
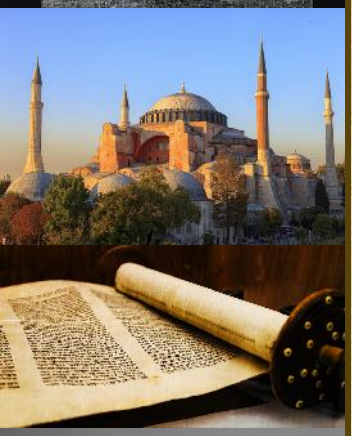


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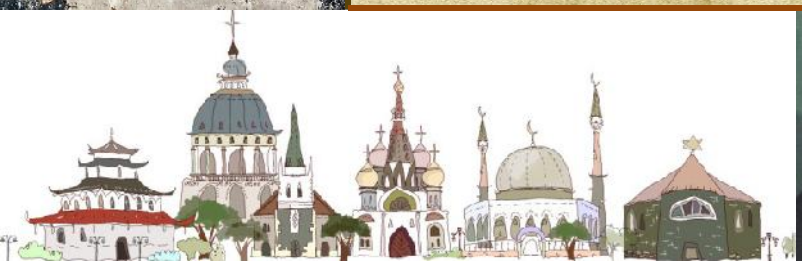
Pravo i religija

Law and Religion

Apstrakti

Abstracts



Sadržaj

Luciana Aleixo

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THE IMPORTANCE OF CANON LAW IN THE FRAMING OF THE PRINCIPLE OF *FAVOR SEXUS*

Last January, Pope Francis changed the code of canon law authorizing women to give communion. This concession is not a novelty in many communities around the world but now it became a practice authorized by the bishops.

Although the foundation of Jesus teachings written in the Bible by his disciples towards women were essentially egalitarian, they were placed in an inferior position by the Church. As stated in the works of the main jurists of the *ancient regime,* female inferiority did not translate only into dependence on family life, contractual or matrimonial incapacity but also conferred a privileged position when they transgress the law. Furthermore, the main fact that has had far-reaching consequences for the situation of women was their removal from certain liturgical functions, which were performed only by men. To that first prohibition, others were added in the following centuries.

As it will be addressed in this paper, the pre-understanding of women as inferiors unravels, in the course of European legal tradition, into normative consequences, some of which are mere extensions of the scriptures communicated to law by their reception in canon law. Guilt, tort, expiation, free will, responsibility and conscience are ideas of mastery of moral theology that for centuries influenced the doctrinal construction and practice of European criminal law.

For both ordinary law criminalists and theologians, the delinquent is a sinner victim of his passions, his temperance or the weakness of his intelligence. It is through this theory of circumstances that influenced the 18th century law, when judges could increase or decrease the seriousness of the crime.

Taking into consideration this background, we analyze in this paper the religious origin of the legal principle of the weak sex and the inferiority treatment granted to women. We intend to address especially how this representation impacted the European criminal law of the old regime when sex was considered a cause of non-culpability. Due to their less rationality, some scholars advocated for a milder female punishment. The *fragilitas sexus* appears as the foundation of a female imputability.

However, there were exceptions to its reach, such as the commitment of serious crimes and if the accused women had demonstrated particular cunning. Moreover, the judges could only show clemency if the delinquent woman had not violated either divine law or natural law. As we can see, the solutions for women criminals are contradictory and ambiguous as this has been their image since medieval canon law.

We aim to analyze the status of women in the medieval canon law. The study focusses in some specific sources of the classic canon law, i.e., the canon law that was formed from the 12th century, imposed by Rome on all western Christianity. We approach specially The *Decretum* of Gratian and the Decretals of Gregory IX. Along with other legal texts, the *Corpus Iuris Canonici* greatly influenced the modern criminal law.

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THE IMPACT OF THE MERCHANT'S CONFESSION IN THE DEVELOPMENT OF BUSINESS LAW DURING THE SIGLIO DE ORO: THE TOMAS DE MERCADO AND MARTIN DE AZPILCUETA'S CASUISTIC APPROACH TO COMMERCIAL LAW

With the discovery of the Americas in 1492, Spain and Portugal acquired the status of **major western economic powers**. Thus, in the sixteenth century, the last lands of Western Europe became the center of the whole world economic activity, as a gateway to the New World. *Sevilla* then concentrated the monopoly of colonial trade, as well as its administration in the *Casa de la Contratación*. Intellectually, the **Very Catholic Kingdom of Spain** became the cradle of the Counter-Reformation, leading to a true Catholic revival. This context of intellectual and economic flourishing made the sixteenth century the Spanish ***Siglo de Oro***.

Consequently, it felt to the **moral theologians of the School of Salamanca**, both jurists and confessors, to answer the questions of Christianity about the new order of things, and to counter the Protestant doctrines coming from the East.

Inside the framework of the sacrament of confession, it is the duty of the confessor to listen to his penitent and then to divulge the moral rule to be applied in the situation presented to him. Nevertheless, the confessor is not detached from the factual conditions: he must also show, in view of the facts presented by the penitent, how the rule should have been applied and how it should be applied in the future. Only then, when the penitent shows his good will to follow the confessor's instructions and advices, can he obtains absolution. The questions of penitents are called **cases of conscience** and reveal a situation in which the application of the rules supposed to apply in everyday social and economic relations make, in view of the factual circumstances of the case, doubts and questions appear, alongside the aim of saving the soul of the penitent, whether he be a worker, soldier, craftsman, judge... However, we will particularly focus on **cases of conscience of merchants as economic agents in this new context of trade with Western India.**

In an effort to harmonise, as the Church is accustomed to do, the responses given by confessors to penitents, casuistic literature appeared, that is to say, **literature relating to the study of cases of conscience, in the form of *Manuals for Confessors and Penitents*.** These books, which present cases taken directly from questions asked to theologians, are written both in Latin for confessors as a methodological guide to be used throughout Europe, but also in the vernacular language so that penitents, who are not members of the clergy and therefore not Latinists, can also find the legal rules to be applied to everyday commercial practices without necessarily going to the confessional. During the *Siglo de Oro*, **the writings of the Spanish theologians of the *School of Salamanca* became the main casuistic literature of the Catholic world, thus intimately mixing Law and Religion, but also the figurehead of the direction of conscience against the growing Protestantism of other nations.**

Therefore, the role of the confessors is extended to that of a legal adviser. Indeed, it is up to the representatives of spiritual power to determine how substantive human law should be applied in everyday legal acts in order to match with natural law, and thus fulfil God's will, keeping in mind the aim of ensuring the salvation of the penitent's soul. This requires a scholarly knowledge of legal institutions on the part of the confessors, but also a detailed analysis of the factual circumstances, which are likely to raise a new case of conscience. **So, the penitent understands and learns the law through the confessor's mouth**, when the confessor dictates the moral precepts derived from Natural Law which must govern the conduct of his business.

But if we take the opposite perspective in order to study it from a new angle, we must ask ourselves how the confession of the penitent, in all its factual specificities, can influence the confessor's legal knowledge. Indeed, the moral precept divulged by the confessor and practiced by the penitent is transformed into Law. It then takes the form of a legal rule applicable to all similar cases, and comes to form the casuistry taught in the *Manuals for Confessors and Penitents*. The specific case of conscience thus forms a general legal precept that is perpetuated in a global, and not only European, framework over the centuries.

Therefore, the question is: **how did the sacrament of confession influence the shaping of Law in the sixteenth century Spain?** To answer this question, two books by the Doctors of Salamanca are particularly worthy of our interest:

– The *Manual de Confesores y Penitentes*, by **Martin de Azpilcueta**, published in its final version in Salamanca in 1556. Its Latin version, published in Rome in 1566, was republished eighty-one times throughout Europe in the end of the sixteenth century alone. It was the first ever *Manual for Confessors and Penitents;*

– the *Suma de Tratos y Contratos de Mercaderes y Tratantes*, by **Tomás de Mercado**, published in 1569 in Salamanca. The specificity of this Treaty is that it is a direct result of the study of contracts related to West-Indian trade, while writings about the subject are generally censored due to information control. These are cases of conscience taken directly from the confessions made by Sevillian merchants in business with the New World to the author himself, who thus gives us a first-hand writing.

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EXAMINATION OF THE RELATIONSHIP BETWEEN THE CONCEPTS OF LAW AND RELIGION IN MULTINATIONAL SOCIETIES; THE CASE OF THE OTTOMAN EMPIRE AND THE REPUBLIC OF TURKEY

The aim of this study is to examine and evaluate the relationship between the concepts of law and religion in states consisting of multinational societies. For this purpose, the Ottoman Empire and the Republic of Turkey by taking the case of the changing relationship over the years has been revealed in the state said the concept of law and religion. As known legal rules, which are a set of rules imposed by the state to ensure social order and justice, can be affected by the religion and way of thinking of the societies they belong to. Especially in societies where monotheistic religion prevails, it is striking that the legal rules are established in accordance with the religious rules. For example; Since the Ottoman Empire was a theocratic state and its religion was Islam, Islamic law was applied. Common law and sharia law coexisted. The source of political domination was seen as a god. Religion was also the source of law. Religious and legal affairs went hand in hand. The Quran, hadith, analogy and consensus were the sources of religious law. Islamic law has emerged as jurisprudence.

However, the jurisprudence in question was the result of the comments of legal scholars and the answers they gave while solving a legal problem rather than the court case law. The Sultan could not bring a rule that was not included in Islamic law with her decree and laws. It could only require the application of the rule established by case law. In this way, case law could be transformed into law. In the field of customary law, there were sultan's laws in areas not regulated by Islamic law. In the Ottoman Empire, the legal order was tried to be provided with an understanding of sharia and customary law. However, the Ottoman Empire consisted of a multinational and multi-religious structure. There was a need to create a modern legal system in order to adapt to social and economic developments.

With the modernization movements, apart from the religious law system, the secular legal system started to form. As a result, a duality has arisen in the legal system. While some laws after the Tanzimat period were taken from European countries, some laws were created by enacting the rules of Islamic law. With the regulations issued, the justice system in Europe began to be effective in the Ottoman Empire. These regulations were effective in many institutions of the Ottoman state and in the modernization of the understanding of law by accelerating the transition process of the state to the constitutional order. Ottoman law that sharia legal system is quite different from the legal system of the Republic of Turkey. State sovereignty belongs to the citizens of the Republic of Turkey. There is an understanding of secular state with the existence of national sovereignty. Republic of Turkey and the Ottoman Empire as well as traditions, lifestyles, is composed of many different groups in terms of origins and beliefs.

Today, the Republic of Turkey Turkish, Kurdish, Arabic, Circassian, Bosnian, Laz, Georgians, Abkhazians, Chechens, Armenians and Greeks live ethnic origin. Established after the disintegration of the Ottoman Empire, the Republic of Turkey on religious identity has been removed by extracting them from the foundation of the religious community. In addition, the dynastic system was abolished and the principle of national sovereignty was introduced. With the transition to the secular state order, it is seen that the biggest revolution in the field of law took place. Atatürk's words on the secularization of the law on March 1, 1924; "I cannot explain the importance we attach to the organization of justice and its correction ... It is necessary

to free our understanding of justice, our laws, our organization, from the ties that have kept us consciously, unconsciously, under their influence and which do not comply with the requirements of the century. The nation wants the principles of justice advances that comply with the country's requirements first in every civilized country. The nation wants civilized methods that will ensure fast and definite justice. The path we will follow in the civil law and family law will only be the path of civilization.

Managing the situation in law and adherence to superstition is the worst nightmare that keeps nations from waking up. It cannot have nightmare on the Turkish nation". It is seen that Mustafa Kemal Ataturk's words emphasized the importance to passing from ummah conciousness to nation consciousness and the importance by comparing the old Sharia law with modern and secular law. In addition, he emphasized that the Republic of Turkey will not bound by the old law. The influence of religion on the law has been abolished, a more secular structure has been created in state institutions and the legal system. In this way, a secular, contemporary and more modern legal system has been acquired. Thanks to the laws and reforms adopted, it has a modern and secular legal system. As a result of the study, although the Ottoman Empire was a multinational state, it is seen that religion constituted the rules of law because the source of sovereignty was god. However, Republic of Turkey, since it is based on national sovereignty and it is a secular state, it is seen that the rules of religion and law are separate from each other. In modern world states, it is understood that the rules of law are prevented from being affected by religious rules in order to ensure the freedom of individuals and to ensure absolute justice.

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IS STATE FUNDING OF CHURCHES AND RELIGIOUS ASSOCIATIONS APPROPRIATE?

There are various forms of financing churches and religious associations in Europe and around the world. These depend primarily on the model of state-church relations in a given country, as well as on historically determined state traditions. It is therefore not surprising that in most cases of countries with a dominant church center or a dominant religious association, besides the tributes of the faithful, the main source of financing is a state subsidy. Given the above, it is therefore also not surprising that the funding of churches and religious associations, most often defined at the level of normative acts of a general nature, is considered to be right and necessary.

However, state funding as currently understood is not in line with the understanding of this concept in the context of the idea of separation of state and church, a process aimed at secularising the state. On average, in countries where churches and religious associations are fully subsidised from the state budget, several hundred million euros are allocated to them every year, most of which is spent on salaries for catechists, followed by educational activities, among others. Parallel to the above, in most of the examined European countries, funds from the faithful constitute a negligible percentage with simultaneous lack of taxation and thus lack of control – mainly due to the fact that these issues are *lex specialis* to the legal act *lex generalis* establishing taxes.

In the Republic of Poland alone, where state expenditure on the Catholic Church alone is in the order of half a billion euros a year, it is impossible to regulate the taxation of donations due to their definition in the law defining the legal situation of the Catholic Church, which is *lex specialis* to the Law on taxation.

The position of the Catholic Church, unlike that of other religious associations, has always been based on its identification with the nation. In Poland, as a result of strong ties with the authorities and thus strong political influence during the communist era, a national narrative has been built up for over 70 years about the Church defending and identifying with the Polish nation. When analysing the history of the emergence of such a strong bond between Poland and the Catholic Church, it is necessary to go back to the times of pre-war Poland, which was then, after all, a multi-national, multi-confessional state and was not so focused on the Catholic religion – primarily because pre-war Poland was only two-thirds Polish and Catholic. At that time, parallel to the ongoing process of ethnic and religious homogenization of Poland, there was a strong anti-clerical current. However, the clash of the two currents – clerical and anticlerical – led to the fact that, as a result of the destruction of the war, Poland slowly became a homogeneous Catholic nation. Numerous events, mass evangelizations or support for the opposition only caused the Catholic Church to become the most important religious association in the Republic of Poland. At the same time, the Church began to use its moral authority to secure itself against other religious associations in terms of access to the state, including funding from the state budget, which happened as early as 1951 with the first Statute of the Church Fund.

The influence of the Church is not only a sensitive issue for Poland, but also for other Member States of the European Union. Speaking of those countries, one can point to numerous standards, including various tax breaks for church entities or the exemption of the Catholic Church from taxes on its business activities in general.

However, the case is different in Germany, where, due to the secular nature of the country, there is a compulsory tax deduction of a certain percentage of income tax for the benefit of a particular religious' association designated by the taxpayer. The essence of the freedom to deduct tax for the religious association of one's choice can easily be derived from the history of Germany, under which already in Article 137§1 ('There shall be no state church.') and Article 137§6 of the Weimar Constitution of 1919 ('Religious societies, which are public enterprises, are entitled to levy taxes on the basis of the civil tax list in accordance with the provisions of national law.') separated these two entities: state – church.

A similar situation existed and still exists in France, where in 1905 the Law on the Separation of Church and State was passed, according to which church property was considered to be state property and religious associations had limited rights regarding churches, seminaries or parish houses. At the same time, France was obliged to pay for the insurance of priests and to maintain church buildings that had been constructed before the 1905 law came into force. Thus, adopted on the basis of the liberal ideology of the Enlightenment, the functioning of the church in separation from the state was to be a guarantee of the religious freedom of the individual through the influence of any church. However, parallel to the secular state model, which France has recognised since the time of the law, there has long been a coordinated religious state model in Alsace and Lorraine. This state of affairs may have occurred because, although the 1905 Act is in force in most of France and in the overseas departments, the Napoleonic Concordat of 1801 is still in force in the three departments in the east of France. This legal document was intended to support the Catholic Church and remove other religious associations from possible influence over the ruling elite. Parallel to the strengthening of state control over the Catholic Church by Napoleon's Concordat, a law in 1905 allowed for the non-financing and non subsidisation of any denomination, which would bring into effect the idea of Napoleon Bonaparte initiated by the decree of the Paris Commune of 1871 ('Whereas freedom is the first principle of the French Republic; whereas freedom of conscience is the first of all freedoms; whereas the religious budget contradicts this principle by taxing citizens against their religious convictions; whereas the clergy were complicit in the monarchy's crimes against freedom – Decides 1) the Church shall be separated from the State; 2) the budget of the confessions shall be abolished; 3) the property, called dead hand property, belonging to religious congregations, movable and immovable, shall be declared the property of the nation.'). France, although divided in the middle between the understanding of what the state is and what the church is, separated these two entities: state – church. Why then has Poland not succeeded?

Similarly, in Italy and Hungary, the issue of religious freedom and the relationship of the state to churches and religious associations can be easily addressed – tax deductions of a certain percentage of income tax to a particular religious association designated by the taxpayer are, on the other hand, optional, as a result of the coordinated separation model advocated in these countries.

In order to fully understand what state financing of churches and religious associations really is, what its purpose is, why it often turns out that the societies of selected countries set as their goal the financing of other issues than churches and religious associations, one must first of all refer to the issue of what the actual legal basis for financing the activities of church institutions is, as well as to the issue of the possible guarantee of granting churches and religious associations enormous privileges in this way.

Reflection on the theoretical questions of the recognition of the legal personality of church organisational units, on the problem of the historical and legal existence of churches and religious associations in such a form, which is present in most of the examined countries, e.g. Poland, Germany or France, on the questions of respecting the equality and cooperation of churches and religious associations, on the legal basis of their functioning, as well as on the opinions of independent researchers, suggests that the financing of churches and religious associations is not really appropriate.

How did such different forms of funding churches and religious associations emerge? How did the current funding model emerge? How have a selected country's history and traditions influenced and are

influencing the issue of funding churches and religious associations? Why is the model of a denominational state with one church funded by the state increasingly rare? How has legislation dealt with the issue of financing the activities of churches and religious associations in countries such as Poland, Germany or France? What are the opinions on the role and finances of churches and religious associations in relation to the socially acceptable extent of their financing? Should it be done primarily with the money of the faithful, and the state should subsidise the activities of churches and religious associations to the extent that they are most needed? How does it look in the historical context? Is it really appropriate to finance churches and religious associations from the state budget?

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VLADE SRBIJE I BEOGRADSKA MITROPOLIJA (1878-1889)

Beogradska mitropolija je crkvena oblast u novovekovoj Srbiji i njene granice su bile istovetne sa državnim. To je uslovilo čvrstu povezanost sa državnim vlastima, a ujedno i podređenost. Mitropolijski presto bio je stabilniji od vladarskog. U periodu od Berlinskog kongresa do abdikacije kralja Milana, Srbija i srpski narod su prolazili kroz buran period. Iako je država stekla nezavisnost, međunarodno priznanje i proširena je za četiri okruga, suočila se sa novim izazovima. Burna decenija u kojoj se kralj razveo, u kojoj je vođen srpsko-bugarski rat, okončana je abdikacijom vladara Milana Obrenovića. Brojne krize uticale su na Beogradsku mitropoliju, a sve je kuliniralo smenom mitropolita Mihaila i stvaranjem „nove jerarhije“. U radu biće dati pravni okviri delovanja Beogradske mitropolije u nezavisnoj Srbiji i analiza na koji način su građanske vlasti uređivale crkvene prilike i kako se država postavljala kada je u pitanju odnos Beogradske mitropolije sa drugim verskim zajednicama. Država je branila crkvena načela i stajala je kao zaštitnik same vere, ali je sa druge strane uticala na praktična i personalna rešenja. Glavna pažnja usmerena je na smenu Mitropolita Mihaila, i tihi sukob države i crkve nametanjem "nove jerarhije". Zakon o crkvenim vlastima koji je donesen 1882. godine, kao dopuna zakona iz 1862. godine, predstavaljao je skoro potpuno podređivanje Arhijerejskog sinoda, Ministarstvu prosvete i crkvenih dela. Političke promene uslovile su da dođe do promene odnosa prema crkvi. „Nova jerarhija“ zamenjena je starom, a mitropolit Mihailo ponovo se vratio na svoj presto. Biće razmatrane i pripreme za donošenje Zakona o crkvenim vlastima.

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SHVATANJA I SLIKE PRAVDE U HELENSKOM SVETU: TEMIDA I DIKE

Apstraktni termini, među kojima je i pravda, u antičkim religijama često su predstavljani putem alegorijskih personifikacija. Takvi pojmovi, otelotvoreni u jednom personifikovanom božanstvu, imaju važno mesto i u helenskoj religiji, naročito u domenu vizuelne kulture. Predstave helenskih božanstava, često su posmatrane isključivo kao estetski fenomeni, izolovani od stvarnosti u kojoj (i za koju) su nastale. Ipak, treba imati na umu da su ove vizuelne predstave bile aktivni činilac helenskog religijskog života, te bi bila greška smestiti ih samo u kategoriju umetničkih dela, već ih treba razumeti kao simbolične i religijske slike.

