THE NATURE AND DIGNITY OF THE HUMAN PERSON AS THE FOUNDATION OF THE RIGHT TO LIFE. THE CHALLENGES OF THE CONTEMPORARY CULTURAL CONTEXT

PROCEEDINGS OF THE VIII ASSEMBLY OF THE PONTIFICAL ACADEMY FOR LIFE

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Discourse of the Holy Father JOHN PAUL II

Final Communiqué

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PRESENTATION

It is becoming more and more urgent to address the theme of the existence of natural law and its definition in man with the necessary connection to its foundation, in human nature, and the resulting effects on natural law. First, because for a valid solution to all the problems being discussed today in the area of bioethics and bio-law, the preliminary question must be clarified as to whether or not an innate requirement exists in man as such on which the judgment can be based of the licitness or illicitness of scientific-experimental intervention on man.

The discussions on abortion, euthanasia, the right to treatments, experimentation on man - starting from the embryonic stage - and, more recently, on the use of embryonic stem cells and cloning, both reproductive and therapeutic, re-propose the definition of the beginning of human life, its end, and thus the ultimate question of what defines man and his nature, and on what his law is based. Even the Universal Declaration of Human Rights and all the documents that appeal to the concept of "human rights", i.e. those inherent to man as such, are subject to this question.

Does evolutionism, as an interpretative theory of the history of the universe, and historical and sociological sensitivity still allow us to speak about a human nature which, in any case, defines man as anima et corpore unus, unus because of the spiritual soul that structures and enlivens him?

The anthropological question also conditions and grounds the ethical question about any intervention on man: What is man's true good, and what action done by the human individual or for the human individual is in conformity with his innate requirement?

In the same way, we ask ourselves on the juridical level: What law can achieve the common good in respect for the good of each one? In order to answer this question, human nature needs to be defined, its "objectivity" and its "knowability".

On the other hand, even dialogue between the different cultural currents can only be carried out on the basis of a search for a common foundation, the true good of man and the truth about man. If one speaks from the viewpoint of contractualism and utilitarianism, there is no common ground or objective values, but only the compromises based on the logic of interests, and every decision ends up being subordinated to the interests of the most powerful.

For this reason the discourse on natural moral law and natural law becomes a discourse on freedom and justice. To lose or conceal this discourse is to lay the premise for all kinds of prevarication and give free rein to the logic of the war of the most powerful against the weakest, especially in the biomedical sector where the human being is the object of destruction, experimentation and business.

To remove the foundations of thought on the questions of truth, the value of justice and right is to expose the entire social edifice to collapse.

Moreover, sensitivity to this foundation - natural moral law-natural law - is re-emerging after the collapse of the ideologies and the deluge of weak thought and moral relativism. A great aid for this reflection has come from the Second Vatican Council (in particular in Gaudium et Spes) and the Encyclicals Veritatis Splendor (August 6, 1997) and Fides et Ratio (September 14, 1998). As to the latter, we would like to mention its condemnation of nihilism, which also brings together the outcome of other relativist visions like utilitarianism and contractualism. Even before its conflict with the requirements and contents of the Word of God, "nihilism is a denial of the humanity and of the very identity of the human being. It should never be forgotten that the neglect of being inevitably leads to losing touch with objective truth and therefore with the very ground of human dignity. This in turn makes it possible to erase from the countenance of man and woman the marks of their likeness to God, and thus to lead them little by little either to a destructive will to power or to a solitude without hope.

Once the truth is denied to human beings, it is pure illusion to try and set them free" (Fides et Ratio, 90).

At the conclusion of the General Assembly the proceedings of which are being published here, the Holy Father cited Gaudium et Spes and the Encyclical Veritatis Splendor and reminded us about the absolute need "to refer always to man's proper and primordial nature, the nature of the human person, that is the person himself in the unity of soul and body, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end" (Discourse to the Participants in the Eighth General Assembly of the Pontifical Academy for Life, L'Osservatore Romano, English weekly edition, N. 11, 13 March 2002, p. 4). In that same Discourse, after criticizing the alleged conflict between natural law and freedom, the Holy Father clarified and rejected the accusation of "fixism" and of "fixist essentialism" which is often brought against natural law because of a profound misunderstanding of the notion itself of natural law: to do good and avoid evil is to put into action a perfective dynamism that involves all of man and all men; it means proposing historical tasks that are ahead of and above humanity behind the sapiential wisdom of the moral law. Perhaps an erroneous analogy with the concept of nature proper to physical realities may have generated the accusation of "fixism", a word employed as a useful tool by those who support evolutionist concepts and moral relativism.

The right to life, which is at the center of the teaching of Evangelium Vitae (1995), could have neither impulse nor support if it were not anchored to the foundation of the truth about man and natural law. In the Discourse mentioned above, the Holy Father recalled that "the rights of man, in fact, should refer to what man is by nature and by force of his own dignity and not to the expression of the subjective choices of those who are able to participate in social life or of those who can obtain the consensus of the majority"; then he stated that "among the fundamental rights of man, the Catholic Church claims for every human being the right to life as the primary right. She does it in the name of the truth about man and to protect his freedom, that cannot be sustained without respect for the right to life (EV, No. 6)".

In addition to the Holy Father's invaluable Discourse, the text we are presenting contains a series of contributions that are unified in an integrated treatment that includes three stages of reflection.

The reflection starts from reference to the dignity of the human person and goes on to study the anthropological question in depth intended as the essential truth about man and woman and their ability to know natural law. In the second stage, the text offers the necessary, in-depth studies on the meaning of "nature" in a cosmological, biological, anthropological and ecological sense.

This is followed by the chapters on: nature and natural law in the current philosophical and theological discussion; the relation between natural moral law, moral knowledge and conscience; natural law and positive law; the Protestant conception and the Catholic conception and the Protestant conception of nature and natural law. Lastly, the theme of the "right to life" is taken up in relation to the dignity of the person, human rights and the consequences that can be anticipated with regard to the family and procreation.

We are convinced that we have brought together and prepared a valid and stimulating contribution to a serious reflection in the moral, the juridical and, more broadly, the cultural sphere.

JOHN PAUL II

DISCOURSE TO THE MEMBERS

Dear and illustrious members of the Pontifical Academy for Life, once again we hold a meeting that is always for me a source of hope and joy.
I warmly and personally greet each one of you I want to thank your President, Juan de Dios Vial Correa for his kind words of homage on behalf of all of you. I want to greet your Vice-President, Bishop Sgreccia, for being the force behind the activity of your Academy.
This week you are participating in your eighth General Assembly and for this reason, coming together from many countries, you are conferring on a crucial subject, that relates to the general deliberation on the dignity of human life: "The nature and dignity of the human person as the foundation of the right to life. The challenges of the contemporary cultural context".
You have chosen to discuss one of the central points which is at the basis of any further reflection be it applied ethics in the area of bioethics, or socio-cultural reflections for the promotion of a new mentality which favours life.
For many contemporary thinkers, the concepts of "nature" and of "natural law" appear to apply only to the physical and biological world, or, as an expression of order in the cosmos, in scientific research or in the field of ecology. Unfortunately, in such a view, it becomes difficult to use natural law to mean human nature in a metaphysical sense and to use natural law for the moral order.
What makes it more difficult to see the depth of reality is the fact that our culture has greatly restricted the concept of creation, a concept that refers to the entire cosmic reality, and in a special way to man. We see in this change the influence of the weakening of confidence in reason, so much a part of contemporary philosophy as I pointed out in the Encyclical Fides et Ratio (n.61).
What is needed is a renewed thinking which returns to it original meaning, with all of its force, the anthropological significance of natural law, and of the related concept of natural right. In fact, we are discussing whether and how it is possible to "recognize" the distinguishing characteristics of the human being, which form the basis of his right to life, in its various historical formulations. Only on this basis, can there be a true dialogue and authentic collaboration between believers and non-believers.
Daily experience reveals the existence of a fundamental reality common to all human beings by which they can recognize each other as such. It is necessary to refer always "to man's proper and primordial nature, the 'nature of the human person' that is the person himself in the unity of soul and body, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end" (Veritatis Splendor, n.50; cf. also Gaudium et Spes, n.14).
This distinctive nature is the foundation for the rights of every human individual, who has the dignity dignity of a person from the moment of his conception. This objective dignity, that has its origin in God the Creator, is founded on the spirituality that belongs to the soul, but also extends to the corporeality that is an essential component. No one can take it away, but all must respect it in themselves and in others. The spiritual feature entails an equal dignity in all and the spiritual element remains in every stage of individual human life.
The recognition of such natural dignity is the foundation of the social order, as Vatican II reminds us: "Furthermore, while there are rightful differences between people, their equal dignity as persons demands that we strive for fairer and more humane conditions" (Gaudium et Spes, n.29).
The human person with his reason, is capable of recognizing this profound and objective dignity of his own being, and the ethical requirements that derive from it. In other words, man can discern in himself the value and the moral requirements of his own dignity. It is a discernment that entails a discovery open to further refinement following the coordinates of the "historicity" so much a part of human knowing.

This is what I pointed out in the Encyclical Veritatis Splendor on the subject of the natural moral law, that, according to the words of St. Thomas Aquinas, "is nothing else than the light of intelligence infused in us by God. As a result of it we know what must be done and what must be avoided. God has given this light and this law to creation" (n.40; cf. Catechism of the Catholic Church, nn. 1954-1955). It is important to help our contemporaries understand the positive and humanizing value of the natural moral law, clarifying a number of misunderstandings and false interpretations.

The first misunderstanding to be eliminated is "the alleged conflict between freedom and nature" that "has repercussions on the interpretation of certain specific aspects of the natural law, especially its universality and immutability" (Veritatis Splendor, n.51). In fact, freedom belongs to the rational nature of the human being and can and should be guided by reason: "Precisely because of this truth the natural law involves universality. Inasmuch as it is inscribed in the rational nature of the person, it makes itself felt to all beings endowed with reason and living in history (Ibid.).

Another point to be clarified is the presumed static and fixed connotation given to the notion of natural moral law, that is prompted by an erroneous analogy with the concept of nature used for physical reality. In truth, the fact of its universality and obligatory nature is what incites and urges the person to develop. "In order to perfect himself in his specific order, the person must do good and avoid evil, be concerned for the transmission and preservation of life, refine and develop the richness of the material world, cultivate social life, seek truth, practice good and contemplate beauty" (Veritatis Splendor, n.51; cf. ST. THOMAS, I-II, q. 94, a. 2).

In fact, the Magisterium of the Church appeals to the universality, and to the dynamic and perfective character of the natural law when referring to the transmission of life, whether it be to the fullness of the spousal union in the procreative act, or to preserve openness to life in the conjugal act (cf. Humanae Vitae, n.10; Instruction Donum Vitae, II.,1-8). The Magisterium makes an analogous appeal on the subject of the respect for innocent human life: our thought goes to abortion, to euthanasia, to the suppression and the destructive experimentation on embryos and human fetuses (cf. Evangelium Vitae, nn. 52-67).

The natural law, insofar as it regulates human social relationships is defined as "natural right" and as such requires complete respect for the dignity of individuals in the realization of the common good. An authentic conception of the natural right, understood as the protection of the eminent and inalienable dignity of every human being, is the guarantee of equality and gives real substance to those "rights of man" that have been placed as the foundation of the international declarations.

The rights of man, in fact, should refer to what man is by nature and by his own dignity and not to the expression of the subjective choices of those able to participate in the life of the community or who obtain the consent of the majority. In the Encyclical Evangelium Vitae I denounced the serious threat that such a false interpretation of the rights of man understood as the rights of an individual or collective subjectivity, free of any reference to the truth of human nature, can lead democratic systems of government to be converted into a substantial totalitarianism (cf. nn. 19-20).

Particularly, among the fundamental rights of man, the Catholic Church claims for every human being the right to life as the primary right. She does it in the name of the truth about man and as a protection of his freedom, that cannot be sustained without respect for the right to life. The Church affirms the right to life of every innocent human being at every moment of his existence. The distinction sometimes implied in international documents between "human being" and "human person" so as to limit the right to life and to physical integrity to persons already born is an artificial distinction without any scientific or philosophical foundation: every human being, from the moment of his conception until the moment of his natural death, possesses an inviolable right to life and merits all the respect owed to the human person (cf. Donum Vitae, n.1).

My dear friends, in conclusion, I want to encourage your reflection on the natural moral law and natural rights with the hope that from your discussions will come a new source of zeal for establishing the true good of the human being and of a just and peaceful social order. It is always by returning to

the deep roots of human dignity and of the true good of man, and by building on the foundation of what exists as everlasting and essential in man, that a fruitful dialogue can take place with men of every culture in order to build a society inspired by the values of justice and brotherhood.
With gratitude for your collaboration, I entrust the activity of the Pontifical Academy for Life to the Mother of Jesus, Word made flesh in her virginal womb, so that she may be with you as you fulfil the mission that the Church has entrusted to you for the defence and promotion of the gift of life and of the dignity of every human being.
With this prayerful wish, I grant you and your loved ones my cordial Blessing.

(From L'Osservatore Romano, English edition, march 2002)

PONTIFICAL ACADEMY FOR LIFE

FINAL COMMUNIQUE'

From February 25th to February 27th the VIII General Assembly of the Pontifical Academy for Life took place in the Old Synod Hall of Vatican City. According to the usual practice, the members of the Academy, from various scientific disciplines, and from around the world were convoked to discuss their experience of giving witness to life as a service to the Church and to all men.
With regards to the purpose of the Academy, which is specifically: the study, information and formation on the principal problems of biomedicine and of law, relative to the promotion and defense of life, above all in the direct relation that they have with Christian morality and the directives of the Church's Magisterium, this years assembly was dedicated to: "The Nature and Dignity of the Human Person as the basis for the Right to Life: The Challenge of the Contemporary Cultural Context".
No one can mistake the fact that in the contemporary cultural context there exist currents of thought that more or less explicitly negate the existence of human nature or the capacity to know it. As a consequence, they do not admit that the dignity of the person has an unconditional and immutable value, especially at the beginning and end of human life, which require more care and protection. In fact, as the Holy Father recalled in his address to the participants of the Assembly "For many contemporary thinkers, the concepts of "nature" and of "natural law" appear to apply only to the physical and biological world, or, as an expression of order in the cosmos, in scientific research or in the field of ecology. Unfortunately, in such a view, it becomes difficult to use natural law to mean human nature in a metaphysical sense and to use natural law for the moral order" (JOHN PAUL II, Address to Participants of the VIIIth General Assembly of the PAV, n.2).
Faced with these cultural paradigms, the Academy for Life understood the need to commit itself to maintaining continuity with the essential components of the lengthy tradition of the Catholic Church, as well as classical philosophical thought and to expressing them in new ways, and with a different vocabulary if necessary, so as to foster dialogue with the modern world, as desired by the Second Vatican Council.
Moreover, this theme is currently of fundamental relevance to an examination of the link between the creation of laws and codes at various levels of government and the human values on which they must be based.
To this end, the General Assembly followed an itinerary organized around three lines: the anthropological question; natural moral law considered in terms of its existence and our capacity to know it; and, finally, the problem of rights, with particular emphasis on the right to life.
In terms of anthropology, and recalling the teachings of Gaudium et Spes (n.14), the Assembly wanted to reaffirm a unitary vision of man, "corpore et anima unus", in refutation of all dualism or reductionism, whether of a spiritual or materialist kind. Authentic respect for each human being has its foundations in this corporo-spiritual identity, of which corporeality is an authentic and constitutive dimension of the person through which he manifests and expresses himself (cf. Donum Vitae, n.3), as is the spiritual dimension, through which man is open to God, finding in Him the ultimate foundation of his dignity.
A problem may arise concerning the recognition of the existence of a universal human nature from which we derive the natural moral law. With regards to this, the presentations discussed the ways in which, in contemporary culture, certain schools of thought relying solely on the historico-evolutionary dimension of man, end up by negating the existence of a universal human nature. Nevertheless, this nature, understood as a "rational nature" seemed to the members of the Academy -in line with the teachings of the Church- to be an undeniable paradigm for clearly understanding the natural moral law.

In fact, what else could form the basis of the dignity of the human person, if not that which specifically characterizes him, which is to say his nature?
The Holy Father himself wished to repeat to the members of the Academy that: "The human person with his reason, is capable of recognizing this profound and objective dignity of his own being, and the ethical requirements that derive from it. In other words, man can discern in himself the value and the moral requirements of his own dignity. It is a discernment that entails a discovery open to further refinement following the coordinates of the "historicity" so much a part of human knowing" (JOHN PAUL II, Address to Participants..., n.3).
Based on this anthropological vision, the reflections of the members were centred on the question of the natural moral law; which, "is nothing other than the light of understanding infused in us by God, whereby we understand what must be done and what must be avoided. God gave this light and this law to man at creation."(Veritatis Splendor, nn.12; 40). Therefore, the existence of such a law is a direct consequence of the existence of human nature.
In particular, recalling the doctrine of St. Thomas Aquinas concerning the natural moral law, we wanted to underline the fact that each man has the natural capacity to know with certainty the fundamental dictates (first principles) of that law, which spring up in his heart, calling him always to do good and avoid evil (Gaudium et Spes, n.16). To human nature also belongs the capacity to know the derived moral norms (such as the moral norms concerning the defence of human life) even though in certain instances tier derivation seems to be difficult, because of the inevitable personal and cultural limitations that constitute the history of each person.
In this respect, the moral virtues, understood as acquired habits towards a specific good, constitute a tremendous help, either towards the acquisition of knowledge of that law, or, once such knowledge is acquired, towards actions in accordance with it. At the same time, there exists the contrary, which are moral vices, and which represent prior obstacles either towards the acquisition of that knowledge, or, once acquired, towards the capacity to act in accordance with it.
The requirements which derive from the natural moral law, and which human history clearly demonstrate, call for both their recognition and protection by law, within society. In this way, we may speak of "natural right", and its subsequent codification in law. The foundation of this right is not mere human consent; rather, it is founded on human nature, and the dignity of the person.
It is for this reason that, historically, until the end of the eighteenth century, we find that the fundamental rights of man were considered as inviolable and non-negotiable, and therefore they were safe from the arbitrary decisions of society, or from the will of the majority.
After that time, on the contrary, in our times, we are witnesses to a progressive change, marked by exaggerated claims to the ?right? of personal freedom, which carries with it many forms of attack against life at its earliest and final stages, "which present new characteristics with respect to the past and which raise questions of extraordinary seriousness. It is not only that in generalized opinion these attacks tend no longer to be considered as "crimes"; paradoxically they assume the nature of "rights" (Evangelium Vitae, n.11). A certain sector of public opinion, beginning from the above presupposition, maintains that the State must not only cease to punish such actions, but must also guarantee their free exercise, even going so far as to sanction them.
Faced with this transformation, referring to the fundamental rights of man, "the Catholic Church claims for every human being the right to life as the primary right. She does it in the name of the truth about man and as a protection of his freedom, that cannot be sustained without respect for the right to life. The Church affirms the right to life of every innocent human being at every moment of his existence. The distinction sometimes implied in international documents between "human being" and "human person" so as to limit the right to life and to physical integrity to persons already born is an artificial distinction without any scientific or philosophical foundation: every human being, from the moment of his conception until the moment of his natural death, possesses an inviolable right to life and merits all

the respect owed to the human person (cf. Donum Vitae, n.1; JOHN PAUL II, Address to Participants.., n.6).
For this reason, the assembly of Academicians calls upon the legislators of all countries, to elaborate contemporary juridical norms based upon an authentic truth about man, above all in regards to the primary right to life.
In conclusion, this final communiqué wishes to make its own the desire of the Holy Father who encouraged the Assemble to continue its "reflection on the natural moral law and natural rights with the hope that from your discussions will come a new source of zeal for establishing the true good of the human being and of a just and peaceful social order. It is always by returning to the deep roots of human dignity and of the true good of man, and by building on the foundation of what exists as everlasting and essential in man, that a fruitful dialogue can take place with men of every culture in order to build a society inspired by the values of justice and brotherhood" (JOHN PAUL II, Address to Participants..., n.7).

JULIÁN HERRANZ

THE DIGNITY OR THE HUMAN PERSON AND LAW

FUNDAMENTAL RIGHTS IN CLASSICAL CULTURE

The essential nature of the fundamental rights of the human person, and amongst them the primary right to life, has always consisted of the fact that they can be neither conceded nor derogated by any human power this is because these rights have their foundation not in an act of human will but in the very nature and dignity of man

Even before the great Roman tradition of doctrine and jurisprudence regarding natural law, the existence of an unwritten law, the foundation of the natural rights of man, was to be found in the thought of many philosophers and writers of ancient Greek culture, such as Heraclitus, who spoke of a universal law rooted in the divine logos; or Sophocles, for whom the agrapta nomina, that is to say laws which are not written but present in the human spirit through the work of the gods, are the last bulwark against tyranny (Antigone, vv 454-460); or Epithetus, who spoke (cf. Diatribai I, 3,1) about the shared and high moral and legal dignity of man because he was a creature of God (1).

Indeed, the contemporary, but in reality very ancient, question of the difference between a legitimate and a distorted state system -even in a democratic regime -was addressed by Polybius in his History of Rome, in which he followed the results previously arrived at by Plato and Aristotle. It should be noted that as regards democracy, Polybius affirmed first and foremost that a state in which any mass of citizens -even when they constitute a majority -is free to do what it wants cannot call itself democratic (cf. Pol. 6,4,4-5). As Cicero taught: "Certainly a true law exists it is right reason; it conforms to nature, it is found in all men; it is immutable and eternal; its precepts call us to duty and its prohibitions impede us from committing error...It is a crime to replace this law with a contrary law; it is forbidden to fail to practice even only one of its provisions; and nobody has the right to abrogate it completely" (De re publica, 3,22, 33).

Ever since the days of pre-Christian antiquity, it has been clear, therefore, that democracy can exist as such only if the majority respects certain basic premises of the social order, amongst which the principles of natural law or ethics and the inviolable human rights which are rooted in that law (2).

As regards the right to life, at a concrete level, we should also consider as a cornerstone of legal civilisation the fact that Roman law saw the unborn conceived child (the nasciturus) as a human being or individual, and as such he or she was the subject of rights, and was even able to be the recipient of property left in a will. Thus in the Digesta of Justinian the unborn child (nasciturus) is recognised as having the legal position of a human being (Qui in utero sunt...intel1igentur in rerum natura esse, D 1.5.26). And thus he or she is to be seen as being the bearer of rights, as though he or she was already born (Nasciturus pro iam nato habetur, D 1.5.7) when this is to his or her advantage (commodum).

This principle, which was introduced by Roman jurisprudence into the system of the ius civi1e (3), effected a qualitative change in the structures not only of Roman social and legal thought but also of the thought of the whole of legal civilisation. Indeed, the principle of seeing the unborn conceived child (who had to be protected) as a human being in legal terms -even though he or she was not defined as a person- was accepted in subsequent centuries in many constitutional and civil codes of rather distant geographical and cultural areas not only of the Latin, Roman, and Iberian world (Italy, Spain, Argentina, Brazil, Uruguay, Peru, Chile, etc) but also in Germanic law (cf. for example, the relevant sentence of the Constitutional Court of the German Federal Republic of 28 May 1993), and even in the civil code of Japan (cf. art. 721).

All of this great legal tradition was possible for almost thirty centuries -until the increase in the second half of the twentieth century of permissive legislation on abortion- because respect for every innocent human life, at every moment of its development, was being solidly formed, even if not always

defended, on the basis of the ontology of the human being, of the person -of his or her singular dignity and superiority in relation to other beings or creatures- and not on the basis of mere accidental considerations of a political, pragmatic or psychological kind.
The advent of Christianity and its spread in the world not only respected all the acquisitions of the recta ratio to be found in the moral philosophy and the science of law of the great Greco-Roman culture, but also confirmed them and enriched them. For Christianity -and to a certain extent for the other monotheistic religions as well -the human being, the person, was not only the highest being on the scale of beings because of his intelligence and the freedom that he or she enjoyed, but also the only creature created by God for its own sake (4). Every human being is created in the image and likeness of God. In every human being, even if weak, sick or handicapped, there is a divine reflection, a life that moves towards eternity. Indeed, the highest reason for the dignity of man lies in his vocation to communion with God (5). For this reason, as John Paul II proclaimed in Evangelium Vitae: "In Christ, the Gospel of life is definitively proclaimed and fully given. This is the Gospel which, already present in the Revelation of the Old Testament, and indeed written in the heart of every man and woman, has echoed in every conscience from the beginning , from the time of creation itself" (6).

INVIOLABLE RIGHTS IN MODERN LEGISLATION

The democratic civil system which was progressively established beginning with the bourgeois revolutions of the end of the eighteenth century -first in America and then in Europe -is based upon two inseparable principles: the democratic principle, which ensures the participation of all citizens in the creation of laws and related political decisions, and the constitutional principle, which legally limits political power in the name of fundamental subjective rights, which are seen as pre-existent or prior to every political institution or social power.
The Declaration of Rights of the State of Virginia of 12 June 1776 is classic in this sense. In article 1 it declares that "all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety". The same concepts can be found expressed in more or less similar terms in the Declarations of Rights of Pennsylvania (art.1), and of Massachusetts (art.1), etc., which had their historical roots in the religious-political movements of England of the sixteenth and seventeenth centuries and its authentic tradition of customary or common law.
Constitutional experts have emphasised (7) that there was a difference in the way that the value of the fundamental rights of the human person was interpreted in these Anglo-American Declarations of Rights and in the subsequent constitutional systems of continental Europe. In the first case, the prior nature and the consequent inviolability of fundamental rights in relation to every state power -including constitutional power -always represented the cornerstone upon which the entire constitutional edifice was built. Instead, in the legal systems of continental Europe, beginning with the French revolution, the prior nature and the inviolability of fundamental rights, although affirmed at the level of principle, were frequently relativised at the level of positive law and political activity.
In the case of the early constitutional systems, the concept of the rights of the subject which was introduced into liberal legal dogma, although it displayed a change in doctrinal approach compared to the legal realism (the suum quique tribuere', the res iusta (8)) specific to classical legal culture, did not represent a break with the past. In fact, the two great movements at the level of ideas -the theory of natural law and the theory of contract -matched each other in recognising two things: 1. that the inviolability of the fundamental rights of the subject lay in the fact that they were innate rights, rooted, that is to say, in human nature itself; 2. that such innate and inviolable rights were in principle non-negotiable rights, and thus could not be subjected to the social pacts that established the rules of living

together in society and even less to the political powers that were created on the basis of these same pacts.
On the other hand, in the legal systems which came after the French Revolution, based on the so-called general will of the people (or in the German version, the concept of State-person or sovereign political entity), the inviolability of fundamental rights was somewhat relativised, if not at the level of constitutional law then by means of ordinary laws which tended to regulate and at times to limit or even to suspend the exercise of such rights. This phenomenon, which was the result in the nineteenth century of legal positivism and its relativistic conception of the rationality of laws, was further aggravated during the twentieth century for two well-known reasons: the legal aberrations against the dignity of the human person specific to the totalitarian political regimes, and, in democratic regimes, the growing inf1uence of philosophical and political ideologies marked by moral relativism and libertarian permissiveness (9). This is what happened, in practical terms, to the right to life.

THE VIOLATION OF THE RIGHT TO LIFE

In 1948, when from the material and moral ruins of the Second World War there emerged the need to reaffirm the dignity of the human person and his or her inalienable rights, the Universal Declaration of Human Rights' was solemnly approved by the United Nations. It is well known that in article 3 of this Declaration we find written that every individual has the right to life, freedom and security. A few years later, in 1959, the Declaration of the Rights of the Child, which was, again, a document of the United Nations, established in its preamble that "a child needs special protection, and in concrete terms legal protection, both before and after birth". For its part, the International Medical Assembly of 1948, when reformulating the Hippocratic oath, made all medical doctors promise: "I will observe absolute respect for human life from the very moment of conception".
From these and other solemn declarations and international agreements, as well as from an examination of the constitutional and civil rights of the most advanced nations, it has been rightly deduced that until the middle of the twentieth century there was in the world a relevant legislative homogeneity when it came to the defence of human life, and the life of the unborn conceived child as well: both in the sphere of Romano-Germanic law and in the system of common law of Anglo-Saxon legislation, abortion and euthanasia were perceived and prohibited as crimes: "Jusqu'alors, aussi bien dans la sphère du droit romain germanique que de la common law les législations européennes et américaines interdisaient l'avortement, sauf en cas de danger pour le mère, ainsi que l'euthanasie. La premier grande rupture avait été produite en 1920 par l'URSS de Lénine, suivie de la parenthèse du régime nazi, avec ses lois eugéniques et le génocide» (10).
This first great denial in Russia of the inalienable character of the right to life was followed in the 1950s by the abortionist legislation of the other nations of Eastern Europe, which were then under the rule of Communism. In the Western world, instead, where the influence of practical materialism did not have the revolutionary impetus of dialectical materialism as a philosophical doctrine of the State, permissive legislation only arrived forty-seven years after that of the Soviet Union: in the form of the English Abortion Act of 1967. Subsequently such legislation slowly spread to other nations, but not without encountering strong doctrinal and popular opposition: in 1973 in the United States of America, Germany and Denmark; in 1974 in Sweden; in 1975 in France; in 1978 in Italy, Luxembourg, and Greece; in 1984 in Portugal; in 1985 in Spain; in 1990 in Belgium, etc.
This means that in the second half of the twentieth century the greatest possible legal and ethical transformation ever imaginable took place in relation to the right to life: the loss, at least in the legislative practices of many States, at times in surprising contrast with their own constitutions, of the perception that this right was an inalienable right. Indeed, in his Encyclical letter, Evangelium Vitae, John Paul II observed that the attacks on life in its earliest and final stages "present new characteristics with respect to the past and which raise questions of extraordinary seriousness. It is not only that in

generalised opinion these attacks tend no longer to be considered crimes; paradoxically they assume the nature of rights, to the point that the State is called upon to give them legal recognition" (11).
But what in practical terms have been the causes of this legal transformation, a transformation which has been leading the legislation of many States to legalise abortion and, by successive steps, euthanasia and other attacks on the dignity of the human person as well?
It is known that the legislation on abortion in Russia in 1920 followed a totalitarian approach of a socio-political kind: the aim was to facilitate the placing of women in the world of work outside the domestic walls in order to benefit the socialist economy. On the other hand, the sentence of the Supreme Court of the United States of America (Roe v. Wade), which in 1973 opened the door in that country to legal abortion, did so within an apparently democratic approach which involved the defence of the personal freedom of the woman. Thus one can read in the expression of the majority view of the judges that "the Court need not resolve the difficult question of when life begins". Thus the woman was allowed to engage in an abortion and as a result the right of the embryo and the foetus to life was denied. The approach expressed in Russia, in a Communist State, and the approach espoused in the United States of America, in a democratic State, involved apparently different motivations, but in reality they both obeyed the same agnostic conception of law, that is to say the notion of strict legal positivism based on the denial of natural law and the consequent moral divorce of .freedom from truth.
One could say that the whole social Magisterium of the Church during the last century was guided first and foremost by the need to defend the consciences of Christians and the very dignity of the human person against two great ideological utopias, which had also become political systems on a world scale: the totalitarian utopia of justice without freedom on the one hand, and the libertarian utopia of freedom without truth on the other. As, indeed, the Pope observed: "Opposing forms of totalitarianism and sick democracies have shaken the history of our century" (12).
The first utopia, and with it the political systems that in various forms embodied it in Europe and on the other continents, is now in decline and on its way to extinction. But this is not without having left behind an immense pile of spiritual and social ruins. The second utopia, on the other hand, that of freedom without truth, is unfortunately in a phase of growing expansion. This utopia, which grew up in the philosophical habitat of the Enlightenment and of agnostic relativism, found its great legislative (and thus social and political) instrument in strict legal positivism. Indeed, for this system, which explicitly or implicitly denies the postulates of natural law, it is not objective truth that ensures the legal rationality and moral legality of a norm or sentence but solely relative or conventional truth, the pragmatic fruit of statistical or political compromise.
It is no accident that the greatest exponent of legal positivism, Hans Kelsen, when commenting on the gospel question posed by Pontius Pilate to Jesus, "What is truth?" (Jn 18: 38), wrote that in reality this question, which was posed by a pragmatic politician, bore its own answer within itself: truth cannot be attained. For this reason, Pilate, without waiting for an answer to be given by Jesus, went to the crowd and asked: "Do you want me to free the King of the Jews?" In acting in this way, concludes Kelsen, Pilate behaved like a perfect democrat: that is to say he entrusted the problem of establishing what was true and right to the majority, despite the fact that he was convinced of the complete innocence of the Nazarene (13).

