

## Radbruch's formula and the conscience of a Saint: Cardinal Alojzije V. Stepinac

Formuła Radbrucha i sumienie Świętego. Kardynał Alojzy W. Stepinac

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**Abstract:** This paper examines the life of Blessed Cardinal Alojzije V. Stepinac during three regimes that were very hostile towards the Catholic Church and its values. The paper discusses the values by which Blessed Stepinac lived and explains that his teachings correspond to the rules of conduct established by the German legal philosopher Gustav Radbruch. According to the latter, laws that contain no traces of humanity and are unbearably unjust should not be considered laws that must be followed. Cardinal Stepinac accepted the political realities of his times but denounced the evils present in each of the regimes under which he served as archbishop of Zagreb and shepherd of his flock. In doing so, he always underlined the values of equality, humanity and religious freedom.

**Key words:** Cardinal Aloysius Stepinac; Gustav Radbruch; legal theory; natural law; Catholic Church; religious freedom

**Streszczenie:** W niniejszym artykule analizie poddano życie błogosławionego kardynała Alojzego W. Stepinaca w czasie panowania trzech reżimów, które były jawnie wrogie wobec Kościoła Katolickiego i promowanych przezeń wartości. Prowadzone analizy obejmują wartości, według których żył ten błogosławiony i prowadzą do wniosku, że jego nauczanie koresponduje z zasadami postępowania ustanowionymi przez niemieckiego filozofa prawa, Gustava Radbrucha. Według tego myśliciela ustawy, które nie odzwierciedlają godności człowieka i są skrajnie niesprawiedliwe, nie powinny być uważane za prawo, którego należy przestrzegać. Kardynał A.W. Stepinac potrafił zaakceptować polityczną rzeczywistość. Demaskował jednak zło, które było obecne w każdym z reżimów, w czasie, gdy służył jako arcybiskup Zagrzebia i pasterz powierzonych mu wiernych. Czyniąc to, stale podkreślał wartość równości, człowieczeństwa i wolności religijnej.

**Słowa kluczowe:** kardynał Aloysius W. Stepinac; Gustav Radbruch; teoria prawa; prawo naturalne; Kościół Katolicki; wolność religijna

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No one in the European Catholic clergy so clearly spoke  
against Nazi crimes as Blessed Cardinal Stepinac  
and the Dutch Catholic Cardinal Johannes de Jong.

MICHAEL PHAYER

## Introduction

The story of Blessed Aloysius Stepinac, the Croatian archbishop and cardinal of the Holy Roman Church, has still not been told enough. Stepinac was a beloved cardinal of the Holy Roman Church, who was unjustly tried by a communist court in Zagreb for being a servant of his people with the Roman belt on his robe. That belt became a cross.<sup>1</sup> Blessed Aloysius was named after St. Aloysius Gonzaga, the Jesuit saint whom Stepinac admired and who protected him throughout his life. This article is written from both a legal and a moral point of view. It focuses on the laws of Yugoslavia's unjust Communist regime and on Cardinal Stepinac's conscience – the central force of his Christian life.

As one explores Stepinac's life in more detail, one realizes that what is missing in the literature is not another article about unjust laws, which we all know existed in Central and Eastern Europe in the twentieth century. Rather, what we need are articles of undiscovered individuals who conducted lives in accordance with their conscience and morals. This is that kind of article – an article about an extraordinary man and cleric. Furthermore, this is not just another essay in legal history. In the process of writing this article, a few other individuals were considered. One example is the life of Blessed Franz Jägerstätter, an Austrian layman who was executed for refusing to join the Austrian military during World War II and pledging his allegiance to Adolf Hitler. Jägerstätter even refused to be a cook in the barracks as he believed that performing any duty would help

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<sup>1</sup> In his Sunday sermon after the Major Synagogue of Zagreb was demolished, Cardinal Stepinac told the full cathedral: "A synagogue is God's house, and whoever destroys the house of God will pay with his life." Afterwards, Ante Pavelić, the head of the Independent State of Croatia, notified him that the next time he heard a comment like this, he would have Stepinac executed regardless of the Roman belt he wore.

expand the demonic system of Nazism.<sup>2</sup> Another man, Otto Schimek, was an Austrian soldier who refused to shoot civilians in Bosnia, after which he was beaten and transferred to Galicia. Here he again refused to kill Polish civilians. As a result, he was arrested and sentenced to death.<sup>3</sup>

What does all of this have to do with legal theory and theories of natural law? The answer is that there is a formula to explain all these events: Radbruch's formula – of course. Even someone who is not a practising lawyer must have heard, at least once in their lifetime, of this juridical-moral concept.

This paper examines two topics. The first one is the philosophical and juridical concept developed by the famous German legal theorist Gustav Radbruch, which will be applied to the life of Blessed Aloysius (Alojzije) Stepinac. Stepinac lived his life according to the principles of moral (divine) law, which requested that he use his conscience. That conscience acted as a litmus paper to test the minimum amount of humanity that laws should contain to be acceptable in terms of the notions of natural law, which has its roots in God or nature.<sup>4</sup> Most of the article will be devoted to the second topic, Aloysius's life, in which Radbruch's principles strongly shine. Like the lives of other courageous people, Stepinac's life was the clear materialization of natural law, which is eternal, does not change, and exists in all legal systems. In this respect, Cardinal Stepinac was the bearer of a conscience deeply rooted in the heart of natural law, which for him was God.

On 25 October 1942, the archbishop of Zagreb, Aloysius Stepinac, asked his faithful parishioners a simple question: "What do we have to say to those individuals, and how to judge their actions, who raise their heads in arrogance as if God does not exist on this Earth?" He continued: "In reality, there is only one race, and the name of that race is God's

<sup>2</sup> Jägerstätter refused to save his life even though he could do so by taking a single oath. He refused despite the fact that everybody, even the local priest and bishop, tried to convince him to do so.

<sup>3</sup> Interestingly, according to some sources, he had promised his mother that he would not shoot any civilians (source in Polish: Sanktuarium Macierzyństwa Najświętszej Marii Panny w Dziekanowicach. <https://web.archive.org/web/20120208100150/http://www.dziekanowice.pl/portal/mk.php5?rok=2006&miesiac=7&id=130> [accessed: 30 May 2022]).

