ISSN 1896-9038 No 27, 2023

CHRISTIANITY WORLD • POLITICS

JOURNAL OF CATHOLIC SOCIAL THOUGHT

In the issue:

Borrego Borrego, Eijk, Figel, Lafferriere, Müller, Stępkowski, Szlachta

John Paul II: Natural Law and Human Rights

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JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

The Institute of Political Science and Public Administration
Cardinal Stefan Wyszyński University in Warsaw

Publisher:

Instytut Nauk o Polityce i Administracji
Uniwersytet Kardynała Stefana Wyszyńskiego w Warszawie

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The Institute of Political Science and Public Administration
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1/3 Wóycickiego Street, 01-938 Warsaw, building 23, room 226
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Graphics and cover designe: Mediakoncept

Desktop Publishing: Studio EDO – Jakub Łoś

The original version of the Journal is the English-language printed version.

ISSN 1896-9038

From the Editors

The current issue of our journal is dedicated to the legacy of the thought of John Paul II. It is addressed by authors from Europe and the Americas. In almost all the articles, a John Paul II's attitude to the doctrine of human rights is given special emphasis. The introductory text by Cardinal Gerhard Ludwig Müller takes up the question of the responsibility of the Popes to protect and promote human dignity, which is the foundation of the entire doctrine of human rights. In secular language, we speak of the inherent human dignity. In religious language, about man as the bearer of the *imago Dei* – the image of God. Cardinal Willem Jacobus Eijk addresses the transformation that the concept of human rights is undergoing in a secular society. Man's subjectivity and the inviolability of his dignity are no longer linked to a reference to the Transcendent Authority. Pius XII, in a 1947 letter to President Harry S. Truman, pointed out that the absence of reference to God in the Universal Declaration of Human Rights meant that these rights would be subject to reinterpretation over time and, at the same time, would be treated as a special kind of agreed-upon international positive law, the content of which, however, remains within the competence of the states-parties. Archbishop Zbigņevs Stankevičs points out that in a secular society like Latvia's, interreligious cooperation to promote human rights, especially family rights, is still possible. It turns out that in a post-communist reality, it is possible to think about the family and its rights across denominational and religious divides.

Aleksander Stępkowski addresses the question of the compatibility of human rights theory with the Christian vision of morality. It might seem that the Pope of Human Rights, as John Paul II has sometimes been called, has finally settled this question. However, analysing his teaching in more detail, we discover that his support for the doctrine of human rights – as in the conciliar constitution *Gaudium et spes* – is not absolute, but conditional. Indeed, in the contemporary public debate we are confronted with a multiplicity of ways of understanding human rights, and they are not always compatible with Christian anthropology. The texts by Bogdan Szlachta and Piotr Mazurkiewicz refer to the liberal interpretation of human rights. They point out that this is generally an atheistic view of these rights, while at the same time appealing to an anthropology that differs from Christianity on some important points. In addition, the liberal interpretation of the doctrine often leads to the proliferation of human rights and their internationalization, i.e. treating them as the fruit of an international agreement. In this context, it is worth reading Javier Borrego Borrego's text on the selectivity in the treatment of human rights in the jurisprudence of the European Court of Human Rights. This is particularly evident in such sensitive areas as the right to life, marriage and family, freedom of religion, and freedom of conscience. Max Silva Abbott addresses a similar evolution in the interpretation of human rights taking place in the Inter-American Court of Human Rights.

The other authors of the current issue of the journal analyse specific human rights that are strongly present in the teachings of John Paul II. These include the right to life and the question of abortion (Nicolas Bauer, Jorge Nicolás Lafferriere), the rights of local cultural communities (María Inés Franck), the culture of respect for human dignity and the possibility of building universal brotherhood and peace (Ján Figel). In addition, the reader will find an article by Stanisław Fel, Jarosław Kozak and Marek Wodawski analysing the dilemmas of Polish immigrants in the UK in the face of Brexit and the return from emigration.

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DOI: 10.21697/CSP.2023.27.1.01

Cardinal Gerhard Ludwig Müller

The Popes as guardians of human dignity

Abstract: The text emphasizes the significance of a Christian philosophy of life in guiding a society towards human rights and the dignity of individuals. It underscores the Church's prophetic role, asserting that followers of Christ are called to uphold justice and oppose oppression. The text also highlights the interconnectedness of eternal salvation and temporal well-being, rooted in core Christian convictions. It explores the Church's responsibility for the common good and the autonomy of earthly realities, advocating for the respectful stewardship of creation. The text addresses the contemporary challenge of protecting human life at all stages and emphasizes the Church's historical commitment to the value of every individual. Drawing on Pope John Paul II and Pope Benedict XVI's encyclicals, it asserts that the Church is inherently charitable and actively engaged in promoting human development, education, and well-being. The text rejects the notion that the Church should merely react to global issues, arguing for a proactive role in shaping the future by emphasizing humanity's vocation within God's creation. It critiques ideological pluralism that rejects moral truths, highlighting the emptiness and lack of true hope in a worldview without God. The text asserts that the Church's antidote to this vision is to focus on the beauty and dignity of the human person, emphasizing the individual's dual nature of soul and matter. It acknowledges the challenges within a secularized society but stresses the need for human rights to be rooted in an authority beyond human consensus for lasting universality.

Keywords: christianity, human person, human dignity

Jacques Maritain once wrote that only "a Christian philosophy of life would guide a *vitally*, not decoratively Christian city, a *city of human rights and of the dignity of the human person*, in which men belonging to diverse racial stocks and to diverse religious creeds would commune in a temporal common good, and common work truly human and progressive."[1] In today's secular world, in which the philosophy

[1] Jacques Maritain, "What Is Man?", https://maritain.nd.edu/jmc/jm502.htm

of life is increasingly unknown or is openly rejected, the church needs to proclaim it more courageously than ever. It is, after all, the only way toward a 'city of human rights and the dignity of the human person' — it is the one, true road to progress.

1. The Prophetic Voice of the Church

The whole Church participates in the prophetic ministry of Jesus, her Lord and Head.[2] This means that each and every one of Christ's followers is called both to help all people reach their eternal goal in God and to take responsibility for the common good. It is true that Christ's kingdom is "not of this world" (Jn 18:36), where "the mighty have their power over their nations" (Mt 20:25). But the apostles are sent to all by the crucified and risen Lord, to whom "(a)ll authority has been given in heaven *and (!) on earth*." (Mt 28:18). Thus, in the name of Christ, there is never a justification for injustice and oppression and exploitation, or the deprivation of freedom and degradation of others, but only the sacred authority to *oppose* injustice in all its manifestations. At the beginning of his public ministry, Jesus refers to himself with the messianic words: "The Spirit of the Lord is upon me, because he has anointed me to bring glad tidings to the poor. He has sent me to proclaim liberty to captives and recovery of sight to the blind, to let the oppressed go free, and to proclaim a year acceptable to the Lord." (Lk 4:18-19). Thus, there can never be a dichotomy between eternal salvation and temporal well-being, just as there can never be a reduction of the Gospel to a worldly welfare program. Our human existence can never be cut off from our supernatural calling to eternal communion with the God of Triune love. Both belong inseparably together. The unity of our universal orientation towards God and our concrete responsibility for the world are rooted in two core convictions of the Christian faith: the creation of the world by God and the mystery of Christ as fully human and divine.

The Second Vatican Council spoke of an "autonomy of earthly realities",[3] which means that the human mind is not only able to understand nature and history progressively, but also to use new philosophical and scientific achievements for the benefit of the common good. The council thus elaborates the second creation account in Genesis, where it says: "The Lord God took the man and settled him in the garden of Eden, to cultivate and care for it". (Gen 2:15). The divine command to cultivate and care for creation, however, does not only entail respect for nature, but also indicates that our lives are spent in a pilgrim state: We are at home in the

[2] Cf. Vatican II, Dogmatic Constitution on the Church "*Lumen Gentium*" 12.
[3] Vatican II, Pastoral Constitution on the Church in the Modern World "*Gaudium et Spes*" 36.

world, but working toward a higher goal. This goal, however, is not of this world but concerns our union with God. Yet, this higher aim does not absolve us from taking good care of what God has put into our hands. Preserving animal and plant life, and keeping our air and water clean, are universal goods. If the Christian vision of the human person is taken seriously, then the defamation of humanity as a pest to all other creatures, as transhumanists allege, can be easily refuted.

The church has two goals. On the one hand, she brings people to Jesus as the primary sacrament of salvation to the world. Yet, she also works for the natural goal of "the unity of mankind".[4] Striving for holiness and better living conditions, worship and civic responsibility, adoration and conversation of nature, historical consciousness and openness to the future do not dialectically exclude each other. No – they are rather assigned to each other through the analogy of being and the analogy of faith, like nature and grace, faith and reason, immanent and transcendent perfection.[5]

When the Church addresses, on behalf of all persons, the moral principles of human action, she is not motivated by a lust for power or supremacy. Moreover, she also does not interfere in a realm outside her competency, because as we have seen, she must also "care" for the world. When she speaks, she defends and promotes the irrefutable truth that every human being exists for his or her own sake and must never be a means to an end. Psalm eight calls this inalienable dignity a splendid majesty, which clothes the human person in "divine splendour and glory" (Ps 8:6). A person should never be thought of merely as a "member of a species," a marginal blip in the history of evolution. Humans are ends in themselves and not means for achieving this or that worldly goal. We are people and we deserve to be treated as such.[6]

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[4] *Lumen gentium* 1.

[5] Cf. Thomas Aq., In Boeth de Trinitate proemium q.2 a.3: "*Dicendum, quod dona gratiarum hoc modo naturae adduntur quod eam non tollunt, sed magis perficiunt; unde et lumen fidei, quod nobis gratis infunditur, non destruit lumen naturalis cognitionis nobis naturaliter inditum.*"

[6] Immanuel Kant, *Kritik der praktischen Vernunft* [1788] A 155f.: "*In der ganzen Schöpfung kann alles, was man will, und worüber man etwas vermag, auch bloß als Mittel gebraucht werden; nur der Mensch, und mit ihm jedes vernünftige Geschöpf, ist Zweck an sich selbst. Er ist nämlich das Subjekt des moralischen Gesetzes, welches heilig ist, vermöge der Autonomie seiner Freiheit.*" Cf. Thomas Fuchs, *Verteidigung des Menschen. Grundfragen einer verkörperten Anthropologie* = suhrkamp taschenbuch wissenschaft 2311, Suhrkamp Verlag, Berlin ^{2}2020.

Christianity even proclaims that humans are individually called by God, adopted as his children and regarded as his friends. Therefore, he revealed himself for all generations: "I am who I am" (Ex 3, 14). By giving Moses his name, God becomes addressable as a THOU, as a person, and communicates that he cares for every particular human being, for everyone who wants to call on him. This Christian personalism contradicts the neo-Confucianism coming from the highest offices of the Chinese Communist Party, which seeks to unite "everything under heaven" through its ideology, as the party philosopher ZHAO Tingyang argues. But "everything" is not the same as "everybody," because the individual does not count in a system, where a person has no "divine splendour."[7]

The cultural history of humanity presents us countless lessons about the origin and future of humanity, not just as a species but especially about the human person as an individual. The concretely existing person cannot be defined by general physiological characteristics or abstract concepts, cannot be evaluated according to function or usefulness to society, because is as St. Thomas Aquinas put it so brilliantly: "*Person signifies what is most perfect in all nature—that is, a subsistent individual of a rational nature*".[8] In every possible world, *person* is the pinnacle of being, as it is capable of thinking and deciding for itself. A person is an absolute singularity, which categorically resists being absorbed by another, taken advantage of, and emptied by force. Therefore, Christianity has always denied that persons are annihilated after death or that Heaven is a Nirvana, in which the individual is dissolved like a sugar crystal in a cup of water. No, in the Christian vision of the person, the pleasure of being one's own-being remains for all eternity.

The Church owes this personalist truth to all mankind and must proclaim it, for truth has to be shared in order to bear fruit and to protect others from danger. Thus, the Catechism of the Catholic Church writes: "The authority of the Magisterium extends also to the individual commandments of the natural moral law. It is necessary for salvation to observe them as the Creator requires. When the Magisterium of the Church recalls the precepts of the natural moral law, it exercises an *essential part of its prophetic task* of proclaiming to mankind what they are in reality, and reminding them what they ought to be before God".[9]

[7] dt. Berlin [5] 2021.

[8] Thomas Aquinas, Summa theologiae I q. 29 a.4: "*Persona significat id quod est perfectissimum in tota natura, scilicet subsistens in rationali natura*".

[9] Catechism of the Catholic Church 2036.

2. The primary and secondary task of the ecclesiastical Magisterium

The teaching authority of the bishops and the pope cannot be merely limited to the faithful and complete transmission of revelation and apostolic teaching. Teaching the faith also means integrating the intellectual and cultural horizon of the people of today and tomorrow, paying attention to their realities of life which are shaped by technology and science, so that they can recognize and accept the Word of God as the Word of life. The prophetic teaching of the apostles and their successors (Acts 13:1-3; Eph 2:20) does not mean foretelling future events, but rather proclaiming that Christ is the future for every human being for all eternity.

The Pope's office is to lead his flock toward a greater love for Christ (Jn 21:15). He steers the bark of St. Peter in boundless trust in the Lord, even when mighty tsunamis threaten the Church with ruin (cf. Mt 8:24). He remains the rock on which Christ safely built his Church. The "gates of hell" (Mt 16:18) do not prevail against her. St. Peter "strengthens" (Lk 22:32) the faith of his "brethren", that is, the pilgrim people of God and the struggling Church. He keeps them strong in their faith in Jesus, the "Christ, the Son of the living God" (Mt 16:16). By rejecting the destructive powers of sin within the church and the "enemies" of the "gospel of the Son of God" (Rom 1:9, 30, 5: 10; 1 Jn 4:1) he testifies that "Christ is the author of life" (Acts 3:15) and our only hope.

The universal mission of the Church is succinctly summarized and represented in the office of the pope. Moreover, his office is witness and guarantor that the house of our faith was not built on sand, but on an unshakable rock: on Jesus Christ, the Word of God made flesh.

We therefore misunderstand the Pope's mission if we attribute to him *only* a moral authority, which even non-Catholics and non-Christians concede. Undoubtedly, the popes' calls for peace in the family of nations, for social justice, for the right of all to have a share in the goods of the one earth carry great moral weight with governments, in the United Nations, and other international institutions. Polling data shows his office still receives the highest credibility among political and business leaders, especially because papal diplomacy is not guided by self-interest but by the common good, and seeks to bring about peace, freedom, and justice. Most often, however, the pope's moral authority is only invoked by politicians when it suits their self-interest or that of their political party. It is abused in order to influence media cycles and elections.

Thus, we should not ground the pope's moral authority as the world's conscience in his status as a head of state or as a teacher of social justice. His authority is first and foremost *religious* because he is the rock that Christ has raised for our faith in God, the Creator of the world, who is the ultimate goal of our life.

Yes, I am talking about every person, regardless of whether one is Catholic or non-Catholic. After all, everyone has the splendid gift of religious freedom and conscience, which orders us toward the truth and toward the good.[10] In our conscience, we encounter the voice of God, presented to us in natural law and the holy will of God, for which the supreme ecclesiastical authority is the ultimate interpreter.

Even though the commandments that God revealed on Sinai, as well as his precepts in the sermon on the Mount, are implanted in the heart of every human being (Rom 2:14-16), the Church knows that sin continuously obscures them. She therefore has to pro-actively and prophetically remind every person and society to shape one's conscience according to the divine will. Therefore, there is no contradiction between the immediacy of one's conscientious decision and the necessity of the church's magisterium to illuminate and educate this conscience—and ultimately to convert it to God. A conscience left to its own devices withers away; a conscience aided by spiritual counsel grows in holiness.[11]

At times, however, it is not enough for the prophet to only teach and advise, but instead must wake up a slumbering conscience. The Church has this duty especially when nationalist and economic self-interest threaten the common good, or when racist or financial ideologies endanger the equality and freedom of all people, or when imperialist and colonialist plans call into question the fraternal unity of the human family.

This need makes it necessary that the Church "is *in* today's world", that it pays attention to what is going on and speaks up whenever the conditions for living and human flourishing are endangered. Dietrich Bonhoeffer (1906-1945) summarized this task when he wrote from a Nazi prison: "The church is only church when it is *there* for others".[12]And in a letter to a friend [Eberhard Bethge, dated 3 August 1944]: "The church must get out of its stagnation. We must get back out into the

[10] Vatican II, Declaration on Religious Freedom "*Dignitatis humanae*" 2.
[11] Vat. II, *Gaudium et spes* 41.
[12] Dietrich Bonhoeffer, *Resistance and Surrender* (= DBW 8), 415.

fresh air of intellectual discourse with the world. We also have to risk saying controversial things, if that will stir up discussion about the important issues in life".[13] In the pastoral Constitution *Gaudium et spes,* the Second Vatican Council confirmed that the church offers on behalf of all people to be a sincere dialogue partner regarding urgent global challenges and to cooperate towards their solution. Interestingly, *Gaudium et spes* does not mention the pope in his capacity as the highest minister of the Church, which shows that this task is entrusted to the whole church. Nevertheless, the pope is the universal teacher and shepherd of the church, and thus he encourages initiatives and calls on the entire church to stay focused on this mission. These papal initiatives can be clearly seen in social teachings from Leo XIII to St. John Paul II's commitment to universal human rights down to the theological foundation of ecology in Pope Francis' encyclical *Laudato si (2015)* and his admonition about human brotherhood in *Fratelli tutti (2020).*

3. The Person is the Way of the Church

One of the great challenges of the 21st century is undoubtedly the protection of human beings at all stages of their development. The Church is the only community that has always risen to the occasion, emphasizing in her social teaching and moral theology the value of *every* human being. In the face of ever more devastating wars and crimes against humanity in all parts of the world, in which the dignity and the rights of the human person become the plaything of the powerful and rich, the essential requirements for authentic human development are ignored. John Paul II, in his encyclical *Sollicitudo rei socialis* (1987), insisted that: The obligation to commit oneself to the development of peoples is not just an individual duty, and still less an individualistic one, as if it were possible to achieve this development through the isolated efforts of each individual. It is an imperative which obliges each and every man and woman, as well as societies and nations. In particular, it obliges the Catholic Church..."[14]

The family, the village, the city, the nation, the state, the family of nations, the whole world and all of its inhabitants are at the service of people, their development, education, food, and property. The charitable commitment of the Church is part of her very nature – Pope Benedict XVI emphatically pointed this out in his first encyclical, *Deus Caritas est* (2005).

[13] Cited according to the English translation, in: Dietrich Bonhoeffer, *Resistance and Surrender*, op. cit., p. 523.

[14] *Encyclical Sollicitudo rei socialis* 32.

This, however, does not mean that the church should only passively react to the problems the world poses. In fact, the church and all Christian communities can shape the future by emphasizing the vocation of humanity in the story of God's creation. This future is reasonable and beautiful because its horizon and fundament is God: "Everything there is, comes from him and is caused by him and exists for him. To him be glory for ever." (Rm 11:36). Therefore, the church can never tire of speaking about the dignity of the human person and its rights according to the Revelation: "God said 'Let us make man in our own image, in the likeness of ourselves'." (Gen 1:26). After all, what does the vision of ideological pluralism have to offer, which rejects objective moral truths and robs people of that hopeful future with aggressive atheist rhetoric? All it really offers is the struggle of humanity against itself. It promises emptiness, not splendour. It talks about welfare, but never shows charity. In such a worldview, humans are not free until they have rejected all norm-giving authority and created their own values according to their appetites and desires. Without God, the preachers of this ideology think that humanity is free, but fail to recognize that their concept of freedom does not even respect the freedom of others. By rejecting God, humans are degraded to being merely highly developed apes, to their biological processes, to a life in which no objective standards, values, and virtues exist. Whatever this worldview celebrates today, can be abandoned tomorrow, since all their counterfeit values are based on majority decisions. A world in which such an ideology reigns is, however, a world without true hope and without true love.

The only antidote to this frightening vision is to focus on the beauty of the human person. That is why the church emphasizes that each individual is more than a conglomeration of molecules. Just as we stand on two legs, we are constituted by two principles, soul *and* matter. The Church therefore emphasizes the human person as a creature and individual in community with dignity and rights.

Within a secularized society that has surrendered to relativism and thus to the destruction of ethics, it has become more difficult to live the unconditional commitment to protecting the dignity of all humans, regardless how small, how old or how healthy. After all, human rights need to be rooted in more than consensus in order to last and be truly universal. They must be based on the recognition of an authority that is beyond the reach of man.

If we take the term person seriously, we recognize that "person" means more than psychological or sensory experience, but rather signifies an ontological reality.

A person is the centre and irreducible reality with which different characteristics are associated. Every human being, from conception to death, is a person. The quality of personhood is not inserted into our body at some arbitrary point of physiological development, but is with us from the very beginning and merely unfolds over time. A person is not merely physical, but matures as a living soul, grows bodily and spiritually, also in times of trial and pain. {"In joy and hope, sorrow and fear,"[15] we Christians can experience the presence of God, who wants "all to be saved and to come to the knowledge of the truth." (1 Tim 2:4).}

A person also does not receive her inherent rights from a government or judge. Respect for every person is the true measure of a humane society. Only a civilization built on this truth can have a future. It will thrive if human rights and personhood are the yardstick for assessing human flourishing**.** St. John XXIII already articulated this when he presented in his encyclical *Pacem in terris* (1963), an ingenious charter of *Christian* human rights. It declared wisely that every individual human being is truly a person. That includes by necessity also the very small, unborn human beings. And is it really such a stretch of the imagination for us to universally accept that all human beings are persons, even if they cannot use reason or freedom to the same degree as others? If we could arrive at a common understanding of the person, there could be a real chance that inequality will decrease, freedom will be restored and dignity will be bestowed on all human beings on this planet.[16]

4. The Church as an Advocate for Human Rights

The universality of human rights was established on the basis of the Christian faith, substantially influenced by the experiences in the New World.[17] They are based on the experience of the world as creation and God's loving care for every human being, especially the oppressed, the poor and the despised. The God of the Bible is, after all, not a distant myth or abstract entity, but one who can be

[15] Vat. II, *Gaudium et spes* 1.

[16] See for example the recent important work of two Notre Dame professors for the concept of personhood: Christian Smith, W*hat is a Person? Rethinking Humanity, Social Life and the Moral Good from the Person up* (University of Chicago Press, 2011) and idem, *A Personalist Theory of Human Goods, Motivations, Failure, and Evil* (University of Chicago Press, 2021). O. Carter Snead, *What It Means to Be Human: The Case for the Body in Public Bioethics* (Harvard University Press, 2020).

[17] See the work of the Notre Dame moral theologian David Lantigua, *Infidels and Empires in a New World Order. Early Modern Spanish Contributions to International Legal Thought* (Cambridge University Press 2021).

addressed as "THOU." This God hears rejoicing and lamentation, wipes away our tears and builds us up. This God is like a loving Father, whom the writer of psalm 63 addresses. "God, my God, you I seek; my soul thirsts for you. My body cries out for you like dry, thirsty land without water. Therefore, I look for you in the sanctuary, to see your power and glory. For your mercy is better than life; therefore, my lips praise you." (Ps 63:2-4). Could anyone write such a prayer without having experienced the closeness of the living God?

The world and everything in it exist because of the goodness of God. God is the reason that anything exists at all, but humans have received more than mere *being*. They are called to be in eternal communion with God because they are made in his image. Thus, every individual owes his being to God's love, which is extended to him before he is capable of doing anything lovable, even before his parents love him.[18] Hence, the church is inherently qualified to speak up in the discourse about human rights and should anchor them safely in the Gospel of Christ,[19] as *Gaudium et spes* rightly asserts: "The Church, therefore, by virtue of the Gospel committed to her, proclaims the rights of man; she acknowledges and greatly esteems the dynamic movements of today by which these rights are everywhere fostered. Yet these movements must be penetrated by the spirit of the Gospel and protected against any kind of false autonomy. For we are tempted to think that our personal rights are fully ensured only when we are exempt from every requirement of divine law. But this way lies not the maintenance of the dignity of the human person, but its annihilation."[20]

Human rights are therefore not constructed by consensus or international organizations, but are deciphered and discovered by reason and revelation, and permanently placed before society as a binding norm. Human rights based on what is politically expedient, however, will always be unstable because a new majority can abolish them. It is only by anchoring them in God that they are removed from the

[18] I added this thought of Joseph Ratzinger.

[19] *Gaudium et Spes* 41: "Thanks to this belief, the Church can anchor the dignity of human nature against all tides of opinion, for example those which undervalue the human body or idolize it. By no human law can the personal dignity and liberty of man be so aptly safeguarded as by the Gospel of Christ which has been entrusted to the Church. For this Gospel announces and proclaims the freedom of the sons of God, and repudiates all the bondage which ultimately results from sin (cf. Rom. 8:14-17); it has a sacred reverence for the dignity of conscience and its freedom of choice, constantly advises that all human talents be employed in God's service and men's, and, finally, commends all to the charity of all (cf. Matt. 22:39)."

[20] Vat. II, *Gaudium et spes* 41.

grasp of arbitrariness. Thus, human rights can only be applied universally if the *person as God's creation* is at their centre.

The Second Vatican Council formulated this idea impressively: "Everyone must consider his every neighbor without exception as *another self,* taking into account first of all His life and the means necessary to living it *with dignity*".[21] Recognition of the dignity of every human being, inherent in the spiritual and moral nature of the human person, and its inalienable fundamental rights, is the distinguishing feature of an *authentic democracy*. Saint John Paul II stated prophetically in *Centesimus Annus (1991)*: "Authentic democracy is possible only in a State ruled by law, and on the basis of a correct conception of the human person. […] As history demonstrates, a democracy without values easily turns into open or thinly disguised totalitarianism".[22]

In the face of the violation of human dignity today, one can not only cite the *Universal Declaration of Human Rights* (1948) or its recognition by democratic governments, but one can also invoke God, the creator of the world and of humanity. *No one,* however, can invoke God to *justify* the violation of human dignity. Terrorists who think they are doing God's will are not acting on God's behalf. Their God is a dangerous, demonic idol. Faith as a genuinely human act (*actus humanus)* – in whatever historical context – is first and foremost a person's relationship with God through the act of worship in which one acknowledges the creator as the source of truth and goodness. The observance of divine commandments and statutes can never contradict this original religious act. {On Facebook, an ISIS fighter boasted of praying to God before and after raping a non-Islamic woman, that is, a fellow human being whom God created in His image and likeness (Gen 1:27).}Violation of human rights and blasphemy are two sides of the same coin: Whoever wants to justify crimes against humanity as obedience to God worships an idol and ultimately the devil. They do not worship God, who is mercy and love, who created Heaven and Earth and who called us, according to Christian anthropology, to be partakers in his eternal, triune love.

Human rights are, however, often formulated and produced *without referencing* a transcendent power, an absolute, but they are empty because they are subject to human arbitrariness. The world is contingent, and therefore needs an anchor in

[21] Vat. II, *Gaudium et spes* 27.
[22] *Centesimus annus* 46.

the absolute, in the necessary. If one denies that human beings have such a reference point *beyond themselves*,[23] something worldly will take its place. This can be a positive law passed by the majority of a parliament or a judicial panel, but such decisions are whimsical because they change and are not built on a rock-solid foundation. Such human rights belong to the world of domination, media manipulation and coercion.

History gives us an example, such as the *Declaration of the Rights of Man,* which the French Revolution of 1789 produced. It was rightly directed against royal absolutism and the exploitative regime of the aristocracy, but it did not stop the Jacobin *reign of terror* because it had no anchor in the absolute. Opponents or critics of the revolution were easily branded as "enemies of the human race" that had to be "exterminated" like "vermin." These human beings had suddenly lost their allegedly inalienable "human rights".[24] One calculates that 100,000 innocent victims died through beheading on the guillotine alone, not counting other victims, such as those in the Vendee. Secular human rights grew from this starting point, as a Stanford historian said, "the terror of natural right," (Dan Edelstein) which, as I might add, has changed its appearance but is still very much at work in today's world.

As beautiful as *Liberté-Egalité-Fraternité* might sound—they are merely a secular imitation of the basic principles of Christian human rights, which reason alone can grasp (cf. Rom 2, 14ff), and which the great French theologian and Archbishop (of Cambrai) François de Fénelon (1651-1715) had formulated three generations earlier.[25] And let us not forget that the Revolution also did not invent the concept of human dignity, but the Renaissance philosopher Pico della Mirandola (1463-1494) {in his *Oratio de hominis dignitate* (1486)}.

5. The World faces either Progress or Abyss

Our world faces the question: Do moral freedom and civil freedom exist without God or *through* him? Without God, humans are merely an accident of evolution who only have temporal goals, such as material or cultural goods. Consequently, the idea of God is threatening to such a world because he is seen as the spoiler of

[23] See the superb collection of essays by Robert Spaemann, *Schritte über uns hinaus. Gesammelte Reden und Aufsätze I* (Klett Cotta 2010).

[24] See: Dan Edelstein, *The Terror of Natural Right: Republicanism, the Cult of Nature, and the French Revolution* (University of Chicago Press, 2010).

[25] Cf. Artur Greive, "Die Entstehung der französischen Revolutionsparole Liberté, Egalité, Fraternité", in: *Deutsche Vierteljahresschrift für Literatur, Wissenschaft und Geistesgeschichte* 43 (1969) 726-752.

self "rule" and an adversary of freedom, a stumbling block to self-realization. Yet, the Christian faith does not compare God to a tyrant or a social media influencer. Instead, the church teaches that the eternal, good and merciful God is the real goal and the fulfilment of human intellect and will. His divine invitation breaks through to our ego, liberates us from selfishness and gently calls us to join him, because *he is love*.

From a theological point of view, it is unnecessary to excuse the critical statements on human rights issued by the popes in the 19th century, as if the church was too ignorant to accept "modernity" until 1963.[26] After all, it is the right and duty of the Magisterium to point out that human rights which are not grounded in the absolute, in God, are insufficient! So far, I have not encountered any convincing arguments that are able to ground human rights in something other than the Divine, and it is historically as well as philosophically wrong to demand from the church to accept such an insufficient foundation.

Human rights, whether grounded in God or not, cannot define the highest goal of the spiritual-moral existence of man. They have only a *protective* function against the arbitrariness of the powerful in politics, finance, media and military. They protect freedom! People who believe in God can cooperate with other people of good will in building a more just world, but should never make worldly goals absolute. We can never replace the final goal of human existence, being with God, with something which will ultimately pass from this world. After all, the only way back to paradise is through God. Any earthly version that humans have attempted to build, as history has shown us, has quickly turned into its opposite.

This is the perennial teaching of the Church, which rejects the unbridled and unrestrained sovereignty of state ideology, just as much as the absolute autonomy of mankind. She points to democracy as the best form of government and admonishes that the "rule of law" is to be understood as a political community whose constitution embodies the values that correspond to the nature and destiny of man. Many modern constitutions that emerged after the catastrophe of World War II and totalitarian rule in Nazi Germany, Soviet Russia, and Japanese imperialism enshrine these fundamental rights by invoking reverence for God and mankind.

[26] *Pacem in terris (*1963) of John XXIII and the pastoral constitution *Gaudium et spes* (1965) of Vatican II.

They give democracy a solid foundation, even if the active, religious faith in their countries is rapidly declining.

Pope John Paul II thus summarizes the human rights that logically follow from the dignity of the human person made in God's image and likeness: "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".[27]

The greatest Russian philosopher, Vladimir Soloviev (1853-1900), a promoter of the unity of all churches along with the pope, summarizes the religious and social dimension of Christianity in the following commandment: "Pray to God, help people, conquer your nature; make yourself inwardly the image of Christ the God-Man, recognize His real presence in the Church, and make it your goal to bring His Spirit into all areas of human and natural life, so that through us the God-human history will be completed and Heaven and Earth are linked".[28] This is said in a biblical reference to the Book of Revelation: "Le us be glad and joyful and give glory to God, because this is the time for the marriage of the Lamb. His bride is ready, and she has been able to dress herself in dazzling white linen, because the linen is made of the good deeds of the saints." (Apc 19:7-8).

[27] Encyclical *Centesimus annus* 47.

[28] Vladimir Soloviev, *Una Sancta. The Spiritual Foundations of Life* [1884], Freiburg 1957, p. 12.

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DOI: 10.21697/CSP.2023.27.1.02

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

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Human rights in a secularized society

Abstract: The article addresses the issue of the attitude of the Catholic Church towards the doctrine of human rights. This doctrine was originally developed on the grounds of Catholic reflection accompanying the phenomenon of colonial conquests. Its use in the context of the Peace of Westphalia and the French Revolution caused the Church to distance itself from the doctrine. The return came with the person of John XXIII and the Second Vatican Council. Pope John Paul II proved to be a particularly important promoter of human rights. However, during the period in which the Church officially lent support to the doctrine of human rights, significant changes occurred in the Western world due largely to secularization. As a result, the way human rights were interpreted changed fundamentally. This has caused the secular understanding of human rights that dominates Western politics to be increasingly distant not only from the Catholic interpretation of them, but also from their original expression in the UN Universal Declaration.

Keywords: Human rights, secularization, christians

Catholic thinking about human rights flourished at the beginning of the colonization by the Spanish conquistadores in the time of Charles V. Pope Paul III, who recognized the rights of Indians to property and freedom, wrote in a letter to the Archbishop of Toledo that he had to prevent the conquistadores from reducing Indians into slaves and depriving them of their properties. For the Indians were human beings and capable of believing and of salvation. They, therefore, should be invited to convert themselves to the Christian faith, but this should not be imposed on them. The fact that they were pagans was no motive to deprive them of their freedom and their belongings.[1]

[1] "Breve *Pastoralis officium* ad archiepiscopum Toletanum" (29 May 1537), *DH* 1495; cf. Idem, papal bull *Sublimis Deus* (29 May 1537), see: https://www.papalencyclicals.net/paul03/p3subli.htm.

A group of moral theologians, belonging to the 'First School of Salamanca', laid the foundation for international law, among others, by also recognizing that the Indians had the right to property and that of not to be made slaves. The first of these theologians, the dominical friar Francesco de Vitoria (1484-1546), taught – like Paul III – that one could invite the Indians to accept the Christian faith, but was not allowed to impose it on them. In this way, he defended their right of freedom from being enforced to confess the Christian faith.[2] Neither the emperor[3] nor the pope[4] had the right to dominate the whole world and therefore also not the right to decide on the territories where the South American Indians were living. Francesco de Vitoria thought that the Indians had the right to self-government on the basis of the natural law and the *ius gentium*.[5] The *ius gentium* says, according to De Vitoria, that territory "which belongs to nobody should be attributed to the one who inhabits it".[6] The term '*ius gentium*' derives from the Roman jurist Gaius (in the middle of the second century).[7] Thomas Aquinas describes the *ius gentium*, which together with human law is one of the two *modi* of positive law, as the conclusions not very remote from the principles of natural law. The *ius gentium*, apart from these conclusions, reflects the customs and traditions of various peoples. Being closely linked to the moral natural law, the *ius gentium* is basically universally valid and in the eyes of Francisco de Vitoria, forms, together with the universal dignity of the human being, a firm basis for universal human rights and international law. He, though not explicitly speaking of the Common Good, implicitly saw the Common Good as something which covers in the end the whole world.

[2] The source concerns notes of public lectures delivered by Francisco de Vitoria in 1537, published by his students under various titles. See, for instance, Francisco de Vitoria, *Relecciones teológicas*, J. Torrubiano Ripoll (ed.), Madrid: Librería Religiosa Hernández, 1917 (facsimile of the first edition of 1557), Part I, "Los indios antes de la llegada de los Españoleseran legítimos señores de sus cosas pública y privadamente", particularly pp. 24-30.

[3] Ibid., Part II, "De los títulos ilegítimos por los que los bárbaros del Nuevo Mundo hayan podido venir a poder de los españoles", 1, pp. 31-39.

[4] Ibid., 2, pp. 39-47.

[5] Cf. Salas V.M., "Francisco de Vitoria on the *ius gentium* and the *American Indios*", *Ave Maria Law Review* 10 (2012), no. 2, pp. 331-341.

[6] Francisco de Vitoria, *Relecciones teológicas*, op. cit., Part II, 3, p. 48.

[7] *Institutiones Gai* I, § 1, in: *Gai Institutiones or Institutions of Roman Law by Gaius*, E. Poste (ed. and trans.), revised and enlarged by E. A. Whittuck, Oxford: Clarendon Press, 1904 (4th ed.).

From reserve to appreciation of human rights

Though Catholic Theologians were the first to develop the idea of human rights, the interest among them vanished after the Peace of Westphalia was concluded in 1648. The peace treaties implied that the sovereignty of the particular states was recognized, and the ruler of the state determined the religion of the inhabitants. This was not personal freedom of religion, but a cooperative one. Persons who wanted to maintain their own religion were granted the possibility to emigrate (art. V, § 30).[8] This treaty meant the end of the medieval world order, in which there had been a commonwealth of Catholic nations under the Pope and the Emperor. Because all authority came from God (Rom. 13,1-4), the Pope as the vicar of Christ had the first place, both due to his spiritual authority and his temporal power. The Pope lost his authority over the States, which were now considered sovereign. Moreover, the whole people of several states were considered to become or remain heretic.[9] Pope Innocent X (1644-1655) therefore rejected the Peace of Westphalia in sharp terms in his Bull *Zelo domus dei* (November 20, 1648). He termed it among others "null," "invalid" and "unjust" (§ 3).[10] This was the beginning of a struggle between the Pope and the states about his authority over them with regard to spiritual and moral questions. The concept of right in the peace treaty of Westphalia made Catholicism reserved to the idea of human rights.

The relationship between the papacy and the states did not become better with the origin of the democratic states in the nineteenth century. However, this relationship started to improve under Pope Leo XIII. In his encyclical letter *Au milieu des sollicitudes*, addressed to French Catholics, he recognized the right of the people of a nation to opt for their own form of government. Diverse forms of government may be good on the condition that they realize the end for which God had instituted government (Rom. 13,1-4), i.e., the Common Good, and correspond to right reason and the natural moral law (cf. *Gaudium et spes* no. 74).[11] This neutral stance towards the actual type of government was maintained by the Second Vatican Council:

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[8] See: Mirbt C., *Quellen zur Geschichte des Papsttums und des Römischen Katholizismus*, Tübingen: Verlag von J.C.B. Mohr, 1911 (3rd improved and extended ed.), p. 291; it actually consists of two treaties, one firmed in Münster, the other in Osnabrück.

[9] Ryan E. A., "Catholics and the Peace of Westphalia", *Theological Studies* 9 (1948), no. 4, pp. 590-599.

[10] Mirbt C., *Quellen zur Geschichte des Papsttums* …, op. cit., pp. 294-295.

[11] Leo XIII, "Lettre Encyclique *Au milieu des sollicitudes* (16. Februar 1896)", *ASS* 24 (1891--1892), pp. 519-529.

> "According to the character of different peoples and their historic development, the political community can, however, adopt a variety of concrete solutions in its structures and the organization of public authority. For the benefit of the whole human family, these solutions must always contribute to the formation of a type of man who will be cultivated, peace-loving and well-disposed towards all his fellow men" (*Ibid*.).[12]

However, Paul VI explicitly preferred democracy:

> "In order to counterbalance increasing technocracy, modern forms of democracy must be devised, not only making it possible for each man to become informed and to express himself, but also by involving him in a shared responsibility" (*Octogesima adveniens* n. 47).

Still, until John XXIII, the Church was still reserved about the Declaration of Human Rights, adopted by the United Nations General Assembly in 1948. The reason did not concern the contents of the human rights, listed in the declaration, but the fact that they were established by secular authorities, as was the case with the Peace of Westphalia. Moreover, the foundation of the rights was rooted in the liberal tradition, which had its main source in the Enlightenment philosophy. They therefore had an individualist character and did not refer to the common good.[13] Hence, Pope Pius XII said in his radio message for Christmas 1948:

> "The Catholic doctrine on the State and the Christian society has always been founded on the principle that the people according to the divine will form together a community, having an end and obligations in common. Also in a time in which the proclamation of this principle and its practical consequences evoke fierce reactions, the Church has

[12] The translation of the documents of the Roman magisterium have been taken from the website of the Vatican (www.vatican.va), unless otherwise indicated.

[13] Utz observes that exactly due to the fact that the declaration was founded on an individualistic-liberal concept of right, one had to add an article on everybody's duties to the community, in order to overcome exaggerated expectations: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (art. 28,1); see A-F. Utz, *Sozialethik*, Heidelberg/Louvain: F.H. Kerle Verlag/ Verlag E Nauwelaerts, 1963, II. Rechtsphilosophie, pp. 168-169. The Catholic tradition of relating human rights closely to the Common Good goes back to Thomas Aquinas' definition of law. According to Thomas, a law is essentially aimed at the Common Good (Thomas Aquinas, *Summa Theologiae*, I-II,90,2c; cf. *Ibid*. 3c).

> refused her consent to the erroneous concept of an absolutely autonomous sovereignty, lacking social obligations. The Catholic Christian, convinced that every human being is his neighbour and that every people is a member, with equal rights, of the family of the Nations, unites with a great heart these generous efforts, of which the first results may be quite modest, and the manifestations collide with strong oppositions and obstacles, but which tend to pull the particular States out from the narrowness of an egocentric mentality".[14]

He added that it is just this mentality which had a big role in the origin of the conflicts of the past and could lead to new conflicts in the future if it were not overcome. As we will see below, his concerns about the foundation of the rights would later prove prophetic.

Pope John XXIII, though observing that not everything in the declaration met with unqualified approval, nevertheless fully embraced the concept of human rights in his encyclical *Pacem in terris* (1963). He called the Declaration "a step in the right direction" as "a solemn recognition of the personal dignity of every human being" (*Ibid*., 144). The encyclical maintains that the Church does not consider it the responsibility of the State to establish basic rights and does not accept the individualist-liberal foundation of rights:

> "But the world's Creator has stamped man's inmost being with an order revealed to man by his conscience; and his conscience insists on his preserving it. Men 'show the work of the law written in their hearts. Their conscience bears witness to them' (Rom. 2,15). And how could it be otherwise? All created being reflects the infinite wisdom of God. It reflects it all the more clearly, the higher it stands in the scale of perfection (Ps. 18,8-11). But the mischief is often caused by erroneous opinions. Many people think that the laws which govern man's relations with the State are the same as those which regulate the blind, elemental forces of the universe. But it is not so; the laws which govern men are quite different. The Father of the universe has inscribed them in man's nature, and that is where we must look for them; there and nowhere else (*Ibid*., no. 5-6).

[14] Pius XII, "Nuntius radiophonicus *Gravi et ad un tempo*", *AAS* 41 (1949), pp. 5-15, particularly p. 10.

In line with Tradition, Pope John XXIII upheld the close relationship between rights and the Common Good (*Ibid*., no. 12, 46, 53-60, 139).

He enumerated a whole series of rights: the basic rights to life, to bodily integrity and the means needed for the development of life (*Ibid*., no. 11), rights concerning moral and cultural values, such as the right of man to be respected, to his good name and to freedom in investigating the truth, that of freedom of publication, "within the limits of the moral order and the common good," and those to choose one's profession and to be informed on public events, to share in the benefits of culture, good general education and to advanced studies according to the person's talents (*Ibid*., no. 12-13). He also recognized the right "to worship God in accordance with the right dictates of his own conscience" both publicly and privately, by which he prepared the document of the Second Vatican Council *Dignitatis humanae*, which recognizes the right to freedom of religion (*Ibid*., no. 14). Moreover, he mentions the "right to choose freely one's state in life" (*Ibid*., no. 15-16). He accentuates that it is primarily the right of parents to educate their children (*Ibid*., no. 17). He gave attention to economic rights, mainly the right to have the opportunity to work (*Ibid*., no. 18), which right he also attributed to women, i.e., that they "must be accorded conditions of work as are consistent with their needs and responsibilities as wives and mothers" (*Ibid*., no. 19). Furthermore, he recognized the right to private property, also that of private ownership of productive goods (*Ibid*., no. 21), and the rights of meeting and association (*Ibid*., no. 23-24), the rights to emigrate and immigrate (*Ibid*., no. 25), and political rights, which implied that man could take an active role in public life, make his own contribution to the common welfare and had the right to legal protection of his rights (*Ibid*., no. 26-27). All these rights are accompanied by corresponding duties on the part of the subject of the rights, other people and the State (*Ibid*., no. 28-30).

The controversy between the Church and the States concerning the authority of the Church over them in moral issues was settled by the explicit recognition by the Second Vatican Council of the independence and autonomy of earthly realities and herewith the autonomy of secular authorities:

> "If by the autonomy of earthly affairs we mean that created things and societies themselves enjoy their own laws and values which must be gradually deciphered, put to use, and regulated by men, then it is entirely right to demand that autonomy. Such is not merely required by modern man, but harmonizes also with the will of the Creator. For

> by the very circumstance of their having been created, all things are endowed with their own stability, truth, goodness, proper laws and order" (*Gaudium et spes,* no. 36).

This does not imply, however, an absolute autonomy of secular affairs and societies, because they remain dependent on the Creator (*Ibid*.). The order he laid in his creation, known by the moral natural law, must be respected.

The growing gap between the Church and society after the Second Vatican Council

The Church, by recognizing the independence of secular authorities, opened herself up to the world. This was one of the special ends of the Second Vatican Council, which John XXIII mentioned in the address of 11 October 1962, by which he opened the Council.[15] However, it was very disappointing that the world from its side did not open itself to the Church, but instead alienated itself from her in the period immediately after the Council. Until the Council, the controversy between the Church and the secular world concerned the way in which values, norms, and rights were founded (for instance by way of the rationalist philosophy of Descartes and that of Kant or by way of positivism), but not their contents. The values, norms, and rights taught by the Church and those accepted by secular society were largely the same. The Napoleonic Code in 1810 and the French National Bloc in 1920, for instance, qualified procured abortion and contraception as crimes.[16] They did so in for pragmatic reasons, i.e., in order to raise the birth rates and thus the number of available soldiers, but – unlike the Church – did not qualify them as morally evil because they implied a transgression of the natural moral law. Notwithstanding the different arguments, the contents were the same. However, this rapidly changed in the second half of the 60s of the last century. The values, norms, and rights of the secular world started to differ deeply from the teaching of the Church. People started to demand for themselves the right to contraception, abortion and later also that of euthanasia and assisted suicide. The availability of hormonal contraceptives on a large scale enabled people to have free sexual relationships, detached from marriage and procreation. One, therefore, started to accept the right to have free sexual relationships. This led to the sexual revolution. The detachment of sexual relationships from procreation implied that also other

[15] John XXIII, "Discorso durante la solenne apertura del Concilio Vaticano II (October 11, 1962)", no. 8.1-8.4, *AAS* 54 (1962), pp. 785-795, particularly pp. 793-794.

[16] Roy O., *Is Europa nog christelijk?*, Utrecht: KokBoekencentrum, 2020 (original title: *L'Europe est-elle chrétienne?*, Edition du Seuil, 2019), p. 52.

sexual acts and relationships which in themselves do not lead to procreation were morally justifiable, like homosexual acts and relationships. In the last decades, the right to enter into a so-called homosexual marriage – or at least partnership – was regulated by law. The first country to legalize the so-called same-sex marriage was the Netherlands in 2001.[17] In the last decades, the gender theory or queer theory has been widely spread, above all by way of educational programmes for schools imposed on countries by international organizations like the United Nations[18] and in the form of medical programmes by the World Health Organization.[19] By the way, sexual education at school in this way is an infringement on the right primarily of parents to educate their children (cf. *Casti Connubii* no. 16), also sexually, according to the right dictates of their conscience and thus their religious convictions, on the condition that they do so in a way which serves the good of the children and the common good.

What caused the radical change in the contents of secular values in the second half of the 1960s?[20] The answer is secularization, which was, however, by then not a new phenomenon. Secularization is a complex phenomenon which occurred in diverse stages and at diverse levels. Many are inclined to think that secularization is due to scientific progress, a common belief in the second half of the nineteenth century. Scientific progress was undoubtedly a factor, but only one factor among many, and not even the most influential one. The Reformation, introducing a sharp separation between the divine and the profane world, caused the first and fundamental wave of secularization. The peace of Westphalia, which deprived the Catholic Church of its authority over the States in religious and moral matters and gave this to secular authorities, was a part of this wave of secularization. A further wave of secularization was brought about by Enlightenment

[17] "*Wet van 21 december 2000 tot wijziging van Boek 1 van het Burgerlijk Wetboek in verband met de openstelling van het huwelijk voor personen van hetzelfde geslacht (Wet openstelling huwelijk)*" [*Act of 21 December 2000 amending Book 1 of the Civil Code in connection with the opening of marriage to same-sex couples (Marriage Opening Act)*], *Staatsblad van het Koninkrijk der Nederlanden* (2001), 9, particularly E, Article 30, 1.

[18] Cf. United Nations, "LGBTQI+," see: https://www.un.org/en/fight-racism/vulnerable-groups/lgbtqi-plus.

[19] World Health Organization, "Moving One Step Closer to Better Health and Rights for Transgender People", see: https://www.who.int/europe/news/item/17-05-2019-moving-one-step-closer-to-better-health-and-rights-for-transgender-people.

[20] The next two paragraphs have largely been taken from: W. J. Eijk, 134. "Der christliche Glaube im demokratischen Staat und im öffentlichen Raum", in: *Zum 95. Geburtstag: Festschrift für den Heiligen Vater em. Benedikt XVI. 16. April 2022*, K. Braun, G. Ratzinger, R. Zörb (eds), Rohrbach: Wenzlik Consulting & Publishing, 2022, pp. 44-76, particularly pp. 50-54.

philosophy, the rationalist founding of values and norms by Descartes and Kant and the State theory of Hobbes, which founded values in a way different from that by the Church, which founded these on the moral natural law. This wave was intensified by the French Revolution. This does, by the way, not take away, of course, the fact that Enlightenment philosophy and the French Revolution brought forth good things, too, among which the constitutional state.

One must make a difference, according to Charles Taylor, between three levels of secularization, closely related to one another: the secularization of the State, the secularization in the sense of the decline of the percentage of people who go to Church on Sunday and the secularization at the level of the experience of the individual, which, being determinant for the first two, is the most important level.[21] The secularization started during the Reformation and as a result of the Peace of Westphalia at the level of the State, whereas the population remained deeply religious, especially in the United States and somewhat less in Western-Europe. Through Enlightenment philosophy and the French Revolution, the number of believing Christians and that of churchgoers dropped, especially among the elites and later in the nineteenth century among labourers, but many people still remained active Christians. However, this rapidly changed in the second half of the 1960s. Secularization, though not a new phenomenon as mentioned above, became a mass phenomenon at the time. It mainly involved secularization at the level of people's personal experience. Due to the fast-growing prosperity, people in Western countries were enabled to live more independently from one another. This led to the present culture, qualified by Taylor as the culture of expressive individualism and authenticity, characterized by a radical ethical relativism. This culture implies that the individual is not only supposed to have the right, but also the obligation to distinguish him or herself from others, by their appearances and by choosing among others an own religion, philosophy of life and set of ethical values.[22] People are considered to be autonomous in these respects, on the condition of not causing damage to others.[23] This development made people generally think that ethical values, norms, and rights were intrinsically relative.

[21] Taylor Ch., *A Secular Age*, Cambridge/London: The Belknap Press of Harvard University, 2007, pp. 1-4.

[22] Ch. Taylor, *A Secular Age*, op. cit., Chapter 13 and 14, pp. 473-535.

[23] Cf. the four principles which Beauchamp and Childress see as "prima facie binding principles" in their influential book on bioethics: the principle of the respect for autonomy of decisions, the principle of non-maleficence, the principle of beneficence and that of justice: R. L. Beauchamp, J. F. Childress, *Principles of Biomedical Ethics*, New York/Oxford: Oxford University Press, 1994 (4th ed.).

Pope Benedict XVI spoke several times of the "dictatorship of relativism," because one is not allowed to contradict this idea.[24] In practice, there is a quite strong conformism, because people, though feeling themselves autonomous, intend to follow the common opinion, a tendency which is still boosted by the appearance of the social media. This explains the strength of the public opinion.[25] It thus concerns more the feeling of being autonomous than really being autonomous. The person who thinks that he is autonomous, has no need of a being transcending him, like institutions, society, the Church, not to mention God. The individualist culture therefore also became a deeply secular culture, characterized by a radical ethical relativism. The individual, feeling autonomous, understands neither the existence of a universally valid moral natural law, nor the idea of Church leaders, who – led by the Holy Spirit – are able to speak with authority on religious or moral questions. Because in democratic states the individuals choose their political representatives, these have changed laws more and more in accordance with ethical relativism. Consequently, in many countries, the right to contraception and abortion is regulated by law. Several countries in the last decades created or are about to create legal possibilities for euthanasia and medically-assisted suicide, the right to so-called same-sex marriages of partnerships and that to choose the own gender identity and to adapt the biological sex to the chosen gender identity by sex reassignment medical treatment and surgery. The State considers itself to be neutral in this sphere, which is a mythos because it actually takes a set of ethical values as the point of departure for its legislation.

The consequence of the ethical relativism of the hyper-individualistic culture is a shift of the interpretation of the meaning of right. The Church on the basis of moral natural law views the right to the marital act or the right to life as a right to use them in order to realize the integral personal development of the acting person himself or fellow human beings. However, the present hyper-individualistic culture considers these rights as rights to dispose of the marital act, the human body or of human life as a means to a self-chosen end, whereas they are intrinsic values, i.e., ends in themselves, never to be disposed of as means to an end. The warning by Pius XII of the risk posed by the individualist-liberal foundation of

[24] "Mass «Pro Eligendo Romano Pontifice» Homily of His Eminence Card. Joseph Ratzinger Dean of the College of Cardinals (April 18, 2005)", see: https://www.vatican.va/gpII/documents/homily-pro-eligendo-pontifice_20050418_en.html.

[25] Ch. Taylor, *Varieties of Religion Today: William James Revisited,* Cambridge/London: Harvard University Press, 2002, pp. 79-107; Idem, *A secular age*, op. cit., pp. 482-486.

the Declaration of Human Rights of the United Nations in 1948 (see above) proved to be justified.

As an aside, it should be noted that another factor explaining ethical relativism and, in particular, the aforementioned shift from a right of use to a right of disposing of human life and sexuality is its materialistic and dualistic view of man. This considers the mind, the centre of rational thinking, autonomous decision-making and of the capacity to have specific human social relationships, which is conceived as a product of complicated biochemical and neurophysiological processes in the human brain, as the human person. Hence, this view of man is called the 'identity theory of mind'. The human person, conceived as the mind, is considered as an end in himself. One mainly does justice to the person, conceived as the mind, as an end in himself by respecting his autonomy. The human body is, however, considered as something extrinsic to the human person and therefore not participating in its intrinsic value as an end in himself. The body is viewed as a means for the human person to express himself. The view of man grants to the human person the right to dispose of his body to a large extent, also in the most radical way, i.e., the right to dispose of life and death.[26]

The Church's answer to the concept of human rights of the present secular culture

How did the churches react to these developments? The liberal Protestant churches adapted themselves to the secular world and integrated its secular values.[27] On the contrary, the magisterium of the Catholic Church did by no means adopt the new secular values but maintained its teachings on intrinsic values and norms and the related human rights. Benedict XVI conformed this in his allocution at a congress of the fraction of the European People's Party on 30 March 2006, qualifying the intrinsic values and the norms which stem from them as non-negotiable principles. These concern the protection of human life from conception until natural death, the recognition and promotion of the natural structures of the family, as the union of a man and a wife founded on marriage and its defence against attempts to equate it by law with radically other forms of commitment and the protection

[26] *Manual of Catholic Medical Ethics: Responsible Healthcare from a Catholic Perspective*, W. J. Eijk, L. M. Hendriks, J. R. Raymakers, J. I. Flemming (eds), Ballarat: Court Connor Publishing, 2014, pp. 64-67; Idem, "Is Medicine Losing Its Way? A Firm Foundation for Medicine as a Real *Therapeia*", *Linacre Quarterly* 84 (2017), no. 3, pp. 208-219 (https://doi.org/10.1080%2F00243639.2017.1301112).

[27] Cf. Roy O., *Is Europa nog christelijk?*, op. cit., pp. 59-62.

of the right of parents to educate their children. Pope Benedict emphasized that these principles are no truths of faith, but stem from human nature common to all human beings.[28]

The great herald and defender of the Church's view of human rights is pope John Paul II. He calls the concept of freedom espoused by contemporary Western society as a pure individualist autonomy, a "caricature of freedom":

> "[T]rue freedom is not advanced in the permissive society, which confuses freedom with licence to do anything whatever and which in the name of freedom proclaims a kind of general amorality. It is a caricature of freedom to claim that people are free to organize their lives with no reference to moral values, and to say that society does not have to ensure the protection and advancement of ethical values (…) There are many examples of this mistaken idea of freedom, such as the elimination of human life by legalized or generally accepted abortion".[29]

John Paul II, by teaching the Church's doctrine concerning freedom and human rights, confutes those of the present secular individualist culture in many of his encyclicals and numerous allocutions. Of this teaching, I would like to highlight three points in particular.

First, he agrees with the present culture that freedom is the most fundamental right of the human being, but his explanation of human freedom is entirely different. Secular culture generally has a materialist view of man, implying that he is free because his mind, in fact, the result of complex biochemical and neurophysiological processes, through evolutionary progress of the brain reached such a level that he can think and take autonomous decisions. Moreover, as we mentioned previously above, the present secular culture holds that human freedom implies

[28] Benedict XVI, "Ad Congressum a « Populari Europae Factione » provectu (30 March 2006)", *AAS* 98 (2006), no. 4, pp. 343-345; a part this paragraph has been taken from W. J. Eijk, "Der christliche Glaube im demokratischen Staat und im öffentlichen Raum", op. cit., pp. 49-50.

[29] Pope John Paul II, "Message for the celebration of the Day of Peace *To serve peace, respect freedom* (January 1, 1981)", no. 7, see: https://www.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-ii_mes_19801208_xiv-world-day-for-peace.html; cf. *Redemptor hominis* no. 21: "Nowadays it is sometimes held, though wrongly, that freedom is an end in itself, that each human being is free when he makes use of freedom as he wishes, and that this must be our aim in the lives of individuals and societies. In reality, freedom is a great gift only when we know how to use it consciously for everything that is our true good".

the right or even the obligation of the individual to choose his own philosophy of life and his own set of ethical values. The Church, on the contrary, teaches that man is free because freedom belongs to his very essence, which is not the product of evolution, but is given to him by the Creator:

> "Freedom in its essence is within man, is connatural to the human person and is the distinctive sign of man's nature. The freedom of the individual finds its basis in man's transcendent dignity: a dignity given to him by God, his Creator, and which directs him towards God. Because he has been created in God's image (cf. *Gen*. 1,27), man is inseparable from freedom (…)".[30]

And he adds: "Freedom of conscience and religion … is a primary and inalienable right of the person," because the highest value to be respected is that of his relationship with God, which he expresses in his religious convictions.[31] The reason is that the relation with God and conscience belong to "the most intimate sphere of the spirit"[32] of the human person. It is therefore impossible to explain the freedom of the human being without referring to his transcendent dimension, i.e., his relationship with God. By his spiritual soul he transcends the material world, though at the same time belonging to this by his body. Freedom, explained in this way, does certainly not mean the faculty to choose what you like, but the "faculty of self-determination with regard to what is true and what is good".[33] What is true and good, is established by the divine eternal law, which man can know through his conscience, described by the Second Vatican Council as "the most secret core and sanctuary of a man, where he is alone with God, whose voice echoes in his depths" (*Gaudium et spes*, no. 16). It is clear that John Paul II, by observing that the freedom of conscience is the basic and inalienable right of the human person, does not

[30] Pope John Paul II, "Message for the celebration of the Day of Peace *To serve peace, respect freedom* (January 1, 1981)", op. cit., no. 5.

[31] *Ibid*., no. 6; here, he quotes his "Message on the value and content of freedom of conscience and of religion" (November 14, 1980)," no. 5, see: https://www.vatican.va/content/john-paul-ii/en/messages/pont_messages/1980/documents/hf_jp-ii_mes_19800901_helsinki-act.html#:~:text=On%20the%20eve%20of%20the%20Madrid%20Conference%20on,reference%20to%20the%20implementation%20of%20the%20Final%20Act; original French version: "*Civilibus Auctoritatibus quae sollemne foedus anno MCMLXXV Helsinkii factum subscripserunt missus: de libertate conscientiae et religionis* (September 1, 1980)", *AAS* 72 (1980), pp. 1252-1260, particularly p. 1258.

[32] *Ibid*.

[33] Pope John Paul II, "Message for the celebration of the Day of Peace *To serve peace, respect freedom* (January 1, 1981)," op. cit., no. 5.

intend to say that he should always follow his conscience just like that. The secularized society with its ideal of the autonomy of the individual is inclined to view the individual's conscience in itself as infallible. His conscientious judgement in itself cannot be criticized, as far as his actions do no harm to the autonomy of other individuals. Against this view, John Paul II clearly teaches that conscience is not "the ultimate instance which decides what is good or what is right".[34] Conscience can err. In this context, he reminds of the warning of the apostle Paul: "Do not be conformed to this world, but be transformed by the renewing of your minds, so that you may discern what is the will of God – what is good and acceptable and perfect" (*Rm* 12,2). Without knowing the truth, man cannot be free. Jesus says: "You will know the truth, and the truth will make you free" (*Jn* 8,32; cf. *Redemptor hominis*, no. 12). Consequently, it is necessary to form one's conscience as to enable oneself to discern what is the fundamental truth, the true will of God, which conscience applies to the concrete act the person himself performs. Freedom, thus conceived, can only be exercised "in accordance with ethical principles and by respecting equality and justice".[35] In other words, freedom actually implies the freedom to do what you ought to do. Instead, the concept of human freedom of the present secular culture, meaning that you are allowed to do as you like, on the condition of not harming somebody else's autonomy, implies the right to perform morally evil acts, for instance the right to end human life in the form of procured abortion.[36] John Paul II emphasizes that freedom cannot be considered as "a pretext of moral anarchy".[37]

John Paul II, teaching that freedom of conscience concerns the freedom to do as you ought to do, is speaking of the human person's freedom from external force as well as his inner freedom, which enables him to do what he ought to do. He can

[34] Pope John Paul II, "General Audience (August 17, 1983)", no. 3, see: https://www.vatican.va/content/john-paul-ii/it/audiences/1983/documents/hf_jp-ii_aud_19830817.html.

[35] Pope John Paul II, "Message on the value and content of freedom of conscience and of religion" (November 14, 1980)", op. cit., no. 5, see: https://www.vatican.va/content/john-paul-ii/en/messages/pont_messages/1980/documents/hf_jp-ii_mes_19800901_helsinki-act.html#:~:text=On%20the%20eve%20of%20the%20Madrid%20Conference%20on,reference%20to%20the%20implementation%20of%20the%20Final%20Act.; original French version: "*Civilibus Auctoritatibus quae sollemne foedus anno MCMLXXV Helsinkii factum subscripserunt missus: de libertate conscientiae et religionis* (September 1, 1980)", *AAS* 72 (1980), pp. 1252-1260, particularly p. 1258.

[36] Pope John Paul II, "Message for the celebration of the Day of Peace *To serve peace, respect freedom* (January 1, 1981)", op. cit., no. 7.

[37] Pope John Paul II, "Homily during Holy Mass at the Logan Circle in Philadelphia (October 3, 1979)", no. 6, see: https://www.vatican.va/content/john-paul-ii/en/homilies/1979/documents/hf_jp-ii_hom_19791003_logan-circle-philadelphia.html.

strengthen this inner freedom through the formation of the acquired virtues, and fully receives it as a gift by being redeemed by Christ.

> "Christ, the Redeemer of man, makes us free. The Apostle John records the words: 'if the Son makes you free, you will be free indeed' (*Jn* 8,36). And the Apostle Paul adds: 'Where the Spirit of the Lord is, there is freedom' (2 *Cor* 3,17)".[38]

Moreover, John Paul II, in saying that conscience can err, observes that conscience in itself is obscured by sin. Like man in his entirety has to be redeemed by Christ, conscience has to be purified by the blood of Christ and be led by the light of the Holy Spirit (*Dominum et vivificantem* no. 43). In this context, John Paul II refers to the letter to the Hebrews: "how much more will the blood of Christ, who through the eternal Spirit offered himself without blemish to God, purify our conscience from dead works to worship the living God!" (*Heb* 9,14).

John Paul II remarks that the Declaration of Human Rights of 1948 does not indicate the ethical foundations of the rights, which was perhaps impossible in 1948, but he offers the assistance of the Church in achieving that:

> "In this domain, the Catholic Church – and perhaps other spiritual families has an irreplaceable contribution to make, for she proclaims that it is within the transcendent dimension of the person that the source of the person's dignity and inviolable rights is to be found, and nowhere else. By educating consciences, the Church forms citizens who are devoted to the promotion of the most noble values".[39]

Secondly, John Paul II's explanation of the freedom of religion and conscience is also entirely different from that of the Declaration of Human Rights of 1948 in another respect. The secular individualist culture views the freedom of conscience as a positive right: you are allowed to act according to your conscience, insofar as you do not harm the autonomy of other individuals. On the contrary, John Paul II, in accordance with the declaration on religious freedom of the Second Vatican

[38] Pope John Paul II, "Message for the celebration of the Day of Peace *To serve peace, respect freedom* (January 1, 1981)", op. cit., no. 11.

[39] Pope John Paul II, "Address to the diplomatic corps accredited to the Holy See (January 9, 1989)", no. 7, see: https://www.vatican.va/content/john-paul-ii/en/speeches/1989/january/documents/hf_jp-ii_spe_19890109_corpo-diplomatico.html.

Council *Dignitatis humanae* (no. 2), teaches that the right to religious freedom and to freedom of conscience is a negative right, which implies that the State, society, groups, or individuals are not allowed to force a person to do or accept something which is against his conscience or religious convictions or to prevent him from living according to his religious convictions or conscience (unless, of course his religious convictions or conscience tell him to do something which is morally evil). It concerns a right "understood as the fundamental right of the person not to be forced to act contrary to his conscience or prevented from behaving in accordance with it".[40]

Thirdly, secular ethics explains rights in an individualistic manner, whereas John Paul II – in line with the Catholic Tradition – does so from the perspective of the Common Good: "Man must therefore be able to make his choices in accordance with values to which he gives his support; this is the way in which he will show his responsibility, and it is up to society to favour this freedom, while taking into account the common good".[41] The diverse authorities in society who have the highest responsibility to guarantee the Common Good, have the obligation to "allow each person a juridically protected domain of independence, so that every human being can live, individually and collectively, in accordance with the demands of his or her conscience".[42] Each human person and each community "must respect the freedoms and rights of other individuals and communities. This respect sets a limit to freedom, but it also gives it its logic and its dignity, since we are by nature social beings".[43]

Conclusion

Like the secular culture, Catholic moral theologians since the fifties and the Church's Magisterium from the sixties again accepted the concept of human rights with open arms, which they themselves had introduced and developed in the sixteenth century. In contrast to the secular culture, however, the Church's Magisterium holds on to the foundation of human rights on the moral natural law and their close connection to the Common Good. The position of the Church is that human rights should not be interpreted individualistically and in isolation

[40] Pope John Paul II, "Address to the Italian Catholic Doctors Association (December 28, 1978)", see: https://www.vatican.va/content/john-paul-ii/en/speeches/1978/documents/hf_jp-ii_spe_19781228_medici-cattolici-ital.html. In this address, the pope stimulates Catholic doctors not to procure abortion and confirms their right to conscientious objection against collaborating in abortion.

[41] Pope John Paul II, "Message for the celebration of the Day of Peace *To serve peace, respect freedom* (January 1, 1981)", op. cit., no. 6.

[42] *Ibid*.

[43] *Ibid*., no. 7.

from their accompanying duties. Nor should they be subjected to a reinterpretation detached from the anthropology out of which the Universal Declaration grew. In particular, this includes the right to life, to marry and to found a family or the right to freedom of conscience and religion.

