

THE QUESTION ABOUT A COMMON GOOD IN THE SECULAR STATE

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Abstract: *What we witness today is secularism in church and state relation and moral pluralism in society. The modern state separates state and church, if not on all the levels, surely on the level of separation of governmental and religious institutions. State and church relation is based on the principles of equality, liberty and neutrality. But secularism of state means not the end of religion! Before we look on a conscientious objection of individual subject in modern secular state, we try to analyze concept of common good with his historical context. If the common good is not provided for, people's individual goods are not sure either. We can therefore see that individual goods cannot be put in opposition to the common good. St. Thomas Aquinas has shown that since every man is part of our common existence, it is impossible for any man to be good without having a good relationship towards the common good. Our aim is to find a role of Christian character of secular society and basic elements of a good secularism for a politic society and the Church in a modern time.*

Keywords: Common good, secular state, social teaching of the Church, conscientious objection of singular person, public place.

Is it true, false or just too daring to say that the modern state did lose its universalism? What we witness today is secularism in church and state relation and moral pluralism in society. The modern state separates state and church, if not on all the levels, surely on the level of separation of governmental and religious institutions. State and church relation is based on the principles of equality, liberty and neutrality. But secularist of state means not the end of religion!

Therefore before we look on a conscientious objection of individual subject in modern secular state, we try to analyze concept of common good with his historical context. Our aim is to find a role of Christian character of secular society and basic elements of a good secularism for a politic society and the Church in a modern time.

The concept of common good plays a central part in the Church's social teaching.¹ It stems from Greek *polis* and is expressed by Aristotle's *Politics*: *the good in the political field, that, the general advantage, is justice² (political good is just, thus contributing towards what is social in nature³)*, where the

¹ A. Anzenbacher, *Christliche Sozialethik*, Paderborn/München/Wien/Zürich, Schöningh, 1998, p. 200.

² Aristotle, *Politics* III, 1282b 14-18, 107 (121), available on: www.perseus.tufts.edu, accessed 12.02.2019.

³ Idem, *Politik*, ed. O Gigon, München, Fink, 1984, p. 5, 115.

common good is closely linked to justice, as well as with the principle of solidarity. John Paul II pointed out that solidarity is a firm determination to commit oneself to the common good. Solidarity means „the correlative response as a moral and social attitude, as a "virtue".⁴ Aristotle held view that justice is accomplished through observation of the law of *polis*, and therefore called it law-based justice. Contrariwise, Küppers states that according to St. Thomas Aquinas, the common good decisively refers to general justice, that is, to something that goes beyond a positive, i.e. man-approved law. To him, the constitutional law is of secondary importance, and its role is to direct the action of virtues towards the common good.⁵ The role of special justice is to ensure equality among citizens and *polis*.

Arzenbacher points out that this contributing good is called „bonum commune“ in social ethics, as expressed by Utz or „concrete freedom“ by Hegel. To put it in other words, according to the traditional Church’s social teaching inspired by Aristotle, the common good, as a comprehensive good pertaining to the social order as a whole, is a special object of politics, or political community.⁶ The state should therefore act in the interest of the common good, which, additionally to the principle of solidarity, is also achieved with the aid of the principle of subsidiarity.

Isensee adds that determining the common good is an essential goal of an open political process. The common good ethos of an office must be defended face to face with external and internal threats of pluralistic democracy, and state functions entrusted in a credible way must be protected against selfish abuse on the one hand, and instrumentalisation by interest groups on the other.⁷

A brief historical excursion into the Church’s social teaching

⁴ John Paul II, *Sollicitudo rei socialis* (abbrev. SRS) 38,6, available on: www.vatican.va, accessed 12.02.2019.

⁵ ST II-II, 57-61; also see A. Küppers, "Soziale Gerechtigkeitim Verständnis der Katholischen oziallehre," in A. Rauscher (ed.), *Handbuch der Katholischen Soziallehre*, Berlin, Duncker&Humbolt, 2008, p. 165.

⁶ Cf. Documents of the Second Vatican Council, *Gaudium et Spes* (abbrev. GS), p. 74, available on: www.vatican.va, accessed 12.02.2019.

⁷ J. Isensee, "Staat", in A. Rauscher (ed.), *Handbuch der Katholischen Soziallehre*, p. 754. Cf. Inocent-Mária V. Szaniszló, OP, "Die Ethik des Seinsoder Was für ein Mensch sollte zum Objekt der Ethik, Philosophie und der Theologie werden?", in *Astra Salvensis*, III, Supplement no. 1, (2015), p. 191.