<sup>4</sup> Savić 2021a, 18. Natural law was perfectly described in the vast work of St. Thomas Aquinas, where the medieval philosopher explained the connection between the substance of the law and God's existence. His formula *Deus sive natura* stated what the law should look like – it should be in accordance with God or nature (for those who do not believe).

race. His birth certificate can be found in the Bible's book of Genesis. [...] All those without exception, gypsies or others, Blacks or sleek Europeans, hated Jews or proud Aryans, all of them have the right to say, 'Our father, who art in heaven!'"<sup>5</sup>

## 1. Radbruch's formula (*Radbruchsche Formel*)

Gustav Radbruch had similar views on the nature of law to those of Hans Kelsen, the founding father of the pure theory of law, who was a positivist and a normativist. Kelsen was a positivist who believed that law should be kept away from axiological concepts and that the major force within the law is the norm itself. In his view, moral, religious, psychological or sociological facts and practices that may influence the pure fabric of law should be put aside. Of course, the structures of different values influence the substance of the norm, but the norm is an independent creature due to its very existence. Thanks to this, it becomes a body detached from both the morals and the facts that exist in the real world. Norms exist because there is another norm that justifies their existence. Norms contain the reason for their existence and indicate what has to be done, regardless of whether this will happen. Radbruch's position was perfectly grounded in the German positivist approach, which supplemented the thought of Jeremy Bentham<sup>6</sup> and Jane Austin.<sup>7</sup> When discussing positivism, he argued that norms are detached from both morals and facts. The only important thing is that the norm is attached to another norm from which it draws its legitimacy. Together with his colleagues, Radbruch was a supporter of pure positivism. According to this school of thought, every norm belongs to the same tree; taken together, all the norms make a logical system that resembles a living creature with a complete body. Before World War II, his support of this idea was unconditional. After the war and his experience with Nazi Germany, Radbruch wrote the essay: *Gesetzliches Unrecht und übergesetzliches Recht*,<sup>8</sup> in which he described his amended theory.<sup>9</sup>

<sup>5</sup> Gitman 2019, 173.

<sup>6</sup> See: "Jeremy Bentham (1748–1832)." In: *Internet Encyclopedia of Philosophy*. <https://iep.utm.edu/jeremy-bentham/> [accessed: 27 November 2021]; see also Schofield 2021.

<sup>7</sup> Austin 1995.

<sup>8</sup> Radbruch 1946, 105–108.

<sup>9</sup> Paulson, Dreier 1999, 235–250.

Radbruch always felt that the conflict between justice and positive law should be resolved in favour of positive law. Obviously, the reason for this was the stability or certainty of the legal system itself. The predictability of positive law was very important to Radbruch. This was so even in cases where legal solutions are unjust in the sense of content and purpose. However, Radbruch allowed for one exception: when the difference between positive law and justice is so great that the law itself becomes non-law, or law with errors that invalidate it. Based on this exception, Radbruch argued that when laws do not contain an elementary desire for justice or when, most importantly, equality, which should be the heart of justice, is renounced in the process of legislating, then the law is not just flawed (erroneous), it is illegal in nature because law needs to serve justice.<sup>10</sup>

In this respect, I would add that the kind of legislation in question is not legislation at all because it lacks the elementary prerequisites for establishing and shaping the legal order. For this order to be possible, law needs to exist, and exist as a social tool. Therefore, Radbruch entered the natural law arena and allowed his theory to be modified by the acknowledgement that the essence of the law must be in accordance with God's morality or with nature. According to Radbruch, law (or rule within the law) cannot be defined without reference to justice.<sup>11</sup>

This article will show that Cardinal Aloysius Stepinac did not accept flawed laws and that his conscience was a litmus paper for the Yugoslav Monarchist, Nazi and Communist regimes. When he rejected rules which were not in accordance with his conscience and basic morality, he acted following Radbruch's principles to the letter. One can argue that conscience, as

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<sup>10</sup> Radbruch 1946, 107: "Der Konflikt zwischen der Gerechtigkeit und der Rechtssicherheit dürfte dahin zu lösen sein, daß das positive, durch Satzung und Macht gesicherte Recht auch dann den Vorrang hat, wenn es inhaltlich ungerecht und unzweckmäßig ist, es sei denn, daß der Widerspruch des positiven Gesetzes zur Gerechtigkeit ein so unerträgliches Maß erreicht, daß das Gesetz als 'unrichtiges Recht' der Gerechtigkeit zu weichen hat. Es ist unmöglich, eine schärfere Linie zu ziehen zwischen den Fällen des gesetzlichen Unrechts und den trotz unrichtigen Inhalts dennoch geltenden Gesetzen; eine andere Grenzziehung aber kann mit aller Schärfe vorgenommen werden: wo Gerechtigkeit nicht einmal erstrebt wird, wo die Gleichheit, die den Kern der Gerechtigkeit ausmacht, bei der Setzung positiven Rechts bewußt verleugnet wurde, da ist das Gesetz nicht etwa nur 'unrichtiges' Recht, vielmehr entbehrt es überhaupt der Rechtsnatur. Denn man kann Recht, auch positives Recht, gar nicht anders definieren als eine Ordnung und Satzung, die ihrem Sinne nach bestimmt ist, der Gerechtigkeit zu dienen."

<sup>11</sup> Ibidem.

the heart of natural law, brings either God and his eternal norms or nature into the centre of equality and justice.

Notions of natural law and Radbruch's formula represent an obvious departure from pure positive law. It draws its legitimacy from a higher power and can be found in the human conscience and heart as a source of moral existence. As Radbruch clearly says, the discrepancy between justice and law can lead to flawed or erroneous laws, and the lack of equality can lead us out of the law entirely. In other words, it could lead us to dictatorship.

