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## Axiology of the Constitution of the Republic of Poland of 2 April 1997: Some Reflections

- **ABSTRACT:** *The fact that almost a quarter of a century has passed since the adoption of the Polish Constitution contributes to a reflection on its axiology. This article prompts the reinterpretation of the critical value that can be ‘decoded’ from the Basic Law. It seems that authors of the supreme law of the Republic of Poland were initially guided by slightly different ideals; however, broad case law has become a test of the timelessness and timeliness of the Constitution of 2 April 1997. From this perspective, the question of grounds for an amendment of the basic law is highly current and pertinent. However, this question seems secondary to an attempt to decode the constitutional values forming the foundation of the Polish legal system. In light of the above reflections, have the values pursued by authors of the Constitution become real, or have they just become a redundant ornament in the legal erudition devoid of any practical value? The search for answers should be embedded in an appropriate context or the will of the historical legislator. However, the author believes that the interpretation of a legal text should keep pace with the times; this is why a dynamic interpretation is extremely relevant.*
- **KEYWORDS:** constitutional law, axiology, Christian values, philosophy of law, Polish Constitution.

### 1. Introductory remarks

A lot is being said about the Christian values and roots of the European culture in public debate, especially in the European forum. This rhetoric is enjoyed by conservatives who refer to the foundations of the European culture: Greek philosophical thought, Roman law, and the Christian religion. The other ideological extreme comprises left-liberal trends aiming for a special understanding of freedom, equality, and tolerance.

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The adopted reasoning frequently results in an annihilation of values in public life and grants control to minorities: ethnic, racial, or sexual.

The contemporary civilisational war is being fought on many levels: political, social, mediatic, and legal. From the perspective of social sciences, it is worthwhile to remember the Latin maxim '*ubi societas, ibi ius*', which reduces the clash of civilisations to the fundamental question, namely, who is human being, and who will human being be in the future? Reflection on the law and its five dimensions of creation, validity, interpretation, application, and compliance can be a valuable resource while decoding political, social, worldview-related, and even philosophical changes. When analysing the issues of values in the law, one has to be aware of the genetic precedence of value over the entire legal system, while the axiological research sphere has to be considered both when it comes to law making and its effect, i.e. the legal system, and when it comes to law application and enforcement.<sup>2</sup>

The passage of almost a quarter of a century since the adoption of the Polish basic law offers a valid excuse to reify the constitutional axiology, which is increasingly becoming the subject of a political dispute rather than the common national *acquis communautaire*.<sup>3</sup> This is why it appears reasonable to ask whether values contained in the Polish Constitution only need to be read in an appropriate context or if a cross-party consensus is necessary along with the engagement of the 'sovereign' to rewrite the Polish constitution. This question is secondary to an attempt to decode the constitutional values comprising the foundation of the Polish legal system. In light of the above reflections, have the values pursued by authors of the constitution become real, or have they just become a redundant ornament in the legal erudition devoid of any practical value?

It will be possible to answer the questions presented above within the context of the adoption of a specific research framework. At the very beginning of these reflections, one needs to resolve the fundamental dilemma of the meta-axiological nature that oscillates around two opposite concepts of axiological cognitivism and axiological non-cognitivism (acognitivism).<sup>4</sup> The first of these concepts assumes that evaluations, standards, and values have cognitive qualities. In other words, it is possible to understand values. Cognitivism ascribes logical value to moral judgements.<sup>5</sup> In turn, non-cognitivism entails the negation of objectively established values. According to representatives of this trend, values are neither true nor false. To retain scholarly integrity, one needs to accentuate that rulings and jurisprudence relating

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2 Leszczyński, 2004, pp. 48–61; Wróblewski, 1973, *passim*.

3 In this case, we are not speaking about the achievements of the European community; rather, we are referring to the metaphorical take on the achievements of Polish law-making.

4 David Hume, who formulated the thesis about the impossibility of the logical transfer from sentences about facts (what is) to sentences about values and duties (what should be) in his *Treatise of human nature*, is considered the founder of this trend. The related literature calls it the naturalistic fallacy.

