

ARTICLES

“HOW DO I RECOGNIZE WHAT IS RIGHT?”

Pope Benedict XVI.’s suggestions on the doctrine of natural law

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Abstract

In the light of the plea for a greater utilisation of Natural Law, as was particularly evident in Pope Benedict XVI’s address to the German Bundestag in 2011, this article examines the understanding and significance of Natural Law in the law of the Catholic Church (Canon Law). On the one hand, specifics are developed using the examples of religious freedom and the protection of life, and on the other, their significance from the perspective of the Church’s social doctrine is examined. The aim is to outline the internal relationship between Natural Law, Canon Law and the Church’s social doctrine.

Keywords: Roman law, natural law, canon law, religious freedom, protection of human life

The three technical terms “natural law”, “canon law” and “ecclesiastical social teaching” are central points of reference in philosophy and theology as well as in Christian social sciences and law. They often overlap in thematic contexts, but primarily represent separate and independent academic disciplines. The motive and aim of the following considerations under the title „*How do I recognize what is right?*“ – Pope Benedict XVI’s suggestions on the doctrine of natural law is to bring them into dialogue with one another and to shed light on their relationship to each other with the help of exemplary questions. It must be expressly stated at this point that, due to the limited scope of this paper, these considerations represent only a first initial outline of the content.

1. Plea in favour of natural law

Initially, we have to examine Pope Benedict XVI's plea for the rehabilitation of natural law. Benedict XVI responds to the central question, which similarly is the title of this article, in a pointed way in his address to the German Bundestag in Berlin on September 22th, 2011. Starting with Solomon's plea for a listening heart to discern between good and evil (1 Kings 3:9), he elaborates the clear commitment to „nature and reason as the true sources of law“¹, within the history of Christianity. In contrast to a divine law of revelation, which endeavours to impose a legal order on the human community from this very revelation, Christianity sees the legal culture of humanity, especially in Christian-shaped societies founded in a coexistence of nature and reason. This interdependency is founded itself by „the creative reason of God“², albeit interpreted in the light of faith.

In this way, human nature and reason form the independent source of determining what is right. This understanding is reflected by St. Paul in his well-known statement within the letter to the Romans: „If Gentiles who do not have the law (the Torah of Israel) do by nature what is required by the law, they are ... a law to themselves. They show that the requirement of the law is written in their hearts; their conscience bears witness to it“ (Rom 2:14 f.) The ability to discern between right and wrong is written in a person's heart and recognized in their conscience as well as testified by their actions.

This revolutionary thought, which was ultimately able to unfold in a unique combination of Greek philosophy and Roman law, the Pope sees a connection with the Judeo-Christian belief in God as leading „via the Christian Middle Ages and the juridical developments of the Age of Enlightenment all the way to the Declaration of Human Rights and ... the German Basic Law“³, in which its founders testified to the „inviolable and inalienable human rights as the foundation of every human community, and of peace and justice in the world“⁴.

This idea is linked to the leitmotif of „natural law“, which Joseph Ratzinger wants to bring out of a Catholic shadowy existence. In doing so, he is fully in tune with Wolfgang Waldstein.⁵ Pope Benedict XVI. sees this classical idea as an appeal to the

¹ BENEDICT XVI.: Gut und Böse unterscheiden und so wahres Recht setzen. Ansprache vor dem Deutschen Bundestag in Berlin vom 22. September 2011. *L'Osservatore Romano* dt 41, 39. (2011), 4–5.; in English translation: <https://tinyurl.com/j7ev2fkz> (Accessed on: 29 May 2025).