According to Pope Pius XII, human rights are the very precious part of the common good.⁸ Rauscher underlines that in the traditional Church's social teaching the common good has its roots in the Roman law. Since humans are social beings, dependent on cooperation and community, the common good cannot be conceived as the sum of private goods of individuals. It is rather an interconnected structure of many goods, that is, in the process of pursuing common tasks, those goods cooperate in order to achieve common goals. If the common good is not provided for, then individual goods of people are not sure either. We can thus see that it is not possible to put personal goods in opposition to the common good.⁹

In ancient times, the common good unambiguously had priority over private goods. A modern question concerning the common good can be formulated as follows: is it not necessary to distinguish between a person's fundamental rights (or, to put it in other words, human rights) and what an individual is due to the society? As pointed out in the Second Vatican Council document, the common good allows people, either as groups or as individuals, to reach their fulfilment more fully and more easily.¹⁰

The common good necessarily draws upon a common sense, which postulates the mindset of a human involved in social life and requirements on a social group arising from a more extensive need for the common good and the imperative of social life. Where citizens miss readiness to engage on behalf of the community, the common good is impaired.

A crucial element of the common good doctrine by St. Thomas Aquinas is the anchoring of the secular, political common good in the sum of goods with reference to transcendence, as well as its characteristic, naturally lawful direction thanks to the makeup of ethics and law based on human nature (*naturahumana*).¹¹ St. Thomas Aquinas writes that the good of any part is such that what it is belongs to the

⁸ A. Rauscher, "Das Christliche Menschenbild", in A. Rauscher (ed.), *Handbuch der Katholischen Soziallehre*, p. 21, note 24: Address by Pius XII dated 25.9.1949 in Utz, Groner, No. 369.

⁹ *Ibidem*, p. 28.

¹⁰ Cf. GS 26, and also see the definition in: *Kompendium Sociálnejnauky Cirkevid Pápežskej rady Iustitia et Pax (The Compendium of the Social Doctrine of the Church published by the Pontifical Council for Justice and Peace)*, Trnava, SSV 2008, p. 164. See also: www.vatican.va, accessed 12.02.2018.

¹¹ U. Nothelle-Wildfeuer, "Die Sozialprinzipien der Katholischen Soziallehre", in A. Rauscher (ed.), *Handbuch der Katholischen Soziallehre*, p. 144.

whole.¹² Since every man is part of a common being (*pars civitatis*), it is impossible that any man should be good without being related in the right way to the common good (*bonum commune*).¹³ Anzerbacher adds that an individual good is integrated here as a sub-function of the common good.¹⁴ In his concept of the common good, St. Thomas Aquinas refers to the idea of personal good of a socialized man who is standardly subject to any (economic and cultural) social nature (*socialite*) as well as to politics. Such common good therefore cannot be conceived as predetermined or unintentional, as if it was an automatic product of competitive mechanisms, or removal of classes through revolution, but is conceived as the outcome of solidary cooperation.¹⁵

In his important encyclical *Rerumnovarum*, Leo XIII reminds us that the basic and essential obligation of the state is to „require the common good“. In accomplishing such good, „the labour of the working class is especially responsible and quite indispensable“. ¹⁶ Pius XI on the other hand develops the concept of distributing the land's goods according to the common good, and he also covers ownership and property rights in the context of the common good.¹⁷ Encyclicals of John XXIII claim that the universally human, universally common good has to do with development aid as part of international solidarity. Anzerbacher adds that Revelation shows us the anthropological substance of a sin: what is it due to, and that both individuals pursuing their destination and social interactions accomplishing the order of goods, and especially the common good, may likewise fail.¹⁸ John Paul II is the first one to clearly talk about the principle of solidarity: it is a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all.¹⁹

¹² Saint. Thomas Aquinas, *Summa theologiae Complete Set (Latin-English Edition)*, volume I-II, New York, 2012, p. 96, 4 (it will be quoted there as *ST*). Cf. Inocent-Mária V. Szaniszló, OP, "Denken des Hl. Thomas von Aquinaleinegute basis für gerechte sozial politik", in *Astra Salvensis*, IV, no. 7, (2016), pp. 10-19.

¹³ *ST*, I-II p. 92, paragraphs 1 and 3.

¹⁴ A. Anzenbacher, *Christliche Sozialethik*, p. 46.

¹⁵ *Ibidem*, p. 135.

¹⁶ Leo XIII, *Encyclical Rerumnovarum* (abbrev. RN), 26; notes by A. Anzenbacher, in: A. Anzenbacher, *Christliche Sozialethik*, p. 139.

