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The Rule of Law: Its Virtues and Limits

*Robert Deinhammer**

Abstract

In this paper, I shall address the important role of the rule of law as an ideal of political morality. I will be outlining the virtues and limits of the rule of law. My central thesis is that the rule of law is crucial for the moral legitimacy of a political system and for an open society, understood in the Popperian sense. Its limits, however, are similar to the limits of positive law in general. Ultimately, the virtues of the rule of law depend on the moral virtues of people and on the moral quality of positive law. In this respect, the benefits of the rule of law ultimately depend on natural moral law and its realization in human affairs.

Key words: rule of law, principle of legality, political morality, democracy, natural law, philosophy of law

Introduction

The *rule of law* is an important ideal of political morality. However, it is only one among many ideals, such as respect for autonomy and human rights, social justice and welfare, economic freedom or democracy. For the sake of conceptual clarity, it may be helpful not to confuse the rule of law with these other more substantial ideals. In brief, the rule of law requires that political power and government operate within the constraints of positive law, i.e. within the framework of a legal and constitutional system. Positive law is binding both for state authority and for the citizens who are to comply with it. It is my assumption that the current crisis of democracy in Europe has several causes. One aspect of this crisis may be identified with the rule of law crisis or its proper application, both in regard to the EU as well as its member states.

In this short paper, I shall outline the virtues and limits of the rule of law.[1] The central thesis is that the rule of law is crucial for the moral legitimacy of a

* Robert Deinhammer, Ph.D., LL.D., Lecturer, Department of Christian Philosophy, Faculty of Catholic Theology, University of Innsbruck. Address: Karl–Rahner–Platz 1, 6020 Innsbruck, Austria. E–mail: robert.deinhammer@jesuiten.org

1 To be sure, only persons can have "virtues" in the strict sense. My phrasing alludes to Raz, 2011a; 2011b.

political system and for an open society, understood in the Popperian sense. Its limits, however, are similar to the limits of positive law in general. Ultimately, the virtues of the rule of law depend on the *moral virtues of people* and on the *moral quality of positive law*. In this sense, the benefits of the rule of law ultimately depend on natural moral law and its realization in human affairs.

1. The Rule of Law and Its Virtues

1.1. No One is Above the Law

The rule of law means, quite literally, that the law should govern. The government and administration should operate within the constraints of positive law, i.e. within the boundaries of a legal and constitutional system. Whether one is an official authority or a citizen, no one is above the law. Everyone is to comply with it and everyone is accountable to it: *The law is the supreme authority*. Historically seen, the rule of law is rooted in a centuries–long process of limiting and taming political power by positive law. One can qualify it as being the result of an emancipation movement and a struggle for political freedom. As an ideal of political morality, it can be found to some extent already in the work of Aristotle. In legal history, the *Magna Carta Libertatum* of 1215 ("Great Charter of England") has been a milestone. Many modern constitutions explicitly lay down the rule of law, for instance, the Austrian constitution of 1920. Art. 18 (1) B–VG states the so–called *Legalitätsprinzip*, i.e. the principle of legality, and says: »The entire public administration may be exercised only on the basis of laws.«[2]

1.2. Conditions for the Rule of Law

In characterizing the conditions for the rule of law, one can distinguish between the formal, procedural and more substantial aspects (cf. Waldron, 2016). With regard to the *formal aspects*, Lon Fuller's list of eight principles is still worth considering, namely, generality, publicity, prospectivity, intelligibility, practicability, consistency, stability and congruence (Fuller, 1969, 33–94). These principles are formal in the sense that they do not address the content of positive law. Nevertheless, Fuller regarded them as some sort of "inner morality of law", i.e. moral values that are inherent in the structure of the legal system.

