

LAW, JUSTICE, AND CHARITY IN THE ENCYCLICAL LETTER CARITAS IN VERITATE

János FRIVALDSZKY
Professor (PPCU)

1. Truth is a logos which creates dialogue

“*Truth*, in fact, is *lógos* which creates *diá-logos*”¹ It may come to mind that in the Christian-minded Middle Ages, the glossators kept investigating into the legal, practical truth by dialectic modes, based on dialectic controversy. They were convinced that they could approximate the just disposition only by way of a dialogue, constituted of affirmative and negative argumentative methods. It has been demonstrated that the dialectic-scholastic method – just like the rhetorical prior to that – took the process and logic of legal disputes for a basis; this method was then proved to be an adequate philosophic mode for approximating the truth itself.² Throughout the Middle Ages, but certainly till the time of Saint Thomas Aquinas, legal, philosophic and theological reasoning was characterised by its discursive inner-structure, established on the logic of *disputa* and *quaestio*.³ However, legal reasoning, and in particular its late medieval form, had, by virtue of its structure, a truth-oriented attribute, which was also shared by its Greek antecedents. Hence, in a dialectic sense, *iurisprudentia* is the most philosophic philosophical discipline, provided, by philosophical discipline, the meaning – i.e. practical philosophy (*prudentia*) – attributed by the classics, in particular the glossators, is being meant. *Iurisprudentia* is then not only one of several

¹ *Caritas in veritate*, 3.

² Alessandro GIULLIANI: *La controversia. Contributo alla logica giuridica*. Pavia, 1996. 82.

³ Concerning the characteristically medieval practice of *liberaliter disputare*, Manlio Bellomo remarks that “They argued about everything and every time: both in and outside of the schools, in the course of lessons and on special occasions, organised just to promote argumentation. They argued about both real and fictitious topics, both cheerfully and stubbornly.” Manlio BELLOMO: *Saggio sull’università, nell’età del diritto comune*. Roma, Il Cigno Galileo Galilei, 1999. 57.

but the principal expression of dialectic truth-seeking because the ‘*vera philosophia*’⁴ seeks after the practical truth, that is, after the just and equitable disposition, while its redressers apply its findings to human relations. They say, the epistemology of this discipline qua “the practice of true philosophy” symbolises both the essential structure of the created world and the basic anthropological orientation of man, since the seeking of truth and justice is intrinsically associated with the sociable nature of man. In the sensitive and complicated matters, this seeking of truth, that is, of *practical justice*, belongs to the lawyer’s proper vocation, obligation and assignment. It is inevitable therefore that lawyers ought to have right ethical and anthropological principles. This right disposition is attainable either via indulgence in such a philosophy that makes use of right reason (*recta ratio*), or it is, in my view, equally accessible from the Catholic social teaching, since, regardless of one’s beliefs concerning the fountain of Truth, any well-disposed person may accept the intrinsic truth of its anthropological and socio-philosophic principles.

The classic dialectic medieval legal thinking was, on the one hand, truth oriented in an ontological sense – since, by virtue of its Platonic divisions and definitions, it abided by the created order –, on the other hand, its epistemology took a communal form because the approximation of the probable truths demands a truth-oriented dialogue of at least two discutants. Precisely that is the reason why such a method is exemplary even at present time.

2. Dialectic reasoning and thinking seeks after the truth, and so it is, in itself, true

According to Saint Augustine, “the science of definition, of division, and of partition, although it is frequently applied to falsities, is not itself false, nor framed by man’s device, but is evolved from the reason of things.”⁵ Hence, dialectic reasoning is the process of definition, division, and partition with a view to include all that pertains to the matter at hand and to omit everything that does not. Thus, in this dialectic sense, reasoning and understanding denotes the cognition of true essences. This cognition is then made possible by dialectics, the discipline that investigates into the nature of things (*rerum natura*). The conclusions following on these assertions are also true in themselves.

