

# ТЕОРІЯ ТА МЕТОДОЛОГІЯ ПУБЛІЧНОГО ПРАВА



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## *The outline of the subject of biojurisprudence (part 1)*

The main elements of the subject of biojurisprudence are its name, ontology, axiology, epistemology, and methodology.

I coined the name 'biojurisprudence' from the Greek word *bios*, which deno-

tes life, and from the Latin word *iurisprudentia*, which expresses legal knowledge or even wisdom<sup>1</sup>.

Taking into consideration the natural rhythm of all of life, especially human

<sup>1</sup> On the name and subject of biojurisprudence see R. A. Tokarczyk. Biojurisprudencja. Nowy nurt jurysprudencji, Lublin 1997 (text in Polish, Russian, French, German and English). It was sent to the XVIII World Congress of the International Association for Philosophy of Law and Social Philosophy, held in August 1997 in Buenos Aires. Moreover, the text was published as separate articles: Biojurisprudencja: New Current in Jurisprudence, «Acta Juridica Hungarica» 1995/1996, 37, № 1–2; Biojurisprudencja – nowy nurt jurysprudencji, «Nauka» 1996, no. 2; under the same title in «Annales UMCS», Sectio G, vol. XLIII, 1996; [in:] Badania zmian i relacji międzykulturowych w Europie oraz jej pograniczach, (ed.) Krzysztof Jarosław Brozi, Lublin 1997; «Lo Staniero» 1997, May; «The Finnish Yearbook of International Law» 1997; [in:] Pravo i sovremennost, Mińsk 1998; Biojurisprudenz. Eine Richtung der Jurisprudenz – Grundriss der Problematik [in:] Jan C. Joerden (Hrsg.): Der Mensch und seine Behandlung in der Medizin. Bloss ein Mittel zum Zweck? Springer Verlag, Berlin, Heidelberg, New York 1999; [in:] Zmiany społeczne a zmiany w prawie. Aksjologia, konstytucja, integracja europejska, (ed.) L. Leszczyńskiego, Wyd. UMCS Lublin 1999; «Dialogue and Universalism», vol. 10, No 7–8, 2000, including the Commentary by W. J. Wagner; Tezy i hipotezy o przedmiocie biojurysprudencji i bioprawa, «Annales UMCS», Sectio G, vol. 46, 1999; Biojurisprudencja – le nouveau courant de la jurisprudence [in:] Konstytucyjny ustrój państwa. Księga Jubileuszowa Profesora W. Skrzydło, Wyd. UMCS Lublin 2000; Biojurisprudencja eksponentem życia w jurysprudencji [in:] Filozofia, Dialog, Uniwersalizm. Księga dedykowana Profesorowi Januszowi Kuczyńskiemu, (ed.) J. L. Krakowiak, W. Lorenc, A. Miś, Warszawa 2001; O potrzebie rozwijania nowej jurysprudencji, «Kwartalnik Historii Nauki i Techniki» 2002, R. 47, no. 1; Biojurisprudencja i bioprawo odpowiedzią na potrzeby ochrony życia w XXI wieku, «Doctrina» 2004, no. 1; See also Prawa narodzin, życia i śmierci, 8-th ed, Żakamycze, Kraków 2006, especially Chapter One Przedmiot biojurysprudencji.

life – birth preceded by conception, life, and death, I have distinguished three segments of biojurisprudence: biojusgenesis, biojustherapy, and biojusthanatology.

Biojusgenesis as the world composed of *bio* – life, *ius* – law, and 'genesis' – origins, covers the first period of life from conception to birth, discussed from the normative standpoint, especially religious and moral, but mainly from the point view of law called here biolaw: the law of life. In previous jurisprudence and the law based on it, the legal protection of this stage of human life was based on the legal fiction, called *nasciturus*, adopted from Roman law. According to it, the interest of the conceived child is treated as the interest of the child already born (*nasciturus pro iam natu habetur quotiens de commodis eius agitur*). Because of the highly developed and still developing techniques and technologies that may artificially interfere in the natural processes of the first stage of life, the legal fiction *nasciturus* is no longer adequate. The need for new normative regulations, recognized and described by biojurisprudence for biolaw, is even compelled by genetic engineering, eugenics, and medically assisted conception and birth – procreation and prenatal diagnostics. The most mature manifestation of biojusgenesis in biolaw is the right to being born as the legal institution, which organizes the formerly scattered norms of life protection from conception to birth into one normative whole.