This article will show that Cardinal Stepinac respected the law as a social phenomenon that is necessary for the state to achieve peace and order regardless of the turbulent times that the Catholic Church went through before, during and after World War II. With his actions, he tried to find a way to protect his flock and the Church by following the rules, hoping that a decent, if not prosperous, life might be possible for the Church and its people in turbulent times, which never stopped. At the same time, he denounced inhuman laws that were against God, natural law and his conscience. This was always the case regardless of the regime he lived and served in. He lived by the dictates of his conscience. For this reason, his actions were an exact reflection of Radbruch's formula, which requests that the law of the land is respected, even if it is cruel or disliked. According to Radbruch, however, when the law is no longer grounded in basic justice and equality, it becomes "non-law," which has to be fought against. For Stepinac, conscience was a pure manifestation of natural law. In the end, his conscience provoked his holy death. In his view, conscience was connected to serving God and the Gospel. By using his conscience, he refused to obey authoritarian, inhumane concepts. The dictatorships he faced lacked both justice and equality. The judgements of the Communist regime lacked basic equality towards religious people, especially the followers of the Catholic Church.

There is another important feature of the implementation of Radbruch's formula in the life of Cardinal Stepinac: his persecution on the basis of so-called political delicts, which was so very common in the communist regimes of Europe's former eastern bloc. During all the periods of Stepinac's life, there were regimes that produced legal mechanisms which involved the persecution of those who were not ready to follow the mantra of

the ruling elites. Political delict became an instrument for the political elimination of those who were willing to speak out. During communism, which is when Stepinac died, religion was heavily persecuted and prosecuted. As Croatian lawyer and attorney Mario Vojvodić has systematically explained, during all three regimes, there were forms of political persecution in which the judiciary was used to eliminate individuals from public life.<sup>12</sup> In the Kingdom of Yugoslavia, there were laws for the “protection of the state” from unwanted activities, such as the Act on the Protection of Public Security and Order<sup>13</sup> and the Act on the State Court for the Protection of the State.<sup>14</sup> During World War II, political delicts existed even in the resistance movement that preceded the formation of the Socialist Republic of Yugoslavia. For example, Foča's Regulations (*Fočanski propisi*) introduced the term “enemy of the people,”<sup>15</sup> which was extensively used in Socialist Yugoslavia.

Unjust laws led to Stepinac's torture and death. This article primarily examines the socialist period of the former Yugoslavia when numerous laws and by-laws were designed to capture the “enemies of the people.” Among the most used ones was the Act on Criminal Acts against the People and the State,<sup>16</sup> which had only nineteen articles and was a major instrument in the capture and prosecution of Cardinal Stepinac.<sup>17</sup> The development of Yugoslavia's political mechanisms for the elimination of “unwanted elements” had a grave and perverse evolution. However, this article focuses on the period up to 1951 when Cardinal Stepinac was prosecuted.

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<sup>12</sup> Vojvodić 2011, 36–53.

<sup>13</sup> Zakon o zaštiti javne bezbednosti i poretka u državi [Act on the Protection of Public Security and Order], Official Gazette of the Kingdom of Serbs, Croats and Slovenes [Službene novine Kraljevine Srba, Hrvata i Slovenaca], No. 17, published on 6 January 1929 and 1 March 1929.

<sup>14</sup> Zakon o Državnom sudu za zaštitu države [Act on the State Court for the Protection of the State], Official Gazette of the Kingdom of Serbs, Croats and Slovenes [Službene novine Kraljevine Srba, Hrvata i Slovenaca], No. 17, published on 6 January 1929; Vojvodić 2011, 37–38.

<sup>15</sup> Jurčević 2005, 84–85.

<sup>16</sup> Zakon o krivičnim djelima protiv naroda i države [Act on Criminal Actions against the People and the State], Official Gazette of the Federative Peoples Republic of Yugoslavia [Službeni list FNRJ], No. 59/46, published on 23 July 1946.

<sup>17</sup> Vojvodić 2011, 45–48.

## 2. Cardinal Stepinac's life<sup>18</sup>

Alojzije Viktor Stepinac was the fifth of eight children in the honest and religious family of Josip Stepinac and Barbara Penić. He was born on 8 May 1898 in the village of Brezarić in the parish of Krašić. Alojzije's extended family included several priests: Dr Matija Stepinac, Stjepan Stepinac and Adam Stepinac were all prominent priests of the Archdiocese of Zagreb.<sup>19</sup> Alojzije went to elementary school in the village of Krašić; later, he attended the Upper Town Zagreb Gymnasium, where he graduated earlier than expected because he was drafted into the Austrian Army. After six months of training, he was sent to the Italian front near Gorizia. During war activities on the river Piave, he was captured by the Italians. He eventually rescued himself from Italian captivity as a volunteer in Salonica in 1918. During his captivity, which lasted five months, his family received a message that he had been killed.<sup>20</sup>

As Darko Pavičić,<sup>21</sup> a well-known Croatian journalist, writes, the fact that Stepinac fought on the Salonica front made him a very different kind of priest compared to most members of the clergy, who did not have war-time experience and who lived quiet, noble lives. Furthermore, some commentators have argued that he was a supporter of South Slavism. While he served the monarchy as a lieutenant, he was known for being the best officer; he often replaced private soldiers and never punished them. Even at the time, everybody knew his virtues: love, righteousness and decency. The reason Stepinac joined the so-called Yugoslav division was to find a way back home. When he came to Salonica, the war activities had already ended, and he was transferred to Serbia and Macedonia. It is interesting to note that the fact that he was a volunteer in Salonica jeopardized his idea of becoming a priest; in the long run, however, this helped his election

<sup>18</sup> Many of the data used for writing this section are taken from the summarized version of Cardinal Stepinac's biography on the website of the Archdiocese of Zagreb (see: *Blaženi Alojzije Stepinac. Životopis*. Zagrebačka Nadbiskupija. <http://stepinac.zg-nadbiskupija.hr/hr/o-stepincu/zivotopis/100>, accessed: 28 June 2022). This is the Cardinal's official biography. Additional sources were also used. The non-English text used for this section was translated by the author; some additional comments and extensions were made to create the new version of the text. Other sources and citations were used whenever necessary; these have been correctly indicated with notes.

<sup>19</sup> Vojvodić 2011, 64.

<sup>20</sup> Benigar 1993, 46.

<sup>21</sup> This passage is a synthesis of Pavičić 2018.

as a bishop coadjutor. The Serbian king Alexander had had Stepinac's military path in mind when he signed his appointment to that position in 1934.

