

**Marek Czachorowski<sup>1</sup>**

<https://orcid.org/0000-0002-7259-6152>

## **Biolaw and psychopharmacotherapy**

DOI: 10.5604/01.3001.0013.0358

**Summary:** In the article one of the key issues of contemporary bioethical law is presented, concerning the so called cosmetic psycho-pharmacology – the widespread overuse of psychiatric medication (mainly antidepressant drugs) not only for medical reasons, but also to enhance the human nature. Prevailing and lasting feeling of sadness which inhibits, or, in luminal cases, paralyses any activity, is perceived as an undesirable part of our lives. The admission to use antidepressant drugs (in the USA in 1987) has marked the start of a new era in human history. On the one hand, it is an era of prevailing depression – 10% of all Americans (including children) uses those drugs on daily basis. On the other hand, it is an era of post-human, as described by F. Fukuyama, since the feeling of sadness is to be conquered not by engaging human mind and will, but by the use of psycho-pharmacological substances. Thus, precise legal regulations are needed, protecting human dignity against technological manipulation. Only a serious scientific discussion can prepare us for this issue, however, such a debate has so far eluded Polish bio-jurisprudence. Reflecting on the subject is made impossible by the belief that philosophical anthropology is not necessary in legal discourse, which is widespread among some bio-lawyers.

**Key words:** bio-law, bio-ethics, cosmetic pharmacology, „human enhancement”, antidepressant drugs, depression, sadness, philosophical anthropology.

### **Bioprawo a psychofarmakoterapia**

**Streszczenie:** W artykule przedstawia się jeden z problemów współczesnego bioprawa (neuroprawa), który dotyczy tzw. kosmetycznej psychofarmakologii, czyli rozpowszechnionego nadużywania leków psychotropowych (zwłaszcza antydepresantów) nie w celach medycznych, ale dla „poprawienia” [inancement] ludzkiej natury. Za jej element niepożądany zwykło się uważać utrzymujące się dłużej przeżycie smutku, utrudniające czy w przypadkach granicznych paraliżujące działanie. Dopuszczenie antydepresantów (w USA, 1987 rok) zapoczątkowało w dziejach nową epokę. Z jednej strony epokę jakoby powszechnej depresji, skoro np. aż 10% Amerykanów (licząc także dzieci) stale używa tych leków. Z drugiej zaś – epokę „po-człowieka”, jak trafnie określił to zjawisko F. Fukuyama – skoro przeżycie smutku próbuje się opanować nie drogą zaangażowania specyficznego dla człowieka rozumu i wolnej woli, ale środkami psychofarmakologicznymi. Konieczne są zatem precyzyjne regulacje prawne

---

<sup>1</sup> Prof. KPSW, dr hab. Marek Czachorowski – Kujawy and Pomorze University in Bydgoszcz, Institute of Law.

w tym zakresie, chroniące ostatecznie godność człowieka przed manipulacją technologiczną. Do tego może przygotować tylko poważna naukowa dyskusja na ten temat, którą jednak omija polska biojurisprudencja. Taką refleksję uniemożliwia rozpowszechnione w niektórych środowiskach bioprawników przekonanie, że antropologia filozoficzna jest niepotrzebna w dyskursie prawniczym.

**Słowa kluczowe:** bioprawo, bioetyka, kosmetyczna farmakologia, „human enhancement”, antydepresanty, depresja, smutek, antropologia filozoficzna.

## 1. Introduction

Although biolaw<sup>2</sup> belongs to especially dynamically developing branches of law, it is still being overtaken by a very fast progress of biotechnology that has deserved to be called a “biotechnological revolution”<sup>3</sup>. It promises us numerous advantages but is also connected with many, serious threats that are expressed by new legal regulations, both international<sup>4</sup> and national ones<sup>5</sup>.

Both the already existing and a new proposed biolaw is an object of scientific considerations within the area of legal sciences (so called biojurisprudence)<sup>6</sup> and - “legal bioethics”<sup>7</sup> - that is connected with them. The question arises whether the research really identifies major threats of the biotechnological revolution, and therefore protects us against this potential danger.

I would like to concentrate mostly on Polish jurisprudence and “legal bioethics” because of the need to limit the scope of my considerations. Due to the same reason, I will also deal with only one area of contemporary biotechnology, which is

<sup>2</sup> See O. Nawrot, *Bioprawo*, [in:] J. Zajadło (ed.), *Leksykon współczesnej teorii i filozofii prawa*, Warsaw 2017, p. 17-20.

<sup>3</sup> See F. Fukuyama, *Koniec człowieka*, Kraków 2004.

