Studia Philosophiae Christianae
UKSW
56(2020) Special Issue 1

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PERMISSIVE NATURAL LAW AND ITS SCOPE IN PAUL VLADIMIRI'S PHILOSOPHY*

Abstract. The article attempts to provide a more precise answer to the question of Paul Vladimiri's (Latin: Paulus Vladimiri; Polish: Paweł Włodkowic) account of the concept of permissive natural law. This purpose is realized in two steps. First, a brief history of permissive natural laws in the tradition of medieval philosophy is discussed, and the historical context, in which Paul Vladimiri developed his concept of natural law, is outlined. Next, some excerpts from Vladimir's writings, in which he uses phrases indicating the presence of the concept of permissive law in his philosophy, are analysed.

Keywords: Paul Vladimiri; natural law; permissive law; philosophy of law; history of Polish philosophy; history of medieval philosophy; history of law

1. INTRODUCTION

The claim that concerns the presence of the concept of natural permissive law (claims law) in the philosophy of Paul Vladimiri, a 15th-century canonist, diplomat and professor at the Krakow Academy, and a student of Franciszek Zabarella's law school, is not new. On the contrary, it was developed at the beginning of systematic research on the legacy of Vladimiri, and with the evolution of it, it gained sharpness: from the careful classification of Vladimiri as a humanist

* This article was originally published in Polish as: M. Płotka, *Uprawnieniowe prawo naturalne i jego zakres w filozofii Pawła Włodkowica*, Studia Philosophiae Christianae 51(2015)1, 123-140. The translation of the article into English was financed by the Ministry of Science and Higher Education of the Republic of Poland as part of the activities promoting science – Decision No. 676/P-DUN/2019 of 2 April 2019. Translation made by GROY Translations.

thinker[1], through a more courageous comparison of his diplomatic work with the activities of Francisco Vittoria and Hugo Grotius[2], to the explicit attribution of human rights theory[3] to the Vladimiri. Although the last statement – that Paul Vladimiri developed an outline of human rights, as they are understood today – is somewhat exaggerated, nevertheless, his concept of the natural law is in line with the contemporary permissive law (not obligation law) and in this sense is an antecedent to more contemporary approaches[4].

Describing Vladimiri's "rich vision of law and legal order"[5] in the context of his diplomatic activities, the researchers draw attention to several elements which, in their opinion, speak for the early-modern character of the concept of law formulated by the Paul Vladimiri. First, the anthropological and subjective source of the law[6]; second, the rational character of the natural law[7]; third, the subordination of human law to self-fulfilment[8]; and fourth, the presence of claims, for example,

1 L. Ehrlich, *Paweł Włodkowic i Stanisław ze Skarbimierza*, Warszawa 1954, 35.

2 S. F. Belch, *Paulus Vladimiri and his doctrine concerning international law and politcs*, London – Hague – Paris 1965, 25.

3 "In my opinion, the category of human law appears in Vladimiri's work in three dimensions. First, as any law that is not divine. Secondly, as a law encoded in human nature and recognized by natural reason, and demanding work and effort of each specific person in its application. Third, as law opposed to natural law, and this is where there is a contradiction - created by the human being himself, and thus as if identifying himself with the positive law" (T. Jasudowicz, *Śladami Ludwika Ehrlicha: do Pawła Włodkowica po naukę o prawach człowieka*, Toruń 1995, 65).

4 S. F. Belch, *Paulus Vladimiri and his doctrine concerning international law and politics*, op. cit., 245.

5 T. Jasudowicz, *Śladami Ludwika Ehrlicha: do Pawła Włodkowica po naukę o prawach człowieka*, op. cit., 57.

6 "... the focus on the human being determines its view of the law", T. Jasudowicz op. cit., 19); "Laws are embedded in humanity" (Ibid, 32); See also: S. F. Belch, *Paulus Vladimiri and his doctrine concerning international law and politics*, op. cit., 240–241).

7 "... the universalism of human rights is the consequence of participation in rational human nature" (T. Jasudowicz, *Śladami Ludwika Ehrlicha: do Pawła Włodkowica po naukę o prawach człowieka*, op. cit., 37); S. F. Bełch, *Paulus Vladimiri and his doctrine concerning international law and politics*, op. cit. 244); "human right derived from natural reason" (L. Ehrlich, *Paweł Włodkowic i Stanisław ze Skarbimierza*, op. cit., 142–143).

