



## Spis treści

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**Tobias Bücher**

Medel-University Brno  
Brno, Czech Republic  
t.buecher@gmx.de

## The end of the ECB's pandemic-induced bond coffers is overdue

### Summary

The pandemic-induced bond purchase program of the European Central Bank (ECB) is a massive intervention instrument to enable monetary policy to have an additional dampening influence on bond yields in view of the corona pandemic. The purchase volume currently amounts to 1,400 billion euros, a considerable volume compared to the monetary policy bond purchases that have been made since 2014 as part of the "normal" APP bond purchase program amounting to 3,000 billion euros. The justification for the program was to counteract the pandemic-related slowdown in the economy. Conversely, this must also mean that the pandemic-related bond purchases must be stopped once the economic downturn has been overcome.

An analysis of economic development, inflation and the development of the labor market suggests that the economic slump in the euro area will be over in early 2022. In this respect, everything points to the fact that the pandemic-related bond purchases should expire at the end of March 2022. This point in time has been set by the ECB as the minimum duration of the program. In view of the increased risk of inflation in recent months, the ECB should not unduly extend special monetary policy measures. An end to the bond purchases caused by the pandemic would give the ECB more flexibility if the increased inflationary pressure turns out to be persistent.

**Key words:** Pandemic Emergency Purchase Program (PEPP), COVID-19 money policy, interest rate policy.

### INTRODUCTION

The pandemic-induced bond purchase program of the European Central Bank (ECB) is a massive intervention instrument to enable monetary policy to have an additional dampening influence on bond yields in view of the corona pandemic. The purchase volume currently amounts to 1,400 billion euros, a considerable volume compared to the monetary policy bond purchases that have been made since 2014 as

part of the “normal” APP bond purchase program amounting to 3,000 billion euros. The justification for the program was to counteract the pandemic-related slowdown in the economy. Conversely, this must also mean that the pandemic-related bond purchases must be stopped once the economic downturn has been overcome. An analysis of economic development, inflation and the development of the labor market suggests that the economic slump in the euro area will be over in early 2022. In this respect, it is the right signal that the bond purchases caused by the pandemic will expire at the end of March 2022. This point in time was fixed by the ECB as the minimum duration of the program when it was introduced. In view of the increased risk of inflation in recent months, the ECB should not unduly extend special monetary policy measures. An end to the bond purchases caused by the pandemic would give the ECB more flexibility if the increased inflationary pressure turns out to be sustainable.

The aim of the paper is to shed light on the background of the Pandemic Emergency Purchase Program (PEPP) and to examine the effects on economic development, inflation and the development of the labor market. This results in a recommendation for the further handling of the PEPP, especially against the background of high inflationary trends, to which the ECB will have to react more intensely in the future. For the investigation, data series of a characteristic expression are analyzed and visualized over time. The data come directly from the ECB, from EU databases such as Ameco and Eurostat, as well as from private bank-related databases such as Consensus or Refinitiv.

The analysis concludes that economic growth is stabilizing. After a slump from the first quarter of 2020, the economy in the euro area has been moving steadily upwards again since the end of 2021. The ECB projections from September 2021 have already been exceeded. From this perspective, the decision to expire the PEPP in March 2022 is the right one.

The observation area inflation shows that inflation was within the target corridor of the ECB (close to 2%) until mid-2021, but has been gaining enormous momentum since then. This can only be partially explained by the corona crisis. The risk of a sustainable trend is clear. The development of inflation suggests an end to the PEPP in March 2022.

In the field of labor market development, there was an increase in the unemployment rate due to the corona, but it has been falling again since March 2021. In this area too, the crisis appears to have largely been overcome.

The sum of the three areas under consideration clearly shows that the ECB would do well to let the PEPP expire in March 2022. In particular, against the background of sustained inflationary trends, it regains scope for new measures.

The content of the paper is divided into five areas. Section 1 describes the general framework and background for the introduction of the PEPP by the ECB. Sections 2–4 examine the effects of the corona crisis on the perspective of economic development, inflation and labor market development. In these areas, an assessment is made of how strongly the crisis has influenced and how recent developments are under the influence of the PEPP. From this, an assessment is made regarding the continuation

or termination of the PEPP. Section 5 shows the policy options of the ECB regarding the PEPP.

## 1. ECB'S PANDEMIC EMERGENCY PURCHASE PROGRAM

In response to the corona pandemic, the Eurosystem significantly increased the degree of monetary policy expansion in the euro area. The central component of the monetary policy package of measures was temporary purchases of bonds from private and public issuers as part of the PEPP. Originally, the program announced in March 2020 had a total volume of 750 billion euros. After a total of two increases, the total volume is currently up to 1,850 billion euros. (European Central Bank (ECB), 2021a) (European Central Bank (ECB), 2021b)

At the end of September, the Eurosystem held securities under the PEPP in the amount of around EUR 1,400 billion. In March 2021, the Council of the European Central Bank (ECB) decided to significantly accelerate monthly security purchases for the 2nd quarter of 2021. The purchase volume was then increased from around 60 billion euros per month at the beginning of the year to around 80 billion euros per month. This pace was maintained in the 3rd and 4th quarters. At the penultimate meeting of the ECB Council in September, a moderate reduction in the purchase volume was announced. This approach was confirmed at the December meeting. In addition, it was announced that the program would expire in March 2022. However, the repayments of the securities were extended until at least the end of 2024. In addition to the already extremely extensive bond portfolio caused by the pandemic, the ECB holds more than twice as many additional bonds from the purchase program started in 2014 (as of the end of November 2022) with a good 3,000 billion euros. (European Central Bank (ECB), 2021b)

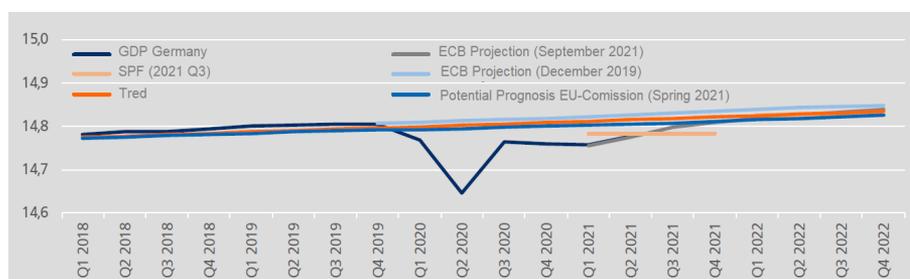
The PEPP was adopted in the wake of the pandemic-related economic slump in March 2020. The aim of the program was to counteract any adverse effects on the economy and a disruption of the monetary policy transmission process caused by the corona pandemic. Against this background, the duration of the program is closely linked to the dangers posed by the pandemic for the economy and the transmission process. According to the decision of the Governing Council, securities purchases under the PEPP are to remain possible until the COVID-19 crisis is over, at least until the end of March 2022. A decision on whether to expire or extend the program is to be made in December 2021. (Beetsma, et al., 2021)

In view of the exceptional economic situation caused by the pandemic, the ECB made the framework conditions for PEPP purchases much less restrictive than in previous Eurosystem bond purchase programs. In comparison to the Asset Purchase Program (APP), securities are also approved for the PEPP, such as Greek government bonds that do not actually meet the Eurosystem's creditworthiness requirements. For PEPP purchases, the capital key is also used as a guideline for the national distribution of purchases. However, the Eurosystem pretends to temporarily deviate from the capital key depending on market conditions. Empirical studies also show that government bonds from highly indebted countries were bought disproportionately. For example, Italian and Spanish government bonds were significantly overweighted as part of the PEPP purchases. (Havlik & Heinemann, 2021)

In contrast, the Eurosystem holds French government bonds less than proportionately in terms of the capital key. In addition, the public sector purchase program (PSPP) does not apply the 33% government bond ceiling under the PEPP. This allows the Eurosystem to acquire a blocking minority and, in case of doubt, torpedo debt restructuring efforts. If the worst comes to the worst, the ECB would find itself in a delicate position given its monetary independence. Against this background, the now noticeable recovery in the real economy and the significant rise in inflation in the euro area raise the question of whether and, if so, to what extent the Eurosystem's securities purchases under the PEPP should currently be continued. Because the PEPP is explicitly linked to the exceptional economic situation in the euro area, this question boils down to determining whether the economic effects of the corona pandemic will soon be overcome. (Heinemann & Kemper, 2021) (Foglia, et al., 2022)

## 2. ECONOMIC SITUATION

Overall economic activity in the euro area collapsed dramatically in the wake of the corona pandemic. At the low point in the 2nd quarter of 2020, the real gross domestic product (GDP) in Germany was around 15% below the pre-crisis level (see Fig. 1). However, the economy has picked up significantly again since then. In the second quarter of 2021, the pre-crisis level was still 2.5% below. A continued strong macroeconomic expansion is generally expected for the coming quarters. Both in the ECB's Survey of Professional Forecasters (SPF) and in the Consensus Economics survey, respondents assume that the pre-crisis level of macroeconomic activity will already be well exceeded on average in 2022. In its current projection from September 2021, the ECB expects that economic output in the final quarter of 2021 will already be above the pre-crisis level. (Gürkaynak, et al., 2021) (Jinjarak, et al., 2021)



**Figure 1.** Euro area overcomes slump in macroeconomic activities at the turn of the year 2021/2022.

**Sources:** Ameco, ECB, Eurostat, Consensus.

A comparison with the pre-crisis level provides an initial indication of the extent of the economic recovery. However, this simple approach also has weaknesses. On the one hand, exceeding the pre-crisis level does not necessarily mean that the economic consequences of the corona crisis have been completely overcome. This simple comparison ignores the fact that without a pandemic the economy would have continued to grow in the past year and a half. On the other hand, it is also possible that the economic recovery has already been completed without reaching the

pre-crisis level. This could be the case if macroeconomic activity in the euro area had been in significant overutilization immediately before the outbreak of the corona pandemic. After the economic slump caused by the pandemic, a return to normal capacity utilization would then be possible without exceeding the pre-crisis level. Therefore, the unobservable potential output in the euro area needs to be determined. There are various methods of determining this potential, varying in complexity. The simplest method assumes a linear trend. This implies that the production potential grows exogenously, for example from advancing technological progress. This study estimates the trend growth based on the period from the beginning of the European Monetary Union to immediately before the outbreak of the corona pandemic (1999 Q1 to 2019 Q4). This assumes that the potential growth during the corona pandemic would have corresponded to the average since the existence of the European currency area. However, the trend growth has weakened noticeably in recent years, which is why the growth in production potential is likely to be oversubscribed. Nevertheless, the production potential approximated by the continuation of the growth trend will already be exceeded again by mid-2022 according to the current ECB projection from September 2021. (Trifonova, 2021) (Foglia, et al., 2022)

As an alternative to assessing the economy in the euro area, this paper uses the European Commission's estimate of potential output. This method is noticeably more complex. A macroeconomic production function is assumed, in which capital and (potential) labor volume are included as input factors. The exogenous growth results from the trend growth of the total factor productivity. However, demographic developments, which can have a significant impact on the labor supply, can be considered in this process. The production potentials calculated by the European Commission also serve as a basis for calculating the structural deficits of the member states.

The production potential calculated in this way before the outbreak of the corona pandemic is at a level comparable to the potential calculated using linear trends. However, during the corona pandemic, this potential developed significantly weaker than the (as stated, probably too optimistic) extrapolation using a linear trend. Based on this production potential, the ECB expects economic overutilization as early as the turn of the year 2021/22. According to the ECB's projection of macroeconomic activity, macroeconomic capacities are likely to be slightly overutilized once the PEPP expires at the end of March. In addition, the current projection still anticipated a weaker development in macroeconomic activity in the first half of 2021 than the official Eurostat figures, which have now been published, imply. However, the ECB often refers to the comparison with the last published projection before the outbreak of the corona pandemic when assessing economic development. According to the ECB, the level of macroeconomic activity projected at the time will not be reached by the end of 2022 either. However, this comparison is not expedient. It ignores the fact that estimates of potential output, as shown, indicate a strong overutilization of macroeconomic capacities in 2019 (the date of the extrapolation of the ECB projection). The European Commission's spring projection 2021, for example, assumes an overutilization of 1.2% in relation to the production potential for 2019.

In summary, it can be stated that, with a view to the development of macroeconomic activity, an expiry of the PEPP at the end of March 2022 seems obvious. (Choi & Gupta-Mukherjee, 2022) (Heinemann & Kemper, 2021) (European Central Bank (ECB), 2021b)

### 3. INFLATION VIEW

Inflation in the euro area has accelerated sharply in recent months. In September, inflation was 3.4%, well above the pre-crisis level of 1.0% (average inflation in the second half of 2019), which, according to the ECB, is the decisive level for the decision on whether to continue or end the PEPP (see Fig. 2). Even the inflation target of 2% in the euro area was thus clearly exceeded. Against this background, there seems to be little to be said for additional monetary policy stimulus to increase inflation. (Choi & Gupta-Mukherjee, 2022)



**Figure 2.** Rise in consumer prices in the euro area.

**Source:** Eurostat.

The significant exceeding of the inflation target is correctly justified with temporary special factors. On the part of the ECB, the members of the Executive Board, Isabel Schnabel and Philip Lane, also point out what they consider to be an inflation trend that is still too low. Indeed, the rise in energy prices resulting from base effects is currently making a major contribution to inflation in the euro area. In the wake of the pandemic-induced slump in the global economy, crude oil prices fell sharply. Since then, however, these have recovered significantly and recently even exceeded the pre-crisis level. However, the domestic economy-driven inflation is now well above the pre-crisis level again. Core inflation, the rise in prices excluding energy and unprocessed food prices, was 1.9% in September. In the second half of 2019, this was still around 1.2%. It is true that special effects of the corona pandemic such as the temporary VAT cut in Germany are currently boosting consumer prices. For this, however, it is possible to control by looking at the annualized price increase over the past two years. At 1.5% in September, however, this was also roughly at the pre-crisis level. Inflation expectations have now also recovered significantly from the decline during the corona pandemic (see Fig. 3). Inflation expectations derived from financial market data for the next two years in two years accelerated from 0.4% in the second half of March 2020 to around 1.7% in September. In December 2019, these expectations were still around 1.1%. The average inflation expectations for five years in five years have recently increased to just under 2.0%. This means that for the first

time since 2014 they are in line with the (current) ECB target. During the corona pandemic, these had decreased from around 1.3% to 0.7%. Overall, the upward trend in prices in the euro area therefore speaks in favor of an end to the PEPP in March 2022. The upward trend in prices has noticeably recovered from the decline during the corona pandemic and is now significantly stronger than before the outbreak of the pandemic. (Choi & Gupta-Mukherjee, 2022) (Beetsma, et al., 2021) (Gürkaynak, et al., 2021)

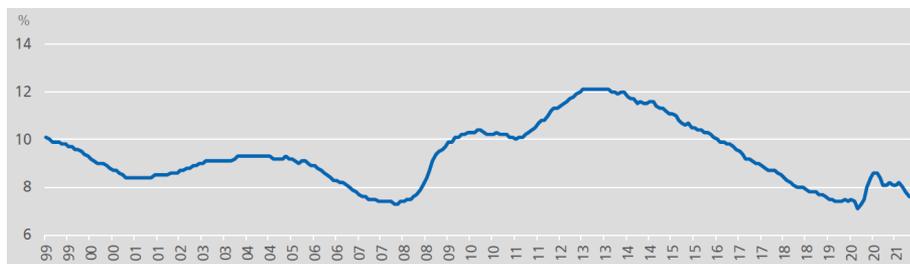


**Figure 3.** Inflation forecasts in the euro area

**Source:** Refinitiv

#### 4. UNEMPLOYMENT VIEW

Due to extensive support measures, the labor market was less affected by the pandemic than the sharp collapse in macroeconomic activity would have suggested. In March 2020, the unemployment rate even fell significantly again and reached the lowest level since the euro area was founded (see Fig. 4). Compared to the annual average for 2019 (7.6%), the unemployment rate during the corona pandemic rose by 1 percentage point to 8.6% in mid-2020. Since then, however, the labor market has noticeably recovered from the corona shock and the unemployment rate has fallen significantly again. In July, at 7.6%, it was roughly at the pre-crisis level. The rate was thus only slightly higher than the lowest level of 7.3% recorded before the outbreak of the corona pandemic at the beginning of 2008 and the level of 7.4% that participants in the Survey of Professional Forecasters considered neutral before the corona pandemic. In this respect, the phase of the corona crisis also appears to be over for the labor market. (Jinjarak, et al., 2021) (Heinemann & Kemper, 2021)



**Figure 4.** Unemployment rate in the euro area

**Source:** Eurostat

## 5. POLICY OPTIONS

With the PEPP, the ECB has created an instrument to be able to react quickly to the foreseeable slump in the economy in the euro area with the outbreak of the corona pandemic. Various previously applicable restrictions on the powers of the central bank, which the ECB itself regarded as fundamental before the corona pandemic, were suspended. This includes, for example, the option to purchase bonds that do not meet the requirements for eligible collateral, or the elimination of the upper limits for the purchase of bonds, which means that the Eurosystem has now become a key player in the event of a possible rescheduling of a euro area member state. The termination of such a program is all the more urgent, should the causes which, in the opinion of the ECB, justify such a massive expansion of central bank competencies, cease to exist. The PEPP was always explicitly linked to the phase of the corona crisis. If this is over, the PEPP should also be ended. When looking at macroeconomic activity, price developments and the unemployment rate in the euro area, it must now be stated that the phase of the corona crisis must be considered to be over by the end of 2021 at the latest. Against the background of the sometimes considerable delay before monetary policy measures take full effect in the real economy, a significant reduction in PEPP purchases therefore seems overdue. On the one hand the PEPP stabilizes financing conditions by reducing issuance-related duration risk. The program also helps to improve liquidity reserves. Asset purchases helped stabilize credit spreads. (European Central Bank, 2020)

On the other hand, the deficit that the PEPP causes for the euro states is significant. Debt-to-GDP ratios have reached record highs for some countries. (Havlik & Heinemann, 2021)

The ECB followed this line of argument and decided at its last monetary policy council meeting in December that the PEPP should expire at the end of March 2022. Particularly in view of the increased risk of inflation in recent months, the ECB would do well not to extend the special monetary policy measures beyond what is necessary. In this way, the ECB has given itself more flexibility should the increased inflationary pressure turn out to be sustainable.

## CONCLUSION

The paper examines the effectiveness of the ECB's PEPP for the period of the corona crisis. The impact of the crisis and the effectiveness of the PEPP are examined on the levels of economic development, inflation and labor market development. From this it is deduced whether the ECB's measures were successful and whether it makes sense to discontinue the PEPP as planned by March 2022. The investigation is carried out on the basis of time series analyzes, which provide clear indications for this.

The study concludes that a recovery has taken place at the level of economic development, which makes discontinuing the PEPP appear sensible. In the area of inflation, there are meanwhile significant rates of increase that make it appear sensible to discontinue the PEPP in favor of an inflation-dampening program. The labor market development shows the weakest informative value. Unemployment has

recovered and is almost at pre-crisis level, which also speaks in favor of discontinuing the PEPP, albeit less strongly than the two areas examined previously.

Overall, it shows that the ECB's decision from December 2022 to discontinue the PEPP is correct. Future investigations could retrospectively look again at the effectiveness of the PEPP for the time horizon of the corona pandemic, once it has finally been overcome. It could be shown here that rapid intervention by the central bank prevented worse effects and that an exit from the emergency program during the crisis at a weakened point in time made sense or did not make sense. In addition, an investigation into the further course of inflation during the pandemic with possibly targeted measures by the ECB that only affect this core area is of interest.

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**Bartłomiej Chrzanowski**

Collegium Humanum-Warsaw Management University  
Warsaw, Poland  
bartłomiej.chrzanowski@humanum.pl

*The savage people believed  
that there is no life without war.*

Titus Livius

## The phenomenon of war in selected philosophical concepts

### Summary

The publication presents descriptions of the phenomenon of war included in selected philosophical concepts. An in-depth analysis of the writings of Heraclitus of Ephesus, Nicollo Machiavelli and Friedrich Nietzsche made it possible to spot similarities as well as differences in the perception of the phenomenon of war. The article also introduces the biographical threads of philosophers, which impose a perspective important for the understanding of their views. In the conclusion of the article, the structure of the war mechanism is formulated, which seems to fully reflect the accompanying idea.

**Key words:** war, Heraclitus of Ephesus, Nicollo Machiavelli, Friedrich Nietzsche.

A world without wars. Is it possible? To what extent does war have to be a natural element of the surrounding reality? A group of realistic philosophers would have answered affirmatively. War is inevitable for them. Therefore, it should not be considered as a crime or a disease. This is the moral condition of humanity. But not everyone sees the terror of war in this way. For some, war is simply unnecessary. Especially in relations between countries, where cooperation can bring much greater benefits than conflict. To what extent does a man, in the light of selected philosophical concepts, seem to be doomed to war? An attempt to answer this question could result in an extensive monograph. For the purposes of the following considerations,

it is worth considering how war, as a phenomenon, can be presented in selected philosophical concepts.

The definition of war is not an easy task. It is quite a challenge to explain clearly a concept whose meaning has been used in so many contexts. Humanity has experienced not only wars understood as armed conflicts between two independent states or ethnic groups. In addition to the aforementioned, history has documented numerous civil, economic, cultural and even psychological wars. The very concept, due to the phenomenon of war, forces the interdisciplinary nature of further reflections.

In the classical definition of Q. Wright, war is considered primarily as a legal state. This state occurs when all or most of the resources of a given society (state or nation) are involved in a conflict. This conflict should be resolved, in keeping with Wright's interpretation, only by the use of military force.<sup>1</sup> In a similar way, taking into account the organizational and strategic values, the concept of war was explained by C. Schmitt: *it is a conflict between politically organized units, conducted with the help of armaments. topicality of the above explanations.*<sup>2</sup>

The phenomenon of war in the twenty-first century showed its face in a completely new light. Events treated as an act of war were not always carried out officially – i.e. by a specific state or even its army. This is evidenced by statistics: out of the fifty conflicts classified as war recorded in the last dozen or so years, only three were of the nature of clashes between states.<sup>3</sup> Thus, the conflicting parties do not always have to have the status of a state in order to define a relationship between them as a war. The current conflict between Russia and Ukraine can be considered as an exceptional phenomenon - it is a kind of return to the conventional form of war.

The term use of armed force used in classical explanations also gives the impression that it does not fit in with modern excesses. After all, this formulation determines the necessity to use weapons, i.e. a tool with a rather narrowly defined application. Passenger planes are an excellent example of unconventional weapons, which the UN legislator did not take into account when explaining the concept of armed aggression. And they were used as weapons in terrorist attacks. Thus, delivering war blows can take place with the help of previously unknown forms of action - which in fact is the essence of an optimally selected tactic.

A terminological analysis of a concept as broad as war proves the inadequacy of the constructed explanations. Defining the war is made difficult by its character, determined by the circumstances. Each epoch has its own wars, wrote H. Clausewitz.<sup>4</sup> Therefore, the most appropriate, in the context of an attempt to know and describe war, is to analyze it as a phenomenon in selected philosophical concepts. The analysis will concern the views of thinkers from different eras. It was decided to consider the works of Heraclitus of Ephesus, Macchiavelli and Frederick Nietzsche.

1 after: J. Wiatr, *Socjologia wojska*, Warszawa 1964, p. 50.

2 after: F. Ryszka, *Polityka i wojna*, Warszawa 1995.

3 after: B. Balcerowicz, *Czym jest współcześnie wojna?*, [in:] ETHOS, Lublin 2005, no: 3(71).

4 C. Clausewitz, *O wojnie*, Wydawnictwo Bellona, Warszawa 2022.

## 1. HERACLITUS OF EPHEBUS

The peak of the mature work of one of the most difficult to understand philosophers of ancient Greece falls in the period of 504 BCE. It was then that Heraclitus, who came from Ephesus, wrote the greatest number of aphorisms. The title *Peri physeos* (On nature) proved the great independence of views which could result – if we used a fragment of the work – from the character traits and the specific lifestyle of the creator himself. *The character of man is his destiny*, wrote Heraclitus, who led the life of a recluse.<sup>5</sup> He not only ran away from the crowd, but also simply despised him. He wrote his texts for the chosen ones. Understanding the arguments of Heraclitus requires a great deal of humility, patience and insight. In a style full of aphorisms, antitheses and understatements, it's hard not to get lost or try to over-interpret it. Hence, several threads of his philosophy are considered unsaid (example: the question of the transcendence of one multi-named God).<sup>6</sup>

Heraclitus, from the perspective of the title of his work, should focus on an insightful description of nature. But the truth is that his considerations did not lack a good deal of political and theological considerations. This could be due, in part, to the purpose of knowledge set by Heraclitus. In all these planes of life, the philosopher tried to see an analogous mechanism of functioning. Getting to know him made it possible to understand the rules of the universe. This mechanism – known as reason (*logos*) – is to rule over every element of reality. This, in turn, should be characterized as a space that is constantly maturing, developing and undergoing numerous changes. The river is its reflection.

For Heraclitus, it is impossible to re-enter the same river. Why? Because new waters continue to flow into it. Thus, it is subject to permanent and relatively easy to observe changes. The philosopher appropriately translated the mechanism of constant change of the world into every aspect of life. The principle of universal variability, however, seems to carry a certain inconsistency in the interpretation of Heraclitus – since each of the elements shaping the reality is changed, this should also apply to the concepts describing reality. As a result, in the light of such a construction of thinking, each of the words may be considered obsolete – their meaning is not constant. This issue gave rise to numerous discussions.

In Tararkiewicz's *History of Philosophy*, this thread, known as *variabilism* (or *heraclitism*), has not been clarified.<sup>7</sup> It is necessary to refer to much more extensive considerations on the philosophy of Heraclitus. They also contain an interpretation that gives clarity and brevity to the aphorisms contained in *Peri physeos*. The analogy of the river was supposed to illustrate, according to contemporary researchers, the order of the changing world. However, these changes – although they mean the end of one thing and the beginning of another – are to take place within a specific structure. As a result, the described river, although new waters flow into it and may change its bed with time, still remains the same river. Cognition, then, means understanding the process that accompanies the change that is inevitable for the ever-becoming object of knowledge.<sup>8</sup> What does all of this have to do with war?

5 K. Nowak, *Leksykon złotych myśli*, Warszawa 1998.

6 W. Wrotkowski, *Jeden wieloimienny. Bóg Heraklita z Efezu*, Warszawa 2010.

7 W. Tatarkiewicz, *Historia filozofii*, Warszawa 1983.

8 A. Gudaniec, *Heraklit z Efezu*, Lublin.

In Heraclitus' work, changeability is not so much inevitable as it is almost like a tense conflict. It cannot be otherwise, since changes occur only at the moment when two antagonistic forces clash. For example: warm and cold or night and day. Heraclitus, wanting to emphasize the tension accompanying these changes, calls it war. As a phenomenon, war is therefore not so much inevitable as it is necessary. *He is the father of all, the king of all.*<sup>9</sup> It guarantees, however, balance as the causative agent of the changes taking place in the world. So one should not be afraid of war, but perceive it as something normal and even necessary. Because only when the opposition appears, it becomes real to appreciate certain values (for example: health in case of illness) or elements (rain in heat).

The role of a rational person is therefore to perceive war as a phenomenon necessary to understand the process of changes taking place in life. The contradictions fighting with each other complement each other, creating a much stronger, though not immediately noticeable, harmony. To illustrate it, Heraclitus used the allegory of the bow and the lyre: *there is a harmony of opposing tensions, as in the bow and the lyre.*<sup>10</sup> The conflict of antagonistic forces present in the thinker's views creates a bond between them, which creates an elemental unity between them. This law must be accepted – because everything is watched over by the logos described above.

## 2. NICCOLO MACHIAVELLI

Not everyone wants to become a philosopher. He probably didn't want to become, at least at the beginning of his career, Niccolo Machiavelli. Much higher, in the role of a trusted secretary, he valued life with the ruler. By the time. Everything collapsed in 1512, when not only did the government change, but Machiavelli was also accused of participating in the conspiracy. The Italian thinker, having experienced torture, imprisonment and subsequent exile to live alone at the hands of the new government, decided not to give up. Increasing inactivity forces him to create a work, thanks to which he will return to his previously held position. It is in these circumstances that Machiavelli begins his search for the principle of optimal state management. The analysis of the huge amount of writings from ancient Rome of poets and historians will prove to be helpful in this endeavor. A set of views is created that make a retired convict one of the most outstanding philosophers specializing in state management.<sup>11</sup>

The treatise *Prince*, is considered the most important work of Niccolo Machiavelli. It does not resemble philosophical considerations with a metaphysical dimension. Rather, these are practical recommendations of an eminently penetrating secretary in reading human nature. These thoughts, although they were mainly to support the State, with time began to be treated as extremely effective in the existential dimension. This may result from the assumption about a properly managed state, important for further considerations. For Machiavelli, everything rests on the personal nature of the ruler. Having certain predispositions of a characterological nature *not only sustains those born to princes, but often brings private people to this dignity.*<sup>12</sup> It is not

9 A. Gudaniec, *op.cit.*

10 after: W. Wrotkowski, *op. cit.*

11 Cz. Nanke, *Przedmowa tłumacza* [in:] N. Machiavelli, *Książę*, Kęty 2005.

12 N. Machiavelli, *Książę*, Kęty 2005, p. 63.

surprising, therefore, the attractiveness of the *Prince's* message. It has turned from a political treaty into an excellent guide for people striving for a better life – understood at the level of material needs.

With what innovative did he surprise Niccolo Machiavelli in his work? In the period of his intensified creativity, one can notice the lack of a humanistic spirit in the sciences of state management. The then political thought resembles an attempt to create a perfect state, hence it is closer to abstract heights than to real recommendations of a practical nature. This is especially visible in the concept of an ideal ruler – *he should be characterized by virtues close to God and far from human passions*.<sup>13</sup> According to Machiavelli, this is not a proper concept. Especially in a world filled with numerous wars and intrigues. What character traits should the rulers have?

Experience as a secretary combined with an analysis of historical and current political events makes the thinker see in the ruler a person neither worse nor better than the rest of society. *Prince*, mentioned in the title, is distinguished by his courage to use each of the measures required by the circumstances. Even morally wrong, because ethical considerations cease to apply when managing the state. The point is not to completely abolish morality. However, it is necessary to abandon the concern to act in accordance with its spirit in the public plane, where *the good of the fatherland is the supreme law*.<sup>14</sup> It can be assumed that a specific obstacle to the implementation of the above concept may be the strong position of the Christian religion.

In the thinker's views, Christianity – focused on shaping virtues not necessarily convergent with those that the ruler should have – limits the freedom to formulate political thought. On the other hand, Machiavelli sees great potential (not only in Christianity, but in religion in general). Thanks to it, an agile ruler is able to provide himself with a powerful tool – as evidenced by the strength of the ecclesiastical authority of some countries. It is enough to instill love for the ruler through religion to gain a powerful army in the form of faithful inhabitants defending their territory. The people, as a self-contained creature, are not yet a force. But properly organized, it can constitute a great military force – which was also called for by the author of *Prince*, noticing his declining patriotism. Own army is always stronger than mercenary army.

The military organization of the state reduces further considerations to the area of war. Machiavelli's views, though elaborated more extensively in *The Discourse and On the Art of War*, may also constitute part of his controversial interpretation. War is perceived in it as a specific impulse that sets the direction of the state's development and enables the discipline of the population. *There is nothing that gives a prince such respect as great undertakings and setting an extraordinary example, the thinker argues*.<sup>15</sup> As a result, in order to manage the state optimally, it is necessary to act also on the international arena. Without remaining neutral to the ongoing conflicts between neighbors. *You are told that it is best and most advantageous for your country not to get involved in our war; it is quite the opposite, because without intermingling, you will become the winner's prize, neither for grace nor for fame* – the view of Titus Livius is invoked in the *Prince*.<sup>16</sup>

13 Cz. Nanke, *op. cit.*, p. 13.

14 *ibid.*, p. 13.

15 N. Machiavelli, *op. cit.*, p. 81.

16 *ibid.*, p. 82.

You can get to know a friend of a weapon relatively easily – he will ask for help. Only the enemy will demand neutrality, and later, as a winner, attack other regions. This is how other countries collapse. Hence, it is appropriate to join forces even with those who are stronger than you (which may disturb your independence) in order to show your dignity as an ally and justify your own existence. *The winner does not want doubtful friends who will not help him in his misfortune.*<sup>17</sup> In addition, the consequences associated with the risk of losing are also significantly reduced, because losing together, so sharing a common fate, draws closer. *If the one with whom you are connected loses, he will accept you, he will help wherever you can and you will become a companion of his fate, who can shine again.*<sup>18</sup>

In Machiavelli's views, war is for man not only inevitable, but even necessary. The ruler must look for her to mobilize and discipline the people. The style of adaptation appropriate to the situation will turn out to be indispensable in governing and waging wars. For sometimes you have to show the cruelty of a lion, and other times the fox's cunning will be better. This is how the title *Prince* can increase the chances of survival. Machiavelli, like Heraclitus, did not doubt the driving force of fate. He cannot be cured, but one can prepare for his blows and, if resourceful enough, survive them. Therefore, it is in the interest of the person who wants to maintain the state to constantly care for capital – because this is what will prevent collapse in the period of increased difficulties.

The views of the Italian thinker met with a huge wave of criticism. His writings were written by Satan for some of the public. Indeed, Machiavelli wrote about politics mainly through the prism of the dark side of human nature. Moreover, a good ruler is not an example of virtue for him, but a fox or a lion who can adapt to circumstances. As a leader, he has the right to do so. However, the last pages of the work should be emphasized. There, the author's concern for a better life for Italy is clearly expressed, which rests in the hands of the rulers. Niccolò Machiavelli was not a careerist, but a down-to-earth, still hiring advisor to the ruler. Due to fate, he would never return to the position of secretary, allowing the book *Prince* of the Political and Historical Treatise to acquire the rank of a philosophical journal.

### 3. FRIEDRICH NIETZSCHE

Another great thinker who touches upon the phenomenon of war in his views is Friedrich Nietzsche. A loner by choice, hungry for friendship and recognition. The necessity of introducing an axionormative system glorifying force and war, which he postulated, could by no means find a place in a delicate and sensitive disposition. Perhaps it was because of the inability to change his own character traits that the philosopher broke down, spending the last years of his life under close psychiatric care.

Before that happened, Friedrich Nietzsche wrote. So intensely that with time he quit his job at the university, where he was a lecturer in classical philology. He began wandering for years. Each of the newly created works was accompanied by huge

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<sup>17</sup> *ibid.*, p. 82.

<sup>18</sup> *ibid.*, p. 82.

emotional swings. In order for the writings to express the depth of thought, Nietzsche decided to create them in the form of aphorisms. To what extent did this style borrow from Heraclitus? He undoubtedly felt a bond with the ancient thinker. Before his work gained momentum, however, it is necessary to reach back to 1870. It is then that the war breaks out, and Nietzsche, fascinated by its phenomenon, can no longer sit at his desk. He sets out on her, he will perform the duties of a paramedic.

The phenomenon of war, in the works of Friedrich Nietzsche, is not described solely in military-state categories (as in Machiavelli's). The philosopher describes the phenomenon of war through the prism of the art whose development he was most interested in. When she wants to find the key to understanding art, she sees two opposing forces. He gives them names: Apollo and Dionysus. Apollo is treated as the embodiment of clarity, form and clear contours - its strength lies in the fact of constant awareness. In turn, Dionysus is the god of intoxication, relaxation and blurring of borders. He is the cause and the driving force behind development. Nietzsche devotes much more attention to the second element.

The very discovery of an interpretative key to art is only the beginning of Nietzsche's activity. He decides to transfer the regularity described in the play to the rank of a regularity of a metaphysical nature. For him, the Dionysian trend is not only a part of art. It is also part of the dark nature of man. The philosopher, like Machiavelli, sees this aspect of human behavior and observes the environment through this prism. While at war, he describes the Dionysian element as *glorifying and embellishing aspects of the horror and horrors of existence as the means to heal the pain of existence*.<sup>19</sup> This current is therefore a pole that has always existed. Moreover, it was first described in Homer. It is in the *Iliad* that the Greeks are characterized by a *certain trait of cruelty, a tiger's desire to destroy*.<sup>20</sup> This element, deprived of any concern for conventions, is responsible, in Nietzsche's concept, for the development paid for with pain and suffering. It is also a permanent element of human nature.

Currently, only in a much more sublime and ritualized form, the Dionysian element can be seen in all forms of ritualized rivalry. In a creation encompassing such broad masses as society, competition takes many forms. One of them forces social stratification. The people are determined to divide - every higher culture needs an exploited class that works for its benefit.<sup>21</sup> This division, with pain and suffering, is necessary for development. The fact that the fight is to serve culture has a certain consequence. Here, evolution takes on a psychological, not biological, character. Hence, it carries with it decisive moral consequences.

So in a conflict-ridden world, it seems that everything is going in the right direction. But Friedrich Nietzsche would not agree with this diagnosis. According to the philosopher, society and its culture are not going in the right direction, and the insolent slave class is to blame for this state of affairs. It is they who, by refusing to accept their destiny, impose on the rest of society a sense of care for the weaker. As a result, outstanding individuals, instead of developing, are forced to follow pre-established rules that also measurably limit their development.

<sup>19</sup> R. Safranski, *Nietzsche. Biografia Myśli*, p. 65

<sup>20</sup> *ibid.*, p. 66

<sup>21</sup> *ibid.*, p. 70

The Christian religion plays a significant role in this. For Machiavelli, it was a perspective that should be suspended in the context of political and military activity - for Nietzsche, it is not conducive to the progress of civilization. The system of norms and values created in it keeps the weaker safe, who, using religion as a tool, are able to enforce from the stronger a feeling as harmful as pity. It is harmful, because in a properly functioning culture, the stronger establish an axionormative order.<sup>22</sup> The stronger also, although they are in the minority, should serve the slave class. However, for such a state of culture to occur, it is necessary to re-evaluate the values. Only then will humanity, as a species, begin to move in the right direction.<sup>23</sup>

Frederick Nietzsche, as a lover of strength and war, was initially interested in the development of culture. However, he noticed a rule which he (like Heraclitus) decided to transfer to anthropological and ethical considerations. The role of the philosopher in a world filled with pleasure and suffering is distancing himself, which Nietzsche describes as Dionysian wisdom. This attitude resembles the Heraclitus view, in which two opposing values as a result of the war between them de facto ensure development, because they create a new quality.

Nietzsche's views were most widely used by neo-Nazis. They invoked a controversial philosophy, but the thinker himself would rather not sign up under their actions. They should be treated rather as a wrong interpretation, which was undoubtedly contributed by the thinker's sister, Elizabeth. It was she who, taking advantage of the growing popularity of his views, decided to sell them „appropriately”, often changing their meaning.

## SUMMARY

The phenomenon of war, in the philosophical concepts presented above, often introduces the thought constructed by a given philosopher to a similar area of considerations or a quite similar position. The very description of this phenomenon in a complete way should be considered a difficult procedure - it is impossible to write about the phenomenon without taking into account the whole concept in which it occurs. And about the philosophical concepts themselves should be written in a much more extensive form than the article. Anyway, many books have already been written about them. The views presented above were briefly characterized, but, in the author's subjective opinion, the text did not reflect the depth of the reflections of individual philosophers.

However, the following article may be an inspiration. And so it should also be treated. In the following pages, it is considered justified to show common elements that can be noted in the perception of the phenomenon of war by apparently independent thinkers. What do Heraclitus with Ephesus, Niccolo Machiavelli and Friedrich Nietzsche have in common?

22 M. Pełka, *Nietzsche. Życie, poglądy, wpływy*, p. 45–75

23 R. Safranski, *op. cit.*, p. 135–171

Thinkers of different eras consider war as inevitable and even necessary. Heraclitus saw its phenomenon in metaphysical terms – war made it possible to constantly become. For Machiavelli, it was part of the optimal management of the state – its presence increased the strength of the national spirit. In Nietzsche's deliberations, war is considered more through the prism of culture, as a custom proper to it, because it determines its progress.

Both Heraclitus of Ephesus and Friedrich Nietzsche were supporters of the search for a universal mechanism of functioning. With such an attitude, identifying patterns in one area becomes more important than getting an education in several others. After learning about it, this regularity can be transferred to each of the selected dimensions of reality. Machiavelli did not take a position on this. Perhaps because he was interested in state management and did not consider himself a philosopher. By comparing his achievements with the views of Heraclitus and Nietzsche, it is worth trying to transfer one of his original rules, increasing the potential of a given principality, to increasing the potential of... man.

In the *Prince*, the Italian secretary recognized that the State, as a creature, needed wars or other undertakings. It mobilizes the spirit of the nation, providing you not only with development, but also with much greater strength for survival. Can this controversial strategy be transferred to the level of human talent management? If so, it becomes necessary to instill in the consciousness of every human being the constant search not only for challenges, but also for conflicts. Therefore, man should approach life through the prism of goals and tasks. However, in order for such "education" of an individual to make sense, Machiavelli would "recommend" a specific style of adaptation based on a thorough knowledge of human nature and rejection of morality if it interferes.

This controversial view would find a wide range of critics. Especially in pedagogy. But also Fryderyk Nietzsche called for a re-examination of the axionormative system. The author of Zarathustra, playing the role of a critic of morality, described its genealogy. He tried to show that its main goal is to keep society in mental discipline (remorse), which blocks the progress of more talented individuals. The current norms and values, however, ensure the existence of the weaker. As a result, humanity as a species is not heading in the right direction - much as Machiavelli Nietzsche called for a reconsideration of values. Only that it was not supposed to apply only to the organization of the state, but to lead to their general (and thus covering every sphere) reevaluation.

The element that united the views of all thinkers was the attitude towards fate. In ancient Heraclitus, the role of the rational man is to accept the state of reality filled with war. Logos watches over everything. Interestingly, Machiavelli also believed in the presence of force majeure, for whom favorable fate was half the success. Fryderyk Nietzsche, who fought against metaphysics, wrote, which exposed him to the accusation of inconsistency, about his constant return.

In the context of philosophical concepts, the very phenomenon of war takes on slightly different meanings. For Heraclitus, war is seen as the inevitable conflict between contradictions that creates a new quality (ensures becoming). For Machiavelli, war is part of a political activity that cannot be escaped. So it means constantly focusing

on taking over countries that do not want to be taken over. In Nietzsche's work, war serves art – it reveals the true nature of man that violates social conventions. Thus, it ensures progress, also appearing in sublime forms, for the human species. In all these views on the phenomenon of war, there are two elements (A and B), one of which (A) decides to violate the other (B), while the latter does not want to yield. This characteristic can be compared with a fragment of the definition of a classic of Clausewitz's war strategy, where war was understood as forcing the enemy to do our will.

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**Mariusz Jankowski**

Collegium Humanum-Warsaw Management University  
Warsaw, Poland  
mariusz.jankowski@poczta.fm

## Mediation in family and divorce-related litigations in Poland

### Summary

The aim of this article is to present the institution of mediation as a way of solving problems in disputes in the field of family law. The fundamental question attempted to answer was formulated as: does the mediation institution enable the parties of the dispute to resolve the conflict faster and less stressfully? Mediation in family and divorce matters is an increasingly frequent and easy way to quickly resolve a conflict in the area of establishing alimony, contacts between minor children and their parents, etc. Unfortunately, the institution of mediation is still not so common and appreciated by both the lawyers and the judges. Within this article, the results of the own questionnaire survey, conducted via the Internet, will be presented. The study was conducted in a group of deliberately selected people - the respondents participated in at least one mediation. The results of the study show that the people who have used this method of conflict resolution appreciate it for its velocity, lack of the need to visit the court, and would be willing to use it in the event of another conflict, or would suggest using it to a friend in such a need. Low costs of mediation, quick time of its conduct and lower stress due to the lack of necessity to participate in a court hearing have a positive effect on the perception of mediation by the respondents. For this reason, mediation should be promoted at every stage of the dispute as a cheap and simple alternative to judicial proceedings.

**Key words:** mediation, divorce, agreement, compromise.

### INTRODUCTION

Family mediation in accordance with the civil procedure has the purpose of resolving the conflict, and if it concerns the breakdown of a marriage, and there still is a chance for reconciliation of the spouses, it should first try to maintain it, if this is impossible, an agreement should be found leading to the settlement of the dispute<sup>1</sup> on any other divorce-related issue.

<sup>1</sup> M. Białecki, *Mediacja w postępowaniu cywilnym*, LEX 2012, p.22.

Most of us don't like conflicts, and if they concern our loved ones, they take on an additional amount of dimension and seriousness. The breakdown of a relationship is an absolutely distressing experience for both parties (spouses as well as informal partners), especially when they have minor children together<sup>2</sup>.

When adults make a conscious decision to break up, they should take equal care of the welfare of their children and cause as little detriment to them as possible.

In Poland, a progressive increase in the number of divorces has been observed every year<sup>3</sup>. As Dr. Agata Gójska<sup>4</sup> points out, "Divorce is a multidimensional event. For each of the spouses, it means the need to redefine themselves, their own system of values and their own place in the world." It is joint by thoughts of the past, fear of the future and the hardships of surviving the present moment.

What makes the difficulty in family conflicts so distinct?

The multifaceted nature of the divorce process, the necessity of conducting detailed legal proceedings and the duration thereof cause the conflict to escalate, moreover, many new problems arise in life after the breakup. These problems are mainly situations where we suddenly have to face everything unattended. We have to go to work, prepare the children for school, pick them up after work, take them to extra-curricular activities, help them with homework, and suddenly it turns out it is too much for one person, which leads us to hold grudges against the other party for having left us and the conflict keeps on growing. After the split, one of the parties files a lawsuit, if they do it themselves, they often make mistakes, so they receive a summons to fill in the gaps, and if they manage to submit everything correctly, they receive a hearing date set in a years' time. It is followed by helplessness, to which we often refer as the feeling of having hit the wall.

It is often the case that a family conflict has been growing for some time, in which people become indifferent to each other, until one of the parties decides to radically end this stressful and difficult situation.

It is important to pay attention to the fact that the family conflict rarely concerns only the spouses and the children. Parents, siblings, grandparents, as well as other people in the close environment are often participants in the conflict, they offer their support, help, give advice and sometimes thanks to them it is easier for the parties<sup>5</sup> to go through this difficult period.

In situations of relationship crisis, or in need of solving a problem, such as providing financial stability to children by paying alimony or arranging contacts with the children for a parent who no longer lives with the family, parties most often refer the case to a competent court that will decide on solving the problem.

Many people do not know that in such case, the most effective way to resolve essential matters is mediation, as it allows you to reach a compromise in a relatively short

2 A. Gójska, *Mediacje rodzinne*, University of Warsaw Press, Warsaw 2014.

3 A. Czerederecka, *Rozwód a rywalizacja o opiekę nad dziećmi*, Warsaw 2020, p. 31.

4 A. Gójska, V. Huryn, *Mediacja w rozwiązywaniu konfliktów rodzinnych*. Wydawnictwo C.H. Beck, 2007, p. 69.

5 i.e. to people in conflict.

amount of time and ensure the safety and continuous contact with the parties' children, regardless of the ongoing court process, which can be ended much faster because of the mediation.

The term „mediation” is derived from Latin „mediare”- to be in the middle, as well as from the Greek „medos”, which means intermediary, neutral, not belonging to either side. Mediation is a confidential and voluntary extrajudicial proceeding in which the settlement is possible. Mediation is also one of the alternative methods of solving disputes in (ADR - Alternative Dispute Resolution<sup>6</sup>), in which the mediator as a impartial and neutral person helps conflicting parties to communicate with the aim of finding a solution and ending the conflict or reducing it significantly<sup>7</sup>. This term signifies „amicable and conciliatory methods of resolving conflicts and disputes based on the idea of seeking agreement and finding a compromise way out of a conflict situation”<sup>8</sup>.