5 Dziędziak, 2015, s. 80.

to the Polish Constitution demonstrate the existence of universal and common values.<sup>6</sup>

By referring to the famous comparison of the relationship between law and morality as the ‘Cape Horn’ of the philosophy of the law, it is possible to state firmly that axiological reflection is the ‘Cape Horn’ of the state legal order.<sup>7</sup> The only thing to be done is cite the words of a renowned theorist of the law, M. Mahlmann: ‘one who wants to talk about law meaningfully cannot remain silent about morality’.<sup>8</sup> This is particularly pertinent when it comes to values in the law that constitute an inherent part of both the law and the morality. In other words, it is not possible to separate the law from values, as the law is their basic carrier in the political and social systems of all contemporary states, not only democratic ones.<sup>9</sup>

## 2. Constitution – sources of the term

The Polish constitutionalism tradition is more than 200 years old. The 3 May Constitution is said to be the first one in Europe and the second one worldwide, following the Constitution of the United States of America. However, considering the way in which principal rules are determined in a state, it is surely true from the modern perspective that such attempts have been made since antiquity.

Cicero, who used the term *constitutio* in his works, *De republica* and *De legibus*, had in mind a certain morphological structure and set of operational rules defining the organisation and functioning of the state at various levels of power, which comprised not only of legal standards but also – or perhaps in particular – time-honoured customs.<sup>10</sup> The fact that attempts to create a certain ‘backbone of the law’, defined as a legal order, have been made since ancient times demonstrates the importance of the subject and its rich tradition, the beginnings of which can be found in antiquity.

The term ‘constitution’ comes from Latin and it is reflected in the following terms: *constitutio* – a system or an organisation; *constituere* – arrange or establish; *concipere* – express or announce; *constare* – to stand heavily or to be certain and known; and *constans* – a constant, unchanging phenomenon.<sup>11</sup>

In the most general terms, the constitution in a strict formal and legal sense is a legal act adopted and amended according to a special procedure, functioning as the universally applicable basic law and the highest legal power. In other words, it is basic and superior to other normative acts, regulating matters such as the indication of the sovereign or the entity from which authority originates; forms of public

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6 See: CT award of 11 May 2005, K 18/04, OTK-A 2005, No. 5, item 49; Dziedziak, 2015; Piechowiak, 2012; Piechowiak, 2020.

7 Jhering, 1997; Jhering, 1999.

8 Mahlmann, 2010, p. 15.

9 Ruszkowski, 2021, p. 107.

10 Zajadło, 2019, p. 166.

11 Długosz-Kurczabowa, 2005, p. 235; see: Sondel, 2005, p. 189, 211, 212.

government; basic rules of the state system, freedoms, rights and obligations of an individual (person and citizen), and means of their legal protection; the system of public authority agencies (state, local), their structure, competencies, and functions; and rules of legislative enactment including, in particular, the position and mode of change of the constitution itself.<sup>12</sup>

The RP Constitution of 2 April 1997 has to be treated as an act that defines more precisely the legal bases for the reborn state, an act with a symbolic dimension that confirms the possibility of the sovereign and democratic determination of the fate of Poland.<sup>13</sup>

### 3. Preamble

Preambles are found in legal acts that are of particular importance to the legal system, acts that are of particular legal, political, social, and international significance; as a rule, these are constitutions, constitutional acts, international agreements, and, less frequently, ordinary legislation.<sup>14</sup>

The introduction to the supreme law of the Republic of Poland is not just an announcement of the statement of reasons for the adoption of the Constitution or a ceremonial formula devoid of legal significance. K. Complak aptly described it by stating that

‘the preamble is not a foreword but rather the afterword whose adoption has opened the path to the enactment of the entire Constitution of the RP. This fragment is the point of reference, a bracket that binds and, in particular, in the light of the content it discusses, the foundation on which the order of our state is based’.<sup>15</sup>

The preamble is a section wherein the legislator indicates, in particular, the values legitimising the legal order and the constitution itself.<sup>16</sup> In this manner, the preamble constitutionalises the constitution itself in the legal sense within the context of the culture in which the specific legal system operates.