Biojustherapy, as the word composed of *bio* or life and 'therapy' or medical treatment, covers the vast area of problems of the protection of life and enhancement of its quality, especially human, plant and animal life, from its birth until its death. The domain of biojustherapy comprises many highly controversial issues. They include highly significant problems of transplantation of some cells, tissues and first of all organs in order to enhance the quality of and to save human life and the life of other living

species. Some problems facing justherapy are caused by some forms of sexuality: homosexuality, biosexuality and probably mainly transsexuality. There are many normative difficulties, of interest to biojustherapy, arising from drug addiction, alcoholism and HIV infection as the cause of the Acquired Immune Deficiency Syndrome (AIDS). The normative aspects of population policy are characterized by highly specific demographic features. They are associated with the problems of contraception, sterilization, and castration both in humans and in animals. Other specific features characterize practical applications of psychiatry. Ecologism, as a vast current of thought, comprising, apart from ecolaw, inter alia ecotheology and ecoethics, largely co-defines the grading scale and value hierarchy of biojustherapy. The fullest interpretation of biojustherapy in biolaw is the right to life, gradually extended but with great adversities, from the right to life of the humans to the life to life of the animals as far as to the right to life of all animate nature.

Biojusthanatology, as the word made up of *bio* or life and 'thanatology' – the science of dying, is concerned with regulating the end of human life – his death, and, by analogy, the death of other animate species. While traditional biojurisprudence and the law based on it basically know one concept of death – biological death, biojurisprudence and biolaw already use many definitions of death: biological death, brain death, cerebros-pinal, and sociological death. Each of these kinds of death can raise a number of doubts, which require, nevertheless, rather unambiguous religious and moral judgments as the basis for legal regulations. These doubts are mainly as to who, when, where, and on what conditions and for what ends, decides about the unnatural death of man. Biojusthanatology provides value judgments and biolaw suggests the most appropriate regulations possible of abortion, euthanasia, suicide, cases of absolute necessity, self-

defense, death penalty, killing people in war, as well as killing animals and destroying the flora. A hypothesis is becoming more and more plausible that biolaw will have to use many definitions of death adjusted to its diverse actual states. The static definition of death, so far used in jurisprudence and law, gives way to the dynamic definition of death described by biojusthanatology and recommended by biolaw to be used in legal practice. The crucial legal institution developed by biojusthanatology for the needs of biolaw, is the right to death.

This tripartite division of biojurisprudence is justified by difference in the quality of life, the scope and substance of its normative protection, described by biojusgenesis, biojustherapy, and biojusthanatology<sup>2</sup>. It by no means conflicts with the need for a comprehensive or holistic view of man in the global aspects of long-term consequences of human endeavors to protect the increasingly long human life having higher and higher quality. Quite the opposite, by recognizing the diversities of the protection and quality of life, this division makes it possible and easier to find such overall presentations<sup>3</sup>. Nor does it reduce human life to physical life, to some

narrow biologism, because, in its search for evaluations and justification of value hierarchies, biojurisprudence takes into comparative account both religious and moral judgments and values. Owing to this, it can combine the evaluations and values of man's physical life with the evaluations and values of his spiritual life – psychical, rational, and social. What the norms of biolaw can recommend to the life of human body should be determined above all by the norms concerning the human spirit: psyche, reason, and socialization. This belief is well established and fairly convincingly justified in the tradition of the natural law thought, mainly, however, in Western legal cultures. A comprehensive discussion of biojurisprudential issues even demands therefore that we take into consideration the problems concerning the sense of human life – religious, moral, and legal. Religions see this sense in the salvation of the soul, morality – in beneficence, law – in justice. The norms of biolaw combine these three senses into an axiological whole<sup>4</sup>.