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ See Wolfgang WALDSTEIN: *Ins Herz geschrieben. Das Naturrecht als Fundament einer menschlichen Gesellschaft*. Augsburg, Sankt Ulrich Verlag, 2010. Comp.: BENEDICT XVI.: Enc. „Deus caritas est“ (12/25/2005). *Acta Apostolicae Sedis* 98, 3. (2006), 217–252., here No. 28.; BENEDICT XVI.: Enc. „Caritas in veritate“ (06/29/2009). *Acta Apostolicae Sedis* 101, 8. (2009), 641–709. See also for example: Franz-Josef BORMANN: *Natur als Horizont sittlicher Praxis. Zur handlungstheoretischen Interpretation der Lehre vom natürlichen Sittengesetz bei Thomas von Aquin*. (Münchener Philosophische Studien. Neue Folge 14), Stuttgart-Berlin-Köln, Verlag W. Kohlhammer, 1999.; Franz-Josef BORMANN: *Naturrecht*. In: Armin G. WILDFEUER – Petra KOLMER (ed.): *Neues Handbuch philosophischer Grundbegriffe*. Freiburg, Verlag Karl Alber, 2011. 1592–1601.; Sascha MÜLLER: *Menschenwürde und Religion. Die Suche nach*

reason common to all people, associated with the ability to reach a common ground about fundamental ethical principles of law in a secular and pluralistic society. This understanding not only serves peace, but also justice as its indispensable prerequisite.

However, to achieve this, it is necessary to overcome the now predominant positivist understanding of nature and reason, in which both entities are understood purely functionally and therefore unconnected with ethics and law, or at least to relativise them in their absolutised forms. As much as the positivist concept is to be appreciated as „a most important dimension of human knowledge and capacity“, its extreme forms also harbours the danger of reducing man, nature and culture. They are sufficient unto themselves without perceiving the greater meaning and openness of their existence.

The consequences are already visible, especially considering the formation of law in Europe. Law is often based on purely positivist, i.e. purely pragmatic reason orientated towards the supposed requirements of reality, without being aware of its ethical implications. The issues of human dignity and its protection at all stages of human life are pressing examples, particularly in light of the attempt to expand human rights at will, for example to include the so-called „right“ to abortion or for an assisted suicide. Pope Benedict repeatedly warned of this ultimately limitless expansion of human rights during his time as Bishop Emeritus of Rome.

Pope Benedict XVI. sees the prerequisite for a rehabilitation of the doctrine of natural law, which could overcome the mentioned lost connection and speechlessness between reason and faith, in the recognition of a given reason: „Is it really pointless to wonder“ – he asks acknowledging Hans Kelsen’s theses – „whether the objective reason that manifests itself in nature does not presuppose a creative reason a Creator Spiritus?“⁶

As a result of this question, Joseph Ratzinger sees reason and faith, Theology and philosophy as a „strange pair of twins, in which neither of the two can be totally separated from the other, and yet each must preserve its own task and its own identity“.⁷ The relative independence of nature and reason, which in their relationship to each other represent the „the true sources of law“⁸, and faith, which knows how to penetrate the law in a rational and purifying way, enter into a creative relationship of mutual help.

This is why Benedict XVI can appeal to the creative preservation of both elements by stating: „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

der wahren Freiheit – metaphysische Wegweiser von Platon bis Hegel. (Münchener Philosophische Beiträge 23). München, Utz Verlag, 2012.

⁶ BENEDICT XVI. (2011) op. cit.

⁷ BENEDICT XVI.: Lecture at the university of Rome „La Sapienza“ (01/17/2008, cancelled 01/15/2008). *Acta Apostolicae Sedis* 100, 2. (2008), 107–114.; in English translation: <https://tinyurl.com/4py567sd> (Accessed on: 29 May 2025).

⁸ Ibid.

established criteria of law: it is these criteria that we are called to defend at this moment in our history“.⁹ Only from this creative combination of nature, reason and faith can a sustainable and effective law be created and realised; only in this way can it ultimately serve justice, peace and human dignity.

2. Consequence: Injustice is not a path to justice

From this fundamental point of view, a decisive consequence already emerges in the papal address to the Bundestag. A right that is deprived of its basis of reasonableness by an arbitrary decision of power always becomes injustice, which does not liberate people but makes them unfree.

