Philosophy and Canon Law

Vol. 3

Church and State: Promotion of Economic, Social, and Cultural Rights of the Human Person

Wydawnictwo Uniwersytetu Śląskiego • Katowice 2017

Contents

Part One
Philosophy

Part Two
Canon Law

Part Three
Reviews

Part One

Philosophy

Philosophy and Canon Law vol. 3 (2017), pp. 7–17

Leo D. Lefebure
Georgetown University, Washington, USA

Ancient Mediterranean Roots of Perspectives on Human Rights

Abstract: ICESCR and *Centesimus Annus* are heirs to a long tradition of reflection on justice and the universe. Amid the debates over the theoretical basis for human rights, it is important to recall the value of justice in ancient Mediterranean wisdom traditions that provided the roots for later perspectives. In ancient Egypt, Israel, and Greece, thinkers from a variety of vantage points affirmed a moral order of justice in the universe, which offered a basis for recognizing human dignity and for rebuking human rulers who abused their power. Early Christian reflections on the identity of the Holy Trinity and Jesus Christ played a decisive role in transforming the understanding of the human person, paving the way for later developments.

Keywords: Egyptian wisdom, ancient Israelite wisdom, Stoicism, Trinity

Introduction

Two of the most significant affirmations of human rights in recent decades have been the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 and Pope John Paul II's Encyclical Letter *Centesimus Annus* twenty-five years later in 1991. The observance of the fiftieth anniversary of the former and the twenty-fifth anniversary of the latter invites reflection on the ancient roots of perspectives on human rights.

Both ICESCR and *Centesimus Annus* of John Paul II reached out to the broadest audience of all persons of good will, seeking to shape a convergence of opinion toward a more just and equitable world. However, in each case this project faces a major challenge in that many persons and institutions have

affirmed human rights, but there is tremendous diversity and disagreement regarding the interpretation and justification of these rights. After working on the United Nations Declaration on Human Rights issued in 1948, Jacques Maritain noted a paradox:

> It is related that at one of the meetings of a UNESCO National Commission where human rights were being discussed, someone expressed astonishment that certain champions of violently opposed ideologies had agreed on a list of those rights. "Yes," they said, "we agree about the rights *but on condition that no one asks us why.*" That "why" is where the argument begins.[1]

Maritain went on to reflect on this situation, noting hopefully that "the goal of UNECO is a practical goal, agreement between minds can be reached spontaneously, not on the basis of common speculative ideas, but on common practical ideas."[2] Maritain explained that there can be "points of convergence in practice" even when there is no theoretical agreement overall.[3] Maritain noted that speculative defenses of human rights draw upon earlier pre-philosophical intuitions, claiming that

> systems of moral philosophy are the products of reflection by the intellect on ethical concepts which precede and govern them, and which of themselves display, as it were, a highly complex geology of the mind where the natural operation of spontaneous reason, pre-scientific and pre-philosophic, is at every stage conditioned by the acquisitions, the constraints, the structure and the evolution of the social group.[4]

Maritain pressed further: "What is chiefly important for the moral progress of humanity is the apprehension by experience which occurs apart from systems and on a different logical basis—assisted by such systems when they awake the conscience to knowledge of itself, hampered by them when they dim the apperceptions of spontaneous reason."[5] Maritain's comments on the importance of pre-philosophic thought invite reflection on the early roots of contemporary perspectives on human rights, dignity, and social justice. In recognition of the significance of both ICESCR and *Centesimus Annus*, this essay will explore the

---

[1] Jacques Maritain, "Introduction," in *Human Rights Comments and Interpretations*: *A UNESCO Symposium*, edited with an introduction by Jacques Maritain (New York: Columbia University Press, 1949), 9.

[2] Maritain, "Introduction," 10.

[3] Ibid., 11.

[4] Ibid., 12.

[5] Ibid.

roots of modern perspectives on human rights in the affirmation of the dignity of the human person in the ancient Mediterranean world.[6]

Ancient Roots of Modern Views on Human Rights

In recent years, some have claimed thinkers in ancient Egypt, Greece, Israel, and early Christianity offer precedents for the notions of human dignity and universal human rights, but others have vigorously contested this claim.[7] Strongly affirming that human rights are grounded in the transcendent dignity of the human person, David Walsh traces the roots of this belief to ancient Greek philosophy and early Christianity:

> How is a universal language of rights to avoid a collapse into incoherence in the absence of any overarching intellectual framework? […] What makes it possible for us to build cooperatively the world that is sustained by just such efforts is that we are not simply entities within that world. Over and above all that is done in history is the singular person that transcends it all. That insight is not by any means new, for it is present at the very inception of philosophy and Christianity.[8]

However, Christopher Gill points out the difficulty in relating modern notions of personality, selfhood, and human rights to ancient Greek philosophy: "On the one hand, these notions are so central to our thinking that it is virtually inconceivable that they have *no* equivalent in Greek thought. On the other, it is clearly unacceptable to assume that we can transpose our conceptual vocabulary

[6] Portions of this essay appeared in my earlier essay, "The Dignity of the Human Person and Social Justice in the Ancient Mediterranean World." *Chinese Cross-Currents* 9/4 (2012): 100–113. Used with permission.

[7] Elaine Pagels, "Human Rights: Legitimizing a Recent Concept," *Annals of the American Academy of Political and Social Science* 442 (1979): 57–62; Kirsten Sellars, *The Rise and Rise of Human Rights* (Stroud, U.K.: Sutton Publishing, 2002); Jack Mahoney, *The Challenge of Human Rights: Origin, Development, and Significance* (Oxford, UK: Blackwell Publishing, 2007); Arvind Sharma, *Are Human Rights Western? A Contribution to the Dialogue of Civilizations* (Oxford, UK: Oxford University Press, 2006); Lynn Hunt, *Inventing Human Rights: A History* (New York and London: W.W. Norton & Co., 2007).

[8] David Walsh, *The Modern Philosophical Revolution: The Luminosity of Existence* (Cambridge, UK: Cambridge University Press, 2008), xii.

wholesale (with all its implied ideological and metaphysical associations) into the ancient Greek context."[9]

The differences in perspectives on social and economic human rights are stark: ancient Mediterranean societies generally assumed that slavery was a natural part of the social, economic, and political order that was willed by God or the gods. From different vantage points, the Torah of ancient Israel (Ex 21:1–11), the New Testament (Eph 6:5–8), and the *Politics* of Aristotle (1.2–7) accepted the ownership of some human beings by others as in harmony with social, economic, and political justice, a perspective shared by many signers of the U.S. Declaration of Independence in 1776 but widely rejected today. While it would be anachronistic to read modern notions of human rights and social justice in their current form back into the ancient texts, nonetheless, it remains true that both the Catholic Church, including John Paul II, and the United Nations draw profoundly upon resources from the ancient Mediterranean heritage in pondering human rights and social justice today.

Ancient Egypt

The roots of perspectives on human rights may be traced to Egypt around the year 2000 B.C.E. Long before the era of Greek philosophers and Hebrew prophets, writers in Egypt affirmed that justice is embedded in the cosmos, and they robustly challenged earthly rulers on behalf of those mistreated. While ancient Egypt did not propose an abstract, philosophical definition of the human person or human rights, writers in the Middle Kingdom about the year 2000 B.C.E. forcefully affirmed the equality of all humans in creation and demanded justice for all humans across social classes. James Henry Breasted argued that early Egypt produced *The Dawn of Conscience*.[10] In one Egyptian text, the god who creates states, "I made the great inundation that the poor man might have rights therein like the great man. That is (one) deed thereof. I made every man like his fellow. I did not command that they do evil, (but) it was their hearts which violated what I had said. That is one deed thereof."[11] This text grounds the

[9] Christopher Gill, *Personality in Greek Epic, Tragedy, and Philosophy: The Self in Dialogue* (Oxford, UK: Clarendon Press, 1996), 3,

[10] James Henry Breasted, *The Dawn of Conscience* (New York: Charles Scribner's Sons, 1933, 1968). See also H. and H. A. Frankfort, John A. Wilson, Thorkild Jacobsen, William A. Irwin, *The Intellectual Adventure of Ancient Man: An Essay on Speculative Thought in the Ancient Near East* (Chicago: University of Chicago Press, 1946, 1972).

[11] "All Men Created Equal in Opportunity," trans. John A. Wilson, in *Ancient Near Eastern Texts Relating to the Old Testament,* ed. James B. Pritchard (3rd ed. with supplement; Princeton, NJ: Princeton University Press, 1969), 7–8.

fundamental equality and rights of all human beings in god's creative action. John A. Wilson comments that for this creation account, "the juxtaposition of god's equalitarian creation and this statement of man's disobedience of god's command means that man—and not god—is responsible for social inequality."[12] Wilson calls attention to the proto-democratic context of this text in the history of Egypt: "It is significant that so sweeping a statement of the ultimate opportunity of every man is known only from that period which came closest to democratic realization."[13]

During the Old Kingdom in the middle of the third millennium B.C.E., Egypt developed a sense of cosmic justice in the figure of *Maat*, "truth, justice, righteousness, right dealing, order."[14] Maat played a role in creation, represented the norm for justice in human society, and she weighed the souls after death to determine their fate. Wilson cautiously applies the word "democracy" to these developments, but not in the sense of political sovereignty residing in the people at large; rather, Wilson claims this was "ancient Egypt's democratic age" in "the secondary but common meaning of social equalitarianism, the disregard of political or economic barriers in the belief that all men have equal rights and opportunities—or should have such. It seems clear from the texts which we have cited that there was a belief in social justice for everybody at this time and that even the poorest man had rights to the gifts of the gods because the creator-god 'made every man like his fellow.'"[15] This is the earliest surviving assertion of something like the social and economic rights that the United Nations International Covenant on Economic, Social and Cultural Rights and *Centesimus Annus* would later affirm.

The Bible

The Bible continues and develops the concern for social justice expressed by the Egyptian creation account and the description of Maat. Commenting on the Hebrew Bible, John J. Collins argues that "no other collection of documents from the ancient world, and scarcely any other documents at all, speak with such passionate urgency on the subject of social justice. The primary voices in this respect are those of the Hebrew prophets, but the law codes of the Pentateuch are

[12] John A. Wilson, Notes to "All Men Created Equal in Opportunity," 8, n. 4.

[13] John A. Wilson, *The Burden of Egypt: An Interpretation of Ancient Egyptian Culture* (Chicago: University of Chicago Press, 1951, 1967), 118.

[14] Ibid., 119.

[15] Ibid., 123.

also of fundamental importance for our understanding of human rights."[16] While Collins does acknowledge the profound gulf between ancient Israelite notions of human rights and the contemporary world, he nonetheless maintains that "the concern for the unfortunate of society in these books is remarkable, and often stands as a reproach to the modern Western world."[17] Like the early Egyptian writers, Amos and other prophets in Israel directly challenged the exploitation of the poor by the wealthy, threatening them with dire punishments. Kings in ancient Israel had the responsibility before God to care and provide justice for the widow, the orphan, and the stranger, that is, those most vulnerable to being exploited and deprived of justice.

The Hebrew Bible does not offer abstract philosophical reflection on the human person, but it does offer grounds for defending the dignity and rights of all in society. The Book of Genesis presents all humans as created in the image and likeness of God (Gen 1). Usually, ancient societies viewed the king as the image or representative of God, but Genesis extends this dignity to every human being without exception. Rabbi Jonathan Sacks, chief rabbi of the British Commonwealth, draws out the implication of this perspective for engaging human differences: "The test of faith is whether I can make space for difference. Can I recognize God's image in someone else who is not in my image, whose language, faith, ideas, are different from mine? If I cannot, then I have made God in my image instead of allowing him to remake me in his."[18] In a world where slaves usually had few rights, observance of the Sabbath (Ex 20) commanded that even slaves be given a day free from labor to worship God. On the Sabbath, humans cease from their economic roles in society and remember their status as creatures before God. Psalm 8:5 dramatically presents the dignity of humans as "a little lower than God."

While ancient Israel did not engage in philosophical reflection in the style of ancient Greece, nonetheless the biblical wisdom tradition approaches philosophy with its concern for the regular patterns in human experience and the cosmic context of human life. The figure of *chokmah*, cosmic Lady Wisdom personified as a woman in the Hebrew Bible, may have been inspired by the model of Maat in Egypt. She plays in the creation of the world, is more valuable than jewels, and she guides kings and calls them to account for their exercise of authority (Prov 8).

The deutero-canonical books of Sirach (also known as Ecclesiasticus) and the Wisdom of Solomon relate the universal, cosmic role of personified Wisdom to the specific historical religious experience of Israel in receiving the Torah.

---

[16] John J. Collins, *Introduction to the Hebrew Bible* (Minneapolis: Fortress Press, 2004), 603.

[17] Ibid., 604.

[18] Jonathan Sacks, *The Dignity of Difference: How to Avoid the Clash of Civilizations* (London: Continuum, 2002), 201.

Sirach 24 interprets the Torah given through Moses as cosmic Lady Wisdom coming to dwell in Israel. William A. Irwin reflects on the assumption of Sirach (Ecclesiasticus) regarding the cosmic sense of justice represented by Lady Wisdom: "But beyond and subsuming this ["positive law"] is the invisible, unwritten law, the universal sense of right which has reality only in human thought and ideals but expresses itself in a mood of judgment upon positive law as well as in just and right action that transcends legal requirements. It will be apparent, then, that Ecclesiasticus's identification of the divine wisdom with the Torah is a statement of the anterior relation of natural law."[19] While Irwin acknowledges that Sirach and the Wisdom of Solomon are clearly aware of Greek literature, he rightly insists: "The concept of natural law here expressed is Israel's own achievement; its relation to that of Greece must be sought in other directions than one of dependence."[20]

The Hebrew word *nephesh* is usually translated as "soul," but it refers to the entire human person, not to a Platonic soul that indwells a body. In the Hebrew Bible the heart (*lev*) is the center of human identity, the seat of both thought and emotion. There is a mystery to the human heart that God alone understands. The corresponding Greek term in the New Testament is *psyche*. The deuterocanonical book, the Wisdom of Solomon, composed in Greek in Alexandria and accepted as part of the First Testament in the Catholic and Byzantine Orthodox Bibles, develops the ancient Jewish wisdom tradition in dialogue with Greek thought and presents a dualistic view of the human person, "for a perishable body weighs down the soul" (9:15).[21]

The Wisdom of Solomon develops the understanding of *chokmah,* now translated into Greek as *Sophia*, by drawing explicitly upon the concepts of Hellenistic philosophy. Writing under the pseudonym of King Solomon, the Greek-speaking Jewish author, probably from Alexandria, Egypt, admonishes the rulers of his day: "Love justice, you who rule on earth" (Wis 1:1). He sternly warns that even if earthly rulers get away with murder in this world, as in the account of the persecution and killing of a just man, they will be held to account in the afterlife, where the righteous will be rewarded and the wicked punished (Wis 1:16–3:19).

The New Testament continues and develops the concern for human dignity and social justice of ancient Jewish religion in relation to the death and resurrection of Jesus Christ. Jesus develops and transforms the roles of prophet and sage, continuing the concern for justice, especially for the poor. The Christological hymns in John 1 and Colossians 1 attribute to the cosmic Christ the ordering role of Lady Wisdom in creation.

---

[19] William A. Irwin, "The Hebrews," in *Intellectual Adventure of Ancient Man*, 295.

[20] Ibid., 295.

[21] All biblical quotations are from *The New Oxford Annotated Bible*, ed. Michael D. Coogan (augmented 3rd ed.; Oxford, UK: Oxford University Press, 2007).

The Concept of the Person and Social Justice in Ancient Greece and Rome

The English word "person" comes from the Latin noun *persona*, which referred to the mask worn by actors in Greek and Latin dramas. The Latin noun in turn comes from the verb *personare,* literally, "to sound through," or "to make a loud, continuous, or pervasive noise."[22] The first meaning of *persona* was the mask that actors wore and through which they spoke; from this came a second meaning referring to the character being represented in a drama (English-language publications of plays traditionally list the "Dramatis Personae," that is, the characters of the drama). The term could also mean the role played by a person in life or the actual being of an individual; in a legal context *persona* could refer to an individual involved in a case; the word could also attribute personality to an abstraction or a personification.[23] Roman Stoics developed a theory of roles or *personae*, which functioned to identify certain "normative reference-points in rational moral choice," a framework that strongly influenced Cicero.[24]

The corresponding Greek term was *prosopon*, literally, "before the eyes." The primary meaning of *prosopon* was the face or visage; it could refer to one's look or countenance; this term also referred to an actor's mask, accenting the visual position of the mask in front of the face. The word could also mean a person, including the sense of a legal personality.[25] Both *persona* and *prosopon* could refer in various contexts either to masks or to roles played or to individual humans. "Persona" in contemporary English can still refer to the image or role that an individual presents to others in a particular context.

The Christian Trinitarian and Christological debates in the fourth and fifth centuries C.E. profoundly transformed the meaning of *persona* and *prosopon* and influenced all later Christian reflection.[26] For the third-century writer Sabellius, who denied any internal distinction in God, *prosopon* referred to the different

---

[22] *Oxford Latin Dictionary*, ed. P. G. W. Glare (Oxford, UK: Clarendon Press, 1982), 1357.

[23] *The Classic Latin Dictionary* (Chicago: Follett Publishing Co., 1931), 410; *Oxford Latin Dictionary*, 1356.

[24] Christopher Gill, "Personhood and Personality: The Four-*personae* Theory in Cicero, *de Officiis I*, in *Oxford Studies in Ancient Philosophy*, vol. VI, ed. Julia Annas (Oxford, UK: Clarendon Press, 1988), 176. See also Gretchen Reydams-Schils, *The Roman Stoics: Self, Responsibility, and Affection* (Chicago and London: University of Chicago Press, 2005), 93.

[25] *A Greek-English Lexicon, compiled by Henry George Liddell and Robert Scott* (revised with supplement: Oxford, UK: Clarendon Press, 1996), 1533.

[26] Lewis Ayres, *Nicaea and Its Legacy: An Approach to Fourth-Century Trinitarian Theology* (Oxford, UK: Oxford University Press).

roles that God plays in relation to humans, variously as Father, Son, and Spirit, analogous to a human actor playing various roles in a drama. A century later, in response to Christian critics who challenged him concerning the status of God the Father, Gregory of Nazianzus rejected the application of the terminology of either substance or accident; instead, Gregory defined the meaning of person in the Trinity in terms of a relation. From this point on, for the later Catholic and Byzantine Orthodox traditions, a Trinitarian person is neither a substance nor an accident but rather is a relationship. Gregory of Nazianzus's breakthrough flowed into Augustine's reflections on the human person as created in the image of God according to the relationships of *memoria, intelligentia, et voluntas* (memory, understanding, and will). Augustine described his reflection on his identity as a labor (*Confessions* 10.16.25).

The ancient sources for understanding the dignity of the human person in relation to the quest for justice are far broader than the explicit Latin and Greek concepts of *persona* and *prosopon.* Separately from discussions of the meaning of *prosopon*, ancient Greek thinkers stressed the necessity of *epimeleia heautou* (in Latin, *cura sui*), that is, "the care of self." From Socrates to Hellenistic philosophers to early Christian authors, many ancient thinkers anticipated modern personalist philosophers in viewing human identity as a dynamic project to be fashioned, or in Augustine's term, as a labor. Studying this trajectory, Michel Foucault found that *epimeleia* involves much more than mere attention to oneself, for the term "also always designates a number of actions exercised on the self by the self, actions by which one takes responsibility for oneself and by which one changes, purifies, transforms, and transfigures oneself."[27] The ancient philosophers generally supposed that knowledge of the truth demanded a transformation of the self through a conversion.[28]

Complementing the spiritual exercises for the care of self, the Stoics developed a theory of natural law that would be crucial for modern understandings of human rights. The Stoics believed that the natural law pervades the cosmos and is common to all humans; they stressed that humans have a responsibility to live according to their reason, which corresponds to the universal natural law. However, Stoics did not develop from this a theory of human rights. Susan Ford Wiltshire rightly comments: "We strain to see in Stoicism a basis for a belief in individual rights. […] Self-sufficient individuals act in accordance with nature, but nature owes them nothing back. Certainly nature has not endowed them with 'unalienable rights.'"[29] Nonetheless, Wiltshire continues, the Stoics prepared for

[27] Michel Foucault, *The Hermeneutics of the Subject: Lectures at the Collège de France, 1981–82*, ed. Frédéric Gros, trans. Graham Burchell (New York: Palgrave Macmillan, 2005), 11.

[28] Ibid., 15–17.

[29] Susan Ford Wiltshire, *Greece, Rome, and the Bill of Rights* (Norman and London: University of Oklahoma Press, 1992), 16–17.

later theories of human rights in three ways: (1) by identifying persons not in terms of their city but rather in terms of the cosmos; (2) by stressing "the individual as a moral agent"; and (3) by developing the understanding of natural law as a measure for human decisions (17).

Cicero incorporated Stoic ideas on the universally valid natural law into the Roman legal world, assuming that Roman law was coequal with the natural law. For Cicero and his contemporaries, it was unthinkable to appeal to the natural law as a basis for revolution against Roman law, but modern readers in later centuries would see the relationship differently. Wiltshire acknowledges that Roman jurisprudence did not accord the individual "any absolute value simply by virtue of being a human being" (28). Nonetheless, it made a major step in developing the notion of a universal natural law: "While Roman law contains only the seeds of a theory of individual rights, there could be no such rights at all apart from a prior commitment to the rule of law. That is what Romans confirmed for the world, dignified and ameliorated by the humane claims of Stoicism" (29). Ambrose of Milan combined the Stoic notion of natural law with the Law of the Old Testament, paving the way for medieval Christian theories of natural law that drew from both pagan legal wisdom and also the Jewish heritage (Wiltshire, 32–33).

The ancient Mediterranean reflections on the dignity of the human person and social justice set in motion a process of critical reflection upon social, economic, and political relationships that continues to the present day. From Maat in Egypt to Wisdom in Israel to the natural law of the Stoics, belief in a universal order of justice embedded in creation challenged successive societies to reflect on the uses and abuses of power, especially in relation to the poor and the vulnerable. These principles are not simply part of our past but continue to challenge us today. As Hans-Georg Gadamer argued, classic works have the power to transcend their original context and to speak directly to later ages across all the differences of cultures, politics, and religions, exerting a demand for attention and at times for change.[30] Even though succeeding ages and different cultures may understand the demand for justice in very different ways, there is a restless ongoing movement in the quest to respect human dignity and shape a more just society, a movement powerfully by ICESCR and *Centesimus Annus* expressed. Precisely because no society has ever perfectly achieved justice, the task continues in ever-changing circumstances. According to the written records that have come down to us, the call for justice sounded first in Africa. It echoes still.

[30] Hans-Georg Gadamer, *Truth and Method*, trans. revised by Joel Weinsheimer and Donald G. Marshall (2nd, revised ed.; New York: Crossroad, 1989).

Leo D. Lefebure

Les origines antiques méditerranéennes de la dignité de l'homme

Résumé

Le Pacte international relatif aux droits économiques, sociaux et culturels de l'ONU et *Centesimus Annus* sont les héritiers d'une longue tradition de réflexions sur la justice et le monde. Quant à la discussion sur les fondements théoriques des droits de l'homme, il importe de rappeler la valeur de justice dans les traditions de sagesse antiques méditerranéennes dans lesquelles puisent les époques y succédant. En sortant de différents points de vue, les penseurs de l'Égypte, de l'Israël et de la Grèce antiques confirmaient l'existence de l'ordre moral de la justice dans le monde qui a servi de base à la reconnaissance de la dignité humaine et à la condamnation des souverains terrestres abusant de leur pouvoir. La réflexion du christianisme primitif concernant l'essence de la Sainte Trinité et de l'identité de Jésus-Christ a joué un rôle décisif dans la formation de la compréhension de la personne humaine et dans la préparation des voies à des réflexions ultérieures.

Mots clés: sagesse de l'Égypte, sagesse de l'Israël antique, stoïcisme, Sainte Trinité

Leo D. Lefebure

Le radici antiche mediterranee della dignità umana

Sommario

La *Convenzione internazionale sui diritti economici, sociali e culturali* delle Nazioni Unite e la *Centesimus Annus* sono le succeditrici di una lunga tradizione di riflessioni sulla giustizia e sul mondo. Tra le discussioni sui fondamenti teorici dei diritti umani è importante ricordare il valore della giustizia nelle tradizioni antiche mediterranee sapienziali da cui attingono le epoche che seguirono. Partendo da diversi punti di vista, i pensatori dell'antico Egitto, di Israele e della Grecia confermavano l'esistenza di un ordine morale di giustizia nel mondo che dava i fondamenti per riconoscere la dignità umana e per condannare i sovrani terreni che abusavano del proprio potere. La riflessione paleocristiana riguardante l'essenza della Santa Trinità e l'identità di Gesù Cristo ebbe un ruolo decisivo nel formare la comprensione della persona umana e nella preparazione delle strade alle riflessioni successive.

Parole chiave: saggezza dell'Egitto, saggezza dell'antico Israele, stoicismo, Santa Trinità

Philosophy and Canon Law vol. 3 (2017), pp. 19–30

Pavol Dancák
University of Prešov, Slovak Republik

The Human Person Dignity and Compassion

Abstract: The subject of human value was not, in many cases, thoroughly discussed in the history of Western culture, and thus it needs further examination. Even today, there is a need to open the debate again, given the divergent views and conflicting opinions on the subject. These days, under the influence of cultural and economic globalization, the development of new technologies and science bring new possibilities, but at the same time poses questions about new ways of understanding the value and dignity of the human person, which sometimes clash with traditional philosophical and theological interpretations. It turns out that the current trend, which emphasizes the new achievements of science and the constant economic growth, also affects the very understanding of the human value. From the perspective of science, it is possible to see a revival of the reductionist approach to the understanding of man and the economy of transforming the man's value into a human resource. The consequences of these tendencies are manifested above all in the ethical dimension of human life. Human dignity, compassion, and good relationships with others are complementary facts that lead to the development of humanity, create good for future generations, clarify the parameters of current rapid changes, and set boundaries that allow man to remain human.

Keywords: man, society, dignity, compassion, freedom

Introduction

In the present time, the humankind is rapidly changing basic paradigms in science, technology, in the social, economic, and political sphere, in self-understanding of cultures and societies, in religions and in creating new ways of being. This phenomenon leads us to the questions: What are the parameters

of these changes? Where are the boundaries which allow the human person to remain human? Humankind is confronted with yet another problem. There is a pressing need to create conditions that would confirm and respect the dignity of all members of the human family. Problems such as famine and chronic unemployment, violence and terrorism, injustice and social exclusion, child abuse and desertion of the elderly, illiteracy and ideological manipulation, dehumanisation and destruction of natural environment are all examples stressing the urgency.

Human dignity is one of the fundamental principles of the Universal Declaration of Human Rights (1948). Not only does it present the foundation for the most important values held by the members of the Euro-Atlantic cultural community,[1] it also speaks to all the nations of the world. First, there were individual people who rejected all forms of slavery and consciously recognized and accepted the concept of human dignity which is inherent to every human being. It then became the foundation of every personal relationship before permeating the social and political spheres. The acceptance of this concept did not happen overnight. The Jewish, Greek, Roman, and Christian philosophical tradition struggled with it. Today we are trying to carry this acceptance into the agenda of practical politics and our everyday lives. The concept of human dignity greatly influenced the law-making processes in the entire civilized world.[2] The decision to include the principle of human dignity in the Universal Declaration of Human Rights, accepted by the United Nations on October 10, 1948, was closely related to moral turbulence after the horrors of the Second World War. The Preamble refers to the principle which would become the foundation for the moral and legal norms. Human dignity also determines the boundaries of human freedom. "Recognition of the inherent dignity and of the equal and inalienable right of all members of the human family is the foundation of freedom, justice and peace in the world."[3] The foundation of all human legal norms is inherent and not acquired human dignity.

[1] Cf. Božena Seilerová, Vladimír Seiler, *Pojem ľudskej dôstojnosti – axióma ľudských práv*, in *Politické vedy*, III, no. 4 (2000), 107–19.

[2] After the Second World War, the Nuremberg trials with the war criminals unveiled the horrors of crimes committed by people with medical or nursing education in the concentration camps. The tribunal did not accept the priciple *nulla poena sine lege, nullum crimen sine lege* (no penalty without a law, no crime without a law) and referring to human dignity convicted the Nazi leaders who defended themselves with the claim that they only fulfilled the orders

[3] Cf. *Preamble of the Universal Declaration of Human Rights*, accessed October 15, 2016, http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

Human Dignity as a Keyword

Human dignity is the key term of the present-day discourse of the postmodern crisis.[4] Postmodernism, as the result of disrupted fundamental vision of the world common to both Biblical religions and to metaphysics, directs human beings primarily to managing their everyday matters. Critical to this disruption was Nietzsche, whose philosophical thought cast doubt on what was considered the foundation of Biblical religion and metaphysics—the transcendence of the invisible reality which is present in truer and "stronger" sense than what we are able to see with our own eyes. Greek and Jewish thinking holds that not everything can be reduced to the flow of phenomena. There is something beyond that; something that guarantees that the flow of life has its inner continuity as well as its source and aim. Nietzsche rejected not only God but also the human being. In postmodernism, culture does not refer to the sources beyond itself and thus the human action is not directed to meaningful and responsible freedom.

In this situation, the term *dignity* on which the protection of human rights is based, presents terminological ambiguity and raises a question whether the meaning of the term remains the same. Since the Universal Declaration of Human Rights or other documents of the UN do not provide any definition of human dignity, there has been a space for various attempts to provide a strict and exhaustive definition. Formally, human dignity is guaranteed by the Constitution and other legal regulations of a given country but a very important role is played by the society which either protects, reinforces or harms human dignity with its moral relationships and the moral consciousness. Every individual cultivates his or her personality; as long as they do not feel indifferent towards the disparaging of dignity of others they are determined to protect it.[5]

The reference to the legal tradition, moral relationships in the society and the attitude of the individual to his or her own cultivation does not provide argumentative certainty with regard to definition of human dignity. It is clear, however, that human dignity is most likely to be some intuitive foundation for different legal institutions and human practical action. Although philosophers, theologians, and moral philosophers point to the diversity of views on dignity and to difficulties in finding some common ground, politicians and lawyers must be firm in the standpoint they consciously decided to take knowing that a compromise is the only option in the joint political and legislative action. Bernhard

[4] Cf. Olga Chistyakova, "Philosophical-Anthropological Meanings of Postmodernism," in "*Mediatizing" Human*. Proceedings of the 2016 International Conference on Contemporary Education, Social Sciences and Humanities, Volume 74 (Paris: Atlantis Press, 2016), 637–42.

[5] Cf. Seilerová, Seiler, "Pojem ľudskej dôstojnosti – axióma ľudských práv," in *Politické vedy*, III, no. 4, (2000), 107–19.

Krautter exposed *a weak or even a dangerous spot* in such an approach by showing the changing circumstances surrounding the legal interpretation of the term *dignity* in the Federal Republic of Germany.[6]

The inviolability of human dignity and the commitment to protect it are enshrined in constitutions of present-day states. The German Constitution (the German Basic Law) is no exception. Drafted after the victory against the horrors of totalitarian National Socialist tyranny, the term dignity was granted the highest priority. Article 1 of the German Basic Law stipulates: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority."[7] Besides the fact that the term dignity is, by its nature, not a legal term, what we see here is a worldview statement that implies ethical consequences. The prominent legal theoretician Ernst-Wolfgang Böckenförde[8] claims that the state lives on normative premises which it, however, cannot itself guarantee and thus these premises lie outside the framework of the state's orders.[9] This was valid only until recently. In his reaction to 2003 commentary on the German Basic Law, Böckenförde concludes: the human dignity *was* inviolable. He refers to this new commentary on the Article 1 section 1 as to "a turning point" drawing attention to its key sentence: "Notwithstanding the claim to human dignity that inheres in every person and leads to the prohibition of certain categories of acts, the mode and measure of the protection of human dignity is open to differentiations which should acknowledge the circumstances of the case."[10] Examples of such *circumstances* are: embryo and foetus protection, heterologous insemination, adopted law stipulating that the human person is responsible for ending his or her own life, reproductive and therapeutic cloning. Such statement questioning inviolability and equality of human dignity, even if only in certain circumstances, concerns and threatens the very essence of the legal order on which the foundation of Western culture lies. People have always raised questions concerning themselves since the dawn of Western culture (e.g., Heraclitus, Sophocles). The knowledge of ancient thinkers about human essence was later acquired, transformed, and improved by the Christianity. Modern times, however, saw a dramatic shift in knowledge of the human essence. In the end,

[6] Cf. Bernhard Krautter, *Dôstojnosť človeka z pohľadu biblie*, trans. Gašpar Fronc and Monika Šurdová, accessed October 15, 2016, http://www.uski.sk/frm_2009/ran/2006/ran-2006-1-04.htm

[7] *The German Basic Law*, accessed October 15, 2016, https://www.btg-bestellservice.de/pdf/80201000.pdf

[8] Ernst-Wolfgang Böckenförde; a constitutional judge in the Federal Republic of Germany from 1983 to 1996

[9] Cf. Bernhard Krautter, *Dôstojnosť človeka z pohľadu biblie*, trans. Gašpar Fronc and Monika Šurdová, accessed October 15, 2016, http://www.uski.sk/frm_2009/ran/2006/ran-2006-1-04.htm

[10] As quoted in Miguel Nogueira de Brito, *Human Reproduction and Human Dignity as a Constutional Concept*, in Mario Viola de Azevedo Cunha, Norberto Nuno Gomes de Andrade, Lucas Lixiski, Lúcio Tomé Féteira, *New Technologies and Human Rights: Challenges to Regulation* (London and New York: Routledge Taylor & Francis Group, 2016), 182.

the debates on human essence and human dignity have reached an impasse, an open aporia which one can characterize by the following statement. Max Scheler claims: "We are the first epoch in which man has become fully and thoroughly 'problematic' to himself; in which he no longer knows what he essentially is but at the same time also knows that he does not know."[11]

Pondering the human dignity is at the very heart of every anthropological approach and so it is important that one does not settle for just any reduced concept of a human.[12] The etymology of the term *dignity* itself can lure to reductionism. The term *dignity* can refer to rank, merit, or competencies of a human being as a person; the ability to be worthy of something, to be capable of something, to be able to manage some task.[13] If we limit our understanding of this etymological explanation to the point of view of reduced utilitarian pragmatism, we could, for instance, see the disease as a serious threat to human dignity.[14] Philosophical anthropology, however, warns us against reductionism and directs us to transcendence of a human and, at the same time, to relationalism of being. Human dignity, *dignitas humana*, does not arise from some arbitrary decision of some authority or law. Thus, it cannot be questioned or nulled by any positive law because it arises from the very core of what it means to be a human person. Important in this context is Christian teaching and the conviction that person *created in the image and likeness of God* can no longer be "portrayed" as or reduced to something general, merely natural and determined by fate.[15]

It would appear that today, after a long struggle with slavery, serfdom, fascism, communism, colonialism, and racism no one would deny dignity of any person or a group of persons and relegate them to the fringes of society. The reality is different though. Old ideologies seem to be making their comeback and finding new ways of excluding certain groups of people from society by taking away their dignity, their subjectivity and their rights which belong to them naturally.[16] Radical and non-balanced subjectivism, individualism, relativism, reductionism, orientation towards individual performance and consumerism all

[11] As quoted in Martin Buber, *Between Man and Man* (London and New York: Taylor & Francis e-Library, 2004), 216.

[12] Cf. Marek Rembierz, *Interpretacje praw człowieka a paradoksy tożsamości europejskie*j, in Ryszard Moń and Andrzej Kobyliński, *Etyczne wymiary praw człowieka* (Warszawa: Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, 2009), 77–90.

[13] Cf. Marián Mráz, *Humanistické aspekty ľudskej dôstojnosti*, accessed October 15, 2016, http://www.uski.sk/frm_2009/ran/2004/ran-2004-1-01.pdf

[14] Cf. Bogdan Węgrzyn, "Godność człowieka a chrześcijański sens choroby i cierpienia," in Halina Grzmil-Tylutki and Zbigniew Mirek, *Godność w perspektywie nauk* (Kraków: Fides et Ratio, 2012), 155–60.

[15] Cf. Arno Anzenbacher, *Úvod do etiky*, trans. Karel Šprunk (Praha: Zvon, 1994), 225.

[16] Cf. Paweł Czarnecki, *Ethics for a Social Worker* (Lublin: IPWN, 2011), 103–24.

pose a threat to human dignity and to human person as such.[17] These views appear in the discourse of bioethics mainly in the Anglo-Saxon environment (among others: an Australian bioethicist Peter Singer, an American bioethicist Hugo T. Engelhardt, a philosopher from Manchester John Harris, and a German bioethicist Ursula Wolf).

Hugo T. Engelhardt claims that not all human beings are persons. They are persons only when they are capable of rationality and are self-aware. Therefore human foetuses, infants, people with intellectual disabilities, and those who are in a coma and infirm elderly people—in general, those who are not capable of autonomous life, those who are incapable of being a part of society are not persons, and therefore they can be stripped of elementary human dignity.[18] Dysfunctional neurological system and brain or a very advanced old age can prevent a person from being a conscious and an active member of moral discourse. People in such condition lose the privilege of a person and they are reduced to a living human biological life. Society can take care of those defected organisms but it is not bound by a moral duty. In relation to the any *former* person, the living person has only the duties that are included in the last will of the deceased.[19]

In this context, it is necessary to refer to Kant's view on a human being. He sees a human being as a natural, sensual, and instinctive being as well as rational, moral, and autonomous being with absolute value and which requires a special treatment: "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means."[20]

Compassion and the Other

Philosophical study of dignity refers to *compassion*, which, for instance, Nietzsche rejected. Compassion shows the importance of relationship between I and you which appears in an authentic human encounter. By recognizing suffering of the other, compassion helps us create new relationships. It has a struc-

[17] Cf. Maurizio Pietro Faggioni, *Život v našich rukách*, trans. *Martin Koleják* (Spišská kapitula – Spišské podhradie: Nadácia Kňazského seminára biskupa J. Vojtaššáka, 2007), 33–40.

[18] Cf. Hugo Tristram Engelhardt, *The Foundations of Bioethics* (New York: Oxford University Press, 1996), 135–241.

[19] Cf. Hugo Tristram Engelhardt, *The Foundations of Bioethics* (New York: Oxford University Press, 1996), 249.

[20] Immanuel Kant, *Základy metafysiky mravů*, trans. Ladislav Menzel (Praha: Svoboda–Libertas, 1990), 91.

ture and a potential to transform a human person with regard to affirmation of dignity. It is an emotion through which we are able to share the suffering. It is connected to the desire to remove or alleviate the suffering of the other person but it is not identical with empathy. Although empathy allows us to recognize what is wrong with the other person, sometimes it can work without any compassion at all. Tyrants might be conscious of the victim's suffering, they might be able to picture it, but it is all without the slightest compassion because they refuse to accept dignity of their victim and they consider the pain of the suffering as the greater good.[21] For instance, the Nazis considered Jews as inferior beings of a separate kind, similar to vermin, or even inanimate objects. This act of dehumanization obstructed and blocked any manifestation of human compassion to such extent that many Nazi were leading a double life. They were able to show compassion to those they recognized as human and to these people they attributed dignity. Toward those whom they killed and tortured, they denied the very recognition of humanity. [22]

Human freedom, as the prerequisite and the consequence of dignity, needs to re-discover high moral value connected with compassion, which creates and manifests humility, responsibility, and charity. Denial of compassion or expression of ingratitude towards the Other, be it of human or divine nature, is the expression of pride. Being proud means to focus only on oneself and deprive oneself of true clarity which arises from the authentic encounter. Freedom, which is open to compassion, reveals dignity and it is a foundation for the unique positive emotions that are important for creation of proper social relationships. These relationships are determined by showing respect to the value of human being, by recognition of liberties, justice and equality.[23]

Philosophical anthropology offers convincing understanding of human dignity but the Biblical perception brings anthropological optimism based upon the message that a person is created "in the image and likeness of God" and it can no longer be "portrayed" as or reduced to something general, to merely natural determined-by-fate being *towards death*.[24] The Bible accentuates the unity of universal dignity for all human beings[25] not through logical and philosophical explanations but through life stories of biblical figures presenting fundamental moral and spiritual attributes of truth, justice, mercy, compassion, generosity,

[21] Cf. Martha Craven Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001), 329.

[22] Cf. Craven Nussbaum, *Upheavals of Thought: The Intelligence of Emotions*, 335.

[23] Cf. Mária Nemčeková, "Poznámky ku konceptu ľudskej dôstojnosti," *Filozofia 55*, no. 5 (2001), 300–307.

[24] Cf. Arno Anzenbacher, *Úvod do etiky*, trans. Karel Šprunk (Praha: Zvon, 1994), 225.

[25] Cf. Bogdan Zbroja, "Jezus jako 'przyjaciel' osób marginalizowanych i odrzucanych w jego epoce," in Štefan Bugri, Pavol Beňo, and Miron Šramka, *New Trends in Current Social Work* (Prešov: Ústav sociálnych vied a zdravotníctva bl. P. P. Gojdiča, 2014), 189–200.

and empathy. In Lévinas's philosophy, it is encoded in the notion of *for-the-other-before-oneself.*

If a human being is created in "the image of God" then his or her personal relationship with the Creator is an inherent feature of his or her nature. In his Apostolic Exhortation *Christifideles Laici*, John Paul II reminds that the dignity of the person is the most precious possession of an individual. In a virtue of a personal dignity, the human being is always a value as an individual. Therefore, he/she cannot be treated as an object to be used or as a thing. The dignity of the person constitutes the foundation of the equality of all people and their mutual solidarity.[26] Human dignity—*dignitas humana*—does not arise from some arbitrary decision of some authority or law. Thus, it cannot be questioned or nulled by any positive law because it arises from the very core of what it means to be a human person. Here we arrive at the highest norm that philosophical ethics can postulate and that is the personalistic norm. The norm tells us that the person is the kind of being for whom the only true and fully-fledged relationship is *love* (K. Wojtyła). Love expresses the most profound way of an ancestral place of a human in the world. It is the most natural way of a human being in the world.[27]

Love as the foundation of every personal relationship is the greatest discovery that follows from the Judeo-Christian religion circles. The discovery of love as the essential motivational source for creation of relationships is rather novel and awaits its realization. The absolute desires of humans somehow cannot be satisfied with knowledge, wealth, or power. We can be truly happy only in relationships we establish and enjoy—vertically or horizontally. The basic aspects of humanity are revealed only through relationships. People realize their true humanity only in relationships as *homo sapiens*, but at the same time as *homo politicus* and mainly as *homo religiosus.* The post-modern people experience loneliness and alienation because they made their relationships too material, objective, rational, and directed towards *shadow* use and abuse.

Freedom allows a human to enter into the realm of good and evil. At the same time, a human assigns himself or herself to good or evil. Tischner holds that the world of values demarcates the boundaries of our freedom: "Our freedom is not without limits. We are free in relation to good and evil and we are accountable for our decisions."[28] Every act of choice between good and evil, between the lower and higher value, influences us, shapes our character and our

[26] Cf. John Paul II, *Christifideles laici 37*, accessed October 15, 2016, http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_30121988_christifideles-laici.html

[27] Cf. Ján Šlosiar, "Láska ako spôsob ľudského pobytu vo svete," in Anna Remišová, Mariana Szapuová, *Filozofia výchovy a problémy vyučovania filozofie* (Bratislava: SFZ IRIS, 1998), 163.

[28] Cf. Józef Tischner, *Pomoc w rachunku sumienia* (Kraków: Znak, 2002), 9.

human dignity. When we opt for good, we are on the path to liberation, if "the liberation means being liberated from what enslaves us. And what enslaves? Evil does"[29]—evil obstructs the affirmation of our own dignity and the dignity of others. "We must do a lot in this life. But we do not have to do evil."[30] Freedom is the force which gives hope because the person is never fully defeated. A human can always rise from the abyss of hopeless despair. Freedom stays closely bonded with good; this relationship mostly plays out within the person. For the individual person to be good, one must want to be good. The decision to be good must be a free one. Freedom expresses and embraces goodness. Good cannot exist by the sheer force of necessity. It must be chosen and confirmed by the free will by a choice of a conscious subject. "To be good, the good must 'want to be good' in itself. Similarly, evil must want to be evil."[31] Contrary to good, evil is enslaved in itself since it is tied to hatred. Evil is destructive to human dignity. For Tischner, evil and good are both the values which represent our external goals. Humans "yearn" for good or evil and thus "appropriate"[32] the value which they were given as a choice. Thus humans partake in good or evil,[33] they partake in affirmation or negation of dignity.

Humans create themselves through answering the call of values, fulfilling the hope that has appeared in the encounter with another person. The quality of this answer defines one's dignity and whom the person really is—"depending on how one answers the call, one might be said to be a traitor or a saint."[34]

Unlike a Jean Paul Sartre's claim, the Other is not hell because the encounter with the Other is the call to fulfill and cultivate one's freedom. The answer to this call allows freedom to become a mature and responsible freedom. Freedom evolves from the reflection of "I," but at the same time, it becomes freedom for the other. While making authentic contact with the other, human "I" must purify itself from everything that is not worthy of humanity—it must peek inside to find the certainty which is able to enter into a liberating communication whose essence is in respecting the freedom of the other.[35] "Who despises freedom of the other, despises one's own freedom."[36] Tischner points out that "[…] there is a close link between the experience of freedom and the experience of the other person."[37] Without the encounter with the Other who presents to us the gift of his/her freedom, we would be unable to reveal the freedom. "Freedom does not

[29] Cf. Józef Tischner, "Wolność w modlitwie o wolność," *Znak* no. 461 (1993), 5.
[30] Cf. Józef Tischner, *Pomoc w rachunku sumieniea* (Kraków: Znak, 2002), 42–43.
[31] Cf. Józef Tischner, *Spór o istnienie człowieka* (Kraków: Znak, 1998), 317.
[32] Cf. Ibid., 305.
[33] Cf. Ibid., 308.
[34] Cf. Ibid., 299.
[35] Cf. Józef Tischner, *Polski mlyn* (Kraków: Nasza Przeszłość, 1991), 254–55.
[36] Cf. Józef Tischner, *Nieszczęsny dar wolności* (Kraków: Znak, 1996), 11.
[37] Cf. Józef Tischner, "Wezwani do wolności," *Znak* no. 362 (1985), 205.

get to a human after reading a book. Freedom comes after an encounter with another free human."[38] Freedom cannot be grounded in independence because it would remain empty and idle.[39] "Freedom is the kind of value we ought to share with others. Freedom is complete in WE."[40]

Conclusion

Without compassion and recognition of the existence of the other, people could not be certain of who they are, they would not find the whole truth about their own being, they would not discover their own dignity and the weight of their responsibility for the being of their own as well as of the others. "Experience with the other through the prism of value is inseparably linked to experience of some kind of hope. It is always "I" who recommends some value to the other hoping that he or she might accept my proposition or the Other recommends to me something similar enjoying the similar kind of hope."[41]

The legal and political need to define human dignity in an exact way seems to overlook its inner dynamics but at the same time points to its axiomatic character which confirms that dignity is closely linked with being together and with the goodness which manifests itself through compassion, love, respect, care, mercy, help, friendship, protection, and so on. Human dignity, compassion, and good relationships with others are complementary realities, which foster humanity, create the good for the future generations, clarify the parameters of the present-day rapid changes, and set the boundaries which allow the human person to remain human.

Bibliography

Anzenbacher, Arno. *Úvod do etiky*. Translated by Karel Šprunk. Praha: Zvon, 1994.

Buber, Martin. *Between Man and Man*. London and New York: Taylor & Francis e-Library, 2004.

[38] Cf. Tischner, *Spór o istnienie człowieka*, 298.

[39] Cf. Karl Jaspers, *Malá škola filozofického myslenia*, trans. Patrícia Elexová (Bratislava: Kalligram, 2002), 148.

[40] Cf. Józef Tischner, *Księdz na manowcach* (Kraków: Znak, 1999), 208.

[41] Cf. Józef Tischner, "Etyka wartości i nadziei," in Dietrich von Hildebrand Jan Andrzej Kłoczowski OP, and Józef Pąsciak OP, *Wobec wartości* (Poznań: W drodze, 1982), 87.

Czarnecki, Paweł. *Ethics for a Social Worker.* Lublin: IPWN 2011.
Chistyakova, Olga. "Philosophical-Anthropological Meanings of Postmodernism." In *"Mediatizing" Human*. Proceedings of the 2016 International Conference on Contemporary Education, Social Sciences and Humanities, Volume 74 (Paris: Atlantis Press, 2016), 637–642.
De Brito, Miguel Nogueira. "Human Reproduction and Human Dignity as a Constutional Concept." In Mario Viola de Azevedo Cunha, Norberto Nuno Gomes de Andrade, Lucas Lixiski, and Lúcio Tomé Féteira, *New Technologies and Human Rights: Challenges to Regulatio.* London and New York: Routledge Taylor & Francis Group, 2016.
Engelhardt, Hugo Tristram. *The Foundations of Bioethics.* New York: Oxford University Press, 1996.
Faggioni, Maurizio Pietro. *Život v našich rukách*. Translated by Martin Koleják. Spišská kapitula – Spišské podhradie: Nadácia Kňazského seminára biskupa J. Vojtaššáka, 2007.
Jaspers, Karl. *Malá škola filozofického myslenia*. Translated by Patrícia Elexová. Bratislava: Kalligram, 2002.
John Paul II. *Christifideles Laici.* Accessed October 15, 2016. http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_30121988_christifideles-laici.html.
Kant, Immanuel. *Základy metafysiky mravů.* Translated by Ladislav Menzel. Praha: Svoboda–Libertas, 1990.
Krautter, Bernhard. *Dôstojnosť človeka z pohľadu biblie.* Translated by Gašpar Fronc and Monika Šurdová. Accessed October 15, 2016. http://www.uski.sk/frm_2009/ran/2006/ran-2006-1-04.htm.
Mráz, Marián. *Humanistické aspekty ľudskej dôstojnosti.* Accessed October 15, 2016. http://www.uski.sk/frm_2009/ran/2004/ran-2004-1-01.pdf.
Nemčeková, Mária. "Poznámky ku konceptu ľudskej dôstojnosti." *Filozofia* 55, no. 5(2001), 300–307.
Nussbaum, Martha Craven. *Upheavals of Thought: The Intelligence of Emotions.* Cambridge: Cambridge University Press, 2001.
Preamble of the Universal Declaration of Human Rights. Accessed October 15, 2016, http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.
Rembierz, Marek. "Interpretacje praw człowieka a paradoksy tożsamości europejskiej." In Ryszard Moń and Andrzej Kobyliński, *Etyczne wymiary praw człowieka*, 77–90. Warszawa: Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, 2009.
Seilerová, Božena, and Vladimír Seiler. "Pojem ľudskej dôstojnosti – axióma ľudských práv." *Politické vedy*, III, no. 4(2000), 107–119.
Šlosiar, Ján. "Láska ako spôsob ľudského pobytu vo svete." In Anna Remišová and Mariana Szapuová, *Filozofia výchovy a problémy vyučovania filozofie*, 163–174. Bratislava: SFZ IRIS, 1998.
The German Basic Law. Accessed October 15, 2016. https://www.btg-bestellservice.de/pdf/80201000.pdf.
Tischner, Józef. *Etyka wartości i nadziei.* In Dietrich von Hildebrand, Jan Andrzej Kłoczowski OP, and Józef Paściak OP. *Wobec wartości*, 55–149. Poznań: W drodze, 1982.
Tischner, Józef. *Ksiądz na manowcach.* Kraków: Znak, 1999.
Tischner, Józef. *Nieszczęsny dar wolności.* Kraków: Znak, 1996.
Tischner, Józef. *Polski młyn.* Kraków: Nasza Przeszłość, 1991.
Tischner, Józef. *Pomoc w rachunku sumieniea.* Kraków: Znak, 2002.
Tischner, Józef. *Spór o istnienie człowieka*. Kraków: Znak, 1998.
Tischner, Józef. "Wezwani do wolności." *Znak* no. 362 (1985), 204–212.
Tischner, Józef. "Wolność w modlitwie o wolność." *Znak* no. 461 (1993), 5–10.

Węgrzyn, Bogdan. “Godność człowieka a chrześcijańskisens choroby i cierpienia.” In Halina Grzmil-Tylutki and Zbigniew Mirek, *Godność w perspektywie nauk*, 155–160. Kraków: Fides et Ratio, 2012.

Zbroja, Bogdan. “Jezus jako ‘przyjaciel’ osób marginalizowanych i odrzucanych w jego epoce.” In Štefan Bugri, Pavol Beňo, and Miron Šramka, *New Trends in Current Social Work*, 189–200. Prešov: Ústav sociálnych vied a zdravotníctva bl. P. P. Gojdiča, 2014.

Pavol Dancák

La dignité de l‘homme et sa place dans le monde

Résumé

Bien que l’objet de la dignité humaine n’ait pas été—dans bien des cas—pris en considération dans l’histoire de la culture occidentale, il n’est pas définitivement clos. Même aujourd’hui, étant donné les opinions et les points de vue divergents sur ce sujet, il y a un besoin d’ouvrir de nouveau ce débat. Le temps présent—sous l’influence de la mondialisation culturelle et économique, du développement de nouvelles technologies et de la science—offre à l’homme de nouvelles possibilités, mais en même temps il ouvre des questions sur les nouvelles possibilités de comprendre la valeur et la dignité de l’homme, étant parfois contradictoires avec les interprétations philosophiques et théologiques traditionnelles. Il s’avère que la tendance actuelle, qui souligne de nouvelles réalisations de la science et la croissance économique constante, influence également la compréhension même de la dignité de l’homme. Du côté de la science, on peut observer la renaissance de l’approche réductionniste quant à la compréhension de l’homme et de l’économie dans la transformation de ses valeurs en ressources humaines. Les conséquences de ces tendances apparaissent avant tout dans la dimension éthique de la vie humaine. La dignité humaine et la compassion, les bonnes relations avec les autres sont des faits complémentaires qui conduisent au développement de l’humanité, créent le bien pour les générations futures, expliquent les paramètres de rapides changements actuels et indiquent les limites qui permettent à l’homme de rester l’homme.

Mots clés: homme, société, dignité, compassion, liberté

Pavol Dancák

La dignità dell’uomo e il suo posto nel mondo

Sommario

Malgrado l’argomento del valore umano in molti casi non fosse stato preso in considerazione nella storia della cultura occidentale, non è definitivamente chiuso. Persino oggi esiste la necessità di riaprire il dibattito, considerate le vedute e le opinioni divergenti in tal materia. Il tempo attuale, sotto l’influenza della globalizzazione culturale ed economica, dello sviluppo di nuove tecnologie e della scienza, offre nuove possibilità all’uomo, ma nel contempo apre domande sulle nuove possibilità di comprensione dei valori e della dignità dell’uomo, talvolta discordanti con le interpretazioni filosofiche e teologiche tradizionali. Risulta che la tendenza attuale che

enfatizza le nuove conquiste della scienza e la costante crescita economica influisce anche sulla comprensione stessa del valore dell'uomo. Dal lato della scienza è possibile osservare la rinascita di un approccio riduzionista alla comprensione dell'uomo e dell'economia nella trasformazione del suo valore in risorse umane. Le conseguenze di tali tendenze si manifestano soprattutto nella dimensione etica della vita umana. La dignità umana e la compassione, i buoni rapporti con gli altri sono fatti complementari che portano allo sviluppo dell'umanità, creano un bene per le generazioni future, chiariscono i parametri dei cambiamenti rapidi attuali e definiscono i limiti che permettono all'uomo di rimanere uomo.

Parole chiave: uomo, società, dignità, compassione, libertà

Philosophy and Canon Law vol. 3 (2017), pp. 33–49

Aneta Gawkowska
University of Warsaw, Poland

Looking for Foundations: Nature, Society, and Rights

Abstract: The article presents the analysis of the subject concerning the alternative views on the foundations of human rights: nature and society. It delves into the questions of relations between nature and culture, as well as the meanings of these terms in the context of Florian Znaniecki's concept of humanistic coefficient. The author discusses the notions of dignity, freedom, autonomy, and anthropological truth with some arguments from the Catholic social teaching, particularly from John Paul II's encyclicals. Finally, the author looks for the possible links between the natural and supernatural foundations of the human rights.

Keywords: nature, natural law, social construct, human rights, freedom, autonomy

It may be banal to start this text with a simple reflection on the fact that every day we wake up a bit older than the day before. Slowly but steadily time passes by, as we gradually change. The funny paradox is that our organisms grow and change faster when we are little children, while our awareness of the flying time and our fear of passing away is much higher when we are adults, especially advanced adults. Probably it is due to the awareness that our earthly lives have to end at some point and this awareness becomes vivid when we get older. However, the fast growing children are usually surprisingly secure in their feeling of stability of existence, unless they experience extraordinary conditions stimulating their insecurity, of course. It is the older, adult people, who experience much more insecurity concerning life in general and their specific conditions of existence in particular.

The middle period of human life seems most stable in many ways: we no longer grow or acquire any spectacular new abilities, compared to our children's growth and development; nor do we as yet grow really old and deteriorating in

health. Yet, the more advanced in adulthood we become, the more suspicious thoughts about our human condition we tend to ponder in our creative minds. Firstly, we tend to question the psychological sense of security and stability which used to be natural in our younger years. Secondly, we tend to worry about our economic standpoint. Thirdly, we tend to grow concerned about our health and physical attractiveness. And finally, we tend to suspect that nothing (or rather nobody) in the whole world cares for us or guarantees the stability of the world around us. We lose the belief in *foundations* or sources of stability of whatever kind. In other words, we think that we are existentially *on our own* in a very deep sense of the word. Sooner or later the ancient thought comes to mind that *panta rhei*, everything flows, everything changes, and thus nothing is permanent.

Paradoxically, again, we discover this *changing* nature of the world together with other people coming to *similar* conclusions. So, we could at least believe in this very change as something regular and constant for all humanity. We could find security in noticing that even changes themselves are somehow rooted in unchanging reality. For many ancients it seemed like an eternal circle of changes repeating themselves. The later, alternative ways of thinking treated this process (or processes) of change as a chain of events expressing progress, whether linear or spiral. Nevertheless, the "adult" or "mature" humanity ever since the Renaissance stressed the claim that more and more (if not everything) depends on the humans and revolves around humans. The man (meaning here the human being) became the center of the world and thus the source of self-created stability in the modern imaginagion. In other words, the human began to be treated as the *foundation* of the shape which reality takes. On the one hand, such a kind of attitude may stimulate taking full responsibility for one's affairs and developing a very creative outlook towards the world. On the other hand, however, it may be connected with the undue pride, the *hubris*, which does not assume proper limits to one's actions and, in consequence, may be destructive as well as self-destructive.

The awareness of constant change which accompanies our existence, together with the experience of toils and hardships of our human condition, may always easily contribute to our persuasion about the lack of any stable strongholds of reality. No wonder that the modern man has gradually been losing the metaphysical ground of trust in the so called nature as well as the supernatural reality. Even narrowly understood nature, namely, the natural environment, contributed to the feeling (and assumption) of uncertainty because of its abundance of natural disasters, once the supernatural framework which provided a certain explanation of reality, was abandoned. So, it became more and more difficult to stick to the belief that nature had a deeper meaning than just the physical, material and changing reality, namely the meaning of a stable essence of beings. Just like an individual growing older enters the world of suspicion and loses the

sense of ontological trust in the world as given and somehow ordered, hence the humanity as such (at least in the history of its Western part) repeated this experience and lost its belief in the existence of any given, natural foundations of reality.

Within such a perspective, what was left was the paradigm of conflict between nature and culture. The former was to be narrowly understood as a raw material for manipulation, while the latter was in a sense glorified as the complex of creative activities establishing human and social order upon the chaotic, initially given state. Culture turned out to be understood interchangeably with society because it was supposed to be the effect of social, that is, collective human efforts. Culture gradually became perceived as something created only by humans and created in a sense *ex nihilo*, with no regard to what was given. No meaning incribed in nature provided the foundation or message worthy enough to be deciphered and respected in later human activities upon it. Human freedom, human will, and human creativity came to be considered as the ruling standards of culture. Within such a paradigm the human rights reached the top of the social values hierarchy and could no longer be based on any outer source of value. However, they are not filled with content by themselves until the will of particular individuals fills them up with meaning. Therefore, their practice needed to be self-limited by the very human beings who were going to live according to the logic of rights. Hence the necessity of the logic of social contracts. People needed to agree upon certain common rules of behavior which would not infringe on the freedom of others. However, the social and political agreements were based on the assumptions of inalienable rights, not any given and pre-contractual foundation of these rights.

The modern mainstream political philosophy assumes that human dignity is based on the ability to exercise one's rights: rights are first and dignity comes next. Only marginal traditions stick to premodern, classical view that inherent dignity is the source of rights, not the other way around. Such is the outlook present in the Catholic social teaching and, for example, in the Constitution of the Republic of Poland from 1997, which states in Article 30: "The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities." Thus evolved the two orientations on the question of the foundations of human rights: they either became percived as stemming from the human dignity as given or they themselves were assumed to be given but not as rooted in the dignity but as being the prerequisite of one's dignity, while their practice came to be guaranteed by the social contract rather than any other reality. In fact, this second and dominant perspective developed the logical consequence, that is, since the rights, not the dignity, constitute the basis, then the rights themselves are not really stable on their own. Their meaning and interpretation are rather to be negotiated between the will of a particular

individual and the liquid social consensus. Therefore, the basis itself turned out to be fluid rather than stable. Rights and free will were either left without any ground or with the changing character of the ground in the form of the social contract. It became more and more clear that when humanity leaves the safe reliance on nature (understood metaphysically), it necessarily falls into the precarious state of reliance on social agreements on what should be established as the basis, however unstable and changing.

The major axis of division between perspectives is thus located between the given nature and the socially produced construct. If rights are given, sooner or later they would point to their given basis in the form of somehow natural dignity (which does not exclude, and even begs for, the supernatural source of nature). If, on the other hand, they are devoid of naturally given meaning, they consequently become understood as only socially constructed and socially guaranteed. The Western humanity has slowly moved from the assumption of "given" to the assumption of "constructed." Although it matured to accept the human rights as inviolable values of a universal character, it did not produce any kind of universal agreement on their justification. In other words, there was no agreement on the foundation of rights. Only certain areas of practical application of them gained international agreement. Hence, the theoretical meaning has been left unclear and ready to be used as an ideological tool for various wars and revolutions, while the practical application has experienced passing periods and various fields of consent together with other times and places of unrest and social quarrels over how rights should or could be claimed and lived.

The lack of agreement on the foundation of rights originated from the lack of common understanding of the concept of nature, including the human nature. In modernity it became reduced to the mechanistic and materialist determination of rules operating in the world independently of the human will. Hence this narrowed concept, deprived of the component of nature as a given potential with meaningful essence, was interpreted as opposed not only to culture but also to freedom, whose active expression resulted in cultural achievements. In this way, along with two alternative ways of understanding nature, there came two alternative ways of understanding freedom: one involved the free (uninterrupted) fulfilment of one's natural essence, the other based on free (not pre-determined) action opposing what was given by nature. The latter necessarily comprised opposing other humans, so that nobody (neither nature, nor society) restricts one's choices. That is why the modern notion of freedom has been intrinsically connected with individualism and traditionally seen as opposed to collectivism.

In fact, it should rather be juxtaposed with personalism because collectivism involved a socially constructed artificial unity established by the will of humans, so it really was an outgrowth of individualism, not something contradictory to it. Even though it turned out to be questioning the freedom of individuals, it effected from the social (i.e., antinatural, in the narrow sense of the word)

attempts at overcoming the drawbacks of rugged individualism; it grew out of human ambition to build the total unity against the supposed natural chaos. Personalism, in contrast to individualism, is based on the anthropology of social nature of humans, who are free to fulfill their essence by living with and for others. The individualistic human is supposedly fulfilled by beeing free from predetermined ties with others, while the personalist human is linked with others by nature (broadly understood) and cannot find one's flourishing without accepting and developing these links.

The difference between these two versions of understanding freedom is particularly visible and pertinent in the area of marriage and family relations. Close and intimate ties of this kind easily exemplify differing practices depending on the differing ways of self-understanding and seeing one's place in relations to others. Family cannot really exist if it is perceived as a fluid collection of individuals who are concentrated upon themselves rather than upon one another and upon the family as a whole. Michele M. Schumacher, a New Feminist[1] theologian and philosopher, considers the question of rights in the context of family issues in one of her articles entitled "A Plea for the Traditional Family: Situating Marriage within John Paul II's Realist, or Personalist, Perspective of Human Freedom." Her article is based on the detailed presentation and analysis of the two contrasting visions of the human freedom: individualistic and realist (personalist) following the thought of John Paul II.[2] In my opinion, Schumacher justly uses the words "realist" and "personalist" interchangeably because the core message of personalism was the late modern rediscovery and development of the realist tradition. Both streams of philosophy assumed the objective value of the given world, within which the value of the person is crucial amongst other values. The person is also naturally linked with others and can flourish only by the free assumption of one's role in the community (not collective being, but a communitarian being).

The realist (personalist) tradition safeguarded the personal freedom (against the power of both the totalitarian *and individualistic* systems) by assuming the value and dignity of the person as given by nature, not dependent on any rights guaranteed by the state or social contracts. Dignity, which is given, and not created (by individuals or the social agreement), does not limit here one's range of choices. The person is still able to affirm or reject the given value. However, others cannot take this dignity away from us. We are safer and free by being

[1] I purposefully use capital letters whenever I write about the New Feminism in order to distinguish this particular type of personalistic feminist thought inspired by the teaching of St. John Paul II from other types of feminisms which also used to call themselves new in the past.

[2] Michele M. Schumacher, "A Plea for the Traditional Family: Situating Marriage within John Paul II's Realist, or Personalist, Perspective of Human Freedom," *The Linacre Quarterly* 81 (4) 2014: 314–42.

independent from others' will concerning this issue. Thus the assumption of the status of being given and defined initially by nature does not limit us but provides the rightful safety of personal existence which does not depend on the will of external conditions. The initial dependence on the nature of personal beings keeps us safe from later intrusions of possibly anti-personal character. From the liberal point of view, we are then deprived of our autonomy. We are not free from external, natural or supernatural conditioning, which takes place even before our will has the chance of being revealed. We cannot decide on who we are if we accept our given nature—a liberal seems to claim. However, analogically to the alternative ways of understanding freedom, there are at least two basic ways of understanding autonomy: either as total independence and license of permanent self-creation or as freedom to realize what has been discovered as one's nature, having its origins and its end. These two options stem from two visions of autonomy of reason. Michał Paluch OP summarizes the two visions:

> For Aquinas reason is the greatest gift received from the Creator. It should enjoy autonomy but it is always the relative autonomy, it is the autonomy related to God. For Enlightenment reason will become absolutely autonomous, its dependence on the Creator is going to be later questioned and rejected.[3]

Actually, accepting the fact of being created without our decisions does not limit our choices, while rejecting the knowledge of this fact leaves us open to being defined by the social forces. We do live with others and we have to agree on some common definitions of our nature as humans in order to regulate our lives in common. So the choice is really between accepting the truth of being born to the preexistent order of nature or accepting the changing, arbitrary social definitions which do not leave us with the possibility of constant redefinitions of our existence. The total freedom of auto-creation is a liberal myth which in reality ends by relying on the definitions provided by the society at large or by the powerful elites, whose rules and regimes pass and go throughout history. The individualistic interpretation of freedom may easily breed totalitarian tendencies because the social space does not tolerate the void, the lack of commonly accepted truth about human nature. In fact, it may rather be a reaction to the previous acceptance of the wrong definition of the human nature as devoid of inherent meaning and shaped only by individual decisions. The hidden assumption is that any decision is fulfilling, provided that it has been made by an autonomous individual without the external pressure. Such relativistic assumption opens the way for those who for some reason want to impose their totalitarian views as the exclusive and ruling. They impose other false views but in a sense they point to the fact that no

[3] Michał Paluch OP, "Jak chrześcijanin powinien zareagować na sekularyzację? Dwa typy reakcji niemieckich teologów," *Przegląd Tomistyczny*, XXI (2015), 473.

society is possible without some agreements on anthropological truth about the human being. Social contracts cannot stand on the relativistic grounds that everyone's arbitrary ideas about human nature and satisfaction thereof are equally right. John Paul II's reflections on this subject are here particularly enlightening. In his encyclical *Centesimus Annus* he writes as follows: "[…] totalitarianism arises out of a denial of truth in the objective sense. If there is no transcendent truth, in obedience to which man achieves his full identity, then there is no sure principle for guaranteeing just relations between people. Their self-interest as a class, group or nation would inevitably set them in opposition to one another. If one does not acknowledge transcendent truth, then the force of power takes over, and each person tends to make full use of the means at his or her disposal in order to impose his or her own interests or opinion, with no regard for the rights of others. People are then respected only to the extent that they can be exploited for selfish ends. Thus, the root of modern totalitarianism is to be found in the denial of the transcendent dignity of the human person who, as the visible image of the invisible God, is therefore by his very nature the subject of rights which no one may violate—no individual, group, class, nation or State. Not even the majority of a social body may violate these rights, by going against the minority, by isolating, oppressing, or exploiting it, or by attempting to annihilate it (cf. Leo XIII, Encyclical Letter *Libertas Praestantissimum*, June 20, 1888): Leonis XIII P.M. Acta, VIII, Romae 1889, 224–226)" (*Centesimus Annus*, n. 44).

As we can see, this argumentation presents a serious warning against totalitarian formulations of inadequate anthropological claims. However, it also includes an equally valid accusation of any other system of social institutions based on false visions of human nature which question the possibility of reaching and acknowledging this truth. Both the misguided views of totalitarian systems and the assumption of there being no truth available to everyone (relativistic standpoint) is treated with criticism: "Authentic democracy is possible only in a State ruled by law, and on the basis of a correct conception of the human person. It requires that the necessary conditions be present for the advancement both of the individual through education and formation in true ideals, and of the 'subjectivity' of society through the creation of structures of participation and shared responsibility. Nowadays, there is a tendency to claim that agnosticism and sceptical relativism are the philosophy and the basic attitude which correspond to democratic forms of political life. Those who are convinced that they know the truth and firmly adhere to it are considered unreliable from a democratic point of view, since they do not accept that truth is determined by the majority, or that it is subject to variation according to different political trends. It must be observed in this regard that if there is no ultimate truth to guide and direct political activity, then ideas and convictions can easily be manipulated for reasons of power. As history demonstrates, a democracy without values easily turns into open or thinly disguised totalitarianism" (*Centesimus Annus*, n. 46)

Clearly and persuasively, the social teaching mentioned here points to the need of assumption of the existence of the standard independent of the human will (be it individual or collective) in the form of the personal dignity recognized as the truth safeguarding human rights and freedom.

Of course, we can imagine the justified caution and even fear that assuming the existence of certain truths may also easily produce its own dangers, most likely in the form of forcing people to accept the truths discovered only by some individuals or groups. However, later in the same point of the quoted document the pope reassures that the standpoint he presents should not be instrumentalized and used for imposing allegiance to the truth of one's inherent (and, theologically speaking, God-given) dignity. The assumption of this truth as universal need not and should not be followed by questioning anyone's freedom. But it is for the purpose of safeguarding and developing freedom that accepting this truth serves and thus should be promoted: "Freedom attains its full development only by accepting the truth. In a world without truth, freedom loses its foundation and man is exposed to the violence of passion and to manipulation, both open and hidden. The Christian upholds freedom and serves it, constantly offering to others the truth which he has known (cf. Jn 8:31–32), in accordance with the missionary nature of his vocation. While paying heed to every fragment of truth which he encounters in the life experience and in the culture of individuals and of nations, he will not fail to affirm in dialogue with others all that his faith and the correct use of reason have enabled him to understand (cf. Encyclical Letter *Redemptoris Missio*, n. 11: *L'Osservatore Romano*, January 23, 1991)" (*Centesimus Annus*, n. 46). It is worth noticing that John Paul II refers to the encyclical devoted to the missionary work, so one may think that he argues for truth-claims only in the religious or even private realms. But it is also worth observing that the reference to the missionary attitude is made in the encyclical devoted to the social teaching, and particularly in the fragments discussing the political philosophy and criticism of relativistic standpoint often treated as the only possible basis of modern democracy. So, these arguments may be read as valid in all spheres of social life, including the political dimension, where the assumption of the given truth of human dignity should be appreciated as supporting human freedom and flourishing, though it should not be used for imposing the overall orientation or background of this idea. As early as in 1414, a distinguished Polish scholar, Paweł Włodkowic, who represented Poland at the Council of Constance that year, strongly defended the rights of pagans against being evangelized by force and to own their land as well as live in peace without being bothered by Christian neighbors. He defended the rule of respect for every person; the rule which stemmed from the universal natural law which, however, was supported by the Christian faith.

When we speak about human nature and dignity as given, we thus necessarily enter the terrain of the so called natural law because it is based on the

notion of natural rules to be discovered instead of created by humans. Basic rules independent from human will are treated as given and they stem from the key principle that good is to be done and evil is to be avoided. This, in turn, is linked with the belief that good and evil can be identified and that they are objective as well as stable rather than solely relative and dependent only on culture. Certain rules, beings, and values are believed to be established independently of our actions and will. Within this perspective we can thus speak not only about the nature of humans but also about the nature of society or the social links as existent before our conscious acceptance and activities towards others appear. In a sense it is all connected with the so called social (or political, according to ancients, while also called communitarian, according to the contemporary critics of modern indicidualism) nature of human beings. Where can we look for any signs of the intrinsically social nature of men (including men and women, of course)? Most obviously it is visible in the sexual differentiation of humans, which clearly shows our natural state of being open and called to communion with others who are complementary even in the basic aspect of sexual organs.[4] However, nowadays even such seemingly simple facts about human body and its social meaning are not unequivocal and, what is more, they are not treated as based in nature which carries a social content. In contemporary debates about sex nature is understood either as identical with biological determinism, which can be freely ignored, or as an element of social construct, which in turn can be modified in an arbitrary way without limits. The traditional treatment of nature as the essence of personal beings is largely excluded from the mainstream debates and the human relation with the body is usually not presented in a satisfactory way in the public discourse. So, on the one hand, the body and sexuality are perceived as elements of determination which stand opposed to autonomy of the subject, while on the other hand, body is treated as the tool of expression of the person and the constitutive part of the person, so as linked with the area of consciousness, reason, and freedom (free expression) but the latter meaning is not connected with the responsibility of caring for the given structure of the body but rather only with the human possibility of playing with the body according to one's will. Body, as nature, is not supposed to have any values or norms inscribed in it apart from whatever the person creates and writes into the body (or nature, for that matter).

Contemporary debates over body/sex/gender issues contributed to the renewed interest in both the natural law and the social constructivist perspective. So, the search for better understanding of human sexuality stimulated questions about the foundations of the human rights: nature or social contract? However,

[4] Cf. the most sophisticated analysis on this topic in the form of the theology of the body by John Paul II, which is actually an example of the philosophical and theological anthropology of human sexuality published as John Paul II, *Man and Woman He Created Them. A Theology of the Body*, trans. Michael Waldstein (Boston: Pauline Books and Media, 2006).

why not explore the possibility of the third way? What is worth analysing is the problem of understanding of human sex as a personal value, thus presenting a kind of third way between the biological sex and socio-cultural gender. Maybe the human nature is given in a different way than unreflective biological determinisms, given as a value, but not only and strictly a cultural value. It could rather be perceived as both rooted in biological nature and pertaining to the personal metaphysical nature of the human being, thus needing personal response, development, and having cultural content, too.

Such a standpoint on this question would then require coming back to the old debate with the concept proposed by Florian Znaniecki of the "humanistic coefficient"[5] and opening of sociology to the perspective of naturally given sources of what exists as having the socio-cultural meaning. The perspective proposed by Znaniecki stresses that every cultural object is given in human experience. In other words, cultural objects (values) are corelates of the subject. They have both the empirical content (like natural objects) and cultural meaning (depending on the society). The third way option proposed above would constitute a certain kind of enrichment of the Znaniecki's concept with the ecological attitude uncovering potentially meaningful contents inscribed already in nature, such as the message of the social nature of humans visible in human sexuality, which nevertheless, needs their conscious response.

If Znaniecki's "humanistic coefficient" is to be treated not only as epistemological and methodological concept and a particular tool for treating culture, but also as an ontological statement, then every value is just a social construct (not *also* a social construct). That is problematic because, pertaining to our topic, it gives a very precarious standing to human rights. If they are not based in nature (of course understood more broadly than material biology), they can easily be manipulated with and even rejected by arbitrary decisions. If Znaniecki's treatment of values means that they are *only* cultural, and if culture is interpreted as not based on nature (as something independent of human will), then we are left with a dangerous assumption of there being a radical division or even conflict between nature and culture. It excludes the deeply ecological possibility that nature, especially human nature, has more than just material, empirical content, while the world is more than just matter (mechanism). In addition, it excludes the option that what is social may have more than just cultural (namely socially constructed) meaning. Znaniecki's dichotomy seems wrong to me because although it rightly notices that cultural values exist within human-cultural space, it does not see any space for potential deep links between nature and culture, particularly in the form of nature inspiring the culture and constituting the basis thereof. His theory built around this concept seems based on the false di-

[5] Florian Znaniecki, *The Method of Sociology* (New York: Farrar and Rinehart, 1934), 36–43.

chotomy accepted beforehand by the Western world of mechanistic nature vs. culture added to it by the human beings in an arbitrary way or even opposed to nature.

