

NATURE AND REASON AS SOURCES OF LAW IN JOSEPH RATZINGER'S EVALUATION OF RELATIVISM



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Background of the Problem

The motives that induced me to write this study are several. In the course of my previous encounters with the discipline of history, I realized the limitations of historical-critical method based on positivism in historical narratives. I recognized that the textual positivism in the writing of history is only one manifestation of the larger positivist thinking in various spheres of engagements in our times. Furthermore, the radical influence of secularization and its libertine consequences in every society on the structures of marriage and family, conjugal ethics, political activity, religious worldviews, the self-limitation of technological possibilities, community-solidarity, fair economy, and innumerable aspects of individual-freedom prompted me to think about the source of the dignity of human persons – which is the goal of all these structures.

In various texts of Joseph Ratzinger, I found the sources with coherent analysis which I felt an urgent necessity and great benefit to develop. In the speech at the beginning of the conclave that elected him Pope Benedict XVI, Ratzinger identified relativism as the most serious problem faced by contemporary man. Later, in his speech at Reichstag, he proposed nature and reason as the true sources of law in finding the basis for normativity. From these starting points, I decided to write the dissertation titled ‘Nature and Reason as Sources of Law in Joseph Ratzinger’s Evaluation of Relativism.’

In order to think the problem of relativism systematically, thanks to Professor József Simon, I was introduced to the great history of the jurisprudential tradition of natural law, the theoretical framework which brought constitutional democracy in the West into birth and nurtured the foundation of normativity over the course of two millennia. In the previous century, seemingly unshakable theses of the liberal generation, the existentialist generation, and the Marxist generation had collapsed with the emergence of new circumstances whereas the appeal to natural law had laid down solid foundation for the human rights after the horrors of Second World War. Summarily, therefore, the objective of this dissertation is to inquire whether natural law clearly inform and convincingly provide the corrective for the problem of relativism.

Chapter I: Demand for Relativism as the Criterion of Normativity

The first task of the study is to arrive at a provisional definition of relativism. Relativism is a worldview and an anthropological conviction by which a person thinks that there is no objective truth in the order of existence; no given nature which must serve as the fundamental criterion of values for individual human-subjects or for inter-subjectively constituted society. We can speak about ethics only in provisional terms and there are no meta-criteria to judge intrinsic truth, absolute beauty, and universal good. I find very serious problem with this view. If one let oneself be tossed and swept along by every wind of teaching and if one does not recognize anything as certain, then one simply drift through life as a banal existence that does not believe in anything and one’s highest goal is one’s own ego and one’s own desires. When the category of good disappears, unfeasible social behaviours take root first merely as a sickness of individuals, but the lived experience tells us that such behaviours could become so

active and so widespread in an intellectual climate wherein good and bad are interchangeable. For better understanding the foundations of law, we need better theory.

In order to be able to make a proposition, we need to first survey as to how the intellectual situation of relativism emerged in thinking about normativity, the task which I have concentrated in the first chapter by relying on Ratzinger's interpretation of modernity as a whole, in the stages of which relativism evolved as the worldview for normativity. First, Ratzinger identifies the de-hellenization of reason in the modern intellectual history. Philosophy distanced from the concept of Logos which had earlier provided an image of the world in which one could affirm faith as meaningful and enlightened aspect of life. The unity between faith and reason underwent separation in the late medieval nominalism and even more radically in voluntarism. Against this background, a way was sought to reconceive nature in order to yield an empowering kind of knowledge, following which the mechanistic view of nature denied the interiority of material beings. After various post-Kantian pursuits in idealism, positivism, and Marxism, in the previous century, existentialist philosophy attempted to overcome the fragmentation of philosophy. Jean Paul Sartre defended a radical freedom and regarded that the existence of human being – his very nature; what he is and ought to be – is not determined.

Second, in the course described above, the legal tradition of natural law diverged and assumed two directions. In the Anglo-Saxon sphere, it evolved into constitutional democracy, as we see in the American constitution which identified the rights by virtue of anthropologically grounded ideas of human nature. On the other hand, the contractual conception of human rights in French constitution had the basis of a concept of nature which is not metaphysical. In the subsequent evolution of thinking on normativity, there was a widespread scepticism against natural law that it is a cultural and historical feature of Christianity, specifically a Catholic doctrine, the insights of which are not accessible to all. It was feared that if natural law is obliged by, then parliamentary laws would become captive to ecclesiastical moral criteria.

