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Culture and Law in Pluralistic Society

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Abstract: The current debate on family is subject to rapid social changes which have had colossal negative impact on economy itself and on the economy of entire countries. The purpose of social and family life is not to bound, but to develop the human being. Thoughts about the future of the family are associated with education in the very sense that is pointed out by human experience. It can be said that Aristotle's legacy is as follows: for subject, it is necessary to reflect *pro futuro* basic demand of to be "together with others," to act "with others" and, on which depends realization and completion of the subject's being.

Keywords: *polis*, family, man

Introduction

The Second Vatican Council in its Pastoral Constitution *Gaudium et Spes*, devoted a special chapter to the "proper development of culture" (*De cultural progressu rite promovendo*). This chapter has crucial importance for defining the aptitude of the Church towards culture. What is significant is the ascertainment that "the feature of the human person is that it comes to full and true humanity

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only through culture, that is, through the cultivation of the goods and values of nature.”¹ The humanity develops through culture.

The organizers of the present conference asked me to try to answer, on basis of the *Gaudium et Spes* constitution, what the relations between culture and law in fact are. The answer to this question involves several issues which cannot be sufficiently explained in just a single lecture. This necessitates that I concentrate on the main issues only. They are the following:

- what is culture?;
- what is law?;
- what are values and what is their connection with the stature law?;
- what are the rules (patterns) for participation of Christians in building the culture in a pluralistic society?.

What Is Culture?

Culture is the complex reality of human existence that is understood in different aspects, and particularly in sociological, philosophical, and theological ones.

In the sociological aspect, culture is a social phenomenon that includes two elements: material and formal. The material element comprises all products of human activity (both material and spiritual), events and most of all human behaviors that form specific patterns that are popularized in the society in form of rules of conduct that may take the form of habitual, moral, and legal rules. The formal element of culture is the ascertainment of meanings—namely, what values stand behind those phenomena? How are they connected and how are they conditioned? Such a search for meaning of the researched cultural phenomena gives the possibility of identification of the following elements:

1. Features of the culture, that is, the repeated behaviors of people from the respective social group that can be differentiated from others;
2. Cultural patterns that are close to the notion of ethos, lifestyle. These are the dominant behaviors among the humans, in the aspect of set values, in form of habits, moral and legal norms that are present in the respective society;
3. Cultural theme—postulate or a stance that is declared and suggested—either in an explicit or implicit way, usually controlling human behavior or stimulating their actions that are tacitly accepted or openly suggested in the society (e.g., tolerance, emancipation of women, euthanasia);

¹ *Gaudium et Spes*, n. 53.

4. Cultural focus—understood as a complex of values that are tightly bound with each other, that shape the behavioral patterns and bind them in social institutions;
5. Cultural center—integral collection of basic (root) cultural values that solidifies the products of human activities (art, literature) and the interpersonal relations, thought structures, interpersonal patterns in the society that are shaped in connection therewith. Such a center is shaped throughout the whole history of the society; forming the basis for its integration into a nation, for its endurance and development. As a matter of fact, those elements determine the identity of a given culture and differences among them.

Philosophy of culture—an autonomous discipline aiming at learning the essence of cultural products, their causes, ascertaining the objective values and also their proper course of their development. Philosophy does not stop with the description of cultural phenomena, as sociology does, but connects them with affirmation of the human being, understood as a person, and the values contained in the various rules of conduct. Among the supporters of this concept we will find: Max Scheler, Bogdan Nawroczyński, and Karol Wojtyła. Philosophy treats the human being as a creator of culture, but at the same time its recipient. Pope John Paul II postulates the primacy of the existential-axiological culture. According to this viewpoint, the essence of culture is the coexistence of humans concentrating on the values of truth and love.

Theology of culture—science of culture, its genesis, essence, functions, values, aims, and also its significance in the religious life, is cultivated not just in the light of the mind alone, as philosophy is, but also in the light of the Holy revelation, spanning onto the whole of human life.

