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## THE MORAL MAN IN DIMITRIE CANTEMIR'S VISION (PART 2)

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**Abstract:** *What we intend to illustrate is what kind of human prototype Dimitrie Cantemir built in his work, taking Plato<sup>1</sup>, the Greek philosopher, as his cultural model. From this perspective, a consistent advocacy for knowledge and truth is the foundation of the whole “moral edifice” especially dedicated by Cantemir in the Sentences<sup>2</sup> (Sententii). Cantemir’s work is an invitation to self-knowledge, thereby contributing to the education of the Romanian human nature.*

**Keywords:** *moral man, cultural model, knowledge, truth, European humanism.*

The wise man, particularly the bright-minded one, is nevertheless the worthy model for both the reader - the loyal partner in the initial and only imaginary periplus - and the one who might have doubts about his own intellectual status. “The state of wisdom”, proper to some people, requires a permanent reconfirmation, and should be lived again, after being previously thought again - as some of us consider - or, if already attained, it may be only continuously enriched. Where does the vigor for such a thing come from?

The answer - or an answer- might reside in: “the learned and the wise poor could give advice”. All the tempted and crazy emperors would not reach it, so that the wise will learn from the wise, thus adding learning to the wisdom already attained and gained through his own endeavor.

The wise are often simple, poor, but even Enlightened ones; the coveted and dreamed wisdom might be the attribute of the one which is addressed to, without no connection with a certain material state. From this direct-or extended over centuries-dialogue, and extended indirectly among the wise people, it reached Cantemir’s epoch as “*a science of wisdom which does not reside in stately and imposing chairs, but which live in humble and learned minds*”.

The “common premises” of wisdom and of self- science is reconfirmed also there, in the minds of those who give life to wisdom and who are the learned people, the “prisoners” of knowledge.

Cantemir “marks” a causality statement between the man’s fundamental ethics and his status of a wise man, even if wisdom is sometimes seen by him as a virtue among virtues.

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<sup>1</sup> Plato, *Republic*, in *Work V*, Bucharest, Enciclopedic Publishing House, Edition prepared by Constantin Noica and Petru Creția, 1986.

<sup>2</sup> Dimitrie Cantemir, *Sententii (Sentences)*, Bucharest, Gramar Publishing House, 2003.

So, it seems that first of all man must be endowed- or better said- must endow himself with beautiful character and behavior features, to embrace the purest form of his soul, which is the “state of his own wisdom”. And the latter, once attaining that wisdom, may confer it, in his turn, more substance, more nobleness, and, why not, more fulfilment to the “moral world” of each wise man.

This one finds out that before accomplishing his wisdom, man should be righteous: “the right judge will judge himself in all fairness first, and then will judge others wrong”. Also, one needs a fair heart in which “not the least slyness or perjury shelters”.

“Training” or better said “self- training” of the one choosing to quench the knowledge thirst means living and generous, honest life, and last but not least giving his own life to an altar of good. To encourage him on his way to pre-accomplishment, prior to final accomplishment of “reaching wisdom”, Cantemir shows his readers, like in a mirror, the wretched pass through life of the unfair, malicious, mendacious, selfish and bad man. In itself, the antithesis is an enough motivation for the first, fundamental choice, among the many choices the reader can make during his existence, a choice between the GOOD and the EVIL with everything they contain.

The spur towards the way to the good is, so much more, a direct one along those works, as if everyone understands, in his own way, why he should not be lured by the evil, he later on will be honored with a convincing explanation to step firmly on the route of the good; the noble way towards the GOOD, fascinating and full of accomplishments as it is, might look very difficult in many people’s eyes, such eyes which cannot look as far as the Good horizon, a blessed horizon, which often urge man on wrong ways, as a proof of his own short-sightedness. A *conditio sine qua non* to attaining what later on Nietzsche<sup>3</sup> called the higher humanity, is what Cantemir calls “the soul diligence”. Written at about 30 years - a young age nowadays - as a continuation of the “*Hieroglyphic History*”<sup>4</sup>, appreciated as the first novel in the Romanian literature, “*Sententii*”<sup>5</sup> is ultimately just a pretext of the return in eternity of he who had already become a wise man for the others. From his spheres, first of all defined by a high spirit, the solitary, cold, lucid, perspicacious wise man -as Nietzsche referred to him - , has moments of meta generosity from time to time, in which he “calls” others to his own solitude. With Cantemir, both his mind and soul game totally devoted, actually “sacrificed” on the altar of his own spirit, is a game which will mark his entire intellectual and social existence. In his work, many years before the “*Sententii*”, one can have a first “meeting” of the Wise with the World, in the already famous dialogue entitled “*The Divan or the Scholar’s Quarrel with the World or the Dispute between Soul and Body*”<sup>6</sup>, issued in 1698 in Iassy, but already sent one year before to Ieremia Cacavela, his mentor, to be published.

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<sup>3</sup> Fr. Nietzsche, *Aphorisms*, Bucharest, Humanitas Publishing House, 2007.

<sup>4</sup> D., Cantemir, *The Hieroglyphic History*, Bucharest, Academiei Publishing House, 2003.

<sup>5</sup> Idem, *Sententii*, cited works.

<sup>6</sup> Idem, *The Divan or the Scholar’s Quarrel with the World or the Dispute between Soul and Body*, Bucharest, Academiei Publishing House, 2003.



For Dimitrie Cantemir who was in his twenties at that moment, that treatise on morals- thus considered by some of his work exegetists - just a paper of reference for the history of pedagogy- was a landmark towards “élite world” of the European humanists.

The dialogue, often a fantastic one, between the Wise – the soul, and the World- the body-, illustrates, in a thorough way, the permanent unrest of the correct option of the mortal man, who passes away before long. The shortness of life generates an extraordinary pressure on the human being which came on Earth under the star of its own misfortune, as some thinkers state, or even damned as others consider.

The fundamental antithesis of the GOOD and the EVIL is present from the very beginning; different from the “*Sententii*”, the reader is only assisting, without participating in the “construction of the moral world”, ready to accept the wise in that “home”. From the very start of the inner own way, the human being is advised to be good, to do good and only good, to make his name illustrious, for continuing to live even after his passing away. Also, the Wise –soul asks the mortal one to remember the following paradox: though the world was created as a sacrifice on the “altar of the Good”, unfortunately it is part of the Evil. Cantemir, a Christian man, gives the World a chance, joining those who had seen in Christ’s appearance an occasion to the World to get free from the star of the Evil by adoration and divination. The sublime analogy of God and light, achieved by Dimitrie Cantemir, the Christian prince and philosopher, suggestively offers the mortal man Seneca’s words: awareness of divinity at which one relates to, and about which one “knows” it observes everything one fulfils.

Asceticism is also suggested to the mortal man, for his own being to live with an appeal to dignity in both his inner and external life: “be blind, dumb and deaf to everything worldly”. The wise man continues his *bona fide* approach to the mortal, by advising him to give up envy and greediness which are his own soul enemies; he who does not understand that, will give up the good life from after life. The vanity of living an ordinary, middling life in which the human being fails in the opportunity of a superior life is underlined, and it always reminds about the symmetry of the human fate fundamental moments from the quality point of view: “you came up naked from your mother’s womb, and will go back naked into the dust”. Therefore, leave all the life lies, said the Wise man to the reader, to the world, and he seldom says that to himself, when the worldly temptation almost captivates him to restart the life trip to the world of the good, by practicing the virtue of justice. This beautiful feature for ever achieved could also be a shield for the human being, against the false friendship that the World seem to offer him. Behind this offer there is nothing but the “soul poison”, actually the soul death. A World trap- means misleading the wish to upstartness, to grandeur, to mounting the social hierarchy stairs, which most often brings about misfortunes, and a fall into an ever-deeper abyss. Faith will fundamentally determine the man to “see” the way to his existential good which gives him the hope of living; the believer will count at least owing to his creed and in which he gets closer to the divinity that created him, “after His likeness”. The created man is urged to behave himself like the real master of the world which was offered to him, but a good master, calm,

humble, aware of the fact that it is well to enrich and to share the world fortune of that world. A diligent, generous, hardworking, righteous master, responsible to himself and in front of others and of the whole world, seen from the perspective of the universal order. A master who should defend his property from the Evil, and who, in order to accomplish that Master of the World cosmical condition, must be both valiant and brave as to fight the Evil itself when needed. A Man Master who must be insensitive to others' praises, to stay clear-minded, with an unaltered judgement, having always in his "mind eyes" the three fundamental moments of his permanent existence as a being and a non-being: "death, resurrection, and the right judgement". Liable to many hardships, the human being will succeed to overcome them, if he remains with an intact sense of justice which allows him a permanent and correct self-evaluation, but which "secures" him with an essential strength of character for his endeavor to step on. The human being could be gradually and morally accomplished in the course of his life stages which are seven at Cantemir: babyhood, childhood, adolescence, youth, maturity, grey-head, and venerable age. Of course, not everybody can pass through all these life stages, and from such a perspective it seems credible to create a certain "concentration" of your human debts which one has to accomplish during one's life. A real qualitative "causal chain" among "life steps" is created, so that each of them counts equally much for the man's firmness and beauty: babyhood and childhood can be identified with the ground of the man's own human construction, while grey-head and venerable age can be the "summit" of the same human construct, as the man's highest level reached. The human being is ideally projected in its permanent development, in its eternal search for accomplishing the earthly destiny; and who could define that destiny for each individual or for all people? Until doomsday, the place where each man will learn if he succeeds in accomplishing his fate, Cantemir proposes the human being-still travelling towards the world of wisdom- a whole technology to achieving a first an inner harmony, a state from which one should start along the way of the proper humanness. The Socrates' spur of "knowing yourself" is taken by the Prince Philosopher with a hint to Thales, in the sense of an intelligent, correct, profound and all - embracing cognition, actually a self-cognition. Once reached, that self-cognition places man among his fellow beings, and then among the other creatures to whom he is superior.

Self-cognition crosses a bridge which places man in the created universe, as a part of Creation. Once there, the man must know his Creator, as much as he is allowed to, by being intelligent, honest, open minded, with an open soul. He should be aware of God's existence once he has become aware of himself. Charity in the world is also a God's gift, while in his turn, the human being is motivated to do good, even since pre-Christianism, the dawns of human civilization. Then being self-aware, endowed also with the knowledge of God, the man should know the world surrounding him, with all its Good and Evil which he must reform. As benefactors have always existed, they will be the models for those to whom the learning from that book is addressed to. The model must be chosen, and one must follow the way leading to what the latter stimulates: the power of behavior example, through the light one spread and through the wisdom one got. The man

should be mindful of the people around him, avoiding those who could divert him from his moral accomplishment, mainly in the moment when he reached to know himself, to know God who gave him a world that had become known too, and from which he could take the good model. From then on, the virtue and charity practice should be man's guide all his life long, the man who became righteous and an eternally legal searcher for the multiple plans of his existence. He then is morally and spiritually prepared to accede to a superior world, one of philosophers, of wise people, who are God's closest and dearest ones, a world of the non-living anteroom. The "*Divan*", a previous work to the "*Sententii*", shows the reader the sense of Life, the ways to reach an existence worthy of human condition, the practice of living in this world. Years after, as if Cantemir realized in the "*Sententii*" that his readers had not acceded on the way of their own formation, he turns back in a generous way as an actor offering advice, on condition that the reader changes himself from a listening bystander into an adviser actor, as time seems to become impatient.

Here comes a possible conclusion for everybody: the Cantemirian vision on man "gives" a good individual from his very birth, attaining the human ideal from his own cognition, and "ending" in the high spheres of wisdom.

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# KANTIAN TRANSCENDENTAL PERSPECTIVE ON METAPYSICS: VARIOUS ASPECTS

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**Abstract:** *In the present paper, we will consider some of the arguments by which Immanuel Kant questions the legitimacy of traditional metaphysics, as these arguments are presented in “Transcendental Dialectics” in the Critique of Pure Reason. Here, the German philosopher’s verdict is radical: the knowledge of the super-sensible is not possible and the “dogmatic” character of metaphysics should be overcome! In the next step, we can ask whether Kant had an additional, different understanding of metaphysics in mind. Some of the phrasing used in the Critique of Pure Reason seems to show that legitimate metaphysics should be a system of pure concepts of reasoning, and a thematically organized inventory of everything we acquire through pure reason. At other times, metaphysics appears to be mistaken with the transcendental philosophy itself – a critique signed by Kant, with the critical examination of our whole a priori knowledge.*

**Keywords:** *classical metaphysics, science of the first principles, natural disposition, transcendental ideas, metaphysics of experience.*

Why Kant? First of all, the spirit of Kantian philosophy satisfies a critical cultural orientation. Immanuel Kant demands the critical analysis of any kind of hypothesis, both the examination of the previous that endorses the scientific and also the philosophical judgement of a certain time. Thus, Immanuel Kant can be considered the master of conceptual-constructivist, critical philosophy, the return to Kantian philosophy indicating even at present, the unconditional demand of reasoning. And this return to Kant usually starts by calling upon the method in which the philosopher critically pertained to classical metaphysics.

In the classical, Platonic-Aristotelian apprehension, that is supported by a lengthy tradition of western philosophy, metaphysics was regarded as a science, as a matter of fact, the science par excellence. From Aristotle to Hegel, no philosopher who dedicated himself to metaphysics ever doubted that it serves as the absolute science. As it is known, the rank of a certain science is given by the dignity and the importance of its object. The science that has the principle of existence as its object (and makes use of pure

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reason in order to understand it) will therefore be the highest of all sciences, an absolute science. The principle itself exists in a significant or strict manner; it represents the pure Being. According to Aristotle, the being that is addressed in the “first philosophy” is nothing other than the supreme foundation of existence and intelligible; its understanding will ensure the knowledge of every particular being.

In *Metaphysics*, Aristotle says:

“For he who chooses to know for the sake of knowing will choose most readily that which is most truly knowledge, and such is the knowledge of that which is most knowable; and the first principles and the causes are most knowable.”<sup>1</sup>

As Mircea Flonta emphasizes in one of his studies published in *Revista de Filosofie*, “Filosofie critică și construcție metafizică” (*The Philosophy Magazine*, “Critical Philosophy and metaphysical construction”) (1993, p. 446), “even Kant”, who carried out a systematic critique of the possibility to gain knowledge regarding the ultimate reality through pure reason, “does not deny that metaphysics is the queen of all sciences”. Though he did not edify and think of it as a theory of the pure being, but as transcendental philosophy.

“All philosophy, however, is either cognition from pure reason or rational cognition from empirical principles. The former is called pure philosophy, the latter empirical. Now the philosophy of pure reason is either propaedeutic (preparation), which investigates the faculty of reason in regard to all pure *a priori* cognition, and is called critique, or, second, the system of pure reason (science), the whole (true as well as apparent) philosophical cognition from pure reason in systematic interconnection, and is called metaphysics; this name can also be given to all of pure philosophy including the critique, in order to comprehend the investigation of everything that can ever be cognized *a priori* as well as the presentation of that which constitutes a system of pure philosophical cognitions of this kind, but in distinction from all empirical as well as mathematical use of reason.”<sup>2</sup>

A few pages later, he adds:

“Thus, the metaphysics of nature as well as morals, but above all the preparatory (propaedeutic) critique of reason that dares to fly with

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<sup>1</sup> Aristotle, *METAPHYSICS*, translated by W.D. Ross, Oxford: The Clarendon Press, 1912, p.3 (ed.rom: *Metafizica*, Editura IRI, 1996, p. 18, translated by Dan Badarau).

<sup>2</sup> Immanuel Kant, *Critique of pure reason*, Translated and edited by Paul Guyer and Allen W. Wood, Cambridge University Press, 1998, p. 695, 696.

its own wings, alone constitute that which we can call philosophy in a genuine sense.' This relates everything to wisdom, but through the path of science, the only one which, once cleared, is never overgrown, and never leads to error (...).Just for this reason metaphysics is also the culmination of all culture of human reason, which is indispensable even if one sets aside its influence as a science for certain determinate ends. For it considers reason according to its elements and highest maxims, which must ground even the possibility of some sciences and the use of all of them. That as mere speculation it serves more to prevent errors than to amplify cognition does no damage to its value, but rather gives it all the more dignity and authority through its office as censor, which secures the general order and unity, indeed the well-being of the scientific community, and prevents its cheerful and fruitful efforts from straying from the chief end, that of the general happiness.”<sup>3</sup>

In the *Critique of Pure Reason*, Kant resoundingly affirms that metaphysics is not possible as a science of the supersensible, and he also questions the possibility of considering metaphysics as a system of pure concepts of reasoning. Furthermore, he often acknowledges that the transcendental philosophy suggested in the *Critique of Pure Reason* can also be assumed as a premise to possible metaphysics.

“Metaphysics, as a natural predisposition of reason, is actual, but it is also of itself, dialectical and deceitful (...). In order that metaphysics might, as science, be able to lay claim, not merely to deceitful persuasion, but to insight and conviction, a critique of reason itself must set forth the entire stock of a priori concepts, their division according to the different sources (sensibility, understanding, and reason), further, a complete table of those concepts, and the analysis of all of them along with everything that can be derived from that analysis; and then, especially, such a critique must set forth the possibility of synthetic cognition a priori through a deduction of these concepts, it must set forth the principles of their use, and finally also the boundaries of that use; and all of this in a complete system.”<sup>4</sup>

In order to explain Kant’s critique regarding traditional metaphysics, we will appeal to some of his statements in „Transcendental dialectics”: the

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<sup>3</sup> Immanuel Kant, *op.cit.*, pp. 700, 701.

<sup>4</sup> Kant, Immanuel, *Prolegomena to Any Future Metaphysics That Will Be Able to Come Forward as Science*, Translated and edited by Gary Hatfield, Cambridge University Press, 2004, p.116.

division in which rationality is examined, as a specific faculty of cognition, distinct from the intellect and the faculty of reason.

We would like to focus on the process of applying pure forms of sensitivity and intuitions to the sensitive *a posteriori* content. Thus, this content is organized in *space* and *time*, and the pure forms of the intellect are applied to the resulted phenomenon, namely *categories*. This is not knowledge, but synthesis functions of the intellect, which are always applied to a content deriving from outside the intellect, which always has an empirical correspondent offered by sensitivity. Therefore, we talk about a *phenomenon*, thought of within the limits of experience – and not about *a thing in itself*, not about the transcendent. In „Transcendental Dialectics”, Kant critically focuses exactly on „the great error of metaphysical thinking” –the extension of intellectual categories beyond potential experience.

“Nevertheless there is something so seductive in the possession of an apparent art for giving all of our cognitions the form of understanding, even though with regard to their content one may yet be very empty and poor, that this general logic, which is merely a canon for judging, has been used as if it were an organon for the actual production of at least the semblance of objective assertions, and thus in fact it has thereby been misused. Now general logic, as a putative organon, is called dialectic. As different as the significance of the employment of this designation of a science or art among the ancients may have been, one can still infer from their actual use of it that among them it was nothing other than the logic of illusion - a sophistical art for giving to its ignorance, indeed even to its intentional tricks, the air of truth, by imitating the method of thoroughness, which logic prescribes in general, and using its topics for the embellishment of every empty pretension. Now one can take it as a certain and useful warning that general logic, considered as an organon, is always a logic of illusion, i.e., is dialectical.”<sup>5</sup>

Considering reason as a faculty of syllogistic rationale and following tradition, Kant identifies three types of reason: categorical, hypothetic and disjunctive, and through a regressive endeavor towards basis he concludes with three *ideas*: an absolute subject, which forms the basis of categorical syllogisms – the soul –representing the *psychological idea*; an absolute condition, based on hypothetical syllogisms – the universe – representing the *cosmological idea*; an absolute entirety, which establishes the series of

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<sup>5</sup> Immanuel Kant, *Critique of pure reason*, Translated and edited by Paul Guyer and Allen W. Wood, Cambridge University Press, 1998, p. 198.

disjunctive reason – the supreme being – representing *the theological idea*. As ideas of reason, the Soul, the Universe and God, have been considered in classical metaphysics as being *real objects*, and possible to be known. On these lines, classical metaphysics focuses on three components: *rational psychology, rational cosmology and rational theology*.

*Rational psychology* studies the soul (as a functional unit of our conscience) as a real object, although, says Kant, we also possess intuitions regarding this “object”, which makes knowing it impossible. *Rational cosmology* focuses on the Universe, but this is also an idea of reason, and not a real object. We are always offered individual phenomena, and never an absolute entirety of phenomena, and even though the Universe has different characteristics (for example, self-sustenance), these are only contradictory determinations (antinomies). *Rational theology* focuses on the highest idea of reason, the idea of a supreme being, and those studying metaphysics never doubted the possibility of knowing it, especially the modern ones. But Kant says that we cannot prove the existence or non-existence of divinity, because these concepts go beyond the ability of our intellect, which is constitutive for everything involving knowledge. At this level we have to take into consideration the German philosopher’s critique regarding “the rational arguments of God’s existence”.

The error in thinking comes from the fact that those of us with reason, have the natural tendency to expand categories beyond experience. Thus, the pure forms of intellect do not work anymore on a phenomenon level. But Kant says: *transcendental ideas* have no empirical correspondent, but relate to intellect. This way, we go beyond experience and ignore our limits. The intellect synthetizes the diversity that comes from invalid abstract notions. The concepts of those judgements have no correspondent intuition and so lack content; they are not constitutive to knowledge. Moreover, an inaccurate use of ideas of substantializing their object, will lead to illusions. Nevertheless, they must not be considered as being negative: “Although we have to say of the transcendental concepts of reason: *They are only ideas*, we will by no means regard them as superfluous and nugatory”<sup>6</sup>. In their nature, they have a positive function: systematic unification of human knowledge and of the rules of the intellect. For that purpose, they have a *regulatory* role, by setting targets (although they may be unachievable through knowledge and experience) and ensure the unlimited progress of science.

“To progress from the cognition of oneself (of the soul) to cognition of the world and, by means of this, to the original being, is so

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<sup>6</sup> Ibidem, p. 403.



natural that this progression appears similar to the logical advance of reason from premises to conclusion”<sup>7</sup>.

The shifting of our thought life towards the unknown is something normal and natural. The human mind always felt the need to outdo itself, to reach the unknown, to discover clearer answers to the great existential questions. A science about the psychic phenomena is possible and useful, just as the natural sciences. But it is beyond our powers to affirm that we possess knowledge about the soul, Universe, God, eternity, freedom, about the world and its beginning. But we can easily notice that the history of metaphysics is profoundly marked by the belief in the possibility of knowing what goes beyond any possible experience. Kant comes with a clear and radical verdict: it is not possible to have a *science* regarding the supersensitive!

In *Critique of pure reason*, Kant analyzed metaphysics, both in its meaning of “natural disposition” (natural tendency of reason) and its meaning of its possibility as a science. Of course, in the hereby paper we are interested in the second meaning analyzed by the philosopher. In his well-known writing, the guiding question is: How is metaphysics possible and what way must reason take in order to get to it? The philosopher was focusing on metaphysics – in its meaning of science, because he rejected traditional, dogmatic metaphysics, being interested in a discourse linked to the supersensitive.

“Due to it’s *a priori* forms, our knowledge is inevitably limited to phenomena, as they are given to us through experience, without being able to expand to trans-phenomenal reality, to the thing itself”.<sup>8</sup>

What other sort of metaphysics could Kant actually focus on?

“Some statements from *Critique of pure reason* seem to indicate that the legitimate metaphysics could be a systematization of pure thinking concepts, for which critique could only offer a main articulation and the «guiding thread» (...). Some other times, metaphysics seems to be confused with the critique itself...”<sup>9</sup>

As Ilie Pârnu was saying at some point (in a *Metaphysics* discourse), Kant focused on “the critique of pure reason” with at least three meanings: *critique* (its character of being a reflexive theory); *transcendental philosophy*, marking the type of theoretical program that the philosopher

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<sup>7</sup> Ibidem, p. 407.

<sup>8</sup> Colțescu, Viorel, *Philosophy and Its History (Filosofia și istoria ei)*, West Publishing House, Timișoara, 1996, p. 118.

<sup>9</sup> Ibidem, p. 119

from Königsberg will achieve; *metaphysics* (a model theory regarding establishing a new type of ontology).

It is often said that Immanuel Kant replaced metaphysics with the possibility of knowing through experience, that he replaced metaphysics with epistemology. But, through another type of interpretation, it is stated that the philosopher only transformed metaphysics, from a general ontology to a critical theory of *a priori* conditions of knowledge through experience and precisely this knowledge made the neo-kantians believe that Immanuel Kant completely abandoned the project of metaphysics, his philosophy only being a “theory of knowledge”. In other words, knowing the structures and conditions that make experience possible is metaphysical knowledge. For example, Kant suggests for Heidegger, to replace metaphysics blocked in antinomies with a metaphysical program that gradually saves a general theory of categories. So, we would not be talking about another construction of metaphysical operation in a traditional sense, but a different way of understanding metaphysics.

The philosopher from Königsberg, distinguishing between “the discovery context” and “the justification context” (establishing), placed metaphysics in the context of the basis. By analogically approaching the track of metaphysics evolution, he constructs “a model” of the epistemic subject and he presents it in theory. From the critical examination of this model through analogy, he draws conclusions regarding faculties of knowledge. As Ilie Pârvu recommends in *The Architecture of Existence* (pp. 205-213), the *Critique of Pure Reason* should be read in a double register: as a theory – the object of a metaphysical model– and as a critique of this theory. For these two levels of discourse there are “indicatory concepts”: subjective-objective, metaphysical-transcendental, critical-dogmatic, transcendental-dogmatic, regulative, reflexive-constitutive etc. Then, the study of the faculties of knowledge especially focuses on the answer to the question: How are synthetic *a priori* judgements possible? We would like to emphasize that Kant also asks about the possibility of metaphysics as a science in connection to this question. As he will write in *Prolegomena*, metaphysical knowledge “is therefore an *a priori* knowledge springing from pure intellect and from pure reason. Through this, metaphysical knowledge would not be different from pure mathematics; so it should be called pure philosophical knowledge.”<sup>10</sup>

Of course, it is obvious with Kant that the object of metaphysical knowledge is not the world being, but the conditions of the creation of the

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<sup>10</sup> Kant, Immanuel, *Prolegomena to Any Future Metaphysics That Will Be Able to Come Forward as Science*, Translated and edited by Gary Hatfield, Cambridge University Press, 2004, p.117.

world – as a possible experience and the principles of this knowledge are principles that make the objects of experience possible. Also, in *Prolegomena*, Kant says about these principles that they represent “the philosophical part of the pure conscience of nature”. Actually, Kant characterized his theoretical philosophy – the critical research of our entire *a priori* knowledge – as a reform of metaphysics, a reform that would have shown for the first time how metaphysics understood as a science is possible. In *General Logics* it is stated that the first question philosophy asks is “What can I know?” and it is said that the answer to this question is in metaphysics:

“In this universal sense, the area of philosophy could be universally reduced to the following questions: 1) What can I know? 2) What do I have to do? 3) What can I hope for? 4) What is man? The first question is answered through *metaphysics*, the second through *morals*, the third through *religion*, and the last through *anthropology* (...). Therefore, the philosopher must be able to determine: 1) the source of human science, 2) the area of possible and useful application of the entirety of science and finally 3) the limits of reason.”<sup>11</sup>

Therefore metaphysics in its new meaning is a transcendental philosophy. Just the same, in *Prolegomena* (Kant, 2004, p.243), Kant underlines that the object of metaphysics is represented by pure reason, meaning that our entire independent knowledge regarding experience, makes experience possible. The statements of metaphysics are *a priori* synthetic statements. We should also mention the “Preface” to the first edition of *Critique of Pure Reason*: “metaphysics (...) is only the thematically organized *inventory* of everything we possess through pure reason.”<sup>12</sup> Also, in *Critique of Pure Reason*, in the chapter of „The Architectonics of Pure Reason”, he names as *pure philosophy* „knowledge from pure reason”. Kant writes:

“Now the philosophy of pure reason is either *propaedeutic* (preparation), which investigates the faculty of reason in regard to all pure *a priori* cognition, and is called *critique*, or, second, the system of pure reason (science), the whole (true as well as apparent) philosophical cognition from pure reason in systematic interconnection, and is called *metaphysics*”.<sup>13</sup>

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<sup>11</sup> Immanuel Kant, *Logica generala / Logics*, Scientific and Encyclopedic Publishing House, Bucharest, translation by A. Surdu, 1985, p. 78.

<sup>12</sup> Kant, 1998, p.129.

<sup>13</sup> Immanuel Kant, *Critique of pure reason*, Translated and edited by Paul Guyer and Allen W. Wood, Cambridge University Press, 1998, p. 696.

Considering that “*pure physics*” is “Kant’s creation”, suggested by him in *Transcendental Analytics* from *The Critique of Pure Reason*, and it assumes the pure concepts and the principles of intellect which focus on “nature in general”, Mircea Flonta identifies on this level “a systematic statement of the *metaphysical experience* and the explanation of its possibility.”<sup>14</sup> In *The Critique of Pure Reason* and in *Prolegomena*, Kant qualifies as *metaphysical* all *a priori* synthetic judgements that do not pertain to pure mathematics. Or, through such judgements, the principles of pure physics express

“universal and necessary laws to which nature submits, as *general nature*”. Kant characterizes them as necessary contexts in which any thinking about objects operates and as *a priori* conditions which make possible any knowledge or experience regarding objects or phenomena.”<sup>15</sup>

Therefore we can say that the possibility of experience in general is also a universal law of nature, and the basic principles of this possibility are the laws of nature themselves. Also, “*the possibility of experience* is (...) what gives to all *a priori* knowledge an objective reality”.<sup>16</sup> *The Metaphysics of Experience* names *the form* of our knowledge about nature „the pure scheme for possible experience”. Experience takes place only when this form organizes a *matter* derived from feelings. Under these conditions, *pure physics* understood as “the metaphysics of experience”, must be clearly distinguished from Newton’s physics, which has laws that do not describe a general nature, but a determined one, which can only be known through means of experience.

We should also add the position of the well-known exegete P.F. Strawson from his work *The Limits of Reason. An Essay about «Critique of Pure Reason» by Kant*. In his opinion, Kant opens towards a form of “scientific metaphysics”:

“It will be, as metaphysics was always said to be, the most general and fundamental of studies, and its method will be not-empirical, or *a priori*, not because, like transcendent metaphysics, it claims to be concerned with a realm of object inaccessible to experience, but because it is concerned with the conceptual structure which is presupposed in all empirical inquiries. This kind of investigation

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<sup>14</sup> Flonta, Mircea, „An explanation of the concept of <pure physics> in *Critique of pure reason*”. In 200 years after the *Critique of pure reason* / „O explicație a conceptului <fizică pură> în *Critica rațiunii pure*”, în *Immanuel Kant. 200 de ani de la apariția Criticii rațiunii pure*: Romanian Academy Publishing House, Bucharest, 1982, pp. 40-42.

<sup>15</sup> Ibidem, p. 40.

<sup>16</sup> Kant, 1998, *op.cit.*, p.183.

Kant sometimes calls «transcendental», as distinct from «transcendent», though he is by no means consistent in his use of this expression”.<sup>17</sup>

As he continues, the exegete mentions that:

“In my general review of the *Critique* I suggested that Kant’s major positive achievement was to be sought in his attempt to articulate the general structure of any conception of experience which we could make truly intelligible to ourselves. If there is such a structure, if there is a set of ideas which enter indispensably into such a structure, then the members of this set will surely have a distinctive status”.<sup>18</sup>

Ilie Pâravu makes statements almost in the same direction, when he says that Immanuel Kant, in *Opus Postumum*, often repeats that science cannot make its own basis, that the metaphysical elements of the science of nature are part of the philosophy of nature, and not the science itself, that the basis of science are metaphysical and that the philosophical assumptions of Newton’s physics are theoretical conditions of possibility for experience. Ilie Pâravu links “the metaphysics of experience” to the fact that transcendental lack of perception represents the unique “origin“ of the categories system, of the schemes of imagination and of the formal conditions of *a priori* intuition (in which objects are given), and also establishes the possibility of passing from the conditions of knowledge to the conditions of the possibility of the object of knowledge. This means it determines the objectiveness of things pertaining to experience, as in determining objects as existing objects. Thus, the metaphysics of experience is a transcendental metaphysics.

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<sup>17</sup> P.F. Strawson, *The Bounds of Sense. An Essay on Kant’s Critique of Pure Reason*, Routledge, London – New York, 1993, p.18.

<sup>18</sup> Ibidem, pp. 49-50.

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# AMERICAN IDENTITY CRISIS: ATTACK TO AMERICAN CIVIL RELIGION & TRANS-WESTERNNESS RISK?<sup>1</sup>

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**Abstract:** *This is a philosophical & socio-cultural History of American identity configuration and development, by religion (lato sense: traditional religion, civil religion and political or ideological religion), as a connecting thread and social methamer. By this way, the inquiry into the American identity is possible: what is the American being and how does it materialize? What does it relate and link to its realization? How does it interact with others and what is its meaning and scope of the transcendent and sacred? In that sense, it reviews the main native ontologies, epistemologies and axiologies (those filtered by its Americanness), and it places them according to their religious cycles of social awakenings and revitalizations of elites. In this way, an inventory is made of the main and most defining ideas, beliefs and institutions, with their characters and sustaining movements, which have made the United States of America (USA) the country it is (a nation with the soul of a church), singling it out in front of others peoples (from the most western to the leader of the West).*

**Keywords:** *History, Philosophy, Socio-Cultural Studies, identity, idiosyncratic legacy & mythopoietic matrix, religion, the United States of America (USA/US), Americanness, trans-Westernness.*

## **Introduction: who is the American? An overview of American development**

The meaning of *American* is controversial. It is not just an administrative category for the citizens of the United States of America. It is more than this: it is complex set for a way of life, a dream, a civil religion, etc. Also, according to the Social Science coordinates (space, time and subject), the meaning can change, with several differences (idiomatic, cultural, etc.). May be, in modern English, American word is not so polemic, because it is clearly identified with a genitive meaning: it is related with every person, thing or issue from the United States of America. The principal issue is about the double grammar condition of

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<sup>1</sup> Paper based on publications during the doctoral program (Coll & Sánchez-Bayón 2013. Sánchez-Bayón 2014. Sánchez-Bayón, et al. 2017).

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American: as an adjective and a substantive. In other languages, for example, the romance languages, American supposes a semantic misappropriation, because it is used for people from the United States of America, and at the same time, it includes people from anywhere in the Continent. In Germanic language, there are two words for American: *Amerikanisch* for things and *Amerikaner* for people. In Slavic languages happen a similar difference (also, to distinguish between masculine and feminine). Also, after the *cultural wars* (1960-80's), from the recent Cultural Studies, they pretend to improve some neologist terms, to distinguish the ethnic-cultural background: English-American, Afro-American, Latin-American, etc. The common sense for all those languages is the vocational meaning of American to mix the citizenship of one country and the continental condition of the inhabitants there (as part of the *Federalist project*: it is a kind of intentional metonymy, linked with *tota pro partibus* or wholes for parts).

The origin of this neologism comes from the surname of an Italian explorer and a map-designer: *Americus/Amerigo Vespucci* (1454-1512). His map was popular thanks to two German cartographers at the University of Freiburg: Waldseemüller and Ringmann. They used the denomination of America (*Americi terram*) in their *Universalis Cosmographia* (1507), to distinguish that part of the New World from the Spanish and Portuguese regions in the continent, which called Western Indian territories at that time. By this way, other European people had the chance to occupy new territories, as well done the Crow of England, German Kingdoms, Dutch Republic, etc.

The confirmation of American expression as the gentilism for people in British America came from Reverend Samuel Johnson (1709-1784). Doctor Johnson was a popular writer and editor (with many publications: poets, essays, biographies, and hand-books –specially, about lexicography). Thanks to his position as a notorious tory and Anglican bishop, he was a printed censor, who corrected every other denomination, until the *uniformization* of American as the official gentilism. Such denomination was confirmed during the debates of the Continental Congress. Also, it was the gentilism selected by Hamilton (Washington's close-friend and future Secretary of Treasure), Madison (fourth President of the United States of America) and Jay (diplomat –who negotiated and signed the Treaty of Paris, 1783- and first Chief of Justice) in their *Federalist Papers* (1787). They used American in two ways: in one hand, as a political adjective (i.e. “American republic”, in Federalist nº 51 or 70), and in the other hand, as a geographic issue (i.e. “American lands” – beyond the United State of America's borders: according to the federalist vocation for the whole continent, as it was mentioned before). The



principal confirmation was the Washington's *Farawell Address* (1796), when the first President affirmed: "The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation". It was the confirmation of the American identity and its *Americaness*, which were improved by American civil religion and its heritage, and other resources to build the country and the nation.

The question "who is an American?", it is the more common inquire of foreign visitors, as Tocqueville, Crevecoeur, Chesterton, et al. Also, from the late 19th century, it is the academic mission of the American Cultural Studies (attending to the domestic History, Literature, Politics, etc.). This PhD dissertation pretends to expose and to explain the rich and complex background about it (not just about the legacy, also the review of the mythopoietic matrix), according to the principal lines of thought (from puritans to identity intelligentsia): how the Americans have (re)thought their-selves (own mission, vision and values), along the centuries, until the current identity crisis; also, how to deal with moral hazard and trans-Western risk.

### **A history of American identity by religious factor: a philosophical, historical & socio-cultural mix approach**

This chapter offers a philosophical, historical and cultural global vision (fixing Philosophy, History and Socio-Cultural Studies), all of them applied to the American religious factor and the dimensions of its pioneer identity frameworks (i.e. religious liberty, social cruzades of religious movements, Church-State relations, welfare state & solidarity). With this aim in mind, it begins with a brief notion of the evolution of religious issues, from colonial *Sunday regulation* or the *Blue Laws*, up to current social order, it is based on freedom of religion and non-discrimination. Also, this chapter evaluates the allegedly paradoxical policies and regulations referring to this issue during two previous presidential Administrations, those of Clinton and G.W. Bush.

There are many foreign studies based on several wrong premises about the USA and about its culture and order (*lato sensu* –including political and legal institutions-). The most common mistakes committed by Continental authors are the following:

- a) Prejudice 1: wrongly assuming that most American people are Protestant and, consequently, guide their lives by a professional logic. Weber was the author who spread this explanation in Continental Europe in his popular book *The Protestant Ethic and the Spirit of Capitalism* (1905). According to this premise, education in the USA should mainly be professionally oriented right from the beginning in

order to develop specific work skills. Nevertheless, this is not the case; this is more likely to be an ethnocentric mistake on the part of Continental Europe people, who do indeed educate their future generations in this way. In the USA a personalized education (a broad scope of selection) is predominant (in the academic world). In addition, this system is based on mature knowledge (not memorization), and on critical reflection in order to learn to be resolute and diligent in any social aspect, not only in the professional sense. This evaluation was established due to *Pragmatism*<sup>2</sup>. This pragmatism has favored the broadening of the educative method in the case method, of which some examples will be given in this paper in order to understand how an American Jurist reasons.

- b) Prejudice 2: There is a mystifying presumption that the American model of Church-State Studies, as a pioneer, it is a model of complete independence between Church and State regarding a total freedom of religion, which is an over-simplification of a complex reality. Thanks to this prototypical secularization, in the USA there is a space between religion and policy, in two different social spheres. This, however, does not imply independence, only separation (a definition of competences). Also, this model could be described as an implementation of a multifaceted system of accommodation, based on certain principles, and each generation has to reinterpret those principles and this model to adjust the social order and legal system to its circumstances. In the same way, the freedom of religion is still not total, because public powers have the constitutional commitment to protect and to promote the free exercise of religious liberty and non-discrimination, and other associated rights, and this is a continuous mission. Also, in the last two (Presidential) Administrations (Clinton and G.W. Bush), there are many examples of violations of this freedom and its associated rights and certain positive discrimination measures have been taken at both extremes (*vid. supra* case study).

### **American identity revelations & the Western road to freedom: from colonial *Blue Laws* to current system of order & justice**

*Blue Laws* or *Sunday Laws* were a kind of regulation of religious aspects during the colonial period (1604-1776) and the beginning of the national period, from the first settlements until the Civil War. It was also necessary to pass the Fourteenth Amendment. It is a diverse System, which includes different regulations (i.e. ordinances, covenants, chapters)

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<sup>2</sup> *Pragmatism* is the most relevant native philosophical current in the USA (Sánchez-Bayón, et al. 2018).

and it covers from confessionalism (Church-State union) to preferentialism (a Church accepted by the majority and tolerant of other denominations). The Fourteenth Amendment standardized the guarantee of religious liberty and the separation of Church and State within the Union, and the Supreme Court became the highest organ of supervision.

An elementary explanation of *Blue Laws* will be presented below with respect to the main foundational settlements in the USA. The experience of previous settlements has been useful in reaching the current social order and legal & justice system. The areas mentioned are: a) Southern plantations, b) New England, c) middle provinces, and d) social laboratories.

### **A) Southern plantations and the Anglicanism stamp (official ecclesiastic recognition)**

This first area consists of four great administrative groups: the *Colony and Dominion of Virginia* -nowadays, Virginia, West Virginia and Kentucky; the *Province of North Carolina* -currently, North Carolina and Tennessee-; the *Province of South Carolina* and the *Province of Georgia*. These colonies are directly dependent on the British Crown, and therefore have an institutional model of Anglican as the state religion. An attempt at this, for example, is the admission of the Episcopalian and Presbyterian-variants as part of the power elites. Within this core foundation, the reference point is the colony of Virginia, where the first settlement was located (Jamestown, 1607), which branches into the adjoining settlements (North Carolina, 1663, South Carolina, 1670; Georgia, 1732), where changes to the model of freedom are ratified (i.e. art. 16 of *Virginia Declaration of Rights*, 1776). *Virginia*:

a) Its fundamental/constitutional rules (*Grants, Charters, Statutes & Constitutions*)<sup>3</sup>, as the first (*Royal*) *Charter* of 1606, included the mission of Christianizing and evangelizing the Indians; the second *Charter* of 1609 included a religious requirement (the Oath of Supremacy)<sup>4</sup> in order to be admitted into the colony. The third *Charter* of 1611 maintained the Oath of Supremacy, although Catholics were exempted from taking it. Eventually, the Declaration of Rights (art. 16), proclaimed Freedom of conscience.

b) Among the precepts regarding religion, it is necessary to highlight the *Death Penalty for Blasphemy* of 1610; the *Sunday Law* of 1610; the

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<sup>3</sup> See *The First Charter of Virginia* (April 10, 1606), *The Second Charter of Virginia* (May 23, 1609), *The Third Charter of Virginia* (March 12, 1611), *Ordinances for Virginia* (July 24, 1621), *Virginia Declaration of Rights* (June 12, 1776), *The Constitution of Virginia* (June 29, 1776).

<sup>4</sup> The *Oath of Supremacy* is the requirement to pledge subservience to the Anglican Church, recognizing the British Monarch as its visible head.

*Law requiring religious attendance of 1623; the Law about Sunday travel and church attendance of 1661; the Law requiring the christening of children of 1662; the Law against Quakers of 1663, the Law in order to expedite the elimination of blasphemy, the Oath (in vain), substance abuse and no compliance with Sabbath (dominical rest) of 1699<sup>5</sup>; the Law of Lashes for working, travel or non- attendance of Church on Sunday of 1705; etc.*

- *North Carolina:*

a) Amongst the fundamental Laws<sup>6</sup>, in the *Charters* of 1663 and 1665, North Carolina is recognized as an Anglican colony (with the maintenance of the confessional religion), though no such officinal denomination is adopted until 1711; finally came the Declaration of Rights of 1776, including Freedom of Conscience;

b) Among the above precepts regarding religion, the most salient is the *Law of the observance of the Lord's sacred name, commonly known as Sunday* of 174, which started a crusade against vice.

- *South Carolina:*

a) Among its Fundamental Laws<sup>7</sup>, once independent of the other Carolina (1729), after the *Border Agreement* of 1735, the Anglican Church was formally established.; finally, the *Constitution* of 1778 declared that Christianity as the official religion.

b) In the *interim* of the segregation of the Carolinas, already enjoying a certain amount of autonomy, its assembly passed the *Sunday Laws* of 1692 and 1712.

- *Georgia:*

a) Among its fundamental Laws<sup>8</sup>, the *Charter* of 1732, declared the

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<sup>5</sup> The *Sabbath* is the day of rest established by the Bible and it must be dedicated to the praise of God. The problem is the controversy generated with the *First Great Awakening* (1740's). Even though it had come from ancient times. Because the *American paradoxology*, protestant confessions suffered a certain grade of *Jewishism* in their pursuit of Orthodoxy, which makes them transfer the traditional day of rest to Saturday. For the purposes of this paper, *Sunday & Sabbath Laws* will be considered as a whole, since the important fact is that eventually a greater secularization was promoted for fundamentalist reasons, given that the calendar was divided into working days and holidays (Sánchez-Bayón 2008-13).

