

# **Some Remarks on Canon Law and Evolutionary Psychology**

## **1. Introduction**

The fundamental matter of this paper is an analysis of the possibility of using the achievements of evolutionary psychology in argumentation for canon law regulations. There are many different issues which determine the answer to that question. Mostly they come from the characteristics of canon law system but there are also general topics related to possibilities of adapting results of evolutionary psychology (hereinafter: EP) to law sciences. This short article will be an attempt to explain the complexity of answering this question at the high level of generality without solving any particular case.

## **2. Evolutionary psychology**

The first part of this reflection is based on the achievements of EP. As the basic definition of EP the following description will be used: "Evolutionary psychology aims to understand and describe human behaviour in the light of past and continuing selection and adaptation"<sup>1</sup>. EP is a new discipline of science which uses the

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<sup>1</sup> S.C. Roberts, *Applying evolutionary psychology*, [in:] *Applied Evolutionary Psychology*, ed. S.C. Roberts, Oxford 2011, p. 1.

achievements of biology (and sociobiology) to explain the nature of human. It describes certain behaviour in the light of knowledge about human evolution, which means – natural selection and adaptation to changing environmental and social conditions<sup>2</sup>. The main thesis which enables to explain human behaviour using EP is the theory of evolution, which comes from Charles Darwin, but nowadays is defined differently. (In fact, the assumption of evolution of species cannot explain every single adaptation in living organisms). Today it is stressed that evolution does not refer to the survival of any species but it is the process which leads to the transfer of a concrete gene<sup>3</sup>.

EP offers a new approach to law. It can be used in many ways, on many levels of understanding law. EP can be used as an attempt to describe human nature, which means EP gives universal knowledge about human behaviour. This knowledge can be further used e.g. in creating new norms<sup>4</sup> (law should not create human nature but should respect the deepest structures of man) or in making sentences as a next factor of evaluating acts. EP can also be used to explain the structure of legal systems because it is possible to notice some bio-mimetic patterns in these systems<sup>5</sup>. Nowadays, the most common application of EP to law is supporting certain law issues by argumentation based on EP's achievements (e.g. kin as a foster family, child maltreatment)<sup>6</sup>. Despite many potentially fruitful possibilities of adapting results of EP to law sciences, there are only few examples of such approach in the Polish jurisprudence. It is quite surprising, as it may be said today that it is almost impossible to deal with the humanities without wider perspective of nature sciences.

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<sup>2</sup> Cf. B. Pawłowski, D. Denel, *Psychologia ewolucyjna – nauka o adaptacjach i ewolucyjnej inercji ludzkiego umysłu*, „Kosmos” 2009, 58(3-4), p. 574.

<sup>3</sup> Cf. H. Gommer, *The Biological Essence of Law*, „Ratio Juris” 2012, 25(1), pp. 61ff.

<sup>4</sup> Cf. E.D. Elliott, *Law and Biology: The New Synthesis?*, „Saint Luis University Law Journal” 1997, 41, pp. 606ff.

<sup>5</sup> Cf. E.D. Elliott, *Law and Biology...*, pp. 600ff.

<sup>6</sup> Cf. D.J. Herring, *Evolutionary theory and behavioural biology research: implications for law*, [in:] *Applied Evolutionary Psychology*, ed. S.C. Roberts, Oxford 2011, pp. 239ff.

### 3. Canon law

The second part of this paper refers to the essential characteristics of canon law. Canon law is a matter which is very hard to define precisely. It is very easy to diminish the specific features of this law. It is the law of the Roman Catholic Church. Using the analogy between state (secular) law and canon law to present law of the Church is imperfect. Canon law is absolutely immanent for the Church and comes from the divine establishment of the Church and from all the complex relations between Church members<sup>7</sup>. Today it has a long history of almost two thousand years of permanent development.

