

The axiological foundations of the economic order in the context of the essential values

Aksjologiczne podstawy ładu gospodarczego w kontekście kluczowych wartości

Аксиологические основы экономического порядка в контексте ключевых ценностей

Аксіологічні основи господарського порядку в контексті ключових цінностей

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Summary: This paper concerns the issues covered under the problem of “The axiological foundations of the economic order in the context of the essential values.” Undoubtedly development of the market economy and realization of the economic freedom are a crucial reference point for the process of development of said foundations. However, we should bear in mind that in this field the classical concept of the order is an oversimplification. Therefore it is justified to approach this concept in the perspective of the idea of its three-level implementation and identifying the basic values laid at its foundation. My primary goal is to justify the thesis proclaiming that the issue of developing axiological foundations for the economic order should be perceived through the lens of the values which are justified not solely by their positive-legal legitimization (common good, human dignity) but also the values which shape the fundamental values expressed in the constitution of the Republic of Poland and the principles derived from them. In the latter case the issue concerns e.g. the rights, freedoms, values and principles other than the economic freedom (certainty of law, protection of acquired rights, protection of competition, righteousness of will of the legislator and the bodies implementing the law, authority of the state and the law etc.). This, in turn, gives birth to a number of challenges and axiological dilemmas – not only related to economy but to law and ethics as well. Therefore it appears justified to properly identify the basic normative pillars and the values covered under the context of the effective and binding law and the potential threats to the axiological foundations of the public commercial law. Therefore it is relevant to turn our attention to the issues of inflation of law, certainty of normative solutions, protection of acquired rights and fully developing expectations towards the legal security and excessive relativisation of the basic principles which determine the essence of legal order. Developing authority of the state and law as well as developing the ethos of public service are significant for the axiological aspects of the economic order. The paper utilizes the dogmatic method and other auxiliary methods as needed.

Key words: axiological foundations of the economic order, key values, inflation of law, legal security, dis-functionality of legal order

Streszczenie: Artykuł niniejszy jest poświęcony aksjologicznym podstawom ładu gospodarczego w kontekście kluczowych wartości. Nie ulega wątpliwości, że kształtowanie się gospodarki rynkowej oraz realizacja wolności gospodarczej są istotnymi punktami odniesienia w procesie jego budowania. Pamiętaj jednak należy, że klasyczna koncepcja ładu w tym zakresie stanowi nadmierne uproszczenie. Stąd też zasadne jest ujmowanie go w perspektywie idei trójplaszczynowego jego urzeczywistnienia i identyfikacji podstawowych wartości leżących u jego podstaw. Jako cel podstawowy stawiam sobie uzasadnienie tezy, że problem kształtowania aksjologicznych podstaw ładu gospodarczego postrzegać należy przez pryzmat wartości, które nie biorą swego uzasadnienia li tylko z pozytywno-prawnej legitymacji (dobro wspólne, godność człowieka), ale również tych, których moc kształtują wartości fundamentalne wyartykułowane w Konstytucji RP oraz zasady z nich

wyprowadzone. W tym ostatnim przypadku rzecz dotyczy m.in. innych niż wolność gospodarcza praw i wolności oraz wartości i zasad (pewność prawa, ochrona praw nabytych, ochrona konkurencji, prawosć woli prawodawcy i organów stosujących prawo, autorytet państwa i prawa itd.). Rodzi to szereg wyzwań i aksjologicznych dylematów nie tylko natury ekonomicznej, lecz także prawnej i etycznej. Zasadne w związku z tym staje się dokonanie właściwej identyfikacji podstawowych normatywnych filarów i wartości ujmowanych w kontekście obowiązującego prawa oraz potencjalnych zagrożeń dla aksjologicznych fundamentów publicznego prawa gospodarczego. Istotne jest również zwrócenie uwagi na problem inflacji prawa, pewność rozwiązań normatywnych, ochronę praw nabytych i maksymalnie ukształtowanych ekspektatyw, jak i bezpieczeństwo prawne oraz nadmierną relatywizację podstawowych wartości stanowiących o istocie porządku prawnego. W zakresie aksjologicznych aspektów ładu gospodarczego ważną rolę odgrywa budowanie autorytetu państwa i prawa oraz rozwijanie etosu służby publicznej. W artykule wykorzystano metodę dogmatyczną i posiłkowo także inne metody.

Słowa kluczowe: aksjologiczne podstawy ładu gospodarczego, kluczowe wartości, inflacja prawa, bezpieczeństwo prawne, dysfunkcyjność ładu prawnego

Резюме: Данная статья посвящена аксиологическим основам экономического порядка в контексте ключевых ценностей. Несомненно, формирование рыночной экономики и реализация экономической свободы являются важными ориентирами в процессе ее построения. Однако следует иметь в виду, что классическая концепция управления в этом отношении является чрезмерным упрощением. Следовательно, правомерно подойти к ней с точки зрения идеи ее трехгранной реализации и выявления базовых ценностей, лежащих в ее основе. Моя основная цель – обосновать тезис о том, что проблема формирования аксиологических основ экономического порядка должна рассматриваться через призму ценностей, которые черпают свое обоснование не только из позитивно-правовой легитимности (общее благо, человеческое достоинство), но и тех, сила которых определяется фундаментальными ценностями, сформулированными в Конституции Республики Польша, и вытекающими из них принципами. В последнем случае речь идет, в частности, о правах и свободах, отличных от экономической свободы, а также о ценностях и принципах (правовая определенность, защита приобретенных прав, защита конкуренции, добросовестность воли законодателя и органов, применяющих закон, авторитет государства и права и т.д.). В связи с этим возникает ряд проблем и аксиологических дилемм не только экономического, но и правового и этического характера. Поэтому правомерным становится правильное определение основных нормативных ориентиров и ценностей, рассматриваемых в контексте действующего права, и потенциальных угроз аксиологическим основам публичного хозяйственного права. Важно также обратить внимание на проблему инфляции права, определенности нормативных решений, защиты приобретенных прав и максимально сформированных экспектаций, а также правовой безопасности и чрезмерной релятивизации базовых ценностей, составляющих суть правового порядка. С точки зрения аксиологических аспектов экономического порядка важную роль играют укрепление авторитета государства и права и развитие этоса государственной службы. В статье используется догматический метод и, дополнительно, другие методы.

