

Tadeusz Guz

THE RELEVANCY OF NATURAL LAW

Legal positivism is becoming more widespread in Europe. We are also witnessing various directions and systems of legal thinking that make relative the truth about man, God, and about *ordo iuris* as a moral and legal foundation for the versatile development of the psychical and spiritual life of the human person. Having all this in mind, it is noteworthy to recall the ontic character of *ius naturae* and consider it anew.

1. NATURAL LAW *VERSUS* THE EXISTENCE OF GOD AND ETERNAL LAW IDENTICAL WITH HIM

The classical conception of natural law as *participatio legis aeternae*¹ points at transcendent and personal God [Guz 2007, 149-80] and eternal law that is absolutely identical with Him. Eternal law is the ultimate reason of natural law written in the ontic character of the human person. The human being and every other contingent being do not have in themselves the reason for the existence, i.e. they are not causes of themselves. The same goes for the other visible beings of the cosmos. They are justified by the Absolute as the ultimate reason of the existence of any being and any legal order. Cicero in the *De Re Publica* writes about “unchangeable and eternal” law which is “God” Himself as the “Author of this Law, its Pro-

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¹ S. Aquinatis Thomae, *Summa theologiae*, I-II, La Editorial Católica S.A., Madrid 1985, q. 91, a. 2.

mulgator, and its enforcing Judge”². In his *De libero arbitrio* St. Augustine, among others, comes to the knowledge of *lex aeterna* as the foundation of the highest order of all things: “Ut igitur breviter aeternae legis notionem, quae impressa nobis est, quantum valeo verbis explicem, ea est qua justum est ut omnia sint ordinatissima”³.

The contemporary man, who “has lost God” [Gilson 1982, 104] needs this transcendent reference. For several years now his reason has been separated from the metaphysical knowledge of the Absolute. In this context it is noteworthy to mention Gilson’s remark: “Science may destroy metaphysics, and in the same manner metaphysics may destroy science” [Gilson 1982, 99], but if metaphysics is not made an ideology, then it is an indispensable intellectual support. It takes reason to the height of knowledge with its statement that “God” as the “ultimate Act” exists. Now since human reason is not satisfied with a partial truth, one needs a grain of wisdom for the imposing effort of the personal spirit in science. The purpose here is not to be limited to the knowledge of the finite being only, but to be delighted with the metaphysical and religious knowledge of the Absolute, so that we could say that the “One who is” is the God of philosophers, the God of Abraham, Isaac and Jacob [Gilson 1982, 108-109].

Now the separation of the natural law order from the eternal, unchangeable and absolutely perfect God is bound to make natural law relative in its attributes: the universality, objectivity, and immutability of its most important principles. For the human persons this means that they not only lose their true Creator from the horizon of existence and thoughts,

² “True law is right reason and in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked (...) We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for He is the Author of this Law, its Promulgator, and its enforcing Judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact, he will suffer the worst penalties, even if he escapes what is commonly considered punishment”, see M.T. Cicero, C.F.W. Müller, *Librorum de re publica sex quae supersunt*, Teubner, Leipzig 1889, 3, 33.

³ S. Aurelius Augustinus, *Opera omnia*. Vol. 1. Pars 1: *De libero arbitrio*, Editio Parisina altera, emendata et aucta, S.-Germani-In-Laya – Typographus, Paris 1836, col. 939.

but also are deprived of the “absolute point of reference” (J. Ratzinger) for what is moral and legal. An example here is e.g. the ideology of nazism. This ideology „knows nothing about the laws of the ‘transcendent’ area”, as Rosenberg writes, but claims that “Each man created the law for himself”⁴.

2. THE APPROVAL OF NATURAL LAW – THE APPROVAL OF THE HUMAN PERSON AND OF ANY BEING

Where is the reason of the human being that helps man to relate himself in his acts towards other personal and non-personal beings?

Greeks and Romans discovered this reason in human nature and concluded that if one was not obedient to this natural law, it meant that “one escaped from oneself”, or else “negated the essence of man”⁵. In a sense it was a negation of another being that was subject to that law written in each nature. Obviously, that law was rooted in nature, not in the personal subject of man as person.