8 "... human rights are ... deliberately and axiologically conditioned equitable means of

for the admissibility of (right to) self-defence[9]. Thus, Vladimiri's concept of the natural law can be summarized as follows: human being is the source of the natural law that is rational as such; thanks to it, man can – by means of claims – achieve his goals and values.

The picture that emerges from the statements of researchers is quite broad, and Vladimiri's concept of natural law – vague and unclear. It is difficult to distinguish specific aspects of Vladimiri's theory: dependence on Augustinian and Thomistic inspirations, its nominal and averroistic sources, or original and pre-modern elements. Therefore, the aim of this article is an attempt to sharpen this image, and thus – to provide a more precise answer to the questions about the very presence, character and scope of the permissive natural law Vladimiri's account.

This goal will be achieved in two stages: first, a brief history of the permissive natural law in the medieval tradition will be discussed and the historical context in which Paul Vladimiri developed his theory of the natural law will be outlined. Then, selected excerpts from Vladimiri's writings in which he uses expressions indicating the presence of the concept of permissive law in his philosophy, will be analysed.

2. SOURCES AND CONTEXT OF THE CONCEPT OF PERMISSIVE LAW *(IUS)* AS DEFINED BY PAUL VLADIMIRI

Considerations should begin with a few terminological remarks. Paul Vladimiri uses two terms to refer to the concept of natural law *lex* and *ius*[10]. He does not use them interchangeably, and the use of each of them – in procedural documents when describing

human self-realization" (T. Jasudowicz, *Śladami Ludwika Ehrlicha: do Pawła Włodkowica po naukę o prawach człowieka*, op. cit., 42).

9 L. Ehrlich, *Paweł Włodkowic i Stanisław ze Skarbimierza*, op. cit., 143.

10 Włodkowic used two terms to denote the law (*lex* and *ius*), therefore his legal theory can be an excellent example of the transformations in the understanding of natural law (principles governing an act) in late medieval thought. He separated the concept of law from the metaphysical structure of the world (structure of being) and based on anthropology he formulated his own theory of laws (*ius*). Vladimiri emphasized the anthropological aspect of natural law even more than Stanisław of Skarbimierz. Cf. S. Bełch, *Paulus Vladimiri and his doctrine concerning international law and politics*, op. cit., 240–241.

particular situations or presenting arguments – is by no means accidental. The differences in the meaning of the terms *lex* and *ius* can be reduced to several aspects: while the *ius* is anthropological, the *lex* is metaphysical, while the former focuses on obligation, the latter on claim. Usually, *lex* is identified with the natural law - the law of the cosmos; such an approach to the law seems to overlook the emphasis on human activity arising from his or her freedom, but rather emphasizes the necessary nature of human obligations arising from, and imposed by law. The scope of the terms *lex* and *ius*, both present in the writings of Paul Vladimiri and in the medieval legalistic tradition, correspond to the definition proposed nowadays by Marek Piechowiak: "Substantive law (*lex*) defines norms determining the area of freedom, determining the range of goals set for free choice, while the term Right (*ius*) is reserved for defining everything that remains in the power of the subject's will as consistent with the Substantive law (*lex*)"[11].

The starting point for the search for historical sources of Right are the texts of twelfth-century decretists, i.e. the commentators of *Decrees*[12]. In fact, the author of the *Decrees* himself – Gratian – has distinguished the permissive function of law. He wrote: "The function of secular and church law is to prescribe what is necessary, to forbid what is wrong, to allow what is permitted"[13]. Stephan of Tournai, the leading founder of the French school of canonists, completed Gratian's definition. He distinguished four types of law: counsel, precept, permission and prohibition. He stated that permission (*permissio*) is voluntary, covering the area of free choice acts, for example, the celebration of marriages[14].

11 M. Piechowiak, *Filozofia praw człowieka. Prawa człowieka w świetle ich międzynarodowej ochrony*, Lublin 1999, 204.

12 Gratian was the author *of Concordantia discordantium canonum*, which was known as *Decretum*. See: B. Tierney, *The idea of natural rights. Studies on Natural Rights, Natural Law, and Church Law 1150–1625*, Grand Rapids 1997, 43.

13 "Officium vero secularium sive ecclesiasticarum legum est praecipere quo necesse est fieri, aut prohibere quod malum est fieri, vel permittere licita" (*Decretum Magister Gratiani in Corpus iuris canonici*, dist. 3, dictum post c. 3, ed. E. Friedberg, Leipzig 1879, 5).

