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RERUM NATURA NON PATITUR

Some remarks in the margin of rerum natura in the sources of Roman law

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Besides the different results concerning particular legal phenomena of Roman law, studies may as well result in such consequences which allow to presume that the approach of jurists was rather practical as for the legal issues of their times. As a result, it is apparent from the *responsa* that jurists were bound to an equitable, therefore just solution to a particular problem, rather than to try to describe, let alone define Justice. This method seemed to be all the better established and more useful, because Roman jurists were far from involving in classifications or dogmatic approach of legal issues, and law itself. Obviously, a legal thinking of this kind was not at all unlimited: on the one hand it was regulated by the rules of *ius* (for the most part in the form of *lex*), on the other–and from a wider aspect as well–there were basic standards, eternal and universal truths of the world serving as organising principles of the society and the state. Thus it was partly *ius* and *lex* which structured everyday legal thinking, as well as activity, moreover such set of norms were also taken into account as *ius naturale*, *naturalis ratio* and *rerum natura* – basic organising principles of existence, or more likely innate human imperatives, the aim of which was mainly to watch over us, as well as our lucidity and sobriety, and also those of our state and law.[1]

This modest paper is aiming at attempting to outline the character of *ius naturale*, *naturalis ratio* and *rerum natura*, since there are several entries in the sources for these terms, which in all probability highly influenced the decision-making of Roman jurists.

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[1] In connection with *lex* and *ius*, in which forms *ius civile* is generally presented, Gaius points out that the norms of *ius civile* are peculiar to, that is belong to the community that established it (cf. Gai. 1, 1 ~ Gai. D. 1, 1, 9 [1 inst.]: "*[...] id ipsius proprium est...*"), while *ius naturale*, in comparison, is what nature taught to all animals (cf. Inst. 1, 2 ~ Ulp. D. 1, 1, 1, 3 [1 inst.]: "*[...] quod nautra omnia animalia docuit...*"). Therefore, if it is true that ius naturale is not peculiar exclusively to the human race, but it is common to all living creatures, it implies at a time that it is really an innate legacy of mankind, too, thus it is not possible that human norms should be contrary to *ius naturale*.

I. Preliminary remarks

Preliminarily, it is to note that the translation of either expressions should be avoided, mainly because via translation the very essence of these terms might as well be lost, and this could prevent a better understanding of legal thinking of Roman times. It is likewise important to take into consideration that modern natural law linked primarily to Hugo Grotius and *ius naturale* are not identical, despite the fact that there are numerous similarities. Firstly, it is undoubted that a kind of idea similar to that of modern natural law was already known in ancient times. In connection with this, it is sufficient to have recourse to a passage from Deuteronomy (Deut. 6, 6–7), where an explicit reference is made to commands written in people's hearts.[2] Also, in accordance with the Gaian testimonial the supremacy of ius naturale over human legislation is incontestable.[3] Yet, in spite of all these similarities, the differences between ancient and modern ideas of natural law are considerable.

Such a statement that *naturalis ratio* and natural reason are identical to each other, can cause misunderstandings, even distortion: mainly because the term *ratio* doesn't only mean 'reason', but it equally means 'order'.[4] Gaius himself asserts that *naturalis ratio* is a kind of general guiding principle of human societies, when he approaches *ius gentium* as a set of rules constituted by *naturalis ratio* for all nations.[5] From this phrasing it is apparent that *naturalis ratio* constitutes an objective establishment for *ius gentium* and perfectly fits nature itself.[6] As a result, *naturalis ratio* refers to the human perception of everything which is natural, such as the procreation, the birth and death of people, as well as the corresponding events in case of animals and plants, but also the qualities of people, animals and even inanimate objects, or the pass of time.[7] From all this such a partial conclusion can be drawn that in the scope of the expression '*naturalis ratio*' the second register (*ratio*) refers to a consistent order of the world. As a result, it is senseless to associate *ratio* with 'reason' as an equivalent, because in the Gaian context *ius gentium* is taught to all mankind by *naturalis ratio*, by the order of nature which all people of mankind perceives via *communis intellegentia*.[8]

In case of *rerum natura*, it is also somewhat distracting to interprete this expression merely as 'the nature of things'. When ancient sources are taken into account, it soon becomes cleat that Roman jurists used this term when they wanted to have reference

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[2] Deut. 6, 6–7: "And these words, which I command thee this day, shall be in thine heart. And thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up."