<sup>4</sup> See L. Kondratiewa-Bryzik, K. Sekowska-Kozłowska (ed.), *Prawa człowieka wobec rozwoju biotechnologii*, Warszawa 2013; M. Grzymkowska, *Standardy bioetyczne w prawie europejskim*, Warszawa 2009; C. Rödigier, *The Council of Europe’s Next ‘Additional Protocol on Neuroscientific Research?’ Towards an International Regulation of Brain Imaging Research*, [in:] T.M. Spranger (ed.), *International Neurolaw*, Berlin/ Heidelberg 2012. One of bioethics’ branches (also legal one) that arises special interest of general public is neuroethics. See N. Levy, *Introducing Neuroethics*, “Neuroethics” 2008, no 1, p.1-8.

<sup>5</sup> It is claimed that Polish biolaw is “not well developed. Regulations concerning bioethical issues are dispersed, incomplete and imprecise, and as regards some issues - missing at all” (A. Brezczko, *Podmiotowość prawna, człowieka w warunkach postępu biotechnomedycznego*, Białystok 2011, p. 43). See O. Nawrot, *Wykładnia antropologiczna bioprawa - zarys koncepcji*, [in:] *Współczesne wyzwania bioetyczne*, op. cit., p. 42-54. Por. M. Safjan, *Jakiego prawa bioetycznego potrzebujemy?*, [in:] *Współczesne wyzwania bioetyczne*, dz. cyt., p. 10. see M. Safjan (ed.), *Prawo wobec medycyny i biotechnologii. Zbiór orzeczeń z komentarzami*, Warszawa 2011.

<sup>6</sup> See: R. Tokarczyk, *Biojurisprudence. Foundations of Law for the Twenty-First Century*, Lublin 2008; O. Nawrot, *Temida w dobie rewolucji biotechnologicznej. Wybrane problemy bioprawa*, Gdańsk 2015; M. Safjan, *Rozwój nauk biomedycznych a granice ochrony prawnej*, [in:] A. Grześkiwiak (edit.), *Współczesne problemy bioetyki w obszarze regulacji prawnych*, Warszawa 2001; T. Twardowski, A. Michalska, *Dylematy współczesnej biotechnologii z perspektywy biotechnologa i prawnika*, Toruń 2000.

<sup>7</sup> The relation between legal sciences and bioethics is defined in different ways. It depends first on the conception of the law itself (and related conception of legal sciences), therefore many authors a priori describe their positions towards perceiving law. The authors of the article “Bioethics and the Law” declare that they write “from the positivist position, and not the natural law” (M. Boratyńska, P. Konieczniak, *Bioetyka a prawo*, [in:] *Bioetyka* (edit.) J. Różyńska, W. Chańska, *Bioetyka*, Warszawa 2013, p. 57-69.

pretty neglected in contemporary biolaw (and “neuro-law”), biojurisprudence (and neurotics) - the psychopharmacotherapy<sup>8</sup>. It gradually replaces other forms of therapy of mental diseases, and since 1987, when antidepressants (SSRI) were approved in the US, and launched in 1988 (with *Prozac* being the best well known example) - a breakthrough has occurred not only in psychiatry but also in culture<sup>9</sup>. Some people hope that pharmacological medication will improve the way how a human brain functions<sup>10</sup> and therefore change the course of history that so far has been governed by fear, desire of proving one’s importance or intellectual limitations. However, the contemporary biolaw and bio-jurisprudence often neglect this issue. Should we idly wait till psychiatrists, pharmacists and politicians will model those legal issue according to their wishes, or should legal reflection signal breaching of a basic human right?

## 2. Costemetic psychopharmacology?

I would like to focus on that offer of psychopharmacology that promises to overcome a global psychiatric problem of today which is depression. According to WHO, it is one of the most significant medical problems of contemporary world, resulting probably from the fact that so far psychiatry has not been able to provide satisfying explanations of what causes depression<sup>11</sup>. One may also suspect that the tools which modern psychiatry uses may even make such understanding more difficult. This branch of medicine makes use of contemporary findings of psychology that faces many methodological problems arising from being deeply rooted in modern dogmas from the realm of scientific ideas and related incorrect anthropological conceptions<sup>12</sup>. Therefore, Galen was justified in claiming that a doctor must be first a philosopher as otherwise s/he conducts inhuman medicine. It is philosophy (understood in a classical way) that offers also indispensable for medicine knowledge on human nature. Without understanding human nature, one cannot properly pursue, especially, psychiatry. One may therefore wonder whether contemporary ignorance of the causes of depression, is rooted in a wrong conception of a human being. In order to understand “depression”, one should firstly apply a proper conception of feelings.