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DOI: 10.21697/CSP.2023.27.1.03

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

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Interreligious Cooperation for Family Values: Latvian Experience

Abstract: The stimulus for writing the paper was an invitation to participate in the academic conference "St. John Paul II's natural law legacy and international human rights: toward a century of persuasion", organized by Cardinal Stefan Wyszynski University and Ave Maria International School of Law. I offered to share the Latvian experience of the last twenty-five years in the field of the defence of family values, taking into account cooperation between different religious communities in Latvia.

The study is based on selected international and Latvian law documents, as well as documents dealing with the issues raised and published in Latvian mass media. In the cited joint letters of religious leaders and my articles from 2002, an analysis is cited regarding the facts and materials in the field of defence of conceived life and family values. The article provides insights into the main topics discussed in Latvian society over the last two decades.

Keywords: Abortion, Civil union, Constitution, Family, Istanbul Convention

Introduction

Family values are cherished by major world religions and Christians, based on natural law which is also the basis for political and social development processes for the good of any nation. Latvia has incorporated these values in its Constitution which had been originally promulgated on 30 June 1922, was amended in 2005 with the expansion of the concept of marriage: its Article 110 affirms that the state protects and supports marriage – the union between a man and a woman, the family, the rights of parents and children.[1]

[1] *The Constitution of the Republic of Latvia*, https://likumi.lv/ta/en/en/id/57980 (12.06.2023).

In the meantime, various ideological conceptions of genderism, *de-facto* and homosexual unions have influenced the Latvian juridical and political landscape. Family values have been endangered by possible or enacted laws and regulations as regards the very notion of marriage and family, gender relations, and assaults on human life in the form of abortion. These proceedings attest to the clashes of such values as life, liberty, human dignity, health, privacy, safety, and integral development. The Roman Catholic Church in Latvia has engaged in close collaborative ecumenical efforts with other Christian churches to promote marriage and family values for the common good amidst the challenges of our times.

1. Law on Civil Unions

The 2020 ruling of the Latvian Constitutional Court provoked renewed efforts to legislate the Law on Civil Unions. In 2020, a woman whose partner did not receive the intended childbirth leave challenged this refusal before the Constitutional Court. The court ruled in November 2020 that the provisions of the Labour Law limiting such leave only to the child's father did not comply with the Constitution.[2] The Court emphasized that the family is not just a marriage-based union, thereby changing the current concept of family. The Constitutional Court ruled that the state has a duty to protect and support same-sex partner families as well. The legislator needed to figure out how to change the laws to ensure compatibility with the Court's decision by mid-2022, through amendments to the Labour Law or other norms, in conjunction with this decision.

From one perspective, the judgment of the Constitutional Court does not affect the institution of marriage, which is defined as the union of a woman and a man, but many consider that the judgment is a threat to traditional values. Therefore, in July 2021, the Central Election Commission (*CVK*) has registered the draft law "Amendment to the Constitution of the Republic of Latvia" submitted by the initiative group for collecting signatures – "The Latvian Men's Association", which envisages clarifying the concept of family in Article 110 of the Constitution. Along with the proposed changes, Article 110 of the Constitution would be more specific about marriage and family relationships: *The state protects and supports marriage – the union between a man and a woman – and a family based on marriage, kinship or adoption*. The number of signatures required to submit the draft Constitutional amendment to the Parliament was 154,868, which was not less than one tenth of

[2] On behalf of the Republic of Latvia Riga, Case No 2019-33-01, 12 November 2020, https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/12/2019-33-01_Spriedums.pdf (12.06.2023).

the number of citizens entitled to vote in the previous Parliament elections. Voters could sign the Constitution amendment for 12 months – from 30 July 2021 to 29 July 2022.

The Roman Catholic Bishops of Latvia supported the initiative to define the family in Constitution with the following message on 10 August 2021:

> The Latvian Bishops' Conference supports the draft law "Amendment to the Constitution of the Republic of Latvia" submitted by the Latvian Men's Association on 29 July, which intends to define the concept of family more precisely.

The draft law envisages a Constitution amendment to Article 110, expressing it in the following wording:

> '*The state protects and supports marriage – the union between a man and a woman – and a family based on marriage, kinship or adoption. The state protects the rights of the child, including the right to grow up in a family based on a female mother and a male father. The state protects the rights of parents and their freedom to bring up their children in accordance with their religious and philosophical beliefs.*
>
> *The state provides special assistance to children with disabilities and parents who take care of them, children left without parental care or victims of violence, families with many children, and mothers and fathers who take care of children without another parent*'.[3]

The Bishops invite Catholics to join this initiative with their signatures, so that they can collect the necessary votes during the year and hold a referendum on strengthening the concept of the family in Article 110 of the Constitution.

The future of the Church and of all humanity depends on the strength of family ties, the mutual responsibility of its members, and the concern for the welfare of one another. The tensions created by a consumerist and pleasure-oriented

[3] On the draft amendments to the Constitution submitted by the Latvian Men's Association, https://likumi.lv/ta/id/325057-par-biedribas-latvijas-viru-biedriba-iesniegto-satversmes-grozijumu-projektu (29.07.2021). Here and below, the translation from Latvian is my own.

individualistic culture threaten the normal development and maturation of individuals in many families.

It is wrong to think that extending the concept of the family could benefit society as a whole. On the contrary, only an exclusive and inseparable union of men and women fully fulfils the necessary social function, guaranteeing stable commitments and enabling children to emerge and grow up in a safe, supportive environment. Therefore, these signatures of ours could be a concrete step in the defence of families. (…)

Thank God that many families, who are far from perfect, live in love, fulfil their calling, and move forward, even if they experience falls along the way".[4]

In response to the November 2020 Court decision, the Ministry of Justice began work on the development of an appropriate legal provision. A working group was set up involving representatives of non-governmental organizations and churches. For a whole year, it worked with a lot of effort to create a sufficiently balanced proposal that would comply with the judgment of the Constitutional Court, would not unnecessarily divide society and would bring the greatest benefit to children.

Therefore, the draft Law on Civil Unions (LCU), which was submitted to the Parliament commissions for discussion on 1 February 2022, caused surprise and confusion.[5] After getting acquainted with the draft law of the Civil Unions, it can be seen that it does not differ significantly from the liberal draft laws on the registration of spouses and partnerships that were once considered and rejected by the Parliament.

In February 2022, the Ministry of Justice presented a draft law that it had prepared in response to the Constitutional Court's 2020 judgment on childbirth leave, in which the court recognized that the Constitution imposed an obligation on the legislature to provide legal protection for same-sex families.

The Civil Union Bill provides for the right of two adults, including same-sex couples, to register their relationship in order to qualify for the minimum legal, social and economic protection of the state.

[4] Conference of Latvian Bishops on amendments to the Constitution, https://katolis.lv/2021/08/latvijas-biskapu-konference-par-grozijumiem-satversme/ (10.08.2021).

[5] Civil Union Law, https://titania.saeima.lv/LIVS13/saeimalivs13.nsf/0/94894F3C9166D-3DEC225880000302475?OpenDocument (12.06.2023).

However, these couples would not be able to receive the same number of guarantees as are foreseen for spouses who have registered their marriage with the registry office or church, where they have also promised mutual trust.

Looking at the Civil Union Bill, it can be seen that it is essentially a 'light version" or "surrogate" of the marriage institution. The Civil Union Law is the first step towards far-reaching change in society. Experience in other countries shows that same-sex marriages sooner or later follow the adoption of a same-sex partnership.

On 23 March 2022, the leaders of Latvia's Christian churches prepared and sent a Letter to the Latvian Parliament expressing their opinion regarding the draft law on the Civil Unions, which had been discussed in the Parliament Commissions in February. Here is the text of the letter[6]:

> The UN Universal Declaration of Human Rights states that the family is the natural and fundamental group unit of society and is entitled to protection by the society and the State. God created man and woman and gave his blessing to a family consisting of a husband and wife, and in this God-blessed family children are born, grown out and raised. The joint upbringing of children by the father and mother is the basis for the moral, religious and social development of a person. Only in the union of a man and a woman can a life be born – a child who needs both parents, i.e. a father and a mother.

Life is not always rosy, and a father does not always want or be able to raise a child. As a society, we suffer the consequences of our lack of fathers: substance abuse, destructive behaviour, suicide, premature sex, sexually transmitted diseases, lower levels of education, lower incomes, and so on.

Aware of this, the Latvian National Development Plan for 2021–2027 in the section "Generations of Strong Families" included the task: *Strengthening the Family as a Value in Society* (p. 24).

The plan aims, among other things, to increase social protection for parents, to develop a family-friendly environment, to honour large families, to strengthen the

[6] The appeal of the leaders of the Christian churches of Latvia in relation to the Civil Union Bill, 23 March 2022, Riga.

role of the father in the family, to improve young people's parenting skills, family and marriage, and the role of intergenerational solidarity in sustainable growth.

Meanwhile, in its 12 November 2020 judgment (case No. 2019-33-01), the Latvian Constitutional Court ruled that the child's father should be replaced by the mother's partner (another woman). In response, the Ministry of Justice began work on the development of an appropriate legal provision.

We appreciated the willingness to do so in dialogue with the society. A working group was set up involving representatives of non-governmental organizations and churches. For a whole year, it worked with a lot of effort to create a sufficiently balanced proposal that would comply with the judgment of the Constitutional Court, would not unnecessarily divide society and would bring the greatest benefit to children.

Therefore, the draft Law on Civil Unions (*CSL*), which was submitted to the Parliament Commissions for discussion on 1 February, caused surprise and confusion. Getting acquainted with the draft law of the Civil Union, it is obvious that it does not differ significantly from the draft laws on the registration of spouses and partnerships that had been once considered and rejected by the Parliament. It is offered to both heterosexual and same-sex couples (see, for example, Article 7 of the Civil Union Bill and Article 84 of the Civil Law; Article 17 of the Civil Union Bill and Article 89.1 of the Civil Law; Article 18 of the draft law and Article 90 of the Civil Law).

An important difference from the duties of the spouses is that the obligation of the members of the Civil Union to be mutually trustworthy has been waived. The CSL goes much further than required by the judgment of the Constitutional Court. It allows the registration of same-sex relationships. This obscures the institution of marriage and family protected in Article 110 of the Constitution, and the right of children to grow up with their biological parents may be endangered.

It is in every child's best interests to grow up in a family with a male dad and a female mum. It is the duty of the state and every citizen to support and strengthen such a union as much as possible. Our President Egils Levits, still a judge at the Court of Justice of the European Union, has rightly pointed out that the introduction of a registered partnership open to both homosexual and heterosexual couples, in accordance with the case law of the European Court of Human Rights,

actually leads to the recognition of same-sex marriages. This would be in conflict with the Constitution of the Republic of Latvia.

There is a war going on in Europe and tensions in society. People are already tired and polarized by the time constraints of a pandemic. In our opinion, this is not the time to push the bill through the Parliament, which will further fuel emotions and increase contradictions. We therefore call for the intention not to abandon the goal of achieving a balanced and publicly acceptable framework in working with members of the public.

The judgment of the Constitutional Court can be enforced by correcting the Labour Law. Those living in a joint household have the opportunity to enter into contracts and to have their power of attorney certified by a notary. This system can be further facilitated by offering notarized contract packages. In this way, the legislator would fulfil the obligations imposed by the Constitutional Court and allow the Working Group and other specialists to continue working on a settlement, the necessary elements of which would be outlined in the way people use the solution offered here.

At a time when insecurity about the future, the consequences of relationship instability and the neglect of children are so evident in society, a stable family based on marriage and mutual trust can provide a sense of security and peace.

Therefore, we call on the Parliament deputies to support only such wording of the draft law that will strengthen families and unite our society."

Despite controversy, on Thursday, 12 May 2022, after a heated debate in the second reading, the Parliament supported the Civil Union Bill, which would allow same-sex couples to register their relations, and forwarded the Bill to the final reading where it was rejected and didn't pass through.

2. The Istanbul Convention Challenges

The Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence, the so-called Istanbul Convention, was adopted in 2011.[7]

[7] *Convention of the Council of Europe on preventing and combating violence against women and domestic violence*, https://rm.coe.int/168008482e (11.05.2011).

On 18 May 2016, Latvia signed it, but the obligations to fully comply with its provisions would be assumed by the state upon ratification of the document. The situation could be compared to an engagement – a voluntary agreement has been reached between the two parties, but the final step in formalizing the relationship – marriage – has not been taken.

Latvia is among 7 European countries that have not yet done so. Discussions on the usefulness of ratifying the Convention in Latvia are continuing, with opinions "for" and "against" depending on its various ideological presuppositions.

The Ministry of Justice developed a legal analysis of the possible impact of the convention on the Latvian legal system. The conclusion is that the ideology underlying the Istanbul Convention, as well as certain norms thereof, do not comply with the basic principles of the Latvian Constitution and fundamental human rights. Three examples could be provided:

1) The Convention obligates the states to refrain from discrimination not only on the basis of sex, but also on the basis of "gender". In order to observe this principle of non-discrimination, Latvia would, sooner or later, need to start interpreting Article 110 of the Constitution, as well as the second part of Article 35 of the Civil Law in the light of the gender social theory. This means allowing same-sex marriage, without even changing the wording of the first sentence of Article 110 of the Constitution;

2) The Convention blatantly ignores the parental rights in children's education guaranteed both in Article 112 of the Constitution and in international human rights instruments. Furthermore, the freedom of religion for parents, which is inextricably linked to the right to educate their children according to their religious and philosophical beliefs, has not been taken into consideration;

3) The first paragraph of Article 12 of the Convention obligates states to make changes in people's thinking and attitudes. Such a requirement does not comply with Articles 99 and 100 of the Constitution, as everyone in Latvia has the right to think freely, as well as to express their opinions freely, unless they violate the fundamental rights of other people (Article 116 of the Constitution).

On 29 April 2016, an open letter of Christian leaders of Latvia was published, inviting the parliament not to ratify the Istanbul Convention. It had the following content:

> "Having become acquainted with the strategy for reducing violence proposed by the Istanbul Convention, we would like to express our opinion on this document, in view of the fact that the result, i.e., its ratification, may affect every inhabitant of Latvia.

First of all, we would like to emphasize that violence against women is contrary to both the Christian faith and humanity, and that violence must be eradicated from human relations in general. Violence must be tackled at all levels, from education and legislation to support for victims of violence. Christian churches address these issues by encouraging people to build relationships based on mutual respect and the authentic benefit of the other person. It is served by preaching the gospel, pre-marriage preparation courses, various family therapy initiatives, and parent education activities. It is also the focus of various Christian organizations that provide specific assistance to victims of violence.

In the Istanbul Convention or the *Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence*, the states-parties commit themselves to the elimination of all forms of violence against women. Such a commitment is very positive. The way in which the authors of the Convention analyse the causes of violence raises questions and concerns, treating as causes not human vices, mistakes and weaknesses, but traditions, culture, religion, and the institution of the family. The Convention does not address the promotion of violence in the media and pornography, which objectifies women in the most degrading way. The Convention does not raise the issue of alcohol or drug abuse, which is most closely linked to domestic and non-domestic violence. Nor does the Convention protect conceived children from such extreme forms of violence as abortion. Instead, the Istanbul Convention on Violence – in a European context! – links it to the "historically unequal distribution of power between women and men". Of particular concern is Article 12 of the Convention, which states that "Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of (...) stereotyped roles for women and men".[8] It is not specified which roles of women and men the Convention considers to be conducive to violence. This allows the Convention

[8] *Convention of the Council of Europe on Preventing and Combating Violence Against Women and Domestic Violence*, https://rm.coe.int/168008482e (11.05.2011).

to be interpreted very broadly, and additionally to be directed against important values and the institution of the family as such.

Similarly vague, paragraph 85 of the Convention's Explanatory Report states: *Parties to the Convention are therefore required to take measures that are necessary to promote changes in mentality and attitudes*.[9] It has not been said which gender stereotypes need to be changed.

In general, it can be stated that the convention does not call for combating the real causes of violence, but opens opportunities to impose on Latvia a project for the transformation of society based on the ideology of gender, which would be in conflict with the Constitution of the Republic of Latvia.

We, the leaders of Latvia's Christian churches, call on politicians, governments and officials to see the need expressed in the title of the Istanbul Convention as an incentive to do everything possible to tackle the real causes of domestic violence, thus combating violence against women. As for the content of the Convention, we believe that it is not acceptable in its current form, as it contains significant shortcomings that allow for biased, ideological explanations, even those that have nothing to do with the elimination of violence. Should the Parliament still have to ratify the Istanbul Convention, we call for ensuring that the values enshrined in the Constitution and laws of the Republic of Latvia be protected".[10]

On 18 April 2018, a meeting of the Expert Council "On the Istanbul Convention" was held, organized by the Department of Humanities and Social Sciences of the Latvian Academy of Sciences. The aim of the Council was to assess the scope and significance of the Istanbul Convention in Latvia.

The experts sought answers to the following questions:

1) Is the Istanbul Convention only about gender equality? What areas are affected?

[9] Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 11.05.2011, Council of Europe Treaty Series – No. 210, p. 16, https://rm.coe.int/ic-and-explanatory-report/16808d24c6.

[10] Open letter from the leaders of Latvian Christian churches on the Istanbul Convention, https://katolis.lv/2016/05/latvijas-kristigo-baznicu-vaditaju-atklata-vestule-par-stambulas-konvenciju/ (2.05.2016).

2) What is violence and equality / equality in everyday life, how does it manifest itself, and how can it be reduced or prevented?

3) What happens if Latvia does not ratify the Istanbul Convention (possible penalties for non-compliance with EU discipline, lost gains, lost losses)?

The Council results were summarized in the "Council Conclusions" and passed on to the responsible state institutions, experts, mass media and published in the media of the Academy of Sciences.[11]

The decision of the expert council was as follows: until the ambiguous issues are clarified, and their impact is studied and explained to the public, the Istanbul Convention could be used as an ideological tool; the Council thus called for postponement of the ratification of the *Convention on Preventing and Combating Violence against Women and Domestic Violence* (Istanbul Convention).

3. Abortion Legislation in Latvia

In 1955 in the USSR, including the Latvian SSR, after a 19-year ban, abortions were allowed to be performed freely. This gave every woman the possibility to terminate her pregnancy by its 12th week.

The current "Sexual and reproductive health act", which legalizes abortion, was passed on 31 January 2002. Article 25 of the Sexual and Reproductive Health Law of the Republic of Latvia authorizes abortion at the woman's request until the 12th week of the pregnancy.[12]

In the spring of 2002, when the law was passed, Christian political forces collected signatures to propose a referendum on a much stricter law that would allow abortion solely to save a woman's life and in case of rape. This attempt failed.

Legal vicissitudes notwithstanding, the number of abortions has fallen steadily since independence. If in 1991 there had been 38 000 abortions in Latvia, then in 2010 the number dropped to 7 400, whereas in 2020 – to 2 800. This is largely due to the

[11] Conclusion of the Expert Consilium "On the Istanbul Convention", organised by the Division of Humanities and Social Sciences of the Latvian Academy of Sciences, http://www.lza.lv/index.php?option=com_content&task=view&id=4425&Itemid=47 (4.06.2018).

[12] Sexual and Reproductive Health Law, https://likumi.lv/ta/en/en/id/58982-sexual-and-reproductive-health-law (01.07.2019).

active pro-life movement, which involves Latvian Christians of various denominations. The director of the Catholic Pro-life movement in Latvia is a Lutheran. An ecumenical campaign "40 days for life" has been running twice a year since 2014.

In January 2002, as a Roman Catholic priest, I published an article in public media to promote the discussion on abortion. It stated:

> "Both I and each of us may not have been born and may have been destroyed in an abortion due to various circumstances. However, our parents have decided in favour of us and life when it comes to our birth".[13] We now have a duty to build what we want to call a democratic and legal society, the state and its laws.

We are now faced with a choice: do we have the right to enshrine the rule of 'abortion' in law and to accept the human right to destroy another person? The question of 'for' or 'against' abortion opens the door to a debate in which a large section of society, including members of the Christian denomination, is currently involved at various levels, although the question of the separation of national law may be questioned.

The latest statistics show that Latvia has the lowest birth rate and the highest mortality rate in Europe (8.3 and 13.8 per thousand inhabitants, respectively). The Church has a duty to uphold the right to life of every human being, and it cannot remain silent when it concerns the most vulnerable. For this reason, the Church is unequivocal in her pro-life, pro-public health position, recognizing that without life, the very existence of the state as such is in doubt. Being open to a dialogue full of mutual respect, Christians want to substantiate their position by explaining that the theological arguments expressed in the commandment "Thou shalt not kill!" is not at all contrary to legal, scientific and universal arguments, but even stands in direct harmony with them.

A legal assessment of induced abortion and its legalisation in law requires some reflection on the foundations of national law. A country that wants to become truly democratic and governed by the rule of law must allow human rights to permeate both public and private law, whereas increasingly permeating private law. If the state wants to identify possible courses of action in private law, it should address these

[13] Zbigņevs Stankēvičs, "Kāpēc man ir paveicies?" ("Why am I a lucky man?"), *Diena*, 23.01.2002, https://www.diena.lv/raksts/pasaule/krievija/kapec-man-ir-paveicies-11226015 (28.08.2023).

issues through the prism of human rights. By supplementing the Constitution with a chapter on human rights, these rights have been recognized as binding on the state, stipulating in Article 93 that "everyone's right to life shall be protected by law".

From a legal point of view, everyone or every person acquires the rights and freedoms provided for him or her at birth. It would be logical to conclude that the rights of the unborn are therefore not protected. This argument is also one of the most frequently used statements in defence of a woman's right to destroy an unborn child. Elsewhere in Europe, the natural human right – the right to life – is used as a yardstick for assessing other rights, and a part of the Latvian civil law inheritance law also provides for the right of an unborn child to inherit.

Abortion is a violation in the context of natural law, as the mere fact of life provides a basis for the exercise of other rights. The preamble to the UN Convention on the Rights of the Child states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". However, it should be added at the outset that, from a legal point of view, this issue has not yet been fully resolved and is still subject to various interpretations. National legislation has now made women's rights more important in reconciling the rights of women and their unborn children. However, if a national law denies a group of people (including unborn children) the protection that this group is legally entitled to, then it denies the equality of all persons before the law.

Abortion would not be a violation of human rights if a conceived child was not considered a human being until a certain age. Leaving for each subjective question the question of how the direct sexual contact of two human beings of the opposite sex can biologically result in "something other than a human being", let us sketch out the scientific side of the question in an attempt to find the answer to "how and when a human being comes to existence". The question of the beginning of human origin cannot be interpreted as broadly as the question of the origin of all civilization, because the moment of human origin can be traced almost in detail and this origin can be confirmed by the facts of natural science.

Researchers acknowledge that the very moment a sperm fertilizes an ovule, the general and individual characteristics of the person conceived – sex, eye, hair and skin colour, facial features, etc. – are determined. The new cell, which is made up of an ovule and a sperm, contains the genetic code of a conceived human,

splitting the chromosomes in the nucleus of the cell about a day after conception, forming two and then countless cells with the same genetic characteristics. Four or five days after conception, the new body is implanted in the womb, the embryo is soon formed, and three weeks after conception, the little person's heart begins to beat, although the woman herself is not yet aware of the new life. A closed blood circulation and other blood composition independent of the mother's blood circulation is formed on the 21st day after conception. What is said here allows us to conclude that a person starts from the moment of conception and is subject to all legal norms on the protection of a person's person.

Seemingly defending a woman's rights, it is explained that she has the right to decide for herself, on her bosom, prompting her to believe that having an unplanned child violates her rights. In another aspect, the issue should be addressed if the sexual contact was violent or unwanted, but even in this case the child is not the property of the woman who conceived him and is not part of the womb in which he is carried. He has been a completely new, unique and independent being since conception. It has already been said that the protection of women's health, the quality of life, the protection of privacy and, ultimately, the freedom and right to take care of one's own body are some of the arguments of supporters of abortion.

However, children's right to life is not incompatible with their parents' right to comfort. The theory of human rights states that some human rights may be restricted in order to protect the fundamental rights of others. Such a restriction of a woman's rights is justified not only for the sake of the life of the child, but also for protecting the woman herself from the consequences of abortion. The claim that abortion is desirable and even advisable mentions both possible abnormalities in the development of the foetus and maternal endocrine problems, extragenital, viral and other illnesses, harmful habits, psychological and many other reasons that make a woman choose to murder her unborn child.

Nevertheless, just as many, if not more, arguments are in favour of the same woman's health if the child is retained. Often, the changes that have already taken place in her body, which occur immediately after conception, as well as in the short time before the abortion is performed, are not even mentioned or are only sketched. The woman is introduced to the possible psychological consequences of abortion, but it is less often mentioned that abortion can also cause mental disorders, not just uncertainty about the possibility of a future pregnancy.

Gynaecologists acknowledge that there are difficulties in identifying the consequences of abortion, as women who have had abortions are more likely to feel guilty about their choices, regardless of the reasons for those choices. The most common reason for abortion among women themselves is the lack of support from others, and only then are the economic and legal problems mentioned as a priority by abortion advisers. 20% of women who have an abortion are by about 12% more likely than other women to consider suicide at some point, and abortion can only increase the risk of breast cancer, as terminating a pregnancy also violently stops breast development and the development of cells that have not yet developed; additionally, sensitivity of yet underdeveloped cells increases the risk of growing a tumour.

The so-called PAD, or post-abortion distress, which appears as early as three months after an abortion, manifests itself as physical and mental pain and a sense of great loss, and so on. The PAS, or post-abortion syndrome, which begins only a few years after an abortion, manifests itself as anxiety for no apparent reason, dissatisfaction with life, loss of meaning, hopelessness, and depression.

Although this discourse does not presuppose that God's word is the main and decisive argument, since theological arguments will not convince a person who does not believe in God's authority, apart from the commandment "Thou shalt not kill" mentioned at the beginning of the article against abortion, Jesus' words "Whatever you did for one of the least of these brothers and sisters of mine, you did it for me" are other words that exclude further discussion (Matthew 25:40, NIV). The early Christian churches, in opposing the prevailing Roman and Greek practices of abortion and the destruction of unborn children, have stated that the foetus cannot be killed by terminating the pregnancy and that the newborn child should not be killed. As stated in the Bible, responsibility will be claimed for the life of every person, because man is created in the image of God. In the Psalms we read, "For you created my inmost being; you knit me together in my mother's womb. I praise you because I am fearfully and wonderfully made; your works are wonderful, I know that full well. My frame was not hidden from you when I was made in the secret place, when I was woven together in the depths of the earth" (Ps 139:13-15, NIV), and the blood of a slain man is called to heaven (cf. Gen 4:10). God loved us before we were born, saying, "Before I formed thee in the belly I knew thee, and before thou camest forth out of the womb I sanctified thee" (Jer 1:5, REV). Thus, Christians recognize human life as sacred, emphasizing that it must be respected and protected from the moment of conception.

The Church has always affirmed that any intentional abortion is morally evil. Also in the text of the Hippocratic Oath, which was drafted in accordance with moral and ethical requirements and universal principles, the doctors undertook to "(…) give no sort of medicine to any pregnant woman, with a view to destroy the child." New life has always been created as the fruit of love, not just pure sexuality, and love is recognized as a moral value even among non-Christians. To Christians, "(…) God is love" (1 John 4:8), which is understandable to everyone, regardless of their level of education, and Christ says, "A new commandment I give unto you, That ye love one another; as I have loved you" (John 13:34).

In the light of the above arguments in support of the Christian view, it can be directly concluded that the Church of Christ cannot accept the legalization of abortion as required by the Latvian Sexual and Reproductive Health Bill. However, given the painful and difficult nature of this issue, we cannot stick to a simple ban by saying a pointed 'no' to abortion. Christians of all denominations in Latvia try to protect their new lives to the best of their ability. For example, the "Steps" (*Pakāpieni*) mission has been operating for several years, accepting new mothers who have been rejected by their loved ones and the public. There also exists a family support centre called 'Let's Protect a Miracle' (*Sargāsim brīnumu*) and a movement 'For Life' (*Par dzīvību*), but this is still not sufficient to solve these painful issues. There is a need for a nationwide programme that also includes appropriate changes in legislation to help women in difficult situations, and Christians are ready to work together to put this into practice.[14]

My 2002 Articles generated some interest, but no major discussion leading to the legislative changes on life issues. Christians in Latvia continue to write and speak on pro-life aspects, including the euthanasia challenge, still awaiting serious evaluation by the society and citizens. Currently, it seems that other socio-economic problems have taken the political lead; however, all the while the people of good will should be alert and guarded in order not to pass by sudden ideological assaults carried out under various slogans.

Conclusion

In Conclusion, the Latvian experience in defence of family values has been greatly enriched by interreligious and ecumenical cooperation. Christians in Latvia have

[14] Zbigņevs Stankēvičs, "*Aborti, cilvēktiesības un baznīca*" ("Abortion, human rights and the Church"), *Delfi*, 24.01.2002, https://www.delfi.lv/news/versijas/zbignevs-stankevics-aborti-cilvektiesibas-un-baznica.d?id=2540534 (28.08.2023).

been united on the issues so important for the development of any society and nation, especially that of Latvians, whose number decreases due to emigration and demographic decline. At the same time, Christians should be more motivated and formed to engage in social and political areas. More effective results could be achieved when Christians and their communities or parishes develop their updated marriage and family preparation programmes, and promote synodal engagement and integral family support in various situations, needs, and crises. Christian married couples and families might indeed be major agents of authentic social and cultural change against any form of violence, when they consciously live in accord with the Gospel of Life, Family, and Love in Christ Jesus; when they experience the Church in a true synodal way as Communion.

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CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

DOI: 10.21697/CSP.2023.27.1.04

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Entitlements/rights, dignity and liberal democracy. Against the backdrop of the text by Cardinal Gerhard Müller "The Popes as Guardians of Human Dignity"

Abstract: The concept of human dignity has already been widely discussed. In his interesting contribution, Cardinal Gerhard Müller once again turned to this category to expound upon its significance for Catholic reflection, to draw attention to its role in the teachings of 20th century Popes, and to bring it to light in connection with the increasing disputes concerning the ability/validity of "improving human nature". Historians of political thought are interested in these disputes, and see them – insofar as they are carried out by using categories developed mainly in Western reflection – not as new ones, but rather embedded in past polemics, referring to old approaches, notably those which are prevailing today. Against the backdrop of the aforementioned disputation, this paper aims to reveal the fundamental tensions between the dominant liberal tradition – which, as the paper argues, is heterogenous – and the approach favored by the Popes".

Keywords: human dignity, philosophy, theology

The concept of human dignity has already been widely discussed also in Polish literature: attention has been drawn to the potential for understanding the concept in line with the assumptions of either the ancient philosophers, or St Thomas Aquinas and other Christian thinkers, or yet, following the approach

of Immanuel Kant.[1] In his interesting contribution, Cardinal Gerhard Müller once again turned to this category to expound upon its significance for Catholic reflection, to draw attention to its role in the teaching of the popes of the last century, and to bring it to light in connection with the increasing disputes concerning the ability/validity of "improving human nature" and the treatment of human beings as creatures of God, who would strive towards their Creator with a view to attaining the goal of their existence: salvation. A historian of political thought is interested in these disputes, and sees them—insofar as they are carried out by using categories developed mainly in Western reflection—not as new ones, but rather embedded in past polemics, referring to old approaches, notably those which are prevailing today. It is worth formulating a few remarks against the backdrop of the text referred to above, revealing the fundamental tensions first and foremost between the dominant liberal tradition (which is, after all, heterogeneous, as I shall try to demonstrate) and the approach supported by the popes.

The subject entitlements/rights of the individual versus rights of the human person

The liberal approach that is usually considered to be the most carrying one is that which treats the prerogatives of the individual as potentialities that only he or she can exercise and which cannot be limited or assisted in this respect by either another individual or other individuals, or by some discretionarily understood lawmaker. This concept, which entails a "negative" understanding of individual rights or entitlements, is typically found in John Locke, who supplements it with another concept, one concerning the law of nature or the law of reason, which contains merely one norm, albeit a norm known, already in the so-called "natural state", to the mind of every "intellectually mature" subject. A norm, therefore, which is not handed down by any culture or revealed, nor is it derived from anyone's law-making work or co-constituted by individuals. It is prior to both any human law-making instances and to the 'civil society' that individuals are to create in order to establish, in particular, an 'instance' capable of an impartial interpretation of that norm, which, and this is crucial, prohibits the infringement of rights or entitlements possessed by each individual prior to the emergence of that norm. This concept, which continues to underpin both the

[1] See e.g., Bogdan Szlachta, "'Nie zdradzać człowieka' – wieloaspektowość ludzkiej godności w nauczaniu Kościoła", in: Anna Budzanowska, Wit Pasierbek (eds), *Polonia Restituta. Dekalog dla Polski w 100-lecie odzyskania niepodległości*, Wydawnictwo Naukowe Akademii Ignatianum, Kraków 2019, pp. 263-280 (along with the literature referenced therein).

notion that every individual has the same rights or entitlements irrespective of the culture in which he or she grows up and the notion of a "reasonable norm" to protect these rights and which sets the normative measure of the correctness of the actions of any legislature meant to consider this "reasonable norm" rather than the cultural content shared by the addressees of the legislature's decisions, is used to counter, *inter alia*, the claims of the majority. After all, it points out the limit of the legislative will, and it does so in the name of the primacy of reason, or more precisely of the law of reason or the law of nature— one might say, it sets a "standard of justice", raised even today by "constitutionalists" who do not accede to the dominance of positivist solutions.[2] This concept, important for

[2] One can find in the literature attempts to distinguish between classical constitutionalism (often associated with Christian constitutionalism) and liberal constitutionalism; both are to aim at limiting "the tyrannical temptations of both rulers and ordinary people, both are to introduce safeguards against abuses of power, from which arises the exclusion of certain spheres of life from the competence of the state" (Andrzej Bryk, *Konstytucjonalizm. Od starożytnego Izraela do liberalnego konstytucjonalizmu amerykańskiego*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2013, p. 623); however, the reasons for which their respective proponents try to draw boundary lines for political power vary: "Christian constitutionalism is rooted in piety—in respect for the absolute Lordship of God and the inherently limited ends of the temporal realm compared to the spiritual realm as well as the inherently imperfect or corruptible nature of politics in the fallen world. The underlying assumption is that God has established an order of being made up of two different realms or "cities," with activities in the spiritual realm that are independent of and higher than the state and those in the temporal or earthly realm that are a necessary and natural part of the political order. The liberal conception of constitutionalism does not recognize this hierarchy of being. It is based on the theory of natural rights or human rights which exist prior to the state and must be protected by an artificial social contract that separates a private sphere of civil society from the public sphere of the state. The underlying assumption of liberalism is not a God-given hierarchy of being but natural freedom and equality that make freedom an end-in-itself or a means for enjoying the safety (…) that accompany protections from state power. Even when liberalism conceives of natural rights as endowments of the Creator, the state recognizes an inviolable private sphere in which one is free to pursue happiness as one sees fit as long as one does not violate the law or take away the rights of others" (Robert P. Kraynak, *Christian Faith and Modern Democracy. God and Politics in the Fallen World*, University of Notre Dame Press, Notre Dame, IN 2001 (reprint 2012), p. 205). Despite similar aims and pursuits, the two constitutionalisms thus differ, and the attempt to reconcile them 'on liberal terms', often undertaken in the past two centuries, has led to a depreciation of the hierarchical order that is key to the Christian view. For when the hierarchy envisaged therein *is*, as Kraynak notes, "absorbed by, or adapted to, liberalism" it suffers destruction "because liberalism treats what is higher and nobler as something that is merely 'private' or 'personal' and, therefore, in a sense lower than the state" (ibid., p. 206). By failing to recognise or by levelling out the hierarchy inherent in the Christian approach, liberal constitutionalism in fact limits itself to a single dimension, that of the temporal life, constructing solely in relation to it the main institutional solutions aimed at restraining the will of those in power, so that in this dimension—the temporal dimension, not to say the one concerning the temporal life—the will of those in power does not infringe upon that which must

the 'Western', American and European reflection, including for the nineteenth-century project of the 'rule of law', was being undermined starting with the speeches of T. H. Green and notably L. T. Hobhouse (regarded as the founder of 'social-liberalism'), mainly by utilitarians, highlighting the ability of each individual to determine the good, seen to relate to the individual's particular benefit. In the "social liberalism" that has dominated Western reflection and jurisprudence since the 1960s, a kind of "positivisation" of the rights once considered in "negative perspective" took place: the legislator was no longer to protect such rights as inviolable, ones that remained exclusively at the disposal of the individual and which were only exercised by that individual, it was not even to protect the right to life, which the first liberals had considered 'inherent'. For the legislator was to act both in the interests of social consent and for the development of the respective individuals. Perhaps in connection with the abandonment of the realist approaches formulated in the dispute over universalities, which presuppose the real existence of the nature, form, or a species substance of the human being, the thrust was seen as a being in the making, who must be provided with the conditions for a decent life in a developing community. The

be guaranteed to individuals in the private sphere of their temporal life; that which must be guaranteed by the laws adopted, after all, in the public sphere. The key to liberal constitutionalism thus lies in the separation of the temporal dimension from the private sphere as the only possible so-called "private sphere", in connection with which is identified a set of more or less defined but nonetheless identical rights possessed by each individual, not by dint of the will or permission of the state, but possessed already in a "pre-state times", as Hobbes and Locke formulated it, drawing up visions of the state of nature as pre-social on the one hand, pre-political on the other (not to mention the pre-cultural condition, which raises perhaps the most serious problems for liberalism: after all, on what can one ground the universality of individual rights, and notably the legitimacy of the norms associated by the two "fathers of liberalism" with the "law of nature", in the absence of a common "cultural substrate", or even a linguistic one?). Or to put it differently, liberal constitutionalism presupposes, or at least presupposed, the inviolability of a certain private sphere by the state. In thus presenting this issue, as late as the mid-20th century, Friedrich August von Hayek could argue that while the democrat is concerned above all with indicating who governs him, the liberal is concerned with determining to what extent he is being governed; the democrat, after all, places the emphasis on the governing subject and raises the question as to whether everyone should participate in governing, and in particular in the creation of legal norms, whereas the liberal ignores this issue as being of lesser importance, expecting every ruler, especially the legislator (indeed any legislator), not to infringe on the sphere of privacy of each individual, which is inaccessible to the ruler's will, even if only the legislative one (for more, see: Bogdan Szlachta, "Konstytucjonalizm liberalny", in: Mirosław Granat (ed.), *Sądownictwo konstytucyjne. Teoria i praktyka*, Uniwersytet Kardynała Stefana Wyszyńskiego, Warszawa 2020, pp. 11-42; ibid., on the approaches by Hobbes and Locke, including the negation of the— ever close to the Catholics—teleological dimension that could be considered in the reflection on the rights of individuals).

predictions of the would-be Jesuit, a Jew but also a Catholic, Leon Naphtha, one of the main characters in Thomas Mann's *The Magic Mountain*, were coming true in that the main mark of modernity was no longer to bring out the separateness and uniqueness of each human as a rational being, but to see human beings in a 'social context': the entitlements of individuals as beings different from their like, lasting from the moment of conception until natural death, were transformed into possibilities shaped in the social game and defined within its framework. From the mid-nineteenth century onwards, liberals have placed the emphasis not on this distinctiveness but on its 'social contextualisation', making the understanding and scope of its powers dependent on the 'well-being' of the collective and themselves, considering deprivation to be the rationale for the unwillingness of parents to have children (the issue of abortion) or the unwillingness by children to have a suffering parent (the issue of euthanasia).[3] There is a growing conviction that the state is no longer there to protect the rights of the unborn and those receiving palliative care, but to ensure meeting the needs of the members of society disposing of possibly unnecessary burdens.

Locke's theory, to some extent contested by Rousseau, "was fertile, as it introduced the principle of the rights of the individual", the French constitutionalist Adhémar Esmain argued already in the nineteenth century; it introduced the "principle of the rights of the individual", the foundations of which, however, should not be sought— as did the English thinker—in the hypotheses of the state of nature or the social contract because its basis—and this is an important element when we try to comprehend the transformations taking place also in liberal constitutionalism—lies in the idea that "the source of the whole law is the individual because it is solely the individual who is a real, free and responsible being. (…) By law and by reason, political society exists exclusively in [the] interests [of individuals]. (…) But the first interest and the first right of the individual is to be able to develop freely his own capacities, and the best way to ensure this development is to allow the individual to guide it himself, spontaneously and as he pleases, at his own risk and peril, as long as he does not undermine the equal rights of others. Yet ensuring this free development is precisely the purpose of the various freedoms that make up individual rights: by failing to respect them, political society would miss its essential mission, and the State would lose its first and principal *raison d'être*.

[3] For more, see: Andrzej Bryk, *Konstytucjonalizm. Od starożytnego Izraela do liberalnego konstytucjonalizmu amerykańskiego*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2013, pp. 608-620.

«The end of all public institutions, said Siéyès, is individual liberty»".[4] Esmein, attributing to American courts "a political authority, supreme over all others" only in light of their having to adjudicate "a conflict between the constitutional law and ordinary law" in favour of the former, noted that this example was not widely followed outside America; that in "Europe, the situation was different" because there, it was established that "the courts had no right whatsoever to assess the constitutionality of laws", they could merely "apply and interpret ordinary laws". The Constitution, "as far as the rules it imposes on the legislative power are concerned" – and this is a significant statement from this jurist of old – "has as its ultimate sanction only the conscience of those who exercise this power and their responsibility, at least their moral responsibility, before the nation".[5] In France, this was the doctrine that had continuously prevailed from 1790 onwards and was "generally presented as a rigorous application of the principle of the separation of powers"[6] associated by the French author with the 'democratic spirit' rather than with the liberal tradition; a tradition which—if we relate it to the republican character of the American constitution—would allow, in the context of liberal constitutionalism, the possibility for the courts to control the constitutionality of laws and thus usher the 'third power' into the role of a 'blocker' of unconstitutional actions by the legislature. Liberal constitutionalism would thus indeed render judges as the demiurges of "a 'just' society, even against the will of the people, for it would be they who would represent—as a jurist over a century later to Esmein puts it—a 'justice' defined in liberal society exclusively in terms of equal rights, increasingly treated as human rights because (…) their cornerstone becomes an autonomous, arbitrary subject endowed with dignity, whose rights ultimately legitimise the political system".[7]

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[4] Adhémar Esmein, *Prawo konstytucyjne*, trans. W. Konopczyński, K. Lutostański, Wydawnictwo Sejmowe, Warszawa 2013, pp. 425-426. Quotation in English translated from: Adhémar Esmein, *Éléments de droit constitutionnel*, Librairie de la Société de Recueil Général des Lois et des Arrêts et du Journal du Palais, L. Larose, Directeur, Paris 1896, pp. 367-368.

[5] Adhémar Esmein, *Prawo konstytucyjne*, trans. W. Konopczyński, K. Lutostański, op. cit., pp. 464-467. Quotations in English translated from: Adhémar Esmein, *Éléments de droit constitutionnel*, op. cit., pp. 419-421.

[6] Adhémar Esmein, *Prawo konstytucyjne*, op. cit., p. 467. Quotation in English translated from: Adhémar Esmein, *Éléments de droit constitutionnel*, op. cit., p. 421.

[7] Andrzej Bryk, *Konstytucjonalizm. Od starożytnego Izraela do liberalnego konstytucjonalizmu amerykańskiego*, op. cit., pp. 602-603. While discussing an autonomous, arbitrary subject endowed with dignity, the author draws attention to "the disintegration of the traditional Kantian theory of human rights and the increasingly frequent interpretation of rights as the result of the autonomous creation by an imperial subject against the society. In such a situation – he adds – constitutional courts are victims of an anthropology that forces them to build, through laws, not a universalist society of moral justice, but a Hobbesian society

But herein arises a significant problem: Catholic social teaching speaks of the human person rather than the individual, mentions the deriving of man's existence (and essence as a species) from God, of the personal bond linking the Creator to the created individual human entity, who is—like Him—the person, placed first and foremost in relation to God and not to society, to God, towards whom the human person must strive with a view to achieving fulfilment, salvation. This existential and essential embeddedness in God, on the one hand, and teleological orientation on the other, introduce a significant moral context for the understanding of the rights of the human person, different from the 'liberal' understanding of human rights. Locke's approach was based on the conviction that each human individual possessed a series of subjective rights primary to the substantive law (called the 'law of reason' or the 'law of nature'), which, taken as a norm constituted by man's inherent reason, was intended to protect the individual's entitlements (subjective rights), in that it made it prohibited for anyone, including a law-making body, to interfere therewith. This concept is a key basis of the 1948 Universal Declaration of Human Rights, which mentions the inalienable rights of the individual that transcend the positive laws enacted by states and are intended to serve as a norm and reference point for the latter. As stated in the 2009 document of the International Theological Commission, *In Search of a Universal Ethic: A New Look at the Natural Law,* there appeared "a tendency (…) to reinterpret human rights, separating them from the ethical and rational dimension that constitutes their foundation and their end", a tendency of their reinterpretation in the spirit of "pure utilitarian legalism",[8] critical of the understanding of the rights of the human person contained in the teaching of the Roman Church. Its Head, Pope Benedict XVI, stated at the United Nations headquarters in 2008: "Experience shows that legality often prevails over justice when the insistence upon rights makes them appear as the exclusive result of legislative enactments or normative decisions taken by the various agencies of those in power. When presented purely in terms of legality, rights risk becoming weak propositions divorced from the

of a world of selfishness that is engulfed in a culture war. This puts them at the centre of such a culture war and constitutes more a manifestation of the crisis of Western constitutionalism and of the disintegration of the liberal *paideia*, forged by the modern mind in the sixteenth and eighteenth centuries, than an ability on the part of these courts to build a sustainable constitutional order sustaining the liberal *paideia*. It is this issue that becomes the most fascinating problem of modern constitutionalism (ibid., p. 603).

[8] *In Search of a Universal Ethic: A New Look at the Natural Law* (hereinafter referred to as the SUE), 5, https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html.

ethical and rational dimension which is their foundation and their goal".[9] Thus, let us note that the "ethical and rational dimension" constitutes the foundation of both subjective rights and any legal norms (or, at least, is associated with their negative limits); it also, it is perhaps to be presumed, sets the essential context both for each person and for the lawmaker, for no one can forget (and this was meant to be expressed back in the 1948 Universal Declaration of Human Rights) that the "respect for human rights is principally rooted in unchanging justice, on which [and not on the will of the consenting parties] the binding force of international proclamations is also based. This aspect is often overlooked – as it is added after the words of Benedict XVI – when the attempt is made to deprive rights of their true function in the name of a narrowly utilitarian perspective" (SUE, fn. 4).

The problem raised by Pope Benedict XVI as regards the discarding of the 'ethical and rational dimension' in favour of a 'narrow utilitarian vision' is linked to the dominance of legal positivism: having recognised that "every claim to possess an objective and universal truth would be the source of intolerance and violence, and that only relativism can safeguard the pluralism of values and democracy", the proponents of legal positivism are not only to renounce any attempts to appeal to "any reference to an objective ontological criterion of what is just. In this perspective, the final horizon of law and the moral norm is the law in force, which is considered to be just by definition since it is the will of the legislator" (SUE 7). Let us also note this: the law in force, the constituted or—as we mentioned earlier—"civil" law, is not only "the final horizon of law", the foundation for itself, but it also constitutes "the final horizon of (…) the moral norm" (SUE 7), from which the moral norms are to be derived. This renders such norms, the moral norms specifically, not distinct from the law and not capable of constituting a criterion for the correctness or soundness, or justice of legal norms, but are instead established therein. This approach, found in the reflections of advocates and even apologists of lawyerly positivism rather than legal positivism (as in the Polish translation of the document cited above), is problematic insofar as it nullifies the approach defended by Pope Benedict and his predecessors: it is no longer possible to convince of the existence of some "higher law" intended to provide—as we have seen—a justification for the existence of human rights and a normative context for a possible conscientious objection, it is also no longer possible to argue that, having become aware of its content as the content allowing to assess the norms of legislated law,

[9] *Address of His Holiness Benedict XVI,* New York, 18 April 2008, https://www.vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf_ben-xvi_spe_20080418_un-visit.html.

it would be possible to consider some of them as "not binding in conscience". Statute law, after all, precedes all morality, for in it must now be found the source of moral norms as well.

I will return to this issue in the last part of the text. In order to highlight the problem more clearly, suffice it to mention that St John Paul II, often referred to as the "Pope of human rights", argued that the moral natural law recognised by man's inherent reason corresponding to his personal structure should be matched with the inherent dispositions (inclinations)[10] of his nature. Not only are these inclinations to constitute the content of human nature, which is proper to every individual belonging to the species, irrespective of the culture in which the person grows up, sex, nationality, or nation to which the person belongs, irrespective of the time of his or her presence in the temporal visible plane, and, finally, irrespective of the social role he or she plays. Thus, not only do they indicate the content of human existence, of existence as a species, but they are also intended as a point of reference for the normative determinations corresponding to the nature of the species, which constitute precisely what in the Catholic tradition is still referred to today as "natural law", and by means of these determinations are to set the limits of legitimate human behaviour.[11] This complex passage expressed just now is based on the thesis that the Pope, who was a native of Poland, was referring to the teachings of the 13th century Christian Aristotelian, St Thomas Aquinas. Like Thomas Aquinas, at the end of the twentieth century, marked by the catastrophes of two world wars and the horrors of totalitarianism, John Paul II pointed out that the law made by man must find both its grounding and its negative boundaries for the human lawmakers in a sphere independent of their will. He argued this at a time when—and today even more clearly—respecting the human rights was usually called for, therein thus finding the sole, essentially, limits to the activity of the legislator. John Paul also frequently mentioned them (he is even sometimes referred to as the "Pope of human rights"), not only because he

[10] The International Theological Commission uses the term 'dynamisms' instead of 'dispositions' or 'inclinations', distinguishing three: "to preserve and to develop one's own existence; (…) to reproduce, in order to perpetuate the species" and, listed together, "to know the truth about God and to live in society", declaring that "(f)rom these inclinations, the first precepts of the natural law, known naturally, can be formulated (*In Search of a Universal Ethic: A New Look at the Natural Law*, op. cit., 46; for the discussion of each of the "dynamisms" or inclinations, see: sections 48-51).

[11] Human nature (one inherent to the species, and not a nature supposedly different in each individual, who would possess a 'nature of his or her own') was the point of reference in the reflection presented by John Paul II, in particular in the 1993 encyclical *Veritatis splendor* (hereinafter referred to as *VS*).

himself had experienced both Nazism and Bolshevism, but also because human life and human dignity had become essential elements in the teaching of the Church, exposing both the need to pursue a transcendent goal suited to the representatives of the human species and the need to honour the freedom to profess Catholicism both in totalitarian regimes and in democratic systems. However, the Pope invariably linked, as is all too often forgotten, reflection on 'human rights' with reflection on the 'precepts of natural law', binding "always and for everyone", including "prohibitions which forbid a given action *semper et pro semper,* without exception, because the choice of this kind of behaviour is in no case compatible with the goodness of the will of the acting person, with his vocation to life with God and to communion with his neighbour" (*VS* 52). The prohibition regarding the ways in which human rights could be exercised out of a single, legislative will, even if legitimised by the majority or all of the addressees of their rulings, sounded extremely unambiguous: "It is prohibited—to everyone and in every case—to violate these precepts. They oblige everyone, regardless of the cost, never to offend in anyone, beginning with oneself, the personal dignity common to all" (*VS* 52; a fundamental question arises, also in connection with the wording of the provision of Article 30 of the 1997 Constitution of the Republic of Poland, concerning the relationship between nature of the species and natural law based thereon as well as dignity, which is considered to be common to all people and therefore also has a 'species'-associated value; I will discuss this further below, as this issue also requires clarification). In his reflection, John Paul II linked the absolute commandments to the principles of natural law, as is evidenced in particular the Catechism of the Catholic Church (hereinafter CCC) signed by him, in which we read not only that "natural law, the Creator's very good work [let us note this problematic statement], provides the solid foundation on which man can build the structure of moral rules to guide his choices. It also provides the indispensable moral foundation for building the human community", which corresponds to the "objective" or normative side of natural law (which is not considered law within the understanding of the dominant contemporary legal positivism because it does not incorporate coercive sanctions into the content of the norm), but we also read that natural law "provides the necessary basis for the civil law with which it is connected, whether by a reflection that draws conclusions from its principles, or by additions of a positive and juridical nature" (CCC 1959).

The Church invokes natural law as a measure of, simultaneously, justice and reason or rationality in connection with the "spread of a culture that limits rationality

to the positive sciences and abandons the moral life to relativism" in order to emphasise that human beings possess "the natural capacity (…) to obtain by reason 'the ethical message contained in being' (…) and to know in their main lines the fundamental norms of just action in conformity with their nature and their dignity. The natural law" not only "makes possible an intercultural and inter-religious dialogue capable of fostering universal peace and of avoiding the 'clash of civilizations'", but also provides "a basis in reason for the rights of man" (SUE 35). It is countered by relativistic individualism close to liberals, who consider that "every individual is the source of his own values, and that society results from a mere contract agreed upon by individuals who choose to establish all the norms themselves". This approach supports the fundamental principles "that regulate social and political life (…)" and "recalls the non-conventional, but natural and objective character of the fundamental norms" (SUE 35), the character that is key to the Catholic approach, which also defines its proper understanding of the rights of the human person.

The authors of *In Search of a Universal Ethic (…)* recall the words of Pope Benedict XVI, who expressed a similar conviction in a speech at UN headquarters on 18 April 2008, pointing out, however, not only that human rights "are based on the natural law inscribed on the heart of man and present in the different cultures and civilizations", but also that "(t)o detach human rights from this context would mean restricting their range and yielding to a relativistic conception, according to which the meaning and interpretation of rights could vary and their universality could be denied in the name of different cultural, political, and social conceptions and even religious outlooks" (SUE, fn. 42). This position, as Pope Benedict XVI pointed out in his speech to the Bundestag in 2011 (*The Listening Heart. Reflections on the Foundations of Law*), relegates the "Christian thinking about law" to the ranks of counter-cultural standpoints (which in itself may seem peculiar),[12] which run counter to the dominant culture, including the legal culture of modern Europeans. These statements alone clearly indicate an awareness of the problematic nature of the Catholic approach to the rights of the human person, which is grounded in a moral teaching that refers to universally valid normative content revealing a just and rational or reasonable normative order which every legislator, including liberal or liberal-democratic lawmakers, must respect. This is a questionable approach when it is assumed that an

[12] See also: SUE 71 along with an analysis of the processes that led to these developments (SUE 71-75), and a reflection on individual freedom juxtaposed with the errors of 'physicalism' on the one hand, and 'environmentalism' on the other (SUE 76-82).

autonomous subject establishes legal norms together with those akin to him or her, ultimately legitimising the political system. The only normative order that binds all the actors in liberal democratic societies turns out to be the legal order, which does not have to consider the requirements of natural law, but should instead be "legitimate", undergo the procedures within the framework of which it is established. These, essentially merely procedural requirements, abolish the "substantive" requirements based on the norms of natural law, shift the reflection on human rights from the level where they are considered "pre-political" or "pre-legislative" to the level of the battles waged by the proponents of various points of view, which may also include those honouring the Catholic position; a position which they may present as universally valid, but which, in liberal democratic societies seeking merely the legality and not the rightness of legal decisions, no longer accepting, no longer even knowing the concept of the nature of the human species, whereby the Catholic position is not recognised as universally valid.

Normative rules adjudicated by individuals and communities against the previously discerned "the very nature of the human subject" constitute, for Catholics, "a permanent critical instance" inherent in "a fundamental ethical norm" of the natural law; the norm unknown to the proponents of legal positivism who consider statute law as the source of moral substance as well (SUE 9); the norm, which should not be associated with "the physical laws of nature", but with the fundamental moral goods "the human person immediately apprehends", and who—and not someone outside that person— "formulates, as a result, the precepts of the natural law" (SUE 10 and 11). It is therefore the human subject, using his or her inherent reason (and not submitting to the will of some arbitrary legislator, even if it were God considered in such a role), as Cardinal Müller also points out, who is to recognise and respect the precepts of this law, also when establishing the norms of "civil law". At this point, however, a problem arises that is often raised by the critics of the Catholic position, which highlights the simultaneously universalistic and rational dimension of natural law, applicable to and cognisable by every human being: in the document at hand, it is clearly stated that since the time of St Augustine it has been recognised that "the norms of the righteous life and of justice are expressed in the Word of God, who then imprints them in the heart of man 'as the seal of a ring passes to the wax, but without leaving the ring'" (SUE 26). Thus, it is ultimately from God that substance is to reach the human heart, the substance which man is to recognise, to realise, like among the Stoics, what has already been written in his heart

by God.[13] Such an approach raises the opposition both by those who do not recognise the existence of God and by those who recognise gods other from the God of Christians.

The rights of the human person, associated with natural law protecting the inclinations of man's nature as a species, are thus not construed in the same way as Locke's rights or entitlements of the individual.[14] What is important is that these rights, too, possess the virtue of being universally valid, non-negotiable, and not subject to arbitrary decisions by the legislature, even if it is acting on the basis of majority rule. At the same time, however, such an approach exposes them not only to the attacks already presented, makes them a subcultural endeavour, but also subjects them to processes analogous to those encountered by the "classical" liberal approach put forth by Locke in the second half of the 17th century. Since the late 1960s, this approach has been driven out by "progressive liberalism", whose followers consider that "the private is political", that equal rights should apply not only in the public realm but also in the private sphere, that the "moment of equality", the "egalitarian moment" should be augmented at the expense of the "moment of freedom" understood as the non-interference by the state in the inviolable private sphere of individuals. Legislative activity is no longer dominated by the effort to establish guarantees of the inviolable rights of individuals, but by the eradication of the inequality of individuals. As a result, the meaning attributed to "dignity" is also changing, where the term is no longer linked to the equal ontic status of individuals (which is so important, *inter alia*, for the protection of their lives), but to their common claim to participate in the formulation of legal norms, their claims to be taken into consideration in the legislative process and thus in the legal system in place. This is not only a significant manifestation of "relativistic individualism" considering that "every individual is the source of his own values, and that society results from a mere contract agreed upon by individuals who choose to establish all the norms themselves" (SUE 35). It also constitutes an

[13] By stating that "creatures are animated by a dynamism that carries them to fulfil themselves, each in its own way, in the union with God", the authors of the document *In Search of a Universal Ethic (…)* declare that this dynamism is "transcendent, to the extent to which it proceeds from the eternal law (…). But it is also immanent, because it is not imposed on creatures from without, but is inscribed in their very nature. (…) The natural law is therefore defined as a participation in the eternal law. It is mediated, on the one hand, by the inclinations of nature, expressions of the creative wisdom, and, on the other hand, by the light of human reason which interprets them and is itself a created participation in the light of the divine intelligence" (SUE 63).

[14] See, for example, Bogdan Szlachta, "Prawo katolika – prawo liberała", *Miesięcznik "Znak"*, no. 11(450), Kraków 1992, pp. 81-96.

important context for understanding a legislative process that no longer takes into account what is common, to be found, for example, in the common nature of all human individuals and in the equal rights of the human person, such as the right to life,[15] but which highlights a multitude of perhaps hardly reconcilable particularistic claims, be it critical of such rights. Claims made by individuals holding their consciences as the ultimate instances for determining the good and the evil, the right and the wrong, in connection with the discernment of what is advantageous or disadvantageous in their view. In his encyclical *Veritatis splendor* issued almost thirty years ago, John Paul II already pointed out the consequences of treating the individual conscience as such an ultimate instance. Not only "traditional culture", but also natural or traditional intermediary bodies, such as the Church, devoid of a transcendent foundation and usually considered as one of many social structures, threaten the authenticity of the inimitable individual capable of articulating own preferences, of indicating what constitutes the good and what is evil. In today's highly influential approaches by proponents of radical, or agonic, democracy, who draw on Marx rather than Locke, individuals driven by current preferences seek *ad hoc* allies and identify *ad hoc* opponents, thus losing reference to "permanent values" (associated not only with the natural law of the classics, but also with the law of nature of the early liberals), instead demanding that hitherto "excluded" behaviour be accommodated in the name of respect for the original standpoint of the individual. It is no longer the correctness of a decision made in a democracy, but its relative validity that is expected: the proliferating deliberative conceptions no longer even refer to a general reasonableness, but increasingly settle for the "epistemic proceduralism", acknowledging the impossibility of not only finding, but even generally accepting, a reasonableness whose content were to be

[15] As we read in the *Catechism of the Catholic Church*, the "right to life of every innocent human individual" is not only "inalienable", but "is a *constitutive element of a civil society and its legislation*": "The inalienable rights of the person must be recognized and respected by civil society and the political authority. These human rights depend neither on single individuals nor on parents; nor do they represent a concession made by society and the state; they belong to human nature and are inherent in the person by virtue of the creative act from which the person took his origin. Among such fundamental rights one should mention in this regard every human being's right to life and physical integrity from the moment of conception until death." "The moment a positive law deprives a category of human beings of the protection which civil legislation ought to accord them, the state is denying the equality of all before the law. When the state does not place its power at the service of the rights of each citizen, and in particular of the more vulnerable, the very foundations of a state based on law are undermined. (…) As a consequence of the respect and protection which must be ensured for the unborn child from the moment of conception, the law must provide appropriate penal sanctions for every deliberate violation of the child's rights" (2273).

co-determined by diverse individuals. If anyone and at any time can – and should not be restricted in doing so – oppose the "instruments" that enslave them, borne not only by the moral teaching of the churches, but also by the law in force and even by the dominant language, then, in the name of their emancipation, or rather "inclusion", any preference may be granted legal protection. This applies both to preferences that were once considered "immoral" or "illicit" and preferences that diverge from the currently prevailing culture, critically assessed therein. The law is increasingly regarded as an instrument that protects the freedom to articulate such current preferences, that run even contrary to the dominant cultural patterns, to which moral virtue is sometimes attributed (at the expense of the order associated with God and His presence in the conscience of individuals, and therefore at the expense – viewed from a Catholic perspective – of their "righteousness"). It is presumed that there was no Creation, that the world has evolved to its present state without the participation of the Creator, therefore referral to God seems unwarranted, unacceptable to those who – being worthy of respect equally like the others – do not recognise Him. When the courts of the so-called western world rule that at the heart of freedom lies the ability of each individual to define their very existence and the universe in their own manner,[16] a referral to the Law of God or the nature of the species constituted by Him becomes even more problematic. In this context, when a person is perceived (more and more frequently, in fact) as an entity that is not necessarily rational, but rather driven by emotions, by the "whims of the moment" that are impossible to assess due to a lack of criteria, such referrals take on not only a subcultural, but also a counter-cultural quality that is antagonistic to the dominant approaches.[17] The law, which had been erstwhile intended to protect the rights which in time came to be known as human rights, is

[16] See e.g., *Planned Parenthood v. Casey*, 505 US 833, 1992.

[17] Foreign, if not even inimical, to such approaches is the view expressed in the already evoked 2009 document of the International Theological Commission, which states that the "norms of natural justice are thus the measures of human relationships prior to the will of the legislator" and that they "express what is naturally just, prior to any legal formulation", if this is to be expressed "in a particular way in the subjective rights of the human person, such as the right to respect for one's own life, the right to the integrity of one's person, the right to religious liberty, the right to freedom of thought" etc. (SUE 92). For these rights, "to which contemporary thought attributes great importance" as to – let us add – human rights, the rights of those to whom the legislator addresses its determinations, "do not have their source in the fluctuating desires of individuals, but rather in the very structure of human beings and their humanizing relations. The rights of the human person emerge therefore from the order of justice" and, as such, cannot be juxtaposed to it, cannot be prior to it, cannot be prior with respect to the norms of natural law; their acknowledgement, the attribution to them of juridical value in positive law, is tantamount to the acknowledgement of the "objective order of human relations based on the natural law" (SUE 92).

becoming not so much a tool to protect these rights as an instrument to multiply them and to provide protection to the successive revealed subjective preferences.[18]

Two perspectives on the "dignity of the human person"

It is said in the Vatican II document *Gaudium et spes*[19] (*GS* 41), invoked by Father Cardinal, that "(m)odern man is on the road to (...) a growing discovery and vindication of his own rights", whose foundation or, rather, whose source is to be his personal relation with the Creator. The Church, conveying that God created man in his own image and redeemed from the sin, who gathers "whoever follows after Christ" and who, though this, "becomes himself more of a man", is to be the might of this faith, able to "anchor the **dignity of human nature** against all tides of opinion, for example those which undervalue the human body or idolize it" (*GS* 41). These theses are alien to the denialists of Christ and of the prophetic mission

[18] The vicissitudes of the original liberal project, which over the course of the past two centuries has been transformed into a social-liberal project that "positivizes" the rights erstwhile regarded as off-limits and now considered by supporters as the basis for positive claims – albeit sometimes culturally tenuous – to inclusion, should become the subject of serious reflection by Catholics. Their framing of the rights of the human person sometimes resembles that original project: true, Catholics link the rights of the human person to the work of God and to the norms of natural law that set negative limits on the potential capabilities of particular individuals. Referring to the natural inclinations as a "metaphysical point of reference" common to every human being, as a reality to be protected by the norms of natural law cognisable by inherent human reason, they speak of the rights of the human person not only as possibilities that are not meant to violate this reality, the norms of natural law, but also as possibilities to which every such person is entitled irrespective of whether they honour or violate such limits. In other words, Catholics speak both of natural law, which the person enjoying his or her rights knows and respects, and of the rights of the human person who does not know or respect such limits. This raises a serious problem, as the second way of addressing it renders Catholics more akin to liberals, requiring to indicate how the legislators are to ensure, in the temporal world, that rules adopted are consistent with the requirements of natural law. Locke intended the law of nature to protect the entitlements/rights of individuals; however, each individual was to be reasonable and to know the norm of the law of nature, whereas civil society and its bodies were merely to interpret that norm. However, this project was altered, as it became apparent that it was not the interpretation but the content of the law that should be determined by debate or by majority judgment: any legislator or the courts increasingly assisting or even replacing it. This modification made it possible to supplement with the context of social struggles the search for the content of the law, the law not so much protecting supposedly inviolable rights any longer, but increasingly fulfilling the claims based on these rights. A similar fate may befall the idea espoused by Catholics, for it too is considered in a political and social environment no longer sensitive to rationality or reason, subject to emotion and the constant strife of the various players.

[19] Vatican II, Pastoral Constitution on the Church in the Modern World "*Gaudium et Spes*", https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html (hereinafter referred to as *GS*).

of His Church, which—again let us turn to the invoked document, finding in it the key passage also analysed by Father Cardinal— "by virtue of the Gospel committed to her, proclaims the rights of man; she acknowledges and greatly esteems the dynamic movements of today by which these rights are everywhere fostered". The thesis that "these movements must be penetrated by the spirit of the Gospel and protected against any kind of false autonomy" so as to fully ensure the "personal rights" the implementation of which requires consideration of "every requirement of divine law" is critical: when the Church associates this call with the thesis of thus saving the dignity of the human person, its denialists take it as heralding the re-objectification of the human being, the abolition of his or her subjectivity and even dignity. These denialists do not accept the conviction expressed by Father Cardinal that "human rights can only be applied universally if the [human] *person as God's creation* is at their centre". They believe that such rights can be possessed by any individual, even when one assumes that they emerged in the course of evolution enabling the construction of a civilisation devoid of God, certainly not deriving its content from Him, but constituting it within itself. To maintain that such rights are held by humans before the emergence of society or the state, before the emergence even of culture, requires neither the creationist theory nor the activity of God preserving in existence that which is created.