Additionally, the preamble makes it possible to decode the hierarchy of individual constitutional values and to determine the relations between individual values. In the case of the Polish constitution, the system-creation function is also realised in the article section by art. 1 of the constitution – the principle of the common good demands the identification of constitutional values as values that define more precisely

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12 Dudek, 2005, p. 5.

13 Garlicki, 2010, p. 95.

14 See: e.g. the Act of 17 May 1989 on the guarantees of the freedom of conscience and faith (consolidated text in Dz. U. of 2017, item 1153 as amended); the Act of 16 November 2016 on the National Tax Administration (consolidated text in Dz. U. of 2019, item 768).

15 Complak, 2007, p. 27.

16 Piechowiak, 2020, p. 27.

the sum total of social life conditions supporting the development of all members of a political community.<sup>17</sup>

#### 4. Sovereignty

The first words of the preamble, ‘Having regard for the existence and future of our Homeland, which recovered, in 1989, the possibility of a sovereign and democratic determination of its fate’, indicate the historical context of liberation from the Soviet Union and the possibility of self-determination. The year 1989 is symbolic and, from the legal perspective, related to the ‘December Amendment’.<sup>18</sup> The name change and the reintroduction of the crowned white eagle in Poland’s emblem did not transform Poland into a sovereign state in themselves. It is worth remembering that Soviet troops were stationed in Poland until 1993. However, the said turning point is symbolic and it marks the beginning of the democratisation process. The proof of a certain axiological ambivalence can be found, on the one hand, in the ‘referral to the best traditions of the First and Second Republic’, and, on the other hand, in the lack of referral to the times experienced by the People’s Republic that – as one can only guess – were defined as ‘the bitter experience of times when basic human freedoms and rights were being violated in our Homeland’. The lack of an unambiguous referral to that period of the People’s Republic was due to the conciliatory nature of the preamble that, as its authors assumed, was supposed to unite rather than divide. Any rigorous formulations in that area could be met with objections of post-communist circles.

However, this does not alter the fact that sovereignty relating to the state is the value one can read in the first words of the preamble. The state sovereignty is also mentioned as first among the values to be safeguarded by the President of the Republic of Poland<sup>19</sup>; art. 126 of the Constitution of the RP provides: ‘The President of the Republic shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory’.<sup>20</sup>

Following this, the authors of the preamble defined on whose behalf they act.

‘We, the Polish Nation – all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty as well as those not sharing such faith but respecting those universal values as arising from other sources’.

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17 Piechowiak, 2020, p. 12.

18 The December amendment changed the content of the first chapter of the Constitution of the People’s Republic of Poland. The name of the state was changed to the ‘Republic of Poland’ and articles referring to the leading role of the party and friendship with the Soviet Union were deleted. In legislative terms, it marked the beginning of democratic changes. *Ustawa z dnia 29 grudnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej* (Dz.U. of 1989, No. 75, item 444).

19 Piechowiak, 2020, p. 50.

20 The Constitution of 2 April 1997 (Dz. U. of 1997, No. 78, item 483 as amended).

The legislator indicates that the nation is the sovereign. The Constitutional Tribunal attempted to detail this concept further by stating that ‘the constitution uses the concept of the Nation in the political rather than ethnic meaning and in the understanding of constitutional standards based on the formulation of the preamble to the Constitution stating “We, the Polish Nation — all citizens of the Republic”, the concept of the Nation means the community comprising of citizens of the Republic of Poland’.<sup>21</sup> Therefore, the prerequisite for membership to the constitutional subject of the authority, i.e. the Nation, is holding a Polish citizenship.<sup>22</sup> However, this is not a definitive settlement, as, in another section, the legislator used language stressing community ties to ‘our compatriots dispersed throughout the world’. Therefore, although the nation mentioned in the preamble has to be considered primarily in its political sense, indirectly, its cultural dimension also needs to be considered.

## 5. ‘Substitutive’ *Invocatio Dei*

The referral to God in the preamble is not a classic *Invocatio Dei*<sup>23</sup> as, in fact, it does not constitute a call to God, but only a mention of the name of God. The portion of the preamble mentioning ‘those who believe in God (...) as well as those not sharing such faith’ is proof of an emphasis on the ideological pluralism. The legislator corroborates this fact further in the section mentioning ‘responsibility before God or our own consciences’.