<sup>6</sup> See *Charter of Carolina* (March 24, 1663), *A Declaration and Proposals of the Lord Proprietor of Carolina* (Aug. 25, 1663), *Concessions and Agreements of the Lords Proprietors of the Province of Carolina* (1665), *Charter of Carolina* (June 30, 1665), *The Fundamental Constitutions of Carolina* (March 1, 1669), *The Mecklenburgh Resolutions* (May 20, 1775), *Constitution of North Carolina* (Dec. 18, 1776).

<sup>7</sup> See *State Boundery Agreement* (April 1, 1735), *Constitution of South Carolina* (March 26, 1776), *Constitution of South Carolina* (March 19, 1778).

<sup>8</sup> See *Royal Charter of Georgia* (Jun 9, 1732), *Constitution of Georgia* (Feb. 5, 1777), *Constitution of the State of Georgia* (May 6, 1789).

Anglican Church to be the official one; in the *Constitution* of 1777, it is disestablished.

b) Among its mandates on religion, the most outstanding is the *Law to punish vice, profanations, immorality and to observe the Sacred Name of the Lord, commonly known as Sunday* of 1762, similar to North Carolina.

## **B) New England and puritanism traces (the *Covenant of Grace*)**

This second area is the regional group, which consists of four main territorial divisions, the *Province of Massachusetts Bay* (afterwards Massachusetts), the *Province of New Hampshire* (New Hampshire, plus Maine and Vermont), the *Colony of Connecticut* (Connecticut), and the *Colony of Rhode Island and Providence Plantations* (Rhode Island). In this environment, a Congregationalist Theonomic model of puritan confessions was originally predominant, until its total incorporation into the British Crown, when it then became a semi-institutional model. Although the first migrations are motivated by the search for recognition and tolerance, the genomic excesses (e.g. witch hunts, strict morality) generated a decline in the settlements due to explicit or tacit ostracism, which created the urgent necessity to found new settlements that were more flexible and permeable for local minorities (e.g. Baptists, Quakers)<sup>9</sup>. Massachusetts is the great colonial reference for the region, since it is the place where the first settlements were established (the *Pilgrims* in *New Plymouth* in 1620 and the Puritans in *Massachusetts Bay* in 1629-30 – later combining in 1691). In addition, this colony established the subsequent foundational initiatives, because the *purging of Winthrop*<sup>10</sup>, allowing the formation of Connecticut (Rev. T. Hooker in 1635-36), Rhode Island (Rev. R. Williams on 1636); New Hampshire (North-Irish Presbyterians as permanent settlers in the 1630's); Maine (*Nova Scotia*, 1696-1713).

- *Massachusetts*<sup>11</sup>:

a) In New Plymouth, the *Charter* of 1620 established a Theonomic

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<sup>9</sup> In New England, severe punishment was inflicted on Catholics, Baptists, Jews and Quakers (e.g. seizing assets, imprisonments, forced labours, hidings, and hangings). In the Boston area, after prescriptive reminders (up to three), several families were exiled, and four Quakers that did not comply with exile were eventually hanged (Pfeffer 1953. Wood 1958).

<sup>10</sup> He was elected governor up to twelve consecutive times, between 1631 and 1648, dying several months after his last election. His strict policy is a consequence of the social demands at that moment, since the population was terrified by previous experiences in other less integrated settlements that did not survive. His zeal, however, was so great that his own son had to move to New Hampshire, where he became Governor.

<sup>11</sup> See *Massachusetts Constitution* (March 2, 1780).

model, the mandate including the conversion of the Indians, and the requirement of the Oath of Supremacy in order to be admitted into the Colony; among its religious regulation, it is necessary to highlight severe punishment for *Desecration of the Lord's Day* of 1650 and 1699, *The Lack of attendance to Church* of 1651, *the Death Penalty for idolatry, Marital Infidelity and Witchcraft* of 1671, *The Death Penalty for presumption of desecrating the Lord's Day* of 1671, *The requirement of orthodoxy for the free man* of 1672, *The punishment for travelling on the Lord's Day* of 1682.

b) In Massachusetts Bay, the *Charter* of 1629 recognized natural rights, but was subject to the Oath of Supremacy; the *Charter* of 1691, recognized as a general principle that people were free from the Oath of Supremacy, except when holding public office. However, the Christians still discriminated against were those labeled as Papists.

c) In religious regulation, it is important to note: *The regulation of Sabbath* of 1629, *The prosecution on religious grounds* of 1630 (Baker was punished), *The exclusive right to vote for members of the Church* of 1631, *Court Orders to attend Church on Sunday* of 1635, *the Declaration of the Civil administration subject to the Divine Administration* of 1636, *the Death Penalty on religious grounds* of 1641, *the Decree of Church Attendance* in 1646, *the Edict of exile for heresy* of 1646, *the Edict of exile or Death Penalty for Catholic Priests* of 1647, *Edict of exile or Death Penalty for disowning the Bible* of 1651, *Edict of exile or Death Penalty for the Homeless Quakers* of 1658, *Mandate recognizing the right to vote for members of the Church* of 1660, *Edict of death against Quakers, only as a last resort*, of 1661, etc.

- *Connecticut*:

a) Among its constitutional acts<sup>12</sup>, such as the *Fundamental Orders of Connecticut* of 1638-39 and the *Government Act of the Colony of New Haven* of 1643, the Oath of Supremacy is imposed (for political representatives and free owners, respectively);

b) The most significant mandates about religion are: the *Law to prevent and punish the profanation of the Sabbath or the Lord's day* of 1721, and the *Law for the implementation of the due observance of the Sabbath or Lord's day* of 1750.

- *New Hampshire*:

a) Among its foundational laws<sup>13</sup>, such as the *Concessions* of 1629 and

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<sup>12</sup> See *Fundamental Orders* (Jan. 14, 1639), *Fundamental Agreement, or Original Constitution of the Colony of New Haven* (June 4, 1639), *Government of New Haven Colony* (1643), *Charter of Connecticut* (1662), *Constitution of Connecticut* (Oct. 5, 1818).

<sup>13</sup> See *Grant of Hampshire to Capt. John Mason* (Nov. 7, 1629), *Grant of Laconia to Sir Ferdinand Gorges and Captain John Mason by the Council for New England* (Nov. 17, 1629), *Grant of the Province of New Hampshire to John Wollaston Esq.* (1635), *Grant of the Province of New Hampshire to Mr. Mason* (April 22, 1635), *Grant of his interest in*

1635, it is not uncommon to observe the requirement of the Oath of Supremacy and Sunday Laws, although they were more flexible than Massachusetts laws in those days.

b) Among the rules regarding religion, it is possible to identify: the *Law for the better implementation and enforcement of the Lord's day of 1700*, as well as the *Prohibition of blasphemy of 1718*.

### **C) Middle provinces and the reformism influence (social communitarianism)**

This third area is the regional bloc which consists of five original territories, the *Province of New York* (previously New Netherlands and, afterwards, New York and Vermont), the *Province of New Jersey* (New Jersey), the *Province of Pennsylvania* (Pennsylvania), *Delaware Colony* (originally, *The Lower Counties on the Delaware River*, today being Delaware), the *Province of Maryland* (Maryland). Among the above-mentioned colonies, the prevailing model was of deist reciprocity, open to various denominations like the Anglican and its derivatives. The continental European reformed and Catholics, while not being persecuted, were minorities in their home countries and went to America seeking both recognition and enrichment. The cardinal colonies in the area are, on one hand, Maryland (1634-36), and on the other, New York (founded as New Netherlands, by the Dutch Reformed Church, from 1614 to 1664, transforming to Anglicanism by annexation after the mid-century Dutch-British Wars). From this last colony, New Jersey broke away (West New Jersey in 1676 and East New Jersey in 1683, united and autonomous in 1702) and then Delaware (founded by the Swedes in 1665, then assimilated by the Dutch and later by the British, and achieving autonomy in 1701).

- *New York*:

a) Among its fundamental laws<sup>14</sup>, the *Real Concessions* of 1664 and 1674 established the Anglican Church as the official religion until it was abolished in the Constitution of 1777.

b) Among its mandates about religion, the most outstanding are *Laws against the desecration of the Sabbath and other immoralities* of 1673 and 1695.

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*New Hampshire by Sir Ferdinand Gorges to Captain John Mason* (Sept. 17, 1635), *Agreement of the Settlers at Exeter in New Hampshire* (1639), *The Combinations of the Inhabitants upon the Piscataqua River for Government* (1641), *Commission of John Cott* (1680), *Constitution of New Hampshire* (Jan 5, 1776; June 13, 1784).

<sup>14</sup> See *Notification of the Purchase of Manhattan by the Dutch* (Nov. 5, 1626), *The Constitution of New York* (April 20, 1777).

- *New Jersey*:

a) Its fundamental laws<sup>15</sup> from the very beginning follow a model characterized by tolerance, although with certain preferences (e.g. requirement of the Oath of Supremacy for public officials)<sup>16</sup>, as is reflected by the *Concession and Agreement* of 1664, the *Fundamental Constitution for the province of East New Jersey* of 1683.

b) The regulation of religion included the *Sunday Laws or Against the desecration of the Lord's day* of 1683 and 1693, *The law for the suppression of immorality* of 1700, etc.

- *Delaware*:

a) Its primordial laws<sup>17</sup> are very similar to those of New Jersey, with a tolerant approach and certain preferences (although the Oath of Supremacy is compulsory for every citizen), which may be inferred from the *Charter of Delaware* of 1701 and the *Law on the organization of the testimony of government employees and ministers for church affairs* of 1701;

b) Among its most relevant articles, it is possible to highlight the *Decree against Blasphemy of 1739* and the Law to prevent the breach of the Lord's day, commonly known as *Sunday of 1739* –the clarification is owing to the boom in religious awakening and the controversial issue of *Sabbatarianism*.

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<sup>15</sup> See *The Duke of York's Release to John Ford Berkeley, and Sir George Carteret* (June 24, 1664), *The Concession and Agreement of the Lords Proprietors of the Province of New Caesarea, or New Jersey, to and with all and every the Adventurers and such as shall settle or plant there* (1664), *A Declaration of the True Intent and Meaning of us the Lords Proprietors, and Explanation of these concessions made to the Adventurers and Planters of New Caesarea or New Jersey* (1672), *His Royal Highness' Grant to the Lords Proprietors, Sir George Carteret* (July 29, 1674), *The Charter of Fundamental Laws, of West New Jersey, Agreed upon* (1676), *Quintipartite deed of revision, between E. and W. Jersey* (July 1, 1676), *Duke of York's Second Grant to William Penn, Gawn Lawry, Nicholas Lucas, John Eldridge, Edmund Warner, and Edward Byllynge, for the soil and Government of West New Jersey* (Aug. 6, 1680), *Duke of York's Confirmation to the twenty four proprietors* (March 14, 1682), *The Fundamental Constitutions for the Province of East New Jersey in America* (1683), *The King's Letter recognizing the Proprietors' Rights to the soil and Government* (1683), *Surrender from the Proprietors of East and West New Jersey, of their pretended right of Government to her Majesty* (1702), *The Queen's acceptance of the surrender of Government* (April 17, 1709), *Constitution of New Jersey* (July 2, 1776).

<sup>16</sup> There are many examples of incipient tolerance, but the most meaningful is the *Yale apostasy*, movement headed by the Presbyterian Reverend and a senior Academic at Yale, T.B. Chandler (Curry 1986).

<sup>17</sup> See *Charter of Delaware* (1701), *Constitution of Delaware* (Aug. 22, 1776), *Constitution of Delaware* (1792).



#### **D) Social laboratories and the deism emergence (*vox populi/publicist*)**

What differs from the previous cases is that these colonies do not have a clear physical convergence<sup>18</sup>, but are in harmony with a certain state of mind, given that here are found the milestones in the emersion of the modern conception of Tolerance, and together with this, in the subsequent goal of freedom. In the first place, Maryland is a colony founded through a real commitment<sup>19</sup> by an Irish Catholic aristocrat, C. Calvert (*Lord Baltimore*) circa 1629-34, in the east of Virginia, to make room for persecuted Christians. Secondly, Rhode Island is a colony south of Massachusetts established between 1634 and 1636 by the Congregationalist and allegedly Baptist reverend<sup>20</sup>, R. Williams, in his escape from the Winthrop “purges” (the tolerance pot). Thirdly, Pennsylvania, because a noble debt<sup>21</sup>, is founded to the west of Delaware by Quaker leader, W. Penn, who wanted to house all persecuted Quakers. Overall, the three aforementioned groups show the same firm will of their founders to house those people persecuted for the dictates of their conscience (the holly experiment). This started a process of emancipation of those persecuted people obliged to flee with respect to majority groups, and of Civil law with respect to religious law (the above-mentioned major religions no longer maintain these public stances). Nevertheless, it is necessary to specify that in the case of Maryland, this step is the consolidation of the idea of modern tolerance—predominating the negative burden of resignation. Subsequent situations in Rhode Island and Pennsylvania are an example of a trial and error method of transit to modern tolerance, in its positive sense and characterized by greater respect for others, close to the modern concept of freedom.

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<sup>18</sup> It is true that there is a convergence in latitude, but geographically, Rhode Island is considered part of the Northeast, Pennsylvania in the center and Maryland in the South.

<sup>19</sup> *Charles I*, being Secretary of State (in 1625), grants to G. Calvert, *Irish House of Lords*, the exploitation of lands in America. But it will be his son who will receive the *Charter* in 1632 that consolidates the first settlement in 1634.

<sup>20</sup> Williams and Jefferson (the former a Congregationalist, and the latter an Episcopalian) introduced the metaphor of the *wall of separation* as part of their separatist Church-State speech, which became the basis of current Baptist doctrine. Actually, it seems to be a confusion of interests to legitimize their positions.

<sup>21</sup> Because the Duke of York's debts to Admiral/Commander Penn, Charles II granted a *Charter* to W. Penn (the Admiral's son and one of the most relevant Quaker leaders) in 1681.

- *Maryland*:

a) Among the basic rules<sup>22</sup> clearly passed to fix a system of coexistence and assure social tolerance, what stands out is the *Charter of Maryland* in 1632 and the *Instructions to settlers by Lord Baltimore* in 1633 (in which Lord Baltimore suggests to Catholics that they should not cause offence to their Protestant neighbors);

b) Among the most popular mandates, projected by the Law on religion, the Act of Tolerance (1649), could be highlighted (which only takes into account tolerance among Christians and which includes severe punishments for blasphemy and the lack of compliance with religious holidays), along with the *Law for the observance and sanctification of the Lord's Day, also known as Sunday* in 1696, and the *Law to punish blaspheming, perjury, alcoholics and those not observant of the Sabbath* in 1723, etc.<sup>23</sup>.

- *Rhode Island*:

a) Its fundamental laws<sup>24</sup> are oriented toward social tolerance and the protection of freedom of conscience (the oath of Supremacy is not required of the citizens), as can be observed in the *Covenant of Providence* in 1636, the *Agreement of the Plantation of Providence* in 1640, the *Agreement of government of Rhode Island* in 1641 and the *Charter of Rhode Island and Plantations of Providence* in 1663.

- *Pennsylvania*:

a) Among its fundamental laws<sup>25</sup>, such as the *Charter of Pennsylvania* in 1681 and the *Agreement of government of Pennsylvania* in 1682, and despite philosophical tolerance similar to that of Rhode Island, Pennsylvania is stricter regarding formalities and religion, demanding the conversion of all Indians, the oath of supremacy to hold public office and to be a citizen and the observance of the Sabbath; this was probably as a consequence of trying to avoid external controls and trying to guarantee free development for the persecuted Quakers.

b) Among its more outstanding precepts, there are two that are especially representative of the model, the *Great Law* or the *Charter of Penn and the Laws of Pennsylvania* in 1682 (where freedom of conscience is allowed, although an oath of supremacy and the consecration of Sunday

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<sup>22</sup> See *Charter of Maryland*, (1632), *An Act Concerning Religion/Maryland Tolerance Act* (1649), *Constitution of Maryland* (Nov. 11, 1776), *Amendments to the Maryland Constitution* (1776).

<sup>23</sup> It is also important to underline the special status attributed to the Jesuits- Maryland was the operating center of their subsequent work in the USA, above all in the academic world-, thanks to the letters between the Jesuit Priest T. Copley and Lord Baltimore (Curry 1986).

<sup>24</sup> See *Constitution of Rhode Island* (Nov. 5, 1843).

<sup>25</sup> See *Constitution of Pennsylvania* (Sept. 28, 1776).

are obligatory), and the *Law of restriction of work the first day of the week* in 1705. Taking into consideration the *First Awakening* and the problematic *Sabbatarianism* for most Protestants, it made the week start on Sunday.

To sum up, the three cases are examples of the trial and error method in the long evolution toward modern religious tolerance. The special feature was that, in the case of Maryland, the emphasis was on the achievement of coexistence, while on the other hand, it was freedom of conscience that was of primary importance in Rhode Island and Pennsylvania. In any case, these three cases have been very useful in driving forward the political process of emancipation of the individual with respect to a group, and of the political and civil community versus the religious and cultural one.

### **Fundamentals of the official social order and legal & justice system: from Constitutional level to local regulation and study cases**

In what sense is the US model peculiar? How could we explain it? In Continental Europe, religion was used as an instrument by the public powers to create national identities and expel dissidents. In contrast, in the new-born USA, it is very clear from the very beginning that it is not a question of preserving the State from religion, as has been argued of late by socialism. To the contrary, religion is popular patrimony and, because of this, religious allegiance cannot be obligatory to hold public office. Thus, art. VI of the U.S. Constitution breaks with the colonial tradition of demanding the Oath of Supremacy<sup>26</sup>. What is more, to make things even clearer, one year after the Constitution was passed, its writers started to work on a Declaration of Rights with the form of ten constitutional amendments (elaborated in 1789 and passed in 1791). The First Amendment starts with the recognition, protection and promotion of the freedom and Autonomy of religion. This point is so important that it is endowed with a double clause in its regulation: a) the establishment clause, which promotes non-religious “officialization”, thus guaranteeing the autonomy, plurality and popularity of religion; b) free exercise clause, by which, the public powers agree to protect the observance and promotion of religious practice as a way of strengthening interpersonal relations which insure social integration. In a nutshell, there are a wide range of acts, in which the lowest limit is the disestablishment process and the highest, the guarantee of freedom of worship, thus giving each State

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<sup>26</sup> It is a gesture to demonstrate the overturning of the discriminatory British vestiges of submissiveness in the colonies, due to the Act of Supremacy of Henry VIII (1534) and Isabella I (1559), with their colonial versions of the *Blue Laws*.

great discretion in the regulation of this issue (e.g. if some favor is conceded to any religious confession, it is compulsory to extend it to the rest of the confessions to maintain the condition of Legal Equality. In order to consolidate this model and avoid excessive dispersion, in 1866 The Fourteenth Amendment was passed (entering into effect in 1868), which put an end to ecclesiastic preferentialism. In addition, it established federal supervision of the issue, as a guarantee that all citizens in the USA would enjoy the same rights and freedoms in all the States of the Union.

Thus, at federal level, The Supreme Court of the USA becomes the great supervisor, not only because it has to ensure a proper interpretation of the Constitution (arts. 3 and 6), but because in addition, it has to clarify significant numbers of rulings on this matter (according to the First and the Fourteenth Amendments), there being already over three hundred consolidated rulings, although with a mercurial *ratio decidendi*. Nonetheless, this is not the only federal organism with competence to deal with the development of legislative and regulatory framework in this area, as we will see below.

In summary, any legislative or regulatory development of the above-mentioned constitutional precepts has to be in accordance with the following rules:

- a) Substantially: a1) Establishment clause: it is the formulation of the dis-establishment process, thus the existence of any official religion is forbidden. After the Fourteenth amendment was passed, the existence of a group of official religions was not possible, as was typical in Preferentialism. a2) Free exercise clause: public powers are obliged to remove any obstacles that prevent freedom of worship, and also have the duty to look for formulas to accommodate a sustainable separation. a3) Equal clause: It is essential to guarantee the freedom, equality and autonomy of religion in the whole country, which is a task pertaining to Federal powers. Nonetheless, in their supervision, they will have to respect the rest of the principles, so they may not develop a legislative and regulatory framework that defines religion, the internal operating rules of any denominations and/or try to equate religious organizations with other types of associations, given that this decision can only be made by the American people. a4) Ecclesiastical corporation sole: It recognizes the right of the American People to decide whether they want to inscribe their group as a religious entity or not, and it is simply with respect to the Labor and Taxation Law; in the same way, public powers are compelled to evaluate civil efficacy with regard to the internal rules of confessions, except in the case of fraud, arbitrariness or attack against public order. a5) Checks & balances policy: It consists of a system of limitation of power through the mutual vigilance of

public institutions and the requirement of citizen accountability. This way, Federal powers have to supervise the policies of the rest of powers (both State and Municipal) but, at the same time, Federal powers have to be vigilant of each other.

- b) Procedurally: b1) Outdated regulation: They are precepts of a limited temporal nature, given their relation to public policies being enforced. They really depend on the holder of office and his/her institutional agenda, as well as the duration of the legislature and/or administration in office. b2) Dependent regulation: They are precepts that require the support of other bodies. In the case of the *Acts* and *Bills*, they only enter into force completely when they are quoted in a judicial proceeding. On the other hand, the Proclamations and Regulations are administrative acts and are not of a regulatory nature completely until Congress<sup>27</sup> endorses them; once this occurs, specific precepts become general rules and are applicable in similar cases. In the same way, the intention of the Courts is revealed. b3) Regulation of welfare: Most of the rules passed regarding religions are a consequence of the Social Gospel, and thus are pragmatically conceived in a secularized way as a Public and health welfare issue (42<sup>nd</sup> Title of U.S. Code), and are subject to tax control (26<sup>th</sup> Title, regarding Internal Revenue Code).

So far, it has been the common features of governing principles and legislative and regulatory development that have been highlighted, but there are also many differences among them. Needless to say, these are evident in sources, formalities and goals and are clearly affected by diverse areas of activity that guide the regulation:

- a) Domestic management: It has been a rich source of legislative output regarding the religious factor in the last few years: Church Arson Prevention Act of 1996<sup>28</sup>; The Defense of Marriage of 1996<sup>29</sup>; Bankruptcy-Religious Liberty and Charitable Donation Protection Act of 1998<sup>30</sup>;

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<sup>27</sup> Remember that “Act” comes from the saying “act before the monarch”, and in the USA, it means “act before the Congress”, and this is the correct way to introduce the Institutional agenda, giving it legal force, and converting it into Statutory Law.

<sup>28</sup> See PL [Public Law] 104-155, July 3, 1996, 110 Stat. 1392 UNITED STATES PUBLIC LAWS 104th Congress - Second Session Convening January 3, 1996 PL 104-155 (HR 3525) CHURCH ARSON PREVENTION ACT OF 1996.

<sup>29</sup> See PL 104-199, Sept. 21, 1996, 100 Stat. 2419 UNITED STATES PUBLIC LAWS 104th Congress - Second Session Convening January 3, 1996 PL 104-199 (HR 3396) THE DEFENSE OF MARRIAGE ACT OF 1996.

<sup>30</sup> See PL 105-183, June 19, 1998, 112 Stat 517 UNITED STATES PUBLIC LAWS 105th Congress - Second Session Convening January 27, 1998 PL 105-183 (S 1244) BANKRUPTCY-RELIGIOUS LIBERTY AND CHARITABLE DONATION PROTECTION ACT OF 1998.

Religious Land Use and Institutionalized Persons Act of 2000<sup>31</sup>; Religious Workers Act of 2000<sup>32</sup>. However, among all these Acts, undoubtedly the most outstanding is the Religious Freedom Restoration Act of 1993. It was passed by the Clinton Administration and many of its articles were derogated by the Supreme Court in 1997.

b) Foreign management: The same as domestic management, it is generous in normative production: Extension of Immigration Deadlines for Religious Workers, Charitable Service Workers, and Paperwork Changes in Employer Sanctions of 1997<sup>33</sup>; International Religious Freedom Act of 1998<sup>34</sup>; International Religious Freedom Act Amendments of 1999<sup>35</sup>; Global Anti-Semitism Review Act of 2004<sup>36</sup>, which is surprising, especially taking into account that the Clinton Administration was its driving force, while at the same time promoting a greater participation of the USA in International Organizations. How is it possible to ratify the *International Covenant on Civil and Political Rights* (ICCPR), with its report mechanism (i.e. Report of freedom of Religion), and at the same time, constitute your own service, like the one established with the *International Religious Freedom Act of 1998*, which justified International interventions?

The key to understanding this atypical situation, and its apparent infringement of the above-mentioned governing principles and common features, lies in the 90's and the public policies of the Clinton Administration. These were absolutely dichotomous -paradoxical speeches and garbage-can policy- and where there is a notable change before and after the sexual scandal. The culmination of the confusion comes with the

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<sup>31</sup> See PL 106-274, September 22, 2000, 114 Stat 803 UNITED STATES PUBLIC LAWS 106th Congress - Second Session Convening January 24, 2000 PL 106-274 (S 2869) RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000.

<sup>32</sup> See PL 106-409, November 1, 2000, 114 Stat 1787 UNITED STATES PUBLIC LAWS 106th Congress - Second Session Convening January 24, 2000 PL 106-409 (HR 4068) RELIGIOUS WORKERS ACT OF 2000).

<sup>33</sup> See PL 105-54, October 6, 1997, 111 Stat 1175 UNITED STATES PUBLIC LAWS 105th Congress - First Session Convening January 7, 1997 PL 105-54 (S 1198) EXTENSION OF IMMIGRATION DEADLINES FOR RELIGIOUS WORKERS, CHARITABLE SERVICE WORKERS, AND PAPERWORK CHANGES IN EMPLOYER SANCTIONS OF 1997.

<sup>34</sup> See PL 105-292, October 27, 1998, 112 Stat 2787 UNITED STATES PUBLIC LAWS 105th Congress - Second Session Convening January 27, 1998 PL 105-292 (HR 2431) INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998.

<sup>35</sup> See PL 106-55, August 17, 1999, 113 Stat 401 UNITED STATES PUBLIC LAWS 106th Congress - First Session Convening January 27, 1999 PL 106-55 (S 1546) INTERNATIONAL RELIGIOUS FREEDOM ACT AMENDMENTS, 1999.

<sup>36</sup> See PL 108-332, October 16, 118 Stat 1282 UNITED STATES PUBLIC LAWS 108th Congress - Second Session Convening January 20 (S 2292) PL GLOBAL ANTI-SEMITISM REVIEW ACT OF 2004.

subsequent interpretation of these previous policies by the G.W. Bush Administration which reformulated them according to their neoconservative approach and their own interests. Again, the “rules of the game” are not respected.

It is a common error to identify *American Common Law* with Case Law, but the latter is only one source and branch of Law. There are others equally important, such as *Executive Law* (with its regulations) or *Statutory Law* (and its laws). Such exaltation comes from the Langdell method and casebooks (*vid. supra*). Nevertheless, there is a very deep relationship between these concepts. It is commonly noted that in order for Executive law to reach true fruition, for example, it needs to be quoted in several judicial proceedings; thus Case Law is used to foster and spread a great part of Executive Law (*vid. infra*).

In honor of the aforementioned American pragmatism, there is below a synthesized and systematic list of the most outstanding cases that have created the interpretative tendency on issues related to religious factors in the USA, such as: the implementation of freedom of religion and religious autonomy (of natural and juridical persons, as well as of denominations), and also the tutelage of non-discrimination on religious grounds (*idem*), and other related issues. Everything is related to legal grounds and the comparative analysis is carried out while studying the following judicial decisions (nearly three hundred case studies of Case Law, systematized by date and issue)<sup>37</sup>.

The headings of the cases from 2005 have been omitted (those after the reelection of G.W. Bush), since explanations about the new topics and tendencies are developed in the following case study below because there are currently more than three hundred and fifty cases involved.

The USA is a country considered as the New World or New Regime, as it is specified in one of its national mottos (“*novus ordo seclorum*”). But this does not mean that there is a lack of knowledge with respect to Western tradition, both sacred (Judean-Christian) and profane (Greek-Roman), as is evident in its national motto which is translated into Latin. The Framers of the constitution were well acquainted with the Greco-Roman culture, as well as the importance of the art of questioning through different methods, such as the *epoché* or the *maieutic*. Thus, the Socratic Method was introduced in university studies which began to be standardized nearly one century afterwards, using as a reference the native

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<sup>37</sup> Purportedly, the first regional cases were *Van Hornes Lessee v. Dorrance* (2 Dallas 304, 1795) and *Calder v. Bull* (2 Dallas 386, 1798); and especially *People v. Phillips* (New York City of General Sessions, 1813), where religious autonomy and religious communications were judged, when instructing the jury about the Seal of Confession of a Catholic priest (Sánchez-Bayón 2012 & 2015).

adaptation of Dean Langdell, as explained below.

The foregoing Socratic method consisted in the combination of the *epoché* or suspension of judgment (which means taking nothing for granted), and the *maieutic* or questioning of the reason why (in order to analyze in more depth, until reaching the primary reason). Nonetheless, we could wonder: how did this method become universally accepted in US Schools of Law? It occurred in the late 1870s, when Europe implanted its public universities (i.e. Spain and the background of the Gamazo's Plan, Sánchez-Bayón 2010), and when the standardization of studies came about. All these changes provoked the transformation of traditional faculties, as the School of Cannons and Laws, into the Law Schools were called (afterwards) Jurisprudence Schools, where all the efforts of professors were concentrated on teaching the new Public Law, mainly characterized by its codified nature. So, although US Law was comparable to Common Law in its roots, it became something extraordinary, because USA Law is the most open to the influences of Civil or Continental Law. So much so, that amongst the flourishing universities of New England –the foundation of the Ivy League (or club of universities, which imitate the European style) – Harvard University begins to stand out in its attempt to become a reference in the standardization of Law studies. It is important to take into account that the influence of English Law, where the prevailing method was the Inn Court where only the mere rudiments were learned. This meant that the most important learning experience was actually acquired afterwards by working as an articled clerk in Law firms or with judges. However, the Dean of the Faculty of Law, Prof. Langdell, started to put into practice a method of Socratic inspiration, though very formalist (related to the exegetical and analytical studies which had been previously undertaken in such referential works as the Blackstone commentaries or Austin's Jurisprudence). It was a three- pronged study: a) *read the cases* b) *distill the rule*; c) *apply the rule to future cases*. It is curious that the method did not achieve its goals, not because of a lack of quality, but because of the publicity generated by the personal competition between the two greatest jurists of the time: Langdell v. Holmes- a rivalry comparable to that had existed one century before between Hamilton and Jefferson-. Since Langdell was the Dean of the Harvard Law School, Holmes also attempted to reach the same position, but he only achieved professor status; for this reason, he opted for the legal practice, acquiring the category of Judge of the Supreme Court. While Langdell promoted legal formalism, Holmes sponsored the appearance of Legal Realism (it would be necessary to wait until after World War I); etc. The fact is that HOLMES provoked an effect that was just the opposite of what he intended through the Law Review he edited (*American Law Review*) and



it's well known book *The Common Law* (1881). At the end, he afforded undue attention to Langdell; Holmes criticized him so harshly, that Langdell become famous thanks to Holmes. This great rivalry also originated the competition between the Schools of Law, such as Harvard (which would continue to maintain Langdell on a pedestal for several years) and Yale (who's incontrovertible reference was Holmes). The fact is that, in the same way that new legal operators are trained, so is Law transformed in its theory and practice. Needless to say, the influence that these two universities have held and continue to hold in the USA today is tremendous; among their students there are a great number of senior government officials (e.g. Presidents, Supreme Court Judges, Secretaries of State, Senators, Congressmen), as well as extremely important business men.

Although the law and its study have changed, the Langdell stamp has survived to the present, since he was the first to offer a native version of the Socratic Method, presenting an example to improve, change, criticize and propose alternatives in his method. Other proposals and materials have emerged from the this method, such as the casebook (it is a type of textbook used mainly by students Which, rather than simply laying out the legal doctrine, contains excerpts from legal cases in which the law is applied). The latest successful version of this method was the *Problem method*, because the opposition to the Langdell method and the casebooks, which were said to be a mere excuse for trivializing Classes. Courses became competitions where students had to learn by heart-preordained answers. Afterwards, in order to revitalize the study of Law, the Problem method was chosen, in which a fictitious or real case is set up, with several legal implications that students have to resolve, usually in groups, and simulating a judicial proceeding supervised by their professors.

Therefore, although the Langdell method and casebooks have been useful to standardize US Law, they are also the origin of a reductionist method that attempted to teach the law through the Case Law or rulings, when there are other sources and branches of the Legal System, as we will clarify below.

The topics chosen, the network of interlaced questions, have an interdisciplinary character and a great complexity, which is the reason behind the use of the holistic way of studying cases. It consists of combining the *epoché* and *maieutic*, together with political analysis and critical culture, until it reaches the problem method, without ignoring the legal priority approach (according to the legal grounds that guide the rest of the argumentation of a specific case).

Finally, it deals with the role of religion in the USA because it's more secular conception. It is the key to achieve salvation in the world, which

definitely contributes to boost a Welfare State with a special foundation or *social gospel* –where social assistance is mainly provided by local religious associations. This is how a great deal of information was collected in Title 42 of the *U.S. Code*, which is headed by the Public Health and Welfare Department. Thus it is possible to understand the list of more than one hundred activities that are being developed by the clergy, religious organizations and the churches and their agencies. Among these activities, it would be necessary to highlight: a) activities and services (adoption services, orphans, children's shelters, assistance to single mothers, programs to support retired people, youth recreation centers, senior recreation centers, spiritual retreat centers, health clinics, services to assist immigrants, charitable funds, sanctuaries, programs of rehabilitation, programs of psychological support, programs of feeding the homeless); b) organizations and sponsored activities (nursery schools, elementary schools, high schools, Bible schools, theological seminaries, universities, educational foundations, convention centers, home study courses, public seminars, meditation centers, book stores, archives, libraries, publishing companies (religious and educative books); c) goods and products offered by churches (books, magazines, documentaries, radio shows, TV shows); d) leisure and social activities (theatre groups, men's clubs, women's clubs, youth centers, senior centers, summer camps, picnic areas, playgrounds, bazaars, social clubs, single clubs); e) affiliated organizations (farms, religious stores, convents, monasteries, cemeteries, inspection services and food stamp certification (*kosher*), programs of mutual societies); etc.

Thus, the great weight of the denominations in the local implementation of social policies, it can be understood why the next two examples have been chosen, though both come from the Federal Executive. They seem to carry out a reverse interpretation of the classic clauses of the first Amendment regarding the Freedom of religion (free exercise and (non)establishment), thus provoking some degree of discrimination, as well as a growing gap in the much-publicized “wall of separation”.

### **Single cases: from correctness to neoconservative issues**

#### **A) Faith-based and Community Organizations**

- a) Preliminary considerations: The social policy of the G.W. Bush Administration – as will be explained below- inherits the federal interventionist boom of programs designed by the Clinton Administration (i.e. *Charitable choice*, *International Religious Freedom Monitoring*, *No child left behind*, etc.)<sup>38</sup>, but characterized by

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<sup>38</sup> As has been mentioned previously, the origin of the programs of *faith-based*

a neoconservative bias. More specifically, this fact explains the clear *paradoxology* involved in the public policies of G.W. Bush Administration; he is a republican and converse evangelist while his federal programs of communitarian intervention, in fact, are ways of financing *Faith-based & Community Organization/Initiatives* (FBOs). This euphemistic denomination refers to organizations and religious initiatives, and specifically those types developed under the *Last Great Awakening* (before *well-established*)<sup>39</sup>, and whose devotees made up a great part of the electoral base of G.W. Bush. Now that some relevant clarifications have been made, we will continue to summarily describe the FBOs, focusing mainly on two questions: a) what are they and how are they related to the White House? b) What are their norms? c) Controversial Issues and *aporeias*)

- b) Meaning and scope: FBOs constitute a group of social intervention programs, described by the President himself as “one of my most important initiatives (...) to extol great American compassion, through the USA with heart, soul, and conscious at the same time” (VV.AA. 2001). Starting with the reform of the Welfare State, initiated by Clinton with the group of *charitable choice* programs, G.W. Bush redirected the planned aids, incrementing the funds and donating to local organizations based on the faith and the municipal service, with the excuse of drawing the Administration closer to the citizenship, without any intermediaries, avoiding excessive “red tape” and the lack of immediate financing. In order to organize the system, president G.W. Bush, in 2001, designated J. Towey the Director of the White House office for FBOs (substituted in 2006 by J.F. Hein, who, in addition, held the post of Deputy Secretary of the President) to act as a link with one hundred and fifty programs underway in other departments (i.e. Agriculture, Trade, Education, Health and Social Services, Housing and Land development, Justice, Work, Veterans affairs, Small business management), and to manage the designation

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*organizations* of G.W. Bush lies in the *Welfare Reform* of the Clinton Administration, through *Charitable Choice* (introduced by Acts as *The Personal Responsibility and Work Opportunity Reconciliation Act of 1996* and programs such as *Temporary Assistance to Needy Families*, *Community Services Block Grant*, etc.) The difference is that the initial goal of the first stage of Clinton’s public policies of was to give public funds to NGOs -in exclusive competition with churches-, whereas G.W. Bush removes the traditional restrictions to faith-based organizations that carry out community promotion activities, allowing them access to public funds (Davis & Hankins 1999. Edwards 2007).

<sup>39</sup> *Faith groups* are those most recent and informal varieties of religious groups, which emerged in the *Last Great Awakening* during the 1960’s. The aforementioned terminology is adopted, as opposed to the *well-established religious denominations*, the rest of the religious organizations.

of more than one thousand programs of grants and scholarships (with a one hundred million dollar budget). All these aids are open to any organization carrying out activities of social promotion and general welfare (e.g. charity, education, health, and help for handicapped people). There are no exclusive funds for organizations based on the faith. With the exception of small and specific programs, such as *Compassion Capital Fund*, all the aids are open to any organization and/or initiatives with a calling for helping others and to serve the common good. The monitoring of all the aids granted is carried out through a five-step process: (1) Step 1: Financial records: the completion of *Standard Form 269* is required, which assures that these organizations are up-to-date in their tax payments and have an appropriate financial situation. (2) Step 2, Co-sponsorship: it is not a mandatory requirement for all aids, but it is quite common. It consists of asking for information about the other organizations that contribute to the project. (3) Step 3, Storage of documents: the recipient of the aid is asked to keep the documents submitted, as well as receipts and bills of expenses, during an approximate period of three years (e.g. if the help is granted from 2003 to 2006, it will be necessary to keep all the documentation until 2009) (4) Step 4, Periodic notification: while the organization is benefitting from the grant, it is obliged to report information with details on the project's evolution, expenses, outcomes, etc. in the prescribed periods for each notification, (5) Step 5, Audit: because of the reception of public funds, the Administration reserves the right to audit. Usually, in the case of funds under USD 500,000, a system of self-auditing is possible for the organizations that receive the aid; if funds are over USD 500,000, organizations are usually required to hire an external auditor; in case of greater amounts, the administration itself audits the organization.

- c) Regulation: this is a regulation at various levels, since it is comprised of Executive Orders passed by the President, Public Acts/Bills enacted by Parliament and Final Rules passed by the Departments, and even Orders of autonomous agencies: (1) *Executive Orders* (E.O.): E.O. 13397, to create a new center for FBOs in US department homeland Security (March 7<sup>th</sup> 2006); E.O. 13280, to require equal protection for FBOs (December 12<sup>th</sup> 2002); E.O. 13199, to create the White House office for FBOs (January 29<sup>th</sup> 2001); E.O. 13198, to create five centers for FBOs (January 29<sup>th</sup> 2001) ; etc. (2) *Public Acts/Bills*: *Charity Aid, Recovery, and Empowerment Act of 2002*, *Savings for Working Families Act of 2002*; etc. (3) *Final Rules* (F.R.): a) F.R. of Department of Education: *Participation in Education Department Programs by Religious Organizations*; *Providing for Equal Treatment of All*

*Education Program Participants* (June 4<sup>th</sup> 2004); b) F.R. Department of Veteran Affairs: *Homeless Providers Grant and Per Diem Program; religious organizations* ( June 8<sup>th</sup> 2004); c) F.R. Department of Agriculture: Equal opportunity for religious organizations (July 9<sup>th</sup> 2004); etc.

- d) Controversial Issues: the constitutionality of the use of the granted funds could be called into question: activities are close to proselytism (e.g. campaigns for salvation of souls and sexual abstention); there is a religious establishment (e.g. worship for general welfare); etc. These funds have even been used to finance the contracting of civil liability insurances for ministers and church worship. How do these things affect the interpretation of the aforementioned clauses of the First Amendment about Freedom of Religion? Does a conflict exist in the study of the second case?

## **B) *The First Freedom Project***

- a) Preliminary considerations: In February 20<sup>th</sup>, 2007, the US Attorney General, A.R. Gonzales revealed to the media one of the key initiatives in his term of office, *The First Freedom Project*. In his own words, he called it “an initiative to preserve the freedom of religion, which requires a great commitment in order to protect the most basic freedom of people of all faiths”.
- b) Meaning and scope: among the initial measures to include in the framework of this project, the Attorney General drew attention to the following: a) the submission of a report about the increased support, to favor the compliance of the Acts protecting the freedom of religion (activity of the public prosecutor, between 2001 and 2006), in which it is established that, in spite of the strong commitment demonstrated, it is necessary to provide more resources; b) the establishment of a dependent Department is proposed, whose director would be the assistant to the Attorney General for the Division on Civil Rights; c) several initial complementary actions to foment awareness are formulated, such as: regional seminars, establishment of a consulting service about religious discrimination, etc.; d) the goals: the main topics to enhance freedom of religion and fight against discrimination through synergies are: 1) educational discrimination; 2) labor discrimination, 3) intra-household discrimination; 4) credit discrimination; 5) public assistance discrimination; 6) religious discrimination in the educational sector (in the Division on Civil rights, the Educational Opportunities section, pursuant to Titles IV and IX of the Civil Rights Act of 1964, is in charge of filing court cases

in order to avoid discrimination in public classes on the grounds of race, color, religion, sex or national origin). The most typical disputes and their most recent examples (there are no notes of registry as of yet as for the rest of the cases included) are:

(1) *Harassment*: cases of religious harassment are supervised, especially harassment of students by professors (e.g. In *Delaware School District*, in March 2005, it was necessary to protect Muslim students in the fourth grade).

(2) *Student Religious Expression*: Discrimination as a consequence of the initiative of students themselves is also supervised (a group of students in a high school in Massachusetts were suspended for distributing candy with religious messages); and those discriminatory acts sponsored by the educational centers themselves (e.g. in a competition of young musical talents in a School in New Jersey, one song was censored for being Christian).

(3) *Religious dress*: any discrimination is forbidden, for example, the use of Muslim headscarves (e.g. *Muskogee Public School District* was sued because it did not allow a Muslim student to attend classes with a headscarf).

(4) *Equal access*: Public centers must allow religious groups to develop extracurricular activities with equal opportunities (e.g. *Good News Clubs* are student associations that develop charitable activities to improve society, but their work is not taken into consideration because of their religious background and thus they have no space to hold their meetings, and they receive no funding, etc.).

(5) *Exclusion from Higher Educational Opportunities Based on Belief*: idem (e.g. *Texas Tech University*, a biology professor refused to write letters of recommendation for medical schools if students had not previously sworn that they firmly believed in the theory of evolution).

(6) *Religious Holidays*: holidays must be observed, especially in cases with parental authorization (e.g. in Indiana, a boy was suspended from school because he did not attend class several times as a consequence of religious celebrations, and his mother was sued for negligence by local authorities).

(7) *Religious discrimination in employment*: By the same token, in the Civil Rights Division, there is a Commission promoting equal employment opportunities, pursuant to title VII of the Civil Rights Act of 1964, which is in charge of filing lawsuits against the discrimination of employees in public institutions or in religious centers. Among the most recent disputes in which the commission has intervened (financial year 2005-06 finds many of them already in

the courts), we could point out two cases: a) *U.S. v. Los Angeles County Metropolitan Transit Authority*, because the Transit Authority demanded full-time availability in the employment application form, without allowing for the Sabbath rest of Jewish People and the Sunday rest of Christians, etc.; b) *U.S. v. State of Ohio*, where the agency of environmental protection refused to recruit workers based on religious motivation, alleging conscientious objection so as to not to pay mandatory fees to trade unions (because the trade unions were in favor of abortion, homosexual marriage, etc.).

(8) *Religious discrimination in housing*: Another entity in the Civil Rights Division, the Housing and Civil Promotion Section (in compliance with the *Fair Housing Act*– a competence shared with the Housing and Urban Development Department) is in charge of filing lawsuits against religious discrimination in the purchase of a house. In the same way, among the most recent disputes which have quoted this section, we could highlight three cases where the people affected did not manage to buy houses, or their houses were attacked because of their faith, or race: a) *U.S. v. Hillman Housing Corporation*, in New York; b) *U.S. v. Altmayer*, in Chicago; c) *U.S. v. San Francisco Housing Authority*, in San Francisco.