¹⁷ Pius XI, Encyclical *Quadragesimo anno* (abbrev. QA), 58 and 49; notes by A. Anzenbacher, in: *Ibidem*, p. 145.

¹⁸ *Ibidem*, p. 182.

¹⁹ Cf. John Paul II, *Encyclical Centessimus annus* (abbrev. CA), 15 and SRS, 38, in: *Ibidem*, p. 196.

However, the conception of common good stretches from the medieval through to the modern times because of the absolutist power claimed by the rulers.²⁰ As if „Raison d'état“ indicated that the common good is directed by someone from above, that is, as if the monopoly of a sovereign holder of power to define it preceded common needs. Liberalism, emerging in the middle of the 18. Century counteracted that. During the course of the Enlightenment, more and more emphasis was laid on individual rights, dignity and freedom of individuals – up to the point where the concept of common good kept losing its importance and, conversely, the individual good grew in importance. Later on, this concept was misused by states with totalitarian ideology.

In Nothelle-Wildfeuer's view, the significance of the concept of common good has been diminishing in the contemporary social ethics. This is frequently presented not as an independent principle, but rather as part of the principle of solidarity. There is the background issue of finding a generally unifying definition of this concept in terms of its substance and content in the process of individualization of the present-day society. On the other hand, in the secular world, this concept seems to come in fashion again (such as in the debate between liberalists and communists at the beginning of 80-ies).²¹

In the period between the wars, the concept of common good has been elaborated so as to become more dynamic: i. e. being an idea relating to order, it cannot be captured either in liberalist or collectivist terms, but it rather maintains the conditions and prerequisites for order, which must be provided so as to enable people in a political community to coexist meaningfully.²² The common good is thus the most universal goal of the state that is comparable with the public interest.²³

Multiple meaning of the concept of common good

According to the classical social doctrine, the common good is constituted of the family, state and ownership. Nevertheless, such common good has several meanings:

²⁰ *Ibidem*, p. 204.

²¹ U. Nothelle-Wildfeuer, "Die Sozialprinzipien der Katholischen Soziallehre", p. 145.

²² R. Uertz, "Zur Enteiklung des katholischen Staats denkens", in A. Rauscher (ed.), *Handbuch der Katholischen Soziallehre*, p. 778.

²³ M. Heintzen, "Der moderne Verfassungsstaat des Grundgesetzes", in *Ibidem*, p. 839.

1) One of them is the so-called value of the common good as *service*.²⁴ The common good is understood as means and possibilities required in order for all individual members of the society to be able to (fully and quickly)²⁵ accomplish their existential goals as designed in their life plans. Concerned is a good position or condition of a social structure or a municipality, thanks to which it is able to help its members, facilitate or empower them, by means of their own endeavours or what they are striving for, that is, to achieve their own good or their own fulfillment, or to achieve some of their common goals.²⁶ The common good is likewise conceived by the Second Vatican Council as „the sum of those conditions of social life which allow social groups and their individual members relatively through and ready access to their own fulfillment“ (GS 26).

According to Anzerbacher, the common good understood in this way is *instrumental* in nature, that is, it serves the self-actualisation of persons. If understood as a condition, it involves the order of societal goods determined by solidarity. Finally, when it comes to distinguishing the issues of justice and good life in modern times, it involves social order of modern goods. However, it not only concerns the accomplishment of life goods of individuals, but also of their various groupings.

It is important that the common good conceived in this way is not the sum of all goods, but only of those that constitute a prerequisite for the realization of all values of common goods (mainly in the sense of structures, institutions and social systems). Thus the common good stands in the service of an individual human.²⁷

2) Another meaning of the common good (i. e. an inclusive meaning as opposed to an exclusive one) is the one that includes a goal at which such instrumentalisation is directed. This is where „the very“ real core of society is constituted. Such interpretation of the meaning aims to indicate that the common good, that is, personal good (of individuals as they are) of all the members of society pertains to

²⁴ O. Von Nell-Breuning, *Gerechtigkeit und Freiheit. Grundzüge katholischer Soziallehre*, Wien, Europaverlag, 1980, p. 35; Cf. U. Nothelle-Wildfeuer, *Die Sozialprinzipien der Katholischen Soziallehre*, p. 145.