The aforementioned element of human nature, namely body with its sexuality, can and does go beyond the dichotomy of nature vs. culture because the human experience shows that body is a constitutive element of a person: the human being expresses himself/herself by his/her actions, including actions in the sexual sphere. But the human actions cannot ignore the meaning which already pre-exists within the body. Persons choose on how to act but they do not create the natural meaning which certain body gestures/actions have by their own nature. Thus, in opposition to what cultural values mean in Znaniecki's concept of humanistic coefficient, body is given in a different way than unreflective biological determinism and cultural meanings associated with sexuality (and gender roles, for that matter, too) do build upon the messages provided by nature. Sexuality is thus an exemplar of how nature cannot be strictly opposed to culture because notwithstanding the human activity, it already carries the social/relational content in the deepest sense available to nature, namely visible in the sexual difference/complementarity. By itself *it is already a value* but different from the concept of values described by Florian Znaniecki, namely values constituted by society in a cultural system. Body reminds us that the source of cultural values is given, largely already given in nature, no matter who is the Author of nature.

How this assumption can influence culture by making it more ecological, is shown in the argumentation made by Pope Francis in his encyclical letter *Laudato Si*: "The acceptance of our bodies as God's gift is vital for welcoming and accepting the entire world as a gift from the Father and our common home, whereas thinking that we enjoy absolute power over our own bodies turns, often subtly, into thinking that we enjoy absolute power over creation. Learning to accept our body, to care for it and to respect its fullest meaning, is an essential element of any genuine human ecology. Also, valuing one's own body in its femininity or masculinity is necessary if I am going to be able to recognize myself in an encounter with someone who is different" (*Laudato Si*, n. 155). The acceptance of the perspective of the world as given cannot be overemphasized. It carries an enormous value in the contemporary world focused on absolute autonomy as licence and unlimited power to change the beings in arbitrary directions.

Contrasting nature and culture was an important factor contributing to such an attitude which did not respect the world in the shape and character it had before human intervention or rather before human resignation from caring for the world's given essence of beings. In the name of autonomy, people caused devastation of the world in many areas. Ironically, as some philosophers noticed, by promoting extremely understood autonomy of genetic experiments, we

encroached upon the autonomy of our offspring.[6] Ignoring the world as given resulted in disrespect for what is given in our children: modelling their genetic equipment is excused by the intention of providing them with better opportunities for the future but it actually deprives them of being inviolable and thus autonomous. The argumentation of Jürgen Habermas is a grave warning against understanding freedom or autonomy as divorced from a certain element which would constitute somebody as given and not constructed by society. In the name of autonomy itself it seems adequate and even indispensable to recognize nature as a given and norm-creative essence of beings, provided that it does not destroy the personal/subjective character of an individual. Paradoxically for the modern mind, a construct is destructive for autonomy while a given nature defends the human being by guaranteeing his/her independence from society. Analogically, respecting a given sex/nature/body is the basis for human freedom and human rights rather than an unjust limit put on one's autonomy. The International Theological Commision at the Vatican prepared a document on natural law in 2009 entitled "In Search of a Universal Ethic: A New Look at the Natural Law," where the question of our interest in this article is explained in point 68:

> Person is not opposed to nature. On the contrary, nature and person are two notions that complement one another. On the one hand, every human person is a unique realization of human nature understood in a metaphysical sense. On the other hand, the human person, in the free choices by which he responds in the concrete of his "here and now" to his unique and transcendent vocation, assumes the orientations given by his nature. In fact, nature puts in place the conditions for the exercise of freedom and indicates an orientation for the choices that the person must make. Examining the intelligibility of his nature, the person thus discovers the ways of his own fulfilment.[7]

In other words, freedom would not exist without certain conditions making it possible. Yet, it needs to be stressed that "natural" does not mean "naturalistic" but rather adequate for human nature as a person, meaning free and rational being. John Paul II writes about it when dealing with the subject of natural methods of regulating conception in his theology of the body mentioned before. He strongly warns against biologizing ethics, that is, "reducing ethics to biology."[8] The modern use of the word "natural" is often associated with "unreflective," as it was hinted above. "Natural" is thus interchangeably used with

---

[6] Cf. Jürgen Habermas, *Przyszłość natury ludzkiej. Czy zmierzamy do eugeniki liberalnej?* Trans. Małgorzata Łukasiewicz (Warszawa: Wydawnictwo Naukowe Scholar, 2003).

[7] International Theological Commision, "In Search of a Universal Ethic: A New Look at the Natural Law" (2009), accessed July 1, 2017, http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html#*.

[8] John Paul II, *Man and Woman He Created Them. A Theology of the Body*, 125:2, p. 637.

"spontaneous," "directed by instincs," etc. On the contrary, natural family planning methods, as John Paul II emphasizes, are not "natural" in this latter sense. They require using reason, self-control, and internal personal attitute of love towards others, together with respecting the natural fertility cycle as well as the objective spousal meaning of the human body. Neither instinct, nor emotion, nor mechanical use of particular methods by themselves make it natural, but rather naturalistic, because it does not involve conscious decision-making. Natural, on the other hand, means free activity within the area of what is possible, provided that natural mechanisms are taken into account and thus respected. Freedom or autonomy is not achieved by following raw natural instincts or, for that matter, by arbitrary creation of one's own laws irrespective of the nature of persons. As John Paul II explains in *Veritatis Splendor*, respecting natural law is not heteronomy (which would be opposed to autonomy) but it involves free acceptance of rules discovered within oneself, given and definitely not imposed on oneself. "The rightful autonomy of the practical reason means that man possesses in himself his own law, received from the Creator. Nevertheless, *the autonomy of reason cannot mean* that reason itself *creates values and moral norms* (cf. Address to a Group of Bishops from the United States on the occasion of their *ad Limina* Visit (October 15, 1988), 6: *Insegnamenti*, XI, 3 (1988), 1228)" (*Veritatis Splendor*, n. 40). Later in this document the pope writes as follows: "Patterned on God's freedom, man's freedom is not negated by his obedience to the divine law; indeed, only through this obedience does it abide in the truth and conform to human dignity. This is clearly stated by the Council:

> Human dignity requires man to act through conscious and free choice, as motivated and prompted personally from within, and not through blind internal impulse or merely external pressure. Man achieves such dignity when he frees himself from all subservience to his feelings, and in a free choice of the good, pursues his own end by effectively and assiduously marshalling the appropriate means. (Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, 17) (*Veritatis Splendor*, n. 42)

This argumentation makes the point that natural law of respecting human dignity as the source of rights does not really limit one's freedom but rather protects the freedom and rights of everyone who respects its precepts and freedom of those around him/her. Following the discovered law should not be categorized as thoughtless naturalism and thus irrational slavery of determinism but as the only rational option for a person who recognizes his/her status of being able to grasp the given moral laws with equally given reason, as well as being able to freely abide by these laws and use them creatively towards one's fulfilment.

After all, the precepts of the natural law are all about the value of person, of human life and its goodness independent of anybody's will. This should be

clear to everyone using reason, as a universal ethical basis agreed on by the Enlightenment thinkers, though they modified both the vision of the Creator and nature itself. Maybe that is why the Western humanity has not kept loyalty to the Enlightenment thought and during times of crisis the only witness to the natural law seemed to be visible in the Catholic social thought. In *Evangelium Vitae* John Paul II expressed his claim stating that the natural law is available to every reasonable being: "Even in the midst of difficulties and uncertainties, every person sincerely open to truth and goodness can, by the light of reason and the hidden action of grace, come to recognize in the natural law written in the heart (cf. Rom 2:14–15) the sacred value of human life from its very beginning until its end, and can affirm the right of every human being to have this primary good respected to the highest degree. Upon the recognition of this right, every human community and the political community itself are founded" (*Evangelium Vitae*, n. 2). In one sentence the pope summarizes the link between the universal ability to discover and adhere to the natural law, its essence located in the objective value of human life, and the consequent rights of the human person.

I wrote earlier about how crucial it is that acceptance of the view of human dignity as given, not created, actually safeguards the human free status as a being independent of the will of other persons. The argumentation made in *Evangelium Vitae* goes even further to asserting that the supernatural source of this dignity needs to be recognized, too, which makes the freedom even deeper: "It is […] essential that man should acknowledge his inherent condition as a creature to whom God has granted being and life as a gift and a duty. Only by admitting his innate dependence can man live and use his freedom to the full, and at the same time respect the life and freedom of every other person" (*Evangelium Vitae*, n. 96). Maybe the Enlightenment vision was too difficult to stick to in the long run precisely due to the fact that separation of nature from God made it virtually impossible to see nature as the plausible foundation of rights. Our perception of nature may no longer be clear, once we divide the natural from the supernatural factor. Maybe the Enlightenment was still too much influenced by the Protestant ideas which assumed that nature is totally corrupt, therefore the common/political sphere (where the philosphy and practice of rights are located) cannot be moral. Long time has passed between the age when Paweł Włodkowic argued that morality discovered in the natural law is the foundation in politics, in public life, not only in private sphere, and the age of the so called Reason when the meaning of nature already gained quite of lot of vagueness, not to mention its divorce from the loving God as the lack of agreement on how to treat His Nature. The theological and philosophical conflicts in the European history had their long-distance effects visible in the political-philosophical standpoints concerning the question of rights. As Michał Paluch OP reminds, a Catholic grace builds upon nature and fulfills nature, while for a Protestant grace is supposed to replace nature, both of which so far

stay in mutual conflict.[9] This was reflected in the modern civil view of opposition between nature and society, whose rules were supposed to order the supposed chaos of nature, including human nature and the nature of society. Laws were supposed to give shape to the social reality and guarantee the dignity and freedom of persons rather than be based on them as given and independent on society. This, in turn, came from the Protestant understanding of nature as totally fallen, totally corrupt. Catholicism sees nature as seriously hurt but not totally deprived of the primary value. Hence, that is why it is within the Catholic social thought that we can still find the development of the precepts of natural law and the firm belief that these precepts can be identified by every person using reason and having good will. Furthermore, that is why there is still the link preserved between nature and God as its ultimate Source, whose traces can be noticed in the structure of the world (another term describing nature, actually).

It seems that only by assuming this optimistic Catholic view of nature can both the status of human rights be safe and the connection between the natural and supernatural seen as supportive of freedom rather than dangerous for it. In the social teaching encyclical (already quoted above) published short after the fall of the so called real socialism in Europe, John Paul II reflects on this issue when he analyzes socialism: "If we then inquire as to the source of this mistaken concept of the nature of the person and the 'subjectivity' of society, we must reply that its first cause is atheism. It is by responding to the call of God contained in the being of things that man becomes aware of his transcendent dignity. Every individual must give this response, which constitutes the apex of his humanity, and no social mechanism or collective subject can substitute for it. The denial of God deprives the person of his foundation, and consequently leads to a reorganization of the social order without reference to the person's dignity and responsibility. The atheism of which we are speaking is also closely connected with the rationalism of the Enlightenment, which views human and social reality in a mechanistic way. Thus there is a denial of the supreme insight concerning man's true greatness, his transcendence in respect to earthly realities, the contradiction in his heart between the desire for the fullness of what is good and his own inability to attain it and, above all, the need for salvation which results from this situation" (*Centesimus Annus*, n. 13). Seemingly opposed philosophies of liberal Enlightenment and communist tradition are here treated as presenting the same mistake of mechanicism in viewing human nature. Mechanicism is nothing else than seeing nature as devoid of meaning, originally being caused by the separation from the supernatural. Thus, the whole logic presented here comes to being summarized as follows: the human rights are founded on dignity, dignity is given within human nature, and nature is given by God. What

[9] Paluch OP, "Jak chrześcijanin powinien zareagować na sekularyzację? Dwa typy reakcji niemieckich teologów," 481.

is more, only by assuming the supernatural source of nature can we keep the assumption of the stable standing of the natural human rights.

So, within the world which seems changing all the time and which seems to have nothing stable, we can and maybe even have to assume that there are the natural and even supernatural foundations of rights, which we find so dear to our civilization that we like to advocate all over the world. Since we like to treat them as the intercultural basis for universal debates, we would better not avoid delving deeper into their possible metaphysical roots, even if we do not expect to persuade everyone about their source. Hopefully, at least we personally will have greater confidence in promoting these rights and greater knowledge on how to use them in practice.

Bibliography

Konstytucja Rzeczypospolitej Polskiej [Constitution of the Republic of Poland]. Dz. U. 1997 nr 78 poz. 483.

Habermas, Jürgen. *Przyszłość natury ludzkiej. Czy zmierzamy do eugeniki liberalnej?* Translated by Małgorzata Łukasiewicz. Warszawa: Wydawnictwo Naukowe Scholar, 2003.

International Theological Commision. "In Search of a Universal Ethic: A New Look at the Natural Law" (2009). Accessed July 1, 2017. http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html#*.

John Paul II. Encyclical letter *Evangelium Vitae*. 1995.

John Paul II. Encyclical letter *Centesimus Annus*. 1991.

John Paul II. *Man and Woman He Created Them. A Theology of the Body.* Translated by Michael Waldstein. Boston: Pauline Books and Media, 2006.

John Paul II. *Veritatis Splendor.* 1993.

Paluch, Michał OP. „Jak chrześcijanin powinien zareagować na sekularyzację? Dwa typy reakcji niemieckich teologów." *Przegląd Tomistyczny*, XXI (2015): 469–489.

Schumacher, Michele M. "A Plea for the Traditional Family: Situating Marriage within John Paul II's Realist, or Personalist, Perspective of Human Freedom." *The Linacre Quarterly* 81 (4) 2014: 314–342.

Znaniecki, Florian. *The Method of Sociology*. New York: Farrar and Rinehart, 1934.

Aneta Gawkowska

À la recherche des fondements : la nature, la société et les droits

Résumé

L'article présente l'analyse du sujet des points de vue alternatifs sur les fondements des droits de l'homme, localisés dans la nature ou dans la société. L'auteure se plonge dans les questions portant sur les relations entre la nature et la culture, ainsi que les significations de ces notions dans le contexte de la théorie de Florian Znaniecki, concernant la compréhension du cofacteur humaniste. Le texte analyse les conceptions de la dignité, de la liberté, de l'autonomie et de la vérité anthropologique avec les arguments de l'enseignement social catholique, et en particulier des encycliques de Jean-Paul II. L'auteure cherche également des liens entre les fondements naturels et surnaturels des droits de l'homme.

Mots clés : nature, droit naturel, construction sociale, droits de l'homme, liberté, autonomie

Aneta Gawkowska

Alla ricerca dei fondamenti: natura, società e diritti

Sommario

L'articolo presenta l'analisi dell'argomento delle opinioni alternative riguardanti i fondamenti dei diritti umani, collocati nella natura o nella società. L'autrice si addentra nelle questioni delle relazioni tra la natura e la cultura e nelle questioni dei significati di tali nozioni nel contesto della comprensione del coefficiente umanista della teoria di Florian Znaniecki. Il testo analizza i concetti di dignità, libertà, autonomia e verità antropologica con gli argomenti dell'insegnamento sociale cattolico, in particolare delle encicliche di Giovanni Paolo II. L'autrice intraprende anche la ricerca dei legami tra i fondamenti naturali e sovrannaturali dei diritti umani.

Parole chiave: natura, diritto naturale, costrutto sociale, diritti umani, libertà, autonomia

Philosophy and Canon Law vol. 3 (2017), pp. 51–69

John P. Hittinger
The University of St. Thomas, Houston, TX, USA

The Revolution of Conscience in *Centesimus Annus*

Abstract: The article analyzes various uses of the term "conscience" in *Centesimus Annus*. In this way it explains the notion of the "revolution of conscience." Disregard for the role of conscience in politics, everyday life, as well as disrespect for human rights were germane to the fall of the USSR. The article analyzes and points to four different realms of freedom of conscience and religion as presented in *Centesimus Annus*.

Keywords: conscience, 1989 revolution, Leon XIII, workers' rights, communism, solidarity

The Revolution of Conscience

John Paul II issued the encyclical *Centesimus Annus* to commemorate the fall of communism in the Soviet block and, more importantly, to explain why communism did not endure and why it could not withstand the challenges it faced in Poland and other Eastern European countries. Those challenges brought into play a "revolution in conscience." There were undoubtedly complex economic and deep political factors in the demise of the Soviet Union. But at heart it was a moral failure, even a spiritual failure. It was a failure to face up to the demands of conscience from the highest levels of policy to the common level of practical survival, work, and family. The thesis of this paper is that this encyclical displays the notion of the revolution of conscience. We will examine each use of the term conscience in the encyclical and then formulate a more systematic idea of the central role that conscience and religious freedom plays in the thought of John Paul II.

The notion of the revolution of conscience, although not used precisely as such in the encyclical, nevertheless embodies the central argument of the encyclical and the legacy that John Paul II commemorates and passes on to the Church and the world at large. George Weigel frequently uses the notion "revolution of conscience" in his works on Poland and John Paul II. The central point of his book, *The Final Revolution: The Resistance Church and the Collapse of Communism*, concerns the discovery of the deepest and truest cause for the overturning of communism, namely, the awakening of conscience and the embodiment of it in public life.[1] On the first page of his book, *The End and the Beginning*, Weigel states outright: "Eight months after his election to the papacy on October 16, 1978, John Paul had ignited a revolution of conscience in his native Poland—a moral challenge to the Cold War status quo that help set in motion the international drama that would culminate in the collapse of European communism in 1989 and the demise of the Soviet Union in 1991."[2] In chapter four, "Victory," Weigel analyzes the events of 1989. He argues that Poland, through the inspiration of John Paul II and Józef Tischner, attempted to "build a genuine human community out of liberated consciences, freed from the inheritance of hatred and egoism." The Polish people thereby initiated "the revolution of conscience" by living in the truth, living responsibly, living in solidarity. At the end of the book, he assesses John Paul II's legacy as awakening a sense of the deeper meaning of liberation—"The first and most urgent liberation was liberation into the moral truth about the human person."

In *Witness to Hope* Weigel approaches the question of the revolution in Poland in the context of political realism and the standard assumption among political scientists that the "engine of history is understood to be economic and military power."[3] In international relations realism designates the amorality of political decision making. Cardinal Wojtyła disagreed with this view and read history through the prism of moral analysis. During his first visit to Poland in 1979 John Paul II referred to St. Stanisław as the patron of moral order in Poland because he "did not hesitate to confront the ruler when defense of the moral order threatened it." Adam Michnik praised the pope's appeal to moral conscience, of believer and unbeliever alike.[4] For good reason then Weigel speaks about "a revolution in spirit," and a "moral revolution." He cites the remark of Józef Tischner that the founding of Solidarność was

[1] George Weigel, *The Final Revolution: The Resistance Church and the Collapse of Communism* (Oxford University Press, 2003)

[2] George Weigel, *The End and the Beginning: Pope John Paul II– The Victory of Freedom, the Last Years, the Legacy* (New York: Doubleday Books, 2010), 1.

[3] George Weigel, *Witness to Hope*: *The Biography of Pope John Paul II* (New York: Harper Perennial, 1999), 291–94.

[4] Ibid., 324.

a "huge forest planted by awakened consciences."[5] Weigel also explains that the non-violent character of the revolution of 1989 evinces the deep awakening of and commitment to moral conscience. In *Centesimus Annus*, John Paul II highlights the role of conscience in the new politics emerging from the events of 1989.

In commenting on the encyclical, Jósef Tischner lamented the ruin of his country by the long and oppressive communist occupation—the ruin was not even primarily economic or political but a ruin within each human being.[6] The loss of moral conscience in the external arenas of economics and politics devastated the human person most of all. Tischner applauded section 13 of the encyclical as particularly important because it identified the chief error of socialism as an "anthropological error," at the heart of which was a denial of human responsibility in the face of good and evil. Hence that failure was the oblivion of conscience. Socialism considered man to be no more than an ant in the anthill, or a cog in the machine. Absent is a true concern for personal responsibility and personal initiative, absent is authentic human freedom. Communism fell, he boldly asserted, because of a "rebellious man" who reclaimed his freedom, that is, reclaimed conscience in moral responsibility. The hero who overthrew communism was not a "man with growing needs" or a "consuming man" but a "responsibly free man." Tischner warned that the same ruin could be inflicted anywhere this absence of conscience is embedded in the systems of economics, politics, and culture.

In his writing about solidarity Fr. Tischner noted that its founding was not only a social or economic event, but an ethical one. He said this because "the dignity of man is founded on his conscience. The deepest solidarity is the solidarity of conscience."[7] Without conscience there is no solidarity. Conscience is "what is steady in man and what does not cause disappointment." Conscience is prior to ethical system; it is a reality of the human person, emerging out of and therefore like intellect and will. One must exercise conscience, but one can stifle it. "Conscience is a voice that calls out within man. To what does it call us today? First, it calls us to want to have a conscience." After years of socialist degradation of conscience, each person must reclaim their forgotten or semi-

[5] Ibid., 324. Weigel found the citation in Garton Ash, *The Polish Revolution: Solidarity* (New Haven: Yale, 2002), 280. But see selections on solidarity and conscience from Tischner's "Etyka solidarności," in *Thinking in Values, The Tischner Institute Journal of Philosophy: Solidarity*, no. 1 (2007), 37–41. See also Adam Michnik, *Letters from Prison and Other Essays* (Berkeley: University of California Press, 1985).

[6] Jósef Tischner, "A View from the Ruins," in *A New Worldly Order: John Paul II and Human Freedom*, ed. George Weigel (Washington, D.C.: Ethics and Public Policy Center, 1992), 165–68.

[7] Józef Tischner "Etyka solidarności," *Thinking in Values*, *The Tischner Iustitute Journal of Philosophy*: *Solidarity*, no. 1 (2007): 38.

forgotten conscience. And what better to call it forth than the natural bond with those who suffer. And in particular the superfluos suffering and the suffering of those who are maltreated and oppressed. The time was ripe in Poland in the 1980s. Tischner's attempts to mobilize the conscience of the nation arose from these truths: "Solidarity is founded on the conscience, and the stimulus for its growth is the cry of help from the man who has been hurt by another man."[8] John Paul II is rightly identified as the father of solidarity, this awakening of conscience and the bond of compassion. Tischner said that to be a father is to be the bearer of someone else's hope, or "the one who brings hope to a man is the spiritual father of this man."[9]

John Paul II wrote of the folly of realism and the exaltation of force over reason and law: "The events of 1989 are an example of the success of willingness to negotiate and of the Gospel spirit in the face of an adversary determined not to be bound by moral principles. These events are a warning to those who, in the name of political realism, wish to banish law and morality from the political arena."[10] Beyond this lesson in international relations and political philosophy John Paul II looked deeper for the "true cause" of the demise of the socialist system:

> The true cause of the new developments was the spiritual void brought about by atheism, which deprived the younger generations of a sense of direction and in many cases led them, in the irrepressible search for personal identity and for the meaning of life, to rediscover the religious roots of their national cultures, and to rediscover the person of Christ himself as the existentially adequate response to the desire in every human heart for goodness, truth and life. This search was supported by the witness of those who, in difficult circumstances and under persecution, remained faithful to God. Marxism had promised to uproot the need for God from the human heart, but the results have shown that it is not possible to succeed in this without throwing the heart into turmoil. (*Centesimus Annus*, n. 24)

The formative factor was the awakening of conscience, but the existential influence of faith was most decisive: the downfall of the Soviet Union, he said,

> was a struggle born of prayer, and it would have been unthinkable without immense trust in God, the Lord of history, who carries the human heart in his hands. It is by uniting his own sufferings for the sake of truth and freedom to the sufferings of Christ on the Cross that man is able to accomplish the miracle of peace and is in a position to discern the often narrow path between the cowardice which gives in to evil and the violence which, under the illusion of fighting evil, only makes it worse. (*Centesimus Annus*, n. 25)

[8] Ibid., 39–41.

[9] Ibid., 46.

[10] *Centesimus Annus* § 25. Further rferences in the text.

These words set the context for John Paul II's explanation of conscience in the events of 1989 and the importance of conscience in political life.

In the general audience prior to the release of the encyclical, John Paul II summarized many of its important theses.

> The Marxist system failed for the very reasons which *Rerum novarum* had already acutely and almost prophetically indicated. In this failure of an ideological and economic power which seemed destined to prevail over and even to root out the religious sense in human conscience, the church sees—beyond all social logical and political factors—the intervention of God's providence, which alone guides and governs history.[11]

Conscience is the voice of God in the human person. Conscience by definition appeals to a transcendent principle of morality. It is the discovery of the testimony of conscience that grounds human dignity. From conscience springs an authentic contribution through work to the common good. "We must renew the questions about social justice, about solidarity among working people, about the dignity of the human person; it means not to be resigned to exploitation and poverty, never to abandon the transcendent dimension of the person, who wants to […] place his own work at the heart to building society." Through conscience we realize the twofold moral significance to property—the right to private property based on dignity of rational agent along with the universal destination of the world's resources for the sake of all people. "Economic freedom cannot be separated from other aspects of human freedom and the full realization of people in an authentic human community new individual ownership and the universal purpose of the world's resources must be acknowledged." In brief, the renewal of society must draw upon the depths of the human person. In addition to a free economy and a democratic participatory government, we must understand that "no free economy can function for long and respond to the conditions of a life more worthy of the human person, unless it's framed and solid legal and political structures, and above all, unless it is supported and enlivened by a strong ethical and religious conscience." Numerous commentators have pointed out that in this encyclical John Paul II distinguishes the economic, political, and cultural dimensions of human society. Each must be respected and given its due, with all proper recognition given to the priority of culture, as Weigel often urges. But we must also note that underneath them all is the free person, responsible to God in the realm of conscience.

---

[11] John Paul II, "Confronting the Challenges of Our Time," General Audience, May 1, 1991. *L'Osservatore Romano*, May 6, 1991. Reprinted as "'As a Civilization of Solidarity and Love': An Invitation to *Centesimus Annus*," in *A New Worldly Order*, 23–28.

> A great commitment on the political, economic, social, and cultural level is necessary to build a society that is more just and worthy of the human person. But this is not enough! A decisive commitment must be made to the very heart of man, to the intimacy of his conscience, where he makes his personal decisions. Only on this level can the human person effect a true, deep, and positive change in himself, and that is the undeniable premise of contributing to change and the improvement of all society.

It is in the light of the reawakening of conscience in solidarity that John Paul II speaks with hope of the prospect for the possibility of building "a more just and fraternal structures in the world for a new civilization—a civilization of solidarity and love." But the crisis of our time is yet to be faced squarely. The crisis continues in western societies wherein the awareness of God is diminished and conscience darkened. A practical materialism continue to subvert the strength of a true culture. John Paul II's revolution of conscience is still a revolution waiting to happen.

For this reason, we should see how he strategically deploys the notion of conscience in *Centesimus Annus* and develop a deeper appreciation for the primacy of the freedom of religion in contemporary society and political order.

The Eight Uses Of Conscience in *Centesmus Annus*

There are eight places in the text wherein John Paul II uses the word conscience.[12] We will consider the context and the argument in which the term is used. We will look to see if there is any development or juxtaposition as he proceeds through the document.

Because the first uses of the term conscience are found in sections 15 & 16, we shall first consider the previous sections. In the introduction John Paul II explains the importance of *Rerum Novarum*—it is an immortal document because of the "vital energies rising from a root that are not spent" but have increased even more over the passing of the years. There is an inexhaustible

[12] We searched for the term conscience in the English text. The Latin text, or the French text, both use cognates of the term to mean awareness or responsibility according to the English translation. The use of the term awareness is not conscience as such, although awareness of a responsibility is very close to conscience as a principle of conscience. For the sake of a systematic examination, we will restrict ourselves to the eight uses in the English text, but we shall note some of the cognate uses as relevant to the argument in *Centesimus Annus*.

fecundity and energizing quality that characterizes the social doctrine of Pope Leo XIII. John Paul II found the great treasure or heritage of Catholic social doctrine extending from past through the present and into the promising future. This task of looking to the future, but acknowledging the past, now one hundred years, serves the purpose of "reawakening our responsibility" or "reawakening conscience" in order to "show the way, proclaim the truth, and to communicate the life which is Christ"[13] (*Centesimus Annus*, n. 3). Although not using the term conscience, John Paul II clearly indicates in the introduction to the encyclical that his purpose is to deepen our awareness of moral responsibility, that is to say, to stir or awaken the conscience of the reader. What is incorporated into the tradition served to inspire many millions of people as if constituting a "great movement for the defense of the human person and the safeguarding of human dignity." We could say that John Paul II with this statement places *Rerum Novarum* in the broad ambit of the personalist movement and contributes to a personalist philosophy. As Jacques Maritain stated in the opening of his book *The Person and the Common Good*, personalism is not a doctrine but a reaction against two errors.[14] It is an aspiration or movement of people to find and build political society suitable for the flourishing of the human person. He queries whether society exists for each one of us, or does each one of us exist for society? Does the state exist for each one of us, or does each one of us exist for the state? He warns that a unilateral answer would plunge us into error: the anarchy of individualism (bourgeois liberalism) or the oppression of totalitarianism (communism and fascism). Maritain sought to develop a personalism rooted in the doctrine of St. Thomas on the dignity of the human person. Inspired by the work of Pope Leo XIII, Maritain also faced the existential problem of avoiding socialism and individualistic liberalism. The anchor for an adequate political philosophy and conceptualization of Catholic social teaching in the modern world is the dignity of the human person. As one who was actively present at Vatican II and who frequently cited *Gaudium et Spes* § 22 and § 24, Karol Wojtyła had a deep appreciation for the place of the dignity of the human person in the new evangelization. John Paul II ends the introduction by mentioning the need to advance the new evangelization from the lessons of 1989, namely a revolution of conscience.

Chapter one opens with a description of the "new things" that came into view in 1891, that is, the threat of new forms of injustice and servitude. A new economics and politics, called by Leo XIII "liberalism," transformed soci-

[13] The latin text: Quae res et promissiones nostram mentem lacessunt vimque creatricem, nostrique tamquam 'unici magistri' Christi (cf. Mt 23, 8) discipulorum officii conscientiam excitant ut `viam' monstremus, 'veritatem' profiteamur et 'vitam' quae Ipse est (cf. Io 14, 6) nuntiemus.

[14] Jacques Maritain, *Person and the Common Good* (Notre Dame Press), chap. 1. See *Centesiumus Annus*, n. 10.

ety through the commodification of labor and the neglect of the well-being, safety of the worker. A chasm divided the worker from the owners. Fueled by the deep inequality and the unjust treatment of the worker, socialism arose as a proposed remedy, a remedy worse than the disease. Pope Leo XIII insisted in *Libertas Praestantissimum* that liberty must be bound to the truth lest it fall into arbitrariness, passion, and ultimate self-destruction. The origin of all of the evils to which *Rerum Novarum* sought to respond is a "kind of freedom which cuts itself off from the truth about man." Although John Paul II does not use the word conscience, obviously the root of the evil is the deformation and stifling of conscience, since moral truthfulness is the essential spring of conscience. In responsible action the agent seeks to know and to do the full truth about man.[15] Pope Leo XIII sought to find the basis for the unity of the human person and to heal the rift between the otherworldliness of the Christian and his worldly duties. The new situations must be met without degrading the human person's transcendent dignity in oneself or one's adversaries.[16] The rights of the human person formulate a measure for protecting the dignity of the person. John Paul II adumbrates various rights, which include theright to associate and the right to a just wage but also the inalienable right to Sabbath rest and an opportunity for religious practices. At the peak we find the right to religious freedom: "the right to discharge freely one's religious duties" (n. 9).

The heart of his teaching, however, is the principle of solidarity. John Paul II treated of this virtue in *Sollicitudo Rei Socialis*. Prior pontiffs have the term "friendship" (Leo XIII), "social charity" (Pius XI), or "civilization of love" (Paul VI). The guiding thread or principle of the work of Pope Leo XIII is "a correct view of the human person and of the person's unique value, inasmuch as the human being 'is the only creature on earth which God willed for itself' [*Gaudium et Spes*, n. 24]. God has imprinted his own image and likeness on human beings (cf. Gen 1:26), conferring upon them an incomparable dignity." John Paul II concludes chapter one with the claim that "beyond the rights which one acquires by one's own work, there exist rights which do not correspond to any work performed, but which flow from one's essential dignity as a person."

Chapter two describes and analyzes the "new things of today (1991)." One hundred years later we return again to the problem of work and the oppression of the worker, but this time in the name of the worker's party and the socialist ideology that claims to advance the working class. But the remedy is worse than the sickness. The abuse of human rights, the measure for political life today, became even worse. Here John Paul II identifies the chief error of socialism as an anthropological one. Not only does it suppress personal responsibility

[15] See Karol Wojtyła. *The Acting Person*, *Analecta Husserliana*, ed. and trans. Anna-Teresa Tymieniecka (Dordrecht/Boston: D. Reidel, 1979), chap. 3.

[16] *Centesimus. Annus*, n. 5.

and ownership, it warns against man's true social nature in the formation of intermediary groups. The first cause of the errors is its atheism. The reason this error is so deadly pertains to the oblivion to man's call to responsibility through conscience. John Paul II explains it as follows: "It is by responding to the call of God contained in the being of things that man becomes aware of his transcendent dignity. Every individual must give this response, which constitutes the apex of his humanity, and no social mechanism or collective subject can substitute for it. The denial of God deprives the person of his foundation, and consequently leads to a reorganization of the social order without reference to the person's dignity and responsibility" (*Centesimus Annus*, n. 13). Rather than to place man before God to learn the way of justice, socialism places class against class in mutual antagonism and hatred. The seeds of total war are planted, that realism of political Machiavellianism, that seeks violent and deceitful means to attain its righteous goal. Total war became the mindset of the nations during World War II as militarism and imperialism gripped most nations. The mindset of total war gave up the search for "a proper balance between the interests of the various nations" and replaced it with an attempt "to impose the absolute domination of one's own side through the destruction of the other side's capacity to resist, using every possible means, not excluding the use of lies, terror tactics against citizens, and weapons of utter destruction." John Paul II traces Marxism and militarism to the "same root, namely, atheism and contempt for the human person, which place the principle of force above that of reason and law" (*Centesimus Annus*, n. 14). We could say that Marxism and militarism destroyed the capacity of conscience and blocked the voice of conscience in the seeking of justice, and rationalized the unfettered use of power and violence to obtained its sanctified goals, an idol of human power. This brings us at last to uses of the term conscience in the encyclical. We will examine them as pairs in four groups: On Work, the rights of the worker, and Conscience (nn. 15–16); On conscience and true peace (nn. 19–23); On conscience and true freedom (nn. 26–29); and On conscience and the culture of social-political renewal (nn. 52–59).

On Work, the Rights of the Worker, and Conscience (nn. 15–18)

The first two uses of the term conscience appear in sections 15 and 16 which concern Leo XIII's effort to find that position contrary to state control of the means of production, that is, socialism, and that form of liberalism which excludes the economic sector from the states range of interest in action. The just reforms that would restore dignity to work required the cooperation of both society and state. But the worker must be protected from unemployment and given adequate means to maintain the worker and his family. But in ad-

dition to these factors John Paul II spoke about "humane" working hours and adequate free time, as well as the right to express one's own personality at the workplace without suffering any affront to one's *conscience* or personal dignity. The worker is more than a producer and a consumer—but a human person who is called to participate in society, to share in the communications of knowledge and love—in this respect he says that the trade unions not only help to negotiate contracts but serve as places where workers can express themselves and communicate with others. As a responsible agent, the human person must act out of and from conscience, the source of their personal dignity. For that conscience to be nourished and activated a respect for the intellect and freedom of the person should be given its place in respect for its embodiment in a social context. Cardinal Wyszyński and Cardinal Wojtyła championed the cause of the worker to be granted time on Sunday to attend religious services.[17] Therefore, in this respect, John Paul II acknowledges that the worker as a person has a conscience and that conscientious work and speech must be given its due.

From the time of Leo XIII many reforms were carried out through the far-reaching influence of Catholic social teaching in the areas of Social Security, pensions, health insurance and compensation in the case of accidents, and a greater respect for the rights of workers generally. In the next section, John Paul II acknowledges the need for these reforms to be accomplished in part by the state, but there is no denial that the workers movement, the labor unions, were also important players in this achievement. The worker's movement he describes as a response of moral conscience to unjust and harmful situations—at the urging of conscience there was a widespread campaign for reform not on the basis of vague ideology but arising from the daily needs and demands of the workers. It was this movement that became dominated or hijacked by Marxist ideology. But it was due to solidarity among the people that cooperatives were established, education and professional training were made available, and an encouragement for participation of the worker in the life of the workplace and in society were promoted. So in this case the term conscience refers to the active subject who possesses conscience and is capable of initiative and cooperative action with others. Conscience is the spring of authentic reform.

In section 17 and 18, John Paul II returns to the deep theme of the essential error concerning conscience. "This error consists in an understanding of human freedom which detaches it from obedience to the truth, and consequently from the duty to respect the rights of others" (*Centesimus Annus*, nn. 17–18). Echoing Augustine's *City of God*, Leo XIII criticizes the notion of freedom detached from truth as a form of self-love carried to the point of contempt for God and

[17] Stefan Wyszyński, *All You Who Labor: Work and Sanctification of Daily Life* (Manchester, NH: Sophia Press, 1995). Translation of *Duch Pracy Ludzkiej* (1946).

neighbor; it leads to an unbridled affirmation of self-interest and refuses to acknowledge the demands of justice. John Paul II considered Leo XIII a prophetic voice because that very error lay behind the world wars of the 20th century. The terrible burden of hatred and resentment arose out of so many injustices and ideologies, sanctioned and organized hatred, and injustice about man and the dignity of conscience. Entire nations were pulled in by these ideologies of hatred that justified violence.

The post-World War II period failed to remove the causes of war, nor did it achieve an effective genuine reconciliation between people. The world's situation was more that of "non-war" rather than genuine peace. If half of the continent of Europe fell under the domination of the communist dictatorship, a suffocation of their historical memory and the roots of their culture came about. In order to counter this threat an arms race swallowed up resources needed for national economies and development. Scientific and technological progress was transformed into an instrument of war. In that persistent ideology of human power the philosophy of total war prevailed. And now with the threat of atomic war that could lead to the extinction of humanity because science used for military purposes has placed this instrument at the disposal of hatred strengthened by ideology. It has become the time to repudiate the concept of total war and the concept of class struggle must be called into question. Would this account John Paul II advanced is the timeline to better appreciate the events of 1989 and the role of conscience in bringing forth those events.

On Conscience and True Peace (nn. 19–23)

Section 19 opens with the judgment that due to a deep germination of consciences at the end of World War II many repudiated the logic of total war and rejected totalitarian ideology. Through the cooperation of the United States, the nations of free Europe made efforts to rebuild democratic societies with a respect for social justice. The grievances of the worker should no longer be a source for communist manipulation. Efforts were made to subject the market mechanisms to public control in order "to deliver work from the mere conditions of 'a commodity' and to guarantee its dignity." While recognizing and applauding the tremendous advances of the dignity of work in Europe, John Paul II also noted the social forces and ideological movements which emphasized national security, favored an increase in the power of the state, thereby risking the value of freedom and the value of the person. In addition, the generation of great affluence and the rise of the consumer society leads to another form of reductionism—a reduction of man to the sphere of economics and the satisfaction of material needs. It would be folly to think that Marxism could be

defeated on the level of productivity alone, that obtaining greater satisfaction of material human needs would be sufficient for the liberation of the human person. The remarks by Jósef Tischner about the reason people turned against socialism in Poland are a reminder of the priority of spirit over matter. So the awakening of conscience after World War II turned out to be somewhat weak and precarious for the reasons that the Communist bloc made every effort to stifle and suppress it and the block of free nations more often diverted from the claims of conscience because of national security and the rise of consumerism. In the Third World most countries were unable to rise to the occasion of building a democratic society and prosperous economy on the basis of their newfound freedom from colonial rule. John Paul II considers one of the great achievements of humanity after World War II was the deepening respect for human rights embodied in a number of international documents to affirm the rights of individuals and the rights of nations. We must mention the work of Jacques Maritain in the drafting of the first international United Nations charter of human rights. The discrepancy between the proclamation of rights and the policies and practices of most nation-states is one of the great tensions and signs of the times that John Paul II picks up in *Redemptor Hominis*, as well as in his many speeches at the United Nations. And still the imbalance of policies for the aid for development, he says, has not always been positive and we are still without effective means of resolution of international conflicts. On this note of hope, realistic, however, about the continuing challenges to the awakening of conscience in social and political life, John Paul II ends chapter 2.

Chapter 3 is entitled "The Year 1989." John Paul II considers 1989 to be the culminating period of the new movement to defend and promote the dignity of the person and human rights. This is the revolution of conscience. A decisive contribution was made by the Church and its commitment to defend and promote human rights and to discover political solutions more respectful of the dignity of the person. This happened in central Europe, but also in some countries of Latin America, Africa, and Asia. The violation of the rights of workers weighed heavily in the fall of oppressive regimes. It was particularly striking that there was a crisis in the socialist system which claim to express the rule of the working class that led to the rise of solidarity, protest, and a transformation of the political system. A sign of conscience at work was the fact that the means of resistance were peaceful protests that made use only of the weapons of truth and justice. Unlike the Marxist who sought to promote the resolution of conflicts by violent confrontation, the Solidarity movement in Poland insisteds on "negotiation, dialogue, and witness to truth, appealing to the conscience of the adversary and seeking to reawaken in him a sense of shared human dignity" (*Centesimus Annus*, n. 23). John Paul II considers it remarkable that the Yalta agreement was not overturned by another war but by a nonviolent commitment of people who found the most effective way of bearing witness to truth. It was

a revolution of the spirit and he thanks God to sustain people's hearts amid difficult trials. It is a lesson for people to learn to fight for justice without violence.

On Conscience and True Freedom (nn. 26–29)

In the next two uses of the term conscience John Paul II develops the sweep of the term as it arises out of the revolution of 1989 in the initiatives to protect the rights of workers to the larger question posed in section 26 of the true liberation of the person and the meaning and dignity of work. In section 29 the deepest level of conscience is to be discovered in the vocation of the human person to seek God, to know him, and to live in accord with that knowledge.

The events of 1989 "have worldwide importance because they have positive and negative consequences which concern the whole human family." There is a providential dimension to the events precisely because they arose from the awakening of conscience in many persons throughout Central and Eastern Europe and such actions so deeply rooted in personal freedom, were not "mechanistic or fatalistic in character" but were examples of human freedom cooperating "with the merciful plan of God who acts within history" (n. 26). Providence is greater than force and violence. The Church, in its encounter with the worker's movement, stirred the consciences of many of the workers and provided an alternative to the materialistic and reductive theories of the dominant Marxist power. Thus, in response to the crisis of Marxism "the natural dictates of the consciences of workers have re-emerged in a demand for justice and a recognition of the dignity of work" (n. 26). But the precepts of the natural dictates of conscience extend beyond work to the integral flourshing of the person. It led to a comprehensive consideration of and demand for "the liberation of the human person and for the affirmation of human rights" (n. 26). This movement drew upon Catholic social doctrine, post war declarations of human rights and it found a ready echo and response in many countries and regions of the world.

The revolution of conscience is a comprehensive one not only its global repercussions but also because of the integral humanism that must undergird the full account of human rights. If indeed "development must not be understood solely in economic terms, but in a way that is fully human" (n. 29), then all human workers and all human beings must be brought within the concern for the dignity of the person and for effort of their behalf for human development. At the center of this concern and this development must be especially the "capacity to respond to his personal vocation, and thus to God's call" (n. 29). Using the great encyclical of his predecessor Pope Paul VI, On the Development of Peoples, he draws out the core truth of the revolution of conscience: "The apex of development is the exercise of the right and duty to seek God, to know him and to live in accordance with that knowledge" (n. 29). This truth stands in

complete opposition to Marxism with its totalitarian attempts to use force and impose a rigid and oppressive ideology to compel the human person to submit without regard for the understanding and freedom of its citizens. The oppression of conscience and the principle of state control and coercion of the person's moral freedom "must be overturned and total recognition must be given to *the rights of the human conscience*, which is bound only to the truth, both natural and revealed" (n. 29). In this section John Paul II states what is a fundamental principle of his social and political philosophy: "The recognition of these rights represents the primary foundation of every authentically free political order" (n. 29). Freedom of conscience must become more deeply understood and affirmed, in law as well as philosophy, because totalitarian and authoritarian forms of government continue to hold sway in many places and in other regions forms of religious fundamentalism oppress the citizens of other faiths by denying them the full exercise of their civil and religious rights. And even in the free countries in the west the promotion of purely utilitarian values and a hedonistic measure of the good make it difficult to "recognize and respect the hierarchy of the true values of human existence" (n. 29). The false claims of "neutrality" in public sphere lead to an increasing limitation of the voice and the actions of the citizens of faith.

On Conscience and the Culture of Social-Political Renewal (nn. 52–59)

The last two uses of the term conscience establish some critical ideas needed for the principles of the revolution of conscience to reach a more durable, widespread and global influence for social-political renewal. War as a means to resolve conflict remains the most vexing problem. War, a scourge on mankind from time immemorial, became a means of ideology and hate, a total war against the person. In the 20th century all the pontiffs have made efforts to bring reconciliation to the nations. In our day John Paul II appealed to the revolution of conscience and promoted its global appreciation. The first step in this direction must be the abandonment of the philosophy of total war derived from hypernationalism, Machiavellian reasons of state, and ideologies of hatred and contempt for the human person. In addition, the nations must understand the plea of Pope Paul VI that development is another name for peace. The rich nations must deepen their awareness of responsibility in solidarity for the less developed nations and assume greater responsibility. But he says, "As there is a collective responsibility for avoiding war, so too there is a collective responsibility for promoting development" (n. 52). And in light of the universal destination of goods, and an analogical common good for all nations, "there is a similar need for adequate interventions on the international level" (n. 52). For any of

these steps to gain traction and adherence "a great effort must be made to enhance mutual understanding and knowledge, and to increase the sensitivity of consciences" (n. 52). Renewal is at the core a cultural matter, and the deepest strata of culture is that of conscience. We are reminded of John Paul II's first encyclical and his call for the priority of the person over things, the priority of spirit over matter, and the priority of ethics over technology.[18]

Finally, to complete his treatment of conscience in the light of the events of 1989, John Paul II reminds the reader that conscience as classically considered by Thomas Aquinas has a "practical and as it were experiential dimension" because it is "found at the crossroads where Christian life and conscience come into contact with the real world" (n. 59). It is not a teaching of empty wish or a dreamy idealism. This fruitfulness of this teaching may be found and verified in the "efforts of individuals, families, people involved in cultural and social life, as well as politicians and statesmen to give it a concrete form and application in history" (n. 52). Conscience draws upon both the natural light of reason and supernatural inspiration and infusion of supernational virtues and gifts. We must not neglect the gift of grace in the events of 1989 and in our hope for the future. Needed most of all for political renewal is the order of grace: "[…] in order that the demands of justice may be met, and attempts to achieve this goal may succeed, what is needed is *the gift of grace*, *a gift* which comes from God. Grace, in cooperation with human freedom, constitutes that mysterious presence of God in history which is Providence" (n. 59, italies original). The challenges of renewal of social and political life fall upon the laity who combine newness of life derived from baptism and their character of secularity, being responsible for temporal affairs. The Church becomes the Mother of the revolution of conscience through the sacraments and the catechetical formation of the laity. Thus John Paul II stresses the need for the renewal of grace:

> The newness which is experienced in following Christ demands to be communicated to other people in their concrete difficulties, struggles, problems and challenges, so that these can then be illuminated and made more human in the light of faith. Faith not only helps people to find solutions; it makes even situations of suffering humanly bearable, so that in these situations people will not become lost or forget their dignity and vocation. (n. 59)

[18] John Hittinger, "The Springs of Religious Freedom: Conscience and the Search for Truth," *Journal of Disciplinary Studies* 29, no. 1/2 (2017): 4–24.

Conclusion
Four Rings of Freedom of Conscience and Religion

John Paul II's uses of the term conscience in *Centesimus Annus* builds a coherent and compelling account of the revolution of conscience in the events of 1989; it establishes lessons that must be applied to social and political life today. Although the uses of the term conscience are scattered throughout the text and may appear unsystematic, I think that we can discern a pattern to his teaching on conscience in social and political affairs. We discern four levels, or rings of freedom of conscience: the political-juridical, the cultural or educational, the social-religious, and the personal-religious circles for the flourishing of conscience.

The outer circle—the political-juridical zone—requires a public commitment and constitutional protection for freedom of conscience and religion. Within the framework of the common good, a wide protection must be afforded to freedom of conscience. That is, the state does not take responsibility for the consciences of others; it does not coerce belief or behavior based upon ideological or religious truth. This zone of freedom is consistent with the dignity of the person and the notion of a free citizen. The truths of morality and religion should elicit a response of freedom based upon understanding and inner persuasion. This right was neglected and suppressed by the totalitarian regimes. In the West, there are some who seek to relativize religious and moral truth in order to protect freedom of conscience. But the zone of religious freedom is not simply prizing an ability to simply opt out or to be indifferent to the truths of morality and religion. That is why a second circle of religious freedom comes into play—the educational and cultural.

Religion requires a search for God, and the formation of conscience. The person needs educational opportunities to learn faith, to seek understanding, and to have the freedom to pursue and affirm, or forswear, a given belief. The attempt for a state ideology to fill this zone with dogmatic and coercive teaching is wrong and counterproductive.

The third level or circle of freedom of conscience requires the freedom for association of the Church and other religious groups. The religious beliefs must be allowed social organization and social expression. The dictates of conscience must be embodied in social life and through various free associations to pursue the good.

The inner core of the freedom of conscience must be that of the individual person. As John Paul II stated in his encyclical, each person stands before God and assumes responsibility for the good or evil of their own deeds. In the sphere

of personal conscience there arises the movement towards repentance and conversion, but also the sphere of betrayal and degradation.

Giacomo Cardinal Biffi, in an essay "The Action of the Holy Spirit in the Church and in the World," wisely notes that "a human being's radical disintegration starts in the conscience when it claims to set itself up as an interior tribunal liberated from any objective norm of behavior."[19] In *Veritatis Splendor* John Paul II describes conscience as the "sanctuary of God" in the human person. In 1983, Pope John Paul II said, "Moral conscience does not close man within an insurmountable and impenetrable solitude, but opens him to the call, to the voice of God. In this, and not in anything else, lies the entire mystery and the dignity of the moral conscience: in being the place, the sacred place where God speaks to man" (General Audience, 17 August 1983). He repeats this statement in ehe encyclical *Veritatis Splendor*. Conscience is not so much a "process of moral reasoning" or a moral syllogism or self-reflection, but primarily a "dialogue of man with God." The protection of religious freedom, or the right to conscience, is a protection of the deepest "sanctuary" in the person, the aspect that defines the person as a person, not as a creator of value, but as the one capable of responding to God. He reminds us that "St. Bonaventure teaches that 'conscience is like God's herald and messenger; it does not command things on its own authority, but commands them as coming from God's authority, like a herald when he proclaims the edict of the king. This is why conscience has binding force'" (*Veritatis Splendor*, n. 58). We listen and we receive something in this sanctuary. In order to protect this sanctuary we need the action of the Church, the opportunities for educational formation and cultural expression as well as the protection of the law.

The revolution of conscience begins within the innermost circle or sphere of personal conscience and radiates outward through associations, culture, and the political order itself. We are in debt to Pope John Paul II for contributing to the revolution of conscience in Poland and worldwide and for providing this compelling account of the events of 1989.

Bibliography

Biffi, Giacomo. "The Action of the Holy Spirit in the Church and in the World." In *John Paul II: A Panorama of His Teachings*, 18–47. New York: New York City Press, 1989.

Conley, John J. 1999. "Anatomy of Conscience: A Reading of *Veritatis Splendor*." In *Prophecy and Diplomacy: The Moral Doctrine of John Paul II*, edited by John J. and Joseph W. Koterski Conley. New York: Fordam University Press.

[19] Giacomo Biffi, "The Action of the Holy Spirit in the Church and in the World," in *John Paul II: A Panorama of his teachings* (New York: New York City Press, 1989), 42.

Dupuy, André (ed.). *Pope John Paul II and the Challenges of Papal Diplomacy: Anthology, 1978–2003*. Vatican City & New York: Catholic Church. Pontificia Commissio Iustitia et Pax., and Path to Peace Foundation, 2004.

John Paul II. 1979. *Address to the XXXIV General Assembly of the United Nations*. Boston, MA: St. Paul Editions.

John Paul II. 1980. *The Freedom of Conscience and of Religion*. Boston, M.A.: St. Paul Editions.

John Paul II. 1998. *Respect for Human Rights: The Secret of True Peace*. In *USCC*, edited by World Day of Peace. Washington, D.C.: USCC.

John Paul II and Catholic Church. Pontificia commissio Iustitia et Pax. 1981. *Religious Freedom and the Helsinki Final Act: Supplement to No. 3 of the Series: The Social Teaching of John Paul II*. Vatican City: Pontifical commission "Iustitia et Pax."

John Paul II. Encyclical Letter *Centesimus Annus*, 1991.

John Paul II. "Confronting the Challenges of Our Time," General Audience, May 1, 1991. *L'Osservatore Romano*, May 6, 1991. Reprinted as "'As a Civilization of Solidarity and Love': An Invitation to *Centesimus Annus*" In *A New Worldly Order*, 23–28

Hittinger, John P. "The Springs of Religious Freedom: Conscience and the Search for Truth." *Journal of Disciplinary Studies* 29, no. 1/2 (2017): 4–24.

Hittinger, John P. *Liberty, Wisdom and Grace: Thomism and Modern Democratic Theory*. Lanham, MD.: Lexington Press, 2002.

Hittinger John P., "On the Right of Conscience." In *Art and Reality*. Edited by Andrzej Maryniarczyk et al., 423–434. Lublin: Polskie Towarzystwo Tomasza z Akwinu, 2014.

Hittinger, John P. "Gaudium et spes and the Importance of Political Philosophy." *Pontifical College Josephinum Journal of Theology* 20.2 (Aquinas and the Philosophical Training of Theologians): 279–306. 2015 (2013).

Hittinger, John P. "'Private Ownership, Common Use,' Aquinas and Maritain on Aristotle's Politics." In *Property as a Condition of Liberty* (Das Eigentum Als Eine Bedingung Der Freiheit). Edited by Anton Rauscher, 22, 91–107. Berlin: Duncker & Humboldt, 2013.

Hittinger, John P., "The Roots of the Doctrine of Religious Toleration." In *Toleranz und Menschenwürde/Tolerance and Human Dignity*. Edited by Anton Rauscher, 21, 105–129. Munich: Soziale Orientierung, 2011.

Hittinger, John P. "Responsibility of the University in the Modern World." In *Responsibility: Recognition and Limits*. Edited by Anton Rauscher, 20, 349–368. Munich: Soziale Orientierung, 2010.

Hittinger, John P. "On Citizen and Conscience: Political Participation in *Gaudium et Spes*." In *Nationale Und Kulturelle Identitat Im Zeitalter Der Globalisierung*. Edited by Anton Rauscher. Munich: Soziale Orientierung, 2006.

Hittinger, John P. "The Cooperation of Church and State: Maritain's Argument from the Unity of the Person." In *Reassessing the Liberal State: Reading Maritain's Man and the State*. Edited by John P. Hittinger and Timothy Fuller. Washington, D.C.: Catholic University of America, 2001.

Maritain, Jacques. *Person and the Common Good*. Translated by John J. Fitzgerald. Notre Dame, IN: Notre Dame Press, 1966. Weigel, George. *Witness to Hope: The Biography of Pope John Paul II*. New York Harper Perennial, 1999.

Weigel, George. *The End and the Beginning: Pope John Paul II—The Victory of Freedom, the Last Years, the Legacy*. Doubleday, 2010.

Weigel, George. *The Final Revolution: The Resistance Church and the Collapse of Communism*. Oxford University Press 1992.

Weigel, George. *The Courage to Be Catholic: Crisis, Reform, and the Future of the Church*. Basic Books, 2002.

Wyszyński, Stefan. *All You Who Labor: Work and Sanctification of Daily Life*. Manchester, NH: Sophia Press, 1995. Translation of *Duch Pracy Ludzkiej* (1946).
Tischner, Josef. "Etyka solidarności." In *Thinking in Values, The Tischner Institute Journal of Philosophy: Solidarity*, no. 1 (2007): 37–41.
Tischner, Jósef. "A View from the Ruins." In *A New Worldly Order: John Paul II and Human Freedom*. Edited by George Weigel, 165–168. Washington, D.C.: Ethics and Public Policy Center, 1992.
Michnik, Adam. *Letters from Prison and Other Essays*. Berkeley: University of California Press, 1985.

John P. Hittinger

La révolution de la conscience dans Centesimus Annus

Résumé

L'article examine différentes façons d'appliquer le terme de « conscience » dans Centesimus Annus. En l'occurrence, il explique la notion de la « révolution de conscience ». L'omission du rôle de la conscience dans la politique et dans la pratique de vie ainsi que le manque de respect des droits de l'homme sont des raisons essentielles de la chute de l'Union soviétique. L'article analyse et démontre quatre différentes sphères de la liberté de conscience et de religion présentes dans Centesimus Annus.

Mots clés : conscience, révolution de 1989, Léon XIII, droits des ouvriers, communisme

John P. Hittinger

La rivoluzione della coscienza nella Centisimus Annus

Sommario

L'articolo esamina i diversi modi di usare il termine "coscienza" nella Centesimus Annus. In tal modo chiarisce il concetto di "rivoluzione della coscienza". L'omissione del ruolo della coscienza nella politica e nella prassi di vita nonché la mancanza di rispetto dei diritti umani sono le cause rilevanti della caduta dell'Unione Sovietica. L'articolo analizza e indica quattro diverse sfere della libertà di coscienza e di religione presenti nella Centesimus Annus.

Parole chiave: coscienza, rivoluzione del 1989, Leone XIII, diritti dei lavoratori, comunismo, solidarietà

Philosophy and Canon Law vol. 3 (2017), pp. 71–89

Krzysztof Wieczorek
University of Silesia in Katowice, Poland

The Ethics of Solidarity According to Józef Tischner

Abstract: At the brink of the decade of the great system breakthrough, which led to the fall of communism in Central Europe, Polish philosopher, theologian, and ethicist Józef Tischner published a series of essays that included the project of social ethics. It was a clear and concrete project, which was deliberately adjusted to the difficult times of hard political fight and conflict of values, addressed to all good people, regardless of their outlook and political affiliation. Tischner put emphasis, first and foremost, on pro-social values, such as solidarity, mutual support, respect toward people with contrary opinions, aiming at unity in society and harmony over divisions, based on the axiological foundation. The author of the text contemplates the question to what extent was Tischner's ethics of solidarity introduced in the practice of Polish social life directly after its announcement and to what extent its postulates remain timely and inspiring today, in an essentially new social and political situation.

Keywords: ethics, solidarity, phenomenological analysis, moral maturity, dialog

Till the last months of his life Józef Tischner[1] was a clever, competent, and engaged observer of the events happening on the Polish public life scene. Already at the beginning of his philosophical life, he made a deliberate decision to become a "narrow and obtuse philosopher of Sarmatians,"[2] and he remained faithful to this choice despite the fact he had all what was needed to pursue an international career. However, the affairs of his fatherland were closer and more important to him that any personal ambitions.

[1] Józef Tischner, a Polish philosopher and theologian, born in Stary Sącz on March 12th, 1931, died after a serious illness on June 28th, 2000.

[2] Józef Tischner, *Myślenie według wartości* (Kraków: Znak, 1982), 11.

It is safe to say that fortune was propitious for him, since he was allowed to live in an exceptionally interesting (however, not easy) moment in the history of Poland. As a child he survived war and the period of occupation; years spent in theological seminary and the beginning of his priestly service fell on the period of Stalinism in Poland, later he could witness how the society was building successive structures of "nation's spiritual self-defense." These were, among others: "small stabilization" during the time when Władysław Gomułka was in power, as well as "socialism with a human face," implemented in the epoch of Edward Gierek. Finally, the climax arrived: John Paul II's election to the papacy and the period of Solidarity. For a philosopher, whose passion was to follow spiritual changes taking place in a nation and a society, witnessing how in ultimate situations the "ethical substance of a nation" materializes in the matter of historical events,[3] was not only a significant intellectual challenge, but also enormous satisfaction.

It seems that in that time there was not another person in Poland that would be equally well prepared in that subject matter and equally determined to, literally overnight, approach an analysis of a rapidly changing social and political situation through applying phenomenology and hermeneutics of a historical process. Naturally, Tischner's analyses bear a stamp of some provisional character on them[4]; however, what constitutes a sensation is the fact that they were published in a close proximity to the described events. And these were events of a substantial gravity. Since, it is crucial to bear in mind that the successive scenes of the political order in Europe had always emerged from a sea of blood. This time, for the first time, it was supposed to be different: a radical change of the global distribution of political forces began and was happening before the eyes of the astounded world, almost without any violence, and these changes began in the early 1980s in Poland. To be a witness and participant of such a historical precedent is a real challenge.

Józef Tischner wrote that every revolutionary change begins with some idea and refers to some order of values.[5] The constituent feature of the ethos of Solidarity, which decided about the peaceful course of the transformation was the fact that it was based on the Gospel interpreted in a specific way—through the prism of John Paul II's teachings. Tischner recalled: "I was asking myself what

[3] See: Józef Tischner, *Etyka a historia*. Lectures, prep. Dobrosław Kot (Kraków: Instytut Myśli Józefa Tischnera, 2008), 133.

[4] "*The Ethics of Solidarity* was a book created on the spot"—Wojciech Bonowicz concludes (publisher's note, in: Józef Tischner, *Etyka solidarności i Homo sovieticus* (Kraków: Znak, 2001), 286) and adds: "Writing on the road did not serve well to the very text. In *The Ethics of Solidarity* it is possible to indicate, among astute and strongly resounding fragments, weaker chapters which contain superficial analyses and undeveloped ideas" (Wojciech Bonowicz, *Tischner* (Kraków: Znak. 2001), 332).

[5] Cf. Tischner, *Etyka solidarności* (Kraków: Znak, 1981), 57–61.

solidarity was. And I answered: 'Bear one another's burdens, and so fulfill the law of God.'"[6] These words from the Letter of St. Paul to the Galatians (Ga 6:2) he also recalled during his "undoubtedly most famous"[7] sermon delivered in the Wawel Cathedral on October 19, 1980.[8]

The public will to "fulfill God's law" connected hearts and minds of people who co-authored the ethical exemplars of the Solidarity movement—and it was yet another anomaly: representatives of radically different, so far antagonized groups—rank and file workers and intellectual elite, met and reached an agreement. As their ultimate priority they took avoiding confrontation (then the so-called power play) and aiming at a peaceful achievement of the political and system goals they set for themselves. The representatives of the party/state apparatus, which in the past had not hesitated to use force to quash social revolts (1956, 1970, and 1976) this time (1980) resorted exclusively to several (unsuccessful) attempts of provocation, and subsequently began negotiations with the Inter-Enterprise Strike Committee in the Gdańsk Shipyard (and several other places, among others in Szczecin and Jastrzębie), which were concluded by entering into an agreement, which meant far-reaching concession of the apparatus and de facto beginning of the process of system transformation.

The period of yet another, startling test of the moral maturity of the entire nation was the martial law, introduced on December 13, 1981, by the then minister of national defense and the chair of the state defense committee, general Wojciech Jaruzelski. With a different moral attitude than the one which was a fruit of the popularization of the ethics of solidarity in Poland, such a legislatively legitimated act of lawlessness could have triggered a spontaneous reaction of hard, decisive resistance on a much wider scale that it really did (in the Wujek Coal Mine in Katowice, in the School for Fire Service Officers in the Warsaw district of Żoliborz, and in several different places). Such a scenario would be really menacing for the society and at the same time quite probable when we take into consideration the exemplars of the national independence tradition (starting from the Bar Confederation 1768–1772, through the Kościuszko Uprising in 1794 to the Warsaw Uprising of 1944). The fact that it did not happen we owe to—at least to some extent—a high ethical awareness of

[6] As cited in: Bonowicz, *Tischner*, 329.

[7] Ibid.

[8] "Let us look at the burden we are carrying. This old and yet new word 'solidarity,' what does it mean? To what does it call us? What memories does it recall? If I were to define the word 'solidarity' more closely, then perhaps I should turn to the Gospels and look for its origin there. The meaning of this word is defined by Christ, 'Bear one another's burdens: and so you shall fulfill the law of God.' Tischner, *Solidarity of Consciences*. Sermon delivered in the Wawel Cathedral on October 19, 1980, in Tischner, *The Ethics of Solidarity*, trans. Anna Fraś (Kraków: Znak, 2005), 37, www.tischner.org.pl/Content/Images/tischner_3_ethics.pdf (accessed 30.03.2017).

the nation, developed at the beginning of the 1980s, and its active in the public life, and at the same time morally mature, element. A considerable role in this work was played by the pastoral and journalistic activity of Józef Tischner, who in that period of time used to "celebrate solidarity and patriotic Masses (among others on May 3rd in the Wawel Cathedral), consecrate standards, deliver lectures, write numerous articles for newspapers and magazines, and became the informal chaplain of Solidarity,"[9] but, first and foremost, published, in the period from October 1980 till April 1981, subsequent installments of the *Ethics of Solidarity* in *Tygodnik Powszechny*, a weekly published in Kraków.

We lack research tools that would allow us to explicitly scientifically evaluate what historical role had the outlook, opinions, and postulates promulgated by Tischner and how extensive was their influence on the formation of Poles' attitudes towards the momentous, and at the same time dangerous, events that were happening on the political scene. Tischner himself claimed to be only a diagnostician, not a therapist. When interviewed some years later by Anna Karoń, he said: "My texts […] did not want to design reality but only to describe it. Their goal was not to show what should be, they were supposed to describe what is […] it was an analysis of an ethical substance of self-awareness of man, without going into the social and economic context."[10] However, the testimony of contemporary people and historical memory explicitly suggest that, contrary to this—overly modest—self-declaration, the real reception of Tischner's teachings was completely different. Wojciech Bonowicz remarks: "It was not Tischner who suggested that the Solidarity unionists name their union with that word and simultaneously he was most capable of showing the importance of the choice they made."[11] However, in a different place he states that despite the fact that "Tischner wrote a book, which was to some degree persuasive, aimed at not only the people of Solidarity, but also at those in power, which attempted to oblige both parties to engage in a dialog [this] persuasion to a large degree fell on stony ground, the eventual proof of which was the introduction of the martial law."[12]

We do not really have to agree with this type of opinion; the more so because we will never get to know the real motivation behind the introduction of the martial law by the state authorities. By relying on the *in dubio pro reo* principle we cannot rule out that general Jaruzelski acted based upon a subjective conviction that in that way he saves Poland from a more substantial evil—for instance from the prospect of a military intervention of the Soviet army. If we adopt such an assumption then we have to presume that also on Jaruzelski's

[9] Bonowicz, *Tischner*, 336.

[10] Anna Karoń-Ostrowska, Józef Tischner, *Spotkanie. Z ks. Józefem Tischnerem rozmawia Anna Karoń-Ostrowska* (Kraków: Znak, 2008), 99.

[11] Bonowicz, Publisher's note, 286.

[12] Bonowicz, *Tischner*, 330.

side—no matter how strange it would sound—we faced a *sui generis* attempt of preserving the "ethical substance" of the nation. Regardless of such or different attempts of interpreting the historical events and motives behind the state authorities' decision, what remains a fact is that their actions conducted behind the facade of the martial law resulted in a relatively small number of fatalities. On the other hand, we must not forget that the scale of unnecessary suffering caused by interning approximately ten thousand women and men, as well as different, various forms of persecution, both mental and economic, was significant, and the long-term geopolitical effects of freezing the process of system transformation had a very unfavorable impact on the international and internal situation of Poland. In spite of all, we should be capable of appreciating the fact that the same authorities, the decisions of which in December 1981 had such a negative impact on the fate of Poland, brought itself to the practice of dialog and negotiations, which eventually led to the 1989 transformations. It is difficult to believe that it would be possible to realize such a scenario without a deep moral transformation on the nationwide scale. Common sense tells us to admit that one of the pillars of that transformation was a strong, clear, and explicit voice of Józef Tischner, which reached all Poles and was also widely disseminated abroad.[13]

The text of *The Ethics of Solidarity*, apart from a set of more or less detailed problems, carried in itself a fundamentally crucial moral message. It was based on a completely different vision of society than the one on which the official ideology of a Soviet state was founded. Since in such a society—according to the Marxist historical materialism—a binding dogma was the one connected with a class conflict, which implied that every society (excluding the future, communist one) is divided into antagonistic classes, the representatives of which are hostile towards one another. Therefore, there is no place for a general community or solidarity above the classes. Meanwhile, Tischner clearly states:

> Dialogue means that people have come out from their undergrounds, have come closer to each other, have started exchanging words. The beginning of dialogue, emerging from a hiding place, is already a significant event. One needs to reach out, cross the threshold, offer one's hand, find a common place for conversation. This place will not be a hiding place anymore, in which man remains alone with his fear, but a place of meeting, the beginning of some community, perhaps the foundation for a home.[14]

[13] *The Ethics of Solidarity* was being published in *Tygodnik Powszechny* from October 1980 till April 1981. As a separate book, it was published in August 1981 by Społeczny Instytut Wydawniczy Znak. […] That publication became the basis for a great many underground literature editions (since December 1981), as well as translations to foreign languages: Italian (1981), German (1982), Flemish (1982), French (1983), Spanish (1983), Swedish (1984), English (1984), Czech (1985), Slovakian (1998). Bonowicz, Publisher's note, 286–87.

[14] Tischner, *The Ethics of Solidarity*, 41, www.tischner.org.pl/Content/Images/tischner_3_ethics.pdf (accessed 30.03.2017).

And even more explicitly:

> A solidarity born of the pages and the spirit of the Gospels does not need an enemy or an opponent to consolidate and develop. It is directed toward everyone and not against anyone. […] We want to be a unified nation, but not unified by fear. We want to be united by our simplest human obligations.[15]

We should bear in mind that although the calling to unifying solidarity was aimed at all people, not all people were ecstatic about it. There were and there still are people who had the Marxist model of antagonistic society deep in their minds and they cannot think in a different way than in the category of a radical division: we and our opponents. These people carry an insurmountable fear, distrust, and suspicion, and they infect others with their disrelish, constructing new walls and digging new hideouts. A peculiar type of impossibility to detach themselves from the sad and self-destructive heritage—not only the Marxism borrowed from a foreign culture, but also own, native, socially hardly less destructive Sarmatism.

Stanisław Lem, already at the brink of 1990, remarked: "Fellow countrymen did not cease to be themselves and after the dear to my heart decease of the communist party they are on the outs with one another and have condemnable quarrels," and on Palm Sunday 1991 he wrote:

> Our nation, I state with full seriousness, is to such an extent ugly, that it allows a herd of sheep to lead them, however, they […] should thank God for what we got from the Providence […]. Jarosław Kaczyński tried to encourage the nation to overthrow the lower house of the Polish Parliament, President is, at a moment like that, also able to slam his fist down on the table with a thump. I doubt it is possible, however, this passion for destruction and destabilization suggests that 'We Want God' is not true, it is rather we want Satan and his children.[16]

Przemysław Czapliński, describing the situation in the Polish public life space of the early 1990s, observes a strong impetus towards restoration and cementing of the well known in the Polish history, both then and now bringing not much good to us, idea of Sarmatism:

> In the dispute of modernization with tradition […] together with the war over the past such a conflict reappeared. […] Traditional culture—old Polish, antimodern—has in such a depiction a great many trumps: as a tremendous

[15] Ibid., 38.

[16] Letters of Stanisław Lem to Zofia and Władysław Bartoszewski, in Władysław Bartoszewski, Michał Komar, *Prawda leży tam, gdzie leży* (Warszawa: Grupa Wydawnicza PWN, 2016), 36–37.

> national simulacrum includes a clear, approved by the history project *me*; contrary to the deregulation of culture and uncertainty, which the accelerating history carries, the Sarmatism makes it possible to find ones roots, reaching far to the past; it is a donor of explicit rules of achieving respect; positions man in the world of transcendental certainty, giving God and making him a being, which manifests itself in the community of ceremony; makes it possible to feel pride connected with the affiliation to a community.[17]

All these features pertinently emphasized and described by an investigator in the Polish culture, put on an illusory show of stability. They pinpoint reasons, which are supposed to persuade us to develop in ourselves a feeling of national pride and be delighted with a conviction that we, the inheritors of the legendary tribe of Sarmatians, are worth more than other neighboring nations and more than those among us who were seduced by the pernicious charms of modernity. In reality, however, these are not symptoms which would unambiguously classify the proponents of the reinstatement of the sarmatian tradition as "people from hideouts," whom Józef Tischner subjected to a critical analysis in his essay which bears such a title. The author of the essay remarks:

> Sometimes something bad happens to the human hope. […] Man, instead of following his own way, feels obliged to seek somewhere in the space a hideout for himself. In this hideout he looks for shelter against the world and against other people. The future does not promise man anything big, the memory puts forward, in front of his eyes, the defeats he suffered, the space does not invite to any movement. […] Man in the hideout believes that he carries some treasury in himself. His tries to hide this treasury somewhere deep. He himself stands next to the hiding place and keeps vigil. The place he stands in, he surrounds with a wall of fear. He becomes suspicious about all people who try to near it, he believes they come to rob him and destroy.[18]

The more such a great and undeserved gift of the Providence for Poland and the world was that short period of time at the decline of the epoch of the so called real socialism, when we could leave our hideouts, overcome divisions and unify in the building of an authentic, however, anything but unanimous, community. That moment, so exceptionally prolific for the latest history of Poland and Central Europe, was noticed and subjected to analysis in *The Ethics of Solidarity* by Józef Tischner.

Aiming at conducting a short evaluation of this work and its reception, let us first look at its structure. The goal of the author—as he himself remarked—

---

[17] Czapliński, *Resztki nowoczesności* (Kraków: Wydawnictwo Literackie, 2011), 105–106.

[18] Józef Tischner, "Ludzie z kryjówek," Kraków: Znak, 1978 nr 283; reprint: *Myślenie według wartości* (Kraków: Znak, 1982), 415–16.

was to "clear several elementary concepts, and at the same time show what they mean in a new context. […] I wanted to describe it by employing my phenomenological method."[19] However, the result of this work surpassed the author's expectations. Wojciech Bonowicz claims:

> The Ethics of Solidarity by Rev. J. Tischner is an absolutely exceptional text in the Polish philosophical literature. Not a single different composition, different work or short work, written by a Polish philosopher, has ever achieved such an enormous social response. *The Ethics of Solidarity* managed to find readers in all social groups—readers characterized by various levels of education, representing various outlook on life.[20]

Why did it happen? In the discussed text, through a layer of more or less successful analyses of subsequent social life phenomena (as, e.g., work, ruling, managing, and upbringing) a deeper bottom becomes noticeable: a promise of fulfilling dreams that had been accruing for a longer period of time, however, so far believed to be indestructible and impossible to realize. These were dreams about regaining the feeling of dignity, self-respect and an internal harmony between the requirements of conscience and the everyday life choices. Tischner wrote: "What we are experiencing is not only a social or economic event, but, above all, an ethical one. The matter impinges on human dignity. The dignity of man is founded on his conscience. The deepest solidarity is the solidarity of consciences."[21] In a different section: "The foundation and source of solidarity is what everyone is truly concerned with in life."[22]

This common movement of waking conscience and regaining one's face, which Rev. Tischner so suggestively exposed and described, constitutes a radical contrast to the then lifestyle of Polish people throughout the entire period of the communists' rule—life in a permanent self-hypocrisy. Long years of existing in a quite difficult survival school, which was the everyday reality of real socialism, trained the citizens of people's democracy countries in a difficult, however, useful art of self-persuasion—leading themselves to believe that in the situation of rationed freedom it is important to create for personal use "rationed conscience," capable of a silent consent to cunctatious activities, sometimes to humiliating compromises, and sometimes to place own particular matters above moral and decency principles. Many people could have believed that owing to this "conscience gymnastics" they found a satisfactory *modus vivendi*, in which they feel fulfilled. However, the illusiveness and falsehood of that attitude was unveiled when a new language appeared in the cultural communication. It was

[19] Karoń-Ostrowska, Tischner, *Spotkanie*, 99.
[20] Bonowicz, Publisher's note, 285.
[21] Tischner, *The Ethics of Solidarity*, 38.
[22] Ibid.

employed by poets, prosaist, and philosophers, who used to publish in the so called underground and the one who did that in the loudest and most entrancing way was John Paul II in his words addressed to his compatriots during his memorable, first pilgrimage to Poland in June 1979. It was not possible to be indifferent to that voice. Tischner wrote:

> When solidarity is born, this awareness is awakened, then speech and word appear—and at that time what was hidden also comes out into the open. […] People are casting aside their masks, they are coming out of their undergrounds, they are showing their true faces. Out from under the dust and out of the oblivion their consciences are coming to light. Today we are such as we really are. […] It makes no sense to play someone else's role. Everyone wants to be called by his own name.[23]

In twenty short merely a few page-long sketches that *The Ethics of Solidarity* cycle consists of, Józef Tischner included a surprisingly coherent and consistent program of a mutual, national fight against the most important, according to the author of the cycle, social pathologies characteristic for the decadent period of socialism. The construction of the deduction irresistibly, and maybe also not accidentally, suggests the Great Novena, preceding the celebrations of the millennium of Poland's Baptism, announced and led by Primate of Poland Stefan Wyszyński in the years 1957–1966. Almost exactly 25 years before the Polish "era of Solidarity" the spiritual leader of the Polish nation, referred to as the Primate of the Century, also arrived at a conclusion that a viable opportunity to improve the quality of life of social masses is not a gullible realization of socialist development postulates, but a ruthless fight against national defects connected with a radical moral revival. The path to it, according to Primate Wyszyński, was to be a collective reformation and consolidation of all moral powers of the population around the act of trusting Poland to the Blessed Virgin Mary.[24] An inter-

[23] Ibid., 37–38.