„Mediation is a conversation”<sup>9</sup> and often a very difficult one, as it is conducted by parties in conflict, but at the same time it is crucial to reach a positive conclusion.

There is no statutory definition of mediation in Polish law, the first record concerning mediation, appeared in the Act of May 23, 1991 on resolving collective disputes (Journal of Laws No. 55, item 236). Act of 6 June 1997 (Journal of Laws No. 89, item 555) introduced mediation in criminal proceedings. In civil law, mediation has been found to be applicable pursuant to the Act on July 28, 2005 amending the Act on the Civil Procedure Code and certain other acts (Journal of Laws No. 172, item 1438).

Mediation can be conducted in all civil cases where it is permissible by law to reach a settlement, which are the cases in whose the outcome of the proceedings may be dependent on the will of the parties.

Thanks to mediation, in the difficult time of parting and in the face of many new situations that people encounter after the breakup, it is possible to develop rules for the joint upbringing of children during the divorce process, which can be continued even after the end of the marriage, with a guarantee of their implementation through court approval.

The main topics of mediation in family and divorce cases are:

- Establishing the terms and conditions of divorce.
- Establishing alimony.
- Establishing contacts with children.

6 R. Świeżak, M. Tański, *Alternatywne metody rozwiązywania sporów. Przegląd zagadnień*, „Partners” Foundation, Warsaw 2003 p. 3.

7 The expression of the dominant tendency to define the meaning of mediation is the definition contained in Article 3 listed in A Directive 2008/52 / EC of the European Parliament and of the Council of May 21, 2008 on certain aspects of mediation in civil matters and trade (Journal of Laws UE L 136, pp. 3–8), according to which „mediation means proceedings, regardless of its name or term, in which at least two the parties to the dispute will try to reach an agreement on their own to resolve their dispute, with the help of a mediator. Such proceedings may be initiated by parties, or they may be proposed or ordered by a court or by the law of the state”.

8 A. Kalisz, A. Zienkiewicz, *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warsaw 2009, p. 26.

9 E. Gmurzyńska, R. Morek, *Mediacje teoria i praktyka*, Wolters Kluwer 2018 p. 23.

- Determining the whereabouts of children.
- Fulfilling the needs of the family.
- Establish a detailed parental care plan.
- Determining issues relating to the division of property.

By virtue of the agreement and the will to provide the minor children of the parties with stability in this difficult period, it is advisable to agree, establish the rules of contact between the parent and the children who do not live together anymore, determine the amount of alimony to ensure a proper life. When the parties agree, such agreements stay in power, and divorce often becomes a pure formality, and when the parties' opinions differ and they cannot reach an agreement, even a temporary parental agreement for the duration of the court proceedings ensures a financial security and guarantees contact with children who, regardless of resentment towards the partner, we love the most in the world.

We distinguish the following principles in mediation:

- voluntariness<sup>10</sup>, only with the mutual consent of the parties can they participate in mediation proceedings, such consent may be withdrawn at any stage of the mediation by either party;
- impartiality, each mediation party has equal rights and should be treated in the same way;
- confidentiality, the entire course of the mediation procedure is classified, the mediator is obliged to keep everything that he learned while conducting mediation secret;
- neutrality<sup>11</sup>, the mediator cannot impose his own proposals on the parties dispute resolution, the agreement is worked out by the parties with the participation of the mediator;
- acceptability, the parties must accept the person of the mediator and their help in finding a compromise;
- adjustability, i.e. the lack of a single way of conducting a mediation procedure.

A mediator is a competent and professional person in possession of the skills to mediate in economic matters. It helps the parties to identify issues that are in dispute and to work out a solution satisfactory to both of them.

The mediator has no interest in making the provisions in the settlement sound different than what the parties wish for, the mediator much more often asks questions than answers them.

The mediator is not a judge and he is not the one to settle the dispute – the parties simply do it with his participation. The mediator should ensure that the parties treat each other with mutual respect and dignity during the discussion.

<sup>10</sup> The principle of voluntary mediation arises directly from the content of Article 183 § 1 of the Code of Civil Procedure.

<sup>11</sup> P. Waszkiewicz, *Zasady mediacji* [w:] *Mediacje. Teoria i praktyka*, red. E. Gmurzynska, R. Morek, Warsaw 2018, p. 170.

A person may become a permanent mediator entered on the list of a district court if they are a natural person with full legal capacity and entirety of civil rights. The person cannot be a judge (except a retired judge), must possess knowledge and skills in the field of mediation, must be over the age of 26, has to be fluent in Polish and cannot have been legally convicted of an intentional crime or an intentional fiscal offense.

In accordance to the ordinance of the Minister of Justice of 20 January 2016 on maintaining a list of permanent mediators<sup>12</sup>, in order to become a permanent mediator, an application must be submitted to the President of the District Court, on the official form, along with the documents confirming the knowledge and skills in the field of mediation.

The mediator is entered on the list based on the verification that the person applying for the entry meets the conditions referred to in Article 157a of the Act on the Organisational Structure of Courts<sup>13</sup>.

The mediator may conduct both contractual mediation, i.e. one initiated by the party or parties, or court mediation, i.e. one to which the parties have been referred by the court.

In the case of mediation initiated by the court proceedings, the court refers the parties to mediation, indicating a person from the list of permanent mediators at a given district court<sup>14</sup>. From the moment the mediator receives the ruling<sup>15</sup> to refer the parties to mediation, the time limit for mediation begins, which may last up to 3 months or longer, but only due to important reasons or at the joint request of the parties.

The important fact is that even when the court proceedings are pending, the parties may submit unanimous declarations of will regarding their willingness to mediate<sup>16</sup>, after which the parties try to resolve the dispute through mediation, and the court proceedings are suspended for that time.

The article consists of three parts. In the first one, a literature review had been made and it was found that mediation is an important element in resolving conflicts in family and divorce-related matters.

The second part defines the purpose of the study, characterizes the data sources and presents the research method. The third discusses the results of the empirical study. The article ends with a summary containing the conclusions of the analysis.

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12 Regulation of the Minister of Justice of 20 January 2016, Journal of Laws No. item 122.

13 Act of 27 July 2001 – Law on the system of courts in common courts (Journal of Laws of 2020, item 2072).

14 A. Kalisz, E. Prokop-Perzyńska, *Mediacja w sprawach cywilnych w prawie polskim i europejskim*, EPS 2010/11, p. 14–24.

15 T. Żyznowski [w:] *Kodeks postępowania cywilnego, Komentarz*, eds. H. Dolecki, T. Wiśniewski, t.1, Warsaw 2011, p. 662.

16 K. Krziskowska, *Mediacje i postępowanie ugodowe w sprawach cywilnych i gospodarczych*, LEX 2019, sec.1.

## 1. THE PURPOSE OF THE WORK AND THE DATA SOURCES

The main goal of the empirical research is to determine how family and divorce-related conflicts are resolved - what mediation participants base their decisions on and what role does the mediator's attitude play in the conflict resolution process.

The main research question concerns how the perception of mediation and the mediator by the participants impacts reaching a compromise in family and divorce-related disputes.

To achieve this goal, a literature review and a survey of mediation participants were planned.

The empirical study has been focused on two main goals:

- finding the most influential factors in the satisfaction of mediation participants and in the fact that they chose mediation as a way to solve problems in family and divorce cases,
- assessment of the current perception of mediation as a method of conflict resolution in family and divorce matters.

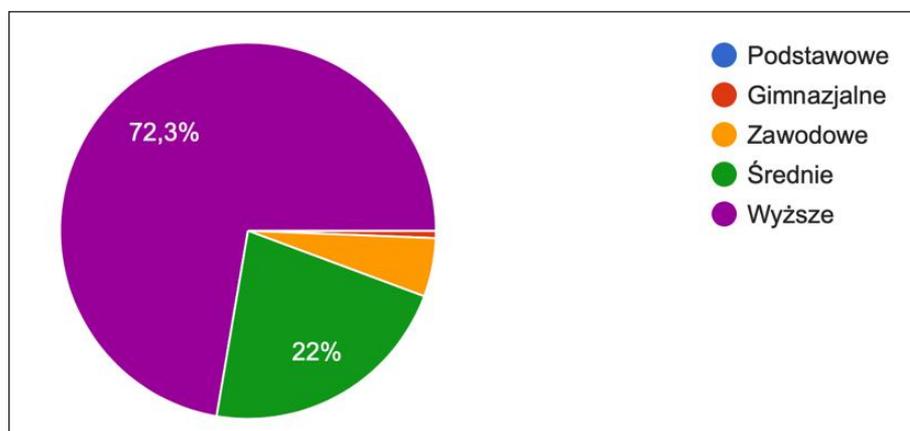
The survey questionnaire consisted of 25 close-ended questions and 5 demographic questions.

There were 159 respondents – mediation participants, who took part in the study, of which: 107 people used mediation only in one case, 52 in more than one case.

The average age of the respondents was 33 years old, the oldest mediation participant was 67 years old, the youngest was 19 years old. In subsequent questions, the education and place of residence of the respondents were analyzed.

### Wykształcenie

159 odpowiedzi



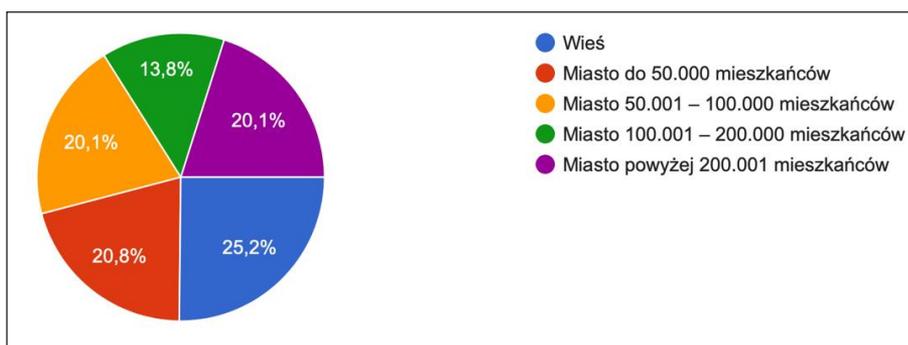
**Chart 1.** Education of the surveyed people

**Source:** own study based on own survey.

Most of the respondents (115 – 72.3% of all surveyed people) are people with higher education, 35 respondents and 22.0% of the surveyed group are people with secondary education, 9 people and 5.6% had vocational or lower education.

## Miejsce zamieszkania

159 odpowiedzi

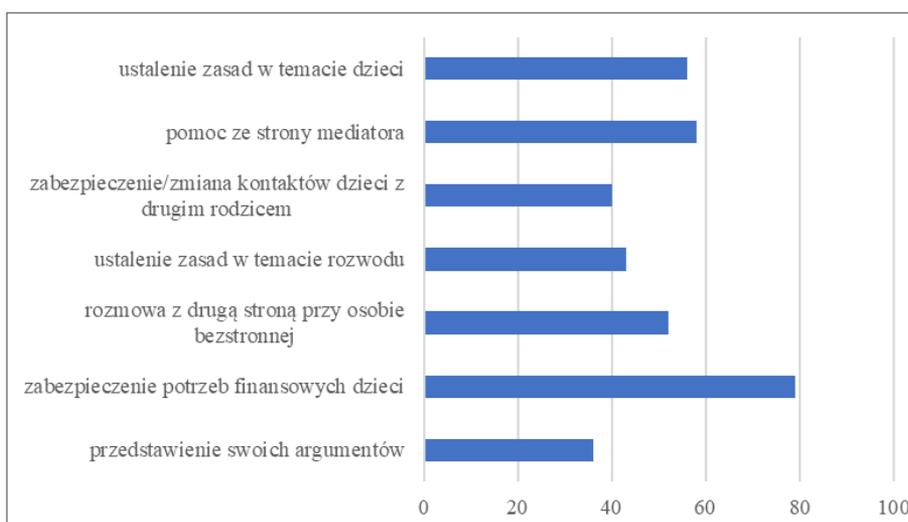


**Chart 2.** Place of residence of the surveyed people

**Source:** own study based on own survey.

Mediation in family and divorce cases was used equally in villages and cities of various sizes. 25.2% of the respondents, i.e. 40 people, lived in villages, the remaining group was 74.8% – 119 inhabitants lived in cities.

Mediation is a popular form of conflict resolution in family and divorce-related matters in cities of various sizes.



**Chart 3.** What were your expectations regarding mediation in family proceedings? (you can choose several answers)?

**Source:** own study based on own survey.

Chart 3 presents the expectations the participants have towards mediation, who undertake conflict resolution in family and divorce-related disputes with its use.

The choice of expectations was finite, although respondents could select more than one out of the seven possibilities. Subsequently, participants were allowed to express their views on their expectations in an open-ended question.

The most common expectation of the mediation participants was to secure the financial needs of the children and to establish rules regarding them, the respondents also perceived the expectations regarding the mediator's qualities as important, e.g. impartiality, neutrality.

Moreover, three respondents took the possibility of expressing their thoughts about mediation in their own family or divorce case.

The answers given by the respondents are presented below:

*Respondent 1: "Unfortunately, in our case, mediation made the situation worse. The mediator, instead of listening to both sides, started pressing on what the other side wanted. She was acting nasty. She was rude, even arrogant. "*

*Respondent 2: «I absolutely wanted a divorce because my husband was mentally, physically and morally abusive, there were reasonable suspicions of him molesting our daughters, so this settlement was a joke ...»*

*Respondent 3: "It was a fulfillment of an obligation imposed by the court. I have been told that it will look bad if I don't agree to mediation. Mediation was a nightmare. «*

The most common areas of mediation in family and divorce-related cases were the following:

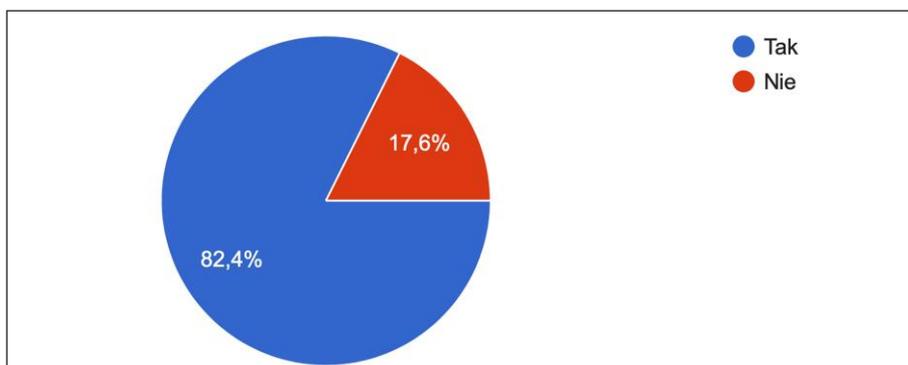
- child support,
- issues related to the division of property,
- regarding the divorce itself and
- establishing contacts with children.

The assessment of the effectiveness of conflict resolution in the opinion of the respondents is presented in Chart 4. Over 82% of respondents assessed mediation as an effective form of solving family and divorce problems - indicating that the mediations undertaken resulted in an agreement and the signing of a settlement.

The respondents' opinion on the evaluation of the effectiveness of mediation is presented in Chart 4.

### Czy mediacje zakończyły się porozumieniem i podpisaniem ugody?

159 odpowiedzi



**Chart 4.** The respondents' opinion on the evaluation of the effectiveness of mediation.

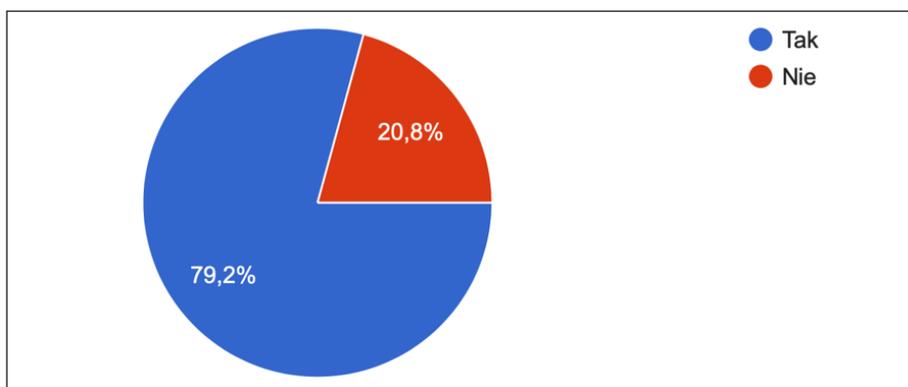
**Source:** own study based on own survey.

In the next step of the analysis, it was checked how the opinion on the effectiveness of mediation influenced:

- opinion on how fast the conflict was resolved,
- lower levels of stress related to the conflict,
- sense of security of mediation participants,
- meeting expectations regarding mediation,

### Czy uważa Pan/i że mediacje przyczyniły się do szybszego zakończenia sporu?

159 odpowiedzi

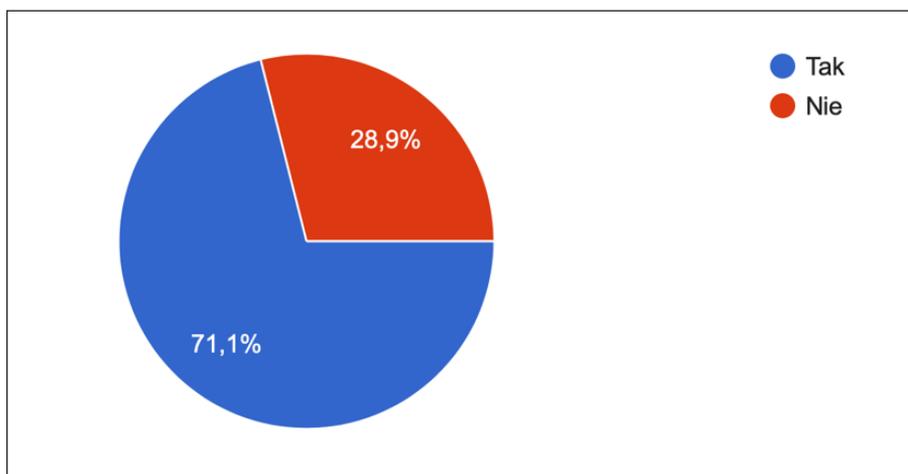


**Chart 5.** Do you think that mediation contributed to a faster resolution of the dispute?

**Source:** own study based on own survey.

### Czy dzięki załatwieniu sprawy u mediatora udało się uniknąć wizyty w sądzie i stresu z tym związanego?

159 odpowiedzi

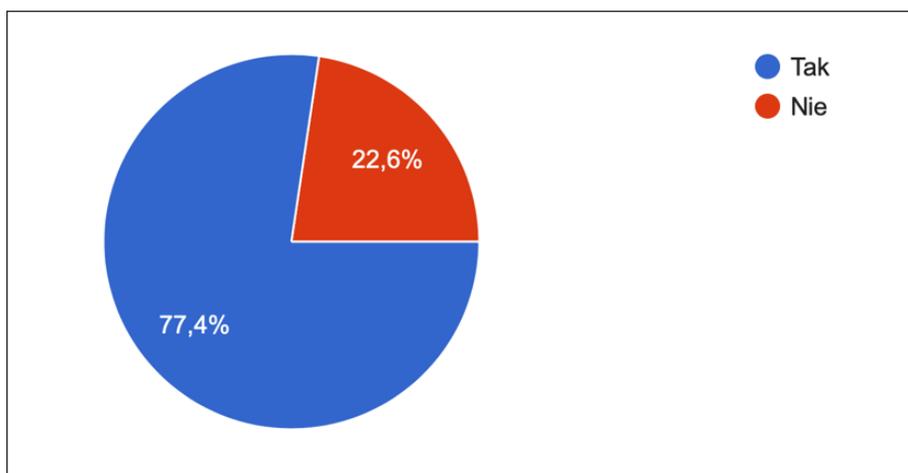


**Chart 6.** Was it possible to avoid court visits and the related stress thanks to settling the case with the mediator?

**Source:** own study based on own survey.

### Czy zawarcie ugody madiacyjnej oraz zatwierdzenie jej przez sąd dało Panu/i poczucie bezpieczeństwa?

159 odpowiedzi

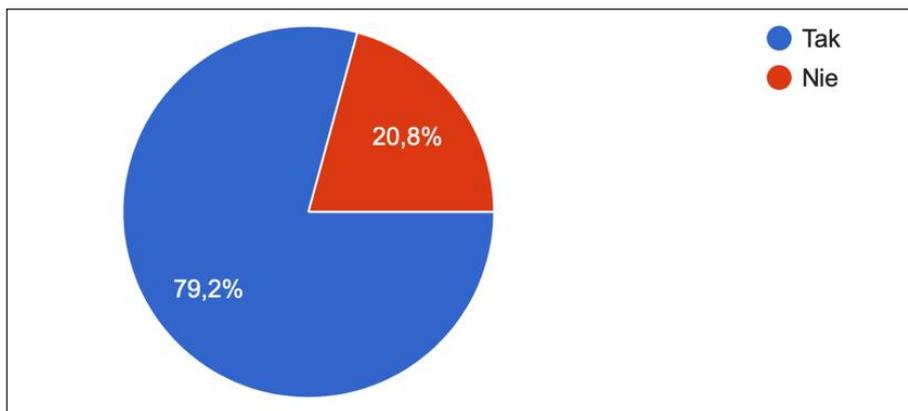


**Chart 7.** Has the conclusion of the mediation settlement and its approval by the court given you a sense of security?

**Source:** own study based on own survey.

## Czy mediacja rodzinna spełniła Pani/a oczekiwania?

159 odpowiedzi



**Chart 8.** Did the family mediation meet your expectations?

**Source:** own study based on own survey.

Regardless of whether the participants had the opinion that mediation is an effective or ineffective method of conflict resolution, their responses to the following topics:

- opinion on the speed of conflict resolution,
- satisfaction with the mediation result,
- lower levels of stress associated with the conflict
- sense of security of mediation participants
- do not differ statistically from each other.

What that means is – stress, safety, speed and satisfaction are assessed by both groups as important factors. The results of the study show that people who have used this method of conflict resolution appreciate it for its velocity, lack of the necessity to visit the court and would be willing to use it in the event of another conflict, or would suggest using it to a friend in such a need. Low costs of mediation, quick time of its conduct and lower stress due to the lack of necessity to participate in a court hearing have a positive effect on the perception of mediation by the respondents. For this reason, mediation should be promoted at every stage of the dispute as a cheap and simple alternative to judicial proceedings. Due to the important role of the mediator in the procedure of solving family and divorce-related conflicts in the last, third part of the questionnaire, the mediator participants determined whether the mediator's attitude influenced their opinion on mediation by assessing the characteristics of the mediators.

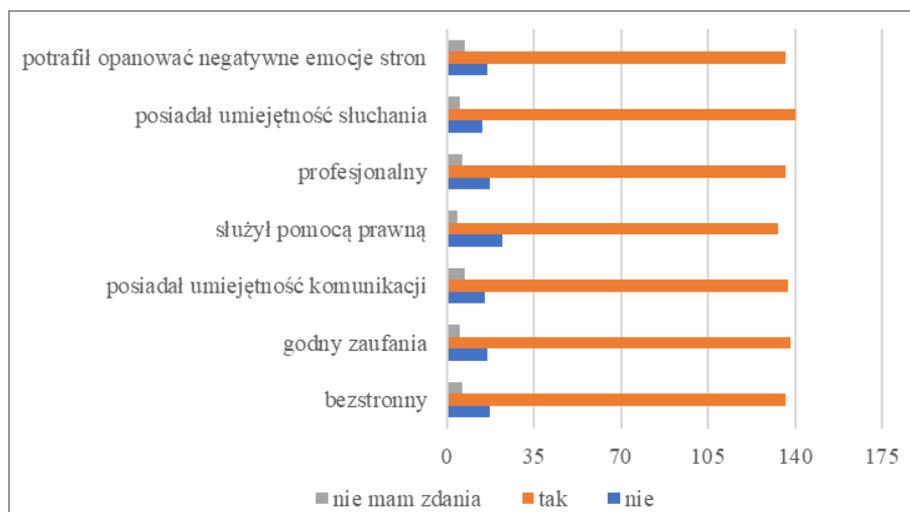
The respondents were asked to answer the 10 following questions:

1. Was the mediator conducting your mediation: [impartial]
2. Was the mediator conducting your mediation: [trustworthy]
3. Was the mediator conducting your mediation: [had good communication skills]

4. Was the mediator conducting your mediation: [provided legal assistance]
5. Was the mediator conducting your mediation: [professional]
6. Was the mediator conducting your mediation: [able to listen]
7. Was the mediator conducting your mediation: [able to control the negative emotions accompanying mediations]
8. Before starting the family mediation, did the mediator inform you about the rules of the mediation?
9. Is your relationship (between the parties to the mediation) after mediation?
10. Was your relationship (between the parties to the mediation) affected by the characteristics and attitude of the mediator during the mediation?

The statistics of answers to the questions about the characteristics of the mediator are presented in Chart 9.

In most cases, mediation participants – respondents assessed that such features as: impartiality, trust, communication, legal knowledge, professionalism, the ability to listen and composure were the features of the mediator during the mediation in which they had participated.



**Chart 9.** Was the mediator conducting your mediation: [impartial] [trustworthy] [had good communication skills] [provided legal assistance] [professional] [had the ability to listen] [was able to control the negative emotions accompanying mediation]

**Source:** own study based on own survey.

The formal requirements of mediation require the mediator to act in accordance with the procedure and professional ethics. Before commencing mediation, the mediator shall inform the mediation participants about the applicable rules during the procedure.

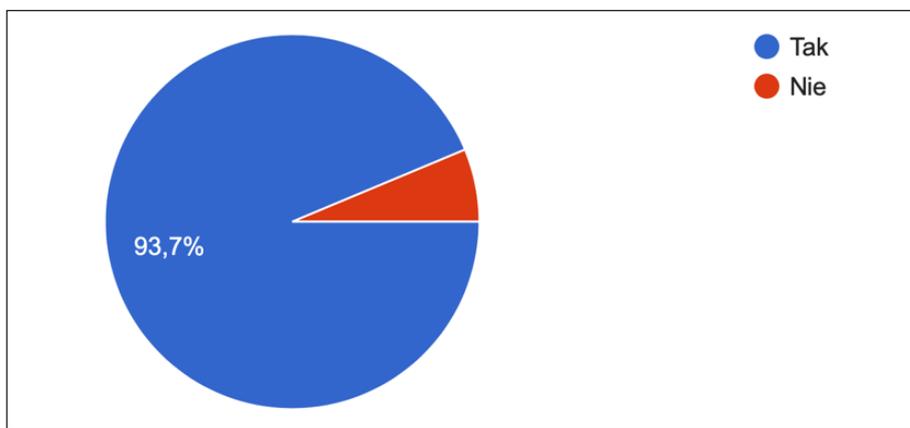
According to the data presented in Chart 10, most mediators fulfill this obligation.

Nearly 94% of the respondents (149 people) confirmed that they had been informed by the mediator about the rules of mediation prior to mediation.

Only in 10 cases (6% of respondents) the mediator ignored this obligation.

### Czy przed przystąpieniem do mediacji rodzinnej mediator poinformował o zasadach mediacji?

159 odpowiedzi

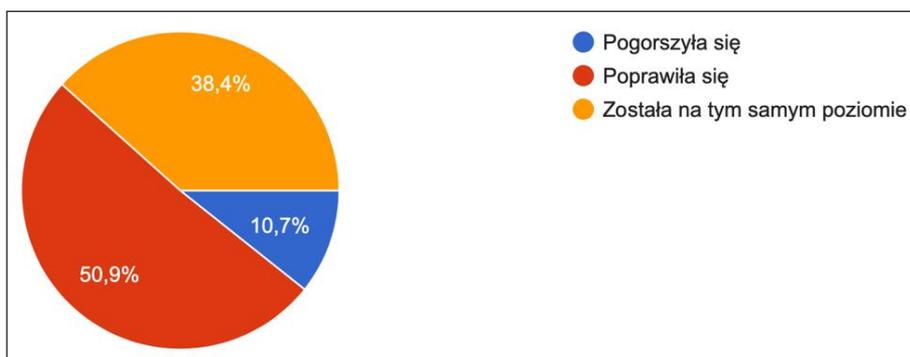


**Chart 10.** Did the mediator inform you about the rules of mediation before starting the family mediation?

**Source:** own study based on own survey.

### Czy Państwa relacja (między stronami mediacji) po odbyciu mediacji?

159 odpowiedzi



**Chart 11.** Is your relationship (between the parties to the mediation) after mediation?

**Source:** own study based on own survey.

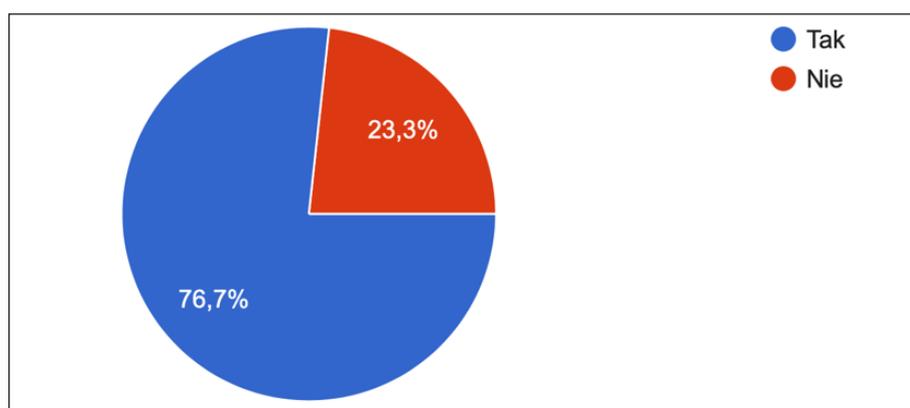
Mediation, as a pre-trial procedure, should contribute to a less conflicting settlement, which causes less tension between the parties.

Furthermore, in mediation, the person and the attitude of the mediator play an important role, which should contribute to the improvement of relations between participants, both during and after the mediation.

Charts 11 and 12 show respectively the respondents views on the relationship between the parties after the mediation and the respondents' views on the role of the mediator in establishing these relationships.

### Czy na Państwa relację (między stronami mediacji) po odbyciu mediacji wpływ miały cechy oraz postawa mediatora podczas mediacji?

159 odpowiedzi



**Chart 12.** Was your relationship (between the parties to the mediation) affected by the characteristics and attitude of the mediator during mediation?

**Source:** own study based on own survey.

Only 11% of the respondents, i.e. 17 mediation participants, indicated that the relations between the parties have worsened because of the mediation. 38%, i.e. 61 mediation participants, declared no changes in their relations, while more than a half of the mediation participants (81 people, i.e. 51% of the respondents) believed that the relations between them had improved.

The respondents indicated that building positive relations between the parties was influenced by the attitude of the mediator – according to the respondents, those relations were influenced by the mediator in 77%.

## SUMMARY

For every person, quick settlement of a contested dispute, in addition to providing a kind of stability and security, provides a psychological comfort, which is essential for the proper functioning in society. The short analysis of mediation in family law

cases presented in this paper and the research summaries presented therein prove that the mediation institution is a much needed and developmental tool facilitating the dispute resolution. Family and divorce-related cases, i.e. those that mainly concern the issue of divorce, establishing alimony, establishing parent-child contacts, are extremely difficult due to the accompanying emotions of usually deeply conflicted parties. However, in all of this, especially when it comes to issues related to the minor children of the parties, negative emotions should be put aside to chiefly focus on their welfare. Despite the increasing popularity of mediation, it still remains uncommon and often people simply do not know that they can settle their disputes during mediation much faster than during court proceedings. Owing to the promotion of mediation, people in conflict, who often search for various information on the Internet, come to mediation completely by accident and start to take interest in it. A good source of information about the possibility of settling difficult cases through mediation are also people from our closest environment who managed to settle their case through mediation. Sometimes it is the court, that helps by referring parties to mediation. I believe that mediation should be so widespread that almost everyone knows about it, and my goal is to promote it wherever possible. I am truly glad that mediation is being talked about more and more in schools and I hope that our children, in the event of a dispute in their adult life, will know the institution of mediation and it will become highly popular. Mediation in divorce cases should be a compulsory element prior to court proceedings. Such meeting of an independent mediator with the parties of the conflict, necessarily outside the court building, may make them resolve the conflict in a civilized manner and give them the opportunity to “create” a verdict in their case by themselves, without having to reveal intimate details of their life in the courtroom. In addition, well-conducted mediation will allow the parties to secure many other issues that they would not have thought of during the trial due to the accompanying stress, limited time and solemnity of the trial.

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### Fabian Keller

Medel-University Brno  
Faculty of Business and Economics  
Brno, Czech Republic  
fabian.keller@gategroup.eu

## German Federal Court of Justice Does Not Grant Tortious Compensation to Lessees of Diesel Scandal Vehicles – A classification of the judgments of April 21, 2022 – VII ZR 247/21, VII ZR 285/21 and VII ZR 783/21

### Summary

In April 2022, the German Federal Court of Justice (BGH) in Karlsruhe heard three cases brought by the car manufacturer VW concerning so-called diesel scandal cars, i.e. cars that use built-in electronic devices to detect whether the car is being operated on a test stand or on the road and, on the basis of this, electronically regulate or adjust the NOx emissions, thus using fraudulent methods to simulate lower emissions than are actually present.

In essence, the new ruling is that anyone who leased a car from Volkswagen before the diesel scandal became known will not get their lease payments back.

The judges of the VII Senate, which is responsible for dealing with the diesel scandal, argued that as long as leasing customers were able to use their cars throughout the duration of the lease without any major restrictions, they had received value for the installments they paid - the two offset each other.

The BGH also makes its position clear with its tenor: no fundamental claim for damages in leasing cases.

**Key words:** Diesel scandal, Dieselskandal, BGH ruling, Volkswagen, (tortious) damages, defeat device, leasing, compensation for use, benefits of use, German tort law, US-German damages calculation differences.

## 1. FACTS IN DETAIL

In the three proceedings, the respective party to the action asserted a claim against the defendant Volkswagen AG (VW) as vehicle and engine manufacturer for (tortious) damages due to the use of an impermissible defeat device.

In the proceedings VII ZR 247/21, the plaintiff concluded a leasing agreement with Volkswagen Leasing GmbH in spring 2010 for a new VW Golf vehicle manufactured by the defendant. Subsequently, it paid the agreed monthly leasing installments until it purchased the vehicle in June 2013.

In the proceedings VII ZR 285/21, the plaintiff concluded a leasing agreement with Volkswagen Leasing GmbH in February/May 2015 for a used motor vehicle of the type VW Tiguan manufactured by the defendant. In accordance with the contract, he subsequently made a one-time payment and monthly payments until he purchased the vehicle in March 2018.

In the proceedings VII ZR 783/21, the plaintiff concluded a lease agreement with Volkswagen Leasing GmbH in December 2011 for a new Seat Ibiza 2.0 TDI vehicle. She made a special down payment and monthly installments, and also spent €1,178.29 on the installation of a threaded chassis. She purchased the vehicle at the beginning of August 2016.

The vehicles each contain a type EA189 diesel engine manufactured by the defendant. At the time the leases were concluded, the engines contained software that recognized the operation of the vehicle on a test bench and in this case resulted in lower nitrogen oxide emissions than in normal operation.

In the lower courts, the parties to the action essentially sought reimbursement of their lease payments less compensation for use, insofar as this is of interest for the appeal proceedings.

## 2. PROCESS TO DATE

The actions were partially successful before the respective courts of appeal. The courts of appeal unanimously held that the parties to the action were entitled to reimbursement of their lease payments (in proceedings VII ZR 783/21 plus the expenses for the threaded chassis), taking into account benefits of use. The value of the benefits of use obtained during the leasing period did not correspond to the leasing payments made by the parties to the action, but was to be calculated according to the formula recognized for vehicle purchases<sup>1</sup>, i.e.

$$\textit{Advantage of Use} = \frac{\textit{Gross purchase price} \cdot \textit{Distance driven (since acquisition)}}{\textit{Expected residual mileage at the acquisition date}}$$

(according to the courts of appeal in proceedings VII ZR 247/21 and 783/21), or according to the loss in value of the vehicle during the leasing period (according to the court of appeal in proceedings VII ZR 285/21).

<sup>1</sup> BGH, judgment of 25.05.2020 – VI ZR 252/19, NJW 2020, 1962 margin numbers (Rn.) 78–82 with further evidence.

### 3. DAMAGES FOR FRAUDULENT MISREPRESENTATION IN THE “DIESEL SCANDAL

Buyers of VW cars affected by the diesel scandal have, according to the Federal Court of Justice (BGH), in principle a claim for rescission of the purchase contract<sup>2</sup>. Based on §§ 826, 823 paragraph II, 31, 249 BGB<sup>3</sup> and § 6 paragraph I 27 EG-FGV<sup>4</sup> announced the Senate as the guiding principles of the decision:

1. In terms of valuation, it is equivalent to direct fraudulent deception of the vehicle purchasers if a vehicle manufacturer, within the framework of a strategic decision made by it during the engine development, to obtain the type approvals of the vehicles by fraudulent deception of the *Kraftfahrt-Bundesamt* (German Federal Motor Transport Authority) and then to place the vehicles thus marked on the market, deliberately exploits the guilelessness and the trust of the vehicle purchasers.
2. If there are sufficient indications that at least one former member of the Board of Management was aware of the strategic decision taken, the defendant manufacturer bears the secondary burden of proof for the assertion that such knowledge did not exist. It is irrelevant whether the former members of the Board of Management could be named as witnesses by the plaintiff.
3. If someone is induced by conduct giving rise to liability to conclude a contract which he would not otherwise have concluded, he may suffer pecuniary loss even if the performance and consideration are objectively of value because the performance is not fully usable for his purposes. However, the affirmation of a pecuniary loss under this aspect presupposes that the performance obtained through the undesired contract is not only regarded as a loss from a purely subjectively arbitrary point of view, but also that the view of the market, taking into account the prevailing circumstances, regards the conclusion of the contract as unreasonable, not appropriate to the concrete pecuniary interests and thus as disadvantageous.
4. The principles of benefit sharing also apply to a claim arising from intentional immoral damage pursuant to Section 826 of the German Civil Code.

In the reasoning for the verdict at the time, the chairman of the senate found clear words for the manufacturer’s behavior. The behavior of VW was “incompatible with the fundamental values of the legal and moral order,” explained Stefan Seiters in justification of the decision: “immoral, and deliberately so,” “attributable to the executive board of the car manufacturer.

By installing the defeat device, VW had “systematically and for many years” deceived the Federal Motor Transport Authority about compliance with the legally prescribed values. To produce more cheaply and increase profits is in itself a permissible goal, Seiters clarified. But on the one hand, this polluted the environment with more

2 BGH, judgment of 25.05.2020 – VI ZR 252/19.

3 German Civil Code BGB

4 EC Vehicle Approval Regulation – EG-FGV

nitrogen oxides than permitted, and on the other hand, there was now a risk that all vehicles in the EA189 series could be taken out of service if the deception came to light. The Group had sold seven-digit numbers of such vehicles in Germany. VW had acted in a particularly reprehensible manner in relation to the buyers of these cars.

On the basis of a strategic corporate decision, approvals had been fraudulently obtained, deliberately taking advantage of the guilelessness and trust of the buyers, the Senate further justified its decision. “This judgment of unworthiness affects VW precisely with regard to the unknowing buyers.”

#### 4. NEW DECISION OF THE FEDERAL COURT OF JUSTICE

In the proceedings relating to lessees, the defendant’s appeals, which were allowed by the courts of appeal, were initially successful. In proceedings VII ZR 285/21 and 783/21, they led in each case to the complete dismissal of the action and in proceedings VII ZR 247/21 to the reinstatement of the judgment of the Regional Court, which had only ordered the defendant to reimburse the purchase price paid by the plaintiff in June 2013 less the benefits derived after the purchase.

As the Federal Court of Justice ruled in its judgment, in the context of tortious benefit sharing, the value of the benefits of use of a motor vehicle obtained during the leasing period corresponds in amount to the contractually agreed leasing payments. Furthermore, the plaintiff is not entitled to reimbursement of the costs incurred for the sports chassis (threaded chassis). As the Court of Appeal correctly decided without being challenged in this respect, the plaintiff cannot claim damages for the vehicle purchase made in August 2016, as this was made after the diesel scandal became known and despite this. Consequently, there is also no justified reason to hand over the vehicle to the defendant. Against this background, the installation of the coilover suspension does not constitute a wholly or partially wasted expense that could possibly be compensated.

#### 5. EXCURSUS: U.S. PRINCIPLE OF PUNITIVE DAMAGES

In contrast to the very fact-oriented German tort law, which balances the interests of both parties, even in the case of tortious liability for damages, as is the case here with the diesel scandal, damages proceedings in the USA often involve substantial sums, which are awarded to injured parties by the courts, often by juries. Manufacturers of products there bear a high liability risk, as national regulations have created a case law that is as diverse as it is confusing. In order to distinguish the U.S. legal situation with regard to product liability law in contrast to the German one, the following case from 1992 lends itself due to its fundamental importance. It is a case that has drawn wide circles and caused international head-shaking about U.S. jurisprudence on “punitive damages.” It involved an elderly woman who had burned herself on a coffee cup in a McDonald’s chain store and was awarded millions in compensation. “Liebeck. /. McDonald’s.”<sup>5</sup>

5 Liebeck v. McDonald’s Restaurants, P.T.S., Inc, No. D-202 CV-93-02419, 1995 WL 360309 (Bernalillo County, N.M. Dist. Ct. August 18, 1994).

The injured party was in her grandson's vehicle, where she removed the plastic lid from the coffee from the fast food chain and spilled the entire coffee. As she held the cup between her knees, it flowed down her legs and, being absorbed by her sweatpants, came into contact with her skin over a prolonged period of time. She suffered third-degree burns to 6% of her body surface as a result and had to spend eight days in hospital, where she also required a skin graft. The injured party's health never really recovered from the consequences of the accident. In addition, the burned area was considered to be a particularly sensitive part of the body.

The injured party then demanded USD 20,000 compensation from McDonald's for the treatment and medical costs. However, they were only willing to settle for \$800. In the ensuing lawsuit, it emerged that more than 700 claims related to overly hot coffee had been filed against McDonald's between 1982 and 1992. Despite these incidents, the chain did not lower the temperature of the coffee. The jury then awarded the injured party \$2.7 million in punitive damages. It also awarded \$160,000 in damages for pain and suffering.

The case vividly illustrates the fundamental differences between the U.S. and German legal situation in the area of damages. In addition to the awarded material damages and compensation for pain and suffering, punitive damages are also awarded, the purpose of which is to punish the defendant for his conduct, to prevent him from engaging in such unlawful conduct again (special prevention) and also to prevent others from ever doing so (general prevention). Against the background of the burns suffered and the health consequences for the injured party, it is incomprehensible why McDonald's had only offered 800 USD in the run-up to the trial. If it also turns out that this is not an isolated case, but that hundreds of victims exist without the company making any effort to lower its coffee temperature, a corresponding claim for punitive damages fulfills exactly its purpose: the damaging party is to be punished for its behavior. If one then takes into account the company profits that McDonald's achieves through the sale of coffee, the amount awarded is not even one. Nevertheless, German law on damages does not recognize such an approach. The recent leasing judgment, which stands in marked contrast to the judgment for buyers of diesel scandal vehicles, must also be viewed against this background.

## 6. GERMAN PRINCIPLE OF COMPENSATION FOR DAMAGES OF BENEFIT SHARING ON THE CONCRETE EXAMPLE AND IN THE DIFFERENCE PURCHASE TO LEASING WITH DIESEL SCANDAL VEHICLES

The institute of benefit sharing has been developed in the law of damages from the principle of good faith (§ 242 BGB). It states that the injured party is to be credited to a certain extent with those advantages that accrue to him in adequate connection with the event causing the damage, whereby a fair balance is to be brought about between the conflicting interests in a case of damage. In accordance with the prohibition of enrichment under the law on damages, the injured party may not be placed in a better position than he would have been in without the damaging event. On the other hand, only those advantages resulting from a damaging event are to be credited to the claim for damages whose crediting is consistent with the respective purpose of the claim for compensation – i.e. those that are reasonable for the injured

party and do not unreasonably relieve the damaging party. Within the framework of an evaluative approach, the advantages and the disadvantages must be “combined, as it were, into one unit of account.”<sup>6</sup>

The principles of benefit sharing also apply to a claim for damages due to intentional immoral damage pursuant to Section 826 of the German Civil Code.<sup>7</sup> Consequently, such a claim for damages is also to be “reduced by way of benefit offsetting by the benefits of use which accrued to the injured party in adequate connection with the damaging event”.<sup>8</sup>

The basic principle is that in the case of a lease, there is no entitlement to reimbursement of the lease payments because the value of the benefits of use obtained during the lease period corresponds to the amount of the lease payments.<sup>9</sup>

Insofar as a later acquisition of vehicle ownership by the plaintiff has not already been agreed upon conclusion of the leasing agreement, the assumption that the injured party, by concluding the leasing agreement, has made an investment decision that is fundamentally different from the purchase, which justifies determining the usage benefit to be imputed differently than in the case of purchase,<sup>10</sup> is not objectionable in the opinion of the BGH.<sup>11</sup> The BGH<sup>12</sup> now adopts the controversial view, but one that prevails in the case law of the higher regional courts, according to which the value of the benefits of use of a motor vehicle obtained during the leasing period corresponds in terms of amount to the contractually agreed leasing payments. The court thus confirms the previous case law of the OLG<sup>13</sup> Dresden,<sup>14</sup>

6 BGH, judgment of September 16, 2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 38 with reference to BGH, judgment of May 25, 2020 - VI ZR 252/19, BGHZ 225, 316 marginal no. 65 = NJW 2020, 1961; BGH, judgment of August 6, 2019 – X ZR 165/18, NJW 2020, 42 marginal no. 8 f. (compensation payments under the Passenger Rights Regulation); BGH, judgment of 10.07.2008 -VII ZR 16/07, NJW 2008, 3359 marginal no. 20; BGH, judgment of 28.06.2007 – VII ZR 81/06, BGHZ 173, 83 = NJW 2007, 2695 marginal no. 18 (on the application of the principles of benefit sharing under the law on damages in the case of warranty claims in the contractual chain of performance).

7 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 38 with reference to BGH, judgment of 25.05.2020 – VI ZR 252/19, BGHZ 225, 316 marginal no. 66 = NJW 2020, 1961; BGH, judgment of 14.10.1971 – VII ZR 313/69, BGHZ 57, 137 = NJW 1972, 250, juris marginal no. 15.

8 BGH, judgment of 16.9.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 38 with reference to BGH, judgment of 25.05.2020 – VI ZR 252/19, BGHZ 225, 316 marginal no. 64 et seq. = NJW 2020, 1961.

9 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 para. 40.

10 Case law considers the investment decision to be significant for the assessment of the benefit of use: cf. for example BGH, judgment of 06.10.2005 – VII ZR 325/03, BGHZ 164, 235 = NJW 2006, 53, juris marginal no. 15 (cf. also BeckOGK BGB/Mössner, § 100 BGB marginal no. 11.4).

11 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 41.

12 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 para. 42.

13 The German judicial system has the Federal Court of Justice (BGH) as the highest court below the Constitutional Court (BVerfG or Federal Constitutional Court) and below that the instances from top to bottom with the Higher Regional Courts, Regional Courts and Local Courts.

14 OLG Dresden, decision of 02.02.2021 – 17 U 1492/19, juris: If the lessee's agreed lease payment (lease installments and, if applicable, one-time payment) has corresponded to those on the market for an equivalent or largely comparable vehicle – or if the lessee has leased, if applicable, even at more favorable terms than those actually agreed – his loss has been fully absorbed if he was able to use the vehicle without interruption during the entire lease term.