Ключевые слова: аксиологические основы экономического порядка, ключевые ценности, инфляция права, правовая безопасность, дисфункциональность правового порядка

Рецензія: Стаття присвячена аксіологічним основам господарського порядку в контексті ключових цінностей. Безперечно, формування ринкової економіки та реалізація економічної свободи є важливими орієнтирами в процесі її побудови. Слід однак пам'ятати, що класична концепція порядку в цьому відношенні є надмірним спрощенням. Тому її доцільно сприймати в ракурсі ідеї його тривимірної реалізації та визначення базових цінностей, що лежать в його основі. Першочерговою метою я ставлю собі обґрунтування тези про те, що проблему формування аксіологічних основ господарського порядку слід сприймати крізь призму цінностей, які не лише виправдовуються позитивно-правовою легітимністю (загальне благо, людська гідність), але також тих, які формуються фундаментальними цінностями, сформульованими в Конституції Республіки Польща, і принципами, що з них випливають. В останньому випадку це стосується крім економічної свободи, прав і свобод, також цінностей і принципів (правової визначеності, захисту набутих прав, захисту конкуренції, справедливості волі законодавця і правоохоронних органів, авторитету держави і права тощо). Це породжує низку викликів і аксіологічних дилем не лише

економічного характеру, а й правового та етичного характеру. Тому стає доцільним належним чином ідентифікувати основні нормативні стовпи та цінності, визнані в контексті чинного права та потенційні загрози аксіологічним основам публічного господарського права. Важливо також звернути увагу на проблему правової інфляції, визначеності нормативних рішень, захисту набутих прав і максимально сформованих очікувань, а також правової безпеки та надмірної релятивізації базових цінностей, що говорять про суть правового порядку. В аксіологічних аспектах господарського порядку важливу роль відіграють розбудова державно-правового авторитету та розвиток етосу публічної служби. У статті використано догматичний метод та інші.

Ключові слова: аксіологічні основи господарського порядку, ключові цінності, інфляція права, правова безпека, дисфункційність правового порядку

Introduction

The issue of commercial operations could be depicted across an excessively wide time frame.¹ However, it seems proper to boil the issue indicated in the title of this paper down to the period during which the market economy and the principle of the economic freedom as its significant displays served as a reference point. Thus it is undeniable that the problem of erecting axiological foundations for implementation of the economic order should be considered in this context. This problem should be perceived through the lens of the values which are justified not solely through the positive-legal legitimization (common good, human dignity) and the values which are based on the principles expressed in the Constitution of the Republic of Poland or its provisions. In the latter case the issue concerns e.g. the rights, freedoms, values and principles other than the economic freedom (certainty of law, protection of acquired rights, protection of competition, righteousness of will of the legislator and the bodies implementing the law, authority of the state and the law etc.).

The basic goal of this paper is justifying the thesis proclaiming that the market economy and the economic freedom are not entities in on themselves and that it is necessary to refer to the key values, common good and human dignity in particular, to develop public order in this field. Despite (rightfully) being expressed in the Constitution of the Republic of Poland these values do not require positive-legal legitimization to materialize. These values are fundamental and universal as confirmed not only within the framework of the social teachings of the catholic church and the person-oriented vision of the public order but also under e.g. judicature of the Constitutional Tribunal. These values were reaffirmed in numerous verdicts of the Constitutional Tribunal. My work related to tackling these issues

¹ M. Zdyb, *Zarys historii myśli organizatorskiej*, Lublin 1987.

(1997–2006) was also an inspiration for engaging in more thorough deliberations and drawing more comprehensive conclusions. The values which are carried and effected through provisions of the Constitution or which derive from these provisions are also of major significance. The economic freedom is a specific point of reference for the economic order but it cannot be considered in separation from other legal values. Therefore anchoring these values in the constitution as well as authority of state and law may be important in this context (even if it may not be necessary). It is related to the care for certainty of law, eliminating dysfunctions of the legal system as well as various displays of excessive relativism in approaching values. This paper, understandably, primarily utilizes the dogmatic method although a limited need for utilizing other methods existed as well.

1. The modern ideas of the public order in the context of commercial operations. Axiological dilemmas

The views of A. Smith (1723–1790), the author of *An Inquiry into the Nature and Causes of the Wealth of Nations*² (and also *The Theory of Moral Sentiments*³) and D. Ricardo (1722–1823)⁴ are frequently indicated as the starting point for the modern deliberations concerning the essence of economic order and economic freedom under the market economy. Both scholars are considered as the forerunners of the classical school and specific personifications of the liberal vision of the market economy. A. Smith claimed that: “A society may emerge among different people, as well as among different merchants, through its utility, without love and attachments; although no one will have any attachment or feel gratitude towards nobody it may survive through beneficial exchange of simple services consistent with their determined values.”⁵ As a result: “No provisions related to commerce may increase productivity of a society beyond what the capital is able to activate.”⁶ Undoubtedly representatives of the classical school and those continuing their work perceived commercial operations’ issues primarily in the economic categories assuming that the market is capable of self-regulation. Therefore they minimized or even negated the need for the state and law acting in the capacity of guardians of order and

² A. Smith, *Badania nad naturą i przyczynami bogactwa narodów*, Warszawa 2007.

³ Idem, *The Theory of Moral Sentiments*, London 1831.

⁴ D. Ricardo, *Zasady ekonomii politycznej i opodatkowania*, Warszawa 1957.

⁵ A. Smith, *The Theory...*, p. 135.

⁶ Idem, *Badania nad naturą...*, p. 54.

security in the area of economic relations. The idea of unprompted order and the corresponding concept of economic freedom as well as the thesis regarding the self-regulation capacity, expressed in the concept of the so called 'invisible hand of the market', along with the convictions regarding exceptional values and virtues of the so called natural, self-creating freedom advocated by A. Smith became the symbols of such approach.

Recognizing A. Smith and D. Ricardo as fathers and precursors of the market economy and economic freedom appears to be a not fully justified oversimplification. The primacy in this matter unquestionably lies with the oldest of the existing Spanish universities, i.e. the University of Salamanca (established in 1208) which was under the protection and great patronage of Isabelle I the Catholic (Isabelle I of Castile) and Ferdinand II the Catholic (Ferdinand II Aragonian). These monikers were imparted upon them by the contemporary pope. During their reign the university grew to the position of one of the most significant universities in the world, also in terms of developing and shaping economic order and its axiological foundations and values referring to the basics of the Latin culture. Following their death, primarily after establishing the order of Jesuits (which contributed greatly to science, also in the field of economic sciences) the university contributed to developing the economic order standards (similarly to the Portuguese University of Coimbra established in 1290). These universities undoubtedly launched the works on developing the foundation for the market economy as early as in the XVI and XVII century. The foundations of these concepts primarily consisted of the views of Francisco de Vitoria from Spain (1486–1546), a lawyer and morality theologian delivering lectures in Sorbonne and Salamanca, D. de Sato (a lawyer, the chancellor of Castile), D. de Cavarrubiasa Leive (the bishop of Segovia) and the most representative of them all, L. de Molina, a Jesuit from Salamanca and the author of *De Justicia et Iure* work consisting of five volumes. These scholars, F. de Vitoria and J. de Molina in particular, drew attention to the axiological and legal foundations of the economic order and the moral aspects of engaging in commercial operations. Despite preceding scientific works of A. Smith and D. Ricardo the legal concepts developed by the professors from Salamanca and Coimbra are not well known. It is so because they got ahead of the age of factual development of the market economy.⁷

Therefore the views of the so called classicists of the market economy became the reference point for numerous liberal concepts of XIX, XX and even XXI century. They supplemented and, at times, expanded the classic concepts of A. Smith and

⁷ M. Zdyb, *Komentarz do art. 2*, in: M. Zdyb, G. Lubeńczuk, A. Wołoszyn-Cichocka, *Prawo przedsiębiorców. Komentarz*, Warszawa 2019, p. 86.

