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The Church-State Situation in Poland After the Collapse of Communism

*Krystyna Daniel**

The changes and developments spawned by the political transition period in Poland not only reached governmental heights but also extended into the religious realm, particularly affecting the Catholic Church. This paper will describe the changed situation of the Catholic Church in Poland after the June 1989 transitional period and will also explore underlying explanations of the changes.

Without doubt, two things that catch our attention when we focus on the Catholic Church in Poland after the communist collapse are the significant reinforcement of its legal position on one hand and the significant decrease in its prestige in Polish society on the other. The reinforced legal position may be expected, especially in a country with a notable Catholic tradition where the Church experienced significant limitations under communism.¹ However, the loss of prestige is surprising and raises many questions.

In order to gain the perspective necessary to explain the position of the Catholic Church in contemporary Poland, I would like to begin with some basic information. Poland has generally been recognized as a profoundly Catholic country with a highly legitimized position of the Church. The idea that Poland is a very Catholic country, one deeply rooted in Polish culture, is based on two main facts. First, Poland has a long historical experience with Catholicism dating back to the Tenth Century, when, in 966, the Polish ruler Prince Mieszko I

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1. Nevertheless, the oppression of the Church in Poland between 1945 and 1989, however hard, was not nearly as drastic as that in the other communist countries: for example, in the Soviet Union, Hungary, and Romania, many church buildings were destroyed, closed or turned into museums, storehouses or factories; religious worship and entrance to seminaries were limited and controlled by the state. See M. BANASZAK, 4 THE HISTORY OF THE CATHOLIC CHURCH 132-33, 138-48 (Akademia Teologii Katolickiej, Warszawa 1992).

adopted Christianity and Poland formally became a part of Christian Europe.² Second, the Catholic Church is, and always has been, the predominant denomination in the country. Indeed, at present, 95% of the entire population is Catholic.³ Poland is currently one of the most monoethnic countries in Europe. Poland has also never been so ethnically homogenous. According to the most recent data, ethnic minorities, such as Germans, Ukrainians and Byelorussians, constitute no more than 3 to 4% of Poland's population.⁴ However, there has always been a Polish, as well as a Catholic, majority. For example, in 1931, Poles made up only 69.9% of the whole population, while 13.9% were Ukrainians, 8.6% were Jews, 3.2% were Germans, and 3.1% were Byelorussians.⁵ The dominant majority of these ethnic minorities in Poland consists of non-Catholics.

Traditionally, it has been counter-intuitive to think about Poles who do not belong to the Catholic Church; membership in the Church was, and still is, perceived as one of the most important features of belonging to the Polish nation. In fact, the stereotypical expression "Pole-Catholic" appears to be deeply rooted in the national consciousness. A 1994 survey shows that for 55% of Poles, membership in the Catholic Church is perceived as an important criterion for belonging to the Polish nation.⁶

Another factor that contributes to the strong position of the Catholic Church in Poland is connected with historical events.

2. The adoption of Christianity by Prince Mieszko I in 966 was preceded by his marriage to Catholic Princess Dobrawa from Bohemia in 965. See A. ZAMOYSKI, *THE POLISH WAY: A THOUSAND-YEAR HISTORY OF POLES AND THEIR CULTURE* 10 (1994).

3. GŁÓWNY URZĄD STATYSTYCZNY [THE LITTLE YEAR-BOOK OF STATISTICS] 54 (Warszawa 1992).

4. In Poland there are 350,000–500,000 Germans, 2,000–250,000 Ukrainians, 200,000–250,000 Byelorussian/White Russians, about 25,000 Romans, 20,000–25,000 Lithuanians, 25,000 Slovaks, no more than 15,000 Jews, 10,000–12,000 Russians, 8,000 Ormians, and 30,000–40,000 Czechs; altogether 1,200,000–1,700,000 people. This data is based on the Report of the Office for Studies and Expert Evidence of the Office of the Sejm; Łodziński, *The Policy of the Polish State Toward Ethnic Minorities in 1989–93* (January 1994) (unpublished report).

5. B. OLSZEWICZ, *THE PICTURE OF CONTEMPORARY POLAND. FACTS, FIGURES AND TABLES* (Warszawa 1938); J. TOMASZEWSKI, *THE ETHNIC MINORITIES IN POLAND IN XX CENTURY* (Warszawa 1993).

6. The results of these polls have been met with Catholic Church approval and with some concern among Protestants. See the comments upon the polls by T. Pieronek, Bishop of the Catholic Church, and B. Trand, pastor of the Evangelical-Reformed Church, *GAZETA WYBORCZA*, September 8–9, 1994, at 17.

Through the ages, the Church served not only as a religious institution but also as a significant national icon, especially when Polish political institutions were weakened. This was particularly true when Poland lost its political independence during the 123-year period that began with its partition among Austria, Prussia, and Russia and ended in 1918, when Poland regained its independence following World War I.⁷ The Church gained strong legitimization during World War II and during communism, when the Polish government and other state institutions were controlled by the Soviet Union. In turn, governmental institutions were held in low esteem by Polish society.⁸

During communism in Poland, the Catholic Church, in spite of numerous abridgements, enjoyed some level of autonomy, especially in comparison with other countries under Soviet domination.⁹ For example, in communist Poland, until 1961, religious classes were not excluded from public schools.¹⁰ Even more significant is the fact that the Catholic Church received financial aid from the communist state when the state supported one university-level Catholic school and paid salaries for teachers of religious classes (since 1961). Additional Christian denominations also received support through the Church's Fund.¹¹ It is clear that communist authority could not entirely neglect the profound religious, as well as cultural and national, feelings of the Poles. During that time, the Church was the only institution that could openly criticize the communist government and intercede for the

7. See J. KŁOCZOWSKI ET AL., *THE OUTLINE OF THE HISTORY OF THE CATHOLIC CHURCH IN POLAND* 235-54 (Znak, Kraków 1986).

8. *Id.* at 362-70, 474-508.

