El Derecho natural y la enseñanza del Derecho constitucional y los Derechos humanos

Ligia Castaldi[a] y Gabriel Maino[b]: ¿Qué aspectos de la tradición del derecho natural, si alguno, considera fundamentales para la enseñanza del derecho constitucional y de los derechos humanos?

Rodolfo Vigo[c]: Parece bastante obvio que en la tradición del derecho natural corresponde destacar y reivindicar la razón práctica y al personalismo ontológico. Si no se suscribe una cierta confianza en la posibilidad de conocer respuestas objetivas en el campo valorativo, desaparece la posibilidad de proclamar un catálogo de derechos humanos atribuibles a todo ser humano y declararlos inalienables. Si el bien (la justicia en tanto moral social) corresponde que lo defina, cada uno, cada sociedad, un Dios que rechaza la razón en el campo moral, una norma jurídica (constitucional, judicial, etc.) o coincida con la mayor felicidad para el mayor número; la consecuencia en cualquiera de esas posibilidades es suprimir la alternativa de reclamar racionalmente justicia o el cumplimiento de deberes indisponibles a la autoridad o a los otros.

Claro está que hoy reconocemos teorías que coinciden en respaldar cierto objetivismo y cognitivismo ético o moral pero que no se apoyan en las enseñanzas centrales aristotélico-tomistas; más aún, ahí encontramos autores muy citados en la jurisprudencia y doctrina jurídica, un buen ejemplo lo constituye la teoría de Robert Alexy inspirada en Kant y la pragmática habermasiana. Y si bien hay coincidencias en ambas posturas en el rechazo al relativismo, también hay diferencias significativas, particularmente en temas de la agenda

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ética social (aborto, perspectiva de género, etc.). En orden a esas diferencias y para clarificar los respectivos fundamentos corresponde remitirnos a la visión gnoseológica y a la antropológica; en definitiva, el constructivismo kantiano habilita a concluir que la persona humana se identifica con la competencia comunicativa o con la autonomía, mientras que el camino realista conlleva un personalismo ontológico o biológico. Una proyección relevante de esas tesis es la cuestión sobre los "absolutos morales" defendida por el iusnaturalismo clásico casi en soledad, rechazando la posibilidad de respaldar moralmente actos cuyo objeto es suprimir bienes humanos básicos. Sin objetivismo y cognitivismo no cabe postular con coherencia los derechos humanos con las características consagradas en los Tratados respectivos, e igualmente quedan sin sustento racional los Códigos de Ética Profesional como una ampliación de los deberes meramente jurídicos.

Grégor Puppinck[(d)]**:** Reference to the natural law is essential for teaching human rights. This reference is necessary to extricate students from a positivist approach and to understand the essence of human rights, and thus, among other things, to enable students to distinguish between genuine rights and freedoms and their counterfeits. However, I do not begin the human rights course with a historical account of the various schools of natural law, but I set out the classical conception based on the recognition of the existence of human nature, inclinations and potentialities, and virtues, oriented towards the duty of *humanitas*, i.e., the fulfilment of human nature in everyone. I lead the students to see that each freedom corresponds to a potentiality of human nature and aims to protect the ability to exercise it.

Here is an abstract of my approach: The desire for fulfilment and perfection is a universal law. Everything in man, as in every other living being whether animal or vegetable tend irresistibly to fulfilment according to its nature. Fire tends to spread; the seed becomes a plant; the flower becomes a fruit; the child becomes a civilised adult, and so on. Man is born incomplete, but he has within himself all the potentialities of human nature. Whereas other beings live as prisoners of their nature and conditioned by it, man has a certain freedom which makes him responsible for his own self-fulfillment. From the moment of conception until death, all the effort of a human life con-

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sists for each person in the fulfilment of the potentialities of human nature: it consists in humanising oneself. The Romans saw this desire as the duty "to perfect human nature in oneself and to respect it in others."[1] They called this "*humanitas*". In recognising their dignity, men mutually oblige one another to respect it in themselves and in others, that is, to live in dignity.

From this desire and this duty to perfection flows a natural morality in virtue of which a thing is good or bad according to whether it contributes to the fulfilment of human nature. Thus, for example, education and physical activity and especially good because they enable children to grow. ST THOMAS, quoting ARISTOTLE[2], observes that "The good is what all beings desire." The good is "that which each thing seeks to the extent that it seeks its perfection."[3] The good is therefore determined by human nature. Things are good or bad according to whether or not they are suitable for human nature. Human nature is thus the origin of morality, whence the importance of knowing what this nature is. Greek and later Christian philosophers[4] distinguished four fundamental aspects of human nature: man is by nature a living, social and spiritual being. Each one of these aspects is a good which produces in man a special inclination. Like all beings, man desires to preserve his existence. Like all living beings, man desires to transmit life. As a social (or political) being, man desires to live in society[5]. Finally, as a spiritual being[6], man desires to know the truth and to know God. Everything which satisfies these desires is a good, everything which frustrates them (death, illness, solitude, error) is an evil bad. From these inclinations, it is possible to determine a rule of conduct, in other words a morality. This morality is natural because it flows from human nature: it is the "moral natural law", "the law written into the human heart"[7] which can be known through human reason. Thus, this "natural law" does not create the good; it is the good which determines

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1 VILLEY, M., *Le droit et les droits de l'homme*, PUF, coll. Quadrige, Paris, 1983, p. 87.

2 ARISTOTE, *Ethique*, 1094a.

3 DE KONINCK, C., *De la primauté du bien commun contre les personnalistes*, quoted by Sylvain Luquet, in " Charles De Koninck et le bien commun ", *Laval théologique et philosophique*, vol. 70, n° 1 (Février, 2014), p. 45-60.

4 SAINT THOMAS D'AQUINAS, *Somme théologique*, Ia, IIae, q. 94, a. 2.

5 Jean-Jacques ROUSSEAU s'opposera à cette compréhension en soutenant que la société corrompt les hommes.

6 Par spirituel, il faut entendre doté d'un esprit c'est-à-dire capable de réfléchir, de penser sur lui-même.

7 SAINT THOMAS D'AQUIN, *Somme théologique*, Ia, IIae, q. 94, a. 2.

the law. Reason deduces the law from the desired good, just as one deduces a route from the destination desired. By observing this law, each person fulfils himself and finds his good in it[8].

This natural law exists independently of the will of legislators, and it is at the origin of human rights. Human rights have conferred international legal force on the natural law by guaranteeing every person the right to fulfil himself as a human being. It is by observing the characteristics of human nature that the content of human rights can be deduced. Thus, the observation that man is by nature a "living, social and spiritual being" enables us to deduce that human rights must protect the life and the physical integrity of persons (as beings), then their ability to find a family (as living beings), then the right of association and expression (as social beings) and then finally freedom of conscience (as spiritual beings). Respect for the nature and dignity of the human person thus makes it possible to establish human rights – their finality, their content, their authority, and their universality.

It should be noted here that natural law differs from justice in that the former has the good as its object while the latter has the just. Natural law recognises to each person the natural right to fulfil himself according to his nature, while justice is a question of equity. Justice consists in giving to each person his due ("*cuique suum tribuere*")[9]. Certainly, human rights can serve justice, but they do not encompass the whole of justice.

It is from this conception of human nature and human dignity that philosophers and diplomats, including the French philosopher, JACQUES MARITAIN, and the Lebanese philosopher, CHARLES MALIK, drew their vision of human rights. They inspired and had a great influence on the text of the Universal Declaration. They wanted to prevent the Declaration from adopting a materialist, individualist or collectivist understanding of the human being.

