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Dialogue between Canon Law and Law in Postmodern Europe

Abstract: The world today is described as postmodern. However, the forms of religious life still present in it allow it to be seen as post-secular. The programmatic removal of religion from social life has not achieved results. The continued presence of religion brings its characteristic values to social life. The world can draw on its unique normative intuition as expressed by Jürgen Habermas. The normative dimension of religion is also constituted by its law. For this reason, a reflection has been undertaken on the possibility of a dialogue between the law of the Church and the law in the world, in its postmodern view. An area of possible dialogue is the unity of the idea of law expressed in the plurality of legal orders. The determinants of this idea include, among others, equity, legal security and justice, which were presented as reference points for the possibility of dialogue between law and canon law.

Keywords: postmodernism, law, canon law, dialogue

The history of European law is also the history of canon law. Christianity, with its law that expressed the social dimension of the faith, entered a stagnant order in which religion had been one dimension of social and state activity. The universalism of the Christian religion, its autonomy from the Jewish and pagan worlds, its independence from the state, its eschatological orientation gave rise to the new phenomenon of the dualism of the secular and religious orders. With Christianity, a new experience of religious law begins to take shape.

Once the new faith has been granted freedom of worship and adopted as a state religion, the law of Christians becomes part of the experience

of the law of the state community.[1] This situation results in practical and theoretical consequences. On the practical side, the hitherto history of two independent legal experiences begins to exist as a history of *legum et canonum* reaching its culmination in the period of *christianitas europea* with its legal system expressed in the form of *utrumque ius*. On the theoretical side, there is a need to reflect on the law itself, on the implementation of the law in the law of the Church and the state community. The legal thought of this period is characterized by the idea of the unity of law.[2]

With the theses of Marsilius of Padua, the Protestant revolution in Europe, the formation of the modern state, there is a closing of canon law within the ecclesiastical community and a clear divergence between state law and canon law. The reflection on canon law in its apologetic function is carried out *ratione status*. It requires the demonstration and defense of elements common to state law and canon law. The distinctions between the two, which used to inspire each other in many areas of theoretical considerations and practical solutions, have been relegated to the metajuridical sphere. Canon law ceased to be an inspiration for state law. It could only draw from it, seeking to reflect what was acceptable.[3] Canon law and the science of canon law have lost the ability to dialogue with new philosophical and legal currents, concepts of law. They adopted an attitude of withdrawal with the consequence of lagging behind contemporary legal culture. This attitude was the result of the position of the Church and the way in which she fulfilled her salvific mission.

The reflection on canon law from the middle of the previous century onwards, together with the redefined form of the Church's presence in the world at Vatican II, prompts the question of the possibility of dialogue between canon law and the law of political and state communities. The scope of consideration needs to be limited. The criterion of choice remains the European legal culture, to the formation of which canon law has made its undeniable contribution. However, it is a legal culture that exists in a world described as postmodern, where the law itself is subject to its influence and inspiration.

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[1] R. Sobański: "Prawo kościelne a prawo świeckie." *Prawo Kanoniczne* 30/3—4 (1987), pp. 64—65.

[2] L. Gerosa: *Teologia del diritto canonico: fondamenti storici e sviluppi sistematici*. Lugano—Varese 2005, pp. 35—60.

[3] R. Sobański: "Prawo kanoniczne a kultura prawna." *Prawo Kanoniczne* 35/1—2 (1992), p. 26.

Postmodernism and the law

The periodization of human history and the definition of its successive stages of development largely remains conventional, which does not mean that it is not accepted, at least for the sake of facilitating discourse. An example is the identification of the modern era as modernist, or already postmodern, together with further questions about whether postmodernism is the culmination of modernism or is rather already its negation, a new stage of civilizational and cultural development. There are, however, certain factors of social life that are the basis for distinguishing the boundaries of the two different periods. Just as in the case of the birth of the modern era identified with the birth of capitalism and the modernization of the world associated with it, the beginning of postmodernity is indicated by the birth of post-industrial societies.[4] Economic change is accompanied by social change, entailing political change and cultural change. The concept of postmodernism encompasses a set of different views (not always consistent between authors and within the same field of human life) concerning culture, social life, politics, man, art, science, religion, philosophy.[5] Postmodernism is, therefore, a convenient term to describe postmodern reality and the changes taking place in it. The transformation of society can be understood by exploring its causes while confronting the underlying assumptions of postmodernism with the basic determinants of modernism and its consequences.