Every totalitarianistic political system bears witness to this axiom in the history of mankind. Injustice is countered by the fundamental Christian conviction that justice cannot be achieved through injustice. As Joseph Ratzinger emphasised in 1979: „Injustice is never a path to justice, violence is never a path to freedom, barbarism is never a path to humanity“.¹⁰ Nevertheless, for Christians in such situations, the „self-evident rule is to observe all those parts of state law that do not contradict God’s commandment; everything retains its legal character for them, even if it is set by unjust power“.¹¹ But the Christian „refuses to do wrong, even if state authority declares it to be right; he is prepared to become a martyr for it and thus once again stand up for the inviolability of the law“.¹²

Pope Benedict XVI used this conviction to remind the Bundestag of the Christian resistance fighters against the Nazi regime, who in their actions kept alive the sense of what is given in the law and in this way were a lighting example for all mankind.

With regard to the „dictatorship of relativism that does not recognize anything as definitive and whose ultimate goal consists solely of one’s own ego and desires“, as described by Cardinal Ratzinger in his homily before the opening of the conclave¹³, the dangers of injustice also exist in democratic states, especially where human dignity is exposed to the risk of being violated due to purely positivist-functional thinking and judgement. This is why nature and reason, as independent source of law, require an inner orientation that opens them up to their origins and therefore knows how to purify them. Faith serves this necessity, i.e. through the guidance of the Ten Commandments. They contain the „fundamental legal relationships of human beings – family, marriage, property, honour – in a way that precedes state law“ and provide the law itself „as the fundamental order of human life“.¹⁴

⁹ Ibid.

¹⁰ Joseph RATZINGER: *Dienst am Recht ist Dienst an der Freiheit*. München, Pressereferat der Erzdiözese München und Freising, 1979; own translation.

¹¹ Ibid., 4.; own translation.

¹² Ibid., 4.; own translation.

¹³ Joseph Cardinal RATZINGER: Homily in the Mass „Pro Eligendo Romano Pontifice“ (04/18/2005). *Acta Apostolicae Sedis* 97, 5. (2005), 685–689.; in English translation: <https://tinyurl.com/2s375u8y> (Accessed on: 29 May 2025).

¹⁴ RATZINGER (1979) op. cit. 6.; own translation.

Pope Benedict XVI sees this predetermination confirmed in the fact that the ten statements of God in the biblical creation narrative („God spoke“) are the foundation for the creation of the Ten Commandments (Decalogue): „The ten-word of the Ten Commandments is, so to speak, only interpretation of the inner word of creation itself and of the action from it, which is there in it and does not eliminate our action“.¹⁵ In terms of natural law and the theology of revelation, the Ten Commandments lead people to those predetermined conditions that constitute the individual and communitarian life of human beings. As such, they remind people of the „pre-political and ethical foundations of the liberal-democratic constitutional state, according to which the task of politics is to place power under the measure of the law and thereby organise its meaningful use: ‘Not the law of the strongest, but the strength of the law must prevail’“.¹⁶ In this way, law becomes the guarantee of human freedom and justice, which are the precondition of the first, and therefore independent of current developments.

3. Classification of natural law in canon law

Regarding the preceded deliberations, we finally can take a third look at canon law and the associated social doctrine of the Church. In the field of canon law, the discourse of natural law is deeply linked to the question of the sources of canon law, more precise, what sources canon law refers to for the legal structure of the Church. To cursory answer this question, we first need to distinct between material and formal sources.¹⁷ On the one hand, the material sources characterise the origin of the respective legislation. According to church doctrine, this can be done by God himself or by the ecclesiastical authority, either when it acts as a legislator (c. 7 CIC) or when it approves a customary law that has become law (cc. 23-28 CIC). Formal sources, on the other hand, include all written records from which this right can be recognized, for example, the currently valid ecclesiastical codes such as the *Codex Iuris Canonici* or the *Codex Canonum Ecclesiarum Orientalium*.

