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## Mieczysław A. Krąpiec’s Metaphysics of Law

This year we celebrate centennial anniversary of the birth of Professor Mieczysław Albert Krąpiec OP (1921–2008). Krąpiec was one of the outstanding Polish philosophers. He was the chief creator of the Lublin Philosophical School, which was a center of free philosophical thought in Poland after the II World War. The Lublin School remains one of the very few centers of realistic philosophy all over the world. Krąpiec developed a coherent metaphysical system to explain the whole reality.<sup>1</sup> His philosophy is the biggest achievement in the field of realistic and wisdom-oriented classical philosophy (realistic metaphysics) both in Poland and abroad in 20<sup>th</sup> century. Krąpiec was eminent rector of the Catholic University of Lublin during the most difficult period of the communist regime in Poland, and he had the longest term in office as rector (for thirteen years, since 1970 up to 1983).<sup>2</sup> He was the initiator figure in the publication of the very first Universal Encyclopedia of Philosophy in Poland and became the chairman of the Scientific Committee for this undertaking (published in 2000–2009).

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<sup>1</sup> See Mieczysław A. Krąpiec, “Metaphysics in the Lublin Philosophical School,” *Studia Gilsoniana* 5, no. 2 (2016): 391–427; and Wojciech Chudy, “Mieczysław Albert Krąpiec in *The Universal Encyclopedia of Philosophy*,” *Studia Gilsoniana* 7, no. 4 (October–December 2018): 549–566.

<sup>2</sup> Marian Kurdziałek, *Biography*. Available online—see the section *References* for details.

One of the fields of Krąpiec's philosophical interest was law and philosophy (metaphysics) of law and human rights. The object-matter of the philosophy (metaphysics) of law developed by Krąpiec is the existence of natural law, the ways in which the content of this law is formulated, the basis of established law and justice, the relationship between established law and natural law, and the conditions of law's implementation in various communities. Krąpiec proposed, firstly, a realistic interpretation of law as a real, interpersonal relation; secondly, the concept of an analogical natural law; thirdly, the interpretation of human rights as the ways of realizing the personal nature of the human being—the ways which were read into the social context and proclaimed particularly in the form of the Universal Declaration of Human Rights (1948). In the philosophy of politics, Krąpiec considered the issue of the sovereignty of the human person in relation to society, nation, and the State, as well as the issue of politics understood as the realizing of the common good in a prudent manner. Krąpiec also referred to the Polish tradition of defending the rights of nations, thus building the foundations of the philosophy of nation.

### **The Object of the Metaphysics of Law: Law as a Relation**

Krąpiec's considerations of law can be called the metaphysics of law—these considerations are a particularization of philosophical anthropology (the metaphysics of person) and general metaphysics.<sup>3</sup> The

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<sup>3</sup> The most important works of M. A. Krąpiec concerning the philosophy of law include, among others: *Person and Natural Law*, trans. M. Szymańska (New York: Peter Lang 1993 [in Polish: Lublin: RW KUL 1993]); *Suverenność – czyja?* [Sovereignty, But Whose Sovereignty?] (Lublin 1996); "Dobro wspólne [Common Good]," in *Powszechna Encyklopedia Filozofii* [Universal Encyclopedia of Philosophy (PEF)], vol. 2, ed. A. Maryniarczyk (Lublin 2001), 628–639; "Filozofia prawa [Philosophy of Law]," in PEF, vol. 3, ed. A. Maryniarczyk (Lublin 2002), 500–512; *O prawie. Z Ojcem prof. Mieczysławem A. Krąpcem rozmawia K. Wroczyński* [On Law. K. Wroczyński speaks

starting point of such a philosophy (metaphysics) of law is the fact of human existence and functioning under law.<sup>4</sup> A description and determination of this fact is made on the basis of an analysis of external experience (we can see the relation of one human being to another as manifesting itself in different types of interaction), as well as on the basis of the internal experience of being bound by the law.

In order to describe and capture the complex structure of the law, Krąpiec recalls the distinction between law in the sense of *ius* and *lex*, thus following the Roman tradition. *Ius* expresses the order of the existence of law (material, existential, obliging), while *lex* (formal, content-related) expresses the formulation of law as the rule of law within a specific content: a specific precept or prohibition issued by a legislator as a rule and measure of action based on interpersonal relations.<sup>5</sup> *Ius* is associated with the natural right of every human being to act; law-*ius* concerns conduct in accordance with justice (*iustitia*), and therefore in accordance with other due states of affairs (*ipsa res iusta*); law-*ius* creates a natural legal order (*ordo iuris, ius naturale*). *Lex* expresses the contentual determination of law in the sense of *ius*; it is an object-related norm that obliges the recipient of law-*lex* to act for a specific purpose—a norm that comes from a legislator and is binding by virtue of his authority.

In explaining the fact of law, Krąpiec emphasizes its metaphysical foundations. Law, according to Krąpiec, has its foundations in real

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with Fr. Prof. Mieczysław A. Krąpiec] (Lublin 2011). Other works of Krąpiec are referred to in subsequent footnotes.

<sup>4</sup> For a wider elaboration on the philosophical and legal thought of Krąpiec, see Marek Piechowiak, "Mieczysława Alberta Krąpca koncepcja filozofii prawa [Mieczysław Albert Krąpiec's Philosophy of Law]," in *W trosce o godziwe prawo* [For the Sake of Just Law], ed. A. Maryniarczyk, *et al.* (Lublin 2013), 23–72.

