SUMMA

BOUNDARIES OF CORPORATE PERSONALITY

Ákos Szalai

The legal persons and individuals have the same rights "unless the context does not imply otherwise". The recent years saw several harsh debates surrounding the meaning of corporate personality: do legal persons have the same religious rights (Hobby Lobby) or the same freedom of speech, the same rights to finance political campaigns (Citizens United) as natural persons? The article attempts to prove that the arguments in this debate (against or for these rights of corporations) stem from the views regarding the basic structure and roles of the corporations. Three crucial issues will be defined. (i) The meaning of the separation between the corporations and their investors: those who do not make a clear distinction between the legal personality and limited liability (the two main aspects of the corporate veil) are less likely to argue for corporate rights. (ii) Control over the management: if the decisions of management and the directors are seen as highly uncontrollable by the investors the new corporate rights will be less attractive. (iii) The main social function of corporations: those accepting that investors may set additional goals for the corporations above the profit-seeking, or rejecting the concept of corporate social responsibility, will be more likely to defend corporate rights against regulation.

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HUMAN DIGNITY, HISTORICAL NARRATIVES, AND LAW. A DRAFT ON TODAY PERSPECTIVES OF NATURAL LAW

Gergely Deli

This paper argues that positive law becomes more and more 'natural' nowadays. It is true despite the fact that the author understands natural law in its strictest form, as being an eternal, necessary, good, and equitable system. From these four attributes the first two, eternality and necessity are present in recent legal development. To prove these rather surprising assumptions, the author analyses two cases of the Hungarian Constitutional Court concerning the prohibition of the use of symbols of totalitarian regimes.

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NATURAL-LAW ARGUMENTS FOR SUNDAY AS COMPULSORY WEEKLY REST DAY AND THE POSSIBILITIES OF PUBLIC POLICY

János Frivaldszky

Art. 5 of the Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time provides that the weekly rest period "shall in principle include Sunday". This provision was, however, annulled by the Judgment of the Court of 12 November 1996, because "the Council has failed to explain why Sunday, as a weekly rest day, is more closely connected with the health and safety of workers than any other day of the week." In this paper I offer several arguments to show that Sunday is the appropriate day for the weekly rest of workers who are at the same time also human persons living in their families. Sunday is unique among the days of the week, and Sunday rest can be a real recreation for all members of the family. For that reason workers have right to weekly rest on Sunday. Moreover, a such family-friendly arrangement of the weekly rest may result in the strengthening of thousands of families, and hence the growth of established family enterprises.

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NATURAL LAW AND OUR CONSTITUTION – WITH SPECIAL REGARD TO THE RIGHT TO LIFE

Antal Hámori

This study examines the relationship between natural law and codified (positive) law, the definition of law, the right to life and the protection of the human embryo. The author delineates the opinion of the Constitutional Court, the views of constitutional court judge Tamás Lábady, the new Fundamental Law of Hungary, and also expresses his own standpoint and arguments. The author sets the opinion articulated by constitutional court judge Tamás Lábady on the legal status of the human embryo in 1991 and 1998 as an example for everybody to follow; underlying that human life is a fundamental value even before birth, which is inviolable and inalienable. It is such a value which humans may perceive merely by the light of reason, and to which philosophers, legal philosophers, natural right theorists and canonists should all pay particular attention.

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ARGUMENTS FROM FAIRNESS IN THE *RHETORIC*

Miklós Könczöl

This article discusses Aristotle's views concerning the role of arguments from fairness in legal argumentation. It first summarises what Aristotle writes about fairness in Book 5, Chapter 10 of the *Nicomachean Ethics*. Then it turns to Plato's conception of fairness as formulated in his dialogues, the *Statesman* and the *Laws*. Relevant passages from Aristotle's *Rhetoric* are examined in two parts. First, his conceptual explanation and example (1374a 26–b 1) are used to reconstruct the structure of arguments from fairness. Second, the list of topics related to fairness (1374b 2–22) is scrutinised. This threefold comparison is intended to show (1) the essential difference between Plato's and Aristotle's approach to fairness, (2) the role definitions play in arguments from fairness, and (3) the distance between what might be termed 'formal' and 'substantive' arguments from fairness, reconstructed on the basis of Aristotle's example and his list of topics, respectively.