<sup>8</sup> See The President’s Council on Bioethics, *Beyond Therapy: Biotechnology and the Pursuit of Happiness*, Washington 2003.

<sup>9</sup> The famous British psychiatrist, D. Healy warns against this phenomenon. See, D. Healy *The Antidepressant Era*, Harvard University Press 1999; D. Healy, *A Dance to the Music of the Century*, “Psychiatric Bulletin” 2000, no 24, p.1-3. Ibidem: *Let Them Eat Prozac: The Unhealthy Relationship Between the Pharmaceutical Industry and Depression*, New York 2004; See, D. Healy, *Pharmageddon*, University of California Press 2012.

<sup>10</sup> In the contemporary science, the ambition of “improving” humankind and its transformation into some superior type of human (superhuman) is often expressed. It is called “human enhancement”, and the element of such “improvement” is “neuro-enhancement” that also includes “pharmaco-enhancement”. The latter issue concerns however various pharmacological means, including the ones that may modify human memory (liberating it from some painful memories) and “improvers” of human intellectual capabilities (nootropic drugs or smart drugs) and antidepressants.

<sup>11</sup> See A. Kepiński: *Melancholia*, Kraków 2001; D. Healy, *Mania: A Short History of Bipolar Disorder*, Johns Hopkins University Press 2010. Horwitz, A. & Wakefield, J. C. *The loss of sadness: How psychiatry transformed normal sorrow into a depressive disorder*, Oxford University Press, New York 2007.

<sup>12</sup> On this topic, see A. Maryniarczyk, *Filozoficzne „obrazy” człowieka a psychologia*, „Człowiek w Kulturze” 1995, no 6-7, p. 77-99.

Recent times have had a problem with it as can be seen even with Descartes, the creator of modern philosophy, who devoted his last work to building a new conception of feelings as - in his opinion - their classical conception was completely wrong<sup>13</sup>.

Today, psychiatry eagerly applies antidepressants for a permanent (“abnormal” emotional state) feeling of sadness. It was made widely popular by Peter Kramer’s famous book<sup>14</sup> as well as some authoritative media. No matter whether it was “sponsored” or spontaneous course of actions, today as many as 10% of Americans take regularly antidepressants, whereas in Europe the lead is occupied by Sweden, the UK and Denmark. In the UK within the ten year period of 2006-2016 the number of their users doubled as in 2015 as many as 61 million prescriptions were issued for them, mostly by GPs. Pharmaceutical companies derive enormous profits from selling such medicines as only in Poland the annual market for them is worth PLN 346.2 million. In the years 2008-2016 as many as 30% increase in their sales in Poland was recorded that reached 21.1 million packets (2017), which means that 1.76 million Poles take antidepressants (a pill may cost even PLN 1.50). Pharmaceutical companies also finance campaigns of hidden advertising of their “happy-making” products. The American producer of *Prozac* (with some other pharmaceutical company) has donated to <Syntonia> Foundation of 3rd Clinic of Psychiatry PLN 120,000 to publish a cartoon “Black Waves. How to Cope with Depression. A Guide for Young People” by Katarzyna Szaulińska and Daniel Chmielewski. This cartoon is a part of an advertising campaign among junior secondary school pupils that is to “help them decrease their fear connected with taking antidepressants”. It is, however, correctly argued that it—only psychiatrist “and not a cartoon (...) should convince a teenage patient and his/her parents to start pharmacotherapy”<sup>15</sup>. In Poland as many as 40% of prescriptions for antidepressants are issued by non-psychiatric doctors, and in 2018 a gynaecologist was caught who in half a year period issued 259 such prescriptions. Is he really the only doctor who conducts such “cosmetic medicine” with the help of antidepressants? Are all their legal users people who are ill with diagnosed and undisputable <depression> or are they rather victims of irresponsible doctors and pharmaceutical companies?

One may ask whether we should further stay silent or wait for any global disaster, not only of health related character<sup>16</sup>, but firstly of mental (moral) one<sup>17</sup>. One may not, however, disregard social manipulation with human dignity (the superior normative principle in the Polish law) because it is mostly manipulating with our reason. A reflection is therefore necessary with regard to this very serious matter.

<sup>13</sup> R. Descartes, *Namietności duszy*, Warsaw 2001, p. 29.

<sup>14</sup> P. Kramer, *Listening to Prozac, A Psychiatrist Explores Mood-Altering Drugs and the New Meaning of the Self*, New York 1993 (*Wsluchując się w Prozac. Przełom w psychofarmakoterapii depresji*, Warsaw 1995).

