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(NON)RELIGIOUS FREEDOM: A CRITICAL PERSPECTIVE ON THE CONTEMPORARY UNDERSTANDING OF FREEDOM OF CONSCIENCE AND RELIGION

ABSTRACT

Nowadays, liberty of conscience as an inalienable right is a standard of democratic liberal constitutionalism. It is an obvious component of a well-organized society and state. However, at the very beginning of its presence in the political discourse, it was more a product of Christian theology (the free conscience perceived as a gift of God) than a legal category; more an endowment of divinity than an intrinsic human value. In the contemporary, secularized world, our understanding of freedom of religion includes not only free exercise of religion but also freedom from religion. An increasing number of non-believers changes our expectations of the state that is obliged to protect the freedom of conscience of all citizens regardless of their beliefs. The goal of the article is to consider the difficulties faced by people with a theistic worldview in the reality of a state founded on the principle of ideological neutrality.

Keywords: liberty of conscience, tolerance, neutrality

INTRODUCTORY REMARKS

Religious freedom – understood as a set of rights related to human spirituality and activity undertaken in response to ‘conscience calls’ (manifestation of beliefs) – like the whole concept of human rights, is a product of Western civilization. The material scope of the rights related to this freedom has been transformed, which significantly distances its contemporary reception from the claims originally associated with it and formulated by its first defenders. Although we are currently used to perceiving it as a standard of demo-liberal constitutionalism, expecting its universalization, openly expressed by those adopting this system of rule, its origin is closely related to the internal dispute within the Christian world, which is searching for answers to questions about the proper arrangement of relations between the Church of Christ and the state, as well as the conditions for the functioning of religious pluralism in both these spheres.

Religious freedom was introduced as a theological category of Christian religion, where a free conscience was presented as a gift of God, and was closely related to the disputes of an ecclesiological nature, more specifically, with regard to the social functioning of Christ’s Mystical Body. While the claim of religious freedom used to be carried out in the reality of *Christianitas* (*Corpus Christianum*, *Res Publica Christiana*), that is, the world of the Church fused with and state, its contemporary, secularized and ‘politicized’ understanding – assuming as an unshakeable standard (1) the depolitization of religion, (2) the desacralization of the state, and (3) the individual’s autonomy in exploration of existential questions – needs to vary from the original sense. The question is: what does these differences bring about to followers of Christ in our times? The answer to this question precedes any discussion on the adequacy of the contemporary ideal of religious freedom in a non-Christian social milieu, including, above all, reality specific to Judaism and Islam, the other two monotheistic religions.

RELIGIOUS FREEDOM IN THE ORIGINAL SENSE. ENGLISH BAPTISTS AND FREEDOM OF CONSCIENCE

Christianity emerges in a world that knows no separation between the Church and the state. The religious life of ancient Judea is closely integrated into the legal and political order. The occupant’s political pattern, i.e. that of the Roman Empire, also endows the religious cult with the state character. Religious principles are sanctioned by law, and political power seeks legitimacy in the transcendent Power – the establishment of religion is complete and obvious. The teaching of Jesus of Nazareth represents a breach of the so-organized world. Although questions are addressed to him whether he is the next David to sit on the throne of the chosen people (Mark 11:10), and there are social expectations of this kind (John 6:15; Acts 1:6), and he does not contradict his royal majesty (Matt. 21:5), but at the same time points out to the difference of his reign from the religious and socio-political model of ancient Israel (John 18:33b-37). While the

New Testament often presents him as a 'new David,' the messianic king (Mark 12: 35-37; Matt. 15:22 and 20:30-32; Luke 1:32-34; Heb. 1:8), he himself does not claim to exercise political power (Matt. 4:8-10) because his reign takes on a spiritual character in people who profess their Lord and Savior in him (Col. 1:13-14). Christ's 'physical' (bodily) reign is only foretold as a future chiliastic reality (Matt. 25:31-45; Acts 1:7; 1 Cor. 15:24-28; The Revelation of St. John).

The unique (and evidently non-political) nature of Christ's teaching makes it a challenge to the public order of His time. In the perception of the Jewish world, it is a 'foreign body' and an obvious heresy (Matt. 21:15; Matt. 26:63-65); for the Romans, it undermines the idea of fusing religious worship with the legal and political status of Roman citizens. The call for religious tolerance by the Church of the first centuries was an appeal to recognize the fundamental difference of Christianity, but this appeal could not be heard. After all, the tolerance privilege granted to the followers of Yahweh in occupied Judea was not a violation of the logic of established religion (fused with the state). Additionally, this privilege was limited to a relatively small population calling themselves the 'chosen people,' which *de facto* made Judaism a local cult: God Yahweh does not challenge Roman gods, as Romans are not the chosen people in the sense of the Jewish tradition. On the other hand, the spread of Christianity throughout the Roman Empire – a universalist religion by definition – heralded a social split in the Roman political community, not only a violation of the official religious standard, but also a crisis of moral principles and civic obligations related to it. All the assurances of the early Christian theologians: Tertullian (c. 155-c. 240) and Lactantius (c. 250-c. 325) that granting Christians the religious tolerance would not violate public order, were harshly disregarded.¹

At the same time, the Church struggled with internal split, both in terms of the doctrine and ritual, as well as in relation to the execution of ecclesiastical discipline (conditions for imposing excommunication). Widespread deviations from the faith (usually as a result of social pressure) and difficulties with maintaining church discipline, as early as at the turn of the 3rd century, brought a sharp intra-church dispute. Appeals of Pope Callistus I (papacy 217-222) for tolerance for the imperfections of the Church members (forced apostasy; clear evidence of moral decline), who referred to the exhortation derived from the parable of wheat (Matt. 13:24-30; 36-43), did not find understanding among the rigorists: Tertullian and Hippolytus (c. 170-235). It was in this atmosphere that the first significant schismatic movement emerged in the Church, later called Montanism.

The inclusion of Christians in the privilege of tolerance (Edict of Milan, 313) heralds making it the state religion of the Roman Empire in the future (Edict of Thessalonians, 380). At the will of Emperor Theodosius I the Great (r. 379–395), the cult of Christian God replaces Roman polytheism, renewing the conformity pattern of the Empire's denominational policy. This edict, also called the Edict of Orthodoxy, points to the teaching of the Council of Nicaea (325) as the religious doctrine of the

¹ J. Lecler, *Historia tolerancji w wieku reformacji*, vol. 1, transl. by L. and H. Kühn, Warszawa 1964, pp. 66-70 (J. Lecler, *Histoire de la tolérance au siècle de la Réforme*, vol. 1, Paris 1955).

empire (the Nicene Creed becomes the foundation of the state religion), reducing other trends of Christian doctrine to the level of heresy, with which not only the Church (*Corpus Christi*) but also the Christian State will ceaselessly and actively fight. In this way, *Corpus Christianum* (*Christianitas*, *Res Publica Christiana*) is created, the Church of Christ fused with the political order, with the Christian State. However, the unity of the Church, which is implied by the Creed of Constantinopolitan (now called the Nicene-Constantinopolitan Creed) has not been preserved, especially if it is considered in an institutional sense.