The intention of the Catholics, the fate of which is difficult to predict, although its weakness in contemporary liberal democracy is known by now, since Benedict XVI already saw it as a subculture found outside the mainstream of Western reflection, harbours two approaches to the "dignity of the human person". One entails the acknowledgement, emphasised by Father Cardinal, of the originality or uniqueness of even each human person as created by God or sustained by Him in existence. This is an ontological basis common to all human beings, unacceptable to the critics of the Church as it refers back to God's work of creation; a basis, however, that is analogous to that accepted by the critics, also indicating that individuals are equal and, moreover, equal to such an extent that it is impossible to prefer the beliefs of any one of them, even those based merely on emotion, which must be respected and presumptively protected by law determined on the basis of the judgment of the majority; law that is valid, although perhaps—pursuant to the benchmarks no longer being considered—wrong. The law adopted under the existing procedures by the majority, which, as already seen in Aristotle, is inclined to exclude the unborn or infirm (as too costly) from sharing in the benefits of common existence, negates their dignity sometimes considered as **inherent** *(innate, natural)* **value**, abolishes dignity conceived, like

Locke's entitlement, as *inalienable and permanent*, and expressing the person, while at the same time constituting the *unity of the human species* due to the acknowledgement of dignity as a *universal value*. The "personal dignity" thus understood, the dignity of every person, may—but need not—be supplemented by the "personality dignity" attained by those who rise to a particular moral level through *morally virtuous action* and through its implantation *in human character*; while *personal dignity is an inherent value*, "personality" or "theological" dignity is to be acquired[20] only by those who, while exercising moral autonomy, accept the moral law, God's commandment, freely allow themselves to be permeated by God's law, and voluntarily obey God. John Paul II states: "obedience to God is not (…) a *heteronomy*", a heteronomous quality of morality would imply "a denial of man's self-determination" and would stand "in contradiction to the Revelation of the Covenant and of the redemptive Incarnation"; heteronomy would be "nothing but a form of alienation, contrary" both "to divine wisdom" and – let us note – "to the dignity of the human person" (*VS* 41). "Personality" or "theological" dignity is linked not only to the moral autonomy of a human person, but also to his or her endowment with contents that he or she is capable of recognising because they reside within the very person, are 'immanent' as such. Human dignity, proclaims the Vatican II document, "demands that [he] act according to a knowing and free choice that is personally motivated and prompted from within, not under blind internal impulse nor by mere external pressure".[21] It is now compared not so much with the continuing presence of a certain ontic unity, but with the possibility of a *conscious and free choice* that takes into account "inner stirrings and direction" rather than "compulsions from without" or "inner urges".[22]

The human person is therefore dignified both as a specific psycho-physical whole and as one who accepts the content immanent within, capable of cognising it, becoming aware of it and taking it into account in the act of choice. When we read in *Veritatis splendor* that "(i)t is in the light of the dignity of the human person–a dignity which must be affirmed for its own sake–that reason grasps the specific moral value of certain goods towards which the person is naturally inclined (*VS* 48 *in fine*), then we note that the key to capturing the "truth of human dignity" is the referral to feeling the natural inclination(s). This element seems perhaps to

[20] Cf. F. J. Mazurek, "Godność człowieka a prawa człowieka", *Roczniki Nauk Społecznych* 1980, v. VIII, pp. 39, 9 and 4.

[21] Vatican II, *Pastoral Constitution on the Church in the Modern World* "*Gaudium et Spes*", 17.

[22] *Catechism of the Catholic Church*, 306-308.

relate most clearly to the much-described vision of St Thomas Aquinas,[23] which is sometimes erroneously compared to the remarks of the Protestant philosopher from Königsberg: in fact, the reference to natural inclinations directs our attention towards an "inner content", not a heteronomous one, but also one which is not constituted by a moral subject, towards a certain "structure" inherent in every person as a representative of the species, possessing dignity at an "ontic" level, which, however, does not fully reveal "the truth of human dignity".[24] Since "the human person (...) entails a particular spiritual and bodily structure" then he or she "cannot be reduced to a freedom which is self-designing", but must respect this structure; otherwise the person will fall into "relativism and arbitrariness" (*VS* 48), attacking the inherent "'certain basic goods" in one's nature, not material and not corporeal, but juxtaposed with the 'natural inclinations' inherent in the person, like any human being. Such inclinations, while gaining "moral relevance only insofar as they refer to the human person and his authentic fulfilment", convey "the true meaning of the natural law" inscribed within "the nature of a human person" and binding upon ""all beings endowed with reason and living in history". Natural law refers to "man's proper and primordial nature, the 'nature of the human person', which is *the person himself in the unity of soul and body,* in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end" (*VS* 50 and 51). Despite the

[23] Aquinas used the term "dignity" in order to emphasise its "gradable" value when he indicated that in what consists the highest degree of human dignity, is that man turns towards the good not due to the influence of others, but out of himself (*Wykład Listu do Rzymian. Super Epistolam S. Pauli Apostoli ad Romanos*, trans. and ed. J. Salij OP, Poznań 1987, p. 49). From this perspective, it becomes evident that dignity is linked to man's efforts, to his orientation towards the good without the influence of others, since this striving or direction is to be undertaken "by himself". This opens up a discussion both regarding inner impulses (perhaps linked to God) and the "gradation" of dignity; however, it does not settle negatively the question of each human person possessing dignity at a lower level (natural dignity?) than its "highest degree" (the dignity of conscience making correct choices based on what lies within the human being, what drives him or her, even though he or she may act differently, thus not attaining dignity in the "highest degree").

[24] Perhaps the fullest articulation in Polish literature of the tension between the positions of St Thomas and Kant was made by Andrzej Szostek, who drew attention to the possibility of a "biologistic interpretation" of the former position and the so-called theonomous autonomy heralded by the latter. Neo-Thomist interpretations tend to depreciate the significance of man's consciousness for his morally correct acts (after all, innate inclinations do not need to be conscious for an act—carried out in conformity with these innate inclinations—to be morally correct); in Catholic ethics (and notably German ethics) of the late twentieth century, however, Kant's approach, leaning towards man's supplementing God's normative rulings, gained increasing popularity (Andrzej Szostek, *Natura-rozum-wolność. Filozoficzna analiza koncepcji twórczego rozumu we współczesnej teologii moralnej*, Rzym 1990, notably pp. 31-48 and Chapters II and III).

separation of the "freedom of individuals" and "nature which all have in common", introduced by certain philosophical theories that have an enormous impact on contemporary culture, which "obscures the perception of the universality of the moral law on the part of reason", natural law "expresses the dignity of the human person and lays the foundation for his fundamental rights and duties" (*VS* 50 and 51). Let us notice what even Catholics find increasingly difficult to see: natural law is supposed to "express" the dignity of the human person, to indicate the obligation with regard to living in accordance with "natural inclinations" and a "particular spiritual and bodily structure" protected by natural law.[25] Not only does the assertion that "dignity of the human person is rooted in his creation in the image and likeness of God" raise opposition from critics of the Catholic position, but so too—and far more frequently—does the thesis that a person fulfils his or her human dignity by complying with the requirements of the law "which makes itself heard in conscience", by leading "a moral life", "in the love of God and of neighbour" (CCC 1700 and 1706).[26]

[25] In the *Catechism of the Catholic Church*, we note the words, which should be read bearing in mind that the right to exercise one's freedom—as stated in passage 1738— "is an inalienable requirement of the dignity of the human person" "The dignity of the human person implies and requires *uprightness of moral conscience*. Conscience includes the perception of the principles of morality (synderesis); their application in the given circumstances by practical discernment of reasons and goods; and finally, judgment about concrete acts yet to be performed or already performed. The truth about the moral good, stated in the law of reason, is recognized practically and concretely by the *prudent judgment* of conscience. We call that man prudent who chooses in conformity with this judgment" (1780).

[26] Whilst dignity, which we may call "ontic", is held by every person by dint of belonging to the human species constituted by God, a dignity that may be called the "dignity of conscience" or "moral dignity" (and not, as in the case of Mazurek, a "personality dignity"), is evidenced by morally correct behaviour. The last form of dignity is realised through or in the course of the moral life, which does not remove freedom as the opportunity to make a choice considered as "an inalienable requirement of the dignity of the human person" "especially in moral and religious matters", "exercised in relationships between human beings" into which "enters" "every human person" (CCC 1738). However, freedom is made into a sort of "threshold", the crossing of which makes it possible to attain a state of moral dignity; a "threshold" at which the person—a holder of an irreversible ontic dignity—must take account of the universally binding natural law, which does not ignore "*the individuality of human* beings" or "the absolute uniqueness of each person"; the natural law that protects "the true good", reveals that freedom and nature "are harmoniously bound together, and each is intimately linked to the other", and, simultaneously, enabling to build a true communion of persons, damaged when the law is disregarded or unknown (*VS* 50 and 51). Usually, and this is also done by John Paul II, "*negative precepts* of the natural law" are pointed out above all, which "oblige each and every individual, always and in every circumstance", prohibiting certain conduct *semper et pro semper* as incompatible with "the goodness of the will of the acting person, with his vocation to life with God and to communion with his neighbour" leading to "offend in anyone, beginning with oneself, the personal dignity common to all".

Catholics proclaim that no right justifies violating the boundaries set by natural law, while some liberals consider the natural (inherent) right to take precedence even over negative norms expressing—in the Catholic view— "the truth of the dignity of the human person". At least part of the liberals accord dignity to the subject that is prior to all norms, or with precedence of the will vis-à-vis moral norms as well (for how else could one comprehend the project of Hobbes, for whom the norm appears only after the establishment of the state, at which point it formulates the law, and before this takes place it is impossible to judge whether an act is good or bad?; how else could one comprehend the project of Locke, who assumes that individuals discover the norm of the law of nature or the law of reason, which forbids the infringement of the rights previously held by individuals?). Both Catholics and the "fathers of liberalism" faced similar problems: both the one whose solution calls for the determination of the relationship between the moral plane and the legal plane, and the one which involves the need to point out the relationship between reason and nature. For the former, however, the moral plane is determined, in particular, by the norms of natural law, which protect the nature of the species, cognisable by the power of inherent reason, and which must be taken into account on the legal plane; for the latter, the primary consideration concerns the rights possessed by every individual who is human already in the so-called "state of nature", i.e., before the emergence of norms as such. The former will say that human freedom is realised by fulfilling the requirements of the divine law that "is most deeply lived out in the 'heart' of the person, in his moral conscience" (*VS* 54) which is capable of revealing the rules thereof; rules which the conscience does not impose on itself, but to which man is held "to obedience. Always summoning him to love good and avoid evil, the voice of conscience when necessary speaks to his heart: do this, shun that. For man has in his heart a law written by God; to obey it is the very dignity of man; according to it he will be judged" (*Gaudium et spes* 16). But the association of human dignity with obedience to an innate law, imprinted by God in the conscience, to a divine and natural law, cognisable by the power of inherent human reason, is rejected by liberal critics. They point out the problematic nature of referrals to God and his voice, to the nature of the species and to reason that recognises its content that is common to every person and enables this person to enter into communion with others; they point this out by proclaiming that dignity is possessed by every

The violation of any of the negative precepts of the natural law is thus compared to an offence against the dignity of the person, a dignity inherent in all human beings (VS 52), invariably associated with "human nature", which becomes not only the *gauge* of any culture, but also a factor in the reinforcement of *personal dignity*.

"morally sovereign" individual; and that, moreover, this "sovereignty" must be respected on account of the demands of tolerance and the "moral autonomy" of the individual, capable of judging what is good and what is bad for him or her, of ruling in the last instance—after all, this is an expression of "sovereignty"—about what he or she should do, sometimes depending on cultural circumstances, at other times depending solely on their own view, need, preference… To the *dictum* of critics, Catholics sometimes respond with the voice of John Paul II in *Veritatis splendor*: after all, this "divine law" is "*the universal and objective norm of morality.* The judgment of conscience does not establish the law; rather it bears witness to the authority of the natural law and of the practical reason with reference to the supreme good, whose attractiveness the human person perceives and whose commandments he accepts" (*VS* 60); or they respond with the voice of the same author from the earlier encyclical *Dominum et vivificantem*,[27] which refers both to *Gaudium et spes* (16) and to *Dignitatis humanae* (3), indicating that a person's conscience is not "an independent and exclusive capacity to decide what is good and what is evil. Rather there is profoundly imprinted upon it a principle of obedience vis-à-vis the objective norm which establishes and conditions the correspondence of its decisions with the commands and prohibitions which are at the basis of human behavior" (*DV* 43).

Kant argued that every human being has the capacity to create a universal moral law, to be a legislator in the field of morality as a rational and free being, also capable of following its principles.[28] Freedom "is the basis for the emergence of dignity, and the latter is expressed in the ability to reasonably limit the discretion of our actions, whereby the practical expression of this egalitarian ability is the categorical imperative and adherence to its principles. The aim is to support the development of humanity as a moral community, and anything that stands in opposition in this regard is not worthy of respect. The Kantian concept of dignity is both universal and egalitarian. For all human beings have the capacity to reasonably determine the moral law, but because human beings have free will, not all are inclined to act morally. Therefore, some people embrace principles of conduct that oppose the well-being of humanity, in which case neither they themselves nor their

[27] John Paul II, Encyclical *"Dominum et Vivificantem". On the Holy Spirit in the Life of the Church and the World", 43,* https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_18051986_dominum-et-vivificantem.html.

[28] Justyna Miklaszewska, "Godność człowieka w koncepcji Immanuela Kanta a doświadczenie Auschwitz", *Ruch Filozoficzny* 2017 no. 4/LXXII, p. 49.

actions deserve respect".[29] For Kant, every human being as a "subject of dignity" assigns values to things himself and is the source of those values—all values are [therefore] relativised, apart from his own value.[30] If we accept this interpretation, we shall find that, for Kant and his followers, dignity is to be associated with a moral quality that is universally present in human beings, but which is exercised not so much in the work of discovering the truth of the good that is present in them and equally shared by everyone, preceding both rational cognition and the decision of the human will, but in the act of "establishing values". "Universal dignity" or "ontic dignity", which marks the person as a human being, becomes the foundation of this "work of establishing values"; it is not complemented by a consideration of the "dignity of conscience", the one that supplements the first, and is only attained by some, cognisant of the normatively framed natural law and taking it into account in their actions. In other words, while Kant is invoked to present dignity as the reason for the "establishment of values" by each individual and (potentially) all individuals simultaneously, Catholic teaching distinguishes between the dignity of the human person found at the "fundamental ('ontic') level", and the dignity of the human person at the "moral level", or—as John Paul II prefers to say—at the level of the "dignity of conscience", or—as is likewise often phrased—at the "theological" level.

The first type of dignity is associated with respect "due to the human person", in order to point out that "(w)hatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person, such as mutilation, physical and mental torture and attempts to coerce the spirit; whatever is offensive to human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children; degrading conditions of work which treat labourers as mere instruments of profit, and not as free responsible persons: all these and the like are a disgrace, and so long as they infect human civilization they contaminate those who inflict them more than those who suffer injustice, and they are a negation of the honour due to the Creator" (*VS* 80).[31] This type of dignity is thus threatened by phenomena and processes in which the human being becomes a means to ends pursued by others and therefore ceases to constitute an

[29] Ibid., pp. 50-51.

[30] E. Niemiec, "Godność człowieka a prawo do dysponowania własnym życiem – aspekty filozoficzno-prawne", *Folia Iuridica Universitatis Wratislaviensis*, vol. 6, no. 2 (2017), p. 72.

[31] See also: *VS* 100, where, after the CCC, it mentions "kinds of behaviour and actions contrary to human dignity".

end in itself, which brings these remarks closer to Kant's position. Nevertheless, the source of "moral dignity" ("conscience") is the "objective truth" that man autonomously accepts, and not the "value" that he *subjectively* establishes, for sometimes individuals *mistakenly* believe something to be *the truth*. One can hardly be surprised by John Paul II's statement that "conscience, as the ultimate concrete judgment, compromises its dignity when it is *culpably erroneous,* that is to say, 'when man shows little concern for seeking what is true and good, and conscience gradually becomes almost blind from being accustomed to sin'" (*VS* 63). After all, it is possible for conscience itself to "betray the dignity of conscience" when that conscience errs "through the fault of man", when he does not know the "objective truth about the good" or when, having learned it, he does not acknowledge it in his decisions. For it is expressly declared that "(t)he Church's firmness in defending the universal and unchanging moral norms is not demeaning at all. Its only purpose is to serve man's true freedom. Because there can be no freedom apart from or in opposition to the truth, the categorical—unyielding and uncompromising—defence of the absolutely essential demands of **man's personal dignity** must be considered the way and the condition for the very existence of freedom" (*VS* 96; emphasis by B.Sz.).[32] The *Catechism of the Catholic Church* adds in this connection that "(t)here is no true freedom except in the service of what is good and just. The choice to disobey and do evil is an abuse of freedom and leads to 'the slavery of sin'" (CCC 1733); a slavery which also suppresses the "moral dignity" ("dignity of conscience", "theological dignity"), albeit without suppressing the

[32] "Only God, the Supreme Good", adds John Paul II in passage 99, "constitutes the unshakable foundation and essential condition of morality, and thus of the commandments, particularly those negative commandments which always and in every case prohibit behaviour and actions incompatible with the personal dignity of every man. The Supreme Good and the moral good meet in *truth:* the truth of God, the Creator and Redeemer, and the truth of man, created and redeemed by him. Only upon this truth is it possible to construct a renewed society and to solve the complex and weighty problems affecting it, above all the problem of overcoming the various forms of totalitarianism, so as to make way for the authentic *freedom* of the person. '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 disposal in order to impose his own interests or his own opinion, with no regard for the rights of others.... 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'". See also: CCC 1740.

"ontic ('natural') dignity" possessed by every human being, including one who does not attain "moral dignity" ("dignity of conscience", "theological dignity") or is not even striving for it altogether.

The Church in (still liberal?) democracy

In his 2018 apostolic exhortation entitled *Gaudete et exsultate. On the Call to Holiness in Today's World*,[33] Pope Francis encourages a holiness that does not take away "energy, vitality or joy", as the Father created each of us to be true to our deepest self; to depend on God in fact frees us from enslavement and "leads us to recognize our great dignity" (32), rather than enslaving us and taking the dignity away from us. "Moral dignity" ("dignity of conscience", "theological dignity") does not enclose the individual within himself, but should rather open him up to others, since it requires the acknowledgement in every human being, even in an "idler", in "a person sleeping outdoors on a cold night", of a "human being" possessing "the same dignity as myself"; after all, every human being is the same, equal to other human beings, "a creature infinitely loved by the Father, an image of God, a brother or sister redeemed by Jesus Christ". Holiness that does not take away energy, vitality or joy, requires "lively recognition of the dignity of each human being" (98). This reflection is similar to that of the evolving liberal approach, which embeds each human person in social relationships, in relationships with others, and which complements the ontic dignity inherent in each person and to be recognized in each, with the theological dignity intrinsic to those who strive for holiness. Striving to make this possible cannot be the Church's only task; nor can the Church confine herself to defending the rights of the human person on the basis of his or her ontic dignity, since she is a Church founded and rooted in Christ, in God, she is a Church of God, which brings hope that transcends the temporal dimension and makes visible a human reality other than the merely political. The Old Testament motif of the juxtaposition of the "City" of God and the "city" of man found its completion in the words of Father Cardinal, who, invoking Jacques Maritain, acknowledged that the "city" of man becomes the "City" of God insofar as, in a secularised world, it honours the rights of human beings and the dignity of the human person understood in both senses. The Church, as Father Cardinal also mentioned, opposes every manifestation of injustice and therefore knows the "measures of justice", which lie above all in the "truth" of "ontic dignity". However, their attempts to introduce a transcendent dimension that justifies the pursuit

[33] Pope Francis, Apostolic Exhortation *Gaudete et exsultate. On the Call to Holiness in Today's World*, https://www.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20180319_gaudete-et-exsultate.html.

inscribed in the "theological dignity" are not recognised by the secularised world; they are even treated with suspicion, as they allegedly resemble ideological projects imposed from outside, especially by academic circles that shape the measures of "political correctness" envisaged by social liberalism. It is important to emphasise that each person is oriented towards a goal that is intrinsic to him and that points him towards God, that he is unique and, as such, can determine the realisation of this goal; however, it must always be remembered that he belongs to a species with its own inclinations, which no one can deny if he seeks to fulfil his goal. In particular, they cannot be negated by the legislator, who—according to the approaches popularised today—no longer aims at justice, but merely strives for legitimacy, for validation of his decisions. When democracy is already conceived of as a field of struggle between numerous positions merely vying for recognition, the attempts of the Church become one of many. The Church loses her unique position stemming from her exceptional quality of having been established by God, and instead turns into just one of many players. Even when she speaks of "truth" linked to God or to the species-related nature of man, in whom, after all, there is heard the voice of God, she is not listened to by the many who, in the "city" of man, strive to fulfil their own particularistic needs arising from their own particularistic preferences tied mainly to the corporeal aspects, to their own fulfilment in the temporal plane. What remains is political philosophy; what is being discarded is political theology, which excludes those who do not heed it and thus fails to meet the requirements of the reasonableness expected in a democracy.

In connection with the remarks on the Church's prophetic task, an old problem of Aristotle's arises anew: democracy is a degenerated system because the majority, which determines the content of the norms that bind everyone, excludes the minority from sharing in the benefits; however, democracy constitutes a system as long as—even if engaging in exclusion— respects the law that is more significant than the norms established in the resolutions of the people, the resolutions of the majority. The Church defends the "rule of law" binding even on the majority, thereby contributing to the preservation of the systemic quality of democracy, which—in order not to lose this quality—cannot be based on arbitrary norms enacted by the people. This defence, however, must consider two layers: one aimed at participation in the debate on natural law that points out the negative limits of legislation allowing to protect the "ontic dignity" of every human person, from the moment of conception to natural death in the "temporal plane"; while the other—directed mainly at the believers— aimed to awaken the fading awareness of the existence of a "transcendent plane", crucial for the purposeful pursuit by

those who also seek to attain their "theological dignity" (and pursue this goal in the "city" of man). The dialogue carried out in the "city" of man no longer makes it possible to attribute to the Church the unique position from which she herself has resigned, proclaiming that she is abandoning the role of guidance towards the "path of truth" and embarking upon the "path of freedom". The Pope, in contrast to the thesis appearing in Father Cardinal's text, is no longer treated as a "universal teacher" who points out the "truth", but as a participant in a game of equal actors, each of whom seeks to impose his standpoint by appealing not to reason but to emotion, attempting to make his proposal be recognised as legitimate. In such a world, dominated by agonism, the endless struggle between the proponents of different positions, and by the emotions that drive them, the position of the Church and her head seems difficult; I am not convinced that a "reset" could alter this situation; rather, an attempt should be made to look critically (as it is being done, for example, by Muslim circles in multicultural societies) at the problem of the preservation of radical secularism, which is purportedly one of the main foundations of liberal democracy; such an examination could lead to a reflection on the admissibility of the use of religious justifications in the public sphere, in debates on the content of legal norms. Western experience, linked as far back as the religious wars of the 16th and 17th centuries, justified—onwards from the 1660s and the pronouncements of French "politicians" at the latest—the thesis of the need to confine religious beliefs in the private sphere. Today, when in a liberal democracy everyone makes their own claims, not always reasonable, claims supported by religious convictions should also be taken into consideration. These can be expected to be contested out of memories of past strife; however, juxtaposing rationales underpinned by Christian convictions with those stemming from Islam seems legitimate if the so-called West is to maintain its distinctive character and perhaps even the foundations of the so-called liberal democracy it has built.

A bitter and concerned final reflection pertains to the "anthropological error", also mentioned by the Cardinal, which in interwar Poland was attributed above all to the Bolsheviks. It appears that this error persists, that the human being is treated—perhaps also as a result of the dominance of science as a unique social practice—solely as a body among other bodies, a body that is not only treated as similar to animal bodies, but also as the main object of interest for those in power: they want to preserve the bodies as long as they are useful, as some proponents of biopolitics or even biopower argue, while at the same time considering that the body does not carry a soul. The Church must continue to expose this error, to reiterate that a human being is a substance separate from others, a complex

substance, nonetheless, endowed with a soul that can retain its existence even after the demise of the body. In the prevailing opinion, however, this is not a mistake, which is something the Church must also reckon with as it continues to engage in the debate on the meaning of man. Thanks to Father Cardinal's contribution to the present issue, we can taste the flavour of such a debate; may it continue, and may the voice of the Church heard in this debate be both unified and coherent, as the voice of a community that is not artificial, called forth by man, but transcendent, inasmuch as it has its source in God Incarnate, the Redeemer. Perhaps the argument voiced by one of the protagonists in von Donnersmarck's film, *Werk ohne Autor*, that artists should not be subservient to anyone, but stand as the voice of freedom, which corresponds to de Tocqueville's thesis that in a democracy a similar role should be played by "aristocratic institutions", applies to Catholics: attacked as one of the ideological groups, they can persevere as a community that warns of the threats to a secularised democracy, dominated by a battle of emotions, full of false judgements, the exclusion of those who hold an incongruous opinion; it is worthwhile for Catholics to ponder their distinctive role; after all, they follow God and not man or something that dominates man's "city" —they are heading towards or, rather, already dwell in the "City" of God.

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DOI: 10.21697/CSP.2023.27.1.05

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

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The teachings of John Paul II and the paradoxes of the right to life in the International Human Rights discourse

Abstract: The right to life has a unique and outstanding importance in the International Human Rights Law. However, at the same time, this right suffers from new threats and contradictions. In this paper, I will address these paradoxes, concerning the moment, in which the legal protection of the human being begins; the tendency to accommodate the beginning of life to biotechnological interests; the manipulation of language, as well as the relativization of the right to life and the pretensions of justifying abortion and euthanasia as a requirement of the right to life. I will offer an assessment of these paradoxes in the light of the *Magisterium* of John Paul II, and I will end with four signs of hope and commitment at the beginning of the 21st century in relation to the protection of the right to life.

Keywords: John Paul II, right to life, abortion, euthanasia

1. Introduction

"Precisely in an age when the inviolable rights of the person are solemnly proclaimed and the value of life is publicly affirmed, the very right to life is being denied or trampled upon, especially at the more significant moments of existence: the moment of birth and the moment of death".[1]

Studying this contradiction, denounced by John Paul II in his prophetic encyclical *Evangelium Vitae*, will be the axis of the present text. To this end, I will first present five paradoxes of the regulation of the right to life in the human rights

[1] John Paul II, Encyclical on the Value and Inviolability of Human Life *Evangelium Vitae*, 18, https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html.

law, especially in the international field. Next, I will offer an assessment of these paradoxes in the light of the *Magisterium* of John Paul II. I will conclude with four signs of hope and commitment at the beginning of the 21st century in relation to the protection of the right to life.

2. Paradoxes of the right to life in the international human rights discourse

In 1996, at the Symposium in the Vatican entitled "*Evangelium Vitae* and Law", Giuseppe Dalla Torre pointed out the ambiguous evolution of the legal experience in the relationship between life and law, so that while the legal protection of the Fundamental Rights is broadened, the same protection is reduced through a splitting of the subject into an individual and a person.[2] Taking the reflections of the Italian jurist as a reference, I would like to deepen what I consider to be some paradoxes that are verified today around the right to life in the international human rights law.[3]

In the field of protection, the first paradox involves the moment in which the legal protection of the human being commences. Thus, although there are clear references in the Human Rights Treaties to the right to the recognition of legal personality for all the human beings, it is also true that there are still positions that deny the character of a person to the conceived, even though there exists overwhelming evidence regarding the first moment, in which the existence of the human being begins.

Another paradox in this field refers to the tendency to accommodate the beginning of life to biotechnological interests. This happened in the famous Warnock

[2] Dalla Torre pointed out three areas of ambiguity. In the area of legality, the incorporation of "biological damage" was verified, on the one hand, as an assumption of compensable damage for the mere injury to physical integrity, and, on the other hand, the de-juridization of relevant bioethical issues, such as the protection of human embryos "in vitro" or the decriminalization of abortion. In the area of protected subjects, Dalla Torre pointed out that supernumerary embryos raised the need to determine a special legal status for the embryo, but such concern for the embryo does not translate into abortion, in which the personality of the unborn is ignored. The third area of ambiguity was, for Dalla Torre, the doctor-patient relationship. On the one hand, the autonomy of the patient is emphasized, and yet, on the other hand, the doctor is granted new powers to decide on the patient's life, as occurs with euthanasia in cases of the unconscious. Giuseppe Dalla Torre, "Le leggi contro la vita", in: *Evangelium Vitae e Diritto. Evangelium Vitae and Law. Acta Symposii Internationalis In Civitate Vaticana Celebrati 23-25 Maii 1996*, Libreria Editrice Vaticana, Città del Vaticano 1997, pp. 99-119.

[3] Puppinck has carried out a complete analysis of the transformation in the field of human rights. See: Grégor Puppinck, *Mi deseo es la ley*, Encuentro, Madrid 2020.

report, which, to facilitate the performance of in vitro fertilization techniques, pointed to day fourteen as the limit to cultivate human embryos in vitro.[4] But in 2021, the International Society for Stem Cell Research issued new Guidelines that extend that limit to day twenty-eight, so that embryos can be experimented on for a longer time.[5]

In 2012, the Inter-American Court of Human Rights introduced a new variant in the strategies to cease the protection of human embryos and facilitate in vitro fertilization techniques. Indeed, article 4.1 of the American Convention on Human Rights protects life from the moment of conception. Despite the clarity of this norm, the Inter-American Court held: "that the 'conception' in the sense of article 4.1 takes place from the moment in which the embryo is implanted in the uterus, which is why, prior to this event, Article 4 of the Convention would not be applicable".[6]

We see a flagrant manipulation of language to facilitate in vitro fertilization, since it is evident that the word conception refers to the initial moment of the emergence of a new being.

Even more, given the existence of a dilemma on how to interpret the term, the Inter-American Court does not apply the rule of the *pro homine* principle and chooses the interpretation that results in a restriction of rights for the unborn person.

Given that a person exists from the moment of conception and possesses the right to life, there should be no controversy here and the law should not admit attempts to deprive the unborn person of her life.

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[4] Report of the Committee of Inquiry Into Human Fertilisation and Embryology, Chairman: Dame Mary Warnock DBE, July 1984, https://www.hfea.gov.uk/media/2608/warnock-report-of-the-committee-of-inquiry-into-human-fertilisation-and-embryology-1984.pdf.

[5] Robin Lovell-Badge *et al.*, "ISSCR Guidelines for Stem Cell Research and Clinical Translation: The 2021 update, Stem Cell Reports", https://doi.org/10.1016/j.stemcr.2021.05.012; Sophia McCully, "The time has come to extend the 14-day limit". *J Med Ethics* 0:1–5, https://pubmed.ncbi.nlm.nih.gov/33531360/, doi: 10.1136/medethics-2020-106406.

[6] Inter-American Court of Human Rights, "Artavia Murillo y otros c. Costa Rica", 264, 28 November 2012, https://www.corteidh.or.cr/cf/Jurisprudencia2/ficha_tecnica.cfm?lang=en&nId_Ficha=235.

This point is decisive, as even the Supreme Court of the United States itself recognized in the ruling "Roe v. Wade": "If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment".[7]

Now, at the beginning of the 21st century, from the Inter-American Human Rights system, we can find pretensions to relativize the right to life. Indeed, even acknowledging that we are dealing with a person in the prenatal stage, the Inter-American Court of Human Rights has said that the protection of the right to life in accordance with article 4.1 of the Convention "is not absolute, but is gradual and incremental according to its development because it does not constitute an absolute and unconditional duty but implies an understanding of the applicability of exceptions to the general rule".[8]

But the most radical way of altering the scope of the right to life is the attempt to justify abortion as a requirement of the right to life. This is what the Human Rights Committee has done in the "General Comment No. 36 on Article 6: right to life" of the International Covenant on Civil and Political Rights:

> "8. Although States parties may adopt measures designed to regulate voluntary termination of pregnancy, those measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant. Thus, restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering that violates article 7 of the Covenant, discriminate against them or arbitrarily interfere with their privacy. States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable. In addition, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to resort to unsafe abortions,

[7] Supreme Court of the United States, *Roe v. Wade*, 410 US 113, 1973, 156-157.

[8] Inter-American Court of Human Rights, "Artavia Murillo y otros c. Costa Rica", 28 November 2012, op. cit., 264, https://www.corteidh.or.cr/cf/Jurisprudencia2/ficha_tecnica.cfm?lang=en&nId_Ficha=235.

> and they should revise their abortion laws accordingly. For example, they should not take measures such as criminalizing pregnancy of unmarried women or applying criminal sanctions to women and girls who undergo abortion or to medical service providers who assist them in doing so, since taking such measures compels women and girls to resort to unsafe abortion. States parties should remove existing barriers to effective access by women and girls to safe and legal abortion, including barriers caused as a result of the exercise of conscientious objection by individual medical providers, and should not introduce new barriers. States parties should also effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions. In particular, they should ensure access for women and men, and especially girls and boys, to quality and evidence-based information and education on sexual and reproductive health and to a wide range of affordable contraceptive methods, and prevent the stigmatization of women and girls who seek abortion. States parties should ensure the availability of, and effective access to, quality prenatal and post-abortion health care for women and girls, in all circumstances and on a confidential basis".[9]

The same problem involves the end-of-life issues, given that the HRC recognizes the legitimacy of euthanasia based on the right to life:

> "While acknowledging the central importance to human dignity of personal autonomy, States should take adequate measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations, including individuals deprived of their liberty. States parties that allow medical professionals to provide medical treatment or the medical means to facilitate the termination of life of afflicted adults, such as the terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity, must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and

[9] Human Rights Committee, "General comment No. 36. Article 6: right to life", 8, 3 September 2019, CCPR/C/GC/36, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement.

unambiguous decision of their patients, with a view to protecting patients from pressure and abuse".[10]

At the base of all these paradoxes lies the controversy over the notion of human dignity, which has ceased to possess an objective and ontological foundation, rooted in the excellence of being. Legislators, jurists, and judges that approve abortion and euthanasia tend to identify human dignity exclusively with personal autonomy.

3. John Paul II's teachings on the right to life

Defending and promoting the right to life is one of the axes of the *Magisterium* of Saint John Paul II. In this sense, it is impossible to summarize here all the richness of his teachings on this right.[11] With this clarification, I will now refer to six aspects of his teachings that I consider particularly significant to address the paradoxes I have mentioned before.

In the first place, Saint John Paul II has deepened the relationship between natural law and human rights. This is a decisive issue to face the legal challenges posed by the paradoxes around the right to life. Indeed, after the Second World War, the expansion of the law of human rights meant an overcoming of legalistic positivism. However, as Saint John Paul II observed in 1995, without connection to natural law, these human rights could soon lead to new and more powerful threats to the human person, as indeed they have done.[12] The teachings of John Paul II on the necessary relationship between natural law and human rights are especially important to respond to the challenges posed to the right to life.

Secondly, Saint John Paul II offers criteria to consider this problem in its international perspective. As he well pointed out in *Evangelium Vitae*, "one cannot overlook the network of complicity which reaches out to include international institutions, foundations and associations which systematically campaign for the

[10] Human Rights Committee, "General comment No. 36. Article 6: right to life", op. cit., 9.

[11] To see a compilation of documents of Saint John Paul II on the right to life, see: Augusto Sarmiento, *El don de la vida. Documentos del Magisterio de la Iglesia sobre bioética*, Biblioteca de Autores Cristianos, Madrid 2002.

[12] "… values such as the dignity of every human person, respect for inviolable and inalienable human rights, and the adoption of the "common good" as the end and criterion regulating political life are certainly fundamental and not to be ignored. The basis of these values cannot be provisional and changeable "majority" opinions, but only the acknowledgment of an objective moral law which, as the "natural law" written in the human heart, is the obligatory point of reference for civil law itself". John Paul II, Encyclical on the Value and Inviolability of Human Life *Evangelium Vitae*, op. cit., 70.

legalization and spread of abortion in the world".[13] At this point, the 21st century has seen a worsening of the problem, due to the growing power and influence exercised by international courts, which tend to force countries to reform their laws to legalize abortion and euthanasia.

On the issue of the world population problems, he notes in *Evangelium Vitae*: "Solutions must be sought on the global level by establishing a true economy of communion and sharing of goods, in both the national and international order. This is the only way to respect the dignity of persons and families, as well as the authentic cultural patrimony of peoples".[14]

Thirdly, I highlight the clarity of the teachings of Saint John Paul II to condemn voluntary abortion and euthanasia.[15] This clear condemnation has been an indisputable reference for all the Catholics and for people of good will throughout the world, especially in the face of complex legislative debates in which, under the guise of tolerating the lesser evil, the ultimate outcome could be the undermining of the solidity and coherence of the defence of life. His teachings are particularly embedded in the Tradition of the Church: "by the authority which Christ conferred upon Peter and his Successors, in communion with the Bishops – who on various occasions have condemned abortion and who in the aforementioned consultation, albeit dispersed throughout the world, have shown unanimous agreement concerning this doctrine – I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being. This doctrine is based upon the natural law and upon the written Word of God, is transmitted by the Church's Tradition and taught by the ordinary and universal Magisterium".[16]

Fourthly, we must thank Saint John Paul II who, through his *Magisterium*, offers timely distinctions regarding the right to life, which are decisive for these legislative debates. We can mention the distinction between direct abortion and the situations in which indirect abortion as an unwanted secondary effect is lawful. We must also highlight the precise distinctions between euthanasia and the decision to forego the so-called "aggressive medical treatment".[17]

[13] Ibid., 59.
[14] Ibid., 91.
[15] Ibid., 62 and 65.
[16] Ibid., 62.
[17] Ibid., 65.

Fifthly, I consider the distinction between negative and positive precepts of natural law to be of decisive importance for public and legislative debates on the right to life. This topic has been the subject of extraordinarily rich teachings by John Paul II, especially in the encyclical *Veritatis Splendor*. As far as the right to life is concerned, we must recognize that the negative precept that obliges "not to kill" does not allow exceptions, as explained in *Veritatis Splendor* no. 52.[18] On the other hand, the positive aspect of the right to life invites us to search for new and creative ways of guaranteeing and promoting life.[19] As John Paul II says: "By his words and actions Jesus further unveils the positive requirements of the commandment regarding the inviolability of life. These requirements were already present in the Old Testament, where legislation dealt with protecting and defending life when it was weak and threatened: in the case of foreigners, widows, orphans, the sick and the poor in general, including children in the womb (cf. Ex 21:22; 22:20-26). With Jesus these positive requirements assume new force and urgency, and are revealed in all their breadth and depth: they range from caring for the life of one's brother (whether a blood brother, someone belonging to the same people, or a foreigner living in the land of Israel) to showing concern for the stranger, even to the point of loving one's enemy".[20]

Sixthly, Saint John Paul II contributed significantly to dimensioning the social projections of the threats to the right to life. That is to say, the problems of abortion, the elimination of human embryos, or euthanasia, are not exclusively the issues of individual morality, but have undoubted social consequences.

> "The original and inalienable right to life is questioned or denied on the basis of a parliamentary vote or the will of one part of the people – even if it is the majority. This is the sinister result of a relativism which reigns

[18] "The negative precepts of the natural law are universally valid. They oblige each and every individual, always and in every circumstance. It is a matter of prohibitions which forbid a given action *semper et pro semper*, without exception, because the choice of this kind of behaviour is in no case compatible with the goodness of the will of the acting person, with his vocation to life with God and to communion with his neighbour. It is prohibited – to everyone and in every case – to violate these precepts. They oblige everyone, regardless of the cost, never to offend in anyone, beginning with oneself, the personal dignity common to all". John Paul II, Encyclical *Veritatis Splendor*, 52, https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor.html..

[19] "In the case of the positive moral precepts, prudence always has the task of verifying that they apply in a specific situation, for example, in view of other duties which may be more important or urgent. But the negative moral precepts, those prohibiting certain concrete actions or kinds of behaviour as intrinsically evil, do not allow for any legitimate exception.". John Paul II, Encyclical *Veritatis Splendor*, op. cit., 67.

[20] Encyclical on the Value and Inviolability of Human Life *Evangelium Vitae*, op. cit., 41.

> unopposed: the "right" ceases to be such, because it is no longer firmly founded on the inviolable dignity of the person, but is made subject to the will of the stronger part. In this way democracy, contradicting its own principles, effectively moves towards a form of totalitarianism. The State is no longer the "common home" where all can live together on the basis of principles of fundamental equality, but is transformed into a tyrant State, which arrogates to itself the right to dispose of the life of the weakest and most defenceless members, from the unborn child to the elderly, in the name of a public interest which is really nothing but the interest of one part".[21]

Thanks to his teachings, issues related to the right to life have been incorporated into the traditional social doctrine of the Church.

4. Signs of hope and commitment

In this context, in which there are great contradictions around the right to life, I would like to present four signs of hope and commitment and try to show the connection they have with the teachings of Saint John Paul II.

In the first place, the advocacy to protect the rights of people with disabilities has emerged as a certain limit to biotechnological power. Aborting a person because of her disability is a serious form of discrimination and a violation of her right to life. The language itself (severe foetal malformations) already bears a discriminatory charge.

The eugenic use of abortion and euthanasia has meant that in countries with legalized abortion, up to 90% of people with disabilities are eliminated after an adverse prenatal diagnosis.[22]

In my country, Argentina, the bill that sought to legalize abortion had, until 2018, allowed abortion beyond the 14th week in the case of serious foetal malformations.

[21] Encyclical on the Value and Inviolability of Human Life *Evangelium Vitae*, op. cit., 20.

[22] PA Boyd, Devigan C, Khoshnood B, Loane M, Garne E, Dolk H, and the EUROCAT working group. "Survey of prenatal screening policies in Europe for structural malformations and chromosome anomalies, and their impact on detection and termination rates for neural tube defects and Down's syndrome", *BJOG*; 115; 9 April 2008, pp. 689-696, DOI: 10.1111/j.1471-0528.2008.01700.x; J. L. Natoli *et al.*, "Prenatal Diagnosis of Down Syndrome: A Systematic Review of Termination Rates (1995-2011)", *Prenatal Diagnosis* 32, no. 2, pp. 142-53, doi:10.1002/pd.2910; Melissa Hill *et al.*, "Has Noninvasive Prenatal Testing Impacted Termination of Pregnancy and Live Birth Rates of Infants with Down Syndrome?", *Prenatal Diagnosis* 37, no. 13, pp. 1281–90, https://doi.org/10.1002/pd.5182.

Due to the opposition of groups of people with disabilities and pro-life groups, these grounds were not included in the 2020 bill, which was finally sanctioned.

At the international level, the Committee on the Rights of Persons with Disabilities has said: "Laws which explicitly allow for abortion on grounds of impairment violate the Convention on the Rights of Persons with Disabilities (Art. 4,5,8). Even if the condition is considered fatal, there is still a decision made on the basis of impairment. Often it cannot be said if an impairment is fatal. Experience shows that assessments on impairment conditions are often false. Even if it is not false, the assessment perpetuates notions of stereotyping disability as incompatible with a good life".[23] The Committee made similar recommendations to Spain,[24] Austria,[25] Hungary,[26] and the United Kingdom.[27]

[23] Committee on the Rights of Persons with Disabilities, "Comments on the draft General Comment No. 36 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights", 1, 2017, http://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/CRPD.docx.

[24] "The Committee also recommends that the State party: … (b) Abolish any distinction made in law to the period within which a pregnancy can be terminated based on a potential fetal impairment, and ensure that there are no provisions in place to allow euthanasia on the grounds of disability, as such provisions contribute to the stigmatization of disability, which can lead to discrimination". Committee on the Rights of Persons with Disabilities, "Concluding observations on the combined second and third periodic reports of Spain", 13 May 2019, CRPD/C/ESP/CO/2-3, https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhslxq2MulDp%2fqMKQ6SGOn0%2fM2iqPHauvLINGLuCsnFfZ4vRELH5%2fNh4FYriSa2QosgVLtPe7xxuafZSKDf63JRE5MZmF9O7lX%2b5vuhjIWQQ0k.

[25] "The Committee recommends that the State party abolish any distinction, allowed by law, in the period within which a pregnancy can be terminated based solely on disability". Committee on the Rights of Persons with Disabilities, "Concluding observations on the initial report of Austria, adopted by the Committee at its tenth session (2–13 September 2013)", 30 September 2013, CRPD/C/AUT/CO/1, https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnzSGolKOaUX8SsM2PfxU7s9lOchc%2bi0vJdc3TEt6JuQH6d6LwuOqunaiCbf0Z0e%2b%2fWMb4CH5VprCrZY%2bNACxgG%2b3FQ4iHroX8O6TU68Yogo.

[26] "The Committee recommends that the State party abolish the distinction made in the Act on the protection of the life of the fœtus in the period allowed under law within which a pregnancy can be terminated, based solely on disability". Committee on the Rights of Persons with Disabilities, "Concluding observations on the initial periodic report of Hungary, adopted by the Committee at its eighth session (17–28 September 2012)", 22 October 2012, CRPD/C/HUN/CO/1, https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsmg8z0DXeL2x2%2fDmZ9jKJskZ6Y9eRc83PT5FhFy95TQZkyGQot9vWZBNEf0eAwM4AH0py5P0KQ9jmr6ZHdZ17dnUAKIzS4Qpi81YhvnXxVrA. In 2022, this recommendation did not appear in the Concluding Observations of the Committee.

[27] "The Committee recommends that the State party amend its abortion law accordingly. Women's rights to reproductive and sexual autonomy should be respected without legalizing selective abortion on the ground of fetal deficiency". Committee on the Rights of Persons

I must admit that the Committee on the Rights of Persons with Disabilities has not recognized explicitly the right to life of persons with disabilities from conception, and has a contradictory record on this issue. For instance, the Committee has recommended Poland to ensure to women with disabilities access to abortion.[28] But, overall, I think that we can see a sign of hope in the advocacy for the rights of persons with disabilities.

This issue has been the subject of important interventions by John Paul II. As early as 1982, in his address to the First International Medical Congress of the Pro-Life Movement, he stopped to consider the moral issues involved in prenatal diagnoses.[29]

Then the teachings of the encyclical *Evangelium Vitae* stand out:

> "Special attention must be given to evaluating the morality of prenatal diagnostic techniques which enable the early detection of possible anomalies in the unborn child. In view of the complexity of these techniques, an accurate and systematic moral judgment is necessary. When they do not involve disproportionate risks for the child and the mother, and are meant to make possible early therapy or even to

with Disabilities, "Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland", 3 October 2017, CRPD/C/GBR/CO/1, https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspCUnZhK1jU66fLQJyHIkqMIT3RDaLiqzhH8tVNxhro6S657eVNwuqlzu0xvsQUehREyYEQD%2bldQaLP31QDpRclCKZKktydtAkeqhq77NLo1.

[28] "The Committee recommends that the State party withdraw its reservation to article 25 (a) of the Convention, and that it: (e) Take the measures necessary to ensure that the autonomy and decisions of women with disabilities are respected, that women's rights in relation to reproductive health are secured, that access to safe abortion is provided, and that women with disabilities are protected from forced sterilization and forced abortion". Committee on the Rights of Persons with Disabilities, "Concluding observations on the initial report of Poland", 29 October 2018, CRPD/C/POL/CO/1, https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnLFjcXmd8Ilx1hLUlxYOlolNx89NMrEyKDrTPKg7T8aUMAwDVPc%2fx6%2fd5Qg%2bJxRYV2Gi33mW2TralO6fd4KvKhcm%2b1Ckv%2bfJTTzoNs6t832. The Reservation made upon signature reads as follows: "The Republic of Poland understands that Articles 23.1 (b) and 25 (a) shall not be interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto". https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec.

[29] John Paul II, "Speech to members of the Pro-Life Movement", 3 December 1982, https://www.vatican.va/content/john-paul-ii/it/speeches/1982/december/documents/hf_jp-ii_spe_19821203_movimento-vita.html.

> favour a serene and informed acceptance of the child not yet born, these techniques are morally licit. But since the possibilities of prenatal therapy are today still limited, it not infrequently happens that these techniques are used with a eugenic intention which accepts selective abortion in order to prevent the birth of children affected by various types of anomalies. Such an attitude is shameful and utterly reprehensible, since it presumes to measure the value of a human life only within the parameters of "normality" and physical well-being, thus opening the way to legitimizing infanticide and euthanasia as well".[30]

A second sign of hope is the emergence of a concern for vulnerable persons. At the beginning of human life, we can find a new and stronger commitment to vulnerable motherhood. In other words, abortion does not solve the real problems that can influence the mother to make the dramatic decision to abort. Thus, there are growing efforts by jurists and policymakers to try to design public policies that address the causes of vulnerability in motherhood. Among other responses, legislators and public administrators adopt policies such as the so-called "1000 days", or other measures that seek to ensure that maternities comply with essential obstetric and neonatal conditions, the education of mothers, or the coordination of the health system.

In addition, from the beginning of his pontificate, John Paul II assigned concern for mothers a principal place in his teachings on the right to life. In the General Audience on 3 January 1979, he stated:

> "The mother who is about to give birth cannot be left alone with her doubts, difficulties and temptations. We must stand by her side, so that she will not put a burden on her conscience, so that the most fundamental bond of man's respect for man will not be destroyed. Such, in fact, is the bond that begins at the moment of conception, as a result of which we must all, in a certain way, be with every mother who must give birth; and we must offer her all the help possible".[31]

In *Evangelium Vitae*, he calls for a new commitment to promote laws in favour of vulnerable mothers:

[30] John Paul II, Encyclical on the Value and Inviolability of Human Life *Evangelium Vitae*, op. cit., 63.

[31] John Paul II, "General Audience", 3 January 1979, https://www.vatican.va/content/john-paul-ii/en/audiences/1979/documents/hf_jp-ii_aud_19790103.html.

> "Here it must be noted that it is not enough to remove unjust laws. The underlying causes of attacks on life have to be eliminated, especially by ensuring proper support for families and motherhood. A family policy must be the basis and driving force of all social policies. For this reason there need to be set in place social and political initiatives capable of guaranteeing conditions of true freedom of choice in matters of parenthood. It is also necessary to rethink labour, urban, residential and social service policies so as to harmonize working schedules with time available for the family, so that it becomes effectively possible to take care of children and the elderly".[32]

This is an urgent task, as Pope Francis pointed out in his Exhortation *Evangelii Gaudium*:

> "Precisely because this involves the internal consistency of our message about the value of the human person, the Church cannot be expected to change her position on this question. I want to be completely honest in this regard. This is not something subject to alleged reforms or "modernizations". It is not "progressive" to try to resolve problems by eliminating a human life. On the other hand, it is also true that we have done little to adequately accompany women in very difficult situations, where abortion appears as a quick solution to their profound anguish, especially when the life developing within them is the result of rape or a situation of extreme poverty".[33]

At the end of human life, the law must promote palliative care as an adequate response to the problem of the vulnerable suffering person, as John Paul II proposed:

> "In modern medicine, increased attention is being given to what are called "methods of palliative care", which seek to make suffering more

[32] John Paul II, Encyclical on the Value and Inviolability of Human Life *Evangelium Vitae*, op. cit., 90.

[33] Francis, Apostolic Exhortation on the Proclamation of the Gospel in Today's World *Evangelii Gaudium*, 24 November 2013, 214, https://www.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html.

> bearable in the final stages of illness and to ensure that the patient is supported and accompanied in his or her ordeal".[34]

A third sign of hope is the legal recognition of the right to conscientious objection. John Paul II was a strong defender and promoter of this right. His teachings laid the foundation for the growth in the number of objectors throughout the world, especially in the health professions. Regarding conscience, it is unavoidable to mention the clarity and sharpness of the encyclical *Veritatis Splendor*, which is intricately connected with the later encyclical *Evangelium Vitae*.[35]

In the latter, John Paul II highlights conscientious objection as a "duty":

> "Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a grave and clear obligation to oppose them by conscientious objection".[36]

In addition, Saint John Paul II provides safe and clear criteria to discern complex situations, such as the one faced by legislators in countries that debate laws on abortion. It is the famous passage from the Encyclical *Evangelium Vitae* that has been so studied and so applied in these years:

> "A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on. Such cases are not infrequent. It is a fact that while in some parts of the world there continue to be campaigns to introduce laws favouring abortion, often supported by powerful international organizations, in other nations-particularly those which have already experienced the bitter fruits of such permissive legislation-there are growing signs of a rethinking in this matter. In a case like the one just mentioned, when it is not possible

[34] John Paul II, Encyclical on the Value and Inviolability of Human Life *Evangelium Vitae*, op. cit., 65.

[35] John Paul II, "Speech to the International Symposium of 'Evangelium Vitae and Law'", Vatican City, 24 May 1996, https://www.vatican.va/content/john-paul-ii/es/speeches/1996/may/documents/hf_jp-ii_spe_19960524_evangelium-diritto.html.

[36] John Paul II, Encyclical on the Value and Inviolability of Human Life *Evangelium Vitae*, op. cit., 73.

> to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects".[37]

His teachings regarding the problem of cooperation with the evil were also truly unambiguous and guiding for the pro-life movement:

> "From the moral standpoint, it is never licit to cooperate formally in evil. Such cooperation occurs when an action, either by its very nature or by the form it takes in a concrete situation, can be defined as a direct participation in an act against innocent human life or a sharing in the immoral intention of the person committing it".[38]

Regarding the problem of cooperation with abortion, his teachings on the questions concerning the correct relationship of Catholic pregnancy counselling centres with the State-regulated counselling in Germany are particularly important.[39]

A fourth sign of hope is the beauty of the Christian Culture, deeply rooted in the communion between a man and a woman, who build the family. In his Letter to the Families, John Paul II spoke about the beauty of the family and the fairest love: "The beauty of love and the beauty of the human being who, by the power of the Holy Spirit, is capable of such love. We are speaking of the beauty of man

[37] Ibid.

[38] Ibid., 74. Pope Benedict XVI said: "the moral conscience, to be able to judge human conduct rightly, above all must be based on the solid foundation of truth, that is, it must be enlightened to know the true value of actions and the solid criteria for evaluation. Therefore, it must be able to distinguish good from evil, even where the social environment, pluralistic culture and superimposed interests do not help it do so". Benedict XVI, "Address to the participants in the General Assembly of the Pontifical Academy for Life", Clementine Hall, 24 February 2007, https://www.vatican.va/content/benedict-xvi/en/speeches/2007/february/documents/hf_ben-xvi_spe_20070224_academy-life.html.

[39] John Paul II, "Letter to the Bishops of the German Episcopal Conference", 11 January 1998, https://www.vatican.va/content/john-paul-ii/en/letters/1998/documents/hf_jp-ii_let_19980111_bishop-germany.html; John Paul II, "Letter to the German Bishops", 3 June 1999, https://www.vatican.va/content/john-paul-ii/en/letters/1999/documents/hf_jp-ii_let_03061999_german-bishops.html; J. Ratzinger, A. Sodano, "Letter to the German Bishops", 18 September 1999.

and woman: their beauty as brother or sister, as a couple about to be married, as husband and wife".[40] And, as the Saint said to the artists, "people of today and tomorrow need this enthusiasm if they are to meet and master the crucial challenges which stand before us. Thanks to this enthusiasm, humanity, every time it loses its way, will be able to lift itself up and set out again on the right path. In this sense it has been said with profound insight that 'beauty will save the world'".[41]

5. Concluding remarks

Faced with these paradoxes presented by the right to life in the context of human rights, the teachings of Saint John Paul II remain current and constitute an unavoidable source for addressing these problems. I have tried to show four signs of hope, linked with limits to the existing tendency to legalize abortion and euthanasia.

> "Although laws are not the only means of protecting human life, nevertheless they do play a very important and sometimes decisive role in influencing patterns of thought and behaviour".[42] Therefore, it is particularly essential to abrogate those laws that legalize abortion, euthanasia, and any violation of the right to life. At the same time, it is important to work for a culture of life, through legislation that promotes this right, valid from conception to natural death.

[40] John Paul II, "Letter to the Families. *Gratissimam Sane*", 2 February 1994, 20, https://www.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_02021994_families.html.

[41] John Paul II, "Letter to Artists", 4 April 1999, 16, https://www.vatican.va/content/john-paul-ii/en/letters/1999/documents/hf_jp-ii_let_23041999_artists.html.

[42] John Paul II, Encyclical on the Value and Inviolability of Human Life *Evangelium Vitae*, op. cit., 90.

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CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

DOI: 10.21697/CSP.2023.27.1.06

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John Paul II and respect for local cultures

Abstract: The cultural issue has undoubtedly been one of the main ideas of John Paul II's pontificate. This paper reviews the main definitions of culture that the Polish Pope left us, relating them to the identity of peoples. In this same sense, a brief analysis of the phenomenon of globalization is made as it was developed by John Paul II, and it ends with a brief reference to the impact of this phenomenon on local cultures.

Keywords: evangelization of culture, globalization, local cultures, multiculturalization

1. Introduction

From the beginning of his pontificate, John Paul II showed an interest and deep concern for the problems of cultures. This led him to repeatedly speak out on the issue, and even to create a specific Dicastery, the Pontifical Council for Culture, to deal with this issue.

It is enough just to recall the familiar expression of "evangelization of culture" or "inculturation of the Gospel", which John Paul II helped to popularize, and which brings so many reminiscences to those of us who are already of a certain age because it marked many years of pastoral action of the Church throughout the world. Even today, the expression is still used very frequently.

Throughout his pontificate, then, John Paul II has had numerous interventions on the cultural question, which can be considered a central axis in his teaching.

2. First element: towards a definition of "culture"

We can differentiate some elements in John Paul II's discourse on cultures. A first element revolves around a first approximation to the term "culture", which is characterized as a universal phenomenon. In all cultures, as it is stated in the first

number of the encyclical *Fides et Ratio* (1998), "there arise at the same time the fundamental questions which pervade human life: who am I? Where have I come from and where am I going? Why is there evil? What is there after this life?".

John Paul II defined culture with different words: as "that through which man, as man, becomes more man" [John Paul II 1980: 7], or as "a specific way of 'existing' and 'being' of man" [John Paul II 1980: 6], and as a "*the form of man's self-expression in his journey through history*, o*n the level of both individuals and social groups*" [John Paul II 2001: 4]. Finally, and perhaps the most practical definition, culture is defined as "the whole of the principles and values which make up the ethos of a people" [John Paul II 1982].

Culture is not fixed, rather it is something dynamic, which is being transformed "because people meet in new ways and share with each other their ways of life. Cultures are fed by the communication of values, and they survive and flourish insofar as they remain open to assimilating new experiences" [John Paul II 1998: 71].

3. Second element: different cultures

Cultural vitality is manifested, among other things, in the formation and development of numerous local cultures. So, as a second distinctive feature of the Polish Pope's approach to the theme of culture, we must say that, more than any other Pontiff, John Paul II insisted on speaking of "cultures" in the plural, rather than "culture" in the singular. This cannot surprise us in a Pope who gave his Pontificate such a travelling and cosmopolitan character.

In the Address to the United Nations Organization for Education, Science and Culture, the Polish Pope affirms that "Man always lives according to a culture which is specifically his, and which, in its turn, creates among men a tie which is also specifically theirs, determining the inter-human and social character of human existence. In the unity of culture as the specific way of human existence, there is rooted at the same time the plurality of cultures in the midst of which man lives. In this plurality, man develops without losing, however, the essential contact with the unity of culture as the fundamental and essential dimension of his existence and his being" [John Paul II 1980: 6].

In 2001, John Paul II recognized that "one is always amazed at the complexity and diversity of human cultures. Each of them is distinct by virtue of its specific

historical evolution and the resulting characteristics which make it a structurally unique, original and organic whole" [John Paul II 2001: 4].

When mentioning this theme of the cultural manifestations of humanity, it becomes impossible not to mention the testimonials numbers 14 and 15 of the Speech to the United Nations Organization for Education, Science and Culture (1980). In them, John Paul II, in an evidently proudly manner, uses his nation's own experience as an example to affirm that the sovereignty of peoples lies, ultimately, in the strength of their culture. Let me extract the gist of these two issues, to read it with you:

"I am the son of a Nation which has lived the greatest experience of history, which its neighbours have condemned to death several times, but which has survived and remained itself. It has kept its identity, and it has kept, in spite of partitions and foreign occupations, its national sovereignty, not by relying on the resources of physical power, but solely by relying on its culture. This culture turned out in the circumstances to be more powerful than all other forces (…). There exists a fundamental sovereignty of society which is manifested in the culture of the Nation. It is a question of the sovereignty through which, at the same time, man is supremely sovereign. When I express myself in this way, I am also thinking, with deep interior emotion, of the cultures of so many ancient peoples which did not give way when confronted with the civilizations of the invaders: and they still remain for man the source of his "being" as a man in the interior truth of his humanity. I am also thinking with admiration of the cultures of new societies, those that are awakening to life in the community of their own Nation—just as my Nation awakened to life ten centuries ago—and that are struggling to maintain their own identity and their own values against the influences and pressure of models proposed from outside. Addressing you (…), I say to you: with all the means at your disposal, watch over the fundamental sovereignty that every Nation possesses by virtue of its own culture. Cherish it like the apple of your eye for the future of the great human family. Protect it! Do not allow this fundamental sovereignty to become the prey of some political or economic interest. Do not allow it to become a victim of totalitarian and imperialistic systems or hegemonies, for which man counts only as an object of domination and not as the subject of his own human existence" [John Paul II 1980: 14 and 15].

John Paul II is telling us here that local cultures base nothing more and nothing less than the sovereignty of a nation. This is an interesting contribution not only

to the magisterium of the Church but also to contemporary sociological-political thought. Pope John Paul also provides us with an answer and an antidote to cultural colonialism that he will also courageously denounce.

But, in addition, local cultures play a fundamental role as a "structuring element of one's personality". Indeed, "(w)ithout a firm rooting in a specific "soil", individuals risk being subjected (…) to an excess of conflicting stimuli which could impair their serene and balanced development. It is on the base of this essential relationship with one's own "origins" – on the level of the family, but also of territory, society and culture – that people acquire a sense of their nationality, and culture tends to take on, to a greater or lesser degree in different places, a "national" configuration" [John Paul II 2001: 6].

4. Third element: migrations, cultural minorities, and multiculturalism

This emphasis placed on the variety and multiplicity of cultures coincides with the great diffusion of the concept of "multiculturality" or "multiculturalism" in the field of contemporary social sciences, a notion that was driven by the importance acquired by the phenomenon of migrations and migrants. Entire members of different ethnic groups living together within States where both the language and the customs, beliefs and practices do not coincide (and could even be conflictive), with the consequent potential for conflict that this situation could entail. The recognition of the identity of these minorities was not raised in an easy way in contemporary societies, and a reflection on it was necessary to find channels for dialogue and meeting.

John Paul II takes the cause of these cultures to himself, clearly establishing the rights and obligations of migrants and local minorities: "There is also a need for commitment in identifying possible forms of genuine integration on the part of immigrants who have been legitimately received into the social and cultural fabric of the different European nations. This demands not yielding to indifference regarding universal human values and a concern for safeguarding the cultural patrimony proper to each nation" [John Paul II 2003: 102].

In the Message for the celebration of the XXII World Day of Peace, he addresses the burning issue of minorities along the same lines: "As communities which take their origin from separate cultural traditions, racial and ethnic stock, religious beliefs, or historical experiences, minority groups exist in almost all societies today. Some go very far back in time, others are of recent origin. The situations in which they

live are so diverse that it is almost impossible to draw up a complete picture of them. On the one hand there are groups, even very small ones, which are able to preserve and affirm their own identity and are very well integrated within the societies to which they belong. In some cases, such minority groups even succeed in imposing their control on the majority in public life. On the other hand one sees minorities which exert no influence and do not fully enjoy their rights, but rather find themselves in situations of suffering and distress" [John Paul II 1989: 2].

Saint John Paul II establishes two fundamental common principles that must be respected in these situations, and that must even be "the foundation of all social organization": the first is the inalienable dignity of each human person, "without distinctions related to their racial, ethnic, cultural, national, or religious belief." The right not to be discriminated against for these reasons is inferred here. But it also follows the fact that "human groups (…) have a right to a collective identity that must be safeguarded, in accordance with the dignity of each member". In other words, the inalienable dignity of the person projects its consequences on the right to the collective identity of peoples and cultures. The second principle that must be considered in these situations refers to The second principle concerns the fundamental unity of the human race, which takes its origin from the one God, the Creator "the fundamental unity of the human race, which takes its origin from the one God, the Creator" [John Paul II 1989: 3].

Minorities have the right to exist, John Paul II tells us in that same Message [John Paul II 1989: 5]. And that right brings with it the right to "preserve and develop their own culture (…). Closely connected with this right is the right to have contact with groups having a common cultural and historical heritage but living in the territory of another State" [John Paul II 1989: 7]. In this sense, the Polish Pope draws our attention here to the fact that "in some places, (…) laws have been enacted which do not recognize [minorities] their right to use their own language. At times people are forced to change their family and place names. Some minorities see their artistic and literary expressions ignored, with their festivals and celebrations given no place in public life. All this can lead to the loss of a notable cultural heritage" [John Paul II 1989: 7].

Years later, the Polish Pope would say that "(h)ow migrants are welcomed by receiving countries and how well they become integrated in their new environment are also an indication of how much effective dialogue there is between the various cultures" [John Paul II 2001: 12].

5. Fourth element: an incorrect understanding of globalization

But this emphasis placed on respect for minorities and local cultures faced (still faces) an even more subtle challenge: an erroneous interpretation of the phenomenon of globalization, through which, following an economist and market logic, some claimed, impose a single culture and way of being on all local cultures. And, behind this imposition – let's not kid ourselves – a whole series of legal, social and economic reforms were promoted that went far beyond consuming this or that food or listening to this or that type of music or dressing in this or that way. A certain "standardization" of societies could come from the misunderstanding of the phenomenon of globalization.

Several times, Pope John Paul II raised his voice to warn about these pretensions that entered almost inadvertently into local cultures. The dangers: the loss of authentic values around which entire peoples had built their way of life. "We now see a process of globalization which tends to underestimate distinctiveness and variety, and which is marked by the rise of new forms of ethno-centrism and exaggerated nationalism. In such a situation, the challenge is to promote and pass on a living culture, a culture capable of fostering communication and brotherhood between different groups and peoples, and between the different fields of human creativity. Today's world is challenging us, in other words, to know and respect one another in and through the diversity of our cultures. If we respond, the human family will enjoy unity and peace, while individual cultures will be enriched and renewed, purified of all that poses an obstacle to mutual encounter and dialogue" [John Paul II 1999: 4].

In addition, in the message for the World Day of Peace in 2001, he stated: "The radicalization of identity which makes cultures resistant to any beneficial influence from outside is worrying enough; but no less perilous is *the slavish conformity of cultures*, or at least of key aspects of them, to cultural models deriving from the Western world. Detached from their Christian origins, these models are often inspired by an approach to life marked by secularism and practical atheism and by patterns of radical individualism. This is a phenomenon of vast proportions, sustained by powerful media campaigns and designed to propagate lifestyles, social and economic programmes and, in the last analysis, a comprehensive worldview which erodes from within other estimable cultures and civilizations. Western cultural models are enticing and alluring because of their remarkable scientific and technical cast, but regrettably there is growing evidence of their deepening human, spiritual and moral impoverishment" [John Paul II 2001: 9].

John Paul II repeatedly expressed the Church's concerns regarding globalization and the identity of local cultures, especially the fact that globalization precisely "has quickly become a cultural phenomenon". For the Polish Pope, this meant that "the market as an exchange mechanism has become the medium of a new culture", presenting "the intrusive, even invasive, character (…). The market imposes its way of thinking and acting, and stamps its scale of values upon behaviour. Those who are subjected to it often see globalization as a destructive flood threatening the social norms which had protected them and the cultural points of reference which had given them direction in life" [John Paul II 2001a: 3].

This process challenges and hits local cultures hard, as it occurs "too quickly for cultures to respond". And, in this way, "globalization often risks destroying these carefully built up structures, by exacting the adoption of new styles of working, living and organizing communities. Likewise, at another level, the use made of discoveries in the biomedical field tends to catch legislators unprepared. Research itself is often financed by private groups and its results are commercialized even before the process of social control has had a chance to respond. Here we face a Promethean increase of power over human nature, to the point that the human genetic code itself is measured in terms of costs and benefits" [John Paul II 2001a: 3].

In this sense, in the Message for the World Day of Peace in 2001, Pope Wojtyła warns about "(t)he fact that a few countries have a monopoly on these cultural "industries" and distribute their products to an ever growing public in every corner of the earth can be a powerful factor in undermining cultural distinctness. These products include and transmit implicit value-systems and can therefore lead to a kind of dispossession and loss of cultural identity in those who receive them" [John Paul II 2001: 11].