There are a few sources of canon law: firstly – there is divine law which exists immutable; secondly, there is church common law and church statutory law<sup>8</sup>. Due to the community in which it exists, canon law regulates institutions important for the salvation of souls and this final aim has a big influence on many solutions inside canon law<sup>9</sup>. This main goal of the whole canon law is also a state, which exceeds canon law itself<sup>10</sup>. Canon law differs from civil law in almost every area, but these dissimilarities have separate value.

To analyze the usefulness of EP's achievements for canon law it is necessary to describe shortly what kind of objects are present in canon law. The most important part of canon law are rules from positive divine law and fundamental norms, which are somehow

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<sup>7</sup> Cf. R. Sobański, *Teoria prawa kościelnego*, Warszawa 1992, pp. 69-73.

<sup>8</sup> Cf. *ibidem*, pp. 90ff. Of course the canon law sources structure is more complicated, e.g. there are also administrative acts or an institution of canonization of secular law, see: R. Sobański, *Metodologia prawa kanonicznego*, Warszawa 2009, pp. 56ff.

<sup>9</sup> Cf. R. Sobański, „*Salus animarum*” jako cel prawa kanonicznego. Wszczęta przez Jana XXIII reforma Kodeksu Prawa Kanonicznego w świetle dyskusji o celu prawa kościelnego, [in:] *W kierunku prawdy*, ed. B. Bejze, Warszawa 1976, pp. 201ff.

<sup>10</sup> Cf. A. Pastwa, *Ochrona praw podmiotowych w kościelnym porządku prawnym: w optyce systemowej zasady „aequitas canonica” (kan. 221 KPK)*, [in:] *Problemy z sądową ochroną praw człowieka*, vol. I, ed. R. Szytchmiller, J. Krzywkowska, Olsztyn 2012, pp. 41ff.

pre-legal, but they are valid in canon law<sup>11</sup>. Of course, they are also expressed in statutory law and in this way they appear in law but they come from a higher order. It would be impossible to use EP to correct these norms because they simply do not expose to such influence. Also using EP for justifying these norms is not proper. The next object of canon law is the law of nature<sup>12</sup>, which means that the Church constitutes some norms on the basis of knowledge about human nature<sup>13</sup>. At this point it would be possible to apply EP's achievements to human nature to help canon law in recognizing the most proper regulations. But EP will have to fulfill some extra conditions which are absolutely necessary, like agreement with the Magisterium or with fundamental guidelines of Christian anthropology<sup>14</sup>. Others conditions are e.g. adapting only results achieved by EP in essential quantity instead of substitution of canon law regulations<sup>15</sup>. A few problems with applying EP to canon law appear. Other canonical norms can be generally described as discipline regulations and they are not important at this stage.

#### 4. Applying EP to canon law

As mentioned before, applying EP results to law in general is today more and more popular and it occurs in different ways. Using EP as an additional source of argumentation for canon law institutions depends on the character of these institutions. In author's opinion, when canon law is only a form for divine rules it is not possible to use EP. The nature of these norms lies in their origin and it excludes any different source as a means to correct these norms.

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<sup>11</sup> Cf. R. Sobański, *Teoria prawa...*, pp. 198-200.

<sup>12</sup> Cf. R. Sobański, *Metodologia prawa...*, pp. 58f; S. Kuttner, *Natural Law and Canon Law*, [in:] *University of Notre Dame Natural Law Institute Proceedings*, vol. 3, ed. E.F. Barrett, Notre Dame 1950, pp. 85-116.

<sup>13</sup> Cf. R. Sobański, *Teoria prawa...*, pp. 201f.

<sup>14</sup> Cf. R. Sobański, *Metodologia prawa...*, p. 59.

<sup>15</sup> Cf. *ibidem*, pp. 171f.