²⁵ See also GS 74; GS 26; Documents of the Second Vatican Council *Dignitatis humanae* (abbrev. DH) 6; John, *Encyclical Mater et magistra* (abbrev. MM), 65; John XXIII, *Encyclical Pacem in Terris* (abbrev. PT), p. 58; Cf. U. Nothelle-Wildfeuer, *Die Sozialprinzipien der Katholischen Soziallehre*, p. 145.

²⁶ O. Von Nell-Breuning, *Gerechtigkeit und Freiheit. Grundzüge katholischer Soziallehre*, p. 41; Cf. A. Anzenbacher, *Christliche Sozialethik*, p. 201.

²⁷ John XXIII, *MM*, p. 219.

socialized persons, since such common good can be achieved via social cooperation, and since such persons strive to achieve it through their personal responsibility.²⁸ All members of a social structure are thus enriched, accomplished and appreciated. In this sense, the common good is not conceived instrumentally, but is an independent value by nature, providing that it also includes an autotelic person, who is the agent of solidarity and cooperation. The purpose of such restrictive interpretation of social cooperation is to show clearly that the realization of personal goods does not solely depend on social cooperation, but, in major part, also on whether a person conducts their life responsibly, that is, on how such person handles the means and possibilities offering cooperation. More specifically, this meaning is reflected in the work of volunteers, who do not ask what the state can do for them, but conversely, they ask what they can do for the state. In this way, they establish a true community.

A traditional rule that the common good has precedence over the individual good needs to be understood in this context too. This will however apply only in cases where a man is a subordinated member of a certain social structure (such as an employee relative to their employer, a citizen relative to the state, and the like).

Finally, the common good can be conceived as a target value only if we realist that the coexistence of humans in the society can only succeed under the precondition that there is at least a minimum consensus with regard to certain indispensable basic prerequisites of common life of members of this society, who share common values.

State and the common good in the light of questions relating to the worldview

A target idea behind the entire social cooperation, the idea of world order of people with human dignity pursuing a universal (the common) good in the society, in which subsystems are aligned and arranged with regard to each other so as to fully accomplish their tasks: at the end of the day, all these prerequisites by and large depend on the questions of worldview. Answering these questions in turn depends on

²⁸ A. F. UTZ, *Sozialethik*, p. 4: *Die Prinzipien der Gesellschaftslehre*, Heidelberg, 1958, p. 136. Inocent-Mária V. Szaniszló OP, "Tangenten der Wissenschaft und des Glaubens Suche Nach der Interaktion der Natur-und Human wissenschaften in Ihrer Beziehung zur (Moral) Theologie", in *Astra Salvensis*, VI, Special Issue, (2018), p. 1003.

the perspective, from which the man's existence and determination are viewed.²⁹

Anzerbacher tries to translate the Aristotle's statement in modern terms: a person can only be guaranteed the status of a person with human rights, which depends on mutual exchange of recognition, providing that political power is replaced with positive law. The state must then necessarily become the guarantor of solidarity, and/or of the common good (as the principle of law). Aristotle's theory that a man is by nature a political being, and that the state pertains to the nature of man, is thereby reconstructed. The state guarantees concrete human freedoms and realization of an extensive common good. In this context, the Second Vatican Council reminds us of the following: „Men, families and the various groups which make up the civil community are aware that they cannot achieve a truly human life by their own unaided efforts. They see the need for a wider community, within which each one makes his specific contribution every day toward an ever broader realization of the common good. For this purpose they set up a political community according to various forms. The political community exists, consequently, for the sake of the common good, in which it finds its full justification and significance, and the source of its inherent legitimacy. Indeed, the common good embraces the sum of those conditions of the social life whereby men, families and associations more adequately and readily may attain their own perfection.... It is clear, therefore, that the political community and public authority are founded on human nature and hence belong to the order designed by God, even though the choice of a political regime and the appointment of rulers are left to the free will of citizens“.³⁰

On the one hand, realization of the common good necessitates the existence of the rule of law and state sovereignty. On the other hand, the common good is the only basic norm behind all rights and political activities. In the final analysis, the particular content of a politically just common good, i. e. the way concrete freedoms as well as civic and social rights are to be exercised, can only be determined within the framework of civic society and the rule of law abiding by the principle of *democracy*, that is, through public discourse and the process of forming the will, as well as a democratic method enshrined in the constitution.

Treating the common good as a service presupposes that the members of society *consent* to common goals and values. Nevertheless,

²⁹ A. Anzenbacher, *Christliche Sozialethik*, p. 94.