### **The Ontology of Biojurisprudence**

Ontology, the word of Greek origin, has its synonym in another Greek word – metaphysics. Both denote one of the

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<sup>2</sup> A similar division of content was used by J. L. Dolgin, D. Shepherd, *Bioethics and Law*, Aspen Publishers 2005. See also J. Menikoff, *Law and Bioethics: An Introduction*, Georgetown University Press 2002; B. J. Spielman, *Bioethics in Law*, Totowa, New Jersey 2007. The American scholars, when using the terms *Bioethics and Law* or *Bioethics in Law*, do not unequivocally show the profoundest sense of this subject, unlike the term 'biojurisprudence'. See also W. J. Wagner, *Remarks on Roman Tokarczyk's Article «The Subject matter of Biojurisprudence and Biolaw», «Dialogue and Universalism*, 2000, vol. 10, No. 7–8.

<sup>3</sup> My article *Biojurisprudence: A New Current in Jurisprudence* was published by the Finnish journal «*The Finnish Yearbook of International Law*» 1996. Having read only this one text, without knowing the broader explication of the concept of biojurisprudence in my book *Prawa narodzin, zycia i smierci*, Juha-Pekko Rentto, a Finnish law professor of law, failed to see the holistic treatment of human life in it. Idem: *Biojurisprudence? A Comment to Professor Tokarczyk, «Recent Developments and State Practice», Helsinki 1999*. See also the comment by another Finnish law professor: Jan Klebbers, *Biojurisprudence?, «Religion, and Human Rights. An International Journal», Helsinki 1999, no. 20*.

<sup>4</sup> The main inspiration for the rise and development of biojurisprudence is still bioethics. The subject of bioethics has developed extraordinarily, entering social, natural, and medical sciences. For those who study bioethics, the actually indispensable work is *Bioethics Research Guide*, <http://www.11.georgetown.edu/quides/bioethics.cfm>. The outline of the whole of bioethical problems is contained in *The Encyclopedia of Bioethics*, edited by S.G. Post, vol. I–V, 3rd Edition, New York 2004.

principal branches of philosophy, which discusses different sides of the concept of being. The word 'ontology' is popular in German thought, whereas the word 'metaphysics' – in English and Catholic traditions<sup>5</sup>. The contentious problems of ontology include the issue of how the referents of general concepts exist, which is immaterial here, however, because the general concept of life has countless referents. Also the dispute over the change of features of an object, its identity, in reference to real life is of negligible significance as it undoubtedly undergoes changes. Quite different themes have recently been introduced into ontology by studies on artificial intelligence, which competes, as it were, with natural intelligence, an important constituent of human intellectual or metal life.

Ontological features already described here with the example of life show that ontology does not aspire to exhaustively describe and catalogue all manifestations of life but rather to offer its general description. Ontology seeks the essence of life in life itself rather than in the subjective cognition of it, i.e. epistemology. It seeks to perceive manifestations of life on all its levels and in all its different units – from micro-units in the form of cells to macro-units in the form of international life. The diversity of levels and units of life shows the existence of their many particular ontologies as the basis for one general ontology. While ontology, as a component of philosophy, develops the taxonomy of life with its descriptions of it, science defines relations between different manifestations of life on the basis of the processes of measuring them. However, both ontology and science are useful to biojurisprudence, when they describe life in unison as different ways

of its realization and the processes of existence from the moment of conception until death. This concertedness disappears in their search of the main principle of life; religions see it in the soul, vitalists in life force, materialists in matter, linguists in the concepts that express life; information scientists in artifacts with their own non-natural life cycles<sup>6</sup>.