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DER NOTWENDIGE UND FEIERLICHE AKT DER MENSCHLICHEN SELBSTBESTIMMUNG: SCHAFFUNG EINER PERSÖNLICHEN WELTANSCHAUUNG

Versuch zu einer möglichen Begründung der menschlichen Rechte

Géza Kuminetz

Durch unsere Untersuchungen bezüglich der menschlichen Person haben wir eigentlich die spezifische Natur des menschlichen Wesens (seine Strukturen und seine Funktion) geforscht. Die Seienden haben den für ihre Spezies charakteristischen Lebensinhalt, der ihr Wesen, ihre Tätigkeit beziehungsweise Erkennbarkeit für den menschlichen Geist ausdrückt. Das Ergebnis unserer Untersuchungen ist es, dass das ganze Wesen des Menschen (sein biologischer, psychischer und geistiger Aufbau sowie seine biologische, psychische und geistige Funktion) eine verantwortungsvolle Lebensführung verlangt, die sich in einer spezifischen Selbstbestimmungsentscheidung und in der Treue zu ihm zeigt, und das ist die Verpflichtung und das Recht, eine Weltanschauung beziehungsweise eine Religion zu schaffen.

Zur verantwortungsvollen Lebensführung muss der Mensch jedoch sorgfältig erzogen werden. Und das Wesentliche bei der Erziehung zum Menschen ist die Schaffung des moralischen Zustandes, denn das moralische Bewusstsein gibt die Fassung der weltanschaulichen Bewertung des Menschen, es drückt sozusagen die Persönlichkeit selbst, ihre Identität aus. Der seiner Moral bewusst werdende Mensch erkennt, dass er alles nach seiner moralischen Gesinnung beurteilt, und er soll auch

so machen. Unsere weltanschauliche Bewertung wird im moralischen Bewusstsein zu unitas multiplex.

Das Problem der Menschenrechte ist heute zum Mittel der Machtkämpfe geworden, und so verstanden müssen wir es eher als eine Fiktion, fast eine Illusion oder gerade als eine Utopie betrachten. Für die Menschheit bedeuten diese Kategorien nur dann einen wirklichen Schutz und sie können nur dann eine persönliche Entfaltung versprechen, wenn wir sie im Lichte ihrer wahren Grundlage auslegen. Diese Grundlage sehen wir heute in der Würde der menschlichen Person, wir haben jedoch gesehen, dass auch dieses Wort mehrere Menschenideale beinhalten kann, das heisst es besteht keine Hoffnung, die Menschenrechte unabhängig von der Weltanschauung beziehungsweise frei von der Religion zu begründen. Wir müssen danach streben, dass wir nach unserem besten Wissen und Gewissen handeln, wirklich aufgeschlossen für die Wahrheit, angenommen ihren moralischen Imperativ.

Beim Entwicklungsstand der Weltanschauungen gibt es natürlich Unterschiede, in jeder ist ein Kern der Wahrheit enthalten, sonst würden die Menschen nicht an sie glauben und so würde niemand diese Lehren befolgen. Prinzipiell kann an die absolute Ordnung der Werte eine Weltanschauung herangehen, die sowohl den Menschen als auch den Kosmos und das Absolute am sachlichsten betrachten kann. Dem steht die christliche Auffassung am nächsten, weil sie einerseits den Menschen als Geschöpf betrachtet, andererseits ist Gott in dieser Auffassung Schöpfer, also einer, der von seinem Geschöpf unabhängig ist und sich von ihm auch unterscheidet, trotzdem wendet er sich auch an die Welt. Und wenn wir mit seinen Augen sehen und bewerten, kann das für uns prinzipiell die Garantie der subtilsten und sachlichsten Urteilsgestaltung sein. Mit der Wahl der Weltanschauung wählen wir sozusagen eine Identität, wir bestimmen die Rahmen der Erfüllung unserer menschlichen Berufung; mit diesem Schritt setzen wir unseren Platz und unsere Bestimmung im Weltall fest.