(9) *Religious discrimination in granting credits*: the Housing and Civil Promotion section is also in charge of enforcing the *Equal Credit Opportunity Act*, a shared competence with other agencies such as the *Internal Revenue Service*, that files lawsuits to prevent religious discrimination in the granting or return of credits (e.g. common circumstances in practice are: the refusal to grant credit, incorporation of unfair terms, etc.)<sup>40</sup>.

(10) *Religious discrimination in Public services*: Again, it is a duty pertaining to the Housing and Civil Promotion Section, pursuant to Title II of the Civil Rights Act of 1964, whose main task is enforcing the observance of religious respect in public places, like restaurants, cinemas, etc. One of the latest cases to employ this section was the discrimination suffered by a *Sikh* in a restaurant in Virginia, where he was obliged to remove his turban to gain admission to a restaurant.

(11) *Religious discrimination in public assistance*: Without a specific unit, the Civil Rights Division, pursuant to Title III of the *Civil Rights Act of 1964*, may deal with all the cases related to a lack of equality in obtaining access to government benefits. An illustrative case in this matter is *Blanch Springs* (Texas), where a municipal ordinance

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<sup>40</sup> After the mortgage crisis, this measure has become somewhat blurred.

prohibited all religious activities in Senior Leisure Centers, which meant that the elderly could no longer bless the table, sing bible hymns etc.

- c) Regulation: *vid.* Legal grounds summoned in paragraph b).
- d) Controversial issues: It is true that Public Authority has the duty of promoting free exercise, while not admitting a proselytizing attitude in religious issues. Is there any evidence of discretion and/or judicial activism?

### **Balance beyond the globalization and its crisis**

In the USA, freedom of religion is widely enjoyed, not only as a foundational milestone, but as a colonial freedom for those who were prosecuted for their religion, and also during the great wars and mass exterminations of the XX century (i.e. Jewish People, Armenians, Baha'is). This is such a key issue that it is the very first of the liberties recognized, and even in a double doubly fashion (with two protective clauses). What is more, a great part of US doctrine considers that it is the cornerstone through which the rest of civil freedoms have been construed, as has been observed in the cases studied. Therefore, Freedom of religion is deeply acknowledged, protected and furthered in the USA, and in its relations with other countries (*idem*). Nonetheless, the last administrations (Clinton and G.W. Bush) have prompted a crisis due to post-modern contagion. There has been a manipulation of meanings in the traditional scope of words, and language has been used politically and selfishly in order to legitimize public policies. What then has happened to the much-quoted "wall of separation"?

It is crucial to draw a clear separation between Church and State: the Church is an institution pertaining to the religious sphere, and the State is the political sphere, so each one has its own competences. Although both have an impact on society, they are not mutually exclusive. It is so important to highlight this notion because otherwise the result could be: a) identification, like in Middle East regimes (confessionalism), or b) exclusion, like in continental European countries (secularism/*laicite*). Politics and religion have their own social spheres, but they overlap in areas like social assistance. That is the reason why it is so urgent in the West to recover an accommodating separation model to lead to a rational system of checks and balances.

Regarding the final assessment of the U.S. legal system and its treatment of the religious factor, such regulation ranges from basic rules (Constitution and jurisprudence), to auxiliary ones (Executive Law, Statutory and International Treaties, especially in human rights). Traditionally, in the first third of the XX century, the weight of



organization was in the hands of the law, but statutory law took on more prominence beginning in the interwar period, and it has been the instrument chosen to implement the welfare state. However, with the onset of globalization, Executive Law has become particularly relevant, although its short expiration and rather discursive load are serious problems. The question now is how to articulate the Ordinance, which is the current major factor to regulate this issue.

The religious factor in the U.S. is crucial, because as mentioned before, it has been considered a cornerstone of identity, cultural background, social power, and solidarity. The U.S. model has been a reference point for other Western countries, until its current identity crisis and the *trans-Western risk* (see chapter 8).

### **Conclusion: “American” as a new kind of religion (a mix for traditional, civil & political identity)**

In the last great review of American identity (before the cultural wars), the American Cultural Studies got a consensus about it: the USA is exceptional, not just for the territory (almost a continent), the people (a melting pot), and the institutions (the pioneer as a democratic government), also for the immunity against the ideologies (i.e. socialism), and the accepted reason was: the religion.

In the USA, there are many kind of religions:

- a) The traditional religion: It is a big set, which includes the positive religions (from animism to monotheism). They are related with each different community, what is articulated thanks to the religion. In the USA, for example, just for a variety of Christian denominations, there are more than a half million of evangelical sects registered by the IRS. Thanks to the pioneer model of relation between Church and State, and the social order based in religious freedom and the pro-active religious movements for welfare state development (see before), the USA has built the identity (*a novus ordo seclorum*, see *Great seal*), and it has been a reference of tolerance and freedom thought and practice for other countries.
- b) The civil religion (also civic religion): it is a modern way, beyond the tolerance, to mix the communitarian traditional religions (see before), and to get a common civic religion for the citizens. By this way, it is articulated a social system of identity for the whole country, with own symbols, rituals, beliefs, etc. (i.e. sacred days and places for the citizens to commemorate the Union). This social methamer is working from the middle of the 18<sup>th</sup> century; it is before than the “nation”, linked to the State, as it is happened in the continental Europe of 19<sup>th</sup> century. This variety of religion is improved by social movement and

their cruzades and it helps to renew the power elites (specially, Statemen).

- c) The political religion (also State-ideologies): it is about that kind of ideologies which pretend to conquest the power and to build the modern States according to a particular project of collective dominion and a cult of a Supreme Being (i.g. nationalism, socialism). It comes from the hibrydation of State religion (regalism in Catholic countries and Church of State in Reformed countries), and the official beliefs system in the hands of the Crow (*cuius region, eius religion*). Currently, there is not more political religions in the way of the strong ideologies of the 19<sup>th</sup> century; after the cultural wars, there is a patchwork of confuse Post-Modern veils, in the way of a wick-thought buffet (it is opening up to the interpretation, but just for cualificated heuristics or new ministers of political cult; at the same time, it pretends the unique thought, by emotional communication, which deals with cognitive dissonances, spiral of silence, etc.). In that sense, the Post-Modern ideology or political religion in the USA, which affects the identity issue, it comes from affirmative action to identity politics (see supra).

This paper has pretended to analyze this complex religious system (the way to link a Modern society, by a shared mission, vision and values), which has impacted in the development of American identity and the thought about it (to support it).

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# ALEXIS KAGAME'S ONTOLOGICAL CATEGORIES

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**Abstract:** *One of the recurring ideas in the criticism of the Universalistic School of African philosophy against ethno-philosophy is the emphasis on culture and collective thought. Very recently, African philosophers of the hermeneutic school, have argued that African philosophy must be hermeneutical, that is, an individual interpretation of one's cultural symbols, mediated by one's understanding and self-understanding. This makes the thoughts of philosophers like Placid Tempels, Alexis Kagame and Leopold Senghor valid thoughts for inclusion into the corpus of African philosophy. This paper, further argues that African philosophy is an ontologico-existential hermeneutics. Albeit, taking a critical look into these affairs, it became plausible that some of the works produced from this task remains a paradox and a travesty as they were inflicted and affected with foreign categories and schemes that further leave the search for an authentic African philosophy open and their endeavour a charade. However, this lousy situation can only be addressed through proper reflective activities of African scholars towards originality of ideas that corresponds and represents the African world and that will make the African world intelligible to Africans.*

**Keywords:** *African philosophy, ontological categories, Alexis Kagame, Placid Tempels, Leopold Senghor*

## **Introduction**

A careful study of African philosophy, in terms of ideological impact,<sup>1</sup> occupies a fundamental place. It would not be out of place if one regards Tempels as the father of modern African philosophy and this is based on his analysis of the Bantu thought system in which the notion of Being or 'Vital force' is easily noticed. He was the first to attribute a developed

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<sup>1</sup> Tempels, P., *Bantu Philsoophy*. Paris: Presence Africaine, 1959.

philosophy to the African people. Thus, Oguejiofor<sup>2</sup> avers that at a time when the concept 'African philosophy' evoked a cacophony of perspectives about the nature of the philosophy described by the adjective 'African', the work of Tempels became the lightning rod of this debate. In his paper, we find a dialogue between philosophy and culture through hermeneutics. A cursory glance at the historical evolution of African philosophy reveals that Tempels bequeathed to the future generation of African philosophers a conceptual framework for a distinctive African mode of thought. Kagame<sup>3</sup> in his work followed up and verified the work of Tempels. The African negritude of Senghor's 1975<sup>4</sup> and 1993<sup>5</sup> essays had also followed the same pattern; the pattern being the strong connection of philosophy with culture. This notwithstanding, with the advent of Hountondji<sup>6</sup> on the historical plane of African philosophy, a negative eye was cast on the culturally-based philosophical perspectives of Tempels, Kagame and Senghor. He coined the word 'ethno-philosophy' to describe their thought, a word that shows his disdain for the method employed. He further described their thoughts in derogatory terms as cultural philosophy, collective philosophy, philosophy by exhumation- that is, to search a culture and discover a philosophy that has sedimented. He described the consequence of Tempels' ethno-philosophy thus:

The consequence was unanimism - the illusion that all men and women in all societies speak with one voice and share the same opinion about all fundamental issues. This implies the rejection of pluralism, the sweeping away of all internal contradictions and tensions, the denial of the intense intellectual life, and the extreme cultural richness associated with these societies.<sup>7</sup>

From Tempels, Hountondji turned the eye of his criticism on Alexis Kagame. He wrote:

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<sup>2</sup> Oguejiofor, O.J., *Negritude as hermeneutics: A reinterpretation of Leopold Sedar Senghor's Philosophy. American Catholic Philosophical Quarterly*, 2009, 83. 1. 79-94.

<sup>3</sup> Kagame, A., *La philosophie Bantu Rwandaise de l' Etre*. Bruxelles: La Divine Pastorale, 1951.

<sup>4</sup> Senghor, L.S., "What is negritude?" (Eds.) G.C.M. Mutiso and S.W. Rohio. *Readings in African Political Thought*. London: Heinemann, 1975, pp. 78-90.

<sup>5</sup> Senghor, L.S., "Negritude: A humanism of the twentieth century". P. Williams and L Chrisman (Eds.). *Colonial discourse and post-colonial theory*. London: Longman, 1993, pp. 27-35.

<sup>6</sup> Hountondji, P., *African philosophy: Myth and reality*. Paris: Francois Maspero, 1995.

<sup>7</sup> Hountondji, P., 1995, p. 18.

Indeed, Kagame, in spite of the very attractive qualities of his analysis and relative accuracy of some of his sequences, has remained on the whole the prisoner of an ideological myth, that of a collective African 'philosophy' which is nothing but a revamped version of Levy-Bruhl's primitive mentality, the imaginary subject of a scholarly discourse which one may regret Kagame did not apply to something else.<sup>8</sup>

Reacting further on Senghor's thought on Negritude, Hountondji avers that:

Senghor's theory of Negritude rests upon a theory of culture which postulates reciprocity between the collective character of each race, as conditioned by an original formulative environment, and the different cultural forms and civilizations to be found in the world. This point of view fits properly into the perspective of cultural pluralism, which is a development of modern anthropology. It is not for nothing that Senghor's formulation of negritude takes the form of largely of elaborate explications of African life and values, of what one might call a synthetic anthropology of African world.<sup>9</sup>

From the foregoing, the concern of Hountondji is evident in the recurring words in his criticism of these philosophers: the emphasis on culture and collective thought. Reacting to the position taken by Hountondji, African philosophers such as Okere,<sup>10</sup> Madu<sup>11</sup> and Serequeberhan (1994)<sup>12</sup> and Serequeberhan (2000)<sup>13</sup> among others argue that African philosophy must be hermeneutical, that is, an individual interpretation of one's cultural symbols, mediated by one's understanding and self-understanding. Thus, the thoughts of philosophers like Placid

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<sup>8</sup> Hountondji, P., 1995, p. 43.

<sup>9</sup> Hountondji, P., *African philosophy: Myth and reality*. Paris: Francois Maspero, 1995, p.18.

<sup>10</sup> Okere, T., *African philosophy: A historico-hermeneutical investigation of the conditions of its possibility*. Lanham: University Press of America, 1983.

<sup>11</sup> Madu, R.O., *African symbols, proverbs and myths: The hermeneutics of destiny*. Frankfurt: Peter Lang, 1992.

<sup>12</sup> Serequeberhan, T., *The hermeneutics of African philosophy: Horizon and discourse*. New York: Routledge, 1994.

<sup>13</sup> Serequeberhan, T., *Our heritage: The past in the present African-American and African experience*. Lanham: Rowman, 2000.

Tempels, Alexis Kagame and Leopold Senghor are regarded as hermeneutical and as such, their categorization as myth by Hountondji is understood as being based on the ignorance of the true complexities involved in the development of their philosophies. This paper, therefore, exposes the contribution of Alexis Kagame's understanding of Being and some possible criticisms.

### **A brief overview of African philosophy**

This work is purely on traditional African philosophy. For this reason it will be relevant to highlight some issues concerning the existence of the enterprise of philosophy in Africa. From the colonial times, there has been the query whether there is a branch of knowledge in Black Africa that can legitimately qualify for the name 'philosophy'. On this, Archie Mafeje states:

From a formalistic point of view, it is hard to conceive of philosophy in its systematic form in preliterate societies. Substantively, it is equally hard to find ideas about the meaning of existence, notion of being and its imperative/logic, and the purpose of mankind in the universe.<sup>14</sup>

Mafeje however reminds us that other disciplines in African like African history, African literature, and social science went through the same birth pangs or fate. In general, we can undermine certain facts about the debate concerning the status of African philosophy or the rise of the historical consciousness and the debate on African philosophy. According to Masolo, two related happenings have put the debate on African philosophy in perspectives, namely western discourse on African, and the African response to the western discourse on Africa.<sup>15</sup> Three major discourses of these western scholars and rational responses on them are relevant here. Firstly, they question the existence of African philosophers who are engaged in the enterprise of African philosophy, that there are no original African philosophers who have pursued philosophy as an academic discipline; this is however using their own paradigm to ascertain who a philosopher is. On this is can be argued that only categorical ignorance or perverse intellectual dishonesty would deny the fact that there are African philosophers.

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<sup>14</sup> Archie Mafeje, In *Search of An Alternative: A Collection of Essays on Revolutionary Theory and Politics*. Harare: SAPES Books, Harare, 1992, p.1.

<sup>15</sup> D.A. Masolo, *African Philosophy in Search of Identity*. Indianapolis: Indiana University Press, 1994, p.1.

The second question is ontological, and it calls into question the very humanity of indigenous Africans people, thereby linking the capacity of Africans to philosophize to their very being. They contend that Africans are not qualified to be called human beings and philosophy is out of the issue. Of the many qualities considered to be relevant in the definition of a human being rationality has been singled out, especially by the western tradition.<sup>16</sup> In response, from the point of view of biological anthropology,<sup>17</sup> and indeed from the viewpoint of the philosophy of mind<sup>18</sup> as well, human rationality as an intentional reflective consciousness<sup>19</sup> can be understood and expresses only in relation to autopoietic activity. Ramose then contends that specific behavioral pattern constitutes the specific character of all living entities. This is the experience and the reality that despite the transitoriness, all living entities are destined by their very being to strive towards preservation of being as wholeness. 'On this basis we posit the thesis that preservation of being as wholeness through the transitory 'self-preservation' of the multiplicity and pluriformity of all living entities, is the universal principle of being as a wholeness.<sup>20</sup> Hence neither ontology nor biology has exempted indigenous African people from this experience and reality. And it confirms the thesis that indigenous African people have always been potential and actual participants in and are full members of *Homo sapiens*.

The third remark springs from non-Africans who had encounters with indigenous African people and bolstered a philosophy and a science aimed at disproving the humanity of the African people. It is unfortunate because the indigenous African people have not abrogated their humanness on philosophical grounds but have rather asserted and affirmed their membership of *homo sapiens* even on philosophical grounds. As a result of the latter, Ramose posits that there is no ontological defect inherent in the indigenous African people by virtue of which they are to be excluded from *Homo sapiens*. That, if Africa is the cradle of *Homo sapiens* then, it is the indigenous African people who are the first members of and the very root from which the tree of *Homo sapiens* took shape and grew. From the

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<sup>16</sup> Peter Winch, 'Understanding a primitive Society' in *Rationality* (ed.), Wilson B. Oxford: Basil Blackwell, 1986, pp. 78-111.

<sup>17</sup> Wahburn, 'Tools and Human Resources' in *Readings from Scientific American: Biological Anthropology*, (ed.) Katx S. H. San Francisco: W.H. Freeman and Company, 1975, pp. 47- 60.

<sup>18</sup> P.M. Churchland, *Matter and Consciousness*, Cambridge: The MIT Press, 1984, p.73.

<sup>19</sup> Jean Paul Sartre, *Being and Nothingness*, (trans.) Barnes H.E. London: Methuen and Co. Ltd. 1969, pp. 37-38.

<sup>20</sup> Mogobe Ramose, *African Philosophy through Ubuntu*, Harare: Mond Books, 1999, p.34.



rejoinder of Mafeje and Ramose et al, it is clear that the issue of the existence of African philosophy is primarily otiose and should be jettisoned by rational and sane individuals. With the attempt of addressing these scathing remarks on the existence of African philosophy, one then thinks right and proud to unearth the four categories of African philosophy as expressed by Alexis Kagame.

### **Alexis Kagame and the four categories of being**

Kagame began his analysis on the hypothesis that the philosophical elements of the linguistic structure of Rwanda reveal the manner in which the Bantu of that country have conceived the categories of Being in their philosophy. Since all four categories of African philosophy are forces and *Ntu* is what the categories are, then *Ntu* is a force. To say that *Ntu* is what the categories are, is to say that force is what they all are too. But to define force would be contrary the very nature of force as it can only be described and not defined. In African worldview therefore, force has a metaphysical connotation. It is not accessible to science. In its meta-empirical state, it is dynamic.

Kagame used a category that is akin to the systems of Plato, Aristotle, Thomas and Kant. He maintains that in Kinyarwanda, all terms are divided into groups and classes, and the substantive are not divided as in other languages. He discovered eleven such classes of words in Kinyarwanda under which terms and words can be grouped. Kagame thinks that each of these words is made of four elements, which have some philosophical role depending on the class to which the word belongs from which are derived the four general categories of speech. This is laced with a Thomistic tradition. In addition to the Thomistic Aristotelian classification tradition, Kagame build on something familiar to speakers of Bantu languages.

The classes are of human beings, for things animated by magic, including trees, tools, fluids, animals, places, abstractions etc. the class of a word can be recognized by a sound or group of sounds which preceded the stem and this Kagame calls determinative. Kagame stated that the stem is ineffectual without the determinative in Bantu language. It was from this that Kagame brought out the four categories of African philosophy. All that exist in the universe of being and becoming is summed up under any of these categories. 'Everything there is must necessarily belong to one of these four categories and must be conceived of not as substance but as force'.<sup>21</sup> The stem is *Ntu* but, it is not particular without the determinatives which gave the categories their distinctive characters and understanding.

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<sup>21</sup> Janheinz Jahn, *Muntu An Outline of the New African Culture*, Marjorie Grene (trans), New York: Grove Press Inc., 1961, p. 100.

According to Kagame the categories of African philosophy are:  
*Muntu - 'Human being' (Plural: Bantu)*  
*Kintu - 'Thing' (Plural: Bintu)*  
*Hantu - 'Place and Time'*  
*Kuntu - 'Modality'*

All being, all essences in whatever form it is conceived, can be subsumed under one of these categories. One cannot think of anything outside them. According to Kagame, all that there is must necessarily belong to one of the four categories *and must be conceived not as a physical substance but as force. Man is a force; all things are forces including place and time, modalities.* They are all also related to one another because they are forces and this relationship is vivid in their very names because if the determinative is removed, the stem Ntu remains and is constant in all of them.

### **Ntu- the underlying category of being**

Ntu is the most general category of being and it is divided into four. Umuntu (Human Being), Ikintu (Non-Human Being), Ahantu (Place and Time), and Ukuntu (akin to the Aristotelian category of quantity). This Ntu has the generic meaning of something. It is the ultimate unifying notion, it is a generic of being but God does not belong here. According to Kagame, the 'property' common to all things and beings is their activity; divination and magic are based on the metaphysics of these powers. These categories are mutually exclusive, the common denomination in the categories is being and this accounts for their interactions. Ntu as a universal force never occurs apart from its manifestations: Muntu, Kintu, Hantu and Kuntu. Ntu is being itself the cosmic universal force, which only modern rationalizing thought can abstract from its manifestations. As a force, Ntu is the point where being and beings coalesce.<sup>22</sup> In trying to buttress the centrality of the being of Ntu Breton observes that 'everything leads us to believe that there exists a central point of thought at which the living and dead, real and imaginary, past and future, communicable and incommunicable, high and low, are no longer conceive as contradictory'. Ntu is that 'point from which creation flows' this was what Klee was seeking when he said 'I am seeking a far-off point from which creation flows, where I suspect there is a formula for man, beast, plant, earth, fire, water, air and all circling forces at once'. However, Janheinz remarked that Ntu is not independent above all these that Breton stated, rather Ntu is what Muntu, Kintu, Hantu and Kuntu all equally are. Ntu only expresses

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<sup>22</sup> Janheinz Jahn, *Muntu An Outline of the New African Culture*, Marjorie Grene (trans), New York: Grove Press Inc., 1961, p. 101.

their being and their forces act continually. *Ntu* is also not the driving force, that activity is the special reserve of *Nommo*.

## MUNTU

This is about human beings, but it is instructive to state that this does not only include man or human beings but other beings that have relations with the man. It includes beings that were human but now control and assist the activities of the human being. On this count Muntu includes both the living and the dead, and the ancestors also have their place in this group. Muntu also includes *laos*, the *orishas*, other gods, and intermediaries that help man to reorder the social system and maintain sanity. Muntu from the designation of Kagame also includes God the highest being which Janheinz Jahn termed *Bon Dieu* (Good God) Tempels calls God '*the Great Muntu*'. Muntu therefore represents the genre of beings that have the primal force and in the works of Tempels, this force is what control and reorders other forces and things in the cosmos. Humans are different from other physical beings by their ability to reflect, compare and invent. All these are functions of intelligence. Hence, Muntu accordingly to Kagame is '***force endowed with intelligence***'. Human beings share the same principle with animals, that is, the principle of shadow (it is the principle of birth and death which men share with animals).

However, human beings are distinct from animals by the possession of intelligence. Man is the union of body with the principle of intelligence. Life, which in Bantu language is called *Amagara* is definitely not on the same plain with the animalistic kind of life.<sup>23</sup> The *Banyaruanda* makes a clear difference between sensitive being in general and a sensitive being imbued with intelligence, the two have certain faculties and operations. But the intelligence attributed to man is not same with the animals because the latter operates mainly at the level of sensations. This led Kagame to the immortality concept. For him the problem of human immortality is the problem of 'disincarnated souls'. When the principle of intelligence is liberated in the human person, it is called the spirit of the dead. This led Kagame into two basic Bantu concepts worthy of clarification in his ontology of being. They are *Umuzinma* and *Umunzimu*, the variation is explicit in the 'U' that terminates the second term; the latter means a non-living being with intelligence.<sup>24</sup> The appreciation of these beings is in most cases abstract and can only be made necessary and

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<sup>23</sup> D.A. Masolo, *African Philosophy in Search of Identity*, Nairobi: East African Educational Publishers, 1995, p. 89.

<sup>24</sup> D.A. Masolo, *African Philosophy in Search of Identity*, Nairobi: East African Educational Publishers, 1995, p. 90.

made concrete as long as they as symbols and appear in practice of reverence to the ancestors. They are immortal and cannot die, with a *terminus ad quo* but not a *terminus ad quem*. They are not neither eternal because they had a beginning in space and time; they are therefore *eviternal*. Muntu is an entity which is a force that has control over Nommo (the word in action). This is where Tempel's idea was recoded in that *muntu* as a being endowed with force is the controller of other forces and can even enforce or 'de-force' other beings. *Nommo* is the magic wand of the word that man uses to make this to be and also used to redirect events. This Nommo is under the control of muntu and it underscores the preeminence and crucial role of the muntu as a mode of force. It is the force of all forces as it controls activities together with other beings (forces) under the canopy of muntu.

### KINTU

Kintu as a category of being includes those forces that are sterile and need the action and activity of other forces to enliven themselves. The force that does this empowerment is muntu, the primal force. The command of the muntu sets the kintu into motion and makes it active. The kintu family includes; plant, animals, minerals, tools, object of customary usage etc. they all do not have a will of their own neither do they possess the requisite force to pull them towards activity. The seeming exception are animals, in their case, it is the *Bon Dieu* that gives their force a drive. Others are sterile and impotent except with the action of the muntu and they are at the disposal of the muntu. Another notable exception among the *bintu* (plural of kintu) are certain trees that are designated as the street of *laos*, in them the water of the depth, the primal Nommo, the word of the ancestors, surges up simultaneously; they are the road traveled by the dead, the *laos* to the living men; they are the repository of the deified'.<sup>25</sup> As a result of this interaction of the trees and the muntu, Jahn was apt to state that in many Bantu languages; trees belong linguistically speaking to the muntu class. This is because of the interaction of forces between the trees and some of the forces in the muntu category. However, this call to mind the idea of totem and taboo, in that when sacrifices are made to the 'tree' it is not meant for the plant but it is for the *laos* or the concerned ancestor that is, that muntu force that has rapport with it. As a result of this privileged condition of these trees, the product (wood) from them have special quality, this is as a result of the Nommo of the ancestors that makes it special and consecrated.

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<sup>25</sup> Janheinz Jahn, *Muntu An Outline of the New African Culture*, Marjorie Grene (trans), New York: Grove Press Inc., 1961, p. 102.

## HANTU

Space and time fall within this category, hantu helps to situate spatial and temporal phenomenon and every event and motion. And because all beings are forces, they are constantly in motion. This hantu takes charge of all the events that are reckoned with in time and puts them in perspective. In the expressions of Kagame, time and space are coterminous, just like there is the close affinity between object and subject in African epistemology. Nazeem had averred that the object or the subject cannot know the other if it is detached, this is to avoid the pantheism of the mystic.<sup>26</sup> The time predisposes one to the event in space and is also in within time. This was why Jahn stated that a question of place can be answered in terms of time e.g. when did you see it? The answer may be ‘in the boat under the liana bridge after Y. Jahn further defends this view, as not been unusual as all who read time (clock) does so in conjunction with position of the hand(s) and this is about space. Kagame made a tripartite distinction of the category of hantu, they are; the physical: having to do with locality of space occupied by an object; the second is the localization insofar as it is a position in space or internal space and lastly external place.

## KUNTU

Kuntu stands as the modal category with a modal force. Here, it is not like the other categories that can be explained away, kuntu is quite unique in the way it is to be understood and appreciated among the other categories. Kuntu has to do with existent that is not tangible but not also metaphysical or strictly abstract. Kuntu cannot be seen or held but it can be experience and felt. The impact of kuntu as a force can be to make some effects and affect human endeavours.

The understanding of this is not strictly western but only within the African system. Such things like beauty, laugh, and laughter fall under the kuntu category. They are only felt. To make this category of Kagame explicable and communicable Janheinz Jahn used some extracts from Tutuola’s *Palm Wine Drunkard*. There, beauty was exposed as a force that has impact and cannot be felt but of course it can be experience and its effects are obvious. Tutuola showed how beauty as a force can manifest. He states that if a gentleman goes to the battlefield, the enemy would not kill him or capture him and even if the bombers saw him in a town which was to be bombed, they would not throw bombs on his presence, and even if they do, the bomb would not explode until the gentleman leaves the town. All these calamities will be averted off the man only because of his

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<sup>26</sup> Z. Nazeem, ‘African Heritage and Contemporary Life: Experience of Epistemological Change’, [http://crup.org/books/series\\_01/11-2/chapter\\_i.htm](http://crup.org/books/series_01/11-2/chapter_i.htm).

beauty. Here once sees the modal force of beauty at play and it has saved a situation. This is the unique genre of force that kuntu commands as a category.

### **Some criticisms of Kagame's categories of being**

Conversely, this problem of language remains a major issue in the academic enterprise in Africa and even by Africans home and/or abroad. This is because, if one enters into the debate of African philosophy or other disciplines, one looks at the meaning of words in English and what it means in African philosophy and world. 'All talks about African philosophy or African socialism are bound to result in conflict of meaning, cultures and perception of reality'.<sup>27</sup> It is in view of this that Kagame is obviously been vilified for being unapologetically too Aristotelian in his analysis of the Bantu ontology of being. This defect is due to Kagame's faint thesis; his exposition rest outstandingly on the assumption that, a semblance exists between the ancient Greek philosophers and the ordinary Bantu. The basis of this comparison rests on the fact that philosophical problems are common to all people without distinction.<sup>28</sup> Kagame then examined the cultural differences in the application of categories to the concept of being in Metaphysics.

Regrettably, this comparison that Kagame tried to reiterate smacks of what Okere<sup>29</sup> describes as the fallacy of comparison. This is one of the severe blunders palpable in dealing with intercultural relations. Too many parameters, quantities and equations become unnoticed and unknown and this accounts for the copious anomalies and logjam evident in the initiative of Kagame and explicit in his end point. More still, Kagame went on to portray the ordinary person among the Bantu as being primarily *res cogitas*, whose primary attribute is a contemplation of essences. He then attempts to prove the universality of the principle of unity of beings, through the forceful formulation of the *Ntu* category.

Certainly, Kagame's work has been influenced by Tempels, but Kagame stands greatly accused of its scholastic background from which he imports categories to transplant into his culture. Imbo would contend that Kagame justified his procedure using the Thomistic belief in the unity of rationality across human tradition and cultures; and the impression is that to penetrate an understanding of African philosophy, we need to follow a

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<sup>27</sup> Moses. A. Makinde, *African Philosophy: The Demise of a Controversy*, Ile-Ife: O.A.U. Press, 2007, p. 17.

<sup>28</sup> D.A. Masolo, *African Philosophy in Search of Identity*, Nairobi: East African Educational Publishers, 1995, p. 93

<sup>29</sup> Theophilus Okere, *Philosophy, Culture and Society*, Nsukka: Afro-Orbis Publications Ltd, 2005, p. 64.

procedure founded on a belief that Aristotelian and scholastic philosophies faithfully speak for humanity thus 'if this is good enough for the Aristotelian, it is good enough for Kagame'. But Asouzu was quick to point out that the difference in Kagame's categorization of *Ntu* with the logic of Aristotle is that while the latter is bifurcating, polarizing and exclusivist, the former is complementary and harmonizing.<sup>30</sup> Another inconsistency that is characteristic of some scholars mostly Africans is the perception that reality as perceived by an individual equals reality of a vast majority of people. Hence for Kagame, the thought of the *Banyarunda* is equal to that of Aristotle. This is what Asouzu calls 'a presumptuous and precarious undertaking' and he observed that this mode of thought is repeated in the thought of Tempels and Kagame as in some other African scholars.

Like Tempels, Kagame seems to have fitted African concepts into western categories, in order to render them intelligible to a foreign audience that detects the parameters of meaning. This is scrupulously making real the assertion of Iroegbu that 'it is curious to note that many Africans are repeating the contents of Tempels' findings in their different areas, cultures and ethnic groups. And these are presented as African philosophy.<sup>31</sup>

So, Kagame should take note that it is not just about keeping up with categories and wealth of knowledge generated elsewhere or 'adapt it to local needs and conditions'<sup>32</sup> but the task in African philosophy on issues bordering on culture is the capacity to generate idea and from it make cognitive and indigenous discoveries. This issue of inclusion is critical for the liberation of African philosophy from the overwhelming one-sidedness of the history of Western philosophy.<sup>33</sup> This is because this discrepancy in history from western scholars is the bane of any authentic and liberal thought system in African, and philosophy is a major recipient of this dilemma. This according to Olusegun Oladipo remains one of the crises of relevance in contemporary African philosophy. Olusegun Oladipo asserts; ... so (probably referring to Kagame and his acolytes) what he is busy doing is to promote an order of knowledge which is largely informed by a socio-economic experience that is, at least in its fundamental aspects, anything

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<sup>30</sup> Innocent Asouzu, *Ibuanyidanda: New Complementary Ontology*, Zurich: LIT VERLAG GmbH & Co. KG Wien, 2007, p. 198.

<sup>31</sup> Iroegbu Pantaleon, *Metaphysics; The Kpim of Philosophy*. Owerri: International Universities Press, Ltd. 1995, p. 291.

<sup>32</sup> Akilagpa Sawyerr, 'Does Africa Really Need Her Universities?' *Codesria Bulletin* Dakar: Nos. 3 & 4, 1998, p. 24.

<sup>33</sup> M.A. Ramose 'De-Liberating Philosophy' in (ed.) Ogumodede Francis, *West African Journal of Philosophical Studies* Vol. 2, Enugu: Snaap Press, Ltd, An AECAWA Publication, 1999, pp. 1 –15.

but African.<sup>34</sup> The outcome of this according to Oladipo<sup>35</sup> is that the contemporary African philosopher derives his education from cultural sources that are distinct from African culture. The apparent implication of this repulsive scenario according to Azenabor is that ‘the African is alienated! But then, the real problem, according to Wiredu, is not actually the variation of sources but its lack of reflective integration.<sup>36</sup> This view is axiomatically in tandem with the logic of Iroegbu that in many others who have written on the African theory of being, one negative cord runs through. This cord is the absence of personal, individual critical and systematic interpretation of what reality is, what reality means for the author in question, as an African.<sup>37</sup>

This for me is the paradox of the predicament inherent in both latent and manifest in contemporary African thought system. It was this same quagmire that Oguejio for appreciated that made him to think that works like; *Bantu Philosophy* (Tempels), *African Religions and Philosophy* (Mbiti) and this work in question (Kagame) do not pass as African philosophy. His reason are not farfetched they; lacked individual contribution, agreed that culture is the raw material needed for philosophy to take root, however, at last, the final analysis have to be the individual’s self-understanding or appreciation in the context of his culture.<sup>38</sup> In the wake of these incongruities and in the bid to darn the complex situation, Asouzu<sup>39</sup> proposed his own remedy out of this conundrum; this is *Ibunyanadanda*. This according to Asouzu provides us with a new ontological horizon that seeks to overcome the reductionism that is inherent in all forms of ethnocentric rationalism. Asouzu maintains that its merit lies in the fact that it seeks to ‘articulate philosophy in a way that supersede this ambience based on personal critical reflection. As a philosophy it emanates out of the communalistic nature of man.

This same abysmal and hackneyed ‘superimposition of foreign categories of thought on African thoughts systems through colonialism’ led

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<sup>34</sup> Olusegun Oladipo, *The Idea of African Philosophy; A Critical Study of the Major Orientations in Contemporary African Philosophy* (3<sup>rd</sup> ed.), Ibadan Hope Publications. 2000, p. 20& 21.

<sup>35</sup> Olusegun Oladipo, ‘Kwasi Wiredu: The Making of a Philosopher’ in *The Third Way in African Philosophy*, Olusegun Oladipo (ed.), Ibadan Hope Publications. 2002, p. 336.

<sup>36</sup> Godwin Azenabor, ‘Odera Oruka’s Philosophic Sagacity: Problems and Challenges of Conservativation Method in African Philosophy’ in *Sophia, An African Journal of Philosophy and Public Affairs*, Published by Department of Philosophy, University of Calabar, Nigeria. Vol. 10. No. 2, 2008, pp. 70-76.

<sup>37</sup> Iroegbu Pantaleon, *Metaphysics*, p. 285.

<sup>38</sup> Obi Oguejiofor, *Philosophy and the African Predicament*, Ibadan: Hope Publications, 2001, p. 118.

<sup>39</sup> Innocent Asouzu, *Ibunyanidanda: New Complementary Ontology*, p. 211.



Olusegun to later propose a conceptual decolonization in African philosophy.<sup>40</sup> Even when he further called for a synergy/syncretism of culture in the course of development, it was with a caveat that it must be discriminate coupled with appropriate criteria.<sup>41</sup> Kagame and Tempels both have the same style, using western categories to appraise African philosophy, though that of Tempels was more of a cultural betrayal coupled with some sort of intellectual cum philosophical segregation. This was borne out of the colonial scheme that betrayed their endeavors at that time and their works smacks of scholars writing to make an impression within an oppressive system. Liboire Kagabo, explicates this ludicrous situation further:

Both of them were born early in the twentieth century and grew up when colonization was triumphant, but also when African traditions were still vibrant. They were lucky enough to experience African traditions at the right moment and gifted enough to conceptualize those traditions and make them known *to both contemporary Africans and Europeans. For that, they both deployed an intense literary activity which has no other equivalent in Africa.*<sup>42</sup>

For them and other scholars of like orientation and mind I end this criticism on a warning note from Ramose:

Colonialism is, therefore, regarded as a veritable moment of epistemicide as far as the indigenous conquered people are concerned. To urge for the protection of standards in these circumstances is another way of asking for the dominance and perpetuation of the colonial epistemological paradigm.<sup>43</sup>

## Conclusion

If Kagame's work is relegated to the level of ethno-thinking, it is not a defect in any way as he tries to pose questions out of the cultural life of a

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<sup>40</sup> Olusegun Oladipo, *Conceptual Decolonization in African Philosophy: Four Essays by Kwasi Wiredu*, (Selected and Introduced by Olusegun Oladipo), Ibadan: Hope Publications, 1995, p. 22 – 32. (*The Second Essay*).

<sup>41</sup> Olusegun Oladipo, 'Contemporary African Philosophy: Issues, Tasks, and Problems', in *African Philosophy Down the Ages*, Ogunmodede Francis (ed.), Ibadan: Hope Publications, 2004, pp. 385 – 399.

<sup>42</sup> Liboire Kagabo, 'Alexis Kagame (1912-1981).

<sup>43</sup> M.A. Ramose, 'De-Liberating Philosophy' in (ed.) Ogunmodede Francis, *West African Journal of Philosophical Studies* Vol. 2, Enugu: Snaap Press, Ltd, An AECAWA Publication, 1999, pp. 1 –15.

people. He therefore provides the rudiment for adequate philosophizing. On another hand, it should not be seen as ethno-thinking as such, for such metaphysical conceptions as; being as force, or force as being, *Ntu* as a higher force that manifests itself in man, are not just limited to the cultural level, but are serious metaphysical issues. That is why Okere is of the view that philosophy must be hermeneutical, yet it must also get its initial impulse and nourishment from the African culture.<sup>44</sup> It must also have to operate within a conceptual framework that is authentically African. It is just within this framework that African philosophers and Kagame in particular operate. We cannot dismiss the cultural element of philosophic task, as culture necessarily leads to critical philosophy. We should rather make the task of philosophy ongoing; for it is in philosophizing we discover the aim of philosophy. Hence, even while we say that cultures and traditions cannot pass for philosophy, they ought to be present if we are to give meaning to our cultures and traditions. Hence, they are not just passive but essential rudiments in the task of philosophizing.

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<sup>44</sup> Ike Odimegwu, "Dialogics and Contemporary African Philosophy" in *Four Decades of African Philosophy Issues and Perspectives*. pp. 236-237.

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# THE INDEPENDENCE OF ROMANIA - A GLANCE AT THE POLITICAL IDEAS OF THE TIME THROUGH POLITICAL SPEECHES

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**Abstract:** *The moment of declaring Romania's state independence is one of the historical reference events. During this short study, the authors intended to present five speeches that reflected the most important ideas of the moment and how the national political elites had positioned themselves within the Orient-West paradigm. Throughout the texts, the arguments that under-pinned the declaration of the country's independence from the Ottoman Empire were firmly resolved. The symbolic value of the arguments used demonstrated that from an ideological point of view, the Romanian political class was integrated into the system of Western European values.*

*These elements demonstrated that the rupture of this reference space had largely been eliminated. The autochthonous political elite began this process half a century ago, but now the westernization modernization model has been referenced, which shows us that the values of the past, specific to the Eastern model paradigm, were progressively replaced by the Western modernizing ones.*

**Keywords:** *independence, Turkey, liberals, Carol I, Romania, Great Powers*

## Introduction

The statement of State Independence of Romania took place at the Chamber of Deputies Meeting of May 9, 1877. This historical moment, particularly important for the history of the state and of the Romanian nation, was not an unexpected act. From the moment the Ottomans entered the Balkan Peninsula (14<sup>th</sup> century) until May 9, 1877, the bilateral relations were tumultuous. The Romanian countries had come into the sphere of influence of the Ottoman Empire, the native boyar elites alternating moments in which they refused Ottoman suzerainty with those in which they accepted it. The Ottoman pressure had intensified, especially

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since the 17<sup>th</sup> century, the relations between the empire and the Romanian and Turkish countries becoming a form of direct domination.

The existence of Ottoman power in Asia Minor and the creation of a power system designed to control the ties between the West and the Orient had major implications for the geopolitics of the time. The Romanian countries, by the geographic and geopolitical nature of their space, were directly affected by these realities.

In order to understand the underlying causes of the transformation of the Balkan space and later of an important part of Central Europe into a conflict zone where the great powers of the moment (Hungary, Poland, Austria, Czarist Russia) fought to control this space geographically we must turn our eyes back centuries ago.

Strengthening the Turkish state under Emperor Osman I (1281-1326) will lead to the emergence of an expansionist policy in Asia Minor. The destiny of this kingdom was mainly influenced by the precariousness of the authority of the Byzantine Empire in an accelerated dissolution process.<sup>1</sup> The weaknesses of the Byzantines allowed the Ottoman state to expand its territory to Asia Minor, as it was during the sultan Mahomed II (1421-1451), and Constantinople, the second Rome, as is known in historiography, the ecumenical center of Oriental Christianity, or Orthodoxy, to be conquered.

This territorial expansion had had complex consequences. Apart from the fact that the last form of government of the Roman Empire had disappeared, it was for the first time that the Mediterranean, the cradle of the Greek-Roman European culture, was gradually losing its importance. Territorial expansion was accompanied by maritime affairs. The control of the Bosphorus and Dardanelles by the Turkish military navy led to a de facto control over Black Sea and Marmara trade with geopolitical effects on the Aegean Sea and the Mediterranean Sea. If we were to see symbolically Europe and Asia in the form of an hourglass, Constantinople, the two straits and the Asia Minor extension represented the passage between the two continents. Indeed, the Ottoman state controlled the passage of the entire flow of goods, on the old commercial roads that existed in the Roman period between Europe and Asia. The immediate effect was a major increase in the economic resources of the Ottoman state, which were invested in territorial and maritime expansion policies and a gradual reduction of the economic resources of the states of the Italian peninsula, Central and Southern Europe. The most important effect of this geopolitical reality was the desire of the great European powers in Western Europe (Portugal, Spain, France, England, the Netherlands) to find a new

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<sup>1</sup> Edward Gibbon, *The history of the decline and collapse of the Roman Empire*, Minerva Publishing House, Bucharest, 1976.

trade route to the Orient. Thus, the era of great geographic discoveries from the turn of the 15th to the 16th century was opened. The consequence of this policy of discovery of new territories was that the Mediterranean Sea was progressively losing its role for almost two millennia, the role of center of European culture and civilization. Indeed, the center of commercial weight, and as a result of economic, political, cultural, civilization, had moved to the European West. In return, European countries in the Mediterranean Sea had fallen. For the Romanian countries, the Ottoman expansion led not only to a progressive decrease in the capacity for internal development, but also to a continuous form of economic and financial exploitation. Step by step, with the passing of the ages, the Romanian lands would be increasingly controlled by the Ottoman Empire, especially with the abolition of native domination and the introduction of the foreign domination of the Phanariotes, ending up in a situation of cultural breakdown and civilization of Western Europe, a space of values of Reformation, humanity, Enlightenment, modernizing revolutions, etc.<sup>2</sup>

The Romanian space evolved slowly, due to the control imposed by the Ottoman authorities, which, in the light of the past experiences, avoided permanently devoting themselves to the form of domination by introducing the *pashalic*. The negative reactions of the local Wallachian, Moldavian or Transylvanian elites forced the Turks to use a far more subtle policy of controlling these territories. With the passage of time, the space inhabited by the Romanians began to become increasingly isolated, the local elites sending their children to study in Constantinople or in Petersburg. It was necessary that the French Revolution of 1789 broke out so that in the Romanian space would start to penetrate the ideas of a new type of modern society. It is interesting that we have the first information on the perception of these ideas three decades after the French Revolution, which demonstrates, once again, the degree of closure that the Romanian society knew. It was necessary that the generation of Dinicu Golescu, who was deeply disappointed with the reformist projects backed by Tsarist Russia in the Balkans at the beginning of the nineteenth century, turned his gaze to the West, to visit Paris, Vienna, London, Venice, etc. to understand the civilization rupture existed between the two parts of Europe - Western and Oriental. Once aware of the state of delay in the modernization of the state and of the Romanian society, the new generations of boyars had definitively left the schools of Constantinople

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<sup>2</sup> For a better understanding of the phenomenon, it is recommended Fernand Braudel, *The Mediterranean and the Mediterranean world in the time of Philip II*, vol. I, Meridiane Publishing House, Bucharest, 1985, and the following five volumes published in the following years.

and Petersburg, and therefore the oriental-feudal mentality, heading for Paris, the city of light, more progressive ideas had been expressed for almost half a century. This change in the educational paradigm would have a direct and major impact on the road followed by the Romanian space in the next 100 years until the end of the First World War. The connection with the European values of the moment involved the emergence of groups of boyars who played a triple role: political, economic and cultural, which in the process modernized the Romanian society by applying a modernizing political project. The ideas expressed by the Romanian revolutionaries in 1848 during the meetings and demonstrations in Wallachia, Moldavia and Transylvania showed very clearly that the reconnection with the Western space had been achieved. Ultimately, the Oriental paradigm had been abandoned, and the road of modernization was that imposed by the ruling Romanian elites. The declaration of state independence on 9 May 1877 and its confirmation on May 10 by the act of Prince Carol I were preceded by the date of 5-24 January 1859, which consecrated Moldavia's union with Wallachia and thus the appearance of the Romanian state. The natural evolution implied, of course, gaining independence as a guarantee of the implementation of a modernization program.<sup>3</sup>

In the forthcoming speeches, we will present, analyse and explain, through the specific type of comparison and language analysis, both the realities of the moment and the way in which the European ideas entered into the domestic political thinking.