Third, in Ratzinger's view, the political career of Marxism had a particular influence on relativizing ethics. The whole programme of real socialism was fabricated upon a mythical conception that the new structures would necessarily produce new humans and new society. This materialistic way of conceiving values disregarded individual-morality. During the students-revolution of 1968, Marxism mediated liberalism's way to libertinism in which each individual could assume for oneself what is good for each person in sexual matters. In these, the existence of truth a priori was suspected – manipulation of human nature. If the intellectual vacuum that has come into being with the failure of Marxism is not filled with right foundations, a relativistic culture would build up on the ruins of Marxism, which if consistently lived through, would become nihilism.

Fourth, syncretism between the post-metaphysical philosophy of the West with Indian religions relativized religious worldview. The point of convergence was Immanuel Kant's distinction between phenomena and noumena which finds ally in the intuition of Indian religions that the divine cannot enter unveiled into the world of appearances in which we live. Furthermore, Hinduism and Buddhism are not institutionally structured, nor are they dogmatically determined. These models seemed to be an attitude of intellectual humility. In

the resultant New Age Religion, intensities of ecstasies and euphoria are depicted as joy of the infinite. In this syncretism, religion is only a set of symbols; a self-satisfying programme.

Chapter II: Insufficiency of Positivist Approach Underlying Relativism

In the light of the four observations by Ratzinger about the demand for relativism, we may say that the methodological reduction of positivism is at the root of relativism. In a first look, this argumentation may seem to be an irony as positivism is the method that values only those facts which are empirically provable whereas relativism overcomes this hindrance by valuing various narratives which cannot be simply fitted into the empirical conditions. However, the convergence between relativism and positivism consists in the fact that the value ascribed by relativist method is only relative value which has no binding force to touch the deepest sense of one's existence. Positivist method permits us to know ever more deeply the rational structures of matter with its capacity to demonstrate experimentally and to quantify clearly. Notwithstanding this merit, there is also in it a false pride that compel us to turn our faces against the notion of truth a priori. This calls for the need to clarify the insufficiency of positivist method, which I attempt in the second chapter according to the following four points.

First, positivist method, with specialized knowledge about structure of matter, enables us to arrive at functional solutions in the technical realm. Here, nature is reduced to a jumble of data connected by random relationship. Reason is only the consequence of a series of accidents that accumulated through time and became a kind of necessity. Within a technocratic cultural perspective, it is highly likely to read that whatever is technically possible and caters utility is also morally permissible, thus lacking an essential perspective, namely the aspect of good. In order to bridge the gulf between the growth of technological progress and moral reason, we need to go beyond positivist reason.

Second, in positivist reason, responsibility before God is replaced with responsibility before humanity and history. In this process, thinking about freedom can also assume superficial expression of one's own ego. The multiplication of rights can emerge even to the point of nihilistic rights to deny oneself, which in the end becomes parody of freedom and the destruction of the concept of law. The problem of ill-defined freedoms and undefined freedoms is due to the lack of sufficient attention to the connection between freedom and anthropology. Hence the need to go beyond positivism and re-read the being of the human person in the truth of his nature.

Third, in the context of economic modernization with spheres of economic super-development of a consumerist kind on the one hand and the spheres of underdevelopment on the other hand, the aspiration of civic solidarity requires more motivational force than what can be legally commanded by positive law. Alongside a maximum of specialized economic knowledge to solve the structural causes of underdevelopment, we also need a meta-economic reason to strengthen various dimensions of human person who act in the economy.

Fourth, positivism can result in God-eclipse in the society. When God is omitted, at first, everything else might be as clever as can be, yet, as a consequence, humans are abandoned to the rule of human. However, this is precisely what dissatisfy and agitate us most today because human's absolute dominion over humans is often much more sinister with abysses of

uncontrolled power. Those who have the power impose their will on others. Only an authentic eschatology limits human behaviour within the state. To ignore this dimension is to exaggerate human capacity and to expect the meta-historical within history, the failure of Marxism.

Chapter III: Cognizability of Natural Law in Historical Contexts

Even as the argumentation in the second chapter is to explicate the limitations of positivist method, this is not to tell that positivist method in law is wrong. In fact, the positivist approach to nature and reason is a most important dimension of human knowledge and capacity. But in and of itself it does not represent a sufficient culture corresponding to the full breadth of the human condition. Hence the need to re-visit natural law as fully as possible; to recognize once again its directive and corrective function vis-à-vis positive law. However, given the multifarious and fluid identities in the contemporary world, essentialism underlying natural law is regarded as very dangerous in thinking about humans. Demands of natural law morality is seen as too rigid and dogmatic; and unable to recognize the complexities involved in various individual-experiences. It results only in marginalization, humiliation, and embarrassment of those who do not adhere to its principles. Notwithstanding these challenges, we must seek the wisdom of natural law, the task which we undertake in the third chapter by understanding natural law in four broad historical phases.