Razumevanje vizuelne predstave alegorijskih (personifikovanih) božanstava, kao vida racionalizacije apstraktnih pojmova, može nam poslužiti kao izvor za razumevanje ne samo helenske kulture, već i helenskog društva, političkog uređenja i kolektivnog identiteta. Helensko poimanje prava i pravde, prvenstveno možemo tražiti u najranijim oblicima njihove religije, izražene kroz mitove Kritički iščitavajući mitove, te smeštajući ih u adekvatni društveno-politički kontekst, možemo razumeti odnos helenske religije i percepcije prava i pravde. Ova veza se najpre očitava u onim elementima mitova koji se tiču mitološke grupe Temide (Θέμις) i njenih kćeri: Dike (Δίκη), Ajrini (Εἰρήνη), Eunomije (Εὐνομία), Mojri (Μοῖραι), i njima srodnih božanstava.

Zarad suštinskog razumevanja mesta Temidinog kulta u sakralnoj topografiji helenskog sveta, a kroz to i helenske percepcije pravde, problemu je neophodno pristupiti interdisciplinarno. Ovaj, po svemu sudeći kompleksni problem, treba posmatrati iz ugla istorije umetnosti podjednako koliko i iz ugla prava. Prvenstveno, kombinujući kritičko čitanje mitova, koje odgovara metodologiji antropologije antičkog sveta Luja Žernea, sa studijama vizuelne kulture, možemo pronaći elemente društveno-političkih okvira u kojima su kultna mesta i vizuelne scene vezane za Temidin kult nastajale. Ipak, radi dubinskog razumevanja društveno-političkog konteksta, neophodno je problem dopuniti i metodologijom pravne istorije i filozofije prava. Na taj način, moguće je dekonstruisati mitološke okvire koji okružuju ovaj problem, sa ciljem suštinskog razumevanja helenske percepcije pravde.

Dakle, cilj ovog rada svakako nije razumevanje vizuelnih predstava iz ugla istorije umetnosti, niti predstavljanje shvatanja o pravu i pravdi iz perspektive filozofije prava, već pokušaj sinteze dva različita pristupa u cilju razumevanja pojmova prava i pravde. Prve predstave o pravu nalazimo upravo u mitovima stare Grčke, kao i u raznim vizuelnim predstavama i simbolima. Tako, Themis se razume kao božansko, a Dike kao ljudsko pravo. Preko Temide, Zevs prenosi zakone, a Dike ih dalje prenosi smrtnicima na zemlji, istovremeno javljajući Zevsu kada su zakoni prekršeni. Međutim, Dike je često nemilosrdna. Ona je katkad zaštitnica prava, katkad je osvetoljubiva i sklona odmazdama. Preko Nemesis ona vrši odmazdu. Tako uočavamo vrlo rana i često primitivna shvatanja o pravu i pravdi, a izvor su nam u najvećem broju slučajeva vizuelne predstave.

U ovom radu ćemo pokušati i da prikažemo svojevrsnu evoluciju shvatanja o pravu. Pravo i pravda su prešli put od mitskog, preko logosa, pa sve do vrlo naprednih shvatanja ovih pojava i pojmova kao političke kategorije (Aristotel, Nikomahova etika). Istraživačko pitanje postaje još zanimljivije, kada se uzme u obzir ne samo evolucija shvatanja, nego i vizuelnih predstava. Na vaznom slikarstvu, još od arhajskog perioda, alegorija prava i pravde najčešće je predstavljana putem mitološke grupe Temide i njenih kćeri. Dakle, po

ikonografskom obrascu, Temida je predstavljana uz Dike, Ajrini, Eunomiju i Mojre, a katkad i uz druga božanstva. Od V veka p.n.e, Temida i Dike, asimilovane su u jedinstvenu personifikaciju. Ovaj primer predstavljanja prava i pravde, putem jedinstvene ženske figure, ponajpre je prisutan na atičkim dokumentarnim stelama, kao i u domenu kultnih statua. Oba vida alegorijskih predstava prava i pravde, simultano postoje sve do hristijanizacije u IV veku n.e, ipak, već od kraja IV veka p.n.e, ovaj vid alegorije, prelazi iz domena kulta u domen javne simbolike. Vremenom, mnoga razumevanja prava i pravde bivaju „pročišćena“ od religijskih primesa i postaju pojmovi bliži „običnim ljudima“. Tako će Aristotel postaviti kao formalni kriterijum pravde jednakost („sa jednakima jednako, sa nejednakima nejednako“), a čitava „istorija pravde“, postaće traganje za materijalnim kriterijumom. Svakako da su Temida i Dike postale anahrone, ali su predstave pravde i dalje imale snažnu religijsku inspiraciju. Istovremeno, shvatanja o pravu i pravdi su nužno proizvod brojnih društvenih okolnosti, pa bez uvida u političku i društvenu istoriju toga doba, istraživanje ne može biti potpuno.

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THE INFLUENCE OF RELIGION ON PRIVATE LAW: EXAMPLE OF MATRIMONIAL LAW IN THE SECOND POLISH REPUBLIC (1918-1939)

On 16th of November 1918 Józef Piłsudski, commander-in-chief of the Polish Army sent the telegram to the governments of the USA, United Kingdom, France, Italy, Japan, Germany and "all fighting and neutral states", which notified the establishment of polish state. Poland had been resurrected from lands of three annexations - German, Russia and Austro-Hungarian. After 123 years of captivity Poland had finally regained its independence.

Economic, social and political situation of newborn Poland was difficult. It had to struggle for every kilometre of its border with the fallen German Empire on west and north, with Lithuanians on north-east and with Czechoslovakia on south. Not to mention deterring the pressures of Bolshevik Russia from the east, which caused the Polish-Bolshevik war (1919-1921). Finally, Poland's situation had stabilized in 1921, Sejm (polish parliament) proclaimed a new Constitution and restoration had begun.

When it comes to private law, Polish legislators chose not only to resign from one common codification of private law, but also to maintain the regulations of former partitioning states. And so, in lands of the so-called Vistula Country and (former Kingdom of Poland, part of Russian Tsarate) was in force Napoleonic Code (with polish modifications) and Digest of Laws of the Russian Empire, on the territory of former German partition BGB took effect and in Galicia and Lodomeria ABGB together with Hungarian law had its impact.

Matrimonial law is one of the most interesting parts of private law. Its form which took place in interwar Poland may be especially interesting, due to the fact that on the area of one state *de facto* several legal systems were in force. For example, one could divorce in former Austrian partition, which was impossible in Warsaw, or Vilnius.

Author will focus on the link between the institution of marriage and its religious dimension on each of in force at that time law orders. Author will try to adopt the comparative method and demonstrate similarities and differences between each other.

As presented, we can see that in the area of one, independent state five systems of private law had been in force. All of them were inherited from the partitioning states. Despite its best efforts, Poland did not achieve one, common codification of private law during the interwar period. Slowly progressing codification works had been interrupted by German aggression on 1st of September 1939. After a month and six days of heroic fighting, resisting Nazis from west and Soviets from east, polish state ceased to exist.

The above information gives specific context needed to understand the situation in which Poland was in the interwar period. The main aim of this paper is to relate the legal status of marriage in the Second Polish Republic, its evolution, and its link with religion, which the author considers very interesting.

The article structure should be following:

1. very short brief into Poland's political, economic and social situation,
2. private law in interwar Poland - the most important aspects
3. territorial range of each codification
4. matrimonial law - institution of marriage and divorce (if possible) in every of above legal systems

5. conclusions - religion impact, variety of different solutions in one law.

During the writing procedure the author will rely on works and opinions of well-known polish and international lawyers and law historians. Author will also conduct his own research and analysis of the most important legal acts.

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TRIAL BY ORDEAL: A SOCIO-LEGAL PERSPECTIVE

On 8 April 1099, during the siege of Antioch by Muslim troops, Pietro Bartolomeo, an Italian commoner that joined the crusade searching for fortune, claimed to have seen several divine figures, one of which Jesus Christ himself, ordering to the Christian army particular task and possible attack to perform. As many of the people were skeptical Bartolomeo decided to show his honesty in the only way possible: trough an ordeal by fire. In that 8 April, the two fires were built, and the soldier walked through them, sure of passing safe between the heat of the flames, unfortunately he died in the attempt.

The phenomenon of trial by ordeal has been observed across many cultures and eras from the oldest known law codes found in the ancient Near East, across medieval Europe and in parts of Africa throughout the twentieth century and into the present day. In my research I would limit myself in investigation regarding medieval western society, and specifically on the ordeal by fire.

For doing so we have to notice how in Economy and Society, Weber presents the trial by ordeal as being the epitome of formal irrationality, as he claims that where a society lacks the machinery of government and state, the role of ritual and belief in witchcraft or other magico-religious forces emerges as enforcing respect for social ties which have no sanction from the state to uphold them. Weber describes the forces to whom the question of guilt or innocence is put as 'magical powers' but Hoebel's terminology 'magico-religious' is preferable as, for example, against the Christian backdrop of the European ordeal material, there was a distinct religious element to the use of the ordeal; it seems doubtful that, say, the originators of the witch trials who perceived the use of magic as being illegitimate, associated with the devil, and negative in force, would have conflated it with what they viewed as the legitimate acts of their God.

It is to see however what was the origin of such kind of trials, as in Roman law there are no present, if not as a punishment, but never as a way to judge. Bartlett, distinguishes the continental tradition from the Irish tradition. He consigns the Irish tradition to obscurity by failing to find any influence on the continent: "*As they represent a tradition uninfluenced by others, so the Irish ordeals were a legal tradition without influence*". The continental tradition arose in the early sixth century with the Frankish ordeal of hot water and spread thereafter through the other Germanic tribes on the continent and into England. The rituals regarding fire ordeal had symbolic aspects and special ceremonies accompanied them, and it is to wonder how much this ritual was important in that culture.

Contemporary Ethnography questions about how participants in collective rituals perceive themselves and the psychological effects of extreme rituals. Emile Durkheim coined the term 'collective effervescence' when describing accounts of village rituals among Australian aborigines: *"The very act of congregating is an exceptionally powerful stimulant. Once the individuals are gathered together, a sort of electricity is generated from their closeness and quickly launches them to an extraordinary height of exaltation. Every emotion expressed resonates without interference in consciousness that are wide open to external impressions, each echoing the others"*. Contemporary incarnations of this idea include Jonathan Haidt's, hive hypothesis, which argues that the immersion of individuals in large collective events creates one source of strong happiness and well-being. These ideas related to contemporary rituals could have a meaning inside medieval Catholic Christian culture and so it is to wonder: Could Ethnography give us more insight on the history and actual present of law? If so, how could it describe the phenomena of trial by fire

in western catholic medieval culture? What was the relation between truth and religion in that culture? And between justice, the pain of the trial, the ritual and then religious figures itself?

My research would aim to investigate historically the medieval practice of ordeal by fire, and eventually to try to utilize contemporary interpretation of rituals in order to achieve a better understanding of them, and unveil the symbolic meaning of such rituals.

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RELATIONS OF LAW AND RELIGION ON THE EXAMPLE OF CANON LAW IN MEDIEVAL EUROPE

The two things common to all medieval social groups uniting in European society were religion and law. These two components created the state and cemented society, formed European civilization and culture. At the same time, they were very close in content and target orientation, and therefore closely interrelated. These components did not contradict each other and were able to become a common foundation for the cultural and historical phenomenon that we call Europe.

Their similarity lies primarily in their universality and universality. Perhaps this is the main quality of both the Christian religion and Roman law. By mutually supporting and enriching each other, they were able to link together the peoples inhabiting a vast expanse. The Christian religion appeared in the vastness of the Roman Empire at a time when this civilization lost the most important foundation, without which it eventually collapsed. It was the ideological justification.

Canon law is an integral part of medieval European civilization. Canonical law arises together with the Christian Church, but it does not receive registration immediately. During the VI−X centuries, the general theological doctrine of the Christian Church was formed, as well as the order of service and the norms of general church discipline. During this period, the canons (norms, rules) are identified with the decisions of councils and synods (assemblies of bishops), with the decrees and decisions of individual bishops, as well as with the texts on punishments in the Bible.

In 1075-1122, there was an important internal church reform organized by Pope Gregory VII, which resulted in the development of a special ecclesiastical system of law, called the new law (ius novum), as well as the new Catholic law.

In the way, canon law is the law contained in the ecclesiastical canons – laws published by the religious authority and sanctioned by the secular authority. The moment of the birth of canon law can be considered the publication of the collection of rules of the Council of Nicaea in 325 under the tolerant Emperor Constantine. The time of the highest flowering of canon law is the Middle Ages, although this right exists within limited limits even today.

In the new Roman Catholic law perceptibly influenced by Roman law (concepts, norms-especially in matters of property, inheritance and contracts) and customary law (at the center of it were the issues of protection of honor, observance of the oath, retribution, reconciliation and collective responsibility). Canon law also includes many biblical examples and metaphors that have become a separable part of the individual canons.

The first codifications of canon law were private collections of canons. These include a collection of canons and a collection of texts about 74 titles (1050) and also a collection of all norms (Pannormia) Yvon of Chartres, who for the first time in the XI century set out the entire canon law. At the same time, Gregory VII declares the authority of the Pope to "create new laws according to the needs of the time." These papal laws were called decretals and were no longer perceived as complementary and clarifying regulations, but as completely new ones.

In 1140, there was is a decree of Gratian entitled "Concordia discordantium canonum". He was a monk of the monastery of St. Felix in Bologna. It was a treatment of canon law with the inclusion of Biblical texts and papal decretals. After this work, "old law" and "new law" began to differ, i.e., the old cathedral

laws and the new papal decretals. Canon law, according to Gratian, is not a dead body, but a living organism that it has not roots only in the past, but also continues to evolve.

Canon law traditionally regulates legal relations related to a special subject composition – such are civil, procedural, and criminal relations with the participation of clergy. Religious crimes (heresy, magic, witchcraft, desecration of objects of religious worship, etc.) were also subject to the jurisdiction of the courts of canon law. This was followed by crimes related to sin (incest, extramarital cohabitation, perjury), which also fell within the jurisdiction of the canon law courts.

A separate area of regulation was, of course, the authority of Christian Church (the power to appoint to church offices, procedures for settling disputes between priests, disciplinary sanctions, etc.). A special category of regulation extended to the relationship between the ecclesiastical and secular authorities. General crimes also often fell within the scope of ecclesiastical jurisdiction (a fixed list of penances imposed for various crimes, including murder and perjury, was used as punishments).

In addition, in the Middle Ages, all legal relations in the marriage and family sphere were regulated by canon law. These include the establishment of the age of marriage, the order of marriage, the prohibition of divorce, the property relations of the spouses, the determination of obstacles to marriage, the determination of the legality of the birth of children and the dissolution of the marriage bonds.

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DRŽAVNA CRKVA U KNJAŽEVINI I KRALJEVINI CRNOJ GORI

Pravoslavna Crkva na prostoru Crne Gore je kroz istoriju uvijek zauzimala važno mjesto u društvenom i pravnom životu. Pravno uređenje odnosa Crkve i države na prostoru srpskih zemalja aktuelno je od Svetog Save pa sve do danas. Na prostoru Crne Gore nakon stvaranja vilajeta Crnojevića i turske vladavine na prostoru nekadašnje države Crnojevića, narod Crne Gore i Brda ostaje bez svog istinskog i narodnog vladara. Silom istorijskih prilika sve veća vlast dolazi u ruke Mitropolita cetinjskog, koji vrši sva vladarska, narodom mu povjerena, ovlašćenja u složenim prilikama previranja između Osmanskog Carstva i Mlečana. Takvo državno uređenje dobija svoj konačni oblik dolaskom na tron vladike Danila Petrovića Njegoša, a zadržalo se do sredine 19. vijeka i Knjaza Danila, koji odbivši episkopsku hirotoniju, od Crne Gore stvara modernu apsolutističku naslednu monarhiju. Upravo nakon razdvajanja svetovne i duhovne vlasti postaje aktuelno pitanje međusobnog uređenja odnosa između države i Crkve.

U prelaznom periodu do izbora i hirotonije novog Mitropolita cetnjskog Nikanora Ivanovića, u periodu od sedam godina adninitrativnu upravu nad crkvenim poslovima i crkvenom organizacijom vrši Knjaz Danilo. Nakon pogibije Knjaza Danila i dolaskom na presto Knjaza Nikole, mitropolit Nikanor Ivanović biva protjeran i na mjesto Mitropolita cetinjskog Knjaz Nikola postavlja Ilariona Roganovića. Ovakav metod apsolutnog izbora i razrešavanja dužnosti Mitropolita cetinjskog je odstupanje koje nije bilo utemeljeno u dotadašnjoj praksi izbora Mitropolita zetskih i cetinjskih. Tokom vladavine Knjaza Nikole crkvena i državna vlast su bile odvojene, dok je njihova međusobna saradnja i pomoć bila na nivou koji u sistemu savremenog državno crkvenog prava, poznat kao sisitem državne crkve.

Briga države za Crkvu uviđa se u brojnim opštim i pojedinačnim pravnim aktima, Opšti imovinski zakonik za Crnu Goru 1888. , Zakon o fondu za izdržavanje iznemoglih sveštenika i đakona Pravoslavne Crkve u Crnoj Gori i njihovih udovica i djece 1901., Ustav Svetoga sinoda u Knjaževini Crnoj Gori 1904. , Ustav pravoslavnih konsistorija u Knjaževini Crnoj Gori 1904. , Ustav za Knjaževinu Crnu Goru 1905. , Pravila o osnivanju i radu bogoslovsko-učiteljske škole na Cetinju 1887., Naredba Ministarstva prosvjete i crkvenih djela Upravi cetinjske gimnazije o zakletvi profesora 1886. , Naredba Knjaza Nikole o nepokretnoj imovini Cetinjskog manastira i prihodima koje Crkva može da uživa 1895., Naredba Mitropolije crnogorske o uvođenju godišnje plate parohijalnom sveštenstvu 1900. itd. Uz gorepomenute pravne akte potrebno je napomenuti da se saradnja između države i Crkve odvijala i na institucionalnom nivou, postojanjem i radom Ministarstva prosvjete i crkvenih djela, postojanjem pravoslavnih konsistorija, kao i zagarantovanim poslaničkim mandatom u Skupštini Mitropolitu crnogorskom, dok je neformalna saradnja imala sve oblike simfonije.

Posmatrajući pomenute akte i sagledavajući istorijske okolnosti, međusobnu saradnju i uticaj, dolazimo do zaključka da iako u Ustavu iz 1905. Crkva nije definisana kao državna, dolaskom na presto Knjaza Danila 1852. pa do 1918. je tretirana i funkcionisala kao državna. Taj zaključak se izvodi na osnovu uporedno pravne analize, sagledavajući obilježja sistema državne crkve kroz istoriju i danas. Pod pojmom Crkva u Crnoj Gori smatra se Mitropolija cetinjska tj. crnogorska kao jedna od eparhija Pećke Patrijaršije nasilo ukinute 1766. Mitropolija je teritorijalnom odvojenošću pod uticajem Osmanskog Carstva bila prinuđena da funkcioniše sa jednim episkopom i bez Arhijereskog Sabora, što nikako ne znači da je postojala autokefalnost ,,Crnogorske Crkve“, premda se ona isticala u pojedinim istorijskim okolnostima usled pretenzija Carigradske Patrijaršije i Ruske Crkve, ali nikad prema djelovima nasilno ukinute Pećke Patrijaršije, kasnije i autonomnoj i autokefalnoj Crkvi u Srbiji.

Kao izvori za obradu ove teme pogoduju upravo opšti i pojedinačni pravni akti iz vremena vladavine Knjza Danila i Knjaza Nikole kao i mnogobrojni radovi i monografije domaćih stručnjaka na polju istorije i pravne istorije Crne Goore u 19. i 20. vijeku.

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TEMIS I DIKE – PRAVDA U GRČKOJ MITOLOGIJI

Predmet rada je analiza ideje pravde u grčkoj mitologiji, koja je oličena u boginjama Temis i Dike i preslikana na pozitivno zakonodavstvo. Civilizacijska zamisao da bilo koje pravilo mora da bude zasnovano na pravdi i pravičnosti prvobitno proističe iz grčkih mitova, kao usmenih i pismenih predanja starih Grka o postanku sveta, zakonima čoveka i bogova i njihovom međusobnom uticaju. Mitološka spoznaja prirode, kao deo kolektivne svesti, formirala je doživljaj morala, prava i pravde koji se prenosio na pisane zakone, uspostavljajući pravne principe nalik mitološkim. Autor će u radu nastojati da prikaže da helenski mitovi i zakoni antičkih bogova nemaju samo teoretski značaj, već i praktičnu vrednost koja se ogleda u implementaciji ideje apsolutne pravde i univerzalnog reda u ljudsko pravno, političko i filozofsko stvaralaštvo.