<sup>15</sup> E. Kaczmarek, *Jak nie leczyć depresji*, „Kultura liberalna” 2017, no 432.

<sup>16</sup> Disputes about negative results of antidepressants are being held. Fukuyama aptly remarks that the problem would be less serious if it did not harm human health. The health aspect is not the only one or even superior in relation to a human being.

<sup>17</sup> F. Fukuyama warns against it (quotation see, p. 78 (according to the author, pharmacological drugs can introduce in the most effective way a new totalitarian system but “it is almost completely silent as regards of their effects for conventional perception of identity or moral attitudes”).

However, they must face here some serious problems that result from the popular attitude in lawyers' circles of negating or disregarding the anthropological foundation of the law.

### 3. Biolaw without philosophical anthropology?

Some of the Polish legal scholars directly negate looking for law foundation (including the biolaw) in philosophical anthropology<sup>18</sup>. According to B. Brożek, the notion of a person is either “ambiguous or arbitrary or completely useless”<sup>19</sup>. The author by supporting the last solution, at first aptly draws attention to the difference between contemporary notion of “a person” versus its classical definition as accepted in contemporary personalism. If modern philosophy reduce “a person” to some conscious element (so called psychological definition of a person)<sup>20</sup>, then the Boetian definition considers a person as an objective, autonomous (substantial) being, constituted by his/her specific nature (essence). Instead of indicating reasons of rejecting modern reductionism in perceiving “a person”, it is claimed that “attempts to compare these conceptions in isolation from some more general metaphysical views on the basis of which they were built makes no sense”<sup>21</sup>. One may not agree with the last assumption as there are reasons to reject both the Kant's metaphysical and epistemological agnosticism as well as incorrect assumptions of the psychological conception of a person.<sup>22</sup> Moreover, the author convinces that the notion of “a person” is redundant in bioethical debate as even Thomistic bioethics apparently does not have to use the notion of “a person”<sup>23</sup>, and contemporary personalism is “a surprising combination of Thomistic philosophy with emphasizing the role of the notion of “a person”<sup>24</sup>. However, it is hard to agree with the author as the conception of a rational human being is a constitutive element of a classical definition of “a person”. In Thomistic ethics it has normative meaning as it is the rule and measure of human actions.

It should also be observed that it is completely pointless to consider contemporary Thomistic personalism as “contradictory to the idea of real Thomism”<sup>25</sup>, or as “eclectic conception that is methodologically incoherent and undoubtedly arbitrary”.

<sup>18</sup> Such task of presenting anthropology as implied by the biolaw is proposed by O. Nawrot [in:] *Wykładnia antropologiczna bioprawa - zarys koncepcji*, [in:] L. Bosek, M. Królikowski (edit.), *Współczesne wyzwania bioetyczne*, Warsaw 2010, p. 42-54.

<sup>19</sup> B. Brożek, *Pojęcie osoby w dyskusjach bioetycznych*, [in:] J. Stelmach, B. Brożek, M. Soniewicka, W. Załuski, *Paradoksy bioetyki prawniczej*, Warsaw 2010, p. 43-55.

<sup>20</sup> The author has a problem with Kant's conception of a human conception of a persons that he calls “ethical theory of a person” and differentiating it from the “psychological” one (Paradoksy, p. 47). However, other authors (e.g. K. Wojtyła) include also Kant's conceptions to “conscious” ones.

<sup>21</sup> *Paradoksy*, see quotation., p. 47.

<sup>22</sup> R. Ingarden pays attention to it (see also *Książeczka o człowieku*, Kraków 1973, p. 125-132).

<sup>23</sup> *Paradoksy*, see quotation p. 49.

<sup>24</sup> The author therefore does not notice that the notion of a person as a substantial reasonable being is also present in St. Thomas' ethical and legal discourse. See also on the topic: M. Piechowiak, *Klasyczna koncepcja osoby jako podstawa pojmowania praw człowieka*, [in:] P. Dardziński, F. Longchamps de Berier, K. Szczucki (edit.), *Prawo naturalne- Natura Prawa*, Warsaw 2011, p. 3-20 (one can find here references to St. Thomas' writings that indicate that the notion of a person has in St. Thomas' ideas a normative meaning.

<sup>25</sup> *Paradoksy*, p. 49.

trary”<sup>26</sup>. With which thesis of Thomism is the conception of a person “contradictory” (or “incoherent”)? The classical conception of a person is not “arbitrary” accepted since at its foundations is the analysis of the experience of the human being<sup>27</sup>.