[3] On this see e.g. Gai. D. 4, 5, 8 (4 ad ed. provinc.) in connection with the *capitis deminutio*: "*[...] civilis ratio naturalia iura corrumpere non potest*".

[4] Cf. FINÁLY HENRIK: *A latin nyelv szótára* [Latin Dictionary]. Budapest: Akadémiai Kiadó, 2002. 1661–1662.

[5] Ld. Gai. 1, 1: "*<ius> [...] quod vero naturalis ratio inter omnes homines constituit...*".

[6] HERBERT SCHAMBECK: *Der Begriff der "Natur der Sache". Ein Beitrag zur rechtsphilosophischen Grundlagenforschung.* Wien 1964, 18.

[7] On this see MAX KASER: *Ius gentium*. Köln–Weimar–Wien: Böhlau Verlag, 1993. 59–61.

[8] In connection with *communis intellegentia* see e.g. Cic. de leg. 1, 44.

to the normal sequence of events in the world, or even in the universe. In this respect it is the constitution and the true character of a particular thing, event, act, etc. which is generally in question.

As a justification for all that have previously been mentioned, it would be worth reviewing the role of *natura*, *naturalis ratio* and *rerum natura* in the scope of decision-making in Roman law. To this, the approach of Wolfgang Waldstein is going to be followed. In his detailed, thorough and profound paper on decision-making in Roman law a whole chapter is devoted to the issue and interpretation of these terms with special focus on the character, as well as the use of these expressions.[9]

II. *Natura, naturalis ratio* versus *ius, lex* and *senatus consultum*

As a first step it is wise to reveal the relation between *natura*/*naturalis ratio* and *ius*. Both Gaius and correspondingly the Institutes of Justinian describe *ius civile* and *ius gentium*, giving an outline of the origin of these two sorts of *ius* at a time. As it is widely known i*us civile* is the result of a legislative activity, therefore it is something that an artificial entity (*populus*) made exclusively for themselves, consequently this *ius* is their own, and belongs only to them. In contrast to this, *ius gentium* originates from *naturalis ratio*, since it is the *naturalis ratio* that created *ius gentium* for all peoples.[10] Though the Roman *populus* possessed and applied both *ius civile* and *gentium*, the expression *apud omnes homines peraeque custoditur* implies, however, that this latter sort of *ius* was known to and applied by people other than Roman, too. The *naturalis ratio* itself is in connection with *natura*, as well as with *ratio*, which is based on *rerum natura*.[11] Moreover, a text from the Digest by Ulpian and an extract from the Institutes of Justinian describe *ius naturale* as an entity taught by *natura* to each and every *animalia*.[12] It is clear from both texts that *ius naturale* does not exclusively belong to mankind, but it also applies to other living creatures.[13] Ulpian regards *ius naturale* as an independent source of law that cannot be corrupted nor abolished by any norms of *ius civile*. A conclusion can easily be drawn that a universal law of

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[9] Wolfgang Waldstein: Entscheidungsgrundlagen der klassischen römischen Juristen. *ANRW II 15 (1976),* 3–101 and 26–68 in particular.

[10] Gai. 1, 1 = Inst. 1, 2, 1: *Omnes populi, qui legibus et moribus reguntur, partim suo proprio, partim communi omnium hominum iure utuntur: Nam quod quisque populus ipse sibi ius constituit, id ipsius proprium est vocaturque ius civile, quasi ius proprium civitatis; quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur. Populus itaque Romanus partim suo proprio, partim communi omnium hominum iure utitur.*

[11] In detail cf. Schambeck op. cit. supra 18. It should be mentioned that Schambeck uses *ratio* in the meaning "Vernunft", that is 'sense'.