<sup>5</sup> Cf. Mieczysław A. Krąpiec, "Ius. Rozumienie prawa [*Ius*: Understanding the Law]," in PEF, vol. 5, ed. A. Maryniarczyk (Lublin 2004), 115–126, and the articles authored by K. Wroczyński: "Ius" (*ibid.*, 115–116) and "Lex" (PEF, vol. 6 [Lublin 2005], 377–380).

existential states, in substantial beings, as well as in real relational states (as expressed in a rational order determined by the causes of being). Finally, law also has its foundation in the order of justice understood as something that is due to the other or to the acting person, and what the man is able to read from the objective order of reality.<sup>6</sup> According to Krąpiec, law is “a certain reality, a fact to which one must respond. It is not only a fact given to us in laws, regulations, in writing, but it is an existential state, occurring in between people.”<sup>7</sup> Law is a kind of being and takes the form of a real interpersonal relation characterized by the obligation to act (or to cease acting) for the good of the other as a person.<sup>8</sup> Krąpiec proposes a finalistic (*i.e.*, purpose-oriented) definition: “Law must be understood as a real relation between acting persons whose actions (or cases of inaction) are owed to them by virtue of their proportionally shared ordering to the common good as the purpose of all their actions in their capacity as persons.”<sup>9</sup>

The next stage of explanation of the fact of law—as well as content formulations thereof in the form of legal norms—is carried out with reference to the objective nature of the human being as a person (*i.e.*, with reference to natural law), wherein philosophical explanations of the human being and its actions are invoked. Final explanation is provided by pointing to the ontic participation of being (eternal law: ultimately, the objective common good is the Supreme Being, the Absolute, God).<sup>10</sup> For this reason, Krąpiec accepts and explains, in a purely rational way, the basic metaphysical definition of natural law as *participatio legis aeternae in rationali creatura* (Thomas Aquinas) and understands the Absolute as “the ultimate, final, efficient and exemplary

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<sup>6</sup> Cf. Krąpiec, *Człowiek i prawo naturalne*, 15–16.

<sup>7</sup> Krąpiec, *O prawie*, 15.

<sup>8</sup> Cf. *ibid.*, 16.

<sup>9</sup> Krąpiec, *Człowiek i prawo naturalne*, 41.

<sup>10</sup> Cf. Krąpiec, *O prawie*, 71–72.

reason ('exemplary' because of external causation) of all human activities and of the order of established laws (through natural law—doing good)."<sup>11</sup> Krąpiec also emphasizes that "in the philosophy of law, the first and the most fundamental thing is to determine the origin of law."<sup>12</sup>

The metaphysics of law, understood in this way, differs radically from other contemporary approaches, which reduce the philosophy of law to a general theory of law which considers the law as a mere linguistic norm-statement. Krąpiec defends the autonomy of the philosophy of law as a strictly philosophical domain in relation to the so-called particular legal sciences and the reflection thereon, which is itself limited to the topic of established law. Krąpiec's conception has been developed in discussion with historically relevant approaches to law in general, to natural law, to justice, as well as in discussion with contemporary legal positivism. Krąpiec's concept differs from all these approaches in its connection with the metaphysics of man and being; in its object and with having a much broader scope (different types of law, not only established law, are included); in its causal explanation of law with there being an emphasis on the role of final causation, and in its attempt at an ultimate justification of law. In disputes between rationalism and legal voluntarism, between natural law (Fr. *jusnaturalisme*) and positivism (conventionalism), his conception defends rationalism (law is a product, an act of reason—"the whole field of law is a rational way of realizing the good"<sup>13</sup>) and natural law (*jusnaturalisme*: the natural legal order that exists and is binding for man in his actions).

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<sup>11</sup> Cf. Krzysztof Wroczyński, Katarzyna Stępień, "Filozofia prawa w ujęciu Krąpca [Philosophy of Law According to Krąpiec]," in *Encyklopedia Filozofii Polskiej* [Encyclopedia of Polish Philosophy], vol. 1, ed. A. Maryniarczyk (Lublin 2011), 379.

<sup>12</sup> Krąpiec, *O prawie*, 19.

<sup>13</sup> *Ibid.*, 24.

## Natural Law and the Nature of Being

Krąpiec's theory of natural law is at the center of his philosophical considerations of the fact of law.<sup>14</sup> According to this theory, "human reason should derive its norms of conduct from an understanding of the human structure as a whole, considered both in the context of individual and social life."<sup>15</sup> Man brings with him this law into the world—"human nature is ordered to the good"<sup>16</sup>—and then reads into it and elaborates upon it. "The human nature associated with the good is the widest field in which law applies and in which more detailed legal formulations can be sought."<sup>17</sup> This attribution of human nature to the good is expressed by the judgment of the *synderesis*: "Good must be done, evil must be avoided."<sup>18</sup> This judgment expresses the fact of the first, essential, and most primordial motive of human action; it is a vision of the aforementioned ordering toward the good. Krąpiec says:

The supreme judgment of practical reason—"do good"—which underlies human rational action, is an essential expression of the natural right of man, because it reveals reality itself as the supreme motive for human action, and expresses human nature, which is a contingent, potentialized, and thus dynamic being; one that is intellectually fulfilled in the discernment of "my" good

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<sup>14</sup> Cf. Wroczyński & Stępień, *Filozofia prawa w ujęciu Krąpca*, 378–382. Wroczyński points to the special position of natural law issues in Krąpiec's philosophy: "Starting from metaphysics and philosophical anthropology (an analysis of the structure and nature of man as being), Krąpiec constructs and explains the philosophical theory of natural law, creating a basis for an evaluation of various, historically relevant philosophical-legal concepts and ethical concepts, various systems of established law, ideologies, theories of State, politics, human rights, etc. He even calls this 'radiation' of natural law to various areas of human social life. This is why references to natural law appear in many [of his] works devoted to different areas of culture" (*ibid.*, 378).