After the war, Stepinac enrolled at the Faculty of Agronomy of the University of Zagreb and became engaged with Marija Horvat. In 1924, Stepinac decided to become a priest. Soon afterwards, Archbishop Antun Bauer sent him to Rome to study at the Collegium Germanicum of the Pontificia Università Gregoriana. Stepinac was ordained in Rome on 26 October 1930. He served his first Mass at Santa Maria Maggiore with his colleague and successor Msgr Franjo Šeper, who was one of the most renowned Croatian prelates and, later, a prefect of the Congregation for the Doctrine of the Faith. In July 1931, Stepinac returned to Croatia as a double laureate in philosophy and theology. At that time, in the Kingdom of Yugoslavia, the Serbian monarchy turned the country into a dictatorship through permanent attempts to weaken the Catholic Church. During this difficult period, one of Stepinac's major achievements was the establishment of the Caritas of the Archdiocese.

It is important to stress here the drama that took place just before Stepinac's consecration. According to the Concordat made with Austria in 1850, which was still in force in Yugoslavia,<sup>22</sup> if a new archbishop was not appointed, there would be a hiatus that would be troublesome for the Church. Therefore, a handful of priests were suggested for the position of bishop – Antun Slamić, Aleksandar Gahs and Juraj Magjerec – all of whom were rejected.<sup>23</sup> When Archbishop Bauer became very ill, he began to fear that the Curia would remain without a coadjutor. He had informed the Holy See via the apostolic nuncio in Belgrade about this potential crisis. After receiving this news, the Vatican's state secretary took concrete steps to find a solution and requested information about the young Alojzije Stepinac from his professors at the Collegium Germanicum. The rector provided the best possible recommendation.<sup>24</sup> According to some sources, Stepinac did not want to accept the candidature, which went ahead only after the intervention of Pope Pius XI.<sup>25</sup>

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<sup>22</sup> Although Catholics were the second-largest religious group in the country, a new concordat was not signed due to the opposition of the Serbian Orthodox Church.

<sup>23</sup> Vojvodić 2011, 77; Benigar 1993, 15.

<sup>24</sup> *Ibidem*.

<sup>25</sup> Batelja 2010, 64.

On 28 May 1934, the pope appointed Stepinac archbishop coadjutor with succession rights. Stepinac was ordained on the day of Saint John the Baptist – 24 June – and received the titular see of Nikopsis<sup>26</sup> (the exact location of Nikopsis is unknown, but most sources put it somewhere between Tuapse in Russia and New Athos in Georgia<sup>27</sup>). At the time, Archbishop Stepinac was the youngest bishop in the world; when he was consecrated, he was only thirty-six years old and had only four years of priesthood. After the death of Archbishop Bauer, he took over the archdiocese and soon became president of the Bishops' Conference of Yugoslavia. It is clear that the king's acceptance of this young man as a bishop was due to his experience as a soldier in Salonica. The king probably thought that Stepinac was young and could thus be manipulated; he possibly also assumed that the new bishop was closer to Yugoslav ideas compared to other priests. What the king did not know was that Archbishop Stepinac would become a prominent and very active supporter of the Catholic Church and the position of Croats and other Catholics within Yugoslavia.

During World War II and the German occupation, the Nazis established the Independent State of Croatia as a puppet state. During this period, Stepinac did not rely on any political party; he was fully dedicated to his Catholic and Croatian identity. In his work, he loudly condemned Ustasha's regime and the atrocities committed by the Nazis and the Fascists. When the authorities passed racial laws, he condemned them openly. During the war, he saved Jews, Serbs, Roma, Slovenians and Polish, as well as Croatian communists. It is important to stress that Stepinac was against religious conversions, but when these were necessary, he instructed his priests to welcome all those who requested acceptance into the Catholic Church. He imposed no conditions, arguing that when "all these days of madness and violence become history, those who converted for their beliefs will stay, and those who did it to save their lives will go back to where they came from." Because of his actions, the Gestapo had prepared a plan to assassinate him, while officials in Zagreb asked the Holy See many times that he be removed as archbishop of Zagreb.

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<sup>26</sup> Vojvodić 2011, 78; Benigar 1993, 122.

<sup>27</sup> Khroushkova 2006, 21.

It is obvious that every regime considered Stepinac an intruder, yet he was and remains one of the most stable and dedicated people in Croatian history. His dedication was to Jesus, Saint Mary and the Holy Catholic Church, and his conscience was based on natural (divine) law. This did not allow him to move his rudder in any other direction. It seems that the only law he followed was God's law. Stepinac understood the theology of Saint Thomas Aquinas perfectly. All his work reflected Aquinas's *Summa Theologica* and his discussion of the state and natural law.<sup>28</sup>

The hardest time for Cardinal Stepinac came after World War II when Josip Broz Tito's communists came to power and the new Yugoslavia was established. On 17 May 1945, Stepinac was arrested and imprisoned until 3 June, after which he went to talk to Tito upon the latter's request. It was evident that the dictator wanted the Catholic Church of Yugoslavia to become the "people's church" – an entity completely separate from the Vatican.

What all this would lead to could be easily predicted. Stepinac was known for his principles, and according to his cardinal's conscience, the separation of the Catholic Church in Croatia could not even be discussed. On 4 June 1945, President Tito and the leader of the Communist Party Ante Bakarić met with the Cardinal to convince him to establish a national church, which he rejected. As Milovan Đilas, a communist politician, stated: "His Croatian nationalism was not something which we minded much. If only he had founded a Croatian Church separate from Rome, we would have raised him to the heavens."<sup>29</sup>

In September 1945, Stepinac summoned his clergy by calling a meeting of the Bishops' Conference as many priests were witnessing a terrible situation and experiencing considerable oppression. History repeated itself when the new government asked the Holy See to remove him from the chair of the Zagreb Archdiocese. On 18 September 1946, Stepinac was again arrested and taken to court. The proceedings were a farce. In a speech he delivered on 3 October, he declared that his words were not only his defence but also a prosecution of the unjust court and that he was ready to give his life for his faith. On 11 October, he was sentenced to sixteen years

<sup>28</sup> S.Th. q. 91. In Croatian: Toma Akvinski. 1990. *Država* (pitanje 91: *O različitosti Zakona*), transl. Tomo Vareš. Zagreb: Globus, 143.

<sup>29</sup> Vojvodić 2011, 85; Batelja 2010, 352.

in prison and forced labour, with an additional five years of suspended civil rights. He served his sentence in the Lepoglava prison.