³⁰ *GS*, p. 74; Cf. *RN*, p. 26.

when it comes to this point, a problem can be envisaged in our modern pluralitarian society, but also a necessity for a public authority of last instance that would oversee the compliance with and realization of the common good. The society can only get unified, as a prerequisite for the development of its members, if such bonding factor of last instance is present at all. The common good, or the state authority, consists in the right of society to lead to the common good (Johannes Messner), and concurrently in the coercive power used to enforce such common good despite the opposing individuals and groups. According to the social encyclical by Pope John Paul II, the common good authority may only be successfully constituted in conjunction with the ethos binding on all citizens, and is based on the man's transcendent truth, without which the society is at risk of individuals enforcing their interests and the force of power taking over.³¹ However, not only the state, but also non-state organizations must strive to enforce the common good.³²

In a law-abiding democratic establishment, such care by the state of the common good must be incorporated in the constitution, and elaborated on. In this connection, the state can be assigned three tasks:

1) Introducing a legal order binding on all people, who, in accordance with their understanding of the individual nature of man, and the concept of common good, orient themselves on universally applicable elements, or an order that may not contain whatever contradicts such elements.

2) Safeguarding such a lawful space in a society subordinated to the state, and protecting it against both external and internal threats. To that end, both the state and state power, that is, military and police forces are required.

3) Capturing the necessary prerequisites for ensuring, by the social state, of the material welfare of all its members. Law, power and welfare are thus the basic constituents of the common good as a state service.

Already Aristotle and St. Thomas Aquinas knew that the common good is a basic norm, and the principle, by which the legitimacy of law and politics is judged. In the process of Modernism it became clear that such legitimacy can only be successfully pursued in a *democratic way*, that is, by leading those concerned, citizens and legislators, to collaborative action in respect to its content.

³¹ Cf. *CA*, p. 44.

³² Cf. U. Nothelle-Wildfeuer, *Die Sozialprinzipien der Katholischen Soziallehre*, p. 147.

Anzenbacher concludes that the correctness moral and human rights foundations of Modernism, and, by that token, a precondition for a solidary order of goods oriented towards the common good, principally depends on a definite point of view regarding the man's nature and destination (as mediated through philosophy and religion).³³ This is also evidenced by the design of law and the end target of politics, as well as questions of creed relating to the economy's social and ethical purpose, or the standing of family in our society. Likewise, the interdisciplinary nature of sciences and the concept for an educational system raise questions relating to the worldview, although a neutral worldview is required in case of political and legal subsystems, so that they do not just become an executive branch of some religion. For this very reason the state should care how the society tackles the questions of worldview, as well as of the human existence and transcendence in its media and the process of training and education. Also, the total output of the media should be judged by the contribution it makes to the common good.³⁴

Christian and secular state

A conviction that political and legal subsystems should coordinate the operation of other subsystems with a view to achieving an extensive common good is contradicted by those, who (starting from Machiavelli through to Eichmann) claim that politics is just about the technique of gaining, expanding and ensuring the power. From the Christian social perspective, politics is nevertheless conceived as responsible *pr axis*.³⁵

Oppenheimer asserts that Christians have an option, and/or obligation to participate in the process of secular democratic culture, and even to co-create it. This is referred to as the *Christian secularism as an ideal of Christian secular democratic citizenship*. Such an ideal has maintained a degree of „differentiated identity“, which enables Christians to concurrently live as Christian believers and citizens of a secular state.³⁶

Secularism and democracy must be universally recognized as political values. This ensures the readiness to accept democratic

³³ A. Anzenbacher, *Christliche Sozialethik*, p. 207.

³⁴ Pastoral instruction written by order of the Second Vatican Council on the means of social communication, *Communio et progressio*, 16 (1971). See: www.kbs.sk, accessed 12.02.2019.

³⁵ A. Anzenbacher, *Christliche Sozialethik*, p. 208.

³⁶ Wien (kath. net/KAP), *Gegen Abtreibung hilft nur gesellschaftlicher Bewusstseinswandel* (online). 13 September 2010 (quot. 2014-12-30). See: www.kath.net, accessed 12.01.2019.

decisions even in cases where they contradict one's own beliefs, where a person considers them as deeply unjust and detrimental to the common good. Convicted Catholics should constructively cooperate with those who believe otherwise, thus recognizing the secular nature of a modern democratic citizenship, as well as the legitimacy of political decisions, even though these „might contradict their own beliefs in respect to the real good.”³⁷

Christians, in their own view, are at the same time committed and predestined to become a force changing the world. Nevertheless, decisions and laws may only be altered by legal democratic tools, using which people strive to persuade their co-citizens of the meaningfulness of their own position. However, a lot of patience is required for a man to be able to follow such procedure. Oppenheimer talks about „a long-lasting cultural process“. In this process, it is not sufficient to use solely religious arguments on why are we for or against a specific law or a trend. It is much more necessary to arrange rational reasons that can also be accepted by citizens who are non-believers or have different faith.