Therefore, it is not possible to state that individual ideological positions are subjected to evaluation, even though the name of God being mentioned first is evidence of the priority given to religious beliefs. According to M. Piechowiak, ‘these declarations express the rejection of the possibility to establish atheism as the state ideology (which was the case under the previous regime) along with the possibility to establish a state religion; they also express the recognition of religious freedom’.<sup>24</sup> This topic is detailed further in art. 25 of the Constitution of the RP, which sets out the principle of impartiality of public authorities in the area of religious, ideological, and philosophical beliefs (section 2); the principle of autonomy, independence, and cooperation in relations between the state and churches and religious associations (section 3); and the principle of the equal rights of churches and religious associations (section 1). Religious freedom mentioned in the preamble is the *explicite* referral to glorious times of the Republic of Poland called the model example of religious tolerance in Europe: ‘the state without stakes’.

However, one needs to remember that the principle of the state’s religious impartiality regarding religious, ideological, and philosophical beliefs entails the guarantee

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21 CT award of 31 May 2004 r., K 15/04 (OTK-A 2004, No. 5, item 47).

22 Kryszewski and Prokop, 2017, p. 69.

23 The Constitution of 3 May included the *Invocatio Dei* ‘In the name of God, One in the Holy Trinity’.

24 Piechowiak, 2020, p. 56.

of ideological freedoms and no interference from public authority agencies. It would be a mistake to interpret this provision in terms of the axiological neutrality of the state. W. Łączkowski aptly draws attention to the indicated aspect of this issue:

‘(...) when the state declaring its impartiality rejects or even neglects the existing, historically ingrained ethical order, it thus creates a new value system. There can be no neutrality or impartiality. Cases of the legalization of abortion, euthanasia, the adoption of children by homosexual couples, the removal of crosses from public areas are not religiously, ideologically and philosophically neutral and, therefore, compromises the religion that has been the foundation of the culture of many nations for ages’.<sup>25</sup>

This is why art. 25 section 2 of the Constitution of the RP has to be read in conjunction with the portion of the preamble referring to the ‘culture rooted in the Christian heritage of the Nation and in universal human values’. From this perspective, one can avoid potential interpretational misunderstandings and, at the same time, demonstrate the bankruptcy of extreme positivist ideas that separate the legal standards from morality. The Polish Constitution corroborates its respect for and attachment to Christian achievements of the Latin civilisation from the very beginning.

In the context of the reflections presented above, it is also worthwhile to interpret the cited snippet ‘recognizing our responsibility before God or our own consciences’ that *prima facie* can suggest two separate and inseparable types of responsibility. According to the common usage of the function word ‘or’, religious people only recognise their responsibility before God, while disbelievers recognise their own consciences.<sup>26</sup> However, J. Krukowski aptly remarks that ‘it has to be accepted, however, that the “or” function word has the function of a connector rather than a separator here. It is because believers have the sense of responsibility before God and their own conscience’.<sup>27</sup>

## 6. Natural law and determinants of the Constitution of the Republic of Poland

Finally, the referral to supra-positive sources of the codified law, i.e. the natural law, is of key importance from the perspective of this reflection. The legislator refers to four universal values: truth, justice, goodness, and beauty. Three of these four timeless values, i.e. truth, goodness, and beauty, belong to the canon of basic perfections. In Plato’s philosophy, they are objectives pursued by three basic parts of the soul symbolised by three parts of the state: the sapient, volitional, and lustful parts correspond to

25 Łączkowski, 2003, p. 119.

26 Dziędziak, 2015, p. 83.

27 Krukowski, 2000, p. 109; Stefaniuk, 2009, p. 283.

the ruled, the defenders, and the producers.<sup>28</sup> In turn, Aristotle links truth, goodness, and beauty to three areas of cognition: theoretical, practical, and poietic (productive).<sup>29</sup> In medieval philosophy, *verum*, *bonum*, and *pulchrum* were defined as transcendentals.<sup>30</sup> Subsequent tradition assigned these values to specific forms of spiritual culture: science strives for truth, morality strives for goodness, and art strives for beauty.

