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What Fundamentals do Natural Law and Biology Hold in Common? : the Normative Significance of Biological Principles

Forum Teologiczne 14, 143-151

2013

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

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WHAT FUNDAMENTALS DO NATURAL LAW AND BIOLOGY
HOLD IN COMMON?
THE NORMATIVE SIGNIFICANCE OF BIOLOGICAL PRINCIPLES

Słowa kluczowe: prawo naturalne, błąd naturalistyczny, *cogito, ergo sum*, scjentyzm, parametry biologiczne, dobro moralne.

Key words: natural law, naturalistic fallacy, *cogito, ergo sum*, scientism, biological parameters, moral good.

Schlüsselworte: Naturrecht, naturalistischer Fehlschluss, *cogito, ergo sum*, Szientismus, biologische Parameter, moralisches Gut.

In 1968 Pope Paul VI promulgated his encyclical letter *Humanae vitae*, which identifies contraception as an immoral detriment to permissible intercourse in marriage. The encyclical was met with strong opposition not only from the laity but also from some theologians. Since the Pope founded his encyclical on the basis of the natural law, the dissenting theologians accused the Pope of the error of “physicalism”, i.e. “a definite tendency to identify the demands of the natural law with physical and biological processes”¹. According to them, because man is a rational being, he should not adhere mindlessly to biological processes which are proper to non-rational beings like animals. Similar opposition to the notion of the natural law is represented by some scientists who think that the natural law as it is taught by the Magisterium of the Roman Catholic Church is nothing more than biological processes which gained the attribute of moral norms. A prominent proponent of this position is Joseph Fletcher, the Director of the bioethics program at the National Institutes of Health (USA). He writes: “The idea of natural law is

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¹ Ch. E. Curran, *Directions in Fundamental Moral Theology*, Notre Dame, Ind. 1985, quoted in: D. James, *Sexual Morality: The Perverted Faculty” Argument*, <http://www.faith.org.uk/publications/MagOldIssues.htm#MarApl06> (3 XI 2012).

one that I think is not a viable concept when it comes to the gene pool... Suppose we really knew how to treat cystic fibrosis or some other very burdensome disease and didn't do it because of the belief that people had a right to an untampered genetic patrimony. Then, you met a person twenty-five years later and did the Golden Rule thing and said, 'Well, you know, we could have treated you for this, but we wanted to respect your right to your untampered genetic patrimony. Sorry.' It doesn't take a highfalutin ethicist to realize that's just plain wrong. You violate one of the basic principles of morality, namely that you want to treat a person as you would want to be treated"². However, the strongest position contrary to what is ascribed to the Roman Catholic Church is today represented by transhumanists. They do not attribute any meaning whatsoever to biological processes. They regard the physicality of the human being as though it were a raw material which should be transformed within processes which promote a new and improved being, a "post-human" being. What the transhumanists intend to do is not yet feasible within the current possibilities of technology. Nevertheless, people usually arrive at such an extreme position starting from something smaller and frequently insignificant. Namely, they start from the rejection of the moral significance of certain biological processes. However, it would be erroneous to think that the reason for rejecting the ethical significance of some biological processes does not have a philosophical basis. On the other hand, if one were to surmise that the acceptance of the moral significance of some biological parameters is merely a result of adherence to some "traditional" way of thinking which tends to preserve the ways our ancestors thought about the world³ and to the rules which have long governed the moral conduct of the majority of people in Western civilization, he would again be mistaken. The challenge facing Catholic bioethicists is that of trying to explain the moral significance of biological processes without being accused of physicalism, i.e. they must profess the true moral teaching of the Church and how it happened that in some forms of moral reasoning biological parameters are not important for moral choices.

Modern philosophy, empirical science and the human body

The search for the philosophical basis for the devaluation of the biological "part" of man in moral choices leads to Descartes and his philosophy. His basic precept "cogito, ergo sum" describes man as a being in which the mind decides

² G. Stock, *Redesigning Humans. Choosing our genes, changing our future*, Boston–New York 2003, p. 132.