A Christian should consider their secular citizenship as „a positive challenge, even something normal“. Such an ideal has been repeatedly referred to as Christian secularism.

Public life plurality should not be conceived as a stressful burden, or as something scandalous, but as the outcome of civic freedom. Freedom, although posing certain risks, must be trusted-since history shows that any time humans feared freedom, and disguised it by way of censorship, repressions, or discrimination, such conduct finally yielded bitter fruit. Nevertheless, this so-called double identity is in no case identical with the so-called double life-on the contrary, Christians unambiguously maintain their obligation to courageously voice out their beliefs.

Christians may never abandon their Christian nature with its potential to change the world, contrariwise, with the aid of a well-formed conscience they are invited to actively cooperate in building up the modern world in accordance with their fundamental religious and moral values.

Such changes are however instilled by legal means-by „Christians trying to persuade other citizens about the meaningfulness of their own requirements“ in all the areas they deem as incompatible with the

³⁷ Wien (kath.n et/KAP), *Plädoyerfür 'christliche Säkularität' im modernen Staat* (online). 14 December 2010 (quot. 2014-12-30). See: *Ibidem*.

common good of human society (fighting against the culture of death manifested by abortion and active euthanasia).

As stressed by Benedict XVI in the Council rules for the interpretation of reform, a distinction has to be made between two levels: the level of principles and the level of their application. Benedict clearly states that thanks to the Second Vatican Council, the Church has accepted substantial aspects of the idea of a modern state, notably its neutrality in terms of religion.

In his interview with Professor Oppenheimer, a journalist by the name of Maksan raises a question: where the state, in its legislative capacity, must constantly make true or false statements, to what extent can morality and law be defended through such quest for the common good?³⁸ In Rhonheimer's view, the state may only punish such deeds that make people's peaceful and just coexistence in the society either impossible, or at least substantially more difficult. Therefore, the criterion is unambiguously political, i. e. the common good, and not moral in nature. The point is not to bring up people so as to make them good, but to maintain public order, and provide for people's coexistence in peace and freedom, which also includes a minimum public morality and the validity of criteria of justice resting upon a rational political consensus. The state is only able to keep track of what can be seen from the outside. Only God knows what is going on in the man's heart, hence the Divine Judgment This protects human law from becoming totalitarian: motivations cannot be punished, only outside attitudes can. Anyway, motives can still be amoral, providing they harm the common good. From this point of view each law has an „educative function“, or put in an even better way, it protects crucial ethic values, thus alleviating and/or aggravating our moral attitudes.

Such an approach is totally impossible in a pluralistic and democratic society, which disallows any laws that disregard majority. Virtuous law of nature is not a positively valid law, but a Meta law, by which the justness of positively valid law can be measured. No one can refer to it just in order to invalidate the positive law. And this is good, unless the state turns lawless.

Here comes another question: Is not such an argument underhandedly critical towards the democracy, since in pursuing the truth, a detour into the majority always has to be made? Oppenheimer principally notes that what matters is not the truth, but the common

³⁸ O. Maksan, '*Der Staat fällt keine Wahrheitsurteile*' (online). Wien (kath.net/KAP), p. 6. December 2010 (quot. 2014-12-30), available at: *Ibidem*.

good! Such majority-based decision-making is not a detour, but the most straightforward way of practically ensuring the common good. It does not involve any cynical pragmatism or resignation, but expresses the conditions for political conduct. In the event that this majority principle is removed, everything would become much more complicated. What would be replaced? Enlightened or Christian monarch or a politburo? Who would legitimize them? Who would empower them? In addition, it will in no way guarantee just laws, rather the opposite way round. The principle of democratic majority is the most transparent and direct way of achieving rational political decisions. Statements on what is good and just are also constituted by, or depend on consensus, and this equally pertains to the common good, and is a precondition for peaceful coexistence.

In conclusion Maksan tries to defend a view that the state is a moral idea that enables us to advance our social nature. It is therefore more than the mere sum of its members. Oppenheimer agrees, but only when it comes to decisions depending on individuals! Calling the state a moral idea may prove dangerous. In the past, this has lead people to make the mistake of waiving their civic responsibility. In the final analysis, morality of the state and of its institutions, which is more than the sum of its members, lives on the morality of its citizens, on the moral nature of our society, as argued by a philosopher of law and German constitutional court judge, professor Böckenförde. The man's social nature is accomplished not only through their citizenship and identification with a supreme authority (establishment) or nation, but also in their family, at worksite, and via different social networks of the civic society. When it comes to the common good, the sense of duty is tried. So Christians must change the society and the hearts of people. Only then can we be granted different laws, or help to make them such!