[12] Ulp. D. 1, 1, 1, 3 (1 inst.) = Inst. 1, 2pr.: *Ius naturale est, quod natura omnia animalia docuit: nam ius istud non humani generis proprium, sed omnium animalium, quae in terra, quae in mari nascuntur, avium quoque commune est. hinc descendit maris atque feminae coniunctio, quam nos matrimonium appellamus, hinc liberorum procreatio, hinc educatio: videmus etenim cetera quoque animalia, feras etiam istius iuris peritia censeri.*

[13] The meaning of the Latin word *animal* is wider than its English equivalent's, the relation between animal and *animus* or *anima* is significant. On this cf. e.g. Fináy op. cit. supra 121–122.

nature should therefore exist, which is equally applicable to both men and animals; as evidence, it is highly sufficient to quote Ulpian's view at the end of the cited extract about marriage as the reflection of self-preservation.[14] For the first sight it seems that Ulpian distinguishes the law of nature and the law set by sense: the former is *ius naturale*, the latter is *ius gentium*, but he deduces both from the order of nature.[15] On the second thoughts, however, it may be added that *ius gentium* is a consequence of the order set by nature, while sense is a mere means of comprehending the order itself.[16] In the Institutes of Justinian the conceptual basis of *ius naturale* is somewhat altered, since the Emperor emphasises the divine will which guarantees that the norms shall all be unalterable.[17] Until the age of Justinian *ius naturale* was the ideal law of regulative functions, after Justinian it becomes a real order with a constitutive aim.[18] So here *natura* is observed from the aspect of an unalterable law of nature considered as a creation of God.[19]

As a second step, *naturalis ratio* should be deeper scrutinised in contrast to *leges* and *senatus consulta* which are material sources of law. When the link between *natura* and *lex* is taken into account, the best known text is one by Celsus:

> Cels. D. 50, 17, 188, 1 (17 dig.)
> *Quae rerum natura prohibentur, nulla lege confirmata sunt.*

Theo Mayer-Maly believes that this short text expresses the limit of *ius*, mainly because the jurist simply subordinates laws to *natura*.[20] Similarly, there is a text in the *Institutes* of Gaius dealing with *furtum manifestum,* which is also widely cited by the authors of secondary literature.[21] In connection with manifest theft it should be pointed out that Gaius focuses on the demonstration of the fact that though the legislator cannot widen the statutory rules, but can make any decisions concerning the actual

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[14] For further details cf. SCHAMBECK op. cit. supra 14.

[15] SCHAMBECK op. cit. supra 14.

[16] On *ius naturale* see also WOLFGANG WALDSTEIN: Ius naturale im nachklassischen römischen Recht und bei Justinian. *ZSS RA CXI* (1994) 1–65.

[17] SCHAMBECK op. cit. supra 22.

[18] "War es bisher meist ein Idealrecht mit regulativer Funktion, so wird es nun zu einer Realordnung mit konstitutivem Zweck." SCHAMBECK op. cit. supra 23. This statement also justifies that *ratio* actually refers to the reflection of order.

[19] Yet, this has not always been the dominant point of view. Stoic philosophy for instance puts the eternal and unchangeable law in the centre, which can be found both in the law of nature and in norms of legal-moral content appealing to human sense. Humans carry this law of nature, so this law is practically the essence of human nature (see e.g. Cic. *de. leg.* 1. 12).

[20] THEO MAYER-MALY: Juristische Reflexionen über *ius* I. *ZSS RA CVII* (2000) 11.