Once again, it is the same two principles as before that should guide ethical discernment in the context of globalization: the inalienable value of the human person and the value of human cultures, "which no external power has the right to downplay and still less to destroy". In this sense, John Paul II affirms, "(g)lobalization must not be a new version of colonialism", but "must respect the diversity of cultures which, within the universal harmony of peoples, are life's interpretive keys. In particular, it must not deprive the poor of what remains most precious to them, including their religious beliefs and practices, since genuine religious convictions are the clearest manifestation of human freedom". They are

the universal human values that underlie local cultures, "the guiding force of all development and progress" [John Paul II 2001: 4].

5. Conclusion

There was a time when, for a very wide spectrum of cultures, the Christian message meant a common assumption in which fruitful dialogue could be conducted while respecting differences. Our time does not seem to have that presupposed factor, and then the differences appear in the foreground, without a substratum that identifies common values. Despite this, the deepest questions of humanity remain always the same.

The attempt to provide this substratum through human rights appears weak and unconvincing now… Probably because the foundation of these rights, as they seem to be conceived today, does not root too clearly in universal reasons that give them full legitimacy.

The diversity of cultures does not contradict the common nature of the human person, since cultures are "always marked by stable and enduring elements, as well as by changing and contingent features". It is about solidarity, peace, life, education[1], forgiveness, and reconciliation. These common values, "express humanity's most authentic and distinctive features" [John Paul II 2001: 5 and 16].

These values are rooted in people's nature and are the foundation of all cultural dialogue.

While the Church finds the ways to re-strengthen the ability to challenge the men and women of today with the evangelical message, in order to once again constitute a common substratum that bases the values and dignity of the person, these values must be underpinned to be able to sustain, albeit weakly, an acceptable dialogue and coexistence between the various cultures and local perspectives. May Saint John Paul II, ardent promoter of the centrality of cultures, accompany this path that Humanity is currently facing.

[1] This must transmit to the subjects the awareness of their own roots and offer them points of reference that allow them to find their personal situation in the world. At the same time, you must strive to teach respect for other cultures.

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DOI: 10.21697/CSP.2023.27.1.07

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

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Does the Strasbourg European Court protect all human rights equally?

Abstract: The text opens with a recollection of St John Paul II's historic visit to a mosque in 2001, highlighting the cultural respect manifested the event. The text then delves into St John Paul II's early fascination with literature and drama, emphasizing his resistance to Nazi occupation through cultural means. The author quotes St John Paul II's statement that faith must become culture in order to be fully embraced and lived. The author urges the audience to approach Catholic culture wisely and quotes St John Paul II's encouragement not to be afraid of the future, emphasising the capacity for wisdom and virtue in individuals. The text then moves on to a critical analysis of the European Court of Human Rights, pointing out instances of procedural irregularities and dissenting views on judgements related to issues such as abortion and the recognition of civil marriage. The author then develops his argument by utilizing the format of a play, metaphorically titled 'Abdi Ibrahim v Norway', as a case study illustrating the impact of Islam on Europe, political correctness and social unrest.

Keywords: Human right, European Court of Human Rights

St John Paul II was the first pope to ever enter a Muslim Mosque, in 2001 in Damascus. The Pope, received in the Umayyad Mosque by Sheik Ahmad Kuftaro, respected the tradition and took off his white sandals, specially made for the memorable occasion. He stopped before the Qibla and before the pulpit, where sermons are preached on Fridays.

The Pope and the mufti were supposed to pray together over the remains of John the Baptist, which tradition situates at the centre of the said mosque, but due to the opposition of some Muslim groups, the Pope had to pray alone.

Thus, I want to start my presentation by recalling one of the many teachings and testimonies of St John Paul II. I would like to thank the Ave Maria School of Law and the Cardinal Stefan Wyszyński University.[1]

For many reasons, it is a privilege and pleasure to come back to Poland, a nation that I admire, and to participate in this conference on the legacy of a magnificent pope, an exemplary saint.

In his youth, John Paul II was fascinated by literature, in particular, as he acknowledged, by drama and theatre.

In 1939, he was an actor in a play performed at the *Collegium Maius* of the Jagiellonian University. While Poland was occupied by Nazi Germany, the German governor Hans Frank said that "any vestige of Polish culture must be eliminated. There will never be a Poland". But Karol Wojtyła, a worker at the Solvay chemical plant in Kraków, resisted Nazi barbarism not with force, but with culture, through the power of words. Thus, he wrote many dramas and with the help of a famous actor turned tram driver, Mieczysław Kotlarczyk, he continued to act in underground pieces at the Rhapsodic Theatre. He left the theatre to study to become a priest, at the underground seminary in Kraków.

Saint John Paul II has said: "a faith that does not become culture is a faith that is not fully received, not entirely thought through and faithfully lived".[2]

It was not an easy time. Yet, by giving example as Karol Wojtyła, Saint JPII taught to "take care that the legitimate desire to communicate ideas is exercised through persuasion and not through the pressure of threats and arms" (XII World Day for Peace, 1979).[3]

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[1] Note from the Editors: the present text is based on the presentation, originally delivered at the conference "Natural Law Legacy and International Human Rights: Toward a Century of Persuasion", hosted in Warsaw by the Cardinal Stefan Wyszyński University and the Ave Maria School of Law on 18-19 May 2022. Footnotes and some references have been added by the Editors of *Christianity-World-Politics* to adapt the format of the contribution accordingly.

[2] John Paul II, *Letter to Cardinal Agostino Casaroli instituting the Pontifical Council for Culture*, 20 May 1982, in: *AAS* 74 (1982), pp. 683-688, https://www.vatican.va/archive/aas/documents/AAS-74-1982-ocr.pdf [*Una fede che non diventa cultura è una fede non pienamente accolta, non interamente pensata, non fedelmente vissuta*. *AAS* 74 (1982), p. 685].

[3] *Message of His Holiness Pope John Paul II for the Celebration of the Day of Peace*, 1 January 1979, https://www.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-

Let us live our Catholic culture with WISDOM, for as Jesus said that "the children of this world are wiser in their generation than the children of light" (Luke 15, 8 [RHE]).

Saint JPII thus also exhorted us: "*We must not be afraid of the future. We must not be afraid of man*. (…) We have within us the capacities for wisdom and virtue".[4]

The interpretation by the Strasbourg-based European Court of Human Rights regarding the rights, protected by the European Convention for the Protection of Human Rights and Fundamental Freedom, has been incorrect at times.

I will explain my dissenting view, not with a judgment issued, but with the process of producing a judgment, starting with a question and answer.

Why does the court issue strident judgments?

For procedural reasons and out of desire to increase the court's visibility. To that end, for instance, the court has appointed to itself the power to decide the "legal characterization of the facts".

For instance, the European Court has examined abortion not under Article 2 of the Convention (right to life), but under Article 8, respect for private and family life (*Tysiąc v. Poland*).[5]

But the Court also determines itself its own procedure.

For instance, a lawsuit would normally not be accepted before all the domestic remedies have been exhausted. But sometimes, arguing that the case is of interest because it would increase the court's visibility, a matter where domestic remedies have not been fully used and facts have not been proven before domestic courts will be examined by the Court regardless (e.g., *A, B, C v. Ireland*,[6] among others).

-ii_mes_19781221_xii-world-day-for-peace.html.

[4] *Address of His Holiness John Paul II, United Nations Headquarters (New York), 5 October 1995*, 18, https://www.vatican.va/content/john-paul-ii/en/speeches/1995/october/documents/hf_jp-ii_spe_05101995_address-to-uno.html.

[5] *Tysiac v. Poland*, Appl. No. 5410/03, Council of Europe: European Court of Human Rights, Strasbourg 20 March 2007, https://www.refworld.org/cases,ECHR,470376112.html.

[6] Case of *A, B and C v. Ireland* (Application no. 25579/05), European Court of Human Rights, Judgement, Strasbourg 16 December 2010, https://hudoc.echr.coe.int/eng#{%22appno%22:[%2225579/05%22],%22itemid%22:[%22001-102332%22]}.

The conclusion was clearly expressed by a Dutch Judge, Egbert Myjer, in his dissenting opinion in the case of Muñoz Diaz v. Spain, which gave civil recognition to a marriage performed under the gypsy rite: "the Court's jurisdiction cannot extend to the creation of rights not enumerated in the Convention, however expedient or even desirable such new rights might be. In interpreting the Convention in such a way, the Court may ultimately forfeit its credibility among the Contracting States as a court of law".[7]

And I would go further by narrating a theatrical play, as if I were the actor, from my experience as a Strasbourg court judge.

The play, divided into acts, is called *Abdi Ibrahim v. Norway*, decided by the Grand Chamber judgment on 10 December 2021.[8] It illustrates the power and influence of Islam in Europe, the lukewarmness of some, and anxiety over what is "politically correct".

ACT I
Introduction to the play's characters

Abdi Ibrahim is a Somali citizen. In her village, she was impregnated at the age of 16 by a man who did not assume paternity. She moved to Kenya and, in traumatizing conditions, gave birth to a boy.

At 17, she moved to Norway, where she was granted refugee status. She moved into a shelter for parents and children. A week later, the shelter staff express concern for the baby and determine that his life is in danger if left under his mother's care. The baby is immediately placed in the home of a family protection worker and is then placed in a foster home. The baby cries, does not sleep when he is visited by his mother. He is placed with a Norwegian Christian family, after unsuccessful efforts to find him a Muslim family.

The mother accepted the foster family, gave up her request that it be a Muslim family and showed agreement with the visits, but insisted that the boy be circumcised, educated in a Koran school and that he does not eat pork.

[7] Case of *Muñoz Díaz v. Spain* (Application no. 49151/07), European Court of Human Rights, Judgement, Strasbourg 8 December 2009, https://hudoc.echr.coe.int/tkp197/view.asp#{%22itemid%22:[%22001-96100%22]}.

[8] Case of *Abdi Ibrahim v. Norway* (Application no. 15379/16), European Court of Human Rights, Judgement, Strasbourg 10 December 2021, https://laweuro.com/?p=17577.

Child protection staff and Norwegian tribunals:

All along, the mother was heard, as were expert witnesses. The work of the state was detailed, attempting to satisfy the mother's wishes and the best interests of the child.

The mother's Supreme Court appeal was rejected.

The five-judge Bench and the Grand Chamber

Three European Court bodies intervene in the play, in the first place, the Second Chamber, which issues the first judgment.

The Second Chamber's five-judge bench authorized the submission of the matter to the Grand Chamber (17 judges). The judgment does not state which judge voted in favour of the said submission, what the allegations were, or why the submission had to be confidential.

The Grand Chamber re-examines the case. Its composition is well-known: a Danish president and 16 other judges from Andorra, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, Hungary, Ireland, Lithuania, Monaco, the Netherlands, Norway, Romania, Slovakia, and Ukraine.

Act II
In Strasbourg

First judgment:

The mother, represented by counsel, files suit before the European Court at 23 years of age, her boy is six. The mother argues a violation of her right to privacy (Art. 8) and religious freedom (Art. 9).

Admitted within a year, the lawsuit is communicated to the government of Norway. The Czech government intervenes and argues that the best interests of the child in adoptions may not be used to ignore the happiness of biological parents.

In September 2019, the Court invites the parties to formulate observations on another adoption and termination of parental rights case, *Strand Lobben and*

Others v. Norway.[9] On 17 December 2019, the Court finds Norway guilty of violating a parent's rights and authorizing a child's adoption without weighing the interests of the plaintiff.

The transfer:

On the same day that the judgment came out, the court issued a press release on the *Abdi Ibrahim* judgment and another against Norway, indicating that the court would examine the plaintiff's arguments only under Article 8, under the heading "adoption placement in foster care and adoption authorization without the mother's consent: a violation of the Convention".

Is the issue resolved? No.

The plaintiff, on 17 March 2020, the last day of the three-month deadline, requests submission to the Grand Chamber on the grounds that the matter raises a serious issue of general interest, under Art. 43 of the Convention, or a serious issue on the interpretation of the Convention and its protocols.

This provision comes from Protocol 11,[10] which I helped draft, along with the Turkish and British representatives. The protocol took away the need for the European Commission. Review of judgments that did not fit within the convention was deemed justified. The Grand Chamber would not include any of the judges from the lower chamber, with the exception of the chamber's president and the national judge in question.

The First Chamber president here requested not to be a part of the Grand Chamber. He was then replaced by the Court's Vice-President, a Danish judge.

Why did the bench grant the requests not to hear the case from the five judges within a period of one month since the resubmission request was made by the plaintiff? It is unknown.

[9] *Strand Lobben and Others v. Norway* [GC] (European Court of Human Rights), Information Note on the Court's case-law 232, 22 November 2019, https://laweuro.com/?p=10098; Case of *Strand Lobben and Others v. Norway* (Application no. 37283/13), Judgment, Strasbourg 10 September 2019, https://laweuro.com/?p=10073.

[10] *Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby*, Strasbourg, 11.05.1994, https://www.refworld.org/docid/42ef8c812.html.

Does a plaintiff that obtained a favourable ruling often seek review by the Grand Chamber?

No, because they would be risking a new unfavourable judgment.

In the well-known case of Navalny v. Russia, however, the plaintiff had obtained a favourable ruling on some of his complaints, but not all. Both he and the Russian government requested submission to the Grand Chamber, and in its judgment, the Grand Chamber expanded the number of violations found against the plaintiff. [11]

Act III
The Grand Chamber

Part I
The Grand Chamber reviews the case and holds an on-line hearing on 27 January 2021. They read the Second Chamber's judgment, the plaintiffs' arguments, the Norwegian government's filing, the filings by other governments, by the child's adoptive parents, all authorized by the Chamber President to intervene.

The plaintiff asks that her Article 8 claim be expanded to include Article 9 on religious freedom, and Article 2 Protocol 1 on the right to education. She argues that the child's baptism in a missionary church that allegedly resembled a cult, and which does not belong to the mainstream Christian church in Norway, violated her rights.

This argument was not examined by the Great Chamber, however, although it did cite the Norwegian Constitution which established that the Church of Norway is a Lutheran Evangelical church, supported by the State. The judgement of the chamber does not reflect the fact that the foster family, which became the adoptive family, are members of the Mission Covenant Church of Norway and the Norwegian Missionary Society. The judgement of the Great Chamber reflects this fact.

The Norwegian Government held that there was no violation of Article 8 and that the matter lay in the national margin of appreciation. It argued that the religious freedom complaint should be based on Article 9 instead of Art. 2, Protocol 1.

[11] Case of *Navalnyy v. Russia* (Applications no. 29580/12 and 4 others), Judgement, Strasbourg 15 November 2018, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-187605%22]}.

Third-party interveners argued; the Government of Denmark argued that the Second Chamber gave too much weight to the biological parent's rights, against the best interest of the child, in line with Norway.

The Czech Republic Government argued in favour of the biological parents and of raising the child in line with their beliefs and traditions. The Government of Turkey argued a violation of Articles 8 and 9, and Art. 2 Protocol 1, and added another violation of Art. 14 on discrimination. The AIRE, "Centre Advice Individual Rights Europe", a British human rights organization, argued that the child should have participated in the adoption process. It stressed that adoption is not authorized by Islam and is prohibited by the Quran, and indicated that in the Muslim world, apostasy is a crime.

Lastly, the adoptive parents asked the Grand Chamber to keep in mind the child's best interest and family bonds, and "private life" within his adoptive family.

Part II: The Hearing Aftermath

In the aftermath of the hearing, held on-line on 27 January 2021, the Grand Chamber immediately convened to deliberate. What could have happened in that deliberation? We can imagine that it is a play, which does not necessarily reflect reality.

We can imagine a tie between those in favour of analysing Art. 9 not separately, who form the majority, and the rest, a discrete [important] minority, who wanted to analyse the provision on religious freedom separately. The alleged violation of the right to education and the right to non-discrimination were rejected. Some in the Grand Chamber thought they should have one section that would essentially copy the Second Chamber's judgement and add their own religious freedom analysis. The Grand Chamber President decided to do so and appointed one judge to re-examine the Lower Chamber's judgement and another to carry out the religious freedom analysis. On 15 September 2021, the Grand Chamber convened to deliberate over both parts of the opinion.

Seventeen judges of the Grand Chamber sat at a long U-shaped table, with some benches for the Court staff in the back of the room, and the interpreters were in their cabins. Out of the seventeen judges, eleven are professors, i.e., law academics, and six are professional judges. The academics turned judges tend to talk a great deal, focus mostly on the "ought to" than the "is", and lack courtroom practice.

They tend to intervene either too soon or too late, whereas experienced judges know their colleagues and can guess their interventions, and will ask to speak if the contrary opinion is likely to come up soon in order to present their reasoning.

What happens in the deliberations?

They all agree that the Convention has been violated, with some discrepancy and separate analyses regarding religious freedom. There is unanimity on the issue of violation of private life, religious freedom, which would lead to a controversial and complicated judgement.

The judges then agree on focusing on the violation of Article 8, including clear references to religious freedom in the majority opinion. This is not what the Bench wanted when admitting the appeal, but they chose to focus exclusively on Article 8 with more references to religious freedom.

Deliberations continued for three weeks. On the last day of the deliberations, the majority opinion was approved. After the English and French translation on 3 December 2021, the press release on the judgement was issued on 10 December, under the heading "Child adoption without taking account of the mother's wishes breached her human rights".[12]

For the first time, a press release described the submission. It literally states that the plaintiff sought a decision under Articles 8 and 9, that the Second Chamber examined her claim only under Article 8, and that the Grand Chamber accepted her claim, which indicated why there was an appeal, adding suspense to the announced judgement.

Part III: The Grand Chamber Judgement

The Tribunal stressed that the 11-year-old child is not a plaintiff and is not represented before the Court. It is proper to examine the complaint on religious freedom and the right to education under Article 8 on privacy and family life. With regard to Article 8, the judges reiterated that this article must be interpreted and applied in light of Article 9. They cite the UN Treaty that provides that the child's ethnic and religious background must be taken into account.

[12] Press Release issued by the Registrar of the Court, "Child adoption without taking account of the mother's wishes breached her human rights", ECHR 384 (2021), 10.12.2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22003-7207340-9793676%22]}.

The judgement condemns the actions taken by the Norwegian authorities based on the child's best interests instead of balancing the interests of the biological child and the biological mother.

Even though the Court can only examine the termination of parental rights and the authorization for adoption, the judgement laments that in foster care placement, the child's cultural and religious background was not carefully weighed, even though the Norwegian Government made several unsuccessful efforts to find a Muslim family for the child. Interestingly, the domestic Appeals Court indicated that "We cannot conclude that the adoption of Muslim children is prohibited in Norway".

The judgement then concludes, unanimously, on the violation of Article 8, stating that "the decision-making process leading to applicant's ties with X being definitely cut off, was not conducted in such a way as to ensure that all of her views and interests were duly taken into account".

On Damages

Since the plaintiff had not requested moral damages before the Second Chamber, but did so before the Grand Chamber, the Grand Chamber rejected awarding any amount for moral damages.

The plaintiff requested EUR 30,000 in legal fees, and the Grand Chamber awarded 30,000 euros.

There were two dissenting opinions on the judgement, relating only to the subject of equitable remedies; the Belgian and Romanian judges argued that the mother should have been awarded moral damages. The judge from Cyprus also held that a certain amount should be given for moral damages, without providing the amount.

On Article 46: The Binding Nature of the Judgement and Execution

The plaintiff requested the Grand Chamber, the first-time precedent in Strasbourg, that the Court grant her with the possibility to reopen the adoption process. The Grand Chamber, in the best interest of the Child, concludes that there are no grounds to grant such an individual request for a measure to be taken at the domestic level.

Conclusion

The Grand Chamber judgement is an example of certain types of decisions taken in Strasbourg. On its face, it appears to properly interpret the Convention, but a careful reading and comparison to the Lower Chamber's judgement reveals that the Grand Chamber's is a judgement with argumentative inconsistencies and difficult to implement in subsequent decisions. It leaves the door open for future decisions in which a biological Muslim parent, in a different situation from the young Somali mother here, may overturn an adoption by arguing a right to religious freedom.

In conclusion, this is a judgement that is a product of a weakness in the application of the Convention. Let us remember the example of Saint John Paul II and let us not be afraid of the future, and let us act with wisdom and courage in our faith.

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

DOI: 10.21697/CSP.2023.27.1.08

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Human Rights: is the concept truly coherent with the Christian moral teaching?

Abstract: The text explores the evolution of anthropological perspectives within Christianity, specifically focusing on the concept of rights. It traces the historical shift from a pre-modern emphasis on the social nature of humans to the emergence of individualistic anthropology in the 17th century. The tension between freedom and justice becomes a central theme, with human rights seen as a means of protecting individual autonomy from social coercion. The text explores the concept of personhood in Christianity, emphasising its central role in understanding the Trinitarian identity of God and its significance in Christology. It examines the classical definition of a person as an individual substance of reasonable nature, highlighting its limitations when applied to social aspects of human life. The author expresses scepticism about reconciling the concept of human rights with Christian anthropology, asserting that the rights-focused ethics is rooted in a non-Christian philosophical framework. The conclusion acknowledges the contemporary dominance of the rights-focused ethics but warns against the temptation to create a new "Christianity" compatible with this framework, urging a recognition of the anti-Christian nature of the ethical foundations of the modern Western society.

Keywords: anthropology, human rights, person, Christology

I. Introduction: on rights in general

1. The concept of subjective rights, as we understand it, is in itself by no means "ever existing". Technically speaking, it has emerged in its proper meaning as we know it today, in ethics and subsequently in jurisprudence as an effect of a radical shift in anthropology that took place in modern times. We ceased to understand the human being as having a social nature that is inseparable from the social context and started to understand man in terms of a free undetermined individual, subsequently creating society in contractual terms. In scholarly writings, this

process has manifested itself in attributing the Latin term *ius* with the specific meaning of a moral faculty possessed by an individual to shape his relationships with others according to his will as agreed with the will of the others. However, this had not been the case for a long time prior to the 17th century.

This close dependence of the concept of rights on anthropology is clearly visible in European writings, where the word *right* is qualified with the adjective "subjective" in order to emphasize its unbreakable relationship with an autonomous (will-driven) subject. The concept of the *right* (as expressed in Latin with the word *ius*) in that modern meaning describes a legally authorized faculty of a subject to act according to his/her autonomous will, and is distinct from the concept of objective *law* (*lex*) as describing an objective legal rule.[1] Such a concept – as demonstrated in the aforementioned distinction between *ius* and *lex,* attributing both terms with a distinct and specific meaning – was unknown to ancient Romans[2] or to Thomas

[1] T. Hobbes, *Leviathan*, I, 14, ed. R. Tuck, Cambridge University Press 1996, p. 91: "*… jus and lex, right and law, yet they ought to be distinguished, because right consisteth in liberty to do, or to forbear; whereas law determineth and bindeth to one of them: so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent*". This distinction was repeated by Spinoza: "*Per ius enim civile privatum nihil aliud intelligere posumus, quam uniuscuisque libertatem ad esse in suo statu conservandum, quae edictis summae potestatis determinatur, solaque eiusdem auctoritate defenditur. …*". Benedicti de Spinoza, *Tractatus theologico-politicus*, XVI § 40, in: *Opera quae supersunt omnia*, vol. 3, ed. C. Hermanus Bruder, Lipsiae 1846, p. 214. Immanuel Kant also differentiated between "*Der Rechte als systematischer Lehre*" which has a clearly objective character, and "*Der Rechte als (moralischer) Vermögen Andere zu verpflichten*", which is precisely the subjective right. Kant divides each of those perspectives on Law into its natural (primary) and social (secondary) dimensions. I. Kant, *Die Metaphysik der Sitten*, Hrsg. J. H. Kirchmann, Leipzig 1870, pp. 39-40. The same distinction dominates in the works of the *Naturrecht Schule*: "*Lex dicitur regula, juxta quam actiones nostras determinare obligamur. …*" (…) "*Facultas ista, seu potentia moralis agendi dicitur Jus. …*", Ch. Wolff, *Institutionis Juris naturae et Gentium …*, Halae Magdeburgicae 1763, §39 and § 46, pp. 20 and 23. Subsequently, it became the fundament of the modern civil law: "*Recht (Recht im subjectiven Sinn, subjectives Recht) ist eine von der Rechtsordnung (Recht im obectiven Sinn, objectives Recht) verlihene Willensmacht oder Willensvorschrift concreten Inhalts*", B. Windscheid, *Lehrbuch des Pandektenrechts*, vol. 1, Düsseldorf 1875, § 37, p. 91. For a brief synthetic presentation of this issue, see my: "Prawa człowieka jako prawa podmiotowe", in: Słowniki *Społeczne: Etyka polityczna*, ed. P. Świercz, Ignatianum University Press, Kraków 2021, pp. 281-283.

[2] In Roman law, being an intellectual matrix of the Western legal culture, the term *ius* meant either law in general or law as a set of objective rules regulating either a particular sphere of social life or the functioning of a particular community (substantive law), depending on the context. The term *ius* was also used to denote a place where the *magistrates'* jurisdiction was exercised. It was also the name for the first stage in a formulary litigation. Occasionally, this term was also used to define a legally granted possibility of action (*facultas agendi*), which can be translated as "right" or "entitlement". It was, however, by no means a dominating meaning of the term "*ius*". See: J. Kamiński, "*Ius*", in: *Prawo rzymskie. Słownik encyklopedyczny*,

Aquinas.[3] The term *ius* was indeed used by medieval lawyers in the meaning of entitlement, thus very close to the subjective right. However, it was never opposed to *lex*, neither it was understood as liberty.[4] This modern meaning was invented by the protestant philosophers of the 17th century in order to explain in a new

ed. W. Wołodkiewicz, Wiedza Powszechna: Warszawa 1986, p. 81; A. Stępkowski, "*Human Rights*", in: *Social Dictionaries: Political Ethics*, ed. P. Świercz, op. cit., pp. 281-282.

[3] See: J. Coleman, "Are There Any Individual Rights or Only Duties? On the Limits of Obedience in the Avoidance of Sin According to Late Medieval and Early Modern Scholars", in: V. Mäkinen, P. Korkman eds., *Transformations in Medieval and Early-Modern Rights Discourse*, Springer: Dodrecht 2006, pp. 22, 24. For a closer explication, see: J. Finnis, *Aquinas. Moral, Political, and Legal Theory*, Oxford University Press 1998, pp. 134-135.

[4] Brian Tierney demonstrated the use of the term *ius* in the meaning of "faculty to act", as early as in the 12th century, arguing that subjective rights have long been a part of the Western thought (B. Tirney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150-1625*, Scholars Press: Atlanta, Georgia 1997). This specific way of understanding *ius* is, however, always closely related to *iustitia* and not to *libertas;* thus, it does not entail the proper meaning of the subjective right. Prior to Hobbes, no one placed *ius* and *lex* in opposition, and their meaning often overlapped in many ways. It is perfectly well demonstrated in the account of the term "*ius*" given by Francisco Suarez SJ, who is commonly believed to be the Catholic inventor of the subjective rights. While discussing the term *ius*, Suarez discerns in his *De Justitia et Jure* (II, 1) its three meanings: 1) what is just (*Jus, id est justum*); 2) the legal rule in objective sense (*Jus, id est lex, que est regula iuris generali*), and 3) the legitimate power stemming from the legal provision (*Jus, id est legitima potestatas a lege concessa*). While the last (third) meaning of *ius* corresponds to that of the "subjective right", Suarez does not reduce its sense to this third (not even to the first) meaning, whereas authors that claim Suarez was operating with the concept of the subjective rights, implicitly reduce his teaching to the third meaning. It is presented as something entirely new, whereas – taken in its entirety – it is still functioning within the framework of the traditional *ius commune* rooted in Roman law that did not discern a sharp distinction between *ius* and *lex*. Neither did Suarez attempt to explain *ius* in terms of *libertas*. See: Franciscus Suarez, *Apendix prima de Justitua et Jure, ad summam R.P. Francisci Suarez A.R.P. Francisco Noel, Societas Jesu concinnata*, p. 3. The Appendix was added to the edition of the *Theologiae R.P. Doctoris Eximii Francisci Suarez, e societate Jesu, summa, seu Compendium* (…) Matriti: ex oficína Antonii Sanz. 1732 (hereinafter referred to as Suarez, *Summa theologiae*). Finnis, quoting Suarez, repeated that "the true, strict and proper meaning of *Jus* is said to be: a kind of moral power [*facultas*] which every man has either over his own property or with respect to that which is due to him" (J. Finnis, *Natural Law and Natural Rights*, Oxford 1980, pp. 206-207 and, following him: V. Mäkinen, "The Evolution of Natural Rights, 1100–1500", in: P. Korkman, V. Mäkinen, J. Sihvola (eds), *Universalism in International Law and Political Philosophy*, Helsinki Collegium for Advanced Studies: Helsinki 2008, pp. 107-108). In fact, this account by Suarez in his *De legibus ac Deo Legislatore* (lib. I, cap. 2) does not contain any indication as to the "true, strict and proper meaning of *jus*", but Suarez presented this meaning of *jus* as the second one (after the first meaning of everything that is reasonable or equitable: *pro omni re, rationi consentanea, seu aeqa*), which then was followed by several other meanings of the term *jus* present in Justinian's *Digesta* (see note 2), emphasizing the importance of context for proper identification of a specific meaning in which the word *jus* was used (see: Suarez, *Summa theologiae*, vol. V, p. 350).

(modern) way the human nature (as an individual) as well as the nature of social life.[5] This new anthropology is known as *individualism*. By that time, there was no strict discernment in using the words *right* (*ius*) and *law* (*lex*) in European legal culture, which Thomas Hobbes strongly criticized, attributing this to the ignorance of the common lawyers.[6]

In more general, ethical terms, the concept of *human rights* reflects the idea of legally enforceable conditions for human development and flourishing. Precisely, it is about the human ability to seek happiness with his/her own (i.e., individual) free choices. Human rights might be therefore presented as promising a just social life, but this is not an accurate point. Unlike the pre-modern way of using the Latin term *ius*, directly linking it to the category of justice,[7] the modern human rights perspective makes the strongest possible association (equivalence) of *ius* with the idea of *libertas*.[8] Justice is considered here not as a primary category of social life but as a secondary effect of the enforcement of individual freedoms of the members of society.

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[5] See: note 1.

[6] T. Hobbes, *Leviathan*, I, 14, ed. R. Tuck, op. cit., p. 91: "*For though they that speak of this subject use to confound jus and lex, right and law, yet they ought to be distinguished, because right consisteth in liberty to do, or to forbear; whereas law determineth and bindeth to one of them: so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent*".

[7] Basic for the pre-modern understanding of the term *ius* is the opening passage from Justinian's *Digesta* taken from Ulpian (D. 1.1.1 pr.), where the jurist declares that Iuri operam daturum prius nosse oportet, unde nomen iuris descendat. est autem a iustitia appellatum. This essential link between *ius* and *iustitia* was fundamental for the pre-Hobbesian legal science, including for Grotius who directly inspired Hobbes, but still insisted on the essential connection between *ius* and *iustitia* when defining right as "*a moral quality annexed to the person, justly* (emphasis added by A.S.) *entitling him to possess some particular privilege, or to perform some particular act*" (H. Grotius, *On the Law of War and Peace. Translated from the Original Latin De Jure Belli ac Paris by A.C. Campbell*, Batoche Books: Kitchener, Ontario 2001, p. 8 [D*e jure belli ac pacis,* I, I, IV]). For the thirteenth century canonists, see e.g.: J. Coleman, "Are There Any Individual Rights…", op. cit., p. 22.

[8] Hobbes redefined *ius* as a legal name for *libertas* (freedom): "*THE right of nature, which writers commonly call jus naturale, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgement and reason, he shall conceive to be the aptest means thereunto*". T. Hobbes, *Leviathan*, I, 14, ed. R. Tuck, op. cit., p. 91. The same approach is then taken by Immanuel Kant: "*Freiheit (Unabhängigkeit von eines Anderen nöthigender Willkür), sofern sie mit jedes Anderen Freiheit nach einem allgemeinen Gesetz zusammen bestehen kann, ist dieses einzige, ursprüngliche, jedem Menschen kraft seiner Menschheit zustehende Recht*". I. Kant, *Die Metaphysik der Sitten*, Hrsg. J.H. Kirchmann: Leipzig 1870, p. 40.

This precedence of freedom before justice is important here, as the primary practical obstacle to individual freedom in this perspective stems from social life – out of the living together with others. Those "others" next to whom we live (our neighbours), create numerous obstacles to unconstrained individual decisions. Such social limitations might be considered as something natural (requirement of justice) if we consider man as a being endowed with social nature. However, if we consider man as an individual (and this is the case in our contemporary culture), those social constraints are more likely to be perceived as instances of social coercion and injustice. Hence, *human rights* are understood as a means of protecting the autonomy of individuals from this social coercion.

If human rights are to be considered as conditions necessary for human development and flourishing, a reservation must be added, that it is the case if we consider man as an individual. As already mentioned, the concept of the *rights* is strictly related to individualistic anthropology, considering equality and freedom as primary features of a human being. The free will has been believed in this context to be the basic manifestation of human rationality.

This way of understanding man was by no means characteristic of the *Magisterium* of the Catholic Church. The latter had consistently emphasized the social character of human nature. Human rationality manifested itself first and foremost in the understanding of the ethical structure of the Creation, understanding the – so determined – difference between good and evil.[9] Therefore, the acceptance of the concept of *subjective rights* in the *Magisterium* was possible only upon the prior acceptance of individualistic anthropology.

Here, an anthropological question stands in the very centre of our dilemma. The answer to the question regarding human identity – are we individuals or social beings? – is determining all intellectual culture and all the social institutions. It might be presented as a question about competitive precedence between two basic categories for social life: the freedom and the justice. What was first? Either

[9] "And it is a characteristic of man, that he alone has any sense of good and evil, of just and unjust (…) and the association of living beings who have this sense, makes a family and a state". Aristotle, *The Politics of Aristotle*, trans. B. Jowett, vol. 1, Clarendon Press: Oxford 1885, p. 4; *τοῦτο γὰρ πρὸς τὰ ἄλλα ζῷα τοῖς ἀνθρώποις ἴδιον, τὸ μόνον ἀγαθοῦ καὶ κακοῦ καὶ δικαίου καὶ ἀδίκου καὶ τῶν ἄλλων αἴσθησιν ἔχειν: ἡ δὲ τούτων κοινωνία ποιεῖ οἰκίαν καὶ πόλιν*. Aristotle, *Aristotelis Politica,* ed. W. D. Ross, *Aristotle's Politica*. Clarendon Press: Oxford 1957, 1.1253a.

justice comes first and determines the way we understand freedom, or it has been preceded by freedom, which determines the way justice is to be understood.

The first option presupposes man's social nature; the second one presupposes individualistic human nature. The former was determining pre-modern intellectual culture, the latter is the foundation of modern (and subsequently post-modern) intellectual culture. For the first one, it was *virtue* that constituted a means for affirming justice; for the second, it is the *right* that allows affirmation of individual freedom.

From an anthropological perspective, this inherent relation between individualistic (solipsistic) anthropology and human rights constitutes a sufficient element to say that human rights are not conformant to Christianity and its anthropology. The Church has considered individualism as a mistaken anthropology for a long time. In contrast, She has always been teaching about man as a social being, whose rationality allows members of society to recognize their duties towards others, in subordination to the requirements of the common good[10] and not be treated as a means for determining and enforcing individual interests. Therefore, the Church was not in the position to suddenly change her mind and just openly embrace individualism. However, the ongoing pressure of the surrounding intellectual culture, which has lasted since the 18th century, has resulted in inventing and accepting a specifically Christian way of thinking in individualistic terms, albeit using the language that was familiar, considered as safe, and thus accepted in the Church.

This anthropological shift was possible due to a specific interpretation of the concept of *person,* upon which a new anthropology was built that allowed Christians to think about man in individualistic terms without admitting it openly and using a plethora of rhetoric qualifications masking perfectly this fundamental change. In order to avoid such an open acknowledgement, *personalism* is believed to be a kind of "third way anthropology", allowing Christians to accept an individualistic concept of rights, while believing at the same time that it does not amount to the acceptance of individualism as such.

Personalism became particularly important after World War II. It provided a common ground for friendly dialogue with the Western intellectual culture,

[10] See, e.g., the account about Albertus Magnus as described by J. Coleman, "Are There Any Individual Rights or Only Duties? On the Limits of Obedience in the Avoidance of Sin According to Late Medieval and Early Modern Scholars", op. cit., pp. 6-7.

which had already been based on the individualistic anthropology for a long time. After the War, the Church wanted to engage actively in the reconstruction of the social order, aiming to influence the modern culture. Personalism seemed to be a perfect tool to this end, allowing a constructive dialogue with those who understood the human as an individual, whilst marking a certain rhetorical distinctiveness between the concept of a *person* and the concept of an *individual*. At the same time, the same concept appeared to be a useful *locum argumentationis* in debates with the so-called collectivist Marxism, where it played a role similar to liberal individualism. In this way, the concept of person allowed challenging atheistic Marxism, at the same time preserving considerable distinctiveness from individualism.

This allowed to present *personalism* as a perfect anthropological approach, and subsequently led Roman-Catholic Christianity to the acceptance of *rights*. In this context, the rights have been understood as a means of protecting the human *person* as required by the *dignity* of that *person*. This was done for the first time in an open and systematic way by pope John XXIII in his encyclical *Pacem in terris*.[11] However, before discussing the acceptance of rights in this papal document, it is necessary to look more closely at the way, by dint of which the concept of *person* came to be officially presented as the foundation for Christian anthropology. One remark is necessary here: the passage below is not discussing *personalism* as a specific philosophical current, which appeared at the end of the 19th century. It is focused precisely on the way by which the well-known theological notion of "person" started to be used in the social teaching of the Church as an anthropological concept – synonymous with the notion of "man" understood as an "individual".

[11] Ioannes XXIII, Enc. *Pacem in terris*, 9: "(…) *illud principium pro fundamento ponendum est, omnem hominem personae induere proprietatem; hoc est, naturam esse, intellegentia et voluntatis libertate praeditam; atque adeo, ipsum per se iura et officia habere*"; Ioannes XXIII, *Sermo*, 4 Ian. 1963: AAS 55 (1963), p. 91. "*Centro di ogni preoccupazione vuole essere la persona umana, creata a immagine e somiglianza di Dio, e redenta dal Sangue Prezioso di Cristo. A l rispetto della persona vanno orientate le attività im m ediate: famiglia, scuola, politica e economia, arte e letteratura, stampa e divertimento*". The rights perspective, however, appears repeatedly in his earlier encyclical *Mater et magistra* (1961): no. 8, 16, 22, 43, 108, 211. Still, John XXIII paid attention to find support for this novelty in the *Magisterium*, invoking the authority of his predecessor, pope Pius XII: "*Nuntius radiophonicus, datus pridie Nativ*. D.N.I.C. anno 1942": AAS 35(1943), p. 17: "*La dignità della persona umana esige dunque normalmente come fondamento naturale per vivere il diritto all'uso dei beni della terra; a cui risponde l'obbligo fondamentale di accordare una proprietà privata, possibilmente a tutti*". See also: *Ibidem*, p. 19, and *Mater et magistra,* 114.

II. The Person

1. The concept of person is at the very heart of Christianity. It is crucial for the understanding of the divine truth about the Trinitarian identity of the One God. Moreover, it manifested its fundamental importance for the Christology when the second person of the Trinity – the Son of God and the Divine Logos – has incarnated and became man. The Lord Jesus was described as one person endowed with two natures, neither mixed nor changeable.[12] Hence, the concept of the *person* was central to Christological disputes since the very beginning. Therefore, it is difficult to imagine a more familiar concept for Christians. Christological debates of the 4th and the 5th centuries resulted in the Boethian definition of the *person,* described as an individual substance of reasonable nature (*rationalis naturae individua substantia*).[13] This also meant that the theological concept became the object of interest to philosophers. Such a description of the person has two crucial points.

The first is the rational nature of the *person,* and the second one is the distinctiveness of each person as a separate *substantia*. The second feature resulted, *inter alia*, in using the noun "subject" (*hypostasis – ὑπόστασις*) as a synonym of the word "person". An individual character of a person allowed to explain the distinctiveness of persons within the Holy Trinity or to emphasise the divine origin of man as a being created intentionally and individually by the highest Reason – God Himself. On its part, a rational character of *person* enabled explaining the creation of man in the image and likeness of his Creator. Therefore, the concept of *person* was also important in elucidating some aspects of anthropology as emerging from the Bible. However, next to those attractive features, the concept of *person* also suffers from some significant limitations when considered as a key concept for anthropology.

2. The first limitation stems from the fact that, whereas the concept of *person* allows us to explain man's likeness to God, for the same reason it cannot be considered as synonymous with a human being. The person, as understood in

[12] "*Unum eundemque Christum Filium Dominum unigenitum, in duabus naturis, inconfuse, immutabiliter, indivise, inseparabiliter agnoscendum, nusquam sublata differentia naturarum propter unitionem magisque salva proprietate utriusque naturae, et in unam personam atque substantiam concurrente (*εἰς ἕν πρόσωπον καὶ μίαν *ὑπόστασιν), non in duas personas partitum aut divisum sed unum eundemque Filium et unigenitum Deum Verbum Dominum Jesum Christum*", *Enchiridion symbolorum, definitionum et declarationum de rebus fidei et morum*, ed. H. Denzinger, 31st edition, C. Rahner: Basilea 1957, p. 71.

[13] Boethius, *Liber de persona et duabus naturis contra Eutychen et Nestorium*, 55, see also 58. Boethius, *Theological Tractates and the Consolation of Philosophy*, H. F. Stewart, William Heinemann Ltd., Harvard University Press: Cambridge, Massachusetts 1918, p. 92.

Christian philosophy, is by far wider a concept than man is. Indeed, Christian theologians and philosophers had never equated the "person" and "man". Boethius expressly stated that the category of person is equally applicable either to man, or to angels, or to God himself (*at hominis dicimus esse personam, dicimus Dei, dicimus angeli*).[14] Already in this perspective, it seems that the concept of the person, while perfectly suitable for describing a divine dimension of human nature and of human life directed towards eternal ends, it is hardly applicable to social philosophy or – speaking in classical terms – to practical philosophy focused on temporal human life (albeit by no means losing its eternal destination).

This is even more obvious if we take the account of the *person* by Aquinas. The most important account of the concept of the person by the *Doctor Angelicus* is to be found in his article 1 of question 29 in the first part of his *Summa Theologiae*[15] or in his first book of the *Scriptum super Sententiis* in distinction 23.[16] Contemporarily, this account of the term *person* is commonly referred to as a discussion on anthropology. This is, however, obviously, not true. The whole question 29 of the first part of his *Summa Theologiae* is devoted to the Holy Trinity, as is distinction 23 in the commentary to Peter Lombard's *Sentences*. These are the passages about God and not about man. Moreover, in the *Summa*'s questions dealing with anthropology,[17] Aquinas seldomly speaks about man in terms of *person*. If it is the case, it has been done only in a supranatural context[18] and not referring to social life. It appears that the notion of *person* hardly applies to the temporal dimension of human life.

Aquinas himself does not explain the reason, why the "personalistic dimension" of human existence did not attract his mind when referring to ethics and other branches of practical philosophy.[19] It seems that Aquinas was drawing a *de facto* clear

[14] Boethius, *Liber de persona et duabus naturis contra Eutychen et Nestorium*, 31. Boethius, *Theological Tractates and the Consolation of Philosophy*, op. cit., p. 84.

[15] "*persona significat id quod est perfectissimum in tota natura; scilicet subsistens in rationali natura*", STh, I, q. 29, a. 3, co.

[16] In I Sent., d. 23, q. 1, a. 1 co. "… *hoc nomen persona significat substantiam particularem, prout subjicitur proprietati quae sonat dignitatem*". Quotation according to an electronic edition available at: https://www.corpusthomisticum.org/snp1022.html.

[17] STh I qq. 75-102.

[18] When referring to the human soul as not being in itself the person (STh I q. 75 a.4) or a human likeness to God (STh I q. 92 a. 2; q. 93).

[19] An outstanding expert in the Aquinas' philosophy, J. M. Bocheński, denied a personalistic character of Aquinas' ethics, arguing that personalism owes intellectual inspiration to Immanuel Kant and not to Aquinas. *Między logiką a wiarą. Z Józefem M. Bocheńskim rozmawia Jan Parys* [Between Logic and the Faith. J. Parys' conversation with J. M. Bocheński], 3rd ed., Noir sur Blanc, Warszawa 1995, pp. 129–130.

distinction when considering man in the divine (supranatural) perspective, referring directly to human relation with God (creation of each particular man as well as the personal responsibility for everyone's deeds culminating in the final judgement). On the other hand, when discussing the temporal perspective of human (hence social) life, the personalistic perspective in dealing with human affairs is virtually absent from Aquinas' teaching. It can therefore be said that it is appropriate to consider a man as a *person* when we deal with human life in the perspective of theoretical philosophy – undetermined by time – but it is not appropriate for the purposes of practical philosophy, which is fully determined by time and space.

There is a particularly good illustration of this distinction when considering the question of man as a sexual (i.e., naturally endowed with specific sex) being. The concept of a person gives no space for examining human nature in the perspective of its inner differentiation resulting from sex, which is so fundamental to social life and to ethics. Whereas, when speaking of man from a theological or metaphysical perspective, there is no particular need to talk about men and women. Equally, the same situation is present when speaking about individuals – an *individual* is sexless, as is the *person*. Therefore, when reading the description of man's creation in the Bible, we can read that God had not created an abstract person nor an abstract individual. On the contrary, He had created a man and a woman. Both descriptions of the creation of man (Gen. 1, 27; Gen. 2, 7, 18-23) express this truth that the real human existence may only be either the male or female existence.

Looking from the biblical perspective, this splitting of humankind into two sexes is a natural feature of man, constitutive for human existence. A human being may exist only either as a man or a woman, and not as an abstract asexual *person*. This basic feature of biblical anthropology can hardly be properly described, when speaking about man in terms of a *person*. However, when speaking about man in the perspective of his eternal destiny (salvation), it seems there is no such difficulty. St Paul has expressed this in his letter to the Galatians (3, 28): "*There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus*".[20] Paul says that the named distinctions, being still of

[20] Strikingly, in the parallel thought as expressed in 1 Corinthians 3:11, the absence of differentiation between man and woman is virtually missing in the most important codices, though it is still inserted into some of secondary importance, probably constituting a supplementary interpolation from the Galatians. See: I. Kwielicka, "Historia przekładu jednego wersetu biblijnego z listu św. Pawła do Kolosan: Kol. 3, 11", *Łódzkie Studia Teologiczne*, 3/1994, p. 53.

fundamental importance for social life, are losing their relevance while speaking about the universal vocation of each man to know the one true faith. However, all the New Testament (not even mentioning the Old Testament) would never support the thesis that those social differences should be abolished or are meaningless for social life. St Paul himself emphasized substantial social differences between man and woman[21] as being of first importance, also in the religious context.[22] However, this social context is not affecting equal moral accountability of man and woman for their equal deeds.[23]

3. The second doubt refers to the modern shift of paradigm in the Western intellectual culture, resulting in a radical change in the understanding of rationality. This directly affected the concept of person, understood as an "individual substance of reasonable nature" (*rationabilis naturae individua substantia*). The pre-modern classical approach understood rationality as deriving from the Highest Reason – God.[24] In this perspective, human rationality was dependent on the rational access of each man to the same supranatural matrix of rationality called by the Greeks the *Logos*, to which St John has referred in the Prologue of his Gospel. This one common source of rationality allows universal consensus among rational beings as to what is truth or falsehood, good or evil, beauty or ugliness.

The modern shift in the intellectual culture was based on the transition from the – dominant prior to that time – theistic approach to transcendence (assuming man's rational access to God), into the deistic approach to transcendence (assuming there is no such rational access). God was still understood as existing; however, was no longer considered as accessible for human reason. Thus, God-Creator Himself, having created the Universe, ceased to constitute the common ground for intellectual culture. Rational contemplation of the Creator was replaced with the rational contemplation of creation. This shift in the intellectual culture amounted to a radical change in the understanding of rationality and was preceded by the protestant shift in theology as expressed in the *sola scriptura* directive. It required

[21] See: 1 Corinthians, 11: 7-10; 1 Corinthians, 14: 35.
[22] See: 1 Timothy, 2: 12.
[23] See: Luke, 16: 18.
[24] Cicero, *De legibus*, I, 22-23. "*Solum est enim ex tot animantium generibus atque naturis particeps rationis et cogitationis, quom cetera sint omnia expertia. Est igitur, quoniam nihil est ratione melius, eaque est et in homine et in Deo, prima homini cum Deo rationis societas*." M. T. Cicero, *The Political Works of Marcus Tullius Cicero: Comprising his Treatise on the Commonwealth; and his Treatise on the Laws*, vol. 2, trans. F. Barham, Edmund Spettigue: London 1841-1842, p. 40.

that theology be focused on the empirically accessible text of the Bible, and subsequently resulted in the modern way of understanding science as an activity based on gathering and processing empirical data. The place of Metaphysics, which used to be attributed within the framework of the classical intellectual culture with the status of the *first philosophy,* was overtaken by Physics. Aristotle was replaced with Newton.[25]

From the anthropological perspective, this shift in the intellectual culture resulted in considering human rationality no longer as the likeness to God, enabling to recognise, in common with others, the moral structure of the creation (its goodness and truthfulness) and enabling a peaceful common life.[26] Since the time of the modern era, human reason has become the source of individual distinctiveness of one man from another, allowing for independent and – moreover – divergent determinations of what is the good or what constitutes the truth. This no longer allowed thinking in terms of the common good. Instead, it has emphasized the freedom of individual human choices and inspired the thinking in terms of individual interests.

Since God – understood in a deistic way – has become very distant from the World and from man, the concept of *person* has lost its importance as a common perspective for man and for God. Moreover, such a common perspective has become intellectually unacceptable. God lost importance for the way we understand rationality. With this shift in the understanding of rationality, the concept of *person* (an individual substance of reasonable nature) became just a synonym for man (angels had already been removed from the rational perspective). In turn, the shift in the understanding of *person* corresponds perfectly with the modern individualistic anthropology, speaking about man in terms of an autonomous individual. The *person*, thus understood, became a rational being driven by self-interest, rather than a social being – a man whose reason enables him to know and care about the common good.

[25] For a more detailed explanation of this process, see my: "Trois approches théologiques et l'avenir de la culture juridique occidentale: de la solidarité vers la libération absolue", in: *La loi de solidarité. Vers une fraternisation selon la théologie et le droit*, ed. Christine Mengès Le Pape, Presses de l'Université Toulouse Capitole 2021, pp. 564-565.

[26] Aristotle, *The Politics of Aristotle*, trans. B. Jowett, vol. 1, op. cit., p. 4; *τοῦτο γὰρ πρὸς τὰ ἄλλα ζῷα τοῖς ἀνθρώποις ἴδιον, τὸ μόνον ἀγαθοῦ καὶ κακοῦ καὶ δικαίου καὶ ἀδίκου καὶ τῶν ἄλλων αἴσθησιν ἔχειν: ἡ δὲ τούτων κοινωνία ποιεῖ οἰκίαν καὶ πόλιν*. Aristotle. *Aristotelis Politica*, ed. W. D. Ross, op. cit., 1.1253a.

4. Both issues referred to above are strongly interrelated. It appears that the classical understanding of *person* is strongly connected with the classical intellectual culture and did not constitute an anthropological concept. Since the intellectual culture changed, the concept of *person* became clearly anthropological in nature and by no means different from the modern individualism. However, this modernized way of the understanding of *person* still represents some features characteristic of God. This manifests itself in considering the *person* in a solipsistic and mainly a-temporal way, not corresponding to the realities of social life.

This shift in the understanding of the concept of *person* has allowed Roman-Catholic Christians, living within the context of modern secular culture, to reconcile Christian anthropology with the individualism that had been dominating intellectual culture for a long time. In this way, the Christian Roman-Catholic version of individualism has been established under the name of *personalism*, and it was a logical consequence of the general modern shift in the Western intellectual culture. However, this process took place in a specific Catholic style, emphasizing the category of *dignity*, often supported with the passages taken from Aquinas and presenting *personalism* to be the most genuine catholic anthropology.

5. The argument of the supporters of this modern *personalistic* anthropology that was, in fact, a specifically Roman Catholic *individualism*, is based on the Aquinas' statements discussing the concept of *person*. That meaning of *person*, however, referred to God and not to man. Notwithstanding that fact, these statements are presented contemporarily as if they were referring directly to the human being. The person so understood is a particular substance (a being) that is endowed with the dignity consisting of its rational nature.[27] This rational nature (the dignity) of a *person* is the source of the particular (perfect) way of existence as a being, which is specific, individual, and independent of others (autonomous).[28] Hence, an emphasis is placed on the person's free choice while determining his or her good. Based on those texts, it is no longer rationality, which is emphasized in the concept

[27] "*Hoc nomen persona significat substantiam particularem, prout subjicitur proprietati quae sonat dignitatem*", *Aquinas*, *In I Sent.*, d. 23, q. 1, a. 1 co. "Quia magnae dignitatis est in rationali natura subsistere, ideo omne individuum rationalis naturae dicitur 'persona'", Summa Theologiae (STh), I, q. 29, a. 3, ad 2.

[28] "*Sed adhuc quodam specialiori et perfectiori modo invenitur particulare et individuum in substantiis rationalibus, quae habent dominium sui actus, et non solum aguntur, sicut alia, sed per se agunt, actiones autem in singularibus sunt. Et ideo etiam inter ceteras substantias quoddam speciale nomen habent singularia rationalis naturae. Et hoc nomen est persona*". STh, I, q. 29, a.1, co.

of *person*, but, rather, liberty manifesting itself in the free choice, that defines the good of that particular person. Rationality is presupposed as if an action taken by the person had to be rational by the very nature of the person. This change of emphasis from rationality to freedom, along with making the concept of person into a purely anthropological construct, allowed the development of a modern, substantially individualistic anthropology based on – albeit instrumentalized to this end – passages taken from Aquinas. In this way, a specific individualism in a Thomistic guise and dedicated to Roman-Catholics, was invented.

6. It is to be remembered that the passages by Aquinas, upon which this individualistic anthropology was built, refer to the *persons* within the Holy Trinity and not to man. They include metaphysical and not anthropological content. Moreover, Aquinas distinguished perfectly between rationality and freedom as attributed to God or angels and the same attributed to man. He has explained that the rational nature of a *person* operates in a very different manner in angels (not to mention God, being Himself the Highest Reason) and in man. A human being, as endowed with sex and the physical body, existing in time and space (going through very different phases of development characterised with a different degree of autonomy[29]), needs the process of socialisation, which is a necessary (!) condition for enabling the actual operation of human rational nature. This basic factor makes for Aquinas' fundamental distinction between different kinds of persons: men, on the one hand, and God as well as the angels, on the other.

Aquinas discusses this in *questio* 59, when comparing the human rationality to that of the angels. He states there that the intellect of angels is far more perfect than that of humans. For this reason, the free will of angels is far more superb than the human one[30] because angels make a free choice without prior reflection, which is necessary for man,[31] who requires reflection in order to avoid errors that would result in choosing the evil instead of the good. Three questions later (in *STh*

[29] It is sufficient to note here how much different is the rationality of an adult man and that of a child in the prenatal stage of development. Still, we refer to both of them as *person*. Their level of autonomy, the ability to use reason and, consequently, their social position, differ drastically. Yet, from the supranatural and eschatological perspectives, these differences are no longer relevant. In this specific perspective, they could still be equally considered as persons. This demonstrates that considering a man as a *person* requires considering him out of the social context.

[30] *STh* I, q. 59 a. 3 s.c.: "*liberum arbitrium esse in Angelis etiam excellentius quam in hominibus, sicut et intellectum*".

[31] *STh*, I, q. 59, a. 3, ad 1.

I, q. 62, a. 8 ad 3), Aquinas explains the reason why this is the case. He indicates that the possibility of choosing between various actions leading to a specific goal, indeed testifies to the perfection of free will (being characteristic for each *person*, i.e., a rational being). However, this is so only when the will is directed towards an authentic good, that is, when it avoids the choice of evil. The choice of evil (sin) amounts to a defectiveness of the human will, and by no means to its perfection.[32] Therefore, since the angels know the essence of God, their will is – in principle – driven only by the true good. In this respect, however, man is very different from the angels. Considering that the human nature is wounded by the original sin, people must always struggle for choosing the good and reject a temptation to choose the evil. Having said so in respect to the difference between the human rationality and that of the angels, we have to add that the difference is by far greater if speaking about God, Him being the pure intellect Himself. This seems to be a sufficient reason for rejecting as erroneous the anthropology based on the properties attributed to God.

What is more important, however, is that the rationality of the human nature must always be understood in terms of its social character. The man is rational, whilst being social at the same time. Therefore, the separation between human rationality and sociality is impossible if we accept that man is endowed with the social nature.[33] Perfection of human reason, and thus its ability to choose the true good, takes effect due to the process of socialization, including an ethical formation by dint of which man acquires *virtues* allowing for a proper operation of his/her practical reason.[34] Therefore, only a virtuous man can be truly rational in his/her actions, i.e., choosing the authentic good and not the evil. Hence, this ethical perfection does not stem directly from the status of the *person*, but takes

[32] *STh* I, q. 62, a. 8 ad 3.: "*quod eligat aliquid divertendo ab ordine finis, quod est peccare, hoc pertinet ad defectum libertatis*". A similar conclusion is to be drawn from STh I^{a}–II^{ae}, q.1, a. 2.

[33] For a closer explication of this unity of rationality and sociality of human nature, see my: "Human Dignity and Two Ways of Its Understanding", in: J. M. P. Montero (ed.), *New Challenges for Law. Studies on the Dignity of Human Life*, Tirant Lo Blanche: Valencia 2020, pp. 44-46.

[34] It was well explained by Cicero when he described human rationality in terms of natural law: "(…) *lex est ratio summa, insita in natura, quae iubet ea quae facienda sunt, prohibetque contraria. Eadem ratio, cum est in hominis mente confirmata et perfecta, lex est. Itaque arbitrantur prudentiam esse legem, cuius ea vis sit, ut recte facere iubeat, vetet delinquere*". *De legibus* I, 18–19; http://data.perseus.org/citations/urn:cts:latinLit:phi0474.phi044.perseus-lat1:1.19.

effect in the course of an ethical formation enabling man to behave in the rational way, i.e., the way characteristic of a *person* in the classical meaning of the term.

7. My conclusion to this *excursus* on the personalistic anthropology could be summarised as follows: the concept of *person*, as elaborated in Christian theology and philosophy, refers to *beings of rational nature* and *must not* be confused with or reduced to anthropology alone. The appropriate intellectual context to deal with the classical concept of *person* is the metaphysical one. It belongs to theoretical, rather than practical, philosophy. Therefore, the classical Christian concept of the *person* (a rational being) is properly applied to man primarily when considering him in the supranatural (including eternal), rather than temporal perspective. In the perspective of practical philosophy (ethical, political, or legal), the rational character of human nature is intertwined with its social character. Thus, the human ability to take rational action is conditioned with the ethical perfection of human reason that results in the acquiring of *virtues*, i.e., a constant practical disposition towards the moral good.

The contemporary (modernised) use of the term *person* in the Christian intellectual *milieu*, equates it, in principle, with a purely anthropological dimension of the human being and moves it from the metaphysical to the ethical and political context. This change has been determined by the modern shift in the understanding of rationality and for the most part, disregards the social character of human nature. Rationality is no longer referred to as the objective and intersubjective criterion of the true good but is implicitly ascribed to every action of man, who is believed to be a rational being by virtue of being a *person*. This implies that each individual may consider something else as rational or as good; hence, rationality becomes subjective and thus *relative*. Such a modernised way of the understanding of the concept of *person* amounts to being something akin to individualistic anthropology, despite its claims to be distinct and different from individualism. This alleged distinctiveness is but limited to a rhetorical use of classical quotations from Aquinas, departing, however, from classical philosophy in substance.

The shift in the Christian anthropology thus described had a determining impact on the social teaching of the Church and resulted in the acceptance of the concept of human rights.

III. The rights in the encyclical Pacem in terris

1. In this context, we can take a fresh look at point 9 of the encyclical *Pacem in terris* that has, openly and systematically, introduced the concept of "human rights" into the papal Magisterial documents. It is worth quoting here:

> "*Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable*".[35]

This passage, as well as the entire encyclical, shows precisely this modernized approach to anthropology and ethics, somewhat camouflaged with quotes from Aquinas. In fact, it is a characteristic feature of the entire teaching of John XXIII, essentially representing a modernized approach, rhetorically balanced with a few traditional quotations, without any clarification as to the way those divergent perspectives could be reconciled.[36] However, an obvious priority is given to the modern perspective. This is clear if we consider the whole structure of this document. The freedom of the individual will occupies a predominant position in the encyclical, seemingly without any need to mention the importance of the *right reason* allowing for the correct moral recognition of the common good.[37]

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[35] John XXIII, Encyclical (…) on Establishing Universal Peace in Truth, Justice, Charity, and Liberty *Pacem in Terris*, April 11, 1963, 9, https://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html.

[36] A very characteristic example of this method is the second part of the encyclical *Mater et magistra* (1961) by John XXIII, presenting the development of the traditional teaching by Leo XIII and Pius XI. If we consider the first paragraphs of this part, they demonstrate alternately passages presenting a modern, individualistic perspective (no. 51) and a justification of interventionism (no. 52), qualified, however, with a traditional *Magisterium* reference to the principle of subsidiarity (no. 53). An obvious emphasis is given to the new interventionist approach (no. 54: "(…) *Hence the insistent demands on those in authority—since they are responsible for the common good—to increase the degree and scope of their activities in the economic sphere, and to devise ways and means and set the necessary machinery in motion for the attainment of this end*"), subsequently qualified with the reminder regarding the necessity of obeying the principle of subsidiarity (no. 55), albeit without a closer explanation of how to reconcile this insistence on intervention with a strong restraint in this respect as required by the subsidiarity. See: John XXIII, Encyclical on Christianity and Social Progress *Mater et Magistra*, May 15, 1961, https://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_15051961_mater.html.

[37] See: *Pacem in terris,* 34: "*Man's personal dignity requires besides that he enjoy freedom and be able to make up his own mind when he acts. In his association with his fellows, therefore,*

Point 9 of the encyclical shows that the concept of *person*, upon which the so-called "catholic concept of rights" is based, is the one which was earlier demonstrated as a departure from the classical meaning of *person* present in the catholic Theology or Metaphysics. Here, it represents a substantially modern individualistic anthropology, hidden behind some classical rhetoric, indistinguishable, however, from the liberal concept of the *individual*. It appears in the encyclical that the free will and the rights are primary manifestations of the *dignity* of *person* thus understood.

2. Certainly, in point 9, the Pope teaches that human nature is equally the source of *duties*. However, the whole subsequent narrative in points 11-27 is focused but on rights with a slight *pro forma* reservation contained in point10. The appearance of the word "duties" in the encyclical is indeed extensive (around 40 entries). However, the noun appears only in the word cluster "rights and duties", and the duties are clearly contingent to the rights, while having no autonomous importance. This is clearly manifested in point 28, where the *duties* are introduced merely as a kind of the shadow of *rights*.[38]

Duties do not represent an autonomous ethical category in *Pacem in terris* because the strongly related category of *virtue* is equally meaningless in this document. Meanwhile, both concepts used to be of fundamental importance in classical philosophy and in the traditional teaching of the Church, which considered that the moral recognition of the true good with practical reason resulted in moral duties to follow that good. This classical perspective is, however, entirely marginalized in *Pacem in terris* and reduced – yet again – to the quotation, in point 38, of one classical passage from Aquinas.[39] Formally, this resembles the classical *Magisterium*; however, the text lacks the slightest explication of how to reconcile the classical perspective with the entirely new approach dominating in *Pacem in*

there is every reason why his recognition of rights, observance of duties, and many-sided collaboration with other men, should be primarily a matter of his own personal decision". It must be noted, however, that the statement is then rhetorically balanced with the quotation from Aquinas in no. 38, albeit giving no explication as to the relationship between those different perspectives. This priority of liberty over reason is even better demonstrated by John XXIII in his *Mater et magistra* (1961) no. 63, where the reference to human nature does not mention its reasonable character, being restricted to the statement that "men (…) are free and autonomous by nature". See: *Mater et magistra*, 63, AAS 53 (1961) 417.

[38] See: *Pacem in terris*, 28: "The natural rights of which We have so far been speaking are inextricably bound up with as many duties, all applying to one and the same person. These rights and duties derive their origin, their sustenance, and their indestructibility from the natural law, which in conferring the one imposes the other".

[39] *Summa Theol. Ia-IIae*, q. 19, a.4; cf. a. 9.

terris.[40] It seems that the quotation from Aquinas in point 38 amounts to nothing more but a slight rhetorical figure, enabling to escape possibly embarrassing questions regarding the consistency of the encyclical with the *Magisterium*. It merely ensures that the latter is still represented in the document.

IV. How did the rights penetrate the Magisterium?

1. The new ethical approach that had been introduced into the *Magisterium* did not immediately change the traditional moral teaching of the Church of that time. It was incorporated first of all into the social teaching of the Church and, to a great extent, was present concurrently to the traditional ethical approach focused on *virtues*. This situation would suggest as if no essential interconnection existed between the moral teaching of the Church, as applied to the private life, and the new approach, applicable to the public dimension of the social life. Therefore, in the moral theology, there still exists (at least on the pages of the Catechism or in some textbooks on Moral Theology) the teaching on *virtues*. However, in the perspective of the social teaching of the Church, a parallel place is occupied by the concept of human *rights*, and *virtues* are hardly present therein. If we take a statistical approach, we will easily see that the *Compendium of the Social Doctrine of the Church*, published in 2004, speaks about *virtue* 33 times, while mentioning *rights* 410 times. Does this dual approach make the whole of the moral teaching of the Church internally consistent? The question is rhetorical.

2. However, each doctrine – and the moral teaching of the Church is by no means an exception here – aims to be internally consistent and, therefore, the modernized (rights oriented) approach as accepted in the social teaching of the Church is gradually influencing the general moral teaching of the Church, thus dismantling its traditional identity.

John Paul II recognized this process and challenged it in his excellent encyclical *Veritatis splendor*. The encyclical aimed at protecting the moral teaching of the Church, and the objectivity of the moral principles it is based on, against relativism. However, this encyclical hardly recognizes that relativism infecting the ethical formation given to clerics at catholic seminaries is rooted in the shift in the *Magisterium*, which took place with the acceptance of the *personalistic* anthropology that refers to man in terms of a subject endowed with rights. Meanwhile, these

[40] The method is exactly the same, as was demonstrated in note 27 above in relations to the subsidiarity and interventionism in *Mater et magistra*.

rights are by their very nature subjective (belonging to the subject) and therefore relative (depending on the subject).

3. After years of advocating the (as it is called) "Christian or proper understanding of human rights", I have finally realized that my efforts were useless and futile. The very philosophical concept of rights takes as its assumption non-Christian anthropology and ethics. Certainly, it can be described rhetorically as if the concept of rights was intrinsically Christian or, at least, under certain conditions, congruous with Christian ethics. However, such rhetorical or linguistic operations, aimed at seeking reconciliation between the traditional catholic moral teaching and modern ethics, seem intellectually erroneous and, in fact, deceptive.

V. The rights perspective and the teaching of Jesus Christ

1. The fundamental reason for this scepticism is that the moral teaching of Jesus Christ, as communicated to us in the Gospel, is impossible to be described in terms of rights. Jesus did not use the "rights-talk" to communicate his moral teaching. If we look at the brief summary of Jesus' public activity, as it is transmitted to us by the authors of the Gospels, besides the proclamation of the Kingdom and addressing the healing of the sick, Jesus was focused on preaching about the commandments and about the necessity of obeying thereof. The commandments constitute the objective law and not the subjective rights. Obeying the commandments, being the expression of the will of the heavenly Father, makes the distinction between the disciples of Jesus and the rest of the people. He said this when people wanted to turn his attention to the arrival of His Mother and His relatives, answering that "(…) whoever does the *will of my heavenly Father* is my brother, and sister, and mother" (Mt 12, 50, cf. Mk 3, 35). Furthermore, after His resurrection, when sending His disciples on the apostolic mission, Jesus said, "(…) go and make disciples of all nations, (…) teaching them to obey everything I have commanded you" (Mt 28, 19-20).