BRIAN SCARNECCHIA[(e)]**:** First, I present the data of Revelation that each human being has inherent dignity because we are created by God in his image

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8 Pour une synthèse actuelle sur la loi naturelle, voir Commission Théologique Internationale, " *À la recherche d'une éthique universelle. Nouveau regard sur la loi naturelle* ", Document XXIV, 2009.

9 SÉRIAUX, A., in "L'objectivité du "ius" selon Saint Thomas d'Aquin", *Persona y Derecho*, n° 40 (1999), pp. 257-270.

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and redeemed by Christ.[10] This is the only inalienable ground upon which to build a culture of human rights in the international community of nations: "This ontological dignity and the unique and eminent value of every man and woman in the world was reaffirmed authoritatively in the *Universal Declaration of Human Rights* [UDHR] issued by the United Nations General Assembly on 10 December 1948."[11] Therefore, properly understood, we have a duty to conform human behavior and laws to the precepts of natural law found inscribed in the basic inclinations of human nature. In addition, I mention the distinction between conclusions and determinations of natural law, the difference between just and unjust human laws, when one *may* versus when one *must* disobey an unjust law, and when public authority is competent to declare a human law null and void if it contradicts the precepts of natural law.[12]

Aleksander Stepkowski[(f)]**:** Constitutional law provides a basic institutional framework for social life that involves fundamental questions about the reasons for social life and the conditions necessary for people to develop and flourish. The mainstream thinking about these issues is determined by a specific anthropological approach which had been expressed in terms of the teaching about Natural Law as proposed in Enlightenment – the Modern tradition of the Natural Law. This way of understanding Natural Law is based on an individualistic anthropology considering human beings and their relationships in terms of freedom and equality. Indeed, an individual itself is understood (within this paradigm) in terms of "someone free from, and equal to others". The same intellectual tradition was the matrix for the theory of human rights being – in general terms – the legal description of human freedom. Therefore contemporary constitutional law, with its focus on human rights, is an expression of this natural law tradition, promoting individual equality and freedom.

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10 "[i]n the light of Revelation, the Church resolutely reiterates and confirms the ontological dignity of the human person, created in the image and likeness of God and redeemed in Jesus Christ." Pope Francis, *Dignitas Infinita*, April 4, 2024.

11 *Ibid*. #1, 2.

12 The natural law tradition founded upon faith and reason is succinctly explained in Thomas Aquinas's *Summa Theologica* I-II, qq. 90-97 (Treatise on Law) and II-II, q. 60, aa 5 and 6 (the role of a judge).

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Ángel J. Gómez Montoro[g] **y Fernando Simón Yarza**[h]: El influjo del iusnaturalismo en la enseñanza de una rama jurídica que, por definición, se ocupa de lo "constitucional", lo "fundamental", e incluso lo "humano", va de suyo. Sin perjuicio de otros aspectos también cruciales para la enseñanza del Derecho constitucional, nos atreveríamos a formular los dos siguientes:

1. En primer lugar, pensamos que es preciso subrayar la nota de "universalidad" que, desde una perspectiva histórica amplia y rigurosa, cabe constatar en la corriente iusnaturalista. En este sentido, es conveniente dar por superado un cierto complejo de inferioridad cultural del iusnaturalismo clásico que, cada vez más, resulta muy difícil de sostener. El entusiasmo generalizado en torno al positivismo jurídico ya ha pasado, pero no parece haber encontrado una refutación sólida en las ideologías políticas que han dominado el discurso en las últimas décadas. Dejando de lado la fascinación por la originalidad y la brillantez de los "constructivismos", es preciso prestar suficiente atención al crisol del tiempo. Con perspectiva histórica, las modas vienen y van, y tanto los grandes interrogantes como las grandes respuestas y tradiciones sapienciales permanecen.

En este sentido, es preciso recordar –en particular a los juristas– que, como tal, la idea de una ley no escrita que legitima y limita al Derecho no pertenece a una tradición cultural concreta, sino que constituye una constante en la historia de la humanidad, por estar ínsita en la naturaleza humana. Es lógico que sea así, porque la fundamentación de las instituciones jurídicas y del Derecho constitucional no puede estar en el puro voluntarismo, del mismo modo que el Barón de Münchhausen no podía sostenerse a sí mismo, por más que se empeñase en lo contrario, tirándose de la coleta. Llevar esta experiencia hasta sus últimas consecuencias teóricas es obra de la tradición iusnaturalista clásica.

2. Esto nos lleva directamente al segundo aspecto, que toca, quizás, la cuestión más importante del Derecho constitucional: el de la medida justa de los derechos humanos. Los catálogos de derechos humanos dan expresión a los bienes o valores básicos que deben presidir el ordenamiento (vida, propiedad, expresión, religión, privacidad, etc.), pero recogen estos valores de manera yuxtapuesta, como los distintos pigmentos de colores en una paleta. Sólo la maestría del artista es capaz de dar a la materia que proporcionan los pigmentos la forma adecuada, convertirlos en obra de arte.

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De modo análogo, sólo la sabiduría práctica, la apertura al bien natural integral del ser humano y a su ley, puede dar forma concreta a la materia que proporcionan los derechos humanos. Sin esa sabiduría, los propios bienes recogidos por los catálogos de derechos se pueden convertir en instrumentos para la injusticia. No en vano, dice ARISTÓTELES en la *Ética a Nicómaco* que "el que comete la injusticia tiene, de lo bueno, más de lo que le corresponde, y el que la padece, menos" (1131b19-20). Tesis extendidas como la "necesidad de ampliar cada vez más los derechos" o de hacer una "interpretación siempre más expansiva" de los derechos pueden parecer a primera vista atractivas, pero contradicen el sentido común, precisamente, porque renuncian a la idea de una medida legítima que no viene dada por los mismos derechos. Como dijo ISAIAH BERLIN, "la libertad del lucio es la muerte de los pececillos" (freedom for the pike is death for the minnows). La ley natural es, en definitiva, el hilo conductor que dota de racionalidad al discurso de los derechos.

CHRISTIAAN W.J.M. ALTING VON GEUSAU[(i)]: The most fundamental aspect is to show students the unbroken line from the Greek tradition to the Roman tradition to the Judeo-Christian tradition that has at its core the primacy of nature and reason as that which informs us how to discern between right and wrong in society and in the law-making process. This is also the mostly ignored basis of our current international human rights system. BENEDICT XVI in his address to the German Parliament in 2011 describes this foundational concept as follows: "How do we recognize what is right? In history, systems of law have almost always been based on religion: decisions regarding what was to be lawful among men were taken with reference to the divinity. Unlike other great religions, Christianity has never proposed a revealed law to the State and to society, that is to say a juridical order derived from revelation. Instead, it has pointed to nature and reason as the true sources of law – and to the harmony of objective and subjective reason, which naturally presupposes that both spheres are rooted in the creative reason of God. Christian theologians thereby aligned themselves with a philosophical and juridical movement that began to take shape in the second century B.C. In the first half of that century, the social natural law developed by the Stoic philosophers came into contact with leading teachers of Roman Law. Through this encounter, the juridical

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culture of the West was born, which was and is of key significance for the juridical culture of mankind. This pre-Christian marriage between law and philosophy opened up the path that led via the Christian Middle Ages and the juridical developments of the Age of Enlightenment all the way to the Declaration of Human Rights and to our German Basic Law of 1949, with which our nation committed itself to "inviolable and inalienable human rights as the foundation of every human community, and of peace and justice in the world". The word of BENEDICT really summarizes very well what it is that we need to understand when we speak about natural law. It is by no means a specifically Christian concept. It was in fact invented much earlier and only copied and integrated by the Christian tradition from its predecessors, especially the philosophical tradition stemming from Athens and the legal tradition stemming from Rome. To put it even more poignantly, the concept of natural law was first only a pagan concept invented by philosophers and those that prayed to multiple gods.

