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## *Book review:* *Faces of the rule of law in Europe*

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**Abstract:** This review discusses the book *Faces of the Rule of Law in Europe*, edited by Michał Gierycz and Piotr Mazurkiewicz (2024), published by Vandenhoeck & Ruprecht in Göttingen. The volume is divided into three parts. The first, *The Concept of the Rule of Law*, provides a solid foundation for understanding this notion across centuries, emphasising the influence of Greek philosophy and Christianity. The second part, *European Traditions of Understanding the Rule of Law*, addresses the book's central theme – namely, the diversity of rule-of-law traditions across European countries. It features contributions exploring the understanding of the rule of law in France, Germany, and Poland, as well as a distinctive case study on the Anglo-Saxon tradition in Australia, viewed through the lens of legal restrictions imposed during the COVID-19 pandemic. The final section, *The Rule of Law in the European Union*, examines the application of the rule of law within EU legal frameworks and highlights how the principle has been used as a political instrument to discipline member states that oppose the policy directions of EU institutions.

**Keywords:** Europe, law, natural law, rule of law

Rule of law is one of the most hotly debated issues in European politics. The rule of law serves – at least in the view of officials working in the upper echelons of the European Union – as a fundamental benchmark of democracy. Today, however, democracy is no longer primarily associated with freedom and the will of the people, but rather with adherence to liberal principles grounded in legal positivism. At the same time, citizens are increasingly challenging the established political order, particularly those institutional arrangements commonly referred to as liberal democracy. A growing paradox is thus emerging. For political elites, illiberal forms of politics are taken as evidence of democratic deficiency. Yet for

ordinary citizens, it is the ‘established laws’ – understood as principles governing social order – that are increasingly questioned as outdated, obsolete, or even actively hostile to the general public.

The multi-author volume *Faces of the Rule of Law in Europe*, edited by Michał Gierycz and Piotr Mazurkiewicz and published by Vandenhoeck & Ruprecht in 2024, seeks to examine this issue from multiple angles in the light of current challenges. Many of today’s institutional controversies – concerning freedom of speech, media independence, and constitutional courts – cut to the heart of this principle: the rule of law.

The book is strongest in its first part, which explores the sources of the European understanding of the rule of law. In contemporary politics, numerous key concepts are widely invoked, yet often wielded as rhetorical weapons against political opponents, particularly when their historical and philosophical roots are poorly understood. In the opening chapter, Zbigniew Stawrowski, drawing on St. Thomas Aquinas and St. Augustine, reminds us that the rule of law is grounded in human reason and derives from eternal law – authored by the Creator, not by man. Following Plato, he emphasises that the idea of the rule of law was never originally associated with the power of political rulers, which so often devolves into the dominion of the strong over the weak. For the ancient philosopher, human-made law must be derived from reason and conform to the nature of the human person. Thus, a rational state – one that could be deemed lawful – is one whose legal system and political structure reflect and serve human nature.

Sara Laga focuses on certain aspects of legal positivism in the context of the rule of law. The Holocaust exposed a profound chasm between statutory law and ethics. The author identifies a critical rupture introduced into the European legal tradition by Hans Kelsen, who derived legal norms not from human nature, but from human will. For Kelsen, law was to be a reality grounded in facts. According to Laga, Kelsen is mistaken in assuming that conviction in the rightness of one’s views inevitably leads to the tyranny of the majority – a conclusion he sought to avoid at all costs. The very idea of distancing law from ‘just ethical norms’ opens the door to treating it as an instrument susceptible to contemporary ideological fashions. Although Kelsen himself maintained faith in human rationality, his views became the foundation for the ideological reinterpretation of the rule of law by contemporary political elites.

In the third essay, the book's co-editor Piotr Mazurkiewicz addresses the rule of law from the perspective of Christianity's legacy. He observes that, in the teaching of St. Paul the Apostle, law ceased to be understood merely as a system of commands and prohibitions. Christianity introduced a different foundation: love and freedom. It also brought about a distinction between just and unjust laws. While instructing obedience to authority as "ordained from above," Christian thought simultaneously pointed to the limits of such obedience and of the legitimacy of positive law. The political sphere, therefore, ought to be structured in such a way that those in power are restrained from abusing their authority. John Paul II saw in this the core of the rule of law: not the arbitrary will of individuals, but law itself delineates the scope of authority. Yet the rule of law must be founded on a proper concept of what it means to be human. Anthropology serves to limit the lawmaker's power. There are things that human beings must never do, and no authority has the right to legalise them. In this sense, Christianity can serve a corrective function within politics, particularly regarding the creation of law. The role of the Catholic Church in European history has been to identify the sources of law and defend them. When these sources are disregarded, the resulting legal systems are turned against people and their nature.