14 "Si enim volueris nec consilio acquiesces, nec permissionem suscipies; praecepto vero

New voices in the discussion on permissive law appeared in the 14th century in the debate on evangelical poverty. The basic problem of this controversy was the question of whether Christ and his disciples owned or only used things[15]. The solution to the problem was important, as long as it depended on the determination of an evangelical way of life for the newly established Franciscan Order[16]. Pope John XXII argued, among other things, that the use of goods must involve their ownership. He argued that the biblical Adam had the right to own land before the fall, and that he was the natural subject of that right. The debate resulted in the formulation of the concept of the individual right to own property and the right to acquire property.

One of the main participants in the discussion about poverty was William Ockham. He separated the individual's right to own property from joint property rights. Although Ockham emphasised the individual dimension of the permissive law, in Vladimiri's writings one can point to the fragments on the right of collective beings, for example, he mentioned the right of a nation (as a group) to own land. For both thinkers, Ockham and Włodkowic, permissive law (*ius*) is of Right nature. Ockham's original contribution to medieval discussions on law also consisted in equating law (*ius*) with power (*potestas*)[17]. In *Breviloquium*, Ockham wrote that not only rights must be respected, but also 'freedoms' (*libertates*) guaranteed to mortals by God[18].

The concept of natural permissive law developed in the Middle Ages on the margins and on the occasion of other discussions: on the codification of law, and especially on evangelical poverty. It was

et prohibitioni non impune resites" (*Studien zur Summa Stephans von Tournai*, ed. H. Kalb, Innsbruck 1993, 117).

15 B. Tierney, *The idea of natural rights*, op. cit., 157.

16 Ibid.

17 Ibid, 27.

18 "Nec solum iura imperatorum, regum et aliorum ... sunt excipienda, sed etiam libertates a Deo et a natura concesse mortalis excipi debent" (W. Ockham, *Breviloquium de principatu tyrannio*, in: *Wilhelm Ockham als politischer Denker und sein Breviloquium de principatu tyrannico*, ed. R. Scholz, Leipzig 1944, 90–91). On the shaping of the terminology of permissive law during the debate on poverty, see: B. Tierney, *The idea of natural rights*, op. cit., 93–206.

no different with Paul Vladimiri's theory of the natural law. It was created for the needs of the trial of Poland and the Grand Duchy of Lithuania with the Teutonic Order at the Council in Constance in 1415[19]. The Council became the venue for a court hearing between the Jagiellonian legation (including Paul Vladimiri) and representatives of the Teutonic Order[20]. It was also an opportunity to present the theory of international law (*ius gentium*) of the Polish school; theoretical principles allowed to formulate the accusations of the Polish faction against the Order and – on this basis – to demand the cessation of the Teutonic Order's plundering activities in the territory of the Republic of Poland, and to leave it. Vladimiri directly stated that since it is not possible to sue the Teutonic Knights by way of civil law, it remains to base the argumentation on natural law[21]. He refers to the Roman legal tradition, but not directly: the law that Vladimiri refers to is divine, natural and canonical, but not directly Roman law, because it was "imperial law" and did not apply in Poland[22].

19 The Council of Constance was opened in November 1414 and closed on 22 April 1418. See: L. Ehrlich, *Paweł Włodkowic i Stanisław ze Skarbimierza*, op. cit., 45.

20 The dispute between Vladimiri and the Teutonic Order of the Teutonic Knights also arose because both sides used different sources. While Vladimiri referred to the Pope Innocent IV concept of the law of the nations (who referred to the Gospel and natural law), the Teutonic Knights referred to influential lawyer Henry of Segusio, who based his doctrine on the proposal of St. Augustine. See: S. Wielgus, *Polska* średniowieczna *doktryna ius gentium*, Lublin 1996, 52–53.

21 "Quia postquam iusticia non habet progressum iure civili vel politico et defensio est iuris naturalis, recurrendum est ad ius naturale" (Paweł Włodkowic, *Ad Aperiendam 1416*, in: *Pisma wybrane*, ed. L. Ehrlich, vol. 1, Warszawa 1968, 219).