However, in human matters, that is, in things pertaining to practical philosophy, the said recognition of the right partition was, in itself, oftentimes the subject matter of a constructive dispute in the classical era. Hence, the glossators for instance debated about that in the process of systematisation of the *Corpus Iuris* which distinction ought to be applied in respect of the distinct matters at hand.

The *Encyclical* states that “by enabling men and women to let go of their subjective opinions and impressions, [Truth] allows them to move beyond cultural and historical

⁴ FRIVALDSZKY, János: A jogászok tudása mint „igazi filozófia” Ulpianusnál és napjainkban. In: PAKSY, Máté (ed.): *Európai jog és jogfilozófia*. Budapest, Szent István Társulat, 2008. 95–120.

⁵ SAINT AUGUSTINE: *De doctrina Christiana*. II, 35. 53.

limitations and to come together in the assessment of the value and substance of things.⁶ Thus, things do have both *value* and *substance*. In human matters, the *rerum natura*, their peculiar substance, possesses a moral value, and so, in a legal sense, *rerum natura* is normative as well. If the anti-essentialism of post-modernity contaminates the lawyer's legal reasoning, it will make them to disregard the peculiar natural substance of the matter at hand. This phenomenon is not only dysfunctional but also unintelligible, perhaps it even runs contrary to natural law, and so, in a legal sense, it may result in invalid regulations.

To the glossators – although they cannot be said to possess distinctly philosophic dispositions –, legal inquiry, that is the seeking of just and equitable legal solutions, meant an investigation into the nature of the things concerned. The epistemology of this investigation considered the truth of its subject matter; therefore, it resembled to their peculiar ontological truth. They knew that behind this natural order, there was a Creator who was the intelligent source of the order itself. To these medieval lawyers, both glossators and commentators, the rudimentary principles of equity (*aequitas rudis*) was such a formless matter that called for a prudent formulation by the application of the lawyers' artificial reason.⁷ Thus, the just disposition is something which is constituted. It is to be found out of the formless principles of rudimentary equity – in part – by way of a constructive *legal dispute*,⁸ yet the end of such a dispute is still something which is equitable. That is the reason why it is termed *aequitas constituta*. It is formed, but its substance is constituted by the nature of human relations, and so, eventually, it is formed by God Himself. As the medieval lawyers put it: *natura, id est Deus*.⁹

To the lawyers, the science of epistemology makes then the order of things apparent and cognisable. Hence, legal epistemology serves the ontology, and so it entails normativity.

3. 'Truth opens and unites our minds in the *lógos* of love: this is the Christian proclamation and testimony of charity'¹⁰

Provided God is Love Himself,¹¹ who by making man to participate in His community of love, created him after the likeness of His own divine and Trinitarian image, it seems reasonable to suppose that the imprint of His creative providence ought to manifest itself in the societies of men also. That is why any inquiry, set to assess the truth of the natural order (*ordo naturalis*) is also an inquiry that leads onto an ever-growing

⁶ *Caritas in veritate* 4.

⁷ Commentators, like Pierre de Belleperche, Cino da Pistoia, Jacques de Révigny, had such a conception of equity and law that indicates the direct influence of John Scotus Eriugena. Andrea PADOVANI: *Perché chiedi il mio nome? Dio, Natura e diritto nel secolo XII*. Torino, G. Giappichelli, 1997. 189–190.

⁸ Cf. *ibid.*

⁹ *Ibid.* 203–204. Piero BELLINI: *Repubblica sub Deo. Il primato del Sacro nella esperienza giuridica della Europa preumanistica*. Firenze, Le Monnier Università, 1993. 48.

¹⁰ *Caritas in veritate* 4.

¹¹ Marisa CERINI: *God who is love in the experience and thought of Chiara Lubich*. New York, New City Press, 1992.

recognition of God's plan for love. This love of God is thus both the reason behind the existence of the natural order which is created out of the pure love of God and the mean of assessing the truth of this order assessable only by reasoning governed by this self-same orderly love. And this truth of the love-order (*ordo amoris*) is what unites its investigators in a perfect community of love, consisting in their perfect conformity to the truth of the natural order.