2. It is virtually vain to look into the Gospel in order to find passages presenting the moral teaching of the Lord Jesus in terms of rights. The main reason is that the moral teaching of the Lord was not focused on the earthly perspective (as are the rights)[41] but on the eternal and supranatural. If we look at the "Sermon on

[41] It is perfectly clear in the encyclical *Pacem in terris,* which shows, inadvertently, that the religious perspective is irrelevant for the conceptualisation of social life and relationships in terms of rights, which are primarily focused on the temporal perspective (emphasis added): "10. *When, furthermore, we consider man's personal dignity from the standpoint*

the Mount", we can clearly see this perspective. Jesus does not promise earthly prosperity. The fulfilment of all earthly desires that he promised is to be accomplished in the perspective of the supranatural.

Moreover, enforcing one's rights can often be considered morally suspect, rather than deserving. This is perfectly evident in the passages of the Gospel that could be described in terms of rights' enforcement and are presented as negative examples.

Let us take the "Parable of the Unforgiving Servant" (Mt 18, 23-35). Jesus is contrasting the king who abstained from enforcing his rights as a creditor vis-à-vis his servant. By forgiving the debt, the king gave the rights back to the servant himself. In turn, the latter unmercifully vindicated a – by far smaller – debt from his debtor, despite having just been graciously released from his own. Enforcing the rights of the creditor in a way that disregards the duties arising from the love of one's neighbour is strongly condemned by the Lord.

We encounter a rather similar situation in the next chapter of Matthew, where Jesus elucidates on the right, attributed to a husband by Moses, to dismiss his wife by giving her a bill of divorce. Jesus clearly states that Moses had allowed such a conduct only *because of the hardness of the hearts* of the Israelites (Mt 19, 7-8, Cf. Mk 10,4-9).

It has to be emphasized again, however, that even those passages from the Gospel do not contain an express *rights-talk*. The passages merely describe situations, in which the rights-perspective is easily applicable. In fact, we can hardly find in the whole Bible the noun "right" in the sense of attributing a right to someone. Indeed, few specific translations of the Bible into English contain this specific use of the term "right". Using the "bible study tools" search, I was able to find only two passages in the *New International Version* (NIV) translation, in which such a meaning appeared (Acts 25, 11; Revelation 2, 7). However, more literal translations of the Bible, such as the *Standard English Version* (SEV), demonstrate that

of divine revelation, inevitably our estimate of it is incomparably increased. Men have been ransomed by the blood of Jesus Christ. Grace has made them sons and friends of God, and heirs to eternal glory. 11. *But first We must speak of man's rights. Man has the right to live. He has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services. In consequence, he has the right to be looked after in the event of ill health; disability stemming from his work; widowhood; old age; enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood*".

the term *right* in the passages from the NIV that I have mentioned, has its source only in the creativity of the modern translator, and not in the original biblical text.

3. In fact, Christ's moral teaching focuses on the recognition and implementation not of our *rights*, but of our *duties*: *duties* towards God Himself and towards others, who should be considered as our neighbours. A proper discernment of the duties is possible thanks to the commandments, which, however, create duties, and not the rights. This is so because it is the fulfilment of our duties and not the enforcement of our rights that allows people to embark on the path of moral development, which constitutes the path to salvation (Mt 19, 17). A constant practical disposition towards the fulfilment of this *duty* is the *virtue*. Therefore, traditional Christian catholic ethics, using the intellectual patterns of classical Greek philosophy, was focused on *virtues* and not on the *rights*.

4. There is a good reason to mention here the Greek philosophy. One can argue that the Church has accepted the rights-focused ethics and adopted the *rights-talk* in order to find a common ground for intellectual dialogue with the Western culture – the common ground that would be purely rational and not determined by religious terms. However, this strategic decision to defend the Christian understanding of morals through basing such dialogue on "purely rational" grounds, amounted in practice to admitting that the traditional Catholic ethics was not fully rational. It is, in fact, inspired by the *deistic* approach that, although not denying the very existence of God, considers transcendence as a realm of subjectivity, which escapes a rational approach towards the world. Indeed, this amounts to an acceptance of the modern way of understanding of what is rational and an abandonment of the classical paradigm of rationality which is proper for Christianity.

Unfortunately, the Church has *de facto* abandoned the Christian *theistic* paradigm of rationality, where God the Creator is the *Highest Reason* Himself. Instead, She accepted the *deistic* paradigm, whereby rationality is deduced from the physical structure of the World by means of the interpretation of empirical data as sensorily acquired and processed by man. Such a *deistic* paradigm as regards the understanding of rationality seemed to be sufficient if supplemented with some purely religious content, as provided to the faithful in weekly Sunday sermons. This, however, resulted in a profound transformation of the catholic faith. It ceased to be *theistic* and became *deistic* with some hint of *fideism* added. Alas, such a mixture of *deism* and *fideism* does not, by any means, come even close to *theism,* leading rather to an intellectual confusion, often resulting in atheism.

5. Why is it important here? As already mentioned, the ethical and legal culture focused on human rights is the product of a specific intellectual culture presupposing a specific way of perceiving rationality and anthropology. I would argue that the Christian perspective, whether expressed in the intellectual terms found in the Bible or in the Greek philosophy, is not at all compatible with the modern liberal perspective. They represent two diverse approaches to human nature. The Christian perspective assumes the social nature of man, while modern liberalism assumes man's individualistic character.

If human nature is indeed social, then human development is possible only in terms of community life, where each person must give his or her due to the others. If it is individualistic, then personal development is only possible if individual autonomy is protected from unauthorized intervention by others. The latter, individualistic approach requires the creation of a specific superstructure to protect the autonomy of the individual from the others. The aforementioned superstructure is the *state*, and the autonomy protected by law has become *rights*. Thus, human protection becomes a political, rather than an ethical, issue. The duty of care for others no longer belongs to neighbours (other members of the community), but to the state.

6. Assuming the rights' perspective always involves politics. The biblical *duties-focused* perspective allows escaping the politics. Therefore, those who seek to modernize Christianity are portraying Jesus as a social reformer, if not an outright revolutionary. Meanwhile, Jesus always shunned people who wanted to make him a political leader (e.g., John 6, 15). In Luke's parable of the Good Samaritan (Luke 10, 30–37), the Lord is not posing questions regarding a public authority's being responsible for protecting the assaulted and robbed traveller from Jerusalem to Jericho. He asks about the neighbour: the man who has recognized his moral *duty* of care towards the victim. Moreover, the Lord has announced that the same attitude will be taken at the Final Judgment (Mt 25, 35–46).

Benedict XVI taught this in his encyclical *Spe salvi* (4), where he emphasized that Christ did not bring with him a socio-political message.[42] Here, he referred to

[42] Benedict XVI, Enc. *Spe salvi*, § 4: "*Christianity did not bring a message of social revolution like that of the ill-fated Spartacus, whose struggle led to so much bloodshed. Jesus was not Spartacus, he was not engaged in a fight for political liberation like Barabbas or Bar-Kochba. Jesus, who himself died on the Cross, brought something totally different: an encounter with the Lord of all lords, an encounter with the living God and thus an encounter with a hope stronger than the sufferings of slavery, a hope which therefore transformed life and the world from within*".

St Paul's *Letter to Philemon*, whose meaning could easily be presented in socio-political terms, since it concerned slavery. St Paul, however, carefully escaped a political perspective. He preferred to tolerate the social institution of slavery of his days as long as his disciple Philemon would not enforce his ownership *rights* relating to his slave Onesimus. Paul was expecting Philemon to recognize his slave as a brother in faith and treat him accordingly, without an express condemnation of slavery as a social institution or requiring Philemon to liberate Onesimus. The apostle thus carefully avoided a possible social or political conflict.

VI. Conclusion

Having said all of the above, I need to make a certain reservation. We are already living in society, which has been dominated by politics and which has been, for a long time already, subjected to social engineering. Therefore, we are not making a choice between living in society designed according to either the Christian or modern ethical paradigm. The choice had already been made long before we appeared in this world. Today, we have to live in the given social conditions, as the first Christians had to live in a society that accepted slavery. The rights' perspective is legally binding for Christians, even though it is hardly conformant to what their faith commands.

The contemporary challenge as constituted by the rights-focused ethics seems, however, to be more demanding. It might be presented – and indeed is presented – as if such ethics were not only conformant to the Christian faith, but even allowed a better understanding and practising of the latter. Meanwhile, St Paul had neither justified slavery nor praised it. Instead, he tolerated it as long as it did not amount to sin. In contrast, today we experience a temptation of "going forward" and creating a new "Christianity", compatible with the rights-focused world surrounding us. In order to avoid this temptation, we need to realize that the ethical foundations of the modern Western society are not only Christian no longer, but are actually anti-Christian. Therefore, we must ask ourselves what can be done, so that we and our children could live in a society that still allows us to keep to the commandments, rather than to enforce the rights.

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CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

DOI: 10.21697/CSP.2023.27.1.09

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Christian vs liberal conceptions of human rights

Abstract: The Catholic Church has traditionally raised four objections to the doctrine of human rights in its liberal version: the lack of reference to God as the source of human rights, individualism, the absence of a list of human duties accompanying individual rights, and the doctrine's vulnerability to proliferation and creative interpretation of those rights. The paper mainly focuses on the first two concerns. From the point of view of secular liberalism, the idea of God appears as an unnecessary by-product of the process of human evolution. From the point of view of Christianity, creation in the image and likeness of God is the source of man's inalienable dignity, and serves, at the same time, to safeguard his rights from reinterpretation by the state, should the state consider itself the source of such rights. Christianity presents man as an inherently social being, with two communities, i.e., the family and the nation, that are recognized as natural. Liberal individualism views people as a collection of elementary particles that collide with one another but never connect. The difference is fundamental when it comes to attitudes towards obligations prior to individual decisions, but also when it comes to a person's emotional backing. The human being, therefore, seeks to create either family-type ties, or merely ones based on a voluntary contract. It is a paradox that the more atomized a society is, the more necessary a strong state becomes to guarantee individual rights and a sense of security in times of crisis. As a result, a system called statist individualism comes to existence. Religion not only reveals the ultimate meaning of human life and the reasons for which it is worthwhile to be human, but it has also been a source of public morality. The liberal concept of neutrality and the privatization of religion reopen the question of the axiological foundations of the state. On the one hand, why, in the end, should people obey state laws when the state itself convinces them that they are morally neutral? On the other hand, this raises the question of the preferred model of education. From the point of view of the state and society, can a culturally and axiologically neutral education, in which children are taught about what is allowed and what is forbidden by law, but not about what is morally right and wrong, be sufficient? One answer suggests that a liberal state conceived in this way is unstable, and able to exist only for a while. The alternative would be a liberal state that is imperfect, culturally charged, and open to the presence of the Church as a public and publicly meaningful authority.

Keywords: individualism, liberalism, God, human rights, dignity of the person

Benedict XVI, in a discussion on Marcello Pera's interpretation of the doctrine on human rights, says: "It was only thanks to your book that it became clear to me how much the encyclical *Pacem in terris* had set a new direction in thinking. I was aware of the strong influence of the encyclical on Italian politics: it gave a decisive impulse to the opening of Christian Democracy to leftist views. However, I did not realize to what great an extent it signified a new premise also to the basis of the party's thinking".[1] Pera himself believes that the Church, by making the doctrine of human rights part of the Church Magisterium, proclaimed "by virtue of the Gospel committed to her" (*Gaudium et spes*, 41[2]) has fallen into a "liberal trap".[3]

The universalist claim of liberalism

Why is it important to confront Christian and liberal approaches to human rights? The importance of such a comparison seems to be well explained by John Gray, who portrays liberalism as "the illegitimate offspring" of Christianity and its most formidable competitor in the struggle over "the rule over the souls". "It is characteristic, and perhaps definitive, of liberalism", Gray writes, "that it should seek to ground the historical contingencies of liberal practice in a foundation of universally valid principles. No aspiration is more peculiarly liberal".[4] The universalist claim of liberalism, he argues, leads to attempts to delegitimize all non-liberal political forms, recognizing at most their relative legitimacy by virtue of being "necessary stages on the way to a form of life possessing universal authority. (…) For the liberal, then, a liberal society is not merely one of the options open to human beings, but a moral necessity".[5] Liberalism understood in this way carries an internal contradiction. It proclaims tolerance and pluralism regarding the behaviours of individuals, while at the same time it proclaims intolerance in the realm of political demands. What we have here is a liberal inconsistency about the status of values – for all values are relative, except liberal values. All values should be tolerated, provided they are liberal. Such a position may be called apparent relativism. "Liberalism", Gray writes, "has always strenuously

[1] Benedict XVI (Joseph Ratzinger), *Liberare la libertà. Fede e politica nel Terzo Millennio,* Edizioni Cantagalli, Siena 2018, p. 8.

[2] Vatican II, *Pastoral Constitution on the Church in the Modern World* "*Gaudium et Spes*", https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html.

[3] Cf. Marcello Pera, *Diritti umani e cristianesimo. La Chiesa alla prova della modernità*, Marsilio Nodi, Venezia 2015, pp. 37-44.

[4] John Gray, "Postscript: After Liberalism", in: idem, *Liberalisms. Essays in Political Philosophy,* Routledge, Abington 2010, p. 239.

[5] Ibid.

resisted this commonplace observation, since it cannot but undermine the claim to universal authority of liberalism as a political faith – a claim which exhibits the structural similarity of liberalism to the evangelizing Christianity of which it is the illegitimate offspring".[6] In a similar vein, Yoran Hazony comments on the goals of Enlightenment philosophers in general: "Their aim was to create their own system of universal, certain truths, and in that pursuit, they were as rigid as the most dogmatic medieval".[7] Thus, if one defines liberalism, as Gray does, as a "political religion" with the goal of establishing a liberal "control over souls", its conflict with Christianity as a rival religion seems inevitable.

Liberalism, however, is unthinkable without Christianity. It could and did arise exclusively within the realms of Christian civilization. This also means that it contains many Christian ideas, albeit at the same time it substantially transforms them. Until recently, liberalism as an auxiliary social and political ideology played a useful role, reminding us, *inter alia*, of the importance of individual freedom, the limitation of the role of the state in social and economic life, the binding nature of contracts, etc. The contemporary problems with liberalism – in my opinion – are closely related to its domination in the political and cultural sphere, and thus to its assumption of responsibility for the whole life of the community, for which it was either unprepared or entirely unsuited. I am aware that liberalism, like Christianity, has many strands, so what can be compared is a certain contemporary image of liberalism and a certain – yet based on Church documents – image of Christianity. More precisely, however, here, we are only interested in the difference in the approach of liberalism and Christianity to the doctrine of human rights.

It is usually said that the Catholic Church had four objections to the UN's Universal Declaration of Human Rights, which led, among other things, to Pius XII never mentioning it in his teaching after its approval. These are the lack of reference to God as the source of human rights, individualism, the lack of a list of human duties accompanying human rights[8] and finally, stemming from the first objection, the

[6] Ibid.

[7] Yoran Hazony, "The Dark Side of the Enlightenment", *The Wall Street Journal*, 06.04.2018, https://www.wsj.com/articles/the-dark-side-of-the-enlightenment-1523050206.

[8] Traditionally, the Catholic Church teaches that human rights are accompanied by duties. Each right imposes on someone an obligation to respect it. This obligation is firstly on the part of the subject of that right himself, secondly on the part of other persons, and finally on the part of the State (cf. John XIII, *Encyclical Pacem in terries*, 10, 16, 28-30, https://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html).

vulnerability of human rights to proliferation and creative reinterpretation. We will reflect only on the first two.

The overturn of the God's order

The reference to God is fundamental in this list. It is not some kind of devotional appeal, but the invocation or omission of a word that fundamentally changes the meaning of the entire Declaration. In a 1947 letter to U.S. President Harry Truman, Pius XII states that to exclude the reference to God from the Declaration will mean recognizing that the state is the ultimate source of human rights. Eventually, this will result in reducing the subject of these rights to the status of a slave in the hands of those who can manipulate the meaning of the words used in the Declaration.[9] Thus, in the Catholic understanding, the source of human rights is inviolable human dignity, the primary source of which is the fact that man was created in the image and likeness of God. Dignity is inviolable because this "image" is sacred, as it were, a "part" of God incorporated into the human person. Consequently, whoever speaks against the dignity of man speaks directly against God.

In this context, it must also be emphasized that the reference to God reminds us of the basic limitation of political power, which is not God and cannot ascribe to itself divine prerogatives. The source of human dignity is transcendent to it. Thus, temporal authority encounters an impassable limit that it does not itself establish. God is the creator of human nature, and by this fact also of natural law, called by John Paul II "moral grammar".[10] Today, we are experiencing the temptation to reject the "idea of God" itself as an already unnecessary by-product of the process of human evolution. However, the consequence of going beyond

[9] "[The foundations of peace] can be secure only if they rest on bed-rock faith in the one, true God, the Creator of all men. It was He who of necessity assigned man's purpose in life; it is from Him, with consequent necessity, that man derives personal, imprescriptible rights to pursue that purpose and to be unhindered in the attainment of it. Civil society is also of divine origin and indicated by nature itself; but it is subsequent to man and meant to be a means to defend him and to help him in the legitimate exercise of his God given rights. Once the State, to the exclusion of God, makes itself the source of the rights of the human person, man is forth-with reduced to the condition of a slave, of a mere civic commodity to be exploited for the selfish aims of a group that happens to have power. The order of God is overturned; and history surely makes it clear to those who wish to read, that the inevitable result is the subversion of order between peoples, is war" (Pius XII, *Letter to President Harry S. Truman, 26.08.1947,* https://w2.vatican.va/content/pius-xii/en/letters/documents/hf_p-xii_lett_19470826_have-just.html (28.08.2018)).

[10] Cf. John Paul II, Address to the United Nations General Assembly, New York, 5 October 1995, 3, https://www.vatican.va/content/john-paul-ii/en/speeches/1995/october/documents/hf_jp-ii_spe_05101995_address-to-uno.html.

the Creator-creation paradigm is to question the very idea of human nature, and therefore also the immutable moral norms common to all humans.[11]

Morality itself is then treated as a product of man, which can be transformed according to the purposes man sets for himself at any given moment in history. Replacing the theology of creation with the ideology of evolution makes the very idea of human nature fluid. The truth about man is only the truth of a certain stage of human history. "A woman is not born a woman, but rather becomes one", feminists erstwhile proclaimed. And today we see that a similar approach is also popular for man, which ultimately means for humans in general. From the assumption "as if there would be no God", we come to the assumption "as if nature had not been created". I do not mean to question the theory of evolution, but only its ideological interpretation, as Thomas Nagel does in his book *Mind and Cosmos*.[12] In St. Augustine's writings, we find repeated references to the hierarchy of created beings. "For a great thing truly is man, made after the image and similitude of God, not as respects the mortal body in which he is clothed, but as respects the rational soul by which he is exalted in honor above the beasts" (*in quantum bestias rationalis animae honore praecedit*).[13] Thus, man is below the angel and above the animals, although it happens to us that because of sin we disregard this hierarchy and "a higher price is often paid for a horse than for a slave".[14] Today, an example of such disregard is, on the one hand, the Universal Declaration of the Rights of Animals, drawn up along the lines of the Universal Declaration of Human Rights. On the other hand, the recognition that at a new stage of history, man should take evolution into his own hands and decide for himself what man should be and whether man should survive as a human being at all, and not, for example, as a post-human being. As Rémi Brague writes: "The modern project is perfectly fine when it comes to producing goods: material, cultural, and moral goods (…). On the other hand, however, it seems to be incapable of explaining why it is good that there are human beings to enjoy the goods are thus put at their disposal".[15]

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[11] Cf. John Paull II, Encyclical *Veritatis Splendor*, 32, https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor.html.

[12] Cf. Thomas Nagel, *Mind and Cosmos. Why the Materialist Neo-Darwinian Conception of Nature is Almost Certainly False*, Oxford University Press, 2012.

[13] Saint Augustine, *On Christian Doctrine*, I,22,20, trans. J. F. Shaw, Dover Publications, Mineola, New York 2009, p. 13.

[14] Saint Augustine, *City of God*, XI,16, trans. H. Bettenson, Penguin Books, Harmondsworth 1984, p. 448.

[15] Rémy Brague, *The Kingdom of Man. Genesis and Failure of the Modern Project*, trans. P. Seaton, University of Notre Dame Press, Notre Dame, Indiana 2018, p. 331.

A London double-decker

Benedict XVI points out another consequence of the lack of reference to God. Today it is customary to treat the secular vision of human rights, or *ordo naturalis* in general, as a certain closed, complete system. In it, God and religion are utterly redundant. The popular image of the relationship between the order of nature and the supernatural order evokes the image of a double-decker London bus[16]. On the lower level, there is the engine, the driver, conductor, and a few lay passengers. And upstairs, there are passengers interested in spiritual life, mostly nuns and priests. Perhaps looking through the windows from the upper deck they can see more, but they still have no influence on the direction or speed of the travel. From the point of view of those on the lower level, interested only in natural life, they are altogether redundant on the bus. "If the *ordo naturalis* is seen as a totality that is complete in itself and does not need the Gospel, there is a danger that what is properly Christian will seem like an ultimately superfluous superstructure superimposed on the natural human" – writes Benedict XVI.[17] But if we completely reject the public importance of a religious justification for morality, even an indirect one, derived from the private faith of individual citizens, then the question arises for what reason should people respect human rights and, in general, why should they obey the law? If we are unable to say anything certain about right and wrong, or we find it a topic of no interest at all, what then is the primary regulator of social life? If mature, "neutral" reason is supposed to be free of history, tradition, and experience, is it actually capable of giving us an answer to the question of what we are to do in this concrete place and time, and not merely in some universal, abstract reality?[18] Indeed, does the categorical imperative obvious

[16] Cf. Wojciech Giertych, *Jak żyć łaską. Płodność Boża w czynach ludzkich [How to Live by Grace. God's Fecundity in Human Actions]*, Bernardinum, Pelplin 2014, pp. 26-27.

[17] Benedict XVI (Joseph Ratzinger), *Liberare la libertà. Fede e politica nel Terzo Millennio*, op. cit., p. 13.

[18] It seems that the concept of the neutrality of reason understood in this way is related to the assumption of the existence of "pure nature", i.e., nature devoid of any reference to culture. The very concept of *natura pura* emerged in the theological discussion regarding the relationship between nature and grace. During the Enlightenment period, this "purity" also began to be understood as the deprivation of any connection with culture, which would take place in a natural pre-social state. However, already Jean Jacques Rousseau perceived that it is not about some historical state, but a hypothetical one. The concept of a "pure state of nature" (*pur état de nature*), is thus a constructed concept, created by "purifying" (i.e., a mental operation of separating) the historical being of any supernatural gifts and any acquired skills. Hence, Rousseau's man, for example, does not use language, since it is an acquired skill, an element of culture, requiring contact with another human being (cf. Robert Spaemann, *Rousseau – człowiek czy obywatel. Dylemat nowożytności [Rousseau – Man or Citizen. The Dilemma of Modernity]*, Oficyna Naukowa, Warsaw 2011, p. 105). Similarly,

to anyone using reason have no connection to experience, tradition, culture, and religion? Kant speaks here of "an apodictic certainty", but this does not convince everyone.[19] The ultimate rationale that determines concrete social behaviour at this point, Leszek Kołakowski states, for example, is that people are afraid of the law and the punishments they face if they do not obey it. In a "neutral" secular reality, it is not necessary for people to be convinced that such behaviour is morally right. It is sufficient that, out of concern for their own safety, they do what the State expects of them.[20] Ultimately, then, such a liberal, religiously and philosophically "neutral" State is based on fear. Kołakowski thus poses the question: is such a radically liberal state stable? In his view, it is a utopia subject to self-destruction. "The liberal state is incapable of survival through the sheer inertia of the neutral state's system of non-intervention. (…) A perfectly neutral liberal state could live only a short while".[21]

Leszek Kołakowski places the issue of religious and philosophical neutrality of the State in the context of the question about the place of children in liberal philosophy. What is their status? They are not things, but neither are they rational, autonomous subjects. Do they therefore have the right to make their own decisions regarding, for example, commencement of sexual activity, getting married, signing contracts, serving in the military, or even getting a driving licence? If the answer is 'no', how can this be justified in a liberal manner? It seems no coincidence that the revolutionaries of the 1960s demanded not only the abolition of all the restrictions concerning sexual relations between adults, but also the abolition of the legally established minimum age for sexual activity. One of the most fundamental decisions concerning children is the one regarding their education. In a neutral state, should education also be world-view- and axiologically neutral?

the concept of the neutrality of reason assumes that it can be free from any cultural references, i.e., that it arose, as it were, outside society and outside any culture. Historically, this is absolutely false. In fact, what is felt to be natural always comes from a historical social structure. The realization of this fact enables the process of abstracting from cultural dependencies, which, however, is always only partial, whereas failure to realize this fact results in an attempt to impose one's own cultural preference by violence under the guise of its neutrality. The liberal conception of neutrality, as Alasdair MacIntyre notes, is as biased as any other. The difference with the others is that liberals impose their ideology under the guise of neutrality, i.e., claiming that this is what they do not do (cf. Alasdair MacIntyre, "Toleration and the Goods of Conflict", in: Susan Mendus (ed.), *The Politics of Toleration in Modern Life*, Duke University Press, Durham, NC 2000, p. 138).

[19] Cf. Yoran Hazony, "The Dark Side of the Enlightenment", op. cit.

[20] Cf. Leszek Kołakowski, *Moje słuszne poglądy na wszystko [My Correct Views on Everything]*, Wydawnictwo Znak, Kraków 1999, pp. 178-181.

[21] Ibid., p. 183.

Is it enough if children at school are taught what is legally permissible and what is forbidden, without considering their ability to distinguish good from evil? Is it enough to prepare them through "culturally neutral" education to be citizens of the world? Can we then remove from school curricula any references to history, tradition, and culture understood as our own? Is it enough to instil "constitutional patriotism", i.e., fear of transgressing the law? If not, who should make decisions on these matters on behalf of children, and in the name of what? It appears that the ultimate answer in a state of perfect liberalism is to say that this is the responsibility of the government or parliament. But this means that the government or parliament assumes the competence of the family and the Church. In other words, it becomes a sacral authority whose decisions – in the absence of any, other than formal, criteria for challenging these decisions – increasingly resemble the infallible rulings of the gods. An exemplification of this trend is today's liberal aversion to the conscience clause.

This way of thinking, however, makes the erroneous assumption that there exists a kind of "naked nature", independent of time and place, utterly devoid of ties to any culture. Well, such nature exists only in the minds of the Enlightenment thinkers. Our cognition of the world always contains some admixture of culture. And it is this admixture of culture, even when its presence is not realized, that provides a minimum of stability to social life. Hence the conclusion that we should defend a liberal state that is imperfect, burdened by culture, and thus educate future citizens to live moral and virtuous lives, in which religious justification is extremely helpful.

Like mushrooms

The second objection to the "official" doctrine of human rights concerns individualism. Liberalism brings with it an individualistic vision of man, combined with a voluntaristic conception of choice. Liberal society consists exclusively of adult, rational entities capable of autonomous decision-making. They are at the same time a-historical individuals, the same everywhere in the world, with the same needs, aspirations, and ways of thinking.[22] This is well expressed by Thomas Hobbes, who states that people appear on earth adult and mature, without parents, unbound one to the other by any obligation, "like mushrooms" coming out of the ground after the rain. "To return once again to the natural state and to look at men

[22] Cf. Leszek Kołakowski, "On the Practicability of Liberalism: What About the Children?", *Critical Review. A Journal of Politics and Society***,** Volume 7, 1993, Issue 1, pp. 1-13.

as if they had just emerged from the earth like mushrooms and grow up without any obligation to each other".[23]

Therefore, according to liberalism, man is a non-relational being and, in making life choices, should be guided primarily by selfishness. He makes short-term commitments to others only by conscious and voluntary decisions, and their content – including the marriage contract – can be renegotiated at any time. At the same time, he sees his life as a constant process of emancipation. Unlike in the classical tradition, expanding the realm of freedom is not about gaining control over "sexual indulgence and gluttony"[24] through virtue training, but rather liberation from external constraints. In the first instance, it is liberation from bonds with other people, in the second: from historical and cultural identity, and, finally, from the constraints of biological nature, including biological sex. Child, marriage, family, and nation are basic categories that potentially limit individual freedom. Liberation occurs through ridding oneself of the state of belonging (e.g., through divorce, apostasy, or emigration[25]), the dismantling of moral norms, traditions and practices, through to the abolition of the category of truth and the deconstruction of language. The result is a "lonely crowd" of competing individuals, or, as Michel Houellebecq states, a collection of elementary particles that constantly collide with one another but never truly connect.[26] They live "increasingly alone, left to themselves without structures of affection and support", as John Paul II said.[27] Under such an anthropology, even the right to marry and found a family is only an individual right. While the family may be considered the basic cell of social life, it is not a separate subject of natural law. Similarly, when it comes to the category of the nation. Viewing the institution of marriage and family from the perspective of individual rights leads today to attempts to reinterpret them. Marriage and having offspring are seen as an individual right of every person, regardless of sex. Thus, everyone has the "right" to marry anyone and expect the state to provide him/

[23] Thomas Hobbes, *On the Citizen*, Cambridge University Press, Cambridge 1998, p. 102.

[24] Aristotle, *Politics*, 1253a, https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0058%3Abook%3D1%3Asection%3D1253a.

[25] Thomas Jefferson considered the right to leave the country of birth to be the most basic right of a free person (Thomas Jefferson, *A Summary View of the Rights of British America*, p. 3, https://thefederalistpapers.org/wp-content/uploads/2012/12/Rights-of-British-America-by-Thomas-Jefferson.pdf).

[26] Michel Houellebecq, *The Elementary Particles*, Vintage 2001.

[27] John Paul II, *Exhortation Ecclesia in Europa*, 8, https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_20030628_ecclesia-in-europa.html.

her with offspring, even if he/she is a single, unmarried individual. The Christian response to this vision of human rights is the Charter of the Rights of the Family.[28]

According to Catholicism, the second – besides the family – natural community to which a person belongs is the nation. Thus, in 1995 at the UN, John Paul II proposed a kind of charter of the rights of nations. In modern liberal philosophy, however, the concept of the nation either does not appear at all, being replaced by the term "society", "civil society", or is associated solely negatively, i.e., with the excesses of nationalism, the return of which should be decisively prevented. Abstract universalism leads us to place our hopes for the organization of social life at an ever-higher level: from the nation-state to the federal state, from the federal state to the global "state". National governments should be replaced as soon as possible by global government, and nations by global civil society. However, observing the transformation of the UN, we must conclude that within the framework of global governance, nation-state governments, the entities that brought the UN into existence, have less and less to say, while global civil society has little in common with either historical nations or democratic societies. In practice, it involves NGOs on the UN register and prominent individuals selected according to obscure procedures.[29]

Roberto Esposito reminds us of the Latin etymology of the word "community" (*communitas*) which derives from *munus*: duty, service, unpayable debt, or gift that cannot be kept. Belonging to a community involves incurring an unpayable debt, binding oneself to a common obligation of mutual gift, which gives rise to an obligation to step out of oneself to turn towards others. Belonging to *communitas* inevitably involves loss, with "expropriation", and thus poses a potential threat to the subject's individual identity and autonomy. Others gain the right to overstep the boundaries of the subject and influence his decisions. Liberalism strongly opposes this understanding of collectivity, relegating the question of community to the sphere of private decisions of individuals. An individual can protect himself from "infection by others" through immunization, turning towards himself and closing off within himself, "in the husk of his own subjectivity". Immunization

[28] Cf. Charter of the Rights of the Family, https://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html.

[29] Cf. Marguerite A. Peeters, *The Emergence of Global Governance as a Political Revolution. New Political Paradigms and the Shift to Postmodern Politics (1945-1996)*, https://bip.uksw.edu.pl/sites/default/files/2022-06-29-M.%20Peeters%20PhD%20Thesis%20-%20Final-_.pdf.

means not only freeing oneself from social debt, but also breaking the system of compulsory mutual endowment that conditions the existence of a community.[30] Man – according to liberal philosophy – is completely independent of the collective. "But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years that he shall not do with his life for his own benefit what he chooses to do with it" – wrote John Stuart Mill.[31] The trouble is that consistent liberalism, according to Patrick Deneen, has led to the almost complete privatization of the citizen, resulting in the disappearance of the instinct for community and the atomization of society.[32] The ideal liberal citizen limits his interest in the community to participating in elections every four years, and the pandemic has further taught him to view the other as a potential threat of infection.

Deneen's merit is to point out that this is not a spontaneous process of emancipation and individualization, but that a "laissez-faire was planned".[33] Liberalism contains a specific ideal of freedom, the realization of which requires a strong state. Only a strong state can force a radical change in society leading to a redefinition of basic anthropological and social categories: sex, the institutions of marriage, motherhood and fatherhood, human rights, the category of discrimination, and finally freedom itself. Liberalism thus claims that it is individuals, who are inherently equal and free, who consent to the creation of a state with limited powers, while in fact it is only the liberal state, with all the tools of power, that creates such untethered individuals, whose survival depends on the ability of the authorities to eliminate "political blasphemers". "The more individuated the polity, the more likely that a mass of individuals would inevitably turn to the state in

[30] Cf. Roberto Esposito, *Terms of the Political: Community, Immunity, Biopolitics*, Fordham University Press, New York 2013, pp. 48-49.

[31] John Stuart Mill, *On Liberty*, Rowman & Littlefield Publishers, Inc., Oxford 2005, p. 113.

[32] According to Norberto Bobbio, the process of atomization was initiated with the 1791 French constitution's ban on acceptance by representatives of "any binding mandate from those who had elected them": "If by modern democracy we mean representative democracy, and if it is of the essence of the latter that the representatives of the nation are not directly obliged to the particular individuals they represent not to their particular interest, then modern democracy is premised upon the atomization of the nation and its recomposition at another level – the level of parliamentary assemblies (…). Now this process of atomization is the same which underlies the liberal conception of the state, whose foundation (…) is to be sought in the assertion of the individual's natural and inviolable rights" (Norberto Bobbio, *Liberalism and Democracy*, trans. Martin Ryle and Kate Soper, Verso, London – New York 2006, p. 29).

[33] Patrick J. Deneen, *Why Liberalism Failed*, Yale University Press, New Haven and London 2018, p. 52.

times of need".[34] The liberal conception of man thus leads inevitably to statist individualism, which cannot do without the support of the state apparatus.

An entirely opposite interpretation of the importance of binding the individual to the community is held, for example, by Jesse Gleen Gray. He states that co-participation, i.e., binding us to others, frees man from the cage of individualism and of the feeling of individual hopelessness in the face of challenges. "In moments like these, many have a vague awareness of how isolated and separate their lives have hitherto been and how much they have missed by living in the narrow circle of family or a few friends".[35] I think the war in Ukraine unleashed by Russia in 2022 makes many realize how vulnerable a single individual would be to aggression, which, however, a community united by the bonds of patriotism is able to successfully resist. This reveals the liberal paradox that a liberal state depends for its existence on soldiers who must think about life and death in illiberal terms. MacIntyre argues: "Good soldiers may not be liberals and must indeed embody in their actions a good deal at least of the morality of patriotism. So the political survival of any polity in which liberal morality had secured large-scale allegiance would depend upon there still being enough young men and women who rejected that liberal morality. And in this sense liberal morality tends towards the dissolution of social bonds".[36]

The encyclical *Pacem in Terris*, called the Catholic constitution of human rights, is characterized by the document's striking secular language, on the one hand, and optimism on the other. John XXIII writes:

> When the rules of coexistence among citizens are formulated as rights and duties, then people come to understand more and more their spiritual and intellectual values, and in particular to understand what truth is, what justice is, what charity is, what freedom is, and to realize that they are members of a community which presupposes these very values. (…) People (…) who are interested in such matters seek to know better the true God who is personal and who is beyond human nature. For

[34] Cf. ibid., p. 61.

[35] Jesse Gleen Gray, *The Warriors: Reflections on Men in Battle*, University of Nebraska Press, Lincoln and London 1998, p. 45.

[36] Alasdair MacIntyre, *Is Patriotism A Virtue?,* The Lindley Lecture, The University of Kansas 1984, pp. 17-18, https://kuscholarworks.ku.edu/bitstream/handle/1808/12398/Is%20Patriotism%20a%20Virtue-1984.pdf.

> this reason, they consider the relationship that binds them to God as the basis of their lives, both their interior life and their relationships with others.[37]

Through the guarantee of human rights, human sensitivity to both moral values and God must grow, John XXIII said. Are we really witnessing an increase in sensitivity in these areas today? Benedict XVI does not seem to share this optimism. On the one hand, he notes that "for great liberals, God is ultimately indispensable", while "liberalism loses its own foundation when it overlooks God". On the other hand, he states that "the concept of human rights detached from the concept of God leads not only to the marginalization of Christianity but ultimately to its rejection".[38] Liberalism makes Christianity redundant. One universalism displaces another competing universalism. There are many variants of liberalism today, some that are not atheistic in nature, others that even attempt to restore the idea of community to some degree. Nevertheless, as John Gray argues, all of them share the same universalist claim. However, when we carefully read *Gaudium et spes*, we find not absolute but only conditional support of the Church for the doctrine of human rights: "For we are tempted to think that our personal rights are fully ensured only when we are exempt from every requirement of divine law. But this way lies not the maintenance of the dignity of the human person, but its annihilation".[39] This is an essential warning that we rarely hear about in Catholic commentaries on the theory of human rights.

[37] John XXIII, Encyclical *"Pacem in terris"*, 45, https://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html.

[38] Benedict XVI (Joseph Ratzinger), *Liberare la libertà. Fede e politica nel Terzo Millennio,* op. cit., p. 8.

[39] Vatican II*, Pastoral Constitution on the Church in the Modern World "Gaudium et Spes"*, 41, op. cit.

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DOI: 10.21697/CSP.2023.27.1.10

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

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Do human rights really protect us? The evolution of the concept of human rights influenced by the work of the Inter-American Court of Human Rights

Abstract: This text explores the growing influence of International Human Rights Law, focusing on the Inter-American System. It argues that human rights have attained a status akin to a "secular religion," shaping the legitimacy of states globally. Criticizing the hierarchical and unaccountable nature of bodies issuing internationally recognized treaties, the text examines specific characteristics of the Inter-American Human Rights Law, such as autonomous treaty interpretation and the control of conventionality doctrine. The concept of a "minimum standard" is scrutinized, raising concerns about the infallibility of treaty body interpretations. The existence of parallel legal orders and the relationship between national and international frameworks is discussed, unveiling potential challenges and an "infallibility complex" among human rights defenders.

Keywords: human rights, Inter-American Court of Human Rights, International Court of Justice, nature law

1. Approach: an increasingly influential International Law

As a preliminary comment, the following reflections derive from my research on the Inter-American System and, in particular, from the work carried out by the Inter-American Court of Human Rights, which is why they refer primarily to the situation that is being experienced in that region of the planet. However, these reflections can also be applied to a great extent to International Human Rights Law in general.

Currently, the notion of human rights is so prestigious in the West that everything that is said about it is considered good and indisputable (to the point that it could be considered a "secular religion") telling factor on the legitimacy of States themselves, both before its citizens and internationally. That is why today the separation of powers (executive, legislative and judicial branches) or a democratic system is no longer enough, since a substantive content of their domestic law is required, inspired by these human rights, determined mostly by international law.

Consequently, human rights have become a kind of "Natural Law", albeit not discovered nor objective, but in permanent construction and reconstruction. This, thanks to the international consensus that has given rise to the current human rights treaties, whether at the universal or regional level, and above all –above all–, to the work of the monitoring bodies of these treaties (Courts, commissions, and committees).

For its supporters, this multilateral origin of international law makes in itself a more legitimate, superior and more "humanitarian" reality than any state law,[1] since the latter has only a unilateral genesis. The foregoing, since it is considered to be the result of universal or regional consensus (through the *pacta sunt servanda*), would make it infallible (unlike that emanating from a State), considering that this consensus could not be wrong.[2] That is why its content should be adopted without delay by all national legal systems, as we will see in time.

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[1] From multiple perspectives and nomenclatures, Sergio García Ramírez, "The Relationship Between Inter-American Jurisdiction and States (National Systems): Some Pertinent Questions", *Notre Dame Journal of International & Comparative Law*: Vol. 5: Issue 1, Article 5, L. 116 (2015), p. 127, https://scholarship.law.nd.edu/ndjicl/vol5/iss1/5; Mariela Morales Antoniazzi, "Interamericanización como mecanismo del *Ius Constitutionale Commune* de derechos humanos en América Latina", in: Armin Von Bogdandy, Mariela Morales Antoniazzi, Eduardo Ferrer Mac-Gregor, eds, *Ius Constitutionale Commune en América Latina. Textos Básicos Para Su Comprensión*, Instituto de Estudios Constitucionales del Estado de Querétaro / Max Planck Institute for Comparative Public Law and International Law (2017), pp. 420-423.

[2] Similar ideas in: Néstor P. Sagüés, "Obligaciones Internacionales y Control de Convencionalidad", *Estudios Constitucionales*, vol. 8 no. 1 (2010), p. 125; without calling it that, similar ideas in Mariela Morales Antoniazzi, "El Estado abierto como objetivo del *Ius Constitucionale Commune*. Aproximación desde el impacto de la Corte Interamericana de Derechos Humanos", in: Armin Von Bogdandy; Héctor Fix-Fierro; Mariela Morales Antoniazzi, eds., *Ius Constitutionale Commune en América Latina. Rasgos, Potencialidades y Desafíos,* UNAM / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht / Instituto Iberoamericano de Derecho Constitucional (2014), pp. 291 and 298; Néstor Sagüés, "Las relaciones entre los tribunales internacionales y los tribunales nacionales en materia de derechos humanos. Experiencias en Latinoamérica", *Ius et Praxis*, vol. 9, no. 1 (2003), p. 214.

However, human rights have evolved remarkably (to the point that it is sometimes difficult to recognize them or to predict how they will be understood in the future), as their interpretation has been monopolized by their treaty bodies (courts, commissions, and committees), often moving away from the original meaning of the treaties that enshrine them. These bodies are not controlled by anyone, and citizens have no part in their work. For this reason, this evolution has become a phenomenon that is increasingly hierarchical and lacking in accountability, due to the characteristics of Inter-American Human Rights Law that will be seen shortly.

Consequently, these organizations are becoming "censors of the world", establishing with remarkable freedom which human rights are to be protected, who complies with them and who does not. All of which directly affects the legitimacy of States before their citizens and the international community.

2. Some characteristics of Inter-American Human Rights Law and the problems generated as a result

To better understand this last phenomenon, it is essential to briefly recall some of the characteristics of International Human Rights Law within the Inter-American System, which complement and enhance each other. Thus, the system's supporters believe that:

a) Human rights treaties have an "autonomous meaning", in light of which their meaning depends on the monopolistic interpretation of their treaty bodies,[3] not on what the States have understood when signing them or later.[4]

b) They are "living instruments", so they must adapt to the new circumstances through this monopolistic interpretation, in order to better protect human rights.[5]

[3] Cecilia Medina Quiroga, "Los 40 años de la Convención Americana sobre Derechos Humanos a la luz de cierta jurisprudencia de la Corte Interamericana", *Anuario de Derechos Humanos*, Vol. 5 (2009), p. 27; Héctor Faúndez Ledesma, "El Sistema Interamericano de protección de los Derechos Humanos. Aspectos institucionales y procesales", *Instituto Interamericano de Derechos Humanos* (2004), pp. 88-91; Manuel Núñez Poblete, "Principios Metodológicos para la Evaluación de los Acuerdos Aprobatorios de los Tratados Internacionales de Derechos Humanos y de las Leyes de Ejecución de Obligaciones Internacionales en la Misma Materia", *Hemicilo: Revista de Estudios Parlamentarios*, vol. 2 no. 4 (2011), p. 53.

[4] Antonio Cançado Trindade, "El Derecho Internacional de los Derechos Humanos en el siglo XXI", *Jurídica de Chile* (2006), pp. 29-31, 344-345 and 349.

[5] Eduardo Ferrer Mac-Gregor, "Interpretación Conforme y Control Difuso de Convencionalidad. El Nuevo Paradigma para el Juez Mexicano", in: Miguel Carbonell and Pedro Salazar,

c) Their interpretation is driven by the "principle of progressive interpretation" or "no regression", thanks to which it is increasingly protective of the rights it protects, prohibiting itself from regressing towards less favorable interpretations.[6]

d) They have ductile rules of interpretation because, together with the classic norms that regulate it (Art. 31 *et seq*. of the Vienna Convention), they must be evolutionary,[7] dynamic,[8] holistic,[9] systematic,[10] progressive,[11]

Derechos Humanos: Un Nuevo Modelo Constitucional, Universidad Nacional Autónoma de México, 2011, p. 392; Juana María Ibáñez Rivas, *Control de convencionalidad*, UNAM / Instituto de Investigaciones Jurídicas / Comisión Nacional de los Derechos Humanos, 2017, p. 136; Flavia Piovesan, "*Ius Constitutionale Commune* latinoamericano en derechos humanos e impacto del Sistema Interamericano: rasgos, potencialidades y desafíos", in: Armin Von Bogdandy; Héctor Fix-Fierro; Mariela Morales Antoniazzi, eds, *Ius Constitutionale Commune en América Latina. Rasgos, Potencialidades y Desafíos,* op.cit., pp. 69-70.

6 Carlos Ayala Corao, "Inconstitucionalidad de la denuncia de la Convención Americana sobre Derechos Humanos por Venezuela", *Estudios Constitucionales,* vol 10 Nº 2 (2012), pp. 655 and 665-678; Gonzalo Aguilar Cavallo, "Los derechos humanos como límites a la democracia a la luz de la jurisprudencia de la Corte Interamericana de Derechos Humanos", *Revista da Ajuris* (Porto Alegre), Vol. 43 Nº 141 (2016), pp. 345-347; Hernán Olano García, "Teoría del Control de Convencionalidad", *Estudios Constitucionales*, vol. 14 Nº 1 (2016), p. 85.

7 Gonzalo Aguilar Cavallo, "La Corte Suprema y la aplicación del Derecho Internacional: un proceso esperanzador", *Estudios Constitucionales,* vol. 7 Nº 1 (2009), pp. 92-93; Eduardo Ferrer Mac-Gregor and Carlos Pelayo Möller, "La obligación de 'respetar' y 'garantizar' los derechos humanos a la luz de la jurisprudencia de la Corte Interamericana", *Estudios Constitucionales*, vol. 10, no. 2 (2012), pp. 149-150; Cançado, supra note 4, pp. 23-25, 40, 46-49 and 530-531.

8 Humberto Nogueira Alcalá, "Diálogo interjurisdiccional y control de convencionalidad entre los tribunales nacionales y la Corte Interamericana de Derechos Humanos en Chile", *Anuario de Derecho Constitucional Latinoamericano*, vol. 19 (2013), p. 521; Gastón Pereyra Zabala, "El control de convencionalidad en el sistema interamericano de derechos humanos", *Revista de Derecho* (Montevideo), Nº 6 (2011), p. 174; Alfonso Santiago, "El Derecho Internacional de los Derechos Humanos: posibilidades, problemas y riesgos de un nuevo paradigma jurídico", in: *60 Persona y Derecho* (2009), p. 111.

9 Luis D. Vásquez and Sandra Serrano, "Los Principios de Universalidad, Interdependencia, Indivisibilidad y Progresividad. Apuntes Para su Aplicación Práctica", in: Miguel Carbonell and Pedro Salazar, eds, *La Reforma Constitucional en Derechos Humanos: Un Nuevo Paradigma*, IIJ, Universidad Nacional Autónoma de México, 2011, p. 155); Cançado, supra note 4, pp. 155, 164 and 166-167.

10 Karlos Castilla Juárez, "Un Nuevo Panorama Constitucional para el Derecho Internacional de los Derechos Humanos en México", *Estudios Constitucionales*, vol. 9 no. 2 (2011), pp. 154-157; Lorena Fríes Monleón, "El Instituto Nacional de Derechos Humanos en Chile y sus desafíos para avanzar hacia una visión integral en el discurso y práctica de los derechos humanos en Chile", *Anuario de Derechos Humanos* (Universidad de Chile), vol. 8 (2012), pp. 169-171; José Orozco, "Los Derecho Humanos Y El Nuevo Artículo 1º Constitucional", *Ius: Revista del Instituto de Ciencias Jurídicas de Puebla*, n. 28 (2011), p. 93.

11 Manuel Núñez Poblete, "Sobre la doctrina del margen de apreciación nacional. La experiencia latinoamericana confrontada y el thelos constitucional de una técnica de adjudicación

finalist,[12] etc., thus giving a lot of freedom to the interpreter. That is why new rights have emerged, either by expanding the current ones,[13] by discovering "implicit" rights,[14] or by making an exegesis contrary to the text that enshrines them.[15] In addition, if human rights are considered indivisible,[16] interdependent,[17] etc., the interpreter can make them say practically whatever he wants, as there is no objective hierarchy between them.

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del DIDH", in: Acosta Alvarado et al., eds, *El Margen de Apreciación En el Sistema Interamericano de Derechos Humanos: Proyecciones Regionales y Nacionales*, Universidad Nacional Autónoma de México, 2012, p. 29; Cançado, supra note 4, pp. 23-25, 40, 46-49 and 532-533; Pereyra, supra note 8, p. 174.

12 Liliana Galdámez Zelada, "Protección de la víctima, cuatro criterios de la Corte Interamericana de Derechos Humanos: interpretación evolutiva, ampliación del concepto de víctima, daño al proyecto de vida y reparaciones", *Revista Chilena de Derecho*, vol. 34, no. 3 (2007), p. 445; Humberto Nogueira Alcalá, "Diálogo Interjurisdiccional, Control de Convencionalidad y Jurisprudencia del Tribunal Constitucional en el Período 2006-2011", *Estudios Constitucionales*, vol. 10 no. 2 (2012), p. 82; Núñez Poblete, supra note 3, p. 54.

13 Álvaro Francisco Amaya Villarreal, "El Principio *Pro Homine*: Interpretación Extensiva vs El Consentimiento del Estado", *International Law: Revista Colombiana de Derecho Internacional*, no. 5 (2005), pp. 337-380; Gonzalo Aguilar Cavallo and Humberto Nogueira Alcalá, "El principio favor persona en el derecho internacional y en el derecho interno como regla de interpretación y de preferencia normativa", *Revista de Derecho Público,* Vol. 84 (2016), pp. 17-19 and 20; David Lovatón Palacios, "Control de convencionalidad interamericano en sede nacional: una noción aún en construcción", *Revista Direito & Práxis*, Vol. 8 Nº 2 (2017), pp. 1405-1406.

14 Álvaro Paúl Díaz, "The American Convention on Human Rights. Updated by the Inter--American Court", *Iuris Dictio*, vol. 20 (2017), pp. 53-87; Gonzalo Candia Falcón, "Derechos implícitos y Corte Interamericana de Derechos Humanos: una reflexión a la luz de la noción de Estado de Derecho", *Revista Chilena de Derecho*, Vol. 42 Nº 3 (2015), pp. 874-884; Alfredo Vítolo, "Una novedosa categoría jurídica: el «querer ser». Acerca del pretendido carácter normativo *erga omnes* de la jurisprudencia de la Corte Interamericana de Derechos Humanos. Las dos caras del «control de convencionalidad»", *Pensamiento Constitucional*, Nº 18 (2013), pp. 369-373.

15 Álvaro Paúl Díaz, "La Corte Interamericana *in vitro*: notas sobre su proceso de toma de decisiones a propósito del caso 'Artavia'", *Revista Derecho Público Iberoamericano*, vol. 1 (2) (2013), pp. 303-345; Max Silva Abbott and Ligia de Jesús Castaldi, "¿Se comporta la Corte Interamericana como tribunal (internacional)? Algunas reflexiones a propósito de la supervisión de cumplimiento del *Caso Artavia Murillo vs. Costa Rica*", *Prudentia Iuris,* vol. 82 (2016), pp. 19-58.

16 Susana Albanese, "La fórmula de la cuarta instancia", p. 7, in LexisNexis, Lexis Nº 0003/001051, http://www.villaverde.com.ar/archivos/File/docencia/unlz-alimentos/Bibliografia/cuarta-instancia-Albanese.pdf (last visited Nov. 11, 2014); Vásquez and Serrano, supra note 9, pp. 148-159; Amaya, supra note 13, p. 345.

17 Ferrer, supra note 5, p. 366; Fríes, supra note 10, pp. 169-171; Cançado, supra note 4, p. 117.

e) The protection of these rights is influenced by the *"pro homine"* or "*favor persona*" principle,[18] which allows the judge, both local and inter-American, to choose quite freely the norm to apply to resolve a human rights case, whether this national norm or international.[19]

f) Finally, that the criteria on human rights established by International Law constitute only a "minimum standard" in terms of the requirements for their protection.[20] Therefore, the only task left to the States would be to match or exceed this "floating line".[21] This is a crucial aspect to which we will return later.

Consequently, the monopolistic interpretation of these treaties by their monitoring bodies has ended up eclipsing them, putting in jeopardy the traditional theory of the sources of International Law[22] (as established in article 38 of the Statute of

[18] José Luis Caballero Ochoa, "La cláusula de interpretación conforme y el principio pro persona (art. 1º segundo párrafo de la Constitución)", in: Miguel Carbonell and Pedro Salazar, eds, *La Reforma Constitucional de Derechos Humanos: Un Nuevo Paradigma*, op. cit., pp. 132-133 and 141-142; Amaya, supra note 13, pp. 337-380; Ferrer, supra note 5, pp. 340-358, 361-366 and 387-390; Castilla, supra note 10, pp. 149-153; Humberto Nogueira Alcalá, "Los desafíos del control de convencionalidad del *corpus iuris* interamericano para las jurisdicciones nacionales", *Boletín Mexicano de Derecho Comparado [BMDC]*, vol. 45, no. 135 (Sept. 26, 2011), pp. 1168-1170, 1176-1178 and 1187-1189.

[19] Juan Carlos Hitters, "Un avance en el control de convencionalidad. (El efecto '*erga omnes*' de las sentencias de la Corte Interamericana), *Estudios Constitucionales*, vol.11, no. 2 (2013), pp. 708-709; Eduardo Ferrer Mac-Gregor, "Eficacia de la Sentencia Interamericana y la Cosa Juzgada Internacional: Vinculación Directa Hacia Las Partes (*Res Judicata*) E Indirecta Hacia los Estados Parte de la Convención Americana (*Res Interpretata*) (Sobre El Cumplimiento del Caso Gelman vs. Uruguay)", *Estudios Constitucionales*, vol. 11 no. 2 (2013), p. 676; Claudio Nash Rojas, "Control de convencionalidad. Precisiones conceptuales u desafíos a la luz de la jurisprudencia de la Corte Interamericana de Derechos Humanos", *Anuario e Derecho Constitucional Latinoamericano*, vol. 19 (2013), p. 505.

[20] Eduardo Meier García, "Nacionalismo constitucional y Derecho Internacional de los Derechos Humanos", *Estudios Constitucionales*, vol. 9 Nº 2 (2011), pp. 332-333 and 369-371; Juan C. Hitters, "¿Son Vinculantes los Pronunciamientos de la Comisión y de la Corte Interamericana de Derechos Humanos? (Control de Constitucionalidad y Convencionalidad)", in: *Revista Iberoamericana de Derecho Procesal Constitucional*, no.10 (2008), p. 153, note 12; Nogueira, supra note 12, pp. 58-59, 64, 68, 71-72, 81, 84-85, 96, 100-102 and 124; Ferrer, supra note 19, pp. 657, 669, 671-672 and 677.

[21] Aguilar, supra note 6, pp. 337-365.

[22] Carlos Cerda Dueñas, "La nota diplomática en el contexto del *soft law* y de las fuentes del derecho internacional", *Revista de Derecho* (Valdivia, Chile), Vol. XXX Nº2 (2017), pp. 159-179; Sergio Fuenzalida Bascuñán, "La jurisprudencia de la Corte Interamericana de Derechos Humanos como fuente del derecho. Una revisión de la doctrina del «examen de convencionalidad»", in: *Revista de Derecho* (Valdivia, Chile), Vol. XXVIII Nº 1 (2015), pp.

the International Court of Justice[23]) and the initial *pacta sunt servanda* that gave rise to them.

In short, we are in the presence of "other" treaties because the initial consensus of the States has been replaced by the free interpretation of the human rights treaty bodies.

In the case of the Inter-American System, this has given rise, *inter alia*, to the *control of conventionality doctrine*,[24] created by the Inter-American Court case

171-192; Alan Diego Vogelfanger, "La creación de derecho por parte de los tribunales internacionales. El caso específico de la Corte Interamericana de Derechos Humanos", *Pensar en Derecho* (Universidad de Buenos Aires), Nº 7, vol. 4 (2015), pp. 251-284; Vítolo, supra note 14, pp. 357-380; Miriam Henríquez Viñas and José Ignacio Núñez, "El control de convencionalidad: ¿Hacia un no positivismo interamericano?", *Revista Boliviana de Derecho*, Nº 21 (2016), pp. 338-339.

[23] Statute of the International Court of Justice.
Article 38:
1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
   b. international custom, as evidence of a general practice accepted as law;
   c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

Article 59
The decision of the Court has no binding force except between the parties and in respect of that particular case.

[24] García, supra note 1, pp. 115-151; Miguel Carbonell, "Introducción general al control de convencionalidad", UNAM, https://archivos.juridicas.unam.mx/www/bjv/libros/7/3271/11.pdf, pp. 67-95 (last visited May 14, 2014); Sagüés, supra note 2, pp. 117-136; Ernesto Rey Cantor, "Controles de convencionalidad de las leyes", in: Eduardo Ferrer Mac-Gregor, Arturo Zaldívar Lelo de Larrea, eds, *La Ciencia del Derecho Procesal Constitucional. Estudios en Homenaje a Héctor Fix Zamudio en Sus Cincuenta Años Como Investigador del Derecho, Vol. IX. Derechos Humanos y Tribunales Internacionales*, Unam, Instituto Mexicano de Derecho Procesal Constitucional, Marcial Pons 2008, pp. 225-262; Ariel Dulitzky, "El impacto del control de convencionalidad. ¿Un cambio de paradigma en el sistema interamericano de derechos humanos?", in: José Sebastián Elias et al., eds, *Tratado de los Derechos Constitucionales*, 1st ed., Abeledo Perrot 2014, pp. 553-569.

law,[25] which orders national judges to impose international criteria[26] (that is, their own case law) over its domestic laws, even if constitutional in rank.[27] In this way, the local judge could:

a) Declare the national standard inapplicable in favor of the international standard, in case of an absolute incompatibility between the two;[28]

[25] Christina Binder, "¿Hacia una Corte Constitucional de América Latina? La jurisprudencia de la Corte Interamericana de Derechos Humanos con un enfoque especial sobre las amnistías", in: Armin von Bogdandy, Eduardo Ferrer Mac-Gregor, Mariela Morales Antoniazzi, eds, *La Justicia Constitucional y Su Internacionalización. ¿Hacia Un Ius Constitutuonale Commune en América Latina? Tomo II*, Unam / Max-Plank-Institut für a Usländisches Öffentliches Recht und Volkerrecht / Instituto Iberoamericano de Derecho Constitucional 2010, pp. 169, 173-174 and 185; Néstor P. Sagüés, "Las opiniones consultivas de la Corte Interamericana, en el control de convencionalidad", *Pensamiento Constitucional*, Nº 20 (2015), p. 281; Víctor Bazán, "En torno al control de las inconstitucionalidades e inconvencionalidades omisivas", *Anuario de Derecho Constitucional Latinoamericano*, vol. 14 (2010), pp. 151-177; Karlos Castilla Juárez, "El control de convencionalidad; un nuevo debate en México a partir de la sentencia del caso Radilla Pacheco", *Anuario Mexicano de Derecho Internacional*, Vol. XI (2011), p. 600.

[26] Eréndira Salgado Ledesma, "La probable inejecución de las sentencias de la Corte Interamericana de Derechos Humanos", *Revista Mexicana de Derecho Constitucional*, N° 26 (2012), p. 224; Gonzalo Aguilar Cavallo, "Constitucionalismo global, control de convencionalidad y el derecho a huelga en Chile", *Anuario Colombiano de Derecho Internacional (ACDI)*, Vol. 9 (2016), p. 137; Claudio Nash Rojas, Constanza Núñez Donald, "Recepción formal y sustantiva del Derecho Internacional de los Derechos Humanos: experiencias comparadas y el caso chileno", *Anuario Mexicano de Derecho Comparado*, vol XLX, núm. 148 (2017), p. 207.

[27] Leonardo García Jaramillo, "De la «constitucionalización» a la cconvencionalización» del ordenamiento jurídico. La contribución a un *ius constitutionale commune*", *Revista Derecho del Estado*, Nº 36 (2016), pp. 131-166; David Andrés Murillo Cruz, "La dialéctica entre el bloque de constitucionalidad y el bloque de convencionalidad en el sistema interamericano de derechos humanos", *Revista de Derecho Público* (Universidad de los Andes, Colombia), Nº 36 (2016), pp. 1-35; Néstor Sagüés, "Derechos constitucionales y derechos humanos. De la Constitución Nacional a la Constitución convencionalizada", in: Humberto Nogueira Alcalá ed., *La Protección de los Derechos Humanos y Fundamentales de Acuerdo a la Constitución y El Derecho Internacional de los Derechos Humanos*, Librotecnia, Santiago 2014, pp. 15-23.

[28] Caballero, note 18, pp. 109-112 and 120-122; Gonzalo García Pino, "Preguntas esenciales sobre el control de convencionalidad difuso aplicables a Chile", in: Humberto Nogueira Alcalá ed., *La Protección de los Derechos Humanos y Fundamentales de Acuerdo a la Constitución y El Derecho Internacional de los Derechos Humanos*, op. cit., pp. 356 and 359-60; Rey Cantor, supra note 24, pp. 226 and 261-262.

b) Reinterpret the local standard in light of international criteria, in order to harmonize them with each other[29] (the so-called "compliant interpretation"[30]); or

c) Apply national norms, but only if it exceeds the "minimum standard" of international law.[31]

In addition, since the American Convention "lives" in the ductile and evolving interpretation of the Court[32] (because it considers itself the definitive[33] and unappealable[34] interpreter of the Convention), this tribunal considers that this treaty is "updated" with each of its verdicts. For this reason, it estimates that this interpretation is binding on all States, even if they have not been part of the dispute that gave rise to the judgment. In other words, that its *"res interpretata"*[35] would have an *"erga omnes"* effect.[36]

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29 Pablo Contreras, "Control de convencionalidad, deferencia internacional y discreción nacional en la jurisprudencia de la Corte Interamericana de Derechos Humanos", *Ius et Praxis*, vol. 20, no. 2 (2014), pp. 237-38, 254, 261 and 263; Sagüés, supra note 2, pp. 215-216; Ibáñez, supra note 5, pp. 104-105.

30 Caballero, note 18, pp. 109-112 and120-122; Karlos Castilla Juárez, "¿Control interno o difuso de convencionalidad? Una mejor idea: la garantía de los tratados", *Anuario Mexicano de Derecho Internacional*, Vol. XIII (2013), p. 56; Miriam Henríquez Viñas, "La Polisemia del Control de Convencionalidad Interno", 24 *International Law: Revista Colombiana de Derecho Internacional* (Colombia) 113 (2014), pp. 132-134.

31 Sergio García Ramírez, "El control judicial interno de convencionalidad", *Ius: Revista del Instituto de Ciencias Jurídicas de Puebla*, no. 28 (2011), pp. 133-139; Cançado, supra note 4, pp. 310-314; Hitters, supra note 19, pp. 708-709.

32 Nogueira, supra note 12, p. 72.

33 Juan Carlos Hitters, "Control de constitucionalidad y control de convencionalidad. Comparación (Criterios fijados por la Corte Interamericana de Derechos Humanos)", *Estudios Constitucionales*, vol.7, no. 2 (2009), pp. 115, 118 and 122; Gonzalo Aguilar Cavallo, "«Afinando las cuerdas» de la especial articulación entre el Derecho Internacional de los Derechos Humanos y el Derecho Interno", *Estudios Constitucionales*, vol. 11 Nº 1 (2013), pp. 642-643; Nogueira, supra note 12, pp. 58-59, 62-63 and 90-98.

34 Meier, supra note 20, p. 333; Humberto Nogueira Alcalá, "El control de convencionalidad y el diálogo interjurisdiccional entre tribunales nacionales y la Corte Interamericana de Derechos Humanos", *Revista de Derecho Constitucional Europeo*, vol. 10, Nº 19 (2013), p. 222; Aguilar, supra note 33, pp. 636 and 645.

35 Carbonell, supra note 24, pp. 79-83; Nogueira, supra note 34, pp. 233 and 245; Ferrer, supra note 19, pp. 655-682 and 688-693.

36 María Angélica Benavides Casals, "El efecto *erga omnes* de las sentencias de la Corte Interamericana de Derechos Humanos", *International Law: Revista Colombiana de Derecho Internacional*, Nº 27 (2015), pp. 141-166; Hitters, supra note 19, pp. 695-710; Ferrer, supra note 19, pp. 652-655, 662-677 and 688-693.

The same is happening with the *soft law* created by other human rights treaty bodies: committees and commissions. Despite not being binding, *soft law* is of crucial importance today, as it ultimately shows how these bodies "see" or understand the treaties that they are supposed to interpret. And it is in accordance with this *soft law* that these "censors of the world" judge whether or not the States are complying with human rights, making their legitimacy depend on it.[37]

Therefore, we are faced with the existence of *two parallel legal orders,* the national and the international, the latter demanding complete obedience from the former.

3. The relationship between these two parallel legal orders

Even when it is not the only factor –because they all complement and reinforce each other–, to better understand the foregoing, it is absolutely necessary to take into account in particular the principle of "minimum standard" to which reference has already been made, which is linked and derives from the multilateral consensual origin of human rights treaties.

Now, if we look closely, the situation is surprising. Indeed, the fact that the interpretation of human rights treaties made by their treaty bodies is considered to be the "minimum standard", implies that their defenders take for granted that their way of understanding these rights is correct and indisputable, or if we prefer, that it can't be wrong. Hence, one could speak in this regard of a kind of "infallibility complex".

The above would derive from the fact that original treaties are the product of international consensus, whether regional or universal, which is why considering that this consensus could be wrong is intolerable. That is why it was pointed out that this international law is currently becoming a new "Natural Law", although created, not discovered, to the point where even some of its defenders today give it an almost semi-divine character. However, it must be remembered that this original consensus has been "highjacked" and obscured by the monopolistic leadership and uncontrolled interpretation carried out by these guardian bodies.

Consequently, through this "authoritative criterion", these "censors of the world" intend to monopolize the notion of right and wrong at a global level, demanding

[37] Max Silva Abbott, "Algunos de los nuevos derechos humanos como instrumentos de dominación", in: Manuel Ramos-Kuri, Augusto Herrera Fragoso, Manuel Santos, eds, *El Embrión Humano. Una Defensa Desde la Antropología, la Biología del Desarrollo y los Derechos Humanos*, Tirant Lo Blanch 2019, pp. 505-510.

complete obedience from democratic national legal systems to achieve its legitimacy (dictatorships do not take them into account).

