THE NATURAL-LEGAL DIMENSION OF A PERSON'S STATUS

Píry Martin
Associate professor, Matej Bela University (Banska Bystrica, Slovakia), JUDr., PhD,
e-mail: martin@piry.sk

The natural law theory of a person as a substance of his own is presented in the article. The author analyzes historical and contemporary theories and states that any human rights and freedoms can be derived only from such a fundamental level, that a human represents an inherent nature himself. For this basic legal personality the quality of persons' life, race, nationality, gender, and other characteristics are not decisive.

Key words: value of life, person, legality, equality, law dignity, natural law

ЕСТЕСТВЕННО-ПРАВОВОЕ ИЗМЕРЕНИЕ СТАТУСА ЧЕЛОВЕКА

Пири Мартин
Доцент кафедры финансового и административного права юридического факультета Университета Матея Бела (Банска Быстрица, Словакия), JUDr., PhD,
e-mail: martin@piry.sk

В статье представлена естественно-правовая теория восприятия человека как ценности в себе. Автор анализирует исторические и современные точки зрения на этот вопрос и утверждает, что любые права и свободы человека могут быть выведены только из такого фундаментального основания, как природа человека. Для этой базовой правосубъектности качество жизни, раса, национальность, пол и другие характеристики людей не являются решающими.

Ключевые слова: ценность жизни, личность, законность, равенство, правовое достоинство, естественное право

The status of a person is one of the fundamental topics of the analysis of law. The person is also organically associated with all the relationships that are actually created, modified or abolished in law. In the end, we can say that without the presence of a person as such, law would not even exist.

In the past, we could observe various tendencies of how to understand the concept of *the person* and its legal personality. In fact, we can distinguish two basic philosophical-legal attitudes towards this subject: the legal positivism and the natural law theory.

According to the historical-critical method, I have tried to introduce two more empirically confirmed attitudes. From the material point of view, we could also talk about *«a person or people with more value»* and *«a person or people with less value»* concepts. These concepts, as I have called them, are directly reliant on whether we grant a discharge of constitutional power to the normative body – the legal authority. Certainly, the most dramatic concept presented in the history was the one of *«a person or people with less value»*.

The idea was that there should be less legal personality attributed to certain groups of people than others (negative discrimination). The Nazi regime or the slave system in the United States are not the only examples, because we could observe it anywhere else in the world, where contrary to the principle of equality, one human life was considered less important than the other one.

The theories, as I have called them, *«a person or people with more value»* are characteristic for the current legal philosophy (positive discrimination). In fact, they are talking about the new rights, in which emphasis is put on the principles of accidental circumstances and not on the essence, which is a person as such.

A special status and the entire catalogue of rights are derived from the principles of accidental circumstances. It is not just about gender, race or sexual orientation (for example.

such as feminism), but also about the opinion, that the person uses full legal protection, only if this person is capable of self-realization[1].

In my article, I will try to introduce the natural law theory of a person as a substance of his or her own. My hypothesis is that any human rights and freedoms can be derived only from such a fundamental level, that a human represents an inherent nature himself or herself. The quality of his or her life, race, nationality, gender, and other characteristics for this basic legal personality are not decisive.

As I have outlined, in the real situation, we can observe two basic theories that are decisive in law, such as the legal positivism and the natural law theory. When presenting them it is necessary to examine, among other things, the question of the limits and the final possibilities of individual theories.

The basic idea of the legal positivism is the legitimacy of law deriving from the form it is adopted from. In other words, we can say that the law is only what is of a certain expected form and is approved by a legal authority, which may be a parliament, an executive or a monarch. The majority of the positive-legal schools derive their conclusions from the fact that if the norm of behaviour is not adopted by the authority and consequently not even in a certain form, it is not possible to talk about a valid law[2].

The natural law, on the contrary, even in the first factual reference to it[3], gives us a certain possibility to compare and understand the differences between natural law and positive law. *«Natural law has the same validity everywhere and is independent of the consent or disagreement of the people. On the other hand, positive law is the one, whose content does not originally matter but which becomes binding as soon as it is established».*

The objection to the absoluteness of the positive law lies both in the empirical experience and in some logical trap that is hidden in it. One of the reasons of the discharge in theoretical-legal considerations is the question of authority that forms the law. For this reason, it is clear that the basic presumption of the *conditio sine qua non* of positive law will be the principle of sovereignty of the people, which is derived from the law-making system[4].

It is relatively difficult to say whether Thomas Hobbes was a *ius* naturalist or a positivist. In his work, Leviathan, he said, «It is the authority, not the truth that makes law». In the history of legal thinking, we would find many arguments of a similar kind, the conclusion of which is, if we are to speak of law, it should be only on the level of formalized law.

