

Theoretical foundation of human rights: J. Maritain philosophy of natural law

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Abstract: The paper is focused on the impact of philosophical ideology of Jacques Maritain - one of the most prominent French philosophers of XX century - onto modern concept of human rights in their legal implementation. The perspectives of Maritain's basic developments for modern democracy are proved to be rather promising. J. Maritain was the first one who managed to unite philosophical anthropological theory (personalism) with actual participation in elaboration of the ideas of human rights oriented against totalitarian offence against the liberty of a person. An author of more than 60 books, J. Maritain helped to revive St. Thomas Aquinas for modern times and is the principal drafter of the Universal Declaration of Human Rights. The foundation of Maritain's thought lays in Aristotle, St. Thomas and the Thomistic treatments. Maritain was a strong defender of a natural law ethics. He viewed ethical norms as being rooted in human nature. For Maritain the natural law is known primarily, not through philosophical argument and demonstration, but rather through "Connaturality". Connatural knowledge is a kind of knowledge by acquaintance. We know the natural law through our direct acquaintance with it in our human experience. Of central importance, is Maritain's argument that natural rights are rooted in the natural law? This was the key to his involvement in the drafting of the UN's Universal Declaration of Human Rights.

Key words: Maritain; Natural law; Human rights; Political society

1. Introduction

Search for the legitimizing foundations of human rights is of the same age as the theoretical research in the history of law that are particularly relevant today (Cicero, 2006). This urgency is amplified by epochal changes in the value paradigm of the modern evaluative world. Maritain's concepts and views on the influence of the philosophy of Natural law on the formation of the Institute of Human Rights found today the special significance for the understanding of the anthropological nature of legal imperatives of normal functioning of humans, civil society and a democratic state.

The starting point of this excursus into the history of the issue is the doctrine of natural law as the philosophical basis of human rights that are set forth in the summary of Maritain's lectures on Natural law (Maritain, 1951). Maritain regrets that the phrase "Natural law" was simplistically connected to rational foundation of human rights, that, as a result, emasculated the richness of its content and meaning: In an era of rationalism, lawyers and philosophers have abused the concept of Natural law, whether for conservative or revolutionary aims, they represented it in such simplistic and voluntaristic manner, that it is difficult now to use this concept without awakening the mistrust and suspicion in our contemporaries (Maritain, 1951; Pascal, 1921).

The question of the genesis and destiny of human rights leads a long-standing history of the idea of Natural law, coming from the Antiquity and middle Ages, and subsequent development of this idea within philosophies and doctrines of the New Age. Maritain had focused his study on the analysis of the content of the idea of Natural law and its basic stages. An important factor for discussion of that period was an open attack of the positivist critique of Natural law, which compromised the ideological foundations of the theory of human rights (Hittinger, 2002; Lyubashits et al., 2015; Shestopal, 2014).

2. On the vulnerability of rational model of natural law

From Maritain's point of view the vulnerability of the modern concept of human rights is caused by the artificial and incorrect systematization and rationalistic processing of the ideas of Natural law performed by Hugo Grotius and Cartesian project called "mathematized thinking". In early period of New Age philosophy and science have demonstrated a turn to subjectivity. Cartesianism is based on the following principle: the rationality is a major factor of science. Rationality arises from the advantages of a systematic, objectified cognition over the everyday knowledge. All that is alien (heteronomous) to cognizing person and arbitrary exercise of his intellect can deprive him of the power of comprehending; destroy the picture of the world and its structure, ordered by reason. "Mathematicized"

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concept of "knowledge" has resulted in subjectivity of modern European philosophy and extremes in rationalization of Natural law doctrines.

It makes Maritain thinking (Maritain, 1951) that due to a fatal error *Natural law*, which is within the being of things like their very entity, which precedes all formulations and is even known to the human mind, not in terms of the conceptual and rational knowledge, started to be treated according the models of written codex applicable to everything declared in just law, defining a priori all aspects and norms of human behavior through decrees, which were thought prescribed by nature and reason, but in reality formulated voluntaristically and artificially.