Although the influence of the teachings of Arius, Novatian and Donatus was consistently marginalized – due to the activity of secular authorities – the permanent divisions within the Church became a fact after the Council of Chalcedon (451). Doctrinally, institutionally, and ritually the Church has definitely ceased to be a monolith, if it ever was (1 Cor. 1:10-13). Subsequent temporary divisions, for example the Acacia schism (484-519), as well as the permanent ones, the Great Eastern schism (1054), and opting out from the Church by the reformers of Western Christianity (16th century) only exacerbated the dismemberment process, burying the hopes for preserving the *Res Publica Christiana*.

The experience of these splits did not result in a revision of the stance. The local churches of the states of the German Reich struggling with Emperor Charles I Habsburg (r. 1519-1556) retain a monopoly within the jurisdiction of individual German principalities as a result of the peace in Augsburg (1555, the principle of *cuius regio, eius religio*). When the unity of the Church could not be confirmed at the universal *Christianitas* level, the possibility of preserving it at the level of the dominion of individual ruling houses of Renaissance Europe was sought. Henry VIII Tudor (r. 1509-1547) had also this goal in mind while undertaking the task of building *Ecclesia Anglicana*, in which he secured supremacy for himself and his successors. The confessionalization of the socio-political order seemed to be an irreversible process, making the public authority a guardian of denominational uniformity, territorially limited to its jurisdiction.

However, the unity of the local (state) Churches was also unsustainable. Protestantism unleashed an energy that the fathers of the Reformation had lost control of. Anabaptists appear in German principalities, including the mainstay of Lutheranism, i.e. in the Electorate of Saxony, gaining popularity among the lower social classes (peasants and petty bourgeoisie). With the exception of the Anabaptists of Münster (the Münster rebellion), they demand a strict separation of the Church and the state, i.e. deconfessionalization of the latter. Claiming freedom of religion, Anabaptists become public enemies to all – Lutherans, Calvinists, Zwinglians, and Catholics – bringing on themselves the wrath of the public authority with its ‘steel sword.’ The ‘Anabaptist schism’ was finally stopped by limiting its influence to the Netherlands (Mennonites) and small enclaves in Czech, Hungarian and contemporary Ukrainian lands (Hutterites).

The situation was quite different in the British Isles. The uniformity of the Church of England was challenged by the students of Robert Browne (c. 1550-1633), and Henry Barrowe (c. 1550-1593), who separated from it. In turn, Baptists, radical advocates of the desacralization of the state and depoliticization of the Church, freedom of religion

and unregulated religious tolerance, separated from the Brownist movement. The first leader of the London Baptist church was Thomas Helwys, whose pamphlet *A Short Declaration of the Mystery of Iniquity* (1612)² is presented by Joseph Lecler as the first Protestant apology of religious freedom of substantial importance in the history of England.³ For Helwys, the authority of the English monarch in the Church is an obvious usurpation because only Christ is the head of the Church, and no earthly ruler who calls himself the 'God's anointed,' i.e. marked by holy oil like King David, which even the waters of the ocean allegedly cannot wash away,⁴ does not sit in his stead on the throne in the Kingdom of God.⁵ The recognition by Eusebius of Caesarea (c. 264-c. 340) of the *mimesis* of Christ's reign in the power of Constantine (by analogy of the *mimesis* of the Kingdom of God in the Roman Empire) appeared to Helwys to be an obvious iconoclasm. Yet, it was the religious role of the ancient kings of Israel and the secular sovereignty in the post-Constantinian *Christianitas* order that were invoked to lay down the supremacy of the monarch of the English people in the Church of England.⁶ For Helwys, Christ's messianism is a radical break with the order of God's justice of ancient Israel, while the Kingdom of Christ, whose temporal expression is the visible Church of Christ, consists only of those who, through the Holy Spirit, profess their Lord and Savior in Jesus of Nazareth. After the Incarnation, the Kingdom of God ceases to be an Old Testament order of God's justice, becoming the reality of the Kingdom of grace: a personal relationship in which the follower of Christ remains in relation with Him, submitting fully to His guidance (reign). In the Kingdom of grace, the earthly sovereign does not exercise

² T. Helwys, *A Short Declaration of the Mystery of Iniquity*, R. Groves (ed.), Macon 1998.

³ J. Lecler, *Historia tolerancji...*, p. 424.

⁴ *Not all the water in the rough rude sea Can wash the balm off from an anointed king. The breath of worldly men cannot depose the deputy elected by the Lord* (W. Shakespeare, *Richard II*, act 3, scene 2, p. 113, at <<https://shakespeare.folger.edu/>>, 12 February 2021).

⁵ *Here is showed unto our lord the king that which we know he is not ignorant of, that Christ only sits upon David's throne to order it. And we the king's servants show it that he has the same power over the church of Christ that the kings of Israel had over the church of the Old Testament, to this end, that they might use the king's earthly power to rule over and build up (as they pretend) the spiritual tabernacle, temple and church of Christ, which if the king shall suffer them to do that, he shall sin against God in entering upon the kingdom of Christ, who only is the king of Israel, (John 12:15), 'whose power and sword are spiritual, whose tabernacle, temple and house is holy, made without hands' (2 Cor 3:17; 1 Pet. 2:5; Hbr. 9:11) and therefore has given spiritual 'gifts unto men, for the gathering together of the saints for the work of the ministry, and for the building up of the body which is the church,' and does not require to have people commanded and compelled by an earthly sword or power as in the days of Hezekiah and Josiah, kings of Israel* (T. Helwys, *A Short Declaration...*, p. 36).