Die grundlegenden Menschenrechte, worauf wir uns auch berufen, ob auf die Würde der menschlichen Person oder auf die menschliche Natur oder auf die menschliche Vernunft, werden immer auf einem weltanschaulich-religiösen Grund begründet. Diese Rechte muss sich ob die Person oder die Gesellschaft oder die Menschheit selbst im Lichte ihrer neuen Kenntnisse immer wieder formulieren. Diese These bedeutet keinen Relativismus sondern eine Voraussetzung für die Grenzen der erkennenden und bewertenden Fähigkeit des Menschen. Diese Synthese gelingt im Laufe der Zeit nicht notwendigerweise immer besser. Während der Geschichte hat bisher die beste Annäherung – nach unserer Ansicht – die aristotelisch-thomistische Philosophie geschaffen. Zur gleichen Zeit kennen wir eine Gemeinschaft, die auch durch die göttliche Hilfe unterstützt wird, damit sie die grundlegenden Menschenrechte im Laufe der Zeit immer klarer und richtiger deuten und verkünden kann, und das ist die katholische Kirche.

Das Schicksal der Menschenrechte ist letzten Endes in den Händen der einzelnen Menschen, der einzelnen Völker und der einzelnen Staaten, nicht hinsichtlich ihres Wesens sondern ihrer Erkennung und noch eher hinsichtlich ihrer Durchführung. Sie werden weder im Leben der Person noch in der Gesellschaft in gebührender Weise zur Geltung kommen, bis wir uns (die Vertreter der Person und der Macht) bewusst

werden, dass wir zur wirksamen Durchsetzung der Menschenrechte grundsätzlich eine moralische Kraft, das heisst Tugend und Erziehung brauchen.

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METHODOLOGICAL ATHEISM AND DISANTHROPOCENTRISM

Preliminary remarks for a theory of natural law to be elaborated

Zoltán Turgonyi

Actual Western liberal consensus is practically atheistic, because references to God cannot be used as public reasons in Rawlsian sense. In the beginning of my paper I accept this atheism as a working hypothesis. But this methodological atheism requires methodologcal disanthropocentrism, too, since without God we have no reason to think that the Universe is automatically favourable to human beings. An analysis, based on this double working hypothesis, finds that liberalism is self-defeating and we need, instead of it, a society based on natural law in classical sense, in which the duty of individuals is not limited to the respect for the liberty of other individuals, but they are responsible for the continuous existence of society as a whole, too. But the functioning of such a society presupposes moral convictions (e.g. on the objectivity of values) which have lost their credibility because of the „dialectic of Enlightenment". In the last third of my paper I abandon methodlogical atheism, in order to see whether we can find a religion as a foundation for the above mentioned moral convictions, which is, at the same time, compatible with methodological disanthropocentrism requiring human responsibility.

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THE PATRIARCH'S FAMILY?

The family in Sir Robert Filmer's patriarchalism

Ákos Tussay

To understand Filmer's political thought, it is inevitable to take a closer look on his patriarchalism, and his concept of the family in particular. This paper gives a brief overview of the key features of Filmer's patriarchalism, with a special focus on the Filmerian conception of the family. In the first part we look at the four main sources of Filmer's patriarchalism: the platonic patriarchal tradition, the analogous philosophical view of the cosmic harmony, the Aristotelian-Thomist idea of political friendship, and, finally the patriarchal fiction. In the second part we turn to particular elements of his system, such as the right of fatherhood, the links between the family and the state, and his concept of family as the union of husband and wife, that is,

the idea of companionate marriage. In so doing, our main interest lies in the fragile balance within the Filmerian concept of the family, based on the harmonious functioning of the different spheres, the personal and the political.

