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*Entitlements/rights,
dignity and liberal democracy.
Against the backdrop of the text
by Cardinal Gerhard Müller*

“The Popes as Guardians of Human Dignity”

Abstract: The concept of human dignity has already been widely discussed. In his interesting contribution, Cardinal Gerhard Müller once again turned to this category to expound upon its significance for Catholic reflection, to draw attention to its role in the teachings of 20th century Popes, and to bring it to light in connection with the increasing disputes concerning the ability/validity of “improving human nature”. Historians of political thought are interested in these disputes, and see them – insofar as they are carried out by using categories developed mainly in Western reflection – not as new ones, but rather embedded in past polemics, referring to old approaches, notably those which are prevailing today. Against the backdrop of the aforementioned disputation, this paper aims to reveal the fundamental tensions between the dominant liberal tradition – which, as the paper argues, is heterogenous – and the approach favored by the Popes”.

Keywords: human dignity, philosophy, theology

The concept of human dignity has already been widely discussed also in Polish literature: attention has been drawn to the potential for understanding the concept in line with the assumptions of either the ancient philosophers, or St Thomas Aquinas and other Christian thinkers, or yet, following the approach

of Immanuel Kant.¹ In his interesting contribution, Cardinal Gerhard Müller once again turned to this category to expound upon its significance for Catholic reflection, to draw attention to its role in the teaching of the popes of the last century, and to bring it to light in connection with the increasing disputes concerning the ability/validity of “improving human nature” and the treatment of human beings as creatures of God, who would strive towards their Creator with a view to attaining the goal of their existence: salvation. A historian of political thought is interested in these disputes, and sees them—insofar as they are carried out by using categories developed mainly in Western reflection—not as new ones, but rather embedded in past polemics, referring to old approaches, notably those which are prevailing today. It is worth formulating a few remarks against the backdrop of the text referred to above, revealing the fundamental tensions first and foremost between the dominant liberal tradition (which is, after all, heterogeneous, as I shall try to demonstrate) and the approach supported by the popes.

The subject entitlements/rights of the individual versus rights of the human person

The liberal approach that is usually considered to be the most carrying one is that which treats the prerogatives of the individual as potentialities that only he or she can exercise and which cannot be limited or assisted in this respect by either another individual or other individuals, or by some discretionarily understood lawmaker. This concept, which entails a “negative” understanding of individual rights or entitlements, is typically found in John Locke, who supplements it with another concept, one concerning the law of nature or the law of reason, which contains merely one norm, albeit a norm known, already in the so-called “natural state”, to the mind of every “intellectually mature” subject. A norm, therefore, which is not handed down by any culture or revealed, nor is it derived from anyone’s law-making work or co-constituted by individuals. It is prior to both any human law-making instances and to the ‘civil society’ that individuals are to create in order to establish, in particular, an ‘instance’ capable of an impartial interpretation of that norm, which, and this is crucial, prohibits the infringement of rights or entitlements possessed by each individual prior to the emergence of that norm. This concept, which continues to underpin both the

¹ See e.g., Bogdan Szlachta, “Nie zdradzać człowieka’ – wieloaspektowość ludzkiej godności w nauczaniu Kościoła”, in: Anna Budzanowska, Wit Pasierbek (eds), *Polonia Restituta. Dekalog dla Polski w 100-lecie odzyskania niepodległości*, Wydawnictwo Naukowe Akademii Ignatianum, Kraków 2019, pp. 263-280 (along with the literature referenced therein).

notion that every individual has the same rights or entitlements irrespective of the culture in which he or she grows up and the notion of a “reasonable norm” to protect these rights and which sets the normative measure of the correctness of the actions of any legislature meant to consider this “reasonable norm” rather than the cultural content shared by the addressees of the legislature’s decisions, is used to counter, *inter alia*, the claims of the majority. After all, it points out the limit of the legislative will, and it does so in the name of the primacy of reason, or more precisely of the law of reason or the law of nature— one might say, it sets a “standard of justice”, raised even today by “constitutionalists” who do not accede to the dominance of positivist solutions.² This concept, important for

² One can find in the literature attempts to distinguish between classical constitutionalism (often associated with Christian constitutionalism) and liberal constitutionalism; both are to aim at limiting “the tyrannical temptations of both rulers and ordinary people, both are to introduce safeguards against abuses of power, from which arises the exclusion of certain spheres of life from the competence of the state” (Andrzej Bryk, *Konstytucjonalizm. Od starożytnego Izraela do liberalnego konstytucjonalizmu amerykańskiego*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2013, p. 623); however, the reasons for which their respective proponents try to draw boundary lines for political power vary: “Christian constitutionalism is rooted in piety—in respect for the absolute Lordship of God and the inherently limited ends of the temporal realm compared to the spiritual realm as well as the inherently imperfect or corruptible nature of politics in the fallen world. The underlying assumption is that God has established an order of being made up of two different realms or “cities,” with activities in the spiritual realm that are independent of and higher than the state and those in the temporal or earthly realm that are a necessary and natural part of the political order. The liberal conception of constitutionalism does not recognize this hierarchy of being. It is based on the theory of natural rights or human rights which exist prior to the state and must be protected by an artificial social contract that separates a private sphere of civil society from the public sphere of the state. The underlying assumption of liberalism is not a God-given hierarchy of being but natural freedom and equality that make freedom an end-in-itself or a means for enjoying the safety (...) that accompany protections from state power. Even when liberalism conceives of natural rights as endowments of the Creator, the state recognizes an inviolable private sphere in which one is free to pursue happiness as one sees fit as long as one does not violate the law or take away the rights of others” (Robert P. Kraynak, *Christian Faith and Modern Democracy. God and Politics in the Fallen World*, University of Notre Dame Press, Notre Dame, IN 2001 (reprint 2012), p. 205). Despite similar aims and pursuits, the two constitutionalisms thus differ, and the attempt to reconcile them ‘on liberal terms’, often undertaken in the past two centuries, has led to a depreciation of the hierarchical order that is key to the Christian view. For when the hierarchy envisaged therein is, as Kraynak notes, “absorbed by, or adapted to, liberalism” it suffers destruction “because liberalism treats what is higher and nobler as something that is merely ‘private’ or ‘personal’ and, therefore, in a sense lower than the state” (ibid., p. 206). By failing to recognise or by levelling out the hierarchy inherent in the Christian approach, liberal constitutionalism in fact limits itself to a single dimension, that of the temporal life, constructing solely in relation to it the main institutional solutions aimed at restraining the will of those in power, so that in this dimension—the temporal dimension, not to say the one concerning the temporal life—the will of those in power does not infringe upon that which must

the 'Western', American and European reflection, including for the nineteenth-century project of the 'rule of law', was being undermined starting with the speeches of T. H. Green and notably L. T. Hobhouse (regarded as the founder of 'social-liberalism'), mainly by utilitarians, highlighting the ability of each individual to determine the good, seen to relate to the individual's particular benefit. In the "social liberalism" that has dominated Western reflection and jurisprudence since the 1960s, a kind of "positivisation" of the rights once considered in "negative perspective" took place: the legislator was no longer to protect such rights as inviolable, ones that remained exclusively at the disposal of the individual and which were only exercised by that individual, it was not even to protect the right to life, which the first liberals had considered 'inherent'. For the legislator was to act both in the interests of social consent and for the development of the respective individuals. Perhaps in connection with the abandonment of the realist approaches formulated in the dispute over universalities, which presuppose the real existence of the nature, form, or a species substance of the human being, the thrust was seen as a being in the making, who must be provided with the conditions for a decent life in a developing community. The

be guaranteed to individuals in the private sphere of their temporal life; that which must be guaranteed by the laws adopted, after all, in the public sphere. The key to liberal constitutionalism thus lies in the separation of the temporal dimension from the private sphere as the only possible so-called "private sphere", in connection with which is identified a set of more or less defined but nonetheless identical rights possessed by each individual, not by dint of the will or permission of the state, but possessed already in a "pre-state times", as Hobbes and Locke formulated it, drawing up visions of the state of nature as pre-social on the one hand, pre-political on the other (not to mention the pre-cultural condition, which raises perhaps the most serious problems for liberalism: after all, on what can one ground the universality of individual rights, and notably the legitimacy of the norms associated by the two "fathers of liberalism" with the "law of nature", in the absence of a common "cultural substrate", or even a linguistic one?). Or to put it differently, liberal constitutionalism presupposes, or at least presupposed, the inviolability of a certain private sphere by the state. In thus presenting this issue, as late as the mid-20th century, Friedrich August von Hayek could argue that while the democrat is concerned above all with indicating who governs him, the liberal is concerned with determining to what extent he is being governed; the democrat, after all, places the emphasis on the governing subject and raises the question as to whether everyone should participate in governing, and in particular in the creation of legal norms, whereas the liberal ignores this issue as being of lesser importance, expecting every ruler, especially the legislator (indeed any legislator), not to infringe on the sphere of privacy of each individual, which is inaccessible to the ruler's will, even if only the legislative one (for more, see: Bogdan Szlachta, "Konstytucjonalizm liberalny", in: Mirosław Granat (ed.), *Sądownictwo konstytucyjne. Teoria i praktyka*, Uniwersytet Kardynała Stefana Wyszyńskiego, Warszawa 2020, pp. 11-42; *ibid.*, on the approaches by Hobbes and Locke, including the negation of the— ever close to the Catholics—teleological dimension that could be considered in the reflection on the rights of individuals).