D. Ricardo. The multitude and these concepts and their diverse character forces us to merely indicate them. We may indicate, if only, J.S. Mill who in his work titled *On Freedom* adopts the premise that freedom begins with becoming aware of it but simultaneously turns readers' attention to the importance of spontaneous acts and the concept of utility, in its praxeological understanding, and emphasizes that the utility is "the last instance in all ethical dilemmas."⁸ In this field it is even more difficult to accept the views of J. Bentham who advocates for the idea of relativism not only in the field economy but morality and ethics as well.⁹ We could say that reflecting on the universal axiological foundations and basic values is of no greater importance for operations of the economic freedom because such values did not become systemic values. Such reasoning may lead us to the conclusion that they are not values at all but instead components of the game of interests. Therefore morality, integrity, justice, truth, falsehood etc. do not exist because behaviours and results of commercial operations are decided by a game of, as depicted in Anotnioni's film, invisible football. Thus the excessive individualism became a peculiar problem. According to J. Bentham only an individual matters: "A society is a fictional organism [...] it is a sum of interests of individuals who form it."¹⁰ Such approach to commercial operations can be accused of: single-dimensionality, faith in economy's capacity for self-regulation, fetishization of artificial systems of values.

Beginning with the XIX century and even as early as in the XVIII century the market economy and the economic freedom became the designata in shaping the modern models of the economic order. The extreme approach to this phenomenon was rooted in the views of classic scholars and, later, in the views of J.S. Mill and J. Bentham,¹¹ P. van Parijs,¹² K. Popper, J. Eccles¹³ and various others expressed similar views. The singular (economic) understanding of the economic order and standards of the market economy, as well as excessive and gullible faith in the self-developing market instruments being adequate for unobstructed and unprompted realization of moral values as well as the faith that under such circumstances actions of the legislator will not be required became excessively primitive and perverse as indicated on the global scale by the great crises from the threshold of XIX and XX centuries as well as the crises of the 20s and 30s of the XX century.

⁸ J.S. Mill, *O wolności*, Warszawa 1959.

⁹ J. Bentham, *Utylitaryzm*, Warszawa 1959, pp. 29 ff.

¹⁰ Idem, *A Fragment on Government and on Introduction to the Principles of Morals and Legislation*, Oxford 1960, pp. 126–127.

¹¹ Idem, *Utylitaryzm...*

¹² P. van Parijs, *Evolutionary Explanation in the Social Science. An Emerging Paradigm*, New Jersey 1981.

¹³ K. Popper, J. Eccles, *The Self and Its Brain*, New York 1977.

Thus the critical approach of not only the exceptional scholars from the fields of law, philosophy of law and economy, who perceived the economic order ideas and considered the related problems in the categories of axiology and the three-level approach (economy, law and moral-ethics) – i.e. in the context of the qualitative categories reflected in specific values, appears to be crucial, also when the foundations of such understanding consist of the quantitative approach, as in the case of e.g. games theory.

The games theory (not to be confused with the market game as understood under the classicist approach) assumed that, in principle, under the market economy conditions zero-sum games emerge relatively rarely, whereas the situations when scope of risk is extensive, numerous entrepreneurs participate in the games and the games itself are, for economic reasons, games of conflict are of key importance. Under such circumstances the environment in which commercial operations are carried out, various utility functions of specific actions which cannot be boiled down to quantitative categories (moral values, aesthetic sensations, moral satisfaction) and the obligation to adhere to the principle of rationality are of major importance. An entrepreneur behaves rationally when the decisions which are being made are beneficial to him.

For an entrepreneur who engages in various commercial operations and at the same time has an opportunity to compensate for losses through the effects of other types of activity/operations it may be favourable to engage in economic activities which will not yield profits at a specific time, e.g. in selling services and goods at a price lower than the manufacturing and realization costs. Rendering services and selling goods at a price lower than manufacturing costs when other entrepreneurs do not have such opportunity may lead to business failure of the latter. Such state of affairs may result in eliminating competitors and, later, increasing prices of goods and services with the goal of compensating for previous losses. Such circumstances forced legislators to implement appropriate legal regulations concerning: counteracting unfair competition; counteracting unfair market practices, establishing regulations concerning dumping practices and offences against economic exchange and trade. The goal was to develop the so called “commercial integrity.” Thus we may say that under such approach the necessity of adhering to moral norms and the appropriate legal provisions which eliminate or should eliminate pathological behaviours become prerequisites for proper functioning of the economy. It is related to the necessity of introducing legal standards shaping the basic principles of an integrous market game and righteousness of will. This issue is of particular importance for the so called “non-zero sum conflict market games” where: a) a loss of one entrepreneur does not necessary result in win of the other entrepreneur and therefore the win of one entrepreneur

does not necessary result in the loss of the other; b) owing to entrepreneurs coordinating their actions it is possible to produce results more beneficial than the level of security. In all cases not only the spontaneously developed economic rules of conduct are of importance but also the legal norms, moral standards, adherence to the principles of integrity and rationality of actions.

In the context of the legal-economic order and related strictness the state-individual relation is not (should not be) a game of conflict (in the traditional understanding) because the state, bearing in mind human dignity and resulting rights as well as common good, is (or at least should be) interested in well-being of every entrepreneur (citizen) who acts with respect for the law.