Max Weber pointed out that a characteristic element in the transition from traditional to modern society was the intellectualization and rationalization of the world, which made it possible to disenchant the world and master it through intellectual calculation. The rational approach to the world presupposed the possibility of achieving earthly goals without recourse to supernatural forces by calculating the means to do so.[6] The consequence of rationalizing the world in this way was the disintegration of the hitherto homogeneous culture and the formation of a material, productive sphere that was autonomous in relation to worldview and religious values. Professional success remained merely a sign of the favour of divine providence. Another and significant consequence was the formation of three independent and autonomous cultural spheres: science,

[4] A. Szahaj: "Co to jest postmodernizm?" *Ethos* 33—34/1—2 (1996), pp. 64, 68. In post-industrial society, the paradigm of production has been replaced by a paradigm of consumption, with the associated shift from a goods economy to a service economy. Consumption has become a new social obligation replacing labour.

[5] A. Bronk: "Krajobraz postmodernistyczny." *Ethos* 33—34/1—2 (1996), pp. 82—83.

[6] A. Szahaj: "Co to jest postmodernizm?...," pp. 65—66.

morality, and art, which broke away from subordination to the actualization of religious or mythical values. The determinant of science became truth. For law and morality, rightness was the benchmark. Art strove for authenticity. Each of the autonomous fields that made up culture embodied the idea of progress: science sought to recognize the ultimate truth about the world of nature and social life, law and morality to discover the absolute rightness (norm) arising from reason and not from religious persuasion, and art to express the truth about man by reaching into his depths.[7]

Postmodernism, understood as a specific form of reaction to cultural modernist currents, is not an unambiguous term. I will only indicate selected contents, important for further considerations. However, it can be stated with great conviction that just as in the case of modernity the unifying and organizing element was the category of rationalization (intellectualization), in the case of the postmodern era, such an element is endless pluralism (realism) and individualism which together create the space of multiculturalism. This space is deprived of the basic values of European culture present in the previous epoch, it denies the existence of an absolute, hierarchical, fixed, cultural system of values, norms and directives of behaviour, it assimilates non-European models of behaviour and postulates tolerance towards them as towards other forms of thinking and activity, emphasizing the originality of each difference. Postmodernism is a plan for stimulating the behaviour of individuals and societies and a set of ideas and recommendations that will enable people to live free and happy lives now and in the future.[8]

Both eras are characterized by a different approach to truth and science. While modernity was characterized by the belief in the possession of rational truth and the possibility of its discovery in the perspective of multidimensional progress, postmodernity is characterized by the negation of a world possessing definite and pre-existing properties and the possibility of its cognition. Modernist cognition was contextual, historical, conventional, and it was displayed within a community and culture. Thus, truth was the result of human creative activity, and facts (including scientific facts) were the result of the changing consensus of the research community.[9] A common element of the modernist and postmodernist eras is the progressive and deepening process of the deformation of truth as a value. This is done by subjectivizing truth, idealizing it, internalizing it, and questioning it, or by denying it any meaning. The relegation

[7] A. Szahaj: "Co to jest postmodernizm?...," p. 67.
[8] A. Bronk: "Krajobraz postmodernistyczny...," pp. 83—84.
[9] A. Szahaj: "Co to jest postmodernizm?...," p. 73.

of truth is linked to the expansion of the space for human freedom, with the free creation of human identity being the ultimate expression thereof.

Pluralism and relativism combined with doubts about the cognitive capacity of reason and the denial of truth as a cognitive possibility result in the impossibility of obtaining truth in relation to moral matters. Postmodernism does not see that there are some generalized moral rules. In this case, it continues the claims of an earlier era denying the existence of human nature and the necessity of rules, principles, and laws to guide the life of the community, expressing the relationship between the order of nature and the social order. However, whereas in the modern era the state existed as the embodiment of a process of rationalization within a particular community, the current situation involves a move away from the explicit conception of sovereignty and the associated phenomenon of the earlier homogeneity of law. The modern state realized the capacity to overcome the tension between formal rationality (law, procedures) and substantive rationality, which was embodied in the idea of justice and development. Law in the state, by organizing social life, guided its citizens towards the actualization of values.[10] In contrast, according to postmodern claims, politics is practiced in defense of minority groups, marginal discourses, albeit not abstracting from global ideas (ecology). The hitherto hierarchical organization of power and its exercise gives way to the pursuit of particular interests. State-wide power is being weakened. The aim of social movements is to ensure that the cultural distinctiveness and local interests of communities are respected.[11] The state ceases to be a value and an objective. Its meaning changes as the political situation changes to one that is conducive to the pursuit of vested interests. This vision of the state is subordinated to the law. The pre-existing relationship of law to the truth or universality of the fact of social coexistence gives way to the role granted to law in the process of legitimizing and valuing social facts. The consequence of an individual and discursive understanding of law is the recognition of the concrete case as a source of justice.[12]

[10] J. Oniszczuk: *Filozofia i teoria prawa*. Warszawa 2008, p. 1061.
[11] A. Szahaj: "Co to jest postmodernizm?...," p. 69.
[12] J. Oniszczuk: *Filozofia i teoria prawa*..., p. 1073.