predictions of the would-be Jesuit, a Jew but also a Catholic, Leon Naphtha, one of the main characters in Thomas Mann's *The Magic Mountain*, were coming true in that the main mark of modernity was no longer to bring out the separateness and uniqueness of each human as a rational being, but to see human beings in a 'social context': the entitlements of individuals as beings different from their like, lasting from the moment of conception until natural death, were transformed into possibilities shaped in the social game and defined within its framework. From the mid-nineteenth century onwards, liberals have placed the emphasis not on this distinctiveness but on its 'social contextualisation', making the understanding and scope of its powers dependent on the 'well-being' of the collective and themselves, considering deprivation to be the rationale for the unwillingness of parents to have children (the issue of abortion) or the unwillingness by children to have a suffering parent (the issue of euthanasia).³ There is a growing conviction that the state is no longer there to protect the rights of the unborn and those receiving palliative care, but to ensure meeting the needs of the members of society disposing of possibly unnecessary burdens.

Locke's theory, to some extent contested by Rousseau, "was fertile, as it introduced the principle of the rights of the individual", the French constitutionalist Adh mar Esmain argued already in the nineteenth century; it introduced the "principle of the rights of the individual", the foundations of which, however, should not be sought— as did the English thinker—in the hypotheses of the state of nature or the social contract because its basis—and this is an important element when we try to comprehend the transformations taking place also in liberal constitutionalism—lies in the idea that "the source of the whole law is the individual because it is solely the individual who is a real, free and responsible being. (...) By law and by reason, political society exists exclusively in [the] interests [of individuals]. (...) But the first interest and the first right of the individual is to be able to develop freely his own capacities, and the best way to ensure this development is to allow the individual to guide it himself, spontaneously and as he pleases, at his own risk and peril, as long as he does not undermine the equal rights of others. Yet ensuring this free development is precisely the purpose of the various freedoms that make up individual rights: by failing to respect them, political society would miss its essential mission, and the State would lose its first and principal *raison d' tre*."

³ For more, see: Andrzej Bryk, *Konstytucjonalizm. Od starożytnego Izraela do liberalnego konstytucjonalizmu amerykańskiego*, Wydawnictwo Uniwersytetu Jagiellońskiego, Krak w 2013, pp. 608-620.

«The end of all public institutions, said Siéyès, is individual liberty».⁴ Esmein, attributing to American courts “a political authority, supreme over all others” only in light of their having to adjudicate “a conflict between the constitutional law and ordinary law” in favour of the former, noted that this example was not widely followed outside America; that in “Europe, the situation was different” because there, it was established that “the courts had no right whatsoever to assess the constitutionality of laws”, they could merely “apply and interpret ordinary laws”. The Constitution, “as far as the rules it imposes on the legislative power are concerned” – and this is a significant statement from this jurist of old – “has as its ultimate sanction only the conscience of those who exercise this power and their responsibility, at least their moral responsibility, before the nation”.⁵ In France, this was the doctrine that had continuously prevailed from 1790 onwards and was “generally presented as a rigorous application of the principle of the separation of powers”⁶ associated by the French author with the ‘democratic spirit’ rather than with the liberal tradition; a tradition which—if we relate it to the republican character of the American constitution—would allow, in the context of liberal constitutionalism, the possibility for the courts to control the constitutionality of laws and thus usher the ‘third power’ into the role of a ‘blocker’ of unconstitutional actions by the legislature. Liberal constitutionalism would thus indeed render judges as the demiurges of “a ‘just’ society, even against the will of the people, for it would be they who would represent—as a jurist over a century later to Esmein puts it—a ‘justice’ defined in liberal society exclusively in terms of equal rights, increasingly treated as human rights because (...) their cornerstone becomes an autonomous, arbitrary subject endowed with dignity, whose rights ultimately legitimise the political system”.⁷

⁴ Adhémar Esmein, *Prawo konstytucyjne*, trans. W. Konopczyński, K. Lutostański, Wydawnictwo Sejmowe, Warszawa 2013, pp. 425-426. Quotation in English translated from: Adhémar Esmein, *Éléments de droit constitutionnel*, Librairie de la Société de Recueil Général des Lois et des Arrêts et du Journal du Palais, L. Larose, Directeur, Paris 1896, pp. 367-368.

⁵ Adhémar Esmein, *Prawo konstytucyjne*, trans. W. Konopczyński, K. Lutostański, op. cit., pp. 464-467. Quotations in English translated from: Adhémar Esmein, *Éléments de droit constitutionnel*, op. cit., pp. 419-421.

⁶ Adhémar Esmein, *Prawo konstytucyjne*, op. cit., p. 467. Quotation in English translated from: Adhémar Esmein, *Éléments de droit constitutionnel*, op. cit., p. 421.

⁷ Andrzej Bryk, *Konstytucjonalizm. Od starożytnego Izraela do liberalnego konstytucjonalizmu amerykańskiego*, op. cit., pp. 602-603. While discussing an autonomous, arbitrary subject endowed with dignity, the author draws attention to “the disintegration of the traditional Kantian theory of human rights and the increasingly frequent interpretation of rights as the result of the autonomous creation by an imperial subject against the society. In such a situation – he adds – constitutional courts are victims of an anthropology that forces them to build, through laws, not a universalist society of moral justice, but a Hobbesian society

But herein arises a significant problem: Catholic social teaching speaks of the human person rather than the individual, mentions the deriving of man's existence (and essence as a species) from God, of the personal bond linking the Creator to the created individual human entity, who is—like Him—the person, placed first and foremost in relation to God and not to society, to God, towards whom the human person must strive with a view to achieving fulfilment, salvation. This existential and essential embeddedness in God, on the one hand, and teleological orientation on the other, introduce a significant moral context for the understanding of the rights of the human person, different from the 'liberal' understanding of human rights. Locke's approach was based on the conviction that each human individual possessed a series of subjective rights primary to the substantive law (called the 'law of reason' or the 'law of nature'), which, taken as a norm constituted by man's inherent reason, was intended to protect the individual's entitlements (subjective rights), in that it made it prohibited for anyone, including a law-making body, to interfere therewith. This concept is a key basis of the 1948 Universal Declaration of Human Rights, which mentions the inalienable rights of the individual that transcend the positive laws enacted by states and are intended to serve as a norm and reference point for the latter. As stated in the 2009 document of the International Theological Commission, *In Search of a Universal Ethic: A New Look at the Natural Law*, there appeared "a tendency (...) to reinterpret human rights, separating them from the ethical and rational dimension that constitutes their foundation and their end", a tendency of their reinterpretation in the spirit of "pure utilitarian legalism",⁸ critical of the understanding of the rights of the human person contained in the teaching of the Roman Church. Its Head, Pope Benedict XVI, stated at the United Nations headquarters in 2008: "Experience shows that legality often prevails over justice when the insistence upon rights makes them appear as the exclusive result of legislative enactments or normative decisions taken by the various agencies of those in power. When presented purely in terms of legality, rights risk becoming weak propositions divorced from the

of a world of selfishness that is engulfed in a culture war. This puts them at the centre of such a culture war and constitutes more a manifestation of the crisis of Western constitutionalism and of the disintegration of the liberal *paideia*, forged by the modern mind in the sixteenth and eighteenth centuries, than an ability on the part of these courts to build a sustainable constitutional order sustaining the liberal *paideia*. It is this issue that becomes the most fascinating problem of modern constitutionalism (ibid., p. 603).