This objectively justifies the existence of conscientious objection.

Religions principles and a modern society

In this particular section we like to give one special example of possibility of common life of different theories about a common good's principle. That because an existing common good can be different from a conviction of certain members or groups of civil society. If a faith or conscience of somebody can not to be prepare to accept a law imposed by lawgiver like a parliament, in this case is very good possibility to have a right to turn to conscientious objection.

On the individual level, modern states guarantee equal treatment before the law, religious freedom (to choose religion, belief or not to choose any) and neutrality where information about religious beliefs is not an essential public matter or public interest. Belief should not be criteria in recruiting civil servants as state should treat everyone neutrally (in creating a law or policy or applying a law).³⁹

Even concepts previously based mostly on religious grounds, arising from conflicts of different religions or out of tolerance and respect between them are nowadays more often based on principles of religious freedom, equality and neutrality such as conscientious objection.⁴⁰ Certain modern authors means that conscience is autonomous, independent from ideology or religion, it has its own legitimacy.⁴¹

Conscientious objection is not a new phenomenon in political or legal theory. Far from that. It is embedded in the „classic conflict“ between iusnaturalist and positivist concept of law. Whereas iusnaturalism, generally speaking, tends to embrace the idea of disobedience towards law in order to comply with the imperative of conscience which is considered the ultimate source of guidance that should be followed by laws; positivist conceptions tend to disregard conscientious objection on the grounds it is not a right and should not be recognized as one.

Therefore, it may seem that conscientious objection is not vivid subject in secular state anymore. Nevertheless, although we are common with the problem of disobedience almost since Antigona had refused to comply with Kreon's order and buried her beloved brother, conscience has still its relevance. However, it has changed. Examining modern conflict of individual's morality and laws shows that

a) the distinction between iusnaturalism and positivism suggests the evolution in the phenomena of conscientious objection from being regarded as an illegal act (*contra legem*) towards some forms that are

³⁹ C. Proeschel, "Výhradavosvedomí a sociálnasúdržnosť/Conscientious objection and social cohesion", in M. Moravčíková (ed.) *Výhradavosvedomí-Conscientious objection*, Trnava, Ústav pre vzťahy štátu a cirkvi, 2007, p. 144. Cf. Iuliu-Marius Morariu, "Bioethics in the discussions of the Pan-Orthodox Synode from Crete (2016)", in *Astra Salvensis*, IV, no. 7, (2016), p. 251.

⁴⁰ L. Madleňáková, *Výbrada svědomí. Jako součást svobody myšlení, svědomí a náboženského vyznání (Conscientious objection as part of freedom of thought, conscience and denomination)*, Praha, Linde, p. 65.

⁴¹ C. Proeschel, *Výbrada vo svědomí a sociálna súdržnosť (Conscientious objection and social cohesion)*, pp. 144-145.

regarded exceptional but recognized as being in accordance with law (secundum legem)

b) conscientious objection does not cover only acts expressing religious beliefs, it takes into consideration acts driven by other motives than religious ones

c) it expanded into new areas which I will speak about mostly about today, that is-healthcare or area of bioethics study in general (cases of vaccination, in vitro fertilization-assisted reproduction, euthanasia, blood transfusion).

The definition of conscientious objection

Conflict is what defines conscientious objection as it arises from conflict between individual's morality and enforceable law, from conflict of obligations or loyalties.⁴² This conflict results in „refusing to comply with the law (legal obligation) which is enforced by authorities or required by legal norms „in the name of“ conscience that opposes such acts and implies supremacy of moral rule over legal rule.“⁴³

Furthermore, some authors note that every act of conscientious objection must display certain essential features such as non violent act, higher law justification-axiological motivation, an act must be public.⁴⁴

Vincenzo Turchi, however, observes the metamorphosis of conscientious objection from an act of Antigona that is legitimate, refers to „Law“ and principles that should be followed because it highlights the difference between legality and legitimacy to modern objections which are arbitrary and extrema ratio in plural societies with cohabiting diverse identities. Nevertheless, he still finds the common basis in modern era which is according to him-human dignity represented in human conscience and guaranteed in modern constitutions.⁴⁵

That means he describes several forms of conscientious objection

a) conscientious objection that in Dworkin words „test the law“ (conscientious objection contra legem)

⁴² V. Turchi, "Všeobecný pojem „výhradasvedomia“ Talianskoprávnická skúsenosť s odvolaním sanaporovnávacie právo (The general concept of „conscientious objection“. Italian legal experience with reference to comparative law)", in M. Moravčíková (ed.), *Výhradavosvedomí-Constientious objection*, Trnava, Ústav pre vzťahy štátu a cirkví, 2007, p. 19.