Possibility of dialogue

In modernism and postmodernism, therefore, is there still a place for religion, including Christian religion understood not in terms of a fact of existence, but in terms of its place as a dimension of human life in the perspective of social life and law? To shed some light on this issue, I would like to recall some of the statements from a debate that took place in 2004 in Munich between the philosopher and atheist Jürgen Habermas and Cardinal Joseph Ratzinger. The topic of the debate was the pre-political and moral foundations of a democratic state, as can be seen from the title of the speeches of both speakers.[13] The topic of the debate does not indicate that its content is the subject of my work. However, the debate itself and Habermas's approach to the need for religion in a secular world, the possibility of dialogue and the coexistence in one society of believers and non-believers provide a broader context for my reflections. The interlocutors also exchange views on the role of law in the state. And this is the reason why I am recalling this debate. I will only draw attention to the statements of the German philosopher as the voice of a man who seeks ways of understanding in social life, pointing out the interpenetration of the idea of justice and the idea of solidarity which are ultimately two aspects of the same thing.[14] I omit the cardinal's statements as well as the exchange itself.

Habermas has not commented before on the place of religion in the post-metaphysical or already post-secular world, as he calls it, apart from a lecture entitled "Faith and Knowledge" delivered after the attack on the World Trade Center (2001).[15] During the debate, he points out that religion is not a phenomenon belonging only to the past but is still present. For this reason, it is necessary to create a society in which conditions exist for the coexistence of believers and non-believers. The philosopher goes further by pointing out the positive role of religion in the process of secularization, which he relates to both believers and non-believers. For secularization, according to Habermas, is a process of mutual learning, in which mutually accommodating Enlightenment and religious traditions will accept social pluralism, clarify cognitive misunderstandings

[13] S. Obirek: "O sekularyzacji dialektycznie. Case-study Habermas — Ratzinger." *Humaniora. Czasopismo Internetowe* 6/2 (2014), p. 10.

[14] A. Smrokowska-Reichmann: "Jürgena Habermasa koncepcja sprawiedliwości i solidarności w przestrzeni języka." *Przegląd Filozoficzny — Nowa Seria* 15/3 (2006), pp. 211—213.

[15] S. Obirek: "O sekularyzacji dialektycznie...," p. 8.

and recognize each other's limitations.[16] Thus, a post-secular society should recognize and value the contribution that religion, with its cognitive and normative content, makes to the understanding of existing controversial content in public opinion.[17]

In a post-secular state, norms expressing the social behaviour expected by the state of believers and non-believers should therefore be developed through a procedural communication process.[18] Secularization, for Habermas, breaks with the previous view of it as a boundary between the spheres of the sacred and the profane, the state and the Church. It should be understood as a principle of world-view balance in the face of possibly existing tensions between the two spheres in the state, which is a social community of believers and non-believers.[19] The interaction between religion and reason is based on a tolerance that goes beyond passive acceptance. Its content is cooperation and freedom. However, this is a freedom different from that of a liberal society, which rejected any coercion in the name of freedom. The post-secular society tolerates coercion. However, it is coercion of a normative nature, which remains in proportion to the relationship between tradition and worldview. It only disallows coercion that violates the human conscience. For Habermas, a post-secular liberal and worldview-neutral state is a space of mutual coexistence between non-believers and believers who engage in dialogue recognizing the contribution of the Christian religion to the well-being of the whole community. Habermas remains far removed from modernist and Enlightenment approaches that eliminate religion from social life.[20]

Habermas is convinced that it is possible for believers and non-believers, adhering to different world views or doctrines, to coexist in one state. This is determined by a worldview-neutral state in which the authority and rules of social life are based on acts of law and on a constitution. However, it is no longer law in its Enlightenment formulation as the result of legislative activity and the authority to which it remains subordinate. Habermas also does not recognize any justification of legal norms referring to the religious sphere or the objective good. Indeed, lawmaking is part of the process of communication on which the model of society is based. In his debate with Cardinal Ratzinger, he recalls his earlier reflections, emphasizing once again that "positive law can no longer derive its

[16] Z. Teinert: "Habermas i Ratzinger: wiara i wiedza w dobie sekularyzacji." *Poznańskie Studia Teologiczne* 20 (2006), p. 158.

[17] C. Fantappiè: *Il diritto canonico nella società postmoderna. Lezioni universitarie*. Torino 2020, p. 387.

[18] S. Obirek: "O sekularyzacji dialektycznie...," p. 10.

[19] Z. Teinert: "Habermas i Ratzinger...," p. 158.