### **Ideas, concepts, principles**

On May 9, 1877, in the Chamber of Deputies' Meeting, Mihail Kogalniceanu spoke a magistral speech, proclaiming the State Independence of Romania. The word is actually a response to a speech of Nicolae Fleva<sup>4</sup>. Fleva wanted explanations from the Foreign Minister in the context of the Russian-Turkish conflict, about the positioning of Romania over the old agreements with the Ottoman Empire. The result of this speech was to cast a motion with 79 votes for and 2 abstentions, the Assembly of Deputies acknowledging the breaking of relations with the Ottoman Empire and the official declaration of Romania's independence.

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<sup>3</sup> Frederick Kellogg, *Romania's Road to Independence*, European Institute Publishing House, Iași, 2002.

<sup>4</sup> Nicolae Fleva, 1840-1920, lawyer, Romanian politician, liberal-radical, Mayor of Bucharest in 1884, Minister of Internal Affairs in 1895, Agriculture and Royal Domains. At the time of the interpellation he was a liberal-radical deputy.



## **Mihail Kogalniceanu**

We will play back the fragments of his discourse, and full play is not possible due to its extent.

Declaration of the absolute independence of Romania (Meeting of the Chamber of Deputies of May 9, 1877)

*"Honourable Members, besides my position as minister, as a Romanian I applauded the Romanian, energetic, patricious language of honor. Fleva. This once said, I have to ask myself if I, the Minister of the Foreign Affairs, and through whose low voice Romania speaks abroad today, are allowed to follow him and consult more the heart than cold reason. (...)*

*Gentlemen, the Chamber, and the Senate, at the interpellations of Mr. Stolojan<sup>5</sup> and Falcoianu<sup>6</sup>, have admitted that we are in a state of war, have admitted that we are unconnected with our links with the Sublime Porte. These two votes decided the situation and did not need a bigger comment. In a state of war, with broken links, what are we? We are a self-standing nation! (applause) But, gentlemen, does our labor stop here? Does our mission stop? I have come to the aim pursued not today, but can I say, for centuries, and more particularly pursued since 1848 onwards? First of all, gentlemen, let us ask ourselves: what was it before the war was declared? Do we have new addicts to Turkey? Were we a new Turkish province? Are we the new vassals of Turkey? Do we have the Sultan as a suzerain? The strangers said this; we never said it. We were not vassals. The Sultan was not our suzerain, but it was something: there were sui generis ties; some ties that were weak when the Romanians were strong; some ties that were strong as the Romanians were weak. (general applause) (...)*

*So, gentlemen, I have no fear and no doubt to declare before the national representation that we are a free and independent nation. (Long repetitive applause) But now, gentlemen, we are beginning to make the hardships, because our new condition, defining our independence in a more determined and absolute way, must be accepted by Europe. This is the point, so patriotism is claimed, so caution is required, so cold blood is claimed. (...)*

*We have to prove that we are a living nation, we must prove that we have the conscience of our nation, we must prove that we are able to make new sacrifices in order to preserve this country and its rights for*

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<sup>5</sup> Anastase Stoloja, 1836-1901, lawyer, politician, liberal, founder member of PNL, mayor of Craiova in 1868, deputy, minister of justice, agriculture, industry, commerce and domains, interior.

<sup>6</sup> Scarlat Fălcoianu, 1828-1877, magistrate, political, liberal, supporter of Al. I. Cuza, Minister of Cults and Public Instruction, of Justice.

*our children, and this mission in these moments it is entrusted to our brothers and sons who die at the border. (prolonged applause) (...)*

*But once this has been done, not only the government, but the Chamber, and the Senate, and the nation should plead before Europe, before the great ereopagus, that arophobe in which Russia itself is addressing its cause; to address and to firmly and wisely advocate our good faith and the good cause of our independence. (...)*

*Once again, I declare to you, on behalf of the government, that we are at war with the Sublime Porte that our ties to the Porte are broken, that the government will do its utmost to make our state of independence and independent state to be recognized by Europe in the future peace, which the government, both you and the whole country wants to see it for an hour before. (prolonged applause) (...)*

*There are on this bench those men who in their youth worked to get where we are; also on this bench are the juniors, who will carry on what the elders have begun.*

*One word I have to say to you today: you see all cold, without enthusiasm, thinking coldly. Well, on the day that Europe recognizes what we all need to work on, it will recognize our determination and put us under the shield of a future European peace treaty - that day, on this bench, you will no longer find the elders; you will find us all young and full of enthusiasm. (prolonged applause)".<sup>7</sup>*

From the text we identified the following key words: Romanian, war, Turkey, independence, Europe, the Treaty of Paris, the 19th century, Russia, Austria.

Kogalniceanu, in his speech, uses a balanced tone to respond to the interpellation emphasizing his quality of minister. He explains the specific conditions underlying the decision-making: "*... when the convention with Russia was voted ... maybe I also spoke as a Romanian ... Today I have to speak only as a minister.*" One of the intentions of the Romanian dignitary was to urge caution of the excited audience by the historical moment lived.

He modestly characterized himself by the use of metonymy as "*a weak voice through which Romania speaks abroad*", while reminding that Romania's independence depends not only on entering the war with Turkey but also on the attitude of the great European powers. He urges caution by warning the Assembly that "*a word, a letter written or imprudently written by the one who has the honor of directing the country's interests with foreigners can compromise ... the fate of the Romanian nation.*"

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<sup>7</sup> Gh. Buzatu, *Speeches and parliamentary debates, 1864-2004*, Mica Valahie Publishing House, Bucharest, 2006, pp. 88-91.

While referring to the use of reason in everything that will be done in the process of gaining independence as a dignitary of the Romanian state, the orator realizes the need to maintain a weighted tone while trying to strengthen the enthusiasm of the audience in support of the cause to be pleaded before the great European powers. By the way he positions himself, he adopts an air of proclamation and national pride in his speech, saying: *"We are independent! We are a self-standing nation! (applause) We have an independent ruler! (applause)"*

After the applause, the call to caution comes again, warning *"But, gentlemen, here is our labor stop? Does our mission stop here? I have come to the goal pursued not today, but can I say for centuries and especially pursued since 1848 onwards?"*

Interrogations with a strong persuasive degree represent the way of introducing historical argumentation, the wishes of the Romanian nation, facts that give legitimacy to the act of independence. The orator's arguments are reproduced through a series of interrogative statements of value, which trained the audience in the proposed demonstration: *"What were we prior to the declaration of the war? Have we been dependent of Turkey? Were we a new Turkish province? Are we the new vassals of Turkey? Did we have the Sultan as a suzerain?"*

Then the confirmation answers: *"We were not vassals. The sultan was not our suzerain. And the ties with Turkey were only "some sui generis ties: some ties that were weak when the Romanians were strong; some ties that were strong when the Romanians were weak".*

The speaker's plea is aimed at convincing the representatives of the great European powers that Romania did not violate in any way the Treaty of Paris, which enshrined the appearance of the Romanian state, being aware that defiance would harm the interests of the country and its needs. He highlights the need for the treaty to be respected by the European forces and at the same time highlights Turkey's failure to do so: *"I will not do the process of Turkey; this is the job of the state people, who are in the government and who have been, and who, today, take part in the Ottoman Parliament. They are obliged to see that they have been wrong when they have always responded and in a systematic way with non-possimus to all our demands."*

Being a diplomat whose abilities were highlighted throughout the political activity, Kogalniceanu continues his argumentation with a symmetrical approach. Stressing the lack of the necessity of conflicting ties with Turkey, but also the need of European approval, and Romania's support, alliance and guarantee of independence.

Using this prolepsis, he recalls and justifies the position adopted by the country, being obliged to defend *"the same and we have recourse to*

*the cannon, and our cannon responds to the Ottoman cannon", then using the argumentation: "Are you wondering what we are now? We are in a state of resentment with the Turks, and when peace is to be done, I do not believe that a single Romanian will agree that Romania will return to its former, badly defined, hybrid and offensive position both to the interests of Romania and to Turkey."*

The politician's recognition of fears follows: *"the definition of our independence ... must be accepted by Europe,"* and then the call to prudence and cold blood that involves lack of sentiment.

Through prolepsis are reminded the words of an English parliamentarian: *"... I very much cared for those words, he said at the Parliament's tribune in London, that Romania is an integral part of the Ottoman Empire and that the Ottoman army can pass the Danube. These words worried me."*

Rhetorical question: what do we do? Let us be dead, introducing a series of pathetic arguments with a persuasive purpose, addressing not only the audience but the whole of Europe: *"No, gentlemen, for no one can help them, no one computes with the dead. We must prove that we are a living nation, we must prove that we are able to make new sacrifices in order to preserve this country and its rights for our children, and this mission is now entrusted to our brothers and sons who die at the border."*

The tone is then tempered by the fact that it is the duty of the House and the Senate to plead before European diplomacy before the great airship *"to which Russia itself addresses and pleads its cause"*, the cause of Romania's independence, not necessarily as a patriotic desire of the Romanians, but as an act justified by the evolution, modernization, of entire Europe in the nineteenth century. The speaker uses arguments: *"We have to prove that we are claiming our independence because we as a nation have the right to live with our lives", all in front of a Europe that "preaches feelings of justice." (...)(...)* *"So, to prove that if we want to be a free and independent nation, it is not for us to be anxious about our neighbors,"* but instead, the aim is to prove that *"we are a nation determined to we take care of our people, let us take care of its development."*

The speaker sends a message to the Romanians' enemies: *"We want to be good with all our powers, with Russia, with Austria, and even with Turkey."*

Kogalniceanu speaks of Romania's interests at the *"Danube mouths"* that are of interest to European forces. The argument is particularly sensitive because, with the economic development of the Romanian countries and its gradual inclusion in the European economy, especially in the field of cereals, the commercial interests of the great European powers

were increasing.<sup>8</sup> Therefore, the desire expressed by the author to guarantee the access of European merchant vessels to the Danube ports and to the mouths of the Danube by the young Romanian state was fundamental. He continues to recall the reasons underlying the decision to break relations with the Gate, making itself "guilty of" the state of war it is in.

It also calls for the help and support of all, "the voice of the country and the duty of those who are on these benches", prophetically emphasizing that "what God will do", but also reminds that any action taken requires caution that "we are not allowed to do anything against the great European interests."

The finish finds the orator using a prophetic tone, hopeful, confident in the future, in the one of the descendants and the country as a European state: "On the day when Europe recognizes what we all need to work, it will recognize the determination and will put us under the shield of a future European peace treaty - on that day, on this bench you will no longer find the elders; you will find us all young and full of enthusiasm. (prolonged applause)"

The rhetorical figures used during the discourse do not have the role of obtaining an agreement, because it already exists, but pushing for a decision in support of the case. The logical, historical type of argument combines with the pathetic one.

Epanalepsa, "Have we been addicted to Turkey? Were we a new Turkish province? Have we been new vassals to Turkey? "Combines with antithesis" some ties that were weak when the Romanians were strong: some ties that were strong when the Romanians were weak".

The rhetorical interplay is intertwined with the paradox: "Are we dead? No, gentlemen, for no one computes with the dead. We have to prove that we are a living nation."

After the speech, Nicolae Fleava proposes to vote the motion, winning the case; and the next day, sovereign Carol I praises the work of senators and deputies.

### **Ion C. Bratianu**

The second speech to be analysed belongs to Ion C. Bratianu. Bratianu was one of the fiercest supporters of the convention with Russia and, at the same time, of Romania's entry into war. He makes a speech before the parliament on the day they vote to cancel the tribute to the Ottoman Empire, May 10, 1877.

This is the full speech, the speech addressed to the Ruler by Ion C. Bratianu on 10 May 1877.

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<sup>8</sup> Ștefan Zeletin, *Romanian Bourgeoisie*, Minerva Publishing House, Bucharest, 2008.

*"Your Majesty, for eleven years, since Your Majesty is on the Throne of Romania, neither the tempting afflictions nor the most audacious challenges have deprived our country, to distract it from the work of its reconstruction and to throw it in adventures which could have rocked the peace of the East.*

*With all these temptations, however, with the most implacable prudence, patience and perseverance, we did everything we could to achieve the international conditions established by solemn treaties and recognized by the Guarantee Powers. We have thus proved to the world that those qualities that have distinguished in the center of Europe the most distinguished men of Your Majesty's race have accompanied you to the mouths of the Danube, and that the Romanian people still preserve the wisdom and energy that, for centuries, inspired our ancestors and made them keep a free homeland in the midst of the most terrible cataclysms.*

*But when all hope has ceased that the thunders across the Danube can quench diplomatically when the war between Russia and Turkey broke out, and when nothing can be assured of the consequences of this terrible conviction for the Balkan Peninsula; when, even before it is sure that it will be victorious from this war, from the terrible political and social crisis it will go through, Turkey, in its circular to powers, cuts us through the whim of its wrath a fate that is not in conformity neither our rights nor our desires; when the program from that circular is already executed, by treating our agent in Constantinople as a simple Ottoman official, when our open cities and villages, where there were neither Russian troops nor Romanian troops, are not occupied as strategic points, but daily bombarded, burned and robbed, when our plains and fields are desolate and burned when our sentinels along the Danube are killed and barbed in the most barbarous way when the workers are kidnapped from their plow and taken together with their women and children, as in the time of Mahomet II, when, in a word, we see our Homeland being threatened by all the horrors of the wild invasions of the past centuries, the same sense of caution and wisdom, which has always led us, imposes today our duty to raise us all, to keep the chest of danger, to save the political individuality of the Romanian state. Our past, Your Majesty, could, believe, already assure all the Guarantee Powers of the purpose we pursue. Our actions, in our present events, will prove to all, and especially to our powerful neighbors, Russia and Austria, that our policy is only a policy of preservation, and that if we undo today and forever Turkey, it is we no longer feel the effects of its aggressions, put a strong stance and make it impossible for them to repeat in the future.*

*Powers will be convinced that, as we are, between two great and powerful Empires, the sense of preservation itself forbids any other adventurous aspirations that could endanger our existence even.*

*At the outset of present Romania, which in fact is European public law, is our patrimony, we believe that we will not deny the solicitude and protection of the Guaranteed Powers if we see ourselves today fighting, and fighting to the extreme to defend our rights and our independence.*

*With God, ahead, Your Majesty! You are already saluted with enthusiasm by the people from all angles of Romania, and if the enormous sacrifices to which the country is called would have no effect but to make you know the Romanian under a new phase, to love him and more, and to gain even greater trust in him, it would still be enough; for only the absolute faith, the mutual and unwavering love between the sovereign and the people can secure the future of Romania, we can give everybody the strength to fight in any vicissitude it would have to pass.*

*Long live, Your Majesty, the first and the free and independent Lord of Romania! Long live the queen and her virtues live a mild balm to the sufferings the nation is exposed to today! Long live, Romania!"<sup>9</sup>*

Keywords from the discourse of one of the most important liberal politicians of the moment are: Romania, the Guarantee Powers, diplomacy, Russia, Turkey, Austria, preservation, independence.

The speaker addresses Prince Carol I, reminding him that "for eleven years" since he occupied the throne, there were no "temptations and challenges" that would have stood for independence.

Making an eulogy of the sovereign's origins, "the most distinguished men of your Majesty's race," as well as of the Romanian ancestors, the orator points out that Romania did not violate the provisions of international treaties.

Using logic-based argumentation intertwined with the pathetic one through the use of metaphors, Bratianu explains the reasons that led Romania to enter into war with Turkey, the diplomatic channel unable to stop the "thunder over the Danube", and Turkey "in the whim of its wrath" occupies Romanian localities using them as "strategic points". Bratianu reminds the historical events of the time of Mahomet II when the territory of our country was robbed, "threatened by all the horrors of the wild invasions of the past centuries" and the Romanians used as slaves for the welfare of the Ottoman population.

It assures Russia and Austria that the only goal that Romania is pursuing is "a policy of preservation and that if we untie today and totally Turkey, it is not to feel the effects of its convulsions, if we take the guns, it

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<sup>9</sup> \*\*\*, *To C.A. Rosetti, 100 years from his birth, commemorative volume dedicated to, "Democracy", Bucharest, 1916, pp. 319-331.*

is to answer of its aggressions, to put a strong barrier on them and make them so that they can no longer repeat in the future."

By adopting a prophetic air, the orator shows that the European forces will understand that the only desire of the Romanians is to gain their independence, not to embark on "other adventurous aspirations".

It points out that the borders of the country, the "European public space", is "our patrimony" and that the Guarantee Powers will empathize with the Romanians and will offer them the diplomatic support necessary for the "defense of our rights and independence". And Austria and Russia, our "strong neighbors," the traditional rivals of Romania, speaks the orator on a prophetic tone, will be convinced by the strict territorial conservation spirit and will support Romania's armed action, located "between the two great and powerful Empires."

At the end of the speech, Bratianu praises the kingdom and reminds him of the trust that has been given to him by the Romanian people and the duty he has.

"God, ahead, Your Majesty! You are already hailed with enthusiastic transports by the people from all angles of Romania, and if the enormous sacrifices to which the country is called, it would have no effect but to make you know the Romanian under a new phase, to love them even more ..... because only the absolute faith, the mutual and unwavering love between the sovereign and the people can ensure the future of Romania."

The rhetorical figures used, such as epanalepsis, love, love, repeated at the end of the discourse, are aimed at highlighting the sovereign-people relations.

The metaphor, "thunder over the Danube", "the whim of the urge", the "sweetening conditioner" and the use of pathetic arguments, are meant to express the devotion to the sovereign and the hope in beneficial decisions that will help to devote the Romanian state to the international level.

The referring term is we, the orator identifying himself with the Romanian people.

Ion C. Bratianu's speech is part of the series of speeches dedicated to the declaration of Independence aimed at maintaining enthusiasm, as well as issuing clear signals to the great European Powers about the political determination.

### **Dimitrie Bratianu**

The third speech selected is that of Dimitrie Bratianu. Liberal politician, brother with Ion C. Bratianu, Dimitrie served as vice-president of the Senate at the moment of the proclamation of Romania's independence on 10 May 1877.



Although Romania's independence is proclaimed on May 9, 1877, the day when the Assembly of Deputies officially states that the country is at war with Turkey is 10, the decision is adopted and voted by the Senate, being immediately proclaimed by Carol I.

Also on 10 May, parliamentarians present the *Declaration of Independence* to the King.

Dimitrie's speech is not addressed to a large audience but to a single person, King Carol I.

Here's the speech of Dimitrie Bratianu:

*"Your Highness, the Senate brings a respectful devotion to your Majesty! Its congratulations and the wishes it does, so that the reign of Your Majesty may be long, fertile, glorious.*

*Your Majesty, for eleven years, the 10th of May, the day of your inauguration, on the Romanian Throne, is a national day of celebration. So far, on that great day, our souvenirs and our sure aspirations were the flattering of our souls. Today, you see, Your Majesty, all the hearts of joy, the selfishness of our ancestors revived in their own great-grandsons, and our aspirations have become a reality.*

*Today the pact between the nation and its chosen August has been committed! When you have ascended to Throne, we have promised our hearts and Your Majesty have promised us that you will do miracles with the Romanian people. Today we restored the broken three centuries of our nation's life as a stand-alone nation and ante-guard of civilization in the Orient.*

*Your Highness, the Chamber and the Senate recognized Romania's independence from Turkey. Your Majesty, in the head of our heroic army, you will make it impose to the enemy and recognized by the Guarantee Powers as a necessity to Europe.*

*And the Senate, Your Majesty, is embraced by the worries and the hopes that make the heart of Your Majesty tickle. If age does not allow us, the sublime impulses that make the youth heroism, our heroism is cold blood; cold blood is not indifference, it is the resignation of the conscience not to recapture before any sacrifice.*

*The times have arrived. You see it, Your Majesty! And the old Senate fired at the blast of the cannon from Calafat and Oltenita. When you have the right and the power, the wisdom is to cure. Dare, dare, dare, son of Friederich the Great, of Stephen the Great and of Michael the Brave! Throw away the faith of the elect of God on the path of salvation of the homeland in which you are pushing the tradition of your heroic families, and the genius of Romania. And we are back loaded with the glory of the Romanian people and the blessings of mankind. Inward through freedom, at the forefront of heroism, maintains our homeland*

*Independence and conquers the esteem and love of the civilized world. Europe, together with us, with veneration and love, will greet you in the Great King of Romania.*

*Long live, Your Majesty! Long live the queen! Long live independent and free Romania!"<sup>10</sup>*

From the reading of the text are identified the following keywords: May 10, Romania, Turkey, Guarantee Powers, Europe, Independence

Addressing is a direct one, Your Highness, and the tone indicates respect.

He remembers that on that day there celebrated 11 years since Carol I became King of Romania, and that on that great day, until then, the Romanian had been feeding with hopes: our safe souvenirs and aspirations were the comfort of our souls, but that in that day, the dreams of independence were seen to be fulfilled: the selfishness of our ancestors revived in their own great-grandsons, and the country finally enjoyed seeing the possibility of realizing the , '48's dream, independence from the Turks.

The elite member of the '48 generation highlights the sacrificial relationship between the ruler and the people: we have promised our hearts and Your Majesty, you have promised us that you will do miracles with the Romanian people.

He reminds Prince Carol that the connection between him and the people will be fruitful only when he, despite the external pressures and political family relations, and the Senate, Your Majesty, is encompassed by the worries and the hopes that make the throat of Mary Tale ... and will assume the wishes of the Romanian people stated in the revolution of 1848 with an emphasis on the independence of the Romanian state: Throw with the faith of God's chosen men on the path of salvation of the homeland in which you push the tradition of your heroic families, and the genius Romania. And we are back loaded with the glory of the Romanian people and the blessings of mankind. Inwardly, through freedom, at the forefront of heroism, maintains our homeland Independence.

The mission that Carol has is given in an exclamation tone Dare, dare, dare, son of Friederich the Great, of Stephen the Great and of Michael the Brave!, recalling that although he is a king of Western origins, in the country he is seen as a follower of the Wallachia and Moldavian great leaders that Romania had.

Appealing to history, the orator reminds that Romania has no longer been independent for three centuries broken of our self-standing and anti-war nation of civilization in the Orient.

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<sup>10</sup> Ibidem, pp. 331-332.

The discourse ends in the tone of the proclamations of "Long live, Your Majesty! Long live the queen! Long live independent and free Romania!"

Being adapted to the requirements of the moment, the discourse is a patriotic one, specifying the wishes of the '48 generation. Its purpose is not to persuade, but to legitimize a political decision. However, we encounter the epanalepsy combined with antithesis the ancestors' selfishness, our heroism is cold blood; cold blood is not indifference, discursive marks that emphasize the force of speech.

The speaker uses the logical arguments to emphasize the necessity of Romania's integration into the modern European space: conquers the esteem and love of the civilized world, Europe.

The romantic metaphor, specific to the '48 language, is also used to emphasize the necessity of the act of Independence: the egoism of the ancestors, the flattering of the souls, the cold blood, the blessings of mankind.

The logical, historical arguments are highlighted by epanalepsy: the 10th of May, the day of the signing of Your Majesty on the Throne of Romania, is a national celebration day. So far, that great day.

The term referent is we, the author using it to identify himself not only with the audience, but with the entire Romanian people.

### **C.A. Rosetti**

The fourth analysis is C.A. Rosetti's speech, President of the Chamber. Rosetti, in his speech from 10 May 1877, gives the emotions of the Romanian political class to the proclamation of Independence, linking the sovereign's statements on his arrival in the country and his deeds in the context of the Russian-Turkish conflict.

This is the speech of C.A. Rosetti:

*"Your Majesty, there are 11 years today, entering for the first time in the palace where the nation, through its representatives, awaiting its chosen, Your Majesty pronounced the following words:., A choice of nation with spontaneity Lord of the Romanians, I left without any doubt my country and my family for responding to the call of this people who entrusted their destiny to me. Putting the foot on this sacred earth, I became Romanian as well. Citizen today, tomorrow, if needed, soldier, I will share with you the good and the bad fate. From this moment everything is common to us; believe me, as I believe in you. Providence, who has led your chosen up here and who has removed all the obstacles in their path, did not leave his work unfulfilled!"*

*These words were acclaimed by the whole country as a goodwill of a new era in which the secular aspirations of the Romanians were to be realized.*

*The illustrious name of the chosen inspires his faith, his force and his youth, the patience to wait for the work to be done. The nation is already seeing the dawn of the day, in which the old independence for which all gentlemen, who were the real expression of the country, had fought for centuries for nothing but to mean to their descendants the way that would lead them to the desired goal.*

*11 years have just passed since then and today the flag of Mircea and Stephen, carried by the Romanian arm of Your Majesty, is again unfolded in the great light, and the whole nation is enthusiastically gathering around it, determined to defend it.*

*The Assembly of Deputies is happy to greet this great day and to acclaim in Your Majesty the Romanian independent sovereign.*

*Long live, Your Majesty! Long live, the queen! Long live Romania!"<sup>11</sup>*

The key words resulting from this discourse are: 11 years, independence, Romania.

The speech is addressed to the sovereign, Carol I.

The orator reminds Carol's 11 years of reign and the promise made by him on the day of the crowning that becoming a Romanian will assume the beliefs of this people and will fight together for emancipation. "The choice of a nation with spontaneity of the Romanians, I left without question my country, and my family ... .. I became Romanian. Citizen today, tomorrow, if needed, soldier, I will share with you the good and the bad fate.", Words that gave hope to the Romanian people.

Rosetti specifies the patience that the Romanian people showed in anticipation of modernization as a nation, using the logical argumentation, recalling the history of all the gentlemen with which they fought, the sacrifice of the ancestors, to pave the way for the achievement of state independence.

The orator also uses the pathetic argument when nominating the great rulers of the two Principalities, Mircea and Stephen, who wore the flag of Romania to glory, a flag that is now "on the Romanian arm of Your Majesty", in order to excite the audience.

The conclusion is an uplifting and time-specific one: "Long live, Your Majesty! Long live the queen! Long live Romania!"

The discursive marks are 11-year-old, designed to highlight the moment of Prince's inauguration and the patience that the Romanians

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<sup>11</sup> Ibidem, pp. 333-334.

have had to live that monumental moment; metaphor, bleached dawn, and metonymy, new era, to amplify the emotion of the audience.

### **Carol I**

The fifth discourse discussed is that of Carol I. The Sovereign holds a speech on the same day:

*"Mr. President, gentlemen, you remind me of what I am 11 years old when I first set foot in the Palace of the Nation. These words are dear to my heart, they have been the myth of my reign for the whole of the years I have gone through together.*

*Today, as on May 10, 1866, I do not even cry that I left my family, nor did I break up from the country of my birth. No gentlemen, I do not repent that I made my country from Romania, that I made my own family from the Romanian Nation.*

*On the contrary, today, when I know better the beauties of this country and the destinies to which it has the right to aspire, today, when I could appreciate more of the great qualities that distinguish the Romanian people, I rejoice with joy the day of my election, the day that I came to the middle of the Romanians, the day you put me on a Throne illustrated by so many glorious Gentlemen, defenders of national independence and Christendom in front of the Ottomans.*

*A single shadow covered the past years, a single humiliation existed for Romania and for its Lord, wanting to talk about those badly defined and unqualified covenants that were called suzerainty in Constantinople and, for Bucharest, vassal.*

*In order to remove these inappropriate covenants, our position, our interests, even our ab antiquo rights, to replace them with the covenants of the nineteenth century, those to which free-standing states and peoples have worked two generations of Romanians, and more from 1857 now.*

*And I have the right to argue that my choice, that my calling to the mouth of the Danube from the very streams of the great river, that the very mission of My Lord meant only the emancipation of Romania of these covenants.*

*In the midst of unwanted events that we have not provoked, the High Porte has broken these covenants on its own. We will not restrain them! Or not your, or not all the bodies of the state, or not proclaimed the entire nation, they have declared that by breaking these covenants, Romania reverts to its old independence, as a free nation, as a state of its own, as a useful member, a civilian in the great family of European states?*

*It now belongs to the energy and devotion of all the sons of this country, belongs to the political prudence of the state bodies, it now belongs to me, forgive me this affirmation, belongs to my zeal, my*

*activity and my tireless efforts to mediate, to become a new political state of Romania receive a European consecration.*

*When we look at the benevolence, the great affection with which the Great Powers, with whom the Augur Monarchs surrounded all our forces of rebirth, all our national acts either allowed us to hope and to have the firm belief that their mighty contest will not miss Romania, even in these supreme moments, when it will only claim that it is a people worthy of being free, a country that has not disowned the expectations of Europe, as a state that has the strength and the intelligence to fulfil a mission that is drawn to it through its geographical position.*

*This we hope for, we want, we will, and Romania's independence, far from being a care for the peace of Europe, for the peace of the neighboring states, we will firmly believe that this will not only be a satisfaction for our national needs, but will also satisfy a great European interest.*

*Once again, thank you, gentlemen, for the good words that you are addressing on this memorable day, and the queen, by associating with these thanks, together we wish you: Long live the deputies of Romania and, above all of us, long live Romania!"<sup>12</sup>*

Keywords: 11 years, Romania, emancipation, covenants, High Porte, Great Powers, Independence.

It responds to deputies' messages, also evoking the past, the 11 years of reign, a period in which he has never felt the pain of separation from the country of origin or family: "I do not even repent that I left my family, I have separated from the land of my birth."

The sovereign praises the "beauties" of Romania and the character of the Romanian people he belongs to since 1866. He also remembers the "single shadow" and "the one humiliation" they live, not to be free, using the antithesis "suzerainty" and "vassalite".

The monarch reminds the country's need to align itself with the other European states on the road to modernity imposed by the "covenants of the nineteenth century", a road for which they fought and which the two previous generations, the '48 and the "past 1857 now".

The rhetorical question demonstrates the need of Romania to act "in the midst of these undesirable events", to respond by force to them, these being, on the one hand, caused totally by the High Porte, but at the same time necessary for Romania in its approach to integrate "into the great family of European states".

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<sup>12</sup> Roxana Patraș, *Romanian political oratory, 1847-1899*, Alexandru Ioan Cuza University Publishing House, Iași, 2016, pp. 278-279.

The necessity of diplomacy in the relations with the Great Powers is underlined by the ruler, alongside, at the same time, the hope of supporting the steps undertaken by Romania by the Monarchs to be free and independent, in order to align with the other states on their way to modernity, the country being supported by "Its geographical position".

Finally, the monarch thanks the deputies and appeals to the necessary unity in the official steps, the desire for state immunity, highlighting the patriotic quality.

"Long live Romania's deputies and, above all of us, long live Romania!"

The rhetorical marks used are epanalepsy, day, family, to emphasize the lack of regret of being the monarch of a foreign state, a single shadow, a single humiliation, highlighting the necessity of liberation, and metonymy, covenants, in order to show the disrespect of the Treaty of Paris by Turkey.

In the beginning of the discourse, the term "me" is a term that is transformed in ourselves, the monarch identifying not only the audience, but the entire Romanian people, that, in the end, I will be reborn.

### **Instead of conclusions**

The five selected speeches of Kogălniceanu, declaring the "absolute independence of Romania", the three *augura* of the Bratianu brothers, Rosetti and Carol I, find a number of key terms such as independence, nationality, freedom, 11 years. We can say that these terms have a fundamental symbolic value. The symbols are persuasively used in political speeches, evoking either the glory of the past, the remarkable personalities, the sacrifice of predecessors to do something, their struggle for a cause, and the disappointment of the present, but at the same time underlines the hope in a bright future. The objective is to highlight the current historical moment and the path to be followed. The aim is to continue the process of modernization, which can also be done by sacrificing political interests.

We find in the speeches analysed evoking the image of Mircea the Elder, Stephen the Great, Mihai the Brave, outstanding personalities in the evolution of the Romanian people, with a special emphasis on the fight for identity and independence. Being a special historical moment, that of declaring the independence, the appeal to the rulers who fought against the Turks, especially for defending the independence of their own voivodate, is aimed at strengthening the argumentation.

Based on the history of predecessors, political language involved the use of several symbols, symbolic situations, the aim being to highlight the

sense of national identity, the individual with the forefathers, and national freedom.

In this category, we can even count the number of past years, 11 years, since the performance of a historical event, the number representing the homage to those who sacrificed to his service. The message is subtle but strongly at the same time, and was sent to Carol I, with the necessary deference, of course, that bringing him to the throne is the fulfillment of an objective assumed in the political project of the foot-masters, which was achieved by giving up the right to enter the throne of the country's most important Romanian boyar families.

"The symbol is not a residual dimension of the so-called true policy; the less it is not a smoke curtain upon which pale and fiery shapes can be projected. Symbolism is true politics, expressed in a very special and extremely insidious way."<sup>13</sup>

By identifying politicians with a popular symbol, it is the value of a powerful instrument in the marathon for obtaining and preserving power.<sup>14</sup>

All this reporting of the past to the present and to the present in the future only increases confidence in our own forces by highlighting the idea of continuity and conviction that the world in which we live is the same as that in which our ancestors lived and with what they want live our descendants.

By the past, present, emphasis is placed on the mythical time dimension. We refer here to a selective creation of a reality, an image of a certain type of historical reality that fits into the ideology of time, which promotes as a form of struggle against outdated political systems, specific to the feudal period, new, modern concepts, what they wanted a change in the cultural-civilization realities of the time. The concepts of national nation and state, based on a common history and roots, were part of this ideological project that finds its origins in Enlightenment and the French Revolution of 1848.

Malinowski is the one who asserts that man teaches the myths of the people he belongs not by telling them, but from the experience of living inside the "social texture of his tribe."<sup>15</sup>

The approach is correct, but here we feel to add that the founding myths of the nation can only be achieved if the selective creation of what

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<sup>13</sup> Clive S. Kussler, *Islam and Politics*, Cornell University Press Publishing House, 1978, pp. 244-245.

<sup>14</sup> David I. Kretzer, *Politics and power*, Univers Publishing House, Bucharest, 2002, p. 19.

<sup>15</sup> B. Malinowski, *Magic, Science and Religion and Other Essays*, Glencoe, The Free Press Publishing House, Illinois, 1948, p. 93.



constitutes the "past" and "the future" depends to a great extent on contemporary needs.

As a partial conclusion to such a vast and meaningful argument in the last two centuries, cyclically and forcefully taking the lead in European politics, we can see once again how the political people of the time were strongly anchored in ideological point of view in the Western European universe, which demonstrates that the process of reconnecting the Romanian space with the European reference was achieved, at least at the level of the leading elite.

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# PRINCIPLES AND EXPERIENCE IN MACHIAVELLI

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**Abstract:** *Theory and history, in Machiavelli, are inextricably connected. They define the coordinates of the Florentine secretary's analysis. The aim of the essay is to schematize the epistemological context used by Machiavelli. The reflection is conducted, mainly, on the "Discorsi sopra la prima Deca di Tito Livio", the most complex and mature work of Machiavelli.*

**Keywords:** *Machiavelli, Principles, experience, history, epistemology.*

Almost seventy years ago, Enrico Castelli, too often forgotten master of humanistic and Renaissance studies, in the conference "Humanism and Political Science", underlined how Machiavelli's tradition of historiography has left us many contrasting figures: the sage of the *res publica*, the nostalgic of Roman history, the symbol of Florence of the arts and of the beautiful letters, the desecrator of morality and religion<sup>1</sup>.

What emerges from the notation of Castelli is the *curiositas* of Machiavelli, his wandering between historians and ancient poets, the acute observation of the vices of his time and his land. More an artist than a thinker. It is the Hegelian interdict that still weighs heavily on the image of Machiavelli.

For the German thinker, the Florentine secretary's philosophy is a philosophy of life taken from experience as it unfolds in the world, or rather according to causal links only temporal namely external, in other words, for Hegel, the Machiavellian view is a non-philosophical one. But above all, and this is certainly the heaviest accusation and the one that has most influenced the subsequent interpretations, the method and the

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<sup>1</sup> «Machiavelli è un personaggio che la storia odierna ha rivestito con diversi paludamenti. O come il saggio, sapienza stessa della *res publica*, il principio di ogni civilizzazione moderna; o come l'umanista nostalgico della storia romana, lettore e commentatore di potei latini; o come il simbolo della Firenze delle arti e delle *bonae litterae*, o ancora: colui che ha insegnato alla Chiesa le vie di una nuova politica, quando il *Sacrum Imperium* è crollato con il sorgere e il moltiplicarsi delle nazioni e dei nazionalismi. A lungo si potrebbe discutere sulla persona del Segretario Fiorentino senza mettersi d'accordo», E. Castelli, „Umanesimo e scienza politica”, in Id. (a cura di), *Umanesimo e scienza politica, Atti del Congresso Internazionale di Studi Umanistici*, Roma-Firenze 1949, Marzorati Editore, Milano 1951, p. 27.

sources of Machiavelli do not belong to philosophy because he has taken them from himself, from his own conscience and experience, from his own life; the inspiration for his reflections indeed comes from personal inner sources.

His reasoning does not take place from thought, as every genuine philosophy must do for Hegel. For this reason, Machiavelli belongs to the culture in a broad sense rather than to history of philosophy<sup>2</sup>.

In 1807 Johann Gottlieb Fichte<sup>3</sup> accused Machiavelli by using the same concepts expressed by Hegel. The Florentine secretary “remains too close to concrete life and history”, and he also clarifies that “the highest views of human life, those that can be achieved from the point of view of reason, remain completely out of its horizon”.

Certainly Machiavelli, thanks to his role, had the opportunity to travel extensively for the main European countries and acquire a deep knowledge of the political reality of his time, to compare different situations and institutions and to question both the crisis of the end of the Italian equilibrium after Charles VIII (1494), and the causes of the fall of the republic in Florence.

And it is undoubted that the reflection of the Florentine secretary is not the result of a withdrawal from a *vita activa*, nor the abandonment of *negotia* for the benefit of the *otium*.

One of the merits of Professor Connell’s research is that his work has shown us how the writing period of *Prince* and *Discourses*, is anything but a moment of solitude; instead it highlights how intense the exchanges with Florence and Rome were and how Machiavelli continued the discussion with the intellectuals of his time.

To fully criticize this Hegelian and Fichtian representation of Machiavelli is only possible by starting from an analysis that deeply connects him with the society and the thought of that time.

As Professor Connell rightly pointed out, it is necessary to link Machiavelli to the culture of the fifteenth and sixteenth centuries. Especially important is to think about Machiavelli by taking into

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<sup>2</sup> «In quest’epoca ci s’imbatte in molte altre notevoli personalità che sogliono venir citate nella storia della filosofia, come Michel de Montaigne, Charron, Machiavelli. Tuttavia costoro non appartengono propriamente alla filosofia, bensì alla cultura in genere [...], in quanto costoro non svolgono i loro ragionamenti a partire dal pensiero come tale», G.W.F. Hegel, *Lezioni sulla storia della filosofia*, Laterza Editore, Roma-Bari, 2009, p. 444.

<sup>3</sup> «Machiavelli resta aderente alla vita concreta e alla storia. [...] Ma le vedute più elevate della vita umana, quelle che possono essere conseguite dal punto di vista della ragione, restano completamente fuori dal suo orizzonte», J.G. Fichte, *Über Machiavelli als Schriftsteller, und Stellen aus seinen Schriften*, tr. it., *Machiavelli scrittore*, Castelvechi editore, Roma 2014, p. 23.

consideration the influence of the Italian movement of that time that involved the Universities of Padua and Bologna.

It is Machiavelli himself who, in the famous and dense passage of the *Discourses*, talks about two kinds of knowledge that may have played the role of model for a political theory. In Machiavelli there is the awareness of being on a completely new road, in fact he writes in Book I:

*“ho deliberato entrare per una via, la quale, non essendo suta da alcuno trita”*.<sup>4</sup>

He is the first starting on these paths and it is interesting to underline that the importance recognized to the path that it intends to perform (methodology). The importance of this path is such that even if a little experience of the facts of the present and the lack of knowledge of the ancient ones should lead to a modest result, all this would not take away the merit of having opened a never walked track. The words of Machiavelli:

*“daranno almeno la via ad alcuno che, con più virtù, più discorso e iudizio, potrà a questa mia intenzione soddisfare”*.<sup>5</sup>

Therefore, what is the new path that we are talking about? Once again, let Machiavelli's words explain it:

*“E tanto più quanto io veggo nelle differenze che intra i cittadini civilmente nascono, o nelle malattie nelle quali li uomini incorrono, essersi sempre ricorso a quelli iudizi o a quelli remedi che dagli antichi sono stati iudicati o ordinati: perché le leggi civili non sono altro che sentenze date dagli antiqui iureconsulti, le quali ridutte in ordine, a' presenti nostri iureconsulti iudicare insegnano. Né ancora la medicina è altro che esperienze fatte dagli antiqui medici, sopra le quali fondano e' presenti e' loro iudizi”*.<sup>6</sup>

Here, in a very close connection, law, medicine and politics are joined together, and what holds them together is obviously not a common object of reflection, but the way of methodology that Machiavelli intends to follow and those roads converge in the political sphere.

The “ridutte in ordine” of the judgments of the ancient jurists and the “esperienze” of the ancient doctors trace the route along which political reflection must carry on.

There is still much to be said about this *Proemio* in book I of the *Discorsi*. A little below, in fact, Machiavelli dwells on the way in which we

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<sup>4</sup> N. Machiavelli, *Tutte le opere*, Sansoni editore, Firenze, 1971, p. 76.

<sup>5</sup> Ibidem.

<sup>6</sup> Ibidem.

must look to the past to "imitate" it (imitation that is not simple repetition). Here too is a splendid lesson in methodology that Machiavelli gives us. But we cannot stop.

So medicine and law here are the coordinates along which we move. And not by chance. Medicine presents itself as closely connected with philosophy. This is a characteristic that differentiates Italian universities from those of the rest of Europe. Logic, for example, was considered a preparatory discipline for medicine and, more generally, the physician's preparation included a curriculum in which, in addition to strictly disciplinary training, the comparison with methodological and epistemological themes and texts was remarkably important. First of all, the question concerning the cognitive status of medicine: is it art or science? and, in this second case, is it a practical or theoretical science? The answer is that it is both: it is theoretical science because it is knowledge of the immutable but is at the same time art and practice because it aims to introduce gradations and changes in the external reality. But does not this remind us of many passages of the Machiavellian writings?

The frequent use of medical metaphors in Machiavelli makes us hypothesize that these were heritage not only of practicing physicians but circulated more widely. These medical metaphors were related to questions of a more general nature concerning the status of knowledge that was structured, even in institutional forms, in universities.

The wide use of these metaphors shows how the latter are often turned into political metaphors.

Law also plays a decisive role in constituting the physiognomy and the way of proceeding of the reflection of the Florentine secretary. The knowledge that Machiavelli builds also presents itself as a continuous movement from the concrete to the abstract and from the abstract to the concrete. It does not quite correspond to the truth, as it has been authoritatively sustained, that the form of Machiavelli's investigation is the opposite of the medieval one because the latter presents itself as a simple conclusion of initial premises of a logical or moral nature while in the former the formulation of the general rule is always the conclusion of a specific political experience.

In reality, Machiavelli's reflection deals with both the rule and the exception, but above all he focuses on the tension that is established between these two poles (tension exemplary analyzed from the linguistic point of view by Fredi Chiappelli's studies<sup>7</sup>), and on the process of identifying the norm. This is because logic and times are not external to experience but are merged with it.