The lack of one, generally accepted definition of life does not run counter to the established belief that 'its most important property is a constant exchange of matter and energy between a living organism and its environment or its ability to replicate, duplicate itself or reproduce... it is necessary for an organism to constantly make an effort... A crucial property of life, deriving from metabolic processes, is the ability of living organisms to maintain a higher level of organization, consequently, decreased entropy than the environment, at the expense of energy consumption. Special attention should be paid to whether the concept of life is used as a noun, to denote a process, or as an adjective, to characterize the properties of an object, because these concepts are defined and understood somewhat differently<sup>7</sup>. Any living organism is characterized by: feeding, breathing, growth and development, intrinsic movement, excitability in the sense of response to stimuli, reproduction, and excretion. In respect of organization levels, one distinguishes cellular, organismal, and social life. For biojurisprudence it is essential to deepen these distinctions by distinguishing human life with man's spiritual, psychical, emotional, and social life from animal life and plant life.

Human life is 'all-embracing totality', as a well-known German philosopher observed<sup>8</sup>. This totality consists of physical

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<sup>5</sup> The outline of ontology was prepared inter alia by F. Czezowski, *O metafizyce, jej kierunkach i zagadnieniach*, Toruń 1948; and w. Strózewski, *Ontologia*, Kraków 2004.

<sup>6</sup> For more, see A. Siemianowski, *Wartości i sens życia z punktu widzenia ontologicznego*, available in the Internet.

<sup>7</sup> Life – Wikipedia, free encyclopedia, [thhp://pl.wikipedia.org/wiki/%C5%Bbycie](http://pl.wikipedia.org/wiki/%C5%Bbycie)

<sup>8</sup> G.W.F. Hegel, *Zasady filozofii prawa*, Warszawa 1969, p. 87.

life and spiritual life with its segments of psychical, emotional, mental, intellectual, and social life. Although it is above all an adult person that determines his/her life fates, yet life is like one great theatre, where you put on a different mask every day. He who wishes to enjoy best health, combines in harmony corporeal, psychical, emotional and spiritual life. Body and soul merge, creating a personal being in the spiritual space. Body influences If we adopt 'First, live' as the prenorm of all norms, we better understand the value of long-lasting healthy life with its highest quality possible. According to Thomas Aquinas, man is not a soul that uses the body but it is composed of body and soul: spiritual life is more important than physical life. If murderers are punished by death for taking away physical life from people, then heretics, who take away people's spiritual life, deserve death penalty the more so<sup>9</sup>.

The knowledge of earthly existence reveals the simultaneous presence of human life in its different spheres, which is why we speak of family life, tribal, national, state, international, professional, religious, cultural, scientific, social, economic and other kinds of life. These spheres have different tasks, they stand side by side, interweave but do not exclude or cancel one another out. The reason for this is that man seeks to achieve many goals at the same time: to accomplish them he needs various kinds of interaction with other people and the organization of this interaction<sup>10</sup>. Legal regulations cover these life spheres in three groups of life – intimate, private, and public. Driven by the instinct for self-preservation, man selfishly cares for his/her own life. Socialization, which develops altruism, sometimes makes man not only to be concerned with someone else's life but even value it higher than his/her own. Concern with

life, with its physical and spiritual aspects, demands that we find adequate means. Maintaining physical life requires food, clothing, somewhere to live and health, and maintaining spiritual life – education, culture, frequently religious faith. These are taken into account by laws made to regulate human life – religious, moral, and legal ones.

The ontology of biojurisprudence deals with the difficult-to-unambiguously-solve problems of distinguishing between 'a human being' and 'a person', rejecting the interchangeable understanding of them or identification. It accepts the view that although any man should be treated as a goal in itself, the self-awareness of it can be attained only by a mature person molded from a human being. In the long history of thought, different features were indicated, which distinguished a human being from a human person, and both of them from animals, plants, and things. The rational soul, described since Aristotle, is by no means an exclusive characteristic of man among living beings. Currently, a view is gaining recognition that the definition of the kind of interest that a specific living being has in preserving its life constitutes sufficient justification for its normative protection. No doubt, the common interest of all living beings is the lasting of long life of high quality, without suffering<sup>11</sup>.

Although the human body as a material component of man's life is more self-evident to ontology than the immaterial human spirit but together they form the psychophysical unity in human life. As a special microcosm, the life of a spiritual and rational man remains in close and multiple relations with the life of macrocosm, probably devoid of some inner spirituality and rationality. Philosophical views on the psychophy-

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<sup>9</sup> Thomas Aquinas, *Summa theologica*, London 1970, II qu, 11.3.