⁸ *In Search of a Universal Ethic: A New Look at the Natural Law* (hereinafter referred to as the SUE), 5, https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html.

ethical and rational dimension which is their foundation and their goal”.⁹ Thus, let us note that the “ethical and rational dimension” constitutes the foundation of both subjective rights and any legal norms (or, at least, is associated with their negative limits); it also, it is perhaps to be presumed, sets the essential context both for each person and for the lawmaker, for no one can forget (and this was meant to be expressed back in the 1948 Universal Declaration of Human Rights) that the “respect for human rights is principally rooted in unchanging justice, on which [and not on the will of the consenting parties] the binding force of international proclamations is also based. This aspect is often overlooked – as it is added after the words of Benedict XVI – when the attempt is made to deprive rights of their true function in the name of a narrowly utilitarian perspective” (SUE, fn. 4).

The problem raised by Pope Benedict XVI as regards the discarding of the ‘ethical and rational dimension’ in favour of a ‘narrow utilitarian vision’ is linked to the dominance of legal positivism: having recognised that “every claim to possess an objective and universal truth would be the source of intolerance and violence, and that only relativism can safeguard the pluralism of values and democracy”, the proponents of legal positivism are not only to renounce any attempts to appeal to “any reference to an objective ontological criterion of what is just. In this perspective, the final horizon of law and the moral norm is the law in force, which is considered to be just by definition since it is the will of the legislator” (SUE 7). Let us also note this: the law in force, the constituted or—as we mentioned earlier—“civil” law, is not only “the final horizon of law”, the foundation for itself, but it also constitutes “the final horizon of (...) the moral norm” (SUE 7), from which the moral norms are to be derived. This renders such norms, the moral norms specifically, not distinct from the law and not capable of constituting a criterion for the correctness or soundness, or justice of legal norms, but are instead established therein. This approach, found in the reflections of advocates and even apologists of lawyerly positivism rather than legal positivism (as in the Polish translation of the document cited above), is problematic insofar as it nullifies the approach defended by Pope Benedict and his predecessors: it is no longer possible to convince of the existence of some “higher law” intended to provide—as we have seen—a justification for the existence of human rights and a normative context for a possible conscientious objection, it is also no longer possible to argue that, having become aware of its content as the content allowing to assess the norms of legislated law,

⁹ *Address of His Holiness Benedict XVI*, New York, 18 April 2008, https://www.vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf_ben-xvi_spe_20080418_un-visit.html.

it would be possible to consider some of them as “not binding in conscience”. Statute law, after all, precedes all morality, for in it must now be found the source of moral norms as well.

I will return to this issue in the last part of the text. In order to highlight the problem more clearly, suffice it to mention that St John Paul II, often referred to as the “Pope of human rights”, argued that the moral natural law recognised by man’s inherent reason corresponding to his personal structure should be matched with the inherent dispositions (inclinations)¹⁰ of his nature. Not only are these inclinations to constitute the content of human nature, which is proper to every individual belonging to the species, irrespective of the culture in which the person grows up, sex, nationality, or nation to which the person belongs, irrespective of the time of his or her presence in the temporal visible plane, and, finally, irrespective of the social role he or she plays. Thus, not only do they indicate the content of human existence, of existence as a species, but they are also intended as a point of reference for the normative determinations corresponding to the nature of the species, which constitute precisely what in the Catholic tradition is still referred to today as “natural law”, and by means of these determinations are to set the limits of legitimate human behaviour.¹¹ This complex passage expressed just now is based on the thesis that the Pope, who was a native of Poland, was referring to the teachings of the 13th century Christian Aristotelian, St Thomas Aquinas. Like Thomas Aquinas, at the end of the twentieth century, marked by the catastrophes of two world wars and the horrors of totalitarianism, John Paul II pointed out that the law made by man must find both its grounding and its negative boundaries for the human lawmakers in a sphere independent of their will. He argued this at a time when—and today even more clearly—respecting the human rights was usually called for, therein thus finding the sole, essentially, limits to the activity of the legislator. John Paul also frequently mentioned them (he is even sometimes referred to as the “Pope of human rights”), not only because he

¹⁰ The International Theological Commission uses the term ‘dynamisms’ instead of ‘dispositions’ or ‘inclinations’, distinguishing three: “to preserve and to develop one’s own existence; (...) to reproduce, in order to perpetuate the species” and, listed together, “to know the truth about God and to live in society”, declaring that “(f)rom these inclinations, the first precepts of the natural law, known naturally, can be formulated (*In Search of a Universal Ethic: A New Look at the Natural Law*, op. cit., 46; for the discussion of each of the “dynamisms” or inclinations, see: sections 48-51).

¹¹ Human nature (one inherent to the species, and not a nature supposedly different in each individual, who would possess a ‘nature of his or her own’) was the point of reference in the reflection presented by John Paul II, in particular in the 1993 encyclical *Veritatis splendor* (hereinafter referred to as VS).

himself had experienced both Nazism and Bolshevism, but also because human life and human dignity had become essential elements in the teaching of the Church, exposing both the need to pursue a transcendent goal suited to the representatives of the human species and the need to honour the freedom to profess Catholicism both in totalitarian regimes and in democratic systems. However, the Pope invariably linked, as is all too often forgotten, reflection on ‘human rights’ with reflection on the ‘precepts of natural law’, binding “always and for everyone”, including “prohibitions which forbid a given action *semper et pro semper*, without exception, because the choice of this kind of behaviour is in no case compatible with the goodness of the will of the acting person, with his vocation to life with God and to communion with his neighbour” (VS 52). The prohibition regarding the ways in which human rights could be exercised out of a single, legislative will, even if legitimised by the majority or all of the addressees of their rulings, sounded extremely unambiguous: “It is prohibited—to everyone and in every case—to violate these precepts. They oblige everyone, regardless of the cost, never to offend in anyone, beginning with oneself, the personal dignity common to all” (VS 52; a fundamental question arises, also in connection with the wording of the provision of Article 30 of the 1997 Constitution of the Republic of Poland, concerning the relationship between nature of the species and natural law based thereon as well as dignity, which is considered to be common to all people and therefore also has a ‘species’-associated value; I will discuss this further below, as this issue also requires clarification). In his reflection, John Paul II linked the absolute commandments to the principles of natural law, as is evidenced in particular the Catechism of the Catholic Church (hereinafter CCC) signed by him, in which we read not only that “natural law, the Creator’s very good work [let us note this problematic statement], provides the solid foundation on which man can build the structure of moral rules to guide his choices. It also provides the indispensable moral foundation for building the human community”, which corresponds to the “objective” or normative side of natural law (which is not considered law within the understanding of the dominant contemporary legal positivism because it does not incorporate coercive sanctions into the content of the norm), but we also read that natural law “provides the necessary basis for the civil law with which it is connected, whether by a reflection that draws conclusions from its principles, or by additions of a positive and juridical nature” (CCC 1959).

The Church invokes natural law as a measure of, simultaneously, justice and reason or rationality in connection with the “spread of a culture that limits rationality

to the positive sciences and abandons the moral life to relativism” in order to emphasise that human beings possess “the natural capacity (...) to obtain by reason ‘the ethical message contained in being’ (...) and to know in their main lines the fundamental norms of just action in conformity with their nature and their dignity. The natural law” not only “makes possible an intercultural and inter-religious dialogue capable of fostering universal peace and of avoiding the ‘clash of civilizations’”, but also provides “a basis in reason for the rights of man” (SUE 35). It is countered by relativistic individualism close to liberals, who consider that “every individual is the source of his own values, and that society results from a mere contract agreed upon by individuals who choose to establish all the norms themselves”. This approach supports the fundamental principles “that regulate social and political life (...)” and “recalls the non-conventional, but natural and objective character of the fundamental norms” (SUE 35), the character that is key to the Catholic approach, which also defines its proper understanding of the rights of the human person.