9. *Id.* at 384. The significant level of the Church's autonomy was connected on the one hand with the treaty signed between the Church and the Government on April 14, 1950, and on the other hand with the uncompromising attitude of the Polish Primate Stefan Wyszyński, who opposed the increased control over the Church imposed by the state in 1953.

10. The religious classes were expelled from public schools on the basis of the Statute on Development of Education and Upbringing of 1961, *Dziennik Ustaw Polskiej Rzeczypospolitej Ludowej* [Government Regulations and Laws Gazette of the Polish People's Republic] [hereinafter *DzU PRL*] No. 32, item 160, art. 2. Since 1961, religious teaching has been held in the Church's buildings and other places, outside the public schools' premises.

11. The state paid for the Academy of Catholic Theology and the non-Catholic Christian Academy of Theology. See M. PIETRZAK, *THE ECCLESIASTICAL LAW 172-73* (Warszawa, PWN 1993).

oppressed. For example, it was the Church that actively and successfully opposed nationalization of private farms.¹²

As communism weakened, the Church concentrated large groups of society around itself—not just practicing Catholics, but skeptical intellectuals and non-believers as well. A strong and visible collaboration was especially evident during the “Solidarity period.”¹³ Particularly, the last decade of the communist regime may be viewed as one of religious upheaval and increasing cooperation between the Catholic ecclesiastical institutions and society. During this period the notion of the universal Church, comprised not only of its hierarchy and clergy in general but also of the believers at large, became true as never before. The Church unified and consolidated the society in the struggle against communism, and in 1989, when communism collapsed, the Church was the unquestioned moral authority in society. Consequently, communist Poland seemed to be one of the last European bastions of deep and authentic religiosity.¹⁴

The new realities considerably changed the legal position of the Catholic Church in Poland. First of all, the post-communist government adopted several laws that not only strengthened the autonomy of the Church in relation to the

12. Poland was the only country in the communist block where private farming was preserved, although the attempt to socialize private farms was undertaken twice: between 1949 and 1956 and again in the seventies. See J. KUBIN, *THE COMMUNISTS IN THE POLISH COUNTRY* 19–26, 48–49 (Wydawnictwo Myśli Nieinternowanej 1988).

13. The Independent Autonomous Labor Union “Solidarity” was established between July 30 and September 31, 1980, was registered on November 10, 1980, was delegalized on December 13, 1981, and was again registered on October 8, 1982. Solidarity gathered over 10 million members and was more than simply a labor union. See A. ZAMOYSKI, *THE POLISH WAY: A THOUSAND-YEAR HISTORY OF POLES AND THEIR CULTURE* 390–96 (1994) (discussing the connections between the Church and “Solidarity”); P. NITECKI, *THE CHURCH, “SOLIDARITY” AND A SOCIAL REVIVAL IN POLAND* (OPTIMUS, Warszawa 1991); J. KŁOCZOWSKI, *supra* note 7, at 412–13 (Znak, Kraków 1886); T. GARTON ASH, *THE POLISH REVOLUTION, SOLIDARITY 1980–1981* 108–09 (Wydawnictwo Krąg, Warszawa 1987).

14. See J. Zakowski, *The Two Churches or Catho-Right, Catho-Left and Catho-Neurosis*, *GAZETA WYBORCZA*, May 16, 1993, at 10–11. In this article, the author shows the relations between the Church, society, and authority under and after communism. According to the author, the Church’s struggle with communism did not reveal its internal divisions, such as the division between integristic and open Catholicism on one hand and conservative and liberal Catholicism on the other. It was the collapse of communism that showed that the Church in Poland is quite differentiated and quite far from unity.

state, but also introduced Christian values into the axiological base of the new, democratic system of law.

A very brief look at the current law in Poland from the viewpoint of its reference to the Catholic Church must begin with the Polish Constitution.¹⁵ The Constitution of 1952, which is still in effect, propounds general regulations concerning church-state relations and religious freedom. An examination of the constitution leads to the conclusion that Poland is an ideologically neutral country.¹⁶ Article 82 declares church-state separation while simultaneously granting free exercise of religious function.¹⁷ The same article also grants freedom of consciousness and creed.¹⁸ Additionally, Article 82 states that a church-state relationship can be determined only by statutory law.¹⁹ Article 81 of the constitution assures the equality of conscience and creed.²⁰

It is also worth mentioning, however, that the Polish Constitution dates back to the communist period and therefore suffers by its association with communism. However, it is the first Polish Constitution to guarantee church-state separation as well as equal recognition of all denominations. Interestingly, previous Polish Constitutions, those of 1791,²¹ 1921,²² and 1935,²³ in contrast with the Constitution of 1952, were adopted in a democratic way, yet they established a privileged position for the Catholic Church through *primam inter pares*.²⁴

The Constitution of 1952 contains only general provisions and, therefore, requires other, more specific, regulations. In the

15. The Constitution of the Republic of Poland [hereinafter RP Const.], adopted in July 22, 1952 as the Constitution of the Polish People's Republic [hereinafter PRL Const.], was amended many times: in 1976, 1980, 1982, 1983, 1987, 1988, 1989 (twice), 1990 (three times), 1991 (twice), and 1992 (twice).