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<sup>7</sup> F. Chiappelli, *Studi sul linguaggio del Machiavelli*, Le Monnier, Firenze 1952.

The writing *Del modo di trattare i popoli della Valdichiana ribellati*<sup>8</sup> is very indicative of this particular way of proceeding. A way of proceeding that very much reminds of the one of jurists, that is, "thinking by chance". Dress of thought that Machiavelli was not supposed to be completely unknown. indeed, the presence in the paternal library of a work by Giovanni d'Andrea (*Novella super sexto Decretalium*) and by Niccolò Tedeschi (*Lectura super quinque libros decretalium*) is certain.

Another example we can draw from a passage taken from book I, chapter 3 of *Discourses*:

*“E’ necessario a chi dispone una repubblica ed ordina le leggi in quella presupporre tutti gli uomini essere cattivi”*.<sup>9</sup>

Let us dwell on these two terms: "it is necessary" and "presuppose". Well, it is easy to see that here we are far beyond the so-called "Machiavellian naturalism" (on the contrary, he has often been simplistically associated by the early twentieth-century culture to naturalism).

Here we are defining a purely theoretical space, introduced by a principle. In fact, the need we are talking about does not belong to a "res" or an institution, what is necessary is the presupposition itself, that is to say that he who disposes a republic and orders the laws in that must presuppose all men to be evil.

This statement does not have a factual character; it is not an anthropological statement, and this is certified by two other passages, always taken from the *Discourses*. In the first one Machiavelli argues that men are never “né al tutto tristi né al tutto buoni”<sup>10</sup>, concept that he had just stated before writing “che gli uomini non sanno essere onorevolmente cattivi, o perfettamente buoni”. These statements have an explicitly empirical character, that is, they arise from the observation of some examples (for example the episode concerning Pope Julius II and Giovampagolo Baglioni tyrant of Perugia)

Therefore, the necessity of presupposing all the bad men does not concern the identification of a presumed human character but is entirely internal to the construction of a knowledge, to the construction of a perspective of government: the necessity of the assumption is logical, it serves to determine the space within which the rule is defined and acquires validity. The rule that immediately after Machiavelli enunciates is: “[men] abbiano sempre ad usare la malignità dell’animo loro qualunque volta ne

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<sup>8</sup> N. Machiavelli, „Del modo di trattare i popoli della Valdichiana ribellati”, in Id. *Tutte le opere*, Sansoni editore, Firenze, 1971, pp. 13-16.

<sup>9</sup> Ibidem, p. 81.

<sup>10</sup> Ibidem, p. 112.

abbiano l'occasione".<sup>11</sup> Here is the rule with a strong constant experiential connotation, underlined by the use of the adverb "always".

And finally, the concrete plan punctuated by the reference to experience and time (terms which, no coincidence, never appear in the previous steps built entirely on the logical-formal level and not on the historical-concrete level): "e quando alcuna malignità sta occulta nel tempo, procede da una occulta cagione, che per no si esser veduta esperienza del contrario, non si conosce, ma la fa poi scuoprire il tempo, il quale dicono essere padre d'ogni verità".<sup>12</sup>

All this happens, undeniably, within a conceptual framework borrowed from Averroism, so present, especially in Discourses and especially in the Second Book (V Chapter), centered on the theme of the eternity of the world.

It is a strategy that moves along a perspective that Aristotle himself had tried to find when in addition to science understood as knowledge of the causes of what cannot be otherwise, he had tried to elaborate an epistemological status also of what can be different from what he is, what he defines as art.

Not for nothing, for a long time, we have used the expression "political art" to indicate the knowledge and strategies related to the problem of power and only in very recent times, under the influence of positivism and neo-positivism, we began to use the term "political science".

Art, what can be otherwise, immediately leads us to the heart of Machiavelli's reflection. This led the Florentine secretary to start looking, in a ruthless and lucid way, at the question of the power.

The tendency to generality presupposes a capacity for observation that can grasp the essential elements of political facts, an acute look at the particular that connects to a high capacity for abstraction, to the ability to grasp "a tendency" or to "extract rules" from historical events, in the end to know the principles.

But preliminary to this analysis is the belief that political matter is also part of nature and that a knowledge that has already found wide use in other disciplines widely discussed and debated, as we have already had occasion to clarify, is applicable to the political subject right in the cultural environment of Italian universities of the fourteenth and fifteenth century, medicine and law.

According to Machiavelli, nature is first of all variety and opposition, but it is also constancy and stability, therefore duration. It is precisely within the link between permanence and change that one can better understand the Machiavellian epistemological nucleus. This link is not a

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<sup>11</sup> Ibidem, p. 81.

<sup>12</sup> Ibidem.

linear one, it does not find a unifying synthesis. The historical times that govern the events are different. This is why it is necessary to overcome a purely chronological vision, we need to acquire an abstract point of view that we can reach only by fully immersing ourselves in the facts. The historical process presents the characteristics of continuous motion, in which there is no aim attained at which the process stops.

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# THE ROLE OF EXECUTIVE POWER IN MATTERS OF LAW- MAKING THE INSTITUTION OF LEGISLATIVE DELEGATION - AN ANALYSIS IN LIGHT OF THE CASE-LAW OF THE CONSTITUTIONAL COURT

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**Abstract:** *The regulation by Government Ordinances (G.O.)/ Government Emergency Ordinances (G.E.O) of the executive power on social relations, the operation of several public institutions or authorities, codes of law or any other aspects relating to the "organic" life - which is not to be confused with organic laws, of the Romanian state does not stand as an element of novelty. On the contrary, this activity is a matter discussed on a daily basis on the public agenda.*

*This study is nevertheless intended to present the limitations of the attribute of "law-maker" of the executive branch and to explain the constitutional mechanisms reinforced by an analysis on the case-law of the Constitutional Court (CCR) assigning the aforementioned quality to the executive, but also the situations in which this prerogative can be employed.*

*We shall also outline the consequences of an inflation of G.O/ G.E.O. in the national "legal environment" and the overlapping of this attribute onto the basic capacity of the Parliament as "the only legislative authority", consequences that indisputably lead to a disturbance of the fragile balance between the powers and implicitly to a destabilisation of the political and institutional environment.*

**Keywords:** *legislative delegation; regulation by Ordinances and Emergency Ordinances; executive power; inflation; imbalance between powers.*

## Introductory chapter

*Legislative delegation* stands as a means of cooperation between the Parliament and the Government, by virtue of the principle of separation of powers in the state, under which the Government is vested with the exercise of the legislative function in certain conditions. Based on the provisions of Article 61 of the Constitution, according to which the Parliament is the supreme representative body of the Romanian people and *the only legislative authority of the state*<sup>1</sup>, legislative delegation represents an exception from the legislative monopoly held by the Parliament.

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<sup>1</sup> *The Constitution of Romania, republished (2003).*

On the one hand, legislative delegation was defined as a transfer of certain legislative attributes to the executive power, conditionally or unconditionally<sup>2</sup>. On the other hand, legislative delegation means the temporary empowerment of an authority other than the legislative one to exercise legislative prerogatives.<sup>3</sup>

Regarding the institution of delegation, we should mention that the legislature does not hold a primary right created by and for itself, but only a right granted by the constituent power in the name of the nation, hence it cannot delegate the right of regulating to another power without the infringement of a constitutional principle – the one of the separation of powers.<sup>4</sup>

In light of these considerations, it was stated in recent doctrine that the interference of the executive power in the legislative field is an institutional substitution derogating from the rules of common law, making a rational argument hard to find in the political system based on the principle of separation of powers in the state and on a written Constitution that stipulating that the Parliament is the only legislative authority.<sup>5</sup> The same author considers, however, that the solution of legislative delegation arose from insurmountable necessities on the political scene, the government being in the situation of defeating a political principle – the principle of separation of powers in the state, in order to cope with ineluctable social requirements.

### ***Constitutional Framework***

In accordance with Constitutional provisions, the legislative delegation acting in favour of the Government occurs in two cases:

- Legislative delegation through a special enabling law under which the Government is enabled to adopt *ordinances* (Article 115(1) of the Constitution).

- Constitutional legislative delegation, under which the Government is enabled to the primary regulation of some social relations, in extraordinary circumstances whose regulation cannot be postponed, by the adoption of Government Emergency Ordinances (Article 115(4) of the Constitution).

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<sup>2</sup> Ioan Vida, *The Legislative Procedure*, Crater Publishing, Bucharest, 1999, p. 134.

<sup>3</sup> Ion Deleanu, *Constitutional Law and Political Institutions*, Europa Nova Publishing, Bucharest, 1996, p. 324.

<sup>4</sup> Benonica Vasilescu, *Administrative Law*, Legal Universe Publishing, Bucharest, 2011, p. 137.

<sup>5</sup> Ioan Vida, *op.cit.*, p. 116.

In accordance with Article 115(1) of the Constitution, the Parliament can adopt a special law enabling the Government to issue ordinances in fields which are not covered by organic laws<sup>6</sup>.

The ordinance issued by the Government is the expression of a delegated legislative competency. Hence the ordinance goes beyond the narrow scope of the general management of public administration, standing as a means for the participation of the Government in the exertion of legislative power. Being a delegated power, it cannot be granted other than by law, as under the Constitution the Government does not hold the competency of primary regulation, but only **the attribute of enforcing the law**. The special enabling law must necessarily stipulate the scope and the date by which the Government can issue ordinances. The exceeding of the scope or deadline of the delegation entails the unconstitutionality of that ordinance, as it was issued by the Government in breach of its areas of competence.

In accordance with the provisions of the Constitution, the Parliament cannot delegate the legislative competence that it holds in the scope which falls under organic laws. Hence, the ordinances issued under special enabling laws **cannot** cover the issues and scope laid down in Article 73(3) of the Constitution<sup>7</sup>, as well as other constitutional provisions relating to the adoption of organic laws. Common practice instituted the rule that the Parliament enables the Government to issue ordinances only during parliamentary holidays, but, referring to constitutional provisions, the enabling may exist even during parliamentary sessions, in the purpose of decongesting the activity of the Parliament in scopes and areas of lesser importance<sup>8</sup>. The exercise of the attributions delegated by the Parliament

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<sup>6</sup> *The Constitution of Romania, republished (2003)*.

<sup>7</sup> Article 73 (3) Organic laws shall regulate: a) the electoral system; the organization and functioning of the Permanent Electoral Authority; b) the organization, functioning, and financing of political parties; c) the statute of Deputies and Senators, the establishment of their emoluments and other rights; d) the organization and holding of referendum; e) the organization of the Government and of the Supreme Council of National Defence; f) the state of partial or total mobilization of the armed forces and the state of war; g) the state of siege and emergency; h) criminal offences, penalties, and the execution thereof; i) the granting of amnesty or collective pardon; j) the statute of public servants; k) the contentious business falling within the competence of administrative courts; l) the organization and functioning of the Superior Council of Magistracy, the courts of law, the Public Ministry, and the Court of Audit; m) the general legal status of property and inheritance; n) the general organization of education; o) the organization of local public administration, territory, as well as the general rules on local autonomy; p) the general rules covering labour relations, trade unions, employers' associations, and social protection; r) the status of national minorities in Romania; s) the general statutory rules of religious cults; t) the other fields for which the Constitution stipulates the enactment of organic laws; *The Constitution of Romania, republished (2003)*.

<sup>8</sup> Benonica Vasilescu, *op.cit.*, p. 139.

is not optional for the Government. The Government is not capacitated to evaluate the appropriateness of issuing the ordinances wherewith it was enabled. The exercise of the delegated attributions is an obligation, just as enforcing the law is an obligation.

Alternatively, as the issues and scope in which the Government was enabled to issue ordinances are part of the subject matter of the Parliament, the latter can, even after the enabling, reconsider any of the matters or fields covered by the enabling law and regulate them by law, even in the situation in which the ordinances that were going to be issued by the Government did not have to be subjected to subsequent approval by the Parliament, thus restraining the scope of the enabling.

The ordinances, as acts of legislative nature whereby the Government exercises its authority, can be amended or repealed by the Government, the only requirement being that these legislative interventions are to be carried out within constitutional boundaries. In accordance with Article 115(3) of the Constitution, we find that in case it is required by the enabling law, the ordinances are submitted for approval to the Parliament, in accordance with the legislative procedure, until the expiry of the enabling period.<sup>9</sup>Non-compliance with the term entails discontinuation of the effects of the ordinance. Even though the constitutional text does not stipulate that the approval of the ordinances issued under enabling laws by the Parliament is mandatory, the rule being that of their non-approval by the Parliament in the insofar common practice, all enabling laws have imposed the requirement of their subsequent approval. In this situation, it is obvious that the rule became the exception and the exception became the rule<sup>10</sup>.

With regard to the entry into force of the ordinances issued under special enabling laws, we should mention that in accordance with Article 11 of Law No 24/2000<sup>11</sup>, this occurs 3 days after the date of its publication in *the Official Gazette of Romania* or at a later date as stipulated therein. The time limit of 3 days will be calculated in calendar days from the date of its publication and it expires at 24:00 hours of the third day since its publication.

Concerning emergency ordinances, they stand as a constitutional legislative delegation, as the Government does not require a special enabling law in order to be able to issue such acts. In accordance with

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<sup>9</sup> *The Constitution of Romania, republished (2003)*.

<sup>10</sup> Benonica Vasilescu, *op.cit.*, p. 139.

<sup>11</sup> On rules of legislative technique for the preparation of regulatory acts, republished under Article II of Law 60/2010 concerning the approval of Government Emergency Ordinance no. 61/2009 amending and supplementing Law 24/2000 on rules of legislative technique for the preparation of regulatory acts, published in the *Official Gazette of Romania*, Part I, No 215 of 6 April 2010, assigning new numbering to the concerned texts.

Article 115(4) of the Constitution, the Government can adopt emergency ordinances only in extraordinary circumstances whose regulation cannot be postponed, entailing the obligation of motivating the urgency therein<sup>12</sup>.

### ***A case-law perspective***

With regards to the obligation to motivate the urgency in the contents of emergency ordinances, the Constitutional Court has constantly stipulated in its rulings **the necessity of the factual and legal mentions regarding extraordinary circumstances whose regulation cannot be postponed, which entailed the recourse to this means of regulation, as well as the negative consequences that would occur in the absence of such regulation. At the same time, the Court has held that the failure to motivate or the inappropriate motivation of emergency ordinances stands as grounds for their unconstitutionality**<sup>13</sup>.

In light of the constitutional text on emergency ordinances, they present certain particularities in relation to the ordinances issued under enabling laws, particularities granting them a specific legal regime.

Firstly, these ordinances can be issued only in extraordinary circumstances when the adoption of an enabling law or of an emergency law was not objectively possible. In the initial wording of 1991, the constitutional requirements stipulated that in exceptional circumstances the Government could adopt emergency ordinances. In this wording, in the regard of constitutional control over emergency ordinances, through **Decision No 65 of 20 June 1995**<sup>14</sup>, notes the fact that emergency ordinances are constitutionally legitimised on the necessity and urgency of regulating a situation that due to its exceptional circumstances entailed the

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<sup>12</sup> *The Constitution of Romania, republished (2003)*.

<sup>13</sup> In this regard see Decision No 34 of 17 February 1998 with respect to the constitutionality of the law for the approval of Government Emergency Ordinance No 88/1997 on the privatisation of commercial societies, published in the *Official Gazette of Romania* No 88 of 25 February 1998; Decision No 15 of 25 January 2000 concerning the exception of unconstitutionality of Government Emergency Ordinance No 23/1999 on the abolition of Law No 31/1996 on the regime of state monopoly, published in the *Official Gazette of Romania* No 267 of 14 June 2000; Decision No 258 of 14 March 2006 on the exception of unconstitutionality of the provisions of Government Emergency Ordinance No 11/2005 for the abolishment of paragraph (2) of Article 38 of Government Emergency Ordinance No 79/2002 on the general framework for the regulation of communications, published in the *Official Gazette of Romania* No 341 of 17 April 2006.

<sup>14</sup> Referring to the constitutionality of the Law for the approval of Government Emergency Ordinance No 1/1995 on the requirements for the wage growth in autonomous administrations and in majority state-owned companies in 1995, published in the *Official Gazette of Romania* No 129 of 20 June 1995.

adoption of urgent solutions in light of avoiding severe repercussions being inflicted on the national interest.

In this context, a special issue arose referring to what the constituent legislature meant by the wording "exceptional circumstances" in which the Government could adopt such legal acts. It was not stipulated neither in the Constitution nor in any other regulation, not even as an example, when and based on which criteria it could be considered that there were indeed "exceptional circumstances" that were to enable the Government to recourse to the regulation of that issue through an emergency ordinance.

By **Decision No 83 of 19 May 1998**<sup>15</sup>, the Constitutional Court notes that the essence of exceptional circumstances is their objective nature, meaning that its existence does not depend on the will of the Government, who in such circumstances is obliged to have a prompt reaction in the defence of the public interest by means of the government emergency ordinance.

By the revision of the Constitution of 2003<sup>16</sup>, the wording "cazuri excepționale" ("exceptional cases", 1991) was replaced by "situații extraordinare" ("exceptional cases", 2003), which in accordance with Article 115(4) mean a state of urgency in the regulation of an issue that can by no means be postponed<sup>17</sup>.

In accordance with the case-law of the Constitutional Court, for an emergency law to be issued there must be an objective, quantifiable state of affairs that does not depend on the will of the Government and jeopardises the public interest<sup>18</sup>. By **Decision No 255 of 11 May 2005**<sup>19</sup>,

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<sup>15</sup> On the exception of unconstitutionality of the provisions of Government Emergency Ordinance No 22 of 26 May 1997 amending and supplementing the Law of local public administration No 69/1991, republished, published in the *Official Gazette of Romania* No 211 of 8 June 1998.

<sup>16</sup> The law amending the Constitution of Romania No 429/2003, published in the *Official Gazette of Romania*, Part I, No 758 of 29 October 2003, republished by the Legislative Council under Article 152 of the Constitution, updating the terms and assigning new numbering to the concerned texts (in the republished version Article 152 became Article 156). The law amending the Constitution of Romania No 429/2003 was approved following the national referendum of 18-19 October 2003 and entered into force on 29 October 2003, the date of its publishing in the *Official Gazette of Romania*, Part I, No 758 of 29 October 2003 of the Constitutional Court Ruling No 3 of 22 October 2003 on the confirmation of the result of the national referendum of 18-19 October 2003 on the law amending the Constitution of Romania. The Constitution of Romania, in its initial version, was adopted in the session of the Constituent Assembly of 21 November 1991, it was published in the *Official Gazette of Romania*, Part I, No 233 of 21 November 1991 and it entered into force following its approval through the national referendum of 8 December 1991.

<sup>17</sup> *The Constitution of Romania, republished (2003)*.

<sup>18</sup> In this regard see Decision No 1008 of 7 July 2009 on the objection of unconstitutionality of the Law on the Government Emergency Ordinance No 224/2008

the Constitutional Court showing the implications of the terminological distinction between the term exceptional cases laid down in Article 114(4) of the Constitution prior to its revision and the term extraordinary situations, noted that “although the difference between the two terms in the regard of the degree of deviation from the ordinary or common that they express is obvious, the same lawmaker felt the need to protect it from any possible interpretations that might minimalize such a difference, by adding the phrase “the regulation of which cannot be postponed”, thus highlighting the imperative of the urgency for that regulation. Finally, for reasons of legislative clarity, it instituted the requirement of modifying the urgency in the very contents of the ordinance adopted outside of an enabling law”.

In the same context, we mention the **Decision No 421 of 9 May 2007**<sup>20</sup>, whereby the Constitutional Court stipulated that “the urgency of the regulation is not equivalent to the existence of an extraordinary situation, meaning that the operative regulation can also take place through the usual means of regulation”.

Emergency ordinances enter into force only after they have been submitted for debate under an urgency procedure to the relevant Chamber and after they have been published in the Official Gazette of Romania. The urgency of the regulation also entails the urgency of their entry into force. We mention that these two cumulative requirements are not necessary for the entry into force of ordinances issued under special enabling laws, as the principle stipulated by the provisions of Law No 24/2000 is applicable to this category of ordinances<sup>21</sup>.

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amending Article 5(2) of Law No 415/2002 on the organisation and operation of the Supreme Council of National Defence, published in the *Official Gazette of Romania* No 507 of 23 July 2009.

<sup>19</sup> On the complaint on the unconstitutionality of the Law on the approval of Government Emergency Ordinance No 100/2004 on the transfer of ownership of certain forestry lands from State public ownership and from the administration of the National Forestry Administration – Romsilva to the ownership of the Archiepiscopate of Suceava and Rădăuți, published in the *Official Gazette of Romania* No 511 of 16 June 2005.

<sup>20</sup> On the complaint on the unconstitutionality of the Law on the approval of Government Emergency Ordinance No 104/2006 amending paragraph (3) of Article 95/2006 on health reform, published in the *Official Gazette of Romania* No 367 of 30 May 2007.

<sup>21</sup> On the legislative technique requirements for the drafting of regulatory acts, republished under Article II of Law No 60/2010 on the approval of Government Emergency Ordinance No 61/2009 amending and supplementing Law No 24/2000 on the legislative technique requirements for the drafting of regulatory acts, published in the *Official Gazette of Romania*, Part I, No 215 of 6 April 2010, assigning new numbering to the concerned texts.

Another specific characteristic of emergency ordinances is the fact that if the two Chambers are not in session, they shall necessarily be convened in the purpose of debating on these ordinances within 5 days from their submission or, as applicable, from their sending. It is the only case in which the Government can determine the convocation of a Parliamentary session through the submission for approval of an emergency ordinance. We are obviously referring to an extraordinary session, since the Parliament is not in session. In practice, the Government has not exercised the adoption of emergency ordinances for the approval of which the Parliament would have had to be convened when the legislative authority was not in ordinary session<sup>22</sup>.

We also need to mention that in order to ensure the stability of the legislative framework, the emergency procedure in the adoption of the law of approval or rejection of emergency ordinances issued by the Government was instituted by the revision of the Constitution. Thus, in accordance with Article 115(5) of the Basic Law it is stipulated that if the contacted Chamber does not decide on the ordinance within a maximum of 30 days from the submission, it is to be considered adopted and it is sent to the other Chamber that also decides under an emergency procedure<sup>23</sup>.

The new constitutional provisions expressly regulate the fields in which emergency ordinances cannot be adopted. The nature of such a limitation is to clarify the issues reserved for the organic laws on which the Government has the constitutional ability to adopt rulings acting as laws in extraordinary situations whose regulation cannot be postponed. In this regard, in Article 115(6) of the Constitution, introduced following the revision of the Basic Law<sup>24</sup>, stipulates that emergency ordinances cannot be adopted in the field of constitutional laws, cannot interfere with the

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<sup>22</sup> Benonica Vasilescu, *op.cit.*, p. 142.

<sup>23</sup> *The Constitution of Romania, republished (2003)*.

<sup>24</sup> Introduced through the Law amending the Constitution of Romania No 429/2003, published in the *Official Gazette of Romania*, Part I, No 758 of 29 October 2003, republished by the Legislative Council, under Article 152 of the Constitution, updating the terms and assigning new numbering to the concerned texts (in the republished version Article 152 became Article 156). The law amending the Constitution of Romania No 429/2003 was approved following the national referendum of 18-19 October 2003 and entered into force on 29 October 2003, the date of its publishing in the *Official Gazette of Romania*, Part I, No 758 of 29 October 2003 of the Constitutional Court Ruling No 3 of 22 October 2003 on the confirmation of the result of the national referendum of 18-19 October 2003 on the law amending the Constitution of Romania. The Constitution of Romania, in its initial version, was adopted in the session of the Constituent Assembly of 21 November 1991, it was published in the *Official Gazette of Romania*, Part I, No 233 of 21 November 1991 and it entered into force following its approval through the national referendum of 8 December 1991.



regime of the fundamental institutions of the state, with the rights, liberties and obligations laid down in the Constitution, with electoral rights and cannot refer to measures of forcing properties or goods into state ownership<sup>25</sup>.

In the initial drafting of the Constitution, the requirement was much suppler and it allowed the adoption of emergency ordinances for the regulation of *all* the issues reserved for organic laws.

In the regard of the meaning of the provisions of Article 115(6) of the Basic Law<sup>26</sup>, the Constitutional Court stipulated through **Decision No 1189 of 6 November 2008**<sup>27</sup> that “it may be inferred that the interdiction of adopting emergency ordinances is complete and unconditional when it is mentioned that “they cannot be adopted in the field of constitutional laws” and that “they cannot refer to measures of forcing properties or goods into state ownership”. In the other fields specified in the text, emergency ordinances cannot be adopted if they “affect” meaning if they have negative consequences, however they can be adopted if they have positive consequences in the fields in which they interfere through the provisions therein.”

In this context, we mention that the G.E.O. No 230/2008 amending certain legal acts in the field of the pensions in the public system, state pensions and service pensions<sup>28</sup> formed the object of the exception of unconstitutionality, exception submitted directly by the Ombudsman. Through **Decision No 82 of 15 January 2009**<sup>29</sup>, the Constitutional Court noted that through the provisions in the contents of this emergency ordinance it was prohibited to cumulate the pension with the income made from a professional activity carried out in public authorities and institutions and, accordingly, it imposed the obligation of the persons in that situation to choose between the pension and the income made from the professional activity, in other words of either giving up the pension in order to continue their professional activity or to cease the income-generating professional activity in order to maintain their pensions. The

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<sup>25</sup> *The Constitution of Romania, republished (2003)*.

<sup>26</sup> *Ibidem*.

<sup>27</sup> Referring to the exception of unconstitutionality of the provisions of Article 32 paragraphs (1) and (2) of Law No 35/2008 on the election of the Chamber of Deputies and of the Senate, amending and supplementing Law No 67/2004 on the election of local public administration authorities, of the Law on local public administration NO 215/2001 and of Law No 393/2004 on the Statute of local elected representatives, published in *the Official Gazette of Romania*, No 787 of 25 November 2008.

<sup>28</sup> Published in *the Official Gazette of Romania*, No 4 of 5 January 2009.

<sup>29</sup> On the exception of unconstitutionality of the provisions of Government Emergency Ordinance No 230/2008 amending the legislation in the field of pensions in the public system, state pensions and service pensions, published in *the Official Gazette of Romania*, No 33 of 16 January 2009.

Court ruled that the interdictions and obligations imposed by the ordinance affect through **limitation** both the right to pension laid down in Article 47(2) of the Constitution<sup>30</sup> and the right to work stipulated in Article 41<sup>31</sup> of the same Basic Law. Taking into account the provisions of Article 115(6) of the Constitution<sup>32</sup>, according to which emergency ordinances cannot affect the rights and liberties laid down in the Constitution, the Constitutional Court ruled that the provisions of G.E.O. No 230/2008 are unconstitutional, as they affect the fundamental rights mentioned in the above.

It thus means that the emergency ordinance was not declared unconstitutional because the legal solution was not in line with the provisions of the Basic Law, but also because of the fact that the Government, in accordance with the provisions of Article 115(6) of the Constitution, was not entitled to recourse to regulate through an emergency ordinance. In these circumstances G.E.O. No 230/2008 was rejected by the Parliament through Law No 208/2009<sup>33</sup>.

Another example of transgression of the boundaries of the basic law is the G.E.O. No 3/2009, amending and supplementing certain pieces of legislation on the organisation and operation of certain structures functioning within the Government's working body<sup>34</sup>, whereby the Government's Department of Control was dissolved, being replaced by another structure within the Government's working apparatus, the Control Body of the Prime Minister, operating as a structure with no legal personality. Through the same piece of legislation, The Fight against Fraud Department was moved from the structure of the Prime Minister's Office into the Government's working apparatus, operating as a structure with no legal personality which reports institutionally to the Prime Minister under the coordination of the Deputy Prime Minister. The staff of the new structures was to be employed only based on the trust of the Minister and of the Deputy Prime Minister and provided that they sign a loyalty commitment, and accordingly, the withdrawal of the trust would entail the revocation of the employment as well as the removal and dismissal from post or the termination of the labour agreement, as applicable.

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<sup>30</sup> Article 47(2) Citizens have the right to pensions, paid maternity leave, medical care in public health centres, unemployment benefits, and other forms of public or private social securities, as stipulated by the law. Citizens have the right to social assistance, according to the law, *The Constitution of Romania, republished (2003)*.

<sup>31</sup> *The Constitution of Romania, republished (2003)*.

<sup>32</sup> *Ibidem*.

<sup>33</sup> On the rejection of Government Emergency Ordinance No 230/2008, amending the legislation in the field of pensions in the public system, state pensions and service pensions, published in *the Official Gazette of Romania* No 385 of 9 June 2009.

<sup>34</sup> Published in *the Official Gazette of Romania*, No 84 of 11 February 2009.

The law of approval of this emergency ordinance was the object of the unconstitutionality complaint formulated by 77 deputies. The reasoning was based on both the infringement of the provisions of Article 115(6) of the Constitution, according to which emergency ordinances cannot affect the regime of fundamental state institutions, and the infringement of the stipulations of Article 16 of the same Basic Law which establishes the principle of equal rights for all citizens<sup>35</sup>.

The Constitutional Court rules through **Decision No 1039 of 9 July 2009**<sup>36</sup> that the provisions of the said emergency ordinance infringes both the provisions of Article 41 of the Constitution and the constitutional principle of equal rights for all citizens, as it introduces a requirement that stands as an unjustified derogation from the stipulations of the Labour Code, placing the data subjects in a situation of manifest legal inequality in relation to the other employees. The Court also ruled that the emergency ordinance approved under the law submitted for control does not satisfy the constitutional requirements laid down in Article 16, Article 41 and Article 115(6) of the Constitution, as it comprises provisions that affect the sphere of legal guarantees of fundamental rights and freedoms, rendering the entire emergency ordinance approved by law unconstitutional, the ordinance ceasing to produce legal effect in accordance with the requirements stipulated in Article 147(1) of the Basic Law.

Following the aforementioned decision of the Court, the Government adopted the G.E.O. No 94/2009 on the ensuring of the continuity of the activity of certain structures functioning within the Government working apparatus<sup>37</sup>, a piece of legislation that was also declared unconstitutional under **Decision No 1555 of 17 November 2009**<sup>38</sup>, as a result of the exception of unconstitutionality submitted directly by the Ombudsman.

Further out, emergency ordinances must **necessarily** be submitted for the approval of the Parliament, in contradistinction to the other ordinances that must be submitted for approval only if required under the law enabling law.

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<sup>35</sup> *The Constitution of Romania, republished (2003)*.

<sup>36</sup> On the exception of unconstitutionality of the Law for the approval of Government Emergency Ordinance No 3/2009 amending and supplementing the legislation on the organisation and operation of certain structures functioning within the Government working apparatus, published in the *Official Gazette of Romania* No 582 of 21 August 2009.

<sup>37</sup> Ensuring the continuity of the activity of certain structures functioning within the Government working apparatus, published in the *Official Gazette of Romania* No 602 of 31 August 2009.

<sup>38</sup> On the exception of unconstitutionality of the provisions of Government Emergency Ordinance No 94/2009 ensuring the continuity of the activity of certain structures functioning within the Government working apparatus, published in the *Official Gazette of Romania* No 916 of 28 December 2009.

Both emergency ordinances and ordinances issued under special enabling laws for which subsequent approval by the Parliament is required are approved or rejected by means of a law, in accordance with the provisions of Article 115(7) of the Constitution<sup>39</sup>. If the ordinances are rejected by the Parliament, their effects cease on the date the rejection law enters into force. If ordinances are approved, they continue to produce legal effect.

In case the ordinances are approved in an amended and supplemented form, the ordinances produce legal effect in the form in which they were adopted by the Government until the date the approval law enters into force, and after this date the norms of the ordinances produce effect in the form in which they were amended or supplemented under the approval law.

In accordance with the contents of the aforementioned Basic Law, the law of approval or rejection of the ordinances wherewith the Parliament was notified must also comprise the ordinances whose effects ceased due to failure of their submission for the approval of the Parliament until the attainment of the enabling time limit. It is obvious that the text refers to simple ordinances for which the enabling law stipulated the requirement for approval by the Parliament.

The norm in the contents of Article 115(8) of the Constitution<sup>40</sup> solves the issue of the effects of emergency ordinances by stipulating that the necessary measures regarding the legal effects that occurred during the period of application of the ordinance shall be regulated, if applicable, under the approval or rejection law. This latter regulation was introduced under Law amending the Constitution of Romania<sup>41</sup> and it is a delicate

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<sup>39</sup> (7) The ordinances the Parliament has been notified about shall be approved or rejected in a law which must also contain the ordinances that ceased to be effective according to paragraph (3) of the same article, The Constitution of Romania, republished (2003).

<sup>40</sup> *The Constitution of Romania, republished (2003)*.

<sup>41</sup> Law No 429/2003, published in the *Official Gazette of Romania*, Part I, No 758 of 29 October 2003, republished by the Legislative Council under Article 152 of the Constitution, updating the terms and assigning new numbering to the concerned texts (in the republished version Article 152 became Article 156). The law amending the Constitution of Romania No 429/2003 was approved following the national referendum of 18-19 October 2003 and entered into force on 29 October 2003, the date of its publishing in the *Official Gazette of Romania*, Part I, No 758 of 29 October 2003 of the Constitutional Court Ruling No 3 of 22 October 2003 on the confirmation of the result of the national referendum of 18-19 October 2003 on the law amending the Constitution of Romania. The Constitution of Romania, in its initial version, was adopted in the session of the Constituent Assembly of 21 November 1991, it was published in the *Official Gazette of Romania*, Part I, No 233 of 21 November 1991 and it entered into force following its approval through the national referendum of 8 December 1991.

measure on which the Parliament needs to deliberate. We should consider the fact that the ordinances will have already produced legal effects during the period of their application, effects which according to the constitutional text could be subsequently repealed under the law of approval or rejection of the ordinance. This measure does not manage to ensure the stability of the legislative system and of the legal effects entailed by the ordinances issued by the Government, as the legal relations established in light thereof can be legally modified by the Parliament at all times.<sup>42</sup>

It was stipulated in the case-law<sup>43</sup> that from the perspective of their legal nature the *simple ordinances* and the *emergency ordinances* issued by the Government are legislative acts and not administrative acts even though they are made by an administrative authority. They have the legal effect of laws, effect that is mainly determined by the legal object and not by the nature of the issuing body. This conclusion results from the fact that the Government can issue ordinances solely on the basis of the legislative delegation granted by the Parliament, the general rule in matters of ordinances being of not submitting them for the subsequent approval of the Parliament. According to another opinion<sup>44</sup>, the acts of the Government (i.e. ordinances) are *normative administrative acts acting as laws*, pointing out the fact that they are *complex acts of administrative and constitutional law*.

Regarding emergency ordinances, they are adopted in the basis of constitutional legislative delegation in situations considered by the Government as extraordinary and whose regulation cannot be postponed. The submission of this category of ordinances for the approval of the Parliament is justified through the highly vast field that can be regulated, including the one of organic laws, with the exceptions expressly and exhaustively stipulated in the Constitution. The ability granted by the constituent lawmaker gives the Government the possibility of evaluating when to step in with primary norms in the regulation of situations that cannot be postponed, and this exception in the law-making process needs to be controlled by the Parliament, the state's only law-making authority<sup>45</sup>.

The control of the constitutionality of G.E.O.s thus stands as a genuine instrument of limiting the abuse in the issuing of Government emergency ordinances. The efficiency of this instrument is conditioned by its actual

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<sup>42</sup> Benonica Vasilescu, *op.cit.*, pp. 145-146.

<sup>43</sup> *Ibidem*.

<sup>44</sup> Verginia Vedinaș, Rozalia Ana Lazăr, *The control of constitutionality of administrative acts*, in Legal Matters, No 8/2000, pp. 300-301.

<sup>45</sup> Benonica Vasilescu, *op.cit.*, p. 146.

use whilst respecting the constitutional and legal reference framework, as well as by a *loyal conduct* of public authorities<sup>46</sup>.

Concerning the issue of the loyal conduct of public authorities and their compliance with the Constitution in its letter and spirit, the respect for the role of the Constitutional Court and for the decisions ruled by the Court should be taken into consideration<sup>47</sup>.

### ***Statistical data – a few reference points***

The year 2003 stands as an important year for the Romanian constitutional system in light of the revision of the Basic Law, but most notably in light of the increase of the constitutional role of the Court on the Romanian political and legal scene, the Court being endowed with an essential attribute – *the resolution of legal conflicts in constitutional matters*.

In law-making matters, the overlap of executive power onto the attribute of “the only legislative authority within the state” held by the Parliament, pursuant to the Constitution (Article 61) is a relevant determinant to the occurrence of conflict among the powers, respectively to the creation of a non-unitary legal framework generating major imbalances. A ”parallel” perspective on the matter of the adoption of laws (And ordinances) can create major imbalances within the political regime.

In the immediate aftermath, starting with the year 2004, according to several quantitative studies carried out by the National Alliance of Student Organisations in Romania (NASOR), we are dealing with a *boom* of the number of emergency ordinances adopted by the executive power, as follows: 2004 – 142; 2005 – 210; 2006 – 138; 2007 – 157; 2008 – 228; 2009 – 111; 2010 – 131; 2011 – 125; 2012 – 96; 2013 – 115; 2014 – 95<sup>48</sup>. Hence, in the analysed period of time (2004-2014) the several Governments that exercised power issued a total number of 1,547 emergency ordinances, meaning 141 emergency ordinances per year or one in 60 hours<sup>49</sup>.

More towards the present, according to the data made publicly available on the official website of the Chamber of Deputies, we find that “the only legislative authority within the country” **enacted a number of**

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<sup>46</sup> Lecturer Marieta Safta, PhD., First deputy Magistrate of the Constitutional Court of Romania, *Constitutional boundaries of law making through Government emergency ordinances*, in the Gazette of Legal Matters No 4 / 2014, p. 12.

<sup>47</sup> *Ibidem*, p. 14.

<sup>48</sup> <http://www.apador.org/blog/avocatul-poporului-ordonante-urgenta/>, accessed on 14.02.2019.

<sup>49</sup> <https://www.anosr.ro/in-ultimii-zece-ani-romania-a-fost-guvernata-cu-cate-o-ordonanta-la-60-de-ore/>, accessed on 14.02.2019.

**363 laws**<sup>50</sup> in the timeframe January-December 2018, whereas the Government whose main attribute is to “ensure the implementation of the domestic and foreign policy of the country, and exercise the general management of public administration” (Article 102(1)) issued within the same timeframe **99 emergency ordinances**<sup>51</sup>. Hence, according to elementary parity, one emergency ordinance is issued for approximately every 3 enacted laws.

### **Conclusions**

The circumstantial mentions made by the Constitutional Court represent a series of necessary clarifications to the reference constitutional text, and the respect thereof stands as an obligation imposed under the stipulations of Article 147 of the Basic Law. The selected case-law showing only a small part of the decisions pronounced by the Constitutional Court on this matter, presents a relevant number of cases whereby complaints<sup>52</sup> on Government emergency ordinances were put forward, partly admitted, entailing the inapplicability of the legislation deemed unconstitutional.<sup>53</sup> It is extremely important to mention again that the urgency of regulation is not equivalent to the existence of an extraordinary situation<sup>54</sup>.

In terms of utility and relevance of this article we should reiterate the importance of understanding the norms stipulated in the Constitution and reiterated in the case-law of the constitutional litigation Court in matters of law-making, as well as the limitations or, more specifically, the (self-)limitation of the attribute of “lawmaker” of the Government through emergency ordinances.

The constant inflation of new normative acts issued by two distinct powers and especially the hyperactivity of the executive power on the adoption of ordinances generate severe blockages and slippages in the optimal functioning of the constitutional democracy.

The extension of the scope or of the meanings of law-making by ordinances must be made in exceptional situations considering the attribute of “urgency” of the situation, in compliance with the constitutional framework, in a logic of *loyal conduct* from the public authorities involved in the endeavour.

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<sup>50</sup>[http://www.cdep.ro/pls/dic/legis\\_acte\\_parlam?cam=0&tip=1&an=2018](http://www.cdep.ro/pls/dic/legis_acte_parlam?cam=0&tip=1&an=2018), accessed on 14.02.2019.

<sup>51</sup>[http://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2018&emi=3&tip=18&rep=0](http://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&emi=3&tip=18&rep=0), accessed on 14.02.2019.

<sup>52</sup> Regarding the unconstitutionality.

<sup>53</sup> Lecturer Marieta SAFTA, PhD., First deputy Magistrate of the Constitutional Court of Romania, *art. cit.*, in the Gazette of Legal Matters No 4 / 2014, p. 12.

<sup>54</sup> *Ibidem*, p. 7.

Considering the aforementioned timeframe (2004-2014) regarding the dynamic of emergency ordinances, which stood as the most visible activity of the “law-maker” Governments running the state and examining the situation of year **2018**, we notice that the *trend* continues. Or, holding a parity of approximately 3 laws - one ordinance is not in line with the standardisation of law in general, respectively with the standardisation of the legislation in compliance with the decisions of the Constitutional Court. Such a constant inflation of acts with legal force simultaneously issued by distinct authorities can and does certainly create “confusion” in the smooth running of activities at central and local level, a situation having consequences also on the judicial power, through the congestion of courts with new provisions that need to be implemented within the various existent litigations.

In summary, pursuant to the principle of the separation of powers in the state, the Government can exercise the legislative function in certain conditions, legislative delegation being an exception from this monopoly of the Parliament. As a means of cooperation between the two institutions, the delegation implies the transfer of certain attributes toward the executive power or its empowerment to exercise the legislative function during a limited timeframe.

Hence, the delegation occurs in two situations: through a special enabling law, the Government can adopt ordinances (legislative delegation); the Government can adopt emergency ordinances in extraordinary situations whose regulation cannot be postponed (constitutional legislative delegation). The Parliament must not delegate its competencies in the fields reserved for organic laws, therefore the ordinances issued under special enabling laws cannot cover constitutional provisions that refer to the adoption of organic laws.

Ordinances can be amended or repealed by the Government, the only requirement being that this must take place within constitutional boundaries as well. The Basic Law does not stipulate that the approval of the ordinances issued under enabling laws by the Parliament is mandatory, but until now all enabling laws have imposed the requirement of their subsequent approval.

In the regard of emergency ordinances, the Government does not require a special enabling law in order to issue them, but it is under the obligation of motivating the urgency of the extraordinary situation whose regulation cannot be postponed. In accordance with the stipulations of the Constitutional Court, the failure to motivate or the inappropriate motivation of emergency ordinances is grounds for their unconstitutionality.



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### **Online Resources**

[http://www.cdep.ro/pls/dic/legis\\_acte\\_parlam?cam=0&tip=1&an=2018](http://www.cdep.ro/pls/dic/legis_acte_parlam?cam=0&tip=1&an=2018)

[http://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2018&emi=3&tip=18&rep=0](http://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&emi=3&tip=18&rep=0)

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# **GENDER IDENTITIES IN RURAL ROMANIA. PART I: WOMEN'S PLACE(S) AND THE VILLAGE WITHIN THE CITY**

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***Abstract:** The study is grounded on an extended research project, concerning the trends in recovery and transmission of cultural memory of women within rural Romania, reinvention of the peasant identities being discussed both in terms of socialist and post-communist transformations. First part of the research, concentrated in present article, discuss the structural and cultural heritage of „women question” in Romania, while the second part of the study will focus on dynamics of property rights and role of landownership in shaping the living memory and status of rural women.*

*The methodological design of the study frames a hybrid approach, reuniting a historical reconstruction perspectives with comparative exercises aiming to highlight the past and present use of social spaces in generating cultural contracts.*

***Keywords:** gender identities, rural space, women's narratives, memory orders.*

## **Introduction**

‘I always say a women is everything: she is a mother, a wife, a lover, a laundress, a cook, and everything else. She does everything’<sup>1</sup> quotes one of Sarah Ashwin’s female respondents, resident of a Siberian mining settlement, still trapped in Soviet inherited perspective of idealized womanhood. Almost thirty years after, the persistence of communist inspired gender orders across the countrified territories of Eastern Europe may disclose the presence of a cultural paradox. In spite of multiple modernization waves triggered by communism’s fall and mostly by

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<sup>1</sup> Sarah Ashwin, Tatyana Lytkina, “Men in Crisis in Russia: The role of Domestic Marginalization”, *Gender and Society*, vol. 18, Issue 2, 2004, p. 190.

blasting digital driven informational revolutions, gender landmark managed to conserve tensional translations of notions as nation, authority or individual autonomy.

Expected to play the part of „wise mothers” and „good wives”<sup>2</sup>, a chorus extracted from early Bolshevik propaganda, women living on rural grounds were apparently forced to let go their lucrative and performative socialist emancipation<sup>3</sup>. Gliding on the realm of invented traditions<sup>4</sup>, women condition experienced a transitional backlash, new emerged democratic societies giving them instead of liberation, renewed formulas of oppression. It was the case of former reformist regimes, reunited under flag of glasnost and perestroika policies since the '80, but also the situation of frozen Stalinist versions of popular democracy, as Ceaușescu's Romania. Starting with exemplary model of Poland's Velvet revolution and going one step further to violent aftermath of Romanian sultanism<sup>5</sup>, the rural world managed to conserve its internal coherence.