[24] Maria Okońska explains: "The program of the Great Novena consisted in introducing the particular vows of the Great National Vows into life. […] Every year of the Great Novena commenced on a Sunday after May 3 with a renewal of [Luminous Mount] Jasna Góra Vows in all Polish parishes. Regardless of that renewal, on every anniversary of taking the vows, namely on August 26, they were renewed very ceremoniously at Luminous Mount by the Primate of Poland and the episcopate. That custom is still practiced and even now August 26 is the day of renewal of Luminous Mount Great National Vows." Maria Okońska, *Wszystko postawił na Maryję* (Warszawa: OW ADAM, 2007), http://raport.jasnagora.pl/2015/10/wielka-nowenna-przed-miellenium-chrztu-polski-1957-1966/ (accessed 24.03.2017). The callings for the subsequent years of the Novena were: "Faithfulness to God, the Cross, the Gospel, the Church and her Shepherds," "Nation Faithful to the Grace"; "Life is the Light of People"; "Matrimony—Great Sacrament in the Church"; "Family Strong with God"; "Youth Faithful to Christ"; "New Man in Christ"; "Protect the Entire Nation" (cf. ibid.).

esting research problem, unfortunately exceeding the framework of this sketch, would be to compare the list of "deadly sins" of the Polish society, included in the program of the Great Novena and the Jasna Góra [Luminous Mount] Vows, written in the years 1955–1956, with the one prepared in the years 1980–1981 by Józef Tischner.

Tischner's list is undoubtedly broader, however, some of the items from the original list are duplicated (among others: disregarding Christian and native customs, neglecting the upbringing of children, hatred, violence, exploitation, selfishness, reluctance to share with others, indifference towards those suffering from hunger, those who are homeless and those who mourn[25]). The distribution of accents is also slightly different. First and foremost, Stefan Wyszyński puts the emphasis on the necessity to fight with particular human vices and weaknesses, such as alcoholism, licentiousness or lack of respect of work. Tischner indicates, first and foremost, towards these incorrectnesses, which we can ascribe to the influence of a "social sin" in such a meaning which John Paul II describes in *Reconciliatio et paenitentia*:

> The […] meaning of social sin refers to the relationships between the various human communities. These relationships are not always in accordance with the plan of God, who intends that there be justice in the world and freedom and peace between individuals, groups and peoples. Thus the class struggle, whoever the person who leads it or on occasion seeks to give it a theoretical justification, is a social evil. Likewise obstinate confrontation between blocs of nations, between one nation and another, between different groups within the same nation all this too is a social evil.[26]

Therefore, it seems that both great spiritual guides of the Polish nation had a different attitude towards the issue of the renewal of the society. Wyszyński assumed that the system norms and the restrictions that stem from them can be gradually, evolutionarily modified under the *sine qua non* condition that the society in its masses will mature morally and by living every day in the spirit of the Gospel, will at the same time neutralize the unfavorable activities from the side of the artificially imposed and maintained, owing to a strong violence apparatus, domination of the communist ideology. Tischner, knowing that the program did not yield the predicted results, adopts different approaches: first we have to repair the sick system and the malfunctioning structures that paralyze the good will of the citizens and bring about wasting of the incommensurately enormous

[25] See the text of Jasna Góra Great Nation Vows, written by Cardinal Stefan Wyszyński: http://www.wyszynski.psur.pl/sluby.php (accessed 24.03.2017).

[26] John Paul II, *Reconciliatio et paenitentia*, pt 16, http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_02121984_reconciliatio-et-paenitentia.html (accessed 24.03.2017).

effort of the working people, only later—and at the best simultaneously—we can think about moral reformation and perfecting of particular people.

The formal structure of the particular installments of the cycle is subject to that assumption. Let us illustrate it with the example of the fourth chapter of *The Ethics of Solidarity*, dedicated to work. Part of the chapter is dedicated to revealing what is bad and what is improper in the described fragment of the social reality, the second part refers us to a positive vision as a desired objective of the reformatory aspirations. Let us, first and foremost, highlight what shortcoming the author notices with the reference to the phenomenon of work:

> Work that brings withering, sickness and death instead of life is sick work or simply ceases to be work. Work is sick or ceases to be work when the natural burden of work, the struggle of man with material, is multiplied by another man, a counterfeit coworker. In similar situations, it is usual to speak about the exploitation of man by another man.[27]

And little bit farther:

> Not only speech can be called "true," but also work. […] True speech is a speech true to things, a speech that really serves life and both grows out of communication and maintains it. […] In order to work and collaborate, people must 'be in the truth' for each other—no one is allowed to lie through work to one's neighbor, because then, work would be like mumbling. Work as a lie—this is exploitation. The beginning of the awareness of exploitation is like the pain felt after a lie.[28]

The period when these words were written down was when the political censorship was still restraining the freedom of public comments. In such a situation it was not possible to speak in a clearer way.[29] However, there was not a need like that, since the Polish reader of that epoch was perfectly trained in the art of reading "between the lines" and unassisted guessing of the content which the author included *implicite* in the form of hints and allusions. What Tischner really thought about the Polish work sickness and its system reasons, we can, without any effort, get to know by reading his different texts, which were either created later or circulated in copies, or also in the form of the unofficial underground versions.[30] However, for the readers of *Tygodnik Powszechny* it was already clear that the responsibility for the pathology of people's work predominantly rests upon, the officers of the political system, the leading principle

[27] Tischner, *The Ethics of Solidarity*, 45.

[28] Ibid., 46.

[29] Cf. Michał Głowiński, *Zła mowa* (Warszawa: Wielka Litera, 2016).

[30] See a broad selection of Tischner's texts on philosophy and work ethics in: Józef Tischner, *Polska jest Ojczyzną. W kręgu filozofii pracy* (Paris: Editions du Dialogue, 1985).

of which was to bring under control all spheres of public life—also the system of work organization—to *stricte* political objectives. It caused more and more frequent situations when decision of a really enormous range, connected with planning large investments and engagement of a great work force, were used exclusively or almost exclusively for objectives related to propaganda, defying the fundamental principles of economics, and also without taking into consideration the norms of the work ethos. Additionally, it is important to take into consideration a great multitude of people, who—employed on state positions and remunerated from the country budget—carried out work which was either simulated, which did not serve anyone, or anything apart from strengthening, to a bigger extent, the more and more questionable prestige of state and party offices and institutions, or even did harm to people by executing disgusting tasks of paid informants, implementers of secretly commissioned acts of violence, etc. It all was a commonly known aspect of the way the system functioned, a system which still remained in the Polish People's Republic and to which an ever growing number of Poles wanted to put an end.

Tischner faces these dreams about a radical change, which seemed to be unfeasible and unrealizable after so many years of unceasing triumphs of the unpopular authorities, after so many attempts of rebellion and reform of the system, with his seemingly modest analyses, however, in reality carrying a huge load of wisdom and hope. The formal construction of the subsequent installments of *The Ethics of Solidarity* cycle is similar and repeating. As we have already said it stems from a trivially easy, however, extremely expressive scheme, which consists in a contrast juxtaposition of two realities: the first—how it is and the second—how it should be. Let us refer once again to an example taken from the chapter on work. Tischner asks in the first place: how does our work look like? And he answers: it is the source of exploitation, prodigality, falsehood, and constraint. And he proceeds to a deliberation on what work should be like and answers:

> Work is a particular form of conversation. In an ordinary conversation, people exchange words with each other, that is, various sounds permeated with meaning. […] As a consequence of the exchange of meaningful sounds, words, an understanding is generated between people. Working people act in a similar way. The objects of their exchange, however, are not usually words (although that happens too), but the products of work which are similar in their constitution to words.[31]
>
> Each conversation conceals within itself some kind of wisdom. Work has a particular, *sui generis*, inner wisdom. This wisdom imposes demands on people, it defines for them suitable standards. Each person must know what he should do so that an organic whole grows out of fragmentary work.[32]

[31] Tischner, *The Ethics of Solidarity*, 44.
[32] Ibid., 45.

At the same time, the particular fragments of the collective portrait of the Polish social arena of the late 1970s and early 1980s are spanned by an important connecting element, without which the entire story would only be yet another utopia or even a literary fiction. This element is indication towards a mechanism, which enables a transfer between "is" and "should be." The significance of a short, however, a meaningful Tischner's work is explicit and in its force persuasively strongly resembles a fragment of the Book of Genesis as interpreted by John Steinbeck. The fragment in question is verse 7 in the 4th chapter of the Book of Genesis in which God while talking to Cain, suggests the possibility of man's dominion over sin: "If thou doest well, shalt thou not be accepted? And if thou doest not well, sin lieth at the door. And unto thee shall be his desire, and thou shalt rule over him." In his story entitled *East of Eden* Steinbeck displays the size of man's freedom, man whom God created capable of dominating over sin using his will.[33] Similarly, Tischner, like a refrain, repeats chapter after chapter: we are deeply embedded in the structures of sin. These were created partially because of the defects of an irrational system, subordination to a false ideology of state and its people management, and partially due to our own, personal vices, weaknesses, and bad habits. However, we are not slaves of a faulty system; nor are we slaves of our own sins. In both cases we are capable of exercising control. The question that remains is how to do it. It is exactly in this point, as it seems, that the real significance of Tischner's project is rooted.

Since the fundamental idea of having control over the sources of evil and "striking out to moral independence"[34] refers to the, defined from the very first words of the cycle, solidarity of conscience.[35] It is how Wiesław Bożejewicz described this problem:

[33] In the 24th chapter of the story an old Chinese—Lee tells a story about the result of his long-lasting studies on the appropriate interpretation of God's conversation with Cain in the Book of Genesis, and says: "The King James version says this—it is when Jehovah has asked Cain why he is angry. Jehovah says, 'If thou doest well, shalt thou not be accepted? And if thou doest not well, sin lieth at the door. And unto thee shall be his desire, and *thou shalt* rule over him.' It was the 'thou shalt' that struck me, because it was a promise that Cain would conquer sin. […] Then I got a copy of the American Standard Bible. […] And it was different in this passage. It says, '*Do thou* rule over him.' […] This is not a promise, it is an order. And I began to stew about it. I wondered what the original word of the original writer had been that these very different translations could be make […] it seemed to me that the man who could conceive this great story would know exactly what he wanted to say and there would be no confusion in his statement. […] And this was: 'Thou mayest.' 'Thou mayest rule over sin.' […] the Hebrew word, the word *timshel*—'Thou mayest'—that gives a choice. It might be the most important word in the world. That says the way is open." John Steinbeck, *East of Eden* (London: Mandarin, 1995), 336–38.

[34] This statement refers to the title of a well-known and popular book in Poland by Józef Pawlikowski, *Can the Poles Strike out to Independence?* (Warszawa: Wyd. J. N. Leszczyński, 1831).

[35] In the first chapter of *The Ethics of Solidarity* we read: "We are living in an extraordinary moment right now. People are casting aside their masks […]. Out from under the dust and out of

> A person who has sensitive conscience feels the need […] to sympathize with those who suffer. In the community dimension he drafts, through his choice and deed, the ethics of solidarity. Tischner unambiguously stated that the ethics of solidarity is the ethics of conscience. For him the ethics of conscience constituted an extraordinary message. A crucial element for its definition is the fact that it is placed above the ethical system. Since the very ethical system is capable of omitting something in its consideration, and the conscience, which is something primary in the nature of man, will take it into account and in a proper way will take a stance on it. […] Owing to that "Solidarity," [which] appeared in the space of the contemporary history of Poland with the purpose of reconstructing the community life, […] established exceptional relations with those who suffered and were injured by the system. In its nature solidarity is for those who were injured by other people and who suffer from suffering which is possible to be avoided, which is accidental and useless. "Solidarity" enters an area of unfair politics, fills the space in which there were not any norms that would be ethically healthy. Enters as an idea an area ruled by the law of the heart. It reaches everywhere where the line of the meeting of a man with another man is marked by harm and injustice. Only fair politics, which serves the good of the other man, delineated by the bond of consciences solidarity, gives hope for the reconstruction of morally healthy interpersonal relation.[36]

As it was pertinently noticed by the quoted commentator of Tischner's thought, the philosopher from Cracow in his project of a radical renewal of the collective spirit of national community refers directly to the primary, rudimental idea of politics as a practical realization of the social ethics principles,[37] however, not to the first in the row, but the one which ought to be cultivated "starting from the social ethos," in the area defined by three elementary concepts: hope, freedom, sacrifice, in the drive towards the identification and realization of the basic values that shape the social ethos of a given human community. "We acknowledge that the core of ethical awareness is evaluation according to values and ideals. We aim at extracting these values, clarify the way we perceive ideals and by using them undertake to evaluate the entire spheres of social events"—Tischner wrote in a text from 1980.[38] These words can be understood as a self-commentary to *the Ethics of Solidarity*. If, owing to a collective effort of the entire nation, it was possible to realize the scenario that consisted in, to begin with,

---

the oblivion their consciences are coming to light. […] we thank for our contemporary solidarity of consciences." Tischner, *The Ethics of Solidarity*, 38.

[36] Wiesław Bożejewicz, *Tischner. Poglądy filozoficzno-antropologiczne* (Warszawa: „Łośgraf", 2006), 125–26 [Trans. Szymon Bukal].

[37] See: ibid., 132.

[38] Tischner, "Myślenie o etosie społecznym," *Znak*, Kraków 1980 nr 309. Quoted from the reprint: Tischner, *Myślenie według wartości*, 456.

constructing an in-depth analysis of the social ethos, included *implicite* in the real life of Poles, in their hopes and expectations, disappointments and defeats, subsequently in building a common, collective conviction that "the authorities, if they want to be responsible for the shape of history, have to […] let people be themselves" and that "only moral authority together with ethical democracy is capable of guaranteeing personal development to man and the community—civilization progress,"[39] and finally a solidary and peaceful rebuilding of the ruling system in order to make sure that it effectively fulfills the above-mentioned assumptions, then the process of the transformation of reality animated by the idea of ethics of solidarity would achieve its objective and end. The time during which the subsequent fragments of Józef Tischner's work appeared—a time full of hope and optimism, full of hope in the common good will and collective feeling of duty—was conducive to the thinking which implied that such a scenario not only is desirable but also possible; not only theoretically and in vaguely defined future, but also exactly here and now, under our eyes and owing to solidary work of our hands, minds, and consciences.

Today, from the perspective of over three decades which separate us from the Solidarity breakthrough, we already know that this beautiful vision of political practice, built from scratch on respect towards the principles of ethics, referring us to the system of values which the traditional Polish social ethos consists of, and at the same time kindly open to different value systems, ready for dialog and agreement, turned out to be another fiction. There was too much disrelish and envy in the Polish society at the end of the 20th century, there were too many circles which did not want to create a thoroughly modern and pluralistic country, in which people and groups of people who represent an entire spectrum of various stances and outlooks—starting from ultraconservative and finishing with radically liberal—would find their rightful place and space for free development. Maybe there was also a lack of a tradition of building the community in the spirit of mutual respect and acceptance of differences, inescapably existing in a society of a few dozen million.

Dawna Markova, in her book dedicated to harmful stereotypes in the educational practice and system of education, notices:

> One of the biggest miseducations we suffer from is the assumption that all human beings use the same process for thinking. Obviously, we all think different thoughts. Not so obviously, we all have unique ways of thinking those thoughts. In school, little attention is given to *how* children think. It's usually assumed that everyone's mind operates in the same way as the teacher's does. In fact, there are six possible ways that we can 'think.'[40]

[39] Bożejewicz, *Tischner*, 131–32.

[40] Dawna Markova and Ann Powell, *How Your Child is Smart: A Life-Changing Approach to Learning* (Berkeley, CA: Conari Press 1992), 34.

Analogically, the conviction that all people have the same beliefs and accept the same values that we do—especially in societies with an insignificant experience of living in a democratic system—is quite common. In the intervening period, although the common feature of all people is both reasoning and valuing, it remains a fact that we are free when it comes to values, and our axiological preferences do not have to be identical. Józef Tischner writes about it:

> We, people, are unceasingly in some motion: we head towards something, we run away from something, we desire something and we are afraid of something, we cherish hope and we are threatened with some despair, we love somebody and we cannot love somebody else, we experience joyfulness and grief. That is how we are cast into the necessity of a ceaseless "placing something above something else," necessity of "preferring." As Jerzy Liebert used to say: "Having made my choice for ever, every day I still have to choose." We are incapable of precisely defining the rules, according to which we establish our tendency to place something above something else, however, we live owing to the fact we know how to do it. […] In our reasoning according to value there is a characteristic motive—motive of freedom.[41]

Not all are, however, willing to approve the freedom to choose value and criteria of their preferences, and even more—agree with the practical consequences of making various choices within the area of one social organism. Michał Paweł Markowski, when defining a map of divisions shattering the Polish society in the post-communism era into hostile, fighting one another factions, ascribed the main fault to the simplifications in the understanding of the relation between reality and the sphere of people's convictions (also the axiological ones) about it. According to Markowski, it is too often that in the Polish public life there appears a person who "looks on the world from a transcendent perspective, exceeding any particular entanglements [and] immediately sets up—according to him completely justified—pretensions to speak on behalf of the Truth, Reality (and God knows what else), and to decide how things—by itself—work." Such a stance—the philosopher from Cracow continues—"leads to closing of the area of public discourse. What unarguably exists, is not subject to any discussion. And what is not subject to any discussion is excluded from the area of social negotiations. It has to be taken on trust. The things that we take on trust, on the other hand, are susceptible to manipulation."[42] In this way, what appears in the place of a constructive social dialog is dispute and conflict, which take on greater size and more severe forms if the outlook on life of the parties to the conflict is more closed and restricted.

---

[41] Tischner, *Myślenie według wartości*, 484–85. [Trans. Szymon Bukal].

[42] Michał Paweł Markowski, "Spór o rzeczywistość," *Tygodnik Powszechny*, Kraków 2008, nr 31, 22–23.

The transience of the period of nationwide harmony and persistence, and depth of divisions within our society has to be treated as a bitter, however real lesson. Owing to learning it today, we know more about ourselves than in the early 1980s. We have already managed to understand that the truth which was revealed before our astounded and fascinated eyes, in the times when *The Ethics of Solidarity* was being created, was only a short-lived reflection of our suddenly released dreams. For a short while we believed that we really are the people we really wanted to be: solidary, great-hearted, merciful, forgiving, patient, understanding… many more epithets like that we are able to extract from *The Ethics of Solidarity* and other, numerous manifestos and public commentaries in that time. For some period of time we really wanted to be like that, but as the years passed the truth of the dreams unrelentingly was superseded by the mundane *tout court* truth.

Our biggest achievement after dropping our masks turned out to be attachment to personal genuineness and authenticity. Today, 35 years after the first publication of the *Ethics of Solidarity*, we can repeat beyond a shadow of a doubt: "We are as we really are. Everyone wants to be called by his own name." However, the contemporary truth about us is much less impressive that the one we can find in Tischner's book. We are deeply divided, distrustful, dissatisfied with all that we have achieved and are all the time ready to fight with the real or made up enemy, without whom we could not live. Despite that it would be absurdity to think that we have not achieved anything or saved from these wonderful times of waking up of the collective subjectivity of the nation. Indeed, we have achieved a lot: we secured ourselves the right to be ourselves—people we really are. The fact that we are not perfect, that there are a lot of ugly vices, insurmountable complexes and trauma that is still to overcome, does not negate the achievements of the generation, which in its everyday confrontation with the world of total falsehood built the ethos of solidarity.

Translated by Szymon Bukal

Bibliography

Bartoszewski, Władysław, and Michał Komar. *Prawda leży tam, gdzie leży.* Warszawa: Grupa Wydawnicza PWN, 2016.

Bonowicz, Wojciech. *Tischner.* Kraków: Znak 2001.

Bożejewicz, Wiesław. *Tischner. Poglądy filozoficzno-antropologiczne*. Warszawa: Wydawnictwo Łośgraf, 2006.

Czapliński, Przemysław. *Resztki nowoczesności*. Kraków: Wydawnictwo Literackie, 2011.
Głowiński, Michał. *Zła mowa*. Warszawa: Wielka Litera, 2016.
John Paul II. *Reconciliatio et paenitentia:* Post-Synodal Apostolic Exhortation *Reconcilliation and Penance* of John Paul II to the Bishops, Clergy, and Faithful and Reconcilliation and Penance in the Mission of the Church Today.
Markova, Dawna, and Ann Powell. *How Your Child is Smart: A Life-Changing Approach to Learning*. Berkeley, CA: Conari Press, 1992.
Markowski, Michał Paweł. „Spór o rzeczywistość." *Tygodnik Powszechny*, Kraków 2008, nr 31, 22–23.
Okońska, Maria. *Wszystko postawił na Maryję*. Warszawa: OW ADAM, 2007.
Spotkanie. Z ks. Józefem Tischnerem rozmawia Anna Karoń-Ostrowska. Kraków: Znak, 2008.
Steinbeck, John. *East of Eden*. London: Mandarin, 1995.
Tischner, Józef. *Etyka solidarności*. Kraków: Znak, 1981.
Tischner, Józef. *Myślenie według wartości*. Kraków: Znak, 1982.
Tischner, Józef. *Polska jest Ojczyzną. W kręgu filozofii pracy*. Paris: Editions du Dialogue 1985
Tischner, Józef. *Etyka solidarności i Homo sovieticus*. Kraków: Znak, 2001.
Tischner, Józef. *The Ethics of Solidarity*. Translated by Anna Fraś. Kraków: Znak, 2005. www.tischner.org.pl/Content/Images/tischner_3_ethics.pdf (accessed 30.03.2017).
Tischner, Józef. *Etyka a historia. Lectures*, prep. Dobrosław Kot. Kraków: Instytut Myśli Józefa Tischnera, 2008.

Krzysztof Wieczorek

L'éthique de solidarité de Józef Tischner

Résumé

Au seuil de la décennie du grand tournant de système qui a abouti à la chute du communisme en Europe centrale, Józef Tischner, philosophe polonais, théologien et éthique, a publié un cycle d'essais englobant un projet de l'éthique sociale. C'était un projet clair et concret, consciemment adapté au temps difficile de la lutte politique acharnée et du conflit de valeurs, adressé à toutes les personnes de bonne volonté, indépendamment de leurs points de vue et leur appartenance politique. Tischner met l'accent en particulier sur les valeurs prosociales, telles que la solidarité, le soutien mutuel, le respect pour ceux qui pensent autrement, l'aspiration à l'unité de la société et à l'accord au-dessus des divisions basé sur un fondement axiologique. L'auteur du texte s'interroge à quel degré l'éthique de solidarité de Tischner a été introduite dans la pratique de la vie sociale polonaise directement après son annonce et à quel degré ses revendications restent actuelles et inspirent à l'époque contemporaine, où l'on se trouve en effet dans une nouvelle situation sociopolitique.

Mots clés: éthique, solidarité, analyse phénoménologique, maturité morale, dialogue.

Krzysztof Wieczorek

L'etica della solidarietà secondo Józef Tischner

Sommario

Alle soglie della decade della grande svolta di sistema che portò alla caduta del comunismo nell'Europa Centrale, il filosofo polacco, teologo ed etico Józef Tischner pubblicò un ciclo di saggi contenenti un progetto di etica sociale. Era un progetto chiaro e concreto, adattato consapevolmente al periodo difficile della dura lotta politica e del conflitto dei valori, rivolto a tutti gli uomini di buona volontà indipendentemente dalle vedute e dall'appartenenza politica. Tischner pone l'accento soprattutto sui valori prosociali quali la solidarietà, l'aiuto reciproco, il rispetto per coloro che hanno opinioni divergenti, l'aspirazione all'unità della società e all'armonia al di sopra delle divisioni, basata sul fondamento assiologico. L'autore del testo riflette sul quesito della misura in cui l'etica della solidarietà di Tischner sia stata introdotta nella pratica della vita sociale polacca subito dopo la sua proclamazione e di quanto i suoi postulati rimangano attuali ed ispiranti oggi, in una situazione socio-politica essenzialmente nuova.

Parole chiave*:* etica, solidarietà, analisi fenomenologica, maturità morale, dialogo

Philosophy and Canon Law vol. 3 (2017), pp. 91–107

Arkadiusz Wuwer
University of Silesia in Katowice

The Church Engaged in Economy—Is It Necessary?

Abstract: In the light of the statements of the Magisterium, the presence of the Catholic Church in the world of economy seems obvious and necessary.
However, this article focuses on the need to define (1) the type of economy referred to in the Church documents, (2) the type of the presence of the Church in economy as defined in these documents and (3) the kind of necessity mentioned in the abovementioned records. It is in these three dimensions that the author depicts the outline of the attitude presented by the Church with regard to the basic economic issues (interventionism, social market economics, subsidiarity and solidarity in economics, the logic of unselfishness and gift).
The conclusion of the text is that the ultimate reason for the presence of Catholic Church in economy is its social mission aimed at creating a society of relations, where the fundamental principle is social friendship (*amicitia socialis*).

Keywords: social teaching of the Church, interventionism, social market economy, subsidiarity and solidarity in economy, logics of selflessness and gift, society of relations, social friendship

Introduction

The question posed in the title constitutes an attempt to put into words one of the most important dilemmas of contemporary people; in fact, it is a question regarding the relation between economic activity and morality; between freedom and social structure; between alienation and community. Primarily, it is addressed to the Church for which "man is the [first] way."[1] Whereas people—

[1] John Paul II, Encyclical Letter *Centesimus Annus*, 6, https://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus.html. Hereinafter as CA.

in the face of the lack of mutual interest and kindness they are experiencing, in the world of weakened solidarity, helpless against common problems and incomprehensible political and economic mechanisms, or the domination of simplified cultural styles in which religion and family are no longer the point of reference, and in which decisions are influenced by the need for mobility and competitiveness, the economic and ecological crises, or persistence in the first ranks of consumer competition—feel increasingly lonely. The sphere of human concerns, relations, and ties is neither attractive to the free market, ever more focused on the individual consumer, nor to the state, occupied with monitoring the international capital.[2] In the anonymous world of stock exchange charts, the desire for subjectivity—or, in other words, sociality—left to itself, must seek allies among whom the Church seems to occupy one of the top places. And the Church, according to Archbishop Damian Zimoń, "though called an expert in human affairs, cannot become an expert in economic matters. When it speaks out on social issues, the institution does so out of concern for human dignity, the preservation of which lies at the heart of Christian anthropology."[3]

What Economy?

The answer to the question—posed in the anthropological context outlined above—may be concise and unambiguous: the competence of the Church to express itself in economic matters has been clearly indicated by Pope Benedict XVI when he writes that "the economic sphere is neither ethically neutral, nor inherently inhuman and opposed to society. It is part and parcel of human activity and precisely because it is human, it must be structured and governed in an ethical manner."[4] He also emphasizes that "striving to meet the deepest moral needs of the person also has important and beneficial repercussions at the level of economics. *The economy needs ethics in order to function correctly*—not any ethics whatsoever, but an ethics which is people-centred" (CiV, 45). The social doctrine of the Church concretes this approach by concentrating propos-

[2] M. Hułas, Obronić „socialitas." Perspektywa „Caritas in veritate" [Defend "Socialitas." The Prospect of "Caritas in Veritate"], in Społeczeństwo – Gospodarka – Ekologia. Perspektywa encykliki społecznej *Caritas in Veritate* [Society – Economy – Environment. The Prospect of Social Encyclical *Caritas in Veritate*], ed. S. Fel, M. Hułas, and S. G. Raabe (Lublin: KUL 2010), 231–47.

[3] D. Zimoń, *Kościół katolicki na Śląsku wobec bezrobocia* [*Catholic Church Against Unemployment in Silesia*], ed. Kuria Metropolitalna w Katowicach (Katowice 2001).

[4] Benedict XVI, Encyclical Letter *Caritas in Veritate*, 36, https://w2.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.pdf. Hereinafter as CiV.

als for the resolution of economic issues on subjects such as the Church and the order of earthly things, man at the centre of economics, the true development of humanity and the world, the importance of human labour, the principles of solidarity, the common good and subsidiarity.

However, it seems pragmatic here to recapitulate the reasons and inspirations why the answer to the question at hand is so positive and clear. First of all, one needs to bear in mind that both the economic activity itself and the assessment of its mechanisms are not homogeneous. The negative consequences of free market capitalism are indicated from both conservative and liberal perspectives. In the former, attention is paid to personalistic elements (e.g., to the fact that economic free market systems lead to the loss of the ability to understand the truth—which "was felt almost instinctively in the pre-industrial era"—that also the economic side of human activity must have its goal (*télos*), subject to the highest, supernatural goal of man, namely eternal salvation).[5] On the other hand, liberal criticism places greater emphasis on unsustainable development (e.g., the fact that the development of information and communication technologies and the enormous growth in mutual, though partly virtual, global economic connections are not accompanied by progress in many more fundamental areas of individual and social life. The latter fall into natural, though of increasing amplitude, periods of recession which—for example in the case of fluctuations in energy and food prices—not only affect the level and economic security of everyday life, but in many cases constitute an effective barrier to the development of individuals, regions, and entire nations).[6]

Regardless of the assessment, however, this multicoloured palette of economic systems and schools is interconnected by a number of elements: new social phenomena connected with the transition from industrial production to

[5] Jacek Bartyzel enumerates, inter alia, the following: "the destruction of many local communities and human bonds; the uprooting and proletisation of a large number of individuals […]; the undeniable exploitation of the working class beyond measure and in conditions that offend human dignity […]; religious indifference and moral scourges […]; the destruction of natural environment by the ruthless exploitation and severance of the unity between nature and culture […]; the birth and overwhelming development of the primitive […] so-called mass culture […]; the appearance of a universal climate of approval and understanding for utilitarian values only, and even the cult of money and profit as the only measure of all goods and the only source of prestige; the loss of bearings in an atmosphere of constant haste in the economic 'rat race' and of a higher meaning of life and the value of contemplative life for the sake of constant need to acquire material means." J. Bartyzel, "Liberalizm" ["Liberalism"], in: J. Bartyzel, B. Szlachta, and A. Wielomski, Encyklopedia polityczna. Myśl polityczna: główne pojęcia, doktryny i formy ustroju [Encyclopaedia of Politics. Political Thought: Main Concepts, Doctrines, and Forms of the Political System], vol. I (Radom Polskie Wydawnictwo Encyklopedyczne „Polwen" 2007), 204–209.

[6] See: M. Zięba, *Papieska ekonomia. Kościół – rynek – demokracja* [*Pontifical Economy. Church – Market – Democracy*], (Kraków: Znak, 2016).

the service sector, which is made up of many professions not directly linked to production; the emergence of a "service-class society" with high levels of social welfare, insurance system, universal access to education, health and recreation; the development of a "technetronic society" based on "intellectual technology," focusing more on information processing than on raw materials; a high level of social dynamics driven by technological development and, consequently, the emergence of a "knowledge society" in which education and training are at the heart of systems of values and of everyday life, where the possibility of business applications is a fundamental criterion of "scientificity."[7]

Working in such a manner, the system transforms the entire class structure and stratification hierarchy.[8] Not only is the gap between the "rich north" and the "poor south" growing alarmingly fast, but there is also a gap between the "global sphere" and "local communities," where the sense of having lost control over technology, political decisions, and social phenomena is growing exponentially. "More and more threats are falling on local communities from the outside, and nobody feels and is really responsible for their occurrence," writes Marek Dutkowski from the University of Szczecin. Economic and political crises as well as the persistent underdevelopment and poverty are most severely felt on the local scale, although they largely originate in the global sphere. In the times of "liquid modernity," when formal structures lose their significance and power, in view of the uncertainty accompanying these processes, the addressee of possible complaints and protests remains impossible to define.

On the other hand, what is rapidly expanding are the areas of marginalization, which manifest the depreciation of values in social life, such as failure to respect human dignity or disregard for solidarity and the common good. Marginalization also has its consequences: it induces passivity, apathy and faith in lucky coincidence, rather than active attitudes, such as rebellion, opposition, participation, or co-decision.[9] In view of the growing number of the so-often-erroneously-called *underclass* European societies, which had hitherto seemed stable, the welfare models started swaying in their foundations, and the famous Welfare State— the Golden Fleece of European societies in the last thirty years of the 20th century—has suddenly found itself "in a serious predicament, not to

---

[7] See: A. Sarnacki, *Krytyczne uwagi na temat koncepcji społeczeństwa wiedzy* [*Critical Remarks on the Concept of Knowledge Society*], in: *Odczarowania. Człowiek w społeczeństwie* [*Disenchantments. Man in Society*], ed. A. Gielarowski, T. Homa, and M. Urban (Kraków: WAM, 2008), 157–71.

[8] See: P. Sztompka, *Socjologia zmian społecznych* [*Sociology of Social Change*], trans. J. Konieczny (Kraków: Znak 2005), 83.

[9] See: Z. Bauman, *Praca, konsumpcjonizm i nowi ubodzy* [*Work, Consumerism and the New Poor*], trans. S. Obirek (Kraków: WAM, 2006); I. Camacho, *Ubóstwo i wykluczenie a nauka społeczna Kościoła* [*Poverty and Exclusion Versus the Social Doctrine of the Church*], trans. T. Żeleźnik. *Społeczeństwo 2000* no. 1, 59–89.

say 'total disintegration.'"[10] Nevertheless, this does not necessarily have to mean rejecting the idea of a welfare state which tries to combine economic freedom with solidarity. The cause of the crisis, which few in a politically correct Europe dare to mention, lies deeper, and is more precisely diagnosed by Alberto Wagner de Reyna (1915–2006), the former Ambassador of Peru to UNESCO, rich in the benefits provided by the perspective of experience and distance. Observing Europe, he argues that the main cause of the economic crisis as well as of its anthropological and social consequences is the "de-humanisation of humanism," which has its origins in the detachment of economy from the idea of God. Thus, the multifaceted crisis rather constitutes a call for the necessary reform of economic structures, restoring proper meaning to Catholic social principles in the economy.[11]

What Engagement?

The Second Vatican Council, as the first in the history of the Church, developed a comprehensive doctrine on the Church's attitude to the world in general and on the Church's attitude to the economy and society in particular. This is manifested most fully in the pastoral Constitution on the Church in the modern world *Gaudium et Spes* (1965) and in the Decree on Secular Apostolate *Apostolicam Actuositatem* (1965). In the latter document, the Council speaks of the need to revive the Church in social terms and to reformulate its attitude towards the world, the economy and society. The Council emphasizes that "Christ's redemptive work, while essentially concerned with the salvation of men, includes also the renewal of the whole temporal order. Hence the mission of the Church is not only to bring the message and grace of Christ to men but also to penetrate and perfect the temporal order with the spirit of the Gospel" (AA, 5). In the *Gaudium et Spes* constitution, the Council teaches that "[i]nspired by no earthly ambition, the Church seeks but a solitary goal: to carry forward the work of Christ under the lead of the befriending Spirit. And Christ entered this world to give witness to the truth, to rescue and not to sit in judgment, to serve and not to be served" (GS, 3).

Before these thoughts have matured, the Church made a series of attempts to define the manner and scope of its involvement in the economic space. Focusing our attention solely on the most recent times, we can indicate some directions and outcomes of its investigations.

---

[10] Such a state was described by Anthony Giddens in *L'Europa nell'età globale* [*Europe in the Global Age*], trans. di F. Galimberti (Roma–Bari: Editori Laterza 2007), 4.

[11] A. W. de Reyna, L'homme au XXIe siècle [The Man in the 21st Century], *Catholica 2009* no. 2, n.p.

Interventionism in the Economy

In his encyclical *Rerum Novarum* (1891), Leo XIII outlined a positive vision of an active, subsidiary society in which every citizen and social group consciously pursues their own objectives in the interest of common good (see: RN 41). Recognizing the initiatives already in place, the pope states that "such manifold and earnest activity has benefited the community at large" and hopes that "the associations [will] continue to grow and spread, and [will be] well and wisely administered" (RN, 55). Pragmatically, he also delivers the following appeal: "The State should watch over these societies of citizens banded together in accordance with their rights, but it should not thrust itself into their peculiar concerns and their organization, for things move and live by the spirit inspiring them, and may be killed by the rough grasp of a hand from without" (RN, 55).

Not only does he legitimize, but Leo XIII also demands an intervention on the part of the State to ensure the conditions for social justice, particularly in order to protect the weak and the poor. The issue of fairness and scope of such an intervention of the State are especially relevant to the economic sphere, and the Pope explains its nature as follows: "the rulers of the State should be to make sure that the laws and institutions, the general character and administration of the commonwealth, shall be such as of themselves to realize public well-being and private prosperity. This is the proper scope of wise statesmanship and is the work of the rulers" (RN 32). Considering that "it lies in the power of a ruler to benefit every class in the State," and implement it "without being open to suspicion of undue interference" (RN 26), the State intervention in economic matters is motivated as follows: "The members of the working classes[12] are citizens by nature and by the same right as the rich; they are real parts, living the life which makes up, through the family, the body of the commonwealth; and it need hardly be said that they are in every city very largely in the majority. It would be irrational to neglect one portion of the citizens and favor another, and therefore the public administration must duly and solicitously provide for the welfare and the comfort of the working classes; otherwise, that law of justice will be violated which ordains that each man shall have his due" (RN, 33).

Other issues where state intervention is deemed necessary by Leo XIII are those related to the protection of private property, the issue of employment, material and spiritual working conditions, protection of women and children, employment contracts and wages, and property diffusion. Still, such interference should not exceed certain limits: it must take into account civil rights and is

[12] The terms *proletarius* and *artifex* are used interchangeably in the Latin text. However, they both are meant to denote *hired workers*.

permitted only in cases which are contrary to morality, justice, and the welfare of the State (cf. RN 45).

Social Market Economy

Ordo-liberalism, also known as the Fribourg School,[13] offers a slightly different proposal. Its representatives were primarily interested in the reconstruction of a stable society, free from the processes of disintegration caused by the break-up of ties. They consciously avoided referring to the trend represented by Adam Smith (1723–1790), but rather relating to Thomism, which meant for them the perfect, rational and cognoscible order of things that could constitute a measure and a reference for existing systems. Although some believe that in the Fribourg school's thought the necessity for an organized society "is justified not so much by a certain ontological vision as by the desire to avoid the temptation of statism,"[14] there is a consensus that "[…] they definitively abandon the idea of nostalgia for organic society and demand an organized society where natural groups are to give way to arbitrary (contact) groups. At the same time, the common good ceases to have an objective value, assuming the character of a *consensus* which owes its legitimacy to the respect it receives from the citizens."[15] The Ordoliberals did not therefore follow in the footsteps of corporatism, which in their opinion depreciates the individual's abilities and overestimates the capabilities of intermediate bodies in the field of the common good. They also did not try to instill other solutions that had proved their worth in the past. Their contemporary reality, as they thought, required new solutions.

That is why they called for a whole range of measures: from the modernization of the liberal order in order to emphasize the principle of common good to the concept of social market economy, combining economic freedom with the principle of social equality, which was applied in Germany after the Second World War. Thus, they wanted to defend the model of a society in which individuals can act spontaneously, but which is at the same time an orderly society,

[13] The theoretical development of ordoliberalism took place on two levels: at the Fribourg school, whose exponents were Walter Eucken (1891–1950), Franz Böhm (1895–1977) and Hans Grossmann-Dörth (1894–1944), and which was developing during the Third Reich as part of the so-called internal migration, that is, outside the official public life; and in exile, where such activists had their say as Friedrich August von Hayek (1899–1992), Wilhelm Röpke (1899–1966), and Alexander Rüstow (1885–1963).

[14] Ch. Millon-Delsol, *Zasada subsydiarności – założenia, historia, problemy współczesne* [*The Principle of Subsidiarity - Assumptions, History, Contemporary Issues*], in *Subsydiarność. Wydanie drugie uzupełnione* [*Subsidiarity. Second Supplemented Edition*], ed. D. Milczarek (Warszawa: Centrum Europejskie Uniwersytetu Warszawskiego, 1998²), 33.

[15] Ibid., 49.

free from the threat of chaos, characterized by stability and natural organization of human activities. The ordoliberal idea is therefore an idea of "existing order, not one created by man, one that creates conditions for free action for the benefit of society and protects against destructive actions."[16]

This movement was an attempt to create a program for the reconstruction of capitalism, which—in the first place—consists in the reconstruction of society and only then on the revival of market economy, based on healthy social structures.[17] These processes should be carried out simultaneously, but as Jerzy Gocko points out, "their control was to be carried out according to the principle that it is not the market that has a decisive role in social life, but— the other way round—permanent inter-group and inter-individual relations create conditions for the market to properly perform the functions envisaged for it."[18] This was an important conclusion drawn by the Ordoliberals thanks to a thorough and critical analysis of the experiences of laissez-faire.

Subsidiarity in the Economy

In response to the State's growing expansion as a participant in the free market game, which has taken in the ever wider areas of private initiative in the economic field, the encyclical *Mater et Magistra* (1961) refers in particular to the principle of subsidiarity. Referring directly to the teaching of Pius XI, contained in *Quadragesimo Anno* (1931), John XXIII proposes a new, broad and concrete application of subsidiarity in economic practice. At the same time, as Jean-Yves Calvez (1927–2010) emphasizes, his main intention was to point to economic aid for self-help (*en aidant les hommes à s'aider eux-mêmes* [*helping man to help themselves*]).[19]

The starting point is the opinion of Pius XI that "free trade has been replaced with economic violence, and the greed for profit has bred greed for power, while all the economic activity has become incredibly harsh, merciless and cruel" (MM, 38 [40]).[20] John XXIII adds that "as a result, even state authorities have

[16] J. Gocko, Ewolucja porządku gospodarczego w koncepcji liberalnej [The Evolution of Economic Order in the Liberal Concept], *Seminare 2000*, 389–420.

[17] See: J. Mariański, Kościół katolicki a społeczna gospodarka rynkowa [Catholic Church and Social Market], *Saeculum Christianum 2000* no. 2, 199–218.

[18] See: J. Gocko, Ewolucja porządku gospodarczego w koncepcji liberalnej [The Evolution of Economic Order], 419–20.

[19] J.-Y. Calvez, *Église et société économique: L'enseignement social de Jean XXIII* (Paris: Aubier Montaigne, 1963), 68.

[20] "[…] free competition has killed itself; free trade was followed by economic dictatorship; greed for profit was transformed into an unlimited greed for power; whole economic activity has become immensely harsh, merciless and cruel. This is doubled by severe damage and losses, following from the mixing and unfortunate association of political power with economics; one of the key losses is the depreciation of state and its importance; state, free from the influences of any political parties, serving the common good and justice, should, as the supreme rules and judge bear its flag high, and now it is reduced to the role of a slave subordinated to human pas-

come to serve the interest of the wealthy, and the accumulated wealth has in a way started to rule all the nations" (MM, 35[36]). John XXIII brings down the recommendations offered by Pius to two major indications: the first one is the absolute need to reject "the principle of regarding economic activity or benefits earned by individuals or groups or unlimited free competition, or the immense power of the wealthy, or excessive pride and the willingness to rule as expressed by certain countries, or any similar tendencies as the supreme law. On the contrary, in all kinds of economic activity, it is necessary to follow the rules of justice and love as the primary principles of social life" (MM, 37 [38–39]). The second recommendation is related to the introduction "according to the rules of social justice and thanks to creating national and international public or private institutions, of such legal order where business subjects could properly negotiate their own benefits and streamline them to the common needs of the whole community" (MM, 38 [40]).

These elements will be mentioned again in the encyclical by John Paul II *Sollicitudo rei Socialis* (1987). First it is state that since the pontificate of Pope Paul VI the symptoms of "economic, but also cultural and political and simply human underdevelopment" have exacerbated (SRS, 17) and are "a sign of common belief that the *unity of the world*, or in other words, *the unity of humankind* is under a serious threat" (SRS 14). Among the reasons behind such a situation, the pope indicated first of all the negligence in following the rules and social values in economics (see SRS 15). "No social group, e.g., a party, has any right to usurp the role of the sole leader; just like in any other form of totalitarian regime, this is the destruction of the genuine empowerment of the society and its people—the citizens. A human being and the nations thus become an "object" in this system, despite all its declarations and verbal reassurances—claims the pope (SRS 15).

Failure to observe the principles and values, as well as "an overly restricted, i.e., mainly economic *concept* of development" as well as negligence and omissions "on the part of both developing and developed nations, which failed to see their duty to help the countries separated from the world of wealth, to which they themselves belong"—all of these lead to the arrival of numerous, new forms of underdevelopment—says the pope. The indication of these economic and international shortcomings is combined with the summon and a plea to resume the responsibility and engagement for integral development, with the awareness that "the good we are all summoned to perform and the happiness we are striving for cannot be achieved without everybody's *effort and involvement*, without excluding anybody and without the consistent rejection of one's own egoism" (SRS 26).

---

sions and selfish interests. As regards international relations, two contradictory directions result from this issue; on the one hand there is economic "nationalism" or even "imperialism," on the other hand, "internationalism" or "international capital imperialism", which is equally dangerous and despicable, as it assumes that homeland is where convenient." QA, 109 [see also MM, 38].

Solidarity in Economic Life

For a long time, a promoter of such social model referring to medieval patterns was the originator of the idea of solidarism, a Jesuit Heinrich Pesch (1854–1926). The social model he promoted was built on the interpersonal moral order stemming from religion. This vision was complemented with an idea of social and economic care and aid provided to the weakest individuals and driven by religious and ethical motivation. This solidarity-based social model necessarily had to be supplemented by the stipulation that God's moral law be included in social life, and consequently, it mean the return to the class and estate structures.[21]

The new, enriched vision of economy based on solidarity is the idea of John Paul II: "[…] in today's world—among numerous human rights—the *right to economic initiative* is restricted, although it is important not only for an individual, but also for the common good. It follows from experience that refusing this right and restricting it in the name of the ostensible "equality" of all the members of the society in fact eliminates and destroys entrepreneurship, which is the creative empowerment of the citizen. As a result, it's not equality, but "pulling downwards." Instead of the creative initiative, we have passive attitude, dependence and submission to the bureaucratic apparatus, which is the only "manager" and "decision-maker" if not the "owner" of the bulk of the production factors and as such makes all the other stakeholders to some extent dependent, which is very similar to the dependence of a proletarian worker under capitalism. This is where frustration or the feeling of helplessness comes from as well as lack of involvement in public life, readiness to emigrate—even if it is the so called inward emigration" (SRS 15).

The Logics of Gift and Disinterestedness in Economy

Benedict XVI claimed that what is of key importance to the social dimension is the Truth,[22] which guarantees realism and is the foundation of the logic of

[21] See: Z. Waleszczuk, System solidaryzmu Heinricha Pescha [The System of Solidarity by Heinrich Pesch], *Legnickie Studia Teologiczno-Historyczne* [*Theological-Historical Studies in Legnica*] 2001 vol. 1, 156–91.

[22] As Giorgio Vittadini underlines, "In defining love as truth, the pope excludes any possibility fora moral reduction of love. In this sense, it is the truth that combines love with cognition. […] building love on truth means restoring it to the proper aspect of theological virtues: faith, hope and love. The understanding of the very word "love" can often be reduced. […] In this case, it is the mention of love seen as the love for human destiny. It is related to the ontological and the cognitive aspect. Cognition as a starting point for love, growth. In my opinion, it is very important: this way, in the atmosphere of chaos and confusion, in which we are living right now—in which these values have been detached from human and historical experience many

disinterestedness. It is in this light that the pope evaluated, e.g., the global economic crisis: "neither in thought nor in behavior […] can we neglect or weaken the traditional principles of social ethics, such as transparency, honesty and responsibility, but also *the principle of gratuity in the market relations* and the logic of gift as an expression of fraternity that may and should *be present in normal economic activity*. This is currently a human need, but it has its economic merits as well. This is the need for love and truth"—writes the pope (CiV 36). Truth and love order certain actions according to the "logic of gift": "when the logic of market and state logic agree to retain the monopoly in their own areas of influence, the solidarity among the citizens starts to disappear with time, and so does the cooperation and the feeling of community, disinterested actions, something other than *you need to give in order to have*, as characteristic of the logic of exchange, or *the obligation to give*, which is part of the logic of public behavior imposed by the public law. Overcoming the underdevelopment requires intervention not only as regards improving the transactions based on exchange, not only as regards the creation of public welfare structures, but most of all as regards gradual openness, in the global context, to the forms of economic activity characterized by gratuity and communion" (CiV 39)—says Benedict XVI.

What combines all of the abovementioned proposals is the statement that the proper condition of human affairs as well as the moral sanity of the world can never be guaranteed solely by structures, no matter how valuable they may be. "Such structures are not only important, but also necessary: yet they cannot and should not deprive people of freedom"—summarizes Benedict XVI in his encyclical *Spe Salvi* (2007). "Even the best of structures function properly only when the community truly believes in the arguments that convince them to opt for the community order of their own free will. Freedom needs conviction and belief; belief won't exist on its own, but has to be acquired by the community all the time. Since a human being is always free and freedom is always fragile, the definitive and consolidated rule of good will never exist in the world. Whoever promises a better world—definitively and forever—makes a false promise and disregards human freedom. Freedom must be constantly acquired for the sake of good. It is virtually impossible to stick with the good on your on and of your own free will. If there could be any structures that would irrevocably establish a defined a good condition of the world, human freedom would thus be negated and for this reason, such structures would not be ultimately good in themselves" (SS 24).

The above proposals are also concurrent when it comes to the involvement of the Church in economic issues. The reasons may well be summarized by

a time—everything is referred to the reality." *Siła miłości. Wywiad Davide Perillo z Giorgio Vittadinim* [*The Power of Love. Interview of Davide Perillo with Giorgio Vittadini*], http://www.cl.opoka.org.pl/artykuly/0150.html (accessed 5.03.2011).

Ralf Dahrendorf (1929–2009), who says that political democracy and market economy, which aspire to rule the entire experience of human life—are "cold projects." He explains that democracy and free market are "the inventions of the civilization of enlightened and collective minds, but they do not make your heart beat faster […]. They are mechanisms for solving problems and were created in order to facilitate the changes of taste, policy and even leadership without bloodshed and unnecessary suffering. As such, they are indeed magnificent inventions and it is not without a reason that they are so highly valued. But they are not 'home'; they do not provide a human with identity or sense of belonging. In this sense, they leave you outdoors, in the cold, without a shelter. Democracy and economy are important, but not all-important. […] it is impossible to maintain the mechanisms of an open society, if the people don't know where they belong. Democracy and anomy do not make a happy couple. In the end, anomy destroys freedom, if only because the moral vacuum it creates attract false deities and bad prophets. […] There is also the 'Böckenförde paradox': democracy and market economy are based on the premises they cannot guarantee themselves. They cannot create the necessary social bonds, not have they ever aspired to do so."[23]

What Necessity?

For the reasons as mentioned above, it seems that there are three major objectives of the involvement of the Church in the economy to indicate how to reconcile economic growth with environment-friendly attitude (focusing on how to use the earth and its potential better, without destroying our planet and exposing it to risk); to initiate and support actions aimed at achieving better economic cooperation and organization as a social process (such action must be two-dimensional: it should be performed on the level of technical and scientific development as well as in the interpersonal dimension, on the organizational level); and to demonstrate that economic initiative is expressed on a level much deeper than the technical process, and realized in the dynamic human nature and as such has both ethical and anthropological dimension to it.[24]

The following elements remain the focus of the care and interest on the part of the Church:

[23] R. Dahrendorf, Wolność a więzi społeczne. Uwagi o strukturze pewnej argumentacji [Freedom and Social Ties. Notes on the Structure of Certain Arguments], in *Społeczeństwo liberalne. Rozmowy w Castel Gandolfo* [*Liberal Society. Conversations in Castel Gandolfo*], preparation and foreword by K. Michalski, trans. A. Pawelec (Kraków–Warsaw: Znak – Fundacja im. Stefana Batorego 1996), 9–10.

[24] See: *Church and Economics*, ed. L. Roos, Ordo socialis, Koeln 1986 (Polish edition: ed. P. Kaczanowski and S. Sowiński) (Warsaw: Fundacja Akademii Teologii Katolickiej, 2008).

Issues related to the expansion of economism, whose source is the fact that the modern well-developed industrial economy has considerably increased contemporary financial ambitions and expectations. This is also how social life has come to rely on actual, but also ostensible, economic needs, thus pushing other values and social needs aside, which are nevertheless necessary for the genuine growth of humanity and for the proper dignity of social existence. Of course, economy as such cannot in itself create or transmit human and social values. Its shape and functioning do, however, considerably impact the axiological and moral aptitude and sensitivity of a society.[25]

The question about the role of human being in an economic process. Human being is the objective and the source of an economic process not only in that people receive their due, fair payment or annuity in the course of the economic process, but also in that people remain or even become "more human"—as described by John Paul II—in the course of this process (LE, 27). In this context, John Paul II often admonished people and warned them against possible utopias or ideologies related to the development of production processes, against the risk of leaving the economic structure and progress exclusively to the domain of technical pragmatism and organizational rationalism.[26]

The problem of responsibility for the development of the global economy in the context of the fear that the facilities provided by contemporary economic and technical progress are not equally shared by and available to all the nations, that they won't be used to effectively eliminate starvation in the world and provide means for development especially to Third World countries. Also the developing countries themselves must make a realistic for their own development. Focusing on this realism, the Vatican Council issues a warning against putting too much hope for the solution of economic problems only in the transfer of the economic models and mentality of industrialized countries to the Third World.[27]

The Catholic social teaching has always combined the reforms of economic conditions with reforms of individual and social morality and customs. This dimension of the involvement of the Church in economic life remains unchanged: the Church not only wishes to define the objectives for social and ethical responsibility, but also wants to contribute to the renewal of the social and ethical awareness. The ultimate goal of each economic system is to serve man—human

[25] "Many people, especially in economically developed countries, seem to rely so much on economics that almost their whole personal and social lives are full of economic attitude and this is the case both in the nations supporting collective economy and others" (GS 63). John Paul II noticed a similar threat in his encyclicals *Redemptor Hominis* (1979) and *Laborem Exercens* (1981).

[26] See: K. Adamski, Technokracja wyzwaniem etycznym dla chrześcijańskiej wizji ładu społecznego [Technocracy Challenge for Ethical Christian View of Social Order], *Świdnickie Studia Teologiczne* [*Theological Studies in Świdnica*] 2013, 17–43.

[27] See: *Church and Economics*, ed. L. Roos.

being as a whole as well as each of individual humans. This is why economic activity should always be perceived in its entire anthropological context. In this context, the challenge of meeting the economic needs of the whole humanity becomes a sort of ethical horizon, which updates and amends the "methods and laws" of economy. This horizon is not subject to anyone's arbitrary decisions, but exists as an objective requirement. It is so because each actually existing society—as observed by Mario Toso—has social awareness and is based on shared intentions and feelings, on the solidarity and friendship among its members, on their virtues and vices. It is also created by the bulk of common heritage—financial, biological, cultural, as well as the heritage of authorities, institutions and structures.[28]

A society as a form of unifying relations among individual people is, however, only "partially" a product of human intelligence, practical reason, and human striving. Some aspects of this unity or order are the subject matter of psychological research, other aspects are discovered in the course of studying human biographies and the history, and further aspects of this unity are discovered by ethics, economics, political philosophy, and related fields of study. It is about achieving such order of human relations, which makes it possible to obtain a single, shared action oriented towards a common goal—an order in which each of the members of a society will find at least a partial self-fulfillment while assisting in the self-fulfillment of other members of the same community by ensuring and protecting their growth in the conditions of freedom and responsibility and in other aspect of human growth.

All the levels of this unity are essential in order for the society to exist. However, none of them can replace the ultimate level of "orderly unity" expressed in the cooperation and common involvement. The unity of cooperation, which is observed in fully formed societies, assumes a special type of cooperation, founded on friendship: in a family, in a society, in politics and institutions.[29]

This friendship differs from the one present in the communities bound by shared interest or among the players of team sports. Shared interest and activities as observed among business partners or football team members ultimately focused not on the interest or love of another human being, but rather on "usefulness" or "pleasure"; in other words, it has individual and personal objectives. These are the communities where the good and common action is definitely present, but the ultimate goal is not common growth. On the contrary, a strong society is one that becomes more of a community, which assumes the kind of friendship that directly implements the love of others and the wellbeing (eternal

[28] See: M. Toso, *Umanesimo sociale. Viaggio nella dottrina sociale della Chiesa e dintorni* (Roma: Las, 2001), 362.

[29] See: S. Grygiel, *Kimże jest człowiek? Szkice z filozofii osoby* [*What is Man? Sketches from the Philosophy of the Person*], (Kielce: Jedność, 1995), 82–83.

and temporal) of all its members.[30] And this is the ultimate reason and purpose of the engagement of the Church in economy.

Translated by Dominika Pieczka

Bibliography

Adamski, K. Technokracja wyzwaniem etycznym dla chrześcijańskiej wizji ładu społecznego [Technocracy Challenge for Ethical Christian View of Social Order]. *Świdnickie Studia Teologiczne* [*Theological Studies in Świdnica*] 2013, no. 10, 17–43.

Bartyzel, J. "Liberalizm" ["Liberalism"], in J. Bartyzel, B. Szlachta, and A. Wielomski, Encyklopedia polityczna. Myśl polityczna: główne pojęcia, doktryny i formy ustroju [Encyclopaedia of Politics. Political Thought: Main Concepts, Doctrines, and Forms of the Political System], vol. I, 204–209. Radom: Polskie Wydawnictwo Encyklopedyczne "Polwen," 2007.

Bauman, Z. *Praca, konsumpcjonizm i nowi ubodzy* [*Work, Consumerism and the New Poor*]. Translated by S. Obirek. Kraków: WAM, 2006.

Benedict XVI. *Caritas in Veritate*. Encyclical Letter on Integral Human Development in Charity and Truth [29 June 2009].

Benedict XVI. *Spe Salvi* – Encyclical Letter on Christian Hope [30 November 2007].

Calvez J.-Y. *Église et société économique: L'enseignement social de Jean XXIII* [*Church and Economic Society: Social Teaching of John XXIII*]. Paris: Aubier Montaigne, 1963.

Camacho, I. Ubóstwo i wykluczenie a nauka społeczna Kościoła [Poverty and Exclusion Versus the Social Doctrine of the Church]. Translated by T. Żeleźnik. *Społeczeństwo* [*Society*] 2000, no. 1, 59–89.

Dahrendorf, R. *Wolność a więzi społeczne. Uwagi o strukturze pewnej argumentacji* [*Freedom and Social Ties. Notes on the Structure of Certain Arguments*]. In *Społeczeństwo liberalne. Rozmowy w Castel Gandolfo* [*Liberal Society. Conversations in Castel Gandolfo*], prepared and prefaced by K. Michalski. Translated by A. Pawelec, 9–18. Kraków–Warszawa: Znak Foundation Stefan Batory, 1996.

Donati, P. *Pensiero Cristiano sociale e società post-moderna* [*Christian Social Thinking and Postmodern Society*]. Rome: Ave, 1997.

Donati, P., and P. Terenzi (ed.). *Invito alla sociologia relazionale. Teoria ed applicazioni* [*Invitation to Sociology. Theory and Applications*]. Milano: FrancoAngeli, 2006.

Giddens, A. *L'Europe nell'età globale* [*Europe in the Global Age*]. Translated by F. Galimberti. Roma–Bari: Editori Laterza, 2007.

Gocko, J. Ewolucja porządku gospodarczego w koncepcji liberalnej [The Evolution of Economic Order in the Liberal Concept], *Seminare* 2000, 389–420.

Grygiel, S. *Kimże jest człowiek? Szkice z filozofii osoby* [*What is Man? Sketches from the Philosophy of the Person*]. Kielce: Jedność, 1995.

[30] See also: P. Donati, *Invito alla sociologia relazionale. Teoria e applicazioni*, trans. P. Donati and P. Terenzi. Milano Franco Angeli, 2006). The relationship between the relational theory and the social teaching of the Church is discussed at length by: P. Donati, *Pensiero sociale cristiano e società post-moderna* (Roma: Editrice Ave), 1997.

Hułas, M. Obronić "socialitas." Perspektywa "Caritas in veritate" [Defend "Socialitas." The Prospect of *Caritas in Veritate*], in *Społeczeństwo – Gospodarka – Ekologia. Perspektywa encykliki społecznej „Caritas in veritate"* [*Society – Economy – Environment. The Prospect of Social Encyclical "Caritas in Veritate"*], ed. S. Fel, M. Hułas, and S. G. Raabe, 231–247. Lublin: KUL, 2010.

John Paul II. *Laborem Exercens* – Encyclical Letter on Human Work on the Ninetieth Anniversary of *Rerum Novarum* [14 September 1981].

John Paul II. *Redemptor Hominis* – Encyclical Letter at the Beginning of Papal Ministry [4 March 1979].

John Paul II. *Sollicitudo rei Socialis* – Encyclical Letter for the Twentieth Anniversary of "Populorum Progressio" [30 December 1987].

John XXIII. *Mater et Magistra* – Encyclical Letter on Christianity and Social Progress [15 May 1961].

Leo XIII. *Rerum Novarum* – Encyclical Letter on Capital and Labor [15 May 1891].

Mariański, J. Kościół katolicki a społeczna gospodarka rynkowa [Catholic Church and Social Market], *Saeculum Christianum* 2000, no. 2, 199–218.

Millon-Delsol, Ch. Zasada subsydiarności – założenia, historia, problemy współczesne [The Principle of Subsidiarity – Assumptions, History, Contemporary Issues]. In *Subsydiarność. Wydanie drugie uzupełnione* [*Subsidiarity. Second Supplemented Edition*], ed. D. Milczarek. Warsaw: European Centre of Warsaw University, 1998², 317–328.

Pius XI. *Quadragesimo Anno* – Encyclical Letter on Reconstruction of the Social Order [15 May 1931].

Reyna de A.W. L'homme au XXIe siècle [The Man in the 21st Century]. *Catholica. Revue de réflexion politique et religieuse* 11 Déc 2009. In http://www.catholica.presse.fr/2009/12/11/l%E2%80%99homme-au-xxie-siecle/.

Roos, L. (ed.). *Kościół a ekonomia* [*The Church and the Economy*], Ordo Socialis, Koeln 1986 (Polish ed. P. Kaczanowski and S. Sowiński). Warsaw: The Foundation of the Academy of Catholic Theology, 2008.

Sarnacki, A. *Krytyczne uwagi na temat koncepcji społeczeństwa wiedzy* [*Critical Remarks on the Concept of Knowledge Society*]. In *Odczarowania. Człowiek w społeczeństwie* [*Disenchantments. Man in Society*], eds. A. Gielarowski, T. Homa, M. Urban, 157–171. Kraków: WAM, 2008.

Second Vatican Council. *Apostolicam Actuositatem* – Decree on the Apostolate of the Laity [18 November 1965].

Second Vatican Council. *Gaudium et Spes* – Pastoral Constitution on the Church in the Modern World [7 December 1965].

Siła miłości. Wywiad Davide Perillo z Giorgio Vittadinim [*The Power of Love. Interview of Davide Perillo with Giorgio Vittadini*]. In http://www.cl.opoka.org.pl/artykuly/0150.html [5 March 2017].

Sztompka P., *Socjologia zmian społecznych* [*Sociology of Social Change*], trans. by J. Konieczny. Kraków: Znak, 2005.

Toso, M. *Umanesimo sociale. Viaggio nella dottrina sociale della Chiesa e dintorni* [*Social Humanism. Trip in the Social Doctrine of the Church and Surrounding Area*]. Rome: Forest, 2001.

Waleszczuk, Z. *System solidaryzmu Heinricha Pescha* [*The System of Solidarity by Heinrich Pesch*], Legnickie Studia Teologiczno-Historyczne [*Theological-Historical Studies in Legnica*] 2001, no. 1, 156–191.

Zięba, M. *Papieska ekonomia. Kościół – rynek – demokracja* [*Pontifical Economy. Church – Market – Democracy*]. Kraków: Znak, 2016.

Zimoń, D. *Kościół katolicki na Śląsku wobec bezrobocia* [*Catholic Church Against Unemployment in Silesia*]. Katowice: Kuria Metropolitalna w Katowicach, 2001.

Arkadiusz Wuwer

L'Église catholique engagée dans l'économie—est-ce nécessaire?

Résumé

À la lumière de l'enseignement de l'Église, la présence de l'Église catholique dans le monde de l'économie paraît évidente et nécessaire.

L'article dirige pourtant l'attention sur la nécessité de préciser (1) de quelle économie parlent les documents de l'Église, (2) quelle présence de l'Église dans le monde de l'économie ils postulent et (3) de quelle nécessité il y est question. Dans ces trois dimensions-ci, l'auteur présente l'abrégé de l'attitude de l'Église envers les questions économiques essentielles (interventionnisme, économie sociale du marché, subsidiarité et solidarité dans l'économie, logique de désintéressement et de don).

Le texte conduit à la conclusion que ce qui est la raison définitive de la présence de l'Église catholique dans l'économie, c'est sa mission sociale visant à créer une société de relations, où l'amitié sociale (*amicitia socialis*) est un principe fondamental.

Mots clés: enseignement social de l'Église, interventionnisme, économie sociale du marché, subsidiarité et solidarité dans l'économie, logique de désintéressement et de don, société de relations, amitié sociale

Arkadiusz Wuwer

La Chiesa impegnata nell'economia—è necessario?

Sommario

Alla luce delle affermazioni del Magistero la presenza della Chiesa cattolica nel mondo dell'economia sembra essere ovvia e necessaria.

L'articolo tuttavia presta attenzione alla necessità di precisare (1) di quale economia parlino i documenti della Chiesa, (2) quale presenza della Chiesa essi postulino nel mondo dell'economia e (3) quale necessità sia menzionata negli stessi. In queste tre dimensioni l'autore delinea un profilo del rapporto della Chiesa nei confronti delle questioni economiche fondamentali (interventismo, economia sociale di mercato, sussidiarietà e solidarietà nell'economia, logica della gratuità e del dono).

Il testo conduce alla conclusione che la ragione ultima della presenza della Chiesa cattolica nell'economia è la sua missione sociale mirata a creare una società di relazioni in cui il principio fondamentale è costituito dall'amicizia sociale *(amicitia socialis).*

Parole chiave: insegnamento sociale della Chiesa—interventismo—economia sociale di mercato—sussidiarietà e solidarietà nell'economia—logica della gratuità e del dono—società di relazioni—amicizia sociale

Philosophy and Canon Law vol. 3 (2017), pp. 109–126

Roman Míčka
University of South Bohemia, Czech Republic

Pope John Paul II's Criticism of "Human Rightism" and Its Further Development

Abstract: The paper deals with the concept of human rights in Catholic social teaching, especially regarding the trends of the so-called human rightism, viz. the ideological broadening and utilitarian relativizing of the concept of human rights in recent decades. It concludes that since the constant reference point of the Catholic moral perspective on human rights is still primarily the concept of natural law, it does not accept all the developmental trends in this sphere and consists in a certain fairly narrow understanding of human rights. The criticism of the inadequate progression and errors in the sphere of the further expansive development of human rights began especially in the era of the pontificate of John Paul II and is still being developed.

Keywords: Catholic social teaching, human rights, hierarchy of human hights, criticism of human rights, human rightism, natural law, John Paul II

Human Rights in Catholic Social Teaching and "Human Rightism"

The relationship of Catholicism to human rights is often said to have undergone a revolutionary development. However, as I will attempt to show, the Catholic position has been very much constant on a long-term basis. For over a century the Church has approached the deformed conception of human rights with distrust, and this holds all the more for the present. In the 18th and 19th century, official church representatives and church documents tended to reject the idea

of human rights and for a long time the modern conception of human rights was regarded as problematic and dangerous in a way. These concerns were justified in a specific way, since the ethos of human rights is interrelated with radical social transformations, with aggressive secularism, with various radically individualistic doctrines, or with collectivistic and utilitarian ones. Since the representatives of the church had respect for the tradition of reasoning based on natural law and the rights and obligations that can be deduced from it, they did not regard the modern concept of rights as a suitable conceptual basis to safeguard human dignity. But the older documents of modern Catholic social teaching define many specific rights of the human being with reference to the natural law (to have a family, to own property, to gather in public, to receive just wages, etc.). Even since Leo XIII, there has been criticism of the declared "human rights," which stand in tension or in contradiction with the natural law as the so-called new rights (see *principia et fundamenta novi iuris*). It is especially a radical concept of equality, self-determination, and rejecting authority as such, which results in a radical concept of democracy, in which everything is determined exclusively by the will of the people (*principatus non est nisi populi voluntas*), not by respect to the natural law.[1]

Already in the course of World War II and subsequently at the time of the Second Vatican Council, motivated by experience with the reality of the totalitarian regimes degrading the basic axioms of humanity and also in connection with a deeper acknowledgement of the need for an institutional grounding of the fundamental human rights, the concept of human rights was received in the Catholic Church. The understanding of the concept of human rights was to a great extent derived from the Universal Declaration of Human Rights, which had been newly promulgated at the UN. Especially in the era of the pontificate of John XXIII and the Second Vatican Council the idea of human rights was fully appropriated by and placed at the very core of Catholic social teaching. In *Pacem in Terris* John XXIII gives a detailed list of rights, which to a great extent coincides with the promulgated Declaration, which for him was "a clear proof of the farsightedness" of the UN and "a step in the right direction, an approach toward the establishment of a juridical and political ordering of the world community."[2] He also perceived some justified objections and reservations regarding some articles of the Declaration, but he did not indicate which ones. However, subsequently the concept of human rights came to be fully at home in Catholic social teaching and became one of the basic concepts of the ethos of the social encyclicals. The idea of human rights was further received, developed, and given creative theological interpretation in the course of the subsequent era, especially in the course of the long pontificate of Pope John Paul II, dur-

[1] Cf. *Immortale Dei*, n. 10.

[2] Cf. *Pacem in Terris*, nn. 143–44.

ing which the Catholic Church even became a key global and strong-sounding defendant of human rights in a broad sense of the word.

The Catholic moral tradition does not accept all the developmental trends in the sphere of human rights, whereby it maintains a constant prophetic-critical character, whose basic point of reference is primarily the concept of natural law and consists in a fairly narrow understanding of human rights, which opposes the non-adequate progress and errors in the sphere of the further expansive development of human rights. The conceptual neologism "human rightism," which is sometimes used to designate the ideological, activist, and expansionist elements in the human rights ethos, can be used as an umbrella term for problematic trends in the sphere of human rights tending towards a deformed perspective of the idea of human rights—the political ideologization of the human rights agenda, the re-definition of the perception of human rights to claims and rights without a relationship to duties, the shift away from understanding human rights in their personalist and ius naturalist meaning towards a positivist, relativist or utilitarian approach, giving precedence to the "new laws" over the fundamental laws. The term "human rightism" is not put to extensive use—it is commonly associated especially with the more radical conservative criticism of the human rights agenda. It has been promoted especially by the former Czech president Václav Klaus (*human-rightism*), an example being his *Speech at the Cardinal Stefan Wyszyński University* (2012)[3] on the occasion of receiving honorary doctorate. But it can be encountered in the Moslem world, for example in the criticism of the Western forms of the human rights agenda presented by Najib Razak,[4] the prime minister of Malaysia (*human rightism*). Alain Pellet, a French international law expert, comments on the concept already in his paper "'Human rightism' and International Law" (2000),[5] although he regards it as a neutral concept and associates it with the human rights activism, which he regards in general as a rather desirable phenomenon in the global spreading and asserting of human rights. So, in the context of this debate, can the Catholic perspective be regarded as "human rightist" in the sense of identifying with human rights, or as implicitly criticizing human rightism for the way it deforms the human rights ethos?

[3] Václav Klaus, *Speech at the Cardinal Stefan Wyszyński University* (2012), http://www.klaus.cz/clanky/3209.

[4] PM says 'human rightism, humanism, secularism' new religion threatening Islam (2014), http://www.themalaymailonline.com/malaysia/article/pm-says-human-rightism-humanism-secularism-new-religion-threatening-islam.

[5] Cf. Alain Pellet, *"Human rightism" and international law* (2000), https://alainpellet.sharepoint.com/Documents/PELLET%20-%202000%20-%20Human%20rightism%20and%20international%20law%20(G.%20Amado).pdf.

The Era of John Paul II and the Criticism of the Trends in Human Rights

In the era of Pope John Paul II an expansion and a dynamic development of the concept, contents, and breadth of human rights began—and at the same time, there appeared a stronger critical reaction to these trends. In this era many critical incentives against the dynamics, expansion, and certain unsatisfactory trends in the sphere of the human rights development appeared, worded by him and by other church texts and documents, which has received surprisingly little attention. The generally expansive development in the human rights sphere motivated Catholic social teaching to a certain reserve and to a return to more modest lists of human rights, which were again more closely linked with the old ius naturalist tradition.

John Paul II repeatedly spoke of the Declaration as of a key document converging to a great extent with the Catholic moral tradition,[6] however, for example, in the encyclical *Centesimus Annus* (1991) he focuses on the four essential and elementary rights derived from the classical ius naturalist tradition:

> Among the most important of these rights, mention must be made of the right to life, an integral part of which is the right of the child to develop in the mother's womb from the moment of conception; the right to live in a united family and in a moral environment conducive to the growth of the child's personality; the right to develop one's intelligence and freedom in seeking and knowing the truth; the right to share in the work which makes wise use of the earth's material resources, and to derive from that work the means to support oneself and one's dependents; and the right freely to establish a family, to have and to rear children through the responsible exercise of one's sexuality. In a certain sense, the source and synthesis of these rights is religious freedom, understood as the right to live in the truth of one's faith and in conformity with one's transcendent dignity as a person.[7]

The wording shows that, compared to the lists cited above, he places greater emphasis on the sacred character and inviolability of an (unborn) human life and on religious freedom as a key condition of human dignity, which are the two spheres in which he saw a fundamentally problematic development taking place. The emphases of John Paul II must be viewed in a close connection with

[6] Cf. *Address to the General Assembly of the United Nations* (1979), where John Paul II assesses the *Declaration* as "a real milestone on the path of the moral progress of humanity" (7); in 1995 he said in the same place that the *Declaration* "remains one of the highest expressions of the human conscience of our time" (2).

[7] *Centesimus Annus*, n. 47.

the "culture of death" he criticized, which is also projected onto a deformed conception of human rights, as he writes also in the newer encyclical *Evangelium Vitae* (1995).[8] According to the pope, the culture of death is derived from a totally individualist concept of freedom, which does not maintain its fundamental connection with truth and which issues in some sort of freedom of the stronger against the weak. He is thinking especially of violating the "right to life," and he does not hesitate to speak of political structures that enforce such a concept of the human being and freedom as of "a form of totalitarianism."[9] John Paul II regards even a democratic form of government as principally illegitimate, if it is the mere rule of the opinion of the majority and an element of respect for the natural law is absent from its core.[10] In his *Message for the World Day of Peace* (2003) the pope even speaks of the problematic trends in the human rights agenda and the expansion of the controversial "new rights":

> There is still in fact much hesitation in the international community about the obligation to respect and implement human rights. This duty touches *all* fundamental rights, excluding that arbitrary picking and choosing which can lead to rationalizing forms of discrimination and injustice. Likewise, we are witnessing the emergence of an alarming gap between a series of *new "rights"* being promoted in advanced societies—the result of new prosperity and new technologies—and other more basic human rights still not being met, especially in situations of underdevelopment. I am thinking here for example about the right to food and drinkable water, to housing and security, to self-determination and independence—which are still far from being guaranteed and realized.[11]

The fact that all the ideals that are at present subsumed under the concept of human rights are not of the same significance and importance, especially from a theological and ethical point of view, was elaborated and commented upon in the era of John Paul II also by other Church documents. It is, for example, the key document of the International Theological Commission *The Dignity and Rights of the Human Person* (1983),[12] which directly speaks about the "hierarchy of human rights." It distinguishes between three levels of rights—the really "fundamental," pre-state and inalienable ones on the one hand, and "rights of a lesser nature" ("civil, political, economic, social, and cultural rights"), concerned with more particular situations, which specify some of the basic rights and are contingent on historical and cultural factors. At the lowest level, there

[8] Cf. *Evangelium vitae*, n. 19.