[21] Gai. 3. 194: *Propter hoc tamen, quod lex ex ea causa manifestum furtum esse iubet, sunt, qui scribunt furtum manifestum aut lege intellegi aut natura: lege id ipsum, de quo loquimur, natura illud, de quo superius exposuimus. sed uerius est natura tantum manifestum furtum intellegi; neque enim lex facere potest, ut qui manifestus fur non sit, manifestus sit, non magis quam qui omnino fur non sit, fur sit, et qui adulter aut homicida non sit, adulter uel homicida sit; at illud sane lex facere potest, ut proinde aliquis poena teneatur, atque si furtum uel adulterium uel homicidium admisisset, quamuis nihil eorum admiserit.*

content of any rules to come.[22] Besides the opinion of Mayer-Maly, another author is also to be referred to. According to Archi, Gaius puts forward that natura does not prevent *ius* from having a particular result, but it is a metaphor for representing truth, at the achievement of which ius itself aims.[23] As a result of his profound analysis, he points out that in the Gaian sources *leges*, *senatus consulta* and *constitutiones principales* are referred to as the most characteristic and important sources of law of that age. He equally denotes that neither the edicts of magistrates nor the responses of jurist are enumerated here.[24] He examines a text from the Digest concerning *quasi ususfructus* (Gai. D. 7, 5, 2, 1 [7 ad ed. provinc.]) and the outcome of his scrutiny is that while the text in the Institutes of Gaius discovers the link between *natura* and *lex*, the Gaian opinion in the Digest reveals the connection between *naturalis ratio* and *senatus consultum*, thus it is not the formal nature of the sources of law which are taken into account, but the imperative character common to all of them, by which, however, neither *natura* nor *naturalis ratio* can ever be discarded.[25] As the opinion of Gaius concerning *quasi usufructus* has been mentioned, it is probably advisable to disclose the relation of *naturalis ratio* and the decrees of the Senate through this opinion.

> Gai. D. 7, 5, 2, 1 (7 ad ed. Provinc.)
> *Quo senatus consulto non id effectum est, ut pecuniae usus fructus proprie esset (nec enim naturalis ratio auctoritate senatus commutari potuit), sed remedio introducto coepit quasi usus fructus haberi.*

In case of the establishment of usufruct, it is problematic that money bears no fruit by nature. Yet, a decree of the Senate permitted the establishment of usufruct in such a case. Gaius underlines the limited character of legislation: the Senate can only widen the scope of the establishment of usufruct paving way to the application of the rule harmonising with *naturalis ratio*.[26]

In order to deepen the aforesaid assertions, a further fragment from the Digest is to be cited in connection with interrogations and confessions in court, and those actions which are based on interrogations.

> Iav. D. 11, 1, 14, 1 (9 ex Cass.)
> *In totum autem confessiones ita ratae sunt, si id, quod in confessionem venit, et ius et naturam recipere potest.*

The jurist points out that generally confessions are only taken into consideration, when those included in a particular confession can be accepted as being in conformity with both law and nature. It is interesting that the text mentions conformity with

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[22] For an even more detailed analysis see Mayer-Maly op. cit. supra 12–13.

[23] Gian Gualberto Archi: „Lex" e „natura" nelle Istituzioni di Gaio. In: *Festschrift für Werner Flume I.* Köln, 1978. 6 and 6[12].

[24] Archi op. cit. supra 7.

[25] Archi op. cit. supra 7–8.

[26] Cf. Mayer-Maly op. cit. supra 13.

respect to '*et ius et naturam*', but no further restrictions are added to *ius*, therefore this opinion should mean that no confession in court can be unlawful. As for natura in this context, it refers to everything which is contrary to absurdity.[27] As a consequence, *natura* as the reverse of *absurdus* in this text is clearly a guiding principle: consistent *ius* is only imaginable within the scope of *natura*.