“Frumpy babushkas”<sup>6</sup> or breadwinning labour heroines were abandoned within an agrarian landscape slowing recovering its parochial cultural and social architecture. Women were forced to confront with feminization of poverty, isolation within the household, renewed cultural oppression pleading for conservative gender roles and not at least a fall into oblivion. Transition games implied a sudden reconfiguration of the rural world, surface thin modernization assured by the communist decades fading away, while major structural transformations revolving around key topic of land reform, placed gender under condition of a silent marginality.

Disappearance of agricultural cooperatives, collapse of small industrial units and withdraw of state's support in topics as child-care and maternity benefits, doubled by ascent of discourses that encouraged mothers exit from labour force<sup>7</sup>, shaped a contradictory picture of gender condition in post-communist villages. Initial disruptive symptoms of gender mis-modernity prolonged towards an extended time span, later

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<sup>2</sup> Elizabeth Waters, “The modernisation of Russian motherhood, 1917–1937”, *Soviet Studies*, vol. 44, no. 1, 1992, p. 125.

<sup>3</sup> Jan Kubik, Amy Linch, *Postcommunism from Within: Social Justice, Mobilization, and Hegemony* (NY University Press), 2013, p. 135.

<sup>4</sup> Eds. Eric Hobsbawm, Terence Ranger, *The Invention of Tradition* (Cambridge University Press), 1992.

<sup>5</sup> Juan J. Linz, Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore: JHU Press), 1996, p. 357.

<sup>6</sup> Eds. Theresa Carilli, Jane Campbell, *Challenging Images of Women in the Media: Reinventing Women's Lives* (Lanham: Lexington Books), 2012, p. 113.

<sup>7</sup> Christy Glass and Eva Fodor, „From Public to Private Maternalism? Gender and Welfare in Poland and Hungary after 1989”, *Social Politics: International Studies in Gender, State & Society*, Volume 14, Issue 3, 2007, p. 7.

gentrification of the rural<sup>8</sup> and return of pauperized urban clusters to their origin communities adding unexpected nativist shades upon women's discourse and identities.

Nowadays, Romanian women facing rural life challenges from within, may offer a meaningful testimony for evolution of gender regimes within the bounds of post-socialism, all the more so their ascent towards modernity and democracy remains engraved by presence of multiple historical fault lines. Communist inspired regimes distinguished through promotion of set of interrelated gender policies, which surprisingly conserved their unity even subsequent to interventions of various ideological or nationalistic drifts. Essentially, communist gender ideology originated in three structural claims: deconstruction of traditional economic structures, related to nuclear family and property succession<sup>9</sup>, women's emancipation and mass participation in paid labour and liberation of gender from household duties and establishment of new group identity landmarks, emerged from conscience of industrial urbanity.

Degree of completion for the socialist project was however placed under influence of previous societal configurations, the Romanian story of communist gender liberation disclosing in fact the tale of two villages. Amid the picture of an Edenic mechanized agriculture and efficient large scale state cooperatives, were lingering the spectres of subsistence agricultural households, disrupting the planned economy strings and assuring a cryptic survival of subsurface gender orders. Romanian women were still performing unpaid domestic work, educate and raise children, take care on elders and invalids, the double burden of productive and reproductive duty<sup>10</sup> being aggravated by a strict anti-abortion and anti-contraception legislation, instituted in 1966.

Before becoming a member of the socialist realm, Romania was a dominantly rural country, where patriarchal family relations were the norm, both in overpopulated countryside and nascent urban entities. The collectivization of agriculture and rapid industrialization instituted after assertion of communist rule in 1947, did not authentically reform the benchmarks of a conservative gender dogma.

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<sup>8</sup> Martin Philips, „Rural gentrification and the processes of class colonisation”, *Journal of Rural Studies*, Volume 9, Issue 2, 1993.

<sup>9</sup> Barbara Einhorn, *Cinderella goes to market: citizenship, gender and women's movements in east central Europe* (Oxford: Verso), 1993, p. 32.

<sup>10</sup> Gail Kligman, *The Politics of Duplicity: Controlling Reproduction in Ceausescu's Romania*, (Berkeley, Los Angeles and London: University of California Press), 1998, p. 25.

Despite all Soviet parties' propaganda promoting "cheerful peasant girls"<sup>11</sup> liberated from ancestral despotic relations by working in factories and accessing previously taboo roles, Romanian scenario of modernization concealed a forgery. If the communist hit "Young man on a plough tractor" was there to stay, gender declinations of new rural ideology concerned rather the image of "dear mother, working in the field, diligent as a bee"<sup>12</sup>. The emancipation endeavour started at the end of World War II, through insertion of women into the workforce and deconstruction of monadic culture structures of the village, suddenly ended at the middle of the '60. Romanian communism interrupted its gender modernization cycle by introduction of coercive body politics, doubled by a hybridization of the communist project with elements of a vivid nationalism<sup>13</sup>.

While the Communist Bloc was making a way through reformation and gradual dismantling of planned economy and party-state structures, Ceaușescu Romania's was gliding towards disruptive modernity and conservative gender regimes. Gorbachev doctrine acted as an adaptive mechanism for future democracies situated at the Eastern border, mushrooming civic, economic and cooperative networks and generating a silent transition. At the fall of communism, Romania felt the absence of intermediary stage in renegotiating its rural heritage, so much the more during chronical food shortages of the '80, the village became a place of refuge and temporary residence for recent urban inhabitants. Rural women's condition during uncertainty years of Romanian transition constantly down-graded, the counter-effects of land restitution policies tending in same cases to advantage the re-establishment of masculine hegemony within familial farms.

In this peculiar context, the study aims to explore how cultural memory shapes the social capital of Romanian women, living in rural areas, focusing mostly on identification of the inter-correlation raised by land rights and gender status. The research follows two leading hypotheses. First claims that land property plays the part of an essential quantifier in reconstructing power relations within post-communist rural areas, while second hypothesis sustains that gender regimes represents a key vector in promoting modernization and local development of rural

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<sup>11</sup> Eds. Funk, Nanette and Magda Mueller, *Gender politics and post-communism: reflections from Eastern Europe and the former Soviet Union* (London and NY: Routledge), 1993, p. 42.

<sup>12</sup> Iulia Anghel, *Dimensiunea simbolică a comunismului românesc* (București: Mustang). *Symbolic dimension of Romanian Communism*. (Bucharest: Mustang Publishing House), 2017, p. 161.

<sup>13</sup> Katherine Verdery, *National Ideology Under Socialism: Identity and Cultural Politics in Ceausescu's Romania* (Berkeley, Los Angeles, London: University of California Press), 1991, p. 125.



communities, through women's roles as socio-cultural determinants of group's memory and discourses upon identity.

### **Gender and modernity: Issues to address long after communism**

Castelles points out the critical interactions between space and society<sup>14</sup>, birth of the city establishing among other things, a different spatial meaningfulness, related to cultural identities. Concentric structure of the village was thus replaced by a multi-modal symbolic geography, in whose bounds the individuals may experience the conditions of anonymity, individualism, severance from community moral regulations and not lastly, class mobility<sup>15</sup>. All the features mentioned above may be connected with a broader project of modernity, the passing of traditional society<sup>16</sup> remaining dependent by birth of the city, with its underlying themes as industrialization, secularization, political mobilization and increasing access to education.

Eastern Europe encounters with urbanity relies heavily on communist projects of social change. At the beginning of the communist era, East European post-war nations remained predominantly agrarian countries, with a nascent urban life. Communist regimes' interest in promoting rapid industrialization and urbanization of their host countries was motivated by a nexus of inter-related objectives. As Marx and Engels had stated<sup>17</sup>, the creation of communist society required the break of previous civilizational landmarks as religion, gender, patriarchal authority and economic segregation amid urban and rural worlds. The urbanization process served multiple purposes, the new inhabitants of rising East European cities being expected to leave the cultural models and representations of the village. This fracture operated however at surface level. The cultural memory of a generation could not be erased during one to two decades of urban life, the village power structures and rituals surviving sometimes in cryptic equations.

New urban residents moved to city carrying with them the social traditions and servitudes of the countryside. Sitting outside on a bench, in front of communist apartment blocks, during rest days, the appeal to extended family moral authority in topics as marriage or children's

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<sup>14</sup> Manuel Castells, *The City and the Grassroots: A Cross-Cultural Theory of Urban Social Movements* (University of California Press), 1983, p.15.

<sup>15</sup> Karin Kurz and Walter Muller, "Class Mobility in the Industrial World", *Annual Review of Sociology*, Vol. 13, 1987, p. 418.

<sup>16</sup> Daniel Lerner, *The Passing of Traditional Society: Modernizing the Middle East* (NY: Free Press), 1964.

<sup>17</sup> Karl, Marx, Friedrich Engels, *The Communist Manifesto: A Modern Edition* (London and NY: Verso Books), 2012, p. 40.

education, conservation of punitive functions of neighbours community, ready to exclude and public criticize the deviant behaviours (non-marital cohabitation, unemployment), all constituted vestigial treats of the rural. The ascent of an urban conscience become more and perceptible within socialist picture after '70, when urban migrants of the '50 succeeded in establishing double referential landmarks, in relation with their rural heritage. Favoured by growing enrolment of women into the workforce and gradual severance from familial dependence, followed by diminish of maternal servitudes due to state's intervention in subject of limited maternal leave, a new secularized urban world, sprang to life in most of communist countries. New generations of children born and raised into the city made their entrance into the social and economic life, marking a fracture point from previous cultural memory of the traditional countryside. Also, genesis of a communist version of leisure culture enabled new socialization and interaction rituals. Not limited anymore to their productive and household duties, communist women entered the social space of the city, making their presence during political parades, secular celebration or leisure shopping, dominated by consumer aspirations, demanding for "washing machines, vacuum cleaners, refrigerators, and increasingly, for fashion and cosmetics"<sup>18</sup>.

Yet, a breach made its appearance into the communist picture. "Brutal pro-natalism policies of Ceaușescu regime"<sup>19</sup> interrupted in Romania's case the modernization, urbanization, gender emancipation trilogy. Forced motherhood induced by abortion banning legislation placed women in position of a rising vulnerability, the cultural memory accumulating a perception of guilt, shame and abandonment. The short leap towards urban conscience of modernity and autonomy was inverted, the legacy of archaic culture reigniting under renewed condition of dependence. For Romanian women, living in the city, the adoption of anti-abortion legislation in 1966, only one year after Ceaușescu's rise to power, determined a range of phenomena as: temporary migration towards extended family residence, often located in the countryside, decline of professional opportunities and isolation within limits of feminine industries (education, health care, light industry, since 1970<sup>20</sup>),

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<sup>18</sup> Ed. S.A. Smith, *The Oxford Handbook of the History of Communism* (Oxford University Press), 2014, p. 212.

<sup>19</sup> *Idem*, p.212.

<sup>20</sup> Eds. Aslanbeigui, Nahid, Steven Pressman, Gale Summerfield, *Women in the Age of Economic Transformation: Gender Impact of Reforms in Post-socialist and Developing Countries* (East Sussex: Psychology Press), 1994, p. 52.

anonymization and deconstruction of previous income and discourse emancipation<sup>21</sup>.

Secondly, women living on rural space during the '60 were exposed to a double depreciation of their social and cultural status. Decreasing interests of communist state toward agrarian economy and lack of alternative employment opportunities within closed rural infrastructure, shrinking income and chronic basic supplies shortages of the '80, drastically reduced rural women's independence and autonomy. Moving to the city become more and more difficult, as the urban inhabitants themselves were seeking temporary asylum in the countryside, all the more the urbanization process did not authentically operated a shift between traditional village and new communist city.

The small towns artificially created under rising ideological pressure of the '60 and '70, had very low levels of economic development, concealing hidden dependencies by former agrarian occupational structures. Half workers, half peasants, the inhabitants of the freshly proclaimed urban entities were assuming a double culture, this duality of memory becoming more and more perceptible in evolution of gender landmarks. The official start of rural systematization was expressed in November 1965, when a "ribbon development" strategy was assumed, in order to limit the excessive spreading of buildings<sup>22</sup>. Unexpectedly, the systematization made slow progress, the collectivization of agriculture and the artificial urbanization of a certain number of villages offering perishable results. The doubtful outcomes were determined also to regime's balisage amid conservation of a distinct agrarian culture and the edification of a genuine and functional urbanity in a society still struggling to recover major modernity deficiencies. Yet, the dynamics of gender orders within this itinerant culture of the village remains critical for future reconfigurations of the feminine identitary narratives in terms of: group memory (women functions in reconstruction of family networks), socialization patterns (women roles in conserving funeral and marital traditions and in camouflaging religious quests), narratives of shame and guilt (women vulnerably for unwanted pregnancies and public odium). Modernity's project evolved in closed correlation with urbanity theme, the twisted story of Romania's birth of the city influencing in a capital manner the cultural memory of its inhabitants, and most importantly of women.

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<sup>21</sup> Daniela Andr n, Thomas Andr n, Gender and occupational wage gaps in Romania: from planned equality to market inequality? *ZA Journal of European Labor Studies*, 4: 10, 2015.

<sup>22</sup> Georgeta Stoian Connor, "Rural Systematization: A Radical Campaign of Rural Planning under Ceausescu Regime in Romania", *International Journal of Business and Social Science*, vol. 8, No. 2, 2017, p. 17.

Culturally speaking, Romanian women did not fully left the village memory, their encounters with modernity being limited in subject of autonomy, familial duties, social networking and economic mobility.

In Romania's case, post-socialist trends endorsed further expansion of cities and towns, the growing number of urban settlements revealing however the survival of a rural way of life, "both in the urban landscapes and in the cities and towns patterns and functionalities"<sup>23</sup>. Assuming the hypothesis that many urban entities remain in fact rural towns, conserving "rural ways of life" and "rural landscapes", two essential questions tend to detach<sup>24</sup>. What should it be the legitimate border in exploring rural identities of Romania's women nowadays and in early years of post-communism? And, rural – urban segregation operated in different spectrums of modernity, or we confront in fact with legacy of a gendered mis-modernity? In this very context, topics that call for an answer, long time after communism, regard mainly the future of gender identities at crossroads of re-traditionalization narratives and memory recovery of Romanian villages, where women's status evolved sometimes under omen of an unexpected modernity.

Last part of the article sketch a historical timeline dedicated to *women's question* during Romanian communism, aiming to disclose the multiple turnovers and cleavages supervened within the modernization games of vernacular gender landmarks.

### **Romania's gender modernity timeline 1947-1989**

1947: Subsequent to more than two years of Soviet occupation, installed at the end of World War II in 1945, the ruling monarch King Michael is forced to abdicate and People's Republic of Romania is declared.

1948: The 1948 Constitution grants equality in rights for all citizens, Romanian women gaining equal rights with men, in all aspects of "public, economic, social, cultural, political and private life", including equal work rights. It is the beginning of "soviet stage of gender policies"<sup>25</sup> in Romania, defined by images of masculinized, fraternal and gender lustrated feminine archetypes, embodied under label of "female propagandist", "female hard-

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<sup>23</sup> I.S. Jucu, „When rural turns to urban: a short statistical analysis on the Romanian post-socialist urbanization”, *14<sup>th</sup> SGEM Geo Conference on Ecology, Economics, Education and Legislation*, Vol. 3, 2014, p. 529.

<sup>24</sup> *Idem*, p. 529.

<sup>25</sup> Romanian Constitution 1948, <https://lege5.ro/Gratuit/g42dooby/constitutia-din-1948>, accesed March, 10, 2019.

industry worker”<sup>26</sup> and beyond all, “women political commissar”, inspired by Romania’s Prime Minister, Stalin’s protégée, Ana Pauker.

1948: Emulated after its Soviet predecessor, Zhenotdel, in Romania begins to function the Union of the Democrat Women from Romania (Uniunea Femeilor Democrate din România), having Ana Pauker as honorary president<sup>27</sup>.

1949: Romanian Workers Party launch the collectivization program, intending to promote a socialist transformation of agriculture. Collectivization process encompassed an ideological struggle argument, the wealthy peasant becoming the target of more than a decade of political persecutions<sup>28</sup>.

1950: The Peasant woman magazine and the Woman magazine, most influential gender publications of the time, depicts women in new emancipated roles, as breadwinners, stahanovist industrial workers and political comrades, the maternal and familial duties remaining more blurred. From the 12 monthly editions of Woman magazine in 1950, more than two thirds represents the feminine characters in autonomous hypostases.

1952: The second communist Constitution is adopted, highlighting however the role of the state in protection of “marriage and family” and in providing institutional support for mothers with more than three children<sup>29</sup>. Ana Pauker and the Soviet leaders are marginalized, gender identities partially recovering traditional benchmarks as: maternal roles, subordination, and vulnerability<sup>30</sup>.

1953: Shortly after Stalin’s death, the collectivization strategy gradually changed, the Party assuming a principle of free consent and recovery of former wealthy peasant, labelled initially as kulaks. In a Romanian translation, they were called chiaburi<sup>31</sup>. Gender identities within rural frame are subject of a cultural limbo, official propaganda concentrating on the image of women as industrial workers and political comrades. Even the communist spelling book it is dominated by images of gender blind workers, sharing undifferentiated economic and social roles<sup>32</sup>.

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<sup>26</sup> Jill M. Massino, *Engendering Socialism: a history of women and everyday life in socialist Romania* (Michigan: ProQuest), 2007, p. 51.

<sup>27</sup> Idem.

<sup>28</sup> John Michael Montias, *Economic Development in Communist Rumania* (Cambridge: MIT Press), 1967.

<sup>29</sup> Iulia Anghel, *Dimensiunea simbolică a comunismului românesc*, p.165.

<sup>30</sup> *Ibidem*, p.52.

<sup>31</sup> *Ibidem*, p. 91.

<sup>32</sup> Iulia Anghel, *Dimensiunea simbolică a comunismului românesc*, p.139.

1962: Romanian state announce the complete collectivization. Within the gender discourses upon village world regain prominence frescos as women working in the field, nurturing children and conserving the family traditions, harmonious adapted to new communist credo. As a meaningful sample, the Peasant woman editions from 1961 and 1962 portrays young women, dresses in national costumes and accessorized with timeless bucolic artefacts, as fruit baskets and wheat sheaves, wherefrom the signs of mechanization and modernization of the village are surprisingly missing.

1965: Nicolae Ceaușescu became General Secretary of the Communist Party, after former leader, Gheorghe Gheorghiu-Dej dies in ambiguous conditions. The Romanian communism changed its doctrinaire substance towards a conservative and nationalist approach, fostering re-traditionalization of gender roles. The 1965 Constitution apparently conserve women's emancipation in work field, but still highlights the role of maternal and familial duties<sup>33</sup>. It is the beginning of what was labelled as the "feminine decade of communist policies".

1966: Law 770 from 1966 prohibited abortions, the only exception being made in case of "woman's life would be endangered, hereditary disease was involved, the pregnancy was the result of rape, the woman was 45 years of age or over, or she had delivered and reared four children"<sup>34</sup> (Kligman 1992, p. 19).

1967: National Conference of Communist Party, re-baptized with its interwar name, decide to promote "the modern women", "active" and "with an extended professional presence" (Ciobanu 1975).

1971: Nicolae Ceaușescu began to promote his wife, Elena, generating the perception of a "dynastic communism" version, unique in its neo-Stalinist and patrimonialist nuances.

1974: Nicolae Ceaușescu assumes the role of President of Socialist Republic of Romania, while Woman magazine December cover portrays the new "Father of the nation" and "beloved ruler" surrounded by labour heroines covered with decorations (Women's Magazine cover of 1974 December edition). The new path of gender cultural policies remains trapped under siege of triple burden: productive, reproductive and political. Periodically medical exams were performed since 1966 in most of industry branches, in order to identify pregnant women and to prevent illegal abortions.

1982: Nicolae Ceaușescu decides to pay the growing foreign debts. The quality of life steadily declines, basic food supplies being rationed, as well

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<sup>33</sup> *Idem*, p. 170.

<sup>34</sup> Gail Kligman, *When abortion is Banned: The politics of Reproduction in Ceaușescu's Romania and after* (Berkeley: University of California), 1992, p. 7.

as electricity and heat. Morality tales about motherhood and sacred duty to contribute to “fulfilment of the national goal of increasing the population” overrun the women’s magazines<sup>35</sup>. Coercive body politics contribute to a deconstruction of private space, fostering an anthropology of fear and shame<sup>36</sup>.

1980-1985: The regime attempted to get rural women to sign contracts to produce four children, but the initiative failed<sup>37</sup>. Gender cultural discourses experience a modernization backlash, the dominant semiotics being one of idealized, timeless countrified nation.

1985: It becomes perceptible a tendency towards collectivization of identities under pressure of an anonymity condition. Romanian communism shapes an innovative formula of secular religion<sup>38</sup>.

1989: The Romanian revolution ended with violent overthrow of Ceaușescu regime.

### Conclusions

Instead of an epilogue, it may be said that modernization games encountered by Romania’s “women question” remains defined by an ambiguous legacy. History of local communist project, dominated by radical and contradictory nuances, could be subsumed to three fundamental stages: a Soviet era of communist emancipation, revolving around key clauses of lucrative liberation and deconstruction of traditional gender roles (from 1947 to middle of ‘50), a re-traditionalization stage, dominated by antagonistically echoes of productive and reproductive duty, accentuated during ‘60 obsessive decade (mid ‘50 until early 1970) and an oblivion stage, marked by infantilization, and anonymity of Romanian women, subordinated to the parental authority of the Ceaușescu couple (1972-1989).

Disenchantment of communist world and recovery of Romanian women’s autonomy and identities proved to be a difficult task, the more so as the vernacular configurations of modernity leaved tensional memories. Advent of urbanity and enrolment within industrial workforce, small emancipation steps conquered during the ‘50 and early ‘60, were partially reversed by body policies of the ‘70 and ‘80. Following Benedict Anderson

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<sup>35</sup> Idem, p. 17.

<sup>36</sup> Katherine Verdery, *National Ideology Under Socialism: Identity and Cultural Politics in Ceausescu's Romania* (Berkeley, Los Angeles, London: University of California Press), 1991, p.95.

<sup>37</sup> Idem.

<sup>38</sup> Claudia-Florentina Dobre, Cristian Emilian Ghiță, *Quest for a Suitable Past: Myths and Memory in Central and Eastern Europe* (Budapest: Central European University Press), 2018, p. 112.

seminal quote, due to a nation is beyond all an imagined community<sup>39</sup>, Romanian women cultural memory remains inextricably linked by imaginary of the village. What was meant to be fate of Romanian women living on rural grounds, thirty years after the fall of communism, it is yet unclear. All the more women's status, private and public roles and activism it is still the subject of multiple neo-traditionalist or millennial contestations. In this very context, the second part of the research will discuss contemporary patterns in narrating rural femininity within Romanian plain villages, Southern region of Romania, in connection with two essential quantifiers, land ownership and locative memory.

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<sup>39</sup> Benedict Anderson, *Imagined communities. Reflections on the Origin and Spread of Nationalism* (London and NY: Verso).



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\*\*\* Romanian Constitution 1948,

<https://lege5.ro/Gratuit/g42dooby/constitutia-din-1948>.

# RUSSIAN GREAT POWER LOGIC AND ITS IMPACT ON RUSSIA-WEST RELATION/LOGICA DE MARE PUTERE A RUSIEI ȘI IMPACTUL SĂU ASUPRA RELAȚIEI CU OCCIDENTUL

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**Abstract:** *The conclusions of 2019 München Security Conference underline the return of great power competition as the main threat the security system face today. The rival dynamic between Russia and the West have manifested on and off since the end of the Cold War, but took a turn for the worse after the Ukrainian crisis. Since then, Russian relations with the West have dramatically deteriorated, being characterise by Russian Foreign Minister Sergey Lavrov as worse than during the Cold War.*

*Taking the above into consideration, the articles argues that the root cause of the conflict is Russia's dissatisfaction with the post-Cold War order that from its perspective does not reflect Russia's great power status and interests. Thus, Moscow approach towards the West depends on Russian great power logic. By applying analytical and case study research methods, the paper examines Russian understanding of great power concept and how it influences the evolution of Russia-West relations. The findings, assessed in view of key Russian-Western interactions, validate our assumption and offer a comprehensive perspective on current crisis.*

**Keywords:** *Russia, the West, great power logic*

## 1. Introduction

Since the Ukrainian crisis, the relations between Russia and the West have dramatically deteriorated. Cooperation reduced considerable and tension are growing continuously. In an interview for BBC, Russian Foreign Minister Sergey Lavrov stated that relations with West are now worse than during the Cold War because then "there were channels of communication and there was no obsession with Russophobia"<sup>1</sup>

Even though Ukraine is the immediate cause and the epicentre of the conflict, there are strong evidence that suggest that we deal with a systemic crisis that exceeds Ukrainian borders. "*The year 2014 marked the end of*

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<sup>1</sup> TASS, *Lavrov: Russia-West relations are worse than in Cold War era*, 16 of April 2018, <http://tass.com/politics/1000039>

*the post–Cold War order in Europe*"<sup>2</sup>, noted Russian specialist Dimitri Trenin, who considers the current crisis a product of both actors' incapacity to build an inclusive security system on the continent in terms acceptable to all parties since the end of the Cold War.<sup>3</sup> Furthermore, the conclusions of 2019 München Security Conference corroborate the systemic nature of present security challenges and underline the return of great power competition as the main threat the security system face today<sup>4</sup>.

The rival dynamic between Russia and the West is manifesting in many and various ways: sanctions, allegation of foreign interference in domestic politics, expels, intimidation attempts, arm races and reflects in the numerous crisis that mark the international system and could suggest the existence of a fundamental, systemic problem<sup>5</sup>, as former Russian foreign minister Igor Ivanov warns.

Taking the above into consideration, the articles argues that the root cause of the conflict is Russia's dissatisfaction with the post-Cold War order that, from Russian point of view, does not reflect the country's great power status and interests. Our main assumption is that Moscow approach towards the West depends on Russian great power logic. Thus, we will examine Russian understanding of great power concept and how it influences the evolution of Russia-West relations. The findings, assessed in view of key Russian-Western interactions will offer a comprehensive perspective on current crisis.

In doing so, we will apply the analytical research method, with focus on primary sources, especially the analyse of official discourses, documents or other data coming from Russian officials, principally from the President and Foreign Minister. In addition, we will use secondary sources: think thank report, academic studies, journalistic articles, the work of international relations specialists that approached our subject. In order to illustrate how great power logic reflects in practice, we opted for the case study method.

In the first part of the research, we will present the great power concept from Moscow's perspective, seeking to establish what it means and entails- What is the translation of Russian great power logic? In order to explain the concept, we will appeal to the clues offered by the historical record of Russia- West relations. Next fragment of the article is dedicated

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<sup>2</sup> Dimitri Trenin, *European Security from Managing Adversity to a New Equilibrium*, Moscow: Carnegie Moscow Center, February 2018, p. 4.

<sup>3</sup> Ibidem

<sup>4</sup> Munich Security Report 2019, *The Great Puzzle: Who Will Pick Up the Pieces?*, <https://www.securityconference.de/en/publications/munich-security-report/munich-security-report-2019/>

<sup>5</sup> Ibidem

to the case studies and there analyse- How great power logic is transposed in practice and what impact does it have on Russian relations with the West? Following a brief overview of Russia-West interactions, we chose as case study the ones that attracted the strongest reactions from the Kremlin- Kosovo 1999, Georgia 2008 and Ukraine 2014.

## 2. Great power logic- implications

When referring to the post-soviet status of their country, Russian leaders define Russia as a great power: "*We're not asking for handouts. Russia is a great power*"<sup>6</sup>, replied Eltin to Clinton, then candidate to US presidency, when he congratulated him on the occasion of his speech in Congress underlining that it would generate economic support. Also, Eltin, in a discussion with Strobe Talbott, said: "*Russia isn't Haiti, and we won't be treated as though we were. That won't be sustainable and it won't be acceptable. Just forget it! What we insist on is equality. Russia's difficulties are only temporary, and not because we have nuclear weapons, but also because of our economy, our culture, our spiritual strength. All that amounts to a legitimate, undeniable basis for equal treatment. Russia will rise again!*"<sup>7</sup>. Evgeny Primakov, when he took office as foreign minister, in 1996, asserted: "*Russia has been, is, and will be a great power!*"<sup>8</sup> The same idea can be found in the programmatic text "*Russia at the Turn of the Millennium*", published by Vladimir Putin in Rossiiskaia Gazeta at the end of 1999 "*Belief in the greatness of Russia. Russia was and will remain a great power. It is preconditioned by the inseparable characteristics of its geopolitical, economic and cultural existence. They determined the mentality of Russians and the policy of the government throughout the history of Russia and they cannot but do so at present.*"<sup>9</sup>

But what it means for the Kremlin a great power? The meanings that Russian leaders have attached to the concept are essential in understanding Russian foreign policy decision-making.<sup>10</sup>

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<sup>6</sup> Strobe Talbott, *The Russia Hand: A Memoir of Presidential Diplomacy*, New York: Random House Trade Paperback, 2002, p.32.

<sup>7</sup> Ibidem, p.197.

<sup>8</sup> Evgeny Primakov, *Mezhdunarodnye otnosheniya na poroge 21-go veka: problem I perspektivy* (International relations on the eve of the twenty-first century: Problems and prospects), *Mezhdunarodnaya Zhizn*, 1996, nr. 10, pp. 3–13 apud. Dimitri Trenin, *Post-Imperium: A Eurasian Story*, Washington: Carnegie Endowment for International Peace, 2011, p. 205.

<sup>9</sup> Vladimir Putin, *Russia at the Turn of the Millennium*, Rossiiskaia Gazeta, 30 of December 1999 <http://pages.uoregon.edu/kimball/Putin.htm>

<sup>10</sup> Dimitri Trenin, 2011, *cited work*, p. 205.

Drawing from studied bibliography, we highlight three main elements that compose Russian great power logic- strategic independence, regional hegemony, global co-ruling.

### **2.1. Strategic independence**

A fundamental component of Russian great power logic is total independence in formulating foreign and domestic policy. This principle is present in Russian strategic documents and is constantly reiterated by Russian officials and analysts: “*Russia is a country with a history that spans more than a thousand years and has practically always used the privilege to carry out an independent foreign policy.*”<sup>11</sup> “*The Russian Federation's implementation of an independent foreign and domestic policy is giving rise to opposition from the United States and its allies, who are seeking to retain their dominance in world affairs.*”<sup>12</sup> “*One obvious quality of a great power is its strategic independence...By definition, a great power did not take orders from anyone*”<sup>13</sup>. “*A large country with the mentality and history of an independent great power simply could not overnight turn itself into a big Poland and follow in the footsteps of states seeking admission to the EU and NATO*”<sup>14</sup>

What does strategic independence mean? At first glance, when speaking about independence, it seems logic and implicit, you don't have to be a great power to be independent, countries regardless of their size or status, define their self as independent and sovereign, but as Lukyanov said, Russia is not just any country.

Andrei Tsygankov recommends for a better understanding of Russian foreign policy and national interests, to analyse them in the context of Russian-Western relations<sup>15</sup>

First period after the collapse of the Soviet Union is considered to stage of Atlanticism in Russian foreign policy characterized by rapprochement with the West, attempts to integrate in the western system and to adopt its model. Domestically, the path of Atlanticism, followed by Eltin and Kozyrev aimed economic grow with western support and from

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<sup>11</sup> Vladimir Putin, *Speech and the Following Discussion at the Munich Conference on Security Policy*, 10 of February 2007,

<http://en.kremlin.ru/events/president/transcripts/24034>

<sup>12</sup> Security Strategy of the Russian Federation

<http://www.ieee.es/Galerias/fichero/OtrasPublicaciones/Internacional/2016/Russian-National-Security-Strategy-31Dec2015.pdf>

<sup>13</sup> Dimitri Trenin, 2011, *cited work*, p. 207

<sup>14</sup> Fyodor Lukyanov, *The Lost Twenty-Five Years*, Russia in Global Affairs, 28 of February 2016, <http://eng.globalaffairs.ru/redcol/The-Lost-Twenty-Five-Years-18012>

<sup>15</sup> Andrei Tsygankov, *Russia's Foreign Policy. Change and Continuity in National Identity*, Third Edition, Lanham: Rowman & Littlefield Publishers, Inc., 2013, p. xxv

the foreign policy perspective, access to the decision-making process of western organisations, mainly NATO. The strategy did not deliver the expected results and Moscow became increasingly dependent on western financial help. In the same time, its foreign policy autonomy decreases, embracing, in some degree, western interests on international arena. In addition, by focusing on the West, it neglected its own interest in the post-soviet space and at home.

After the disillusion of Atlanticism and its abandonment once Primakov was appointed ministry of foreign affairs, a second stage of Russian Western rapprochement began with the first election of Vladimir Putin. Putin's pragmatic strategy implied cooperation with the West in efforts to address the country's economic problems after the financial crisis. At the same time, he aimed to obtain the maximum possible from situations that he could not control- for instance, if he cannot stop NATO enlargement, at least to obtain a commitment from the West regarding the limitation of the Alliance conventional forces in Europe. The international context favoured Putin's strategy as Russia and the West found the common ground in the fight against terrorism.

The second honeymoon in Russian Western relations did not last for long. From the mid-2000, against the backdrop of a series of events that Moscow considered threaten as the coloured revolutions, US intervention in Iraq, NATO enlargement in the Baltics without having made any concessions concerning posture limitation, Kremlin replaced he cooperating-pragmatic foreign policy with an assertive one.<sup>16</sup>

Dissatisfied with the position of "*West's junior partner*"<sup>17</sup> as Tsyganov characterized it, Moscow decided to "*raise from its knees*"<sup>18</sup> and reaffirm its great power status by implementing a foreign policy independent of western objectives, based only on national interests as defined by Kremlin. As Trenin noted: "Until recently, Russia saw itself as Pluto in the Western solar system, very far from the centre but still fundamentally a part of it. Now it has left that orbit entirely: Russia's leaders have given up on becoming part of the West and have started creating their own Moscow-centered system."<sup>19</sup>

The semi authoritarian regime from Kremlin responded to the challenges imposed by the coloured revolutions and foreign interventions in the name of democracy by reaffirming its commitment to European

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<sup>16</sup> Idem, *Russia's International Assertiveness: What Does It Mean for the West?* in *Problems of Post-Communism*, Vol. 55, Nr. 1, March-April, 2008, pp. 38-55.

<sup>17</sup> Ibidem

<sup>18</sup> Dimitri Trenin, 2011, *cited work*, p. 207.

<sup>19</sup> Idem, *Russia Leaves the West*, Foreign Affairs, July/August 2006, <https://www.foreignaffairs.com/articles/russia-fsu/2006-07-01/russia-leaves-west>

liberal values on the occasion of Putin's programmatic speech held in the Federal Council, in 2005, but he made clear that even though Russia shares the same democratic path with the West, it follows its own way on its own conditions.<sup>20</sup>

Later, the principle of non-interference in domestic affairs as a fundamental rule of global governance and international relations became more and more present in Russian official narrative as well as the accusations against the West of violate it: "*The main threats to state and public security are:... the activities of radical public associations and groups using nationalist and religious extremist ideology, foreign and international nongovernmental organizations, and financial and economic structures, and also individuals, focused on destroying the unity and territorial integrity of the Russian Federation, destabilizing the domestic political and social situation -- including through inciting "colour revolutions" -- and destroying traditional Russian religious and moral values.*"<sup>21</sup> "*The main external military dangers:...establishment in the states contiguous with the Russian Federation regimes, including as a result of the overthrow of legitimate public authorities whose policies threatens the interests of the Russian Federation.*"<sup>22</sup>

Putin's vision was encompassed in the new concept put forward by Vladislav Surkov of sovereign democracy. Basically, it implies rejection of foreign interference and influence in domestic affairs. Hence, primarily, great power status for Kremlin means independence. Practically, it requires an autonomous foreign policy and full domestic sovereignty, regardless the type of regime we deal with- democratic or authoritarian.<sup>23</sup>

## **2.2. Regional hegemony**

Russia's great power logic does not stop at its borders. Russian political elites operate with the realist concepts of international relations- power politics, balance of power, sphere of influence. From this perspective, the international system is composed of few independent great powers, centres of power and their sphere of influence, their poles. In this sense, regional supremacy is natural and stabilizing, but universal supremacy is an illusion and a threat.<sup>24</sup> "*But the United States, having declared itself the winner of the Cold War, saw no need for this. Instead of establishing a new balance of power, essential for maintaining order*

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<sup>20</sup> Andrei Tsygankov, 2008, *cited work*.

<sup>21</sup> Security Strategy of the Russian Federation, *cited work*.

<sup>22</sup> Military Doctrine of the Russian Federation.

<sup>23</sup> Andrei Tsygankov, 2008, *cited work*.

<sup>24</sup> Dimitri Trenin, 2011, *cited work*, p. 209.



*and stability, they took steps that threw the system into sharp and deep imbalance.*"<sup>25</sup>, stated president Putin.

Accordingly, being a great power in a multipolar world means, for Russia, having its own region, its pole of power, that represent a guaranty for its global status and security. As Richard Kugler observed in RAND research "*Enlarging NATO: The Russian Factor*", Russia wanted a double zone of security than translated "*into a Eurasia fashioned under its influence and an East Central Europe that remains a neutral zone, not belonging to the West.*"<sup>26</sup>

Moscow's great power interest in having a buffer zone that protect it from other powers is considered, both by Russians and Western analysts, also a product of Russia's geography and history.

Russia's geography, specifically the lack of natural borders except the Pacific Ocean and the Arctic, of which the last also became, in time, a competitive space, in conjunction with a history of foreign invasions and turbulent dynamics in neighbourhood territories contributed to a perception of a perennial vulnerability that manifest into an aggressive-defensive behaviour<sup>27</sup>. It seems that, in time, Russian leaders came to the conclusion that only through a continuous expansion can secure their gains.

Likewise, Russia's need to have a sphere of influence is attributed to its imperial identity that emerge from the 15, 16 century and from a perception ingrained in Russian mentality that Russia is one of the world gravity centres, a great power, whether we refer to the Tsarist Empire or the Soviet Union, or Russia. In addition, Trenin spoke about a civilizing mission of Moscow, as the third Rome. He explained that "*for more than four centuries, right up to the First World War, the guiding foreign policy idea of the Russian state was to reunite the territories that once formed Kievan Rus and to assume tutelage over Eastern Christendom under the banner of Pan-Slavism. During the first half of the nineteenth century, St. Petersburg staunchly defended the legitimacy of European monarchies against revolution. On the margins, Russia was engaged in a mission civilizatrice in places like Turkestan.*"<sup>28</sup>

At present, Russia's supranational identity is articulated through the concept of "ruskii mir", meaning Russian world. Initially, the term referred only to the Russian ethics living abroad, but it evolved by including a

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<sup>25</sup> Vladimir Putin, *Speech on the occasion of the Meeting of the Valdai International Discussion Club*, 24 of October 2014 <http://en.kremlin.ru/events/president/news/46860>

<sup>26</sup> Richard Kugler, *Enlarging NATO: The Russian Factor*, Santa Monica: RAND Corporation, 1996.

<sup>27</sup> Stephen Kotkin, *Russia's Perpetual Geopolitics. Putin Returns to the Historical Pattern*, Foreign Policy, May/June 2016.

<sup>28</sup> Dimitri Trenin, 2011, *cited work*, p. 202.

with range of elements- culture, religious, history etc.<sup>29</sup> President Putin explained: “*The compatriot is not only a legal category...It is primarily a matter of personal choice. Of self-identification. I would even say, of spiritual self-identification.*”<sup>30</sup> Later, in 2014, he defines the Russian world as civilisation that comprises people who feel culturally close to Russia.<sup>31</sup>

Returning to Russia's exclusive sphere of influence, a logic question arises: What is this sphere of influence? What are its limits? Is it synonym with the Russian world?

Strong evidence coming from Russian official narrative, from the work of Russian specialists and also by examining historical records suggest that it includes all the former soviet states except the Baltics, namely what Trenin defined as the “*Russian historical space or the inner imperium*”<sup>32</sup>. “*From Moscow’s perspective, they constituted, collectively, Russia’s historical patrimony. Two of them, Ukraine and Belarus, which used to form, with Russia, the core of the historical Russian state, are the inner sanctum in that group. Most Russians, in 1991, found it difficult or even perverse to treat them as foreign countries.*”<sup>33</sup> On contrary, the Baltics had been considered something of an “inner abroad.”<sup>34</sup> Trenin argued.

RAND research “*Assessing Russian Reactions to U.S. and NATO Posture Enhancements*” corroborates this view by identifying limited strategic Russian interest in the Baltics in sharp contrast with Ukraine where Russian interest reached the highest point.<sup>35</sup> Its geopolitical importance for Russia is best illustrated by the renowned specialist Zbigniew Brzezinski who affirmed that without Ukraine, “*Russia ceases to be a Eurasian empire*”.<sup>36</sup>

Further, a new question arises what is the meaning of influence when referring to Russia 's sphere of influence?

In Russian official narrative, it is described not like a sphere of influence but a region of “privileged interests” as president Medvedev proclaimed it in 2008 in the context of the war in Georgia: “*as is the case of other countries, there are regions in which Russia has privileged*

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<sup>29</sup> Orysia Lutsevych, Orysia Lutsevych, *Agents of the Russian World Proxy Groups in the Contested Neighbourhood*, Chatham House, Research Paper, April 2016.

<sup>30</sup> Marlène Laruelle, *The Russian World: Russia’s Soft Power and Geopolitical Imagination*, Washington: Centre on Global Interests, May 2015.

<sup>31</sup> Orysia Lutsevych, *cited work*.

<sup>32</sup> Dimitri Trenin, 2011, *cited work*, p.107.

<sup>33</sup> *Ibidem*, p.26.

<sup>34</sup> *Ibidem*, p.106.

<sup>35</sup> Bryan Frederick, Matthew Pavlock, Stephen Watts, Miranda Priebe, Edward Geist, *Assessing Russian Reactions to U.S. and NATO Posture Enhancements*, Santa Monica: RAND Corporation, 2015.

<sup>36</sup> Zbigniew Brzezinski, *The Grand Chessboard*, New York: Basic Books, 1997, p. 46.

*interests. These regions are home to countries with which we share special historical relations and are bound together as friends and good neighbours.*"<sup>37</sup>

Russian great power logic implies that the West must recognize Moscow privileged interests and "droit de regard" over the region, regardless of the sovereign will of the countries there.

What Russia aims in its zone of privileged interests? In the best scenario the centric integration in a structure as the Eurasian Union controlled by the Kremlin or at least if the ex-soviet states do not join Moscow-led integration projects, not to join Western alliances.

### **2.3. Global co-ruling**

In addition to constantly reaffirming Russia great power status, Russian officials promote multipolarity in the international system with Moscow one of the power centres. In this regard, we can notice the antithesis with the unipolar post-Cold War order that reflects US leadership. *"The attempts made by western powers to maintain their positions in the world, including by imposing their point of view on global processes and conducting a policy to contain alternative centres of power, leads to a greater instability in international relations and growing turbulence on the global and regional levels."*<sup>38</sup>

*"In a situation where you had domination by one country and its allies, or its satellites rather, the search for global solutions often turned into an attempt to impose their own universal recipes. This group's ambitions grew so big that they started presenting the policies they put together in their corridors of power as the view of the entire international community."*<sup>39</sup>

Again, the historical record of Russian West interactions offers us important clues about how Moscow understands its role in the global arena.

Gorbachev's belief that *"a new world order would emerge through the integration of East and West on a completely equal basis"*<sup>40</sup>, was sustained to a great extent by the atlanticist policy of Eltin and Kozyrev. Then, Russia aimed to integrate with the West, but it expected that the West will adapt its institution and grant it privileged access to the decision-making process.

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<sup>37</sup> Dmitri Medvedev, *Interview to Television Channels Channel One, Rossia, NTV*, 31 of August 2008, <http://en.kremlin.ru/events/president/transcripts/48301>

<sup>38</sup> Foreign Policy Concept of the Russian Federation, [http://www.mid.ru/en/foreign\\_policy/official\\_documents/-/asset\\_publisher/CptICk6B6Z29/content/id/2542248](http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptICk6B6Z29/content/id/2542248)

<sup>39</sup> Vladimir Putin, 2014, *cited work*

<sup>40</sup> Fyodor Lukyanov, *cited work*

Unable to obtain what Trenin called the “*co-presidency of the western club*”<sup>41</sup> Moscow came to the conclusion that the West pursue policies aimed to deliberately isolate Russia and to undermine its great power status.