The *generality* of law means that there must be general rules — rather than *ad–hoc* decisions — so that people can comply with them. Without general rules, there can be no rule of law. As a purely formal principle, however, this requirement does not guarantee justice. It is compatible with laws that are morally unfair. *Publicity* means that legal norms are to be promulgated in the proper way. Officials and citizens must have access to legal rules and know them such that the law will be able to guide human conduct. Similarly, no one can comply with

2 »Die gesamte staatliche Verwaltung darf nur auf Grund der Gesetze ausgeübt werden.« My translation.

a retroactive law because it does not exist at the time of action; hence, the importance of *prospectivity* for the rule of law. Furthermore, people have to understand the legal requirements, if they are to fulfil them. Laws have to be clear and *intelligible*. *Practicability* means that the law has to be enforceable and must not demand the impossible. The ethical principle "ought implies can" is valid already at this technical level. Legal norms that impose obligations which are beyond human capacity are simply pointless. Legal rules should also be relatively stable during time, for the *stability* of law is necessary in order to guide human behaviour in the long–term. Rules that change too frequently will be rather ineffective. In addition to the complex principle of *congruence* between official action and the declared rule, deontic *consistency* is also an important desideratum. The rule of law cannot work if there are contradictory requirements within a legal system.

As regards *procedural aspects*, the following requirements are important. In order to safeguard the universal validity of the rule of law, there must be legal norms that regulate the process of law–making and bind the legislator, for instance, parliament. Those norms are typically laid down in the constitution, so it is only within the framework of a constitutional state, including *independent constitutional jurisdiction*, that the rule of law can be fully realized. Similarly, there must be legal norms which regulate the application of laws by administrative authorities or courts. Discretion is not sufficient: there must be general laws that guide the making of particular laws. In this respect both types of legal norms are needed for the rule of law, namely, primary rules (rules of conduct) and secondary rules (rules of empowerment) (Hart, 2012, 79–99). A system of *checks and balances* is important in order to control the rule of law. Furthermore, certain *procedural rights* must be guaranteed by the legal system — for instance, the right to a fair trial — so that the law can be enforced in an adequate way.

Frequently, the rule of law is associated with other more *substantial* requirements such as the safeguarding of human rights, the respect for private property and economic freedom, the promotion of social justice and welfare, and — last but not least — democracy. There is a continuum of "thin" and "thick" concepts of a state under the rule of law.[3] It might certainly be difficult to draw a sharp line between the formal/procedural and the substantial aspects. However, for the sake of conceptual clarity it seems to me helpful, as already noted, not to confuse the rule of law with other ideals of political morality. Inflationary use of the concept also presents the danger of opening the gates for ideologies of all sorts or ending up with empty formulas. At any rate, even a formal/procedural understanding of the rule of law involves important moral implications. What are, then, the underlying moral values of the rule of law? Wherein lie its virtues?

1.3. Underlying Moral Values

The rule of law seeks to limit and restrain political power in the sense that the government and official authorities are themselves subject to the law. Political

3 Tom Bingham (2011, 66–68) argues, against Raz, for a "thick concept".

measures and actions of the state have to be implemented by general, clear and relatively stable rules. Courts or other institutions supervise the making of these rules, as well as their application. Seen from this perspective, one of the most fundamental values of the rule of law is that it aims to *minimize the exercise of arbitrary power* and the damage that will inevitably arise from it. It is about the mitigation of damage and harm, which is morally relevant in a profound sense. In aiming to reduce arbitrariness and despotism, the rule of law can be seen as a principle that ensures a minimum of rationality or reasonableness within the political process. Following Georg Simmel, Fuller argued that the rule of law also establishes a *bond of reciprocity* between the ruler and the ruled since both are subject to the law:

> Government says to the citizen in effect, žThese are the rules we expect you to follow. If you follow them, you have our assurance that they are the rules that will be applied to your conduct.' When this bond of reciprocity is finally and completely ruptured by the government, nothing is left on which to ground the citizen's duty to observe the rules (Fuller, 1969, 39–40).

In this sense, the rule of law also ensures a minimum of *trust in the political system* as well as *adherence* to it.

Within a state under the rule of law, people can rely on the fact that political action is bound to promulgated, prospective and relatively stable laws. Hence, politics becomes more predictable. One is able to foresee how the state will respond to one's own decisions and actions. This *value of predictability* is important in order to make long–term plans and to develop a scheme of life. On this view, the rule of law is, as Hayek pointed out, conducive to individual and economic *freedom* (Hayek, 1960). It is a genuine liberal principle. Arguably, free market economy and entrepreneurship cannot function without a certain standard of legality implied in the inherent meaning of the rule of law. Hence, the rule of law is also crucially important with regard to the economic system.