[20] Ibidem, pp. 167—168.

legitimacy from higher law. Modern law derives its legitimacy from the autonomy of the citizen, guaranteed equally to everyone."[21] The universality of procedures is not only a formal element determining the law. It also expresses a community of expectations, of values, which will be framed into legal norms in the process of argumentative communication (discourse). It also contributes to emphasizing the role of citizens, who do not remain mere passive addressees of the law, but become involved in the process of its formation.[22] In a post-secular world, Habermas sees in law its universal vocation.[23]

Religion and law are not independent of each other. Elements of legal monism can be discerned in Habermas's thinking, as religion must conform to the constitutional requirements that determine its scope of activity but also its political responsibility. On the other hand, however, a dimension of legal dualism can be discerned in Habermas's thinking, as religion enters public life with its characteristic normative intuition, independent of existing political, social and legal arrangements in society. By maintaining its independence, religion becomes involved in the process of secularization, influences consciousness and creates a social bond. Therefore, Habermas, when asking about the relevance of the sacredness of religion for enlightened, secular reason, points to its unique and exceptional normative intuition, which manifests itself in relation to guilt, but also redemption, salvation and the meaning of life. Religion, preserving within itself, in a mature and intact form, a sensitivity to moral evil, the pathologies of social life or even human error, can be an inspiration for non-believers in the perspective of building a common society with a sense of solidarity, justice, and the good life.[24]

Areas of dialogue

The voice of Habermas in his debate with Cardinal Ratzinger may be regarded as isolated and far removed from the common experience of the modern era with its lines of thought and demands for action. However, it is a voice that has grown up in this epoch, seeing more deeply

[21] J. Habermas: "O wewnętrznym powiązaniu między państwem prawa a demokracją." *Przegląd Filozoficzny — Nowa Seria* 4 (1995), p. 63.

[22] V. Possenti: "Stato, diritto, religione. Il dialogo tra Jürgen Habermas e Joseph Ratzinger." *Roczniki Filozoficzne* 52/1 (2014), p. 73.

[23] L. Ceppa: *Habermas: le radici religiose del moderno*. Brescia 2017, p. 121.

[24] Z. Teinert: "Habermas i Ratzinger…," p. 162.

and broadly the possibilities arising from its assumptions. Although the debate between scholars dealt broadly with the question of faith and reason, focusing on the problem of the pre-political and moral foundations of the democratic state, I would like to emphasize the place of religion in the post-secular world as perceived by Haberman. He states that the undeniable existence of religion in a secularized society is a fact, which, however, cannot be treated like any other social fact. It must therefore be looked at not only from the point of view of its intrinsic claim, but as a cognitive proposition.[25] He therefore believes that postmodern society can draw from it, from its unique and unmistakable normative intuition insofar as it does so by appealing to religion itself, and its professional religious scholars.[26]

In a similar vein, Cardinal Ratzinger points to the role of religion, although he goes beyond the circle of Western European culture dominated by Western reason and Christian religion. He sees that the crisis of European culture was brought about by the imposing omnipotence of reason and the failure of religion to enter into dialogue with other cultures and religions.[27]

Both thinkers, a theologian and an atheist philosopher, remain in agreement about the place of religion in the postmodern world. Their debate and exchange of ideas, it would seem, remains somewhere on the sidelines of the changes taking place and the efforts to consolidate a certain social and organizational status quo. However, agreement itself makes it possible to overcome the stereotypical thinking around both religion itself and the modern world as two, if not hostile then at least incompatible realities and structures. This is because the mutual recognition of values leads to dialogue, and the initial assumptions indicated by the discussants make it possible to define its levels. The correct attitude in the perspective of the coexistence of believers and non-believers in the state is to agree that the mutual prejudices of religion and postmodernism are a thing of the past. Both the philosophical thought behind postmodernism and the religion in opposition to which it was formed cannot be ignored in today's debate. The place of mutual resentment should be taken by a dialogue aimed at understanding the intentions and premises of the two realities in the perspective,[28] as Cardinal Ratzinger put it, of a worldwide *ratio* and *ethos*.[29] The cardinal's intuitions aim to purge postmodernism of a certain logical error that can be seen

[25] Ibidem, p. 165.
[26] Ibidem, p. 162.
[27] Ibidem, p. 165.
[28] A. Szahaj: "Co to jest postmodernizm?...," p. 78.
[29] Z. Teinert: "Habermas i Ratzinger...," p. 165.

when it tries to point to a kind of all-human ethics that appeals to freedom and relativism. The reconciliation of desires and goals requires the choice of a criterion of conduct, which depends on a description of reality. This description can be based on the choice of concepts in such a way that the agreement of goals can lead to the imposition of one's own goal. In contrast, the absence of an imposed description provokes the adoption of some principle of its objectivity, even being the most pragmatic, in the form of a conviction to act as if the world could be described objectively. This is because this pragmatism facilitates arriving at the necessary understandings. A pragmatic attitude thus leads to the recognition of an objective source of knowledge. The choice of what is best and safest for all is therefore not dictated by individual preferences, but ultimately remains determined by reality. Ultimately, truth retains its value.[30] This is what the theses put forward by Habermas in his proposal for a theory of communicative discourse aim towards.[31]

