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The Religious Origin of Law, its Secularization and the current Need of Interdisciplinary Dialogue ¹

Abstract

In this article, His Beatitude Daniel, Patriarch of the Romanian Orthodox Church, underlines the religious origin of law and the need for interdisciplinary dialogue in our contemporary secularized society.

Righteousness or justification acquired by faith in Christ goes beyond the legalism based on formalism and self-sufficiency, structured by an excessive attention to outer details.

Righteousness by faith as it is invoked in the Gospels and the Epistles of the



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New Testament is not just a formal and exterior action. It involves an inner state and commitment, a transfiguration of human's powers by the experience of grace, a spirituality of human's personal communion with God. To rediscover the profound and objective identity of law an effort to recover and value the Judeo-Christian Tradition is needed. The law is structured by a vision of the world for which there is a rational order embedded in the nature of things. Interdisciplinary dialogue and academic research concerning the relation between *Judeo-Christian biblical tradition, European law, and social ethics* are necessary in order to cultivate co-responsibility and cooperation in the society of today.

Keywords

Law, Social Ethics, interdisciplinary dialogue, human dignity, human rights, justice

1 The identity of juridical science in the context of current scientific paradigm

In his research, *The Structure of Scientific Revolutions* (1962), Thomas Kuhn launches and analyses the implications of the concept of *paradigm*, showing that it represents a comprehensive conception of scientists about the world during a certain period. He shows that there is a tension generating a moment of crisis that unleashes an approach that leads to the replacement of the old paradigm by a new one. Kuhn shows that a scientific theory cannot be dissociated from the scholars' community, from the cultural and ideological context in which it is structured.

In the current context, it is increasingly highlighted, starting from the implications of certain results from different scientific

research domains, that *we are witnessing the delineation of the major lines of a cultural framework favoring the meeting and the dialogue between different cultural, religious and scientific traditions.* Ioan Petru Culianu, analyzing the crisis of the modern scientific spirit, highlights the fact that in various domains of the current science, the positions dominated by positivism, empiricism or rationalism have become outdated. That includes, as far as the identity of current juridical science is concerned, several researchers in the philosophy of law and judicial anthropology committed to a development of some positions with *openness to the relation between law and different traditions, including the religious one.*

Norbert Rouland, a professor of judicial anthropology and history of law at the University of Marseille, asserts that after the *World Conference on Human Rights*, organized by the UN in 1993, in Vienna, two great concepts have been outlined, in relation to the interpretation of human rights. The first of them consists in understanding human rights as expressions of certain universal values, as resulted following some historical experiences dominated by secularist ideologies promoting autonomy in relation to transcendence. There is also a second concept articulating human rights on the divine right, precisely in the Judeo-Christian tradition derived from the social ethic of the prophets and from the Gospel.

Rouland insists on the role of religious faiths, which can have significant influences on understanding and assuming human rights. He underlines that for the religious man, the spiritual and the juridical thinking are closely connected. *“If juridical and religious reflections are united, we cannot establish a priority between them; the way one thinks about a divine being, taking into account his divine side, is not more important than the thought about the world and its institutions. Religious thinking, like that of the social, juridical and political institutions, asserts,*

in these diverse domains, a way of viewing the universe specific of each society"².

2 Juridical order and human dignity

On the other hand, Jean-Louis Halperin claims that the notion of *juridical order* is developed in the context of the 19th-century controversies concerning the nature of international law. Towards the end of the 19th century, there were several specialists who developed a philosophy of law, according to which *the juridical order can be realized by the priority given to the international law in relation to the national law*. Santi Romano's work *L'ordinamento giuridico (Juridical Order)* was published in 1917, in which he shows that *juridical order cannot be defined as a set of norms because the juridical order is related to a social order inside a community. A specific law corresponds to each social order*. Thus, Santi Romano is considered a famous representative of *juridical pluralism*.

An international, cosmopolitan, abstract and sometimes justified order by ideological fictions cannot be imposed without taking into account the specific juridical orders concretely embodied within certain social norms articulated to the life of different communities. *In the ideological context of excessive secularization of law, the juridical order has as a referee a man dissociated from any transcendental guideline, and his dignity becomes an overestimated foundation*. In this sense, dignity is associated with humanity, not with the actual man, the authentic person.

However, Gilles Lebreton, in *Ordre public et dignité de la personne humaine: un problème de frontière* (Public Order and

² *Droits fondamentaux (Fundamental Rights)*, no. 3, 2003 apud Marius Dumitru Linte, *Ordinea trupului și/în sfera juridică (The Order of the Body and/in the Juridical Sphere)*, Editura Platytera, București, 2012, pp. 212-213.

the Dignity of the Human Person: A Border Issue), asserts that the tendency to place public order under the patronage of human dignity is problematic, since humanity is considered more than man and the species more than the person.