In the course of the work on the constitution, justice as a principle of social life was rightly added to the abovementioned three values.<sup>31</sup> One could say that ‘each human being requires justice for themselves from their fellows and are aware that they owe them justice as well’.<sup>32</sup> Justice applies to another human being. In the antique tradition, this value was considered the perfection of man, his most eminent *arete* (bravery, virtue). Roman jurist Ulpian maintained that justice is a constant and unchangeable will to give everyone their due.<sup>33</sup> Justice finds its expression in the golden rule: what you do not want done to yourself, do not do to another. Justice in a positive form can be found in the evangelical message: ‘Do to others whatever you would have them do to you’.<sup>34</sup>

Among contemporary authors, J. Rawls emphasised its importance when he stated

‘As truth in knowledge systems, justice is the first virtue of social institutions. An untrue theory, even if highly economical and elegant, has to be rejected or revised; the same is true for laws and social institutions, however efficient and well organised, they have to be reformed or abolished if they are unjust’.<sup>35</sup>

There is no doubt that the legislator did not refer to this value by accident. As the objective of the law is the common good – as stated in art. 1 of the constitution – its implementation can only occur against the background of justice. A certain minimum of social life order can be found in justice. Metaphorically, justice without the law would only be possible if judges were sorcerers and people were saints.<sup>36</sup>

The adoption of universal values by the authors of the Constitution of the Republic of Poland is evidence of their cognitivist approach. The meaning of the word ‘universal’ denotes something common and pan-human. Universal values are not transitory or

28 Piechowiak, 2020, p. 57.

29 Arystoteles, 1025b

30 See: Maryniarczyk, 2008, pp. 540–542.

31 Dziedziak, 2015, p. 84.

32 Kość, 2005, p. 177.

33 Ulpianus, Digesta I, 1, 10. *Iustitia est constans et perpetua voluntas ius suum cuique tribuendi.* Aristotle distinguished two forms of justice: conventional justice (*iustitia commutativa*), i.e. to give everyone their due, and distributional justice (*iustitia distributiva*), i.e. treat equally what is essentially equal, treat unequally what is essentially unequal.

34 Pismo Święte Starego i Nowego Testamentu, 2013, p. 1061; Matthew 7:12.

35 Rawls, 1994, p. 13.

36 Tokarczyk, 2005, p. 237.



ephemeral, but timeless (supra-historical). Person does not establish universal values, but can get to know them.<sup>37</sup> Additionally, the significance of these values was reiterated by the Constitutional Tribunal in the expression ‘universal constitutional values’.<sup>38</sup> One has to agree with the apt statement made by P. Winczorek, who pointed out that ‘authors of the constitution consciously adopted the natural law concept of basic freedoms and rights. They considered that neither the sovereign, i.e. the Nation, nor its institution, i.e. the state, are called to establish them, they can only declare them. (...) Such intentions do not have to be read directly in the text of the constitution; they are clearly expressed in the constitutional discussion of the National Assembly by its participants such as deputies, senators, and experts of the Constitutional Committee’.<sup>39</sup>

## 7. Common good

When searching for the intellectual tradition of primary importance for the interpretation of the common good category, one needs to reach for the tradition of the classical philosophy from Plato and Aristotle to Thomas Aquinas, on which the Catholic social science is based.<sup>40</sup> This category has historical connotations and tangible repercussions for the entire constitutional order in Poland. The history of Polish constitutionalism can combine ‘common weal’ and the ‘common good’. The first term was mentioned in art. 1 section 1 of the April constitution: ‘The Polish state is the common weal of all its citizens’.<sup>41</sup> The above constitutional provision sets an axiological perspective characteristic of the statist approach wherein national interest defined in modern terms is the central concept. The primacy of the state over the national community typical of the April constitution resulted in the rejection of natural human rights as a relevant feature of the constitutional order. This solidarist formula was a move away from the concept of the nation as a subject of the supreme authority, treating the state as a ‘union of individuals established to take care of the good of such individuals but as a whole that in itself constitutes the good and, therefore, has an independent non-individual value’.<sup>42</sup>