As far as the subject is concerned, there are two main approaches towards culture. The first one lists only the human cultural activity, thus making culture an intentional and accidental being (J. Maritain, A. M. Krąpiec, P. Jaroszyński, Z. Zdybicka). The other is the integral approach towards human being that is through extension of theological anthropology (John Paul II, F. Bednarski, Cz. Bartnik, W. Kasper). Such an approach towards culture, even without stating its name, was the approach of the Second Vatican Council.²

What Is Law?

Next, in order to explain the relations between culture and law we need to define law. Usually, law is understood in the positivistic aspect, that is, the rules

² *Ibid.*, nn. 53–62.

of conduct imposed by sovereign authority with due procedure. But such an understanding of law is not sufficient to ascertain the relations between culture and law. We need to differentiate between the subjective and objective understanding of law.

Objectively, law is the norm, that is, a pattern of conduct or a complex of such norms imposed on a society by its higher authority in order to achieve certain required aims, and most of all to secure harmony and order of the public life. This complex of norm includes: sanctioned and sanctioning norms. The sanctioned norms set the rules of conduct for achievement of such goods as life, health, freedom, while the sanctioning norms set the competences of state authorities to make decisions on how to recognize the possibilities of securing those goods for people, especially when they are threatened or infringed by other members of society. Still the objective definition of law is controversial when it comes to setting the aim (sense) of law in discontinuity with the common good. The positivist concept of law sets the crucial importance of adherence to procedure in making and applying law; with the omission of the axiological sense of the disposition. If we satisfy ourselves with just the objective approach to law, it would be difficult to explain the connection between law and culture in categories of values.

The explanation of this connection becomes possible if we understand the law in a subjective way. What is important in defining the law in this approach is the attention directed towards the participants of social relations, and indirectly towards the very bases of the whole order of social life that have moral and legal dimensions. This applies to this category of relations, that have people as participants, people understood as persons, that is, subjects of laws and obligations. It is worth observing that the concepts of subjective laws are construed on the bases of different philosophical assumptions. Broadly speaking, we can distinguish the positive and axiological (natural law) approaches.

The positivist concept of law says that what is subjective is the creation of the lawmaker. A special type of those laws are the citizen's rights and obligations, that find their justification solely in the will of the constitutional legislator. This concept of subjective laws is favored by totalitarian regimes.

The axiological concept states that subjective laws depend not just solely on the will of the state lawmaker. Their source of existence is not just the disposition of stated law, but also the superior value—inherent to human being, its nature and personal structure. In the axiological aspect the source of laws is found in the value of human being and its ability to respond to values. Among the subjective laws we have the special category of human rights, stemming from the person's innate dignity.

What Are Values?

Next we should turn to the notion and types of values. What we have to take into account is the whole range of interconnected issues. Most of all, we have to learn that the value of each individual existence is set in relation to other beings. In particular, the value of a person as a being endowed with reason, free will, and conscience, is learned in relation to all other living beings in the world that have no such features. And the very discovery of this value takes place in human consciousness. Therefore, value is an intentional entity, yet it is rooted in the objective reality.

Searching for answers to the following questions: Are there, apart from the system of law established by people and made for people, other benchmarks for its evaluation? Are there objective evaluation criteria of legal law? The fundamental question concerns the value as a substantial element of legal norm. In fact, these questions touch upon the relation between statutory law and moral law, that is, natural one—imprinted in the human nature. The answers to those questions depend on one of the two opposing law concepts adopted: (1) the positivist concept that assumes the moral neutrality of statutory law; and (2) the concept assuming axiological justification of law.

The first one is supported by those who favor axiologically neutral law. They assume that there is no connection between the statutory law and objectively existing ethical values. This group of concepts includes:

1. The supporters of extreme legal positivism, who claim that the benchmark for the statutory law is just the hierarchically ordered set of rules of conduct, procedural in its character, that ensures the instrumental efficiency of the legal order.
2. Supporters of limited legal positivism who see the connection between the statutory law and values, but at the same time assume the primordial character of the norms of statutory law in relation to the realm of values. These values—according to them—are set down by statutory law, that is, by a legislator. They believe that of value are such actions that are in accordance with statute law; although they do not completely deny the relation to universal ethical values, that stand above the constitutional law. What remains unsolved is the hierarchy of these values.
3. Supporters of the pantheist model of democracy who believe that the will of the people—expressed directly in a referendum or indirectly through its parliamentary representatives—is law, and thus sets what has value and what is devoid of value. There is no benchmark in this case that would relate the will of lawmaker to the objectively existing values. Such a lack of benchmark can, and even has to, lead to outgrowth of values. It marks the complete lack of criteria for their limitation, apart from procedural ones, that can easily be