³ Thus, it would be regarded as merely a form of nostalgia for a time and a world in which the moral teaching of the Church was not subjected to the sharp criticism it faces in the modern world.

for itself about its own identity. “I think, therefore I am” means that in human existence the spiritual trait and not bodily trait (of the former view) of the human being is his more important characteristic. The human body is composed of matter. It is a machine which is ordered by reason⁴. If one wishes to apply Catholic teaching to this way of thinking about man, he would argue that in the Cartesian view of man his body ceases to be part of the human subject⁵. The body is a material, even a raw material, which might be used by man (identified with his/her reason) to actualize the ideas which appear in his/her mind. It is possible that Descartes, who presented his ideas while living in a Christian milieu, was not fully aware of the all consequences of his view. However, his ideas opened a new perspective⁶. It comprises not only the ideas of transhumanists, but also some other concepts concerning man which appreciate the human mind while depreciating both the human body and the biological parameters which govern its functioning. The gender ideology which appreciates man’s self-concept (in regard to his or her sexuality) decides his/her gender-specific attributes. This ideology regards the biological dimension of human sexuality as being insignificant and is a good example of what “cogito, ergo sum” means today.

Nevertheless, we also need to realize that the idea expressed by Descartes became a basis for the development of empirical science. This development has provided mankind with many great advances. Nobody dares to negate it. However, as a side effect the development generated an infatuation with this science and its methodology. As a result, empirical science became regarded as the “only” science or at least the only science worthy of human effort and the only

⁴ Descartes identified the human subject with his mind. “To begin this way is to treat the body and the material world of which it is a part as pure *objects* set over against the mind in dualistic opposition, to be understood as knowable only extrinsically and superficially in a merely mechanical way, describable in purely mathematical terms”. B. Ashley, *Theologies of the Body. Humanist and Christian*, Braintree, Massachusetts 1985, p. 270. About the consequences of Cartesian idea of man, see: T. Kraj, *Granice genetycznego ulepszenia człowieka (Acceptable Limits of Genetic Enhancement in Humans)*, Kraków 2010, p. 244–247.

⁵ H.T. Engelhardt Jr., *Human Nature Technologically Revisited*, Social Philosophy & Policy 8 (1990), 180–191; K. Bayertz, *GenEthics. Technological Interventions in Human Reproduction as a Philosophical Problem*, Cambridge 1994, p. 213.

⁶ P. Ramsey, *Fabricated Man. The Ethics of Genetic Control*, London 1970, p. 159; R.A. McCormick, *How Brave a New World? Dilemmas in Bioethics*, London 1981, p. 284; D.J. Kevles, *In the Name of Eugenics. Genetics and the Uses of Human Heredity*, Harmondsworth 1986, p. 263–264; L. Melina, *Corso di bioetica. Il Vangelo della vita*, Casale Monferrato 1996, p. 39: “La biotecnologia applicata all’uomo è forse il punto estremo che può raggiungere l’impresa globale della scienza moderna. [...] Il progetto scientifico e tecnologico prende per oggetto ormai il suo stesso autore, in un *intento prometeico*, che si riassume nell’idea forza della manipolabilità integrale dell’essere umano. L’essere dell’uomo è semplicemente una materia che può venire plasmata e utilizzata dalla libertà, secondo fini e progetti del tutto arbitrari. Mediante la biotecnologia l’uomo diventa programmatore e creatore di se stesso”.

serious source of human knowledge. Thus, classical philosophy (i.e. that which acknowledges classic metaphysics) and especially theology were moved to the margins of human knowledge⁷. Various forms of contemporary scientism so common today⁸ and particularly so common in the field of bioethics are a good testimony of what many people involved in scientific research think of classic philosophy and theology⁹.

The devaluation of such philosophy and theology has largely resulted in rejection of their subjects as well. Since empirical science is unable to recognize such realities as e.g. the human person, nature, purposefulness, or the truth of things, scientists simply contend that they are either not recognizable or do not exist. If somebody restricts his or her worldview to what empirical science with its methods of cognition is able to recognize, one will find that the reasoning which is based on what is “not recognizable” is incomprehensible. That is why the only “logical” explanation for moral obligation as it is taught by the Church with reference to the natural law seems to be its being based on physical (biological) parameters. The critics of that teaching think it is a form of physicalism or of the natural fallacy which consists in an illegitimate transition from “is”, i.e. from the naturally existing biological processes, to “ought”, i.e. to a moral duty to preserve those processes¹⁰. In order to explain this misunderstanding one needs first to say a few words about the natural law as it is taught by the Magisterium of the Church.

⁷ The mutual relationship between empirical science and metaphysics is presented by E. Agazzi, *Considerazioni epistemologiche su scienza e metafisica*, in: C. Huber (ed.), *Teoria e metodo delle scienze*, Roma 1981, p. 311–340.

⁸ M. Stenmark, *What is scientism?*, *Religious Studies* 33 (1997), no. 1, p. 15–32.