Starogrčke reči *themis* i *dike* u ranoj grčkoj kulturi i poeziji imaju mnoga značenja oko kojih u naučnim i akademskim krugovima još uvek nije postignuta saglasnost. Najstariji helenski prikaz pravde se pronalazi u Homerovim epovima Ilijadi i Odiseji i Hesiodovoj Teogoniji. Temis je u antičkim izvorima predstavljena kao drevna starogrčka boginja i proročica, Titanka, ćerka Gaje i Uranusa. Ona je oličenje božanskog reda, pravičnosti, prirodnih zakona i dobrih običaja i zaštitnica prava i sudova, odnosno zakonitosti. Temis je važan savetodavac bogovima i ljudima, ona je Zevsova glavna savetnica u borbi protiv Titana i mudri vođa u drevnim božanskim ratovima. Temis je bila simbol prirodnog zakona i volje bogova, za razliku od *nomosa*, pozitivnog zakona koji su stvorili ljudi. *Nomos* je ispravan samo ako je u harmoniji sa *themis*, te je zakon valjan samo ako je pravedan i pravičan. Dike, Temidina ćerka, boginja je pravde i istine, predstavnica pravičnosti, zaštitnica prava i sudova, arbitar, simbol časti, boginja odmazde i kazne. Identitet Dike je bio slojevit u toj meri da je predstavljao i ravnotežu i jedinstvo, univerzalni kosmički poredak i meru svih stvari. Obe boginje, majka i đerka, smatrane su ujedno stvarnim boginjama koje poseduju mudrost i znanje o pravu, i apstrakcijom filozofskog i pesničkog uma, metaforom poželjnih vrednosti. *Nomos* se pojavio kao nova ideja nakon Dike i u 4. i 5. veku p.n.e. značio je običaje i navike a kasnije zakon i red. Termini *themis* i *dike*, istovremeno su se koristili u najširem označenju vrline pravde (bilo ljudske ili božanske), etičkih vrednosti, pravičnosti, reda, zakona, sudskog postupka i običaja. U radu će biti istaknuta i specifična višeznačnost i skladnost pojmova *dike* i *themis*, koji personifikuju kosmički red i prirodno pravo.

Razumevanje prava u staroj Grčkoj proisticalo je iz tumačenja stvarnosti i prirodnih zakonitosti, čiji se osnov pronalazio u religiji. Veliki starogrčki pesnici, mislioci i filozofi su definisali čoveka kao religiozno biće i svoja učenja su izvorno zasnivali na baznim mitološkim elementima. Pravda, kao primarno načelo prava, u antičkom svetu je u svojim počecima bila otelotvorena u prirodnom pravu božanskog porekla. Po Heraklitu, predstava pravde ogledala se u kosmičkoj sili, odnosno božanskoj pravdi kao opštem logosu, koja se izražavala kroz zakone polisa. Platon je zamislio pravdu kao red i sklad unutar ljudske duše, koji je harmoničan i prirodan. Aristotel je razmatrao pojam pravde kroz razliku između prirodne i zakonske pravde i prirodnog i pozitivnog prava. Sofoklova Antigona ističe težnju ka vrhovnoj prastaroj pravdi, koja je iznad promenljivih zakona ljudi. Solon, atinski mudrac i zakonodavac, zasnovao je svoju političku i pravnu reformu na mitskim načelima prirodne neophodnosti postojanja pravde, pravičnosti i humanosti. Teško je razaznati granice između prava, filozofije, običaja i religije drevnih Helena zbog apstraktnosti i kompleksnosti istraživanja i doživljavanja mitološkog prikaza sveta. Metodom uporedne analize u radu će biti prikazane doktrine helenskih jurista i mislioca o pravdi i pravu i njihovom međusobnom odnosu, uz poseban osvrt na uticaj filozofskih ideja na celokupni razvoj evropske pravne i političke misli.

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MODELI ODNOSA DRŽAVE I CRKVE – RAZVOJ I IMPLEMENTACIJA U SREDNJOVEKOVNOJ SRBIJI

Cilj ovog rada jeste prikazivanje različitih implementacija odnosa između države i crkve u viđenju različitih dela koja predstavljaju sintezu crkvenih i pravnih normi. Među njima su najznačajnija pravila usvojena, kako na Vaseljenskim (drugom, četvrtom i šestom), tako i na saborima pomesnih Crkava. Ova pravila, uz svoja tumačenja razlitih autora, dopunjena svetovnim zakonodavstvom ušla su u sastave Nomokanonskih spisa, od kojih će poseban osvrt biti na Zakonopravilo Svetoga Save.

Sava se u svom delu primarno oslanjao na tumačenja kanona Aristina (Aleksija) i Zonare (Jovana). Sava je time izabrao model simfonije – saglasja crkve i države, nasuprot cezaropapističim tendencijama u tumačenjima Teodora Valsamona.

Geneza odnosa između države i crkve vuče koren iz religijskog opravdanja svetovne vlasti. Od samog svog početka crkva je uobličavala vrednosni sud prema svetovnoj vlasti, kako u pojedinačnim učenjima Svetih Otaca, tako i u sistematizovanim crkvenopravnim spisima koji se pojavljuju sa ozvaničenjem hrišćanstva u rimskom carstvu. Pre uspostavljanja čvrstih veza crkve i države u Istočnom rimskom carstvu postojala su izolovana svetootačka učenja. Atanasije iz Aleksandrije među prvima apostrofira neophodnost jedinstvene carske vlasti. Značajan doprinos približavanju svetovne i crkvene vlasti daje Amvrosije Milanski, koji u svojim tumačenjima psalama prihvata Evsevijeve ideje o podudarnosti rimskog i hrišćanskog carstva. Svetootačko učenje upotpunjeno je odlukama Vaseljenskih i Pomesnih sabora čime je poprimilo karakter opšteobavezujućih kanona.

Posle pobede nad ikonoboračkim pokretom na sedmom Vaseljenskom saboru prestala su dogmatska trvenja i učestali raskoli u crkvi, što je omogućilo legalitet naknadnim tumačima kanona u okviru Vaseljenske Patrijaršije. Ovaj rad ima cilj da pokaže da su uticaji vizantijskih kanonista primetni i u odnosima crkve i države u srednjovekovnoj Srbiji, zbog potpadanja pod vizantijski kulturni uticaj. Izdvajanje autentično srpskog modela uobličio je Sveti Sava, prvi arhiepiskop autokefalne srpske crkve. U svom najznačajnijem delu crkvenopravne prirode, Zakonopravilu, Sveti Sava svojim izborom tumačenja kanona vešto izbegava cezaropapističko ustrojstvo odnosa crkve i države, koje bi stvorilo konfliktni potencijal dezintegrišući na taj način srpsko srednjovekovno društvo. Ovo je značajno i zbog izbegavanja istočnog papizma u ustrojstvu same Crkve, čime je dat fundamentalni doprinos uspostavljanju autokafalije srpske crkve.

Drugo Savino delo kapitalnog značaja jeste Studenički tipik, u kojem on nalaže vladaocu Srbije da učestvuje u postavljanju novog igumana, koji je “prvi” u srpskoj Crkvi. Studenički tipik propisuje da na igumanskoj poziciji mora biti čovek arhimandritskog ranga jer na taj način preuzma primat, što ima krucijalnu ulogu u učvršćivanju autokefalije srpske crkve. Savin pogled na odnos između crkve i države dijametralno je oprečan učenju Teodora Valsamona, vizantijskog kanoničara i Savinog savremenika. Ispravno je zaključiti da je Savin Nomokanon prevazišao granice srpske srednjovekovne države i korišćen je kao pravni transplant u Bugarskoj, a preko Bugarske i u Rusiji. Paralelno sa razvojem pravoslavne državotvorne ideje u zapadnom delu hrišćanske civilizacije razvija se ideja papocezarizma. Ova koncepcija počiva na pretenzijama rimskog episkopa ka svetovnoj vlasti i svoj legitimitet crpi iz Konstantinove darovnice (Donatio Constantini).

Autentično srpski obrazac crkveno-državnih relacija utemeljen Savinim Nomokanonom ostao je relativno neokrnjene suštine i konzistentan. Ne mogu se uočiti pojave papocezarističkih tendencija ni u kasnijem diskursu Srpske pravoslavne crkve, dok je cezaropapizam uzeo maha samo za vreme vladavine cara

Dušana, i to ne autonomnim razvićem u pravoslavnoj teologiji, već Dušanovim pokušajem usklađivanja proširene države sa ekstenzijom carske moći.

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Pravni fakultet Univerziteta u Beogradu

UTICAJ SRPSKE PRAVOSLAVNE CRKVE NA KAMATU

Zajam je izuzetno star pravni institut na koji je uticao veliki broj istorijskih činilaca u različitim okolnostima. Iako se regulacija zajma, kako pre Velikog raskola, tako i posle njega, temelji uglavnom na identičnim referencama iz Svetog pisma, tumačenje od strane Svetih otaca i drugih crkvenih autoriteta je drugačije u različitim hrišćanskim crkvama. Srpska pravoslavna crkva, zadobivši autokefalnost 1219, postaje ravnopravna ostalim crkvama pravoslavne vaseljene. Sledstveno, uticaj SPC na zajam kroz istoriju u maniru je pravoslavne crkve, sa izraženim osobenostima uzrokovanim naročitim okolnostima burne istorije Srbije i Srpske pravoslavne crkve.

S jedne strane, povoljnijem položaju zajmoprimca je hrišćanska religija doprinela nesumnjivo, u skladu sa jednim od svojih osnovih učenja — darežljivosti. Iako darežljivost po Hristovom učenju nije sama sebi cilj, već je cilj spasenje duše, neupitno je da ona ima isključivo karitativan karakter. Svako odstupanje od takvog karaktera milostinje će, u eshatološkom smislu, biti osuđeno. Pogled na zajam (kao, uostalom, i na svako drugo dobročinstvo) je u svetlu prikupljanja "blaga na nebu". Hrišćani pomažu bližnjima (a bližnji je svaki potrebiti čovek) radi upodobljavanja Hristu i onima koji su na sličan način zadobili svetost.

Odnos hrišćanstva prema kamati utemeljen je ne samo u učenju samog Hrista, tj. Jevanđelju, nego i u brojnim knjigama Starog zaveta koje, bez obzira što su upotpunjene Hristovim životom, te kao takve većma ne predstavljaju obrazac ponašanja, hrišćani smatraju svetim: Druga knjiga Mojsijeva (Izlazak) 22:25-26, Treća knjiga Mojsijeva (Levitska) 25:35-37, Priče Solumunove 28:8, Psalmi Davidovi, 15:5, 111:5).

Naročitu problematiku stvara poznata priča o talantima, odnosno slugama koje su imale uvećati bogatstvo svog gospodara davši ih menjačima (Mt. 25:14-30; Lk. 19:12-27). Mada je parabolički značaj priče detaljno razjašnjen tumačenjima Svetih otaca, istorijski je bio sporan izbor Hristovih reči — zašto upotrebiti baš taj način uvećavanja bogatstva, nagraditi sluge koji su zaradili, izrazivši se savremeno, plasiranjem finansijskog kapitala, dok je zli i lenji sluga koji je to propustio kažnjen? Ova parabola bila je predmet sporenja tumača Svetog pisma.

S druge strane, kako danas na tržištu kapitala, tako od prvih starovekovnih pravnih institucija, zajam (s kamatom) za cilj ima finansijsku korist zajmodavca. Premda se nesumnjivo pomaže zajmoprimcu u kojoj bilo nuždi ili potrebi koja ga primorava da zajmi, dobročini karakter zajma (u građanskopravnom smislu) je tek posredan. Otuda izuzetno teško sprovodiva institucijalizacija hrišćanskog učenja o nenaplativosti dobročinstva. Danas se privredni život bez ubiranja kamate praktično ne može zamisliti.

Usled jakog uticaja vizantijskog učenja o simfoniji, koje je u Srbiju dospelo preko Nomokanona Svetog Save, Srpska pravoslavna crkva je od samog početka imala znatan uticaj na zakonodavstvo. Od početka pokušavala je da pomiri ova dva suprotstavljena cilja zajma. Iako je, prirodno, držala prevashodno do duhovnih interesa vernika, te s toga načelno branila zahtevanje i plaćanje kamate, u privrednom životu je već tada plaćanje kamate bila uobičajena i prilično ukorenjena praksa. Srednji vek i period do Prvog srpskog ustanka je vreme najjačeg uticaja SPC na pravna pitanja. Primetna je, međutim, izvesna tolerancija u pogledu običajnog privrednog života, koja je rezultirala u snishodljivosti crkve i dopuštanju minimalnih kamata.

U novoj srpskom državi u devetnaestom veku nastaje i nova kodifikacija građanskog prava. U veku u kom zamaha uzima ekonomska ideja kapitalizma i pravna ideja suverenosti slobodne građanskopravne volje, mnoga zakonodavstva pitanje kamate kod zajma ostavljaju nevidljivoj ruci tržišta. Srpski građanski zakonik, sa druge strane, pripada grupi propisa koja dozvoljava uplitanje države u ekonomiju u ovom slučaju. Mada

je stav SPC o zajmu u načelu ostao nepromenjen, što znači negativan prema kamati uopšte, kompromis je pronađen u ograničenju kamatne stope na 6, odnosno ugovorenih 12%. Nesumnjivo je da se uticaj SPC odrazio i na propisivanje krivičnopravne odgovornosti za zelenašku kamatu.

Današnji građanskopravni propisi takođe zabranjuju zelenaštvo, što se smatra izuzetnom tekovinom humanizacije prava; ne treba, međutim, zaboraviti da je verovatno najveći nosilac te humanizacije bio odlučan stav hrišćanske religije kroz istoriju, a u slučaju naših propisa, stav Srpske pravoslavne crkve.

Najzad, nije bez značaja suštinski religiozno poreklo odbojnog kolektivnog stav prema visokim kamatama. Osećaj religioznosti u ekonomskim pitanjima u novijoj istoriji jedno je od delikatnih pitanja pri kojima vernici moraju pristajati na kompromis svetovnog i duhovnog. S druge strane, negativne posledice su da se kolektivno mnjenje neretko pogrešno odnosi na standardne načine poslovanja i izvesnu odbojnost prema delatnosti banaka uopšte.

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PRAVNO UREĐENJE SVETE GORE SA POSEBNIM OSVRTOM NA ZABRANU ULASKA NA SVETU GORU – AVATON

Veze između prava i religije su mnogobrojne i složene i njih već vekovima unazad spajaju tanane niti koje se nesumnjivo razlikuju s obzirom na vreme i prostor u kojima su ove kategorije prisutne i u kojima se izučavaju. Ipak, iako se čini da na tlu savremene Evrope postoje indicije ka opstruiranju crkve i vere, kao i njihovog isključivanja iz političkog života, Sveta Gora – jedinstvena zemlja monaha sa svojom autonomijom i samoupravnim uređenjem dokazuje suprotno. Ona već deset vekova uspešno odoleva nestanku i prilagođavanju savremenom društvu i načinu života, a kao jedan od glavnih razloga za to navodi se i postojanje regulisanosti pravnih odnosa i detaljnih propisa koji uređuju sve aspekte delovanja monaške zajednice.

Ovaj rad se bavi pravnim odnosima unutar Svete Gore, kao i brojnim pravnim pravilima kojima su oni regulisani. Značaj ovog crkveno-pravnog fenomena pokazuje i činjenica da se Sveta Gora pominje u Ustavu Republike Grčke, u kome se navodi da se detaljna formulacija svetogorskog uređenja i njegovog funkcionisanja prepušta Povelji Svete Gore koju, u saradnji sa predstavnikom Države, sastavlja i izglasava dvadeset manastira, a verifikuje Vaseljenska Patrijaršija i Vlada Grčke. Dosledno poštovanje svetogorskog uređenja spada u duhovnom smislu pod vrhovni nadzor Vaseljenske Patrijaršije, a u upravnom smislu pod nadzor Države, kojoj isključivo pripada i očuvanje javnog reda i bezbednosti, kako stoji u st. 4. čl. 5. Ustava Republike Grčke. Iz ovoga sledi da briga o javnom redu i miru nije više u nadležnosti Sveštene epistasije (nosioca izvršne vlasti na Svetoj Gori) ili nekog drugog svetogorskog organa, već postaje isključiva nadležnost države, o čemu će više reči biti u samom radu.

Uprava Svete gore regulisana je Statutom iz 1924. godine. U skladu s njim zakonodavnu vlast vrši Sveti sabor koji se sastoji od dvadeset članova, to jest od igumana svakog manastira, koji se sastaju dvaput godišnje u Kareji, prestonici čitave monaške države. Upravnu vlast vrši sveta zajednica od dvadeset članova koji se biraju 1. januara na godinu dana, a koja takođe ima sedište u Kareji. Prema gore pomenutom Statutu na Svetoj Gori može biti samo dvadeset manastira, ni više ni manje od toga, dok je broj skitova i kelija neograničen. Manastiri su svrstani u pet tetrada, u svakoj po četiri, tako da se Izvršno telo, Sveštena Uprava (Epistasija) sastoji od četiri člana sa jednogodišnjim mandatom s tim da prvi član tetrade uvek bude jedan od pet glavnih manastira. Svi svetogorski skitovi i monaške kelije moraju pripadati nekom od manastira. Zakonom su takođe propisane i sudska vlast koju sprovode manastirske vlasti i Sveštena Zajednica, kao i carinske i poreske prednosti Svete Gore.

O uskoj povezanosti crkve i države govori i činjenica da u Kareji svoje sedište ima i politički upravnik Svete Gore koji je pod nadležnošću Ministarstva spoljnih poslova Republike Grčke i odgovoran je za primenu Statuta. Pored njega postoji i nekoliko administrativnih službenika koji svi zajedno obezbeđuju suverenitet države nad Svetom Gorom, koja, u skladu sa Ustavom, čini autonomni deo grčke državne teritorije.

Iako je Sveta Gora mesto gde prošlost i sadašnjost u harmoničnoj zajednici odaju počast istoriji Atosa i gde monasi ponosno čuvaju vizantijsko nasleđe i veru, što je čini najvećom svetinjom pravoslavnih naroda, prvenstveno Grka, Srba, Bugara, Rumuna i Rusa, ipak, uz pomisao na nju, s pravom se pomisli i na zabranu

ulaska na Svetu Goru, prvenstveno ženama. Autori u ovom radu naročitu pažnju posvećuju avatonu („ne kročiti“) – drevnom zakonu Atosa, koje nije restriktivno samo prema ženama, već generalno prema svim licima, jer postoji veoma ograničen krug lica kojima je dozvoljeno da uđu i borave na Svetoj Gori. Ovo je ujedno i jedno od najproblematičnijih pitanja vezanih za Svetu Goru sa aspekta savremenog demokratskog društva. Koja su to opšta ograničenja ulaska na Svetu Goru? Od kada ova ograničenja postoje? Da li je u toku istorije bilo izuzetaka? Na koji način se pravno reguliše zabrana pristupa ženama i kakav je stav Evropske Unije o ovom pitanju, samo su neka od pitanja na koja ovaj rad pruža odgovor.

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ŠERIJATSKO PRAVO U KRALJEVINI JUGOSLAVIJI

Međunarodnim ugovorom iz Sen Žermena o zaštiti manjina Jugoslavija se obavezala da će za građane muslimanske veroispovesti u pitanjima porodičnog i naslednog prava važiti versko pravo. Potvrda ove obaveze data je Ustavom Kraljevine SHS iz 1921. u članu 109. gde je određeno da će u porodičnim ili naslednim poslovima muslimana suditi državne šerijatske sudije. Ova odredba je zadržana i u Ustavu Kraljevine Jugoslavije iz 1931. godine u članu 100. Posle ujedinjenja, šerijatsko pravo je primenjivano po dotadašnjim propisima, a 1922. godine Zakonom o izmenama i dopunama zakona o ustrojstvu sudova određeno je da u će u porodičnim stvarima muslimana suditi muftija. Unifikovanje i definitivno uređenje primene šerijatskog prava učinjeno je Zakon o uređenju šerijatskih sudova i o šerijatskim sudijama od 21. marta 1929. godine. Članom 2 zakona propisana ja primena šerijatskog prava: 1) za stvari bračnog prava ako su oba supružnika islamske veroispovesti ili ako je brak sklopljen pred šerijatskim sudom; 2) u istom opsegu sve stvari, koje se odnose na prava i dužnosti između roditelja i dece; u ovo se broje i sporovi, da li je dete u zakonitom braku rođeno; 3) raspravljanje deoba i zaostavština muslimana; 4) postavljanje staratelja; 5) proglašenje muslimanskih osoba umrlim; 6) vakufske stvari. Šerijatski sudovi bili su odeljenja redovnih sudova, njihove presude proveravali su drugostepeni sudovi (tj. Šerijatska odeljenja apelacionih sudova). Šerijatske sudije bili su pravnici prilično odvojeni od islamske zajednice. Formiranje ovih sudova bile je predviđeno za područja na kojima je živelo više od pet hiljada građana muslimanske veroispovesti.

Šerijatsko pravo važilo je najviše u domenu porodičnog prava i u radu će biti analizirano koliko je ono odgovaralo uslovima i potrebama prve Jugoslavije. Pošto je šerijatsko pravo veoma staro, u njemu postoje veoma izraženi patrijarhalni i anahroni elementi koji nisu odgovarali potrebama moderne države u XX veku. Najmanje prihvatljivi su bili propisi o položaju žene, vlasti muža nad ženom, umanjenom pravu žene pri zakonskom nasleđivanju, kao i izrazito nepovoljan položaj žene u bračnom pravu. Ovakve norme nisu bile spojive sa vrednostima građanske demokratske države. U radu će biti izloženi stavovi i raspoloženje unutar islamske zajednice prema reformi šerijatskog prava, to jest o pitanju opsega u kome će se primenjivati šerijatsko pravo, kao i pitanja koliki će biti uticaj opšteg građanskog prava na muslimansku manjinu. Islamska zajednica stajala je tu na veoma čvrstim konzervativnim pozicijama (npr. nisu dozvoljavali primenu instituta usvojenja za decu muslimana), koje nisu odgovarale potrebama države i društva. Sa druge strane modernija struja među muslimanskim pravnicima, zbog verske prirode šerijatskog prava, kao i zbog velike snage konzervativne pozicije, nije predlagala obimnije reforme, već se trudila da rešenja šerijatskog prava prikaže kao prihvatljiva uz manje izmene. Rad će pokušati da iznese uzroke zbog kojih ovaj sukob nije prevladan, kao njegove posledice.