lifted or modified. The legal order that is based on this model is the result of outgrowth of democracy and leads to the degeneration of democracy and its transformation in an order that is characteristic for the authoritarian state, or even a totalitarian one. Pope John Paul II warns us against the construction of such a democracy, stating that “democracy without values is easily transformed into totalitarianism” (John Paul II, enc. *Centesimus Annus*).

The other group is that of the supporters of the axiological justification of law. They state that every order of law that is stated—both by state authorities and international ones (e.g., the authorities of the European Union)—has to be based on a system of objective values. Every legal order, regardless of the legislator’s awareness of the that fact, is based on a set system of values. Most of all the legal order should be based on the set concept of human being and the hierarchy of values that is connected with this concept. A rational legislator states laws that take the relation between the behaviors of addressee as described by law to a set object into account, thus marking the value of the law. The sense of each law is the value that this law relates to. This makes the axiological neutrality of statutory law order and their autonomy in relation to the ethical norms impossible.

Another problem is connected with the issue of how consistent the system of statutory law should be with the system of moral values? Two models were developed in answer to that question.

The first model assumes the full conformity of the legal order with the moral one, as accepted by the lawmaker. We may say that there is a logical relation of the stated law resulting from the system of ethical values.

The other model assumes that there are two parallel systems of norms that result from the system of values. They are: the system of norms of morality and the system of norms of statutory law. Whereas, the latter one, there is no relation between the system of moral norms and the system of law, the concurrence of law with the system of values lays the grounds for the evaluation of justness of the legal order and may lay the groundwork for *de lege ferenda* postulates. This gives rise to another issue, namely: Shall there be a contradiction between the statute law and the order of values? Does this pave the way for questioning the very force of the law? There are two answers to this question. According to the first one — represented by G. Radbruch—the contradiction between the system of law and the system of morality makes the system of law basically cease to be binding. According to the other conception, such a contradiction does not render the binding force of system of law void, but inevitably leads its questioning (A. Zoll).

What are the consequences of adopting the first of the aforementioned models? Accepting full conformity of the statutory law with the system of values accepted by a legislator makes the lawmaker is simply limited, in the process of lawmaking, to the reading of a set moral order and to making laws that sanction the moral norms. This makes the lawmaker give a state sanction to the moral

norms. This gives rise to the following question: Is such a model possible for adoption in a legal system of a democratic state?

Taking up the question the supporters of liberal ideology—who refer to the philosophy of Emmanuel Kant—point to the impossibility of legal norms resulting from moral norms due to the following reasons: both systems of norms fulfill basically different—but not necessarily contradictory—functions. The system of moral norms teaches the person to tell the good from the bad and its aim is to perfect the human being. And the system of legal norms is here to provide internal and external safety of the society and safeguarding its free development.

There can be just one system of statutory law within a set territory. But in social reality the same territory may at the same time host people—who according to their conscience—accept different moral systems. They may accept different values, and especially give them a different hierarchical structure. A legislator who makes one system of moral norms sanctioned by the state would be enslaved in its will by people who accept other system of moral norms. This model is characteristic for totalitarian states based on atheist ideology or religious fundamentalism. In a democratic state the state sanction may only be connected with a legal norm issued by the state, which does not exclude that at its base there is a moral norm relating to a set ethical value, accepted also for religious motives.

The other model is based on the assumption that legal norms of statutory law resulting entirely from moral norms would not be useful in the democratic society. Supporters of this concept reject the rule of axiological neutrality of the legal system, and at the same time try to set the following issues: What are the limits to which the legislator should take the moral norms into account, that are here in place, regardless of its will; and what values and which moral norms are universal and binding regardless of the will of the legislator, who has to act in accordance with them, which places them above the constitution.