These bodies require "periodic reports" from the States, in order to "monitoring the commitments undertaken" and "may formulate such observations and recommendations as it deems pertinent" (or judge the States, if it is a court), for the "progressive compliance" of these treaties.[38]

The foregoing explains why this parallel international legal order requires that national legal systems must adapt without delay to their criteria, taken as the "minimum standard", exceeding it, if possible, but never contradicting it.[39]

[38] The guardian bodies of human rights treaties in the region are:
a) The "Inter-American Commission on Human Rights" and the "Inter-American Court of Human Rights", created by the American Convention of Human Rights, "Pact of San Jose, Costa Rica" (Arts. 33-51, 70 and 73; 33 and 52-73, respectively).
b) The Inter-American Convention to Prevent and Punish Torture, refers to these same organizations (Art. 17).
c) The "Inter-American Economic and Social Council", and the "Inter-American Council for Education, Science and Culture", established in the Additional Protocol to the American Convention on Human Rights in The Area of Economic, Social and Cultural Rights, "Protocol of San Salvador". It is also possible to go to the Commission and the Inter-American Court (Art. 19).
d) The "Inter-American Commission of Women" was created by the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, "Convention of Belém Do Pará" (Arts. 10, 11 and 19).
e) The Inter-American Convention on Forced Disappearance of Persons, is also referred to the Commission and the Inter-American Court (Arts. XIII and XIV).
f) The "Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities", was created by the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities. It is also possible to go to the Commission and the Inter-American Court (Art. VI).
g) The "Inter-American Committee for the Prevention and Elimination of Racism, Racial Discrimination, and All Forms of Discrimination and Intolerance", was established by the Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance. In the same way, it is also possible to turn to the Commission and the Inter-American Court (Art. 15).
h) Exactly the same organizations are referred to in the Inter-American Convention Against All Forms of Discrimination and Intolerance (Art. 15).
i) Finally, in addition to the tasks that are also assigned to the Commission and the Inter-American Court (Art. 36), The "Conference of States Parties" and a "Committee of Experts", was created by the Inter-American Convention on Protecting the Human Rights of Older Persons (Arts. 33-35).

[39] Eduardo Ferrer Mac-Gregor and Carlos María Pelayo Möller, *Las obligaciones generales de la Convención Americana sobre Derechos Humanos (Deber de respeto, garantía y adecuación de derecho interno)*, UNAM / Instituto de Investigaciones Jurídicas / Comisión Nacional de los Derechos Humanos, *passim* (2017).

However, regardless of this situation's legitimacy –or lack thereof–, it is impossible for national legal systems to adapt so quickly to the evolving and flexible interpretation of international law.[40] And surely this is one of the reasons for the jurisprudential emergence of the doctrine of conventionality control by the Inter-American Court, which orders domestic judges to prioritize international criteria over local ones when resolving human rights cases, as mentioned earlier.

In this way, thanks to the control of conventionality, this "minimum standard" emanating from the jurisprudence of the Inter-American Court, always ends up winning –always–[41]. This occurs, evidently, by failing to apply local regulations in favor of international ones. But the same thing happens when carrying out a "compliant interpretation", since it is guided and dominated by these foreign criteria, so that its effects can be as drastic as those of non-application.[42] And finally, it also happens if the local standard is used, since this is possible and has been authorized only because this "minimum standard" has been adopted and exceeded. Consequently, implicitly or explicitly, the criteria of this parallel international law always end up being applied.

Therefore, it is always local law that must adapt to international law, but not the other way around. Thus, a notable "legal Copernican twist" occurs between States and international law, as states end up being dominated by their own creation.

Obviously, the above is not mentioned, at least openly. Instead, it is pointed out that there would be no hierarchy between national and international law,[43] since

[40] Max Silva Abbott, "La doctrina del control de convencionalidad: más problemas que soluciones", in: Max Silva Abbott ed., *Una Visión Crítica del Sistema Interamericano de Derechos Humanos y Algunas Propuestas Para Su Mejor Funcionamiento*, Tirant Lo Blanch 2019, pp. 200-205.

[41] For example, thanks to the downgrading of the status of the unborn child (Inter-American Court of Human Rights, *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C Nº 257); the evolution of the concept of family (Inter-American Court of Human Rights, *Case of Atala Riffo ad daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C Nº 239); new forms of discrimination (Inter-American Court of Human Rights, *Case of Pavez Pavez v. Chile*. Merits, Reparations and Costs. Judgment of February 4, 2022. Series C Nº 449) or indigenous property (Inter-American Court of Human Rights, *Case of the Afro-descendant Communities desplaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C Nº 270). All these matters have been influencing the legal systems of the region.

[42] In part and indirectly, Sagüés, supra note 27, pp. 17-18.

[43] Paola Andrea Acosta Alvarado, "Zombis vs. Frankenstein: sobre las relaciones entre el

both must work together in their common task of protecting human rights,[44] being possible to resort to one or the other under the *"pro homine"* principle,[45] independently of the formal rules of each one.[46]

However, international law always ends up triumphing, both for reasons of "form" and "substance". In form, since it establishes the rules of their mutual relationship (mainly thanks to the "*pro homine*" principle); and in substance, because by virtue of "minimum standard", international criteria always end up prevailing, whether openly or covertly.[47]

This is the reason why it is highly debatable that International Human Rights Law today has a "subsidiary" character, as its promoters insist.[48]

The foregoing means that the role of the States (at least the democratic ones) would become increasingly supportive and secondary, limiting themselves to humbly following or improving international criteria (thus losing considerable sovereignty and democratic self-determination), becoming a kind of amplifier of it, and placing all their resources at their disposal to make them come true. For this reason, conventionality control is also intended to be applied to the executive

Derecho Internacional y el Derecho interno", *Estudios Constitucionales*, vol. 14 Nº 1 (2016), pp. 29-31 and 53-55; Aguilar and Nogueira, supra note 13, p. 16; Castilla, supra note 25, p. 598.

44 Murillo, supra note 27, p. 25.

45 Castilla, supra note 10, pp. 149-153; Caballero, supra note 18, pp. 109-112, 128 and 130; Nogueira, supra note 18, pp. 1202-1203.

46 Henríquez and Núñez, supra note 22, pp. 338-339; partly, Nash and Núñez, supra note 26, pp. 224-225; Acosta, supra note 43, p. 33 (warning about this situation, from various perspectives and using different terminology).

47 Max Silva Abbott, "El control heterónomo de convencionalidad", in: Manuel Núñez Poblete ed., *Derecho Internacional, Derechos Humanos y Democracia. Liber Amicorum Eduardo Vio Grossi,* Universitarias de Valparaíso 2022 (forthcoming; developing this idea).

48 Juana Ibáñez Rivas, "Control de convencionalidad: precisiones para su aplicación desde la jurisprudencia de la Corte Interamericana de Derechos Humanos", *Anuario de Derechos Humanos*, vol. 8 (2012), p. 112; Manuel Núñez Poblete, "Introducción al concepto de identidad constitucional y a su función frente al derecho supra nacional e internacional de los derechos de la persona", *Ius et Praxis*, vol. 14 Nº 2 (2008), pp. 351-353; Karlos Castilla Juárez, "La independencia judicial en el llamado control de convencionalidad interamericano", *Estudios Constitucionales*, vol. 14 Nº 2 (2016), pp. 86-87 and 90; Néstor P. Sagüés, "El Control de Convencionalidad en Argentina. ¿Ante las Puertas de la «Constitución Convencionalizada»?", Conselho Nacional de Justiça 2016, p. 112; Eduardo Vio Grossi, "Jurisprudencia de la Corte Interamericana de Derechos Humanos: ¿del control de convencionalidad a la supra nacionalidad?", *Anuario de Derecho Constitucional Latinoamericano*, vol. XXI (2015), pp. 100-101.

and legislative branches,[49] so that they do not deviate from the jurisprudence of the Court when issuing their rules (laws, decrees, regulations, etc.), seeking to reach a sort of legal monism.

Similarly, democratic decisions would be limited by the "minimum standard",[50] generating a kind of democracy that is "tutored" or "protected" by these international human rights from a hierarchical approach. Local judges would thus become the first guardians to guarantee their submission through the application of conventionality control,[51] which is why a growing and aggressive judicial activism is advocated by delegates of the Inter-American Court.[52] And the same could happen with constituent power.[53]

The idea is to produce a growing standardization between both normative orders,[54] for which the Inter-American Court intends to become a continental constitutional court[55] and the American Convention on Human Rights a continental

[49] Eduardo Ferrer Mac-Gregor, "Control de Convencionalidad (Sede Interna)", in: Mac-Gregor et al., eds, *Diccionario de Derecho Procesal Constitucional y Convencional: Instituto de Investigaciones Jurídicas*, Universidad Nacional Autónoma de México 2014, p. 238; Nogueira, supra note 12, pp. 85, 93-94, 102-103 and 128; Sagüés, supra note 27, p. 18; Contreras, supra note 29, pp. 255-257.

[50] Aguilar, supra note 6, pp. 337-365; Víctor Bazán, "El Control de Convencionalidad: Incógnitas, Desafíos y Perspectivas", in: Víctor Bazán and Claudio Nash, *Justicia Constitucional y Derechos Fundamentales. El Control de Convencionalidad 2011*, Universidad de Chile 2012, p. 30; Hitters supra note 19, pp. 705-707; Ibáñez, supra note 48, pp. 103-104 and 109-113; Nash, supra note 19, pp. 498-499.

[51] Armin Von Bogdandy *et al.*, "A manera de prefacio. *Ius Constitutionale Commune* en América Latina: un enfoque regional del constitucionalismo transformador", in: Armin von Bogdandy, Mariela Morales Antoniazzi, Eduardo Ferrer Mac-Gregor, eds, *Ius Constitutionale Commune en América Latina. Textos Básicos Para Su Comprensión*, op. cit., p. 34; Murillo, supra note 27, p. 20; García Jaramillo, supra note 27, p. 138.

[52] Sergio García Ramírez, "Sobre el control de convencionalidad", *Pensamiento Constitucional*, Nº 22 (2016), p. 182; Armin Von Bogdandy, "*Ius constitutionale commune* en América Latina. Aclaración conceptual", in: Armin Von Bogdandy, Mariela Morales Antoniazzi, Eduardo Ferrer Mac-Gregor, eds, *Ius Constitutionale Commune en América Latina. Textos Básicos Para Su Comprensión*, op. cit., pp. 156-161; García Jaramillo, supra note 27, pp. 134, 136-143, 158-160 and 162; Piovesan, supra note 5, pp. 78 and 80-81.

[53] Néstor P. Sagüés, "Nuevas fronteras del control de convencionalidad: el reciclaje del derecho nacional y el control legisferante de convencionalidad", *Revista de Investigações Constitucionais*, vol. 1 Nº 2 (2014), pp. 26-27; Morales, supra note 1, pp. 433-434; Sagüés, supra note 25, p. 276.

[54] Filiberto Manrique Molina *et al.*, "Los retos y dificultades operativas del control de convencionalidad: una mirada desde el sistema jurídico mexicano", *Conflicto & Sociedad*, Vol. 3, N°2 (2015), pp. 20-21; Ibáñez, supra note 5, pp. 69-70.

[55] Ariel E. Dulitzky, "An Inter-American Constitutional Court? The Invention of the Conventionality Control by the Inter-American Court of Human Rights", 50 *Texas International*

constitution.[56] Therefore, it is intended that all the democratic States apply the *res interpretata* of this court with *erga omnes* effects, thanks to the work of their local judges (and other authorities) through the conventionality control doctrine. This system of precedents[57] (let us not forget: they are only the "minimum standard") aspires to homogenize local legal systems and achieve a "public order",[58] or an "inter-American *ius commune*"[59] on the continent, arriving at something similar to global constitutionalism.[60]

Therefore, the foundation of legitimacy of this process of primacy of International Law is the "minimum standard" (which is becoming increasingly demanding by virtue of the "principle of progressive development" or "no regression"); the tool to open the doors to the direct or indirect application of international law is the *"pro homine"* principle; and conventionality control would become the practical and concrete application of all of the above.[61]

Law Journal 46 (2015), pp. 64-65; Lawrence Burgorgue-Larsen, "La Corte Interamericana de Derechos Humanos como Tribunal Constitucional", in: Armin von Bogdandy, Héctor Fix-Fierro, Mariela Morales Antoniazzi, eds, *Ius Constitutionale Commune en América Latina. Rasgos, Potencialidades y Desafíos*, op. cit., pp. 421-457; Binder, supra note 25, pp. 169-170; Eduardo Ferrer Mac-Gregor, "El control difuso de convencionalidad en el Estado constitucional", pp. 187-188, https://archivos.juridicas.unam.mx/www/bjv/libros/6/2873/9.pdf (last visited Oct. 20, 2023).

56 Nogueira, supra note 18, p. 1188; Bazán, supra note 50, p. 25; Néstor P. Sagüés, "El 'control de convencionalidad', en particular sobre las constituciones nacionales", *La Ley* (2009), pp. 3-4, https://www.joseperezcorti.com.ar/Archivos/DC/Articulos/Sagues_Control_de_Convencionalidad_LL_2009.pdf (last visited Oct. 20, 2023).

57 Caballero, supra note 18, p. 133; Sagüés, supra note 27, p. 18; Hitters, supra note 19, pp. 705 and 707 (similar ideas, from different angles and depth).

58 Manuel Becerra Ramírez, "La jerarquía de los tratados en el orden jurídico interno. Una visión desde la perspectiva del Derecho Internacional", in: Sergio García Ramírez and Mireya Castañeda Hernández, eds, *Recepción Nacional del Derecho Internacional de los Derechos Humanos y Admisión de La Competencia de la Corte Interamericana*, Universidad Nacional Autónoma de México 2009, pp. 301-304; Humberto Nogueira Alcalá, "El uso del derecho convencional internacional de los derechos humanos en la jurisprudencia del Tribunal Constitucional chileno en el período 2006-2010", in: *Revista Chilena de Derecho*, Vol. 39 Nº1 (2012), p, 152; Ferrer, supra note 19, pp. 686 and 679-682.

59 García Ramírez, supra note 52, p. 175; Dulitzky, supra note 24, p. 548; Néstor P. Sagüés, "El «Control de convencionalidad» como instrumento para la elaboración de un *ius commune* interamericano", pp. 449-451 and 467, https://archivos.juridicas.unam.mx/www/bjv/libros/6/2895/15.pdf (last visited Oct. 20, 2023).

60 Aguilar, supra note 26, pp. 116, 116, 119 and 143; García, supra note 1, p. 122; Jorge Enrique Carvajal Martínez and Andrés Mauricio Guzmán Rincón, "Las instituciones del Sistema Interamericano de Protección a los derechos humanos: un análisis a sus procedimientos y orientación estratégica", *Revista Republicana*, vol. 22 (2017), pp. 190, 198-203 and 205.

61 Silva, supra note 47 (forthcoming).

4. Towards a single thought protected by the State

The remarkable prestige that human rights still have in the West, hand in hand with the work of their monitoring bodies, armed with an "infallibility complex", is imposing, with less and less dissimulation, a single thought that is increasingly difficult to resist, since it is currently considered that no one can be so heartless and vile not to enthusiastically support something as good and necessary for today's world as human rights,[62] elevated as it has been said, to the category of a new "Natural Law".

That is why human rights end up imposing their way of seeing things (by having a kind of *priority pass*), making dissidence or criticism increasingly difficult. Thus, because everything they "touch" becomes a dogma in our societies –despite its increasingly hierarchical origin–, what we call a "talisman effect" of human rights. But in addition, we must not forget that these rights are under permanent construction and reconstruction by the "censors of the world", raising the bar of the "minimum standard" more and more, thanks to the principle of progressive interpretation or no regression.

In fact, they have become so dogmatic, that those who disagree with their point of view will generally be accused of being arbitrary, discriminatory or of advocating hate speech. These are the "hinge-concepts", that seek to take out immediately and without the right to appeal anyone who opposes this dominant discourse.

Consequently, those who do not accept this state of affairs will be considered "heretics" of our time, and even a danger to society. For this reason, and in the name of these same human rights, they could be deprived of their own rights, despite human rights' supposedly universal nature, by opposing this kind of "hive thinking" that has ended up prevailing.

In short, these human rights would end up generating an authentic "thought police", ultimately dependent on these "censors of the world".

Finally, another aspect of great importance today, derived from the submission that is intended of democratic national legal systems to international law, is the growing role of the State in the implementation of these rights, which must be of

[62] Indirectly, Aguilar, supra note 6, pp. 344 and 346; Morales, supra note 2, pp. 273-274; Murillo, supra note 27, p. 20.

total support to making them a reality.[63] The foregoing, due to having freely and sovereignly committed to it by signing the treaties that gave rise to it.[64]

That is why it was pointed out that today a substantive content of national law is required. And since these rights have become a new "secular religion", we are ultimately in the presence of "confessional States",[65] being forced to adopt this substantive content derived from the "minimum standard" on which their legitimacy depends.

For the same reasons, since they are automatically assigned a positive content, human rights must affect all spheres of life.[66] With which, they give the State the perfect excuse to interfere in all areas of the existence of its citizens (life, family, childhood, sexuality, freedom of conscience, opinion, property, etc.). Therefore, far from being a kind of "shield" to protect against certain State interference to guarantee an area of freedom, today, the current human rights are quite the opposite.

5. Some conclusions

Perhaps the most important thing is to realize that the supporters of this process intend to give rise to two parallel legal orders, with international law as dominant and legitimizing, by endowing it with infallibility and unquestionable superiority (almost a deification), regarding it as the "minimum standard", and trying to turn the States into its mere executing instruments. This, because international law can always modify national law but not the opposite, except to improve it.

Thus arises a "heteronomous conventionality control" that forces local law to permanent adaptation.[67]

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63 Ferrer and Pelayo, supra note 39, *passim*.

64 Bazán, supra note 25, pp. 173-174; Sergio García Ramírez, "Admisión de la competencia contenciosa de la Corte Interamericana de Derechos Humanos", in: Sergio García Ramírez and Mireya Castañeda Hernández, eds, *Recepción Nacional del Derecho Internacional de los Derechos Humanos y Admisión de la Competencia de la Corte Interamericana*, Universidad Nacional Autónoma de México 2009, pp. 28-31; Aguilar, supra note 26, pp. 137 and 158.

65 "Leyes LGTBI: el nuevo confesionalismo de Estado", *Aceprensa*, 7 October 2016, https://www.aceprensa.com/sociedad/leyes-lgtbi-el-nuevo-confesionalismo-de-estado/ (last visited Oct. 20, 2023).

66 Cançado, supra note 4, pp. 87-88, 179-180, 279, 366 and 413-424.

67 Silva, supra note 47 (forthcoming).

Today's human rights, the "secular religion" of our time, seek to arrive at a single thought, by transforming what they defend into dogma (the "talisman effect"), and prohibiting dissent. But being in permanent construction and reconstruction, and not being a reality to discover but to invent, they are a perfect Trojan horse to introduce the content desired by the "censors of the world", and thus impose "human duties" on societies, being endowed with a presumption of legitimacy and considered a kind of new "Natural Law".

For the same reason, these rights allow the State to intervene and regulate everything, becoming a "Big Brother", to promote them, establish them, punish those who violate them and prevent future violations thereof. Consequently, and paradoxically, far from being a protection for our freedoms, human rights as we know them, are becoming a new form of totalitarianism and a subtle but effective instrument of domination.

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CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

DOI: 10.21697/CSP.2023.27.1.11

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St. John Paul II's Natural Law Legacy and International Human Rights

Culture of Human Dignity – A Road to Universal Brotherhood and Peace

Abstract: The text underscores the pivotal role of human dignity in shaping the notions justice, peace, and human rights in the 21st century. The author advocates a return to the core principles of key documents on this subject to counter the influence of various ideologies and totalitarian regimes. Highlighting secular and faith-based sources including the Universal Declaration of Human Rights and Vatican II Council Declaration, the text emphasizes human dignity as the meeting point for religious and secular humanists. It underscores the belief in the innate value of individuals and their equality in dignity, derived from the Judeo-Christian tradition. The three dimensions of Me, Thee, and We are explored, emphasizing personal uniqueness, respect for others, and societal responsibility. The text concludes by advocating for a culture of human dignity in politics, serving as the basis, purpose, and criterion for public policies, promoting equal dignity and fraternity for a just and unified society. The text discusses the historical evolution of the concept of human dignity in global constitutional history, highlighting its presence in contemporary constitutions and international declarations. It advocates the promotion of a culture of human dignity, encompassing gold and silver ethical principles. The conclusion emphasises the need for a renewed commitment to a culture of human dignity in line with the legacy of John Paul II.

Keywords: natural law, Universal Declaration of Human Rights, Dignitatis Humanae

"Peace is a fruit of justice". The core of justice today is based on the respect of fundamental human (civil, political, economic, social, cultural) rights of people. And the foundational principle of human rights is dignity. In order to make the 21st century more humane, we must return to the original meaning of key documents and definitions on this subject.

Around the world, the interpretation and agenda of human rights are hijacked today by various groups representing new ideologies or ethical relativism. Or they are refused and violated by totalitarian or autocratic regimes and by violent extremism.

The world needs active protagonists of a **CULTURE OF HUMAN DIGNITY** of all (protection and respect of human dignity) and for all (promotion and active support of human dignity).

It is an important and noble task to defend the universality of fundamental human rights and the human dignity of all people. St. John Paul II insisted on respect for human dignity in his teachings and in his life, in his words and deeds.

The following are three basic sources that articulate the priority of human dignity – two secular foundational documents for our society, and a faith document:

1. Universal Declaration of Human Rights (1948)
Preamble: Whereas **recognition of the inherent dignity** and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, (…)
Article 1
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

2. Charter of Fundamental Rights of the European Union (2000)
The EU Charter recognizes **dignity** as the first founding value of the Union and respects and protects dignity in the Article 1 of Chapter 1.

3. Vatican II Council Declaration Dignitatis Humanae **(1965)**
'**A sense of the dignity of the human person** has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a **responsible freedom, not driven by coercion but motivated by a sense of duty**' [DH 1].[1]

[1] Second Vatican Council, *Declaration on Religious Freedom "Dignitatis Humanae" on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious* (*DH*), 1, 7 December 1965, https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

This is the first paragraph of the Declaration on Religious Freedom made by the Second Vatican Council. It speaks to all of us today: '**The Council further declares that the right to religious freedom has its foundation in the very dignity of the human person.'** [DH 2].[2] We all know how active and important a role Cardinal Wojtyła played at the Council, and how active he was in the implementation of the Council conclusions.

The Judeo-Christian, Biblical tradition, as expressed in the Book of Genesis, states that mankind is created in the likeness and image of God (*Imago Dei*). This is the supreme source of human dignity. Christianity deepens this conviction through its belief that Jesus Christ, as the Son of God, in his terrestrial life became one of us. These acts of 'divinization of human dignity' invite us to respect the dignity of each human being and the whole creation as well [RH 10; UN 13].[3]

Respect of human dignity is **the meeting point of all religious humanists and secular humanists** (if they are really humanists). The convergence of different traditions and conceptions leads from the definition of a **common ground** to the promotion of a **common good. Dignity is the highest worth** (richness) that each person possesses, and therefore transcends the entire material world.

The **value of a human (person) is not in what he has, but in what he is**: a unique being with intellectual, spiritual, and material dimensions of life [SRS 28].[4] Each human being is a PERSON. **Only a person can have rights and duties** (the Christian view of integral personalism *versus* totalitarian collectivism or liberal individualism) [RH 17; DP 1].[5] A person is not a matter, a thing, an animal, or

[2] Second Vatican Council, *Declaration on Religious Freedom "Dignitatis Humanae" on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious* (*DH*), op. cit., 2.

[3] John Paul II, *Encyclical Letter "Redemptor Hominis"* (RH), 10, https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_04031979_redemptor-hominis.html; John Paul II, *Address to the 34th General Assembly of the United Nations* (UN), New York, 2 October 1979, https://www.vatican.va/content/john-paul-ii/en/speeches/1979/october/documents/hf_jp-ii_spe_19791002_general-assembly-onu.html.

[4] John Paul II, *Encyclical Letter "Sollicitudo rei socialis"* (SRS), 28, https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html.

[5] John Paul II, Encyclical Letter "*Redemptor Hominis*" (RH), op. cit., 17; Congregation for the Doctrine of the Faith, Instruction *Dignitas Personae* on Certain Bioethical Questions (DP), 1, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html.

an object. A person is always a SUBJECT with reason, conscience, and freedom [UNESCO 4].[6]

Dignity expresses the innate value of a person endowed with reason, free will, the capability to procreate and to build relations with other people. A person has fundamental, inviolable and inalienable rights and duties, which are implemented individually or in community with others.

Human dignity is the foundational principle of all human rights. In dignity, we are ALL EQUAL. In identity, we are ALL DIFFERENT (people of the past, presence, future). This is not a problem; this is the principle of creativity (as opposed to copying and cloning). In humanity, the global family is one. Unity in diversity is a humanist ideal. Unity in/and uniformity is a totalitarian ideal.

Human dignity can be articulated in three dimensions which are critical for a positive change in the human rights climate: **Me – Thee – We**. These three dimensions need to be brought together.

1. Me

Human dignity concerns me, my personhood, myself. My specificity is my uniqueness. In common with each and every person, past, present, and future (billions of people), **I am unique. And from this uniqueness, I draw my dignity and project my specificity.** This personal uniqueness is something original that nobody can ever replicate or replace. I am a specific and unique contribution to my fellow human beings. If my originality, authenticity, and uniqueness is not 'revealed' and 'fulfilled', it will be lost. My own dignity causes me to interpret the world, make choices, and interact with others, according to my own conscience, my reason, and my convictions. To do so I need to exercise all my freedoms: freedom of thought, of expression, of action.

2. Thee

Human dignity is not limited to my own freedom. **It includes the freedom of the other. It invites me to exercise tolerance and to define my limits, in order to respect the other**. This includes an imperative of equity and equality and, therefore, of justice. Human dignity is a responsibility that must be shouldered.

[6] John Paul II, *Address to UNESCO*, 4, Paris, 2 June 1980, https://inters.org/John-Paul-II--UNESCO-Culture.

If dignity gives rise to rights, it also implies duties and responsibilities. These responsibilities are not fixed or static, but must be developed and exercised, and maintained through time.

3. We

In addition, human dignity is not only an individual responsibility. **Since I am a part of a community, the dignity has also a collective, a social or societal dimension**. The "religious social responsibility" in particular is that of seeking the common good. For their part, religious actors need to contribute to the strengthening of social cohesion and justice in society.

A culture of human dignity is built upon the recognition and observance of the triple importance of human dignity in politics. Human dignity is, at the same time:

1) **The Departure Point** (basis) of public policy

2) **The Objective** (purpose) of public policies

3) **The Criterion** of adopted measures and utilized means.

The dignity of the human person represents a balance and interdependence of rights and duties, freedom, and responsibility (mature citizenship). The triangle of *ÉGALITÉ*, *FRATERNITÉ*, *LIBERTÉ* brings justice and common good to society only when all three components are present and strong. A culture of dignity is promoted when the human dignity of all is duly respected and protected [see: UNESCO 6-7; UN 14].[7]

Equal dignity gives each of us a place within one human family, one humanity. Therefore, the spirit of brotherhood and sisterhood is our duty and right. It means to treat others as brothers and sisters and to be treated as brothers and sisters.

The concept of dignity is basic to the reason and logic behind the universality of human rights. Dignity is the root and source of inalienable and undeniable rights

[7] John Paul II, *Address to UNESCO*, op. cit., 6-7; John Paul II, *Address to the 34th General Assembly of the United Nations* (UN), 14, New York, 2 October 1979, https://www.vatican.va/content/john-paul-ii/en/speeches/1979/october/documents/hf_jp-ii_spe_19791002_general-assembly-onu.html.

of each person. The universality of human rights is implicit in the logical character of fundamental human rights [see: WDP 3].[8]

And fraternity is the fruit of this conviction. Dignity is the root and fraternity is the fruit of these roots. One, equal dignity calls for one, equal fraternity. This represents one humanity and the universality of humankind [see: EV 19].[9]

Human dignity, universality of rights, and duty or privilege of fraternity are interrelated, indivisible – like roots, tree, and fruits. Without equal dignity, how could we speak about universality, the oneness of humankind, and the demands of fraternity?

The concept of human dignity entered global constitutional history in a small country – Ireland, in 1937. But after the tragedy of World War II, we can find it in many modern constitutions – those of Federal Germany and India, for example, but also in the UN Charter and the Universal Declaration of Human Rights. To bear more and better fruits of this universal, more humane approach to our conflictual world, we must cultivate this notion: the understanding and promotion of human dignity of all and for all. We all need to nurture a culture of human dignity [see: UNESCO 6-8].[10]

A culture of human dignity brings together one principle and two rules. It promotes Christian personalism and refuses both individualism and collectivism as extremes. This culture respects in society the Golden and Silver ethical rules.

The Silver Rule: "Do not do unto others as you would not have them do unto you".

The Golden Rule: "Do unto others as you would have them do unto you".

Both are very ancient. Both were quoted by Jesus Christ in the Gospel.

[8] John Paul II, *Message for the Celebration of the World Day of Peace* (WDP), 3, 1 January 1999, https://www.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-ii_mes_14121998_xxxii-world-day-for-peace.html.

[9] John Paul II, *Encyclical Letter "Evangelium Vitae" on the Value and Inviolability of Human Life* (EV), 19, https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html.

[10] John Paul II, *Address to UNESCO*, op. cit., 6-8.

Let me conclude by reflecting on the Declaration on Human Dignity for Everyone Everywhere, adopted in December 2018, in Punta del Este, Uruguay. By issuing the Punta del Este Declaration, its signatories wish to respect and protect the human dignity of every human person as his or her innate worth.[11] And to make an even stronger and active commitment, they subscribe to "human dignity for everyone everywhere" [see: SRS 26; EV 18-19].[12] Dignity is described here as the foundational principle, criterion, and key objective of human rights.

Despite many achievements of the landmark post-WWII documents and institutions, we need a positive change in the human rights climate. The Punta del Este Declaration is an invitation to the global community for an enriching conversation about "dignity for everyone everywhere" and an invitation to tap the inspirational potential of the notion of human dignity. Economy and security are necessities like daily bread. But culture gives sense to our living together, gives meaning to our relations. While economy and security are the roots, culture is the flowering.

Speaking in time of war in Ukraine, it is an urgent moment to do more and to do better for the culture of human dignity. There are many commendable initiatives on peaceful coexistence. Change comes from words to deeds to habits as they form character, culture, and destiny. A culture of human dignity for all is the opposite of intolerance. It stands against the allies of evil: indifference, ignorance, and fear.

The 21st century can be an era of hope replacing the past century of ideologies, violence, wars, genocides, and divisions. However, we must stand up to our promise that NEVER AGAIN will there be a genocide. We must learn how to live together (not just to exist) in diversity. Special attention must be given to young people. Working with youth, for youth, through youth, and finding a peaceful future for the MENA region, for Ukraine and Eastern Europe, for the Israeli-Palestinian conflict, for a democratic Pakistan and Nigeria, for peace and real development in the ACP countries.

[11] *Punta del Este Declaration on Human Dignity for Everyone Everywhere: Seventy Years after the Universal Declaration on Human Rights*, December 2018, https://classic.iclrs.org/content/blurb/files/Punta%20del%20Este%20Declaration.pdf.

[12] John Paul II, *Encyclical Letter "Sollicitudo rei socialis"* (SRS), op. cit., 26; John Paul II, *Encyclical Letter Evangelium Vitae on the Value and Inviolability of Human Life* (EV), op. cit., 18-19.

Respect for human dignity starts with triune personal freedom: freedom of thought, conscience, and religion. *Homo rationalis, homo moralis and homo religiosus* is one integral person. My hope and dedication are for a renewed, strong commitment to the culture of human dignity, in line with the spiritual legacy of John Paul II.

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Miscellanea

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

DOI: 10.21697/CSP.2023.27.1.12

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Dilemmas Faced by Polish Migrants in the UK Concerning Brexit and Return Migration

Abstract: This paper presents the results of an original quantitative sociological study conducted in Autumn 2019 on a sample of 620 Polish migrants living in London, Oxford, and Swindon. The study was conducted using a group-administered questionnaire. It was primarily to address the question of whether they intend to return to Poland and when. We identify some significant factors influencing their choices. Those are the length of stay in England, their financial situation, their knowledge of English, their ability to assimilate culturally, their relations to the families in Poland, homesickness, and better religious education of children. Religious issues, although mentioned, are less critical; however, a deeper statistical analysis allows to understand the religious background more broadly, to provide a clearer image of the respondents' deep motivations.

Keywords: Brexit, Polish migrants, economic migration, religiosity of migrants, Polish parishes

Introduction

There have been many studies and analyses of the post-accession migration of Poles, especially to the UK. Even so, few empirical studies have estimated how many people would be returning from Britain to their country of origin in the aftermath of Brexit. This sociological study focuses on Polish immigrants to the United Kingdom, with particular attention on post-accession migrants. We have chosen Poles living in three areas in England with diverse demographic and cultural backgrounds for this study. Swindon is a typical working-class town; Oxford, an example of a university city; and London, the largest urban area with a distinctive size and diverse social, economic, cultural, and technical and infrastructural characteristics. The aim of this paper is to describe the diversity of remigration trends, based on the migrants' current place of residence (Swindon, Oxford, London) and to explore the motivations behind the decision either to return to Poland, for those who plan to return soon, or for those who are undecided or who consider remigration a possibility in the future. All respondents were reached through Polish parish centres, around which many Polish communities' lives in the UK are concentrated. It is important to note that cities and towns account for the largest share of the population in the UK. A document by the UK Department for Environmental Food and Rural Affairs from January 2019 shows that in late 2017/early 2018, only 9.5 million people—i.e., 17.0% of the country's population—lived in rural areas, while about 495.700 people, or 0.9% of the British people, lived in rural settlements in a sparse setting [Government Statistical Service, 2019: 15]. Even though the studied sample was selected based on purposive sampling, the above facts do not make it more challenging to draw reasonable conclusions about the general population of Polish post-accession migrants to the United Kingdom and to construct future scenarios for economic migration developments: on the contrary, they make it far more manageable.

Poles in the United Kingdom, in the light of recent social studies

Office for National Statistics data published in 2018 shows that the estimated number of Poles living in the United Kingdom is 905.000; 832,000 were born in Poland. It is necessary to note that these figures constitute a severe underestimate, as they fail to account for people who have not registered anywhere or who work with no legal authorization. Furthermore, over 12.000 Poles acquired British citizenship last year and therefore are not included in these statistics. The figures reported in late 2018 (905.000) are lower by 116.000 than those from late 2017 [Ceglarz 2019]. UK statistics clearly show that this drop in the number of Poles has been the first such dramatic decrease since the opening of the borders

for free trade and movement of people when Poland joined the EU in 2004. It is important to note that before Poland acceded to the European Union, there had been about 70.000 Poles living in the UK. In 2013, this number increased nearly tenfold.

In both Polish and British academic sources, publications have sought to keep up to date with the situation of migrants in the context of rapid changes in political decisions and postponement of the Brexit date, which could be observed back in the autumn of 2019. One of the most influential publications on this topic is "And then came Brexit: Experiences and plans of young EU migrants in the London region" [2017] by Aija Lulle, Laura Moroşanu, and Russell King. The authors conducted sixty in-depth interviews among students and young employees, both skilled and unskilled, from Ireland, Italy, and Romania, who moved to London in late 2015 or early 2016, just before the referendum. A further 27 interviews were carried out after the referendum. The study showed that, in the study group, Brexit made people feel uncertain about their plans and unsure whether to stay or go back home or perhaps emigrate elsewhere [Lulle, Moroşanu, and King 2018: 9]. A new sociological notion that has emerged in connection with this situation is Duncan Scott's "the tactics of belonging: the idea is becoming more and more popular, and Brexit can only contribute to its popularity" [Scott 2013].

There is also a study by Louise Ryan, in which she relies on Mark Granovetter's theory of embeddedness to study Poles in London to explore how these migrants are negotiating attachment and the sense of belonging as dynamic temporal, spatial, and relational processes? Ryan advocates adopting the concept of differentiated embedding, which can provide a frame of reference for studying how EU migrants living in the UK respond to Brexit [Ryan 2018]. In her publication "Security of Polish economic migrants in Great Britain in the light of Brexit", Katarzyna Gi erczak from the University of Wrocław claims, supported by a detailed analysis, that economic factors, such as an increase in prices, the depreciation of the pound, socio-cultural factors, and an increase in discrimination and xenophobia will constitute some of the key factors influencing the sense of security among Polish migrants following Brexit [Gierczak 2018: 33; Rzepnikowska 2018], thus strongly influencing their decisions about where to live and work.

Brexit reflects a political strategy designed to achieve a national reawakening and restore social solidarity among British people, something at least some of its advocates seem to believe. It certainly suggests that some changes are about to

occur, not only in the UK but also in continental Europe. In terms of security, it may have severe consequences for social solidarity throughout Europe as a whole [Frerichs and Sankari 2016]. Therefore, considering the broadly defined community of European countries, including the UK, whatever the consequences of Brexit turn out to be, there is another issue we wish to emphasize in this study. This problem is the considerable uncertainty faced by migrants about their social and other rights, including their right to work. This has been described in sociology as the precariat, theoretically developed and popularised by Guy Standing [2011]. Regarding Brexit, the concept of the precariat has been analysed by Duda-Mikulin [2018], who focuses mainly on the situation of women in the UK labour market. Polish migrants represent an illustrative example of large-scale economic migration under the new structural conditions of intra-European migration. Migration involves a specific risk, and migrants are likely to face uncertainty regarding working and living conditions. Duda-Mikulin has identified a perception that seems to affect British society at large and migrants in particular—an all-pervasive feeling of uncertainty, not only about work but indirectly about virtually all areas of human activity [Duda-Mikulin 2018: 10]. Regarding Brexit, the precariat is, without question, a new ethical and social problem.

The situation of Poles in the UK has also been examined in a recent study by Kate Botterill and Jonathan Hancock. Based on original qualitative data collected in Edinburgh following the referendum, those authors read the spatial identities and practices of Polish nationals living in Scotland. They use data they collected during biographical narrative interviews to determine how the referendum's outcome has impacted immigrants' attachment to place and nation. Their study provides some fascinating insights, one of which is that Polish nationals are in the process of rethinking their spatial identities following the Brexit vote. The study demonstrates the complexity of the spatial uniqueness of Polish migrants: they are not fixed but involve multiple scales of belonging, from subnational to supranational or post-national. The data had been collected to reflect the immediate reactions of Poles living in Scotland to the decision for Britain to leave the EU. The authors of that study argue that the immediate aftermath of the vote gave rise to a range of conflicting emotions and complex strategies of resistance [Botterill and Hancock 2018: 8]. The Glasgow and Edinburgh study is interesting, not only in sociological but also in historical terms. It captures a certain mood among Polish migrants right after the publication of the referendum results.

Given the subject matter of this article, a publication that seems crucial is a 2016 qualitative study by Derek McGhee, Chris Moreh, and Athina Vlachantoni from the University of Southampton, UK [2017]. They collected data online over the four months preceding the referendum, in a questionnaire running from 11 March 2016 to 23 June 2016. Using a sample of 894 Polish respondents, they examine the attitudes of Polish emigrants towards the referendum on Britain's membership in the EU and its impact on their lives. Considering the timeframe of that study, it can be used for comparative purposes, as the findings presented in this study are from October 2019.

All the mentioned sources present the importance of Brexit and the uncertainty of migrants who arrived in recent years and have adapted to the incoming changes. One of their main dilemmas was whether to stay there anyway or to arrange a return. To determine their opinions and doubts, we followed the field research process described below.

Data and Methods

Using quantitative research methodology, we conducted an empirical study using "Poles in the United Kingdom in the face of Brexit', a survey questionnaire designed for a larger project that relies on the knowledge, opinions, and behaviour of people living in the UK concerning the UK's withdrawal from the European Union. As part of this empirical project, between September and October 2019, we surveyed 620 people. For sociological testing, we used the group-administered questionnaire method, the sample being selected based on how easy it was for us to meet with and survey the respondents. As a result, we decided to conduct the sociological study on the most extensive available communities of adult Poles in the UK, namely those in Polish parishes and Polish Saturday schools (teachers, office clerks, parents, and carers). This made it far easier to conduct the quantitative empirical study in the immigrant diaspora community, who were not easy to contact. Information regarding the survey and the collection of questionnaires was carried out around Polish Catholic parishes, led by priests as part of the Polish Catholic Mission in Great Britain and Wales in these cities. These centres record not only religious matters but also the social and cultural life of the Polish diaspora. This has been the case since the time of the historical Polish migration after World War II. Even so, after the mass post-accession migration in 2004 and subsequent years, the number of migrants increased significantly.

Intention to stay or to return

It is important to note that this sociological study coincided with "Brexit fever". In the last quarter of 2019, it looked as if the so-called Brexit scenario—a clean break from the EU—would implemented by the House of Commons in the British parliament. This would lead to several consequences for both the EU and the UK. Consequently, it became front-page news in British and global mass media. Therefore, it seemed reasonable for us to ask respondents, "*Do you intend to return to Poland (and if you do, when)?"*

The percentage of respondents interested in returning was the highest among respondents with primary education (60.4%), people working physically (61.5%), assessing their financial situation as "average or bad" (61.4%), and declaring a poor proficiency of the language English (66.7% of respondents declaring a willingness to return to Poland declared deficient or no language knowledge). On the other hand, the desire to return to Poland in the coming years (reported in total by 23.5% of the respondents) was the highest among people with secondary or higher bachelor's education (26.1% and 26.5% respectively), and blue-collar workers – (29%). Interestingly, people assessing their financial situation as "clearly good" were also more likely to return faster (30.7% chose this answer). Similarly, a greater tendency to contemplate a quick return was found amongst those staying in the UK for the shortest time (34% among those staying less than five years, compared with 10.3% among those waiting for 20 years and longer). On average, every seventh respondent decided to remain in the UK permanently. Logistics analysis showed the key factors influencing these attitudes. A relatively greater desire to return to Poland was declared by people who remained in the UK for a shorter time, were more involved in the activities of Polish diaspora organizations, and those who work physically (including those who are unemployed).

Logistic regression models were used for analyses, and, in this context, it was necessary to transform selected dependent and independent variables under the assumptions of the analysis. Affirmative answers to this question (i.e., within a year, within a few years, in an indefinite future) were further decoded as "1-desire to return to Poland", while negative and undecided (i.e., never, hard to say) answers were recoded as "0-no desire to return". Such defined willingness to return was expressed by half of Swindon respondents (48%), over 55% of Oxford respondents, and almost 60% of respondents in London. One in five respondents in Swindon (20.5%) and one in four from Oxford and London (25.1% and 25.5%, respectively) declared a wish to return to Poland in the near future; the average answer to this

question for all three locations amounted to 53.8% expressing a desire to return to Poland, and 23.5% expressing a desire to return in the coming years.

Table 1. *Do you intend to return to Poland (and if you do, when)?* [data in %]

		Willingness to return to Poland	*Willingness to return to Poland in the coming years*
Total		53.8	23.5
Sex	*Men*	*58.7*	*27.1*
	Women	*50.6*	*21.0*
Age group	*Below 30 years*	*54.4*	*27.9*
	30-34	*62.7*	*27.7*
	35-39	*46.9*	*20.1*
	40-44	*52.3*	*21.2*
	45-49	*59.3*	*20.3*
	50 years and more	*57.6*	*27.3*
Place of residence	*Swindon*	*48.0*	*20.5*
	Oxford	*55.4*	*25.1*
	Londyn	*59.6*	*25.5*
Education level	*basic or basic vocational*	*60.4*	*14.6*
	general, technical or post-secondary	*58.0*	*26.1*
	higher vocational (bachelor's)	*53.8*	*26.5*
	higher master's or doctoral degree	*48.9*	*21.5*
Professional activity	*Blue-collar*	*61.5*	*29.0*
	White-collar	*47.1*	*18.4*
Financial status	*Average or poor*	*61.4*	*23.8*
	Satisfactory	*45.6*	*19.0*
	Good	*54.5*	*30.7*
Religious practices	*occasional or non-practicing practitioners*	*50.4*	*22.2*
	practitioners rarely	*63.9*	*27.8*
	practicing irregularly	*54.9*	*24.1*
	practicing regularly	*50.4*	*21.9*
Knowledge of English	*Poor or no knowledge*	*66.7*	*28.2*
	Communicative	*63.9*	*31.6*
	Good	*56.0*	*24.4*
	Fluent	*43.3*	*17.0*

Involvement in the activities of Polish organizations	*No involvement*	*47.5*	*14.4*
	Low involvement	*57.7*	*26.1*
	Moderately involved	*56.6*	*30.1*
	involved	*60.8*	*28.4*
	Very involved	*50.7*	*21.1*
Length of stay in the UK	*Less than 5 years*	*65.0*	*34.0*
	5-9 years	*65.6*	*33.3*
	10-14 years	*50.8*	*20.3*
	15-19 years	*44.3*	*17.2*
	20 years or more	*37.9*	*10.3*

To sum up, even though the central variable does not produce statistically significant differences between the answers, it seems reasonable to observe that one in every four respondents intends to return to Poland within a year or in the near future. More than a half of respondents want to return eventually. An interesting group is represented by the undecided, since it is they who will determine how the future of post-accession migration to the UK plays out, whether they join the ranks of those who have already decided to stay in the UK or follow those who have resolved to remigrate.

The dilemma of whether to stay or return is primarily a question of the financial situation of the respondents. There are two powerful trends among immigrants. Those who had improved their families' financial situation as a result of personal advancement were twice as likely to say they wanted to stay in the UK, or at least postpone their decision to return to Poland until some unspecified time in the future, compared with those who, having achieved sufficient financial independence, wanted to return to Poland within the next few years. Therefore, one trend is that, as the economic situation deteriorates, there is an increase in the number of people who want to return to Poland at some unspecified time in the future (financially very comfortable 54.5%; relatively comfortable 45.6%; average or poor 61.4%). There is also a further contrary trend regarding the decision to stay in the UK: the better the financial situation of the respondent, the more likely they are to say they want to remain (financially very comfortable 20.5%; relatively comfortable 16.9%; average or poor 7.6%). The sense of security provided by financial well-being is sufficient and satisfactory for those respondents not to consider returning to Poland or postpone this decision to some unspecified time in the future. Returning to Poland within the next year is considered by every tenth respondent who is very comfortable in the UK (10.2%) and by half as many

of those who described their financial situation as relatively comfortable (5.3%). About one in fifteen respondents who described their financial situation as average or poor do not see any future in a continued stay abroad and intend to return to Poland within a year (6.6%). The decision to emigrate within the next few years proved to be nearly twice as likely among people who are satisfied with their financial conditions (financially very comfortable 20.5% or relatively comfortable 13.5%) than those who consider their situation not satisfactory (average or poor 17.1%). The most substantial number of people who had decided whether to stay or leave was found in the group who described their financial situation as relatively comfortable (36.8%). Indecision over this was reported by three in ten people who expressed their financial concern as average or poor (30.8%, and one in four who considered themselves very comfortable (25.0%).

Plans to leave the UK in the near future were reported by almost one in three men and a slightly lower number of women (M=27.1%; W=21%), predominantly the youngest immigrants (<30 years 27.6%), followed by those who during the study were 30–34 (27.7%), or over 50 (27.3%), while people between the ages of 35 and 39 (20.1%), 40–44 (21.2%), and 45–49 (20.3%) were the least likely to have such plans. Almost half as many people people with primary or vocational education considered an early return compared with holders of a Bachelor's degree (14.6% vs. 26.5%), and by about one in five people with a Master's degree (21.5%) or secondary or post-secondary education (26.1%). Such a decision was reported almost twice as often by people involved with Polish community organizations than those who were not (28.4% vs. 14.4%), and by one in five people closely involved in Polish community organizations (21.1%).

One in every six women (16.0%) and one in ten men (10.6%) had not decided whether to return to Poland. Such an intention was declared by one in five of the youngest immigrants (<30 year-olds 20.6%), a slightly lower number of the oldest (>50 year-olds 18.2%), and far fewer people from the other age groups (45–49 year-olds 11.9%; 40–44 year-olds 12.9%; 35–39 year-olds 12.8%; 30–34 year-olds 10.7%). The highest levels of indecision (represented by the answer "It's hard to tell") were found in four in every ten respondents aged between 35 and 39 (40.0%), one in three people aged 40–44 (34.8%), a slightly lower number of people aged 45–49 (28.8%), over one in four people aged 30–34 (26.2%), and a slightly lower number of the youngest immigrants (25.0%). In contrast, the lowest levels were represented by people aged 50+ (24.2%). In terms of involvement with Polish community organizations abroad, such an answer was given by one in three closely involved

respondents (31.0%) and almost as many moderately (30.8%) and uninvolved people (28.9%), as well as those actively involved (28.4%).

While this sociological study does not indicate that intellectual competence in English is a strong predictor of staying abroad, there is a noticeable trend where the better the respondents' knowledge of the language, the less likely they are to leave (poor or no English language skills 38.5%; working knowledge 32.1%; intermediate 31.3%; fluent 26.1%). An intention to return within a few years was expressed by every sixth person fluent in English (17%). This sentiment was shared by nearly twice as many respondents who considered themselves intermediate language speakers (24.4%). A similar decision was made by one in three people who had a working knowledge of English (31.6%), and by more than one in four of those who had poor or no English language skills (28.5%).

The UK's immigration policy has existed for many years. It dates back to the late nineteenth century, from the time of a liberal immigration regime for immigrants from Europe and former British colonies, to active efforts to help integrate migrants from refugee camps in the aftermath of World War II; and then from the strict policy in the 1960s, associated with the seemingly endless influx of foreigners into the UK, to the "zero immigration policy" of the 1990s, to a complete reversal of the immigration policy in 2004 caused, for example, by rapid economic growth and a workforce shortage [Fihel and Piętka 2007: 5–6]. These shifts in immigration rules, especially over the last several decades, seem significant here. Having assessed the research data collected, we decided to adopt length of stay in the UK as the independent variable. We identified five periods, whose distribution approximates perfect normal distribution and corresponds to historical developments in the global economy and the UK's migration policy. The groups we identified were as follows: Polish immigrants who arrived in the UK before 1999; those who arrived in the UK between 2000 and 2004 (2000 was the year the Treaty of Nice was drafted to allow the European Union to admit the new Member States); the first wave of economic migrants immediately following Poland's accession to the EU (2005–2009); the second wave of economic migrants (2010–2014), which started right after the global financial crisis, which was symbolized by the collapse of the American investment bank Lehman Brothers; and the most recent Polish migrants who came to the UK after 2015. An intention to return to Poland at an unspecified time was declared by more men as women (M=58.7%; W=50.6%), with slightly more people over fifty (57.6%) compared with other age groups (45–49 year-olds 59.3%; 40–44 year-olds 52.3%; 35–39 year-olds, >30 year-olds 54.4%).

The age group of 30–34-year-olds was most likely to return to Poland, however with no detailed plans: 62.7% declared a generalized will to return.

Motivations behind the decision to remigrate

The next question asked in our survey questionnaire was about the declared motivations behind returning to Poland. Statistical analysis was used both for the respondents who had already decided that they would leave the UK and for those who had not yet made up their minds but expressed some opinion on the matter.

More than half of the respondents from London and Oxford reported separation from family and weakening family bonds (65.2% and 63.6%, respectively) as the main reasons for returning to Poland. This opinion was shared by a slightly lower number of people living in Swindon (62.4%). The most popular motivation behind returning to Poland was nostalgia or homesickness (London 45.2%; Oxford 42%; Swindon 43%). Improvement in the quality of life in Poland encouraged more than one in three people living in London (37.8%), one in four living in Oxford (28%), and one in five living in Swindon (25.5%) to consider remigration. Weakening connections with Polish culture, customs, and traditions as the motivation behind the decision to remigrate was slightly more frequent among people living in Oxford than among those from Swindon or London (28% vs. 24.8% and 24.4%, respectively). One in every five Poles living in the UK (Oxford 25.9%; London 24.4%; Swindon 24.2%) might consider leaving due to the lack of acceptance of multiculturalism and ideological diversity. The argument for a better religious education for children in Poland compared with the UK was given by almost twice as many respondents from Oxford (22.4%) as from London (12.6%), and by one in every five Poles from Swindon (18.1%). The argument concerning children's religious upbringing was also more often given by those participating in the religious life of the parish. Better quality and accessible religious education in Poland is more likely to be an argument for leaving for men than for women (M=21.8%; W=14.8%); for thirty-somethings (30–34 year-olds 2.4%; 35–39 year-olds 18.3%) rather than for forty-somethings (40–44 year-olds 11.5%; 45–49 year-olds 9.5%); and for similar numbers of the youngest (<30 year-olds 21.3%) and oldest immigrants (>50 year-olds 20.4%). Health issues were the least popular reason for returning to Poland from the UK. Health was cited by similar numbers of men and women (M=3.2%; W=3.8%), more often, unsurprisingly, by persons aged 50+ (10.2%), and least often by thirty-somethings (30–34-year-olds 1.6%; 35–39 year-olds 2.5%) and those younger than 30 (2.1%).

Table 2. What are your main motivations for returning to Poland? [data in %, numbers present percentage of respondents in various categories who answered positively]

		Separation from family / weakening of contacts with family	The disappearance of Polish culture, customs, and traditions	Injury to health	Improving the quality of living in Poland	Guarantee of the religious education of children	Longing, nostalgia for the country	A multicultural dispute in the UK, ideological incompatibility
Total		**63.7**	**25.8**	**3.5**	**30.2**	**17.8**	**43.3**	**24.8**
Sex	Men	54.5	25.6	3.2	36.5	21.8	42.9	28.2
	Women	69.6	25.1	3.8	26.2	14.8	44.1	23.6
Age	below 30 years	72.3	34.0	2.1	27.7	21.3	34.0	21.3
	30-34	68.8	32.8	1.6	21.9	23.4	40.6	26.6
	35-39	70.0	26.7	2.5	28.3	18.3	40.0	30.8
	40-44	65.5	23.0	3.4	32.2	11.5	49.4	26.4
	45-49	45.2	11.9	2.4	40.5	9.5	50.0	31.0
	50 years or more	55.1	18.4	10.2	34.7	20.4	55.1	6.1
Place of residence	Swindon	62.4	24.8	1.3	25.5	18.1	43.0	24.2
	Oxford	63.6	28.0	4.2	28.0	22.4	42.0	25.9
	Londyn	65.2	24.4	5.2	37.8	12.6	45.2	24.4
Level of education	basic or basic vocational	48.6	27.0	5.4	32.4	16.2	35.1	8.1
	general, technical or post-secondary	69.3	27.3	3.3	33.3	22.7	42.7	26.7
	higher vocational (bachelor's)	55.1	25.6	2.6	29.5	15.4	46.2	28.2
	higher master's or doctoral degree	66.9	22.9	3.2	27.4	14.0	45.2	24.8

Professional activity	Blue-collar	63.0	28.2	3.2	33.8	22.7	45.4	24.5
	White-collar	65.2	22.5	2.8	24.7	10.1	42.1	25.8
Financial situation	Average or poor	66.5	23.0	5.0	37.3	19.9	47.2	28.0
	Satisfactory	62.7	22.9	1.2	25.9	12.7	43.4	20.5
	Good	59.3	25.4	3.4	22.0	20.3	33.9	30.5
Religious activity	occasional or non-practicing	58.4	22.1	1.3	31.2	9.1	41.6	16.9
	practitioners rarely	73.3	32.0	6.7	28.0	16.0	57.3	17.3
	practicing irregularly	66.4	24.8	3.5	33.6	15.9	38.1	27.4
	practicing regularly	60.9	24.4	3.2	27.6	23.7	41.7	31.4
Knowledge of English	Poor or no knowledge	71.0	25.8	3.2	32.3	29.0	45.2	25.8
	Comunicative	60.6	22.1	5.8	32.7	16.3	46.2	22.1
	Good	61.1	28.2	1.3	28.9	22.8	44.3	28.9
	Fluent	67.4	23.9	4.3	29.7	10.1	39.9	22.5
Involvement in the activities of Polish organizations	No involvement	66.4	19.6	1.9	22.4	17.8	43.0	17.8
	Low involvement	63.4	30.7	2.0	30.7	14.9	45.5	32.7
	Moderately involved	65.7	24.8	2.9	35.2	18.1	41.9	26.7
	involved	64.2	34.0	9.4	35.8	20.8	39.6	28.3
	Very involved	54.3	21.7	6.5	26.1	19.6	50.0	17.4
Length of stay in the UK	Below 5 years	65.0	28.8	1.3	21.3	20.0	33.8	20.0
	5-9 years	72.4	31.6	3.9	25.0	22.4	42.1	31.6
	10-14 years	63.5	22.8	2.4	32.9	16.8	48.5	28.7
	15-19 years	64.0	26.7	8.0	32.0	13.3	44.0	22.7
	20 years or more	31.3	6.3	6.3	62.5	6.3	56.3	6.3

Isolation from family as the primary reason for returning to Poland was reported more often by women (W=69.6%; M=54.5%) and by people aged 34 or less (<30-year-olds 72.3%; see Table 2. for details), and less frequently among those respondents with primary or vocational education (48.6%) than the more highly educated (see Table 2). Simultaneously, the proportions were similar between those working in blue-collar jobs and those in white-collar jobs (63% vs. 65.2%, respectively). Regarding the independent variable financial situation, the less affluent the respondent was, the more they seemed to miss their family (very comfortable 59.3%; relatively comfortable 62.7%; average or poor 66.5%). Compared to those who considered themselves fluent or intermediate in English or with a working knowledge of English, those with poor language skills were more likely to feel cut off from their family (67.4%, 61.1% vs. 71%, respectively). Involvement with Polish community organizations abroad was slightly more likely to make up for the lack of contact with loved ones among people who were closely or actively involved, compared to those with moderate, low, or no involvement (54.3% and 64.2% vs. 65.7%, 63.4%, and 66.4%, respectively). The intention to leave the UK and return to Poland because of separation from family was much more often declared by those respondents who arrived in the UK between 2010 and 2014, and the most recent immigrants who had been in the UK for up to five years (72.4% and 65%, respectively), compared to those who immigrated before 1999 (31.3%). A longing for one's close relatives was expressed by more than half of respondents who had been living abroad for 10–14 years (63.5%) or slightly longer (15–19 years 64%). It should be noted that for Poles in the UK, family is still one of the most important arguments for returning to Poland if emigration has forced separation from family members. If parents have children who were born in the UK and for whom English is the first language, they often think about staying in emigration for the sake of their children (Fel, Kozak and Wódka 2022: 97-121).

A sense of nostalgia for their homeland was felt by more than one in three men (42.9%) and slightly more women (44.1%), usually by the oldest participants in the study (>50 year-olds 55.1%; 45–49 year-olds 50%); by only one in three of the youngest immigrants (<30 year-olds 34%), usually with a Master's degree (45.2%) and least often with primary or vocational education (35.1%). Being homesick was more frequently reported by blue-collar workers than white-collar ones (45.4% vs. 42.1%), those who were not that proficient in English (working knowledge 46.2%; poor or no English-language skills 45.2%; intermediate 44.3%; fluent 39.9%), and those who had arrived in the UK before 1999 (56.3%) in contrast with those who had lived there for up to five years (33.8%). We also observed that the

less affluent the respondent was, the more homesick they seemed to feel (financially very comfortable 33.9%; relatively comfortable 43.4%; average or poor 47.2%).

The recent improvement in the quality of life in Poland encouraged one in three men (36.5%) and one in four women (26.2%) to consider returning. This was more often true for older immigrants to the UK (>50 year-olds 34.7%; 45–49 year-olds 40.5%) than for younger thirty-somethings (35–39 year-olds 28.3%; 30–34 year-olds 21.9%), usually moderately involved with Polish community organizations (35.8%) and less frequently showing no involvement whatsoever (22.4%). Those were twice as likely to be people who had been living in the UK the longest (62.5%) compared with those who had immigrated up to five years ago (21.3%). What was unsurprising was that an improvement to the quality of life was more likely to be cited as their motivation for returning to Poland by respondents who were less comfortable financially (very comfortable 22%; relatively comfortable 25.9%; average or poor 37.3%). A further noticeable trend was that more educated people were less likely to return to Poland because of the improvement in the quality of life there (primary or vocational education 32.4%; secondary or post-secondary education 33.3%; Bachelor's degree 29.5%; Master's degree 27.4%). Those who were more proficient in English were less likely to consider returning to Poland because of its improving quality of life (intermediate 28.9%; fluent 29.7%) compared with those who believed themselves to have a working knowledge of English, or who admitted to being unable to speak the language (32.7% and 32.3%, respectively).

A decline in Polish culture, customs, and traditions as the answer to the question about respondents' motivations behind returning to Poland was almost equally popular among men and women (M=25.6%%; W=25.1%). Those were the least likely to be forty-somethings (45–49 year-olds 11.9%; 40–44 year-olds 23%) and most likely to be people aged 34 or under (<30 year-olds 34%; 30–34 year-olds 32.8%). They were more often people with poor or no English language skills, compared with those who were fluent (25.8% vs. 23.9%); least often people with no involvement in Polish community organizations (19.6%); and most often those who considered themselves actively involved (34%). A decline in their culture, customs, and traditions proved to be the least disturbing for Polish immigrants to the UK who arrived there before 1999 (6.3%), and for one in four of those who came in the first decade of the new millennium (2000–2004 26.7%; 2005–2009 22.8%). Those who were the most worried about this were the most recent immigrants, who came to the UK in 2010–2014 (31.6%) or after 2015 (28.8%).

Multicultural issues might be one of the many arguments for returning to Poland for 28.2% of men and 23.6% of women, more often aged 45–49 (31%) and less often aged 50 or more (6.1%), and less often with primary or vocational education (8.1%), compared with those with secondary or post-secondary education (26.7%), a Bachelor's degree (28.2%) or a Master's degree (24.8%). These were divided almost equally among people working in blue-collar jobs and with white-collar jobs (24.5% and 25.8%, respectively), and least frequently concerned those who were comfortable financially (20.5%), and most often concerned those who were very pleased (30.5%), or average or poor (28%). Regarding involvement with Polish community organizations, ideological issues are least likely to be a reason for returning to Poland for two groups of respondents at opposite extremes (no involvement 17.8%; close involvement 17.4%), and most likely for people with low participation (32.7%). Multiculturalism is an issue for 6.3% of people who arrived in the UK before 1999. This number is nearly five times smaller than that for respondents who came to the UK in the first half of this century (2010–2014: 31.6%).

Conclusions

The years 2004 and 2020 mark crucial moments in history, regarding political, social, and economic transformations and migration. One of the EU's steps towards greater spatial mobility was the liberalization of its border control policy and the opening of labour markets in Western Europe to immigrants from other parts of Europe, including Poles. The great unknown associated with Brexit and its consequences raises questions about whether to carry on with or to adjust the European scenario. Fifteen years after 1 May 2004, when Poland joined the EU and Member States such as the UK opened their labor markets, it seems reasonable to revisit questions about the sense of stability and the gradual social adaptation of those immigrants who wish to remain in the UK; on the other hand, Brexit could be considered by immigrants as the definitive end to the dream of the "promised land" meaning that their prospects of an improved financial situation and better future are ruined.

To sum up our analyses, we can draw the following conclusions:

1. Immigrants do not share clear and unanimous views about returning to Poland or staying in the UK. However, it is essential to note that there are no statistically significant differences between people living in different areas (Swindon, Oxford, London). At least 25 percent of Polish immigrants can be expected

to return soon, if not within the next twelve months, then certainly within the next few years, and with long-term forecasts, this may be true for up to 50 percent of Poles currently living in the UK. An interesting group are the "undecided". Virtually identical levels of indecision characterize Poles living in the English areas covered by the study. An intention to stay was most likely to be given by people living in Swindon, a working-class town; it was least likely among those living in Oxford, a university city, but this difference was not significant. This might be associated with the costs of living, which are far higher in the smaller university city than in a relatively sizeable working-class town with some 200.000 people.

2. Blue-collar workers are more likely than white-collar workers to return to Poland across all periods, whether within the next twelve months or later. More long-term forecasts can be produced based on data available from Statistics Poland (GUS). Between 2004 and 2010, the sharpest increase in salary levels was recorded in groups such as technicians and other middle-level specialists (55.9%), and in two of the lowest-level professional groups, salespersons and people working in services (54.8%) and unskilled workers (53.3%) [Zgliczyński 2013: 105]. This suggests that blue-collar workers, having experienced labour market fragility in Poland a few years back and not having moved up the social ladder, do not risk a great deal by returning home, having better prospects in their homeland now than before they emigrated.

3. For persons who are more comfortable financially, there are two opposing trends. The first can be considered in terms of change, the other in terms of continuity. It appears that some of those who wish to leave the UK immediately include people who consider themselves to be very comfortable or (somewhat) comfortable financially. On the other hand, almost the same proportion of people, who are either rather or very pleased financially, do not intend to leave the UK. It seems likely that the above-described trends are based upon the differences in personal objectives motivating the former decisions to migrate to the UK. Those in the first group may wish to return to Poland because they have improved their financial situation. Those in the other group may want to stay because they see opportunities to further improve their finances.

4. The proportion of people who intend to return to Poland at some unspecified time in the future increases in proportion to the decline in respondents' wealth. This can be explained as follows: those who have failed to achieve their expected

level of financial independence abroad still want to return to Poland at some point therefore, they have postponed their return, believing that their chance of changing their financial situation is still better in the UK than in Poland. This is a noticeable trend where one in every four respondents considers themselves very comfortable. One in three who regard themselves as (relatively) comfortable or in an average or poor financial conditions is undecided about whether to leave or stay. Migrants of this kind often have no clear purpose behind their economic migration [cf. Szymczak 2018]. As a result, on the one hand, some of the most affluent Polish immigrants to the UK are planning to return immediately; on the other hand, almost the same proportion of such comfortably-off people intend to stay in the UK. Therefore, the future of immigration will not be determined by the richest or by the poorest, but by the undecided immigrants, and those who have postponed making their decision.

5. People who are less proficient in English are more likely to consider leaving the UK, which is hardly surprising. Not knowing the language, they cannot integrate and bridge the gap between the immigrant community and the native population, let alone blend in [Włodarczyk 2005: 5]. On the other hand, a more significant proportion of undecided people regarding their return to Poland has been recorded among more fluent English speakers. This could mean that language proficiency is not a substantial reason for staying abroad, which is also confirmed by the conducted logistic regression analyzes.

6. The time spent abroad is also an essential factor. Around 30 percent of respondents who have been in the UK for the shortest time, representing the last three periods, said they would return to Poland at some unspecified time in the future (<5 years 34%; 5–9 years 33.3%; 10–14 years 20.3%). These were people who do not have any specific plans for the near future and have not decided to return home no matter what. They are the ones who will determine what the Polish community in the UK looks like in the future. It is important to note that one in every three of those immigrants who have been in the UK the longest are planning to return to Poland. Only one in ten of the most recent immigrants say they are never going to return.

7. The primary reason for leaving the UK is missing one's family. This finding is supported by other sociological studies, which clearly show that family continues to be among the top values in the axiological systems of the Polish people. A report by Centrum Badania Opinii Społecznej (a Polish analytical

institution), in a sociological survey conducted in January 2019, shows that a happy family continues to be among the dominant values held by Poles in their everyday lives. In that survey, this was true for four in every five respondents (80%) [Boguszewski 2019: [1]. In this study, 63.7% of respondents (M=54.5%, W=69.6%) gave missing one's family as a reason to return to Poland.

8. What proved to be most interesting was the correlation between immigrants' current wealth and the motivations behind their decision. Those who were better off seemed not to miss their families so much, while those who were less comfortable were more likely to want to return to Poland because they missed their families. Perhaps this reflects some rationalization. Unsatisfactory quality of life in Poland, a gap between one's expectations and reality, and not wanting to accept the bleak prospect of any improvement in one's situation all undoubtedly help rationalize respondents' perspectives on remigration, and consequently show that they do not seem to feel homesick. An opposite trend can be observed among those people who seem disappointed by their emigration, which failed to be worth their while by, for example, improving their financial situation. It is hardly surprising that the people who are less comfortable in the UK are more likely to cite the improvement in the quality of life in Poland as their motivation. We also observed that people were more likely to feel homesick as their financial situation deteriorated, making it a severe argument to remigration, particularly among those respondents who found themselves disappointed by the prospects offered by life abroad. This further shows how solid economic reasons are. Financial reasons tend to be more important than emotional ones, such as homesickness.