The authors of *In Search of a Universal Ethic (...)* recall the words of Pope Benedict XVI, who expressed a similar conviction in a speech at UN headquarters on 18 April 2008, pointing out, however, not only that human rights “are based on the natural law inscribed on the heart of man and present in the different cultures and civilizations”, but also that “(t)o detach human rights from this context would mean restricting their range and yielding to a relativistic conception, according to which the meaning and interpretation of rights could vary and their universality could be denied in the name of different cultural, political, and social conceptions and even religious outlooks” (SUE, fn. 42). This position, as Pope Benedict XVI pointed out in his speech to the Bundestag in 2011 (*The Listening Heart. Reflections on the Foundations of Law*), relegates the “Christian thinking about law” to the ranks of counter-cultural standpoints (which in itself may seem peculiar),¹² which run counter to the dominant culture, including the legal culture of modern Europeans. These statements alone clearly indicate an awareness of the problematic nature of the Catholic approach to the rights of the human person, which is grounded in a moral teaching that refers to universally valid normative content revealing a just and rational or reasonable normative order which every legislator, including liberal or liberal-democratic lawmakers, must respect. This is a questionable approach when it is assumed that an

¹² See also: SUE 71 along with an analysis of the processes that led to these developments (SUE 71-75), and a reflection on individual freedom juxtaposed with the errors of ‘physicalism’ on the one hand, and ‘environmentalism’ on the other (SUE 76-82).

autonomous subject establishes legal norms together with those akin to him or her, ultimately legitimising the political system. The only normative order that binds all the actors in liberal democratic societies turns out to be the legal order, which does not have to consider the requirements of natural law, but should instead be “legitimate”, undergo the procedures within the framework of which it is established. These, essentially merely procedural requirements, abolish the “substantive” requirements based on the norms of natural law, shift the reflection on human rights from the level where they are considered “pre-political” or “pre-legislative” to the level of the battles waged by the proponents of various points of view, which may also include those honouring the Catholic position; a position which they may present as universally valid, but which, in liberal democratic societies seeking merely the legality and not the rightness of legal decisions, no longer accepting, no longer even knowing the concept of the nature of the human species, whereby the Catholic position is not recognised as universally valid.

Normative rules adjudicated by individuals and communities against the previously discerned “the very nature of the human subject” constitute, for Catholics, “a permanent critical instance” inherent in “a fundamental ethical norm” of the natural law; the norm unknown to the proponents of legal positivism who consider statute law as the source of moral substance as well (SUE 9); the norm, which should not be associated with “the physical laws of nature”, but with the fundamental moral goods “the human person immediately apprehends”, and who—and not someone outside that person— “formulates, as a result, the precepts of the natural law” (SUE 10 and 11). It is therefore the human subject, using his or her inherent reason (and not submitting to the will of some arbitrary legislator, even if it were God considered in such a role), as Cardinal Müller also points out, who is to recognise and respect the precepts of this law, also when establishing the norms of “civil law”. At this point, however, a problem arises that is often raised by the critics of the Catholic position, which highlights the simultaneously universalistic and rational dimension of natural law, applicable to and cognisable by every human being: in the document at hand, it is clearly stated that since the time of St Augustine it has been recognised that “the norms of the righteous life and of justice are expressed in the Word of God, who then imprints them in the heart of man ‘as the seal of a ring passes to the wax, but without leaving the ring’” (SUE 26). Thus, it is ultimately from God that substance is to reach the human heart, the substance which man is to recognise, to realise, like among the Stoics, what has already been written in his heart

by God.¹³ Such an approach raises the opposition both by those who do not recognise the existence of God and by those who recognise gods other from the God of Christians.

The rights of the human person, associated with natural law protecting the inclinations of man's nature as a species, are thus not construed in the same way as Locke's rights or entitlements of the individual.¹⁴ What is important is that these rights, too, possess the virtue of being universally valid, non-negotiable, and not subject to arbitrary decisions by the legislature, even if it is acting on the basis of majority rule. At the same time, however, such an approach exposes them not only to the attacks already presented, makes them a subcultural endeavour, but also subjects them to processes analogous to those encountered by the "classical" liberal approach put forth by Locke in the second half of the 17th century. Since the late 1960s, this approach has been driven out by "progressive liberalism", whose followers consider that "the private is political", that equal rights should apply not only in the public realm but also in the private sphere, that the "moment of equality", the "egalitarian moment" should be augmented at the expense of the "moment of freedom" understood as the non-interference by the state in the inviolable private sphere of individuals. Legislative activity is no longer dominated by the effort to establish guarantees of the inviolable rights of individuals, but by the eradication of the inequality of individuals. As a result, the meaning attributed to "dignity" is also changing, where the term is no longer linked to the equal ontic status of individuals (which is so important, *inter alia*, for the protection of their lives), but to their common claim to participate in the formulation of legal norms, their claims to be taken into consideration in the legislative process and thus in the legal system in place. This is not only a significant manifestation of "relativistic individualism" considering that "every individual is the source of his own values, and that society results from a mere contract agreed upon by individuals who choose to establish all the norms themselves" (SUE 35). It also constitutes an

¹³ By stating that "creatures are animated by a dynamism that carries them to fulfil themselves, each in its own way, in the union with God", the authors of the document *In Search of a Universal Ethic (...)* declare that this dynamism is "transcendent, to the extent to which it proceeds from the eternal law (...). But it is also immanent, because it is not imposed on creatures from without, but is inscribed in their very nature. (...) The natural law is therefore defined as a participation in the eternal law. It is mediated, on the one hand, by the inclinations of nature, expressions of the creative wisdom, and, on the other hand, by the light of human reason which interprets them and is itself a created participation in the light of the divine intelligence" (SUE 63).

¹⁴ See, for example, Bogdan Szlachta, "Prawo katolika – prawo liberała", *Miesięcznik "Znak"*, no. 11(450), Kraków 1992, pp. 81-96.

important context for understanding a legislative process that no longer takes into account what is common, to be found, for example, in the common nature of all human individuals and in the equal rights of the human person, such as the right to life,¹⁵ but which highlights a multitude of perhaps hardly reconcilable particularistic claims, be it critical of such rights. Claims made by individuals holding their consciences as the ultimate instances for determining the good and the evil, the right and the wrong, in connection with the discernment of what is advantageous or disadvantageous in their view. In his encyclical *Veritatis splendor* issued almost thirty years ago, John Paul II already pointed out the consequences of treating the individual conscience as such an ultimate instance. Not only “traditional culture”, but also natural or traditional intermediary bodies, such as the Church, devoid of a transcendent foundation and usually considered as one of many social structures, threaten the authenticity of the inimitable individual capable of articulating own preferences, of indicating what constitutes the good and what is evil. In today’s highly influential approaches by proponents of radical, or agonistic, democracy, who draw on Marx rather than Locke, individuals driven by current preferences seek *ad hoc* allies and identify *ad hoc* opponents, thus losing reference to “permanent values” (associated not only with the natural law of the classics, but also with the law of nature of the early liberals), instead demanding that hitherto “excluded” behaviour be accommodated in the name of respect for the original standpoint of the individual. It is no longer the correctness of a decision made in a democracy, but its relative validity that is expected: the proliferating deliberative conceptions no longer even refer to a general reasonableness, but increasingly settle for the “epistemic proceduralism”, acknowledging the impossibility of not only finding, but even generally accepting, a reasonableness whose content were to be

¹⁵ As we read in the *Catechism of the Catholic Church*, the “right to life of every innocent human individual” is not only “inalienable”, but “is a *constitutive element of a civil society and its legislation*”: “The inalienable rights of the person must be recognized and respected by civil society and the political authority. These human rights depend neither on single individuals nor on parents; nor do they represent a concession made by society and the state; they belong to human nature and are inherent in the person by virtue of the creative act from which the person took his origin. Among such fundamental rights one should mention in this regard every human being’s right to life and physical integrity from the moment of conception until death.” “The moment a positive law deprives a category of human beings of the protection which civil legislation ought to accord them, the state is denying the equality of all before the law. When the state does not place its power at the service of the rights of each citizen, and in particular of the more vulnerable, the very foundations of a state based on law are undermined. (...) As a consequence of the respect and protection which must be ensured for the unborn child from the moment of conception, the law must provide appropriate penal sanctions for every deliberate violation of the child’s rights” (2273).