What is important in selecting legal norms in a democratic state is their justification. For people accepting religious values this justification of the norm is, most of all, God, as the supreme being, timeless and perfect existence, the Creator of the whole order on earth, including the norms that form the moral order. This is a metaphysical or theological justification. And in case of all people—both believers and the non-believers—according to the axiology of the democratic state—the justification of a norm that stands above the constitution has to be based on cultural values that are typical for the respective culture. We can also see that for believers these two types of norms are supplementing each other.

The notion of value is universally bound with culture and religion. We have to differentiate between religious and cultural values. This differentiation is required not for practical reasons only. Although religion and culture influence

each other, they cannot be related to each other or treated as substitutes. It is true that religion is expressed through culture, but there is a significant discrepancy between them, that is, culture concerns the human development in the horizontal plane, in the natural order, whereas religion concerns the vertical development of human being in the transcendental (eschatological) order.

What Are the Christian Values?

Then we should turn our attention to the notion of Christian values and their types. Christians had an enormous influence on the development of cultures of European nations. That is why to define these values underlying the European culture, shaped in large proportion by the Christians, we use the term *Christian values*. In a pluralistic reality, Christians, who in different institutions and environments play the roles of leaders of social, political, and economic life, are confronted with people who resort to other concepts of values, especially the liberal values. This frequently leads to stresses and misunderstandings, especially when trying to answer the following question: Should the law stated by a democratic state, in which Christians are the majority, respect the Christian values?

Total negation of respect for Christian values in the order of statute law first appeared in France during the liberal revolution, then—with the spreading of the liberal ideology—it was transformed to other countries. The radically secular state, under the slogan of neutrality towards religious and world beliefs, made the aim of uprooting Christian values from the legal order—together with a ban on their expression in public life. This aversion to Christian values was the aftermath of the adoption of an ideological assumption that respect for Christian values does necessarily involve imposing a religious character of the state. In order to question this assumption we have to set apart two sets of values within the Christian values, that is:

- the set of the specifically Christian values;
- the set of universal values that have the character of basic human values, which the Christian religion helped to bring to our attention.

The foundations of those two subsets of Christian values are ontological and epistemological criteria. Both subsets of values are called Christian, as they were taught by Jesus Christ in his teaching, deeds, and example of life, as the basic human values for those who willingly want to shape their lives according to the Gospels. These values form the foundation of the Christian humanism, as they, prior to the culture created by Christians, were inspired by the Gospels. The misunderstanding is thus the result of lack of understanding of

the fact that the system of Christian values also accumulated the influences of the Judaist culture, as accepted by Jesus Christ (Decalogue) and elements of Greek philosophy and Roman law. The common denominator of this culture is the cognition (awareness) and respect for general humane values such as: the indispensable dignity of each person and the basic human rights and freedoms that every person has.

Characteristic of the Christian humanism is the fact that it does not rely on objective human values without making it dependent on the free will of a state legislator, nor the will of the majority of society, but instead, it accepts them as a reality depicting the ontological structure of human being.

The Specifically Christian Values

The specifically Christian values are based on theological assumptions. They are formed by truths that human person learns in the light of Revelation and accepts them voluntarily by an act of faith, and the rules of conduct connected with them that differentiate the Christian ethics from all other ethics. This subset of Christian values includes the truth about the endowment of human person with divine dignity that was granted by Christ by his sacrifice on the cross salvaging the sinners. The person becomes a participant of this dignity through rebirth that takes place during baptism. This category of values also includes ethical rules that are based on respect and love of every human being, which also includes one's foes. This concept of life was defined by Jesus Christ in his Sermon on the Mount, in which he set the pattern for the people "who suffer oppression in the name of justice," and remain faithful to the adopted ideals. Jesus turns to the human being with a proposal of self-sacrifice; calls for love of foes and overcoming of evil by good. This subset of specifically Christian values shall not be imposed on anyone, as one shall not order one to love or be heroic.

The specifically Christian values should not be imposed by means of the state-executed sanctions. The Church is not willing to impose them with force, proposing the people the ideal of life shown on the pages of Gospels.

When it comes to respecting the specifically Christian values in the order of statute law, the Church demands public respect towards them and the state authorities to guarantee their manifestation by every person in its public life, on the principle of equality with all other citizens of a pluralistic society.