Also if EP was used only for strengthening these norms, it is in fact not necessary because they simply do not need such support. EP can be useful when looking for norms which are founded on the knowledge of human nature because that is the area where other sciences can support canon law. But is it possible to recognize EP as compatible with the Christian anthropology? The theory of evolution can be accepted in the Church only as a hypothesis<sup>16</sup> and it cannot diminish the crucial role of God in creating human body (modern evolutionists do so in denying the intentionality of evolution<sup>17</sup>). It mostly depends on the character of the presented theses: if they are based on the observation of human behaviour itself, it is possible to use them, but e.g. if they come directly from observing other primates, it is, in author's opinion, impossible.

The most obvious branch of canon law where EP can become a useful source of argumentation is the law of marriage. In a few canons of the Code of Canon Law (1084 § 1, 1163 § 2, 1165 § 2) there are some references to the law of nature or to the nature of marriage. In these strictly limited cases, if EP passes the test of accordance with the Magisterium it can be used as a source of knowledge about human nature. But it can be difficult to find such precise information about marriage in EP research results which will be useful for canon law. Extending the possibility of applying EP to the whole law of marriage is not necessary (e.g. the monogamy of marriage is its characteristics, which apparently comes from the positive divine law). Of course, it can be helpful to convince someone of the veracity of canon law regulation but it is not the purpose of the highest importance for canon law.

Evolutionary psychology and canon law undoubtedly have some common links which come from the discussion about human nature. In a very narrow range EP can be used as a support for canon law in searching for basic features of human nature. Still, it can happen only under several conditions. Of course, EP can be

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<sup>16</sup> Cf. M. Chaberek, *Kościół a ewolucja*, Warszawa 2012, pp. 343-347.

<sup>17</sup> Cf. *ibidem*, pp. 36-38.

used to spread some canonical solutions of questions connected with the complexity of human nature but it can be rather a dangerous tool at the exact moment because not all conclusions of evolutionary psychologists are acceptable from the perspective of canon law. It does not mean that canon law is against nature but, firstly, law is not to create a second system of the law of nature and, secondly, the assumptions, which are necessary for EP, are often brought against the Magisterium and Christian anthropology. Under such conditions EP can hypothetically be a source of argumentation for canon law regulations.

### **Wybrane zagadnienia z zakresu prawa kanonicznego i psychologii ewolucyjnej**

#### **Streszczenie**

Artykuł jest próbą analizy możliwości wykorzystania osiągnięć psychologii ewolucyjnej do argumentacji na rzecz rozwiązań stosowanych na gruncie prawa kanonicznego. Psychologia ewolucyjna jest stosunkowo młodą nauką, która zajmuje się badaniem natury człowieka i wyjaśnianiem jego zachowań, przyjmując jako założenie podstawowe hipotezę ewolucji. Współcześnie jest ona coraz częściej wykorzystywana do analizowania instytucji prawa świeckiego oraz do formułowania szczegółowych postulatów dotyczących rozstrzygnięć prawnych. Prawo kanoniczne jest zaś prawem Kościoła Rzymskokatolickiego, które przynależy do jego istoty i służy kształtowaniu relacji pomiędzy jego członkami. Wychodząc od przedstawienia źródeł prawa kanonicznego, artykuł wskazuje niezbędne warunki, jakie musiałaby spełnić psychologia ewolucyjna, aby jej osiągnięcia mogły znaleźć zastosowanie w argumentacji kanonistycznej w ograniczonym zakresie dotyczącym prawa natury.

#### **Summary**

The article is an attempt to analyze the possibility of adapting the achievements of evolutionary psychology in argumentation for the canon law regulations. Evolutionary psychology is a later science which studies human nature and explains human behaviors on the grounds of evolution hypothesis. Nowadays, it is even more frequently used in appraising secular law institu-

tions and in formulating detailed postulates of legal decisions. Canon law is the law of the Roman Catholic Church, an immanent part of its structure, and it regulates the relationships among its members. Having presented the sources of canon law, the article briefly shows the necessary conditions for applying the achievements of evolutionary psychology to canon law, however, useful only in a narrow range of the laws of nature.