co-determined by diverse individuals. If anyone and at any time can – and should not be restricted in doing so – oppose the “instruments” that enslave them, borne not only by the moral teaching of the churches, but also by the law in force and even by the dominant language, then, in the name of their emancipation, or rather “inclusion”, any preference may be granted legal protection. This applies both to preferences that were once considered “immoral” or “illicit” and preferences that diverge from the currently prevailing culture, critically assessed therein. The law is increasingly regarded as an instrument that protects the freedom to articulate such current preferences, that run even contrary to the dominant cultural patterns, to which moral virtue is sometimes attributed (at the expense of the order associated with God and His presence in the conscience of individuals, and therefore at the expense – viewed from a Catholic perspective – of their “righteousness”). It is presumed that there was no Creation, that the world has evolved to its present state without the participation of the Creator, therefore referral to God seems unwarranted, unacceptable to those who – being worthy of respect equally like the others – do not recognise Him. When the courts of the so-called western world rule that at the heart of freedom lies the ability of each individual to define their very existence and the universe in their own manner,¹⁶ a referral to the Law of God or the nature of the species constituted by Him becomes even more problematic. In this context, when a person is perceived (more and more frequently, in fact) as an entity that is not necessarily rational, but rather driven by emotions, by the “whims of the moment” that are impossible to assess due to a lack of criteria, such referrals take on not only a subcultural, but also a counter-cultural quality that is antagonistic to the dominant approaches.¹⁷ The law, which had been erstwhile intended to protect the rights which in time came to be known as human rights, is

¹⁶ See e.g., *Planned Parenthood v. Casey*, 505 US 833, 1992.

¹⁷ Foreign, if not even inimical, to such approaches is the view expressed in the already evoked 2009 document of the International Theological Commission, which states that the “norms of natural justice are thus the measures of human relationships prior to the will of the legislator” and that they “express what is naturally just, prior to any legal formulation”, if this is to be expressed “in a particular way in the subjective rights of the human person, such as the right to respect for one’s own life, the right to the integrity of one’s person, the right to religious liberty, the right to freedom of thought” etc. (SUE 92). For these rights, “to which contemporary thought attributes great importance” as to – let us add – human rights, the rights of those to whom the legislator addresses its determinations, “do not have their source in the fluctuating desires of individuals, but rather in the very structure of human beings and their humanizing relations. The rights of the human person emerge therefore from the order of justice” and, as such, cannot be juxtaposed to it, cannot be prior to it, cannot be prior with respect to the norms of natural law; their acknowledgement, the attribution to them of juridical value in positive law, is tantamount to the acknowledgement of the “objective order of human relations based on the natural law” (SUE 92).

becoming not so much a tool to protect these rights as an instrument to multiply them and to provide protection to the successive revealed subjective preferences.¹⁸

Two perspectives on the “dignity of the human person”

It is said in the Vatican II document *Gaudium et spes*¹⁹ (GS 41), invoked by Father Cardinal, that “(m)odern man is on the road to (...) a growing discovery and vindication of his own rights”, whose foundation or, rather, whose source is to be his personal relation with the Creator. The Church, conveying that God created man in his own image and redeemed from the sin, who gathers “whoever follows after Christ” and who, though this, “becomes himself more of a man”, is to be the might of this faith, able to “anchor the **dignity of human nature** against all tides of opinion, for example those which undervalue the human body or idolize it” (GS 41). These theses are alien to the denialists of Christ and of the prophetic mission

¹⁸ The vicissitudes of the original liberal project, which over the course of the past two centuries has been transformed into a social-liberal project that “positivizes” the rights erstwhile regarded as off-limits and now considered by supporters as the basis for positive claims – albeit sometimes culturally tenuous – to inclusion, should become the subject of serious reflection by Catholics. Their framing of the rights of the human person sometimes resembles that original project: true, Catholics link the rights of the human person to the work of God and to the norms of natural law that set negative limits on the potential capabilities of particular individuals. Referring to the natural inclinations as a “metaphysical point of reference” common to every human being, as a reality to be protected by the norms of natural law cognisable by inherent human reason, they speak of the rights of the human person not only as possibilities that are not meant to violate this reality, the norms of natural law, but also as possibilities to which every such person is entitled irrespective of whether they honour or violate such limits. In other words, Catholics speak both of natural law, which the person enjoying his or her rights knows and respects, and of the rights of the human person who does not know or respect such limits. This raises a serious problem, as the second way of addressing it renders Catholics more akin to liberals, requiring to indicate how the legislators are to ensure, in the temporal world, that rules adopted are consistent with the requirements of natural law. Locke intended the law of nature to protect the entitlements/rights of individuals; however, each individual was to be reasonable and to know the norm of the law of nature, whereas civil society and its bodies were merely to interpret that norm. However, this project was altered, as it became apparent that it was not the interpretation but the content of the law that should be determined by debate or by majority judgment: any legislator or the courts increasingly assisting or even replacing it. This modification made it possible to supplement with the context of social struggles the search for the content of the law, the law not so much protecting supposedly inviolable rights any longer, but increasingly fulfilling the claims based on these rights. A similar fate may befall the idea espoused by Catholics, for it too is considered in a political and social environment no longer sensitive to rationality or reason, subject to emotion and the constant strife of the various players.

¹⁹ Vatican II, Pastoral Constitution on the Church in the Modern World “*Gaudium et Spes*”, https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html (hereinafter referred to as GS).

of His Church, which—again let us turn to the invoked document, finding in it the key passage also analysed by Father Cardinal— “by virtue of the Gospel committed to her, proclaims the rights of man; she acknowledges and greatly esteems the dynamic movements of today by which these rights are everywhere fostered”. The thesis that “these movements must be penetrated by the spirit of the Gospel and protected against any kind of false autonomy” so as to fully ensure the “personal rights” the implementation of which requires consideration of “every requirement of divine law” is critical: when the Church associates this call with the thesis of thus saving the dignity of the human person, its denialists take it as heralding the re-objectification of the human being, the abolition of his or her subjectivity and even dignity. These denialists do not accept the conviction expressed by Father Cardinal that “human rights can only be applied universally if the [human] *person as God’s creation* is at their centre”. They believe that such rights can be possessed by any individual, even when one assumes that they emerged in the course of evolution enabling the construction of a civilisation devoid of God, certainly not deriving its content from Him, but constituting it within itself. To maintain that such rights are held by humans before the emergence of society or the state, before the emergence even of culture, requires neither the creationist theory nor the activity of God preserving in existence that which is created.

The intention of the Catholics, the fate of which is difficult to predict, although its weakness in contemporary liberal democracy is known by now, since Benedict XVI already saw it as a subculture found outside the mainstream of Western reflection, harbours two approaches to the “dignity of the human person”. One entails the acknowledgement, emphasised by Father Cardinal, of the originality or uniqueness of even each human person as created by God or sustained by Him in existence. This is an ontological basis common to all human beings, unacceptable to the critics of the Church as it refers back to God’s work of creation; a basis, however, that is analogous to that accepted by the critics, also indicating that individuals are equal and, moreover, equal to such an extent that it is impossible to prefer the beliefs of any one of them, even those based merely on emotion, which must be respected and presumptively protected by law determined on the basis of the judgment of the majority; law that is valid, although perhaps—pursuant to the benchmarks no longer being considered—wrong. The law adopted under the existing procedures by the majority, which, as already seen in Aristotle, is inclined to exclude the unborn or infirm (as too costly) from sharing in the benefits of common existence, negates their dignity sometimes considered as **inherent** (*innate, natural*) **value**, abolishes dignity conceived, like

Locke's entitlement, as *inalienable and permanent*, and expressing the person, while at the same time constituting the *unity of the human species* due to the acknowledgement of dignity as a *universal value*. The "personal dignity" thus understood, the dignity of every person, may—but need not—be supplemented by the "personality dignity" attained by those who rise to a particular moral level through *morally virtuous action* and through its implantation *in human character*; while *personal dignity is an inherent value*, "personality" or "theological" dignity is to be acquired²⁰ only by those who, while exercising moral autonomy, accept the moral law, God's commandment, freely allow themselves to be permeated by God's law, and voluntarily obey God. John Paul II states: "obedience to God is not (...) a *heteronomy*", a heteronomous quality of morality would imply "a denial of man's self-determination" and would stand "in contradiction to the Revelation of the Covenant and of the redemptive Incarnation"; heteronomy would be "nothing but a form of alienation, contrary" both "to divine wisdom" and – let us note – "to the dignity of the human person" (VS 41). "Personality" or "theological" dignity is linked not only to the moral autonomy of a human person, but also to his or her endowment with contents that he or she is capable of recognising because they reside within the very person, are 'immanent' as such. Human dignity, proclaims the Vatican II document, "demands that [he] act according to a knowing and free choice that is personally motivated and prompted from within, not under blind internal impulse nor by mere external pressure".²¹ It is now compared not so much with the continuing presence of a certain ontic unity, but with the possibility of a *conscious and free choice* that takes into account "inner stirrings and direction" rather than "compulsions from without" or "inner urges".²²