⁶ In the *Constitutions and Canons Ecclesiastical* of 1603, in item 2 of the section entitled *On the Church of England*, we find the following provision: *Whosoever shall hereafter affirm, That the King's Majesty hath not the same authority in Causes Ecclesiastical, that the godly Kings had amongst the Jews and Christian Emperors of the primitive Church; or impeach in any part his regal supremacy in the said causes restored to the Crown; and by the laws of this realm therein established; let him be excommunicated, ipso facto, and not restored, but only by the Archbishop, after repentance, and public revocation of those his wicked errors* (*The Constitutions and Canons Ecclesiastical* [Made in the Year 1603, and Amended in the Year 1865], to which are Added the Thirty-Nine Articles of the Church of England, Published under the Direction of the Tract Committee, London 1900, p. 6).

any authority which belongs exclusively to the Son of God. The idea of the earthly governorship (God's vicariate) has been definitely denied here. Helwys's thought will be elaborated on by other Baptists: John Murton (1585–1626), the author of *Persecution for Religion Judged and Condemned* (1615), and Leonard Busher, the author of *Religious Peace; or and Plea for Liberty of Conscience* (1614).

Depriving the secular power of any authority in matters of religion by the English Baptists was in conflict not only with Erastianism, but also with the doctrines of Luther (in the form after the Peasants' War), Calvin, and Zwingli. However, Baptists did not share the fate of Anabaptists, because both in England and in New England any attempts at permanent limitation of the influence of this 'sect,' considered as dangerous to the order of *Corpus Christianum*, failed.

The deprivation the political power of any authority on religious matters in the Baptist doctrine did not lead to the confirmation of the individual's autonomy in the area of their spirituality, making the conscience a sphere of 'freedom from' (negative freedom as defined by Isaiah Berlin). The liberty of conscience promoted by Helwys and his successors frees the individual from the interference of public authority, subjecting it to the guidance (authority) of the transcendent Power. In other words, the freedom of conscience is understood here as an unconstrained (without the interference of third parties) submission to the rigors of God's law in response to the call that God addresses to a person meditating on His Word, which the addressee is unable to resist. As incomprehensible as it sounds to the ears of a contemporary participant in our cultural circle, the guarantees of freedom of conscience set forth in Helwys' *A Short Declaration...* refer to the condition of God, to his prerogatives, rather than to the legal situation of a man who demands recognition of his autonomy. Helwys did not link conscience with an autonomous choice but with a commitment to God.⁷ This freedom does not result from the self-possession of man, but from the fact that he is God's property (belongs to God). In other words, freedom from the dictatorship of state power in spiritual matters is not an end in itself, but a means of realizing the desire to live in harmony with the unstoppable voice of conscience, for the glory of God and for the benefit of others.⁸ Identifying freedom with an unfettered choice that remains closed to the perspective of God's perfect plan (actualized in the act of Christ) and with freedom from the urgings of conscience, constantly calling the sinner to live according to the Gospel pattern, is 'the most damnable⁹ heresy,' as presented by the author of *A Short Declaration...*;¹⁰ it is not so much a rejection of God's perspective as a denial of Christ

⁷ L. Canipe, *A Baptist Democracy: Separating God and Caesar in the Land of the Free*, Macon 2011, pp. 29-32.

⁸ This approach can be illustrated with St. Paul's apostolic lesson (1 Cor. 9:19).

⁹ This term effectively reflects the emotional attitude of Helwys to perceiving the freedom of conscience as an affirmation of human autonomy in spiritual matters (freedom from any interference in human thoughts).

¹⁰ J. Early Jr., *The Life and Writings of Thomas Helwys*, Macon 2009, pp. 152-153. Cf. comments by L. Canipe, *A Baptist Democracy...*, pp. 30-35; and idem, "'The Most Most Damnable Heresy.' John Smyth, Thomas Helwys, and Baptist Ideas of Freedom," *Baptist Quarterly*, vol. 40, no. 7 (2004).

and the grace that believers have access to. After all, freedom for a Christian is not an excuse for evil, but submission to God's will (1 Pet. 2:15-16); it is not surrendering to one's flesh (one's whims), but serving one's neighbor in loving him (Gal. 5:13-14).

In summary of this fragment of our considerations, let us emphasize the fact that the original understanding of religious freedom in our cultural circle boiled down to the freedom to profess beliefs that do not constitute the basis of state religion (public worship), and such freedom was claimed by Tertullian and Lactantius, the outstanding thinkers of the pre-Constantian patristic epoch. During the reign of the first Stuarts in England, English Baptists engaged in defense of the so-understood religious freedom, supplementing their excellent predecessors' appeal for tolerance for the dissenters by calling for the separation of the Church and the state, depriving the latter of all authority in the matters of faith. The position of the advocates of religious freedom, in the original understanding, was founded on the conviction that loyalty to public order is not conditioned by the adoption of a religious standpoint shared by the majority or promoted by the public authority. The actual religiosity does not comply with social (civic, political) conformism; genuine worship is a response to the voice of conscience, not a response to the orders of secular authorities. This conviction was accompanied by the opinion that the richness of thoughts related to the so-called existential questions (the primary ones, the ultimate ones) is not a matter of choice for people to whom things appear in a definite way. Man is not the master of his conscience. Religious freedom is the freedom to act according to the summons of conscience and the voice of the Spirit, as presented in Christian theology. The act of faith is performed in freedom, which, however, does not come down to an autonomous choice of the person who performs it. Freedom is understood here as the release of a believer in the transcendent Power from the pressure of another person, especially the one carrying a 'steel sword' (public authority).

ON THE WAY TO CONTEMPORARY UNDERSTANDING OF RELIGIOUS FREEDOM. FREEDOM OF CONSCIENCE AND RELIGIOUS TOLERANCE IN THE WRITINGS OF JOHN LOCKE

The awareness of the participation of the first Baptists in the promotion of the idea of religious freedom and tolerance, a strict separation of the Church and the state, and consequently also an acceptance of the outlook pluralism, is unsatisfactory even among historians of political and legal doctrines. In search of the most significant voice in defense of religious freedom in the 17th century, we are drawn to the person of John Locke (1632-1704) and his *Letter Concerning Toleration* (1689). Although the context of Locke's deliberations is related to the intra-Puritan discourse on the properly arranged relations between the Church and the state, and man's responsibility for 'conscience choices,' *A Letter Concerning Toleration* belongs to another era, to modernity, in the sense given to this concept by Anthony Giddens. In Locke's reflection, religious freedom becomes man's claim (not the admonition of a God jealous for man, the

culmination of His act of creation), whose conscience the public authority stubbornly wants to submit to its will, although its actual master is the Creator. *A Letter on Toleration* invariably remains within the canon of writings in defense of religious freedom, most likely due to the convergence of Locke's arguments with those raised today in the Western culture.