HUMAN DIGNITY: A UNIVERSAL VALUE

In her investigation of the origins and the drafting of the Declaration of Human Rights , Mary Ann Glendon well illustrates the clarity of the thought that guided the work of Charles Malik, the proposer of this Magna Carta at the General Assembly of the United Nations. Malik, a Lebanese Christian belonging to the Greek Orthodox Church, followed from the beginning to the end the entire course of the preparation of the document: first as draftsman of this first project on human rights, then as its proposer, and then as the President of the Committee for Social Affairs. Aware of the many problems

of a political and cultural character which were involved in the drafting of a charter of human rights which could be universally accepted as inviolable and inalienable, Malik from the outset posed to his colleagues of the committee a prior and preliminary question. He told them that when it came to human rights a "fundamental question presented itself: what is man?"
From this, from a careful historical, philosophical, sociological and ethical consideration of the nature of the human person and his specific dignity -commonly recognised by the various human cultures worthy of that name- sprang, and were technically formulated, the fundamental rights of this Universal Declaration, one of the highest expressions of the conscience and legal culture of our times. In the preamble to the Declaration, in fact, one reads: "the recognition of the personal dignity and the equal and inalienable rights of all the members of the human family constitute the basis of freedom and peace in the world". John Paul Il in his message addressed to the General Secretary of United Nations on the thirtieth anniversary of the same Declaration wrote in relation to the basis of fundamental human rights: "Unquestionably, this basis is the dignity of the human person. Pope John XXIII explained this in Pacem in terris: "The foundation of an ordered and fertile coexistence should be the principle that every human being is a person...; and thus he is the subject of rights and duties, which spring immediately and simultaneously from his very nature: rights and duties which are thus universal, inviolable, inalienable" (n.158) (15).
In these inalienable rights are reflected the objective requirements and the inescapable values of a universal moral law , whose first principles and immediate conclusions do not accept geographical frontiers or reductive influences of a cultural, political or ideological character. "These rights also remind us", John Paul Il said to the General Assembly of the United Nations, "that we do not live in a meaningless or irrational world, but, on the contrary , that there is a moral logic that illuminates human existence and makes dialogue possible...The universal moral law, written into the heart of man, is that kind of "grammar" which helps the world to address this discussion about its own future" (16).
But it was, and is, very significant that the Pope wanted to immediately add, in front of the highest civil authorities of the world who were gathered there, that "from this point of view, the fact that today some people deny the universality of human rights, just as they deny that there is a human nature shared by everybody, is a source of serious concern". In saying this it did not escape John Paul II's notice -indeed he recognised the fact -that different cultures and particular historical experiences give rise to different institutional and legal forms, and thus it was that he added: "It is one thing to uphold a legitimate pluralism of forms of freedom , but it is quite another to deny that the nature of man or the human experience have any universality or intelligibility" (17). With these words, the Pope certainly wanted to stress the danger that the Universal Declaration of Human Rights -which was not an international law but a "shared ideal towards whose realisation all peoples and nations must strive" (18) -could be progressively emptied of moral authority and binding force because of the growing spread of the philosophical and political thought of libertarian individualism. Having a false concept of freedom, which is separated from truth, this libertarian individualism does not recognise that there is any objective ethical limit to personal and social conduct, and in the final analysis it does not even concede the existence of morally and legally binding objective and universal values.
This ideological aberration, which denies the unequivocal and universal character of human nature and human dignity and their consequent inviolable rights, obliges us to see that what is at stake here is not only the Magisterium of the Church at the service of the human and supernatural dignity of man - something that could affect only Christians. Instead, what is at issue -and this concerns everybody- is the very moral legitimacy of Law.

THE CENTRALITY OF THE PERSON IN LAW

There is no doubt that the most positive phenomenon to be found in modern legal science and democratic constitutions has been the doctrinal and normative development in relation to the

fundamental rights of man, which has helped to place at the centre of legal reality its real protagonist - the human person- with his or her inalienable dignity and freedom. Indeed, law as a system is the set of norms and relations that organise man into a social community .However, there has been a progressive awareness that such a system must be structured and improved by taking into account that it is precisely the human person who is the foundation and the end of social life. This has been the contextual "riverbed" in which contemporary law has developed, despite the deviations -when they have not actually been legislative aberrations- of the various totalitarian regimes, and the lack of intellectual honesty with which not a few exponents of legal positivism have yielded to the social pressure of these political ideologies.

Nonetheless, parallel to the development of the centrality of the person in law, of legal anthropology - let us term it such- another phenomenon has emerged which is a serious source of concern not only to the ecclesiastical Magisterium but also to sociologists, philosophers of law, and even ordinary citizens. I am referring here to the progressive ethical impoverishment of civil laws (contempt for the indissolubility of the marriage bond and even for the very concept of the family as a natural institution; the liberalisation of abortion, of euthanasia, and of drugs; the insufficient defence of conscientious objection and of the right to religious freedom, etc.) and thus also the impoverishment of the pedagogic value of these very laws, and even the loss of their moral legitimacy.

Unfortunately, these so-called secular ethics, which form the basis of agnostic or libertarian law, do not accept concepts of amorality or immorality which are based upon objective values and truths that are above positive laws. For this reason, such ethics champion the separation between "private morality" and "public ethics" within the sphere of so-called "ethical positivism". Private morality is said to be based upon the philosophical principles or religious beliefs of the individual, and thus such ethics are circumscribed to the sphere and the judgement of the mere personal conscience of each citizen. Public ethics, instead, are said to be those exclusively determined by the majority consensus of the community, that is to say by the conventional truth that is concretised in law. Obviously, "permissive" (anti-prohibitionist) laws are also growing in number in areas and institutions which for one reason or another are important for the common good and public order, such as family law, education, public morality, etc. "The issues of life, of procreation including abortion and euthanasia are entrusted to the private conscience and the law should only guarantee in this area freedom of conscience and behaviour , individual choice. One is dealing here, therefore, not only with defining and establishing more effectively the relationship between bioethics and bio-law, but also with upholding the legitimacy of an ethical approach in the social sphere and its relevance in the legal sphere" (19). As John Paul II declared, "Today, in by no means few societies it is not unusual to witness a kind of regression of civilisation the fruit of...a subjectivistic idea of freedom, detached from moral law" (20). We must, however, say clearly and with force -in order to defend the inalienable right to life and to warn honest intellects against the sophisms of false democrats- that this merely subjectivistic and agnostic reduction of freedom and law is contrary not only to Christian social doctrine but also to the traditional and healthy concept of law and democracy.

At this point in our analysis, someone, when assessing the previous affirmations in a moralistic and even fundamentalist light, could raise the following question: but is it not realised that in speaking in this way one is mixing up morality and law in a dangerous way? Is it not realised that moral precepts refer back to the conscience whereas legal norms concern, instead, external relations, the social conduct of man? Is it not realised that in the whole of this way of reasoning, there transpires, in addition to the above-mentioned conceptual confusion, a certain nostalgia for the Christian confessional State which was opposed to religious liberty?

Let us not be taken in by the subtle sophism concealed within these questions. Apart from the fact which has already been pointed out- that before Christianity the pre-eminence of natural law, of recta ratio, in relation to positive legislation, was the legal heritage of classical legal culture and also of

modem constitutionalism, it is also the present-day personalist approach of sociology and the science of law that requires all legal systems to respect the postulates of natural law (21).
It is indeed true that morality and law are two different sciences which approach man with different perspectives and goals in mind. Morality is primarily concerned with the order of man as a person: it involves, that is to say, the set of requirements derived from the ontological structure of man as a being created and endowed with a particular nature, dignity and purpose. Law, on the other hand, is primarily concerned with the social order -the set of structures that order the civil community, that order society .But if the most relevant and positive fact of the advance of the science of law during the twentieth century was specifically that of placing at the centre of legal reality its real protagonist, i.e. man, the foundation and the end of society, it is obvious that the law of a healthy democracy, in ordering its own social structures, must take into account the ontological structure of the human person: by nature, the human person is not only animal and instinctive but also intelligent and free, bearing a transcendent and religious dimension of the spirit that cannot be ignored or demeaned. If we were to deny this universal truth about the nature and dignity of the human person -a truth that cannot be determined by convention or depend on the opinion of a majority- not only would we dangerously weaken the concept of religious freedom -and of the other fundamental human rights as well- but we would find ourselves face to face with an essentially immoral anti-natural law , the instrument of a totalitarian social system, even if one wanted to term it democratic.

WHEN DOES ONE HAVE THE DIGNITY OF A PERSON?

It is commonly accepted that the Universal Declaration of Human Rights does not identify with legal precision the subject to whom is attributed the bearing of human rights. In the preamble every member of the human family is designated as such and the term human person is also used. In article 1, however, it is said that "all human beings are born free and equal in dignity and rights", while in articles 2 and 3 reference is made respectively to the person (as a subject of rights in general) and to the individual (as the subject in concrete terms of the right to life). The Declaration did not clarify the doubt -raised also in the philosophical and biological sphere- as to when one can use the legal category of the person (with his or her consequent personal dignity) in order to apply it to the human being as a subject of his or her fundamental rights. This is a problematic terminological question -present in by no means a few civil and constitutional codes- which reflects the other basic question referred to above: what is the truth about man? I think that it is incumbent upon me, at the end of this paper, to offer a modest reflection on the question, leaving it to other more specific and qualified presentations to engage in further investigations of the subject.
There can be no doubt, in fact, that at the present crossroads in history the need to make very clear the nature of the human person (and this nature is radically different from that of all other living beings) has acquired a particular importance and urgency. This is because this question has very grave and decisive consequences for the future of mankind, both in the field of science (especially in biology and genetics) and in the fields of law, sociology and politics.
For believers, the truth about man is not a problematic question but a fully revealed truth. "Who is it that is about to be created, that enjoys such honour?", asked St. John Chrysostom when considering the greatness of this singular being created by God in His image (Gen 1: 27), who is thus also intelligent and free, aware and responsible; redeemed from sin and death through the sacrifice of God Himself made man; raised to the condition of the adopted son of God and called to share, in awareness and love, in the life of his Creator. And St. John Chrysostom himself answered: "It is man -that great and wonderful living creature, more precious in the eyes of God than all other creatures! For him the heavens and the earth, the sea and all the rest of creation exist" (22).
In commenting upon this biblical notion of man, Christian anthropology explains that "being in the image of God the human individual possesses the dignity of a person, who is not just something, but

someone" (23). For this reason, the human being "is to be respected and treated as a person from the moment of his conception" (24). Indeed, by now there is no doubt that even for the positive sciences the embryo is not only a well defined individual of the human species but also embraces all the biological, psychological, cultural, spiritual, etc. potentialities that man will develop during the course of his existence. For this reason, as John Paul II emphasised at the conclusion of the international symposium "Evangelium Vitae and Law", "we cannot but adopt as a point of departure that the biological status of the embryo is that of a human individual, who has the quality and the specific dignity of the person. The human embryo has fundamental human rights, that is, he is the bearer of essential constituent elements so that the activity connatural to a being can be engaged in according to its own vital principle. The existence of the right to life as a constituent element which is intrinsically present in the biological status of the human individual from fertilisation, constitutes, for this reason, the secure point of nature for the definition of the ethical and legal status of the unborn child as well" (25). In fact, to have "the quality and dignity specific to the person" it is not necessary for this person to have already developed to higher or lesser levels his or her own potentialities.

But, for non-believers, for intelligences not yet illuminated by faith, what is the truth about man? The answer to this impelling question -provided by philosophy and the biological sciences- involves grave and decisive consequences for the future, not only as regards law and democracy but also the whole of mankind. For this reason, it is precisely in relation to this primary question that the dialogue between philosophy and revelation, between Athens and Jerusalem, and between reason and faith, a dialogue solicited indeed by John Paul II in Fides et Ratio, seems to be most urgent (26).

Within this horizon of the "circularity between faith and philosophy", of their dialogue, that is to say, in the human search for truth, is certainly to be located the primary legal question -but not this question alone- regarding the truth about man, that is to say the dignity of the human person. This was expressly emphasised by John Paul II: "The notion of the person as a spiritual being is another of faith's specific contributions: the Christian proclamation of human dignity, equality and freedom has undoubtedly influenced modem philosophical thought" (27).

In thinking about the need to develop further this philosophical-metaphysical reflection in a constructive dialogue with the biblical message about the dignity of the person being, but also while listening to the discoveries of the biological and genetic sciences about the origins and the development of the human being, it seems to me that a challenge presents itself at the outset: that of overcoming prejudices. Without this primary methodological requirement, the "circular" and constructive dialogue between faith, philosophy and biology would not be possible. And yet it must be possible. This is because -and it is worth repeating the point- the notion of the human person, the truth about man, is not a purely academic question but an acute existential problem. Without a solution to this problem -at the level of reason- t would not be possible to retrieve the meaning and value of ethics and law.

In the past -at the time of heresies and controversies about the dogmas of the Trinity and of the Word made Flesh- the dialogue between theology and philosophy was especially intense, given the need to clarify the meaning and the various relationships between the terms nature, substance, hypostasis and person (especially since the philosophical notion of person, which was introduced with the well-known definition of Boethius (28), did not exist in ancient Greek philosophy). And it is well known that this dialogue continued subsequently, especially during the modern age, in relation, among other things, to the existence or non-existence of a distinction - whether merely functional or ontological- between the terms individual and person (Hegel, Kierkegaard, Fuerbach, M. Bubber, Mounier, etc.). For his part, John Paul II, in the above-cited Encyclical, Fides et Ratio, encourages philosophers to explore the concept of the person by paying greater attention to the relational anthropology of the Bible (29).

However, where it appears the called for circular dialogue should be undertaken with greater dedication and patience is in the relationship between, on the one hand, theology and the philosophy of law and, on the other, the biological sciences. This constructive dialogue -of mutual enrichment- perhaps appears today to be more difficult than it was in the past given the notorious tendency of a large part of

modern thought to reject metaphysics, to marginalise being. It has rightly been said that in the modern cultural project "man is seen in dual terms: there is a level at which he is seen as an inalienable subject (the person interpreted as the bearer of rights), and another level at which he is an object, that is to say part of physical-biological nature, on which science lays its hands" (30). Obviously, at this level of the biological sciences, which is purely empirical, the dignity of the person as an inalienable subject becomes very problematic.

For this reason, perhaps it may be suggested that the first approach to the dialogue between the philosophy of law and the biological sciences -and more concretely with human bio-genetics- should not be engaged in with personalist "postulates" introduced ex abrupto. "One should rather begin", suggests one philosopher, "with the analysis and ontological observation of reality -the life and being of man- beginning with which there will emerge the originality and the specific character of his person being" (31).

At the same time, biology should avoid an erroneous use of the term person , which is in fact now employed by some people no longer as a transcendent boundary between the human universe and the non-human universe, but only within the human universe in order to effect an arbitrary discrimination between one stage and another of his development: a person, in their view, is only a child who has been born, and a foetus or an embryo is thus not a person. In this way, and in opposition to the theological and philosophical vision, the person is not defined in terms of what he is but in terms of what he is able to do or to appear, with the normative consequences at an ethical and legal level that are deduced from this discrimination: he or she who is not yet a person -but only a potentially human reality or thing- cannot have a legal personality, cannot be, that is to say, the bearer of true rights, such as the right to life (32). And this is an intellectual conclusion that neither faith nor science can accept.

NOTES

(1) Cf. amongst others, BAUSOLA A., Il fondamento del diritto alla vita, in TARANTINO A. (ed.), Per una Dichiarazione dei diritti del nascituro, Milano, 1996: 113-114.

(2) Cf. HERVADA J., Escritos de Derecho Natural, Pamplona, 1986: 420-443; WALDSTEIN W., Diritto naturale, diritti umani e democrazia , paper presented to the "XI Colloquio Internazionale Romanistica- Canonistico", Rome 22-25 May 1996, organised by the PontificaI Lateran University.

(3) One need only consider that Roman jurisprudence always sought to protect the unborn child. For example, the carrying out of the death penalty on a pregnant woman was delayed until after the birth of the child; and a pregnant woman could not be subjected to an interrogation using torture, ULPIAN D., 1.5.18; 48.19.3; PAUL., Sent., 1.12.4. Cf. CATALANO P., Vigenza dei principi del diritto romano riguardo ai diritti dei nascituri, in TARANTINO A. (ed.), Per una dichiarazione dei nascituri, pp. 134-135.

(4) Cf. Gaudium et Spes, n.24.

(5) Gaudium et Spes, n.19.

(6) JOHN PAUL II, Evangelium Vitae (25 March 1995), n. 29; cf. Gaudium et Spes, n.16; Dignitatis humanae, n.3.

(7) Cf. BALDASSARE A., Diritti inviolabili, in Enciclopedia Giuridica Treccani, Vol. XI , Rome, 1989: 1-7.

(8) Cf. ULPIAN, Regularum in Digesto, Bk. I, 10, 1; JUSTINIAN, Institutiones, Bk. I, tit. I, 1; ST. THOMAS AQUINAS, S. Th., II-II, q. 57, a. I.

(9) Cf. HERRANZ J., L'agonia del diritto agnostico, Studi Cattolici, 1994: 166-171.

(10) MINNERATH R., Le rôle des traditions juridiques dans les débats internationaux sur les droits à la vie, in. LÓPEZ TRUJILLO A, HERRANZ J., SGRECCIA E. (eds.), Evangelium Vitae e Diritto , Vatican City, 1997: 269.

(11) JOHN PAUL II, Evangelium Vitae, n.11.
(12) JOHN PAUL II, Discorso al mondo della cultura nell'Università di Vilnius, L'Osservatore Romano, (6 11 .1993), p.1.
(13) Cf. POSSENTI V., Le società liberali al bivio. Lineamenti di filosofia della società, Genoa, 1991: 345 ff.
(14) Cf. GLENDON M.A., Il laico nell'agone pubblico, Studi Cattolici, 465 (Nov. 1999), pp. 741-748.
(15) JOHN PAUL II, Messaggio: The signal occasion a S.E. il Dr. Kurt Waldheim, Segretario Generale delle Nazioni Unite, (2.XII.1978), in AAS, 71 (1979), pp. 122-123. Cf. KASPER W., The Theological Foundation of Human Rights, Jurist, 50 (1/90), pp. 146 ff.
(16) JOHN PAUL II, Discorso alla Assemblea Generale delle Nazioni Unite, in occasione del 50° anniversario della fondazione dell'ONU, (5.X.1995), n. 3, Insegnamenti di Giovanni Paolo 11, v. XVIII/2 (Vatican City, 1998), p. 732.
(17) Ibid.
(18) UNIVERSAL DECLARATION OF HUMAN RIGHTS, Preamble.
(19) SGRECCIA E., Le legislazioni sulla corporeità. Il saluto della Pontificia Accademia per la Vita, in LÓPEZ TRUJILLO A., HERRANZ J., SGRECCIA E. (eds.), Evangelium Vitae e Diritto, pp. 28-29. Cf. also NAVARRO VALS R., Ley civil y ley moral: la responsabilidad de los legisladores, in La Causa della Vita, Vatican City, 1995: 84-104.
(20) JOHN PAUL II, Discorso al Simposio Internazionale Evangelium vitae e Diritto, n. 3, in AAS, 88 (1996) p. 940.
(21) Amongst others, the following thinkers, with different approaches and varying hues, share this basic idea: MARITAIN J., L'homme et l'Etat, Paris, 1953: 69ff.; DEL NOCE A., I caratteri generali del pensiero politico contemporaneo, Milan, 1972; POSSENTI V., Le società liberali al bivio. Lineamenti di filosofia della società, Genoa, 1991: 281-314; HERVADA J., Derecho natural, democracia y cultura, Persona y Derecho, 6 (1979): 200ff.; COTTA S., Diritto naturale: ideale o vigente?, Iustitia, 2 (1982): 119ff.; FORNES J., Pluralismo y fundamentación ontológica del derecho, Persona y Derecho, 9 (1982): 109ff.; NOVAK M., Dignité humaine et liberté de les personnes, Liberté Politique, 1998: 155-166; SCHOOYANS M., Démocratie et droits de l'homme, Liberte Politique, 1998: 57-66; ROUCO VARELA A.M., Los fundamentos de los derechos humanos: una cuestión urgente, Madrid, 2001: 20-61.
(22) Sermones in Genesim, 2,1: PG 54, 587D-588A.
(23) Catechism of the Catholic Church, n.357.
(24) JOHN PAUL II, Evangelium Vitae, n.70; cf. INSTRUCTION OF THE CONGREGATION FOR THE DOCTRINE OF THE FAITH, Donum Vitae, I.1.
(25) Communicationes 28 (1996) 16.
(26) Cf. JOHN PAUL II, Fides eRatio, n.76.
(27) Ibid.
(28) Persona est rationalis naturae individua substantia, (De duobus naturis, chap. 3: PL 64, 1343).
(29.Cf. n.80.
(30) POSSENTI V., Sobre el estatuto ontológico del embrión humano, in AA.VV., El derecho a la vida, Pamplona, 1998: 117.
(31) Ibid., p. 118.
(32) This is obviously a thesis that the Magisterium of the Church does not accept. But bioethics, too, sees it as being without any foundation, given that 'it is by now biologically and genetically certain that as soon as the fusion of the gametes has taken place there begins the existence of a new human subject who, subject to the control of the programme written into his or her own genome, automatically and teleologically carries out, in a rigorous functional unity, his or her own plan of development in a co-ordinated fashion: SGRECCIA E., Identità e statuto dell'embrione umano, in Per una dichiarazione dei diritti del nascituro, Milan, 1996: 24-25.

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THE ANTHROPOLOGICAL ISSUE: DOES ABSOLUTE TRUTH ABOUT MAN EXIST?

The anthropological issue, mentioned in the title of my paper, has clearly its ethical relevance. As I see it, it concerns the question as to whether we are able to recognise such a truth relating to each Man, the cognition and recognition of which entails profound ethical implications; and if they do so exist, what are they? This question will be referred to in the context of the challenges posed by contemporary culture. In my view, it is especially worthwhile looking upon these current trends of thought which either challenge the existence of such truths about the human being or drastically reduce their catalogue. From among many possible positions, I suggest concentrating on evolutionism and liberalism, referred to not only as strictly philosophical views, but rather as influential current trends of thought. Their critical presentation will make it possible, at least in one instance, to point to the possibility of cognitively reaching such a truth about Man which constitutes the basis of materially defined, absolute (that is ever-binding) moral obligations.

EVOLUTIONISM

I do not refer to evolutionism as to a synonym for evolutionary ethics, the advocates of which, after H. Spencer, try to derive the essence and the binding force of moral norms from the ways of nature and instinctive animal behaviour. Evolutionary ethics is rather a consequence of evolutionism, which I regard as a view inspired by the theory of evolution or, to a greater extent, by advances in modern astrophysics, according to which the Universe is basically a homogenous, interrelated unity, dynamically evolving in accordance with its own specific rules from the moment of the 'Big Bang' of about 15 billion years ago up to the present day. An evolutionist, in this sense, claims that both the beginning of life on the Earth and the appearance of a conscious being are elements of the evolution process of the world, and there is nothing that can indicate that either life and consciousness exist only on our planet or, which seems to be of greater importance for us, that the process of evolution has stopped with Man. Of course, it is hard for us to imagine other, more complex and sophisticated beings (in the same way that it is hard for an animal to 'imagine' Man as a superior being) but it does not automatically mean that the process of evolution must stop with Man. Looking upon Man as the pinnacle of all beings is a mistake, characteristic of anthropocentrism, which is as much unjustified as the formerly fashionable geocentrism. 'One thing is certain - as Hoimar von Ditruth, one of the most well-known propagators and advocates of the theory of evolution writes - that if whoever (at all) can be the end and the aim of evolution, it is surely not us. The Universe would have survived without us and it will surely have to do so without us at some point in the future; moreover, because of that, the history of the Universe will not lose its meaning, if there exists such at all'(1).

Evolutionism thus understood, has at least three important consequences, from an ethical point of view. Firstly, it questions the constancy of human nature, as well as, in fact, the constancy of other forms of life, since all of them constitute transitional stages of the Universe as a whole. Consequently, it questions, of course, any moral norms which find their justification in the stable and materially defined human nature.

Secondly, evolutionism levels an important difference between human beings and the rest of the Universe, and in so doing it questions the legitimacy of attributing a special dignity to Man, since Man is a part of the sum total of the evolution of the Universe. Furthermore, since each human being is linked in various ways with others and with the entire Universe, there are no reasons why one should treat any particular human being as 'the' one especially deserving of respect and the protection of his or her life. What is more, the vastness of the Universe, the tendency - mentioned above - towards the

building of ever more complex structures (already observable at the level of inanimate matter), and the relatively young age of the solar system (almost 5 billion years) lead many supporters of the theory of evolution to presume that the Universe is 'populated' by similar or even more advanced conscious beings. Owing to technical reasons and the 'local character' of evolution tracks, being adjusted to the conditions of a given place in the Universe, an encounter between terrestrial and extraterrestrial civilisations may never occur, yet it does not mean that the latter does not exist. The aforementioned Ditfurth warns against rashly identifying intelligence with the brain (yet another example of anthropocentrism). According to Ditfurth, many amazing natural wonders rather lead to the presumption that already on our globe and even more so in other expanses of the Universe, there exists some kind of intelligence, unlike the brain, which is rather located in some sort of 'species-specific structure'(2). In fact, in the entire Universe we are only the 'children of the Universe', cumulating just a small part of its richness, only the part of its intelligence.

Finally, the third consequence of evolutionism, more closely linked with evolutionary ethics, is naturalistic relativism which finds expression in the belief that moral norms are, as a matter of fact, the varieties of the rules by which the lower-class organisms - animals and plants - are governed, as well as the entire Universe. It is regarded as relativism in that it makes the content and the binding force of all norms dependent upon variable elements determining a given stage of the development of human 'nature' and the community. It is the so-called naturalistic relativism in the way that it reduces the sense of moral norms to the rules which govern the world of animals (such an approach, referred to as naturalistic fall, will be a matter for our reflections further on). Such a way of interpreting moral norms impels one to presume that although the changes in the structures of social life and attitudes may have a chequered course, the evolution of mankind basically follows the way of progress, because mankind, at its own level, aims to achieve its 'biological advancement', which also encompasses the improvement of the forms of social life. Different communities may follow different routes, so independent of one another that they may form different inter-incompatible and incommunicable sets of values. It is worthwhile pointing out that although the origin of postmodernism does not have much in common with the theory of evolution, the criticism of rationality and the treatment of various sets of values as being equal to one another, both characteristic of postmodernism, also gain some ground in evolutionism.

Of course, such a worldview, inspired by the theory of evolution, significantly impinges not only upon science but also upon theological reflection. According to some theologians one should consequently move away from a classical world view: static, emphasising the significance of the invariable substance, and at the same time put the variable elements, such as, time and history in the shade. Instead, one needs to adopt a historical worldview, in which the Universe and the human being are treated as dynamic reality and where history is of fundamental significance. These two worldviews entail different methodologies: the classical one opts for abstraction, apriorism and deduction, whereas the historical one is characterised by concreteness, aposteriorism and empirical induction. As far as ethics is concerned, this means that one needs to stop trying to comprehend invariable moral norms in favour of forming approximate norms, whose content and binding force can be determined only through dialogue with the sciences; one also needs to be in favour of acquainting oneself with many changeable elements of social life(3).

Thus, evolutionism seems to imply that absolute and morally significant truths about Man do not exist. On the other hand, however, the same authors who so vigorously oppose any forms of unjustified anthropocentrism, often admit that the appearance of Man is a turning point in the evolution. So far, the whole world has been utterly subjected to the theory of evolution, governed by the laws of nature somehow 'from the outside'. Man, in turn, is able to comprehend the world and the laws governing it; he is also able to distance himself as a subject both from himself and from the external world. His intelligence allows him to influence both the world's fate and his own, and what is more, allows him to do it of his own free will. We can observe it nowadays on a global scale: it is in Man's power either to

preserve the world's ecological balance or disturb it to the catastrophic detriment of himself and other living beings. Such a possibility of the free steering of the earth's fate is not and cannot be possessed by living beings deprived of rational freedom. Astrophysicists, contemplating the future fate of mankind and the world, tread the line of science and fantasy in trying to find answers as to whether and how mankind can prolong the existence of his own species or even influence the course of the stars(4). H. von Ditfurth, quoted above, underlines that our task is to ensure that the development of the world does not stop in our time and through our fault, while the future of Man and the world rests upon joining the one, powerful, galactic super-organism, equipped with consciousness. For Ditfurth, this all-embracing consciousness determines the pinnacle of the development of the Universe - the pinnacle which Man, in spite of a relatively young age of the earth and the entire Galaxy, has already apparently attained(5). However, a tempting hypothesis which assumes the existence of intelligence in other expanses of the Universe encounters quite considerable problems at a closer look. S.W. Hawking, incidentally regarded as an atheist, concurs with the so-called weak anthropic rule, according to which the appearance of human intelligence requires the fulfilment of some specific conditions, the creation of which has taken the Universe almost 15 billion years (6).

The unquestionable credit of the evolutionist trend lies in paying special attention to the ties between Man and the environment, which are now seen to be somewhat closer than was earlier thought. These ties run through the biological dimension of the human being; hence, evolutionism helps to show the specific character of this sphere more fully (amazingly genetically similar to the entire world of living beings, as was shown by the latest research in this field). Most of all, however, this trend has made us sensitive to the fact that Man belongs to the world, which is subject to the profound process of evolution. Thus, it is necessary to appreciate the significance of the history of the world and Man in it, and beware of the temptation to rashly treat as stable that which seems to be transitional on a cosmic scale. Yet, on the other hand, one should beware of too primitive a comprehension of evolution, quite dogmatically levelling Man with the rest of the Universe. Reflection upon the significance of intelligence, with which Man is equipped, leads many supporters of the theory of evolution to admit that Man does play a significant role in the course of evolution. Moreover, whatever the further history of the species 'homo sapiens' is, it will never lose its specificity and superiority over the world. B. Pascal had no knowledge of the evolution of the Universe, yet he grasped, remarkably well, the difference between the Universe and Man and the features by which Man distinguishes himself: 'The world encompasses me with its space and absorbs me like a point. I encompass it with thought'.(7) Physicists and biologists are not competent to speak about the value (dignity) of the human being, but even so their theories are not free from axiological presuppositions. A superficial fascination for the theory of evolution makes some of its propagators level the specificity of the human being and treat Man as just a cog in the dynamically evolving Universe. However, by burdening mankind with responsibility for his own future and the future of the world, as well as encouraging him to act in a way which would ensure this future, these scientists give way to the basic axiological intuition, which suggests that the world itself is precious, deserving of existence, and even more so is Man worthy of care in this world. In this sense, they accord, though indirectly, a special position to Man, resulting from his inalienable rationality.

