„INS HERZ GESCHRIEBEN”
Die Grundlagen des freiheitlichen Rechtsstaates

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*Die Grundlagen des freiheitlichen Rechtsstaates*

Aufsätze und Diskussionsbeiträge aus Anlass der Internationalen Tagung am 10. Juni 2013 an der Katholischen Universität Pázmány Péter in Budapest

Herausgeber / Editors:
Nadja El Beheiri – János Erdődy

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EINFÜHRUNG


1 Das Buch erschien 2012 unter dem Titel „A szívébe írva. A természetjog mint az emberi társadalom alapja” im Szent István Társulat.

Im Anschluss an jeden Vortrag haben wir der Diskussion breiten Raum eingeräumt.


Auch im Aufbau der Ansprache selbst lässt sich diese Absicht ablesen. Der Papst spricht im Parlament als Bischof von Rom, der die oberste Verantwortung für die katholische Christenheit trägt. Der Papst versteht sich auch hier im Sinne seines Wahlspruches als Mitarbeiter der Wahrheit. Er beginnt die Ansprache mit

Nadja El Beheiri, Budapest am Tag des Heiligen Nikolaus 2013
Sehr geehrte Damen und Herren!

Liebe Kollegen, meine Damen und Herrn!


der ihn berechnen konnte. Er wird auch dann weiter existieren, wenn man die mathematischen Bücher einmal nicht mehr lesen wird. Was wahr ist, das ist eben wahr und, wie der Hl. Johannes sagt, Wahrheit macht frei.


MORAL CHALLENGES IN BIONICS IN VIEW OF CARITAS IN VERITATE

TAMÁS ROSKA

Nadja El Beheiri: It’s a great pleasure for me to present Prof. Tamás Roska. He comes from the field of electrical engineering. Prof. Roska is a co-inventor of the CNN Universal Machine and the analogical CNN Bionic Eye. He is Fellow of the Institute of Electrical and Electronics Engineers, member of the Hungarian Academy of Sciences, elected member of four Academies of Sciences in Europe and the Academia Europaea. He is also a devoted Professor and had been the founding Dean of the Faculty of Information Technology, which recently changed its name, and is now called Faculty of Information Technology and Bionics. Thank you Prof. Roska, that you have accepted our invitation.

If we start to read chapter six, then right at the very beginning Pope Benedict wrote the following words: “The challenge of development today is closely linked to technological progress, with its astounding applications in the field of biology”.1 Actually, this is bionics: the combination of biotechnology and electronic technology. This branch of technology is really new, a 21st century phenomenon, a genuine symbiosis of biology and electronics. Interestingly, it is coincided with a major paradigm shift that has been made in one of its foundation, namely in biology. In particular, the methodology shifts towards quantitative biology, or new biology or convergence (on this, see a summary of Sharp2). This is in sharp contrast to the descriptive biology of previous centuries. Bionics gives rise to brand-new products and services, some of which are fundamentally touching the issue dealt with in this conference. When

1 BENEDICT XVI, Caritas in Veritate, 69. The text Prof. Roska is referring to is reprinted in the appendix of this book.

working with people, our first concern must consist in curing people instead of experimenting with them. Today we have face a very huge risk, namely that people might start to experiment without having a clear anthropological view of human beings. Starting from this point, one might also ask, if we also consider the fundamental issue of what the axioms are. In science – e.g. natural science – and technology we always start from axioms. On axioms we understand true statements we can draw either experimentally and / or logically from some experience. So we start from axioms and go forward through logical steps in order to arrive to a statement. Until 1930, and especially at the beginning of the 20th century, there was a belief that if I provide the axioms and show a statement within a logical framework, then sooner or later I’ll be able to prove whether the statement is true or not. Then Kurt Gödel proved in 1930 that this is not actually the case. Even within the simple framework of logic, there are some statements that in principle cannot be proved or disproved. The axioms about the understanding of man must be anthropological axioms. But it’s clear, that there are very different axioms, such as that of the *homo ludens* or the *homo economicus* or the “man created in the image of God”. In view of this, it’s a blessing, it’s a kind of present for us to have received the Ten Commandments. From this fundamental consideration, it’s clear that if we are about to confront the latest developments in bionics, then we will be in trouble. There are some new products and services, which didn’t exist before and which now really raise great and fundamental questions. Let me give an example on the new products and services. You all know the traditional pacemaker device, but for a couple years now, we have such pacemakers where the wires bringing the electrical signals will not be connected to the heart, but they will be connected to some specific parts of the brain. This is called neuromodulation. It’s a nice word not to intimidate people. Perhaps if we said that we are dealing with a “brain pacemaker” device, people might get frightened, so we use other words instead. In Hungary, in the National Institute of Clinical Neurosciences they routinely perform some neuromodulation surgeries. At some very specific places in the brain, they put the above mentioned contacts, tune the frequency, the amplitude, then close the scalp, and the patient will be cured from e. g. some unbearable pain, epileptic seizures or movement disorders. I asked Loránd Eröss, director of the Institute, if they exactly know what’s happening around that area where they put the electrical contacts meeting the brain and he said: “No, we don’t know exactly what’s happening there”. I asked him, how you know that after some years the person will not get mad. And he answered that
they don’t know it, but they follow thousand years of medical practice, animal models etc.

And now some words about discovery and invention. In natural sciences, we are talking about discovery, there is a fact, there is a law, and it is there. We don’t invent it, it’s there by nature, but we have to uncover it in order to see what there is. This is the discovery; this is the job of a biologist, a physicist, etc. But there is something else, the invention, which is mainly done by engineers. Invention means that we already know some important elements of the discoveries and we develop new products and services, new devices, new tools and amongst these new tools the bionic tools are really remarkable. So basically, we are entering a new kind of knowledge, but this also means that the sphere of the unknown is becoming bigger and bigger. So coming back to the main point, the question is that depending on our anthropological hypothesis or our vision and conviction about man, we will be able to decide whether something is human or inhuman. When I started to read again the Bundestag speech at, I was glad to find the roots of law, namely nature and reason. In these kinds of challenges on bionics, we can rely on nature and reason, but the nature we are considering is much, much richer than it used to be – not a thousand or hundred years ago, but even just ten, fifteen years ago. There is also another point which is likewise discussed in Chapter 6 of the Encyclical *Caritas in Veritate*. Due to the fascination of technological development, an idea can be risen that “technology is self-sufficient when too much attention is given to the ‘how’ questions, and not enough to the many ‘whys and wherefores’ underlying human activity”.3 Truth has come to be seen as something coinciding with that which is possible – we can read about it in Section 7. This is a very fundamental issue. Those of us who are involved in this activity are sometimes so much fascinated by the details, by the beauties that they really get addicted. It is human nature that they are fascinated with, and they are addicted to the experimental and even intellectual details, to the discovery or the invention of laws of nature, as well as new tools based on natural laws. This fascination is hiding the fact why we are doing this. Who is the man, who is the specific patient behind all these tools? In this context, another point mentioned by Pope Benedict in this part is important, namely, he says that professional competence and moral consistency are necessary for the common good. Moral consistency means that there is no contradiction, consistency in logic means that there is no contradiction. Avoiding contradiction

3 *Caritas in Veritate*, 70.
has been a fundamental requirement in logic since the last two thousand years. Consistency is not easy to get, especially when the situation is quite complex, so moral consistency means that we have to develop a kind of judgment in ourselves, which is in our case is in accordance with Biblical anthropology. Let me just mention one experience. One of my colleagues and good friends, a professor in Switzerland is an orthodox Jew and we found that the basis of our friendship is our common Biblical anthropology. We need some common goods. With the *homo ludens*, we don’t have a common good, therefore the consequences will also be fundamentally different. If we point out that one of the challenges consists in the fact that in the field of bionics we act with a certain lack of knowledge, another one is to find the borderline between curing patients and experimenting with them, so I think that the guidelines proposed by Pope Benedict in *Caritas in Veritate*, professional competence and moral consistency, and the ones in the Bundestag speech – reason, nature and Biblical anthropology – provide an important help in the decision-making process also in the light of the astounding developments in the field of bionics.
János Erdődy: If this is the case, what you have just mentioned, how can we talk about moral consistency? Moral consistency, because of limits of knowledge, won’t include a bigger picture.

Tamás Roska: I think in this case the moral consistency means that according to the practice developed in the last let’s say thousand years we have made all the necessary steps that are morally and scientifically sound as of now, for example for a medicine in the pharmacy industry. Moral consistency means that we have made all the necessary steps to make a legally and – more importantly – morally sound decisions. The moral competence and the moral awareness will play a much more important role than before.

Jutta Hausmann: I have a question and a remark. I can agree that we need some moral consistency – there is no disagreement between us here on this. The question for me is where we can find the roots for this moral consistency. You mentioned Biblical anthropology. I am here as an Old Testament scholar. In the current semester, I’ve taught the ethics of the Old Testament. I think when we have a look at Biblical anthropology; it is not as easy as we want it to be. I think when we have a look at the Biblical text it seems very often clear, I will show it through some examples. It should also be pointed out that there are certain points on which we have strong disagreement. It is not so simple that we can say that in the Bible we have the anthropology, so that we can say that is what we have to do.

Tamás Roska: The essence of Biblical anthropology is given in the Ten Commandments. I would not go into the very details. I was very glad to study the three volumes of Pope Benedict XVI. And of course the New Testament gives a couple of additional highlights. From our point of view, I see the problem that even the Ten Commandments are questions in some cases. Because marriage is marriage whatever word magic is used, but the sophists were already very good of playing with the words instead of killing saying choice. So all in all,
when mentioning Biblical anthropology I would basically rely on the Ten Commandments.

Pablo Blanco: I am also very interested in the ecumenical and interreligious dialogue, and I work concretely about the Lutheran – Christian theological dialogue. I appreciated very much your anecdote about that orthodox Jew – I was wondering myself about ethics: we Jews or Christians sometimes speak a lot about the limits. But at the same time, we must also see the positive aspects, the best perspective for rationally explaining our beliefs. How can we then express this positive perspective? If Christian and Biblical ethics do not constitute a wall, but rather a mirror through which we can get to know our own nature, or look at the world. How can we then express these positive aspects?

Tamás Roska: My answer is that I don’t know but my comments may be as follows, two or three brief comments. Primarily, the Ten Commandments in particular, not to mention the Beatitudes, could be phrased – to my understanding – in an affirmative way, as well. If you consider the Ten Commandments as ten life-saving belts, then this could be a turning point for a harmonious life. Secondly, I’ve just spent a couple of weeks in the US and I bought two books that Pope Francis published before having been elected Pope. The one is a book about conversations between Jorge Mario Bergoglio and Abraham Skorka, Chief Rabbi of Buenos Aires – in this book, they mention the very same issue, which is very interesting. Maybe it is our mission – especially the mission of those who are as old as I am – to point out not only the positive aspects of the Ten Commandments and the Bible, the New Testament, but also the beauty and the attraction of these Biblical texts, and the Gospel. I think we have a particularly blessed time, because we can see morals collapsing around us. I don’t want to use strong words, but in one of his books, Pope Francis spoke about a shipwrecked culture, a morally shipwrecked culture. If we add to this what is related to our mission to educate the young people, I think our responsibility is even bigger. But it is a kind of interesting era when the people in both sides of the Atlantic living in general, not everybody – living in the highest material standards of history and they are completely depressed.

Nadja El Beheiri: Joseph Ratzinger in his dialogue with Jürgen Habermas said about natural law that the idea of natural law presupposes a concept of nature in which nature and reason overlap, since nature itself is not rational. He continued saying that with the victory of the theory of evolution, this view
of nature capsized. Do you think it is necessary to search for some other new guiding principles?

Tamás Roska: If I understand well the controversy about evolution is basically an ideological confrontation. Maybe it sounds funny, but comparing Darwin and Mendel. Mendel was a scientist and Darwin was a kind of descriptive visionary. We can say that without questioning his important visions. Yet, some other consequences later on are attributed to his visions. I think from a broader perspective, there are very different kinds of laws in nature. One is the kind of natural selection and that’s it. The consequence is interesting. But far more fundamental is this secret than the fact that there are five physical constants in the universe and if one of these constants would be 1.0% different we would not exist. There are many-many, but it is easier to understand the popular interpretation of evolution than the dynamic laws of nature.
1. Einleitung


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2. Die Grundlagen des freiheitlichen Rechtsstaates


Ebenso wie bei früheren Gelegenheiten hat Benedikt XVI. auch im Bundestag zum Ausdruck gebracht, dass er sich durchaus dessen bewusst ist, dass man dem Naturrecht weithin skeptisch gegenübersteht. In dem vielbeachteten Gespräch mit Jürgen Habermas im Januar 2004 etwa wollte Ratzinger sich ausdrücklich nicht auf die Argumentationsfigur des Naturrechts stützen. Im Bundestag spricht der Papst davon, dass man sich beinahe schämen müsse, das Wort außerhalb des


5 Es kann an dieser Stelle an das bekannte Wort von Theodor Heuss anlässlich einer Schulfieber erinnert werden: „Es gibt drei Hügel, von denen das Abendland seinen Ausgang genommen hat: Golgatha, die Akropolis in Athen, das Capitol in Rom. Aus allen ist das Abendland geistig gewirkt, und man darf alle drei, man muß sie als Einheit sehen.“ Theodor HEUSS: Reden an die Jugend. Tübingen, Wunderlich, 1956. 32.

3. Die Lehre Hans Kelsens über den Dualismus von Sein und Sollen


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von Sein und Sollen im hohen Alter modifiziert hat, nicht sagen wollte, dass
der späte Kelsen zu einem Anhänger des Naturrechts geworden ist. Kelsen
hat vielmehr im hohen Alter seine Naturrechtskritik auf andere Beine gestellt.
Gegen Ende der Ansprache sagt Benedikt XVI., dass Kelsen im Jahre 1965
meinte, dass er ein Naturrecht nur unter der Voraussetzung annehmen könne,
dass dieses Recht aus dem Willen eines gerechten Schöpfergottes kommen
würde. Kelsen blieb bis zum Schluss bei der Meinung, den Glauben an einen
solchen Gott nicht annehmen zu können, gegen Ende seines Lebens wurde diese
Ansicht konstitutiv für sein ganzes theoretisches Gebäude. Dabei war der große
österreichischen Rechtstheoretiker der Meinung, dass es „völlig aussichtslos [sei],
über die Wahrheit [eines solchen] Glaubens zu diskutieren.8 Mit einer solchen
Aussage konnte sich der Römische Oberhirte wohl direkt angesprochen fühlen
und er reagiert, in einer für Joseph Ratzinger charakteristischen Weise, mit einer
fragen. Ist es wirklich sinnlos zu bedenken, ob die objektive Vernunft, die sich
in der Natur zeigt, nicht eine schöpferische Vernunft, einen Creator Spiritus
voraussetzt.

Die Kritik von Horst Dreier bezieht sich vor allem auf die Aussage, dass Kelsen
vom Dualismus von Sein und Sollen abgegangen sein soll.9 Dreier räumt ein, dass
Kelsen im hohen Alter noch Änderungen an seiner Rechtstheorie vorgenommen
hat, diese sollen jedoch zu dem entgegengesetzten Ergebnis geführt und den
Dualismus von Sein und Sollen „verschärft und zugespitzt“ haben.10 Die von
Kelsen vorgenommen Änderungen haben – so Dreier – einerseits die Theorie zur
sogenannten Grundnorm und andererseits den Satz betroffen, dass die „Regeln

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8  Im Zusammenhang mit der durch die Bundestagsrede angesprochne Diskussion zum
Naturrecht sind die Worte Kelsens zu seinem Vortrag in Salzburg bemerkenswert: „Ich
habe Ihre Einladung, in diesem Kreis von Anhängern der Naturrechtslehre über Naturrecht
t sprechen, nicht in der Absicht angenommen, Sie zu meiner Ansicht zu bekehren, daß
man von einem wissenschaftlich rationalen Standpunkt aus die Geltung eines Naturrechts
nicht annehmen kann. Denn eine solche Bekehrung halte ich nicht für möglich; und zwar
aus einem Grunde, der gerade daraus folgt worüber ich sprechen will. Die Grundlage der
Naturrechtslehre, das ist die Antwort auf die Frage: unter welcher Voraussetzung allein man
die Geltung eines ewigen, unveränderlichen, der Natur immanenten Rechts annehmen kann;
so daß, wer – wie ich – diese Voraussetzung nicht annehmen zu können glaubt, auch ihre
Konsequenz nicht annehmen kann. Diese Voraussetzung ist, wie ich zu zeigen versuchen
werde, der Glaube an eine gerechte Gottheit, deren Wille der von ihr geschaffenen Natur
nicht nur transzendent, sondern auch immanent ist. Über die Wahrheit dieses Glaubens zu
diskutieren, ist völlig aussichtslos“. KELSEN In: SCHMÖLZ op. cit. 1.


10  Horst DREIER: Hier irrte der Papst – Kelsen blieb bei seiner Lehre. Frankfurter Allgemeine,
03.11.2011.
der Logik (wie insbesondere der Satz vom ausgeschlossenen Widerspruch) sich nicht nur auf Aussagen über Sachverhalte, sondern auch auf Normen beziehen ließen.”11 Diese Änderungen seien aber nur „Variationen seines Theoriedesigns, Deliktassen eher für juristische Feinschmecker“ gewesen.12

4. Die Aussagen Wolfgang Waldsteins zu der „Reinen Rechtslehre“


11 DREIER op. cit. 1152.
12 DREIER op. cit. 1152.


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15 W ALDSTEIN (1976) op. cit. 20 f.
17 KELSEN (2010) op. cit. 1202–1204.
18 WALDSTEIN (1976) op. cit. 22.
19 KELSEN (2010) op. cit. 22.

21 Bundestagsrede.
5. Anfragen von Joseph Ratzinger/Benedikt XVI. an das Naturrecht


\(^{25}\) Bundestagsrede.

\(^{26}\) Bundestagsrede.

\(^{27}\) Bundestagsrede.
6. Das Naturrechtsverständnis von Wolfgang Waldstein

6.1. Unmittelbare Einsicht als Erkenntnisform


\(^{30}\) KASER (1976) op. cit. 56–58.

\(^{31}\) Vgl. EL BEHEIRI (2013) op. cit. 227–229.

\(^{32}\) WALDSTEIN (1976) op. cit. 100.
6.2. Recta ratio im Sinne einer Naturrechtsordnung


Dem Menschen kommt in der Natur, insbesondere auch im Verhältnis zu den anderen Lebewesen eine besondere Stellung zu. Diese Erkenntnis war auch für die antiken Philosophen grundlegend. Waldstein hat in diesem Zusammenhang auf eine Stelle bei Cicero in De officiis hingewiesen, wo der römische Staatsmann sagt, dass „homo autem, quod rationis est particeps, per quam consequentia

34 WALDSTEIN (1967) op. cit. 15. Vgl. Cic. De rep. 3, 33: „Est quidem vera lex ratio naturae congruens, diffusa in omnes, constans, sempiterna, quae vocet ad officium tubendo, vetando a fraude deterreat […]”.
Diesen Text legt der Professor für Römisches Recht im Lichte der Definition der *lex naturalis* des Hl. Thomas von Aquin aus. Die bekannte Stelle der Summa Theologica lautet: „*lex naturalis nihil alius est quam participatio legis aeternae in rationali creatura*“.

Thomas definiert die *lex naturalis* als Teilhabe der vernunftbegabten Kreatur am ewigen Gesetz. Diese Teilhabe erfolgt dabei in zweifacher Weise. Das Gesetz als Regel und Maßstab kann sich in einem Seienden „*sicut in regulante et mensurante*“ oder auch „*sicut in regulato et mensurato*“ befinden. Im ersten Fall handelt es sich um ein passives Geordnetsein, im zweiten Fall spricht Thomas von einer aktiven Teilhabe der Vernunft, die die natürlichen Neigungen des Menschen auf das Gute hin ordnet. Nur diese zweite Art der Teilhabe ist für Thomas *lex naturalis* – natürliches Gesetz.

Waldstein schließt sich also grundsätzlich der thomistischen Lehre zur *lex naturalis* an, anhand der Beschäftigung mit den antiken Quellen kommt er jedoch zu der Schlussfolgerung, dass *ratio* eine vorgegebene Ordnung bedeutet, die der Mensch mit seiner Vernunft erfassen kann. Der Begriff der Natur bei Waldstein ist denkbar weit gefasst. In diesem Sinn sucht er bei der Übersetzung des Begriffes *natura* in den antiken Quellen nach Ausdrücken, die auf Weite und einen allumfassenden Charakter hindeuten. Dies zeigt sich etwa bei der Wendung *ratio profecta a rerum natura* in De leg. 2,10, die der Professor für Römisches Recht mit „aus der Natur des Universums hervorgegangene Ordnung“ ins Deutsche überträgt.

In *De legibus* 1,18 schreibt Cicero: “*Lex est ratio summa insita in natura, quae iubet ea, quae facienda sunt, prohibetque contraria*”. Kaser bezieht diese Stelle eindeutig auf die menschliche Vernunft. Er schreibt im Hinblick auf die vorliegende Cicero-Stelle: „Sie [die *lex naturae*] ist die den Menschen von Natur aus angeborene höchste Vernunft, die ihnen gebietet, was sie zu tun, und verbietet, was sie zu unterlassen haben.“

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36 Cic. De off. 1, 11: *Homo autem, quod rationis est participes, per quam consequentia cernit, causas rerum videt, earumque praegressus et quasi antecessiones non ignorat, similitudines comparat rebusque præsentibus adiungit atque adnectit futuras, facile totius vitae cursum videt ad eamque degradam praeparat res necessarias.*

37 Thomas VON AQUIN: Summa Th.I-II q. 91,2.


39 KASER (1993) op. cit. 55.
Zusammenhang mit De legibus 1,42. Cicero sagt dort: “est enim unum ius, quo devicta est hominum societas, et quod lex constituit una: quae lex est recta ratio imperandi atque prohibendi [...]”.

Wolfgang Waldstein stützt sich auf die Übersetzung von Büchner will jedoch auch hier recta ratio mit rechter Ordnung wiedergeben: „Es gibt nämlich ein einziges Recht, durch das die Gemeinschaft der Menschen gebunden ist und das ein einziges Gesetz begründet, ein Gesetz, welches die richtige Vernunft (eher Ordnung) im Befehlen und Verbieten ist.

In all diesen Texten geht es um die Formulieren von Gesetzen, die Frage nach guten oder schlechten Gesetzen stellt sich jedoch nur für den Bereich des Menschlichen. Die Qualität eines Gesetzes soll naturae norma aufgrund der Ordnung der Natur entschieden werden. Dem Menschen ist die Fähigkeit eigen, diese Ordnung zu erkennen. Diese Fähigkeit nennt Cicero communis intellegentia, was – so Waldstein – νοῦς bei Aristoteles entspricht. Zusammenfassend kann an dieser Stelle festgehalten werden, dass Waldstein anhand der Auslegung jener antiken Quellen, die das Zusammenspiel von ratio und natura erörtern, zu dem Ergebnis gekommen ist, dass es in der Natur eine Ordnung gibt, die der Mensch durch seinen Verstand im Wege der Intuition erkennen kann. Diese Ordnung kann einerseits im Menschen selbst, andererseits aber auch in der Wirklichkeit außerhalb des Menschen grundgelegt sein. Der menschliche Verstand ist wesenhaft zur Erkenntnis dieser Ordnung befähigt. Es stellt sich noch die Frage, welche Stellung Gott von den antiken Quellen zugewiesen wird.

In dem Ausgangstext De re publica 3, 33 sagt Cicero: „Gott allein, der Herr und Meister, der Beherrscher aller, ist sein [des Gesetzes] Erfinder, er der Deuter, er allein der Schiedsrichter. Wer ihm nicht gehorcht, der flieht vor sich selbst, verleugnet die Menschennatur, wird um deswillen bitter büßen müssen, auch wenn er den Strafen entgehen sollte, die man gemeinhin für solche ansieht“.


40 Cic. De leg. 1,42.

6.3. Das Recht, sich gegen Unrecht zur Wehr zu setzen

Unter den zahlreichen Beispielen zu einem Naturrecht bei den römischen Juristen, die sich bei Waldstein finden, kann ein Text herausgenommen werden, der sich insofern gut in den Zusammenhang der Bundestagsrede einordnen lässt, als er festlegt, dass der Mensch sich gegen Gewalt und Unrecht zur Wehr setzen darf und so in der Nähe des vom Papst angesprochenen Widerstandsrechts angesiedelt werden kann. Der Text geht auf den römischen Juristen Florentinus zurück. Die Stelle lautet in der deutschen Übersetzung: …: „Denn nach diesem Recht wird alles, was man zum Schutz seiner Person tut, als rechtmäßig angesehen. Und da die Natur unter uns so etwas wie eine Verwandtschaft begründet hat, folgt daraus, daß es frevelhaft ist, wenn ein Mensch dem anderen nach dem Leben trachtet.“ Der Ausdruck „dieses Recht“ bezieht sich auf das im vorhergehenden Fragment angesprochenen *ius gentium*, zu dem Ulpian sagt, dass es im Unterschied zum *ius naturale* als jenes Recht anzusehen ist, das nur „den Menschen untereinander gemeinsam ist.“44 Auch hier ist es die Bezugsnahme


44 Ulpian D. 1.1.1.4: *ius gentium est, quo gentes humanae utuntur. quod a naturali recedere facile intelligere licet, quia illud omnibus animalibus, hoc solis hominibus inter se commune sit.*
„Natur und Vernunft als die Wahren Rechtsquellen“ aus der Perspektive… auf die Rechtsordnung, die klarstellt, dass die Stelle des Florentinus in den dem Menschen spezifischen Bereich der Natur einzuordnen ist. Waldstein kommentiert diese Stelle folgendermaßen: Ein feindseliger Angriff auf einen Menschen wird als *nefas* erkannt. Wer derartiges tut, verläßt die Grundlagen der menschlichen Gemeinschaft. Daher darf sich auch jeder gegen einen solchen Angriff zur Wehr setzen. „[…]


45  W A L D S T E I N (1976) op. cit. 86.
damit, dass die mit der Natur im Einklang stehende Ordnung ohne Rückgriff auf Gott nicht erkannt werden kann.