The *Letter on Tolerance* can be read in various ways. An attractive interpretative key is to approach Locke's search in the light of Thomas Hobbes' analyses presented in *De Cive* (1642) and *Leviathan* (1651). The separatist radicals in the Puritan camp – following the footsteps of Browne and Barrow – questioned the unity of the Church of England, understood as the homogeneity of worship (*Prayer Book*) and doctrine (Thirty-Nine Articles of Faith), as well as ecclesial conformism (Supremacy Act of 1534, renovated on the initiative of Elizabeth Tudor in 1559), fueled the passions leading to the civil war. The fall of *Christianitas* in England turned out to be final, as the religiously divided people of England would not be united. The last attempts, made after the restoration of the English monarchy by Charles II Stuart, were also disappointing. For Hobbes, the condition for social peace will not come as a result of a return to the *status quo ante* – a world in which the authority of the *Gospel* is used to undermine the authority of the ruler of the earthly kingdom in spiritual matters – but the power of 'Leviathan,' a state that puts itself at the center of public religion, worshipping its authority and rights, fully controlling the religious life of its subjects. The politicization of religion in Hobbes' project exceeds the limitations of erastianism, because *Ecclesia* is no longer functionally distinguishable from *stato*, it completely melts into the latter. The state becomes a mortal (immanent) god, eventually abolishing the dual sovereignty in *Christianitas* and causing social unrest and centrifugal movements (schisms) in *Corpus Christi*. When denominational-ecclesial-social-political unity of the *Res Publica Christiana* turned out to be an illusion, an unfulfilled desire of successive generations of the heirs of Constantine and Theodosius, Hobbes founded unity on the absolutism of the deified Leviathan. This is an obvious antithesis of the thought preached by the first Baptists, who considered the separation of the Church and the state a condition of social peace, entrusting the latter only with 'corporeal' matters – by definition the earthly ruler is not omnipotent.

On the other hand, *A Letter Concerning Toleration* will constitute a specific synthesis of the political theology of Baptists and Hobbes' thought which stands in clear opposition to the former. While Locke affirms that man is not in control of his thoughts, he sees a basis for rejecting the compulsion in the matters of conscience in reason instead of the authority of the Creator, as the early Baptists did.¹¹ At the same time, he finds the

¹¹ Locke writes: *For it is absurd that things should be enjoined by laws which are not in men's power to perform. And to believe this or that to be true does not depend upon our will* (J. Locke, *A Letter Concerning Toleration*, transl. by W. Popple, p. 30, at <<https://core.ac.uk/download/pdf/7048692.pdf>>, 9 April 2021). Although we find here an affirmation of the thesis that man does not control his thoughts (conscience), which constantly tell(-s) him the "truths about the world," he does not perceive the source of these thoughts in God, and he does not point to His Spirit as the initiator of whispers of conscience (although, admittedly, it does not rule out that this is the case).

basis to define the limits of religious freedom and tolerance, blocking access to it for the 'papists,' 'Turks' and atheists. Although these groups do not control their thoughts either, in the name of unity, social peace and loyalty to fellow citizens (within the ideal of civic friendship in the Aristotle's manner), this recognized thinker of the times of the Glorious Revolution denies the aforementioned groups the freedom of religion in the Kingdom of England. The vivid image of the religious civil war in the eyes of Hobbes along with the preserved remembrance of it among the people of England, in Locke's opinion, exclude tolerance for those who (allegedly or actually) challenge the authority of the state. For the sake of the permanence of political community, certain ideological positions, attitudes and forms of worship do not remain unimportant to the secular authority which reserves the right to penalize them. This is a theme in Locke's deliberations that does not fit in with the thought of the first Baptists, while at the same time comes closer to the Hobbesian *Leviathan*. The value of social peace and civic unity precedes the significance of freedom of conscience of those suspected of lack of civic loyalty. For Helwys and those following in his footsteps, the only permissible compulsion is the one aimed at those who, ignited by ideological calls, are ready to swing at dissenters (Mill's limitation of freedom in the name of freedom). If man is not the master of his conscience, then, obviously, neither is a Catholic, a Muslim, or a person who doubts or denies the existence of God.¹² Having recognized that the master of human conscience is the transcendent Power, Helwys defends the rights of those who do not follow the voice of this Power, but follow their own path. After all, the Spirit blows wherever it pleases, you cannot tell where it comes from or where it is going (John 3:8).

CONTEMPORARY UNDERSTANDING OF RELIGIOUS FREEDOM IN THE LIGHT OF THE JURISDICTION OF THE EUROPEAN COURT OF HUMAN RIGHTS IN RELATION TO RELIGIOUS SYMBOLISM IN THE PUBLIC SPHERE

Reading of the international, but also domestic regulations of religious freedom (usually presented as 'freedom of thought, conscience and religion'), for example Art. 53 of the Constitution of the Republic of Poland of 1997, allows for distinguishing two dominant threads in our cultural circle.

Firstly, there are two spheres of this freedom: the internal sphere (freedom of conscience; freedom of thought) and the external one (freedom of religion; freedom of religious practice). The former is unlimited, as it occurs within the space of human autonomy (Berlin's 'negative freedom'). The latter, referring to the activity dictated by the

¹² *For our lord the king is but an earthly king, and he has no authority as a king but in earthly causes. And if the king's people be obedient and true subjects, obeying all human laws made by the king, our lord the king can require no more. For men's religion to God is between God and themselves. The king shall not answer for it. Neither may the king be judge between God and man. Let them be Turks, Jews, or whatsoever, it appertains not to the earthly power to punish them in the least measure* (T. Helwys, *A Short Declaration...*, p. 53).

voice of conscience (externalized beliefs), is subject to legal limitations in order to protect the public interest. The position of 'freedom of religion' in this dichotomous approach is undefined. It is equated with 'religious freedom' encompassing both spheres; alternatively it functions only in relation to the external sphere, equating its scope with the 'freedom of religion.'

Secondly, the worldview, including the religious worldview, is made an object of free choice, which directly results from the autonomous nature of religious freedom in its internal aspect. A person has the right to adopt a certain worldview, revise or abandon it at their own discretion.