Consequently, it attempted to consolidate the status of international organisation in which it has a decisive position as ONU, to establish a parallel system of alliances that excludes the West, as BRICS or the Shanghai Cooperation Organisation, and also to create alternatives to Western organisations that can be controlled from the Kremlin. Hence, inside the CIS, Moscow created as an alternative to NATO, The Collective Security Treaty Organization and as an alternative for the EU, The Eurasian Economic Union.

Further, we notice Russia's objections to the foreign intervention decided and carried out by the Western powers- Yugoslavia 1999, Iraq 2003, Libya 2011. Disregarding its position on these issues was perceived by the Kremlin as a humiliation on the international arena. More recent, in the conflict in Syria, Russia refused to back the Western stance and supported Bashar al-Assad, in doing so it followed its own strategic interests and assumed an important role in peace negotiations. In this sense, Russian analyst Dimitri Kiselyov noted: “The essence is that two great powers, the United States and Russia, are taking direct responsibility for peace in Syria.”<sup>42</sup> Again, in the Venezuelan crisis, Russia supported Nicolas Maduro against Western position.

What conclusions can we extract from this brief overview?

Being a great power means, for Moscow, having a permanent and active role in the global decision-making process on basis of equality with other centre of power. Great power status implies the quality of co-ruler of the world, part of a global oligarchy.

Resuming Russian great power logic, it entails fully independent foreign and domestic policy, considering itself part of a small category of great powers that have such privileged, including China and the United States<sup>43</sup>, regional hegemony and global decision power.

### **3. Russian great power logic- applications.**

As we explained in the first part of the paper, Russian great power logic is not an abstract notion and it reflects in concrete foreign policy actions. In two decades of interactions, Russia and the West passed

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<sup>41</sup> Dimitri Trenin, 2006, *cited work*.

<sup>42</sup> Howard Amos, *Russia Welcomes Syria Ceasefire as Proof of Great Power Status*, International Business Times, 29 of February 2016.

<sup>43</sup> Andrew Radin, *Clint Reach, Russian Views of the International Order*, Santa Monica: RAND Corporation, 2017.

through many crises of vary intensity. In order to illustrate how Russian great power logic influences the relations with the West, we chose three, that attracted the strongest reactions from Moscow: Kosovo 1999, Georgia 2008, Ukraine 2014. In all three cases, Russia used force and all are linked to the relations with the West.

### **3.1. Case Studies**

#### **Kosovo 1999**

In March 1999, NATO intervened in Federal Republic of Yugoslavia by launching air strikes that lasted 78 days aiming to put an end to the violence and repression against the Albanian ethnics in Kosovo. The Alliance legitimise its decision by invoking the Resolution 1244 issued by the Security Council in June 1999 on Kosovo that demanded immediate withdrawal of Yugoslav and Serb forces and the deployment of an international security presence in Kosovo. But the actual military intervention took place without UN mandate, that ticked many controversies and put on the international agenda heated debates regarding foreign intervention in sovereign states for human rights protection.

NATO intervention in Yugoslavia generated, at that moment, the biggest crisis in Russian Western relations after the end of the Cold War. Foreign Minister Ivanov accused NATO's leaders of war crimes and called the operation an act of genocide.<sup>44</sup>

As a response, Russia suspended the cooperation with the Alliance and tried to seize the Pristina airport.<sup>45</sup> Later Moscow revised its military doctrine placing a higher priority on nuclear deterrent and began to develop an integrated air defence system together with Belarus.

#### **Georgia 2008**

After Mihail Saakashvili came to power in the context of Georgian coloured revolution of 2003 that led to the resignation of Eduard Shevardnadze, Tbilisi attempted more and more to restore control over the breakaway regions South Ossetia and Abkhazia. Its effort culminated in august 2007 when Georgian army forces entered Tskhinvali, the capital of South Ossetia. Russian troops stationed nearby intervened quickly and entered the conflict supporting South Ossetia. Russian army, quantitative and qualitative superior, rapidly defeated the Georgian troops and Saakashvili was forced to accept the peace agreement negotiated by Paris with Moscow.

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<sup>44</sup> Bryan Frederick, Matthew Pavlock, Stephen Watts, Miranda Priebe, Edward Geist, *cited work*.

<sup>45</sup> *Ibidem*.

Later, Russia recognized the independence of South Ossetia and Abkhazia and included them as avant-posts in its defence system against the West. The war in Georgia lasted only 5 days and the number of casualties was small. It was a short and little war, but as Ronald Asmus said, it was a war that shocked the world.<sup>46</sup> In 2008, in Georgia, it was the first time when Moscow used force to protect its interest in the former soviet space.

Russian intervention in Georgia led to another crisis in relations with the West that appreciated Moscow's actions as disproportional and incompatible with the Helsinki Act. But, despite of the harsh western rhetoric, the consequences for Russia were minim and after a short period of frost in the relations with Moscow, things went back to normal.

Even though, the immediate cause of the conflict invoked by Moscow was the protection of Russian ethnics, as the Defence Ministry reported casualties among Russian peacekeepers and civilians during Georgian campaign in South Ossetia, according to a shared view among international relations experts, the root cause of the war is the Bucharest NATO Summit of 2008.

The cooperation between Georgia and NATO intensified after the coloured revolution of 2003 and, at the Bucharest Summit in 2008, even if neither Georgia or Ukraine were invited to join the Alliance, they received the commitment of future Accession enshrined in the Summit Declaration.<sup>47</sup> The perspective of Georgia and Ukraine joining NATO was defined by Russia as a “*direct threat*”<sup>48</sup> and played a key role in its future actions.

### **Ukraine 2014**

In autumn 2013, a series of protests brooked out following president Yanukovici decision not to sign the Association Agreement with the EU that escalated into violence between civilians and law forces. In February 2014, president Yanukovych was removed from power and a pro-European coalition assumed the government.<sup>49</sup>

Russia responded by launching two military operation, one in Crimea that led to the annexation of the peninsula and a second one,

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<sup>46</sup> Ronald Asmus, *A Little War That Shook the World: Georgia, Russia, and the Future of the West*, New York: Palgrave Macmillan, 2010, pp. 4-5.

<sup>47</sup> NATO, Bucharest Summit Declaration, [https://www.nato.int/cps/en/natolive/official\\_texts\\_8443.htm](https://www.nato.int/cps/en/natolive/official_texts_8443.htm)

<sup>48</sup> Vladimir Putin, *Press Statement and Answers to Journalists' Questions Following a Meeting of the Russia-NATO Council*, 4 of April 2008, <http://en.kremlin.ru/events/president/transcripts/24903>

<sup>49</sup> Bryan Frederick, Matthew Pavlock, Stephen Watts, Miranda Priebe, Edward Geist, *cited works*.

unrecognized, in Eastern Ukraine that evolved from protests to a separatist movement.<sup>50</sup>

Russia's reaction in Ukraine 2014 was the most aggressive reaction that Russia had to the rapprochement between former soviet states and the West and it represents a major challenge to European security – the borders in Europe were change by force for the first time after the Second World War.

This time, Moscow's actions did not remain without consequences—massive economic sanctions were imposed, it was excluded from the G8, cooperation with NATO was frozen and the Alliance consolidate its defence posture on the Eastern flank.

Russian intervention in Ukraine generated the biggest crisis in Russia West relations since the end of the Cold War, taking its toll over the entire security system.

### **3.2. Explications for Russian behaviour**

How did Russian great power logic influence, the decision-making process at Kremlin in these three ceases?

First, in all three we notice a “threat” that could be perceived by Moscow against the number one principle of great power status: **strategic independence**.

In Kosovo's case, both Russian and Western analysts observe Russia's concerns regarding the similarities with Serbia and thus, sharing the same destiny. According to Trenin, *“a popular Russian thesis at the time suggested that the difference between Serbia and Russia was that the latter had nuclear weapons, and thus was safe from Western invasion. Otherwise, it would share a similar fate. At the time, Western publics generally sympathized with the Chechens, as they did with the Kosovo Albanians.”*<sup>51</sup> In the same vein, Strobe Talbott explains that Russian politicians, generals and analysts speculate with distress that NATO's intervention in Yugoslavia is a preparation for a war against Russia that could begin by claiming the protection of Chechens' rights.<sup>52</sup>

Also, the controverts regarding the legality and legitimacy of the intervention are exploit by Moscow which accuses the Alliance of violating the principle of sovereignty.

In the context of subsequent US's foreign interventions in the name of democracy and human rights protection, Russia perceives Kosovo as part of a systemic threat to the security of the regime at home, a pattern of US's

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<sup>50</sup> Ibidem

<sup>51</sup> Dimitri Trenin, 2011, *cited work*, p. 105.

<sup>52</sup> Strobe Talbott, *cited work*, p. 301.

action that break the international norms in their efforts to maintain global dominance.<sup>53</sup>

Both events, Georgia 2008 and Ukraine 2014, occurred against the background of the coloured revolutions. A series of pro-Western and pro-democracy protests took place in the post-soviet space which led to changes in governments- Georgia (2003), Ukraine (2004), Kirgizstan (2005), Ukraine (2014). These movements were perceived as an expression of democratic values and had a positive impact in the West. Instead, Russian officials describe them as coup d'état organized by the West. Moscow frequently accused Washington of orchestrating regime change, replacing the legitim authorities with anti-Russian ones.<sup>54</sup> The allegations against the US also include the involvement in the anti-regime protests inside Russia and it seems that Kremlin concluded that the West is aiming to replace the current regime.<sup>55</sup> Trenin explains that “*like NATO’s enlargement, the color revolutions in Georgia (2003), Ukraine (2004), and Kyrgyzstan (2005) performed the task, in Western eyes, of expanding the space of freedom and democracy in the former Communist world. To the Kremlin, by contrast, the uprisings constituted a political challenge of regime change at home atop the geopolitical challenge of reducing Russia’s influence beyond its borders.*”<sup>56</sup> Furthermore, “*in the Kremlin’s eyes, the Russian protests, like the Arab Spring that had begun a year before and the color revolutions of the preceding decade, were largely part of a U.S.-led effort to subvert previously stable regimes around the world. They would be replaced with feeble but loyal democracies or, failing that, with controlled chaos—all in order to expand U.S. global influence. Vladimir Putin publicly suggested that the U.S. Department of State was engaged in rent-a-crowd activities in Russia, relying on Russian recipients of foreign grant money. The Medvedev interlude was over, at home as well as abroad.*”<sup>57</sup> Similarly, Nikolai Patrushev, Secretary of Russian Security Council, observed “The US administration expects that its actions will result in the decrease of life quality for the population in Russia and as a consequence massive protests will take place to removed the current regime from power, using the scenario of the color revolutions.”<sup>58</sup>

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<sup>53</sup> Andrew Radin, Clint Reach, *cited work*.

<sup>54</sup> *Ibidem*.

<sup>55</sup> *Ibidem*.

<sup>56</sup> Dimitri Trenin, *The Ukraine Crisis and the Resumption of Great-Power Rivalry*, Moscow: Carnegie Moscow Centre, July 2014.

<sup>57</sup> *Idem*, *Russia’s Breakout from the Post–Cold War System: The Drivers of Putin’s Course*, Moscow: Carnegie Moscow Centre, December 2014.

<sup>58</sup> Paul Sonne, “U.S. Is Trying to Dismember Russia, Says Putin Adviser,” *Wall Street Journal*, 11 of February 2015 apud Andrew Radin, Clint Reach, *cited work*.



These concerns are affirmed also in Russian strategic documents: *“the main threats to state and public security are:...the activities of radical public associations and groups using nationalist and religious extremist ideology, foreign and international nongovernmental organizations, and financial and economic structures, and also individuals, focused on destroying the unity and territorial integrity of the Russian Federation, destabilizing the domestic political and social situation -- including through inciting “color revolutions” -and destroying traditional Russian religious and moral values;”*<sup>59</sup> *“the practice of overthrowing legitimate political regimes and provoking intrastate instability and conflicts is becoming increasingly widespread;”*<sup>60</sup> *“the main external military dangers:... k) the use of information and communication technologies in the military-political purposes for acts contrary to international law, aimed versus sovereignty, political independence, territorial integrity of states and threatening international peace, security, global and regional stability; l) establishment in the states contiguous with the Russian Federation regimes, including as a result of the overthrow of legitimate public authorities whose policies threatens the interests of the Russian Federation.”*<sup>61</sup>

### **Regional hegemony**

As mentioned above, the perspective of Georgia and Ukraine joining NATO was considered by Moscow a direct threat: *“We view the appearance of a powerful military bloc on our borders, a bloc whose members are subject in part to Article 5 of the Washington Treaty, as a direct threat to the security of our country. The claim that this process is not directed against Russia will not suffice. National security is not based on promises. And the statements made prior to the bloc's previous waves of expansion simply confirm this.”*<sup>62</sup>

Georgia's strategic importance for Kremlin is not comparable with Ukraine's, but it is essential for Russian sphere of influence. With Georgia in NATO not only the Alliance expanded to Russian borders, but a domino effect could produce, Azerbaijan could be next, in this case Armenia would have to rely on the US to manage its difference with Azerbaijan.<sup>63</sup> As regards Ukraine, its western orientation deeply affects Kremlin's strategic interests. As, Zbigniew Brzezinski underlined, without Ukraine *“Russia*

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<sup>59</sup> Russian National Security Strategy, *cited work*.

<sup>60</sup> Ibidem.

<sup>61</sup> Military Doctrine of the Russian Federation, *cited work*.

<sup>62</sup> Vladimir Putin, 2008, *cited work*.

<sup>63</sup> Dimitri Trenin, 2011, *cited work*, pp. 96-97.

ceases to be a Eurasian empire”<sup>64</sup>, Ukraine is the key of Russian domination in Europe. Referring to the Ukrainian crisis, it is important to mention that Russian reactions came as a response at what seems to be a political challenge for Moscow, not a military one.<sup>65</sup>

Initially, UE was not perceived by Russia as a threat, its attention being focus on NATO. Moscow's attitude began to change once the Eastern Partnership was launch. For Russia, that wanted the former soviet states in the Eurasian Union, EaP seemed like a hostile takeover. Concerning Russian integration project, Ukraine's participation is perceived as an imperative, Eurasian Union, without Ukraine has little chances in becoming a viable economic bloc.<sup>66</sup>

### **Global co-ruling**

In Russian narrative, NATO intervention in Kosovo is often describe as a humiliation as Kremlin's stance was ignore and the campaign took place without UN mandate. Moscow prestige was undermined, proofing itself incapable of defending its allies, they can be tempted to orientate towards the West.

Georgia 2008 and Ukraine 2014 reflect Moscow's frustrations accumulated in two decades of interactions with the West. Regardless what strategy it adopted- cooperative or assertive, Moscow failed in obtaining access to the decision-making process of Western organisations or not even a limitation of NATO' s posture in the former soviet space. *“However, it is clear that the effectiveness of our cooperation will depend on the extent to which NATO respects the interests of the Russian Federation and the Alliance’s willingness to compromise on issues shaping the strategic environment in Europe and the world.”*<sup>67</sup>

*“But, this war (Russian- Georgian war) was a war that was aimed not only at Georgia, but at Washington, NATO, and the West more generally. It was aimed against a European Security system Moscow had come to see as tilted against itself and which it believed encouraged or enabled countries like Georgia to go West against its interests.”*<sup>68</sup>

Moscow's actions in Georgia send a message to NATO and non-NATO states that Russia is one more a force to be reckoned with and the times of strategic withdrawal are over, now being ready to use any means at its disposal, including military force, to protect its objectives in its area of

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<sup>64</sup> Zbigniew Brzezinski, *cited work*.

<sup>65</sup> Bryan Frederick, Matthew Pavlock, Stephen Watts, Miranda Priebe, Edward Geist, *cited work*.

<sup>66</sup> Stephen Larrabee, Peter Wilson, John Gordon IV, *The Ukrainian Crisis and European Security: Implications for the United States*, Santa Monica: RAND, 2015.

<sup>67</sup> Vladimir Putin, 2008, *cited work*

<sup>68</sup> Ronald Asmus, *cited work*, pp.4-5.

privileged interests.<sup>69</sup> If Georgia 2008 was a warning regarding Moscow's dissatisfaction with the post-Cold War order, Ukraine 2014 means the end of its partnership with the West<sup>70</sup>, as Trenin noted. *“This means that some can ignore everything, while we cannot protect the interests of the Russian-speaking and Russian population of Crimea. This will not happen. I would like everyone to understand this. We need to get rid of this temptation and attempts to arrange the world to one’s liking, and to create a balanced system of interests and relations that has long been prescribed in the world, we only have to show some respect.”*<sup>71</sup>

## Conclusions

Our research outlines three principals-strategic independence, regional hegemony and global co-ruling, which, to the extend they are respected or not in Moscow's perception, have a great impact on Russia's relations with the West. These are the main components of Russian great power logic and the historical records confirm that whenever Kremlin perceived a threat against them, its reactions generated crisis in Russian Western relations. Moreover, every time when Russia used force after 1991 was linked in vary ways with the recognition of its great power status as it is understood by Moscow.

Another result reveals the fact that post-soviet Russia is in a continuous search of methods to sustain its great power status and to gain international recognition of it, especially from the West.

In conclusion, the research results confirm our assumption that Moscow’s approach towards the West depends on Russian great power logic. However, along with this confirmation, arise questions that unveil not too optimistic realities regarding an eventual solution to current crisis, acceptable to all parties. For instance, how can we manage Moscow's need to have regional primacy, at which all proofs indicate it will not give up? A compromise from Western part means to violate the right of post-soviet state to affirm their sovereign will, a return to the Europe of Cold War, divided in sphere of influence.

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<sup>69</sup> Ibidem, p.6.

<sup>70</sup> Dimitri Trenin, 2018, *cited work*.

<sup>71</sup> Vladimir Putin, 2014, *cited work*.

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# GEORG SIMMEL AND THE PROBLEM OF THE RELATIONSHIP BETWEEN THE ISOLATED INDIVIDUAL, THE DYAD AND THE TRIAD

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**Abstract:** *Georg Simmel's thinking was concerned with the strict determination of the study object specific to social sciences in general, as well as sociology as science in particular. In this sense, sociology is understood as a new scientific method, whose sphere of application is universal, and can therefore be successfully applied to the vast majority of the human condition issues, being capable to build a common basis for a wide range of issues in different areas of research. Another major contribution brought by philosopher and sociologist Georg Simmel to the field of study of sociology concerns the relationship between the isolated individual, the dyad and the triad.*

**Keywords:** *Sociology as a science, the isolated individual, the dyad, the triad.*

## I. The object of study specific to social sciences

The sociologist and philosopher Georg Simmel has as one of his main objects of his reflections the society, as well as the issue of culture. In addition, Simmel has made a decisive contribution to shaping the field of research and interrogation specific to sociology as an independent science. In this sense, Simmel argues that one of the fundamental tasks of the sociology is to describe the various forms of existence of the human community, but also the rules and principles according to which a person becomes a member of a group with regard to which he/she feels a strong sense of belonging, as well as the relations established between the various groups. One of the main concerns of the sociologist is not to have an unsubstantiated claim in drafting the laws of the social development, and this because there is no universal law whose scope encompasses the society as a whole, while each element of society acts according to the laws of nature.

The observation from which any analysis of the human condition must begin is that all the action and all aspects of human life are determined by the fact that it is a social being<sup>1</sup>. And to build a science on the measure of

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<sup>1</sup> Simmel, G., *The Sociology of Georg Simmel*. Glencoe, Illinois, The Free Press, 1950.

this fundamental fact, namely to have the social component as a determinant, is takes what Simmel calls a sociological point of view. And this require, in the first instance, the development of interpretations of social or historical phenomena. This interpretations should aim to highlight of "societal production", the social character of all phenomena and processes within the society.

Therefore, the German sociologist consider that the fundamentals of sociology as a science cannot be fixed a priori within rigid concepts, in other words, he rejects as inappropriate the positivist approach on sociology<sup>2</sup>. On the other hand, confronted with the complexity of social reality, the sociologist sees himself placed in a position in which is unable to fragment the subject of his knowledge into tiny parts, which can be analyzed and understood separately, as well as capturing basic social relationships and processes. The society cannot be understood as an entity possessing a degree of absolute autonomy, thus constituting an object of study whose abstract nature is predominant, but neither the individualistic point of view cannot be proposed to be followed and this because the social reality must not be conceived in a strictly atomistic way, it does not reduce itself to a multitude of isolated elements that have nothing to do with each other.

In order to configure itself as a self-sustained science, it is necessary for sociology to have its own field of knowledge, well differentiated from other`s science knowledge objects. What cannot be said clearly in the case of sociology. In this sense, sociology is first established as a method, the most appropriate method to study the human condition in general. To better illustrate the fact that sociology should be understood as a method, Simmel appeals to an analogy with the logical induction method, whose emergence in the research activity was so revolutionary that it was able to penetrate into all sorts of issues and areas of research. And the results were truly amazing, succeeding in imposing new solutions, which have replaced those who seemed to be irreplaceable. This situation is somewhat similar in the case of sociology, Simmel argues, and this because his research object is circumscribed to the fundamental idea that man must be understood as a social animal, and society is the environment that contains all historical events without exception. And this idea is hardly something new, since it originated back in ancient Greek. Novelty lies, however, in something else. Sociology bring with it a new scientific method, whose sphere of application is universal, and can therefore be successfully applied to the vast majority of the human condition issues. As a method, sociology is capable to build a common basis for a wide range of issues in different areas of research.

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<sup>2</sup> Frisby, D., *Georg Simmel*. London, Routledge, 2002.

In this sense, sociology - understood as a social philosophy rather than a purely empirical science - has the advantage of being able to continue and deepen those research that come from fields of knowledge very distant from relative to another<sup>3</sup>. One of the techniques that sociology can use as a method is to use the abstraction of specific elements within the historical reality, followed by the recombination of those elements in a specific research, where there may be three main directions of analysis. First of all, these elements are nothing more than the effect of masses on individual by a direct influence. Secondly, the disposition or even willingness to sacrifice himself in favour of others as it appears in religious context can be shared by other groups that do not have an obvious religious character. Finally, one can resort to the adoption of "generalized attitudes to the world"<sup>4</sup>, in which an adequate example might be the perspective of individualism in opposition to those who are followers of maximal uniformity.

Next, the German sociologist and philosopher argues that human life can be captured by three points of view: objective, subjective and social. And what really matters, in Simmel's analysis, is social perspective. In fact, he defines sociology as the study "of the entire historical life, in so far as it is socially formed". The next step of crystallization of sociology as a science approach is to examine the forms of society itself, whose existence determines the impossibility of understanding a certain society by simply the gathering of the people that make it up. In other words, in order to understand and research a society it is neither necessary to nor useful the analysis of each human individual that makes up; apart from the rational evidence that implies the irrationality of such an approach, the main reason why the mere sum of the individuals that make up it is not synonymous with society itself lies in the existence of these forms specific to society, of which he offers the following examples: authority, representativeness, division of labour, competition, superiority and subordination, inner solidarity closely linked to exclusion of outsiders etc.

The attempt to understand society from the perspective of social sciences shows us a fact of special simplicity: in fact, society, says Simmel, is nothing but a name that includes a certain number of individuals, whose essential feature is the fact that they are connected through social interaction. In this sense, society cannot be understood either as a "substance", that is kept unaltered in the face of external changes, and not something concretely, but, rather, society is an event whose main function is to receive, to realize the destiny of every human being, and also the way in which an individual develops in relation to others. It should not be

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<sup>3</sup> Frisby, D., *Georg Simmel*. London, Routledge, 2002.

<sup>4</sup> Simmel, G., *The Sociology of Georg Simmel*. Glencoe, Illinois, The Free Press, 1950.



forgotten that sociology has a pronounced abstract character; so, it is its task to analyze a certain social phenomenon, but not to describe how operate all the particular existences involved in the phenomenon. The examples offered by the German thinker to illustrate this idea are fully eloquent: sociology can approach as the object of research the history of marriage, but it is not necessary to describe the married couples in particular, or the principles according to which an institution is organized, without describing a typical day in which such an organization operates. Furthermore, sociology is not the only social science that use abstraction in its cognitive approach; another social science that frequently resorts to abstraction is economy. But what particulars sociology from others social sciences is that it uses abstraction based on concrete reality, and all this process of knowledge is executed "under the guidance of the concept of society"<sup>5</sup>.

As a consequence, the perspective that sociology opens must take into account the reality that man`s nature is directly determined by his social condition, deriving from the permanent interaction that an individual maintains with others. And society is nothing else than 'an ongoing creation of its subjects'<sup>6</sup>. It is necessary to point out that all specific human products bear the mark of his sociability, and cannot be regarded as individual creations, and, in this sense, Simmel introduce the expression "societal production" to explain that all specific human phenomena are caused by interactions between people or, in certain situations, may be similar to these interactions. If we consider only individuals in isolation, then those phenomena could not appear.

Finally, societal production basically means that phenomena do not occur only through social life and this in two main directions. First, the simultaneity of interaction between individuals results in the production of something that can only be explained following of the interaction between humans and not on its own basis. On the other hand, reality shows us that there is a succession of generations, so that every man is an heir of specific traditions, customs etc., and these products of inherited culture merge with the creations made by each individual, so that it can never be rigorously separated. Moreover, there is no need for that, says Simmel, and this is because man, unlike animals, "is not only a successor, but also an inheritor"<sup>7</sup>.

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<sup>5</sup> Simmel, G., *The Sociology of Georg Simmel*. Glencoe, Illinois, The Free Press, 1950.

<sup>6</sup> Elliott, A. (ed.), *The Routledge Companion to Social Theory*. Routledge, Abingdon, 2010.

<sup>7</sup> Simmel, G., *The Sociology of Georg Simmel*. Glencoe, Illinois, The Free Press, 1950.

## **II. The relationship between the isolated individual, the dyad and the triad**

Another major contribution brought by philosopher and sociologist Georg Simmel to the field of study of sociology concerns the relationship between the isolated individual, the dyad and the triad. Undoubtedly, from the point of view of social interaction, the simplest structure is that composed of two elements. However, it does not follow from this that the existence of a separate sociological category, called by Simmel as the isolated individual, must be ignored. And the two dimensions from which individuality can be analyzed are freedom and isolation. In this case, the main reason for the lack of social interaction is provided not by the physical absence of society or large or small groups of people, but by an imaginative projection on the society, followed by a refusal and a rejection of this mental construct with which society is identified from the perspective of the isolated individual. Society cannot be perceived otherwise than by keeping it at distance, being away from it.

And the causes from this departure from society as a hole can be multiple, for example the disappointment that follows the break-up of a relationship of love or friendship, or the nostalgia of past events etc. Isolation is understood by Simmel as an interaction between two people, one of whom leaves the other after having previously exercised a certain influence on it. Therefore, the person who left is an isolated individual only in the realm of reality, at the imaginary and emotional level, he or she continues to exist and to act in determined ways. In order to emphasize this idea of isolation, the German philosopher appeals to an idea from the domain of knowledge of psychology, according to which an individual experiences the feeling of isolation in the most pressing way not necessary when he is physically alone, but when he is in the midst of a group of people whom he perceived to be strangers, for example at a party where he does not know anyone, and the other participants seem to be in a very close relationship with each other. And the fact that a particular group allows the existence of an isolated individual within it becomes an essential feature of that group.

Another relevant example of this situation is the one in which a person is stuck in a crowded city traffic. But the truly dramatic conclusion of this state of fact is that a multitude of antisocial actions and behaviours such as crime, terrorism, drug use or suicide are caused not only the specific peculiarities of an individual, but also certain social conditions that have the role of favouring the emergences and especially the development of these behaviours.

As we said above, the German sociologist and philosopher considers that the two essential features of the isolated individual are isolation and

freedom. Isolation means, in certain given situations, an interruption - even temporary - of interaction and socialization between two or more people. Simmel includes in this category any monogamous marriage, which, he observes, may seem paradoxical, and this because marriage is usually regarded as a social environment not only opposed, but also hostile to isolation. Yet, we can talk about isolation, including within marriage. But we must operate the distinction between the situation where the two spouses look at the moments of loneliness offered by marriage as moments of true satisfaction despite the happiness offered by the common family life and the circumstance in which the family life is never interrupted by moments of loneliness, which can be explained, on the one hand, by the fact that isolation is no longer attractive to spouses, being completely suppressed by the joys of domestic life and, on the other hand, that the feeling of love between spouses has diminished considerably, and they pay great attention to the surveillance of the other due to the suspicion that he or she takes advantages of the moments of loneliness to become unfaithful. From all this, it follows that isolation cannot be reduced to a single individual and cannot be defined as a simple denial of association.

Usually, freedom, like isolation, is commonly understood to be in opposition to the association and as a feature of individuality. In other words, is talk of freedom in the case of individuals who are not pressed by any kind of external coercion from others. And the examples that the common sense provides in this sense are those about individuals who have isolated themselves from society, such are those living in the solitude of the mountains or forests that are hardly accessible, and this for reasons unrelated necessary with religion. Simmel opposes to the understanding in this narrow, devoid of depth way and lack of the understanding of the nuances offered by the social life. In this respect, for the individual who interacts with his fellows, freedom opens new opportunities, inaccessible to the people in the examples above. Freedom is defined in this new context as a special relationship with the social environment. At this point, it should not be forgotten that freedom is a correlative term, that cannot make sense in the absence of the other term in relation to which it is in a direct relationship. In connection to the social man, freedom must not be regarded as something that can be obtained once and for all, neither of something of a material nature. In the sense of Georg Simmel, freedom must not be confused with the existence of something like solipsism, is not a "condition limited to one individual"<sup>8</sup>. but it is a characteristic of connecting people, of the interaction between them; in other words, freedom means social action. Freedom is not a state of fact, but a

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<sup>8</sup> Simmel, G., *The Sociology of Georg Simmel*. Glencoe, Illinois, The Free Press, 1950.

continuous process, similar to the struggle of people for their natural rights.

In the continuation of the analysis, Simmel argues that there is an essential difference, not only of nuance, between the simplest form of human groups, namely the two member-group, called the dyad, and the group of three people, called the triad<sup>9</sup>.

The dyad is a special form of group because it disappears as soon as one member decides to leave the group, while for groups with more members the loss of one of them does not necessarily have the effect of disintegrating them. This fragility of the dyad also gives it a special character, which is a very high degree of intimacy, that can never be matched by relations within larger groups. As a consequence, the dyad is the social group that best favours keeping secrets. As soon as the group expands, it is supposed that secret or intimacy information becomes more predisposed to be disclosed. On the other hand, no other person can alter the existing balance between the two members of the group, which means that the dyad has much greater internal stability than other types of groups. Thus, a first difference between the dyad and the other types of groups resides in that the dyad has a special relationship with each of its elements, which is different than the relationship established inside the other types of groups<sup>10</sup>.

In other words, in order to be brought to life, a dyad needs of both members, while to die, the same dyad only needs a single member. As we have seen, the dyad is characterized by great fragility, and this is because the withdrawal or death of one of the members is similar to the disappearance of the dyad itself. And this fragility gives to the members of the dyad the feeling that each of them is irreplaceable, but at the same time given that the death of a man can occur at any moment and completely unprepared, and the presumption that the group is exposed, that the dyad is permanently in danger of disappearing.

The main features of dyad, in the view of Georg Simmel, are the following: banality and intimacy. First of all, banality takes into account the repetitive character of life situations, actions, interactions, and behaviours specific to dyad. There is, therefore, a very high frequency of repeating situations/aspects of life, and this is not a surprise, it does not come unexpected, but is, in most cases, aware of the members of the group. The sociological nature of the dyad, emphasizes Simmel, lies in the fact that dyad cannot be separated from immediate interaction. On the

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<sup>9</sup> Borgatta, E.F., & Montgomery, R.J.V., (2000), *Encyclopedia of sociology (2<sup>nd</sup> ed.)*. New York, Macmillan Reference.

<sup>10</sup> Simmel, G., *The Sociology of Georg Simmel*. Glencoe, Illinois, The Free Press, 1950.

other hand, intimacy as the defining feature of the dyad consists in the conviction shared by every individual, namely the fact that what distinguishes him from other people, which individualizes it is something special in a profoundly qualitative sense. The intimacy specific to dyad resides, in conclusion, in that its members see only themselves, they are receptive only to each other, which only rarely occurs within larger groups than the dyad. And one of the most common feelings that arise as a result of the high degree of intimacy specific to dyad is the jealousy felt by one of the partners against the other.

In his analysis of the dyad, Simmel proposes the distinction between two types of individuality: individuality determined, on the one hand, and strong individuality, on the other. People with determined personality tend to value the superiority of the group to which they belong, as well as the inclination to avoid being part of large groups of people in whom it is possible to wake up in a position to face a certain majority. As a result, individuals with a determined individuality are prone to initiate and develop social relationships like dyad, because the feeling of vulnerability that characterizes them makes them dependent on other person. On the symbolic level, there is a sort of reunion. In contrast, individuals with a strong personality show a powerful inclination to measure their strengths in opposition to others. And dyad is not the ideal group model for a person belonging to this category; the emphasis is placed on the quantitative side and on the confrontation with a high number of opponents, which, due to specific abilities, he or she succeeds in channelling one against the other, so that at the end of the confrontation the person with a strong personality invariably succeeds in winning.

The transition from the dyad to the triad, however, carries with it a series of fundamental changes, modifying the very nature of relations between the two members. Although apparently the differences between the dyad and the triad are minor, referring only to the size or the presence of one individual in addition, however, the nature of the interactions within the group changes radically. Moreover, the difference between the dyad and the triad is significantly more pronounced than that between the triad and the groups made up of four or more people. The most eloquent example in this sense is provided by people's frequent claims that a family with a single children has more in common with the families with two or more children than with the family without children. It can be said, without exaggeration, that the two types of families - without children and with one child - are radically different.

One of the triad-specific tendencies is to be divided between a pair on the one hand and a single/isolated person, on the other hand; it creates

thereby a coalition between two members of the group - a dyad - against the third.

In this situation, the third member can be invested with three roles. A primary role is that of a mediator or a non-partisan, whose function is to bring even closer the two members of the dyad. A relevant example is the birth of a child in a couple, which most often increases affective ties between parents. There are even some people who consider that a marriage cannot be considered as fulfilled in the absence of its third element. Also a disagreement/dispute between two friends can be solved by the intervention of a third person. In conclusion, the main objective of the person invested as mediator within the triad is to protect and save the unity of the group, to eliminate the dissensions that may result in disintegration of the triad. However, as Georg Simmel very perceptibly observes, the person who plays a non-partisan role can go beyond this major objective of keeping the unity of the group intact and thus pursuing strictly personal goals based on selfishness. In this way, it opens the possibility of apparition of the second role.

The second role is defined by Simmel through the expression *tertius gaudens* (the third enjoys); respectively, a third party takes advantage of a situation where both conflicting persons are trying to win it on its side. The main feature of this role is impartiality, which brings with it countless advantages for the third member of the group. In such a situation, there can be a party whose electoral score is low, but there is a great rivalry between two other parties that have achieved high percentages in elections, but none of them succeeded in having enough votes to secure the majority needed to form the government. Without this small party nothing essential can be done, only this one can tilt the balance in one direction or the other, so the leadership of the party does nothing but take advantage of its privileged position and awaits the gaining of advantages that go far beyond what would have been due to the electoral score obtained. Generally, a person in the position of *tertius gaudens* occupies a dominant position, which gives him a certain aura of superiority assumed as if it had not been acquired often after a conjuncture but as a result of personal merits or belonging to a particular group.

The third role is named by Georg Simmel through the famous phrase *Divide et impera* (Divide and Conquer). In this case, it is the third person that encourages others to enter into conflict, in order to control them and to get as many advantages as possible from the conflicting situation. This action to divide the other parties is deliberately committed, with different types of strategies being developed in this respect. Thus a parent can gain a greater degree of control over his two children by encouraging them to

compete in order to obtain greater favors and more affection from their parents.

The first and simplest of the stratagems that a third party can apply for the purpose of induce division is to prevent the unification of disparate elements, which, taken individually, are of no great importance, nor have a power that it is worth considering, but if they manage to unite and form a whole, they can gain a great deal of strength and prove very difficult to dominate. Also, in the event of reunification, these elements become a potential danger to the third party. On the other hand, the association of large groups of individuals is viewed, at the imaginary-psychological level of those who hold political power in a certain society, most often as a danger to the rule of law, even at a potential level, just in the conditions in which this association pursues objectives other than political ones.

Another technique that is practiced with the aplomb of a person playing the role of a third person in this case is to perform various actions or to make certain insinuations in order to determine the appearance of the sense of envy between the two. If this feeling has taken root, the game is practically won by the third person, since envy is a barrier almost impossible to overcome in the path of association between two or more people. One of the most effective types of actions that seek to induce the feeling of envy is, according to Simmel, the principle of unequal distribution of value, the consequences of which are, in fact, predictable. In the same category we can include the feeling of distrust, with the mention that it mainly targets large groups of people, while envy is an effective incentive for the establishment of hostility between people, provided it is applied mainly in small groups.

The person in the role of *Divide et impera* aims to trigger a state of conflict in order to take advantage of the situation in which the two sides discredit each other; a suggestive example is that of people who run for the same job in an organization, and one of the candidates is discreetly challenging others to face each other, with the sole aim of undermining them. In this way, the conflicting parties destroy any chance of taking up the desired job, while the third party has an open path to achieve his or her intended purpose.

In order to succeed in all of the above-described situations, it is necessary to respect a fundamental condition, namely: the ability of the third party to keep the distance between the actions that converge to the division of others and the fact that it is himself that triggers these actions, which implies the adoption of a behavior that leaves no room for suspicion from others. No one should suspect anything, and especially the fact that the real enemy is elsewhere and acts in secret. But the most important idea is represented by Simmel's observation that the success of adopting the

role of *Divide et impera* is often ensured by human nature itself, more precisely by the fact that people, when they feel a high degree of hostility to one another, feel greater satisfaction in maintaining the existing conflict between themselves than in focusing exclusively on achieving those truly important goals.

In conclusion, Simmel points out that triad or larger groups generally do not differ from dyad by quantitative criteria or by placing in antithetic universes, but they imply the emergence of new processes such as games and strategies cannot develop within a dyad group. Within a group, the behavior of its members is largely independent of the personality characteristics of each individual member, independently analyzed.

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# JAPAN'S CROSS CULTURAL KIDS (CCK) AND THEIR QUEST FOR IDENTITY

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**Abstract:** *The present paper discusses two minorities in Japan, kaigai/kikoku shijo, and Brazilian nikkeijin through the prism of Pollock and Van Reken's concept of Third Culture Kids (TCK) and Cross Cultural Kids (CCK), and reflects on their problems related to cultural identity and coping mechanisms for survival in a highly segregating society.*

**Keywords:** *Cross-Culture Kids/Third Culture Kids, Japan, identity, kaigai/kikoku shijo, Brazilian Nikkeijin*

Japan has a strong image of a monoethnic society.<sup>1</sup> Japanese children are taught that "the Japanese" are a homogeneous, uniform nation, and the so-called "nihonjinron", or theories of Japanese uniqueness, are explaining how the Japanese resemble a large family whose members live in harmony and unspoken understanding.<sup>2</sup> However, as Murphy-Shigematsu observes, Japan has a plethora of ethnic and social minority groups and a large portion of its "homogeneous" population has in fact heterogeneous origins.<sup>3</sup> Nevertheless, by virtue of the monoethnic myth, upheld by Japanese policymakers and promoted domestically and abroad, Japanese society largely ignores the minorities that are hiding in plain sight (burakumin, Ainu, Okinawan, hibakusha, kaigai/kikoku shijo, LGBT, Zainichi Koreans and Chinese) as well as those more conspicuous (bi-racial/cultural children – the so-called *haafu*, Nikkeijin, Muslim, immigrants, refugees, and other foreigners), preferring to pretend they do not exist. Murphy-Shigematsu stresses that public opinion in Japan is largely oblivious of the considerable diversity of the population, being "constantly reminded that they are special and fortunate to live only among themselves, and therefore able to enjoy a supposedly easy communication, trust, and understanding, without the allegedly terrible problems of multiethnic states".<sup>4</sup>

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<sup>1</sup> Stephen Murphy-Shigematsu, "Multiethnic Japan and the monoethnic myth", *Melus*, Vol. 18, No. 4, 1993, p. 63.

<sup>2</sup> Murphy-Shigematsu, p. 65.

<sup>3</sup> Murphy-Shigematsu, p. 63.

<sup>4</sup> Murphy-Shigematsu, p. 65.

Referring to her own experience as a Japanese American, Dorinne Kondo points out that most Japanese she knew “seemed to adhere to an eminently biological definition of Japaneseness.”<sup>5</sup> Thus, while foreigners are considered inapt to acquire perfect Japanese language skills and considered “henna gaijin” if they speak flawless Japanese, Japanese Americans and other people of Japanese ancestry born overseas who seem to lack linguistic and cultural competence are met with puzzlement and exasperation, “how can someone who is racially Japanese lack “cultural competence”?”<sup>6</sup>

The present paper addresses the complex problem of identity, “Japaneseness”, self-perception and how Japanese society perceives two particular minorities, *kaigai/kikoku shijo*, and Brazilian *Nikkeijin*, whose main commonality is that, in spite of their self-perception as Japanese, their multi-cultural upbringing causes them to have difficulty finding their place in the monoethnic Japanese society.

### **1. Cross-Cultural Kids (CCK) and Third Culture Kids (TCK)**

The concept of Cross-Cultural Kid (CCK) is defined by Van Reken & Bethel as "a person who has lived in - or meaningfully interacted with - two or more cultural environments for a significant period of time during developmental years".<sup>7</sup> The term includes children who move between cultures due to a parent's career, known as Third Culture Kids (TCK); bi/multi-cultural and bi/multi-racial children, or children born to parents of different cultures or races; children of immigrants; children of refugees; children of ethnic minorities; international adoptees; and "domestic" TCKs, or children whose parents moved around various subcultures in the child's home country.<sup>8</sup>

The concept of Third Culture Kids (TCK), considered "the petri dish"<sup>9</sup> used to study and analyze for the first time the experiences of children growing up between cultures, was introduced in mid-1950s by social anthropologists John and Ruth Hill Useem, and was used by Pollock and

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<sup>5</sup> Dorinne Kondo, *Crafting selves: power, gender and discourses of identity in the Japanese workplace*. Chicago, IL: University of Chicago Press, 1990, p. 11.

<sup>6</sup> Kondo, p. 11.

<sup>7</sup> Ruth Van Reken & Paulette Bethel, "Third culture kids: Prototypes for understanding other cross-cultural kids", *Intercultural Management Quarterly*, Fall 2005,

[http://www.eurotck.net/wp-content/uploads/2016/05/06\\_cross\\_cultural\\_kids.pdf](http://www.eurotck.net/wp-content/uploads/2016/05/06_cross_cultural_kids.pdf) (retrieved March 11, 2019).

<sup>8</sup> Van Reken & Bethel, p. 3.

<sup>9</sup> Pollock, David C. and Van Reken, Ruth E., *Third Culture Kids: The Experience of Growing Up Among Worlds*, London: Nicholas Brealey, Revised edition, 2009, p. xiv.

Van Reken in their book *Third Culture Kids: The Experience of Growing up Among Worlds*. A TCK is defined as,

A person who has spent a significant part of his or her developmental years outside the parents' culture. The TCK builds relationships to all of the cultures, while not having full ownership in any. Although elements from each culture may be assimilated into the TCK's life experience, the sense of belonging is in relationship to others of similar background.<sup>10</sup>

The first culture is understood to be the parents' "home" culture, the second culture is the culture of the host country.<sup>11</sup> The third culture Useem and colleagues also called "interstitial culture", and denotes "the behavior patterns created, shared, and learned by men [sic] of different societies who are in the process of relating their societies or sections thereof, to each other".<sup>12</sup> Pollock and Van Reken stress that the third culture is an abstract culture, created through the interactions of the members, a "culture between cultures", or the shared culture of the expatriate community.<sup>13</sup>

Also referred to as "global nomads", "cultural chameleons", or "cultural hybrids"<sup>14</sup>, TCKs were largely discussed in the media and attracted the attention of the expatriate communities and international school educators.<sup>15</sup> The term was used to describe children who move abroad during their formative years due to their parents' career choices, such as corporate, diplomatic, military, religious or NGO sectors.<sup>16</sup> One distinctive feature, which differentiates them from other CCKs is that the typical TCKs who belong to economically privileged categories, are expected to return to their home countries upon completion of the parents' assignment and therefore do not need to blend in their host cultures and are rather "outsiders who do not belong, but gain a new cultural dimension by virtue of living in a different cultural environment".<sup>17</sup>

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<sup>10</sup> Pollock & Van Reken, p. 13.

<sup>11</sup> Pollock & Van Reken, p. 14.

<sup>12</sup> John Useem, Ruth Useem, & John Donoghue, "Men in the middle of the third culture: the roles of American and non-western people in cross-cultural administration. *Human Organization*, Vol. 22 No. 3, 1963, p. 169.

<sup>13</sup> Pollock & Van Reken, p. 15.