III. The role of *rerum natura* in decision-making

To go one step further r*erum natura* should be dealt with, mainly as the factual character of things. In secondary literature rerum natura is considered as a term of stoic origins. Schambeck for instance explicitly asserts that the stoic idea of rerum natura appears in Roman law mainly due to the works of Cicero.[28] As for the appearance of rerum natura in the sources, Wolfgang Waldstein outlines–without the slightest intention of classification–certain groups, the establishment of which was based on the logic of Roman lawyers. It is generally true for the analysed sources that they reflect situations of the objective truth. Since the objectivity in these cases is beyond doubt, thus it is not distorted by the fact that human sense is unable to comprehend it. It means that facts cannot be altered by human will, or because of human imprudence. Correspondingly, Ulpian writes:

> Ulp. D. 50, 1, 6pr. (2 opin.)
> *Adsumptio originis, quae non est, veritatem naturae non peremit: errore enim veritas originis non amittitur nec mendacio dicentis se esse, unde non sit, deponitur: neque recusando quis patriam, ex qua oriundus est, neque mentiendo de ea, quam non habet, veritatem mutare potest.*

Any incorrect statements of a person's birthplace does not change the fact of that person's origin, it always remains the same independently of mistake (*error*), lie (*mendacium*), or even denial (*recusatio*). As Ulpian formulates it universally, these actions have no effect on *veritas naturae*, that is they cannot change it. Therefore, the reality of this objective truth cannot be altered for the very reason that it is objective, which means that it is derived from *veritas naturae*.[29]

Waldstein also examined certain specific cases of the factual character of rerum natura, which in this sense come into to parts in the sources. On the one hand there are opinions in the Digest, where rerum natura is understood as the expression of physical existence, while on the other hand some fragments refer to the natural character or quality of a particular thing or event. The sources related to physical existence unanimously emphasise that the factual existence of a particular thing is a prerequisite for the establishment of its legal relevance. There are several sources, from which this idea becomes clear, yet the best example is one by Africanus.

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[27] On this see the last sentence in the principium of the cited text, in which it is claimed that no action can properly be brought with reference to a freeman against someone who has made a confession (Iav. D. 11, 1, 14pr. [9 ex Cass.]: "[…] *non recte hominis liberi nomine actum sit cum eo qui confessus est*".)

[28] SCHAMBECK op. cit. supra 12.

[29] On this cf. WALDSTEIN (1976) op. cit. supra 36.

> Afric. D. 30, 108, 10 (5 quaest.)
> *Qui quinque in arca habebat ita legavit vel stipulanti promisit "decem quae in arca habeo": et legatum et stipulatio valebit, ita tamen, ut sola quinque vel ex stipulatione vel ex testamento debeantur. ut vero quinque quae deerunt ex testamento peti possint, vix ratio patietur: nam quodammodo certum corpus, quod in rerum natura non sit, legatum videtur. quod si mortis tempore plena summa fuerat et postea aliquod ex ea deperierit, sine dubio soli heredi deperit.*

In his opinion Africanus claims that if a certain individual promises in a stipulation ten golds, though he merely has five golds in his chest, his promise is valid, but only five will be due, since the rest virtually does not exist (*in rerum natura sit*). The authors of the other texts of this "group" share this opinion.[30] Paul for example asserts in connection with the *usucapio pro suo* that only such a thing can be usucapted that virtually exists. As a consequence, *rerum natura esse* expresses the existence of a particular thing, or in other words *rerum natura* designates the boundary between existence and non-existence.

As for those texts which pertain to the natural quality of things and events, there's also one by Paul dealing with the issues of taking care of rainwater and *actio aquae pluviae arcendae*. In a fragment Paul writes:

> Paul. D. 39, 3, 2pr. (49 ad ed.)
> *In summa tria sunt, per quae inferior locus superiori servit, lex, natura loci, vetustas: quae semper pro lege habetur, minuendarum scilicet litium causa.*