16. R.P. Const. art. 82, ¶ 2.

17. R.P. Const.

18. R.P. Const.

19. R.P. Const.

20. R.P. Const.

21. Constitution of May 3, 1791, entered to the book of the city of Warsaw on May 5, 1791.

22. Constitution of March 17, 1921, *Dziennik Ustaw Republiki Polskiej* [Government Regulations and Laws Gazette of the Republic of Poland] [hereinafter DzU RP] No. 44, item 267.

23. Constitution of April 23, 1935, DzU RP No. 30, item 223.

24. Art. 114 and art. 120 of the Constitution of March 17, 1921, introduced the obligatory religious classes into the public school system (including religious classes for non-believers).

absence of such regulation, the constitutional provisions can easily be manipulated in the process of interpretation or application. Importantly, the same constitution with the same provisions concerning church-state relations was in force under communism; however, those provisions were somewhat illusory because of lack of more specific regulations.²⁵

Substantial changes arrived in May 1989, less than one month before the collapse of communism. The Polish Parliament adopted three statutes that gave more specific church-state regulations: the Statute on Freedom of Consciousness and Creed,²⁶ the Statute on Social Insurance of Clergymen,²⁷ and the Statute on the Relationship Between the Catholic Church and the State.²⁸ In the following years, Parliament also passed individual regulations concerning the legal position of other major denominations in Poland.²⁹

The limited framework of this paper does not allow me to present and analyze the entire scope of the legal regulations concerning Polish church-state relations generally or the position of the Catholic Church specifically. Instead, I will focus on the most general, as well as the most controversial, regulations.

Generally, the Statute on Freedom of Consciousness and Creed, while possessing the character of a *lex generalis*, gave force to broad constitutional problems regarding religious freedom and freedom of conviction. Additionally, it defined the basic relationship between church and state. In particular, Article 2 of the Statute on Freedom of Consciousness and Creed precisely defines the meaning of freedom of consciousness and

25. See PIETRZAK, *supra* note 11, at 164.

26. Statute on Freedom of Consciousness and Creed of May 17, 1989, DzU PRL No. 29, item 155.

27. Statute on Social Insurance of Clergyman of May 17, 1989, DzU PRL No. 29, item 156.

28. Statute on the Relationship Between the Catholic Church and the State of May 17, 1989, DzU PRL No. 29, item 154.

29. Individual statutes that regulating relations between the state and particular churches have been adopted for the Polish Orthodox Church, Statute on the Relationship Between the Polish Orthodox Church and the State of July 4, 1991, DzU RP No. 66, item 287; for the Evangelical-Augsburg's Church, Statute on the Relationship Between the Evangelical-Augsburg's Church and the State of March 25, 1994, DzU RP No. 73, item 323; and for the Evangelical-Reformed Church, Statute on the Relationship Between the Evangelical-Reformed Church and the State of March 25, 1994, DzU RP No.73, item 324. Drafts of three other statutes have been prepared: for the Methodist Church, the Baptist Church, and the Seventh Day Adventist Church.

creed. This article states that all citizens can form churches of other denominations, participate in religious holidays, preach their religion or share their conviction, raise children according to their own beliefs, keep silent in matters concerning their religion and personal convictions, maintain contacts with co-religionists, acquire religious information, produce and purchase objects relating to their religious sect, and associate in secular organizations to promote religious convictions.³⁰ At the same time, another article of the statute states there are to be no state endowments or subsidies for churches.³¹ However, there is also a provision that allows financial aid to churches according to specific regulations.³² Thus the statutes begin to more narrowly define the constitutional clauses relating to religion. Finally, Article 11.1 establishes the autonomous character of churches and denominations, while in Article 11.3, churches and other denominations are granted the right to undertake action before the Constitutional Tribunal.³³

As mentioned above, the legal position of the Catholic Church, as well as the position of some other major denominations in Poland, is ultimately regulated by specific statutes that have the character of *lex specialis* in relation to the Statute on Freedom of Consciousness and Creed and to the constitutional law.³⁴ Analyzing the ecclesiastical law in Poland reveals four levels of legal regulation: (1) the constitution; (2) a general statutory regulation that refers to all churches and denominations; (3) the individual statutory regulation that refers to the particular churches and denominations; and (4) other lower ranking regulations such as administrative orders, instructions or circular letters.

The legal position of the Catholic Church is presently founded on a statute.³⁵ The statute guarantees the wide autonomy and self-government of the Church. For example, the statute grants the Church the right to exclusively recall its

30. Statute on Freedom of Consciousness and Creed of May 17, 1989, DzU RP No. 29, item 155.

31. *Id.* art. 10, ¶ 2, cl. 1.

32. *Id.* art. 10, ¶ 2, cl. 2.

33. *Id.* art. 11, ¶ 2.

34. The law that has the character of *lex specialis* includes the individual statutes adopted for particular churches. See *supra* note 29.