Of course, from the perspective of creation theology, all law, both secular and ecclesiastical, is ultimately founded in God.¹⁸ God, as the origin of all creation, inspires and legitimises the law. However, canon law has a deeper connection to divine norms because it is based on the revelation of God, and in particular on the Gospel of the incarnate Son of God. This gives canon law a significant distance from secular law, because the first mentioned is „the communal (or congregational) order of the new people of God and therefore a visible sign of an invisible reality founded in God“.¹⁹

¹⁵ Joseph RATZINGER, BENEDIKT XVI.: *Gottes Projekt. Nachdenken über Schöpfung und Kirche*. Regensburg, Verlag Friedrich Pustet, 2009. 39.; own translation.

¹⁶ Kurt KOCH: Gott ist Logos und Liebe. Versuch eines theologischen Porträts von Papst Benedikt XVI. In: Kurt KOCH: *Das Geheimnis des Senfkorns. Grundzüge des theologischen Denkens von Papst Benedikt XVI. (Ratzinger Studien 3)*. Regensburg, Friedrich Pustet, 2010. 14–44., here 20 s.; own translation.

¹⁷ See Winfried AYMANS – Klaus MÖRSDORF: *Kanonisches Recht I*. Paderborn, Verlag Ferdinand Schoeningh, ¹³1991. 25–57., espec. 32–37.

¹⁸ See Ibid 32. s.

¹⁹ Ibid. 33.; own translation.

Canon law is therefore sacred law, *ius sacrum*, not only in the sense that it seeks to serve the establishment of the kingdom of God on earth and thus the sanctification of the world, but also and precisely because it is linked to the sacramental life of the Church and is embedded in the sacramental nature of the Church.

This definition of the Church as a sacrament was emphasised to the people of God once again by the Second Vatican Council in the Constitution „Lumen Gentium“, as Joseph Ratzinger emphasised many times. According to this, the Church is to be understood as a visible assembly and at the same time a spiritual community that has grown out of divine and human elements and that forms a „single complex reality“ (*una realitas complexa*) consisting of external (human) and internal (divine) dimensions.²⁰ Consequently, even if canon law arises from the nature of the Church, a distinction must be made between divine and purely human law. This classical legal distinction is therefore theologically based. But what exactly is meant by divine and human canon law?

3.1. *Ius divinum*

Traditionally, *ius divinum* is understood to be twofold: Natural law (*ius divinum naturale*), which is linked to the idea of creation and can be recognized by reason, and the right of revelation (*ius divinum positivum*), which in itself cannot be derived from reason. According to Joseph Höffner, natural law in the above-mentioned sense encompasses all human rights that are inextricably linked to the nature given to us as human beings by the Creator himself²¹, including fundamental, timeless, supreme and general legal provisions. Irrespective of faith and culture, they are already recognisable through man's own reason. These include, for example, the right to life, the right to physical integrity and the right to freedom of religion and conscience. In this sense, we can find a number of such natural law provisions listed in the Decalogue of the Old Testament (Ex 20:2-17; Deut 5:6-21), since according to the Catholic view, this natural law as part of the natural moral law is ultimately founded in the eternal law (*lex aeterna*) of the Creator's Logos and binds man as a rational creature in conscience.²²

According to the Declaration *Dignitatis Humanae* of the Second Vatican Council, the Church's Magisterium has the task of „to declare and confirm by her authority those principles of the moral order which have their origins in human nature itself“²³. In a similar way, c. 747 § 2 CIC has taken this up when it grants the Church the right „to

²⁰ Vat II, LG art. 8, also LG art. 1. See Christoph OHLY: Inkarnation und Kirche – Eine Analogie und ihre Konsequenzen. In: KATHOLISCHES SÄKULARINSTITUT CRUZADAS DE SANTA MARÍA (ed.): *Kriterien der Wahrheit christlicher Glaubenserfahrung*. (Pasinger Philothea 1), St. Ottilien, EOS-Verlag, 2006. 77–104.

²¹ See Joseph HÖFFNER: *Christliche Gesellschaftslehre*. New edition published by Lothar Roos. Kevelaer, Verlag Butzon & Bercker, 1997. 63.