In the commercial operations aspect the games theory indicates numerous examples of conflict situations where participants, e.g. the state – an entrepreneur – a citizen or an entrepreneur – other entrepreneurs, hoping that other participants will act with integrity and rationally, attempt to ‘outsmart’ each other hoping that the other party will adhere to the universal principles and rules of conduct and thus an opening will emerge – if they will act unfairly – for acquiring benefits and profits greater than the benefits and profits obtained as a consequence of adhering to the standards and principles of a market game. Under such circumstances the additional ‘benefits’ or profits (in the economic understanding) will be secured by the party violating the law and acting unfairly. Such state of affairs is perfectly demonstrated by such games as ‘the prisoner dilemma’, ‘the game of chicken’ or ‘the marriage problem.’ These games indicate that, by nature, we should behave morally, rationally and adhere to the legal and economic principles as well as the fundamental values which lay at the foundation of the public order and establish the sense of security and trust between an entrepreneur and other entities and in the case of the entrepreneur – state relation build authority of the state, trust of state authorities in entrepreneurs and citizens and vice versa. In case of a market game fraudulent and dishonest behaviours and actions frequently contributed to economic crises or loss of trust in the state and state institutions e.g. the central bank or persons of public trust (e.g. commercial banks). Frequently it pertained to the Central Bank (the State) – commercial banks – a citizen (acting as a credit recipient) relation. The state, or rather the National Bank of Poland which embodies the state authority, being obliged to care for the value of currency and through utilizing appropriate instruments, including interest rates, may protect the foundation of the monetary order which is of major significance for establishing the economic order and legal security. Article 227 Section 1 of the Constitution of the Republic of Poland explicitly indicates that the National Bank of Poland guards the value of money and bears the related responsibility. Inefficiency of actions of e.g. the National Bank of Poland

and its bodies as well as appropriate state authorities, when their actions serve only instrumental goals and contribute to inflation and rising prices, is not only a violation of law but may also be immoral and to the detriment of the authority of the state and persons of public trust. The thesis imported from the USA proclaiming that it does not pay to be unfair and dishonest applies not only to citizens but to the state and persons of public trust as well.

Thus it should be claimed that developing all economic relations on the foundation of basic values and the premise that it does not pay to act without integrity, not only the economic but the moral and legal integrity as well, is important for public order in terms of economic relations. We should also bear in mind that freedom is not something assigned but rather something which is being developed and everyone takes responsibility for exercising his freedom. Under such premises the foundations of the USA public order were developed following the great economic crisis which developed on the turning point between the 20s and the 30s of the XX century.

In summary, we must ascertain that in relation to the above an entrepreneur should be aware that integrity and righteousness of will, respecting the fundamental values of law and adhering to properly legitimized law are values crucial for developing the economic order. Such state of affairs is universal in character and pertains also to the actions taken by state authorities. Under such circumstances the state should act not only as an administrator of a certain empire but also as a medium for rationality, righteousness of will and justice. Through integrous and just actions and through respecting common good and human dignity the trust of citizens (entrepreneurs) in the state and its bodies as well as the authority of law is being developed. Each dishonest and unfair action gives birth to mistrust, sense of wrong and deteriorates trust in the other party. Under such circumstances the perfidiousness and perversity in approach to values, excessive relativism, glorification and absolutization of artificial systems of values and axiological nihilism are particularly dangerous.¹⁴

2. The basic pillars and values of the public order within the framework of economic activity

Undoubtedly following the 'prenatal' period related to the classicist school of the market economy theory it has been observed, also in the liberal circles, that at a certain level of

¹⁴ M. Zdyb, *Komentarz...*, pp. 93–94.

economic development the agency of the idea of spontaneous order not only decreases but also gives birth to a number of detrimental phenomena. The extremely liberal and individualistic approach to commercial operations required significant and thorough verification. Such approach was accused of: 1) normative and ethical nihilism, 2) axiological relativism, 3) excessive utilitarianism, 4) uncontrolled concentration of capital as well as, 5) not perceiving the importance of the fundamental values such as human dignity and common good – this in turn led to stratification of society which is conducive to pauperization of the general populace in favour of the few. Excessive concentration of the capital led to factual weakening of economic freedom and competition – values crucial for the market economy. Thus a problem emerged – how to eliminate circumstances under which the rules of the market game were being determined not by the market itself but by the few strongest players who through holding the economic power determined the basic principles of the game without considering the principles of integrity or even the normatively developed standards.

Therefore the need for intervention emerged, e.g. in the field of unfair competition, unfair market practices and moral and legal relativization of the rules of conduct. Appropriate legal regulations and entities holding appropriate causative power and legal implements adequate for enforcing the standards of the so called “commercial integrity,” i.e. conducting economic activity consistently with moral principles, and capable for shaping the space for crucial values of the public order, common good and human dignity in particular, had to emerge at the foundation of such process. This problem could be in particular observed in the conservative concepts of the economic order which did not question the role of the market as one of the regulators of the economic order but indicated the need for modifying its role consistently with the fundamental values. The attention to this issue has been drawn by e.g. the German *ordo*-liberals with W. Röpke at the forefront. As he wrote: “[...] It is true that at a certain age we have to go through all stages of madness. We became aware of the excesses of capitalism – the colossus, and then we were carried away by the collectivism in which many sought salvation. People take note of the common qualities of these phenomena and currently should be fed up with their role as a well-oiled cog in the social, political and economic machine. People wish to become people in the most true and simplest understanding, they wish to be themselves, to belong to their family and greater community, they sense with an irresistible force that the modern society sentences them to living the life discordant with the human nature.”¹⁵

¹⁵ W. Röpke, *Powrót do niepowtarzalności*, Znak 1990, no. 10–11, p. 71 (translated on the basis of W. Röpke, *Civitas humana. Grundfragen der Gesellschafts- und Wirtschaftsreform*, Erlenbach-Zürich 1946).

Also other representatives of this trend noticed that the excessive utilitarianism, individualism and relativism, i.e. not observing the basic values or even holding them in contempt, also the contempt transferred to other aspects of the public order, are a major obstacle for developing economic order.¹⁶

The need for modifying liberalism towards conservatism was expressed in the postulate advocating for axiologization of the economic freedom, reinforcing position of the state through providing it with the capacity for protecting the very essence of freedom and, where applicable and necessary, the capacity for shaping wise and rational restrictive mechanisms and combining this type of freedom with the responsibility for executing it, eliminating all pathological behaviours and displays of unfair competition, artificial weakening of the value of currency etc. This type of activity in the fields of law, economics and morality served as the foundation for the idea of the three-level materialization of law in the process of developing foundations for public order. These and other views laid at the foundation of the German economic miracle symbolized by the reign of chancellor K. Adenauer.