On the other hand, by studying jurisprudence and national legislations enacted in the countries of Euro-Atlantic civilization, we notice the following phenomena in religious policy:

1. Privatisation of religion: religious identity is strictly separated from political (civic) subjectivity, and is located in the private sphere.
2. The lack of extra-appreciation for ideological identification: religious (denominational) identity becomes one of many personal properties (traits) of a member of a political community, treated by the political decision-maker on an equal footing with other personal assets, even if the addressee of legal norms and the beneficiary of public policies assign a fundamental significance to it.
3. Reasonability of politics: pushing out of the public debate and the legislation process of the coercive law any reasons founded on 'non-neutral ground' (assumed characteristics of the theistic worldview), in the name of upholding the standards of 'public reason' (in the sense given to this notion by John Rawls).
4. Freedom from religion: the implied ideological neutrality of the state results in the need to 'liberate' public institutions from religious symbols.
5. Conformity in the name of social unity: socio-political and legal pressure to adjust religiously motivated activities to the standard of behavior and the value-system of the 'ideologically neutral state.'¹³

The relationship between the contemporary understanding of religious freedom and the above-mentioned phenomena of the denominational policy of demo-liberal society is clear. The richness of thoughts in the area of fundamental questions is not of interest to those who enact the law, the content of which should be determined without any ideological references if they remain untranslatable into the 'neutral' language of public debate. The demo-liberal state focuses only on observable activity motivated by worldview (including religion), which is allowed to take any form as long as it does not constitute a threat to the public interest (determined in the political process). As a consequence, the importance of given forms of activities for the actual fulfillment of the 'summons of conscience' by the one who undertakes them remains irrelevant for the demo-liberal state; private motivations are not subject to public assessment or weighing: religiosity does not present a greater value than irreligiosity and anti-religiosity. In addition, the neutral state becomes the guardian of liberty from religion

¹³ Cf. R. Prostak, *Teista w demoliberalnym świecie*, Kraków 2014, pp. 36-58.

of citizens subject to its sovereign power, while the basis of this freedom is, *nota bene*, provided by religious freedom.

The jurisprudence of both the American Supreme Court¹⁴ and the European Court of Human Rights (ECtHR) provides a number of examples confirming the above. In recent years, decisions regarding the display of religious symbols in the public sphere, which perfectly reflect the matter in question, have aroused particular interest in Europe.

In the famous case of *Lautsi v. Italy* 30816/06 (2011), the Grand Chamber of the ECtHR confirmed that the display of the Christian cross in the Italian public school classrooms did not violate the principles of secularism. Soile Lautsi, a citizen of the Italian Republic summoned the school authorities to remove the cross from the classrooms where her children stayed during compulsory schooling. According to the claimant, the display of the cross in Italian public schools is a promotion of Christianity by the authorities, which violates the principle of secularity of the state and adversely affects claimant's right to raise children in a non-religious viewpoint (freedom from religion), guaranteed in Art. 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).¹⁵ It is worth noting here that, in the interest of the secular nature of the state, the Italian Constitutional Court justified the order to remove the cross from polling stations, which was recalled by the applicant in the proceedings before the ECtHR. The Italian authorities, in turn argued that although the cross is a religious symbol, it also has an ethical meaning, recognized and appreciated by participants of other religious and moral traditions, reflecting the values promoted beyond the Christian faith. The defendant presented the cross as an essential element of the Italian tradition and a unique source of identity of Italians. This argument did not convince the majority of the Court Chamber, but was accepted by the Grand Chamber. It was acknowledged that the issue of religious symbols in classrooms remains within the scope of decisions of state authorities due to the lack of European consensus on this matter. Additionally, it was emphasized that the display of the cross in public places does not lead to indoctrination, as it is a 'passive symbol.'

The above presented decision is often recalled in connection with the accusation of the ECtHR that it allegedly favored the process of privatization of religion, which is inevitably accompanied by the removal of religious symbols from the public sphere. Let us note, however, that the dismissal of Lautsi's claim in defense of her freedom from religion (in this case, from undesirable religious indoctrination in public buildings) was justified by the decision-making freedom of state authorities and the 'passivity' of the

¹⁴ *Engel v. Vitale*, 370 U.S. 421 (1962); *Abington School District v. Schempp*, 374 U.S. 203 (1963); *Lee v. Weisman*, 505 U.S. 577 (1992).

¹⁵ 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

² Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Christian cross. The latter argument is controversial as it can be considered a trivialization of the symbol that many people place in the center of their spiritual life. The Christian cross functions here as a cultural product, integrated into the Italian tradition and social history of Italians. As a result, although it still remains a religious symbol, it is not only a religious one. It may be said that its 'religiosity' has been culturally neutralized.

At the same time, the ECtHR has repeatedly dismissed complaints filed by persons defending their right to religious expression and non-discrimination in relation to clothing which reveals their religious identity. The complaint of a public elementary school teacher who covered her hair with a headscarf on the grounds of her religious beliefs was dismissed as manifestly ill-founded [*Dahlab v. Switzerland* case, 42393/98 (2001)]. The main argument of the Swiss government, adopted in the decision by the ECtHR, was the conviction that exposing children to a symbol associated with Islam will not remain indifferent to the process of shaping their worldview, as the teacher enjoys special authority in the eyes of the student. Hence, in the name of ideological neutrality of public education, teachers were deprived of the right to symbolic religious expression (the headscarf was considered a 'powerful religious symbol') in the workplace. The need to secure freedom from religious indoctrination in the public school – the undesirable effect of that indoctrination is to expose students to the sight of a Muslim headscarf – fulfills the provisions of Art. 9 (2) of the ECHR (limitation clause in connection with the interest of protecting the rights and freedoms of others). The teacher in this type of school was classified as a 'public official' and, as such, subjected to the regime of a public institution's neutrality (restrictions necessary in the democratic state to protect individual rights and freedoms).

However, the ban on displaying a 'powerful religious symbol' is not limited to public school teachers. The domestic legislation of Turkey and France extended it to public school students, motivating this step with the need to protect public order, to safeguard the rights and freedoms of others and to preserve the neutrality of public education, which in 2006 was recognized as complying with Art. 9 of the ECHR.¹⁶ Also dismissed were the complaints of adults, a university professor and a female student seeking recognition of the right to express their religious identity through clothing in the state higher education institutions [cases: *Kurtulmuş v. Turkey*, 65500/01 (2006); *Leyla Şahin v. Turkey*, 44774/98 (2005)]. Again, the Court pointed out the need to maintain the ideological neutrality of public institutions and to protect the rights and freedoms of other people. Freedom from contact with the 'powerful religious symbol' of adults in the academic community was placed before the freedom to express beliefs through the clothing of members of that community.

¹⁶ The cases: *Köse and 93 others v. Turkey*, 26625/02; *Aktas v. France*, 43563/08; *Bayrak v. France*, 14308/08; *Gamaleddyn v. France*, 18527/08; *Ghazal v. France*, 29134/08; *R. Singh v. France*, 25463/08 and *J. Singh v. France*, 27561/08; *Dogru v. France*, 27058/05 (2008); *Kervanci v. France*, 31645/04 (2008). On 7.02.2008, the Turkish Parliament introduced an amendment to the Constitution which guaranteed an access to public education for women who – for religious reasons – cover their heads with a scarf. As a result of the Constitutional Court decision, the ban was reintroduced, to be lifted again in 2013 in higher education, and in 2014 in primary/secondary education.