According to B. Brożek, not only the notion of “a person” is redundant in legal and bioethical debates<sup>28</sup> but also the notion of “human being” seems vague, and “we should not resolve important bioethical problems - e.g. banning abortion - y resorting to general (and vague) terms such as a human being, which results in “problems of logical nature”<sup>29</sup>. How can one properly evaluate in moral terms, and consequently also legally, any human actions if we do not use the notion of a human being, i.e. the knowledge about their nature? Moral good is that through which the human being as a person is good. If, therefore, we assume the possibility of resolving ethical and legal disputes without referring to human’s nature, then morality is reduced to some other branch, and therefore, moral evaluation to extra-moral one.

The objection of some legal circles<sup>30</sup> as regards basing bioethical and bi-olegal reflection on insight into human nature is based on fear of the “naturalistic fallacy” (G. Moore), i.e. deriving normative statements from anthropological presumptions (presumptions based on facts<sup>31</sup>). However, according to Oktawian Nawrot “deriving the most elementary rights of an individual from their nature, and from a certain model of a human being (...) is a practice well grounded and widely accepted in the Western tradition”<sup>32</sup>. Although this argument does not prove that in such way we can avoid “the naturalistic fallacy”, but it has been indicated many times that foundations of ethical and legal reasonings in anthropological thesis (having always not only ontic but also axiological meaning) avoid the allegation of the “naturalistic fallacy”<sup>33</sup>.

How does the bio-legal discourse look like without using the philosophical anthropology one may see in M. Safjan’s works, who was one of the first Polish “biolawyers”<sup>34</sup> According to him, the function of law is “to prevent a potential social conflict”<sup>35</sup> or balance “freedom” of all parties concerned, and not protect of objective, ontical and axiological truth of a human being. Although he agrees with legal

<sup>26</sup> See quotation *ibidem.*, p 49.

<sup>27</sup> The leading representative of classical personalism (Thomistic) is K. Wojtyła. He starts “Miłość from (based on experience) insight into a human being as an exceptional existence and value (see: K. Wojtyła, *Miłość i odpowiedzialność*, Lublin 1986; chapter “A person as a subject and object of activities”).

<sup>28</sup> *Paradoksy*, p. 53.

<sup>29</sup> *Ibidem*, p. 55.

<sup>30</sup> The fear of “naturalistic fallacy” was made popular in legal circles by Hans Kelsen [in:] *The Natural-Law Doctrine before the Tribunal of Science*, „The Western Political Quarterly” 1949, vol. 2, No. 4, p. 481-513. Such fear gave also rise to the “new theory of natural law” (especially in J. Finnis; see in *Prawo naturalne i uprawnienia naturalne*, Warsaw 1980).

<sup>31</sup> See O. Nawrot, *Błąd naturalistyczny*, [in:] J. Zajadło, *Leksykon współczesnej teorii i filozofii prawa*. 100 podstawowych pojęć, Warsaw 2007, p. 29-30.

<sup>32</sup> O. Nawrot, *Wykładnia antropologiczna bioprawa*, quotation, p. 52. Also F. Fukuyama does not fear the “naturalistic mistake”, to which he devoted one of the chapters in “*Koniec człowieka*”.

<sup>33</sup> See T. Styczeń, *Spór o naukowość etyki*, p. 410-412; *ibidem*, *Etyka niezależna*, quotation., p. 76.

<sup>34</sup> M. Safjan, *Jakiego prawa bioetycznego potrzebujemy?*, [in:] L. Bosek, M. Królikowski (edit.), *Współczesne wyzwania bioetyczne*, Warsaw 2010, p. 1-15.

<sup>35</sup> *Ibidem*, p. 6.

anti-positivists that the law always assumes some ethical system (and therefore some specific anthropology)<sup>36</sup>, but there is not “a full congruence between the law and morality”<sup>37</sup>. Especially, he considers the moral and legal notion of “human dignity” as not sufficiently normative<sup>38</sup>, although such human dignity is protected in legal systems of all European countries. M. Safjan in his bio-legal discourse does not refer to any anthropologically justified obligation of protecting non-instrumental human dignity but to social benefits. The law according to him is not to serve “achieving human perfection” but some other functions. He describes such functions as reconciliation of contradictory wishes (called “freedom”) of citizens by “limiting individuals’ freedom in relation to other individuals and a state may not (...) trespass the sphere of individuals’ autonomy beyond what is necessary and results from the interests’ of others and the society as a whole”<sup>39</sup>. Therefore “the law interferes not in order to remove moral conflict, but to provide proper framework for social relations, stabilize the situation of specific individuals and prevent a potential conflict”<sup>40</sup>. Consequently, the law “must sometimes tolerate behaviour (...) that does not correspond with a dominant moral or overall view”<sup>41</sup>, which may be exemplified by law interference into “medically assisted procreation”. In Safjan’s opinion the law “by establishing some axiological minimum allows to determine legal situation of those who decide to use it. The law does not impose a legal obligation to use such method neither repeals validity of evaluations formulated in another normative order (moral or religious), that may be based on basically different axiological assumptions”<sup>42</sup>.