The human person is therefore dignified both as a specific psycho-physical whole and as one who accepts the content immanent within, capable of cognising it, becoming aware of it and taking it into account in the act of choice. When we read in *Veritatis splendor* that "(i)t is in the light of the dignity of the human person—a dignity which must be affirmed for its own sake—that reason grasps the specific moral value of certain goods towards which the person is naturally inclined (VS 48 *in fine*), then we note that the key to capturing the "truth of human dignity" is the referral to feeling the natural inclination(s). This element seems perhaps to

²⁰ Cf. F. J. Mazurek, "Godność człowieka a prawa człowieka", *Roczniki Nauk Społecznych* 1980, v. VIII, pp. 39, 9 and 4.

²¹ Vatican II, *Pastoral Constitution on the Church in the Modern World* "Gaudium et Spes", 17.

²² *Catechism of the Catholic Church*, 306-308.

relate most clearly to the much-described vision of St Thomas Aquinas,²³ which is sometimes erroneously compared to the remarks of the Protestant philosopher from Königsberg: in fact, the reference to natural inclinations directs our attention towards an “inner content”, not a heteronomous one, but also one which is not constituted by a moral subject, towards a certain “structure” inherent in every person as a representative of the species, possessing dignity at an “ontic” level, which, however, does not fully reveal “the truth of human dignity”.²⁴ Since “the human person (...) entails a particular spiritual and bodily structure” then he or she “cannot be reduced to a freedom which is self-designing”, but must respect this structure; otherwise the person will fall into “relativism and arbitrariness” (VS 48), attacking the inherent “certain basic goods” in one’s nature, not material and not corporeal, but juxtaposed with the ‘natural inclinations’ inherent in the person, like any human being. Such inclinations, while gaining “moral relevance only insofar as they refer to the human person and his authentic fulfilment”, convey “the true meaning of the natural law” inscribed within “the nature of a human person” and binding upon “all beings endowed with reason and living in history”. Natural law refers to “man’s proper and primordial nature, the ‘nature of the human person’, which is *the person himself in the unity of soul and body*, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end” (VS 50 and 51). Despite the

²³ Aquinas used the term “dignity” in order to emphasise its “gradable” value when he indicated that in what consists the highest degree of human dignity, is that man turns towards the good not due to the influence of others, but out of himself (*Wykład Listu do Rzymian. Super Epistolam S. Pauli Apostoli ad Romanos*, trans. and ed. J. Salij OP, Poznań 1987, p. 49). From this perspective, it becomes evident that dignity is linked to man’s efforts, to his orientation towards the good without the influence of others, since this striving or direction is to be undertaken “by himself”. This opens up a discussion both regarding inner impulses (perhaps linked to God) and the “gradation” of dignity; however, it does not settle negatively the question of each human person possessing dignity at a lower level (natural dignity?) than its “highest degree” (the dignity of conscience making correct choices based on what lies within the human being, what drives him or her, even though he or she may act differently, thus not attaining dignity in the “highest degree”).

²⁴ Perhaps the fullest articulation in Polish literature of the tension between the positions of St Thomas and Kant was made by Andrzej Szostek, who drew attention to the possibility of a “biologistic interpretation” of the former position and the so-called theonomous autonomy heralded by the latter. Neo-Thomist interpretations tend to depreciate the significance of man’s consciousness for his morally correct acts (after all, innate inclinations do not need to be conscious for an act—carried out in conformity with these innate inclinations—to be morally correct); in Catholic ethics (and notably German ethics) of the late twentieth century, however, Kant’s approach, leaning towards man’s supplementing God’s normative rulings, gained increasing popularity (Andrzej Szostek, *Natura-rozum-wolność. Filozoficzna analiza koncepcji twórczego rozumu we współczesnej teologii moralnej*, Rzym 1990, notably pp. 31-48 and Chapters II and III).

separation of the “freedom of individuals” and “nature which all have in common”, introduced by certain philosophical theories that have an enormous impact on contemporary culture, which “obscures the perception of the universality of the moral law on the part of reason”, natural law “expresses the dignity of the human person and lays the foundation for his fundamental rights and duties” (VS 50 and 51). Let us notice what even Catholics find increasingly difficult to see: natural law is supposed to “express” the dignity of the human person, to indicate the obligation with regard to living in accordance with “natural inclinations” and a “particular spiritual and bodily structure” protected by natural law.²⁵ Not only does the assertion that “dignity of the human person is rooted in his creation in the image and likeness of God” raise opposition from critics of the Catholic position, but so too—and far more frequently—does the thesis that a person fulfils his or her human dignity by complying with the requirements of the law “which makes itself heard in conscience”, by leading “a moral life”, “in the love of God and of neighbour” (CCC 1700 and 1706).²⁶

²⁵ In the *Catechism of the Catholic Church*, we note the words, which should be read bearing in mind that the right to exercise one’s freedom—as stated in passage 1738— “is an inalienable requirement of the dignity of the human person” “The dignity of the human person implies and requires *uprightness of moral conscience*. Conscience includes the perception of the principles of morality (*synderesis*); their application in the given circumstances by practical discernment of reasons and goods; and finally, judgment about concrete acts yet to be performed or already performed. The truth about the moral good, stated in the law of reason, is recognized practically and concretely by the *prudent judgment* of conscience. We call that man prudent who chooses in conformity with this judgment” (1780).

²⁶ Whilst dignity, which we may call “ontic”, is held by every person by dint of belonging to the human species constituted by God, a dignity that may be called the “dignity of conscience” or “moral dignity” (and not, as in the case of Mazurek, a “personality dignity”), is evidenced by morally correct behaviour. The last form of dignity is realised through or in the course of the moral life, which does not remove freedom as the opportunity to make a choice considered as “an inalienable requirement of the dignity of the human person” “especially in moral and religious matters”, “exercised in relationships between human beings” into which “enters” “every human person” (CCC 1738). However, freedom is made into a sort of “threshold”, the crossing of which makes it possible to attain a state of moral dignity; a “threshold” at which the person—a holder of an irreversible ontic dignity—must take account of the universally binding natural law, which does not ignore “*the individuality of human beings*” or “the absolute uniqueness of each person”; the natural law that protects “the true good”, reveals that freedom and nature “are harmoniously bound together, and each is intimately linked to the other”, and, simultaneously, enabling to build a true communion of persons, damaged when the law is disregarded or unknown (VS 50 and 51). Usually, and this is also done by John Paul II, “*negative precepts* of the natural law” are pointed out above all, which “oblige each and every individual, always and in every circumstance”, prohibiting certain conduct *semper et pro semper* as incompatible with “the goodness of the will of the acting person, with his vocation to life with God and to communion with his neighbour” leading to “offend in anyone, beginning with oneself, the personal dignity common to all”.