35. Statute on the Relationship Between the Catholic Church and the State of May 17, 1989, DzU PRL No. 29, item 154. See specifically art. 2.

functionaries.³⁶ It also contemplates guarantees for direct as well as indirect financial aid,³⁷ which include support for educational and charitable activities performed by the Church.³⁸ The statute establishes numerous tax and custom exceptions such as the income tax, property tax, and community tax.³⁹ The statute also regulates the wide scope of Church property restitution.⁴⁰ The state also bears a substantial part of insurance of clergy.⁴¹ The next important element to notice is the provision of article 19.2 of the statute regulating the relationship between the Church and state where *expressis verbis* allows religious education in public schools. This provision was added September 7, 1991,⁴² following the decision passed by the Constitutional Tribunal on January 30, 1991,⁴³ that confirmed the legality of implementing religious education in the public school system. In spite of the Constitutional Tribunal decision, the law introducing religious classes to public school was in conflict with several legal regulations, including the Statute on Education and the constitutional principle of church-state separation.⁴⁴

Relevant to the law that regulates public religious education are article 12.1 of the Statute on Education⁴⁵ and

36. *Id.* arts. 13 and 14.

37. *Id.*

38. *Id.* arts. 21, 22, and 40, ¶ 4.

39. *Id.* arts. 55 and 56.

40. *Id.* arts. 60-70 with amendments of September 16, 1991, DzU RP No. 107, item 459.

41. The Statute on Social Insurance of Clergyman of May 17, 1989 DzU PRL No. 29 item 156, arts. 28 and 29.

42. Statute on the Relationship Between the Catholic Church and the State of May 17, 1989, DzU PRL No. 29, item 154 (amended September 7, 1991, DzU RP No. 95, item 425).

43. Case No. K.11/90 T.C.

44. The religious classes were introduced into the public school system on the basis of the instructions enacted by the Minister of Education on August 3 and 24, 1990. The Polish Ombudsman brought action against these instructions to the Constitutional Tribunal. The Constitutional Tribunal, in a ruling in January 1991, upheld the legality of these instructions. However, the tribunal recommended changing the Statute on Development of Education and Upbringing of July 15, 1961, DzU PRL No. 32, item 160, wherein art. 2 was a provision about secular education. Consequently, other amendments were introduced to the Statute on Freedom of Consciousness and Creed of May 17, 1989, and to the Statute on the Relationship Between the Catholic Church and the State of May 17, 1989. Both amendments were adopted on September 7, 1991, DzU RP No. 95, item 425.

45. The Statute on Education of September 7, 1991, DzU RP No. 95, item 425.

the administrative order enacted by the Minister of Education in April 1992⁴⁶ that finally specified the way and the conditions of religious teaching in public schools.⁴⁷ Despite the obvious constitutional principle of church-state separation, the preamble to the Statute on Education of 1991 indicates that Christian values should be respected in the process of education.⁴⁸ This is worth mentioning because the contents of the preamble are significant for the interpretation of the statute. The Statute on Radio and TV Broadcasting, adopted January 29, 1992, requires respect of Christian values in public broadcasting.⁴⁹ Also, a recent law⁵⁰ introduced severe limitations on abortion; although there is no direct reference to Christian values in the language of this law, it is a law justified by Christian values.⁵¹

There are some significant signs that the strong and previously autonomous Church is becoming entangled with the

46. The Administrative Order of the Minister of Education on the Conditions and Way of Organizing Religious Education in Public Schools of April 14, 1992, DzU RP No. 36, item 155 (amended August 23, 1993, DzU RP No. 83, item 390).

47. The Statute on Development of Education and Upbringing of July 15, 1961, DzU PRL No. 32, item 160, was replaced by the Statute of Education of September 7, 1991, DzU RP No. 95, item 425. Also, the instructions of August 3 and 24, 1990, were replaced by an administrative order of April 14, 1991, which specifically regulates religious teaching in public schools.

On August 19, 1992, the Ombudsman brought an action against this administrative order before the Constitutional Tribunal on the basis of infringement of the constitutional principle of church-state separation. According to the Ombudsman, the order violated the law, including the constitution (arts. 81.1 and 82.1), the Statute on Freedom of Conscience and Creed of 1989, and later amendments to that statute (arts. 2.5, 20.2, 10.2, and art. 5.2), and the Statute on the Relationship Between the Catholic Church and the State of 1989, and later amendments to that statute (art. 18.3). The Constitutional Tribunal, in its sentence No. U.12/92, passed on April 20, 1993, generally recognized the legality of the order. However, it challenged the provision of article 3.3 that obligates parents who do not want religious classes for their children to declare this decision to the school authority, and it challenged the provision of article 12 that allows prayer and placing of religious symbols in classrooms.

48. The Statute on Education of September 7, 1991, DzU RP No. 95, item 425.

49. The Statute on Radio and TV Broadcasting of January 29, 1992, DzU RP No. 7, item 34, arts. 18.2 and 21.2. The Polish Ombudsman brought action against these provisions, but the Constitutional Tribunal confirmed the provisions' legality in its decision No. AK K.17/93 of June 7, 1994.

50. The Statute on Family Planning, Human Fetus Protection and Conditions for Possibility of Abortion of January 7, 1993, DzU RP No. 17, item 78.