9. What is also important to note is the acculturation and assimilation of immigrants into their new community abroad. Poor or no knowledge of the local language contributes to how much they miss their loved ones back home. Not being able to assimilate into the new environment, they develop a sense of being rejected by the local population. This shows the role of Polish community organizations abroad. People involved with such organizations are the least likely to miss their loved ones back home, and, as people spend more time abroad, they are less likely to feel that the culture and customs related to Polish traditions are in decline. This can be attributed to assimilation.

10. One more important observation follows from the research: representatives of the younger generation (people under 30) perceive their place in exile in a manner significantly different than older ones. They are more attached to

the national culture, customs, and traditions (even while staying abroad) than the 40- and 50-year-olds. More often than not, older people believe that it is desirable to return to their home country sooner or later. The reasons for this attitude are not clear-cut. They may result from several factors, ranging from a shorter period of stay in exile to a different moment of departure (Poland's increasingly more favorable economic situation than the economies of the old EU countries) or others.

It is undeniable that Polish people continue to be among the most recognisable national minorities in the UK. While no massive remigration should be expected, it seems highly likely that up to 50 percent of Polish emigrants will eventually be returning home. In this respect, a critical role will be played by the contemporary precariat, meaning undecided people who are torn between the current uncertainties associated with professional stability in Poland and the UK. They find themselves in a precarious situation, with no reasonable prospects and unable to plan their future because of the uncertainty they feel and the unpredictability of tomorrow, which, in a sense, makes them feel vulnerable to social downward mobility [Standing 2014: 19, 155, 175]. Such people continue, if not in geographical, then at least in psychological terms, to seek stability and balance in life and a sense of security [Trąbka and Pustulka 2020]. Moreover, the possible consequences of Brexit are hard to anticipate. It might be considered a threat and an opportunity for immigrants to the United Kingdom from a critical perspective. The plans to limit immigration following the UK's withdrawal from the European Union might mean, contrary to what might be expected, new long-term opportunities for people living in the UK. What is certain is that this series of developments will pose new challenges for those Poles who are now part of the Polish community in the UK.

The following most popular motivations for returning to Poland were nostalgia or homesickness; the third was the subjective belief that the quality of life in Poland has improved. Other reasons for returning to Poland were the decline in Polish culture and customs, issues related to multiculturalism in the UK, and better religious education in Poland. It is also worth mentioning that religious people also had a greater tendency to get involved in the parish life and have a greater interest in its confessional activities. Therefore, religious issues in deciding whether to return are not of primary importance. Although they are given more often by younger respondents who have recently stayed in the UK, this argument is mentioned as important by only one in five of them. The data collected in the study show that the religiosity of the respondents is essential for the declared

willingness to return to Poland. The indicators of religiosity that were taken into account included: declarations of participation in religious practices, activity in Polish organizations and associations, and declared religiosity. Non-religious respondents are twice as willing to stay in the UK as religious ones. One of the side effects of parish activities is, at least in the respondents' declarations, maintaining ties with the country of origin. With its religious and social activities, the parish can be defined as an extension of contact with Polishness, by cultivating holidays and customs deeply rooted in the national culture.

Another question may be raised, which factors do not affect the willingness to return? Apart from the subjective perception and self-definition of one's situation in emigration as favourable, primarily economically, it seems that one can say that migration is treated as a kind of a plan or career path. After achieving the expected effects—even if it is a sufficiently high amount of money savings—it is desirable and planned to return to the country and place of origin. However, factors such as knowledge of the English language and subjective satisfaction with the economic situation do not play such a role (logistic regression analyses showed no statistically significant correlation, cf. Table 3). Therefore, is religious motivation primary? Not at this time; however, it should not be underestimated in the relatively religious sample in this research. Ongoing contact with religious services in the Polish language might be an additional trigger with return motivations.

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CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

DOI: 10.21697/CSP.2023.27.1.13

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Transnational religious actors and international order – the case of the Gülen Movement

Abstract: This paper seeks to illustrate how religion can affect international relations and international order. Given that religion has been neglected as an important factor in political science, and then in theories of international relations, this paper will try to provide a modest contribution to the study of religion in the theory of international relations by analyzing the influence of transnational religious actors on the existing international order. The transnational religious actor analyzed in this paper is the Gülen Movement – Hizmet Movement. Hizmet Movement is a transnational Islamic movement formed in the Republic of Turkey in the 1960s by the former Turkish Imam Muhammad Fethullah Gülen. Today, this Islamic movement has many institutions, organizations and members around the world. The Gülen Movement aims to create a transnational society – the Golden Generation of Ideal People (Altın Nesıl), and thus represents a challenge for the existing international order.

Key words: transnational religious actors, international relations, religion, international order, The Gülen Movement

Introduction

Today, as in the past, there are many factors that affect society and politics. One of the important factors and a phenomenon that influences politics is religion [Jevtic 2007; Јевтић 2009: 18]. However, political science has long neglected the influence and significance of religion on politics and politics on religion. This fact was shown by Steven Kettell in his research entitled "Has political science ignored religion?" [Kettell 2012]. Also, we must emphasize that religion is an important factor in IR, especially if we consider the transnational character of religion. David Wessels notes religions of Islam, Christianity as well as Buddhism as global or transnational

[Wessels 2009: 323-340]. However, theories of IR for a long time did not consider religion to be an important factor that can affect the international arena and IR. Theories of IR were formed according to the secular principle and had their origin in the Westphalian Peace of 1648, ending the Thirty Years' War (1618-1648) between Roman Catholics and Protestants. The four pillars of the Westphalian system of IR are: 1. States are considered the sole legitimate actors in the international system, 2. Government do not seek to change relations between religion and politics in foreign countries, 3. Religious authorities legitimately exercise few, if any, domestic temporal functions, and even fewer transnationally 4. Religious and political power, or church and state, are separated. As we can see, sovereign states are key actors in IR, while religion and politics are separate [Shani 2009: 308-322].

As we have already stated, theories of IR have long neglected the significance and influence of religion on IR. Philpott writes in support of this fact. Namely, Philpott conducted a survey that included four main (mainstream) journals of IR. He came to the conclusion that only six scientific works of a total of 1600, published in the period from 1980 to 1999, dealt with religion as an important factor in IR [Philpott 2002: 66-95]. In addition to Philpott, Hassner has also done research, although the difference between their researchs is that Hassner did the analysis of books dealing with the study of religion in IR. Namely, Hassner came to the conclusion that only one book on the mentioned phenomenon in IR was published over a decade, more precisely one in the 1970s, one in the 1980s, and one in the 1990s, while since 2002 we find six books that are published annually, and relate to religious issues in IR [Hassner 2011: 37-56]. However, since September 11, 2001, things have been changing and religion is gaming significance and providing a fresh perspective on the study of IR. This fact is slowly being explained in an increasing number of scientific, academic works that are studying religion in IR. Among them, those include studies by Jevtić, Veković, Haynes, Johnston and Cox, Petito and Hatzopoulos, Thomas, Gopin, Fox, Gözaydin, and many others.

In order to determine whether religion can be incorporated into the theories of IR, which are predominantly secular, this work will use a study by Nukhet A. Sandal and Jonathan Fox entitled "Religion in International Relations Theory – Interactions and possibilities" [Sandal and Fox 2013]. This study has made a significant contribution to the study of religion and politics, especially to religion and IR. With this study, Sandal and Fox tried to make a significant contribution to understanding religion as a multidimensional phenomenon that affects IR. The authors tried to integrate religion into the theory of IR in this book, cataloging

various ways, in which religion can influence IR. This catalog of the ways in which religion can affect IR includes: religious view of the world, religious legitimacy, religious states, non-state religious actors, transnational religious movements, transnational religious issues and religious identity. In their study, the authors, through the prism of five main theories of IR, attempt to integrate religion into the theory of IR. These five major (mainstream) theories of IR are: Classical Realism, Neorealism, (Neo) Liberalism, the English school and Constructivism. In the context of the ways in which religion can influence IR, the authors of this study cite the importance and influence of transnational religious movements on IR and the international arena. And as this paper is based on the analysis of the transnational Islamic movement – The Gülen Movement, we find that this study is important.

It is precisely the possibility of the creation of an alternative state and a new world order by transnational religious movements, which is the basis for the seventh chapter of Sandal's and Fox's study based on Constructivism [Ibidem]. Sandal and Fox come to the realization that Constructivism is the most suitable and most flexible theory of IR that has the potential to incorporate religion into IR [Ibidem: 181]. But, we must note that Alexander Wendt, the most important theoretician of Constructivism, did not give space to the study of religion in the theory of IR [Wendt 1999].

In this paper we will associate ourselves with a "new" model of Islam – "moderate, modern Islam," by Muhammad Fethullah Gülen and his Hizmet Movement. The research question that we are trying to answer here is: Can the transnational religious actors (The Gülen Movement) be a challenge to the existing international order?

1. Transnational Religious Actors and International Order

The process of globalization and technological innovation has spurred the growth and the influence of many state and non-state actors on IR and international order. Since the 1970s, the influence of non-state actors in the international arena has increased. Therefore, the international system is no longer solely determined by relations between sovereign states, but also by other non-state actors and transnational movements that have become important in international affairs. This results in a new outlook on the international order, since it is based on key actors – sovereign states. These non-state actors, actively involved in international processes, stimulated by globalization, technological innovations, communications and the media, are transnational corporations and organizations. In addition, religious actors also

become visible and influential. Namely, since the 1970s, transnationalism has grown, and the growth of new opportunities for non-state, transnational actors, including transnational religious actors [Haynes 2001: 143-158]. Religion is one of the essential elements of transnational actors and therefore arouses growing interest in studying and analyzing the influence of religion on IR [Taşkaya 2011: 37].

Transnational religious actors, according to Shani, can be defined as non-state actors who represent certain religious teachings and have an active relationship and relationships with other actors in other countries or international organizations. Shani believes that the transnational identity of these actors can be a potential challenge, both positive and negative, for an international order dating back to the Westphalian Peace [Shani 2009: 308-322].

Shani and Haynes agree with the claim that transnational religious actors influence the international order. Haynes points out that transnational religious actors have the potential to "undermine" the sovereignty of states, which are key actors of IR and international order [Haynes 2001: 143-158]. Haynes, believes that by using „soft power" transnational religious actors, can create conditions for establishing a transnational civil society [Haynes 2009: 43-69]. Gözaydin also emphasized the use of religion as a "soft power" in IR, especially in the Republic of Turkey [Gözaydin 2010].

By using "soft power", transnational religious actors seek to promote a "positive" image of the values and ideas they advocate. To understand how transnational religious actors use "soft power" we will first present what "soft power" means. Namely, the term "soft power" was coined by Joseph Nye and he defined it in the following way: "soft power is the ability to get what we want with attractiveness, rather than coercion and payment" [Nye 2004]. This is achieved by an attractive image of ideas and values, culture and politics. In addition, Nye emphasizes that certain "qualities" are needed for "soft power" to influence and attract others. What is also significant is that the use of "soft power" is much cheaper and more attractive than the use of "hard power". "Soft power" instruments are public diplomacy, cultural diplomacy, ideology and attractive values [Ibidem; Taşkaya 2011]. Transnational religious actors are important users of religion as „soft power" in IR. They influence IR by using the power of their ideas as well as the media that allow them to spread their „positive" message globally and create an opportunity for establishing a transnational society [Taşkaya 2011]. Transnational civil society consists of groups and organizations, from various countries, working together

to create a society outside the borders to achieve their goals. The possibility of creating a transnational civil society, by transnational religious actors, presents an alternative and a challenge to the Westphalian international order, as well as to the secular liberal model of a global civil society [Shani 2009: 308-322].

To see how transnational religious actors can influence the international order, we will first explain what the international order represents. International order is a regime characterized by the acceptance of certain values and norms of behavior, including certain actors, rules, mechanisms, and understanding. Therefore, international law is the central category of the concept of international order, as well as various international institutions and organizations, such as the United Nations Organization and the World Trade Organization, which seek to develop and promote it, Haynes said. The concept of an international order is based on two pillars:

1. International acceptance of certain values and norms, including international law

2. The development of institutions that seek to expand and develop an international order.

Haynes says that since the end of the Cold War, the international order has relied on the primary Western values and norms, as well as the following goals: liberal democracy, human rights and capitalism. However, as we have already mentioned, globalization and the development of technology and communications, there is the strengthening of transnationalism, especially religious (Christian and Islamic), which aims to create a transnational society. Haynes belives that the rise of Islamic fundamentalism is also a challenge to Western values and the existing international order [Haynes 2009: 43-69].

Jonathan Fox states that fundamentalist movements, especially Islamic, are trying to create a world-class religious society that knows no boundaries. Fox states that transnationalism is their goal. Some of these movements are limited by the borders of the state they are based in while many of them are trying to expand the movement internationally [Fox 2009: 273-292]. One of the transnational religious movements that is active in today's world and influences the international arena is the transnational Islamic Movement – The Gülen Movement of the former Turkish Imam Muhammad Fethullah Gülen. Accordingly, this paper seeks to show how the Gülen Movement poses a challenge to the existing international order.

2. The Gülen Movement as Transnational religious movement

The Gülen Movement (The Service) was formed in the 1960s in the Republic of Turkey by the former Turkish Imam Muhammad Fethullah Gülen [Лончар 2017]. Gülen is the former Turkish Imam, preacher and writer. Wagner holds that Gülen represents one of the most influental Islamic leaders in today's world [Wagner 2013]. However, Yavuz thinks that Gülen, founder of Hizmet Movement, is "a stranger in his own land, a political and spiritual exile in his birthplace, as well as not fully at home in any particular era. He is a stranger (garip) steeped in anxiety, a religious critic, a social innovator. However, he is much more than observer; he is a builder, shaper of ideas and leader of his own movement" [Yavuz, 2013: 26]. The followers of Gülen call him „Hocaefendi". It may be translated as „esteemed teacher" or „master". Also, this name refers to one who has "supreme religious authority" [Yavuz 2003].

The Gülen Movement is formally declared as a social, Islamic, "non-political" movement aimed at promoting certain values and ideas, among which are: the idea of "modern, moderate Islam", quality education, interreligious dialogue, tolerance, democracy, nonviolence, and the idea of establishing a bridge between Islam and the West [Ebaugh 2010]. The goal of this movement is to create the transnational society – the Golden Generation of Ideal People (Altın Nesıl). The key difference between this movement and other Islamic movements is that this movement uses a specific method of action. Namely, this movement uses "soft power" and aims to spread a "positive" image of its activities and ideas through the construction of educational institutions and organizations, in order to attract as many supporters and sympathizers as possible. Yavuz thinks that the Gülen Movement, while predominantly promoting "Western values," seeks to portray a "positive image of Islam", most notably to the West and the Americans [Holton and Lopez 2015: 24].

A significant fact is also the one, pointed by Angey. Angey holds that "the Gülen Movement is unusual in the sociology of transnational social movements for its informality and its culture of secrecy" [Angey 2018: 54]. Namely, Hizmet Movement has no official representative office, address or bank account. All activities in Hizmet Movement are based on "the voluntary will" of the members of the movement. The members of the movement are gathered in three circles. The first circle are sympathizers, the second circle are members while the third circle is made of workers. The movement is mostly made up of volunteers and students, from middle and upper class, with an average age between 25 and 30 years. Dumovich holds that "these students believe that it is their duty to represent

Islam outside Turkey, especially in countries where Hizmet (both the movement and its message) is still unknown" [Dumovich 2019].

The Gülen Movement is funded by Turkish businessmen, parents of students and members of the movement. The members of Hizmet Movement allocate from 10% to 70% of their income for the functioning of the movement [Лончар 2017]. Cemal Uşak, the former president of The Journalists and Writers' Foundation (one of the institutions of Hizmet Movement) said in an interview: "The main sources of this movement are Qur'an, our prophet and then Mr. Gülen but that is not to say money is not important. How else could we open up so many schools?" [Watmougn and Öztürk 2018: 41].

The Gülen Movement expanded beyond the borders of the Republic of Turkey in the nineties and formed organizations and institutions around the world. Today, the institutions of the Gülen Movement can be found in Central Asia, in the Balkans, Europe, Africa, Australia, as well as in the United States, where the leader of Hizmet Movement, Gülen, has been living since 1999 in self-imposed exile. Tungul notes that "while in the West the movement focused on interfaith dialogue and building a positive image of Islam, its activities in the Central Asia republics, the Balkan countries and some African countries were more directly to increase the influence of Turkish nationalism and Islam" [Tungul 2018].

An important fact that relates to this movement is that this Islamic transnational movement, as well as its leader, Gülen has been charged with the coup attempt in the Republic of Turkey in 2016. Namely, the Turkish government, led by Recep Tayyip Erdoğan, has accused the Islamic Movement of corruption and attempts to take over power in the Republic of Turkey. The Turkish government has accused the Gülen Movement of corruption in key institutions of the Republic of Turkey (military, police, media, education sector and judiciary) and declared the Gülen Movement as the Fetullah Gülen's terrorist organization (FETÖ) in 2014 [Holton and Lopez 2015]. However, Gülen has dismissed these accusations and is still in the United States, which refuses to extradite him to the Republic of Turkey, due to the lack of evidence for organizing the coup attempt [Yavuz and Balci 2018]. In addition to charges of organizing the coup attempt, the Gülen Movement has also been charged with organizing the murder of the Russian ambassador to the Republic of Turkey, Andrei Karlov, in December 2016 [Lončar 2018: 177-192].

3. The goal of the Gülen Movement – The Golden Generation of Ideal People (ALTIN NESIL)

The ultimate goal of the founder of Hizmet Movement, Gülen, is to create a new world order. To support that claim, we will present a quotes from his book "The Statue of Our Souls: the Return of Islamic Thought and Activism" which reads: "We do not believe that anything new will emerge from the tatters of capitalism, or the fantasy of communism, or the debris of socialism, or the hybrid of social democracy, or old-fashioned liberalism. The truth of the matter is that, if there is if there is a world open to a new world order, it is our world" [Gülen 2005a: 24]. „From America to Europe, from the Balkans to the Great Wall of China and the heart of Africa, indeed, almost everywhere, faith, hope, security, and therefore, peace and contentment will be experienced once more under the umbrella of Islam. The whole of humanity will witness a new world order that is far beyond imagination" [Ibidem: 3].

As we see, Gülen invites his followers to the possibility of creating a new world order, which according to him is the creation of an inclusive civilization, the so-called The Golden Generation of Ideal People (Altın Nesıl). The ideal people are "people of the service". These are people who will be educated and religious, modern and „tolerant". Gülen believes that those who want to reform and change the world must first change themselves [Gülen 2005b: 105]. "The students of today will become the governors, judges, administrators as well as business people of the future. That is to say, today's businessmen and other influential figures used to be simple students too [Watmougn and Öztürk 2018: 44]. "Findley, notes by ‚shaping the students' personhood (kişlik) and identity (kimlik), the goal is to craft a golden generation (altin nesil) of Turks who can be producers, not consumers, of modernity" [Ibidem].

As we find, for Gülen the ideal man must be educated, he must work on himself, but he must also be religious. Gülen was an active participant as well as organizer of conferences on interreligious dialogue. However, the interreligious dialogue he represents is a dialogue between monotheistic religions (Judaism, Christianity and Islam) [Лончар 2019: 219-229]. Polytheists and atheists do not fit into his idea of a new world order, which means that the world that Gülen strives to create is extremely elitist and exclusive. Whether this new world order, shaped by the Gülen Golden Generation of Ideal People, insipired by „modern, moderate Islam," is a challenge for an existing international order based on sovereign states, will be analyzed in the next part of this work.

4. The Gülen Movement as a Challenge for the existing International order

In order to determine whether the Gülen Movement, the movement of "moderate, modern Islam", presents a challenge to the existing international order, we will analyze two key factors of international order. First, we will analyze the concept of sovereignty in the Western and Islamic traditions, and then we will analyze the difference between international law and Islamic law. These analysis will be key for us to answer the question: Do transnational religious actors (in our case Islamic) represent a challenge for the existing international order?

The international order implies "a system of relations in the international community that is coordinated with international law aimed at securing world peace and functioning of the economy" [Аврамов 1990; Јевтић 2009: 231). As the existing international order, founded by the Westphalian Agreement, is based on sovereign states, we will present the understanding of sovereignty in the Western tradition, as well as the understanding of sovereignty in the Islamic tradition. Since the Gülen Movement declares itself as an Islamic movement, it is precisely for this reason that we consider it necessary to examine whether the Islamic concept of sovereignty is identical to the Western one, which is accepted in most countries around the world.

Namely, in the Western tradition, sovereignty, in political theory, is the ultimate overseer, or authority, in the decision-making process of the state and in the maintenance of order. [Encyclopaedia Britannica]. Also, Bealey advocates that „A state becomes sovereign when other states recognize it as such" [Bealey 1999: 306]. This understanding excludes any kind of influence of non-state actors. In the Islamic tradition, the concept of sovereignty is interpreted differently than in the West. „In Islam, sovereignty is defined as *hakemiya* (ar. hakemiya) and it refers to the one who has the supreme power in an Islamic society, and he is called *hakem* (ar. Hakem)" [Јевтић 2009: 188]. The bearer of the highest authority and legislator in Islamic doctrine is God, Allah, says Miroljub Jevtić [Ibidem]. „In the Muslim Holy Book of the Qur'an, God is explicitly described as Al-Malik, in the meaning „ruler" (sovereign), or as Al-Malik al-Mulk, in the sense of „bearer of eternal power" (sovereignty) [Потежица 2006; Ђурић and Ајзенхамер 2011: 311-338). This understanding of sovereignty is accepted in the entire Islamic theory and transcends all divisions in the Islamic community. Therefore, the Islamic state must be based on God's law- the Shariah law [Ibidem]. It is precisely this different notion of the concept of sovereignty in the Western and Islamic traditions that sends us a significant signal that existing international order could be challenged by Islamic religious actors who do not separate faith from the state.

Namely, obedience to God, as prescribed by Islamic law is fundamental. Esposito notes that, in Islam, law is a fundamental religious doctrine, as in Judaism, while theology is the queen of science in Christianity [Esposito 2003: 141]. Muslims believe that their primary task is to spend their entire lives fighting to establish God's will in their private and public life. They see themselves as God's representatives with God's order, which is to establish God's rule on earth. Therefore, the purpose of political authority in Islam is to embody the divine message. The ideal Islamic state is the one based on God's law [Ibidem: 152].

The second aspect of our analysis demostrate the differences between international law and Islamic law. International order is based on international law, which rests primarily on Western values and is the central category of the international order. Even though the Gülen Movement calls for certain Western values, this movement finds its source in Islam, and therefore we find it important to make an analysis of the differences between Islamic law and international law.

"Islamic law originates in two mayor sources: divine revelation (wahy) and human reason (aql). This dual identity of Islamic law is reflected in its two Arabic designations, Shariah and fiqh. Shariah bears a stronger affinity with revelation, whereas fiqh is mainly the product of human reason", notes Esposito [Esposito 1999: 107-108]. The goal of Islamic law is the realization of God's will on earth, the expansion and defense of the Muslim community. Islamic law is based, first, on the relationship between people and God, more precisely on God-worship, and secondly, on the actions of people among themselves, more precisely on social relations [Esposito 2003: 141]. Although there are divisions in Islam, as well as in Christianity, what are common in Sunni and Shiite Islam are certain sources of Islamic law.

"Islamic law is the same as any other: a system of rules that regulates the behavior of Muslims in a particular domain and non-Muslims living in territories under administration inspired by Islamic law" [Јевтић 2009: 231]. As we have already stated, law is the main doctrine in Islam, not theology as in Christianity. The first and fundamental difference between international law and Islamic law is that Islamic law is divine – Ius divinum. In Islam there is no law created by the state. Islamic law is based on religious sources. Another characteristic of Islamic law is that Islamic law is personally and not territorially based, and therefore obliges Muslims wherever they live, including territories which are not governed by Islamic law [Ibidem: 232].

In addition, we have to note that "The Shariah law does not have a special international law, but that segment of legistation is just one part of the Shariah law aimed at regulating relations between Muslims and non-Muslims, wherever they are. This means that in Islamic law there is no difference between national and international law" [Ibidem: 233]. However, in the Shariah law we find a part dealing with IR and this part is called *Siyar* (ar. Siyar). Siyar is a special branch of the Fiqh. „According to the Fiqh, the whole world should become one single state with the Qur'an as a constitution and a caliph as the head, in the Sunni Islamic variant, or the Imam in the Shiite" [Ibidem: 234-235]. Islamic law divides the world into two parts: the world of Islam and the world of war. Thus, the current state, or more precisely, the current relations between Muslims and non-Muslims are a temporary state of affairs until the creation of a unique Islamic state with the purpose of establishing God's rule and „lasting peace" on Earth [Ibidem: 235]. As we find, international law largely contradicts Islamic law, which is divine and presents a challenge for sovereign states, and therefore a challenge for the existing international order.

Conclusions

In the end, it remains only to confirm that religion plays an important role today, both in political science and in IR. This is primarily demonstrated by the transnational character of religion. Namely, globalization and growth of communication between people and societies have also caused the growth of transnationalism. This has led to the growth of the influence of many non-state actors, including religious actors in the international arena. As religious actors (in our case Islamic) have transnational goals, this requires further analysis related to their influence and importance on the international arena and international order. The transnational religious actor analyzed in this paper is the Islamic Movement, the Gülen Movement, which aims to create a transnational society and establish a new world order that is significantly different from the current international order. A key feature of the new world order promoted by Gülen and his movement is that it consists of, above all, educated and religious people. Religious people will strive for the realization of their religion, in our case Islam. As Islam has a different starting point of the concept of sovereignty and law from the Western tradition, we find, that the differences between these two concepts indicate our research question. Thus, the Gülen Movement is a challenge to the existing international order. This paper was aimed at providing a modest contribution to the study of religion in the theory of IR and contributing to its further development.

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DOI: 10.21697/CSP.2023.27.1.14

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

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The Polish-Belarusian border: between mercy and the reason of state

Granica polsko-białoruska: między miłosierdziem a racją stanu

Abstrakt: Celem niniejszego artykułu jest przedstawienie czytelnikowi czym charakteryzują się postawy kolejno miłosierdzia i racji stanu w kontekście wydarzeń mających miejsce na pograniczu polsko-białoruskim, jaki szerzej określany jest kryzysem humanitarnym. Przedstawione zostaną motywacje jakie stoją za przytoczonymi postawami. W artykule zostanie zweryfikowana hipoteza stanowiąca, iż postawa miłosierdzia nie zawsze jest możliwa do realizacji, kiedy to zagrożone jest państwo i jego obywatele, ponieważ władza stojąca na czele tych obywateli ma za zadanie ich ochronę, a dopiero później udzielanie ewentualnej pomocy innym. Obie postawy są zestawione ze sobą. Metodą badawczą jaką zastosowano w pisaniu owego artykułu była metoda empiryczna. Artykuł został podzielony na poszczególne rozdziały. W artykule zostały przedstawione wyniki badań, w ramach których ustalono, że miłosierdzie jest możliwe tylko przez pojedynczych ludzi, a racja stanu jest to postawa jaką kierują się rządzący, w ramach której dążą do bezpieczeństwa obywateli i państwa. Władze państwowe mogą jedynie wspierać działania poszczególnych ludzi czynionych w myśli miłosierdzia. Jednak należy podkreślić, że obecnie zauważalne są dwie postawy miłosierdzia – faktycznego i fasadowego.

Słowa kluczowe: granica, miłosierdzie, racja stanu, kryzys humanitarny, Polska, Białoruś

Abstract: The aim of this article is to show the reader what the attitudes of mercy and reason of state are characterized in the context of the events taking place on the Polish-Belarusian borderland, which is broadly referred to as a humanitarian crisis. Motivations behind these attitudes will be presented. The article will verify the hypothesis that the attitude of mercy is not always possible to implement when the state and its citizens are at risk, because the authority at the head of these citizens is supposed to protect them, and only then provide possible help to others. Both attitudes are juxtaposed with each other. The research method used

in writing this article was the empirical method. The article has been divided into individual chapters. The article presents the results of research in which it was established that mercy is possible only by individual people, and the reason of state is the attitude followed by the rulers, under which they strive for the security of citizens and the state. State authorities can only support the actions of individual people made in the thought of mercy. However, it should be emphasized that currently there are two attitudes of mercy – factual and superficial.

Keywords: border, mercy, reason of state, humanitarian crisis, Poland, Belarus

Wstęp

Termin *kryzys* wydaje się być pojęciem jakie coraz częściej jest podnoszone w dyskursie akademickim, czy też przez organizacje pozarządowe, bądź organy państwowe. Może to stanowić wypadkową codzienności otaczającej ludzkość – ze szczególnym podkreśleniem społeczeństwa polskiego, czy też białoruskiego – która to coraz częściej jest naznaczana wydarzeniami odbiegającymi od tak zwanej „normalności". Pojęcie *kryzys* stanowi również pewien problem identyfikacyjny, ponieważ pojęcie to zawiera w sobie szeroki opis rzeczywistości nas otaczającej. „Kryzys obecnie identyfikowany jest z wieloma dziedzinami działalności praktycznej i naukowej. Odnosi się go głównie do zagrożeń, systemów politycznych, integralności terytorialnej, stabilności ekonomicznej, życia i zdrowi ludzi oraz środowiska"[1]. Przytoczona definicja terminu *kryzys* w znacznym stopniu odpowiada wydarzeniom jakie mają miejsce na pograniczu polsko-białoruskim. Nie ulega wątpliwości, iż kryzys humanitarny na granicy polsko-białoruskiej jest wydarzeniem wysoce problematycznym pod względem etycznym. Został on wywołany przez białoruski reżim Aleksandra Łukaszenko, który to wykorzystał migrantów jako broń demograficzną by zdestabilizować sytuację w Polsce.

W ramach pracy nad artykułem została zastosowana metoda empiryczna. Celem niniejszego artykułu jest przestawienie czytelnikowi czym charakteryzują się postawy kolejno miłosierdzia i racji stanu w kontekście wydarzeń mających miejsce na pograniczu polsko-białoruskim, jaki szerzej określany jest kryzysem humanitarnym. Przedstawione zostaną motywacje jakie stoją za przytoczonymi postawami. W artykule zostanie zweryfikowana hipoteza stanowiąca, iż postawa miłosierdzia nie zawsze jest możliwa do realizacji, kiedy to zagrożone jest

[1] W. Otwinowski, *Kryzys i sytuacja kryzysowa* [w:] Przegląd Naukowo-Metodyczny. Edukacja dla Bezpieczeństwa nr 2, Poznań 2010, s. 83.

państwo i jego obywatele, ponieważ władza stojąca na czele tych obywateli ma za zadanie ich ochronę, a dopiero później udzielanie ewentualnej pomocy innym. Sformułowanemu wyżej problemowi badawczemu podporządkowano następujące pytania szczegółowe:

– Czym charakteryzują się terminy miłosierdzia i racji stanu?

– Czym jest tak właściwie kryzys na pograniczu polsko-białoruskim oraz czym został on spowodowany?

– Jakie czynności podjęły władze Rzeczpospolitej Polskiej w celu ochrony granicy i zażegania kryzysu?

1. Miłosierdzie

1.1. Znaczenie terminu „miłosierdzie"

Według internetowego słownika języka polskiego PWN słowo miłosierdzie znaczy: „dobroć i współczucie okazywane komuś"[2]. Na poziomie etymologii warto zwrócić uwagę na to, że termin miłosierdzie pochodzi z łaciny. Badając źródłosłów miłosierdzia zauważymy, że polskie miłosierdzie w łacinie kryje się pod słowem *misericordia*. Łaciński protoplasta miłosierdzia składa się z części: „*misere* co oznacza nieszczęście, potrzeba; *cor*, *cordis*, które oznacza serce i *ia*, które wyraża wobec innych"[3].

Jeśli się zastanawiać nad zdefiniowaniem słowa miłosierdzie, to zaskakującym będzie, gdy stwierdzimy, że jest to pewien rodzaj miłości, która to nie jest skierowana do osoby nam bliskiej, a wręcz przeciwnie jest to miłość jaką kieruje człowiek do osoby mu obcej[4].

1.2. Miłosierdzie w nauce Kościoła katolickiego

Miłosierdzie jako szczególny rodzaj miłości jest szeroko przywoływane w katolickiej myśli teologicznej. Zasadniczo miłosierdzie było jedną z ważniejszych kwestii, na jakie zwracał uwagę papież Jan Paweł II w trakcie swojego pontyfikatu.

[2] *Słownik języka polskiego PWN* [online] https://sjp.pwn.pl/slowniki/miłosierdzie.html (dostęp: 06.02.2022).

[3] *Znaczenie Miłosierdzie (Czym jest, Pojęcie i Definicja) – Znaczenia*, https://znaczenia.com.pl/znaczenie-milosierdzie-czym-jest-pojecie-i-definicja-znaczenia/ (dostęp: 29.03.2022).

[4] Z. Stawrowski, *Solidarność, miłosierdzie, sprawiedliwość* [w:] Teologia Polityczna, https://teologiapolityczna.pl/zbigniew-stawrowski-solidarnosc-milosierdzie-sprawiedliwosc (dostęp: 28.03.2022).

Zauważalne było to w papieskim nauczaniu, a zwłaszcza w Encyklice *Dives in misericordia*.

> „Autentycznie chrześcijańskie miłosierdzie jest zarazem jakby doskonalszym wcieleniem „zrównania" pomiędzy ludźmi, a więc także i doskonalszym wcieleniem sprawiedliwości, o ile ta w swoich granicach dąży również do takiego zrównania. Jednakże „zrównanie" przez sprawiedliwość zatrzymuje się w kręgu dóbr przedmiotowych związanych z człowiekiem, podczas gdy miłość i miłosierdzie sprawiają, iż ludzie spotykają się ze sobą w samym tym dobru, jakim jest człowiek z właściwą mu godnością. Równocześnie „zrównanie" ludzi przez miłość „łaskawą i cierpliwą" (por. 1 Kor 13, 4) nie stanowi zatarcia różnic: ten, kto daje – daje tym bardziej, gdy równocześnie czuje się obdarowany przez tego, kto przyjmuje jego dar; ten zaś, kto umie przyjąć ze świadomością, że i on również przyjmując, świadczy dobro, ze swej strony służy wielkiej sprawie godności osoby, która najgłębiej może jednoczyć ludzi pomiędzy sobą. Tak więc miłosierdzie staje się nieodzownym czynnikiem kształtującym stosunki wzajemne pomiędzy ludźmi w duchu najgłębszego poszanowania wszystkiego, co ludzkie oraz wzajemnego braterstwa"[5].

Powyższy fragment papieskiej encykliki wskazuje istotę miłosierdzia w nauce Kościoła. Jan Paweł II łączy miłosierdzie z działalnością ludzką względem bliźnich. Interesującym jest również to, że w encyklice autor nawiązuje do sprawiedliwości i zrównania międzyludzkiego oraz tego, by czynić dobro w stosunku do innych, ponieważ jest to kwintesencją nauki wyniesionej z Biblii, dodając, że czyniąc dobro samemu się zaznaje dobra. Oznacza to, iż czynienie dobra sprawia dowartościowanie i podniesienie ku górze oraz nawraca ze zła.

W Starym Testamencie słowo miłosierdzia jest skierowane do narodu wybranego przez Boga – ludu Izraela. Ukazuje się to przez przymierze między ludem Izraela a Bogiem. Można tu zauważyć dwa doświadczenia: przebaczenie i opiekę, którą Bóg kieruje do ludzi. Miłosierdzie „oznacza dobroć, życzliwość i wierność na zasadzie wewnętrznego zobowiązania, przy czym nie chodzi tu przede wszystkim o uczucie czy wewnętrzne usposobienie, ale o czynną pomoc

[5] Jan Paweł II, *Dives in misericordia,* …., https://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_30111980_dives-in-misericordia.html (dostęp: 06.02.2022).

[…] podkreśla wierność sobie samemu i odpowiedzialność za własną miłość […]. Wtórnie użyte w stosunku do Boga wyraża łaskę wierności Przymierzu"[6]. Fragment ten także wskazuje na podkreślanie znaczenia relacji międzyludzkich opartych na takich uczuciach jak: dobro, życzliwość, wierność i czynną pomoc bliźnim.

Krystalicznym przykładem miłosierdzia przedstawianym przez naukę Kościoła katolickiego, która pochodzi już z Ewangelii jest *Przypowieść o miłosiernym Samarytaninie*.

> „Pewien człowiek szedł z Jeruzalem do Jerycha i wpadł między zbójców. Ci obrabowali go, pobili dotkliwie i zostawiwszy na pół żywego, odeszli. I zdarzyło się, że przechodził tamtędy pewien kapłan. Zobaczywszy go, poszedł jednak dalej. Podobnie i pewien lewita, choć był koło tego miejsca i widział go, poszedł dalej. Aż oto pewien Samarytanin, odbywając podróż, gdy był już obok niego i zobaczył go, ulitował się nad nim. Zbliżył się do niego, opatrzył jego rany, zwilżając je oliwą i winem, a potem, usadowiwszy go na swoim zwierzęciu, zawiózł go do gospody i opiekował się nim. Następnego dnia wydobył dwa denary, wręczył je właścicielowi gospody i powiedział: Opiekuj się nim, a jeśli wydasz coś ponadto, wszystko ci oddam, gdy będę wracał. Jak ci się wydaje: Któryż z tych trzech okazał się bliźnim tego, co wpadł między zbójców? Odpowiedział: Ten, który okazał mu miłosierdzie. A Jezus na to: Idź, i ty czyń podobnie"[7].

Przypowieść ta pokazuje nam, czym jest miłosierdzie i jak się ono objawia w działaniach. Bohaterem tej przypowieści jest Samarytanin, który jako jedyny zwraca uwagę na człowieka, na jakiego napadli bandyci i postanawia mu pomóc. „Nie bez powodu bohaterem ewangelicznej przypowieści jest właśnie Samarytanin – ktoś, kto dla ówczesnych Żydów był kimś całkowicie obcym, wręcz wrogim […]"[8]. Niewątpliwie celem przypowieści wygłoszonej przez Jezusa było to by pokazać, że przykazanie miłości powinno być kierowana do wszystkich, ale przede wszystkim do tych, których bliżej nie znamy. Pokazuje to, że na początku jest jakaś obcość między ludźmi, która często nie pozwala nam na działanie pozytywne względem

[6] W. Zyzak, *Miłosierdzie jako termin teologiczny* [w:] Łódzkie Studia Teologiczne, Łódź 2015, s. 125.
[7] *Łk 10,30-37,* Biblia Warszawsko-Praska, wyd. III.
[8] Z. Stawrowski, *Solidarność znaczy więź AD 2020*, Kraków 2020, s. 331.

innych, jednakże, gdy uda się komuś przełamać tę obcość to zauważamy, iż po drugiej stronie jest człowiek taki sam jak my, któremu należy udzielić pomocy. Jest to obraz prawdziwego miłosierdzia.

Dodatkowo, w celu dopełnienia wizerunku miłosierdzia, o jakim naucza Kościół Katolicki warto zwrócić się do obrazu Rembrandta – Powrót syna marnotrawnego[9]. W tradycji Kościoła miłosierdzie jest pokazywane jako miłosierdzie matki i ojca. Miłosierdzie matczyne jest bezgraniczne, a ojca jest również bezgraniczne, ale i bywa surowe, co zostało ukazane właśnie na obrazie Rembrandta. Malarz pokazuje ojca obejmującego syna, a dłonie jego złożone są na głowie dziecka, które do niego wróciło. Obie dłonie się różnią od siebie, jedna jest miękka i kobieca, a druga męska i surowsza. Pokazuje to, że miłosierdzie może być nieskończone jak miłość matki do dziecka, ale z drugiej strony miłosierdzie może być okazane w sposób surowszy.

1.3. Dwa obrazy miłosierdzia

Początkowo omawialiśmy teorię powiązaną z terminem miłosierdzie, jakim było zdefiniowanie miłosierdzia, a następnie przedstawiona została nauka Kościoła. Definicja, jak i nauka Kościoła wskazuje na pewną prawidłowość, mianowicie miłosierdzie jest możliwe tylko w działalności ludzi jako jednostek. Działania zinstytucjonalizowane nie można nazywać *stricte* miłosierdziem, bo jak już to zostało wyżej wskazane jest to domena czynności jednostek.

We współczesnym świecie mamy do czynienia z dwoma postaciami działania, które prezentowane jest jako miłosierdzie. Z jednej strony jest miłosierdzie prawdziwe, czyli bezinteresowna pomoc innym ludziom, prowadzona najczęściej przez jakieś fundacje lub instytucje charytatywne, które za swoją działalność nie uzyskują dochodów. Wszelkie darowizny przekazane na funkcjonowanie takich organizacji są przeznaczane na ich działalność pomocową. Przykładem takiej organizacji może być np. *Caritas*.

> „Caritas Polska jest duszpasterską instytucją charytatywną Kościoła katolickiego i największą organizacją społeczno-charytatywną w Polsce,

[9] *Powrót marnotrawnego syna*, Rembrandt Harmenszoon van Rijn, https://artsandculture.google.com/asset/return-of-the-prodigal-son/5QFIEhic3owZ-A?hl=pl&ms=%7B%22x%22%3A0.5%2C%22y%22%3A0.5%2C%22z%22%3A8.466081828318435%2C%22size%22%3A%7B%22width%22%3A2.2675489803292845%2C%22height%22%3A1.2374999999999998%7D%7D (dostęp: 19.03.2022).

> która niesie profesjonalną, wielowymiarową pomoc osobom wykluczonym, ubogim, idącym przez życie z różnego rodzaju deficytami. Caritas Polska, będąc ich głosem i rzecznikiem, odwołuje się do wyraźnie zdefiniowanych wartości ewangelicznych, które wyznaczają kryteria oceny rzeczywistości społecznej i odpowiednie zasady działania: zasadę dobra wspólnego, pomocniczości, solidarności i miłości społecznej"[10].

Z zakładki *O nas* na witrynie internetowej *Caritas Polska* można się dowiedzieć, czym ściśle się zajmuje, a mianowicie: pomocą ubogim, wykluczonym, co oznacza, iż ich działalność jest skoncentrowana na tym, co wiążemy z okazywaniem miłosierdzia.

Działalność *Caritas* można podzielić na: pomoc indywidualną, edukację, przedsięwzięcia cykliczne i różnego rodzaju akcje. Oznacza to, iż działania *Caritas* są połączone ze sferą społeczno-gospodarczo-ekonomiczną.

Jak można przeczytać na wspomnianej stronie internetowej, *Caritas Polska* zaangażowała się w pomoc dla migrantów znajdujących się na granicy polsko-białoruskiej, którzy to zostali wykorzystani jako broń przez reżim Aleksandra Łukaszenko, w celu destabilizacji sytuacji w Polsce. Wolontariusze *Caritas* zajęli się pomocą cudzoziemcom znajdującym się w ośrodkach oraz tym, którzy przeszli procedury azylowe. Wolontariusze skoncentrowali swoją pracę w tak zwanych *Namiotach Nadziei*[11]. Działania w nich skupione polegają na pomocy zarówno cudzoziemcom, jak i funkcjonariuszom służb mundurowych strzegących granicy; wolontariusze rozdają koce, śpiwory i inne artykuły pierwszej pomocy. Pomoc ta nie jest podszyta ideologią, ani chęcią polepszenia swojego wizerunku w opinii publicznej; ale jako normalny odruch wrażliwych serc realizuje po prostu to, co stanowi istotę nauki Kościoła i Ewangelii, okazuje potrzebującym miłosierdzie.

Drugą postacią działania chętnie przedstawianą jako miłosierdzie jest pomoc innym ludziom, jednakże podyktowana zyskami materialnymi lub wdrażaniem jakiejś ideologii. Przykładem takiego fasadowego miłosierdzia jest amerykański

[10] *Caritas Polska*, https://caritas.pl/o-nas/ (dostęp: 07.02.2022).

[11] „Namioty Nadziei stanęły w Podlipkach w gm. Krynki oraz w Białowieży. Organizacje pomocowe działające w rejonie przygranicznym, ale również mieszkańcy okolicznych miejscowości udzielający pomocy migrantom i funkcjonariusze służb mundurowych, mogą stąd pobierać m.in. śpiwory, koce, kurtki, buty, termosy, żywność i artykuły higieniczne", *Caritas rozszerza pomoc na granicy*, https://caritas.pl/blog/2021/11/19/caritas-rozszerza-pomoc-na-granicy/ (dostęp: 07.02.2022).

multimiliarder George Soros, który zajmuje się promowaniem tak zwanego *społeczeństwa otwartego*. Termin ten odnosi się do idei świata, w którym nie byłoby tożsamości narodowych, a społeczeństwo kierowałoby się *liberalizmem kulturowym* i *polityczną poprawnością*. Aby osiągnąć ten cel, należy pozbyć się granic oraz państw narodowych, których społeczeństwo oparte jest na realnym paradygmacie rozumienia narodu, czyli etniczności, terytorium, języku i religii. Wizję Sorosa, którą wielu pochopnie nazywa miłosierdziem. Jeden z jego krytyków streszcza następująco: „Społeczeństwa zamknięte w chrześcijaństwie i nacjonalizmie potraktowane taranem islamu się otworzą. Państwa upadną i z multikulturowego chaosu wyłoni się rzeczywistość pełna równości oraz wolna od nietolerancji i wszelkich wykluczeń”[12].

Multimiliarder tak oto przedstawiał swój własny plan na rozwiązanie kryzysu migracyjnego w Europie: „UE powinna przyjmować w najbliższej przyszłości przynajmniej milion uchodźców rocznie”, a ich rozmieszczenie powinno być zgodne z warunkami wynegocjowanymi na ostatnim szczycie[13]. Dodatkowo „UE powinna zapewnić 15 000 euro na każdego uchodźcę przez dwa lata, aby opłacić koszty mieszkania, opieki medycznej i edukacji”[14].

Przytoczony cytat wskazuje na to, jak według Sorosa powinno się rozwiązać problem kryzysu migracyjnego, mianowicie – przyjmując znaczną liczbę migrantów w UE oraz poprzez zapewnianie przybyszom środków do życia.

Dodatkowo, w jednym ze swoich esejów multimiliarder wykazuje chęć dofinansowania działalności migrantów, jacy dotarli do Europy.

> „W odpowiedzi, postanowiłem przeznaczyć 500 milionów dolarów na inwestycje, które w szczególności odpowiadają na potrzeby migrantów, uchodźców i społeczności przyjmujących. Będę inwestować w start-upy, firmy o ugruntowanej pozycji, inicjatywy społeczne i biznesy założone przez samych migrantów i uchodźców. Chociaż moją główną troską jest pomoc migrantom i uchodźcom przybywającym do Europy, będę

[12] K. Zwoliński, *George Soros walczy o świat bez granic i narodów*, https://tygodnik.tvp.pl/41206866/george-soros-walczy-o-swiat-bez-granic-i-narodow (dostęp: 08.02.2022).
[13] Posiedzenie Rady Europejskiej, 25-26 czerwca 2015 roku.
[14] *Soros: UE powinna przyjmować milion uchodźców rocznie*, https://www.bankier.pl/wiadomosc/Soros-UE-powinna-przyjmowac-milion-uchodzcow-rocznie-7279602.html (dostęp: 08.02.2022).

szukał dobrych pomysłów inwestycyjnych, które przyniosą korzyści migrantom na całym świecie"[15].

Słowa te przedstawiają działania, jakie wielu nazwałoby miłosierdziem, ponieważ są ukierunkowane na pomoc bliźnim i to najbardziej nieznanym i obcym. Dofinansowanie start-up'ów i innych firm prowadzonych przez migrantów, którym udało się dostać do Europy, miałoby ponadto stanowić odpowiedź na kryzys migracyjny. Jednakże wszystkie te czynności podjęte przez Sorosa są, jak sam otwarcie deklaruje, podyktowane wprowadzaniem w życie *społeczeństwa otwartego* mającego zastąpić Europę narodów. Taki zaś cel niewiele ma jednak wspólnego z prawdziwym miłosierdziem.

2. Racja stanu

2.1. Znaczenie terminu racja stanu

Działania państwa, które są połączone z interesem narodowym można łączyć z takimi pojęciami jak cele, priorytety i preferencje. Z uwagi na wymienione konotacje można zauważyć, że kategoria racji stanu zawiera w sobie wiele aspektów, które zdecydowanie utrudniają zdefiniowanie tego terminu. Jego znaczenie zmieniało się na przestrzeni lat. Po raz pierwszy termin ten pojawił się w XVI wieku u włoskiego pisarza polityczno-historycznego Giovanni Botero w książce *O racji stanu* (*Della Ragion di Stato*). „Według G. Botero racja stanu to zastosowanie koniecznych środków do wprowadzenia i rozszerzenia panowania nad narodami"[16]. Warto wskazać, iż „kategoria racji stanu odnosi się tylko i wyłącznie do państw"[17]. Politolog Adam Danek w swoim artykule pt. *Racja stanu jako suwerenność państwa in actu* dokonał zestawienia obecnych w dyskursie wiodących definicji omawianego terminu racji stanu.

[15] Oryginalny tekst: „In response, I have decided to earmark $500 million for investments that specifically address the needs of migrants, refugees, and host communities. I will invest in startups, established companies, social-impact initiatives and businesses founded by migrants and refugees themselves. Although my main concern is to help migrants and refugees arriving in Europe, I will be looking for good investment ideas that will benefit migrants all over the world" G. Soros, Why I'm Investing $500 Million in Migrants, https://www.georgesoros.com/2016/09/20/why-im-investing-500-million-in-migrants/ (dostęp: 08.02.2022).

[16] K. Kałążna, R. Rosicki, *O interesie narodowym i racji stanu – rozważania teoretyczne*, Poznań 2013, s. 119.

[17] A. Danek, *Racja stanu jako suwerenność państwa in actu*, https://geopolityka.net/adam-danek-racja-stanu-jako-suwerennosc-panstwa-in-actu/ (dostęp: 09.12.2022).

> „W swoim artykule przywołał on [A. Danek] opinie autorów, którzy eksponują rozległość pojęcia, a przez to podkreślają utrudnienia w jego precyzyjnym rozumieniu. I tak Ziemowit Jacek Pietraś uznał, iż «racja stanu to pojęcie o wyraźnie określonej treści, ale o nieostrych granicach»; Henryk Groszyk określił rację stanu jest kategorię polityczną niezwykle pojemną i historycznie zmienną, a Kazimierz Łastowski podkreślił zarówno wieloznaczność jak i przeobrażenia koncepcji racji stanu, tak w myśli politycznej jak i praktyce funkcjonowania państw"[18].

Zacytowany fragment artykułu pt. *Racja stanu – teoretyczne dylematy, praktyczne wątpliwości* wskazuje, iż w polskiej literaturze przedmiotu nie obecna jest jedna holistyczna definicja terminu racji stanu, raczej znajdzie się liczny dorobek polskich i zagranicznych badaczy zajmujących się omawianym terminem.

Warto wskazać, że A. Danek skłania się do definiowania racji stanu, rozumianej jako „imperatyw stałego wzmacniania potęgi państwa, a więc zwiększania jego suwerenności"[19]. Tak rozumiana racja stanu wskazuje na pewne zagrożenie mocarstwowym dążeniem danego państwa do uzyskania dominującej pozycji na świecie tzn. zupełnej władzy. Co więcej definicja A. Danka wskazuje na stałość tego dążenia, które ostatecznie nie będzie możliwe do osiągnięcia z uwagi na analogiczne działania innych państw.

Innym aspektem utrudniającym definiowanie racji stanu jest jej aspekt moralny. W literaturze przedmiotu wyszczególnia się nurt relatywizmu moralnego (kierowanie się względami rzeczywistych interesów państwa, często nawet wbrew moralności i prawu; państwo, ośrodek decyzyjny kieruje się nie wymogami etyki, lecz racjonalnym wyborem, chłodną kalkulacją) i relatywizmu prawnego (rewolucje, zamachy stanu)[20].

Omawiany termin zatem można zdefiniować jako kierowanie się interesem państwowym postrzeganym jako najwyższa wartość, która jest wspólna dla większości obywateli, czyli – innymi słowy – działania na rzecz danego państwa. Zatem omawiany termin można określić „jako zespół najbardziej żywotnych

[18] A. Kasińska-Metryka, *Racja stanu – teoretyczne dylematy, praktyczne wątpliwości*, „Racja Stanu Polski w Europie", Warszawa 2020, s. 24.
[19] A. Danek, *Racja stanu…* op. cit.
[20] *Ibidem.*

wewnętrznych i zewnętrznych interesów państwa"[21]. Co pozwala wskazać, iż zawartość treściowa omawianego pojęcia – racji stanu – to niepodległość, suwerenność i integralność terytorialna państwa, jak i ochrona jego bezpieczeństwa, tożsamości narodowej i możliwości rozwojowych.

2.2. Kryzys humanitarny na granicy polsko-białoruskiej

Kryzys migracyjny na pograniczu polsko-białoruskim rozpoczął się 7 sierpnia 2021 roku i nie został jeszcze zażegnany. Kryzys ten został wywołany sztucznie przez reżim Aleksandra Łukaszenko. Władze w Mińsku zorganizowały i uruchomiły kanał przerzutowy migrantów na granicę z Polską, a wcześniej litewską i łotewską.

> „Białoruś zapewnia, że ruch migracyjny jest spontaniczny, a państwo to jedynie przestało powstrzymywać migrantki i migrantów podążających przez białoruskie terytorium na Zachód. To deklaracja wprost nieprawdziwa. Znane są nawet konkretne linie lotnicze, które pomagają w sprowadzaniu migrantów – ten proceder jest zresztą obecnie ukrócany"[22].

Władze białoruskie utrzymują, że migranci docierają pod granicę polską w sposób spontaniczny, jednak mija się to z prawdą. Jak można przeczytać w analizach poczynionych przez PISM, migranci byli sprowadzani na pogranicze polsko-białoruskie przez firmy turystyczne działające na Bliskim Wschodzie[23]. Cudzoziemcy są używani jako narzędzia nacisku i zemsty na krajach Unii Europejskiej, w tym na Polsce, które włączały się w wybory prezydenckie na Białorusi w 2020 roku, komentując ich przebieg oraz wyrażając głębokie ubolewanie odnośnie do traktowania obywateli biorących udział w pokojowych protestach przeciw władzy Prezydenta Łukaszenko. Działania „Zachodu" spowodowały, iż legitymizacja władzy Łukaszenko została naruszona, ponieważ wiele gazet i innych źródeł bez ogródek mówiło o tym, że w Mińsku doszło do fałszerstwa wyborów i przemocy wobec pokojowych protestów obywateli białoruskich.

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[21] A. Kasińska-Metryka, *Racja stanu – teoretyczne dylematy, praktyczne wątpliwości*, „Racja Stanu Polski w Europie", Warszawa 2020, s. 26.

[22] *Kryzys humanitarny na pograniczu polsko-białoruskim* [w:] Raport Grupy Granica, https://www.grupagranica.pl/files/Raport-GG-Kryzys-humanitarny-napograniczu-polsko-bialoruskim.pdf (dostęp: 15.02.2022).

[23] A. M. Dyner, *Kryzys graniczny jako przykład działań hybrydowych 2* [w:] Polski Instytut Spraw Międzynarodowych PISM, https://www.pism.pl/publikacje/kryzys-graniczny-jako-przyklad-dzialan-hybrydowych (dostęp: 17.12.2022).

Należy nadmienić, iż w dyskursie akademickim i tym powiązanym z organami bezpieczeństwa narodowego podobne wykorzystanie ludzi (migrantów) jako lewara nacisku na Warszawę przez władzę w Mińsku można nazwać *bronią „D"* – bronią demograficzną. Jest to tak zwane zagrożenie asymetryczne lub – inaczej nazywając – przejaw *wojny hybrydowej*. Jak można przeczytać w literaturze przedmiotu, termin „wojna hybrydowa jest składową działań taktycznych, a także terroryzmu i przestępczości, pozbawiona norm społecznych, realizowana z wykorzystaniem sił konwencjonalnych i niekonwencjonalnych dla osiągnięcia założonych celów politycznych, w tym także geostrategicznych"[24]. Przytoczona definicja terminu *wojny hybrydowej* jak najbardziej odpowiada wydarzeniom na pograniczu polsko-białoruskim, ponieważ wykorzystanie migrantów z Bliskiego Wschodu jako broni odpowiada stosowania siły niekonwencjonalnej w celu osiągnięcia celu politycznego. Wspomniana *broń „D"* ma jeszcze jedną charakterystykę, – jej wykorzystanie ma działanie psychologiczne, ponieważ „użycie środków militarnych wobec takiego strumienia [migrantów] jest […] nieakceptowalne przez znaczną część opinii publicznej, zwłaszcza przy jednoczesnej walce informacyjnej i może prowadzić do kompromitacji państwa wobec sojuszników, kierujących się podobnymi wartościami"[25]. Oznacza to, że strona atakująca stosuje walkę informacyjną w stosunku do broniącego się przed ukierunkowanym strumieniem migrantów. Polska była celem takich działań informacyjnych ze strony reżimu Łukaszenko, kiedy to prezydent Białorusi oskarżał stronę polską o działania nieakceptowalne wobec migrantów na granicy polsko-białoruskiej[26].

Istotną sprawą w odniesieniu do owego kryzysu na granicy polsko-białoruskiej jest to jak sytuacja ta była ukazywana w samej Polsce. Z jednej strony mówiono, że mamy do czynienia z kryzysem humanitarnym, z ludźmi, którym to należy pomóc bezwarunkowo, z drugiej strony – że wydarzenia na granicy to działania czysto militarne tak jak to wyżej wymieniono.

[24] B. Gostomczyk, *Definicje wojny hybrydowej i jej postrzeganie przez Rosjan*, Warszawa 2017, s. 66.

[25] W. Repetowicz, *Broń „D" jako zagrożenie asymetryczne*, Warszawa 2018, s. 118-119.

[26] „Działaniom Mińska towarzyszy agresywna kampania informacyjna, w której władze RP oskarża się o cyniczne doprowadzenie do katastrofy humanitarnej na granicy". P. Żochowski, *Białoruś: eskalacja kryzysu migracyjnego* [w:] Ośrodek Studiów Wschodnich, https://www.osw.waw.pl/pl/publikacje/analizy/2021-10-27/bialorus-eskalacja-kryzysu-migracyjnego (dostęp: 11.12.2022).

2.3. Polska racja stanu wobec kryzysu granicznego

To, czym jest polska racja stanu oraz jakie są jej najważniejsze obszary zostało przedstawione w *Białej Księdze Bezpieczeństwa Narodowego Rzeczpospolitej Polskiej*. Chodzi tu o: „rozwój gospodarczy potencjału państwa z podkreśleniem ochrony środowiska naturalnego (zasoby materialne); rozwój społecznego potencjału państwa z podkreśleniem dziedzictwa narodowego (zasoby niematerialne); wolne i bezpieczne życie obywateli (obywatel i społeczeństwo); istnienie niepodległego państwa polskiego w nienaruszalnych granicach (państwo)"[27]. W tym przypadku znamiennym dla nas będą dwa ostatnie obszary odnoszące się do polskiej racji stanu, czyli wolnego, jak i bezpiecznego życia obywateli oraz istnienia niepodległego państwa polskiego z nienaruszalnymi granicami.

W przypadku kryzysu humanitarnego, jaki odbywa się na polsko-białoruskim pograniczu, wspomniane dwa istotne obszary polskiej racji stanu stały się celem działań reżimu Łukaszenko. Cudzoziemcy znajdujący się na terenie przygranicznym, są narzędziem mającym zaburzyć bezpieczeństwo obywateli polskich na terenach przygranicznych, jak i tych położonych głębiej kraju, co ewidentnie uderza w integralność i nienaruszalność granicy państwa polskiego.

W celu zniwelowania zagrożenia na granicy, a nawet całkowitego zlikwidowania kryzysu, władze w Warszawie podjęły liczne kroki. Pierwszym działaniem mającym na celu uporządkowanie sytuacji w regionie przygranicznym było wysłanie wsparcia dla straży granicznej w postaci żołnierzy Wojska Polskiego[28]. Działania straży granicznej zostały również skupione na udzielanie pomocy tym migrantom, którym udało się przedostać do Polski oraz tym, którzy potrzebowali pomocy na terenie między Polską a Białorusią. Kolejną ważną decyzją podjętą przez prezydenta Andrzeja Dudę było wprowadzenie stanu wyjątkowego na wąskim terenie przy granicy polsko-białoruskiej, obejmujący 115 miejscowości w województwie podlaskim oraz 68 miejscowości z województwa lubelskiego. Innym działaniem wprowadzonym w związku ze zmaganiami z migrantami na granicy były decyzje o wprowadzeniu w Polsce procedury *push-back*. „Procedura *push-back* to nic innego, jak odsyłanie migrantów za polską granicę przez Straż

[27] *Biała Księga Bezpieczeństwa Narodowego Rzeczpospolitej Polskiej*, https://www.bbn.gov.pl/ftp/dokumenty/Biala_Ksiega_inter_mm.pdf (dostęp: 09.12.2022).

[28] *Wojsko Polskie wzmocni bezpieczeństwo granicy polsko-białoruskiej*, https://www.wojsko-polskie.pl/articles/tym-zyjemy-v/wojsko-polskie-wzmocni-bezpieczenstwo-granicy-polsko-bialoruskiej/wyszukiwarka (dostęp:19.12.2022).

Graniczną"[29]. W międzyczasie na granicy również skonstruowano tymczasową zaporę w postaci zasieków. Rozwinięciem tej zapory ma być mur, jaki ma powstać na granicy z Białorusią.

Wyżej wymienione działania polskiego rządu i prezydenta były podyktowane chęcią obrony kraju i jego mieszkańców na co się składa polska racja stanu. Dodatkowo należy nadmienić, iż „Konstytucja RP w art. 5 stanowi natomiast, że Rzeczpospolita Polska strzeże niepodległości i nienaruszalności swojego terytorium, zapewnia wolności i prawa człowieka i obywatela oraz bezpieczeństwo obywateli, strzeże dziedzictwa narodowego oraz zapewnia ochronę środowiska, kierując się zasadą zrównoważonego rozwoju. Przepis ten należy rozpatrywać w powiązaniu z art. 26 ust. 1 Konstytucji RP, zgodnie z którym to Siły Zbrojne RP mają chronić niepodległość państwa i niepodzielność jego terytorium oraz zapewniać bezpieczeństwo i nienaruszalność jego granic"[30]. Oznacza to, że działania podjęte przez władze polskie podyktowane były ochroną państwa polskiego zawartego w niezmiernie istotnym dokumencie prawa polskiego – Ustawie Zasadniczej RP. Jednakże działania te w dużym stopniu stoją w sprzeczności z miłosierdziem, ponieważ jeżeli władze polskie kierowałby się tylko i wyłącznie zasadą miłosierdzia to należałoby udzielić pomocy i azylu wszystkim migrantom zmierzającym do Polski i na zachód poprzez teren Białorusi. Byłoby to działanie w istocie niebezpieczne dla Polski i jej obywateli, bo w tak dużej grupie ludzi mogliby przedostać się na teren kraju także terroryści. Co więcej, przedostanie się tak dużej liczby ludzi samo w sobie jest niebezpieczne dla polskiej integralności terytorialnej[31]. Kierując się racją stanu władze polskie nie udzielają

[29] *Push-back: co to znaczy? Na czym polega?*, https://www.se.pl/wiadomosci/polityka/push-back-co-to-znaczy-na-czym-polega-aa-Kw8F-Zbae-ppru.html (dostęp: 09.02.2022).

[30] I. Stańczuk, *Konstytucyjny obowiązek ochrony granic RP w świetle kryzysu na granicy z Białorusią*, „Przegląd Prawa Konstytucyjnego", nr. 3 (67)/2022, s. 251.

[31] Jest to wątek również poruszony w *Strategii Bezpieczeństwa Narodowego Rzeczpospolitej Polskiej* z 2020 roku. W Filarze IV dotyczącym Rozwoju Społecznego i Gospodarczego i Ochrony Środowiska zawarto punkt 2 o tytule: Polityka Migracyjna. Można tam przeczytać, że władze polskie będą: „Opracować i prowadzić kompleksową politykę migracyjną, skoordynowaną z polityką bezpieczeństwa, polityką gospodarczą i społeczną, uwzględniającą zarówno bieżące, jak i prognozowane potrzeby rynku pracy, integrację migrantów ze społeczeństwem polskim, zapewniającą zachowanie spójności społecznej, jak i przeciwdziałanie możliwym zagrożeniom porządku i bezpieczeństwa publicznego związanym z procesami migracyjnymi". Oznacza to, że władze polskie nie mogą umożliwić przedostanie się nielegalnym migrantom z Bliskiego Wschodu na terytorium RP z uwagi na to, że byłoby to działanie sprzeczne z podjętą strategią bezpieczeństwa. Strategia Bezpieczeństwa Narodowego Rzeczpospolitej Polskiej z 2020 roku, https://www.bbn.gov.pl/ftp/dokumenty/Strategia_Bezpieczenstwa_Narodowego_RP_2020.pdf (dostęp: 19.12.2022).

obecnie azylu tak dużej liczbie cudzoziemców. Jest to powiązane również z tym, iż sami zainteresowani – migranci nie chcą mieć udzielanego azylu w Polsce, bo ich destynacją są kraje „zachodnie" takie jak Francja czy Niemcy, a nie Polska.

Ciekawym wątkiem jaki należy podkreślić w tym miejscu jest samo stanowisko Rady Biskupów Diecezjalnych Konferencji Episkopatu Polski w sprawie wydarzeń na granicy polsko-białoruskiej, przekazane w *Komunikacie Rady Biskupów Diecezjalnych Konferencji Episkopatu Polski Po Spotkaniu Na Jasnej Górze* z dnia 25.08.2021 r.

> „Wobec wydarzeń na wschodniej granicy Polski, a przede wszystkim wydarzeń w Afganistanie, biskupi diecezjalni przypominają, że sytuacja migrantów i uchodźców zawsze powinna budzić zrozumienie, współczucie i pomoc. Tym, którzy uciekają przed prześladowaniami, winniśmy okazać postawę chrześcijańskiej gościnności, z zachowaniem obowiązującego prawa, gwarantującego bezpieczeństwo zarówno uchodźcom, jak i społeczności przyjmującej. Oczekujemy od państwa i samorządów wypracowania właściwych dla naszej sytuacji mechanizmów pomocy uchodźcom, które będą mogły być wsparte zaangażowaniem Kościoła w Polsce. Biskupi dziękują także za wszelkie inicjatywy pomocowe Caritas oraz lokalnych społeczności, jak również żołnierzom i Straży Granicznej za ich trudną służbę. Maryja, Królowa Polski i Pociecha Migrantów, niech będzie naszą przewodniczką i opiekunką w tym dziele"[32].

Zauważalne jest zasadniczo odmienne stanowisko hierarchów Kościoła Katolickiego od tego prezentowanego przez władze Rzeczpospolitej Polskiej. Podyktowane jest ono nauką kościoła i chęcią czynienia dobra – miłosierdzia – względem tych najbardziej potrzebującym (migrantom), jednakowoż stanowisko hierarchów nie uwzględnia refleksji nad zagrożeniem jakim stanowi niekontrolowana migracja nakierowana do Polski przez reżim w Mińsku, która ma za zadanie – jak to zostało wcześniej stwierdzone – zdestabilizować sytuację polityczną w Rzeczpospolitej Polskiej. Ową refleksję nad bezpieczeństwem państwa prezentują władze w Warszawie czego wizualizacją jest „twarde" stanowisko

[32] *Komunikat po obradach Rady Biskupów Diecezjalnych* [w:] Diecezja Kielecka, https://www.diecezja.kielce.pl/komunikat-po-obradach-rady-biskupow-diecezjalnych-0 (dostęp: 11.12.2022).

wobec migrantom, próbującym się przedostać nielegalnie na terytorium Polski z Republiki Białoruś.