²² See Heinrich de WALL – Stefan MUCKEL: *Kirchenrecht: Ein Studienbuch*. München, Verlag C. H. Beck, 2009. 101.

²³ Vat II, DH 14.

render judgment concerning any human affairs insofar as the fundamental rights of the human person or the salvation of souls requires it“.

Positive divine law, au contraire, is derived from the specifically christian revelation in Scripture and tradition. However, the law of revelation cannot be misunderstood as a self-contained corpus of formulated legal propositions. Rather, it is a matter „of certain statements contained in Holy Scripture, which have been and are understood in the tradition of the Church as binding instructions for concrete full realisation“.²⁴ In this form, divine law is already embedded in the tradition of the Church. Not all biblical directives are to be understood as divine law without further ado. Time-related statements must be distinguished from essential directives. Which biblical statements are to be understood as directives of divine law is primarily decided by the church tradition itself. Thus, positive divine law can also be described „as a right of revelation made recognisable or visible by tradition“.²⁵ In the *Codex Iuris Canonici*, explicit references to the respectively understood right of revelation can be found again and again. In addition to the not frequently used term „*ius divinum*“²⁶, a number of other expressions also serve this reference. For example, c. 330 CIC emphasises that Peter and the other apostles „*statuente Domino*“ form a single college, which becomes visible in the communion of pope and bishops. Similarly, c. 375 CIC states that the bishops take the place of the apostles „*ex divina institutione*“. In sacramental law, c. 840 CIC emphasises that the sacraments are „*a Christo Domino instituta*“ and have been entrusted to the Church. Similarly, analogous references such as „*ex ipsa ordinatione divina*“ (c. 113 § 1 CIC) or „*divinitus missio concredita*“ (c. 794 CIC) are also repeatedly found in the Code.

Divine law always needs to be concretised in the historical conditions of the Church.²⁷ It is not a fixed quantity, for just as the realisation and appropriation of revelation itself takes place under the assistance of the Holy Spirit in the particular historical and cultural context and is co-determined by it without contradicting itself, this applies in the same way to divine law. The historical dimension relates to the *ius divinum* neither as an inherent deficiency nor simply as a constant process, instead the contextualisation and interpretation is a task of the Church, namely the supreme magisterium of the Pope and the College of Bishops.²⁸

3.2. *Ius mere ecclesiasticum*

Finally, purely ecclesiastical law (*ius mere ecclesiasticum*) is understood to mean all legal principles that have their origin in the legislative will of an ecclesiastical legislator or in the authorised recognition of an approved custom. It is related to the process of concretisation of divine law. Its task is to develop divine law into an order of life in

²⁴ AYMANS–MÖRSDORF op. cit. 35.; own translation.

²⁵ De WALL – MUCKEL op. cit. 102.; own translation.

²⁶ See cc. 22, 24 §1, 1059, 1075 § 1, 1163 § 2, 1165 § 2, 1290, 1692 § 2 CIC.

²⁷ See AYMANS–MÖRSDORF op. cit. 36.

²⁸ See *ibid*.

such a way that divine law is a *de facto* manageable law in its respective temporal and cultural context. Human canon law must be able to answer and respond to the resulting legal questions.

The totality of divine and human canon law proves to be a unified law that is, however, characterised by an immanent qualitative difference. This means that not all norms of canon law are equally close to the centre of the mystery of the Church; not all norms have the same significance in the nature of herself. And yet they should all be orientated towards her described nature and goal.