LIBERALISM

Such a position is certainly accorded to Man by liberalism, which I conceive not as an economic doctrine, but as a view which regards freedom as the main attribute of Man's greatness and as a condition and the only way of achieving complete happiness. Such a description of liberalism does not contain all its elements; however it is impossible to encapsulate it in a succinct definition because we wish to use the term liberalism to encompass a rich, multicoloured trend of thought, present in many philosophical, theological, political and economic theories. Among the leading representatives of

liberalism, the existentialists are undoubtedly worth mentioning, especially the followers of J.P. Sartre, whose comprehension and protection of freedom does not allow the acceptance of either invariable human nature or moral norms. Let us recall that existentialism owes its name to a thesis, according to which in Man, unlike in the surrounding world of beings deprived of freedom, existence precedes essence. Insofar as the life (existence) of other beings is determined by their nature (essence). Man should just start to define his nature: to create his own identity by himself (existence), to 'define' his essence. Succumbing to any norms equals bad faith for Sartre: it means the betrayal of oneself and one's freedom, which only then deserves to be called freedom when it is absolutely unrestricted.(8)
The fascination for freedom regarded as a strictly moral dimension which distinguishes Man, whereby Man fulfils himself in his human nature, finds its expression not only in existentialist philosophy. One may rather claim that philosophy attempts to grasp and subject to reflection this experience and 'taste of freedom', which became part of mankind, notably in the Euro-Atlantic nations, from the French Revolution, the inception of the United States of America, through the Revolution of 1848 (The Springtide of Nations), up to the experiences of the two World Wars and decolonisation, and finally gave rise to the promotion of freedom in philosophy and literature; this also permitted democracy (with a censorship-free press) and the free market economy to gain secure footholds.
It is not surprising that liberal tendencies were also reflected in theology, which already for centuries had guarded the truth about Man's freedom and indicated its significance in the nature of the human being from a theological perspective. Among the theologians who lay special emphasis on freedom, understood as that which differentiates the personal dimension of Man's existence, is certainly K. Rahner. According to him, 'on the basis of the spiritual-material duality of Man, one needs to differentiate between Man as an intelligible person and Man as 'nature'. A person is understood as Man, inasmuch as he is able freely to control himself (as nature) and indeed he does so. Nature is understood as all that which conditions the possibility of Man's free actions (as a person), and at the same time constitutes a norm restricting the autonomic independence of freedom'(9). In the same spirit, Rahner goes on to underline that the moral value of an action needs to be assessed, not only by the objective criterion of its rightness, but more so by whether and to what extent this moral value expresses and strengthens the freedom of a subject (10).
What is more, in the spirit of liberalism, some theologians tend to diminish the importance of typical acts of choice, aimed at achieving a certain goal - and therefore 'thematic'- in favour of the so-called underlying 'fundamental option', which differs from them in its depth and in unique 'athematic' character, which renders its moral evaluation difficult(11). Moreover, these theologians will tend to deny the existence of the so-called absolute (that is always valid) operative (that is defined by their content) moral norms(12). Those norms refer to a stable and morally binding human nature which appears less stable than used to be thought(13). Certainly, the unique character and dynamism of human "nature" in the way K. Rahner understands it, should not be ignored, but this nature does not establish any "strict" rules without exceptions. 'There is a need,' as J. Fuchs writes, 'to abandon the attempt to precisely distinguish between what is variable and what is not. Even the components of the essence of humanity, and therefore unchangeable, belonging to human nature and its stable structures, basically undergo changes. Variability is part of the invariability of human nature. The only unchangeable (tautology!) fact is that Man is Man'(14). Instead of looking for a stable human nature, there should always be admitted an ever newer way of understanding and realising it; an ever newer sense of social bonds, sexuality, etc. Their meaning depends on how Man would understand those elements, what sense he would assign to them within an individual 'life project', 'self-understanding', which 'enters his nature in a determining way'(15). Therefore, reason itself is equipped with creative prerogatives and as 'schöpferische Vernuft', does not passively recognize an objective moral norm, but establishes it in the spirit of free, self-determination(16).
In a way similar to that in which evolutionism contributed to the deeper understanding of the biological dimension of Man and his dynamics, liberalism contributed to the perception of freedom and its

importance to personal self-fulfilment. The analysis of freedom, showing its deep, personal dimension, helps in the perception of the dignity of the human being, which distinguishes him from other beings exactly due to freedom itself. However, it should be remembered that it is a rational freedom, which liberalists do not undermine straightforwardly, but do not always notice its consequences.
Rational freedom is the freedom guided by a truth discovered, and Man as a rational being should respect, in his acts of free will, this dependence of freedom upon truth. It is even Sartre who seems to emphasize the moral importance of this rule, although his proposed way of understanding of classical philosophical terms slightly blurs the comprehension of this subject matter. He derives the leading postulate - that Man should form his identity (essence) by an act of free choice - from freedom, which specifies him and distinguishes him from other beings. In the name of respecting this truth, he condemned the attitude of compliance with any imposed norms as a manifestation of bad faith (another issue is whether his understanding of freedom was accurate). The objection of bad faith raised against other beings (which are not free) would make no sense. However, that which specifies the individual being in Thomas philosophy is referred to as its essence (nature). In this way one may say that Sartre's ethics, despite its iconoclastic rhetoric, is part of the classical tradition calling for respect for the rule: agere sequitur esse. Similarly I. Kant, who in law-making will, identified with practical reason, saw the only source of moral law,(17) derives the second formula of the categorical imperative(18) from a belief that 'rational nature exists as an aim in itself '(19). Again, the basic moral norm must relate to what the human being is as the subject and object (addressee) of an action, it is the truth about him and his deepest nature (in the traditional understanding of this term).
Kant was a pioneer of the transcendalistic trend in philosophy, the influence of which is noticeable in the modern theology. An important element of this philosophy is the blurring of the difference between the activity of reason and that of will, especially a tendency towards according creative prerogatives to reason, whereas reason is characterized by a receptive transcendence, yet not by a spontaneous one, as in an act of the will(20). Cognition is the only way of one's transcendence providing that in an act intentionally aimed at an object, the subject "accepts" this object as it is in reality. In this sense, the subject grasps truth in the act of intentional cognition. Limitations resulting from the aspectability and imperfection of our perception do not deny the basic receptivity of cognition. Discarding it means, in fact, closing the subject within its inner "self" and renders its real cognitive transcendence impossible. With the positive valuation of freedom in life and Man's self-fulfilment (also in the sphere of cognition), this difference must not be ignored. And if so - if the cognition thus understood, constitutes the basis for formulating moral norms - these norms, notably their importance and scope, cannot be made dependent only upon 'athematic', cognitively elusive and thus ambiguous, fundamental option.

ARE THERE MORALLY BINDING TRUTHS ABOUT MAN WHICH ARE BEYOND DOUBT?

In this way we return to the title question: are there any truths about Man which are certainly beyond doubt and which can be rendered into material and ever-binding (absolute) moral norms; and if there are such, what are they? The argument so far seems to point towards an affirmative answer. Even views or trends of thought like naturalism and liberalism, which clearly do not favour the recognition of such truths, seem to confirm - per opposita - Man's distinguishing rationality and his dignity based upon this rationality. It is to be respected in the way that every human being should be treated as the aim of all actions, and never as mere means of achieving subject's own aims (21). The basis of a personalistic norm, thus understood, lies in the rationality of the human being. It was referred to by aforementioned I. Kant, and earlier on its nature was more specifically expressed by St. Thomas Aquinas, for whom persona est perfectissimum in tota natura, scilicet in rationali creatura(22), for rationality determines that persons habent dominium sui actus(23) are the causative reason for their own intentional acts, eventually leading to God himself.

It must be emphasized that Man is capable of experiencing this human dignity (in himself and others) as morally binding, and this unique cognition is the source of the whole set of moral duties. Theses duties should not be regarded as only slightly modified animal instincts (as it is favoured by the advocates of evolutionistic ethics) or as basic particularization - characteristic of any human person - strive for happiness (as it is claimed by eudemonists)(24). Both cases bear the so-called naturalistic fallacy, which consists in unjustified drawing normative conclusions from descriptive premises, which D. Hume warned against(25). The consequence of the naturalistic fallacy is an assumption that judgement and moral norms are descriptions of human goals and behaviour hidden behind a normative façade, and ethics is reduced to the psycho-sociology of morality(26). The uniqueness of moral cognition is another difficult issue; a simplified solution to this problem, however, leads to the abandonment of the rational and normative character of ethics itself.

There are many detailed conclusions following from the basic, personalistic norm. Above all, however, there is an obligation to respect human life. Man is an imperfect and fragile being; therefore, human life is not a value 'equal to' other values, such as education, wealth, or power, but is a fundamental value, whose preservation and protection is a condition of the realisation of any other values, including also these ones which are attributed to the human person in particular. For Man 'to live' simply means 'to exist'. Therefore, St. Thomas warned against treating life as a category of action (operatio), because vivere nihil aliud est, quam esse in tali natura, hence the term 'life' is only an abstract rendering of this esse of living beings, like 'a run' is an abstract rendering of the action of running(27).

Therefore, if the personalistic norm is not to remain an empty term, one needs to admit that the obligation to respect human life is its first, materially defined and absolutely valid conclusion. Consequently, it is impossible to justify acts of the direct killing of a human being, especially an innocent one. Such an act of killing deprives the victim, along with his or her life of (along with his or her life) any other values and possibilities of self-fulfilment. Therefore, we should not be surprised at exceptionally firm, almost dogmatic, moral condemnation of any acts of abortion and euthanasia laid down in the Encyclical letter Evangelium vitae (28). Consequently, the Pope also clearly encourages renouncing the death penalty(29).

Thus, here is an example of truth about oneself that Man can learn ('Man is a rational being deserving of disinterested treatment') and 'render into' a moral norm ('You shall never kill an innocent man'). It is not the only one ethical-anthropological conclusion of the cognition of Man (his nature). If the uniqueness and dignity of the human being is determined by his spirituality, any instances of the enslavement of the mind should be judged as morally wrong, that is, such actions which render it difficult or impossible to perform rational and free acts. The consideration of these issues as well as of the significance of Man's sexuality would start a new discussion about ethical-anthropological issues. To answer the title question ,however, it suffices to point to at least one such truth, which Man is able to learn and show its materially determined ethical consequences. Therefore, we have concentrated only on the truth about Man's rationality and dignity as well as on the commandment: 'Thou shall not kill'. This single example is enough to manifest basic stability of human nature, its normative 'capacity' and a possibility of deriving from it clearly materially defined and ever-binding normative consequences. Ethics cannot, of course, be limited to such elementary truths and norms; however, it cannot ignore them either. In particular, it cannot ignore its metaphysical and epistemological significance.

NOTES

(1) DITHURTH H. von , Wir sind nicht nur von dieser Welt. Naturwissenschaft, Religion und die Zukunft des Menschen, Hamburg: Hoffmann und Campe Verlag, 1981: "Die Entdeckung der Evolution schliesst die Einsicht mit absoluter Sicherheit nicht das Ende (oder gar das Ziel) der Entwicklung sein kann", p. 20.

Although there is no room to elaborate on the theory of evolution, it is worthwhile mentioning some of its elements, notably those which concern evolution in its basic, strict sense - the evolution of living beings - for they will reflect the means for the understanding of Man and morality also from the theological perspective. Accordingly, all forms of life are characterised by two-dimensional expansion: extensive (manifested by a tendency of forms of life towards expanding their own habitat and filling the entire accessible surroundings) and intensive (evidenced by a tendency towards the updating - through adaptation to the surroundings and a specific 'response' to their challenges - of all the internal development abilities, characteristic of a given form of life). Both kinds of expansion take place in the process of the changes of the generations: the subsequent generations of a given species occupy ever greater territory and evolve internally, adapting ever more effectively to the surroundings. These tendencies are the sign of a more basic feature, characteristic of life and its dynamic in all varieties, namely the natural need for biological advancement. This natural need constitutes the condition for a given species to survive (in the face of the existing threat from the external world, also involving competition between other living beings), thus generating the development of a given species (or in a broader perspective: inter-species development). I have mentioned these elements of the theory of evolution, because although they imply that it is difficult to draw a parallel between evolution and progress, the mechanisms of evolution lead one to consider the new to be better. See: BRÖKER W., Aspekte der Evolution, "Concilium. Internationale Zeitschrift für Theologie" 6-7 (1967) p. 433-441.

(2) See: DITHURTH H. von, Im Anfang war der Wasserstoff, Hamburg: Hoffmann und Campe Verlag, 1972.

ID., Kinder des Weltalls, Hamburg: Hoffmann und Campe Verlag, 1970.

(3) See: among others, GRÜNDEL J., Wandelbares und Unwandelbares in der Moraltheologie. Erwägungen zur Moraltheologie an Hand des Axioms 'agere sequitur esse', Düsseldorf 1967; CURRAN C., Themes in Fundamental Moral Theology, Notre Dame 1977. I elaborate on that in greater length in my dissertation: Natur ? Vernnuft ? Freiheit. Philosophische Analyse der Konzeption "Schöpferische Vernunft" in der zeitgenössischen Moraltheologie, Frankfurt am Main-Bern-New York-Paris: Peter Verlag 1992, p.50-60.

(4) See: DAVIES P., The Last Three Minutes. Conjunctures about the Ultimate Fate of the Universe, London 1994.

(5) See: DITFURTH H., Im Anfang?

(6) See: HAWKING S.W., A Brief History of Time. From the Big Bang to Black Holes, London, 1988.

(7) PASCAL B., Pensées, Paris: Latour-Maurbourg, éditées par Francis Kaplan, 1982, (302), p.212; See: (301), p.212.

(8) For a short outline of Sartre's concept of freedom, see e.g.: GAŁKOWSKI J., Z historii pojęcia wolno(□ci (The History of the Concept of Freedom: Duns Szkot, Kant, Sartre), "Roczniki Filozoficzne KUL" v. 19 (1971), no. 2, p. 59-101.

(9) RAHNER K., Die Gliedschaft in der Kirche nach der Lehre der Encyklika Pius XII 'Mystici Corporis', K. Rahner Schriften zur Theologie, Bd II, Einsiedeln 1955, p.86 (transl. by T.K.). See also: entries: 'Natur' (p. 294), 'Natürliche Sittengesetz' (p.295-296), 'Person' (p.325-328) in: RAHNER K., VORGRIMLER H., Kleines Theolgisches Wörterbuch, Freiburg im Breisgau: Verlag Herder 1980.

(10) See: RAHNER K., Würde und Freiheit des Menschen, in: ID. Schriften zur Theologie, Bd. II, Einsiedeln 1958, p.261-267.

(11) For characteristics of the "fundamental option" see: SZOSTEK A. Szostek: Natur - Vernnuft - Freihei?, p. 83-109. It is worth mentioning that the concept of fundamental option was formulated also by D. von Hildebrand and J. Maritain, but they did not assign the transcendentalist interpretation to it, as K. Rahner and J. Fuchs do.
(12) Ibid., p.164-197.
(13) Here theologians eagerly cite the achievements of the sciences and the evolutionary character of the whole world, including the human being.
(14) FUCHS J., Absolutheitscharakter sittlicher Handlungsnormen, in: Für eine menschliche Moral. Grundfragen der theologischen Ethik, Bd. I., Freiburg i.Ue/ Freiburg i.Br. 1988, p. 219-257 (transl. by T.K.). See: RAHNER K., VORGRIMLER H., entry: 'Natürliche Sittengesetz' in: Kleines Theolgisches?, p. 295-296.
(15) PIANA G., O hermeneutykę decyzji etycznej (On the Hermeneutics of the Ethical Decision), "Communio. Międzynarodowy Przegląd Teologiczny" 1(1981) no. 3, p. 24.
16Deep anxiety about liberal trends in contemporary moral theology was expressed by the pope JOHN PAUL II, Encyclical Veritatis splendor, chap. II, p. 28-83.
(17) KANT I., Foundations of the Methaphysics of Morals and What is Enlightenment? , Indianapolis-New York: The Bobbs-Merrill Company, Inc., 1959, p. 36, 71.
(18) "Act so that you treat the humanity, whether in your own person or in that of another, always as and end and never as a means only", p. 47.
(19) Ibid.
(20) SEIFERT J., Erkenntnis objektiver Wahrheit. Die Transzendenz des Menschen in der Erkenntnis, Salzburg- München 19762, p. 83-88.
(21) WOJTYŁA K. (POPE JOHN PAUL II), Love and Responsibility, London 1981, p. 41.
(22) ST. THOMAS AQUINAS, S. th. I q. 29, a. 3.
(23) Ibid. I q. 29, a. 1.
(24) A detailed, critical characteristics of eudaemonism is presented in: STYCZEŃ T., Etyka niezależna? (Independent Ethics ?), Lublin 1980, p. 15-32.
(25) HUME D., A Treatise on Human Nature,vol.2, London: Dent, 1911
(26) STYCZEŃ T., The Problem of the Perspectives of Ethics as Empirically Justified and Always Relevant Theory of Morality. A Metaethical Study, Lublin 1972, p. 63-78.
(27) ST. THOMAS AQUINAS, S. th. I q. 18, a. 2.
(28) JOHN PAUL II, Encyclical Evangelium vitae, no. 58-67
(29) Ibid., no. 56.

WOLFGANG WALDSTEIN

THE CAPACITY OF THE HUMAN MIND TO KNOW NATURAL LAW

It is a strange fact that since antiquity philosophical theories existed which ended with the denial of the capacity of the human mind to know anything as true. This radical scepticism however ignored the fact that this very affirmation is destroyed by itself. Because if the human mind is unable to know anything as true, also the knowledge of this supposed fact would be impossible.(1) In any case it is completely arbitrary to restrict the possibilities of human knowledge to certain claims, as scepticism or relativism, which are contradictory in themselves. At the same time the human capacity of knowing truth was affirmed by the greatest philosophers from Socrates to Plato, Aristotle and the Stoics in such a way that one also today is able to grasp the truth of the relevant findings. Aristotle not only says that "philosophy is rightly called a knowledge of Truth",(2) but he also shows with compelling logic that the sceptical and relativistic ideas are self-contradictory and untenable.(3) They have many times since been refuted convincingly. For antiquity I may only mention Cicero.(4)

Innumerable philosophers have taken up true findings which are contained in true philosophy, as for instance Cicero and the Roman jurist Ulpian call it.(5) It is naturally impossible even to only mention them all. The most famous are St. Augustine and St. Thomas Aquinas. Pope John Paul II mentions in his Encyclical Fides et ratio 74 in addition to these names many others, including John Henry Newman, Antonio Rosmini and Edith Stein. I would like to add to these names Dietrich von Hildebrand, whose philosophy is very close to the Lublin School promoted by Karol Wojtyla. Pope John Paul II himself refutes the errors of scepticism, relativism, positivism, scientism and others especially in his Encyclicals Evangelium vitae(6) and Fides et ratio.(7) In spite of the fact that these theories have been proven to be untenable, they are also today widespread and in fact dominant opinions. They form part of the main obstacles for the knowledge of natural law. Therefore it seems to me necessary, first to discuss some of the main arguments against natural law in order to show that they are erroneous and therefore not at all valid arguments.

Second I will, as far as possible within the time limit, try to show how natural law in fact has been known since antiquity. And it was not only known in a theoretical way as a product or projection of human reason, but it was recognized as an existing and knowable reality, which everyone is obliged to know in order to be able to be just.(8) Through the work of Roman jurisprudence, it formed the legal order that governed all of Europe until the so called codifications of natural law in the 18th and 19th centuries,(9) and at present is grovingly acknowledged by the courts of the European Union as the common basis of European law. In Austria this codification from 1811 is still valid, although many parts of it were changed out of various and partly political reasons. But two paragraphs which refer expressly to natural law are still in force. I will come back to one of them later.

Before dealing with the details, it seems to me necessary to mention the fact that according to a widespread opinion Immanuel Kant is recognized as the father of the modern ideal of science which has substituted the one before Kant. This is, for instance, expressed by Wolfgang Fikentscher with the words: "One could justly divide the entire development of legal science (methodology) in a pre-kantian period and a post-kantian".(10) Similar views are also widely held in present theological thinking. I was told that there is no way to go back behind Kant. In this view everything that was known since antiquity before Kant, would have to be considered as antiquated ideas which have long since been superseded by modern science.

It is clear that everything which I will have to say in my paper would fall under these verdicts, if they were true. Therefore I feel it to be my duty to quote a passage from the Encyclical Fides et ratio which is decisive for my own position. The most important part for my paper of the passage in Fides et ratio 72 reads as follows: "In India particularly, it is the duty of Christians now to draw from this rich heritage the elements compatible with their faith, in order to enrich Christian thought. In this work of

discernment,(11) which finds its inspiration in the Council's Declaration Nostra Aetate, certain criteria have to be kept in mind. The first of these is the universality of the human spirit, whose basic needs are the same in the most disparate cultures. The second, which derives from the first, is this: in engaging great cultures for the first time, the Church cannot abandon what she has gained from her inculturation in the world of Greco-Latin thought. To reject this heritage would be to deny the providential plan of God who guides his Church down the paths of time and history. This criterion is valid for the Church of every age, even for the Church of the future". I think that these statements of the Encyclical not only allow me, but also oblige me, to rely on them. Besides this they are not only true for the Church, but also for any honest scientific endeavor, because every truth that has been discovered at any time remains true for ever. And, as Aristotle formulates in his Nicomachean Ethics, "For if a proposition be true, all the facts harmonize with it, but if it is false, it is soon found discordant with them".(12) Therefore the "work of discernment" between truth and error is doubtlessly the main challenge also of our cultural context.

John Finnis has shown in his paper, how untenable, for instance, the theses of "Lonergan's post-Vatican II work" are. In spite of this fact it "has had its wide and damaging impact on Catholic theologians not so much by his underdeveloped and inoperable ideas on ethics, but by his unhistorical thesis that there is a profound distinction between 'historical consciousness' and a classicist world view".(13)

SOME OF THE MAIN ARGUMENTS AGAINST NATURAL LAW

One of the most influential forms of scepticism and agnosticism was developed among others by Christian Thomasius (1655 - 1728). He started as one of the natural law specialists of the enlightenment, but he wanted to detach it from any theological dependence and to found it on autonomous human reason. As Stefan Buchholz has shown in a masterly analysis, the autonomized human reason ends up in its self-destruction. The fundamental premise: "voluntas semper movet intellectum" turns in its consequence the "animal rationale" into a "servus passionum suarum".(14) The human intellect and the liberty of will are denied. As a consequence of this assumption, human knowledge becomes a product of constraint and by that very fact cancels itself. According to Christian Thomasius, passions stamp the will, and the will imposes its prejudices on the reason ("voluntas praeiudicium facit intellectui").(15) In this way individual knowledge is absolutely excluded. From this it follows that all men in fact are fools.(16) They can only be guided by positive law, which - at that time - the "princeps absolutus" enacts ("exinde necessitas iuris positivi"). The subject, who as fool is held to be "under age", has to accept the command of the law without having criteria to examine the question of the rightness and justness of a law. By his submission he serves the unifying goal of the state.(17) At least since the experiences with tyrannies like Nazi-Germany and communistic governments the submission of the subject to serve the unifying goal of the state has shown its utopian character.

As far as the principle "voluntas praeiudicium facit intellectui" is concerned, there can be no doubt that this phenomenon really exists. But there can equally be no doubt that the consequences, which Thomasius draws from this fact, are not the whole truth. The complete denial of human reason and free will is, in view of all human knowledge since antiquity, simply absurd. It is the consequence of a distorted concept of human nature. Thomasius only forgets to explain, why and how he himself should be exempt from being a fool. He, on the contrary, feels himself to be entitled to identify all those as fools who contradict him.(18)

A seemingly more scientific argument is founded on the supposed dualism of "is" and "ought" with the consequence that from an "is" no "ought" can follow. According to this argument every attempt to derive natural law from nature as an "is" was labelled as "naturalistic fallacy" or, as Prof. Rhonheimer puts it in his paper, as "dualistic fallacy".(19) It would be true that natural law would be founded on

such a fallacy, if in fact it would have been derived from an "is" in the sense of a factual, non normative nature. But it can be shown that exactly this is not the case, at least not in the notion of natural law since Aristotle, Cicero, and the Roman jurists. With the positivistic concept of nature things changed in the theory, but not in the reality.

The argument concerning the "naturalistic fallacy", which originates from David Hume, was developed in the field of legal theory especially by Hans Kelsen in his pure theory of law. In addition the German logician of Law, Ulrich Klug, attempted to confirm the position of Kelsen by means of formal logic. I have analysed these arguments many times in detail.(20) Klug thinks that the words formal logic are sufficient to prove that one uses a scientific method which secures irrefutable definitive results. To be brief: The only result which the arguments of Klug really were able to achieve is the logical matter of course that from a premise concerning an is, which does not contain a normative element, a conclusion, which contains a normative element, cannot be drawn. What he however neither proved with this argument nor would be able to prove is the tacitly included presupposition, that norms do not exist in reality as an "is" from which an "ought"could be derived. He simply presupposes that the positivistic concept of reality is the only possible one. But if that were true, no law whatsoever could exist, even no positive law. If it would be true that no norm can belong to the realm of "is", the idea of "having" rights of any kind in any meaningful sense would have to be abandoned.

Now Kelsen himself affirms that norms exist. Their form of existence is their being in force or having validity.(21) In the first edition of his "Reine Rechtslehre" he had even said: "One cannot deny that law as a norm is a spiritual and not a natural (material) reality".(22) In 1965 he still revised his original view in this respect remarkably with his clarification of the relation between law and logic. In this important contribution he made the following statements: "Truth and untruth are attributes of a statement, being in force on the contrary is not an attribute of a norm, but its existence, its specific ideal existence. That a norm is in force means that it is at hand or existent".(23) If a norm exists, it undoubtedly is an "is" with normative content. And from an "is" with a normative content undoubtedly an "ought" can follow.

This discovery completely destroyed the arguments of Ulrich Klug. And Kelsen himself could no longer rely on the argument against natural law, which he earlier had thought to be absolutely irrefutable, namely, that from an "is" no "ought" can follow. If this "is" is a norm, then from this "is" an "ought" can undoubtedly follow. In order to uphold his denial of natural law he had to have recourse to some other argument. According to Kelsen's theory positive norms are created by an act of will. He then admits that norms need not necessarily be acts of a human will, but there cannot exist norms which are not created by an act of will. If norms should exist by nature, they would have to be the meaning of a will which is immanent to nature. And then he raises the decisive question, which is grounded on the positivistic concept of nature: "From where can such a will come into a nature which, from the point of view of empirical-rational knowledge, is an aggregate of factual beings linked to one another by cause and effect?"(24) Kelsens answer is that this will could only be the will of a just deity, "whose will is not only transcendent to the nature created by him, but also immanent". He therefore thinks that natural law can only be accepted on the presupposition of belief in such deity. Because he himself does not believe he is able to accept this presupposition, he also cannot accept the consequence, namely a natural law. He in addition thinks that a rational discussion about the question of the truth of this belief is hopeless.(25)

It is of course not possible to discuss all the details of Kelsen's arguments here, which follow from his positivistic presuppositions. I can only mention here the clear knowledge which already Aristotle was able to achieve. He says that on such a basis "the pursuit of truth will be 'chasing birds in the air'". And he then continues: "But the reason why these men hold this view is that although they studied truth about reality, they supposed that reality is confined to sensible things, ... Thus their statements, though plausible, are not true".(26) He also shows that every contingent being leads by logical necessity to a non-contingent first cause, without which no knowledge would be possible.(27)

On this point I have to add to my original text that I am very glad to be able to express my full agreement with the statements of Prof. Rhonheimer concerning the true character of natural law as "the eternal law, implanted in beings endowed with reason".(28) Exactly this was also the understanding of natural law in Cicero and the Roman jurists. To show that, I have to quote again a passage fom Cicero, which I had quoted in full already four years ago,(29) and in addition one from the Roman jurists.
The passage from Ciceros De re publica 3, 33 reads as follows: "True law is right reason (or order(30)) in agreement with nature; it is of universal application, unchanging and everlasting; ... It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God (the Latin text says here deus in the singular), over us all, for he is the author of this law, its promulgator and its enforcing judge. Whoever is disobedient (to him, cui, omitted in the translation) is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishment".(31)
The passage from the Institutes of Justinian 1, 2, 11, which according to recent research originates from the classical Roman jurisprudence, says simply: "The law of nature, which is observed uniformly by all peoples, is sanctioned by divine providence and lasts for ever, strong and unchangeable".(32)
From both texts it becomes clear that natural law is not understood to be something derived from a non normative factual nature, as Kelsen understands it, but in fact is seen to be introduced by God himself or by divine providence. That was the understanding in the entire Roman jurisprudence. Insofar Kelsen is right, that natural law can only be understood as the meaning of "the will of a just deity". But he is not right in the affirmation, that this could "only be accepted on the presupposition of belief in such deity".
Furthermore it also is not true that to argue rationally about the existence of God would be "hopeless", as Kelsen affirms. Since antiquity, there have been many rationally well founded answers concerning this question. I need not demonstrate that here in detail. I would only like to quote one passage from Cicero's work on Laws. After he had affirmed "that divine mind is the supreme Law" he goes on to say: "Indeed, what is more true than that no one ought to be so foolishly proud (adrogantem in the latin text means in fact: arrogant) as to think that, though reason and intellect exist in himself, they do not exist in the heavens and the universe, or that those things which can hardly be understood by the highest reasoning powers of the human intellect are guided by no reason at all?"(33) If this assertion is true as innumerable others about the existence of God over millennia, then the last argument of Kelsen against natural law, namely that it can "only be accepted on the presupposition of belief " in God, can, according to the law of non contradiction, not be true. God as well as natural law were and are knowable as realities independent of any presupposition of faith.(34) This is also rightly affirmed by Prof. Rhonheimer in his paper, where he says: "The idea is not that to know good human reason needs to be instructeted by God in the sense of revelation that is added to what human reason is able to know".(35)

HOW WAS NATURAL LAW IN FACT KNOWN SINCE ANTIQUITY?

In my contribution to the Sixth Assembly two years ago concerning Natural law and the defence of life in Evangelium Vitae I was already compelled to say something about "The Historical and Legal Reality of Natural Law".(36) Here I will not repeat what I said there. For demonstrating the capacity of the human mind to know natural law I will have to concentrate on the question how it in fact was known.

I have discussed this question more in detail in my book on Teoria generale del diritto.(37) Here I can only give a short summary of what I was able to show there.
In spite of being surrounded by sceptical and relativistic theories, all great philosophers agree on the fact that the human mind is capable of knowing truth. Aristotle shows right at the beginning of his Nicomachean Ethics that there are different methods of knowing different realities. He in addition warns that "The same exactness must not be expected in all departments of philosophy alike".(38) And he says a little later: "for it is the mark of an educated mind to expect that amount of exactness in each kind which the nature of the particular subject admits".(39) Concerning the different methods of knowing for those who are "students of truth" he mentions in the Nicomachean Ethics, as the English translation renders the text, the following: "And principles are studied - some by induction, others by perception, others by some form of habituation, and also others otherwise".(40) Here now begin the difficulties with the translation. For "studied" the greek text has Jewrou=ntai. Qewre/w means in greek among other things to look at a spiritual reality spiritually. Qew/rhma therefore is something that one has seen. For "perception" the greek text has ai)sJh/sei. Ai)/sJhsij is translated in the German translation by Dirlmeier correctly with "intuition", which in the original Latin meaning from intueor means an immediate spiritual seeing of a spiritual reality. This becomes still much clearer when Aristotle parallels ai)/sJhsij with nou=j. The English translation renders the relevant text in the following way: "Also Intelligence (nou=j) apprehends the ultimates in both aspects - since ultimates as well as primary definitions are grasped by Intelligence and not reached by reasoning:
in demonstrations Intelligence apprehends the immutable and primary definitions, in practical inferences it apprehends the ultimate and contingent fact, and the minor premise, since these are the first principles from which the end is inferred, as general rules are based on particular cases; hence we must have perception (ai)/sJhsij) of particulars, and this immediate perception is Intelligence" (nou=j).(41) In the Metaphysics he shows that for instance the law of non contradiction can only be grasped by immediate perception or Intelligence. And he then continues saying: "Some, indeed, demand to have the law proved, but this is because they lack education; for it shows lack of education not to know of what we should require proof, and of what not".(42) This statement is extremely important because nowadays it is often argued that only what can be proven by means of logic can be accepted as scientifically known.(43) Therefore, concerning the general capacity of knowing, I have to mention as the last point that Aristotle also has shown that the laws of logic themselves cannot be proven by logical deduction - how should they before one knows them! - , but can be grasped only by Intelligence (nou=j).(44)
On this background we now have to examine how natural law has in fact been known since antiquity. From innumerable sources it could be shown that natural law has from the earliest times, as far as we have written sources, been obviously "evident to reason", as § 16 of the Austrian Civil Code (ABGB) still affirms. This fact was especially important for the development of ancient Roman Law and for the subsequent development of the European legal culture up to our own times. Roman jurisprudence did not theorize about natural law, but the jurists applied it to the solution of practical legal cases. Therefore one can see from the sources, by which method they achieved knowledge of this law.
One of the most outstanding scholars of ancient Roman law, Max Kaser, had dedicated an inquiry into the method of the Roman findings of law.(45) On the basis of his lifelong intense studies of the sources of Roman law he was able to formulate the following result: Examining the ways by which the Roman jurists, in their casuistic manner, found their law, one does not find in the first place the rational methods of induction or deduction. According to the impressions which the juridical tradition offers reliably, we find in the first place intuition, i.e., finding the right decision by immediate perception, which does not need rational argumentation.(46) Kaser himself was admittedly not familiar with ancient Greek philosophy. He just describes what he had empirically found in the sources. But there can be no doubt, that the "immediate perception", the "intuition", which he describes, is in principle the same which we have seen in Aristotle. The prejudices of modern theories of science do not accept

intuition as a rational way of knowledge without additional scientific proof, which is expected from logical deduction. But, as we have seen, the possibility of logical deduction itself cannot be proven by logical deduction. It can, as Aristotle shows, only be known by immediate perception. Therefore immediate perception is not in contrast to rational argumentation, but its presupposition. And in addition he says concerning the immediate grasping of the law of non contradiction, as we have seen already: "Some, indeed, demand to have the law proved, but this is because they lack education; for it shows lack of education not to know of what we should require proof, and of what not".(47) This is most important for understanding the method and the results of the work of Roman jurists. Horak admits that intuition plays an important role in the scientific process of discovery, but cannot provide any scientific proof. He says: "As great as the importance of intuition is in the process of discovery - it has nothing to do with the process of argumentation and proof. Who declares that he not only has found his knowledge by intuition, but can also prove this knowledge only by this very intuition, will not be heard on the forum of science".(48) Horak obviously is not aware of the fact that for instance Hans Kelsen, who is regarded, by Horak, as one to be heard on the "forum of science", can ground his whole pure theory of law only on knowledge found by "immediate perception". He expressly states: "The difference between being and ought cannot be further explained. It is immedieately given to our consciousness".(49) Kaser himself rightly sticks to his results even after the criticism of intuition as an argument proposed by Horak on the basis of a modern theory of science. In spite of his mentioning the work of Horak as fundamental in its part concerning "Begründung und Topik" (argumentation and topic),(50) Kaser still affirms: "The jurists find their law by way of deduction from given laws and other sources of knowledge, but at the same time by intuitive perception of the problems of the case, after having prepared this intuition by a careful study of previous solutions of cases".(51) Already at the beginning of this magisterial work on Roman Private Law Kaser asserts, that the Roman jurists find the way to the right knowledge of law with their ingenious intuition, thanks to their sure philosophy of life.(52) Therefore one of the greatest Roman jurists, Ulpian, can assert in the first fragment of the Digest that the jurists in their endeavour to realize justice strive for the true philosophy, and not for a simulated one (veram nisi fallor philosophiam, non simulatam affectantes).(53)

Kaser adds to his previously quoted statement concerning intuition(54) that this spontaneous perception has two foundations which intimately interpenetrate, a strong and refined sense for juridical realties and great experience which had been acquired by painstaking work. This reminds me of a passage in Aristotle, where, in continuation of the already above quoted text(55), he says: "Consequently the unproved assertions and opinions of experienced and elderly people, or of prudent men, are as much deserving of attention as those which they support by proof; for experience has given them an eye for things, and so they see correctly".(56)

It is an undeniable fact that in their endeavour to find just solutions for given cases, Roman jurists also perceived natural law. Here I may repeat a passage, written by Fritz Schulz in 1936, which I quoted already two years ago. After having described various matters of Roman private law he says: "In all these matters it may be observed that legal writers are not satisfied with describing the positive Roman law in force at the time, but that they are at pains to evolve a law of Nature. This is the determining cause for the peculiar manner in which legal science is presented; it does not actually prove the rules stated, but derives them direct from the ... ratio iuris".(57) It is not possible here to discuss the question what Schulz means by ratio iuris, but it is clear that it refers ultimately to natural law. To show how natural law worked in practice, I can give only one example taken from the immense material. Ulpian reports that a slave had been freed in a last will under the condition that he pays 10 to the heir. In an amendment to the last will he had been freed without this condition. Not knowing that, he paid the 10 to the heir by error. After the error was detected, the question arose, whether he could reclaim the 10. The father of the famous P. Iuventius Celsus filius still denied the possibility to reclaim the 10 according to the strict law. About the decision of his son, Ulpian says: sed ipse Celsus naturali aequitate motus putat repeti posse. And Ulpian adds to that: quae sententia verior est. Here we can see

clearly, that Celsus filius, who had defined law as ars boni et aequi - the science of the good and the just(58) -, does not look at the strict civil law, but at natural equity which means at natural law, and according to that decides the case. This is the natural law of which the Roman jurist Paulus says in D. 1, 1, 11 that it is always aequum ac bonum, just and good. It corresponds perfectly to the definition of law by Celsus as the science of the good and the just. Cicero can say: "And therefore Nature's law itself ... protects and conserves human interests". Utilitatem hominum in the Latin text does not simply mean "interests", but the real good of man.(59) The civil law itself was seen by Ulpian as grounded on natural law, but modified in specific cases.(60) These modifications in the old and strict ius civile were, as in the quoted example, largely felt to be unjust and therefore corrected by the Roman jurisprudence in order to arrive at just decisions.(61)
This work of the Roman jurists was developed continuously through almost five centuries. The result of this work was codified in 533 by the emperor Justinan in the Digest. In the introductory constitution to the Digest Justinian calls this compilation a iustitiae Romanae templum.(62) As I had mentioned already two years ago, precisely the rediscovery of this compilation in the Middle Ages and its study at the original school of arts in Bologna first changed the character of this school of arts into the first University of Europe and then gave way to the entire development of the European legal culture. On this basis the Austrian Civil Code (ABGB) can affirm in its § 16: "Every man has inborn rights, evident to reason".(63) Thus knowing natural law is not a question of some more or less reliable philosophical theories, but a reality in the legal culture not only of Europe, but of the entire World. It is only on this basis that human rights declarations and conventions can have any substantial meaning.