The currently applicable constitution points out in art. 1 that ‘The Republic of Poland shall be the common good of its citizens’. The reflection on the choice of words turns out to be of key importance as the concept of the common good is related to the classical paradigm of thought, which is completely different from the statist one. In this way, the legislator took the side of human rights, indicating the servient nature of the state with respect to the individual. There is a strong case in favour of this attitude based on grammar rules that specify that placing an adjective after a noun signals the

37 See: Dziedziak, 2015, p. 89.

38 CT award of 11 May 2005, K 18/04, OTK-A 2005, No. 5, item 49.

39 Winczorek, 1999, p. 137.

40 Piechowiak, 2012, p. 49.

41 See: Rostocki, 2002, p. 75.

42 Komarnicki, 1937, p. 184.

presence of an idiomatic expression.<sup>43</sup> Additionally, one has to consider the legislator's will, noted at meetings of the Constitutional Committees.<sup>44</sup>

The category of the common good is based on the conditions of Catholic social science. The approach proposed in the post-conciliar documents *Gaudium et Spes* and in the encyclical by John XXIII, *Pacem in terris*, defines the common good as 'the sum of those conditions of social life thanks to which individuals, families, and associations can attain their own perfection more comprehensively and in an easier way. In particular, this involves the respect for natural human rights and obligations'.<sup>45</sup> The principle of the common good should be read in conjunction with the entire Constitution of the Republic of Poland, including its preamble, and in consideration of the variety of ideological traditions underlying the concept of the 'common good'.<sup>46</sup>

## 8. Dignity

The concept of human dignity is present in all concepts of an individualist understanding of the status of an individual and, in contemporary times, it can be considered the basis and axiological starting point for such concepts.<sup>47</sup> This category has philosophical, anthropological, ethical, social, and legal dimensions. From the perspective of the philosophy of the law, there are two trends that systematise the concept of dignity. The first of them relates to personalist philosophy rooted in the thought of Aquinas, and the Enlightenment one relates to I. Kant, the philosopher from Königsberg.<sup>48</sup> Lech Garlicki wrote:

'Each constitution adopts certain basic principles serving both as an axiological keystone for detailed provisions and as a tool either allowing one to find content that the authors forgot to include in the constitution or to remove the content that should not have been included in it. The 1997 Constitution considered human dignity such a principle'.<sup>49</sup>

Therefore, a question arises: if dignity is the spiritual foundation of basic human rights, why has the Polish legislator included it only in art. 30?<sup>50</sup>

43 Piechowiak, 2020, p. 74–75.

44 This is what Tadeusz Mazowiecki said about the preamble at the meeting of the Constitutional Commission of the National Assembly on 11 December 1996: 'I think that this text emphasises most important matters, in particular, that the Polish state is our common good, that it is not a state ruling the citizen but a state that serves the citizen and this is how it should be modelled further on'. *Biuletyn Komisji Konstytucyjnej Zgromadzenia Narodowego* 1997, No. 42, p. 40.

45 [https://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_const\\_19651207\\_gaudium-et-spes\\_en.html](https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html), (Accessed: 21 November 2021). Jan XXIII, 1963.

46 Słup, 2017, p. 224.

47 Garlicki, 2019, p. 106.

48 See: Mazurek, 2001; Potrzyszcz, 2013, pp. 273–299; Piechowiak, 2011a, pp. 3–20.

49 Garlicki, 2002, p. 62.

50 Cf. Schambeck, 2001, p. 119.

From the perspective of the systematics of the constitution, the German legislator was much more consistent, including the principle of dignity as the basis of the constitutional order, in art. 1 section 1: ‘Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority’.<sup>51</sup> This seeming inconsistency of the Polish legislator should be interpreted as the placement of the two most important values, the common good and dignity, as the first articles in chapters I and II of the constitution. As a consequence of this approach, dignity is read within the context of the common good. The common good as the sum total of social life conditions promoting individual development cannot be precise without consideration of who the individual is, and dignity is its most important and first characteristic from the axiological perspective.<sup>52</sup> It has to be concluded that the common good makes it possible to place dignity in a wider axiological context even though the position of dignity in that context is determined by its specific features recognised in art. 30.<sup>53</sup>