BARTOSZ LEWANDOWSKI[j] I think that the most important aspect of the natural law tradition in teaching constitutional law and human rights is realizing the existence of a certain world order, and the role of man in the world. The truth about man, his value, moral choices and tasks allows students to realize that we do not live in a world without values, without moral assessment of phenomena, which is based solely on the will of the state, the government, considerations of utility or violence. This is extremely important to introduce students to thinking about the law.

LIGIA CASTALDI Y GABRIEL MAINO: ¿Puede enseñarse y comprenderse seriamente el derecho constitucional y/o el derecho de los derechos humanos, sin abordar explícitamente la cuestión de su concepción antropológica subyacente? ¿Aborda esta cuestión en sus propios cursos? Si es así, ¿Cómo? ¿A través de qué textos?

RODOLFO VIGO: Está señalado precedentemente que la cuestión antropológica es de especial y directa relevancia en el derecho de los derechos humanos. Esa tesis la suscribe también ALEXY en su artículo donde pregunta "¿Derechos humanos sin metafísica?", y responde negativamente. Por supuesto que esa

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propuesta del profesor alemán es una metafísica constructiva, lo que conlleva una distancia con la realidad que se pretende conocer alcanzando sus aspectos intrínsecos y constitutivos. El tema de la dignidad humana resulta un excelente banco de pruebas acerca de la antropología escogida, dado que encontramos propuestas muy sofisticadas como la de MANUEL ATIENZA que desemboca en un personalismo funcional, que termina sacrificando a algunos miembros de la especie humana a tenor de su composición biológica. A los alumnos puede resultarle interesante el contraste entre la posición de ATIENZA y la sólida visión sobre la dignidad formulada por R. SPAEMANN. Ampliando esta respuesta, cabe aludir a la cuestión del bien común y la moralidad pública en relación al bien individual que tiene enormes proyecciones en la jurisprudencia constitucional. El principio de privacidad contemplado en el art.19 de la Constitución Argentina que excluye de la autoridad de los magistrados "las acciones privadas que de ningún modo ofendan el orden y la moral pública, ni perjudiquen a un tercero", se ha reflejado en la jurisprudencia con alcance muy diferente que van desde una perspectiva estrictamente individualista que reduce el bien común a la suma de los bienes individuales, hasta la razonable admisión de restricciones a la moral individual en aras del buen vivir en sociedad.

GRÉGOR PUPPINCK: Human rights establish a close correlation between man and his rights. Human rights cannot be understood without a prior conception of what man is. The different conceptions of human rights imply just as many conceptions of man; this is why the modification of rights implies a modification of the underlying conception of man. The question of the various conceptions of man must therefore be studied and explained: it is to understand the divergent interpretations of human rights. The difference between man and individual is already, in itself, an obvious and essential difference, but a decisive one.

I have summarised this problem by distinguishing and contrasting two conceptions of man, and more precisely of the relationship between body and mind, from which derive two conceptions of human dignity, and consequently of human rights. I use my book, *Les droits de l'homme dénaturé*, originally published in France in 2018. An abstract on the two conceptions of dignity has been published separately.[13]

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[13] See PUPPINCK, G., "Embodied and Disembodied Dignity", *Journal of Christian Legal Thought*, vol. 9, n.° 2 (2019).

It is possible to illuminate the nature of the problem by recalling the clash between the two competing conceptions of dignity: that of Aristotelian and Christian thought, and that promoted by materialist and atheist philosophies. Put simply, the former posits that humanity receives its dignity from human nature, or from God, while the latter argues that humanity is the author of its own dignity. In the first case, man accepts himself as he is; that is, as a created being composed of both a body and a spirit. His dignity is embodied, the perfection of which is found in conducting himself according to the nature that accompanies it. In the second case, man sees himself as an essentially spiritual being, a metaphysical will that emerges and frees itself from matter. His dignity is therefore disembodied, and his aim is always to transcend true reality and create his own. As a consequence, his physical body possesses no greater dignity or value than that of an animal. This distinction between embodied and disembodied dignity enables us to understand the transformation of human rights that has recently occurred. Depending on the particular conception of human dignity one chooses to adopt, human rights will take on very different directions and meaning; they are always a form of expression, whether of natural rights or of individual will.

Brian Scarnecchia: Constitutional and human rights law cannot be seriously taught nor understood without explicitly addressing the question of anthropology. I address this issue in my courses by reference to Jaques Maritain's Introduction to the United Nations Educational, Scientific, and Cultural Organization publication *Human Rights: Comments and Interpretations (A symposium edited by UNESCO)* wherein he points out that even though in 1948 an agreement had been reached on a list of rights, nonetheless, "the fight begins," he said, when one asks "why." [14] Even if human dignity is "inherent in all members of the human family" as the preamble of the UDHR states, the question remains – is human dignity flourished by giving expression to the basic inclinations of human nature that the state must recognize or does one flourish by giving expression to subjective desires legitimized and universalized by concessions of the state? I point out that in 1948 at least there

[14] Maritain, J., *Human Rights: Comments and Interpretations (A symposium edited by UNESCO)*. Introduction by Jacque Maritain, p. 1. https://e-docs.eplo.int/phocadownloadpap/userupload/aportinou-eplo.int/Human%20rights%20comments%20and%20interpretations.compressed.pdf (last accessed September 22, 2023).

was common agreement on a list of universal rights. However, today there is no longer an agreement on that list. I cite the Association of Southeast Asian Nations objections to the UDHR and their insistence on "Asian Values" in opposition to the UDHR as evidence of this breakdown of consensus on the list of human rights. Now, to speak of human rights we must ask why this list, why this right and not another or else abandon the human rights project altogether.

In the United States the dominant jurisprudence of Originalism refuses to consider the ontological foundation of constitutional fundamental rights and simply posits that we are bound to the values found in the plain meaning of the text of the Constitution as understood by informed citizens at the time it was ratified and promulgated over two centuries ago. However, arguments based on authority provide a weak philosophical justification for human rights. So, in contrast with Originalist jurisprudence I also present recent attempts to reintroduce natural law jurisprudence in considerations of constitutional law.[15]

Aleksander Stepkowski: As already mentioned in the answer to the first question, all constitutional law is underpinned with a specific anthropology understanding human being as personification of free will and equality. The fact that constitutional law addresses many technical issues that seem unrelated to anthropology or more widely philosophy, does not negate the fact that the very importance of those technical issues – most often – comes exclusively from the fact that they are consequences of accepting individualistic anthropology.

In my courses I try to demonstrate that the dominating approach towards Natural Law (as understood since Enlightenment) is much different to the classical one which was abolished in the course of the (revolutionary) process of Modernization. The main goal is to demonstrate in what way Natural Law might be understood differently from the dominating paradigm and how it is directly connected to anthropology.

I use standard textbooks. As relates to Modern Natural Law Tradition, I am using, Hobbes, Locke, Kant, Rousseau. For the classical Natural Law Tradition, I am using Aristotle and Cycero (in the first place) as pagan philosophers in order to avoid charges of promoting Christian doctrine and in order to demonstrate that the natural law is NOT only a Christian approach.

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15 One such attempt has been made by A. Vermeule. See *Common Good Constitutionalism*, Polity Press, Cambridge, 2022.

Ángel J. Gómez Montoro y Fernando Simón Yarza: De suyo, la argumentación práctica –incluida la jurídica– no siempre exige tematizar una concepción antropológica particular. Todos nos movemos en contextos humanos en los que no necesitamos explicitar nuestra visión antropológica para dar cuenta de exigencias fundamentales de justicia.