Catholics proclaim that no right justifies violating the boundaries set by natural law, while some liberals consider the natural (inherent) right to take precedence even over negative norms expressing—in the Catholic view— “the truth of the dignity of the human person”. At least part of the liberals accord dignity to the subject that is prior to all norms, or with precedence of the will vis-à-vis moral norms as well (for how else could one comprehend the project of Hobbes, for whom the norm appears only after the establishment of the state, at which point it formulates the law, and before this takes place it is impossible to judge whether an act is good or bad?; how else could one comprehend the project of Locke, who assumes that individuals discover the norm of the law of nature or the law of reason, which forbids the infringement of the rights previously held by individuals?). Both Catholics and the “fathers of liberalism” faced similar problems: both the one whose solution calls for the determination of the relationship between the moral plane and the legal plane, and the one which involves the need to point out the relationship between reason and nature. For the former, however, the moral plane is determined, in particular, by the norms of natural law, which protect the nature of the species, cognisable by the power of inherent reason, and which must be taken into account on the legal plane; for the latter, the primary consideration concerns the rights possessed by every individual who is human already in the so-called “state of nature”, i.e., before the emergence of norms as such. The former will say that human freedom is realised by fulfilling the requirements of the divine law that “is most deeply lived out in the ‘heart’ of the person, in his moral conscience” (VS 54) which is capable of revealing the rules thereof; rules which the conscience does not impose on itself, but to which man is held “to obedience. Always summoning him to love good and avoid evil, the voice of conscience when necessary speaks to his heart: do this, shun that. For man has in his heart a law written by God; to obey it is the very dignity of man; according to it he will be judged” (*Gaudium et spes* 16). But the association of human dignity with obedience to an innate law, imprinted by God in the conscience, to a divine and natural law, cognisable by the power of inherent human reason, is rejected by liberal critics. They point out the problematic nature of referrals to God and his voice, to the nature of the species and to reason that recognises its content that is common to every person and enables this person to enter into communion with others; they point this out by proclaiming that dignity is possessed by every

The violation of any of the negative precepts of the natural law is thus compared to an offence against the dignity of the person, a dignity inherent in all human beings (VS 52), invariably associated with “human nature”, which becomes not only the *gauge* of any culture, but also a factor in the reinforcement of *personal dignity*.

“morally sovereign” individual; and that, moreover, this “sovereignty” must be respected on account of the demands of tolerance and the “moral autonomy” of the individual, capable of judging what is good and what is bad for him or her, of ruling in the last instance—after all, this is an expression of “sovereignty”—about what he or she should do, sometimes depending on cultural circumstances, at other times depending solely on their own view, need, preference... To the *dictum* of critics, Catholics sometimes respond with the voice of John Paul II in *Veritatis splendor*: after all, this “divine law” is “*the universal and objective norm of morality*.” The judgment of conscience does not establish the law; rather it bears witness to the authority of the natural law and of the practical reason with reference to the supreme good, whose attractiveness the human person perceives and whose commandments he accepts” (VS 60); or they respond with the voice of the same author from the earlier encyclical *Dominum et vivificantem*,²⁷ which refers both to *Gaudium et spes* (16) and to *Dignitatis humanae* (3), indicating that a person’s conscience is not “an independent and exclusive capacity to decide what is good and what is evil. Rather there is profoundly imprinted upon it a principle of obedience vis-à-vis the objective norm which establishes and conditions the correspondence of its decisions with the commands and prohibitions which are at the basis of human behavior” (DV 43).

Kant argued that every human being has the capacity to create a universal moral law, to be a legislator in the field of morality as a rational and free being, also capable of following its principles.²⁸ Freedom “is the basis for the emergence of dignity, and the latter is expressed in the ability to reasonably limit the discretion of our actions, whereby the practical expression of this egalitarian ability is the categorical imperative and adherence to its principles. The aim is to support the development of humanity as a moral community, and anything that stands in opposition in this regard is not worthy of respect. The Kantian concept of dignity is both universal and egalitarian. For all human beings have the capacity to reasonably determine the moral law, but because human beings have free will, not all are inclined to act morally. Therefore, some people embrace principles of conduct that oppose the well-being of humanity, in which case neither they themselves nor their

²⁷ John Paul II, Encyclical “*Dominum et Vivificantem*”. *On the Holy Spirit in the Life of the Church and the World*, 43, https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_18051986_dominum-et-vivificantem.html.

²⁸ Justyna Miklaszewska, “Godność człowieka w koncepcji Immanuela Kanta a doświadczenie Auschwitz”, *Ruch Filozoficzny* 2017 no. 4/LXXII, p. 49.

actions deserve respect”.²⁹ For Kant, every human being as a “subject of dignity” assigns values to things himself and is the source of those values—all values are [therefore] relativised, apart from his own value.³⁰ If we accept this interpretation, we shall find that, for Kant and his followers, dignity is to be associated with a moral quality that is universally present in human beings, but which is exercised not so much in the work of discovering the truth of the good that is present in them and equally shared by everyone, preceding both rational cognition and the decision of the human will, but in the act of “establishing values”. “Universal dignity” or “ontic dignity”, which marks the person as a human being, becomes the foundation of this “work of establishing values”; it is not complemented by a consideration of the “dignity of conscience”, the one that supplements the first, and is only attained by some, cognisant of the normatively framed natural law and taking it into account in their actions. In other words, while Kant is invoked to present dignity as the reason for the “establishment of values” by each individual and (potentially) all individuals simultaneously, Catholic teaching distinguishes between the dignity of the human person found at the “fundamental (‘ontic’) level”, and the dignity of the human person at the “moral level”, or—as John Paul II prefers to say—at the level of the “dignity of conscience”, or—as is likewise often phrased—at the “theological” level.

The first type of dignity is associated with respect “due to the human person”, in order to point out that “(w)hatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person, such as mutilation, physical and mental torture and attempts to coerce the spirit; whatever is offensive to human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children; degrading conditions of work which treat labourers as mere instruments of profit, and not as free responsible persons: all these and the like are a disgrace, and so long as they infect human civilization they contaminate those who inflict them more than those who suffer injustice, and they are a negation of the honour due to the Creator” (VS 80).³¹ This type of dignity is thus threatened by phenomena and processes in which the human being becomes a means to ends pursued by others and therefore ceases to constitute an

²⁹ Ibid., pp. 50-51.

³⁰ E. Niemiec, “Godność człowieka a prawo do dysponowania własnym życiem – aspekty filozoficzno-prawne”, *Folia Iuridica Universitatis Wratislaviensis*, vol. 6, no. 2 (2017), p. 72.

³¹ See also: VS 100, where, after the CCC, it mentions “kinds of behaviour and actions contrary to human dignity”.

end in itself, which brings these remarks closer to Kant's position. Nevertheless, the source of "moral dignity" ("conscience") is the "objective truth" that man autonomously accepts, and not the "value" that he *subjectively* establishes, for sometimes individuals *mistakenly* believe something to be *the truth*. One can hardly be surprised by John Paul II's statement that "conscience, as the ultimate concrete judgment, compromises its dignity when it is *culpably erroneous*, that is to say, 'when man shows little concern for seeking what is true and good, and conscience gradually becomes almost blind from being accustomed to sin'" (VS 63). After all, it is possible for conscience itself to "betray the dignity of conscience" when that conscience errs "through the fault of man", when he does not know the "objective truth about the good" or when, having learned it, he does not acknowledge it in his decisions. For it is expressly declared that "(t)he Church's firmness in defending the universal and unchanging moral norms is not demeaning at all. Its only purpose is to serve man's true freedom. Because there can be no freedom apart from or in opposition to the truth, the categorical—unyielding and uncompromising—defence of the absolutely essential demands of **man's personal dignity** must be considered the way and the condition for the very existence of freedom" (VS 96; emphasis by B.Sz.).³² The *Catechism of the Catholic Church* adds in this connection that "(t)here is no true freedom except in the service of what is good and just. The choice to disobey and do evil is an abuse of freedom and leads to 'the slavery of sin'" (CCC 1733); a slavery which also suppresses the "moral dignity" ("dignity of conscience", "theological dignity"), albeit without suppressing the

³² "Only God, the Supreme Good", adds John Paul II in passage 99, "constitutes the unshakable foundation and essential condition of morality, and thus of the commandments, particularly those negative commandments which always and in every case prohibit behaviour and actions incompatible with the personal dignity of every man. The Supreme Good and the moral good meet in *truth*: the truth of God, the Creator and Redeemer, and the truth of man, created and redeemed by him. Only upon this truth is it possible to construct a renewed society and to solve the complex and weighty problems affecting it, above all the problem of overcoming the various forms of totalitarianism, so as to make way for the authentic *freedom* of the person. "Totalitarianism arises out of a denial of truth in the objective sense. If there is no transcendent truth, in obedience to which man achieves his full identity, then there is no sure principle for guaranteeing just relations between people. Their self-interest as a class, group or nation would inevitably set them in opposition to one another. If one does not acknowledge transcendent truth, then the force of power takes over, and each person tends to make full use of the means at his disposal in order to impose his own interests or his own opinion, with no regard for the rights of others.... Thus, the root of modern totalitarianism is to be found in the denial of the transcendent dignity of the human person who, as the visible image of the invisible God, is therefore by his very nature the subject of rights which no one may violate – no individual, group, class, nation or State. Not even the majority of a social body may violate these rights, by going against the minority, by isolating, oppressing, or exploiting it, or by attempting to annihilate it". See also: CCC 1740.