⁹ G. Stock, *Redesigning Humans*, pp. 88, 132, 174–175; B. McKibben, *Enough. Staying Human in an Engineered Age*, New York 2004, p. 195.

¹⁰ The problem of transition from “is” to “ought” is also known as “Hume’s Guillotine” or “the is-ought problem” or “Hume’s law”. “Hume argued that one cannot make a normative claim based on facts about the world, implying that normative claims cannot be the conclusions of reason”, i.e. that normative claims may not be based on positive premises. See: Anon, *Hume’s Guillotine*, <http://www.philosophy-index.com/hume/guillotine/> (14 XII 2012). However, not all ethicists agree with what Hume says. E. Sgreccia notices that everything depends on the meaning of a “positive premise”. If it is an empirical statement like: “Many people steal or commit adultery”, it does not result in a normative statement that to steal or commit adultery is something people “ought” or “ought not” to do. However, if it is a statement which is not exclusively empirical but also has a metaphysical dimension like: “This embryo is a man” i.e. the embryo is a being which has its own dignity and inviolable rights, we have a completely different situation. Such a statement makes a normative claim which requires a proper attitude towards that embryo. In the latter case the positive premise is a basis for a normative claim. A problem arises when somebody rejects both metaphysics and its subject. E. Sgreccia, *Manuale di bioetica*, Milano 1994, p. 74–78.

What is the natural law and how does it work?

The classic definition of the natural law states that it is the rational creatures' participation in the eternal divine law¹¹. According to St. Thomas Aquinas, who gave us this definition, the source of this law is not deontological, i.e. the norms of the natural law are not based exclusively on divine authority. "Law is something that pertains to reason, since both law and reason function as 'a rule and measure of acts' [...] directing man to his last end of happiness. [...] Law is thus defined in relationship to happiness not in relationship to obligation"¹². Hence, according to Aquinas, the goal of human life and effort is to gain happiness. However, this goal is not attainable without conscious participation in some good actions. That is why the natural law is oriented towards good actions. The first and most fundamental norm of this law is: "do good and follow it, avoid what is evil". The good that man should do and follow is not something he established in an arbitrary way, "but in a manner that accords with the nature God has designed him with"¹³. The notion of nature used in this case is not the same as that used by those who dispute the moral teaching of the Church. It is the metaphysical notion of nature, which is the basic principle of existence and functioning. Such nature is common to all human beings. However, man is not only a spiritual creature, he is a unity of spirit and body. The biological processes make up an essential part of his nature. Reason may attempt to use the body and its biological processes as a tool or a raw material to achieve some intellectual purposes or subjectively appointed goals, but this is a violation of human nature.

How does the natural law work?

The natural law is a moral precept. Although its norms may be expressed verbally, it is not promulgated anywhere. The norms are recognized through rational inclination. Y. Simon shows how such an inclination works and how man can gain knowledge through it. "Suppose you are in business, and a would-be partner has a project beneficial to you, to him, and even to community at large. Now when business projects are so wonderful, there is usually something wrong with them. But you cannot see anything wrong, the projects appear perfect. The fellow is very smart, it is probably not for the first time that he is telling that story. So you do not see the 'gimmick,' but you can 'smell' the fellow. Indeed, judgments by way of inclination are often expressed by this metaphor. 'Are you going

¹¹ W. May, *An Introduction to Moral Theology*, Huntington 2003, p. 73.

¹² D. James, *Sexual Morality*.

¹³ *Ibidem*.

to make a deal?' 'No.' 'And why not?' 'Because the fellow, excuse me, stinks.' There is an inclination in the honest conscience of the man trained in justice which makes him sensitive to the unjust even when he is completely unable to explain his judgment. [...] Pressed for an explanation, the man ponders and finally says, 'Yes, I can tell you why'"¹⁴. Y. Simon concludes: "Does knowledge by inclination exclude knowledge by rational evidence? Certainly not; it precedes it. Natural law is known by way of inclination before it is known by way of cognition"¹⁵. A similar observation is made by W. May who says that "natural law, therefore, is something that we ourselves naturally bring into being by the spontaneous exercise of our own intelligence as ordered to action. It is something that we bring into being by our doing [...], not something enabling us to bring something into being by our own doing"¹⁶.

