

Axiology and the Treaty on a Constitution for Europe

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1. Introduction

Culture of Europe is unusually opulent and sophisticated. The values which are its basis come from many different origins. Are there any cultures or civilisations - I exclude any ethnocentrism in my reasoning - which would have such beautiful and sophisticated origins? A paradox of European culture is a special phenomenon.

What is a value? I agree with an outstanding philosopher of law Aleksander Peczenik that a value is a certain ideal, i.e. a criterion of evaluation.¹ We can also say that a value is a social or individual “desired state” (position, conditions).² There are e.g. moral, religious, philosophical, cultural, political, social or individual (personal) values. In theory of cognition absolute objective values arouse serious doubts but it does not seem to be a problem of institutionalisation of the deeper European integration.

The Treaty on a Constitution for Europe in a version presented by d’Estaing is not only a result of a legal and institutional aspect of deeper European integration but also a result of an axiological compromise. After the Second World War, the process of economic integration, development of peace and wide social-economic integration between states and societies of European Communities have brought the need for seeking a common foundation of the European axiology.

If Europe wants to be the main and real actor in the world politics, it is necessary to understand what is the foundation of our culture and what role in the world Europe wants to play or what mission is a destiny of the European culture. An axiology understood as a

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¹ A. Peczenik, *Weighing values*, International Journal for the Semiotics of Law 1992, V/14, p. 138. See also his article: *A Coherence Theory of Juristic Knowledge*, <http://peczenik.ivr2003.net/> (Accessed 10.01.2006).

² K. Pałeczki, *O aksjologicznych zmianach w prawie* (w:) *Zmiany społeczne a zmiany w prawie. Aksjologia. Konstytucja. Integracja Europejska*, L. Leszczyński (red.), Lublin 1999, p. 16 (*About Axiological Changes in the Law* (in:) *Social Changes and Changes in the Law. Axiology. Constitution. European Integration*, L. Leszczyński (ed.), Lublin 1999).

complex of historically cumulated, social values seems to be a community of spirits and minds of the European citizens. It is a basis of political unity in the politics in the world and Europe.

2. The Origins of the Europe Culture

2.1. Fundamental values

It is often said that Greek philosophy, Roman law, Roman universalism and Christianity are treated as cultural foundations of Europe. In connection with development of the culture and Western civilisation (e. g. such events as: Magna Charta of 1215, The Declaration of Independence of 1776, the French Revolution of 1789, two world wars in 20th century, the great development of science, arts, culture and economy) the main purpose for Europe was to maintain peace between nations, welfare, freedom, human dignity, equality, democracy, the rule of law, property, social solidarity. In the culture of Europe the great part belongs to the Enlightenment which brought ideas of tolerance and scepticism. The result of new philosophical and scientific currents was desacralisation of social life what became visible in the law.

It is difficult, or even impossible, to deny the existence of universal human rights. But we can ask if it was a source of these rights which were, of course, incredibly obvious and very mainly social values. I think J. Van der Veken, the Catholic researcher and philosopher from Leiden, was right when he wrote: “(...) the so-called universal human rights are not all as universal as they may seem: they are not a-cultural or a-historical. They are the concrete form given to human possibilities which have emerged out of the only partly successful fertilization by christianity of specific culture (based on the Greek heritage, the Roman Empire, the European melting pot out of the 6th to 10th centuries, the Medieval world, the Renaissance, the Enlightenment, the French Revolution and the rise of social consciousness in the 19th century)”.³ As Van der Veken rightly added: “Even Marx recognised that his ideals could not have been possible without the influence of the Judaic-Christian heritage”.⁴

³ J. Van der Veken, *The philosophical mediation of Christian values* (in:) *Memoria del X Congreso Mundial Ordinario de Filosofía del Derecho y Filosofía Social (I.V.R.)*, volumen III, Mexico 1981, p. 154 (*The philosophical mediation of Christian values* (in:) *The Memory of the 10th Congress of Association of Philosophy of Law and Social Philosophy*, volume III, Mexico 1981).

⁴ *Ibidem*.

These Christian values which Van der Veken wrote about are the following: rationality, “real fraternity”, “true equality”, “liberating freedom”⁵, “love of all men and women, regardless of race, religion, or sex”.⁶

I would like to add that also the Enlightenment and doctrines of natural law and movement of the human rights after the World War II strictly and very explicitly underlines the meaning of universal human rights which were expressed in many legal acts and international conventions.