Po upływie około pół roku od początku kryzysu na granicy polsko-białoruskiej rozpoczęła się na Ukrainie „operacja specjalna", jak to nazwała Federacja Rosyjska, choć bez ogródek należy działania rosyjskie zwać inwazją. Można, więc tym bardziej sądzić, iż działanie władz w Mińsku były nakierowane na zdestabilizowanie sytuacji wewnętrznej Rzeczpospolitej Polski. Drugorzędnym celem reżimu Łukaszenko było zmanipulowanie obywateli polskich oraz nastawienie ich negatywnie do władz centralnych. Działanie władz w Mińsku miały doprowadzić do tego, by polski rząd był zaabsorbowany ochroną stabilności w kraju, kosztem wspierania politycznego i humanitarnego Ukrainy.

Wnioski

Podsumowując, zasada kierowania się miłosierdziem nie zawsze jest możliwa do realizacji, kiedy to zagrożone jest państwo i jego obywatele, ponieważ władza stojąca na czele tych obywateli ma przede wszystkim za zadanie ich ochronę, a dopiero później udzielanie ewentualnej pomocy innym – w tym przypadku migrantom. Jest to kierowanie się racją stanu, która to w działalności państwa musi stać zawsze na pierwszym miejscu. Jak się jednak dodatkowo okazało, kryzys na granicy polsko-białoruskim był tylko etapem wstępnym do inwazji wojsk Federacji Rosyjskiej na terytorium Ukrainy. Gdyby więc władze polskie nie kierowały się racją stanu względem migrantów z Bliskiego Wschodu, to obecnie Polacy nie mogliby tak skutecznie pomagać uchodźcom wojennym z Ukrainy. Oznacza to, iż kierowanie się przez władze państwowe twardym stanowiskiem – racją stanu – pozwala jego obywatelom realizować prawdziwe miłosierdzie, podejmując odpowiednie działania względem tych, którzy naprawdę potrzebują pomocy. Jednakże racja stanu jest domeną ściśle powiązaną z państwem, a miłosierdzie jest możliwe tylko na poziomie działalności poszczególnych ludzi.

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DOI: 10.21697/CSP.2023.27.1.15

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

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John Paul II, the right to life and abortion

Abstract: John Paul II formulated the prohibition of killing an innocent person in terms of natural Human Rights. He advocated in favour of the right to life of unborn children, through diplomacy and action at the United Nations. The Polish Pope opposed both the claims and the methods of the pro-abortion lobby. This article examines news of this worldwide battle, analysing both Human Rights Law and the power relations surrounding abortion. Nearly thirty years after the Cairo Conference (1994), unborn children have not been excluded from the protection of the right to life and an international obligation to legalize abortion has never been created. However, the assaults of the pro-abortion lobby are as strong as during the 1990s. The entryism of this lobby has even created dysfunctions in the international institutions themselves, thus affecting and losing their impartiality.

Keywords: John Paul II, abortion, human rights

John Paul II was specifically and deeply preoccupied with the protection of human life from conception. He published an encyclical on this topic in 1995: *Evangelium vitae*. During his fourth year as a Pope (1982), John Paul II gave one homily on the right to life, during which he recalled: "*Nothing can legitimize the death of an innocent person. That would be to deny the very foundation of society. What would be the meaning of words about the dignity of man, about his fundamental rights, if we do not protect an innocent person, or if we even facilitate private or public means or services to destroy human lives?*"[1] This article does not deal with the issue of the end of life, but rather focuses on the beginning of life.

The killing of an innocent person has always been regarded as a moral evil by the Church. The Catechism of the Catholic Church quotes sources from

[1] John Paul II, *Mass for families*, Madrid, Spain, 2 November 1982 (free translation).

the first and second centuries condemning abortion.[2] The contribution of John Paul II is thus not to be sought in this condemnation. An innovation of his pontificate (1978-2005) was to formulate this doctrine within the modern paradigm of Human Rights. The Polish Pope interpreted Human Rights both through the Thomistic doctrine of natural law and through international law.

Even today, the thought and action of John Paul II are a good starting point to inspire advocacy for unborn children based on Human Rights (1) and to understand and oppose what he called a "network of complicity" to legalize and spread abortion worldwide (2).

1. Advocacy for unborn children based on Human Rights

John Paul II argued in favour of the right to life from conception and stressed the responsibility of states to enforce this right. As we shall see, this advocacy differs from Human Rights Law but does not contradict it.

1.1. The right to life and other Human Rights

According to John Paul II, the right to life begins at conception, which is the very beginning of the life of a human being. It is based on the nature of the human being, because there is a "*natural inclination to preserve one's own physical life*" and there is even more "*a dignity proper to the person*."[3] As such, the right to life is universal.[4]

The right to life also has supernatural purposes. At the beginning of *Evangelium vitae*, John Paul II recalled that "*Man is called to a fullness of life which far exceeds the dimensions of his earthly existence, because it consists in sharing the very life of God*."[5] The birth of a child makes his or her baptism possible. The right to be born thus encompasses the possibility of a life with God, on Earth first, and in Heaven for eternity.[6]

[2] The Holy See, *Catechism of the Catholic Church*, promulgated in 1992, § 2271; See also: Gérard Mémeteau, *Le droit de la vie dans les enseignements pontificaux*, Téqui, 1985, p. 28.
[3] John Paul II, *Veritatis Splendor*, 6 August 1993, § 50.
[4] *Ibid.*, § 51.
[5] John Paul II, *Evangelium vitae*, 25 March 1995, § 2
[6] On baptism, see the John Paul II's Angelus and Homily for the Feast of the Baptism of the Lord, 12 January 2003.

John Paul II establishes a hierarchy among Human Rights.[7] Two rights are at the top: the right to life and the right to religious freedom.[8] They prevail over other rights and their ultimate aim is to respond to God's call.

Human Rights Law is not aligned with this vision of John Paul II, but there are points of agreement. International Human Rights instruments all recognize the right to life as a primary right, by quoting it in their first articles. This right is considered as "*inherent*" to "*every human being*"[9] and includes a prohibition on intentionally depriving a person of his or her life.[10] Human Rights instruments do not explicitly exclude children before birth from this protection, insofar as a "*human being*" is not legally defined. On this point, international law stands in stark contrast to the French Declaration of the Rights of Man and of the Citizen of 1789, which stated that human rights began at birth.[11]

Some Human Rights instruments recognize that human life before birth can or should be protected. The Convention on the Rights of the Child, which was ratified by the Holy See, recalls that the child shall benefit from "*appropriate legal protection, before as well as after birth*."[12] Even better, the American Convention on Human Rights considers that the right to life "*shall be protected by law and, in general, from the moment of conception*."[13] The European Court of Human Rights considers that "*the issue of when the right to life begins comes within the [national] margin of appreciation*"[14] which leaves states free to protect unborn children in their national legal order.

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7 An analysis of this hierarchy and its foundations can be found in Philippe-Ignace André-Vincent, *Les droits de l'homme dans l'enseignement de Jean-Paul II*, éditions LGDJ, 1983, pp. 43-46.

8 See for example: John Paul II's, Homily, Nowy Targ, Poland, 8 June 1979.

9 *International Covenant on Civil and Political Rights*, New York, United States of America, 16 December 1966, Article 6-1.

10 *Ibid.*; See also: *Convention for the Protection of Human Rights and Fundamental Freedoms* ("European Convention on Human Rights"), Rome, Italy, 4 November 1950, Article 2-1.

11 According to Article 1 of this Declaration, "*Men are born and remain free and equal in rights.*"

12 Convention on the Rights of the Child, New York, United States of America, 20 November 1989, Preamble.

13 *American Convention on Human Rights*, San José, Costa Rica, 22 November 1969, Article 4 § 1.

14 See for example: European Court of Human Rights (ECHR), *Vo v. France* [GC], No. 53924/00, 8 July 2004.

1.2. The duties of society and states

According to John Paul II, not only is there an individual dimension to the right to life, but also a social dimension, which gives duties to states. On this point also, as we shall see, we can find parallels between this thinking and Human Rights Law.

John Paul II explained that there is a "*distinctly social dimension*", "*beyond the responsibility of individuals and beyond the harm [which can be] done to [unborn children].*"[15] For him, the protection of these innocent persons is related to "*civilization itself*"[16] and the "*foundation of society*"[17].

According to John Paul II, the recognition of natural Human Rights is a condition for the existence of the rule of law.[18] He developed the notion of the "*human state*"[19] in a speech on the right to life. It is not a Christian state, submitted to the whole divine revelation, including the Gospel, but a state submitted to natural law. The human state "*recognizes at its primary duty the defence of the fundamental rights of the human person, especially the weakest.*"[20] This duty implies an obligation not to violate the right to life from conception and also to "*protect and promote*" it.[21]

In Human Rights Law as well, Human Rights give negative and positive obligations to states. In support of their positive obligations, states of the United Nations committed in 1994 to "*help women avoid abortion*" and to "*reduce the recourse to abortion*"[22], during the Cairo Conference, which we shall discuss subsequently. In the case-law of the European Court of Human Rights, states which legalize

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15 *Evangelium vitae*, *op. cit.*, § 59. Before this quotation, John Paul II made a list of all the actors who have an individual responsibility towards an unborn child: his parents, wider family circle or friends, doctors and nurses, legislators and administrators of health-care centres (§§ 58 et 59).

16 *Ibid.*, § 59.

17 Mass for families, Madrid, *op. cit.* (free translation).

18 See John Paul II's speech at the European Court of Human Rights, 10 November 1980, § 4.

19 See *Evangelium vitae*, *op. cit.*, § 101; John Paul II, Address to Participants in the Study Conference on "The Right to Life in Europe", 18 December 1987, § 1: "*It is not necessary to refer to the light of the Christian faith to understand these basic truths. When the Church calls them back, she does not want to introduce a Christian state: she simply wants to promote a human State.*"

20 *Ibid.*

21 *Evangelium vitae*, op. cit., § 93.

22 Programme of Action of the International Conference on Population and Development, Cairo, 5-13 September 1994, § 7.24 and § 8.25.

abortion keep some obligation which can limit the damage. For example, states must oppose eugenics.[23]

However, despite these elements remaining in Human Rights Law, there is, of course, a discrepancy between natural law and Human Rights Law, especially on the right to life. We shall now deal with measures in favour of abortion.

2. The "network of complicity" to legalize and spread abortion

John Paul II identified and denounced in the 1990s a "*network of complicity which reaches out to include international institutions, foundations and associations which systematically campaign for the legalization and spread of abortion in the world.*"[24] From the experience of the Holy See and from what we can observe today, we shall clarify what this pro-abortion lobby requests and how it works.

2.1. Towards a fundamental "right to abortion"?

The agenda of this pro-abortion lobby is exactly the opposite of the right to life from conception. Its main claim since the 1990s is a universal "right to abortion," which would create an international obligation for states to legalize abortion on demand.

John Paul II denounced the "right to abortion" as a "*contradiction*" in itself.[25] In *Evangelium vitae*, he asked people "*to call things by their proper name.*"[26] He qualified abortion[27] as a "*most serious and dangerous crime*" [28] and "*murder.*"[29] He recalled the condemnation in the Bible of "*those who call evil good and good evil.*"[30]

A "right to abortion" would protect an ability to use freedom as a power upon nature, up to the destruction of this nature, rather than protecting the ability to accomplish nature. John Paul II called this a "*corruption of the idea and the*

[23] See: ECHR, *Costa v. Italy*, No. 54270/10, 28 August 2012.
[24] *Evangelium vitae*, *op. cit.*, § 59.
[25] John Paul II, *Address of the Holy Father to the new ambassador of New Zealand to the Holy See*, 25 May 2000.
[26] *Evangelium vitae*, *op. cit.*, § 58.
[27] John Paul II also addressed other practices which involve the killing of human embryos, such as the experimentation on embryos, in-vitro fertilization, prenatal diagnosis techniques involving risks for the child.
[28] *Evangelium vitae*, *op. cit.*, § 62.
[29] *Ibid.*, § 58.
[30] *Ibid.* See: Isaiah 5:20.

experience of freedom."[31] He also qualified the legalization of abortion, with the culture surrounding it, as a "*structure of sin*."[32] This notion, coming from liberation theology, was also used by him regarding racism and contempt for poor people, in some places.[33]

John Paul II became personally involved against the creation of a "right to abortion" during the International Conference on Population and Development (ICPD), held in Cairo in 1994, and during the World Conference on Women, held in Beijing in 1995. Many even say that without the involvement of John Paul II at the United Nations, a "right to abortion" would have been created during these two Conferences.[34]

Even today, almost thirty years later, the idea of a fundamental "right to abortion" remains a mere political idea. No international binding instrument includes such a right.

The European Court of Human Rights examines abortion cases from the perspective of the right to respect women's private life, but they do not derive from this right a "right to abortion."[35] The "right to abortion" is often confined to soft law, at the worst. It is, most of the time, the same at the national level,[36] with a few exceptions. The United States had been one of the exceptions between 1973 and 2022, with the judgments of *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), but The Supreme Court reversed them in *Dobbs vs. Jackson Women's Health Organization* (2022).

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[31] John Paul II, *Familiaris Consortio*, 22 November 1981, § 6: "*a corruption of the idea and the experience of freedom, conceived not as a capacity for realizing the truth of God's plan (…), but as an autonomous power of self-affirmation, often against others, for one's own selfish well-being*" (FC, § 6).

[32] *Evangelium vitae*, *op. cit.*, § 59.

[33] See on this topic the study carried out by Pascal Ide, « La dimension sociale du péché dans le magistère de l'Église », 2000.

[34] André Dupuy, *Le courage de la vérité – Jean-Paul II et la diplomatie pontificale. Les grands dossiers.*, Les Éditions du Cerf, 2014, pp. 67 et 76.

[35] See for example: ECHR, *A, B and C v. Ireland* [GC], No. 25579/05, 16 December 2010, § 214: "*Article 8 cannot (…) be interpreted as conferring a right to abortion.*"

[36] In France, a "fundamental right to abortion" has been "reaffirmed" in a resolution of the National Assembly on 26 November 2014, but it is a political declaration of principle without any real legal value.

We can thus say that John Paul II's victory against the creation of a right to abortion is still bearing fruit.

2.2. The corruption of international institutions

John Paul II's criticism of a pro-abortion "network of complicity" is based on the experience of the Pope during international conferences, especially in Cairo. The Holy See understood the strategy of this lobby there. It observed that the International Planned Parenthood Federation (IPPF) was included in about sixty government delegations, that the president of the IPPF led the work of the Commission responsible for preparing the final text, and that the NGO members of IPPF financed the travel of many experts invited to give a speech during preparatory meetings.[37]

The Holy See was thus in a weak position but was effective. The pro-abortion lobby understood in Cairo that its main obstacle was the Holy See. The following year, at the beginning of the Conference of Beijing, the pro-abortion lobby launched a campaign named "See Change" to challenge the legitimacy of the Holy See at the UN. The goal was to remove its status.[38]

What we can observe today is the same kinds of methods, employing entryism, and even creating dysfunction in the international institutions themselves. The *European Centre for Law and Justice* (ECLJ) published two reports about these dysfunctions: *NGOs and the Judges of the ECHR, 2009 – 2019* (February 2020) and *The financing of UN experts* (September 2021). Abortion is often the issue on which these dysfunctions are the worst, as the examples below show.

At the United Nations, pro-abortion foundations and NGOs directly finance some reports of "independent" experts.[39] One of these experts qualified these direct payments as "silent corruption." As an illustration, the former UN expert on torture published a report in 2016, in which he explained that the prohibition of abortion was a form of torture.[40] The Ford Foundation gave him 90,000 dollars to write this report. The Open Society Foundations also gave him 200,000 dollars

[37] André Dupuy, *Le courage de la vérité*, *op. cit.*, p. 60
[38] *Ibid.*, pp. 81-83.
[39] The information in this paragraph can be found in the ECLJ report *The financing of UN experts*, September 2021, especially pp. 35-42.
[40] Human Rights Council of the United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, § 44.

the same year. These foundations thus paid to promote their ideas with the logo of the UN.

The pro-abortion lobby also has great influence at the Interamerican Court of Human Rights.[41] In November 2021, this Court judged the case *Manuela v. Salvador*.[42] The case began in 2008, when Manuela killed her newborn child. Pro-abortion NGOs used this dramatic story to promote abortion and their lies about the facts were everywhere in the media. The President of this Court and one other judge had strong ties of interest with the applicant NGO (Center of Reproductive Rights), and with NGOs and a UN expert supporting them. The proceedings before the Interamerican Court were thus biased and unfair, due to conflicts of interest.

The third illustration we can give of the methods of the abortion lobby is that of the World Health Organization (WHO). In March 2022, the WHO issued 170 pages of guidelines about abortion, which promote abortion on demand until birth.[43] The work was financed by the *Human Reproduction Programme*, which is funded by private groups, such as the Bill & Melinda Gates Foundation and the Buffett Foundation.[44] Among the experts chosen to write the guidelines, two-thirds of them promote abortion, belonging notably to the IPPF or to Marie Stopes International.[45] There was no expert in favour of the prevention of abortion. This work was thus paid and completed by pro-abortion groups, and it now has the WHO logo.

Conclusion

There has been a worldwide battle since the 1990s between two sides. The promoters of the right to life from conception fought the attempt to create an opposite "right to abortion." No issue seems to have mobilized John Paul II so much as this battle.[46] The Polish Pope laid the foundations to lead this battle at an international

41 All the details about the information in this paragraph can be found in this article: Nicolas Bauer, "Conflicts of Interests at the Inter-American Court of Human Rights," ECLJ website, March 2021.

42 Interamerican Court of Human Rights, *Manuela v. Salvador*, No. 13.069, 2 November 2021.

43 World Health Organization, "Abortion care guideline," 8 March 2022.

44 World Health Organization, "Voluntary contributions by fund and by contributor, 2020," A74/INF./4, 7 May 2021, pp. 5-14 and 18-20.

45 See: "List of contributors to the "Abortion care guideline" cited in the WHO/HRP document," ECLJ website, June 2022.

46 See: André Dupuy, *Le courage de la vérité*, op. cit., p. 81

level, by relying on Human Rights, without naiveté concerning the corruption of law and international institutions.

Faced with the attacks in favour of abortion, the doctrine of natural law is a source of hope, because it is engraved in the heart of every man.[47] In his encyclical *Veritatis Splendor*, John Paul II recalled that conscience can *"[become] almost blind from being accustomed to sin"*[48] but also that "*no darkness of error or of sin can totally take away from man the light of God the Creator. In the depths of his heart there always remains a yearning for absolute truth and a thirst to attain full knowledge of it*."[49] Every person thus has the possibility to rediscover in his or her heart natural Human Rights, even those of unborn children.

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[48] *Ibid.*, § 62 (quoting the Second Vatican Ecumenical Council, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, § 16).
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Reviews and discussions

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

DOI: 10.21697/CSP.2023.27.1.16

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Naród w kontrze do imperium

Recenzja książki: Yoram Hazony: „Pochwała państwa narodowego" Wydawnictwo Teologia Polityczna, Warszawa 2023

Lektura książki Yorama Hazony'ego pt. „Pochwała państwa narodowego" uwagę czytelnika przykuwa już od pierwszych stron. Dzieje się tak nie tylko dlatego, że ten błyskotliwy esej politologiczny został napisany przystępnym językiem i równie przystępnie przetłumaczony. Jego magnetyczną siłą jest przede wszystkim niezwykle gorący temat oraz odwaga autora w formułowaniu opinii uważanych współcześnie za co najmniej kontrowersyjne.

Już po zapoznaniu się z autorskim wprowadzeniem do książki – którą w 2023 roku wydało Wydawnictwo Teologii Politycznej, pięć lat po jej anglojęzycznym pierwowzorze – zyskuje się przekonanie, że jesteśmy prowadzeni w sam środek gorącej debaty, która rozpala głowy i wyostrza pióra wielu współczesnych intelektualistów. Od samego początku czytelnik ma wrażenie, że publikacja, którą trzyma w ręku powstała w kontrze do tych kręgów opiniotwórczych współczesnego Zachodu, które hołdują przekonaniu o nadciagającym kresie państw narodowych. Wszak nie trzeba wcale daleko szukać, by w obecnej dobie usłyszeć opinie, że struktury większe, bardziej sfederalizowane będą w przyszłości lepiej realizować interesy poszczególnych grup społecznych, zawodowych, czy etnicznych niż robią to samodzielne organizmy państwowe. Takie głosy płyną obecnie zarówno z ust uznanych intelektualistów, przedstawicieli uniwersyteckich elit, jak również czynnych polityków, którzy z neofickim żarem potrafią przekonywać własnych wyborców, że dobro tych ostatnich leży w rezygnacji z państwowej suwerenności na rzecz projektów ponadnarodowych. Przykład niedawnej debaty i głosowania w Parlamencie Europejskim (październik 2023 r.) nad propozycją zmiany traktatów europejskich w kierunku dalszej centralizacji władzy w rękach Brukseli jest aż nadto wyraźny i dobitny.

Książka Yorama Hazony'ego idzie pod prąd takim przekonaniom. Jest obroną koncepcji politycznej, która za fundament relacji globalnych uznaje istnienie państw narodowych, jako najwłaściwszej formy organizowania się wspólnot ludzkich, które dzięki kulturze i własnemu, oryginalnemu i wytworzonemu przez pokolenia dziedzictwu, stanowią odrębne byty realnie istniejące w historii i tę historię tworzące.

Jasność wywodu Hazony'ego wspiera czytelna konstrukcja publikacji, która składa się z trzech głównych części podzielonych na rozdziały. Już pierwsza z nich stanowi mocne uchwycenie tematu, choć szkicowana jest raczej grubą kreską. Jej celem jest przedstawienie tylko pewnego zarysu, a raczej kontekstu historycznego toczącego się konfliktu pomiędzy siłami narodowymi a ponadnarodowymi, które autor w całej swej pracy nazywa „imperialnymi". Wrócimy do tego za chwilę. Druga i zasadnicza część książki jest prezentacją argumentów na rzecz niepodległego państwa narodowego, jako najlepszej organizacyjnej zasady politycznej dostępnej ludzkości. To w tej części Hazony odsłania karty i przedstawia siedem zasad, których spełnienie tworzy właściwy porządek państw narodowych. Strukturę publikacji zamyka trzecia część, która jest równie inspirująca, jak poprzednie i zawiera swoiste studium na temat relacji pomiędzy nacjonalizmem a nienawiścią i fanatyzmem, które w opinii wielu ma on z zasady determinować. Hazony rozprawia się z tym konstruktem myślowym wskazując, że podobne postawy można wskazać równie dobrze w obrębie koncepcji liberalnych i uniwersalistycznych, dlatego postuluje by debatę nad kształtem porządku światowego opierać o zupełnie inne przesłanki.

Warto w tym miejscu powiedzieć, że autor nie boi się kontrowersji. Prowadząc swój wywód cały czas posługuje się pojęciem „nacjonalizmu", które w drugiej połowie XX wieku nabrało – na przekór wcześniejszym historycznym interpretacjom – jednoznacznie pejoratywnego charakteru. Czyni to z rozmysłem, wskazując, że momentem przełomowym tego swoistego odwrócenia pojęć było „utożsamienie wszelkich narodowych i religijnych odrębności z nazizmem i rasizmem" (s.79), jakie dokonało się w kręgach wykształconych elit, próbujących znaleźć racjonalne wytłumaczenie przyczyn katastrofy II wojny światowej oraz towarzyszącego jej okrucieństwa. „Gdy narody próbowały zrozumieć, jak to się dokonało, niektórzy – zarówno marksiści, jak i liberałowie – gotowi byli uznać, że przyczyną tej tragedii był sam ład opierający się na istnieniu państw narodowych" – pisze Hazony, wskazując jednocześnie na łatwe uproszczenie, które wkrótce po wojnie utrwaliło się w powszechnym dyskursie intelektualnym,

zmieniając w sposób zasadniczy jego wektory. Polega ono na łatwym i pozornie logicznym „rozszyfrowaniu" nazwy, a co za tym idzie również intencji, niemieckiej partii nazistowskiej NSDAP, na której bez wątpienia ciąży niekwestionowana wina za zło wojny. Uproszczenie polega jednak na tym, że fakt iż w jej nazwie widnieje słowo „narodowa" – co dla wielu było i do dziś pozostaje dowodem wystarczającym na postawienie znaku równości między Hitlerem a nacjonalizmem – nie jest w istocie zgodne, jak dowodzi Hazony, z realną polityką prowadzoną przez niemieckich nazistów.

I tutaj dotykamy głównej materii książki, która – jak już wcześniej wspomnieliśmy – główną osią narracyjną buduje wokół konfliktu, jaki zachodzi pomiędzy dwiema rozbieżnymi wizjami porządku światowego. Jedną z nich jest ład oparty na istnieniu i zagwarantowaniu rozwoju niepodległych państw narodowych, druga zaś zakorzeniona jest w koncepcji przekraczającej wymiar narodowy, a którą izraelsko-amerykański pisarz wiąże z tendencjami uniwersalistycznymi, manifestującymi się w każdej epoce ludzkich dziejów i nakierowanych na budowę imperiów.

Hazony przekonuje, że skłonność do tworzenia imperiów w zachodniej cywilizacji jest tak stara, jak ona sama. Jednak pomimo usilnych wysiłków podejmowanych na przestrzeni tysiącleci – czy będzie to starożytny Egipt, Rzym, czy niemiecka Rzesza – Zachód ma z tą koncepcją odwieczny kłopot. A wszytko za sprawą biblijnego przesłania znajdującego się w centrum zachodniej cywilizacji. To przesłanie jest bowiem radykalnie odmienne od tendencji unifikacyjnych przenikających imperialne marzenia i sprowadza się do „porządku politycznego opierającego się na niepodległości narodu zamieszkującego określone granice, z którym sąsiadowałyby inne niezawisłe narody" (s.44).

Ta biblijna koncepcja jest dla wszelkiej maści „imperialistów" niewygodna. Ma bowiem wbudowane pewne samoograniczenia wobec bezpośrednio sprawujących władzę, a zarazem nakłada na nich obowiązki związane z troską o pielęgnowanie dziedzictwa swego narodu. I troska ta nie ma nic wspólnego z kwestią etniczną. Od niej ważniejsze są bowiem „więzy wzajemnej lojalności, ustanowione między członkami narodu wskutek długotrwałego współdoświadczania przez nich trudów i sukcesów" (s. 122).

Według Hazony'ego treści zawarte w Biblii hebrajskiej – którą umieszcza on w kanonie największych pism politycznych Zachodu – uczą „dostrzegać, że

sprawiedliwe rządy przyczyniają się do stabilizacji porządku politycznego, podczas gdy głupia polityka prowadzi do jej rozkładu, torując drogę anarchii i podbojowi przez innych. To tutaj po raz pierwszy stykamy się z pytaniem, czy państwo sprzyja wolności człowieka, czy też ją ogranicza, oraz czy rozwój państwa imperialnego nie prowadzi z konieczności do zniewolenia ludzkości" (s.108).

Do tego biblijnego fundamentu nawiązuje – jak przekonuje Hazony – porządek polityczny, jaki powstał na Zachodzie po wojnie trzydziestoletniej i zamykającym ją traktacie westfalskim. Autor nazywa ten porządek „protestanckim" przypisując reformacji kluczowe znaczenie dla wykreowania współczesnego ładu międzynarodowego opartego na istnieniu niezawisłych państw narodowych. W swoim wywodzie Hazony stawia też tezę, że kościół katolicki budujący przez kilka stuleci Christianitas był zwolennikiem koncepcji imperialnych.

To bodaj największe uproszczenie całej publikacji i wypada w tym miejscu powtórzyć zastrzeżenie prof. Ryszarda Legutki, które uwypuklił on w przedmowie do polskiego wydania książki. Profesor wskazuje na pewną nieoczywistą kwestię, która wiąże się z procesem formowania się państw narodowych w wyniku wcześniejszego wykształcenia się kościołów narodowych, do czego dużą wagę przykłada Hazony. Legutko zauważa, że przewrót protestancki „wprowadził do zachodniej polityki koncepcję konstruktywistyczną, z której wynikało, że państwo można wymyślić i skonstruować zgodnie z regułami domniemanego kontraktu [społecznego – dopisek KW]". W opinii prof. Legutki było to „całkowite zanegowanie narodu jako wspólnoty historycznej". Innym słowy, ten konstruktywistyczny paradygmat protestancki stał się podglebiem pomysłów imperialnych, jakie w obrębie cywilizacji zachodniej zaczęły rodzić się w czasach nowożytnych. Paradoksalnie zaś zwolennicy państw narodowych mogli liczyć na katolików, którzy broniąc swego Kościoła „nie bronili tylko swojej religii, papieża i Christianitas, lecz także swojej wspólnoty narodowej, z którą ta religia była złączona". Legutko wskazuje bez wahania przykład Polski, w której obrona suwerenności zawsze łączyła się z obroną religii katolickiej. A zaangażowani w walkę z zaborczymi imperiami polscy patrioci mogli niezmiennie liczyć na azyl i wsparcie wspólnoty Kościoła.

Wracając do zasadniczej myśli trzeba powiedzieć, że niewątpliwym atutem książki Yorama Hazony'ego jest próba skodyfikowania przez niego reguł, na jakich powinien opierać się porządek państw narodowych. Autor wskazuje siedem praktycznych zasad, dzięki spełnieniu których możemy mieć pewność, że mamy do

czynienia ze wspólnotami na tyle silnymi, iż są w stanie samoistnie istnieć, jako byty politycznie niepodległe. Dla porządku wymieńmy je tutaj. Są to:

– wystarczająca spójność i siła danego narodu, by ją sobie zapewnić;
– nieingerowanie w wewnętrzne sprawy innych państw narodowych;
– monopol rządu na środki przymusu istniejące w obrębie państwa;
– istnienie licznych ośrodków władzy w porządku międzynarodowym;
– zapobiegający zbytniej fragmentacji minimalizm w tworzeniu niepodległych państw;
– zapewnienie przez rząd ochrony mniejszościowym narodom i plemionom;
– nieprzekazywanie przez rząd narodowy przynależnej mu władzy instytucjom uniwersalnym.

Rozwinięcie każdej z tych kwestii znajdzie czytelnik w omawianej publikacji. Jednak w świetle toczącej się obecnie w Europie debaty na temat pogłębiania procesu federalizacji Unii Europejskiej oraz rozszerzania jej kompetencji względem państw członkowskich, szczególnie ostatnia z przedstawionych przez Hazony'ego reguł nabiera niezwykłej wymowy i aktualności. Z pewnością warto zapoznać się z jego argumentacją, w której upiera się on przy całkowitej niezawisłości niepodległych państw względem ponadnarodowych instytucji uniwersalistycznych. Zwłaszcza, że kończy je złowieszczą przestrogą: „ustępstwo dziś sprawiające wrażenie niewielkiego jutro nieuchronnie stanie się bardzo znaczące. A gdy naród przebudzi się ze snu, odkrywając, że jest powoli i nieubłaganie podbijany, jedynymi dostępnymi mu jeszcze drogami będzie pójście w wiekuistą niewolę albo wypowiedzenie wojny" (s.269).

Na koniec zwróćmy jeszcze uwagę na pewną szczególną koincydencję, jaka związana jest z publikacją „Pochwały państwa narodowego". Oto polskie wydanie książki Yorama Hazony'ego ukazuje się w roku poświęconym postaci i dziełu Maurycego Mochnackiego. Taka była wola Sejmu RP, który chciał w ten sposób uczcić 220. rocznicę urodzin tego wybitnego myśliciela, a zarazem autora najwybitniejszej analizy polskiej myśli politycznej dobry romantyzmu – „Powstania narodu polskiego".

Wydaje się, że jeśli potraktujemy ten fakt w kategoriach szczęśliwego zbiegu okoliczności możemy – zestawiając Mochnackiego z Hazony'm – odkryć niezwykle inspirujące tropy interpretacyjne dla naszej współczesności. Wszak to Mochnacki w obliczu zaborów i utraty państwowej suwerenności stawiał przeżywającym

traumę rozbiorów Polakom pytanie o korzenie naszej odmienności, dzięki której jako naród możemy rozpoznać się i przetrwać w „swoim jestestwie".

Książka Hazony'ego uświadamia nam, że intuicje Mochnackiego nie są czymś przebrzmiałym, a wręcz przeciwnie mogą nabierać nowego znaczenia. Co prawda, inaczej niż przed dwoma stuleciami, możemy obecnie cieszyć się własnym państwem, jednak podobnie jak inne wspólnoty i kraje Europy, stoimy w obliczu nabierającego rozpędu – używając terminologii Hazony'ego – projektu imperialnego, który ogarnia Stary Kontynent i coraz słabiej toleruje istnienie niezależnych państw narodowych. Lektura „Pochwały państwa narodowego" nie tylko pomaga nam wrócić do diagnoz Mochnackiego, ale również każe nam zastanowić się nad tym, jaka jest nasza samowiedza narodowa na obecnym etapie dziejów. I co będzie decydować o polskiej tożsamości w niedalekiej przyszłości.

CHRISTIANITY WORLD • POLITICS No 27, 2023
JOURNAL OF THE CATHOLIC SOCIAL THOUGHT

DOI: 10.21697/CSP.2023.27.1.17

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Sprawozdanie z pobytu naukowego na Uniwersytecie Stanforda i udziału w Hoover Institution International Seminar Program 2023

W czerwcu 2023 r. wraz z 28 ekspertami w dziedzinie polityki zagranicznej i obronnej z Finlandii, Francji, USA, Gruzji, Włoch, Polski, Wielkiej Brytanii, Japonii, Korei, Czech, Indii, Grecji, Litwy, Nigerii, Izraela, Danii, Tajwanu, Australii i Niemiec uczestniczyłem w międzynarodowym programie Uniwersytetu Stanforda[1]. Coroczne seminaria koordynowane przez generała HR McMastera i Nadię Schadlow umożliwiają wymianę poglądów z czołowymi naukowcami i decydentami ze Stanów Zjednoczonych na temat rozwiązywania problemów o charakterze strategicznym w stosunkach międzynarodowych. Poniżej przywołano wybrane wypowiedzi z debat, które obrazują główne zagadnienia podejmowane podczas seminarium.

Rywalizacja demokracji i autorytaryzmu

Prof. Condolezza Rice, b. sekretarz stanu USA, Stanford University*:* Chiny choć nie zmagają się ze słabościami systemowymi właściwymi demokracjom, to mają o wiele większą ekspozycję na błędy wynikające z jednoosobowego sposobu podejmowania decyzji strategicznych. Widać to także na przykładzie Rosji, gdzie Putin swoją polityką zepchnął państwo do poziomu sprzed kilkuset lat. Taka jest skala utraconych szans rozwojowych krajów o modelu autorytarnym.

Świat zachodni wobec Chin powinien przyjąć spójną strategię. Chodzi o przeciwdziałanie ekspansji chińskiej ideologii i wpływów na świecie, poprzez

[1] Z polskiej strony również: dr Urszula Góral (IP UKSW) i dr Jakub Jakóbowski (OSW). Pozostali uczestnicy: Annina Aalto (FI), dr Florence Akinyemi (USA), Megi Benia (GE), dr Giovanna De Maio (FR/IT), Amelie Gericke (UK), Taro Han (JP), Dennis Hong (KOR), Rie Horiuchi (JP), Berta Jarosova (CZ), Akash Jindal (IN), Hyunjee Kim (KOR), Christina Maria Kravvari (GR), Tadas Kubilius (LT), Kyunghee Lim (KOR), Tahir Ngada (NG), gen. Eran Ortal (IL), dr Tina Alice Bonne Reeh (DK), Zafiris Rossidis (GR), Maryum Saifee (USA), Carlo Sanfilippo (IT), Michael Schena (USA), Shannon Shiau (TW), Yusuke Shimizu (JP), William Stoltz (AU), prof. Maximilian Terhalle (DE), Jayson Warren (USA).

udzielanie pomocy ekonomicznej, finansowej i wojskowej dla zagrożonych krajów, oraz przez tworzenie regionalnych formatów współpracy. To kierunek będący kontynuacją doktryny powstrzymywania George'a Kennana.

Popularność radykalnych ugrupowań politycznych wynika z ułomności globalizacji i samej demokracji. W każdym państwie są liczne grupy społeczne, które nie są beneficjentami tego porządku. Brak rozwiązań im dedykowanych powoduje, że stają się podatni na skrajne hasła i przyjmują uproszczone uzasadnienia opisu rzeczywistości.

Prof. Stephen Kotkin, Princeton University*:* Proces kształtowania się państw autorytarnych przebiega wedle powtarzającego się modelu. Najważniejszy jest (1) aparat represji posiadający wiele różnych narzędzi. Niezbędne są (2) przepływy pieniężne. Dla stabilności systemu potrzebne są zasoby naturalne lub inny sposób wytwarzania gotówki. Jeśli PKB spada, powstaje niezadowolenie społeczne. By sobie z nim poradzić powraca punkt wcześniejszy – aparat represji. Władza umacnia swoją pozycję poprzez (3) kontrolowanie „szans życiowych". A zatem reglamentowanie dostępu do edukacji, zatrudnienia, swobody działalności gospodarczej, i innych obszarów, które uniezależniają obywatela od państwa. Do tego dochodzi (4) ideologia. Mobilizacja społeczna generowana jest poprzez odpowiednią narrację, z jednej strony opowieści bogate w przykłady dające powody do chwały, oraz postulaty przywrócenia wielkości, z drugiej wskazywanie wrogów wewnętrznych i zewnętrznych (Zachód), z których winy państwo utraciło wcześniejszą pozycję. Mamy tu do czynienia z mieszanką aspiracji i lęków. Ostatnim elementem jest (5) transfer technologii, importowanie rozwiązań produkcyjnych, w tym poprzez nielegalne działania, jak szpiegostwo przemysłowe.

Reżimy totalitarne mają deficyty zaufania do kogokolwiek. Wynika to ze stworzonych przez nie mechanizmów kontroli społecznej, które zapewniają dominację w polityce wewnętrznej, ale skutkują zarazem brakiem zaufania w polityce zagranicznej. Stąd systemy te cechuje znikoma zdolność do budowania sojuszy. Elity polityczne takiego państwa nie wierzą same sobie, stąd i potencjalnym partnerom.

Jak pozbyć się reżimu? Zmobilizować społeczeństwo, pokazać, że rządzący blokują szanse rozwojowe. A jeszcze lepiej, jeśli ujawni się, że blokują szanse egzystencjalne. To jest dźwignia zmiany społecznej, użycie siły wroga przeciwko niemu samemu.

Iluzje polityki zagranicznej

Prof. Jakub Grygiel, b. doradca sekretarza stanu USA, Catholic University of America: Iluzje w polityce zagranicznej USA wynikają z wiary w możliwość zmienienia wszystkiego przy użyciu narzędzi politycznych właściwych administracji państwowej. Iluzja nr 1 to nadzieja, że możemy zmienić reżimy autorytarne w demokracje. Wystarczy usunąć tyranów a będziemy mieli przyjaznych sąsiadów. Nowe instytucje miałyby wygenerować nowe państwo i społeczeństwo. By ten proces zainicjować niekiedy trzeba użyć sił zbrojnych, które zaprowadzą nowy porządek. Ale pytanie brzmi – co nastąpi po wojnie? Wymiana liderów, a nawet zmiana systemu rządzenia, to jeszcze nie zmiana kultury politycznej narodu.

Takie przekonania nadal utrzymują się wobec Rosji i Władimira Putina. Zarówno elity polityczne jak i opinia publiczna mają tendencję do przypisywania całego zła jednej osobie. Przykładem jest wypowiedź Antony Blinkena: „Jeden człowiek rozpoczął tę wojnę, jeden człowiek może ją zakończyć". Czy na pewno? Co z przekonaniami zwykłych Rosjan? Działalność Kościoła Prawosławnego w Rosji i przyjęcie roli adwokata inwazji na Ukrainę, obrazuje skalę problemu rosyjskiego społeczeństwa.

Rosja i kraje Europy Środkowo-Wschodniej to całkowicie inne społeczeństwa. Po II wojnie światowej owszem były tam reżimy autorytarne, ale były one narzucone siłą społeczeństwom o innej kulturze politycznej. Dlatego po upadku bloku wschodniego dokonała się restauracja demokracji, a nie budowa jej od początku. W tych krajach funkcjonowało podziemie demokratyczne, opozycyjny był Kościół katolicki, intelektualiści. W Polsce w 1791 r. uchwalono jedną z pierwszych konstytucji na świecie. Co pokazuje dojrzałość kultury politycznej regionu.

W Europie Środkowo-Wschodniej do zmiany systemu nie doprowadziły „zdalnie" USA i Zachód, lecz determinacja społeczeństw tych krajów, zwłaszcza: Kościół, inteligencja, naukowcy, twórcy, związkowcy. Zachód przekazywał wsparcie, dodatkowe środki, narzędzia, do istniejącego podziemia.

Iluzja nr 2 opiera się na koncepcji globalnego zarządzania, wedle której, instytucje międzynarodowe mogą kreować nowe realia w krajach członkowskich. W to wpisuje się polityka amerykańska, w tym propozycje Woodrowa Wilsona i rozwiązania wdrażane po obydwu światowych wojnach XX wieku. Multilateralizm jest traktowany jako formuła dająca gwarancję dokonywania

fundamentalnych zmian. Przykładem były dawniej koncepcje dołączenia ZSRR do ONZ bez względu na wszystko. Czy powracające postulaty by usiąść z Rosją do stołu negocjacyjnego przy którym rozstrzyga się globalne i regionalne problemy. To polityka, która nie ogląda się na sojuszników. To nie tyle zrównanie wroga z lojalnymi partnerami, ale uprzywilejowanie wroga kosztem sojuszników w różnych regionach świata. Organizacje międzynarodowe osłabiają sojusze jeśli je zastępują.

Iluzja nr 3 jest to wiara w postęp ekonomiczny, który zapewni pokój i harmonię na świecie. Wedle tego założenia, ludzie zamożni i zadowoleni nie będą chcieli inicjować wojen. Choć brzmi to logicznie, niestety coś przeciwnego obrazuje przykład nieudanej polityki zbliżenia ekonomicznego realizowanej wobec Chin od lat 60., aż po członkostwo w Światowej Organizacji Handlu w 2001 roku. Dziś mierzymy się z nieoczekiwanymi konsekwencjami tej polityki w postaci zagrożenia równowagi sił w skali globalnej. Przekonanie o sprawczości narzędzi ekonomicznych przejawia się też w politykach sankcyjnych, wówczas gdy są wyłącznym narzędziem oddziaływania na agresora.

Iluzje udaremniają stawianie pytań i projektowanie realnej polityki. Czy chcemy dalej wzmacniać wymianę handlową z Chinami i Rosją? W jakim celu? By przybliżyć te reżimy do zniszczenia sojuszników USA w kluczowych regionach? Wymiana handlowa z Rosją i Chinami spowodowała w minionych latach i dekadach, że ich gospodarki urosły, co powoduje, że stać je na finansowanie imperialnej polityki. Ten problem wyewoluował w alternatywę: handel z rywalami czy handel z sojusznikami? Błąd Niemiec polegał na budowie przy pomocy Rosji swojej energetycznej pozycji, dającej potęgę gospodarczą, ale skutkiem tej współpracy była rozbudowa zdolności ekspansywnych Rosji.

Jeśli żywimy i utrzymujemy iluzje w polityce zagranicznej, będziemy często zaskakiwani. Ewolucja kultury politycznej jest możliwa, jest to proces zmiany pokoleniowej połączonej z edukowaniem, czasem więcej niż jednego pokolenia. Zmiany następują bardzo powoli, trzeba je wprowadzać ze strategiczną cierpliwością.

Agresora trzeba z całą stanowczością powstrzymywać, odstraszać i potęgować koszty wrogich działań. Dlatego liberalizm to iluzja gdy mówimy o budowie postawy odstraszania wobec reżimów totalitarnych i autorytarnych. Porządek międzynarodowy utrzymują poszczególne kraje, a nie liberalne zasady.

Stephen Kotkin*:* Nie chodzi o to by zmieniać ludzi władzy, czy o wielkie projekty geopolityczne, chodzi o to by zyskać uwagę i posłuch w różnych krajach, wśród ludzi, którzy znajdą się we właściwym pokoju, gdzie będą zapadały decyzje.

Gen. H. R. McMaster, b. doradca ds. bezpieczeństwa narodowego USA: Przed własnymi iluzjami nie mamy żadnej obrony. Skutkują one najgroźniejszymi konsekwencjami: brakiem przygotowania, brakiem zasobów, brakiem gotowości do reagowania. Trzeba walczyć z politycznym syndromem wyparcia, który skłania decydentów do zaprzeczania rzeczywistości w celu uniknięcia niewygodnej prawdy. Ryzyko trzeba jasno wskazać i zneutralizować aniżeli czekać aż wróci ze zdwojoną siłą.

Europa

Condolezza Rice*:* Inicjatywa autonomii strategicznej UE to kwestia wolnej decyzji krajów członkowskich, które wybierają to co zbieżne z ich interesami. Ale czy to brzmi na scenariusz „wygranej" w globalnej rywalizacji bloku autorytarnego z demokratycznym? W tej chwili obserwujemy niemiecką bierność wobec globalnych wyzwań.

Jakub Grygiel: Ukraina nie ma dużych szans na bliskie członkostwo w NATO i UE. Dołączenie do Paktu wprowadziłoby chaos. A Unia równa się interesy, nie trzeba wielu kalkulacji, by dostrzec, że w tej chwili nikt nie ma interesu w europejskiej akcesji Ukrainy.

Rose Gottemoeller, b. zastępca sekretarza generalnego NATO, Stanford University*:* Unia Europejska pełni ważną rolę w stabilizowaniu bezpieczeństwa na kontynencie. Tę konieczność większego zaangażowania widać szczególnie na Bałkanach Zachodnich, gdzie pomoc ekonomiczna mogłaby zapewnić porządek w regionie.

Ukraina

Stephen Kotkin*:* Na Krymie jest obecnie 2 miliony etnicznych Rosjan. Mamy do czynienia ze stałą obecnością wrogo nastawionych mieszkańców. Scenariusz odzyskania Krymu przez Ukrainę, to powiększenie problemu i osłabienie szans na trwały pokój w regionie. Należy też właściwie umiejscowić Ukrainę pośród innych konfliktów wojennych i ich cywilnych ofiar w Syrii, Jemenie, czy wobec COVID-19.

Dr Michael McFaul, b. ambasador USA w Rosji, Stanford University: Dlaczego Putin zaatakował UA? Funkcjonują trzy teorie objaśniające: polityka siły, ekspansja NATO i polityka wewnętrzna Rosji.

Koncepcja polityki siły tłumaczy w sposób politologiczny przyczyny wojny, jako efekt rywalizacji między państwami, ich sprzecznych interesów i walki o zasoby lub wpływy. Skoro przez kilka dekad Rosja urosła w siłę, a nowe siły dają nowe możliwości zaspokajania imperialnych aspiracji, stąd w konsekwencji wybuch wojny. Problemem w tej argumentacji jest fakt, że nie wszystkie wschodzące mocarstwa najeżdżają i anektują terytoria sąsiadów. Czego przykładem w okresie ostatnich dekad po II wojnie światowej były Niemcy, Japonia, Chiny, USA. Kolejnym problemem jest pytanie o czas inwazji. Dlaczego teraz, a nie w 2004 podczas Pomarańczowej Rewolucji? Dlaczego nie było wystąpień Putina nt. Krymu lub faszyzmu przed 2014? Dlaczego inwazja nie rozpoczęła się w 2019 lub 2020?

Druga teoria zbieżna z obecną rosyjską narracją, przyczynę inwazji na UA upatruje w „agresywnej" polityce NATO ostatnich kilku dekad. Tak interpretowane jest rozszerzenie sojuszu obronnego o Polskę, Węgry i Czechy w 1999 r., oraz Estonię, Łotwę, Litwę, Rumunię, Słowację, Słowenię i Bułgarię w 2004, czy wreszcie zabiegi o otwarcie drogi do członkostwa dla Ukrainy i Gruzji podczas szczytu NATO w Bukareszcie w 2008r.

Ale interpretowana w ten sposób sekwencja wydarzeń nie uwzględnia dwóch faktów, relacje NATO-Rosja miały okresy dobrej i otwartej współpracy, a także prób zbliżenia ze strony Rosji. A zatem rosyjska ocena o „agresywnej polityce" NATO jest dość późna. Jeszcze w 2000 r. Putin wypowiadał się o ewentualnym członkostwie Rosji w NATO: „Czemu nie… nie wykluczam takiej możliwości… Rosja jest częścią kultury europejskiej, a własnego kraju nie postrzegam w oderwaniu od Europy… Dlatego z trudem wyobrażam sobie NATO jako wroga". Natomiast w 2002 r. Putin prezentował następujące stanowisko odnoście członkostwa UA w NATO: „Ukraina ma swoje własne stosunki z NATO… Ostatecznie decyzja ma zostać podjęta przez NATO i Ukrainę. To sprawa tych dwóch partnerów". A w roku 2008 po szczycie w Bukareszcie, Medwiediew opisał relacje NATO – Rosja: „okres dystansu w naszych stosunkach i wzajemnych roszczeń dobiegł końca".

Kolejny problem tej narracji odsłania fakt, że w okresie poprzedzającym inwazję w 2022 r. nie było żadnej nowej inicjatywy NATO mającej na celu przyspieszenie członkostwa Ukrainy. Brak postępów był oczywisty, dla Moskwy, Waszyngtonu,

Brukseli i Kijowa. Nie mówiąc już, o obronnym charakterze NATO, które nigdy nie atakowało Rosji i nigdy nie zaatakuje. Trzecia teoria wskazuje, że inwazja została zorganizowana na potrzeby wewnętrznej rosyjskiej polityki.

Jakub Grygiel: Ukraina jest krajem przenikniętym korupcją. Kto wie, czy w perspektywie 2-3 lat nie pojawi się pytanie wśród elity politycznych tego kraju, czy aby na pewno demokracja jest dla nich. Czy układy oligarchiczne nie okażą się silniejsze? Można wyobrazić sobie, że proces akcesyjny naruszyłby interesy wielu ośrodków władzy na Ukrainie, czy nie powstałby bunt, czy nie ujawniłaby się jakaś junta wojskowa, która obieca zrobienie porządku z oligarchami i na tej fali przejmie władzę?

Rosja

Michael McFaul: Wczesny putinizm charakteryzowała słabość centralnego ośrodka władzy. Później elity władzy przystąpiły do realizacji nowego kursu politycznego: likwidacja niezależnych mediów, przekształcenie Rady Federacji oraz Dumy w atrapy, rekonfiguracja systemu partyjnego, fałszowanie wyników wyborów, represje wobec opozycji i protestujących, ograniczanie możliwości powstania społeczeństwa obywatelskiego.

Demokratyczna ekspansja zagroziła autokratycznej Rosji. Przejawami tego były masowe protesty i rosnące znaczenie opozycyjnych ruchów politycznych w Serbii w 2000 r., Gruzji w 2003 i Ukrainie 2004 r. Istotne wstrząsy zwiastujące epokę rekonfiguracji ładu międzynarodowego objęły w 2011 r.: Egipt, Libię, Syrię a także samą Rosję.

Reakcją Putina na masowe demonstracje w Moskwie, było gwałtowne poszukiwanie nowej legitymizacji swoich rządów, ożywienie narracji upatrującej USA jako wroga, mobilizacja ideologiczna i dalsza dyskredytacja i eliminacja opozycji. Jako amerykański ambasador [McFaul] byłem oskarżany w 2012 o to, że stoję za ruchem Aleksieja Nawalnego i jestem organizatorem protestów. Upadek prorosyjskiego prezydenta Janukowycza, Ukraińcy nazywają rewolucją godności, zaś Putin nazywa to nazistowskim zamachem stanu sponsorowanym przez USA. Ujawnia to obsesję Rosji w zniszczeniu zainicjowanego demokratycznego kursu Ukrainy.

Prawdziwym zagrożeniem dla Putina była ekspansja demokratyczna, a nie rozszerzenie NATO. Ukraińcy przyjmujący demokrację radykalnie delegitymizowali

rządy Putina w Rosji i jego narrację na temat Zachodu. Putin jest taki jak wielu innych wcześniejszych imperialnych przywódców Rosji.

Jeśli oceniać Putina po pierwszym roku od inwazji to przegrał wojnę. Ale na finalną ocenę trzeba poczekać do zakończenia konfliktu. Jak dotąd bowiem nie osiągnął żadnego z postawionych celów, co więcej uzyskał odwrotne skutki. Cele były następujące: zjednoczyć Rosjan i Ukraińców jako jeden naród, denazyfikacja, demilitaryzacja, zajęcie całej Ukrainy, zatrzymanie rozszerzenia NATO.

Badania opinii publicznej wskazują, że przytłaczająca większość Ukraińców popiera działania prezydenta Wołodymyra Zełenskiego i wierzy w wygraną w wojnie z Rosją. Ukraiński prezydent został wybrany w demokratycznych wyborach, utrzymuje się u władzy i ma pochodzenie żydowskie. Od stycznia 2021 r. USA przekazały 47 miliardów dolarów na pomoc w zakresie bezpieczeństwa, a w koalicji państw „militaryzujących" Ukrainę jest wiele innych krajów NATO. Bieżące dane wojskowe wskazują na utratę zdolności Putina do podbicia terytorium UA. Rozszerzenie NATO postępuje, do Sojuszu dołączyła Finlandia i wkrótce Szwecja, a więzi Ukrainy stały się głębsze niż przed wojną. Wszystko to wskazuje na przeciwskuteczność polityki Putina.

Komentarz*:* Ambasador McFaul mimo znacznej reorientacji swych ocen i diagnoz skali zagrożenia rosyjskiego, nadal reprezentuje charakterystyczny dla zachodnich elit punkt widzenia, w którym uwzględnia się scenariusz demokratyzacji Rosji w przypadku zmiany przywództwa na Kremlu. Prezentowane scenariusze przyszłości Rosji obejmują to co wydarzy się w przypadku „końca putinizmu i przyjścia nowej nadziei dla Rosji". Bazują na założeniach, że „koniec ery Miedwiediewa oznaczał nowe napięcia z Zachodem", oraz że „to kto jest liderem ma znaczenie i widać to na przykładzie zmiany prezydentury z Miedwiediewa na Putina". Pełny obraz tej diagnozy uzupełniają tezy, że „siły prozachodnie w Rosji nie zostały pokonane", a także „jeśli Putin jest tak popularny, to dlaczego musi aresztować wszystkich swoich krytyków?". Ten tok argumentacji podsumowuje stwierdzenie, że „po Putinie nie przyjdzie Putin 2.0."

Wojna na Ukrainie

Rose Gottemoeller*:* Ukraina jest niesamowicie wspierana przez sojuszników. Trzeba pamiętać, że kraje NATO już od 2014 r. trenowały ukraińskie siły zbrojne. Niemniej jednak w tej chwili wszczęcie procesu akcesji Ukrainy do NATO miałoby potencjał eskalacyjny. Ale są też głosy, że zmusiłoby to Rosję by usiąść przy

stole negocjacyjnym. Rada NATO-Ukraina to doskonałe narzędzie do „robienia swojego" równolegle, do formalnych kroków przybliżających członkostwo w NATO. Umieszczenie jakichkolwiek sił pokojowych, będzie możliwe dopiero po wstrzymani ognia.

Komentarz*:* Była zastępczyni Sekretarza Generalnego NATO, prezentowała anachroniczną linię polityki wobec Rosji, w której skupić się należy na „zapewnieniu Rosji drogi powrotu do społeczności międzynarodowej, co jest ważne z uwagi na jej potencjał nuklearny". Była zdania, że Rosja po spełnieniu warunków wstępnych, czyli zwrot terenów okupowanych oraz zapłacenie reparacji, mogłaby „powrócić do stołu".

Michael McFaul: Bieżące cele Putina obejmują działania przede wszystkim w ramach „specjalnej operacji wojskowej w rejonie Donbasu": zajęcie rejonów donieckiego, ługańskiego, chersońskiego i zaporoskiego; ogłoszenie zwycięstwa i tymczasowe zawieszenie broni; wywieranie pośredniej presji poprzez wybrane państwa Zachodnie na Prezydenta Zełenskiego by zamienił ziemię na pokój.

Cele bieżącej ukraińskiej kontrofensywy obejmują: rozpołowienie armii rosyjskiej na dwa zgrupowania północne i południowe, zajęcie pozycji umożliwiających objęcie Krymu działaniami ofensywnymi, przygotowanie się do następnej kontrofensywy. Do długoterminowych celów należą zaś: wyzwolenie całej Ukrainy, w tym Krymu, uzyskanie gwarancji bezpieczeństwa z Zachodu, odbudowanie Ukrainy, członkostwo w UE i NATO.

Są trzy możliwe scenariusze zakończenia wojny: 1) zwycięstwo Rosji – bardzo mało prawdopodobne, 2) zwycięstwo Ukrainy – być może, oraz 3) impas – co jest prawdopodobne. Pierwszy z nich oznaczałby, że Putin doczeka, aż Zachód straci zainteresowanie dalszym wsparciem UA, zajmuje Donbas, zatrzymuje Krym, wzmaga jeszcze bardziej system represji i doprowadza do podziału Ukrainy jak niegdyś stało się z Niemcami i Koreą.

W drugim wariancie dochodzi do decyzyjnego patu, wynikłego z powodu ogromnych strat ludzkich, potężnych zniszczeń, wieloletniej przewlekłości konfliktu, niemożności osiągnięcia postępu wojennego przez którąkolwiek ze stron.

Zwycięstwo Ukrainy jako trzeci scenariusz, oznacza, że czołgi, odrzutowce i zaawansowane uzbrojenie dotarło na czas, udana kontrofensywa doprowadziła

do rozpołowienia armii rosyjskiej, Ukraińcy odzyskują Donbas i Krym, negocjują odszkodowania i gwarancje bezpieczeństwa, pomyślnie materializują się pierwsze fazy powojennej odbudowy kraju wraz z prodemokratycznymi reformami państwa.

Zwycięstwo UA zwiększy bezpieczeństwo sojuszników z NATO na wschodniej flance, a także Tajwanu, zniechęci Chiny do agresywnej polityki, ukaże kosztowność polityki siły światowym reżimom, umocni szanse na pojawienie się lub rozwój ruchów demokratycznych w Gruzji, Mołdawii, Kazachstanie, Białorusi, Rosji.

Jeśli Ukraina przegra, radykalnie zmieni się sytuacja bezpieczeństwa w regionie i sąsiednie kraje członkowie NATO będą się obawiać, że będą następni. Oznacza to zwiększone wydatki USA na obronę, Chiny zostaną ośmielone w stosunku do Tajwanu, nastąpi reorientacja krajów wahadłowych i będą zabezpieczać swoją sytuację poprzez sojusze z Chinami, światowy ruch demokratyczny i USA zaczną upadać.

Komentarz*:* Zdaniem Ambasadora, inwazja RU na UA poprzedzała „dobra passa Putina", postrzegane jako zwycięstwa krwawe wojny: w Czeczenii (1999), Gruzji (2008), Ukrainie (2014) i Syrii (2015). Tym niemniej inwazja na UA w 2022 była przesadą, podobnie jak kiedyś inwazja Breżniewa na Afganistan. W pełni można zgodzić się z postulatami McFaula, że w związku z powyższym, potrzeba więcej i lepszej broni dla UA, więcej i lepszych sankcji na RU, mniej strachu przed Putinem, więcej zdecydowania w odstraszaniu. Zwycięstwo jest dobre dla Ukrainy, Europy, interesów bezpieczeństwa USA i ideałów demokratycznych.

Ylli Bajraktari, CEO Special Competitive Studies Project: Europa jest teraz w stanie wojny. To największa wojna od czasu II wojny światowej. Europa zrobiła bardzo wiele dla Ukrainy. Ameryka jest nadal supermocarstwem, które jako jedyne jest w stanie umieścić swoje siły zbrojne w każdym miejscu na świecie.

H. R. McMaster: Należy pomóc Ukrainie odzyskać całe terytorium Krymu. W Niemczech przed połączeniem wschodu i zachodu było bardzo dużo obywateli rosyjskich i pochodzenia rosyjskiego, a udało się doprowadzić do zjednoczenia. Mniejszość rosyjska na Krymie nic nie zmienia. Krym daje kontrolę nad morzem dlatego jest kluczowy. To naturalna droga eksportowa dla Ukrainy. Jeśli jako celu nie wskażemy najwyższej stawki w tej wojnie, to w jaki sposób po aktywnej fazie chcemy usiąść do negocjacji?

Chiny

dr Glenn Tiffert, Stanford University: Chiny w swej polityce zagranicznej akcentują pojęcie „cywilizacji" a nie „kultury". Cywilizacja odnosi się do państw, do systemu politycznego, na który właściwie nie można oddziaływać. Kultura jest czymś, w czym każdy może partycypować, wnieść swój wkład, decydować i inicjować nowe nurty, wpływać na kierunki rozwoju. Z tych samych powodów Chiny posługują się terminem „lud", a nie „społeczeństwo", pierwszy termin odnosi się do ekskluzywnej wspólnoty politycznej, jej członków łączy pochodzenie lub przekonania, społeczeństwo zaś to wszyscy członkowie reprezentujący różne poglądy, pochodzenie i priorytety.

Clete Willems, b. zastępca asystenta prezydenta USA ds. międzynarodowych relacji gospodarczych, Atlantic Council: Deficyt handlowy USA-Chiny rośnie bardzo dynamicznie od 2001 r. czyli od członkostwa Chin w WTO. Chiny powiększają listę bilateralnych umów o FTA co zmienia układ handlowy, który USA chciały uregulować poprzez TPP. Administracja Donalda Trumpa miała rację, gdy chciała przeorganizować światowy handel, renegocjować umowy, ale za mało tłumaczyła to opinii publicznej. Ameryka zorganizowała porządek międzynarodowy, którego beneficjentem jest większość krajów, w tym Chiny. Dlatego USA są bardzo czułe na punkcie współpracy dotychczasowych partnerów z Chinami. WTO nie spełnia swojej roli, trzeba zorganizować nowy porządek i powołać nową organizację. Dobrym wyznacznikiem jest Północnoamerykański Układ o Wolnym Handlu NAFTA.

Jakub Grygiel: Już niebawem USA mogą zwrócić się do sojuszników by opowiedziały się bardziej jednoznacznie po którejś ze stron w konflikcie USA-Chiny.

Ylli Bajraktari: Jeśli kraje europejskie nie będą chciały budować technologicznej niezależności od Chin, za parę lat będą w tej samej pozycji i sytuacji co dziś wobec Rosji i jej konsekwentnej ekspansjonistycznej polityki. Chiny są zagrożeniem i konkurentem. Realizują swój plan, który trzeba umieć czytać. Nie można być naiwnym, gdy chodzi o prowadzenie interesów kosztem bezpieczeństwa. Chiny są największym przytułkiem dla bezrobotnych na świecie. Są rzeczy ważne np. klimat i rzeczy ważniejsze czyli Chiny, to pokazała pandemia COVID-19.

H. R. McMaster: Warto utrzymywać jak najwięcej pozytywnych kontaktów z Chińczykami, ale kontakty z rządem i partią komunistyczną to strata czasu.

AI

Condolezza Rice: Instytut Hoovera działa na rzecz państwa według stałego modelu, śledzi dane zagadnienie np. rozwój technologii, a dzięki umiejscowieniu na uniwersytecie ma do tego odpowiednie narzędzia i może przyciągać ekspertów z różnych dziedzin sektora prywatnego, identyfikowane są implikacje danej problematyki dla państwa, a wówczas powołując się na wyniki naszej pracy możemy tłumaczyć decydentom, co oznacza AI dla społeczeństwa, jak rozwój nanotechnologii wpłynie na politykę.

Karen Courington, wiceprezes Google: Państwa powinny przyjąć programy edukacyjne w obszarze AI. Decydenci powinni dysponować wiedzą o zjawisku, które może zadecydować o przyszłości. AI rozwija się bez pogłębionej wiedzy administracji państwowej. Rządy powinny animować debatę akademicką, ekspercką i środowisk biznesowych, której efektem powinno być uzgodnienie rozwiązań koniecznych dla państwa. Regulacje dla AI są już w Chinach, czas opracować je w świecie zachodnim.

Ylli Bajraktari: Nie tyle rządy, co największe korporacje mogłyby przedstawić publicznie swoje propozycje modelu w jakim społeczeństwa powinny uregulować kwestie AI. Powinny podzielić się wskazówkami co do obrony i ochrony jednostek, ale także instytucji demokratycznych, procesu wyborczego, swobody debaty publicznej. Projektowanie polityki musi uwzględniać podstawowe trzy filary: komunikację (5G), hardware (półprzewodniki) i software (AI). Trzeba uregulować chińskie platformy społecznościowe: tik-tok i inne, to kwestia bezpieczeństwa narodowego.

Prof. Amy Zegart, Stanford University: By zrozumieć na czym polega wojna informacyjna, trzeba poznać mechanizm psychologiczny umacniania się informacji zasłyszanej jako pierwszej. Nie jest łatwo zmienić opinie, czy uprzedzenia ludzkie. Najskuteczniejszą metodą jest docierania do ludzi z prawdziwą informacją jako pierwszą, przed falą fakeów. Powinno się stworzyć nową służbę specjalną zajmującą się bezpieczeństwem informacji w przestrzeni publicznej.

Brad Boyd, Stanford University: LLM, czyli Large Language Model, jako typ algorytmu sztucznej inteligencji, który wykorzystuje techniki deep learningu i wielkie zbiory danych nie jest „myśleniem" ale automatyzacją. AI umożliwi dezinformację na taką skalę jakiej nigdy dotąd nie było. Odróżnienie świata

sztucznie wykreowanego (deep fakeów) od rzeczywistego będzie niemożliwe dla ludzkich zdolności percepcji.

Komentarz*:* Google publikuje raporty dot. atrybucji ataków cybernetycznych w związku z wojną na Ukrainie. Cyber jest takim samym zagrożeniem egzystencjalnym dla państw jak ataki konwencjonalne. Wszyscy uczestnicy zgadzali się, że potrzeba dedykowanych rozwiązań, służb i instytucji monitorujących. Przy cyberatakach skierowanych w infrastrukturę krytyczną będą ofiary śmiertelne wśród ludności cywilnej, trzeba to uświadamiać decydentom.

Polska

Jakub Grygiel: Polska dobrze radzi sobie z zarządzeniem kryzysowym, co pokazały kryzysy: energetyczny, pandemiczny i wojenny. Polska jest postrzegana jako zbyt antyniemiecka. Niemcy powinny być dostarczycielem bezpieczeństwa w Europie Wschodniej, niekoniecznie militarnie, bo nie mają takich zasobów, ale politycznie i przede wszystkim infrastrukturalnie. Mogliby zbudować drogi, porty, mosty, tunele, sieci, które służyłyby następnie zwiększaniu amerykańskiej obecności wojskowej w Polsce. W Europie nie ma brygady sił sojuszniczych, którą można by umieścić na stałe w Polsce. Tylko USA dysponuje taką możliwością.

Podsumowanie

Tegoroczna edycja Hoover Institution International Seminar (HIIS) zdominowana została przez tematykę rosyjskiej inwazji na Ukrainę, która stała się stałym odniesieniem kolejnych paneli. W tym kontekście podejmowano takie zagadnienia jak: wyzwania i szanse stojące przed wolnymi społeczeństwami w dobie rozwoju reżimów totalitarnych, iluzje amerykańskiej polityki zagranicznej, inicjatywy międzynarodowe Chin, odpowiedzialny rozwój sztucznej inteligencji, przyszłość bezpieczeństwa energetycznego, czy proliferacja. Seminarium pozostaje ważnym forum wymiany poglądów, którego celem jest stworzenie pozytywnego porozumienia między decydentami w Stanach Zjednoczonych i w krajach o podobnych poglądach.

Ministerstwo
Edukacji i Nauki

Dofinansowano ze środków budżetu państwa przez Ministerstwo Edukacji i Nauki w ramach programu „Rozwój Czasopism Naukowych". Kwota dofinansowania/ całkowita wartość zadania wynosi 64.400,00 zł.