The possibility of a dialogue between law and religion is supported by concrete legal solutions that have their origins in religious references. Their value is recognized today in a world that is not only spoken of as postmodern but, as Habermas argues, already post-secular. The ingrained conviction of the total separation of the sacred and profane as the fruit of the process of secularization has failed to completely break with the religious inspirations at the root of today's legal institutions. And although they remain independent of each other, they are inextricably linked in their genesis. By way of illustration, the following legal solutions relating to: legal protection to the dead, institutions related to the provision of assistance to vulnerable people, parental authority, protection of the environment, protection of animals, invocation of God's name while taking an oath, bicameralism of parliaments, seats of public authority, legal protection of places commemorating a particular event or person.[32] The legal institutions mentioned as examples now find their reasons for existence in non-religious causes, which does not change the fact that religious foundations were at the beginning of their presence in legal orders.

In addition to the institutions indicated, axiomatic values characteristic of Christianity such as the principle of equality or human dignity remain an inspiration for contemporary legal orders. Their modern vali-

[30] Ibidem, p. 165.

[31] J. Habermas: *Faktyczność i obowiązywalność. Teoria dyskursu wobec zagadnień prawa i demokratycznego państwa prawnego*. Trans. A. Romaniuk, R. Marszałek. Warszawa 2005.

[32] M. Najman: "The religious basis of contemporary law." *Kościół i Prawo* 13/1 (2024), pp. 93—96.

dation, far from being religiously motivated, does not annihilate the contribution Christianity has made to their lasting presence in legal orders. I believe that a contemporary dialogue between law and canon law is possible in this axionormative area of social life. I see the possibility of its existence in the practical and theoretical dimensions. The former is not about the practical possibilities of ecclesiastical legislation influencing secular legal orders, but about the constitutive practice of the life of the ecclesiastical community determined by the professed faith and the law indicating its social consequences. I consider the theoretical dimension of dialogue to be possible insofar as the theoretical and logical justifications of the ecclesiastical legal order stand at its core provoking and justifying the actions taken.

The two areas of dialogue, however, cannot be treated merely at the level of legal discourse. For if this were the case, we would only be dealing with a discourse of a legal nature, and canon law would exist as one of the legal orders, and hardly a useful one at that. If, on the other hand, religion is granted a place in the formation of society then canon law, in dialogue with law, should be accepted as the law of the Church within its mission. In this perspective, the question arises of the Church, which in fulfilling its mission in the world also has something to say with its law. The law of the Church cannot be alienated from the mission that the Church carries out. Only then can the contribution of the Church's law be seen in dialogue with the law. For what is at issue is the lasting, relatively permanent, inspiration of Church law, examples of which exist in today's legal institutions. If the law of the Church has contributed to the formation of European legal culture, it can still be present in it, but always as an internal law of the Church consistently implementing the principle of Christian dualism.

The Church and the world meet in dialogue when the world's openness to the unique intuition of religion is met and religion does not close in on itself, is not limited to its adherents. It is in this perspective that the Church must be seen to follow the principles expressed in the conciliar constitution *Gaudium et spes* in its mission of evangelization: 1) the Church seeks to bring help to society[33]; 2) the Church receives help from the world.[34] The Church does not perform its mission for its own sake, it does not exist for its own sake, but for the sake of the world. And this is also the right perspective for considering its law. It requires a constant rethinking of one's own aims and assumptions made according to one's

[33] Vatican Council II: *Pastoral Constitution on the Church in the Modern World "Gaudium et spes"*, nos. 42—43.

[34] Ibidem, no. 44.

own conviction of faith. Canonical thought cannot be focused on the law of the Church or the Church alone, but its proper point of reference should be salvation history. The Church shapes its own legal structures to be a clear and unambiguous sign to the world. Its legal order is relevant in this perspective.[35]

Although postmodernism seeks mind-independent truth, eliminates rational discourse with its rejection of the notion of objective truth, and promotes the right to express one's own opinion along with the cult of pluralism in all spheres of human culture, it is nevertheless oriented towards dialogue to create a society based on these principles.[36] An element that fosters the pursuit of a community beyond individualistic interests is global problems related to ecology, the global economy or the expanding conflicts related to increasing migration. These unplanned phenomena created by reality force the globalization of solutions and involuntarily steer towards a social structure with a common destiny. The law and its real layer (factoids) in the form of specific laws and established rules will play a major role in its realization. Realistically existing law is an experiential phenomenon. The search for solutions and rules can direct towards the normative intuitions of religion, including Christianity. For what in the layer of aspirations and pursuits remains a question of future realization is made present in Christianity. The idea of the unity and solidarity of mankind in the salvific perspective of all humanity is realized through the presence of Christians in the world. The law of the Church can serve as an example of the possibility of realizing communal aspirations for legal orders. Its provisions show how the tasks of building unity and solidarity are realized in the community of believers with its openness to the needs of the world.[37]

The law does not close itself off from the reality layer. Closing the law in this area would limit the possibility of dialogue between the law of the Church and the law of contemporary communities. Dialogue cannot be reduced to a confrontation of concepts or comparisons at the level of specific legal solutions. These can only remain in a relationship of mutual inspiration. The point of reference for dialogue involving the law should be the legal consciousness of social groups for whom the law is a value that regulates and makes social life possible. This is the ideological

[35] R. Sobański: "Prawo kanoniczne a kultura prawna…," p. 26.