Entscheidet man sich mit Benedikt XVI. dazu, die Grundlagen des freiheitlichen Rechtsstaates in der europäischen Tradition seit der Antike zu suchen, so stellen die drei Elemente jüdisch-christlicher Glaube, griechische Philosophie und römisches Recht ein Material dar, das zu entdecken und zu bearbeiten sich auch weiterhin lohnt. Nimmt man die dort enthaltenen Aussagen ernst, so wird man entdecken, dass sie auch für viele moderne Problemstellungen Lösungsansätze enthalten. Insofern stellt die Rede des Papstes in Berlin eine Einladung dar, den Schatz der Tradition nicht brach liegen zu lassen.
Diskussion / Discussion


Diskussion / Discussion


Jutta Hausmann: Was aber dann bedeutet, dass es Unrecht gegen mich selbst ist, aber nicht das Inkaufnehmen des Unrechts gegenüber anderen.


Nadja El Beheiri: Eines ist die spontane Reaktion, dass man eine Handlung als Unrecht erkennt, dass spontan erkannt werden kann, was recht und unrecht ist. Der zweite Punkt ist die Verhältnismäßigkeit in der Abwehr. Hier haben wir das Schulbeispiel im Zusammenhang mit Notwehr und Notstand. Ein an den Rollstuhl gefesselter Mann sieht, dass ein Kind von seinem Apfelbaum

Pablo Blanco: From the philosophical point of view, you have mentioned the dialogue between Habermas and Ratzinger in 2004. They both agreed that reason and religion must help each other. The reason can liberate the religion from fanaticism and fundamentalism, and the religion can heal the modern reason from illness like the atomic bomb or the extermination fields, which are very „scientific“ in a very narrow sense of the word. Can we also say that law and religion must help each other, must free each other from their “pathologies”? Is that right?

Nadja El Beheiri: It depends on how you interpret ‘law’. I think that one of the key messages by Benedict XVI consists in calling the attention to the fact that religion is related very much to the question of truth. In this sense, we might say that religion might be also a calling to open ourselves to whole range of knowledge and to search harmony between the different areas of knowledge.

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die Arbeit von Wolfgang Waldstein\(^2\) neu entfachte Diskussion um das Naturrecht, die auch Eingang in die Rede von Papst Benedikt XVI. im Bundestag gefunden hat.\(^3\) Dabei spielen die im Titel genannten beiden Zugänge zu Konfliktvermeidung bzw. – Regelung eine wesentliche Rolle.

1. Alttestamentliches Recht als göttliche Setzung


\(^3\) http://www.bundestag.de/kulturundgeschichte/geschichte/gastredner/benedict/rede.html


\(^5\) Darüber hinaus wird dies auch sprachlich unterstrichen durch das häufige Vorkommen des hebräischen Verbes *zawah* = befehlen.


7 Ein besonders aparter Zug der Erzählung ist durch den Namen des Heimatortes der ausgewanderten Familie gegeben: Bethlehem, in Deutsch = Haus des Brotes, ist zu einem
zeigt sich also, dass die Gesetze nicht losgelöst von ihrem Kontext zu sehen und zu werten sind.


Entgegen früheren Überzeugungen hat sich die Erkenntnis aufgrund neuerer Textfunde durchgesetzt, dass sowohl das apodiktische Recht wie das kasuistische Recht nicht nur in Israel, sondern auch in seiner Umwelt begegnen. Solange als Allgemeingut galt, dass das apodiktische Recht, wie es sich (auch) im Dekalog zeigt, allein im alttestamentlichen Israel zu finden war,9 hatte es eine höhere Wertigkeit als die Lösungen kasuistischer Rechtsordnungen in den Augen der Kommentatoren und anderer Gelehrter, da es als unmittelbare Setzung des Gottes Israels wahrgenommen wurde, während das kasuistische Recht wesentlich deutlicher die sozialgeschichtlich bedingten Veränderungen erkennen lässt, als je bei apodiktischen Rechtssätzen möglich ist. So bekommt das kasuistische Recht eine deutliche Aufwertung, und es wird immer klarer erkennbar, dass ein wesentlicher Zug alttestamentlichen Rechts seine Orientierung an vorgegebenen Situationen ist, nicht aber eine für alle Zeiten unumstößlich gültige Festlegung auf eine einzige Lösungsmöglichkeit von Problemfällen.

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8 Im NT wird dieses in Tod und Auferstehung Jesu gesehen mit deren Relevanz für unsere eigene menschliche Existenz.
2. Menschliche Erfahrung


Spr 10,4 macht dieses Prinzip gut nachvollziehbar deutlich: „Lässige Hand macht arm; aber der Fleißigen Hand macht reich.“ Gleiches gilt für Spr 17, 20: „Ein verkehrtes Herz findet nichts Gutes; und wer falscher Zunge ist, wird ins Unglück fallen.“ Nicht ganz so eindeutig, aber doch ebenso erfahrungsbasiert begegnen Aussagen über den König wie Spr 29, 14: „Ein König, der die Armen treulich richtet [= ihnen Recht schafft], dessen Thron wird für immer bestehen.“ Demgegenüber ist der eher königskritische Spruch in Spr 30, 27 zu nennen: „Die Heuschrecken, sie haben keinen König, dennoch ziehen sie aus in Ordnung.“, wenngleich auch Spr 29, 14 nicht frei von immanenter Kritik ist, da kaum ein König zu finden ist, dessen Thron auf immer besteht.

Das Idealbild des Königs, wie es sich in Spr 29, 4 darstellt („Ein König richtet das Land auf durch Recht, aber wer viel Steuern erhebt, richtet es zugrunde“), verbindet die Notwendigkeit von funktionierendem Recht mit der menschlichen Erfahrung, da (zu) hohe Steuern durchaus im Rahmen geltenden Rechts erhoben werden können, aber erfahrungsgemäß wirtschaftlich nicht sinnvoll sind.

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11 Spr 8 mit seiner Aussage, dass die Weisheit vor Gott spielt bei der Erschaffung der Welt, spiegelt etwas von diesem Gedanken im AT wider.

12 Der Zusammenhang von Tun und Ergeben wird auf je unterschiedliche Weise zum durchgehenden – oft indirekten – Thema in vielen alttestamentlichen Schriften auch außerhalb der Weisheitsliteratur, teilweise durch diese beeinflusst.
Das Grundprinzip setzt sich auch in der Weisheit Salomos fort, die nicht mehr zum Kanon der Hebräischen Bibel (und damit zum protestantischen Bibelkanon) gehört, sondern Teil der griechischsprachigen Septuaginta (und über diese bzw. die lateinische Variante der Vulgata auch Teil des katholischen Bibelkanons) und so in einen anders geprägten kulturellen Kontext spielt. Die Nähe zu den Proverben zeigt eine Aussage wie die von WeishSal 2, 11: „Alles, was wir tun, das soll Recht sein; denn es zeigt sich, daß Schwäche nichts ausrichtet.“  
Weish Sal 1, 7-8 bietet eine Kombination von göttlichem Wirken und Wissen sowie menschlichem Handeln. Es ist also sinnvoll, sich ethisch angemessen zu verhalten, weil Gott alles wahrnimmt. Die Einsicht zu rechtem Handeln ist so zunächst weniger von daraus folgenden Ergeben her motiviert, sondern durch die Gottesbeziehung und Gottes Wissen begründet, zielt aber letztlich dann doch auch auf die positiven Folgen.  


Wie sehr es im Zusammenhang mit der Weisheit um Recht und Gerechtigkeit geht, zeigt die Gott gegenüber formulierte Bitte des Königs Salomo in 1 Kön 3, 9 anlässlich seines Herrschaftsantrittes: „So wollest du deinem Knecht ein gehorsames Herz geben, damit er dein Volk richten könne und verstehen, was gut und böse ist.“ In dieser Formulierung findet sich im Hebräischen lev schomea' – eine Wendung, die aus doppelter Sicht näher zu bedenken ist. Zum einen


3. Menschliche Erfahrung und göttliche Setzung – einander ergänzende Modelle

„Theology and jurisprudence have a great deal in common. Both impose obligations upon the individual and the community; both are now faced with the problem of interpreting written documents as a basis for action, and both have to deal with questions of fact as well as judgments of value.“ So lesen wir es bei George E. Mendenhall, einem Orientalisten in der Mitte des letzten Jahrhunderts.17 Wenn wir *theology* und *jurisprudence* durch *göttliche Setzung* und *Erfahrung* austauschen, würde sich an der Gültigkeit der Sätze kaum etwas ändern. Ein Blick auf die beiden vorgestellten Zugänge zeigt – wie schon oben erwähnt - Überschneidungen vor allem im sozialethisch-rechtlichen Bereich, insbesondere im Umgang mit den Armen, Witwen und Waisen, für die Sorge getragen werden soll. Ein Unterschied ist eher im Adressatenkreis zu erkennen: Während weisheitliche Ethik mehr am Individuum ausgerichtet ist und so vor allem Orientierung für den Einzelnen anbietet, findet sich das Gesetz als göttliche Setzung stärker an der kollektiven Größe Volk ausgerichtet wieder, das immer als Volk Gottes begegnet. Dies schließt jedoch nicht aus, dass auch das Handeln des Volkes von Einsicht bestimmt sein kann. Wo aber die Einsicht nicht ausreichend gegeben ist, müssen feste Regeln eingebracht und angewendet werden. Aber auch diese Regeln sind keine willkürlichen, sondern von mehr oder weniger konkreten Gegebenheiten initiiert und geprägt und somit im Prinzip wieder aus Einsicht

16 Besonders deutlich wird dies beim gehäuften Gebrauch des Verbums im Deuteronomium.  

Die Notwendigkeit so veränderter Wahrnehmung ist ohne Erkenntnis, ohne Weisheit jedoch nicht denkbar. So findet sich eine enge Verbindung von Tora/Gesetz und Weisheit findet sich im Buch Jesus Sirach, das wie die Weisheit Salomos zur griechischsprachigen Septuaginta gehört. Vorbereitet wird diese bereits in Texten wie Psalm 1, in dem weisheitliche Terminologie und die Rede von der Freude am Gesetz des Herrn im Miteinander begegnen.


Das AT weiß um die Begrenzung von Erkenntnis bzw. deren Umsetzung, ebenso aber auch um die (Nicht-)Fähigkeit zur Befolgung von göttlichen Setzungen. So kommt es nicht zufällig in Jer 31 zur eschatologischen Erwartung

19 Vgl. Mendenhall op. cit. 7.
des neuen Bundes, dessen wesentliches Merkmal das in Herz geschriebene Gesetz ist, ein Gesetz, das zum Teil des Menschen selbst wird, das zu einem Stück seiner Identität wird und er es so einfach einhalten wird.\textsuperscript{21}

In der Diskussion um ein Naturrecht sind also durchaus Anknüpfungspunkte im Alten Testament gegeben. Zugleich aber wird deutlich, dass sowohl was die göttlichen Setzungen als auch die menschliche Erfahrung betrifft, das Alte Testament (wie auch das Neue) um die Situationsgebundenheitheit und damit Geschichtlichkeit von Entscheidungen und Regeln weiß, auch wenn diese im Namen Gottes verkündet werden. So sind wir immer wieder neu mit der Herausforderung konfrontiert, die hinter allem stehende Konstante zu erkennen, sie zu formulieren und in jeweils unterschiedlichen Situationen zu ihrem Recht kommen zu lassen.\textsuperscript{22}

\textsuperscript{21} Vgl. dazu auch Ez 36, 26f. mit der Erwartung eines neuen Herzens und eines neuen Geistes. Gott wird die Menschen zu solchen machen, die seinen Geboten entsprechend leben.

Jutta Hausmann: When Professor Roska told us that we have the Decalogue as a basis of our moral consistency, in my opinion it is not enough. It’s only a formal declaration, when we say we have the Ten Commandments and so we have the bases for moral decisions. I think, it is not so easy, maybe he doesn’t believe it so, either. But I think, through all the discussions we have in ethical questions now, so when we have a look at the decisions of several denominations in the world. So the Catholic Church, maybe we can say, that you have your own block for yourselves, you have Rome and so on. It seems to me that within the Catholic Church there are central decisions, but the practice in the different countries isn’t all the same – I mean the way these decisions are applied in reality, how you really handle them?

Pablo Blanco: We try our best.

Jutta Hausmann: It shows me that though you have a global church with one particular decision, but you have many different ways of practical approach and application of it. When we have a look at the different denominations, we can see that ethical decisions are not everything in the same way and everybody is looking for the Biblical text. I think really one of our tasks is that instead of talking about a Christian ethic, in my opinion we should refer to the Christian ethic, the Biblical anthropology. However, we have a great spectrum in the Bible itself, so we have to look for such aspects, why for example a particular thing is expressed in a certain way, and in what context. Consequently, I think it is much more helpful to have a look at the context, than to say that something is OK only, because it is written in the Bible – in Paul or in the Old Testament, for instance. I think the former approach is too simplistic. To give an example, I can say that if I consider the commandments in the Old Testament, should I do it in sense of the Second Book of Moses, or in the sense of the Fourth Book of Moses, instead.
Pablo Blanco: But this is also a hermeneutical problem: the unity between the Old and the New Testament.

Jutta Hausmann: Sure.

Pablo Blanco: We always speak about the unity between the Old and the New Testament.

Jutta Hausmann: Yes, and we have the same problems with the New Testament, too. Therefore, it is always a question of hermeneutics when reading texts from different times: in case of the New Testament, it is easier, for it embraces only a couple of decades, while in case of the Old Testament, it is more difficult, as it covers some hundred years. So, when we learn that we have different positions in the Bible itself, we cannot simply say “OK” – as a Christian lawyer, as a Christian politician I have a look at what is said in the Bible, and – excuse me – what is said in the Church. From time to time, I have to say to the leaders of my Church, please, what you are doing is too simplistic – and I say that as a protestant.

János Erdődy: I would like to ask something in connection with your remark on considering a text within the context. I admit, that for a scholar it is OK, because you can understand the context, you can evaluate the actual situation, but for an everyday believer, who is not well versed in hermeneutics and textual criticism, can’t it lead to the danger of “forum shopping”, so to speak?

Jutta Hausmann: The way I see it is that we can and should make some steps to consider it from a general perspective: that is everybody is created by God, everybody has the same rights, the same opportunities, and as a Christian everybody is beloved by God. Now, that’s a very important point, because for example, as an individual I am a part of a community and I have to be aware of the fact that everything I do has some effects on and results for the community, consequently I have to pay attention not to disturb the community with my actions. I think that we should really bear in mind what the Ten Commandments say as a directive, but knowing at a time that in a particular case it may as well occur that I have to ask for more. On the other hand, when taking into consideration both the Old and the New Testament, I have to realise that we have our limits: in the Bible, the term “sin” is used to refer to it, but it is not always the question of sin. As a result, there are truly my limits, but on the other side,
there’s forgiveness, too. I think when we put these things together; maybe this can give you some forms of guidelines.

Viola HEUTGER: Diese Argumentation würde eigentlich gegen die These sprechen, dass die Zehn Gebote eine Grundlage sind, diese Ausführung würde eher dafür sprechen, dass es sich bei den Zehn Geboten um eine Zusammenfassung handelt.

Jutta HAUSMANN: Ja, ich vertrete im Hinblick auf die Zehn Gebote eindeutig die Position, dass es sich dabei um eine Zusammenfassung handelt.


Jutta HAUSMANN: Nein, also ich vertrete sehr stark die Position, dass wir eine Reihe von Ausführungsbestimmungen einzelner Fälle haben. Wir haben ja jede Menge Texte mit kasuistischem Recht, in denen festgelegt wird: „wenn das und das geschieht, dann das und das.“ Dann finden wir aber auch allgemeine Formulierungen und nur wenn wir all diese Regelungen zusammen anschauen, dann werden die Zehn Gebote wirklich handhabbar.

Anna RADVÁNYI: Sie haben gesagt, dass das Gesetz nicht ewig ist. Das verstehe ich nicht ganz genau. Ich wollte fragen, wer das Gesetz ändern kann, bzw. wie erkenne ich zu einem konkreten Zeitpunkt, was recht ist?


Jutta Hausmann: Ja also der Schaden, der dadurch entsteht, dass mein Auto weg ist, der wird nicht entrichtet.

Viola Heutger: Arbeitsrechtlich sieht man das schön, wenn jemand einen Arm verliert. Die Diskussion ist zwar ein wenig anders gelagert, aber hier wird auch die Arbeitskraft mit ihren potentiellen Möglichkeiten ins Auge gefasst.

Pablo Blanco: As Jutta Hausmann has just perfectly said, we must look for this common ground, this common platform for everybody. I think you have explained and described the problems very well. There are many commandments in the Old Testament; if you read the Book of Leviticus you can find a lot of them, maybe so many... I think you have explained those precepts quite well, which are for everybody. That’s similar to what Hans Küng did with his Weltethos, although he thinks specifically about consensus rather than nature. In Italy Ratzinger also had a dialogue with Flores d’Arcais who is not only an agnostic, but also an atheist. In this dialogue Gad Lerner, a Jew, asked why we couldn’t consider the Ten Commandments as general criteria, as a Weltethos, as a common ground for everybody. I think this effort must be done. Your contribution also goes towards this direction, and the Bundestag speech points out the same idea. I think we must find them not only in the Old Testament, but also in New Testament – but here we have some problems.

Jutta Hausmann: I am absolutely sure. I think the problem in this case is that we use an Old Testament text and New Testament text as well, which we consider as a directive for our Christian belief, our Christian communities, etc. There are these canonical texts with some kind of normative character, and especially in the Old Testament, we find texts for such a community that is surrounded by other communities with other gods and other religions, and they had to find some way either to coexist with the others, or to separate and distinguish themselves from them. In the Old Testament, we always witness a discussion between universalism
and particularism. In the New Testament, it is easier because there we don’t have particularism, but rather the belief in Jesus Christ instead, who addresses the nations. But when we have a look at it we have to find really the point. I think we have made many steps in the meantime, maybe because of the experience drawn from the Second World War, and the nationalism in Germany... In addition, these steps may also be the result of increasing globalisation. Consequently, we have to raise the question what happens with other denominations and religions. We have to ask if there are any common points. In this regard, I often have a look at the Catholic Church with the declaration “Nostra aetate” covering the topic of the relation of the Church with non-Christian religions. I think from a theological point of view, it is easier or simpler for you than it is for us in our protestant tradition to build up connections with other denominations and religions. We have these connections, too, there’s no question about that, but as for the theological background, I think that we have to learn from it.

Pablo BLANCO: But I was wondering if there are any connections for example with the Muslims. They are different because – as you have very well explained it – there is no law given directly by God in Christianity. Muslims, however, think that all laws are given by God, but at the same time, we have some commandments that are common with the Muslims, in addition, they also have some commandments that are not given by God but by Mohammed instead, as a result of a personal revelation. In my opinion, it isn’t clear which commandments are really given by God, and which by the men.

Jutta HAUSMANN: With such dialogues, I think we really have to find out where we find common positions. Maybe they say Allah, while we say God. Maybe we have to consider whether we had received the commandments from God, noted by human beings and we also have some texts written by human beings, and we have them all in our languages. From time to time, I have some disagreements with my students, as they attach to some kind of Biblical texts arguing that something is written in the Bible. Then, I keep telling them: “Look, here is a text in Hebrew, there is a German translation, there is a Hungarian translation. As we have some differences in all, which one should we accept as normative? The Hungarian choose the Hungarian text, because they are Hungarian, the German opt for the German text, because they are German, or the Hebrew accept the Hebrew text, because it is the original one, but also, this could be continued with French or Spanish translations, too. This is quite a challenge for us.


ERFAHRUNGEN IM ZUSAMMENHANG MIT DER ÜBERSETZUNG DER BUNDESTAGSREDE

ANNA RADVÁNYI

1. Einführung

Heute möchte ich mich mit vier Begriffen im Zusammenhang mit der Bundestagsrede des Papstes beschäftigen, die mich während der Übersetzung nachdenklich stimmten. Ich blickte meine Notizen der Übersetzung durch, und wählte aus diesem Anlass solche Begriffe, bei denen, das zum deutschen Ausdruck passende ungarische Wort zu finden nicht automatisch war. In den gewählten Fällen war die Übersetzung nicht nur wegen der Wahl zwischen verschiedenen sprachlichen Nuancen und der Harmonisierung des ungarischen und deutschen Wortes schwierig, sondern es ging um Termini, wo es notwendig war, den genauen Hintergrund der Begriffe zu prüfen, um eine bestmögliche Übersetzung des gegebenen Wortes zu erreichen.

2. Hörendes Herz

Um meine Betrachtungen in chronologischer Abfolge zu beginnen, lohnt es sich die Erfahrungen hinsichtlich der Übernahme der Texte aus der Heiligen Schrift in Augenschein zu nehmen. Dieser Gedanke steht mit der zentralen Aussage der Bundestagsrede im Zusammenhang. Der Papst wählte als Ausgangspunkt seiner Rede eine Stelle aus dem ersten Buch der Könige. Gott erhört die Bitte des jungen Salomon bei seiner Thronbesteigung. Was Salomon erbat, lautet folgendermaßen: „Verleih deinem Knecht ein hörendes Herz...” Papst Benedikt leitet aus dieser Aussage Salomons ab, was die Politiker von heute auch nötig hätten, und er kehrt auch am Ende seiner Rede zu diesem Ausdruck zurück, wenn

1 Kön 3, 9
er betont, „Ich denke, auch heute könnten wir letztlich nichts anderes wünschen als ein hörendes Herz; die Fähigkeit, Gut und Böse zu unterscheiden und so wahres Recht zu setzen, der Gerechtigkeit zu dienen und dem Frieden.” Eine Frage im Zusammenhang mit der Übersetzung bestand darin, die entsprechende ungarische Wendung für hörendes Herz zu finden. Was bedeutet das hörende Herz? Es ist keine Frage, welche Bedeutung dieser Wendung hinsichtlich der ganzen Rede trägt.

In den zur Verfügung stehenden ungarischen Übersetzungen der Bibel steht an der Stelle des deutschen Ausdrucks ‘hörendes Herz’ am häufigsten die Wendung ‘értelmes szív’ (verständiges Herz), es kommen aber auch die Wendungen ‘éber szív’ (waches Herz) und ‘engedelmes szív’ (gehorsames Herz) vor. Keine der erwähnten Übersetzungen bedeutet aber genau das, was der Papst sagte. Hören und verstehen ist nicht ähnlich. Mithin schien es so, dass es notwendig ist, die Bibel-Übersetzungen und die ihr zugrunde liegenden Originaltexte näher zu untersuchen. Die Hauptfrage war, ob der Ausdruck ‘hörendes Herz’ mit der Wendung ‘értelmes szív’ (verständiges Herz) übersetzt werden kann.

Die Prüfung verschiedener Übersetzungen der Bibel verhilft uns zum angemessenen Sinn des Textes. Das ist eine Methode, die schon in früheren Zeiten gebräuchlich war, und worüber Papst Benedikt selbst im Zusammenhang mit dem Leben und den Werken des auch in der Bundestagsrede zitierten Theologen Origenes sich schon früher geäußert hat. Die Methode des Origenes sieht folgendermaßen aus: „Zunächst las er [Origenes] die Bibel mit der Absicht, deren Text bestmöglich sicherzustellen und die zuverlässigste Ausgabe zu bieten. Das ist […] der erste Schritt: wirklich zu kennen, was geschrieben steht, und zu kennen, was diese Schriftstelle am Anfang und mit welcher Absicht sagen

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Erfahrungen im Zusammenhang mit der Übersetzung der Bundestagsrede

wollte.” Im vorliegenden Fall zeigt die Prüfung der hebräischen, griechischen und lateinischen Texte folgendes Bild:


7 Der Papst fügt im Weiteren Folgendes zu „Zu diesem Zweck führte er eine große Forschungsarbeit durch und redigierte eine Ausgabe der Bibel mit sechs parallelen Spalten, von links nach rechts, mit dem hebräischen Text in hebräischer Schrift – er hatte auch Kontakte mit den Rabbinern, um den hebräischen Urtext der Bibel richtig zu verstehen –, dann der in griechische Schrift umgeschriebene hebräische Text und dann vier verschiedene Übersetzungen in griechischer Sprache, die ihm erlaubten, die verschiedenen Übersetzungsmöglichkeiten zu vergleichen. Daher der Titel Hexapla (»sechs Spalten«), der dieser enormen Synopse beigefügt wurde.“
8 Einheitsübersetzung https://www.bibelwerk.de/shop/erweiterte_suche/einheitsubersetzung
10 Die Buchstaben des hebräischen Abc sind mit den, seines Tonwert bestmöglich angemessenen ungarischen Buchstaben umgeschrieben. Die Konsonanten, die keinen selbständigen Tonwert haben, sind nicht markiert.
11 Vgl. zum Beispiel Ó- és Újszövetségi Szentírás a Neovulgáta alapján.
12 Es ist bemerkenswert, dass eine deutsche Luther- Übersetzung aus 1912 auch den Ausdruck ‘gehorsames Herz‘ benutzt.
wichtigste Wort […] in der Regel mit Herz übersetzt“ wird und es „in der geläufigsten Form leb […] in hebräischen Alten Testament“ vorkommt.13 Es wird danach gründlich mit vielen Beispielen erörtert, wie dieser Ausdruck ausgelegt wurde. Es wird festgestellt, dass die wesentlichen Tätigkeiten des menschlichen Herzens […] in der Bibel von geistig- seelischer Art“ sind.14 Wolff führt die Aufgaben des Herzen wie zum Beispiel Gefühle, Wünsche, Emotionen an,15 dann stellt er fest, dass „in den meisten Fällen vom Herzen intellektuelle, rationale Funktionen ausgesagt werden, also genau das, was wir dem Kopf und genauer dem Hirn zuschreiben“.16 Später fügt er Folgendes hinzu, „wie die Augen zum Sehen und die Ohren zum Hören, so wird das Herz zum Verstehen bestimmt17. Während der Erörterungen weist er ausdrücklich auf die gerade geprüfte Stelle hin, wenn er betont, dass die Vielfalt der Kenntnisse aus verständigem Hören stammt. „Darum besteht Salomons hohe Weisheit darin, dass er nicht um langes Leben, um Reichtum oder um das Leben seiner Feinde bittet, sondern um ein „hörendes Herz” „Genau als hörendes ist es das weise und einsichtige Herz. Es befähigt ihn zu der schweren Aufgabe ein großes und schwieriges Volk recht zu regieren, und zwischen Gut und Böse zu unterscheiden …“18

Nachdem „für die vernehmende Vernunft Herz und Ohr parallel” stehen, und unter den ungarischen Übersetzungen eine Fassung ‘meghalló szív’ (hörendes Herz) nicht zu finden war, schien es mir so, dass die Wendung ‘értelmes szív’ (verständiges Herz) den genauen Sinn des Textes zum Ausdruck bringt. Einverständiges Herz hat die Fähigkeit Gutes vom Bösen zu unterscheiden, was für Salomon und auch für Politiker heute von ausschlaggebender Bedeutung ist.