Universal Ethical Values

The other group of Christian values comprises the universal ethical values, forming the humanistic social order. Important elements of those values are the

fundamental human values, as respected in every social system and every legal order pretending to be democratic. These are:

- respecting the hierarchy of values;
- accepting that the human has the first place in this hierarchy;
- accepting that the inherent dignity of a person forms the source of fundamental rights and freedoms that belong to each human being.

The truth about the exceptional value of the dignity of a person played an important role in shaping, within the European culture, the rule stating that the dignity of humans is the source of their basic rights and freedoms. The awareness of the exceptional dignity of the human within the created world paved the way for the development of a doctrine of brotherhood of the whole human family and the need of common solidarity of mankind. This truth includes the acceptance of the existence of objective universal human values that should be respected in every social order. The rule of respecting the dignity of the human person as the foundation of every legal order of a state pretending to the name of a democratic one, is the achievement of twentieth-century legal culture, with universal reach.

The inherent dignity of a human person is a basic value which means that all other human values are derived from it. In consequence, the dignity of the human being is the source of all fundamental rights and freedoms that are proper to every human being. These values are ordered hierarchically. This hierarchy should be respected and protected by every system of statutory law.

The rule of respecting the dignity of the human person, as the basic principle of every legal order is coupled with the principles concerning the respecting of the hierarchy of values in every situation and the basic principles of social life. Actions of individuals and public authorities leading at shaping public life should be guided by those principles. These are the principles of: common good, subsidiarity, solidarity, and social justice.

Rules for Catholic Participation in a Civil Society in the Light of Religious and Worldview Pluralism

The answer to this issue can be found in the documents of the Second Vatican Council and the Code of Canon Law formulated on their basis (can. 227 of the 1983 Code of Canon Law, cann. 401 and 402 of the Code of Canons of the Eastern Churches). These rules apply to internal relations between the Christian faithful and non-Christians in the civil society:

1. The Christian faithful participating in the construction of political community have the right to freedom that is due to all citizens, that is, without privileges and discrimination in public life.

2. The Christian faithful differ from people of other religions in that that they are guided by the spirit of Gospels and the principles of the social teachings of the Magisterium of the Catholic Church.
3. The Christian faithful have the right, in such social questions that allow different opinions, to make decisions in their own name (on their own responsibility), directing themselves with their Christian conscience.

In relation to the state, the Church is represented by bishops; and the lay people can only represent it if they are authorized by the bishops. The clergymen have the right and duty to participate in public life and appear in matters connected with keeping peace and justice. But they should refrain from holding state offices and membership in political parties. These measures aim at the Church not being identified with the state, and the clergy not being identified with members of any political party in public life. Still in public life of every state, regardless of its political system, the clergy and the laymen have the same freedom rights as any other citizen.

The above principles of participation of Christians in the development of political culture are universal, that is, common for all citizens creating a political commonwealth in every single cultural circle.

Conclusions

The model of relations between the system of Christian values and the statutory law, as characterized above, can be easily utilized when the law is stated and applied by people who have sufficient knowledge regarding the values that are to be attained by means of that law. Still, a liberal democracy is unable to secure the statement and application of law by only such people who possess the necessary knowledge of values that are to be protected by the respective regulations, and the good will to apply them to public life. As a matter of fact, the majority of cases show the opposite. It is frequently the case that the law is passed by votes of people who have very little knowledge of the ethical content of the act, and the consequences that its application will have for the protection of goods that convey the values. Representative democracy requires that parliamentary majority express its political will in a vote in order to pass a law. However, what they vote for is usually in the hands of the leaders of political parties.

Frequently, even the draft acts that were well prepared in their axiological dimension fail to win the majority of votes due to pressures exercised on MPs not only by leaders of the respective parties, but also by the interest groups lobbying to achieve their own particular interests, which are contrary to the hierarchy of universal ethical values rooted in the European culture. In this way, the

legislatures of the European Union member states differ largely in their views of protection of fundamental rights, such as: the right to live for every human being from the conception to natural death (abortion, euthanasia); the protection of family as the basic unit of social life, based on a marriage of man and woman.