[36] I. Ziemiński: "Postmodernizm a dylematy człowieka." *Ethos* 33—34/1—2 (1996), p. 142.

[37] C. Fantappiè: *Il diritto canonico nella società postmoderna…*, p. 391. The author gives examples of normative solutions in which the salvific function of the Church's law is reflected in a world perspective (canons 211, 225 §1, 573 §1, 603 §1, 747 §2, 768 §1, 839 §1, 1173).

layer of law understood as the content of consciousness, the basis of which cannot be fully realized. The recognition and acceptance of the law presupposes some understanding of the law, which remains prior to rational and generalizing reflection. Law is put in the perspective of the accepted assumptions of social life. It encompasses the accepted principles, the assumptions, verifiable at the practical level, that underlie communal thinking and ideas, social practice, order, which are commonly believed to preserve forms of social coexistence.[38] These elements point to the ideological layer of the law, which cannot be ignored when considering the law. This is because it is in the light of ideological assumptions that specific legal solutions are evaluated. The ideological layer of law is determined by anthropological assumptions (the image of man), social assumptions (the structure of social life), ontological assumptions (the structure of reality), as well as common expectations related to the law itself (equity, justice, rule of law, expediency, security).[39] In the ideological layer, I see the possibility of a dialogue between canon law and the law, because in it the determinants of real law are specified. The real problem of a possible dialogue revolves around the question of the realization of law in law and what canon law can offer to law.

The determinants or criteria of the idea of law in which its assumptions are specified are expressed in different ways, but together they give orientation to the determination of the idea of law itself or its essence. There is the conviction that the law is to be just. Such law is based on values such as truth (in the process of law-making it is the existential dimension of the human person and in application the conformity of factual findings with reality), the good in the moral sense as the good of man and the common good), justice, human dignity.[40] The content of the idea of law is determined, in addition to those indicated above, by the expediency of law and legal security.[41] In what follows, I will draw attention to three possible areas of dialogue: equity, legal security and justice. Their choice is conditioned by the aforementioned value of law perceived in the post-secular world, which concerns the process of legitimizing and valuing it more than the relationship of law to truth or the universality of the fact of social coexistence.

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[38] R. Sobański: "Prawo kościelne a prawo świeckie…," p. 68.

[39] R. Sobański: "Prawo kanoniczne a kultura prawna…," p. 27.

[40] W. Dziedziak: "Wartość słuszności w wykładni prawa." In: *Wykładnia prawa. Aspekty teoretyczne i praktyczne*. Eds. J. Potrzeszcz, B. Liżewski, Lublin, pp. 41—42.

[41] A. Kość: "Znaczenie idei prawa dla tworzenia dobrego prawa." In: *Semel Deo dedicatum non est ad usum humanos ulterius transferendum. Księga pamiątkowa dedykowana ks. prof. dr. hab. Julianowi Kałowskiemu MIC z okazji siedemdziesiątej rocznicy urodzin*. Eds. J. Wroceński, B. Szewczul, A. Orczykowski. Warszawa 2004, p. 34.

When I speak of equity as a level of possible dialogue between canon law and law, I have in mind its legal concept. For its meaning derives from the problematic situation of law. The thread of agreement will not, therefore, be an equity which introduces extra-legal tendencies (forbearance, benevolence, leniency) relating to the law when evaluating its outdated and insensitive solutions to legal situations. Such equity is focused on the law, but no longer necessarily positively affects the human being in a difficult legal situation.[42] It is a form of justice that invokes what is right and just in situations in which the general justice prescribing compliance with the law fails. *Epikeia* is a way out of a difficult legal situation in which it is not the law but the nature of things that is being judged, a situation in which the subject of the law who is obliged to obey it finds himself. Following Aristotle, it can be described as a correction of the law in the spirit of the legislator, or, recalling the category of justice characteristic of law, specific justice or the justice of a particular case. With the relativistic attitude present in today's public debate, *epikeia* is likely to make a comeback in the assessment of legal situations. The public debate around what is due more than what is right is shaped by conflict and agreement, influenced by ad hoc social situations. On the other hand, existing problems are provoked by the increasing juridization of social relations and the weakening possibilities of solving them with the help of the law, which leads to resentment towards it. The space of law as an objective social order is not seen as an area that favours discussion and exchange of ideas. Consequently, more and more importance is attributed to the interpretative skills of particular legal situations. Consequently, from a postmodern point of view, the approach to law somehow loses the objective and distanced form of its perception, and the source of justice is not the law itself, but the particular case and the discourse concerning it.[43] In such a situation, I see a role for *epikeia*, forgotten by legal orders, which can find a place between the requirements of objective law and concrete legal situations. Its application requires the appropriate prowess, since *epikeia* is not an ethical or legal compromise, but the ability to seek individual but always concrete justice.