[9] Ibid., n. 20.

[10] Ibid., n. 70.

[11] *Message of His Holiness Pope John Paul II for the Celebration of the World Day of Peace* (2003), 5.

[12] ITC. *The Dignity and Rights of the Human Person* (1983), n. 1.2.

are rights like "postulates of an ideal" that are not requisites of the rights of nations or strictly obligatory norms, but express certain human requirements, demands, and desires from the point of view of practical application.

This key emphasis on a certain minimalism of the basic, really universal, and elementary human rights was then adopted into the *Catechism of the Catholic Church* (1991), where elementary rights coincide to a great extent with the definition of the common good. The common good must be sought in the basic essential human rights and their securing on the part of the political authority, which is associated with four spheres principally identical with the basic enumeration of human rights in John Paul II. According to the *Catechism*, the common good contains four essential elements, which translated to the language of basic human rights can be succinctly enumerated as follows:[13]

— freedom of religion, conscience, and true information;
— the right to basic material living conditions;
— the right to start a family and the right to privacy;
— the right to peace, safety, and justice.

The Continuing Criticism of "Human Rightism" in Benedict and Francis

The critical view of some forms of the human rights ethos is most sharply pointed in Benedict XVI in the encyclical *Caritas in Veritate*:

> Nowadays we are witnessing a grave inconsistency. On the one hand, appeals are made to alleged rights, arbitrary and non-essential in nature, accompanied by the demand that they be recognized and promoted by public structures, while, on the other hand, elementary and basic rights remain unacknowledged and are violated in much of the world… […] The link consists in this: individual rights, when detached from a framework of duties which grants them their full meaning, can run wild, leading to an escalation of demands which is effectively unlimited and indiscriminate.[14]

The significance of the natural law in a broader context and with respect to the universal dimension of the natural law and the philosophico-theological debate is again underlined in the era of Benedict XVI by the document of the International Theological Commission *In Search of a Universal Ethic: A New Look at the Natural Law* (2009). It understands the natural law as a point of departure for a universally valid ethics and for searching for an ethical language common

[13] Cf. *Catechism of the Catholic Church* (1991), nn. 1907–9.
[14] *Caritas in Veritate*, n. 43.

to all people vis-à-vis the contemporary challenges. Based on the natural law and based on appreciation of the changing situations in which people live and the judgement of practical reason, it is possible to formulate a norm of natural justice, which can take the form of mildly different and epoch-contingent expressions in history.[15] The document views the expansive concept of human rights as a step away from the natural law towards a "utilitarian legalism" and reinforcing the consumer and hedonistic lifestyle:

> Moreover, a certain propensity towards multiplying human rights more according to the disordered desires of the consumerist individual or the demands of interest groups, rather than the objective requirements of the common good of humanity, has—in no small way—contributed to their devaluation.[16]

At the same time, it praises the legacy and constant significance of the Declaration and its natural law grounding:

> Contemporary attempts to define a universal ethic are not lacking. Shortly after the Second World War, the community of nations, seeing the consequences of the close collusion that totalitarianism had maintained with pure juridical positivism, defined in the Universal Declaration of Human Rights (1948) some inalienable rights of the human person. These rights transcend the positive law of states and must serve them both as a reference and a norm. […] The Universal Declaration of Human Rights constitutes one of the most beautiful successes of modern history. It "remains one of the highest expressions of human conscience in our times," and it offers a solid basis for promoting a more just world.

With respect to further development and historical experience it also perceives some requirements of the Declaration as too "Western" and calls for a "more comprehensive" reformulation.

> Nevertheless, the results have not always been as high as the hopes. Certain countries have contested the universality of these rights, judged to be too Western, prompting a search for a more comprehensive formulation.

Pope Francis does not lay back in this criticism of "human rightism" and in a similar spirit emphasizes the deformation of the human rights ethos in the sense of abuse and excessive individualism, for example in his Address to the European Parliament (2014):

---

[15] Cf. ITC. *In Search of a Universal Ethic: A New Look at the Natural Law* (2009), 90.

[16] Ibid., 5; including subsequent citations.

> At the same time, however, care must be taken not to fall into certain errors which can arise from a misunderstanding of the concept of human rights and from its misuse. Today there is a tendency to claim ever broader individual rights—I am tempted to say individualistic; underlying this is a conception of the human person as detached from all social and anthropological contexts, as if the person were a "monad" (*μονάς*), increasingly unconcerned with other surrounding "monads."[17]

Similarly, Pope Francis confirms a modest and natural law core of understanding human rights, when in his Address to the United Nations (2015) in New York he again focuses on a modest enumeration of human rights, converging with the basic requirements of natural law, which he evidently regards as panhuman and universal:

> Government leaders must do everything possible to ensure that all can have the minimum spiritual and material means needed to live in dignity and to create and support a family, which is the primary cell of any social development. In practical terms, this absolute minimum has three names: lodging, labour, and land; and one spiritual name: spiritual freedom, which includes religious freedom, the right to education and all other civil rights. […] essential material and spiritual goods: housing, dignified and properly remunerated employment, adequate food and drinking water; religious freedom and, more generally, spiritual freedom and education. These pillars of integral human development have a common foundation, which is the right to life and, more generally, what we could call the right to existence of human nature itself.[18]

A Constant Emphasis on the Natural Law?

We can see that despite a certain broader reception of the human rights ethos in Catholic social teaching, which to a great extent overlaps with the highly appraised Universal Declaration of Human Rights of the UN, the popes repeatedly return to a somewhat more modest expression of basic human rights, which is derived from the classical formulations of the natural law. In fact, a list of human rights similar to the ones that can be found in the encyclical *Centesimus Annus* by John Paul II, the *Catechism of the Catholic Church* and in the Address to the United Nations (2015) by Pope Francis can surprisingly be found already in Pius XII at the time of World War II, that is, already before that "human rights turn" in Catholic social teaching, in his Radio *Christmas Message* (1942):

---

[17] *Address of Pope Francis to the European Parliament* (2014).

[18] *Address of the Holy Father, United Nations Headquarters, New York* (2015).

> Fundamental personal rights—the right to maintain and develop one's corporal, intellectual and moral life and especially the right to religious formation and education; the right to worship God in private and public and to carry on religious works of charity; the right to marry and to achieve the aim of married life; the right to conjugal and domestic society; the right to work, as the indispensable means towards the maintenance of family life; the right to free choice of state of life, and hence, too, of the priesthood or religious life; the right to the use of material goods; in keeping with his duties and social limitations.[19]

Hence it is possible to say that all the popes of the second half of the 20th century as well as numerous accompanying church documents agree on this certain minimalism of human rights, which can be traced down to the four basic human goods known already since Thomas Aquinas.

Unlike some contemporary and debated views of global social justice, which in a certain sense expect the application of the broader social rights and standards developed in prosperous societies, Catholic social teaching certainly does not call for a consolidation of social rights and redistribution mechanisms in analogy to the developed prosperous societies of the West, which markedly contributed to the development of deformed forms of economy and of a consumer mentality. In general, Catholic social teaching calls for solidarity and for the assertion of basic social rights, although in a principally narrower sense of the word than is common in the contemporary human rights rhetoric. The economic goal it apparently views as crucial is precisely attaining the minimal standards to eliminate poverty in the sense of the minimal material means to secure a dignified livelihood. This continual position is linked to the basic ideas of natural law, which constitutes the permanent core of Catholic ethics.

Even though the expression of these rights can differ in a minor way depending on the historically changeable situations and judgments of practical reason, the requirements of the ius-naturalisic tradition in the Catholic interpretation are fairly modest and the requirements of the *Declaration* are their "upper limit." It understands the natural law as a starting point for constructing a global moral order, but at the same time perceives some requirements of the Declaration as too "Western" and calls for a "more comprehensive" reformulation. The Declaration contains elements that go beyond the minimalist elements of the traditionally conceived natural law—"the right to democracy," certain stronger "social rights," and other. These more demanding values are also highly appraised by Catholic social teaching, but they are not perceived as necessary for a universal and transcultural harmony in the sphere of human rights. So from this point of view the effort to set through a broader conception of human rights at the

[19] Cf. Pius XII *Radio message Con sempre nuova freschezza for Christmas* (December 24, 1942).

global level over and above the Declaration is an expression of a certain limited Western or Eurocentric perspective, as is the case to a great extent with, for example, A Report to the Bishops of COMECE, when it requests that the Charter of Fundamental Rights of the European Union become the starting point for a global basis of human rights.[20]

The whole Catholic view of human rights is to a great extent based on the classical concept of the natural law. This continual position is linked to the basic ideas of the natural law, which constitutes the permanent core of Catholic ethics. Thomas Aquinas understands natural law as the rational cognition of the natural goals of human nature, viz. the human goods (*bona humana*)—sustaining one's own life, sustaining the human species, knowing the truth about God, life in community. According to these formulations, the basic presuppositions of human dignity include not only freedom (the right to life, religious freedom, and the right to family life), but also the right to basic material security deriving from the concept of the universal destination of created goods. Despite the interpretational breadth of this conception and despite the departure from rigid scholasticism, it is certain that the natural law still constitutes the core of Catholic moral theology and thereby also of modern Catholic social teaching. In this context beyond the narrower framework of Catholic social teaching it may be noted that with his encyclical *Veritasis Splendor* (1993) John Paul II again emphasized the natural law as the core and basis of Catholic moral doctrine. He rejects the relativization of natural law and its requirements, its universality, and the possibility of cognizing it by the power of human reason, as well as the alleged contradiction between the demands of the natural law and human freedom. The natural law is not "a set of norms on the biological level," but "the rational order," that "expresses and lays down the purposes, rights, and duties which are based upon the bodily and spiritual nature of the human person."[21] The basic moral principles of the natural law can be historically and culturally formulated in mildly different ways, but that does not cast any doubt on their unchangeable and universal character.[22]

It is interesting that one can find a deep connection and remarkable correlation between the sober ius-naturalist approach of Catholic social teaching and, for example, Roosevelt's famous Four Freedoms Speech (1941),[23] which expresses a similar foursome of human rights as the minimalist definitions of human rights in Catholic social teaching quoted above. In his famous speech, Roosevelt speaks of the hope for a future world based on "four basic human freedoms," which are the foundation of the "moral order"—freedom of speech

[20] Cf. A report to the Bishops of COMECE: Global Governance. Our responsibility to make globalisation an opportunity for all (2001), 27.

[21] Cf. *Veritasis Splendor*, n. 50.

[22] Cf. ibid., n. 53.

[23] Cf. Franklin D. Roosevelt, *Four Freedoms Speech* (1941).

and expression, freedom to worship God in one's own way, freedom from want and freedom from fear. The situation is similar, for example, in the case of the classical theorist of justice John Rawls, who sees the basis of an international coexistence in an enumeration of human rights, which is very close to their usual ius-naturalist expressions and thereby also to the enumerations contained in Catholic social teaching:

> Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly). Human rights, as thus understood, cannot be rejected as peculiarly liberal or special to the Western tradition. They are not politically parochial.[24]

Conclusion

A document witnessing to a shared ecumenical (Judeo-Christian) attitude on the question of human rights consisting in an appraisal of the Declaration and a criticism of "human rightism" is *A Statement of the Ramsey Colloquium* (a group of Jewish and Christian theologians, ethicists, philosophers, and scholars) of 1998, formulated on the occasion of the fiftieth anniversary of the Declaration's adoption,[25] which takes a principally identical perspective on the issue of human rights as Catholic social teaching. The *Statement* underlines the importance of the Declaration as "a decisive moment in the moral, cultural, and political history of the world"[26] and appeals to Christians and Jews to understand it as a fundamental expression of human rights deriving from the Judeo-Christian perspective and the natural law tradition. At the same time, the *Statement* is critical of principal steps away from the Declaration in the sense of a resignation on the concept of human unity, radical multiculturalism, or disputing the sacred character of human life and human dignity. It also does not omit the problem of an ideological multiplication of human rights, by which the concept of human rights is obfuscated:

---

[24] John Rawls, *The Law of Peoples. With "The Idea of Public Reason Revisited"* (Harvard: Harvard University Press, 1999), 65.

[25] Cf. Michaela Moravčíková, *Ľudské práva, kultúra a náboženstvo* (Praha: Leges, 2014), 194–96.

[26] *A Statement of the Ramsey Colloquium* (1998).

> Also in the name of human rights, the number of rights is multiplied to the point that the very idea of rights is dangerously diluted. The Declaration is neither exhaustive nor perfect in its articulation of rights. But the essential rights specified by the Declaration are weakened by multiplying the number of interests, goods, and desires that are elevated to the status of rights.

One of the putative rights it gives as an example is "the right to abortion." It warns against the application of such a deformed concept of human rights which will evidently be perceived from religious perspectives as an imperialism of the fallen forms of Western secularism and disrespect for the culture of life. In the case of social rights, which have also become an object of confusion and hypertrophy, the *Statement* says that they must be perceived in their ontological difference. They are not rights that can be generally enforced and "claimed," based on a simple declaration, but a requirement for human goods that should be understood as "our duties of solidarity rather than as the rights of others," in relationship to the economic possibilities of the individual states. The *Statement* rejects their "confusing moral symmetry," which it regards as an ideological construct of collectivistic and totalitarian regimes that preferred social and economic rights to the detriment of basic and political rights.

From the point of view of the intercultural debates on human rights the Catholic ethic of human rights takes the so-called essentialist position,[27] because, as compared to the relativist or constructivist positions, it sees their grounding in a transcendent moral order and regards them as universal, that is, belonging to all human beings. It assumes that they are universal and is not satisfied with simply reaching an agreement by negotiation from various cultural and religious perspectives. But due to the modest enumeration of these rights based primarily on the classical ius-naturalist tradition, this position is suitable as a point of departure for further intercultural and interreligious dialogue.

As for other religions and their relationship to the issue of human rights, it is a topic for a separate treatise. But in general it is possible to say that on the part of Catholic social teaching it is possible to identify some key challenges, with which the traditional emphasis on the natural law constitutes a certain dissent against the contemporary trends in the sphere of human rights—the issue of rejecting the expansive interpretation of human rights over and above the framework of natural law, the issue of basic global solidarity associated with rejecting consumerism and developed forms of "Western" lifestyle, and the issue of the spreading of the structures of "culture of death." By these emphases Catholic ethics diverges from the dominant "human rightist" concept of values, which has culturally and institutionally adopted many trends originating from

[27] Cf. Marek Hrubec, Předpoklady interkulturního dialogu o lidských právech, in Marek Hrubec, ed., *Interkulturní dialog o lidských právech. Západní, islámské a konfuciánské perspektivy* (Praha: Filosofia, 2008), 30.

Western secularism and from deformed concepts of freedom and human dignity. A similar attitude of criticism of "human rightism" can be assumed in other religions. In these aspects the Catholic idea converges to a great extent with the alternative and "non-Western" understanding of human rights in non-Christian religions and other civilizational ambits, which could become a certain shared "religious contribution" towards the basic universal value framework of human rights. Among the efforts for a definition of human rights from the point of view of Islam the Cairo Declaration On Human Rights in Islam (1990)[28] stands out. Despite the fundamental diversity and plurality of positions in the context of Islam, it must be perceived as a key point of departure for a dialogue on human rights with the Moslem world, at least confirmed by its official political representatives. It declares equality "in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations" (art. 1). In many aspects and formulations the Cairo Declaration is close to the Catholic idea of guaranteeing the basic rights—in protecting human life, including life before birth and natural death ("throughout the term of time willed by Allah," art. 2c), and also in the fairly modest formulation of social rights, which is narrower than in the Universal Declaration of Human Rights—it consists in the right to work ensured for all (13) and in warrants of a "decent living" of the human being and persons depending on him or her, "including food, clothing, housing, education, medical care and all other basic needs," albeit within the limits "provided by society and the State within the limits of their available resources" (all in 17). At the same time, the Cairo Declaration emphasizes the role of Islam as a warrant of this dignity and a path to human perfection. Islam is conceived as "the religion of true unspoiled nature" and it is prohibited to exert any form of pressure on a human being or to make use of his poverty or lack of education "in order to force him to change his religion to another religion or to atheism" (10). Here we already encounter the sensitive issue of religious freedom and conversion, which is possible and desirable from another religion to Islam, but not vice versa. Other freedoms and rights in general can also be interpreted and accepted only in the context of the Sharia law (25), so that it limits the equality in contracting marriage (5), freedom of speech (22), or gender equality (6), as they are normally understood. Despite an evident intersection in numerous spheres and basic human rights, from the Catholic perspective there remains a fundamental problem in the perspective principally bound to religious texts, in the issue of religious freedom, freedom of expression, and equality of men and women. In a more radical interpretation the Cairo Declaration could mean a legitimation of an active discrimination of persons of other faith and non-believers and limiting freedoms on the part of the

[28] *The Cairo Declaration On Human Rights In Islam* (1990).

state in the name of "the right to live in a clean environment, away from vice and moral corruption" (17).

Despite a possible value convergence in key areas, the issue of freedom of conscience and religion still remains a constant object of dispute and discord. In the Catholic context this has been gradually placed in the very centre of human rights from a theological perspective, as a basic prerequisite of the dignity of a human person. Since the declaration *Dignitatis Humanae*, religious freedom is even conceived as the first and highest human right grounded in human dignity and, at the same time, as a key prerequisite of global human cohabitation ("in order that relationships of peace and harmony be established and maintained within the whole of mankind").[29] John Paul II regards religious freedom as the source and synthesis of all further rights of a human person. He also links his concept of "civilization of love" closely with the (more broadly conceived) "culture of freedom"—the freedom of individuals and the freedom of nations, who live in a self-giving solidarity and responsibility. He associated human freedom closely with human dignity and regarded it as a universal value, which constitutes a key dynamics in history. He spoke of the global acceleration of the "quest for freedom" and even of a "universal longing for freedom."[30]

Of course, the emphasis on freedom, as it was developed within the official positions of Catholicism, is very close to the "Western" concept of freedom, in whose core there is a fundamental emphasis on the dignity of a human person and human individuality, although some specific characteristics may be mentioned (the close association with responsibility and the obligation to the cognized truth). Certainly, the emphasis on freedom in a form close to the "Western conception" is not shared globally, despite its essential reception in the Declaration. It is evident that in the context of non-Western civilizational ambits such a concept of freedom may be perceived as too extensive and not sufficiently linked to the "community" and social dimension of the human being. In some religions the freedom of religion and the associated freedoms of speech and expression are accepted only conditionally and in the sphere of Islam, for example, they are fully respected only in the "most liberal" interpretations of Islam and in countries that have adopted a "secular" political order. On the other hand, in upholding the key values of religious freedom and the associated freedoms it is necessary to perceive the fact that Christianity itself (especially Catholicism) fully accepted many values of human freedom (human rights, democracy) as late as the second half of the 20th century—in many spheres, Catholic Christianity has historically and still fairly recently taken positions close to those that are criticised from the contemporary viewpoint in the (non-liberal) Islam

[29] *Dignitatis Humanae*, n. 15.

[30] Cf. *Address of His Holiness John Paul II, United Nations Headquarters, New York* (1995).

(domination of religion over politics; rejection of human rights, freedom of conscience, democracy; literal and ahistorical reading of sacred texts, etc.). It is also necessary to perceive the fact that from the perspective of "non-Western" religions and civilizational contexts the "liberal" concept of human freedom is closely mixed with the secularistic and excessive forms of freedom, which are rightfully criticized and understood as a product of the civilizational degeneration of the West, which is why they are accepted only conditionally and with suspicion.

Despite respect for a pluralist attitude to the nature of human rights the question that remains crucial is the issue of religious freedom (and, more broadly defined freedom in general), which from the "non-Western perspectives" often appears excessive and too broadly delineated. In the context of Western civilization, freedom has in a certain way become dislocated from the traditional Christian contexts and has acquired many deformed shapes and expressions, which often becomes an argument against absolutizing it and applying it in different cultural and religious contexts. The Western civilization is an ambivalent fruit of Christianity, where human freedom has flourished and its institutional anchoring has become exemplary for the rest of the world, but where at the same time the most deformed forms of freedom contradicting the Christian tradition and the natural law have developed. Despite acknowledging this fact—which has also been criticized by Catholic social teaching—human freedom is still at the centre of Christian anthropology and the human rights ethos, and religious freedom is even understood as the "source and synthesis" of all rights grounding the transcendent dignity of the human person. The Christian concepts of the human person, freedom, and the greatness of human dignity, which are derived from the notion of the human being as an image of God and from the premise of Christ's incarnation and human redemption, are really so strong that they in a certain way clash against other limited perceptions of human dignity in non-Christian religions, where human freedom is adumbrated or limited in a certain way, in some cases with reference to the freedom and greatness of God, in others with reference to stronger emphases on the human collective. So certain forms of tension and non-consensus can be expected on this issue, which it will be difficult to overcome. The way without doubt consists in an emphasis on satisfactory progress concerning the issue of freedom accompanied by respect for certain historically and culturally conditional limits.

The trends of the so-called human rightism are foreign (not only) to the Catholic tradition of human rights and it is not possible to speak of a further continuing convergence of the human rights ethos between the religious position and the secular one, over and above the Universal Declaration of Human Rights, which is a certain upper (or even questioned) limit of the global ethos of human rights. Years ago, Pope John Paul II began to openly criticize ideological human rightism and even today his criticism must be understood as a key dimension of

the "prophetic and critical" ethos in the debate on the human being, his essence and human rights in general, and at the same time as a remarkable contribution to the interreligious dialogue on human rights.

Bibliography

Books, Articles, and other Documents

A Statement of the Ramsey Colloquium (1998). https://www.firstthings.com/article/1998/04/001-on-human-rights.

Hrubec, Marek, ed. *Interkulturní dialog o lidských právech. Západní, islámské a konfuciánské perspektivy*. Praha: Filosofia, 2008.

Klaus, Václav. Speech at the Cardinal Stefan Wyszyński University (2012). http://www.klaus.cz/clanky/3209.

Moravčíková, Michaela. *Ľudské práva, kultúra a náboženstvo*. Praha: Leges, 2014.

Pellet, Alain. *"Human rightism" and international law* (2000). https://alainpellet.sharepoint.com/Documents/PELLET%20-%202000%20-%20Human%20rightism%20and%20international%20law%20(G.%20Amado).pdf.

PM says 'human rightism, humanism, secularism' new religion threatening Islam (2014). http://www.themalaymailonline.com/malaysia/article/pm-says-human-rightism-humanism-secularism-new-religion-threatening-islam.

Rawls, John. *The Law of Peoples. With "The Idea of Public Reason Revisited."* Harvard: Harvard University Press, 1999.

Roosevelt, Franklin D. *Four Freedoms Speech* (1941). http://www.fdrlibrary.marist.edu"/fourfreedoms.

The Cairo Declaration On Human Rights In Islam (1990). http://www.oic-oci.org/english/article/human.htm.

Church Documents

A Report to the Bishops of COMECE: Global Governance. Our responsibility to make globalisation an opportunity for all (2001). http://siteresources.worldbank.org/DEVDIALOGUE/Resources/GlobalGovernance.pdf.

Address of His Holiness John Paul II, United Nations Headquarters, New York (1995). https://w2.vatican.va/content/john-paul-ii/en/speeches/1995/october/documents/hf_jp-ii_spe_05101995_address-to-uno.html.

Address of Pope Francis to the European Parliament (2014). http://w2.vatican.va/content/francesco/en/speeches/2014/november/documents/papa-francesco_20141125_strasburgo-parlamento-europeo.html.

Address of the Holy Father, United Nations Headquarters, New York (2015). http://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150925_onu-visita.html.

ITC. *In Search of a Universal Ethic: A New Look at the Natural Law* (2009). http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html.

ITC. *The Dignity and Rights of the Human Person* (1983). http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_1983_dignita-diritti_en.html.

Message of His Holiness Pope John Paul II for the Celebration of the World Day of Peace (2003). https://w2.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-ii_mes_20021217_xxxvi-world-day-for-peace.html.

Pius XII. *Radio message Con sempre nuova freschezza for Christmas* (December 24, 1942). https://w2.vatican.va/content/pius-xii/it/speeches/1942/documents/hf_p-xii_spe_19421224_radiomessage-christmas.html; English translation: http://www.ewtn.com/library/PAPALDOC/P12CH42.HTM.

Caritas in Veritate (2009); *Catechism of the Catholic Church* (1991); *Centesimus Annus* (1991); *Dignitatis Humanae* (1965); *Evangelium Vitae* (1995); *Immortale Dei* (1885); *Pacem in Terris* (1963); *Veritasis Splendor* (1993). All these church documents available at www.vatican.va.

Roman Míčka

La critique de l' « idéologie des droits de l'homme » par le pape Jean-Paul II

Résumé

L'article analyse la conception des droits de l'homme dans l'enseignement social catholique, en particulier en relation avec les tendances de la soi-disant « idéologie des droits de l'homme », c'est-à-dire l'élargissement idéologique et la relativisation utilitariste de la conception des droits de l'homme dans les dernières décennies. L'auteur de l'article constate que si le point stable de référence de la perspective catholique morale des droits de l'homme est toujours avant tout une notion de droit naturel, il n'accepte pas toutes les tendances de développement dans ce domaine et il consiste dans une certaine compréhension, assez étroite, des droits de l'homme. La critique de la progression inadéquate et des erreurs dans la sphère du développement expansif ultérieur des droits de l'homme a commencé en particulier à l'époque du pontificat de Jean-Paul II et elle est toujours développée.

Mots clés : enseignement social catholique, droits de l'homme, hiérarchie des droits de l'homme, critique des droits de l'homme, idéologie des droits de l'homme, droit naturel, Jean-Paul II

Roman Míčka

La critica di papa Giovanni Paolo II all'»ideologia dei diritti umani»

Sommario

L'articolo tratta la concezione dei diritti umani nell'insegnamento sociale cattolico, specialmente rispetto alle tendenze della cosiddetta "ideologia dei diritti umani", vale a dire dell'espansione ideologica e utilitarista della relativizzazione della concezione dei diritti umani negli ultimi decenni. Enuncia che, poiché il punto di riferimento costante della prospettiva morale cattolica

dei diritti umani continua ad essere soprattutto il concetto del diritto naturale, esso non accetta tutte le tendenze di sviluppo in tale campo e si basa su una comprensione abbastanza ristretta dei diritti umani. La critica dei progressi inadeguati e degli errori nella sfera dell'ulteriore sviluppo espansivo dei diritti umani è cominciata specialmente nell'epoca del pontificato di Giovanni Paolo II e continua ad essere sviluppata.

Parole chiave: insegnamento cattolico sociale, diritti umani, gerarchia dei diritti umani, critica dei diritti umani, ideologia dei diritti umani, diritto naturale, Giovanni Paolo II

Part Two

Canon Law

Philosophy and Canon Law vol. 3 (2017), pp. 129–147

Józef Krukowski
The John Paul II Catholic University of Lublin, Poland

The Standpoint of the Holy See on Communism From Benedict XV to John Paul II*

Abstract: The article presents the relations of the Holy See, both as the supreme authority of the Roman Catholic Church and subject of the public international relations law, with the authorities of the European communist states. The first part shows the position of the Holy See towards the communist regime of the Soviet Union in the period from the October Revolution till the end of the Second World War. The Holy See started charitable activities for the benefit of starving Russian population and negotiations with the representatives of the Soviet Union. In the first phase, the communist authorities offered the Holy See the termination of an international agreement and normalization of diplomatic relations, but they were unwilling to stop fighting religion and prosecuting the Church. In the second phase, the contacts between the Holy See and the communist authorities were interrupted. It was then that Pope Pius XI came with critical evaluation of ideological assumptions and methods of the communist governance (the *Divini Redemptoris* encyclical).

The second part contains a review of relations of the Holy See with the states of Central and Eastern Europe that were imposed by the communist rule after the Second World War, and with the Soviet Union—in the period from the end of the Second World War to the collapse of the communist bloc in Europe. At first, the governments of those countries broke off diplomatic relations with the Holy See as well as the concordat, negotiated in the interwar period, starting to limit the freedoms of Church and discrimination of believers. It was then that the Holy See granted special faculties (*facultates speciales*) to the bishops in dioceses in these countries that were to secure the functioning of the Church in a degree that would be close to normal. During the pontificate of John XXIII a dialogue was initiated with the communist governments of the European countries to secure the freedom of religion. Still, those governments aimed at the

* The Polish version of this article has been published in Buletin no. 30 (2017) of Stowarzyszenie Kanonistów Polskich, and it is available at: http://www.stowarzyszeniekanonistow.pl/index.php/artykuly/biuletyn-nr-30/112-jozef-krukowski-stolica-apostolska-wobec-komunizmu-od-benedykta-xv-do-jana-pawla-ii.

international support of the Holy See for their policies, while they did not stop to limit religious freedoms. During the pontificate of John Paul II the Holy See put a strong emphasis on supporting Solidarity and the right of self-governance of the nations.

Keywords: Church and State, diplomatic relations, concordat, self government, religious freedom, legal regulations, political system

Initial Remarks

The issue of relations between The Holy See[1] and the communist states includes a broad range of both pragmatic and doctrinal aspects. It is first recommended to start with the identity of the Parties of those relations and their respective aims. In its relations with the communist states—similarly to that with other entities—the Holy See played a double role. The first was that of the highest authority within the Roman Catholic Church, a universal religious community that was performing its mission within territories of numerous countries; the latter—of participant of international relations, equipped with public-legal personality that included the ability to hold diplomatic relations and conclude international agreements.[2] The respective states set their relations with the Holy See depending on their political regime, that is, the sum of ideological assumptions that the state authority based its relation with its society upon, and the methods that it relies on in its relations that society. We can commonly distinguish between two opposing political regimes—the totalitarian and the democratic ones, and the intermediate type—the autocratic regime. There are different versions of these regimes. The Holy See takes position according to ideological assumptions that they rely to set their relations with their societies, the methods for implementation thereof and the possibilities of accomplishing its religious and moral mission therein. In the 20th century the Holy See faced the need to take position relative to the communist states in their Marxist-Leninist version. The first state of this type was the Union of Socialist Soviet Republics that was created in Russia after the October Revolution of 1917. After the Second World War this regime was forcibly imposed in the countries of Central and Eastern Europe. Thus, we have to distinguish two separate stages in relations between the Holy See and the communist states.[3]

[1] The name "Holy See" or the "Apostolic See" means the Bishops of Rome, that is the Pope as the head of the Roman Catholic Church and the Roman Curia, that is the set of auxiliary institutions, through which the Pope acts in the Church and in the world. See Can. 361 of the 1983 Code of Canon Law.

[2] More on this subject: Józef Krukowski, *Kościelne prawo publiczne. Prawo konkordatowe* (Lublin 2013), 177–264.

[3] See Hansjakob Stehle, *Tajna dyplomacja watykańska. Papiestwo wobec komunizmu* (1917–1991) (Warszawa 1993). With precision of a chronicle writer the author presented the course of

From the October Revolution till the end of the Second World War

Prior to the formation of the USSR the Holy See treated socialism and communism as a dangerous roject of a political and economical system. At the end of the 19th-century Pope Leon XIII in his encyclical *Rerum Novarum* (1891)[4] conducted a critique of the capitalist system and indicated the need to solve the difficult social issues, especially the worker issues. At the same time, he was warning us against the solutions proposed by the socialists. Then in the encyclical *Graves de Communi* (1901)[5] the pope put forward a proposal of Christian democracy, as opposed to social democracy.

As a result of the October Revolution the first communist state emerged in Russia. The response of the Holy See opened the way to two perspectives, that is, the pragmatic and the doctrinal one. The first one utilized the method of diplomatic dialogue, leading to negotiation of guarantees of completion by the Church of its religious-moral mission regarding the Roman Catholics. When the doctrinal plane is taken into account, it questioned the basic ideological assumptions.

The Holy See initiated its first relations with the USSR during the pontificate of Pope Benedict XI. These included interventions or diplomatic negotiations initiated by Achilles Ratti, the representative of the Holy See in Warsaw (future Pope Pius XI)[6]; Piotr Gasparri, the secretary of state at Benedict XV,[7]

relations between the Holy See and the representatives of the USSR and other communist states. The description of events concerning those relations in the present publication is largely based on information presented in this publication.

[4] Acta Apostolicae Sedis (AAE) 23(1890/91), 641–70.

[5] AAS (1900/1901), 385–96.

[6] In the summer of 1918 Achilles Rati, the apostolic visitor and the nuncio in Warsaw telegraphed Lenin asking to free the tsarina and her daughters and to save the life of the tsarevitch Grand Duke George. His interventions proved futile. Then he turned to Lenin asking him to free the imprisoned archbishop Ropp, ordinary Mohylew. It proved to be a mistake as the one arrested was not the archbishop himself but his nephew. Still, a little later, in 1919 also archbishop Ropp was arrested with charges of cooperation with Poland. It was then that Mons. Ratti started the efforts to free him with the mediation of Red Cross in Warsaw. This intervention proved successful. On 17 November 1919 archbishop Ropp was released from prison—on principles of exchange of prisoners of war.

[7] In March 1919 two Orhodox archbishops turned to Pope Benedict XV for "compassion" due to prosecution by Bolsheviks. It was then that card. Gasparri turned with a telegraphic appeal to Lenin, asking him to issue "strict regulations that would order respect of clergymen of all religions." The USSR People's Commissar of the Foreign Affairs Chicherin cynically replied that "no clergymen of this religion (Orthodox—J.K.) suffered due to his religious beliefs" and that: "Still, against those who participated in conspiracies against the Soviet government and the rule of workers and peasants, are really subjected to the same procedure that is also

and Eugenio Pacelli, the nuncio in Münich and Berlin (later known as Pope Pius XII).

When in years 1921–1922 thousands of people died in Russia due to famine, Benedict XV introduced an initiative to provide the starving with charitable aid in a way that would be within the limits of law. Based upon the agreement with the USSR government missionaries went to Russia to aid its population by providing food, setting up agricultural and vocational schools and providing religious and moral education. Hope was awakened in Vatican that—pursuant to the prophecy of Fatima—the time has come for Russia to convert. The Communists demanded the Holy See to declare the sums devoted to aid, but did not agree on the religious and educational mission to join the charitable one. The Holy See did not save on the aid, and after the death of Pope Benedict XV on January 22, 1922, it turned out that the treasury was empty. The continuation of aid provided to the famine-struck Russia was only possible thanks to public fundraisers, especially those conducted in America. At the same time, the Soviet authorities ordered the forced requisition of all valuable church property made of gold, silver, and precious stones, and crossed out the religious mission from the draft agreement. The new pope—Pius XI most likely agreed with the opinion of archbishop Ropp saying that the Soviet government was only temporary. That is why on March 12, 1922, the agreement between the Holy See and the government of Soviet Russia was signed. The Soviet government guaranteed the Holy See land concessions for agricultural and educational establishments in Russia. Then the papal diplomacy was included in the talks aimed at reaching an agreement between the western states and Russia. On April 22, 1922, Victor Emmanuel, King of Italy invited the participants of World Economic Conference to Genoa onboard the Dante Alighieri cruiser. Card. Gasparri sent his substitute, mons. Pizzardo to Genoa, to convince the Bolsheviks—on grounds of international law—to make some concessions in their religious policy. And the chancellor of German Reich wanted to use the support of the Holy See for his treaty of Rapallo, which was met with reservations in the West. Both Germans and Russians thus wanted the support of the Holy See for their plans, due to its high moral authority. The pope in turn wished that the Church survived in Russia, where at the moment it was destined to end.

The papal emissaries who went to Russia with charity mission in July 1922 were, as they conveyed in the message they sent back to Vatican, very skeptical about their own possibility for action. The head of the papal mission, rev. Walsh, an American was to negotiate the agreement in the scope that was entrusted in him by the Office of the Secretary of State. Still it soon turned out that the Soviets are not willing to perform their obligations. They allowed the papal envoys

applied to other citizens"; he also ascribed the responsibility for attacks on orthodox clergy to Catholics.

to deliver food to the starving population, but at the same time they aimed to abolish the Church. On July 22, 1922, abp. Cieplak of Petersburg received an order from the Soviet authorities to submit all "buildings and objects of cult."

After he protested, the police closed up all Roman Catholic churches, apart from the French-run ones in Russia just three weeks before Christmas of 1922. After that archbishop Cieplak received consent from Vatican to sign the agreement to surrender the churches and underwrite an agreement for their use for religious purposes, still the Soviet authorities were no longer interested in it. On March 12, 1923, abp. Cieplak, general curate rev. prelate Butkiewicz, the Greek-Catholic exarch Fedorow and twelve more clergymen were summoned to Moscow for a trial in front of the Supreme Court for their resistance against the fulfillment of the decree on the division of Church and state and the decree on confiscation of church possessions. During that trial archbishop Cieplak and rev. Butkiewicz were both sentenced to death by shooting "for their counterrevolutionary activities." In the result of diplomatic intervention of card. Gasparri with Kalinin, the head of the Supreme Soviet, the sentence of Cieplak was changed to ten years imprisonment, while rev. Butkiewicz was executed on March 31, 1923, with a single shot in the back of the head. Even after those events the Holy See did not stop its charitable mission for the benefit of the starving Russian population, with the intention not to abandon contact with the Church in Russia and the dialogue with the Soviet authorities. Rev. Walsh, head of the charitable mission, submitted information pertaining to the failure of the Soviet authorities to observe the conditions of the agreement to the pope. After his arrival in Moscow he presented them with new proposals of an agreement for continuation of the charitable mission of the Holy See in return for some concessions on the part of Soviets, namely: freeing abp. Cieplak and, in particular, lifting a ban on teaching religion to children.

At the same time, a German ambassador in Moscow notified Berlin to notify Vatican to back off rev. Walsh as "he has mixed his charitable mission with diplomatic activities." Card. Gasparri replied that the personal question is secondary, the more important issue was the Russian failure to observe any promises, for example, a conclusion of a *modus vivendi* concerning the church property. A German monk rev. Edward Gehrman became the new leader of Holy See's charitable mission.

In early December 1923, the Soviet Ambassador at the Quirinal submitted a proposal to the papal Office of the Secretary of State, for the Holy See, an internationally recognized authority, officially recognized the existence of the USSR in the international arena and concluded an agreement that would transform the charitable mission in a nunciature, changing its current general aid agreement in specific financial obligations. The Soviet authorities offered "freedom of cult" for Roman Catholics, pardoning the imprisoned clergymen and offering the possibility to teach religion to children. Still, by the end of December 1923

a regulation of the Soviet government was published that was forbidding to teach religion to the underaged, even outside of schools in groups larger than three people, without prior consent.

On December 17, 1923, the Congregation for Special Affairs announced that the Holy See withholds the recognition of the USSR and appoints the apostolic nuncio in Moscow, but proposes to establish an apostolic delegate to care for the matters of Church in Russia, who will not be accredited at the head of state, but shall reside in Moscow and negotiate the *modus vivendi* of Church with the Soviet government. Should these negotiations be successful, the Holy See accepts the Soviet state and signs the *modus vivendi* with it.

New aid to be sent for the charitable mission was also made dependant on the outcome of those negotiations. The talks were mediated with the participation of the Soviet embassy and the apostolic nuncio to Berlin mons. E. Pacelli. This is where the reply of the Holy See to the December 1923 proposals of the Soviet government was submitted. Angered by the reply the Soviets notified rev. Ghermann (on March 22, 1924) that the charitable mission of the Holy See was crossed out of the list of approved charities. The Soviet authorities no longer needed the recognition of the Holy See, as such recognition was already granted by Italy, England, Norway, Austria, Greece, and Sweden.

Even though the Vatican-Soviet talks in Berlin continued, there was no progress in reaching a *modus vivendi*. The Soviets did not want to guarantee even the teaching of religion in churches. In August 1924, car. Gasparri ordered rev. Gehrmann to close the charitable mission in Russia. During that time, after the death of Lenin, on Stalin's order, commissar Łunczarski, a person competent in matters of religion, further intensified the fight with any signs of religious life, using terror. This tragic reality was addressed by Pope Pius XI during his Christmas speech to cardinals on December 18, 1924. He confirmed the will of the Holy See to continue the aid for the Russian people and appealed to the statesmen to "join forces to push the great and evident evil of socialism and communism away from them and their citizens, at the same time not lessening their feeling of care for the better fate of workers and those unprivileged ones."

The Soviets demanded that the Holy See recognize the USSR in the international arena; the division of Church from the State rule and all the legislation on the religious communities (registration, acceptance of statutes, election of the leader of community by its members, state control of contacts of the Holy See with the religious communities in Russia). The Holy See did not want to accept such conditions. The 1925 Berlin talks of Pacelli were fruitless. Once it was apparent that the diplomatic course for setting the legal basis for the mission of Church in Russia is futile, Pope Pius XI decided to keep the bonds with the Roman Catholic Church in Russia with use of private contacts with followers—keeping them in secrecy from the state authorities. In order to do that, with me-

diation of the French Embassy in Moscow the French Jesuit Michel d'Herbigny, rector of the Papal Oriental Institute in Rome, travelled to Moscow in 1925. After submitting information from his first travel to the pope, d'Herbigny was authorized to embark on another. After acquiring a visa for pastoral purposes that concerned Catholics in the French Embassy in Moscow, he was ordained a bishop in order to be able to ordain bishops in Russia. On Maundy Thursday, April 1, 1926, d'Herbigny reached Moscow again. With the help of the French Embassy d'Herbigny summoned rev. Neveu, a former French journalist, a priest who was secretly leading his pastoral mission in the USSR to Moscow. On April 21, 1926, d'Herbigny ordained rev. Neveu bishop and nominated him an apostolic delegate in the USSR. D'Herbigny ordered him not to announce his competencies, so as not to come under threat of immediate arrest. Then d'Herbigny travelled with him to Ukraine, to cities of Kharkiv, Mykolaiv, Odessa, and Kiev. It was there where d'Herbigny nominated rev. Teofil Skalski an apostolic administrator of the Soviet part of Zhytomir Diocese. During this travel, on May 10, 1926, d'Herbigny secretely ordained bishops, Bolesław Sloskans and Aleksander Frison (Greek Catholic). After d'Herbigny's return Pius XI believed that he will be able to build the hierarchy of the Roman Catholic Church in Russia without the consent of the communist authorities. He established a special Commission for Russia (*Commissio pro Russia*) at the Congregation for the Oriental Churches with d'Herbigny appointed as its leader.

In the summer of 1926, d'Herbigny headed for Russia for the third time. During his visit in Leningrad, d'Herbigny ordained rev. Antoni Malecki bishop. Then, speaking from a pulpit to the followers in Moscow, d'Herbigny announced that the Holy Father has decided that they shall be guided by a bishop. After that event the Soviet official ordered him out of Russia. Prior to his departure, d'Herbigny handed papal documents to bish. Neveu, authorizing him to: in urgent cases—without the need to wait for a papal bulla—establish an apostolic administrator with the reservation that Russia shall not have more than three bishops other than him and that he shall negotiate with state authorities the improvement of the situation of believers. Bish. Fedorow subordinated two further documents to him and authorized him to accept the Orthodox clergy in the Catholic Church. When he was leaving Russia there was a secret church hierarchy in existence, which consisted of four bishops of the Roman Church and one bishop of the Greek Catholic Church.

Pacelli, the papal nuncio to Berlin received a document signed by commissar Chicherin in which the Russian communists no longer proposed a concordat, but acceptance of limitations of freedom. In the end, on October 15, 1926, the Soviet of the People's Commissars in Moscow adopted a resolution stating that the government of the USSR, until different regulations are adopted, will not consent for travel of foreign clergymen that arrive in the USSR in religious purposes or to lead the religious communities that are existing in the USSR.

On October 6, 1927, nuncio Pacelli declared to the Soviet ambassador in Berlin that The Holy See is ready to take into account the political reservations that the Soviet government might have to the candidates for the offices of bishops and asks for the possibility: (a) to open theological seminars; (b) to send clergymen who are acceptable for the government to Russia; (c) to support those clergymen and their work. The Soviet authorities did not reply to this proposal. Under those circumstances, on December 27, 1927, Pope Pius XI announced to card. Gasparri that as long as there was persecution in Russia there would be no further negotiations with the Soviets.

The Soviet authorities started the liquidation of church hierarchy in Russia. Bish. Sloskans was sentenced to three years of penal colony on Solovetsky Islands. On January 27, 1928, rev. Skalski the apostolic administrator of Zhytomir was sentenced to ten years in prison. Exarch Frison was sentenced to labor camp on Solovetsky Islands on White Sea, where 22 other Catholic priests were also held. It was there that he was shot dead in 1937.

On April 8, 1929, at the Presidium of the Central Committee a permanent religion commission was appointed, led by Szmidowicz and a new decree on division of Church and state issued, that was even more prohibiting than the previous regulations. This decree remained in force for 60 years. This was also used as a template by the so-called socialist countries after the Second World War.

It was then that pope Pius XI summoned the believers of all around the world for "a praying crusade" which in turn made soviets even further increase the terror. Replying to the note of the German Ministry of Foreign Affairs E. Pacelli, the new papal secretary of state was explaining that the pope did not call for a "military crusade" but for a spiritual mobilization and influencing the moral condition of the world. The "Izvestia" daily announced in Moscow that the pope became the world leader in the fight against the Soviet Union. On 6 April 1930 the pope made the Commission for Russia independent, separating it from the Congregation for the Oriental Churches, with the leadership remaining in hands of bish. D'Herbigny. In 1934 it was joined with the Congregation for Unusual Events in Church.

Pope Pius XI—after fruitless attempts at entering into a dialogue with the communist authorities—defined his relation to communism in two social encyclicals. First, in the encyclical *Quadragesimo Anno* (1931)[8] he stigmatized both capitalism and communism. Among others he said that:

> Communism, both in theory and in practice has two aims: the most extreme class fight and the abolishment of private property, and it does so not secretly but openly, with the use of even the most violent means […]. This is further

[8] Giovanni Codevilla, *Stato socialista nell'Unione Sovietica* (Milano 1972).

> attested by the enormous conflagration that marked the enormous spaces of Eastern Europe and Asia. To what extent it is a foe and open enemy of the Church and God himself, and say about it, unfortunately very loudly, and these facts are undisputed and commonly known.[9]

Then, in the encyclical *Divini Redemptoris* devoted to the godless communism (19.03.1937).[10] Pope Pius XI performed a thorough analysis of this system as an ideology and a socio-political organization. The pope defined communism as an erroneous ideology that threatened the Christian civilization. The duty of the Church—in his opinion—was to defend against the threat coming from this side. The pope indicated the erroneous bases of communism that were included in dialectical and historical materialism, such as: the abandonment of the idea of God, questioning of spiritual and supernatural realities, declining the human right to dignity and freedom, harnessing individual persons to do collective work against their will, making families devoid of spiritual links and rights of parents to bring up their children, cult of personality, wrongful concept of economic life that says that the task of the human being is to produce material wealth and the main aim thereof is to use them. The pope also added the description of actual situation in the USSR to his analysis of the communist system, stating: "In this way instead of heaven on earth only terror is born, such one as we see in Russia, where former comrades, plotters and fighters murder each other; terror that can't stop the social decomposition and even less the chaos in the social structure." By rejecting the errors of the communist doctrine and stigmatizing the methods for its action, the pope warned Catholics and the world of the Western civilization of the threats that were on its side. Still with ever tenser political situation these warnings were of no significant influence on the politicians.

Pope Pius XII did not issue any documents that would specifically criticize the communist regime during the Second World War and afterwards, even though the communist propaganda depicted him as an anti-communist on services of American imperialism. What is characteristic is that in his speeches he called for a "crusade" to renew the society, but this did not concern a "military crusade." Yet he failed to condemn, *expresis verbis*, both the German Nazism and the communism in order not to worsen the situation of millions of Roman Catholics under German or communist occupation.

Pius XII did not consent for the authority of the Holy See to be engaged on the part of the Axis states to fight with Stalin. From the notes of von Weizsäker, the German ambassador at the Holy See, we know that in 1945 he was ordered by Ribbentrop, the Reichsminister of Foreign Affairs to check: if the pope can

---

[9] AAS 23(1931), 285–312.

[10] AAS 29(1937), 145–67; Stefan Wyszyński, "Pius XI w walce z komunizmem," *Ateneum Kapłańskie* 30(1937): 145–67; Piotr Nitecki, "Socjalizm i komunizm w nauczaniu społecznym Kościoła," *Chrześcijanin w Świecie* 22, no. 1(1992): 56–66.

influence the western powers to make them turn against Stalin for fear from bolshevization of Europe. In reply mons. Tardini informed him that the Holy See: (1) cannot do anything that would be escalating; (2) cannot be a protector of military or political interests; (3) cannot act naively.

From the End of Second World War up to the Collapse of the Communist Bloc in Europe

Pope Pius XII feared that the methods of fight with Church that the communist authorities used in the USSR will be repeated in the countries of Central and Eastern Europe. That is why, in 1944 the Holy See granted special faculties (*facultates speciales*) to all diocese bishops and equivalent offices of particular churches in the countries of Central and Eastern Europe.

These faculties concerned decision making regarding several branches of church jurisdiction in specific pastoral matters that in normal circumstances would be reserved for the Holy See. These were to be used exclusively "in case of occurrence of highly exceptional circumstances" should the state authorities render their communication with the Holy See difficult.

As long as Poland was concerned these faculties included the organization of pastoral work for the Polish population that was resettled from the eastern territories of the Second Polish Republic to the "Recovered Lands," that is, the western and northern areas of Poland that prior to 1945 belonged to the German Reich. Before he left for Poland in 1944, Pius XII granted card. August Hlond special rights to establish apostolic administrative regions with the seat in Wrocław, Opole, and Gorzów Wielkopolski, as well as in northern territories for the Warmia diocese in Olsztyn. After the death of primate Hlond these entitlements were also granted by the Holy See to primate Stefan Wyszyński.[11] These faculties—as primate Wyszyński stated—were of two types. The first type was granted in writing (*in scriptis*) by the Roman Curia; the other one in "vivid voice" (*viva voce*) granted personally by the pope, and known only to the pope and the primate. The faculties that the primate received in writing on 26 February 1949 were granted "for the better remedy for the good of souls." Their use was limited by two conditions: (1) inability to correspond with the Holy See, either in writing or by telegram—both encoded and in open text; (2) the

[11] Józef Krukowski, "Uprawnienia nadzwyczajne Stefana Wyszyńskiego, Prymasa Polski, wobec zagrożeń ze strony reżimu komunistycznego," *Studia Prymasowskie* 5(2011): 299–342.

danger of occurrence of large damage through delay. These faculties were then confirmed by the next popes: John XXIII (1958), Paul VI (1974), John Paul I (1978), and John Paul II (1978).

The Holy See did not break diplomatic relations with the countries of Central and Eastern Europe that existed in the interwar period and during the Second World War (in Prague, Budapest, Bucharest, and Sofia) nor did it terminate any concordats that were concluded in the interwar period.[12]

Specific case existed in Poland, as the apostolic nuncio in Warsaw left Poland together with the president of the Polish Republic and the Polish primate, after Germany invaded it in September 1939. After hostilities ceased, Pius XII did not send a new nuncio to Poland and granted special faculties to the primate A. Hlond who was returning to Poland, concerning the organization of pastoral work of the Church in new territorial boundaries. Card. Hlond returned to Poland on July 20, 1945, and, based on his special faculties—after the Potsdam Agreement was announced—on August 15, issued decrees that nominated Polish apostolic administrators in those territories, granting them the rights of the resident bishops. These decisions came as a reply to the pastoral needs, still they were not liked by the state authorities, as they were temporary only. The Holy See took the position that it is unable to establish a permanent Polish church organization in those territories, as there was no peace agreement in place, which was only to be concluded in future. The Holy See did not recognize the communist Interim Government, which did not apply for such a recognition itself.

On September 12, 1945, the Board of Ministers of the Interim Government adopted a resolution concluding that the Polish concordat of 1925 ceased to be existing, putting forward unsubstantiated claims that the Holy See did break it during German occupation, and that it does not recognize the nomination of apostolic administrators by card. Hlond. Then the Government went on to fill the gap in the law that was created after the concordat was rejected, in form of decisions that interfered in internal Church affairs. On January 26, 1951, the government demanded the dismissal of apostolic administrators in western and northern territories. Then the state officials went on, forcing the election of vicars capitular replacing the apostolic administrators. This resulted in a real threat of schism. It was then that primate Wyszyński, pursuant to his special faculties de-nominated the illegal vicars capitular with vicars general of his own

[12] Karel Kaplan, *Stat a Cyrkev v Ceskoslovensku* (1948–1952) (Brno 1993); Tadeusz Pieronek, "Polityka konkordatowa Stolicy Apostolskiej ze szczególnym uwzględnieniem krajów Europy środkowo-wschodniej," *Polileja* (Kraków 2014), 152–57; Szanda Balasz, "Relations between the Holy See and Hungary: The Legal Apects of the Relations between Church and State," in *International Bilateral Relations between the Holy See and States: Experiences and Perspectives*. December 12–13, 2001 (Città del Vaticano 2003), 161–62.

choice.[13] This should form the basis for conclusion, that he received the apostolic power *ad nutum Santae Sedis.* The hostile decisions of communist authorities towards the Holy See also took place in the remaining states of Central and Eastern Europe: Romania, Hungary, Czechoslovakia, Yugoslavia, Albania, East Germany, and even earlier (after the aggression of the USSR on Poland and the Baltic States, pursuant to the Ribbentrop-Molotov Pact) in Latvia and Lithuania.[14] Authorities of those states broke off diplomatic relations with the Holy See and the concordats concluded in the interwar period. In his public appearances Pius XII condemned the aggressive actions of communist authorities, but did not list them *expresis verbis.* Still it was on his order that on July 1, 1949, the Congregation of the Holy Office issued a decree that threatened Catholics with the most strict church sanction, that is, with excommunication *latae sententiae* for membership in communist party or attempting cooperation therewith and for reading and publishing the communist propaganda.[15] It is worth noticing that those bans were not a novelty when compared to the 1917 Canon Law Code. It was just a specification of norms of common law applicable to new factual circumstances. Still, these sanctions led to even more intensive attacks of the communist authorities on the Catholics in the USSR-occupied countries. Still they came as a warning for Catholics living in the democratic states of Western Europe, especially in Italy where the Christian Democrats entered in a coalition with the Italian Communist Party.

In this difficult situation formed after the communist authorities broke the Polish Concordat, primate Wyszyński decided to start institutionalized dialogue with the communist government in form of the so called Mixed Committee, in order to work out some form of *modus vivendi*, to "patch up" the legal loophole. On April 14, 1950, an agreement was signed between the Polish Episcopate and the communist government.[16] In order to safeguard the ties of the Church in Poland with the Holy See, the following statement was included in the agreement: "The rule that pope shall be the competent and highest authority of Church shall be applicable to matters of faith, morality and church jurisdiction; in other matters the Episcopate shall guide itself with the Polish national interest" (art. 5).

The introduction of this rule was decisive for the "agreement" not to be rejected by the Holy See. Even though it was concluded by the Episcopate without the prior authorization of the Holy See, it was later granted its silent approval.

---

[13] Raina Peter, *Kardynał Wyszyński, Prymas Polski*, vol. I (London 1979), 377–83.

[14] Lozoraitis Kazys, "Relazioni internazionali giuridiche bilaterali: esperienze e prospettive," in *Relazioni internazionali giuridiche bilaterali tra la Santa Sede e gli Stati*. Latvia, 12–13 Decembre 2001 (Città del Vaticano 2003), 204–205.

[15] AAS 41(1949), 334.

[16] Józef Krukowski, "Porozumienia pomiędzy przedstawicielami Rządu i Episkopatu Polski z 1950 i 1956 r. Znaczenie i realizacja," in: *Prawo i polityka wyznaniowa w Polsce Ludowej* (Lublin 2005), 33–70.

What was the subject of controversy was another fragment of this agreement: "Based on the assumption, that the Recovered Lands are inseparable part of the Republic the Episcopate will turn to the Holy See to replace the temporary administrators with the rights of resident bishops into bishop's ordinariates" (art. 3). When shortly after the end of the Second World War instead of signing peace treaty the relations between the West and the Communist bloc quickly evolved to what was called Cold War, the communist authorities perceived the lack of stabilization of church organization in the Recovered Lands as the basis for questioning the agreement with the Polish Episcopate and worsening of the situation of the Polish church.[17] The stabilization of the Polish church organization on those territories only occurred in the 1970s—after peace agreement was signed between the Polish People's Republic and the Federal Republic of Germany. The apostolic administration was at that time advanced to the rank of dioceses and the administrators were nominated for diocese bishops.

During the pontificate of Pope John XXIII the Holy See initiated a dialogue with the governments of the communist states of Central and Eastern Europe, with the intention to improve the conditions for Church activities in those countries. The sign of this method was the conclusion of the "Protocol" from discussions led by the Holy See with the communist government of Hungary (1964) and the socialist government of Yugoslavia (1966).

In 1974 temporary diplomatic relations were established between the Holy See and the government of the Polish People's Republic. Diplomatic protocol was signed, concerning the establishment of two Teams for Permanent Working Relations between the Holy See and People's Poland. Their task was to negotiate the convention that would stabilize the relations between the Holy See and Poland and normalize the legal position of Church in Poland.[18] Still there were substantial differences in understanding of the term normalization. The communist authorities wanted to gain support of the Holy See on international area and confirm, in form of the convention, such limitations of freedom, as were imposed on Church and the society by the communist regime. Card. Wyszyński, in turn, wanted the legal personality of the Polish Church to be recognized, to secure the culture-making role of the Church and guarantee all religious and irreligious citizens equal rights to participate in public life. The communists pushed towards reaching an agreement behind the backs of the Primate of Poland Mons. Casarolli was eager to reach a "compromise" regarding the postulates of the communist government. But Pope Paul VI declared that there

[17] Jan Żaryn, "Stolica Apostolska wobec 'zimnej wojny' i w pierwszych latach po II wojnie światowej," *Studia Najnowsze*, no. 25/2, (1992): 45–51.

[18] Peter Raina, *Cele polityki PRL władz PRL wobec Watykanu, Tajne Dokumenty 1967–1989* (Warszawa 2001), 46–67; Maciej Mróz, "Polityka wschodnia w Stolicy Apostolskiej w latach 1988–1989/90: Idee i wartości w działaniu," *Politeja* 29 (2014): 121–45.

shall be no "normalization" without participation of Primate and Episcopate of Poland.[19]

Change in relations between the Holy See and the USSR, also referred to as the "Eastern policy of the Vatican" were initiated during the pontificate of John XXIII. What contributed to that was the intervention of the pope in the dismantling of the dangerous tension between the United States and the USSR that rose around the Cuban conflict. The actions of the Holy See, apart from stigmatizing the communism as a system based on erroneous doctrine also started to include the method of dialogue with the communists, aimed at keeping peace between East and West in face of the nuclear weapons threat.

Pope John XXIII adopted the assumptions that we shall differentiate the errors in doctrine, that the communist system is based upon, from the people, with whom it is always well worth to talk. At the same time, he ordered the Catholics to cooperate with people with different viewpoints—not excluding the communists—as long as the Catholics kept their identity and loyalty towards the Church (the *Pacem in Terris* encyclical).

The Second Vatican Council did not issue a special document devoted to communism. Still, its critical stance towards this system was included in the analysis of the "systemic atheism" that formed one of the elements of political ideologies of contemporary world and indication of the high dignity of the human person as the source of basic truths and freedoms that were due to every person. Although the name communism was not mentioned in connection with this phenomena, its description clearly indicated this was the regime concerned. The Council stated, among others: "The supporters of this doctrine, once they gain power in the country, violently fight religion, spreading atheism with use, especially in education of youth, of pressure that only the public authorities are able to exercise."[20] On the one hand, the Council indicated that atheism, through elimination of God from human existence contributed to the impoverishment of the human person, but on the other hand, has shown the need for cooperation between the religious ones and the irreligious, for the common good of the human person and building of just social order, stressing the need of respecting the rights of religious freedom in public life (*Dignitatis Humanae*).

Pope Paul VI continued the stance of the Second Vatican Council in the doctrinal and practical planes. In the encyclical *Populorum Progression* (1967) and the apostolic letter *Octogesima Adveniens* (1971) the pope stressed the im-

[19] Andrzej Grajewski, "Kardynałowie Stefan Wyszyński i Agostino Casaroli, Dwie osobowości i dwie koncepcje wschodniej polityki Watykanu," *Studia Prymasowskie* 3(2009): 51–79; Raina, *Cele polityki władz PRL wobec Watykanu*; Agostino Casaroli, *Il martyrio della pazienza. La Santa Sede e i paesi comunisti (1963–1989)* (Torino 2000); (Polish edition: *Pamiętniki. Męczeństwo cierpliwości. Stolica Apostolska a kraje komunistyczne (1963–1989)* (Warszawa 2001)).

[20] *Gaudium et Spes*, n. 20.

possibility of reconciling the Marxist program with the rules of the Catholic social teaching, but did not exclude the possibility of cooperation of Catholics with communist for the common good, asking the Catholics to oppose unjust social structures.

Holy Pope John Paul II, who knew the communist regime from autopsy, efficiently contributed to the fall of communism in Europe. He adopted an uncompromising dispute with the basic assumptions, aims and practices of communism. In the whole teaching of the pope, starting with the encyclical *Redemptor Hominis* (1979)[21] the main motif is the truth about the dignity of the human person, personal freedom, as well as the need to respect basic rights of the human person in public life. In the light of the objective truth about the human person he judged communism as a system that is degenerating and alienating. What was significant in mobilizing the people living behind the Iron Curtain was his call that he voiced during the Pontifical mass at St. Peter's Square: "Do not be afraid! Open wide the doors for Christ."[22] Of special importance, when it comes to the nations dominated by the Soviet Union were the calls of John Paul II for solidarity and appeals to the authorities to respect the right of every nation to retain its cultural identity and self-determination of their own political fate. The summary of the critical evaluation of the communism by the Holy See is included in his encyclical *Centesimus Annus* (1.05.1991).[23]

* * *

There are some conclusions drawn from the review of relations between the Holy See and communism in Russia and other countries of Central and Eastern Europe. The Holy See was always critical in its approach to the communist regime, both when we consider the assumption of the Marxist-Leninist ideology and the methods for their implementation, that is, imposing upon the society an erroneous atheist ideology in place of religion, with the use of state enforcement. Within the stance of the Holy See there was differentiation between the errors of the doctrine that should be rejected and the readiness to conduct a dialogue with people, who believe in that doctrine, bearing the dignity of the human person into account. There was a difference of aims encountered in negotiations between the representatives of the Holy See and the representatives of communist authorities there. The Holy See attempted diplomatic actions leading to change of their decisions pertaining specific items concerning protection of basic hu-

[21] AAS 71(1979), 271–72.

[22] John Paul II, *Homily of His Holiness John Paul II for the Inauguration of His Pontificate*, 22 October, 1978, https://w2.vatican.va/content/john-paul-ii/en/homilies/1978/documents/hf_jp-ii_hom_19781022_inizio-pontificato.html

[23] AAS 83(1991): 793–867; Stanisław Kowalczyk, "Ocena marksizmu w encyklice *Centesimus Annus*," *Chrześcijanin w Świecie*, vol. 22(1) (1992): 67–76.

man values or negotiation of legal guarantees for the pastoral, educational, and culture-making activities of the Church. The communist regimes, in turn, were aiming at granting themselves support of the Holy See in the international arena in order to attain specific political goals, at the same time demanding the acceptance of the limitations of freedom that they imposed.

What is characteristic for the diplomacy of the Holy See towards the communist regimes after the Second World War is the method of "small steps," also known as the Vatican's policy towards the East. Although the short-term efficiency of such actions was less visible, it still contributed to the gradual liberalization of that regime and its peaceful decomposition.

Bibliography

Casaroli, Agostino. Il martyrio della pazienza. La Santa Sede e i paesi communisti (1963–1989), Torino 2000 Polish ed. *Pamiętniki. Męczeństwo cierpliwości. Stolica Apostolska a kraje komunistyczne (1963–1980)*, Translated by T. Żeleźnik. Warszawa 2001.

Chellini, Jean-Paul. *Le pelegrin de la liberte*, edited by Jean Goujon. Paris 1980.

Codevilla, Giovanni. *Stato e Chiesa nell'Unione Sovietica*. Milano 1972.

Cywiński, B. *Ogniem próbowane. Z dziejów najnowszch Kościoła w Europie środkowo-wschodniej.* Warszawa 1994.

Hlebowicz, A. *Kościół odrodzony. Katolicyzm w państwie sowieckim 1944–1992*. Gdańsk 1993.

Dudek, Antoni, and Ryszard Gryz. *Komunizm i Kosciół w Polsce (1945–1090)*. Kraków 2004.

Dzwonkowski, Roman. *Kościół katolicki w ZSRR 1917–1939. Zarys historii*. Lublin 1997.

Fumagalli, Carulli Ombretta. *A cesare cio che e di cesare, a Dio cio e di Dio. Laicita dello Stato e la liberta della religione*. Milano 2006.

Grajewski, Andrzej. *Normalizcja administracji kościelnej na Ziemiach Zachodnich i Północnych w kontekście watykańskiej polityki wschodniej*. Wrocław: Drukarnia „SADY."

Grajewski, Andrzej. "Kardynałowie Stefan Wyszyński i Agostino Casaroli. Dwie osobowości i dwie koncepcje wschodniej polityki Watykanu." *Studia Prymasowskie* 3 (2009), 51–79.

Kaplan, C. Stat a Cyrkev v Ceskoslovensku 1948–1952. Brno 1993.

Kowalczyk, Stanisław. "Ocena marksizmu w encyklice *Centesimus Annus*." *Chrześcijanin w świecie* 22(1992) nr 1, 67–76.

Krukowski, Józef. *Kościół i państwo. Podstawy relacji prawnych*. Lublin 2000.

Krukowski, Józef. *Kościelne prawo publiczne. Prawo konkordatowe*. Lublin 2000.

Krukowski, Józef. Kościół wobec reżimu komunistycznego w Polsce. *Kościół i państwo*, 10(1992), 15–32.

Krukowski, Józef. "Uprawnienia nadzwyczajne Kard. Stefana Wyszyńskiego Prymasa Polski wobec zagrożeń ze strony reżimu komunistycznego." *Studia Prymasowskie* 5(2011), 29–42.

Krukowski, Józef. *Wstęp do nauki o państwie i prawie*. Lublin 2004.

Lozorraitis, Kazys. Relationi Internazionali giuridiche bilaterali: esperienze e prospettive—Lituania, in *Relazioni Internazionali giuridiche bilaterali tra la Santa Sede i gli Stati. Esperienze e Prospettive*. Decmber 12–13, 2001, Citta del Vativano 2003, 2004–2007.

Mikołajczyk, Krzysztof. *Uprawnienia Kardynała Stefana Wyszyńskiego wobec Kościoła Greckokatolickiego w archiwach Prymasa i Konferencji Episkopatu Polski*. Lublin (2016).
Mróz, Maciej. "Polityka wschodnia w Stolicy Apostolskiej w latach 1988–1989/90: Idee i wartości w działaniu." *Politeja* 29 (2014), 121–145.
Nitecki, Piotr. "Socjalizm i komunizm w nauczaniu społecznym Kościoła." CHS 22, no. 1 (1992), 56–57.
Pałyga, Edward. *Polsko-watykańskie stosunki dyplomatyczne*. Warszawa 1988.
Pieronek, Tadeusz. "Polityka konkordatowa Stolicy Apostolskiej ze szczególnym uwzględnieniem krajów Europy środkowo-wschodniej." In *Politeja. Pismo Wydziału Studiów Międzynarodowych i Politycznych Uniwersyteu Jagiellońskiego*, 29, no. 3 (2011), 121–145.
Pietrzak, Michał. *Prawo wyznaniowe*. Warszawa 1999.
Raina, Peter. *Kardynał Wyszyński Prymas Polski, I–III*. Londyn 1979–1988.
Raina, Peter. Rozmowy biskupa Dąbrowskiego z władzami PRL. Stolica Apostolska reguluje organizację kościelną na Ziemiach Zachodnich i Północnych. Pelplin 1998.
Raina, Pater. *Cele polityki władz PRL wobec Watykanu. Tajne Dokumenty 1967–1989*. Warszawa 2001.
Ricardi, A. *Il potere del Papa, Da Pio XII a Paolo VI*. Bologna 1998.
Romaniuk, R. *Życie, twórczość i posługa Prymasa Tysiąclecia*. Warszawa 1994.
Schanda, Balazs. "Relations between the Holy See and Hungary. Legal Aspects of the relations between Church and State." In *Relazioni Internazionali tra la Santa Sede a gli Stati. Esperianze e prospettive*, 12–13 Dicembre 2001, Citta del Vaticano 2003, 161–197.
Skwierczyński, Zbigniew. Komunizm. Stanowisko Kościoła, Encyklopedia Katolicka, t. 9, 525–527.
Staszewski, M. *Państwo a związki wyznaniowe w europejskich państwach socjalistycznych*. Warszawa 1976.
Stehle, Hansjakob. Die Ostpolitik des Vatikans. Munchen/Zurich 1975 (Polish ed. Stehle, Hansjakob. *Tajna polityka Watykanu*. Warszawa).
Wyszyński, Stefan. Pius XI w walce z komunizmem. *Ateneum Kapłańskie* 29(1937) 466–478.
Żaryn, Jan. "Stolica Apostolska wobec 'zimnej wojny' (w pierwszych latach po II wojnie światowej)." In *Dzieje Najnowsze*, *XXIX* (1992), z. 2, 45–51.
Żaryn, J. "Stolica Apostolska wobec konferencji jałtańskiej a prawa Polski do suwerenności." In *Jałta. Szkice i polemiki*. Edited by M. M. Drozdowski. Warszawa 1996, 185–198.

Józef Krukowski

L'attitude du Saint-Siège à l'égard du communisme De Benoît XV à Jean-Paul II

Résumé

L'article présente les relations du Saint-Siège—aussi bien comme pouvoir suprême de l'Église catholique, que comme sujet étant soumis au droit dans le cadre des relations internationales—avec les autorités des États européens communistes. Les réflexions sont divisées en deux parties.

Dans la première partie, on a présenté l'attitude du Saint-Siège à l'égard du régime communiste de l'Union soviétique datant de l'époque dès la révolution d'Octobre jusqu'à la fin de la Se-

conde Guerre mondiale. Le Saint-Siège a commencé l'activité de charité pour aider la population russe souffrant de la faim et les négociations avec les représentants de l'Union soviétique. Dans la première phase, les autorités communistes ont proposé au Saint-Siège de conclure un accord international et de normaliser les relations diplomatiques, mais elles ne voulaient pas cesser de lutter contre la religion et de formuler des accusations contre l'Église. Dans la seconde phase, on a rompu les contacts entre le Saint-Siège et les autorités communistes. C'est à cette époque-là que le pape Pie XI a présenté une évaluation critique des principes idéologiques et des méthodes de la gestion communiste (encyclique *Divini Redemptoris*).

La seconde partie contient une revue des relations du Saint-Siège avec les États d'Europe centrale et orientale auxquels on a imposé le régime communiste après la Seconde Guerre mondiale, et avec l'Union soviétique—à la période datant de la fin de la Seconde Guerre mondiale jusqu'à la chute du bloc communiste en Europe. Au début, les gouvernements de ces pays ont rompu les relations diplomatiques avec le Saint-Siège ainsi que les accords de concordat qu'ils ont conclus avec lui à l'époque de l'entre-deux-guerres, tout en commençant à limiter les libertés de l'Église et la discrimination des croyants. C'est à cette époque-là que le Saint-Siège a accordé des facultés spéciales (*facultates speciales*) aux évêques de diocèses dans ces pays qui avaient pour objectif d'assurer le fonctionnement de l'Église à un degré qui serait proche de celui que l'on pourrait considérer comme normal. Durant le pontificat de Jean XXIII, on a initié un dialogue avec les gouvernements communistes des États européens pour assurer la liberté de religion. Ce que voulaient ces gouvernements, c'est de gagner un soutien international du Saint-Siège à leur politique, tandis qu'ils ne cessaient de limiter les libertés religieuses. Durant le pontificat de Jean-Paul II, le Saint-Siège mettait un accent fort sur le soutien à la Solidarité et au droit des nations à l'autogestion.

Mots clés : Église et État, relations diplomatiques, accord de concordat, autodétermination, liberté religieuse, réglementations juridiques, régime politique

Józef Krukowski

Il rapporto della Santa Sede nei confronti del comunismo Da Benedetto XV a Giovanni Paolo II

Sommario

L'articolo presenta le relazioni della Santa Sede sia come autorità suprema della Chiesa cattolico-romana, sia come soggetto subordinato al diritto in materia di rapporti internazionali, con le autorità europee degli stati comunisti. Le considerazioni sono divise in due parti.

Nella prima parte è stata presentata la posizione della Santa Sede nei confronti del regime comunista dell'Unione Sovietica nel periodo dalla rivoluzione d'ottobre alla fine della II guerra mondiale. La Santa Sede iniziò l'attività caritativa in favore della popolazione russa che pativa la fame e le trattative con i rappresentanti dell'Unione Sovietica. Nella prima fase le autorità comuniste proposero alla Santa Sede la stipulazione di un accordo internazionale e la normalizzazione dei rapporti diplomatici, ma non vollero cessare la lotta contro la religione e la formulazione delle accuse nei confronti della Chiesa. Nella seconda fase furono interrotti i contatti tra la Santa Sede e le autorità comuniste. All'epoca papa Pio XI presentò un giudizio critico delle premesse ideologiche e dei metodi di governo comunista (enciclica Divini Redemptoris).

La seconda parte è costituita da una rassegna dei rapporti della Santa Sede con gli stati dell'Europa Centrale ed Orientale a cui furono imposti i governi comunisti dopo la II guerra

mondiale, e con l'Unione Sovietica—nel periodo dalla fine della II guerra mondiale alla caduta del blocco comunista in Europa. All'inizio i governi di questi paesi ruppero i rapporti diplomatici con la Santa Sede ed anche gli accordi concordatari che avevano stipulato con loro nel periodo tra le due guerre, iniziando a limitare le libertà della Chiesa ed a discriminare i fedeli. Fu allora che la Santa Sede riconobbe facoltà speciali (*facultates speciales*) ai vescovi delle diocesi in quei paesi, facoltà che dovevano garantire il funzionamento della Chiesa in una misura vicina a quella normale. Durante il pontificato di Giovanni XXIII fu iniziato il dialogo con i governi comunisti dei paesi europei per garantire la libertà di religione. Ciò che tali governi desideravano era il sostegno internazionale della Santa Sede per la loro politica, mentre loro non cessavano di limitare le libertà religiose. Durante il pontificato di Giovanni Paolo II la Santa Sede pose una forte enfasi sul sostegno di Solidarnośæ e sul diritto all'autogoverno dei popoli.

Parole chiave: Chiesa e stato, rapporti diplomatici, accordo concordatario, autodeterminazione, libertà religiosa, regolamentazioni giuridiche, regime politico

Philosophy and Canon Law vol. 3 (2017), pp. 149–161

Małgorzata Tomkiewicz
University of Warmia and Mazury (UWM) in Olsztyn

Cooperation of Common Courts and Ecclesiastical Courts in Poland for the Common and Individual Good

Abstract: In Poland, there is no dual judiciary structure, ecclesiastical courts are not part of the judiciary authority, and at the moment there is no legal basis for common courts to respect the judgments of ecclesiastical courts.

However, the fact that the issue of marriage between the same parties may be the subject matter of a trial in different normative orders begs the question: in the event of marriage cases, is there any form of cooperation between ecclesiastical and common courts? Is such cooperation a desirable phenomenon and should it be analyzed as an example of cooperation between the Church and the State for the individual and common good?

This article attempts to answer these questions.

Keywords: individual good, common good, marriage, judiciary, evidence proceedings, legal aid

Introduction

The principle of independence and autonomy of the Church and the State expressed in Art. 1 of the Concordat between the Holy See and the Republic of Poland[1] in legal terms means that each of the two communities recognises its own legal system and is able to govern itself within such an order, which—however—does not cause a complete isolation of these two legal structures.

[1] Concordat between the Holy See and the Republic of Poland signed in Warsaw on 28 July 1993 (Journal of Laws No. 51/1998, item 318), ratified with the act of 8 January 1998 (Journal of Laws No.12/1998, item 2); hereinafter: the Concordat.