51. In article 7, the anti-abortion law of January 7, 1993, permits abortion only when the life of a woman is in danger or her health is severely threatened, when the fetus is severely and irreversibly damaged, or when a pregnancy is caused by rape or incest.

state. The legal position of the Catholic Church in Poland is also regulated by the Concordat that was signed between the Holy See and Poland on July 28, 1993.⁵² Broadly, a Concordat constitutes a bilateral treaty concluded between the Holy See and a particular state.⁵³ The bilateral character of this regulation usually allows the Church to obtain additional prerogatives. In the Polish case, the general objective of the Concordat seems to be establishing the entanglement between the Church and state as well as strengthening the position of the Church by allowing it to influence or even determine the content of the new Polish Constitution.⁵⁴ This intention is more than clear if we consider the fact that the present constitution will likely be superseded; the Constitution of 1952, however significantly changed after the collapse of communism and supplemented by the so-called Small Constitution of 1992, is seen symbolically as a communist one.⁵⁵

The current Constitution of 1952 guarantees church-state separation, but the new constitutional drafts, submitted to the Parliament, are not compatible with each other in the area of church-state relations. In several of the drafts the neutral position of the state is preserved, but in others the Catholic Church holds a privileged position,⁵⁶ and no clear separation between church and state exists. For example, the presidential

52. Concordat between the Holy See and the Republic of Poland, signed on July 28, 1993 by Mr. K. Skubiszewski, Minister for Foreign Affairs of the Republic of Ireland and the Reverend J. Kowalczyk, the Apostolic Nuncio, in Warsaw [hereinafter Concordat]. The Concordat will become effective after ratification, anticipated in the near future.

53. A concordat is a generous agreement of international law, concluded between the Holy See and a particular country. See J. WISLOCKI, *THE POLISH CONCORDAT OF 1993: YES OR NO?* (Kantor Wydawniczy SAWW, Poznan 1993).

54. For example, article 12 of the Concordat confirms setting up religious teaching in all public schools. An especially inexplicit provision of article 12 provides that all public schools may "organize according to the will of the interested persons the teaching of religion in the framework of the plan of school and kindergarten classes."

55. The so-called Small Constitution was adopted on October 17, 1992, DzU RP No. 84, item 426. It concerns the relationship between the legislative and executive powers and self-government in Poland. It is worth noting that Poland is the only post-communist country that did not adopt a new democratic constitution. As a recent poll shows, a majority of Poles (74%) recognize the great importance of adopting a new constitution. *CBOS Survey of 1994*, POLITYKA, March 5, 1994, at 13.

56. See *THE CONSTITUTIONAL DRAFTS 1989-1991* (Wydawnictwo Sejmowe, Warszawa 1992), and the comparison of the seven constitutional drafts presented in *GAZETA WYBORCZA*, September 22, 1994, at 5.

control draft and the draft submitted by the Senate allow the Concordat to establish church-state regulation,⁵⁷ and other drafts do not require ratification of the Concordat treaty with the Holy See. However, the draft submitted by the post-communist Alliance of the Democratic Left, which has been the biggest political group in Parliament since September 1993, openly declares the secular character of the state.⁵⁸

The Concordat of 1993 sends a clear message of the growing involvement of state institution in religious action. For example, the Concordat not only endorses some state obligations derived from existing law, but also expands them. These include, among others, state aid for religious schools at the university level⁵⁹ and expanding support for maintaining buildings belonging to the Church.⁶⁰ Article 12.1 of the Concordat excludes the right of adult students to decide whether to take religious classes, a privilege they presently enjoy.⁶¹ Nevertheless, possibly the most startling point of this treaty is the proposed relation of the Church to the existing legal order. First, no provision exists requiring the Church to respect the existing law, specifically the constitutional order.⁶² This is of great significance, especially considering the fact that the provision of the Statute on the Relationship Between the Catholic Church and the State that stated "the Catholic Church in the Republic of Poland acts within the framework of the Constitutional order"⁶³ was removed by amendment in September 1991.⁶⁴

Second, the Concordat introduces some provisions that are entirely inconsistent with existing law, particularly regulations

57. See the comparison of the seven constitutional drafts presented in *GAZETA WYBORCZA*, September 22, 1994, at 5.

58. *Id.*

59. Concordat art. 14, ¶ 3. The text of the Concordat is published in P. KUGLARZ & F. ZOLL, *THE CONCORDAT MARRIAGE* 73-85 (Staromiejska Oficyna Wydawnicza, Krakow 1994).

60. Concordat art. 22, ¶ 4.

61. *Id.* art. 12.

62. Such obligation was provided in the Concordat concluded between the Holy See and Poland in 1925. See WISKOCKI, *supra* note 53. In article one of the Concordat there is only one provision about mutual independence and autonomy of the Church and state.

63. Statute on Relationship Between the Catholic Church and the State of May 17, 1989, DzU PRL No. 29, item 154, art. 1.

64. Amendment of September 11, 1991, DzU RP 107, item 459, changed article one of this statute to read "The Catholic Church acts in the Republic of Poland in Each of its Rites."

referring to canon law matrimony,⁶⁵ and goes so far as to call for essential changes in marital law.⁶⁶

In summary, it appears that the law adopted following the fall of communism not only significantly strengthens the position of the Catholic Church, but it also indicates a gradual inclusion of Christian values in the axiological base of the changing legal system.