A conducive motive for evoking *epikeia* is Aristotle's thought at its core and which can influence postmodern consciousness. The philosopher took at the starting point of his consideration of *epikeia* the democratic principle of equality of power and subjects (citizens), according to which all people were able to evaluate the requirements of a just social life

[42] Ibidem, p. 41.

[43] J. Oniszczuk: *Filozofia i teoria prawa*..., p. 1073.

in the realities of everyday life.[44] Christian thought, the moral and canonical tradition enriched Aristotle's doctrine by pointing out its applicability thanks to man's likeness to God, which he accesses through Christ. Thanks to practical reason and the grace of the Holy Spirit accompanying man, recourse to *epikeia* was considered legitimate, since in this way man could realize detailed justice by reading the binding requirements of the Christian life. According to the Christian understanding of *epikeia*, it is not a way of freeing oneself from the law, but of finding its meaning in an individual perspective with consequences in the social space. Man obeys the law as a free person. He responds to the imperative of the law by a conscious and free act of his will. He is not deprived of such responsibility by the law. Responsibility requires the consideration and confrontation of the concrete situation with the scope of validity contained in the law itself.[45] In the face of increasing judicialization on the one hand and the discursive search for justice on the other, Christian thought and the canonical tradition can become a point of reference for man's finding himself in relation to the law. Christianity does not negate man's conscious and free will when he is confronted with the necessity of making a just choice and reconciling it with the applicable law governing social relations. *Epikeia* allows man to behave decently and justly.

The determinants (criteria) of the idea of law also include legal security, which influences lawmaking and application. In the most general terms, this security concerns the certainty of human conduct, planning, shaping, securing human existence in the individual and social dimensions. Specific, mutual social expectations and the possibility of their realization require order in human relations. The security of existence is largely guaranteed by positive law when it can ensure the regularity and predictability of human behaviour. Security guaranteed by law requires the complement of legal security, that is, the one which the law realizes in itself.[46] Its content area is filled with: security of order, as it guides citizens by indicating the foreseeable legal consequences of their actions so that they can act in accordance with the law; security of implementation, namely, security of the law's effectiveness, the possibility of pushing it through in the face of other possible proposals or rejections of the law itself; stability of the law by eliminating sudden changes and ensuring continuity in the process of development and possible changes.[47] Legal security thus appears as a value of the law itself. By giving a sense of legal security to the addressees

[44] R. Sobański: *Nauki podstawowe prawa kanonicznego. Teoria prawa kanonicznego*, Warszawa 2010, p. 130.

[45] Ibidem, pp. 132—133.

[46] A. Kość: "Znaczenie idei prawa dla tworzenia dobrego prawa…," p. 45.

[47] Ibidem, pp. 45—46.

of the law at the same time, the law can go beyond the temptations of its instrumentalization by the authorities. It can cease to be seen as an instrument of social pressure and thus become an argument on the side of the addressees in their involvement in community building. With legal security, citizens can influence and take responsibility for public life by performing public functions. In this perspective, I see the possibility of a dialogue between law and canon law. Canon law has a certain offer in this area stemming from two areas indicating security of the law and legal security. The first is due to the fact that canon law is the law of the community of faith, which underpins the legal order. It is the community that first gives a sense of certainty and security to the actions taken, which the law only specifies and in relation to which it has a servile role. Human relations in the ecclesial community are not shaped by the law, but by the faith of the community. The bonds of faith allow for a sense of security, since mutual social expectations and the possibility of their realization relate to similar and predictable expectations on the part of other believers in a salvific perspective. The security of existence in the ecclesial community is not guaranteed by positive law, but by the testimony of faith. It shapes predictable but at the same time demandable behavior. The second area of dialogue relates to the legal security existing in the law of the Church itself, its stability, as evidenced by the canonical tradition and lawmaking, which in its constitutive elements determines the shape of the ecclesial community. The universal character of the ecclesiastical community and the universality of the law are also elements that influence its stability. These elements influence the value of canon law and decisions made not only for the sake of goodness and equity, but for the sake of the law. The legal motives of just law coexist with moral motives and professed faith. Canon law can inspire non-believers in the perspective of building a common society with a sense of solidarity and justice. Indeed, adherence to canon law contributes to the building of ecclesial community.