3. Partner

Die nächste Frage der Übersetzung stellte sich in Bezug auf einen Ausdruck, den der Papst bei der Beschreibung seiner eigenen Rolle verwendet. Unmittelbar nach

14 Wolff op. cit. 80.
15 Wolff op. cit. 81.
16 Wolff op. cit. 84.
17 Wolff op. cit. 85. Er weist auf Dtn 29, 3 hin: „Aber einen Verstand, der wirklich erkennt, Augen, die wirklich sehen, und Ohren, die wirklich hören, hat der Herr euch bis zum heutigen Tag nicht gegeben.“
18 Wolff op. cit. 85.

Der Papst beschreibt sich selbst in der Bundestagsrede und auch an der Universität La Sapienza als Bischof von Rom, und „als solcher in der Nachfolge

\[\textbf{19} \text{ Vgl. http://www.duden.de s. v. 'partner'}\]


Durch diese Überlegungen wurde ich geführt, als ich an der genannten Stelle das auf die Rolle des Heiligen Stuhls innerhalb der internationalen Beziehungen hindeutende Wort Partner, mit dem Ausdruck „egyenrangú fél“ (gleichgestellter Partner) übersetzte. Dieser ungarische Ausdruck beinhaltet sowohl sein Wesen als Teilhaber als auch die beigeordnete Beziehung, die ihm zukommt.

4. Das Gute vom Bösen…

Das Denken, das das Christentum für sich beansprucht, verweist auf Natur und Vernunft, und behauptet, dass das Gute vom Bösen, Recht vom Unrecht, Wahrheit vom Schein der Wahrheit mindestens hinsichtlich der grundlegenden anthropologischen Fragen unterschieden werden kann. Das heißt, dass es eine objektive Wahrheit gibt. Um diese Differenzierungen zu verstehen, erbat Salomon ein hörendes Herz. Wenn man deutschsprachigen Materien dieses Themas begegnet, kommen oft diejenigen Fragen im Zusammenhang mit der Übersetzung vor, die ich auch in zahlreichen Fällen sowohl während der

In der deutschen Sprache bedeutet nämlich das Adjektiv recht 1. richtig: im Sinne von geeignet oder passend; 2. richtig: im Sinne von dem Gemeinten, Gesuchten, Erforderlichen entsprechend; 3. dem Gefühl für Recht für das Anständige, Angebrachte Entsprechend und 4. so wie es sein soll, wirklich, echt.²² Auf Ungarisch werden aber fast alle der erwähnten Bedeutungen mit einem eigenen Wort ausgedrückt (igazi, valódi, helyes, rendjén való, jogos usw.). Es stellte sich also die Frage, wie die folgenden Sätze der Bundestagsrede zu übersetzen sind. Im Folgenden erwähne ich einige Beispiele, die das Wort recht als Adjektiv beinhalten: „Wie erkennen wir, was recht ist?“ „Aber bei den Entscheidungen eines demokratischen Politikers ist die Frage, […] was wahrhaft recht sei und Gesetz werden könne, nicht ebenso evident.“ Die Übersetzung war auch nicht in allen Fällen ebenso evident.

Ähnliche Schwierigkeiten kamen angesichts des Substantivs Wahrheit und des Adjektivs wahr vor. Das Adjektiv wahr bedeutet einerseits „való, valódi“ der Wahrheit, der Wirklichkeit, den Tatsachen entsprechend, tatsächlich, wirklich, andererseits aber „igaz, igazság“ echt, aufrichtig, richtig, nicht nur dem Schein nach.²³ Es ist schon ein großer Unterschied, ob man von der Wirklichkeit oder dem richtigen, wahren Wesens einer Sache oder eines Gedankens spricht – auf Deutsch kann man aber in diesen Fällen das gleiche Wort Wahrheit verwenden. Diese Frage interessierte auch den ungarischen Dichter Attila József sehr, der in seinem Gedicht mit dem Titel „Thomas Mann zum Gruß“ die wohl bekannten Zeilen schrieb: „Te jól tudod, a költő sose lódit;/ az igazat mondd, ne csak a valódit“ Auf Deutsch lautet das genannte Zitat: „Du weiß selbst, daß die Dichter niemals lügen./ So laß die Wahrheit, nicht die Fakten siegen[…]“²⁴


²² http://www.duden.de s. v. ’recht’
²³ http://www.duden.de s. v. ’wahr’


5. Freiheitlicher Rechtsstaat

Der Ausdruck „freiheitlicher Rechtsstaat“ kommt in der Einführung der Bundestagsrede vor. Die Bedeutung und das ungarische Wort für Rechtsstaat sind außer Frage. Das ist eine der wortwörtlichen Übersetzungen, der wir sehr oft im Bereich der juristischen Ausdrücke begegnen. Im Zusammenhang mit dem Adjektiv freiheitlich treten aber Schwierigkeiten auf. Unter den Bedeutungen dieses Wortes stehen im Bedeutungswörterbuch26 die Bedeutungen 1. nach


26 www.duden.de s. v. ‘freiheitlich’.
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6. Zusammenfassung


\textsuperscript{28} Artikel B Absatz (1) ungarisches Grundgesetz.


Anna Radványi: Wie steht es mit wach?

Jutta Hausmann: Wach ist eigentlich ein bisschen merkwürdig. Wenn man also das wache Herz im Sinne von „darauf zu achten, was gefordert ist“ versteht, dann kann ich vielleicht „éber“ – wach auch noch irgendwie nachvollziehen. Hier sehe ich schon ein bisschen viel Interpretation.

Pablo Blanco: Ja, auf Italienisch sagt man „traduttore traditore“. Ich wollte noch eine Frage im Zusammenhang mit der biblischen Anthropologie stellen. Wir heute verstehen, im spanischen, englischen, vielleicht auch im deutschen Sprachbereich das Herz als Sitz des Romantischen, des Sentimentalen, im Sinne der biblischen Anthropologie denke ich, dass das Herz nicht nur ein Gefühl, sondern auch Gedächtnis, Vernunft ist. Ich weiß nicht, ob diese Bedeutung in anderen Sprachen gedeckt ist.
Anna RADVÁNYI: Ich glaube, dass das ungarische Verständnis in diese Richtung weist.


Pablo BLANCO: Wie steht es mit Ungarisch, wird hier diese Doppelbedeutung angesprochen.

Anna RADVÁNYI: Der Ausdruck „szív“ bezieht sich auf den emotionalen Teil.


zur Wahrheit führt. Wesentlich ist dabei, dass das Streben nach Wahrheit frei von selbstsüchtigen Motiven etc. ist und diesem Sinn wäre das Bemühen wohl auch von der Formulierung „wahrhaft nach Philosophie streben“ gedeckt. Im Hinblick auf Kelsen, habe ich bei der Vorbereitung des Vortrages sehr oft nachgeschaut, was er eigentlich meint, wenn er über die Wahrheit spricht und ich denke, dass Wahrheit bei Kelsen fast immer bedeutet, dass etwas empirisch richtig ist.

Viola Heutger: Ja, das war auch mein Eindruck.

Nadja El Beheiri: Er sagt dies zum Beispiel im Hinblick auf die Newtonschen Gesetze und ob die Erde in einer bestimmten Entfernung von der Sonne steht, dabei handelt es sich um Dinge, die man nachprüfen kann und insofern finde ich es interessant, dass er die gleiche Wahrheit auch auf Aussage „Gott existiert“ anwendet. Weil die Tatsache, dass Gott existiert man eben nicht in der Weise nachprüfen kann, wie ich die Gesetze Newtons nachprüfen kann. Das ist dann auch das Problem Kelsens, dass er die Wahrheit sehr verengt sieht.

Viola Heutger: Ja, aber das war auch die Diskussion seiner Zeit, ist denn nun Rechtswissenschaft eine Wissenschaft und wenn sie eine Wissenschaft ist, dann müssen wir sie auf die Richtigkeit und auf Lehrsätze und so weiter gründen können. Da ist es in sich schlüssig, wie Kelsen vorgeht.


Übersetzen schwierig, ich denke, das ins Herz geschriebene Gesetz – ja, was das Hebräische betrifft, aber ob das jetzt so hilfreich ist, wenn man das einfach als Spiegelübersetzung in andere Zielsprachen übersetzt, muss man wirklich nochmal überlegen. Also ich finde das jetzt mit dem „Ins Herz geschrieben“ persönlich gar nicht so schlecht.

Balázs Schanda: Es ist nun wirklich sehr schwierig die Kleinigkeiten zu übersetzen, aber „szívbe írva“, oder „szívébe írva“, wo spürst Du den Unterschied. Meine Frage war das „é“.

Nadja El Beheiri: Ja, dass „é“ ist wirklich eine winzige Nuance. Das „é“, das ja einen „Besitzfall“ darstellt auf die Frage bedeutet, spricht die Problemstellung an, in wessen Herz das Gesetz geschrieben ist, in das Herz aller Menschen – wofür die Form ohne Besitzfall stehen würde, oder nur in das Herz bestimmter Menschen.

Viola Heutger: Einen letzten Beitrag.

László Virgil: This question is going to be in the centre of my presentation in the afternoon. The law is written in their hearts – the hearts of the Gentiles. I think, there is a difference between the New and the Old Testament – Jeremiah. The New Testament writes on it in Romans Chapter 2 “[…] on the hearts of the people of Israel […]” – that will refer to the Commandments. In addition, in Paul we can see that they demonstrate the work of law written in their hearts. I’m going to talk about it in detail, but it is not the law written in their hearts, but the work of it in singular.

Viola Heutger: That means to a selected group, not to all.

László Virgil: Exactly, to a selected group. We see it with Gentiles; they don’t speak about “the Gentiles”, “the nations”, but some Gentiles. I’m going to talk about it in detail, but actually, there is a difference between Jeremiah and Romans.
GERECHTIGKEIT ALS MAßSTAB INTERNATIONALER VERANTWORTUNG

VIOLA HEUTGER

1. Einleitung

Gerechtigkeit als Maßstab internationaler Verantwortung, muss in seiner historischen, gegenwärtigen als auch globalen Dimension besprochen werden. Eine der zentralen Fragen ist dabei, was kann der einzelne beitragen?

Als Bürger unseres Heimatlandes, sowie als Bürger der EU, sind wir Weltbürger1 auf einer komplexen Erde, die mitanschauen, was da alles in der Welt geschieht. Das Weltgeschehen betrachten ist allerdings für einen Christenmenschen nicht genug. Wie wissen wir nun, was wir tun können, dürfen oder müssen? Wo liegt unsere Verantwortung für diese Welt?


Die Herausforderung liegt darin Gerechtigkeit nicht zu einem Problem der jeweiligen Definition des Rechtsbegriffs in einem einzelnen Staat zu machen. Wir brauchen einen Maßstab, der zeitlos und supranational ist.

1.1. Die Bundestagsrede und die Enzyklika Deus Caritas Est

Als Inspiration für dieses Thema: Gerechtigkeit als Maßstab internationaler Verantwortung, dienten mir die Rede von Papst Benedikt XVI vor dem Bundestag im September 2011 als auch die Enzyklika Deus Caritas Est. In der Enzyklika werden Gerechtigkeit und Nächstenliebe in einem Atemzug genannt. Wie kann man nun Gerechtigkeit definieren und wie steht diese im Verhältnis zur Nächstenliebe?


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4 Kelsen (1953) op. cit. 41.
5 Kelsen (1953) op. cit. 42.
6 Kelsen (1953) op. cit. 2. So schreibt auch Kelsen: „Die Sehnsucht nach Gerechtigkeit ist des Menschen ewige Sehnsucht nach Glück“.
1.2. Die Brücke zu Augustinus

Wenig später verfolgt Papst Benedikt seine Ausführungen mit dem bekannten Augustinus Zitat, welches er in einer weniger gelungenen Übersetzung auch in seiner Bundestagsrede verwendet:


7 *De Civitate Dei*, IV, 4: CCL 47, 102. In der Bundestagsrede wurde iustitia mit Recht übersetzt. Das ist allerdings auch nachzu vollziehen, da Augustinus auch schreibt, wie kann Recht herrschon, da wo keine Gerechtigkeit ist?
9 MAIER (1955) op. cit. 59.
10 Nachweise bei Erzbischof Dr. Ludwig SCHICK: *Der Gottesstaat Augustins – Maßgabe für heutige Staaten?* Vortrag bei der Jahresversammlung der Gesellschaft zur Förderung der Augustinus-Forschung e.V. Würzburg, 30. Oktober 2010. 2 ff.
11 Vor allem dessen Werk De re publica.
Volk. Augustinus geht hart mit den Römern ins Gericht. Die pietas der Römer sei eine auf irdischen Erfolg ausgerichtete Scheinreligiosität, ihr Streben nach Tugend (virtus) eine Folge des persönlichen Geltungsdranges und ihre iustitia eine selbstgefällige Scheingerechtigkeit.13

2. Iustitia im Kontext bei Augustinus

Vor Augustinus hatten schon große griechische und römische Denker jahrhundertelang über die Gerechtigkeit nachgedacht. Ganze Bibliotheken können mit den Abhandlungen über diese Theorien gefüllt werden.14 Aristoteles verdanken wir die Einteilung in die distributive, verteilende, Gerechtigkeit, mit der er sich auf die Verteilung von Ämtern und Geld bezieht; und in die kommutative, die ausgleichende, Gerechtigkeit, zum Beispiel beim Abschließen von Verträgen, also auf die Beziehung zwischen zwei Gleichem und auf die korrektive Gerechtigkeit, die wiederherstellende Gerechtigkeit.15 In modernen Termen dürfen wir da an Schadenersatz denken. Bei Aristoteles ist Gerechtigkeit eng an Sittlichkeit und Tugendhaftigkeit gekoppelt als auch an die geltende Gesellschaftsordnung.16

2.1. Ius suum cuique

Nicht erst seit Augustinus kommen wir immer wieder dem Gedanken, jedem das Seine zu geben, als Basis für Gerechtigkeit entgegen.17 Suum cuique, ein jeder Student, der einmal Vorlesungen zum römischen Recht gefolgt hat, wird sich an diesen Satz erinnern.18

15 Buch V der Nikomachischen Ethik von Aristoteles.
16 Siehe dazu HEIDENREICH (2011) op. cit. 36.
17 Die Regel „Jedem das Seine“ war auch am Eingangstor zum KZ Buchenwald zu lesen. Auch zum Missbrauch eignete sich die Regel.
18 Digesten 1, 1, 1 u. 1, 1, 10.
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Wie eine goldene Regel durchzieht das Schlagwort Jahrtausende. 19 Bei Augustinus lesen wir es so: *Quid iustitia, cuius munus est sua cuique tribuere*.... 20 Auf Plato ist der immer wieder zurückkommende Satz „jedem das Seine“ zurückzuführen. 21 Allerdings können wir aus den meisten philosophischen Betrachtungen nicht ableiten, was genau unter dem „das Seine“ zu verstehen ist. Je nach Gesellschaftsordnung kann das verschieden sein. 22 Was das jedem Gebührende sei, wird bei dieser Formel vorausgesetzt statt definiert. 23 Wolfgang Waldstein führt allerdings überzeugende Argumente gegen die These an, „suum cuique tribuere“ sei nur eine Leerformel. 24 Er präzisiert die Formel über die Tradition ihres Verständnisses und über die Relation zu einer als solcher wirksamen Rechtsordnung. 25 Allerdings bedarf er zur Definierung und Konkretisierung nach Waldstein auch noch der Rechtsordnung des Nationalstaates, wenngleich er auch feststellt: „Gerechtigkeit setzt jedoch voraus, dass eine dem Menschen vorgegebene Ordnung eine objektive Erkenntnis dessen, was gerecht ist, überhaupt möglich macht.“ 26 Gerechtigkeit bleibt ein Streben, welches von hoher Relevanz ist für die Rechtsgestaltung in Gegenwart und Zukunft. 27

Augustinus definiert Gerechtigkeit auch als „Suum cuique“. Augustinus definiert allerdings im Gegensatz zu seinen Vorgängern und vielen Nachfolgern das Seine konkret. Der Mensch soll nach seiner Natur und Bestimmung Leben können. Das Seine ist aber Gott. 28 Was lässt sich aus dieser Definition ableiten?

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20 Augustinus, Gottesstaat, 19, 21.
21 Leider stand dieser Satz auch am Eingangstor des KZ Buchenwald.
22 Kelsen (1953) op. cit. 23.
23 Siehe dazu auch Mayer-Maly (1988) op. cit. 100.
25 Waldstein (1980) op. cit. 305.
27 Waldstein (1996) op. cit. 71.
28 Augustinus, Gottesstaat 19, 21: Demnach ergibt sich folgender unanfechtbarer Schluß: Wenn der Staat Volkssache ist und zum Begriff Volk der Zusammenschluß durch Rechtsübereinkunft gehört, Recht aber nur da sich findet, wo sich Gerechtigkeit findet, so kann da, wo die Gerechtigkeit mangelt, von einem Staate keine Rede sein. Nun ist aber Gerechtigkeit die Tugend, die jedem das Seine zuteilt. Wie kann man also von Gerechtigkeit beim Menschen reden, wenn nichts Geringeres als eben der Mensch dem wahren Gott entzogen und den


Zum Problem der Abgrenzung von kollektiver Gerechtigkeit und individueller Gerechtigkeit haben sich viele geäußert. Stellvertretend sei hier der englische Jurist und Philosoph Jeremy Bentham zitiert. Er formulierte das so:35 In einer gerechten Gesellschaftsordnung versucht man das größtmögliche Glück der größtmöglichen Zahl herbeizuführen, auch wenn das individuelle Glück aller nicht möglich ist.36 Aber bei dieser Theorie wird zu sehr von einem kollektiven}

29 SCHICK (2010) op. cit. 6–7.
31 Siehe zu dieser Verbindung auch HAMMACHER (2011) op. cit. 89.
33 BONHOEFFER (1961) op. cit. 101.
34 BONHOEFFER (1961) op. cit. 100.
35 Bereits vor Bentham wurden ähnliche Definitionen vorgenommen, weitere Nachweise bei HAMMACHER (2011) op. cit. 107.
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Menschenbild ausgegangen, was nicht vereinbar ist mit der Gottesebenbildlichkeit des Menschen und seiner Einzigartigkeit.

2.2. *Die Zwei-Reiche Lehre*


2.3. *Andere Werke seiner Zeit*

Die Zwei-Reiche-Lehre, so wie wir die bei verschiedenen christlichen Lehrern entgegenkommen und auch wiederholt im neuen Testament begegnen, wurde in einem anderen Kontext auch schon formuliert. Es gibt nicht nur die menschlichen Dinge. So definiert der römische Spätklassiker Ulpian die Jurisprudenz als

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37 SCHICK (2010) op. cit. 4.
38 SCHICK (2010) op. cit. 4.
2.4. Krieg und Frieden


3. Der Auftrag von Papst Benedikt an uns


Wir sind die Generation, die nun dran ist ihren Beitrag zu leisten. Gerechtigkeit ist eine Aufgabe. Wir dürfen diese Verpflichtung zum Handeln nicht auf den Staat schieben. Deutlich mahnt uns der Papst vor den Folgen:

Der totale Versorgungsstaat, der alles an sich zieht, wird letztlich zu einer bürokratischen Instanz, die das Wesentliche nicht geben kann, das der leidende Mensch – jeder Mensch – braucht: die liebevolle persönliche Zuwendung.

Ein jeder von uns ist zur Nächstenliebe aufgerufen. Im Kleinen wie im Großen: wir sind auch gerufen an öffentlichen Ämtern teilzunehmen.

40  D. 1, 1, 10, 2: Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia.
41  KELEN (1953) op. cit. 2.
3.1. Gerechtigkeit als Grundlage des Rechtstaates


4. Iustitia und regna


4.1. Gerechtigkeit verlangt Verzicht

Da wo Interessenkonflikte bestehen, da besteht ein Bedürfnis nach Gerechtigkeit.\textsuperscript{43} Verlangen wir nach Vergeltung, so knüpfen wir an das Übel des Unrechts auch noch das Übels der Unrechtsfolge.\textsuperscript{44} Unsere Haltung muss also eine andere sein. Streben wir nach individueller Gerechtigkeit\textsuperscript{45}, so fragt das um Verzicht und die ständige Übung den Maßstab Gerechtigkeit auch in den kleinen Dingen des Lebens anzuwenden.


4.2. Caritas und iustitia

Caritas meint die Nächstenliebe. Mit Liebe ist somit nicht das menschliche Gefühl das wir Liebe nennen gemeint.\textsuperscript{47} Ein Vorbild für unmessbare Nächstenliebe ist Jesus Christus. Jesus als Mittler zwischen Gott und den Menschen.\textsuperscript{48} Sein Tod ist versinnbildlicht im Zeichen des Kreuzes. Das Zeichen des Kreuzes dürfen wir als Plus in unserem Leben sehen.\textsuperscript{49}

\textsuperscript{43} KElsen (1953) op. cit. 6.
\textsuperscript{44} KElsen (1953) op. cit. 24.
\textsuperscript{45} Siehe zur unterschiedlichen Behandlung von Menschen auch KElsen (1953) op. cit. 25.
\textsuperscript{47} Siehe dazu auch KElsen (1953) op. cit. 21.
\textsuperscript{48} Vgl. 1 Tim. 2, 5.
\textsuperscript{49} Dieser unvergessene Ausspruch stammt aus einer Predigt von Pastor Zippenfennig in der Christuskirche während meiner Studienzeit in Salzburg.
Jesus gab Zeugnis für die Gerechtigkeit. Für jene Gerechtigkeit, die er in Gottes Königreich verwirklichen wollte. Für diese Gerechtigkeit ist er gestorben.\(^{50}\) Lassen wir sein Kreuz als Plus mit in unser Leben nehmen. Wenn wir nach Gerechtigkeit streben, sollten wir nie die Liebe als Faktor, sozusagen für das Fine Tuning vergessen. Gerechtigkeit ist der Maßstab und die Liebe die Maßeinheit. Nächstenliebe bedeutet immer auf die Würde des Anderen zu achten und ihm wohlwollend zu begegnen. Was kann nun unser Beitrag zur Nächstenliebe und Gerechtigkeit sein?

5. Conclusio: Wie ist Gerechtigkeit hier und jetzt zu verwirklichen?


\(^{50}\) Kelsen beginnt seine Frage: “Was ist Gerechtigkeit?” mit dem Verhör von Jesus von Nazareth vor dem römischen Statthalter. KELSEN (1953) op. cit. 1.


\(^{53}\) KELSEN (1953) op. cit. 12.

Zusammenfassend können wir abschließenden mit dem folgenden Fazit aus Deus Caritas Est: es wird ... nie eine Situation geben, in der man der praktischen Nächstenliebe jedes einzelnen Christen nicht bedürfte, weil der Mensch über die Gerechtigkeit hinaus immer Liebe braucht und brauchen wird.54


54 Enzyklika Deus Caritas est, 29.
55 (1878-1965), jüdischer Religionsforscher u. – philosoph.
Diskussion / Discussion

Jutta Haussmann: Viola ist die Gerechtigkeit Gottes, die uns später zugute kommt, für Dich identisch mit Rechtfertigung oder ist das etwas Anderes?


Jutta Haussmann: Womit wir wieder bei dem Übersetzungsproblem wären.