The issues demonstrated herein-above were presented even more explicitly and blankly in the views of Michael Novak (born 1933), an American conservative political philosopher. In the part of his work I frequently invoke titled "Beyond economics, beyond politics" he wrote: "The statue of Liberty gifted to the United States of America by France more than a hundred years ago is a symbol of true freedom; a woman – not a warrior – in one hand she holds a torch of enlightenment guarding against the darkness, in the other the book of laws. This dame, undeniably stern, disciplined and with expression of focus, is a proper symbol of freedom; a pornographic shop in Manhattan lit up with neon lights most certainly is not. If the symbols of moral decadence were to become the symbols of liberal societies the freedom would go extinct within a single generation. You don't have to be a puritan – within the liberal vision there is place to spare for carnality and pleasure – to notice that the freedom is primarily a quality of spirit, intellect, the world based on the wisdom of law."¹⁷ Thus Pope John Paul II in his encyclical *Centesimus annus* adopts that pure economism isolated from laws and morality as well as common good and human dignity in its approach to the market economy is a form of materialism which differs from the Marxist materialism solely in the quantitative categories. However, Pope John Paul II adopts that "if we were to understand capitalism as an economic system which recognizes the principal and positive role of an enterprise, the market, private property and the related responsibility for means

¹⁶ A. Rüstow, *Das Versagen des Wirtschaftsliberalismus*, München 1950, p. 52.

¹⁷ M. Novak, *Poza ekonomiq, poza politykq*, Znak 1994, no. 6, pp. 94–95.

of production as well as free human initiative in the area of economy the capitalist model would be worthy of proposing to all nations.¹⁸

Bearing in mind the above it must be adopted that the market economy and economic freedom are values established on the level of the Constitution of the Republic of Poland (and they derive from it) and therefore they are entitled to appropriate protection and the possibility of limiting them to the extent determined by the Constitution and axiologically eligible. We should also take in to consideration that such restrictions can be imposed only through a major legal act and when justified through major public interest (e.g. threat to life, health, public order, public morality, environment protection, in consideration of other laws, rights and freedoms etc.). These restrictions cannot violate the essence of freedom including, obviously, taking the freedom away (see: Article 22 and 31 Section 3 of the Constitution of the Republic of Poland). Such state of affairs means that market operations, competition and the economic freedom are not entities in on themselves. They should be perceived in the context of the most crucial values of public order i.e. common good and human dignity. Existence and essence of these values is not dependant on the appropriate acts of the positive legislator although the legislator may form the normative foundations for their execution. Therefore these values are the key pillars of every legal order (also in the economic order).

Due to the contemporary complexity of the modern economic relations establishing any type of order in the philosophical, legal or economic understanding must not lead to chaos and a crisis devastating the economy and, as a result, encroaching upon other areas of functioning of the state and other communities and, at the same time, corrupting the principle of a state governed by the rule of law. This is why contemporarily it is impossible to shape the economic order without referring to common good¹⁹ and, in consequence, the principles of justice and subsidiarity. Therefore the commercial law not only may but also should be perceived as one of the reference points for the search for its axiological perspective. The law is meaningless or means little if it is not aimed at the supra-systemic values

¹⁸ Jan Paweł II, *Encyklika Centesimus annus*, Wrocław 1991, p. 128.

¹⁹ Ibidem, passim; J. Majka, *Etyka społeczna i polityczna*, Warszawa 1993, p. 243; M. Zdyb, *Dobro wspólne w perspektywie art. 1 Konstytucji RP*, in: *Trybunał Konstytucyjny. Księga XV-lecia*, Warszawa 2001, pp. 190–205; idem, *Drogi i bezdroża państwa prawnego*, in: *Konstytucja. Ustrój, system finansowy państwa. Księga pamiątkowa ku czci prof. Natalii Gajl*, eds. T. Dębowska-Romanowska, A. Jankiewicz, Warszawa 1999, pp. 197–235, as well as: idem, *Służba publiczna*, in: *Prawość i Godność. Księga pamiątkowa w 70. rocznicę urodzin Profesora Wojciecha Łączkowskiego*, eds. A. Gomułowicz, S. Fundowicz, F. Rymarz, Lublin 2003, pp. 349–377; see also the Judgment of the Constitutional Tribunal of 25 February 1999, K 23/98, OTK 1999, no. 2, item 25.

(positive-legal values).²⁰ The provisions of positive law undeniably constitute a significant and crucial but not the sole point of reference in the attempts at identifying the legal norms referred to the specific factual states. System-wide and fundamental values which are the foundation for public order (and the legal order) of the state are significant for developing such provisions. They cannot contradict the axiological core of the legal order.²¹ Therefore I fully share the view of A. Kaufmann who claims that “a positivist who sees only acts and shuts himself off from other supra-act aspects of law is for this very reason [...] powerless in the face of each form of corruption of law effected by a political force.”²² Thus it is necessary to refer to two fundamental values, i.e. common good and human dignity.

It should be adopted that the common good is not only an expression of the expectations of individuals but also an obligation to accept the supra-individual values. We should agree with J. Krucina who claims that the common good is a specific emanation of the natural order which is a symbol of unity of individuals and the society forming a community. It is being determined by: “1) humans – because a human is primarily a person within a community, works towards becoming a part of a community, grows within it and wishes to participate in it by giving and taking; 2) therefore humans cannot be separated from each other and must remain together [...]; 3) the relations connecting people are not of any kind and indifferent but instead are aimed at some unifying factor; this mutual relation grows on the foundation of inherent and imparted goods, values and goals which give people the strength to come together and become a common good of a society [...]; 4) in caring for common good people discover a part of themselves within its values, a personal individual good.”²³ Thus it is undeniable that determining common good is related to the necessity of taking into consideration other values which supplement this concept, even if it serves as their foundation. It is related to the necessity of breaking down its contents into its most basic components. These components are ultimately responsible for expressing the essence of this concept. Therefore the common good should always be analyzed in the context of the democratic state governed by the rule of law, the principle of social justice, respecting human dignity and the rights which are based on the common good because these values are the specific emanation of the common good.

²⁰ Such as e.g. M.A. Krąpiec, *By ocalić suwerenność*, Toruń 1997, p. 8.

²¹ F. Longchamps, *Z problemów poznania prawa*, Wrocław 1968, pp. 32–33.

²² A. Kaufmann, *Rechtsphilosophie, Rechtstheorie, Rechtsdogmatik*, in: *Einführung in Rechtsphilosophie und Rechtstheorie der Gegenwart*, eds. A. Kaufmann, W. Hassemer, Heidelberg 1989, p. 17.

²³ I. Krucina, *Wokół wartości najwyższych*, Wrocław 1996, pp. 14–15.