It is worth observing that in the European Union as a transnational structure based on a system of statutory law—there is an acute cultural crisis, directed by the majority of the political elites that worship the extremely liberal ideology. Its particular manifestation is seen in new regulations, passed mostly in the form of European Commission or European Parliament Commissions Directives, ordering the member states to introduce regulations that contradict the respect for the basic human values—concerning the protection of human life, freedom of conscience, freedom of speech, protection of marriage understood as a relation of man and woman, respecting the right of parents to bring up their children according to their beliefs within the public education system. The situation becomes dramatic due to the collision between the positive law and the system of universal ethical values, rooted in the natural law that St. Paul described as “engraved on their hearts, to which their conscience bears witness” (Rom. 2,15).

We have to remember that Christians, as citizens of any civil society, may not be treated as passive observers of uprooting of Christian values from public life by means of the applications of statutory law, for example, European Union Law.

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Józef Krukowski

La culture et le droit dans la société pluraliste

Résumé

L'article concerne le problème de la relation entre la culture et le droit dans la société pluraliste contemporaine où existent les différences idéologiques considérables liées à la perception des valeurs humaines de base. Le droit positif devrait servir à atteindre ces valeurs. Au début, l'auteur analyse la conception personaliste de la culture exprimée dans la constitution du Concile Vatican II, disant que « c'est le propre de la personne humaine de n'accéder vraiment et pleinement à l'humanité que par la culture, c'est-à-dire en cultivant les biens et les valeurs de la nature » (*Gaudium et Spes*, n° 53). Le développement de l'humanité se produit alors par la culture.

Afin d'expliquer ce problème—à l'avis de l'auteur—, il faut considérer : qu'est-ce que c'est que le droit, les valeurs et quel est leur rapport avec le droit positif, qu'est-ce que c'est que les valeurs chrétiennes, quelles sont les règles de la participation des chrétiens à la construction de la culture juridique dans la société pluraliste ?

Dans la partie finale, l'auteur dirige son attention sur le conflit dramatique concernant les systèmes juridiques des États membres de l'Union européenne—étant la conséquence des ordres de comportements inclus dans la loi écrite par les organes de l'Union européenne—qui sont en contradiction avec le système des valeurs chrétiennes enracinées dans la culture des nations européennes. D'après l'auteur, les chrétiens—en tant que citoyens de l'Union européenne ayant tous les mêmes droits—ne peuvent pas être traités comme des observateurs passifs de l'élimination de ces valeurs de la vie publique.

Mots clés : culture, droit, dignité de la personne humaine, valeurs chrétiennes, société civile

Józef Krukowski

La cultura e il diritto nella società pluralistica

Sommario

L'articolo riguarda il problema delle relazioni tra la cultura e il diritto nella società pluralistica contemporanea in cui esistono notevoli differenze ideologiche nella percezione dei valori umani fondamentali. Il diritto positivo deve servire a conseguire tali valori. Nell'introduzione l'Autore sostiene la concezione personalistica della cultura espressa nella costituzione del Concilio Vaticano II secondo la quale: « è proprio della persona umana il non poter raggiungere un livello di vita veramente e pienamente umano se non mediante la cultura, coltivando cioè i beni e i valori della natura » (*Gaudium et Spes*, n. 53). Lo sviluppo dell'umanità avviene quindi attraverso la cultura.

Al fine di chiarire tale problema, secondo l'Autore, occorre ponderare cosa sia il diritto, cosa siano i valori e quale sia il loro legame con il diritto positivo, cosa siano i valori cristiani, quali siano le regole di partecipazione dei cristiani alla costruzione della cultura giuridica nella società pluralistica.

Nella conclusione l'Autore fa notare il drammatico conflitto nei sistemi giuridici dei paesi membri dell'Unione Europea, conseguenza delle imposizioni dei comportamenti inclusi nel diritto stabilito dagli organismi dell'Unione Europa che sono in contraddizione con il sistema dei

valori cristiani radicati nella cultura delle nazioni europee. Secondo l'Autore i cristiani, in quanto cittadini dell'Unione Europea che godono della parità dei diritti, non possono essere trattati come osservatori passivi dell'eliminazione di tali valori dalla vita pubblica.

Parole chiave: cultura, diritto, dignità della persona umana, valori cristiani, società civile