The category of dignity appears in the introduction to the constitution as a call for the application of the constitution with ‘respect to the inherent dignity of the person’.<sup>54</sup> Its full potential is developed in art. 30 of the constitution, which defines dignity as an inherent and inalienable aspect of persons, constituting the source of freedoms and rights of persons and citizens. The legislator equipped dignity with the aspect of inalienability and established the duty of respect for and protection of human dignity for all public authorities.

Dignity is the only feature to which the legislator ascribed the aspect of inviolability in the normative rather than descriptive sense.<sup>55</sup> It entails that the actual lack of possibility to deprive someone of dignity or to diminish it is the source of rights, as dignity cannot be graded. Every human being is entitled to dignity. The autonomy of dignity was accentuated by I. Kant, who stated that ‘in a state of goals, everything has a *price* or *dignity*. Whatever has a *price* can be replaced by something else as its equivalent and whatever exceeds any given price and, therefore, does not allow for an equivalent, has dignity’.<sup>56</sup> As a consequence of the above comparison, dignity is not gradable. Therefore, it would be unacceptable to differentiate or grade dignity depending on the race, nationality, citizenship, education, or gender; in this sense, the principle of dignity is the starting point of the equality principle.<sup>57</sup> Dignity is subject to absolute protection; it is the only right to which it would not be possible to apply the proportionality principle.<sup>58</sup> The prohibition to objectify human beings was expressed

51 See: Chmaj, 2008, pp. 33–34.

52 Piechowiak, 2011b, p. 122.

53 Piechowiak, 2012, p. 352.

54 The Constitution of 2 April 1997 (Dz. U. of 1997, No. 78, item 483 as amended).

55 The meaning is different in art. 30, in particular, in the descriptive sense; when characterising certain states of affairs, the Constitution of the Republic of Poland also mentions the inviolability of the territory (art. 5, art. 126.2), inviolability of borders (art. 26.1), and inviolability of dwelling (art. 50, art. 233.3 referring to art. 50); see: Piechowiak, 2011b, p. 115.

56 Kant, 2013, p. 51.

57 Garlicki, 2019, p. 107.

58 Award of 5 March 2003, file sign K 7/01, OTK ZU No. 3/A/2003, item 1.

in I. Kant's categorical imperative: 'Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end'.<sup>59</sup>

The Constitutional Tribunal endorsed the recognition of dignity as a supra-constitutional value central to the constitutional axiology in its ruling of 23 March 1999:

'The Constitution in the totality of its provisions expresses a certain objective value system whose realization should be supported by the process of interpretation and application of individual constitutional provisions. Provisions relating to the individual rights and freedoms included, in particular, in chapter II of the constitution, play the central role in the determination of this value system. The principle of the natural and non-transferable human dignity occupies the central position among these provisions.'<sup>60</sup>

## 9. Significance of key constitutional principles

As in other legal systems, both national and supra-national, their inclusion in the principles of the law is the basic tool for the positivising of values.<sup>61</sup> Principles with the status of key constitutional principles form the backbone of the entire state system and provide the legal basis for the basic moral values whose protection is among the fundamental obligations of the contemporary state.<sup>62</sup> This is where the commonly accepted stance of the doctrine that 'it is the constitution – maybe more than other normative acts (e.g. the Criminal Code) – has to be «axiologically versatile»'.<sup>63</sup> The axiological charge of the Polish Constitution is extensive and multidimensional. The greatest axiological potential (understood as the possibility to distinguish many values) among all the key principles can be found in the one expressed in art. 2 of the constitution, i.e. the principle of the democratic rule of law. It results from its treatment as the principles' principle (*Mutterregeln*). The Constitutional Tribunal derived from it a range of other principles that should be complied with in a democratic rule of law: the principle of protection of the citizens' trust in the state, the prohibition of the retroactive effects of the law, the principle of proper legislation, the *vacatio legis* principle, the principle of protection of acquired rights, the principle of the certainty of the law, the *ne bis in idem* prohibition, the proportionality principle, and the principle of social justice.<sup>64</sup> From the perspective of value transmission, a democratic rule of law safeguards legal safety.<sup>65</sup>