Iako je država prihvatila međunarodnim ugovorom važenje verskog prava za muslimane, stručna javnost to rešenje nije jedinstveno prihvatila. Šerijatskom pravu upućivani su brojni prigovori a u radu će biti analizirana dva najznačajnija. Prvi je da se primenom verskog prava na samo jednu versku manjinu krši ustavni princip jednakosti pred zakonom, a uz to i otežava pravni saobraćaj između pripadnika različitih veroispovesti. Drugi prigovor bio je praktične prirode i ticao se bračnog prava, tj. zloupotrebe prelaska na islamsku veru radi razvoda braka (koji je bio dosta jednostavniji u šerijatskom pravu nego u drugim pravima). Rad će ispitivati uticaj zloupotrebe prelaza na islamsku veru u kontekstu narušenih odnosa između verskih zajednica, kao i posledice njihovog sukoba na državno jedinstvo.

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TRANSFORMATION OF THE ZINA: THE INVENTION OF NEW TYPES OF ZINA

In most of the studies on Islamic jurisprudence, *zina* has been translated as adultery or fornication in general, and neither of these two notions can fully answer *zina*. *Zina* is defined as “unlawful sexual intercourse, i.e. intercourse between a man and a woman who are not married to one another nor in a state of lawful concubinage based on ownership (the relationship between the owner and his female slave).”

As there is still a great deal of confusion regarding the punishment, description and translation of *zina*, a detailed analysis will be conducted as part of this research to avoid such confusion. For this reason, the position and punishment of *zina* in the Qur'an, Shari'ah and Ottoman *kanunnames* (codes) will be examined separately. This study will therefore comprise three sections: *zina* in the Qur'an, *zina* in the Islamic legal context (*fiqh*), and *zina* in the Ottoman *kanunnames*. The objective of this research is to demonstrate the transformation of *zina*, its punishment in these three different sources, and the invention of new types of *zina*, especially in the context of the Ottoman Empire. At the same time, it will allow us to understand the transformation of Islamic jurisprudence and the gaps between the prescription and the praxis in the field of legal justice in general.

Through doing all this, the process of transforming *zina* from a "crime against God" to a "crime against men" will also be shown. This research also analyzes how Islamic law is masculinized and transmuted into a male-dominated system. Thus, it will indicate where the relationship between religion, power and law lies in this transformation. The cooperation between men of religion, men of authority, and men of family is obvious. In other words, there is a contract between men to control, discipline and kill women. This will be better understood with the Ottoman codes that appoint the family, especially male family members, as the new mechanism to punish the woman who has committed or is alleged to have committed the *zina* "crime".

Briefly, this paper will look at *zina* historically, from a gender perspective, examine its transformation in detail, and argue that new types of *zina* have been invented. Thus, it will assert that the authorities in the Qur'an and the Islamic legal tradition (*fiqh*) and in the Ottoman *kanunnames* are different and will analyze each one separately.

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HISTORY OF PROTECTION OF THE RIGHTS OF BELIEVERS IN RUSSIAN LEGISLATION

The relationship between church and state is relevant since the emergence of these institutions and there are no prerequisites for the loss of relevance of this issue because role of religion in modern society remains significant. The balance of powers of the state and the church has changed over many centuries and the relationship between law and the church has changed accordingly.

Since freedom of religion is a basic right, and the spread of religions is not limited by the borders of states, the protection of religious rights is carried out at the international level. Freedom of religion is enshrined in Article 18 of the Universal Declaration of Human Rights; the same right is detailed in the International Covenant on Civil and Political Rights.

At the same time because of secularization of states and decrease in the number of believers in both religious and secular states while realizing the importance of religion in society, states began to take additional measures to protect religion as a common value and protect the rights of believers on a national legislation level. Some countries that have stopped protecting religion at the state level for some reasons have started doing it again creating a legal institution to protect the rights of believers virtually from scratch.

The interaction of the church with the state and, accordingly, the legal status of the church and believers has undergone radical changes throughout the history of Russia. it is important to trace the changes that have occurred in the legal status of the church and religion since the time of the Russian Empire, where religion was one of the fundamental values to the period of the USSR, which can be called the most difficult period of religion in Russia and finally to the period of modernity, in which, after the collapse of the Soviet Union, religion again took its important role in society. This will help to understand how religion took its current position and why in a secular state such as Russian Federation, insulting the feelings of believers was criminalized and how legislation of protection the religious feelings of citizens changes over time.

In 2013 in Russia, a federal law was adopted that amended the criminal code of the Russian Federation. In accordance with this amendment, the list of criminally punishable acts was expanded, as well as the responsibility was toughened up to imprisonment. Prior to the amendment, Article 148 of the Criminal Code of the Russian Federation was called “Obstruction of the exercise of the right to freedom of conscience and religion,” and contained responsibility for only one type of violation - for illegal obstruction of the activities of religious organizations or the performance of religious rites. The article now contains 4 parts. In addition to the above-mentioned act, which is now described in the third part of the article, as well as its «qualified corpus delicti» (part 4), the article criminalizes "Public actions expressing obvious disrespect for society and committed in order to insult the religious feelings of believers".

This is a current position and the key question is how, having survived the period of the anti-religious USSR, Russia returned to the legal protection of religion and the rights of believers.

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CELIBAT U STAROM I SREDNJEM VEKU – OD RELIGIJSKE PRAKSE DO NORME

Na celibat nailazimo još na početku ljudske istorije koga obeležavaju nastanak civilizacija u dolinama velikih reka. U ovim civilizacijama, bilo one nastale na teritoriji Plodnog polumeseca ili na Dalekom Istoku, celibat je uvek bio čvrsto povezan sa religijom predstavljajući često jedan od najviših oblika posvećenja. Ovo naglašavamo imajući u vidu da se u vezi odnosa politeističkih religija staroga veka prema seksualnosti najčešće spominju pojmovi poput sakralne prostitucije, poligamije, promiskuitetnost, a da se zapostavljaju oblici uzdržanja od seksualnih odnosa koji su, naravno ne kao dominantan obrazac seksualne etike, bili na različite načine zastupljeni u isto vreme. Naravno, tek kroz preovladavanje monoteističkih religija (pre svega hrišćanstva) celibat kao religijska praksa doživljava svoj zenit. Međutim, cilj našeg rada nije jednostavno nabrajanje formi koji je u različitim religijama u periodu starog i srednjeg veka dobijao celibat, već se davanje istorijskog pregleda razvoja celibata u ovim istorijskim periodima nalazi u funkciji pokušaja da se objasni šta uslovljava to da se celibat, sa jedne strane razume kao nešto što pojedinac sam sebi nameće, dok se sa druge strane shvata kao obaveza koja je, najposle, i pravno regulisana. Ovako postavljeni cilj rada iziskuje multidisciplinarni pristup temi, te korišćena literatura pripada, osim istoriji prava, i oblastima istorije religije, sociologije religije, crkvenog prava i teologije.

U definciji celibata koju daje *Enciklopedija živih religija*, stoji da je to u užem smislu „odricanje od braka, slobodno prihvaćeno kao sredstvo potpunog posvećivanja Božijoj službi u položaju klirika". I, zaista, razmatranje celibata neretko ne izlazi izvan ovog užeg okvira usredsređujući se isključivo na problematizovanje sveštenićkog celibata. No, u našem radu podvlačimo da je u grčko - rimskom svetu obavezan celibat za sveštenike pre bio izuzetak nego pravilo. Samo pripadnici određenih sveštenićkih kolegija, kakav je recimo bio kolegijum vestalki o čijem pravnom položaju saznajemo iz Zakona XII tablica, morali su da drže celibat. Rano hrišćanstvo ne poznaje bezbračnost kao uslov za sveštenički čin, ali ga hvali kao vrlinu. Za promene značaja celibata u hrišćanstvu, kome je u radu posvećeno najviše prostora, najzaslužnija je pojava monaštva. Monaški pokret nastao u 4. veka u Egiptu kao lični čin bežanja od ovog sveta pobožnih hrišćana željnih dublje kontemplacije proširio se po čitavoj hrišćanskoj vaseljeni i uticao u hrišćanskoj Crkvi i na ono što je od njega starije i važnije – na poimanje sveštenstva. Ovaj uticaj se drugačije ispoljavao na Istoku i Zapadu, ali je, svakako, u ovom slučaju najvidljivija putanja od celibata kao individualnog akta do njegovog normiranja u kanonskom pravu. Naime, dok je na Istoku celibat postao neophodan samo za stupanje u episkopski čin budući da su se episkopi počeli birati samo iz monaških redova, Zapadna Crkva obavezuje svo sveštenstvo na celibat pogotovo pod uticajem klinijevskih reformi. Ovo je bila i jedna od razlika koje su dovele do Velikog raskola 1054. godine.

Pored sveštenićkog celibata, drugi aspekt fenomena celibata u starom i srednjem veku koji je obrađen u našem radu jeste odnos prema celibatu kao praksi među drugim slojevima stanovništva. Da je ovaj odnos bio negativan, pokazujemo kroz svedočanstva kakvi su „kadukarni zakoni "Oktavijana Avgusta kojim je čak bilo propisano da su brak i deca uslov za sticanje javnih funkcija, te kroz snažne progone od svetovnih i crkvenih vlasti u srednjem veku različitih dualističkih jeresi (manihejstvo, albižanstvo, bogumisltvo itd.) koje su svaki polni odnos shvatale kao blud, te se sa gnušanjem odnosile prema samom braku podstičući apstinenciju među supružnicima i celibat. Sve gore navedeno upućuje da je podsticanje celibata u široj

populaciji viđeno kao opasnost po srednjovekovno društvo budući da napada njegovu osnovu - porodicu i onemogućava reprodukciju njegovih članova dovodeći u pitanje njegovo normalno funkcinisanje, te je zbog toga i praktikovanje celibata u većem delu stanovništva bilo zabranjivano.

U zaključku rada ističe se da je nemoguće razumeti celibat u starom i srednjem veku bez uzimanja u obzir činjenice da je njegov početak uvek u autonomnoj odluci jedne ličnosti da želi da se približi onome što smatra svetim, ali i da je celibat uvek bio predmet pravne regulacije najpre na nivou religijske zajednice, a potom i društvene i državne.

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PRAVNOISTORIJSKA ANALIZA VERSKIH PROMISORNIH ZAKLETVI SRPSKIH VLADARA U SRBIJI U 19. I 20. VEKU

U ovom radu će se istražiti koncepcija zakletvi sa verskim elementima i ukazaće se na tesnu vezu između prava i religije. Istražiće se izvori odakle potiču zakletve i kakvu su ulogu imale u prvobitnim zajednicama. Državni funkcioneri u većini zemalja u Evropi prilikom stupanja na funkciju polažu promisorne (verske) zakletve. Fokus rada, sekundarno, biće usmeren na verske promisorne zakletve koje polažu šefovi država u sekularnim modelima odnosa države i crkve u Evropu i države koje će biti uzete u razmatranje su: Nemačka, Grčka. **Primarno**, fokus rada biće usmeren na istraživanju srpske istoriografije kroz ustavno – pravne sisteme u kojima su postojale verske promisorne zakletve koje su polagali srpski vladari. Kao period za istraživanje srpske pravne istorije uzima se 19. i 20. vek sa osvrtom na 21. vek i razmatranje nedostatka verskog elementa u promisornoj zakletvi predsednika Republike Srbije.

Prvi deo primarnog dela rada biće usmeren na elaboraciju vladarskih verskih zakletvi u srpskim Ustavima u 19. veku. U kratkim crtama, biće prikazan pravni status Srpske pravoslavne crkve koja se prema Ustavima naziva ***istočno – pravoslavna vera***, kao i osnovne pretpostavke vezane za funkciju, tj. položaj vladara i primarno tekst zakletve koje polaže prilikom dolaska na presto. Tekstovi verskih zakletvi su interesantni po svojoj strukturi jer eklatantno sadrže verske elemente i ukazuju na prisnu povezanost crkve sa državom.

Drugi deo primarnog dela rada biće usmeren na 20. vek i istraživanje ustavno – pravnih normi kojima su predviđene verske zakletve. Dolaskom komunističkog režima na vlast dolazi i do nestajanja verskih zakletvi ili verskih elemenata iz promisorne zakletve predsednika Republike, te je struktura zakletve koncipirana prema ideji ljudskih prava. Ove zakletve će biti upoređene sa zakletvom predsednika Republike prema Ustavu iz 2006. godine u kojoj se dodaje kosovska klauzula. Dakle, istoriografski i kroz ustavno – pravni kontinuitet biće prikazane strukture verskih zakletvi koje opravdavaju postojanje verskog dodatka u savremenoj zakletvi šefa države.

Na osnovu toga, elaboriraće se istorijsko – pravna i identitetska opravdanost prisustva verskog dodatka ,,**Tako mi Bog pomogao**“ u ustavnopravnom poretku Srbije. Prikazaće se teološka eksplanacija formule ,,**Tako mi Sveta Trojica pomogla**“ na osnovu istorijskog i identitetskog istraživanja. Srpsko identitetsko pitanje je u dubini pitanje crkve, budući da je srpski narod nastao ,,u crkvi i sa crkvom“ i ona je, kada su Srbi izgubili svoju državu, bila jedini krovni sistem zaštite u kojoj su se podudarale narodnost i crkvenost. Obrađivanje pitanja srpskog identiteta utoliko je važno jer izražava temelje na kojima je nastao, kontekst u kojima je očuvan i budućnost ka kojoj treba da se odredi, pa se na osnovu te perspektive može konstatovati da je srpski svetosavski identitet utemeljen na hrišćanskim vredostima i hrišćanskim istinama vere.

Sa druge strane, elaboriraće se odnos države i crkve u Srbiji i ispitaće se funkcionalnost principa sekularnosti. Važnost ovog istraživanja ogleda se u tome da li prisustvo verskog dodatka u promisornoj zakletvi predsednika Republike Srbije narušava princip sekularnosti države. U tom kontekstu i na osnovu pitanja spominjanja Boga u Ustavu opravdaće se prisustva verskog dodatka u tekstu promisrone zakletve kroz razmatranje himne Bože pravde. Ovaj aspekt će se povezati sa slučajem koji je došao do Evropskog suda za ljudska prava. Reč je o odbijanju polaganje verske promisorne zakletve od strane državnih funkcionera

prilikom stupanja na funkciju u državi San Marino. Slučaj je poznat pod nazivom ,,**Buskarini i drugi protiv San Marina**“ ili na engleskom izvorno kao ,,***Buscarini and Others v San Marino***”.

Otuda, važno je istražiti i strukturu slobode veroispovesti u okviru člana 9. Evropske konvencije o ljudskim pravima. Različite modele odnosa države i crkve Evropski sud za ljudska prava prihvatio ih je kao kompatibilne sa članom 9. Evropske konvencije za ljudska prava. Tako se u članu 9. ne zahteva postojanje sekularne države, ali sloboda misli, savesti i veroispovesti su prema jurisprudenciji Evropskog suda za ljudska prava konstitutivni element demokratskog društva i njegovog pluralističkog karaktera. Tako će se analizovati dva aspekta – unutrašnji i spoljašnji - ***forum internum*** i ***forum externum*** kao načini da se iskažu ili ne iskažu verska uverenja. Ovaj rad je pre svega pravnoistorijskog karaktera gde se kroz istorijsko – pravnu analizu ispituju verske zakletve u srpskim Ustavima 19. – og i 20. – og veka, a sa druge strane rad je reflektivno usmeren na savremeno doba i ispitivanje opravdanosti/neopravdanosti verskog elementa u Ustavu Republike Srbije iz 2006. godine.

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CONTEMPORARY ROMAN CATHOLIC DOCTRINE – 'ONLY' A MILD INFLUENCE ON MODERN LAW, OR A LEGAL SYSTEM IN ITS OWN RIGHT?

Religion has always played a great role in the human society. Starting with the ancient civilisations, ruled by taboos and other religious rules, all the way to the 21st century world, where terrorism happens and wars break out in the name of religion. Being the largest branch of the most widespread religion in the world, Roman Catholicism holds a substantial role in the contemporary world. The fact that the Roman Catholic pope is the only church leader to have a country of his own is only one of the many indicators suggesting the importance of this religion in the world we know.

In the past, religion was a dominant force in the regulation of people's actions and everyday life. Everything was ruled by divine rules - births, deaths, dietary habits, wars... Nowadays, however, legal systems are dominantly secular in nature, and religion is more often than not considered a thing of the past in the legal context. The influence of religion on law is acknowledged, but considered to be mild and presumably growing weaker as the evolution of legal systems progresses, leaving the sacral rules in the exclusively private sphere of life.

Even so, the structure of religious doctrines, especially the Roman Catholic doctrine, which is the main topic of this work, has some indisputably legal elements. The existence of strict rules and organisation, as well as the presence of the ultimate sovereign, makes the Roman Catholic doctrine appear to be very similar to some of the structures present in contemporary legal and political systems. In this paper, we will look into the similarities between 'ordinary' legal systems, and the Roman Catholic doctrine.

At the beginning, we will examine the elements of a legal system. Through examination of the general theory of law, we will extract the 'requirements' for labelling a normative structure a legal system. Next, we will go through the list of the mentioned 'requirements', and endeavour to, for lack of a better word, 'fit' the norms of the Roman Catholic doctrine into the 'mould' of a valid legal system.

Although the Roman Catholic tradition has a history longer than two millennia, for the purposes of this research, we will focus on contemporary Roman Catholic doctrine. We will limit the time frame to the period beginning with the second half of the 19th century (around the First Vatican Council). Doing this will help us at least vaguely and imprecisely separate the period in which religion played an extremely strong role in society, while legal systems were yet to evolve, from the period of modern legal practice and the shift of religion to the strictly personal sphere of life. In addition, the period we chose is a well-rounded unit in the history of Roman Catholicism, without even considering the legal history of that time. The First Vatican Council, among other decisions, proclaimed the papal infallibility, one of the most controversial dogmas in the history of the Roman Catholic Church. This proclamation is one of the most important changes in the Roman Catholic history, and it holds great influence over the way the Roman Catholic doctrinal system functions, which makes the mentioned time frame most relevant to our research.

In our search of the required elements of a legal system, we will use a wide array of sources. Obviously, the starting point for the research will be the Holy Scripture; however, we will also examine the decisions of the Vatican councils, various encyclicals and proclamations of the popes of the mentioned period (from Pius IX to Francis), as well as The Catechism of the Catholic Church. As an aid in interpreting the aforementioned texts, we will use various contemporary Catholic Biblical studies and commentaries. In the

end, once we have analysed all the set requirements and the corresponding elements of the Roman Catholic doctrine, we will attempt to answer the question posed in the title of this work – is the Roman Catholic doctrine 'only' a mild influence on the contemporary legal systems, or does it have what it takes to be considered a legal system on its own?

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THE LEGAL STATUS OF NON-CONVERTED INDIGENOUS PEOPLES IN PORTUGUESE AMERICA (16TH –18TH CENTURIES)

Portuguese America, which was part of a huge empire with land in four continents, had peculiar features in comparison with the Kingdom of Portugal itself. The colony had their own cultural context as recently discovered land that was mainly primed for the exploitation of its natural resources: high rates of illiteracy, excessive control over the production and circulation of books, absence of formal legal education, low presence of Crown officials, as well as great influence of catholic missionary orders. This set up the framework in which various actors, from both erudite and rustic legal culture, were able to create and disseminate normative knowledge, contributing to the concomitant application of a multitude of normative orders, influenced by all sorts of cultural elements, which were not always strictly legal in origin.

The focus of the intended paper will lay upon ecclesiastical normativity, in particular because of the role played by the Church's missionary orders in enforcing sacraments and moral theology amongst indigenous groups through conversion and pastoral work. The reach and intensity of missionary work in Portuguese America is in large part why the accentuated influence of ecclesiastical authority over the colonies would not be significantly diminished until the expulsion of the Jesuits in 1759. In fact, Jesuits were responsible for conquering numerous indigenous nations, and turning the pagans "in both political and Christian beings".

In this scenario, converted natives acquired the capability to exercise rights and to be assigned certain obligations, in both ecclesiastical and secular sphere and, despite being somehow coerced into labor and physical punishment at the villages ("missões") they could not be captured as slaves. On the other hand, indigenous groups that refused submission to missionary's regime, called generically as "tapuias", were often submitted to slavery by colonists who instigated conflicts with them in order to fabricate scenarios of "just war", thus legitimizing captivity in the view of royal and ecclesiastical authorities.

Nevertheless, despite lacking the "Christian" legal status, the non-converted natives were not that helpless against colonist aggressions, as they had strategies in accessing institutional means to make themselves heard by the Royal administration, such as assuming military obligations at the frontiers of the Empire or promising to submit themselves into catechism in the future. Although catechism was instrumental in forming the legal status of indigenous peoples, the non-converted "tapuias" were still able to exercise some degree of the autonomy, by accessing royal judicial channels and claiming their freedom. By doing so, "tapuia" groups demonstrated awareness of rights and obligations and their capability to act accordingly, even though they were living in isolation, as well as not attending catechesis or pastoral work, which leave us with the question of what were the juridical categorization of non-converted indigenous people and what role (if any) did the Church played in shaping their legal status. In order to answer this question, this paper will rely on petitions to the King and Crown officials in Lisboa, ecclesiastical legal literature and the communication between missionaries, legal scholars from Salamanca and others Church's authorities.