It may be valuable, at this point, to emphasize that, with regard to the shape of a new constitution, the Church openly calls for a constitutional acknowledgment of an ideologically neutral state, not a secular one, on the one hand, and for acknowledgment of the right of an unborn child to life, based on religious grounds, on the other hand. With the Church actively voicing its opinion on unborn children, it appears unlikely that such a provision will be overlooked. The implications and importune of the provision are significant and obvious in the future constitution.⁶⁷

History is full of the "coup de theater." For everybody who follows the changes that have been taking place after the collapse of communism, it is clear that the Catholic Church in Poland, despite new regulations that strengthen its legal position, is undergoing a very difficult period, involving numerous serious and unprecedented challenges.

The significant decline of social confidence towards the Church and its hierarchy in the years immediately following the collapse of communism cannot escape notice. Evidence of the decline is found in the decreasing number of people who claimed confidence in the Church; the number dropped quickly below fifty percent by the end of November 1992.⁶⁸ This illustrates a rather dramatic decrease when compared with the pre-collapse number of ninety percent who felt confidence in the Church.⁶⁹

One conclusion that emerges almost immediately from examining this data, is that the decreasing prestige of the

65. Concordat arts. 10 and 11.

66. See WISLOCKI, *supra* note 53, at 131-41. According to current Polish law, religious marriage does not cause any legal consequences.

67. See the letter of the Polish Episcopacy on the Constitution, 272 Conference of Polish Episcopacy, Niepokalanow, September 22, 1994. GAZETA WYBORCZA, September 25, 1994, at 9.

68. OBOP polls conducted between 1989 and 1994, GAZETA WYBORCZA, September 20, 1994, at 3 [hereinafter *OBOP polls*].

69. *Id.*

Church in Polish society is connected directly with legal decisions concerning the position of the Church in the state. Many of these changes, and even some proposals pre-dating the changes, generated a strong social reaction not only in deliberations of law professors and politicians but also in public opinion.⁷⁰ The first serious indication of tension in the relationship between the Church and the society began in 1990, with the controversial and unexpected decision to bring religious education to public schools,⁷¹ that was followed by the implementation of the provision regarding respect for Christian values in radio and television broadcasting in 1992.⁷² These actions were quickly followed by a significant limitation on the freedom of abortion in the beginning of 1993,⁷³ and finally by the Concordat signed in the middle of 1993.⁷⁴ Additionally, another significant fact to be mentioned here is related to the involvement of the Church in the presidential election at the end of 1990,⁷⁵ and the parliamentary election in September 1991.⁷⁶ This significant increase in negative attitude towards the Church is obviously connected with lack of approbation for active, political involvement of clergy. An examination of the national data gathered in 1991 reveals that, in spite of an overwhelming majority of Catholics, 74% of the entire population did not approve of the political activity of the Church.⁷⁷ A high level of criticism of the Church's involvement in politics has been maintained consistently in the years that followed.⁷⁸ In July

70. *Id.*

71. Religious education was brought to public schools based on Instructions of August 3 and 24, 1990, enacted by the Ministry for Education.

72. Arts. 18.2 and 21.2 of the Statute on Radio and TV Broadcasting of December 29, 1992, DzU RP No. 7, item 34.

73. Statute on Family Planning, Human Fetus Protection and Conditions for Abortion of January 7, 1993, DzU RP No. 17, item 58.

74. Concordat.

75. The Church supported L. Walesa in the first turn of the presidential election held on November 11, 1990. The Church gave Walesa even stronger support in the second turn on December 9, 1990, when S. Tyminski was Walesa's opponent.

76. During the electoral campaign in 1991, Bishop J. Michalik, from Gorzowska diocese, openly called upon his believers to vote for Catholics: "the Catholic is obliged to vote for Catholic, Christian for Christian, Moslem for Moslem, Jew for Jew, Mason for Mason, and Communist for Communist." Z. Nosowski, *The Church and the Election*, GAZETA WYBORCZA, February 22, 1992, at 10.

77. *OBOP polls, supra* note 68.

78. For example, in March 1992 more than 80% of Polish society did not

of 1994, almost 70% of respondents openly declared that the Catholic Church in Poland should not actively influence politics.⁷⁹ Additionally, in the answers given in 1993, there was a clear conviction of the importance of maintaining separation between the Church and state; the majority of respondents declared that the Church should not influence the election of persons to public office, and the state should not involve itself in the internal affairs of the Church by doing such things as influencing the selection of Church officials.⁸⁰ This attitude was accompanied by low approval of religious classes in the public schools with less than forty percent of the respondents approving, without any reservation, the Church's teaching in public schools.⁸¹ There was also a strong conviction that the public schools' curriculum should be established without any participation of the Church hierarchy, while the teaching of religion should remain exclusively in the domain of families and churches.⁸² In contrast, according to the majority of respondents, the Church did not devote enough attention to fighting the negative phenomena of social life such as alcoholism, drug addiction, and intolerance.⁸³ All this indicates that a dominant part of Polish society, in the transitional period after communism, appears to uniformly support a liberal model of the state with clear church-state separation.

A discussion of additional relevant historical and socio-political factors is necessary to establish the perspective needed to explain this dramatic shift that occurred in post-communist Poland. The first factor I would like to examine, as well as challenge, is what I call the myth of Polish religiosity, including the strong attachment to the Church that was mentioned above.