Jutta Haussmann: Ja ich frage nur deswegen, weil Du das so formuliert hast, „Gerechtigkeit Gottes, die uns später zugute kommt“. Da ist natürlich die Sache wirklich ein bisschen schwierig, weil vom Neuen Testament kommt das griechische Dikaiosyne, was eigentlich „Gerechtigkeit“ bedeutet. Da ist aber das was Gott uns zuspricht, letztlich aber dann doch in den Kontext von Rechtfertigkeit einzuordnen. Im Hebräischen haben wir eigentlich auch mit dem Tzedaqa ein Wort, das dem griechischen Dikaiosyne sehr ähnlich ist, aber ganz stark, eben als Tzedaqa, eben etwas was unter Menschen geschieht – Recht als
Diskussion / Discussion

Gerechtigkeit. Schauen wir es von der anderen Seite an: Im Jüdischen – jetzt einmal rein gedanklich, ist Tzedaqa etwas was ich tun kann. Also ich kann Tzedaqa verwirklichen, das ist eine Aufgabe, die ich als Mensch habe. Hier steht wieder das Tun im Vordergrund. Von der Seite Gottes her ist es in der Tat nicht distributiv, sondern ich denke, hier wird es ganz stark im Hebräischen – im Sinne von „Jedem das Seine“ verwendet. Gott gibt was ich brauche, nicht mehr, aber auch nicht weniger. Hier stellt sich nun in unserer Gegenwart wirklich die Frage, was brauche ich nun eigentlich. Brauche ich als Professorin in Ungarn weniger Geld, als Professorin in Deutschland. Wir merken, es geht alles, aber gerecht ist es nicht. Ich denke, das ist also ein ganz konkretes Beispiel. Ich denke, dass es an der Stelle nun doch noch einmal Unterschiede von der theologischen Dimension her gibt. Im Alten Testament zeigt sich das immer konkret. Segen ist etwas, das ich konkret erfahre, durch Kinder, durch entsprechenden Reichtum etc. und nicht einfach so spiritualisiert. Ich denke auch, dass der hebräische Begriff Tzedaqa im Alten Testament ganz stark nicht spiritualisiert, sondern er ist auch in der konkreten Erfahrung zu finden. Es ist aber auch nirgendwo in der Weise konkretisiert, das festgelegt wird: „Du brauchst so und so viel Kilo Mehl pro Person in der Woche, damit es gerecht ist, so unter dem Motto, der Mann braucht mehr, weil er schwerere körperliche Arbeit verrichtet als die Frau. Eine solche Konkretisierung findet sich eben leider nicht. Aber es ist doch noch einmal eine andere Dimension als die Spiritualisierung, die wir im Neuen Testament finden. Deswegen ist diese Formulierung „die Gerechtigkeit, die uns dann später zugute kommt“, Du hast ja dann auch selber gesagt, die Gegenwartsdimension ist immer vorhanden und ich denke, darin liegt gerade die Schwierigkeit, dass wir Menschen sehr leicht geneigt sind, die spirituelle Ebene zu betonen und zu sagen: „Ja also das mit Gott kommt dann irgendwann und wir müssen das schon ein bisschen hier sichtbar machen, da denke ich wieder, dass es eben gut ist, dass wir nicht nur das Neue Testament, sondern auch das Alte Testament haben und das vom Alten Testament her viel stärker der tagtägliche Aspekt miteinbezogen wird. Der ist aber dann auch in der Tat handlungsorientiert. Dies gilt auch für die Seite Gottes. Wir sehen, dass Gott uns eben auch entsprechend gibt, was wir brauchen. Das gilt auch für die Leute, die hier im Moment bei der Hochwasserkatastrophe ertrinken. Auch diesen Menschen gibt Gott das was sie brauchen. Vielleicht gibt ihnen Gott eine Gotteserfahrung und sie denken, naja wenn es nun wirklich so weit ist, dass ist es auch kein Drama – weil irgendwo war es eigentlich auch ganz nett, was ich bis jetzt gehabt habe. Man weiß ja nicht, was ein Mensch in einer solchen Situation erfährt.
It was on 22\textsuperscript{nd} September 2011 when Benedict XVI went straight to the podium. After making a mistake about the location, he had to be prompted by the President of the German Parliament, the famous Bundestag. He was playing the part of a distracted Professor… Then he began his contribution: “Basing myself on this international responsibility that I hold –asserted–, I should like to propose to you some thoughts on the foundations of a free State of Law”.\textsuperscript{1} Without proposing actual solutions, he went directly to the core of the matter. He spoke more as Herr Professor than as a Roman Pontiff. In fact, Pope Ratzinger paid tribute to those who had attempted to boycott his speech with some riots against the papal visit in the Brandenburg Gate. He said that the ecologist members of parliament (\textit{die Grüne}) had been able to pay attention to Nature and Reality… “In its self-proclaimed exclusivity –he said–, the positivistic Reason which recognizes nothing beyond mere functionality resembles a concrete Bunker with no windows, in which we ourselves provide lighting and atmospheric conditions, being no longer willing to obtain either from God’s wide World. […] The windows must be flung open again, we must see the wide World, the sky and the earth once more and learn to make proper use of all this”.\textsuperscript{2}

\textsuperscript{1} Benedict XVI: Address in the Reichstag Building. Berlin (22.9.2011).

\textsuperscript{2} Ibid. This relation was presented with the title “Creation, nature and ecology. The Bundestag Speech according to Joseph Ratzinger’s Theology”, in the conference “Ins Herz geschrieben. Die Grundlagen des freiheitlichen Rechtsstaates”, at the Pázmány Péter Catholic University in Budapest. I am grateful for all the questions and corrections of all the participants at this meeting.
1. The senses of logos

The ecologists were on the right track, but they hadn’t yet reached the very origin: the creative act of God, as have been said by many different religions. The beginning of Creation by God could then set a more solid foundation for the respect for the natural Environment. To better understand these papal words in the Bundestag, we must take a look at the background of Joseph Ratzinger’s thought. “In the Beginning was the Logos”, reflected J. Ratzinger in 1984. This ancient and venerable proposition, that we have heard frequently, is no longer evident in our days. Goethe’s Faust says of it: “this is such a difficult translation that I will give it another sense, if the spirit will enlighten me”. In the end, he translates: “in the beginning was Action”. Physicist say now that “in the beginning was the Big Bang”, a big originary explosion. But now, if we stop to reflect on it, we arrive to the conclusion that, in the end, none of these [=Action, the Big Explosion] are sufficient. So we turn back to the Biblical Logos. To understand it, we need to read the entire phrase: “in the beginning was the Logos, and the Logos was with God and the Logos was God”. This profound maxim means that since God existed in the beginning, God is the beginning. All things come from the Creator Spirit, from God who creates.3

1.1. “In the Beginning was the Logos” (Jn 1:1)

The Logos of St. John constitutes one of the points of departure in the theological thought of Joseph Ratzinger. As he frequently says in his work, when God is called “the Logos” it means that “in the beginning” there was a God who is Thought and Meaning (Sinn), that is, a Thinking Creator who called the World into existence and who, with this calling and at that same moment, gives it a meaning. Reason is, in this way, the foundation on which the entire Universe is supported: the root from which we come, within which we are, and in which we can trust. But the Logos – specified a Bavarian Theologian – is Thought not in the

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“In the beginning” (Gn 1:1; Jn 1:1) – Creation, nature and ecology according to... sense of a complicated mathematical formula that dominates the Universe, and which remains deaf and indifferent to our demands. On the contrary, this God – who is Truth, Love, Spirit and Thought – is “Word” and so is also “Relationship” (Zuwendung) and a “New Beginning” for all of us. Thus “in the beginning” – in Creation – Reason, Freedom and Love are profoundly united, in such a way that the term logos represents a richness of content and meanings that we are going to analyse in the lines that follow:

a) Logos as eternal Word of the Father. “In the Beginning was the Logos” (Jn 1:1): before the origin of everything was the eternal Word. This is the first (and fundamental) meaning of the term logos; a strictly theological meaning referring to the Divinity. In the first lines of his prologue, John speaks about the Word and His Relationship with the Father who is God. The two are identical: the Logos is also God. Today it is generally admitted that the idea expressed here by the term logos does not stem from Platonic thought, but is best represented in the Hebraic term memra, which is word. As it is well known, the Fathers of the Church saw in the Logos of St. John a clue to understand the eternal procession of the Word. St. Augustine applied this parallelism in a clear way: “as my word reached your comprehension without being in my mind (in corde meo), in this way the Word reached our mind without leaving the Father. My word was inside me and became a voice; the divine Word was in the Father and became flesh”. This line of argument would undergo further development in subsequent western Theology.

The Logos that grounds all of Reality is the eternal Word of the Father. This is the trajectory of Ratzinger’s exegesis of St. John’s prologue: “‘In the Beginning was the Logos’: the creating Reason, the energy of God’s Intelligence, the communicatory force of meaning in the Divine Knowledge. Only from this starting point can we correctly understand the Mystery of Christ, in which Reason is made visible as Love. The first expression of Faith says to us: “all that exists is Thought made Reality”. The Creator Spirit is the origin and the beginning that founds all things. The Creator Spirit is rational in his origin,
because it comes from the Creating Reason”.9 Reason and Relation, Intelligence and Dialogue, Thought and Word, Knowledge and Communication, Truth and Love (Christ and his Spirit, in the end) are united in God. This complementary binomial reflects and projects the Divine Persons. Ratzinger pays great attention to the Principle of the Logos, even to such an extent that he is going to be accused of “Logocentrism”. But this Logos will be always – as we have seen – a “Logos agapicus”, a Reason-Love, a Verbum spirans amorem, as has been named by Augustine and Thomas Aquinas.10

1.2. “Through him all things were made...” (Jn 1:3)

b) Logos as truth and meaning. The parallelism between the first verse of Genesis (“In the Beginning God created the heavens and the earth”) and the words of St. John’s prologue is well known.11 Creation begins when God uses words: “and God said: ‘let there be’” (Gn 1:3.6.9 et al.). The Logos is the Creating Word. There is a perfect correlation between Creation according to the Logos and its result, which remains as the meaning and the interior Truth of all created things and Persons (we are now moving from a theological level to a gnoseological and metaphysical one). J. Ratzinger reminds us frequently of the contemporary need to speak about the meaning of Creation. Perhaps this is because nowadays it is a forgotten dimension; because now the Human Being is presented as Creator of himself, leaving in the background the fundamental fact that “in the beginning was the Logos”, according to which all things were created.12 “Through him all things were made; without him nothing was made that has been made” (Jn 1:3). In the Beginning, existed the Thought that creates for Love according to His own image: “God created mankind in His own image” (Gn 1:27)

c) Logos as Reason and Relation: “and the Logos was made flesh” (Jn 1:14). Thus Creation receives the trace of the Eternal Logos. In our opinion, this trace shows that in an analogical way Ratzinger also applies the term logos in a special

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10 De Trinitate IX,10; PL 42,833; S.Th I, q. 43, a. 5, ad 2.


manner to the human Person. He and she have been created in the “image and likeness” of God (Gn 1:27), that is, according to the Divine Logos. We have arrived now at the anthropological level. In the 6th century BC, Heraclitus defined man as *logos*, and placed him between the Divine Logos and the cosmic *logos*, the object of knowledge and the word of the Human Being.\footnote{Fragmento 31; cf. A. Bernabé: *De Tales a Demócrito*. Madrid, Alianza, 1988. 15.; Kittel op. cit. VI 229–232.; R. Schnackenburg: Logos. LThK, VI, 1961. 1123–1124.}

This analogy would be taken up later by Aristotle, who defined man as *zoon lògon èchon*\footnote{Arist. Pol. 1253a ss.; also Plotino in *Eneadas* VI, 7, 4–5.; Kittel op. cit. VI 238–239.; 242–245.; Schnackenburg (1961) op. cit. 1124–1125.}, translated variably as *homo loquens* and *homo sapiens*, that is, as a rational being who possesses the Word. Reason and Language appear here as fundamental capacities of the human Person. In fact, Thought crystallizes in the Word: more than simply giving it garments, the Word sculpts and gives form to the Ideas. Word and Thought, Dialogue and Reason, Love and Truth are two basic conditions of the Human Being, according to the image and likeness of their Creator. Here there is a third sense of the term *logos*, which has at the same time a double meaning (Reason and Relation, Thought and Word, Knowledge and Communication), which our theologian puts as the basis for the most important capacities of Human Being.\footnote{Cf. J. Ratzinger: *La palabra en la Iglesia* (1973). Salamanca, Sigueme, 1976. 89–90.}

2. Ratzinger and Creation

Today we speak frequently about Ecology, Sustainable Development and Climate Change. It is almost a fashion. But it was not a foreign topic for the archbishop of Munich and Freising, Joseph Ratzinger, in the 80’s of the last century. Nature has also stood in the middle of his interests since his origins. In his childhood and youth, he was very interested not only in Ethics, but also in Natural Sciences.\footnote{Cf. J. Ratzinger: *Mi vida. Recuerdos* (1927-1977). Madrid, Encuentros, 1997. 54–55.} There is also a document that contains typed notes of lessons, with the title *Schöpfungslehre*, assigned to Joseph Ratzinger and dated in Münster in 1964. At the same time, he has always held fast to the idea of Human Nature and Natural Law, even if at times the latter goes by a different name. This Law (according to the *logos*, the interior meaning of each thing that compounds the Reality) can be reached rationally, and not only through Religion and Revelation (in this sense Ratzinger is a big epistemological optimist!). In fact, the *logos* becomes a key
concept for understanding the Person and his mission in the World. The human Person – dust and Divine Breath – has been created in the “image and likeness of God the Creator” (Gn 1,26ss.), as we have noted, and this implies a special status and responsibility in the World. Thus, the human person receives a definitive impetus derived from Creation itself; this, according to Ratzinger, has been a forgotten dogma, the great ‘Cinderella’ of theological issues.17

2.1. “In the Beginning God created” (Gn 1:1)

Let us go then to Ratzinger’s texts. Back in 1964, when his academic career was in its infancy, Ratzinger researched the Christian concept of Creation. He rejected both Monism and Dualism; Christianity embraced neither Materialism and Spiritualism nor the opposition between them. After making reference to the central ideas of Love, Reason and Freedom in God as origin of the World (i.e. God’s Personal element is present from the first moment), Professor Ratzinger mentioned that “Faith in Creation (Schöpfungsglaube) arises from an amplification of the first Commandment, as a specification of the layout and

ordination of human destiny”\textsuperscript{18}. God and Creation: there is a binding Knowledge that, in a certain sense, conditions all of our existence, as well as our relationship with the World. Ratzinger recalls the Christological sense of Creation that is present in Jn 1:3: “everything was made according to Him” (see also 1Co 8-6)\textsuperscript{19}. Before Redemption it was Creation: and the Lord of History comes after the Creator of the World. Our World is the raising and purifying of Nature by Grace.\textsuperscript{20}

In the same way, this Faith in Creation is united in an inseparable way with the concept of Natural Law applied to the Human Being, although it is a concept that can be reached through unaided Reason. But in specific difficulties, the Revelation can give light in a complementary way. To illustrate this point, Ratzinger refers to Jesus’ teachings about the familiar stability: “What the order of Creation lays down at least in an unequivocal way of Mk 10,1-12, and about this the Catholic Theology has never doubted”\textsuperscript{21}. In this way the concept of Nature, in Ratzinger’s opinion, is intimately united to the idea that we have of Creation, and at the same time it is reinforced by other truths revealed by the Christian Faith.\textsuperscript{22} Ratzinger concludes by rejecting any form of “Positivism of Faith”: we need a consistent understanding of Human Nature that we can also share with Non-Believers.\textsuperscript{23} That is because, at that time, Professor Ratzinger considered the Doctrine of Creation as one of the most important topics in Christian Preaching.\textsuperscript{24}

In another article of 1968, the German Professor studied the relationship between Creation and Evolution,\textsuperscript{25} trying to reconcile the doctrine contained in Genesis with the theories formulated by Charles Darwin. Regarding the purpose

\textsuperscript{19} Cf. Ratzinger (1964) op. cit. 464.
\textsuperscript{21} Ibid. 465.
\textsuperscript{22} About this topic see P. Blanco: La razón en el cristianismo. Una reivindicación de Joseph Ratzinger. Scripta Theologica, 37, 2005/2. 597–613.; P. Blanco: Logos. Joseph Ratzinger y la historia de una palabra. Limite, 14, 2006/1. 57–86.
\textsuperscript{23} Ratzinger (1964) op. cit. 466.
\textsuperscript{24} Cf. Ratzinger (1976) op. cit. 87–88.
of the Creation of the human Person, he concluded: “The consideration that man has been created by God in a more direct and specific way than the rest of the Creation signifies only – to put it graphically – that Man has been loved by God in a special way: not only as a being that ‘exists’ but also as one who knows him; not only as a form that he has thought, but also as an existence that can also think of him [...]. The mud was converted in Man in the moment in which a Creature can be formed – for a first time in a nebulous way – by the Idea of God. The first ‘You’ that – as stammering as it was – was said to God by a human mouth signals the moment in which the Spirit manifests itself to the World. It is the crossing of the Rubicon in the process of Creation”.26 Man is dust which has received the Breath of the Spirit, according to the tale of the Genesis (2:7). The Human Person is earth that has been formed and called by God in a special way, so the natural and animal condition of the Human has been elevated by a specific act of Love and Freedom by God.

2.2. “God created mankind in his own image” (Gn 1:27)

Similarly, in a Salzburg-talk in 1979, Cardinal Ratzinger said that “in the theological debate of recent times – decades – the issue of Creation has developed a very specific role. It is seen as a topic without anthropological implications”.27 Nevertheless, the issue has recently become of great importance both in culture and society. The years of the Petrol Crisis led to the first ecological movements. “Against the limited capacity of creativity of Man, who understands the World as a matter that creates himself, it is the Creation by God”.28 Not everything depends on Man, and going against Nature is to saw off the branch on which we are sitting. But in order to construct an effective defence of Nature we need a firm Foundation. The question “what can we do?” is based on “who are we?”. The question of Being conditions our hopes for the future. Nonetheless, there is no consensus about Creation. In fact, Modern Thought has changed our way of viewing it, as Ratzinger later demonstrates in his analysis of the ideas of Bruno, Galileo, Luther, Hegel and Marx.29 The reduction of God to a Being who writes with mere mathematical signs ends up emptying the meaning of Creation.30 Either

26 Ratzinger (1976) op. cit. 129.
27 Ratzinger (1980) op. cit. 5.
28 Ratzinger (1980) op. cit. 6.
grace annuls and suppresses nature – everything is grace –,\textsuperscript{31} or it is forgotten that Love is the original fount of all Creation.\textsuperscript{32}

For Christians, God is the “Creating Reason”, a Reason who loves; a Reason and a Love which precede us. Nevertheless, in the above mentioned modern developments, “the concept of Creation is substituted by that of Nature, which at the same time is no more than the object of the Sciences of Nature, and any other meaning of this word could be seen as a contradiction”.\textsuperscript{33} In this sense, there is no way one can speak about Natural Law or Human Rights, because they correspond deep down with an empty category. In some way, Person is based only on his Freedom or on emptiness: on nothing.\textsuperscript{34} Another possibility – proposed by Rousseau – is the presumed return to Nature in which all traces of Freedom disappear and the Spirit is considered as an “illness of Nature”.\textsuperscript{35} On the contrary, Christianity has elected Reason and Love – logos and agape – as the origin of Creation: not the Chaos but the Cosmos, ordained and created by Reason and Love: “Christian Love – as Faith in the Creator – must be united to self-acceptance as part of Creation”.\textsuperscript{36} It conceives of all Creatures as dependent on an original Love, Freedom and Truth. This heteronomy does not destroy Liberty, but gives it all its sense and meaning in Love: it is the summit of Freedom.\textsuperscript{37} In this sense, “Man is dependent. He cannot live without dependence on others and trust in them”.\textsuperscript{38} So – he continued to say –, this dependence is not alienation when we are speaking about Love, because it is an enriching Relationship that changes our Being and Freedom. This is the Liebe-Prinzip which Ratzinger proposed: “we exist thanks to the foundation of Love”.\textsuperscript{39}

Some years later, Archbishop Ratzinger returned to the theme of Creation in a series of Lenten conferences pronounced in 1981 in the Cathedral of Munich. There he drew attention to the neglect of this doctrine in contemporary Christian

\textsuperscript{31} Cf. Ratzinger (1980) op. cit. 10–11.
\textsuperscript{33} Ratzinger (1980) op. cit. 13.
\textsuperscript{34} Cf. Ratzinger (1980) op. cit. 13–14.
\textsuperscript{35} Ratzinger (1980) op. cit. 14.
\textsuperscript{36} Ratzinger (1980) op. cit. 15.
\textsuperscript{37} Cf. Ratzinger (1980) op. cit. 16–17.
\textsuperscript{38} Ratzinger (1980) op. cit. 17.
Thought. “Some time ago, a Theologian said that the Creation had become an unreal concept, and from the intellectual point of view we cannot speak about Creation, but about mutation and selection”. Against this sceptical point of view regarding the Truth of Creation, Archbishop Ratzinger defended the symbolic value of the Biblical Tale (Gn 1,1-19), at the same time making reference to some Babylonian Myths. What is said in the Bible – he says – is that there is a Creator God, a Creating Reason: “It is the challenge of Faith that, against the Pagan Myths, it speaks about the Light of the Truth, and teaches us that the Universe is not produced by a struggle of dark forces, but from Reason – the Reason of God – and is bound to the Word of God. In this sense, the tale of the Creation means a real ‘Enlightenment’ for history, a rupture with the fears that have dominated all Men”. The World is not absurd or meaningless. God (that is, Love and Truth, Reason and Freedom, as we have seen) is the origin of everything that has been created. “Only if the Universe proceeds from Liberty, Love and Reason, only if those are the dominant forces, can we trust each other, advance towards the future, and live as Persons”.

Beyond randomness and necessity there is Love, Sense and Freedom, maintained once and again Ratzinger. There is no sense in living in a World where Atheism and non-Belief propose absurdity and meaninglessness as the only explanations for our Existence, concluded the Bavarian Cardinal. He tried to find an answer and an orientation. For this, he turned back to the scientific premises: after avoiding the statements of the scientists Laplace, Einstein and Monod, he pointed to the true origin of God’s Law, which is absolutely not arbitrary and tyrannical. What is more, Natural Law is not something exclusive for Christians – it can be reached through Reason and Conscience –, so it constitutes an ethical patrimony also shared by Jews and Muslims. “The Torah, the Law, is the expression of the History that Israel lives with God. It is an expression of the alliance, and the alliance is an expression of God’s love, of a ‘yes’ to man, whom he has created for loving and being beloved”. Later Ratzinger spoke about the polemical Divine Commandment: “Dominate the Earth!” (Gn 1:28). In order to avoid abuse and exploitation, man must follow the Law and the Word of God. Then Man will become a Creative Being, a “co-Creator”, a contributor to

43 RATZINGER (1992) op. cit. 41.
44 RATZINGER (1992) op. cit. 53–54.
God’s Creation. “It is appropriate to the Christian way to have the certainty that we are ‘creative’, and thus creators, only if we are united to the Creator of the Universe. We can only serve the Earth truly when we make use of it according to God’s Word”.45

2.3. Love and truth in the Beginning

Finally, our theologian spoke also about the Human Condition, which finds itself between God and the rest of the World. Man was created from Earth, but he is formed specifically in “God’s image” (Gn 1:26ss.). “In him Earth and Heaven touch. God enters Creation through Man. And Man has been called by Him. [...] Each Person is known and beloved by God; is God’s image”.46 The religious inspiration of these lines adds a new aspect to what we can know by pure Reason about Nature and Natural Law, giving them a wider and more luminous dimension. But it does not destroy their value. Because God plays a decisive role here, the Human Person has a specific value: “So today we can say, with greater certainty and joy: ‘yes, the Person is a project of God’. Only the Creator Spirit was strong, large and brave enough to conceive this project. The Person is not a mistake: he and she have been desired, and are the fruit of one Love. They can discover in their interior, in the Daring Project that they are, the Language of this Creator Spirit who speaks to them and encourage them to say: ‘yes, Father, you have loved me’”.47 The Person participates in an elevated mission given by God, and he becomes the object – subject – of the predilection of the same Creator.

A problem then arises in the dialogue with non-Christian Thought: is a Common Morality possible? Or is the Decalogue an exclusively Christian prerogative? Faced with the difficulty of this universalist Endeavour – the possibility of a Weltethos –, Cardinal Ratzinger proposed, in a debate with Jürgen Habermas in 2004, that the answer must be found not only at the level of Ethics, but also in the mutual relationship between Reason and Religion, natural and religious Ethics. “We have seen – he concluded – that there are highly dangerous pathologies in Religion that require the light of Reason as a sort of control system by which Religion must let itself be purified and regulated again and again, as even the Fathers of the Church have noted. But this consideration suggests –and Humanity

45 Ratzinger (1992) op. cit. 63.
46 Ratzinger (1992) op. cit. 70.
47 Ratzinger (1992) op. cit. 82–83.
today, in general, doesn’t realize it— that there are also pathologies of Reason. The arrogance of Reason is not less dangerous. It is perhaps more so if we consider its potential effects; whether it be the atomic bomb or the objectification of the Human Person. Thus Reason also must be asked to recognize its limits, and to listen to the major Religious Traditions of Humanity. If it considers itself as totally independent and rejects its capacity to learn, the interrelationship becomes destructive”.48

He concludes that only after this reciprocal purification between Reason and Religion will the West be in a position to take part in a dialogue with other cultures. As Ratzinger argued in a discourse with another agnostic intellectual, Ethics will ultimately be the winner in this exchange: “In my debate with the philosopher Flores d’Arcais we arrived at this point: the limits of consensus. This Philosopher could not deny that there are values that not even majorities could contradict. But which ones? At this point, the Moderator of the debate, Gad Lerner, set out this question: Why not take the Decalogue as a rule? It is not just the private propriety of Jews and Christians. It is an elevated expression of the Moral Reason that is in accordance with the Wisdom of all the great cultures. To add here again to the Decalogue might be essential precisely for regenerating Reason, for giving a new impulse to recta ratio”.49 Ratzinger concludes by proposing Reason as a fundamental premise for Peace in the World: “Changing a phrase of Hans Küng (kein Weltfriede ohne Religionsfriede: there will be no World peace without religious peace), I must say that –without Peace between Faith and Reason– there cannot be peace in the World, because without Peace between them the wellsprings of Morality and Law will dry up”.50


49 RATZINGER (2005) op. cit. 66. and 87.

50 RATZINGER (2005) op. cit. 93.
2.4. The Bundestag Speech

Religion, Reason and Common Sense can all contribute – in a sense they are committed to contribute – to Ethics, to Peace in the World, and to Respect for the Environment. As we have mentioned, the very existence of a Natural Law, prior to any act of the Will, demands the Acknowledgement of a Nature gifted with Rationality by God. This normative Rationality is the footprint of the Creator in Creation: it directs us towards a certain concept of Man and to a Theistic Vision of the World. In this field Christians agree with most of other Religions. The Triumph of Evolutionism as an Ideology meant the withdrawal of any pretension to find a binding Rationality in Nature. Nature was now regulated by randomness and determinism. God – said the Darwinians – is not necessary for explaining the World, but later they have also expressed in not a so radical sense. With the cultural transformation that took place in the second half of the 19th century, there was no longer any Theoretical Foundation for Natural Law, nor was it even possible to pose the question of such a Foundation. In Pope Benedict’s words, “the idea of Natural Law is considered today largely as an irrelevant Doctrine, not worth discussing outside of Catholic Circles, and so we can almost give offense simply by mentioning the title”.