CONCLUSION

Since antiquity man has been seen as capable of knowing natural law. With this capability a legal culture was developed which for more than 2000 years formed Europe and even had importance for the entire world, as far as it made possible things like the General Declaration of Human Rights in 1948 and many other things. The fact that this capability is being contested progressively under the influence of sceptical, relativistic, positivistic, and scientistic theories, does not have any influence on the existence of natural law as such, nor does it in principle cancel the capability of the human mind to know it. If in spite of all these patent facts, a modern scientist was able to make the statement "that we have never had a knowledge, but only 'the illusion of a knowledge of natural law'",(64) then this reveals, on the pretext of scientific knowledge, the total ignorance of the reality of legal development. The arguments of this supposed scientist must be regarded as pure nonsense. But it must be regarded as a real tragedy that arguments of that kind could succeed in entering Catholic moral theology.(65) This is a tragic example for the affirmation of Thomasius: "voluntas praeiudicium facit intellectui", which I quoted earlier.(66) If man honestly tries to keep himself free from all kinds of prejudices, especially of those of the will, then his capacity to know natural law will also today allow him to really know it. With great gratitude I may add that Pope John Paul II in his address of 27 February 2002 to the participants in the eighth General Assembly of our Academy encouraged "a conscious effort that returns ... to the anthropological and ethical meaning of natural law and of the related concept of natural right".(67) Referring to the "nature of the human person" the Pope says: "This distinctive nature is the foundation for the rights of every human individual, who has the dignity of personhood from the moment of his conception." And then the Pope, among other things, further says: "The human person, with his reason, is capable of recognizing both this profound and objective dignity of his being, and the ethical requirements that derive from it. In other words, man can discern in himself the value and the moral requirements of his own dignity." The "natural moral law" is known by "the light of understanding infused in us by God".(68) As history since antiquity shows, this "light of understanding" was already present also in those who did not yet have the light of the Christian revelation.

NOTES

(1) See Hossenfelder M., Die Philosophie der Antike 3, Stoa, Epikureismus und Skepsis, in: Geschichte der Philosophie, hrsg. von RÖD W., Bd. III, München: C. H. Beck, 1985: 157 and 195 - 200.
(2) Aristot. Metaph. 2, 1; 993 b 19 - 20.
(3) See Waldstein W., Teoria generale del diritto. Dall'antichità ad oggi (STUDIA ET DOCUMENTA, Sectio Iuris Romani et Historiae Iuris - 6, Direttore G. L. Falchi), Roma: Pontificia Università Lateranense, 2001: 31-38.
(4) See Waldstein, Teoria ... pp.38-45.
(5) Cic., Tusc. 4, 6; Ulp., D. 1, 1, 1, 1; see Waldstein, Teoria ..., pp.99-100.
(6) See Evangelium Vitae, n.70.
(7) One can say that this Encyclical does, against all kinds of modern errors, in its entirety reestablish the human capacity to know truth. See especially Fides et Ratio nn.22-35 and nn.80-90.
(8) See Cic., Rep. 3, 33: ..., sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit, unusque erit communis quasi magister et imperator omnium deus, ille legis huius inventor, disceptator, lator;cui qui non parebit, ipse se fugiet ac naturam hominis aspernatus hoc ipso luet maximas poenas, ...; 5, 5: summi iuris peritissimus, sine quo iustus esse nemo possit; and leg. 1, 42: est enim unum ius, quo devincta est hominum societas, et quod lex constituit una; ... quam qui ignorat, is est iniustus, sive est illa scripta uspiam sive nusquam.
(9) See Wieacker F., Privatrechtsgeschichte der Neuzeit, Göttingen: Vandenhoeck & Rupprecht, 1967: 322-347; Klippel D., Legitimation, Kritik und Reform. Naturrecht und Staat in Deutschland im 18. und 19. Jahrhundert. In: Zeitschrift für neuere Rechtsgeschichte 22 (2000) 3-10 with further references.
(10) Fikentscher W., Methoden des Rechts, Tübingen: J. C. B. Mohr, vol. I, 1975: 32. The original text reads as follows: "Einen Angelpunkt allen Rechtsverständnisses in historischer Entwicklung stellt die bei Hume und Kant begründete These dar, aus einem Sein könne kein Sollen folgen. Diese Aussage ist so wichtig, daß man mit Fug die gesamte Entwicklung der Rechtsmethodik in eine vor-kantische Periode und in eine nach-kantische einteilen kann".
(11) Emphasis in both cases added by myself.
(12) Aristot., Eth. Nic., 1, 8; 1098 b 11 - 12.
(13) Finnis J. M., Nature and Natural Law in Contemporary Philosophical and Theological Debates: Some Observations, draft-text for the eighth General Assembly esp. p.19-23 with many further references, quotations from p.19, in this vol. p. 81-109.
(14) Buchholz St., Recht, Religion und Ehe, Orientierungswandel und gelehrte Kontroversen im Übergang vom 17. zum 18. Jahrhundert, Frankfurt am Main: Vittorio Klostermann, 1988: 36-37.
(15) Buchholz, Recht ..., p.159.
(16) Buchholz, Recht ..., p.161.
(17) Buchholz, Recht ..., pp.181-182.
(18) Buchholz, Recht ..., p.161.
(19) Rhonheimer M., Natural Moral Law: Moral Knowledge and Conscience, paper presented to the eighth General Assembly p.2, in this vol. p.123-159. See also Waldstein, Teoria..., pp.21 - 27: "Che cosa è la fallacia naturalistica?"
(20) Waldstein, Teoria .., pp.118 - 136 with further references.
(21) Kelsen H., Reine Rechtslehre, Wien: Franz Deuticke, 1960, Unv. Nachdruck 1967, 9.
(22) Reine Rechtslehre, 1934, 12.
(23) Kelsen H., Recht und Logik, in: Klecatsky H., Marcic R., Schambeck H., Die Wiener rechtstheoretische Schule, Wien ET AL.: Europa Verlag, Salzburg-München: Universitätsverlag A. Pustet, 1968: vol. 2 p.1472.
(24) Kelsen, Recht...,p.1474. The German original says: "Nun kann man vielleicht zugeben, daß Normen nicht notwendig der Sinn menschlicher Willensakte sein müssen. Keinesfalls kann man aber

zugeben, daß es Normen gibt, die nicht der Sinn eines Willensaktes, wenn auch nicht gerade eines menschlichen Willensaktes, sind. Einer Natur, der Normen immanent sind, muß auch ein Wille immanent sein, dessen Sinn diese Normen sind. Woher kann aber ein solcher Wille in die Natur kommen, die, vom Standpunkt empirisch-rationaler Erkenntnis, ein Aggregat von als Ursache und Wirkung miteinander verbundenen Seinstatsachen ist?"
(25) Kelsen H., Die Grundlage der Naturrechtslehre, in: Das Naturrecht in der politischen Theorie, Hrsg. Schmölz F.-M., Wien: Springer, 1963: 1.
(26) Aristot., Metaph. 4, 5; 1009 b 38-1010 a 5. English translation by Tredennick H., Aristotle The Metaphysics I - IX, The Loeb Classical Library, Cambridge (Mass.): Harvard University Press, London: Heinemann, 1980: 189.
(27) See for example Aristot., Metaph. 2, 2; 994 b 16 - 31. Many other texts could be added.
(28) Rhonheimer, Natural..., p.6 ff., in this vol. p.123-159..
(29) In my contribution to the Fourth Assembly, see Human Genome, Human Person and the Society of the Future, Proceedings of the Fourth Assembly of the Pontifical Academy for Life, Ed. by Vial Correa J. de D. and Sgreccia E., Città del Vaticano: Libreria Editrice Vaticana, 1999: 398.
(30) Ratio in this context as in many others evidently means "order". Later on it is, as at the beginning, rendered by lex. Cancelli F., Ed. del Centro di Studi Ciceroniani, Firenze 1979, p.408, affirms in his ample note 22 to the text that ratio in this context means "la legge eterna divina (...), fondamento inconcutibile (così) dell'etica". See also Waldstein W., Teoria generale del diritto, Roma: Pontificia Università Lateranense, 2002: 95.
(31) Translation by Keyes C. W., Cicero De re publica, De legibus, The Loeb Classical Library, London: Heinemann, 1966: 211.
(32) Translation by Birks P. and McLeod G., London: Duckworth, 1987: 39.
(33) Cic., Leg. 2, 11 and 2, 16. English translation by Keyes, Cicero ... pp. 383 and 389.
(34) The Dogmatic Constitution on Divine Revelation of Vatican II confirms the definition of the First Vatican Council saying in art. 6: "This sacred Synod affirms, «God, the beginning and end of all things, can be known with certainty from created reality by the light of human reason» (cf. Rom. 1:20); but the Synod teaches that it is through His revelation «that those religious truths which are by their nature accessible to human reason can be known by all men with ease, with solid certitude, and with no trace of error, even in the present state of the human race»".
(35) Rhonheimer, Natural..., p.7, in this vol. p.123-159..
(36) Evangelium Vitae, Five Years of Confrontation with the Society. Proceedings of the Sixth Assembly of the Pontifical Academy for Life, Ed. by Vial Correa J. de D. and Sgreccia E., Città del Vaticano: Libreria Editrice Vaticana, 2001: 225-230.
(37) Waldstein , Teoria..., pp.31-52.
(38) Aristot., Eth. Nic., 1, 1; 1094 b 12-13. English translation by Rackham H., Aristotle, The Nicomachean Ethics, The Loeb Classical Library, Cambridge (Mass.): Harvard University Press, London: Heinemann, 1975: 7.
(39) Aristot., Eth. Nic., 1, 1; 1094 b 23-25.
(40) Aristot., Eth. Nic., 1, 7; 1098 b 3 - 4.
(41) Aristot., Eth. Nic., 6, 12; 1143 a 35-b 5.
(42) Aristot., Metaph. 4, 3-4; 1005 b 5-1006 a 11. In the continuation of the text he says: "For it is quite impossible that everything should have a proof; the process would go on to infinity, so that even so there would be no proof." The entire following text should be read also.
(43) See for instance Horak F., Rationes decidendi, Entscheidungsbegründungen bei den älteren römischen Juristen bis Labeo I, Aalen: Scientia, 1969: 20.
(44) Aristot., An. post. 2, 19; 100 b 12-15. For details see Waldstein, Teoria ..., pp.132-133 and p.199.
(45) Kaser M., Zur Methode der römischen Rechtsfindung, Nachr. d. Akad. d. Wiss. Göttingen, Phil.-hist. Kl. Nr. 2, Göttingen: Vandenhoeck & Rupprecht, 1969: 47-78.

(46) Kaser, Zur Methode..., p.54. The German text, hard to be translated into English, reads: "Fragt man sich nun nach den Wegen, auf denen die Römer in dieser kasuistischen Manier ihr Recht gefunden haben, so wird man entgegen den Erwartungen, die etwa Cicero erwecken könnte, nicht sogleich auf die rationalen Methoden der Induktion oder Deduktion verwiesen. Nach den Eindrücken, die die juristische Überlieferung zuverlässig vermittelt, steht vielmehr im Vordergrund die Intuition, also die Gewinnung der richtigen Entscheidung durch ein unmittelbares Erfassen, das des rationalen Argumentierens nicht bedarf." See for more detail Waldstein, Teoria..., pp.45-52.
(47) Aristot., Metaph., 4, 3-4; 1005 b 5-1006 a 11. See at note 42.
(48) Horak, Rationes ..., p. 20
(49) Kelsen, Reine Rechtslehre, p.5.
(50) Horak, Rationes..., pp.45-64. See Kaser M., Das römische Privatrecht I, München: C. H. Beck, 1971: 212 note 17.
(51) Kaser, Privatrecht ..., p.212.
(52) Kaser, Privatrecht ..., p.3.
(53) Ulp., D. 1, 1, 1, 1.
(54) See at note 46.
(55) See at note 41.
(56) Aristot., Eth. Nic. 6, 12; 1143 b 11-14.
(57) Schulz F., Principles of Roman Law, Oxford: Clarendon, 1936: 35-36. See also Proceedings ... (above note 36) p.229.
(58) Ulp., D. 1, 1, 1 pr.: Iuri operam daturum prius nosse oportet, unde nomen iuris descendat. est autem a iustitia appellatum: nam, ut eleganter Celsus definit, ius est ars boni et aequi. See Waldstein, Teoria ..., p.17 and especially p.249.
(59) See Cic., Off., 3, 31, and Waldstein, Teoria..., p.88.
(60) Ulp., D., 1, 1, 6 pr.: Ius civile est, quod neque in totum a naturali vel gentium recedit nec per omnia ei servit: itaque cum aliquid addimus vel detrahimus iuri communi, ius proprium, id est civile efficimus.
(61) The text from Ovid, Metamorphoses, 10, p.329 ff., quoted by D'Agostino F. in his text at note 1, could also be read in another sense. But if it should mean eluding laws which in reality were good, but felt to be bad by a sophistic understanding of nature, then the text does by no means represent the Roman concept of natural law.
(62) Const. Tanta 20.
(63) For the actual importance of this § see Klecatsky H., Unvergeßbare Erinnerungen an § 16 ABGB, in: Pro iustitia et scientia, Festgabe zum 80. Geburtstag von K. Kohlegger, hrsg. von Ebert K., Wien: Verlag Österreich, 2001: 275-300.
(64) Leinweber A., Gibt es ein Naturrecht? Beiträge zur Grundlagenforschung der Rechtsphilosophie, Hamburg: Cram, de Gruyter & Co., 1970: 285.
(65) See Böckle F., Das Naturrecht im Disput. Drei Vorträge beim Kongreß der deutschsprachigen Moraltheologen 1965 in Bensberg, Düsseldorf: Patmos Verlag, 1966, and the review to that by Messner J., Ethik und Gesellschaft, Aufsätze 1965-1974, Köln: Bachem, 1975: 324-335.
(66) Above at note 15.
(67) JOHN PAUL II, Discourse of Joly Father John Paul II, in this volume, pp. 11-14.
(68) Ibid., with a quotation from St. Thomas Aquinas.

SERGIO BELARDINELLI

"NATURE" IN A COSMOLOGICAL, BIOLOGICAL, ANTHROPOLOGICAL AND ECOLOGICAL SENSE

The differentiation of the concept of nature, the fact that one can talk about nature in a cosmological, biological, anthropological and ecological sense, should principally be traced back to the development of modem science. It seems, however, to me that today, for reasons that I will try to explain, this differentiation is becoming increasingly problematical. On the one hand, in fact, a certain exaggerated tendency to concentrate on the cultural aspect of things is literally dissolving nature into culture, making nature a simple result of different ways of looking at it; on the other, above all else in the strictly scientific domain, we are witnessing a kind of radical taking things back ad unum, according to a model that I would define as of an evolutionistic-bio-cosmological kind, which, the more it draws near to things (from the infinitely large to the infinitely small, from the origins of the universe to the mystery of the birth of life), the more it tends to decide everything is of the same nature, subject to the same laws. Rather as was the case with the ancient archaic civilisations, everything seems once again to be fused with everything: the stars, the trees, the animals, and -why not? -man and his socio-cultural world as well.(1)

All this makes really urgent a reflection which knows how to renew in their specific natures, and at the same time reconcile what have constituted, almost always, the privileged terms of philosophical discourse: nature and reason. And yet not only these. For, side by side and intertwined with nature and reason there are in fact others: for example, faith, freedom and history. One cannot divide freedom from its natural or historical-socia1 conditions; and in the same way, one cannot imagine an approach to nature that does not find in reason, in freedom, in history , and thus also in faith (concretely united, but also irreducible to each other and thus analytically separable), a means by which nature itself, let us put it in these terms, opens up to us. If we want to avoid the reefs of culturalist or naturalist reductionism, we have no other choice before us: we must safeguard and reconcile all the horns of the dilemma.(2) To employ the words of the great poet, Giacomo Leopardi, which I would like to adopt as a kind of ideal background to the analysis that I will present, 'nature wants to be illuminated by reason, not burnt'.(3) But reason, too, wants to be illuminated by nature; and freedom and faith also illuminate and in turn want to be illuminated by reason and nature. None of these terms -faith, freedom, nature, history -even though each one of them has its own irreducible specific nature, can be found, to express succinctly, in a pure state.

After making this premise, let us now come to the subject of this paper.

What are we thinking about in specific terms when we think about the nature of the cosmos? As is known, cosmos is a word which indicates the world, a reality into which man feels that he is inserted, but also the order that rules over this reality. Cosmos, at least in the ancient Greek world, was thus the opposite of chaos. It was the result of the work of a creator who put order into what Hoelderlin would call "the original crucible",(4) an inscrutable order which embraced both the movement of the astral spheres and the heavens, as well as the will of man and the gods themselves. Moira, ananche and tyche were the names of this order .

The great poems of Homer, ancient Greek great tragedy, and ancient Greek great philosophy would not have been what they were without the sense of this order, this destiny that rules over all things. An order that presented itself as tragic but also a source of harmony and justice,(5) into which man felt that he was inserted and in relation to which in the end of things he tried to conform his life. To employ the words of Plato's Timeo, "one begins by speaking about the origins of the world and ends up by speaking about the nature of men"(6); and employing the words of Arnold Gehlen one could also say that man "interprets the world according to his image, and vice versa interprets himself according to the images of the world"(7).

But to return to the question that we began with: what are we, the inhabitants of the twenty-first century, thinking about when we think about the nature of the cosmos?
First of all, I would say that the cosmos makes us think today more of chaos than of order. If Plato thought that "this world is really a living being bestowed with a soul and intelligence, created by divine providence"(8), for a dominant part of our culture God no longer exists, and thus there is no longer any rational principle at the origin of everything. There is, rather chance (one thinks of Monod) or chaos. To employ a well-known image employed by Weber, the world is moving towards taking the form of an infinity without meaning"(9). "The more the universe seems comprehensible, the more it also seems pointless" was how the cosmologist Steven Weinberg expressed himself in his famous book(10).
That there is a nexus of meaning between the movement of the planets and our lives as men; that both form a part, for example, of the same project (which is rational and of love); that God in his inscrutable omnipotence and omniscience decided to bring about, is a thought that seems to be of little interest, even to Christians as we are. Today we love to a speak a great deal about solidarity, justice and such things, but we do not employ the same passion to explain to our children that the world, and the universe, were created by God and that it is God who keeps them in existence. It seems that certain unifying connections, capable of giving a rational sense to everything that exists, by now are only of interest (in an irrational way!) astrology and perhaps a certain religion of the New Age stamp.
As to cosmology, I would say that it certainly conserves the idea of an order (and this is no small thing), but this order is interpreted, on the one hand, in such a necessary way as to fade even the ancient Greek idea of ananche, and on the other hand, it is though one were dealing with (and the phrase is a difficult one) of "chance necessity", without any reason at all. Let us take as an example Stephen Hawking, one of the most authoritative and stimulating contemporary cosmologists. Convinced that "the universe is not arbitrary but is governed by precise law", he is seeking to create nothing less than "quantum theory of gravity" which is able to put the theory of relativity and quantum mechanics together and thereby offer "a complete unified theory" able to describe "everything in the universe" and "presumably to determine our actions as well"(11). Above all else this theory should demonstrate the "self-sufficiency" of the universe; it should, that is to say, render futile the very idea that the universe can have a beginning and can have an end. If, indeed, we suppose that the universe had a beginning, we can always suppose, according to Hawking, that it had a creator. If, instead, we manage to demonstrate that space and time make up "a closed surface without boundaries", then there is no longer a need for God. The theory of relativity and quantum mechanics become sufficient to explain not only the expansion and the contraction of the universe but also the "formation of galaxies, the stars, and lastly even such insignificant creatures as ourselves"(12).
Without taking anything away from the fascination which the idea of a "quantum theory of gravity" undoubtedly provokes, what really strikes one is the claim that by it one can finally scientifically demonstrate the non-existence of God. Even given, indeed, that our universe is a part of an infinite chain of universes that expand and contract, are born and die, it does not seem to me that the dizzy meaning of this spatial and temporal infinity should be confused with the meaning that we give to the transcendence of God, His infinitely, indeed absolutely, being other in relation to the increasingly manifest contingency of the universe or universes. In other words, it is not the case that Hawking's idea of rendering futile what we could define as the problem of the beginning is really so hostile, as he believes, to the idea of God. Rather, given at least the constant moves backwards that we are forced to engage in by cosmologists and the theorists of evolution (we have by now come to place the beginning at fifteen milliard years ago), it is striking that such an idea is still taken so seriously. At a fundamental level, Thomas Aquinas himself gave us a warning: "That the world had a beginning is a question of faith, but not a question of demonstration or science"(13). And as Augustine was to make clear later(14), the creation effected by God regards not only the world but also time itself. It is a vain exercise, therefore, to try to look for the beginning of the creation "in time", being happy perhaps about the idea of the Big Bang, interpreted as a sort of scientific confirmation of divine intervention. But it

would be an equally vain exercise to suppose that a possible closing of the space-time horizon can eliminate the very idea of creation. "In the beginning was the Word" -here is what Cardinal Ratzinger defines as the, "summary of the creation" in the light of "a force which carries meaning"(15). In essential terms, one could also say that what faith wants above all to indicate through the idea of creation is not so much the beginning of the world but its goodness, its meaningfulness, and the absolute omnipotence of God.

To return to Hawking's theory, from certain points of view it seems to represent a sort of radicalisation of the "order" which ruled over the ancient Greek cosmos. But that of which specifically there is no longer trace is the idea that this order could be seen as a "good thing", in the sense of which it is spoken not only in the Book of Genesis but also in Plato's Timeo. The idea, that is, that telos, conformity to a purpose, to a law, could be a rational foundation for the existence of the cosmos itself. We are face to face with an "order" which has no reason, has no sense. Hawking writes that "the universe must have begun exactly with the minimum of irregularity allowed by the principle of indeterminateness"(16). In this way the teleology which ruled over the ancient Greek cosmos tends to become teleonomy, almost as if, as Aristotle would have put it, the conformity of everything that exists was produced "by chance"(17).

This teleonomic tendency seems to me even more marked if we look at the way in which nature in a biological sense is considered. The famous book by Monod, Il caso e la necessità (Chance and Necessity), is the most evident demonstration of this. By the word teleonomy Monod means "one of the fundamental properties (the other is reproductive invariance) characteristic of all living things, with no exclusion: that of being objects endowed with a project, represented in their structures and at the same time realised through their performance"(18). But with regard to the "project" of a given species, let us say man or life in generaL, for Monod one is dealing simply with a "number which carne up on a roulette wheel"(19). As can be seen, we are face to face with conformity to a project which, with the exception of self-preservation, does not, however, in its turn, have a purpose.

Of the same opinion seems to be another Nobel Prize winner, the Italian, Renato Dulbecco. He says that "life is the actuation of instructions which are coded in the genes"(20). Hence the life project. But one assuredly must not talk about a project that is such because it was planned that way. This, in fact, could lead to the idea of a creator and this would be rather disagreeable given that "creationism can be sustained only if many absurdities are accepted"(21). There is only one model within which the "life project" can find an adequate explanation -the evolutionistic model. If some doubts arise on the matter, this can be imputed, according to Dulbecco, to the fact that present-day models for evolution are approximate. But "anyone who knows what a scientific process is takes for granted that this approximation does not invalidate the basic idea of evolution. In science no theory is ever final but continues to evolve as new data become available and new refinements are possible".(22).

Yes, indeed! But an epistemologist such as Thomas Kuhn would say, for example, that it is the changes in the paradigm and not the refinements of the same theory that lead to the progress of scientific knowledge. To insist too much on the same theory runs the risk of acting rather like Ptolemy with his geocentric cosmology, who, as is well known, confined himself to adding a new heaven with each discovery of a new star .The thing went ahead for a certain period of time until finally somebody said: "It's the general theory that's wrong; the earth is not at the centre of the universe". And there was a change in direction. Something similar is happening, will certainly take place with respect to the evolutionistic theory as well, at least as regards certain of its reductionist claims(23).

On this point I would like to present very schematically the criticism of evolutionistic functionalism made by a biologist of the twentieth century who tried, in essentials, to combine evolutionism with creationism - Adolf Portmann (1897-1982). In one of his most fascinating books, entitled Aufbruch der Lebensforschung (1906), translated into Italian with the title Le forme viventi (Living Forms), he wrote: "However evident the structures which work for the preservation of life may be in certain living beings, they are always part of a whole, which cannot be understood as the sum of these structures and

their functions"(24). The form, the innumerable forms, of living things, their being made to appear in the light, for Portmann cannot be traced back to mere functional reasons of utility or selective advantage. The sense of the innumerable forms of life "is not in the first and highest place the preservation of the individual or the species, as can be read in certain definitions of life, but self-presentation, appearing in the light"(25). Hitherto biology -this is the thesis advanced by Portmann- has neglected the vital characteristics which do not allow themselves to be traced back immediately to the self-preservation of the species or to the metabolism of the individual. It has looked at life and at living beings being guided "too much exclusively by methodological premises and not by the nature of the object"(26). But it should "apply a remedy to this neglect so as to make prevail a more comprehensive idea of the living"(27), "avoiding calling chance into play every time that a certain given fact appears incomprehensible to us"(28).

From this biology of forms comes an image of nature that is certainly richer that functionalist evolutionism would have us believe. The colours of f1owers or of butterflies, their forms, cannot be traced back in toto to their evolutionary function. They have a kind of value in themselves; they answer to a special impulse, self-presentation; they make nature and the world into a beautiful reality. This is a point which in our context seems to me to be rather important.

The nature that emerges from a rigorously evolutionistic approach is, in fact, pure matter, a sort of natura naturans without a purpose, at the most a gigantic process, a struggle for self-preservation, where, in reality, the mors immortalis spoken of by Lucretius dominates. In this approach, living beings are nothing else but machines made up of atoms. It seems to me, therefore, of great significance that within the world of biology space is also given to the beauty of nature, a beauty that does not appear simply as the accidental effect of an evolutionary function but as characteristic of nature as such. We are not yet at the good, but it is no small thing that at least the beautiful is being rediscovered.

A limiting idea of the biological-functional type with an evolutionist background seems also to dominate the idea that our epoch is forming in relation to human nature and consequently to society as well. On this point I find rather significant the so-called systemic positions, along, that is to say, the lines proposed by Humberto Maturana or Niklas Luhmann.

"What are living beings?", asks Maturana. This is his reply: "Living beings, including men, are structurally determined systems"(29); autopoietic systems, or rather systems engaged in the, "systematic reproduction of themselves through continual reproduction and continual exchange of their own constituent elements"(30); systems which are closed to each other, which are formed exclusively in relation to an environment. In this approach everything becomes describable as a system: of a bacterium, of man, of society. In the final analysis we have before us always and only a "system" which in virtue of a special "medium" (for example, DNA for an organism, language for man and for society) is formed in relation to its own "environment" with a view to a very precise functional requirement. In a differentiated society such as ours -this, for example, is the thesis advanced by Luhmann -the various social systems (science, technology, politics or the economy) by now function according to their own functional code which makes them closed systems in relation to one another: "Autopoietic systems, in fact, within which man is nothing if not the recipient of the process of communication"(31). Man is what makes possible the communicative interplay that the various social systems consist of , but what defines these last is only their functional code, their way of selecting information coming from the environment and to constitute themselves in this way as a particular system. The political system is nothing else but the result of a selection of environmental complexity according to the code of politics; the religious system is nothing else but the result of a selection of environmental complexity according to the code of religion, and so forth. Man, as a pole of communication, is necessary to the formation of all the various social systems but as man he does not belong to any of them; he belongs, rather, to their environment. As a result, there is nothing more obsolete than trying to affirm specific human requirements within any social system. In the face of the problems thus raised, let us say, by the

so-called technologies of reproduction, the injunction of Luhmann is, not by chance, one of "allowing those who are very busy to work in peace", that is to say scientists, without disturbing them with analyses about man, his nature or his dignity, which, in the best of hypotheses, belong to another system (ethics) and are thus incommensurable in relation to each other(32). In short, "man is no longer the yardstick of society"(33). As man, he is in his turn a system, a "psychic system", functioning and closed to all the other systems, and whose environment is represented by society.

If I have made these brief references to "systemic" reductionism it is because from some points of view I believe that it is one of the most refined and radical results of contemporary nihilism, where man and society have no other "yardstick" than that of their biological-social evolution. In the final analysis we have here always and only to react "autopoietically" to a specific environmental complexity. For man and for society, which are on the same level as a cell, the principal question is self-preservation as "systems". It is not at all strange, therefore, if today so-called bio-sociology meets with so much success.