We deal here with determining of law functions omitting the basic fact that it is created by humans and for humans: human beings who are in first place reasonable and free creatures, therefore able to decipher the objective truth, obliged to protect it and with freedom of choice. The law created by humans should not protect contradictory interests of citizens but universal, objective goodness of each of them (human welfare). Isn’t it the reason behind introducing of life protection or a ban on killing or prohibition of Holocaust?

The question arises whether without the application of philosophical anthropology it is possible to resolve the subtle and multi-aspect problem of legal framework concerning psychopharmacology, including antidepressants. Will mere “balancing” between the contradictory wishes of citizens and pharmacological companies be enough?

---

<sup>36</sup> “Referring to universal moral principles in the sphere of law is not equivalent to undermining law autonomy” (ibidem, p. 2). Finally, “the law not reflecting moral principles is also always governed by axiology and hierarchy of values within it” (p. 6).

<sup>37</sup> Ibidem, p. 6.

<sup>38</sup> Ibidem, p. 7. According to M. Safjan “a legal definition of a human being, for example, does not exist” (Ibidem, p. 3).

<sup>39</sup> M. Safjan, quotation., p. 2.

<sup>40</sup> Ibidem, p. 6.

<sup>41</sup> Ibidem.

<sup>42</sup> Ibidem, p. 6-7.

## 4. Moral discourse or a pill?

Searching for adequate legal solutions should start from determining facts. Does using antidepressants as the only method constitute a proper way of coping with the global problem of “depression”, or is it, by its nature, not respecting human dignity?

At first, we should be worried by contemporary “epidemic” of depression that is correlated with a huge advertising campaigns of widely available “antidepressants”. It should also be clear that it is impossible to understand the potential danger without insight into human feelings and their place in human life<sup>43</sup>. I will try to show it by referring to the classical theory of feelings that is a part of the classical philosophical anthropology.

It is a widely accepted fact that depression occurs first in emotional sphere as a long lasting feeling of sorrow, paralyzing whole activity of the person. This feeling occurs when such subject feels some present evil<sup>44</sup>. The basic method of coping by a reasonable and free person with sorrow (the moral vice of yielding to sadness in relation to hardships of ascribed greatness to humans is called “acedia”<sup>45</sup>) is a reflection or revealing reasons behind experienced evil and therefore the reasons for his own sadness. When experiencing various kinds of evil, one should remember that only moral evil touches our whole humanity, i.e. is the most important kind of evil. Sadness resulting from such moral evil is therefore of superior character, especially when we are convinced that we may not liberate ourselves from such moral evil. In the epochs of triumphant irrationalism and determinism (epochs when it is doubted that human intellect is able to grasp the truth about goodness and in his/her free will, i.e. be able to follow the truth) “melancholy” is becoming extremely widespread and popular. If, therefore, our guilt confronts us with our main evil (moral evil), then removing of the feeling of sorrow with the use of antidepressants means a resignation from the only way of overcoming one’s moral evil. For a human person emotions are adequate measures of functioning their reason and a will, and not “soul diseases” as it was believed by ancient stoics (or I. Kant). Pharmacological removal of sorrow - as a reply to one’s moral evil - must mean problems with understanding such evil and problems with taking an effort to overcome it. “The happiness pill” (without so called cognitive therapy, based on reflection) does not allow for such self-reflection and choice, or at least hinders them considerably. It levels off the emotional component of experiencing guilt.

<sup>43</sup> The quoted document of the US President’s Bioethics Council (*Beyond Therapy: Biotechnology and the Pursuit of Happiness*) starts not only from recalling entries in the American saying that constitution that everybody has the right to seek happiness (it is a quotation from J. Locke’s works who uses a subjective conception of happiness) but also a anthropological analysis of such pursuit: it should be congruent with objective truth about human being.

<sup>44</sup> See St. Thomas, I-II, q. 23, a. 4; q. 35-39.