Señalado lo anterior, en una sociedad muy fragmentada y dividida en torno a problemas morales, la cuestión se vuelve algo más complicada. Las soluciones a interrogantes que suscitan desacuerdos fundamentales –esos que solemos llamar *hard cases*– no siempre se pueden explicar satisfactoriamente sin ascender a un nivel discursivo más elevado. Pensemos, por ejemplo, en el caso del aborto. No parece que pueda dudarse ya que abortar es matar a un ser humano. En esta situación, se ha recurrido a menudo al doble expediente de negar al no nacido la condición de persona (1º); y afirmar que lo verdaderamente inviolable no es la condición humana sino la condición de persona (2º).

Ciertamente, este artificio entra en contradicción con el artículo 6 de la Declaración Universal de Derechos Humanos, que en su versión castellana –que fue una de las seis lenguas originarias oficiales– afirma que "todo ser humano tiene derecho, en todas partes, al reconocimiento de su personalidad jurídica". Pese a ello, la idea de que el ser humano no es persona ha penetrado en la conciencia social, y está muy extendido el desconocimiento del origen del concepto mismo de persona y su evolución, tanto en la Filosofía como en el Derecho. Abordar a fondo estas cuestiones no suscita el mismo interés, como es lógico, entre todos los alumnos de Derecho. Los que no se formulan estas preguntas tienden a conformarse con respuestas como la ofrecida por el artículo 6 de la Declaración, pero muchos, gracias a Dios, aspiran a explicaciones más profundas.

Obviamente, estas cuestiones forman parte importante de lo que se enseña a los estudiantes. Si bien es cierto que las exigencias que presenta el programa de la asignatura pone límites a la profundización en clase, ello no impide hacer digresiones, referencias y recomendaciones bibliográficas al hilo de la explicación. En cualquier caso, resulta muy satisfactorio dedicar tiempo adicional a profundizar en conversaciones personales o seminarios de lectura. Aparte de las clases, los seminarios extraoficiales y conversaciones en pequeños grupos son muy adecuados para cubrir el deseo de profundización. Se realiza así, además, ese "ayuntamiento de maestros y de escolares" que, hecho "con voluntad y con entendimiento de aprender los saberes", compendia la esencia de la Universidad, al decir de Alfonso X el Sabio.

En cuanto a los materiales que empleamos con los alumnos que guardan relación con cuestiones antropológicas básicas, varían entre nosotros y con el tiempo: desde textos clásicos hasta trabajos propios –los dos suscribientes hemos publicado estudios de fundamentación (v. gr., sobre la dignidad, la autonomía, el recto entendimiento de los derechos, la ley natural, etc.) y sobre cuestiones acuciantes relacionadas con derechos básicos (aborto, eutanasia, vientres de alquiler, privacidad, educación, matrimonio, etc.)–, pasando por autores más modernos e incluso vídeos en los que, oradores profundos y con excelentes habilidades didácticas, abordan temas fundamentales.

Christiaan W.J.M. Alting von Geusau: No, it cannot. I address this question in-depth in my own courses and public lectures through pointing out, amongst others, the above quoted words of Pope Benedict XVI that state nature and reason as the true sources of law, and not the imposition on society of a revealed order. I also work a lot with texts from Aristotle and Cicero, who are important in these times where Christian writers on the subject are immediately suspected of being biased. The most important texts I use for these courses are the aforementioned 2011 speech by Benedict on *The Listening Heart Reflections on the Foundations of Law*, as well as Cicero's work *The Laws* which is an excellent and obviously non-Christian (and thus for the secular world not so suspicious) exposé of natural law written in a way any Christian scholar of natural law could have written it. I also use St. Thomas Aquinas' *Summa Theologica QQ 90-97*, his Treatise on Law. Furthermore, various German state constitutions and the German Basic Law (Grundgesetz), as well as the rules for the Nuremberg War Crimes Court are used to illustrate the manifold non-Christian references to natural law showing its timelessness and applicability today.

Bartosz Lewandowski: The answer is obvious. It is impossible to reliably teach constitutional law and human rights without analyzing fundamental anthropological attitudes. Discussions on constitutional law and human rights are often rife with emotions, and legal assessments may not be formulated on a reliable and philosophical description of reality. The discussion on law must begin with the truth about man, his ethical dimension and human nature. Otherwise, students and listeners will not understand why one and not another legal position is the only one that should be taken (e.g. regarding the protection of human life). During classes, I explain these basic notions to students by analyzing fragments of the writings of Aristotle, St. Augustine or St.

THOMAS AQUINAS. I compare them with the new "Enlightenment" teachings about man on the example of the writings of JOHN LOCKE and THOMAS HOBBES and point out further consequences in the present day.

LIGIA CASTALDI Y GABRIEL MAINO: ¿Cuáles son, en su opinión, los principales desafíos para la continuidad de nuestras prácticas constitucionales y/o de derechos humanos en la actualidad? ¿Incluiría entre estos desafíos el surgimiento y el afianzamiento constante de la "cultura de la muerte" y la ideología de género?

RODOLFO VIGO: En última instancia, frente a la difundida pretensión de asumir un tiempo caracterizado por la post-verdad, nos corresponde reivindicar a la verdad, no solo aquella proporcionada por la razón especulativa, sino también la que posibilita la razón práctica. Y en orden a alcanzar esa verdad del juicio prudencial que guía nuestra conducta, es importante asumir el conocimiento que proporcionan los sentidos y estudiar tanto exigencias procedimentales como sustanciales.

GRÉGOR PUPPINCK: The problems are much deeper than the entrenchment of the culture of death and of the woke or gender ideology. The main problem has already been mentioned; it relates to the divergent conceptions of the human being, and to the fact that the majority of the West adopts a post-natural conception of man, reducing human nature to an indeterminate individual autonomy. But the human rights system has structural features that can prove problematic. These structural problems are largely ignored, in favour only of some of their symptoms. They include the individualistic and liberal assumptions that structurally place the individual against society. Individual freedoms have eclipsed virtues. The individual takes precedence over society as a matter of principle because society must justify infringements of individual freedoms, not the other way round. The indeterminate exercise of freedom is assumed to be good and just a priori, whereas the State is a priori seen as oppressive, because all its restrictions on individual freedoms are a priori illegitimate. The human rights system implies a positive view of man and a negative one of the State. The result is an inability to consider common goods as goods in themselves and a difficulty in protecting other goods, particularly immaterial goods such as defending the culture. Another structural problem of human rights, among others, is its confusion between morality and law, between the good and the just, as it is mainly a moral system expressed in legal terms.

Brian Scarnecchia: The main challenge to the continuity of our constitutional and human rights practices today is an eclipse of a sense of God in the secularized global community. John Paul II pointed out that if God is denied or forgotten the rights of man fall into dark shadow:

"[W]hen the sense of God is lost, there is also a tendency to lose the sense of man, of his dignity and his life; in turn, the systematic violation of the moral law, especially in the serious matter of respect for human life and its dignity, produces a kind of progressive darkening of the capacity to discern God's living and saving presence." (*Evangelium Vitae #21*)

The emergence and steady entrenchment of the culture of death in an eclipse of the sense of God can be seen in the widespread practice and legal promotion of contraception, abortion, artificial reproductive technologies, euthanasia, and gender ideology, often in the service of a thinly veiled agenda of eugenics. These tenants of a culture of death are presented as transversal cross-cutting themes for the accomplishment of the Sustainable Development Goals. In the United States, for example, the American Bar Association requires all accredited law schools to not discriminate on the bases of "gender identity or expression." Thus, to retain accreditation a law school will have to require its administrators, faculty, and staff to address students or employees suffering from gender dysphoria by a pronoun ("he" or "she") that does not conform to their biological sex and to provide them with access to bathrooms reserved to persons of the opposite sex.