In this context of predictability and personal freedom, some authors, notably Joseph Raz, connect the rule of law — even in its formal understanding — with a certain degree of respect for *human dignity*. Raz argues that violating the rule of law and exercising power over people in an arbitrary manner frustrates the possibilities of long–term planning and rational agency. Hence, it neglects the fact that humans are persons in a moral sense. Says Raz:

> A legal system which does in general observe the rule of law treats people as persons at least in the sense that it attempts to guide their behaviour by affecting the circumstances of their actions. It thus presupposes that they are rational autonomous creatures and attempts to affect their actions and habits by affecting their deliberations (Raz, 2011b, 222).

Raz is aware of the limited strength of his argument. A purely formal understanding of the rule of law is compatible with many forms of injustice and violations of human dignity, however, the prospects are getting slightly better, if one emphasizes the importance of procedural aspects, for instance, certain procedural rights like the right to a fair trial. Such rights presuppose that human

beings are capable of rational agency and accountability for their actions, and thus are persons in the moral sense.

1.4. The Rule of Law and an Open Society

The possibility of an *open society* depends on several conditions, and the rule of law is a very important one in this regard. Karl Popper developed his ideal of an open society by applying central tenets of critical rationalism to political philosophy.[4] Popper rejected the question "Who should rule?" as the fundamental question of political philosophy and replaced it by the question of *institutional design*: »How can we so organize political institutions that bad or incompetent rulers can be prevented from doing too much damage?« (Popper, 2011, 115). The crucial idea is to minimize the exercise of arbitrary power in order to prevent damage, safeguard individual freedom and foster critical rationality for our attempts at problem solving. An open society is opposed to all forms of closed societies like tribal, collective or totalitarian societies. Given the persistent fallibility of human beings, it is necessary to divide political power in order to control it. Political decision–making processes must be transparent and open for correction and improvement. Hence, an open society requires that political institutions and their actions can be rationally criticised and reformed. To be sure, much more than the principle of legality is required, but it is difficult to see how an open society could be realized without the rule of law.

1.5. An Expression of Self–Legislation

In its formal understanding the rule of law, as such, does not imply democracy. However, within a democratic–participatory system, i.e. a system in which the population is involved in the process of law–making, it ensures a certain degree of *collective autonomy* ("identity of ruler and ruled") (cf. Habermas, 1998, 109–237). Here, the rule of law is an expression of *self–legislation* because executive autho-

4 As a contemporary philosophical movement, critical rationalism claims to be an alternative to both dogmatism and scepticism. There are different versions; however, one could identify three core components of critical rationalism: critical realism, comprehensive fallibilism and methodological revisionism. *Critical realism* involves the ontological thesis that there is an objectively structured world, which exists independently of the human mind and our conceptual frameworks; and the epistemological thesis that this objectively structured world is in principle accessible to our cognitive powers, despite various possible limitations that are caused by the structure of our cognitive apparatus. *Comprehensive fallibilism* involves the thesis that human beings remain fallible not only in their quest for knowledge but also in all other areas of problem–solving. There are no methods that could overcome this fallibility, for instance, we cannot obtain any justification of our beliefs whatsoever that would guarantee their truth. *Methodological revisionism* applies to the whole field of human problem–solving (including morality and ethics) and involves the thesis that all our theories and problem solutions are in principle revisable. We should not try to verify or "prove" them — for ultimate justification is illusory — but rather critically examine and check them against possible alternative solutions in order to assess their qualities. The emphasis is on criticism and refutation, not on justification or (inductivist) confirmation. Moreover, there are no (basic) beliefs that can be legitimately regarded as immune to rational criticism. See, for instance, as a brief summary: Albert, 2010, 391–392.

rities are bound to democratically generated norms and may enforce only those laws that are democratically generated. The principle of legality accomplishes democracy in the sense that executive authorities are subordinate to parliament, which expresses, at least in theory, the will of the people. Moreover, the rule of law also confines parliamentary power, because legislative actions are regulated by constitutional provisions and controlled by constitutional jurisdiction.

The underlying values of the rule of law are of such significance that a political system cannot claim moral legitimacy without a minimal degree of legality. Nonetheless, there are limits and pitfalls, too. What are, as it were, the "vices" of the rule of law?