The fact that the common good is not a fully defined and clear concept does not mean that the bodies exercising the law enjoy discretionary powers which impart upon them the freedom of interpretation. Such body enjoys not as much the power and freedom of specifying it as it sees fit but rather the obligation to develop the optimal extent of power in consideration of the fundamental values. Rooting common good within the framework of a specific normative structure of positive law not always provides a proper foundation for determining its contents in this field without referring to the supra-systemic values which do not require positive-legal legitimization and which specify this law. We should bear in mind that understanding of these values is influenced by tradition, legal culture, goals of the legislator who contributed to introducing these laws/provisions into the legal order or even by the specific metaphysical conditions and references. Thus it is an oversimplification to assume the existence of specific opposition, particularly against the concepts of common good and human dignity, in advance although elements of disharmony may emerge. However, in principle, these concepts supplement each other and constitute the two key pillars of public order, also in the area of economic relations.

Undeniably in the context of the economic order, just like in the case of other areas of law, human dignity is a basic value and this fact is reflected in both the doctrine²⁴ and verdicts of the Constitutional Tribunal.²⁵ Human dignity demonstrates our humanity and essences regardless of the area in which we operate. It concerns all personal incarnations and circumstances. Those who in the time of contempt, in the inhuman land 'reigned over' by the fascist and Bolshevik tormentors attempted to deprive people of their wealth, houses, families, friends and life were unable to deprive people of human dignity.

The economic life, the past and the contemporary, is not entirely free from the contempt aimed against the weak, from the conviction that human trafficking can

²⁴ J. Bucińska, *Godność człowieka jako podstawowa wartość porządku prawnego*, Prawo – Administracja – Kościół 2001, no. 2–3, pp. 31 ff.; K. Complak, *Uwagi o godności człowieka oraz jej ochrona w świetle nowej Konstytucji*, Przegląd Sądowy 1998, no. 5, p. 44; F.J. Mazurek, *Godność osoby ludzkiej podstawą praw człowieka*, Lublin 2001; M. Jabłoński, *Pojęcie i ochrona godności człowieka w orzecznictwie organów władzy sądowniczej w Polsce*, in: *Godność człowieka jako kategoria prawna*, ed. K. Complak, Wrocław 2001, pp. 304 ff.; L. Urbanek, *Pojęcie godności człowieka w Konstytucji RP z 1997 r. a problem definicji*, Prawa Człowieka 2000, no. 7, p. 67; M. Zdyb, *Godność człowieka w świetle art. 39 Konstytucji Rzeczypospolitej Polskiej*, in: *Normatywny wymiar godności człowieka*, eds. W. Lis, A. Balicki, Lublin 2012, pp. 41–73.

²⁵ The Judgment of the Constitutional Tribunal of 25 November 1997, K 26/97, OTK 1997, no. 5–6, item 64; the Judgment of the Constitutional Tribunal of 12 January 1999, P 2/98, OTK 1999, no. 1, item 2, p. 221; the Judgment of the Constitutional Tribunal of 15 November 2000, P 12/99, OTK 2000, no. 7, item 260; the Judgment of the Constitutional Tribunal of 7 January 2004, K 14/03, OTK 2004, no. 1A, item 1; the Judgment of the Constitutional Tribunal of 7 March 2007, K 28/05, OTK 2007, no. 3, item 29 etc.

be a source of profits, that a fellow man can be treated as an object, or that we are demonstrating our own strength when we deprive someone of life in order to secure profit. We may demonstrate our, at times imaginary, superiority over a fellow human but dignity cannot be deprived of its value nor can it be stolen, processed into profitable material goods. In numerous legal acts of the highest rank, international agreements, constitutions etc. we come across references to dignity. However, we must bear in mind that dignity is secured not through the will of domestic or international legislators but because it is of character reaching beyond the positive-legal qualities. The United Nations Charter, international conventions and agreements, Article 30 of the Constitutions of the Republic of Poland do not establish but only confirm the existence of inherent and inalienable human dignity.

‘Human dignity’ as D. Dudek rightfully notes in this context “with its major significance and implications is not a legal institution developed by law and strictly regulated [...]. It is a primal phenomenon independent of law and related to existence of a man, possible to reconstruct in the form of a definition rather philosophical (anthropological and ethical) or philosophical-legal in character than strictly dogmatic-legal.”²⁶ Under such circumstances we should adopt that human dignity is inviolable and that it deserves appropriate respect within the framework of the practices of all state bodies.

We should agree with F.J. Mazurek (Professor of The John Paul II Catholic University of Lublin) that in the context of the reference to a man “neither economy nor ideology or the state” are a measure of public and private actions. “In the core of the structure lies human dignity. The law inscribed in the Constitution cannot be treated as binding solely because it was established by the will of the state rulers. The constitution does not negate the powers of the state authority regarding establishing laws, their importance and binding force but always acts within the confines of the primary principle of human dignity.”²⁷ Human dignity is a justification and source of not only the economic freedom but also other rights and freedoms. Thus we cannot label the state in which freedom will lead to excessive restrictions or annihilation of other laws and freedoms (e.g. the right to live, the right to health protection, the property right etc.) as exercising freedom. The human dignity contains the categorical imperative which in this matter symbolizes the essence of the natural public order.

²⁶ *Zasady ustroju III Rzeczypospolitej Polskiej*, ed. D. Dudek, Warszawa 2009, pp. 43–44.

²⁷ F.J. Mazurek, *Godność osoby ludzkiej...*, pp. 157–158.

3. The basic (selected) axiological issues in the context of the dissonance of the economic order

3.1. General remarks

The development of legal order in the area of the commercial law and also other areas of reference should be undeniably connected to the attempts at eliminating the dissonance between values which are the primary designata of the axiological order. There are numerous related dilemmas. Therefore it is justifiable to draw attention to these dilemmas which may give birth to various displays of values' corruption regardless of the appropriate approach to such axiological and fundamental values as common good and human dignity. Thus we should primarily indicate the following problems: the inflation of law, the uncertainty of law, the damage to the authority of the state and law, liberation from the specific ethos of public service, relativization of the values significant to the legal order. It is crucial to draw attention to them at least cursorily.

3.2. Inflation of law

The problem of inflation of law is undeniably a major challenge, not only in the context of the axiological perspective of legal and economic order but also in the context of destruction of positive law and unacceptable relativization and nihilization of the values to which specific regulations refer. Inflation in the axiological sphere may lead to the conflict of values and, frequently, to the legal system and individual regulations becoming 'liberated' from these values. Frequently as a consequence of the inflation of law common good and human dignity are artificially put in opposition and instrumentalized. It pertains also to the values, rights and freedoms empowered by human dignity and these rights, values and freedoms should be put into primal and independent categories which are only confirmed by the positive law because in on themselves they possess primal legitimization.