Bernard Edelman is one of the authors who promote human dignity as the basis of the juridical order. On this line, *the defense and promotion of dignity are not related to the freedom of the person, but with his belonging to mankind.*

Lebreton claims that, until 1995, human dignity was considered a component of public ethics, but *“after 1995, from being part of public ethics, dignity becomes a competitor of it and is considered an absolute concept, exceeding its relative and situational character... This new concept of dignity transforms potentially public order into an instrument of oppression against freedoms. From its initial vocation of being the instrument for maintaining social peace, public order risks becoming, under the emergence of its new component, an instrument of establishing a new moral order in the hands of the authority of the police of the general administration”*³.

Assuming such a perspective, one can note the **dissociation of human dignity** (*correlative to an abstract, unembodied humanity*) **from the dignity of the human person** (*which presupposes a concrete, embodied existence*). **However, the concrete man, the living individual, cannot be reduced to an accessory integrated into an impersonal system, in the name of an abstract humanity, by a set of rules and norms by which, in the name of the efficiency of the system, bureaucracy comes to mean more than life.**

Pierre Manent is the one who particularly highlights the need for recovering and giving value to the *order of the embodiment, of the identity of the concrete individual*. He shows that this type

³ Marius Dumitru Linte, *Ordinea trupului și/in sfera juridică* (The Order of the Body and/in the Juridical Sphere), Editura Platytera, București, 2012, p. 39.

of order has been deliberately destroyed by ideologies hostile to the Tradition. In the present context, including in the approaches of the juridical research, there is a relevant effort to value the specifics of the Christian Tradition, which affirms an order based on the reality of Christ's Incarnation. The order of the body is structured by specificity and concreteness. The concrete, unique and unrepeatable person, as well as the family, are fundamental realities, articulated to the life of Christ's mystical body, which is the Church.

Thus, *"on the onset of the changes of paradigm, in a time signalling a new juridical revolution as an impulse generating and structuring the matrix of the New Order, cosmopolitan, impersonal, of the number-man, of the mass superman, of the relation without face, of the process subject, the Order of the Body highlights and reveals the Iconic Image of Christ, complete and eternal, of substance and sense, of Man's dignity and liberty, offering a testifying, dynamic and dialogical argument to the authentic-accomplishing preservation of the identity of the person, as basis and vector recovering the real diversity"*⁴.

3 The rediscovery of the identity of law from the perspective of the Judeo-Christian Tradition

Michel Villey had a special role in the contemporary history of the philosophy of law. Alain Renault, in his work *Philosophie du droit*, published in 1991, considers Villey as the *initiator of the philosophy of law* in France. He recovered, in the context of the juridical studies from France, *the philosophical dimension, overcoming the positivist position based on triumphalism and self-sufficiency*. Michel Villey shows that today the crisis of law is *caused by the fact that a unilateral and reductionist*

⁴ Marius Dumitru Linte, *op. cit.*, p. 20.

understanding of it is being promoted, according to which the only source of law is legislation and jurisprudence.

Villey makes an analysis of the undermining of the objective character of law by Occam's, Locke's and Hobbes' philosophy, and especially by Kant's philosophy. This philosophy institutes a law, extracted from the subject itself. Modern law, deduced from the subjectivism based on the autonomous reason, leads to juridical rationalism. Villey shows that *the misuse of the objective law and its transformation into subjective law has as basis the autonomous humanism.*

In article *L'Humanisme et le droit* (Humanism and Law), Michel Villey asserts that *Humanism makes man the only author of law and human being becomes the supreme goal of law.* However, by assuming that the human being is *source and goal of law* leads the moderns to forget the authentic philosophy of law. **In order to rediscover the profound and objective identity of law,** according to Michel Villey's vision, **an effort to recover and give value to the Judeo-Christian Tradition is needed.** He mentions that from such a perspective *law is structured by a vision of the world for which there is a rational order imbedded in the nature of things.*

In his work *Philosophie du droit* (Philosophy of Law), Michel Villey shows that the entire European culture, including the juridical one, has appeared and developed in the framework of the Church, in the life of the monasteries and schools around the cathedrals. He asserts that the medieval University gave priority to the Holy Scripture and in the 17th century there was no philosopher, writer, artist or scholar who would not have drawn inspiration from the Bible. Until the 16th century, the academic elite of Europe used Biblical Latin. The author also asserts that, in the actual context, one can note an embarrassing religious ignorance, including in the Faculties of Law. He remarks that: *"...at the Faculty of Law, Jewish Law and Christian Canon Law are hardly mentioned. In this sense, some students' ignorance is astonishing. Many juridical realities have been borrowed from Biblical sources, and our current idea of law is a*

heritage of the Judeo-Christian thinking. We have received from Christianity a second philosophy of finality in law"⁵.