If the law is only what the constitutional corps approves, because the sovereignty of the people is supported, as one of the basic arguments of this school[5], there may be a situation where this body (constitutional corps), for example, cancels the elections and decides that all its members will be emeritus the right of inheritance. *De facto*, he will introduce tyranny.

If by this procedure, *ad absurdum,* we give an absolute power to the constitutional authority, we must also respect the new state as a state approved by the legal authority and at the same time hypothetically assume the prescribed form. Paradoxically, this way, the basis of this sovereignty of the people and the argument for the absoluteness of the positive right denies its most preposterous assumption, *conditio sine qua non*.

However, this is not an absurd case at all. Let us compare the legislation of the Third Reich, the Soviets or the bizarre case of the dictator Dr. François «Papa Doc» Duvalier from Haiti. The latter, in particular, is a classic example of the fact that the absoluteness of the legal authority, in this case carried out even by referendum, has led to a bloody dictatorship[6].

This is what the opposite argument originates from, the one which says, that if we really absolutized the positive-legal doctrine, we would have to cancel the results of the Tribunal of Nuremberg, as the deeds punished there, especially in the context of crimes against humanity, were legal when committed.

---

[1] *Gorsuch M. N.* The Future of assisted suicide and euthanasia. Princeton, 2006. P. 159.

[2] *Hart H. L. A.* Concept of law. Oxford, 2012.

[3] *Aristoteles.* Etika Nikomachova. Bratislava, 2011.

[4] Compare Article 2.2 of the Constitutional Act no. 460/1992 Coll. in the wording of changes and novels (Constitutions of the Slovak Republic). The state power comes from citizens who carry it through their elected representatives or directly.

[5] *Hart H. L. A.* Op. cit.

[6] Dr. Françoisa «Papa Doc» Duvalier was a physician who became a legal and democratic way in 1956, and then in 1964, by way of a referendum, his power was defined emeritously to have a constitution rewrote in 1971, and his son's hereditary rights to the office of President

There are many different opinions of the courts, but they say that the constitutional power in none of its form, and thus not even a lower legislative normative power, is absolute. Probably the best known is the decision of the German Constitutional Court, which Alexy mentions in his book[1]. The Constitutional Court was dealing with the question of the validity or invalidity of positive law in conflict with the principles of natural law.

This was a situation when a Jewish lawyer, on the basis of the Nazi law of November 25, 1941, lost his citizenship of the empire because he was a Jew. According to the Court's ruling, *«Law and Justice are not given to the arbitrariness of the legislator and are not made available to him»,* the right of the Nazi establishment shows that the legislator may adopt injustice. According to this ruling, the constitutional power is not absolute and the law that opposes the fundamental principles of natural law is invalid.

If we can say, starting from Aristotle, but also from Cicero or the whole line of Christian philosophers, in terms of some basic definition, what the natural law is, it is still necessary to take into consideration whether this dimension of the law, as it were eternal, can be a unifying element for the global dialogue[2].

As we are witnessing this demand with John Paul II, who says, *«The natural moral law is an important and urgent topic which attention should be drawn to. On the basis of this law, it is possible to create a platform of shared values around which a constructive dialogue can be developed with all people of a good will, regardless of their faith, religion and culture»*[3].

The need for a certain degree of natural law is also understood by one of the most important representatives of legal positivism H. L. A. Hart. In its minimal view it is about:

a) Human vulnerability;
b) Convergence towards equality;
c) Restricted altruism;
d) Restricted assistance;
e) Limitation of understanding and the power of will[4].

In addition to this distinction, Hart, in spite of being a positivist, is talking about a certain minimum of natural law that will help us to construct a definition of this concept. This is an attempt that can be an interpretative tool within the rules and institutes. It is sufficiently abstract to be used as a means of global communication and at the same time to be specific enough to be called law[5].

There is one episode in Judaism that I can quote.

«Someone came to Rabbi Shamai and asked him to sum up the Jewish religion while standing on one leg[6]*.The Rabbi merely imagined the basic collection of the five books of the Moses on his mind, and it was clear to him that this was not possible. So this man went to the other Rabbi Hilel. Unlike Shamaya, he did not see any problem in the request, „What is disgusting to yourself do not do it to your fellow. That is the whole law; the rest is only the interpretation"»*[7].