Many polls confirm that while Polish churches are still full of Sunday churchgoers, especially when compared to other Western European countries, the society as a whole is becoming more secular. Some of the latest polls reveal that

approve political involvement of the Church. *Sopocka Pracownia Badan Społecznych*, GAZETA WYBORCZA, May 10, 1992.

79. Exactly 69% of the population. *OBOP polls*, *supra* note 68.

80. *Id.*

81. CBOS polls conducted in May 1992, GAZETA WYBORCZA, May 27, 1992, at 2.

82. *Id.*

83. OBOP polls published in GAZETA WYBORCZA, May 27, 1992, at 2.

only 56% of those who consider themselves Catholics regularly attend religious services.⁸⁴ The same data show that people with elementary and secondary education take part in regular religious services more frequently⁸⁵ than those with a graduate level education.⁸⁶ The devoutly religious are most likely to be elderly, rural, and female.⁸⁷ The increasing number of divorces and abortions performed prior to the passage of the 1993 abortion law serves as an illustration of diminishing religiosity in Poland; both practices are contrary to express Church dogma.⁸⁸ The new law reduced legal abortions significantly and raised varied reactions. According to a very recent survey, only 32% of the whole population supports a new anti-abortion regulation and 52% call for more liberal regulations that allow the performance of abortions on social grounds.⁸⁹ Another national survey revealed that 59% of the population believes that the Catholic Church should allow people to divorce.⁹⁰

A new attitude toward religion is developing, possibly leading to the privatization of religion.⁹¹ The ideology of the individual is increasingly different from that of the Church.

From this perspective, Poland is not so exceptional when compared with other European countries.⁹² The process of secularization in Poland has been delayed by certain episodes

84. *OBOP polls, supra* note 68.

85. *Id.* Sixty-nine percent of people with elementary and secondary education regularly attend religious services.

86. *Id.* Only 37% of people with university education regularly attend religious services.

87. *Id.* Seventy-one percent of people over 60 and 64% of women attend religious services regularly.

88. Before 1993, according to the regulation of 1956, abortion in Poland was available on demand. According to the Main Statistical Office (GUS), in 1980 there were 33,800 divorces; in 1985, 49,100 divorces; and in 1990, 42,500 divorces. *GAZETA WYBORCZA*, August 22, 1994, at 4. According to Church doctrine, both abortion and divorce are forbidden.

89. *OBOP polls.*

90. *DEMOSKOP polls, GAZETA WYBORCZA*, August 22, 1994, at 4.

91. Thomas Luckmann describes privatization of religion as "the most revolutionary trait of modern society Each person selects a world of significance from a variety of choices. The selection is based on consumer preference which is determined by the social biography of the individual and similar social biographies will result in similar choices." T. LUCKMANN, *THE INVISIBLE RELIGION: THE PROBLEM OF RELIGION IN MODERN SOCIETY* 97 i 105 (1967) (quoting M.E. MARTY, *RELIGION AND REPUBLIC: THE AMERICAN CIRCUMSTANCE* (1987)).

92. See R.P. McBrien, *Roman Catholicism: E Pluribus Unum*, in *SPIRITUALITY IN A SECULAR AGE* 179 (M. Douglas & S.M. Tipton, eds. 1983).

in Polish history, such as the period of struggle with communism and the time of partition, when Poland lost its independence to orthodox Russia, Protestant Prussia, and Austria. Ironically, however, the historical position of the Church as a substitute for the political institution, combined with the Church's direction of society in its struggle for freedom and democracy, actually contributed indirectly to the process of secularization. As the Polish example demonstrates, under communism, many of those who regularly joined the religious service were paying more attention to what priests were saying about the political situation than to the religious preaching. And more importantly, the churchgoers heard what they wanted to hear. Paradoxically, the Church, highly engaged in a secular social, political, and quasi-political action, had neglected its moral and spiritual activity, leading to its own decline.

Additionally, the Church's position in Poland was not always strong and stable. This was particularly evident during times of political transition, including the period of communism and the time when Poland lost its independence. Although examples demonstrating the high prestige of the Church in Polish society are easy to find, there are, nevertheless, periods in Polish history when the Church lost its prestige among a large part of the society. In the seventeenth century, the Polish Sejm⁹³ repeatedly forbade anyone to give a legate for the benefit of the Church.⁹⁴ When Poland emerged from World War I and created its sovereign and democratic political institutions, the significant development of anti-clericalism was spreading into society.⁹⁵

The political climate was not the only factor that influenced the increase of secularism.⁹⁶ Among other factors contributing to the rise of secularization were the growth of science and technology, the expansion of higher education, the

93. Sejm is the lower house of the Polish Parliament.

94. J. Tazbir, *The Fall of the State and the Glory of the Church*, POLITYKA, March 19, 1991, at 13.

95. J. CHALASINSKI, *YOUNG GENERATION OF THE PEASANTS* (PWN, Warszawa 1938). In his empirical study, conducted before World War II, F. Znaniecki notices that a significant part of the citizens of Poznan "do not have any respect for clergy as one should expect in such Catholic City as Poznan." F. ZNANIECKI, *THE CITY IN THE CITIZENS' CONSCIOUSNESS: THE SOCIOLOGICAL RESEARCH ON POZNAN CITY* 372 (1931).