Furthermore, since the scientific knowledge (*epistēmē*) of anything whatsoever presupposes the acquaintance with its peculiar subject-matter, it follows that any investigation into this love-order is comprehensible only by way of love, more precisely by the love of truth. This approach, also warranted by the reasons provided by Max Scheler,¹² entails that love is the basis of any truly Christian epistemology, also that the intersubjective truths of society are assessable only by *philanthrōpia* established on the love for God.¹³ The *Encyclical* warns us however that this kind of charity (*caritas*) does not at all exclude knowledge, on the contrary, it claims that '[c]harity is not an added extra, like an appendix to work already concluded in each of the various disciplines: it engages them in dialogue from the very beginning.'¹⁴

This principle is also confessed by Saint Augustine, who holds that charity is the prerequisite of the kind of prudence attained by the application of the philosophic method of '*quarere*',¹⁵ both because prudence consists in the love of truth¹⁶ and because the scientific knowledge constituting prudence is attained only by virtue of a dialogue between truth and its investigators. Needless to say that the intersubjective aspect of this dialogue cannot lack charity either, for any truly social dialogue is characterised by the culture of both empathy and the attitudes of hermeneutical understanding. Thus, in agreement with the Augustinian doctrine, I believe the proper epistemology of any philosophic investigation whatsoever suited to appeal to the truth of its subject-matter is necessarily established on this dialectic method, which method was considered the only scientific mode of investigation throughout the Middle Ages.

The interlocutors of such a dialogue are united by their shared love for God and truth which enables them to address properly the natural phenomena of the love-order. We also know from the Book of Genesis (1:31) that this order is good, meaning that its orderly structure is the outcome of God's infinite love for His creation, also that the normativity of such an order is assessable only by virtue of reasoning governed by the self-same orderly love.

Saint Augustine claims that a man lives a just and holy life, if he is capable of forming unprejudiced estimation of things,¹⁷ a thing impossible unless one's actions

¹² Cf. Max SCHELER: *Amore e conoscenza*, trad. Edoardo Simonotti. [Liebe und Erkenntnis] Brescia, Morcelliana, 2009. 58–59., 65.

¹³ Cf. St AUGUSTINE: *De doct. Christ.* I, 26.

¹⁴ *Caritas in veritate* 30.

¹⁵ Coloma VIOLA: Lineamenti di una storia della quaestio. In: P. FELTRIN – M. ROSSINI (a cura di): *Verità in questione. Il problema del metodo in diritto e teologia nel XII secolo*. Bergamo, Lubrina, 1992. 249–251.

¹⁶ The Greek word for philosophy (*philosophia*) means the love of prudence. Cf. St. AUGUSTINE: *Conf.*

¹⁷ St. AUGUSTINE: *De doct. Christ.* I, 27. 'Ille autem iuste et sancte vivit, qui rerum integer aestimator est.'

are governed by orderly love. An act of justice thus requires both an acquaintance with the love-order and the deliberator's adequate action corresponding to the peculiarities of the concrete situation. In essence, it means that one 'keeps his affections also under strict control, so that he neither loves what he ought not to love, nor fails to love what he ought to love, nor loves that more which ought to be loved less, nor loves that equally which ought to be loved either less or more, nor loves that less or more which ought to be loved equally.'¹⁸ From this follows, any relativistic understanding of human nature is intrinsically fallacious,¹⁹ as it is not established on the truths of reality and so the *Encyclical* equally condemns both those endeavours that wish to deprive human nature of its peculiar essence and those that wish to subject the human persona to the environmentalist values.²⁰ In line with this teaching, it is not right therefore e.g. to vindicate a right to marriage for same-sex couples, since marriage is the life-long union of man and woman, constituted by the positive law, but grounded on the eternal principles of natural law (*ius naturale*). Thus, love within marriage ought to be ordered in respect of both its subject-matter and intersubjective relations to form a 'love-order' in its true sense.²¹ And this *ordo* is the ontological foundation of those rights and duties that an unprejudiced deliberator ought to reckon with.