OLG Düsseldorf,<sup>15</sup> OLG Frankfurt,<sup>16</sup> OLG Karlsruhe,<sup>17</sup> OLG München<sup>18</sup> and the OLG Stuttgart.<sup>19</sup>

Since, in the case of a car purchase, the purchaser has the opportunity to use the vehicle without time limit over its entire mileage until it becomes unfit for use, the purchase price payment and total use are “congruent” – according to the Federal Court of Justice<sup>20</sup> – and can therefore also be offset against each other. From an evaluative point of view, they are, as it were, combined to form a single unit of account.<sup>21</sup> Consequently, it is also appropriate to assess vehicle use by comparing the purchase price – as a suitable reference point for the objective vehicle value<sup>22</sup> – with the expected mileage at the time of purchase and multiplying the resulting value of use per kilometer of driving distance by the distance driven since purchase.<sup>23</sup>

In the case of leasing, on the other hand, the lessee only acquires the possibility of using the leased vehicle over a specific period of time under certain conditions agreed with the lessor. The special nature of the use of the vehicle compared with the purchase of a vehicle has a different value of its own, namely one that is fundamentally time-related.<sup>24</sup> This value can be offset against the lease payments. The agreed leasing price is a suitable point of reference for the valuation. This is in line with the principle that the objective value of a benefit of use to be surrendered is generally to be measured on the basis of the customary market price of a contractual grant of use. The only exception is if the surrender norm requires a different valuation, as is the case in particular with the reversal of a purchase agreement.<sup>25</sup> The consequence of this is that the lessee, who in the specific case was able to use the vehicle over the entire leasing period without any significant restrictions, has also fully realized the advantage to which the conclusion of the leasing agreement was directed.<sup>26</sup> This advantage then compensates for the entire financial disadvantage associated with

15 OLG Düsseldorf, judgment dated January 26, 2021 – 23 U 73/19, juris: If there was no restriction on the usability of the repaired vehicle over the entire term of the finance lease - and thus no impairment of the lessee’s legal position - the lessee did not suffer any damage.

16 OLG Frankfurt, decision of 15.02.2021 – 19 U 203/20, juris: In the case of a mileage leasing contract, there is no recoverable damage if the lessee was able to exercise the contractually owed right of use without restriction despite the vehicle being in a state of disrepair.

17 OLG Karlsruhe, judgment of 21.01.2020 – 17 U 2/19, MDR 2020, MDR Year 2020 Page 672 = DAR 2020, DAR Year 2020 Page 455 – juris: Advantages of use to be offset in the case of a finance lease agreement for a motor vehicle are not calculated - unlike in the case of a purchase agreement – on the basis of the pro rata temporis linear reduction in value, i.e. on the basis of a comparison between the actual use and the expected total useful life of the item, taking into account the value of the item or the purchase price, but on the basis of the objective leasing value, i.e. the leasing charges customary for the vehicle used or for a comparable vehicle, due to the lease-like nature of the finance lease agreement, as in the case of a rented item.

18 OLG Munich, decision of 14.12.2020 – 32 U 5915/20, juris.

19 OLG Stuttgart, judgment of 09.04.2020 – 2 U 156/19, juris: If the risk of an operating restriction or shutdown has not materialized during the entire useful life.

20 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 43.

21 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 43.

22 BGH, judgment of April 13, 2021 – VI ZR 274/20, ZIP 2021, 1220 para. 23.

23 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 43.

24 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 44.

25 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 44, with reference to BeckOK BGB/Fritzsche, § 100 marginal no. 10 and Staudinger/Stieper, § 100 BGB marginal no. 5.

26 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 45.

the lease payments – which is ultimately comparable to the situation of a vehicle purchaser who has exhausted the vehicle’s mileage expectancy.<sup>27</sup> Finally, the BGH<sup>28</sup> states, with reference to the prevailing opinion in the case law of the higher courts and voices in the literature, that the leasing price is also not to be reduced by the financing costs, the lessor’s profit or other ancillary costs contained therein in the context of the offsetting of benefits, since corresponding costs are in the nature of the leasing contract and are included in the objective value of the leased vehicle use: In the case of a leasing contract – in contrast to a vehicle purchase – any financing costs do not increase the objective benefit of use.<sup>29</sup> In contrast, there are no differences between purchase and leasing agreements with regard to the treatment of the profit share, as the profit of the (commercial) seller is also included in the calculation of the benefit of use via the purchase price in the case of a purchase.<sup>30</sup>

## CONCLUSION

Even in the case of a claim by an injured party against the tortfeasor (motor vehicle manufacturer) arising from intentional immoral damage within the meaning of Section 826 of the German Civil Code (BGB), the injured party must, via the principle of benefit sharing as an outgrowth of the principle<sup>31</sup> of good faith that governs all legal life in accordance with Section 242 of the German Civil Code (BGB), allow those benefits to be offset that accrued to him in connection with the damaging event and thereby reduce his claim for damages. The principle of benefit sharing thus applies to the entire law of damages. In its decision commented on here, the Federal Court of Justice applies this approach to benefits from the use of leased vehicles in connection with the diesel emissions scandal. For a long time, it was disputed whether lessees affected by the emissions scandal were also entitled to claims for damages against the vehicle manufacturer.

The starting point is to achieve a fair balance between the conflicting interests and the prohibition of enrichment under the law on damages. The injured party must not be placed in a better position than he would have been without the damaging event. Therefore, those advantages are to be credited to him “to a certain extent” which have accrued or accrue to him in adequate connection with the damaging event. However, advantages may only be credited if – from an evaluative point of view – advantages and disadvantages form a “unit of account”.

The Federal Court of Justice thus fundamentally denied the lessee of leased vehicles affected by the diesel emissions scandal a claim for repayment of the leasing installments paid, because the lessee who only leases and does not purchase a vehicle ultimately acquires a mere possibility of use and thus – even if the vehicle is equipped with an impermissible defeat device – acquires only that, i.e. the use, for which

27 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 45, with reference to BGH, judgment of 30.07.2020 – VI ZR 354/19, BGHZ 226, 322 = NJW 2020, 1962 marginal no. 15.

28 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 48.

29 BGH, judgment of September 16, 2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 48, with reference to BGH, judgment of April 13, 2021 – VI ZR 274/20, ZIP 2021, 1220 marginal no. 23.

30 BGH, judgment of 16.09.2021 – VII ZR 192/20, WM 2021, 2056 marginal no. 48.

31 Palandt/Grüneberg, § 242 BGB Rn. 1.

he has also paid: the possibility of use as the subject matter of the leasing contract. In this basic constellation, no damage is incurred because the value of the use obtained by the lessee corresponds to the leasing installments paid by him – i.e., the use of a leased item has a time-related value.

However, the situation could be different in the event of an obligation on the part of the lessee to take over the vehicle (acquisition of vehicle ownership) already agreed upon at the time of conclusion of the contract. In such a constellation, in which the legal construct of leasing is designed as a form of vehicle financing, the focus of the transaction is no longer necessarily on the idea of use, but on the acquisition of the vehicle.

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**Leszek Kurnicki**

Collegium Humanum – Warsaw Management University  
Warsaw, Poland  
lech.kurnicki@humanum.pl

## Eurasianism – sources of ideas and contemporary concepts

### Summary

The author in the article presents the idea of Eurasianism. The study shows its sources and contemporary concepts. The idea of Eurasianism was born in Russia in the 1870s and evolved over many years. Eurasianism can be considered as one of the most developed directions of contemporary geopolitical thought in the area of post-Soviet states. The term “Eurasia” was introduced into the sphere of scientific terms as early as 1883. The basis for separating this particular geopolitical construction is the community of nations living there. The practical implementation of the concept of the Eurasian Union found concrete expression in subsequent events that showed the reality of integration in the areas of the former USSR. An important step in the deepening of economic integration was the signing by the leaders of the governments of Kazakhstan, Russia and Belarus in 1995 of the Customs Union and the consolidation of the three-state program carried out in stages concerning the implementation of agreements on further deepening mutual cooperation.

**Key words:** Eurasianism; economic Eurasianism; Eurasian integration; Neo-Eurasianism; Slavophile.

### EURASIANISM – SOURCES OF IDEAS AND MODERN CONCEPTS

The Eurasian Economic Union was established in 2014 by five states of the former Union of Soviet Socialist Republics: Russia, Belarus, Kazakhstan, Kyrgyzstan and Armenia. The goal of the project was the economic and political integration of the Member States through the implementation and protection of common interests. The EEU closely merges the policies of its constituent states and sets the direction for common development, however the divergent interests of its individual participants, differences in their socio-economic and political systems, traditions and culture, cause this community to be characterized by a rather feeble structure.

At most, we can talk about a coherent theoretical concept, which is the scientific basis for integration processes.

Eurasianism can be considered one of the most developed directions of contemporary geopolitical thought in the post-Soviet countries. Historically, economically and mentally, this scientific trend is tightly related to Russia. Supporters of this direction in geopolitical science publish many different works, taking advantage of the open and covert help of the Russian authorities, and their views are gaining popularity among a significant part of the population of the country<sup>1</sup>.

The views of the supporters of the Russian version of Eurasianism (Neo-Eurasianism) were fully reflected primarily in Russian-language literature. In scientific and journalistic publications, the issues of geopolitics and foreign policy of the Russian state have been analyzed most extensively. Russian statesmen and politicians in majority of cases share the views of the Eurasians. The growing popularity of the idea can also be seen in other post-Soviet countries, meeting with understanding and support from a significant part of their inhabitants. It gained particularly wide support in Kazakhstan, whose president, emphasizing the economic dimension of the project, initiated a scientific discussion, as a result of which a new concept of Eurasianism emerged – the so-called economic Eurasianism. Thanks to this, the integration processes taking place in the discussed areas are based on a developed scientific theory, and at the same time are deeply rooted in history.

According to its supporters, the Neo-Eurasian school of geopolitics today has the status of a mainstream idea in Russia and in some post-Soviet countries.

The idea of Eurasianism was born in Russia in the 1870s. Several stages in its development can be distinguished. They are as follows.

1. The end of the 19th – beginning of the 20th century in the history of Russia is a time of radical changes and reforms of socio-political and economic relations, determining the emergence of questions about, among others: the line of further development of the state, the essence of the nation and the idiosyncrasy of its culture. In the conditions of intensive development of capitalist relations, which accompanied the destruction of the traditional structure of Russian society and the undermining of old values and authorities, representatives of the Russian intelligentsia tried to find a solid foundation on which Russia could base its further development.

At that time, for the first time a thesis was formulated regarding Russia as a separate civilization, significantly different from European countries in cultural, religious, spiritual and social terms. Russian Slavophil philosophers (I.W. Kirievsky, A.S. Khomiakov, J.F. Samarin and others) made the first attempts to formulate the idea of Eurasianism. In their works, however, the emerging idea was expressed not using the terminology of “political geography”, but as a concept related to the culture, religion and social system of Russian society, the meaning

<sup>1</sup> *Integracyonnyj barometr JEABR – 2015 (czetwiertaja wolna izmierienij). Analitczeskoje rieziunie*, CII EABR, Sankt-Pietierburg 2015, [http://www.eabr.org/general/upload/CII%20-%20iz-dania/2015/Barometr-2015/EDB\\_Centre\\_Report\\_33\\_Analytical\\_Summary\\_RUS.pdf](http://www.eabr.org/general/upload/CII%20-%20iz-dania/2015/Barometr-2015/EDB_Centre_Report_33_Analytical_Summary_RUS.pdf) (access: 11.12.2017).

of which was to preserve the community origins in the Russian nation, the lack of individualism and politicization among its representatives<sup>2</sup>.

A significant contribution to the formation of Eurasianism as a geopolitical concept was made by later Slavophiles. They presented and justified the thesis that the main feature of the Russian state and society is the so-called Byzantineism (understood as the development of Russian society in the Byzantine Orthodox-imperial tradition), which then became the ideological basis of Russian Eurasianism. According to K. Leontiev, one of the more expressive representatives of late Slavophilism, this feature sharply distinguishes Russian history from the history of other Slavic nations. He belonged to the supporters of views on the historical development of Russia, who believed that Russia should not allow it to lose its special spiritual and historical mission, which in the final analysis would mean not only losing its role as a center of consolidation of nations living in the European area, but also would deprive the Russian state of its essence<sup>3</sup>.

Supporters of Slavophilism were of the opinion of the diversity of types of development of human civilization, differing from Western European thinkers who considered their own civilization as the only possible one, and all others as “barbaric” forms. Thus, the Russian philosopher N. Danilevsky described the Western European (“Roman-Germanic”) civilization as one of many, at the same time separating from it a number of other self-contained, fully fledged communities, based on completely different foundations, but having all the features of long-lasting and stable civilizations. They functioned over the centuries, maintaining their identity, while experiencing various forms of state and social system, changes in religion and systems of value<sup>4</sup>.

Although the works of supporters of Slavophilism made a major contribution to the emergence of Eurasianism, there are many fundamental differences between the two currents of scientific thought. The Eurasians rejected the existence of the Slavic cultural and historical type and believed that the cultures of the nations associated with the Russians share a common historical fate closer to the Russian culture than to the culture of the Western Slavs (Czechs, Poles)<sup>5</sup>. The Eurasians also rejected the pan-Slavic political project, and ultimately their ideal was a federal Eurasian state within the borders of the USSR until 1939. Moreover, the Eurasians were foreign to the Slavophile apotheosis of the community. With regard to economic issues, they were supporters of private enterprise and mixed private-state capitalism<sup>6</sup>. Despite these differences, the works of Russian historians and philosophers of the second half of the 19th century and the beginning of the 20th century served as the ideological basis for the emergence of Russian Eurasianism.

2 N.V. Riasanovsky, *The Emergence of Eurasianism*, „California Slavic Studies” 1967, vol. 4, p. 39–72.

3 K.N. Leontiev, *Wizantyzm i sławianstwo*, AST, Moscow 2007.

4 N.Ja. Danilewskij, *Rossija i Jewropa. Wzgląd na kulturnyje i polityczeskie otnoszenija Sławianskogo mira k Giermano-romanskomu*, Izdatielstwo „Głagoł”, Sankt Pietierburg 1995.

5 A.W. Sobolew, *O jewrazijstwie kak kulturocentriczeskom mirowozzrienii*, „Rossija XXI” 2000, no 1, p. 70–91.

6 *Russkij uziel jewrazijstwa. Wostok w russoj mysli. Sbornik trudow jewrazijcew, wstupitielnaja statja i primieczanija S. Klucznikowa*, Bielowodje, Moscow 1997.

2. In the 1920s–30s the idea of Eurasianism was embodied in the emergence and activity of the socio-philosophical movement of Russian emigrants, forced to leave Russia due to the transformations of the 1917 Revolution and the civil war. It was promoted by them as an alternative to communist ideology, which in practice led Russia to destruction and chaos<sup>7</sup>.

Eurasianism, as an independent philosophical direction and political science, was formed in the early 1920s. Its assumptions and ideas were first presented in the book 'Drive to the East. Premonitions and fulfillment. Eurasian thought' ('Iskhod k Wostoku') – a collection of works by the most prominent representatives of early Eurasianism, which is a reflection of the "catastrophic perception of reality", born as a result of the collapse of the Russian imperialist idea (as it seemed to the authors at the time), and the search for a new historical mission of Russia<sup>8</sup>. This book is considered to be the beginning of the Eurasian movement.

This movement gradually began to gain a growing number of supporters, many prominent activists of the Russian émigré society joined it – scholars, journalists, former officers and students. Its centers were established, among others, in Berlin, Prague, Paris and Brussels. The political organization of the Eurasians was formed in 1927.

Early Eurasianism is recognized to have gone through three stages.

The first stage (1921–1923) was related to the philosophical and cultural justification of self-reliance and the Anti-Occidentalism of Russian society. In the next stage, in the years 1924–1929, the ideology of Eurasianism was systematized and simplified in the name of accessibility for the masses. Under the influence of disinformation on the part of the Soviet special services, the activity of the movement underwent a recalibration towards the ideological protection of the underground Eurasian movement allegedly created in the Soviet Union, the creation of political and socio-economic programs for the peaceful transformation of the Soviet state into a Eurasian-ideocratic state, leveling religious issues and emphasizing cultural and psychological unity of the nations inhabiting its territory. The increased interest in socio-political processes in the USSR stimulated the emergence of pro-Soviet sentiments in the Eurasian movement. The presented settlement policy of the leaders of the movement in reality discredited it in the emigrant social opinion and at the final stage (1930–1938) meant the liquidation of the classic version of Eurasianism<sup>9</sup>.

3. Eurasianism experienced another wave of interest in the 1980s. This stage of development of ideas was determined by the collapse of the world communism system and the collapse of the Soviet empire, and with it, the failure of previous value systems, the separation of states and nations. The search for the best way to the dignity of the nation and the creation of a single state in the future became the main ideological goal of the Eurasians.

7 S.M. Połowinkin, *Jewrazijstwo*, [w:] *Russkaja filosofija. Małyj encykl. słowar'*, Nauka, Moscow 1995, p. 172–178.

8 *Ischod k Wostoku. Priedczuwstwija i swierszenija. Utwierzdienije jewrazijcew. Kniga 1*, Biblioteka pierwoistocznikow jewrazijcew: 20–30-je gody, <http://nevmenandr.net/eurasia/1921-isxod.php> (access: 12.06.2017).

9 *Jewrazija. Istoriceskije wzglady russkich emigrantow*, Rossijskaja akademijskaja nauka, Institut wsieobszczzej istorii, Moscow 1992.

A growing tendency was the debilitation of the Russian “monopoly” on Eurasianism as a scientific theory and political movement. The initiator of the creation of the “new wave” - the so-called of economic Eurasianism – was the president of Kazakhstan, N.A. Nazarbayev, who in 1994 put forth the idea of practical Eurasianism. It later became the basis for many economic and political practices<sup>10</sup>. Nazarbayev’s concept assumes that the practical form of community integration should be a union of equal, independent states, fully exploiting the potential of individual participants and pursuing common national and state interests. Unlike the classical Eurasianism and Neo-Eurasianism, which were mainly based on metaphysical values, the basis for the merger was to be the mutual economic ties.

At the beginning of the 21st century, the idea of post-Soviet Eurasian integration and new Eurasianism spread rapidly. President V. Putin, followed by the leader of the largest political party in the Russian Federation, United Russia, B. Gryzlov<sup>11</sup>, argued that the creation of the Eurasian Union would allow Russia to become yet another center of global influence. In addition, they saw Belarus and Kazakhstan in its composition.

Experts are unable to mark the boundaries of this relationship – there is not only a theoretical justification missing, but also practical rationality and the political possibility of its creation. Moreover, the position of Kazakhstan and Belarus has evolved, and their centers of power have declared their lack of desire to introduce political integration within the Eurasian Union and other similar alliances. In 2013, the President of Kazakhstan, N.A. Nazarbayev, criticized the Eurasian Economic Union at the meeting of the Supreme Council of the EEU<sup>12</sup>. President of Belarus A. Lukashenko spoke in a similar spirit in an interview for the Kazakh TV channel 24 KZ. He announced that there would be no common currency and no “supranational superstructure” in the Eurasian Union<sup>13</sup>.

The very term “Eurasia” was introduced into the sphere of scientific terms in 1883. It was first used by the Australian geologist H.E. Siess, meaning the largest continent of the Earth, consisting of two parts of the world – Europe and Asia<sup>14</sup>. The Eurasians of the 1920s gave the term a completely different meaning. They considered Eurasia the territory occupied by the Russian Empire and later the Soviet Union. According to them, Russia is neither Europe nor Asia, but a special “central continent”, significantly different from the rest of Europe and Asia due to

10 N.A. Nazarbayev, *Projekt o formirovanii Jewrazijskogo Sojuza Gosudarstw, Kazakstan Respublikasynyn Tyngysh Prezidenti – Elbasynyn kitapkhanasy*, 1994, <http://presidentlibrary.kz/?p=2434&lang=ru> (access: 14.12.2017).

11 B.W. Gryzlov, *Buduszcze za nami – «Jedinaja Rossija» na diele dokazala, czto sposobna rieszat' stojaszczije piered stranoy zadaczi*, „Niezawisimaja gazieta”, 15.11.2011, [http://www.ng.ru/ideas/2011-11-15/1\\_future.html](http://www.ng.ru/ideas/2011-11-15/1_future.html) (access: 19.06.2017).

12 *Nazarbayev raskritikował polityzaciju Jewrazijskogo ekonomiczeskogo sojuza*, „Nur.kz”, 23.12.2013, <http://www.nur.kz/295894-nazarbaev-raskritikoval-politizacziju-evrazijskogo-ekonomicheskogo-sojuza.html> (access: 21.06.2017).

13 *Lukaszenka nie widit nieobchodimosti w jedinoy walucie i politiczeskoj nadstrojkie w JEES*, „TengriNews”, 2.10.2013, <http://tengrinews.kz/sng/lukashenko-vidit-neobchodimosti-edinoy-valyute-politicheskoy-242805/> (access: 13.12.2017).

14 E. Suess, *Das Antlitz der Erde*, vol. 1, F. Tepensky–G. Freytag, Wien–Prague–Leipzig 1883, reprint 2011.

its natural peculiarities<sup>15</sup>. It is the natural conditions, according to the Eurasians, that determine the natural framework of a uniform geographical space, which stretches from Khigan to the Carpathians, from the south it is surrounded by a belt of deserts, from the north – the sea, from the west – a conventional climatic line – an isotherm above zero degrees in January. In this way, Eurasia from a geopolitical point of view is a self-sufficient and independent continent<sup>16</sup>.

Another feature that serves as the basis for separating the special geopolitical construction of Eurasia is the community of nations living there. One of the creators of the theory of Eurasianism, N.S. Trubetsky, believes that the nations inhabiting it have an awareness of belonging to the Eurasian community stronger than the awareness of belonging to any group of nations – Slavic, Turkish, Muslim – according to linguistic or religious characters. In his opinion, in the Eurasian community, nations are related to each other not because of a certain number of one-sided features, but because of a common historical circumstance. This is the reason why Eurasia is a geographical, economic and historical whole<sup>17</sup>.

The idea of a historical community of the peoples of Eurasia is supported by many contemporary authors. An example is the pictorial expression of the Kazakh researcher of the processes of Eurasian integration D.N. Nazarbayev: “The fates of the Eurasian nations are intertwined, they are firmly bound into one huge ball that cannot be unraveled, so that the detachment of one nation from this community can only be carried out by artificial violence against nature and will lead to suffering. This became fully evident after the October Revolution of 1917.”<sup>18</sup>. According to this researcher, “the nations of the former Russian Empire, previously struggling so much to freedom from the “prison of nations”, did not take advantage of the opportunity to become sovereign and independent”<sup>19</sup>. These factors, and not the strength of Bolshevik ideology, led to the creation of the USSR and the reincarnation of the Eurasian Russian Empire.

Since its formation as an independent direction of philosophical thought, Eurasianism has attracted attention with the uniqueness of the concepts used, non-traditional approach to the analysis of traditional problems, captivating with the enthusiasm and sincerity of the authors, bold projects to rebuild the existing social system of Russia.

The dominant emotional side in the Eurasian understanding of events was aptly noticed by the Russian religious and political philosopher N. Berdyaev, who wrote: “Eurasianism is, above all, an emotional direction, not an intellectual one, and its emotionality is a reaction of creative, national and religious instincts to the ongoing catastrophe [October Revolution]”<sup>20</sup>.

15 M. Łariuel, *Idieologija ruskogo jewrazijstwa, ili Mysli o wieliczii impierii*, translation from French T.N. Grigor'ewa, Natalis, Moscow 2004.

16 D.N. Nazarbayewa, *Sodruzestwo Jewrazija*, ZAO Biznies-szkola „Intiel-Sintiez”, Moscow 2000, p. 40.

17 A.W. Sobolew, *Kniaz' N.S. Trubiecoj i jewrazijstwo*, „Litieraturnaja uczeba” 1991, no 6, p. 121–130.

18 D.N. Nazarbayewa, *Sodruzestwo...*, p. 41.

19 Ibid.

20 As cited by: A. Biersztiejn, D. Karcew, *Trietij mir. Jedinoje nasledije Czingischana*, „Wriemja nowostiej” 2007, no 231, <http://www.vremya.ru/2007/231/13/194290.html> (access: 1.10.2017).

M. Laruelle, a French female researcher of this movement, also came to a convergent conclusion about the intangibility of the foundations of Eurasianism, pointing out that “the Eurasian community [of the nations of Russia] is not only a natural object, but, equally, also a mental construction”<sup>21</sup>.

Russia’s attitude towards Europe and Asia was and remains one of the main contentious issues raised by the Eurasians. P. Bicylli undertook to work out this problem in the article *Two Faces of Eurasianism*<sup>22</sup>.

Eurasia becomes a unified area, a common home for all the nations inhabiting it. It cannot be divided without destroying this natural area, according to the Eurasians. Why does the federation of Russian lands and nations as the basis of the idea of Eurasia – the “development space” of all nations of the “Russian world” – appear? However, as Bicylli notes, the Eurasian theory contains an internal contradiction in this question. The temptation to which the Eurasians succumbed is that they decided to use the ready-made structures of this very power, replacing the ruling communist party with the “uniform and only” Orthodox-Eurasian party. Strengthening the dictatorship of the Orthodox-Eurasian party, however, destroys the homogeneous economic and cultural area of all nations of the “Russian world” proclaimed by Eurasianism, which, due to cultural and religious traditions, will inevitably become second-class nations.

One of the first works reflecting the desire of scholars and politicians to rethink the idea of Eurasianism was the book by the chief theoretician of Russian Neo-Eurasianism, A.R. Dugin, titled ‘Foundations of geopolitics’ from 1997.<sup>23</sup> A few years later, this author’s fundamental work was published, reflecting the consolidated views of contemporary Russian supporters of Eurasianism<sup>24</sup>.

At this time, there was also an interest in the problems of Eurasianism from non-Russian authors. Among their works, the monograph of the German researcher O. Böss, *The Science of Eurasianism*, can be distinguished<sup>25</sup>, in which, for the first time, foreign readers were comprehensively presented with the history and content of Eurasianism, as well as the works of the German Slavist Ł. Luks<sup>26</sup>.

The project to develop of the center of Eurasia has good economic prospects. On the one hand, it allows to combine *raison d’état* and private business with the development of Russian regions, and on the other hand, it creates a long-term infrastructure for the profitable operation of private companies interested in production and commercial cooperation with other countries in the region.

In addition, an economically strong and attractive investment center of Eurasia is a prerequisite for the development of Russian regions – Siberia and, to a certain

21 M. Łaruelle, *Kogda priswajajetsia intiełektualnaja sobstwiennost’, ili o protiwopolożnosti Ł. N. Gumilewa M. i P.N. Sawickowo*, „Wiestnik Jewrazji” 2001, no 4, p. 16.

22 P.M. Bicylli, *Dwa lika jewrazijstwa*, [in:] *Rossija mieżdu Jewropoj i Azijej. Jewrazijskij sobłazn*, Moscow 1993, p. 279–291.

23 A.G. Dugin, *Osnovy geopolitiki. Gieopoliticeskoje buduszczje Rossii*, Arktoģieja, Moscow 2000 (Polish edition: *Podstawy geopolityki*, trans. A. Radlak, ReVolta, Warsaw 2019).

24 A.G. Dugin, *Projekt «Jewrazija»*, Eksmo, Moscow 2004.

25 O. Böss, *Die Lehr der Eurasier. Bin Beitrag zur russischen Ideengeschichte der 20. Jahrhunderts-Wiesbaden*, Veröffentlichungen des Ostueropa-Instituts, München 1961.

26 Ł. Luks, *Jewrazijstwo i konsierwatiwnaja riewolucyja. Sobłazn antizapadniczestwa w Rossii i Girmanii*, „Waprosy filosofii” 1996, no 3, p. 57–69.

extent, the Far East. Among other things, the participation of Siberia, which its enormous human and resource potential, in the integration project will not only make it possible to fully use the transport and transit potential of this region, but also ensure high integration of the regional economy with the global communication system.

According to the assumptions, the Eurasian Union should be a form of integration of sovereign states, providing for the formation of political and currency relationships. The agreement on the creation of such a community proposed the establishment of supranational bodies to coordinate economic, defense and foreign policy, a common parliament and a constantly operating interstate executive secretariat. It was also planned to introduce common citizenship for all EEU countries and to develop economic reform programs. At the same time, the concept of the Eurasian Union would by no means signify the restoration of the USSR. The basic principles guiding the idea of creating such a union should be: equality, respect for sovereignty, territorial uniformity and inviolability of state borders, individual rights and individuality of each person. EU countries would be given the right to participate in other integration structures and to leave it without obstacles<sup>27</sup>.

The practical implementation of the concept of the Eurasian Union found concrete expression in later events that showed the reality of integration in the areas of the former USSR. An important step in the deepening of economic integration was the signing by the leaders of the governments of Kazakhstan, Russia and Belarus in 1995 of the Customs Union and the consolidation of the three-state program carried out in stages regarding the implementation of agreements on further deepening mutual cooperation, resulting in the future the Common Economic Space (CES). The creation of the customs union and the CES became an important premise for building a common market for goods, services, capital and workforce. In order to improve the effectiveness of the merger, the states agreed to conduct a coordinated policy of economic reforms, as well as to create the same type of market-based mechanism for regulating the economy.

Deepening the process of Eurasian integration, in October 2000, the leaders of the Customs Union countries signed a declaration and an agreement of the Eurasian Economic Community. The agreement on the establishment of the EEC set out the concept of close and effective trade cooperation to achieve the goals and tasks defined in the agreement on the customs union and the Common Economic Space. Organizational and legal tools are provided for the implementation of the agreements reached, mechanisms for synchronous and adequate fulfillment of concluded international agreements, as well as the introduction of a system to control the implementation of the solutions taken. Further development of integration processes led to the creation in 2014, on the basis of the EEC, of a new integration union – the Eurasian Economic Union. Judging from the statements of the EEU leaders, such an economic connection fully replaced the initial idea of creating a political Eurasian Union.

Practice shows that integration brings positive results when states join it voluntarily, expressing their readiness to be guided by coordinated decisions aimed at improving

27 N.A. Nazarbayew, *Jewrazijskij sojuz. Idiei, praktika, pierspiektivy. 1994–1997 gody*, Fond sodejstwija razwitiju socyalnych i politiceskich nauk, Moscow 1997.

vital social institutions and increasing the well-being of citizens. The integration process should not be in contradiction with the process of national revival and statehood formation of the participating countries. This is confirmed by many years of experience of the European Union. All this means that a flexible cooperation mechanism is being created in the CIS, allowing for taking into account the different degrees of readiness and interest in integrating the participants of this process. The result of this trend was the emergence of several levels of integration, covering various levels of cooperation between states, including issues related to energy problems.

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**Rafał Miastowski**

Vistula University

Warsaw, Poland

mokotow.sekretariat@um.warszawa.pl

## Biopolitics of sovereign power in the conditions of the COVID-19 pandemic

### Summary

The article is devoted to the analysis of the concept of biopolitics by Michel Foucault in relation to state policy in the conditions of the coronavirus pandemic.

Interest in this concept, as well as in Giorgio Agamben's "bare life" and Achille Mbembe's "necropolitics" concepts, has grown significantly in connection with the changes in social and political life around the world caused by the pandemic and the fight against the spread of infection. The introduction of restrictions by the governments of many countries is met with severe criticism, mainly from radical left-liberal positions, with critics using the concepts of biopolitics. Nevertheless, governments display irrationalism, reactivity, and sometimes helplessness in the fight against the pandemic, which does not correspond with the critical views of sovereign power as a totalitarian monstrosity, maximally rational to the detriment of humanitarianism. The concept of bioethics needs to be revised, and the interest in bioethics in a pandemic is unfairly high because it does not provide an understanding of the essence of political power.

**Key words:** life, biological power, biopolitics, COVID-19 pandemic, necropolitics, restrictions.

### INTRODUCTION

The COVID-19 pandemic, announced by the World Health Organization (WHO) in March 2020<sup>1</sup>, has had and continues to have a visible impact on social and political processes around the world<sup>2</sup>. The consequences of the

1 WHO Director-General's opening remarks at the media briefing on COVID-19 – 11 March 2020, World Health Organization, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19-11-march-2020>, accessed 25.11.2021.

2 D. Runciman, *Coronavirus Has Not Suspended Politics – It Has Revealed the Nature of Power*, Guardian, 27 March 2020, <https://www.theguardian.com/commentisfree/2020/mar/27/coronavirus-politics-lockdown-hobbes>, accessed 25.11.2021.

pandemic are manifested in virtually all spheres of political life of mankind and individual nations - in international relations, diplomacy, economic policy, political communication, social policy, electoral processes, ecological policy, political globalization, regionalization and localization. There has been a radical shift in some political trends that were considered stable and unchanging prior to the pandemic. All these changes could not go unnoticed by political scientists and have led to significant progressive changes in political research.

Among other things, in the context of the pandemic, the interest in the concept of "biopolitics" by Michel Foucault<sup>3</sup> clearly increased. Immediately after the pandemic was announced, attempts were made to forecast its political consequences within the concept of biopolitics<sup>4</sup>. Biopolitics came to be understood in the broadest sense of the word.

Contemporary research on biopolitics is not only of practical importance, but also makes an important contribution to the theory of politics. It also exerts a highly ambiguous influence on the theory of political power, political systems, states, international relations and other theoretical aspects of political science. In this article, one of the most important categories of political science - sovereign power, is considered from the standpoint of biopolitics.

## 1. LIFE AS AN OBJECT OF POLITICS.

According to Foucault, the necessary prerequisites for shaping contemporary biopolitics are the Westphalian system of sovereign states and the rationalism of the Enlightenment era. States began to become aware of themselves in a specific historical context, to understand that they are among the irremovable multitude of other states in a limited territory. If one follows the rational logic, the state is an end in itself, and the sole effort of governments should not only be to preserve, but also to constantly strengthen and develop the strength of the state. Of course, governments should not take care of, or rather, they should only be concerned with them insofar as they constitute a means to a similar end, namely what they do, their lives, death, health, activities, their individual behaviour, effort and other important aspects of human life activity.

Individuals are considered solely from the point of view of their political utility. From the point of view of the state, individuals exist only to the extent that they are capable of bringing a certain change, even a slight one, to the power of the state, in a positive or negative direction. And, consequently, the state should take care of an individual only to the extent that the latter can bring about such a change. And the state can require them to live, work, produce or consume, and it can also demand death<sup>5</sup>.

3 F. Demetri, *Biopolitics and Coronavirus, Or Don't Forget Foucault*, Naked Punch, 21 March 2020, <http://www.nakedpunch.com/articles/306>, accessed 25.11.2021.

4 P. Singh, *The Biopolitics of Coronavirus*, Deccan Herald, 13 March 2020, <https://www.deccanherald.com/opinion/in-perspective/the-biopolitics-of-coronavirus-813519.html>, accessed 25.11.2021.

5 M. Foucault, *Bezpieczeństwo, terytorium, populacja. Wykłady w Collège de France 1977/1978*, transl. M. Herer, Wydawnictwo Naukowe PWN, PWN, Warszawa 2010.

The Enlightenment gave a new way of management, a new model of relations between the state and the subject, a new type of property relations. The subject is a measure in the resources of the state.

It is this idea that links a number of Foucault's works, where he examines the specific instruments that gave rise to this new type of management – the penal system, the system of medical and psychiatric institutions, and social services. The very type, technique and manner of such rational management he calls the police<sup>6</sup>. The aim of the police is to improve the state of the state, to maintain its power. For this purpose, laws and prohibitions are used, as well as constant control and interference in social life.

The state began collecting information about people's lives – their illnesses, worries, jobs, poverty, problems. The state began to be interested in the life of people, living biological creatures.

This is how the biopolitics appeared, which Foucault describes as follows: “By this term I meant attempts to rationalize, from the eighteenth century, the problems that the practice of management faced, phenomena, peculiar to communities or people - such phenomena as health, hygiene, number of births, life expectancy, and race.”<sup>7</sup>

Biopolitics deals with the “population” as a set of existing living beings who are endowed with specific biological and pathological characteristics and, therefore, belong to the spheres of specific knowledge and techniques<sup>8</sup>.

From the medieval punishment of the individual human body (executions, torture, imprisonment), the state moves to managing the collective body of the nation as a biological object with a specific set of physiological and pathological features, from the right to take life, using a monopoly on the right to use violence, to the right of sanctioning and disposing of life through techniques such as health protection, sanitation and hygiene<sup>9</sup>, reproductive and demographic policy, physical culture and sport, legislative regulation of sexuality.

Over the course of the history of the New Era, biological power has been increasingly used by states, societies and markets to create institutions such as the army, school, workplaces, factories and boarding houses, hospitals and psychiatric institutions, but also in gyms and ballet schools – everywhere there people were subjected to discipline and normalization, transforming into controlled communities of tamed, trained and equal bodies.

The biological power strictly distinguished between “healthy”, “clean”, and “productive”, and “dirty”, “marginal”, “unproductive” bodies, which were, in fact, treated as biological waste: such was the base of the modernist institutions of colonialism, racism and fascism. There is an interesting example from Foucault's

6 M. Dillon, *Biopolitics of Security: A Political Analytic of Finitude*, Routledge, Abingdon 2015.

7 M. Foucault, *Bezpieczeństwo, terytorium, populacja. Wykłady w Collège de France 1977/1978*, transl. M. Herer, Wydawnictwo Naukowe PWN, PWN, Warszawa 2010, p. 53.

8 M. Foucault, *Narodziny biopolityki. Wykłady z Collège de France 1978/1979*, transl. M. Herer, PWN, Warszawa 2011.

9 B. Latour, *The pasteurization of France*, transl. A. Sheridan, J. Law, Harvard University Press, Cambridge, Massachusetts 1988.

“The Birth of the Clinic”, where he shows how the health system, as having “body access” (in all senses of the phrase), was transformed for the purposes of the police and performing its most important functions – the census, control over the state of the workforce, the total number and level of the working population: “For a capitalist society, the most important are biopolitical, biological and bodily measurements. The body is a biopolitical reality; medicine is a biopolitical strategy [...] It is known that the human body is viewed from a political and social point of view as a workforce. However, for the evolution of social medicine, or Western medicine itself, it seems important that initially medicine was not interested in the human body as a workforce. It was interested neither in the body of the proletarian, nor in the human body in general as a labour force. This was not the case until the second half of the nineteenth century, when the problems of the body, health and the level of the productive forces of the individual were raised”<sup>10</sup>.

Indeed, medicine, by essentially having special access to the body, wields colossal powers, not only over a specific “patient” but political power over society as a whole. Being able to observe everyone, control their life activities, isolate from other people if necessary, declaring death / disability, medicine controls the whole society, recording and continuously recording information in medical cards about everyone, resulting in a complete picture of the current state of the population<sup>11</sup>.

Similarly to medicine, politics uses other instruments, organizing control also in other spheres of society’s life. The question arises as to the scope of such control. If there are no restrictions and barriers to the intensification of control, it can become total and actually lead to a totalitarian political regime.

Developing according to its internal rational logic, biopolitics, based on the total administration of all forms of human life through full supervision and interference, becomes absurd and transforms the state into “the coldest of all monsters caught”, into what is usually referred to as “police state”. The most notable examples that Foucault uses constantly are fascism and Stalinism, which took the idea of rational management to the extreme. Indeed, these systems could be accused of anything but irrationality. From the time of these “two great experiments we suddenly felt that under the state organs, on a completely different level and to some extent independent of them, there existed the whole mechanics of power, happening continuously, uninterruptedly and violently; it made it possible to maintain durability and toughness, and it played a role in this matter no less than that of basic state organs, such as the army or the judiciary”<sup>12</sup>.

The sovereignty of sovereignty has traditionally focused on preserving the territory of the state. The state guaranteed the population the inviolability of its borders from external enemies. It was a territorial pact. Currently, the guarantees are slightly different. Safety is guaranteed against unfavorable internal factors (e.g. accident, illness, loss, risk), and these guarantees require a qualitatively different legal order and a different rule of law.

10 M. Foucault, *Narodziny kliniki*, transl. P. Mrówczyński, Wydawnictwo KR, Warszawa 1999, p. 78.

11 N. Rose, *The Politics of Life Itself*, Princeton University Press, Princeton 2007

12 M. Foucault, *Narodziny biopolityki. Wykłady z Collège de France 1978/1979*, transal. M. Herer, PWN, Warszawa 2011.

Sovereign power should show «concern» for man. Underneath, there is an unlimited supply of resources for interference and oppression.

The interference by the sovereign power is masked under the slogans of «tolerance». Foucault points out that “today’s emerging security associations are tolerant of a whole range of different types of behaviour, ranging from abnormal and even mutually antagonistic to each other; indeed, as long as such behaviour turns out to be a «protected shell», preventing forms of human behaviour that are considered uncontrolled and dangerous. And limiting such «dangerous randomities» is a matter of power. But in the aforementioned shell there is a certain freedom of manoeuvre, and a certain kind of pluralism, which is treated with much greater tolerance than in the totalitarian system. This power more efficient and cunning than totalitarian power. It is a new type of power”<sup>13</sup>.

According to Foucault, the idea of biopolitics derives from the dual relationship between politics and life: on the one hand, life is the basis of management, and on the other, the authority is called to take care of it. For Foucault, “life” was a way of expressing what was “external” to the human world of politics, the external that seemed to be essential, but in fact turned out to be a rather fragile construct<sup>14</sup>.

In a more radical and pessimistic spirit, Foucault’s ideas about life as an object of politics were developed in the works of the Italian philosopher Giorgio Agamben, and especially in his concept of “naked life”<sup>15</sup>. Within this concept, “life” is constructed mainly in a negative key, as deprived of will to act, that is, subjectivity. It is completely excluded from the political sphere, or included in it as an object of a civilizing mission, belonging to the form of hierarchical or coercive power.

The second radical development of the idea was the concept of “necropolitics” by the Cameroonian philosopher Achille Mbembe. Necropolitics is a system of actions by which the sovereign in the form of the state determines who should live and survive, and who is insufficiently strong, suitable or effective as a living person, and therefore should die<sup>16</sup>. Necropolitics represents power over the recombination of states (from “living” to “dead”, from subject to object), a power that can divide people into “appropriate” (those who, for example, according to doctors’ observations, do not belong to high-risk groups), and not very appropriate, to form power on the basis of the dying experience of others [...] and their commemorative practices.

Necropolitics tries to curb the actions of death by rationing who should approach it more easily, and who will be able or should maintain a high standard of living at all costs. Unlike biopolitics, which focuses on ways to control the various manifestations of life, necropolitics’ focus is on the control of death, or more precisely, on the right to decide who and how many should die.

Such a shift from biopolitics to necropolitics becomes possible precisely because Mbembe examines the situation in this part of the world (Africa) where European

13 M. Foucault, *Security, Territory, Population. Lectures at the Collège de France, 1977–1978*, Palgrave-Macmillan, Basingstoke 2007.

14 T. Lemke, *Biopolitics: An Advanced Introduction*, New York University Press, New York 2011.

15 G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, Stanford 1998.

16 A. Mbembe, *Necropolitics*, Duke University Press, Durham; London 2019.

culture, with all its universality and cosmopolitanism, literally inhibits the operation of its control mechanisms, exposing its colonial dimension, demonstrating the ongoing a policy of violence and, as a result, slavery. According to Mbembe, necropolitics calls into question both the European understanding of freedom and personality, but above all the idea of sovereignty as it was formulated by Carl Schmitt: sovereign is the one who makes the decision about the state of emergency, that is, the one who takes responsibility, demonstrates decisiveness in the face of death, in fact taking the position of a master<sup>17</sup>. Mbembe shows that necropolitics is a peculiar peak of such logic, when the very mechanism of sovereignty is revealed, when the person who decides to annihilate people becomes the sovereign<sup>18</sup>. In this sense, any policy based on the principle of sovereignty amounts to the annihilation of people.

## 2. POLITICAL CHALLENGES OF THE PANDEMIC

Since the start of the COVID-19 pandemic, Western countries' anti-infection policies have faced harsh criticism from Agamben's "bare life" concept and Mbembe's necropolitics believers. Many critics are supporters of radical leftist or left-liberal views.

The peculiarity of the current coronavirus pandemic, according to the critics, is that it affects the entire white population of Europe and North America regardless of people's social status. When AIDS was spread around the world in the 1980s, Western politicians did not take any vigorous and effective steps because they all believed that the dying (homosexuals, drug addicts, Haitians, Africans, sex workers, transsexuals and others) either don't deserve to be saved or deserve to die. At that time, the authorities did not take any preventive measures - no taxpayer-funded drug-seeking research programs were launched, and instead, the authorities only used methods of stigmatization, isolation, and killing. Similar processes have occurred as Ebola, tuberculosis and dengue fever, as well as the protracted HIV epidemic, spread death in the countries of the global South where health protection either does not exist at all or is weakened by neo-colonialism, debt and a policy of strict budget austerity. Only COVID-19 has forced privileged members of a thriving Northern society and the old European colonial empires to face death. Despite the fact that they control most of the world's riches, the governing organs of the North saw their weakness and mortality. Faced with the virus, neither financial assets nor capital reserves can save them.

Thus, according to radical critics, the pandemic crisis is the crisis of the sovereignty of the "white male heterosexual body of patriarchal-colonial capitalism". It is also a terrible moment for all those who, from different positions of body and identity, somehow distribute the privileges of the ruling North.

G. Agamben himself became the banner of all radical critics of the contemporary fight against the pandemic and all coronasceptic protest movements. This Italian philosopher, even before the official declaration of a global pandemic by the World Health Organization, on February 26, 2020, published the note "Invention of the

17 C. Schmitt, *Lewiatan w teorii państwa Tomasza Hobbesa*, transl. M. Falkowski, Prószyński i S-ka, Warszawa 2008.

18 A. Mbembe, *Necropolitics*, Duke University Press, Durham; London 2019.

epidemic”, in which he strongly criticized the practice of forced social distancing<sup>19</sup>. In response, an article by J.-L. Nancy was published<sup>20</sup>, criticizing Agamben’s skepticism, which, in fact, opened a polemic between supporters and opponents of the restrictions to fight the pandemic. The polemical publications of Agamben and Nancy began to be widely distributed on the Internet and became a part of social discussions, also among people far from academic life.

Agamben called the steps taken in February 2020 by state control in Italy “irrelevant, irrational and completely unjustified”. At that time the statement of the Italian Research Council that there is “no epidemic in the country” was considered accurate. Referring to this statement and pointing out that in most patients “the infection causes mild symptoms (a kind of flu)” and only “4% of patients should be hospitalized and undergoing intensive care”, Agamben asks himself: if this is the case, then why are the mass media and the authorities sowing panic and provoking a state of emergency, which provides for tough restrictions and suspension of the normal functioning of citizens’ living and working conditions? In the actions of the authorities, Agamben saw, firstly, a tendency to use the state of emergency as a normal management paradigm (decrees and orders with legally vague wording), and secondly, a “heightened state of fear” that had spread in mass consciousness “and converted into a real need to create a collective panic”. In this way, according to the philosopher, in the name of security the authorities launched “a distorted, vicious circle of restriction of liberties”<sup>21</sup>.

In his letter entitled “Viral Exclusion”, Nancy pointed out the absurdity of comparing the new coronavirus with the common flu, adding that the death rate from the coronavirus is higher and that there is a vaccine to fight the flu that has proven its effectiveness. In the pandemic, Nancy saw not a new excuse for emergency measures, but a necessity dictated by the realities of time: “the technical interconnection (numerous movements, transport, infiltration and spread of substances) reaches a previously unprecedented degree of intensity which increases with the increase of the population”. With the COVID-19 avalanche falling on humanity, “the entire civilization is under impact”, and governments become merely forced and “pathetic subordinates” of this situation that is characterized by a kind of “viral exclusion” (biological, social, cultural), therefore the accusations to the authorities “look more like a diversion than a deliberate analysis of the political situation”<sup>22</sup>.

With the spread of the epidemic in Italy and the increase in the number of victims, Agamben did not change his point of view. Later, in his new text, he compared the prevailing panic with what happened in Milan during the plague of the 17<sup>th</sup> century.