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FUNDAMENTAL RIGHTS IN THE EU MEMBER STATES

Application and interpretation of the EU Charter of Fundamental Rights

Beáta Bakó

The paper examines the role of the EU Charter of Fundamental Rights in the European fundamental rights protection system, focusing to articles 51-53 of the Charter which concern its application and interpretation. Since the Lisbon Treaty entered into force, the Charter has become the part of EU primary law. However, Member States are addressees of the Charter only when they are implementing EU law. Nonetheless, it seems from CJEU's newest decisions (especially from the Åkerberg Fransson-ruling) that the Court might broaden this narrow field of application.

By the interpretation of the Charter national constitutions and the European Convention on Human Rights have significance but it can be limited to their 'respective field of application' in order to secure the primacy of EU-law (as it is concluded in the Melloni-ruling).

Under article 6 TEU the EU shall also accede to the European Convention on Human Rights but the accession does not seem to be probable, after in December 2014 the CJEU ruled that the draft agreement on the accession was not compatible with EU law. In the light of the Court's opinion, probably the Charter will remain dominant in EU fundamental rights protection in the future.

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THE SYSTEM OF THE GROUNDS FOR SUBSIDIARY PROTECTION

Árpád Szép

Subsidiary protection is a new form of international protection created by the European Union's so called Qualification Directive (QD). This new category of protection is based on already established notions however there is a lot of uncertainty in the definitions used by the QD especially regarding the "serious harm" in Art. 15. c). There is no clear distinction between the protection based on the Art. 15 c) QD and the one based on the Article 3 of the European Convention of Human Rights (ECHR). There is no such case where protection should be granted under the Art. 15 c) QD, but outreaches the protection by the Article 3 ECHR. Because of this, Art. 15

c) QD can be considered as a subcategory of the cases dealt under the Art. 3 ECHR, which is equivalent in its definition to the 15 b) QD. This Study deals with the structure and the definitions of the subsidiary protection in order to identify the possible distinctive elements between Art. 15 c) QD and Art. 3 ECHR.

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THE PRINCIPLE CLAUSULA REBUS SIC STANTIBUS REFLECTS ON ANTIQUE AND MIDDLE-AGE JURISPRUDENCE

Nikolett Lukács Dávidné Talabos

The publication negotiates a roman law principle, *„clausula rebus sic stantibus"*, across the antique and middle-age jurists theories. The clausula can be found in nowadays german private law regulation in BGB 313. §, in Bernhard Windscheid's and Paul Oertmann's theory too. In Hungary after Ist World War the *economical impossibility*, nowadays the *juridical conract modifying* can identify as clausual adaptations.

The publication reviews only sketchy the history of the theorem, from Cicero and Seneca to the natural law jurists. The study emphasises the importance of the glossators and commentators, like Baldus, Bartolus, Accursius, Teutonicus, Ludovicus Pontanus, Tommaso d' Aquino, Donellus or Alciatus. Next to the civil law, the canon law innovated the interpretations of the theory, especially the concept *aequitas*, which was one of the most significant precept in the european private law. The dissertation attends to the doctrines of Hugo Grotius and the north natural school too, until the XVIIIth century, the theories of Heinrich von Cocceji, Karl Philip Kopp and Augustin Leyser. The researching based on english, german and latin bibiliography.

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THE BEGINNING OF THE ECCLESIASTICAL RELATIONS BETWEEN HUNGARY AND POLAND

Szabolcs Anzelm Szuromi

The ecclesiastical institutional system has developed by parallel way in Poland and Hungary, from their conversion to Christianity. It is testified by organizing the dioceses, the conciliar legislation in order to solve those internal ecclesial questions which were particular problems of the same region. These solutions basically laid on the universal canonical norm-system, in particular the generally used canon law collections (i.e. primary the influence of the Decretum Burchardi Wormatiensis [1008–1022] and the Decretum Gratiani [around 1140]), the canonical auxiliary books for the ecclesiastical tribunal process, namely the ordo iudiciarii, and the similar academic background in philosophy, theology, canon law and legal studies. The University of Cracow (established in 1364) played a very important local role regarding this common intellectual basis.