Natural law and law as such can be analysed at length and it can provide us different points of view, but according to the pattern of this episode, I will try to introduce the most basic framework. Natural law can only be such a norm of conduct that is also capable of being a norm for everyone, and which ensures the survival of all humanity if respected, and on the contrary, in case of its infringement by everyone, its destruction or violation of two fundamental principles, equality and dignity of a person.

Certainly, an attentive reader could not miss the fact that it is a synthesis of several philosophical-legal opinions: Kant's imperative[8], Mill's limitation by damage[9], Dworkin's idea of

---

[1] *Alexy R.* Pojem a platnosť práva. Bratislava, 2009. S. 27.

[2] For example, Etika Nikomachova.

[3] *Pavol J. II* Príhovor účastníkom plenárneho zasadnutie Kongregácie pre náuku viery (6.2.2004), bod 5 // Acta Apostolicae Sedis. 2004. Vol. 96. P. 399–402.

[4] Compare to: *Večeřa M.* Právní princípi, přirozené právo a hlediska spravedlivosti // Právny obzor roč. 2003. Vol. 86. S. 248.

[5] *Dworkin R.* Ríša práva. Bratislava, 2014.

[6] *Tondra F.* Svätý Tomáš Akvinský a prirodzené zákon // Nové horizonty: časopis pre teológiu, kultúru a spoločnosť. 2011. № 1. S. 11.

[7] Compare to: Book of Tobit (Bible), Tob 4.15 «What you hate yourself, do not you another».

[8] *Kant I.* Základy metafyziky mravov, Bratislava, 2004.

[9] *Mill J. S.* O slobode. Bratislava, 1995.

the two principles of equality and dignity[1], and Aquinas' three tendencies. The above-mentioned Hart considers the survival as a fundamental respect for natural law. If the objective of natural law was to be anything less than the sustainable development of humanity, it would become an oxymoron-neological philosophical principle.

An important aspect of such a concept of natural law is its legal entity; a person.

I will help myself with the Biblical Source-File of the decalogue. This Old Testament Code is very popular when interpreting any institutes in their natural law.

For example, *Do not kill*. This rule includes both: the determination of the subject and the set of rights and obligations.

Do not kill is not addressed to a Jew (as at that time a chosen nation), it is an imperative in the second person of singular. This means that anyone in the world who is able to understand the meaning of this word is bound to it. This implies directly the fact that natural law is recognizable by our mind and concerns everyone. It is an outlook on a person as a subject of duty with no analogy. Shortly, we will see that this is a negative definition of rights and obligations. The primary duty is not to kill, so everyone's right to live is clearly implied.

It is a negative command, so that it does not require the pursuit of any activity or the pursuit of improvement. Even though there are many similar commands elsewhere in the Bible, but on the basic level, it says to every person what he or she cannot do. The interesting dimension of this interpretation is the fact that, apart from the 4th commandment *(honour your father and your mother)*, the entire social code (4th–10th commandment) is negative. It seems as if only in this particular case, the primary duty of the person concerned was to act against their own parents[2].

Obviously, it is the most abstract definition of an obligation, which, however, clearly and unambiguously has features of concreteness. Unlike other modern concepts, it is clear that within a single imperative, the status of a person, right and duty are contained. In spite of the development of human society, it is obvious that, apart from some short but tragic periods, there has been no fundamental controversy over the need for such an imperative in our society. For comparison, there is a truly exceptional match for the need for protection of life, such as Hinduism, Chinese Confucianism, even the Nordic verse says: *«I saw the murderers in Náströnd»* or the Qur'an: *«Do not kill anyone because it was forbidden by God»*.

However, the term *«do not kill»* includes primarily a basic criterion for determining a person, and that it is about everyone. It has not always been unambiguous. Let us remind you of an example of the system applied in the Roman law, where the slave was a talking instrument[3]. A very interesting case is mentioned by R. Procházka[4]: *«In 1846 Dredd Scott, a slave of African descent living in the United States of America, attempted to achieve the emancipation from slavery. He relied on a whole range of arguments, ranging from the rules of the federal states to the constitutional clause of equality, which is the following: All men were created as equal. In 1857, after more than a decade of litigation, the US Supreme Court ruled that the clause of equality does not apply to slaves. The majority argued, among other things, that allowing Scott to emancipate would interfere with the owner's property rights»*.

A part of the discussion about this problem of the status of a person must be a brief outline of the Catholic social teaching. It is true that nowadays the social teaching of the Church is taken as a theological, at most as an economic or a social discipline[5]. The Catholic social science is built on its basis on the natural law[6]. In spite of this common interpretation, it cannot be denied that, for example, the encyclical of John XXIII *Pacem in Terris* is of great importance for the examination of the law and the human rights system at all. It is

[1] *Dworkin R.* Op. cit.