19 G. Agamben, *L'invenzione di un'epidemia*, Quodlibet, 2020, <https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia>, accessed: 27.11.2021; see.: *Coronavirus and philosophers*, M. Foucault, G. Agamben, S. Benvenuto, European Journal of Psychoanalysis Issues, 2020, <http://www.journal-psychoanalysis.eu/coronavirus-and-philosophers/>, accessed: 27.11.2021.

20 J.-L. Nancy, *Eccezione virale*, Antinomie, 2020, <https://antinomie.it/index.php/2020/02/27/eccezione-virale/>, accessed: 27.11.2021; zob.: *On Pandemics. Nancy, Dwivedi, Mohan, Esposito, Nancy, Ronchi*, European Journal of Psychoanalysis Issues, 2020, <https://www.journal-psychoanalysis.eu/on-pandemics-nancy-esposito-nancy/>

21 G. Agamben, *L'invenzione di un'epidemia*, Quodlibet, 2020, <https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia>, accessed: 27.11.2021.

22 J.-L. Nancy, *Eccezione virale*, Antinomie, 2020, <https://antinomie.it/index.php/2020/02/27/eccezione-virale/>, accessed: 27.11.2021.

Then they searched for thieves who were blamed for contamination, the so-called infectors (*“pestis manufacta”*) who supposedly deliberately smeared surfaces with plague poison in order to infect people. Agamben expressed his concern about the new “witch hunt” and noted the inhumanity that was increasing with the implementation of social distancing practices: even a loved one must not be approached or touched, and an arbitrarily changed distance should be kept. “Our neighbour has been cancelled”, concluded the philosopher<sup>23</sup>.

It is noteworthy that the historical experiences of the plague are used not only by those who oppose restrictions, but also by those who consider them justified.

Thus, historian Alexander Lee touches on the subject of Machiavellianism: the thinker and politician Niccolò Machiavelli experienced several waves of the plague and, according to the author of the article, realized that it was at this time that “freedom was most at risk”<sup>24</sup>. While honesty, generosity and compassion on the part of the nobility may seem commendable to those looking from the side, especially when people are suffering, it was obvious to Machiavelli that, in the extraordinary circumstances of the pandemic, such benefactors risked panic, treasure trash, and rebellion, and not at all help to stop the spread of infection. Relying on such beliefs, Machiavelli proposed to the government of the Republic to try not to be particularly virtuous, to strengthen censorship, to reduce economic spending to a minimum, and to use soldiers to suppress symptoms of dissatisfaction. Bearing in mind that many of the people are not sufficiently intimidated by the plague to stay at home, or are too selfish to limit themselves for the sake of the common good, these should be repressed and punished, advised Machiavelli.

One historian notes that these ideas may seem cynical and soulless at first glance, but they are still useful because through them we can see and understand our own reactions - so the historical past helps us in our search for new solutions<sup>25</sup>. And while the coronavirus is not like the plague, and modern society is very different from that of the 17th century, today’s academic logic corresponds to Machiavelli’s ideas. These types of similarities and interconnections make the COVID-19 pandemic not only the subject of historical comparisons, but also the subject of biopolitics, distinguishing European epidemics as events that formulated specific societal responses and influenced the shaping of various political regimes.

Using biopolitical rhetoric, in June 2020, Agamben criticized distance learning in his next material, as a “type of technological barbarism”, where life sensations are eliminated and human attention is “locked in a deceptive screen”. According to Agamben, the thousand-year tradition of studying, and that means the European tradition of the university, is coming to an end<sup>26</sup>. In his second article, Agamben discusses the medicalization that overwhelms human everyday life, in which he

23 G. Agamben, *Contagio*, Quodlibet, 2020, <https://www.quodlibet.it/giorgio-agamben-contagio/>, accessed: 27.11.2021.

24 A. Lee, *What Machiavelli knew about pandemics*, New Statesman, 2020, <https://www.newstatesman.com/2020/06/what-machiavelli-knew-about-pandemics>, accessed: 27.11.2021.

25 A. Lee, *Machiavelli: His Life and Times*, Picador, London 2020.

26 G. Agamben, *Requiem per gli studenti*. Istituto Italiano per gli Studi Filosofici, 2020, <https://www.iisf.it/index.php/attivita/pubblicazioni-e-archivi/diario-della-crisi/giorgio-agamben-requiem-per-gli-studenti.html>, accessed: 27.11.2021.

sees distinctive religious features: medicine has become a new belief system that has combined the quasi Christian eschatology with the permanent crisis of capitalism<sup>27</sup>.

The basis of Agamben's critical replies is the idea that governments, in their regulative anti-epidemic activities, lower the human community to support "naked life", a concept that the philosopher developed earlier: "Naked Life" is a biological existence, a state beyond the law, the limit of which it determines, at the time when the law itself is made by the political power of the sovereign, arising from the possibility of introducing a state of emergency<sup>28</sup>. In the era of the coronavirus, as Agamben believes, existence as such becomes more important than free and dignified existence, and the quality of life is counteracted by the very fact of life, by mere existence. This idea became the basis for broad protest rhetoric: some consciously appeal to Agamben, and some agree with his arguments in independent judgements. Similar views, for example, are developed by the German specialist in political philosophy and digital development, J.P. Friedrich, who asks: "What is the point of continuing life if we can no longer do what gives meaning to our ongoing life?"<sup>29</sup>

Similar statements meet with "criticism from the left". Among other things, the Greek philosopher, supporter of Marxism and "communist biopolitics", Panagiotis Sotiris, exposes the Agambenist position, accusing him of "individualistic panic", at a time when the pandemic situation requires, in his opinion, not only the restriction of personal freedoms and an increase in the level of social cohesion, but also the forced redistribution of funds from the private sector to the social health service<sup>30</sup>.

University of Westminster professor David Chandler, analyzing the criticism of epidemic restrictions, does not agree that the implementation of the bans was the result of authoritarian efforts of the authorities. Authorities, Chandler stresses, «on their own, were not prepared for the crisis and did not keep up with an effective response», they had to not only direct and initiate new restrictions, but also to respond to media pressures demanding the introduction of restrictive measures<sup>31</sup>. The topic of the rule of media and media pressure in a pandemic is also considered in more narrow research. Thus, based on the results of the work of anthropologists and sociologists observing crises in the social health service (for example, during the Ebola and H1N1 outbreaks) and other collective injuries, specialists find in the work of the mass media risks leading to increased anxiety, increased stress reactions, overload medical institutions, inadequate behavior and questionable decisions in the field of health care<sup>32</sup>.

27 G. Agamben, *La medicina come religione*, Quodlibet, 2020, <https://www.quodlibet.it/gior-gio-agamben-la-medicina-come-religione>, accessed: 27.11.2021.

28 G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, Stanford 1998.

29 J.P. Friedrich, *Corona als Generalprobe für die Klimakrise*, Die Welt, 2021, <https://www.welt.de/kultur/plus223754002/Dauerhafter-Lockdown-Corona-als-General-probe-fuer-die-Klimakrise.html>, accessed: 27.11.2021.

30 P. Sotiris, *Against Agamben: Is a Democratic Biopolitics Possible?*, Critical Legal Thinking, 2020, <https://criticallegalthinking.com/2020/03/14/against-agamben-is-a-democratic-biopolitics-possible>, accessed: 27.11.2021.

31 D. Chandler, *The Coronavirus: Biopolitics and the Rise of 'Anthropocene Authoritarianism'*, Russia in Global Affairs, 2020, no. 2, April/June, <https://eng.globalaffairs.ru/articles/coronavirus-authoritarianism/>, accessed: 27.11.2021.

32 D.R.Garfin, R.C.Silver, E.A. Holman, *The Novel Coronavirus (COVID-2019) Outbreak: Amplification of Public Health Consequences by Media Exposure*, Health Psychology, 2020, no. 39 (5), p. 355–357.

When talking about the social rhetoric that is formed in the media and dominates the levels of rulers, it is worth noting the militaristic imagery characteristic of experiencing the COVID-19 pandemic. The fight against infection is called «war» and the politicians «go to the front» of this struggle. Glorifying doctors, making the virus similar to a war enemy, comparing the rigors of self-isolation and keeping distance with military mobilization in conditions of a hostile invasion – these are the features that characterize pandemic discourse in various countries.

Considering the pandemic situation in the context of the socio-philosophical ideas of Michel Foucault, Jean Baudrillard and Bruno Latour, Handler points out that the Agambenian separation between bios, the social and biographical life of the citizen and the individual, and zoé, the impersonal biological or animal «naked life», «it is a dubious and outdated concept of human uniqueness»<sup>33</sup>. According to Handler, approaching the pandemic “war” from the standpoint of anthropocentric authoritarianism will not provide the desired answers to new challenges, and alternatives to the traditional discourses of biopolitics should be sought instead.

Anyway, notes Chandler, Agamben himself introduces these possibilities when he writes that the war against the coronavirus as “an invisible enemy that can lurk in every human being” is, in fact, a civil war, because “the enemy is not outside, he is inside us”. If the enemies are the people themselves, who at the same time have become security actors, then “the political fight against the coronavirus will inevitably have authoritarian repercussions, regardless of the formal political preferences of the respective governments”<sup>34</sup>. As this discussion shows, people are faced with the need to re-shape social life, and therefore the COVID-19 pandemic is not limited to medical or economic issues, but inevitably draws citizens into political processes.

### 3. BIOPOLITICAL APPROACHES TO FIGHT COVID-19

At the present time, Foucault’s concepts are actively used in the study of culture and society, including in the anthropology of medicine<sup>35</sup> and the health service management system<sup>36</sup>. Today, people seem to literally play “the caricature of a biopolitical object that just emerged directly from Michael Foucault’s lectures”, observes Bruno Latour. This is happening in an atmosphere when the state of statistics is “resurrected” and the citizens “remain locked in their homes, while the police power outside strengthens, and in the empty streets you hear only the signals of ambulances”<sup>37</sup>. No wonder that biopolitical approaches set the framework for humanitarian discussion about the COVID-19 pandemic, not only in scientific editions, but also in mass media, socio-political blogs and popular science platforms.

33 D. Chandler, *The Coronavirus: Biopolitics and the Rise of ‘Anthropocene Authoritarianism’*, *Russia in Global Affairs*, 2020, no. 2, April/June, <https://eng.globalaffairs.ru/articles/coronavirus-authoritarianism/>, accessed: 27.11.2021.

34 *Ibidem*.

35 A.R. Petersen, R. Bunton, *Foucault, Health and Medicine*, Routledge, London; New York 1997.

36 C.T. Farrell, J. Porter Lillis, *An adaptation to Michel Foucault’s medical authority: The Lucid Succor of the informal caregiver*, *Social Theory & Health*, 2013, no 11 (4), p. 327–343.

37 B. Latour, *Is This a Dress Rehearsal?*, *Critical Enquiry*, 2020, <https://critinq.wordpress.com/2020/03/26/is-this-a-dress-rehearsal>, accessed: 28.11.2021.

Such publications are not limited to conceptualizing the current pandemic in the context of biopolitics, biological power, and a disciplinary society. Epidemic socio-political models: the “leper exclusion” model and the “plague-ridden inclusion” model, which developed in Europe during similar cataclysms<sup>38</sup>. According to Foucault, in the 18th century, at the beginning of the modern era, a disciplinary mechanism was developed to prevent the spread of infection, distinguished by Foucault, consisting in controlling the movement of human bodies, subjects of an epidemic threat. While the fight against leprosy required the exclusion of the leper from society, the fight against the plague placed at the centre of the disciplinary mechanism not only its victims, but also the entire population. In modern society, the so-called disciplinary model of power dominated, managing not by “excluding the deviants” from society, but by including them in the common social “productivity of bodies”<sup>39</sup>. This favoured the emergence and spread of the harsh management of work and politics that embraced European societies in the 17th and 18th centuries. The political instrumentation of biological power, according to Foucault, is extremely broad: examining psychiatric practices and the social history of fear.

This allows the French thinker to distinguish historic turning points that led to the emergence of beliefs in Europe that allowed the restriction of freedom to those elements of society that are labelled “other” or “dangerous” – in the name of general welfare and security<sup>40</sup>.

Similar approaches make it possible to justify on the theoretical level the more and more often sounding concerns about the various forms “attack on democracy”<sup>41</sup> voiced by the governments of some countries during the pandemic. The abundance of critical statements with references to Foucault forced the editor of Foucault Studies, Daniele Lorenzini, to emphasize that biopolitics “is not intended to show us how bad this or that modern form of power is,” although it is not designed to glorify one: it is directed, above all, at an understanding of transitory historical states, in particular “the biological threshold modernity”, when the processes that characterize human life as a species become a key element in political decision-making, not only in “exceptional “circumstances such as epidemics, but also in” normal times”<sup>42</sup>.

According to Foucault, as the author of the publication notes, political power in itself is neither good nor bad, but dangerous if you take it blindly and do not question its actions. At the same time, biological power functions mainly “automatically, unnoticed and in a completely normal way”, and it is dangerous precisely when we do not notice it, which cannot be said about a pandemic situation with its active biopolitical discussion.

38 B. Latour, *Is This a Dress Rehearsal?*, Critical Enquiry, 2020, <https://critinq.wordpress.com/2020/03/26/is-this-a-dress-rehearsal>, accessed: 28.11.2021.

39 M. Foucault, *Nadzorować i karać*, Wydawnictwo Fundacji Aletheia, Warszawa 1993.

40 J. Jipson, P.M. Jitheesh, *The Attack on Democratic, Constitutional Rights During the Pandemic Is Ominous: Aruna Roy*, The Wire, 2020, <https://thewire.in/rights/covid-19-lockdown-indian-govt-rights-migrants-aruna-roy-interview>, accessed: 28.11.2021.

41 K.C. Meneses, *L'Arche, a Radical Reversal: Fearless Dialogue between Foucault and Vanier with the New Testament*, Journal of Disability and Religion, 2020, vol. 24 (2), p. 151–173.

42 D. Lorenzini, *Biopolitics in the Time of Coronavirus*, Critical Inquiry, 2020, <https://critinq.wordpress.com/2020/04/02/biopolitics-in-the-time-of-coronavirus/> accessed: 28.11.2021.

Karsten Schubert, Associate Professor of the Department of Political Theory at the University of Freiburg, called the COVID-19 pandemic “Foucault’s Times”.

However, in the general cross-section of the biopolitical discussion, Schubert sees the prevalence of “populist biopolitics”, which must be opposed to “democratic biopolitics”, directed not against distrust of state power and “authority of experts”, but on collective civic “concern without coercion”. The author sees a social threat in the dissemination of the “populist biopolitics”, showing the negative aspects of the operation of social conventions, free from the participation of the state, using the example of stigmatization of HIV-positive people<sup>43</sup>. Other authors<sup>44</sup> are calling for a “democratic biopolitics” that calls for the transformation of the fear and passivity of a disciplinary society into collective efforts, mutual support, solidarity and concern.

Numerous participants in the discussion, both in the circle of experts and in broad social circles, agree that the transformations of everyday life, social life and the socio-political landscape caused by the COVID-19 pandemic largely shape our long-term perspective. Social networks and media are full of news that “the world will no longer be as it is now” and some scholars speak of humanity approaching “a major and exceptional catastrophe”, and at the same time of “a rare chance for a series of political and economic transformation” on a global scale<sup>45</sup>.

An anthropologist, professor at Stanford University, Robert Harrison, in an interview with the German edition of “*Die Welt*”, outlined an extremely dark picture of the social reality of a pandemic as the construction of an “existential alienation” society through daily panic, in which the unconscious aspirations of technocracy are realized: social distance, change of the real to virtual, miniaturization of the world and the image of the interlocutor on the screen, smoothing the plastic life to screen flatness. In line with Agamben’s “naked life”, Harrison reminds that civilizations have always been built on the idea of values that go beyond “life-only”, and that striving to exist in the name of mere existence risks losing points of reference<sup>46</sup>. S. Pines, a specialist in the field of commemoration and defending the paramount importance of mourning rituals to culture and society points out to the “escape from death”, the cancellation of funeral rituals and the prohibition of saying goodbye to the dead from the coronavirus. In his opinion, the dehumanization of death speaks of the deepest existential changes taking place in many contemporary societies. This is related to the growing interest in necropolitics. In a pandemic, necropolitical decisions experience centralization and intensification. At some stage, necropolitics only function in medical facilities in the form of treatment,

43 K. Schubert, *Crying for Repression: Populist and Democratic Biopolitics in Times of COVID-19*, Critical Legal Thinking, 2020, <https://criticallegalthinking.com/2020/04/01/crying-for-repression-populist-and-democratic-biopolitics-in-times-of-covid-19/>, accessed: 28.11.2021.

44 G. Kakoliris, *A Foucauldian enquiry in the origins of the COVID-19 pandemic management (Critique in Times of Coronavirus)*, Critical Legal Thinking, 2020, <https://criticallegalthinking.com/2020/05/11/a-foucauldian-enquiry-in-the-origins-of-the-covid-19-pandemic-management-critique-in-times-of-coronavirus/>, accessed: 28.11.2021.

45 B. Suresh Lal, *Health and economic shocks of COVID-19*, International Journal of Multidisciplinary Research and Development, 2020, vol. 7 (4), p. 6–12.

46 S. Pines, *Robert Harrison: “Die Krankheit hat fast den Status eines Gerüchtes”*, Die Welt, 2020, <https://www.welt.de/kultur/plus207908299/Robert-Harrison-Die-Krankheit-hat-fast-den-Status-eines-Geruechtes.html>, accessed: 28.11.2021

hospitalization and resuscitation protocols. Then, as a preventive measure to reduce mortality, it is introduced more widely in the social space. By way of, for example, the implementation of digital passes, planned walks, a special form of clothing for these walks, and a ban on visiting places of mass human gatherings.

But in any case, a significant part of the provisions is a reaction to the constant increase in knowledge about the virus, which targets people with specific characteristics.

While it has been assumed that the pathogen knows no discrimination<sup>47</sup>, the virus, according to research data, is indeed more dangerous to adults, those with chronic ailments, obese, etc.<sup>48</sup>

However, people are segregated by sovereign power without sufficient knowledge of their real weakness. Undoubtedly, the said segregation is to bring the virus to a controlled state, domesticate it, and transform it into a harmless seasonal ailment. And, of course, the more knowledge about the virus and all its variants is obtained, the more detailed characteristics that allow for violating the rights to specific losses (“old”, “chronically ill”, “obese”) will simply turn into set of “objective” risk factors. And on the site of necropolitical discrimination, there will be a “standardized” one, which may even be perceived initially as forced, but will eventually be adopted as simple and understandable rules of sanitary behavior, universally binding. Though indirectly determined by the virus, but in fact resulting from systemic inequality, the difference in suffering caused by the virus for “rich” and “poor” will remain. But this will not be the result of a biologically determined tendency of the pathogen, but a diagnosis for the social order, the deficiencies of which are exposed by a complex epidemiological situation.

Sufficiently disturbing forecasts regarding the social consequences of the pandemic are made by the German philosopher and journalist J.P. Friedrich, who criticizes the idea of “resignation” (new asceticism in the name of the common good). In this idea, the coronavirus limitations harmonize with the ecological agenda popular in Germany: a higher debt orders man and citizen to limit their needs, pleasures and travel, so that society can come closer to the correct balance of forces between nature and civilization, viruses and people, ecology and capitalism. Showing the common logic of left-liberal rhetoric related to the coronavirus and environmental problems, Friedrich calls the COVID-19 pandemic a “general rehearsal of the climate crisis”, a movement to meet “eternal isolation” that “could save the world, but would make it completely meaningless”. “Quarantine life” without theaters, concerts, social evenings and live communication, life which, according to extraordinary lockdown rules and sanitary recommendations, comes down to online activity only, the author of the article compares with the “green” ideal: no more flying for long journeys, not going to the mountains, minimize energy consumption, no harmful to the climate animal farming, no exotic fruit import, etc. The German philosopher is wary of calls for “temporary perseverance” and, in the current context of vaccines being developed and implemented, on the eve of the

47 J. Butler, *Capitalism Has its Limits*, Blog. Verso Books, <https://www.versobooks.com/blogs/4603-capitalism-has-its-limits>, accessed: 28.11.2021.

48 J. Lighter et al, *Obesity in patients younger than 60 years is a risk factor for Covid-19 hospital admission*, *Clinical Infectious Diseases*. 2020, <https://pubmed.ncbi.nlm.nih.gov/32271368/>, accessed: 28.11.2021.

promised return to the joys and pleasures of pre-pandemic life, he is anxious and suspicious. After all, the emergence of a virus mutation against which high-tech vaccines will be powerless is only a matter of time, and “what appeared to be a short-term measure in the current pandemic is already being considered as a necessary and permanent means of avoiding future problems, a solution in the fight against climate change”<sup>49</sup>. The culture of “endless therapy”, the crisis of neoliberalism and the increasingly influential ecological movement herald the destruction of the present free society, as Friedrich believes, “ultimately, from the liberal principle that we should all be free to pursue personal happiness, nothing can remain – but we will survive as a human species”<sup>50</sup>.

The article by J.P. Friedrich introduces biopolitical problems into the broadest context, linking them through the ecological idea of “refusal” with other ascetic ideals of the newest movements. Among them is the so-called new ethics, which proclaims a shift from “traumatic” spontaneous sexuality and free expression of emotions to a society in which personal activity, sexuality and public speech are subject to sharp political correction, social supervision and disciplinary administration. The common element of the new ethics and ecological activism is the criticism of the older generation, against whom accusations of irresponsibility, profligacy, patriarchalism, hedonism and individualism are directed, in other words, of “toxicity”, that is, a traumatic threat to the surrounding world.

Everyday life should change towards limiting consumerism, tourism, international supplies, in favour of greater transparency and discipline of interpersonal relations, from cultivating the freedom of the individual towards an acute “social sensitivity”, especially in the sphere of minorities, traumatized and discriminated groups – these are the current postulates of the ideology of the leftist turn, and it draws its most visible and convincing arguments for the masses from a pandemic drama.

The new ethical and ecological need to be safe (the ideal of security is opposed to “toxicity”) becomes not only a subject of politics, but also a subject of fashion, a discursive practice, where the internal logic of this demand rests on the same social solidarity in the name of security on which the restrictive appeals of the pandemic era are also based<sup>51</sup>.

Sometimes similar requirements sound aggressive enough, and under the pretext of social solidarity, increasing discipline of life processes is being carried out, believes J.P. Friedrich. He points out that prohibitions, silences and moralizing, those characteristic tricks of the left-liberal media, will not help to solve urgent problems, epidemiological, climate-related, and other, but on the contrary, will lead society to “conflicts that may tear them apart”<sup>52</sup>.

49 J.P. Friedrich, *Corona als Generalprobe für die Klimakrise*, Die Welt, 2021, <https://www.welt.de/kultur/plus223754002/Dauerhafter-Lockdown-Corona-als-General-probe-fuer-die-Klimakrise.html>, accessed: 28.11.2021.

50 Ibidem.

51 C.Mudde, *‘Wartime’ Coronavirus Powers Could Hurt Our Democracy - Without Keeping Us Safe*, Guardian, 24 March 2020, <https://www.theguardian.com/commentisfree/2020/mar/24/wartime-coronavirus-powers-state-of-emergency>, accessed: 28.11.2021.

52 J.P. Friedrich, *Corona als Generalprobe für die Klimakrise*, Die Welt, 2021, <https://www.welt.de/kultur/plus223754002/Dauerhafter-Lockdown-Corona-als-General-probe-fuer-die-Klimakrise.html>, accessed: 28.11.2021.

## CONCLUSION

The biopolitics of sovereign power in the context of the COVID-19 pandemic is characterized by two opposing trends. On the one hand, the introduced restrictions increase the level of control and ability to control people by the state as a universal institution of sovereign power. In strict accordance with the concept of Foucault's biopolitics, restrictions are introduced on rational grounds and are directed at society as a whole, as a uniform biological organism.

On the other hand, the sovereign power has turned out not to be ready for a new dangerous virus pandemic, it is reactive and sometimes showing helplessness. The numerous actions of the authorities are irrational - they are dictated by the pressure of public opinion, and not by rational arguments. Moreover, the politicians themselves also get sick and sometimes even die. The susceptibility of the subjects of political power to this disease and death from the virus, which is becoming widely known thanks to the modern means of mass communication, shows the limitation of their biological power over "naked life". In this sense, the pandemic becomes a challenge to existing political systems. In such conditions, radical left-liberal criticism of politicians only intensifies the disorderly, irrational actions of the authorities and may exacerbate the systemic political crisis.

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### Kiyokazu Nakatomi

Former Chiba Prefectural High School

Japan

[k-nakatomi@gc4.so-net.ne.jp](mailto:k-nakatomi@gc4.so-net.ne.jp)

## Idea of Transcendent Law

### Summary

I once published 'A philosophical Synthesis of Christianity, Buddhism, and Islam'<sup>1</sup> to overcome religious conflicts. Suicide bombings occurred frequently after the Iraq War in the name of Allah. The United States used Christianity to claim its legitimacy. As a result, terrorist acts in the name of Allah occurred frequently as a repulsion. How should we suppress this? It is impossible with power only. I advocate the freedom to believe in one's religion, but not impose it on others. I admit God, transcendent-being. It is Christ, Allah, Buddha, and others. It is transcendent-being that included the gods of various religions and that is also close to the god of Aristotle. I apply this idea to the nation. I respect the gods and religions of each country and respect the sovereignty of each country. However, I do not emphasize the sovereignty of one country over the sovereignty of other countries. "America First" and "China First" are such. These examples' words sound good to the people in their own country but it becomes the nationalism that comes first in their own country. Beyond that, it becomes a war from the source of political and economic conflicts. To prevent this, one respects the sovereignty and activities of his own country but one should consider cooperation and harmony. At that time,

1 'A philosophical synthesis of Christianity, Buddhism and Islam' was published in the following countries and linguistic treatises.

"Ministrare", pp. 627–638, University of finance and management in Warsaw, French version 2010, Poland.

"Kultura i wartości w czasach przemian", pp. 269–283, Poland, Slovak, Ukraine, Warszawa-Legnica-Preszów, French version 2010.

"CZŁOWIEK WARTOŚCI EDUKACJA", pp. 25–38, University of Legnica, French version 2010, Poland.

"Discourse-p" (Philosophy, Politics, Power, Public relations) 2005 / V, pp. 51–54, Russian Academy of Science, Russian version, 2005, Russia.

"Synthesis of Science and Higher Education in social-cultural field" articles of science, pp. 388–401, Krasnodar State University, Russian and English version, 2005, Russia "Teme" No.2 / 2008, pp. 367–378, University of Niš, English version, 2008, Serbia Website: <http://teme.junis.ni.ac.yu/teme2-2008/teme2-2008.htm>.

"Parerga" No.2 / 2005, pp. 31–41, University of finance and management in Warsaw, English version, Poland.

Website: [http://parerga.vizja.pl/wp-content/uploads/.../parerga\\_02\\_2005.pdf](http://parerga.vizja.pl/wp-content/uploads/.../parerga_02_2005.pdf).

"New Horizon of Sciences by the Principle of Nothingness and Love", Kiyokazu Nakatomi, Lambert Academic Publishing, Germany, 2012.

what is needed is a transcendent-being. Do not claim an individual god externally. The nations of the world act in awe of the transcendent-being. The rules and principles of action are transcendent laws. I will refer to Aristotle's politics and the philosophy of law of Fusaaki Uzawa, who served as the lead lawyer for Japanese defendants of the International Military Tribunal for the Far East.

**Key words:** Natural law, transcendent-being, transcendent law, Politics and god of Aristotle, ritual law, Phenomenology, Corona crisis, Fusaaki Uzawa, Toyohiko Kagawa, Philosophy of Nothingness and Love.

## 1. CONCEPT OF TRANSCENDENT-BEING

From my "Philosophy of Nothingness and Love"<sup>2</sup>, the departure is nothingness, greatness and nothing as reality in ancient China. It is so great that one cannot say nothingness because it transcends expression, it is the flow of life and energy that flows through all things. I can explain the creation of the universe from nothingness and the Big Bang from nothingness. This was discussed in my cosmology 'On the Synthesis of the Theory of Relativity and Quantum Theory'<sup>3</sup>. Since this nothingness is the root of the creation of the universe, it is also infinite. Nothingness is infinite, eternal and can be said to be a transcendent-being (God). Moses, who intuited this nothingness then preached that the universe was created from nothingness. And the god of Allah is so great that it can be expressed as nothingness. In Buddhism, one does not preach the creation of the universe, but since enlightenment is a match with the reality of the universe, one still aim for a state of nothingness that is Satori. Christianity, Buddhism, Islam and all other religions are synthesized by this nothingness as reality. It is the source of the world, the universe and the expanding universe because it is the flow of energy. The movement of energy does not always suit human convenience. Therefore, there can be a huge earthquake, tsunami or collision with a celestial body. These are misery, darkness and nothingness for humankind. Ancient people were afraid of such nothingness as reality as heaven and god. I use this spirit. Albert Schweitzer describes it as "Awe for life" and "Awe for nature." According to Professor Konstantin S. Khroutski (Russia, Novgorod University)<sup>4</sup>, the god of Aristotle is also close to my transcendent-being. In Greece, many gods such as Zeus and Athen are spoken, but Aristotle only insists on the god as an object of thought and intuition, not the personal god. He describes it as follows:

"Moreover, life belongs to God. For the actuality of thought is life, and God is that actuality; and the essential actuality of God is life most good and eternal. We hold, then, that God is a living being, eternal, most good;

2 „Philosophy of Nothingness and Love” Kiyokazu Nakatomi (中富清和), Japanese version, Hokuju Publishing, Tokyo, 2002.

„Philosophy of Nothingness and Love”, English version Lambert Academic Publishing, 2016.

3 'On the Synthesis of the theory of relativity and quantum theory'.

This paper has been published in international academic journals such as the Russian Academy of Sciences in English, French, Russian, Macedonian and Spanish. Recorded in "New Horizon of Sciences by the Principle of Nothingness and Love", Lambert Academic Publishing, 2012.

4 He is the editor-in-chief of "Biocosmology-neo-Aristotelism" of Biocosmological Association. His major is philosophy and medicine. So his territory is wide, the area of the journal is diverse.

and therefore life and a continuous eternal existence belong to God; For that is what God is.”<sup>5</sup>

Aristotle defined god as objects of ideology and intuition in the sense of surpassing those gods because he knew many personal gods. He did not use the name of personal god. Since it is an object of intuition, it is nature, the flow of life (psychē) and nothingness as reality. Therefore, the god of Aristotle is close to my notion and the opinion of Professor Konstantin S. Khroutski is accepted.

Since nothingness as a transcendent-being is infinitely diverse, it was Christ, Buddha and Muhammad who were revealed as Yahweh, Dharma and Allah. And they were born with concrete bodies. Each religion has its own doctrine and has developed history. I admit each uniqueness. However, it is forbidden to impose it on others. I also reject the expression “Christianity is good and Islam is evil.” In the international community, it is taboo to make a special claim to one’s religion.

Similarly, this logic applies to the nations of the world. Each nation admits. However, I also reject excessive home-first principles such as “America First” and “China First.” The tragedy of the conflict gave birth to the Covid-19 pandemic. In my paper ‘Infectious Diseases bear Philosophy’<sup>6</sup>, the outbreak of corona is caused by the conflict of great powers. At the time of the former SARS outbreak, the United States and China were cooperatively strong, so they quickly sealed their borders to prevent a pandemic. However, this time, American researchers withdrew from the Wuhan Institute. The strong cooperative system between the United States and China has disappeared. It became a facility only for Chinese researchers and research including military purposes was also conducted and headed in a dangerous direction.

An American inspection team in 2018 pointed out the danger. In February 2021, more than a year after the outbreak of the Covid-19, the WHO inspector general was dispatched but important evidences were erased and no particular results were obtained. America and many countries are not convinced. America requested the submission of detailed medical records in the early stages. The fact that the investigation team was accepted after a year could be construed as evidence of fraudulent concealment. Just the Chinese Government advertised to establish a Wuhan memorial hall and showed off. The Chinese Communist Party rejected the report of the outbreak of the Covid-19 on December 31, 2019 as a hoax and they removed the masks in the hospital and disposing of the doctors. Immediately, the Covid-19 became widespread and the entire Wuhan city became a pandemic area. Taiwan closed the country borders immediately after receiving this information. They took measures against corona, so they were spared the damage. If China had taken these measures, the corona pandemic would not have occurred. China is desperate to wipe out this fact and is overseen.

5 “Metaphysics”, Aristotle, Book XII Chapter 7, verse 9, Loeb Classical Library, Harvard University Press 1935).

6 Infectious diseases bear Philosophy. This paper was published in next publications.

“Biocosmology-neo-Aristotelism Vol. 9 2020” Biocosmological Association.

“Medicine and Ethics in Times of Corona”, Lit Verlag, Germany, 2020.

“Humanum N. 39” French version, Poland, 2020.

“Nothingness and Love of Japanese Philosophy”, Kiyokazu Nakatomi, Lambert Academic Publishing, Germany, 2020.

What both the United States and China have in common is nationalism, which insists on to be first and the outstanding strength of the leader. In the United States, President Trump posted many dolls and portraits. The wrinkle is a scandal at the time of the change after the January 2021 presidential election. Trump supporter demonstrators broke into the Capitol during the opening parliament. There were casualties. An unprecedented scandal, it symbolized the division within the United States. “America First” created the division of America. China is the apotheosis of Xi Jinping. Huge pictures are posted (like a prewar shadow of the Emperor in Japan) and books about him are piled up in the bookstore. Xi Jinping is too honored, he lacks humility. Both the United States and China have lost their awe for transcendent-being. Both should be humble. Therefore, I propose transcendent law that transcends religion and country.

Don't take the awe for transcendent-being lightly. The awe is also used cleverly by the tyrant dictator, aiming for the effect. Aristotle notes:

“And further he must be seen always to be exceptionally zealous as regards religious observances (for people are less afraid of suffering any illegal treatment from men of this sort, if they think that their ruler has religious scruples and pays regard to the gods, and also they plot against him less, thinking that he has even the gods as allies), though he should not display a foolish religiosity.”<sup>7</sup>

Even a dictator can control the people if he recognizes and awes transcendent-being. If the dictator is involved in ceremony of god, people can escape punishment and spend time with peace of mind. So people do not attempt a rebellion. By the way, Hitler also joined forces with Pope Pius XII (Concordat, 1933) and used his authority. Eventually, Hitler had a painter draw his picture wearing a white robe. It was a god-like sublime picture and created the image of a messenger of heaven. This is a misuse of transcendent-being but I make good use of it in the world.

## 2. DIFFERENCE FROM NATURAL LAW

Natural law is a law that has universality and that transcends time and place when ‘you must not kill people’. And it is an immutable law that does not change forever and is rational. It has its source in European Judaism / Christianity, Greek philosophy and Roman law. It is based on the establishment of the Old Testament, which begins with the Ten Commandments of Moses, the philosophy of law of Aristotle, Roman law and Christian doctrine.

Aristotle wrote about natural law as follows:

“Political Justice is of two kinds, one natural, the other conventional. A rule of justice is natural that has the same validity everywhere and does not depend on our accepting it or not. A rule is conventional that in the

<sup>7</sup> “Politics”, Aristotle, ix.15 Translated by H. Rackham, Loeb Classical Library, Harvard University Press, 1932, p. 469–470.  
Japanese version, Translated by Michitarō Tanaka, Great book of the world, Chūokōronsha, Tokyo, 1972, p. 235.

first instance may be settled in one way or the other indifferently, though having once been settled it is not indifferent: for example, that the ransom for a prisoner shall be a mina, that a sacrifice shall consist of a goat and not of two sheep; and any regulations enacted for particular cases, for instance the sacrifice in honour of Brasidas (General of Sparta), and ordinances in the nature of special decrees. Some people think that all rules of justice are merely conventional, because whereas a law of nature is immutable and has the same validity everywhere, as fire burns both here and in Persia, rules of justice are seen to vary. That rules of justice vary is not absolutely true, but only with qualification.”<sup>8</sup>

What should be noted here is that of “the same validity everywhere”. This is the universality of overall justice of Aristotle. Cicero, who inherited this concept of natural law, contributed to the formation of Roman law. The establishment of Roman law brought about the prosperity of the Roman Empire and, in addition, the establishment of medieval European society. Its philosophical foundation is Thomas Aquinas, who introduced Aristotle into Christian philosophy. In a sense, Thomas is the founder of natural law. In Thomas, natural law is the law revealed by God through reason. Since reason comes from God, natural law is a divine law and a rational law<sup>9</sup>.

However, in modern times, due to the influence of the development of natural science, the awakening of the ego by Descartes and rationalism, the reason is divided into divine reason and atheistic reason. The representative is Grotius, who is called the father of international law. He insisted on “Natural law will not lose its effect in the absence of God”<sup>10</sup>. Though he was Christian, he aimed to establish the international law that did not depend upon the theology. This is probably because when many nations gathered, religions and gods were different. The inheritance of this was the worship of rational religion by the Jacobins of the French Revolution.

As symbolized by this, reason became independent of religion in modern Europe and rational law in the light of reason was developed. At the same time, the awakening of the ego became an advocate of individual rights, establishment of human rights and natural rights. The United States Declaration of Independence and the French Declaration of Human Rights make a clear statement about the guarantee of life, freedom and property. Based on these natural laws, positive laws such as German law, Anglo-American law and French law were established. After the Meiji Restoration, Japan actively introduced Western laws and positive laws in order to establish a rule of law nation. But so far, it lacks an Asian perspective altogether. Therefore, in contrast to European natural law, natural law including Asia is called transcendental law.

8 “Nicomachean Ethics”, Aristotle, V-vii, Translated by H. Rackham, Loeb Classical Library, Harvard University Press, 1926, p. 295.

9 “Natural Law”, A.P., ENTRÉVE, Translated by Masahata Kubo, Iwanami Gendai Sōsho, Tokyo, 1952, pp. 54–68.

10 “Natural Law” p. 106.

### 3. TRANSCENDENT LAW – INCORPORATION OF THE PHILOSOPHY OF LAW OF UZAWA

The basic philosophy is my philosophy of nothingness and love. This is a synthesis of Asian philosophy and European philosophy. Through the inquiry for nothingness in the East and West, I advocate the principles of nothingness and love. Nothingness continues, infinity, eternity, transcendent-being (god) and love by philosophical intuition. This principle overcomes the gap between Asian and European philosophies and allows free movement of concepts. So to speak, it is a world philosophy. I already demonstrated the theory in my book “Philosophy of Nothingness and Love”. Based on this idea, I preach transcendental law, which can be called world law.

Transcendental law respects national sovereignty. However, a country cannot exist in one country alone. It is absolutely necessary to have relationships and cooperations with other countries. Even North Korea, which is internationally isolated, still has ties to China. Like humans, nations survive in world relations. Today, we are in a state of corona crisis but at best in our own country, corona may come in again from overseas. It is always a crisis. International cooperation is always needed. The cooperation also has the meaning of helping weaker countries. In terms of international cooperation, it is close to the United Nations. The basic idea of the United Nations is good.

However, the United Nations is centered on the five major powers and its true significance has not been realized. A typical example is the Treaty on the Prohibition of Nuclear Weapons. This came into effect on January 22, 2021 and many small countries agree. But the nuclear powers and the five major countries disagree. Japan and South Korea, which are under the umbrella of the nuclear weapons of the U.S., disagree. Japan, the only country who suffered the nuclear holocaust opposed the treaty. However, the great powers are also in favor of reducing nuclear weapons. The dilemma is that they are in favor of reducing nuclear weapons but against their abolition. With regard to international troubles, the powers with interests often veto in the Security Council and the United Nations are not functioning well. The United States, which opposes this, has not paid the UN contribution. However, it maintains its position as a permanent member of the Security Council. Contribution to the UNESCO, which is part of the United Nations, has been suspended by the United States after the secretary misused the funds. The United Nations is a collection of dilemmas. The wrinkles are borne by the countries except the five major countries. Japan is the third largest UN contributor member in the world, but cannot be a permanent member of the Security Council. Simply, it is called a country that provides money. It is impossible to establish a replacement for the United Nations. As evidence, the United States abandoned its leadership (world police) during President Obama tenure. The EU is also in danger of collapsing with the withdrawal of Britain. Instead of relying on other countries or international organizations, I set out clear ideas and philosophy to move individuals and the World.

The reference is the philosophy of law of Fusaaki Uzawa (鵜沢総明 hereinafter abbreviated as Uzawa, 1872–1955). Uzawa was two years younger than Kitarō Nishida (1870–1945), a leading figure in Japanese philosophy. Uzawa was born in a wealthy farmer family in Mobarā City, Chiba Prefecture. Mobarā is about 40 km south of my house. At the age of twelve, his father was accused of forging documents

(innocent) and imprisoned for three and a half years. With this, Uzawa experienced the darkness and nothingness of life. He was stigmatized as the 'son of the criminal' and was in financial difficulty. At this time, he studied Chinese classic studies, especially Lao-tzu and Confucius, from the Chinese classical master, Wasai Ōta and laid the foundations. Later, he went on to the University of Tokyo but repeated a year due to infectious typhoid fever. This also applies to Kitarō Nishida, who drops out of normal school after repeating a year. Both Nishida and Uzawa suffered infectious diseases and experienced the hardships, darkness, and nothingness of life. However, during a repeat of the same class, Uzawa burned his passion for infinite and eternal scholarship and learned French, German and Greek. After recovering, Uzawa believed in Jesus Christ at Tokyo YMCA (Young Men's Christian Association) and touched the love of Christ. The hardships of typhus, nothingness prepared the love of Christ. This is an adaptation of the principle of nothingness and love that nothingness continues to infinity, eternity, transcendent-being (God) and love.

He became a lawyer to prevent his father's innocent crime in society. He was in charge of more than twenty thousand projects in his lifetime. He focused on improving the status of lawyers when the status of judges and prosecutors was still high and the social status of lawyers was low. He also defended seven historic events in Japan such as the High Treason Incident (大逆事件, Emperor's Assassination Plan, 1910)<sup>11</sup>.

Uzawa, who was expected to be eloquent at the age of 30, was invited to Meiji University<sup>12</sup>. However, he was almost unpaid and was an educational volunteer. He taught the philosophy of law at the Faculty of Law and became president after working as the dean of the faculty. He invited Emperor Showa to the ceremony and raised the fame of Meiji University in Japan. He was also encouraged by parliamentarians during that time and contributed to national affairs.

The philosophy of law of Uzawa is written in his great book "Philosophy of Law (法律哲学)" (Meiji University Publishing, 1954). The spirit is 'development of living law'. Since the Meiji era, Japan has imported Western cultures and laws and realized the development of domestic laws. The law is well-developed but there is no living law that saves human beings by sticking to the interpretation of the text. One example is the innocent sin that his father once suffered and the extortion of confessions that existed in prewar Japan. In addition, it is a bad law, the Peace Preservation Law, which can justify arrests only by suspicion in the name of security and security maintenance. Like the current National Security Law of China, it is a law that tightly binds the people by law, killing thousands. In the year of the end of the war, Kiyoshi Miki (三木清)<sup>13</sup>, the first successor of Kitarō Nishida, was killed in prison. So what is a living law? It re-questions from the root of the law, the establishment. As mentioned above, the conventional laws from Europe and the United States are based on Western ideas and natural law. They are based on Jewish, Christian, and Roman law. So what is the

11 Kōtoku Shūsui and 14 others were sentenced to death for attempting to assassinate the emperor with a bomb. At a later date, they turned out to be innocent. Uzawa defended, but the police created the blueprints for the bomb that were left in the room. The police and the prosecution were united, so Uzawa could not defend them.

12 Meiji University. One of the six universities in Tokyo. Further one of the most popular and large number of examinees in Japan.

13 Kiyoshi Miki. He studied philosophy from Nishida at Kyoto University and went abroad in Germany and France. His excellence in language surprised German scholars.

law based on Asian philosophy and thought?

Uzawa learned from a Chinese classical master when he was a boy but the results come to life. Those results were the philosophy and thoughts of Lao-tzu, Chuang-tzu, and Confucius. In particular, the way of Lao-tzu, the great flow of life are so great that it is also called nothingness. This overlaps with my philosophy. He brings nothingness as reality to the root of philosophy. This nothingness continues to infinity, eternity, transcendent-being (God) and love. My principle of nothingness and love basically supports the philosophy of Uzawa. This intuition of nothingness is the essence of Eastern philosophy. And from there, Uzawa preaches mandate, heaven and morality of Confucius and reason as the way that people should keep. He does not create detailed texts but preaches the principle of action from the world, the heavens under the reality of the universe. And he respects for the prince of heaven and fears to mandate. Moreover, Uzawa is also familiar with European philosophy. He absorbed Socrates, Plato and Aristotle and his former Greek learning was alive. In modern times, he focused on Kant, Hegel, and Husserl and applied phenomenology to law. The introduction of this phenomenology into law is brilliant and a symbol of the philosophy of law of Uzawa. The examples are as follows:

At the time of the corona crisis, masks are being worn. At first, Europe and the United States were reluctant, although it varies from country to country. In Japan, wearing masks has become a habit due to the epidemic of pollinosis. It is not legally bound. It does not require one to do it, but one is voluntary by respect because of the compassion that one will not transfer the virus to the other party. At school, teachers instruct students to wear them and most students do. The same is true for all Japanese. However, Europe and the United States, which were initially reluctant, recognized the effect of preventing droplet infection and recommended wearing a mask, ultimately they took legal action with fines. This legal measure is Western-style but Uzawa Law leaves it to the spontaneity of the people. The last of the legislation was the United States. In the United States, wearing a mask had the image of a robber and people were completely reluctant. President Trump did not wear a mask and he and his staff were infected with the corona virus. Luckily, he had a quick recovery. The robbery image of the mask is a prejudice.

Phenomenology is to put the object in parentheses once and stop the judgment (epoché). That is the elimination of prejudice. After eliminating the prejudice of robbery, one should consider the significance of the mask. It is hard to breathe but one wears a mask in consideration of the effect of preventing droplet infection and consideration for the other party. This is the behavior. One should give phenomenological reductions rather than relying on the enactment of laws and articles. Then it is the principle of action in the open world. The emperor also wore a mask on March 26, 2021 at the new year's poetry reading ceremony at the palace. This effect is also great. Japan also suffers from corona but the number of patients is far less than in the United States. The Biden administration has made masks mandatory but the actions of Japan have set a good example for the world.

Also, Japanese people like cleanliness. In the past, spectators scattered garbage in soccer and baseball stadiums in any country and were criticized internationally, but Japanese supporters were actively cleaning the venue. This attitude is spreading

overseas. The source is the cleaning work at the educational site. Ordinary school students often clean. This is a traditional Japanese culture but it seems to be practiced in overseas schools as well. Laws and regulations are not universal, they include the customs and morals of those who act and they act in awe of heaven and transcendent-being. This is Uzawa Law and the transcendent law that I advocate.

#### 4. REFLECTIONS ON THE WAR AND JAPANESE PHILOSOPHY

The philosophy of law of Uzawa resulted in a tremendous historical reflection. The work of Uzawa as the lead lawyer for the International Military Tribunal for the Far East (hereafter abbreviated as Tokyo Tribunal) was excellent. There were more than 100 suspected war criminals who were in charge of Japan's war during World War II including former Prime Minister Hideki Tōjō. During World War II, Japan killed about 3 million people, reduced national wealth by a quarter and caused great damage to the United States and other countries. There is no chance of winning of judgment such as the defense of the Japanese war officers. There were seven death sentences but there is no point in defending these war criminals. It is just a waste of time and a negative label for "war criminal defenders." It only hinders postwar lawyer activities. However, Uzawa, who is experiencing the suffering of innocent sin of his father, has taken on the role of lawyer. How to defend more than 100 war criminals? Even an amateur or a professional lawyer cannot think of a plan. However, Uzawa made closing arguments of the great reversal by making full use of his philosophy. At that time, he made a phenomenological reduction and stopped judgment (epoché).