András Zs. Varga, in his contribution, reflects on the contemporary distortion of the rule of law. Today, it seems, the rule of law has become an end in itself. Legal norms are made to serve an abstract principle of legality rather than actual people. Inevitably, such a perspective becomes dehumanising. Of course, this approach is ultimately unsustainable. The power of the rule of law lies in the interpretation it receives from the principal political actors. What was once intended as a limit on governmental abuse has now become a convenient tool for suppressing doubts, questions, and demands raised by citizens through democratic means. Law is deeply rooted in human nature. Any attempt to turn the rule of law into a kind of idol – one to which citizens must pay tribute – is doomed to fail, and likely to cause serious harm. One might even say: "The rule of law was made for man, not man for the rule of law" [cf. Mk 2:27]. It is possible that World War II and the totalitarianisms of Nazi Germany and Soviet Russia revealed the limits of democracy, prompting the post-war flourishing of the rule of law. Yet even this human invention has its boundaries.

The second part of the volume presents various traditions of the rule of law. Michel de Villiers highlights the significance of Enlightenment republicanism in the French context. Paweł Kaczorowski situates the German understanding of the rule

of law within the philosophical frameworks of Kant and Hegel, noting the close relationship between legal formalism and moral justification. Bogdan Szlachta analyses the Polish legal tradition, which integrates Christian moral teaching and a civic ethos. Iain Benson and Jane Adolphe, drawing on the Anglo-Saxon tradition, examine the COVID-related restrictions implemented in Australia, illustrating how even democratic states, under the pretext of ensuring public safety, may violate individual rights generally considered inviolable.

The third part of the book focuses particularly on the European Union. In the opening chapter, Dorin Dobra and co-editor Michał Gierycz argue that the principle of the rule of law constitutes a shared cultural heritage of all EU member states. At the same time, they warn against efforts by EU institutions to impose a uniform interpretation of this principle, despite the diverse legal traditions across the continent. José Luis Bazán addresses the mechanisms of rule-of-law enforcement employed by EU institutions. He demonstrates that these mechanisms are applied in a highly selective and politically instrumentalised manner, leading to inconsistent consequences for alleged violations – different for Germany, and different for Poland or Hungary. This discrepancy raises a fundamental question: Is the European Union itself governed by the rule of law? In the final chapter, Tomasz Grzegorz Grosse reflects on the future of the EU through the lens of the rule of law. He observes that the principle is being increasingly instrumentalised, and current intra-EU dynamics suggest its further erosion as it is used to discipline national governments that diverge from the federalising agenda promoted by the European Commission.

The book as a whole leads to several important conclusions regarding the future of the European Union and the prospects for further integration. First, it must be acknowledged that the rule of law predates the EU itself. It is rooted in Europe's rich intellectual history, particularly in Greek philosophy and Christian thought, both of which affirm the inseparability of law and ethics – law and natural law whose author is God. In light of this, one may observe how far, at least in theory, contemporary legal practice has diverged from its foundational sources.

Second, the volume reveals the plurality of legal traditions in Europe, and, correspondingly, the diverse interpretations of the rule of law. Third, it seems that the European Union is attempting to unify the concept of the rule of law, deploying it as a political tool to enforce institutional agendas, often in disregard of national differences. These differences, however, reflect the continuing sovereignty of member states in matters of legal and political order.

The most important conclusion of this volume is that political Europe shines with the diversity of its national traditions concerning the rule of law. This diversity should not be perceived as an obstacle but rather as a richness to be embraced. Respecting this diversity may, in fact, be the most effective means of promoting further integration and addressing Europe's current social and political challenges. Unfortunately, there is little indication that EU elites are willing to pursue this path.

**Bibliography**

Gierycz M., Mazurkiewicz P. (eds.) (2024), *Faces of the rule of law in Europe*, Vandenhoeck & Ruprecht, Göttingen.