This dimension of natural law thinking was made possible only due to Christina reflection. That reflection understood the Divine Giver of natural law as one and at the same time in Three Persons. Since God is Person, then His natural law is written in the human being as person, and this in turn is defined as the personal relational being [Krapiec 1994]. This being helps man to determine himself in thought, word, and deed. Without this personal dimension of natural law there would be no bridge between the eternal and transcendent Creator and the man created in the time and space of the cosmos. That is why *participatio legis aeternae in rationali creatura* (Th. q. 91, a. 2) is invaluable for all personal acts of the human being; first it inspires them *in proprios actus et fines* (Th. q. 91, a. 2), so that the human person could realise himself according to the plans of the Creator Himself become worthy of eternal communing with Him. One may put forward a thesis that the approval of natural law means the approval of person as person, and at the same time it approves of God. This God grants man “the fundamental right to live” the right that

⁴ “Von den Gesetzen des ‘jenseitigen’ Gebietes wissen wir nichts!”; “Das Gesetz hat jeder sich selbst geschaffen”, see Rosenberg 1943, 392-93.

⁵ Cicero, Müller, *Librorum de re publica*, 3, 33.

is “written in man’s nature from the moment of conception: this truth belongs to the essence of natural law and the tradition of great religions, is also in accordance with the spirit of the third article of the *Universal Declaration of Human Rights*”⁶.

The last two centuries have proved that if one negates natural law, one either reduces man as a substantial being to a purely contingent being on the substance of the “state” in Hegel, “nature” or “communist society” in Marx, Engels and Lenin, “the world” in Heidegger, “the drive” in S. Freud and in the neo-Marxism of the new left. This may also mean that the human being is negated as such, of which John Paul II writes: “Abortion, euthanasia or cloning of human beings threaten that man may be reduced to an object: life and death become in a sense a commodity to order! If scientific research that reach the source of life is not governed by any moral principles, violate the dignity of persons and their right to live”⁷. In this context Tenbruck says about attempts to negate man [Tenbruck 1984, 230-43]. Krapiec is of a similar opinion. Namely, he says that “one natural law is negated, the whole legal system is negated as well because in fact this means that human nature is negated. That nature knows the reality, discerns good from evil, is able to choose good to be applied in action” [Krapiec 2007, 23]. According to Card. Ratzinger should one turn away from “the one God is perceived as Intellect” and as the “creating Love”, from “the ethos that is obedient to the reason of the creation and finds in it the echo of the Creator’s Intellect (...) one would make the man himself disintegrate” [Ratzinger 1991, 6].

In opposition to those tendencies, once natural law is placed in God as the ultimate Good the human persons as the reasonable and free subjects are directed to *bonum commune*, i.e. to the proper goal of their humankind, the unrepeatable individual in all its aspects and at the same time being and action. Thus we have the order of life that is worthy of man as the “image of God”. What follows is his unusually creative development which does not result from the laws of nature alone, or from “an automatically self-sustaining law, but it is something worked out by the human will”. The same goes for “equality” which “is not a currently given fact, but an ideal to which one should progressively approach by the means of justi-

⁶ Jan Paweł II, *Chrońmy prawa rodziny*, „L’Osservatore Romano” (Polish edition) 2 (2000), p. 20.

⁷ Idem, p. 21.

ce” and “democracy is not a deity-patroness of these or those societies, but a splendid promise that everybody is entitled to fulfil through the constant will of friendship, so strong that it could persist from generation to generation” [Gilson 1982, 104].

The being of natural law allows us to make the shape of various interpersonal relations more precise, e.g. the marital relation as a relation between man and woman, a fact that was clearly defined by the Roman law. Following Gaius, Ulpianus stated that from “the law of nature (...) comes the unity of man and woman that we call marriage, their giving birth and education”⁸. Family comes from marriage and the ultimate ontic reason for the family in the order of nature is to give life to children and bring them up on the basis of truth, good, and beauty. Legalising homosexual marriages is therefore contradictory with natural law and as such destabilise the ontic character of man, makes its development impossible, and brings to destruction and chaos. This is unacceptable for Augustine in view of the fact that the being of law is linked with the order directed to *bonum commune*.