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2.5. The ecological question

But Times are changing, and in this case the Natural Law can reveal something of that Eternal Truth which is contained in Nature. That was the issue that Pope Benedict proposed in the now famous Speech in the Bundestag, in the Sacred Temple for the Defence of Freedom, Justice and Democracy. Christoph Ohly has spoken about a *Sternstunde*, one of the “Decisive Moments in History”.\(^54\) “But how are we to do this? How do we find our way out into the wide World, into the Big Picture?”, asked the German Pope in the Bundestag. “How can Reason rediscover its true greatness, without being side-tracked into irrationality? How can Nature reassert itself in its true depth, with all of its demands, with all of its directives?” These questions must be answered. Nature, Reason and Conscience belong to everyone, and they could be considered as a Common Platform for universal understanding. It is true that Christianity has been helped by God’s Revelation, but this Faith doesn’t go against the discoveries made alone with theoretical and practical Reason. Benedict XVI then recalled the developments in recent Political History, not only in Germany: he didn’t want to be misunderstood, “nor provoke too many one-sided polemics”. “I would say that the emergence of the Ecological Movement in German politics since the 1970s – he continued –, while it has not exactly flung open the windows, nevertheless was and continues to be a cry for fresh air which must not be ignored or pushed aside, just because too much of it is seen to be irrational”.\(^55\)

In this regard, Christian Teaching totally agrees – and maybe more radically – with the Ecological Movement. “Young people – he continued – have come to realize that something is wrong in our relationship with Nature, that matter is not just raw material for us to shape at will, but that the Earth has a dignity of its own and that we must follow its directives”. The Bishop of Rome added with his typical but often unrecognised irony that he was not advertising for any Political Party… But after this wry comment, he continued with his argument: “If something is wrong in our relationship with Reality, then we must all reflect seriously on the whole situation and we are all prompted to question the very foundations of our Culture”. We must solve this problem and recuperate our original relationship with Nature, as have been said by Ecologists. Their cry


is: open your windows to Nature, to Reality! And this has also been said by many Religious People: “The importance of Ecology is no longer disputed. We must listen to the Language of Nature and we must answer accordingly”, he concluded.57

2.6. “The Ecology of Man”58

The German Pope then went further, speaking about a Human Ecology, the Ecology of the Human Person (Ökologie des Menschen). In fact we need both: interior and exterior Ecologies, interior and exterior Natures, and both must be respected and harmonized: “Man too has a Nature that he must respect and that he cannot manipulate at will. Man is not merely self-sufficient Freedom. Man does not create himself”, he reiterated. “He is Intellect and Will, Reason and Freedom... but he is also Nature, and his Will is rightly ordered if he respects his Nature, listens to it and accepts himself for who he is, as one who did not create himself. In this way, and in no other, is true human Freedom fulfilled”.59 Each Person must listen to the voice of the Nature that dwells within him; if he is able to hear it, he will be also able to speak the same Language as Nature. The Apostle Paul spoke about “the Law [that] is written on their Hearts” (Rm 2:14). The openness of conscience to the language of Being, the formation of a docile Heart, must be achieved – according to the emeritus Pope – by listening to “the Language of one’s Nature”.60 This is one of the requirements of our time. In this context, Llano and Breuer have spoken about the Ecological Movement as a sign of a New Postmodern Sensitivity which at the end is in agreement with the precept of God «in the beginning», but it is something more than an “Ecological Spiritualism”.61

57 Cf. also id., Caritas in veritate (29.6.2009), n. 32, 49. About the concept of Nature in Kant and Rousseau, see BREUER (2012) op. cit. 119–123. In these lines can be seen that we are speaking about a different sense of nature, where there is no place for an ingenuous conception of human Nature.
58 Cf. BREUER (2012) op. cit. 114–149.; this term also appears in Benedict XVI: Caritas in veritate (29.6.2009), n. 51.
59 Benedict XVI: Address in the Reichstag Building, Berlin (22.9.2011); cf. id., Caritas in veritate (29.6.2009), n. 48.
Nevertheless, Ecology – and this was Benedict’s proposal – must widen its commitment to include an understanding of the Human Being, since it too has a Nature that must be respected. In this way, and in a mode of speech in keeping with contemporary sensibilities, the Pope revisits the connection between Nature and Reason that for centuries had been used to support the rationality of Natural Law. There is a link which passes through Conscience and depends on its openness to the Being and, ultimately, to God. “Let us come back to the fundamental concepts of Nature and Reason, from which we set out. The great proponent of Legal Positivism, Kelsen, at the age of 84 – in 1965, he continued – abandoned the dualism of ‘is’ and ‘ought’. (I find it comforting that rational thought is evidently still possible at the age of 84!)”, mentioned Ratzinger wryly, alluding to his own age. “Previously Kelsen had said that norms can only come from the Will, as a sacred formulation of Juridical Positivism. But Nature, Kelsen dixit later, would presuppose a Creator God, whose Will had entered into Nature. It is Creation through Love and Freedom, we have said. Any attempt to discuss the Truth of this belief is utterly futile”. And at the end of this dialogue with Kelsen, Benedict XVI asked: “Is it really pointless to wonder whether the objective Reason that manifests itself in Nature does not presuppose a Creative Reason, a Creator Spiritus?”.

As Breuer has said, Benedict has reconciled Aristotle with the Ecological Movement and the supporters of Natural Law. In this sense, we also arrive to the Christian Beginning: the Logos Principle. “In the Beginning was the Logos, and the Logos was with God and the Logos was God” (Jn 1:1). It does not seem that this “Bunker without windows” can stand for much longer. The erosion of the Foundations has created a general Crisis of the System, not only ecological but in many different aspects of our lives, as we can see every day. In fact, the cracks of this building after the earthquake of the last Crisis have maybe allowed the light to enter. But there are still some concerted efforts about the Environment, Nature, Human Life, and that ecological Habitat which is called the Family. Perhaps Benedict XVI’s proposal could also change Grotius’ formula, and make us live

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64 Cf. ibid., 148–149.
and think *veluti si Deus daretur*, as if God exists.⁶⁵ He ended this Speech in the Bundestag as he began, pointing to the wisdom of Solomon: “As he assumed the mantle of office, the young King Solomon was invited to make a request. […] I think that – concluded the Pope –, even today, there is ultimately nothing else we could wish for but a listening heart – the capacity to discern between Good and evil, and thus to establish true Law, to serve Justice and Peace”.⁶⁶ Although Solomon later lost his way a little (cf. 1Kg 11:1-8), he can still teach us to ask God for Reason, Sense, Respect and Prudence for everyone (cf. 2Cr 11-12).⁶⁷

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Jutta Hausmann: I think, if I were a law scholar, I would ask what I should do in order to find a solution for an actual problem.

Pablo Blanco: In my opinion, Ratzinger does not give actual solutions. He outlines the problems and leaves them there. He respects freedom, especially that of jurists to resolve the problems, and at the same time, he made us hear the voice of nature, of conscience, of reason. In some ways, we can feel that Ratzinger says: “That is your business”, but you have to look to reality with your own reason and with your own conscience. In this sense, I see a parallelism with the ecological movement, which discovered or rediscovered nature or reality, and that’s the same thing jurists or other professions should do in with laws. This is my reading of Ratzinger, if I understand it correctly.

Nadja El Beheiri: I have the impression that Ratzinger, when he was still a professor of theology, worked on the topic of creation. When he started to move to another level as an archbishop and afterwards he started to use a broader concept and he also started to speak about natural law. So do you think that this observation is correct?

Pablo Blanco: The most important texts about creation is his Munich preaching. Then he was an archbishop, in fact then he was preaching about two topics, two issues: the one was Eucharist as the centre of the Church, the other was creation. Creation was a very important topic for him, but he had already published minor articles before, which pointed to the same direction. He has also given a lecture about the doctrine of creation in Münster in 1964, and that is much before his nomination as archbishop. For him, creation is one of the most important topics, but his approach is a theological one: it is an eco-theology but considered from the mystery of creation. At the same time, he tries to launch a dialogue with other disciplines, such as law, philosophy, with empirical sciences and the ecological movement, too. The way I see it, it is a constant in his thought.
Viola HEUTGER: I was thinking whether Ratzinger changed or not, because his target group changed. As Pope, he became increasingly multidisciplinary and a little bit professorial, because he wanted to make it open for everybody, as it were. Perhaps, he focused on very specific aspects previously, while as a professor and as previously an archbishop, he spoke more for his people. Can we see something like that or is he very consistent in the way he is writing and working?

Pablo BLANCO: I have seen new and old issues in his pontificate. There are some issues, which are not from his theology, such as, for example: family, defence of life. These topics are not personal ones, but I think, he was convinced that they were so important that he should say something about them. His book about Jesus of Nazareth serves as a point of key importance when ones is trying to understand Ratzinger’s thought. There are all the topics in this book that he has developed in the course of several years, first at the university and later as an archbishop or as a prefect or as a pope. At the same time, however, you can also ask why a pope writes a book about Jesus. Doesn’t he have anything else to do?

Viola HEUTGER: It’s one of the essence of the belief that you know... Where else he should write about?

Pablo BLANCO: In fact, he thinks that the most important thing that a Pope must do is to speak about Jesus. He wrote these three books about Jesus because he thought, this was his central task, the most important thing, the centre of his thought and of course that of Christianity: speak about Jesus Christ as God and man. I think you, Viola, have got it right.

Viola HEUTGER: I would like to raise another question concerning ecology. It’s a very personal impression that I have. Every two years we meet at the German Kirchentag, where also Lutherans meet and there are some fighters for nature. I don’t see such groups fighting for nature in the Catholic Church. Do you think that there is a different idea of hierarchy in Catholic Church – God, human beings, animals, whatever, or do we, Lutherans, have a different idea of the world around us, just like Luther himself loved his dog, Tölpel. I was always wondering and discussing it with some friends, why there is not such an extreme ecological movement in Catholic Church as we could find one in the Lutheran Church.

Pablo BLANCO: I think there is: we Catholics understand the ecological movement in a broad sense, for example we speak about the defence of human life.
Viola Heutger: Yes, ok, but besides from human life.

Pablo Blanco: Why besides?

Viola Heutger: You are very strong in protecting human life, but what happens to animals and the rest of creation?

Pablo Blanco: Animals and plants are very important, not only because they are created by God, but also because we are animals, too. Animals that are – sometimes – rational... Yes, you are right: we should look for a common ground in all the issues. If we speak about environment, we must also agree not only on the issues related to animals, but also on the meaning of human life. I can’t forget the meeting of the European Churches Council for instance that took place in Sibiu, Romania some years ago. It was impossible to find a common statement about the defence of human life from its beginning to its natural end. This sentence was proposed by the Patriarch of Moscow, and it was impossible to arrive to a common declaration. We have to see the environment, life and all these topics “from the beginning”: we have to discover God’s desire in it. We can find there a common rule, not only regarding ecumenical aspects, but also from the point of view of other religions. When Ratzinger deals these topics he does it also in dialogue with Jews, with Muslims and with Buddhist and every other religion.
REFLEXIONS OF CLASSICAL IUS NATURALE IN THE PAPAL SPEECH*

JÁNOS ERDŐDY

In his 1998 book, Mario Bretone1 devoted a chapter to the phenomenon of natura in the Roman law sources. With this respect he wrote: “La natura, orientate in senso finalistico, reca un progetto dentro di sé. Siamo noi a ignorarlo nel caso concreto, e perciò ricorriamo a qualche calcolo o ipotesi”.2

The background for this statement is that Bretone asserts that people in ancient times must have been very much aware of their own place in the surrounding world, as a result of facing the eternal and indestructible nature.3 True as it may be, he is hiding behind kind of pathos, nonetheless, as he likewise points out that nature sometimes tends to create uncommon, or irregular entities, such as an earthquake, or a monstrous child.4 Besides the fact that the uncommon or irregular being of these events and entities could even be debated, suffice it to underline that Bretone’s approach starts from a fully different platform. He starts out from the aspect of the human beings of our age stating that it is contemporary cutting-edge science that enables us to successfully respond to the aforesaid irregularities, or even – again via modern scientific results – to become independent from nature itself. Consequently, Bretone – even if he himself is reluctant to admit – idealises a “modern” picture of mankind, the one which is independent of nature – and let’s add hastily far off from nature, therefore afraid,

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2 BREtone op. cit. 121.
3 Cf. “L’uomo antico sapeva a quale riva fermarsi. La sua condizione era stata determinata una volta per sempre. La natura si erge, maestosa, davanti lui: eterna e indistruttibile, oppure mortale machina mundi”. BREtone op. cit. 114.
4 Cf. BREtone op. cit. 116.

* This paper is the written from of my lecture held at the conference “Ins Herz geschrieben – Die Grundlagen des freiheitlichen Rechtsstaates” (10th June, 2013).
unsecure and uncertain at a time. Though with a bit of commercial or rather pop
 cultural scent, a practical example of this fear, insecurity and uncertainty could
 be evoked here, namely a documentary on Varanasi, India, or – as it is commonly
 referred to – on the City of the Dead. Two young Hungarian journalists were
eager to find out how people in Varanasi, and in general, how people overall in
India are able to cope with the everyday sight of death, even in the streets, how
come they do not fear death. Most people responded simply, appealing to the
cultural differences, when finally someone pointed out that Western people are
socialised in such a way to believe that they are able to subdue anybody and
anything by means of cutting edge technology – even nature itself. Therefore, if
we must face something we cannot subdue, and that particular thing overcomes
us with a 100% certainty, we fear and hate that thing. Consequently, we fail to
realise the innate reason and order of nature, resulting in such comfortable lies
that it is up to us whether we submit ourselves to this natural reason and order,
or on the contrary we try our best to get extracted from its scope. Bretone’s
aforesaid affirmation dates back to 1998. Pope Benedict XVI also had reference
to this issue in 2011. This shows best that some delusions – just like old habits –
die hard. As His Holiness formulated it in his speech: “[a]t a moment in history
when man has acquired previously inconceivable power, this task takes on a
particular urgency. Man can destroy the world. He can manipulate himself. He
can, so to speak, make human beings and he can deny them their humanity”.
This idea was expressed in a context, in which the main topic was the recognition
of what is right, and the traps related to such a recognition, with reference to
some everlasting mementos of the 20th century history. The underlying rhetorical
question is cited from Saint Augustine, which should likewise be quoted here,
though in a bit longer version:

De civ. Dei 4, 4, 1

Remota itaque iustitia quid sunt regna nisi magna latrocinia? quia
et latrocinia quid sunt nisi parva regna? Manus et ipsa hominum est,
imperio principis regitur, pacto societatis astringitur, placiti lege
praedae dividitur.

First, I hasten to point out that the original Latin text mentions “iustitia”, while
in the original German version of the Papal speech refers to “Recht”, and even the
Hungarian translation of *De civitate Dei* offers “jog” in the text. In the English version, however, “justice” is used, as R. W. Dyson puts it in his translation.\(^5\)

It would be interesting to find out the reasons for such diversity in the translations, luckily, the Latin original of the text is at hand, and therefore we can simply and more conveniently rely on it. As a second step, a lot more interesting choice would be to compare the text by Saint Augustine with one excerpt by Cicero from *De re publica*.\(^6\)

\[\text{Cic. de re publ. 1, 39} \]

\[\text{Est igitur, inquit Africanus, res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus.}\]

The prima facie similarities of the two texts are obvious, even spooky, on the second thoughts, however, it turns out that the two texts approach the same topic from two different angles. Cicero is aiming to focus on *res publica* first, establishing equality between *res publica* and *res populi*. Consequently, he simply avoids the burden of answering the vexing question about the true identity and meaning of *res publica*. Instead, he chooses to make reference to *populus* as the origin of *res publica*. Hence the accent is rather put on the issue what *populus* truly is. At this point, Cicero decides to point out what happens to be the farthest from *populus*, referred to as *hominum coetus quoquo modo congregatus*: association of men, however congregated. Similarly, he ventures to outline some basic reference points of *populus*. These are *iuris consensus* and *utilitas communionis*. The phrase *iuris consensus* is *ablativus instrumentalis*, and in this sense it expresses a means towards a certain goal, which happens to be *utilitas communionis*, as the final asset of being associated.

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\(^5\) “Justice removed, then, what are kingdoms but great bands of robbers? What are bands of robbers themselves but little kingdoms? The band itself is made up by men; it is governed by the authority of a ruler; it is bound together by a pact of association; and the loot is divided according to an agreed law”. *The City of God against the Pagans*. Translation by R. W. Dyson. New York, Cambridge University Press, 1998.

\(^6\) “Well then, a commonwealth is a constitution of the entire people. The people, however, is not every association of men, however congregated, but the association of the entire number, bound together by the compact of justice, and the communication of utility”. *The Political Works of Marcus Tullius Cicero. Comprising his Treatise on the Commonwealth; and his Treatise on the Laws*. Translated from the original, with Dissertations and Notes in Two Volumes by Francis Barham. London, Edmund Spettigue, 1841–1842.
The text by Saint Augustine in comparison starts from the “opposite end”: he begins with *latrocinium* in the centre, that is a band of robbers. It is *iustitia* that balances the scales: in the absence of justice kingdoms are nothing more than bands of robbers. At this point, the bishop of Hippo claims that observing by the surface, by the outlook, there’s no difference between *regna* and *latrocinia*, as both are made up by men (*manus et ipsa hominum est*), both are governed by the authority of a ruler (*imperio principis regitur*), and both of them are bound together by a pact of association (*pacto societatis astringitur*). Again, *lex* plays a preponderant role in both associations of men, with the remark, however, that in case of *latrocinia* agreed law serves as the basis for the division of loot (*placiti lege praeda dividitur*).

There are three pillars left to be closely examined, and linked: *populus*, *iustitia* and *utilitas communionis*. The link that brings these together is *iuris consensus*, the content of which was clear to everyone. It contained *ius civile*, *ius gentium* and *ius naturale* – the layers of *ius* in the Roman thought.

At this point, it could be said that all those sources that reveal the relation between *natura*, *naturalis ratio* and *ius* are widely known. Gaius and as a result correspondingly the Institutes of Justinian describe *ius civile* and *ius gentium*, focusing especially on the origin of these two sorts of *ius*, which all have in common in the first place that both are applicable in the community of each and every people governed by *leges* and *mores*. *Ius civile* is the result of a legislative activity, so that it’s an artificial entity, which the *populus* – previously depicted by Cicero (and afterwards by Saint Augustine) as the association of an entire number of persons, bound together by the *iuris consensus* to achieve *utilitas communionis* – made exclusively for themselves; consequently this *ius* is their own. In contrast to this, *ius gentium* is derived from *naturalis ratio*, since it is

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8 As for the use of *ius* instead of law or right, suffice it to refer simply to the title of Max Kaser’s famous work: Das altrömische *ius* – even the title of which suggests that there are several differences between *ius* and Recht.

9 Gai. 1, 1 = Inst. 1, 2, 1: *Omnes populi, qui legibus et moribus reguntur, partim suo proprio, partim communi omnium hominum iure utuntur*: Nam quod quisque populus ipse sibi ius constituit, id ipsius proprium est vocaturque ius civile, quasi ius proprium civitatis; quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur. *Populus itaque Romanus partim suo proprio, partim communi omnium hominum iure utitur.* Ulp. D. 1, 1, 1, 3 (1 inst.) = Inst. 1, 2 pr.: *Ius naturale est, quod natura omnium animalia docuit: nam ius istud non homani generis proprium, sed omnium animalium, quae in terra, quae in mari nascantur, avium quoque commune est. hinc descendent maris atque feminae conjunctio, quam nos matrimonium appellamus, hinc liberorum procreat, hinc educatio: videmus etenim cetera quoque animalia, feras etiam istius iuris peritia censer.
the naturalis ratio that created ius gentium for all peoples, so it is observed by all peoples alike. Then Gaius asserts that the Romans make use of both ius civile and ius gentium. The expression apud omnes homines peraeque custoditur implies, however, that this sort of ius is known and applied by people other than Roman. Naturalis ratio itself is in connection with natura, as well as with ratio, which is based on rerum natura.10

After having given in to the temptation to sketch the very outline of the primary meanings of ius civile and ius gentium, we should stay focused and concentrate exclusively on the scrutiny of ius naturale. His Holiness quoted Saint Paul, from his Letter to the Romans: “When Gentiles who have not the Law [the Torah of Israel] do by nature what the law requires, they are a law to themselves [...] they show that what the law requires is written on their hearts, while their conscience also bears witness [...]” (Rom 2, 14f).

If we compare this formulation to the Roman circumscription of ius naturale, we will surely get to some strange findings.

References to ius naturale in the sources of Roman law may as well come into two parts. On the one hand, those citations should be mentioned, where ius naturale is used as an explanatory or exemplificative means. On the other hand, there are some instances, where ius naturale is defined or circumscribed. With this regard, it is enough to refer to the following texts:

Ulp. D. 1, 1, 1, 3 (1 inst.) = Inst. 1, 2
Ius naturale est quod natura omnia animalia docuit. Nam ius istud non humani generis proprium est, sed omnium animalium, quae in caelo, quae in terra, quae in mari nascuntur.

This from Digest text by Ulpian and the consequent extract from the Institutes of Justinian describes ius naturale as an entity taught by natura to each and every animalia. Therefore, it is apparent from the text that ius naturale is not exclusively peculiar to humankind, but from a much wider aspect to other living creatures, as well, designated by the vague and manifold expression animal.11

10 In detail cf. Herbert Schambeck: Der Begriff der “Natur der Sache”. Ein Beitrag zur rechtsphilosophischen Grundlagenforschung. Wien, 1964. 18. Schambeck uses ratio in the meaning “Vernunft”, that is sense. Yet, it will be proven that the actual meaning of this word was somewhat wider.

11 The meaning of the Latin word animal is wider than its English equivalent’s, the relation between animal and animus or anima is significant. On this cf. e.g. Finały Henrik: A latin nyelv szótára. Budapest, Akadémiai Kiadó, 2002. 121–122.; Oxford Latin Dictionary op. cit. s. h. v.
Ulpian admittedly regards *ius naturale* as an independent source of law, which cannot be corrupted by any norms of *ius civile*. He presumes that a universal law of the nature is bound to exist, which is equally applicable to men and animals both, or even to any living creature. As evidence, he mentions marriage as the reflection of self-preservation. As Schambeck puts it Ulpian distinguishes the law of the nature and the law set by the sense: the previous is *ius naturale*, the latter is *ius gentium*, but he deduces both from the order of the nature. As a precision, it can be added that *ius gentium* is a consequence of the order set by the nature, while sense is a mere means of comprehending the order itself. In the Institutes of Justinian, however, the conceptual basis of *ius naturale* is a bit altered, since the Emperor emphasises the divine will, which guarantees the norms are unalterable. Until the age of Justinian *ius naturale* was the ideal law of regulative functions, while from Justinian it becomes a real order with constitutive aim. So, here *natura* is observed from the aspect of an unalterable law of the nature, which is considered as a creation of God.

As for the first group, however, that is the one where *ius naturale* comes up as a means of explanation, any indication of the form “*iure naturali*” will suffice.

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12 Schambeck op. cit. 14.
13 Schambeck op. cit. 14.
15 Schambeck op. cit. 22.
16 „War es bisher meist ein Idealecht mit regulativer Funktion, so wird es nun zu einer Realordnung mit konstitutivem Zweck.“ Schambeck op. cit. 23. This statement justifies that *ratio* actually refers to the reflection of order.
17 Yet, this hasn’t always been the dominant point of view. Stoic philosophy for instance puts the eternal and unchangeable law in the centre, which can be found both in the law of the nature and in norms of legal-moral content appealing to human sense. Humans carry this law of the nature, so this law is practically the essence of human nature. On this suffice it to have reference to Cicero, cf. e.g. Cic. de. leg. 1, 12.
18 Cf. Ulp. D. 1, 1, 4 (1 inst.): “[...] cum iure naturali omnes liberi nascerentur [...]”; Marci. D. 1, 8, 2, 1 (3 inst.): “Et quidem naturali iure omnium communita sunt illa: aer, aqua profluens, et mare, et per hoc litora maris”; Flor. D. 1, 8, 3 (6 inst.): “Item lapilli, gemmae ceteraque, quae in litore invenimus, iure naturali nostra stant”; Tryph. D. 12, 6, 64 (7 disp.): “[...] enim libertas naturali iure continetur [...]”; Mod. D. 38, 10, 4, 2 (12 pand.): “[...] quaedam cognitiones iure civili, quaedam naturali conectuntur, nonnumquam utroque iure concurrente et naturali et civili copulatur cognatio [...] sine iure naturali cognatio consistit per adoptionem”; Gai. D. 43, 18, 2 (25 ad ed. provinc.). “[...] proprietas et civili et naturali iure eius est, cuius et solum”; Licin. D. 44, 7, 58 (8 reg.): “Pupillus mutuam pecuniam accipiendo ne quidem iure naturali
From these an excerpt could be introduced here in which Florentinus is having reference to a particular classification of certain objects with regards to the way ownership is acquired over them.

Flor. D. 1, 8, 3 (6 inst.)

*Item lapilli, gemmae ceteraque, quae in litore invenimus, iure naturali nostra statim fiunt.*

According to the text precious stones, gems, and other things which we find upon the seashore also immediately become ours by *ius naturale*. The adverb *item* at the beginning of the text refers back to the previous fragment (Marci. D. 1, 8, 2, 1 [3 inst.]), in which Marcianus claims that certain things are common to all by *ius naturale*, while some belong to the entire community, some to no one, and the greater number to individuals. The importance of such a classification is that all these things are acquired in various ways respectively. Firstly, he asserts that things like air, running water, the sea, and hence the shores of thereof are common by *ius naturale*. In all these texts the ablative form, *iure naturali* serves as an instrument, as an agent, by which something takes place. Consequently, in these texts *ius naturale* can be regarded as the origin of any entity, as well as a means of explanation for the existence of such an entity.

Amongst the aforesaid instances, there is one more particular example that doesn’t in fact mention *ius naturale*, but rather *lex naturalis* – and this could serve us as a means of better understanding the Roman stance concerning the relation between *ius naturale* and *lex naturalis*. The text in question goes as follows:

Paul. D. 47, 2, 1, 3 (39 ad ed.)

*Furtum est contrectatio rei fraudulosa lucri faciendi gratia vel ipsius rei vel etiam usus eius possessionisve. quod lege naturali prohibitum est admittere.*

The cited passage defines *furtum*, that is theft, and the lawyer adds in the end that *furtum* is admittedly prohibited by *lex naturalis*. At this point it is inevitable to cite an excerpt by Cicero, in which he describes

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*obligratur*”; Ulp. D. 50, 17, 32 (43 ad Sab.): “*Quod attinet ad ius civile, servi pro nullis habentur: non iamen et iure naturali, quia, quod ad ius naturale attinet, omnes homines aequales sunt*”. 

Cic. de re publ. 3, 33 (= Lactant. Div. Inst. 6, 8, 6)\textsuperscript{19}

Est quidem vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna, quae vocet ad officium iubendo, vetando a fraude deterreare; quae tamen neque probos frustra iubet aut vetat nec improbos iubendo aut vetando movet.