Hence, to lawyers, *ordo amoris* refers to the justice and equity of the God-given order which prescribes the proper conduct in each and every social relation. It is not surprising therefore that the anonymous author of the *Fragmentum Pragense* identifies equity with God, stating 'nichil enim aliud est equitas quam deus.'²² The lawyer's duty therefore is to grasp with his peculiar legal terminology that just and equitable order whose author is God Himself. In practice, lawyers ought to form their legal categories and norms always in close communication with the rudimentary principles of equity (*aequitas rudis*), in particular, by taking into consideration the essence, nature, good and end of the social relations concerned, because the validity of positive law always depends on its conformity to natural law. It is precisely this realism, established on the principles necessarily following on the truths about human nature which made the pre-modern legal thinking realistic. Realism to e.g. Saint Thomas Aquinas meant therefore the recognition and respect of finality in creation, making him to understand that the approximation of any scientific knowledge whatsoever necessitates to deliberate on the peculiar essence, telos, proper conduct and intrinsic normativity of the subject-matter.²³

¹⁸ St. AUGUSTINE: *De doct. Christ.* I, 27. 'Ipse est autem qui ordinatam habet dilectionem, ne aut diligit quod non est diligendum, aut non diligit quod diligendum est, aut amplius diligit quod minus diligendum est, aut aequè diligit quod vel minus vel amplius diligendum est.'

¹⁹ *Caritas in veritate* 61.

²⁰ *Caritas in veritate* 48.

²¹ Cf. *Casti Connubii Encyclical of Pope Pius XI on Christian Marriage* etc. I, 31. The recurrence to this particular terminology is most infrequent in the 20th Century scholarly literature, the one remarkable exception under this rule is to be found in Max Scheler's *Ordo amoris*.

²² *Fragmentum Pragense*. In: Hermann FITTING (Hrsg.): *Juristische Schriften des früheren Mittelalters*. Halle, Waisenhaus, 1876. 216.

²³ Ottavio DE BERTOLIS: *Il diritto in San Tommaso D'Aquino*. Torino, G. Giappichelli Editore, 2000. 7.

‘Right’ in the proper sense does not denote then a faculty to act (*facultas agendi*), but rather it refers to that which is due (*id quod iustum est*) according to the objective rules of justice,²⁴ that is, according to the intrinsic normativity of the natural order. Legal realism²⁵ thus implies a real essence behind those rights that ensue from this objective order. So, Aquinas for instance ought to be considered a legal realist, for he subjected his legal reasoning to the principles following on the *natura rerum* of his subject-matter, rather than founding these principles on the unbound will of the legislator. In conclusion, it appears, a right is always something deductible from the said normativity and it is therefore always something just in itself (*iustum per se*). However, it does not follow that every right is equally recognisable to all reasoners. In the so-called hard cases, in which the proper conduct is far from being evident, it is inevitable to engage in dialogue both with the truth itself and with one another in order to ascertain the equitable disposition of the thing concerned.

4. Reconsidering social relations after the Trinitarian image of God

Perhaps the *Encyclical’s* most vital message to lawyers consists in its appeal to reconsider our social relations after the Trinitarian image of God. The *Encyclical* is outspoken on this matter:

The Trinity is absolute unity insofar as the three divine Persons are pure relationality. The reciprocal transparency among the divine Persons is total and the bond between each of them complete, since they constitute a unique and absolute unity. God desires to incorporate us into this reality of communion as well: ‘that they may be one even as we are one’ (Jn 17:22). The Church is a sign and instrument of this unity. Relationships between human beings throughout history cannot but be enriched by reference to this divine model. In particular, in the light of the revealed mystery of the Trinity, we understand that true openness does not mean loss of individual identity but profound interpenetration. This also emerges from the common human experiences of love and truth.²⁶

At the same time, the *Encyclical* admits that ‘[t]hinking of this kind requires a deeper critical evaluation of the category of relation. This is a task that cannot be undertaken by the social sciences alone, insofar as the contribution of disciplines such as metaphysics and theology is needed if man’s transcendent dignity is to be properly understood.’²⁷

²⁴ Cf. Javier HERVADA: *Introduzione critica al diritto naturale*. Milano, Giuffrè Editore, 1990. 30.