<sup>45</sup> See STh I-II q. 84, a. 4. *Acedie* is defined by St. Thomas as “grief because of spiritual good resulting from corporal suffering that is connected with such good” He considers also acedia as a kind of sorrow (he differentiates 4 types of it), which “results in no activity, incapacitates external body limbs” (STh I-II q. 36, a. 8). Such sorrow is focused not on every good, but only “spiritual” good, i.e. - in this case - good of a human being as a man and therefore moral good.

Peter Kramer, who is the father of the financial <success> of *Prozac* producers, describes in his book the circumstances of the drug's first application in treating depression. This story is an example of carelessness of some psychiatrists in dealing with the human person. Kramer administered *Prozac* for the first time to an Austrian architect, and as a result, depression was to disappear as 'patient X' "felt better than well, free and full of life"<sup>46</sup>. The reasons of his depression are not explained, although we may guess them as he was described as "following a European non-conformist way of living" or being "lecherous" and moreover (which always testifies to deeply rooted "moral defect") "not caring that some called him <lecherous>"<sup>47</sup>. He liked watching "brutal, pornographic movies"<sup>48</sup> and also made his wife watch them as well, which resulted in a conflict as she "found them disgusting". It is therefore strange that the psychiatrist did not notice the relation between the sorrow attacking his patient X and feeding his mind on "brutal pornography". Can it fill a human with life's joy or rather burden him/her with limitless sorrow? So, instead of offering his patient a help in overcoming his serious moral weakness (called in the classical ethics the moral defect of "promiscuity"), the psychiatrist applied a pill, which allowed for perfect feeling, although he was objectively still tied by the moral evil, called promiscuity<sup>49</sup>. The pill for his moral guilt. The human person is aptly described as *homo ethicus* as being within the area of moral goodness and evil determines our humanity. Pharmacological removal of moral guilt - on general social scale - means a direct blow to our humanity.

## 5. Ending

The above were just initial remarks to a very interesting, current and extremely serious legal problem of finding protection against global manipulation of human's dignity with the use of careless application of psychopharmacology. Complicated history of modern and contemporary psychiatry should warn us against the following act of manipulation, which is not only dictated by rich pharmaceutical companies, but at first - as F. Fukuyama emphasizes - by masses wanting to get rid of a painful feeling of moral guilt, and connected with it, existential sorrow. The issue is very important as manipulating human emotionality (emotional component of the feeling of guilt) with the use of "antidepressants" is manipulation of the human per-

<sup>46</sup> Kramer, quotation, p. 16.

<sup>47</sup> Ibidem, p. 15.

<sup>48</sup> Ibidem, p. 16.

<sup>49</sup> The use of antidepressants (without combining them with "cognitive" therapy) to treat depression is usually criticized due to its mere instrumental treatment of one's own person (e.g. G. A. Hoffman, *Treating Yourself as an Object: Self-Objectification and the Ethical Dimensions of Antidepressant Use*, „Neuroethics" 2013, vol. 6, p.165–178); using "short-cut" to happiness; something "not authentic", being "mind steredoid" (see A. Kapusta, quotation., p. 174). See Z. Melosik, *Rekonstrukcja szczęścia w społeczeństwie neoliberalnym: Prozak jako sposób na życie*, „Studia Edukacyjne" no 28, 2013, pp. 109-128. See also C. Elliott, *The Tyranny of Happiness: Ethics and Cosmetic Psychopharmacology*, [in:] E. Parents (ed.), *Enhancing Human Traits ethical and social implications*, Washington 1998, p. 77-188; see. C. Freedman, *Aspirin for the mind? Some ethical worries about psychopharmacology*, [in:] *Enhancing human traits*, quotation, p. 135-150. In my argumentation - in the anthropological and therapeutic dimension - the emphasis is placed on negative personal meaning of using the "happiness pill".

son. The biolaw (neuro-law) that is being established as regards this sphere should be preceded by scientific reflection, which - as far as neuroethics are concerned - is still missing. However, without reflecting on currently valid views on anthropological foundations of the law, it is impossible to solve these subtle issues.