Aleksander Stepkowski: The main problem of contemporary social life and its institutions including constitutional law are the consequences of individualistic anthropology. The best example is gender ideology, as it is direct advancement of individualism. If an individual is in the first place free and equal, then all features of human being that provoke differentiation and differentiated treatment, are to be eradicated. Thus, the human sex (sexual identity), as provoking differences in treatment within the context of social life (stemming from maternity, differences in physiology etc.) is rejected by gender ideology as a way of liberating people from their biological sex. Self-determination of sexual identity affirms freedom and is believed to provide equality.

The main challenge is the restoration of proper human anthropology and the rejection of individualism. I mean rejection and not softening/moderation/limitation. This is however of utmost difficulty, and in the perspective of recent decades and centuries – it seems to be virtually impossible. It is not a legal challenge – it is a challenge to the intellectual culture.

Ángel J. Gómez Montoro y Fernando Simón Yarza: Es difícil definir cuáles son los principales, porque están surgiendo problemas en numerosos ámbitos. A riesgo, nuevamente, de acotar en exceso el elenco de desafíos, algunos de los más importantes afectan a los siguientes cuatro ámbitos:

1. *Dignidad, vida y reconocimiento de la personalidad (arts. 1, 3 y 6 Declaración Universal de Derechos Humanos).* Probablemente, lo que se ha llamado, con razón, la "cultura de la muerte", es el principal desafío en este ámbito, que incluye el aborto, la eutanasia, y todas las cuestiones relacionadas con la manipulación tecnológica de la vida (eugenesia, transhumanismo, fecundación *in vitro*, etc.).

2. *Libertad religiosa, de conciencia y expresión (arts. 18 y 19 Declaración Universal de Derechos Humanos).* Por mencionar algunos de los desafíos principales en este ámbito, hemos de referirnos a la objeción de conciencia, el derecho a las manifestaciones religiosas públicas, la libertad de cátedra o el derecho a la disidencia frente al discurso políticamente correcto. Es muy habitual, por otra parte, que las injerencias en la inviolabilidad de la conciencia vayan unidas a agresiones al derecho a la vida. Así lo demuestra, por ejemplo, la degradación de la objeción de conciencia en las recientes leyes españolas sobre el aborto y la eutanasia, así como en las sentencias constitucionales que avalaron dichas leyes.

3. *Protección de la familia y libertades educativas (arts. 16 y 26 Declaración Universal de Derechos Humanos).* Este apartado incluye desafíos de tanta actualidad como la ideología de género, la defensa del verdadero matrimonio, la libertad de enseñanza o los derechos educativos de los padres. También se puede incluir aquí el drama de los vientres de alquiler, que está encontrando una notable (y bienvenida) oposición.

4. *Democracia, separación de poderes y rule of law*. Un problema crucial, que no siempre se asocia a la ley natural y que, sin embargo, guarda una insoslayable relación con ella, es el respeto a las instituciones jurídicas y al *rule of law*. En el Libro X de *Las leyes*, Platón se opone a la antítesis sofística entre naturaleza *(physis)* y ley *(nomos)* defendiendo, justamente, la dignidad del Derecho en cuanto que fundado en la naturaleza *(cfr.* 889e-90a). El respeto al orden jurídico y a las instituciones legítimas es una exigencia elemental de la ley natural, dado que el hombre es, por naturaleza, un animal social. La manipulación subrepticia de los textos jurídicos a través del activismo interpretativo, por ejemplo, es una práctica fuertemente deplorada desde instancias iusnaturalistas; algo que no deja de resultar irónico si tenemos en cuenta que, antiguamente, la doctrina de la ley natural fue tachada de inconcreta y etérea, cuando no de subversiva.

Ciertamente, nos dejamos muchos problemas en el tintero (entre otros el gran reto que supone el recto uso de la inteligencia artificial), dado que es imposible sintetizar la abundancia de desafíos que tenemos por delante en unos pocos párrafos. Pero es indudable que los cuatro ámbitos destacados son algunos de los retos más importantes a los que nos enfrentamos en el ámbito de la ley natural y los derechos humanos.

Christiaan W.J.M. Alting von Geusau: Yes, obviously so. But the problem lies much deeper than that and these ideologies emerging are only a symptom of the profound illness in the human soul that has caused them. The main challenge to the constitutional and human rights order (I prefer to speak about fundamental rights) lies in Western societies having now definitively moved from the *rule of law* to the Rule of Feelings. This has been caused by ethically mostly unchallenged intellectual, scientific and technological advances that have brought the human being to a level of capability in mastering and even manipulating creation that has brought it to yet unseen expressions of the old-as-humanity tendency to replace the Creator God with the "me-god" or "we-god", rejecting any moral restraints and transcendental order and relationship in favor of doing what feels good or pleasurable or useful and necessary in the light of whatever I am capable of doing. The distinction between "can" and "ought" is being lost, as Benedict XVI has so often pointed out in his writings. "Human rights" – as we see abundantly clear today – then become just an effort to impose upon society whatever are the latest expressions of the "I/we can – feel – desire", therefore I do" culture, by those that are in the best (political and/or economic) position to get their individual and inward-looking choices codified in systems of constitutional – and human rights law that have themselves been hollowed out by decades of relentless moral relativism on the one hand, and on the other hand the weakness of international human rights instruments that since their inception – due to a lack of agreement amongst the framers – never addressed the question where these rights were rooted in, where they come from.

Bartosz Lewandowski: It seems to me that these are consequences of a broader problem. With the increasing technologization, informatization and atomization of societies, people have stopped trying to understand reality. Young people especially do not have the time or willingness to make the effort to understand their own existence and role in the world. The thesis of maximum pleasure in life and lack of limitations pushed in liberal democracies,

creates an "individual" who has little consciousness, susceptible to emotions and focused on pleasure and comfort. It is easy for such an individual to be brainwashed with extremely irrational or illogical ideas, such as the "gender" ideology.

Ligia Castaldi y Gabriel Maino: ¿Considera usted que nuestras practicas constitucionales y de derechos humanos están selladas por la modernidad y, particularmente, por su concepción antropológica típicamente individualista? Si es así, ¿Cómo podemos abordar la enseñanza de estos campos del derecho, mostrando su servicio al bien común político y a la persona humana, comprendida como un ser intrínsecamente social? ¿Cómo se pueden transmitir estos conceptos a alumnos que son parte de la cultura relativista de la "post-verdad" en la que vivimos?

Rodolfo Vigo: No creo que la práctica constitucional esté sellada por una visión individualista, aunque las recomendaciones que daría para enfrentarla o promover una cultura más personalista y solidaria se detallan en la respuesta siguiente.

Grégor Puppinck: This can be done by adopting a realist approach, i.e., by drawing students' attention to the very reality of social life, showing them that the common good is necessarily present in all the organisation of society, and that no one lives in isolation from others. When it comes to public morality, we need to distinguish between relativism and permissiveness. Society is permissive when it comes to private behaviors, but it is not completely relativistic, since Western society is governed by a single way of thinking that is a form of compulsory morality.

Here again, it is necessary to return to human nature to show students that good and evil are not subjective and relative inventions, but that the morality of acts depends on their conformity to human nature. What is good is what is worthy of human nature, i.e. what contributes to its fulfilment in a person, and what is bad is what opposes it.