[2] Compare to: *Fuller L. L.* Morálka práva. Praha, 1998.

[3] On the question of the existence of slavery on the territory of Slovakia, see more: *Jáger R.* Existovalo otroctvo aj na území dnešného Slovenska? // Ako sa nestať obeťou obchodovania s ľuďmi? Hľadáme riešenie. Banská Bystrica, 2014; *Gábriš T., Jáger R.* Najstaršie právo na Slovensku? Pokus o rekonštrukciu predcyrilometodského normatívneho systému. Bratislava, 2016. S. 179 a nasl.

[4] *Procházka R.* O myšiach a ľuďoch // Impulz. 2008. № 2. URL: http://www.impulzrevue.sk/article.php?306.

[5] *Sekerak M.* Neoliberálni teórie a praxe a její recepce u sv. Jana Pavla II, Benedikta XVI. a Františka // Studia theologica. 2015. № 1. S. 10.

[6] Compare to: *Grocholewski Z.* Prirodzený zákon v náuke cirkvi // Nove horizonty: časopis pre teológiu, kultúru a spoločnosť. 2012. № 1.

precisely in this encyclical that the pope interprets indirectly the notion of a person: *«Every man is a person who has his or her rights and duties»*[1].

It is probably one of the most accurate interpretations of a person, as we know it from *«Do not kill»*. We can see both the «brotherhood» of rights and duties which are characteristic for the social doctrine and the definition of a person as every human being without any additional attributes. The organic link between the subject itself and the rights and duties is unique because it also tells us that rights and duties cannot be at that basic level for another reason than the fact of being a human.

In John XXIII's interpretation of the position of a person there is no space for the attributes of a race, a nation, a gender, or a sexual orientation. In this case, a person is understood as a substance himself of herself, the above attributes being incidental only. On one hand, it establishes the maximum, as I have already said, the impossibility of deriving rights from a fact other than being a person, and on the other it is the limit for other partial legal relationships. Therefore, all other rules must be in accordance with these maxima of naming a person, in particular.

The Slovak expression, *«osoba»,* meaning a person, also expresses etymologically something that exists itself, that is not inside of something else, as it is typical for the principles of accidental circumstances, the fact that being a person is always a substance, an essence[2].

The second dimension, which is mentioned by John XXIII, is already contained in the quoted principle of the person in *Pacem in Terris*. This is an idea of equality of people. This is contained in the Declaration of Independence of the United States, but also considered to be the basic principle of the European Communities.

Nevertheless, there is no consensus among experts and we are witnessing many debates. Equality, along with the requirement of a person's dignity, is the basic category that we can speak of as the universal validity of natural law.

Equality is primarily due to the lack of an attribute justifying inequality. It is not the metaphysical consequence of the abstraction based on religion or other transcendental cause. This is the empirical conclusion of mankind, which has been confronted with attempts to define a life with a lower value or a life without value in Nazi times. The value of human life must be established as an imperative of the facts of the person. Neil M. Gorsuch, in his book «The Future of Assisted Suicide and Euthanasia», gives one example that is a traditional example in common law, *Regina vs. Dudley and Stephens*.

In this case, the two shipwrecked people have eaten a third because his death was necessary in order for them to survive. The basic argument of the defence was the fact that, that boy's value of life lost significantly, taking into consideration that all three would not be able to survive. The Court has rejected such arguments and has confirmed the fundamental principle of the law that all human beings are equal in dignity and respect for the value of life[3]. Gorsuch is quite right asking in the quoted work: *«Which measurable quality will we objectively use to measure the value of life in terms of comparison? Is it perhaps an intellect, a physical force, or what?»*

Within this decision, the common law objectifies the human being as himself or herself, having equality and consequent inherent values. Dworkin, despite of being considered a *ius* naturalist, when it comes to a person's status, he stands for the relativistic point of view. When assessing a person, he speaks of an important prerequisite for the person's ability of self-realization or what is called the creative person's ability of self-realization.

Dworkin's theory would justify the manslaughter of a person suffering from the Alzheimer's. Posner, on the contrary, links the value of subjectivity to the fact of understanding and accepting moral values. Dworkin, Posner, Signer, Epstein, and many others consider the person's subjectivity to be fully dependent on the person's ability to express himself or herself externally, his or her legal personality is measured by the ability of self-realization.

Therefore, we believe that under certain circumstances it is possible to talk about some people's limited legal personality and the relative value of their lives. The determinant is not as a race or a nation, as we have witnessed in history, but the ability of the person to mani-

[1] Dokumenty sociálnej náuky cirkvi. Trnava, 2007.