In the XIX century aprioristic rationality gives way to historicism. The laws of natural science have not been identified with the social laws and could not be applied to society and to explain the nature of the law. However, by the end of the XIX century, in Western culture doctrines of "absolute" and "fair" natural law were accompanied by a large proportion of subjectivity and phantom shadows of "correct", "morally justifiable" law of amorphous content. This was largely predetermined by attempts of predecessors to justify the category of justice as the principal criterion of rationality and purpose of natural law as the *universals*.

3. Maritain's criticism of abstract justice

The philosophers of the XVII century began to perceive the Nature and Reason as the Platonic heaven abstract deity. The consistency of human action and the Reason have been understood as conformity of the human action to ideal model that inerrant Nature ordered to inerrant Reason to establish. In this case a human action should be recognized rationally justified at any time anywhere in the world. Such comprehension has allowed B. Pascal (1623-1662) to believe that justice in human socium should be treated and recognized same universal category as the of Euclid's theorem. The task of genuine philosophy consisted in facilitation humanity with cognition from the Nature what justice is. "Then the splendor of true justice, - said Pascal - would have conquered all the nations, and legislators would have to take it (true justice) as samples instead of this invariable justice fantasies or caprices of the Persians or Germans. One could watch it (true justice) establishment in all countries worldwide and throughout the ages" (Pascal, 1921). Maritain considers such an understanding of justice "completely abstract and unrealistic". However, a century after Pascal, another representative of the French rationalism Marquis (Marie Jean Antoine Nicolas) Condorcet (1743-1794) insisted on the same universal dogma: "A good law should be good for everyone, as well as a true statement is true for everyone". The idea of a universal Natural law gained popularity; at Leipziger Messe new books about Natural law had appeared. German writer Jean Paul Richter (1763-1825) reasonably sneered on this occasion: "Each fair and every war give rise to

the new Natural law" (Condorcet and Richter statements are cited from the Maritain's book (Maritain, 1951)). There Maritain pointed out that in addition to the previous artificiality and abstraction, in the new systems of law after Rousseau and particular after Kant, the philosophy of law started to empower the individual with all absolute and unlimited rights of God. Now the Man, as God from the medieval scholastics, became self-sufficient guarantee of triple absolute: Nature, Reason and Natural law. Ultimately, it is not God and Nature, but the human Will and human Freedom have become to be interpreted as the ultimate source of natural law.

4. Culture centrism of Maritain's philosophy

It is important to take into account that legal convictions of Maritain most likely could not be considered outside the concept of culture. He could not perceive the human rights issues and their semantic basis that is the Natural law outside the general concept of the semantic foundations of the society culture. Defining the place of the individual in the legal system Maritain following Christian theologians A. Augustine, P. Abelard and T. Aquinas and being in line with the modern Catholic cultural studies, took as a base for his own theory the theological understanding and perception of culture, which he considers to be the divine revelation.

"What determines the unity of a culture is first and above all a common philosophical structure, a certain metaphysical and moral attitude, a common scale of values-in short, a common idea of the universe, of man and of life, of which the social, linguistic, and juridical structures are, so to speak, the embodiment." (Maritain, 1958).

The cultural process he perceives as an attempt to learn the Divine wisdom and the Divine fundamental principle of the world. All the achievements of culture, especially of the spiritual culture, including private law and privacy, are connected with Divine Will (Gallagher, 1990). This cult urological position explains why Maritain criticized the artificial philosophical position of absolutisation the personality unlimited will that is "equal to God" and that defines the limits of personal rights. Maritain, takes into consideration person's Will (when a person does not have to obey any law except the law of his own will and freedom), he quoted as saying Kant: "A person subjects only to the laws that he (self, or at least in conjunction with others) establishes for himself" (Kant, 1886). He did not directly mention Hegel, but Hegel's interpretation of human rights is, obviously, equally abstract and artificial, as hypostatized will of abstract person in Rousseau and Kant. The only difference is that Hegel prefers to talk not about a Person or God, but about the Absolute Spirit as the source of Natural law and of the State ("an earthly God") as a guarantor of that law. Maritain summarizes: this extremely abstract version of Natural law does not create a strong theoretical basis for the rights of the human person. It only

discredited these rights, encouraging people to think of them as divine in themselves and therefore these rights are not subject to any objective measure and are expressing absolute independence of the human subject and the so-called absolute right. But when people believed in “absolute right” and when facing throughout its limitations, they came to disappointment, skepticism and nihilism regarding the rights of the individual. Extensive distribution of such pessimism, Maritain says, was one of the warning signs of the cultural crisis as an element of European civilization. Maritain obviously has in mind the positivists’ criticism of doctrine of Natural law, with which even J. Bentham made his debut, and then, independently of him, the representatives of the historical school of law (Bentham, 1843).