There is indeed a true law, right reason, agreeing with nature, diffused among all, unchanging, everlasting, which calls to duty by commanding, deters from wrong by forbidding; which, however, neither commands nor forbids the good in vain, nor affects the wicked by commanding or forbidding.\textsuperscript{20} The underlying text is usually printed with the punctuation seen in this citation. However, comparing to other texts by Cicero (amongst which the other, already cited fragment from De re publica is to be mentioned as well), it turns out that another kind of punctuation is likewise possible, which goes as follows:

\begin{quote}
est quidem vera lex recta| ratio naturae congruens | diffusa in omnes | constans | sempiterna quae vocet ad officium iubendo | vetando a fraude deterreare | quae tamen neque probos frustra iubet aut vetat | nec improbos iubendo aut vetando movet.
\end{quote}

It is only the first line which should be discussed here: improbable as it may be, but on the second thoughts, ratio naturae shouldn’t be restricted with any attribute, as attributes always have a restrictive, separative character. In other words, when one says “recta ratio naturae”, such an assertion would imply that there must be a “prava ratio naturae” or even an “improba ratio naturae”. Yet, the situation is quite the contrary: there’s ratio naturae. Dot. Without any single description or further affirmation. If this is the case, we should say that vera lex recta (sc. est) – an elliptic sentence, which lacks the predicate. This is on the one hand not irregularly uncommon in Latin scripture, and on the other hand Cicero himself made several recourses on this. Suffice it to mention the above cited passage from De re publica, where he says: res publica res populi. The same sort of elliptic sentence! If we say that vera lex recta, it means that the

\textsuperscript{19} This text is cited in Divinae institutiones, an apology by Lucius Caecilius Firmianus Lactantius (ca. 240 – 320), an early Christian author who tutored the son of Constantine I. The quotation was taken from M. Tullius CICERO: Librorum de Re Publica Sex. Recognovit C. F. W. MÜLLER, Leipzig, Teubner, 1889.

utmost, or even the paramount characteristic of lex ought to be that it is recta. The adjective vera is linked with the noun veritas, which refers to something that actually takes place, which is real, which exists.\footnote{Cf. Oxford Latin Dictionary s.h.v.} Again, rectus, stemming from rego, designates something which is first and foremost straight, that is not crooked, and in an abstract sense, something which is right, or rightful.\footnote{Cf. Oxford Latin Dictionary s.v. 'rectus'.} Consequently, the actually existing law ought to be straight and rightful. In other words, if a law lacks this character, it is not considered as “actual law”, or as “a law that exists. I can’t help having reference to Gustav Radbruch and his well-known expressions “unrichtiges Recht” and “gesetzliches Unrecht” – where a law lacking the character of being recta would be the latter. I won’t deal with Radbruch’s life, or his works – I simply mention him here, with regards to the undeniable similarities. I do so, even if the comparison is and will always be defective, mainly because of the obvious anachronism. Still, these affirmations aren’t seem to be that far-fetched, if we think about Pope Benedict XVI cited the Book of Kings (1 Kg 3, 9), underlying “what should ultimately matter for a politician”: to have “a listening heart” in order that they “may govern God’s people, and discern between good and evil”. And more importantly, this should ultimately matter for a jurist as well, as we know it from Ulpian: aequum ab iniquo separantes, licitum ab illicito discernentes.\footnote{Cf. Ulp. D. 1, 1, 1, 1 (1 inst.)}
Nadja EL BEHEIRI: Es kann doch zunächst überraschen, dass der Papst im Bundestag Augustinus „falsch” übersetzt hat. Jemand der Augustinus so gut kennt, denn Ratzinger ist ja ein absoluter Augustinus-Kenner.

Viola HEUTGER: Ja, wenn man Augustinus im Kontext liest, denkt man, dass die Aussage im Bundestag eine perfekte Zusammenfassung ist. Wenn ich eben den ganzen Absatz lese, dann denke ich auch, hier könnte ich „Recht” sehr gut im Sinne einer Zusammenfassung schreiben, für die Ausführungen die in De Civitate Dei 4,4 stehen. Hier denke ich, dass Recht noch gerade gedeckt wäre, weil es eben aus dem Kontext zitiert wird, das ausdrückt, was im Endeffekt ausgesagt wird.

János ERDÖDY: Auch Professor Waldstein hat erwähnt, dass sich hier ein Fehler findet.

Viola HEUTGER: Ja, aber Waldstein selbst schreibt auch „aber jedem Menschen muss inne sein, die Einsicht zu dem, was Gerechtigkeit ist, nur dann kann man Recht schaffen. Waldstein würde sich hier mit seinem eigenen Schreiben wiederlegen und könnt somit meiner Theorie folgen.

Viola Heutger: Ja und darum ist hier wirklich der ganze Absatz zu sehen und es kann gesagt werden, inhaltlich erhalte ich hier das gleiche Ergebnis und ich kann den Text der Zielgruppe so doch besser zugänglich machen.


Anna Radványi: Waldstein hat aber oftmals die Übersetzungen ins Deutsche kritisiert.

János Erdődy: Ja, aber oftmals war die von Waldstein aufgeworfene Problematik im Ungarischen „korrekt“ übersetzt.

Jutta Hausmann: Hier finde ich die Lösung, die ihr dann gewählt habt, dass ihr in einer Fußnote Anmerkungen der Übersetzer hinzugefügt habt, als den einzig vernünftigen Ausweg.


Jutta Hausmann: Womit wir hier bei der ägyptischen Weisheit sind.

Nadja El Beheiri: Herr Professor Blanco, Sie haben ja zu diesem Thema bei Ratzinger gearbeitet, vielleicht können Sie hier etwas zu dem Ausdruck „ratio“ hinzufügen.


János Erdődy: Now, I choose to respond in English, if you don’t mind – that would be much simpler. If I should make a choice between a justice-related text or a religion-related text, I would definitely choose justice-related text. In this respect in case of Cicero I wouldn’t dwell into religion. In Roman religion especially if we think about the secondary literature which is stacking on Roman religion, only think about Wissowa’s “Religion und Kultus der Römer” also Kurt Latte’s “Römische Religionsgeschichte” which was bound to substitute Wissowa’s classical work, also we can have reference to Franz Altheim or Károly Kerényi from Hungary. Each of these people approached Roman religion from a different aspect. Now if we talk about religion at this point we should bear in mind that this text stems from Cicero, so we can’t set textual and chronological links aside. Therefore, when we talk about Cicero, we can only have reference to it at this sense. I don’t think about St. Augustine at this point. We can only have reference to with a ghost religion, the ancient Roman religion or the classical Roman religion, even if Cicero himself has such implications which come
in handy for a person which a Christian attitude. On the other hand however concerning justice – Gerechtigkeit – if we consider one of the very first excerpts from the Digest, a very famous one, where also Ulpian states that “ius est a iustitia appellatum” which is called to be a forced etymology but this kind of etymology is not uncommon in Roman law texts. We can for example refer to mutuum, which is a kind of loan for consumption. There Gaius, the great riddle of Roman law, says that it is called mutuum because “ex meo tuum fit”. With this regards, there is Fritz Schulz, also a famous Romanist, who in his “Classical Roman Law” says that the etymology of mutuum is still obscure. The one by Gaius is obviously a silly one – as he puts it. So we have such misconceptions, etymological misconceptions, but this Ulpian text “ius est a iustitia appellatum” indicates nonetheless that there was a strive for justice and not only in the late Justinian text can we say that “iustitia est constans et perpetua voluntas ius suum cuique tribuens”. It was Hervada, amongst others, who underlined ius as the goal, the target of voluntas, it was a constant strive for justice before and after. I think it is innate in constans et perpetua that the Romans somehow sensed something from it that it used to be, it was, it is and it will be. In a nutshell, I would say that also some other Roman texts should be considered as a postulate of justice.

László Virgil: Speaking of these two concepts “constans” and “sempiterna” I think that these don’t come from Roman religion, but from the stoic philosophy.

Pablo Blanco: Yes, but at the same time, this is also the nature of religion, isn’t it?

László Virgil: Stoicism?

Pablo Blanco: Yes.

László Virgil: You can say so. I’m going to talk about it in my contribution. But we should ask why it is derived the nomos from the physis. The law from the nature, but it is derived by the

János Erdődy: In addition, you can’t set the fact aside that even in the Teubner edition of Cicero it is pointed out, that especially this excerpt is derived from Lactantius. So we can’t be sure about the use of adjectives. I think Frivaldszky János could talk much about how certain adjectives changed in this ius naturale concept, mainly due to scholastics, for example.
László Virgil: But they were also influenced by the stoics, through the early Fathers of the Church. This is a very, very exciting issue and complex and complicated.


Nadja El Beheiri: But I think that religion in Roman society is situated on the level of “mos”, “mos maiorum”. Mos maiorum represents the Roman tradition; religion is situated on this level and also on the level of religio civilis, if you speak with St. Augustine. Law, natural law is situated on the level of religio naturalis and ius. Kaser pointed out, mos maiorum enables you to recognize natural law and so you have the religion as a background among other factors, like for example sense for beauty helps you to recognize natural law. Therefore, it is necessary to put yourself – and I think, Roman made a big effort to do so, into the position to be able to recognize what is right.

Viola Heutger: Was there a hierarchy between these elements?

Nadja El Beheiri: I think they were complementary.

János Erdődy: You can imagine them like circles, concentric circles.

Nadja El Beheiri: I wrote a book on the regimen morum of the Roman censors. I came to the conclusion that the task of the Roman censor, mainly in early times, was precisely to put the leaders of the Roman society – not only lawyers, but first of all the magistrates – into such a position to do their job in a proper way, to be able to act as a good man in the ancient sense of this term. The regimen morum was not a theoretical issue, but a very, very practical one. Later writers put a theory on it, but in the beginning, the regimen morum was a product of experience in society. But the regimen morum always move in the area of mos,
and not in the area of nature and natural religion. I think mos and early religion was on the level of religio civilis, law was on the level of religio naturalis.

János Erdödy: But if the censors made any measure based on mos maiorum, such a measure took a legal form, isn’t it so? And if so, it was made a part of ius again.

Nadja El Beheiri: The censors used legal measures to put mos into effect, they used legal instruments, but the content was not necessarily a legal one.

János Erdödy: So there was also this dichotomy in Roman thought. Religion itself was also a kind of superficial thing.

Pablo Blanco: But in the same time in his doctoral thesis, Ratzinger gave an analysis of religio civilis, and he says that Christianity refuses the relationship between religion and society because Christianity applies the principle of giving Caesar what belongs to Caesar and giving God what belongs to God. It is strange, however, because at the same time Ratzinger tries to find the common platform with other religions, still the separation persists. To give an example, suffice it to point out that today in Islamic world, and maybe amongst Jews, too, there is a fusion, but perhaps some kind of a confusion at a time between the two areas. Ratzinger tries to understand this pagan world but at the same time he is a little critical towards it on this issue.

Nadja El Beheiri: I have the impression that the text by Terrentius Varro is important when we try to understand the discourse of Ratzinger on this topic. The way I see it, Ratzinger says that pagan religion was on the level of religio civilis, and the level of religio naturalis was the one where Greek philosophy, Roman law and Christianity met. I think it was actually Jesus Christ whose concrete personality thus enabled religion to make the step from religio civilis towards religio naturalis.
1. Introduction

In his speech to the Bundestag on September 22\textsuperscript{nd}, 2011 Pope Benedict XVI said: „For the development of law and for the development of humanity, it was highly significant that Christian theologians aligned themselves against the religious law associated with polytheism and on the side of philosophy, and that they acknowledged reason and nature in their interrelation as the universally valid source of law. This step had already been taken by Saint Paul in the Letter to the Romans, when he said: ‘When Gentiles who have not the Law [the Torah of Israel] do by nature what the law requires, they are a law to themselves [...] they show that what the law requires is written on their hearts, while their conscience also bears witness [...]’ (Rom 2:14f.). Here we see the two fundamental concepts of nature and conscience, where conscience is nothing other than Solomon’s listening heart, reason that is open to the language of being.”\footnote{http://www.vatican.va/holy_father/benedict_xvi/speeches/2011/september/documents/hf_ben-xvi_spe_20110922_reichstag-berlin_en.html Last accessed: June 9th, 2013}

With this kind of argumentation Pope Benedict stands in the long line of interpreters who claim that St Paul’s aforementioned reasoning in the Epistle to the Romans provides a Scriptural attestation of natural law—thinking. My aim in this lecture is to exegetically scrutinize the referred broader Bible passage in details to determine the message of it as exactly as possible. We have to do so by also drawing up the contemporary Hellenistic thinking about natural law, which will enable us to discover certain contrasts with the apostle’s approach. Secondly, we will shortly delve into the ideas of some great thinkers of Christianity who
– in connection with their dealing with natural law –, also kept in mind these Pauline sentences.

2. The Hellenistic Background

Although we could talk about the related thoughts of several Greek authors from the sophists through Plato to Aristotle, in the Hellenistic ideological milieu of Paul’s age it was definitely the philosophical school of Stoicism, which provided a well-reasoned ethical system by integrating its ethics and cosmology. Its core idea is a logical pattern of behavior in a logical universe: in a universe governed by law the human being is also governed by law. According to Diogenes Laertios, this common law – *nomos koinos* – is embedded in nature and also in enlightened humans. The immanent law of Cosmos is prior, therefore, it should be discerned first and then it can be a pattern of the immanent moral law of the human being. As the Roman Catholic Biblical scholar John McKenzie sums it up correctly: “Nomos is the law of the universe, which is the Cosmopolis, and the laws of the particular Polis are valid only to the degree in which they are in harmony with the Nomos of the Cosmopolis. Justice is established by nature, not by ordinance.”

The one and only unifying principle of the universe is called by different names by the Stoics: Fire (*Pyr*), Spirit (*Pneuma*), Reason (*Logos*), Nature (*Physis*), God (*Theos*). Thus the Cosmos is ruled and governed by a *Logikon Hégemonikon*. The law, the *nomos* of the *Physis* is eternal and immutable. Anyhow, as John Martens evinces it, only the enlightened sages, the wise men were considered to be competent to recognize and to follow such a law by choosing the right course of action in complex situations. Those people, who do not participate in the *Logos* sufficiently, they are the ones in need of the local laws of the *Polis*. Wise people do not need these, since the law of the *Polis* - if it is really good-, stems from the universal *Logos*, which is grasped by them directly. This leads us to one of the core notions of Stoicism: *autarkeia*, that is, self-sufficiency. A person who is *autarkes* needs no other rule than his or her own *Logos*. To give an example,

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4 McKenzie (1964) op. cit. 5.
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suffice it to mention that Diogenes Laertios wrote about Socrates that he was “autarkes kai semnos”, that is, self-sufficient and venerable.⁶

As a conclusion, it is very important to emphasize that for Greek thinking the unwritten law (nomos agraphos) is something greater and more sacred than any statute or civil constitution.⁷ Here, very obviously, we can grasp the roots of natural law-thinking, that is, granting primacy to natural law over positive law.

Now, before turning our attention to the Apostle St. Paul, let us recall Pope Benedict’s words: For the development of law and for the development of humanity, it was highly significant that Christian theologians aligned themselves against the religious law associated with polytheism and on the side of philosophy, and that they acknowledged reason and nature in their interrelation as the universally valid source of law: ... (Rom 2:14f.) Here we see the two fundamental concepts of nature and conscience, where conscience is nothing other than Solomon’s listening heart, reason that is open to the language of being.” It is very clear that Pope Benedict’s argumentation is entirely parallel with the Stoic approach that I have just delineated. His understanding of St. Paul’s sentences from Romans 2 comes to us through the lenses of this thought-framework. So, let us scrutinize what the apostle is talking about in the broader context.

3. Romans

Romans 2:12-16: “¹²For as many as have sinned without the law shall also perish without the law; and as many as have sinned within the law shall be condemned through the law. ¹³For it is not the hearers of the law who are righteous before God, but the doers of the law will be counted righteous. ¹⁴For when Gentiles, who have not the law do by nature what the law requires, they not having the law are the law for themselves: ¹⁵they demonstrate the business/work of the law written in their hearts, their conscience also bearing witness, while their thoughts bring accusation or even make defense among themselves, ¹⁶in the day when God is to judge the secrets of mankind in accordance with my gospel through Jesus Christ.” (Professor James Dunn’s translation)⁸

3.1. Verse 12

When Paul refers to being “without the law/within the law” (anomos/en nomo) he uses a standard Jewish definition of the distinction between Jews and Gentiles. Jews are people of the Law, the Torah, while the Gentiles are those without the Law of Moses. For a devout Jew of that time, this was the chief identity factor and boundary marker which evidenced Israel’s distinctiveness among the nations. Although Paul uses this common distinction, the outcome of his argumentation goes to a peculiar direction. His main point is that in spite of the aforementioned distinction, in the final outcome of a sinning life there is no difference: judgment will not depend on whether someone comes from within the people of the Law or from outside. We have to keep in mind that the addressees of the Epistle to the Romans are Christians of both Jewish and non-Jewish origin, who very probably boasted against each other. Paul makes his point in relation to this circumstance: the impending impartial divine judgment takes no account of cultural or religious background. Therefore, we can claim that in this Bible verse the role of Law is clearly an identity factor, as it was perceived by Jewish people of Paul’s time. Consequently the Greek adjective “anomos” refers to the perception of Gentiles in Jewish thinking and not to a kind of “law-less” judgment of God on the Gentiles. Both Jews and Gentiles will be condemned by God with impartiality, because they sinned and not because they were with or without the Law.

3.2. Verse 13

In verse 13 Paul formulates another oddly sounding claim to contemporary Jewish ears by making a difference between hearing and doing the Law. Of course, emphasis on doing the Law was very characteristic to Judaism. But hearing (shama) also had a definitely positive connotation, because it meant an attentive or heedful hearing of God’s word. Israel’s encounter with God was always an acoustic phenomenon. (Cf.: Deut 4:10, 5:27; not to mention the daily prayer of

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9 Dunn (1988) op. cit. 95.
10 Dunn (1988) op. cit. 96.
12 The Greek verb “hamartano” (to sin) was well-known and frequently used not only in Jewish, but in Greek literature, as well. E.g.: We can find it by Homer, Sermonides, Aristotle, Sophocles, Aeschylus etc. Cf. Jewett (2007) op. cit. 210.
Shema based on Deut 6:4!) But pitting hearing and doing against each other was something pretty new,\textsuperscript{14} which was otherwise characteristic to the earliest Christianity (cf.: Matt 7:24-27; James 1:22-25) defining itself as distinctive in this sense from contemporary mainstream Jewish piety of those times. And again, this new distinction refers to the same categories as previously: those who hear the Law are the Jewish people – they listen to it from Saturday to Saturday in the synagogues. Those who do not hear it, those are the Gentiles. The novelty in Paul’s approach about hearing and doing is that he breaks through the boundaries of the covenant. For Judaism to be righteous and to be the hearer of the Law were counted as overlapping notions for the most part. As James Dunn puts it: “[…] the dominant strands in the Judaism of Paul’s time started from the presupposition of a favored status before God by virtue of membership of the covenant people, which could be characterized by the very link between ‘hearing the law’ and ‘the righteous’, which Paul here puts in question. Like his fellow Jews and the whole prophetic tradition, Paul is ready to insist that a doing of the law is necessary for final acquittal before God; but that doing is neither synonymous with nor dependent upon maintaining a loyal membership of the covenant people.”\textsuperscript{15} Thus, the category of doers of the Law includes both Jews and Gentiles in Paul’s thinking.

3.3. Verse 14

In verse 14 the direction of the argument gets reversed: previously it was from Law to act and now from act to the Law effecting it.\textsuperscript{16} Paul does not speak about Gentiles who always does what the law requires but that there are some Gentiles who time to time live as otherwise the Law prescribes it. It is remarkable that there is no article before the word “\textit{ethne}”, Gentiles. This word in plural with the article (\textit{ta ethne}) is a technical term: it is the translation of \textit{haggoyim}, all the nations apart from Israel. So, this is not about all the Gentiles, all the nations who follow their own natural law, but about certain Gentiles, whose behavior coincides with the prescriptions of the Torah. At this point we have to be aware of a very important feature of Paul’s understanding of the Law, as

\textsuperscript{14} Although there could be Jewish teachers phrasing this idea, as well. Rabbi Johannai (30BC) said: “Make the study of Torah into something solid: speak little but do much […] The main thing is not studying but doing.” Quoted by \textit{JEWETT} (2007) op. cit. 212.

\textsuperscript{15} \textit{DUNN} (1988) op. cit. 98.

well. The German New Testament scholar Ernst Käsemann phrases it like this: “In a way characteristic of the whole theology of the apostle, the Mosaic Torah is so identified with the divine law that there is no overall species ‘nomos’ […] Certainly the more general use of the term in the sense of ‘norm’ is familiar to the apostle from the Greek world. But he does not limit the Torah by making it one law among others. On the contrary, the Torah reaches out in a distinctive way beyond the sphere of Israel to the world […]”.17 Therefore, we can conclude that Paul does not assert the existence of natural law, but talks about some Gentiles who despite their ignorance of the Torah, act in line with the demands of that. This is not about the fulfillment of the whole Law, but about meeting the demands of the Law encountered in concrete situations.18 This is not a sort of conscious obedience to the Law. Gentiles do these things without recognizing the source of their actions; „their conformity to the Nomos is merely material not formal.”19 The implication of this is that this moral sensitivity they show will serve in place of the Law as a measure on the Day of Judgment. The fate of these people will be much better than of those who sinned within the confines of the Law.20 We could ask then what the basis for such kind of behavior is on part of some Gentiles, that is, doing by nature (physis) the things of the Law? Let us remark first, that physis in the dative case in the original Greek text of this Bible verse qualifies their identity rather than their behavior, given the fact of the absence of the Torah within the Gentile cultural background.21 So, what is the basis for them? It is their natural knowledge of God. Paul has written the following just shortly previously in the well-known passage of Romans 1:19-21: „For what can be known about God is plain to them, because God has shown it to them. Ever since the creation of the world his eternal power and divine nature, invisible though they are, have been understood and seen through the things he has made. So they are without excuse; for though they knew God, they did not honour him as God or give thanks to him, but they became futile in their thinking, and their senseless minds were darkened”. Therefore, a certain natural knowledge of God is characteristic to mankind similarly to the rebellion against Him. But when even this limited knowledge becomes the basis of conduct, then doing the things of the Law, or meeting the demands of the Torah (which latter one –let

17 KÄSEMANN (1994) op. cit. 62.
18 Cf. KÄSEMANN (1994) op. cit. 63.
19 McKENZIE (1964) op. cit. 7.
20 DUNN (1988) op. cit. 105.
us emphasize it here- is basically a written positive Law!) becomes possible without being aware of it. So, we can draw our conclusion in this issue with Hans Eckstein’s words: “The intention of Paul is not to reflect systematically on the possibility of moral norms among the Gentiles, but to emphasize the one point, that the exclusively understood pledge of election, the law, is also present among the Gentiles, so the ‘boasting’ of the Jews is ‘excluded’ (3:27)”.22

Let us shed some light on this question from a different angle! When Paul contends in this verse that those not having the Law are the law for themselves, he does not refer to the existence of another universal or unwritten law beside the Torah. Rather since Gentiles also experience the transcendent claim of the divine will, they become – as Käsemann distinguishes it – “not the law or a law, but law to themselves”.23

There is one more nuance we have to pay attention to. This Bible verse begins with the word “when”. “When Gentiles […] do by nature what the law requires […]” This “when” also contradicts the idea of a broadly accessible morality discerned in nature. Claiming that Gentiles show the work of the law when they by nature do the things of the Law does not say anything about how commonly the condition holds.24 It can both be rarely or frequently.

I have to mention that there is a minority opinion among theologians about the Gentiles of this passage. St Augustine, Karl Barth and Robert Jewett - just to mention the most important authors from this group - claim that in these Bible verses Paul talks about Christians of Gentile origin. It would lead us far and stretch the frames of this presentation to discuss the arguments and counter-arguments here and now. Let it suffice for us that this minority opinion has to face serious challenges and me myself do not support it either. Anyway, this question does not concern our basic problem, whether there is a natural law argumentation in Romans 2 or not.

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23 KÄSEMANN (1994) op. cit. 64.

3.4. Verse 15

What we have in front of us in verse 15 is the continuing of the sentence of verse 14 with three clauses, providing proof or substantiation of the claim we had there. Let us see these three witnesses.

a) “They demonstrate the work/business of law written in their heart”
Let us notice that Paul neither talks about the law written in their hearts, nor the works of the law written in their hearts, but about the work of the law in singular. In the first case we have two Old Testament resemblances. Jeremiah 31:33 says: “But this is the covenant that I will make with the house of Israel after those days, says the Lord: I will put my law within them, and I will write it on their hearts; and I will be their God, and they shall be my people.” According to the Greek Septuagint version of Isaiah 51:7: “Listen to me, you who know righteousness, you people who have my law in your hearts”. In other loci Paul regards the fulfillment of the Jeremiah-promise in the gift of the Holy Spirit to Christians. But here it is not the case.

It is also not about the “works of the Law” in plural. This technical term in plural (ta erga tou nomou) is frequently used by Paul in a negative way opposed to the idea of justification by faith, e.g.: in Gal 2:16, 3:2.5.10; Rom 3:20.28). The singular form anyhow avoids the negative connotation of the plural one since this work of the law is written in the heart. In Biblical anthropology heart is the center of the human being, the inward person, the rational, emotional and volitional center of them. Therefore, there is a palpable contrast between the singular and the plural phrase. Paul, similarly to Jesus Christ, criticizes the works of the Law several times as an outward concern, carried out without the work of Law in the heart, which is an inward concern. Law in this sense and Gospel coming up in verse 16 are not in contradiction to each other, at all.

Since this clause of verse 15 we are talking about is usually the main reference point about natural law, we should not forget an issue we have already discussed before. In Paul’s view this is not a claim of existence of a sort of universal law written in the hearts of people. Rather his point is that Gentiles do not have the advantage of the Jewish people having a written Law on the tables of God. What they – some Gentiles and not the Gentiles, the nations - have is something written within, that is, the work of the Law, when they do the things of Law by nature.