In the light of the above-outlined characteristics of the contemporary understanding of religious freedom, of special interest are the matters related to compliance with Art. 9 of the ECHR concerning the statutory prohibition of veiling the face, including wearing burqas and niqabs, not so much in public buildings as in the open public sphere [S.A.S. v. France, 43835/11 (2014); Belcacemi and Oussar v. Belgium 7798/13 (2017); Dakir v. Belgium 4619/12 (2017)]. Since the S.A.S. case, settled in 2014, provided the *ratio decidendi* for the other two, in which the judgment was passed three years later, we should focus on the S.A.S. case.

The applicant, who was a Muslim, argued that she had been wearing the burqa and the niqab not compelled to do this by any third parties. She justified her dress with religious beliefs and the culture she identified with. In her complaint, she pointed out to being subject to discriminatory practices on the basis of religious beliefs and gender (the burqa and the niqab are parts of female garment), the violation of her right to privacy and freedom of expression. However, it will be pertinent to focus on the applicant's religious freedom (free expression of religion) here. The defendant submitted that under the Law of 11 October 2010 (in use from April 11, 2011), in the French Republic it was forbidden to wear full-face clothing in public places, thus pursuing the legitimate objectives of public safety and respecting the minimum set of values of an open democratic society. The Court did not share the opinion that the introduction of the challenged statutory prohibition can be justified by the need to protect the interest of public security – due to the prior application of the prohibition, without the necessity to identify a specific threat caused by a specific person covering their entire face. Moving on to the second legitimate aim indicated, the French Government referred to three values of the French republicanism: equality between women and men, the dignity of the human person and the minimum requirements of 'living together' (being part of society; 'le vivre ensemble'). Importantly, these values were not included in the description of limitation clause in Art. 9 (2) ECHR. Basically, we find no values there understood as a closed set of public interest categories. Confirming this fact, the Court did not depart from the proportionality test using the legitimate aim so described by the defendant, placing it in the category of protection of the rights and freedoms of other persons. As it turned out, only with regard to the third value, that is, 'living together,' the Court shared the position of the French Government. It is the right of fellow citizens to 'live together' that justifies their claim that the members of French society, including Muslim women, do not cover their faces. The burqas and the niqabs effectively separate those who wear them from the rest of society, significantly reducing the possibilities for social communication that determines 'living together' in a democratic and open society. The burqa, niqab or any other face veil can communicate the religious identity of their wearers, but, as the Court notes, they are also a clear message about the intention to give up social contacts. The ban on covering the face remains in force to this day in the Republic of France and the Kingdom of Belgium.¹⁷

¹⁷ Currently, in addition to France and Belgium, the ban on covering the face in public spaces is in force in Austria, Bulgaria, Denmark, Latvia, the Netherlands, and Norway among the countries subject to the ECHR regime. The ban was also introduced in some parts of Italy and Spain. On 7 March 2021,

CONTEMPORARY UNDERSTANDING OF RELIGIOUS FREEDOM VERSUS THE ORIGINAL MODEL

Let us repeat that Tertullian's and Lactantius' call for tolerance of beliefs other than those of the state cult (established religion) was voiced in the world where the state religion was the norm. The inclusion of Christians in the privilege of tolerance by Constantine the Great took place at the time when the followers of Christ were already deeply divided and these divisions threatened the public order. For the sake of maintaining social peace and the unity of the Roman Empire, the public authority, having distinguished Christian orthodoxy from heresy (Council of Nicaea, 325), took up the fight against the latter. Making Christianity a religion of the state by Theodosius the Great gave rise to *Christianitas*, a world in which there was room only for 'one holy and apostolic Church' (Nicene-Constantinopolitan Creed), and all unorthodox doctrines were outlawed. Novatians, Arians, Donatists, and later also Cathars, as well as numerous, smaller and larger schismatic movements were considered public enemies. Religious violence had constantly haunted Christian Europe. The 16th-century Reformation did not change this state of affairs; the divisions it had caused only increased faith-related persecutions. From the time of Constantine, social peace depended on the unity of the Church, the uniformity of teaching, cults and the institutional (ecclesial) order. However, Christian unity was not maintained, and therefore social peace was constantly threatened.

The most radical of the wings of the Puritan Reformation in the Church of England, Baptists, came up with a proposal to solve this dilemma. They supplemented Tertullian's and Lactantius' call for tolerance with a call for permanent separation of the Church and the state, the depoliticization of the Mystical Body of Christ and desacralization of the state. Baptists maintained that history taught us that the unity of Christians in the formula of *Christianitas* could not be maintained, therefore the usefulness of the construction of *Corpus Christianum* must be negated. However, anyone who thinks that the desacralization of the political order is tantamount to the privatization of faith is wrong. Christianity remains an invariably communal religion, only not organized politically. In addition, there are serious reasons to consider as unfounded the belief that faith is necessarily a private matter and 'spiritual choices' constitute a manifestation and affirmation of man's autonomy since the 'Church' means persons who have a personal, intimate relationship with Christ. Let us recall: the religious freedom in its original sense meant the freedom of Christian communities from external pressures, in particular from public authority, regardless of whether this authority guarded the cult of Roman deities (Tertullian, Lactantius) or *Christianitas* (the first Baptists). This freedom is by no means reduced to the affirmation of man's autonomy in

it was decided in a referendum to introduce a ban on covering the face in Switzerland. In public institutions, face covering ban has moreover been introduced in the Federal Republic of Germany and Kosovo.

his spiritual choices, nor to freedom from unwanted contact with religious symbols in public institutions, let alone open public space.