In the ecclesiastical and secular doctrine, it is emphasised that institutional relations between the Church and the State are based on the principle of co-operation. The Constitution of the Republic of Poland from 1997 states in its Art. 25 § 3 that "the relationship between the State and Churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good," while the *Gaudium et Spes* Constitution in its clause number 76 has it that "the Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more they both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all."[2]

How this cooperation should be understood and what "common good" and "individual good" mean are not easy questions and as such they have been the subject of many disputes and academic discourse for years.[3] In the literature

[2] Second Vatican Council, *Konstytucja dissipaters o Kosice w świecie współczesnym Gaudium et spes*, in *Sobór Watykański II. Konstytucje, dekrety, deklaracje, tekst łacińsko-polski* (Poznań 1967), 830–987; *Acta Apostolicae Sedis* 58 (1966), 1025–120. It should be noted that *Gaudium et Spes* presents the contemporary standpoint of the Catholic Church as regards the co-operation with political communities. A similar standpoint was, however, expressed long before that, by Pope John XXIII in his encyclical *Mater et Magistra* of 1961. (*Acta Apostolicae Sedis* 53 (1961), 453) and in the encyclical titled *Pace in Terris* from 1963 (*Acta Apostolicae Sedis* 55 (1963)). For more information, see: Włodzimierz Kaczocha, "Dobro wspólne w nauce społecznej Kościoła Katolickiego," *Przegląd Religioznawczy* 2 (2000): 89–108.

[3] For more information, see, among others: Piotr Steczkowski, "Konstytucyjna zasada współdziałania Państwa i Kościoła w kontekście interpretacji zasad poszanowania godności osoby ludzkiej i dobra wspólnego," *Studia z Prawa Wyznaniowego* 11 (2008): 155–70; Paweł Sobczyk, "Dobro wspólne jako cel współdziałania państwa z kościołami i innymi związkami wyznaniowymi," *Kościół i Prawo* 1 (2015): 169–84; Wojciech Brzozowski, "Konstytucyjna zasada dobra wspólnego," *Państwo i Prawo* 11 (2006): 17–28; Marek Piechowiak, "Dobro wspólne jako fundament polskiego porządku konstytucyjnego," *Tom XL Studiów i Materiałów Trybunału Konstytucyjnego, Monografie Konstytucyjne* 2 (Warszawa: Wyd. KUL, 2012); Ryszard Mojak, "Kościół a sprawy publiczne w demokratycznym państwie. Podstawy doktrynalne oraz zasady prawne współdziałania Kościoła i państwa w sferze prawa publicznego," in *Funkcje publiczne związków wyznaniowych*, ed. Artur Mezglewski (Lublin: Wyd. KUL, 2007), 63; Piotr Zamelski, "Wybrane koncepcje dobra wspólnego w ujęciu prawnonaturalnym i normatywnym," in *Efektywność europejskiego systemu praw człowieka. Ewolucja i uwarunkowania europejskiego systemu ochrony praw człowieka. Część I: współczesne rozumienie praw człowieka*, red. Jerzy Jaskiernia (Warszawa: Wyd. Adam Marszałek, 2012), 180–206; Anna Młynarska-Sobaczewska, "Dobro wspólne jako kategoria normatywna," *Acta Universitatis Lodziensis. Folia Iuridica* 69 (2009): 61–72; Wacław Uruszczak, Katarzyna Krzysztofek, and Maciej Mikuła, eds., *Kościoły i inne związki wyznaniowe w służbie dobru wspólnemu* (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2014); Jakub Królikowski, "Pojęcie dobra wspólnego w orzecznictwie Trybunału Konstytucyjnego," in *Konstytucja Rzeczypospolitej Polskiej w pierwszych dekadach XXI wieku*

on the subject, however, it is agreed that this cooperation is exercised within the realm of affairs of the so-called miscellaneous forum (*rei mixti fori*), which refers to such matters in which both the Church and the State are competent, although each of them deals with such matters in its own specific manner. Such matters, apart from education and upbringing, social and humanitarian aid, or activities aimed at protecting culture and national heritage, include also actions related to concluding civil law marriage in a religious form. A classic example of "miscellaneous affairs," which are subject both to the ecclesiastical and state rule, is the protection of marriage and family.[4] Such protection is multidimensional and exercised in various areas, including court proceedings. In the case of Polish citizens who are also members of the Catholic Church, the issue of effectively concluding, existence or non-existence of marriage is more and more often the subject of analysis of both common and ecclesiastical courts.

In Poland, there is no dual judiciary structure, ecclesiastical courts are not part of the judiciary authority and, at the moment, there is no legal basis[5] for common courts to respect the judgments of ecclesiastical courts.

The fact that the issue of marriage between the same parties may be the subject matter of a trial in different normative orders begs the question: in the event of marriage cases, is there any form of cooperation between ecclesiastical and common courts? Is such cooperation a desirable phenomenon and should it be analyzed as an example of cooperation between the Church and the State for the individual and common good?

---

wobec wyzwań politycznych, ed. Stanisław Bernat (Warsaw: nazwa wyd., 2013), 159; Marek Zubik, "Refleksje nad 'dobrem wspólnym' jako pojęciem konstytucyjnym," in *Prawo a polityka. Materiały z konferencji Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, która odbyła się 24 lutego 2006 roku*, ed. Marek Zubik (Warsaw: Liber, 2007), 404.

[4] For more information, see: Józef Krukowski, *Kościół i państwo. Podstawy relacji prawnych* (Lublin: Wyd. KUL, 2000), 313.

[5] In the literature on the subject, however, we can also find the view that since the legislator has regulated the issue of marriage in its Concordat form on the basis of the provisions included in the Concordat, which means that a couple may conclude marriage within a single ceremony, then the possibility to regulate the recognition of the judgments passed by ecclesiastical courts in common law courts should be considered, as regards the marriage annulment cases. The solutions adopted in the Concordat do not envisage such a situation, but—following the presented point of view—the communicating parties have allowed for the possibility of legal changes in this respect, because Art. 10 § 5 of the Concordat has it that the question of notification of adjudication referred to in paragraphs 3 and 4 may be subject to proceedings in accordance with Art. 27. Accordingly, pursuant to the autonomy and independence principle, a good solution could be a form of controlled recognition (Adam Bartczak, "Sądowa jurysdykcja nad małżeństwem w Polsce," *Łódzkie Studia Teologiczne* 2 (2014): 35. For more information, see: Piotr Majer, "Uznawanie przez państwo wyroków sądów kościelnych w sprawach małżeńskich. Czy byłoby pożyteczne przyjęcie takiego systemu w Polsce?", in *Funkcje publiczne związków wyznaniowych. Materiały III Ogólnopolskiego Sympozjum Prawa Wyznaniowego (Kazimierz Dolny, 16–18 maja 2006)*, ed. Artur Mezglewski (Lublin: Wydawnictwo KUL, 2007), 414–31.

Ecclesiastical and Secular Judiciary as the Area for Cooperation between the Church and the State—Theoretical Aspect

The definition of *cooperation* as mentioned in Art. 25 § 3 of the Constitution of the Republic of Poland and in the teaching of the Catholic Church is not—as indicated above—an easy task, because such notions are not defined either by the secular or by the ecclesiastical legislator. There are no formal rules for interpretation that would define the areas of social life or activity, where such cooperation would be practised, and there are no rules that would define the forms of such cooperation.

In the doctrine, we may find three principal views, with regard to the analyzed issue, differing in focus. One of them, represented by Michał Pietrzak,[6] focuses on the independence of the state and religious groups in defining the essence of such cooperation, stipulating, however, that the abovementioned independence may not hinder the cooperation of both partners for the sake of the common and individual good. This interpretation also notes that although the Constitution does not define the substantial scope of the cooperation, it may be inferred from other sources of religious law that this principle is manifested mainly in such areas as charity and education.

According to another view (represented by Piotr Stanisz and the representatives of the "Lublin school"),[7] the essence of the debated principle rests in each coordinated activity undertaken together by the parties that wish to cooperate, and focused of pursuing the same goals, whereas the enforcement of the cooperation principle should also refer to such actions of one of the parties aimed at supporting the activities undertaken by the other partner, after previously confirmed the legitimacy of such activities (with reference to individual and common good). The areas where the principle of cooperation is manifested should be identified on the basis of those provisions, where the cooperation between the States and Churches is expressly indicated. The authors claim that such provisions include Articles 16, 16a, 17 of the Act of 17 May 1989 on the guarantees of the freedom of conscience and faith[8] as well as Art. 11 of the Concordat.[9]

---

[6] Michał Pietrzak, *Prawo wyznaniowe* (Warszawa: Wyd. LexisNexis, 2010), 231–32.

[7] Artur Mezglewski, Henryk Misztal, and Piotr Stanisz, *Prawo wyznaniowe* (Warszawa: Wyd. C.H. Beck, 2011), 77.

[8] Journal of Laws 1989, No. 29, item 155.

[9] Steczkowski, "Konstytucyjna zasada," 157.

However, according to Józef Krukowski,[10] the interpretation of the cooperation principle should be based on understanding its raison d'être, that is, on understanding the notions of the "common and individual good." The role of the Church is to teach and propagate human rights and to undertake educational activity in order to shape the attitudes focusing on respecting those rights and freedoms, whereas the obligation of the State is to recognize human rights and freedoms, create conditions for people to exercise and use these rights and freedoms and protect them, if needed.[11] "Individual good" is interpreted here in the context of Art. 30 of the Constitution, whereas the "common good" is understood as building such social order in which individual rights and freedoms are respected and exercised.

Referring the above views to the issue of how contemporary common courts cooperate with ecclesiastical courts, it should be noted that such cooperation would be included in the notion of "cooperation between the State and the Church," in the meaning of each of the presented concepts. First of all, if we assume that—as mentioned in the Introduction—in both proceedings the protected value is the wellbeing of marriage and family, then the basis for such cooperation can be found directly in the quoted Art. 11 of the Concordat, which expressly states that "the Contracting Parties declare their will to co-operate for the purposes of protecting and respecting the institution of marriage and the family, which are the foundation of society." Secondly, this type of cooperation also seems to be proved by its purpose, that is, that such cooperation would be justified due to the "individual good" and "common good." Without getting too deep into the details of the concepts related to both of the notions mentioned, due to the framework of this paper, it should only be emphasised that the basic rule of the canon law case for the annulment of marriage is getting at the truth—and not just any truth, but the truth on the existence or non-existence of the sacrament, and therefore—the concern for the salvation of a human being. In its strife for the truth, the canon law case touches upon the crucial goal, that is, the eschatological one, whereas the truth regarding a particular marriage is the concern of the whole human and divine community of the Church.[12] Also the doctrine of the state law emphasizes that the judgment should be consistent not only with the mandatory law, but also with the system of approved and socially relevant non-legislative values.[13] Law is not used to achieve justice as such, as an

[10] Józef Krukowski, "Konstytucyjny model stosunków między państwem a kościołem w III Rzeczypospolitej," in *Prawo wyznaniowe w systemie prawa polskiego*, ed. Artur Mezglewski (Lublin: Wyd. KUL, 2004), 98.

[11] Steczkowski, "Konstytucyjna zasada," 159.

[12] Aleksandra Brzemia-Bonarek, *Dopuszczalność dowodów zdobytych w sposób niegodziwy w kanonicznym procesie o stwierdzenie nieważności małżeństwa* (Katowice: Księgarnia Św. Jacka, 2007), 117.

[13] Jerzy Skorupka, *O sprawiedliwości procesu karnego* (Warszawa: Wolters Kluwer, 2013), 327

autonomous value. Among the values more precious than justice itself, one can mention those achieved with it, that is, the harmony of interpersonal relations and the reinforcement of the everyday order.[14]

Therefore, both in the proceedings in ecclesiastical courts and in common law courts, the crucial purpose is to determine the *truth* concerning the marriage of the parties. In both types of proceedings, the common factor is also that while passing judgments, each of the abovementioned courts is obliged to achieve one of the purposes of the court trial, that is, fairly resolve as regards the subject matter of the proceedings. Therefore, if cooperation between courts would be helpful in passing a fair judgment and would be tantamount to action in the name of truth, then in this context it would be hard to defend a possible thesis that such an action would not be for the benefit of individual good and for the common good.

Ecclesiastical and Secular Judiciary as the Area for Cooperation between the Church and the State—Practical Aspect

In the canon law case concerning the annulment of marriage, it is increasingly frequent that we observe the parties' right to adduce evidence, identical to the right they have in the civil law case. Ecclesiastical courts do not, however, take advantage of the privileges available to secular courts. They do not have, among others, the formal possibility to obtain documents including the information subject to the so-called personal data protection, such as for example, official medical records. It is such documents that are usually of key importance to resolve certain marriage annulment cases, especially those conducted under can. 1095, 1084 or 1103 of the Code of Canon Law.[15]

With reference to these documents, it should be noted that the standard of Art. 40 § 1 of the Act on medical professions of 5 December 1996[16] says that a doctor is obliged to observe the physician-patient privilege, which includes information related to the patient, whereas the physician-patient privilege ex-

[14] Skorupka, *O sprawiedliwości*, 328. It should also be noted that in the judgment dated 27 January 1999 (K. 1/98), the Polish Constitutional Tribunal stated that there is the public interest (identified as the common good) which involves shaping an external image of justice, which produces a conviction in the society that court is impartial. The existence of autonomous judiciary is—in the opinion of the Tribunal—one of the prerequisites for proper functioning of the community, which can satisfy its interests in this way (OTK ZU 1999, No. 1, item 3).

[15] Codex Iuris Canonici. Auctoritate Ioannis Pauli PP. II promulgatus. Code of Canon Law. Polish translation approved by the Polish Episcopal Conference, Pallotinum 1984; hereinafter: CCL.

[16] Journal of Laws of 2005, No. 226, item 1943, as amended.

tends—as follows from Art. 14 § 1 and 2 as well as Art. 23 § 2 of the act on patients' rights and the ombudsman of patients' rights dated 6 November 2008[17]—onto all the medical documentation including information concerning the patient. The physician-patient privilege may be waived, for example, when it follows from legal acts. Such acts include the Law of 17 November 1964, The Code of Civil Procedure,[18] whose Art. 248 § 1 states that following the court order, everybody is obliged to serve—within a determined time and place—a document he or she holds, which is the evidence of a fact significant for the resolution of the case, unless the document contains classified information.[19] A doctor is, therefore, obliged to present relevant medical documentation following the order of a common court, whereas the mode of presentation is determined in the regulation of the Minister of Health of 30 July 2001 on the types of individual medical records, the way of keeping them and special conditions for disclosing them.[20] However, as regards ecclesiastical courts, a doctor is still bound with the physician-patient privilege, which shall not be waived, because the proceedings in ecclesiastical courts are not regulated in the Act [21] and there is no specific provision that would allow for disclosing medical records in a canon law case. The patients may require to be handed over his/her own medical records, but he/she has no possibility to obtain the documents concerning his/her former spouse. This means that if one of the parties on the canon law case does not agree to participate in the proceedings and is not interested in providing the evidence, the ecclesiastical court cannot obtain the evidence directly, even if it is crucial and decisive in solving the case. Since medical records to be used as evidence in a canon law case cannot be obtained for this case, be it by the party and its legal representative, or by the ecclesiastical court while for the common court they would be available, the situation begs the question whether in such circumstances the ecclesiastical court can use the help of a common court. This issue was debated during the shared meetings of the Ecclesiastical Concordat Commission and the Government Concordat Commission in the years 2003–2005,[22]

[17] Journal of Laws of 2009, No. 52, item 417, as amended.

[18] Journal of Laws of 1964, No. 43, item 293, as amended; hereinafter: CCP.

[19] Documents including classified information are documents whose unauthorized disclosure would or could cause damage to the Republic of Poland or be prejudicial to its interest, also when such information is being developed and regardless of the form and expression (see Art. 1 § 1 of the act of 5.8.2010 on the protection of classified information, Journal of Laws, No. 182, item 1228)

[20] Journal of Laws of 2001, No. 83, item 903.

[21] Canon law is not one of the sources of law defined in Art. 87 of the Constitution of the Republic of Poland, therefore it is not universally mandatory in the whole area of the Republic of Poland. It may have legal effect in the Polish legal order only pursuant to a permit following from the provision of the act and only to the extent included in the permit.

[22] Aleksandra Brzemia-Bonarek, *Pomoc sądowa pomiędzy sądami kościelnymi a państwowymi w celu uzyskania dokumentów niedostępnych dla strony w kanonicznym procesie małżeń-*

and it was even the subject matter of an interpellation lodged by a member of the parliament, yet it still remains a problem both for canon law specialists and for secular judges.[23]

Letters rogatory (judicial assistance) among ecclesiastical courts and among common courts is known and used in both legal orders. Neither the provisions of the common law, nor those of the canon law expressly allow for the possibility of legal aid between ecclesiastical and common courts. Pursuant to Art. 44 § 1–4 of the Act of 27 July 2001 the Law on the System of Common Courts,[24] in the cases stipulated in the acts, courts are obliged to perform particular judicial actions at the request of other courts and other authorities (§ 1), as well as when requested by foreign courts, provided reciprocity is ensured (§ 2), and to the extent stipulated in the provisions concerning civil proceedings, common courts are obliged to perform proceedings to take evidence also when requested by adjudicating authorities other than those listed in § 1 and 2, provided the request has been addressed by the Minister of Justice (§ 3).

The problem is that ecclesiastical courts are not classified as courts in the meaning of the abovementioned law on the systems of common courts, nor do they count among non-judicial adjudicating authorities (Art. 44 § 1 of the LSCC), because their activities are not governed by the Law; they are not foreign courts, either (Art. 44 § 2 of the LSCC). In the literature on the subject, though, there is a view presented among others by Lucjan Świto that ecclesiastical courts should be treated as "other adjudicating authorities" in the meaning of Art. 44 § 3 of the LSCC. In the light of such interpretation, when we assume at the same time that the possibilities of cooperation between ecclesiastical courts and common courts as regards obtaining evidence are not ruled out by the canon law, civil and canon judicial assistance would be possible pursuant to the procedure defined in Art. 44 § 3 of the LSCC, that is, through the Minister of Justice. According to this concept, though—which should be noted—judicial assistance as described above would only be acceptable "one way," that is, in the situation when the common court responds to the request of the ecclesiastical court. If the situation was reversed, namely, in the event when the ecclesiastical court was summoned to provide judicial assistance to the common court, the discussed judicial assistance shall not find any justification in the mandatory legal solutions.

The above interpretation is undoubtedly interesting and worth attention. It must be observed, though, that in the case law in both ecclesiastical and common courts the proposed solution is virtually non-existent. This is due to the fact

---

skim (analiza prawna zagadnienia i propozycje „de lege ferenda"), in Sędzia i pasterz. Księga pamiątkowa w 50-lecie pracy ks. Remigiusza Sobańskiego w Sądzie Metropolitalnym w Katowicach (1957–2007), ed. H. Typańska (Katowice 2007), 49.

[23] Lucjan Świto, "Rekwizycja cywilno-kanoniczna? Pomoc sądowa pomiędzy trybunałami kościelnymi a sądownictwem powszechnym w Polsce," *Prawo kanoniczne* 2 (2012),

[24] Journal of Laws of 2001, No. 98, item 1070, as amended; hereinafter: LSCC.

that the abovementioned interpretation is innovative, but above all it includes certain organisational difficulties. If we assume that in order to obtain particular evidence through the common court, the ecclesiastical court would each time have to launch the procedure involving the Polish Minister of Justice, it is hard to conclude that such proceedings could actually impact the effectiveness of the canon law marriage nullity trials.

The abovementioned solution may also raise some doubts because of the lack of "reciprocity." If legal help between ecclesiastical and secular courts constituted only the help offered to ecclesiastical courts, then the axiology of such requisition would become questionable.

Regardless of the fact that the effective regulations do not provide *epressis verbis* any solutions within which secular courts could use legal assistance of ecclesiastical courts, still there are some mechanisms in the Polish legal system which, as it seems, do not allow for complete failure to act in response to the requests of common courts. In terms of a civil procedure, the rule which directly can oblige judges and ecclesiastical court employees to act specifically when they are subpoenaed by a common court is the above quoted Art. 248 § 1 of the Code of Civil Procedure (CCP). Since, according to the abovementioned rule, *everybody* is obliged by a court order to present in an appointed place and at specified time the document they hold which proves a fact significant for settling a case − unless the document contains confidential information − then claiming that the rule does not apply to clergymen, or broadly defined employees of church institutions, would be difficult to accept in the light of linguistic interpretation. As a side note, one should observe that the above-mentioned Art. 248 § 1 of the Code of Civil Procedure seems to be supported by, among others, the rules of the Law of 29 August 1997 on personal data protection.[25] Sharing specially protected data, that is, data concerning religious affiliation, is forbidden in the light of the law (Art. 27 § 1), however, it is acceptable if it concerns the data which are necessary for court actions (Art. 27 § 2 pt. 5). It is beyond any doubt that the rules of the abovementioned law apply also to the Catholic Church.[26]

It is difficult to determine unequivocally what is the limit of the common court powers due to Art. 248 of CCP, and, within this regulation, which documents can be requested by a secular court as regards the documents at an ecclesiastical court's disposal. According to Art. 5 of the Concordat and Art. 2 of the Act of 17 May 1989 on the relationship between the State and the Catholic Church in the Polish Republic,[27] the Church for its own cases uses its own law,

[25] Journal of Laws of 2004, No. 101, item 926, as amended.

[26] See "Ochrona danych osobowych w działalności Kościoła katolickiego. Instrukcja opracowana przez Generalnego Inspektora Ochrony Danych Osobowych oraz Sekretariat Konferencji Episkopatu Polski," http://www.giodo.gov.pl/data/filemanager_pl/wsp_krajowa/KEP.pdf (accessed 20.10.2016).

[27] Journal of Laws of 1989, No. 29, item154, as amended.

and freely executes ecclesiastical and judicial power, as well as governs its matters. One of the rules of the Code of Canon Law is the rule of confidentiality of matrimonial proceedings. Thereby, when a secular court requests providing complete acts of matrimonial proceedings, or significant number of documents collected in the proceedings, such a request should be considered unacceptable. Such an interpretation is directly supported by § 2 of Art. 248 of CCP which states that, among others, a person as a witness may refuse to give evidence on the circumstances covered by the content of the document, or a person who holds a document on behalf of a third party who could reasonably object to the presentation of the document for the same reasons. This means that the duty to present a document can be deviated by a person who, as regards the circumstances covered by the content of the document, could deny a testimony, or a person who holds a document on behalf of a third party, who may, for the same reasons, object to the presentation of the document. The holder of the document may be released of duty to present it when the revealed content of the document could expose him/her or his/her close relative, as defined in Art. 261 § 1 of CCP, to penal liability, shame or severe and direct material damage, or would constitute a breach of crucial professional secrecy.

On the other hand, if the request considered only a specific document, for example, a document indicating the ordination, justification of possible denial of its delivery would be rather dubious. Likewise, the reasons why the officials of the ecclesiastical court could reasonably and convincingly refuse, for example, to give the contact address of a person heard in a canonical process would be difficult to indicate.

Evaluating whether the requested document constitutes the proof of fact relevant for the resolution of the case belongs exclusively to the court and not to the holder of the document. It is also important that, within the scope of Art. 248 of CCP, a common court can take quite intimidating measures. An unjustified refusal to submit a document by a third party to the court, after hearing it and the parties as to the merits of the refusal, the court may penalize a third party with a fine of up to PLN 5,000 (Art. 163 § 1 of CCP).[28]

Conclusion

Institutional relations on the State and the Church level, in the area of cooperation between ecclesiastical and state courts in Poland, in the current legal situation are not subjected to any unequivocal regulation. Despite the fact that

[28] The decision is subject to appeal (Art. 394 § 1, point 5 CCP).

cooperation between ecclesiastical and common courts regarding matrimonial proceedings seems, without a doubt, to be assumed by the idea of "cooperation for the good of individual and the common good," so far, this aspect has not been the subject of deeper reflection, and basically escapes common notice. Such a state of affairs is clearly demonstrated by the document issued by the Polish Episcopal Conference and prepared in Tarnów in 2012 by the Social Council "To Care for the Good of Individual and the Common Good," which, aiming at promoting an integral image of man, included into its analysis such areas of human activity as culture, political life, business activity, media (in the service of the truth and the good). The law and broadly understood judiciary are not mentioned in the document.

Meanwhile, the activities of ecclesiastical and common courts concerning matrimonial proceedings are not mutually isolated. For one thing, the fact that the proceedings in the two legal systems apply to the same spouses and often rely on analogous evidence in the form of the same documents or testimony of the same witness have a number of "tangent points." The formal admittance of the possibility of interaction between these courts and the clear definition of the way in which such cooperation can take place would thus facilitate the parties to prove their arguments and, consequently, to come to the truth, which for obvious reasons is a socially desirable phenomenon.

Such solutions are not alien to European legislation. For example, following Michał Rynkowski,[29] it should be pointed out that the problems of ecclesiastical courts and relations with state courts were partially settled, among others, in agreements between the Federal Republic of Germany (or individual Lands) and churches and religious associations. These agreements are specific legal acts: they have a form similar to international agreements, although they do not have international law values. They are concluded between Germany or the Land and a subject of German public law. For example, Art. 12 of the Treaty of 18 February 1960 between Hesse and the Evangelical Church makes it clear that in ecclesiastical proceedings and in formal disciplinary action against clerics and church officials, ecclesiastical and ecclesiastical disciplinary authorities are authorized to make an oath to witnesses and expert witnesses. The secular district courts are required to grant legal aid to church courts, with the exception of only infringement proceedings. In some Lands, there are clear rules for the help of the church courts (Hesse, Rhineland-Palatinate, Saxony, Saxony-Anhalt, and Schleswig-Holstein).

In Finland, the Law on the Evangelical-Lutheran Church states that state courts are to help the ecclesiastical courts of this church, among other things, through legal assistance involving the interrogation of witnesses.[30]

[29] Michał Rynkowski, *Sądy wyznaniowe we współczesnym porządku prawnym* (Wrocław: Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, e-Monografie, Nr 31, 2013), 146–47.

[30] Rynkowki, *Sądy wyznaniowe*, 148.

If in Poland the state has entrusted the church with carrying out public tasks and in such a dimension that in the literature one may find the view that "[…] the Republic of Poland is increasingly involving the church in the public administration of the witness," and if one considers that the faithful of the Catholic Church in Poland are also citizens of this country, the introduction of the possibility of using judicial assistance between ecclesiastical courts and common courts, with a clear definition of its principles, seems to be worth considering *de lege ferenda*.

Małgorzata Tomkiewicz

La coopération pour le bien de l'homme et pour le bien commun dans la pratique des tribunaux de droit commun et des tribunaux ecclésiastiques en Pologne

Résumé

En Pologne, il n'y a pas de double structure juridique, les tribunaux ecclésiastiques ne font pas partie de la justice, et à présent il n'y a pas de bases juridiques pour que les tribunaux de droit commun puissent respecter les jugements des tribunaux ecclésiastiques.

Pourtant, le fait que la question de mariage entre les mêmes parties peut être l'objet de procès dans deux ordres normatifs différents incite à poser la question si—dans le cas des mariages—il existe une quelconque forme de coopération entre les tribunaux ecclésiastiques et séculiers. Une telle coopération est-elle un phénomène désiré et faudrait-il la considérer dans les catégories de coopération de l'Église et de l'État pour le bien de l'homme et pour le bien commun ? L'article essaie de répondre à ces questions.

Mots clés : bien de l'homme, bien commun, mariage, juridiction, procédure probatoire, aide juridictionnelle

Małgorzata Tomkiewicz

La cooperazione per il bene dell'uomo ed il bene comune nella pratica dei tribunali ordinari e dei tribunali ecclesiastici in Polonia

Sommario

In Polonia non esiste la struttura duale della giurisdizione, i tribunali ecclesiastici non costituiscono una parte dell'amministrazione della giustizia ed attualmente non vi è alcun fondamento giuridico perché i tribunali ordinari possano rispettare le sentenze dei tribunali ecclesiastici.

Tuttavia il fatto che la questione del matrimonio tra le medesime parti sia oggetto di processo in due differenti ordini normativi fa sorgere la domanda se nel caso delle cause matrimoniali esista una qualsiasi forma di collaborazione tra i tribunali ecclesiastici e quelli laici. Tale collaborazione è un fenomeno auspicabile e la si dovrebbe esaminare come un esempio di cooperazione della Chiesa e dello stato per il bene dell'uomo e il bene comune?
L'articolo contiene un tentativo di risposta a tali domande.

Parole chiave: bene dell'uomo, bene comune, matrimonio, giurisdizione, istruzione probatoria, aiuto legale

Philosophy and Canon Law vol. 3 (2017), pp. 163–176

Lucjan Świto
University of Warmia and Mazury in Olsztyn

Does Labor Law Apply in the Church? An Analysis of the Socio-Legal Conditions on the Example of the Latin Church in Poland

Abstract: The article is a reflection on the contemporary socio-legal determinants referring to labour law, on the example of the Church in Poland. The subject undertaken, viewed from the intersection of canon law and Polish law, raises a series of questions, including: Does labour law apply in the Church, and how? Who in the Church is the employee and who is the employer? On the basis of what relationship do people serving various functions in the Church work? The present analysis, along with the referenced cases, clearly shows that although the Church is the employer for many entities and is obliged to comply with labour law, the intersection between canon and state laws can raise many problems of interpretation. The biggest problem concerns the determination by Polish law of the pastoral services of members of the clergy serving as parish priests and vicars. Their services, analyzed at a broad level of contractual relationships, include features so specific that it is impossible to be classified as any of the aforementioned types of contracts. This specificity appears to be clearly perceived by Polish legislation, which emphasizes its distinctiveness in key legal and social areas, such as the matter of insurance and taxation. The services provided by members of the clergy, assessed through the secular optics of the law, should be considered an innominate contract (*contractus innominatus*). Such an agreement, however, does not carry with it the entitlements that result from an employment contract relationship.

Keywords: labor law, social insurance, clergy insurance, tax law, employment relationship, agreement unnamed (*contractus innominatus*)

Introduction

One of the key topics of Leo XIII's encyclical *Rerum Novarum*, which was the basis for John Paul II's encyclical *Centesimus Annus*, is undoubtedly human labor in its various philosophical, social, and legal references. The political transformations in Poland and Europe after 1989 motivate a reflection on human labor, which occurs both in the state and Church order. Taking up this subject, I would like to take a look at the contemporary socio-legal determinants referring to labor law on the example of the Church in Poland. The subject undertaken, considered at the meeting point of canon law and Polish law, raises a series of questions, including the following: Does labor law apply in the Church, and how? Who in the Church is the employee and who is the employer? On the basis of what relationship do people serving various functions in the Church work?

The Church as Employer

There is no doubt that the operations of the Catholic Church in Poland, which governed by its own—guaranteed by the Concordat[1]—canon law, must reckon with state law. This dependence is particularly visible in the aspect relating to the forms and conditions of establishing employment relationships, which is directly addressed by Canon 1286 of the Code of Canon Law.[2] This is why we can read in the documents of the Second Polish Plenary Synod that:

> The Church as an employer is obligated to the same extent as other employers to comply with the Labour Code, to shape employment relationships in the context of the needs of the family, fair treatment of workers, equitable remuneration, respecting equality between men and women, dialogue with

[1] The Concordat between the Holy See and the Republic of Poland of 28 July 1993, Journal of Laws 1998, 51, 318, 5: "Respecting the right to religious freedom, the State shall guarantee the Catholic Church, irrespective of rites, the free and public exercise of its mission, as well as the exercise of its jurisdiction, management and administration of its own affairs, in accordance with Canon Law."

[2] Can. 1286 Code of Canon Law: "Administrators of temporal goods: 1° in making contracts of employment, are accurately to observe also, according to the principles taught by the Church, the civil laws relating to labour and social life 2° are to pay to those who work for them under contract a just and honest wage which will be sufficient to provide for their needs and those of their dependents."

> employees, and in the event of loss of jobs to give priority to the division of labour before downsizing work positions and dismissals.[3]

Thus, taking into account the norms of canon law mandating the canonization of certain standards of state law,[4] it is not surprising that the Church, in the course of its operations, employs people who provide assistance under an employment contract. This category of employees includes organists and sacristans, whom EU law otherwise classifies as the so-called liturgical altar servers.[5] With this type of employment contract, defining the parties—that is, who is the employer and who the employee—or the scope of services and remuneration does not present major difficulties, since this employment relationship is governed by state legislation (labor law). On the other hand, problems may arise in connection with the work undertaken in the church by persons on the other side of the altar—the clergy performing ministry services in parishes as pastors and vicars. It turns out then than the intersection of canon and state law may give rise to real questions. An example of the fact that the issue raised is not baseless at the following two case studies of clergy from Poland and Slovakia.

The Case of the Vicar from Diocese of Łowicz

The first case concerns a priest of Diocese of Łowicz and a vicar of one of the local parishes, who sustained injuries as a result of a car accident. He was hurt severely enough that rehabilitation was required. Its costs were to be covered by accident insurance obtained from the Social Insurance Company (ZUS). To receive the insurance, it was necessary to submit a so-called accident claim form to the Social Insurance Company, which described all the circumstances of the accident, along with a note that the victim was insured.

The form is customarily issued by the employer. However, according to the priest, neither the Curia nor the bishop himself issued him such a form, explaining that they are not his employer and that there is no employment relationship between them. The priest therefore brought the case to the prosecutor's office and took out a loan to cover the costs of his rehabilitation.

---

[3] The Second Polish Plenary Synod (1991–1999), *Kościół wobec życia społeczno-gospodarczego*, no. 54 (Pallotinum 2001), 79.

[4] Giorgio Feliciani, "Canonizzazione delle Leggi civili," in *Nuovo Dizionario di Diritto Canonico*, ed. Carlos Salvador, Velasio De Paolis, and Gianfranco Ghirlanda (Milan 1993), 120–21; Henryk Jagodziński, "Kanonizacja prawa cywilnego," *Kieleckie Studia Teologiczne* 3(2004), 355–65.

[5] Michał Rynkowski, *Sądy wyznaniowe we współczesnym europejskim porządku prawnym* (Wrocław: Prawnicza i Ekonomiczna Biblioteka Cyfrowa, 2013), 70.

Due to this, a problem arises with the Social Insurance Company considering the aforementioned accident as an accident at work, which implies special rights for the victim. Who exactly would issue the accident form, and thus assume the responsibilities of being the employer of said member of the clergy? Should the priest have taken out prior additional insurance on himself? And since the diocese pays for his insurance from the Church Fund, is that not enough to receive compensation from the Social Insurance Company?

The Case of Father Vladimir Šupa

The second case concerns a Catholic priest, who worked in the parish of Pruské, Slovakia, for five years.[6] In 1994, by the decision of a bishop, he was to be moved to a different parish. He did not agree with the decision and first filed a complaint with the Supreme Tribunal of the Apostolic Signatura, which dismissed the complaint, and then—after being suspended by his bishop—he appealed to the Congregation for the Clergy in Rome, which also upheld the bishop's decision.

The priest then sued for payment of withheld wages in the district court of Považská Bystrica, which referred the case to the district court in Nitra. The court dismissed the suit,[7] arguing that the relationship between the plaintiff and the diocesan office, which pays the clergy's wages, is governed by canon law and is not an employment relationship within the meaning of Slovak labor law.

The priest appealed to the regional court in Nitra, arguing that the diocesan office should be considered his employer, because it paid his health insurance and issued certificates of employment for the purposes of social security. In turn, the diocesan office argued that, after the transfer of the parish in Pruské to another designated cleric, Father Šupa no longer performed any pastoral duties and therefore was not entitled to compensation.

The regional court upheld the judgment of the court of first instance, stressing that churches and associations are autonomous in defining their functions, and that actions of the state with regards to the fulfillment or termination of clerical service would be unconstitutional. Because the fact was that Father Šupa was not serving any clerical function, and the state court was not competent to declare whether the decisions of the Church were legitimate, the court in Nitra could not assign him any benefits.

The priest appealed—also unsuccessfully—to the Slovak Constitutional Court, alleging a violation of the right to legal protection, equal rights without

[6] The case took place before the signing of the Concordat between Slovakia and the Holy See. The so-called basic agreement was signed on November 30, 2000. Rynkowski, *Sądy wyznaniowe*, 176–79.

[7] According to canon law and Article 5(2) and Article 7(1–3).

discrimination to freedom of religion and expression, as well as to decent working conditions, including remuneration, and then—also unsuccessfully—to the European Court of Human Rights in Strasbourg.

Formulation of the Problem

The cases described above—regardless of the fact that they took place in two different systems of state law—concern the intersection of canon and state law, and force the question of the legal nature of the pastoral work of parish priests and vicars.[8] Focusing on this issue, an analysis will be conducted based on Polish legislation, in which, inter alia, the following questions will be raised: Does the pastoral work of parish priests and vicars in parishes bear the characteristics of employment as understood by Polish law? Are the clergy serving in parishes working there under an employment contract? Who is their employer? How is the scope of their responsibilities regulated? What privileges are they entitled to?

Employment Relationship

Not every person who works in the colloquial sense of the word, that is, working physically or mentally, is automatically an employee in the legal sense. An employee is only the person with whom an employment relationship has been established in a form specified by law. This may be an employment contract, appointment, or election.[9] The type of legal relationship, on the basis of which the work is performed, is not decided by its formal name, but the actual will of the parties. However, when interpreting declarations of intent, one should take into account the circumstances in which they were made, the rules of social conducts and established customs.[10]

In light of the provisions of the Labor Code of 26 June 1974, among the inherent characteristics of an employment relationship are:

— the employee undertakes to perform work of a specified type for the benefit of an employer,
— the employee is under the supervision of the employer,[11]

[8] Lucjan Świto, "Charakter prawny posługi duszpasterskiej proboszczów i wikariuszy w parafiach rzymskokatolickich w świetle prawa polskiego," *Seminre* 27(2010), 41–50.

[9] Świto, "Charakter prawny posługi duszpasterskiej," 42.

[10] Wyrok SN, 9 XII 1999, I PKN 432/99, "Orzecznictwo Sądu Najwyższego. Izba Administracyjna, Pracy i Ubezpieczeń Społecznych" 2001, 9, 310; *Kodeks pracy. Komentarz*, ed. Zbigniew Salwa (Warszawa: Oficyna Wydawnicza Branta., 2004), 82.

[11] As concerns the time, place, and method of performing the work.

— while the employer undertakes to employ the employee in return for remuneration.[12]

As part of the employment relationship, only work perform in return for remuneration is possible.[13] At the same time, the principle of personal participation applies, which means that the employee cannot fulfil their obligation through another person.[14]

Employer and Salary

Referring these comments to pastoral services, it should be noted that the actions carried out by the parish priest and vicar in a parish do not contain the abovementioned features of an employment relationship. First, they cannot be considered that they have an "employer" who, for the work performed by them in the parish, pays then the agreed remuneration. The parish priest and vicar are directed to work in a specific parish by a bishop, but it is not the bishop who pays them for the pastoral services performed. The abovementioned clergymen also do not receive any remuneration from the parish (as a legal entity), but live on the donations of the faithful, and are therefore "financed" by a body that has no connection with their "employment."[15]

Also speaking against identifying the donations of the faithful made in connection with pastoral services with "payment" or "remuneration," which implies equivalence of services and a dependence of the services rendered on the payment made, are norms of canon law. The legislator states, in Canon 848 of the Code of Canon Law that a minister is to seek nothing for the administration of the sacraments, and that the needy cannot be deprived of the assistance of the sacraments because of poverty, while in Canon 947, demands that any appearance of trafficking or trading is to be excluded entirely from the offering for masses. Therefore, offerings and donations of the faithful made in connection with pastoral services should be seen rather as donations. These are in fact voluntary payments, made by the faithful in arbitrary amounts. It is therefore difficult to accept that these offerings are remuneration for work as understood

[12] Article 22(1) of the Labour Code. Podaję stronę www. http://www.en.pollub.pl/files/17/attachment/98_Polish-Labour-Code,1997.pdf.

[13] Andrzej Świątkowski, *Kodeks pracy. Komentarz* (Warszawa: Wydawnictwo C.H. Beck, 2006), 96.

[14] The lack of an absolute obligation of personal participation in the work excludes the possibility of classifying the legal relationship as an employment contract, Wyrok SN, 28 X 1998, "Orzecznictwo Sądu Najwyższego" 1999, 4, 775.

[15] It is of course clear that neither the bishop nor any church legal entity (the parish) assigns to the faithful the obligation of paying gratifications to the ministering priests, and this issue is not subject to any regulation between the bishop and the faithful residing in the parish.

in the Labor Code. No parish priest or vicar, in the exercise of the ministry in a parish, has a guaranteed statutory minimum wage, which is referred to in Article 13 of the Labor Code, and theoretically, it cannot be ruled out that due to a negligible amount of donations, can remain de facto without remuneration.

Subordination to the Employer

Another argument for the fact that the services performed by a parish priest or vicar in a parish do not contain the features of an employment relationship is the fact that priests in a parish are undoubtedly subject to the authority of the bishop, but this relation is not due to the work in the parish, but due to accepted ordination, and its legal basis is laid out in the Code of Canon Law.[16] As an aside, it should be noted, that priests are subject to the bishop's authority even when they cease to perform any functions in the parish.

Personal Participation in the Work

The pastoral service performed by a parish priest and vicar, although usually included in a certain framework of responsibilities, does not provide for a strict requirement of personally providing every service. An implied consent to various "replacement" in this respect is commonly accepted.

Finally, it cannot be accepted that the bishop, in assigning, and the priest, in accepting the specified responsibilities in the parish, do so with the intent of establishing an employment relationship and accepting all the resulting rights and obligations. Similarly, it cannot be considered that the parish priest and the vicar have the option to terminate their service in a given parish on the principle of autonomy of the will, to which every employee is entitled.

Other Provisions of Polish Law

The thesis that performing pastoral services by a member of the clergy in a parish is not treated by the state as performing work under an employment relationship is confirmed by the analysis of other regulations of Polish law: tax law, social security and civil law.

[16] The duty of obedience to the bishop is contained in Can. 273 of the Code of Canon Law, while the consequences of not obeying this requirement are penalized in Can. 1371(2) of the Code of Canon Law.

Tax Law

In accordance with Article 3(2)(b) of the Personal Income Tax Act of 26 July 1991,[17] all individuals who gain income from an employment relationship are obliged to pay taxes. This obligation also applies to clergy if they gain income as remuneration from labor contracts, such as work performed in schools,[18] universities,[19] hospitals,[20] correctional and penal institutions,[21] military bases,[22]

[17] Journal of Laws, 2000, 14, 176.

[18] According to Article 2(4) of the Act on the Guarantees of Freedom of Conscience and Faith of 17 May 1989 (Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, Dz. U. 1989, 29, 155), the Polish state recognized the right of parents to educate their children in accordance with their religious convictions, the consequence of which was the return of religion classes to schools in the 1990/91 school year. For their work, priests and deacons receive—since September 1997—remuneration as other teachers exercising their profession, and the school as personal income tax payer, deducts monthly advances for this tax.

[19] According to the Higher Education Act (Ustawa o szkolnictwie wyższym, Dz. U. 1990, 65, 38), a university may employ an academic teacher as a researcher, researcher-instructor, or instructor. If the work performed by a member of the clergy at the university is associated with their use of copyright and related rights or administering them, the legislature has defined flat-rate costs for such an occasion, in the amount of a specified percentage indicator related to the income derived from a given source and amounts to 50% of earned income (Dz. U., 2000, 14, 176). However, if the work is done in other forms, income from it shall be taxable as remuneration from an employment relationship. In practice, the separation of part of the remuneration resulting from creative work should result from an employment contract, which should at the same time note that the employee receives remuneration in several components, such as a basic salary and royalties. Then, statutory costs apply to the former element, and costs in the amount of 50% to the latter (A Letter of the Minister of Finance, July 11,1996, POP 5/3-5031/01235/96).

[20] According to Articles 30–31 of the Act on the Relations between the State and the Catholic Church in the Republic of Poland, contracts of employment with chaplains performing religious services in hospitals and sanatoriums, as well as closed social assistance institutions are concluded on similar principles as catechists in schools.

[21] See Article 32; Act on Juvenile Delinquency Proceedings (Ustawa o postępowaniu w sprawach nieletnich, Dz. U. 1982, 35, 228); Regulation on detailed rules of participation in religion lessons and religious practices, the use of religious services and pastoral work organisation in correctional facilities and shelters for minors (Rozporządzenie w sprawie szczegółowych zasad uczestniczenia w lekcjach religii i praktykach religijnych, korzystania z posług religijnych i organizacji pracy duszpasterskiej w zakładach poprawczych i schroniskach dla nieletnich, Dz. U. 2001, 106, 1157); Article 106 of the Criminal Code; Regulation on detailed rules of the use of religious services and pastoral work organization in penal institutions (Journal of Laws 1998, 139, 904); Polish Concordat from 1993, Article 17. Chaplains performing religious services in correctional and penal institutions receive, in addition to basic remuneration, an allowance for working in difficult conditions. Advances for the payment of income tax are deducted by the institution employing the chaplain, and then paid to the relevant tax office.

[22] According to Article 53 of the Constitution of the Republic of Poland, every citizen is guaranteed the freedom of conscience and religion, and therefore every person, including those in the military service, has the right to participate in religious activities and ceremonies. Rules

bishop curiae, seminaries, etc. However, income gained by clergymen in connection with duties of a pastoral nature[23] is excluded from the general principles of taxation and is subject to separate regulation of tax in a lump sum, the amount of which is linked with the number of parishioners and the function the cleric serves in the parish.[24]

Thus, if the legislation itself treats the income received in connection with the provision of pastoral services not as income from an employment relationships, but as a separate category of sources of income, establishing a separate tax regulation for it, this circumstance is yet another significant argument speaking to the fact that the pastoral care offered by parish priests and vicars is not carrying out an employment relationship. To conclude otherwise would be contrary to the principle of rationality of the legislator.

Social Insurance

Analogous conclusions also result from the analysis of the provisions on social security. In Article 6(1)(1) and (4) of the Social Insurance Act of 13 October 1998,[25] the legislator, in defining the entities subject to compulsory retirement and disability insurance, lists physical persons who are "employees" and persons "performing work under an agency contract, a commission contract, or another services agreement." However, in subparagraph 10 of the aforementioned provision, the legislator lists "members of the clergy" as a separate category of entities subject to compulsory retirement and disability insurance, from the day of acceptance to the clerical state until the day of leaving the state.

In the case of overlapping entitlements to retirement and disability insurance, that is, when a person achieves income on the basis of an employment relationship, his or her social insurance in this respect is mandatory, which insurance in respect of being a member of the clergy is voluntary.[26]

---

of professional military service of professional soldiers apply to military chaplains, and therefore the amount of remuneration received is regulated by the Act on Professional Soldiers' Salary and depends on the military rank held by the chaplain, the functions served and other additions (Journal of Laws 1992, 5, 18).

[23] These include offerings of the faithful made in connection with religious services performed—sacraments and sacramentalia, the so-called *iura stole* (offering for baptism, wedding, funeral, Christmas pastoral visit, prayers for the dead, preaching missions and retreats, Mass stipends, etc.).

[24] Act of November 20, 1998, o zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne. Journal of Laws 1998, 144, 930; Lucjan Świto, "Podatki a etyka obywatelska. Opodatkowanie osób duchownych w Polsce," *Forum Teologiczne*, 11(2010), 44–46.

[25] Journal of Laws 1998, 137, 887; Świto, *Podatki a etyka*, 46–47.

[26] Journal of Laws 1998, Article 9.

The legislator thus expressly distinguishes such situations in which a member of the clergy performs work under the employment relationship or the aforementioned civil law contracts, and those in which they do not remain in any of these relationships. Indeed, if every priest, by virtue of belonging to the priesthood, became an "employee,"[27] specifying these categories in this Act and defining the rules of conduct in the event of overlapping of entitlements would be completely irrational. In the intent of the legislator, providing pastoral services in relation to "being a member of the clergy" is not tantamount to remaining in an employment relationship or providing them on the basis of a civil law contract. Moreover, since the social insurance reform, that is, more than ten years ago, social insurance companies have no doubt that a parish priest and a vicar, performing pastoral functions, are not performing work in the parish in the legal sense, hence these members of the clergy, in the performance of their pastoral work, are subject to social insurance by virtue of being members of the clergy, not through an employment relationship.[28]

Civil Law

It is also difficult to accept that pastoral care provided in a parish is the performance of work within the framework of a civil legal relationship and would constitute any of the nominate contracts[29] provided for in the Civil Code of 23 April 1964.[30]

Analyzing commission contracts[31] and specific task contracts,[32] that is, those nominate contracts that in their character could superficially conform to pastoral service, it should be noted that the performance of pastoral services by a parish priest and vicar is undoubtedly not any of the abovementioned contracts. According to Article 734(1) of the Civil Code, a person accepting a commission contract is obliged to perform a specific legal task for the principal.[33] It is obvious that the services of a parish priest and vicar do not fit this category of actions. They are also not specific task contracts, since the essential condition for a specific task contract is the definition of the said task, that is, an indica-

[27] In the understanding of labour law or civil law contracts.

[28] Świto, *Charakter prawny*, 46.

[29] Świto, *Charakter prawny*, 47–50.

[30] Journal of Laws 1964, 16, 93.

[31] Articles 734–749 of the Code of Civil Law.

[32] Articles 627–646 of the Code of Civil Law.

[33] Understood as a function of substantive law, procedural action and activities relating to the representation of the principal in judicial and administrative court proceedings, in arbitration courts and other bodies. See *Kodeks cywilny. Komentarz*, ed. Edward Gniewek (Warszawa: Wydawnictwo C.H. Beck, 2006), 1150.

tion of the expected result, as well as the commitment of the principal to pay the equivalent, that is, remuneration. As has been indicated above, since neither the parish priest nor the vicar, on assuming the duties in a parish, do not agree with the bishop sending them there as to the amount of the "equivalent" for their services and do not receive any remuneration from the bishop, it cannot be said that elements constituting the said contract occur in that relationship. It is also difficult to consider that a specific task contract is entered into each time by the member of the clergy and the faithful making offerings in connection with a specific pastoral service, since the faithful as a rule not only do not have any influence over who will carry out the task, but also—given the specific nature of the matter—cannot give indications or instructions on how the work should be performed in any aspect.

Conclusions

The analysis presented above, along with the referenced cases, clearly shows that although the Church is the employer for many entities and is obliged to comply with labour law, the intersection between canon and state laws can raise many problems of interpretation.

The biggest problem concerns the determination by Polish law of the pastoral services of members of the clergy serving as parish priests and vicars. Their services, analyzed at a broad level of contractual relationships, include specific features that it is impossible to classify them as any of the aforementioned types of contracts. This specificity appears to be clearly perceived by Polish legislation, which emphasizes its distinctiveness in key legal and social areas, such as the matter of insurance and taxation. The services provided by members of the clergy, assessed through the secular optics of the law, should be considered an innominate contract (*contractus innominatus*).[34] Such an agreement, however, does not carry with it the entitlements that result from an employment contract relationship.

[34] See Witold Czachórski, *Zobowiązania. Zarys wykładu* (Warszawa: LexisNexis, 1995), 109.

Bibliography

Czachórski, W. *Zobowiązania. Zarys wykładu*. Warszawa 1995.

Feliciani, G. *Canonizzazione delle Leggi civili*. In *Nuovo Dizionario di Diritto Canonico,* ed. C. Salvador, V. De Paolis, and G. Ghirlanda (Mediolan, 1993), 120–121.

II Polski Synod Plenarny (1991–1999), Pallotinum 2001.

Jagodziński, H. "Kanonizacja prawa cywilnego." *Kieleckie Studia Teologiczne* 3(2004), 355–365.

Kodeks cywilny. Komentarz, ed. E. Gniewek. Warszawa 2006.

Kodeks pracy. Komentarz, ed. Z. Salwa. Warszawa 2004.

Kodeks Prawa Kanonicznego. Przekład polski zatwierdzony przez Konferencję Episkopatu Polski, Pallotinum 1984.

Konkordat między Stolicą Apostolską a RP z dnia 28 lipca 1993 r., Dz. U. 1998, 51, 318.

Konstytucja RP, Dz. U. 1992, 5, 18.

Pismo Ministra Finansów z dnia 11 lipca 1996 r., POP 5/3-5031/01235/96.

Rozporządzenie w sprawie szczegółowych zasad uczestniczenia w lekcjach religii i praktykach religijnych, korzystania z posług religijnych i organizacji pracy duszpasterskiej w zakładach poprawczych i schroniskach dla nieletnich, Dz. U. 2001, 106, 1157.

Rozporządzenie w sprawie szczegółowych zasad wykonywania praktyk religijnych i korzystania z posług religijnych w zakładach karnych, Dz. U. 1998, 139, 904.

Rynkowski, M. *Sądy wyznaniowe we współczesnym europejskim porządku prawnym,* Wrocław 2013.

Świątkowski, A. *Kodeks pracy. Komentarz*. Warszawa 2006.

Świto, L. "Charakter prawny posługi duszpasterskiej proboszczów i wikariuszy w parafiach rzymskokatolickich w świetle prawa polskiego." *Seminare* 27(2010): 41–50.

Świto, L. *Podatki a etyka obywatelska. Opodatkowanie osób duchownych w Polsce*, „Forum Teologiczne" 11(2010), 97–111.

Ustawa z dnia 26 października 1982 r. o postępowaniu w sprawach nieletnich, Dz. U. 1982, 35, 228.

Ustawa z dnia 12 września 1990 r. o szkolnictwie wyższym, Dz. U. 1990, 65, 38.

Ustawa z dnia 13 października 1998 r. o systemie ubezpieczeń społecznych, Dz. U. 1998, 137, 887.

Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, Dz. U. 1989, 29, 155.

Ustawa z dnia 20 listopada 1998 r. o zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne, Dz. U. 1998, 144, 930.

Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny, Dz. U. 1964, 16, 93.

Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych, Dz. U. 2000, 14, 176.

Wyrok SN, 28 X 1998, "Orzecznictwo Sądu Najwyższego" 1999, 4, 775.

Wyrok SN, 9 XII 1999, I PKN 432/99, "Orzecznictwo Sądu Najwyższego. Izba Administracyjna, Pracy i Ubezpieczeń Społecznych" 2001, 9, 310.

Lucjan Świto

Le droit du travail est-il en vigueur à l'Église ? L'analyse des conditions sociojuridiques à l'exemple de l'Église latine en Pologne

Résumé

Le présent article est une réflexion sur les conditions sociojuridiques contemporaines se référant au droit du travail à l'exemple de l'Église en Pologne. La problématique entreprise, considérée au point de rencontre du droit canonique et polonais, incite à poser nombre de questions, entre autres : Le droit du travail est-il en vigueur à l'Église, et comment ? Qui à l'Église est employé et qui y est employeur ? Sur la base de quelle relation travaillent les personnes exerçant différentes fonctions à l'Église ? L'analyse effectuée, avec les cas mentionnés, montre nettement que bien que l'Église soit employeur pour bien des sujets et qu'elle soit obligée de respecter le droit du travail, le point de rencontre du droit canonique et étatique peut engendrer de nombreux problèmes interprétatifs. Le plus grand problème porte sur la manière dont le droit polonais définit le service pastoral des membres du clergé exerçant les fonctions de curé et de vicaires. Leur service, analysé à un large niveau de relations contractuelles, contient des traits si particuliers qu'il est impossible de le classifier comme quelconque des types de contrats susnommés. Cette spécificité paraît être clairement aperçue par le législateur polonais qui accentue sa particularité dans les domaines clés juridiques et sociaux, c'est-à-dire dans la matière des assurances et des impôts. Le service des membres du clergé, évalué dans l'optique séculière du droit, devrait être considéré comme un contrat innommé (*contractus innominatus*). Quoi qu'il en soit, un tel contrat ne bénéficie pas des revendications qui résultent de la relation du contrat de travail.

Mots clés : droit du travail, assurances sociales, assurances du clergé, droit fiscal, relation de travail, contrats innommés (*contractus innominatus*)

Lucjan Świto

Il diritto del lavoro vige nella Chiesa? Analisi delle condizioni socio-giuridiche sull'esempio della Chiesa latina in Polonia

Sommario

L'articolo presentato è una riflessione sulle condizioni socio-giuridiche contemporanee riguardanti il diritto del lavoro sull'esempio della Chiesa in Polonia. La problematica intrapresa, esaminata nel punto di convergenza tra il diritto canonico e quello polacco, fa sorgere una serie di domande tra le quali: il diritto al lavoro vige nella Chiesa e come? Chi nella Chiesa è il lavoratore e chi è il datore di lavoro? Nell'ambito di quale rapporto lavorano le persone che ricoprono varie funzioni nella Chiesa? L'analisi condotta, unitamente ai casi citati, mostra chiaramente che sebbene la Chiesa sia un datore di lavoro per molti soggetti e sia tenuta a rispettare il diritto del lavoro, il punto di convergenza tra il diritto canonico e quello statale può comunque suscitare molti problemi di interpretazione. Il problema più grande riguarda la definizione da parte del diritto polacco del ministero pastorale degli ecclesiastici che ricoprono la funzione di parroci e vicari. Il loro ministero, analizzato sul piano inteso ampiamente dei rapporti obbligazionari,

include tratti talmente specifici da non poterlo collocare in alcun tipo di contratto menzionato. Pare scorgere chiaramente tale specificità anche il legislatore polacco che accentua la sua singolarità nelle aree chiave giuridico-sociali ossia in materia di assicurazioni e di imposte. Il ministero degli ecclesiastici quindi, valutato nell'ottica laica del diritto, deve essere considerato un contratto innominato (*contractus innominatus*). Tale contratto non gode tuttavia dei diritti che scaturiscono dal rapporto del contratto di lavoro.

Parole chiave: diritto del lavoro, assicurazioni sociali, assicurazioni degli ecclesiastici, diritto tributario, rapporto di lavoro, contratti innominati (*contractus innominatus*)

Philosophy and Canon Law vol. 3 (2017), pp. 177–195

Andrzej Pastwa
University of Silesia in Katowice, Poland

In the Circle of the "Culture of Indissolubility": Family as the First and Fundamental Structure for "Human Ecology"

Abstract: The study aims to prove that one of the most fundamental postulates of the Church—aimed at the state legislator, inscribed in the preamble D of the Charter of the Rights of the Family—to include in the legislative process the truth about the institution of "the family, a natural society [that] exists prior to the State or any other community, and possesses inherent rights which are inalienable" (preamble D of the Charter of the Rights of the Family)—gains in the interpretation of the anthropological trails of Saint John Paul II's teaching (mainly in the *Centesimus Annus* encyclical and also in: the *Letter to Families*, in *Evangelium Vitae*, and in the *Addresses to the Roman Rota* from the years 2000–2005) the depth of significance and power of expression. It is in the universal "contexts," often explicitly exceeding the horizon of Church (legal and canonical) issues: first of all, within the context of the presentation of integral ecology, which—both in the ethical and legal perspective—is connected with protection and promotion of common good; secondly, in a particular context of the original address on human ecology; thirdly, in the context of universal paradigm of "culture of indissolubility" (durability of matrimony as a universal good).

In the legal perspective adopted in this study, which refers, first and foremost, to the idea of "sovereignty of family," all three contexts indeed possible to set apart, however, explicitly complementary—can be boiled down to the latter one. Today, when the message of the Church about ecology is capable of getting wide social response, a consistent presentation of "human ecology" and "culture of indissolubility" postulates, potentially gives a tool for a more effective influence over the shape of legislature promoting family and stating a pro-family policy.

Keywords: family, family crisis, integral ecology, "human ecology," "culture of indissolubility," sovereign family, legislation for the protection of identity and sovereignty of family

Introduction

"In the first place, the family achieves the good of 'being together.' This is the good of marriage par excellence (hence its indissolubility) and of the family community. It could also be defined as a good of the subject as such. Just as the person is a subject, so too is the family, since it is made up of persons, who, joined together by a profound bond of communion, form a single communal subject. […] Indeed, the family is more a subject than any other social institution: more so than the nation or the State, more so than society and international organizations. These societies […] possess a proper subjectivity to the extent that they receive it from persons and their families."[1] This, significant Saint John Paul II's proclamation from the *Gratissimam Sane* letter of 1994, which due to the concept of "indissolubility" used by the pope within this context complemented with title words from the 2002 Address to the Roman Rota: "The indissolubility of marriage [is A.P.] the good of all constitutes the structure of this study.

The universal character of the quoted papal statements, the meaning of which is strengthened by the paradigm of "culture of indissolubility," *explicite* delivered in the Rotal address, inscribes well in the subject of scientific contemplation, defined by the means of the title of this volume: "State and Church, promotion of […] rights." Indeed, if we accurately illuminate the legal plane of this concept, this universal voice of the Church *ad extra*—in a dialog with society and its political representation (state, international organizations)—resounds particularly resonantly in the Charter of the Rights of a Family (1983), a document which credibly attests to the "the fundamental rights that are inherent in that natural and universal society which is the family."[2] It seems enough to refer to universal determinants of European legal culture (the *aequitas* principle)[3] is it not true that "the rights of the person, even though they are expressed as rights of the individual, have a fundamental social dimension which finds an innate and vital expression in the family."[4] It is not necessary to convince anyone how such a pure and undisturbed *quid iuris* message is needed for the contemporary, civilized world, for societies attached to democratic values.

---

[1] John Paul II, *Letter to Families Gratissimam Sane* (February 2, 1994), n. 13. Henceforth as GrS.

[2] Pontifical Council for the Family, *Charter of the Rights of the Family. Introduction*, http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html, accessed December 30, 2016.

[3] Cf. R. Sobański, "Ius fori – ius poli," *Forum iuridicum* 1 (2002), 17.

[4] Holy See, *Charter of the Rights of the Family* (October *22, 1983*), http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html, accessed: December 30, 2016. Preamble A. Henceforth as CRF.

Indeed, in the face of the disquieting global tendencies to destroy the anthropological paradigms—whose visible effect is the ever stronger process of belittling the natural law in the European legislature (*un processo di denaturalizzazione del giuridico*[5]) what gains strength is the enunciation of the Charter: "The family and society, which are mutually linked by vital and organic bonds, have a complementary function in the defense and advancement of the good of every person and of humanity."[6] It is here where the "area" of weighty issues, worthy a scientific contemplation, is unveiled. In the same way, as the mentioned Holy See's document remains an invaluable point of reference in the promotion of the rights of a family, however, also in identifying contemporary dehumanization threats (the first chapter), an exceptionally valuable prophetical voice of the Church today, serving for a proper understanding of the dignity and rights of a person in matrimonial and family relations, is the testimony of truth about "human ecology" (chapter two), passed to the world by Saint John Paul II in his encyclical *Centesimus Annus* (1991).

"The rights, the fundamental needs, the well-being and the values of the family [...] are often ignored"[7]

John Paul II's esteem, we can claim, is a sufficient reason for the contemporary world to open itself to the post-conciliar 'person-centric' address on the matrimonial and family *communio personarum*. In the Pope of the Family's depiction this address culminates in the truth which claims that the fundamental good of a family—which constitutes its ontic, social, and legal subjectivity—is the "good of 'being together.'" The durability of personal bonds (and in a relationship of the baptized: indissolubility as a fruit of sacramental covenant of love) constitutes fundamental, inherent good of the institution of family.[8] It is why all other organized people's communities have their own subjectivity, as long as they get it from families.[9]

[5] F. D'Agostino, "Introduzione al lavori," in *Identità sessuale e identità di genere. Atti del convegno nazionale dell'U.G.C.I. Palermo, 9–11 dicembre 2010* (Milano: Giuffrè, 2012), 3.

[6] CRF, Preamble G.

[7] CRF, Preamble J.

[8] Cf. W. Góralski and A. Pastwa, *„Rodzina suwerenna" – „Kościół domowy". W nurcie współczesnej myśli prawnej Kościoła powszechnego i Kościoła w Polsce* (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2015), 21–26.

[9] GrS, n. 13.

In order to understand the significance and timeliness of this constatation, it is necessary to contrast the teaching of the pope-teacher of personalism with opinions of experts who occupy themselves with the subject of family, be it the opinion of Professor Tomasz Szlendak, head of the Institute of Sociology, Nicolaus Copernicus University in Toruń. Szlendak, the author of *Family Sociology*,[10] thoroughly conducts an analysis of the phenomenon of impermanence of interpersonal relations; these relations dynamically (since before our eyes) change their character, are ever less stable—as a result hamper or even discourage us from establishing formal relationships. Szlendak, while noticing the crisis of the traditional family structure, simultaneously and in a quite unconventional way delineates, their "new" shape: "We cannot restrict family to a dyad, in which there are not any children subject to taking care of. Apart from the dyad mother-child, which is a biological relation (meaning: stable—A.P.), the remaining dyads as part of various family patterns are only a social construction (and as such they are subject to changes, so they are fluent—A.P.), even the relation with father (it is […] always 'presumed' and 'social)."[11] According to Szlendak, such a state of affairs authorizes us to present the definition of a family as follows: "Family is a group of relatives, kinsmen, friend, as well as different actors focused around the parent with a child, most often the mother."[12]

What stands behind this mysterious concept of "different actors"—in a situation when the fundamental relation— that of the mother and child, is no longer indicated, but instead, the parent-child relation, is not difficult to guess. Let us notice that the quoted definition easily makes room for all kinds of alternative "family" arrangements. Even if the definition excludes interpersonal relations, which do not fulfill the reproductive function (and let us remind that today next to this function, there are the following ones: socializing, protective, emotional, sexual, economic, stratificational, identificational, integrative, and control, or recreational and social) then what successfully falls into the quoted definition are the so-called homo-families, in which same-sex partners bring up children, or patchwork families (i.e., reconstructed families, in which at least one child is not a child of the couple that brings him or her up), or even more complex multi-family arrangements); not to mention family cohabitation, or the so-called LAT (Living Apart Together) families.

We can see how explicitly this "modern" (or, if we prefer: "postmodern") depiction of a family differs from the classic depictions of a nuclear family with a husband and wife (parents) and children. Are we supposed to accept the fact that the classic definition—like the one which claims that the nuclear family is a fundamental, elementary social bond, which comprises parents, their chil-

[10] Tomasz Szlendak, *Socjologia rodziny. Ewolucja, historia, zróżnicowanie* (Warszawa: Wydawnictwo Naukowe PWN, 2011), 542.

[11] Ibid., 113.

[12] Ibid., 114.

dren, also these adopted; a group in which parents are connected by means of a matrimonial bond, while parents with children—by a parental bond, is slowly disappearing from sociology course books?

It is not the end, though. According to Professor Szlendak, reliable sociological research leave no room for doubt—the transformation of the family and the decline of its roles in social life is inevitable: "deprived of many functions, the family ceases to be functional towards society—therefore, it automatically discontinuous to be useful and good"[13]; the fundamental functions of a family are taken by specialized institutions, which fulfill these functions in a better way.

A different expert, teacher, and sociologist from the University of Silesia Maciej Bernasiewicz, in his interesting recent study (2015), presents an image of a contemporary family—in the conflict of normative paradigms, dictated by new social facts. And these are: fluidity of the known family forms (with reference to the concept supported by the promoter of postmodernism Zygmunt Bauman) or also—if we stick to the convention of late modernism of Anthony Giddens, with an exemplary radical thoughtfulness—the fact that family structures are subject to inevitable processes of redefining and reforms.[14]

Contrariwise to Szlendak, since not only with a cold distance of a researcher into social phenomena, but also with a perceptible disquiet and concern of an educator, Bernasiewicz writes about the dangerous trends transforming the traditional model of the matrimonial family into its extramatrimonial forms that seems to be posing a threat to the institution of the family: "The crisis of the Judeo-Christian, nuclear family, Maciej Bernasiewicz claims, is visible within the area of social practice and theory, that is:

— in the increased popularization in social life practice of new "families" on a so far unprecedented scale;
— in challenging by sociology the "normalcy" of a nuclear family (validating non-nuclear families) by postmodern sociology;
— in an increasing number of divorces, violating in a common estimation the reliability of this social institution;
— in decreasing fertility (ever weaker procreative motivation);
— in decrease of family value to the benefit of different cultural ends (consumption and fun, professional career)."[15]

Therefore, is it surprising that Karol Wojtyła—John Paul II, solicitous reviewer of disquieting social and cultural phenomena after the 1968 cultural revolution, did not hesitate to speak openly about the crisis of civilization—and its derivative: crisis of the institutions of matrimony and family? It is a generally known fact that the sources of the crisis in the area of value were convinc-

[13] Ibid., 116.

[14] Maciej Bernasiewicz, "Rodzina w konflikcie normatywnych paradygmatów oraz nowych faktów społecznych," *Pedagogika społeczna* 14 no. 2, (2015): 88.

[15] Ibid., 89.

ingly diagnosed in the *Veritatis Splendor* (1993)[16] and *Fides et Ratio* (1998)[17] encyclicals, and in a direct reference to the institution of family: in the letter *Gratissimam Sane* (1994). It is in the latter document where we are capable of finding a phenomenological and hermeneutical "matrix," which constitutes a key to formulating this "crisis" factors/phenomena, also on the legal plane,[18] namely, the existence of antinomy between individualism and personalism.[19]

The message embedded in the pope's teachings is easy: the individualistic culture that is spreading in the postmodernist world appears to be a radical contradiction of personalism.[20] If, thus, the basis of the social order is a human being in his or her inalienable dignity of being shaped "in God's own image," then it is owing to the typical for individualism amputation of the transcendental dimension of human being's dignity—*nota bene* nowadays set on a pedestal in beautiful platitudes, which usually prove to be void—that it looses its most valuable guarantee. As John Paul II teaches in the *Centesimus Annus* encyclical "The denial of God deprives the person of his foundation, and consequently leads to a reorganization of the social order without reference to the person's dignity and responsibility [*personae humanae*—AP]."[21]

Therefore, in the *Charter of the Rights of a Family*, next to the postulates and principles for legislation,[22] the Holy See formulated (by no means unnecessarily!), a prophetic *credo* concerning the defense of the fundamental social institution: "The Catholic Church, aware that the good of the person, of the society and of the Church herself passes by way of the family, has always held its part of her mission to proclaim to all the plan of God instilled in human nature concerning marriage and the family, to promote these two institutions and

[16] Cf. John Paul II, Encyclical Letter *Veritatis Splendor* [August 6, 1993], chapter II: "Do not conform to the pattern of this world" (Roman 12:2), nn. 28–83. Henceforth as VS.

[17] Cf. John Paul II, Encyclical Letter *Fides et Ratio* [September 14, 1998], nn. 86–91. Henceforth as VS.

[18] Ioannes Paulus II, "Allocutio ad Romanae Rotae praelatos auditores" [January 27, 1997] *Acta Apostolicae Sedis* 89 (1997), 488, n. 4; In the monograph *Matrimonio y familia*, canonists Jorge Miras and Juan Ignacio Banares—after synthetical albeit instructive remarks concerning the sources of the contemporary marriage and family crisis (with an emphasized destructive impingement of the *gender ideology*, in the chapter entitled *Matrimonio y familia bajo la presion cultural*)—accurately defined the "keys" to the understanding of the mentioned crisis: (a) el rechazo del realismo; (b) el positivismo juridico; (c) el relativismo moral y el individuo como absolute; (d) la libertad como pura opcion J. Miras and J. I. Banares, *Matrimonio y familia. Iniciacion Teologica* (Madrid: Rialp, 2007[2]), 22–32.

[19] GrS, n. 14.

[20] Cf. John Paul II, "Allocutio ad Romanae Rotae praelatos auditores" [January 27, 1997], 488, n. 4.

[21] John Paul II, Encyclical Letter *Centesimus Annus* [May 1, 1991], n. 13. Henceforth as CA.

[22] Pontifical Council for the Family: *Charter of the Rights of the Family. Introduction.*

to defend them against all those who attack them."[23] Since it is crucial to ask what do the contemporary aspirations of pseudo-reformers, demiurges of new social reality, have in common with personal human good and concern for his or her integral development? First of all, not uncommonly under the "guise" of personalistic ideas, they conduct a de facto reformation of such elementary concepts as "love," "freedom," "sincere gift,"[24] to subsequently, under the "banner" of the new theory of *gender*,[25] institutionally encased (*gender mainstreaming*, *gender studies*) and widely promoted, aim at redefining matrimony and family as well.[26]

Such a situation motivates the advocates of real humanism: lawyers (philosophers of law, civil lawyers)[27] and canonists,[28] to challenge a problem clearly defined by the Church: "the rights, the fundamental needs, the well-being and the values of the family […] are often ignored."[29] The solemnity of the situation is well reflected by the questions that the abovementioned law communities have to confront with, like: "what family?"[30] or "family or families?[31] At the same time, what does not disappear from the field of vision is a fundamental issue: to what extent do gender and queer theories constitute an ideological back-up[32] for dangerous, in their consequences, legislative decisions in contemporary democratic states of law?

---

[23] CRF, Preamble L.

[24] Carlo Caffarra, *Podstawy doktrynalne rodziny*, in *W trosce o dobro małżeństwa i rodziny*, vol. 2: *"Rodzina: serce cywilizacji miłości". Akta Międzynarodowego Kongresu Teologiczno-Pastoralnego z okazji I Światowego Spotkania Rodzin z Ojcem Świętym, Rome, 6–8 October 1994*, ed. M. Brzeziński (Lublin: Wydawnictwo KUL, 2011), 44.

[25] Judith Butler, *Gender trouble*: *feminism and the subversion of identity* (New York: Routledge, 1990).

[26] See *"Mężczyzną i niewiastą stworzył ich." Afirmacja osoby ludzkiej odpowiedzią nauk teologicznych na ideologiczną uzurpację genderyzmu*, ed. A. Pastwa (Katowice: Księgarnia św. Jacka, 2012).

[27] See, for example, Laura Palazzani, "Il matrimonio istituzione di diritto naturale. La questione della identità di genere e della diversità sessuale nella famiglia," in *Studi in onore di Giovanni Giacobbe*, ed. Giuseppe Dalla Torre, vol. I: *Teoria generale, Persone e Famiglia* (Milano: Giuffrè, 2010), 675–93.

[28] Giuseppe Dalla Torre, *Identità sessuale e diritto canonico*, Studi Cattolici 55 (2011), 168–76; Cire Punzo, *Questioni di genere e profili giuridici e canonici dell'identità sessuata* (Capua: Artetetra Edizioni, 2016).

[29] CRF, Preamble J.

[30] Laura Palazzani, *Il matrimonio istituzione di diritto naturale*, 675–76.

[31] Laura Palazzani, *Famiglia o famiglie? Tra gender theories e ritorno del diritto naturale*, in: *Diritti delle donne, diritti umani, voci di donne*, ed. M. R. Costanza (Roma: Editori Riuniti Univ. Press, 2009), 201–28.

[32] See a critical depiction of new "family models" from the point of view of a law philospoher—Gabriella Gambino, *Le unioni omosessuali. Un problema di filosofia del diritto* (Milano: Giuffrè, 2007), 115–76.

It is obvious that in the face of such solemn civilizational challenges (indeed this compartmentalization is not really an exaggeration), the legal community, and first and foremost the bodies directly responsible for the shape of the legislative process and state family policy can count on repeatedly renewed—reflecting the spirit of the times!—anthropological and ethical testimony of the Church *de matrimonio et familia*. That is how we should perceive the Saint John Paul II's paradigmatic idea included in the title of this study: "family the first and fundamental structure for 'human ecology.'"

Towards "a Correct Understanding of the Dignity and the Rights of the Person"[33]

"Authentic democracy is possible only in a state ruled by law, and on the basis of a correct conception of the human person. It requires that the necessary conditions be present for the advancement both of the individual through education and formation in true ideals, and of the "subjectivity" of society through the creation of structures of participation and shared responsibility."[34] This well-known passage from the fifth chapter of the already quoted encyclical *Centesimus Annus* entitled "State and Culture" explicitly indicated the anthropologic paradigm as an irreplaceable foundation of individual and society subiectivization. Although the concepts postulated by means of this paradigm, namely: ethos (with a central axis located around the relations: the good of a person—common good) and law (according to the rule: "the rights of the person […] finds an innate and vital expression in the family"[35]), should be, at first, referred to the state and its legal order, then the institution of the family, which constitutes *ex natura* the area of the said "subjectivization," does not disappear from the magisterial horizon, defined by Saint John Paul II, even for a moment. Indeed, it is worth to repeat once again, "the family and society, which are mutually connected by vital and organic bonds, have a complementary function in the defense and advancement of the good of every person and of humanity."[36] That is why the inalienable responsibility—shared by state and family—for personal good of an individual and common good is invariably "[…] a point of reference for the drawing up of legislation and family policy, and guidance for action programs."[37]

[33] CA, n. 47.
[34] CA, n. 46.
[35] CRF, Preamble A.
[36] CRF, Preamble G.
[37] Pontifical Council for the Family, *Charter of the Rights of the Family. Introduction.*

It is worth to ask the question why calling into doubt the mentioned anthropological paradigm (which guarantees a proper understanding and affirmation of dignity and rights of a person) is so dangerous? The clou of the problem lies in a fundamental cognitive discordance concerning *persona humana*, that is, in the discrepancy between: superficial perception, ideologicalized (usually contaminated with nihilism and utilitarianism[38]) and a humanistic integral perception. How serious is *in concreto* the threat (posed for matrimony and family) connected with the egotistic/egocentric individualism, we can easily construe from John Paul II's criticism[39] of two characteristic attitudes: utilitarian freedom and utilitarian happiness. In the first case it is about—based on ethical relativism—freedom without responsibility. Such an attitude captivates human beings and is an antithesis of love, since as a rule, it hinders the disinterested personal gift,[40] which is embedded at the foundations of matrimonial and family communion, hence the realization of the ethos of a "personalistic norm."[41] In turn, an individualistic, utilitarian pursuit of "happiness" signifies a permanent quest for pleasure, when each short-term fulfillment "makes happy" self-centered (egoistic) individuals regardless of "the objective demands of the true good."[42] Therefore, let us recapitulate after John Paul II, individualism, which yields consumerist and antinatalistic mentality that annihilates the institution of matrimony and family, is in its core not a "civilization of persons," but a "civilization of things"[43] instead.