<sup>15</sup> Krąpiec, *O prawie*, 25.

<sup>16</sup> *Ibid.*, 34.

<sup>17</sup> *Ibid.*

<sup>18</sup> Cf. Katarzyna Stępień, "Synderesis and Natural Law," *Studia Gilsoniana* 3 (2014): 377–398.

and in the achievement of various goods in human action—goods that characterize an action itself.<sup>19</sup>

Human nature is ordered to the realization of the good through its innate inclinations. The first inclination expresses the drive present in the nature of beings to preserve their lives to the measure of each particular nature, according to which living beings (including man in a specific, personal way) strive to preserve and defend themselves as acting beings who actualize their potentiality.

The second inclination concerns the procreation of human being in the natural relationship between man and woman (marriage) and sets the basis for the realization of the good in this area of human life (the family): “In order for human life to continue in the cosmos, in order to overcome the course of matter, it is necessary for it to be transmitted.”<sup>20</sup> Nevertheless, Krąpiec indicates: “On the other hand, what is implanted in the human nature, is the desire to transmit life which is not only biological but also rational (the issues of learning and interpersonal communication also belong to the sphere of personal transmission of life).”<sup>21</sup> In this understanding of these inclinations, Krąpiec emphasizes their personal, and not only necessary and biological, dimension.

The third inclination of human nature concerns the social and dynamic character of man's nature and especially what is specifically human, personal, rational, and free in this nature. It covers the area of the “common good,” that is, the comprehensive intellectual, moral, creative, and religious development of a society which lives in conditions of order and peace. Inclinations—together with the guiding principle of

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<sup>19</sup> Mieczysław A. Krąpiec, “Prawo naturalne a etyka (moralność) [Natural Law and Ethics (Morality)],” in *Filozofia prawa a tworzenie i stosowanie prawa. Materiały Ogólnopolskiej Konferencji Naukowej 11–12 VI 1991 w Katowicach* [Philosophy of Law and Creation and Application of Law: Materials of the all-Poland Scientific Conference in Katowice, 11–12 June 1991], ed. B. Czech (Katowice 1992), 47.

<sup>20</sup> Krąpiec, *O prawie*, 35.

<sup>21</sup> *Ibid.*

the *synderesis* “the good must be done,” which are formally expressed in the practical judgment of reason as a natural right—guide toward what belongs to man because of his individual and social nature. The judgment of *synderesis* (the natural disposition of reason to read the first principles of action) and the knowledge of natural inclinations form the basis for particular acts of practical reason (conscience) and acts of will in choosing to conduct the good in a concrete action (decision): “In the main sense, therefore,” says Krąpiec, “I am, in a way, the legislator of myself, for I am making a specific practical judgment, which orders me to do this, here, now, and in such-and-such way. I choose the concrete legal norm of my action.”<sup>22</sup> The act of decision (self-determination) is “that focal point of understanding of the real law.”<sup>23</sup> Krąpiec emphasizes: “The moment of internal decision is the main reference for understanding the validity of law.”<sup>24</sup>

### **Human Rights as the Way to Realize Human Nature**

Another area of interest for M. A. Krąpiec, in terms of the philosophy of law, is the issue of human rights, which is generally the object-matter of research in the legal sciences, international law, and in terms of the sociological justifications of these rights as not found in the field of philosophy of law.<sup>25</sup> Krąpiec seeks the foundations and jus-

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<sup>22</sup> *Ibid.*, 58.

<sup>23</sup> *Ibid.*, 58–59.

<sup>24</sup> *Ibid.*, 59.

<sup>25</sup> Cf. Katarzyna Stępień, “Antropologiczno-metafizyczne podstawy praw człowieka [Anthropological and Metaphysical Foundations of Human Rights],” in *O prawach człowieka nieco inaczej. Praca zbiorowa* [About Human Rights a Little Differently: A Collective Volume], ed. R. Moń, A. Kobyliński (Warszawa 2011), 63–76; Katarzyna Stępień, “Prawa człowieka jako aksjologiczna podstawa dla stanowienia prawa w ujęciu Mieczysława A. Krąpcza [Human Rights as an Axiological Basis for Lawmaking in Mieczysław A. Krąpiec’s View],” *Zeszyty Naukowe KUL* [Scientific Journals of Catholic University of Lublin] 55, no. 1 (2012): 51–60.



tifications for human rights on the anthropological and metaphysical level (within the human person and relations, respectively). He understands these rights as ways of realizing the human nature of the person. Human rights, although they have always existed and are inextricably linked to their subject (the human person), have particularly been socially identified and proclaimed in the context of the events of World War II and in the Universal Declaration of Human Rights. Krąpiec believes that at the heart of this Declaration is an affirmation of a common sense understanding of man—an understanding known to all people from experience and from their personal and spontaneous lived experience in society<sup>26</sup>—which includes universal elements common to all people and uses the sociological-empirical method to identify the most important laws and the content thereof.<sup>27</sup> This implies an understanding of man himself as the subject of these rights.<sup>28</sup> Krąpiec formulates this as follows: “The basis for the binding force and validity of human rights is the human person itself. The understanding of the structure of the person becomes a condition, or basis, for understanding the value of human rights.”<sup>29</sup>

In the Declaration, according to Krąpiec, we find a reference to traditional, Stoic, and Roman natural inclinations.<sup>30</sup> This gives rise to an interpretation of human rights in relation to natural law. In his analysis of human rights, therefore, Krąpiec puts these rights in the context of the above mentioned elements of his conception: law as a real inter-

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<sup>26</sup> Cf. Mieczysław A. Krąpiec, *Człowiek i polityka* [Man and Politics] (Lublin 2007), 146.