It is a judgment that Japan, which started the war with the attack on Pearl Harbor (December 1941), is evil and America that was forced to bear the attack is good. This was a one-sided interpretation and declaration from the American side before the reflection of the war at that time. Japan is evil, America is good. However, Uzawa stopped making a decision and once eliminated this one-sided decision. So his new thesis says: "Before eternal justice, there are no defeated or victorious nations in the war. Both are defendants."<sup>14</sup> Not only Japan. From here, Uzawa preaches peace theory and philosophy in Japan and Asia. He develops the theory of peace of Confucius in China and the idea of "Prince Shōtoku" in Japan. In the first place, Yamato is an abbreviation for great peace and the Japanese are a people who like peace. This time, the war was fought by the Confederate States Armed Forces' ABCD siege network, oil export bans, freezing of Japanese assets and other policies that afflicted Japan. Because of that, the Prime Ministers changed six times in just six years. The Cabinet resigned almost every year.

Unstable political conditions continued and the unrest and pressure from the siege led to the start of the war. In a sense, the American side has provoked it. Uzawa admits that the war broke out but the nearly 100 people present here as defendants only performed the duties of the country and did not cause the war arbitrarily. On the battlefield, at the command of a superior, firing and killing is not liable. Class

<sup>14</sup> "Philosophy of Law", pp. 514–515.

A war criminals only performed their duties and are not responsible. All Japanese are people who respect the idea of peace such as Prince Shōtoku, 'Be precious with harmony' and love great peace (大平和) and Yamato (大和). Even if those peace-educated defendants are acquitted and released, it is unlikely that they will start a war. Therefore, they are not guilty.

It was a speech 'on behalf of Japanese wisdom and conscience'<sup>15</sup> for about an hour. Immediately, it was translated into multiple languages and passed on to the world. In particular, the story about the formation and history of peace thought in Japan and Asia was an expression of the essence of Japanese and Asian philosophy to the world. After the speech, Judge Radhabinod Pal of India, who was impressed, visited Uzawa in the defense counsel waiting room and seemed to touch the essence of Eastern thought, holding Uzawa's hand firmly<sup>16</sup>. Only Justice Pal judged them innocent. After that, it was Justice Pal and the American defense counsel who understood Japan's position and made the world aware of the mistakes in the trial. And it was Uzawa who created the opportunity. Uzawa awakened the world. It is said that this defense gained a momentum for remorse on the victorious nation side then the remorse increased.

Seventy-five years after World War II, confidential documents are being released in the United States. Among them, "Freedom Betrayed"<sup>17</sup>, the memoir of the 31st President Herbert Hoover is drawing attention in Japan. After the war, the former President Herbert Hoover had meetings with Supreme Commander Southwest Pacific Area of the Allied Powers Douglas MacArthur on the 3rd and 5th in May 1941. According to the record, President Franklin Roosevelt was able to avoid economic sanctions, property freezes against Japan, Japan's attack on Pearl Bay and the use of atomic bombs. At that time, Hoover called it 'Crazy Desire'<sup>18</sup> of Franklin Roosevelt. This is the description. Though Franklin Roosevelt had promised no war, the European front expanded and the Allies were at a disadvantage. However, he had no reason to join France and Britain. With the opening of the war in Japan, the Tripartite Pact of Japan, Germany and Italy gave the United States the reason of joining the European front. The United States was waiting for the participation of Japan in the war. Then, the interpretation that Japan was fitted to the United States (conspiracy theory) also holds. There were scholars and opponents who said the United States did not even need to use the atomic bomb. The scholars were the group of the University of Chicago<sup>19</sup>. MacArthur did so at first. The atomic bomb was developed against Hitler

15 "Fusaaki Uzawa" p. 291.

16 "Fusaki Uzawa" p. 288, Radhabinod Pal (1886–1967).

Only Judge Pal ruled Japan's innocence among the 11 judges. One of the reasons is that the Tokyo Tribunal is just a one-sided trial by the victorious countries. Second, the Tokyo Tribunal violates the criminal statutory principle. This ruling was sealed at the time. However, in later years, the ruling became a historic ruling, alleging that the International Law Society urged the victorious nations to reflect on the war.

"The International Military Tribunal for the Far East Dissentiment Judgment of Justice Pal", Radhabinod Pal, Translated by Yohtaro Tsuzuki, Gentosha, 2016, Tokyo.

"Innocence in Japan of Judge Pal", Masaaki Tanaka, Shōgakukanbunko, 2001, Tokyo.

17 „Freedom Betrayed”, Hoover Institution Press, Stanford University, 2011.

18 "Freedom Betrayed" p. 833.

19 'Theory of peace by Confucius', The quoted parts are as follows.

"Parerga" No.2/2006, pp. 135–148, University of finance and management in Warsaw, English version, 2006, Poland, p. 146.

"Skepsis" XXI/i-2010, pp. 65–84, International Society for Universal Dialogue and Athens University, English version, 2010, Greece, p. 81.

but the Hitler administration collapsed. It was no longer necessary to use the atomic bomb. Japan has repeatedly sought peace. However, since it was developed, it was dropped on Hiroshima and Nagasaki because they wanted it to be used. The defense of Uzawa preceded this view and foresaw the reality of the time and the future. The logic of transcendent law foresaw the future.

## 5. NEW HORIZON OF TRANSCENDENT LAW

Through the law theory of Uzawa, I explained the core of transcendent law. Well how will this change the world? I preach the new horizon. The first is the philosophy of preventing global warming and environmental pollution. By recognizing the universal transcendent-being to humankind, the ethics of resource and energy moderation work from its awe. Recently, the term of ‘Anthropocene’ has been heard, which was advocated by Nobel Prize Paul Jozef Cruzen (1933–2021, Netherlands). He insisted on the ozone hole as a warning to the destruction of nature from the middle of the 20th century as a crisis situation on the earth. Mankind is emerging and the earth is on the verge of destruction. The warning is good. However, these warnings are no different from the theory of population of Malthus<sup>20</sup>, Club of Rome<sup>21</sup> and the theory of earth catastrophe that had been said for 40 years. For me, the destruction of the environment and the earth and the collapse of the universe have already originated in my essay “Philosophy of Nothingness and Love” as a crisis for humankind. It feels like it’s just now. The problem is that we need a strong philosophy to stop the destruction of the earth. We must consider not only legal force but also the way of life to protect the earth and the environment.

Currently, the corona pandemic is causing the world to be in crisis. According to one researcher, infectious diseases such as corona occur as a reaction to development of unknown places where humans do not need to enter. That is overdevelopment. Currently, the bat cave in Hubei Province in China, which is the source of corona, is off limits. It was originally off limits. The corona pandemic happened because man invaded unknown area. Mankind is forced to live a more inconvenient life than ever before. Humbly mankind accepts this inconvenience as a warning from heaven and transcendent-being. It is a life that stops energy consumption, renewable energy, a modest life and a life that coexists and helps each other. That is not just for oneself to enjoy. It does not need huge leisure facilities or entertainment facilities such as casinos. In addition, energy conversion and car conversion from gasoline-powered vehicles to electric vehicles are gradually beginning. However, the realization of this conversion requires enormous electrical energy and how much can oil and coal use be reduced? In the past, China has undergone rapid economic development and neglected environmental pollution. That reaction was PM2.5. In 2013, a city

20 Thomas Robert Malthus (1766–1834) British economist. Population increases geometrically but food increases only arithmetically. He said that this would lead to poverty due to overpopulation and income inequality.

21 Club of Rome “The Limits to Growth” A study compiled by the Club of Rome, focusing on the finiteness of resources and the earth, and commissioned by an international team led by Dennis Meadows of the Massachusetts Institute of Technology, using system dynamics techniques. It was announced in 1972. “If current trends such as population growth and environmental pollution continue, global growth will reach its limits within 100 years,” he warned.

near Beijing was hit by a thick fog-like pollutant that could not allow vision even a meter away. Inhalation masks were installed at hotels and many air purifiers were imported from Japan. With regard to the Paris Agreement<sup>22</sup>, President Xi Jinping finally announced at the UN General Assembly in September 2020 that “we will make real emissions start to decline by 30 years and reach zero by 60 years”. A device for purifying CO<sub>2</sub> is under development in Japan but the problem of cost is an issue. Further technological innovation is needed.

Also, as the number of nuclear power plants increases, explosion accidents are also dangerous. The disposal of the nuclear waste fuel of the exploded Fukushima nuclear power plant is not yet complete. It is said that decades are still needed. Overcoming the challenges of these countries and industries requires strong awe, nature and heaven, which is transcendent law.

The second is equality of wealth. This is to correct extreme economic disparities. In my paper ‘Corona Depression Demands Equality of Wealth,’ I preached that only a few of Internet companies such as Facebook, Amazon and Microsoft and millionaires own half the world’s wealth. They have far more assets than the national budget of Japan. One needs the solution to this imbalance. It requires a redistribution of wealth. But it is not communism. Communism prohibits the possession of private property, so there are few communist countries in the world today. China advocates communism. But many people own money and are wealthy in China. Further quite a few communist elites and wealthy people own large amounts of assets in American banks. Chinese tourists were buying in Japan. They bought Japanese goods explosively, so this phenomenon was called an explosive purchase. Chinese tourists were important for sightseeing and commerce in Japan. They also buy and own land in Japan. They are rich.

On the other hand, quite a few people still live in caves. In addition, Premier of the state council of PRC Li Keqiang said, “The monthly salary of 600 million Chinese is about 15,000 yen (136 dollars).” In the corona measures, Xi Jinping declared “the victory of the Chinese Communist Party” but what is this disparity? In addition, although corona countermeasures are good, excessive epidemics will block the town if even one infected person appears. It is like using dynamite to kill cockroaches. In the name of measures against corona, each person has a smartphone to monitor their behavior. In the name of Corona measures, freedom of people is deprived. In the meantime, suddenly the National Security Law is enacted, blocking Hong Kong and arresting and detaining democratic activists. It is doubtful why Britain, the former suzerain, was on the sidelines. This is similar to that of the infamous Peace Preservation Law in prewar Japan. This has cracked down on and killed many talented researchers and scholars. China is heading for collapse like prewar Japan. The evidence included the Tiananmen Square massacre of thousands and the imprisonment of Nobel Peace Prize laureate, Liu Xiaobo. The crackdown on speech can be shocking from unexpected places and can lead to collapse. In short, Chinese communism is pseudo-communism and is basically capitalism.

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<sup>22</sup> Paris Agreement. It is an international framework for global warming countermeasures after 2020. The purpose is to pursue efforts to keep the world average temperature rise well below 2°C compared to before the Industrial Revolution.

Wealth equality knows Aristotle's moderate concept of Confucius. Aristotle says, "Justice is a kind of equality and without wealth and freedom, a nation cannot exist."<sup>23</sup> The thoughts of equality of wealth and poverty also are preached by Rousseau<sup>24</sup> and Hegel<sup>25</sup>. However, instead of giving money to the poor, it is an assistance that includes aid, concrete and human resources such as a corona vaccine. In developing countries, one cannot buy it soon, so the millionaire will help one with the vaccine. However, it is assistance including doctors and nurses who can inoculate. In the past, Japan sent electrical appliances, refrigerators and washing machines to developing countries but there was a time when there was no electricity in the area and it made no sense. This waste is omitted. The work of non-governmental organizations and activities at the micro level such as the Japan International Cooperation Agency (JICA) will hold the key of these help in Japan.

## 5. CONCLUSION

As mentioned above, I acknowledged the transcendent-being beyond the gods of various religions and preached a humble attitude of awe and respect. In modern times, it is said to be religion-free but this diluting of religious spirit is the diluting of awe for transcendent-being. Modesty, which recognizes individual religion but does not put one's god first externally, is essential in religions and in the nations.

As a real example of the transcendent-being law is Toyohiko Kagawa (賀川豊彦), a world-class evangelist in Japan who suffered from an infectious disease of tuberculosis. He bereaved his parents at the age of four, experiencing nothingness and darkness as a lack of his parents. In his suffering he believed in Christ (transcendent-being) in high school and knew the depth of eternal love of Christ. The philosophy of Kagawa also fits my principle of nothingness and love. At the age of 20, he was on the verge of death from tuberculosis. However, he miraculously recovered. He devotes his joy to the relief of the poor, the workers and the peasant movement. Moreover, he sought world peace and dedicated himself to the movement of the World Federation with Bertrand Russell, Albert Einstein and Hideki Yukawa. At that time, he was so respected that he was called "Kagawa, Gandhi, Schweitzer". He had been a candidate for the Nobel Peace Prize and the Literary Prize several times. However, his life was a struggle with tuberculosis and trachoma infections. In this difficulty he intuited nothingness as the reality of the universe and screamed for world peace in awe of transcendent-being. Today, we are suffering from the corona crisis but Toyohiko Kagawa shows hope to live even in that difficulty.

23 "Politics", Aristotle, III.vii. 4–7, p. 235, Translated by H. Rackham, Loeb Classical Library, Harvard University Press, 1932, p. 469–470, pp. 110–111.

Japanese version, Translated by Michitarō Tanaka, Great book of the world, Chūōkōronsha, Tokyo, 1972, p. 235.

24 "Du Contrat Social ou Principes du Droit Politique", Jean-Jacques Rousseau, Bibliothèque de la pléiade. Gallimard, *Œuvres Complètes* III, Livre III, Chapitre IV, 1964, p. 405.

Japanese version, In Great Books of The World No. 30 Rousseau. Tokyo: Chuōkōronsha. 1966, p. 285.

25 "Grundlinien der Philosophie des Rechts", G.W.F Hegel Werke in zwanzig Bänden 7, Theorie Werkausgabe Suhrkamp Verlag, 1970, Germany, pp. 388–390.

"Philosophy of Law" Hegel, In Great Books of The World No. 35 Hegel. Tokyo, Chuōkōronsha. 1967, p. 468–469.

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**Leszek Kurnicki**

Collegium Humanum – Warsaw Management University  
Warsaw, Poland  
lech.kurnicki@humanum.pl

## The future of Eurasian economic integration

### Summary

The lack of quick successes led the political elites of some post-Soviet countries to realize the necessity of integration. In the article, the author attempts to determine the future of Eurasian economic integration. The basic factors hindering Eurasian economic integration, both now and, probably, in the foreseeable future, are presented. One of the basic tendencies, according to which the cooperation of the former states that used to be part of the USSR is developing, is the consistent strengthening of the integration formula with different levels and different speeds. The processes of economic integration of the countries of the former Soviet bloc, associated under various structures, are developing in line with global trends. The countries of the world cannot exist in isolation from each other.

**Key words:** Eurasian economic integration; Eurasian Economic Union; economy; customs union; trade exchange.

### 1. THE FUTURE OF EURASIAN ECONOMIC INTEGRATION

For some time, there has been a clear global tendency to intensify regional and interregional integration in the economic sphere. The contractual union of the former Soviet republics, formed in the early 1990s, is no exception. A significant part of the former republics of the USSR initially merged within the Commonwealth of Independent States. In the new sovereign states in the post-Soviet area, however, there were no democratic traditions, and power remained largely in the hands of the former elites, which had no experience of working in market economy conditions. Therefore, initially all integration attempts were of a unified nature, and the decisions made did not take into account the specificity of individual countries. With such

significant socio-economic differences that exist in the CIS countries, this approach to integration turned out to be ineffective<sup>1</sup>.

The lack of quick successes led the political elites of some post-Soviet states to realize the need for integration at various levels and at different speeds, which was reflected in many practical steps taken in this direction over the past few years. The Eurasian Economic Union, connecting five CIS countries – Russia, Armenia, Belarus, Kazakhstan and Kyrgyzstan, is becoming the central link in the policy of different speeds of integration of the post-Soviet states. The EEU is currently the broadest link of formal integration in the post-Soviet space. It is joined by countries that have made a choice in favor of creating supranational institutions and progressing by shaping the customs union and the Common Economic Space<sup>2</sup>. The presented formation has undergone a long-term evolution, starting from the first agreement on the customs union signed in 1995, up to the creation of the EEU in 2014.

Most former Soviet republics are aware of the need for economic integration. However, there are many factors that hinder the further development of cooperation between these countries. In the case of the EEU, among the objective reasons hindering integration, experts indicate: the characteristics of the national economies of the Member States, the constant reduction of the level of trade and economic cooperation between the Union countries, the difference in the implemented economic strategies and national models of economic development<sup>3</sup>.

Firstly, significant differences can be seen in the structures of the national economies of the EEU participants. Russia and Kazakhstan are large exporters of the raw material and, at the same time, producers of a wide group of goods (the latter is particularly relevant to Russia), and Belarus specializes in the production of finished products mainly from imported raw materials.

Armenia and Kyrgyzstan, clearly lagging behind other EEU participants in terms of industrial production development, are becoming importers of a significant amount of industrial goods, and from outside the Union. As a result, the EEU countries have very different economic interests. Russia is particularly interested in defending its market with tariffs and non-tariff methods, a market for a much wider range of goods than other EEU countries. As a result, the level of Russian import tariff rates on many goods is higher than in other members of the Union. Kazakhstan's national tariff, even after the recent harmonization of customs legislation, as a result of negotiations on joining the World Trade Organization<sup>4</sup> is distinguished by a lower level of protection of the national economy.

Differences in economic structures also affect the coordination of export rates in customs duties. These measures, envisaged in the Customs Union Agreement, pose considerable difficulties, as export duties applied by the EEU countries on many goods

1 M. Ju. Gołownin, *Problemy i perspektivy intiegracyonnoj gruppirowki Jewrazes*, „Jewrazijskaja ekonomiceskaja intiegracyja” 2008, no 1, p. 27–44.

2 *W SNG słożyłos' jadro intiegracyi*, „Ekonomika i żyzn” 2010, no 3 (9319), <http://www.eg-online.ru/article/89884/> (access: 8.12.2017).

3 S. Glinkina, I. Orlik, *Jewrazijskaja idieja na postsowietskome prostranstwie*, „Nowaja i nowiejszaja istorija”, 2012, no 2, p. 3–22.

4 T. Manienok, *Sojuz niedowolnych*, „Bielrynok”, 21.09.2015, <http://www.belrynok.by/ru/page/economics/1187/> (access: 13.12.2017).

are the main source of budgetary revenue at this stage of development. Therefore, any unification of foreign trade tools regulated by the EEU, providing for the abolition or significant reduction of customs duties, seems unlikely, at least in the short term. The differences in the structures of the national economies of the EU Member States also limit the possibility of implementing joint projects by them. They are generally implemented to a very limited extent. In recent years, projects in the areas of the fuel and energy complex, mainly initiated or financed by Russia, have played a special role. It is the Russian Federation, which has the greatest economic potential among the EEU countries and the most absorptive internal market, as well as occupying a key transport and geographical position, naturally acted as the main partner in all energy projects implemented in the territories of the post-Soviet states.

Therefore, we are dealing with a significant potential for conflicts due to the differences in the interests of the EEU member states. Russia and Kazakhstan have traditionally acted as large exporters of oil and gas, but Belarus is a transit corridor for the export of energy to European countries. It is therefore natural for Russia and Kazakhstan to strive to diversify the direction of their exports, while Belarus has completely opposite interests, consisting in ensuring maximum benefits from the transit of Russian and Kazakh energy carriers<sup>5</sup>.

A solution to the problems of differences in the structures of the national economies of the EEU members could be joint work on coordinating economic development priorities, in conducting a coordinated industrial and foreign trade policy. Meanwhile, the transition to a coordinated structural policy within the EEU has not yet taken place. The problem of compensating the losses of national budgets as a result of the harmonization of tariff rates is also unresolved, because such measures will lead to significant expenses, primarily for Russia, for which it is not ready<sup>6</sup>.

Secondly, the process of unification of foreign policy and the transition to higher levels of integration, despite the difficulties caused by the differences in the structures of national economies and, as a consequence, the divergent interests of the EEU countries, clashes with one more objective problem – Russia's special role in the post-Soviet area. The scale of the Russian economy considerably surpasses the economies of all other EEU countries. This property gives rise to many specific difficulties that, for example, did not exist during the creation of the European Union.

On the one hand, Russia is perceived as a player imposing its rules on other partners, which provokes a fully justified negative reaction of the other EEU members. This prevents Russia's partners in the EU from transferring even a small part of its sovereignty to supranational bodies. This inhibits the course of integration processes. On the other hand, as a serious player, it is forced not only to initiate integration processes in the post-Soviet area, but also often acts as their sponsor<sup>7</sup>.

Thirdly, in the period after the collapse of the USSR, up to the present day, there is a visible tendency to reduce the scope of mutual trade and economic cooperation

5 A. Libman, *Integracyonnyje processy w jewrazijskom prostranstwie. Osobiennosti sowremennogo etapa*, „Rossija i nowyje gosudarstwa Jewrazii” 2009, no 4, p. 5–19.

6 Ibid.

7 M.Ju. Gołownin, *Pierspektiwy mnogostoronniego wzajemodiejstwa na postsowietskomi prostranstwie s pozicij Rossii*, „Informacyonno-analiticzeskij biulletien' Centra problem intiegracyi Instituta ekonomiki RAN” 2006, no 4 (8), p. 9.

of the former union republics in comparison with their cooperation with third countries. This trend is stable all the time, with the exception of a short period of the first few years of the 21st century, when a certain increase in part of mutual trade could be observed.

The dynamics of trade between EEU members is largely determined by the specificity of their commodity structure in comparison to trade with third countries. A significant place in the supplies within the EEU is occupied by the production of the machine building complex, the price of which is growing much slower than the prices for the production of raw materials. The reduction of mutual trade is also favored by the low competitiveness of goods from the EEU compared to goods from external markets. Competition breeds the desire to create barriers to intra-regional trade and provokes “trade wars”. Although the customs union assumes no similar barriers, in practice acute economic conflicts often arise between the members of the EEU (in particular between Russia and Belarus), which has a significant negative impact on the state of mutual trade and economic cooperation and the pace of integration processes.

Fourthly, the integration process and the dimension of foreign trade are also negatively affected by differences in economic strategies implemented by individual EEU countries. During the transformation process, different models of transition to a market economy were used by individual EEU members. In countries such as Russia, Kazakhstan and Kyrgyzstan, these models were largely based on liberal principles, in others – such as Belarus – the state played an important role.

The CIS is a set of countries with economies in transition, transforming from a planned-allocation system to a market system. This transition takes place simultaneously with the formation of national statehood, national financial, money and credit, currency and customs systems, as well as other mandatory attributes of an independent state. In the process of shaping the new structure of the national economy, in the conditions of weakening mutual ties within the post-Soviet area, a change in the orientation of the former Soviet republics towards cooperation with third countries is becoming increasingly visible. There are different points of view on the nature of the impact of these changes on the integration processes in the region. According to experts, the result of excessive intensification of the external vector in the economic policy of the post-Soviet states will be the final disintegration of the post-Soviet area<sup>8</sup>.

At the same time, there are voices, especially among the supporters of the concept of economic Eurasianism, that the expansion of cooperation between post-Soviet states and other states, just the opposite, will lead to intensification of regional integration in the post-Soviet area<sup>9</sup>.

The basis of the concept of economic Eurasianism is the idea that Eurasian or continental integration is the key driving force for regional economic development

8 See e.g. A. Dugin, *Jewrazijskaja ideja w kaczestwiennom prostranstwie*, Jewrazija – informacyjno-analiticzeskij portal, <http://evrazia.org/modules.php?name=News&file=article&sid=1904> (access: 10.12.2017).

9 See e.g. Je.Ju. Winokurov, *Jewrazijskaja intiegracyja*, 2012, <http://www.vinokurov.info/eurasian-ru.htm> (access: 31.07.2017).

and security on the Eurasian continent. According to the opinion of the supporters of this concept, Eurasian integration goes far beyond the borders of the post-Soviet area<sup>10</sup>. In addition, the presence of several centers of economic power of equal size, such as the European Union, China, India, Russia and the nascent leader of Islamic West Asia – Turkey, makes the emergence of a joint continental integration organization of a supranational nature unlikely.

The main driving forces of the transformation of Eurasia into a macro-region of joint development, in accordance with the concept of economic Eurasianism, should be the most promising and mutually complementary inter-state projects. The most important ones include Eurasian economic integration and large-scale partnership under the Belt and Road Initiative.

At a time when the Eurasian Economic Union will create legal conditions for the creation of transport, logistics and energy infrastructure and the implementation of joint development projects, another important Eurasian project – the Belt and Road Initiative will give it an additional, extremely strong trade and investment impulse. The authors of the concept of economic Eurasianism hope that China's experience in the development of economic belts/zones within the country and the huge financial potential of this country will start to work in the creation of new international and transcontinental economic zones, ensuring the link between resources, production and markets.

The economic integration of the post-Soviet states and, at the same time, a strong vector of external development of this structure, according to the supporters of economic Eurasianism, fully corresponds to the interests of all countries participating in the integration processes. The interests of Russia, which has found itself in a state of long-term deterioration of relations with the US and its allies, are to ensure that it is as little dependent on the West as possible. Russia needs the subsequent strengthening of the Eurasian integration project and the joining of new states to it, the creation of regional development institutions that will complement the already existing international financial and economic organizations. Moscow is also interested in ensuring its security, minimizing war challenges and threats, the most serious of which are located along its south-eastern perimeter, in the Kazakhstan region and Central Asia. At the same time, the Russian Federation wants to increase the economic and political importance of Siberia and the Far East<sup>11</sup>. All these tasks, in the conditions of Russia's self-isolation from Western countries, cannot be solved without a strategic partnership with China<sup>12</sup>.

According to the ideologues of the concept of economic Eurasianism, the Chinese state, no less than Russia and other EEU countries, is interested in developing cooperation in the region and deepening economic ties with the former union republics. China sees its interests as the gradual shaping of such a system of international trade, economic and political cooperation in Eurasia that would allow

<sup>10</sup> Ibid.

<sup>11</sup> A. A. Migranian, *Jewrazijskaja intiegracyja kak faktor obiespieczeniya intieriesow Rossii*, „Niezawisimaja gazeta”, 10.01.2012, [http://www.ng.ru/courier/2012-10-01/11\\_possibilities.html](http://www.ng.ru/courier/2012-10-01/11_possibilities.html) (access: 13.12.2017).

<sup>12</sup> P. Mozias, *Ekonomiczeskoje wzaimodiejstwije Rossii i Kitaja. Ot dwustoronniego formata k riegionalnomu*, „Mirowaja ekonomika i miezdunarodnyje otnoszenija” 2011, no 11, p. 43–48.

to supply the transport corridor between the People's Republic of China and Europe, which is relatively independent of traditional sea routes. For Beijing, the political conditions conducive to the implementation of investment projects in Kazakhstan, Central Asia, Siberia and the Far East are important. The Chinese are trying to minimize the risks and threats posed by Islamic extremism and optimize the conditions for the development of the western regions of their own country<sup>13</sup>.

At the same time, the issue of a common electricity market is promising for both China and the EEU countries. The great potential of energy resources, the availability of generating capacity, a fairly developed energy infrastructure – all this ensures high attractiveness of the electricity market of the EEU countries. Experts believe that there is an economic justification for connecting the energy systems of the EEU countries to the common energy market of Western China. In the future, it is possible to create a common Eurasian energy ring system, including Siberia, Kazakhstan, Central Asian states and the western regions of China<sup>14</sup>.

In addition to clear benefits, further economic rapprochement of the EEU countries with China also includes many risks. According to Russian experts, the most important are: the threat of degradation of the economies of the EEU countries, transformation into “a raw material supplement or a transport and logistics center for supplying the Chinese economy with raw materials, [...] a market for Chinese products”.<sup>15</sup> A separate problem for Russia may be the threat of losing its political position as a leader in the integration processes in the region, especially in Central Asia<sup>16</sup>. Such threats are the main constraints holding back the eastern policy of the EEU. The leaders of the EEU countries, rightly afraid of the economic expansion of their powerful neighbor – China, despite the declared immense plans, remain very moderate when it comes to submitting real initiatives and projects.

It should be noted that a better way to implement a sustainable policy would probably be to restore and develop relations with another global pole of “economic power” – the European Union. Despite the obviousness of such a direction and its support from the majority of EEU countries, Russia's policy, which seeks confrontation with the West to achieve its own goals, is a serious obstacle.

State policy aimed at stimulating integration processes in the economy is the main, but not the only, condition for the effectiveness of these processes. In a market economy, the success of integration “from top” is possible only with the help of corporate integration<sup>17</sup>. One of the main elements of such support is foreign investment.

13 Ibid.

14 S.A. Karaganow i in., *Buduszcze Centralnoj Jewrazii. Nowyj wiektor mieżdunarodnoj strategii Rossii – osnovnyje položenija dokłada dla Mieżdunarodnogo diskussionnogo klubu «Waldaj», podgotowlenno go nauczny m kolektiwom wo gławie s S.A Karaganowym, „Rossija w globalnoj politikie”* 2015, no 2, <http://www.globalaffairs.ru/number/Buduschee-Tcentralnoi-Evrazii-17441> (access: 11.12.2017).

15 P. Minakir, *Rossija–Kitaj na Dalniem Wostokie. Mnimyje strachi i rialnyje ugrozy*, „Prostranstwiennaja ekonomika” 2009, no 3, p. 7–19.

16 A. Moczulskij, *Ob osobiennostiach politiki Kitaja w woprosach ekonomiceskogo sotrudnicestwa w SZOS*, „Mirowaja ekonomika i mieżdunarodnyje otnoszenija” 2010, no 10, p. 84–90.

17 A. Libman, M. Golovnin, *Trends in Investment Cooperation between CIS Countries and the Global Economic Crisis*, [in:] *Regional Integration Studies Programme of the EDB Technical Assistance Fund in Regional Effects of the Global Economic Crisis in the CIS*, Eurasian Development Bank 2011, p. 33–54.

Their scope in mutual relations between the EEU member states is still too small to solve structural problems. Moreover, the deep structural crisis in the economies of the EEU countries has significantly reduced their investment opportunities<sup>18</sup>. For example, at the beginning of 2016, Kyrgyzstan officially announced the termination of the agreement with Russia on joint construction in the territory of the republic of several hydroelectric power plants. The main reason for the breakup was given as “lack of movement in project financing, as well as a possible serious increase in the cost of credit that can be used to build these power plants.”<sup>19</sup>.

There are also doubts related to the efficiency of investments in the economies of the EEU countries. For example, from 1991 to 2015, \$7.6 billion was invested in the Kyrgyz economy. foreign investments. Every fifth dollar of this sum was spent on the modernization of the energy sector, which in total “found itself in a deep systemic crisis”<sup>20</sup>. Such negative experiences do not encourage private investors to further activities in the EEU countries.

In Belarus, 20 transactions were carried out with the participation of Russian capital (including five projects in the petrochemical sector). The acquisition of 100 percent of shares in the Belarusian gas and transport monopoly Beltransgaz by Russian Gazprom has become the biggest investment investment in recent years for the sum of USD 5 billion.<sup>21</sup> These indicators testify to the poor corporate integration of Russia, Kazakhstan and Belarus. At the same time, despite the declared intentions and efforts of the authorities, cooperation between the EEU countries was not completely focused on the priority areas of the processing industry, its basic sphere is the extraction and use of energy resources and traditional petrochemistry (production of petroleum products). The analysis of various sources leads to the conclusion that the development of the EEU is heading in several basic directions:

- one of the priorities of the EEU is to expand the free trade area of the member states with all interested countries;
- in order to deepen the cooperation of the EEU countries, a monetary union should be established;
- activities aimed at attracting the maximum number of CIS countries to the EEU are strengthened (this goal is a kind of tradition of all post-Soviet institutions, although it has little in common with the rational logic of the concept of economic Eurasianism).

Moreover, one can often encounter the opinion of experts that it is unlikely that other post-Soviet states will join the integration structure. In such a case, according to experts attending the Eurasian Economic Commission round table meeting, “Uzbekistan’s probability of joining the EEU is extremely low. The political factor

18 B. Heifetz, *The Impact of the Crisis on Russia’s Cooperation with EurAsEC Countries*, The Eurasian Heritage Foundation, 2009, Eurasia Home portal, <http://www.eurasiahome.org> (access: 31.07.2017).

19 A. Atambajew, *Kirgizija rastorgła sogłaszenije s Rossijej o stroitelstwie GES*, „Lenta.ru”, 22.01.2016, <http://lenta.ru/news/2016/01/22/ges/> (access: 7.12.2017).

20 G. Michajłow, *Swiet w Kirgizii staniet dorigim*, „Niezawisimaja gazieta”, 20.10.2015, [http://www.ng.ru/cis/2015-10-22/6\\_kirgizija.html](http://www.ng.ru/cis/2015-10-22/6_kirgizija.html) (access: 13.12.2017).

21 S.Ju. Glazjew, *Pierspektiwy dalniejszego rozwitija...*, p. 7–29.

plays a decisive holding role. The probability of a country joining the EEU is less than 10%.<sup>22</sup>.

As other directions of development of cooperation between the EEU member states, the experts also mention:

- liberalization of trade in services;
- legislative protection of the migration flow of labor and investment cooperation of the countries of the Eurasian area;
- shaping a common energy, transport and agricultural strategy.

Agriculture is becoming one of the sensitive spheres of the economy of the EEU countries, due to the fact that a large percentage of agricultural products and food produced by the CIS countries is in circulation on their internal markets. Experts believe that cooperation in this area should be of an infrastructural and technological nature, providing for the joint development of food market infrastructure, integration of national distribution networks, shaping a regular trading system between stock exchanges, development of electronic commerce and information exchange systems<sup>23</sup>.

The future of the existing basic institutions of Eurasian integration, such as the Customs Union and the Common Economic Space, is unknown. According to some experts, once all the EEU institutions are completed, they will probably continue to function as the previous forms of economic integration.

The processes of economic integration of the countries of the former Soviet bloc, associated under various structures, are developing in the trend of global trends. All the countries of the world cannot exist in isolation from each other. On the contrary, the process of their integration takes place as the material premises develop. Integration takes various forms – starting from ordinary trade relations to the most complex mutual relations of individual enterprises, fields, regions and countries. The positive effects of integration cooperation are easily visible: wider access to material and financial resources, human capital, the latest technologies, new markets, and factors that improve competitiveness. Integration is also an opportunity to jointly solve problems in the sphere of science, social protection of the population, education, health care, increasing work efficiency, saving time, etc.<sup>24</sup> The listed advantages determine the prospects for economic integration in the post-Soviet space.

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22 *Jewrazija. Nowyje gorizonty intiegracyi*, „Nacionalnaja služba nowostiej – informacyonnoje agentstwo”, 18.02.2015, <http://nsn.fm/in-the-world/eksperty-veroyatnost-vstupleniya-tadzhikistana-v-eaes-sostavlyaet-70.php> (access: 11.12.2017).

23 R.M. Szafijew, *Puti razwitija JEAES*, „Niezawisimaja gazieta”, 8.12.2015, [http://www.ng.ru/ng\\_energiya/2015-12-08/11\\_eaes.html](http://www.ng.ru/ng_energiya/2015-12-08/11_eaes.html) (access: 17.12.2017).

24 A. Libman, *Intiegracja krupnych gosudarstw i potiencał ekonomiczeskogo wzaimodiejstwija w Jewrazii*, „Rossija i sowriemennyj mir” 2010, no 4, p. 92–106.

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**Ramiro Délio Borges de Menezes**

IUCS, CESPU  
Gandra, Portugal  
menezes7751@gmail.com

## From the hospitality to hostility on the old continent. *Roman and Russian peace*

### Summary

In the context of hospitality and hostility, with this article we seek to phenomenologically describe the meaning and philosophical relationships of Roman and Russian peace. We will also analyze the theological roots of telluric peace and eschatological peace. All this reflection is set against the backdrop of the Russo-Ukrainian War as a continuous and protracted conflict that began on February 24 th, 2022, mainly involving Russia, pro-Russian forces and Ukraine; concentrated on the Crimean peninsula and parts of the Donbas territory, which are internationally recognized as part of the Ukrainian territory. We seek the philosophical foundations for this war action, which was unleashed by the Russian Federation. All this reality is developed under the auspices of Western culture, which has always influenced Russian reality.

**Key words:** Hospitality, hostility, peace, war, Russia, and Ukraine.

### INTRODUÇÃO

Segundo Kant, o estado de paz entre os homens, que vivem juntos não é um estado de natureza (*status naturalis*), o qual é antes um estado de guerra, isto é, um estado em que, embora não exista sempre uma explosão das hostilidades, há sempre uma ameaça constante. Deve, pois, instaurar-se o estado de paz; a omissão de hostilidades não é ainda a garantia de paz e, se um vizinho não proporcionar segurança a outro (o que só pode acontecer num estado legal), cada um pode considerar como inimigo a quem lhe exigiu tal segurança. Alguns destes aspetos, refletidos por Kant, encontram-se configurados nesta ação bélica entre a Rússia

e a Ucrânia. Assim, devem ser os Estados, nas duas relações mútuas, vivendo num “paz telúrica”, verdadeira e harmónica, para não viverem numa paz de cemitérios. A paz, segundo uma Ética de Virtudes, surge como uma “aretologia teleológica”, de acordo com a *Ética Nicomaqueia* de Aristóteles. Neste estudo analisaremos os diferentes graus de paz na sua relação com a guerra, que é o seu antónimo, finalizando com uma reflexão hermenéutica sobre a Teologia Bíblica do termo e conceito de paz.

Existe uma paz telúrica, descrita por Kant, na obra *Zum ewigen Frieden*, de 1795, em Königsberg, Prússia Oriental, que se constitui, segundo o “idealismo transcendental kantiano”, como um estudo jurídico e filosófico de paz elaborado pela *praktischen Vernunft* do ser humano. Contudo, existe um outro “irenismo”, pregado por Jesus Cristo, no Sermão do Monte, segundo o Evangelho escrito por São Mateus (Mt, 5,9). Esta paz denomina-se como uma “paz escatológica”, tratando-se de uma paz revelada por Jesus Cristo como anúncio do Seu Reino, como apanágio do Reino dos Céus, com o seu código, a que poderemos chamar de “macarismos” ou as “bem-aventuranças”, que exegeticamente possuem duas narrativas, uma segundo São Lucas e outra segundo São Mateus. A paz escatológica dos “macarismos” do Novo Testamento é um paz divina e sobrenatural, que poderemos descrever como o “descanso definitivo” no Reino dos Céus, que nada tem a ver com a paz telúrica, que se encontra infelizmente condicionada por guerras e pelas suas devastadoras consequências. Mas, somente temos guerras, porque existe a paz, mesmo que seja muito duradoura, tal como está a acontecer com esta Guerra no Velho Continente. Estivemos em paz na Europa durante 77 anos. Kant termina o opúsculo sobre a *Zum ewigen Frieden*, com as seguintes palavras: “A condição de possibilidade de um direito das gentes enquanto tal é que exista previamente um estado jurídico. Sem este, de facto, não há direito público algum, mas todo o direito que se possa pensar fora daquele (no estado de natureza) é simples direito privado. Ora, vimos antes que uma federação de Estados, cujo propósito é simplesmente evitar a guerra, constitui o único estado jurídico compatível com a sua liberdade. Por conseguinte, a consonância da política com a moral só é possível numa união federativa (que é igualmente necessária e está dada *a priori*, segundo os princípios do direito), e toda a prudência política tem como base jurídica a instauração dessa federação na sua máxima amplitude possível; sem tal fim, toda a habilidade política é ignorância e injustiça velada. – Esta pseudopolítica tem a sua própria casuística, a despeito da melhor escola jesuítica – a *reservatio mentalis*: redigir os tratados públicos com expressões tais que se possam ocasionalmente interpretar como se quisera nos caminhos da “paz telúrica”<sup>1</sup>.

1 Cf. “Was die Natur in dieser Absicht, beziehungsweise auf den Zweck, den dem Menschen seine eigene Vernunft zur Pflicht macht, mithin zur Begünstigung seiner moralischen Absicht tue, und wie sie die Gewährleiste, dass dasjenige, was der Mensch nach Freiheitsgesetzen tun sollte, aber nicht tut, dieser Freiheit unbeschadet auch durch einen Zwang der Natur, dass er es tun werde, gesichert sei, und zwar nach allen drei Verhältnissen des öffentlichen Rechts, des Staats, Völker- und weltbürgerlichen Rechts. – Wenn ich von der Natur sage: sie will, dass dieses oder jenes geschehe, so heisst das nicht soviel, als: sie legt uns eine Pflicht auf, es zu tun (denn das kann nur die zwangsfreie praktische Vernunft), sondern sie tut es selbst, wir moegen wollen oder nicht (fata volentem ducunt, nolentem trahunt)” (Immanuel KANT’s Werke, *Zum ewigen Frieden*, Akademie, Berlin, 1923/1968, p. 365); Cf. “Ce que fait la nature dans cette intention, relativement à la fin que la propre raison de l’homme impose à celui-ci comme devoir, par conséquent pour favoriser sa fin morale; et comment elle fournit la garantie que, ce que l’homme devrait accomplir d’après les lois de la liberté, mais n’accomplit pas, il l’accomplira certainement sans que sa liberté ait à en souffrir, grâce à une contrainte de la nature et conformément aux trois aspects du droit public: droit civil, droit des gens et

Kant termina, escrevendo: “A ajuda para tal é proporcionada pela dupla atitude da política, em relação à moral, de utilizar um ou outro ramo seu para os seus propósitos. – O amor aos homens e o respeito pelo direito dos homens são ambos deveres; mas aquele é um dever condicionado; em contrapartida, o segundo é um dever incondicionado, absolutamente imperativo, que quem quiser entregar-se ao suave sentimento da benevolência deve estar certo de o não ter transgredido. A política facilmente coincide com a moral no primeiro sentido (como ética), em sacrificar o direito dos homens aos seus superiores; mas no segundo sentido da moral (como teoria do direito), perante a qual devia dobrar o seu joelho, a política acha aconselhável não entrar em pactos, negar-lhes antes toda a realidade e interpretar todos os deveres como actos de simples benevolência; a filosofia facilmente faria fracassar esta astúcia de uma política tenebrosa através da publicidade das suas máximas, se ela ousasse apenas conceder ao filósofo a publicidade das suas”.<sup>2</sup> Assim, chama a nossa atenção para a realização de uma guerra, sempre que uma das partes não cumpra os interesses da outra, chamando à atenção do Direito Internacional Público para impedir uma guerra implementando uma “paz telúrica”, criando desta feita uma hospitalidade condicional, como desenvolveremos ao longo deste artigo.

## 1. DA HOSPITALIDADE À HOSTILIDADE: COMO ENCONTRO DE PAZ

Kant, há mais de duzentos anos, apresentou no opúsculo *A Paz Perpétua* (1795), um projeto filosófico para a efetivação da paz mundial. A filosofia jurídico-política kantiana, no tocante à paz perpétua, está fundamentada em três ideias básicas: a constituição republicana, a federação de Estados e o direito cosmopolita. No contexto da obra kantiana, a filosofia jurídico-política e a paz como ideia orientadora fazem parte da arquitetónica da *prakichen Vernunft* e têm sustentação definitiva na razão pura da lei moral. Para Kant, a constituição republicana é a única derivada do conceito de direito e capaz de garantir a liberdade e a paz; a federação de Estados concebe um ordenamento internacional, que mantém a soberania dos Estados e garante o direito de permanecer em paz como regra universal; e, por fim, o direito cosmopolita fornece os elementos práticos necessários não só para a formação de uma comunidade jurídica universal, como também para a elaboração de uma constituição cosmopolita. O fio condutor subjacente ao projeto kantiano da paz perpétua concentra-se não só na ideia de progresso para o melhor presente na história da humanidade, bem como na ação da natureza em prol da realização do sumo bem político.

A natureza, para o filósofo de Königsberg, providenciou que os homens possam viver sobre a Terra e que, de modo despótico, eles tenham de viver, contra a sua inclinação e sem que este “dever” (*Pflicht*) pressuponha, ao mesmo tempo, um conceito de “dever”, que a vincule por meio de uma lei moral. A hospitalidade, como

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droit cosmopolite. – Quand je dis de la nature qu'elle veut que telle ou telle chose arrive, cela ne signifie pas qu'elle nous impose comme devoir de le faire (cela n'est en effet, possible qu'à la raison pratique qui est libre de toute contrainte), mais elle l'accomplit elle-même, que nous le voulions ou non (fata volentem ducunt, nolentem trahunt)” (Immanuel KANT, *Projet de Paix Perpétuelle*, Livrairie Paris, 1999, p. 75). Cf. Immanuel KANT, *A Paz Perpétua e outros opúsculos*, Tradução de Artur Morão, Edições 70, Lisboa, 2002, p. 169.

2 Cf. Immanuel KANT, *A Paz Perpétua e outros opúsculos*, p. 170.

relacionamento com o Outro, no seu significado moral, coloca-se dentro do que Kant denomina de *Achtung*, pelo respeito pela Lei Moral<sup>3</sup>. Porém, a hospitalidade, no seu significado jurídico-político, inscreve-se dentro do que Kant considera como o caminho para a paz. Com efeito, o conceito de paz perpétua, para o pensador de Koenigsberg, não denota uma simples fantasia, nem um Estado utópico, mas antes uma orientação para se trabalhar no sentido de um melhoramento moral do mundo. Mas, a natureza humana escolheu a guerra para obter esse fim. Na perspectiva de Kant, a “natureza” (*Natur*) garante a “paz perpétua” através do mecanismo das inclinações humanas com uma segurança, que não é suficiente para prever o futuro, mas que chega, entretanto, no propósito prático e transforma num dever de trabalhar em ordem a esse fim. Há limites que são também os do próprio direito (nacional e internacional), que hoje temos e que serão provenientes das suas instituições. Limites que estipulam, infalivelmente, o cosmopolitismo kantiano, mostrando como as “Ilustrações” (*Aufklaerungen*) não respondem mais às urgências e aos terríveis desafios dos nossos dias, como estamos a assistir com a guerra na Ucrânia. Como pensar, então, sobre a importância da ligação entre o legado filosófico e a estrutura do sistema jurídico-político dominante, a fim de sonhar com o seu melhoramento? Será através da distinção entre a hospitalidade incondicional e a condicional, que Derrida tentará responder, com esta feliz distinção, tal como refere num dos dois protocolos, com que termina o texto sobre *De l’hospitalité*, lançando alguma luz sobre o sentido da singularidade de uma tal reflexão. Derrida, por um lado, considera a importância da distinção entre hospitalidade incondicional e condicional, por outro, os direitos e os deveres, que condicionam a hospitalidade, definidos pela hospitalidade condicional. Longe de destruir a exigência da hospitalidade, esta distinção obriga-nos a determinar aquilo que se poderia chamar, em linguagem kantiana, os “esquemas intermédios”. Será nesta singular distinção, como refere Fernanda Bernardo, que se estruturam os referidos “esquemas intermediários”, que tentaremos agora aproximar, já que de todo indecifrável, em termos de saber, de ciência ou de consciência, numa tal singularidade se alberga o segredo sem segredo da Luz das Luzes, por virem propostos, pelo pensamento derridiano, como uma distinção que, pela discrepância entre experiência e experimentação, se referem entre a experiência da hospitalidade incondicional e a de um direito e de uma democracia “por-vir”<sup>4</sup>

Desde a introdução à obra *Zum ewigen Frieden* (1795), seremos recebidos com advertência. Antes da admoestação, está o título, e ele ainda faz mais do que anunciar um lugar, a “paz eterna”. Kant propõe um conjunto de regras e de contratos, uma condicionalidade interestatal, que limita a hospitalidade, que ela mesmo garante, sob um fundo de “direito natural”, reinterpretado à luz de uma visão cristã. Se a transcendência do Outro traduz a amizade hospitaleira, então a interpretação desta tradução distingue, de maneira perturbadora, o conceito levinasiano do conceito kantiano de paz.