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25 Cf. 2Cor 3:3, 3:6; Rom 2:29; Phil 3:3.
b) “Their conscience also bearing witness”

Talking about conscience (syneidesis) Paul does not have in mind the modern notion of that shaped by the Stoic view as an inner guiding voice of God. For Paul, conscience is an anthropological phenomenon of the knowledge whether “a particular action is consistent with the internalized standard.”  

It is basically a painful or disturbing awareness, which assesses and condemns deeds, therefore, in a secondary sense it can be a guide though: those who want to avoid pain will avoid certain acts, transgressions that lead to that. Anyhow, in this Bible verse what Paul appeals to is not simply conscience but the testimony of the activity of the conscience, which confirms the evidence of the “law’s effect on the heart”.

The point again is that the Law will give no special advantage to the Jews at the final judgment since Gentiles will also have the advocacy of conscience.

c) “And their thoughts bringing accusation or even making defense among themselves”

Here we can find clearly a forensic, legal language. In this third clause, one more evidence is enumerated about the moral consciousness characteristic to people outside of the Law. The forensic scenario takes place in the inner person. The conflicting thoughts, the inward moral conflict among the Gentiles, provide us a third witness to the moral consciousness existing among those outside of the Law.

Summarizing with James Dunn’s words: “Here, Paul’s readers would note, is a doing of (the things of) the law which is essentially an inward matter, at the level of heart and conscience and thought, and which Paul sets in approving antithesis over against Jewish pride and confidence in possessing the law”.

3.5. Verse 16

All of these will come to surface on the Day of the Judgment. This verse is the ending of the sentence that was begun in verse 14.

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26 Jewett (2007) op. cit. 215.
28 Dunn (1988) op. cit. 106.
4. Reception History

After examining these Bible verses, the question emerges for us, what are the reasons for Pope Benedict XVI to interpret this passage along the lines of the natural law understanding of the Greek philosophical tradition? The answer can be found in reception history (Wirkungsgeschichte). We do not have the time to go through this in its entirety, since it would require writing a whole book. I am about to highlight only a couple of instances in a very sketchy way.

Already Clement of Alexandria (c 150-211 AD) built heavily on the thoughts of the Jewish thinker Philo of Alexandria, who tried to assimilate Stoic and Biblical thought. With Clement, Greek natural law-thinking gained more and more acceptance and influence in Christianity. For Clement natural law is the law of right reason which is natural reason. 29 His disciple Origen gave a huge impetus for the further development. He occasionally cites Paul’s reference to the “law written on their hearts”. In his view human beings have a capacity to understand divine teaching because of the rational nature received from God. “It is in particular the natural law [lex naturalis] which God gave to the human race, and wrote in the mind of all men: whence we get the principles and those seeds we have received for examining the truth”.30 According to Origen, Paul alludes to an intellectual capacity similar to the Stoic spermatikos logos, which allows men to grasp the truth.

St. Ambrose identified natural law with the Mosaic law, explaining that the latter confirms and extends the former. In his opinion, Paul’s reference to the inner law of the Gentiles is about natural law. He also claimed that moral reason (synderesis) cannot be extinguished even in Cain. 31

Also St. Augustine connected natural law with „the unwritten law of the Gentiles” derived32 from Rom 2:14-15. For him natural law is universally binding, although it has been almost entirely obscured through sin. He also associated the natural law with the image of God, which he interpreted as the rational soul.

30 Brian DUNKLE S.J.: A Development in Origen’s View of the Natural Law. Pro Ecclesia, Vol. XII, No. 3. 341.
32 I use the word “derived” deliberately. As we could see, it is not about “the unwritten law of the Gentiles” but about the work of the Law written in the hearts of some Gentiles, when they act in accordance with the Mosaic Law.
Hence, on his view, the natural law is innate; it is coeval with the creation of the first human beings; it cannot be eradicated. Finally, in common with many other patristic authors, he connected the natural law to the Golden Rule and the Decalogue. The former, he said, is a basic moral norm known to all, and from this rule it would be theoretically possible to derive at least the fundamental principles of morality. At the same time, given the pervasive effects of sin, our moral knowledge is at best limited and corrupt. For this reason, God has mercifully formulated the fundamental precepts of the natural law in the Mosaic law, particularly in the Decalogue. Hence, the latter can be considered to be a written formulation of the natural law”.  

St. Thomas Aquinas builds on the Aristotelian dichotomy between the natural and the supernatural spheres. Therefore, both the believer and the unbeliever live according to the natural law. God’s revelation, which is available only in the Church, merely supplements the natural order. For St. Thomas natural law (lex naturalis) is a sharing from within (or participation) of the Eternal Law, but not something “otherwise different from that first and highest law in the mind of God: ‘the natural law is nothing else than the rational creature’s participation of the eternal law.’ This participation is available to all humans independently of any reception on their part of divine supernatural revelation: the natural law is observed whenever humans both engage in correct practical reasoning about what is good and best for them overall in any given situation and when they act in accord with that rational determination”.  

Modern natural lawyers like Hugo Grotius or John Locke tried to develop their theories of natural law on purely rational grounds, without appeal to revelation, and they have then turned to Scripture to confirm their constructs. Comparing to them the earlier Medieval scholastics also held that natural law is grounded in reason. Notwithstanding, at the same time, they understood “reason” in theological and Scriptural terms. Therefore, they did not try to derive a system of natural law out of purely natural data or rationally self-evident intuitions. And this is the reason why they appealed to Scripture to establish specific points of natural-law morality.

As a Lutheran theologian I cannot help but to say a couple of words also about Martin Luther, as well. He, just like other contemporary Reformers as Melanchthon, Zwingli and Calvin even if with differences, but all understood Romans 2 in the light of Natural Law thinking. Luther had a sermon series of seventy-seven pieces based on the Book of Exodus in 1525. He titled the twenty-ninth: “How Christians Should Regard Moses.” In this sermon he provides seven basic insights about natural law. In the second insight Luther leans on Romans 2:15. Luther is definitely conventional here by attesting that God writes the law on the hearts of all the nations of the world. For Luther natural law is a practical primary principle in the sphere of morality, while positive law is a decision that takes circumstances into account and conforms with natural law on credible grounds. The basis of natural law is God who has created this light, but the basis of positive law is civil authority. 37

5. Conclusion

A Biblical text’s message is not confined to what we can mine out of it by historical-critical methods or by certain social-scientific means. A reception history of our scrutinized Bible passage from Romans 2 exercised such a huge impact on theological and legal thinking of the last two thousand years in a peculiarly substantial way, which is almost exceptional. We can see that Pope Benedict XVI with his interpretation of Romans 2 stands firm and organically in the long line of theological thinkers of the two millennia behind us. It can be said that this history of interpretation was informed and formed by extrabiblical motifs to a great extent, namely, by the hermeneutical insights of Greek philosophy. Nevertheless, basically all the great historical thinkers of the Christian church from East and West, regardless of their denomination, leaned on this hermeneutical framework bequeathed to us through the Earliest Church Fathers the Medieval Scholastics, the Reformers and even by Pope Benedict XVI. Therefore, it will irrevocably and irreversibly belong to our common intellectual and cultural heritage till the end of time.

37 Gary M. Simpson: “Written on their hearts”. Thinking with Luther about Scripture, Natural Law, and the Moral Life. Word & World, 30 No. 4, Fall 2010. 421.

Pablo Blanco: I would like to start with the end of your contribution. If I remember correctly, Martin Luther first speaks about the commandments in his catechism putting them in the first place and into relation with creation. Creation is the one that gives us the commandments, and later God gives them explicitly to Moses. It’s not only important in the order of salvation or redemption, but also in the order of creation. In Luther’s Catechism, the commandments precede the creed. In contrast to this, in the Catechism of the Catholic Church, we have the creed first, then the sacraments, because the grace for everybody comes through sacraments and in the third place the commandments. In my opinion, this difference justifies the doctrine. When St. Paul speaks to Gentiles in Romans chapter 2, versus 15, he mentions “a law written in their hearts”, and he adds later that they have no excuse; “their conscience also bearing witness, and [their] thoughts the mean while accusing or else excusing one another”.

László Virgil: The Jews are the ones who have no excuse. Because here St. Paul wants to demonstrate that despite the fact that the Gentiles are without the Law (Torah), but they have these three instances which demonstrate that they are the law for themselves, according to which God will judge them on the day of judgement. When they act in line with the Torah, then the work of the law is written in their heart. The second one is their conscience, and the third one are their thoughts accusing and defending among themselves. The second and the third are really close to each other, the conscience and the thoughts, which accuse or defend themselves, though they are not entirely the same. Although these examples show that the Gentiles are law to themselves, but the discourse is not
about natural law, I mean a universal natural law that is written in their hearts as a basis of which they can act because the best they can do is to act according to the Torah, the Law even unconsciously.

Pablo Blanco: Maybe, this is the union that Paul finds – not only between Jews and Christians but also between Jews and Gentiles. Perhaps we should try to find again this union or synthesis in Christ, of course. Therefore, my question goes back to the beginning of our meeting. Should we understand natural law as the Ten Commandments? Is there only the Mosaic law for Christians, or is there a wider or a more universal law for everyone?

Jutta Hausmann: You’ve just mentioned that Jews, Christians and Gentiles, I assume that in the thinking of Paul we should not make such a differentiation, you can say pagan, but I am not quite sure if we can denominate everybody who is not a Jew as a Gentile. We have Gentiles being followers of Christ, but Paul didn’t speak about Christians, so it is difficult to say that we have three categories. I suppose what you are looking for is the term “Gentiles” and for Gentiles, it will not be the Ten Commandments. It’s already the Torah, I don’t know, if you agree.

László Virgil: I think you are right, because it was St. Augustine who made this simplification that it is the Ten Commandments basically, but I think, what Paul has in mind is the Torah, as a whole, the law, which is a revealed law. The main point is that it is revealed as a whole. But of course there is a distinction between the to ergon tou nomou, which is the work of the law and the ta erga tou nomou: the works of the law, as I mentioned as an inward or an outward approach. Jesus Christ did the very same about the Pharisees: “For you pay tithe of mint and anise and cummin, and have neglected the weightier matters of the law: justice and mercy and faith” (Mt 23:23). So, you do all these outward things but in your heart, inward, you are like a painted sepulchre. I think this is the very same reasoning. Paul stands in the line of the prophetic tradition, the prophets write the very same. We read in the prophetic literature that God says: I do not want you burnt offering, don’t tear your cloths but tear your hearts. I think that is the very same logic.

Pablo Blanco: So does the change of the approach come from St. Augustine not from the Greek philosophy?
László Virgil: Maybe I was not entirely exact, I just reflected on this Ten Commandments issue.

Pablo Blanco: So I think it is the point of correctly understanding this versicle.

László Virgil: But again, you can see, for Ambrosius the Mosaic Law was the natural law, which is pretty exciting since the Mosaic Law is a written positive law. Of course, natural law elements are formulated in it, you can say the Ten Commandments can be a basis for that, but I think, that will not work.

Jutta Hausmann: The Ten Commandments are not formulated in an imperative version, but or in future time or in present time. They just say you will not kill, you will not steal, you will not

Pablo Blanco: But the first commandment is affirmative…

Jutta Hausmann: It’s affirmative in a way that the Ten Commandments start in a way I brought you out from Egypt, so there will be no other God then me for you. So you will not make pictures, images, you will not use my name in a way I cannot agree with, and you will not, you will not.

Pablo Blanco: But the question is whether it is written in the hearts of the Gentiles. I mean the Mosaic Law is much wider than the Ten Commandments.

Jutta Hausmann: I don’t think the New Testament, or the Old Testament reflects that the Ten Commandments are written in the hearts of the Gentiles, either. They are specifically given to Israel, they are connected to the Exodus, to bring out the people of Israel from Egypt. It is connected to one of the deeds of God for his people and so I think we cannot say in a general way that it is written in the heart of the people, of the Gentiles. When we have a look at the commandment “liebe Vater und Mutter auf dass Du lange lebest im Lande”, it is the land of Israel. I think it is really connected, I would be very careful to say that the Ten Commandments are that is written in the hearts of the Gentiles. I can only imagine, if we have a look at what is written in the hearts of the Gentiles, it is much more general. Respect for each other, the respect for God. Perhaps we can have a look on the Old Testament in Jonah Chapter 1.

Jona flieht, weil er keine Lust hat, den Leuten in Ninive Gericht zu predigen, so nach dem Motto, die sind so schrecklich, wenn ich Gericht predige, dann kehren
sie um und dann ist alles wieder gut, also dazu habe ich keine Lust. Da kommt er auf ein Schiff und sie sind im Sturm und hier sind auch die nichtisraelitischen Seeleute und dann heißt es, dass jeder zu seinem Gott betet und es geschieht nichts und sie erinnern sich, dass sie noch einen weiteren Fahrgast haben, der im Bauch vom Schiff schläft. Da beschließen sie, vielleicht ist es Dein Gott und bei Dir stimmt etwas nicht und dann zeigt sich, dass Jona die Ursache des Sturmes ist, weil er etwas gemacht hat, was nicht in Ordnung war und Gott deswegen das Meer aufwühlt. Dann kommt die Sache in Ordnung, der Wind hört auf und sie kommen heil ans Land. Aber was geschieht dort? Diese nichtisraelitischen Seeleute bauen einen Altar, bringen Opfer dar, danken dafür, dass sie heil gerettet wurden und damit hört das Kapitel auf und man kann sich die Fortschreibung denken, sie steigen wieder auf ihr Schiff und fahren weiter und der Gott Israels ist irgendwie einer unter den vielen anderen Göttern, jetzt war eben gerade er zuständig. Ich denke, dieses Beispiel zeigt, wie man sich das alttestamentlich vorstellen kann, dass die Nichtisraeliten ein Gespür dafür haben, dass man nichts tun darf womit man Gott, diesen Gott verärgern kann, aber das Leben geht dann eben weiter. Ich denke, dass ist ein charakteristischer Text, in dem deutlich wird, wie man sich das vorstellen kann, dass in den Nichtisraeliten, in den Heiden etwas angelegt ist. Aber es ist eben nicht konkret.

László Virgil: You can see also in the small prophet, Malachi that the offering you made is a bad one, but from sunrise to sunset, they suggest me offerings that have good smell. I would say only one sentence. When I said that this verse in Romans is not about natural law, I do not say that the Bible does not have any reference to natural law. I wouldn’t dare to say that. For example, I have one thing in mind, maybe I am wrong, but when Jesus is asked about giving a divorce letter to a woman, it is there in the Mosaic Law, but Jesus says this was not so from the beginning. Moses allowed it to you because of the hardness of your heart. Look it up in the Torah and you will find that it was God who said: give a divorce letter to the woman. How does it work, “it was not like that in the beginning”, does it refer to Paradise? As a result, what Jesus is referring to is behind the Torah.

Pablo Blanco: So natural law isn’t equal to Mosaic Law. At least from this point of view.

László Virgil: I think that Mosaic Law is definitely a positive law, it is not natural law, it’s a written positive law.
Pablo BLANCO: So we agree in this sense, but the Mosaic Law – I mean not all the Torah, and especially the Ten Commandments – also contains the main principles of natural law.

László VIRGIL: That is the tragedy, however, when they tried to regulate all possible life-situations in a casuistic way, after a while it becomes very difficult to live in accordance with such a legal system.

Jutta HAUSMANN: The sense of law cannot be reached any more.

László VIRGIL: Yes, it’s a very casuistic law, you have those 39 activities that you are not allowed to perform because when they rebuild the walls of Jerusalem in the time of Nehemiah they performed these. Now when you commute on electric vehicles you have to do something because you cannot apply what is written there.

Nadja EL BEHEIRI: Could the term “work of the law” be something similar to justice in a very broad sense?

László VIRGIL: I try to understand it as a reference to an actual, particular situation. When some Gentiles act in line with Torah, the work of the Law is written in their hearts. I would understand it in this way.

Nadja EL BEHEIRI: St. Paul speaks about „ergon tou nomou”. If we consider ergon as the peculiar activity of man, the activity, an activity in accordance with the dynamis of man, then we could draw the conclusion, that ergon in St. Paul refers to a specific human activity. Nomos might be the law that is peculiar to human beings, therefore reason.

László VIRGIL: I would say this is clearly the understanding of the last two thousand years of Christian thinking.

Nadja EL BEHEIRI: Yes, but you find the same approach also in Roman jurists. When they derive law from justice they but there attention precisely to the specific way of acting in human beings. A similar argument you can find also in the Nichomachean Ethics of Aristotle.
László Virgil: Yes, but in Jewish thinking law is not valid because of its conformity with justice. Law is valid because it is revealed by God, it comes from God. Of course, God is the source of justice, as well, but the main point—and this applies for apostle Paul as well—in this passage is that what Gentiles do unconsciously when they act in line with the law, which is the Torah, then the work of law is written in their hearts.

Viola Heutger: Do they act first and then is it written?

János Erdődy: It’s always something that is ongoing, so it’s simultaneous. If it is an ongoing activity, so what is its final purpose?

László Virgil: I don’t think Paul is speaking about it, but it is certain that the work of law written in their hearts is not prior to the activity according to the law for Gentiles. You see, when they act like this, the work of the law is written in their hearts. The natural law thinking says it is written in their hearts therefore they act.

Nadja El Beheiri: I think the natural law thinking does not part from a product, a Codex, which is written in your heart but it is the faculty to recognize, we remember the example from today in the morning that something is wrong or right you recognize it. It’s not the same if you have a modern Codex or also the Torah. I think it might be a little bit different if you say it’s not a product which is written in your heart but it is the possibility of recognizing in the very moment the basic principles about what is good or evil. This you can see also in the example with the fornication we can think about Cicero and other ancient authors, if you do fornication or other bad things your mind will be become obscure, so you will not be able anymore to recognize what is wrong or what is right.

Nadja El Beheiri: It’s the same thinking, first acting and afterwards it comes the law. The Nichomachean Ethics, the Digest and your interpretation of Paul shows in the same direction. I think, perhaps that tradition, the fathers of the Church wanted to make it easier for people when they said that the law is written in the heart.

László Virgil: I agree with this, but the only aspect I would like to emphasise is that Paul does not try to reveal on what basis Gentiles act in line with the law.
It is not a concern for him. There is only one law, the revealed Mosaic Law and according to Paul, for Gentiles there is no law, they are law for themselves.

Viola Heutger: Will Gentiles be more complete, they have their own laws and then their hearts is filled up with all the works whatever they do, what is the final result?

Pablo Blanco: Paul writes to Christians who are coming from Gentiles. Am I right?

László Virgil: But in this passage, the addressees are the Jewish Christians. Because the point is that he tells them that they don’t have anything to boast with saying: well, we have the Law and therefore we are in an exceptional position because God will judge with impartiality both Jews and Gentiles. Not only Gentiles, Christians coming from Gentile origin, but Gentiles as well.

Viola Heutger: Can these Gentiles become complete like Jews let’s say when they always act according to the works of the law can they be filled up.

Jutta Hausmann: Wenn Du daran denkst, dass wir ja das sog. Apostelkonzil haben, von dem in der Apostelgeschichte gesprochen wird, wo die Frage auftaucht, ob die Leute, die aus den Völkern kommen, sich beschneiden lassen müssen, um erst einmal Juden zu werden, damit sie Anteil haben können an allem. Im Ergebnis wurde dann die Entscheidung getrofen, dass es auch ohne Beschneidung geht und dass sie auch nicht alle Kultgesetze usw. einhalten müssen. Das ist insofern eine Antwort auf Deine Frage, dass das für die Leute, die aus den Völkern kommen rausfällt. Was aber soziale Gesetze usw. betrifft, dann sehen wir, dass neutestamentarische Gesetze sich von alttestamentarischen nicht unbedingt von der Grundtendenz her unterscheiden. Die an das Judentum gebundenen Kultgesetze fallen für die aus den Heiden, aus den Völkern kommenden weg, aber hier kommt die Frage nach der Gerechtigkeit noch einmal ein Stück herein, hier haben wir einen Kontext mit Blick auf den Monotheismus, wenn wir hier noch einmal den Blick auf die religiöse Dimension ausweiten, den Sabat einhalten, den Gottesnamen nicht missbrauchen, keine Kultfiguren herzustellen. All das was wir im Dekalog haben gehört nicht abgelehnt, der Dekalog stellt eine Zusammenfassung dar. Das ist eigentlich etwas was im Neuen Testament nicht in Frage gestellt wird, aber sie müssen nicht sozusagen jüdische Menschen werden, im Sinne einer Volkszugehörigkeit.
László Virgil: I think the earliest Christianity was not so homogeneous. You can see it in Galatians Chapter 2. When people coming from James, from the Jerusalem community, and Peter is already in Antioch, St. Peter gets into hypocrisy. Paul rebukes him, and so does Barnabas, because they acted like non-Jews eating with Gentiles, and then when people coming from James appeared, they didn’t want to get in touch with non-Jews. I think that it wasn’t so clear where the boundaries between Jews and Christians lied. There was an interim between the Roman procurators in Jerusalem. I think it was Gessius Florus who parted, and there was no new procurator and the High Priest had James killed. When the new procurator came, the Pharisees accused the High Priest because James was such a devoted person in their eyes, and by the way, the leader of the Christian community in Jerusalem. The Pharisees accused the High Priest and the High Priest lost his position because of James, since according to the Roman authorities the Pharisees stepped up in favour of James. So, I think the boundaries were not so clear in the beginning between Judaism and Christianity.
Sehr geehrter Herr Bundespräsident!
Herr Bundestagspräsident!
Frau Bundeskanzlerin!
Frau Bundesratspräsidentin!
Meine Damen und Herren Abgeordnete!

Es ist mir Ehre und Freude, vor diesem Hohen Haus zu sprechen – vor dem Parlament meines deutschen Vaterlandes, das als demokratisch gewählte Volksvertretung hier zusammenkommt, um zum Wohl der Bundesrepublik Deutschland zu arbeiten. Dem Herrn Bundestagspräsidenten möchte ich für seine Einladung zu dieser Rede ebenso danken wie für die freundlichen Worte der Begrüßung und Wertschätzung, mit denen er mich empfangen hat. In dieser Stunde wende ich mich an Sie, verehrte Damen und Herren – gewiß auch als Landsmann, der sich lebenslang seiner Herkunft verbunden weiß und die Geschicke der deutschen Heimat mit Anteilnahme verfolgt. Aber die Einladung zu dieser Rede gilt mir als Papst, als Bischof von Rom, der die oberste Verantwortung für die katholische Christenheit trägt. Sie anerkennen damit die Rolle, die dem Heiligen Stuhl als Partner innerhalb der Völker- und
Staatengemeinschaft zukommt. Von dieser meiner internationalen Verantwortung her möchte ich Ihnen einige Gedanken über die Grundlagen des freiheitlichen Rechtsstaats vorlegen.


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1 *De civitate Dei*, IV, 4, 1.
In einem Großteil der rechtlich zu regelnden Materien kann die Mehrheit ein genügendes Kriterium sein. Aber daß in den Grundfragen des Rechts, in denen es um die Würde des Menschen und der Menschheit geht, das Mehrheitsprinzip nicht ausreicht, ist offenkundig: Jeder Verantwortliche muß sich bei der Rechtsbildung die Kriterien seiner Orientierung suchen. Im 3. Jahrhundert hat der große Theologe Origenes den Widerstand der Christen gegen bestimmte geltende Rechtsordnungen so begründet: „Wenn jemand sich bei den Skythen befände, die gottlose Gesetze haben, und gezwungen wäre, bei ihnen zu leben […], dann würde er wohl sehr vernünftig handeln, wenn er im Namen des Gesetzes der Wahrheit, das bei den Skythen ja Gesetzwidrigkeit ist, zusammen mit Gleichgesinnten auch entgegen der bei jenen bestehenden Ordnung Vereinigungen bilden würde […]“ ²

Von dieser Überzeugung her haben die Widerstandskämpfer gegen das Naziregime und gegen andere totalitäre Regime gehandelt und so dem Recht und der Menschheit als ganzer einen Dienst erwiesen. Für diese Menschen war es unbestreitbar evident, daß geltendes Recht in Wirklichkeit Unrecht war. Aber bei den Entscheidungen eines demokratischen Politikers ist die Frage, was nun dem Gesetz der Wahrheit entspreche, was wahrhaft recht sei und Gesetz werden könne, nicht ebenso evident. Was in bezug auf die grundlegenden anthropologischen Fragen das Rechte ist und geltendes Recht werden kann, liegt heute keineswegs einfach zutage. Die Frage, wie man das wahrhaft Rechte erkennen und so der Gerechtigkeit in der Gesetzgebung dienen kann, war nie einfach zu beantworten, und sie ist heute in der Fülle unseres Wissens und unseres Könnens noch sehr viel schwieriger geworden.

Wie erkennt man, was recht ist? In der Geschichte sind Rechtsordnungen fast durchgehend religiös begründet worden: Vom Blick auf die Gottheit her wird entschieden, was unter Menschen rechtens ist. Im Gegensatz zu anderen großen Religionen hat das Christentum dem Staat und der Gesellschaft nie ein Offenbarungsrecht, nie eine Rechtsordnung aus Offenbarung vorgegeben. Es hat stattdessen auf Natur und Vernunft als die wahren Rechtsquellen verwiesen – auf den Zusammenklang von objektiver und subjektiver Vernunft, der freilich das Gegründetsein beider Sphären in der schöpferischen Vernunft Gottes voraussetzt. Die christlichen Theologen haben sich damit einer philosophischen und juristischen Bewegung angeschlossen, die sich seit dem 2. Jahrhundert v.

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Chr. gebildet hatte. In der ersten Hälfte des 2. vorchristlichen Jahrhunderts kam es zu einer Begegnung zwischen dem von stoischen Philosophen entwickelten sozialen Naturrecht und verantwortlichen Lehrern des römischen Rechts. In dieser Berührung ist die abendländische Rechtskultur geboren worden, die für die Rechtskultur der Menschheit von entscheidender Bedeutung war und ist. Von dieser vorchristlichen Verbindung von Recht und Philosophie geht der Weg über das christliche Mittelalter in die Rechtsentfaltung der Aufklärungszeit bis hin zur Erklärung der Menschenrechte und bis zu unserem deutschen Grundgesetz, mit dem sich unser Volk 1949 zu den „unverletzlichen und unveräußerlichen Menschenrechten als Grundlage jeder menschlichen Gemeinschaft, des Friedens und der Gerechtigkeit in der Welt“ bekannt hat.