96. See J. Tazbir, *supra* note 94.

growing acceptance of liberal values accompanied by a permissive view on morality and sex, and, of course, the growing role of the state.⁹⁷

Returning again to the historical background of church-state-society relations in Poland, it is easy to discover the more general tendency that indicates the dependence of the Church's legitimation on the condition of the democratic state. Whenever the Polish state went through a serious political crisis, and thus was unable to create democratic institutions, the significance of the Church rose, and society gathered itself around her. The corollary is also true: the growing legitimation of the democratic state has caused a decrease in the Church's prominence among society.

The position of the Church in Polish society is attributable to its political involvement. There are circumstances where this political involvement is acceptable and anticipated and there are also circumstances where the Church is expected to significantly limit its activity in the political sphere. In Poland, a significant part of society believes that the success of democracy has created a strong need for church-state separation and the depolitization of the Church's activity. Why? To answer this question it is necessary to focus on two views of the government and law: one attributable to the Catholic Church, and the other characteristic of modern, liberal, and pluralist democracy. Even a superficial look at both views reveals the essential, although difficult to surmise, discrepancy. The democratic concept of government and law is based on a value of freedom. This value implicates rejection of any totalitarian or paternalistic regime. In democracy there is only one subject of political power: a society, or more precisely a majority of society. Society alone decides, according to democratic procedural rules, its political institutions and the content of its legal norms. In such a system, law and political institutions have derived "from the bottom, according to the will of those who are subjected to the state authority."⁹⁸ Conversely, for the Catholic Church, legitimation of the government and law depends upon clearly defined transcendent values as well as subordination to them. According to the Church, these kinds of essential values and moral standards

97. R. WUTHNOW, *THE RESTRUCTURING OF AMERICAN RELIGION 153-63* (1989).

98. E.W. Bockenforde, *The Ethos of Modern Democracy and the Church*, in *FREEDOM, STATE, CHURCH 26* (E. W. Bockenforde, ed., Znak, Krakow 1994).

are universally valid and, therefore, cannot be subjected to the democratic rules of negotiation and adjustment. The Catholic position holds that these essential values and moral standards must be adopted irrespective and independent of the opinion of the majority. This, however, is irreconcilable with the basic value of freedom and cannot be accepted by a society that defines itself as a pluralist democracy.

The strong tension between the Church and society resulting from the decision to teach religious classes in public schools came not from the introduction of public religious education itself but from the manner in which this decision was made. It was a very low ranking law, enacted by the Ministry of Education under the pressure of the Church.⁹⁹ Additionally, this law was in discrepancy with many other legal regulations, including constitutional ones;¹⁰⁰ despite amendments, there are still some doubts concerning the constitutional provision on church-state separation. Such a practice raises serious reservations in a society building a democratic state in which the legislature is expected to create law freely but in accordance with the constitution.

Generally, there are at least two main ways in which church-state relations can be shaped. Broadly speaking, in the first case both institutions may preserve separation and full autonomy simultaneously. In such a system the state maintains religious and ideological neutrality, guaranteeing all citizens equal position independent of their religious convictions, and a church, in its activities for its believers, cannot make use of any state institutions. In the second case, there is not such a strict division between church and state, and a church may exert a direct influence on citizens through state structure. The second case raises a number of reservations and controversies, mostly because non-believers, or more often non-followers of the "privileged" church, will find it difficult to recognize such a state as a commonwealth.¹⁰¹

When analyzing the standard of the Polish law that was passed after June 4, 1989, we come to the conclusion that the method of regulating church-state relations in Poland has not

99. This decision was made by the Joint Commission, consisting of representatives of the government and the Polish Episcopacy.

100. See PIETRZAK, *supra* note 11, at 259.

101. See *id.*, at 48-103; LOREN P. BETH, *THE AMERICAN THEORY—CHURCH AND STATE* 145 (1959).

yet been decided. However, a number of normative regulations indicate a considerable departure from the separationist model adopted in the United States and indicate an approach to a model where there is a positive identification between church and state.¹⁰² The inclusion of Christian values into the axiological base of the legal system that was introduced under the influence of the Church is cause for concern.

Undoubtedly, the prompt resort to Christian values, in a legal system that has experienced forty-five years of domination by communist law characterized not by ideological neutrality but rather by the intention to limit religion and church autonomy, was eagerly welcomed by the Church and certain groups of the society. Nevertheless, at the same time, as shown by the results of surveys presented above, political involvement of the Church and the tendency to implement religious values into law are viewed by a large part of society as a serious threat to a modern, pluralist democracy. As a result of its political involvement, the Church is significantly and rapidly losing its previously high prestige. This situation, however, is not different from the general tendency found in the history of Polish church-state relations. Briefly speaking, the greatest opportunities were presented to the Church whenever the state was in difficulty and could not create its democratic institutions, but when the condition of the democratic and pluralist state strengthened, the Church lost its prominence.

Considering the present and the full political sovereignty of the Third Republic of Poland, we should hope that society will support a separation of church and state and that both society and the Church will understand what Tocqueville understood so well when he wrote that religion is strengthened, not weakened, by the separation of church and state.¹⁰³

102. On the subject of church-state relations models, see among others PIETRZAK, *supra* note 11; and W. Cole Durham, *A Comparative Framework for Analyzing Religious Liberty*, in *FIRST AMENDMENT FREEDOMS AND CONSTITUTION-WRITING IN POLAND* (Leszek Lech Garlicki, ed., American Studies Center, University of Warsaw, 1994).

103. A. TOCQUEVILLE, *DEMOCRACY IN AMERICA* (1945).