<sup>27</sup> Cf. *ibid.*

<sup>28</sup> Cf. Mieczysław A. Krąpiec, “Porządek prawny – rzeczywistość czy fikcja? [The Order of the Law: Reality or Fiction?],” *Człowiek w Kulturze* [Man in Culture] 11 (1998): 22–24.

<sup>29</sup> Krąpiec, *Człowiek i polityka*, 146.

<sup>30</sup> Cf. Krąpiec, “Porządek prawny – rzeczywistość czy fikcja?,” 15–26; Krąpiec, *Człowiek i polityka*, 157.

personal relation; the supreme, analogical precept-judgment of the *synderesis* “good must be done” (“do good”), and the inclinations that define the essential areas for the realization of good. These inclinations (to preserve existence/life, to transmit life, to develop the person in a community) express certain directions of human action and their ordering toward certain goods. Krąpiec emphasizes: “The most important is the existence of man, human life, and human action. From the existential structure of man, from the necessity of his action, comes the entitlement. And therefore, this entitlement is natural.”<sup>31</sup>

Krąpiec constantly emphasizes the internal, essential relationship of law as a rule of action with the good, which is the goal and *raison d'être* of law: “The natural purpose that man is, as it were, forced by his nature to achieve the good.”<sup>32</sup> In fact, it is only by doing good that “one is entitled to act.”<sup>33</sup> And, further on, Krąpiec indicates the good as the basis of any legal obligation:

What is due to us is a certain *debitum* that someone else must fulfill. Why does he have to fulfill it? Because this is where the essential good of man (which is to be human) lies; this is the good, through which man finally fulfills himself as a personal being, [*i.e.*, through which he] comes to the full development of his personality: intellectually, morally, and creatively. In order for man to fulfill himself as a personal being, he deserves to be allowed to perform certain actions or have others cease certain actions they have undertaken. And this is exactly law.<sup>34</sup>

In contemporary human rights doctrine, the first natural inclination corresponds to the right to life, which is the ontic basis of other hu-

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<sup>31</sup> Krąpiec, *O prawie*, 19.

<sup>32</sup> *Ibid.*, 24.

<sup>33</sup> Wroczyński & Stępień, *Filozofia prawa*, 379. “As the second premise of Krąpiec’s philosophy of law one can mention his conviction (justified in his system) that all human behaviour is ‘legitimate’ (in the field of morality, established laws, customs, various fields of culture and creativity, and also in religion) in so far as it derives its legitimacy from the natural law expressed in the judgment ‘the good must be done’” (*ibid.*).

<sup>34</sup> *Ibid.*, 17.

man rights. The second inclination—to the transmission of life—corresponds to the right to marry and to start a family, the rights of the family, the rights of parents to raise their children, to decide upon their education, etc. The third inclination—to personal development—corresponds to the right to freedom of thought, conscience, and religion, to participation in culture, the right to education, the right to establish social organizations, political rights, etc. Human rights express, according to Krąpiec, the orientation of human nature to what should be achieved by man according to his nature: the particularly precious human goods such as life, health, religion, freedom, security, integrity, family, work, peace, culture, knowledge, property, and those others necessary for the individual and social fulfillment of man. Around these goods, signaled in the Universal Declaration, the activities of both the individual and the people around him are focused, creating a social context—a culture—of respect for the rights and dignity of the person.

These basic personal activities of the human being and the goods protected by the Declaration constitute the axiological (or rather agathological) basis of established law, the necessary conditions for its application, and the criteria for the assessment of its value. In this way, by means of the Declaration, natural human rights become a point of reference and a test of the quality of established law, which, as it turns out, cannot retain its character without a connection with the good (morality, natural law). As Krąpiec points out:

The good is readable by reason, it is objective. . . . If we denied knowledge of the good, and thus removed the basis for the validity of natural law, we would give up our humanity. The renunciation of natural law, and thus of the precept to do good, is the renunciation of humanity, because then man would no longer distinguish between good and evil.<sup>35</sup>

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<sup>35</sup> *Ibid.*, 74.

## The Human Person as the Subject of Law

What is characteristic of Krąpiec is that, in his considerations of law, he constantly evokes the understanding of man as a person (which reveals the methodological status of the philosophy of law as a part of philosophical anthropology), thus indicating that the solution to the centuries-old dispute about the basis of the validity of law must be based on a realistic understanding of man—which in turn is shaped by external and internal experience, and systemic analyses which explain man in terms of his existence and functioning. Man is a person, that is, an individual and substantial being endowed with a rational and free nature (understood as the internal autonomous source of action); a being capable of intellectual cognition, acts of love and freedom, and open to transcendence; a being that is complete from the beginning of its existence (from the moment of conception), having dignity and subjectivity before the law, preserving its identity and unity in all phases of its development and in all material and spiritual planes of its own life and actions.<sup>36</sup>

Thus, the personal dimension of human life is expressed by such properties or abilities as: intellectual cognition, love, freedom and legal subjectivity, existential completeness and uniqueness (sovereignty), dignity, and religiousness. The possibility of knowing the truth and the rational choice of goodness is actualized in the individual life of a human being, while love, dignity, and religiousness actualize as acts of affirmation of others—from human beings to the Personal Absolute. Moreover, legal subjectivity, completeness, and existential sovereignty imply social relations.