We have in reality gone very far ahead on this path. We no longer confine ourselves to seeing society as something analogous to a living organism, according to Aristotelian organicism or the organicism of Durkheim, to give just one example. Society itself, socio-cultural forms, are interpreted as the final outcome of a process of biological evolution, where the gene is flanked by an evolutionary motor of a socio-cultural kind -the meme. As for example Freeman Dyson writes: "Almost all the phenomena of genetic evolution and specialisation have their analogues in the history of culture with the meme which takes on the function of the gene. The meme is a behavioural unit which reproduces itself like the gene. The meme and the gene are equally selfish"(34). However, the genetic duplicators are only a component of evolution; the other component is "homeostasis", or rather the capacity to react and adapt to complexity. The history of life becomes from this point of view, and these once again are words used by Dyson, "a musical counter-point, an invention of two parts with one voice, the voice of duplicators which seek to impose their selfish aims on the whole system, and the voice of homeostasis which acts to maximise the diversity of the structures and the versatility of the functions"(35). All this, yesterday, mitigated the "tyranny of the genes", which lasted for three milliard years, and today mitigates the tyranny of the memes, which have become established over the last hundred thousand years thanks to homo sapiens and his symbolic language. As Dyson says: "Our models of behaviour are now in large measure the products which are culturally rather than genetically determined"(36). Culture is nothing other than the final stage, the highest stage, of biological evolution.

This biological-functionalist schema, within which variously organised positions can exist but ones which share the tendency to allocate the cultural dimension of man to nature, does not however constitute the whole of the scenario of contemporary nihilism. There exists, in fact, an opposing schema, which I would define as radical concentration on the cultural aspect of things (or culturalism), which acts instead to break down the analysis of nature into an analysis of culture. Nature is a "social category" said the Marxist philospher, Gyorgy Lukacs (1885-1971): more than the natural needs of man what matters in the way in which he satisfies them.

The analysis of the nature of man, and thus of the relationship between nature and culture, has always been a question for philosophy. In essential terms, ancient Greek teleology as well found in man not only the most perfect being, because he was endowed with reason, but also a kind of shadowy area. Differently from an acorn, whose telos meant that it would become an oak tree, man did not seem, in fact, to have an equally well-defined telos. For Plato and Aristotle, man should become a good citizen in the polis or a good philosopher, but there always existed an awareness, as Aristotle perceived (37), that one was dealing with a being who was half way between the gods and the beasts. Whatever the case, rather than starting with this ambivalence in order to try to understand something more about the telos of man, a large part of modem philosophy, as we know, has ended up by putting aside the idea. The nature of man lies in the final analysis in his freely given freedom, on which limits can certainly be

placed, certainly not because these limits should be seen as conforming to human nature but simply because we like doing this, it is useful to us, we agree to do it.
I know that I am over-simplifying a question which is literally immense. It seems to me, however, that present-day discussions on bioethical matters well reflect this approach. The idea that within nature a certain normativeness can be found is rejected a priori as a myth or as bio- teology(38). To employ a phrase of Juergen Habermass, our reason "by now recognises only those limits that are accepted by the will ofthe interlocutors"(39). And yet it is precisely the challenges of bioethics which are putting back into circulation analyses about man which are less promethean and less culturalist. These are analyses which in fact propose anew the theme of a nature which, because it expresses itself in terms of freedom, and thus of culture, does not for this reason cease to be nature, and thus limit, purpose, and telos, the respect for which alone, as Robert Spaemann would say, can allow man to be what he is "by nature"(40).
On this point it seems to me that something is moving in both the sociological field and the philosophical field. Interest in so-called relational sociology(41), the proposing anew of the idea of the good life that we find once again in authors such as Amartyr Sen or Martha Nussbaum(42), or the renewed interest in the idea of second nature on the part of an author such as John McDowell(43) are examples that could also point to a possible major change. In essential terms, one is always dealing with re-establishing a difference between nature and culture, so that rather than opposition or only opposition there can be harmony. Employing the words used by McDowell we could say that this is a matter of distinguishing between "the movement of the planets or the flight of a sparrow" -the expressions of nature, and ourselves, a work of art or a human action- the expressions of second nature. "We must retrieve the Aristotelian idea that a normal adult human being is a rational animal, but without abandoning the Kantian idea of the free working of rationality in its own sphere"(45). And again: "We are searching for a conception of our nature that includes the capacity to enter into syntony with the structure of the space of reasons. Given that we oppose crude naturalism, we have to broaden the concept of nature beyond that sanctioned by the naturalism of the animal kingdom. But this expansion is limited by the first nature, so to speak, of human animals, and by the evidence ofthe facts about what happens to human animals during their growth"(46). Hence the Bildung, the second nature, as a privileged place in which man, according to McDowell, can really come into his own nature.
I do not deny, reading this author, that sometimes I have the sensation that second nature is interpreted too freely, almost as if the "limits" of the "first", which nonetheless are recognised, at the end of things can be moved ad libitum, and thus be taken away because they are "limits". This perhaps has something to do with the preference of McDowell for Kantian reason. Whatever the case, his proposing anew of the Aristotelian idea of man as "an animal whose natural being is permeated by rationality" seems to me to be significant. Perhaps we should strengthen the conviction that "second nature does not float independently from the potentialities that belong to the normal human organism"(47). If to this we then manage to add that the condition for a person to be respected as a free subject is that of the sacralising -as Robert Spaemann affirms- of the sphere in which he or her appears, or his or her existence as a natural living being(48), then we draw near to a definition which is even more suited to human nature. "Every man is a thought of God"(49), Cardinal Ratzinger has written.
One authority has recently stated that "human nature, once the guiding principle of human activity, as now become its project"(50). The statement, it seems to me, is illuminating in relation to rather widespread theoretical position, but precisely for this reason the task which is in front of us is that of schematising or re-schematising the mix of given facts and of a project of which human nature consists. Employing the language of Heidegger, one could say that the nature of man is not like the nature of a stone, of a tree, or of a bird. It is nature that implies self -realisation, realisation of one's own existence, of one's own freedom, and one's own dignity. In reflecting on himself, man becomes aware not only that he is someone who is unique and unrepeatable, but also that he has to be, that is to say that he must take on his own existence as a task to be realised. "Become what you are", as John Paul II would put it.

As to the concept of nature in an ecological sense, I would like to base my steps on a statement of Vittorio Hoesle: "Ecology is, literally, the doctrine of the home; amongst the various material concrete dwellings in which man lives it takes into consideration our earth, which is today an inseparable unity of natural and cultural elements"(51). If today, therefore, there is a great deal of talk about ecological crisis, this means that we are face to face with a crisis that affects in the same way both nature and culture and which should be tackled on both fronts. It is no accident that Hoesle himself writes that "a philosophy of nature directed towards linking the autonomy of the spirit to the absolute dignity of nature seems to me one of the fundamental requirements of our time"(52).

Although I do not share the basic ideas of the analysis proposed by Hoesle and his representation, which from some points of view is fascinating, of objective idealism, it seems to me that his approach to our fundamental question is sound. The modem science of nature in the final analysis rests upon a dualistic counter-position: between man and nature, between res cogitans and res extens, as Descartes would have said. This has undoubtedly facilitated the technical dominion over nature that we have witnessed from modern centuries until today. The contemporary "ecological crisis" forces us, however, to review our conceptual armoury. In varying ways, all of us by now realise that our culture cannot go on seeing nature as a mere object of dominion without this dominion turning in the end against culture itself, destroying both. To speak about nature in an ecological sense thus forces us to speak about an ecosystem and this could help us, among other things, to schematise human beings (from the beginning to the end) not only within the system of, "social relations", and thus cultural values, but also with reference to their naturalness. The ecosystem is something that leads man back to a (natural and cultural) environment that does not depend on him, which he influences and by which he is also influenced, representing in a certain sense the condition and therefore also the conditioning of his life and his freedom.

As emerges in a rather significant way in the work by Hans Jinas(53), today ecological reflection proposes anew, in an obvious way, the idea that the sense of nature is a "limit" to our freedom, a limit that has in itself a dignity that must not be trampled on. In Hegelian terms, we could say that so-called "external nature" is certainly nature "for us", something that we can use for our purposes. But it is also "nature in itself", or rather something whose telos does not finish in being at our disposal, and which therefore, precisely for this reason, also asks to be respected. The taking up again of the idea of "human nature" as an 'end in itself, or rather as something which absolutely cannot be disposed of, more or less in the sense in which Kant said that it was necessary always to see man as an "end" and never as a "means", without doubt occurs through the extension of certain margins of not being able to be disposed with to "external nature" as well.

Recently this sense of "limit" has also begun to be perceived within the so-called "theory of communicative acting" of Juergen Habermas, which is increasingly measuring up to the bioethical and philosophical questions and issues of nature(54). As, however, Spaemann pointed out some time ago(55), it is precisely ecological reflection which demonstrates the insurmountable difficulties of the paradigm of communication. Never before, face to face now with the dramatic challenges that are created by the ecological crisis, has it been so evident that the criterion of the truth of our answers depends more on facts than on discourse.

One final consideration. Given that the reflections engaged in hitherto in this paper have sought in basic terms to share the solicitude of the Church for man, it seems to me that great knowledge about the place that man occupies in the cosmos(56) is of fundamental importance today specifically for man himself. It is much more useful, and I mean useful for man, for his dignity and freedom, to manage to rehabilitate at this level the deepest sense of the ancient "primary philosophy" than to lay emphasis on "secondary philosophies", which, however much they may be motivated by good intentions, are often abstract and distant precisely from that man that they would like to serve. But this will not be an easy undertaking. In recent years. which have been marked at a philosophical level not accidentally by the so-called "rehabilitation of practical philosophy" - "secondary philosophy" that is to say- we have

wrongly thought that analyses about values, morality and ethics could be engaged in looking exclusively at the autonomy and freedom of individuals, as though "human nature" did not exist or was in the final analysis reducible to freedom and autonomy. In the meanwhile, above all else at the level of the biological sciences, an opposing tendency has been developing, which acts to reduce the whole of the human, and thus also intelligence and freedom, to biological formulas. I find it rather worrying and at the same time rather curious that at the normative level these two opposing tendencies have ended up by producing the same outcome: the lack of a valid criterion able to really justify the unconditioned, absolute, value of the human person.

Returning, in conclusion, to the analysis that I outlined at the beginning of this paper, one could say that these tendencies point to the failure of a reason or a nature that are by now no longer able to mutually "illuminate each other". If, then, we add that we have by now entered a phase in which the normative weight of social customs has also begun to waver, then the scenario appears in all its worrying difficulty. There is no longer any limit; and in the meanwhile at all levels we continue to increase a power whose only "yardstick" seems to be itself and its own automatisms. Abstractly separated from each other, nature and reason lose their normative character and run the risk of becoming merely the environment of "social systems", which operate indiscriminately (without limits) behind and over men. It is because of this abstract separation that we oscillate between the Scylla of being prevented from distinguishing nature from man, and the nature of an animal from the nature of a plant, and thus from bestowing upon each form of nature its own degree of dignity, and the Charybdis of being prevented from understanding in what sense men, plants and animals share in the same nature. It must be clear , therefore, that only beyond this abstract separation can it be meaningful to speak about Nature in a cosmological, biological, anthropological and ecological sense.

NOTES

(1) On this point the position taken by the physicist, Freeman Dyson, is significant. Cf. DYSON F., Infinito in ogni direzione. Le origini della vita, la scienza e il futuro dell'umanità, Rizzoli, Milan, 1988.

(2) It seems to me that one can adopt a similar approach towards the relationship between the natural and supernatural as well: cf. SCOLA A., Naturale e soprannaturale: per una visione integrata, in this volume.

(3) LEOPARDI G., Zibaldone, n. 2, in LEOPARDI, Tutte le Opere, vol. II, Sansoni, Florence, 1969: 15.

(4) HOELDERLIN F., Der Rhein, in HOLDERLIN F., Poesie, Mondadori, Milan, 1971: 205.

(5) As regards the tragic nature of this order, one many think of the famous fragment of Anaximandres, where life is sees as a fall to be paid for with death, thanks to which one returns "to where one has come from", renewing thereby order. With respect to the cosmic order as harmony and justice, and thus as a yardstick of the human order, one may think of the fragment of Heraclitus: "The sun will not go beyond its range; otherwise the Furies, the ministers of justice, will force it to respect it".

(6) PLATO, Timeo, IV, pp.26, 27.

(7) OEHLEN A, L'uomo nell'era della tecnica, Sugar, Milan, 1967: 25.

(8) PLATO, Timeo, VI, p.30.

(9) WEBER M., L'oggettività conoscitiva della scienza sociale e della politica sociale, in WEBER M., Il metodo delle scienze storico-sociali, Einaudi, Turin, 1958: 96.

(10) WEINBERG S., The First Three Minutes, Basic Books, New York, 1977: 154.

(11) HAWKING S., Dal Big Bang ai buchi neri, Rizzoli, Milan, 1988: 25-26.

(12)Ibid., p.165.

(13) ST. THOMAS AQUINAS, Summa Theologiae, I, q. 46, a.2.

(14) ST. AUGUSTINE, Confessioni , in ID., Opere di Sant 'Agostino, Città Nuova, Rome, 1965: 381.

(15) RATZINGER J., Dio e il Mondo. Essere cristiani nel nuovo millennio. In colloquio con Peter Seewald, San Paolo, Turin, 2001: 101.
(16) HAWKING S., Dal Big Bang, p.165.
(17) Cf. ARISTOTLE, Fisica, II, 198 b.
(18) MONOD J., Il caso e la necessità, Mondadori, Milan, 1974: 22.
(19) Ibid., p.141.
(20) DULBECCO R., Il progetto della vita, Mondadori, Milan, 1989: 30.
(21)Ibid., p.502.
(22) Ibid.
(23) On this point I find very important the criticism of evolutionism formulated at a philosophical level as a retrieval of the ancient teleological idea that is engaged in by Robert Spaemann e Reinhard Loew. Cf.. SPAEMANN R, LOEW R., Die Frage Wozu. Geschichte und Wiederentdeckung des teleologischen Denkens, Piper, Munich, 1981.
(24) PORTMANN A., Le forme viventi. Nuove prospettive della biologia, Adelphi, Milan, 1969: 39.
(25) Ibid., p.52.
(26) Ibid., p.37.
(27) Ibid., p.73.
(28) Ibid., p.71.
(29) MATURANA H., Biologie der Sozialitaet, in SCHMIDT S.J., Der Diskurs der radikalen Konstruktivismus, Suhrkamp, Frankfurt, 1987: 288.
(30) Ibid., p.289.
(31) LUHMANN N., Ethik als Reflexionstheorie der Moral, in LUHMANN N., Gesellschaftsstruktur und Semantik, vol. III, Suhrkamp, Frankfurt, 1989: 367.
(32) Cf. LUHMANN N., E' lecito tutto ciò che è possibile, in Bollettino dell'Università degli Studi di Bologna, 1993, 2, 5-7. I examined these aspects of the thought of Niklas Luhmann in Belardinelli S., Una sociologia senza qualità. Saggi su Luhmann, Angeli, Milan, 1993.
(33) LUHMANN N., Sistemi sociali, Il Mulino, Bologna, 1990: 354.
(34) DYSON F., Infinito, p.92.
(35) Ibid.
(36) bid., p.91.
(37) Cf. ARISTOTLE, Politica, I, 2.
(38) This is what is done, for example, by G.E. Rusconi. Cf. RUSCONI G.E., Come se Dio non ci fosse, Einaudi, Turin, 200.
(39) As is known this is one of the most important assumptions of so-called discourse ethics, of which Haberman is one of the principal sources of inspiration. For a criticism of this ethical theory see BELERADINELLI S., Il progetto incompiuto. Agire comunicativo e complessità sociale, Angeli, Milan, 1996.
(40) Cf. SPAEMANN, LOEW, Die Frage, p.287.
(41) Cf. DONATI P., Teoria relazionale della società, Angeli, Milan, 1991.
(42) SEN A., La disuguaglianza. Un riesame critico, Il Mulino, Bologna, 1994; NUSSBAUM C., Human Capabilities, Female Human Beings, in NUSSBAUM M.C., GLOVER S. (eds.), Women, Culture, andDevelopment: A Study ofHuman Capabilities, Clarendon, Oxford, 1995: 61-104.
(43) Cf. MCDOWELL J., Mente e mondo, Einaudi, Turin, 1999.
(44) Cf. Ibid., pp.71-92.
(45)Ibid., p.91.
(46) Ibid., pp.118-119.
(47) Ibid., p.91.
(48) SPAEMANN R., Il significato del naturale nel diritto, in SPAEMANN R., Per la critica dell'utopia politica, Angeli, Milan, 1994: 196.

(49) RATZINGER C., Dio e Mondo, p.67.
(50) This is David Roy, Director of the Centre of Bioethics in Canada. Cf. FONDAZIONE LANZA, Vent'anni di bioetica. Idee, Protagonisti, Istituzioni, Padua, 1991: 101.
(51) HOESLE V., Filosofia della crisi ecologica, Einaudi, Turin, 1992: 11.
(52) Ibid., p.10.
(53) Cf. JONAS H., Il Principio di responsabilità, Einaudi, Turin, 1990.
(54) Of interest here is the text of the paper given by Habermass on 25 October and 1 November 2001 to the New York University Law School with the title: "On the way to liberal eugenics? The dispute over the ethical self-understanding of the species".
(55) Cf. SPAEMANN R., Ende der Modernitaet?, in KOSLOWSKI P., SPAEMANN R., LOEW R. (eds.), Moderne oder Postmoderne?, Acta Humaniora, Vienna, 1986: 38.
(56) Here I would like to refer to two classic texts: Die Stellung des Menschen im Kosmos by Max Scheler and Der Mensch, seine Natur und seine Stellung in der Welt by Arnold Gehlen

JOHN FINNIS

NATURE AND NATURAL LAW IN CONTEMPORARY PHILOSOPHICAL AND THEOLOGICAL DEBATES: SOME OBSERVATIONS

The source of the normativity or directiveness of natural law -of its rational force in deliberation and therefore also in theoretical reflection- is the intelligibility of the goods (aspects of human fulfillment) to which its propositional principles direct us. No progress can be made in reflection on natural law without real understanding of that intelligibility, and the best helps to such an understanding still seem to be some of Plato's dialogues, and Aquinas read in line with his own statements about method.Neo-scholastic accounts of natural law, and of our knowledge of human nature, generally neglected both those helps. Their influential theological successors, Karl Rahner and Bernard Lonergan, retained some of the most serious neo-scholastic misunderstandings while adding their own errors, especially their misunderstanding of arguments from self-referential inconsistency -which are powerful without being "transcendental"- and their unhistorical division of our culture into "classical" and "historically minded" phases. In much modern thought, "nature" means what happens to happen, with whatever patterns of recurrence happen to exist at a given moment or period; "natural law", correspondingly, is taken to mean the same as "law of nature", that is, a pattern of recurrence, or common tendency, understood precisely as a pattern or scheme describable in propositions which have the law-like qualities of generality and of facilitating prediction. "Natural law", then, is thought of as bearing on deliberation in two ways: understanding of natural tendencies facilitates selection of efficacious means to short-term or long-term goals; and the thought that following one's inclinations -doing what one just feels like doing- is "doing what comes naturally" provides a welcome excuse, rationalization, or refuge in the face of moral criticism.

Thus when Plato, Aristotle, the Roman jurists, and St Paul writing to the Roman Christians, speak of what is or is not "in line with nature {kata/para physin}" or with "natural law/right {jus naturale}", their idiom sounds to very many of our contemporaries questionable, fallacious, or simply remote and somehow sectarian.

But this state of affairs (of culture) is by no means without precedent. Greek Sophists tended to use the terms "natural law or right" and "in line with nature" in approximately the modern way I have described, or used them to rationalize - I always use this term to mean "make seem rational what is motivated sub-rationally" - the exercise of sheer power of weak over strong. In face of these Sophists, Plato made the epochal decision to capture or recapture the same terms for use as a critique of all rationalizations, of all mere "doing what comes naturally", and of all sheer lording (and lauding) of strength over weakness. In face of a Babel in which a neo-Sophistic understanding of the terms "nature" and "natural" tends to predominate, those participants in the modern debate who uphold philosophically the Church's historic understanding of those terms have made progress by reappropriating and renewing Plato's strategy. This is not a matter of learning Plato's "theses" from a some second-hand summary, but of participating in his masterly dialectical explorations of the data of human experience and the resources of human understanding. His dialectic is at its most penetrating and useful when it explores the implications of debate itself, as a chosen, morally significant human activity. Having been defending a theory of natural law in a thoroughly secular university environment for about thirty years, I find that at the root of my confidence in that theory are my judgments (i) that it makes sense of the human activity of debate, and of all the norms of rational and decent debating or discourse, and (ii) that all those skeptical or utilitarian or Kantian or other such theories which entail a rejection of natural law theory are incapable of justifying or even explaining adherence to those norms of discourse - my judgment, that is to say, (iii) that the theories or attitudes of my colleagues who reject natural law theory are self-refuting, i.e. self-referentially inconsistent with the activity of asserting and defending them.

Any philosophical theory of anything can only be critically and responsibly affirmed if its content, the set of propositions it asserts, is consistent with the human activity of critically and responsibly considering and affirming the theory. Plato worked out the original theory of natural law precisely by working out the presuppositions about human good and evil that are made by anyone who participates appropriately in a work well doable in and through debate or dialogue, the work of working out whether there is (and what in principle is) right and wrong in ways of human choosing, doing, and living.

For the thesis that, despite the great variety of opinions and practices, there are indeed some standards of right conduct which are true, and valid for anyone (any being of our nature), was philosophically articulated by Plato first, I think, in the Gorgias. Precisely in his dialectic with sceptics, there in the Gorgias, Plato judged it helpful to recapture from them the words "nature" and "natural". These sceptics contended that by nature, naturally, the strong and selfish prevail over those who are weak or weaken themselves by care for other persons, or for promises, or for what their society doubtless holds out as their responsibilities. Plato's brilliant and resourceful response, still very pertinent, is that trying to live "naturally" or "in line with nature" by ruthless pursuit of one's own desires for power or other satisfactions is self-stultifying, incoherent, and unreasonable. By nature one's desires, whether intelligent (say, for knowledge and friendship) or primarily emotional (say, for tasty food, sex, power, reputation, and so forth) are in need of being governed and moderated by the standards of reason. These standards require that one set one's own psyche in order, and that itself entails that require also the establishing and maintenance of a good order with, and among, one's fellows. Despite appearances (the glamour of evil),the sceptics' "law of nature" - rule of the strong and unprincipled -- is unnatural, precisely because unreasonable.

That it is unreasonable is not simply asserted by Plato, but shown, primarily by his reflections on the conditions for attaining truth in dialogue. These conditions are stated summarily on the occasion when Socrates is articulating the formal relation between truth and consensus. He affirms, in effect, that under conditions of the kind we today would call "ideal", persons engaged in discourse will agree.(1) The conditions? "Knowledge, good will, and frankness"(2) - (i) a sound, wide-ranging education, (ii) good will towards the other parties to the discourse/discussion (indeed, the kind regard one has towards one's friends), and (iii) willingness to speak frankly (even when that involves admitting one's mistakes, self-contradictions, and self-refutation), and not to feign agreement.(3) Where these conditions are not satisfied, even universal assent to a proposition would be no evidence (let alone a guarantee) of its truth.(4) And when the conditions are fulfilled, the discussants' convergence is not a criterion of truth, a standard to which one can appeal to discriminate, within argument, between sound and unsound judgments. Rather it is a mark of truth, a welcome and confirmatory consequence of their common willingness to attend to what every truth-seeking discussion must have as its objective: what "is so",(5) "what is true and false concerning the matters of which we speak - for it is of common good to all that the thing itself become manifest".(6) But that to which true propositions correspond is not something accessible or intelligible (still less is it adequately imaginable) otherwise than by question and answer, coherent, self-consistent thought, and attention to all relevant evidence, all pertinent considerations. Nor, therefore, can there be any alternative basis than this, for rationally affirming or denying that correspondence in relation to any particular subject-matter of discursive or reflective inquiry.(7) The indispensable conditions on which discussion/debate/dialogue is worthwhile, then, can be reduced to respect-and-concern for the two human goods which Socrates/Plato keeps tirelessly before our attention in the Gorgias: truth (and knowledge of it), and friendship (goodwill towards other human persons). These conditions are rich and demanding. Still, although Socrates's interlocutors Polus and Callicles are vividly deficient in goodwill, Socrates is reasonably willing to persist, for as long as they are at all willing to listen, in trying to illustrate, display, and explain, to them as well as to any bystanders of goodwill, the worth - the desirability -- of a friendship (including a public politics)

based on shared acknowledgement and respect for intrinsic human goods such as truth and (such) friendship, goods which can be elements of an intelligible and common good.
That the good of truth, and of getting to know it for its own sake, is one among these basic aspects of that human well-being/flourishing/fulfilment, aspects which can be truly common (a koinon agathon)(8), is a truth which Socrates finds dozens of ways to assert.(9) His strategy can be reconstructed as follows.
Considered as the benefit to be gained or missed in a discussion (or a course of reflection), truth is a property of the judgments to be made by those (or the one) engaged in the common (or solitary) inquiry. So, existentially, it is the good of understanding and knowledge. Its intelligible goodness, its character as not merely a possibility but also an opportunity, is grasped, in practice, by anyone, in the first instance children, capable of grasping that the connectedness of answers with questions, and with further questions and further answers, is that general and inexhaustible possibility, goal, and achievement which we call knowledge. This grasp of a field of possibility as also a field of opportunity originates in an act of that kind of undeduced (though not datafree!) understanding which C.S. Peirce, in common with the tradition originated by Plato, calls insight.(10) The grasp of possibilities as possibilities is essentially theoretical; the grasp of possibilities as opportunities is essentially practical - it is the originating moment, never superseded, of practical understanding and reasoning, deliberation and rational choice. Using the term 'intelligible' to signify the content of insight(s), this understanding of possibilities as opportunities is understanding of intelligible goods.
If one set out to argue - to contend in discourse or in one's private reflections -that truth (and knowledge of it) is not a good both intelligible and intrinsic, desirable for its own sake as the avoidance and overcoming of ignorance, muddle, and error, one would refute oneself.(11) One's argumentative (seriously asserted) denial would be performatively inconsistent; what is asserted would be inconsistent with what is instantiated in and by the act of seriously asserting it, arguing for it, proposing it for acceptance.(12) The bringing to light of such performative, self-referential inconsistency is one, but only one, of the kinds of refutation (elenchos) which Socrates employs and which Callicles vainly urges him to abandon.(13)
Refutation of this particular kind is not, to be sure, a strict demonstration of the truth which the self-refuting assertion denies;(14) it is rather a cogent defence of that truth -in this particular case the truth that knowledge is a basic human good- against any serious denial. And it is a form of defence peculiarly and appropriately unsettling for the self-refuting sceptic,(15)since what refutes his assertion is instantiated in his very own (inner or outward) act. This is not merely self-contradiction in the usual sense of asserting contradictory propositions (a contradiction from which one can escape by simply abandoning one or both of them). It is inconsistency, rather, between what one asserts (denies) and the data given, willy nilly, by one's own very choosing to assert it.(16) One's position is ridiculous,(17) absurd;(18) it is a vivid manifestation of that "discord with oneself"(19) which is involved in some measure in every kind of inconsistency, and which Callicles - testifying to its unacceptability - hopes to avoid by brutal frankness.(20)
In the logical domain of argumentation, self-refutation (whether by self-contradiction or performative inconsistency) is a mode of refutation, a way of being refuted. In the existential domain of praxis it is like any other condition of having one's eyes closed to the truth: an unworthy condition of truncated appropriation of opportunity, a kind of self-mutilating, a notable way of leaving oneself "limping and crooked" in psyche "due to falsity and pretence".(21) The Gorgias strenuously insists upon the moral significance of the existential choice between concerning oneself with soundness in argumentation, in the hope of overcoming one's ignorance, incoherence, or blindness to what is so, and concerning oneself with success in (say) erotic/political affairs.(22)
But in grasping the goodness, the intrinsic worth, of truth and knowledge of it, one grasps that it is a basic good not only for oneself but for anyone like oneself - a basic human good. Moreover, knowledge is not the only human possibility which, by insight into the data of one's inclinations and capacities, one

understands as opportunity, and as an intrinsic good, worthwhile for its own sake. Friendship, the sharing in goods with another or other persons each for those persons' own sake,(23) is another such good. For each and both of these reasons, one cannot reasonably seek a fulfilment which is only one's own. And because there is more than one intrinsic good, and also because one's pursuit of any basic good is threatened by more or less chaotic subrational desires, aversions, and inertia ("licentiousness"(24)), one needs look to establishing and confirming order in one's soul: a temperate (including courageous)(25) will and character. Because one's pursuit of fulfilment would be unreasonable and self-mutilating if it were indifferent to friendship and to the worth of the instantiation of human goods in the lives of other people, one needs look to getting order into one's relations with one's fellows, one's communities. The name for that order, and for one's constant concern for it, is justice.(26) The recognition of human equality which (as Plato/Socrates makes plain) is the core of a just will(27) is nothing other than the recognition that basic human goods are realisable as much in the lives of other human beings as in my own life. To refuse that recognition is to be buried in untruth. No one thus enslaved to error can intelligently think himself happy; to think so would be to bury oneself deeper in untruth, untruth about what fulfilment is. Properly (rationally) understood, knowledge, friendship, fulfilment, and justice are inter-defined. (That, abstractly put, is the essence of Plato's response to Callicles, and equally to Glaucon's challenge, which has nothing to do with the question whether any of the principles or norms of justice can be formulated exceptionlessly.)

One cannot, then, have order in one's soul (will) without anticipating and doing what one reasonably can to promote and respect an order of equal justice in one's societies, one's associating or communion with one's fellows. And it would be folly to expect justice and friendship to exist in any society whose members are not concerned to promote and maintain such rational, desire-integrating order in their individual souls (wills). Moreover, just as no-one could intelligently call a society good whose members treat each other as robbers treat their victims, so no-one could intelligently call good the life of an individual who is enslaved to his subrational desires for gratification and thus, too, cut off from the reality, as opposed to spurious imitations, of friendship. In each type of case - the individual and the society - the order in question is good because it is intelligent and reasonable and the corresponding forms of disorder are so far forth unreasonable and bad. And this appropriateness of good order in the individual and society is not something we just invent; rather, it becomes clear to us by experience, thought-experiment, discussion, rational judgment.

So, both because its desirability is discovered rather than dreamed up and because being reasonable is central to what we find ourselves to be (in potentia) and reasonably want to become and remain (in act), we can call this reasonable order in the soul and in society "natural" - something naturally good. And since in each type of case the good, reasonable, and therefore natural order can and must be picked out in the form of normative propositions directing one towards individual and social choices promotive and respectful of good order, the relevant directive propositions are appropriately called laws. (For law of any kind governs precisely by directiveness within the deliberations of its subjects). This in substance of the way Socrates/Plato transforms the Calliclean opposition between nature (physis) and law/convention (nomos) into the recognition of a natural law -the set of propositions which pick out (i) the goods (such as knowledge and friendship)(28) to be pursued and (ii) the principles of reasonableness in realising goods in the life of oneself and one's fellows- the principles of justice and the other virtues.(29) As the dialogue is calculated to make clear, the Calliclean/Nietzschean(30) proposal to consider natural and therefore choice-worthy (just by nature)(31) the rule of the stronger, in doing what comes naturally -ruthless pursuit of the desires they happen to find within themselves,(32)- ends inevitably in incoherence and self-refutation. For the weak, in concert, are naturally stronger than the strong and subject him to their law and conventional wisdom of equality-based justice.(33) But does their natural strength entitle them to rule? Does anyone's? Plato expects us effortlessly to see that any such attempted inference from 'is' to 'ought' is fallacious.

Again, proposing the 'principle' that a worthwhile life consists in freedom from subjection to others turns out to be performatively, self-referentially, inconsistent, for (as Callicles is brought to admit) it implicitly proposes living by flattery and demagogy, which is a matter of conforming more or less slavishly (if only for personal safety) to the desires of the many.(34) Similarly the 'principle' that the content of the emancipated life is the search for satisfaction of all one's desires deprives Callicles of any basis for his own judgment that, say, the catamite's pathetic slavery-to-desire is unworthy.(35) The "principle's" incompatibility, moreover, with the conditions of reasonable discussion (discourse) is made manifest, for readers of Plato's dialogue to contemplate at leisure: the speech-making, the surliness, the sulky abdication from the to-and-fro of debate, the not too veiled warnings that, outside the discussion, and after a trial by rhetoric not truth, Socrates' property may well be confiscated and he himself exterminated. The reader knows that in the face of such threats Socrates lived up to the truth that it is better to suffer injustice than to do it: as Socrates recounted at his trial, the Thirty Tyrants called upon him and four others to participate in the murder of Leon of Salamis, "and when we departed from government house, the other four went off to Salamis and brought back Leon, but I left and went home" - knowing that the oligarchy would probably kill him for that. (But he escaped that fate, on that occasion, because the oligarchy collapsed.)