Let us note that the contemporary understanding of religious freedom is closely related to the concept of the state's secular nature. The separation of the Church and the state is often presented as a prerequisite for the preservation of religious freedom. However, the question remains whether indeed we are talking about the separation of the Church and the state or the separation of the state and religion, and this is not a petty distinction. In the first case, it is about protecting the Church; in the second, protecting the interests of the state. Undoubtedly, when calling for the desacralization of the state, the first Baptists had in mind a freedom of confessing religion. Nowadays, this call is often understood as liberating the state (and often, more broadly, the public sphere) from religion, from interreligious and interfaith disputes. As Stephen Holmes, a popular liberal political philosopher notes: *No issue is more frequently classified as 'worthy of avoiding' than religion. Sectarianism is understandably considered to be divisive, a serious threat to communal cooperation. Religious disputes, it is said, cannot always be resolved politically, or even rationally. On this premise, many communities have decided to draw a 'line' between the public and the private – to consign religious attachments to the nonpolitical sphere.*¹⁸

The denominational divisions which Charles I Stuart, the head of the Church of England, tried to stop, plunged the English nation into a fratricidal war in 1642 and led him to the scaffold. The response of the first Baptists to the need for restoring social unity was a call to abandon the idea of the Church fused with the state and a call to unlimited religious tolerance. Thomas Hobbes' answer constituted an irrevocable and total surrender of religion to the state, abolishing, *de facto*, the institutionally understood Church (the Church is no longer fused with the state in the Erastian formula, but fully dissolves in it). Finally, John Locke's response was to separate religion from the state while allowing the public authority to judge which doctrines go against the public order, including undermining the unity of the commonwealth, and then repress those who will disseminate them (himself pointing to 'papists,' 'Turks' and 'atheists'). Although Baptists and Locke share the conviction about the need to separate the Church from the state, the former did it mainly to secure the freedom of conscience and the good of the Church, whereas the latter was primarily concerned with social peace and the good of the state. The early Baptists are Christ-followers, victims of repression from the Anglican, and later Presbyterian establishment; John Locke is a political philosopher, concerned about the fate of the state, condemning both the absolutism of the Stuarts and the radicalism of Puritan fideism.¹⁹

While studying the development of the idea of religious freedom in the Western culture, we can note very clear Lockean inspirations. Following the jurisdiction of the

¹⁸ S. Holmes, "Gag Rules of the Politics of Omission", in J. Elster, R. Slagstad (eds.), *Constitutionalism and Democracy*, Cambridge 1988, p. 23.

¹⁹ A. Szwed, "Johna Locke'a koncepcja tolerancji jako reakcja na zasadę 'cuius regio, eius religio'", *Roczniki Filozoficzne*, vol. 62, no. 4 (2014), p. 74.

ECtHR in relation to Art. 9 of the ECHR, we can see how often the filed complaints are considered 'manifestly ill-founded' due to the fact that the satisfaction of the plaintiff's claims is in conflict with the values of an open democratic society, a secular state being its emanation. An excellent example of this is the case of *S.A.S. v. France*, in which the right to express one's religious identity in public space using specific clothing, essentially foreign to European culture, was denied as failing to conform to the abstract principle of 'living together.' The requirement of conformism by the followers of Islam wishing to cover their faces because of their beliefs was confirmed in the judgment issued by the ECtHR. The readiness to communicate with the social environment was recognized as a measure of civic involvement in the democratic state. When Tertullian and Lactantius challenged a demand for religious conformism from Christians, they assured of the unwavering political loyalty of Christ's followers to the Roman Empire. Likewise, for Thomas Helwys the ecclesial nonconformity did not mean a challenge to the authority of James I Stuart, except, of course, in the spiritual affairs of the royal subjects. Meanwhile, John Locke, a recognized advocate of tolerance and worldview pluralism, did not shy away from calling for a civic ideological conformism of 'papists,' 'Turks' and atheists, because, according to him, those who adhered to these doctrines could not be loyal members of the English political community. Today, the ECtHR maintains that the French Republic and the Kingdom of Belgium can rightly demand conformism from their female political community members, who should unveil their faces whenever they are in public space, justifying it by the need to defend the values of an open democratic society, in particular, the principle of 'living together.'

THE UNIVERSALISM OF THE CONTEMPORARY UNDERSTANDING OF RELIGIOUS FREEDOM?

Anyone who tries to find out the reasons for the evolution of the understanding of religious freedom in the observed direction points to the process of 'world disenchantment' in secularization of Western culture. The roots of this process are sought in the main currents of the Age of Enlightenment. However, it can be argued that participation in this process also exposes certain elements in the Christian doctrine. It was the first Baptists – in their advocacy of the depoliticization of the Church and secularization of public authority – who faced an accusation that they were in fact trying to break down the communal life of the Church and privatize religion, which allegation they steadfastly rejected. Not blaming Baptists and other Christians who promote a radical separation of the Church and the state for the current status quo, let us pay attention to the uniqueness of Christianity among other religions, including monotheism of the Old Testament and Islam. A unique feature of Christianity, strongly exposed by the 16th- and 17th-century reformers, is its emphasis on the believer's individual relationship with God, which is accompanied not only by the acceptance of faith in His existence, but also the adoption of a set of unshakable truths (dogmas) in the description of His characteristics, and the community of believers in God's presence (mentioned, among

others, in the Apostles' Creed or in the Nicene-Constantinopolitan Creed). Belonging to the Mystical Body of Christ follows from sharing a set of beliefs, and not the implementation of standardized practices of everyday life, such as 613 principles of Judaism or the five principles of Islam and Sharia law (Halal and Haram). Obviously, this does not mean that Christianity is purely spiritual, and that other religions are ritualistic or 'practical' – such a simplistic dichotomy would be absurd. However, what matters here are accents and proportions. A compulsory ritual for Christians, though not for all, is the baptism of water by the follower of Christ. All other forms of Christian activity are to be a testimony to the implementation of the 'Two Commandments of Love,' which cannot be standardized outside the denominational traditions of particular Christian denominations, or outside Christian ethics, so elusive in description (the problem of conscience). Thus, we see here the preference of intimately functioning convictions and calls of conscience over the 'religious law' (Gal. 5:2-6) regarding, for example, the method of obtaining food (the practice of Judaism and Islam in this respect in confrontation with Matt. 15:11, 17-20 and Acts 11:1-10) or clothing (certain currents of Islam but also Judaism literally reading the commands contained in 'Shema Yisrael'). Emphasizing the importance of intimate religious experience in the Christian doctrine (Matt. 6:5-6) is in line with the currently promoted understanding of religious freedom in the Western culture, absolutizing internal religious freedom and limiting the external one in the name of conformism, with previously established social standards of conduct introduced as legal norms. Importantly in this context, we find some encouragement to 'cultural conformism' in the apostolic lesson (1 Cor. 10:14–33).