The social and legal subjectivity of man, however, according to Krąpiec, is not based on one's activity or ability to perform these social

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<sup>36</sup> Cf. Mieczysław A. Krąpiec, *Ja – człowiek. Zarys antropologii filozoficznej* [I—Man: An Outline of Philosophical Anthropology] (Lublin 2005).

relations, but above all on the subjectivity of being, of substance. The human being exists as a subject in itself and for itself. Being a self-sustained spiritual-corporeal substance, the human being exists as a whole and as a unified being through the act of spiritual existence.

In the context of understanding law, the issue of the potentiality of human nature and its ordering toward development, ordering toward the good is particularly important. “And only in the person does the real good in itself and for itself realize itself as an end-purpose.”<sup>37</sup> Krąpiec emphasizes the inner finality of human nature. Human life and actions are oriented to these main objectives: sustaining life, life’s transmission, and personal development (in its cognitive, moral, creative, and religious aspects). This understanding of man as a person justifies the existence of an objective order of human natural entitlements.<sup>38</sup>

### **The Foundations of Analogy of Natural Law**

Another concept Krąpiec also discusses is the concept of analogical natural law. According to Krąpiec, the basis for the proper approach to rights and goods due concerns analogical and transcendental cognition. According to K. Wroczyński, this is a very particular and original element of Krąpiec considerations in the philosophy of law.<sup>39</sup> Krąpiec, namely, believes that knowledge of the content of natural law and human rights entails a specific, analogical, and concrete-oriented type of transcendentalizing cognition (as opposed to universalizing cognition), which lies at the basis of all decision-making acts—acts which themselves are normative as a result of practical cognition.<sup>40</sup> In the first

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<sup>37</sup> Krąpiec, *Człowiek i prawo naturalne*, 16.

<sup>38</sup> Cf. Josef Seifert, “Antropologia praw człowieka [The Anthropology of Human Rights],” trans. J. Merecki, *Ethos* 12, no. 1–2 (1999): 141.

<sup>39</sup> Cf. Wroczyński & Stępień, *Filozofia prawa w ujęciu Krąpca*, 378–382.

<sup>40</sup> More on this topic in *ibid.*

type of cognition, we use analogical expressions such as truth, the good, and being, and we predicate these expressions analogically, while, in the second type of cognition, we unambiguously comprehend/grasp the content of being in general concepts. The content of natural law and human rights is always revealed in contact with concrete beings (hence the inalienable role of existential judgments in the affirmation of this concrete beings), in acts of decision. Even if we formulate the principles of natural law in a general (*i.e.*, universalizing) manner, they preserve their analogical and concrete-oriented sense.<sup>41</sup>

According to Krąpiec, the difficulties experienced by the school of natural law were due to a lack of awareness of the specificity of transcendentalizing and analogical cognition. And although

[I]n the seed stage, in universalizing language . . . we can read in a real set of persons and things what is just and right (*sensibile per se est intelligibile per accidens*)—just as in empirical data we can read with our intellect content that is sensually inaccessible, “abstract” in the exact sense of the term—after all cognition of the foundations of law is not achieved through processes of abstraction only, but through the more complex processes of a transcendentalizing, strictly analogical cognition.<sup>42</sup>

If it is important for the law to first cognize the good as that which needs to be done, then such a cognition must be analogical, not unambiguous.<sup>43</sup>

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<sup>41</sup> Cf. *ibid.*

<sup>42</sup> Krąpiec, *O prawie*, 40.

<sup>43</sup> “Therefore, real natural law as a law characterized by relativity is something analogous because a number of real relations enter into this very law’s understanding. Real, analogical law is very often grasped cognitively only in a general manner, unambiguously, and in isolation from the condition of an individual being. For sometimes the individual elements of being, captured in cognition spontaneously, do not change the general, cognitively constructed pattern of the law, which in some cases is connected only with certain elements in being. Nevertheless, a real understanding of laws as analogical laws calls for the taking into account of concrete structures of being that are substantially different from one another” (Mieczysław A. Krąpiec, *Teoria analogii bytu* [The Theory of Analogy of Being] [Lublin 1993], 189).

It must be first comprehended that there is a real being (an existing content: a concrete thing that is fully and specifically determined by existence), which is desired because it exists—because it is real. In this type of cognition, the affirmation of existence (expressed in the existential judgment) is combined with an increasingly precise approach to this really existing content (and it took, in some instances, whole centuries to establish this precision).<sup>44</sup>

Action under law (whether established or natural) is done for the sake of the good—and with this always being an analogical-concrete good, which therefore requires a transcendentalizing cognition to be expressed and affirmed. “The precept ‘do good’ is analogical; it changes in different circumstances, according to what has been perceived as good, which, nonetheless, is always the motive for action.”<sup>45</sup>

In Krąpiec's concept, as Wroczyński points out:

The ultimate point of reference for understanding the validity of the law, both in an objective and subjective order, is the human decision. In it, as in the lens, the whole personal life of a human being is focused, including the cognition of legal obligation. Man self-determines himself to act: he “entitles” himself. This is the first analogate of understanding law. . . . Decision always chooses a concrete good (being), and it is precisely the analysis of the human decision that reveals, according to Krąpiec, the basic structural elements of understanding natural law. There are three main elements here: the judgment, which says “the good must be done” (natural law in the formal sense), the pre-judgmental orientation toward the good (*synderesis*), and natural inclinations which are expressed in natural human goals as a material basis for judgments of the concrete good. The main analogate is, of course, judgment as a result of a decision; *synderesis* and natural inclinations are lesser analogates of understanding natural law.<sup>46</sup>

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<sup>44</sup> Krąpiec, *O prawie*, 41.

<sup>45</sup> *Ibid.*, 61–62.