Perhaps the four who went off to fetch Leon for liquidation rationalised their complicity in murder by an ethics of "the situation", or of "proportionality".(36) Or perhaps with the zest for thuggery of a Polus; or just with a more lofty Calliclean shrug. Perhaps, rather, they were decent people ashamed of what they were doing, acknowledging each to himself (though not in "discourse" with anyone else) the injustice, untruth, evil of their choice -this condition of awareness being part of what St Paul refers to with his metaphor: the natural law is written on their/our hearts. And since the consequences of Socrates' choice to go home are continuing, quite strongly, to this very day (e.g. through the hearts of readers of so many eras), we can judge how unreasonable it is to try to guide moral (= ethical) judgment by an assessment of the "overall net balance" of pre-moral good and bad consequences "promised" by each of the options available in "the situation"- a situation which in reality includes our situation, so far away and so many centuries later. An ethics of "natural law" (rational principles) cannot embrace any moral methodology of the kinds proposed by utilitarianism/consequentialism/proportionalism or by "situation ethics".

Plato, in the Gorgias and elsewhere, says much of what he wishes to say about the dignity of human persons, and about an individual's most significant excellences or failures as a person, by speaking of the soul and its order or disorder. This is consistent, at least for the most part, with that personal body-soul unity which Aristotle and more resolutely Aquinas explicitly (and Plato surely, if not explicitly) brought to light by reflection on the experience, the inwardness-outwardness of being in action.

In the act of (say) speaking to my partner in discourse, I understand my utterance as the carrying out of a choice which I made, and in the same act I am aware of my audible uttering, see the hearers register their comprehension, feel (say) confidence or anxiety, remember a past misunderstanding, and hope my statement will make my point. This experience of the unity (including continuity) of my being - as a feeling, willing, observing, remembering, understanding, physically active and effective mover or cause of physical effects and equally an undergoer and recipient of such effects-is a datum which philosophical exploration of human and other natural realities can adequately account for only with great difficulty and many a pitfall. Still, prior to all accounts of it, this intelligible presence of my many-faceted acting self to myself is a datum of understanding; one and the same I -this human being- who am sensing and understanding and choosing and carrying out my choice, etc., is a reality I already truly understand, albeit not yet fully (explanatorily, with elaboration). (Indeed, it is only given this primary understanding of one's understanding, willing, and so forth, that one can and typically does value such understanding, freedom, voluntariness, unity of being, and so forth.)

So, as Aristotle and (plainly) Aquinas argue more or less explicitly,(37) any account proposing to explain these realities must be consistent not only with the complex data it seeks to explain but also

with the proposer's performance, outward and inward, in proposing it. The only account which meets these conditions will be along the lines they argue for: The very form and lifelong act(uality) by which the matter of my bodily make-up is constituted the unified and active subject (me myself) is a factor, a reality, which Aristotle (after Plato) calls psyche and Aquinas calls soul (anima). In the human animal - the very same animal whose interests in every individual case are to be taken equally into account, in Plato's ethics - from the very outset of his or her existence as human, it is this one essentially unchanging factor, unique to each individual, which explains (1) the unity and complexity of the individual's activities, (2) the dynamic unity in complexity -in one dimension, the programme- of the individual's growth as embryo, foetus, neonate, infant...and adult(3), the relatively mature individual's understanding of universal (e.g. generic) immaterial objects of thought (e.g. classes, or truth and falsity, or soundness/unsoundness in reasoning), and (4) this unique individual's generic unity with every other member of the species. In members of our species the one factor unifying and activating the living reality of each individual is at once vegetative, animal (sentient and self-locomotive), and intellectual (understanding, self-understanding, and, even in thinking, self-determining by judging and choosing). Though the manifold activations of these bodily and rational powers are variously dependent upon the physical maturity and health of the individual, the essence and powers of the soul seem to be given to each individual complete (as wholly undeveloped, radical capacities) at the outset of his or her existence as such. This is the root of the dignity we all have as human beings. Without it claims of equality of right would be untenable in face of the many ways in which people are unequal.

This metaphysics of the activity of debate or discourse enables a theory of natural law to stabilise and clarify practical reason's undeduced grasp of first principles of the form "knowledge (friendship...etc.) is a good for me and anyone (any being like me)". The same metaphysics is the indispensable basis for rationally affirming the second element of the core of any theory of natural law, the account of right. For that account, explanatorily ordered, begins with the master principle of ethics, that one's choices and other acts and dispositions of will must be open always to integral human fulfilment, that is to the fulfilment of all human persons and communities.

I have been dwelling on the ethics and metaphysics of debate, and on Plato's Gorgias as a still fresh and living exploration, articulation, and philosophically critical and responsible assertion of that ethics and, in some measure, that metaphysics. That dialogue, at the very origin of "natural law theorising", exemplifies what it is for a natural law theory to be living, not dead. The theory is living if it can meet anyone willing to attend to it, and meet them where they are - for example, in the act and activity of attending to it. It is living if it can help one to capture or recapture those insights into known possibilities which Aquinas calls practical understanding - acts of insight, intellectus - whereby one adds to the knowledge that this is possible the insight that this is an opportunity, a good, a perfecting (a making better-off), for oneself and in principle for anyone. A natural law theory cannot be living unless it is through and through practical, that is, thinking of goods as facienda et prosequenda, to-be-pursued and done, pursuit-worthy and choice-worthy, in the sense that the thought "this is a good to be pursued and done" is directive, that is normative. Here we are at the root of all moral normativity, that is, all normativity (including moral obligation in its various kinds and strengths) precisely as it bears on choices about how to spend a portion of one's life, choices about what Aquinas calls "life as a whole". Aquinas's theory of natural law, in its essentials, is living because it resolutely recognises and affirms that what Aquinas calls interchangeably the first principles of natural law and the first principles of practical reason are principles picking out and directing us towards the primary forms of human good - primary goods such as life itself, knowledge, friendship, marriage, and practical reasonableness (the bonum rationis) itself. These principles are truths. They are, as he frequently says, indemonstrable, that is, self-evident, per se nota - not of course data-less intuitions, but insights into the experience of desires (e.g. curiosity) and knowledge of possibilities (e.g. that questions can be answered and that answers can hang together as knowledge of truth and reality). As isolated insights their directiveness is not yet moral, but it becomes moral when, as directed by the principle that practical reasonableness

itself is a good to be pursued and done, one considers the question what to choose in the light of the combined directiveness of all the principles as they bear both on one's own individual good and the good of everyone else. (For, recall, the insight is not that a good, such as life or knowledge or friendship is good-just-for-me, but that it is good, just as intelligibly a good, for anyone.) The propositional content of the combined directiveness of all the first principles can be expressed, as the new classical theorists have been putting it since the early 1980s, as the principle, which can be thought of as the master principle of morality, that one ought to choose and in other ways will those and only those possibilities the willing of which is compatible with a will towards to integral human fulfilment. Integral human fulfilment, one must repeat -because here the history of the tradition has created a stubborn nest of misunderstandings and refusals to read- is the good of all human persons and communities. Here natural law theory decisively breaks with the literally shameful misconception, so common in neo-scholastic philosophies, that makes my fulfilment (my Happiness) the telos or ultimus finis for me and the supreme criterion of practical reasonableness in my practical reasoning.

In Aquinas, this master principle of morality finds its articulation in what he calls a "first and common precept of the law of nature", that one should - must - "love one's neighbour as oneself", a self-evident principle from which all (other) moral principles and norms can (given further premises) be inferred as either implicit in it or conclusions from it.(38) Notwithstanding all the deformations in Kant's emaciated conception of practical reason, the true master principle has a shadowy half-life in his conception of a Kingdom of Ends, understanding Ends as human persons as is suggested by another of his alternative formulations of the Categorical Imperative, the one that requires us to treat humanity (Menschlichkeit) in oneself and others always as an end and never as a mere means.

Kant's "Kingdom of Ends" is a vaguely articulated philosophical echo of the injunction which is the supreme norm or principle of the ethics of Jesus Christ, of the Gospel, of Catholic mores: "Seek first the Kingdom."

A living account of natural law is one that takes seriously the fundamental thesis which Aquinas stated but never explained or explicitly exemplified: that all moral norms must be seen, not as self-evident but as conclusions(39) from the master moral principle, itself a specification of the absolutely first principle of practical reason that good is to be pursued and done. For present purposes the master moral principle, as Aquinas understands it, is that one must love one's neighbour as oneself.(40) However short the way from here to the conclusions, some further premise needs to be displayed, and Aquinas neglects to do this in any discernibly systematic way. The master moral principle's specification in the Golden Rule captures one element in the integral directiveness of all the basic goods, that is of each of the first practical principles which pick out and direct towards those goods. The other framework moral rules, specifying fundamental human rights and responsibilities, give moral direction by stating ways in which more or less specific kinds of choice are mediately or immediately contrary to some basic good.(41)

All this is a matter of putting carefully to work the practical insights -into the intelligible goods of knowledge, friendship, and other primary goods- that the Gorgias re-enacted and represented. The main elements are there to be read in Aquinas. But it all sounded and sounds surprising and new to those who were and are working with theories of natural law which I would describe, with due regret, as more or less dead.(42) Some of these dead - that is more or less untrue and unfruitful -- theories are found in what one can call the tradition of "modern" natural law theory, paradigmatically in Pufendorf and Locke, each drawing both on Grotius and Hobbes. Others are found is what one can call the neo-scholastic tradition. I will venture a few thoughts about each of these traditions.

From Grotius, Locke and Pufendorf take the well-sounding but quite opaque idea that morality and the law's basic principles are a matter of "conformity to rational nature". How this nature is known, and why it is normative for anyone, these writers never carefully consider. Such fundamental questions were confronted and answered by Hobbes. But his answers treat our practical reasoning as all in the service of sub-rational passions such as fear of death, and desire to surpass others - motivations of the

very kind identified by the classical tradition as in need of direction by our reason's grasp of more ultimate and better ends, of true and intrinsic goods, of really intelligent reasons for action. Hobbes proclaims his contempt for the classical search for ultimate ends and for intrinsic reasons for action. Accordingly there can be for him no question of finding the source of obligation and law in the that kind of necessity which we identify when we notice that some specific means is required by and for the sake of some end which it would be unreasonable not to judge desirable and pursuit-worthy.(43) Rather, obligation and law are defined, by Hobbes and then by Locke and Pufendorf, as matters of superior will.

"No law without a legislator."(44) No obligation without subjection to the "will of a superior power".(45) "Law's formal definition is: the declaration of a superior will."(46) "The rule of our actions is the will of a superior power."(47) These definitions and axioms are meant by these founders of modern natural law theory to be as applicable to natural law, the very principles of morality, as to the positive law of states.(48) So obligation is being openly "deduced" from fact, the fact that such and such has been willed by a superior. To be sure, when natural law (morality) is in issue, the superior, God, is assumed to be wise. But the idea of divine wisdom is given no positive role in explaining why God's commands create obligations for a rational conscience. God's right to legislate is explained instead by the analogy of sheer power: "For who will deny (says Locke) that clay is subject to the potter's will and that the pot can be destroyed by the same hand that shaped it?"(49)

Locke, like Hobbes, is uneasily though dimly aware that "ought" cannot be inferred from "is" without some further "ought". That is to say, he is uneasily aware that the fact that conduct was willed by a superior, or indeed by a party to a contract, does not explain why that conduct is now obligatory, or indeed can ever be obligatory at all. So he sometimes thinks of supplementing his naked voluntarism (oughts are explained by acts of will) by the rationality of logical coherence: fundamental moral principles are tautologies, norms which it would be self-contradictory to deny.(50) Hobbes had ventured a similar account of the obligatoriness of his fundamental social contract, of subjection to the sovereign. His official and prominent explanation was of the form, "clubs are trumps" (superior will and power/force). But, for anyone unimpressed by the naked assimilation of right with might and ought with is, he offers another explanation: it is self-contradictory not to keep a promise one has made.(51)

The strategy of assimilating the norms of natural law (morality) with those of logic finds its principal exponent in Kant, whose Metaphysics of Morals (1797) is in some ways the most sophisticated exposition of modern natural law theory. Officially rejecting any reduction of ought to the is of will, Kant holds that reason alone holds sway in conscientious deliberation and action. The rational necessity decisive for this sway is the logical necessity of non-contradiction, and all Kant's efforts to explain particular kinds of obligation (promissory, proprietary, political, marital, etc.) are claims that to proceed on any other "maxim of action" would entail (self-)contradiction.(52)

Kant's reductions of moral rationality to logic all fail. They were bound to, because his basic theory lacks the concept of a substantive reason for action - a reason which is not a true judgment about natural facts, nor a logical requirement, nor a technical necessity of efficient means to a definite and realizable end. His theoretical and practical purpose is to save the content of civilization from the ravages of utilitarianism and scepticism. He articulates with novel power the radically anti-utilitarian principle that one must always treat humanity, in oneself as in others, as an end and never as a mere means. But his own official definition of "humanity" would rob this categorical imperative of its significance. For if our humanity is, as he says, our rationality, and that rationality has no directive content save that one be consistent, we are left with neither rational motivation nor intelligent direction that could count in deliberation.

In the end, like Locke and Hume, Kant remains firmly in the grip of the assumption that what motivates us towards one purpose rather than another is our sub-rational passions. He lacks almost all the building blocks of classical natural law theory, the substantive first principles - basic reasons for action

-- that direct us towards bodily life and health, marriage, friendship, knowledge, and so forth,(53) as the intrinsic human goods which give us reasons (intelligent, not merely passionate motives) for action, and which, as aspects of our humanity as flesh-and-blood persons, are to be treated always as ends and never as mere means. He cannot account for the obligations and institutions which he does try to justify, let alone others which he overlooks, such as the obligation in justice to employ much of one's wealth for the relief of the needs of others. Kant's official rejection of reductions of ought to the is of will is subverted by the ambiguities of his claim that the moral law is a matter of one's legislation for oneself, ambiguities made inevitable by the absence of any substantive ends (reasons for action) in his conception of what practical reason understands.(54)

In the neo-scholastic tradition of thinking about the morality's and natural law's foundations, as one could find it in 1960, apparently alive but in truth more or less dead, there was a similar failure to take seriously -indeed, for the most part, even to notice, what Aquinas had made reasonably clear. Some neo-scholastics thought that the first principles of natural law were already fully specified moral norms of the form "One must not kill the innocent", or "One must not commit adultery". These they took to be self-evident and indemonstrable, in defiance of Aquinas clear and correct thesis that they are conclusions from higher principles by a form of inference left entirely unexplored by these neo-scholastics.

Others thought that the principles of natural moral law are found by inspecting either human nature as expounded in some ontology or anthropology or metaphysics of human nature disclosing such truths as that knowledge is a higher form of existence than life, from which one should deduce - who knows how? - that contemplation is the final end of man, but not (why not?) that people can be put to death for the sake of advancing knowledge. These thinkers were either indifferent to the question why I should regard the supposed truths of ontology etc. as entailing any moral obligation, indeed any normativity or directiveness for practical reason; or else they answered it by appealing to a supposed divine imperative of the form "Respect nature", while neglecting to supply evidence that any such imperative has been issued or revealed, justification for treating it as wise, and reasonable principles for discerning what kinds of choices it excludes, what it requires, and what it in some other way gives guidance upon.

They also passed over in unbroken silence Aquinas's pervasively deployed methodological or epistemological principle that one understands the nature of any dynamic reality by understanding its capacities, and one understands its capacities by understanding its acts, and one understands its acts by understanding its objects.(55) Clearly, the objects of all human acts which are expressions of will (the carrying out of choices) are the intelligible goods identified and directed to in the first and indemonstrable principles of practical reason. So human nature cannot be adequately known, as in metaphysics, without prior knowledge of what is first known (undemonstrated and not in need of demonstration) in practical understanding of primary human goods as normative for us.(56) These thinkers also passed over in unbroken silence Aquinas's analysis, precisely at the beginning of his Commentary on the Ethics, distinguishing as diversi, and by implication irreducibly diverse, all the sciences of nature, including metaphysics, from the sciences of logic, and from the moral sciences, which deal not with ordered reality as it already is, independently of our thinking, but rather with the order which is not yet reality, and is to be brought into our deliberation and action by thinking about what is to be done. Asked how one moves from the "is" of true propositions in ontology, anthropology, metaphysics, etc. to the "ought" of normativity for praxis, they gave, and give, answers which at bottom are as voluntarist, and as mistaken, as those of the "modern natural law" tradition: some sort of act of will of the deliberating subject, or some "spark of desire", is supposed to transform speculative into practica ratio. In effect the category of practical truth is thus abolished, at least from the sphere of ends and principia. In its place is put something which, whether or not it can account for motivation, cannot account for normativity.

A third group of neo-scholastics tried and some still try to put at the foundation of practical reasoning, in place of principles directing to intelligible goods as true, rather inclinations which by (their) hypothesis are prior to practical understanding. But this, too, makes normativity subrational and unintelligible, not to say gravely wounding to human dignity by assimilation of free choice's principles to animal automaticity.(57)

In other ways, too, these schools of "natural law theory" showed clearly enough that they were dead, when they were put to the question in the 1960s and after: Is the intentional killing of the innocent truly always wrong? Is non-marital sex wrong? Is producing babies by in vitro fertilisation or cloning? On such matters the great names of the twentieth century neo-scholastic tradition seemed to me to have little or nothing interesting to say, no explanations and, philosophically speaking, no answers to offer. Those who tried to use twentieth century neo-scholastic ethics as a heuristic model for rereading the tradition of moral and theological thought were cripplingly disabled from even understanding, let alone critically assessing, that tradition. A good example: John Noonan's calamitous misreading of Aquinas's ethics of sex and marriage,(58) a misreading incautiously followed to this day by many who should know better, and so far as I can discover little if at all criticised at the time of its appearance, or long after, for its misapprehensions of Aquinas.

Besides lacking any theory of true practical principles, and any coherent account of the bearing of our ultimus finis on the rightness of specific kinds of choice, twentieth-century neo-scholastic natural law theories were gravely weakened, it seems to me, by an uncritical and incoherent account of the human act and of how kinds of human acts are "specified" by their object(s). The acts referred to in principles and norms of natural law are kinds of acts which carry out choices of proposals for action, proposals shaped in deliberation about what to do. The encyclical Veritatis Splendor, presenting itself, not without reason, as "the first time the Magisterium of the Church has set forth in detail the fundamental elements" of Christian moral teaching (sec. 115), makes a decisive break with neo-scholastic accounts of natural law, not only by its teaching that the principles and leading moral norms of the natural law direct us in relation to "the good of the person...by protecting his goods" (sec. 13), goods called throughout the encyclical "fundamental goods" (e.g. secs. 48, 50; also 67), but also by its teaching that in order to be able grasp the object of an act which specifies that act morally, it is...necessary to place oneself in the perspective of the acting person. ... By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person (sec. 78). Grisez, Boyle and I have recently explored some implications of understanding action from the perspective of deliberation, intention, and choice to adopt a proposal, rather than as a chunk of behavior understood as events or causes in the purely physical order.(59)

A word about virtues. Any living natural law theory will be a virtue ethic, for virtues are nothing other than dispositions to make and act upon reasonable and right choices, and avoid unreasonable and wrong ones. They correspond to the intransitive aspect of one's choice and action, its significance as not only transitively shaping the world outside one's will but also shaping one's character, one's dispositions and thus one's very self, because choices last in one's will unless and until reversed by another contrary act of will (repentance, however informal).(60) But it should go without saying that one can make no progress in justifying one's judgment that this is a virtuous choice and this not, unless and until one can identify the criteria, the principles and norms which identify some kinds of chosen acts as reasonable and, in appropriate circumstances, right, and other kinds of chosen act as unreasonable and wrong, either in some kinds of circumstances or in all. Dreams of an ethic which would be an ethic of virtue(s) as opposed to an ethic of natural law and principles of practical reasonableness are dreams, as mistaken, I am sure, as the thought that there is a significant and fundamental difference, in Plato or anywhere else, between a theory of natural right and a theory of natural law.

HUMAN NATURE AND HISTORICITY IN SOME RECENT THEOLOGICAL THOUGHT

It has been said, with some plausibility, that "the critiques of (by) Karl Rahner and Bernard Lonergan (led) most Catholic scholars to reject so-called classical natural law theories".(61) If that is sound history, and I suppose it is, these scholars have put their faith as theologians in an argument both philosophical and historical, and very faulty both as history and as philosophy.

Presuming, with his master Kant, that there are no intelligible and primary or basic human goods delineating the main lines of human flourishing and thus of human nature, Rahner, followed uncritically by Lonergan, restricted the "objective structures of human nature" to those which are "implicitly affirmed by a transcendental necessity even in the act of their denial".(62) Both he and Lonergan misunderstood the nature of arguments from self-referential inconsistency (arguments of the kind which I deployed more than once earlier in this paper). Philosophical explanation of what is involved in the making of assertions has no special method, and the truths it may attain or defend have no special metaphysical or "transcendental" necessity, even though their defence is peculiarly facilitated by the special proximity (so to speak) of the facts that are given in the performance of denying them.(63) Accordingly, Rahner's conception of human nature (which Lonergan promoted) was grounded in fallaciously extrapolating from a misconception of self-referential inconsistency to a division between an allegedly unchangeable "transcendental" human nature comprising only those features necessitated by the very concept of thought and action (and thus by the very act of scepticism) and the merely "categorical" and "concrete" nature which -without any explanation, but doubtless relying upon one of the moribund schools of neo-scholastic "natural law theory"- Rahner treated as the source of most moral norms. To this he added the empirical-sounding assertion that "nowadays man himself in his concrete nature" is "subject to swift changes", indeed, "to a most far-reaching process of change".(64) To those who ask for evidence, for an example... he offers, so far as I know, not even one. In truth, talk of human nature's changeability could not impinge upon the foundations of morality, of the natural law, unless it pointed to some class of human beings for whom it would not be the case that life and health, knowledge of truth and beauty, excellence in mastery of work and play, the harmony of friendship with others, the procreative friendship of marriage, and so forth, are basic reasons for action, basic forms or aspects of human fulfilment in which he or she would wish to share and outside which no other benefit or goal could be really worthwhile.

As I have indicated, Rahner had no ethical method save the ghost of some neo-scholastic conception that one arrives at some theoretical ontology of human nature and then, to give it practical relevance or normativity, postulates a supposed divine imperium "Follow nature (or: human nature)". Lonergan, too, had no ethics worth speaking of. He struggled to find a conception of principles of practical reasoning in Insight, but without result. In Method in Theology it became clear that he had entirely overlooked the kind of insight which is articulated in the first practical principles that interested Aquinas, directing us to the intelligible goods that interested Plato and Aristotle as true goods for anyone. Lonergan had veered into some kind of quasi-utilitarian aggregation or systematisation of values conceived not as intelligible but as objects of feeling -a strange capitulation to empiricism by one of the most perceptive critics of empiricist metaphysics and epistemology in the domain of speculative reason.(65)

But Lonergan's post-Vatican II work has had its wide and damaging impact on Catholic theologians not so much by his undeveloped and inoperable ideas on ethics, but by his unhistorical thesis that there is a profound distinction between "historical consciousness" and a "classicist world view", and his hints and insinuations (sometimes denied by himself but enthusiastically taken up and promoted as unqualified theses by many subsequent theologians)(66) that most if not all pre-Vatican II Catholic theology is deplorably classicist and thus lacking in historical consciousness, and thus in need of substantial

replacement - especially so far as it concerns human nature and the morality of human action. I have extensively analysed, elsewhere, Lonergan's work, and the work of some of his followers, on this alleged distinction and its application to Catholic faith and Catholic theology.(67) I cannot here repeat those analyses. I will make only two points.

Pius XII's Divino Afflante Spiritu (1943) did not exaggerate in saying that many things, "especially in matters pertaining to history, were scarcely at all...explained by the commentators of past ages (on Sacred Scripture), since they lacked almost all the information which was needed"(68) for an accurate exposition of such matters (chronology, sequence, antecedents, and suchlike). But it does not follow that on all matters whatsoever all past thinkers lacked what was necessary for sound understanding. To think that they did is to make a fundamentally unhistorical and philosophically unsound extrapolation from particular to general or universal. Lonergan, for example, tells us that the name "historical-mindedness" -the name he favoured for his own thought- originated with the Anglican theologian Alan Richardson. He omits to note that Richardson in fact adopted the phrase from a passage in which the unbelieving, secularist American historian of Enlightnment, arl Becker, is explaining to the Yale Law School, in 1931, why neither he nor any modern man can understand St Thomas's definition of natural law.(69) Now this fact about the history of the phrase in no way weakens the historical or philosophical validity of Lonergan's thesis. But Richardson's explanation of historical-mindedness, inspired by Becker's, is this:

Because we are nowadays historically minded, we can understand an idea or doctrine only when we relate its history; we can identify a concept only by regarding it, not as something static...but as a living, developing entity.

Here Richardson extrapolation from some particulars to a universal claim (...only when...only by...) which is self-refuting: that we can understand a doctrine only when we relate its history, abd can identify a concept only by regarding it as developing. If these doctrines of Richardson and Becker (and Lonergan?) could be understood only by relating their history (something attempted neither by Richardson nor Becker), that historical relation or account would only serve to lead us back to other doctrines, and indeed could only be understood if we could get back to yet other doctrines which could only understood if...a so on: a doubly vicious regress. And if a concept could only be identified by regarding it as developing, we could not now identify what Richardson meant when he uttered this statement thirty-five years ago or Becker his similar statement 35 years earlier still. And of course the statement is inconsistent not only with its own claim to intelligibility but also to much else in the practice of science and philosophy. As for Becker's particular example, about the intelligibility of Aquinas's concept of natural law it is both straightforwardly false - for Aquinas's concept, though often misunderstood, can be accurately understood by someone who reads his work with care - and also self-refuting: for Becker cannot know that any modern interpreter's interpretation of Aquinas's statements about natural law is mistaken unless he himself understands those statements.

My second observation about Lonergan's attempted distinction between classicism and historical-mindedness is that it substantially mistakes the history of classical philosophy and of Catholic theology.(70) Lonergan alleges that "the classicist believed that he could escape history, that he could encapsulate culture in the universal, the normative, the ideal, the immutable..." and that for the classicist all science "proceeds from self-evident, necessary principles".(71) On the same page he says: "Every good Aristotelian knows that there is no science of the accidental (Aristotle, Metaphysics VI,2, 1027a19f)".(72) But for Aristotle and Aquinas, "necessity" and "science" are analogical, not univocal terms, and so if one troubles to consult that very page of the Metaphysics one can learn that science extends to the ut in pluribus, which happens not necessarily (stricto sensu) but only for the most part. And from the next page one can learn that the accidental of which there is no science is nothing other than that which has no cause, no explanation at all. But even for one-off ("concrete", "historical") events there are, in Aristotle's view (still at the same place in the Metaphysics), accounts -explanations- which though they do not show that the event happened by stricto sensu necessity, do give genuine

knowledge-by-causes of why it happened (or, if it is still in the future, the grounds for a well-founded prediction). If someone, to take Aristotle's own example, got thirsty because he ate spicy food, and so went outside intending to get a drink, and there met a violent death because robbers were lying in wait intending to assault him, we have here multiple valid explanations in terms of the non-accidental causing of thirst by spicy food, and the per se non-accidental character of whatever is intended.(73) So scientia, authentic knowledge as conceived by classical philosophers and theologians such as Aristotle and Aquinas, extends beyond the stricto sensu necessary and the ut in pluribus, to the per se which embraces the intention of even one-off, unique intentional actions. It can thus extend to basing a whole scientia, theology, primarily on an identification of the sensus litteralis seu historicus, the set of propositions which the witnesses to revelation and its transmission through history actually intended to assert as true.(74) For Aquinas, though that science has an unchanging, ahistorical subject, God, it relates everything back to God, and so deals with salvation history: fall, praeparatio evangelica, incarnation and life of Jesus, the instituting of the sacraments and founding of the Church...many things that involved change, radical concreteness, one-off events, the necessity only of freely adopted intentions...

The great issue suppressed by programmatic attempted distinctions between the classical and the historically-minded is the issue of truth. If historically-minded moderns are conscious of the diversity, development, and decay of cultures (something very well known to Herodotus and Plato and Aristotle and all their readers), and if classicism's idea of culture is "not empirical" but "normative", still the issue remains to be faced. Is there indeed, in truth, no ranking of cultures, and of their political and legal orders? Or again: Is there indeed no catholic church, and has the Catholic Church indeed no universal culture created, at once "empirically" and "normatively", by its founder's historically given choices (as in the Lord's Prayer, or in the Mass in which is offered the same true and proper sacrifice once offered on Calvary)?

In distinguishing classicism from historical consciousness or mindedness, Lonergan and others like him are attempting to describe a change, but also are urging us to join them in shifting to the latter, better view (and higher viewpoint). Their distinction is at once empirical and normative. It needed some argument, and in his last major exposition of the distinction, Lonergan offered one, in the form of an account of what he called the dialectic and experiment of history. (We observe the non-historical metaphors, "dialectic" and "experiment", to which he thus subjects the understanding of history's course.) This proceeds in terms of a succession of plateaus of developing human meaning, the first plateau having to do with doing, the second (on which is to be found classical consciousness)(75) mainly with speaking, and the third with "the human understanding where developments originate";(76) this supreme level, which is also historical consciousness in its fullness, seems to be reached precisely with the author's own unfolding of the "generalized empirical method"(77) -the method announced, he implies,(78) in his book Insight. Let us set aside the temptation to digress here into reflections on the truly Hegelian and Comtian posture of Lonergan's reflection on the world-historical significance of his own work. The point to notice here and now is, rather, that the whole alleged process is one which, he says, "has its origin in the tensions of the adult human consciousness".(79)

But of course, "adult human consciousness" is as "classicist" a category as one could wish to find, and has been rather carefully explored by the tradition. Central to individual and social development, according to the tradition, is the tension between reason and feeling, between intelligence and emotion or affectivity. Virtue, in the tradition, is no suppression or despotic mastery of one's affectivity. Every intelligent and good action will be supported by some emotion, and in a well-ordered person even conflicting and dissonant emotions would take their place in an inner harmony or resolution. But intelligence grasps goods, values, benefits, aspects of human flourishing, which one's affectivity ,as such, cannot apprehend, and these are the principles of all reasonable deliberation. Lonergan made very little of this central theme of the tradition, for, as I have said above, he came to the view that the

apprehension of values rests on affectivity, that "apprehension of values and disvalues is the task not of understanding but of intentional response", i.e. of "sensibility" and "feelings".(80) I could go on tracing his eminently questionable views on the foundations of ethics,(81) and the root of sin. But my point here is simply that the pertinent issues he is raising all lie well within the realm of "classicist" philosophical method, and are treated by Lonergan in a thoroughly classicist style, with just the sort of philosophical tools which he assigned to the second plateau of history's dialectic. The methods employed by Lonergan, or Rahner, or their many epigones, seem to me no more historically conscious or historically critical than those employed by Aristotle in tracing various patterns of social, political, and philosophical development in the Politics and the Metaphysics.

Indeed, in some significant respects, the methods employed by Lonergan and Rahner are historically less conscious and critical than Aristotle's. For example: Lonergan assigns the study of intellectual development and method to a third plateau, not by virtue of any historical knowledge or reasoning, but by extrapolating, in the fashion of Rahner, from a form of argument which is straightforwardly classical, the argument from self-referential inconsistency - a form of argument employed, as I have recounted above, by Plato, and later by Aristotle, the Stoics, extensively by Augustine, and less extensively by Aquinas.(82) Lonergan did not carefully study this form of argument, and his own rather fumbling attempt to use it in Insight(83) is one of the weakest points in a book which contains many good things. As I have said in relation to Rahner's claims about "transcendental" interpretations, "transcendental" aspects of human nature, etc., the philosophical explanation of what is involved in the making of assertions has no special method, and the truths it may attain have no special metaphysical necessity, no "transcendental" necessity, even though their defence is peculiarly facilitated by the special proximity of the facts which are given in the sceptic's performance of denying them. There being thus no peculiar metaphysical status to truths defensible by arguments from the self-referential inconsistency of attempts to deny them, there disappear not only the grounds for asserting a Rahnerian transcendental human nature but also the grounds for asserting a Lonerganian third plateau in the dialectic of history in general or of the history of philosophy or theology in particular.

In short, the many theologians who have been impressed by Lonergan and Rahner on human nature and historicity have been rather comprehensively misled by some poor philosophising and inaccurate history. They would do better to consider with care the very extensive and profound work that has been done, most notably by the philosophical theologian Germain Grisez,(84) in reappropriating and authentically developing the tradition by taking seriously Aquinas's long neglected insights (i) that the normativity or directiveness of natural law is entirely the normativity or directiveness of intelligible goods, (ii) that "human virtue, which makes good both human persons and their works, is in accordance with human nature just in so far as {tantum...inquantum} it is in accordance with reason...",(85) and (ii) that the human nature which, by God's originating disposition, is perfectible and perfected by the realising of these goods in and by the actions of human persons who can understand these goods as prosequenda et facienda is a nature only adequately and critically known with the help of that prior understanding of some possibilities, but not others, as opportunities, that is, as goods intelligently desirable.