As a result of thus deformed or split marriage, we have negation of the family as a material cause of the nation and state. The man settles in his universe by establishing a nation as a community of families and the state as a social community. Tocqueville learned in detail the forms of the democratic state in America. He realised that in order to build and save democracy as a political system one needs more profound reasons than the reason of the law alone. This law in “democracy” is “almost always erroneous” [Habermann 2005, 44] therefore one needs to represent the transcendent in the form of natural law. It is the latter that is the best safeguard in the form of marriage and family for the formation and development of the state structures. John Paul II writes: “The constitutive elements of the objective truth about man and his dignity are deeply rooted in *recta ratio*, in ethics and natural law: they are values prior to any man-made legal order, hence a law-abiding state should defend them in its legislation against the self-will individuals and arrogance of the wealthy”⁹,

⁸ *Corpus Iuris Civilis. Codicis Domini Iustiniani Sacratissimi principis institutionum, perpetui Augusti, repetitae praelectionis*, II: *Prooemium institutionum*, Lugduni 1589.

⁹ Jan Paweł II, *Nienaruszalne prawa istoty ludzkiej*, „L'Osservatore Romano” (Polish edition) 9 (1996), p. 42-44.

because “recognition of this law makes the foundation (...) for the existence of a political community”¹⁰.

Natural law as the participation of human reason in the life of God Himself is therefore the most profound and stable natural dimension of psychical and spiritual life. When this law is denied man becomes “homeless” (F. Nietzsche), i.e. if a man consciously and from the depth of his personal freedom damages the ontic order of the law, he turns the cosmos into chaos, a person into a thing ready for being made instrumental, a community of personal love in marriage and family into mutually fighting groups of feminists and homosexuals (the neo-Marxist Frankfurt School), law into lawlessness (the right to live into the right to abortion or euthanasia), science into ideology, art into kitsch, “the culture of life” into the “culture of death” (John Paul II). The climax of all these is found in the twentieth-century ideologies of Soviet communism and Hitler’s nazism: “Such positions reduce ‘man in the world’ to the dimensions of absolute immanence of ‘man’ towards the ‘world’. They are associated with the Nietzschean ‘death of God’, but also (...) the perspective of the ‘death’ of ‘man’. In this principally ‘materialistic’ vision of reality the man does not have in the ultimate sense any other eschatological possibilities than the whole rest of the objects of the visible universe”¹¹.

3. RETURN TO NATURAL LAW – A CHANCE TO SURVIVE AND DEVELOP EUROPE

The return to natural law classically understood seems to be particularly urgent. Especially, in the context of a common constitution for the Old Continent, for Europe as the cradle of rational knowledge, conscious and free acceptance of natural law which has its ultimate reason in God revealed by Jesus of Nazareth, the true God and at the same time true Man in one Person. Not only did He most perfectly fulfilled, but what is more, signed its validity with His Holy Blood on Golgotha. Cardinal Ratzinger warns us against “the abuse of the image of God and against the equally dangerous denial of God. Both attitudes were expressed in the

¹⁰ Idem, *Evangelium vitae*, „L'Osservatore Romano” (Polish edition) 4 (1995), p. 5.

¹¹ Idem, *Trzecia pielgrzymka Jana Pawła II do Ojczyzny*, Instytut Wydawniczy Pax, Warszawa 1988, p. 65.

twentieth-century ideologies and their flagship totalitarian systems. They have ravaged the world – within and without until the depth of the soul. Europe and the world need now the presence of God” [Ratzinger 2004, 3]. This position was represented by Robert Schuman, the co-founder of unifying Europe. In his work *Pour l’Europe (For Europe)* he writes: “Christianity teaches us that all people are equal because of their essence; they are children of the same God, saved by the same Christ, without any difference as to their race, colour of the skin, class or work. Christianity approved of the dignity of labour and everybody’s duty to subject to labour. It was first to grant primacy to internal values which alone can ennoble man. The general law of love and love for one’s neighbour make each man our neighbour; all social relations in the Christian world are based on this commandment. This instruction and its practical consequences have transformed the world. The Gospel has filled this revolution with spirit and slowly influenced the successive generations, at times with great pain. The progress of Christian society has not been automatic or straight” [Schuman 1963, 57-58].

The return to natural law is the return to the universal reason of all human and non-human existence. Thus natural law has a universal character. Only on this universal legal basis can Europe and the world build culture of universal values, such values that serve the good of all people and all nations. Otherwise ideologies in the form of nationalistic particularism or may come to life again. Such and other lines of thinking deform true universalism, the kind of universalism that can understand unity in plurality and make it real in the Triune God, a fact often indicated by Schuman. This universality is “the unity of hearts which” were called to existence and “opened by God”. Hence this kind of universality is “the unity in which the whole wealth of humankind has its proper place and what is one’s own is not against what is foreign because everything is God’s” [Ratzinger 2003, 142] alone and only God is able to maintain the whole in unity.