<sup>14</sup> Andrea M. Moore & Gina G. Barker, "Confused or multicultural: Third culture individuals' cultural identity", *International Journal of Intercultural Relations*, Vol 36, Issue 4, 2012, p. 553.

<sup>15</sup> Danau Tanu, "Toward an interdisciplinary analysis of the diversity of "Third Culture Kids"", in Saija Benjamin & Fred Dervin (eds.) *Migration, Diversity, and Education: Beyond Third Culture Kids*, Palgrave Macmillan, 2015, p. 13.

<sup>16</sup> Tanu, p. 13.

<sup>17</sup> Ann Baker Cottrell, "TCKs and other Cross-Cultural Kids", *Japanese Journal of Family Sociology*, Vol. 18, No. 2, 2007, pp. 54-65, p. 56.

In the preface of their book *Migration, Diversity, and Education: Beyond Third Culture Kids*, Benjamin and Dervin warn against the so-called "macdonaldisation" or excessive simplification of the concept of Third Culture Kids as described by the Useems and question its exclusive application to privileged people and not to refugees or migrant workers.<sup>18</sup> This prompted Ruth Van Reken, the co-author of *Third Culture Kids: The Experience of Growing up Among Worlds*, to broaden the concept of TCKs into Cross-Cultural Kids (CCKs), so that it would include other categories of children from different economic backgrounds, but with similar experiences. Moore and Barker consider that Pollock and Van Reken's definition should not be limited to children, but can well be renamed as TCI, to include both children and adults who reached maturity while experiencing two or more different cultures.<sup>19</sup>

### **CCKs - advantages and challenges**

All CCKs share the experience of growing up in a culturally mixed environment, some by relocating to different countries, such as TCKs, immigrants, refugees, or international adoptees, and others without leaving the home country, such as the so-called "domestic TCKs", children of bi-/multi-racial parents, those of bi-/multi-cultural parents, or education CCK (children who attend international/foreign schools in the home country).<sup>20</sup> Their mobility gives them the advantage of an expanded worldview, enabling them to quickly adapt to new situations as compared to their locally based peers.<sup>21</sup> Many CCKs who experience more than one culture have bicultural competences, which Moore and Barker define as "knowledge of cultural beliefs and values of two cultures, a positive attitude toward both groups, and communication competency in both cultures".<sup>22</sup> Dewaele and Oudenhoven quote Byerly who refers to former President Barack Obama as the prototype of successful TCK, as an individual with "a global perspective, being socially adaptable, intellectually flexible, able to think outside the box and reconcile different points of view".<sup>23</sup>

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<sup>18</sup> Saija Benjamin & Fred Dervin (eds.) *Migration, Diversity, and Education: Beyond Third Culture Kids*, Palgrave Macmillan, 2015, p. 2.

<sup>19</sup> Moore & Barker, p. 553.

<sup>20</sup> Pollock & Van Reken, pp. 31-32.

<sup>21</sup> Dodie Limberg & Glenn W. Lambie, "Third culture kids: Implications for professional school counseling", *Professional School Counseling*, Vol. 15, No. 1, 2011, p. 47.

<sup>22</sup> Moore & Barker, p. 560.

<sup>23</sup> B. Byerly, 2008, [benbyerly.wordpress.com/2008/12/15/our-tck-president-obama-and-his-team-of-third-culture-kids/](http://benbyerly.wordpress.com/2008/12/15/our-tck-president-obama-and-his-team-of-third-culture-kids/), in J. M. Dewaele & J. P. van Oudenhoven, "The effect of multilingualism/multiculturalism on personality: No gain without pain for third culture kids?", *International Journal of Multilingualism*, Vol. 6, 2009, p. 445.

Since many CCKs receive education and socialize with members of the host culture(s), they are functional multilinguals, aptly switching between languages and negotiating communication situations, which, according to a study conducted by Dewaele and van Oudenhoven, reflect positively on their open mindedness score.<sup>24</sup> Multilingualism allows CCKs to effortlessly shift between cultural identities, and to even operate from the standpoint of an insider.<sup>25</sup>

However, despite multiple advantages which come with their cosmopolitan image, some of the benefits resulting from multiple cultural experience tend to be cancelled by many challenges CCKs are facing, many of which are connected to their sense of identity and belonging.

Cultural identity is a concept which it holds a special importance for children and adolescents exposed to more than one culture. Whiting and Child define cultural identity as a “custom complex”, including “customary practice and ...the beliefs, values, sanctions, rules, motives, and satisfactions associated with it” (cited in Schweder et al.).<sup>26</sup> Jensen notes that, in the process of forming their cultural identity, children with multicultural experiences adopt the custom complexes of more than one community.<sup>27</sup> Jensen, Arnett & McKenzie stress that, as they make choices pertaining to ideology, love or work, they tend to choose the values of the culture they identify with.<sup>28</sup> Unlike adults, CCKs have to leave their home countries before they form a sense of personal and cultural identity<sup>29</sup>, and before being anchored in their home culture's values and beliefs.

Multicultural children, who move between different cultures may benefit from multiple exposures to different values and beliefs, but they often experience confusion, a sense of rootlessness, and feel “bereft of a sense of home”.<sup>30</sup> In particular, children of immigrants who are discriminated against and marginalized tend to experience these negative feelings more acutely, as they do not feel at home in either their culture of

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<sup>24</sup> J.M. Dewaele & J.P. van Oudenhoven, “The effect of multilingualism/multiculturalism on personality: No gain without pain for third culture kids?”, *International Journal of Multilingualism*, Vol. 6, 2009.

<sup>25</sup> Moore & Barker, p. 560.

<sup>26</sup> Shweder, R.A., Goodnow, J.J., Hatano, G., LeVine, R.A., Markus, H., & Miller, P.J., The cultural psychology of development: One mind, many mentalities. In W. Damon (Ed.), *Handbook of Child Psychology* (5<sup>th</sup> ed., Vol. 1, pp. 865–938). New York: Wiley, 1998, p. 872.

<sup>27</sup> L.A. Jensen & C.A. Flanagan, “Immigrant civic engagement: New translations”, *Applied Developmental Science*, Vol. 12, No. 2, 2008, pp. 55-56.

<sup>28</sup> Lene Arnett Jensen, Jeffrey Jensen Arnett, and Jessica McKenzie, “Globalization and cultural identity”, in S.J. Schwartz et al. (eds.), *Handbook of Identity Theory and Research*, Springer, 2011, p. 286.

<sup>29</sup> Pollock & Van Reken, p. 40.

<sup>30</sup> Jensen, Arnett & McKenzie, p. 294.

origin or their host culture.<sup>31</sup> The feeling of “not belonging” is prone to cause psychological problems, such as depression, suicide, or hostility and even aggression.<sup>32</sup>

As Pollock and Van Reken point out in their definition of TCKs, they “build relationships with all of the cultures while not having full ownership of any”.<sup>33</sup> Many of the stories of TCKs or CCKs are pervaded by a sense of rootlessness, of not belonging to any culture, of being raised in a neither/nor world.<sup>34</sup> Moreover, frequent relocations which many of the CCKs experience during their childhood and teens force them to say goodbye to familiar places and people, and move to new places, with unfamiliar customs and people, which induces a sense of loss and grief. The questions “Where are you from?” or “Where is home?” are the most difficult for them to answer because, although they have experience of different cultures, they feel they don’t belong completely to any culture.<sup>35</sup> For the CCKs/TCKs who relocate repeatedly, or for those whose parents do not share the same race or home culture the sense of “home” becomes diluted, as “home” may often mean a different place from their parents’ “home”.

What's more, even though many TCKs repatriate after the completion of their parents' job assignments, they find it hard to re-enter their home culture and reconnect with people after years of absence. They are most of the time perceived as “different”, or they themselves feel different, which adds to their sense of alienation.

## **2. CCKs in Japan: “Princes and Paupers”**

In this part we will discuss and compare two categories of CCK: *kaigai/kikoku shijo*, and Brazilian *nikkeijin*. *Kaigai/kikoku shijos*, who resemble typical TCKs, are children who accompany their parents to their overseas business postings. Brazilian *nikkeijin*, one of the most numerous Japanese communities living outside Japan, are the descendants of Japanese immigrants to Brazil, who, due to their Japanese heritage, are allowed to live and work in Japan. They are concentrated in a few prefectures in Japan (Gunma, Aichi, Shizuoka, and Kanagawa), and are usually employed in unskilled jobs mainly in automotive industry and other so-called 3D jobs (dirty, dangerous, difficult). We will examine a few similarities, differences and coping strategies of these two groups of CCKs.

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<sup>31</sup> Jensen, Arnett & McKenzie, p. 293.

<sup>32</sup> Jensen, Arnett & McKenzie, p. 295.

<sup>33</sup> Pollock & Van Reken, p. 13.

<sup>34</sup> Pollock & Van Reken, p. 4.; K. Gilbert, “Loss and grief between and among cultures: The experience of third culture kids”, *Illness, Crisis, & Loss*, Vol. 16, 2008, 93-109.

<sup>35</sup> Limberg & Lambie, p. 48.

### ***Kaigai/kikoku shijo* – Japanese returnees**

Momo Kano-Podolsky defines them as "children who grow up abroad due to their parents' job requirement, and return to their home country after a prolonged absence."<sup>36</sup> They are called *kaigai shijo* while abroad, and *kikoku shijo* (returnees) after they repatriate. The fact that they repatriate after a few years distinguishes them from immigrant children, who settle down in their host countries.<sup>37</sup> Citing the Ministry of Foreign Affairs, Enomoto defines *kaigai/kikoku shijos* as native Japanese students who have lived abroad and gone to a foreign educational institution for at least one academic year, and then have returned to Japan to reenter the Japanese educational system.<sup>38</sup>

According to a Ministry of Foreign Affairs document, in 2016 a number of about 78,000 Japanese *kaigai shijos* were living and studying abroad as long term expatriates.<sup>39</sup> The term "long term expatriates" refers to those who have lived abroad for over three months and hold a temporary visa other than a tourist visa.<sup>40</sup> In 2015 there were around 80,000 *kikoku shijos* (returnees) studying in elementary, junior high, senior high and universities in Japan.<sup>41</sup> Cottrell notes that, although most people have never heard of TCKs, Japan is one country in which they are officially recognized and even have a name.<sup>42</sup> Kano-Podolsky stresses that, unlike TCKs in other countries, Japanese TCKs have enjoyed special government support upon reentry. Thus, in order to help *kikoku shijos* catch up academically with their domestic peers and facilitate admission to high schools or universities, school programs and special admission standards were implemented in some private or public schools.<sup>43</sup>

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<sup>36</sup> Momo Kano-Podolsky, "Internationally mobile children: The Japanese *kikoku-shijo* experience reconsidered", *Kyoto Women's University Contemporary Society Bulletin*, Vol. 1, 2007, p. 50,

[http://repo.kyoto-wu.ac.jp/dspace/bitstream/11173/240/1/0140\\_002\\_003.pdf](http://repo.kyoto-wu.ac.jp/dspace/bitstream/11173/240/1/0140_002_003.pdf) (retrieved March 15, 2019).

<sup>37</sup> Momo Kano Podolsky, "Comparing third culture kids and *kaigai/kikoku-shijos*", in Pollock & Van Reken, p. 279.

<sup>38</sup> Andrew Enomoto, "An examination of Japanese returnee students and their social identities in relation to class engagement", *Journal of Global Media Studies*, Vol. 22, 2018, pp. 89-96, [http://gmsweb.komazawa-u.ac.jp/wp-content/uploads/2018/03/j-GMS22\\_Enomoto.pdf](http://gmsweb.komazawa-u.ac.jp/wp-content/uploads/2018/03/j-GMS22_Enomoto.pdf) (retrieved March 14, 2019).

<sup>39</sup> Ministry of Foreign Affairs, "Zairyuu houjin (gakureiki) shijosuu (chouki taizaisha)" [Number of school age Japanese children living abroad on a long term], <https://www.mofa.go.jp/mofaj/files/000171467.pdf> (retrieved March 15, 2019).

<sup>40</sup> Kano-Podolsky, 2007, p. 51.

<sup>41</sup> Enomoto, p. 89.

<sup>42</sup> Cottrell, p. 54.

<sup>43</sup> Kano-Podolsky, 2009, p. 280; Kano-Podolsky, 2007, p. 52.

Kano-Podolsky points out that there is a highly stereotypical image associated with these Japanese-style TCKs.<sup>44</sup> On one hand, they are perceived as the "new elite", admired and envied for their foreign language fluency (usually English), for their experience outside Japan or for their "emancipated" personality.<sup>45</sup> On the other, they experience marginalization and discrimination due to their insufficient knowledge of Japanese language and culture. Nevertheless, because they are Japanese by birth, they do not enjoy foreigner privileged status, nor are they fully recognized as Japanese by their peers, so they are, to use Pollock and Van Reken's expression, in a "neither/nor" situation.<sup>46</sup>

Van Reken & Bethel point out that for TCKs/CCKs the greatest challenge comes from their sense of cultural marginality, from the perceived obligation "to fit into a certain cultural framework, which is defined in the traditional expectations of a particular race, nationality, or ethnicity".<sup>47</sup> Pollock and Van Reken analyzed how TCKs/CCKs relate with their surrounding culture and distinguished four main types of cultural identities, described in Figure 1 below.

Foreigner	Hidden immigrant
Look <i>different</i>	Look alike
Think <i>different</i>	Think <i>different</i>
Adopted	Mirror
Look <i>different</i>	Look alike
Think alike	Think alike

**Figure 1.** Pol-Van Identity Box (copyright 1996 David C. Pollock/Ruth E. Van Reken)

*Kikoku shijos* fall in the category of "hidden immigrants", because they go unnoticed among other Japanese, and are expected to think and behave like them. However, their exposure to a different culture and language, their education and past experience of socialization with children from diverse cultural backgrounds, the scarcity of their linguistic and cultural competences in the home culture, and the way they perceive themselves make them different from their monocultural peers. Although they might look the same as others, their Japanese might sound strange and their views, values and beliefs might be different too. Therefore, just like

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<sup>44</sup> Kano-Podolsky, 2007, p. 50

<sup>45</sup> Kano-Podolsky, 2009, p. 283-4.

<sup>46</sup> Kano-Podolsky, 2007, p. 57.

<sup>47</sup> Van Reken & Bethel, p. 9.



immigrants in Japan, they are considered “strange” and tend to be marginalized or bullied because they fail the “uniformity” test.

At times admired and envied as the “new elite”, or scorned as “deficient Japanese”<sup>48</sup> for their incomplete knowledge of Japanese language and culture, *kikoku shijos* have had a difficult time finding their place in a rigid, conservative and “homogeneous” society, which rejects anybody who does not match the expectations of the majority. Kano-Podolsky cites Horoiwa, who points out that they resort to “strategies of adaptation”, such as “scraping off” their overseas experience, or “grafting” a layer of Japanese cultural patterns over the ones they acquired while abroad, to help them reintegrate in their home culture.<sup>49</sup> The coping strategy of hiding one’s *kikoku shijo* past might be carried over into the workplace, as companies appear more interested in their employees’ conformity and ability to adapt to the corporate culture than in their linguistic and cultural competences.<sup>50</sup> As one former *kikoku shijo* writes in a Japan Times article, “Japan is increasingly more accepting of foreigners, but having a Japanese face (and passport) means that we have to conform to the Japanese norms. Whether it be for a job, or for social life, there is just no place for us.”<sup>51</sup>

### ***Nikkeijin* – Japanese-Brazilian returnees**

*Nikkeijin* (or *Nikkei*) are members of the Japanese diaspora, Japanese people or their descendants who live in a foreign country. With about 2 million people, including Japanese citizens and descendants of Japanese citizens, Japanese Brazilians are the largest ethnic community residing outside Japan.<sup>52</sup> Japanese emigration to Brazil started at the beginning of the 20<sup>th</sup> century, and continued well after WW2. Hoping it would help solving the unemployment and overpopulation problems, the Japanese government, through a number of companies specialized in emigration,

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<sup>48</sup> Kano-Podolsky, 2009, p. 285.

<sup>49</sup> Naomi Horoiwa, “Kaigai seicho nihonjin no tekio to sentaku (The adaptation and choices of Overseas Grown Japanese)”. *Meta Report I*, 1983, pp. 90-99, cited in Kano-Podolsky, 2007, p.

<sup>50</sup> Niwa Tsukumo, “Welcome “Home,” Students: The Reintegration of Kikoku Shijo in the Japanese Education System”, Bachelor Thesis, *University of Michigan*, 2017, p. 51, <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/139664/tsuniw.pdf?sequence=1&isAllowed=y> (retrieved March 16, 2019).

<sup>51</sup> The Japan Times, “Letters: Kikokushijo encounter trouble upon reentry”, May 26, 2014, <https://www.japantimes.co.jp/community/2014/05/26/voices/kikokushijo-encounter-trouble-upon-re-entry/> (retrieved March 16, 2019).

<sup>52</sup> Ministry of Foreign Affairs, “Japan-Brazil Relations”, <https://www.mofa.go.jp/region/latin/brazil/data.html> (retrieved March 17, 2019).

encouraged thousands of people to emigrate to Brazil.<sup>53</sup> The Japanese immigrants have faced a harsh treatment in Brazil, being regarded as a source of cheap labor, have suffered racial discrimination and were considered inassimilable because of their continued affiliation with Japan and its culture.<sup>54</sup> Tsuda observes that,

race is the most prominent marker that differentiates the Japanese-Brazilians as ethnically “Japanese” in Brazil. In fact, the experience of being racially identified as “japonês” is undoubtedly familiar to anyone of Japanese descent who has lived in Brazil, and it can be rather disorienting for those who come from a society where less overt emphasis is placed on racial phenotype.<sup>55</sup>

However, at present, due to their diligence, trustworthiness, intelligence, responsibility, association with Japan and its culture, and their relatively high socio-economic and education status, they are regarded in a more positive light than other ethnic minorities in Brazil, which has determined *nikkeijin* to identify stronger with their Japaneseness and take pride in their ethnic heritage.<sup>56</sup>

As of June 2018, there were about 200,000 Brazilians in Japan.<sup>57</sup> Japanese Brazilians are currently the fifth largest foreign population after the Chinese, Koreans, Vietnamese, and Philippines.<sup>58</sup> Many of the Brazilian *nikkeijin* who live in Japan are the so-called “*dekasegi*”, or Japanese Brazilians who have migrated to Japan from the end of the 1990s to work temporarily as unskilled workers under their Japanese citizenship or *nisei* visa.<sup>59</sup> The reason why Japan, a country which has long frowned upon accepting unskilled immigrant workers, has chosen to grant entry to Brazilians of Japanese ancestry, was due to its reluctance to dilute its ethnic “purity”, and the pretext that in fact these were not immigrant workers, but Brazilians of Japanese ancestry who returned to their roots to explore the culture of their ancestors.<sup>60</sup>

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<sup>53</sup> Robert J. Smith, “The ethnic Japanese in Brazil”, *The Journal of Japanese Studies*, Vol. 5, No. 1, 1979, p. 54.

<sup>54</sup> Smith, 1979, p. 58.

<sup>55</sup> Takeyuki Tsuda, “The benefits of being minority: The ethnic status of the Japanese Brazilians in Brazil”, The Center of Comparative Immigration Studies, Working Paper, May 2000.

<sup>56</sup> Tsuda, 2000, p. 8.

<sup>57</sup> Ministry of Foreign Affairs.

<sup>58</sup> Ministry of Justice,

[http://www.moj.go.jp/housei/toukei/toukei\\_ichiran\\_touroku.html](http://www.moj.go.jp/housei/toukei/toukei_ichiran_touroku.html)(retrieved March 17, 2019).

<sup>59</sup> Wikipedia, <https://en.wikipedia.org/wiki/Dekasegi> (retrieved March 17, 2019).

<sup>60</sup> Takeyuki (Gaku) Tsuda, “Japanese-Brazilian ethnic return migration and the making of Japan’s newest immigrant minority”, in Michael Weiner, ed., *Japan’s*

Like the *kikoku shijo*, Brazilian *nikkeijin* are returnees of sorts, and have difficulty finding their place in either culture. Born and raised in Brazil, many of them do not speak Japanese,<sup>61</sup> although their children, who were born in or came to Japan in early childhood, are bilingual. Moreover, since many of them and their parents were born and raised in Brazil, they have become “Brazilianized” and are treated as foreigners despite their Japanese heritage.<sup>62</sup> Like the *kikoku shijo*, they, too are “hidden immigrants”, expected to talk and behave like the Japanese due to their physical similarity with the local people. Tsuda quotes a Japanese resident who explains this attitude:

There’s a lot of *iwakan* (sense of incongruity) towards those who have a Japanese face but are culturally Brazilian. If they have a Japanese face, we interpret this to mean they are Japanese, so we initially approach the *nikkeijin* this way. But then when we find they are culturally different, we say they are *gaijin* [foreigners] (p. 211)

The *nikkeijin* themselves are aware of the paradoxical situation they find themselves in - considered Japanese in Brazil but looked down upon as foreigners in Japan.<sup>63</sup> Despite their Japanese blood-ties, they are considered inferior, being the descendants of low-class Japanese who could not survive in Japan and chose to flee abroad in the face of adversity. The fact that they returned to Japan as unskilled workers is considered a proof that they could not succeed in Brazil either.<sup>64</sup>

*Nikkei* children do not enjoy the privileged status of *kikoku shijos*. Education is not compulsory for foreign children, but granted upon request, and at present the number of children who are not enrolled in school is not known.<sup>65</sup> According to Genaro Castro-Vasquez, this situation has three implications. First, the state does not take responsibility for the education of ethnic minorities. Second, the schools for foreigners are not officially accredited by the MEXT, and the diplomas are not recognized in Japan. Third, the chances of immigrant children to advance to tertiary

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*Minorities: The Illusion of Homogeneity*, Second Edition, Routledge, 2009., pp. 206-227, p. 208.

<sup>61</sup> Tsuda, 2009, p. 209.

<sup>62</sup> Tsuda, 2009, p. 208.

<sup>63</sup> Tsuda, 2009, p. 213.

<sup>64</sup> Tsuda, 2009, p. 210.

<sup>65</sup> Ryoko Tsuneyoshi, “The “newcomers” and Japanese society”, in Ryoko Tsuneyoshi, Kaori H. Okano, and Sarane Bookcock (eds.), *Minorities and Education in Multicultural Japan: An Interactive Perspective*, London & New York: Routledge, 2011, p. 139.

education are slim, and their employment prospects are gloomy.<sup>66</sup> Moreover, Tsuneyoshi observes that, as Japanese ethnic minorities tend not to stand out (i.e. “hidden immigrants”), Japanese education upholds the post-war ideology of homogeneity and assimilation, maintaining that children are all the same irrespective of where they come from and should be treated the same.<sup>67</sup> They are expected to renounce their cultural heritage and become similar to “mainstream Japanese”, although it is not easy and “the psychological costs are high”.<sup>68</sup>

The temporary nature of the Brazilian *dekasegi* has a strong influence on the children’s cultural identity. Tsuneyoshi notes that “the child grows up in Japan and he/she reaches adolescence, unsure where he/she belongs, unsure of the future”.<sup>69</sup> Suspended between two worlds neither of which they can identify with, young *nikkeijin* face an identity crisis and might be attracted to gang and delinquency.<sup>70</sup> Even if they do graduate from junior high school, their limited Japanese language proficiency or their parents’ limited financial resources makes it difficult to enter a good high school and, later on, a prestigious university. Although their parents have high hopes that they would receive a good education, which will help them have a better life, in Japan they face “spatial and social ghettoization”.<sup>71</sup>

How do Brazilian *nikkeijin* cope with this situation of living between two worlds? Unlike *kikoku shijos*, who prefer to hide their multicultural past, *nikkeijin* have two main coping strategies: ethnic self-segregation and rediscovery, and assertion of their Brazilian identity. Self-segregation manifests itself in contact avoidance with the Japanese, and in their refusal to become integrated in the mainstream society. This refusal is also due to the fact that many of them regard themselves as “temporary”, so they feel they are under no obligation to acclimate themselves to their host country.<sup>72</sup> As a matter of fact, in regions with large numbers of Brazilian *nikkeijin*, such as Hamamatsu and Oizumi, an array of businesses such as clothing stores, supermarkets, restaurants, discos, churches and other public establishments and services cater for the needs of the Brazilian

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<sup>66</sup> Genaro Castro-Vasquez, “The educated citizen: Cultural and gender capital in the schooling of Latin American children in Japan”, *Journal of Research in International Education* Vol. 10, No. 3, 2011, p. 246.

<sup>67</sup> Tsuneyoshi, 2011, p. 132.

<sup>68</sup> E. Creighton “Soto others and uchi others: imaging racial diversity, imagining homogeneous Japan”, In M. Weiner (ed.) *Japan’s Minorities: The Illusion of Homogeneity*. London: Routledge, 1997, 211–238, p. 227.

<sup>69</sup> Tsuneyoshi, 2011, p. 138.

<sup>70</sup> Tsuneyoshi, 2011, p. 140.

<sup>71</sup> Castro-Vasquez, p. 251.

<sup>72</sup> Tsuda, 2009, p. 210.

*nikkei* community, providing a sort of “home away from home” environment which helps them maintain their Brazilian identity while keeping any contact with the predominant culture at a minimum.

Another phenomenon which Tsuda pointed out as emerging out of Brazilian *nikkeijins'* cultural marginalization and negative experiences in Japan is their attempt to redefine their cultural identity, to regain a sense of “home”. Rejected by the country their parents and grandparents always looked up to as “home”, *nikkeijin* are looking back to their Brazilian roots, displaying a renewed appreciation of Brazil and its culture. Their rebellion against mainstream culture is manifested more or less ostentatiously, in their refusal to speak Japanese or write their names in Japanese characters, or in behaving and dressing in Brazilian fashion or holding traditional events such as samba festivals in areas densely inhabited by Brazilian *nikkeijin*.<sup>73</sup>

Returning to the parallel with the case of *kikoku shijo*, who have enjoyed privileged status, at least from the educational vantage point, and who are lauded as “global citizens”, *nikkeijin* are associated with such things as “developing country”, “foreign workers”, and “Portuguese”. Tsuneyoshi suggests that, the situation of *nikkeijin* children might improve if they were to receive the same privileged treatment the *kikoku shijo* have enjoyed, namely, acquisition of the Japanese language, readjustment to Japanese society, retaining the strengths of the things they learned while abroad and giving them a positive role in the internationalization of Japanese society.<sup>74</sup> However, she points out, this model does not take into account the discrimination and marginalization of ethnic groups and the fact that they “tend to be at the bottom of Japanese society”.<sup>75</sup>

In conclusion, globalization and the intensification of population mobility across the world is a complex phenomenon, which presents a number of benefits such as multiculturalism, multilingualism and an international outlook, but at the same time it creates serious problems like identity confusion and feelings of rootlessness and grief. As Japan is dealing with an increasingly culturally diverse society, it needs to recognize the challenges it entails, reflect upon the effects of cultural mobility upon the younger generations and actively seek solutions by encouraging the integration of ethnic minorities into the mainstream culture.

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<sup>73</sup> Tsuda, 2009, p. 216-219.

<sup>74</sup> Tsuneyoshi, 2011, p. 144.

<sup>75</sup> Tsuneyoshi, 2011, p. 144.

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# "GEO-CULTURAL IDENTITY" IN MULTICULTURALISM: CAN IT BE A SOCIAL CONTRACT?

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**Abstract:** *Multiculturalism is the system of society that allows people of different cultural backgrounds to live together in harmony, whereas geo-cultural identity is the framework by which to classify a person based on their geographical and cultural roots. If identity and culture are to be intertwined in a social contract, then in a multicultural society, people shall have a right to protection of culture only. However, in the case of geo-cultural identity, some other rights (for example, identification with one's geographical heritage and cultural values) are also fundamentally deserved by all. Since this will create a more reasonable notion of rights and justice, which is the goal of any modern society, it is rational to say that geo-cultural identity in multiculturalism can be seen as a social contract. In this paper, I have analyzed the possibility of the co-existence of geo-cultural identity and multiculturalism through a social contract.*

**Keywords:** *Cultural diversity, Geo-Cultural identity, Justice, Minority rights, Multiculturalism, Social Contract.*

## **Introduction**

Multiculturalism is a political theory which helps us to live in a pluralistic society where the prime values are 'recognizing cultural diversity' and 'maintaining justice and equality for all'. Preserving own culture and traditions while allowing immigrants or foreigners for various reasons is one of the chiefs goals of modern nation-states. Multiculturalism therefore tends to make a balance between the rights of majority and minority.

There are several approaches proposed within multicultural framework ensuring minority rights. For example, Will Kymlicka, the most noted and eminent multicultural theorist, suggests that minority rights can only be preserved through 'cultural membership' and 'equality'. According to him, in a multicultural society, minorities' rights to celebrate and participate in their 'own' cultural matrix can only make their lives meaningful. They will be free and equal in the true sense if their cultures are addressed, recognized and cherished like as the ethnic majority.

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However, many critics argued that the emphasis Kymlicka provided for cultural membership is 'forceful' and 'illegitimate'. In their view, culture might be important for individuals' flourishing but it is not morally relevant. In other words, there is no relationship between justice and culture.

Now, "geo-cultural identity", relatively a new term in multiculturalism introduced by myself, could pave the way out of this tension. Geo-cultural identity is grounded on two important values: firstly, *tolerating* cultural diversity and secondly, promoting uncoerced *integration*. While Kymlicka also considered 'cultural diversity' an important element in multiculturalism, he seems argued it as a basic right of minority to be imposed to the majority. To my view, cultural diversity is a kind of social contract between majority and minority based on tolerance. The latter 'promoting geo-cultural identity' by an uncoerced integration, I believe, is a rational choice for worthwhile lives. This project will analyze the concept of 'geo-cultural identity' in detail and develop an argument that instead of being a social contract geo-cultural identity is a rational choice for worthwhile living.

### **Multiculturalism**

Multiculturalism is a view where the rights of people in all cultural traditions are protected. Naturally, any cultural tradition has its own values and practices. What is accepted in one culture might not be accepted in another culture. People sometimes might perceive the common cultural practices. However, several ethno-cultural conflicts are evident all over the world. The world is becoming more and more cosmopolitan. People are now moving one city to another for several reasons. They are staying in different places for longer time for business, education, training and voluntary services. This causes the integration of different semi-societies and traditions into the geo-cultural fabric of the region; and the product of this integration is thus known as "multiculturalism".

Multiculturalism is the direct result of the acceptance of the migration of differently-cultured people into the home culture, and is thus caused by several reasons:

- i) Ethno-religious persecution
- ii) Economic migration
- iii) 'Alien of Extraordinary Ability' visa

The term 'multiculturalism' has been defined in many ways.

Bhikhu Parekh has observed multiculturalism as:

It is sometimes argued that almost all societies in history except the most primitive have been multicultural, and

that there is nothing new or historically distinctive about our age. Although this is true, it ignores some of the unique features of contemporary multicultural societies. Whatever their differences, almost all premodern societies were religious and broadly agreed on many of their basic moral beliefs and practices.<sup>1</sup>

He believes that multiculturalism is a view where almost all inhabitants in a society has an agreement about their "basic moral beliefs and practices". Parekh added that "every modern multicultural society needs to find ways of accommodating diverse demands without losing its cohesiveness and unity"<sup>2</sup>. So, preserving "comprehensiveness and unity" in a diverse society is another aim of multiculturalism.

Multiculturalism sometimes refers to a system or policy for assimilating or integrating minority rights. A sense of "belongingness" is vital for nation building and many nation-states hold that a unified system of education, social and cultural practice will be helpful for nation building. Kuzio mentions that there are at least four ways to understand multiculturalism: "1. within a demographically diversified population due to migration 2. as policies to protect ethnic and national minorities 3. *vis`a-vis* a post-national utopia; 4. political correctness and identity politics at American universities"<sup>3</sup>. So, he describes multiculturalism as a process of learning. He states,

Multiculturalism teaches the citizens of a democratic society to value diversity and differences, helping to integrate diverse cultures into the larger society without cutting them off from their past. This, in turn, helps to reinforce the polity because citizens are willing to make sacrifices for those with whom they share a common project.<sup>4</sup>

Will Kymlicka has defined multiculturalism mainly as a policy by stating,

Ideas about the legal and political accommodation of ethnic diversity – commonly termed “multiculturalism” –

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<sup>1</sup> Bhikhu Parekh "Unity and Diversity in Multicultural Societies", International Institute for Labour Studies, 2005, p.4. Available:

<http://red.pucp.edu.pe/ridei/files/2011/08/02.pdf>

<sup>2</sup> Ibid, p.4.

<sup>3</sup> Taras Kuzio "The Politics of Multiculturalism", p.1. Available:

[http://www.taraskuzio.com/Nation%20and%20State%20Building\\_files/1998\\_kuzio.pdf](http://www.taraskuzio.com/Nation%20and%20State%20Building_files/1998_kuzio.pdf)

<sup>4</sup> Ibid, p.1.

emerged in the West as a vehicle for replacing older forms of ethnic and racial hierarchy with new relations of democratic citizenship. Despite substantial evidence that these policies are making progress toward that goal, a chorus of political leaders has declared them a failure and heralded the death of multiculturalism.<sup>5</sup>

Multiculturalism is a response to adapt cultural diversities where individuals can maintain their freedom, autonomy, and cultural practices to ensure justice and equality. According to the *Standard Encyclopedia of Philosophy*,

The idea of multiculturalism in contemporary political discourse and in political philosophy is about how to understand and respond to the challenges associated with cultural and religious diversity. The term “multicultural” is often used as a descriptive term to characterize the fact of diversity in a society, but in what follows, the focus is on its prescriptive use in the context of Western liberal democratic societies.

Multiculturalism has been seen as an idea, a policy and even a "political discourse" to understand, response and realize the value of culture, the challenges associated with culture and a model to preserve cultural pluralism without abandoning the concept of justice.

Therefore, we can claim that multiculturalism enforces 'tolerance' and 'integration' or 'assimilation' for a peaceful co-existence of people having diverse cultural origins.

### **The Social Contract Theory**

Social contract theory is one of the most influential theories in the history of political thoughts in understanding how human societies have been formed, individual and collective rights were protected while maintaining social order. The theory provides us a reasonable philosophical explanation about transferring some of our rights to others through mutual understanding. The ancient people agreed to form a society by contract where everyone's right was protected. The basis of social relationship and moral practice was a genuine contract.

The concept of existing a contract in society was present in the wrings of Plato where Socrates seems to accept his unjust penalty due to contract between himself and the state. The state and its citizens have an unwritten

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<sup>5</sup> Will Kymlicka, "Multiculturalism: Success, Failure, and the Future", p.1. Available: <https://www.humanityinaction.org/files/514-multiculturalism.pdf>

contract that citizens are obliged to respect state's laws and in return state will ensure peace and security. The most prominent social contract theorists were English philosopher Thomas Hobbes (1588-1679), John Locke (1632-1704) and French philosopher Jean-Jacques Rousseau (1712-1778). They have different views about human nature and the State of Nature but they all agreed that the primitive human society was formed by a mutual contract among people. The modern idea of 'state' is the development of ancient society where various kind of laws were obeyed by the people living in societies.

Thomas Hobbes perceives the social contract not merely as a consent. A contract is more than a consent as stated in book *Leviathan*. In his words,

This is more than consent, or concord; it is a real unity of them all in one and the same person, made by covenant of every man with every man, in such manner as if every man should say to every man: I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition; that thou give up, thy right to him, and authorise all his actions in like manner. This done, the multitude so united in one person is called a COMMONWEALTH; in Latin, CIVITAS. This is the generation of that great LEVIATHAN, or rather, to speak more reverently, of that mortal god to which we owe, under the immortal God, our peace and defence.<sup>6</sup>

So, it a 'covenant' between the state and its citizens. The covenant has a basis of morality.

John Locke when stating his view of social contract he perceives the Government or the state as 'common-wealth'. The common-wealth has the absolute power to punish its citizens. As Locke says,

Where-ever therefore any number of men are so united into one society, as to quit every one his executive power of the law of nature, and to resign it to the public, there and there only is a *political, or civil society*. And this is done, where-ever any number of men, in the state of nature, enter into society to make one people, one body [272] politic, under one supreme government; or else when any one joins himself to, and incorporates with any government already made: for hereby he authorizes the society, or which is all one, the legislative thereof, to make

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<sup>6</sup> Thomas Hobbes, *Leviathan*, The Second Part. Available: <https://ebooks.adelaide.edu.au/h/hobbes/thomas/h681/chapter17.html>

laws for him, as the public good of the society shall require; to the execution whereof, his own assistance (as to his own decrees) is due. And this *puts men* out of a state of nature *into* that of a *common-wealth*, by setting up a judge on earth, with authority to determine all the controversies, and redress the injuries that may happen to any member of the common-wealth; which judge is the legislative, or magistrates appointed by it.<sup>7</sup>

Here, the common-wealth is the highest authority or judge set forth by its citizens themselves.

Rousseau also imagined the state as 'Sovereign' which is a collective unit but all the citizens living here has the equal right. The Sovereign and individual both are considered mutually dependent. He writes,

Suppose the State is composed of ten thousand citizens. The Sovereign can only be considered collectively and as a body; but each member, as being a subject, is regarded as an individual: thus the Sovereign is to the subject as ten thousand to one, i.e., each member of the State has as his share only a ten-thousandth part of the sovereign authority, although he is wholly under its control. If the people numbers a hundred thousand, the condition of the subject undergoes no change, and each equally is under the whole authority of the laws, while his vote, being reduced to a hundred-thousandth part, has ten times less influence in drawing them up. The subject therefore remaining always a unit, the relation between him and the Sovereign increases with the number of the citizens. From this it follows that, the larger the State, the less the liberty.<sup>8</sup>

### **The Concept of "Geo-cultural Identity"**

The term 'Geo-cultural identity' as an alternative to multiculturalism was coined in my paper "In defence of Geo-cultural Identity: An Argument Against Kymlicka's View of Multiculturalism and Minority Rights" *CEU Political Science Journal* 8 (4) (2013): 405-426. While the term was used in a few writings previously in economics and politics, no one has used this

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<sup>7</sup> John Locke, *Two-Treatises of Government*, The Second Government, 89. available: <http://oll.libertyfund.org/titles/locke-the-two-treatises-of-civil-government-hollis-ed>

<sup>8</sup> Jean-Jacques Rousseau, *The Social Contract*, Book III. Available: [https://ebooks.adelaide.edu.au/r/rousseau/jean\\_jacques/r864s/book3.html#section24](https://ebooks.adelaide.edu.au/r/rousseau/jean_jacques/r864s/book3.html#section24)

in the discussion of multiculturalism. 'Geoculture' was primarily described as a system. This system is reflected in the writings of Han-Woo Choi in a foot note,

Geoculture can be understood as the superstructure of a world. In addition to this concept, I tend to think of it as its underside, the part that is more hidden from view and therefore more difficult to assess, but the part without which the rest would not be nourished. Geoculture is with geopolitics by analogy, not because it is supra-local or national but because it represents the cultural framework within which a world system operates.<sup>9</sup>

Here, we can observe that Choi considered the term in geopolitical sense which is the base structure of the world of a system.

However, I myself think geo-cultural identity as a way of complete representation of someone's identity. The term 'geo-cultural identity' I used quite different way in the following statement,

To my view, geographical and cultural identities are both crucial to survival as a nation. People's identity can only be meaningful and complete by their geographical and cultural identities. Cultural identity refers to their language, dress, food, festivals, norms, values, and so forth, whereas geographical identity refers to their living land. Kymlicka undermines the geo-cultural identity of a nation.<sup>10</sup>

So, It can clearly be seen that the idea is used here as an alternative to multiculturalism.

This concept 'Geo-cultural identity' is remarkably used by Jada Watson. She applied this idea in the field of music to examine how place-based identity can be reflected in singer or song-writer's creations. By taking Canadian artist Corb Lund as a case study she writes,

With Canadian alt-country artist Corb Lund as a case study, this study draws literature from musicology, literary studies, and cultural geography to demonstrate how the singer-songwriter describes life, work, and sociocultural

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<sup>9</sup> Han-Woo Choi, "Geo-cultural Identity of the Western Turkestan" *International Journal of Central Asian Studies* 8 (2003). Available: <http://www.iacd.or.kr/pdf/journal/08/8-01.pdf>

<sup>10</sup> Munir Hossain Talukder, "In defence of Geo-cultural Identity: An Argument Against Kymlicka's View of Multiculturalism and Minority Rights" *CEU Political Science Journal* 8 (4) (2013): 421.

issues in Alberta to create diverse conceptions of place. It develops a framework for considering how artists use music to negotiate relationships to place and construct elements of their “geo-cultural” identity.<sup>11</sup>

What is most important to me in these statement is that geo-cultural identity could be a term for 'negotiation' in cultural pluralism or multiculturalism.

### **Multiculturalism and the "Geo-cultural Identity"**

Multiculturalism is a framework, model, policy or approach to protect cultural diversity. The goal of this theory is to ensure the rights of cultural minorities. Cultural practice is valuable for individuals for a happy, peaceful and vibrant life-style. Everyone has a right to celebrate his or her own culture irrespective to geographical identity and nationalism. It seems that individuals cultural identity is much more valuable than their geographical identity. The emphasis is given by realizing the frequent change of citizenship status for several reasons including globalization. As I noted earlier, "...multiculturalism, primarily as a political theory, guides us how we should live in a cultural diversity; thus, it has political as well as moral implications. The political part will focus on the form of government of a culturally heterogeneous state. The moral part will explore how multiculturalism can ensure justice to minorities in these states"<sup>12</sup>.

By contrast, the 'Geo-cultural identity' is more balanced to both of the identities i.e. geographical and cultural of the individuals. The geographical identity is crucial since it constructs our values, practices, habits and personality. More importantly, this may also represent a kind of economic status, the condition of law and order, security status, the level freedom of speech and human rights status. The cultural identity is a reflection of culture and heritage of the place where a human being born. As nowadays more people are forced to migrate for several reasons multiculturalists are just reluctant about the geographical identity.

### **Can "Geo-cultural Identity" in multiculturalism be a social contract?**

The main challenge for multiculturalism is integration and assimilation. Integration without losing something, for example,

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<sup>11</sup> Jada Watson, "Geography and Country Music: Constructing Geo-cultural Identities". *The Oxford Handbook of Country Music*, 2017. Available: <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780190248178.001.001/oxfordhb-9780190248178-e-2>

<sup>12</sup> Munir Hossain Talukder, "In defence of Geo-cultural Identity: An Argument Against Kymlicka's View of Multiculturalism and Minority Rights" *CEU Political Science Journal* 8 (4) (2013): 421.



geographical identity is not possible. Similarly, assimilation without all sort of coercion or pressure seems unrealistic. So, how multiculturalism as a system or policy could survive? We already observed that in many parts of the world multiculturalism has been failed. What reform should be done? Or, what could be an alternative to multiculturalism?

Geo-cultural identity thesis could function within the multicultural framework. Multiculturalism promotes a kind of understanding, coexistence, toleration between majority and minority. Geo-cultural identity promotes a sense of belongingness, identification, interrelatedness with geographical boundary or place. So, in my view a kind of social contract is necessary in multiculturalism. Similar kind of suggestion is made by Joseph Heath. Heath claims that,

a contractualist theory provides a better framework for the analysis of these issues than any of its current rivals. First of all, the choice/circumstance distinction, which follows from the contractualist agreement as the central normative category...Second, the liberal strategy of avoiding disputes over questions of the good life provides theoretical grounds for claiming that social policy can coherently promote integration without requiring full blown-assimilation. This provides a good way of establishing limits on tolerance, without the discomfort associated with simply imposing 'our' system of values.<sup>13</sup>

Although Heath did not proposes here a reformation or alternation of multiculturalism he seems to be correct in holding a contractualist view within the multicultural policy. I believe that geo-cultural identity can be a social contract in multiculturalism.

## **Conclusion**

To conclude, this report analyzes the most recent political theory, namely multiculturalism along with the influential philosophical theory called the social contract theory. Multiculturalism is an approach where cultural diversity is valued. Multiculturalism functions within two main mechanisms: integration and assimilation. Minorities want to integrate with the mainstream culture while majorities want to preserve their national and cultural heritage. Minorities assimilation can cost to abandon some of their cultural practices including language which they enjoy to preserve.

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<sup>13</sup> Joseph Heath, "Immigration, Multiculturalism and the Social Contract" *Canadian Journal of Law and Jurisprudence* 10 a(2) (1997): 360-361.

In many countries, multiculturalism already creates some tensions among their citizens and immigrants. Some scholars have also mentioned several limitations of this theory. However, this theory is still one of the best choices for policy-makers. I explained here that only cultural identity should not be our concern. We should equally consider geographical identity of an individual. Hence, the term "geo-cultural identity" was elaborated here. I have argued that geo-cultural identity in multiculturalism can function as a contract. Such a contract can ensure both geographical and cultural identities while at the same time can continue the process of integration and assimilation.

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