Aleksander Stepkowski: The question is composed out of 3. On the first I have already answered in affirmative way. Yes, contemporary constitutional and human rights practices are fundamentally determined by the Modernity and by the anthropology underpinning Modernity i.e. individualism. As the constitutional law and the concept of human rights are determined by the

individualism, basically it is NOT possible to address Christian anthropology (the true one) and the common good approach (as based on that anthropology) while teaching constitutional law. At least, it is not possible to do it in a proper (correct) and efficient way. Individualistic approach is compulsory, inherently included in the current paradigm of rationality and as such in the very structure of constitutional law – it is its very source.

Indeed, it is possible to work out several kinds of rhetorical styles which will simulate possibility of reconciliation between Christianity (its intellectual identity) and the modern constitutional law. However, this is only a rhetoric that might make Christians feel better for some time but will not provide any true solution. Rather make us unable to pose a proper diagnosis and start proper treatment. This was the case in Poland, in the last decade of the 20 c. just after collapse of the communism. After abolishment of communism, Polish lawyers who adhered to Christianity believed strongly, that they can workout Christianity-friendly constitutional law interpretation. After 30 years they became astonished, as they realized their efforts failed and they could not understand why it happened. They do not want to accept, that individualism and human rights are not compatible to Christianity and that their efforts were vain since the very beginning even if it was not apparent at that time.

What to do then? In order to stop going down this blind alley we have to first realize, that the way we are following is the wrong one. Here is the crucial and the most important point. We have to realize we were fundamentally wrong for all this time when we have been believing in the Christian version of human rights. This self-consciousness is the *sine qua non* condition. And it will be difficult to achieve it. Firstly, because the Church herself (in its institutional dimension) had already approved this erroneous approach and has started to operate as if it preferred the modern one approach to its own traditional intellectual identity (Church is losing her identity). If we do not understand we are erring, there is no hope for improvement.

The fundamental reason for this confusion is again anthropological. For the sake of modernization of the Christianity, it worked out Christian version of individualism under the label of *personalism*. This was the base for acceptance of the human rights in the social teaching of the Church. As long as we believe that the concept of *person* describes correctly human being in the social context, we will not be able to abandon the vicious circle of attempts to baptize liberal social institutions. We have to understand that the Christian concept of the person is not identical to human being. Indeed, human being is an example of the person so understood, but this

way of understanding the human being is proper only for understanding the supranatural dimension of human being and not the social dimension. Otherwise speaking, the concept of person is theological, not anthropological. When discussing the concept of the person as an anthropological concept, contemporary Christian authors base their consideration on AQUINAS' texts (*In I Sent.*, d. 23, q. 1; *STh*, I, q. 29) which however deal with God's persons, and NOT humans! The effect of this unauthorized extrapolation (attributing to man what was said about God) is that contemporary Christian social thought proposes social solutions that are not for humans beings, bodily and temporal social creatures, but for angels and for the Godly persons who are noncorporal and atemporal.

We have to understand then, that the "common good" and the "human rights" are highly competitive concepts providing an intellectual framework for the same goals, but they propose opposite and unreconcilable solutions. Both concepts describe conditions that are necessary for human development and flourishing. However, whereas the common good does this based on a social anthropology (assuming that the human being is endowed with a social nature), human rights describe and define those conditions for individuals. Whereas for the social human being those conditions are provided by the self-sustaining community, for individuals the community constitutes a fundamental threat to those conditions which have to provide sufficient independence from the community. Therefore, it is not possible to teach human rights in a way that is (functionally and not only rhetorically) affirmative of the common good. We can present conditions for human development either in terms of the common good of the community of social beings, or in terms of individual autonomy protected and expanded by means of human rights. Any attempt to reconciliate those concepts is merely rhetorical, disguising the advancement of a solipsistic anthropology.

What we can do now is to allow students understanding this and make them aware of the problem we have. It is impossible now to change suddenly the trajectory of social development, but we can understand that it leads us in a wrong direction and start to slow-down the progress. Perhaps sometime we will be able to stop and turn in a proper direction. To do so, however, we have to fight the temptation of providing this change with some statutory means; and realize that the only way is making a deep change in the Western intellectual culture. Once this change is achieved legal solutions will start to be available. Legal solutions are only possible as an acknowledgement of a cultural change that has already taken place.

I find efforts to build an alternative social order through legal changes regrettable, vain and extremely dangerous as potentially compromising the Natural Law (classical) approach. While we have to fight against statutes destroying the social fabric with counter-statutes applying them as an emergency solution, all the time we should be aware, that statutory instruments were invented to destroy the natural order and not to protect it. In order to elaborate our own means in this respect, we have to understand whom we are, whereas so far, we are unable to understand our current deep confusion in this respect.

As concerns teaching about the common good and the human being as a social being, we first have to demonstrate the true ends of human rights and the individualistic anthropology, demonstrating also, that the concept of the person, as the anthropological concept, is only a kind of rhetorical envelop for individualism dedicated for Christians and all those who would prefer to avoid thinking about man in solipsistic way. Otherwise speaking, we have to demonstrate, that the way we conceptualize social life is by no means the correct one. We have to realize that we would never implement this social project (which we have implemented) if we had been aware about its true meaning.

It is necessary to let the students understand, that the concept of individual is not describing the real man, but rather is an anthropological agenda to be implemented; a man which is to be politically construed by means of social engineering. It is by no means accidental, that today, people still complain about the lack of equality and freedom, even though the liberating and egalitarian agenda had been implemented and advanced since the middle of 17 century. In the societies founded upon freedom and equality we still fight for it. It is so, as we had been going down blind alley and all our achievements in the promotion of individualistic anthropology (i.e. promotion of equality and freedom) make us desiring still more freedom and equality and leads us to self-destruction. It is so, as the individualistic anthropology is the wrong one and its implementation (reconstruction of social life according to principles of freedom and equality with the legal means provided by the concept of human rights) is self-aggressive to man.

Once we can explain this, we can demonstrate to students, what the true (biblical one) anthropology is. First however, we have to understand, that the Western culture (Catholic Church including) has forgotten the true anthropology. We have to realize the true meaning of the biblical description of the creation of man as included in the book of Genesis. We have to understand

that man was created NOT as an individual, but as a man and woman, that is as the marriage (for the same conclusion drawn from the second description see BENEDICT XVI, *Deus caritas est* § 11)! Yes, God has created man as fertile community of man and woman, and this informs us about our social nature too. When we understand this, we can properly understand why the common good, and not the human rights, is the proper way to conceptualize conditions for human development and flourishing. But first, our errors must be identified and exposed and only then corrected.

ÁNGEL J. GÓMEZ MONTORO Y FERNANDO SIMÓN YARZA: No cabe duda de que, sobre todo en estos últimos años, esa deriva individualista está cada vez más presente en nuestras sociedades y ha calado en la cultura jurídica. Eso se nota también en la percepción y la aproximación a los problemas que tienen nuestros estudiantes. Hay una tendencia cada vez más fuerte a considerar como valor absoluto el libre desarrollo de la personalidad y a identificar la dignidad de la persona con la mera autonomía o autodeterminación. Los derechos se convierten en instrumentos para la satisfacción de los propios deseos y, como ha advertido MARY ANN GLENDON, dejan de ser el sustrato común, lo que nos une, para convertirse en un arma arrojadiza de unos frente a otros. De los límites tradicionales a la autonomía de la voluntad (artículo 1255 de nuestro Código Civil) hace tiempo que se excluyó la moral, y ahora tampoco se admite un orden público constitucional entendido como los valores esenciales sobre los que se construyen nuestras sociedades. Cada vez cuesta más que se acepte que hay un bien común que, en ocasiones, puede exigir la limitación de la propia autonomía.