During his imprisonment, Stepinac was systematically humiliated, harassed and poisoned. After 1,864 days, he was placed under house arrest in his childhood home in Krašić. When Pope Pius XII named him a cardinal of the Holy Roman Church, Yugoslavia broke all diplomatic relations with the Holy See. Despite his worsening health, in his letters and prayers, Stepinac told others to pray for his enemies and asked for forgiveness for everyone. In the spring of 1953, he became very ill with polycythaemia rubra vera, thrombosis of the legs and bronchial catarrh. Though he was cared for by good doctors, he rejected privileged treatment to show his endurance as a believer and a man of faith. He died as a saint on 10 February 1960 *ex aerumnis carceris*.

### 3. The Catholic Church, the state and Cardinal Stepinac in Croatia before, during and after World War II

To understand the figure of Cardinal Stepinac, it is important to offer a short insight into the history of the Catholic Church in Croatia, especially during hard times. Although Christianity arrived in Croatia in the seventh century, for the purpose of this article, I will only explain the situation from the late Austro-Hungarian period onwards, which is crucial to understand the turbulent years of Blessed Cardinal Stepinac.

In the eighteenth century, the Catholic Church was informally treated in Austro-Hungarian Empire as the state's church, while other accepted denominations, such as the Orthodox and Protestant ones, operated freely but with different privileges. This was the norm until the 1782 Edict on Tolerance of Joseph II, which made Catholicism the official faith; the other religions continued to be accepted.<sup>30</sup> Until 1916, the Croatian Parliament, which operated within the Austro-Hungarian Empire, officially recognized five religions: Catholicism,<sup>31</sup> Orthodox Christianity, Evangelical Christian-

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<sup>30</sup> Čepulo 2003, 160–161. For more about Church–state relations in the preceding period (i.e., from 1848 onwards), see: Savić, Mažuranić 2015.

<sup>31</sup> In Croatia, there are two traditional Catholic groups: Roman Catholics and Byzantine Rite Catholics of the Križevci Eparchy, a Catholic *sui iuris* Church.

ity, Judaism and Islam.<sup>32</sup> In Croatia, the Islamic community was recognized only after Austria did so, in 1912. Therefore, Croatia was the second country in Europe to accept Islam as a recognized and free religion. The most important period for this article's topic is the one that followed the dissolution of the Austro-Hungarian Empire when the position of the Catholic Church started to become complicated. This period can be divided into three sub-periods during which Cardinal Stepinac had prominent and very difficult roles. Throughout these times, his attitudes towards freedom of conscience and religion were central to his work and public activities. Stepinac wanted freedom for his people and requested the same for others. In all three periods, he deeply believed in the principles of self-determination, conscience, and free and equal rights of worship for all religious groups in society.<sup>33</sup> Especially during the Communist regime, when pressure was extremely high, he believed that the Catholic Church in Croatia (and Yugoslavia) should be part of the Holy Roman Church; under no circumstances did Stepinac accept its separation from the Holy Father and the Holy See.<sup>34</sup> Initially, Tito wanted to receive the support of the Catholic Church for his activities; when his attempt to break away from the Holy See was rejected, he started to fight the Church.<sup>35</sup> When we look closely at Cardinal Stepinac's sermons and letters, we see that he deeply believed in religious freedom and the separation of church and state. This is why he insisted that the Catholic Church could and should survive with clear ties to Rome even in communist Yugoslavia.

In the former Yugoslavia, ethnicity mostly overlapped with religion, so being Croatian meant being Catholic. During the Kingdom of Serbs, Croats and Slovenes and, later, during the Kingdom of Yugoslavia, which was ruled by the Serbian majority and the House of Karađorđević, the government disliked the connection between the Croatian Catholic Church

<sup>32</sup> Savić 2019, 242; Staničić 2014, 277.

<sup>33</sup> Gitman 2019, 170 ff. See also the documents on pp. 293 ff., especially the document on pp. 300 in which Stepinac requests freedom of labour for the remaining Jews in Croatia and, if they were incarcerated, their freedom. This letter was sent to the minister of internal affairs of the Independent State of Croatia. The special value of this letter is that it calls for salvation based on the natural-ethical and Christian nature of the Croatian people.

<sup>34</sup> A recent article in a leading Croatian newspaper argues that Tito explicitly requested Stepinac's persecution and that the Cardinal's major crime was rejecting the dictator's wish to separate the Croatian Church from the Vatican. See: Despot 2021.

<sup>35</sup> *Ibidem*.

and the Holy See. In 1919, King Alexander of Yugoslavia abolished state religion and proclaimed the equality of all faiths. In 1920, the Serbian and Montenegrin Orthodox Churches merged, thus acquiring a privileged position.<sup>36</sup> In the following years, the king's reign turned into a dictatorship with the abolition of the constitution. In the religious domain, four laws were passed regulating the work of the Serbian Orthodox Church, the Evangelical Church, the Islamic community and the Jewish one. Despite the fact that Catholics (mostly Croats, Slovenes and Hungarians) made up almost 40 percent of the kingdom's population, a Concordat with the Holy See was never signed.<sup>37</sup> Despite the plans to sign such an agreement,<sup>38</sup> most scholars, even Serbian ones, agree that this was prevented by the Serbian Orthodox Church.<sup>39</sup> The old Concordats that were still in force were outdated.

This situation made the position of the Catholic Church very difficult even before World War II. During the war, the Independent State of Croatia was not really independent but rather a puppet state under German patronage. Croatia had a bigger resistance movement made up of partisans (*partizani*) than many other countries that are well known for their opposition to Nazism. Still, many foreign historians and politicians label World War II-era Croats "fascists;" for some commentators, this has become a mantra. On 22 June 1941, one of the first European antifascist battalions was established in Sisak, a town in central Croatia; today, this date is a national holiday.<sup>40</sup> The tragedy is that many who supported the Independent State of Croatia saw this as the realization of a "thousand-year-old dream" for Croats – to have their own state. In contrast, those who fought as partisans believed that this was the real fight for Croatian freedom. Both groups were fooled. As discussed above, Cardinal Stepinac always insisted on the protection of all. In an important statement, Michael Phayer, an American academic at the Catholic Marquette University, has argued that: "No

<sup>36</sup> Staničić 2014, 277; Novaković 2011, 524.