22 "Poland and England did not recognize the sovereignty of the Emperor nor Roman law, nor did the rulers of Poland, England or France had a fief law towards rulers of other countries" (L. Ehrlich, *Paweł Włodkowic i Stanisław ze Skarbimierza*, op. cit., 7). In addition, Stanisław Bełch stresses that Vladimiri, when arguing against the Order, often based on the historical independence of Poland from the empire. Similarly, the emphasis on Poland's independence from both the empire and the papacy is a frequent motif in Wincenty Kadłubek's writing. See: S. Bełch, *Paulus Vladimiri and his doctrine concerning international law and politics*, op. cit., 51–53.

3. PERMISSIVE LAW AND THE LAW OF OBLIGATIONS IN PAUL VLADIMIRI'S *CORPUS DIPLOMATICUM*

Difficulties with the development of a coherent and systematic theory of the natural law Vladimiri's account – difficulties that also had the above-mentioned researchers – probably result from the fact that the Vladimiri did not leave behind any synthetic elaboration of his own concept of the natural law. Numerous passages about rights, claims, freedoms and obligations are scattered throughout his *corpus diplomaticum* and are presented while discussing the current political issues of Poland at the time. Nevertheless, following the references to the natural law in Vladimiri's writing, one can outline his theory of permissive law.

The basic characteristic of permissive law is its Right nature. Human being is a subject to the law in the sense that the law is the property of his nature. In the context of his reflections on the appropriation by the Teutonic Order of lands belonging to Lithuanians and Samogitians, Paul writes: "It is illegal to deprive someone of its right without a legitimate cause and without due consideration of the case, because both are against the natural law"[23]. Paul argues that taking land away illegally from its rightful owner is tantamount to depriving an owner of his rights. Ownership of land is therefore the possession of rights to it. What is more, the violation of other people's rights, as Paul writes, is against the natural law. The expression *privare aliquem iure suo* – "to deprive someone of their right" – suggests that a right can be deprived as if it were property, so it belongs to the individual in the same sense as a property; and thus, it may indicate that the legal and natural discourse present in Vladimiri's work is a subjective discourse.

Apart from its subjective character, permissive law also has other aspects, which, according to Brian Tierney, are expressed in specific contexts in medieval legal literature. Paul Vladimiri was a lawyer, he

23 "... paria enim sunt privare aliquem iure suo sine causa legittima et sine debita cognicione cause quia utrumque est contra ius naturale" (Paweł Włodkowic, *Ad videndum 1421*, in: *Pisma wybrane*, op. cit., 182).

studied in Padua and there is no reason to believe that he did not refer to the decree tradition. Tierney offers a list of the five most fundamental terms, the occurrence of which in medieval legal, philosophical and theological theories marks the presence of a discourse of permissive offers. Following Tierney one can therefore mention: (1) *demonstratio-permissio* – according to the decretist Rufinus of Bologna, these are situations in which natural law neither precepts nor prohibits an action; natural law here refers to neutral land[24], for example, the marriage, which the natural law neither precepts nor prohibits; (2) *fas* – what is compatible, permitted; this term is already present in the Gratian's *Decretum*; for example, crossing someone else's land is allowed (*fas*) but is illegal (*ius*)[25]; (3) *libertas* – the Italian canonist Huguccio in *Summa decretorum* lists *libertas* – a freedom that belongs to everyone – among the many meanings of *ius naturale*[26]; (4) *tolerantia* – appears in a number of arguments that concern what would normally be considered sinful and unlawful; *tolerantia* describes situations that force us to choose the lesser evil; an interesting example of such a situation discusses Huguccio: divorce is allowed (tolerated) if it avoids the greater evil (murder of the wife)[27]; (5) *licitum* – the term expresses a permissive natural law relating to a range of acts performance of which is a matter of free choice – "All things are allowed to me, as long as they are not prohibited by law"[28] – for example, to say something or not to say, to eat or not to eat.

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24 B. Tierney, *Liberty and law. The idea of permissive natural law, 1100–1800*, Washington 2014, 26.

25 "Fas lex divina est; ius lex humana. Transire per agrum alienum fas est, ius non est" (*Decretum Magister Gratiani in Corpus iuris canonici*, dist. 1, c.1, op. cit., 1). Cf. B. Tierney, *Liberty and law*, op. cit., 29.

26 Ibid, 36.

27 Ibid, 40-41.

28 "Ius naturale ... licitum et approbatum quod nec a domino nec consitutione aliqua precipitur vel prohibitur, quod et fas appellatur, ut repetere suam vel non repere, comedere vel non comedere" (R. Weigand, *Die Naturrechtslehre der Legisten und Dekretisten von Irnerius bis Accursius und von Gratian bis Johannes Teutonicus*, Münich 1967, 209 (cited follow: B. Tierney, *Liberty and* law, op. cit., 44).