The natural law which orders us to do good and to avoid evil works well together with man and his nature which is spiritual and bodily at the same time. That is why that law exists in man in two ways: "in precepts and in man's inclinations. [...] Strictly speaking, the natural law is 'in' man when he grasps the eternal law as law by knowing it as precepts. In a derivative sense, the natural law is 'in' man by the fact that the eternal law imprints 'inclinations' to acts and ends in man's nature"¹⁷. The natural law conducts man towards happiness which consists in the fullness of being, known also as human personal fulfillment. The fullness of being is in being the human being as much as it is possible according to the plans God has for us, i.e. "according to the nature God has designed us with". Thus we do not achieve the goal of our lives when we postpone what is "written" in our nature. We do achieve that goal when we follow the inclinations proper to our human nature by ordering them according to the requirements of the right reason which we identify with the precepts of the natural law. The important feature of those inclinations is their biological dimension. Practical reason, which conducts us in our moral life, perceives the aims of natural human inclinations as goods to be pursued. However, those goods are proper to man as a spiritual/ /bodily creature. Thus, the good of man may not be gained without reflecting on both the spiritual and bodily dimensions of the human being and both dimensions have their part in the way man achieves his good.

Two examples seem to be useful to illustrate this issue. The most basic inclination is the one which tends to preserve the human life. It is very closely linked to the associated inclination, which is to preserve human health. Both, life

¹⁴ Y. Simon, *The Tradition of Natural Law. A Philosopher's Reflections*, New York 1992, pp. 128, 130.

¹⁵ *Ibidem*, p. 130.

¹⁶ W. May, *An Introduction to Moral Theology*, p. 74.

¹⁷ D. James, *Sexual Morality*.

and health are perceived by practical reason as goods to be pursued. Let us focus first on human health, which is used as an example by J. Fletcher. The natural law which is “brought into being” in this situation tells us that we should pursue the intrinsic good of health. Thus, we should always do what is necessary to preserve or recover human health. In this case we would cure the genetic disorder instead of leaving it ‘untampered with’ as J. Fletcher thinks the natural law requires, because we understand that we cannot achieve the good of human health without curing this disorder. To refrain from tampering with genetic make-up in such a situation is in no way a moral imperative. It is or is not such an imperative only as a constitutive part of the human good. If its being ‘untampered with’ threatens human health, we should ‘tamper with’ it. If its being ‘untampered with’ conditions good human health and its being ‘tampered with’ threatens good human health, as it is in the case of the new proposals of genetic enhancement, we should leave it ‘untampered with’.

We notice the same rule in the other human inclination, namely that of preserving the life of the human species, and particularly in what concerns human sexuality. We should also order this inclination in a manner not proper to animals, but proper to rational beings, i.e. within the stable and loving relationship of matrimony which is necessary for the upbringing and education of children. A stable marriage requires love which is based on the mutual self-giving of the spouses which occurs in a special way in the marital act. The contraception of the marital act creates a flaw in the mutual self-giving of the husband and wife. The act of full self-giving becomes deficient because fertility is excluded. While it may seem that the contraceptive action does not change the marital act significantly, it changes the internal structure of that act making it a separative act rather than a unitive one. The statistics also confirm that the rate of divorces among couples who practice contraception is much higher than that among those who practice the form of natural family planning which includes periodic abstinence¹⁸. Contraception also makes the ordering of the sexual inclination according to the requirements of responsible parenthood unnecessary. Thus, it devalues the virtue of marital chastity. This virtue promotes the self-governing of the husband and wife, i.e. that he/she “possesses” him/herself which is a fundamental condition for self-giving, which is so important to infuse into and nourish in marriage. Thus the contraceptive act, i.e. an act which damages the internal structure of the marital act, results in various forms of evil which are destructive for the spouses and their life together. Fertile marital intercourse does not change that structure, and it is the only way which preserves some specifically marital goods and steers clear of the evil linked to the distorted form of that intercourse.

¹⁸ Ibidem.

The preservation of the integrity of the marital act does not mean that biological processes proper to it become moral norms on their own. These processes gain their moral significance since they make up a crucial part of the form of marital intercourse which preserves and develops some important human goods as well as helps to avoid the various forms of evil linked to the contracepted act. The fertile act is not the imitation of animal sexuality (i.e. biological animal processes), because the notion of the good that is proper to human sexuality is absent from the animal behaviors.

The two examples, one concerning the preservation of human health and the second one involving marital intercourse, show us that some biological processes may have moral significance. However, the moral significance is not an intrinsic part of the biological process except as it constitutes an integral part of some important human good. The biological processes are essential to the attainment of particular human goods as well as to the avoidance of some forms of evil. The same rule concerning a mutual relationship between human goods and the biological dimension of man (i.e. whether we should preserve some biological processes or not) works within any other moral issue.