Undeniably at the foundation of inflation of law, independently of the qualities indicated above, are:²⁸

²⁸ See also: M. Zdyb, *Dylematy ładu prawnego w kontekście inflacji i niektórych innych niedoskonałości prawa administracyjnego*, in: *Prawo administracyjne dziś i jutro*, eds. J. Jagielski, M. Wierzbowski, Warszawa 2018, pp. 425–441.

- liberating the commercial law from values; it leads to instrumentalization of values and glorification of artificial systems of values. All instances of relativization of values may lead to axiological and moral anarchy and lawlessness. S. Wyszynski strongly emphasized that: “Without restoring the moral order [...] Poland will remain stuck in the mire of crises.”²⁹ The contempt for values may give birth to the sense of lawlessness (the issue of so called ‘statutory lawlessness’), disturbing the basic solutions and regulations as well as lack of sense of legal security;
- lack of systemic solutions between specific legal regulations;
- inconsistency of legal solutions within the framework of the commercial law;
- lack of systemic understanding of law (e.g. in the field of the financial market);
- excessive number of legal regulations; as A. Zoll rightfully emphasized “the law has lost its function of motivating entities to engage in behaviour prescribed under legal norms due to the excessive number of regulations, their inconsistency, ambiguity and instability.”³⁰ In the peculiar jungle of legal regulations not only the citizens but also, in a certain sense, lawyers become lost. Law should be written for citizens, in a manner which ensures that recipients of law are capable of not only familiarizing themselves with its contents without help of experts but are also capable of understanding it;
- excessive number of amendments (there are instances of major changes being effected in an act at the *vacatio legis* stage);
- insufficient protection of the acquired rights; consistently with the case-law of the Constitutional Tribunal protection of acquired rights “prohibits arbitrarily abolishing or restricting legal rights of an individual or other private entities available under legal transactions”³¹;
- lack of adequate protection of the fully developed expectations;
- legal traps burdened with the risk of unintentional threat to citizens (e.g. in the area of tax law);
- excessive amount of legal regulations issued in the form of circular letters, guidelines, interpretations and instructions which encroaches upon the commonly effective law;
- inconsistencies in definitions;
- separating competences and responsibility related to realization of law etc.

²⁹ S. Wyszynski, *Prymas Tysiąclecia (Z przemówienia w uroczystość Matki Bożej Gromniczej w Gnieźnie w dniu 2 lutego 1978 r.)*, Paryż 1982, p. 144.

³⁰ A. Zoll, *Główne grzechy w funkcjonowaniu państwa prawa*, a paper delivered during “Czy Polska jest państwem prawnym?” conference, Warszawa, 15.10.2004.

³¹ The Judgment of the Constitutional Tribunal of 5 December 2013, K 27/13, OTK 2013, no. 9A, item 134.

The issue of inflation of law points towards the quality of law not being evidenced by the number of normative acts but their quality and, in a certain sense, their permanence and legal security the law guarantees.

3.3. Uncertainty of law

The certainty of law is undoubtedly of crucial importance for development of legal orders, permanence of legal order, proper development of the legal relations between key values and establishing the legal system on a solid foundation.³² The certainty of law cannot be guaranteed solely by the democratic foundations of its development formulated under the quantitative categories; even more importantly certainty of law should be guaranteed by the democracy formulated under the qualitative categories, i.e. in the perspective of axiological foundation. Owing to the laws of the Decalogue and the values stemming from the Old and the New Testament being inscribed deeply into our consciences and despite the passage of ages not only the Catholics treat these values as immovable stronghold of earthly public and personal order. For the faithful these laws and values are legitimized by the fact that they were imparted by the God, a perfect entity, whereas for others (nonbelievers or people of a different creed) these laws and values can simply constitute the quintessence of humanity. How important properly formulated and worded regulations (legal provisions) are for certainty of positive law is demonstrated by the certainty of the Roman law and Napoleonic codifications.

It is undeniable that the certainty of the positive law bolsters the righteousness of will of legislators and the bodies applying laws; it also induces the law-makers to reason in the pro-state and pro-citizen categories and not through the lens of the interests of various groups. The constant changes in law related to shifting political powers are dangerous for certainty of law. Everyone to whom law refers expects that the adopted legal solutions will establish a sense of permanence of these solutions and will enable recipients of law to plan their activity and impart upon them the sense of normative security. It is of particular importance in the area of economic relations. Uncertainty of law may induce the uncertainty regarding the future and reluctance towards the solutions the permanence of which is questionable and does not engender trust in the state and the law.

³² See also: M. Zdyb, *Pewność prawa (Legal Certainty)*, TEKA Komisji Prawniczej PAN – Oddział w Lublinie 2018, vol. 11, no. 1, pp. 421–443.

The dis-functionality of material and procedural law in regards to competences and structure of the bodies exercising the law as well as the dysfunctional attempts at overhauling dysfunctional regulation are not conducive to certainty of law. It pertains to e.g.: functioning of the financial market, rationing of commercial operations, the banking law, public procurement law, excess of bureaucratic obstacles, adopting hastily drafted laws and flimsy character of legal solutions.

The certainty of law is undeniably an axiological guarantee of legal security and the value conducive to developing trust in the state and the law. Its importance has been noticed by the Constitutional Tribunal which drew it from the normative preamble and expanded it with the comprehensive analysis of certain constitutional provisions contained within the articles of the Constitution (e.g. in Article 2 – the principle of a democratic state governed by the rule of law). On the level of acts referring to commercial operations we should draw attention to the act of 6 March 2018 – the Entrepreneurs Law³³ where the certainty of law has been emphasized in act's preamble and Article 11. The issue of certainty of law indicated in the preamble refers to both adoption and application of law. In turn, Article 11 refers to applying the law.³⁴ However, we should bear in mind that simply formulating the law under an act consistently with the aforementioned principle is not decisive for ensuring certainty of law. The practice of implementing this principle will be crucial in this matter.

3.4. Insufficient care for authority of the state and law as well as the public service ethos

The issue of establishing the authority of law in the field of commercial operations has been discussed above. Here we should indicate that the key to doing so undeniably consist of clear axiological foundations and values which should be carried by the positive law and state bodies with the goal of ensuring that we may state that the law is the art of everything good, just, rational and prudent but also moral and ethical. It also concerns the authority of the ruling power.

Bearing the above facts in mind it appears legitimate to invoke two meaningful quotes. In this context F. Koneczny rightfully noted that: “The state does not exist beyond ethics nor does it stands above ethics. The so called strong rule is justified and good as long as it remains just [...] Lack of ethics in the state led [...] to characteristic perception of politics as the art of grabbing power [...]. If the state does not behave

³³ Journal of Laws [Dziennik Ustaw] 2018 item 646.