2. The Rule of Law and Its Limits

2.1. Individual Cases and Concrete Circumstances

Most citizens, jurists and political philosophers, especially the liberal ones, are appreciative of the rule of law and its underlying values. However, criticism is also present. Prominent figures such as Plato, Hobbes and Carl Schmitt were opposed to the rule of law or, at least, to an exaggerated understanding of it. A general critique states that human and social affairs are not uniform; they are characterised by instability and uniqueness. The principle of legality, on the other hand, emphasises general aspects because of the requirement that general and relatively stable laws must guide political and judicial decisions. Hence, the rule of law is conducive to disregarding individual cases and their concrete circumstances. From this point of view, the rule of law promotes the opposite of what it intends to do, namely the exercise of arbitrary power. Especially in a situation of crisis or emergency, a strict adherence to the rule of law can be disastrous because it impedes quick political response and paralyzes the state's ability to act. Furthermore, it can lead to a problematic mentality of both citizens and political authorities, for instance, with respect to legalism and over–bureaucratized thinking which is unable or unwilling to criticise positive law from a moral point of view.[5]

Given these dangers and problems, much depends on a reasonable actualization and application of the principle of legality. One needs to avoid two extremes, namely an overly loose conception of the rule of law on the one side, and an overly strict conception on the other side, i.e. a regulatory overkill. Drawing on a general legal–ethical maxim, one could say that the principle of legality has to be realized in a non–counterproductive way, i.e. in such a way that its underlying values are not undermined in the long run and on the whole. It is about a truly sustainable actualization of the rule of law. This applies to both law–making and the application of laws.

5 For further criticism, see, for example, Waldron, 2016.

For example, in interpreting Art. 18 (1) B–VG, the Austrian Constitutional Court demands a "nuanced" or "differentiated" principle of legality (Öhlinger, 1999, 243–250). In some areas of law, it requires more strictly determined legal rules and a stricter determination of administrative action than in others, taking into account the specific nature of the subject matter and the need for the legal protection of citizens. Strict determination is necessary primarily in areas with a strong relation to fundamental rights, for instance, in criminal law or expropriation law. In other areas, a more flexible regulation is adequate. Legal regulations in the form of specified targets ("final programming") are also considered to be compatible with the principle of legality, for example, in regional planning law. However, the vagueness of this "final programming" must be compensated by strict procedural rules. Taken as a whole, a proper functioning of the rule of law requires a *high quality of legislation and law–making*. Unfortunately, one can find many examples, i.e. laws, in which the corresponding quality standards are not sufficiently met, not even on a formal or technical level (cf. Fuller's list of eight principles). This problem, in turn, contributes to a crisis of the rule of law and a crisis of democracy. Therefore, one measure to overcome this crisis would be to improve the quality of law–making as well as the quality of professional legal training (cf. Bussjäger, 1996).

Similar questions arise with regard to the application of laws. There is some controversy in regard to the role of *discretion* within the rule of law. Some authors, notably Dicey and Hayek, hold that official discretion is fundamentally opposed to the rule of law (Dicey, 1915; Hayek, 1944). In reality, discretion is inevitable because general rules are usually vague and underdetermined. However, within a state under the rule of law discretion cannot be "free" in the sense that officials may make decisions arbitrarily. To be sure, applying general laws, i.e. generating particular laws, is most often a creative activity and involves constructive aspects. However, this creative activity must be guided by the law in the sense that an official is bound by the meaning and purpose of those legal norms which must be applied or by certain legal principles. Hence, discretion always must be a "bound discretion" (cf. Reimer, 2016, 237–241).

2.2. Law Enforcement and Moral Attitudes

The rule of law cannot work if laws are not enforceable or are, in fact, not enforced. The state is in charge of law enforcement because it holds a *monopoly on the use of force* and must ensure *legal certainty*. On an international level, one can detect a lack of legality due to systemic deficiencies regarding the enforcement of international law and also a lack of a clear monopoly on the use of force. Hence, the rule of law is not sufficiently realized in the international community of states.[6] To a certain degree, this applies to the EU as well. Enforceability can be problematic, however, also within a nation–state. The lack of law enforce-

6 »If the daunting challenges now facing the world are to be overcome, it must be in important part through the medium of rules, internationally agreed, internationally implemented and, if nece-

ment can have many reasons, of course: for example, institutional or economic reasons. In addition, one should not underestimate personal or moral attitudes. Both citizens and officials must acknowledge the *authority of law*, its values and the importance of law enforcement, without becoming subservient. There has to be a culture of compliance and public spirit within the population, a sort of *Verfassungspatriotismus*: "constitutional patriotism" (cf. Müller, 2010). In other words, the rule of law cannot function without certain moral and civic virtues, because, in the final analysis, human beings make the rule of law happen. Ultimately, the virtues of the rule of law depend, at least in part, on the *moral virtues of people*. In a similar context, Ernst–Wolfgang Böckenförde (1967, 60) famously stated: »The liberal, secularized state lives by prerequisites which it cannot itself guarantee.«[7]