[2] *Uram J.* Ľudská osoba ako substanciálne bytie a dôvod jej absolútnej hodnoty // Nové horizonty: časopis pre teológiu, kultúru a spoločnosť. 2012. № 2. S. 65.

[3] Compare to: *Gorsuch M. N.* Op. cit.

fest himself or herself externally either using their intellect, creativity or morality. There is a certain degree of utilitarianism in the case of a person's assessment, which is not possible to fully agree with.

The full protection of the law, that is the full personality of the person, is based on the person and not on the attributes. From the point of view of this preferential utilitarianism, Peter Signer then inquires objectively why the parents could not decide about the life or death of the new-born. According to this theory, neither the *fetus* nor the new-born are able to realize their existence in time, they are not considered to be people[1].

This theory is logically confirmed by the fact that if a mother chooses to go to abortion, in a lot of states, there is nothing that obstructs her from doing so. Another question is that this theory of border utilitarianism fully legitimizes the trade with new-born babies and paid surrogate agreements.

This way, a human becomes a means and not an aim. From the point of view of the philosophy of law and morality, such a degradation of a value of a human being is rejected by Kant, for example, when he says, *«it is never possible to use man as a means but always as an aim»*. However, this progressivist concept in law, based on preferential utilitarianism, must come to the conclusion that is far from being progressive. It is the conclusion admitting that there is a person or there are people with less value or no value at all. Our conclusion is also the one of social Darwinism, which formed the basis of the ideology of National Socialism.

The natural-legal concept that is based on *Do not kill* (figuratively speaking), considers as its aim, as Hart admits, the survival of the human family. Thus, it is impossible to exclude from this aggregate the people from the aspect of any attributes and the principles of accidental circumstances. Gorsuch considers that the principle of the foundation of a just system or good in law, that any deliberate killing is always bad.

It is precisely because it violates the principle of equality. The absoluteness of the anthropocentric orientation of the principles of law, in other words, the natural law, among other reasons, is the only one possible, because if the law does not have a person as its objective, it loses its meaning. The absoluteness of the person as such, as stated by John XXIII in *Pacem in Terris*, is thus the only possible basis in order to avoid the experience of the historical periods, when the value of life was judged by other occasional assumptions.

References

Alexy R. Pojem a platnosť práva. Bratislava, 2009.

Aristoteles. Etika Nikomachova. Bratislava, 2011.

Dokumenty sociálnej náuky cirkvi. Trnava, 2007.

Dworkin R. Ríša práva. Bratislava, 2014.

Fuller L. L. Morálka práva. Praha, 1998.

Gábriš T., Jáger R. Najstaršie právo na Slovensku? Pokus o rekonštrukciu predcyrilometodského normatívneho systému. Bratislava, 2016.

Gorsuch M. N. The Future of assisted suicide and euthanasia. Princeton, 2006.

Grocholewski Z. Prirodzený zákon v náuke cirkvi // Nove horizonty: časopis pre teológiu, kultúru a spoločnosť. 2012. № 1.

Hart H. L. A. Concept of law. Oxford, 2012.

Jáger R. Existovalo otroctvo aj na území dnešného Slovenska? // Ako sa nestať obeťou obchodovania s ľuďmi? Hľadáme riešenie. Banská Bystrica, 2014.

Kant I. Základy metafyziky mravov, Bratislava, 2004.

Mill J. S. O slobode. Bratislava, 1995.

Pavol J. II Príhovor účastníkom plenárneho zasadnutie Kongregácie pre náuku viery (6.2.2004), bod 5 // Acta Apostolicae Sedis. 2004. Vol. 96.

Procházka R. O myšiach a ľuďoch // Impulz. 2008. № 2. URL: http://www.impulzrevue.sk/article.php?306.

Sekerak M. Neoliberálni teórie a praxe a její recepce u sv. Jana Pavla II, Benedikta XVI. a Františka // Studia theologica. 2015. № 1.

Tondra F. Svätý Tomáš Akvinský a prirodzené zákon // Nové horizonty: časopis pre teológiu, kultúru a spoločnosť. 2011. № 1.

Uram J. Ľudská osoba ako substanciálne bytie a dôvod jej absolútnej hodnoty // Nové horizonty: časopis pre teológiu, kultúru a spoločnosť. 2012. № 2.

Večeřa M. Právní princípi, přirozené právo a hlediska spravedlivosti // Právny obzor roč. 2003. Vol. 86.

[1] *Gorsuch M. N.* Op. cit.