O significado do conceito de hospitalidade inscreve-se dentro do que Kant denomina de “razão prática” (*praktische Vernunft*). Deste modo, a hospitalidade kantiana implica uma relação com o Outro, que se resolve no seu aspeto moral, significado

3 Cf, Immanuel KANT, *Grundlegung zur Metaphysik der Sitten*, mit einer Einleitung herausgegeben von Bernd Kraft und Dieter Schoenecker, Felix Meiner Verlag, Hamburg, 2016, p. 18.

4 Fernanda BERNARDO, “Para além do Cosmopolitismo Kantiano:”, in\_ *Revista Portuguesa de Filosofia*, 61, 3.4, (2005) p. 981.

moral, no aspeto jurídico-político. Logo, a hospitalidade, como relacionamento com o Outro no seu significado moral, coloca-se no domínio da Lei Moral.

Esta herança paradoxal de Kant parece evocada por uma alusão à paz dos cemitérios, sendo ironizada, também, em *Zum ewigen Frieden*. Segundo Levinas, como em Kant, a paz eterna deve permanecer a paz dos vivos. O conceito de paz parece então ir, ao mesmo tempo, na direção de e contra Kant, um Kant que é ele próprio, ao mesmo tempo, protestante e homem das Luzes, um Kant que pensava a paz de maneira puramente política e a partir do Estado, como comenta Fernanda Bernardo<sup>5</sup>.

Para Kant, o estado originário das relações entre os homens, como estado natural, é uma indicação de guerra. É, por isso, que a paz deve ser uma “instituição”, deve ser construída como conjunto de artifícios, de projetos culturais, que reduzam essa hostilidade originária (a guerra). Trata-se, pois, de dar graças a uma paz primeira, de reconhecer esta paz, algumas vezes, através da guerra e tender para uma paz escatológica, segundo o pensamento de Levinas. É um gesto análogo ao de Kant, uma vez que Kant quer, também, através da instituição, que as instituições de paz universal ou os tratados de paz se reencontrem numa “hospitalidade universal”. Kant diz que o direito natural, embora perante um estado de guerra, implica que, para uma hospitalidade universal, os homens não podem dispersar-se até ao infinito sobre a superfície da Terra. A hospitalidade é um “encontro de paz”. A relação da hospitalidade, com o cosmopolitismo, é uma forma polivalente da Ética da Hospitalidade, isto é, da mundialização do cosmopolitismo e “au-delà du cosmopolitisme” (para além do cosmopolitismo), que se esclarece pelo pensamento de Derrida<sup>6</sup>.

A hospitalidade, que fosse simplesmente regulada pelo Estado, pela relação entre cidadãos, deixaria de ser suficiente. Seria, pois, necessário ajustar a nossa “ética da hospitalidade” e a nossa política de hospitalidade para além do Estado. Devemos, numa leitura de Kant, assinalar em que é que o seu cosmopolitismo universal é uma reflexão notável, para a qual é necessário tender, mas que é necessário também saber transgredir. Entretanto, Derrida revelou o mais elevado « respeito » (*Achtung*) pelo ideal cosmopolita de Kant.<sup>7</sup> Entretanto, Kant definiu as condições da hospitalidade universal, que se referem, nada menos, a uma multiplicidade de Estados, que jamais formarão um Estado universal. Com efeito, estes Estados e os seus sujeitos-cidadãos deverão definir as leis da hospitalidade. Eles devem fazer respeitar estas regras e,

5 Cf. Tradução de Fernanda Bernardo, 92; Cf. "Considerons d'abord la distinction entre l'hospitalité inconditionnelle et, d'autre part, les droits et devoirs qui conditionnent l'hospitalité. Loin de paralyser le désir ou de détruire l'exigence d'hospitalité, cette distinction nous commande de déterminer ce qu'on pourrait appeler en langage kantien ( ) des schèmes intermédiaires" (Jacques DERRIDA, *De L'hospitalité*, pp. 129; 131).

6 "Je reviens un instant à la question de l'hospitalité. L'idéal cosmopolitique de Kant, pour lequel j'ai le plus grand respect, supposait encore que le citoyen fût citoyen du monde "en tant que citoyen", c'est-à-dire en tant que sujet d'un État-nation. Lorsque Kant définit les conditions de l'hospitalité universelle, il se réfère néanmoins à une multiplicité d'États qui ne feront jamais un État universel. Ces États, et leurs sujets citoyens, doivent définir les lois de l'hospitalité. Ils doivent faire respecter ces règles et donc poser des limites à l'accueil du ci-toyen étranger ( ). Ce concept d'hospitalité cosmopolitique, tout respectable qu'il est, et tou-jours perfectible me paraît encore lié à une figure de la citoyenneté de l'État-nation, celle qui se", Cf. Jacques DERRIDA, *Papier Machine*, Éditions Galilée, Paris, 1984, pp. 395; 396; 397.

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logo, colocar os limites ao acolhimento do cidadão-estrangeiro. Este conceito de hospitalidade cosmopolita, totalmente respeitável, sempre perfeitável, parece ligado a uma figura da cidadania do Estado-nação, como aquele que se encontra em vias de deslocação, de transgressão e de transformação. Ainda hoje, dia 01/05/2022, segundo o jornal *PÚBLICO*, Sergey Lavrov, ministro dos negócios estrangeiros da Federação Russa, disse que a Guerra da Ucrânia foi feita para “libertar o mundo da influência do Ocidente”. Nada mais falso do que esta afirmação, visto que todo o mundo filosoficamente depende do Ocidente, basta ver e saber sobre o que se passou, na Universidade de Heidelberg, em pleno império germânica, a criação da Esquerda Hegeliana, com o cortejo do Materialismo Dialético, dos filósofos Marx e Engels, para já não falar do Materialismo e Empiriocriticismo de Lenin. A Igreja Ortodoxa Russa também nasceu, aqui no Ocidente, a partir do Cisma na Igreja Católica Romana, com Miguel Cerulário, Patriarca de Constantinopla, decorria o ano de 1056. Toda a Teologia e Filosofia começaram no Ocidente e no Ocidente se mantém, felizmente para todos nós.

A *Pax Romana* (Paz Romana”) é um período de aproximadamente 200 anos da história romana que é identificado como um período e uma era de ouro de imperialismo romano crescente e sustentado, ordem, estabilidade próspera, poder hegemónico e de expansão, apesar de várias revoltas e guerras, e contínua competição com a Pártia. É tradicionalmente datada a partir da ascensão de César Augusto, fundador do principado romano, em 27 a.C., e concluída em 180 d.C., com a morte de Marco Aurélio, o último dos “Cinco Bons Imperadores”. Como foi inaugurada por Augusto com o fim da Guerra Final da República Romana, às vezes é chamado de *Pax Augusta*. Durante este período de cerca de dois séculos, o Império Romano alcançou sua maior extensão territorial e sua população atingiu um máximo de até 70 milhões de pessoas. De acordo com Dião Cássio, o reinado ditatorial de Cómodo, mais tarde seguido pelo Ano dos Cinco Imperadores e a Crise do Terceiro Século, marcou a descida “de um reino de ouro para um de ferro e ferrugem”.<sup>8</sup>

Para além de transmitir elementos da cultura, religião e língua latina às regiões onde se fixavam as guarnições militares, bem como a criação de condições favoráveis para o desenvolvimento das economias locais, a sua presença impunha o respeito e a aceitação incondicional da soberania de Roma: *pax romana*. Era uma paz armada e atingível apenas com a presença das legiões. Todavia, essa era a única forma de assegurar uma harmonia mínima e a articulação entre o poder imperial e as vastas regiões a governar, servindo de instrumento de apoio à execução de medidas de carácter administrativo, fiscal e judicial. O apoio e estímulo à colonização latina do império deve-se também, em grande parte, à presença militar romana, procurando construir-se as quintas, *villae* ou povoações junto aos quartelamentos ou próximo de vias militares. As legiões eram assim a garantia de uma conjuntura necessária para o desenvolvimento material e a difusão da civilização romana.

Uma alegoria da manutenção da *pax romana* é a prisão e condenação à morte da figura de Jesus Cristo, que, teria arrastado consigo multidões e se auto-intitulado “Rei dos Judeus”, supostamente punha em perigo a paz e a estabilidade pretendidas por Roma naquela região, constituindo uma ameaça pública.

8 Cf. Maria Helena da ROCHA PEREIRA, *Estudos de História da Cultura Clássica*, Volume – II- *Cultura Romana*, Fundação Calouste Gulbenkian, Lisboa, 1988, pp. 223–354.

Bem treinado e equipado, o exército romano era composto por um conjunto de legiões - cerca de 50 no tempo de Augusto, que depois as reduz para metade -, cada qual com cerca de 6000 homens, que eram colocadas estrategicamente nas regiões onde mais se impunha a sua presença. Assim, o império protegia e governava as províncias, permitindo que cada uma elaborasse e administrasse as suas leis e estatutos, à luz do direito romano e aprovadas pelo imperador, tendo em contrapartida de aceitar a fiscalidade romana e o seu controle militar.<sup>9</sup> As províncias da Península Ibérica, por exemplo, dependiam da VII Legião, sediada em Leon, extremamente ativa e reforçada em virtude dos vários focos de insubmissão existentes, particularmente na Lusitânia e nas Vascongadas (atual País Basco). A *pax romana* foi um dos pilares da civilização romana e da sua difusão e implantação no mundo antigo, responsável pela ordem, tranquilidade, cumprimento da lei e, acima de tudo, da obediência e culto ao imperador.<sup>10</sup> A *pax romana*, ao tempo de Octaviano Cesar Augusto a grande forma de hospitalidade cosmopolita de todos os povos do Império Romano. Assim estamos com a atual *pax russica*.

A ação da Federação Russa na Ucrânia tem muito de semelhante com a *Pax Romana* dos tempos de Octávio Cesar Augusto, ao tempo de Jesus Cristo, ressaltando algumas circunstâncias históricas, apontadas pela Filosofia da História.

Os termos de hospitalidade e hostilidade são latinos e possuem a mesma raiz itálica: *host/hosp*, que significam “aquele que acolhe aquele que desacolhe” e que segundo a Gramática Sincrónica Latina, é um substantivo da 3ª declinação no nominativo, singular no feminino.<sup>11</sup> Não deve pois considerar-se como válido nenhum tratado de paz que se tenha feito com a reserva secreta de elementos para uma guerra futura, segundo Kant.

Seria então, pois, apenas um simples armistício, um adiamento das hostilidades e não a paz, que significa o fim de todas as hostilidades e juntar-lhe o epíteto eterna é já um pleonasma suspeito. As causas existentes para uma guerra futura, embora talvez não conhecidas agora nem sequer pelos negociadores, aniquilam-se no seu conjunto pelo tratado de paz, por muito que se possam extrair dos documentos de arquivo mediante um escrutínio penetrante. – A “restrição” (*reservatio mentalis*) sobre velhas pretensões a que, no momento, nenhuma das partes faz menção porque ambas estão demasiado esgotadas para prosseguir a guerra, com a perversa vontade de, no futuro, aproveitar para este fim a primeira oportunidade, pertence à casuística jesuítica e não um Projeto Filosófico corresponde à dignidade dos governantes, do mesmo modo que também não corresponde à dignidade de um ministro a complacência em tais deduções, se o assunto se julgar tal como é em si mesmo. Se, pelo contrário, a verdadeira honra do Estado se colocar, segundo os conceitos ilustrados da prudência política, no contínuo incremento do poder seja por que meios for, então aquele juízo afigurar-se-á como escolar e pedante. «Nenhum Estado independente (grande ou pequeno, aqui tanto faz) poderá ser adquirido por outro mediante herança, troca, compra ou doação.» Um Estado não é “património” (*patrimonium*) (como, por exemplo, o solo

9 Cf. *Ibidem*, pp. 432–485.

10 Cf. F.R. COWELL, *Cícero e República Romana*, Editorial Ulisseia Limitada, Lisboa, 1968, pp. 352–372.

11 Cf. A.ERNOUT; A. MEILLET, *Dictionnaire Étymologique de la Langue Latine*, Librairie Kincksieck, Paris, 1932, pp. 440–441,

em que ele tem a sua sede). É uma sociedade de homens sobre a qual mais ninguém a não ser ele próprio tem de mandar e dispor. Enxertá-lo noutra Estado, a ele que como tronco tem a sua própria raiz, significa eliminar a sua existência como pessoa moral e fazer desta última uma coisa, contradizendo, por conseguinte, a ideia do contrato originário, sem a qual é impossível pensar direito algum sobre um povo). Todos sabem a que perigo induziu a Europa até aos tempos mais recentes o preconceito deste modo de aquisição, pois as outras partes do mundo jamais o conheceram, isto é, de os próprios Estados poderem entre si contrair matrimónio; este modo de aquisição é, em parte, um novo género de artifício para se tomar muito poderoso mediante alianças de família sem dispêndio de forças e, em parte, também, serve para assim ampliar as possessões territoriais. – Deve também aqui incluir-se o serviço das tropas de um Estado noutra contra um inimigo não comum, pois em tal caso usa-se e abusa-se dos súbditos à vontade, como se fossem coisas de uso. Um reino hereditário não é um Estado que possa ser herdado por outro Estado; é um Estado cujo direito a governar se pode dar em herança a outra pessoa física. O Estado adquire, pois, um governante, não é o governante como tal (isto é, que já possui outro reino) que adquire o Estado”.<sup>12</sup> De acordo com Kant, «Os exércitos permanentes (*miles perpetuus*) devem, com o tempo, de todo desaparecer.» Pois ameaçam incessantemente os outros Estados com a guerra, devido à sua prontidão para aparecerem sempre preparados para ela; os Estados incitam-se reciprocamente a ultrapassar-se na quantidade dos mobilizados que não conhece nenhum limite, e visto que a paz, em virtude dos custos relacionados com o armamento, se torna finalmente mais opressiva do que uma guerra curta, eles próprios são a causa de guerras ofensivas para se libertarem de tal fardo”<sup>13</sup>.

## 2. A HOSPITALIDADE: COMO IRENISMO

Como Derrida relaciona, a hostilidade manifesta a hospitalidade, ela segue sendo, apesar dela, um fenómeno da hospitalidade, com esta terrível consequência, que a guerra pode ser interpretada como a continuação da paz, por outros meios, ou, em todo caso, como a interrupção da paz ou da hospitalidade. Assim, nesse extenso discurso messiânico, sobre a paz escatológica e sobre um acolhimento hospitaleiro, o qual nada precede, nem sequer a origem, podemos entender um “irenismo político”. Por aqui se verifica que, semântica e fenomenologicamente, as duas noções se encontram ligadas. A hospitalidade alberga uma paz telúrica e uma escatológica. O último valor e sentido da hospitalidade encerra-se na “paz escatológica”, porque somos cidadãos do Céu e hóspedes da Terra. A hospitalidade é um “irenismo escatológico”. Segundo Levinas, o esquecimento da linguagem é, em suma, um testemunho, um testemunho inconsciente (como analisa Derrida), se é possível, ele atesta aquilo mesmo que ele esquece, a saber, a transcendência, a separação, a linguagem e a hospitalidade, a mulher e o pai. Eis o que “habita” em sua habitação. Como descreve Levinas, em *Totalité et Infini*: “o separado pode fechar-se no seu egoísmo, quer dizer, na realização propriamente dita do seu isolamento. E esta possibilidade de esquecer a transcendência do Outro, de banir, impunemente, de sua casa toda a hospitalidade (toda a linguagem), ao banir a relação transcendente, que só permite ao Eu fechar-se em si, atesta-se a verdade absoluta, o radicalismo da separação. A separação não existe somente sobre o mundo dialético, correlativo da

<sup>12</sup> Cf. Immanuel KANT, *A Paz Perpétua e outros opúsculos*, pp. 120–121.

<sup>13</sup> Cf. *Ibidem*, pp. 121–122.

transcendência com o seu contrário. Ela realiza-se como acontecimento. A relação com o Infinito habita como uma outra possibilidade de ser recolhido na sua habitação. A possibilidade, para a casa se abrir ao Outro, é, também, essencial à essência da casa, quando estão as portas e as janelas fechadas<sup>14</sup>.

A casa de Betânia abriu-se ao Outro-estranho (Jesus Cristo), a fim de que Marta (ação) e Maria (contemplação) se abrissem ao Outro-estranho (Jesus Cristo) pela “escuta da palavra”, constituindo a intersubjetividade da hospitalidade de Betânia. Na hospitalidade, a casa abre-se ao Outro. A casa é essencial ao acolhimento. Toda a hospitalidade se reveste de humanidade. Foi esta que esteve presente no acolhimento de Jesus e no que Jesus disse a Marta (estás demasiado atarefada) e a Maria (escolheste a melhor parte). A hospitalidade é a *optima pars* (a melhor parte): “ouvir o hóspede”. Aqui reside o “leitmotiv” (fio condutor) da hospitalidade. A hospitalidade é “ouvir o hóspede”. É, assim, uma desconstrução da palavra do Outro.<sup>15</sup>

Aquilo que se passou em Betânia foi um “irenismo telúrico”, como prefiguração do apólogo da hospitalidade, traduzindo-se num “irenismo escatológico”. Por isso, a hospitalidade vive numa paz, que vai da tranquilidade telúrica à escatológica. A hospitalidade é uma realidade pacífica. Quem são os hóspedes e os reféns de Jerusalém? Como entender a humanidade da *Torah*? Segundo Levinas, um acolhimento seria mais do que um “acolhimento”, mais antigo do que um acolhimento. Uma hospitalidade escatológica, que seria mais do que a hospitalidade, tal como é entendida em direito e em política, uma hospitalidade da *Torah*, que seria, numa palavra, mais do que um refúgio. Porque é que a “ética da hospitalidade” deveria ser mais uma outra coisa, que um direito ou uma política de refúgio? Assim, surge uma resposta pela exposição, do pensamento de Levinas, feita por Derrida: – desejo, amor ao estrangeiro, desmedida, eis o que eu queria, a título de Adeus, colocar como epígrafe a esta conclusão as cercanias de Jerusalém. “Deus que ama o estrangeiro”, mais do que parece, não se encontra aí (para além do ser e do fenómeno, para além do ser e do nada), um Deus que, precisamente quando, literalmente, ele não está, não está “contaminado pelo ser”, consagraria o “a-Deus”, a saudação e a santa separação do desejo, como “amor ao estrangeiro”? Dizer “a-Deus” significaria a hospitalidade. Não alguma abstração que se nomearia, como eu venho de o fazer apressadamente pelo “amor do estrangeiro”, mas Deus que ama o estrangeiro.<sup>16</sup>

14 Cf. "En tout cas, il nous est clairement dit que l'allergie, l'oubli inhospitalier de la transcendance d'Autrui, cet oubli du langage, en somme, est encore un témoignage, un témoignage inconscient, si c'est possible: il atteste cela même qu'il oublie, à savoir la transcendance, la séparation, donc le langage et l'hospitalité, et la femme et le père. Voilà ce qui "demeure" dans sa demeure": Mais l'être séparé peut s'enfermer dans son égoïsme, c'est-à-dire dans l'accomplissement même de son isolement. Et cette possibilité d'oublier la transcendance d'Autrui – de bannir impunément de sa maison toute hospitalité (c'est-à-dire tout langage), d'en bannir la relation transcendante qui permet seulement au Moi de s'enfermer en soi – atteste la vérité absolue, le radicalisme de la séparation. La séparation n'est pas seulement, sur le mode dialectique, corrélative de la transcendance comme son envers. Elle s'accomplit comme événement positif. La relation avec l'infini, demeure comme une autre possibilité de l'être recueilli dans sa demeure. La possibilité pour la maison de s'ouvrir à autrui, est aussi essentielle à l'essence de la maison que les portes et les fenêtres closes (Emmanuel LEVINAS, *Totalité et Infini*, Nijhof, De Hagen, pp. 147–148) Je souligne » (Ibidem, pp. 168–169).

15 Cf. Isabel M. FORNARI-CARBONELL, *La Edscucha del Huésped*, (Lc 10, 38–42), Editorial Verbo Divino, Pamplona, 1995, pp. 184–199.

16 "Désir, amour de l'étranger, démesure, voilà ce que je voulais, au titre de l'Adieu, mettre en exergue à cette conclusion – aux approches de Jérusalem. "Dieu qui aime l'étranger

A hospitalidade é “a-Deus”. É um *amen* (estar firme na fé e um cumprimento de despedida). É um dizer “adeus” e uma saudação entre o *homo mendicans* e o anfitrião. A substituição anuncia o destino da subjectividade, a sujeição do sujeito, o hóspede e o refém. O sujeito é um hóspede. O sujeito é refém de um outro modo que ser segundo Levinas. Como hóspede ou como refém, como Outro, como alteridade pura, a subjectividade deve ser despojada de todo o predicado ontológico, um pouco como este Eu puro, do qual Pascal dizia que era “despido de todas as qualidades” e que se poderiam atribuir-lhes todas as propriedades, que, por consequência, enquanto puro, e, propriamente puro, ele transcende.

A transcendência do Rosto apresenta-se como exterioridade imediata no “face-a-face”. Logo, a ideia de Infinito, enquanto relação com o Outro, é de ordem social. Todavia, o Rosto apresenta-me a sua verdadeira transcendência e exterioridade na resistência pacífica, pela qual se opõe aos meus poderes. O Rosto nem é de ordem sensível, nem fenoménica. O Rosto aparece como abertura na caricatura da sua forma. Mas, por meio desta, o Rosto apresenta-me a sua profundidade. O que impede o meu poder é a resistência do Outro, como resistência não-violenta. O Rosto recusa-se à posse, aos meus poderes. Na sua epifania, o sensível ainda captável transforma-se em resistência total à apreensão. A expressão, que o Rosto introduz no mundo, não desafia a fraqueza dos meus poderes, mas o meu poder de poder. O Rosto, ainda coisa entre as coisas, atravessa a forma que, entretanto, o delimita. O Rosto fala-me e convida-me a uma relação sem paralelo com um poder, que se exerce, quer seja fruição, quer seja conhecimento. Assim se manifestou o Rosto de Jesus Cristo no acolhimento de Betânia.<sup>17</sup>

A alteridade, que se exprime no Rosto, fornece a matéria-prima para a negação total. Embora o Rosto se exprima no sensível, é a alteridade que subtrai o meu poder e é, enquanto tal, porque surge a tentação de o aniquilar. O Outro levinasiano nem é empírico, nem puramente fenomenológico. É, antes, uma presença real que eu posso olhar e que me olha e é dado no encontro *πρόσωπον πρὸς πρόσωπον* (face-a-face). O Rosto levinasiano está carregado de significado e não se reduz à sua manifestação exterior. Esta significa ir até ao Infinito e constitui o “enigma do rosto”. Esta epifania do Rosto é “presença”, que é dada numa vivência moral. Assim, o Rosto coloca-me numa “intriga ética”. Por aqui se vê que o Rosto levinasiano se coloca no contexto da “nudez” e da significação. Aquilo que o caracteriza como Rosto será a significação, que dele emana, a qual faz irromper a forma.<sup>18</sup>

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“plutôt qu'il ne se montre, n'est-ce pas là, au-delà de l'être et du phénomène, au-delà de l'être et du néant, un Dieu qui, alors même que littéralement il n'est pas, pas "contaminé par l'être", vouerait l'à-Dieu et le salut et la sainte séparation au désir comme "amour de l'étranger"? Avant et par-delà l'existence de Dieu, hors de sa probable improbabilité, jusque dans l'athéisme le plus vigilant sinon le plus désespéré, le plus "dégrisé" (Levinas aime ce mot), le Dire à-Dieu signifierait l'hospitalité. Non pas quelque abstraction qu'on nommerait, comme je viens de le faire hâtivement, amour de l' « étrange » mais (Dieu) "qui aime l'étranger" (Jacques DERRIDA, *Adieu à Emmanuel Levinas*, Éditions Galilée, Paris, 1997, pp. 181–182).

17 Cf. Cf. Ramiro Délio Borges de MENESES, *O Desvalido no Caminho. O Bom Samaritano como paradigma da humanização em saúde*, Santa Maria da Feira, Edições Passionistas, 2008, pp. 31–32.

18 Cf. Cf. Ramiro Délio BORGES DE MENESES; *Na parábola do Bom Samaritano*, Lc 19, 25–37): *o caminho da misericórdia do Desvalido*, IF Press, Roma, 2016, pp. 105.110.

A hospitalidade tem variados rostos, que vivem a “intriga da alteridade” entre o anfitrião e Outro-estranho. A nudez determina-se como impossibilidade de se ornamentar. A relação com a “nudez” do Rosto é uma relação com uma presença, sem qualquer mediação, uma relação com uma nudez livre de todas as formas, segundo a fenomenologia levinasiana. Por isso, esta nudez significa a luz sobre ela mesma. A nudez será uma significação imediata. Esta precede as coisas e ilumina-as. Esta imediata significação é evidente na nudez do Rosto. O Outro voltou-se para mim e é isso mesmo a sua nudez. Mesmo despido da sua forma, o Rosto está transido pela sua “nudez”. A nudez do Rosto é desnudamento e suplica na rectidão que me visa. O Rosto significa “des-valido”.<sup>19</sup>

Analogicamente, interpretando a parábola do Bom Samaritano, pela leitura de Levinas, o “rosto”, na sua epifania como nudez, é expressão da sua imagem, isto é, como “semi-morto” (Lc10, 30). Este (des-valido no caminho) é o Rosto desfigurado de Jesus Cristo. Mas, a expressão do Rosto, como nudez, não depende da imagem, porque é muito superior a ela: Rosto de Cristo. No entanto, Ele é rectidão que me visa, concretamente a mim, porque fica à medida daquele que O acolheu, ele fica numa vivência telúrica. E quem O acolheu foi o Bom Samaritano. O Sacerdote e o Levita viram o “desvalido”, mas passaram para o outro lado do caminho. Não O acolheram. A nudez do Rosto (desvalido no caminho, o homem que está na rua) é uma miséria, um des-nudamento, uma pobreza, a dor e o sofrimento. O Rosto do Outro (semi-morto) é um “mendicante”, que transforma o Samaritano num servidor. Na verdade, esta pobreza e esta nudez dão significado à nudez em si. Na hospitalidade, há uma “nudez do rosto”, aquele que se apresenta como estrangeiro, como *homo mendicans* (homem pedinte).<sup>20</sup>

O Rosto, na sua nudez, deixa uma abertura para o transcendente, a que Levinas chama de fresta. Esta abertura não anula a transcendência, sendo passagem que permite a mesma. Por detrás desta conceção de Rosto estão as vítimas do povo de Israel, as que viveram o drama de Auschwitz. O olhar, segundo Levinas, revela-se como fonte de sentido e como olhar de súplica, pedindo-me para ser acolhido, porque este olhar é “face-a-face”, ao qual não me posso furtar. O Samaritano não se furtou. O Sacerdote e o Levita viram o Rosto, mas furtaram-se ao “acolhimento do dom”: o Outro-estranho (Desvalido no Caminho).<sup>21</sup>

O Rosto do Outro é tudo quanto me ordena, expressando-se através das mãos, do olhar, da boca, dos lábios e da pele enrugada. Assim o vemos na debilidade e na doença. É no Outro que se manifesta o Rosto nu e que é, simultaneamente, próximo e distante, onde encontro o Infinito, que chegou por meio de vestígios, deixados pelo Outro, segundo a perspectiva de Levinas. Ele junta-se a mim. Mas, junta-me a ele para servir, ele comanda-me como um Mestre. A hospitalidade tem um Mestre. O Mestre é a Palavra. A hospitalidade é um juntar-se a mim. Por isso, a hospitalidade é uma “vivência plesiológica”.<sup>22</sup> A hospitalidade de Betânia será “acolher o Outro”

19 Cf. *Ibidem*, pp. 80–81.

20 Cf. Ramiro Délio BORGES DE MENESES, *HOMO MENDICANS:: Da hospitalidade em Derrida ao acolhimento em saúde*, IF Press, Roma, 2014, pp. 80–94.

21 Cf. Cf. Ramiro Délio Borges de MENESES, *O Desvalido no Caminho. O Bom Samaritano como paradigma da humanização em saúde*, Santa Maria da Feira, Edições Passionistas, 2008, pp. 131–132.

22 Cf. Cf. George PETITDEMANGE, “Emmanuel Levinas on la question d’autrui”, in: *Études*, 30 (1972), pp. 757–764.

na sua alteridade. A partir do momento em que me abro, faço “acolhimento”, para retomar o termo de Levinas. Pela alteridade do Outro estou já numa disposição hospitaleira. Por outras palavras, não posso ter relação comigo próprio, com o meu “em mim”, a não ser na medida em que a irrupção do Outro preceda a minha própria ipseidade. Levinas parte de um pensamento de acolhimento, que é a atitude primeira do Eu perante o Outro, de um pensamento do acolhimento para um pensamento do “refém” (otage). Sou, de certa maneira, o “refém” em que sou já o convidado do Outro e esta situação de refém define a minha própria responsabilidade.

Quando digo “aqui estou”, sou responsável perante o Outro, o “aqui estou” significa que “eu sou já presa” do Outro. Sou presa do Outro, o “refém do Outro” e a Ética devem fundar-se nesta estrutura de “refém” (Otage). A hospitalidade como irenismo, em Levinas, tem uma leitura através da paz ética, onde a relação vai ao Outro inassimilável, incomparável, ao Outro irredutível, ao Outro único. Somente o único é absolutamente Outro. A unicidade do único dá-se no amor. A paz ética não é uma paz telúrica, segundo Levinas, é uma paz escatológica. Esta paz é um “macarismo.” A hospitalidade participa destas duas formas de paz. Surge não só a hospitalidade como “paz telúrica”, que se poderá resumir no pensamento do Hiponense: *tranquillitas in ordine* (tranquilidade na ordem), como também se manifesta como “irenismo escatológico”, como se narra no Sermão do Monte, segundo São Mateus (Mt. 5, 9). A paz telúrica é uma paz não-ética, como se expressa Levinas pelas seguintes palavras:” Na paz ética, a relação vai até ao Outro inacessível, incomparável, ao Outro irredutível, ao Outro único. Somente o único é absolutamente Outro.<sup>23</sup> Mas a unicidade do único, é aquela que é a unicidade do amado” Daqui podermos concluir que a hospitalidade é, já neste mundo, um “macarismo”. A paz escatológica vem descrita no Sermão do Monte, como quinta bem-aventurança: “*Beati psacifici, quoniam Dei Filii vocabuntur*” (Mt,5,9).<sup>24</sup> Assim, Felizes os construtores da paz, porque serão chamados Filhos de Deus. Aqui temos a “paz escatológica” ou paz intrínseca, que nada tem a ver com a “paz telúrica” ou paz extrínseca, tal como vem narrada por Kant, no seu opúsculo *Zum ewigen Frieden*.

A 24 de Fevereiro de 2022, que grande surpresa que foi para todos, Putin invadiu a Ucrânia, um país soberano com 44 milhões de habitantes, e ao segundo ou terceiro dia de guerra, já estava a ameaçar com ataques nucleares o Mundo. Que surpresa, ninguém estava nada à espera que um autocrata encartado, ultranacionalista neofascista, revisionista, que anda há anos a sonhar com a reconstrução de um império czarista, tipo Catarina II, a Grande, fosse capaz de ir tão longe.

As ações de Putin pareciam, no entanto, ter tido um efeito positivo: a União Europeia parecia voltar a falar a uma só voz, não apenas na condenação deste ato de guerra, mas também na necessidade de aplicar sanções ao regime de Moscovo. E, enquanto essas sanções pareciam afetar mais Putin do que a economia europeia, tudo parecia bem encaminhado. O problema surge quando essas sanções começam a virar-se contra os interesses alemães.

23 Cf. “Dans la paix éthique, la relation va à l'autre inassimilable, incomparable, à l'autre irréductible, à l'autre unique. Seul l'unique est absolument autre. Mais l'unicité de l'unique, c'est l'unicité de l'aimé” (Emmanuel LEVINAS, *Entre nous: Essais sur le penser*, Éditions Grasset, Paris, 1991. pp. 36–38.

24 Cf. NESTLE-ALAND, *Novum Testamentum Graece et Latine*, Deutsche Bibelgesellschaft, Stuttgart, 1991, p. 9.

E é neste ponto que estamos. A Alemanha, como a Áustria, a Holanda ou mesmo a Itália (a Hungria é um caso à parte) estão aflitas com a ideia de perderem o gás russo. O Banco Central Alemão estimou que fechar a torneira podia levar a uma queda do produto interno bruto alemão de 5 pontos, só este ano. Impensável para o governo de Berlim, que anda há dois meses a travar um acordo europeu para cortar uma das principais fontes de financiamento da guerra, que Vladimir Putin está a travar. É uma guerra de um só homem, não é uma guerra do povo russo contra a Ucrânia.

Como bom manhoso que é – e aflito que está com a economia interna –, Putin decidiu carregar um pouco mais na ferida e decidiu obrigar todos os que compram energia à Rússia a pagar em rublos. Que é o equivalente a dizer: se querem gás, têm de me financiar a guerra.

Neste momento, algumas das maiores empresas energéticas da União Europeia preparam-se, segundo o *Financial Times*, para abrir contas num banco russo sediado na Suíça, aceitando assim as exigências de Putin. Algumas dessas empresas são austríacas, outras húngaras, outras ainda eslovacas e, por fim, alemãs.

O tema é muito mais grave do que parece. Se estas empresas – se estes Estados – decidirem ceder às exigências de Vladimir Putin, isso terá graves consequências: a primeira, e mais óbvia, é a de que a União Europeia vai dando apoio à Ucrânia com uma mão e à Rússia com a outra, financiando o esforço de guerra que está a decorrer. A segunda é a de que a União, que parecia existir no início deste conflito, se desmorona com todas as consequências no médio e longo prazo, que isto pode trazer. A Alemanha é aqui um país charneira. Ou fica para a história como o país que, a expensas próprias, conseguiu ser um exemplo, contribuindo para o reforço da União Europeia, ou ficará, para todo o sempre, como um Estado egoísta, hipócrita, que é forte com os fracos e cobarde com os fortes. Berlim tem, nas suas mãos, a possibilidade de contribuir para um fim mais rápido desta guerra. Mas será que o vai fazer? Com Vladimir Putin temos a *Pax Russica*, muito à imagem e semelhança da *PAX ROMANA*, como bem caracterizou Nietzsche, na obra *Origem da Tragédia*, como sendo “sede de poder e de influência”.<sup>25</sup> Segundo Nietzsche, a vivência da *pax romana* revê-se no sentimento do poder, como salienta o filósofo da suspeita, ao escrever: “O sentimento de poder começa por ser conquistador, para depois se tornar administrativo ou organizador. No interesse da conservação própria, impõe a sua lei ao vencido, ao qual, por acréscimo, também conserva. Do sentimento de poder nasce a função, em luta com forças mais fracas do que ela. E essa função mantém-se, molda e domina as funções mais fracas do que ela, que é sustentada por um poder superior”.<sup>26</sup> Tudo isto aconteceu com a *pax romana*, há dois mil anos a esta parte. Da mesma forma, as máximas escritas por Nietzsche cumprem-se, nos nossos dias, com a *pax russica*. A *pax russica* é uma readaptação da *pax romana* para o século XXI.

A *Pax Russica* é uma sede de dominação e de influência global, não na linha bolchevique, mas antes pelo império de Catarina II, até porque culturalmente o dirigente russo é um político do século XXI com mentalidade do século XVIII.

25 Cf. Friedrich NIETZSCHE, *A Origem da Tragédia*, Tradução e Comentário de Luis Lourenço, Lisboa Editora, Lisboa, 2005, pp. 80–165.

26 Cf. NIETZSCHE, F., *A Vontade de Poder, Volume II- Crítica dos Valores Superiores*, Res Editora, Porto, 2004, p. 51.

A *PAX RUSSICA* à semelhança da *PAX ROMANA* é uma paz extrínseca, como “paz telúrica” na linha da definição de Santo Agostinho: *in ordine tranquillitas pax* (a paz é a tranquilidade na ordem). A *pax russica* é uma paz interesseira, porque as “nações não têm amigos, têm interesses, que no seu jogo criam inimigos”, criam hostilidades, que se traduziram em guerras contínuas, sanguinárias, com grande sofrimento para as populações. Corremos o risco de estar a criar uma nova forma de paz telúrica, que se poderá definir como “tranquilidade na desordem”, a que chamaria “paz entrópica”, que também é uma forma de paz telúrica. Esta nada tem a ver com a “paz escatológica” anunciada por *JESUS CRISTO*, pelas Suas Bem-aventuranças, no Sermão da Montanha, segundo São Mateus. Com esta temos uma segurança, como consequência: seremos chamados Filhos de Deus. Trata-se, pois, de uma herança espiritual, no Reino de Deus, como um “macarismo”, que definirá, sendo a Escatologia, uma hospitalidade incondicional, porque somos hospedes da Terra e cidadãos do Céu. As pazes telúricas são pazes que se fundamentam na hospitalidade condicional, porque a “paz escatológica” será uma hospitalidade incondicional, fundamentadora de todas as pazes.<sup>27</sup>

Mas para se verificar os jogos de interesses na guerra da Ucrânia, a nível mundial, basta referir a análise da *CNN-PORTUGAL*, da seguinte forma: “Historicamente, a relação entre a Rússia e a Turquia é marcada por vários séculos de guerras. Durante o auge do Império Otomano, o Império Russo foi o seu principal inimigo e a nação que mais territórios “amputou” aos otomanos, entre os quais a disputada península da Crimeia. A situação altera-se ligeiramente com a formação do Estado turco e, em particular, a partir do momento em que o país entra na *NATO*, na década de 50, passando a cumprir a função de “tampão” à União Soviética na região. Nos últimos dez anos, aproximaram-se, particularmente desde que o regime de Erdogan parece ter seguido um rumo mais autocrático, depois da tentativa de golpe de Estado em 2016, mas os especialistas recusam-se a classificar a relação entre os dois como uma aliança. É uma parceria. Os dois países têm interesses em comum, desenvolveram relações económicas bastante aprofundadas, particularmente desde que começaram a dar mais importância à política eurasiática, como considera Isabel David.<sup>28</sup>

Esta ideia é partilhada por Arnaut Moreira, para quem a Rússia olha para a Turquia como alguém que não tem qualquer interesse no Ocidente e, por isso, o seu papel mediador de paz não beneficiará esse mesmo Ocidente, até porque a Turquia de Erdogan “não é uma defensora das ideias europeias”. A Rússia é muito sensível a esta questão de não ter como mediador alguém que esteja próximo do Ocidente e que venha para a mesa de negociação fazer propostas que, de alguma forma, beneficiam o Ocidente”, refere o especialista. Já a Ucrânia poderá estar a tomar partido do facto de o futuro da Crimeia e de toda a costa ucraniana no Mar Negro não é indiferente para a Turquia, uma vez que o país tem ambições de influência na zona. O controlo de toda a costa ucraniana por parte da Rússia é algo que o major-general Arnaut Moreira acredita não ser do interesse de Ancara, que arrisca ver a Rússia tornar-se a potência hegemónica do Mar Negro. A Ucrânia reconhece que a Turquia pode ser um bom mediador ao tentar encontrar soluções, que não tornem a Rússia uma potência hegemónica no Mar Negro, destaca Arnaut Moreira.<sup>29</sup> Circunstâncias que

27 Cf. Juan RUIZ DE LA PEÑA, *La pascoa de la creación*, BAC, Madrid, 2011, pp. 196–223.

28 Cf. CNN, *PORTUGAL-Telejornal*, 09h:30, 03/05/2022.

29 Cf. *Ibidem*.

fazem com que alguns dos mais importantes intérpretes da política internacional vejam a Turquia como um possível “desbloqueador” diplomático da guerra. Foi esse o caso de António Guterres, secretário-geral das Nações Unidas, que antes de se encontrar em Moscovo com Vladimir Putin viajou até Ancara. Guterres foi tentar construir em cima dos esforços turcos. O presidente austríaco reconheceu isso. A Itália, o Reino Unido e os Estados Unidos já reconheceram isso. Toda a gente já percebeu que a única porta de acesso diplomático a Putin é a Turquia”, frisa Isabel David.<sup>30</sup> E todos ansiamos pela paz, que infelizmente teme em não chegar ...

## CONCLUSÃO

Na modernidade da *Aufklärung*, surgiu a formulação mais rigorosa sobre o cosmopolitismo, a partir da Filosofia Transcendental, a par do seu originário registo onto-teológico-político, no dizer de Fernanda Bernardo, numa dupla genealogia : a bíblica e a helénica. Acrescentaria na herança romana : o direito. Assim, para Levinas, a Europa seria a Bíblia (religiões monoteísticas) e os gregos (filosofia e democracia). Derrida resume a mundialização à europeização. Para Derrida, somos herdeiros de mais do que uma língua e de muitas culturas, como salienta no obra *Cosmopolites de tous les pays, encore un effort!*. Oriundo da Teologia do Apóstolo Itinerante (Saulo de Tarso), onde qualquer homem é um co-cidadão do mundo, tal como se narra em Ef. 2, 19-20. O termo ático, da Política de Aristóteles, *sympoliteo* quer dizer “administrar conjuntamente os negócios do Estado”; ser co-cidadão. Na hospitalidade, somos todos co-cidadãos uns dos outros (anfitrião e estrangeiro). S. Paulo abre as portas ao cosmopolitismo moderno, politizando e saindo da tradição abrahâmica. Todavia, passando pelo estoicismo imperial, representado em Marco Túlio Cícero e Marco Aurélio, o clássico ideal cosmopolita alcançará a formulação filosófica mais adequada no *Iluminismo kantiano* pelo tratado do direito cosmopolita (*Weltbürgerrecht*), restrito às condições jurídicas da hospitalidade universal, em ordem a uma “paz perpétua” (*Zum ewigen Frieden*). Segundo o filósofo de Königsberg, como refere Fernanda Bernardo, há um apelo à necessidade da existência de um direito cosmopolita para uma aproximação à paz perpétua que, pelo lado jurídico, se restringiu às condições da hospitalidade universal e que o filósofo da “Albertus Universitaet” determinara. Assim, a Bíblia ofereceu-nos uma hospitalidade de alteridade, pelo “desejo do Outro”, em Jerusalém. Atenas dá-nos a hospitalidade como meta-filosofia (ontoteologia) e, finalmente, Roma redige o legado legislativo da hospitalidade.

Segundo Kant, na obra *Zum ewigen Frieden*, diz-se que\_: «Os exércitos permanentes (*miles perpetuus*) devem, com o tempo, de todo desaparecer.» Pois ameaçam incessantemente os outros Estados com a guerra, devido à sua prontidão para aparecerem sempre preparados para ela; os Estados incitam-se reciprocamente a ultrapassar-se na quantidade dos mobilizados que não conhece nenhum limite, visto que a paz, em virtude dos custos relacionados com o armamento, se torna finalmente mais opressiva do que uma guerra curta, eles próprios são a causa de guerras ofensivas para se libertarem de tal fardo; acrescenta-se que pôr-se a soldo para matar ou ser morto parece implicar um uso dos homens como simples máquinas

<sup>30</sup> Cf. *Ibidem*.

e instrumentos na mão de outrem (do Estado), uso que não se pode harmonizar bem com o direito da humanidade na nossa própria pessoa.<sup>31</sup> Algo de todo diverso é defender-se a si e defender a Pátria dos ataques do exterior com o exercício militar voluntário dos cidadãos empreendido de forma periódica. O mesmo se passaria com a cumulação de um tesouro; considerado pelos outros Estados como uma ameaça de guerra, forçá-los-ia a um ataque antecipado, se a tal não se opusesse a dificuldade de calcular a sua grandeza (pois dos três poderes, o militar, o das alianças e o do dinheiro, este último poderia decerto ser o mais seguro instrumento de guerra)". No caso da Invasão Russa, a 22 de fevereiro de 2022, tratou-se de uma ação puramente revisionista, a fim de ampliar a sua influência expansionista e redefinir o império. Assim, os apetites expansionistas da Rússia irão continuar e não ficarão por aqui, indo até à Moldávia, passando pela Finlândia ou pela Suécia. Muitas coisas poderão acontecer, até mesmo arrastar outros países para uma 3ª Guerra Mundial. Tudo isto torna-se possível ...

Aqui temos outra advertência de Kant, como autêntica conclusão, sobre as relações entre a paz e a guerra: "são estratagemas desonrosos; mesmo em plena guerra deve ainda existir alguma confiança no modo de pensar do inimigo já que, caso contrário, não se poderia negociar paz alguma e as hostilidades resultariam numa guerra de extermínio (*bellum internecinum*); a guerra é apenas o meio necessário e lamentável no estado da natureza (em que não existe nenhum tribunal que possa julgar, com a força do direito), para afirmar pela força o seu direito; na guerra, nenhuma das partes se pode declarar inimigo injusto (porque isso pressupõe já uma sentença judicial). Mas o seu desfecho (tal como nos chamados juízos de Deus) é que decide de que lado se encontra o direito; entre os Estados, porém, não se pode conceber nenhuma guerra de punição (*bellum punitivum*) (pois entre eles não existe nenhuma relação de superior a inferior). Daqui se segue, pois, que uma guerra de extermínio, na qual se pode produzir o desaparecimento de ambas as partes e, por conseguinte, também de todo o direito, só possibilitaria a paz perpétua sobre o grande cemitério do género humano, imposto pelos arsenais nucleares dos países. Logo, não se deve de modo algum permitir semelhante guerra nem também o uso dos meios que a ela levam. Que os mencionados meios levam inevitavelmente a ela, depreende-se do facto de que essas artes infernais, em si mesmas, nunca convenientes, quando se põem em uso não se mantêm por muito tempo dentro dos limites da guerra, mas transferem-se também para a situação de paz como, por exemplo, o uso de espias (*uti exploratoribus*), onde se aproveita a indignidade de outros (que não pode erradicar-se de uma só vez); e assim destruir-se-ia por completo o propósito da paz".<sup>32</sup> Para Kant, nenhum Estado em guerra com outro deve permitir tais hostilidades que tornem impossível a confiança mútua na paz futura, como, por exemplo, o emprego no outro Estado de assassinos (*percussores*), envenenadores (*venefici*), a ruptura da capitulação, a instigação à traição. Será isto que a Rússia deve oferecer à Ucrânia e ao Mundo, deixar que todos os seus países vizinhos optem por regimes democráticos. Para a Rússia, o medo estará na NATO, mas esta organização militar, com carácter ofensivo e defensivo simultaneamente, criada em 1949, nunca irá invadir a Rússia.

31 Cf. Immanuel KANT, *A Paz Perpétua e outros opúsculos*, pp. 121–122.

32 Cf. Immanuel KANT, *A Paz Perpétua. Um Projeto Filosófico*, Tradução de Artur Morão, Texto "online", pp. 4–8, acesso a 05/05/2022.

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### Lucrece Mireille Segning

Université Saints Cyrille et Méthode de Trnava – UCM,  
Trnava, Slovakia  
L.Segning2020@aol.com

## L'immigration comme solution au vieillissement et au déclin de la population allemande / *Immigration as a solution to Germany's aging and declining population*

### Summary

The massive displacement of people in the world is a phenomenon that has existed since the beginning of humanity. This has in many cases been the result of natural disasters, climate change, violent conflict, thus forcing human beings to flee their homes in order to escape political or religious persecution, economic instability and environmental hazards, in short, to seek refuge and a better life elsewhere. However, in recent years, international immigration has attracted much attention and is a powerful force on a global scale; such is the case of the Federal Republic of Germany which, in 2015, welcomed more than one million refugees on its territory thanks to its "open door policy". A great opportunity that could be exploited to remedy the problem of aging and the regression of its population.