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KANCELPARAGRAF – ISTORIJSKOPRAVNI, CRKVENOPRAVNI I USTAVNOPRAVNI ASPEKTI

Stogodišnjica donošenja prvog Ustava Kraljevstva Srba, Hrvata i Slovenaca inspirisala je autore da se u radu bave rafiniranim pitanjem koje je umnogome bilo osobenost najvišeg pravnog akta mlade južnoslovenske države. Reč je o tzv. *Kancelparagrafu*, čuvenoj odredbi iz člana 12. stav 7. Ustava kojom se zabranjivala politička agitacija koju bi sa amvona (ili predikaonice) vršili sveštenici. Model ove specifične ustavne norme koja skoro da nije bila oživotvorena u praksi ali je zato preneta u jugoslovenski Krivični zakonik a nedugo potom i u Septembarski Ustav iz 1931. godine, nalazimo u Bizmarkovoj Nemačkoj i to u znamenitom Krivičnom Zakonu iz 1871. Pomenuta krivičnopravna odredba u Nemačkoj bila je jedna od prvih mera zakonodavne politike Bizmarkovog aparata usmerene protiv Rimokatoličke crkve kao svojevrsne "države u državi" a u okviru tzv. Kulturnog rata, rata o čijem su učinku za mladu, tek ujedinjenu Nemačku i njenu demokratiju mišljenja podeljena između emancipatorske i retrogradne uloge. Na ovom mestu se može napraviti i prva analogija sa jugoslovenskim primerom, budući da, iako nije bilo mnogo imena koji su se njime u skorije vreme bavili, u teoriji preovlađuje stav da je glavni doprinos našeg kancelparagrafa u tome što je svojevremeno iznedrio opsežnu i kvalitetnu debatu.

Autori u radu, pored ove početne napomene, komparativno analiziraju ova dva slučaja- njihove sličnosti i razlike, sa osloncem na teoriju Alana Votsona o pravnim transplantima. Među podudarnostima mogu se istaći sličan istorijski trenutak unošenja kancelparagrafa u pravni život zemlje jer se u oba slučaja to odigralo po ujedinjenju do tada razjedinjenih državnopravnih područja, a i sa donekle sličnim ciljem – da se amortizuju religijske razlike koje su mogle biti pretnja proklamovanom političkom cilju zajedničke države, uz napomenu da je u Nemačkoj ta politika amortizacije poprimila radikalnije obrise i dosegla karakter asimilacione mere protiv rimokatolika. Uz ovu, još jedna razlika je naprosto više nego očigledna a sastoji se u različitom mestu koje je ovom pitanju posvećeno u hijerarhiji pravnih izvora, te primetna konstitucionalizacija ove ideje u Vidovdanskom ustavu govori o ipak posebnoj važnosti koja je ovom pitanju data pri pisanju Ustava a čemu će u radu biti poklonjena posebna pažnja.

Naposletku, nakon prikaza ovih, kako se na prvi pogled čini, skromnih uporednoistorijskih primera odredbe kancelparagrafa, autori pokušavaju da ovaj problem reaktualizuju u savremenim uslovima, kako sa aspekta ustavnog i državno-crkvenog prava tako i sa stanovišta autonomnog crkvenopravnog poimanja. Da ovakav zahvat ne predstavlja čistu intelektualnu gimnastiku autora potvrđuju sve česće i skore debate o ulozi verskog u javnom diskusrsu, a posebno o preplitanju religije i politike. Da li je opravdana i najcelishodnija mera u savremenom trenutku još jedno je pitanje na koje autori u radu pokušavaju da daju odgovor.

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BETWEEN FREEDOM AND DUTY: HOW JEWISH LAW OF OBLIGATIONS MERGED BOTH

Judaism is a legal system as well as a religious one. In contrast to Christianity, which distinguishes sacrum from profanum, Jewish law is inseparable from Judaism. Jewish law of obligations is characterized by the prevalence of heteronomous norms over the autonomous ones, duties over rights and what Professor Rabbi Michael Broyde accurately named „freedom from contract" in opposition to freedom of contract. It is not contract, but obligation driven and derived from a unique understanding of freedom innately bound to its divine origin. These unique characteristics make Jewish law of obligations a worthy, yet sometimes neglected area of research in countries in which other religions have historically proven to have the most influence on private law. I am grateful to Professor Rabbi Michael Broyde and Rabbi Michael Schudrich, the Chief Rabbi of Poland, for showing me how the Jewish law of obligations has been shaped by its religious principles.

The theological origin of Jewish law influenced a specific understanding of freedom in Judaism. According to the Torah, all the law has been given to the people by God at Mount Sinai in the words of Torah. In the process of rabbinical interpretation, the definition of the law given has been expanded to include all past, present and future interpretations of the Torah as well as its original text. Because of its divine origin, the Torah cannot be modified or derogated. Nonetheless, the Rabbis must have changed their interpretation of some halakhic norms to make them applicable to the lives and commerce in greatly varied legal systems of countries in which Jews lived.

A man's place in the world is defined by the duties he or she has to their family, society and God. The most important celebrations of Jews are marked by the acquisition of new responsibilities. Bar Mitzvah, a coming of age ritual for boys, is literally translated to „son of commandment". Adulthood comes with the acquisition of new obligations: the ability to bear responsibility for obeying Jewish law and the duty to participate in all areas of Jewish community life. On the contrary, in the Western legal tradition more emphasis is put on the acquisition of rights instead of duties. No matter how distant from Jewish law of obligation this observation may appear at first glance, it has deeply influenced halakhah and the Jewish view of the law.

A dense network of duties does not seem to provide the individuals with much space for freedom. However, this problem only arises upon a Western definition of freedom as an innate possibility of taking decisions upon one's will unless it collides with another man's ability to do so. It is rights-driven and derived from a social contract theory based on the concept of natural law. It assumes that an individual is born with a right to shape the reality through contractual ties that are an exchange of promises. The freedom of contract is therefore innate to human nature and precedes the society and the law. No matter which social contract theory is taken into consideration, the state is thought to be established by an agreement of individuals who decided to transfer some of their natural rights to a more powerful entity. A social contract theory is a useful myth which explains the role of the state and its legislative in the life of a citizen and justifies its power by adhering to the natural grounds for freedom of contract. However, it was not until the 17th and 18th century when the social contract theory and modern understanding of contract law emerged and gained major influence on Western legislation.

Jewish law does not need a social contract theory to describe the origin of law because it is believed to be given by God. The special place halakhah holds for the idea of duty is vital to the understanding thereof. In classical Judaism, free will and the ability to make one's own decisions do not lead to the assumption that an individual can create binding obligations by words themselves. Free will is a guarantee of one's moral and religious responsibility which is the ground for God's judgement. Halakha puts emphasis on protecting one's individual freedom by not allowing to contract away his or her future choices easily.

Halakhic legal norms cannot be interpreted in separation from their religious aspect. However, despite their deuteronomous character, not every one of them is equally religiously and legally binding. Some norms are endowed with a strictly religious sanction and their breach is not legally enforceable despite being condemned. A verbal agreement is not legally binding, but its breach is considered to violate the biblical mandate to „distance oneself from falsehood" and is sanctioned as a lie. The protection of freedom results in delaying the conclusion of a deal in order not to limit one's freedom of choice as long as possible. Therefore, a legally enforceable obligation is made when the ownership is transferred from the seller to the buyer, when an employee finishes his work for an employer and when a tenant pays the rent to the landlord. Moreover, an obligation has a deep personal meaning because of its close link to personal, religious responsibility for keeping it. A claim against a debtor is thought to be of secondary importance due to it being another man's fault.

It is not possible to approach a complex system of Jewish law without the awareness of its unique characteristics and in separation from the religious aspect of Judaism. The law, the religion and the morality are interlinked in a way that renders understanding them in separation hard, if not impossible. Halakha is considered to be a divine set of norms which influence most of the aspects of Jewish life, including entering into legal obligations. Jewish law of obligations may serve as a lens through which one may see how religious dogmas, Jewish anthropology and ethics shape the legal system at its finest.

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PRAVO I RELIGIJA U JAPANU – DVIJE LATICE TREŠNJINOG CVIJETA NAKON MEIJI RESTAURACIJE

Časna obnova, danas poznata kao Obnova cara Meijia (Meiji restauracija) predstavlja jedan od najznačajnijih događaja u istoriji zemlje izlazećeg Sunca. Ovim događajem došlo je do konsolidacije moći japanskog monarha, te učvršćivanja praktične carske vlasti u Japanu XIX stoljeća. Događaje koju su neposredno prethodili Časnoj obnovi pokrenuo je japanski car Meiji (zvan i Meiji Veliki, te Meiji Dobri). Iako je i prije Meiji restauracije japanski monarh bio uticajna figura u japanskoj politici, nakon reformi provedenih 1868. godine dolazi do obnove faktičkih mogućnosti da imperator počne rukovoditi političkim tokovima u zemlji, te postaviti ih pod izravan nadzor japanskog suverena. Ciljeve svoje obnove car Meiji iznio je u Povelji od 6. aprila 1868. godine (poznatoj i kao Povelja od pet članaka). U svojoj Povelji imperator Meiji naročito ističe potrebu stvaranjem odgovarajućeg pravnog okvira za modernizaciju japanske države, te je mnogi smatraju pretečom prvog Ustava Japanske carevine.

Restauracija pokrenuta nakon tog događaja dovela je do korijenitih promjena u japanskom društvu, ali i pravnom sistemu. Pravni okvir stvoren od strane cara Meijia je bio mehanizam za "vesternizaciju" i kasniju industrijalizaciju japanskog društva. Krunski trenutak procesa reformi bio je donošenje Ustava Japanskog carstva 11. februara 1889. godine (poznatiji kao Ustav cara Meijia). Ustav je ustanovio osobenu mješavinu dva oblika vladavine – ustavnu i apsolutnu monarhiju (zasnovanu na principima preuzetim iz pravnih sistema Ujedinjenog Kraljevstva i Njemačkog Carstva, o čemu će se u radu detaljnije i govoriti).

Bez obzira na sve reforme koje su išle ka razvoju temeljnih građanskih sloboda i ljudskih prava, sloboda vjeroispovjesti sredinom i krajem devetnaestovjekovnog Japana bila je tek novorođenče. Religija, ali i pravo su supstancijalni dijelovi svih modernih zajednica. Religijske vrijednosti nerijetko su bili središnji element principa jednoga društva koji su kasnije služili za stvaranje pravnih pravila, odnosno, pravnog okvira na osnovu kojega počivaju ustanove koje tvore jednu državu. Te su vrijednosti do naročitog izražaja došle u Japanu prilikom institucionalizacije starih društvenih ustanova.

Autor rada će se ukratko osvrnuti na razvoj religije u Japanu sa osobitim prikazom šintoizma i njegovog utacaja na kasniji razvoj japanske pravne misli. Autor će također pokušati prikazati odnose koji su vladali u japanskom društvu s cilje objašnjavanja tadašnjeg pozitivnopravnog okvira u pogledu odnosa sa vjerom i vjerskim zajednicama u Japanu od Meiji restauracije pa do svršetka Drugog svjetskog rata, sa naročitim osvrtom na II poglavlje Ustava Japanskog cartstva iz 1889. godine, te III poglavlje Ustava Japana iz 1947. godine.

LAW AND RELIGION IN JAPAN - TWO PETALS OF THE CHERRY BLOSSOM AFTER THE MEIJI RESTORATION

The Honorable Restoration, today known as the Restoration of Emperor Meiji (Meiji Restoration), is one of the most significant events in the history of the land of the rising Sun. This event led to the consolidation of the power of the Japanese monarch, and the consolidation of practical imperial power in Japan in the nineteenth century. The events that immediately preceded the Honorable Restoration were initiated by the Japanese Emperor Meiji (also called Meiji the Great, and Meiji the Good). Although even before the Meiji Restoration the Japanese monarch was an influential figure in Japanese politics, after the reforms carried out in 1868 there was a renewal of the factual possibilities for the emperor to start directing political currents in the country and placing them under the direct control of the Japanese sovereign. The

goals of his renewal were stated by Emperor Meiji in the Charter of April 6, 1868 (also known as the Charter of Five Articles). In his Charter, Emperor Meiji especially emphasizes the need to create an appropriate legal framework for the modernization of the Japanese state, and many consider it a forerunner of the first Constitution of the Empire of Japan.

The restoration launched after that event led to radical changes in Japanese society, but also in the legal system. The legal framework created by Emperor Meiji was a mechanism for the "Westernization" and subsequent industrialization of Japanese society. The culmination of the reform process was the adoption of the Constitution of the Empire of Japan on February 11, 1889 (better known as the Constitution of Emperor Meiji). The Constitution established a special mixture of two forms of government - constitutional and absolute monarchy (based on principles taken from the legal systems of the United Kingdom and the German Empire, which will be discussed in more detail in the paper).

Despite all the reforms that went towards the development of fundamental civil liberties and human rights, freedom of religion in mid- and late nineteenth-century Japan was only a newborn. Religion, but also law, are essential parts of all modern communities. Religious values were often a central element of the principles of a society, which later served to create legal rules, that is, the legal framework on which the institutions that make up a state rest. These values came to the fore in Japan during the institutionalization of old social institutions.

The author of the paper will briefly review the development of religion in Japan with a special account of Shintoism and its influence on the later development of Japanese legal thought. The author will also try to present the relations that prevailed in Japanese society in order to explain the then positive legal framework regarding relations with religion and religious communities in Japan from the Meiji Restoration to the end of World War II, with special reference to Chapter II of the 1889 Constitution. and Chapter III of the 1947 Constitution of Japan.

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THE AGENDA OF THE CORRECTOR OF THE CLERGY IN THE DIOCESE OF PRAGUE AND ITS SECULAR EQUIVALENT

One of the key periods for the evolution of medieval ecclesial administrative structure within the Kingdom of Bohemia was the 14th century. This period gave the foundation to a number of advanced establishments and bureaus within the church administration. One of those bureaus established at the time was the *Corrector of the clergy.* The founding of the office can be dated back to the half of the 14th century and although it served as an attempt of the church to enforce the statutes presented at synods, the constitution of the bureau can also be rooted in the political pursuit of the first archbishop of Prague. *Corrector cleri civitatis et diocesis Pragensis* operated only in the diocese of Prague and was a unique institution within the bounds of medieval Europe, for the existence of the bureau was not yet archived in any other region. The *corrector of the clergy* was an institution similar to a criminal judge who also investigated and inspected the morals of the clergy and if any doubts about the manners of the clerics arose, he had conducted questioning and eventually assessed a punishment.

This submission analyses *Acta correctoris cleri* from 1407-1410, which is the only preserved comprehensive source that presents the agenda of the Corrector within the Diocese of Prague. For its importance, the source had been subjected to different analysis in the past, but this paper tries to reflect more of a legal approach to the subject. First, a connection to the written and custom law will be made, demonstrating what the corrective ought to look like through a presentation of excerpts of synodal statutes. Subsequently, the corrective will be applied to the judicial praxis of the corrector's office, reflecting the reality. The majority of enrolled cases concern a breach of the celibate duty, but the source provides also cases on sacrilege, theft, murder or simply engaging in dishonest behaviour such as taking part in playing the dice or visiting local tabernas. It was mainly in the hands of the archdeacons to report such deviant behaviour to the Corrector, who proceeded by calling the clerics to Prague, interrogated them and determined a possible punishment. In other cases, the interrogation could have been started by an initiative from other clerics, who were in general supposed to report any suspicious behaviour, although it may have served as a distraction from their own questioning – when asked by the Corrector if they had any women at the rectory, they sometimes replied "*I swear by the Bible I did not, but I think the neighbouring pastor has one.*"

Thereafter, it is the aim of this paper to draw attention to the different types of punishments given by the *Corrector of the clergy,* their character, periods used to remedy one's behaviour or possible connection of status to the sanction received. The submission also points out the leniency of punishments in general and especially within the question of recidivism. In order to demonstrate the distinct character of the penalties, the paper draws a comparison between the sanctions given by the *Corrector to the clergy* and the sanctions given to the people who were exempt from the canon law and were judged either by the Land or municipal courts.

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BRAK I PRIMENA KRIVIČNOG PRAVA U BRAČNIM ODNOSIMA U NEMANJIĆKOJ DRŽAVI

U srednjem veku su vladar-zakonodavac i crkva kontrolisali sferu braka. Stoga su veoma značajni pravni izvori, zakoni i povelje. Srednjevekovna Srbija je u kontinuitetu bila izložena spoljnim uticajima, te se tako doprinos vizantijskog carstva primetio već u početku Nemanjićke države, prihvatanjem pravoslavne vere i crkvenih kanona. Osnivanjem autokefalne srpske pravoslavne arhiepiskopije, brak je po uzoru na vizantijsko zakonodavstvo, zvanično prešao u nadležnost crkve i postao jedna od svetih tajni.

Povelja kralja Stefana Radoslava definisala je crkveni brak kao obavezan čin spajanja dvoje ljudi u svetu vezu pred Bogom. Žička povelja definisala je uslove za stupanje u brak kao što su godine, krvno srodstvo, brak između srodnika po tazbini i predviđala je kazne za nepoštovanje ovih kanona. Po pravoslavnom kanonskom pravu, žene su mogle da stupe u brak sa dvanaest, a muškarci sa četrnaest godina, i to od osmog stepena srodstva.

Zaključenju braka je prethodila veridba koja je najčešće sklapana iz interesa, te su devojčice bile predmet rasprava i kombinacija za budući brak već oko dvanaeste godine. Idealan brak bio je onaj sklopljen između dvoje mladih istog društvenog, i po mogućstvu istog imovinskog ranga. Od najvećeg značaja je bilo izvršiti uzajamno povezivanje istaknutih kuća. Ljubav nije imala nikakvu ulogu u sklapanju braka.

Kao i veridba i brak je zavisio od saglasnosti i uopšte odluke roditelja. Blagoslov i venčanje crkvenog braka obavljao je parohijski sveštenik. Venčanje se vršilo krunisanjem mladenaca.

Brak je bio osnovno oruđe ženske emancipacije ali ni on nije bio moguć bez miraza. Bez miraza devojci je bilo gotovo nemoguće da se uda, ali je on bio zalog sigurnosti njene dece kao naslednika miraza. Miraz je bio često jedina svojina koju je žena imala jer, sem retkih, žene nisu radile i privređivale. Kako su često mlade žene postajale udovice, nakon muževljeve smrti preuzimale su brigu o porodičnoj imovini. Ako bi nakon muža ostali dugovi, prvo bi bio vraćen miraz, a potom od ostalog vraćeni dugovi. Taj princip je bio preuzet iz zakona cara Justinijana. Kao udovica kmeta imala je izvesna ograničenja. Prema povelji kralja Milutina (1313-1318), udovica je mogla zadržati sve ako ima maloletnog sina koji će kasnije preuzeti imanje, a ako nije imala dece održavala je jedan deo muževljevog imanja, ostali deo je oduzimao gospodar. Imovina žene je oduzimana u slučaju samovoljnog napuštanja muža ili preljube.

Pravno ograničena, žena u Srbiji nije mogla da se poziva na sud bez znanja muža, te ju je on zastupao u raznim pravnim pitanjima. Što se tiče podele rada, muškarac je u društvu izgrađivao svoj status na osnovu profesionalne delatnosti, a žena je učestvovala u poslovima svog muža pomažući mu pri radu. Stoga se aktivnost zavisnih žena kmetova na selu svodila, pre svega, na brigu o kući i deci. Muž je bio, ali i morao biti zaštitnik svoje žene i zajedničkog poroda. Brinuo se ne samo za materijalna dobra nego i na dobro vladanje okoline prema njima. Zajedno sa svojim muževima, žene su činile osnovu radnog stanovništva koje je privređivalo za gospodara.

Konzumacija braka podrazumevala je uspostavljanje seksualnih odnosa, a ako do toga ne bi došlo, brak se mogao razvesti pošto ne ispunjava suštinu i smisao, a to je rađanje dece. U to vreme dešavalo se da su žene bežale od muževa jer su zbog podređenog položaja bile maltretirane iz različitih pobuda. Za žene koje su činile preljube bile su predviđene posebne kazne. Jednu od njih je car Dušan propisao u svom Zakoniku, gde se predviđa kazna sakaćenja vlastelinke koja učini blud sa svojim slugom, dok je preljuba gospodara sa svojom sluškinjom smatrana normalnom pojavom. Na osnovu toga, možemo zaključiti da je

krivica žene mogla biti dvostruka: samovoljno napuštanje ili preljuba, i da su takve mere bile oštrije nego prema muškarcima. Što se tiče samovlasnog rastavljanja braka, stara prehrišćanska tradicija, po kojoj je muž mogao da otpusti ženu, nije još dugo vreme izumrla, te se primenjivala kaznena represija protiv raspusta. Raspust se ubrajao u one globe, koje je država ustupala crkvama.

Hrišćanska crkva je unela u pravni život evropskih naroda novu kategoriju krivičnih dela, i to protiv vere. U vezi sa tim, kažnjavalo se dvoženstvo, i to uzimanje druge žene posle otpuštanja prve. Prema ondašnjem shvatanju gore pomenuta krivična dela nisu bila protiv braka i porodice, nego protiv vere, odnosno protiv Božjih zapovesti. U vreme vladavine Stefana Nemanje, započela je borba protiv jeresi i prodiranja katolicizma u pravoslavni svet. Zakonik cara Dušana je zabranjivao venčanje između muškarca katolika i pravoslavne žene, osim u slučaju ako muškarac ne promeni veru. Po običaju inoverna žena prelazila je u pravoslavlje pre venčanja.