Aunque no siempre sea fácil, resulta imprescindible hacer ver la debilidad de esos planteamientos. No podemos olvidar que, originariamente, los derechos fueron calificados como "verdades evidentes". Se mire como se mire, este hecho histórico pone de manifiesto, al menos, que se interpretaban como valores compartidos, y no como instrumentos para avanzar ideologías objeto de disputa. Esencial en este contexto es la noción de dignidad humana, un concepto de matriz cristiana, vinculado a la naturaleza del hombre, que es el único que puede garantizar que los derechos se lean como valores universales y que, a su vez, no queden al albur de las mayorías cambiantes de cada momento.

Por otra parte, no se pueden separar los derechos individuales de otros bienes constitucionales y, de manera más general, del bien común. Por supuesto, el respeto de los derechos de las personas es parte de ese bien común; pero los derechos tienen también que conciliarse con ese bien general sin el

cual la sociedad se disuelve y los propios derechos no quedan garantizados. No deja de llamar la atención que, en un momento en el que se ha impuesto la idea de un Estado Social, donde se garantice un mínimo de calidad de vida para todos y, en particular, la protección de los más débiles haya tal exaltación de una visión individualista que, en no pocas ocasiones (aborto, eutanasia), ofrece soluciones poco compatibles con la dignidad de la persona y con la idea misma de solidaridad.

Christiaan W.J.M. Alting von Geusau: Current constitutional and human rights practices are very much defined by the confusions and orthodoxies of modernity and the great limits posed by individualism. We see this clearly in the way how modern man or woman's claims to human rights of certain groups or ideologies can often be myopic in the sense that in our obsession with our own perceived rights, we are incapable to see and accept that this claim may collide with other people's claimed rights. A core aspect of applying the principle of the Common Good is that it is always relational and already visible in the two words themselves constituting this concept: it is 'common' and thus needs to apply to the community and it is 'good' and thus cannot be bad for some other member(s) of the community. Human rights are not another word for 'private rights' that only apply to me; the word 'human' in 'human rights' means that it is something for humanity and all parts thereof, not just a few or even many chosen ones who happen to have the power at any given time. The one who expressed this most powerfully and consequentially and whose works are also excellent literature for modern students – because she was an agnostic philosopher and survivor of the Holocaust – is Hannah Arendt in her seminal work *The Origins of Totalitarianism*, published in 1946: "A conception of law which identifies what is right with the notion of what is good for – for the individual, or the family, or the people, or the largest number – becomes inevitable once the absolute and transcendent measurements of religion or the law of nature have lost their authority. And this predicament is by no means solved if the unit to which the 'good for' applies is as large as mankind itself. For it is quite conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity will conclude quite democratically – namely by majority decision – that for humanity as a whole it would be better to liquidate certain parts thereof. Here, in the problems of factual reality, we are confronted with one of the oldest perplexities of political philosophy, which could remain undetected only so long as a stable Christian theology provided the framework for all

political and philosophical problems, but which long ago caused PLATO to say: "Not man, but a god, must be the measure of all things."

BARTOSZ LEWANDOWSKI: The answer to this question is not simple. In my opinion, it is worth, above all, to present the jurisprudence of both national and international courts, which refers to classical philosophy and natural law in its arguments. In Poland, it is possible to find judgments of, for example, the Constitutional Tribunal, which refer to the importance of human dignity or the common good, which always makes it easier to present a specific philosophical and ethical trend to students. However, it is important to present law to students as a set of rules protecting a specific ethical order, and not only political will. Students should be made aware that the correct definition of law must precede learning the truth about man. And man is, by his nature, not only a social being, but also a being that can develop in a certain ethical order. This determines his happiness and the development of the common good. This is not an easy task, but it is certainly possible, because every person defines their happiness through the prism of safety and rationality.

LIGIA CASTALDI Y GABRIEL MAINO: ¿Qué sugerencias o recomendaciones daría a los profesores de derecho constitucional y de derechos humanos, que se preocupan por reconectar la cultura jurídica con la afirmación de la razón práctica, con la fuerza explicativa de la tradición del derecho natural y, en última instancia, con el valor sagrado y absoluto de toda persona humana?

RODOLFO VIGO: A los profesores de filosofía del derecho que asumen la tradición del derecho natural me atrevería a darle las siguientes sugerencias: i) que se interesen por la jurisprudencia constitucional y en materia de derechos humanos, y que ese interés se traduzca en lecturas críticas en las que se exija racionalidad, precisión y coherencia; ii) que se esfuercen por hacer filosofía y no teología, recordando que la fe respalda la razón y la eleva; iii) que no confundan la verdad teórica donde opera "adequatio intellectus ad rem", con la verdad práctica en donde hay algo dado, pero también corresponde proyectarlo inéditamente en un tiempo y lugar; iv) procurar dialogar e interesarse por temas que habitualmente estudian los científicos de las típicas ramas del derecho consagradas por nuestras Facultades de Derecho; v) inmiscuirse en debates y noticias de la agenda pública aportando lecturas iusfilosóficas respaldadas en

la filosofía clásica ; vi) estar atento a las otras visiones de la filosofía jurídica con la convicción que hay que ser más amigo de la verdad que de los amigos; vii) recordar siempre que el derecho es inescindible de la moral, la política y las otras dimensiones de la vida social; viii) ocuparse inexorablemente del transversal tema de los derechos humanos, reclamando definiciones que posibiliten el diálogo racional y eviten coincidencias meramente terminológicas; ix) evitar miradas solipsistas generando grupos de estudios, ya Aristóteles advirtió que cuatro ojos ven más que dos; y x) no olvidar que el error teórico no compromete necesariamente la calidad moral del equivocado ni el afecto al mismo.

Grégor Puppinck: I would say that teaching human rights should start with explaining the natural law, and then moving forward to law and human rights. Natural law presupposes the recognition of a pre-existing human nature. Natural law also presupposes that human nature is good, which is by no means self-evident.

The origin of human nature is also an important question, as it can be recognized as divine or accepted only as factual. Human nature is generally "crowned" by the conviction that its origin is divine. But it is not sufficient to ground natural law, as it requires a god with specific attributes. This god must be a creator, conscious of himself and with a will, and even more it shall be a good god who wills and does good. The god who creates human nature must not be a malevolent, a clumsy or negligent demiurge.

As for basing the dignity of human nature on nature, this seems more difficult, because nature has no will; it is factual and therefore cannot be normative. From the Jewish and Christian point of views, human nature has a God as its creator, a personal God, endowed with a will, just and good. God, as revealed to Jews and Christians, is a perfect foundation for human nature and natural law. We know from the Genesis that human nature is good, and indeed, it is "very Good" according to God's own judgement on his creation. And the goodness of human nature is confirmed by the incarnation of God. At the opposite, the rejection of God is generally accompanied by the rejection of the goodness of human nature.

Judaism and Christianity offer a solid basis for understanding human nature and the natural law that flows from it. But can Christians stop their reasoning at this point, on the grounds that they could thus join the secular world and agree with it on a common conception of law, because it is natural, and therefore universal? I don't think so because modernity does not believe in the goodness of human nature.

Human rights offer a secular morality to humankind; but the humanity is incapable of grounding it without accepting the God of ABRAHAM, ISAAC, and JACOB. As a consequence, human rights are reduced to individual claims and will. The most beneficial way to counterbalance this mindset would be to introduce a teaching on the virtues, and to compare the rights and the virtues.

BRIAN SCARNECCHIA: One winsome approach suggested by Popes JOHN PAUL II, BENEDICT XVI, and FRANCIS is to revitalize natural law theory by integrating it with environmental concerns in a "human ecology."[16] In so many words these three Popes of the Twenty-Fist Century ask – Why is it that flora and fauna have innate and objective laws of flourishing that courts must recognize and protect and human beings (also, a part of nature) do not? Can we do less for human beings than for plants and animals and the natural environment?