In his current juridical research, Jean-Marc Trigeaud affirms the truth of the person and of paternity as realities that cannot be exhausted in the framework of theoretical principles and juridical norms of an impersonal type. By the fact that the person is irreducible to legalist regulations, Jean-Marc Trigeaud claims that the personalist law differs from the law of positivist type and from the natural law, which reduce the human person to a character integrated and manipulated by models structured by autonomous reason.

In a personalist sense, Trigeaud pleads for the recovering and valuing of the relation as a specific mark of the person, since the relation "*...is a specific mark of the person and reflects its act of living, its outflow springing from the personal being... It expresses the capacity of self-giving, the gesture, with no return or counterpart, pure creation; an invitation, actually, of the vertical relation uniting the created person with the divine transcendence, by means of Christ's hypostasis*"⁶.

4 Righteousness by faith as an action of grace transcends the formalism of the Law

Righteousness by faith endowed by Jesus Christ, the Son of God, Who became Man out of love for human beings and their salvation, is *fulfilling and renewing in relation to the Law of the Old Testament*. Thus, righteousness or justification acquired by the faith in Christ goes beyond the legalism based on formalism

⁵ *Ibidem*, pp. 123-124.

⁶ Jean-Marc Trigeaud, *Métaphysique et éthique au fondement du droit* (Metaphysics and Ethics as Foundation of Law), p. 49, apud Marius Dumitru Linte, *Dreptul în context* (Law in Context), Editura Platytera, București, 2014, p. 367.

and self-sufficiency, structured by an excessive attention to external details. Righteousness by faith invoked in the Gospel and the Epistles of the New Testament is not a merely formal and external action. *It involves an inner state and commitment, a transfiguration of man's powers by the experience of grace, a spirituality of man's personal communion with God.*

Righteousness is not an act realized for a social appearance, to acquire the appreciation of public opinion. Our Saviour Jesus Christ addresses His disciples, warning them in this sense: *"Take care not to perform your good deeds before others so as to be seen by them; otherwise, you have no reward from your Father Who is in heaven"* (Matthew 6:1).

Righteousness deriving from the faith in Christ is distinct compared to the righteousness of the Old Law and of that of polytheist or pagan peoples (for there is also a righteousness of the pagans, who do by nature things required by the natural law – according to the teaching of Saint Paul the Apostle in the Epistle to the Romans 2:14-15). Righteousness coming out of faith implies at the same time the dimension of interiority, of discretion and of the relation of humble love towards God and fellow people. In this sense, Jesus tells His disciples: *"For I tell you that unless your righteousness exceeds beyond that of the scribes and Pharisees, you will never enter the kingdom of heaven"* (Matthew 5:20).

Righteousness as an act of the grace inside of man does not render absolute the power of an autonomous man, who does his deeds being detached from the experience of faith. Saint Paul the Apostle calls this righteousness as being *"righteousness that comes by faith"* (Romans 4:11-13) or *"the hope of righteousness by faith"* (Galatians 5:5).

The relation between righteousness and the Law is analysed by Saint Paul the Apostle especially in the Epistle to the Romans, where he shows the difference between righteousness acquired by the faith in Christ as a relation of man with the God-Man and the righteousness or the justification resulting from the observance of the Law, as exterior gestures or acts without a

spiritual content. He asserts that, although what was initially pursued was true righteousness based on faith, it has not been reached because the Law became external to faith and an intrinsic goal, and not an expression of the communion of the human person with the divine Person (*Romans* 9:31-32).

In this sense, there is a subjective righteousness or a self-justification that generates pride since it relies exclusively on man's own power. This righteousness based on pride lacks the consciousness of repentance (the parable of the publican and the Pharisee is eloquent in this respect). Above all, however, *God's righteousness received by faith relies on the fact that the **Righteous God is also a Loving Father**, and that by the Incarnation or embodiment of God's eternal Son **not only forgiveness of sins but also the grace of adoption is granted to man***. God's righteousness revealed in and by Jesus Christ indicates *the relation between God's righteousness and God's kingdom, as a communion of the eternal love between God and the saints*. Consequently, a righteousness that comes by faith is a relation and a state of life acquired by pursuing God's kingdom. In this sense, Jesus exhorts people, by saying: "*Seek first the kingdom of God and His righteousness*" (*Matthew* 6:33). Thus, *a righteous man is a man in communion of love with the Righteous and Holy God and fulfilling His will in the society*.