The context of the *licitum* – the sphere of acts of free choice and what is voluntary or involuntary – is the most common context in Paul Vladimiri writings where he discusses the natural law. Let us therefore take a close look at his arguments, all concerning the illegal occupation of Lithuanian lands by the Teutonic Order. The first of one ends with the conclusion that taking someone else's property away is an offence against human law: "Although from the beginning of man all things were common at all, yet by the law of nations, to wit, natyral and human, there have been distinguished dominions of things and therefore those things which have been previously occupied by one, another is not allowed to seize, because natural law prohibits, to wit: "What thou wouldst not have done to thee do not to another", and divine law: "Remove not the landmarks of thy neighbour"[29]. Paul refers here to the inalienable right to own one's own property (land), but what strikes one the most in the passage quoted is the coexistence of two types of natural law: the first is the natural law (*ius naturalis*), which, together with human law (*ius humanum*), belongs to the law of nations (*ius gentium*). The second kind of natural law (*lex naturalis*) Paul mentions along with the divine law (*lex divina*). Vladimiri assigns each of the rights an area of validity. Thus, under the natural law of man and nations (*ius*), the right of property has been established, and an example of a second type of natural law is the imperative of love of one's neighbour (*lex*), which Paul sets on a par with the proscription against violating territorial boundaries (*lex*). So what is the difference between the two types of natural law? The first one is of a claim nature, because it describes the right of a nation (as a subject) to own a property (land). The second includes precepts and prohibitions, so it belongs to the law of obligations (*lex*). In other words, natural human law (*ius humanum*) concerns claims, and natural and divine law concerns

29 "Quamvis a principio creature omnia erant omnibus communia, iure tamen gencium videlicet naturali et humano distincta sunt rerum dominia, et ideo preoccupata ab uno iam non licet alteri occupare lege naturali prohibente, scilicet 'Quod tibi non vis fieri alteri non facias', et lege divina 'Ne transgrediaris limites proximi tui', etc." (Paweł Włodkowic, *Opinio Ostensis 1415*, in: *Pisma wybrane*, op. cit., 121).

obligations. Permissive law falls within the scope of human law, and the law of obligations falls within the scope of natural and divine law.

The permissive nature of *ius humanum* confirms the following passage: "And because pagans possess their dominions by the natural law of nations and justly, therefore their dominions can not licitly (*licite*) by seized"[30]. Włodkowic repeats here that pagans claim their own lands under natural law, while the brothers of the Teutonic Order are not allowed to (*licite*) occupy them. If we would like to follow Tierney's indications faithfully, the expression *non possunt ... licite* should be read not only as "they are not allowed" (which is in accordance with the Belch's translation) or "they are forbidden", but more strongly – "they have no right to"[31]. While the context of *licitum* in the Middle Ages usually concerned – as Tierney suggested – the area of free choice, the term used by Vladimiri, together with a denial (*non licitum*), refers to what is beyond the free choice, what is forbidden, what *is not allowed*.

The term *licitum* can be read as the expression "Secondly, there were produced on the part of the said brothers many and diverse articles and privileges, some of which seemed prima facie to contain heresy: as if it were allowed to Christians to invade countires of infidels with the intention of seizing their dominions, whereas this is directly contrary to that commandment of the Lord: "Thou shalt not steal", "Thou shalt not kill", while, however, no one of sound mind doubts that infidels have just dominions and (that they have them) by the natural natural law of nations"[32]. To the question of

30 "Et quia pagani sua dominia iure naturali gencium possident atque iuste ideo non possunt eorum dominia licite occupari" (Paweł Włodkowic, *Quoniam error 1417*, in: *Pisma wybrane*, vol 2, op. cit., 229).

31 On the proper interpretation of the expression *licitum* in medieval legal discourse see: B. Tierney, *Liberty and law*, op. cit., 44–47.