<sup>37</sup> Savić 2019; for more details, see also: Staničić 2014, 233.

<sup>38</sup> Savić 2021b, 18.

<sup>39</sup> Novaković 2012, 939–965.

<sup>40</sup> See: *Jugoslavija i II. svjetski rat (1918–1990)*, Hrvatska.eu Zemlja i Ljudi. <https://croatia.eu/index.php?view=article&lang=1&id=23> [accessed: 26 August 2022].

one in the European Catholic clergy so clearly spoke against Nazi crimes as Blessed Stepinac and the Dutch Catholic cardinal Johannes de Jong.<sup>41</sup>

Stepinac, who saved many Jews, Serbs and others and who fiercely resisted Pavelić's regime, became a target of the communists simply because, as they stated, he held his office during the Nazi-supported puppet regime. The position of the Catholic Church and Croatia became even more difficult and complicated after World War II. Cardinal Stepinac insisted on the same values of freedom of worship, the separation of Church and state, and the importance of the nation's religious psyche. During his life, he proved that he believed in all three. The consequence of his work was the martyrdom of a saint. He was openly persecuted and sentenced to prison, where he was tortured and humiliated.

We should also mention his lawyer, Dr. Ivo Politeo, a courageous attorney-at-law from Zagreb, who defended him in very difficult circumstances.<sup>42</sup> There were also other brave intellectuals who stood up for Stepinac. One was Sida Košutić, a poet who openly criticized the public attitude towards the archbishop of Zagreb by refusing to sign the request for his death penalty. As a result, Košutić was expelled from the Society of Writers and was forgotten for a long time.

#### 4. Radbruch, Stepinac and conscience

We can now return to Radbruch. Humankind is often incapable of learning from previous mistakes. Current world events, especially the war in Ukraine, prove that this is the case. Once again, natural law arises from the dust to talk about principal values. When positive law seems to stop existing, natural law speaks.

Radbruch's formula is easily found in Stepinac's actions. During all three periods when he held the seat of the Archdiocese of Zagreb, he faced the same dilemma in different guises. In all three periods, Cardinal Stepinac accepted the existence of state authority but insisted on certain values:

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<sup>41</sup> Phayer 2010, back cover.

<sup>42</sup> Today, the Ivo Politeo Award is the most prestigious award given by the Croatian Bar Association. For more information about Ivo Politeo, see: Kisić Kolanović 2013, 243–276.

conscience, a minimum of humanity and freedom (for him, freedom to follow and love God as well as worship and belong to the body of the Catholic Church). Later, during the communist period, he accepted the establishment of the new Yugoslavia but hoped that Croats would finally be able to live freely following their faith and in communion with the Holy See. He was wrong. This only happened after 1991 when the Croatian state declared independence and started a new path, which included the respect of religious communities, human dignity and conscience – the central values of Cardinal Stepinac’s life.

As noted earlier, the most important period to understand Stepinac’s life was the one after World War II when the Communists took over and numerous laws and by-laws were passed to control those who were against the new state. The most notorious among these laws were the Act on Criminal Actions against the People and the State, the Act on the Protection of Public Property,<sup>43</sup> the Act on the Banning of National, Ethnic and Religious Hatred,<sup>44</sup> and the Act on the Suppression of Forbidden Speculation and Economic Sabotage.<sup>45</sup> All these laws were created to secure the undemocratic establishment of the new government and ensure that any attempts at democratization or critiques could not even start. The most notorious provision of the first of the above-mentioned laws was Article 15, according to which legal remedy was not guaranteed for certain criminal actions. The Article 15 of the Act on Criminal Actions against the People and the State stated: “Based on the decision of the court of the first instance, except for the cases described in article 13, paragraph 2, of this law, legal remedies are possible and should be submitted to the higher court within eight days of the decision of the first instance.” Compared to what happens in democratic societies, Article 13 was an unjust legal framework that

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<sup>43</sup> Zakon o zaštiti narodnih dobara i njihovom upravljanju [Act on the Protection of Public Property] dated on 24 May 1945, Official Gazette of Democratic Federal Yugoslavia [List DFJ], No. 36/45.

<sup>44</sup> Zakon o zabrani nacionalne, etničke i vjerske mržnje [Act on the Banning of National, Ethnic and Religious Hatred] dated on 2 June 1945, published in *Vjesnik* (daily newspaper).

<sup>45</sup> Zakon o suzbijanju nedopuštene trgovine, nedopuštene špekulacije i privredne sabotaže [Act on the Suppression of Forbidden Speculation and Sabotage], Official Gazette of Federative Peoples Republic of Yugoslavia [Službeni list FNR], No. 56/46; see: Vojvodić 2011.

enabled a dictatorship in the making to eliminate, under the pretence of legality, its opponents and critics.<sup>46</sup>

It is well known that criminal law should be clear and precise, more than any other type of law. This was not the case in the legal system of the former Yugoslavia. The reason for this is obvious. By having vague and imprecise norms, the state prosecutors could stretch and apply various legal standards as desired by the regime. The applicability of those regulations was enormous, and their nature was completely different from what the law is supposed to be. The purpose of those unjust laws was not to create order, peace and harmony but to eliminate political opponents. Article 9 of the law in question prescribed several penalties, including the death penalty, for “propaganda and starting processes that invite the violent overthrowing of the current regime.”<sup>47</sup> It was articles such as this one that constituted the legal grounds for the persecution of Archbishop Stepinac. The laws that were applied to Stepinac did not have, in Radbruch's terms, a single trace of humanity – they were a travesty of law. Despite this, Stepinac showed that the legal order must be respected, even if doing so means suffering and humiliation. For the Cardinal, a legal order must exist even in difficult times; however, certain elements of a regime should be labelled inhuman and unchristian, even diabolical.