**Key words:** Immigration, Birth rate, Death rate, Refugees, Integration.

### INTRODUCTION

La République Fédérale d'Allemagne est confrontée à une crise démographique drastique en raison du décroissement et du vieillissement de sa population car ces deux facteurs posent des défis importants pour le pays. Selon DESTATIS (Office fédéral de la statistique allemande), le taux de mortalité en Allemagne est supérieur au taux de natalité depuis 1973 ; ce qui signifie que le nombre de décès enregistrés par an est de loin supérieur au nombre de naissances. Par conséquent, la population

décroit. Tel a été le cas entre 2003 et 2010 lorsque le pays a connu une forte réduction de sa population. Cet Office fédéral prédit également que la population allemande passera de 82 millions actuellement à environ 65 millions d'ici la moitié du siècle. En outre la population du pays vieillira considérablement, un processus qui changera la structure de sa force de travail. Il est également important de souligner que l'Allemagne est l'un des pays européens avec des taux de fécondité les plus bas, soit 1,4 enfant par femme (une moyenne de 2,1 enfants par femme est nécessaire pour maintenir un niveau stable de la population) et l'une des espérances de vie les plus élevées dans le continent avec une moyenne de 80 ans. En 2010, l'Allemagne comptait environ 50 millions d'habitants âgés de 20 à 65 ans et selon les statistiques officielles, la population de cette tranche d'âge pourra se situer en dessous de 36 millions d'ici 2060, et plus de 50% de la population allemande aura plus de 51 ans. Le gouvernement en place devra trouver un moyen consistant pour accroître le taux de natalité et maintenir les taux de main d'œuvres élevés d'une part, les systèmes de sécurité sociale et de retraite devront être améliorés d'autre part.<sup>1</sup>

Jusqu'à récemment, l'Allemagne ne s'était jamais considérée comme un pays d'immigration ou une société multiculturelle. Les étrangers étaient abandonnés à eux-mêmes avec un soutien d'intégration très minime de la part du gouvernement, bien que constituant de nos jours une population très particulière dans l'étude des mouvements internationaux. Cependant, l'année 2015 a marqué une étape importante dans l'histoire de l'Allemagne. Elle a connu une augmentation spectaculaire des déplacements massifs de personnes atteignant un niveau record (la plus grande crise migratoire sur le continent depuis la deuxième guerre mondiale).

Cet article rassemble les connaissances nécessaires à une bonne compréhension du sujet en examinant comment faire face à une Allemagne vieillissante et décroissante, aux coûts plus élevés de la solidarité nationale en termes de santé et de retraites, au déficit de main-d'œuvre et de salariés; d'où mettre en exergue l'intégration des immigrants dans le pays d'accueil (Allemagne) comme étant un indice de résolution au problème du vieillissement et au déclin de sa population est l'objectif de cette recherche.

## 1. METHODOLOGIE

Cet article est basé sur une analyse de la littérature et des données d'archives ainsi que sur la méthode inductive afin de donner une réponse au problème posé. Des empiristes tels que F. Bacon, J. Locke et D. Hume stipulent que nous connaissons la réalité à partir de nos sens. Cependant, il est important de savoir comment procéder. L'induction consiste à induire des déclarations ou des vérités générales résultant des expériences rigoureuses et systématiques. La réalité devant être observée pour vérifier l'hypothèse. Cette approche permet d'obtenir des théories ancrées dans la réalité et non dans l'imaginaire.<sup>2</sup>

1 Bosoni, 2013.

2 N'DA, 2015, p. 18.

## 2. DISCUSSION ET RESULTAT

### 2.1. Evolution de la démographie en Allemagne

La démographie allemande a connu un grand changement au cours des dernières décennies. Au début du XXe siècle, l'Allemagne disposait d'un taux de natalité d'environ 4,2 enfants par femme, d'un taux de renouvellement des générations de 2,9 enfants ainsi que d'une espérance de vie inférieure à 45 ans. Le nombre de naissances était supérieur au nombre de décès avec une moyenne d'environ 10,4 pour 1 000 habitants. Cependant, au milieu des années 1950, le taux de natalité a régressé pour atteindre un taux de renouvellement de 2,1 enfants par femme. Cette période a suivi le « baby-boom » jusqu'à la fin des années 1960 avec des niveaux maximums de plus de 2,5 enfants par femme.

En 1970, une autre forme de changement démographique est apparue en Allemagne, introduisant une tendance durable à un taux de natalité total de 1,4 enfant. Ce niveau est resté stable depuis 1991, ce qui signifie que 1971 était la dernière année au cours de laquelle le nombre de naissances a excédé le nombre de décès. Depuis lors, le pays est confronté à un bilan naturel négatif.<sup>3</sup> L'évolution de la structure démographique allemande est également perceptible en raison de la prévalence des groupes d'âge plus âgés. Contrairement à d'autres pays européens, l'Allemagne est confrontée à des pressions démographiques, qui devraient être plus dramatiques au cours des 20 prochaines années. Avec une augmentation prévue de la population vieillissante (personnes âgées de plus de 70 ans) d'environ 18 millions d'ici 2060 et une baisse correspondante de son groupe d'âge actif (20-60 ans) de 50 à 40 millions, elle fait face à un risque de baisse spectaculaire du taux de croissance potentiel en raison d'une baisse attendue de la population totale de 82 millions à 73 durant la même période si l'immigration n'est pas bien gérée.<sup>4</sup>

Le tableau suivant est une récapitulatif personnel de l'évolution de la population allemande de 1950 à 2014.

**Tableau 1.** Evolution de la population allemande de 1950 à 2014.

Année	Naissances	Décès	Différence
1950	1.116.701	748.329	368.372
1960	1.261.614	876.721	384.893
1964	1.357.304	870.319	486.985
1970	1.047.737	975.664	72.073
1980	865.789	952.371	- 86.582
1990	905.675	921.445	- 15.770
2000	766.999	838.797	- 71.798

<sup>3</sup> Swiaczny, 2014.

<sup>4</sup> Meier-Braun / Weber, 2013, p. 16.

Année	Naissances	Décès	Différence
2010	677.947	858.768	- 180.821
2014	714.927	868.356	- 153.429

Source: DESTATIS (Office fédéral de la statistique allemande)

## 2.2. La crise migratoire de 2015: une grande opportunité pour l'Allemagne

À la fin de l'été 2015, l'ancienne chancelière d'Allemagne Angela Merkel pris l'initiative d'ouvrir les frontières allemandes pour permettre aux réfugiés syriens, afghans etc... qui s'étaient déjà enregistrés ailleurs dans l'Union Européenne d'entrer sur le territoire allemand afin de s'y enregistrer ; ignorant temporairement une loi de l'UE signée en 2013 entre les pays membres de l'Union européenne, ainsi que la Suisse, l'Islande, la Norvège et le Liechtenstein, loi qui délègue la responsabilité de l'examen de la demande d'asile d'un réfugié au premier pays qui l'a accueilli (règlement Dublin). Avec la déclaration populaire d'Angela Merkel « Wir haben so vieles geschafft, wir schaffen das », phrase qui pourrait être traduite par « nous avons géré tant de choses ; nous allons gérer » l'Allemagne a révélé la position libérale qu'elle occupe dans le contexte de l'actuelle crise migratoire en Europe, crise qui a atteint un niveau critique entre 2015 et 2016, suscitant ainsi des débats politiques internationaux.<sup>5</sup>

Bien que sa « politique de porte ouverte » fût critiquée par de nombreux politiciens et médias, il est incontestable que l'ancienne chancelière allemande n'a pas regretté son engagement envers les réfugiés ; bien au contraire elle est restée ferme et concentrée sur sa décision. Dans une interview publiée dans le journal « Welt am Sonntag » quatre semaines avant les élections fédérales allemandes du 24 septembre 2017, elle a déclaré : « C'était une situation extraordinaire et j'ai pris ma décision en fonction de ce que je pensais être juste d'un point de vue politique et humanitaire ».<sup>6</sup>

Cependant, l'admission d'un grand nombre de réfugiés en une si courte période a conduit à une division de la société ; d'une part les partisans des réfugiés et d'autre part ceux qui voient les nouveaux arrivants comme une menace pour les ressources et certaines normes telles que l'éducation, la sécurité, les programmes de formation professionnelle ainsi que les opportunités d'emploi. Pour Andrea Nahles l'ancienne ministre allemande du travail et des affaires sociales, tout comme pour l'ancienne chancelière allemande, les nouveaux immigrants sont une solution à la crise du vieillissement de la population allemande, en l'occurrence un soutien pour son système de retraite généreux. Par conséquent, ils devraient avoir la possibilité de devenir autonomes le plus rapidement possible et bénéficier d'un support dans le développement de moyens de subsistance durables, d'intégrité sociale et individuelle.<sup>7</sup>

5 Spindler, 2015.

6 Maïa de la Baume, 2017.

7 Blaschke A. Linder A., 2015, Flüchtlinge in Arbeit und Ausbildung p. 6–11.

Il est évident que l'accueil d'immigrants pourrait compenser le déficit démographique si l'on considère la diminution de la population comme étant l'unique problème. Afin de maintenir la stabilité démographique en Allemagne, les principales analyses de Destatis estiment un solde migratoire annuel moyen situé entre 100.000 et 200.000 personnes après 2020. Au fil des années, il en faudrait certainement plus ; situation qui pourrait également entraîner d'autres problèmes. Dans un pays comme l'Allemagne où le taux de natalité est extrêmement bas, l'accroissement démographique reste l'un des enjeux majeurs pour combler le déficit des naissances qui selon Destatis, devrait exploser passant d'un peu plus de 200.000 en 2013 à plus de 500.000 en 2050.

### 2.3. Analyse de l'impact de l'immigration

Le tableau ci-dessous est un résumé de la prévision de la population allemande jusqu'en 2100 divisée en 5 groupes d'âges différents, qui respectivement selon leur évolution démographique, entraîneront des conséquences particulières sur la société allemande à venir. Pour certaines sous-populations, différentes hypothèses sur l'évolution du taux de natalité, de l'espérance de vie et de la migration ont servi de base.

**Tableau 2.** Population par groupe d'âge de 1998 à 2100 (en millions)

Âge	1998	2030	2050	2080	2100
<i>En dessous de 20</i>	17,7	12,0	9,7	7,8	7,1
20 à 39	24,6	16,3	13,4	10,4	9,2
40 à 59	21,9	19,9	17,1	13,1	11,4
60 et plus	17,9	29,4	27,8	21,7	18,3
80 et plus	3,0	6,6	10,0	7,6	6,3
Population totale	82,1	77,5	68,0	53,1	46,1

Source: Birg 2001, P.108

Pour pallier au problème du vieillissement et du déclin de la population allemande, l'attraction des immigrants en elle seule ne saurait être une solution durable. Il faudrait au préalable identifier et exploiter toutes les pistes visant à atténuer le déficit démographique sur le long terme :

#### 1. Main d'œuvre qualifiée

Le 25 mai 2016, le gouvernement fédéral a annoncé de nouvelles mesures pour soutenir et favoriser l'intégration des demandeurs d'asile dans le pays : la loi dite « Integration Act ». Ce projet de loi sur l'intégration était censé être la première loi fédérale sur l'intégration visant à intégrer le plus grand nombre possible de personnes sur le marché de l'emploi et dans la société. La loi obligeant

8 Cettour-Rose, 2015.

les employeurs à donner la priorité aux demandeurs d'emploi allemands ou européens par rapport aux demandeurs d'asile devrait être suspendue pendant trois ans.<sup>9</sup>

Plusieurs programmes éducatifs ainsi que plusieurs milliers d'emplois d'un euro étaient prévus pour introduire lentement les demandeurs d'asile sur le marché du travail allemand. Les demandeurs d'asile ayant de fortes chances de rester en Allemagne devaient recevoir une aide éducative supplémentaire avec des cours d'intégration accessibles pour eux, avec une augmentation du nombre d'heures pour les cours d'orientation (informations pratiques, culturelles et historiques sur l'Allemagne) de 60 à 100 heures. Ils devaient pouvoir commencer leurs études ou leur formation plus tôt, peut-être déjà trois mois après leur arrivée sur le territoire. En outre, le gouvernement a assuré la sécurité de résidence des personnes en formation et a introduit un nouveau programme: les « Mesures d'intégration pour les réfugiés » (Flüchtlingsintegrationsmaßnahmen, FIM). Ce programme visait à créer environ 100 000 opportunités d'emploi à bas seuil pour les demandeurs d'asile.<sup>10</sup>

Bien que cette politique d'intégration ainsi que d'autres initiatives soient mises en place, le gouvernement allemand devrait également recruter du personnel qualifié en copiant l'exemple du Canada. Une plateforme de recrutement accessible et compréhensive dans le monde entier devrait être établie en expliquant clairement la procédure d'immigration en Allemagne et les secteurs en manque d'une main d'œuvre qualifiée. Ceci pourrait permettre aux immigrants non seulement de cotiser leur pension retraite mais, aussi de contribuer à l'économie du pays car ils vieilliront aussi et ils seront en droit de bénéficier de la solidarité sociale. En outre, un investissement dans l'éducation est nécessaire en ce sens que la génération future qui est sensée supporter les coûts croissants du système devrait être éduquée de façon à pouvoir générer les revenus nécessaires.

## 2. **Accroissement du taux de natalité et intégration des femmes sur le marché de l'emploi**

Le taux de natalité joue un rôle fondamental dans l'analyse démographique. Une population sans renouvellement décroît et finit par disparaître au fil du temps. Comme évoqué précédemment, l'Allemagne est confrontée à un bilan naturel négatif depuis 1971 (dernière année au cours de laquelle le nombre de naissances a excédé le nombre de décès). Au préalable l'on pourrait considérer l'immigration comme un indice de solution au déclin de la population allemande. Cependant cette hypothèse n'a de sens que si le taux de natalité s'accroît de façon exponentielle avec l'intégration des immigrants sur le territoire ; dans le cas contraire, l'attraction des réfugiés ne serait qu'une solution temporaire. Cela étant, le gouvernement en place devrait envisager de nouvelles politiques natalistes avec pour objectif d'accroître le taux de natalité. Pour ce faire, les naissances devraient être encouragées par des mesures d'incitations financières; Les femmes devraient donner davantage naissance aux enfants sans pour autant mettre en péril leurs emplois. Avec des garderies

9 Olterman, p. 2016.

10 Ibid.

d'enfants à proximité de leur lieu de travail et un congé de maternité ou de paternité entièrement payé, certaines familles pourraient être motivées à donner naissance à plus d'enfants. Plusieurs seront ainsi à mesure de travailler à plein temps et pourront totalement être intégrées sur le marché de l'emploi.

Dans son projet portant sur l'avenir démographique de l'Europe, la députée française Françoise Castex proposait lors du sommet de Barcelone en 2002 quelques mesures réalistes visant à encourager la natalité : les Etats-membres de l'UE et la Commission européenne doivent offrir aux jeunes des taux avantageux de crédits lorsqu'ils doivent combiner études et responsabilités familiales. En plus, leurs conditions de logement doivent être adaptées s'ils élèvent un ou plusieurs enfants, et leur accès aux garderies doit être aussi favorisé par rapport à celui des parents salariés. Les mères célibataires doivent bénéficier d'une aide par des investissements publics dans les aides aux jeunes enfants, dans les garderies d'enfants ou la protection sociale.<sup>11</sup>

### 3. Extension de l'âge de la retraite

Augmenter la productivité des actifs tout en repoussant l'âge du départ en retraite de 67 à 70 ans par exemple pourrait être une solution envisageable mais cela conduirait également à une augmentation des soins de santé, voire à des tensions si la population souhaite au contraire davantage de loisirs et de temps libre.

Selon Reiner Klingholz, directeur de l'institut berlinois pour la population et le développement, c'est la première des choses à faire si l'on souhaite remédier de façon durable au vieillissement de la population allemande et à la baisse du taux de natalité. Il estime que l'espérance de vie augmente et, d'une façon ou d'une autre, cette augmentation du nombre d'années de vie en bonne santé se doit d'être financée. Il préconise une indexation du départ à la retraite sur l'allongement d'espérance de vie. De nos jours nous travaillons en moyenne pendant 40 années et sommes à la retraite pendant 20 années. Il faudrait conserver ce rapport de deux à un comme l'ont fait plusieurs pays scandinaves en intégrant cela dans leur loi ; solution idéale qui pourrait empêcher les débats politiques répétitifs concernant l'âge du départ à la retraite.<sup>12</sup>

## CONCLUSION

Bien que l'attraction d'immigrants puisse aider à atténuer les effets du vieillissement ainsi que du déclin de la population allemande en offrant la possibilité de contrer la baisse de la main d'œuvre s'ils sont intégrés de manière appropriée, il est également très important de tenir compte des changements démographiques (changement climatique, guerres, catastrophes naturelles...) pour assurer une trajectoire de croissance stable. De plus, il est peu probable que l'arrivée d'étrangers inverse la diminution de la population allemande. Même si l'Allemagne parvient à attirer autant de travailleurs que possible chaque année, sa population resterait toujours en baisse au cours de la prochaine moitié du siècle. L'afflux massif d'immigrants comporte également le risque de générer des désordres sociaux dans

11 Parlement Européen, 2007.

12 Helen Sibum, 2018.

la population nationale sans oublier que les questions liées à l'immigration sont diversement accueillies par l'opinion publique et suscitent parfois des tensions. Cependant, la première des pistes suggérées ci-dessus reste l'option la plus réaliste en ce sens qu'elle peut inclure les deux autres et pourrait également être valable à long terme.

Outre le taux de natalité, difficile à contrôler, l'immigration reste le principal facteur influent sur la dynamique de la population en Allemagne depuis la Seconde Guerre mondiale. Par conséquent, elle sera également utilisée dans le futur comme une variable décisive pour déterminer le vieillissement démographique ; cependant elle ne sera pas une solution à long terme au déclin démographique ainsi qu'aux déficits attendus sur le marché de l'emploi et dans la sécurité sociale. Il faut également noter que les effets du déficit démographique peuvent entraîner des conséquences dévastatrices sur la population allemande s'ils ne sont pas contrôlés à temps ; raison pour laquelle le gouvernement devrait déjà prendre des précautions pour les années à venir en combinant toutes ces suggestions. Le problème du vieillissement et de la baisse du taux de natalité ne sera pas à l'avenir limité uniquement à l'Allemagne mais risquera de se répandre dans toute l'Europe. Cela permettra d'augmenter la pression migratoire future des immigrants illégaux vers l'Europe d'une part et d'autre part il naîtra une concurrence croissante en Europe pour les travailleurs migrants les plus qualifiés. De ce fait, une révision et un contrôle de loi d'immigration en Allemagne se doivent d'être faits.

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**Wojciech Słomski**

University of Economics and Human Sciences in Warsaw  
slomski@autograf.pl

## Abortion – ethical thoughts

### Summary

Among the problems of bioethics, abortion seems to arouse relatively the most disputes and evoke the most emotions. The ethical assessment of abortion also seems to depend on the purpose for which it is performed. Abortion applies not only to the mother and child, but also to the doctor, and due to statutory regulations, also to the entire health service. The main problem in this case is the doctor's right to refuse to perform the procedure for philosophical reasons.

**Key words:** philosophy, ethics, bio-ethics, choices, decisions, abortion.

Looking at abortion from a historical perspective, it is necessary to clearly distinguish between the practical attitude towards abortion and the discussions about its ethical and legal permissibility. It often happens that the ethical assessment of abortion has a negligible impact on the practical number of procedures performed, even with the existence of a legal prohibition on abortion. For example, in Poland, the law on abortion is much more restrictive than in other European countries, and according to the press reports, the number of cases of actually performed abortions is not at all smaller. This fact can be explained not only by the demoralization of a certain part of the medical community, but above all by the social consent to abortion.

In ancient Greece and Rome, abortion was widely accepted. For Plato (State 461 c) it was an effective way of regulating the number of births, while Aristotle allowed abortion until the first fetal movements. Also, the Talmud did not recognize the fetus as a human being [Reisenberg, 1998: 112]. However, abortion has already been declared morally wrong by the Hippocratic Code, which states: «I will never give a woman a miscarriage.» Likewise, I will not give any woman a vaginal abortion drug.” Although there may be some inaccuracies or even contradictions in the text of the Code, this is due to the fact that fragments of the text come from different periods and from different authors. [Biesaga, 2006]). This means that a doctor may

not be able to participate in the abortion procedure. It should be noted, however, that the Code does not specify whether it is meant to prohibit abortion at all stages of fetal development, including the earliest stage (assuming that contemporary medicine was able to perform an abortion at the earliest stage of pregnancy). This issue seems fundamental from the point of view of the reasons why abortion is prohibited in the Hippocratic Code. This reason may be an abstractly understood imperative to respect life or simply the conclusion that the developing fetus, especially later in life, is already a suffering and independent human being.

It is also worth noting that in some of the later ethical codes based on the Hippocratic Code, a certain ethical regression can be observed, consisting in the relaxation of the rigor of the abortion ban. For example, in the so-called The Geneva Declaration (The Declaration was adopted in 1948 by the World Medical Association (WMA) as a result of the abuses committed by doctors during World War II. Its purpose was to redefine the principles of medical ethics and relieve them of any reference to politics and economics. Conf. [Muszala, 2007]), does not prohibit abortion directly, it only talks about the need to respect human life from the moment of conception (“I will keep the highest respect for human life from the moment of its conception” [Dunn, 1997: 45]). One can risk a thesis that the lack of precision in this type of formulation results from the development of medicine, which is now able to recognize the state of pregnancy at a very early stage and perform an abortion at an early stage.

In turn, for medicine based on the principles of Christian ethics, the issue of abortion was and is simple. Human life begins at conception and only God has the right to interrupt this life. From this point of view, deliberate termination of pregnancy is tantamount to homicide. Paradoxically, until the mid-nineteenth century in most European countries, abortion was not considered a crime, although there were voices calling for it to be considered a criminal act. Until then, the discussion on the admissibility of abortion focused mainly on the medical aspects of the procedure and its effects on the life and health of a woman. [Warren, 2002: 347]. It is worth noting, however, that medieval theologians forbade abortion only from the moment the fetus was formed, but allowed it in the early stages of pregnancy. It was only in the 16th century that Pope Sixtus V in the Bull *Effraenatum* included abortion, along with contraception, among the crimes threatened with excommunication [Connery, 1977].

It is difficult to find a commonly accepted definition of abortion. Definitions formulated in the literature generally contain evaluative concepts on the basis of which it is possible to decide whether an abortion is morally wrong or not. For example, opponents of abortion define it as “killing an unborn (relatively innocent) human being.” Also, the commonly used term “termination of pregnancy” seems to be evaluative, as it suggests that we are dealing with a certain state of a woman that can be interrupted at any moment, not with a developing human being.

Theoretically, such a decision would be possible on the basis of the definition of a human being, but there is no such commonly accepted definition. Paradoxically, in the current discussion on abortion, relatively little space is devoted to the issue of the criterion of humanity. Both sides either assume that knowledge of who a human being is and how to distinguish it from other living creatures is known, or that any

decision sufficiently clear to become the basis of ethical reasoning is impossible to attain. According to Z. Szarawarski, such a criterion is unnecessary, because even if it were found, it would be purely descriptive, i.e. it would allow for the formulation of a definition of a human being, but it would not say anything about how to deal with a human being. The author proposes replacing the question about the criterion of humanity with the question of «how should one proceed with this conceived being (being, organism, etc.), about which it is not known whether he is or is not a human» [Szarawarski, 1978: 425].

The subject of the dispute, however, is the criterion of the beginning of the existence of the human individual. Two types of positions can be distinguished here. The first one is based on the assumption that a human exists as a fully-fledged human being from the moment of conception, the second – that the fertilized egg is not yet a human, but becomes a human during development due to the emergence of specific features. There are different justifications for both the first and the second view. In the first case, one can refer to the very fact that a conceived being belongs to the human species, to human dignity or to the dogmas of a particular religion. The range of differences in the second case is much greater, because the range of features that can be considered significant is also greater. In general, the time of fertilization, the implantation of the embryo in the uterine wall, the formation of the central nervous system, and sometimes the time of delivery are taken as the cut-off point.

According to Singer not all human beings are defined as persons, which excludes not only all stages of an unborn child, but even newborn babies and people with certain disabilities from basic human rights. Killing a person is morally wrong, which cannot be declared about killing a human [Singer, 2011]. Nevertheless, the main ethical counter-argument in the case of the abortion debate is potentiality as the value of the future person compared to the current state [Ambrozy, 2022].

It is worth devoting a little more attention to the question about the beginning of an individual's human life, as it is an example of the closeness of biotic issues and metaphysics. There is no doubt for anyone that neither male nor female gametes before fertilization are human beings and have no rights. The point at which these cells acquire rights, simply becoming human, is the subject of dispute. According to Catholic ethics, this moment is the moment of fertilization – in order to recognize the humanity of the fertilized egg, its further divisions are not even necessary. For the Catholic culture, the prohibition of abortion results from the fundamental right to life of every human being, including the unborn. Catholic ethicists therefore reject the objection that their attitude to abortion is religiously based, assuming that the right to life extends to all people, regardless of religion. The weakness of this approach is the fact that it does not take into account empirical data on the biology of the functioning of the female organism, as it turns out that most of the “human beings” resulting from fertilization die naturally, and the woman does not even realize that fertilization has taken place. (It is worth noting that the moment of fertilization is not the same as the moment of implantation, i.e. implantation of the fertilized egg in the uterus. This means that the use of the so-called early pregnancy contraceptives is, from this point of view, tantamount to abortion).

There is also a view according to which it is neither possible nor necessary to define the beginning of the existence of a human being, and the developing embryo gradually acquires the characteristics that belong to a human being. This view is important for the ethical discussion, because it shows that although abortion is always a morally wrong act (even an embryo in the first days of life is to a small extent a human being), it sometimes becomes a morally right act, namely when it is prevented from doing so-called greater evil. Thus, termination of pregnancy in the first weeks of fetal life is permissible in virtually all cases (as unwanted pregnancy is a greater evil than abortion), and as the pregnancy progresses, the number of cases justifying abortion decreases. It is worth noting that this position does not assume a uniform pace of “growth” of the value of human life, so it may appear in various variants. It seems that Polish legislation is based on the assumption that a developing embryo becomes a human being in the first few weeks of life and that its “humanity” value is high from the moment of fertilization. Otherwise, the law would either allow abortion in the event of a clear threat to the mother’s life (conflict of two equivalent values), or would allow the so-called abortion on request (assuming a low life value of the fetus).

Determining the moment from which the existence of a significant human begins is important not only from the point of view of abortion. By treating the developing fetus as a human being, we give it the same rights that are enjoyed by every human being, that is the right to healthcare. This is important due to the possibility of a conflict between the value of the mother’s life and the value of the child’s life in a situation where maintaining pregnancy is associated with a serious risk to the health or life of the mother.

Ethics who advocate the moral acceptability of abortion refer to women’s rights. They believe that a woman has the right to decide about her own body, and that the developing fetus is just a component of this body. It is noted that pregnancy is a great burden for the body and psyche of the woman, therefore only the woman should have the right to decide whether she wants to be pregnant or not. According to this point of view, also having a child entails – for a woman who did not want to give birth – a number of unpleasant consequences. A woman can either raise a child, which always has a more or less negative impact on her professional career, or give her child up for adoption, which in turn can make her feel sorry and guilty. All these factors mean that many ethicists believe that it is a lesser evil for a woman to have an abortion than to go through pregnancy and give birth to an unwanted child.

The ethical evaluation of abortion also seems to depend on the purpose for which it is performed. Depending on the purpose, abortions can be divided into voluntary and involuntary. Of the first type include, first of all, cases of abortion with the comfort of a woman’s life (sometimes also of two partners, a marriage or the whole family). Sometimes you can come across the opinion that abortion can be a method of controlling the size of a given population, which would imply that the cause of a large number of abortions in China is overpopulation (there are even press reports about forced abortion in China, which, however, are difficult to verify). Abortion is treated here as a type of contraception that protects a woman against unwanted pregnancy. We deal with involuntary abortion when the mother’s health or life is at risk due to pregnancy. You can also include abortion in the event of a pregnancy resulting from rape, because then the mental balance of a woman may be at risk.

However, anti-abortion ethicists question these goals. According to their point of view, these goals are those of the mother, while the developing human being has his own independent goals which we should respect on an equal footing with the mother's rights. For example, rape is not a sufficient ground for an abortion because the mother is harmed and the child is not to blame for her, so there is no reason why we should be allowed to kill it. While abortion may seem like a simple way to remove the consequences of an evil one has already committed, it is in fact adding another reprehensible act to an already existing evil.

Objection resulting from the same reasons as the rejection of the moral permissibility of abortion is also raised by all medical procedures, as a result of which a doctor may be forced to perform an abortion. Such a procedure is, for example, artificial insemination, as a result of which the doctor causes multiple pregnancies, sometimes with up to seven fetuses. Leaving all of them alive would threaten their further development, so in such situations, several fetuses are removed in order to create better living conditions. Finally, abortion can be a form of euthanasia. It happens when the fetus has a serious genetic defect that can be detected at an early stage of its development.

Ethics opposing the abortion ban also criticize the methods of preventing unwanted pregnancy recommended by adversaries. In their opinion, it is unrealistic to demand that people refrain from sexual contact, the more so as Catholic ethicists also oppose the use of contraception, wishing to subordinate sex life solely to procreation. The popular opinion is also often cited, according to which a proper sex life is essential for mental health. The «defenders of life» are also accused of being inconsistent in that they try to forbid the killing of human embryos, while at the same time advocating the death penalty, allowing the possibility of waging war and agreeing to voluntary death for faith. In public debates, you can often find the claim that the «anti-abortion lobby» is wasting its strength on fighting for the rights of unborn children and at the same time doing nothing for the benefit of already born children, often deprived of any care.

Abortion concerns not only the mother and the child, but also the doctor, and due to statutory regulations, also the entire health service. The main problem in this case is the doctor's right to refuse to perform the procedure for philosophical reasons. Although Polish law does not oblige a doctor to perform an abortion, it provides, however, that in a situation that meets the condition provided for in the Act, the doctor is obliged to refer the patient to a hospital that performs the abortion. However, for many doctors, referring a woman directly to an abortion procedure, or at least referring a woman to a specialist who gives such a referral, is tantamount to accepting moral responsibility for the procedure itself. From the point of view of the opponents of abortion, there is also a fear that women asking for an abortion to the doctor are not fully aware of the moral evil associated with it, which may be caused by depression, young age and lack of life experience, as well as the influence of the mass media. In such a situation, the doctor seems to bear greater moral responsibility for possible termination of pregnancy than the mother.

The method of statutory regulation of the issue of abortion is therefore of great importance also for determining the relationship between a doctor and society. As M. Schooyans noted, in societies governed by Marxist ideology, «the role of the doctor

was to heal the social body,” and abortion was treated as a method of solving a social problem (giving birth to unwanted children) [Schooyans, 1991: 122]. On the other hand, in societies where one of the monotheistic religions plays a significant role, the problem of abortion is treated in an individual dimension, i.e. as an act concerning a specific human being or beings in relation to God. While in the countries based on Marxism the question of the beginning of human life was not taken into account at all, and the only criterion determining humanity was awareness and the ability to consciously feel suffering.

Elimination method attempting to find problematic points in the two basic opinions as an attempt for possible compatibility between the mentioned arguments [Polačko, Dancák, 2020] of the abortion debate fails. Among the problems of bioethics, abortion seems to arouse relatively the most disputes and evoke the most emotions. There are several reasons for this state of affairs. It concerns human beings not yet fully formed, and therefore helpless and unable to express their own opinion. The question of whether we are dealing with a human being at all refers directly to religious and philosophical beliefs. Ethical discussion has significant implications for legal decisions, therefore both parties to the dispute accuse themselves of calling for the spread of moral evil. However, it is difficult to answer the question why it was the discussion about abortion, and not about euthanasia or the death penalty, that until recently caused such heated and fierce disputes in Poland. Some authors put forward the thesis that this state of affairs is not unrelated to the importance attached by Catholic ethics to sexual life, with which the problem of abortion seems to be closely related. However, this thesis is undermined by the fact that, as I mentioned, for many centuries Catholic ethics has tolerated abortion in early pregnancy.

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**Piotr Szczurowski**

Collegium Humanum-Warsaw Management University  
Warsaw, Poland  
piotr.szczurowski@humanum.pl

## Impact of the Covid-19 pandemic on share prices of the world's largest corporations

### Summary

This text contains an analysis of the impact of the Covid-19 pandemic on the share prices of the largest companies included in the S&P 500 index, which is the next stage in the study of the impact of the pandemic crisis on the economic situation of the world's largest corporations and their socio-political position. The analysis carried out, which covered a period of almost 4 years (46 months), shows that the Covid-19 pandemic did not harm the share prices of the largest corporations, on the contrary, during the pandemic, the most of them grew more than in the pre-pandemic period.

**Key words:** Covid-19 pandemic, stock exchange, largest corporations, share prices, S&P 500, NYSE, NASDAQ.

### INTRODUCTION

This article is a continuation of research efforts started in the article on the impact of the Covid-19 pandemic on the main indices of the world's largest stock exchanges (Szczurowski 2021). It is therefore another attempt to confirm the thesis that events such as wars, pandemics or great natural disasters, commonly perceived as catastrophes, do not have to be unfavorable to large enterprises, on the contrary, may be an excellent opportunity for them to improve their financial results and to further strengthen its dominant position. It should be remembered that the financial situation and market position of large corporations should be assessed in relative, comparative categories, i.e. against the background of the situation of smaller companies, with which they directly or indirectly compete, and these are

small enterprises, for the reasons already mentioned (Szczurowski 2021, p. 132), are most vulnerable to the negative effects of such phenomena as pandemics. Moreover, the issue in question should be considered not only in economic terms, but also in socio-political terms, which has also already been mentioned (Szczurowski 2021, p. 131).

Continuing the previous research, this time I analyzed the share prices of the twenty largest (in terms of capitalization) global companies included in the S&P 500 index, and therefore listed on the two largest stock exchanges in the world (NYSE and NASDAQ), of course during the Covid-19 pandemic. This analysis is another small research step on the way of a comprehensive study of its impact on the global economy, including the multidimensional position of the largest corporations, and although some research attempts on the impact of the pandemic on financial markets have already taken place (e.g. Bahrini, Filfilan 2020, Khatatbeh, Bani Hani, Abu-Alfoul 2020, WEI 2021, Buszko, Orzeszko, Stawarz 2021, Kusumahadi, Permana 2021, Singh, Shaik 2021, Szczurowski 2021, Aldasoro, Hardy, Tarashev 2021, Rungcharoenkitkul 2021, Mikita 2021), but we are still dealing with area leaving a huge field for multidimensional analyzes.

## 1. METHODS

As mentioned above, I examined the share prices of the twenty largest companies in the S&P 500 index in terms of capitalization (as of April 30, 2022), i.e. the largest companies listed on the two largest exchanges in the world in terms of capitalization, i.e. the NYSE and NASDAQ (Statista 2021). I analyzed the changes in these prices during the Covid-19 pandemic (23 months) and comparatively in the corresponding period before the pandemic. As before (Szczurowski 2021, p. 133), I assumed February 2020 as the beginning of the pandemic, when the virus spread throughout China and has already begun to reach other countries, quickly spreading almost all over the world. In February and March, there were also crashes on the world stock exchanges precisely in connection with the information about the Covid-19 pandemic. In March, far-reaching restrictions on running a business were already in force in many countries. Thus, I assumed January 2020 as the last month without a pandemic. For the last month of a pandemic, I assumed December 2021, but not because in January of the following year the pandemic ended, but because it was in January 2022 that another event that shook the world economy appeared very clearly on the horizon, namely Russia's invasion of Ukraine. This invasion took place in February, but already in January it was clearly visible that it would happen, although it must be said that the symptoms that preceded it also appeared earlier. In any event, investors feared an escalation of the conflict and its consequences even before the invasion on February 24, 2022. Therefore, I shortened the time span of the analysis a bit in order to avoid overlapping the effect of the war in Ukraine. Were it not for this war, the end of the Covid-19 pandemic would be March or April 2022 (a wide range of vaccinations, lifting all restrictions by subsequent governments and recognizing this disease as one of many), so the time delay is small. It should also be clarified that in all cases I took into account the session closing prices.

Of course, the image that will emerge from my research will be general and simplified, but it will still allow quite important conclusions to be drawn. No doubt, the level of

share prices of the largest economic tycoons is influenced by many macroeconomic factors such as interest rates, money supply, inflation and inflation expectations, industrial production, exchange rates, etc. (e.g. Wiśniewski 2014), but also sudden and unexpected events, the so-called black swans, which can include the Covid-19 pandemic, as well as the war in Ukraine, but the term “unexpected” should not be taken in absolute terms. Moreover, there are evident links between the black swan events and the above-mentioned factors affecting the level of share prices of listed companies. In the event of the Covid-19 pandemic, particular attention should be paid to the printing of money and other activities that increase its supply. It is also worth noting that among the twenty largest corporations in the world selected for the study, there are enterprises from various industries, with technology companies at the forefront.

## 2. RESULTS

The data in Table 1 shows that during the Covid-19 pandemic, the shares of all analyzed companies recorded increases, while in the case of technology companies (items 1, 2, 4, 5, 6, and 10) these increases were very large and amounted to more than 100%. In the case of TESLA and NVIDIA companies, we can even speak of enormous increases. Also, the other two companies on the NASDAQ stock exchange (items 3 and 9) recorded significant increases (66-67%), which all together shows that it is the world's largest technology giants that gained the most in the pandemic period. Moreover, the companies UNITEDHEALTH GROUP and HOME DEPOT recorded very good results during the pandemic (share prices increased by 90%). The remaining top 20 companies recorded increases in share prices by 8% to 42%.

**Table 1.** Share prices of selected corporations during the 23-month period of the Covid-19 pandemic

item	company	4/30/2022 capitalization (M \$)	stock exchange	1/31/2020 share price (\$)	12/31/2021 share price (\$)	Change
1.	APPLE	2576037.00	NASDAQ	76.1520	177.3400	+133%
2.	MICROSOFT	2088647.00	NASDAQ	166.7000	335.6300	+101%
3.	AMAZON.COM	1260587.00	NASDAQ	2008.7200	3334.3400	+66%
4.	TESLA	874469.40	NASDAQ	130.1100	1056.7800	+712%
5.	ALPHABET (GOOG.US)	730589.10	NASDAQ	1434.2300	2893.5900	+102%
6.	ALPHABET (GOOGL. US)	686505.60	NASDAQ	1432.7800	2897.0400	+102%
7.	UNITEDHEALTH GROUP	481962.10	NYSE	263.5500	500.6600	+90%
8.	JOHNSON & JOHNSON	481260.40	NYSE	140.4600	169.9800	+21%
9.	META PLATFORMS	474368.20	NASDAQ	201.9100	336.3500	+67%
10.	NVIDIA	463810.80	NASDAQ	58.9490	294.0600	+399%

item	company	4/30/2022 capitalization (M \$)	stock exchange	1/31/2020 share price (\$)	12/31/2021 share price (\$)	Change
11.	WALMART	427844.40	NYSE	110.420	144.130	+31%
12.	PROCTER & GAMBLE	389098.30	NYSE	118.03	161.79	+37%
13.	EXXON MOBIL	364912.90	NYSE	53.6000	60.5190	+13%
14.	JPMORGAN CHASE	357485.70	NYSE	123.7200	156.2500	+26%
15.	MASTERCARD	354159.70	NYSE	312.2800	358.3500	+15%
16.	VISA	354034.10	NYSE	196.2100	216.3600	+10%
17.	HOME DEPOT	316887.90	NYSE	216.970	412.520	+90%
18.	CHEVRON	308709.20	NYSE	95.3520	116.1300	+22%
19.	BANK OF AMERICA	291020.20	NYSE	31.2160	44.2740	+42%
20.	COCA-COLA	283526.40	NYSE	54.325	58.760	+8%

**Source:** own study based on stooq.pl, access: 4/30/2022.

In the corresponding period before the Covid-19 pandemic, the surveyed companies did not perform as well as during the pandemic, as shown in Table 2. In the pre-pandemic period, the largest technology companies (items 1, 2 and 4), PROCTER & GAMBLE, MASTERCARD and VISA recorded the greatest increases (from 64 to 90%). Two companies (CHEVRON, BANK OF AMERICA) recorded very slight increases (2% and 7%), and in the case of two others (NVIDIA, EXXON MOBIL) the results even deteriorated. The remaining top 20 companies grew from 13% to 44% in the pre-pandemic period. Comparing the data from both tables, it is not difficult to notice that as many as 15 companies, including all technological ones (items 1–10, 13, 14, 17-19), achieved better results in the pandemic period than in the pre-pandemic period, and in some cases the differences are very big. Only the shares of 5 surveyed companies (items 11, 12, 15, 16 and 20) gained more in the pre-pandemic period than in the pandemic period. Overall, therefore, during the Covid-19 pandemic, the shares of the 20 largest companies in the S&P 500 index increased by an average of 104%, and in the pre-pandemic period, by an average of 37%. So you can see that the increase in the pandemic period is almost three times that of the pre-pandemic period. This is a very big difference, even if you take into account inflation.

**Table 2.** Share prices of selected corporations in the period of 23 months before the Covid-19 pandemic

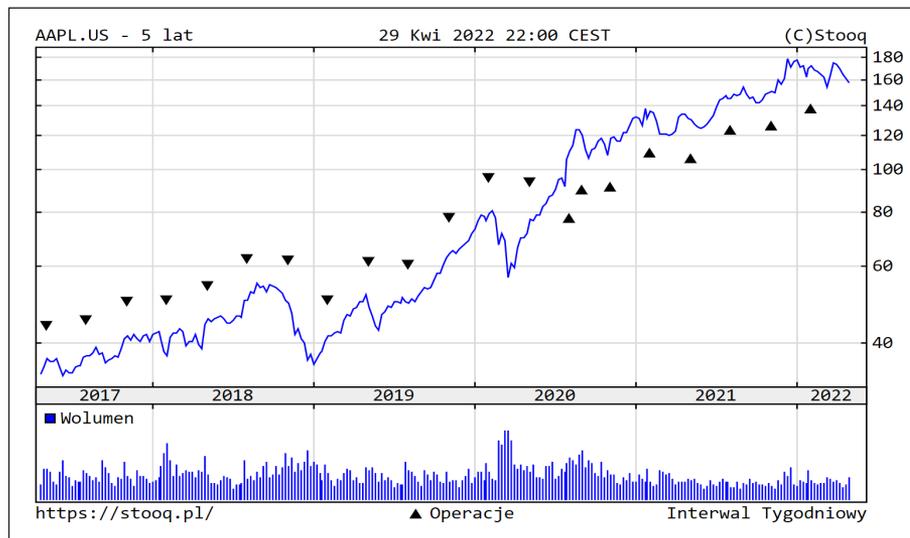
item	company	4/30/2022 capitalization (M \$)	stock exchange	2/28/2018 share price (\$)	1/31/2020 share price (\$)	change
1.	APPLE	2576037.00	NASDAQ	42.7140	76.1520	+78%
2.	MICROSOFT	2088647.00	NASDAQ	89.3630	166.7000	+87%
3.	AMAZON.COM	1260587.00	NASDAQ	1512.4500	2008.7200	+33%
4.	TESLA	874469.40	NASDAQ	68.6120	130.1100	+90%

item	company	4/30/2022 capitalization (M \$)	stock exchange	2/28/2018 share price (\$)	1/31/2020 share price (\$)	change
5.	ALPHABET (GOOG.US)	730589.10	NASDAQ	1104.7300	1434.2300	+30%
6.	ALPHABET (GOOGL. US)	686505.60	NASDAQ	1103.9200	1432.7800	+30%
7.	UNITEDHEALTH GROUP	481962.10	NYSE	212.2600	263.5500	+24%
8.	JOHNSON & JOHNSON	481260.40	NYSE	116.7800	140.4600	+20%
9.	META PLATFORMS	474368.20	NASDAQ	178.3200	201.9100	+13%
10.	NVIDIA	463810.80	NASDAQ	59.9730	58.9490	-2%
11.	WALMART	427844.40	NYSE	83.115	110.420	+33%
12.	PROCTER & GAMBLE	389098.30	NYSE	69.97	118.03	+69%
13.	EXXON MOBIL	364912.90	NYSE	60.4950	53.6000	-11%
14.	JPMORGAN CHASE	357485.70	NYSE	102.2400	123.7200	+21%
15.	MASTERCARD	354159.70	NYSE	171.8800	312.2800	+82%
16.	VISA	354034.10	NYSE	119.8900	196.2100	+64%
17.	HOME DEPOT	316887.90	NYSE	165.040	216.970	+31%
18.	CHEVRON	308709.20	NYSE	93.0670	95.3520	+2%
19.	BANK OF AMERICA	291020.20	NYSE	29.3060	31.2160	+7%
20.	COCA-COLA	283526.40	NYSE	37.670	54.325	+44%

**Source:** own study based on stooq.pl, access: 4/30/2022.

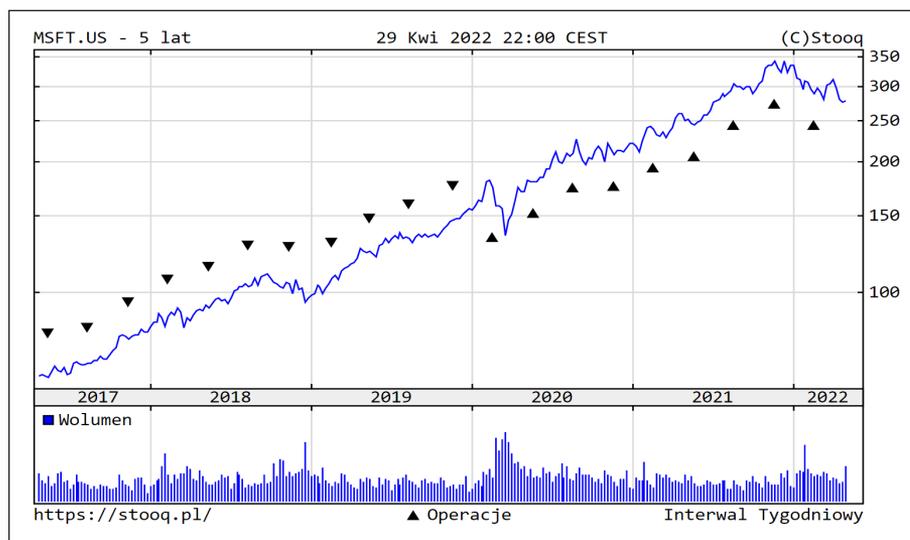
The picture resulting from the data contained in the above tables is simplified, to some extent dependent on the adopted quite rigid starting and ending dates of the analyzed periods. Nevertheless, it is a credible picture, allowing for drawing conclusions, because postponing these dates by a few days one way or the other does not change the results significantly. The only significant change occurs at the end of February and the beginning of March 2020, when there were drastic drops on the global stock exchanges, which was already mentioned above. Of course, these declines also affected the companies I analyzed. Previously (Szczurowski 2021, p. 137) I wrote that it was a somewhat hysterical reaction resulting from fear of the unknown (short-term black swan effect). For investors who were able to keep a cool head, it was undoubtedly a great opportunity to increase their portfolios. In this context, it would be worth examining who exactly made large purchases of shares at that time, which would allow further conclusions to be drawn. Unfortunately, I do not have such data. After these large slumps, the stock exchanges and the vast majority of the largest companies from the S&P 500 index began to rebound quickly in a very dynamic manner. Along the way, of course, there were smaller bumps related to subsequent waves of the pandemic (for example, in December 2020), but in the long term, as you can see from my analysis, they did not matter much, being only convenient

investment opportunities, as any correction. All of the above can be seen very well in the charts below, which present the share prices of the analyzed companies in a 5-year perspective (weekly interval). In the vast majority of cases, you can easily notice a large crash at the turn of February and March 2020, followed by a dynamic growth cut by short-term corrections. Moreover, in many cases (mainly technology companies) the pandemic growth dynamics was much higher than the pre-pandemic one. The exceptions are EXXON MOBIL, CHEVRON and JPMORGAN CHASE, where the upward trend appeared with some delay.