In conclusion I would like to point out that the discussion of any philosophical or theological issue requires a good knowledge of the contrary position. If one disputes a misinterpretation of his opponent's position, he may propound his own concepts, but he will never actually address the real differences between himself and his opponent, since the differences brought into the argument do not actually exist. This very much applies to the contemporary discussion of the natural law as it is presented by the Magisterium of the Roman Catholic Church. This teaching is not a case of physicalism or natural fallacy. It is rather a well grounded and logically sound moral concept.

CO PRAWO NATURALNE MA WSPÓLNEGO Z BIOLOGIĄ? MORALNA NORMATYWNOŚĆ PARAMETRÓW BIOLOGICZNYCH (STRESZCZENIE)

Wielu ludziom słyszącym o prawie naturalnym kojarzy się ono z prawami, jakimi rządzi się przyroda. Tymczasem definicja prawa mówi, że jest to *ordinatio rationis*. Także prawo moralne, którym powinien się kierować człowiek, winno mieć charakter rozumny. Wydaje się zatem, że rozumność tego prawa nie może się ograniczać jedynie to „odczytywania” praw przyrody po to, by im przypisać znaczenie normatywne. Traktowanie prawidłowości biologicznych jako zobowiązujących uważane jest za wypaczenie idei prawa, za jego fałszywe ujęcie, co zresztą odzwierciedla nazwa takiego błędu: byłoby to zafalszowanie naturalistyczne. Tymczasem w swoim nauczaniu moralnym Magisterium Kościoła mówi o prawie naturalnym i o normatywnym znaczeniu pewnych prawidłowości (parametrów) biologicznych, a jednocześnie zaprzecza oskarżeniom o zafał-

szowanie naturalistyczne. W nauce o odpowiedzialnym rodzicielstwie jest mowa o uszanowaniu naturalnego rytmu płodności, o odrzuceniu antykoncepcji; w bioetyce natomiast raz mówi się o zachowaniu zastanych parametrów biologicznych, innym razem o ich zmianie. Rozwiązanie tych kwestii można znaleźć w klasycznej teorii prawa naturalnego, opracowanej przez św. Tomasza z Akwinu. Jest tam mowa o tym, co to jest prawo naturalne, jak je poznajemy oraz w jaki sposób prawidłowości biologiczne stają się moralnie zobowiązujące. Dzieje się to dzięki odniesieniu do pojęcia dobra, które zawsze powinno być przedmiotem wyboru moralnego.

WAS HAT NATURRECHT MIT DER BIOLOGIE GEMEINSAM? DIE SITTLICHE NORMATIVITÄT DER BIOLOGISCHEN PARAMETER (ZUSAMMENFASSUNG)

Der Begriff des Naturrechtes wird bei vielen mit den Naturgesetzen in Verbindung gebracht.

Die Definition des Rechtes bezeichnet es jedoch als *ordinatio rationis*. So soll auch das Naturrecht, das eine Richtschnur für menschliches Handeln bilden soll, einen vernünftigen Charakter haben. Es scheint, dass sich die Vernünftigkeit des Naturrechtes nicht lediglich auf das „Ablesen“ der Naturgesetze beschränken kann, um ihnen dann eine normative Bedeutung zuzuschreiben. Das für verbindlich Halten der biologischen Gesetzmäßigkeiten muss eher als eine Verfälschung der Rechtsidee betrachtet werden, was im Begriff des naturalistischen Fehlschlusses zum Ausdruck kommt. Das Magisterium der Kirche nimmt zwar in seinen Verlautbarungen auf die normative Bedeutung einiger biologischer Parameter Bezug, weist jedoch gleichzeitig den Vorwurf des naturalistischen Fehlschlusses von sich. In der Lehre von der verantwortlichen Elternschaft ist von der Beachtung der natürlichen Fruchtbarkeitsrhythmen und der Ablehnung der künstlichen Verhütung die Rede; in der Bioethik spricht man dagegen einmal von der Beachtung der biologischen Parameter, ein anderes Mal von ihrer Veränderung. Eine Lösung für dieses Problem findet man in der Naturrechtslehre vom hl. Thomas von Aquin. Er definiert den Begriff des Naturrechtes, wie es erkannt werden kann und auf welche Weise biologische Parameter verbindlich werden können. Es ist möglich durch den Vermittlungsbegriff des Guten, das immer das Objekt der moralischen Wahl sein soll.