⁴³ C. Proeschel, "Výhradavosvedomí a sociálnasúdržnosť/Conscientious objection and social cohesion", pp. 144-145.

⁴⁴ V. Turchi, "Všeobecný pojem „výhradasvedomia“, p. 19. See also J. Rawls, *Spravodlivosť ako férovosť (Justice as fairness)*, Bratislava, Kalligram, 2007.

⁴⁵ V. Turchi, "Všeobecný pojem „výhradasvedomia“, pp. 23-24.

b) conscientious objection that is respected by state and substitutes one obligation with an alternative (conscientious objections *secundumlegem*)

c) conscientious objection as a tool of recognition of collective identities

d) conscientious objection-as an outcome of modern democracy that upholds legality and improves legislation.⁴⁶

In the regard of recognized objection Lucia Madleňáková emphasizes important difference between conscientious objection which is an act, a decision, a result of internal conflict and right to conscientious objection that provides an option to refuse legal obligation on the grounds of the decision of conscientious objector.⁴⁷

Conscientious objection in healthcare

Is it a right to apply conscientious objection in health care in Slovakia? Conscientious objection of medical professionals and healthcare workers is guaranteed by international multilateral treaties such Universal Declaration of Human Rights, art. 18 and Covenant on Civil and Political Rights as well as through Health Care Act and Ethical Code of Healthcare Professionals. It is conceived as a dimension of freedom of thought, conscience and religion and taking into consideration its regulation it might be considered as recognized by law.

Nevertheless patients' objection is not regulated by any Act, yet medical and healthcare professionals' objection has its flaws. Since it is framework legislation comparing to Italy it does not regulate any details how to apply objections and most importantly how to proceed in the situation when objection was applied. Should a physician provide a referral?

According to principles guiding application of objection in secular society: objection may affect only an objector and cause no harm to third party. Secondly, conscientious objection *secundumlegem* still requires demonstration of loyalty towards law by imposing alternative-different legal obligation. In our opinion, that must also be a case in conscientious objection in healthcare, in particular in reproductive medicine. All others decisions need a process described higher in the section „Christian and secular state“.

⁴⁶ *Ibidem*, pp. 24-25.

⁴⁷ L. Madleňáková, *Výhrada svědomí*, p. 67.

Attempted conclusion

Anzerbacher infers that even the Christian social ethics is unable to offer any alternative projects other than the ones offered in the modern times. It may however commit itself to the common good, social justice and social establishment of good so as to be able to cooperate with modern projects, recognizing them as legitimate. In this way, the Christian social ethics will be able to more clearly manifest the humanitarian goals, providing that it accomplishes the process in modern conditions and with modern tools. But in interpreting this process, it must defend an opposition that establishes the Revelation's social dimension. Then we shall see that even the roots of such a modern project originate from Christian motifs.⁴⁸

However, subjective rights are not any absolute rights subordinated to the common good, but they are principal rights in service of the common good, and as such they need to be legitimized.⁴⁹ This is based on the possibility of integrating them into a project dealing with the conditions for recognizing the common good, which, along solidarity lines, puts the person's status in terms of human rights on a universal basis.

Also, the secularization of state, upheld over a long historic period against the opposition by Christian churches, is the historical consequence of Christianity. At the end of the day it pursues dualism of two kingdoms, the polarity of immanence and transcendence, of the Church and state, as well as of the law and conscience. However, the state is no longer *societa perfecta* as conceived by Aristotle or St. Thomas Aquinas.⁵⁰ We therefore believe that the secular process nowadays equally provides a positive challenge for religions, and the search for an answer to the question of common good. In the process, conscientious objection not only helps us to maintain the identity in this relativistic environment of no simple truth, but also hope that universal norms will be preserved.

⁴⁸ A. Anzenbacher, *Christliche Sozialethik*, p. 124.

⁴⁹ A. F. Utz, *Sozialethik*, p. 4.

⁵⁰ Cf. J. Isensee, *Staat*, p. 756.