Žena koja je počinila krivokletstva kažnjavana je kao muškarac i gubila pravo da zasnuje brak i porodicu.

Brak u srednjevekovnoj Srbiji bio je u potpunosti pod uticajem pravoslavnih crkvenih kanona, što pokazuje i nadležnost crkve za krivična dela učinjena u braku. Brojne pravne praznine koje su postojale u pogledu bračnih odnosa, najčešće su se popunjavale vizantijskim zakonima.

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KRIVICA, ODGOVORNOST I PRAVO(SLAVLJE)

Centralni pojam krivičnog prava je krivica. Krivični zakonik propisuje da nema kazne bez krivice (čl.2 KZ RS). Kriv je onaj učinilac koji je u vreme izvršenja dela bio uračunljiv, postupao sa umišljajem i bio svestan ili je bio dužan i mogao biti svestan da je njegovo delo zabranjeno, a kada to zakon izričito predviđa, kriv je i onaj učinilac koji je postupao iz nehata (čl. 22 KZ RS). Dakle, krivica je subjektivni elemenat krivičnog dela i osnov kažnjivosti.

Vodeći se zakonskim određenjem pojma krivičnog dela (čl. 14 KZ RS), možemo ga zamisliti kao konstrukciju koju nose četiri stuba – četiri elementa: delo čoveka (objektivni elemenat), protivpravnost, skrivljenost (krivica – subjektivni elemenat) i određenost krivičnog dela kao takvog u zakonu. Značaj krivice je toliki da bez nje, kao nosećeg elementa, konstrukcija ne može da opstane, urušava se, bez obzira na to što ostali stubovi nisu čak ni poljuljani.

Ipak, u istoriji srpskog krivičnog prava, domaće zakonodavstvo, a ni pravni teoretičari nisu uvek pridavali isti značaj pojmu krivice. Kaznitelni zakonik za Knjažestvo Srbiju iz 1860. godine najpre se bavi deobom kaznimih dela na zločinstva, prestuplenja i izstuplenja, i to spram njihove težine, to jest težine kazne koja je za delo propisana. Imajući u vidu i sam naziv zakonika, način određenja pojma kaznimog dela i činjenicu da je pojam krivice u četvrtoj glavi tek posredno određen preko okolnosti koje isključuju kažnjivost, jasno je da centralni pojam „kazna“, a ne „krivica“.

Početkom XX veka, Toma Živanović iznosi svoju teoriju o triparticiji krivičnog prava čiji su osnovni pojmovi krivično delo, kazna i krivac. Živanović krivično delo shvata objektivno, te iz njega «uklanja» krivicu, koju, kao subjektivni elemenat, «smešta» u pojam krivca. Ovakvo razdvajanje krivca od njegovog dela moglo je imati praktičnog značaja, ali se ova teorija u svom «čistom» obliku nije održala kao pozitivna.

Jugoslovenski pojam krivičnog dela, pod uticajem socijalističke ideologije, sadrži samo formalne elemente: društvena opasnost dela, određenost dela u zakonu, određenost obeležja (bića) dela u zakonu (čl. 8 KZ SFRJ). Dakle, propivpravnost i krivica nisu elementi pojma krivičnog dela. Ideološki je naglašena društvena opasnost, čije postojanje, paradoksalno, sud nije utvrđivao pri presuđivanju. Krivica (vinost) i uračunljivost čine pojam pojam krivične odgovornosti.

U pozitivnom zakonodavstvu krivica je subjektivni elemenat, odnosno psiloški, ali i normativni odnos učinioca prema krivičnom delu kao svom ostvarenju. Psihološka komponenta sastoji se iz uračunljivosti i umišljaja (izuzetno nehata), a normativna se ogleda u svesti o propivpravnosti dela i upućenom prekoru. Uračunljiv je onaj učinilac koji je u vreme izvršenja dela bio sposoban da rasuđuje – shvati značaj svog dela i da odlučuje – da upravlja svojim postupcima; dok sa umišljajem postupa učinilac koji je u konkretnomslučaju svestan radnje koju preduzima, tačnije svog dela i koji je hteo ili je pristao na njegovo izvršenje, odnosno na prouzrokovanje štetne posledice. Svest i volja su za krivicu najznačajnije psihološke kategorije, koje kao niti povezuju njene komponente uračunljivost i umišljaj ili nehat.

Brojnost, ali i značaj subjektivnih, psiholoških kategorija u krivičnom pravu može nas pobuditi da ovu oblast posmatramo i istražujemo ne samo kao granu pozitivnog prava ili granu pravne nauke, što je ustaljen pristup, već u drugačijem svetlu – kao pogodno tle za ispitivanje i razvoj sposobnosti samoodređenja, samoocene i projekcije ličnosti u odnosu prema pravnoj normi, prema društvenim, moralnim i verskim pravilima, očekivanjima, standardima. Tako, ne treba zaboraviti da su ljudi adrsati pravnih normi, niti

zanemariti (oborivu) pretpostavku da su svi adresati sposobni da razumeju normu i da se u skladu sa njom ponašaju.

Ovom filozofsko-pravnom pitanju blizak je i stav Velikog senata Saveznog sudskog veća bivše Zapadne republike Nemačke koji čoveka određuje kao sposobnog za slobodno, etično, odgovorno samoodređenje, sposobnog da se odluči za pravno naspram neprava, te da svoje ponašanje uskladi sa pravnim normama i na svoju i opštu korist izbegne kažnjavanje i štetne posledice. Pretpostavka o sposobnosti samoodređenja je bliska uračunljivosti – sposobnosti da se shvati značaj svog dela i upravlja svojim postupcima. Onaj ko je slobodan i sposoban da bira između prava i neprava, dobra i zla, podoban je da bude pozvan na odgovornost za svoj izbor i svoje postupke.

Čovek nije samo adresat pravnih normi, već su njemu upućene i verske zapovesti, date u Starom i u Novom zavetu. Tek u poređenju sa normama i zapovestima, a uz pomoć savesti, čovek stvara sliku o svojoj grešci, grehu, krivici. Bez ovih „referentnih tela“ nema ni samoodređenja – tek u odnosu na njih čovek spoznaje ko je i koje je mesto zauzeo u društvu, među ljudima, ali i sam odlučuje i pravi izbor u odnosu na mesto koje želi da zauzme u Večnosti.

Uporedo sa slobodnom voljom, savešću,opraštanjem i pokajanjem, krivica predstavlja „ključne reči“ u Pravoslavlju. Od spoznaje osećaja krivice je „sve“ počelo. Krivica je kao glasnik savesti rekla Adamu da je nag. Od tog saznanja do danas nema čoveka koji se nije susreo sa krivicom. Moguće je izbeći odgovornost na koju pozivaju država i pravo, dok je skoro nemoguće pobeći od osude vlastite savesti, koju mnogi mislioci još od antičkog perioda pa do današnjih dana nazivaju „Božijim glasom u čoveku“.

Sposobnost samoodređenja u odnosu na svoja loša dela značajna je u krivičnom pravu, ali ima svoju svrhu i u Pravoslavlju, koje vrlo pažljivo pravi razliku između pojmova „moj greh – moja loša dela“ i „loš ja“. Onoliko koliko je korisno biti svestan svojih loših dela, truditi se da se ona ne ponavljaju, kajati se, ispovedati se, oslobađati se krivice, toliko je opasno poistovećivati sebe sa svojim grehom, zlodelima. O ovoj opasnosti govore psihologija i psihijatrija.

Pojmovi krivice i samoodređenja zajednički su krivičnom pravu i Pravoslavlju. Međutim, za razliku od prava, pravoslavna vera krivicu ne vidi kao osnov kažnjivosti, već kao osnov pokajanja i opraštanja. Vera neprestano podstiče čoveka na preispitivanje svojih dela, misli i osećanja. Uz pretpostavku da se ti procesi odvijaju na zdrav način (bez patološkog osećaja nepopravljive grešnosti i prenaglašene krivice), u čoveku na (društveno) poželjan način sazrevaju i sve psihičke funkcije, između ostalih i svest i volja – koji imaju svoj krivičnopravni značaj. Čovekova svest i volja mogle bi biti tle pogodno za plodnu saradnju krivičnog prava i Pravoslavlja.

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VJERSKE ZAJEDNICE U BOSNI I HERCEGOVINI OD 1878 – 1918. GODINE

Berlinski mirovni kongres, održan u julu 1878. godine, bez sumnje je jedan od najznačajnijih događaja u istoriji Balkana i prekretnica u razvoju jugoslovenskih naroda, razapetih između interesa najvećih svjetskih sila tog vremena i sopstvenih težnji za oslobađanjem i ujedinjenjem. Mirovni ugovor koji je tada potpisan, nije samo rezultat kongresa i nastojanja da se riješi najveća kriza 19. vijeka (tzv. Istočno pitanje), nego i kruna višedecenijskih borbi Srbije i Crne Gore za nezavisnost i teritorijalni integritet. Specifikum ovog ugovora ipak je član XXV, kojim je bilo predviđeno da Austrougarska monarhija okupira i upravlja provincijama Bosnom i Hercegovinom. Time je izvršen politički i pravni presedan, koji je već za pravnike tog vremena otvorio dva pitanja: šta podrazumijeva austrougarsko "upravljanje" Bosnom i Hercegovinom i do koje granice se može ići u tom upravljanju, a da se ne naruši suverenitet Osmanskog carstva i sultana, čija je vlast formalno nastavila egzistirati na datoj teritoriji? Pitanje nije bitno samo u pogledu političkih i pravnih implikacija koje je ostavio Berlinski mirovni ugovor, jer je pravni položaj Bosne i Hercegovine u tom vremenu često bivao okarakterisan kao pravna anomalija koja se dodatno zakomplikovala aneksijom 1908. godine od strane Austrougarske. Pitanje je naročito bitno u kontekstu ostvarivanja građanskih, a posebno vjerskih sloboda u društvu Bosne i Hercegovine, u kojem su religijska pitanja oduvijek imala presudnu ulogu u kreiranju cjelokupne političke scene.

Prema podacima iz 1910. godine, Bosna i Hercegovina imala je 1 898 044 stanovnika, od čega 43, 49% pravoslavaca, 32, 25% muslimana, 22, 87% rimokatolika, 0, 62% Jevreja i 0, 77% ostalih. Do tada dominantan muslimanski faktor opstao je pod zaštitom sultanske uprave iz Istambula, osjećajući se ugroženim pred sve jačim katoličkim uticajem koji je sa entuzijazmom dočekao dolazak Austrougarske monarhije. U ovako heterogenoj sredini, vjerski momenat postao je odlučujući u obrazovanju, privredi i politici. Istovremeno, bilo ga je potrebno smjestiti u zakonodavni okvir, kako nijedan od vjerskih faktora ne bi prevagnuo i kako bi se uspostavila ravnoteža snaga u ionako krhkoj Bosni i Hercegovini. Do 1910. godine i usvajanja Zemaljskog ustava za Bosnu i Hercegovinu (tzv. Štatuta), ne vidimo značajan pomak na tom polju. Vlada potpuni pravni partikularizam, u kojem se svaka vjerska zajednica u građanskopravnim odnosima između svojih vjernika rukovodi sopstvenim propisima, a u nedostatku istih – običajnim pravom. Najveći broj porodičnopravnih, vakufskih i drugih odnosa muslimani rješavaju putem šerijata, te zakona i naredbi osmanske uprave, dok se pitanje položaja drugih vjerskih zajednica reguliše tzv. pravom mileta (pravom nemuslimanskih zajednica). Zemaljski ustav iz 1910. godine najavljuje novine u ovom pogledu. Članom 8. Ustav je garantovao slobodu vjere i savjesti i taksativno naveo koja su to priznata vjerska udruženja, ubrajajući u njih: "muslimansko, srpsko – pravoslavno, rimsko – i grčko – katoličko, evangeličko, augsburškog i helvetskog zakona i jevrejsko". Dodatno je interesantan i član 42. Ustava, koji među nadležnosti novoformiranog bosanskog Sabora svrstava i "poslove bogoštovlja, koji se tiču sveza vjeroispovjesti međusobno ili prema vladinoj vlasti, koliko se time ne dira u ravnopravnost, unutrašnju uredbu i u vršenje pojedinih po zakonu priznatih vjeroispovjesti." Autorka će kroz analizu autonomnih propisa vjerskih zajednica i zakonodavnu aktivnost Sabora od 1910. godine nastojati da odgovori na pitanje u kojoj mjeri je Sabor, s obzirom na pretežno savjetodavni karakter i vremenski ograničeno djelovanje, svojom djelatnošću ostvario ravnopravnost vjerskih zajednica, kao i na to kakav je bio formalni i faktički položaj vjerskih zajednica u specifičnim uslovima vladavine dvije religijski potpuno suprotstavljene monarhije.

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PRAVOSLAVLJE U UKRAJINI: JEDNA VERA – TRI CRKVENE ORGANIZACIJE

Na današnji dan Ukrajina je nezavisna sekularna država u kojoj su registrovane mnoge verske organizacije. To i nije neka retkost u današnje vreme. Ono, pak, što nije uobičajeno, jeste to, što neke od njih, spoljno slične, pretenduju da dobiju isključivo pravo da se nazivaju Pravoslavnom Crkvom. U radu će biti predstavljeno kako je došlo do toga da u Ukrajini postoje tri verske organizacije od kojih svaka pretenduje da bude zvanična Pravoslavna Crkva u Ukrajini: Ukrajinska Pravoslavna Crkva (Moskovske patrijaršije), Ukrajinska Pravoslavna Crkva Kijevske patrijaršije i Pravoslavna Crkva Ukrajine. Kako bi se došlo do poimanja ovog fenomena, u radu će biti uvod, tri poglavlja i zaključak. Prvo će biti predstavljen objektivni kratki istorijski osvrt svake od tih verskih organizacija. Zatim bi se provela analiza njihovog savremenog pravnog položaja i faktičkog stanja u Ukrajini. Tema je aktuelna zbog nedavnog pokušaja da se na zakonodavnom nivou naziv Ukrajinska Pravoslavna Crkva (Moskovske patrijaršije) promeni u "Ruska Pravoslavna Crkva u Ukrajini".

Za to postoje svoji razlozi, ne samo crkvene prirode, već pretežno geopolitičke, koje svoje korene ima još od 2014. godine. Od tada i mnoge registrovane parohije Ukrajinske Pravoslavne Crkve bivaju pereregistrovane na diskutabilan način u novoformiranu versku organizaciju Pravoslavna Crkva Ukrajine, koja je nastala 2018. godine uz pomoć tadašnjeg državnog vrha usled spajanja dve religiozne organizacije koje su se u svoje vreme odvojile od Ukrajinske Pravoslavne Crkve. Tema može biti od interesa za srpsku čitalačku publiku jer će biti pokušano putem komparativne analize da se uporedi stanje u današnjoj Ukrajini sa nedavnim pokušajem da se u Crnoj Gori primeni Zakon o slobodi veroispovesti prema verskim organizacijama, s time što je Mitropolija crnogorsko-primorska Srpske Pravoslavne Crkve tim zakonom bila diskriminisana. Time bi se sagledao položaj verske organizacije, konkretno Pravoslavne Crkve, u državama Ukrajini i Crnoj Gori koje se smatraju sekularnim. Stanje u Ukrajini, sa tri verske organizacije koje se smatraju za Pravoslavnu Crkvu, nije nepoznato na prostorima Balkanskog poluostrva. To stanje bi se uporedilo sa stanjem Srpske Pravoslavne Crkve do ujedinjenja 1920. godine. Do tada je postojalo nekoliko crkvenih organizacija u sastavu Srpske Pravoslavne Crkve. Tako da će biti provedena analiza u kojoj meri su te dve situacije slične, a koliko različite. Cilj rada je da se pokaže kako je u Ukrajini došlo do formiranja tri verske organizacije svaka od kojih pretenduje da se naziva Ukrajinska Pravoslavna Crkva i šta i da li država čini kako bi se prevazišle nesuglasice između tih verskih organizacija. Stoga će u radu biti korišćeni pretežno izvori i literatura iz Ukrajine. Autor je neposredno bio u prilici da poseti Ukrajinu, vidi kakvo je savremeno stanje crkvenog pitanja u Ukrajini i koja je tendencija razvijanja ove situacije.

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NOVELLA XVII IN THE LIGHT OF LEX IULIA DE MAIESTATE: HILARY OF ARLES CASE STUDY

This paper's main focus is the analysis of the case presented in Novella XVII with the aim of giving a general idea of the religious policy of the emperors Theodosius and Valentinianus. The edict titled *De episcoporum ordinatione* is one of plenty examples of blurring the line between what is called ius sacrum and the ius publicum present in the legislation of the Western Empire between 2 the 4th and the 5th century.

The letter addressed to Aetius is the Emperors' answer to the conflict that occurred between Pope Leo and Hilarius, the Bishop of Arles in the second half of 5th century. The latter was accused of a serious violation of the papal authority that consisted of ordinating new bishops without the consent of the Apostolic See and collecting and army (*manum sibi contraherat armatam*) with the aim of preparing for war (*per bella ducebat*). In the light of such accusations the given „conflict" left the frames of *ius sacrum* (to which we would surely include the act of episcopal ordination) and started to be of wider (state) concern.

The emperors described Hilarius' deeds with a name of the biggest crime (*quod est maximi criminis*). Indeed, having compared the given circumstances with the hallmarks of crime presented in the Lex Iulia de maiestate from the I century, one can clearly notice their resemblances. The law's descriptions provided by Ulpianus and Marcianusseem to be particularly congruent with the discussed case. Therefore, there was indeed an urgent need for an imperial intervention. It wasn't however enough for the Emperors to just punish Hilarius; they had to make sure that a similar situation would not happen again. A crime against the maiestas of not only the pope, but also the whole empire was a serious threat to the public order. Given that they decided to give binding power (*pro lege sit*) to the Apostolic See's injunctions so that should any bishop (*quisquis episcoporum*) neglect to stand trial, he would be captured by force by the province's governor (*per moderatorem eiusdem province adesse cogatur*).

At this point it would be proper to step back to the first part of the edict, where the Emperors refer to the Catholic creed (*fides*) and *religio.* Seeing that those constitute the reasons of imperial concern about Hilarius' case it is rather obvious that the boundary between the imperial and religious matters was no longer an issue.

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SOME RELIGIOUS AND LEGAL RULES ON ASSISTED REPRODUCTIVE TECHNOLOGIES: PROBABILITY OF CONVERGENCE IN THE REPUBLIC OF BELARUS

One of the most serious problems of mankind nowadays is infertility. According to the World Health Organization, there are about 48.5 million infertile couples in the world. Of these, 19.2 million have difficulties with the birth of their first child. Modern advances in medicine allow families to have their baby through assisted reproductive technologies (ART).

The first work, which served as the beginning of ART as a branch of medicine, dates back to the 19th century, when in the 1890s Dr. Walter Heape reported on the successful transfer of embryos from one animal to another with the subsequent birth of viable offspring. In 1934, Pincus and Enzmann published an article on the possibility of mammalian egg development outside the body, which was an important step in the development of in vitro fertilization (IVF). In 1978, Robert Edwards and Patrick Steptoe first achieved artificial insemination in a woman, and they are considered the founders of the modern IVF method.

The history of the origin of surrogacy goes back several thousand years, but initially this method was very different from its modern method. In some countries, for example, in Ancient Greece, if the wife could not get pregnant, it was considered possible to find an heir by turning to a more fertile woman who, after birth, gave the child to an infertile couple. The modern method, when a surrogate mother is not an egg donor, and the child she is carrying has no genetic relationship with her, began to be used only in 1985.

Religious factors have an impact on the regulation of public relations in the field of ART. In matters of ART, religion has a negative opinion, because it considers these procedures unnatural.

One of the reasons for the negative attitude of religion towards ART is the killing of extra embryos.

The Orthodox religion allows for artificial insemination, however, if certain rules are observed. According to Art. XII "Fundamentals of the Social Concept", the Church considers artificial fertilization with the husband's sex cells to be an acceptable means of medical care for childless spouses, if this is not accompanied by the destruction of fertilized eggs. Currently, the modern IVF method is carried out in stimulated cycles, while many eggs are taken from a woman. In the hands of the embryologist there are many human embryos, some of which he transfers to a woman, while others must be destroyed or frozen. Orthodox anthropology claims that a person's personality appears from the moment a person is conceived, and any manipulation of embryos that intentionally leads to their death is murder.

The Islamic world gives permission for IVF if a man and a woman are in an official and spiritual marriage. According to the teachings of Islam, the human embryo is humanized on the 40th or 42nd day from conception, and until that moment the embryo has no human status in the eyes of Islamic theologians. As a result of this circumstance, the Muslim world does not see any ethical problems associated with the destruction of extra embryos.

In order to overcome this problem in Christianity, in our opinion, regarding the application of the IVF method, an additional limitation should be established in the legislation of states, including the Republic of Belarus: the number of created embryos cannot exceed that which can be transferred in one IVF cycle. This legislative innovation is aimed at solving the problem of "extra" embryos in accordance with religious norms.