Despite the temporary victories over the theory of Natural law in the XIX century that positivism and historical school in Germany, or analytical jurisprudence Bentham-Austin in English-speaking countries acquired, they were not able to discredit completely the doctrine of Natural law. Already in the end of XIX and in early XX century the movement for “the revival of Natural law” had begun (Maritain referred to the works of C.J. Haynes (Haines, 1930) and others). A new appeal to Natural law in the second half of the XX century was quite understandable reaction of scientific thought to the onslaught of arguments of the positivism philosophy. A consequence of its invasion into the jurisprudence was a theoretical justification for the legitimacy of any value- and ethically- neutral authorities’ solution as legal.

The response of supporters the doctrine of Natural law is becoming particularly sensitive and operative in the historical situations of the tightening of political regimes, when the government uses force resources without regard to the legal grounds, and is transforming into an authoritarian (totalitarian) system. The appropriate public interest in the concept of Natural law including “revival” of Natural law appears. The rational part of this concept goes into the sphere of moral consciousness, wherein is filled with common ethical imperatives with an irrational sensory content (the ideal of justice and goodness, the absolute value of the person) against the background of an abundance of historical facts manifestations of pluralism in the sense of *justice* and *good* in different people at different times. Every society settles down in his illusion of the existence of the universal ideal law in the image of “correct” law (adjusted to the historical period and its system of values), expressed in the form of inalienable natural rights, acquired by man by virtue of sufficient evidence of his birth. The very human nature acts as legitimizing basis of his natural rights. The peculiarity of the historical and socio-cultural context of Western Europe of the second half of the XX century is characterized by particularly keen perception of the value of human life. On the background of the victims of wars the idea of existence of natural and inalienable human rights (right to live by virtue of the fact of a person's birth

and priceless newfound life) does not need the search by science or by disputes of theologians of a rational justification. The legitimized foundations of inalienable rights enclosed in the society are constantly at a gunpoint of external and internal military threats.

The process of “renaissance” of the idea of Natural law took place in the discussions all along the XX century (e.g., a discussion between H.L.A. Hart and Lon. L. Fuller), and continues even today (The Hart-Fuller debate in the twenty-first century, 2010.)

Probably the debate between proponents and opponents of the idea and sense of Natural law in the theory and philosophy of law will continue through the end of human civilization. However, under any circumstances, an anthropological component of the doctrine of natural law in the cultural space of civilization is the closest to the Western civilization even today, in the XXI century, maintaining continuity with doctrines and basic values the New Time (freedom and autonomy of the individual, private property). In addition, it meaningfully fit into the Western European tradition of *jus*, which opposes the Natural law to the positive law, and is expressed in aggregate of immutable principles and inalienable rights corresponding to human nature and independent from changing human institutions. This tradition is represented in the French Declaration and the Universal Declaration of Human Rights. Within the frames of the ideological antagonism “East-West” the principal foundations of Natural law were indispensable in differently oriented confrontation of nationalist, communist and capitalist doctrines in XX century. The renaissance of the trust in human rights is possible, according to Maritain, only on the basis of genuine philosophy. “This genuine philosophy of human rights is based on the idea of Natural law, which is considered within the ontological perspective and transmits through the core structures and needs the wisdom of the Creator to be present in the created nature” (Maritain, 1951).

Maritain rightly discerns the origins of the idea of Natural law in the ancient Greek and Christian thinking. Its appearance he sees in the chef-d'oeuvre of the great poets of antiquity. In Sophocles “Antigone”, the Stoics and Cicero, in the great moralists of antiquity (obviously referring to Epictetus, Seneca and Marcus Aurelius). Christian philosopher Maritain sees special importance in the appeal to the Natural law of Apostle Paul: “For when Gentiles, who do not have the law, by nature, do what the law requires, they are a law to themselves, even though they do not have the law”. (Rom. 2:14). This message was the impetus for the formation of the Christian doctrine of Natural law and the rights of the early Church Fathers, especially St. Augustine. Maritain believes that this teaching “at the most perfective aspect” was developed by St. Thomas Aquinas, Suarez and Francisco de Vitoria. Although “unfortunately, it had been formulated in the insufficiently clear terms so that its most profound traits soon ceased to be noticeable and taken into

consideration" (Maritain, 1951). Thus, it was not Grotius, but the ancient and medieval thinkers who long before have become genuine authors of the doctrine of natural law and the law. Grotius, according to Maritain, only distorted and assigned the wrong direction to the further development of this doctrine (Maritain, 1951; Lyubashits et al., 2015).