²⁵ Cf. Reginaldo M. PIZZORNI: *Il fondamento etico-religioso del diritto secondo San Tommaso D’Aquino*. Milano, Massimo, 1989. 75.; Ottavio DE BERTOLIS: *L’Ellisse giuridica. Un percorso nella filosofia del diritto tra classico e moderno*. CEDAM, 2011.

²⁶ *Caritas in veritate* 54.

²⁷ *Caritas in veritate* 53.

What is more, since ‘the human creature is defined through interpersonal relations’,²⁸ the message of the Gospel together with the implications stemming from man’s creation after the likeness of the Trinitarian image of God ought to be reconsidered from a legal philosophic perspective as well.²⁹

One may wonder however why the need for the said reconsideration did not arise at all in the Late Middle Ages, despite of the medieval doctors’ significant endeavour to approximate the mystery of the Holy Trinity³⁰ and the rights warranted by the normativity of the natural order by way of the previously described dialectic reasoning.³¹ Perhaps Piero Bellini³² is right about his supposition that the medieval doctors interpreted the implementation of Christian deontology in terms different from our own, first, because they tended to naturalise this course of implementation and second, because they wanted to see its scope of application severely restricted to strictly-speaking inward actions only. By virtue of this second tendency, he argues that the rules of charity were considered to govern only the monks’ actions,³³ while in respect of lay persons, the self-same rules were regarded only recommendations.

Despite of Bellini’s arguments, I think his demonstration is unsupported, for the scantiness of historical evidences cannot either validate or falsify his claim. Anyway, the Encyclical is outspoken on the matter: it invites Catholic lawyers to reconsider social relations in terms of the described intersubjective anthropology and ethics, especially by way of recurrence to the rudimentary rules of charity and equity. In conclusion, the *Encyclical*³⁴ invites us to rethink the implications following on the Biblical truth that we are all brothers and sisters in Christ.

²⁸ Ibid.

²⁹ There are a number of such endeavours. See e.g. Enrique CAMBÓN: *Trinità. Modello sociale*. Roma, Città Nuovo, 2005. Cambón is avowedly indebted however to Klaus Hemmerle, who argues for a novel kind of Christian philosophy. Klaus HEMMERLE: *Tesi di ontologia trinitaria. Per un rinnovamento della filosofia cristiana*. Roma, Città Nuovo, 1986.

³⁰ See Massimo PARODI – Marco ROSSINI (a cura di): *Fra le due rupi. La logica della trinità nella discussione tra Roscellino, Anselmo e Abelardo*. Milano, Edizioni Unicopli, 2000.

³¹ Cf. Piero BELLINI: *Saeculum christianum. Sui modi di presenza della Chiesa nella vicenda politica degli uomini*. Torino, G. Giappichelli Editore, 1995.

³² Piero BELLINI: *Respublica sub Deo. Il primato del Sacro nella esperienza giuridica della Europa preumanistica*. Firenze, Le Monnier Università, 1993.

³³ After a while, only monks addressed one another as brothers in Christ. Cf. Joseph RATZINGER: *La fraternità cristiana*. Brescia, Editrice Queriniana, 2005. 55

³⁴ *Caritas in veritate* 53.: “[...] a new trajectory of thinking is needed in order to arrive at a better understanding of the implications of our being one family; interaction among the peoples of the world calls us to embark upon this new trajectory, so that integration can signify solidarity rather than marginalization.”