<sup>46</sup> Wroczyński & Stępień, *Filozofia prawa*, 379. Wroczyński goes on to point out: “Based on the above assumptions (explained in detail in the philosophical analyses) Krąpiec formulates the view that all formulated principles of natural law have analogical sense (he makes an exception to the general principle: *bonum est faciendum*)—the

## Politics as the Realization of the Common Good

Krapiec complements his strictly philosophical studies of law with philosophical-social reflection, and considers the concept of politics not as amoral “art” but as the prudent realization of the common good.<sup>47</sup> Since established law regulates human actions in a community, the reason for these legally sanctioned actions is the common good. Actions are always individualistic and pertain to particular matters, but as such they can be related to the good understood as a common goal (final cause).<sup>48</sup> The law, which is an imperative of practical reason, is ordered (in a necessary way) to the common good.

However, the common good (analogical identity of purpose<sup>49</sup>) can be considered from different points of view. The common good in the community “shall be called the object of human action, which can become an individual goal of every personal aspiration and, in this sense, be analogically common to all persons living in society.”<sup>50</sup> According to Krapiec, the good means for man “to actualize more and more fully the potentiality of his nature, different in each individual case, analogical.”<sup>51</sup> Such a good is, therefore—as the only non-antagonizing common goal, both individual and universal—the concrete person itself and that person’s

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sense which does not conclude in strictly legal reasoning (silogisms) as seen in jurisprudence. Hence, this concerns not the derivation of established laws from the principles of natural law, but rather demonstrates the non-contradiction of established laws with the natural law that is fundamental and essential for social order and justice. Such a process of demonstrating the non-contradiction of natural law with established law is, moreover, constantly carried out in the form of studies of the fairness of the law, both in scientific reflection and in spontaneous, concrete considerations” (*ibid.*, 380).

<sup>47</sup> Cf. Mieczysław A. Krapiec, *O ludzką politykę!* [For the Sake of Human Politics!] (Katowice 1993).

<sup>48</sup> Cf. Mieczysław A. Krapiec, “Dobro wspólne [Common Good],” in *Encyklopedia “Białych Plam”* [Encyclopedia of “Blank Spaces”], vol. 5 (Radom 2001), 90.

<sup>49</sup> *Ibid.*

<sup>50</sup> Krapiec, *O prawie*, 67.

<sup>51</sup> *Ibid.*, 68.



life from conception to natural death in the perspective of eternal life. Since law applies to persons living in society, its purpose is the perfection of those who make up that society. One of the rich aspects of the common good, therefore, is the full actualization of the human being, and to this very purpose law is ordered.<sup>52</sup> Law, therefore, with the common good as the purpose, is intended to promote the development of the human person. The purpose of law, therefore, is not only a specific action, but a certain state of the subject (the development of the person), that is to say, to bring about the actualization of what is in potency within the person. Man as a person is not merely a specimen representing a species; his aim, therefore, is not to realize perfection as marked by one model common to all people, but to realize himself as a unique individual.<sup>53</sup>

Prudent concern for this good, that is, for human life in its various dimensions and manifestations, is politics, viz.: the morality of social life. Human rights currently determine the most basic planes for the realization of the common good. These rights order man (read from his very nature) as a potential, dynamic being (a being in development), to the good-purpose and the conditions-means for the realization thereof. The common good also includes the material conditions under which a law can actually be law (the conditions of material justice).<sup>54</sup>

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<sup>52</sup> Krąpiec, *Człowiek i prawo naturalne*, 38.

<sup>53</sup> Cf. Marek Piechowiak, "Filozoficzne podstawy rozumienia dobra wspólnego [Philosophical Foundations of Understanding the Common Good]," *Kwartalnik Filozoficzny* [Philosophical Quarterly] 31, no. 2 (2003): 25. "A person's end-purpose is not to realize the nature of the species, but to actualize him- or herself in what is specific to him or her. . . . The manner in which this actualization is carried out is not clearly determined by the natural inclinations inherent in the species nature of man or, even more broadly, not by what people have in common as persons. Therefore, there is no single, universal way of actualizing that can be determined by the knowledge of the structures of being and the circumstances of action common to all people. Only natural law defines individual goals" (Marek Piechowiak: *Filozofia praw człowieka. Prawa człowieka w świetle ich międzynarodowej ochrony* [Philosophy of human rights. Human rights in light of their international protection] [Lublin 1999], 300).

<sup>54</sup> Piechowiak, "Filozoficzne podstawy rozumienia dobra wspólnego," 23.

It is therefore necessary for the rational life of an organized society to determine the legal rules of conduct based on the read order of good.<sup>55</sup> The order of good, which is open to the intellect of every human being, is realized in concrete actions in an analogical manner, and is not clearly determined by the nature or arrangement of things. This order requires determination on the path of free choices. It is only in the acts of lawmaking that certain ways of achieving the common good-goal of both the person and society are unambiguously clarified.<sup>56</sup> The order of rational lawmaking should reveal a set or system of rational relations, cognitively grasped by man and thus binding his action (the real rational legal order, primary and independent of legislation).

The task of politics is to prudently pursue the common good:

Prudence, on the other hand, is to choose the various means so wisely as to be able to help the realization of the good itself most effectively. For this, a politician needs to be both educated and righteous in his character. Education is needed in order for him to know the history, the law, and the character of a society, and therefore the role of the family, of the nation, and of the state, and in this context to guide the realization of the good of the person; righteousness of character is needed in order to prevent him from converting this aim into a means and from not making the means of pursuing the common good the goal of one's own political endeavors.<sup>57</sup>

### **The Existential Foundations of Justice**

Krąpiec points out that justice is always “ordered to man to give what is due to him”—and he means the things due to a real individual, a concrete personal being, and not an idea, utopia, or abstraction. So, what is justice about? Justice concerns the concrete person and his basic ac-

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<sup>55</sup> Krąpiec, *Człowiek i prawo naturalne*, 47, 231.