Archbishop J. Życiński maintains that humanism and an integral development of human person remain the foundation of the European culture and axiology. They are a community of the European values. We can not forget about the value of solidarity which is so significant for the Polish people.⁷

The values are rather forms than meanings: they are historically and culturally relevant and relative but their essence seems to be the achievement of discovery of freedom and human dignity in the world full of inequality and social unjustified limitations and restrictions. Human dignity which is an explicit and rational point of entrance to building the values catalogue becomes a fundamental value in the Europe axiology and culture.

2.2. Peace as the main value

Peace as a social value performs similar function (like human dignity) in Europe. A peace as a value is correlated with the value of unity. By many centuries Europe was the scene of “eternal” wars and blood between nations, states and rulers. A war was a fundamental, often only, measure of the conflict solution. The unity was an idea which may have brought up the stereotype of violence and the scheme of horrible wars. What is the unity? The unity helps us to understand that peace is a correct form of social life and relations between nations and states. The unity understood as a state without wars, violence and blood accelerates social, economic and spiritual development, being the light of human being conceptualising the values. Everybody knows that two wars in 20th century and two totalitarisms: fascism and communism have caused much evil in Europe. After the evil of the wars we must have understood the sources of evil in Europe.

⁵ Ibidem, pp. 156-157.

⁶ Ibidem, p. 158.

⁷ J. Życiński, *Rola fundamentów aksjologicznych w procesie integracji europejskiej (The Role of Axiological Foundations in the Process of European Integration)*, <http://msz.gov.pl>, (Accessed 20.09.2005).

Is the idea of purpose to unity of Europe and peace in Europe absolutely modern? Origins of the purpose to unification of Europe emanates from its by 'own opulence', being the value and European idea 'itself by itself' (as Hegel would say). From centuries rulers and thinkers in Europe were sure that there was a necessity of the purpose to peace and creation of one European state (confederacy, union) based on the common values – on the axiological foundations, supported by pragmatic factors.

The European culture is not based on one philosophical system. Following the Luijpen's thought⁸, it can be maintained that different philosophical systems are not convergent but although many contradictions of the values systems, ideas, religions Europe may live with the respect of the diversity of the styles of life and the freedom of speech. The different ideas can exist together, being an inspiration for people, researchers or governments. It does not mean that from the universalistic point of view of history and values Europe is not a community of values or may not be such an axiological community.

The history is a splot of necessities and development of area of freedom.⁹ Freedom as a social and individual value may be the best conceptualised in conditions of peace or violence.

3. The European Constitution and its values

The purpose of the Constitution for Europe is a creation of institutional conditions to existence and development of persons, communities and the "national states" in the spirit of freedom, democracy, pluralism, equality, the rule of law, humanism, personalism, solidarity and human rights.

In the last years we can observe the discussion about axiology of the European Union law. It is the great axiological metamorphosis: the community based on economic cooperation seeks the axiological foundations – in the values, human rights and morality.

⁸ W. Luijpen, *Fenomenologia egzystencjalna*, Warszawa 1972, pp. 9-14 (*Existential Phenomenology*, Warszawa 1972).

⁹ See: J. Munoz Batista, *Reflexiones sobre los Valores de Libertad e Igualdad (Aspecto Filosofico y Social)* (in:) *Memoria del X Congreso...*, op. cit., p. 275 (*Reflections about Values of Freedom and Equality. Philisophical and Social Aspect* (in:) *The Memory of the 10th Congress...*). Batista writes: "La historia es resultado de una masa enorme de necesidades y fatalismos acumulados, en la que las intervenciones de la libertad tambien se hacen oir".

The Constitution for Europe in the version presented by d'Estaing¹⁰ is an expression of axiological compromise. I suppose that a lack of the complete axiological consistency shows the diversity of the outlooks on life and the intricate origins of the European culture.

The Constitution has two preambles: the first preamble is the Preamble to the whole Constitution and the second preamble is the Preamble to the Charter of Fundamental Rights (the Charter is a Part II of the Constitution). In the Preamble to the Constitution it is easy to find many terms with strongly axiological meaning. These are: “the cultural, religious and humanist inheritance of Europe”, “the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law”, “the path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived”, “continent open to culture, learning and social progress”, “democratic and transparent nature of its public life”, “peace, justice and solidarity throughout the world”, “proud of their own national identities and history”, “common destiny”, “united in diversity”¹¹, “the best chance of pursuing, with due regard for the rights of each individual”, “awareness of their responsibilities towards future generations and the Earth”, “special area of human hope”¹².

The axiology of the Constitution for Europe or the Union's values expressed in article I-2 must not be fully identified with the Union's objectives. Article I-2 predicts that the Union is founded on the values of respect of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Then it is said that these common values are respected by the Member States in society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

¹⁰ The English version of the text of the Treaty on Constitution for Europe: http://europa.eu/constitution/en/lstoc3_en.htm.