However, the above presented reality does not suit those participants of religious traditions who center their identity around a specific way of life which is the implementation of strictly established rules of conduct resulting from the unconditional entrustment to the Divinity. For them, living in accordance with the model presented as the revealed God's law or rules derived from it, visible for the social environment, is a measure of faithfulness to the transcendent Power and a condition of blessing. The essence of this is perfectly illustrated by the recurrent dispute in Poland over the legality of obtaining kosher meat (in the Muslim tradition, halal slaughter). In 2013, a ban on slaughter according to specific methods required by religious rites was introduced in order to protect animal rights [Act on the Protection of Animals, Art. 34 sec. 1, Journal of Laws of 2013, title 856]. The legislator's goal was understandable and accepted by members of Polish society (65% of respondents in the Public Opinion Research Centre CBOS survey expressed their condemnation of such a slaughter without a prior stunning of the animal).²⁰ The alleged ideological neutrality of the adopted law manifested the lack of understanding of the role of ritual slaughter in the life of orthodox followers of the Mosaic religion (Lev. 17:12-14) and Islam by the decision of the Constitutional Court of December 10, 2013 (K 52/13), the statutory regulation prohibiting ritual slaughter was recognized as violating Art. 53 (1), (2) and (5) of the Constitution of the Republic of Poland and Article 9 of the ECHR, i.e. religious freedom. However, the

²⁰ CBOS, BS/70/2013.

discussion around ritual slaughter returned in 2020, due to the ‘five for animals’ political initiative. In the society with predominating Christian religion and the growing presence of non-religious worldviews, it is difficult to accept the importance of the unusual method of obtaining food or clothing for religious identity of a small group of fellow citizens. By pointing to the spiritual (intimate, private) space as a proper or at least crucial sphere for religious experience, we significantly narrow the scope of religious freedom, reducing the importance of non-optional principles of everyday life for followers of non-Christian religions. At the same time, we make the public sphere (state institutions; political community as such) the subject of this freedom (its carrier), so that, in the name of neutrality, it is to remain free from religion, from religious symbols, but also from employing arguments, messages or motifs derived from ‘revealed truths’ in the process of making universally abiding law. In the interest of ‘freedom from religion in the public sphere,’ we find reasons for restricting religious practices, including those assuming a symbolic character (e.g., clothing). Specific religious commandments must yield in the face of necessity to pursue public interest, taking the form of an abstract principle of ‘living together,’ surprisingly included in the catalog of rights and freedoms of other people.

FINAL REMARKS

To recapitulate our considerations, let us return to the initial thought opening this article: the claim of religious freedom was articulated in a world where religion was closely related (integrated) with the state. The call for religious tolerance came from nonconformist circles, incapable of identifying themselves spiritually with the state worship. The addressee of this appeal was the polytheistic *Imperium Romanum*, but also *Corpus Christianum*. Before it became a legal category, religious freedom in our culture functioned as a theological concept, as a claim of a ‘jealous God’ who reigns over human conscience (Ex. 20:5; 34:14). Religious compulsion was understood as a manifestation of sacrilege, an unauthorized entry into a space (domain) in which Christ exercises inalienable power. Over time, the concept of religious freedom became associated with considerations in the field of ecclesiology. The authentic Church of Christ should be, as the first Baptists proclaimed, radically separated from the state, while the state church, functioning in any formula of *Res Publica Christiana* (including the Erastianism of the Church of England), was not in fact a Church for them. Today, this separation is perceived as a prerequisite of religious freedom. The actual politicization (*ergo* desacralization) of the state was accompanied by the ‘politicization’ of religious freedom. It has become a subjective claim, encompassing the entire richness of ideological standpoints, including non-theistic and anti-theistic ones. Religious freedom, originally understood as safeguarding religious nonconformists against the pressure of public authority, is today perceived in equal measure as the right of those who wish to live a life without religion (freedom from religion). Moreover, the separation of the Church and the state resulted in the separation of the state and religion,

endowing political community (the state, state institutions) with the right to be free from religion – the state's ideological neutrality has been inscribed in its *ratio status*. In other words, a specific 'politicization' of religious freedom has been completed by freedom from religion in the public sphere.

This situation is disadvantageous for people following theistic worldviews, especially if they express their beliefs publicly (e.g. symbolically). The 17th-century claims of tolerance and religious freedom by nonconformist Christian 'sects' in Erastian England are rightly considered a leaven of modern struggles for freedom of speech, freedom of assembly and association, and ultimately the right to privacy. Meanwhile, today this claim is juxtaposed with freedom from religion of the ideologically neutral state, as it is often believed, ready to limit the freedom of public religious expression in the name of the rights and freedoms of those who do not share a theistic worldview. This will inevitably induce resistance of people who do not limit their religious experiences to the intimate sphere in which they enjoy unlimited freedom in accordance with the specificity of internally understood religious freedom.

Obviously, the freedom of religious practice (expression of religion) is not and cannot be an unlimited right. Yet, the expectation of the comfort of not being exposed to the reception of religious contents or symbols, or the claim of communicative openness in 'living together' constitute weak bases for limiting the freedom of religious expression. Numerous statutory solutions and court's decisions, including those of the European Court of Human Rights, are and will be perceived as not reflecting the essence of religious freedom. This applies not only to participants in non-Christian religious traditions, but also to numerous Christians who, in the conditions of a pluralist democratic society, are not ready to accept the privatization of religion as a civic virtue.

BIBLIOGRAPHY

- Canipe L., *A Baptist Democracy: Separating God and Caesar in the Land of the Free*, Macon 2011, <https://doi.org/10.1093/jcs/cst021>.
- Canipe L., "The Most Most Damnable Heresie'. John Smyth, Thomas Helwys, and Baptist Ideas of Freedom", *Baptist Quarterly*, vol. 40, no. 7 (2004), <https://doi.org/10.1179/bqu.2004.40.7.002>.
- Early J. Jr., *The Life and Writings of Thomas Helwys*, Macon 2009.
- Helwys T., *A Short Declaration of the Mystery of Iniquity*, R. Groves (ed.), Macon 1998.
- Holmes S., "Gag Rules of the Politics of Omission", in J. Elster, R. Slagstad (eds.), *Constitutionalism and Democracy*, Cambridge 1988, <https://doi.org/10.1017/CBO9781139173629.002>.
- Lecler J., *Historia tolerancji w wieku reformacji*, vol. 1, transl. by L. and H. Kühn, Warszawa 1964 (J. Lecler, *Histoire de la tolérance au siècle de la Réforme*, vol. 1, Paris 1955).
- Locke J., *A Letter Concerning Toleration*, transl. by W. Popple, at <<https://core.ac.uk/download/pdf/7048692.pdf>>.
- Prostak R., *Teista w demoliberalnym świecie*, Kraków 2014.
- Shakespeare W., *Richard II*, act 3, scene 2, at <<https://shakespeare.folger.edu/>>.

Szwed A., "Johna Locke'a koncepcja tolerancji jako reakcja na zasadę 'cuius regio, eius religio'", *Roczniki Filozoficzne*, vol. 62, no. 4 (2014).

The Constitutions and Canons Ecclesiastical [Made in the Year 1603, and Amended in the Year 1865], to which are Added the Thirty-Nine Articles of the Church of England, Published under the Direction of the Tract Committee, London 1900.

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