Despite the fact that Cardinal Stepinac was forced to experience an unjust court mechanism that lacked legal remedies, there were many occasions when he expressed his respect for the existing system of justice, but without accepting unjust provisions and requests. There is a direct link between conscience and Radbruch's formula that requires the application of positive law. Stepinac's life shows that when statutes and norms do not contain a sufficient amount of justice, we should look for justice in morality. In these cases, justice is to be found outside the legal system as a concrete

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<sup>46</sup> Article 13 of the Act on Criminal Actions against the People and the State stated: “Criminal actions as defined in this law will be prosecuted in front of the courts of the first instance except in those cases when, according to specific regulations, the military courts have jurisdiction. In the most important cases, the court will hear the case in the first and last instance for the criminal actions defined in article 9 of this act at the Supreme Court of the People's Republic and at the request of the public prosecutor of the Republic. If the case is of general interest to the state (the federation), it will be heard in front of the Court of the Federation or the Supreme Court of the Yugoslav Army on the request of the military prosecutor of the Yugoslav Army.”

<sup>47</sup> See: Vojvodić 2011, 46–48.

body of natural law. When statutory law includes unbearable amounts of injustice, then positive law should be replaced by the elements of justice that are missing. Radbruch's formula states that preference should always be given to positive law, even when its content and purpose contain unjust provisions, if such law is enacted by a legitimate authority. This, however, seriously limits basic justice. In the three periods analysed here, Cardinal Stepinac respected the government and public order, but his demands for a just society in which religious and ethnic freedom were respected, if not cherished, remained unchanged. As is often the case with saints, his views and principles led to his premature death.

During the final hearing, many accusations were levelled at Cardinal Stepinac. His deep, sharp and courageous replies highlight his integrity as a priest and a bishop. The case that was brought against him was shameful in every respect. One of the accusations he faced was that he had performed the duties of a military vicar during Ustasha's regime. He replied that he had been a military vicar also in the former Yugoslavia when he had tried to regulate the position without finding an appropriate solution. Catholics were second-class citizens. Stepinac said that he had to give spiritual help to all Catholics, regardless of whether they were soldiers of the former Yugoslavia or those of the Independent State of Croatia.<sup>48</sup> It is very clear that Cardinal Stepinac was a faithful companion of his flock during all the regimes. He stated in the courtroom:

I was *persona non grata* both with the Germans and with Ustasha; I did not take an oath, as some of your higher officials did,<sup>49</sup> some of whom are sitting here. The Croatian people wanted a Croatian state, and I would have been a bad person if I had not felt the pulse of the Croatian people, who were slaves in the former Yugoslavia. As I said, Croats couldn't advance in the army or enter the diplomatic service unless they changed their religion or married someone of another faith. This is the factual basis and background of my letters and sermons. What I have said regarding the right of the Croatian people to freedom and independence is all in accordance with the general principles expressed by the allies in Yalta and the content of the Atlantic Charter. If, according to these principles, every

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<sup>48</sup> Croatian State Archives (hereinafter: HDA), column 6/1946, II. Bundle, Dossier Alojzije Stepinac, Supreme Court of the People's Republic of Croatia (Vrhovni sud NRH), column 6/1946, box br. 5, II. Bundle, 998. See: Vojvodić 2011, 233.

<sup>49</sup> Here, Stepinac expresses the same attitude of Blessed Franz Jägerstätter, who refused to serve in the Nazi army and pledge his allegiance to Adolf Hitler, even as an army cook.

nation has a right to be independent, why shouldn't this be possible for the Croatian people? On many occasions, the Holy See has stressed that small nations and national minorities have a right to freedom. Are you telling me that, as a Catholic bishop and a metropolitan, I shouldn't talk about this? If we should fall, we will, because we have done our duty. If you think that the Croatian people are satisfied with their destiny, or if you want to give them another chance to say what they think, I don't see a problem with this. I respected and will respect the will of my people. You are accusing me of being an enemy of the state and of the people's authorities. Today, I recognize your power and authority. Who had the power and authority in the past? I will say it again: you are the authorities since 8 May 1945. Before that, you were not the authorities. Where in the world can one listen to two authorities? You who were in the woods and those who were in Zagreb. Should I obey coop leader Simović – as you call him – who is in exile in London or that which is in Jerusalem? Yours in the woods or this one in Zagreb? How can you obey two masters? This was not in accordance with Catholic morals, neither under international nor general human rights law. The authority that was here could not be ignored, even if it was Ustasha's. It was here, and you can only ask me about and call on my responsibility from 8 May 1945.<sup>50</sup>

This important quote highlights that Cardinal Stepinac was a legalist, dedicated shepherd who strove to help his flock within the space of possible manoeuvre given at any one time. He was as sharp and concrete with the previous authorities as he was with the communist judges. The amount of courage he showed to the unjust court is almost incomprehensible, and his clear and pure message about Catholic morals, international law and human rights is astonishing. Obviously, he revealed his disguise for the technique used in interrogations as he expressed his condemnation of the actions of Pavelić's Ustasha regime.

When he was questioned about the baptizing of Serbs, Stepinac replied that it was not possible to baptize the same person twice, thus recognizing the theological unity of Catholicism and Orthodox Christianity. This would amount to religious crossing (*vjerski prijelaz*). Stepinac insisted on conscience as the backbone of his activities.

I will talk about this later, but I can say that my conscience is clear, and history will eventually give its judgement. It is a fact that I transferred a parish priest, who had been

<sup>50</sup> HDA, column 6/1946, II. Bundle, Dossier Alojzije Stepinac, Supreme Court of the People's Republic of Croatia (Vrhovni sud NRH), column 6/1946, box br. 5, II. Bundle, 998–999. See: Vojvodić 2011, 248–249.

threatened by Orthodox believers who wanted to kill him because he was postponing religious crossings. It is a fact that, in recent war times, the Church had to pull through obstacles like a snake, and we have been treating the Serbian people with intention of helping them as much as possible.<sup>51</sup>

Another very important point made by Stepinac, which highlighted the cynicism of the ruling Communist Party, was that if he had not approved crossings to Catholicism, he would have been accused of being heartless.<sup>52</sup> His courage was incredible, as the following words show:

Again, I confess in front of everyone: between 260 and 270 priests were killed by the People's Freedom Movement. In any civilized state of the world, it would have been impossible for so many priests to be punished like that for the crimes that you accused them of. [...] In any other civilized state, no one would have sentenced those priests to the death penalty; at most, they would have gone to prison. You made a fatal mistake when you killed those priests. People will never forget it. This is a picture of our freedom.<sup>53</sup>

Conscience was always a keyword in Cardinal Stepinac's vocabulary. His words "my conscience is clear" remained his major moral compass. As a devout priest, he kept his actions within the domain of the spiritual, interfering with the state only when it was necessary to serve his people and offer protection to them. His life was the exact definition of Radbruch's formula, which he lived in the most transparent way. Countless quotes could be used to support this thesis; those given in this text are only a selection of the narrative he used.