CONCLUSIONS

The return to reality after many *apriori* intellectual systems, sought by Husserl for instance, may be successful through the approval of the objective law of nature. This law is inherent in the nature of man and the world

that is independent in its being of any human knowing subject. German idealism, Marxism and Leninism, nazism, positivism, and neo-Marxism are various forms of subjectivism that have enormously ravaged being. I think that Europe no longer needs any evidence for the essential untruthfulness of those systems, i.e. their incompatibility with reality surrounding each of us.

The return to *ius naturale* is so precious because it equips man as person with absolutely unchangeable moral and legal principles. By means of those principles each man together with his fellowships is able to make his life on earth respectable as a foretaste of his eternal future. These are unchangeable “principia”, “metanorms”, “the essential principia of the Divine law” as the source by which to form “each social structure in the light of which all practical norms should be measured, developed and improved”¹². The Holy Father Benedict XVI indicated them in his work “Jesus of Nazareth”. Wolfgang Waldstein thinks that “only when these bases are recognised and really conformed with the protection of human rights may be effectively safeguarded. It is one of the most important tasks to establish such legal awareness, so that we could regain the European community of values on the basis of ‘the common heritage of spiritual goods’ and thus safeguard the future worthy of man” [Waldstein 2007, 327] in Europe and in the world.

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¹² Benedict XVI, *Jesus von Nazareth*, Herder Verlag, Freiburg-Basel-Wien 2007,
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The Relevancy of Natural Law

S u m m a r y

In the face of legal positivism which is spreading both in Europe and in the whole world towards different directions and systems of juristic thinking relativizing the

truth about *ordo iuris* as, among other things, the foundation of overall development of psychical and spiritual life, it is worth recalling the existence of *ius naturae* and consider it anew. Detaching the legal-natural order from eternal, unchangeable and absolutely perfect God inevitably leads to relativization of natural law in its attributes: universality, objectiveness and invariability of its most important principles, which for a human person means not only losing the true Creator from the horizon of existence and thoughts, but also losing “the absolute point of reference” (J. Ratzinger) of moral and legal nature. Reversion to the classically viewed natural law in the context of creating the common constitution for the Old Continent seems an especially urgent matter for Europe as the cradle of the rational cognition and the conscious and free acceptance of natural law, which Jesus of Nazareth as true God and simultaneously true Man in one Person fulfilled in the most perfect way and sealed its up-to-date importance with His blood on Golgotha.

Key words: God; eternal law; natural law; subjectivization of natural law; relativization of natural law; Europe

Relatywizm prawa naturalnego

Streszczenie

W obliczu rozprzestrzeniającego się w Europie i na świecie pozytywizmu prawnego względnie różnych kierunków i systemów myślenia prawniczego relatywizujących prawdę o *ordo iuris* jako m.in. fundamentu dla wszechstronnego rozwoju życia psychiczno-duchowego warto przypomnieć bytowość *ius naturae* i je na nowo rozważyć. Oderwanie porządku prawnonaturalnego od wiecznego, niezmiennego i absolutnie doskonałego Boga prowadzi nieuchronnie do relatywizacji prawa naturalnego w jego atrybutach: powszechności, obiektywności i niezmienności jego najważniejszych zasad, co dla osoby ludzkiej oznacza nie tylko utratę swojego prawdziwego Kreatora z horyzontu egzystencji i myśli, lecz także zagubienie „absolutnego punktu odniesienia” (J. Ratzinger) moralno-prawnego. Powrót do klasycznie pojętego prawa naturalnego wydaje się w kontekście tworzenia wspólnej konstytucji dla Starego Kontynentu szczególnie pilną sprawą dla Europy jako kolebki racjonalnego poznania oraz świadomej i wolnej akceptacji prawa naturalnego, które Jezus z Nazaretu jako prawdziwy Bóg i zarazem prawdziwy Człowiek w jednej Osobie najdoskonalej wypełnił oraz jego aktualną ważność przypieczętował swoją świętą Krwią na Golgocie.

Słowa kluczowe: Bóg; prawo wieczne; prawo naturalne; subiektywizacja prawa naturalnego; relatywizacja prawa naturalnego; Europa

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