2.3. Unjust Laws, Natural Moral Law and the Christian Faith

At this point in our reflection, positive law refers to morality and moral standards. To be sure, the rule of law is an ideal of political morality. It is however, as already noted, a more or less formal/procedural one because it does not address the content of the laws. Without a minimal degree of legality, a political system cannot claim moral legitimacy. Yet, more is needed. There can be gravely unjust laws, even under the rule of law and within democracies. Obedience to such laws would not be a virtue, but rather a vice. The crucial question is, then: *How is it possible to assess the moral quality of positive law?* Seen from the perspective of moral objectivism, mere reference to factual consensus or conventional morality would not be sufficient. Conventional morality can be problematic, and there are diverse moral traditions, which partly contradict each other. Cultural relativism is not a viable option because it leads, in the final analysis, to dogmatism and violence (cf. Deinhammer, 2010). Perhaps the current crisis of democracy and the rule of law in Europe indicates, to some extent, an even more fundamental crisis, namely a crisis of reasonable morality and confusion regarding objective moral standards.

From my point of view, a recovery of the *natural law tradition* could contribute to overcoming this crisis.[8] Natural law thinking is deeply rooted in the philosophical, theological and legal tradition of (not only) Europe. It draws on the plausible intuition that the way we should live and act as human beings has to have something to do with the way we *are* as human beings. The moral good is seen as related to or somehow grounded in human nature. Historically seen, the-

ssary, internationally enforced. That is what the rule of law requires in the international order« (Bingham, 2016, 129).

7 »Der freiheitliche, säkularisierte Staat lebt von Voraussetzungen, die er selbst nicht garantieren kann.« My translation.

8 One can notice a marked resurgence of interest in natural law ethics within contemporary philosophical debates, especially in the English–speaking world. Some important contributions: Devine, 2000; Finnis, 2011; Foot, 2001; Gomez–Lobo, 2002; Hill, 2016; Hittinger, 1989; Lisska, 1996; MacIntyre, 1999; McInerny, 2012; Oderberg, 2000.

re is a range of different versions of natural law ethics. The author conceives of natural law ethics as a type of normative ethics that exhibits at least the following four characteristics: (a) Natural law ethics involves moral objectivism and argues that the *natural moral law* and its principles provide criteria for assessing the moral quality of human actions and related phenomena (like legal norms). (b) Natural law ethics correlates the idea of moral goodness with our human nature and presupposes (minimal) metaphysical and anthropological *essentialism*. (c) Natural law ethics holds that moral principles can be identified by *natural reason*, i.e. without appealing to supernatural revelation, however, (d) natural law ethics is open to a theistic worldview and typically analyses the relationship between morality and religion.

I have made the case for a *critical natural law theory* as a kind of normative ethics that attempts to reconcile the legitimate concerns of the Aristotelian–Thomistic natural law tradition with contemporary philosophical insights, especially with the insights of critical rationalism (Deinhammer, 2016; Knauer, 2002). The crucial idea of this approach is that morally right action is reasonable in the sense that it does not undermine, in the long run and on the whole, those values that the agents want to pursue by performing it. Morally right action is truly sustainable, seen from a universal or unfettered point of view.

Whenever we act, we act *sub ratione boni*,[9] i.e. we desire something that is good or at least appears to be good (in a pre–moral or ontic sense) and which corresponds to our human nature. The way we are as humans constitutes the spectrum of things or states of affairs which are important and beneficial for us, which fulfil our needs, or which are irrelevant or harmful and destructive. In other words: if we had a different nature, including different dispositions, other things would be beneficial or harmful to us, that is to say, other things would be desirable for us. In this sense, our common human nature, which is admittedly interpreted to some extent in the light of "cultural factors", constitutes basic human goods or values. However, the most important question in normative ethics is not "*Which* values should we pursue?" but rather "*How* should we pursue the values that we have decided to strive for?" Acting morally wrong is, in the final analysis, destructive and displays a negative overall balance with regard to the very value(s) that one is striving for. Such ways of acting are ultimately self–defeating or counter–productive, which is also the case if one unnecessarily sacrifices other values. For instance, one can pursue wealth in such a way that other people are excluded from participating in this value so that wealth is ultimately undermined.