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und Wirkung miteinander verbundenen Seinstatsachen“ ansieht, dann kann aus ihr in der Tat keine irgendwie geartete ethische Weisung hervorgehen. Ein positivistischer Naturbegriff, der die Natur rein funktional versteht, so wie die Naturwissenschaft sie erkennt, kann keine Brücke zu Ethos und Recht herstellen, sondern wiederum nur funktionale Antworten hervorrufen. Das gleiche gilt aber auch für die Vernunft in einem positivistischen, weithin als allein wissenschaftlich angesehenen Verständnis. Was nicht verifizierbar oder falsifizierbar ist, gehört danach nicht in den Bereich der Vernunft im strengen Sinn. Deshalb müssen Ethos und Religion dem Raum des Subjektiven zugewiesen werden und fallen aus dem Bereich der Vernunft im strengen Sinn des Wortes heraus. Wo die alleinige Herrschaft der positivistischen Vernunft galt – und das ist in unserem öffentlichen Bewußtsein weithin der Fall –, da sind die klassischen Erkenntnisquellen für Ethos und Recht außer Kraft gesetzt. Dies ist eine dramatische Situation, die alle angeht und über die eine öffentliche Diskussion notwendig ist, zu der dringend einzuladen eine wesentliche Absicht dieser Rede bildet.


4 WALDSTEIN aaO, 15–21.

aussichtslos“, bemerkt er dazu.5 Wirklich? – möchte ich fragen. Ist es wirklich sinnlos zu bedenken, ob die objektive Vernunft, die sich in der Natur zeigt, nicht eine schöpferische Vernunft, einen Creator Spiritus voraussetzt?


5 Zitiert nach WALDSTEIN aaO. 19.
Mr President of the Federal Republic,
Mr President of the Bundestag,
Madam Chancellor,
Madam President of the Bundesrat,
Ladies and Gentlemen Members of the House,

It is an honour and a joy for me to speak before this distinguished house, before the Parliament of my native Germany, that meets here as a democratically elected representation of the people, in order to work for the good of the Federal Republic of Germany. I should like to thank the President of the Bundestag both for his invitation to deliver this address and for the kind words of greeting and appreciation with which he has welcomed me. At this moment I turn to you, distinguished ladies and gentlemen, not least as your fellow-countryman who for all his life has been conscious of close links to his origins, and has followed the affairs of his native Germany with keen interest. But the invitation to give this address was extended to me as Pope, as the Bishop of Rome, who bears the highest responsibility for Catholic Christianity. In issuing this invitation you are acknowledging the role that the Holy See plays as a partner within the community of peoples and states. Setting out from this international responsibility that I hold, I should like to propose to you some thoughts on the foundations of a free state of law.
Allow me to begin my reflections on the foundations of law [Recht] with a brief story from sacred Scripture. In the First Book of the Kings, it is recounted that God invited the young King Solomon, on his accession to the throne, to make a request. What will the young ruler ask for at this important moment? Success – wealth – long life – destruction of his enemies? He chooses none of these things. Instead, he asks for a listening heart so that he may govern God’s people, and discern between good and evil (cf. 1 Kg 3:9). Through this story, the Bible wants to tell us what should ultimately matter for a politician. His fundamental criterion and the motivation for his work as a politician must not be success, and certainly not material gain. Politics must be a striving for justice, and hence it has to establish the fundamental preconditions for peace. Naturally a politician will seek success, without which he would have no opportunity for effective political action at all. Yet success is subordinated to the criterion of justice, to the will to do what is right, and to the understanding of what is right. Success can also be seductive and thus can open up the path towards the falsification of what is right, towards the destruction of justice. “Without justice – what else is the State but a great band of robbers?”, as Saint Augustine once said.¹ We Germans know from our own experience that these words are no empty spectre. We have seen how power became divorced from right, how power opposed right and crushed it, so that the State became an instrument for destroying right – a highly organized band of robbers, capable of threatening the whole world and driving it to the edge of the abyss. To serve right and to fight against the dominion of wrong is and remains the fundamental task of the politician. At a moment in history when man has acquired previously inconceivable power, this task takes on a particular urgency. Man can destroy the world. He can manipulate himself. He can, so to speak, make human beings and he can deny them their humanity. How do we recognize what is right? How can we discern between good and evil, between what is truly right and what may appear right? Even now, Solomon’s request remains the decisive issue facing politicians and politics today.

For most of the matters that need to be regulated by law, the support of the majority can serve as a sufficient criterion. Yet it is evident that for the fundamental issues of law, in which the dignity of man and of humanity is at stake, the majority principle is not enough: everyone in a position of responsibility must personally seek out the criteria to be followed when framing laws. In the third century, the great theologian Origen provided the following explanation for the resistance of Christians to certain legal systems: “Suppose that a man were

¹ De civitate Dei, IV, 4, 1.
living among the Scythians, whose laws are contrary to the divine law, and was compelled to live among them ... such a man for the sake of the true law, though illegal among the Scythians, would rightly form associations with like-minded people contrary to the laws of the Scythians."

This conviction was what motivated resistance movements to act against the Nazi regime and other totalitarian regimes, thereby doing a great service to justice and to humanity as a whole. For these people, it was indisputably evident that the law in force was actually unlawful. Yet when it comes to the decisions of a democratic politician, the question of what now corresponds to the law of truth, what is actually right and may be enacted as law, is less obvious. In terms of the underlying anthropological issues, what is right and may be given the force of law is in no way simply self-evident today. The question of how to recognize what is truly right and thus to serve justice when framing laws has never been simple, and today in view of the vast extent of our knowledge and our capacity, it has become still harder.

How do we recognize what is right? In history, systems of law have almost always been based on religion: decisions regarding what was to be lawful among men were taken with reference to the divinity. Unlike other great religions, Christianity has never proposed a revealed law to the State and to society, that is to say a juridical order derived from revelation. Instead, it has pointed to nature and reason as the true sources of law – and to the harmony of objective and subjective reason, which naturally presupposes that both spheres are rooted in the creative reason of God. Christian theologians thereby aligned themselves with a philosophical and juridical movement that began to take shape in the second century B.C. In the first half of that century, the social natural law developed by the Stoic philosophers came into contact with leading teachers of Roman Law. Through this encounter, the juridical culture of the West was born, which was and is of key significance for the juridical culture of mankind. This pre-Christian marriage between law and philosophy opened up the path that led via the Christian Middle Ages and the juridical developments of the Age of Enlightenment all the way to the Declaration of Human Rights and to our German Basic Law of 1949, with which our nation committed itself to “inviolable

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and inalienable human rights as the foundation of every human community, and of peace and justice in the world”.

For the development of law and for the development of humanity, it was highly significant that Christian theologians aligned themselves against the religious law associated with polytheism and on the side of philosophy, and that they acknowledged reason and nature in their interrelation as the universally valid source of law. This step had already been taken by Saint Paul in the Letter to the Romans, when he said: “When Gentiles who have not the Law [the Torah of Israel] do by nature what the law requires, they are a law to themselves [...] they show that what the law requires is written on their hearts, while their conscience also bears witness [...]” (Rom 2:14f.). Here we see the two fundamental concepts of nature and conscience, where conscience is nothing other than Solomon’s listening heart, reason that is open to the language of being. If this seemed to offer a clear explanation of the foundations of legislation up to the time of the Enlightenment, up to the time of the Declaration on Human Rights after the Second World War and the framing of our Basic Law, there has been a dramatic shift in the situation in the last half-century. The idea of natural law is today viewed as a specifically Catholic doctrine, not worth bringing into the discussion in a non-Catholic environment, so that one feels almost ashamed even to mention the term. Let me outline briefly how this situation arose. Fundamentally it is because of the idea that an unbridgeable gulf exists between “is” and “ought”. An “ought” can never follow from an “is”, because the two are situated on completely different planes. The reason for this is that in the meantime, the positivist understanding of nature has come to be almost universally accepted. If nature – in the words of Hans Kelsen – is viewed as “an aggregate of objective data linked together in terms of cause and effect”, then indeed no ethical indication of any kind can be derived from it. A positivist conception of nature as purely functional, as the natural sciences consider it to be, is incapable of producing any bridge to ethics and law, but once again yields only functional answers. The same also applies to reason, according to the positivist understanding that is widely held to be the only genuinely scientific one. Anything that is not verifiable or falsifiable, according to this understanding, does not belong to the realm of reason strictly understood. Hence ethics and religion must be assigned to the subjective field, and they remain extraneous to the realm of reason in the strict sense of the word. Where positivist reason dominates the field to the exclusion of all else – and that is broadly the case in our public mindset – then the classical

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4 Cf. Waldstein op. cit. 15–21.
sources of knowledge for ethics and law are excluded. This is a dramatic situation which affects everyone, and on which a public debate is necessary. Indeed, an essential goal of this address is to issue an urgent invitation to launch one.

The positivist approach to nature and reason, the positivist world view in general, is a most important dimension of human knowledge and capacity that we may in no way dispense with. But in and of itself it is not a sufficient culture corresponding to the full breadth of the human condition. Where positivist reason considers itself the only sufficient culture and banishes all other cultural realities to the status of subcultures, it diminishes man, indeed it threatens his humanity. I say this with Europe specifically in mind, where there are concerted efforts to recognize only positivism as a common culture and a common basis for law-making, reducing all the other insights and values of our culture to the level of subculture, with the result that Europe vis-à-vis other world cultures is left in a state of culturelessness and at the same time extremist and radical movements emerge to fill the vacuum. In its self-proclaimed exclusivity, the positivist reason which recognizes nothing beyond mere functionality resembles a concrete bunker with no windows, in which we ourselves provide lighting and atmospheric conditions, being no longer willing to obtain either from God’s wide world. And yet we cannot hide from ourselves the fact that even in this artificial world, we are still covertly drawing upon God’s raw materials, which we refashion into our own products. The windows must be flung open again, we must see the wide world, the sky and the earth once more and learn to make proper use of all this.

But how are we to do this? How do we find our way out into the wide world, into the big picture? How can reason rediscover its true greatness, without being sidetracked into irrationality? How can nature reassert itself in its true depth, with all its demands, with all its directives? I would like to recall one of the developments in recent political history, hoping that I will neither be misunderstood, nor provoke too many one-sided polemics. I would say that the emergence of the ecological movement in German politics since the 1970s, while it has not exactly flung open the windows, nevertheless was and continues to be a cry for fresh air which must not be ignored or pushed aside, just because too much of it is seen to be irrational. Young people had come to realize that something is wrong in our relationship with nature, that matter is not just raw material for us to shape at will, but that the earth has a dignity of its own and that we must follow its directives. In saying this, I am clearly not promoting any particular political party – nothing could be further from my mind. If something is wrong in our relationship with reality, then we must all reflect seriously on
the whole situation and we are all prompted to question the very foundations of our culture. Allow me to dwell a little longer on this point. The importance of ecology is no longer disputed. We must listen to the language of nature and we must answer accordingly. Yet I would like to underline a point that seems to me to be neglected, today as in the past: there is also an ecology of man. Man too has a nature that he must respect and that he cannot manipulate at will. Man is not merely self-creating freedom. Man does not create himself. He is intellect and will, but he is also nature, and his will is rightly ordered if he respects his nature, listens to it and accepts himself for who he is, as one who did not create himself. In this way, and in no other, is true human freedom fulfilled.

Let us come back to the fundamental concepts of nature and reason, from which we set out. The great proponent of legal positivism, Kelsen, at the age of 84 – in 1965 – abandoned the dualism of “is” and “ought”. (I find it comforting that rational thought is evidently still possible at the age of 84!) Previously he had said that norms can only come from the will. Nature therefore could only contain norms, he adds, if a will had put them there. But this, he says, would presuppose a Creator God, whose will had entered into nature. “Any attempt to discuss the truth of this belief is utterly futile”, he observed.5 Is it really? – I find myself asking. Is it really pointless to wonder whether the objective reason that manifests itself in nature does not presuppose a creative reason, a Creator Spiritus?

At this point Europe’s cultural heritage ought to come to our assistance. The conviction that there is a Creator God is what gave rise to the idea of human rights, the idea of the equality of all people before the law, the recognition of the inviolability of human dignity in every single person and the awareness of people’s responsibility for their actions. Our cultural memory is shaped by these rational insights. To ignore it or dismiss it as a thing of the past would be to dismember our culture totally and to rob it of its completeness. The culture of Europe arose from the encounter between Jerusalem, Athens and Rome – from the encounter between Israel’s monotheism, the philosophical reason of the Greeks and Roman law. This three-way encounter has shaped the inner identity of Europe. In the awareness of man’s responsibility before God and in the acknowledgment of the inviolable dignity of every single human person, it has established criteria of law: it is these criteria that we are called to defend at this moment in our history.

5 Cf. WALDSTEIN op. cit. 19.
As he assumed the mantle of office, the young King Solomon was invited to make a request. How would it be if we, the law-makers of today, were invited to make a request? What would we ask for? I think that, even today, there is ultimately nothing else we could wish for but a listening heart – the capacity to discern between good and evil, and thus to establish true law, to serve justice and peace. I thank you for your attention!
AUSSSCHNITT AUS DER

ENZYKLIKA „DEUS CARITAS EST”

VON PAPST
BENEDIKT XVI.

AN DIE BISCHÖFE
AN DIE PRIESTER UND DIANKO
AN DIE GOTTGEWEIHTEN PERSONEN
UND AN ALLE CHRISTGLÄUBIGEN
ÜBER DIE CHRISTLICHE LIEBE

28. Um nun das Verhältnis zwischen dem notwendigen Ringen um Gerechtigkeit und dem Dienst der Liebe genauer zu klären, müssen zwei grundlegende Sachverhalte beachtet werden:

a) Die gerechte Ordnung der Gesellschaft und des Staates ist zentraler Auftrag der Politik. Ein Staat, der nicht durch Gerechtigkeit definiert wäre, wäre nur eine große Räuberbande, wie Augustinus einmal sagte: „Remota itaque iustitia quid sunt regna nisi magna latrocinia?”.1 Zur Grundgestalt des Christentums gehört die Unterscheidung zwischen dem, was des Kaisers und dem, was Gottes ist (vgl. Mt 22, 21), das heißt die Unterscheidung von Staat und Kirche oder, wie das II. Vaticanum sagt, die Autonomie des weltlichen Bereichs.2 Der Staat darf die Religion nicht vorschreiben, sondern muß deren Freiheit und den Frieden der Bekenner verschiedener Religionen untereinander gewährleisten; die Kirche als sozialer Ausdruck des christlichen Glaubens hat ihrerseits ihre Unabhängigkeit und lebt aus dem Glauben heraus ihre Gemeinschaftsform, die der Staat achten muß. Beide Sphären sind unterschieden, aber doch aufeinander bezogen.

1 De Civitate Dei, IV, 4: CCL 47, 102.

An dieser Stelle berühren sich Politik und Glaube. Der Glaube hat gewiß sein eigenes Wesen als Begegnung mit dem lebendigen Gott – eine Begegnung, die uns neue Horizonte weit über den eigenen Bereich der Vernunft hinaus öffnet. Aber er ist zugleich auch eine reinigende Kraft für die Vernunft selbst. Er befreit sie von der Perspektive Gottes her von ihren Verblendungen und hilft ihr deshalb, besser sie selbst zu sein. Er ermöglicht der Vernunft, ihr eigenes Werk besser zu tun und das ihr Eigene besser zu sehen. Genau hier ist der Ort der Katholischen Soziallehre anzusetzen: Sie will nicht der Kirche Macht über den Staat verschaffen; sie will auch nicht Einsichten und Verhaltensweisen, die dem Glauben zugehören, denen aufdrängen, die diesen Glauben nicht teilen. Sie will schlicht zur Reinigung der Vernunft beitragen und dazu helfen, daß das, was recht ist, jetzt und hier erkannt und dann auch durchgeführt werden kann.

Die Soziallehre der Kirche argumentiert von der Vernunft und vom Naturrecht her, das heißt von dem aus, was allen Menschen wesensgemäß ist. Und sie weiß, daß es nicht Auftrag der Kirche ist, selbst diese Lehre politisch durchzusetzen: Sie will der Gewissensbildung in der Politik dienen und helfen, daß die Hellsichtigkeit für die wahren Ansprüche der Gerechtigkeit wächst und zugleich auch die Bereitschaft, von ihnen her zu handeln, selbst wenn das verbreiteten Interessenlagen widerspricht. Das bedeutet aber: Das Erbauen einer gerechten Gesellschafts- und Staatsordnung, durch die jedem das Seine wird, ist eine grundlegende Aufgabe, der sich jede Generation neu stellen muß. Da es sich um eine politische Aufgabe handelt, kann dies nicht der unmittelbare Auftrag der Kirche sein. Da es aber zugleich eine grundlegende menschliche Aufgabe ist, hat die Kirche die Pflicht, auf ihre Weise durch die Reinigung der Vernunft und durch ethische Bildung ihren Beitrag zu leisten, damit die Ansprüche der Gerechtigkeit einsichtig und politisch durchsetzbar werden.

Die Kirche kann nicht und darf nicht den politischen Kampf an sich reißen, um die möglichst gerechte Gesellschaft zu verwirklichen. Sie kann und darf nicht sich an die Stelle des Staates setzen. Aber sie kann und darf im Ringen um


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wenn er sich anmaßt, sein eigener und einziger Hervorbringer zu sein. Ähnlich gerät die Entwicklung der Völker aus den Bahnen, wenn die Menschheit meint, sich wiedererschaffen zu können, wenn sie sich der „Wunder“ der Technik bedient. So wie sich die wirtschaftliche Entwicklung als trügerisch und schädlich herausstellt, wenn sie sich den „Wundern“ der Finanzwelt anvertraut, um ein unnatürliches und konsumorientiertes Wachstum zu unterstützen. Gegenüber dieser prometheischen Anmaßung müssen wir die Liebe zu einer Freiheit stärken, die nicht willkürlich ist, sondern durch die Anerkennung des ihr vorausgehenden Guten menschlicher geworden ist. Dazu muß der Mensch wieder zu sich kommen, um die Grundnormen des natürlichen Sittengesetzes zu erkennen, das Gott ihm ins Herz geschrieben hat.


70. Die technologische Entwicklung kann zur Idee verleiten, daß sich die Technik selbst genügt, wenn der Mensch sich nur die Frage nach dem Wie stellt

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28. In order to define more accurately the relationship between the necessary commitment to justice and the ministry of charity, two fundamental situations need to be considered:

a) The just ordering of society and the State is a central responsibility of politics. As Augustine once said, a State which is not governed according to justice would be just a bunch of thieves: “Remota itaque iustitia quid sunt regna nisi magna latrocinia?”.1 Fundamental to Christianity is the distinction between what belongs to Caesar and what belongs to God (cf. Mt 22:21), in other words, the distinction between Church and State, or, as the Second Vatican Council puts it, the autonomy of the temporal sphere.2 The State may not impose religion, yet it must guarantee religious freedom and harmony between the followers of different religions. For her part, the Church, as the social expression of Christian faith, has a proper independence and is structured on the basis of her faith as a community which the State must recognize. The two spheres are distinct, yet always interrelated.

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1 De Civitate Dei, IV, 4: CCL 47, 102.
2 Cf. Pastoral Constitution on the Church in the Modern World Gaudium et Spes, 36.
Justice is both the aim and the intrinsic criterion of all politics. Politics is more than a mere mechanism for defining the rules of public life: its origin and its goal are found in justice, which by its very nature has to do with ethics. The State must inevitably face the question of how justice can be achieved here and now. But this presupposes an even more radical question: what is justice? The problem is one of practical reason; but if reason is to be exercised properly, it must undergo constant purification, since it can never be completely free of the danger of a certain ethical blindness caused by the dazzling effect of power and special interests.

Here politics and faith meet. Faith by its specific nature is an encounter with the living God – an encounter opening up new horizons extending beyond the sphere of reason. But it is also a purifying force for reason itself. From God’s standpoint, faith liberates reason from its blind spots and therefore helps it to be ever more fully itself. Faith enables reason to do its work more effectively and to see its proper object more clearly. This is where Catholic social doctrine has its place: it has no intention of giving the Church power over the State. Even less is it an attempt to impose on those who do not share the faith ways of thinking and modes of conduct proper to faith. Its aim is simply to help purify reason and to contribute, here and now, to the acknowledgment and attainment of what is just.

The Church’s social teaching argues on the basis of reason and natural law, namely, on the basis of what is in accord with the nature of every human being. It recognizes that it is not the Church’s responsibility to make this teaching prevail in political life. Rather, the Church wishes to help form consciences in political life and to stimulate greater insight into the authentic requirements of justice as well as greater readiness to act accordingly, even when this might involve conflict with situations of personal interest. Building a just social and civil order, wherein each person receives what is his or her due, is an essential task which every generation must take up anew. As a political task, this cannot be the Church’s immediate responsibility. Yet, since it is also a most important human responsibility, the Church is duty-bound to offer, through the purification of reason and through ethical formation, her own specific contribution towards understanding the requirements of justice and achieving them politically.

The Church cannot and must not take upon herself the political battle to bring about the most just society possible. She cannot and must not replace the State. Yet at the same time she cannot and must not remain on the sidelines in the fight for justice. She has to play her part through rational argument and she has to reawaken the spiritual energy without which justice, which always demands sacrifice, cannot prevail and prosper. A just society must be the achievement
of politics, not of the Church. Yet the promotion of justice through efforts to bring about openness of mind and will to the demands of the common good is something which concerns the Church deeply.

b) Love – caritas – will always prove necessary, even in the most just society. There is no ordering of the State so just that it can eliminate the need for a service of love. Whoever wants to eliminate love is preparing to eliminate man as such. There will always be suffering which cries out for consolation and help. There will always be loneliness. There will always be situations of material need where help in the form of concrete love of neighbour is indispensable.³ The State which would provide everything, absorbing everything into itself, would ultimately become a mere bureaucracy incapable of guaranteeing the very thing which the suffering person – every person – needs: namely, loving personal concern. We do not need a State which regulates and controls everything, but a State which, in accordance with the principle of subsidiarity, generously acknowledges and supports initiatives arising from the different social forces and combines spontaneity with closeness to those in need. The Church is one of those living forces: she is alive with the love enkindled by the Spirit of Christ. This love does not simply offer people material help, but refreshment and care for their souls, something which often is even more necessary than material support. In the end, the claim that just social structures would make works of charity superfluous masks a materialist conception of man: the mistaken notion that man can live “by bread alone” (Mt 4:4; cf. Dt 8:3) – a conviction that demeans man and ultimately disregards all that is specifically human.

68. The development of peoples is intimately linked to the development of individuals. The human person by nature is actively involved in his own development. The development in question is not simply the result of natural mechanisms, since as everybody knows, we are all capable of making free and responsible choices. Nor is it merely at the mercy of our caprice, since we all know that we are a gift, not something self-generated. Our freedom is profoundly shaped by our being, and by its limits. No one shapes his own conscience arbitrarily, but we all build our own “I” on the basis of a “self” which is given to us. Not only are other persons outside our control, but each one of us is outside his or her own control. *A person’s development is compromised, if he claims to be solely responsible for producing what he becomes.* By analogy, the development of peoples goes awry if humanity thinks it can re-create itself through the “wonders” of technology, just as economic development is exposed as a destructive sham if it relies on the “wonders” of finance in order to sustain unnatural and consumerist growth. In the face of such Promethean presumption, we must fortify our love for a freedom that is not merely arbitrary, but is rendered truly human by acknowledgment of the good that underlies it. To this end, man
needs to look inside himself in order to recognize the fundamental norms of the natural moral law which God has written on our hearts.

69. The challenge of development today is closely linked to technological progress, with its astounding applications in the field of biology. Technology – it is worth emphasizing – is a profoundly human reality, linked to the autonomy and freedom of man. In technology we express and confirm the hegemony of the spirit over matter. “The human spirit, ‘increasingly free of its bondage to creatures, can be more easily drawn to the worship and contemplation of the Creator’”.1 Technology enables us to exercise dominion over matter, to reduce risks, to save labour, to improve our conditions of life. It touches the heart of the vocation of human labour: in technology, seen as the product of his genius, man recognizes himself and forges his own humanity. Technology is the objective side of human action,2 whose origin and raison d’etre is found in the subjective element: the worker himself. For this reason, technology is never merely technology. It reveals man and his aspirations towards development, it expresses the inner tension that impels him gradually to overcome material limitations. Technology, in this sense, is a response to God’s command to till and to keep the land (cf. Gen 2:15) that he has entrusted to humanity, and it must serve to reinforce the covenant between human beings and the environment, a covenant that should mirror God’s creative love.

70. Technological development can give rise to the idea that technology is self-sufficient when too much attention is given to the “how” questions, and not enough to the many “why” questions underlying human activity. For this reason technology can appear ambivalent. Produced through human creativity as a tool of personal freedom, technology can be understood as a manifestation of absolute freedom, the freedom that seeks to prescind from the limits inherent in things. The process of globalization could replace ideologies with technology,3 allowing the latter to become an ideological power that threatens to confine us within an a priori that holds us back from encountering being and truth. Were that to happen, we would all know, evaluate and make decisions about our life situations from within a technocratic cultural perspective to which we would belong structurally, without ever being able to discover a meaning that is not of our own making. The “technical” worldview that follows from this vision is

now so dominant that truth has come to be seen as coinciding with the possible. But when the sole criterion of truth is efficiency and utility, development is automatically denied. True development does not consist primarily in “doing”. The key to development is a mind capable of thinking in technological terms and grasping the fully human meaning of human activities, within the context of the holistic meaning of the individual’s being. Even when we work through satellites or through remote electronic impulses, our actions always remain human, an expression of our responsible freedom. Technology is highly attractive because it draws us out of our physical limitations and broadens our horizon. But human freedom is authentic only when it responds to the fascination of technology with decisions that are the fruit of moral responsibility. Hence the pressing need for formation in an ethically responsible use of technology. Moving beyond the fascination that technology exerts, we must reappropriate the true meaning of freedom, which is not an intoxication with total autonomy, but a response to the call of being, beginning with our own personal being.
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