NOTES

(1) PLATO, Gorgias 486e5-6; also 487e, 513d. On 'marks of truth', see the discussion of Wiggins in FINNIS, J.M., Fundamentals of Ethics, Oxford: Oxford University Press, 1983: 63-4.

(2) PLATO, Gorgias 487a2-3: episteme, eunoia, parresia

(3) Ibid., 487a-e; see also 473a, 492d, 495a, 500b-c, 521a.

(4) See e.g. ibid., 472a, 475e. One must add what is not so often noted by those who speak of the 'burdens of judgment' and the 'fact of pluralism', that in non-ideal conditions (i.e. all actual and

foreseeable conditions) the absence of universal assent to, and the existence of widespread dissent from, a proposition is no evidence of its falsity.
(5) Ibid., 509b1.
(6) Ibid., 505e4-6.
(7) 'The illusion which underpins most denials of the objectivity of ethics is this: that to which true judgments have their truth by corresponding ("the facts", "the world", "reality"...) somehow lies open to an inspection conducted otherwise than by rationally arriving at true judgments of the type in question (scientific, historical, cryptographic..., and, why not? evaluative...). That illusion is the root of all those reductive programmes which we call philosophical empiricism - programmes like those of Hobbes and Hume and successors of theirs...': FINNIS, Fundamentals..., 64. Among those successors is, in his own curious way and despite his own intentions, Kant: ibid., 122-4.
(8) PLATO, Gorgias 505e6, quoted above at n. 6.
(9) If his assertions leave Polus and Callicles unimpressed, they perhaps do not fail to move the old sophist Gorgias (see ibid., 506a). Indeed, as Plato intended and in some measure foresaw, they are appeals over the heads (and under the guard) of unreasonable people to anyone willing to listen. (And the division between unreasonable and reasonable people is also a division within one's own - in practice, everyone's -- individual mind-and-will.)
(10) See e.g. BUCHLER, J., The Philosophy of Peirce, London: Routledge & Kegan Paul, 1940: 304, a passage in which Peirce, italicising the word 'insight', speaks of 'the abductive suggestion (which) comes to us like a flash' as 'an act of insight'. Peirce's emphasis on the fallibility of the thought which thus emerges is entirely compatible with the Aristotelian thesis (e.g. AQUINAS, Summa Theologiae I q. 85 a. 6) that insight (nous, intellectus) is intrinsically infallible; for in every particular instance, what strikes one as sheer insight (which could not but understand matters as they are) may in fact be a mere 'bright idea', distorted by oversight, imaginative fantasy, and/or prior or subsequent fallacious reasoning. Always, bearing this possibility of error in mind, one must go beyond simple insight to judgment (itself a matter of insight into the fulfilment of conditions of adequacy to the data, validity of argumentation, etc.). Even basic insights into first principles are appropriately reviewed and defended by what the tradition calls 'dialectic'. So 'wisdom' is a matter not only of drawing conclusions from, but also of making judgments about, indemonstrable first principles, and of rebutting (disputando) those who deny them: Summa Theologiae I-II q. 66 a. 5 ad 4; FINNIS, J.M., Aquinas: Moral, Political, and Legal Theory Oxford: Oxford University Press, 1998, 88. (Underlying Kant's abandonment of the Aristotelian concept of judgment is 'the vestigial empiricism so often denounced in Kantian thought': LONERGan, B.J.F., Insight, London: Longmans, 1958: 154, 339-42; cf. FINNIS, J.M., 'Historical Consciousness' and Theological Foundations, Toronto: Pontifical Institute for Mediaeval Studies, 1992: 16. ALLEN, R.E. (Ed.), The Dialogues of Plato vol. 1, New Haven: Yale University Press, 19++: 220, puts the root of the matter straightforwardly - though 'insight' is a better term than 'intuition' --: 'Assuming without argument the nonexistence of intellectual intuition, on which the classical tradition in metaphysics is based, (Kant) undertook to prove that what he called theoretical reason is powerless in metaphysics and ethics...')
(11) FINNIS, J.M., Scepticism, Self-refutation and the Good of Truth, in HACKER, P.M. & RAZ, J. (Eds.), Law, Morality and Society: Essays in honour of H.L.A Hart, Oxford: Oxford University Press, 1977: 247-67.
(12) Ibid., 251, behind which lie ISAYE, G., La justification critique par rétorsion, Revue philosophique de Louvain 1954, 52: 205; MACKIE, J.L., Self-refutation - A Formal Analysis, Philosophical Quarterly 1964, 14: 195-6; BOYLE, J.M., Self-referential Inconsistency, Inevitable Falsity and Metaphysical Argumentation, Metaphilosophy 1972, 25. See also FINNIS, Natural Law & Natural Rights, Oxford: Oxford University Press, 1980: 73-5, 79-80; BOYLE, J.M., GRISEZ, G.G., TOLLEFSEN, O., Free Choice: A Self-referential Argument Notre Dame, Indiana: University of Notre Dame Press, 1976: 122-38.

(13) 'Dear friend (Socrates), be persuaded by me. Cease from refutation (elenchon) and practise the music of affairs (pragmaton). Practise that which will make you seem wise (doxeis phronein). ... Do not emulate men who practise refutation (elenchontas) in these petty matters, but rather those who possess life and glory (reputation) (doxa) and many other goods': PLATO, Gorgias 486c-d.
(14) See e.g. AQUINAS, Sententia super Metaphysicam IV lect. 6 n. 14 (609): elenchus or argumentatio (which Aquinas thinks would better have been called redarguitio, self-refutation: n. 13 (608)) is 'not demonstration simpliciter.'
(15) Much 'post-modernist' loquacity seeks to hide the irrationality, the surrender to evil, which persisting in performative inconsistency entails.
(16) So it is, in the last analysis, a denial of evidence (data), and thus is less a question of logical incoherence than of turning away from or blindness to what is so, such as Socrates begged to be saved from even when it involved him in no logical inconsistency: 'if I seem to any of you to agree with myself in something that is not the case, you must lay hold on it and refute me' (PLATO, Gorgias 506a2-3). Illogicality is not the only, or even perhaps the most dangerous, obstacle to truth.
(17) Cf. ibid., 509a7.
(18) Ibid., 519c4.
(19) See ibid., 482b6.
(20) Ibid., 482d-483a.
(21) See ibid., 525a2-3.
(22)So Callicles loves and flatters both the demos and his lover Demos (ibid., 481d, 513b-d), while Socrates takes care not to let the shifting opinions of his own beloved Alcibiades deflect him from the unchanging arguments of philosophy, his weightier love (482d). Or, as Callicles puts it, one should (and Socrates, he confidently - and, we know, mistakenly-- thinks, in the end will) dismiss philosophy ('spending one's life whispering with three or four kids in a corner': 485e) in favour of the 'free, important, sufficient' affairs of the courts, public and private business, and 'human pleasures and desires', the whole voluptuous 'music of affairs': 484d, 485e, 486c. Consider also the admission wrenched from the soul of Callicles, late in the discourse: 'I don't know why, but you seem to me to make sense, Socrates. Yet I suffer the affection of the multitude. I don't quite believe you': 513c
(23) Not to be confused with the unilateral 'altruism' introduced by Comte. Since friend A wills the good of friend B for B's sake, and B the good of A for A's sake, A must will also his own good (for B's sake) and B his own good (for A's sake), so that each is raised to a new standpoint, concern for a truly common good. See FINNIS, Natural Law... 142-4, 158; FINNIS, Aquinas 111-17.
(24) 507d.
(25) 507b-c.
(26) 'I hold these things so and I say that they are true. But if true, then he who wishes to be happy must, it seems, pursue and practice temperance, and each of us must flee licentiousness as fast as our feet will carry us... This seems to me the mark at which we ought to look and aim in living; so to act as to draw everything of our own and of the city toward this, that justice (dikaiosyne) and temperance (sophrosyne) shall be present to him who is to be happy. He must not permit unchastened desires to exist or undertake to fulfil them, for then an endless, aimless evil will be his, and he will live the life of a robber...dear neither to god nor to any man, for it is impossible to live in association (koinonein) with him, and where there is not association (koinonia), there is no friendship.' Ibid., 507c-e.
(27) See e.g. ibid., 489b1 (dikaion to ison); 508a6 on geometrical equality as informing principle of justice.
(28) For attempts to identify a more or less full list of basic human goods and reasons for action, see FINNIS, Natural Law... 59-99; FINNIS, Aquinas, 80-86; GRISEZ, G.G., BOYLE, J.M.., FINNIS, J.M., Practical Principles, Moral Truth, and Ultimate Ends, American Journal of Jurisprudence 1987, 32, 99 at 106-115.

(29) '...proper arrangement and good order of the soul have the name of lawfulness and law, whence souls become law-abiding and orderly; and this is justice and temperance... (and) the rest of virtue...': PLATO, Gorgias, 504d, e. '...there is a certain order properly present in each thing, and akin to it, which provides a good naturally suited to it...' Any authentic exercise of practical reason, such as a true art (technÂ) like medicine as distinct from a mere pleasure-oriented knack (empeiria) like pastry-cooking (500e5) or cosmetics or rhetorical-sophistic politicking-by-flattery (463b), 'considers the nature (physin) of the person it serves and the cause (and nature (physin): 465a4) of what it does, and is able to render an account (logon) of each' (501a1-3).
(30) For a careful documentation of the close relationship between Callicles and Nietzsche, see DODDS, E.R. (Ed.), Plato: Gorgias: A Revised Text with Introduction and Commentary, Oxford: Oxford University Press, 1959: 387-91; for a brief but deeper philosophical assessment of Dodds's pages, and of the differences which are rooted in Nietzsche's post-Kantianism, see ALLEN, Dialogues of Plato, vol. I , 220-221.
(31) kata physin...dikaiou: PLATO, Gorgias, 483e1 (and therefore kata nomon...physeous: e3); also 484b1 (physeos dikaion), 488b2-3.
(32) 482e-484b.
(33) 488d.
(34) 521a-b with 518a-d.
(35) 494c-e.
(36) For a critique of ethical methodologies which propose to subject all norms, negative as well as positive, to a 'test' of appropriateness to 'the situation', see e.g. FINNIS, J.M., Moral Absolutes, Washington, DC: Catholic University of America Press, 1993: 16-24, 101-5; FINNIS, Fundamentals..., 80-108; FINNIS, J.M., BOYLE, J.M., & GRISEZ, G.G., Nuclear Deterrence, Morality and Realism, Oxford, Oxford University Press, 1987: 238-72.
(37) See AQUINAS, De Unitate Intellectus III.3 (79); FINNIS, Aquinas 177-9.
(38) Summa Theologiae I-II 100, 3 ad 1; 11c. See FINNIS, Aquinas, 115-131, esp. 126.
(39) Summa Theologiae I-II 95, 2c; 100, 1c; 3c & ad 1; 6c; 11c & ad 1; 94, 6c; FINNIS, Aquinas 125.
(40) Summa Theologiae I-II 95, 1 ad 2; 100, 3 ad 1; 100, 11c; II-II q. 44 a. 2. In the latter three places this principle, precept, or command is paired with the command to love God, and in I-II 99, 1 ad 2 and II-II 44, 2c & ad 4 the command to love God is said to be implicitly contained in the precept of love of neighbour (as end is implicit in what is relative to end {quod est ad finem}). See also FINNIS, Aquinas, 126 and 314.
(41) See ibid., 138-43, 124-9.
(42) Can something be more or less dead? Yes. Consider, for example, some great fallen tree, from just one branch of which spring a few remaining shoots.
(43) What this obligation-explaining end is, in the last analysis, is considered in sec. 7 below.
(44) LOCKE, J., Questions concerning the Law of Nature, (c. 1660-1665), ed. HORWITZ, R., CLAY, J.S., & CLAY, D., Ithaca: Cornell University Press, 1990: 192/3.
(45) Ibid., 158/9, 166/7.
(46) See ibid., 102/3
(47) See ibid., 204/5
(48) See e.g. PUFENDORF, S., Elementorum Jurisprudentiae Universalis Libri Duo by Samuel Pufendorf, volume two, The Translation, by OLDFATHER, W. A., Oxford: Oxford University Press, 1931: I def. 12 sec. 17: 'For, if you have removed God from the function of administering justice, all the efficacy of ... pacts, to the observance of which one of the contracting parties is not able to compel the other by force, will immediately expire, and everyone will measure justice by his own particular advantage. And assuredly, if we are willing to confess the truth, once the fear of divine vengeance has been removed, there appears no sufficient reason why I should be at all obligated, after the conditions governing my advantage have once changed, to furnish that thing, for the furnishing to the second party

I had bound myself while my interests led in that direction; that is, of course, if I have to fear no real evil, at least from any man, in consequence of that act.'
(49) LOCKE, Questions... 165-6: 'patet...posse homines a rebus sensibilibus colligere superiorem esse aliquem potentem sapientemque qui in homines ipsos jus habet et imperium. Quis enim negabit lutum figuli voluntati esse subjectum, testamque eadem manu qua formata est.' (emphasis added, here as elsewhere)
(50) See ibid., 178/9 (passage deleted by Locke in 1664).
(51) See HOBBES, T., De Corpore Politico (1650), part I, c. 3; HOBBES, T., Leviathan c. 14; FINNIS, Natural Law... 348-349 (quoting and analysing the relevant passages, and pointing to the fallacies of temporal equivocation and unexplained chronological preference inherent in the strategy).
(52) See FINNIS, Natural Law... 349.
(53) For a list of basic goods, see e.g. FINNIS, J.M., Is Natural Law Theory Compatible with Limited Government?, in GEORGE, R. P. (ed.), Liberalism and Morality, Oxford: Oxford University Press, 1996: 1-26 at 4; more fully, FINNIS, Aquinas 79-86; earlier, FINNIS, Natural Law..., 59-99.
(54) See FINNIS, J.M., Legal Enforcement of Duties to Oneself: Kant versus Neo-Kantians, Columbia Law Review 1987, 87: 433-56 at 443-5, 454-6
(55) See FINNIS, Aquinas... 29-34
(56) Ibid., 90-94, 102.
(57) On the three kinds of levels of inclinationes referred to in the Summa Theologiae, see FINNIS, Aquinas 92-3. The decisive kind or level of "natural inclinations", primary in Summa Theologiae I-II 94, 2c, are the inclinations natural to our will, and these, like all operations of our will, follow intellect's understanding of intelligible goods - they are our natural response to that prior practical understanding, and their normativity for us is an implication of the intelligible goodness, the intrinsic desirability, of the goods understood as good by practical insight. To make inclinations primary is to defy and reverse Aristotle's deepest understanding: that we desire things because they are (or seem to us to be) desirable: Metaphysics XII, 7: 1072a29-30.
(58) See FINNIS, J.M., The Good of Marriage and the Morality of Sexual Relations: Some Philosophical and Historical Observations, The American Journal of Jurisprudence 1997, 42: 97-134 at 102-114.
(59) FINNIS, J.M., GRISEZ, G.G., & BOYLE, J.M., 'Direct' and 'Indirect': A Reply to Critics of Our Action Theory, The Thomist 2001, 65: 1-44.
(60) See citations in FINNIS, Moral Absolutes..., 73.
(61) PORTER, J., Natural and Divine Law, Ottawa: Novalis; Grand Rapids: Eerdmans, 1999: 54.
(62) RAHNER, K., Natural Moral Law in RAHNER, K. & Vorgrimler, H., Concise Theological Dictionary, Fribourg: Herder, 1965: 305. Lonergan speaks approvingly of this article in LONERGAN, B., The Transition from a Classicist World-View to Historical Mindedness, in LONERGAN, B., A Second Collection, London: Darton, Longman & Todd, 1974: 6.
(63) See FINNIS, "Historical Consciousness"..., 12-16, 24-29.
(64) RAHNER, K., Basic Observations on the Subject of the Changeable and Unchangeable Factors in the Church, in RAHNER, K., Theological Investigations XIV, New York: Crossroad, 1976, 15. For further references and critique, see FINNIS, J.M., The Natural Law, Objective Morality, and Vatican II, in MAY, W.E., Principles of Catholic Moral Life, Chicago: Franciscan Herald Press, 1980, 113 at 139-42, 148-9; GRISEZ, G.G., Christian Moral Principles, Chicago: Franciscan Herald Press, 1983: 869 n. 62.
(65) See FINNIS, Fundamentals ..., 42-5.
(66) See FINNIS, 'Historical Consciousness'...1-3.
(67) Ibid..
(68) Encyclical Divino Afflante Spiritu, Acta Apostolicae Sedis 1943, 35: 309 at 313.

(69) RICHARDSON, A. History, Sacred and Profane, London: SCM Press, 1964:, 253; BECKER, C., The Heavenly City of the Eighteenth-Century Philosophers, New Haven: Yale University Press, 1932: 19.
(70) Of course, as the influence of Lonergan's thesis suggests, it had some significant basis in truth. FINNIS, 'Historical Consciousness'... pp. 6, 17, gives a number of instances to supplement those alluded to by Pius XII, supra n. 68 .
(71) LONERGAN, Second Collection..., 112.
(72) Ibid.
(73) ARISTOTLE, Metaphysics VI, 2-3, 1027 a 19 - b 16; AQUINAS, ad loc.; AQUINAS, In Peri Hermeneias I lect. 1q4, nn. 187, 194.
(74) AQUINAS, Summa Theologiae I, 1, 10c; AQUINAS, In epistolam ad Galatas c. 4 lect. 7; cf. Vatican II, Dei Verbum 12: "...interpres Sacrae Scripturae...attente investigare debet, quid hagiographi reapse significare intenderint...".
(75) A Third Collection: Papers by Bernard J.F. Lonergan S.J., (Ed. CROWE, F.E.), London: Geoffrey Chapman, 1985: 181.
(76) Ibid., 177
(77) Ibid., 176-8, especially the last paragraph on p. 177.
(78) See ibid., last three lines of p. 177.
(79) Ibid., 178.
(80) LONERGAN, Method in Theology, London: Darton, Longman & Todd, 1972: 247, 67, 115; see also LONERGAN, Third Collection..., 173, 141 ("On affectivity rests the apprehension of values.")
(81) See FINNIS, Fundamentals..., 42-5, 54-5.
(82) See FINNIS, J.M., Self-refutation and the Good of Truth, in HACKER, P.M., & RAZ, J., (Eds.), Law, Morality, and Society, Oxford: Oxford University Press, 1977: 247-67 at 257-8.
(83) See FINNIS, 'Historical Consciousness'..., 15-16, and LONERGAN, Insight..., 342.
(84) Principally (from a very large body of works), GRISEZ, G.G., The Way of the Lord Jesus vol. 1, Christian Moral Principles; vol. 2, Living a Christian Life, Quincy, Illinois: Franciscan Press, 1993; vol. 3, Difficult Moral Questions, Quincy: Franciscan Press, 1998.
(85) AQUINAS, Summa Theologiae I-II, 71, 2c.

CHARLES MOREROD

NATURE AND NATURAL LAW IN CATHOLICISM AND PROTESTANTISM

There is no real parallel between Catholicism and Protestantism on the issue of Natural Law. Even though there is some diversity among Catholic theologians, it is possible to describe an official position of the Catholic Church on the basic principles of what is natural law. Such an official position is not to be found in Protestantism, and this for obvious reasons: 1. there is not just one Protestantism, and 2. most Protestant denominations do not have a teaching authority.
Therefore, we shall present the principles of the Catholic understanding of natural law, and then we shall try to identify some basic presuppositions found among the various Protestant approaches to natural law.

CATHOLIC POINT OF VIEW (1)

Several laws
Catholic theology traditionally distinguishes several types of laws, which are related: there are different expressions of the moral law, all of them interrelated: eternal law - the source, in God, of all law; natural law; revealed law, comprising the Old Law and the New Law, or Law of the Gospel; finally, civil and ecclesiastical laws .(2)
The reason why these laws are related is their common origin: God, who acts in Creation and in Revelation - Redemption. The harmony between Creation and Redemption implies that original sin does not destroy nature.

HUMAN NATURE AND NATURAL LAW

"Natural law" is - at least for the purpose of our discussion- the law of human nature. Human reason can discover this human nature and its principles: I am taking it for granted that you admit that there is a human nature, and that this human nature is the same in all men. I am taking it for granted that you also admit that man is a being gifted with intelligence, and who, as such, acts with an understanding of what he is doing, and therefore with the power to determine for himself the ends which he pursues. On the other hand, possessed of a nature, being constituted in a given, determinate fashion, man obviously possesses ends which correspond to his natural constitution and which are the same for all… But since man is endowed with intelligence and determines his own ends, it is up to him to put himself in tune with the ends necessarily demanded by his nature. This means that there is, by very virtue of human nature, an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the necessary ends of the human being. The unwritten law, or natural law, is nothing more than that(3) ... Natural law distinguishes good and evil,(4) shows how to do what is good according to some moral principles summarized in the Decalogue,(5) is universal,(6) is immutable(7) at least in its basic principles,(8) although its application can change.(9)
Thanks to natural law, we can acknowledge whether a positive law (as accepted in a given State) is legitimate or not: if the written law contains anything contrary to the natural right, it is unjust and has no binding force.(10)
Human nature is unified in all individuals by a common origin (God), but also a common end, as Aristotle had already shown in the First Book of the Nicomachean Ethics. All human beings in all their actions are in fact striving for happiness, or beatitude, although they disagree on what this end is exactly . Even one who would refuse such an end would in fact be looking for it even in his act of

refusal. Free choice is not about the final end, but about the means to obtain it: man wills Happiness of necessity, nor can he will not to be happy, or to be unhappy. Now since choice is not of the end, but of the means, as stated above; it is not of the perfect good, which is Happiness, but of other particular goods. Therefore man chooses not of necessity, but freely.(12)
Natural law is not always clearly perceived, because of our limited intelligence and because of sin. For instance, Aristotle considered slavery to be natural.(13) Perhaps in the future death penalty will be considered to be against natural law. But the fact that we don't always acknowledge it or that we do acknowledge it only over a long period of time, does not mean that natural law does not exist: knowing that there is a law does not necessarily mean knowing what that law is. It is because this very simple distinction is forgotten that many perplexities have arisen concerning the unwritten law.(14)
Furthermore, even if in some circumstances majority can act against natural law, this law still is natural: therefore those offences which be contrary to nature are everywhere and at all times to be held in detestation and punished; such were those of the Sodomites, which should all nations commit, they should all be held guilty of the same crime by the divine law… But when God commands anything contrary to the customs or compacts of any nation to be done, though it were never done by them before, it is to be done; and if intermitted it is to be restored, and, if never established, to be established .(15)

NATURAL LAW AND REVELATION

Within Catholic understanding, there is a harmony between nature and grace (gratia supponit naturam).(16) Natural law, as known by natural reason, and revealed divinely morals are not opposed to each other. Quite the opposite in fact, Revelation presupposes nature: as to its (Christianity's) relation to nature. As I have said, Christianity is simply an addition to it; it does not supersede or contradict it; it recognizes and depends on it, and that of necessity: for how possibly can it prove its claims except by an appeal to what men have already? Be it ever so miraculous, it cannot dispense with nature; this would be to cut the ground from under it; for what would be the worth of evidences in favour of a revelation which denied the authority of that system of thought, and those courses of reasoning, out of which those evidences necessarily grew?(17)
The Papal Encyclical Fides et Ratio summarizes the reasons why there can't be an opposition between nature and Revelation: faith asks that its object be understood with the help of reason ;(18) therefore, it is necessary therefore that the mind of the believer acquire a natural, consistent and true knowledge of created realities -the world and man himself- which are also the object of divine Revelation. Still more, reason must be able to articulate this knowledge in concept and argument(19) . Were this not so, the word of God, which is always a divine word in human language, would not be capable of saying anything about God.(20)
If there were a gap between nature and grace, Revelation would not be understandable, and would simply not be a revelation at all. Since this Revelation is for the salvation of all human beings of all times, it also presupposes a permanence of human nature.(21)
We can know our nature and its law. But sin makes such a knowledge more difficult and uncertain. Therefore, Revelation helps us secure this knowledge: The precepts of natural law are not perceived by everyone clearly and immediately. In the present situation sinful man needs grace and revelation so moral and religious truths may be known 'by everyone with facility, with firm certainty and with no admixture of error.(Pius XII, Humani Generis: DS 3876; cf. Dei Filius 2: DS 3005.) The natural law provides revealed law and grace with a foundation prepared by God and in accordance with the work of the Spirit.(22)
That is why the Magisterium must sometimes explain natural law. It is not because this law would be known only by faith or would apply only in the life of believers, but because faith gives a spiritual

lucidity on what is human: no member of the faithful could possibly deny that the Church is competent in her Magisterium to interpret the natural moral law. It is in fact indisputable, as Our predecessors have many times declared, that Jesus Christ, when He communicated His divine power to Peter and the other Apostles and sent them to teach all nations His commandments, constituted them as the authentic guardians and interpreters of the whole moral law, not only, that is, of the law of the Gospel but also of the natural law. For the natural law, too, declares the will of God, and its faithful observance is necessary for men's eternal salvation.(23)

SUMMARY

There is a nature common to all human beings
There is a "natural law" which says what is good or bad according to this human nature.
Natural law depends on the Creator and is above all positive human laws.
Natural law can be known by reason, but this knowledge is made more difficult by sin.
Divine Revelation helps us know with certitude natural law.
Divine Revelation is transmitted by the Church, and therefore the Magisterium can explain what is natural law.

THE TENDENCIES OF REFORMATION ABOUT NATURAL LAW

Which Protestant authors?
There is not only one Protestantism. There are in fact two main streams. We can classify them as: "Classical" Reformation authors: the main Reformers and their contemporary disciples; and liberal protestants, who kept the individualistic aspect of Reformation but abandoned most other parts of its theology. They basically depend on the philosophies of their historical setting. Nowadays, these philosophies are often against the idea of natural law(24) or at least against its clear identification or its use in ethical(25) or political(26) fields.
We must find whether anything is common to all these Protestant streams, with regard to our topic. We shall study the main Reformers, Luther and Calvin, looking for a basic element which would remain until our time within different Protestant streams. We shall look for what they say specifically about natural law. Then we shall study the role these statements can have in their global systems.

SOME NATURAL LAW BY LUTHER AND CALVIN

Luther
For Martin Luther, there is a natural right (here we can consider that natural right and natural law have the same meaning), which is common to all human beings: now in all this I have been speaking of the common, divine, and natural law which even the heathen, Turks and Jews have to keep if there is to be any peace or order in the world.(27)
According to Rom 2:15, this right is written in our hearts, and its content is basically expressed by the golden rule or in the Decalogue:
This Law was not promulgated for the first time in the Decalog but is written in the hearts of all men. Cain contends against it.(28)

Calvin(29)

For John Calvin, natural law exists and is given by God: now, as it is evident that the law of God which we call moral, is nothing else than the testimony of natural law, and of that conscience which God has engraven on the minds of men, the whole of this equity of which we now speak is prescribed in it. Hence it alone ought to be the aim, the rule, and the end of all laws.(30)
Calvin defines natural law and its purpose, which is to show that man cannot observe it by himself but needs grace to do so: let us consider, however for what end this knowledge of the law was given to men... This is even plain from the words of Paul, if we attend to their arrangement… The end of the natural law, therefore, is to render man inexcusable, and may be not improperly defined - the judgement of conscience distinguishing sufficiently between just and unjust, and by convicting men on their own testimony depriving them of all pretext for ignorance.(31)
We see that both great Reformers accept natural law. Even Karl Barth, very convinced enemy of any natural theology, had to admit that the Reformers had accepted some natural theology on the moral level .(32) But to accept the existence of natural law does not mean to affirm that we can follow it.

THE BASIC LIMITATIONS OF HUMAN ACTS

Natural law is about human acts. The understanding of what human acts are and can be will be the context of any understanding of what natural law can mean.
For Luther and Calvin, the sola fide principle implies a radical limitation of human acts in relation to God (and not in other fields). The main idea is that anything affirmed about human actions related to salvation is taken away from God. That's why Luther refuses free choice:
I wish the defenders of free choice would take warning at this point, and realize that when they assert free choice they are denying Christ.(33)
The same structure is clearly to be found by Calvin: It is, therefore, robbery from God to arrogate anything to ourselves, either in the will or the act:(34) so long as a man has any thing, however small, to say in his own defense, so long he deducts somewhat from the glory of God,(35) man cannot claim a single particle of righteousness to himself, without at the same time detracting from the glory of the divine righteousness.(36)
This forma mentis applies to sacramental theology, because no created reality can really be used in the transmission of grace. That's what Calvin says about Eucharist: the presence of Christ in the Supper we must hold to be such as neither affixes him to the element of bread, nor encloses him in bread, nor circumscribes him in any way (this would obviously detract from his celestial glory)…Let us never allow ourselves to lose sight of the two restrictions. First, let there be nothing derogatory to the heavenly glory of Christ. This happens whenever he is brought under the corruptible elements of this world, or is affixed to any earthly creatures .(37)
Luther and Calvin presuppose that any action attributed to a creature cannot be wholly God's work. One must then choose between God and his creatures, above all between God and man. The Reformers choose God; later some philosophers will choose to kill God for the sake of man; both streams lead to secularization. Any way, there is no harmony between human and divine dimensions, and this undermines any importance of natural law.
But such an opposition between divine action and human action is not necessary. St. Thomas shows how it is possible that the same action is fully God's action and fully the action of a creature, concomitantly: so, just as it is not unfitting for one action to be produced by an agent and its power, so it is not inappropriate for the same effect to be produced by a lower agent and God; by both immediately, though in different ways. Though a natural thing produces its own effect, it is not superfluous for God to produce it, because the natural thing does not produce it except in the power of God. Nor is it superfluous, while God can of Himself produce all natural effects, for them to be produced by other causes: this is not from the insufficiency of God's power, but from the immensity of

His goodness, whereby He has wished to communicate His likeness to creatures, not only in point of their being, but likewise in point of their being causes of other things (Chap. XXI). When the same effect is attributed to a natural cause and to the divine power, it is not as though the effect were produced partly by God and partly by the natural agent: but the whole effect is produced by both, though in different ways, as the same effect is attributed wholly to the instrument, and wholly also to the principal agent .(38)

St. Thomas' doctrine helps Catholics to understand the New Testament itself, in which Jesus gives real tasks to his disciples: this means that human beings can be involved in the work of transmitting salvation without taking away from Christ's work. But Luther and Calvin did not see this possibility of avoiding a rivalry between divine and human action. Luther depends unconsciously on a simplified version of the Scotist univocity of being :(39) if there is only one type of being, then two actors of the same action (like two men carrying an object) will necessarily share the action, so that none of them does it completely. If it applies to God and man, God is no longer fully the author of our salvation. Luther could not be really conscious of his dependence on a philosophical theory, since he refused to consider philosophy, above all Aristotelian philosophy,(40) and acknowledged only the pure authority of Scripture, considered uncontaminated by philosophical presuppositions. Ecumenical dialogue often does not take such factors into consideration, because unfortunately Catholics tend not to include metaphysics in their dialogue with Protestants.(41) Even the recent Joint Declaration of Catholics and Lutherans on Justification,(42) which is most useful as an expression of theological convergences, does not take into consideration the philosophical presuppositions, and therefore might be understood in two divergent ways.

LUTHER'S TWO REIGNS

The opposition between divine and human actions is limited to what is related to salvation. Luther distinguishes another level, or another Reign, which is more or less disconnected from the level of salvation (although it would be recommended to act as a Christian also at this level, when it is possible). Luther expresses this distinction of levels for instance when he speaks about princes: a prince can be a Christian, but he must not rule as a Christian; and according to his activity of ruling, he's not called a Christian but a prince… Because according to the fact that he's a Christian, the Gospel teaches him that he must hurt nobody, neither punish nor speak, but forgive everybody and must suffer whatever painful or unjust happens to him. This is (I say), a Christian teaching, but it would not make a good government, if you would also preach it to the prince; but he must say: I leave my Christianity between God and me… But over or next to it I also have in the world another status or office: that I am a prince.(43)

THE TWO REIGNS IN THE CONTEMPORARY CONTEXT

The theology of the two reigns shows precisely how the bad connection between what is divine and what is human leads to an existential division in the life of the Christians. This is still to be seen nowadays in the political action of Protestant groups. There is usually no official position of the Protestant communities at the political level (except sometimes about social justice). When there is a position of Protestant groups at the political level, for instance in the case of groups which fight against abortion or for some kind of teaching in schools, the arguments are often taken immediately from the Bible - often on a fundamentalist way which in itself expresses some disconnection with human sciences - and not on the basis of natural law.