In a session held on 14 February 1992, the Croatian Parliament issued a declaration condemning the process against Cardinal Stepinac, who was prosecuted based on false accusations driven by the political interests of the Communist regime. As he had prophesied, history would one day judge him, and history and justice did.<sup>54</sup>

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<sup>51</sup> HDA, column 6/1946, II. Bundle, Dossier Alojzije Stepinac, Supreme Court of the People's Republic of Croatia (Vrhovni sud NRH), column 6/1946, box br. 5, 998. See: Vojvodić 2011, 223.

<sup>52</sup> HDA, column 6/1946, II. Bundle, Dossier Alojzije Stepinac, Supreme Court of the People's Republic of Croatia (Vrhovni sud NRH), column 6/1946, box br. 5, 999.

<sup>53</sup> HDA, column 6/1946, II. Bundle, Dossier Alojzije Stepinac, Supreme Court of the People's Republic of Croatia (Vrhovni sud NRH), column 6/1946, box br. 5, 999. See: Vojvodić 2011, 240–241.

<sup>54</sup> See: Pavelin 2019, 7 ff.

Modern-day Croatia has chosen to regulate religious freedoms in its Constitution<sup>55</sup> and the Act on Religious Communities.<sup>56</sup> In doing so, it has joined those countries that support the cooperation between Church and state, one of the three existing models of Church–state relations.<sup>57</sup> In my opinion, this is exactly where Archbishop Stepinac would choose to stand. After 1991, a new chapter in Church–state relations began in Croatia. Currently, most of Cardinal Stepinac's life has been explored, especially during the process of beatification and canonization, the latter of which has yet to happen. However, numerous details remain unknown to the public. One example is the recent discovery by H. E. Neven Pelicarić, former ambassador of Croatia to the Holy See, of Stepinac's titular church in Rome. This had been a mystery for years.<sup>58</sup> No one knew if Pope Pius XII had given a titular church to Stepinac when he created him as a cardinal. According to Ambassador Pelicarić's survey, he did, and that church is Sancti Pauli in Arenula (San Paolo alla Regola).<sup>59</sup> Apparently, even Cardinal Stepinac ignored what his titular church was.<sup>60</sup> After this discovery, the Croatian Embassy to the Holy See took all the necessary steps and placed a sign in the Chapel of Schola Sancti Petri, within the Church of San Paolo alla Regola, with the following words: "Beato Aloisio S. R. E. Cardinali Stepinac huius temporis nacto titulum quod in vinculis detentis numquam inravit lx interveniente die natali quo in caelum migravit Legatio Rei Publicae Croatiae apud S. Sedem posuit AD MMXX."<sup>61</sup>

Saint John Paul II beatified Cardinal Stepinac during his papal visit to Croatia at the Saint Mary of Bistrica Shrine in Hrvatsko Zagorje, some thirty kilometres from Zagreb, the country's capital.

<sup>55</sup> Constitution of the Republic of Croatia [Ustav Republike Hrvatske], Narodne Novine. National Gazette of the Republic of Croatia [hereinafter: NN] No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

<sup>56</sup> Act on Religious Communities [Zakon o pravnom položaju vjerskih zajednica], NN No. 83/02, 73/13.

<sup>57</sup> The three models are state church, separation and cooperation, see: Doe 2011, 30–39.

<sup>58</sup> Pelicarić 2021, 587–618.

<sup>59</sup> Ibidem, 612.

<sup>60</sup> Ibidem.

<sup>61</sup> Ibidem, 613–615. In English: "Blessed Aloysius Stepinac, cardinal of the Holy Roman Church, received the titulus of this church where, because of his incarceration, he never entered. On the occasion of the sixtieth anniversary of his migration to heaven, the Croatian Embassy to the Holy See placed [this sign] in the year of our Lord 2020" (author's translation).

## 5. *In Te Domine speravi* – a materialization of natural law

Cardinal Stepinac was a saint, but his qualities were of a calibre that both Catholics and non-Catholics could recognize. His virtues made him a Catholic priest, a bishop and a cardinal, and he acted as he believed a man of the Church should. For believers, he was a priest, a good shepherd and a martyr. For everyone else, he could be a beacon for a world where the principles of humanity still need to be accepted and felt, regardless of the million different views that people hold. For lawyers and academics, Cardinal Stepinac was a pure materialization of natural law and the living principles that Radbruch conveyed with his formula about “unbearably unjust laws.” Stepinac was a loyal citizen; he was always full of hope despite the real despair that surrounded him. He was a citizen who gave his best in every circumstance, regardless of the regime under which he lived, to repair the human soul and heal society. Stepinac did not wish to overthrow any of the governments that he experienced as an archbishop and a cardinal; rather, he sought and denounced injustice and evil in each of them. This is what makes him so close to Radbruch’s formula. Stepinac respected positive law and the existence of the state but could not be silent on laws that were against equality, humanity and religious freedom. He fought against all that contradicted his Christian and human conscience. This can be summarized as follows (table):

Table. Struggle of Cardinal Stepinac through various stages of repression

<b>Kingdom of Serbs, Croats and Slovenes and Kingdom of Yugoslavia</b>	<b>Independent State of Croatia (World War II)</b>	<b>Communist Yugoslavia</b>
Catholic Church lacks proper recognition	Catholic Church forced to be silent about crimes	Suppression of public activities, persecution and detentions
Cardinal Stepinac: quest for equality	Cardinal Stepinac: quest for humanity	Cardinal Stepinac: quest for religious freedom

Source: own preparation.

These principles were embedded in his trust in God. His motto was: *In Te Domine speravi, non confundar in aeternum*.<sup>62</sup> Cardinal Stepinac and his life were a spiritual materialization of natural law, which seeks humanity and justice in all legal systems.

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<sup>62</sup> In English: "I trust in you, Lord, and I will not be ashamed in eternity" (author's translation).

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