In applying this approach to *legal ethics*, one could argue that its master principle is able to provide convincing and universally valid criteria for an ethical evaluation of positive law and for providing criteria for its improvement. Nonetheless, these criteria may remain hypothetical, i.e. do not have to be ultima-

9 Cf. Thomas Aquinas, STh I–II q8 a1; I–II q94 a2; I q19 a9; I–II q78 a1; Raz, 2011a, 59–84. — It is impossible to desire an evil *as such*.

tely justified. For instance, if legal norms are universally seen as counter–productive with regard to their goals (i.e. the goals of the lawmaker) or if legal norms command universally seen counter–productive actions (in the above sense), they can be evaluated as morally problematic. Similar to conventional morality, positive law can be characterised as an instrument for solving certain social problems (cf. Albert, 2000, 57–76). Based on this view, we may assess the moral quality of legal problem solutions in various ways, especially in the light of our master principle and thus propose better alternatives.

For example, in organising communal life and solving social problems, a politician may emphasise different (incommensurable) values, for instance, either freedom or (social) security. However, he or she must not act counterproductively or sacrifice unnecessarily other values in pursuing freedom or security. Freedom without sufficient security will be self–destructive, and social security without sufficient personal and economic freedom is unsustainable also. The ideal would be to combine a maximum of freedom with a maximum of (social) security. A restriction of freedom is only acceptable if this is truly necessary in order to safeguard and foster freedom in the long run and on the whole, i.e. related to the overall context and from a universal point of view. Hence, using force is only permissible in order to minimize the use of force in the final analysis. This is an important criterion of legitimate authority and legitimate use of force. Obviously, it is closely connected to the rule of law and its spirit. The rule of law is itself required by natural moral law.

Regarding the *role of the Christian faith in morality and our moral life*, I would argue that natural moral law is not a possible content of divine revelation, i.e. not a possible object of faith, because supernatural divine revelation can only be understood as God's self–communication to the world. Natural moral law and its principles can be identified already by natural reason. However, faith as ultimate trust in God and his self–communication in Jesus Christ could be seen as *liberation* for the fulfillment of this natural law and the performance of truly good actions. By this faith, human beings are liberated from the power of a fear for themselves which is rooted in their vulnerability and impermanence, and, which is also the deepest cause of selfishness and inhumane behaviour. Hence, the Christian faith empowers human beings to perform good actions guided by morally right motivation, i.e. to do what is morally good precisely because it is good (cf. Deinhammer, 2017).

Conclusion

To sum up, the rule of law is crucial for the moral legitimacy of a political system and for an open society. Its limits, however, are similar to the limits of positive law in general. Ultimately, the virtues of the rule of law depend on the *moral virtues of people* and on the *moral quality of positive law*. In this sense, the benefits of the rule of law ultimately depend on natural moral law and its realization in human affairs.

Bibliography:

Albert, Hans (2000). *Kritischer Rationalismus: Vier Kapitel zur Kritik illusionären Denkens*. Tübingen: Mohr Siebeck.

Albert, Hans (2010). Kritischer Rationalismus und christlicher Glaube. In Guiseppe Franco (Ed.), *Sentieri aperti della ragione: Verità metodo scienza: Scritti in onore Dario Antiseri nel suo 70 compleanno* (pp. 391–401). Lecce: Pensa Editore.

Bingham, Tom (2011). *The Rule of Law*. London: Penguin Books.

Böckenförde, Ernst–Wolfgang (1967). *Staat, Gesellschaft, Freiheit: Studien zur Staatstheorie und zum Verfassungsrecht*. Frankfurt a. M.: Suhrkamp.

Bussjäger, Peter (1996). *Der Rückzug des Rechts aus dem Gesetzesstaat*. Wien: Verlag Österreich.

Deinhammer, Robert (2010). Menschenrechte und Kulturrelativismus. *Archiv für Rechts— und Sozialphilosophie*, 96, pp. 121–135.