³⁴ Consistently with Article 2 of the Act: “without a justified reason a body does not depart from the determined and consolidated practice of resolving cases of the same factual and legal state.”

ethically in regards to the citizens how citizens can behave ethically towards the state? [...] The bizarre conviction that the law is enough of a connection between the state and the society does not belong to any part of the Latin civilization. Legal formulas supplanting conscience, formulas destined to be toys of authorities – a clear example of the Byzantine malady. [...] The state does not [...] hold the power to engage in unethical acts, i.e. the evil does not become moral and allowable because the state engages in evil acts or through being committed on the behalf of or by the state [...]. There is no power under the sun which could order its subjects to act against the Decalogue.”³⁵

D. Hollenbach further adds that “the government has a moral role to play: to protect human rights and ensure basic justice for all members of the community. The society [as in ‘the state’ – M.Z.] understood as a whole, as a conglomeration of diverse planes and aspects, bears the responsibility for jointly developing common good.”³⁶

The authority of public authorities does not stem solely from the requirements developed under legal provisions and the expectations based on their contents nor from the formal qualifications or specific personal relations. Undoubtedly it is not enough. Such authority is being developed through the sense of service. This is why restoring the ethos of public service appears to be so important contemporarily. Under no circumstances public service can be associated with servility, a spot in the hierarchy of power and perceiving the power through the lens of means required to obtain it. Public officials exercising power on various planes and levels of hierarchy should be characterized by the righteousness of will, just character of their actions and thinking in categories of the state and a citizen. Recently, as evidenced by the crisis which started in 2007, the countries with seemingly vast democratic traditions went through state institutions’ crisis and legal crisis and, as a result, contributed to exacerbating the economic crisis. The words of the Primate of the Millennium delivered during the launch of academic year at the Catholic University of Lublin in 1979 remain topical to this day: “Do not think that a nation can achieve its goals with the help of blank people who do not see the essence of public service and perceive it solely as servility.”

3.5. Excessive relativization of understanding of normative values

We can with full certainty claim that following the tragic experience of two World Wars and various totalitarian regimes the modern international conventions and

³⁵ F. Koneczny, *Rozwój moralności*, Lublin 1938, pp. 212–219.

³⁶ Quoting M. Novak, *Splot dwóch tradycji*, Znak 1990, no. 10–11, p. 11.

agreements as well as domestic constitutions and law in civilized states have been saturated with the values significant from the point of view of legal order and security. Undoubtedly despite the passage of time the United Nations Charter signed on the 16 October 1945 in Washington and the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in Paris remain crucial documents³⁷ which are certainly some of UN's greatest achievements. The majority of the phrases were reflected in constitutions of individual countries but was not always interpreted in the spirit of the aforementioned documents; this fact resulted in specific relativization of constitutions on the level of other domestic laws and agreements. Without establishing these laws on clear axiological foundations glamorous slogans and values may become a subject of unacceptable and intolerable relativization. They become as useful to a drunkard as a streetlight – not as a source of light but as a place to prop himself up against. The issue of moral perversity in approach to values was emphasized by e.g. J. Nagórny,³⁸ J. Onimus,³⁹ A.M. Krąpiec,⁴⁰ G. Radbruch⁴¹ as well as the author of this paper.⁴²

The theory of axiological neutrality of law frequently advocated for today, the 'moral situationism,' fetishization of the artificial systems of values, the single-minded approach to economic reality lead to relativization of the values of law and towards the assumption that everything is relative. It is undeniable that the axiological dilemmas and the possible conflict of values in the area of commercial law are not sparked by the essence of the economic freedom, as it is unquestionable, but instead by the understanding of the economic freedom in the context of diverse conditions.

Conclusion

In summary, it must be ascertained that the economic freedom is not something granted but rather something that has to be developed. Thus it should be understood not as an arbitrarily assigned privilege but as a task to be fulfilled, encum-

³⁷ [https://www.unesco.pl/fileadmin/user_upload/pdf/Powszechna Deklaracja Praw Czlowieka.pdf](https://www.unesco.pl/fileadmin/user_upload/pdf/Powszechna_Deklaracja_Praw_Czlowieka.pdf) [access: 7.07.2023].

³⁸ J. Nagórny, *Wychowanie do wartości moralnych. Perspektywa chrześcijańska*, Lublin 1993, p. 14.

³⁹ J. Onimus, *Próby odpowiedzi*, Warszawa 1972, pp. 9–12.

⁴⁰ M.A. Krąpiec, *Człowiek i prawo naturalne*, Lublin 1975, p. 38.

⁴¹ G. Radbruch, *Die Natur der Sache als juristische Denkform*, Darmstadt 1960, p. 42.

⁴² Journal of Laws 1947 no. 23, item 91. M. Zdyb, *Drogi i bezdroża...*, pp. 197–235.

bered with related responsibilities and the obligation to manage it appropriately. It cannot relate to state nihilism and liberating the economic order from morality and the so called 'commercial integrity'.

The state nihilism and moral relativism are not a part of human nature. "Fidelity, loyalty, courage, integrity, entrepreneurship, creative spirit, kindness, compassion and other regular virtues are still alive" as M. Novak wrote.⁴³ However, they are frequently overlooked or their contents are filled with normative mush, particularly in the field of application of law.

The deliberations contained within this paper were directed, similarly to my numerous other publications, by the personal vision of public order which assumes that in this context not only the literal wording of legal provisions is important but also – as I emphasized on numerous occasions – the law being an art of choosing what is good, right, just, prudent, rational and wise. Thus the thesis was born proclaiming that to establish legal order in the area of economic relations it is not sufficient to adopt a certain number of laws because to play its role the laws have to be founded on clear axiological foundations which embody the essential values. Common good (Article 1 of the Constitution of the Republic of Poland) and human dignity (Article 30) perceived not in opposition but in mutual relation are of primary importance under these circumstances. They exist regardless of being legitimized by law or positive reception. Every legislator must bear these values in mind, also when considering rights and freedoms (including the economic freedom) stemming from human dignity. They are undoubtedly supplemented with various systemic values resulting from the social principle of the market economy, the need for protecting other rights and freedoms, the idea of social justice etc. In conclusion, it would be prudent to claim that the axiological foundations of the legal-economic order are, as per this paper, threatened by such phenomena as: normative and ethical nihilism, axiological relativism, uncontrolled concentration of capital, uncertainty in the field of developing and applying law as well as inflation of law, not caring appropriately for developing and maintaining authority of the state and law etc.

Translated by Monika Zielińska

⁴³ M. Zdyb, *Drogi i bezdroża...*, p. 106.

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