5. Natural law and natural human rights

Research aimed at cognition of the nature of law are mainly appearing just recently (Hittinger, 2002), but Maritain put to them his efforts already after the Second World War, in the late 1940s. According to Maritain, the (cognition) knowledge of the law has epistemological element (aspect). This knowledge is always blurred and having no obliging force of law until the time as it can be proclaimed by law. "And only insofar as it is cognized and expressed in postulates of practical reason, this natural right has the force of law" (Maritain, 1951). At the same time the prescriptions of Natural law are not open to the human mind in a ready abstract form (like geometric theorems) or by logic inference. At this point, the French philosopher follows the teachings of Thomas Aquinas. St. Thomas believed that human mind opens prescription of Natural law being driven not by rational knowledge but the tendency of human nature to the good. After the establishment of the internal principles of Natural law, all further arguments about the rights should be the logical conclusion from these principles. Maritain rejected apriorism in the characteristics of the original inclinations, which are intertwined with the unconscious mentality and are developing and die off during the formation of human consciousness. Judging from the findings of comparative cultural anthropology, historical knowledge deployment of Natural law and, accordingly, of law leads to diverse forms of its representation in moral life of a particular society. In the history of every society where the dynamic schemes of Natural law and natural rights are generated, the knowledge of this schemes leads to a more complex system of regulations in the form of prohibitions and permissions. For example, it is generally accepted that to deprive the life of a person is not the same thing as to take off the life of an animal; family group must be subject to certain established patterns of behavior; sex should be subject to certain restrictions; people should live according to the rules of communication and subject to certain restrictions. In conditions permitted either approved deformations of moral consciousness expressed in the inhumane treatment of other ethnic or social group within the ethnic group (when killing an enemy is a feat, the theft of the stranger has merit, punishment of slave is a duty, etc.) the dynamic schemes create preconditions for unification and universalization of Natural law and natural right. This happens through the recognition of the possibility, and then in the necessity to spread them

from us to others by virtue of consciousness of some superior and transcendental instructions. Maritain rightly points out that the Natural law is an unwritten law. "As our knowledge of the Natural law is not a free conceptualization, but is the result of inference subordinated to essential inclinations of being, nature and reason, acting in person, to the extent that the unwritten law is evolving in accordance with the level of moral experience and self-reflection, and social experience, which people are able to reach in different periods of their history" (Maritain, 1951). This capacious description of Natural law and natural rights opens a perspective of comparative historical understanding. At the dawn of a theoretical reflection on the natural law, in the ancient and medieval times, it was paid more attention to the duties of man than to his rights. Maritain considers a shift from human obligations to human rights a great achievement of the philosophy of law of the XVIII century that became possible due to the development of moral and social experience. However, the shift in focus exclusively onto the rights is ideologically wrong, since the theory overlooks the duties of the person: "The true and comprehensive theory should pay attention to both the rights and the duties of a man that Natural law embodies" (Maritain, 1951). Following the judgment of Maritain, one could argue that the theory of Natural law should be focused on the dynamic balance of rights and obligations, showing the unity of freedom and responsibility of a man in political society.

Philosophical understanding of Natural law is a prerequisite for further research into the nature of human rights, the reasons of their structure and dynamics. "How could we understand human rights, if we did not have enough adequate understanding of the Natural law? The same Natural law that sets our most basic duties and, thanks to which every law is mandatory and is precisely the kind of rules that define for us our basic rights" (Maritain, 1951). According to Maritain, Natural law arises from the natural rules as a universal order, which is defined by the Creator of the Universe. Human relationships are part of the natural order of the universe and, therefore, ultimately, these relations must be balanced against with the Natural law. "... A person has the rights thanks to the Law belonging to God, who is pure Justice" (Maritain, 1951).