“ontic (‘natural’) dignity” possessed by every human being, including one who does not attain “moral dignity” (“dignity of conscience”, “theological dignity”) or is not even striving for it altogether.

The Church in (still liberal?) democracy

In his 2018 apostolic exhortation entitled *Gaudete et exsultate. On the Call to Holiness in Today’s World*,³³ Pope Francis encourages a holiness that does not take away “energy, vitality or joy”, as the Father created each of us to be true to our deepest self; to depend on God in fact frees us from enslavement and “leads us to recognize our great dignity” (32), rather than enslaving us and taking the dignity away from us. “Moral dignity” (“dignity of conscience”, “theological dignity”) does not enclose the individual within himself, but should rather open him up to others, since it requires the acknowledgement in every human being, even in an “idler”, in “a person sleeping outdoors on a cold night”, of a “human being” possessing “the same dignity as myself”; after all, every human being is the same, equal to other human beings, “a creature infinitely loved by the Father, an image of God, a brother or sister redeemed by Jesus Christ”. Holiness that does not take away energy, vitality or joy, requires “lively recognition of the dignity of each human being” (98). This reflection is similar to that of the evolving liberal approach, which embeds each human person in social relationships, in relationships with others, and which complements the ontic dignity inherent in each person and to be recognized in each, with the theological dignity intrinsic to those who strive for holiness. Striving to make this possible cannot be the Church’s only task; nor can the Church confine herself to defending the rights of the human person on the basis of his or her ontic dignity, since she is a Church founded and rooted in Christ, in God, she is a Church of God, which brings hope that transcends the temporal dimension and makes visible a human reality other than the merely political. The Old Testament motif of the juxtaposition of the “City” of God and the “city” of man found its completion in the words of Father Cardinal, who, invoking Jacques Maritain, acknowledged that the “city” of man becomes the “City” of God insofar as, in a secularised world, it honours the rights of human beings and the dignity of the human person understood in both senses. The Church, as Father Cardinal also mentioned, opposes every manifestation of injustice and therefore knows the “measures of justice”, which lie above all in the “truth” of “ontic dignity”. However, their attempts to introduce a transcendent dimension that justifies the pursuit

³³ Pope Francis, Apostolic Exhortation *Gaudete et exsultate. On the Call to Holiness in Today’s World*, https://www.vatican.va/content/francesco/en/apost_exhortations/documents/pa-francesco_esortazione-ap_20180319_gaudete-et-exsultate.html.

inscribed in the “theological dignity” are not recognised by the secularised world; they are even treated with suspicion, as they allegedly resemble ideological projects imposed from outside, especially by academic circles that shape the measures of “political correctness” envisaged by social liberalism. It is important to emphasise that each person is oriented towards a goal that is intrinsic to him and that points him towards God, that he is unique and, as such, can determine the realisation of this goal; however, it must always be remembered that he belongs to a species with its own inclinations, which no one can deny if he seeks to fulfil his goal. In particular, they cannot be negated by the legislator, who—according to the approaches popularised today—no longer aims at justice, but merely strives for legitimacy, for validation of his decisions. When democracy is already conceived of as a field of struggle between numerous positions merely vying for recognition, the attempts of the Church become one of many. The Church loses her unique position stemming from her exceptional quality of having been established by God, and instead turns into just one of many players. Even when she speaks of “truth” linked to God or to the species-related nature of man, in whom, after all, there is heard the voice of God, she is not listened to by the many who, in the “city” of man, strive to fulfil their own particularistic needs arising from their own particularistic preferences tied mainly to the corporeal aspects, to their own fulfilment in the temporal plane. What remains is political philosophy; what is being discarded is political theology, which excludes those who do not heed it and thus fails to meet the requirements of the reasonableness expected in a democracy.

In connection with the remarks on the Church’s prophetic task, an old problem of Aristotle’s arises anew: democracy is a degenerated system because the majority, which determines the content of the norms that bind everyone, excludes the minority from sharing in the benefits; however, democracy constitutes a system as long as—even if engaging in exclusion— respects the law that is more significant than the norms established in the resolutions of the people, the resolutions of the majority. The Church defends the “rule of law” binding even on the majority, thereby contributing to the preservation of the systemic quality of democracy, which—in order not to lose this quality—cannot be based on arbitrary norms enacted by the people. This defence, however, must consider two layers: one aimed at participation in the debate on natural law that points out the negative limits of legislation allowing to protect the “ontic dignity” of every human person, from the moment of conception to natural death in the “temporal plane”; while the other—directed mainly at the believers— aimed to awaken the fading awareness of the existence of a “transcendent plane”, crucial for the purposeful pursuit by

those who also seek to attain their “theological dignity” (and pursue this goal in the “city” of man). The dialogue carried out in the “city” of man no longer makes it possible to attribute to the Church the unique position from which she herself has resigned, proclaiming that she is abandoning the role of guidance towards the “path of truth” and embarking upon the “path of freedom”. The Pope, in contrast to the thesis appearing in Father Cardinal’s text, is no longer treated as a “universal teacher” who points out the “truth”, but as a participant in a game of equal actors, each of whom seeks to impose his standpoint by appealing not to reason but to emotion, attempting to make his proposal be recognised as legitimate. In such a world, dominated by agonism, the endless struggle between the proponents of different positions, and by the emotions that drive them, the position of the Church and her head seems difficult; I am not convinced that a “reset” could alter this situation; rather, an attempt should be made to look critically (as it is being done, for example, by Muslim circles in multicultural societies) at the problem of the preservation of radical secularism, which is purportedly one of the main foundations of liberal democracy; such an examination could lead to a reflection on the admissibility of the use of religious justifications in the public sphere, in debates on the content of legal norms. Western experience, linked as far back as the religious wars of the 16th and 17th centuries, justified—onwards from the 1660s and the pronouncements of French “politicians” at the latest—the thesis of the need to confine religious beliefs in the private sphere. Today, when in a liberal democracy everyone makes their own claims, not always reasonable, claims supported by religious convictions should also be taken into consideration. These can be expected to be contested out of memories of past strife; however, juxtaposing rationales underpinned by Christian convictions with those stemming from Islam seems legitimate if the so-called West is to maintain its distinctive character and perhaps even the foundations of the so-called liberal democracy it has built.

A bitter and concerned final reflection pertains to the “anthropological error”, also mentioned by the Cardinal, which in interwar Poland was attributed above all to the Bolsheviks. It appears that this error persists, that the human being is treated—perhaps also as a result of the dominance of science as a unique social practice—solely as a body among other bodies, a body that is not only treated as similar to animal bodies, but also as the main object of interest for those in power: they want to preserve the bodies as long as they are useful, as some proponents of biopolitics or even biopower argue, while at the same time considering that the body does not carry a soul. The Church must continue to expose this error, to reiterate that a human being is a substance separate from others, a complex

substance, nonetheless, endowed with a soul that can retain its existence even after the demise of the body. In the prevailing opinion, however, this is not a mistake, which is something the Church must also reckon with as it continues to engage in the debate on the meaning of man. Thanks to Father Cardinal's contribution to the present issue, we can taste the flavour of such a debate; may it continue, and may the voice of the Church heard in this debate be both unified and coherent, as the voice of a community that is not artificial, called forth by man, but transcendent, inasmuch as it has its source in God Incarnate, the Redeemer. Perhaps the argument voiced by one of the protagonists in von Donnersmarck's film, *Werk ohne Autor*, that artists should not be subservient to anyone, but stand as the voice of freedom, which corresponds to de Tocqueville's thesis that in a democracy a similar role should be played by "aristocratic institutions", applies to Catholics: attacked as one of the ideological groups, they can persevere as a community that warns of the threats to a secularised democracy, dominated by a battle of emotions, full of false judgements, the exclusion of those who hold an incongruous opinion; it is worthwhile for Catholics to ponder their distinctive role; after all, they follow God and not man or something that dominates man's "city" —they are heading towards or, rather, already dwell in the "City" of God.

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