The Church's law on marriage can be cited as a relevant example. The Church must provide a legally qualified answer to the question of how a sacramental and consummated marriage between two baptised people, which is subject to the requirement of absolute indissolubility in accordance with c. 1141 CIC, is validly established by means of its own marriage law. This makes the divine law (i.e. indissolubility of marriage) manageable and verifiable. With the help of specific norms, it determines when and how this sacramental marriage comes about. At the same time, ecclesiastical marriage procedural law opens the possibility of examining the validity of the marriage within the framework of marriage annulment proceedings if the marriage could only have existed in appearance.²⁹

Consequently, human canon law is always about making divine law legally effective in the best possible way. Even if human canon law may contain norms that are not explicitly connected with divine law but find their legitimation in the social constitution of the Church according to LG Art. 8, purely human canon law cannot be characterised as arbitrarily changeable in contrast to divine law. Human canon law is not a purely variable law, but a law which, as human law, must be governed and executed by the spirit of divine law. In this sense, the triad formulated by Erik Wolf applies: divine law legitimises, limits and standardises human canon law.³⁰ As a tiered legal order, human canon law finds its legitimation, its limitation and its internal and external orientation (standardisation) in the *ius divinum*. The theological stipulation of the axiom that the supreme law in the Church is the salvation of souls (human beings) is to be understood in this sense.³¹

3.3. Natural Law in canon law

In addition to these important distinctions, we must examine – especially regarding the occasion of this lecture – the special significance of natural law in canon law. A

²⁹ See cc. 1671–1691. CIC. POPE FRANCIS: Motuproprio „*Mitis Iudex Dominus Iesus*“ (08/15/2015). *Acta Apostolicae Sedis* 107, 9. (2015), 958–970.; See Winfried AYMANS – Klaus MÖRSDORF – Ludger MÜLLER – Christoph OHLY: *Kanonisches Recht IV*. Paderborn, Verlag Ferdinand Schoeningh, 2013. 533–550.; Ludger MÜLLER: *Das kirchliche Ehenichtigkeitsverfahren nach der Reform von 2015 (Kanonisches Recht. Ergänzungsband)*. Paderborn, Verlag Ferdinand Schoeningh, 2017. <https://doi.org/10.30965/9783657785971>

³⁰ Erik WOLF: *Ordnung der Kirche*. Freiburg i. Br., 1961. 469., quoted from AYMANS–MÖRSDORF op. cit. 36.; own translation.

³¹ See c. 1752 CIC: *salus animarum suprema lex*.

statement by two important German-speaking canon lawyers, Klaus Mörsdorf (1909-1989) and Winfried Aymans (1936-2023), expresses the increasing distance from natural law within canon law in the 20th century. Although they believed that „natural law is not of such decisive importance for canon law because the Church itself is not a product of nature; the Church did not emerge from a natural process, but from the unfathomable counsel of God“³², but it is true that the communal life of the Church also affects people as natural persons, primarily in the area of marriage and matrimonial law.³³ However, this basic norm complex in canon law based on natural law cannot conceal the fact that ecclesiastical law essentially arises from the mystery of the Church and is therefore at the service of the law of revelation and secondary to the latter.

Both a naturalistic interpretation of natural law as a direct and only source to matrimonial law and an anti-authoritarian criticism of the idea that the Church’s magisterium could decide how and what belonged to natural law increasingly intensified the criticism of natural law in the canon law debate. At the present time, canon law textbooks still place it under *ius divinum* as a formula, but its possible significance for the service of faith, which also includes canon law, is largely ignored. In my own academic orientation, I’m deeply aligned to the basic approach of the theological foundation of canon law in the mystery of the Church, as Mörsdorf and Aymans established it. And I have tried – also following the two great encyclicals of Pope Benedict *Deus caritas est* and *Caritas in veritate* – to prove that the law of the Church can be derived and founded not only from the basic acts of the word and the sacrament (Mörsdorf-Aymans), but also and especially from the act of charity (*caritas*).³⁴ Insofar, the law of revelation is the determining source of ecclesial legislation.

However, I am convinced that the idea of natural law in church law must be riveted insofar as it can be „connectable“ to areas that go beyond the boundaries of the ecclesiastical constitution and thus be able to express common fundamental convictions more strongly. I am convinced that this can be of great help to the proclamation of the Church in the dialogue with other religious and ideological views in the context of truth and tolerance to set legal norms in its own area based on natural law. To do this, however, it is necessary to free the concept as well as the reality of natural law from the naturalistic close into which they obviously have fallen in canon law studies.³⁵

³² AYMANS–MÖRSDORF op. cit. 37.; own translation.