The jurist enumerates three causes, because of which a lower tract of land may be subject to an upper one, and they are namely *lex*, *natura loci* and *vetustas*. Waldstein emphasises that the text is arranged so that *natura loci* stands between *vetustas* and *lex*. The conclusion drawn is that if a case cannot be solved on the basis of either *lex* or *vetustas*, it is–as in the present case–the natural place of the ground that is to be taken into consideration. It should therefore be examined, whether the hurtling rainwater can be trapped by human force or not. As a result, it is *natura loci* from which the obligation for the endurance of the actual possessor of the lower land is derived. Thus, according to Waldstein, *natura loci* is inserted in the text, because when *lex* and *vetustas* are useless for solving the case, the lawyers had reference to the nature of the ground as a point to start from.[31] All things considered, it can be stated from the aspect of this particular case that *rerum natura* was used as a principle or notion of limitation.

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[30] Such texts are as follows: Iav. D. 7, 4, 24pr – 1 (3 ex post. Lab.); Ulp. D. 38, 1, 9pr. – 1 (34 ad Sab.); Paul. D. 41, 2, 3, 21 (54 ad ed.).

[31] Cf. Waldstein (1976) op. cit. supra 39–40. On the basis of an other text (Cels. D. 50, 17, 188, 1 [17 dig.]) Mayer-Maly concludes similarly that *rerum natura* as a principle was referred to by the Romans, if only one possible solution existed to a particular case. "Auf die *natura rerum* beriefen sie sich dagegen, wenn aus irgendwelchen Gründen – sei es aus physiologischen, sei es aus sozio-kulturellen – für ein Problem nur eine Lösung denkbar schien." cf. Mayer-Maly op. cit. supra 11.

Relating to the aforesaid *veritas naturae*, the characteristics and the essence of individuals should also be mentioned. From this aspect, a text of Gaius is to be referred to, in which he underlines that the offspring of a female slave is not considered to be *fructus* (fruit, or here rather profit), and therefore belongs to the owner of the property.[32] Since–as he argues–it would seem absurd for a man to be classified under the term "profit" or "fruit", when *rerum natura* has created the fruits of everything for the benefit of the mankind. This extract also supports the concept of *rerum natura* as a notion of limitation, yet, in the text examined previously it kept apart existence and non-existence, while here it separates *absurdus* from *realis*. Waldstein believes that the way Gaius described *rerum natura* implies even more: it reflects the normative order that people can get to know, involving value judgements and teleological structures.[33]

There are other sources that deal with some circumstances independent of human actions, but referring to humans.[34]

> Ulp. D. 21, 1, 1, 7 (1 ad ed. aedil. curul.)
> *Sed sciendum est morbum apud Sabinum sic definitum esse habitum cuiusque corporis contra naturam, qui usum eius ad id facit deteriorem, cuius causa natura nobis eius corporis sanitatem dedit: […]*

This text by Ulpian explains the notion of illness claiming that it is such a state of the body that *contra naturam est*. As he explains, it is *natura* that gave health (*sanitas corporis*) to us all. Similarly, those sources are also to be mentioned that scrutinise family relationship, namely *cognatio*, which is also a circumstance independent from human actions.[35] These texts correspond closely to the issue of the birthplace of an individual mentioned in connection with *veritas naturae* by Ulpian: both sorts of texts refer to conditions, situations, on which men have no influence.[36] An even stronger indication of this can be discovered concerning actions against theft by Paul.[37] The jurist claims that it is the *natura rei* that prevents (*impedimentum*) the *pater familias* to sue his own son because of theft, as the son is under the authority of his father, so that the father seems to sue himself. Mayer-Maly supposes that the text reports on the

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[32] Gai. D. 22, 1, 28, 1 (2 rer. cott.): *Partus vero ancillae in fructu non est itaque ad dominum proprietatis pertinet: absurdum enim videbatur hominem in fructu esse, cum omnes fructus rerum natura hominum gratia comparaverit.*

[33] WALDSTEIN (1976) op. cit. supra 51.

[34] Such as e.g. Iav. D. 41, 2, 23, 2 (2 epsit.).