¹¹ See art. I-8. „United in diversity” is the motto of the Union.

¹² We can also analyse the axiological terms in the Preamble to the Charter of Fundamental Rights. These are: “peaceful future based on common values”, “spiritual and moral heritage”, “founded on the indivisible, universal values of human dignity, freedom, equality and solidarity”, “based on the principles of democracy and the rule of law”, “individual at the heart of its activities”, “area of freedom, security and justice”, “the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe”, “national identities of the Member States”, “balanced and sustainable development”, “free movement of persons, services, goods and capital”, “the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments”, “the principle of subsidiarity”, “the constitutional traditions and international obligations common to the Member States”, “responsibilities and duties with regard to other persons, to the human community and to future generations”.

And what are the Union's objectives? In my opinion they belong to a practical-realising category and are the factor of the realisation of the values.¹³ Article I-3 explicitly provides that the Union's aim is to promote peace, its values and the well-being of its people. The Union offers its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted. Then it is predicted that the Union works for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. The Union also promotes scientific and technological advance and combats social exclusion and discrimination. Moreover, it promotes social justice, protection, equality between women and men, solidarity between generations and protection of the rights of the child, economic, social and territorial cohesion, and solidarity among the Member States. On the other hand, the Union should respect its cultural and linguistic diversity and ensure that Europe's cultural heritage is safeguarded enhanced.

If we analyse the Union's relations with other countries on the constitutional ground, it should uphold and promote its values and interests, contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade and eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. The Constitution adds in article I-3 *in fine* that the Union should pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in Constitution.

The values included and expressed in the European culture are formulated in many concrete provisions of the Constitution.¹⁴ For example, in the Charter of Fundamental Rights there are normatively formulated the following values: human dignity (art. II-61 and the next provisions¹⁵), "freedoms" (art. II-66 and the next¹⁶), equality (art. II-80 and the next¹⁷),

¹³ Compare about a collision and hierarchy of values in the law: H. Rot, *Law amid Values* (in:) *Memoria del X Congreso...*, op. cit., pp. 59 i 61-62 (*Law amid Values* (in:) *The Memory of the 10th Congress...*).

¹⁴ See e. g. art. III-257 – art. III-277 (*Area of Freedom, Security and Justice – part III, title III, chapter IV*, which includes very concrete rules relating to policies on border checks, asylum and immigration, judicial cooperation in civil matters, judicial cooperation in criminal matters and police cooperation).

¹⁵ See: art. II-61 (*Human dignity is inviolable. It must be respected and protected*), art. II-62 (*right to life*), art. II-63 (*right to the integrity of the person*), art. II-64 (*prohibition of torture and inhuman or degrading treatment and punishment*), art. II-65 (*prohibition of slavery and forced labour*).

¹⁶ See: art. II-66 (*right to liberty and security*), art. II-67 (*respect for private and family life*), art. II-68 (*protection of personal data*), art. II-69 (*right to marry and right to found family*), art. II-70 (*freedom of thought, conscience and religion*), art. II-71 (*freedom of expression and information*), art. II-72 (*freedom of assembly and association*), art. II-73 (*freedom of arts and science*), art. II-74 (*right to education*), art. II-75 (*freedom of*

solidarity (art. II-87 and the next¹⁸), democracy, the rule of law and justice (part II, title V “Citizens’ Rights”¹⁹ and title VI “Justice”²⁰).

There are some common European constitutional values. The axiology of the European Union law and the Union have formed for many years. I do not agree with an opinion that there are only “liberal” values in the Constitution.²¹ In the Constitution we can find both the “liberal” values:

- intellect, freedom, democracy, tolerance,

as the “communitarian” values:

- human dignity, peace and public security, anti-discrimination, solidarity and social security, the legal state based on democracy, justice and social dialogue.

Welfare and “freedom from war” are supported by “the cultural, religious and humanistic inheritance” (the Constitution Preamble) or “spiritual or moral heritage” (the Preamble of the Charter).

choose and occupation and right to engage in work), art. II-76 (*freedom to conduct a business*), art. II-77 (*right to property*), art. II-78 (*right to asylum*), art. II-79 (*protection in the event of removal, expulsion or extradition*).

¹⁷ See: art. II-80 (*Everyone is equal before the law*), art. II-81 (*non-discrimination*), art. II-82 (*cultural, religious and linguistic diversity*), art. II-83 (*equality between women and men*), art. II-84 (*the rights of the child*), art. II-85 (*the rights of the elderly*), art. II-86 (*integration of persons and disabilities*).