Deinhammer, Robert (2016). Can Natural Law Ethics be Tenable Today? Towards a Critical Natural Law Theory. *The Heythrop Journal*, doi: 10.1111/heyj.12345, to be printed. (Version of record online, 5 july, early view.)

Deinhammer, Robert (2017). Das Verhältnis von Moral und Religion. *Ethica*, 25(3), pp. 195–208.

Devine, Philip E. (2000). *Natural Law Ethics*. London: Greenwood Press.

Dicey, Albert Venn ([8]1915). *Introduction to the Study of the Law of Constitution*. London: McMillan and Co.

Finnis, John ([2]2011). *Natural Law and Natural Rights*. Oxford: Oxford University.

Foot, Philippa (2001). *Natural Goodness*. Oxford: Oxford University.

Fuller, Lon L. ([2]1969). *The Morality of Law*. London: Yale University.

Gomez–Lobo, Alfonso (2002). *Morality and the Human Goods: An Introduction to Natural Law Ethics*. Washington, DC: Georgetown University.

Habermas, Jürgen (1998). *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*. Frankfurt a. M.: Suhrkamp.

Hart, Herbert Lionel Adolphus ([3]2012), *The Concept of Law*. Oxford: Oxford University.

Hayek, Friedrich August von (1944). *The Road to Serfdom*. Chicago: University of Chicago.

Hayek, Friedrich August von (1960). *The Constitution of Liberty*. Chicago: University of Chicago.

Hill, John Lawrence (2016). *After the Natural Law*. San Francisco: Ignatius.

Hittinger, Russel (1989). *Critique of the New Natural Law Theory*. Notre Dame: University of Notre Dame.

Knauer, Peter (2002). *Handlungsnetze: Über das Grundprinzip der Ethik*. Frankfurt a. M.: BoD.

Lisska, Anthony J. (1996). *Aquinas's Theory of Natural Law: An Analytical Reconstruction*. Oxford: Clarendon.

MacIntyre, Alasdair (1999). *Dependent Rational Animals: Why Human Beings Need the Virtues*. London: Duckworth.

McInerny, Ralph (2012). *Aquinas on Human Action: A Theory of Practice*. Washington: The Catholic University of America.

Müller, Jan–Werner (2010). *Verfassungspatriotismus*. Frankfurt a. M.: Suhrkamp.

Oderberg, David S. (2000). *Moral Theory: A Non–Consequentialist Approach*. Oxford: Blackwell.

Öhlinger, Theo ([4]1999). *Verfassungsrecht*. Wien: WUV.

Raimund Popper, Karl Raimund (2011). *The Open Society and Its Enemies*. London: Routledge.

Raz, Joseph (2011a). *From Normativity to Responsibility*. New York: Oxford University.

Raz, Joseph ([2]2011b). The Rule of Law and Its Virtue. In: *The Authority of Law* (pp. 210–229). Oxford: Oxford University.

Reimer, Franz (2016). *Juristische Methodenlehre*. Baden–Baden: Nomos.

Thomas Aquinas (1988). *Summa theologiae*. Milano: Editiones Paulinae.

Waldron, Jeremy (2016). The Rule of Law. In Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, https://plato.stanford.edu/archives/fall2016/entries/rule–of–law/ (accessed 22.08.2018)

Vladavina prava: vrline i granice

*Robert Deinhammer**

Sažetak

U članku autor govori o važnosti uloge vladavine prava kao ideal političkog morala te opisuje vrline i granice vladavine prava. Središnja je teza da je vladavina prava vrlo važna za moralni legitimitet političkog sustava, kao i za otvoreno društvo, u popperijnskom smislu. Međutim, njegove granice općenito su nalik na granice pozitivnog prava. Konačno, vrline vladavine prava ovise o moralnim vrlinama ljudi i o moralnim kvalitetama pozitivnog prava. U tom smislu, korisnost vladavine prava u konačnici ovisi o prirodnom moralnom pravu i o njegovu ostvarenju u ljudskim zbivanjima.

Ključne riječi: vladavina prava, načelo legalnosti, politički moral, demokracija, prirodno pravo, filozofija prava

* Dr. sc. Robert Deinhammer, Odjel za kršćansku filozofiju, Fakultet katoličke teologije Sveučilišta u Innsbrucku. Adresa: Karl–Rahner–Platz 1, 6020 Innsbruck, Austria.
E–adresa: robert.deinhammer@jesuiten.org