32 "Secundo pro parte dictorum fratrum producti erant articuli et privilegia multa et diversa, inter que non nulla videbantur prima facie heresim continere: quasi esset licitum Christianis parte infidelium invadere animo occupandi ipsorum dominia, cum hoc sit directe contra preceptum Domini: 'Non furtum facias', 'Non occidas' etc., cum tamen nullus dubitat sane mentis apud infideles esse iusta dominia ac de iure gencium naturalis" (Paweł Włodkowic, *Ad Episcopum Cracoviensem 1432*, in: *Pisma wybrane*,

whether Christians are allowed to occupy a state that belongs to the infidels, Vladimiri gives a negative answer, again claiming that this is against the natural law. Solving this issue, Vladimiri classifies the right to own land as an example of the natural right of nations (*ius gencium*). Let us note the way in which Paul deals with the problem: his current formulation of the quasi *esset licitum Christianis parte infidelium invadere* can be read as "whether Christians have the right to occupy the countries possessed by infidels".

Going further, Paul's negative answer – "Christians have no right to occupy countries possessed by unfaithful" – can be understood in two ways: (1) by occupying the countries of the infidels, the Teutonic Order violates the (state) law prohibiting this; (2) by occupying the countries of the infidels, the Teutonic Order violates the pagans' rights to these lands. According to the first interpretation, Vladimiri indicates the legal prohibition of invasion of other people's lands. The passage quoted "it is not allowed to occupy other people's land" would mean that "the occupation of other people's land is prohibited by law". By accepting this reading of the above passage, one should therefore admit that the comment made by Paul Vladimiri is trivial. However, according to the second interpretation (which omits the context of the legal provisions), the above passage would mean that Christians cannot claim the right to occupy other people's lands, they have no power to do so in the sense that they have no power to invade Lithuanian lands. What ultimately makes the second interpretation of Vladimiri's statement more accurate than the first is the historical context. At the beginning of the 15th century – at the time when Vladimiri was preparing trial documents – neither Roman nor canonical law was in force in the lands belonging to pagan Lithuanians, Samogitians and Prussians, and the law regulating international relations was only in *statu nascendi*. Vladimiri, as a lawyer, could therefore not, during the trial, invoke international law governing relations between Christian and non-Christian countries[33]. It can

op. cit., 214).

33 On the development of international law in the 15th century, see: S. Swieżawski, *U* źródeł

therefore be presumed that, by pointing out situations in which pagans have the right (property) to their lands, and by justifying that the Teutonic Knights do not have the right to invade those lands, Paul describes the natural law *ius humanum* – the natural permissive law, which is inherent to human nature.

While the expression *licitum* in the medieval literature on law was usually used to describe the sphere of acts performed under free choice, the expression *non licitum* – "forbidden", "not allowed", "has no right to" is more frequent in Vladimiri's writings[34]. Anyway, the *licitum* is not the only expression that creates the context of discussion on permissive law in his legacy. Here is another part of his work: "Besides, since infidels are not to be compelled to the Faith but are to be tolerated and are to be induced by salutary exhortations, what toleration would this be and what wholesome exhortation to the Faith, if it took away from them dominions and honours"[35]. In the list of terms indicating the presence of permissive law in the Middle Ages, Tierney lists tolerance in the penultimate place. The concept of Vladimiri's tolerance is very different from a more contemporary understanding of the term[36]. Following Vladimiri, A tolerates B when: (1) A disagrees with B; (2) A does not force B to change its opinion and (3) A induces B to change its opinion by "salutary exhortation" (*salubris exhortatio*). Paul's use of the word *tolerantia* does not depart

etyki nowożytnej. Filozofia moralna w Europie w XV wieku, Kraków 1987, 231–262.

34 B. Tierney, *Liberty and law*, op. cit., 44.

35 "Preterea ex quo infideles non sunt ad fidem cogendi sed tolerandi et sanctis exhortacionibus inducendi que tolerancia esse e que salubris exhortacio ad fidem si auferret eis bona dominia et honores" (Paweł Włodkowic, *Ad aperiendam 1416*, in: *Pisma wybrane*, op. cit., 79).

36 The entry "toleration" in the *Stanford Encyclopedia of Philosophy* discusses four main contemporary concepts of tolerance: *permission conception*, *coexistence conception*, *respect conception* and *esteem conception*. Each of the four concepts of tolerance indicates a positive emotional component (respect, approval, love), which is an important element of tolerance itself. R. Forst, *Toleration*, in: *Stanford Encycklopedia of Philosophy*, ed. E. Zalta, 2012, (http://plato.stanford.edu/entries/toleration/), [accessed on: 10/2014]. Cf. E. Podrez, *Moralne uzasadnienie tolerancji: studium z etyki personalistycznej*, Warszawa 1999; M. Walzer, *O tolerancji*, transl. T. Baszniak, Warszawa 1999.

from the customary use of the term by other medieval law theorists and practitioners, because *tolerantia* means permission (*permissio*) for lesser evil. The choice of "salutary exhortation" instead of less sacred types of persuasion is indeed a choice of the lesser evil, but the term *tolerantia* indicates the presence of permissive law in Vladimiri's writings.