<sup>10</sup> R. von Mohl, *Encyklopedia Umiejętności Politycznych*, [Polish translation of *Encyklopaedie der Staatswissenschaften*] Warszawa 2003, p. 15.

<sup>11</sup> See a monograph by E. J. Cassel, *The Nature of Suffering and the Goals of Medicine*, New York 1991.

sical unity of man focus mainly on his/her mind, personality, self, subjectivity and on similar notions. In terms of explanations of relations between the body and spirit, they are divided into dualist, materialist and personalist. Dualism treats the spirit and body as two separate or even opposing beings. Materialism grants the properties of matter to both the spirit and the body. Personalism emphasizes the life unity of the spiritual-corporeal man.

Scientific thought inclines to the materialist understanding of man. It is based on the assumption that man's life creates the basis for all his/her life as a material whole and unity, regulated by empirical regularities described by biological sciences. The treatment of the human body as an exclusively biological natural being was challenged at the end of the twentieth century by showing the constant variability of it, determined by diversified cultural factors. Science agrees with philosophical and religious views that man's corporeal nature is inherent in his/her sexuality, determining physical and spiritual differences between man and woman, which meet, however, within sexual, marital and familial life. 'Femininity finds itself, in a sense, in the presence of masculinity while masculinity is confirmed through femininity'. This finding itself is regulated by the sets of various norms applied to friendship, love, marriage, another man's desires, sexual attraction, and to becoming spiritual and/or physical unity.

The uniqueness of the corporeal nature of every human is closely connected with his/her spiritual uniqueness, determined by factors in diversified natural and social environments. Corporality defines the limits of possibilities of the actions of man's body in his/her perception and expressions of aspirations, will, wishes, desires and in other manifestations of the spirit. Generally, spirituality can be realized only through bodily movements, more or less expressive

depending on temperament and emotions. It is corporality that is the material framework of the spiritual sense of normative imperatives of the inviolability of man's personality, intimacy, privacy, confidentiality, respect, integrity, and dignity – psyche and soma (the body) always being parts of the inseparably merged, always unique whole. This uniqueness of human life is profoundly perceived by medicine, which combines knowledge and practice, and has to cope with the questions of values and norms over and over again. Medicine considers the human body and spirit in broad contexts: structure – anatomy, functioning – physiology, regulatory mechanisms – neurology and immunology, psyche – psychiatry, organ systems – cardiology, immunology, nephrology and many others<sup>12</sup>.

One could say much about the diversity of views on the body and spirit, or rather soul, and their relations in religions. While Buddhism highly values physical life, most religions contrast the body with the spirit; it sees in the soul rather than in the body that which is the most essential for man's worldly life and afterlife. The soul, combining the subtly cold rationality and warm emotionality in it, creates in religions the pure, invariable and religiously, morally and legally valued human essence. However, religions show the body as a crude, variable, impermanent and corrupt form of man's material existence, which is a prison of the soul. In order to attain its proper and ultimate destiny, the soul must be freed from the bodily prison. Some members of Christian fundamentalist sects even provoke an outrage by refusing medical treatment to the ill as they believe that medicine undermines the faith in God while illness ending with death speeds up the liberation of the soul from the body. Even non-fundamentalist groups of believers evaluate surrogate motherhood, cloning, abortion, or euthanasia through the prism of relations between

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<sup>12</sup> More extensively, see J. Troska: *Moralność życia cielesnego*, Poznań 1999. R. Hardcastle, *Law and the Human Body, Property Rights, Ownership and Control*, Hart Publishing 2007.

the human body and soul. However, while it was believed in the days of yore that religious faith alone could cure people of diseases, nowadays miraculous healings are seen by religious fanatics only.