The fundamental requirement of the Natural law to establish justice is an imperative in cases when there is a gap in the positive law (legislation) and there is a need in a new legal rule - precedent. For the legitimization of the activities of international tribunals after World War II the universal values and ideals were needed. An example was the trial of Nazi war criminals at Nuremberg, including, for action to execution of the legal in terms of positive law, orders of command. In the opinion of Maritain, this event and discussions about it clearly demonstrated the failure of any other form of philosophizing about the law to justify human rights, in addition to the Thomistic "perennial philosophy". The central idea

of the legitimacy of the Nuremberg Court was the conviction in the existence of the rights that a person has in a natural way “the rights primary and superior with respect to the written law and the agreements between the governments, the rights that civil society should not grant the man, but to acknowledge and affirm as universally valuable and that any public necessity cannot force us to cancel or ignore even for a moment” (Maritain, 1951). Maritain claims that this idea in any way could not occur and could not get justification in the framework of legal positivism or in the framework of materialistic or idealistic the philosophy of law. The position of natural human rights seems to be archaic and illogical prejudice to representatives of these trends. They prefer to rely only on the *facts* (positivism), or only on the *nature* (materialism), or only on the *reason* (idealism), avoiding reliance on absolute human values, orientation to which underlies the genuine (i.e., within the meaning of Maritain, Thomist) philosophy. According to this philosophy, the right does not exist as long as there is no such set of order, coinciding with the God-given eternal law, in which the values - life, work and freedom - will not be guaranteed to every person, endowed with soul and free will. You cannot claim a right if you do not believe in that values. “If the statement of intrinsic value and dignity means nonsense, then the assertion of the natural rights of man means nonsense too” (Maritain, 1951).

In the concept of human rights Maritain not bypasses the problem of the relation of Natural and positive law. The error in rationalist philosophy of human rights, he said, was a treatment of positive law as a simple copy of the Natural law. It was assumed that the Natural law prescribed on behalf of the *nature* all that the positive law prescribed in the name of *society*. Supporters of rationalism abstracted from those areas of human relationships, about which Natural law either says nothing or is leaving them in legal limbo, due to their high dependence on changes in the socio-historical conditions and spontaneity of the human reason. For example, it is difficult to strictly define the limits and content of the right of nations (*jus gentium*), because it is intermediate between natural and positive law.

Maritain considers most appropriate judgment about the right of peoples, which suggested Thomas Aquinas (*Summa theologiae*, II - II, qu. 94). In Aquinas the right of peoples as a common law of civilization is different from the Natural law, as the right of peoples is known not through the intuitive tendency, as a Natural law but through the rational conceptualization and logical inference. In Aquinas *jus gentium* is clearly separated from the Natural law and is closely related to positive law, though it is derived from Natural law as conclusions of its basic principle. *Jus gentium* is the result of rational activity and by its form relates to the positive law, constitutes a legal order (not even necessarily formulated in the Code). And the content of *jus gentium*, as the common law of civilization, like Natural law deals with the rights and obligations as

defined by basic principle - to strive for the good and to avoid evil in civilian life.

The positive law in the form of the housing of laws of acting of a given social group also deals with the rights and obligations arising from the first principle. But this connection is sporadic, because it is focused on patterns of behavior created by the mind and will of the people who establish the laws or customs of a particular society. The result is a variety and often the direct opposite between the legal norms valid in different societies.

Nevertheless, thanks to the Natural law, the right of peoples and the positive law enter into a legal consciousness of society, finding legitimate base and mandatory. They are an extension of Natural law. “The very Natural law requires: that what was left in limbo, was subsequently identified as the rights or obligations existing for all people and realized by them, not by learning but through inclination, by means of conceptual thinking (i.e. *jus gentium* or positive law) as a right or obligation” (Maritain, 1951). Transition over time from of natural law to positive law and to the right of peoples is only visible on the historic interval. However, the evolution of the appreciation of human rights results in their official legal form. Human rights to life, personal freedom, and others have a natural-legal nature and are already formalized in positive law at the level of all its various sectors.