The Old Law was "*a guide to Christ*" (*Galatians* 3:24). Christ has accomplished the Old Law (cf. *Matthew* 5:17), not by abolishing it, but *by perfecting it*.

The expression: "*Christ is the end of the law*" (*Romans* 10:4) means at the same time that He is the accomplishment or the perfectness of the Old Law and the beginning of the New Law of grace as eternal love of the Trinitarian God, a love revealed and communicated to people by Jesus Christ. Therefore, by the divine-human Person of Jesus Christ, [the Most Holy Trinity] has granted us righteousness accomplished by grace and truth. Saint John the Evangelist witnesses in this sense: "*From His fullness we have all received grace upon grace. For the law was given through Moses; grace and truth came through Jesus Christ*"

(John 1:16-17). It is worth mentioning that even nowadays, when mercy or generosity transcend legal or formal justice, the respective act or state is called *grațiere* (in Romanian, i.e. amnesty), from the Latin word *gratia*, which means grace, generosity, mercy.

However, the relation between righteousness and merciful love cannot constitute a pretext for a state of passivity, of non-commitment in preventing or correction of the injustices manifested in history because of sin or selfishness. The believer committed to the spiritual life seeks righteousness not necessarily for himself, but for his fellow humans, hence for the good of the community.

In this sense, Father Dumitru Stăniloae mentions: *“The spiritual man does not want only an interior righteousness, but (also) an exterior one to be realized among human beings. [This happens] because he knows that exterior injustice can hinder the realization of love among people, therefore [it can hinder] inner righteousness, as well. Exterior righteousness is not the ultimate goal, but, above it, is the righteousness in the spiritual order ... A full and true righteousness will also mean the restoration of the full balance between everything that has been created, which is the full reflection of God’s righteousness, Who loves everything”*⁷.

Just as Saint Paul the Apostle, Father Stăniloae understands righteousness as a fruit of the faith in God in a comprehensive sense, rich in meanings, as a *life renewed by Christ’s love*.

Especially in the current context, when the development of a more and more impersonal system is being sought, in which the details of life are organized excessively in a robotized manner, it is relevant to accomplish and witness righteousness as being first of all a state of inner freedom acquired by the relation of the human person with the Person of Jesus Christ and with the

⁷ Dumitru Stăniloae, *Teologia dogmatică ortodoxă* (Orthodox Dogmatic Theology), vol. I, Editura Institutului Biblic și de Misiune Ortodoxă, București, 2010, p. 263.

Holy Trinity, the supreme communion of life and love of the distinct, yet unseparated, divine Persons. Today, the engineered efficiency, bureaucra-tically materialized by norms, directions, rules and regulations favors an approach of excessive and even abusive regulation by which the mystery, the dignity and the intimacy of the concrete person are affected. In other words, the unique and eternal value of the human person and the interpersonal relations are often disregarded in the context of the overwhelming mechanisms of a legalistic type, in the name of the efficiency of the system and of the immediate material gain.

Under these circumstances, it is of great actuality for the social life *to recover and bring value to the spiritual goal of righteousness, viewed as an authentic relation of human communion, based on the communion with Christ the God-Man, because from this perspective righteousness is being experienced, as Father Dumitru Stăniloae highlights, as being "...the life in Christ, the adoption, the inheritance of the kingdom of heaven, crucifixion and resurrection together with Christ, to put on Christ. This new way of living is called by Holy Apostle Paul "righteousness from God". This enters the human being through the faith in Christ, and it develops from it, or better said it comes from the personal Christ, as a source of love and infinite power; it is not a quality gained by man in his deeds, in an arrogant isolation. Because only a person gives another person a certain life; and the Person of Christ, as the supreme person with an infinite life, is the only one communicating a non-transitory life to the human being (...). While the one regulating his life by law lives an individualistic existence, related to an impersonal norm whose accomplishment depends on himself, the one who has Christ within has Him as a living norm and as a source of power,*

and this is why he can live a life of communion with Christ, from Christ's power"⁸.

What we have presented so far aims at encouraging an interdisciplinary academic dialogue and research concerning the relation between the *biblical Judeo-Christian tradition, the European law and social ethics*, similar to the model of the interdisciplinary dialogue between *theology, science and philosophy*, already existing in the University of Bucharest and *Alexandru Ioan Cuza* University of Iași. Such a dialogue can be useful for all the parties involved, but also for the cultivation of co-responsibility and cooperation in today's society.

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⁸ Dumitru Stăniloae, *Teologia dogmatică ortodoxă* (Orthodox Dogmatic Theology), vol. II, Editura Institutului Biblic și de Misiune Ortodoxă, București, 2010, pp. 344-345.