At present, man's body, not less than his/her spirit, has become a highly attractive phenomenon of business and culture, especially consumer culture, which suggests to him/her elaborate scales of needs and desires. The history of culture shows how man's self-concern has come a long way from the expectation of a speedy spiritual salvation in the afterlife to the earthly desire for the health of the well-cared body and its longest life possible. Concern for the beauty of the spirit already gave way to concern for the beautiful body with a young and attractive look. This change of the attitude to the body is largely influenced by the organization of social life: education, work, rest, and health service. This organization requires appropriate regulation based on values emerging from the competition, coexistence or even dominance of the religious, the moral, and the legal. There have been considerable advances in experiments on creating the imitation of the living human body in the inanimate systems of cybernetic bodies – robots, which also require some corresponding moral and legal regulation<sup>13</sup>.

Death is the end of physical life just as birth is its beginning. Only the idea of reincarnation supports the faith in the possibility of many physical lives of man. While physical life is a necessity, spiritual life – a possibility. This necessity is opposed by suicides. One cannot live a spiritual life alone because it is determined by physical life. Man's corporality is easier to observe than spirituality when defining his/her identity on the basis of the knowledge of gender and features of his/her appearance. Corporality creates

the basis for psychical life, which is made up of thinking processes, will, feelings and emotions. Thinking or consciousness is a primary feature of psychical life. Observing one's own psychical life through self-awareness is introspection. Consciousness or intellect controls the will and feelings. Psychology recognizes three levels of psychical life: psychophysiological, psychosocial and rational-spiritual<sup>14</sup>. Physiological psychology reduces man's psychical life to physiological processes of the nervous system. Sociology shows the psychosocial aspects of human life – social life. 'The main center of psyche is the self, the ego is only the core of the consciousness sphere, often usurping the right to be the axis of the whole psychical life'<sup>15</sup>.

For the ontology of biojurisprudence, it is highly significant to distinguish between the health of psychical life and not healthy psychical life. While psychical life is a natural norm, which determines man's normal and social life, the mental illness, by disturbing this normality, creates serious normative difficulties. The state of man's psychical life – healthy or ill – exerts an impact on the general condition of his/her health, which in turn influences the state of social life. Changes in man's psychical state are caused by various factors. An especially effective factor changing man's psychical condition is often indoctrination depriving him/her of independent thinking and inducing him to be completely obedient. After medicaments, narcotics, and alcohol, man's psychical life changes fundamentally, until its disintegration – the breakup into unconnected elements. The shaping of the healthy style of psychical life, unlike the unhealthy style, is one of the goals of biojurisprudence.

The ontology of biojurisprudence also includes social life with its great wealth

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<sup>13</sup> Similar views in N. Lenoir, *Bioethics and Law: Europe's 21-st Century Challenge*, «Modern Law Review», Vol. 69, No. 1.

<sup>14</sup> Thus in A. Concini, A. Manenti, *Psychologia a formacja*, [Polish translation of *Psicologia e formazione*] Kraków 2002, p. 19.

<sup>15</sup> P. Mozdzyński, *Środowisko a życie psychiczne*, text available on the Internet.

of life segments: religious, moral, political, economic, professional, educational, cultural and many, many others. The ontology of social life explains what parts the society consists of, how they function, what their mutual relations are, what purposes they serve and when and where they are subject to changes. The ontology of social life is the general theory of struc-

ture, functioning and changes of societies, regulated by various norms<sup>16</sup>. Perfect social life, without tensions and conflicts, would eliminate the need to regulate it with norms in any way or to consider it by biojurisprudence and biolaw. Like other trends in normative thought, biojurisprudence stems from the imperfection of individual people's and social life.

### **Токарчик Р. Характеристика предмета біоюриспруденції (частина 1)**

Основними елементами предмета біоюриспруденції є її власні онтологія, аксіологія, епістемологія та методологія. Біоюриспруденція – новотвір із двох латинських слів: *bios* (життя) й *iurisprudentia* (правове знання, або мудрість).

Токарчик виділяє три складові біоюриспруденції: біоюгенезис, біоюстерапію й біоюстанатологію.