¹⁸ See: art. II-87 (*workers’ right to information and consultation within the undertaking*), art. II-88 (*right of collective bargaining and action*), art. II-89 (*right to access to placement service*), art. II-90 (*protection in the event of unjustified dismissal*), art. II-91 (*fair and just working conditions*), art. II-92 (*prohibition of child labour and protection of young people at work*), art. II-93 (*family and professional life*), art. II-94 (*social security and social assistance*), art. II-95 (*health care*), art. II-96 (*access to services of general economic interest*), art. II-97 (*environmental protection*), art. II-98 (*consumer protection*).

¹⁹ See: art. II-99 (*right to vote and to stand as a candidate at elections to the European Parliament*), art. II-100 (*right to vote and to stand as a candidate at municipal elections*), art. II-101 (*right to good administration*), art. II-102 (*right of access to documents*), art. II-103 (*European Ombudsman*), art. II-104 (*right to petition*), art. II-105 (*freedom of movement and of residence*), art. II-106 (*diplomatic and consular protection*). It is an essence of the citizenship of the Union (compare art. I-10). See also: part I, title IV “The Union’s Institutions and Bodies” and title VI “The Democratic Life of the Union”. These principles refer to political ideals of democratic liberalism.

²⁰ See: art. II-107 (*right to an effective remedy and to a fair trial*), art. II-108 (*presumption of innocence and right of defence*), art. II-109 (*principles of legality and of proportionality of criminal offences and penalties*), art. II-110 (*right not to be tried or punished twice in criminal proceedings for the same criminal offences*).

²¹ W. Sadurski, *Czy istnieją wspólne europejskie wartości konstytucyjne?* (w:) *Idea Europy*, H. Machińska (red.), Biuro Informacji Rady Europy 2004, p. 175. (*Are There Any Common European Constitutional Values?* (in:) *Idea of Europe*, H. Machińska (ed.), Bureau of Information of the Europe Council 2004).

4. Concluding remarks

An omission of *invocatio Dei* arouses controversies.²² But it is the result of the axiological compromise and social changes determining the legal provisions. A secularisation of modern states influences law making. Every constitution as the main act seems to be a symbol of changing social values. I think that the President of the European Parliament Hans Gert Poettering was right when he said that the Constitution was full of the Christian values *de facto* (as peace, solidarity, justice or freedom). It is obvious that the Constitution must be founded on the values which are a basis of our culture and tradition (Greek philosophy, Roman law and universalism, Christianity, the Enlightenment and some moral or philosophical doctrines). Let me add that an incorporation of the values into the Constitution does not mean an incorporation of their ontological justifications. People may justify the constitutional values by very different ways, referring to many philosophical-moral systems of values (but the European tradition may be very inspiring). The European constitutional law based on moral neutrality of the law and state (the concept of moral neutrality of the law respects ethical pluralism in society)²³ can be “supported” by an interpretation of humanistic values formulated in the Constitution.²⁴ Humanistic values as well as human dignity, freedom, solidarity, justice, tolerance, intellect, peace still remain the foundation of deeper integration of the Union.

We must also understand some distinctions between the Union’s objectives, the Union’s values and the values in the European culture. The European Union is a new type of cooperation between of the states, governments and societies. There is no place for legal moralism (legal paternalism may also be a problem if the idea of law deregulation falls flat in the EU). The axiology of the Constitution expressed in many provisions of this act is an

²² In 2005 I wrote to many outstanding philosophers or researchers (e. g. Les Moran, Dean of the Law Faculty, The Birkbeck University, London; Massimo La Torre, University of Hull; James Crawford, Dean of the Law Faculty, University of Cambridge; John Finnis, University of Oxford; Aleksander Peczenik, universities in Lund and Szczecin; Vaclav Pavlicek, Karl’s University in Prague) in context of religious values in the Constitution. (The question: *What do you think about the European Constitution without the Christian values as a direct reference to a person of God and the truth of history?*). They answered that the Union must have been a secular state (“a complete division of religion and the state”, as Crawford wrote). But Peczenik wrote me that “moral, religious and cultural heritage of Europe” is an euphemism: it is necessary to mention Greek philosophy, Roman tradition, Christianity, the Enlightenment and secular systems of morality or values. Without this mentioning the concept of “heritage” seems to be an empty notion. It may be that Peczenik was right but we must remember that the Preamble of the Constitution is a result of morally and axiologically difficult consensus.