Maritain asserts that the right to private ownership of material goods also applies to Natural law and *jus gentium*, as it is caused by natural right to use natural resources and is not contrary to the common good. At the same time, it provides the freedom of man in the community. Natural law determines the content of private property, and its specific forms recognized by the society, are determined by the positive law (Maritain, 1951). Soviet ideologists could not accept this Maritain’s judgment because in that time the communist ideology and the practice within which the private property and entrepreneurship were considered as a crime.

The natural human right to life has many interpretations, but in conjunction with the *jus gentium* it is filled with clear content. An example of such content Maritain sees in nominated by US President F.D. Roosevelt’s “Four Freedoms” - religious, political (to vote and have their political views), “freedom from poverty” and freedom from terror. All of them are included in the text of the “Universal Declaration of Human Rights”, defining the content of the modern law of peoples and states, their responsibilities embodied in the positive law and imperative to the unconditional implementation.

Finally, the natural right of the people to self-government shall be implemented through secured by positive law and guaranteed by the state the possibility of using the citizens’ right to free choice of legislators and senior government officials, representative bodies of self-government in a democratic society.

In the process of the modern integrative jurisprudence formation positive law appears as the embodiment of a multi-dimensional and universal Natural law, which includes the already registered human rights; the rights for self-government (regional importance); rights of the people; the rights of the nation (the preservation of their own identity and self-determination).

Natural rights are inalienable because they are based on *nature*, which human person is unable to lose under any circumstances. Some natural rights (to life, striving for happiness) are absolutely inalienable. But certain natural rights are restricted, as their use is unacceptable to the detriment of the common good, the public interest (for example, the right to association, to freedom of expression). Therefore, their inalienable character is relative, and they are implemented under the conditions of legitimate restriction. Due to existence of possible limitation for absolutely inalienable rights Maritain proposes to distinguish between possession of right (eligibility) and implementation of the right. The latter one is always related to the common good, while restrictions are dictated by the need to ensure justice. Maritain gives the example of a criminal who can be deprived justly the right to life, because "he has morally separated himself from the human community exactly in that is concerning the use of this fundamental and "inalienable" right, which the penalty imposed on him forbids him to implement" (Maritain, 1951). The declared absolute right to education is necessary for inclusion of person into the heritage of human culture and it is also absolutely inalienable. However, its implementation is deeply dependent on social and economic opportunities in every such historical periods of society, when the right gets in the conditions of collapse in social and economic institutions.

Maritain considers social revolution unacceptable and prefers evolutionary structural changes in society, adequate to the level of economic development of this particular society. He states that the main contradiction, which is found only by the philosophy of Natural law are in the fact: "the man has inalienable rights but he is deprived of the opportunity to demand justice for the implementation of some of these rights that is the result of some element of inhumanity that is present in the social structure in any period of time" (Maritain, 1951).

The methodological difference between possession of rights and its implementation creates and keeps up in the legal consciousness of society the acceptability criterion of just (legitimate) restrictions maintained by the authorities of only some of the rights in the presence of socially justifiable causes, circumstances and guarantees of non-infringement of the whole group of fundamental rights.

Maritain believes that this distinction also allows us to understand why "in certain periods of history it is useful renounce the implementation of certain rights, which we, nevertheless, continue to have"

(Maritain, 1951). He was referring to the situation with a change in forms of private property in the process of economic transformation and, on a wider scale - some limitations of sovereignty of States in the international community.

Thus, the philosophy of human rights should recognize the inevitable conflict among the claimed provisions about inalienable human natural rights and their implementation by individuals in specific socio-economic conditions. The absolute nature of the right is permanently correlating with their relativity. Maritain draws attention to the peculiar people's "desire to exaggerate and to make the rights which we are aware of to acquire absolute, infinite, unbounded in any respect character, thereby obscuring themselves from any other right that might balance their" (Maritain, 1951).

Another type of collision in the subject of philosophy of law is established between "new" and "old" rights. Even R. von Jhering noted that any right is acquired through purposeful and more or less long struggle. Maritain saw in this thesis additional meaning: "In human history, none of the "new right"... was acknowledged without a struggle and without overcoming the rigid opposition of some "old" rights" (Maritain, 1951). At the time, in such a way the "new" rights to a fair wage, fixed working hours and the best working conditions have been approved within the context of the "old" rights to freedom of mutual agreement and private property. The "old" rights like the "sacred" right to private property were subjected to attacks by the "new" social rights since the beginning of the XIX century. When in the United States on the eve of the Civil War the law against fugitive slaves was toughened, assisting them or recognition of their rights and trespass on private property rights were treated as criminal.