Not without reason, in 2004 John Paul II in his second to last address to the Roman Rota included a universal appeal—not only *ad intra* to the shepherds of the Church and workers of Church judiciary, but also *ad extra* to the wide circles of lay recipients: institutions and people responsible for the shape of legislation

[38] See C. Caffarra, "Matrimonio e visione dell´uomo," *Quaderni Studio Rotale* 1 (1987): 35–40.

[39] It is possible to trace philosophical analysis of individualism in the "classic" work of the teacher of personalism—Karol Wojtyła, *The Acting Person* [Analecta Husserliana. The Yearbook of Phenomenological Research, vol. 10], trans. A. Potocki. Dordrecht: D. Reidel Publishing Co., 1979 (part 4: *Participation*, § 4: *Individualism and Anti-Individualism*), 271–76.

[40] "Individualism presupposes use of freedom in which the subject does what he wants, in which he himself is the one to 'establish the truth' of whatever he finds pleasing or useful. He does not tolerate the fact that someone else 'wants' or demands something from him in the name of an objective truth. He does not want to 'give' to another on the basis of truth; he does not want to become a 'sincere gift.'" John Paul II, Letter to Families, n. 4, quoted in: GrS, n. 14.; Cf. Ioannes Paulus II, *Allocutio ad Romanae Rotae praelatos auditores* [January 27, 1997], 488, n. 4.

[41] Karol Wojtyła, *Miłość i odpowiedzialność* (Lublin: Wydawnictwo Towarzystwa Naukowego KUL 1986[4]), 41–45. More on this topic: Andrzej Pastwa, *"Przymierze miłości małżeńskiej" Jana Pawła II idea małżeństwa kanonicznego* (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2009), 32–41.

[42] GrS, n. 14.

[43] Cf. GrS, n. 13.

that would protect (secure) the identity and sovereignty of[44] the institution of family. This peculiar testament of the Pope of the Family comes down to one, however, crucial *memento*: an inseparable reference point for—the targeted towards the family or concerning it indirectly—activities: lawmaking and application of law, is a metaphysical vision of man or the matrimonial and family bonds. The lack of understanding and accepting this ontological foundation results in the fact that the described primary and elementary institution—insensitive to the great pillar of our civilization—begins to gradually appear as an unrealistic "extrinsic superstructure, the result of the law and of social conditioning, which limits the freedom of the person to fulfill himself or herself."[45] Since, it is crucial to bear in mind that an authentic fulfillment of a human person does not mean an "individualistic" going beyond oneself, but opening oneself to communion, simultaneously, with the Holy Trinity (God), with other people (neighbors) and with the entire nature (space). The real affirmation of human dignity, motivated by the concern for his personal good and integral development—is nothing else but creating and strengthening the communion bonds with: God, neighbors (on the plane of connection/unity with God) and with the material world (on the plane of connection/unity with God and neighbors)[46].

Half a century ago Karol Wojtyła, in his work *The Acting Person*, wrote how alien the individualistic ideas/ideologies of contemporary advocates of advance are when it comes to building these communion relations with the Creator, with neighbors and with the natural world. In the section dedicated to the theory of "participation" he claimed: "Individualism sees in the individual the supreme and fundamental good, to which all interests of the community or the society have to be subordinated […]."[47]

Therefore, it limits participation

> […] since it isolates the person from others by conceiving him solely as an individual who concentrates on himself and on his own good; this latter is also regarded in isolation from the good of others and of the community. The good of the individual is then treated as if it were opposed or in contradiction to other individuals and their good; at best, this good, in essence, may be considered as involving self-preservation and self-defense.[48]

[44] A. Pastwa, "Sovereign Family," *Ecumeny and Law* 2 (2014).

[45] John Paul II, "Allocutio ad Rotam Romanam habita" (January 29, 2004), *Acta Apostolicae Sedis* 96 (2004): 352, n. 7.

[46] Cf. VS, n. 13.

[47] K. Wojtyła, *The Acting Person*, 273; cf. Janusz Mariański, *Problem ochrony środowiska i "ekologii ludzkiej,"* in *Jan Paweł II. "Centesimus annus." Tekst i komentarze*, ed. F. Kampka and C. Ritter (Lublin: Redakcja Wydawnictw KUL, 1998), 335.

[48] Wojtyła, *The Acting Person*, 273–74.

Let us notice that the shortage of truly interpersonal relations, described by Karol Wojtyła, based on mutual love—say: a situation of personal alienation—has a lot in common with "the culture of the ephemeral," (a concept from Pope Francis's *Amoris Laetitia* adhortation),"[49] culture which "prevents a constant process of growth [*personae humanae*–A.P.] (human person).[50] Meanwhile, the truth about the human person, which the Church promulgates in the spirit of integral humanism (within the area of the model "civilization of love") is completely different. "Man as a person is an intelligent and free being, who fulfills himself in love, so through the gift of oneself and accepting a personal gift from the other person. He is capable of defining and expressing oneself, and realizes dialogic structure of his nature and in that way, establishing permanent relations, creates communities."[51] Therefore, an authentic community constitutes an inalienable environment for the development of a human person. The opposite is also true: the developmental potential of every community is embedded in truly interpersonal relations, that is, based on mutual love. Indeed, the elementary norm of social life is precisely love, which constitutes, on the one hand, the crowning of such social life principles as: the principle of fairness, solidarity, helpfulness and permanent aiming at peace, on the other, the only relation that is adequate to the person.[52] Professor Krzysztof Jeżyna is right when he concludes that the relational and social dimension of humanity needs to be perceived within the context of human person's subjectivity; that is where the primacy of person in relation to every society explicitly stems from.[53] In the already mentioned encyclical *Centesimus Annus* Saint John Paul II writes: "Man receives from God his essential dignity and with it the capacity to transcend every social order so as to move towards truth and goodness. But he is also conditioned by the social structure in which he lives, by the education he has received and by his environment."[54]

It is not difficult to guess that these papal words introduce us to the very center of the title *Human Ecology*. It is within this context that the famous words are uttered: "too little effort is made to safeguard the moral conditions for an

[49] "An extreme individualism and freedom understood negatively as a lack of interference, on the side of these who could restrict or hamper the actions of an individual, are mechanisms that lead to destruction and atrophy of bonds, to obliteration of social communication. From the sum of egoisms—without a moral effort—not a single society can be created." Janusz Mariański, "Problem ochrony środowiska i 'ekologii ludzkiej,'" in *John Paul II. Centesimus Annus. Text and Commentaries*, ed. F. Kampka and C. Ritter, Lublin: Redakcja Wydawnictw KUL, 1998), 335.

[50] AL, n. 124.

[51] Krzysztof Jeżyna, *Ekologia ludzka*, in *Ekologia. Przesłanie moralne Kościoła*, ed. J. Nagórny, J. Gocko. (Lublin: Wydawnictwo KUL, 2002), 122.

[52] Michał Wyroskiewicz, *Ekologia ludzka. Osoba i jej środowisko z prspektywy teologiczno-moralnej* (Lublin: Wydawnictwo KUL, 2007), 151–52.

[53] Ibid., 109.

[54] CA, n. 38.

authentic 'human ecology.'" While it is already in the fifth issue of Pope Francis' "ecological" encyclical *Laudato Si* that this important *passus* appears, the echo of John Paul II's thought explicitly sounds in the fragment from the part preceding the fourth, key and to some extent culminating chapter of the encyclical entitled the *Integral Ecology*. Pope Francis claims: "If the present ecological crisis is one small sign of the ethical, cultural and spiritual crisis of modernity, we cannot presume to heal our relationship with nature and the environment without healing all fundamental human relationships."[55]

We can ask: Which is the first thing that needs healing? In the answer it is crucial to clearly underline: the ecological crisis arose from the loss of the truth about man. It is not only about falsifying the hierarchy of values, but about something more elementary, that is, a fundamental distortion of the image of human freedom, falsely understood human autonomy. Professor Janusz Nagórny pertinently described this issue when he wrote: "The theological contemplation on ecology sees the final source of ecological crisis in the sinful attitude of the human person, and its overcoming perceives to be only fully possible when man makes a real effort to fight the inclination towards sin."[56]

No wonder that Pope Francis firmly states: "A correct relationship with the created world demands that we not weaken this social dimension of openness to others, much less the transcendent dimension of our openness to the 'Thou' of God. Our relationship with the environment can never be isolated from our relationship with others and with God. Otherwise, it would be nothing more than romantic individualism dressed up in ecological garb, locking us into a stifling immanence."[57]

That is how the very essence of John Paul II's idea of "human ecology" manifests itself, idea which announces the title of this study: "Family as the First and Fundamental Structure for 'Human Ecology.'" The significance of this idea reveals the consecutive "steps" of the papal discourse in the 39th issue of *Centesimus Annus* (it is suffice to quote the first two sentences):

> The first and fundamental structure for "human ecology" is the family, in which man receives his first formative ideas about truth and goodness, and learns what it means to love and to be loved, and thus what it actually means to be a person. Here we mean the family founded on marriage, in which the mutual gift of self by husband and wife creates an environment in which children can be born and develop their potentialities, become aware of their dignity and prepare to face their unique and individual destiny.[58]

---

[55] Francis, Encyclical Letter *Laudato Si* [May 24, 2015], n. 119. Henceforth as LS.

[56] Janusz Nagórny, "Teologia ekologii. O prawdziwie chrześcijańskim spojrzeniu na kwestie ekologiczne," in *Ekologia. Przesłanie moralne*, 197.

[57] LS, n. 119.

[58] CA, n. 39.

Making use of Saint John Paul II's teachings in the Letter to Families and the *Evangelium Vitae* encyclical (in which we discover the same context of theological anthropology), the "personalistic" image of ecology, depicted here, get its fuller shape in the recognition of the meaning of formulas that defines family, such as: "sanctuary of life and love," "irreplaceable center of culture of life," or "a school of deeper humanity and social education."[59]

The conclusions that follow from the teachings of Pope John Paul II and Pope Francis are for the state legislator difficult not to appreciate. "Human ecology," which constitutes the very nucleus of "integral ecology," carries a clear message that *persona humana* is capable of achieving full development only in community and owing to a community. These are the roots of the anthropologic, ethic and legal postulates of such a shape of social structures, in which life and dignity of a human person are consistently affirmed in order to provide multiform institutional support to help the human person achieve integral development. In other words, the quoted papal magisterium points towards the role of a state, in which, on the one hand, the democratic political system based on the principles of justice, rightness, solidarity and care for peace, on the other, a family-friendly social, economic and cultural system—constitute important postulates of human ecology.

The question if, in the face of the social significance of the quoted doctrine of the Church, a canonist is able to disregard the issue of the "transmission belt" for the title idea (family the first and fundamental structure for "human ecology")—remains obviously a rhetorical question. If we assume the interference/dialog of Church and secular law (and what follows—the presence of church law in legal culture, both in the ideological sphere and a practical realization of law as well),[60] it is difficult not to notice a potentially productive role of *ius canonicum* in the subject matter scope. It is how the "program" clou of the last *Address to the Roman Rota* (2005), in which the highest Church legislator connected the teaching about "the intrinsic connection of [canonical—A.P.] norms with Church doctrine"[61] with a universal (!) plea for "the duty to conform to the truth about marriage,"[62] should be understood. First and foremost, what he had in mind was the leading subject of his last five Rotal addresses, namely: indissolubility of matrimonial bond[63]; let us add truth, proclaimed earlier in the

[59] See Góralski and Pastwa, *"Rodzina suwerenna"—„Kościół domowy"*, 30–36, 108–15, 123–40.

[60] See Remigiusz Sobański, "Prawo kanoniczne a kultura prawna," *Prawo Kanoniczne* 35 (1992), no 1–2, 15–33.

[61] John Paul II, "Allocutio ad Tribunal Romanae Rotae iudiciali ineunte anno" [January 29, 2005], *Acta Apostolicae Sedis* 97 (2005), 165, n. 6.

[62] Ibid., 164, n. 1.

[63] *Code of Canon Law*, can. 1056, 1134, 1141 (henceforth as CIC); *Code of Canons of the Eastern Churches*, can. 776 § 3, can. 853 (henceforth as CCEO).

instructive phrases: "he is good news of the definitive nature of that conjugal love,"[64] "an indissoluble personal reality, a bond of justice and love,"[65] or in the formulas which have a particular prophetic and evangelical potential: "indissolubility of matrimony as a common good," "culture of indissolubility."[66] What remains is hope that the significant range and virtue of these formulas—currently in the *ius Ecclesiae* system, also at the level of evangelical testimony *praxis*[67]—will inspire the entities responsible for the normative shape and realization of elementary "ecological" principles of social life in a democratic state.

Today, when the message of the Church about ecology gets a wide social resonance, a consistent presentation of "human ecology" and "culture of indissolubility" postulates (and what we mean here are contemporary "contexts" of the anthropological paradigm promulgated by the Church) potentially gives a tool of more effective impingement on the shape of legislative process promoting family and state pro-family policy. In the times of an ever-deepening crisis of values, the state legislator should bear in mind that complete families, the foundations of which is matrimony—especially these based on an authentic love "inextricably faithful for the good and for the bad,"[68] connected by the sacrament of matrimony (assuming that it renews and purifies the relations between its members through prayer, magnanimity, spirit of sacrifice, and especially sacramental grace) and taking on a mission of "responsible parenthood"[69]—if only they achieve in the legal order of a democratic state a protection of its sovereignty (family subjectivity), can guarantee an authentic development of a society. The determinants of the latter one will always remain: interhuman justice, peace, solidarity, and widely understood "genuine culture of care for the environment."[70]

Closing Remarks

The article has made an attempt to demonstrate one of the most important postulates of the Church, directed towards the state legislator, inscribed in the pre-

[64] John Paul II, "Allocutio ad Romanae Rotae iudices et administros" [January 21, 2000], *Acta Apostolicae Sedis* 92 (2000), 351, n. 3.

[65] John Paul II, "Allocutio ad Rotam Romanam habita" [January 29, 2004], *Acta Apostolicae Sedis* 96 (2004), 352, 7.

[66] John Paul II, *Allocutio ad Romanae Rotae tribunal* (January 28, 2002), 344, n. 7.

[67] See Sobański, *Prawo kanoniczne a kultura prawna*, 28.

[68] *Vatican Council II*, Pastoral Constitution on the Church *Gaudium et Spes* (December 7, 1965), n. 49. Henceforth as GS.

[69] See GS, nn. 50, 51; Paul VI, Encyclical Letter *Humanae Vitae* [July 25, 1968], n. 10.

[70] LS, n. 229.

amble D of the *Charter of the Rights of a Family*. Moreover, it tried to include in the legislative process the truth about the institution of the family as a "natural relationship, primary in relation to a state or any other different community," which gains in the interpretation of the anthropological trails of Saint John Paul II's teaching (mainly in the *Centesimus Annus* encyclical, and auxiliarily in the *Letter to Families* and in the *Addresses to the Roman Rota* from the years 2000–2005) the depth of significance and power of expression. It is in the universal contexts, often explicitly exceeding the horizon of Church (legal and canonical) issues: first of all, within the context of the presentation of integral ecology, which—both in the ethical and legal perspectiveis connected with protection and promotion of common good[71]; secondly, in a particular context of the original address on human ecology; thirdly, in the context of universal paradigm of the "culture of indissolubility" (durability of matrimony as a universal good).

In the legal perspective adopted in this study, which refers, first and foremost, to the idea of "sovereignty of family," all three contexts—indeed possible to set apart, however, explicitly complementary—can be boiled down to the latter one. Therefore, in the conclusion it seems reasonable to once again emphasize the value of thought formulated on the basis of the personalistic magisterium of John Paul II, Pope of the Family, giver of two codices (CIC, CCEO).

The "ecological" truth about family appears to be *par excellance* the good of "being together." In other words, the durability of personal bonds constitutes a crucial good of matrimonial and family community. An inalienable part of the Christian address on the human person as well as the matrimonial and family *communio personarum* is a clear message: embedded in an irrevocable act of consent the good of inseparable community of baptized spouses and their children, and in a universal space (not only legal and canonical, but also civil and legal)—the good of a durable institution of the family, is in fact the good of subjectivity. "Just as the person is a subject, so too is the family, since it is made up of persons, who, joined together by a profound bond of communion, form a single communal subject. Indeed, the family is more a subject than any other social institution."[72]

[71] "An integral ecology is inseparable from the concept of the common good […]. Underlying the principle of the common good is respect for the human person as such, endowed with basic and inalienable rights ordered to his or her integral development. It has also to do with the overall welfare of society and the development of a variety of intermediate groups, applying the principle of subsidiarity. Outstanding among these groups is the family, as the basic cell of society. […] Society as a whole, and the state in particular, are obliged to defend and promote the common good." LS, nn. 156, 157. See Wyroskiewicz, *Ekologia ludzka*, 151.

[72] GrS, n. 13.

Bibliography

Bernasiewicz, Maciej. “Rodzina w konflikcie normatywnych paradygmatów oraz nowych faktów społecznych.” *Pedagogika społeczna* 14 no 2 (2015): 87–100.

Butler, Judith. *Gender Trouble*: *Feminism and the Subversion of Identity*. New York: Routledge, 1990.

Caffarra, Carlo. “Matrimonio e visione dell´uomo.” *Quaderni dello Studio Rotale* 1 (1987): 35–40.

Caffarra, Carlo. Podstawy doktrynalne rodziny. In *W trosce o dobro małżeństwa i rodziny*, vol. 2: *“Rodzina: serce cywilizacji miłości.” Akta Międzynarodowego Kongresu Teologiczno-Pastoralnego z okazji I Światowego Spotkania Rodzin z Ojcem Świętym, Rzym, 6–8 października 1994 r.* 37–45. Edited by Mirosław Brzeziński. Lublin: Wydawnictwo KUL, 2011.

Code of Canon Law (promulgated: January 25, 1983).

Code of Canons of the Eastern Churches (promulgated: October 18, 1990).

D’Agostino, Francesco. “Introduzione al lavori.” In *Identità sessuale e identità di genere. Atti del convegno nazionale dell’U.G.C.I. Palermo, 9–11 dicembre 2010*, 1–6. Milano: Giuffrè, 2012.

Dalla Torre, Giuseppe. “Identità sessuale e diritto canonico.” *Studi Cattolici* 55 (2011). 168–176.

Francis. Apostolic Exhortation *Amoris Laetitia* [April 8, 2016].

Fracis. Encyclical Letter *Laudato Si* [May 24, 2015].

Gambino, Gabriella. *Le unioni omosessuali. Un problema di filosofia del diritto*, 115–176. Milano: Giuffrè, 2007.

Góralski, Wojciech, and Andrzej Pastwa. *“Rodzina suwerenna”—”Kościół domowy.” W nurcie współczesnej myśli prawnej Kościoła powszechnego i Kościoła w Polsce*. Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2015.

Holy See. *Charter of the Rights of the Family* (October 22, 1983). http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html. Accessed December 30, 2016.

John Paul II. “Allocutio ad Romanae Rotae praelatos auditores” [January 27, 1997]. Acta *Apostolicae Sedis* 89 (1997): 486–489.

John Paul II. “Allocutio ad Romanae Rotae iudices et administros” [January 21, 2000]. *Acta Apostolicae Sedis* 92 (2000): 350–355.

John Paul II. “Allocutio ad Romanae Rotae tribunal” [January 28, 2002]. *Acta Apostolicae Sedis* 94 (2002): 340–346.

John Paul II. “Allocutio ad Rotam Romanam habita” [January 29, 2004]. *Acta Apostolicae Sedis* 96 (2004): 348–352.

John Paul II. “Allocutio ad Tribunal Romanae Rotae iudiciali ineunte anno” [January 29, 2005]. Acta Apostolicae Sedis 97 (2005): 164–166.

Jeżyna, Krzysztof. „Ekologia ludzka.” In *Ekologia. Przesłanie moralne Kościoła*. Edited by Janusz Nagórny and Jerzy Gocko. 105–138. Lublin: Wydawnictwo KUL, 2002.

John Paul II. Encyclical Letter *Centesimus Annus* [May 1, 1991].

John Paul II. Encyclical Letter *Evangelium Vitae* [March 25, 1995].

John Paul II. Encyclical Letter *Fides et Ratio* [September 14, 1998].

John Paul II. Letter to Families *Gratissimam Sane* [February 2, 1994].

John Paul II. Encyclical Letter *Veritatis Splendor* [August 6, 1993].

Mariański, Janusz. “Problem ochrony środowiska i “ekologii ludzkiej.” In *Jan Paweł II. “Centesimus annus.” Tekst i komentarze*. Edited by Franciszek Kampka and Cezary Ritter. Lublin: Redakcja Wydawnictw KUL, 1998.

Pastwa, Andrzej (ed). *"Mężczyzną i niewiastą stworzył ich." Afirmacja osoby ludzkiej odpowiedzią nauk teologicznych na ideologiczną uzurpację genderyzmu*. Katowice: Księgarnia św. Jacka, 2012.

Miras, Jorge, and Juan Ignacio Bañares. *Matrimonio y familia. Iniciacion Teologica*. Madrid: Rialp, 2007[2].

Nagórny, Janusz, "Teologia ekologii. O prawdziwie chrześcijańskie spojrzenie na kwestie ekologiczne." In *Ekologia. Przesłanie moralne Kościoła*. Edited by Janusz Nagórny and Jerzy Gocko. 187–203. Lublin: Wydawnictwo KUL, 2002.

Palazzani, Laura. "Famiglia o famiglie? Tra gender theories e ritorno del diritto naturale." In *Diritti delle donne, diritti umani, voci di donne*, 201–228. Edited by Maria Costanza and Maria Rosaria. Roma: Editori Riuniti Univ. Press, 2009.

Palazzani, Laura. "Il matrimonio istituzione di diritto naturale. La questione della identità di genere e della diversità sessuale nella famiglia." In *Studi in onore di Giovanni Giacobbe*. Edited by Giuseppe Dalla Torre, vol. I: *Teoria generale, Persone e Famiglia*, 675–693. Milano: Giuffrè, 2010.

Pastwa, Andrzej. *"Przymierze miłości małżeńskiej." Jana Pawła II idea małżeństwa kanonicznego*. Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2009.

Paul VI. Encyclical Letter *Humanae Vitae* [July 25, 1968].

Pontifical Council for the Family: *Charter of the Rights of the Family. Introduction*. http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html. Aaccessed December 30, 2016.

Punzo, Ciro. *Questioni di genere e profili giuridici e canonici dell'identità sessuata*. Capua: Artetetra Edizioni, 2016.

Sobański, Remigiusz. "Ius fori—ius poli." *Forum iuridicum* 1 (2002): 11–20.

Sobański, Remigiusz. "Prawo kanoniczne a kultura prawna." *Prawo Kanoniczne* 35, no 1–2, (1992): 15–33.

Pastwa, Andrzej. *Sovereign Family*. Katowice: Wydawnictwo Uniwersytetu Śląskiego. *Ecumeny and Law* 2 (2014).

Szlendak, Tomasz. *Socjologia rodziny. Ewolucja, historia, zróżnicowanie*. Warszawa: Wydawnictwo Naukowe PWN, 2011.

Vatican Council II. Pastoral Constitution on the Church *Gaudium et Spes* [December 7, 1965].

Wojtyła, Karol. *Miłość i odpowiedzialność*. Lublin: Wydawnictwo Towarzystwa Naukowego KUL, 1986[4].

Wojtyła, Karol. *The Acting Person* [Analecta Husserliana. The Yearbook of Phenomenological Research, vol. 10]. Translated by Andrzej Potocki. Dordrecht: D. Reidel Publishing Co., 1979.

Wyrostkiewicz, Michał. *Ekologia ludzka. Osoba i jej środowisko z perspektywy teologiczno-moralnej*. Lublin: Wydawnictwo KUL, 2007.

Andrzej Pastwa

Dans la sphère de la « culture de l'indissolubilité » : la famille en tant que première et fondamentale cellule de l' « écologie humaine »

Résumé

L'étude constitue une tentative de prouver que l'une des revendications les plus importantes de l'Église—adressée au législateur étatique, inscrite dans la préambule D de la *Charte des Droits de la Famille*, concernant la prise en considération dans la législation la vérité sur l'institution de la famille en tant que relation naturelle, primaire par rapport à l'État et à une quelconque autre communauté—acquiert dans l'interprétation des traces anthropologiques de l'enseignement de Jean-Paul II (notamment dans l'encyclique *Centesimus annus*, et auxiliairement dans *Lettre aux familles* et *Discours à la Rote romaine* des années 2000–2005) une profondeur de signification et une force d'expression. C'est dans les « contextes » universels, sortant décidément en dehors du cadre de la problématique purement ecclésiastique (juridique et canonique) : premièrement, dans le contexte de la présentation de l'écologie intégrale, qui—aussi bien dans l'optique éthique que la juridique—est liée à la sauvegarde et la promotion du bien commun ; deuxièmement, dans le contexte précis de la déclaration originale sur l'écologie humaine ; troisièmement, dans le contexte du paradigme universel de la « culture de l'indissolubilité » (durabilité du mariage en tant que bien universel). Dans la perspective juridique adoptée dans l'article, se référant notamment à l'idée de la « souveraineté de la famille », tous les trois contextes—bien sûr, possibles à séparer, pourtant décidément complémentaires – peuvent être réduits à ce dernier. Aujourd'hui, quand le message de l'Église sur l'écologie peut compter sur une vaste résonance sociale, la présentation conséquente des revendications de l' « écologie humaine » et de la « culture de l'indissolubilité » donne potentiellement un outil permettant d'influencer plus efficacement la forme de la législation promouvant la famille et la politique étatique favorable à la famille.

Mots clés : famille, crise familiale, écologie intégrale, « écologie humaine », « culture de l'indissolubilité », famille souveraine, législation en faveur de la protection de l'identité et de la souveraineté de la famille

Andrzej Pastwa

Nella sfera della «cultura dell'indissolubilità»: la famiglia come prima e fondamentale cellula dell'»ecologia umana»

Sommario

Nello studio si è cercato di dimostrare che uno dei postulati più importanti della Chiesa nei tempi contemporanei, rivolti al legislatore dello stato, scritto nel preambolo D della *Carta dei Diritti della Famiglia,* di considerare nella legislazione la verità sull'istituzione della famiglia come legame naturale, originaria rispetto allo stato o a qualsiasi altra comunità—acquisisce nella lettura delle vestigia antropologiche dell'insegnamento di san Giovanni Paolo II (principalmente nell'enciclica *Centesimus annus*, e in modo sussidiario nella *Lettera alle Famiglie* e nelle *Allocuzioni alla Rota Romana* degli anni 2000–2005), profondità di significato e forza espressiva.

E ciò nei «contesti» universali che escono decisamente dall’orizzonte della problematica puramente ecclesiastica (giuridico-canonica): primo, nel contesto della lezione di ecologia integrale che—sia nell’ottica etica, sia in quella giuridica—è legato alla custodia ed alla promozione del bene comune; secondo, nel contesto particolare del discorso originale sull’ecologia umana; terzo, nel contesto del paradigma comune a tutti gli uomini della «cultura dell’indissolubilità» (durabilità del matrimonio come bene universale). Nella prospettiva giuridica assunta nello studio, che fa riferimento innanzitutto all’idea della «sovranità della famiglia», tutti e tre i contesti—che certamente possono essere distinti, ma che sono decisamente complementari—possono essere ricondotti all’ultimo. Oggi che il messaggio della Chiesa sull’ecologia può contare su una vasta risonanza sociale, la presentazione coerente dei postulati dell’»ecologia umana» e della «cultura dell’indissolubilità» offre potenzialmente uno strumento di influenza più efficace sulla forma della legislazione che promuove la famiglia e la politica pro-familiare dello stato.

Parole chiave: famiglia, crisi della famiglia, ecologia integrale, «ecologia umana», «cultura dell’indissolubilità», famiglia sovrana, legislazione in favore della tutela dell’identità e della sovranità della famiglia

Philosophy and Canon Law vol. 3 (2017), pp. 197–218

Michał Poniatowski
Cardinal Stefan Wyszyński University, Warsaw, Poland

The Family as an Entity in the Polish Legal Order

Abstract: The concept of the family as a legal entity in the Polish legal order, discussed in this paper, concerns practical issues that are at the same time quite complex, due to the vague and inconsistent definition of the status of the family in particular branches of law, which enjoy their own autonomy within the framework of the current system of universally applicable law. Proper understanding of the issue in question requires an adequate analysis of legal provisions, judicial decisions, and the literature.
The article presents the subject matter in the context of traditional branches of law such as constitutional law (in addition to international and community law, which recognize a number of family rights and obligations), administrative law, civil law, and penal law. As a consequence of adopting such article structure, in individual parts thereof the issue of family as a legal entity is presented in both substantive and formal context, accompanied by the relevant conclusions.
The final section of the paper contains the most important general conclusions resulting from the analysis.

Keywords: family, legal entity of the family, family members, family rights

Introduction

As already observed in ancient times, the family exists because man is by nature a social being. On this basis, Aristotle stressed that the family was an elementary component of the State.[1] Even today, the family still remains an integral part

[1] Cf. Maria Szyszkowska, *Zarys filozofii prawa. Fragmenty dzieł filozoficznoprawnych w przekładzie Czesława Tarnogórskiego* (Białystok: Temida 2, 2000), 112–13.

of the functioning of both society and the State.[2] The legislator in a democratic legal state should therefore, in accordance with the principle of subsidiarity, recognize the family in a legal aspect and create an appropriate legal framework for its protection. In the legal dimension, it is worth paying attention, *inter alia*, to the problem of family as a legal entity in the current Polish legal order as will be the subject of this article. Due to the framework of this paper, the above issue will be illustrated as a comparison of traditional branches of law, with particular regard to the constitutional law resulting from the rank of this type of law.[3]

Family in Constitutional, International, and Community Law

Due to the prevailing hierarchy of sources of common law, it is appropriate to refer first to the issue in question in the context of constitutional law. This law does not contain a definition of what constitutes a legal family. However, attempts to define a family in the context of constitutional law have been repeatedly made by the Constitutional Court. According to the ruling of the Constitutional Court of May 28, 1997,[4] the family is a complex social reality which is the sum of relations, primarily between parents and children, and which is entitled to protection. At the same time, the Constitutional Court pointed out that, in a broader sense, the concept of the family should also include other relationships arising from blood relations or adoption.

It is also worth noting that, in its ruling of April 12, 2011,[5] the Constitutional Court repeatedly introduced the concept of the family, stating the following:

> The provisions of the Constitution do not define the concept of the family, albeit the status of this basic and natural group unit of society is determined by a number of provisions of the basic law.
> In the light of the constitutional provisions, the "family" should be considered any permanent relationship of two or more persons, consisting of at least one adult and a child, based on emotional, legal, and usually also on blood relations.

[2] See also: Tadeusz Smyczyński, *Prawo rodzinne i opiekuńcze* (Warszawa: Wydawnictwo C.H. Beck, 2005), 1.

[3] See also: Tomasz Stawecki and Piotr Winczorek, *Wstęp do prawoznawstwa* (Warszawa: Wydawnictwo C.H. Beck, 2003), 208–209.

[4] Sygn. akt K 26/96, publ. OTK 1997/2/19.

[5] Ref. No. SK 62/08, *Dziennik Ustaw* [Journal of Laws] of 2011 No. 87, item. 492. *Dziennik Ustaw*, hereinafter referred to as Journal of Laws.

In the strict sense of that wording, the family is "[…] a community of parents, usually married, and children […]." The Constitutional Court also emphasized the constitution-based vision of the family as a lasting relationship between man and woman, directed towards motherhood and responsible parenthood. It is also worth noting the attempt by the Constitutional Tribunal to define the terms appearing in Art. 71 Sec. 1, such as: (1) a family in a difficult financial and social situation[6]; (2) a large family[7]; (3) an incomplete family.[8] The concept of the family was also formulated by representatives of the science of constitutional law, where, for example, according to Witold Borysiak: "[…] the family is a social group whose membership is acquired by birth or by the establishment of a family relationship on a different legal basis."[9]

At this point, it is worth referring to the legal definition of the family contained in other normative acts, including international law binding for the Republic of Poland, which, according to Art. 9 and 87 of the Constitution, is respected by it and constitutes the source of universally applicable law.

---

[6] According to the ruling of the Constitutional Court of November 18, 2014 (Ref. No. SK 7/11, Journal of Laws of 2014, item 1652): "A difficult financial situation is to be understood as a situation in which the living conditions do not allow the family to fulfill the function attached to it by the state. On the contrary, a difficult social situation should be equated with the "unnatural, disturbing personal condition of the family and deviations in its functioning due to the failure to fulfill or inadequate fulfillment of social roles by family members" (Aneta Korcz-Maciejko and Wojciech Maciejko, *Świadczenia rodzinne. Komentarz* (Warszawa: Wydawnictwo C.H. Beck, 2008, 34)). These conditions, in the opinion of the Constitutional Court, should be considered in isolation, that is, it should be recognized that the obligation of specific state aid is updated already at the time of the occurrence of one of them, although they are often fulfilled simultaneously (Cf. Ruling of 23 June 2008, Ref. No. P 18/06, OTK ZU No. 5/A/2008, item 83)." Also in the doctrine one can find an explanation of this concept. According to Witold Borysiak: "A difficult financial situation of the family means that it does not have the financial means to meet basic needs. This may result either from limited material resources (e.g., lack of own housing, valuable assets) or lack of income to meet such needs. A difficult social situation of the family means the threat of internal or external factors that prevent its proper functioning in society (e.g., alcoholism, threat of eviction, loss of work by family members, etc.). Witold Borysiak, "Komentarz do art. 71," in *Konstytucja RP. Tom I. Komentarz · Art. 1–86*, ed. Marek Safjan and Leszek Bosek (Warszawa: Wydawnictwo C.H. Beck, 2016), 487

[7] Cf. Constitutional Court Ruling of 18 November 2014 (Ref. No. SK 7/11).

[8] In its ruling of April 12, 2011 (Ref. No. SK 62/08), the Constitutional Court stated that: "[…] Meanwhile, an 'incomplete family' is a family where one parent is absent (see Słownik Języka Polskiego PWN). On the basis of constitutional provisions, there are no grounds at all to depart from the universal meaning of the concepts that have arisen in the Polish language."

[9] Witold Borysiak, "Komentarz do art. 18," in *Konstytucja RP. Tom I. Komentarz · Art. 1–86*, ed. Marek Safjan and Leszek Bosek (Warszawa: Wydawnictwo C.H. Beck, 2016), 487. According to Borysiak, the family creates several types of communities: "(1) spouses and their children […]; (2) single mothers who raise a child or children if they have been married or in a relationship for a long time […]; (3) fathers who are single parents or children if they have been married or in a relationship for a long time […]." Ibid., 489.

Bearing in mind universal multilateral international agreements, the importance of the Universal Declaration of Human Rights adopted in New York on December 10, 1948, as part of the normative acts that form international standards, should be emphasized.[10] According to its Art. 16 Sec. 3: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." In addition, according to Art. 23 Sec. 1 of the International Covenant on Civil and Political Rights, put forward to be signed in New York on December 19, 1966: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."[11] Meanwhile, based on Art. 10 Sec. 1 of the International Covenant on Economic, Social and Cultural Rights, put forward to be signed in New York on December 19, 1966, the States Parties to the present Covenant recognize that: "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children […]."[12] It is worth adding that the preamble to the Convention on the Rights of the Child, adopted in New York on November 20, 1989, even referred to the notion of a human family, each member of which is a member because of the recognition by the States Parties of the Convention the inherent dignity and the equal and inalienable rights.[13]

Among the multilateral international agreements of territorial scope, it is worth pointing to Sec. 16 of the Preamble to the European Social Charter drawn up in Turin on October 18, 1961,[14] which stated that "[…] the family as a fundamental group unit of society has the right to appropriate social, legal, and economic protection to ensure its full development." Significantly extended economic protection should be noted as compared with multilateral universal agreements. At the same time, the nature of the family was omitted. Meanwhile, in other multilateral international agreements, the nature of the family was referred to as well. In Art. 17 Sec. 1 of the American Human Rights Convention, drafted in San José on November 22, 1969, it is stated that: "The family is the natural

[10] Polish text: *Księga jubileuszowa Rzecznika Praw Obywatelskich*, Vol. II 2. *Wybór dokumentów prawa międzynarodowego dotyczących praw człowieka*, ed. Marek Zubik (Warszawa: 2008).

[11] Publ. Journal of Laws 1977 No. 38, item 167.

[12] Publ. Journal of Laws 1977 No. 38, item 169. It is also worth noting the legal definition of the family contained in the Preamble to the Convention on the Rights of Persons with Disabilities of December 13, 2006, signed in New York (not signed by the Republic), which expressed the belief that: "[…] the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities."

[13] Publ. Journal of Laws 1991 No. 120, item 526 as amended.

[14] Journal of Laws 1999 No. 8, item 67.

and fundamental group unit of society and should be protected by society and the State." Then, based on Art. 18 Sec. 1 of the African Charter on Human and Peoples Rights, drafted in Nairobi on June 27, 1981: "The family shall be the natural group unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral."

It should be noted here that the legal definition of the family can also be found in legislative acts of statutory rank, including in the Social Welfare Act of March 12, 2004 (sometimes referred to in English as the Social Assistance Act).[15] The case law of the administrative courts emphasizes, however, that the legal definition of the family contained in this act does not refer to the concept of the family within the meaning of the Constitution of the Republic of Poland and will therefore be discussed later in this article.[16]

In the context of the substance of the family as a legal entity, it is worth noting that according to the aforementioned ruling of the Constitutional Court of April 12, 2011:

> The rights expressed in Art. 71 Sec. 1, the second sentence of the Constitution may, within the limits of the social policy established by the legislature, be entitled to the members of the family who are its beneficiaries. In the case of incomplete families, they are: a parent or guardian raising a child and a child brought up by such adult. In each case, however, this provision refers to the protection of the upbringing of children. It does not, however, constitute an independent basis for claims of adults who do not raise any children.

Thus, the Constitutional Court held that individual family members could claim rights that benefited the entire family. It is worth adding that since the family has specific rights, it has its own legal entity.

Apart from the above, the right to special assistance from the public authorities, the family as the subject is also beneficiary of other rights contained in the Constitution. According to Art. 18 of the Constitution, the family is under the protection and care of the Republic of Poland.[17] However, as the Constitutional

[15] Publ. consolidated text Journal of Laws 2016 item 930 as amended.

[16] According to the ruling of the Provincial Administrative Court in Gliwice of 8 August 2013 (Ref. No. IV SA/Gl 541/13, publ. *Centralna Baza Orzeczeń Sądów Administracyjnych*, hereinafter referred to as CBOSA): "Pursuant to Art. 6 Sec. 14 of this Act, the concept of the family is understood to contain relatives or unrelated persons in a common union, living and managing their resources together. Such wording of the provision makes it possible to recognize that the concept of the family on the grounds of social assistance is of a special nature and does not refer to the concept of the family within the meaning of the Constitution of the Republic of Poland. The statutory definition of the concept of the family refers to the actual relationship between two or more persons expressing common residence and maintenance."

[17] Publ. Journal of Laws 1997 No. 78, item 483 as amended. It is worth adding that according to the ruling of the Supreme Administrative Court of 1 February 2001 (Ref No. V SA 1541/00, publ. CBOSA): "The provisions of the Constitution must not be interpreted restrictively

Court pointed out in its ruling of November 18, 2014, Art. 18 of the Constitution is not a source of subjective rights, but it defines the direction of actions undertaken by the public authorities desired by the legislator.[18] A different stance can be found in the ruling of the Provincial Administrative Court in Łódź of November 30, 2010[19]: "Art. 18 and Art. 72 Sec. 1 of the Constitution of the Republic of Poland imply the right of the family to be provided protection by the State against possible crimes against the family." The definition of this protection and care is already contained in the provisions of the constitutional rank. For example, according to Art. 23 of the Constitution, the basis of the agricultural state is the family farm. On the other hand, based on Art. 41 Sec. 2 of the basic law, in case of deprivation of liberty of any person, his or her family—or the person indicated by the person deprived of liberty—should be immediately notified.

In addition, it should be noted that the rights embodied in constitutional status are enjoyed not only by the entire family, but also by individual members of the family in the context of its protection and care by the public authorities. In this regard, the following may be mentioned: (1) the mother's right before and after the birth of the child to special assistance from public authorities[20]; (2) the right of everyone to protect family life,[21] or (3) the right of parents to raise children according to their own convictions.[22]

It is worth adding that the family as a subject is also beneficiary of other rights as defined in international law. As already mentioned in many international agreements of universal scope, it is emphasized that the family as the natural and fundamental group unit of society is entitled to protection from society and the State.[23] In this sphere, one can also point to the emergence of the notion of the family good that can be threatened and that is to be looked after.[24]

---

in so far as they apply only to families in which both spouses are Polish citizens, since there is no basis for that. The view that constitutional protection of the family, marriage and child is only involved when both spouses are Polish citizens would also violate international norms contained in the provisions of the International Covenant on Civil and Political Rights, ratified by the UN General Assembly on 16 December 1966 and ratified by Poland in 1977 […], which is therefore part of the national legal order."

[18] Ref. No. SK 7/11.

[19] Ref. No. III SA/Łd 253/10, publ. CBOSA.

[20] Ref. No. 71 Act 2 of the Constitution.

[21] Cf. Art. 47 of the Constitution.

[22] Cf. Ibid., Art. 48 Sec. 1.

[23] Cf. Art. 16 Sec. 3 of the Universal Declaration of Human Rights; Art. 23 Sec. 1 of the International Covenant on Civil and Political Rights; Art. 10 Sec. 1 on the International Covenant on Economic, Social and Cultural Rights. This act also contains the right to marry, which is universal. Cf. Kazimierz Piasecki, "Wprowadzenie," in *Kodeks rodzinny i opiekuńczy. Komentarz*, ed. Kazimierz Piasecki (Warszawa: LexisNexis Polska Sp. z o.o., 2011), 25.

[24] Cf. Preamble to the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others of 21 March 1950, drafted in Lake Success, New York, publ. Journal of Laws 1952 No. 41, item 278.

In this type of international agreements, both all and individual family members also have rights. Some of the wide-range rights include: (1) the right of everyone to protect family life[25]; (2) the right of every person to the standard of living that will provide health and well-being to that person and their family, including food, clothing, shelter, medical care, and necessary social welfare[26]; (3) the right of everyone to an adequate standard of living for them and their family, including food, clothing and shelter, and to constant improvement living conditions.[27]

Men and women have the right to found a family.[28] In addition, it is important to note the prohibition of discrimination against women in all matters arising from family relationships.[29] Parents or legal guardians are entitled to specific rights, including: (1) the right of priority for parents to choose the type of education for their children[30]; (2) the right of parents or legal guardians to provide their children with religious and moral education in accordance with their own convictions[31]; (3) the right and obligation of parents or, where appropriate, family members or the environment, in accordance with local customs, legal guardians, or other persons legally responsible for the child, to provide him or her with the capacity to direct and advise him on her how to use the rights granted to him or her under the Convention on the Rights of the Child.[32] Children have the right, *inter alia*, to: (1) the protection measures required by the status of a minor, family, society, and the State[33]; (2) be raised in a family environment, surrounded by happiness, love, and understanding for the full and harmonious development of his or her personality[34]; (3) legal protection against arbitrary

[25] Cf. Art. 17 Sec. 1 of the International Covenant on Civil and Political Rights.

[26] Cf. Art. 25 Sec. 1 of the Universal Declaration of Human Rights.

[27] Cf. Art. 11 Sec. 1 of the International Covenant on Economic, Social and Cultural Rights.

[28] Cf. Art. 16 of the Universal Declaration of Human Rights; Art. 23 Sec. 2 of the International Covenant on Civil and Political Rights. It is worth emphasizing here the prohibition of discrimination against women in all matters resulting from family relationships. Cf. Art. 16 Sec. 1 of the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, drafted in New York, publ. Journal of Laws 1982 No. 10, item 72.

[29] Cf. Art. 16 Sec. 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

[30] Cf. Art. 26 Sec. 3 of the Universal Declaration of Human Rights.

[31] Cf. Art. 18 Sec. 3 of the International Covenant on Civil and Political Rights. See also Art. 5. Sec. 1 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, announced in New York on 25 November 1981. Polish text: *Księga jubileuszowa Rzecznika Praw Obywatelskich*, Vol. II 2. *Wybór dokumentów prawa międzynarodowego dotyczących praw człowieka*, ed. Marek Zubik (Warszawa 2008).

[32] Cf. Art. 5 Convention on the Rights of the Child.

[33] Cf. Art. 24 Sec. 1 of the International Covenant on Civil and Political Rights.

[34] Cf. Preamble to the Convention on the Rights of the Child.

or unlawful interference in the sphere of his or her family life.[35] The above family members and further relatives have the right to send and receive from family members, irrespective of their place of residence, messages strictly related to family matters.[36] In addition, internees have the right to be visited by their relatives[37] as well as—in emergencies, especially in case of death or serious illness of any family member—to go to their family if possible.[38] It is also worth mentioning in the context of the family the rights of workers, including: (1) the right of every worker to an adequate satisfactory remuneration ensuring that he and his family live in harmony with human dignity[39]; (2) the right to enjoy fair and favorable working conditions, including, in particular, satisfactory living conditions for themselves and their families in accordance with the provisions of the International Covenant on Economic, Social, and Cultural Rights.[40]

On the other hand, it is also important to bear in mind the obligations of the State toward family members, including: (1) the obligation of States to facilitate the searches undertaken by family members dispersed by the war for mutual retrieval and possible reconnections[41]; (2) the obligation, depending on the possibilities, to place members of the same family in the same premises and accommodation separately from other internees, as well as to grant them the necessary facilitation to conduct family life.[42]

In multilateral international agreements limited to Europe, the family and all members of the family also have certain rights. First of all, it is important to emphasize the right of the family to benefit from legal, economic, and social protection.[43]

---

[35] Cf. Art. 16 Sec. 2 of the Convention on the Rights of the Child.

[36] Cf. Art. 25 of the Geneva Convention for the Protection of Civilian Persons during the War, dated August 12, 1949, Geneva, publ. Journal of Laws 1956 No. 38, item 171.

[37] Cf. ibid., Art. 116.

[38] Cf. ibid.

[39] Cf. Art. 23 Sec. 3 of the Universal Declaration of Human Rights.

[40] Cf. Art. 7 let. a and b of the International Covenant on Economic, Social and Cultural Rights.

[41] Cf. Art. 26 of the Geneva Convention for the Protection of Civilian Persons in Times of War.

[42] Cf. ibid., Art. 82.

[43] Cf. Art. 33 Sec. 1 of the Charter of Fundamental Rights, signed in Nice on 7 December 2000, publ. Dz. Office. U.E. of 2010. As Roman Wieruszewski points out, the Charter of Fundamental Rights was based on Art. 16 of the European Social Charter. Cf. Roman Wieruszewski, *Postanowienia Karty Praw Podstawowych w świetle wiążących Polskę umów międzynarodowych i postanowień Konstytucji RP z 1997 r.*, ed. Jan Barcz (Warszawa: Wydawnictwo C.H. Beck, 2016), 134.

In addition, individual members of the family have additional rights. Each of them is entitled to the right to: (1) respect for one's family life[44]; (2) receive from the relevant public or private services such advice and personal assistance as may be necessary to relieve the family situation[45]; (3) found a family[46]; (4) protect family life, especially through measures such as social and family benefits, tax solutions, encouraging the construction of flats adapted to the needs of families, providing services to young couples, and any other appropriate measures.[47]

Men and women of marriageable age have the right to found a family.[48] Parents have the right to educate and teach in accordance with their own religious and philosophical beliefs,[49] as well as those pedagogical.[50] It is worth mentioning that according to Aneta Maria Abramovich, in this context, religious freedom constitutes a special entity.[51] Fathers and mothers of an extramarital child, who have or do not have parental authority in certain cases do not exercise the authority to contact the child.[52] Children have the right to maintain a permanent personal relationship and direct contact with both parents, unless this is contrary to his or her interests.[53] Workers, meanwhile, have the right to: (1) remuneration that will provide them and their families with a decent standard of living[54]; (2) protection against dismissal for reasons related to maternity and the right to paid maternity leave and to parental leave after the birth or adoption of a child for the purpose of reconciling family and professional life.[55] Migrant workers and their families also have the right to protection and assistance.

The Polish legal order also comprises bilateral international agreements containing family norms. For example, according to Art. 11 of the Concordat between the Apostolic See and the Republic of Poland of 28 July 1993:

---

[44] Cf. Art. 8 Sec. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, publ. Journal of Laws 1993 No. 61, item 284; Art. 7 of the Charter of Fundamental Rights.

[45] Cf. Art. 13 item 3 of the European Social Charter.

[46] Cf. Art. 9 of the Charter of Fundamental Rights.

[47] Cf. Art. 16 the European Social Charter.

[48] Cf. Art. 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[49] Cf. Art. 2 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 20 March 1952, drawn up in Paris.

[50] Cf. Art. 14 Sec. 3 of the Charter of Fundamental Rights.

[51] Cf. Aneta Maria Abramowicz, "Podmioty prawa do wolności myśli, sumienia i religii w normach prawa międzynarodowego i wspólnotowego," *Studia z Prawa Wyznaniowego* 9 (2006): 241–43.

[52] Cf. Art. 8 of the European Convention on the Legal Status of the Extra-marital Child of 15 October 1975, drawn up in Strasbourg, publ. Journal of Laws 1999 No. 79, item. 888.

[53] Cf. Art. 24 Sec. 3 of the Charter of Fundamental Rights.

[54] Cf. Art. 4 (1) of the European Social Charter.

[55] Cf. Art. 33 Sec. 2 of the Charter of Fundamental Rights.

> The Contracting Parties declare their will to cooperate for the defense and respect of the institution of marriage and the family which is the foundation of society. They emphasize the value of the family, while the Holy See, for its part, confirms the Catholic doctrine of the dignity and indissolubility of marriage.[56]

As regards procedural aspects, it seems that the ability of a family member to participate in proceedings before the Constitutional Court is problematic. According to Art. 79 of the Constitution:

> Any person whose constitutional freedoms or rights have been violated shall have the right, on the basis of the law, to file a complaint with the Constitutional Court on the conformity of the Constitution or other normative act on the basis of which the court or body of public administration has finally ruled his freedoms or rights or his obligations under the Constitution.

Meanwhile, based on Art. 42 (2) of the Act of November 30, 2016, on organization and proceedings before the Constitutional Court,[57] the complainant or the entity who has filed the constitutional complaint is the participant of the proceedings. Therefore, if one were to consider that the family is directly entitled to the rights described in the previous section of the paper, the wording of Art. 79 of the Constitution does not theoretically prohibit the filing of a constitutional complaint by the family. Nevertheless, the Constitutional Court, in its abovementioned ruling of April 12, 2011, stated that although the family is a beneficiary of the right in question, this right may be claimed by family members. It is worth adding that, in doctrine, constitutional capacity is autonomous, independent of other areas of law.[58] There is no doubt, however, that such ability is granted to individuals as individual members of the family.[59]

[56] Publ. Journal of Laws 1998 No. 51, item. 318.

[57] Publ. Journal of Laws 2016, item 2072.

[58] Cf. Leszek Bosek and Mikołaj Wild, "Komentarz do art. 79," in *Konstytucja RP. Tom I. Komentarz · Art. 1–86*, ed. Marek Safjan and Leszek Bosek (Warszawa: Wydawnictwo C.H. Beck, 2016), 1829.

[59] Cf. Leszek Bosek and Mikołaj Wild, "Komentarz do art. 79," in *Konstytucja RP. Tom I. Komentarz · Art. 1–86*, ed. Marek Safjan and Leszek Bosek (Warszawa: Wydawnictwo C.H. Beck, 2016), 1829.

Family in Administrative Law

Constitutional law as the overarching one should be consistent with other branches of law, where the constitutional norms should be precisely expressed. In the field of administrative law, it is worth emphasizing that the jurisprudence emphasizes this law should be exercised by the constitutional right of the family to provide protection by the State against possible family offenses, including by evicting a person accused of family abuse from a permanent place of residence where family members live as well.[60]

As already mentioned, administrative law contains the legal definition of the family. For example, according to Art. 6 (14) of the Social Welfare Act of March 12, 2004, the family is: "[…] related or unrelated relatives in a factual relationship, living and managing together."[61] In the case law of the administrative courts, one can find explanations concerning the individual elements of the above definition of legal family. As per ruling of the Supreme Administrative Court of October 2, 2014[62]:

> The factual relationship, referred to in Art. 6(14) of the Social Welfare Act of 12 March 2004, means not only the provision of income as a source of subsistence, but also the daily interactions of persons seeking to better meet their living needs, including housing and food. The source of subsistence is therefore not the sole factor for the recognition of persons living in the same family.[63]

Meanwhile, according to the ruling of the Provincial Court of Appeal in Lublin of December 29, 2011[64]: "The factual relationship referred to in this provision means the daily interaction of people seeking to better meet their living needs, including housing, food and income security." According to the Provincial Administrative Court in Gliwice, as expressed in the ruling of 25 February 2011, the factual relationship is manifested through joint residence and management.[65] Joint residence means to share the dwelling in such a way that it can be

[60] Cf. Ruling of the Provincial Administrative Court in Lódź of 30 November 2010 (Ref. No. III SA/Łd 253/10, publ. CBOSA).

[61] Consolidated text Journal of Laws 2016 item 930 as amended. The Provincial Administrative Court in Warsaw, in its ruling of 5 May 2011 (Ref. No. VIII SA/Wa 28/11), concluded that couples not bound by wedlock also constitute a family.

[62] Ref. No. I OSK 1138/13, publ. CBOSA.

[63] Cf. also Ruling of the Supreme Administrative Court of 25 June 2014, Ref. No. I OSK 618/13, publ. CBOSA; Ruling of the Supreme Administrative Court of 25 June 2014, Ref. No. I OSK 801/13, publ. CBOSA.

[64] Ref. No. II SA/Lu 794/11, publ. CBOSA.

[65] Ref. No. IV SA/Gl 559/10, publ. CBOSA.

said that the living activity of the resident is concentrated in the dwelling.[66] On the other hand, joint management means, in accordance with the ruling of the Supreme Administrative Court of February 7, 2017[67]:

> […] joint management of the household. Characteristics of a joint household can be participation and close co-operation in dealing with the day-to-day house management, not making a living and thus depending completely or partially on the maintenance of the person who manages the household and everything else supplemented by the characteristics of constancy which are typical of this kind of situation.[68]

It is also worth noting that the Supreme Administrative Court, in its ruling of June 11, 2013,[69] stated that:

> Art. 6 (14) of the Social Welfare Act of 12 March 2004 […] shows that persons related in accordance with the provisions of the Family and Guardianship Code constitute "family" within the meaning of the Act, if they live and manage together, and they remain in factual relationship. […] Joint management is based on the division of tasks related to the proper conduct of the household and, if it is in the functional association with that household, the farm.[70]

The essence of joint management was referred to by the Supreme Administrative Court in its ruling of April 5, 2011,[71] where it states that it does not merely mean contributing to the functioning of the community by carrying out any activity on its behalf, co-deciding on the allocation of family income and performing activities related to daily activities, but also the maintenance of the person with whom that household is shared. This law also sets out the rights that are vested in the family or its members, for example, the right to cash benefits from social welfare is available to families whose income does not exceed the sum of the income criterion set out per family member.[72] It is worth noting that according to Iwona Sierpowska:

---

[66] Cf. Ruling of the Provincial Administrative Court in Poznań of 28 August 2013 r., publ. IV SA/Po 596/13, publ. Legalis No. 780454.

[67] Ref. No. I OSK 1434/16, publ. CBOSA.

[68] A similar stance can be found, among others, in the ruling of the Provincial Administrative Court in Wrocław of February 24, 2015 (Ref. No. IV SA/Wr 626/14, publ. CBOSA) and the ruling of the Provincial Administrative Court in Krakow of October 5, 2016 (Ref. No. III SA/Kr 387/16, publ. CBOSA).

[69] Ref. No. I OSK 1947/12, publ. CBOSA.

[70] Cf. also Ruling of the Supreme Administrative Court of 26 March 2013, Ref. No. I OSK 1537/12, publ. CBOSA.

[71] Ref. No. I OSK 2096/10, publ. CBOSA.

[72] Cf. Art. 8 Sec. 1 (3) of the Social Welfare Act.

> The legal nature of the family as a beneficiary raises doubts due to its lack of legal personality. Family is not a legal entity. However, the Social Welfare Act treats the family as an entity of rights and obligations. The problem also arises in administrative proceedings on benefits where the family cannot be party.[73]

In her opinion, although the recognition of the family as the legal entity raises the objection to the doctrine of law, it is nevertheless justified: "[…] by the ideas of social welfare, the need to treat the family as a single entity requiring support and protection, but also the entity from which a particular activity and cooperation expected."

Another legal definition of the family can also be found in Art. 3 (16) of the Family Benefits Act of November 28, 2003,[74] according to which the family:

> […] means […] respectively the following family members: spouses, parents of children, guardian of an actual child and dependent children up to the age of 25 and a child who has reached the age of 25 years with a severe disability certificate if there is a nursing allowance or special care allowance or carer's allowance referred to in the Act of 4 April 2014 on the determination and payment of carer's allowances […]; family members do not include children under the care of a legal guardian, married children or children with a child of their own.

As can be seen, this definition is narrower than that in the Social Welfare Act. The legislator also included in this act the definition of a large family that represents a family raising three and more children eligible for family allowance.[75] The act in question also lays down the conditions for acquiring entitlement to family benefits.[76] For example, in Art. 5 Sec. 3b (1)–(2), the legislator indicates that the family is entitled to child benefits or family allowances. It is worth noting that family assistance is not only a duty of public authorities. This aid is also the statutory purpose of many *sensu strictae* and *sensu largo* NGOs. Accordingly, the legislator included the activities for the family in the sphere of public tasks referred to in Art. 4 Sec. 1 of the Act of 24 April 2004 on Public Benefit and Volunteer Work.[77]

---

[73] Iwona Sierpowska, *Pomoc społeczna. Komentarz* (Warszawa: Wolters Kluwer Polska Sp. z o.o., 2014), 75. Cf. Iwona Sierpowska, *Prawo pomocy społecznej* (Warszawa: Wolters Kluwer Polska Sp. z o.o., 2011), 163.

[74] Publ. consolidated text. Journal of Laws 2016, item 1518 as amended.

[75] Cf. Art. 3 (16) a of the Act of 28 November 2003 on Family Benefits.

[76] Cf. ibid., Art. 1 Sec. 1.

[77] Publ. consolidated text. Journal of Laws 2003 No. 96, item 873 as amended. Cf. Art. 4 Sec. 1 (31) of the Act of 24 April 2004 on Public Benefit and Volunteer Work.

The administrative procedure does not explicitly exclude the status of the family as party to some administrative proceedings. For example, according to Art. 28 of the Act of 14 June 1960 of the Code of Administrative Procedure[78]: "A party is any person whose legal interest or duty is concerned, or who requests a court action because of his or her legal interest or duty." Then, according to Art. 29 of this Act: "Natural persons and legal persons can be parties, and when it comes to state and local government units and social organizations—also individuals without legal personality." It is worth noting the broad conceptualization of the word "party" used by the legislator.[79]

Family in Civil Law

In civil law, there are traditionally three categories of legal entity: (1) natural persons; (2) legal persons, and (3) defective legal persons.[80] There is no family in this directory. As stated by the Constitutional Court in its ruling of September 9, 2003, in the context of the right to property: "[…] the legal title to a dwelling is vested in certain persons and not the family as such. The family has no legal personality, it cannot be a separate entity of rights and obligations, especially with respect to property. Therefore, it cannot acquire the right to occupy the premises, the legal title may only concern individually identifiable persons." Each family consists, however, of individuals who have individual rights and obligations.

With that being said, civil law refers indirectly to the family, *inter alia* by properly regulating inheritance rules to protect the interests of the family. As the Constitutional Court rightly stated in its judgment of September 4, 2007[81]:

---

[78] Publ. consolidated text. Journal of Laws 2016 item 23 as amended.

[79] Cf. Janusz Borkowski, "Komentarz do art. 28," in *Kodeks postępowania administracyjnego. Komentarz*, Barbara Adamiak and Janusz Borkowski (Warszawa: Wydawnictwo C.H. Beck, 2011), 178–93. As the author aptly remarks, "The concept of party to the administrative procedure referred to in Art. 28 is very capacious because of the use as a structural element of a criterion of legal interest or an obligation under legal provisions falling within the scope of the competence of the public administration and its competence to substantiate the law by issuing an administrative decision. This gives the concept of the party a broad legal dimension. However, the provisions of Art. 29 enumerating the basic categories of entities which may be parties to […] the content of Art. 28 are no longer fit for the structure of entities of administrative proceedings, this observation does not refer to that particular provision, and refers in reality to the legal formula of Art. 29, should it be considered without reference to the provisions of separate acts. Ibid., 193.

[80] Cf. Edward Gniewek, "Stosunek cywilnoprawny," in *Podstawy prawa cywilnego*, ed. Edward Gniewek (Warszawa: Wydawnictwo C.H. Beck, 2011), 26–27.

[81] Ref. No. P 19/07, pub. Journal of Laws 2007 No. 168, item 1188.

> […] the constitutional protection of the family designates a framework for the liberty of the ordinary legislature, which is to regulate various matters relating to family matters and interests, not only in the field of inheritance law—or, more broadly, civil law—but the whole legal system (penal law, labor law, social security law). This makes the constitutional framework within the scope considered to be sufficiently large to cover many different norms of specific legislation, dictated by various ratios and corresponding to the principle of proportionality of normalization. […] the failure to include the heirs of the statutory siblings of the testator's parents does not violate the most important constitutional values in this area, such as the protection of property and the well-being of the family.[82]

It is also worth pointing out to the civil law protection of personal rights, including the right to undisturbed family life and the right to maintain personal contact with particular family members, which expresses family ties.[83]

It should also be emphasized that due to the importance of the family in the life of society and the State, with the passage of time civil law was further divided into the explicitly defined family law, in particular the Family and Guardianship Code set out in the Act of February 25, 1964.[84] The code repeatedly cites expressions such as: (1) the good of the family[85]; (2) family matters[86]; (3) family needs[87]; (4) maintenance of the family[88]; (5) supporting the family[89]; (6) providing assistance to the family[90]; (7) forms of working with the family[91]; (8) return to the family.[92]

Civil proceedings do not exclude, *expressis verbis*, court capacity of the family.[93] According to Art. 64 § 1–11 of the Act of November 17, 1964, the Code of Civil Procedure,[94] court capacity is granted to legal and natural persons as well as organizational units which are not legal persons, but who are granted

---

[82] Cf. also Elżbieta Skowrońska-Bocian, *Prawo spadkowe* (Warszawa: Wydawnictwo C.H. Beck, 2003), 152.

[83] Cf. Ruling of the Court of Appeal in Katowice of 29 January 2013 (Ref. No. I ACa 906/12, publ. Legalis No. 732676).

[84] Publ. consolidated text Journal of Laws 2017, item. 682 as amended. Hereinafter the Act also referred to as K.R.O.

[85] Cf. ibid., Art. 10 § 1, 23, 39, 45 § 2.

[86] Cf. ibid., Art. 23.

[87] Cf. ibid, Art. 27, 28, 28^1, 30 § 1, 36^1 § 1, 45 § 1, 103.

[88] Cf. ibid, Art. 91 § 1.

[89] Cf. ibid, Art. 100 § 2.

[90] Cf. ibid.

[91] Cf. ibid, Art. 109 § 2 (1).

[92] Cf. ibid., Art. 112^4.

[93] Cf. Andrzej Zieliński, "Komentarz do art. 64," in *Kodeks postępowania cywilnego. Komentarz*, ed. Andrzej Zieliński (Warszawa: Wydawnictwo C.H. Beck, 2011), 132–35.

[94] Publ. consolidated text. Journal of Laws 2016, item 1822 as amended.

legal capacity under the Act. It seems that due to the Polish legal order it cannot be ruled out that the family is entitled to this capacity but only in a substantive and not a procedural sense. There is no doubt, however, that individual members of the family as individuals have court capacity.

Family in Penal Law

The family as goods is also protected under penal (criminal) law, which expresses the constitutional and international norms of this social group unit.[95] In the Act of June 6, 1997, the Penal Code,[96] the definition of the legal family was not included. However, what was included was the term "closest relative," that is, spouse, descendant, sibling, affiliates on the same line or degree, person in adoption and their spouse, and person with whom one lives in a relationship out of wedlock.[97] It is worth adding that Art. 2 Sec. 1 of the Family Law Act of 29 July 2005, a family member is to be understood as the closest person within the meaning of Art. 115 § 11 of the Penal Code, as well as another person with whom the person concerned lives or manages together.

In the Penal Code, Chapter XXVI deals with crimes against family and caring, such as: (1) bigamy[98]; (2) mistreatment of the closest person or another person who is in a permanent or transient relationship dependent on the perpetrator, or of a minor or a person impaired due to his or her mental or physical condition[99]; (3) encouraging a minor into drinking[100]; (4) persistent evasion from maintenance obligations[101]; (5) abandoning a minor under the age of 15 or a person with a mental or physical condition[102]; (6) abduction or retention of a minor under the age of 15 or a person helpless because of his or her mental or physical condition[103]; (7) organizing illegal adoption of children.[104] Constitu-

[95] Cf. also Marek Mazgawa, "Komentarz do art. 206," in *Kodeks karny. Praktyczny komentarz*, ed. Marek Mazgawa (Kraków: Kantor wydawniczy ZAKAMYCZE, 2006), 398–99; Zygfryd Siwik, "Uwagi wstępne do przestępstw przeciwko rodzinie i opiece," in *Kodeks karny. Komentarz*, ed. Marian Filar (Warszawa: LexisNexis Polska Sp. z o.o., 2012), 1029–1030.

[96] Publ. consolidated text Journal of Journal 2016, item 1137 as amended. The Act referred to hereinafter also as K.K.

[97] Cf. ibid., Art. 115 § 11.

[98] Cf. ibid., Art. 206.

[99] Cf. ibid., Art. 207.

[100] Cf. ibid., Art. 208.

[101] Cf. ibid., Art. 209.

[102] Cf. ibid., Art. 210.

[103] Cf. ibid., Art. 211.

[104] Cf. ibid., Art. 211a.

tional protection of the family is also specified in the scope of imposing penal sanctions.[105]

As per penal, or criminal, procedure it should be noted that, according to Art. 49 of the Act of June 6, 1997, the Code of Penal Procedure,[106] the victim may be the natural or legal person as well as a state or local-government institution or other organizational entity whose separate provisions confer legal capacity. It is worth noting that the legislator used the term "legal capacity" in penal procedure rather than "capacity to undertake legal actions." It is necessary to share the view of Wincenty Grzeszczyk, who states the following: "In determining the victim, one should apply the rules of substantive law which determine who and what legal good has been compromised or threatened."[107] As indicated earlier on the example of the Social Welfare Act, a family whose income does not exceed the sum of the income criterion set out per person in the family is entitled to cash benefits from social welfare.[108] At the level of administrative law, they have legal capacity since they are entitled to such benefits. In addition, the family cannot be accused or witnessed, even though such status can be granted to individual family members.

Conclusions

The above analysis indicates that the status of legal entity for the family in the Polish legal order is quite complex, varied, and dependent on the autonomy of particular branches of law. In particular, it should be noted that in the Polish legal order, the family, as a specific community of natural persons resulting from humans as social beings, is explicitly entitled, in the substantive dimension, to individual rights and obligations, particularly in the field of constitutional law, international law (defined in multilateral international agreements of universal and European scope and bilateral agreements), community law, and administrative law. Civil law and penal law recognize the protection of the institution of the family and its individual members have individual rights and obligations.

At the level of conduct of the branches of law concerning legal entities, the family, due to its individual rights and obligations, may be the legal entity and may at the same time be regarded as party to proceedings in substantive terms.

---

[105] Cf. Ibid., Art. 33 § 3, Art. 47 § 4.

[106] Publ. consolidated text. Journal of Laws 2016, item 1749 as amended.

[107] Wincenty Grzeszczyk, *Kodeks postępowania administracyjnego*. Komentarz (Warszawa: LexisNexis Polska Sp. zo.o., 2011), 86.

[108] Cf. Art. 8 Sec. 1 (3) of the Social Welfare Act.

On the other hand, such status in the procedural sense seems rather doubtful. As rightly pointed out by the Constitutional Court, the family is the beneficiary of rights and it acts through its individual members.

It should be borne in mind that the status of the family recognized by constitutional, international, and community norms should be included in lower-level normative legislation, accounting for the autonomy of individual branches of law, which will enable the family to be properly supported as a fundamental and natural group unit of society and to implement the principle of subsidiarity, which is fundamental to the development of man, society, and the State.

Translated by Jakub Majchak

Bibliography

Abramowicz, Aneta Maria. "Podmioty prawa do wolności myśli, sumienia i religii w normach prawa międzynarodowego i wspólnotowego." *Studia z Prawa Wyznaniowego* 9 (2006): 227–244.

Afrykańska Karta Praw Człowieka i Ludów sporządzona w Nairobi w dniu 27 czerwca 1981 r.

Amerykańska Konwencja Praw Człowieka sporządzona w San José w dniu 22 listopada 1969 r.

Borkowski, Janusz. "Komentarz do art. 28." In *Kodeks postępowania administracyjnego. Komentarz*. Barbara Adamiak and Janusz Borkowski, 178–193. Warszawa: Wydawnictwo C.H. Beck, 2011.

Borysiak, Witold. "Komentarz do art. 18." In *Konstytucja RP. Tom I. Komentarz · Art. 1–86*. Edited by Marek Safjan and Leszek Bosek, 464–495. Warszawa: Wydawnictwo C.H. Beck, 2016.

Borysiak, Witold. "Komentarz do art. 71." In *Konstytucja RP. Tom I. Komentarz · Art. 1–86*. Edited by Marek Safjan and Leszek Bosek, 464–495. Warszawa: Wydawnictwo C.H. Beck, 2016.

Bosek, Leszek, and Mikołaj Wild. "Komentarz do art. 79." In *Konstytucja RP. Tom I. Komentarz · Art. 1–86*. Edited by Marek Safjan and Leszek Bosek, 464–495. Warszawa: Wydawnictwo C.H. Beck, 2016.

Deklaracja w Sprawie Eliminacji Wszelkich Form Nietolerancji i Dyskryminacji Opartych na Religii lub Przekonaniach, ogłoszona w Nowym Jorku dnia 25 listopada 1981 roku. Tekst polski: Księga jubileuszowa Rzecznika Praw Obywatelskich, t. II 2. Wybór dokumentów prawa międzynarodowego dotyczących praw człowieka. Edited by Marek Zubik, Warszawa 2008.

Europejska Karta Społeczna sporządzona w Turynie dnia 18 października 1961 r., publ. Dz. U. 1999 Nr 8, poz. 67.

Europejska Konwencja o Statusie Prawnym Dziecka Pozamałżeńskiego z dnia 15 października 1975 r. sporządzona w Strasburgu, publ. Dz. U. 1999 Nr 79, poz. 888.

Gniewek, Edward, "Stosunek cywilnoprawny." In *Podstawy prawa cywilnego*. Edited by Edward

Gniewek, 25–28. Warszawa: Wydawnictwo C.H. Beck, 2011.
Grzeszczyk, Wincenty. *Kodeks postępowania administracyjnego. Komentarz.* Warszawa: LexisNexis Polska Sp. z o.o., 2011.
Karta Praw Podstawowych podpisanej w Nicei dnia 7 grudnia 2000 roku, publ. Dz. Urz. U.E. z 2010 r.
Konkordat między Stolicą Apostolską i Rzecząpospolitą Polską z dnia 28 lipca 1993 r., publ. Dz. U. 1998 Nr 51, poz. 318.
Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., publ. Dz. U. 1997 Nr 78, poz. 483 z późn. zm.
Konwencja Genewska o Ochronie Osób Cywilnych podczas Wojny z dnia 12 sierpnia 1949 r., Genewa, publ. Dz. U. 1956 Nr 38, poz. 171.
Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności sporządzona w Rzymie dnia 4 listopada 1950 roku, publ. Dz. U. 1993 Nr 61, poz. 284
Konwencja o Prawach Dziecka przyjęta w Nowym Jorku w dniu 20 listopada 1989 roku, publ. Dz. U. 1991 Nr 120, poz. 526 z późn. zm.
Konwencja o Prawach Osób Niepełnosprawnych z dnia 13 grudnia 2006 r. podpisanej w Nowym Jorku.
Konwencja w Sprawie Likwidacji Wszelkich Form Dyskryminacji Kobiet z dnia 18 grudnia 1979 r. sporządzona w Nowym Jorku, publ. Dz. U. 1982 Nr 10, poz. 72.
Konwencja w Sprawie Zwalczania Handlu Ludźmi i Eksploatacji Prostytucji z dnia 21 marca 1950 r. sporządzona w Lake Succes, publ. Dz. U. 1952 Nr 41, poz. 278.
Księga jubileuszowa Rzecznika Praw Obywatelskich, t. II 2. Wybór dokumentów prawa międzynarodowego dotyczących praw człowieka, edited by Marek Zubik. Warszawa 2008.
Mazgawa, Marek. "Komentarz do art. 206." In *Kodeks karny. Praktyczny komentarz*, edited by Marek Mazgawa, 398–400. Kraków: Kantor Wydawniczy ZAKAMYCZE, 2006.
Międzynarodowy Pakt Praw Gospodarczych, Społecznych i Kulturalnych otwarty do podpisu w Nowym Jorku dnia 19 grudnia 1966 roku, publ. Dz. U. 1977 Nr 38, poz. 169.
Międzynarodowy Pakt Praw Obywatelskich i Politycznych otwarty do podpisu w Nowym Jorku z dnia 19 grudnia 1966 roku, publ. Dz. U. 1977 Nr 38, poz. 167.
Orzeczenie Trybunału Konstytucyjnego z dnia 28 maja 1997 r., sygn. akt K 26/96, publ. OTK 1997/2/19.
Piasecki, Kazimierz. "Wprowadzenie." In *Kodeks rodzinny i opiekuńczy. Komentarz*, edited by Kazimierz Piasecki, 13–38. Warszawa: LexisNexis Polska Sp. z o.o., 2011.
Powszechna Deklaracja Praw Człowieka przyjęta w Nowym Jorku w dniu 10 grudnia 1948 roku. Tekst polski: *Księga jubileuszowa Rzecznika Praw Obywatelskich*, t. II 2. Wybór dokumentów prawa międzynarodowego dotyczących praw człowieka, edited by Marek Zubik. Warszawa 2008.
Sierpowska, Iwona. *Pomoc społeczna. Komentarz.* Warszawa: Wolters Kluwer Polska Sp. z o.o., 2014.
Sierpowska, Iwona. *Prawo pomocy społecznej*. Warszawa: Wolters Kluwer Polska Sp. z o.o., 2011.
Siwik, Zygfryk. "Uwagi wstępne do przestępstw przeciwko rodzinie i opiece." In *Kodeks karny. Komentarz*, edited by Marian Filar, 1029–1030, Warszawa: LexisNexis Polska Sp. z o.o., 2012.
Skowrońska-Bocian, Elżbieta. *Prawo spadkowe*. Warszawa: Wydawnictwo C.H. Beck, 2003.
Smyczyński, Tadeusz. *Prawo rodzinne i opiekuńcze*. Warszawa: Wydawnictwo C.H. Beck, 2005.
Stawecki, Tomasz, and Piotr Winczorek. *Wstęp do prawoznawstwa*. Warszawa: Wydawnictwo C.H. Beck, 2003.
Szyszkowska, Maria. *Zarys filozofii prawa. Fragmenty dzieł filozoficznoprawnych w przekładzie Czesława Tarnogórskiego*. Białystok: Temida 2, 2000.