³³ See ibid. 35. with reference to the impediments to marriage based on natural law in the doctrine, such as the impediment of *impotentia coeundi* (c. 1084 CIC), consanguinity in the straight line and in the collateral line up to the third degree (c. 1091 CIC) and in-laws (c. 1092 CIC).

³⁴ See Christoph OHLY: *Deus caritas est. Die Liebe und das Kirchenrecht*. In: Michaela C. HASTETTER – Christoph OHLY – Georgios VLACHONIS (ed.): *Symphonie des Glaubens. Junge Münchener Theologen im Dialog mit Joseph Ratzinger / Benedikt XVI.* St. Ottilien, EOS-Verlag 2007. 103–129.; also Christoph OHLY: *Caritas et Ius. Un impulso para la fundamentación teológica del derecho canónico*. In: Juan José Pérez-Soba Diez del CORRAL – Andrés García de la CUERDA – Ángel Castaño FÉLIX (ed.): *En la escuela del Logos. A Pablo Domínguez in memoriam*. (Collectanea Matritensia 6.II), Madrid, 2010. 563–577.

³⁵ See Wolfgang WALDSTEIN: *Naturrecht und naturalistischer Fehlschluß*. In: Winfried AYMANS – Anna EGLER – Joseph LISTL (ed.): *Fides et Ius. Festschrift für Georg May zum 65. Geburtstag*. Regensburg, Verlag Ferdinand Pustet, 1991. 33–58.

3.4 Suggestion and ideas from Pope Benedict XVI.

Pope Benedict's speech in the Bundestag in Berlin opens a path towards this. In response to the question „How do we recognize what is right?“, he says in accordance to Wolfgang Waldstein that we need to „listen to the language of nature“, specifically, he explains: „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“.³⁶

But how can we understand the language of nature correctly? This requires criteria based of reason and can judge and order natural inclinations. In this context, Martin Rhonheimer assesses Benedict XVI's reminder „of the ultimately transcendent origin of all reasonableness that justifies law“³⁷ as an inadequate response to the statements of the legal scholar Hans Kelsen as a representative of radical legal positivism. Although this reference testifies to the „specifically Christian tradition of the moral natural law as participation in the eternal law in the rational creature“, as a position that assumes a theonomic justification of natural law and thus also of human rights, it hardly allows for an understanding with non-believers.³⁸ Rather, with Thomas Aquinas, natural law must be understood as the light of understanding in the sense of moral reason.³⁹ This enables man to recognize what is right.

Although, according to christian theology of creation, all natural realities manifest God's wisdom and will, but only man's natural reason realises this in a morally ordering and normative way for himself and the world. To do this, however, it must be free from the disorder caused by vices and passions. Accordingly, the virtues are the breeding ground for the right functioning of natural reason. Man is able to recognize and formulate the first and fundamental principles of natural law (e.g. the prohibition of killing, the right to physical integrity, ...), which are therefore valid independently of a concrete positive law. Legal positivism, which denies the existence of a natural law and its coordinates, must therefore be countered by the competence of natural human reason, which is capable of setting universally applicable ethical standards.

3.5 Examples in canon law

By incorporating fundamental convictions based on natural law into its legislation, canon law, which is initially focussed on the internal ecclesiastical sphere, also establishes possible connections to a non-ecclesiastical sphere. The relevance of this

³⁶ BENEDICT XVI. (1979) op. cit.

³⁷ Martin RHONHEIMER: Benedikt XVI. über Rechtsstaat, Demokratie und Naturrecht. Die Reden in Berlin und London. In: Jan-Heiner TÜCK: Der Theologenpapst. Eine kritische Würdigung Benedikts XVI. Freiburg i. Br., Verlag Herder, 2013. 135–157., here 149.; own translation.

³⁸ Ibid. 149. s.; own translation.