Another reason that causes religious disapproval of ART is the interference of a third party in the fertilization process. One of the main ethical requirements of childbirth, according to the Roman Catholic

Church, is that it should be "the result of the union and personal relationships of spouses." The concept of interference in the fertilization process of third parties also implies surrogacy. According to Art XII "Fundamentals of the Social Concept", surrogate motherhood, which means the bearing of a fertilized egg by a woman who returns the child to “customers” after childbirth, is unnatural and morally unacceptable, even in cases when it is carried out on a non-commercial basis. This technique involves the destruction of the deep emotional and spiritual connection that is formed between the mother and the baby during pregnancy.

In Islam surrogacy is prohibited.

One of the possible ways that can contribute to solving this problem, from our point of view, is to provide an opportunity to conclude a surrogate motherhood agreement only on a gratuitous basis and only on condition that the surrogate mother is a relative of the genetic mother or a woman who used the donor egg, or a relative of the spouse of the genetic mother, or a woman who used the donor egg. The relationship between the surrogate mother and the future parents of the child is a guarantee that there is no actual commercial relationship between the future parents and the surrogate mother, and the fact that a woman is a relative suggests that she cannot be considered as a third person due to the presence of family ties.

So, as we can see at the present time, there is a critical attitude of various religions to ART. At the same time, the reasons causing their negative assessment can be solved by including the following rules in the legislation: 1) the number of created embryos cannot exceed that which can be transferred in one IVF cycle; 2) the possibility of concluding a surrogate motherhood agreement only on a gratuitous basis and only on condition that the surrogate mother is a relative of the genetic mother or a woman who used the donor egg, or a relative of the spouse of the genetic mother, or a woman who used the donor egg.

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NEKI ASPEKTI PRAVNOG UREĐENJA BAŠTINSKIH CRKAVA U SRPSKOM SREDNJOVEKOVNOM PRAVU

Baštinske crkve, kao poseban institut srpskog srednjovekovnog prava sreću se, po prvi put normirane, u Dušanovom zakoniku i pominju se u nizu pravnih spomenika sve do gubitka nezavisnosti srpske države.

One predstavljaju privatne crkve podignute na vlastelinskom posedu. Ta posebnost, izraženi imovinskopravni element ove ustanove, koji na trenutke možda i nadvladava njihovu duhovnu svrhu, odraziće se značajno na status koje ove crkve imaju spram ostalih zadužbina. S tim u vidu, analizu njihove pravne prirode treba posmatrati dvojako. Najpre bi trebalo razumeti norme Zakonika koje se na njih direktno odnose (čl. 45 i 47), zatim one koje bi se na njih možda mogle primeniti (čl. 31 i 65) i, najposle, pogledati koje se regule tradicionalnog ktitorskog prava, do tada uobličenog po romejskom uzoru, primenjuju, a koje odbacuju pri uređenju baštinskih crkava (npr. prethodni blagoslov episkopa kod podizanja crkve).

Rasvetlivši, uslovno rečeno, „statiku“ ovog instituta, pitanja samog definisanja njegove suštine, trebalo bi se posvetiti razumevanju njegove dinamike, odnosno širokog spektra pravnih odnosa koji bi se oko takve crkve, kao duhovnog zdanja, ali i kao stvari u prometu, mogli izgraditi.

Relativno mali broj posebnih pravnih izvora naročito ističe tri takva odnosa. Najpre, tu je jedan specifičan ugovor o radu: ugovor o postavljenju sveštenoslužitelja u baštinskoj crkvi, koji mahom prati formu privatnopravnog ugovora. Njegovu tipičnu sadržinu predstavljaju „zaduživanje“ bogoslužbenih knjiga, sasuda i drugih predmeta, opredeljivanje imovine koja će služiti za izdržavanje sveštenika (nepokretnosti i posebnih crkvenih prihoda, poput priloga i grobnine), garantije nepovredivosti statusa i njihova ograničenja... Crkvenopravnu stranu ovog posla predstavlja pristanak nadležnog episkopa na postavljenje sveštenika, kao i njegova docnija redovna arhijerejska ovlašćenja. Ona je, čini se, svedena na puku formalnost. Zaista, niti jedan dokument kojim arhijerej koristi svoja ovlašćenja u duhovnim pitanjma baštinskih crkava nije sačuvan do danas.

Druga dva odnosa jesu odnosi raspolaganja. S jedne strane, postoji raspolaganje baštinskom crkvom njenim „podlaganjem“ – potčinjavanjem hijerarhijski višoj crkvi/ manastiru, koja tim prema njoj stiče ne samo duhovne, već i „svetovne“ – imovinske zahteve, ostavljajući samom vlastelinu, osnivaču, ius nudum, praktično nepovratan u pun obim svojinskih ovlašćenja, osim u izuzetnim slučajevima.

S druge strane, baštinskom se crkvom moglo raspolagati kao ma kojom drugom baštinom, poklonom, prodajom, zaveštanjem... Time bi se svojinska ovlašćenja prebacivala na novog vlasnika, uz (pretpostavljeno) poštovanje uređenja sveštenih pitanja (baštinskog sveštenstva, duhovne nadležnosti arhijereja…).

Kroz samu obradu pitanja položaja i pravnih odnosa u vezi sa njim, ukratko bi trebalo naslikati širu socio-ekonomsku sliku vremena u kome se ove crkve pojavljuju kao uobličen institut, da bi se razumela potreba za njihovim uređenjem, kao i kako bi se olakšalo zaključivanje o određenim svojstvima takvog uređenja.

Uzevši u obzir prethodno izneto, na kraju bi trebalo videti koja je svrha pravnih rešenja karakterističnih samo za baštinske, ali ne i za ostale crkve/manastire. Da li njihova pravna priroda zaista toliko odstupa od opštih odredaba ktitorskog prava, da se može govoriti o sui generis institutu, te da li je na oko „povlačenje“ duhovnih vlasti u njihovom regulisanju ustupak koji nije trebalo učiniti, korak ka prevladavanju „privatizovane“ religioznosti nad kolektivnim duhom pravoslavnog hrišćanstva? Najposle, moguće je u takvoj

isprepletanosti ličnih i crkvenih interesa naći osnov za krajnje zanimljiv odnos prema veri visokog plemstva u pojedinim krajevima Srpskog carstva po propasti centralne vlasti, recimo u oblasti pod vlašću Dejanovića.

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BOŽJI SUD U STAROM I SREDNJEM VEKU

U ovom članku razmatra se pravna priroda i svrha jednog od centralnih instituta, pre svega starovekovne, a potom i srednjevekovne sudske prakse - iracionalnog dokaznog sredstva Božjeg suda, poznatijeg pod generičnim imenom Ordalija. Autor se trudi da, prikazujući različite načine spoljne konkretizacije osnovne ideje praktikovanja ovog arhaičnog oblika „isterivanja pravde", jednom komparativnom analizom sa, pre svega, istorijskog aspekta prikaže osnovne karakterisitke ordalija, kao i da utvrdi distinkcije i similarnosti između raznih ordalija u različitim drevnim pravnim sistemima.

Te spoljne konkretizacije manifestovale su se na razliličite načine - dizanjem usijanog železa iz vatre (slična varijanta je izvlačenje predmeta iz kipućeg ulja), bacanjem u hladnu vodu, gutanjem određene hrane, pijenjem otrovnih supstanci, izdržavanjem ispred krsta, hodanjem ispod busena i one predstavljaju ključan element razlikovanja ordalija u pravnim sistemima u kojima su egzistirali. Ponašanje koje predstavlja sadržinu obaveze koju nalaže ordalija najčešće se sastoji u podvrgavanju optuženika bolnom, neprijatnom iskustvu radi utvrđivanja krivice. Ako preživi takvo iskušenje smatraće se nevinim, suportno biće kriv (mada postoje izvesna odstupanja). Osnovna ideja Božjeg suda leži u verovanju da će Bog (ili bogovi), kao vrhovni i neprikosnoveni pravni arbitar, doneti pravdu stranci koja je u pravu, odnosno kazniti krivca. Njegova nužnost nalazi se u činjenici nepostojanja drugih učinkovitih pravnih sredstava. Pritom, on je po pravilu bio sredstvo provere i ispitavanja krivice lica čija je loša reputacija u društvu onemogućavala primenu zakletve.

Karakteristične su za arhaična društva tj. društva koja nisu u savremenom smislu dostigla najviši stepen civilizacijskog napretka i u kojima se zapažaju tek obrisi moderne državne organizacije (Sumeri, Vavilonci, Germani, Sloveni), mada ima slučajeva primenjivanja i u razvijenijim istorijskim sredinama (Dušanova Srbija, Osmansko castvo). Odredbe o njima sadržane su u mnogim zakonicima pomenutih naroda (Ur-Namuov, Hamurabijev, Salijski), ali i u tekovinama snažnog običajnog prava. Usled sekularizacije i modernizacije države iluzorno bi bilo postojanje ove ritalne institucije i u modernim pravnim sistemima.

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ODNOS RANE CRKVE PREMA POZITIVNOM PRAVU

U ovom radu definisaćemo odnosa rane hrišćanske Crkve prema državi i pravnom poretku. Rasvjetljavanje odnosa između Države i Crkve osnov je razumjevanju rane hrišćanske Crkve ali i sveukupnog hrišćanstva, koje se pojavilo u jevrejskoj sredini koja je željno isčekivala pojavu svog Mesije (Spasitelja), s tim što su ga Jevreji razumijeli kao državotvorca, nekoga ko će uspostaviti hiljadugodišnje zemaljsko carstvo i zbog čega „su se odrekli Mesije koji se pojavio u obliku roba i koji je učio da Carstvo Njegovo nije od ovoga svijeta.“ Mesija kojeg su Jevreji odbacili bio je Isus Hristos.

Hristos je učio: „podajte Caru carevo, a Bogu božje“. Nikolaj Berđajev piše: „od riječi Hristovih „dajte Caru carevo, a Bogu Božje“ nastala je nova era u istoriji državnosti u svijetu. (...) Ono je postavilo ustav svakoj ljudskoj vlasti, bilo to vlast jednog, mnogih ili svih. (...) U svojoj osnovi, to nisu ograničenja države određenom zajednicom i određene zajednica nekim grupama kojima su potrebne ove ili one ustavne garancije; to je prije svega ograničenja države crkvom i dušom ljudskom. U hrišćanskom otkrovenju zasnovala se sasvim posebna „deklaracija prava“ ljudske duše, usinovljene od Boga kroz Hrista. U hrišćanskom svijetu država ne može pretendovati na ljudsku cjelost, njena vlast se ne rasprostire na dubinu ljudsku, na njegov duhovni život. Dubina čovjekova pripada crkvi, a ne državi.“

A to da ljudska duša ne pripada državi, ali i da Istina postoji van država i da ona nije nužno saglasna državnoj istini i pravdi, dokazao je sam Isus Hristos. On, Sin Božji, je osuđen i razapet je od strane tadašnjih državnih vlasti, jasno dokazujući da isupunjenje ljudske pozitivnog pravo nikako ne podrazumjeva i ispunjenje nebeske pravde i istine. U poslanici Jevrejima, apostol Pavle navodi kako hrišćani ovdje (na zemlji) nemaju postojana grada, već da traže onaj koji će tek doći (Jev. 13:14). U poslanici Filipanjima, piše: „Naše življenje je na nebesima, otkuda očekujemo i Spasitelja Gospoda Isusa Hrista“ (Fil. 3:20).

Dakle, u oba slučaja mi vidimo dvojstvo i metafizički rascjep između Carstva Nebeskog i Carstva Zemaljskog, ali i prvenstvo ovog prvog u odnosu na drugo. U svjetlu ovih pouka trebamo tumačiti i druge riječi apostola Pavla, izrečene u poslanici Rimljanima: „svaka duša ima pokoravati vlastima koje vladaju, jer nema vlasti da nije od Boga“. Dovoljno je da ove riječi ne odvojimo od ostatka poslanice i da shvatimo njihov pravi smisao, jer na Pavle takođe zapovijeda svojim učenicima da: „svakome podaju ono što su mu dužni: kome dakle porezu, porezu; a kome carinu, carinu; a kome strah, strah; a kome čast, čast“ . Pritom je Pavle smatrao da hrišćani nisu dužni da podaju priznanje sudsku vlast Rimljana, pišući Korinćanima: „sme li koji od vas, kad ima tužbu na drugog, ići na sud nepravednima, a ne svetima? Na sramotu vašu govorim: zar nema među vama nijednog mudrog koji može rasuditi među braćom svojom? Nego se brat s bratom sudi, i to pred nevernima!“.

„Suprotstavljenost između Crkve i svijeta je nesumnjivo suštinski element ranog hrišćanstva. Bitno je naglasiti da je ta suprotstavljenost ne samo moralne i psihološke prirode, već i nadasve metafizičke. Crkva nije od ovoga svijeta; između Crkve i svijeta fiksiran je ogroman jaz, koji je nemoguće premostiti.“ Ovaj stav dobio je svoj izraz u propisima Apostolskog sabora koji su zabranjivali hrišćanskim episkopima da vrše državne službe.

A da su hrišćani ostali „prolaznici“ u odnosu na državna i svjetovna uređenja jasno nam je i iz spisa prvih hrišćanskih apologeta. Justin Filosof piše: „Vi kada čujete da mi iščekujemo carstvo, odmah mada bezrazložno podrazumevate da mi govorimo o nekom određenom ovozemaljskom carstvu, dok mi, ustvari, govorimo o carstvovanju sa Bogom (...) Mi se svagda staramo da blagovremeno izmirimo sve dažbine i

obaveze koje vaši činovnici ubiraju od nas, jer takva je zapovest Božija.“ Dakle, prebivalište Hrišćana je bilo na Nebesima, dok je na zemlji bilo toliko njihovo privremeno boravište. Oni su to boravište poštovali i cijenili, ali mu nikad nisu dozvoljavla da zarad njega izgube svoj prvenstveni dom – Carstvo Nebesko.

Pozvanost hrišćana Carstvu nebeskom nije podrazumjevalo antagonistički odnos prema državi i pozitivnim vlastima. Misija hrišćana nije bila da ukinu državu – već da spasu svoje duše. U poslanici Diognetu, nepoznati autor opisuje hrišćane govoreći: „Oni žive u jelinskim i varvarskim gradovima, kako je svakome palo u deo, i u svome odevanju i hrani i ostalom životu sleduju mesnim (lokalnim) običajima, (...) Žive u otadžbinama svojim, ali kao prolaznici, kao građani učestvuju u svemu, ali sve podnose kao stranci. Svaka tuđina njima je otadžbina, a svaka otadžbina tuđina”. Zarad sticanja tih Nebesa, oni su bili spremni da se suprotstave državi. Tada se hrišćani, pak, nisu suprostavljali vlastima u ime uspostavljanja naročitog oblika „hrišćanske države“, već u samo ime Hristovo. Kada su Svetog Polikarpa izveli pred rimskog prokuratora, ovaj ga je tjerao, „radi Kesareve sreće, da se odrekne Hrista, ne bi li sačuvao svoj život.“ Polikarp mu se nije odrekao Hrista, a njemu je odgovorio: „Tebe sam i reči udostojio, jer smo naučeni da načalstvima i vlastima, postavljenim od Boga, odajemo dužnu čast, onu (čast) koja nam ne nanosi štetu (duši)“.

„Rana hrišćanska zajednice protestuje protiv Države samo onda kad ona poziva sledbenike Hristove da priznaju Cara kao vrhovnog Gospodara i kada im zabranjuje da ispovjedaju Isusa Hrista kao jedinog Gospodara“. A takvih poziva je bilo u prvim vjekovima hrišćanstva mnogo. Uporedo sa rođenjem Isusa Hristo, u Rimskoj imperiji rodio se i kult obožavanja rimskog imperatora. Kada je vlast pretendovala da sebi prigrabi ono što sleduje Bogu ona je za hrišćane mogla biti samo satanska i dostojan otpora, pa je takva i predstavljena u Jovanovom oktrovenju, kao „zvijer iz bezdana“ čiji je patron sam Đavo. Razumije se da hrišćani ovakvoj državi nisu dugovali poslušnost. Ona narušava onaj praustavni princip koji je postavo Hristos – da se da Bogu Božje, a Caru Carevo.

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KRIVIČNA DELA RIMOKATOLIČKOG PROZELITIZMA U DUŠANOVOM ZAKONIKU

Dušanov zakonik predstavlja najznačajniji spomenik srpskog srednjovekovnog prava. Donet je 21. maja 1349. godine na saboru u Skoplju. Zajedno sa Skraćenom Sintagmom Matije Vlastara i tzv. Zakonom cara Justinijana činio je trodelni (tripartitni) zbornik (codex tripartitius). Dušanov zakonik sadrži veliki broj odredaba koje se odnose na pravoslavlje, crkvu, sveštenstvo i monaštvo. Prvih 38 članova direktno je posvećeno veri i crkvi. Zakonik predviđa i različita krivična dela protiv pravoslavlja, a najbrojnija su dela rimokatoličkog prozelitizma. U uvodnom delu rada je najpre izvršena kraća analiza položaja rimokatolika u srednjovekovnoj Srbiji, odnosi srpskih vladara sa papama, a naročito je istaknuta uloga rimokatoličke propagande i prevođenje pravoslavnih u rimokatoličanstvo, koje je po svemu sudeći bilo najzastupljenije upravo u vreme cara Dušana. Predmet pravnoistorijske analize autora su one odredbe Dušanovog zakonika koje inkriminišu rimokatolički prozelitizam. Do sada je u nauci nesporno utvrđeno da su to članovi 6, 7, 8 i 9. Član 6. Zakonika ''О ересн латин҃скон'' reguliše otpadništvo od pravoslavlja u rimokatoličanstvo (apostasija): '' И за ересь латин҃скоую; што [се] соу (о)братили христіане въ азіинство; да се възврате опеть въ христіан҃ство; а ко ли се кто обрѣете прѣчюбь и не възвративь се вьхристіан҃ство, да се каже како пише оу законнкоу светыихь о тьць.'' Dakle, ovom odredbom se naređuje onima koji su iz pravoslavlja prešli u rimokatoličanstvo, da se vrate pravoslavnoj veri. Ukoliko ne bi postupili po ovoj naredbi, bili bi kažnjavani prema „Zakoniku svetih otaca“. Od izuzetnog je značaja utvrditi koji nomokanonski zbornik označava izraz „Zakonik svetih otaca“, te na koju njegovu odredbu, odnosno kaznu upućuje Dušanov zakonik. Kako bi se navedena zapovest uspešno izvršila, crkva je morala da postavi protopopove po svim gradovima i trgovima, čiji bi zadatak bio da vrate otpadnike u rimokatoličanstvo pravoslavnoj veri, a prema članu 7. Zakonika: ''И да поставн црковь велнка пр отопопѣ по въсѣхь [градовѣхь н] трговѣхь да възврате христіане оть ересн латин҃скые, кон се соу обратили въ в ѣроу латин҃скоу; н да нмь дадеⷯ заповѣдь доуховноу; н да се въсакы врати въ христіан҃ство.''

Prema članu 8: ''О латин҃ском попѣ'' i rimokatolički sveštenik je kažnjavan po „Zakonu svetih otaca“ ako bi preveo pravoslavnog u rimokatoličanstvo: ''И попь латин҃скы, ако се нанде обративь христіаннна вь в ѣроу латин҃скоу, да се каже по законоу светыихь отьць.'' Kao i kod člana 6, i ovde je važno utvrditi na koju kaznu je za popa latinskog upućivao Dušanov zakonik. Član 9. ''О полоувѣр҃цін'' pod pretnjom krivičnih i građanskopravnih sankcija zabranjuje mešoviti brak između rimokatolika i pravoslavne: ''И ако се нанде поло увѣрьць оузьмь христіанницоу; ако оузлюбн, да се крьсти оу христіан҃ство; ако ли се не крьсти, да моу се оузмѣ жена и дѣца; и да нм даа дѣль од коукіе; а онь да се нждене.'' Dakle, takav brak se poništavao, a rimokatolik je trpeo još i progonstvo i konfiskaciju dela imovine u korist žene i dece. U pitanju je bila otklonjiva bračna smetnja, pa je rimokatolik mogao da sačuva brak prelaskom u pravoslavlje. Naposletku je izvršena i analiza člana 21. Dušanovog zakonika: ''И кто прода христіаннна оу ноу невѣрноу вѣру, да [моу] се [роука] осече н езы кь оуреже.'' U nauci preovlađuje mišljenje da je u pitanju krivično delo prodaje pravoslavnog hrišćanina u rimokatoličanstvo, mada postoje i tumačenja o opštem značenju ovog člana, odnosno da je njime inkriminisana prodaja u bilo koju drugu veru. Takođe, važno je utvrditi vizantijski uzor navedene krivičnopravne odredbe. U zaključnim razmatranjima autor ukazuje na osnovne uzroke propisivanja ovih krivičnih dela, kao i na određene istorijske podatke o Dušanovoj anitakatoličkoj politici.

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THE ROLE OF JUPITER IN ARGUMENTATION SCHEMES OF CICERO'S ORATIONS

The Roman comprehension of the divine right, *ius divinum*, entailed the completion of earlier, treaty-binding, obligations between humans and deities. Thus, the Roman religion was based upon the legal system and the principle of *do ut des* from the *Leges Duodecim Tabelarum*. This attitude implies that the religion is a right and a duty of any citizen, because even a personal crime or inappropriate behavior can induce anger of gods towards the State. Cicero himself firmly believed in this *ius divinum* of the State, and he deemed that the role of the State was to maintain this proper relationship between its citizens and the deities on whose benevolence depended their welfare.