At first glance, it would seem that Paul is writing about the right of infidels to freedom of religion: infidels should be tolerated because they have the right to their own religion. However, such a solution should be rejected, because, firstly, it is untenable in the light of other passages of Vladimiri's writings on the matter[37] and, secondly, the canonistic tradition suggests a different interpretation. According to Gratian, committing acts that are contrary to the natural law is not allowed unless it proves necessary in a situation of choosing between greater and lesser evil[38]. The decretist Rufinus gives an example of a situation where a man swears to kill his brother[39]. Although breaking your oath is evil, in this case it is allowed (tolerated) because it avoids the greater evil (killing the brother). Tolerance is therefore a permission to committing a wrongdoing. Just as a brother is allowed not to keep his oath, so Christians are allowed to tolerate the religion of the infidels. This means that a Christian will commit less evil if it accepts pagan beliefs than if it were to use violence to promote Christianity. In other words, just as a brother has the right not to keep his oath, so Christians have the right to refrain from persuading infidels to change their religious worldview.

The problem of tolerance appeared in medieval writings on the law when moral problems such as those mentioned above were

37 Tolerance of other faiths is not based, in Paul Vladimiri's case, on the right of infidels to freedom of religion, but rather on the prohibition (God's law) to use violence to convert by faith: "Sed non apparet esse dubium, quod amplificacio fidei per vim et per arma bellica ac rapinas non solum est prohibita per generale Concillium Tolletanum, sed eciam est naturali iuri et divino contraria" (Paweł Włodkowic, *Quoniam error 1417*, in: *Pisma wybrane*, op. cit., 257). Similarly in: Idem, *Saevientibus 1415*, in: *Pisma wybrane*, op. cit., 60.

38 See: B. Tierney, *Liberty and law*, op. cit., 37.

39 Rufinus von Bologna, *Summa Decretorum*, ed. H. Singer, Aalen 1963, 32.

discussed. However, there are two difficulties here. The permission (*permissio*) to commit a lesser evil, understood as having the right to commit a lesser evil, was questionable by earlier living theologians[40]. The Decretists were accused of prematurely establishing the equivalence between the claims "it is permissible to commit act A" and "I have the right to commit act A". However, even if we agree to a strong interpretation of "permission" in the spirit of permissive law ("I have the right to what is allowed"), it seems to be more difficult for the contemporary reader to understand Vladimiri's very understanding of tolerance. While in the modern concept of tolerance, the subject of permissive law is a tolerated person ("I have the right to tolerate my views"), in Paul's view, the subject of law is a tolerant person ("I have the right to tolerate his views of others"). In the light of the aforementioned tradition of commenting on the *Decretum* and the above considerations around Vladimiri's writings, the radical and modern character of the views of the Krakow professor's views – attributed to him by researchers[41] – is losing its focus. It turns out that the terms "religious freedom" or "tolerance" which have so far described the legal theory developed by Vladimiri, have different meanings than those of today.

4. CONCLUSIONS

Paul Vladimiri's theory is the most systematic Krakow study on the theory of permissive natural law, but not the only one. Following the works of Krakow masters, one cannot help feeling that their legal and natural discourse is *de facto* a permissive discourse: Benedykt Hesse lists the right to own money[42], the anonymous Krakow author of the manuscript BJ 723 mentions the right to use armed assistance[43], and Jan Dąbrówka takes up the subject of entitlement,

40 B. Tierney, *Liberty and law*, op. cit., 40.

41 T. Jasudowicz, *Śladami Ludwika Ehrlicha: do Pawła Włodkowica po naukę o prawach człowieka*, op. cit., 17.

42 S. Swieżawski, *U źródeł etyki nowożytnej*, op. cit., 162.

43 *Notatka Revovatur*, BJ 723, in: L. Ehrlich, *Polski wykład prawa wojny w XV wieku*,

because he wonders whether a woman has the right to get married without her parents' consent[44].