Maritain admits that the "new" rights are developing not always for the better and sometimes turn out to be worse than the "old" rights. For example, in revolutionary France, the law of 1791 prohibited the attempt of workers to unionize and to stop work in the event of dissatisfaction with the amount of wages, as saw in such actions "encroachment on the freedom and the Declaration of Human Rights". The basis for the adoption of this law was the desire to prevent a return to the feudal system of corporations and their "old" rights.

In the contemporary epoch already other "new" rights are relevant, the rights about which there was no idea in previous historical periods, such as the rights of producers and consumers (Maritain, 1951). To this group of "new" rights Maritain also includes rights of experts, i.e. persons devoted themselves to intellectual work, and more generally - human rights of persons involved in the labor process. This is the right to work and free choice of profession; the right to the free formation of professional groups and unions; the right of workers to be recognized as socially mature subject; the right to participate in economic life and to take responsibility for it; the right of trade unions and other associations to

freedom and independence; the right to fair wages sufficient for the sustenance of the family; the right to be entitled to an allowance and unemployment insurance, social protection; initiation to the basic right, to the benefits of civilization, both material and spiritual, independent of personal income, but only on the capabilities of the social structure.

"All this requires first of all dignity, feeling of possession of human rights, which gives the worker a feeling of justice in his relations with the employer, the feeling that he acts as a mature person, not a child or servant. Here there is something essential, significantly exceeding problem of pure economic and social means as it is a moral fact, acting on a human in his spiritual depth" (Maritain, 1951). Thus, the question of the philosophical foundation of human rights is inevitably converted into social and practical level of the implementation of the "new" rights, which occurrence is due to the development of productive forces.

Maritain believes that the antagonism between the "old" and "new" human rights is greatly exaggerated by the struggle of ideologies and political systems. For the sake of social justice this antagonism must and really can be overcome. "The recognition of a distinct category of human rights is not the privilege of one school of ideas at the expense of others; to be a follower of Rousseau in order to recognize the rights of the individual it is now necessary not to a greater extent than to be a Marxist to recognize the economic and social rights" (Maritain, 1951). According to Maritain, the antagonisms between people are caused by the struggle for the establishment of the ladder of values that determines the degree of implementation of the specific structuration of various rights. Thus, the conflict between "old" and "new" rules is defined not only by their meaningful antipodes, but by the conflict between incompatible forms of political philosophy, recognizing each of these rights generally.

Experience in preparation of the "Universal Declaration of Human Rights" showed that the supporters of the liberal-individualist, communist and personalistic model of social structure can make similar lists (catalogs) of human rights. However, they have different interpretations of the law. "Everything depends on that supreme value, according to which these rights will be ordered and will limit each other. It was thanks to the hierarchy of values, with which we therefore agree, we define the way in which human rights, both economic and social, as well as the individual can ... proceed into the sphere of existence" (Maritain, 1951). Defenders of liberal-individualistic type of society see human rights in that human were free to do what he wants. Supporters of the Communist type of society they see them in the goal to "liberate" human labor, while subordinating him to economic community and to gain control over the history. Finally, proponents of personalistic type of society to which Maritain classed himself, tend to compound individual self-interest and human dignity and the common, truly

human, moral and spiritual values, providing true freedom and autonomy of the individual in society.

The positions argued by Maritain acquired with time the status of axioms and principled priorities in the modern science of philosophy of law. But they are not fully implemented even in the practice of institutions of developed democracy in the West. In science they acquire a special significance for the new findings in the philosophical foundations of human rights theory, in the general theory of rights, updating legal values in EU law, in constitutional law of nation-states, in their legislative and judicial practice.

The philosophical and legal ideas and principles acquire even greater importance as a result of awareness of the idea of Maritain about the unity of values and interaction of ethics and law as the spiritual-value normative regulators. Accordingly, in the modern theory of law the prerequisites are emerged and the position of legal axiology (axiological theory of law) is strengthened: because all prominent concepts of value comprehension of rights have Natural law roots.

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