As the supreme deity, Jupiter was indomitable in Rome. According to legends, Romulus had dedicated Rome's first temple to Jupiter. Even triumphs were tightly connected to Jupiter's cult, because the military commander personified the god himself. The main aim of this paper is to outline the role and importance of Jupiter within the argumentation system of Cicero's political and judicial orations, as a starting point for a broader study of the use of Roman religion in Cicero's oratory.

Cicero's more frequent citing of Jupiter in times of crisis than during relatively peaceful periods fails to surprise. When Cicero began his career, with his orations against Q. Caecilius and, subsequently, against Verres, Roman society was still reeling with the aftershocks of Sulla's regime. Perhaps this could give us a clue why Cicero uses more religious-based argumentative devices, along with the central theme in the accusation against Verres's corruption and his sack of Sicilian temples. In his orations against Verres Cicero uses religious *exempla* not merely as a piece of outright evidence against Verres, but also as an additional motive in a picture of Verres's character.

Cicero's consulate in 63 BC and his actions during Catiline's rebellion marks another rise in Cicero's citing of Jupiter, again in the times of social turmoil. In the orations against Catiline, enclosed within the *locus* of affected modesty, Cicero proclaims that credit for the salvation of State should be given to Jupiter, not to himself.

Once again, during the aftershocks of Caesar's death, Cicero turns to religion and Rome's supreme deity to lend him authority and influence over the members of the Senate, opposing Mark Antony to his death. In his orations against Mark Antony, Cicero deliberately uses the argumentation *ad hominem* as a legitimate means against his opponent.

Although the fact that Cicero was one of the greatest orators of all times has been universally recognized, there is still room for a comprehensive study on his use of the Roman religion within the argumentative systems of his orations. We strongly believe there is more to be gleaned from this, often neglected, aspect of Cicero's orations, not only about Cicero's attitude towards religion, but also about the Roman society and the place of religion within it.

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LEGISLATION AND RELIGION IN THE KINGDOM OF SERBS, CROATS AND SLOVENIANS AND KINGDOM OF YUGOSLAVIA

Proponents of the idea and creators of the plan to create a state, which would include all South Slavs after the end of the First World War, were aware of the fact that its stability would largely depend on the proper resolution of the religious issue. The slow work of the Assembly of the Kingdom of Serbs, Croats and Slovenians on the adoption of religious legislation was a consequence of the overall instability and political struggles that marked the first years of the new state, as well as the unwillingness of the Government to establish the unity of some religious communities throughout the state.

The coup d'etat carried out at the beginning of 1929, the dissolution of the assembly and the suspension of the Constitution, confronted the creators of the new political reality with the necessity of looking for allies for the realization of unpopular solutions that were not accepted by most people. Estimating that the promoted concept of national and state unity will be difficult to achieve if religious contradictions flare up and intensify, the new political forces tried to win over the leaders of the Serbian Orthodox Church and the Islamic religious community and put them in the function of realizing their interests. Trying to strengthen and in some way guarantee the agreement, the state passed complete religious legislation within fifteen months of the introduction of the dictatorship in 1929, adopting laws on the Serbian Orthodox Church and the Islamic Community, but also on the Jewish Religious Community and the Evangelical Christian Churches and the Reformed Christian Church . The corresponding law was not passed on the Catholic Church, because complex negotiations lasted for a long time, the ultimate goal of which was the adoption of the Concordat.

Churches and religious communities maintained the same legal position as in the countries that became part of the new state from the creation of the Kingdom of Serbs, Croats and Slovenes on December 1, 1918. until the adoption of the first Constitution on June 28, 1921. The existence of numerous nations and different religions on the territory covered by the state of South Slavs decisively contributed to Regent Alexander issuing a Proclamation on January 6, 1919, guaranteeing the equality of all religions in the Kingdom and confirming the elimination of the privileged position and state status of the Orthodox Church in Serbia and Montenegro agreed by the Corfu Declaration. By the Provisional Law of May 10, 1920, on the Treaty between the Allied Powers and the Kingdom of Serbs, Croats and Slovenians, signed on September 10, 1919, the new state committed itself to the right of all inhabitants to freely perform public and private rites of any religion or confession, which is not contrary to public order and morality. The assumed international obligations and the activities of various religions in the new state, contributed to the formation of the Ministry of Religion of the Kingdom of Serbs, Croats and Slovenians.

The Corfu Declaration, the Proclamation of Regent Alexander and the Treaty of Senj indicated the possibility for the Constituent Assembly to accept the principle of separation of church and state and thus in a unique way resolve the current heterogeneous situation in the legal position of confessional communities in the new state.

The Constitution of June 28, 1921 abandoned the system of state churches, but did not implement the consistent principle of the separation of religious communities from the state. Religious communities have been given the status of "public institutions with a special position in the state and special privileges" and the authority to perform some public-law affairs on behalf of the state. Vidovdan Constitution, and

similar solutions were retained by the so-called “enacted” constitution of September 31, 1931 that divided the adopted and recognized religious communities. The position of the adopted was given to all religious communities that were legally recognized in any part that became a part of the Kingdom.

In my paper I would like to focus on each of the laws that cover all of the mentioned churches in the Kingdom of Serbs, Croats and Slovenians as well as the Kingdom of Yugoslavia. This paper will also explore the overall position of every religion that was legally protected in the Kingdom compared to the status of the Serbian Orthodox Church. To conclude, I will present the difference between the religious legislation of the Kingdom and modern Serbian state and also mention the changes considering the position of Church in relation to the state.

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CHURCH, WARTIME SLOVAK STATE, AND JEWISH COMMUNITY IN NITRA

In the late 1930's, the Czechoslovak Republic was dealing with serious existential problems. Being almost completely surrounded by hostile states, it was eventually forced to fall apart in 1938-1939. German Reich, Poland and Hungary annexed some of the border areas, leaving the state seriously weakened. Following a wave of Slovak nationalist anti-Czech sentiment (supported by Nazi Germany, which wanted to destroy Czechoslovakia), a first independent Slovak Republic, also known as Slovak State (*Slovenský štát)*, was proclaimed on 14th March 1939.

The Slovak State was formally an independent republic, but de facto more or less a Nazi Germany satellite state, led by a single far-right political party, Hlinka's Slovak People's Party (*HSĽS*). Unlike Germany or its other puppet states, it was strongly clerical. The first and only president, Monsignor Jozef Tiso, was an active Catholic priest. The religious education was made obligatory in Slovak schools, and in practice, being a Christian was almost compulsory for Slovaks. According to the article 85 of the Slovak Constitution, freedom of religion was guaranteed, "provided that it does not oppose the law, public order, or Christian morals." This quite vague provision might be easily used against non-Christians, as their activities might be considered as contradictory to Christian morals, and therefore suppressed.

In practice, there were not many non-Christians in the Slovak State, except of one group – Slovak Jews. There were 136 737 Jews or in Slovakia in 1930 census, with largest populations in Bratislava, Košice, Prešov, and Nitra. During the 1930's, as the Slovak nationalism was rising, there were manifestations of antisemitism mainly from the paramilitary Hlinka Guard (an armed wing of *HSĽS*). In 1941, an openly anti-Semitic "Jewish Codex" (governmental decree No. 198/1941 Coll.) was issued. The Jews were made "second-class citizens" and their civil rights, guaranteed by Article 81 of the Constitution "without any difference based on origin, nationality, religion, or profession", were extremely suppressed. The Constitution allowed limiting these rights by law if necessary, but the extent of limitation in Jewish Codex was obviously excessive, and even triggered criticism of Slovak government by the Roman Catholic church. However, the Codex remained valid without changes to the end of the war.

In Nitra, there is an oldest documented Jewish community in Slovakia, being first mentioned in the 10th century. In the 1930's, more than five thousand Jewish people were living in the city and its suburbs. They actively participated on the public life of the region: they were represented in the local council, more than five hundred Jewish businesses were registered there, the Jewish community operated an elementary school and a Jewish religious school (*yeshiva*). In November 1938, first attacks on local Jewish community took place. Several Jewish houses and businesses were defaced with hateful texts. Those attacks became normal after the Slovak State was proclaimed, being committed by the Slovak ultranationalists (frequently by Hlinka Guard members) and usually ignored by the police.

After encoding the Jewish Codex, the position of Jews worsened. They had to wear a yellow star in public, were not able to marry non-Jews, could be evicted from their homes for no reason etc. However, even in these tough times, a few Jews did not surrender. Michael Dov Weissmandl, son-in-law of the Chief Rabbi of Nitra, Shmuel Dovid Ungar, was particularly active in fighting for Jewish rights in the antisemitic state. He managed to convince Slovak government to let the *yeshiva* in Nitra open, making it the only *yeshiva* which was working in the entire Europe under Nazi Germany sphere of influence. It survived even after 1942, when majority of Jews from Slovakia was deported to German concentration camps.

In my submission, I am going to look into theory and practice of the freedom of religion in Slovak State – in the constitution, which theoretically granted all people equal rights regardless of their religion or race, but only if it's in accordance with vague "Christian morality"; in the laws, which openly discriminated one ethno-religious group of people; and in an everyday reality of a rural town, where many Jews were respected citizens before, yet they later had to deal with antisemitic actions, hateful propaganda against them, and eventually massive deportations. I am also going to mention the role of Catholic church in these affairs, particularly the role of Bishop of Nitra, Karol Kmeťko, who was a respected figure and intervened to the benefit of Jewish community several times. In the paper I am also going to try to evaluate the impacts of selected legal actions of the Slovak State on the lives of Jews, searching for information about their lives and their relations with non-Jewish neighbors.

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INTESTATE SUCCESSION IN TURKEY. LAW INSPIRED BY RELIGION OR STILL BASED ON ITS SECULAR HERITAGE?

The Turkish Civil Code of 1926 is commonly regarded as the one of the most notable examples of legal transplants. This is because the Turkish lawmakers decided to translate – almost literally – the Swiss Civil Code and implement it as Turkey's own legal act. For this reason, Turkey exemplifies the Alan Watson's concept that private law does not need to reflect the socio-economic factors existing in a given society and can be easily transplanted between legal systems. The opposite idea that law should mirror such factors could be described as the traditional approach of legal history represented by Savigny, Kahn-Freund or Legrand and others.

From such traditional perspective, the Turkish Civil Code was doomed to failure, since the socio-economic factors in Switzerland and Turkey (e.g. religion) have been completely different. Consequently, such differences should materialize in law in the longer term; particularly, in the area of succession law, as this branch of law is strongly rooted in social mores.

Among the socio-economic factors, the particular attention should be paid to Islam as the dominant religion of Turkey. This focus on religion can be explained by couple of reasons. Firstly, the Civil Code of 1926 was designed as a revolutionary act against religion and Osman traditions, since the post-war Republic of Turkey was based on the principle of laicism. Even though the majority of Turks was Muslim in 1926, as well as in 2021. Secondly, Islam is not only a religion, but also a legal system rooted in Qur'an and containing some – often very detailed – restrictions and rules regarding, e.g. inheritance. Thirdly, for almost last 20-years, Turkey has been ruled by more religion-oriented establishment (including Recep Tayyip Erdogan) that has not hesitated to revoke some laicism-inspired laws (e.g. ban on Muslim scarfs at universities).

In 2002, new Turkish Civil Code came into force. This new law "refreshes" the language of the code, but also contains some material amendments. The new code creates the opportunity to verify whether and – if yes – how Islam affected or could affect code's provisions. Such examination requires *inter alia* checking the scope of amendments between the current and 1926' versions of the Turkish Civil Code and analyzing the Islamic rules in a given branch of law. Supplementary comparison between the Swiss and Turkish civil code may be useful as well.

In my presentation, I will explore the above-mentioned problem on the example of the intestate succession in the Turkish Civil Code. This would allow to answer the question whether the Turkish legal system has been becoming more religion-inspired or is still based on its secular heritage. Thus, this is also the study how law and religion influence each other.

From a wider perspective, the analysis of the Turkish experience regarding intestate succession can contribute to verification of Watson's idea of legal transplants. In particular, it can allow to check if private law remains as isolated from socio-economic factors as it was suggested by Watson in some of his essays. Moreover, it can give some guidelines how legal transplants work in practice.

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ROLE OF CHURCH OFFICIALS IN THE SURVIVAL OF ROMAN LAW IN THE BYZANTINE EMPIRE

This paper will summarize the role played by church officials in the survival of Roman law in the Byzantine Empire.

Historically, the Byzantine Empire had not experienced the succession of so-called Roman law, and the Corpus iuris Civilis and its derivative works continued to be used as current law. Despite this, many of the legal scholars who support it have been discharged from church officials, and few are known as pure Roman legal scholars. The church organization also maintained an institution like the response of ancient Rome, and the legal system of ancient Rome was preserved within the church organization as well as the state institution.

It is seen in people such as some doctor iuris utriusque and Bracton in England that church officials are familiar with not only canon law but also Roman law (so-called general law) and play a role in the operational stage. Under what circumstances is such a case seen even in Byzantine, which should have used the law as the current law? Also, what are the differences from those cases?

In this report, after stating the above-mentioned concerns, we first confirm the establishment of canon law, and confirm that the canon law has referred to Roman law from the beginning, using the synod decision as a historical source. In addition, we will confirm the status given to the canon law by the state from the canon law (Nomocanon) and the new law according to the style of the canon law that was carried out during the Justinian era.

Subsequently, the period when these legislative activities were carried out in light of the fact that these forms of canon law continued to be used even in the 8th-10th centuries, when the law in the Byzantine Empire was revived by the activities to improve national law. Mention the enforcement of national law and the assistance of canon law to trials.

Also, at the same time, legal scholars were born from priests, centering on the response activities to the churches in each region, which began to be held mainly in the courts that became permanent in the Patriarchate of Constantinople. In addition to showing the process of becoming like this, the case where the emperor used a specific priest as a mid-state official to deal with legal issues led to the legal activities of church officials based on these two methods. Organize as if it was broken.

Finally, by taking the case of Theodoros Balsamon, a prominent legal scholar in the 12th century, when the activities of canon law scholars were most active, in Byzantine there was a collection of forms that contrast Roman law and canon law. Indicates that it has been used consistently since the century. His main achievement was the addition and commentary of contemporary canon law, carried out in the form of Nomocanon.

In the conclusion part, after reconfirming that the survival of Roman law by church officials in this way has some elements in common with Western Europe, we will summarize the factors that were special to Byzantines.

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BIOETIČKE DILEME PITANJA ABORTUSA – EUGENIČKI POKRET U NACISTIČKOJ NEMAČKOJ

Bioetička dilema pitanja abortusa datira još iz antičkog doba, stvarajući razdor između religiozne i društvene svesti. Viševekovna debata vodi se u okvirima medicine, sociologije, teologije, filozofije, antropologije i drugih naučnih disciplina, stremeći ka odgovoru na suštinsko pitanje: "Da li je fetus ljudsko biće?" Razvoj civilizacije rezultira inovacijama na polju nauke i stvaranjem novih disciplina koje se bave proučavanjem ne samo fetusa i embriona već i samog gena. Različiti deformiteti fetusa, komlikacije koje ugrožavaju život žene, nameću dilemu da li se feticid može poistovetiti sa abortusom? Kao i konačno, čije je pravo "jače", da li žene da slobodno raspolaže svojim životom i telom ili pravo fetusa na život? Posledica tehnološkog napretka odrazila se i na zakonsku regulativu te se ustanovljavava pravo na rađanje, ali i pravo na nerađanje koje podrazumeva dalje niz različitih prava poput prava na kontracepciju, prava na sterilizaciju ili prava na prekid trudnoće. Eugenički pokret kao bio-socijalni program XIX veka, razvio je ideologiju kontrole ljudske rase kroz prinudnu sterilizaciju "genetski defektnih" individua čime bi se izbegao abortus ali i razvio genetički inženjering. Sama eugenika (grč. eu- i genos - "dori geni") deli se na pozitivnu, koja podstiče razvoj i reprodukciju "genetski superiornih" ljudskih bića i na negativnu, kojom se sprečava reprodukcija siromašnih, slabih i bolesnih, prirodnom selekcijom.

Eugenički pokret se razvijao pod uticajem Frensis Galtona u Ujedinjenom Kraljevstvu i Čarlsa Devenporta u SAD, koji su zauzimali stav da hrišćanstvo i medicina samo koče napredak ljudske rase. Biolog Čarls Devenport objavio je u SAD knjigu pod nazivom „Uticaj nasleđa u eugenici". Rad ovog naučnika uticao je na predsednika SAD-a Teodora Ruzvelta koji je čak izjavio: "Veoma bih voleo da se spreči razmnožavanje pogrešnih ljudi. Kriminalce treba sterilisati, a slaboumnim osobama zabraniti da stvaraju potomstvo. Akcenat treba staviti na uzgoj poželjnih ljudi." Do kraja 1930. godine većina američkih država imala je normativne okvire po pitanju sterilizacije. Eugenika najsuroviju primenu dobija u Nacističkoj Nemačkoj, pod rukovodstvom Adolfa Hitlera koji uvodi masovnu eutanaziju, sterilizaciju i primenu gasnih komora u svrhu smanjivanja broja "nepoželjnih". Već 14. jula 1933. godine uvodi se Zakon o sprečavanju rađanja potomstva kod ljudi sa naslednim bolestima, što je dovelo do toga da između 320.000 i 350.000 ljudi bude podvrgnuto sterilizaciji, a 1935. godine donet je Zakon kojim se dopušta abortus ženama za koje se verovalo da poseduju neke od naslednih genetskih bolesti, za razliku od žena za koje se verovalo da pripadaju pravoj nemačkoj lozi i kojima je abortus strogo zabranjen. Herman Raušning tako navodi Hitlerove reči na jednom sastanku: „Moramo da smanjimo stanovništvo i treba da razradimo tehniku depopulacije... Pod tim ja ne podrazumevam obavezno uništenje, nego prosto mere za gušenje njihove ogromne prirodne plodnosti. Postoji mnogo puteva, sistematskih i relativno bezbolnih, u svakom slučaju beskrvnih, da bismo naveli nepoželjne rase da izumru." Nasuprot tome, kao rešenje za prekomeran broj abortusa, Hajnrih Himler, tadašnji zapovednik SS-a osniva organizaciju Lebensborn, podstičući neudate mlade žene da u tajnosti rode decu i daju ih na usvajanje nemačkim porodicama, odnosno "rasno čistim roditeljima". Program je neudatim ženama omogućavao rođenje deteta izvan braka bez osude društva. Sva deca bila su podvrgnuta kategorizaciji i kontroli s ciljem zadovoljavanja "arijevskih kriterijuma" da bi se odredila podobnost za predaju na čuvanje. Ukoliko kriterijumi nisu ispunjeni, deca "nearijevskog" porekla smeštana su u logore širom Nemačke.

Da bi se arijevsko poreklo dokazalo, neophodan je bio dokument o krštenju predaka koji je izdavala isključivo crkva, zahvaljujući starim crkvenim knjigama. Na čelo Rimokatoličke crkve od 1939. godine

postavljen je Papa Pije XII, kog pojedini istoričari nazivaju i "Hitlerov papa". Pre ustoličenja, služio je kao kardinal Euđenio Pačeli i kao ambasador Vatikana u Nemačkoj, gde je samim tim svedočio usponu nacista. Smatra se da je crkva nemo posmatrala istrebljenje jednog naroda i zločine pod pokroviteljstvom eugenike i nacizma. Nasuprot tome, mnogi crkveni velikodostojnici širom Evrope zauzimaju stav po pitanju pobačaja, međutim, može se zaključiti da na globalnom nivou taj stav nije bio usaglašen. Vatikan je 2020. godine otvorio arhivske dokumente o ovom ozloglašenom Papi kako bi se uvtrdile činjenice i razrešila dilema kolika je bila uloga crkve u stradanjima i da li je uopšte postojala, jer kako ističe Papa Franja, ovaj period obeležili su "trenuci ozbiljnih poteškoća, mučnih odluka ljudske i hrišćanske razboritosti što bi se nekima moglo učiniti kao uzdržanost."

Eugenički pokret nadživeo je ratove i stradanja sve do danas, iako, rimskim govorom iz 1998. godine Međunarodni sud u Hagu za zločine protiv čovečnosti propisuje zakon o zabrani eugenike i prakse nasilne sterilizacije nad stanovnicima bilo koje zemlje. Ipak, razvojem nauke i tehnološkim inovacijama stekli su se uslovi za poboljšanje života i razvoj ljudske rase, ali postavlja se pitanje da li smemo menjati tok prirode? Ko bi odlučivao o takvim odlukama i šta ga čini kompetentnim? Čini se da humane misije često nailaze na zloupotrebu istih. Umesto dobrim obrazovanjem, savetodavnom i medicinskom praksom, pribegava se radikalnim merama. Podržano mogućnostima genetičke tehnologije eugenika i dalje deluje. Istraživanja su pokazala da bi čak 11% roditelja abortiralo dete ako se dokaže sklonost ka razvoju gojaznosti, čak 75% ukoliko se otkrije neka fizička anomalija, a blizu 50% bi pristalo na genetski inženjering. Kroz istraživanje pokušaću da odgovorim na ova i mnoga pitanja koja se nameću i koja nas teraju na razmišljanje o tome ko smo mi zapravo? Da li mi sami imamo kontrolu nad životom ili je to ipak obrnuto? Da li smo rastrzani između prava i religije zanemarili prirodu i ugrozili balans, vodeći se idejom da smo superiorniji?