<sup>56</sup> However, established law does not regulate everything that serves to actualize a human person (*Cf. ibid.*).

<sup>57</sup> Krąpiec, *Człowiek i polityka*, 6.

tions. Our actions (or inactions/lack of actions) are done toward others.<sup>58</sup> The order of law and justice (*ordo iuris*) is therefore an objectively existing arrangement involving a set of interpersonal relations in which people organize their actions on the basis of them recognizing their actual relations with others, which is the basis of the obligation to act for the good of the other person.

This situation, as already mentioned, presupposes the transcendental nature and cognoscibility of good:

If I want to know why I should do good, I can immediately see that the understanding of good is not unequivocal but analogical, because there are really existing beings that are desirable not because of their single aspect, but because of their often mutually exclusive aspects, which nonetheless do not deny the real good that exists in such beings. On the contrary, such mutually exclusive aspects only affirm the good more strongly.<sup>59</sup>

The imperativeness of the obligation to act or to refrain from acting toward the other is a result of the necessity to agree with the objective truth of the human being (this truth takes on a normative character). Justice therefore concerns:

the human being and its essential actions, which stem from its nature: (1) in the biological aspect, it eats, grows, and multiplies—enabling man to be by virtue of human nature; (2) in the sensual and emotional aspect, with these actions involving the senses, memory, and imagination; (3) in the aspect of intellectual life, involving reason. Justice in this sense—justice to man, to his needs, to his desires, and to the fulfillment of them all—is fundamental.<sup>60</sup>

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<sup>58</sup> Cf. Mieczysław A. Krąpiec, “Bytowe podstawy sprawiedliwości [Existential Foundations of Justice],” in *Sprawiedliwość – idee a rzeczywistość* [Justice: Ideas and Reality], ed. P. Jaroszyński, I. Chłódna, P. Tarasiewicz (Lublin 2009), 11.

<sup>59</sup> Cf. Krąpiec, *Człowiek i prawo naturalne*, 15–16; Krąpiec, “Porządek prawny,” 16–19.

<sup>60</sup> Krąpiec, *O prawie*, 81. Cf. Krąpiec, “Bytowe podstawy sprawiedliwości,” 9–13.

The subjects of legal relations are personal beings, as the law defines interpersonal relations due to the natural ordering of one human individual to another.<sup>61</sup> The state of the mutual ordering of individuals and the fact of a relation between them is objective state of things and as such demand to be intellectually apprehended and recognized due to the proportional end-purpose (the good) of these same individuals. The fact of their existence in a legal reality—which is understood as an interpersonal relation—results in a specific bond between the subjects of this relation on the level of both the occurrence and the content of an action.<sup>62</sup> The binding power thereof is a property of duty (*debitum*), conditioned by the specific structure of beings who are persons.<sup>63</sup> Krąpiec remarks:

In law . . . one, very fundamental aspect of my action or inaction is crucial, namely another person, who should not, in any way, be diminished in his good by my action (or inaction). Therefore, the law guarantees the interpersonal good, *i.e.*, the good of the acting person and of the others who are affected by the action taken. Lawfulness, liability, duty—all that *debitum* of an act in the legal aspect—comes from the other person.<sup>64</sup>

So, what is due to one person (who is the correlate of the legal relation), the other person should do. The legal relation that binds two persons as correlates is characterized by “that which is due, that which should be done” as the moment that distinguishes the moral order of justice and law from any other dimension of morality.<sup>65</sup>

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<sup>61</sup> Cf. Krąpiec, *Człowiek i prawo naturalne*, 16.

<sup>62</sup> Cf. Tomasz Duma, *Metafizyka relacji. U podstaw rozumienia relacji bytowych* [Metaphysics of Relations: Foundations of Understanding of Ontic Relations] (Lublin 2017).

<sup>63</sup> Cf. Krąpiec, *Człowiek i prawo naturalne*, 34.

<sup>64</sup> *Ibid.*, 33–34.

<sup>65</sup> Cf. *ibid.*, 34–35.

## The Sovereignty of the Human Person

Krąpiec referred to the term “sovereignty” used in the philosophy of politics. In recent centuries, there has been a tendency to settle the issue of the sources of power by indicating that peoples (nations) are sovereign, and it is them who convey certain attributes of this sovereignty by electing the authorities of the state—or that the main sovereign is the State. But where does the sovereignty of a nation, in its social and political dimensions, come from?

Krąpiec analyzes the problem of sovereignty in the context of the subjectivity of beings (this is original element of his understanding of sovereignty). Sovereignty is related to being human because of human dignity.<sup>66</sup> Krąpiec sees the basis of social independence, therefore, as residing in the sovereignty of the human person as an ontologically stronger being (a substance, subsisting in its own subjective existence) than a society, a nation, or a State, which do not exist independently, being merely relational beings: a network of relations (the weakest mode of existence) between persons. And it is not these relations that are the purpose of actions, but what causes them to occur.<sup>67</sup> “The human person is the first sovereign—the first subject of human rights and duties, thanks to the fact that only the human being can embrace himself, the world, and all that surrounds him, with his knowledge and love, and make acts of decision.”<sup>68</sup>

However, the human person remains a social being; together with other people he creates communities of which he is part. Social life is naturally necessary to secure the material aspect of man's life and to fully actualize his personal abilities. Hence the antinomy of the individ-

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<sup>66</sup> Cf. Krzysztof Wroczyński, “*Naturalis ratio* jako podstawa praw człowieka [*Naturalis Ratio* as the Basis of Human Rights],” *Filozofia* 1 (23) (1993), 67.