³⁹ See also Martin RHONHEIMER: Recht und Politik. Benedikts Auseinandersetzung mit Demokratie und Rechtspositivismus. In: Stephan O. HORN – Wolfgang SCHMIDT: *Hoffnung und Auftrag: die Reden Benedikts XVI. zur Politik*. Freiburg-Basel-Wien, Verlag Herder, 2017. 62–89.

connection can be illustrated with two exemplary provisions in the current Code, which also stand for fundamental convictions in the Church’s social doctrine.

Firstly, there is *religious freedom*. In c. 748 CIC, the Church professes both the fundamental duty of man to seek the truth in matters concerning God and his Church, and the freedom of man and his conscience from any coercion that could be exercised to accept the faith. Both elements are equivalent to human rights. It is part of the dignity of the human person that nobody should lose himself in the penultimate questions and be content with penultimate answers, but should face the entirely meaning of its existence.

This inner obligation of every human being, which is recognized by human reason as a natural right (human right) and is formulated both in the declarations of human rights and in canon law, corresponds to the tolerance towards the search for answers. There are different answers to the questions, which are respected in the sense of religious freedom. However, the Church sees this human obligation as the basis of its right to give strong testimony of the revelation given in its fullest sense in Jesus Christ. The acceptance of the truth does not happen through coercion, but through the power of the proclaimed word and the testimony given by those who have accepted the truth (baptism and acceptance of faith).

Religious freedom based on conscience must therefore be appreciated from two perspectives and recognized as justified by „natural law“ – even if it can also be legitimised theologically: externally and internally.⁴⁰ The proclamation of the Gospel in all nations does not arise from human decision. Rather, it follows from the mission of the Lord, in whose mandate the Church acts. To fulfil this basic duty appropriately, the Church requires the necessary freedom to do so. This legal claim to freedom must not be understood as a privilege. The Church claims for itself the right to proclaim the Gospel as an innate right vis-à-vis all human authority. At the same time, it corresponds to the individual right of every person to religious freedom. In material terms, the right to free proclamation means freedom from any influence of human power on the content; in formal terms, it means the unhindered use of the legitimate methods and instruments (means of communication) available to the Church. In the context of greater respect for natural law in the sense described above, this norm therefore plays a key role in canon law.

In a similar, albeit qualitatively different way, this also applies to two provisions of ecclesiastical criminal law regarding the *protection of human life*. According to c. 1397 § 1 CIC, anyone who kills a person or abducts, detains, mutilates or seriously injures a person by force or deception must, in addition to state criminal prosecution measures, be subject to corresponding internal ecclesiastical penalties. In the case of an abortion, the person performing the procedure (woman, doctor, man) is subject to self-imposed excommunication in accordance with c. 1397 § 2 CIC, while the German state currently provides for impunity after counselling in accordance with § 218 StGB (Criminal Code). In both legal provisions, the right to life and the integrity of life are at the centre of the codified normative statement, albeit with different emphases.

⁴⁰ See AYMAN–MÖRS DORF op. cit. 8.

In both legal systems, this is based on natural law and expresses the non-availability of human life. The ecclesiastical norms deliberately refer to the legal sphere within the Church and State the withdrawal or reduction of certain rights within the Church to illustrate – at least for a corresponding period of time until the church sanction is lifted – the damage that the believer has caused to the community of the Church and its witness to the integrity of life by committing the offence.

These two examples from the current ecclesiastical code are two norms that harbour a quite remarkable approach for a stronger consideration of the idea of natural law. As it is shown, human reason, in which the image of God is revealed, formulates as law and justice what it can distinguish as good and evil, as right and wrong. Without doubt, it also does this in the light of faith, which becomes its source of knowledge, but at the same time human reason opens the bridge to those other religious or non-religious traditions to bear joint witness with them in these areas and to create universally applicable law.

The future will show to what extent there are further opportunities for development – also and especially in canon law. This is conceivable and possible with the help of renewed natural law thinking in this very discipline, for which Wolfgang Waldstein and Joseph Ratzinger have made fundamental contributions.

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