The first phase considers the period from the classical foundations up to scholasticism. The classical natural law emerged in the search for deeper grounding for law in the three-way encounter between Jerusalem, Athens, and Rome. Through this encounter, the juridical culture of the West was born, which is of key significance for the juridical culture of mankind. Christianity understood natural law in the framework of the history of salvation within which man's original nature, fallen nature, and restored nature can be distinguished. Even as the Christendom had reached the highest point of urbanization in the thirteenth century, Thomas Aquinas synthesized Christian revelation and Greek philosophy and developed the scholastic tradition of natural law. He identified and distinguished between eternal law, natural law, human law, and divine law in the order of existence.

The second phase treats voluntarism, early modernity, and the Enlightenment. Whereas Aquinas held law as an expression of reason and act of wisdom, voluntarism, in wish to save God's absolute sovereignty over nature, maintained that law is connected solely to the will of the lawmaker. From Martin Luther onwards, analogy was drawn between God's freedom and human freedom. The early modern natural law pioneered by Hugo Grotius and Francisco Suárez evolved against this backdrop. In the period that followed, a common agreement among Thomas Hobbes, Samuel Pufendorf, and John Locke was that natural law allows for us certain rights which impose on us duties. Except for eschatological hope, they considered morality as an open-ended system based on contract. Later, the philosophers of the Scottish Enlightenment held the historical dimension of contract as determinative because moral consciousness and institutions are formed by the accommodations reached at a given stage of society. In this way, natural law assumed contractual dimension.

The third phase attempts to understand natural law vis-à-vis legal positivism. Appropriating Immanuel Kant's transcendental logic, Hans Kelsen defended the system of

legal positivism by contrasting norm and nature. In Kelsen's view, legal science is a normative science which must consider only whether the norms are valid or not. The norms are autonomous from the sphere of value. However, after the traumatic experiences of totalitarianism, it was once again recognized that the values and norms are inherent to humans, and therefore, they are not to be invented but to be found. The universal Declaration of Human Rights in 1948 is the post-war affirmation of natural law. Later, seeing the crisis prompted by the exclusivity of procedurality in political liberalism, Ernst Wolfgang Böckenförde said that a liberal state is secured by the normative resources that it cannot itself guarantee.

The fourth phase consider natural law's encounter with the Critical Social Theory represented by Jürgen Habermas. According to him, political liberalism is a non-religious justification situated in the tradition of rational natural law that eschews cosmological or soteriological assumptions of classical and religious natural law. In his view, liberal constitutional principles have less trouble with objective natural law than with historicist and empiricist forms of criticism.

Chapter IV: A Proposition for Re-discovering Nature and Reason in Normativity

Based on the study of natural law in its historical dimension; from its classical origins up to its encounter with legal positivism and critical social theory, it can be assumed that the appeal to nature is ever present in normativity. Hence the need to re-read the concepts of nature and reason integrally and comprehensively – by considering its inevitable metaphysical, cultural, personalist, historical and theological roots. In the concluding chapter, I attempt this task in line of Joseph Ratzinger's thinking. First, the initial question relates to the metaphysical source of normativity. In spite of the fact that many human rights that we enjoy today are born of values of secularism, enlightenment and humanist rationalism, non-metaphysical conceptions of dignity had resulted in a narrow utilitarian legalism. If human dignity is to be understood as an a priori value, then the constitution must go beyond weak and ambiguous foundation of relativism. The conviction that there is a Creator God is what gave rise to the idea of human rights, the idea of equality of all before the law, and the awareness of people's responsibility for their actions. Second, a constitution is not only the product of a purely formalistic legal approach, but also a cultural historical interpretation. Therefore, the search for nature takes intercultural way. The question of nature has threads of agreement in great historical cultures, which together constitutes a patrimony of moral values that reflect several aspects of the essential ecology of man. Third, as the physical order meets the moral order in human acts, there is a need to understand the essential coherence that occur between the subject person and action through the concept of nature. By seeking the relationship between naturalism and personalism, we can arrive at a more complete picture of subjectivity proper to the person and find that it corresponds to the nature which is his fundamental property.

Finally, on the basis of all these discussions, I hope it is reasonable to verify Joseph Ratzinger's statement that the objective reason that manifests itself in nature presupposes a Creative Reason. If nature were to be an aggregate of objective data linked together in terms of cause and effect, then no ethical indication can be derived from it except some mere pragmatic and functional answers which have no serious binding effect on human conscience. Normativity is not merely a matter of formal consensus or correct procedures; it is the

foundation that guarantee the absolute sacredness of human life; dignity that is not subject to modification by anyone. The Creative Reason, God understood as Logos, gives intelligibility to the creation and reason for human existence. By assenting to nature and reason in their proper normative meaning that Logos provides, relativism can be evaluated correctly.

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