Біоюгенезис охоплює перший період життя – від зачаття до народження, розглядаючи його з нормативної точки зору (як релігійної, так і моральної), а особливо з точки зору біоправа (права на життя). У попередній юриспруденції та праві правовий захист цього періоду людського життя ґрунтувався на юридичній фікції, що походить із Римського права й має назву «насцитурус» (лат. *nasciturus*). Згідно з нею інтереси зачатой дитини розглядаються як інтереси вже народженої дитини. Ненароджена дитина вважається такою, що вже народилася, оскільки йдеться про її вигоду. Розвиток технології штучного втручання й моделювання цієї стадії життя призводить до того, що правило юридична фікція насцитурус більше не є спроможною. Потреба нової нормативної регуляції цих питань виявлена й описана біоюриспруденцією та біоправом, а також зумовлена генною інженерією, евгенією, медично асистованими зачаттями і народженнями, пренатальною діагностикою.

Біоюстерапія охоплює сферу проблем, пов'язаних із захистом життя (особливо людського, але також рослинного й тваринного) і покращенням якості життя з часу народження і до самої смерті. Серед суперечливих питань, які входять до сфери біоюриспруденції, є трансплантація деяких клітин, тканин, всіх органів, також проблеми, що пов'язані з окремими формами сексуальності: гомосексуальністю, біосексуальністю і частково трансексуальністю.

Біоюстанатологія – наука про смерть, що пов'язана із регуляцією кінця життя людини, та за аналогією – життя інших одушевлених видів. На відміну від традиційного права, що послуговується лише концептом біологічної смерті, біоюриспруденція й біоправо вже використовують багато дефініцій: біологічна смерть, смерть мозку, цереброспінальна й соціологічна смерть.

Біоюстанатологія забезпечує оціночні судження, а біоправо пропонує найбільш прийнятні регулятори можливості абортів, евтаназії, суїциду, випадків граничної необхідності, самозахисту, смертної кари, вбивства людей на війні, так, як і вбивства тварин, знищення флори.

Ключова правова інституція, розроблена біоюстанатологією для потреб біоправа, – право на смерть.

Така тризначна структура біоюриспруденції жодним чином не є спробою звести людське життя лише до фізіологічного рівня, так само, як не може бути й виключно вузьким біологізмом, оскільки шукає оцінки й обґрунтування ціннісної ієрархії, біоюриспруденція бере до уваги порівняння правових, але одночасно й моральних, і релігійних приписів і цінностей.

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<sup>16</sup> H. Waśkiewicz, Normy życia społecznego według encykliki >Pacem in terris<, «Chrześcijanin w Świecie» 1979, no. 5–6.



**Онтологія біоюриспруденції**

Онтологія – одна з фундаментальних філософських наук, що поряд із іншими розділами філософії прагне описати різні сторони категорії буття. До засадничих питань онтології належить проблема того, як можна описати основні принципи буття, що не є матеріальним, тоді як основне поняття – життя – має нескінченну кількість проявів.

Онтологія не намагається описати різноманітність проявів життя, а радше прагне знайти сутність життя в самому житті, не обмежуючись лише його дефініцією. Вона розпізнає вияви життя на всіх рівнях – від мікорорівня (життя клітин) до макрорівня (суспільного міжнародного життя).

Онтологія біоюриспруденції має справу зі складними для вирішення питаннями, до яких належить розрізнення між людською істотою й особистістю. Онтологія біоюриспруденції також пов'язана із соціальним життям у значній різноманітності його проявів, серед яких – релігія, мораль, культура, політика, економіка та ін.

**Ключові слова:** біоюриспруденція, онтологія, онтологія біоюриспруденції.

**Токарчик Р. Характеристика предмета біоюриспруденції (часть 1)**

В рамках статті определены основные элементы предмета биожуриспруденции. Часть 1 этой статьи посвящена анализу онтологии биожуриспруденции.

**Ключевые слова:** биожуриспруденция, онтология, онтология биожуриспруденции.

**Tokarczyk R. The outline of the subject of biojurisprudence (part 1)**

The main elements of the subject of biojurisprudence are defined in the article. Part 1 of the article is devoted to the analysis of the ontology of biojurisprudence.

**Key words:** biojurisprudence, ontology, ontology of biojurisprudence.