Ustawa z dnia 12 marca 2004 r. o pomocy społecznej, publ. tekst jedn. Dz. U. 2016 poz. 930 z późn. zm.
Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego, publ. tekst jedn. Dz. U. 2016 poz. 23 z późn. zm.
Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, publ. tekst jedn. Dz. U. 2016, poz. 1822 z późn. zm.
Ustawa z dnia 24 kwietnia 2004 r. o działalności pożytku publicznego i o wolontariacie, publ. tekst jedn. Dz. U. 2003 Nr 96, poz. 873 z późn. zm.
Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy, publ. tekst jedn. Dz. U. 2017, poz. 682 z późn. zm.
Ustawa z dnia 28 listopada 2003 r. o świadczeniach rodzinnych, publ. tekst jedn. Dz. U. 2016, poz. 1518 z późn. zm.
Ustawa z dnia 30 listopada 2016 r. o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym, publ. Dz. U. 2016, poz. 2072.
Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi, publ. tekst jedn. Dz. U. 2016, poz. 718 z późn. zm.
Ustawa z dnia 6 czerwca 1997 r. Kodeks karny, publ. tekst jedn. Dz. U. 2016 poz. 1137 z późn. zm.
Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego, publ. tekst jedn. Dz. U. 2016, poz. 1749 z późn. zm.
Wieruszewski, Roman. *Postanowienia Karty Praw Podstawowych w świetle wiążących Polskę umów międzynarodowych i postanowień Konstytucji RP z 1997 r.*, edited by Jan Barcz, 113–143. Wydawnictwo C.H. beck, 2008.
Wyrok Naczelnego Sądu Administracyjnego z dnia 01 lutego 2001 r., sygn. akt V SA 1541/00, publ. CBOSA.
Wyrok Naczelnego Sądu Administracyjnego z dnia 25 czerwca 2014 r., sygn. akt I OSK 618/13, publ. CBOSA.
Wyrok Naczelnego Sądu Administracyjnego z dnia 25 czerwca 2014 r., sygn. akt I OSK 801/13, publ. CBOSA.
Wyrok Naczelnego Sądu Administracyjnego z dnia 26 marca 2013 r., sygn. akt I OSK 1537/12, publ. CBOSA.
Wyrok Naczelnego Sądu Administracyjny z dnia 11 czerwca 2013 r., sygn. akt I OSK 1947/12, publ. CBOSA.
Wyrok Naczelny Sąd Administracyjny z dnia 5 kwietnia 2011 r., sygn. akt I OSK 2096/10, publ. CBOSA.
Wyrok Sądu Apelacyjnego w Katowicach z dnia 29 stycznia 2013 r., sygn. akt I ACa 906/12, publ. Legalis nr 732676.
Wyrok Trybunał Konstytucyjnego z dnia 4 września 2007 r., sygn. P 19/07, pub. Dz. U. 2007 Nr 168, poz. 1188.
Wyrok Trybunału Konstytucyjnego z dnia 12 kwietnia 2011 r., sygn. akt SK 62/08, publ. Dz. U. 2011 Nr 87, poz. 492.
Wyrok Trybunału Konstytucyjnego z dnia 18 listopada 2014 r., sygn. akt SK 7/11, publ. Dz. U. 2014, poz. 1652.
Wyrok Trybunału Konstytucyjnego z dnia 9 września 2003 r., sygn. akt SK 28/03, publ. Dz. U. 2003 Nr 167, poz. 1636.
Wyrok Wojewódzkiego Sądu Administracyjnego w Gliwicach z dnia 08 sierpnia 2013 r., sygn. akt IV SA/Gl 541/13, publ. CBOSA.
Wyrok Wojewódzkiego Sądu Administracyjnego w Gliwicach z dnia 25 lutego 2011 r., sygn. akt IV SA/Gl 559/10, publ. CBOSA.

Wyrok Wojewódzkiego Sądu Administracyjnego w Krakowie z dnia 5 października 2016 r., sygn. akt III SA/Kr 387/16, publ. CBOSA.
Wyrok Wojewódzkiego Sądu Administracyjnego w Łodzi z dnia 30 listopada 2010 r., sygn. akt III SA/Łd 253/10, publ. CBOSA.
Wyrok Wojewódzkiego Sądu Administracyjnego w Poznaniu z dnia 28 sierpnia 2013 r., publ. IV SA/Po 596/13, publ. Legalis nr 780454.
Wyrok Wojewódzkiego Sądu Apelacyjnego w Lublinie z dnia 29 grudnia 2011 r., sygn. akt II SA/Lu 794/11, publ. CBOSA.
Wyrok Naczelnego Sądu Administracyjnego z dnia 2 października 2014 r., sygn. akt I OSK 1138/13, publ. CBOSA.
Wyrok Naczelnego Sądu Administracyjnego z dnia 7 lutego 2017 r. sygn. akt I OSK 1434/16, publ. CBOSA.
Wyrok Wojewódzkiego Sądu Administracyjnego we Wrocławiu z dnia 24 lutego 2015 r., sygn. akt IV SA/Wr 626/14, publ. CBOSA.
Zieliński, Andrzej. "Komentarz do art. 64." In *Kodeks postępowania cywilnego. Komentarz*. Edited by Andrzej Zieliński, 132–135. Warszawa: Wydawnictwo C.H. Beck, 2011.

Michał Poniatwoski

La famille en tant qu'entité juridique dans l'ordre juridique polonais

Résumé

La question de la famille en tant qu'entité juridique dans l'ordre juridique polonais, abordée dans le présent article, concerne la problématique pratique qui est en même temps assez complexe en raison de définitions imprécises et hétérogènes du statut de la famille dans les branches particulières du droit qui jouissent de leur propre autonomie dans le cadre du système juridique, étant universellement en vigueur. La compréhension correcte de cette question exige une analyse adéquate des réglementations juridiques, de la jurisprudence et de la littérature.

L'article présente le problème dans le contexte des branches traditionnelles du droit, telles que le droit constitutionnel (en outre avec le droit international et communautaire, où l'on a reconnu nombre de droits et de devoirs de la famille), le droit administratif, le droit civil et le droit pénal. Grâce à une telle structure de l'article, on a présenté dans ses parties particulières la problématique de la famille en tant qu'entité juridique aussi bien au niveau matériel que formel, y compris des conclusions concrètes.

Les conclusions générales les plus importantes, résultant de l'analyse effectuée, ont été incluses dans le chapitre final.

Mots clés: famille, famille en tant qu'entité juridique, membres de la famille, droits de la famille

Michał Poniatwoski

La famiglia come soggetto nell'ordine giuridico polacco

Sommario

La problematica, intrapresa nel presente articolo, della soggettività della famiglia nell'ordine giuridico polacco riguarda una questione pratica e allo stesso tempo abbastanza complessa, a causa delle definizioni imprecise ed eterogenee dello status della famiglia nei diversi rami del diritto che hanno un'autonomia adeguata nell'ambito del sistema giuridico comunemente in vigore. La comprensione corretta di tale problematica richiede un'analisi appropriata delle norme giuridiche, delle decisioni giudiziarie e della letteratura in materia.

Nell'articolo la problematica in oggetto è stata presentata nel contesto dei rami tradizionali del diritto quali il diritto costituzionale (oltre al diritto internazionale e comunitario in cui sono stati riconosciuti molti diritti e doveri della famiglia), il diritto amministrativo, il diritto civile e il diritto penale. In seguito all'assunzione di una simile struttura dell'articolo nelle sue singole parti è stata presentata la problematica della soggettività della famiglia sul piano sia materiale, sia formale con le relative conclusioni.

Le conclusioni generali più importanti risultanti dall'analisi condotta sono state racchiuse nella parte finale.

Parole chiave: famiglia, soggettività della famiglia, membri della famiglia, diritti della famiglia

Philosophy and Canon Law vol. 3 (2017), pp. 219–240

Damián Němec
Palacký University in Olomouc, Czech Republic

The Family in the Czech Legal Order

Abstract: This article on the status of the family in the Czech legal order is based on legal norms, but it cannot be limited to them because they have not defined the legal concept of the family for decades and they refer rather to the concept of marriage. Specification of the understanding of the family thus has become left more to sociology. Therefore, it has been necessary to extract this definition also from other official documents, such as the documents of the Ministry of Labour and Social Affairs of the Czech Republic, which is responsible for the development of state strategic documents in the area of family and marriage. From these documents, there follows a clearer understanding of the family, which, until 2015, was characterised by the support of marital families. This resulted in preferences of marriage in determining parenthood, in adoption and in the use of economic instruments, especially tax reductions.

The proposed new concept of family support from the end of 2016 retreated from a clear value distinction, and thus leads to such a wide definition of the family that this has become a subject of contention between ministries of the Czech government, those in the professional sphere, and those in the area of non-governmental organizations. At the same time, this concept surrenders its attempt to actively influence social reality through measures in favor of marriage, all of which are still the most effective economic benefits for spouses, with reference to the principle of non-discrimination.

The area of family and marriage is the subject of deep dispute and it is good that these questions have clearly entered the public social debate, even though it is not clear what results this will bring. In this situation, a clear statement has been issued by the Czech Bishops' Conference in favor of the marital family as the only standard model of the family.

Keywords: law, family law, civil law, the Catholic Church, catechism, family, marriage, registered partnerships, financial relief

Introduction

In trying to describe the status of the family in the Czech legal order we will need to realize three successive steps.

First, it is necessary to analyze official documents. Therefore, in the first section we will analyze the most important provisions of the relevant laws since the establishment of Czechoslovakia in 1918 up to the present. In the second chapter, we will focus on strategic official documents relating to support of the family.

The third section will be devoted to different aspects which show a preferential approach towards marriage and family with regard to other forms of cohabitation.

In the conclusion, we will evaluate the findings reached and the whole situation regarding the rank of the family in the Czech Republic, whilst looking towards the future.

Marriage and the Family in the Development of Czech law

Austrian Act no. 946/1811 Coll., the General Civil Code

After the establishment of the Czechoslovak Republic in the year 1918, the existing legal situation of Austria was retained in the Czech lands, namely in the area of marriage and family by the General Austrian Civil Code (Allgemeines bürgerliches Gesetzbuch) no. 946/1811 Coll. (hereinafter ABGB).[1] Despite minor amendment in the following years, its fundamental provisions regarding marriage and the family remained basically unchanged.

ABGB in §§ 40 and 44 provides the basic definition of family as a marriage-based family:

> § 40 The family means parents with all their descendants. […]
> § 44 Family relationships are based on matrimonial contract. Two persons of different sexes manifest in the matrimonial contract their will under which to live in indissoluble communion, to engender children, to bring them up and to provide mutual aid.

[1] In Slovakia, the Slovak part of Czechoslovakia, Hungarian customary law was used.

The other provisions of the ABGB are considerably based on Canon Law, but this is not the subject of our investigation.

Czechoslovak Act no. 265/1949 Coll., on Family Law

The Communist Party of Czechoslovakia embraced practically unlimited power in February 1948 and it began to prepare and implement the redevelopment of the Czechoslovak legal order almost immediately. This period is called "the period of socialist legality" or even "legal two-year plan."[2]

Besides the new Civil Code, an important part of the new socialist legislation was also the first separate Czechoslovak Act no. 265/1949 Coll., on family law. The matter of family law was extracted from the Civil Code and composed as a separate legal act. In this act, the family is far less spoken about, but the act is meritoriously a text of considerable importance. The most fundamental texts can be found in the preamble of the act:

> In order to lay the foundation for the creation of marriage as the voluntary and permanent life's community of a man and a woman, lawfully founded, which will serve as the base of the family to the interests of all its members and to the benefit of society in accordance with its up-to-date development, […] and in order to ensure the protection of marriage and of the family, so that the family becomes a healthy base of the development of the nation […].

Further, there is a subtle yet significant mention of the family in § 16 section 1:

> The couple decides the essential matters of the family based on their marriage by mutual agreement. If they do not agree, it should be decided by the court.

Further mentions of the family in this act do not deal with major conceptual issues, but they concern the area of material provision of persons living in a marriage and especially of children.

Otherwise, it would be more adequate to call this law a 'law of marriage' because the vast majority of the text deals with marriage, and not with the family. Yet it can be said that the family is clearly presented as a marital family there.

[2] Under this so-called legal two-year plan, the existing legal dualism, inherited from the Austro-Hungarian Empire, was overcome.

Czechoslovakian Act no. 94/1963 Coll., on the Family

The recodification of the Czechoslovak legal order began by the issuing of the Constitution of the Czechoslovak Socialist Republic no. 100/1960 Coll., which notes in its flowery preamble, among others, that socialism has won in Czechoslovakia.

In this atmosphere, the recodification of a large number of important acts was introduced, among others, family law, namely by promulgation of Act no. 94/1963 Coll., on family. Before the articulated text, there are located some very basic principles. Two of them are very important for us:

> Art. I. In our society, marriage consists in solid emotional relationships between a man and a woman. Both of them are equal in it. The main social purpose of marriage is the foundation of the family and the proper upbringing of children.
> Art. II. The family based on marriage is the basic unit of our society, which broadly protects family relationships.

The articulated text of the act, however, speaks about the family very sporadically, namely on the mutual representation of the husband and wife in matters of the family and in property matters. Again, this act becomes more an act on marriage rather than one on the family, but even there the family is clearly presented as a marital family, whose main characteristic is to be stability, as it is determined by the opening paragraph of Title V on divorce:

> § 23
> (1) State authorities, in collaboration with social organizations and with all citizens are obliged to assist the strengthening of marriages and families, particularly by preventing the causes which could lead to a disruption of the strength and of permanence of relationships in marriage and in the family.
> (2) A frivolous attitude towards marriage is contrary to the interest of the society. Therefore, the abolition of marriage by divorce would proceed only in socially justified cases.

The focus of family law was progressively weakened by amendments, especially by Act no. 91/1998 Coll., by which were derogated the abovementioned basic principles. A large part of the provisions of the act was individualized by an elision of references to the social signification of marriage and substantially changed by provisions introducing so-called non-contradictory divorce. This significant amendment coincided with significant social changes, consisting in a preference for free cohabitation before marriage, in the steep increase of marriage age, and in the growth of the divorce rate. It can be stated that this

amendment follows social changes without attempting to distinguish values and to prefer worthwhile positive solutions.

Czech Act no. 89/2012 Coll., the Civil Code

In 2012, the process of the recodification of Czech private law was completed after a twelve-year effort by issuing the new Czech Civil Code no. 89/2012 Coll.,[3] effective from January 1, 2014 (hereinafter referred to as CC). This Code is a monumental work, even in its size: 3,081 paragraphs. The second part of CC is applied to family law, involving §§ 655–975.

The provisions of this part of CC especially do not give any definition of the family, speaking almost exclusively about marriage, from which the family should arise:

> § 655 Marriage is a permanent union of a man and a woman formed in a manner stipulated by this law. The main purpose of marriage is the foundation of the family, the proper upbringing of children, and mutual support and assistance.

Thus, the family, family community and family households will then be spoken of mainly in the context of defining the rights and obligations of spouses, particularly in the issues of property.

Summary

An analysis of the legal provisions in the area of family law leads unambiguously to the following conclusions:

– there is a tendency to specify closely legal matters of marriage, which has the important social role of creating the family;
– yet a gradual resignation in the definition of family is visible since the first communist legislation of 1950, and therefore the term family becomes a non-juridical or super-juridical concept with a definition that is left primarily to sociology.

[3] Důvodová zpráva k návrhu nového občanského zákoníku. [Explanatory report to the proposal of the new Civil Code.] See Poslanecká sněmovna Parlamentu České republiky, "Sněmovní tisk 362/0, Občanský zákoník" [Chamber of Deputies of the Parliament of the Czech Republic. "Parliamentary Document 360/2, Civil Code"], accessed March 15, 2017, http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=362&CT1=0.

Definitions of the Family in Official Documents of the Czech Republic

Although the family is often mentioned in the legal norms, not one of them offers a definition of the family, even descriptively. Because the law is closely linked with politics, it is appropriate to rely on official government documents relating to the family, because the legal regulations are then shaped by them.

State Anchoring of Care for the Family

At the level of the government, family issues are within the competence of the Ministry of Labor and Social Affairs of the Czech Republic. The Family Policy and Social Work Section were created there, which includes the Family and Aging Policy Department, Social Services Social Work, and Social Housing Department, Protection of the Rights of Children Department and the Department of Inspection of Social Services. Within the Family and Aging Policy Department, there has been created the Ward of Family Policy,[4] within which there operates an Expert Committee for Family Policy.[5]

The family policy of the state, according to data of the ministry itself, on the one hand, concerns various public areas of society, for example, housing, education, health, the labor market, and infrastructure, and on the other hand, it handles highly private areas, including human intimacy, which creates the home. It therefore seeks to respect the autonomy and the ability of families and to support them in exercising their natural functions, and not to assume these roles and not to interfere in the internal life of families, the distribution of social roles in the family, etc., while it should remember all of the developmental phases of families as well as their needs in specific situations too.[6]

---

[4] Ministerstvo práce a sociálních věcí, "Organizační struktura Ministerstva práce a sociálních věcí." [Ministry of Labour and Social Affairs. "The Organisational Structure of the Ministry of Labour and Social Affairs"], last modified March 7, 2017, accessed March 13, 2017, http://www.mpsv.cz/cs/1856.

[5] Ministerstvo práce a sociálních věcí, "Odborná komise pro rodinnou politiku." [Ministry of Labour and Social Affairs. "National Concept of Support of Families with Children"], last modified May 4, 2015, accessed March 3, 2017, http://www.mpsv.cz/cs/21022.

[6] Ministerstvo práce a sociálních věcí, "Rodina a ochrana práv dětí, Podpora rodiny – rodinná politika." [Ministry of Labour and Social Affairs, "Family and Protection of Children's Rights, Family Support – Family Policy"], last modified January 30, 2013, accessed March 3, 2017, http://www.mpsv.cz/cs/4.

The Framework of the State Concept of Family Support

Reasons for the Elaboration of the National Conception of Family Support

The impetus for the processing of the first comprehensive family policy has become the harmonization of legal and other official documents during the accession negotiations to join the European Union, held in the years 1998–2002, which culminated in the signing of the Treaty of Accession of April 16, 2003. The accession of the Czech Republic to the European Union came into force on May 1, 2004.[7]

In preparation for the Czech Republic's accession to the European Union the characteristics of social life were also analyzed in comparison with actual EU member states.

National Family Report from 2004

Following the example of other European Union countries, the Government of the Czech Republic entrusted the Ministry of Labor and Social Affairs with the preparation of a concept of family policy on April 7, 2003. As a starting document, first the National Family Report was issued in spring 2004, in collaboration with a number of experts from academic and various government institutions, and from several NGOs. For this, there were utilized foundational materials of the Ministry itself, working papers of various central government bodies, professional studies, and research reports from many disciplines related to the topic.

This document is very extensive, having 226 pages,[8] and it consists of three parts: I. The social function of the family and family policy in the Czech Republic, II. Socio-demographic synthesis of family life conditions in the Czech Republic, and III. Legislative and institutional provision of family support in the Czech Republic.[9] This document gives a solid basis for further work.

[7] Detailed information is available at the official common web-site of the European Union and the Office of the Government of the Czech Republic www.euroskop.cz: Petr Zenkner (Euroskop), "Vstup ČR do EU", accessed March 7, 2017, https://www.euroskop.cz/803/sekce/vstup-cr-do-eu/.

[8] Ministry of Labour and Social Affairs, *National Family Report (2004)*, accessed March 7, 2017, http://www.mpsv.cz/en/1607. (Only this document is available on the website of the Ministry in the English version.)

[9] Ministry of Labour and Social Affairs. *National Family Report (2004)*, 2–3.

National Family Policy Concept from 2005

Based on the National Family Report, the National Family Policy Concept was prepared in 2005 and approved by the Czech government in October 2005.[10] This document is significantly shorter than the National Report on the Family, having 59 pages, and is divided into two parts: a general section and a special section.

The general part consists of four chapters: 1. Preamble, 2. Current Situation of Czech Families, 3. Goals of Family Policy, 4. Principles of the Implementation of Family Policy. It provides substantial empirical and ideological basis for specifying concrete measures in the special part. This part is relatively brief, comprising merely eight pages.

The special part consists of nine chapters: 5. Supporting Parenthood and Family Cohesion, 6. Financial Support of Family and Housing, 7. Services for Families, 8. Reconciliation of Professional and Family Roles, 9. Family and the Education System, 10. Family and Health Care Systems, 11. Families with Specific Needs, 12. Support of Families at Regional and Municipal Level, and 13. General Measures to Implement Family Policy. This part is much more detailed. Each chapter is divided into sections, with conclusions containing specified concrete measures identifying the responsible authority and the completion date as well. Not surprisingly, it is also substantially larger, occupying 48 pages.

It was expected that the National Family Policy Concept would be annually updated, but this was not fully realized. In 2008, two strategic documents were published nationwide: National Concept of Family Support with 36 pages and A Set of Pro-Family Measures—A Pro-Family Package in a much larger scale with 114 pages.[11]

Family Policy at Regional and Municipal Level in 2008

Yet the National Concept of Family Policy of 2005 made provisions for a stronger involvement of regions and municipalities in the support of family, noting

[10] Ministerstvo práce a sociálních věcí, *Národní koncepce rodinné politiky* [Ministry of Labour and Social Affairs, *National Concept of Family Policy*] (Praha: Ministerstvo práce a sociálních věcí, 2005), 6.

[11] Ministerstvo práce a sociálních věcí. *Národní koncepce podpory rodin s dětmi* [Ministry of Labour and Social Affairs, *National Concept of Support of Families with Children*] (Praha: Ministerstvo práce a sociálních věcí, 2008) and Ministerstvo práce a sociálních věcí. *Soubor prorodinných opatření – Prorodinný balíček* [Ministry of Labour and Social Affairs, *A Set of Pro-Family Measures – a Pro-Family Package*] (Praha: Ministerstvo práce a sociálních věcí, 2008). Both documents are available online at Ministerstvo práce a sociálních věcí, "Strategické dokumenty v oblasti podpory rodiny." [Ministry of Labour and Social Affairs, "Strategic Documents in the Field of Family Support"], last modified January 30, 2013, accessed March 7, 2017, http://www.mpsv.cz/cs/14474.

that their importance in this regard was not being appreciated. It thus appears necessary to coordinate the activities of these units nationwide.[12]

Therefore, in 2008, the detailed methodical recommendations document Family Policy at Regional and Municipal Level was created, having a length of 32 pages, and was applicable nationwide.[13] This recommendation summarizes in the first part the objectives and means of the national family policy and, in the second part, which is devoted to regional policy, it then gives singular specific recommendations, including recommendations for the institutional provision of family policies in individual entities.

Currently it is normal that different regions have their own medium-term strategy for family policy, which is updated annually. Similar documents are also produced by larger cities.

The Current Draft of the Family Policy Concept at the End of 2016

The Ministry of Labor and Social Affairs drew up a new draft of the Family Policy Concept in 2016, which targets its focus on the so-called functional families with children or other dependents, whereas the question of support for vulnerable families with children is addressed in other documents of the same ministry: National Strategy for the Protection of Children's Rights, and National Strategy for the Development of Social Services.[14] This draft, 54 pages long, has a very different structure in comparison to the existing concept from 2005. It is divided into four parts, being Part A: Socio-Economic and Demographic Trends, Part B: What Do Families Want, Part C: Well-Tested Experience from Abroad, and Part D: Proposed Measures.

Here, the elaboration of the concept was not preceded by an extensive analytical document, on which experts and special interest organizations working in this area would greatly participate—such a document has yet to be prepared by the Research Institute for Labour and Social Affairs.[15]

---

[12] Ministerstvo práce a sociálních věcí, *Národní koncepce rodinné politiky* [Ministry of Labour and Social Affairs, *National Concept of Family Policy*], 56.

[13] Ministerstvo práce a sociálních věcí, *Rodinná politika na úrovni krajů a obcí* [Ministry of Labour and Social Affairs, *Family Policy at Regional and Municipal Level*] (Praha: Ministerstvo práce a sociálních věcí, 2008). This document is likewise available online at Ministerstvo práce a sociálních věcí, "Strategické dokumenty v oblasti podpory rodiny." [Ministry of Labour and Social Affairs, "Strategic Documents in the Field of Family Support"], last modified January 30, 2013, accessed March 7, 2017, http://www.mpsv.cz/cs/14474.

[14] Ministerstvo práce a sociálních věcí, *Národní koncepce rodinné politiky, verze 22. prosince 2016* [Ministry of Labour and Social Affairs, *National Concept of Family Policy, version of 22nd December 2016*] (Praha: Ministerstvo práce a sociálních věcí, 2016), 2.

[15] "Zápis z 10. jednání Odborné komise pro rodinnou politiku konaného dne 19. dubna 2016" ["Minutes of the 10th meeting of the Expert Commission for Family Policy, held on April 19, 2016"], available online, accessed March 7, 2017, http://docplayer.cz/33173777-Zapis-z-10-jednani-odborne-komise-pro-rodinnou-politiku-konaneho-dne-19-dubna-2016.html.

Publication of the concept provoked contradictory and mostly negative feedback. The actual interdepartmental comment procedure led to some very critical remarks from a significant number of ministries (led by ministers from various political parties) as well as by the Deputy Prime Minister Pavel Bělobrádek, chairman of the Christian Democratic Party—Czechoslovak People's Party. Some ministries expressed that the concept cannot be repaired in parts, and that it therefore should be rejected as a whole. Currently (March 2017), the settlement of the comments from the Ministry of Labour and Social Affairs is in progress, and then the material should be handed over for discussion by the Government of the Czech Republic.

From the publicly available responses, very critical views on the draft concept were expressed by the Confederation of Employers' and Entrepreneurs' Associations of the Czech Republic[16] and by the Pro-life Movement of the Czech Republic,[17] which speaks about its attempted social engineering. Clear critical opinion was taken officially by the Czech Bishops' Conference this time in its plenary session on January 25, 2017, whereupon—and indeed for the first time—the Conference has officially endorsed the National March for Life and Family, scheduled for April 22, 2017.[18]

The Description of Family in the Czech Official Strategy Documents

The Concept of the Family in the National Family Report of 2004

The National Family Report of 2004 contains a very long and in-depth exposition of the family.[19] With regard to the factual situation of human coexistence

[16] Konfederace zaměstnavatelských a podnikatelských svazů ČR, *Stanovisko Konfederace zaměstnavatelských a podnikatelských svazů ČR k návrhu Koncepce rodinné politiky* ze dne 6.1.2017 [Confederation of Employers' and Entrepreneurs' Associations of the Czech Republic, *Statement of the Confederation of Employers' and Entrepreneurs' Associations of the Czech Republic to the Draft of the to the Family Policy Concept* of 6th January 2017], accessed March 7, 2017, http://kzps.cz/legislativni-navrhy/page/2/.

[17] Hnutí pro život ČR. *Stanovisko Hnutí Pro život ČR ke „Koncepci rodinné politiky"* ze dne 13.1.2017 [Pro-life Movement of the Czech Republic, *Statement of the Pro-life Movement of the Czech Republic to the "Family Policy Concept"* of 13th January 2017], accessed March 7, 2017, http://hnutiprozivot.cz/download/zpravy/2634-koncepce_rodinne_politiky.pdf.

[18] Katolická církev v České republice, "Biskupové a zástupci řeholí: Rodina je základní buňkou společnosti i církve" [Catholic Church in the Czech Republic, "Bishops and Representatives of Religious Orders: The Family in the Basic Cellule of the Society and of the Church"], accessed March 7, 2017, https://www.cirkev.cz/cs/aktuality/170125biskupove-a-zastupci-reholi-rodina-je-zakladni-bunkou-spolecnosti-i-cirkve.

[19] Ministry of Labour and Social Affairs, *National Family Report (2004)*, 9–11.

connected with parenthood, it avoids a clear definition of the family, even initially presenting several possible concepts of the family. It does not hide that not all of these forms of coexistence are (equally) desirable for the society. As a starting point, then, it provides a definition of various socially relevant functions of the family.

The first, primary and irreplaceable role is still cited as the biological-reproductive or generative one.

The second, equally important role is a socialization function, which was suppressed and replaced by a state system of organized education in the period of totalitarian regimes. Within its framework, the educational function of the family is essentially important for the preparation of a child for living in a society where its full replacement by another institutional form always causes a risk to healthy child development.

The third is appointed as the socio-economic function, which is not unlike the first two family functions, being directly dependent on the presence of children.

Regenerating function and support, which includes all of the mutual emotional support of singular family members, but also any financial or material assistance, is listed last as the socially relevant functions of the family.

Based on this description, the relatively long summarizing text is thus given:

> Given its basic biological and functional characteristics, the family in the European and Czech environment can, in its broadest sense, be seen as a social unit whose constituent feature is the cohabitation of at least two directly related generations (parent-child) and whose secondary features are the performance of basic family functions, with a desirable but not essential, legislative-institutional basis in society. In exceptional cases, family relations can be based on legal institutions not based on biological parentage (e.g., adoption). It must be emphasized that this form of family is not restricted to two-generation cohabitation, but also includes multiple generation forms of family cohabitation. Attention must also be devoted to this issue in relation to current demographic changes and discussion of forms of intergenerational solidarity.
>
> In the narrower sense, the natural nuclear family, which is the predominant form of cohabitation in the Czech Republic, can be seen as an institutionally structured community founded on parental and marital relationships as its two basic relationship lines, which is based on family law, besides which, marital cohabitation, whose main role is to create a family and raise children under Czech law, envisages this basic type of family.
>
> The broader, biological function related definition of the term family can be used when demographically describing heterogeneous forms of family life based on any form of cohabitation between two people of opposite sexes with children. However, in formulating its family policy concept, the state has to choose which forms of partner relationships it considers most appropriate. In

> this context, it must be realized that a family based on marriage meets all of the family's socializing, economic and regeneration functions in relation to the stability of its partnership union. However, the state must naturally also respect other forms of cohabitation between partners with children (to whom state assistance must also be directed in relation to children raised). However, it has to be realized that these informal types of cohabitation create much more pressure on state budget resources and are supported from these resources to a much greater degree in comparison to marital families. According to the principle of responsibility, the state should give people the freedom to decide the form of cohabitation they wish to live in, but at the same time for them to bear responsibility for their decision. Equally, in making its decision on preferences in family policy, the state should not overlook the major role played by the development of alternative forms of cohabitation as an important component of population regression. In view of these facts, the narrower legislative-institutional definition of the family, based on marital and parental relationships, should be determinative for state family policy.

Via this rather long detour, the government document arrives at the notion of the marital family and notes that this form of family deserves the greatest state aid.

The Concept of the Family in the National Family Policy Concept of 2005

The National Family Policy Concept of 2005 explicitly concurs with the National Report on the Family from 2004, and it does not define the family. It uses the terms defined in the document of 2004 as the "nuclear family" and the "incomplete family" without using the expression "marital family."

Marriage is explicitly mentioned in the description of the second general objective of the family policy:

> To increase awareness of family values and of personal responsibility for its functionality and stability, especially in today's young generation and in subsequent generations, among others by promoting education for partnership, marriage and parenthood.[20]

However, the importance of marriage is emphasized there by means of two economic elements, namely: a tax deduction for the husband/wife and the joint taxation of spouses.[21]

---

[20] Ministerstvo práce a sociálních věcí, *Národní koncepce rodinné politiky* [Ministry of Labour and Social Affairs, *National Concept of Family Policy*], 9.

[21] Ministerstvo práce a sociálních věcí, *Národní koncepce rodinné politiky* [Ministry of Labour and Social Affairs, *National Concept of Family Policy*], 20.

The Concept of the Family in Family Policy at the Regional and Municipal Level of 2008

The strategic document *Family Policy at Regional and Municipal Level* of 2008 continues the line of the previous two above-mentioned documents. It avoids defining the concept of family, but it states at the same time:

> Influences of contemporary changes in the sphere of culture and values are problematic, too. The marital family as a traditional form of life stands in contrast to many of the newly created alternatives based on a much looser, childless relationship.[22]

Among the key areas of family policy, it includes support for the institution of marriage and for its social prestige,[23] and also economic resources related to tax benefits legally set at national level.[24]

The Concept of the Family in the Current Draft of Family Policy at the End of 2016

While it can be stated that the documents issued up until 2008 prefer the marital family, it is no more the case with the current draft Family Policy of 2016, which is deliberately and explicitly based on a "reflection of social development" including the legalization of registered partnerships in 2006,[25] clearly surrendering value preferences. Those result in a significantly different definition of family[26]:

> The decisive criterion for the family is an ongoing relationship and values of love, respect and mutual care. Today's family is in fact a very diverse category and it is still changing. This diversity is the result of complex and often new situations in which families are facing. The family in today's world consists of individuals and couples with children (biological and the adoptive) or without them (even deliberately childless), marital, registered, unmarried, foster and so called composite, often multigenerational, namely always regardless of their gender.

---

[22] Ministerstvo práce a sociálních věcí. *Rodinná politika na úrovni krajů a obcí* [Ministry of Labour and Social Affairs, *Family Policy at Regional and Municipal Level*], 7.

[23] Ministerstvo práce a sociálních věcí. *Rodinná politika na úrovni krajů a obcí* [Ministry of Labour and Social Affairs, *Family Policy at Regional and Municipal Level*], 8.

[24] Ministerstvo práce a sociálních věcí. *Rodinná politika na úrovni krajů a obcí* [Ministry of Labour and Social Affairs, *Family Policy at Regional and Municipal Level*], 12.

[25] Act no. 115/2006 Coll., on the registered partnership and changes of connected acts.

[26] Ministerstvo práce a sociálních věcí, *Národní koncepce rodinné politiky, verze 22. prosince 2016* [Ministry of Labour and Social Affairs, *National Concept of Family Policy, version of 22nd December 2016*], 2.

This radically new definition of the family became the subject of sharp criticism both from some ministries, and from some non-governmental organizations in the comments to the draft concept.[27]

In response to demographic changes, especially to the decline in the marriage rate, the growth in the number of unmarried cohabitations and the significant increase in the number of children born out of wedlock, which has amounted to 48.6% in 2016,[28] and with an emphasis on the principle of non-discrimination, the draft of the concept brings the intention to move the financial benefits of marriage in the tax area to the direct support of parents with children, without distinction, whether they are married or not.[29]

Legal Support of Marriage

Starting Position

While Czech law avoids defining the family, the Catholic Church is clear on this topic. The definition of the family is given by the Catechism of the Catholic Church,[30] n. 2202:

> A man and a woman united in marriage, together with their children, form a family. This institution is prior to any recognition by public authority, which has an obligation to recognize it. It should be considered the normal reference point by which the different forms of family relationship are to be evaluated.

It is clearly stated that the family in the Catholic understanding is the marital family. If we therefore deal with this from the perspective of the Catholic Church on the legal support of the family in the Czech law, we necessarily reach the topic of the legal support of marriage.

[27] Cf. above *2.2.5 The Current Draft of the Family Policy Concept at the End of 2016.*

[28] Český statistický úřad, "Pohyb obyvatelstva – 1. – 3. čtvrtletí 2016" [Czech Statistical Office, "Motion of Population – 1st to 3rd Quarter 2016"], accessed March 13, 2017, https://www.czso.cz/csu/czso/cri/pohyb-obyvatelstva-1-3-ctvrtleti-2016.

[29] Ministerstvo práce a sociálních věcí, *Národní koncepce rodinné politiky, verze 22. prosince 2016* [Ministry of Labour and Social Affairs, *National Concept of Family Policy, version of 22nd December 2016*], 36.

[30] *Catechism of the Catholic Church* (New York: Doubleday, 1994).

The Institutionalization of Marital Status

Individual types of legally recognized marital status arise from the second part of Act no. 89/2012 Coll., the Civil Code, and from the state administrative practice. Thus, these conditions are referred to as a family: single, married, divorced, and widowed.

This concept has been somewhat undermined by the adoption of Act no. 115/2006 Coll., on registered partnership, and amendments to other acts. This act defines a registered partnership in § 1 section 1:

Registered partnership is a permanent association of two individuals of the same sex established in the way that prescribes this act (hereinafter the 'partnership').

In the explanatory report of the bill, the registered partnership has the status of a relationship, but it is not the marital status. Nevertheless, it is determined in § 39:

> Partnership is registered in place of marital status in the identity card of a partner and in other public documents in which marital status is featured.

The Registered Partnership Act, however, is formulated as a shortened modification of the then Family Act no. 94/1963 Coll., and also in the CC, especially in its second part *Family Law*, effectively acting as marital status—for example, a registered partnership is an impediment for the solemnization of marriage, and vice versa. It is no wonder that 'gay marriages' are often talked about in popular and journalistic parlance. Although this is legally flawed, it corresponds to the state de facto established by the law.

Parenthood

The question of motherhood is dealt with in § 775 of CC unambiguously in the traditional manner, according to the principle of Roman law *mater semper certa est*: the child's mother is the woman who bore him/her. A factual discrepancy may occur in the event that it is an assisted reproduction with use of a donated egg—the donor must be anonymous and it can only be a woman who has completed 18 years of age and did not exceed the age of 35 years, as regulated by Act no. 373/2011 Coll., on specific health services in § 7. In contrast, the question of a surrogacy motherhood is not regulated in Czech law, for which CC does not provide for any contract—in this case, only the path of adoption remains for the client of surrogacy.[31]

[31] Milana Hrušáková et al., *Rodinné právo* [*Family Law*] (Praha: C.H.Beck, 2015), 130–31.

The question of paternity is already much more complicated. It is mostly based on three legal rebuttable presumptions. CC in § 776 establishes a presumption for the couple: the father of the child is considered to be the mother's husband; further in § 779 a presumption of paternity is established in the case of the affirmative declaration of the man and the child's mother; the third presumption is laid down in § 783 and is based on the fact of intercourse at the decisive time—that presumption is implemented through court proceedings. All three presumptions can legally be denied. Currently, the basic proper evidence consists in the test of conformity of DNA.

In the case of assisted reproduction, it is assumed that the father of the child is the husband of the woman or the man who gave his consent to assisted reproduction (CC § 778), even in the case of sperm donation. This presumption can be disproved in court.

In the field of fatherhood, therefore, the easier solution is fatherhood (the first presumption) for married couples, even in the case of assisted reproduction.

Adoption of a Child

In Czech law, adoption significantly is newly regulated by the CC in §§ 794–854. It is again understood as a private relationship and it includes the possibility of the adoption of an adult person.

The comparison of different forms of cohabitation with regards to adoption shows significant differences.

The first major difference concerns the possibility of joint adoption: it is possible only for a married couple according to § 800 of CC. It is possible to liken it to adoption by one spouse if the other spouse is the parent of the child. Such adoption is therefore not allowed to partners in a heterosexual non-married couple.

The question of the adoption of children by persons living in a registered homosexual partnership is regulated specifically in Act no. 115/2006 Coll., on registered partnership. The original wording of its § 15, sect. 2 was:

> Persisting partnerships inhibit either partner becoming the adoptive father of a child.

This is clearly expressed in the explanatory report:

> The partner will have in principle a step-parent relationship to a biological child of his partner, or to a child previously entrusted to the care and education of the partner, or to an adoptive child of the partner, with the corresponding rights and obligations. The adoption of a child by registered partners,

> respectively by any of the partners at the time of persisting partnership will be banned. The reason is the preference of foster care of a child by a heterosexual couple.

Although representatives of LGBT organizations declared at the time of the legislative process of the Registered Partnership Act that they will not seek the adoption of children by registered partners, the opposite has proven to be true. Efforts for change proceed at the parliamentary and judicial level. At the parliamentary level, a parliamentary amendment bill was filed on registered partnerships allowing the registered partner of the child's parent to adopt the child in 2014—this proposal suffered from technical and legal flaws. Expanded and modified substantively, a similar proposal has been presented by the government in 2016. Discussion of the first proposal in the first reading started only on July 13, 2016, and was interrupted on the same day.[32] The second proposal is still pending (at the end of March 2017) in the Chamber of Deputies.[33] It is difficult to predict the fate of these legislative initiatives.

Judicial power has intervened in this matter. The Municipal Court in Prague proposed to the Constitutional Court the annulling of the above-cited § 15 sect. 2 of Act no. 115/2006 Coll., on registered partnership, in March 2015. The Plenum of the Constitutional Court granted the petition in June 2016,[34] leaving open the way for the adoption of a child by one of the registered partners—the legal impossibility of the joint adoption of a child by a registered couple persists.

Economic Advantages for Spouses

Experience shows clearly that economic indicators are a considerable motive for the selection of specific solutions and behaviors of individuals and of society. From the history of Czechoslovakia, the phenomenon of population growth in the early 1970s is well known, having been fuelled by economic incentives for married couples with children (loans to young families, facilitating the issuance of decrees on flats, etc.). It caused a phenomenon called Husák's children, named

[32] Poslanecká sněmovna Parlamentu České republiky, *Sněmovní tisk 320, Novela z. o registrovaném partnerství* [Chamber of Deputies of the Parliament of the Czech Republic, *Parliamentary Document 320), Amendment of the act on registered partnership*], accessed March 16, 2016, http://www.psp.cz/sqw/historie.sqw?o=7&t=320.

[33] Poslanecká sněmovna Parlamentu České republiky, *Sněmovní tisk 967, Novela z. o registrovaném partnerství* [Chamber of Deputies of the Parliament of the Czech Republic, *Parliamentary Document 957, Amendment of the act on registered partnership*], accessed March 16, 2016, http://www.psp.cz/sqw/historie.sqw?o=7&T=957.

[34] Decision of the Constitutional Court of the Czech Republic Pl. ÚS 7/15 from June 14, 2016, published in the Collection of Acts and Orders as no. 234/2016 Coll.

after the former first secretary of the Communist Party of Czechoslovakia Gustav Husák.

The situation of economic stimuli for marriages in the Czech Republic is contradictory. While single mothers reach easier and higher social benefits, especially in housing benefit and material need benefit, the state permits applying tax credit for a spouse with no income to the tax on personal income under § 35ba of Act no. 586/1992 Coll., on income tax; in this matter, registered partners are equated to a married couple according to § 21e of the act.

The joint taxation of spouses, introduced in the Czech tax system in the same act in 2005, was possible only for years 2005–2007, it was abolished in 2008.

It is considerable that the current draft Concept of Family Policy at the end of 2016 plans the abolition of tax credit for a spouse with no income and transfer it into direct support for families with children without discrimination regarding contracting or not contracting marriage.[35]

Conclusions

The analysis of the Czech legal acts and official strategy documents showed two clear tendencies: first, the resignation of the legal definition of family, which is becoming the domain of sociology; and second, the growing trend of government policy merely to follow social changes.

The definition of the family in official strategy documents is marked by support of marital families until 2015. The proposed new concept of family support at the end of 2016 retreated from its clear value distinction, and thus it leads to such a wide definition of the family, which has become a subject of contention between ministries of the Czech government, those in the professional sphere, and those in the area of non-governmental organizations. At the same time, this concept surrenders its attempt to actively influence social reality through measures in favor of marriage, all of which are still the most effective economic benefits for spouses, with reference to the principle of non-discrimination.

At the time of issuing the present article, that is, in March 2017, it was not clear whether and how the proposed new concept of family support would win recognition. However, it is evident that these concern the essential realities affecting the lives not only of the current generations of the inhabitants of the

[35] Ministerstvo práce a sociálních věcí, *Národní koncepce rodinné politiky, verze 22. prosince 2016* [Ministry of Labour and Social Affairs, *National Concept of Family Policy, version of 22nd December 2016*] (Praha: Ministerstvo práce a sociálních věcí, 2016), 36–37.

Czech Republic, but also of future generations and the future direction of the Czech state.

It is therefore good that in this situation, which must be assessed as critical, the Catholic bishops publicly have taken an official position with a declaration of the Czech Bishops' Conference in accordance with the clear teaching of the Catholic Church. It is evident that the area of family and marriage is the subject of serious dispute and it is favorable that these questions have clearly entered into the public social debate.

Bibliography

Legal Texts

Act no. 946/1811 Coll., Allgemeines bürgerliches Gesetzbuch für die gesamten Deutschen Erbländer der Österreichischen Monarchie.

Act no. 265/1949 Coll., on family law.

Constitutional act no. 100/1960 Coll., Constitution of the Czechoslovak Socialist Republic.

Act no. 96/1963 Coll., on the family.

Act no. 586/1992 Coll., on income tax.

Act no. 91/1998 Sb., amending and supplementing Act no. 94/1963 Coll., on family, as amended, and amending and supplementing other laws.

Act no. 115/2006 Coll., on the registered partnership and changes of connected acts.

Důvodová zpráva k návrhu zákona o registrovaném partnerství. [Explanatory report to the proposal of the Act on registred partnership.] See Poslanecká sněmovna Parlamentu České republiky. "Sněmovní tisk 650/0, Návrh zákona o registrovaném partnerství" [Chamber of Deputies of the Parliament of the Czech Republic. "Parliamentary Document 650/2, Proposal of the Act on registred partnership"]. Accessed March 15, 2017. http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=650&CT1=0.

Act no. 373/2011 Coll., on specific medical services.

Act no. 89/2012 Coll., the Civil Code.

Důvodová zpráva k návrhu nového občanského zákoníku [Explanatory report to the proposal of the new Civil Code.] See Poslanecká sněmovna Parlamentu České republiky. "Sněmovní tisk 362/0, Občanský zákoník" [Chamber of Deputies of the Parliament of the Czech Republic. "Parliamentary Document 360/2, Civil Code"]. Accessed March 15, 2017. http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=362&CT1=0.

Poslanecká sněmovna Parlamentu České republiky. *Sněmovní tisk 320, Novela z. o registrovaném partnerství* [Chamber of Deputies of the Parliament of the Czech Republic, *Parliamentary Document 320, Amendment of the act on registered partnership*]. Accessed March 16, 2016. http://www.psp.cz/sqw/historie.sqw?o=7&t=320.

Poslanecká sněmovna Parlamentu České republiky. *Sněmovní tisk 967, Novela z. o registrovaném partnerství* [Chamber of Deputies of the Parliament of the Czech Republic. *Parliamentary Document 957, Amendment of the act on registered partnership*]. Accessed March 16, 2016. http://www.psp.cz/sqw/historie.sqw?o=7&T=957.

Decision of the Constitutional Court of the Czech Republic Pl. ÚS 7/15 from June 14, 2016. Published in the Collection of Acts and Orders as no. 234/2016 Coll.

Official Texts

Catechism of the Catholic Church. New York: Doubleday, 1994.

Český statistický úřad. "Pohyb obyvatelstva – 1–3 čtvrtletí 2016" [Czech Statistical Office, "Motion of Population – 1st to 3rd Quarter 2016"]. Accessed March 13, 2017. https://www.czso.cz/csu/czso/cri/pohyb-obyvatelstva-1-3-ctvrtleti-2016.

Hnutí pro život ČR. *Stanovisko Hnutí Pro život ČR ke „Koncepci rodinné politiky"* ze dne 13.1. 2017. [Pro-life Movement of the Czech Republic. *Statement of the Pro-life Movement of the Czech Republic to the "Family Policy Concept"* of 13th January 2017]. Available online. Accessed March 7, 2017. http://hnutiprozivot.cz/download/zpravy/2634-koncepce_rodinne_politiky.pdf.

Katolická církev v České republice. "Biskupové a zástupci řeholí: Rodina je základní buňkou společnosti i církve." [Catholic Church in the Czech Republic. "Bishops and Representatives of Religious Orders: The Family in the Basic Cellule of the Society and of the Church"] Accessed March 7, 2017. https://www.cirkev.cz/cs/aktuality/170125biskupove-a-zastupci-reholi-rodina-je-zakladni-bunkou-spolecnosti-i-cirkve.

Konfederace zaměstnavatelských a podnikatelských svazů ČR. *Stanovisko Konfederace zaměstnavatelských a podnikatelských svazů ČR k návrhu Koncepce rodinné politiky* ze dne 6.1.2017. [Confederation of Employers' and Entrepreneurs' Associations of the Czech Republic. *Statement of the Confederation of Employers' and Entrepreneurs' Associations of the Czech Republic to the Draft of the to the Family Policy Concept* of 6th January 2017]. Available online. Accessed March 7, 2017. http://kzps.cz/legislativni-navrhy/page/2/.

Ministerstvo práce a sociálních věcí. *Národní koncepce podpory rodin s dětmi.* [Ministry of Labour and Social Affairs. *National Concept of Support of Families with Children*] Praha: Ministerstvo práce a sociálních věcí, 2008. Available online. Accessed March 7, 2017. http://www.mpsv.cz/cs/14474.

Ministerstvo práce a sociálních věcí. *Národní koncepce rodinné politiky.* [Ministry of Labour and Social Affairs. *National Concept of Family Policy*] Praha: Ministerstvo práce a sociálních věcí, 2005. Available online. Accessed March 7, 2017. http://www.mpsv.cz/cs/14474.

Ministerstvo práce a sociálních věcí. *Národní koncepce rodinné politiky, verze 22. prosince 2016.* [Ministry of Labour and Social Affairs. *National Concept of Family Policy, version of 22nd December 2016*] Praha: Ministerstvo práce a sociálních věcí, 2016. Available online. Accessed March 7, 2017. http://www.mpsv.cz/cs/14474.

Ministerstvo práce a sociálních věcí. "Odborná komise pro rodinnou politiku." [Ministry of Labour and Social Affairs. "National Concept of Support of Families with Children"] Last modified May 4, 2015. Accessed March 3, 2017. http://www.mpsv.cz/cs/21022.

Ministerstvo práce a sociálních věcí, "Organizační struktura Ministerstva práce a sociálních věcí." [Ministry of Labour and Social Affairs. "The Organisational Structure of the Ministry of Labour and Social Affairs"] Last modified March 7, 2017. Accessed March 7, 2017. http://www.mpsv.cz/cs/1856.

Ministerstvo práce a sociálních věcí. "Rodina a ochrana práv dětí, Podpora rodiny – rodinná politika." [Ministry of Labour and Social Affairs. "Family and Protection of Children's Rights, Family Support – Family Policy"] Last modified January 30, 2013. Accessed March 3, 2017. http://www.mpsv.cz/cs/4.

Ministerstvo práce a sociálních věcí. *Soubor prorodinných opatření – Prorodinný balíček.* [Ministry of Labour and Social Affairs. *A Set of Pro-Family Measures – a Pro-Family Package*]

Praha: Ministerstvo práce a sociálních věcí, 2008. Available online. Accessed March 7, 2017. http://www.mpsv.cz/cs/14474.

Ministerstvo práce a sociálních věcí. *Rodinná politika na úrovni krajů a obcí.* [Ministry of Labour and Social Affairs. *Family Policy at Regional and Municipal Level*] Praha: Ministerstvo práce a sociálních věcí, 2008. Available online. Accessed March 7, 2017. http://www.mpsv.cz/cs/14474.

Ministerstvo práce a sociálních věcí. "Strategické dokumenty v oblasti podpory rodiny." [Ministry of Labour and Social Affairs. "Strategic Documents in the Field of Family Support"] Accessed March 7, 2017. http://www.mpsv.cz/cs/14474.

Ministry of Labour and Social Affairs. *National Family Report (2004).* Available online. Accessed March 7, 2017. http://www.mpsv.cz/en/1607.

"Zápis z 10. jednání Odborné komise pro rodinnou politiku konaného dne 19. dubna 2016." ["Minutes of the 10th meeting of the Expert Commission for Family Policy, held on April 19, 2016."] Available online. Accessed March 7, 2017. http://docplayer.cz/33173777-Zapis-z-10-jednani-odborne-komise-pro-rodinnou-politiku-konaneho-dne-19-dubna-2016.html.

Other Texts

Hrušáková, Milena, et al. *Rodinné právo* [Family Law]. Praha: C.H. Beck, 2015.

Zenkner, Petr (Euroskop). "Vstup ČR do EU" [Czech Republic's Accession to the EU] Accessed March 7, 2017. https://www.euroskop.cz/803/sekce/vstup-cr-do-eu/.

Damián Němec

La famille dans l'ordre juridique tchèque

Résumé

L'article sur le statut de la famille dans le système juridique tchèque est basé sur les normes juridiques, mais il ne peut s'y limiter, car depuis des décennies ces normes ne définissent plus la notion de famille et se réfèrent plutôt à la notion de mariage. Ainsi, la spécification de la notion de famille est réservée à la sociologie. En l'occurrence, il s'est avéré nécessaire de consulter d'autres documents, tels que ceux du Ministère du Travail et des Affaires sociales de la République tchèque qui est responsable du développement des documents étatiques stratégiques dans le domaine de la famille et du mariage. De ces documents se dégage une compréhension plus nette de la famille qui, jusqu'à 2015, se caractérisait par le soutien aux familles maritales. Le mariage est devenu le point de repère préférable dans la définition de la parentalité, de l'adoption et dans l'usage des instruments économiques, surtout les allégements fiscaux.

La nouvelle conception du soutien à la famille de la fin de 2016 a renoncé à la distinction nette de valeurs, ce qui par là même conduit à la définition de la famille tellement vaste que cela est devenu l'objet de discorde entre les ministères tchèques, aussi bien dans la sphère professionnelle que dans celle des organisations non gouvernementales. En même temps, cette conception, par rapport au principe de la non-discrimination, renonce à ses tentatives d'influer activement sur les réalités sociales en faveur du mariage ; de toutes les actions, ce sont bel et bien les allégements fiscaux pour les époux qui s'avèrent les plus efficaces.

Le champ de la famille et du mariage est l'objet d'un litige très sérieux, et il est bon que ces questions se soient infiltrées dans le débat social public, bien qu'il ne soit pas clair quels résultats

il va apporter. Dans cette situation, la Conférence épiscopale tchèque a formulé une déclaration nette en faveur de la famille maritale en tant que seul modèle standard de la famille.

Mots clés: droit, droit familial, droit civil, Église catholique, catéchisme, famille, mariage, partenariats enregistrés, allégement fiscal

Damián Němec

La famiglia nell'ordine giuridico ceco

Sommario

L'articolo sullo stato della famiglia nel sistema giuridico ceco è basato sulle norme giuridiche ma non può essere limitato ad esse perché già da decenni esse non definiscono la nozione di famiglia e fanno piuttosto riferimento alla nozione di matrimonio. La specificazione della nozione di famiglia in questo modo è destinata alla sociologia. Per questo motivo è stato necessario estrapolare tale definizione anche da altri documenti ufficiali, ovvero dai documenti del Ministero per gli Affari del Lavoro e della Politica Sociale della Repubblica Ceca che è responsabile dello sviluppo dei documenti strategici statali nel campo della famiglia e del matrimonio. Da tali documenti risulta una comprensione più chiara della famiglia che, fino al 2015, era caratterizzata dal sostegno delle famiglie coniugali che ha determinato la preferenza del matrimonio nella definizione della genitorialità, nell'adozione e nell'uso degli strumenti economici, specialmente delle agevolazioni fiscali.

La nuova concezione di assistenza familiare proposta, risalente alla fine del 2016, ha rinunciato alla distinzione chiara dei valori, e quindi conduce ad una definizione così ampia della famiglia da divenire oggetto di disaccordo tra i ministeri cechi, nella sfera professionale e nel campo delle organizzazioni extra-governative. Nel contempo tale concezione rinuncia ai tentativi di influire attivamente sulle realtà sociali attraverso misure in favore del matrimonio, che continuano tutte ad essere le più redditizie agevolazioni economiche per i coniugi, in riferimento al principio di non discriminazione.

Il campo della famiglia e del matrimonio è l'oggetto di una seria controversia ed è un bene che tali domande siano entrate espressamente nel dibattito sociale pubblico anche se non è chiaro a quali risultati porterà. In tale situazione la Conferenza Episcopale Ceca ha rilasciato una dichiarazione chiara in favore della famiglia coniugale come unico modello standard di famiglia.

Parole chiave: diritto, diritto della famiglia, diritto civile, Chiesa Cattolica, catechismo, famiglia, matrimonio, unione civile registrata, agevolazione finanziaria

Philosophy and Canon Law vol. 3 (2017), pp. 241–256

Stanislav Přibyl
University in České Budějovice, Czech Republic

The Principle of Subsidiarity in the Code of Canon Law

Abstract: While the Code of Canon Law of 1917 was promulgated at a time when the social doctrine of the Church was still in the process of formulation, the new Code of 1983 comes after Vatican II and after the publication of the major documents of the social doctrine of the Church. The Code obliges all faithful to take their share of responsibility for the social issues in the world and the Church itself to provide social benefits to its employees following the standards found in the social doctrine of the Church. The Code also reflects the principle of subsidiarity whose classical definition is given in the encyclical *Quadragesimo Anno* of Pius XI (1931). This is reflected in the attitude towards the family and the education of children, towards the role of the lay faithful and their associations or in relation to the use of media of mass communication. The Council also enriched the doctrine on the supreme authority of the Church by emphasizing the role of the College of Bishops, which is reflected in the Code of Canon Law both in the generally formulated programmatic norm, but also in the regulation of the dispensational authority, which is now performed mainly by the bishops. The Pope is reserved to deal only with the gravest matters. The specifics of the constitutional framework of the Eastern churches show that the principle of synodality, which has been so typical for them is also remarkably in accordance with the requirement to implement subsidiarity within the Church itself.

Keywords: Canon Law, social doctrine, encyclicals, parents, education, the pope, the bishops, dispensation, Eastern churches

Introduction

Canon Law is a multi-layered phenomenon, which may be examined and treated also on the basis of principles, which have not been created in the canonical jurisprudence. A rich source of inspiration may be provided by civilistics (civil-

legal doctrine), for example, its notion of legality,[1] legal security,[2] or the proportionality principle.[3] Among the many other fields related in certain aspects to Canon Law is also the social doctrine of the Church.

The Influence of the Social Doctrine of the Church on the Code of Canon Law

The Church invites its members to make use of their means to support the Church and the needy. The extensive catalogue of obligations and rights of Catholic Christians (*christifideles*) in the 1983 Code of Canon Law (CIC/1983) also contains a provision of Canon 222, whose first section talks in detail about the support of specifically ecclesiastical activities, including charity work. However, the social engagement of Christians dealt with in Section 2 is formulated in a more general manner: "§ 1 The Christian faithful are obliged to assist with the needs of the Church so that the Church has what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of ministers. § 2. They are also obliged to promote social justice and, mindful of the precept of the Lord, to assist the poor from their own resources." The efforts to establish social justice and support the poor in the form of the canonical norm in § 2 refers to the commandment of the Lord Himself. Presumably it refers to the statement found in the Gospel of St. John: "This is my commandment: love one another as I love you" (Jn 15:12).

This aspect of the activity of the Church and its members is aptly characterized by Pope John Paul II in his encyclical *Sollicitudo rei Socialis*, Article 31:

> Thus, part of the teaching and most ancient practice of the Church is her conviction that she is obliged by her vocation—she herself, her ministers and each of her members—to relieve the misery of the suffering, both far and near, not only out of her "abundance" but also out of her "necessities."[4]

[1] Antonín Ignác Hrdina, *K vybraným aspektům zákonnosti v církvi* [On Selected Aspects of Legality in the Church], in *Revue církevního práva* 10 (2/1998): 81–90.

[2] Ignác Antonín Hrdina, *Právní jistota křesťana v katolické církvi* [Legal Security of a Christian in the Catholic Church], in *Revue církevního práva* 20 (3/2001): 187–99.

[3] Stanislav Přibyl, *Verhältnismässigkeitsprinzip auch im kanonischen Recht?*, in Piotr Szymaniec (ed.), *Zasada poporcjonalności a ochrona praw podstawowych w państwach Europy. The Principle of Proportionality and the Protection of the Fundamental Rights in the European States* (Wałbrzych: Wydawnictwo Państwowej Wyższej Szkoły Zawodowej im. Angelusa Silesiusa w Wałbrzychu, 2015), 389–400.

[4] John Paul II, *Sollicitudo rei Socialis*, in *Sociální encykliky (1891–1991)* [Social encyclicals (1891–1991)] (Praha: Zvon – české katolické nakladatelství, 1996), 385.

It is no wonder, therefore, that it led to the emergence of the idea that the primary owners of all the property associated with the Church are precisely the poor: "The attempts to view the poor as those who are by right determined as the owners of the Church assets have a rather historical significance."[5] Nevertheless, they express an ideal to which any handling of the assets of the Church should be oriented.

The same principles which the Church expects from other subjects in accordance with its social doctrine are obligatory for her also in relation to the lay faithful and clerics if they are entrusted with a specific service within the Church. These servants, staff or employees of the Church have—in accordance with Canon 231 § 2 CIC/1983—"the right to decent remuneration appropriate to their condition so that they are able to provide decently for their own needs and those of their family. They also have a right for their social provision, social security, and health benefits to be duly provided." Those who are in charge of Church legal persons with employees are directly obliged in Canon 1286 2° "to pay a just and decent wage to employees so that they are able to provide fittingly for their own needs and those of their dependents."

The Good of the Spouses

Very remarkable is also the impact the Church's social doctrine has had on the concept of the "good of the spouses" (*bonum coniugum*) as one of the two equal goals of marriage defined by Canon 1055 § 1 of CIC/1983:

> The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring (*ad bonum coniugum atque ad prolis generationem et educationem*), has been raised by Christ the Lord to the dignity of a sacrament between the baptized.

By common good (*bonum commune*) one traditionally understands the benefit of all the members of a specific community. It has most frequently been used on the level of the state or even the entire mankind, but the *Compendium of the Social Doctrine of the Church* uses it also to refer to smaller groups or communities (Article 165):

[5] Hans Heimerl, Helmuth Pree, and Bruno Primetshofer, *Handbuch des Vermögensrechts der katholischen Kirche* (Regensburg: Pustet Verlag, 1993), 61.

> No expression of social life—from the family to intermediate social groups, associations, enterprises of an economic nature, cities, regions, States, up to the community of peoples and nations—can escape the issue of its own common good, in that this is a constitutive element of its significance and the authentic reason for its very existence.[6]

The term "good of the spouses" entered into general cognizance after it had been used by Dominicus M. Prümmer in his manual of moral theology. He identified it as the most important goal of marriage: "The primary principle of both the married life in general and the marital act in particular, is a spiritual good of the spouses."[7] We should be reminded that his thesis was a novelty in its own right, because according to the then canonical regulation of the issue the procreation and education of the offspring was put above the mutual help of the spouses (*mutuum adiutorium*) and the means of satisfying bodily concupiscence (*remedium concupiscentiae*). The concept of the "good of the spouses" was unknown to Canon 1013 of the 1917 Code of Canon Law (CIC/1917). The turning point was the Pastoral Constitution *Gaudium et Spes* of Vatican II: Article 48 states that "for the good of the spouses and their off-springs as well as of society, the existence of the sacred bond no longer depends on human decisions alone." In fact, this is how the formulation *bonum coniugum* found their way to the canonical regulation of the new Code of Canon Law of 1983 and has remained an instance of the impact the social doctrine of the Church has had on the doctrine of the Canon Law.[8]

---

[6] Papežská Rada pro Spravedlnost a Mír; *Kompendium sociální nauky církve* [The Papal Council for Justice and Peace. *The Compendium of the Social Doctrine of the Church*] (Kostelní Vydří: Karmelitánské nakladatelství, 2008), 115–16.

[7] Dominicus M. Prümmer, *Manuale Theologiae Moralis secundum principia S. Thomae Aquinatis* III (Friburgi Brisgoviae, 1936), 503.

[8] "The expressed opinion of the Fathers of Vatican II as well as the text of CIC/1983 invites different interpretations. The advocates of the traditional (more legal) conception emphasize that the traditional doctrine expressed in CIC/1917 had not been rejected and so it is to be kept. However, looking at the preparatory documents and debates on the Council it seems as if this opinion is rather improbable or downright untenable." – Damián Němec, *Manželské právo katolické církve s ohledem na platné české právo* [The Marital Law of the Catholic Church in Relation to the Valid Czech Law] (Praha – Kostelní Vydří: Krystal – Karmelitánské nakladatelství, 2006), 18.

The Primary Role of Parents in the Process of Educating Their Children

However, this is not only a terminological inspiration. In many ways, the Canon Law adopts the essential viewpoint of the social doctrine in relation to the world and the society. This has also been the case with the application of the principle of subsidiarity, as it was formulated in the classical definition in the encyclical of Pope Pius XI. *Quadragesimo Anno* (1931), Article 79:

> Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.[9]

Evidently, there is hardly a more important institution in need of protection in the sense delineated by this papal statement than the institution of the family. The connection is clear: the education of children—as one of the mentioned main goals of marriage—should remain in the hands of the parents. They should be given preference in determining the value orientation of their offspring. This obligation is defined more concretely in Canon 793:

> Parents and those who take their place are bound by the obligation and possess the right of educating their offspring. Catholic parents also have the duty and right of choosing those means and institutions through which they can provide more suitably for the Catholic education of their children, according to local circumstances.

Clearly, the resonance of the social doctrine of the Church is apparent here, since the text of the legal norm is introduced with stating the general principle valid not only for the addressees of the legal norms, but also for all parents without exception. In fact, in relation to education they are to be given preference instead of the state or any other institution "further away "from the family. Catholic parents put this principle into practice as a duty rooted in the canon

[9] "This encyclical for the first time defines the concept of subsidiarity: the state and the society are obliged to provide support and help to the citizens and small communities; however, they must also grant them freedom. The state should not interfere in family matters, in the rights of parents to raise their children, in politics and in church matters."—*Předmluva k encyklice Quadragesimo Anno* [Preface to *Quadragesimo Anno*], in *Sociální encykliky* [Social encyclicals], 59.

law, as it is formulated in the Vatican II declaration *Gravissimum Educationis* inspired by Canon 226 § 2 of the Code:

> Since they have given life to their children, parents have a most grave obligation and possess the right to educate them. Therefore, it is for Christian parents particularly to take care of the Christian education of their children according to the doctrine handed on by the Church.[10]

The Role of the School in the Education of Children

The role of the state and other mediating institutions is also respected in canon law, as it is clear from Canon 793 § 2 of the Code: "Parents also have the right to that assistance, to be furnished by civil society, which they need to secure the Catholic education of their children."[11] The previous Code of 1917 held the assistance of the state to Catholic parents as a matter of course. Thus, in Canon 1217 it obliged parents to choose for their children only the confessionally formed Catholic schools: "Catholic children shall not attend non-Catholic, indifferent, schools that are mixed, that is to say schools open to Catholics and non-Catholic alike."

The 1983 Code, however, reflects both the concept of religious freedom delineated in the declaration *Dignitatis Humanae* of Vatican II, and the understanding of the role of parents as found in the declaration of the Council on Christian education *Gravissimum Educationis*. CIC/1983 thus approaches the issue of choosing the school differently. Canon 797 gives the parents freedom of choice: "Parents must possess a true freedom in choosing schools; therefore, the Christian faithful must be concerned that civil society recognizes this freedom for parents and even supports it with subsidies; distributive justice (*iustitia distributiva*) is to be observed."[12] In the field of education, the Church itself intends

[10] "The care for the necessities of life and the education of children is not only a duty for the parents, it is also the basis of certain human rights. Parents are primarily entitled to make decisions about the form and contents of the education of their children. This right is often endangered by the excessive influence of the state in the field of education which inappropriately abridges the rights of the parents. These unjustified interventions violate basic human rights, and so it is necessary to oppose them in a resolute manner." – Karl-Heinz Peschke, *Křesťanská etika* [Christian Ethics] (Praha: Vyšehrad, 1999), 487.

[11] "If the family cannot manage a certain task alone, e.g., in the field of education, the state must not consequently take over the role of the socialist state. Rather, it should—in accordance with the principles of subsidiarity—provide ensuring assistance stressing the personal aspect and only within the extent, which it is necessary." – Franz Furger, *Etika seberealizace, osobních vztahů a politiky* [The Ethics of Self-Realisation, Personal Relations and Politics] (Praha: Academia, 2003), 137–38.

[12] In the Czech Republic, this requirement seems to be met to a large extent: "Schools and educational institutions established by churches or religious institutions which have been autho-

to apply its subsidiary role to the state rigorously. This confirms Canon 800 § 1 of the Code: "The Church has the right to establish and direct schools of any discipline, type, and level." In order to make it possible for the Church to run the schools, the Code in Canon 800 § 2 imposes major duties on the faithful: "The Christian faithful are to foster Catholic schools, assisting in their establishment and maintenance according to their means."

Forming Associations of Catholic Christians

The right to found schools can be understood as a specific expression of the right of association, which the Code in Canon 215 grants to all the Christian faithful: "The Christian faithful are at liberty freely to found and direct associations for purposes of charity or piety or for the promotion of the Christian vocation in the world and to hold meetings for the common pursuit of these purposes." In the Church itself, one distinguishes between *public associations* (Canons 312–320 CIC/1983) and *private associations* (Canons 321–326 CIC/1983), which are formed by spontaneous initiative "from bellow." The subsidiarity is thus expressed not only by the fact that Catholic associations orient their activities towards the benefit of civil society, but also in the actual structure of the Church, where private associations fill the space that has not yet been taken by the institutions established via direct initiative of the Church hierarchy.

Decades before Vatican II, the model for such a development was set by the existing so-called Catholic Action. At the turn of the 19th and 20th centuries, the reform Pope Pius X reflected on its lay character, which he found as a positive development: Catholic Action "in any manner, direct or indirect […]

rized to carry out the special right to establish church schools […] are financed from the state budget. The state covers salaries, compensations for salaries and wages, working emergencies, bonuses for work beyond the employment contract and severance/redundancy payments. Moreover, it covers the social insurance expenses, and the contribution to the state employment policy and other expenses of labor-law relations, expenses necessary for teaching tools and textbooks, if the School Law expects them to be provided for free. Furthermore, the state covers the expenses for the further training of the pedagogical staff, activities directly associated with the running of the schools and educational institutions. In this aspect, the church schools find themselves in the same position as the schools established by the Ministry of Education. – Záboj Horák, *Církve a české školství. Právní zajištění působení církví a náboženských společností ve školství na území českých zemí od rok 1918 do současnosti* [Churches and Czech Educational System: The Legal Provision of the Activity of Churches and Religious Institutions in the Sphere of Education in Czech Lands from 1918 until the Present] (Praha: Grada Publishing, 2011), 112.

pertains to the divine mission of the Church."[13] In the interwar period, we saw a major increase in the spontaneous activities of the Catholic Action. However, Pope Pius XI understood its apostolate primarily as participation on the activities of the hierarchy. Therefore, it also required an explicit mandate from the hierarchy. Article 20 of the decree on the apostolate of the laity *Apostolicam Actuostitatem* of Vatican II states the following:

> Many decades ago the laity in many nations began to dedicate themselves increasingly to the apostolate. They grouped themselves into various kinds of activities and societies which, while maintaining a closer union with the hierarchy, pursued and continue to pursue goals which are properly apostolic. Of these associations, or even among similar and older institutions, those are especially noteworthy which followed different methods of operation and year produced excellent results for Christ's kingdom. These societies were deservedly recommended and promoted by the popes and many bishops, from whom they received the title of "Catholic Action," and were often described as the collaboration of the laity in the apostolate of the hierarchy.

Canon 225 of CIC 1983 symbolically expresses the outcome of this process and formulates the principle of the free initiative of the lay Christian faithful and the subsidiary role of their apostolate:

> Since, like all the Christian faithful, lay persons are designated by God for the apostolate through baptism and confirmation, they are bound by the general obligation and possess the right as individuals, or joined in associations, to work so that the divine message of salvation is made known and accepted by all persons everywhere in the world. This obligation is even more compelling in those circumstances in which only through them can people hear the gospel and know Christ.[14]

[13] "…Quocumque modo, directe aut indirecte, ad divinam Ecclesiae missionem pertineat." – Pius X., Encyclical *Il fermo proposito*, in *Acta Sanctae Sedis* XXXVII (1904–1905): 741–67, 744.

[14] "The field of apostolate delineated in Article 225 expresses the entirety of the mission of the Church. It is both a right and an obligation of the lay faithful to strive to spread the message of salvation, so that all the people in the world come to know and accept it. A lay person performs his/her service in the Church and in everyday life. In this Canon, the legislator does not distinguish between the Church and the world. Their activities become part of the missionary orientation of the Church, because they should perform this mission in those places, where this message may be heard only through them." – Jozef Ivan, *Laici v kánonickej normatíve Katolíckej církvi* [The Lay Faithful in the Canonical Normativity of the Catholic Church] (Michalovce: Redemptoristi, Vydavateľstvo Misionár, 2013), 96.

The Media of Mass Communication

The application of the subsidiarity principle in the public sphere is also related to the use of the media of mass communication. In this field, the state monopoly is undesirable. The Church too can make use of the mass media for preaching its doctrine and has the right to have them at its disposal, as it is stipulated in Canon 747 CIC/1983: "The Church […] has the duty and innate right, independent of any human power whatsoever, to preach the gospel to all peoples, also using the means of social communication proper to it."[15] The canonical regulation is the outcome of the impulses of Vatican II, particularly the decree *Inter Mirifica* on the media of social communication. Article 3 of the decree expects that the lay faithful will be involved in this process:

> The Catholic Church, since it was founded by Christ our Lord to bear salvation to all men and thus is obliged to preach the Gospel, considers it one of its duties to announce the Good News of salvation also with the help of the media of social communication and to instruct men in their proper use.

The Relation of Papal and Episcopal Power

Increasingly, the principle of subsidiarity has also been applied in the hierarchical system of the Church organization. This is evident when we compare the regulation of 1917 Code and the Code promulgated in 1983. The first does not attribute any importance to the principle of subsidiarity. At the time, when the 1917 Code was published the concept of subsidiarity typical for the Catholic social teaching was still taking form. According to Canon 218 § 2 CIC/1917, the pope as the successor of Peter, has the supreme and complete jurisdiction over the whole of the Church. His authority can shortly be defined as a public power to lead the baptised faithful to all things related to their salvation. This power

[15] "In fulfilling the mission of the Church to preach the Gospel to all people, one cannot ignore the use of the media of mass communication, both classical/traditional and modern ones. The Church has a task and innate right to make use of them, because they are useful and necessary for the Christian formation and in fulfilling the work of salvation. That is why the Church, shortly after the invention of the printing press (1455), started to look for ways to make use of this invention for the benefit of its mission of evangelisation." – Miloš Pekarčík, *Učiaca úloha cirkvi. Kánonicko-teologická analýza tretej knihy Kódexu kánonického práva* [The Teaching Office of the Church: A Canonical and Theological Analysis of the Third Book of the Code of Canon Law] (Levoča: MTM, 2013), 168.

is characterized as "truly episcopal, ordinary, and immediate (*vere episcopalis*, *ordinaria et immediata*), both over each and every pastor and faithful independent from any human authority. The authority of the bishops is stipulated in Canon 329: "Bishops are successors of the Apostles and by divine institution are placed over specific churches that they govern with ordinary power (*potestas ordinaria*) under the authority of the Roman Pontiff."

The kind and extent of the competences thus overlap in both of the subjects, but the authorization is different: in the case of the Roman Pontiff, it is his position as the successor of Peter; for the bishop, it is his position as the head of a particular church. The pope can undoubtedly intervene "bossily" into the governance of a particular church which is legally valid in the same way as when the responsible bishop made the decision. However, even in the 1917 Code in Canon 228 § 1 stipulated that "an Ecumenical Council enjoys supreme power over the universal Church."

Nevertheless, Vatican II focused its attention on the context of the primatial authority of the Roman Pontiff and the collective body of the assembly of bishops in the communion with each other and in communion with the pope. John Paul II called the 1983 Code of Canon Law "the last document of the Second Vatican Council" because many of the canons directly resonate the teaching of the Council. This is also the case of Canon 330, which reproduces the basic premise found in Article 22 of the Council's dogmatic constitution on the Church *Lumen Gentium*: "Just as in the Gospel, the Lord so disposing, St. Peter and the other apostles constitute one apostolic college, so in a similar way the Roman Pontiff, the successor of Peter, and the bishops, the successors of the apostles, are joined together."[16]

The outcome of this is the obligation of the pope to foster a permanent communion with the bishops, as it is formulated in Canon 333 § 2 of CIC/1983: "In fulfilling the office of supreme pastor of the Church, the Roman Pontiff is always joined in communion with the other bishops and with the universal Church." His intervention into the matters concerning the local churches have an explicitly supportive, subsidiary character. In accordance with the 1917 Code (Canon 333 § 1), the Roman Pontiff "not only possesses power offer the universal Church but also obtains the primacy of ordinary power offer all particular churches and groups of them," as it was already stipulated in the 1917 Code,

[16] "Vatican II created an important sketch of the teaching about the episcopate and the synod of bishops. The teaching about the episcopate supplemented the teaching on the hierarchical constitution of the Church. The third chapter of the dogmatic constitution on the Church *Lumen Gentium* presents the second image of the dogmatic diptych on the hierarchical constitution of the Church which needs to be laid aside the first image, which is the dogmatic constitution *Pastor Aeternus* of Vatican I on the papal primacy." – Pietro Fietta, *Cirkev, diakonia spásy. Základné rysy ekleziológie* [The Church as the Diakonia of Salvation: The Fundemnetals of Ecclesiology] (Prešov: Vydavateľstvo Michala Vaška, 2001), 181.

however, what is new in the 1983 text, is that the papal power "strengthens and protects the proper, ordinary, and immediate power which bishops possess in the particular churches entrusted to their care." Moreover, we find here also the regulation of Canon 334 which formulates in an obligatory manner the need for cooperative assistance, because "bishops assist the Roman Pontiff in exercising his office. They are able to render him cooperative assistance in various ways, among which is the synod of bishops."[17]

Dispensational Authority

Clearly, these pronouncements of the Council reproduce above all the theologically based principles. About their canonical application, however, we need to refer to the concrete outcome of these emphases of the Council. This becomes evident, for example, in the dispensational practice of the Church. In the earlier conception, the bishop was in the exercise of his powers dependant on the powers assigned to him by the pope. Therefore, it was basically a concessional system. The new conception, based on the primary autonomy of the bishop's powers, is labelled as reservational. The pope now reserves for himself only those powers that are important for the functioning of the entire Catholic Church, and their significance transcends the interior life of the particular dioceses and their faithful.