**Chart 1.** APPLE share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



**Chart 2.** MICROSOFT share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.

It is also worth noting that the charts below also show the impact of the war in Ukraine on the share prices of the largest companies in the world – the first 4 months of 2022 marked a significant slowdown in growth, and in many cases significant declines. However, this issue requires a separate long-term analysis, for which, for obvious reasons, we still have to wait.



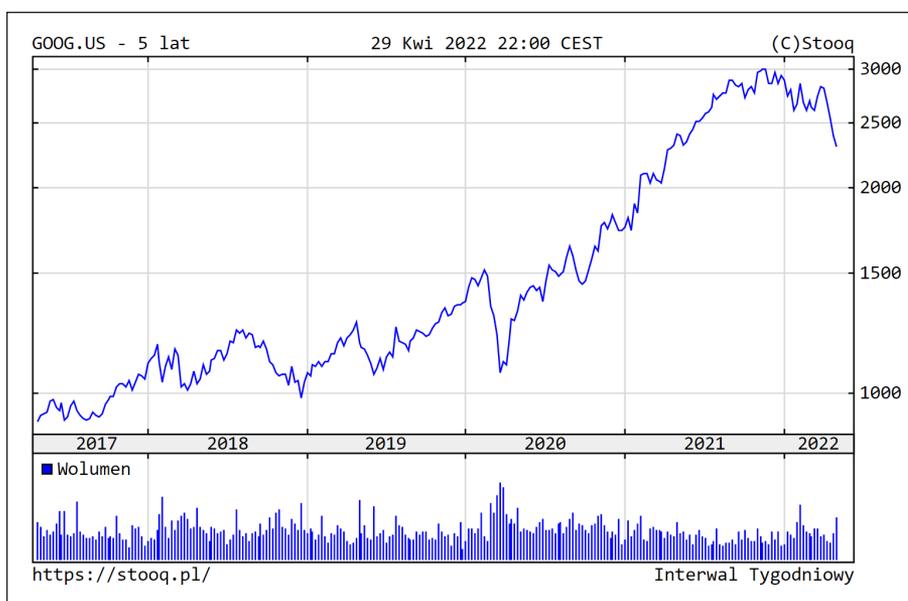
**Chart 3.** AMAZON.COM share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



**Chart 4.** TESLA share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



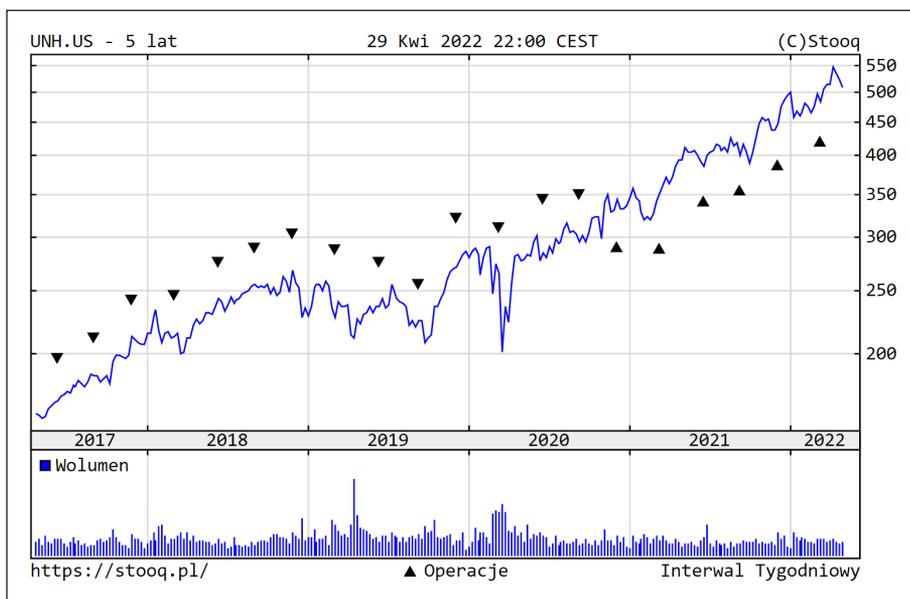
**Chart 5.** ALPHABET (GOOG.US) share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



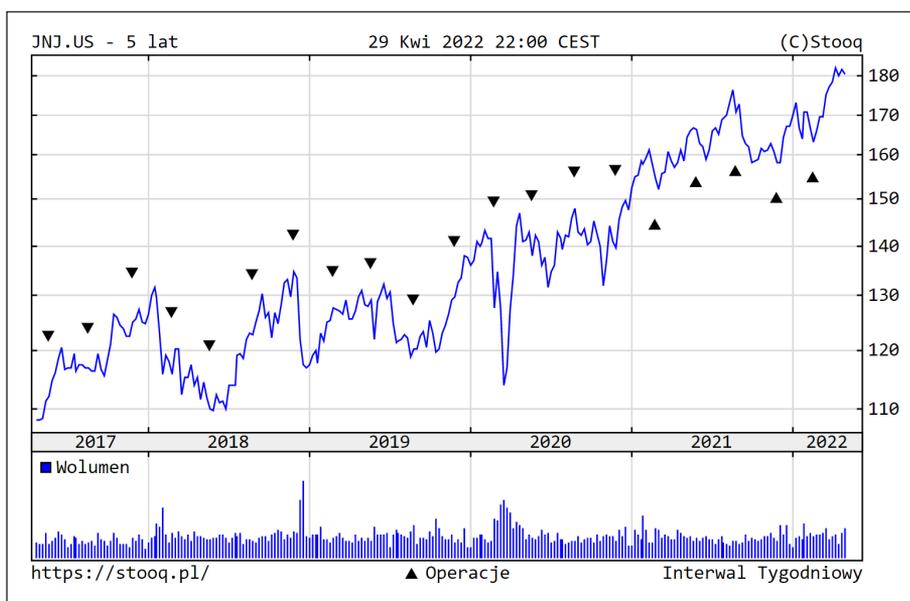
**Chart 6.** ALPHABET (GOOGL.US) share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



**Chart 7.** UNITEDHEALTH GROUP share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



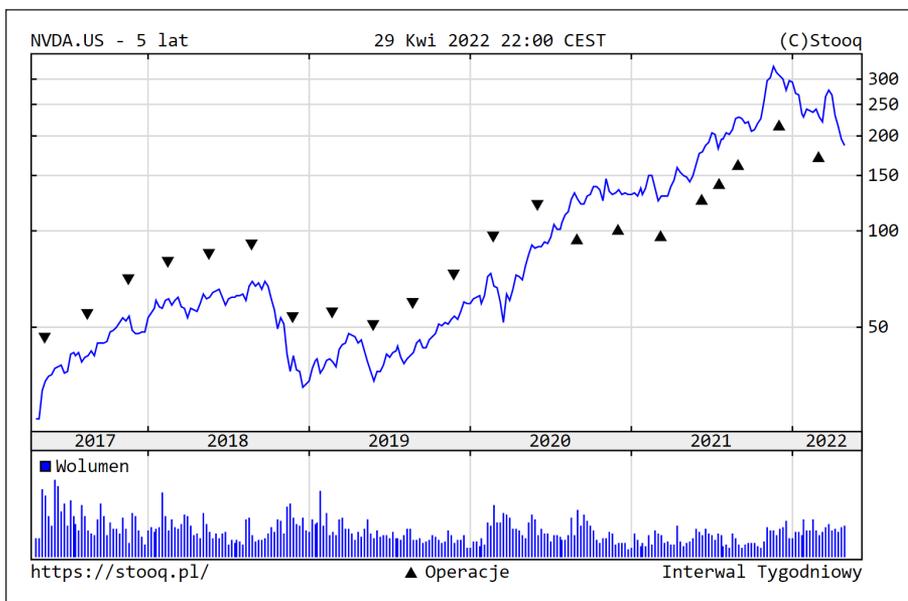
**Chart 8.** JOHNSON & JOHNSON share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



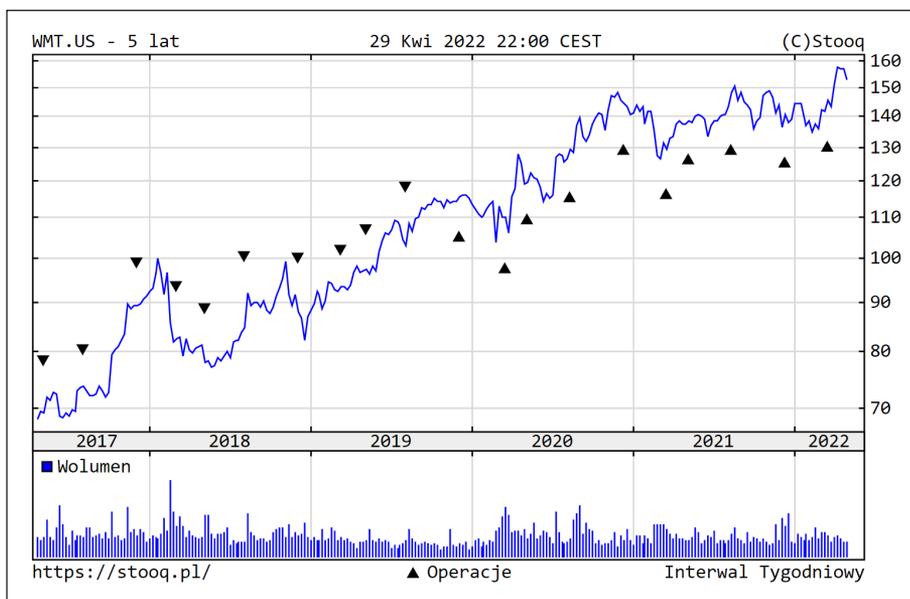
**Chart 9.** META PLATFORMS share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



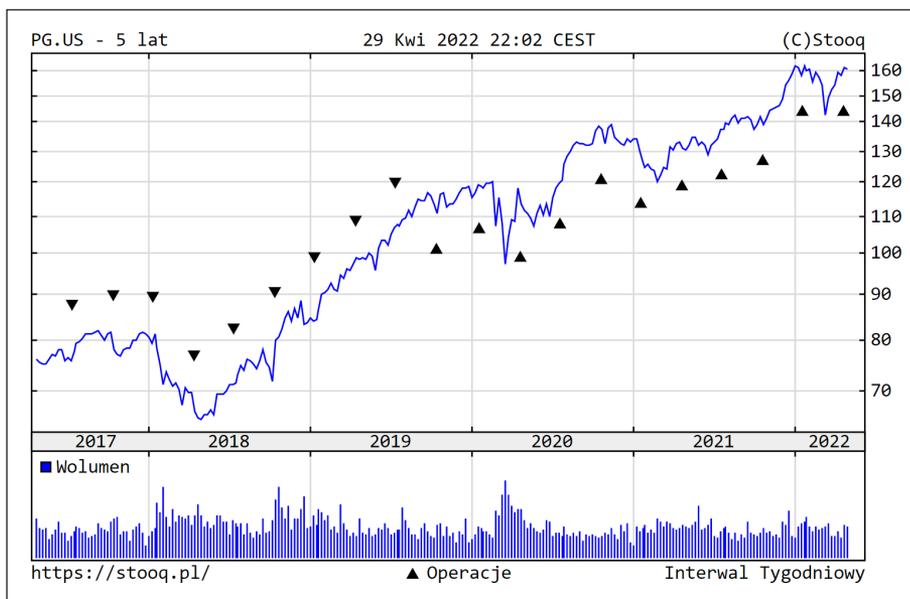
**Chart 10.** NVIDIA share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



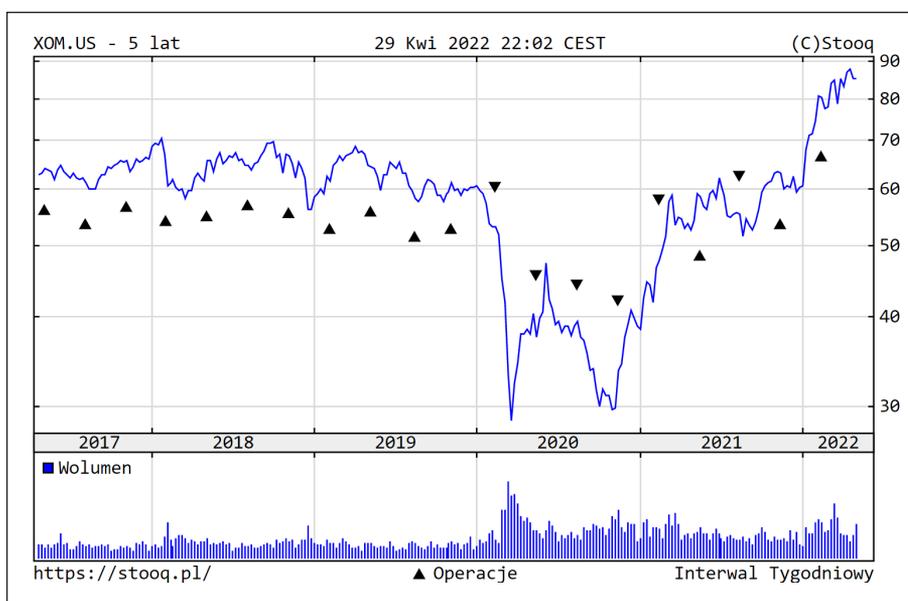
**Chart 11.** WALMART share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



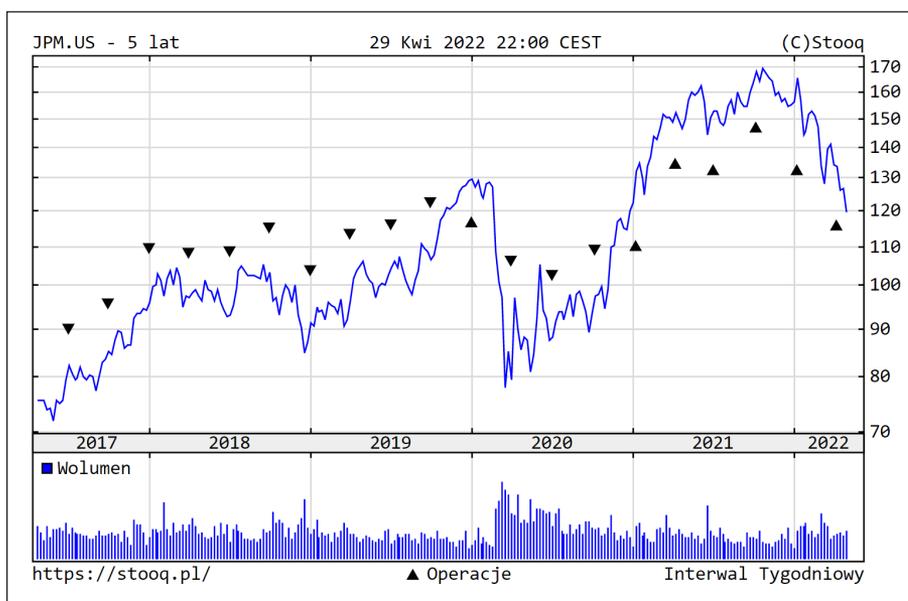
**Chart 12.** PROCTER & GAMBLE share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



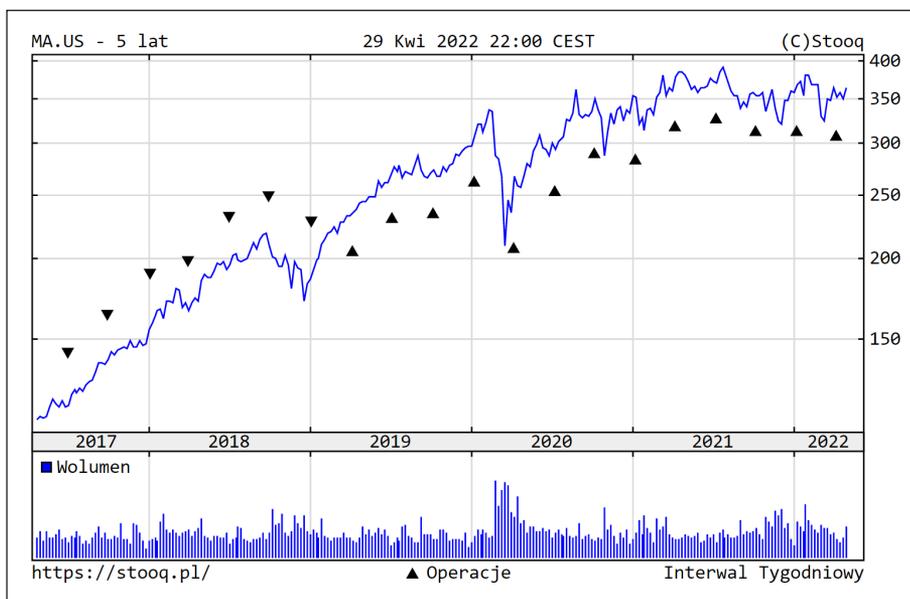
**Chart 13.** EXXON MOBIL share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



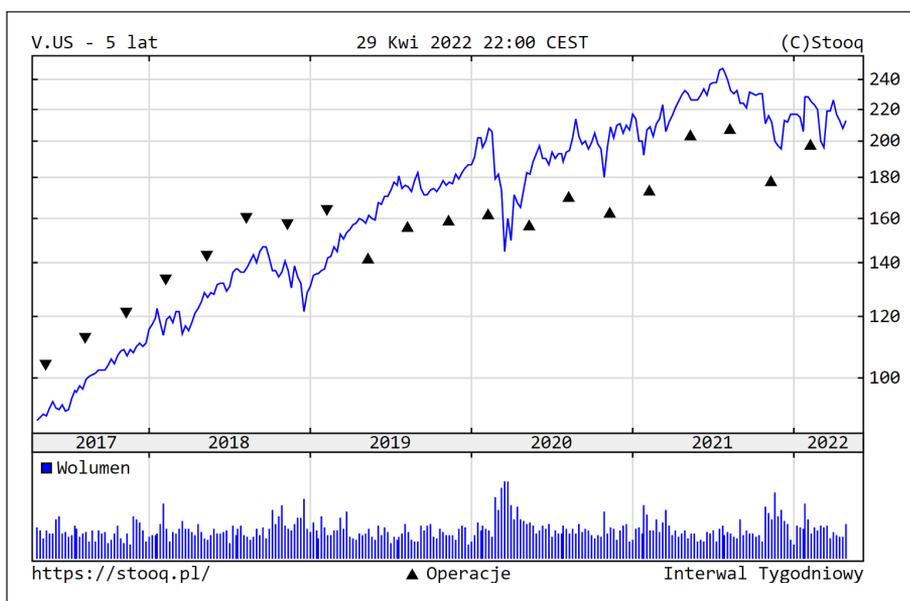
**Chart 14.** JPMORGAN CHASE share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



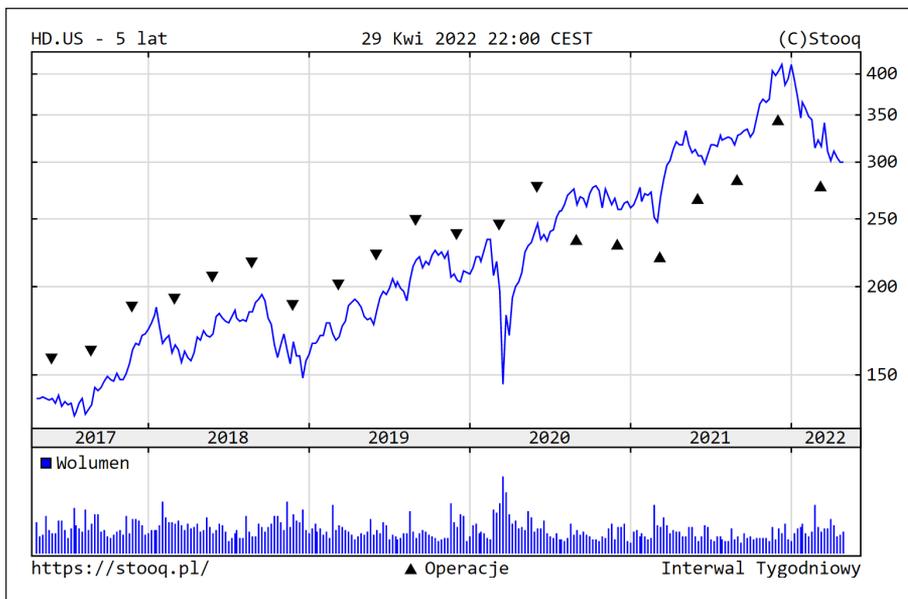
**Chart 15.** MASTERCARD share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



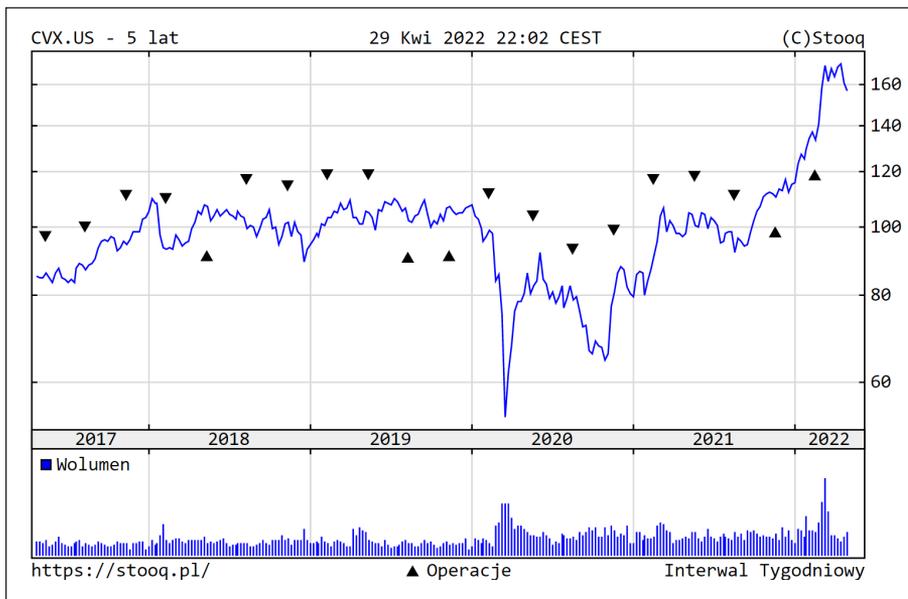
**Chart 16.** VISA share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



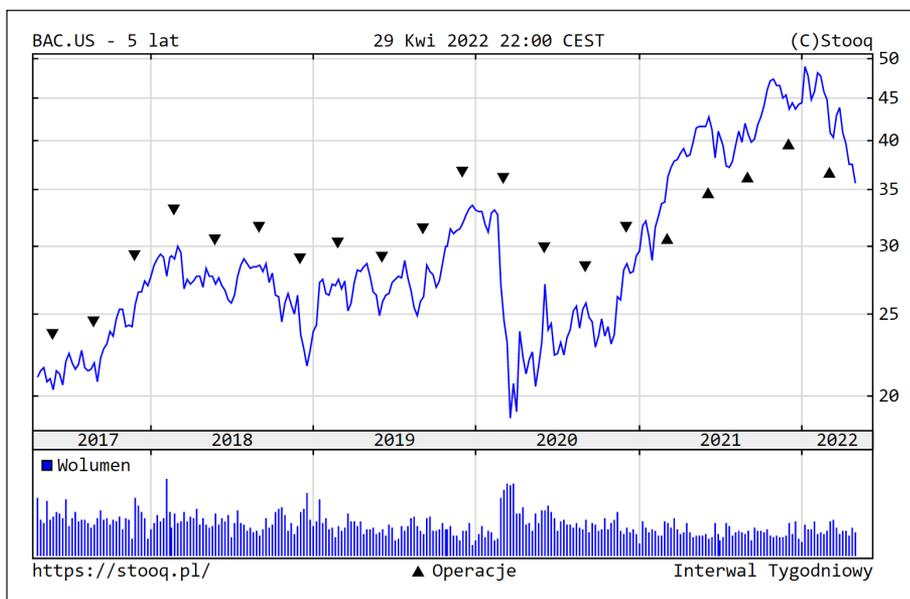
**Chart 17.** HOME DEPOT share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



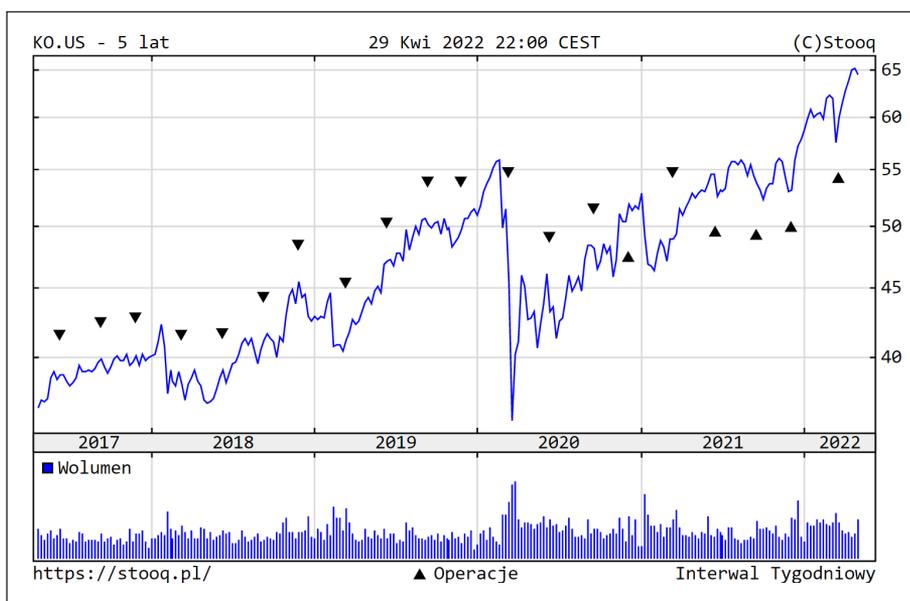
**Chart 18.** CHEVRON share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



**Chart 19.** BANK OF AMERICA share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.



**Chart 20.** COCA-COLA share price – 5 years

**Source:** stooq.pl, access: 4/30/2022.

## SUMMARY

This analysis should be treated as the next, still initial stage of research related to the long-term impact of the Covid-19 pandemic on the largest economic entities in the context of their impact on the economic and socio-political reality. As I mentioned earlier (Szczurowski 2021, p. 145), we are dealing here with an almost virgin research area, and therefore the field for scientific research is very large, the more so as the issue itself is complex, giving a wide range of multidimensional, interdisciplinary analyzes. The next step may be to examine the financial performance of the largest corporations listed on the largest stock exchanges in the period before, during and after the pandemic. An industry analysis in a pandemic context could also be interesting. Finally, the long-term change in the economic and socio-political position of large corporations as a result of the Covid-19 pandemic and the economic constraints imposed by individual governments should also be explored. All of the above should be treated as research postulates for the future, the list of which may be much longer.

Nevertheless, it is already possible to draw an important conclusion that the largest global corporations, especially those from the technology industry, did not lose because of the pandemic, on the contrary, they significantly gained from it, which should be confirmed by further, more detailed studies.

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### Wojciech Welskop

Institute of Social Sciences, The Academy of Business and Health  
Sciences  
Łódź, Poland  
wojciech.welskop@o2.pl

# Nonreactive research in social sciences – advantages and disadvantages of analyzing ‘found’ data

## Summary

Nonreactive research is a specific alternative to reactive research in the social sciences, both in quantitative and qualitative strategies. The research methods used in this type of research, also called unobtrusive, non-invasive, do not have any interaction between the researcher and the subjects, which may be both an advantage and a disadvantage of non-reactive research. The purpose of this article is to analyze the positive and negative aspects of nonreactive research in social sciences, which are currently not very common. The introduction is a consideration of the phenomenon of reactivity and nonreactivity. In the text, I have applied the desk research method, as a result of which I have synthesised the knowledge on non-reactive research, with particular emphasis on its advantages and disadvantages.

**Key words:** nonreactive research; reactive research; data analysis; analysis of found data; advantages of nonreactive research; disadvantages of nonreactive research.

## 1. INTRODUCTION

There is a perception in the social sciences that knowledge about people is available primarily through asking questions and getting answers, even though many other research techniques exist. When conducting interviews, we ask people questions or a series of questions in a survey questionnaire, and the aim is the same – to obtain answers from respondents to issues that are of concern to the researcher (Kellehear 1993: 10). Many times it can be argued that these types of research techniques are by far the more appropriate option in order to be able to

conduct the research reliably and obtain 'real' data that the researcher can analyse in depth. So, by conducting research without people and without asking them questions, are we conducting less valuable scientific research? It can certainly be argued that conducting research using the survey or interview method is the most popular of the empirical studies conducted, but it is not the only one. The choice of research method and, above all, of research strategy, depends very much on the scientific discipline within which we are conducting our research. In the social sciences, especially in the sociological sciences, reactive research is indeed the preferred style of empirical research today, but this has not always been the case. To this day, there is much discussion of Emile Durkheim's work on suicide, even though the data analysed in it were not from reactive research. However, research that does not require the active participation of subjects is not always appreciated in the social sciences today.

Nowadays, in Polish methodological textbooks we can usually find very broad descriptions of research methods used in reactive research, i.e. requiring contact with other people. The methods used in non-reactive research, which do not disrupt the social environment, are sometimes regarded as inferior. Earl Babbie (2013), for example, devotes only one chapter to non-reactive research in his book *Fundamentals of Social Research*. Other methodologists (e.g. Frankfort-Nachmias, Nachmias 2001; Brzezinski 2019; Nowak 2006) did not include them at all in their reflections or they were only part of the research analysis, without distinguishing non-reactive research in the form of a chapter or subsection.

Non-reactive research (otherwise known as discrete, non-invasive research) refers to methods of data collection that do not disturb the respondents. They are used by both qualitative and quantitative researchers. Discrete surveys do not require the researcher to interact with respondents. At first, we may begin to wonder, then, what is the point of conducting social research, without direct contact with the people? How do you get data from people, without human contact? However, it is important to remember that everyone creates a lot of evidence of their behaviour or actions during their lives – posting comments, photos or videos on social media, reading, consuming goods, participating in many activities, going for walks, etc. Each of these activities leaves a footprint that is a potential source of data for the researcher who conducts non-reactive research.

The modern researcher can now find rich sources of data in new and overlooked social areas and re-analyse the data in new and innovative ways (O'Brien 2010: 6-10). The 21st century is the information age, with a vast amount of data that we can use to conduct research, so why not take advantage of this opportunity? What are the advantages and disadvantages of conducting non-reactive research in the social sciences? The aim of this text will be to analyse non-reactive research in the social sciences, with a particular focus on the advantages and disadvantages of conducting non-reactive research, selected for the volume of this text. The article uses a narrative review to analyse the advantages and disadvantages of conducting non-reactive research in the social sciences.

## 2. REFLECTIONS ON REACTIVE RESEARCH

Each type of research conducted has its advantages and disadvantages. In survey research or conducted interviews, researchers cannot be sure that respondents are not interacting in a certain way with the people or interactions observed. Thus, there may be a Hawthorne effect, which occurs when research participants change their behaviour because they know they are being studied, that is not noticed when conducting discrete research. When conducting non-reactive research, on the other hand, researchers face the risk of their bias. According to Webb (1966: 43–46), one of the reasons for using non-reactive methods, is the methodological inadequacy of reactive methods. The research tools used, such as survey questionnaires or interview dispositions, are a certain foreign element, introduced into the social environment, which may interact in a certain way with the respondents, eliciting an unusual response. Another issue is also the limited availability of respondents who participate in the survey – who are reachable and willing to cooperate. The creation of specific attitudes by respondents is also an important element that affects the results of reactive research. Looking at voting behaviour, Presser and Traugott (1992: 77–86) noted that some of those who claim in surveys to have voted did not do so. According to Presser and Traugott, misreporting of voting behaviour correlates with factors such as education and interest in politics. As a result of the fact that people may consider themselves to be the kind of people who should vote (they are educated and politically aware), they feel pressure to answer the question precisely in this way during the survey research conducted even if they did not participate in the vote. Bradburn (1979) also found that there is a correlation between the socially desirable behaviour of respondents and less anonymous survey methods. The more anonymous the method, the more likely respondents are to admit to socially undesirable behaviour.

The formulation of questions during the interview or in the survey questionnaire can also have a significant impact on the responses received. Angluin and Smith (1983: 237–269), for example, found in a number of surveys that the word ‘welfare’ in questions about financial support for disadvantaged people elicited a lower level of positive response than the word ‘poor’. There is a high risk that respondents may use the response cafeteria in a survey or interview questionnaire as a guide to the researchers’ expectations of the extent of particular behaviours (Schwarz, Strack, Hippler, Bishop 1991: 193–212). In one experiment, when asked if they suffered from headaches ‘frequently’, respondents reported three times as many headaches per week as those who were asked if they suffered from headaches ‘occasionally’. As noted by Schuman and Presser (1981: 216–223), survey questions are never asked as a single question, but are a certain sequence of multiple questions. Thus, the context or order in which the questions appear can have consequences for the answers. Indeed, respondents sometimes adjust their answers to later questions to make them consistent with the answers they gave earlier. The juxtaposition of questions that have an alternative form, sometimes triggers a norm of reciprocity that may influence a particular response from the respondent. Fred Bryant and Joseph Veroff (2017) believe that participating in a survey can change respondents’ attitudes and behaviour. In in-depth interviews, the risk of certain reactions from respondents may be lower than when conducting survey research, but even when conducting

survey research, problems can also arise, if only when taboo subjects or topics socially considered 'sensitive' are raised. A qualitative study conducted by Maureen Padfield and Ian Procter in 1996, on the other hand, reveals the issue of the importance of gender in conducting interviews (Padfield, Procter 1996: 355–366). Padfield and Procter conducted a study among young adult women. One of the questions was about having an abortion. The women who had had one admitted to having done so when interviewed by Maureen Padfield, whereas when interviewed by Ian Procter they did not mention the fact at all. Of course, this cannot be taken as any indication, let alone generalised, but it should be borne in mind that the researcher in qualitative research has a much greater role to play than in quantitative research, where there is often no direct contact with the respondents.

Webb (1966) also notes that when conducting reactive research, respondents must be available and willing to answer the researcher's questions for research methods to be effective. Conducting research by collecting information from respondents is common, but it is not always reliable, for example in cases of low respondent engagement, biased responses or under- or over-reporting by the researcher. The researcher can always in such a case look for alternative means of data collection. Non-reactive methods appear promising in this case, but undervalued in the social sciences. There is no doubt, therefore, that traditional survey methods also have their drawbacks. After all, can we trust what the respondent tells us they have done, are doing or intend to do? Is the data obtained then reliable? In most situations, it is assumed that respondents' answers are trustworthy and describe behaviour and opinions fairly. However, this is not always true and may depend on the research environment or the phenomenon under investigation. Respondents' memory is also not always perfect and they are not always able to recall the exact situation or data they are being asked about, which can lead to incorrect results (Bradburn 1983: 289–328). Conversely, when conducting research on sensitive topics, the results may be useless due to the unreliability of the answers.

### 3. THE PHENOMENON OF NON-REACTIVITY IN RESEARCH

In the social sciences, research participants are usually aware of their participation, interpret the researcher's actions and relate them to their own beliefs. The behaviour of the research subjects is therefore controlled in some way, to which they acquiesce, considering this feature to be immanent to the conduct of empirical research. The researcher is therefore able to observe the state of the participant in relation to the specific situation under study. This is certainly not the natural state of the respondent. This is because we have no assurance that the declared behaviour at the time of the research would have been the actual, real behaviour in the natural environment. Nevertheless, we will then call the research participant's behaviour 'reactive' because it will be the subject's reaction to a specific situation, deliberately created for the research by the researcher. Non-reactive research, on the other hand, uses methods of data collection that do not involve directly eliciting information from research participants. They are useful in situations where it might be unsafe or difficult to ask respondents directly, or where, for various reasons, conducting reactive research will not yield reliable information.

Three main sources of non-invasive data can be distinguished: traces, documentary records and direct non-participatory observation (Esterberg 2002: 129). Non-invasive research includes non-reactive observation of behaviour, historical research of pre-existing archives such as statistics or records, the study of physical traces and critical analysis of cultural content. Non-reactive research is primarily associated with its use by researchers interested in historical, comparative events. Although non-reactive research is not always valued as highly in academic circles as traditional, reactive methods of data collection (Esterberg 2002: 129), it is an extremely valuable tool that does not violate or 'skin' the data, but shows it in its unprocessed form, without the interference of emotion.

Consideration of non-reactive methods can be found in the book published by Eugene Webb, Donald Campbell, Richard Schwartz and Lee Sechrest: *Unobtrusive Measures: Non-Reactive Research in the Social Sciences* (Webb et al. 1966). The authors introduce physical traces, analysis of archival texts or computer-assisted observations (e.g. traces suggestive of forms of human activity, i.e. the wear of floor tiles around museum exhibits as an indicator of the popularity of the exhibits in question; the setting of car radio dials as indicators of favourite stations; the wear of books in the library by observing rubbing and marks on their pages; analysis of the contents of household rubbish; analysis of the content of graffiti in toilets or gender differences in the shape, height or inscriptions on gravestones). Above all, the aim of Webb and his colleagues was to challenge social scientists to think creatively about data sources and their use during their research.

Webb et al. (1966) began their discussion of non-reactive research and discrete data in relation to information collected by means that do not involve the direct elicitation of information from research subjects. Unobtrusive, discrete measures are 'non-reactive' because they avoid problems caused by the presence of the researcher. Webb et al. focus their attention on getting social researchers to pay more attention to collecting unobtrusive data sources, such as physical footprints (evidence that people leave behind as they traverse their physical environment), non-participant observation and the use of documentary sources. Indeed, experiences, attitudes and beliefs can be analysed just as effectively by observing what people do, looking at different types of physical evidence and drawing information from both written texts and already recorded statements. Non-reactive research is therefore research in which the participant's behaviour is not shaped by the social interaction with the researcher, as both directions of this interaction are seen as potential sources of distortion.

Non-reactive research is a strong critique of the positivist conception that truths about the social world can be represented by scientific measurements. Discrete research belongs to the epistemological theory of interpretivism, which holds that the social sciences are fundamentally different from the natural sciences and therefore require researchers to reject empiricism and capture the subjective meaning of social actions (Bryman 2012: 5–6). In line with ontological considerations, discrete methods fit into the theory of constructionism, according to which social phenomena and their meanings are constantly created and changed by social actors. Experiments in which participants take part unconsciously can also be classified as non-reactive research, since not being aware that one is part of the experiment is tantamount to the fact that the reactions of the subjects will be natural and thus will not jeopardise the reliability

of the results obtained (Sechrest 1979: 16). Such an approach, of course, does not presuppose any ethical dilemmas associated with involving people in an experiment without their consent, so it may be seen as inappropriate. According to Lee (2000: 3-16), opportunistically obtained data should in no way be seen as inherently inferior to data obtained for a specific purpose and researchers need to overcome the notion that the task of the social sciences is to measure, discrete or otherwise, as opposed to critically or interpretively perceiving and understanding social reality.

Non-reactive research offers a critical approach and fresh perspective to research that challenges traditional academic standards in innovative and creative ways and, by analysing existing data, including sources that people have left behind, allows exciting new interpretations and findings to emerge (Webb, Campbell, Schwartz et al. 1981). Non-reactive research is used to collect data without asking for it. The researcher also does not have to worry about problems arising from, for example, participation in the research. An example of a non-reactive method is the use of existing census data.

A feature of non-reactive research is the lack of interaction with other people, which does not mean that these interactions are not visible during the research. Individuals create a lot of evidence of their behaviour – they write diaries or other texts, create films, consume goods, etc. (Esterberg 2002: 129). Each of a person's actions leaves a trace of some kind – a printed paper, an electronic relay or a piece of rubbish, all of which are potential sources of data for the researcher. In historical research, the aforementioned sources are something natural and unquestionable during data collection. Research then focuses on one or a few instances in a particular time-space.

One way to conduct discrete research is through content analysis (Babbie 2013: 328–329). Content analysis is a type of non-reactive research that involves the study of human communication - texts and their meaning. The texts under study include actual copies of texts (e.g. newspapers, letters), but also content that can be seen or heard (e.g. speeches or other performances) and other visual representations of human communication, such as television programmes, advertisements or films. During the analysis, both primary sources, i.e. original sources that have not yet been analysed, and secondary sources that have been previously analysed can be used. Reinhartz and Davidman (1992: 155) point out that primary sources are 'raw historical material', while secondary sources are 'cooked' analyses of these materials. Content analysis can be qualitative or quantitative, and many times researchers use both strategies. The aim of qualitative content analysis is to identify themes in the analysed text and determine their underlying meanings. Quantitative content analysis, on the other hand, involves assigning numerical values to the raw data so that they can be analysed using various statistical analyses.

#### 4. ADVANTAGES OF NON-REACTIVE RESEARCH

Among the benefits of conducting non-reactive research are the low financial outlay, compared to some of the techniques used when conducting reactive research. This is because the research participants are generally inanimate objects, as opposed to people, for example, who sometimes expect to be paid for participating in research. This does not mean, of course, that non-reactive research is cost-free, since, for

example, travelling to archives to analyse documents, as well as accessing them, can generate financial expenditure. Another advantage of non-reactive research is the possibility to make post factum corrections of mistakes made during the research. It is much easier to correct mistakes made during the collection of found data than mistakes made, for example, during in-depth interviews, when after conducting dozens of interviews we realise that we have omitted one of the questions included in the interview instructions. We can, of course, conduct the interviews again, try to draw conclusions from the respondents' answers to the remaining questions, reformulate the research questions or abandon the entire research project, but none of these options is ideal. Similar problems may arise when conducting survey research using the survey technique. When conducting field research, the consequences of mistakes made by the researcher can be even more disastrous, as the source of data may already be outdated and a completely different research sample would have to be found. The case is different when conducting non-reactive research. When collecting data, it is always possible to go back to an item very quickly and make corrections.

Conducting discrete studies can focus on processes that occur over time. Conducting reactive research, longitudinal and long-term field observations are also suitable ways of collecting data, but they lack the ability to study processes that occurred decades before data collection began. Discrete studies allow researchers to study events and processes that are of long duration. They also do not rely on flashbacks, which can be a source of error due to gaps in memory. Discrete research also has the advantage, over data acquired directly in conflict situations, of reducing the potential physical danger of having to venture into dangerous places. Non-reactive research is also usually safe, both for the researchers and for other people. Observations are harmless if carried out discreetly, and examining traces or analysing archival data does not even require physical contact with other people (Rathje 1979: 75–91). Non-reactive research certainly has the advantage of being non-invasive and thus able to assess actual behaviour without the participation of respondents, who may succumb to the behaviour or attitude of the researcher. Non-reactive research also allows the data to be re-checked, examining issues of reliability and validity of the source. It is also an important fact that during non-reactive research we can completely exclude the reactions of respondents to the researcher.

While in both non-reactive and reactive research, there is nevertheless a risk of introducing researcher bias into the work, when conducting non-reactive research, researchers do not have to at least worry about the influence of research subjects on the research being conducted. Then the Hawthorne effect, where research participants, intentionally or unintentionally, change their behaviour because they know they are being researched, is not a problem for non-reactive researchers because they do not interact directly with research participants. This is certainly one of the main advantages of discrete research. Non-reactive research therefore reduces the inevitable bias in the data. They examine and evaluate the 'ephemeral traces' (Dabbs 1982: 31–66) that people intentionally or unintentionally leave behind (Lee 2000: 3–16). Participants are not aware of their role as respondents and are therefore not influenced by the desire to achieve good results or to please the researcher. According to Kellehear (1993: 10), one of the greatest advantages of non-intrusive research is the documentation of actual, rather than declared, behaviour by respondents. Other advantages include the reproducibility of the results, easier access to the data and

the fact that the consent of the respondents is not always needed. When conducting discrete surveys, respondents are not taken away from their time and are not induced to disclose sensitive information.

## 5. DISADVANTAGES OF NON-REACTIVE RESEARCH

Although discrete research has many advantages, some disadvantages can also be noted. One of these is the reliability of the research, caused by the fact that the foundational data that the researchers are analysing, for example, was collected for purposes quite different from the research objective stated in the project in question. A significant disadvantage of conducting non-reactive research may also be that the data sources, necessary for analysis, do not exist. Researchers may then have to alter the original research objectives to suit the existing data. In discrete research it is also difficult to see the social context of specific events, which we can in turn observe when conducting reactive research, such as fieldwork. When analysing found data, it will be difficult for researchers to ascertain the causes of the events under study, which may lead to unreliability of the research or a falsified subjective social context of the phenomenon under study.

A disadvantage of non-reactive research is also the possibility of distorting data in archival sources (Kellehear 1993: 10), with the aim of hiding information or creating a particular impression in the reader (not everyone, for example, describes everything in a personal diary, in case it is read by siblings or parents, or stolen by journalists). Interpretation of physical traces or observations is not always perfect, as it may be done from the point of view of someone outside a particular cultural group and then the researcher may fail to capture the socio-cultural group-relevant meanings of the trace or observed situation or event. Non-reactive research may also involve variables that interfere with and distort the data (Rathje 1979: 75–91), e.g. when conducting longitudinal trash surveys, there may be an alcoholic who throws his bottles into his neighbour's rubbish bin (Sechrest, Phillips 1979: 1–31). Non-reactive research is sometimes criticised as lacking definitive interpretations or true representation (Kellehear 1993: 12) because it is delivered from the point of view of a person who is unable to grasp the meanings of the events or phenomena under study, which are important from the point of view of a member of a particular social or cultural group.

Another issue of discrete research is also the selective recording of observed data. Certain objects and relationships may be more likely to be recorded by observers with different interests, biases and backgrounds. A man observing women may notice different features of interaction or dress than an observer who is a woman, and vice versa. Other sources of error may arise from an over-reliance on single methods. Non-reactive studies are therefore inferentially flawed (Lee 1993: 2–15). According to Lee, there are a number of flaws in such research that the researcher needs to be aware of in order to know when it is appropriate to use or when complementary or alternative research methods should be used. Non-reactive research, unlike reactive research, is limited in terms of the potential areas that can constitute a research area (Webb, Campbell, Schwartz, et al. 1966: 181).

## 6. CONCLUSION

In today's globalised world, non-reactive research is now more relevant than ever, providing useful tools such as data-mining, digital footprinting and cultural analytics to better understand the vast amount of data around us. So instead of seeing digital data and sources as these 'second-class', we need to realise that we live in a world where they are ubiquitous and we are unable to move past them.

With discrete research, social behaviour can be analysed in such a way as to eliminate biases and promote contextual analysis in the research process. My intention, of course, is not to negate the conduct of reactive research, but to draw attention to the enormous potential of non-reactive research, which we can currently exploit but which we avoid. Perhaps this is due to the inadequacies of certain research techniques, but I might be tempted to say that we often fail to use traces left by people as sources of data, due to the promotion of primarily reactive research among researchers, pointing to interaction as an indispensable element of social research. However, it is important to remember, as I have also pointed out in this text, that reactive research also has drawbacks and conducting it will not automatically make the results of our analyses accurate and reliable. I could compare the dilemma of conducting reactive and non-reactive research to the dilemma of conducting quantitative and qualitative research. Both research methods have their positive and negative aspects, which does not mean that by conducting research using one of them, the results of our research will be 'better' or 'worse' - they will certainly be different. We have to consider each phenomenon, each research problem individually in order to be able to choose one of the research methods (quantitative, qualitative, reactive, non-reactive) or to use triangulation, i.e. to combine selected or all methods.

Non-reactive research is, of course, not a panacea for the problems that arise when conducting research, but in my opinion, its proper use can result in an improvement in the overall quality of much social science research, as it offers a number of benefits and unique opportunities for the 21st century researcher. However, in order to conduct effective non-reactive research, it is important to understand the ethical issues involved in using such techniques. A careful researcher needs to know when it is appropriate to use discrete research and when it needs to be supplemented with other research methods. Each method or technique used in non-reactive research should be tailored to the problematic of the research project, taking into account methodological requirements such as reliability or validity, among others.

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