## Bibliography

- Aquinatis S. T., *Summa theologiae*, cura et studio P. Caramello, Torino 1963.
- Boratyńska M., Konieczniak P., *Bioetyka a prawo*, [in:] Różyńska J., Chańska W. (ed.), *Bioetyka*, Warszawa 2013.
- Breczko A., *Podmiotowość prawna, człowieka w warunkach postępu biotechnomedycznego*, Białystok 2011.
- Brożek B., *Pojęcie osoby w dyskusjach bioetycznych*, [in:] Stelmach J., Brożek B., Soniewicka M., Załuski W., *Paradoksy bioetyki prawniczej*, Warsaw 2010.
- Descartes R., *Namiętności duszy*, Warsaw 2001.
- Finnis J., *Prawo naturalne i uprawnienia naturalne*, Warsaw 1980.
- Fukuyama F., *Koniec człowieka*, Kraków 2004 (*Our Posthuman Future: Consequences of the Biotechnology Revolution*. New York, NY: Farrar, Straus and Giroux. 2002).
- Grzymkowska M., *Standardy bioetyczne w prawie europejskim*, Warszawa 2009.
- Healy D., *A Dance to the Music of the Century*, "Psychiatric Bulletin" 2000.
- Healy D., *Let Them Eat Prozac: The Unhealthy Relationship Between the Pharmaceutical Industry and Depression* New York University Press 2004.
- Healy D., *Mania: A Short History of Bipolar Disorder*, Johns Hopkins University Press 2010.
- Healy D., *The Antidepressant Era*, Harvard University Press 1999.
- Horwitz A., Wakefield J. C., *The loss of sadness: How psychiatry transformed normal sorrow into a depressive disorder*, Oxford University Press, New York 2007.
- Kaczmarek E., *Jak nie leczyć depresji*, „Kultura liberalna” 2017, no 432.
- Kelsen H., *The Natural-Law Doctrine before the Tribunal of Science*, „The Western Political Quarterly” 1949, vol. 2, no. 4.
- Kępiński A., *Melancholia*, Kraków 2001.
- Kondratiewa-Bryzik L., Sekowska-Kozłowska K. (ed.), *Prawa człowieka wobec rozwoju biotechnologii*, Warszawa 2013.
- Kramer P., *Wysłuchując się w Prozac. Przełom w psychofarmakoterapii depresji*, Warsaw 1995 (*Listening to Prozac, A Psychiatrist Explores Mood-Altering Drugs and the New Meaning of the Self*, New York 1993).
- Levy N., *Introducing Neuroethics*, „Neuroethics” 2008, no 1.
- Maryniarczyk A., *Filozoficzne "obrazy" człowieka a psychologia*, „Człowiek w Kulturze” 1995, no 6-7.
- Nawrot O., *Bioprawo*, [in:] Zajadło J. (ed.), *Leksykon współczesnej teorii i filozofii prawa*, Warsaw 2011.
- Nawrot O., *Błąd naturalistyczny*, [in:] Zajadło J. (ed.), *Leksykon współczesnej*

teorii i filozofii prawa. 100 podstawowych pojęć, Warsaw 2007.

- Nawrot O., *Temida w dobie rewolucji biotechnologicznej. Wybrane problemy bioprawa*, Gdańsk 2015.
- Nawrot O., *Wykładnia antropologiczna bioprawa - zarys koncepcji*, [in:] Bosek J., Królikowski M. (ed.), *Współczesne wyzwania bioetyczne*, Warszawa 2010.
- Piechowiak M., *Klasyczna koncepcja osoby jako podstawa pojmowania praw człowieka*, [in:] Dardziński P., Longchamps de Berier F., Szczucki K. (edit.), *Prawo naturalne- Natura Prawa*, Warsaw 2011.
- President's Council on Bioethics, *Beyond Therapy: Biotechnology and the Pursuit of Happiness*, Washington 2003.
- Rödiger C., *The Council of Europe's Next 'Additional Protocol on Neuroscientific Research?' Towards an International Regulation of Brain Imaging Research*, [in:] Spranger T. M. (ed.), *International NeuroLaw*, Berlin/ Heidelberg 2012.
- Safjan M. (ed.), *Prawo wobec medycyny i biotechnologii. Zbiór orzeczeń z komentarzami*, Warszawa 2011.
- Safjan M., *Jakiego prawa bioetycznego potrzebujemy?*, [in:] Bosek J., Królikowski M., (ed.), *Współczesne wyzwania bioetyczne*, Warszawa 2010.
- Safjan M., *Rozwój nauk biomedycznych a granice ochrony prawnej*, [in:] Grześkowiak A. (edit.), *Współczesne problemy bioetyki w obszarze regulacji prawnych*, Warszawa 2001.
- Styczeń T., *Spór o naukowość etyki*, [in:] *W drodze do etyki*, Lublin 1984.
- Tokarczyk R., *Biojurysprudencja. Podstawy prawa dla XXI wieku*, Lublin 2008.
- Twardowski T., Michalska A., *Dylematy współczesnej biotechnologii z perspektywy biotechnologa i prawnika*, Toruń 2000.
- Wojtyła K., *Miłość i odpowiedzialność*, Lublin 1986.