I see a third area of possible dialogue between law and canon law in considerations concerning justice. On the one hand, this is a vast area in which it seems difficult to agree on the requirements of biblical justice far removed from the justice found in law. An additional problem is related to the different conceptions and understandings of it. On the other hand, however, justice is a concept so characteristic of and related to the law that it allows, and even demands, that it be viewed in some common perspective. Ecclesiastical law formulates its own requirements of justice with the assumption of the possibility of their realization. And it is precisely this possibility of realization, which takes human weakness and sinfulness into account, that makes the law, which upholds the identity

of the community, adapts the requirements of justice to the concrete situations regulated by the law. Consequently, the law of the Church also appears as the will of the legislator. Here it meets the law of the secular community, which finds itself in a similar situation.[48] In contrast, however, canon law sets certain minimum limits, which it considers to be impassable, and which ensure that the fulfilment of justice continues to be a testimony of the faith and not merely a complement to the law in force. It is the motivation in the fulfilment of justice that gives and reveals its meaning and significance. The practice of justice in the ecclesial community is the realization of a new justice as a testimony of God's love shown towards every human being. This primordial love and the commandment to love one's neighbour motivate actions of justice. For the just one is he who loves. In Christianity, love is not next to justice, but love forms justice, is its shape in living and preaching. Understood in this way, Christianity presents justice for the consideration of the secular community, in which the law is subjected to vested interests, is used as an instrument of social manipulation. The law of the Church can become an inspiration for looking at the law as an element of the cohesion and unity of society.[49] In dialogue with the law, it points to the meaning of law, the hopes and expectations commonly placed in it regarding the establishment of concrete duties, the regulation of social life, the orientation towards the common good as a sign of security and solidarity. Such a role of law as a universal value was seen by Habermas in the perspective of the democratic state.

Concluding remarks

The dualism of religious and secular orders requires respect for the autonomy of the dualism of legal orders. Law is a general concept, the perception of which depends on the forms of interpersonal relations recognized as valid in a particular community, but also on the expectations placed upon it. Even if it does not correspond to the criteria present in specific social groups, it does not mean that it is not so in others. The area of possible dialogue between different conceptions of law is therefore not primarily concerned with concrete solutions, which remain the subject of comparative legal research. However, they certainly acquire value in

[48] R. Sobański: "Prawo kanoniczne a kultura prawna...," p. 29.
[49] R. Sobański: "Prawo kościelne a prawo świeckie...," p. 70.

the cognitive perspective of the ways in which the law is realized in specific legal orders as well as enable dialogue at the level of the idea of law. In the dialogue at the level of the idea of law, there is a place for the law of the Church, at the core of which are the immutable values that have given shape to the life of the community of believers.

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Dialogue entre le droit canonique et le droit civil dans l'Europe postmoderne

Résumé

Le monde contemporain est qualifié de postmoderne. Pourtant, les formes de vie religieuse qui y subsistent permettent encore de le considérer comme post-séculier. La suppression programmée de la religion de la vie sociale n'a pas produit les effets escomptés. La présence constante de la religion apporte à la vie sociale des valeurs qui lui sont propres. Le monde peut puiser dans son intuition normative unique, comme l'a souligné Jürgen Habermas. La dimension normative de la religion se manifeste également à travers son droit. C'est pourquoi une réflexion a été entreprise sur la possibilité d'un dialogue entre le droit de l'Église et le droit du monde, dans sa conception postmoderne. Le champ de ce dialogue possible réside dans l'unité de l'idée de droit, qui se traduit dans la pluralité des ordres juridiques. Parmi les repères de cette idée figurent notamment : l'équité, la sécurité juridique et la justice, présentées comme des points de référence pour envisager un dialogue entre le droit et le droit canonique.

Mots-clés : postmodernisme, droit, droit canonique, dialogue

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Dialogo tra il diritto canonico e il diritto civile nell'Europa postmoderna

Riassunto

Il mondo contemporaneo è definito postmoderno. Tuttavia, le forme di vita religiosa ancora presenti permettono di considerarlo post-secolare. La rimozione programmata della religione dalla vita sociale non ha prodotto i risultati attesi. La costante presenza della religione introduce nella vita sociale valori che le sono propri. Il mondo può attingere alla sua irripetibile intuizione normativa, come ha sottolineato Jürgen Habermas. La dimensione normativa della religione si manifesta anche attraverso il suo diritto. Per questo motivo è stata intrapresa una riflessione sulla possibilità di un dialogo tra il diritto della Chiesa e il diritto del mondo, nella sua concezione postmoderna. L'ambito di questo possibile dialogo risiede nell'unità dell'idea di diritto, che si esprime nella pluralità degli ordinamenti giuridici. Tra i criteri di questa idea figurano, tra gli altri: l'equità, la certezza del diritto e la giustizia, presentati come punti di riferimento per immaginare un dialogo tra il diritto e il diritto canonico.

Parole chiave: postmodernismo, diritto, diritto canonico, dialogo