In the work of the Krakow diplomat, two approaches to the natural law are present: on the one hand, Paul Vladimiri refers to the natural law of God, on the other hand, in his argumentation he often refers to the natural law of man and the law of nations – *ius humanum* and *ius gencium*. In this twofold – natural and, at the same time, human – nature of the natural law, some researchers see a contradiction within his doctrine[45], but the contradiction turns out to be only apparent. Paul calls natural law both the commandments of God and the set of prohibitions and orders governing human relations, and the area of claims which are the work of a human (such as the right to property) but are not codified by positive law, and which are universal and universally accepted by nations (as a right to self defence[46]). In other words, the first type of natural law is a law of obligations, the second type is a permissive law, a right.

Furthermore, in his work, Paul not only formulates a number of specific rights, but also proposes a hierarchy of them: he mentions the right to have one's own state[47], following Stanisław of Skarbimierz, he points to the right to preserve oneself in existence, which

Warszawa 1955, 201; see: J. Rebeta, *Czy notatka „Revocatur" należy do polskiej szkoły prawa stosunków międzynarodowych z połowy XV wieku?*, Kwartalnik Historii Nauki i Techniki 20(1975), 533–540; S. Wielgus, *Polska średniowieczna doktryna ius gentium*, op. cit., 13–14.

44 K. Bochenek, *Filozofia człowieka w kontekście piętnastowiecznych krakowskich dyskusji antropologicznych (ciało-dusza)*, Rzeszów 2008, 97.

45 "In my opinion, the category of human law appears in Vladimiri's work in three dimensions. First, as any law that is not divine. Secondly, as a law encoded in human nature and recognized by natural reason, and demanding work and effort of each specific person in its application. Third, as law opposed to natural law, and this is where there is a contradiction – created by the human being himself, and thus as if identifying himself with the positive law" (Ibid, 65).

46 Paweł Włodkowic, *Ad videndum 1421*, in: *Pisma wybrane*, op. cit., 183; Ibid, *Ad Aperiendam 1416*, 234.

47 Idem, *Quoniam error 1417*, in: *Pisma wybrane*, op. cit., 229–231.

underpins the right to defend oneself[48] and to oppose violence[49]. He argues that freedom is a condition of legal bond (obligations imposed on a person by natural or established law). For a person to be able to fulfil their legal obligations, they must be a free person. Therefore, the right to freedom – Vladimiri justifies – is a primary and fundamental human right[50].

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48 Idem, *Ad videndum 1421*, in: *Pisma wybrane*, op. cit., 183; Ibid, *Ad Aperiendam 1416*, in: *Pisma wybrane*, op. cit., 234.

49 "Ius quippe naturale est, ut unusquisque se conservet in esse et vim aut violentiam, prout potest, reprimat et contrario resistat. Hoc enim est cernere in creaturis irrationalibus, quae se, prout possunt, tuentur et defendant, et interdum in se ferientem remordendo consurgunt" (Stanisław ze Skarbimierza, *Sermones*, vol. 1, Warszawa 1979, 330).

50 "Natura enim omnes hominess errant liberi" (Paweł Włodkowic, *Saevientibus*, in: *Pisma wybrane*, op. cit., 13). Freedom is the right to something (to defend oneself, to own property, etc.), it is connected with the obligation to act actively, to make efforts and to safeguard one's own interests. This understanding of freedom is closely linked to Vladimiri 's argumentation in favour of peace: peace as a natural state is not given in advance, but is rather a result of active action of people themselves. Domański rightly concludes, therefore, that "Włodkowic does not repeat Stanisław's argumentation of the natural law as the basis of justice of defensive war. However, Włodkowic significantly complements Stanisław's doctrine with his own theory of power and the conditions of its legitimacy. This theory is based on the tacitly accepted assumption not only of the equality of all people, but also of their essentially unlimited freedom: only God, as the supreme being, the source and principle of all being can exercise power over people" (J. Domański, Z. Ogonowski, L. Szczucki, *Zarys dziejów filozofii w Polsce. Wieki XIII–XVII*, Warszawa 1989, 62). Cf. Paweł Włodkowic, *Ad Aperiendam II*, in: *Pisma wybrane*, op. cit., 47; cf. T. Jasudowicz, *Śladami Ludwika Ehrlicha: do Pawła Włodkowica po naukę o prawach człowieka*, op. cit., 153.

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DOI: 10.21697/spch.2020.56.S1.01