This is also evident in the exercise of the dispensational duties. The 1917 Code formulates the dispensational authority appertaining to the pope as its one and only source in Canon 81:

> Ordinaries below the Roman Pontiff cannot dispense from the general laws in the Church, even in a specific case, unless this power has been explicitly or implicitly granted them, or unless recourse to the Holy See is difficult and there is also a grave danger of harm in delay and the dispensation concerns a matter from which the Apostolic See is wont to dispense.

In Canon 87 of CIC/1983, however, it is principally the bishop, who is entrusted with the dispensational authority: "A diocesan bishop, whenever he judges that it

[17] "The objections against the principle of the primacy of the Roman Pontiff will fade away if we see in him not only an absolute power of some kind, but chiefly the center of unity and persistence of the Church and beyond that we notice that there is the college of the bishops represented by the synod and the permanent secretariat." – Wincenty Granat, *K člověku a Bohu 3. Nástin katolické dogmatiky* [Towards Man and God: the Outline of Catholic Dogmatics]. (Řím: Velehrad – Křesťanská akademie, 1982), 42.

contributes to their spiritual good, is able to dispense the faithful from universal and particular disciplinary laws issued for his territory or his subjects by the supreme authority of the Church." The pope exercises his dispensational powers only in the most pressing cases. Therefore, we may now talk about a reservational system.

The subsidiary character of the legal institution of the dispensation can also be seen in the fact that in accordance with Canon 80 of the previous Code, the dispensation could only be given by the legislator, whereas Canon 85 CIC/1983 gives the dispensational authority to those who carry the executive power. Thus, in everyday dispensational practice, the bishops can be replaced by general vicars. This is connected with the abandonment of the earlier canonistic idea that dispensation is a legislative act, given that by its exercise the law is "abolished" even in a single, unique case. The newer concept puts more emphasis on the singularity of the issue which does not revoke general validity of the law; the dispensation thus can also be given to those who exercise the executive power.[18]

The Eastern Catholic Churches

It is also necessary to pay attention to the specific issues of the Eastern Catholic churches, which present a particular pattern of relations in the organism of the universal Church. Its system may be described as being in accordance with the model of subsidiarity. The actual Code of Canons of the Eastern Churches (CCEO) is conceived as consolidated statues for all these churches *sui iuris*, which consistently refer to their particular laws wherever it is possible. Its legal regulation is thus subsidiary to the law of individual Eastern churches.[19]

However, the very framework of the Catholic Eastern churches is different from the Latin church: while in the latter the patriarchal structure—the con-

[18] "The first author who developed a legal definition of the dispensation was Rufinus. He defined it as "canonici rigoris causalis derogation." In the course of time, another term started to take root in the doctrine: instead of the term 'derogatio,' 'relaxatio' came to be used. It is a term which better suits the state of things: in the act of dispensation, the law remains valid, but the subject is released from its obligatory character." – Ján Duda, *Katolícke manželské právo* [Catholic Marital Law]. Spišská Kapitula – Spišské Podhradie: Kňazský seminár J. Vojtaššáka, 1996, 139–140.

[19] "It is not a code in the modern sense of the word, i.e., a body of general laws of the Eastern churches which would abrogate and replace the existing laws. Neither is it a body of synthetic and abstract norms which would create a coherent and closed system. It is a kind of "compilation" adopting an aged-old law and adjusting it to modern requirements." – Jiří Dvořáček, *Východní kanonické právo. Úvod do studia* [Eastern Canon Law: an Introduction] (Praha: Apoštolský exarchát řeckokatolické církve a Institut sv. Kosmy a Damiána, 2014), 30.

necting link between the papal and episcopal power—was "swallowed," major Eastern churches have kept it. CCEO provides a definition of a patriarch in Canon 56: "A patriarch is a bishop who enjoys power over all bishops including metropolitans and other Christian faithful of the Church over which he presides according to the norm of law approved by the supreme authority of the Church."[20] The patriarchal constitution thus presents an important connecting link between the papal and episcopal authority. One of the marks of autonomy is for example the fact that once a patriarch has been elected by the synod, he is not approved by the pope, but the patriarch has an obligation (Canon 76 § 2) "as soon as possible request ecclesiastical communion (*ecclesiasticam communionem*) from the Roman Pontiff by means of a letter signed in his own hand."

Moreover, the Eastern churches, both Catholic and non-Catholic, are governed by the principle of synodality, "sobornost," where the synod as a collective body of a certain group of hierarchs supports their individual decision-making whereby harmonic interconnection of both these elements is established and the lower level supports the higher one. This principle has found a classical expression in 34th Apostolic Canon.[21] "The bishops of every nation must have their primate and respect him as the head. They must not undertake anything beyond their authority without his consent. Each bishop should take care of their eparchy and the places belonging to it. However, even the primate should not undertake anything unknown to the other bishops, since only in this way a unity may be established and God praised through the Lord in the Holy Ghost—the Father, the Son and the Holy Ghost."[22]

---

[20] "There is no definition of a patriarch in the Latin church (cf. Canon 438), but one can find it in the Code of Canons of the Eastern Churches. This definition, however, cannot be applied on the patriarchs of the Latin church, where a bishop of a particular diocese sometimes holds the title of a patriarch. A patriarch in an Eastern church possesses a legitimate jurisdiction over the bishops and faithful of his patriarchate, and a patriarchate is a collection of eparchies. In the Latin church, the Roman Pontiff holds the title of a patriarch, as well as the patriarch of Venice, Lisbon, the western Indies patriarch with the seat in Madrid and the patriarch for Eastern India with the seat in Goa." – Ján Duda, *Náčrt právnej ekleziológie* [An Outline of Legal Ecclesiology] (Spišská Kapitula – Spišské Podhradie: Kňazský seminár J. Vojtaššáka, 2002), 186–87.

[21] "The collection *Canones apostolorum* (Apostolic Canons) is clearly an apocryphal work coming most likely from Syria of the 4th and 5th centuries that […] pretends that the author is St. Clement (92-around 101). Originally, it contained 50 canons, later their number increased to 85." – Vojtech Vladár, *Pramene práva v Katolíckej církvi v historickom vývoji* [The Sources of Law in the Catholic Church in Historical Perspective] (Plzeň: Aleš Čeněk, 2009), 75.

[22] *Pravidla všeobecných a místních sněmů i sv. otců pravoslavné církve* [The Rules of General and Local Synods and the Holy Fathers of the Orthodox Church] (Praha: Pravoslavná církev v Československu, 1955), 10.

Conclusion

The definition of subsidiarity, as conceived by the social doctrine of the Church, results in twofold requirement: firstly, what the individuals (or smaller and lower communities) can do with their own initiative should not be taken away from them and, secondly, "subsidiary assistance" should be provided, when larger and higher communities are supposed to intervene if individuals (or smaller and lower communities) are not able to reach what is necessary. In the life of the Church and its faithful, this presents a major challenge for the parents who should raise their children in accordance with their own worldview, without the intervention of the state. This doctrine is also reflected in the Code of Canon Law which regulates the rights of parents in the educational process. The Code also emphasizes the subsidiary role of the lay initiatives and their associations in the organism of the Church. The actual hierarchical constitution of the Church has benefited from this new impulse, because the exercise of the papal primacy is now placed into the wider context of the hierarchical community with the bishops and among the bishops themselves. The bishops carry their own autonomous responsibility which can be strengthened by further papal interventions. Looking at the Code of Canons of the Eastern Churches, we see that the synodal principle, typical for the churches of the Christian East, in their own right reflects the subsidiarity within the framework of the church organism.

Bibliography

Bible. Český ekumenický překlad. Bible Kralická [The Holy Bible: Czech Ecumenical Translation and The Bible of Kralice]. Praha: Česká biblická společnost, 2008.

Code of Canon Law in English. http://www.vatican.va/archive/ENG1104/_INDEX.HTM.

Code of Canons of Oriental Churches. IntraText Edition CT, Copyright Èulogos 2007. http://www.intratext.com/X/ENG1199.

Dokumenty II. Vatikánského koncilu [The Documents of Vatican II]. Kostelní Vydří: Karmelitánské nakladatelství, 2002.

Duda, Ján. *Katolícke manželské právo* [Catholic Marital Law]. Spišská Kapitula – Spišské Podhradie: Kňazský seminár J. Vojtaššáka, 1996.

Fietta, Pietro. *Cirkev, diakonia spásy. Základné rysy ekleziológie* [The Church as the Diakonia of Salvation: The Fundamentals of Ecclesiology]. Prešov: Vydavateľstvo Michala Vaška, 2001.

Furger, Franz. *Etika seberealizace, osobních vztahů a politiky* [The Ethics of Self-Realisation, Personal Relations and Politics]. Praha: Academia, 2003.

Granat, Wincenty. *K člověku a Bohu 3. Nástin katolické dogmatiky* [Towards Man and God: The Outline of Catholic Dogmatics]. Řím: Velehrad – Křesťanská akademie, 1982.

Heimerl, Hans, Helmuth Pree, and Bruno Primetshofer. *Handbuch des Vermögensrechts der katholischen Kirche*. Regensburg: Pustet Verlag, 1993.

Horák, Záboj. *Církve a české školství. Právní zajištění působení církví a náboženských společností ve školství na území českých zemí od roku 1918 do současnosti* [Churches and Czech Educational System: The Legal Provision of the Activity of Churches and Religious Institutions in the Sphere of Education in Czech Lands from 1918 until the Present]. Praha: Grada Publishing, 2011.

Hrdina, Antonín Ignác. *K vybraným aspektům zákonnosti v církvi* [On Selected Aspects of Legality in the Church]. In *Revue církevního práva* [Canon Law Review] 10 (2/1998): 81–90.

Hrdina, Ignác Antonín. *Právní jistota křesťana v katolické církvi* [The Legal Security of a Christian in the Catholic Church]. In *Revue církevního práva* 20 (3/2001): 187–199.

Ivan, Jozef, *Laici v kánonickej normatíve Katolíckej cirkvi* [The Lay Faithful in the Canonical Normativity of the Catholic Church]. Michalovce: Redemptoristi, Vydavateľstvo Misionár, 2013.

Kodex kanonického práva. Úřední znění textu a překlad do češtiny. Latinsko-české vydání s věcným rejstříkem [The Code of Canon Law. The Official Text and Translation into Czech. Latin-Czech Publication with Subject Index]. Praha: Zvon, 1994.

Kompendium sociální nauky církve [The Compendium of the Social Doctrine of the Church]. Kostelní Vydří: Karmelitánské nakladatelství, 2008.

Němec, Damián. *Manželské právo katolické církve s ohledem na platné české právo* [The Marital Law of the Catholic Church in Relation to the Valid Czech Law]. Praha – Kostelní Vydří: Krystal – Karmelitánské nakladatelství, 2006.

Pazourek, Miroslav. *Manuál pro Codex canonum Ecclesiarum orientalium aneb Úvod do Kodexu kánonů východních* církví [A Manual for Codex canonum Ecclesiarum orientalium or an Introduction to the Code of Canons of the Eastern Churches]. Praha: Karolinum, 1998.

Pekarčík, Miloš. *Učiaca úloha cirkvi. Kánonicko-teologická analýza tretej knihy Kódexu kánonického práva* [The Teaching Office of the Church: A Canonical and Theological Analysis of the Third Book of the Code of Canon Law]. Levoča: MTM, 2013.

Peschke, Karl-Heinz. *Křesťanská etika* [Christian Ethics]. Praha: Vyšehrad, 1999.

Pius X., Encyklika *Il fermo proposito*. *Acta Sanctae Sedis* XXXVII (1904–1905): 741–767.

Pravidla všeobecných a místních sněmů i sv. otců pravoslavné církve [The Rules of General and Local Synods and the Holy Fathers of the Orthodox Church]. Praha: Pravoslavná církev v Československu, 1955.

Prümmer, Dominicus M. *Manuale Theologiae Moralis secundum principia S. Thomae Aquinatis* III, Friburgi Brisgoviae, 1936.

Přibyl, Stanislav. *Verhältnismässigkeitsprinzip auch im kanonischen Recht?* In Piotr Szymaniec (ed.), *Zasada poporcjonalności a ochrona praw podstawowych w państwach Europy. The Principle of Proportionality and the Protection of the Fundamental Rights in the European States*, 389–400. Wałbrzych: Wydawnictwo Państwowej Wyższej Szkoły Zawodowej im. Angelusa Silesiusa w Wałbrzychu, 2015.

Sociální encykliky (1891–1991) [Social Encyclicals (1891–1991)]. Praha: Zvon – české katolické nakladatelství, 1996.

The 1917 Pio-Benedictine Code of Canon Law. In English Translation with Extensive Scholarly Apparatus. Dr. Edward N. Peters – curator. San Francisco: Ignatius Press, 2001.

Vladár, Vojtech. *Pramene práva v Katolíckej církvi v historickom vývoji* [The Sources of Law in the Catholic Church in Historical Perspective]. Plzeň: Aleš Čeněk, 2009.

Stanislav Přibyl

Le principe de subsidiarité dans le Code de droit canonique

Résumé

Tandis que le Code de droit canonique de 1917 a été promulgué à l'époque où la doctrine sociale de l'Église était toujours en état de formation, le nouveau code de 1983 est apparu après le concile Vatican II et après la publication des documents principaux de la doctrine sociale de l'Église. Le code oblige tous les croyants à assumer une partie de responsabilité des affaires sociales au monde, et l'Église elle-même s'engage à assurer à ses employés des prestations sociales conformément aux standards adoptés dans la doctrine sociale de l'Église. Le code reflète aussi le principe de subsidiarité dont la définition classique a été donnée dans l'encyclique *Quadragesimo anno* du pape Pie XI (1931). Cela trouve son reflet dans l'attitude à l'égard de la famille et dans l'éducation des enfants envers leur rôle de croyants séculiers et leurs associations ou encore l'usage des médias de masse. Le Conseil a également enrichi la doctrine sur le pouvoir suprême de l'Église, en soulignant le rôle du collège d'évêques, ce qui a trouvé son reflet dans le Code de droit canonique, aussi bien dans la forme générale de programme que dans la régularisation du pouvoir de dispense qui est exercé aujourd'hui notamment par les évêques. Le pape s'occupe uniquement des affaires les plus importantes. L'examen précis du cadre constitutionnel des églises orientales montre que le principe de synodalité, tellement caractéristique de leur fonctionnement, est aussi remarquablement en accord avec l'exigence de l'application du principe de subsidiarité à l'Église elle-même.

Mots clés: droit canonique, doctrine sociale, encycliques, parents, éducation, pape, évêques, dispense, Églises orientales

Stanislav Přibyl

Il principio di sussidiarietà nel Codice di Diritto Canonico

Sommario

Mentre il Codice di Diritto Canonico del 1917 fu promulgato in un'epoca in cui la dottrina sociale della Chiesa era ancora in fase di formulazione, il nuovo Codice del 1983 è uscito dopo il Concilio Vaticano II e dopo la pubblicazione dei documenti principali della dottrina sociale della Chiesa. Il Codice obbliga tutti i fedeli ad assumersi una parte della responsabilità per le questioni sociali nel mondo mentre la Chiesa stessa si impegna a garantire ai suoi lavoratori le prestazioni sociali conformemente agli standard assunti nella dottrina sociale della Chiesa. Il Codice riflette anche il principio di sussidiarietà la cui definizione classica fu indicata nell'enciclica *Quadragesimo anno* di Pio XI (1931). Ciò trova riflesso nella condotta nei confronti della famiglia e dell'educazione dei figli, verso il ruolo dei fedeli laici e delle loro associazioni o rispetto all'uso dei mezzi di comunicazione di massa. Il Consiglio ha anche arricchito la dottrina dell'autorità suprema della Chiesa, sottolineando il ruolo del collegio episcopale, cosa che ha trovato riflesso nel Codice di Diritto Canonico, sia nella norma programmatica formulata genericamente, sia nella regolamentazione dell'autorità dispensatoria che attualmente è esercitata principalmente dai vescovi. Il Papa si occupa esclusivamente delle questioni più gravi. Uno sguardo dettagliato alle cornici costituzionali delle chiese orientali mostra che il principio di sinodalità così caratteristico per loro è anche eccezionalmente conforme al requisito di applicazione del principio di sussidiarietà nella Chiesa stessa.

Parole chiave: diritto canonico, dottrina sociale, encicliche, genitori, istruzione, papa, vescovi, dispensa, Chiese orientali

Part Three

Reviews

Philosophy and Canon Law vol. 3 (2017), pp. 259–263

Patrick J. Deneen, *Why Liberalism Failed*, 248 pp. New Haven, CT: Yale University Press, 2018

Talk of liberalism is just about everywhere now. The resurgence of the discussion is due in large part to the recent book by University of Notre Dame political theorist Patrick Deneen, *Why Liberalism Failed.* Deneen's basic thesis contends that liberalism, as the last standing ideology defeating all others, has failed precisely because it has succeeded. The discontent vocalized by democratic citizens throughout America and Europe can thus be understood to be a result of the principles at the core of liberal political and philosophical thought.

Deneen's *modus operandi* is an activity that resembles what the American political philosopher David Walsh calls putting "liberalism itself to the test" ("Truth and the Liberal Tradition," *Modern Age*, 1994*:* 254). For Deneen,

> Liberalism's success today is most visible in the gathering signs of its failure. It has remade the world in its image, especially through the realm of politics, economics, education, science, and technology, all aimed at achieving supreme and complete freedom through the liberation of the individual from particular places, relationships, memberships, and even identities (16).

The referent for "remaking of the world in its image" would be the fundamental principles of the liberal world view. Deneen's claim here is insightful, for it helps his readers to see more clearly the nature of first principles. In his book, *Unity of Philosophical Experience*, the medieval historian Etienne Gilson

> In the first place, philosophers are free to lay down their own sets of principles, but once this is done, they no longer think as they wish—they think as they can […] any attempt on the part of a philosopher to shun the conse-

> quences of his own position is doomed to failure. What he himself declines to say will be said by his disciples […] (243).

Deneen's account of liberalism pays close attention to those principles that the early modern thinkers were "free to lay down." The first principles established by Bacon, Hobbes, Locke, and lets not forget Descartes, are such that they (or their followers) are "constrained" to draw the conclusions that are set by the limits of their principles. There are a variety of approaches to reading the early moderns, especially Hobbes and Locke. Deneen's reading, however, alerts the readers to the fact that the conclusions drawn can only come from their principles. If we do not like the conclusions with respect to Lockean anthropology or epistemology, we are not free, as Gilson notes, "to shun the consequences" of one's own position. This was precisely the philosophic activity we witness in the Platonic dialogues. As Socrates so often shows his interlocutors, if you are not satisfied with your conclusions, then you must re-examine your principles, or run the risk of being trapped in a contradiction.

At the heart of the liberal worldview, according to Deneen, is the contention that human beings are predominantly understood as individuals severed from any context except that which is chosen. As a result of this first principle, democratic citizens have become disembodied from the real order of things (*nature and culture*), tend to see the world through the lens of well-being and the present (*history*), and their Cartesian philosophical method orients us towards a loss of place and transcendence (*non-metaphysical*). This "myth" that grounds the political philosophy of liberalism means that human beings are "rights-bearing individuals who could fashion and pursue for themselves their own version of the good life" (1). Deneen's description echoes Alexis de Tocqueville's similar observation about Americans regarding the relationship between freedom, rights, and limited government:

> In fact, Americans see in their freedom the best instrument and the greatest guarantee of their well-being. They love these two things for each other. They therefore do not think that meddling in the public is not their affair; they believe, on the contrary, that their *principle affair is to secure by themselves a government that permits them to acquire the goods they desire and that does not prevent them from enjoying in peace those they have acquired* (*Democracy in America*, 517. Emphasis mine).

For both Tocqueville and Deneen, such a condition is troubling. To see why this is the case, it is helpful to consider a critical review of Deneen's book offered by Shadi Hamid ("The Rise of Anti-Liberalism," *The Atlantic*, February 20, 2018). Hamid observes that while liberalism has its faults, he "wouldn't want to live under a non-liberal or even a less liberal system." His position rests upon his concluding argument against those like Deneen: "What liberalism's critics

appear unable, or unwilling, to address is whether a lack of meaning is a worse problem to have than a lack of freedom." Hamid's question can be rephrased this way: would we hope to live in a liberal democracy surrounded by endless choice that is presupposed to no *telos*, or live in something akin to an Islamic world where there is an absence of freedom? On the surface, such a stark dichotomy is rather attractive intellectually, and the answer quite obvious.

At the same time, the dichotomous dialectic of meaning or freedom is one that Deneen is intimately aware of already. Hamid neglects the profound temptation for a lack a meaning in life, especially as it relates to social and political life in contemporary democratic societies. Deneen provides the historical and social context that gives strength to his critique of liberalism. Speaking to the "basic political psychology" of the democratic age, Deneen writes that

> a signal feature of modern totalitarianism was that it arose and came to power through the discontents of people's isolation and loneliness. A population seeking to fill the void left by the weakening of more local memberships and associations was susceptible to a fanatical willingness to identify completely with a distant and abstract state. (59)

In Deneen's reasoning, the first point is to recognize that the existential void of meaning will seek fulfillment in something, and in a political context, a total system does not merely become an option, but deeply alluring. The liberal myth of autonomy, along with the rise of the equality of social conditions, puts democratic citizens into a paradoxical condition: they are liberated from ties of presupposed association, and yet, such liberation "in turn generates liberalism's self-reinforcing circle, wherein the increasingly disembedded individual ends up strengthening the state that is its own author" (59). Deneen goes on to note that once human beings are isolated, thrown back upon their resources of themselves alone, "the more likely that a mass of individuals would inevitably turn to the state in times of need" (61). Deneen's deepest concern, one shared by Tocqueville, is not just that democratic citizens will be set in an oscillating dialectic between statism and individualism. Rather, such citizens will neglect to consider the darker paradox, namely, that "statism enables individualism, individualism demands statism" (17).

While there is much to praise in Deneen's book, it is also worth considering a certain question that needs further clarification. The question to raise concerns Deneen's judgment that the American Founding put into practice the destructive principles that constitute the liberal ethos. The concern with such an approach is not that there is not truth to it. Rather, it seems to overlook the more fundamental issue that concerns the possibility of democratic societies.

One needs to consider Tocqueville's judgment that the origins of America are not the Founding of 1776; its foundations, instead, were incarnated by the

Puritans who breached the Massachusetts shore in the 17th century. This is no small point. Perhaps the various ways in which one can interpret the documents of the American founding fathers is, at some level, a result of the vagueness of the documents themselves. One can see in the Declaration of Independence or the Constitution the seeds of both a Thomistic political philosophy as well as a Lockean individualism that is problematic. The juxtaposed readings are not so much a critique of these American documents as it is a simple sociological affirmation that they were not intended to address the most serious problems and vital potencies of American democratic life. Could it be the case that much of the contemporary discussion about the American Founding of 1776 ends with interlocutors talking past each other?

This initial question orients us towards an additional one worth examining, which is Deneen's answer to the failure of liberalism. According to Deneen, what democratic citizens need is the cultivation of what he calls "civic polis life." According to David Walsh, it has become somewhat normative to contend that liberalism can be salvaged only by a recovery of ancient and medieval political and philosophical principles. Walsh agrees with such an understanding in a number of significant ways, yet still wonders: "[…] is there not an element of escapism secreted in the very heightening of the contrast between them (i.e., liberal traditions vs. pre-liberal ones)?" The challenge, according to Walsh, is "that of finding a *modus vivendi* that will enable the life of reason to be carried on in a world that is pervaded by unreason." Walsh contends that the "mere assertion of premodern truth, without any attempt to mediate it in language that renders it minimally intelligible from a liberal perspective, would be futile" ("Truth and the Liberal Tradition," 256).

"Polis life" is certainly an echo of Aristotle's understanding of political life centered upon a true and commonly shared account of what it ultimately good for human beings. Deneen certainly has this in mind, but what can be overlooked is that this participation in civic life as self-governance is imbedded in something that must come to exist prior to a theoretical articulation of a more robust philosophical anthropology. As Deneen argues,

> It is likely from the lessons learned within these communities that a viable post-liberal political theory will arise, one that begins from fundamentally different anthropological assumptions […] [built on] the learned ability to sacrifice one's narrow personal interest not to abstract humanity, but for the sake of other humans.

Deneen's anti-utopian description of "polis life" can be defined in following way: "[…] forms of self-governance that arise from shared civic participation" (192). What Deneen is arguing for the emergence of culture itself, although he sometimes coins this as something "new." The predominant notion of the cultures of "state" and "market" can only be understood within a more substantial

whole of cultus as "a set of generational customs, practices, and rituals that are grounded in local and particular settings" (64).

Deneen's argument seems to be that a "viable post-liberal political theory" can *only* be temporally grounded in the prior actualization of coming together in multifaceted forms of associational life. It is when we come to associate together, in the local and particular arenas of our neighborhoods and civic life, can we learn the "ability to sacrifice one's narrow interest not to abstract humanity, but for the sake of other humans." This is why Deneen concludes that,

> What we need today are practices fostered in local settings, focused on the creation of new and viable cultures, economics grounded in virtuosity within households, and the creation of civic polis life. *Not a better theory, but better practices*. (197)

Perhaps one could argue that Deneen is giving too much credence to the possibility of a viable political anthropology arising within the democratic age. However, Deneen is more than astute than most to recognize that the dialectic of modern liberal democracy (loneliness and statism) entails, at the most foundational level, that we come together in local forms of association. This claim is not primarily about changing social structures and institutions; such a daunting task is only conceivable after democratic citizens come together and see that they really do need each other. We could say that joining together with other people, in real embodied places, is the unacknowledged potential for democratic citizens.

The judgment about the potency of democracy is important for those who wish to become somewhat intellectually imbalanced in their critiques of Deneen. To recognize that we are in need of one another is the reason for Deneen's emphasis upon fostering better practices rather than developing a new theory. Deneen's Tocquevillian precursor to a truer philosophical anthropology first entails rejoining human beings back together in those local settings that are the ground for drawing us outside of ourselves, which is arguably the perennial temptation for democratic citizens. The true founders of America, the Puritans, knew this well with their habits and practices of association.

Our democratic practices have the potential to deepen our attachment to "particular places, relationships, memberships, and even identities." We could conclude with a provocative question that comes from Susan Pinker's recent book, The Village Effect: "where is all the buzz about getting together?" Professor Deneen's *Why Liberalism Failed* is a major contribution to this deeply existential need in our democratic times.

Brian Jones
University of St. Thomas, Houston, TX, USA

Philosophy and Canon Law vol. 3 (2017), pp. 265–269

Pierre Manent, *Seeing Things Politically: Interviews with Bénédicte Delorme-Montini*, Translated by Ralph C. Hancock, Introduction by Daniel J. Mahoney, 240 pp. South Bend, IN, USA, St. Augustine Press, 2015

Pierre Manent is one of the most important political philosophers of our day. His books provide a rich historical perspective on political developments in the west; he lays out the distinctive contributions of the Greek, Roman, medieval and modern forms of political forms in his magisterial *The Metamorphoses of the City*. In his previous books, *The Intellectual History of Liberalism*, *The City of Man*, and *Tocqueville and the Nature of Democracy*, he identifies the various strands and tensions within modern liberal democracy. His most recent book, *Seeing Things Politically*, is autobiographical; it is a rich examination of his intellectual formation and growth from the 1970s until the present. In this book we discover the core insights and problems that spawned each book. These autobiographical and philosophical essays take the form of a series of interviews by Bénédicte Delorme-Montini. In the preface, "Seeing Things Politically," (1–9) he states what his intellectual project is all about. He seeks to understand human nature and human affairs. Such an anthropological quest must turn to political philosophy; man is political by nature and it is political order that gives human life its distinctive form and feel. The fundamental order and disorder in our age, and each age, turns on political association. Through a study of ancients and moderns, Aristotle and Machiavelli, he finds a way around the incoherence and disorders of Marxian totalitarianism and Nietszchean nihilism. The discovery and rejuvenation of a "liberal political science of democracy" are an important

part of a political and philosophical response to the collapse of communism. And now liberal democracy faces a new crisis in the loss of a coherent political order. Manent seeks to address the philosophical questions pertaining to political association today in the context of the European Union and the decline of the nation-state.

In the first half of the book (part one, "Apprenticeships," and two, "Philosophy, Politics and Religion"), Manent gives the reader a close look at French political life as well as the French intellectual scene over the last 40 years. Leo Strauss, Alan Bloom, and Raymond Aron loom large in the intellectual life of Pierre Manent. There are a number of evocative personal vignettes sketched out in the book, including a warm memory of Allan Bloom. But it was his mentor Raymond Aron who awakened Manent to the possibility of "seeing things politically" and who opened the way to recover a more practical and yet theoretically informed account of political life in the west. Aron is described as "the perfect gentleman who experienced no need of transcendence" and he "gave each person what seemed to him best for that person without worrying about his own influence." Aron helped Manent find his way through the intellectual confusion and moral disarray of postwar France. The young Manent faced a choice between the Communist hopes of his father and the opposing power and prestige of the United States. Aron assisted him to understand the nature of political prudence, which establishes a balance between principles defending human freedom and dignity with the realistic alternatives and necessities of concrete political life. Simply put, "Aron knew what he was talking about" whereas the communist Sartre did not. Manent discovered that "Christian-democratic-capitalist America" embodies a strong and confident modern soul that remains "distinctive of the West" and in fact was distinctive of the West in Europe. Manent was then led to the deeper questions of political philosophy for greater clarity on the regime of freedom. As he pursued his studies at the provincial lycée and the École Normal Supérieure in the late 1960s the passions and subsequent ideologies of the student revolt of 1968 did not stir him as deeply as did the recovery of ancient philosophy and the study of Tocqueville. He participated in the Tocquevillean school of French thought around the journals *Contrepoints* and *Commentaire*. From his teacher Louis Jugnet he learned about French Thomists Etienne Gilson and Jacques Maritain. Manent was deeply impressed by the Catholic intellectual tradition. Nevertheless, a later encounter with Leo Strauss through Bloom divided Manent between philosophical inquiry and theology. He came to find the Thomistic harmony of faith and reason more problematic because of the Straussian claim that "the way of philosophy and the way of religion are two self-sufficient ways that cannot be joined." Jerusalem and Athens are too far apart for any simple statement of harmony. This intellectual formation thus has allowed Manent's thought and work to shuttle between philosophy, religion, and politics: "I am inside a triangle: politics, philosophy, religion. I have never been able to

settle on one of the poles. Aron situated himself within the political, Strauss the philosophic, and Maritain, the religious. The world draws on these three great sources, turns on these three great axes and therefore in keeping my distance in relation to these three points, I remain open to the diversity or complexity of the world." (59) In point of fact, Thomism has not fully worked out a political philosophy for the modern world in part because Thomas devoted little time to the political philosophy. In contrast to an apolitical Thomism, Manent articulates an Aristotelian political science as guide to how we can deliberate and act in common with an understanding of historical political experience.

In the second half of the book (part three, "From the Modern Moment to Western History," part four, "Teaching Political Philosophy" and part five, "The Universal and the Common") the reader is offered an intriguing introduction to his most recent and ongoing work. This work includes Manent's brilliant and original reformulation of the great question of continuity and change in the classical, Christian, and modern dispensations of the Western efforts to understand and to "enact humanity." He formulates a fascinating notion of "the Cicero moment," a time when the old forms seem to burst open, and there was a need to determine a new political form. Caught between Cato and Caesar, Republican city and empire, Cicero sought to find new features in order to open up a space for deliberation and action. The process of political decomposition and recomposition is an episodic challenge throughout human history. How to preserve civic order? Cicero would make some significance contributions to modern political thought through his discovery of new things such as representation, respect for property, and the humanity or dignity of the human being. We can thus appreciate the modern advance beyond ancient and medieval political forms in light of its "Ciceronian moment." In the modern age the theological-political problem brought about a crisis in political order. Caught between the king and the Church, the prince and the minister of God, who was one to obey? The old forms would burst with the rise of the nation, the reformed Christian churches, the autonomy of spheres, and claims for individual freedom. In the midst of all this, how can the people be well governed? Neither the ancient pagan appeals to nature and virtue nor the appeal to hierarchic authority of the Church would do. Political action seemed closed off. To overcome such political inertia Machiavelli overturned and mocked the old foundations and he redefinined virtue and human fulfillment in this world. Machiavelli's new political science was in part an effort to make action possible and to restore some sense of political hope and courage. Through the modifications of Hobbes and Locke and the broader accounts of Montesquieu and Tocqueville (well studied by Aron), the liberal science of democracy grew to a maturity and thereby provided a sphere for common human action unique to the west in which politics is "opened toward a future that depends upon us."

Manent understands that we must understand both the ancients and the moderns. By examining dialectically the various and opposing political constitu-

tions, Plato and Aristotle provide "a science of deliberation" for actors of any regime. As for the moderns, those before the French Revolution, which would include Machiavelli, Locke, Montesquieu, and the American Federalists, as well as those after the revolution such as Constant, Guizot, and Tocqueville studied the ancients and yet opened their eyes to the new things of the modern era such as pluralism, freedom, and equal social conditions.

But now in the new millennium the opening for political deliberation and action is closing again. Now we must look anew at human nature and return to seeing things politically in order to deal with the decomposition of the contemporary political scene, especially in the European Union. Even though our contemporary politics of universal human rights has deep roots in the Western tradition and has also a global appeal, it may have reached its limits. The European Union, as well as the liberal culture of the United States, reveals its tensions and inner contradictions. How can "public order be built on the protection of private lives alone"? The very realm of a common life is destroyed by the denial of our Christian roots and the understanding of a permanent human nature. Manent very adeptly explains the difference between a "common" life, based on common principles, mediating the universal, versus the appeal to the universal as a lowest common denominator which must seek to homogenize the population, equalize all wants and desires. Its project is to suppress politics. There are some, especially in America, who understand that subjective rights reside in an inner space opened up by Christian conscience. The Europeans tend to fill that space up with post-political and post-religious fantasies that detach rights from any real thought or confident action in response to the central question: What is man? Transcendence and mediation are disappearing. The transcendent truth about man and the mediation of national tradition provide that common ground. What is the truth about who we are: we are free, relational, and dutifully responsible persons under God. National life provides concrete images of excellence and sacrifice. But now Europe lives in a bubble or is "on vacation" if it fails to see the crisis of the day, which includes the lack of confidence in or even care for the truth about human nature and its blindness to the intolerance of liberalism and the fanaticism of Islamic religion. The nation-state is disappearing under the mist of the "religion of humanity." The religion of humanity, according to Manent, is "vaster and more humane" than Christianity. But it demands the equality of homogeneous interests and it forbids inquiry about the human as such; let there be no hint of judgment or rank! Strong and confident political and religious opinions are forbidden in public. But political philosophy thrives on the arguments and disputes of common political opinion. Now political philosophy is nothing more than an endless set of commentary upon Rawlsian liberalism with its veil of ignorance and fundamental principle of equality. Religious discourse is banned as fanatical and not worthy of so called "public discourse." The EU, Manent claims is no longer open to political discourse and deliberation and there is no common life to mediate

our life together. We face a tyranny of rules. These points are finely elaborated by Manent and yet he understands that simple nationalism is not enough. Do we face yet again a Ciceronian moment? Manent thinks so. The last twenty pages of the book, entitled "What is the West?", recapitulates the historic development of political forms from the search for public glory in the ancient pagan city to the Christian appeal to conscience as a limit to political rule. The Christian claims for universal authority and the formation of conscience was undermined as modern liberal democracy took on a new account of what is common for the civic order and constructed a new account of popular political sovereignty. At present it is the "religion of humanity" that most occludes our vision and prevents us from "seeing things politically."

Manent has fulfilled his own ideal of teaching political philosophy (142). The philosopher must become an educator of the civic body, raise the authentic disputes about the best political regime, and work through the partial accounts of justice to find a more comprehensive account of justice. Manent also keeps alive the fruitful quarrel between the ancients and the moderns. At the core of his project is the rediscovery of the soul with its array of excellences or virtues and also the possibility of conversion. However modern, we must continue to see our link to the ancient political philosophy and the Christian unveiling of conscience and its claim to freedom and responsibility under God. The development of political life in the West is a "succession of three waves, each emerging from the thrust and failures of the preceding. This process involves succession and superposition, for each wave rests upon the one that preceded it, the one it covers but that carries it along. It follows that, however modern we may wish to be, we cannot be content to allow ourselves to be carried along by the latest wave. We must, like Glaucon, swim in deep waters, since beneath us lie in successive levels the distinct levels of pagan glory, Christian conscience, and modern rights. The wave that carries us must not make us forget the waves that carry it" (192). Manent's book shows that it is not too late to act; the tides of confusion and homogenization are rising but we need not drown. He ends the book with this encouragement to think and to act: "It is up to us to discern, under the mirroring surface that captivates and comforts us, the different densities and salinities of the underlying waters. It is up to us to discern that we are carried and given life by what we think we have long since left behind" (192). Strong swimmers do not flail helplessly against a strong current, but reposition themselves and find the hidden currents. Pierre Manent bids us to put out into the deep of our Western heritage. "Duc in altum" would apply, it seems, not only to the new evangelization but also to political philosophy.

John Hittinger
University of St. Thomas, Houston, TX, USA

Philosophy and Canon Law vol. 3 (2017), pp. 271–274

George Weigel, *Lessons in Hope: My Unexpected Life with St. John Paul II*, 257 pp. New York, USA, Basic Books, 2017

George Weigel is widely known as the author of *Witness to Hope: The Biography of Pope John Paul II* (1999) and *The End and the Beginning: Pope John Paul II—The Victory of Freedom, the Last Years, the Legacy* (2010). This new book provides an insight into how these books came to be researched and written, and how and why this American writer was selected by Pope John Paul II to write a biography by attempting to understand him from within. The book opens with an account of a dinner at the Vatican in December 1995 when Pope John Paul II asked George Weigel to write his biography. Weigel looks back from that dinner to ponder how providence prepared him to take on such a monumental task. And of course he unfolds the story from that evening until his publication of two long biographies of John Paul II. He took many trips to Rome and throughout Poland to meet with the Holy Father and to meet and to interview many of those who knew him and worked with him in Poland. Through seventy short to medium size chapters Weigel shares many stories about the Pope and he reveals much about his life and work in Poland and helps the reader understand various Vatican personalities and the dynamics of the Vatican operations. Weigel explains that he was often asked after the publication of his two major works to tell stories that would make Saint John Paul II present again by "rekindling memories or illuminating previously unknown aspects of his rich personality." He also sensed "a yearning to get to know more personally a saint who bent the course of history in a more humane direction." (3) This book fulfills many tasks and it is a book that is very worthwhile reading for these reasons. Perhaps the book is most useful for an identification and review of the key points that he

makes in his large biographical works; here he explains them in a brief compass and embeds them in many poignant and often entertaining sketches. These key points include the priority of culture over politics and economics, the centrality of conscience, the promotion of a free and virtuous society as the way to accomplish peace and development in the world today, his deep faith and prayer life, and his commitment to Vatican II. Weigel offers his own summary of the lessons of hope at the book's end:

> God is here, in the midst of the human condition, redeeming his creation through radical, self giving love. God is here, even when humanity is at its worst, so that fear and hatred and death don't have the final word. God is here, even when, to human eyes, the Holy One seems silent or indifferent. God is here, and God's creative and redemptive purposes are going to win the day, ultimately. (340)

John Paul II lived and died according to those convictions and "that is why his life is a witness to hope. And that is why the lessons he taught me were, above all, lessons in hope (340).

Much of the story of his writing of the biography revolves around Weigel's special work on the encyclical letter *Centesimus Annus*. With his colleagues Michael Novak and Richard Neuhaus, Weigel found in this encyclical a breakthrough document expanding Catholic social teaching in new ways and building bridges to liberal political philosophy and practice. John Paul II apparently found the Weigel/Novak/Neuhaus account compelling because he often invited them to the Vatican and sometimes used their writings. The encyclical also provides an understanding of the deep causes of the fall of the Soviet Union and liberation of Eastern Europe. Weigel spent much time in Poland and Eastern Europe preparing a book on the resistance to communism entitled *The Final Revolution: The Resistance Church and the Collapse of Communism* (1992). Virtually everyone he interviewed for his book on the fall of the Soviet rule in Poland traces that event to the first visit by John Paul II to Poland in 1979. That revolution of conscience is on display in the encyclical letter. Weigel talks about his debates and conversations with Cardinal Casaroli who was an advocate and defender of Pope Paul VI's Ostpolitik. The two sparred at a conference the very weekend that Weigel was invited to write the biography. As Weigel reports the story, Cardinal Schotte and Cardinal Ratzinger supported his interpretation of the events. In the longest chapter in the book entitled *A Pride of Curialists: Rome 1966–1969*, Weigel describes and summarizes his meetings with the following Cardinals: Francis Arinze, William Baum, Agostino Casaroli, Edward Cassidy, Roger Etchegaray, Bernadin Gantin, Pio Laghi, Giovanni Battista Re, Jan Schott, Angelo Sodano, Jean-Louis Tauran, and Jozef Tomko. Each interview reveals much about the significance of the papacy of John Paul II and gives

testimony to the variety of gifts and strengths of the men who surrounded John Paul II in the Vatican.

Also of special note are the interviews he conducted with many of the people surrounding the pope during his life, especially in Poland. (See among others the chapter entitled "Wojtyla's Poland in Depth," 156–168) He interviews members of Solidarity, members of Środowisko, and the Rhapsodic Theater. Weigel met them all and carried away much information and a deeper of understanding of the Pope's life as is evidenced in his books. There is an air of authenticity in Weigel's books because of his relentless research and his sympathetic interviews. In one series of interviews with Sister Emilia they commenced to translate "Stanisław" into English (124–125), part of which can be found in *Witness to Hope*. Through these many trips to Poland his interviews with many Polish people, we better understand the influence of his Polish experience on the papacy of John Paul II. The pope himself explained the Polish connection as due to the "confidence in the Holy Spirit, who was calling to the see of Peter a Cardinal with this experience, this background. It means that there is something here that is useful for the universal church" (155). The influence of the Polish Catholic experience, its shrines and saints, is much in evidence throughout these stories. Poland's humiliation at the hands of evil during World War II (127) was the central factor in Wojtyła's conviction that errors concerning the human person are at the root of so many modern evils and an adequate philosophy of the human person became the central focus of his life long work. The devastation of hate filled and reductive ideologies on human life and dignity gave rise to his profound commitment to defending human dignity and human rights (127).

Of particular interest to all students of the Pope's writings is found in a chapter entitled "The Spiral Staircase" (116–119). Weigel explained to the Pope the difficulty that many people have in reading his works; but Weigel proposed a way to approach them. He proposed to the Pope that he writes in a non-linear fashion. He walks around the object he is describing, always proceeding to a greater depth of understanding.

> You see a problem or question start walking around, looking at it from different angles. When you get back to where it seems you began, you're in fact one level deeper. So you start walking around it again, only deeper this time. You get back again to that starting point, but now your two levels deeper, so you start going around the subject again, in a more profound way. […] It's not a linear journey, it's like walking down a spiral staircase to get where you want to go.

The pope responded by saying "yes you've got it" (116–117). Also of interest to readers will be their discussion of the poor translation of *Person and Act*, his interest in John of the Cross especially as a bridge from his early theological

writings to later philosophical writings and his turn from the object to a fuller appreciation of the subject. There are many more details about the pope's life, his travels, his work in the Vatican, and his life in Poland that make this book worth reading. My one question about Weigel's books on John Paul II concerns his brief but guarded criticism of Radio Maryja and inference that John Paul II was not very favorable to their message (244); I suspect that there is much more to the story.

Lessons in Hope by George Weigel is a welcome addition to his other two works on Saint John Paul II; it completes his own Triptych as the third panel to "flesh out the portrait of Saint John Paul II" (4).

John Hittinger
University of St. Thomas, Houston, TX, USA

Philosophy and Canon Law vol. 3 (2017), pp. 275–276

Martin Dojčár, *Self-Transcendence and Prosociality*, 178 pp. Frankfurt am Main: Peter Lang, 2017

Self-transcendence and Prosociality is a comprehensive study in self-transcendence and prosocial behavior from the perspective of philosophy of religion. The main aim of the study is to propose a model of self-transcendence as a tool of understanding of the phenomenon of self-transcendence, and to theoretically examine the relation between self-transcendence and prosociality.

There are three questions I am going to address in this review, namely: (1) What is it about? (2) How is it designed? And (3) How it contributes to our knowledge? The first question addresses the topic of the book, the second its methodology, and the third one its contribution.

(1) The book covers the whole range of issues such as self-transcendence, its structure, modalities, aspects, morphology, and principle, together with prosociality and its structure, morphology, as well as motivation of prosocial behavior. Even though the Author goes much into detail in dealing with his topic, particularly in his analysis of textual sources attributed to an anonymous author of *The Cloud of Unknowing*, an Indian saint Ramana Maharshi, and a contemporary writer Eckhart Tolle, he always keeps in mind his main theme, which remains self-transcendence and prosociality, as well as the relation that links the two notions. The Author's decision to approach the issue of prosociality through self-transcendence is innovative and deserves my appreciation.

(2) In order to accomplish his aim, that is, "to propose a model of self-transcendence as a tool of understanding of the phenomenon of self-transcendence, and to theoretically examine the relation between self-transcendence and prosociality," the Author builds his methodology on the combination of methods.

He applies biographical and phenomenological methods in order to construct the phenomenology of self-transcendence on three examples he takes from the history of spirituality. In this regard, the Author makes a fundamental methodological decision to take his spiritual sources seriously, which is not always the case in the humanities and social sciences. The "recognition grounding," as he calls this approach, is supposed to allow him to search for elements of the invariant structure of self-transcendence. This phase of his research is further complemented by purely philosophical work, which is aiming at philosophical understanding of self-transcendence on the basis of consciousness. Again, the Author's decision to methodologically combine empirical and philosophical approaches is innovative and methodologically justified.

(3) The main outcome of the book is a proposal of a theoretical model of self-transcendence, which the Author formulates as follows: "By self-transcendence we understand a process of inversion and singularity of consciousness that culminates in the state of non-intentional consciousness and manifests itself in prosocial behavior." As an outcome of his examination of the relation between self-transcendence and prosociality, the Author further proposes to reexamine our understanding of prosociality, regarding his inversion model of self-transcendence, and take self-transcendence into consideration also as a moral concept relevant to human behavior. The author provides readers with arguments in favor of his conclusions and supports his claims by multiple references to the textual sources he relies on.

Let me conclude my review with the following evaluation: *Self-transcendence and Prosociality* is an in-depth study in self-transcendence and its relation to prosociality from the perspective of philosophy of religion. The study provides us with several innovative insights on the two notions presented above.

Pavol Dancák
University of Presov, Slovakia

Philosophy and Canon Law vol. 3 (2017), pp. 277–279

Aniela Dylus, *Polityka w perspektywie etycznej i religijnej*, Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, 501 pp. Warszawa, 2016

Aniela Dylus, *Gospodarka w perspektywie etycznej i religijnej* Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, 445 pp. Warszawa 2016

On the occasion of Professor Aniela Dylus's birthday and anniversary of academic work, it is worth recalling her two latest books that depict a synthesis of years of research into ethical and religious aspects of the Polish systemic transformation, challenges of economical and social ethics, presence of the Church in the public sphere and integration of Poland with the European Union. Earlier works of Professor Dylus (e.g., *Marginal Morality as the Issue for the Catholic Social Teaching* [1992], *Changeability and Continuity. Polish Systemic Transformation in the Ethical Horizon* [1997], *Globalisation. Ethical Reflections* [2005]), due to a competent and balanced scientific reflection made her recognized not only in the circle if the Cardinal Stefan Wyszyński University in Warsaw (formerly Academy of Catholic Theology) with which he has strong links.

The works I am to analyze do not concern—which was characteristic for earlier books of the Author—the issue and challenges related to leaving the communist system by Poland, creation of a new political and economic order and integration with structures of the united West. It is a well thought out and aranged collection of reflections on a developing society in terms of economy and social order. It illustrates a dynamic development of technology and computing that makes citizens face new ethical dilemmas and verify the existing structures and institutions. A society that for Professor Aniela Dylus is a point of departure and inspiration for universal considerations is a society that is constantly between "the old" and "the new"—the one that has not got to grips with challenges and problems of the transitional period yet (e.g., fighting unemployment and corruption, search for a social order and realization of the common good, optimal model of economic order) but is already experiencing problems pertinent for developed and modern societies (e.g., the issue of transparency of information and the right to privacy, application of the principle of subsidiarity, social responsibility of business, dumping and anti-dumping, etc.).

In the introduction to the book devoted to politics the Author emphasizes that her considerations concern ways of practicing politics as a prudent concern for the common good which means politics that is both realistic and true to its ideals. Major themes of the reasoning: ethical moderation in politics, moral importance of conscience and institution, a role of authorities, importance of the language of politics, etc., touch upon the gist of moral condition of the modern society and constitute an integral suggestion of realistic—humanistic and Christian—political and economic ethics. Suchethics that would direct the mercenary and short-sighted world of politics and economy towards the old and new ways for social life to meet minimum criteria of rules and social values, as described by the Catholic social teaching.

A similar approach can be found in the book devoted to economy. Professor Aniela Dylus assumes that the ethical and religious perspective in reflection on economy is highly justifiable, for "an old liberal dogma concerning a natural goodness of the market and its rules, a deadly enemy of which is external morality that disrupts the market logics, has not been conquered yet" (from the Introduction).

Reading leads to the conclusion that major temptations that Professor Dylus warns her readers against, is political moralizing or, as the Author puts it, "immoral intransigence" ("hyper-moralizing"), as well as political and economic cynicism. She is of the opinion that such approaches are too often, too easy, and too quick to accuse politics of wickedness. They prevent political compromise and efficiency and too often treat political declarations more seriously than efficient actions, and attribute economy solely with greed and other aberrations.

Undoubtedly, in the center of the Author's considerations is the human being that is brave enough to face the truth, respect the reason and integrity of cus-

toms. It is a man of conscience who bestows politics and economy with personalistic and humanistic features. It is the virtues, understood in the Aristotelean and Christian way, of prudence and temperance that make politics and economy possible and reasonable. It is those virtues that give chances to preserve conditions that are favorable for maintaining human dignity in the conditions of deepening pluralism of societies. It is those virtues that open politics to freedom of citizens and economy to their activities. They allow for compromise. It is those virtues that extend the perspective of the political responsibility, from "here and now" and thinking in terms of "let us survive till the next elections" to taking responsibility for the future and the next generations, the *sine qua non* condition of sustainable development. According to Professor Dylus, following these virtues in the political world of free economy in which the seemingly ruling features are speed, opinion polls, results, media noisiness, and egocentrism, is not moral abdication but the manifestation of courage and bravery, realism and faithfulness to the values.

Professor Dylus's reflection becomes a message that leads to a conclusion that politics and economic management are social cultural processes. Therefore, individual and collective decisions of entities may and should not be taken only in the perspective on the economic rationale, but they should touch upon ethical dimension and be religiously justified. Examples of referring to possession, financial crisis, various economic difficulties and aberrations, social responsibility of business, globalization, integral ecology, economical importance of religion, the spirit of capitalism, and the meaning of celebrating show that the ethical and religious perspective in perceiving economy is highly justifiable.

The category of conscience (understood theonomically rather than autonomously) and virtues (understood theologically rather than philosophically) as a unique guard and compass within her concept of political and economic ethics, is introduced to the analysis in a very unique way. First of all, the perspective of political responsibility towards conscience is presented by Aniela Dylus very broadly and universally. Dylus refers to a universal dignity of each person. Second, in analyses of various dilemmas and moral quandaries the Author introduces her arguments carefully, providing a detailed evidence-based, ideological, and historical analysis. Third, while building argumentative strategy for the presence of morality and conscience in politics, Professor Dylus is well aware that for improvement of quality of politics and economic activities, personal moral choices of individual politicians, voters, entrepreneurs, and workers and their observers, as well as commentators are as equally important as the quality of political language and ethical quality of institutions that constitute daily public life.

It is precisely defence of dignity of a man immersed in a world of politics and economy, personal choices and established structures, as well as building, modelling, and promoting a specific shape of various institutions that facilitate

or hinder decent everyday life, that in the perspective suggested by the Author constitutes perhaps the most important moral task of politicians and entrepreneurs.

A Christian perspective that claims and believes that *gratia supponit naturam* remains in this respect an inexhaustible and strongly emphasized source of inspiration.

Arkadiusz Wuwer
Uniwersytet Śląski w Katowicach

Philosophy and Canon Law vol. 3 (2017), pp. 281–284

Jiří Rajmund Tretera, Záboj Horák, *Konfesní právo* 416 pp. Praha: Leges, 2015

Jiří Rajmund Tretera, Záboj Horák, *Církevní právo* 424 pp. Praha: Leges, 2016

Religion law is a subject that was not taught in Czechoslovakia during the forty years of the totalitarian communist regime (1948–1989), the science of religion law could not be developed. Relations between the state and religious communities were blocked and these communities were subject to ubiquitous surveillance of state and police authorities. After 1989, relations between public authorities and religious communities could be freely developed and religion law began to be taught at schools of law (as well as theology).

Jiří Rajmund Tretera, a Dominican priest, is a restorer of religion law. Since 1990, he has been teaching legal history as well as religion and church law at the School of Law of the Charles University in Prague. The results of his teaching experience in the field of religion law were first recorded in his book *Konfesní právo a církevní právo* [Religion Law and Church Law] issued by the Jan Krigl publishing house in Prague in 1997. Meanwhile, there was gradual development of religion law regulation in the Czech Republic and another book by Jiří Rajmund Tretera was published by the Carmelite Publishing House in Kostelní Vydří in 2002, entitled *Stát a církve v České republice* [State and Churches in the Czech Republic].

The reviewed book *Konfesní právo* [Religion Law] is a new monograph, which the Author wrote together with his colleague and student, Associate Professor Záboj Horák of the School of Law of the Charles University in Prague. It was published by the Leges Publishing House in Prague at the end of 2015. It is the most complex and ambitious publication regarding religious law in the Czech Republic. At first, the Authors present fundamental knowledge of legal basics of relationship between the state and religious communities, they also illustrate elementary terms necessary to understand facts related to religious law and introduce models of relations of the state and religious communities in some European states.

The Authors divided the text regarding religious law into two sections, that is a general and a special one. The general section contains foundations of legal regulation of individual and organizational religious freedom, including the process of registration of religious communities. It should be emphasized that many books and journals have been published in the Czech Republic since the religious freedom was regained, the Authors reflect and quote them. They also refer to the work of foreign authors in connection with religious law amendments and more fundamental questions. It is significant that the Authors do not present the issue of ecclesiastical property, financing and restitution, in the Czech Republic solved by Act No. 428/2012 Sb., as almost the only aspect of relation between the state and religious communities.

The special section of the book represents the most diverse areas of life of the society where public power interacts with religious communities for the benefit of citizens, including those who do not adhere to religion: education, church schooling, armed forces, prison, social and health care, place of work, family, marriage, asylum policies, etc.

It is quite unique to include a chapter on the historical development of Czech religious law to the very end of the publication. It is clear that historical events and facts are also reflected in recent legislation, so that the interpretation of history represents in some way a summary and partly a justification of existence of some legal institutes of religious law as they are currently regulated in the Czech Republic.

Soon, both authors presented the publication *Církevní právo* [Church Law] to students as well as to the general public, published at the end of 2016 also by the Leges Publishing House, which is, in some sense, a continuation of the book on religious law, so that it is possible to speak of a two-part work. The Authors do not automatically assume knowledge of facts regarding churches and explain them in a clear way. Without their elementary knowledge, the interpretation of church law does not make sense. Perhaps only if the target group of readers were only students of theology obliged to attend courses of church law, the foresight in ecclesial issues would be assumed. However, targeting the widest range of readership requires pedagogical approach chosen by the Authors.

In their publication, the authors deal with a field that was traditionally a compulsory part of studying of law in the Czech lands until the communist coup in 1948. But from that year until the end of 1989, due to disfavor of the communist totalitarian and atheistic regime, it was excluded from study programs of schools of law. Students could only hear about it briefly during lectures on the Czech and world history of the state and law.

The initial situation of authors is therefore different from teachers of other areas of historical and effective law. Thus the book *Církevní právo* [Church Law] is more innovative. It follows the mentioned book *Konfesní právo a církevní právo* [Religion Law and Church Law], which was published 20 years ago though. Meanwhile, there have been both partial changes in church law regulation in force and, above all, deepening of the knowledge and pedagogical methods used by the authors. In the Czech Republic, probably solely a book written by professor of the School of Catholic Theology of the Charles University in Prague, Antonín Ignác Hrdina, entitled *Kanonické právo* [Canon Law, second edition published in 2011] is thematically comparable to this publication, but it is intended primarily for students of theology and, moreover, only deals with church law of the Catholic Church.

In the first part of the book *Církevní právo* [Church Law], the authors familiarize readers with basic terminology regarding churches, church law, and the relationship of church law to religion law.

The second part of the book, the most extensive one, deals with canon law of the Catholic Church. The Catholic Church is—despite common notions—the most numerous and historically as well as currently the most important of all religious communities in the Czech Republic. The authors first introduce readers into history of sources of canon law, but this is only the starting point for a detailed description of contemporary regulation. Current regulation, in particular interpretation of applicable provisions of the Code of Canon Law of 1983 (CIC/1983) and the Code of Canons of the Eastern Churches of 1990 (CCEO), form the core of the entire book. Emphasis is placed on the law of the Latin (Roman Catholic) Church.

However, the Authors aimed to familiarize readers not only with canon law of the Catholic Church, but also with legal systems of non-Catholic churches, whether Protestant, Eastern Orthodox, or Old Oriental Churches, which are discussed in the third part. This part is less extensive and therefore selective. The criterion here is the presence and importance of these churches in the Czech lands.

The Authors accommodate the readers and offer further literature on individual topics, the Czech literature is naturally presented more completely. They consistently take care of specialized terminology, terms in Latin as the official language of the Church and, moreover, in English as the most widely spoken language in the world are included.

For the thoroughness of the work, topicality of the subject, clarity of presentation, and necessity of both publications, it is possible to speak of a certain milestone, by which the Authors set an indispensable standard for other Czech publications in the fields of religious and church law.

Stanislav Přibyl
University of České Budějovice, Czech Republic

Philosophy and Canon Law vol. 3 (2017), pp. 285–286

Rafał Paprzycki, *Prawna ochrona wolności sumienia i wyznania*, 134 pp. Warszawa: Wydawnictwo C.H. Beck, 2015

The relationship between the Church or other religious organizations on the one hand and states on the other is a very sensitive subject. Part of the relation involves issues of religious freedom and freedom of conscience. It is not only theoretical but also a practical problem. The literature on the subject is extensive and keeps increasing in number. It is a sign that the problem is a very current one.

In this perspective, one can see the book by Rafał Paprzycki, who is a Doctor of Law and a judge in the common court. His work is entitled *Prawna ochrona wolności sumienia i wyznania* [*Legal protection of freedom of conscience and religion*]. The book was published by a renowned and acclaimed publisher of legal books, that is, Wydawnictwo C.H. Beck, in the series "Monografie prawnicze" [Legal monographs]. The fact allows the readers to expect high level of competences from the author and high standards of edition. In this review, one can find the discussion about both elements.

At the beginning of the book, one can find some typical elements of a monography: an introduction, a list of abbreviations, a list of literature on the subject, and a list of judicatures. The book consists of five chapters. The first chapter deals with religion as a social phenomenon. It presents some definitions of religion and main theories about this phenomenon in social and individual dimension. The Author describes some current tendencies, such as privatization of religion, that is, pulling it back to the private sphere of lives of the believers, and a trend of creating small religious organizations and simultaneously diminishing big, old churches. The second chapter describes denominational law as a function of a state policy. Typical models of the church-state relations are presented and

exemplified. The Author limited his lectures mainly to the European countries. The third chapter, which is a theoretical one, presents the fundaments, notion, range, and limits of the freedom of conscience and religion. The author defines the key terms like conscience and religion, and describes the personal subject range of the freedom of conscience and religion. The sources for deliberations are laws and views of scholars. The Author also expresses his opinions. The next chapter refers to the freedoms in question but in the perspective of judicature, mainly of the European Court of Human Rights. In this part the Author presents practical application of the laws about the freedoms. In the fifth which is the last chapter, one can find presentation of the criminal law protection in Polish law for the freedom of conscience and religion, like discrimination, defamation of religious feelings, prevention from carrying out one's religious acts. The book ends with the conclusion and the subject index. Referring to the arrangement of the book I can say that it is a very good example of a fine planning and execution. The subject matters are logically connected.

As the Author wrote in the Foreword [*Wstęp*], the book is an interdisciplinary one. Apart from legal issues, it makes references to sociological, historical, and political sciences. They might be helpful for carrying consideration in legal matters. Such a solution should be considered very modern and should win the readers' approval.

The sources for the author's deliberations are varied. As regards legal aspects, they are mainly international laws, UE laws, and Polish laws. The Author also refers to the judicatures of the European Court of Human Rights, Polish Constitutional Tribunal, The Supreme Court of Poland, as well as Polish common courts and administrative courts. For referring to part of the book that treats about religion the Author refers to the documents of the Second Vatican Council and other documents of the Catholic Church. The author made a thorough research on the literature on the subject and relevant commentaries. However, it covers mainly Polish literature on the subject and, to a small degree, English-language literature. Yet I can say there are no gaps to be filled.

Nevertheless, the book does not bring any crucial novelty to the subject. The author is aware of it and states in the Foreword that "no new continents were discovered." Still, the book presents a detailed elaboration of the subject. The references to the sources and literature can be of help for the readers to get familiar with the state of the art and the current scientific knowledge.

A considerable advantage of the book is its interdisciplinary character, which is often overlooked by the scholars who deal with the subject. There are many examples that show the author is an erudite. He makes specific references to philosophy, movies, statistics, politics, and current affairs. One can say that the book by Paprzycki is a thoroughly and duly written work. This monograph can be recommended to the students of law and to the lawyers who professionally deal with the matter of religious freedom.

As far as the editorial aspect of the book is concerned, I regret to say that the book is not a well published one. The font size seems too small to enjoy a comfortable reading, whereas. In the Foreword it is even smaller, which, all in all, may discourage potential readers. Fortunately, for those unwilling to make such an effort and read through the paper version, there is available an electronic one on offer.

Piotr Kroczek
The Pontifical University of John Paul II, Cracow, Poland

Philosophy and Canon Law vol. 3 (2017), pp. 289–291

Hieronim Kaczmarek OP *Czechy. Kościół i państwo*, 383 pp. Kraków: Wydawnictwo WAM, 2016.

It is customary that a particular country and its political situation is described by its own inhabitants, because they have grown up in the atmosphere of the culture and the history of the treated part of the world, so they can well understand it as if 'from within'. But it also has its own pitfalls: most often, such authors express themselves in a discussion in their own country, less abroad, and sometimes their anchor in the life of a given country somewhat hinders the necessary distance or outlook. The fact that this situation is described by a man from another country and nation can be enriching in many aspects, even though he also has some rather different pitfalls.

Dr. Hieronim Kaczmarek OP is a Polish Dominican priest who assisted in the Moravian metropolis of Olomouc with the formation of young Dominican brethren from 1991–1998 and then returned to Poland. Actually, he lives in Prague as a member of the Czech Dominican community and pastor of the Polish personal parish since 2011. He has spent more than ten years in the Czech lands.

The book *Czechy. Kościół i państwo* (Czechia. Church and State) is his doctoral dissertation, which was defended in October 2016 at the Faculty of History and Social Sciences of the University of Cardinal Stefan Wyszyński in Warsaw under the title *Stosunki Kosciół – państwo w Republice Czeskiej* (Church – State Relations in the Czech Republic) in the field of social sciences in the branch of political science. This is not a monograph from the field of law, which should be borne in mind.

This book aims to offer to Polish readers a wide and broad view of the relations between the Church (not only the Catholic one!) and the state in the terri-

tory of today's Czech Republic, because this topic is rather less traced in Polish written publications, especially political ones—the majority of Polish articles on this topic are written in the field of state ecclesiastical law. The goal set thus corresponds to the wide breadth of the subject, as is evident from the chapters' own inventory itself.

The first chapter "The Present Models of Church–State Relations" has the character of a general introduction to the issue with a focus on the political concept and above all it represents existing models, including the model of co-operation realized in the present Czech Republic. The second chapter "Historical and Cultural Conditionality of Church–State Relations in the Czech Republic" provides a brief description of the evolution of the Church-political situation from the re-catholicization of Bohemia and Moravia after the Thirty Years' War to the end of the period of persecution by the Communist regime in 1989. The third chapter "Current State Ecclesiastical Law of the Czech Republic" describes the main features, origins, and sources of the present Czech state ecclesiastical adjustment, including the Czech specifics: tripartite agreements between the relevant state administration body, the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic. The fourth chapter "Attempts to a Concordat Regulation" deals with the issue of contractual relations between the State and the Catholic Church, including the context of European Union law. The fifth and last chapter "The Determinants of Future Relations between the Church and the State" introduces changes in contemporary Czech society (secularization, the relationship of the main political parties to religious issues and the process of democratization) and in the Catholic church in the Czech Republic (presentation of the Church in the society, access to Jan Hus's inheritance and an intra-church debate about the Church's role in the society). The work is complemented by a clear chronological summary of important church-political events from 1989 to 2014 and by a rich bibliography; the text of the non-ratified draft agreement between the Czech Republic and the Holy See of 2002 is included as an addendum.

Such a wide-ranging work has one undisputed advantage: it attempts to present extensively the question regarding the Czech form of the Church–state relation in a broad context, which has not yet been written in Polish writings; the situation in this context is highlighted by the inclusion of 21 tables and two diagrams. The disadvantage of such a broad approach, however, is necessarily the schematics, abbreviation, and selectivity in the selection and description of partial facts and aspects. Therefore, some critical questions can be asked: why the author begins with a description of the historical development of the Church–state relations only from the 17th century, and thus the earlier significant events since the Christianization of this territory are neglected; whether it would be necessary and useful to take more into account the role of non-Catholic churches and religious societies (e.g., the Federation of Jewish Communities)

and the Ecumenical Council of Churches in the Czech Republic in shaping the ecclesiastical-political situation, because here, according to my judgment, the author is too focused on the Catholic Church; and, above all, in view of the prevailing model of cooperation between churches and the state, to what extent it is true that Church–state relations are tense in the Czech Republic, as the author states in the introduction to his publication. In view of the necessity of the above-mentioned confessional issues, it is also possible to argue with some of the assessments of the author intervening in the area of law, but in fact it is necessary to bear in mind that this is not a study in the field of state ecclesiastical law.

I am convinced that the book of Dr. Hieronim Kaczmarek is a good contribution to Polish readers and that it may encourage them to become acquainted with more detailed treatises published in Poland (predominantly in Polish).

Damián Němec
Palacký University in Olomouc, Czech Republic

Philosophy and Canon Law vol. 3 (2017), pp. 293–296

Notes on Contributors

Pavol Dancák, Professor, Ph.D., graduated from the Cyril and Methodius Roman Catholic Faculty of Theology in Bratislava in 1988, and in the same year received the priest's ordination. He worked as a parish priest and in 1996 was appointed as a censor in beatification of Bishop Paul Peter Gojdič, and later also in the process of beatification of Bishop Vasil Hopko, Th.D. In 1995, he began to study philosophy at the Philosophical Faculty of Papal Theological Academy in Cracow. In 2001, with the supervision of Professor Karol Tarnowski, he defended his postgraduate dissertation *The Issue of Education in Teaching of John Paul II*. On April 27, 2005, he attained the habilitation in history of philosophy with a book *Historical and Philosophical Reflections of Paideia in Works of Karol Wojtyla*, at the Faculty of Arts, University of Prešov in Prešov, and on January 29, 2011, he was appointed Professor of History of Philosophy. On August 1, 2002, he was employed as Vice-Dean for Development and External Relations Greek Catholic Theological Faculty of University of Prešov in Prešov, Slovak Republic, and currently Professor Dancák is the Head of Department of Philosophy and Religion. He is a member of the Academic Council of GTF UP in Prešov and the Academic Council of the St. Elizabeth University of Health and Social Work in Bratislava.

Aneta Gawkowska, Ph.D. habil., assistant professor at the Chair of Sociology and Anthropology of Custom and Law, Institute of Applied Social Sciences, University of Warsaw, where she teaches on sociological theories, communitarianism, and New Feminism. Awarded scholarships at the Institute of Human Sciences in Vienna and at the University of Notre Dame (USA). Author of the book *Taking Community Seriously? Communitarian Critiques of Liberalism* (Warszawa 2011) and *Skandal i ekstaza. Nowy Feminizm na tle koncepcji po-*

jednania według Jana Pawła II [Scandal and Ecstasy. New Feminism within the Background of the Concept of Reconciliation according to John Paul II] (Warszawa 2015), and numerous articles; co-editor of the book *Teorie wspólnotowe a praktyka społeczna: Obywatelskość, polityka, lokalność* (Warszawa 2005). Her academic interests include: social theory, political philosophy, communitarian theories, New Feminism, and theology of the body.

John P. Hittinger, the Center for Thomistic Studies at the University of St. Thomas, Houston, Texas, USA. He is the founder and director of the Pope John Paul II Forum for the Church in the Modern World. He holds degrees from the University of Notre Dame and the Catholic University of America. Dr. Hittinger has published articles on political philosophy, just war theory, and the thought of Karol Wojtyła. He is an ordinary member of the Pontifical Academy of St. Thomas Aquinas.

Józef Krukowski, Professor ordinarius of law, professor of Catholic University of Lublin of John Paul II (1965–2015) and University of Cardinal Stefan Wyszyński in Warsaw (1994–2015), consultor to the Pontifical Commission for Legal Texts in Vatican (1985–), representative of Conference of Polish Episcopacy to the National Assembly of the Constitution of Republic of Poland (1984–1987), member of the Parliamentary Commission for the Ratification of Concordat between Holy See and Poland (1984–1997), president of the Legal Commission of the Polish Academy of Sciences. Branch in Lublin (2014–), president of the Polish Society of Canon Law (1991–).

Leo D. Lefebure, is the Matteo Ricci, S.J., professor of Theology at Georgetown University. He is the author of *True and Holy: Christian Scripture and Other Religions*, which received the 2015 Catholic Press Association First Place Award for best academic book on scripture. He is the co-author of *The Path of Wisdom: A Christian Commentary on the Dhammapada*, which received the 2011 Frederick J. Streng Book Award from the Society for Buddhist-Christian Studies. He is also the author of *The Buddha and the Christ* and of *Revelation, the Religions, and Violence*, which received the Pax Christi USA 2001 Book Award. He is an Honorary Research Fellow of the Chinese University of Hong Kong and a Trustee Emeritus of the Council for a Parliament of the World's Religions.

Roman Míčka, Dr. Th.D., Ph.D. (1976), assistant professor at the Department of Ethics, Psychology and Charity Work at the Faculty of Theology, University of South Bohemia in České Budějovice, Czech Republic. His research focuses on the Catholic social doctrine and social ethics, American political Catholicism, and relations between politics, economics, and religion. He is a member

of the Czech Christian Academy, the Church Law Society, the Czech Society for Political Science and the Work Group for Social Issues by the Czech Bishops Conference.

Damián Němec, OP, Assistant professor at the Palacký University of Olomouc, Head of the Department of Church Law, teaching canon law and ecclesiastical law at the Faculty of Theology and at the Faculty of Philosophy. Research worker at the Faculty of Law at the University of Trnava (Slovak Republic). Specialist in the area of the law of consecrated life (including participation on the elaboration of several Constitutions of some religious institutes), of the law of sacraments and of the Church-state-relationship, especially of the concordats between the Holy See and individual States. Translator of several official documents of the Catholic Church into Czech. Translator of liturgical texts of the Catholic Church into Czech.

Andrzej Pastwa, Professor UŚ, Priest in the Archdiocese of Katowice, Head of Department of Canon Law and Ecumenical Theology at the Faculty of Theology at the University of Silesia. He is a member of Consociatio Internationalis Studio Iuris Canonici Promovendo, Consociatio Iuris Canonici Polonorum, as well as Commission for Polish-Czech and Polish-Slovak Relations of the Polish Academy of Sciences. His scholarly achievements contain, among others, monographs: *Prawne znaczenie miłości małżeńskiej* (Katowice 1999), *Istotne elementy małżeństwa. W nurcie odnowy personalistycznej* (Katowice 2007), *"Przymierze miłości małżeńskiej." Jana Pawła II idea małżeństwa kanonicznego* (Katowice 2009) and recently *Dobro małżonków. Identyfikacja elementu „ad validitatem" w orzecznictwie Roty Rzymskiej* (Katowice 2016). Editor of *Ecumeny and Law.*

Michał Poniatowski, Attorney of the Bar Association, Church Attorney, Assistant Professor at Cardinal Stefan Wyszynski, Member of the Association of Polish Canonists, Member of the Polish Society of Religious Law and the Scientific Association of the Catholic University of Lublin, author of numerous publications on religious law, constitutional law, and international law.

Stanislav Přibyl, Ph.D., J.C.D, is a priest of the Catholic Prague Archdiocese. He was ordained in 1996. He studied at the Law School of Charles University in Prague and at the Faculty of Canon Law at the Institutum Utriusque Iuris of the Pontifical Lateran University in Rome. His thesis *Ekumenismus a právo* [Ecumenism and Law] was published in 2006. In 2011, he received the degree of docent following a successful defence of his study *Tschechisches Staatskirchenrecht nach 1989*. He is a judge of the Metropolitan Church Court in Prague; teaches church and civil law at the Theological School of South Bohemian Uni-

versity in České Budějovice. He also works as a researcher at the Institute of Religious Liberty Questions in the Faculty of Law in Trnava. Presently serves as a spiritual administrator of the St. Gabriel Church in Prague–Smíchov.

Lucjan Świto, a priest in the Archdiocese of Warmia, graduated from the "Hosianum" Seminary in Olsztyn and the Faculty of Canon Law at the Cardinal Stefan Wyszyński University in Warsaw. He also studied at the Faculty of Canon Law of the Gregorian University in Rome, as well as at the Congregation for Divine Worship and the Discipline of the Sacraments and at the Apostolic Tribunal of the Roman Rota in Rome. He obtained the title of doctor, followed by doctor habilitated, at the Faculty of Canon Law at the Cardinal Stefan Wyszyński University in Warsaw. Currently, he is a judicial vicar at the Metropolitan Court of the Archdiocese of Warmia as well as the Head of the Department of Canon Law and Philosophy at the Faculty of Theology of the University of Warmia and Mazury in Olsztyn.

Małgorzata Tomkiewicz, Doctor of Juridical Science, judge, lecturer in law at the Faculty of Theology, University of Warmia and Mazury (UWM) in Olsztyn, author of several dozen publications on religious law.

Krzysztof T. Wieczorek, Professor, Ph.D., director of the Unit of Logic and Methodology of the Institute of Philosophy at the University of Silesia. Studied mathematics at the University of Silesia; two semesters of theology at Albert Ludwigs University of Freiburg, and philosophy in Cracow and Lublin. Scientific titles and degrees: 1978 Master of Science in Mathematics MSM; 1986 Doctorate degree in Philosophy; 1994 Habilitation Thesis in Philosophy; 2005 Full professor in Philosophy. Author of four books, co-author of five. Published more than 200 articles. Visiting professor at J. Palacki University, Olomouc; M. Bela University, Banska Bystrica; P. J. Safarik University, Koszyce. Research cooperation, among others, with „Die Wolfsburg" Katholische Akademie des Bistums Essen; „Renovabis" Solidaritatsaktion der Diözese München/Freising, Europäische Akademie für Lebensforschung, Integration und Zivilgesellschaft, Wien.

Arkadiusz Wuwer, Ph.D. in the humanities (sociology), habilitation in theology in the field of Catholic social teaching; adjunct professor at the Chair of Moral Theology and Catholic Social teaching at the Faculty of Theology of the University of Silesia in Katowice). Author and editor of 12 books and several dozen articles. Area of research: history of Catholic social teaching, evolution of social ideas, ethical aspect of social transformations.

The publication is indexed in the following databases:

BazHum

Central and Eastern European Online Library (CEEOL)

Index Copernicus

Worldcat

Erih Plus

Copy editor Gabriela Marszołek
Cover design Emilia Dajnowicz
Typesetting Alicja Załęcka

ISSN 2450-4955
(print edition)

ISSN 2451-2141
(digital edition)

Published by
Wydawnictwo Uniwersytetu Śląskiego
ul. Bankowa 12B, 40-007 Katowice
www.wydawnictwo.us.edu.pl
e-mail: wydawus@us.edu.pl

First impression. No. of copies: 70 + 35.
Printed sheets: 18.5. Publishing sheets: 22.5.
Alto paper, 80 g, vol. 1.5 Price 22 zł (+ VAT)

Printing and binding:
Volumina.pl Daniel Krzanowski
ul. Księcia Witolda 7–9, 71-063 Szczecin