59 Kant, 2013, p. 46.

60 File sign K 2/98, OTK ZU 1999, No. 3. S. 219 et seq.

61 Kordela, 2006, pp. 41–42; Bałaban, 1999, p. 120.

62 Kordela, 2021, p. 64.

63 Winczorek, 1996, p. 76.

64 See: Garlicki, 2019, pp. 76–80.

65 See: Potrzyszcz, 2013.

The catalogue of principles mentioned here, common good, dignity, and democratic rule of law, constitutes the axiological foundation from which further principles and values can be derived. Legal principles of the constitution and the state system (in a wide sense) are

‘[...] the way to express values of the law previously adopted by the constitutional authority, a method to transpose and transfer values from the axiological and moral sphere to the area of the positive law with the use of instruments of the legal language’.<sup>66</sup>

## 10. Final thoughts

The Polish constitution contains many values even in its preamble: sovereignty, common good, justice, and dignity. They are not only declarations; their normativisation takes place in the body of the basic law: common good (art. 1), sovereignty (art. 126), justice (art. 2), and dignity (art. 30). The individual key principles of the constitution safeguard values, but the principle of the common good is the most important one (art. 1). It constitutes the pillar of the Polish constitutional order. Undoubtedly, the Polish basic law contains an axiological compromise whose clear indication is the indirect referral to God (‘Both those who believe in God as the source of truth, justice, good, and beauty, as well as those not sharing such faith’) rather than the classic *Invocatio Dei*. An enigmatic way of settle account with the communist past is a serious shortcoming of the preamble (‘Mindful of the bitter experiences of the times when fundamental freedoms and human rights were violated in our Homeland’). From the current perspective, the introduction to the constitution seems to be highly flawed. However, considering the circumstances in which the basic law was created, one has to conclude that it performs its axiological function to a great extent despite its terminological weaknesses. There is no doubt that the doctrine and the generally consistent judicial practice of the Constitutional Tribunal in that area contribute to the *status quo*.

The principle of non-transferable and natural dignity correlated to the principle of common good plays the key role in the value transfer process. Both principles have a natural law dimension. The reception of ideas sourced from Catholic social science combined with a ‘culture rooted in the Christian heritage of the Nation’ seems to be a sufficient safety buffer protecting from the secularisation offensive.

On the other hand, it is worthwhile to consider the application of the actual *Invocatio Dei* similar to the one used in Ireland<sup>67</sup> (‘In the name of the Most Holy Trinity’), Greece<sup>68</sup> (‘In the name of the Holy and Consubstantial and Indivisible Trinity’), or

66 Dudek, 2009, p. 21.

67 The Constitution of Ireland of 1 July 1937 r., translated by Grabowska, 2006.

68 <http://libr.sejm.gov.pl/tek01/txt/konst/grecja.html> (Accessed: 21 November 2021).

Hungary<sup>69</sup> ('God bless the Hungarians! – the National Confession of Faith'), which would make it possible to establish unambiguously and clearly the Christian roots of the Republic of Poland.

The principle of the natural and non-transferable human dignity is an apt solution applied by the legislator; however, it could be *implicite* implicitly rooted in the referral to the natural law. Such a solution could foster the discovery of human rights rather than the discretionary creation of human rights. To this end, one would need the 'constitutional moment', i.e. the situation in which society expects the legislator to provide a new basic law.

The reflections presented above are of a preparatory and indicative nature. The in-depth axiological reflection that this article strives to encourage should precede any potential amendment of constitutional regulations. Action milestones can be identified in this manner: 'Where are we?' and 'Where are we heading?' Subsequently, the clearly presented world of values will enable the sovereign to verify the actions taken by politicians and law practitioners who frequently use complicated and multi-level regulations to relativise rather than build the world of universal values.

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69 The Basic Law of Hungary of 18 April 2011, translated by Snopek, 2012.

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