[35] Pomp. D. 38, 8, 5 (4 ad Sab.): *Legitimis capite deminutis non datur bonorum possessio iure heredis legitimi, quia non eadem causa eorum est, quae liberorum: sed gradu cognatorum rursus vocantur.* Pomp. D. 50, 17, 8 (4 ad Sab.): *Iura sanguinis nullo iure civili dirimi possunt.* On this cf. Mod. D. 38, 10, 4pr (12 pand.), too.

[36] Mayer-Maly believes that in this case *ius sanguinis* and *ius civile* compete with each other, the appearance of the concurrence between *civitas* and *rerum natura* is marginal. MAYER-MALY op. cit. supra 14.

[37] Paul. D. 47, 2, 16 (7 ad Sab.): *Ne cum filio familias pater furti agere possit, non iuris constitutio, sed natura rei impedimento est, quod non magis cum his, quos in potestate habemus, quam nobiscum ipsi agere possumus.*

collision of *iuris constitutio* and *rerum natura*,[38] but after a deeper and more proper examination of the problem it can be stated that the text concerns family relationship and its origin in *natura*.

Finally, there is one more "group" of texts to be examined more closely, the sources of which Waldstein identifies as ones linked to *natura rei*, which here denotes a natural ability or strictly spoken character. A text by Paul[39] is the best to outline the question, here in connection with the acquisition, transfer and cease of possession.

> Paul. D. 41, 2, 3, 5 (54 ad ed.)
> *Ex contrario plures eandem rem in solidum possidere non possunt: contra naturam quippe est, ut, cum ego aliquid teneam, tu quoque id tenere videaris. […] in summa possessionis non multum interest, iuste quis an iniuste possideat: quod est verius. non magis enim eadem possessio apud duos esse potest, quam ut tu stare videaris in eo loco, in quo ego sto, vel in quo ego sedeo, tu sedere videaris.*

After having listed the different opinions of various lawyers, Paul asserts that the same thing cannot be possessed *in solidum* by two or more people, because this *contra naturam est*. Of the diversity of opinions Paul tends to agree with Labeo, who assumes that there is only one condition that counts in case of possession: the fact of physical, material control over the thing. Paul himself supports this statement with a very evident example: if A is at a particular place at a specific time, it is impossible that B should stand in the very place where A is standing. This example reflects the observation of the world around us. As a result *natura* here also signifies the limit between possible and impossible.

IV. Conclusions

As a summary, it is clear from the cases examined on the previous pages that whenever the Romans made reference to *rerum natura*, they only asserted that the relevant elements of a particular case are in accordance with *rerum natura* and this is why these elements can be taken into consideration in the particular case, consequently they regarded this notion as a kind of axiom. The essence of these texts is composed of case by case fragments, and in each case the jurist only declares that a particular thing *in rerum natura est*, while the other is *contra*. For the most part, *rerum natura* goes hand in hand with unalterable facts (birth, death, family relations, place of birth, etc.) that actually cover the normative order, but how are they connected? Reality defines the cornerstones of normative order, so that it is useful when the scope of the

[38] Mayer-Maly op. cit. supra 11–12.

[39] Beside this, a text of Gaius (Gai. D. 50, 16, 236pr. [4 ad duodec. tab.]) should equally be mentioned, in which the jurist explaining the meaning of *venenum* says that those who speak of poison should add whether it is good or bad, for medicines are poisons as well, and they are so called because they change the natural disposition of those to whom they are given.

application of a certain norm should be decided. And above all this, it is *veritas naturae* that guards the objectivity of these facts. This is the reason why *rerum natura* is considered a notion or principle of limitation, used mainly as a final reference. *Ius naturale* on the other hand, consists of basic norms derived from the order of nature, from which these norms can be deduced. All things considered, *ius naturale* is the legal reflection of natural imperatives, while *rerum natura* sets the scope of the application of man-made norms.