Environmental ethicists argue from the facts of nature (an "*is*"), the species and ecosystems of nature, to the goods of those entities and from the goods of those entities they argue to our obligation to further their natural goods (an "*ought*"). Thus, they address DAVID HUME'S "is – ought" dilemma and surmount the so called "naturalist fallacy."[17] Environmental attorneys then take this ethical argument to court to enjoin trespass on the goods of flora and fauna. Why shouldn't the same approach be taken by natural law human rights attorneys to defend human ecology?

Caveat! Without a proper understanding of man as created in the image of God, such an environmental approach to natural law can be used to suggest univocal parity between human beings and the rest of nature, i.e., that what is good for plants and animals and their ecosystems is equally applicable to human beings. This of course provides justification for eugenics. However, the relationship of human beings to nature is analogical – a one-way analogy – in the sense that plants and animals are like human beings, but human beings are not like plants and animals. POPE FRANCIS suggests a proper regard for human flourishing must include respect for the good of nature. What is required, he

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16 See JOHN PAUL II *Centesimus Annus*, 1991, #38-39; POPE BENEDICT XVI, *Caritas et Veritatis*, 2009 #53; and Pope FRANCIS, *Laudato Si'*, 2015, #117.

17 See NOLT, J.,"The Move from *Is* to *Good* in Environmental Ethics", Faculty Publications and Other Works, The University of Tennessee. 2009. https://trace.tennessee.edu/utk_philpubs/1/ (last accessed September 22, 2023). Also see NOLT, J., "The Move from *Good* to *Ought*", in *Environmental Ethics*, 28 (2006), pp. 355-374. https://philpapers.org/archive/NOLTMF-5.pdf (last accessed September 22, 2023).

says, is a "situated anthropocentrism" that recognizes even if flora and fauna do not possess 'dignitas infinita" as do human beings, still "human life is incomprehensible and unsustainable without other creatures."[18]

An integral natural law, recognizes that flora and fauna and human beings all have natural laws that must be respected in our "common home" where the "book of nature is one."[19] However, the key principle differentiating the honor we accord to flora and fauna versus that due human beings is this:

Due to those basic inclinations of human nature that we share in common with flora and fauna, i.e., self-preservation and preservation of the species, we deserve no less consideration than they. However, because of our unique rational characteristics, i.e., our search for truth, appreciation of beauty, relationality based on a gift of self in friendship and making a gift of self in decent work, and that we strive to preserve our lives and that of future generations only in ways that do not contradict the other basic inclinations of our rational human nature, we deserve even more consideration than they.

Keeping this key distinction in mind it is possible to glean good insights and arguments found in environmental law such as the Public Trust Doctrine's use of the precautionary principle to shift the burden of proof to those who challenge the status quo of our ecosystem, our human ecology, and the Rights of Nature movement's insistence that nature is normative and if the environment has rights then even more do the most vulnerable human beings, prenatal children and persons with disabilities.

Aleksander Stepkowski: First of all, it is necessary to determine which natural law theory provides us with the proper anthropology – an alternative for the current postmodern intellectual culture. We have to be aware, that the system is working upon assumptions that do NOT come from the classical Natural Law Tradition and we have to live with it. Living with it, we must build awareness of students, that we are living within the intellectual framework that is NOT complementary to Christian culture and the classical Natural Law Tradition.

If we understand that our contemporary legal culture (including constitutional law) is based on self-contradicting human identity (understood as a composition of freedom and equality) then it will start to be visible, that the

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18 *Dignitas Infinita* #28.

19 Pope Benedict XVI, *Caritas in Veritate* (2009), n. 51.

liberal democracy is far from being "the best solution of all bad solutions" but is just as bad as it can only be. It should be demonstrated to students, but in terms not frightening to them and thus disturbing to understand institutions of contemporary constitutional law. We must be most delicate in going about this task. Our explanations must deepen understanding of contemporary institutions (and) build awareness about unwanted consequences of their operation and problems that emerge, not despite but due to operation of those institutions. This awareness should help (and not disturb) a better understanding of the existing institutions and allow for their gradual change in the future.

The change mentioned above is possible but only as a result of deep change in intellectual culture and MUST NOT be attempted by means of some legislative change.

Ángel J. Gómez Montoro y Fernando Simón Yarza: Dentro de la situación complicada en la que vivimos, y que hemos descrito en las respuestas anteriores, es importante tener en cuenta que los valores que están en la base del constitucionalismo responden en no pequeña medida a una visión cristiana de la persona y la sociedad; y que el contenido de los derechos humanos no puede explicarse satisfactoriamente sin una cierta llamada al derecho natural. Las Constituciones –y lo mismo las declaraciones internacionales de derechos– no pretenden crearlos, sino reconocerlos; y, no en vano, se les denominó en su origen como derechos naturales. Parten, pues, de una idea de los bienes protegidos (vida, asociación, honor, intimidad, libertad religiosa...) que es anterior al propio texto constitucional, y sin la cual los derechos se quedarían en fórmulas vacías.

Hay que hacerles ver también que sólo una visión que podríamos llamar ontológica de la dignidad, y un entendimiento de la vida como valor indisponible, permiten a los derechos cumplir con la función para la que nacieron: ser un límite al poder político, pero también a las mayorías cambiantes de cada momento y, en consecuencia, ser una garantía de que las minorías no queden al albur de la opinión pública que, por definición, es muchas veces cambiante.

Hay, por último, un dato de interés que cada vez se subraya más por autores de distinta procedencia: el constitucionalismo supone un pueblo *(We the People*, en la conocida fórmula de la Constitución americana) y, por tanto, unos valores comunes de la sociedad. Ciertamente, ello no sólo es compatible, sino que exige el pluralismo, pero éste no puede entenderse como una suma de identidades que compiten entre sí y que ponen todo el énfasis no en lo que tienen de común, sino en lo que distingue. Eso, como hemos dicho antes,

disuelve la misma idea de sociedad y, por ello, es muy elocuente y alentador constatar los intentos recientes de volver sobre la idea de bien común (es significativo el título del conocido libro de ADRIAN VERMEULE, *Common Good Constitutionalism)* o la recuperación de una idea de Derecho natural que vendría a poner el énfasis en el carácter objetivo de los bienes que protegen los derechos humanos (por más que estos sean, por definición, derechos subjetivos).

CHRISTIAAN W.J.M. ALTING VON GEUSAU: My suggestion is that professors lead students to a discovery of natural law by leading them through carefully selected and a limited number of great texts like for example CICERO quoted above, illustrating the meaning of these texts by concrete practical examples of what is meant by it, and so let students themselves discover this rich tradition. I have developed my course "Foundations of Law and Justice", which I have been teaching for over 15 years now, on the basis of this starting point and the results have been impressive. We need to acknowledge that since most of our students at law schools are either religiously illiterate, hostile towards religion or only poorly educated, and since natural law theory is fundamentally a non-religious concept, we need to approach the topic focusing, as BENEDICT XVI did in the German Parliament in 2011, on the reality of the created natural order and the use of reason. Even though we know that modernity is in the process of rejecting "that what is" in favor of "that which I want", since Man is still an inherently natural and reason-driven being, the suggested approach can capitalize on this. The text I find most effective in addressing these issues and overcoming the bias against the concept of natural law is to CICERO'S *The Laws*.

BARTOSZ LEWANDOWSKI: We should try to show the truth about man from the very beginning. Issues should be discussed as much as possible so that students will come to the conclusion that the anthropological assumptions of the classical vision of the world are accurate. This will make it easier to explain our legal position. Moreover, the ideologies that are contrary to the classical vision of man should be exposed as much as possible and reduced to absurdity. Let us remember that people are rational by nature and are able to accept rational arguments.

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