<sup>67</sup> Krąpiec, *O prawie*, 126.

<sup>68</sup> *Ibid.*, 82.

ual and community is explained by Krapiec in showing that man is sovereign in setting the goal of personal life, while the community remains sovereign in the field of the material means of the realization of this goal, but has no competence whatsoever in setting people's life goals. Civil sovereignty is therefore secondary to personal sovereignty. Alienation would consist in the appropriation by the State of the goals of human life, with individuals being excessively concerned about resources. The State and law should only guarantee the possibility of the intellectual development of man, his moral development, as well as his development in the field of art and religion—for the sake of the good of the person, leaving the individual with the initiative in this respect—and limit itself to organizing the material conditions of man's development and to supporting the natural circles of his life (family, nation).

The ultimate basis for the sovereignty of the State is the sovereign decision of person.<sup>69</sup> “No society has the right to command him what is right and wrong and to create morality through the legal system, to establish rules for its creation.”<sup>70</sup> Society can at most make up for the shortcomings of individuals and support human actions (according to the principle of complementarity). Krapiec constantly emphasizes that the truth about person is an unchanging criterion according to which all cultures and forms of social life are judged.<sup>71</sup>

### **Rights of Human Person as the Basis of Rights of Nations**

Another field of Krapiec's considerations is a philosophy of nation based on the example of the specificity of the Polish nation and care for the rights of nations in accordance with the tradition of Polish

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<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, 132.

<sup>71</sup> *Ibid.*, 159–160.

thought concerning freedom.<sup>72</sup> With this reflection, Krąpiec's work joins the canon of the most important reflections of eminent Polish thinkers concerning the nation.<sup>73</sup> He remarks: "For me and my peers, Polishness was not something abstract, but a clearly shaped way of life. In the East, we lived Polishness as a form of cultural presence, and a very, very high form of it."<sup>74</sup> However, "Polishness is not the goal of human life, but it is a valuable instrument of human development."<sup>75</sup> Krąpiec sees, first of all, the importance of national culture as that through which one's inclusion in the general cultural current is achieved and through which the humanity of particular individuals is realized. Hence, defense of national culture is for Krąpiec, in fact, defense of the identity of human beings as persons.<sup>76</sup> Krąpiec emphasized the rational-emotional character of the Polish nation, thus connected with the necessity of a centuries-long defense of freedom—a good that was and is constantly threatened.

Among the rights of nations, Krąpiec emphasized the right to existence, culture, and the most important right to freedom, manifesting itself in the possibility of making sovereign decisions concerning action.<sup>77</sup> Just as freedom, and rationality, is a property of the human per-

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<sup>72</sup> On this topic, see Jan Sochoń, "Katolicka filozofia społeczna. Ujęcie Mieczysława A. Krąpca [Catholic Social Philosophy. The Approach of Mieczysław A. Krąpiec]," in *Państwo – Kościół – Naród* [The State – the Church – the Nation], ed. S. Kowolik (Tarnowskie Góry 2018), 39–51.

<sup>73</sup> This is a passage from the book by Mieczysław A. Krąpiec *Rozważania o narodzie* [Considerations of the Nation] (Lublin 2000) reprinted in the collection of texts prepared by the Polish Academy of Sciences, Department of Nationality Studies in Poznań, entitled *Polska refleksja nad narodem. Wybór tekstów* [Polish Reflection on the Nation: A Collection of Works] (Poznań 2002), 238–246.

<sup>74</sup> Mieczysław A. Krąpiec, *Rozważania o narodzie* [Considerations of the Nation] (Lublin 2004), 81.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, 5.

<sup>77</sup> *Ibid.*, 9. Cf. Mieczysław A. Krąpiec, *Ludzka wolność i jej granice* [Human Freedom and Its Limits] (Lublin 2008).

son in the dimension of individual conduct, thus enabling a person's fulfillment, so too in the social dimension does rational freedom enable the responsible realization of the common good. It is the particularly strong experience of personal and national freedom in situations where they are threatened that determines the characteristic features of Polish culture, its heritage, and the ever-present task of building a civilization of freedom and love.<sup>78</sup>

In this area, as well as in those previously mentioned, we can see the independence and autonomy of Krąpiec's thinking. Although he strongly embeds his considerations in the current of classical philosophy and respects historicism, Krąpiec still remains a distinct, original, and independent philosopher.<sup>79</sup>



### Mieczysław A. Krąpiec's Metaphysics of Law

#### SUMMARY

The subject of interest of the philosophy (metaphysics) of law developed by Mieczysław A. Krąpiec is the existence of natural law, the ways in which the content of this law is formulated, the basis of established law and justice, the relationship between established law and natural law, and the conditions of law's implementation in various communities. Krąpiec proposed, firstly, a realistic interpretation of law as a real and interpersonal relation; secondly, a concept of the analogical natural law; and thirdly, the interpretation of human rights as ways of realizing the personal nature of the human being—as the ways which are found in the social context and proclaimed particularly in the form of the Universal Declaration of Human Rights (1948). Concerning the philosophy of politics, Krąpiec considered the issue of the sovereignty of the human person in relation to sovereignty of society, nation, and the State, as well as the issue of politics understood as the realization of the common good in a prudent manner. Krąpiec also re-

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<sup>78</sup> Krąpiec, *Rozważania o narodzie*, 11.

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ferred to the Polish tradition of defending the rights of nations, thus building the foundations of the philosophy of nation.

#### KEYWORDS

Mieczysław A. Krąpiec, philosophy of law, metaphysics of law, natural law, human rights, common good, sovereignty, justice, relations.

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