²³ W. Sadurski, *Neutralność moralna prawa. Przyczynek do teorii prawa liberalnego (Moral Neutrality of the Law. Contribution to the Theory of Liberal Law)*, Państwo i Prawo 1990, No. 7, pp. 28-41.

²⁴ See more about humanistic values: M. Nowaczyk, *Karol Wojtyła’s Social Thought, Dialectics and Humanism* 1979, no. 4, pp. 81-92; M. Fritzhand, *What Is the Meaning of Tolerance at a Time of Cultural Diversity?*, Dialectics and Humanism 1979, no. 4, p. 14.

emanation of this cooperation founded on a compromise, welfare and peace. Deeper political cooperation in the system of the EU requires stronger reference to the axiological foundations of the European culture and sudden understanding the values community. This is a *sine qua non*, fundamental condition of growth of the Europe role in the world.

BIBLIOGRAPHY

Batista J. Munoz, *Reflexiones sobre los Valores de Libertad e Igualdad (Aspecto Filosofico y Social)* (in:) *Memoria del X Congreso Mundial Ordinario de Filosofia del Derecho y Filosofia Social (I.V.R.)*, volumen III, Mexico 1981 (*Reflections about Values of Freedom and Equality. Philisophical and Social Aspect* (in:) *The Memory of the 10th Congress of Association of Philosophy of Law and Social Philosophy*, volume III, Mexico 1981).

Fritzhand M., *What Is the Meaning of Tolerance at a Time of Cultural Diversity?*, *Dialectics and Humanism* 1979, No. 4.

Justyński J., *Historia doktryn polityczno-prawnych*, Toruń 2000, (*History of Political-legal Doctrines*, Toruń 2000).

Luijpen W., *Fenomenologia egzystencjalna*, Warszawa 1972 (*The Existential Phenomenology*, Warszawa 1972).

Nowaczyk M., *Karol Wojtyła's Social Thought*, *Dialectics and Humanism* 1979, No. 4.

Palecki K., *O aksjologicznych zmianach w prawie (w:) Zmiany społeczne a zmiany w prawie. Aksjologia. Konstytucja. Integracja Europejska*, L. Leszczyński (red.), Lublin 1999 (*About Axiological Changes in the Law (in:) Social Changes and Changes in the Law. Axiology. Constitution. European Integration*, L. Leszczyński (ed.), Lublin 1999).

Peczenik A., *A Coherence Theory of Juristic Knowledge*, <http://peczenik.ivr2003.net/> (Accessed 10.01.2006)

Peczenik A., *Weighing values*, *International Journal for the Semiotics of Law* 1992, Vol. 14.

Ramotowska F., *Opracowanie i zarys dziejów myśli politycznej (w:) Wojciech Bogumił Jastrzębowski. Traktat o wiecznym przymierzu między narodami cywilizowanymi. Konstytucja dla Europy*, Łódź 1985 (*Study and Introduction to Political Thought (in:) Wojciech Bogumił Jastrzębowski. Treaty on Eternal Peace between Civilized Nations. Constitution for Europe*, Łódź 1985).

Rot H., *Law amid Values* (in:) *Memoria del X Congreso Mundial Ordinario de Filosofia del Derecho y Filosofia Social (I.V.R.)*, volumen III, Mexico 1981 (*Law amid Values (in:) The Memory of the 10th Congress of Association of Philosophy of Law and Social Philosophy*, volume III, Mexico 1981).

Sadurski W., *Czy istnieją wspólne europejskie wartości konstytucyjne? (w:) Idea Europy*, H. Machińska (red), Biuro Informacji Rady Europy 2004 (*Are There Any Common European*

Constitutional Values? (in:) *Idea of Europe*, H. Machińska (ed.), Bureau of Information of the Europe Council 2004).

Sadurski W., *Neutralność moralna prawa. Przyczynek do teorii prawa liberalnego (Moral Neutrality of the Law. Contribution to the Theory of Liberal Law)*, Państwo i Prawo 1990, No 7.

Van der Veken J. , *The Philosophical Mediation of Christian Values* (in:) *Memoria del X Congreso Mundial Ordinario de Filosofía del Derecho y Filosofía Social (I.V.R.)*, volumen III, Mexico 1981 (*The Philosophical Mediation of Christian Values* (in:) *The Memory of the 10th Congress of Association of Philosophy of Law and Social Philosophy*, volumen III, Mexico 1981).

Życiński J., *Rola fundamentów aksjologicznych w procesie integracji europejskiej*, (*The Role of Axiological Foundations in the Process of European Integration*, <http://msz.gov.pl>, (Accessed 20.09.2005).