Fr. Congar said that such a division was even to be perceived in Luther's Christology, which was in a

way monophysite because in salvation only divine nature is really working .(44)
The division between two Reigns or two fields of life does not mean as such that there is no natural law. One could think about a system in which two realities would be accepted but badly connected: natural law and revealed morals. But in fact the situation which is becoming always more evident is the division between the minority of Protestants who base their action on the Bible alone, and the majority of Protestant who aim at pragmatism in the context of the laws of the States where they live. In both cases natural law is not really taken into consideration.

PROTESTANT AUTHORS AFTER REFORMATION

What did Protestant Authors after Luther and Calvin say about natural law as such?
Authors such as Melanchthon (1497-1560) during Reformation itself, Grotius (1583-1645), Johannes Althusius (1557-1683), or more recently Emil Brunner (1889-1966) have seen natural law as good and useful. But are they in that regard typically Protestant? We would reply negatively, if by typical we understand Protestants in the line of the Reformers. And what we are trying to find here is what is more typically Protestant (or Catholic).
The typical Protestant attitude in reference to nature in the ethical field is expressed by Eric Fuchs, Professor of Ethics at the Autonomous Faculty of Reformed Theology of the University of Geneva:
Protestantism has an ambivalent attitude towards nature. On the one hand, he [the Protestant] rejects it as source of ethical normativity. Unlike Catholic morals which -following in this regard the teaching of Aristotle and Thomas Aquinas -founds itself on permanence and universality of 'natural law', Protestant theology does not believe that one could find ethical norms out of a knowledge of how nature works ('nature' understood here as the whole of living beings). What nature 'does' is neither good nor bad; it is the human being who is called to judge on it according to other criteria involving his freedom. Similarly, if one speaks about nature as the whole of objective conditions that determine human existence (to be a mortal body with a sexual dimension), one describes a level of reality which does not imply in itself any moral obligation. Morals must of course take into consideration this reality, in order not to fall into a deceiving idealism.(45)
The point is thus made clear: nature cannot be an ethical norm. What Fuchs says next is quite interesting: on the other hand, as an expression of God's good creation, given to human enjoyment, nature has been exalted more than elsewhere in countries of Protestant tradition. And this, by Calvin as by Rousseau. Because, if sin affects seriously any human work, nature remains the visible trace of the goodness of God's work. That's why one can marvel in front of it and have a religious feeling. One of the few objects of devotion often to be found in Protestant families is a painting or of photo of a beautiful scenery, with a biblical quotation as sub-title, whose meaning is often unrelated to the image, but which reminds that in popular Protestant sensibility, admiration of nature and faith in God often go together.(46)
This last text expresses quite well the situation: man is related to nature -because it cannot be avoided in any way- but any attempt to express with the Bible this relation man-nature fails. The Protestant is related both to created nature and to the Bible, but cannot really connect both relations. This is the long-term cultural impact of the philosophically influenced disconnection between divine and human actions.

SUMMARY

There is some presence of natural law by the Reformers and by some later Protestant authors.
But basically, as nature is corrupted, the works of the "natural man" cannot be good.

In relation to God, any goodness of human actions would be an offense to God; this depends on some unconscious philosophical presupposition.
Therefore, the natural dimension is not connected to the level of salvation, and nature is not an ethical criterion.
There is no official ecclesiastical position on natural law in Protestant societies: non only because there is no Magisterium, but also because the presuppositions of Reformation make difficult a connection between faith and nature.
The moral positions of some Protestant groups (abortion…) are most typically founded on Scripture, not on natural law, and suggest that what is defended is a specific religious opinion.
Such a situation is expressed by Luther's theology of the Two Reigns and its historical consequences: faith in personal religious life, efficiency in "secular" fields.
In the typical line of Protestantism, which does not accept natural law, the field of nature still exists, but tends to be disconnected from Revelation; as a consequence what is Christian tends to be disconnected from "civil" life.

NOTES

(1) For a summary of the Catholic vision, and a summary of the history of philosophy, see Georges COTTIER, Nature et nature humaine, in: Nova et Vetera 74/4, 1999, p.57-74.
(2) Catechism of the Catholic Church, § 1952. Cf. also St THOMAS AQUINAS, Summa theologiae, Ia-IIae, q.91.
(3) MARITAIN, J., The rights of Man and Natural Law, translated by Doris C. Anson, Gordian Press: New York, 1971:60-61.
(4) Cf. Catechism of the Catholic Church, § 1954,
(5) Cf. Ibid., § 1955.
(6) Cf. Ibid., § 1956.
(7) Cf. Ibid., § 1958.
(8) Cf. St THOMAS AQUINAS, Summa theologiae, Ia-IIae, q.94, a.5.
(9) Cf. Catechism of the Catholic Church, § 1957.
(10) ST. THOMAS AQUINAS, Summa Theologiae,IIa-IIae, q.60, a.5, ad 1.
(11) Ibid., q.1, a.7.
(12) Ibid., Ia-IIae, q.13, a.6.
(13) Cf. above all ARISTOTLE, Politics, I.5.
(14) MARITAIN, The rights of Man,...p.62.
(15) St AUGUSTINE, Confessions, III.8.15.
(16) Cf. STOECKLE, B., Gratia supponit naturam, Geschichte und Analyse eines theologischen Axioms, Studia anselmiana 49, Herder: Roma, 1962.
(17) NEWMAN, J. H., An Essay in aid of a Grammar of Assent, II.X, Longmans, Green, and Co.: London, New York and Bombay, 1930:388.
(18) Cf. JOHN PAUL II, Encyclical Fides et Ratio (14th Sept. 1998), § 42. This is confirmed by the argument mentioned in § 82: "Sacred Scripture always assumes that the individual, even if guilty of duplicity and mendacity, can know and grasp the clear and simple truth".
(19) Ibid., § 66.
(20) Ibid., § 84.
(21) Ibid., § 95.
(22) Catechism of the Catholic Church, § 1960.
(23) PAUL VI, Encyclical Humanae Vitae (25th July 1968), no.4.

(24) Cf. for instance Sartre : " Je la vois, moi, cette nature, je la vois... Je sais que sa soumission est paresse, je sais qu'elle n'a pas de lois : ce qu'ils prennent pour sa constance... Elle n'a que des habitudes et peut en changer demain " (SARTRE, J.-P. La nausée, "Le Livre de poche", Gallimard: Paris, 1963:222).
(25) In the line of Immanuel Kant.
(26) Cf. FLORES D'ARCAIS, P., "Dio esiste?", MicroMega 2/2000:40: "La pietra d'inciampo per il cristiano è la tentazione di dettare legge (in nome di una presunta 'legge naturale' che coincide sempre, guarda caso, con la parola ex cathedra)". Coming from a different background, cf. Karl Popper who expresses this general statement in a context of political philosophy: "The choice of conformity with 'nature' as a supreme standard leads ultimately to consequences which few will be prepared to face; it does not lead to a more natural form of civilization, but to beastliness" (POPPER, K., The Open Society and its Enemies, vol. 1, The Spell of Plato, Routledge & Kegan Paul: London and Henley, 1980, 5th edition reprinted:71).
(27) Original text: "Dis ist alles gesagt von gemeinen göttlichen und natürlichen recht, das auch Heiden, Türcken und Juden hallten müssen, soll anders fride und ordnung in der wellt bleiben" (LUTERO M., Ermahnung zum Frieden auf die zwölf Artikel der Bauerschaft in Schwaben, 1525, WA 18:307, l.23-25). Translation in LW 46:27.
(28) Original text: "Haec enim lex non in Decalogo primum promulgata sed omnium hominum animis inscripta est. Contra hanc Cain pugnat" (Vorlesungen über 1. Mose Kap.4.9, 1544, WA 42:205, l.23-25). Translation in: LW 1:277-278. Cf. also Ein Sermon Mart. Luther Über das Euangelion Matth... (1529), WA 29:564.
(29) Texts from: CALVIN, J., Institutes of the Christian Religion, "The Library of Christian Classics", vol.XX-XXI, The Westminster Press - S.C.M. Press: Philadelphia- London, 1967 (4). We quote according to the paragraphs, which are common to all editions.
(30) Ibid., IV.XX.16.
(31) Ibid., II.II.22.
(32) Cf. BARR, J., Biblical Faith and Natural Theology, The Gifford Lectures for 1991 Delivered in the University of Edinburgh, Clarendon Press: Oxford, 1994:8.
(33) LUTHER, M., The Bondage of the Will (De servo arbitrio, 1525), in: Luther's Works, vol.33, Philadelphia, 1972:279
(34) CALVIN, Institutes of the...,II, III.9.
(35) Ibid., III, XIII.1.
(36) Ibid., III, XIII.2.
(37) Ibid., IV, XVII.19.
(38) St THOMAS AQUINAS, Summa Contra Gentiles, Book III, Chapter 70.
(39) Cf. DUNS SCOTUS, Ordinatio I, dist. III, pars I, q. 1, in: DUNS SCOTUS, Philosophical writings, A Selection, Translated, with Introduction and Notes, by Allan Wolter, O.F.M., Hackett, Indianapolis - Cambridge, 1987:21: "I say that God is conceived not only in a concept analogous to the concept of a creature, that is, one which is wholly other than that which is predicated of creatures, but even in some concept univocal to Himself and to a creature. And lest there be a dispute about the name 'univocation', I designate that concept univocal which possesses sufficient unity in itself, so that to affirm and deny it of one and the same thing would be a contradiction".
(40) His statements about "der blinde Heide Aristoteles" (Adventspostille, WA 10, 1.2, 116, l.11, 1522) are extremely strong: "... ut impiissimi Aristotelis, publici veritatis vel ex professo hostis, sententias quantumlibet Christo adversarias..." (WA 6, 186, ll.14-15, 1520).
(41) Cf. CONGAR, Y., Un unique médiateur (excursus), in: COMMISSION INTERNATIONALE CATHOLIQUE-LUTHERIENNE, Face à l'unité, Tous les textes officiels (1972-1985), Cerf: Paris, 1976:279 : « La Réforme voulait substituer un monde de relations personnelles à un monde de qualités ontologiques hiérarchiquement ordonnées. Elle combattit ainsi une scolastique qui fut, finalement,

laissée à ses querelles internes. L'effort de l'Eglise catholique pendant et après le second concile du Vatican a consisté, pour une grande part, à dépasser la scolastique pour tendre ardemment vers ce qu'on pourrait appeler, sans idéalisation irréelle, I''Eglise indivise' ».
(42) Text and commentaries in Information Service 98, 1998/III:81-100.
(43) Original text: "Ein Fürst kann wohl ein Christ sein, aber als ein Christ muss er nicht regieren: und nach dem er regieret, heisst er nicht ein Christ sondern ein Fürst... Denn nach dem er ein Christ ist, lehret ihn das Evangelium das er niemand sol leid thun, nicht straffen noch reden, sondern idermann vergeben, und was im leid odder unrecht geschicht sol er leiden. Das ist (sag ich) eines Christen lectio, Aber das wurde nicht ein gut regiment machen, wenn du dem Fürsten wolltest also predigen, Sondern so mus er sagen: Meinem Christenstand lasse ich gehen zwischen Gott und mir... Aber über odder neben dem habe ich inn der welt einen andern stand odder ampt: das ich ein Furst bin" (Wochenpredigten über Matt. 5-7, 1530/2, Druck 1532, WA 32:440). Our translation.
(44) Cf. CONGAR, Y., Martin Luther, Sa foi, sa Réforme, Cogitatio Fidei 119, Cerf: Paris, 1983:105-133.
(45) "Le protestantisme a une attitude ambivalente à l'égard de la nature. D'une part, il la récuse en tant que source de la normativité éthique. A la différence de la morale catholique qui, suivant en cela l'enseignement d'Aristote et Thomas d'Aquin, se fonde sur la permanence et l'universalité de la 'loi naturelle', la théologie protestante ne croit pas qu'on puisse tirer de la connaissance des lois de fonctionnement de la nature (définie ici comme l'ensemble des êtres vivants) des normes pour une éthique. Ce que 'fait' la nature n'est ni bonne ni mauvaise, c'est l'homme qui est appelé à en juger à partir d'autres critères qui engagent sa liberté. De même, si l'on parle de la nature pour désigner l'ensemble des conditions objectives qui déterminent l'existence humaine (être un corps sexué mortel), on décrit un ordre de réalité qui n'implique ne soi aucune obligation morale. Même si la morale doit évidemment prendre en charge cette réalité sous peine de succomber à un idéalisme trompeur" (FUCHS, E., Nature, in : Encyclopédie du protestantisme, GISEL, P., directeur d'édition, Cerf - Labor et Fides: Paris - Genève, 1995:1066). Our translation.
(46) "D'autre part, en tant qu'elle est l'expression de la création bonne de Dieu, offerte à la jouissance de l'homme, la nature a été plus qu'ailleurs exaltée dans les pays de tradition protestante. Et ce, aussi bien par Calvin que par Rousseau. Car si le péché affecte gravement tout œuvre humaine, la nature reste la trace visible de la bonté de l'œuvre de Dieu. C'est pourquoi on peut s'en émerveiller et ressentir à sa fréquentation un sentiment religieux. C'est ainsi qu'un des rares objets de piété qu'on trouve souvent dans les familles protestantes est un tableau ou une photographie d'un beau paysage, sous-titré d'un texte biblique, dont le sens est souvent sans rapport avec l'image, mais qui rappelle que dans la sensibilité populaire protestante l'admiration de la nature et la foi en Dieu vont volontiers de pair" (Ibid., p.1066). Our translation.

MARTIN RHONHEIMER

NATURAL MORAL LAW: MORAL KNOWLEDGE AND CONSCIENCE. THE COGNITIVE STRUCTURE OF THE NATURAL LAW AND THE TRUTH OF SUBJECTIVITY

A DUALISTIC FALLACY AND THE ESSENTIALLY COGNITIVE CHARACTER OF THE NATURAL LAW

A historical reminiscence: the nature-reason dichotomy

In a book bearing the title Lex naturae, which was published almost half a century ago and became before Vatican Council II an obligatory work of reference, the moral theologian Josef Fuchs presented a systematic exposition of the formulations of the Magisterium of the Church on the natural moral law. (1) The author thought that he had found two series of formulations on the natural law in the documents of the Magisterium. The first series had formulations which referred to the ontological foundation of the natural law, the nature of things: these formulations identified the natural law with the "corporeal-spiritual nature of man" and thus understood it as nature, which was normative for human action. On the basis of this first approach, the natural law was thus put on the footing of a normative order which was placed within the order of things. On the other hand, the second series of formulations in the texts of the Magisterium was said to refer to what Fuchs called "the noetic aspect of the natural law, its being written into the heart, its natural ability to be recognised by man". (2)

With this schematisation, Fuchs echoed an approach that was widespread in the neo-scholastic theology and philosophy of the period, which without doubt also acted to influence the language of not a few documents of the Magisterium. According to this approach, the natural law is an order of nature that is knowable by man, and, once known, imposes itself immediately as a norm of moral action. (3) This schema, in essential terms, is dualistic because it is based upon a dichotomy between nature and natural order (the objective aspect) on the one hand, and reason and moral knowledge (the subjective aspect) on the other: in this schema the natural law is situated in the sphere of nature whereas it is the function of reason to read the moral order placed in nature and to follow this order in free action. Only in this sense can one - always according to this schematic approach - affirm that the natural law 'is written in the heart of man': this is said to be the case because this is an objective normative natural order which is subjectively known and applied to action. But an observation must be made here: according to this notion what is 'written in the heart of man' is not so much the natural law in its objective being but only the subjective knowledge of this law. The natural law itself, instead, is said to be a kind of code of moral norms, found in nature as an object of knowledge, in its being as law, independent, however, of this last.

This notion is based upon what I would like to call a dualistic fallacy. In my judgement, it is difficult to match this way of speaking about the natural law with the long tradition of the doctrine on lex naturalis, of which St. Thomas was not only a privileged witness but also perhaps the most lucid and original continuator. For this tradition, the natural law was never simply a natural order, the object of the knowledge of the subject which only through this knowledge would become something written in the heart of man. Indeed, this tradition understood the natural law itself as a special form of moral knowledge, that is to say as natural knowledge of good and evil, and thus affirmed the essentially cognitive character of the natural law. According to this tradition, the natural law is written in the heart of man not only because it is something known but specifically because the very intellectual opening of the human subject to moral good constitutes a law for human acts. And since this opening takes place in a natural way it can really be called a natural law. Thus St. Ambrose, almost a thousand years before St. Thomas Aquinas, when paraphrasing the famous passage from the letter of St. Paul to the Romans

(2:14ss), spoke about the natural law, which for him was like the word of God written into our hearts, in the following terms: 'opiniones queaedam nobis boni et mali pullulaverunt, dum id quod malum est naturaliter intellegimus esse vitandum et id quod bonum est naturaliter nobis intellegimus esse praeceptum' (for this reason the ideas of good and evil have sprung up in us, whereby we understand by nature that what is evil must be avoided, and equally by nature we know that there has been prescribed there for us what is good) (4) . The natural law is this practical, and thus perceptive, natural knowledge, about moral good and evil. (5)

Understood in these terms, the natural law shows that it is located specifically on the side of the subject and, as a result, that it is really subjective. Its objectivity - and thus the objectivity of the moral norms based upon it - consists in the fact that in this natural knowledge of human good the truth of subjectivity is expressed. As we will see at a more detailed level later on in this paper, the natural law, in fact, is the intrinsic principle of truth of practical reason.

It is certainly the case that for daily communication and pastoral language to express oneself in the terms of this dualist schema can in many cases be sufficient and even useful. This schema can also be enough to defend the existence of a natural right, that is to say the idea that underlying and prior to any positive legal norm there exists an objective normative order of good and right. Finally, it also acts to express the idea that for subjectivity - for the moral knowledge of the acting subject - there exists an objective rule of truth that is not to be identified with what the subject in fact believes to be true and good. In this last sense, the natural law, indeed, is that moral norm that establishes the truth of subjectivity, defending it from affirming as really good that which is good only in appearance.

However, the dualistic schema does not fail to seriously lead astray the analysis of the natural law and the whole of the ethical-normative discourse based upon it, and this to the point of rendering such a discourse unintelligible and not very convincing in rational terms. The counterpoising of objective 'nature' (the natural order) on the one side, and subjective reason (moral knowledge) on the other, favours a 'physicist' understanding of the natural law. In a physicist notion of the natural law, this 'law' is identified with the merely natural structures and ends upon which is conferred in an immediate way a moral normativeness.

An alternative: the anthropology of the essential unity of nature and reason

This dualistic fallacy obfuscates the fact that reason as well, as a cognitive faculty, and thus the very subjectivity of the moral agent, is a part of what we call the "nature of man". It is precisely the intellectual acts, of which reason is the discursive part, which open the human subject to an understanding of the human good according to the truth of his or her "being a person" (which is a corporeal-spiritual unity), and this is a good that reveals itself to be a "good of the person" only in the face of intellectual cognition. This good, therefore, is not a simple 'object' which is said to be face to face with the knowing subject as a simple "natural given fact". It is also a part of the same knowing subject because in the cognitive acts it is manifested, and in a certain sense constituted, through its intelligibility.

We are here face to face with an anthropological and metaphysical fact which through the employment of the right approach of moral philosophy seems to me to be of decisive importance: a concept of the "nature of man" is not conceivable without the inclusion within such a concept of the intellectual part and the corresponding acts of the intellect and of reason. As I have argued in detailed fashion elsewhere (6) , action always certainly follows and expresses, according to St. Thomas Aquinas, the being of every thing (agere sequitur esse), but at the same time this means that the being of things, that is to say their essence or nature, of which acts are a consequence, in itself is unknown to us. We know it by knowing the specific faculties of each nature. The faculties are known by their acts, but we know the acts by their objects. (7) The object of human freedom - which lies in reason and the will as appetitus in

ratione - is specifically good in the multiple forms of its self-expression, For this reason, to know the nature of man we must first know, however paradoxical this may seem, the specifically human good. This applies, in principle, also to non-rational animals, only that in this case we can know their good through an observation of their behaviour - that is to say certain typical regularities and normalities. In the case of man, who acts on the basis of freedom, that which takes place regularly and with "normality" is not however a criterion by which to determine his good. Human persons act on the basis of reason and thus with freedom, since reason is "open to many things" and can have "various notions of good"; indeed, false ones as well. (8) Thus the ethical question is raised. Ethics is not a philosophy of nature; it does not describe regular, and thus natural, behaviour. (9) The human nature that we are looking for as a foundation for human action, and of which moral good is the adequate expression, can be found by us only to the extent to which we already know the human good. Knowledge of human nature is not the point of departure for ethics, and even less for the practical reason of each acting subject: it is, rather, its result. We must already know the human good to interpret nature rightly and thereby reach the concept of human nature, which is full of normative meaning. This human good we know, indeed, through the natural law, which therefore must be understood as a cognitive principle, as a form, that is to say, of moral knowledge.

We can now state clearly, therefore, that the human good is not simply an object given to intellectual acts. The very nature of the intellect - emanating as it does from the spiritual soul which is a substantial form and thus the life principle of its corporality - means that what is really good for man is, in a certain sense, constituted and formulated only in the intellectual acts themselves.

The human and moral good is essentially a bonum rationis; a good of reason, for reason, and formulated by reason. (10) Only within the horizon of this good, as it appears before the intellectual acts of the soul, does "human nature" reveal itself in its normative significance. As a result, and even if at first sight this may seem paradoxical, knowledge of the human good precedes the right understanding of human nature. This cannot reveal its normative character before all that is natural in man has not been interpreted in the light of that good that is the object of the acts of the intellect, and as we will see later on in this paper, not of the speculative intellect but of the practical intellect, from which the natural law emanates.

As a consequence, it does not seem adequate in moral philosophy, and even less in an analysis of the natural law, to depict human reason as the faculty "which knows'" in the face of a nature which is 'that which is known'. This schema simplifies things, just as certain neo-scholastic theories have simplified the analysis of the natural law, obscuring its real nature. (11) We need once again to discover human reason specifically because it is also nature; the reason, that is to say, that naturally knows the good to be done and the evil to be avoided.

THE APPROACH OF ST. THOMAS AQUINAS: BEYOND THE DUALISTIC FALLACY

A long-forgotten text

It is symptomatic that Fuchs in his above-mentioned book did not take suitably into account one text of the Magisterium on the natural law, which, to my knowledge, is the only one which refers to the notion of the natural law not simply in order to expound on a particular subject of morality but in which precisely the concept of the natural law is the subject of papal teaching. I am referring here to the brief and summarising exposition on the natural law, which, within the much wider context of the teaching on human freedom and the moral law, is presented in the encyclical Libertas praestantissimum of Leo XIII. (12) In his book, Fuchs quotes this text only in an incomplete fashion, without paying particular importance to it, and, it appears, without grasping its deep meaning. In fact, the text could not be

associated with either of the two 'series' of texts that make up Fuchs's schema. But it is also fitting to mention that this text had never been taken up in any subsequent document of the Magisterium! One had to wait until the encyclical Veritatis Splendor of John Paul II, published in 1993, to see it quoted once again, and suitably emphasised, in a document of the Magisterium, together, as we will see, with another key text by St. Thomas Aquinas on the natural law.
In fact, according to the doctrine of St. Thomas, which was admirably summarised in the encyclical of Leo XIII, the concept of the natural law did not form a part of the rather simplistic alternative mentioned above. For St. Thomas Aquinas, the natural law is placed at one and the same time on the side of the knowing subject and on that of the objectivity of the truth of 'nature'. According to this conception, the natural law is first and foremost the natural way by which man knows the human good in a practical and imperative way according to truth, a knowing, that for its part, renders manifest that moral order that we usually call the "'natural order".

The natural law: a praescriptio rationis

But let us now go to the texts. In fact, the text of Leo XIII, taken up in n. 44 of Veritatis Splendor, fundamentally contains three assertions, of which the first places us in a decisive way within the right approach. This text, that is to say, affirms first of all that the natural law "is written and engraved in the heart of each and every man, since it is none other than human reason itself which commands us to do good and counsels us not to sin". These words provide a formal or essential definition of what the natural law is: it is not 'human nature' or 'an order of nature'; nor is it a norm encountered in the nature of things: it is something 'written and engraved in the heart of each and every man'. It is 'human reason itself' because it commands us to do good and forbids us to sin. The natural law, therefore, is specifically practical reason, and in more precise terms, the set of determined judgements of practical reason, those judgements, that is to say, that naturally make us do good and flee from evil. For this reason, in the next sentence, the text of Leo XIII calls the natural law a praescriptio rationis, a 'prescription of reason', a term that is near, if not identical, to the terminology of St. Thomas, for whom the natural law, like every law, is an ordinatio rationis.(13)
Because of this, the natural law possesses in a precise sense the character of a law. It is not a law in the sense of the physical or natural laws of modern science. This way of speaking about the natural laws as natural regularities, orientations, and structures, knowable to man and then applicable at a practical level, is already a derived and improper use of the term law, which, although it also has roots in Stoic thought, arose with modern science. When Kepler spoke about the 'leges celeritatis et tarditatis' of the earth, and Newton formulated his 'leges motus', these scientists were certainly not speaking about a rational principle which orders acts, but rather of structures and regularities that are, indeed, nature. In as much as these laws are nature, they are certainly an effect of the ordering reason of the Creator, but considered in themselves, they remain a natural structure that is simply an object of speculative knowledge. (14)
It would be an anachronism to interpret texts such as those of St. Thomas Aquinas on the natural law within the approach of the modern natural sciences. (15) When St. Thomas speaks about a law, he speaks about it in a legal-political sense, by analogy with human laws, with the divine law, and with the eternal law that is the ordering reason of God. In this sense, law is an ordinatio rationis, or rational prescription, that is to say an imperative act of reason that directs, in a given sphere, human acts to their end, which is always a certain good. (16) Nature as nature does not have the character of being law. Law is always aliquid pertinens ad rationem (17) : laws can be established by the eternal reason of God, by the reason of a human legislator, but also naturally by the natural reason of every individual man precisely because this last knows in a natural and prescriptive - that is to say practical - way the good to be done and the evil to be avoided, thereby ordering his action to the due end. For this reason, for St. Thomas the first principle of practical reason and the first precept of the natural law are exactly

the same: bonum est faciendum et prosequendum et malum vitandum (18) . We will come back to this principle later in this paper.
The formally rational and cognitive character of the natural law is confirmed by a text of St. Thomas which is twice quoted by the encyclical Veritatis Splendor (in nn. 12 and 40). It affirms that the natural law is "nothing other than the light of understanding infused in us by God, whereby we understand what must be done and what must be avoided"' (19) . Without doubt, this formulation expresses in a more categorical and a clearer way the rational and cognitive character of the natural law. Like every law, the natural law as well, is, as St. Thomas would later say in Summa Theologiae, "something constituted by reason" (aliquid a ratione constitutum) (20) and a "work of reason" (opus rationis (21)). The natural law, in fact, proceeds from the light of understanding that God gave to man at the moment of his creation. The natural law is a set of cognitive acts that make us perceive in an imperative, that is to say practical, way, the good to be performed and the evil to be avoided. This law is called the natural law precisely "because the reason which promulgates it is proper to human nature" (22) , in the same way that the intellect which has been given to man by the Creator is a part of human nature. It is a law that man through his intellectual acts establishes, formulates, or promulgates naturally. (23)

The natural law as the participation of the eternal law in the rational creature

We now come to the second assertion of the text by Leo XIII that is quoted in Veritatis Splendor: "But this prescription of human reason could not have the force of law unless it were the voice and the interpreter of some higher reason to which our spirit and our freedom must be subject". Paraphrasing the text by Leo XIII, Veritatis Splendor then continues: "Indeed, the force of law consists in its authority to impose duties, to confer rights and sanction certain behaviour". Veritatis splendor then goes on by quoting the text by Leo XIII: "Now all of this, clearly, could not exist in man if, as his own supreme legislator, he gave himself the rule of his own actions."
This second assertion, therefore, says that these prescriptive acts of human reason really have the character and the force of a law: they impose duties and confer rights, as well as sanctioning certain behaviour. Reason can have such authority only because it is the voice of a higher authority on which it depends and to which it is subject. This statement is important not only because it affirms the subjection of human reason to the reason of its Creator, but also because it refers human reason, in the establishing of its normativeness, not so much back to nature or to a natural order but to divine reason! This last is the eternal law which is the ratio of divine wisdom by which it guides all acts and movements (24) , thereby ordering things to their due end. (25) The providence of God is manifested in a natural way in the natural law: God teaches man his own true good in an imperative way, that is to say in the form of law, through man's own cognitive acts.
With this we come to the third assertion of the text by Leo XIII, an assertion which exactly confirms the perspective that has just been outlined: "It follows that the natural law is itself the eternal law, implanted in beings endowed with reason, and inclining them towards their right action and end; it is none other than the eternal reason of the Creator and the Ruler of the universe". Human reason, therefore, because it is the natural law, refers back not to nature but to God. It is important not to misunderstand this statement. The idea is not that to know good human reason needs to be instructed by God in the sense of a revelation that is added to what human reason is able to know. The text that has been quoted asserts precisely the opposite, that is to say that the natural law is the eternal law itself: the eternal law of God manifests itself in the natural law and specifically through it achieves its goal of directing human action to its due end. The eternal law is thus known to the extent to which the natural law is explained and becomes effective, that is to say through the natural reason of man. In other words: the natural law is really a participation of eternal law; it is its possession in a cognitive and active way.

Participated theonomy: the normative task of human reason

Therefore, practical reason, because it is natural law and proceeds on the basis of the natural law, is really the authoritative guide for action, imposes duties, and formulates rights. Man possesses real autonomy precisely because his autonomy is "participated theonomy": participation and self-possession of the eternal law. (26) This is expressed by St. Thomas Aquinas in various famous formulations such as "the natural law is none other than the participation of the eternal law in the rational creature" (27) , or that by his reason man "shares in divine providence, providing for himself and for others" (28) , and that the eternal law, leaving aside an additional revelation, which is always possible, is revealed specifically through the natural law, that is to say through the natural reason, which derives its own image from the eternal law. (29) In the logic of the argument of St. Thomas all these texts, and in particular the most famous one according to which the natural law is the participation of the eternal law in the rational creature, do not aim in the least to affirm the theonomic character of the natural law, but seek, rather, to establish the normative character of human reason, since this last is none other than an 'impress of the divine light within us', by which we can discern good from evil, which is precisely what the natural law does. (30)

These clarifications are important because the reference to the eternal law, that is to say the affirmation of the subjection or prescriptive acts of human reason, which are called natural law, to a higher wisdom, does not relativise in any way the preceptive task of the practical reason of the human person, nor does it make us think that to know the human good one needs every time an explicit reference to God. Indeed, commanding and moving belongs to the nature of practical reason. Practical reason is the beginning of practice and moves the agent to follow or to avoid what it believes good or bad. This is not to be understood as if human reason were only directed to knowing relations of adequacy in an indicative but not yet imperative way, having, however, in order to become preceptive and properly practical, to have in addition recourse to knowledge of God as the author of this order of good, and thus as legislator (this was in the early 17th century the opinion of Francisco Suárez (31)). Human nature is already in itself constituted in such a way that reason, because moved by the will and inserted into the appetitive dynamism of the natural inclinations, really moves to practice and to good.

The explicit knowing of the participatory character of this intellectual motion towards known good - the knowing, that is to say, of the subjection of human reason to the reason of his Creator - is not necessary to explain the existence of awareness of a real and specific obligatory character of known good. This is due to the fact that because 'good' is something 'true' - otherwise it would not be intelligible - the true and the good mutually include each other. The judgements of practical reason have as their object good as regards acting from the aspect of its truth. Like the speculative intellect, the practical intellect also knows truth. (32) Known good, therefore, is a 'practical truth'. (33) Truth, however, imposes itself on the conscience because of its own "being true". Thus, the known good of reason obliges the knowing subject in the same way in which known truth requires assent. Furthermore, the judgement of practical reason has the character of a dictate which includes in itself the vis obligandi. (34)

The explicit cognition, therefore, of the participated nature of the natural law and the moral order established by it does not constitute the practical and imperative value of human reason but enriches it in a way that is known as practical truth derived from a transcendent higher source, that which in certain circumstances and extreme situations can also supply the decisive motive for an effective subjection to the dictates of the natural law. In addition, the explicit awareness of the "participative subjection" of human reason to divine reason prepares the moral experience to take part in an experience which is also specifically religious, an experience that is eliminated by the mistaken affirmation of absolute autonomy on the part of man.

As a result, what the knowing of the participated character adds is the ratio legis in the real sense of the term, being subordinated and subjected to a higher law, the law of God. Even if the natural law, as the

work of practical reason, possesses in a real sense the character of a 'law', the ratio legis is not made explicit or concomitantly reflected at the moment when these practical judgements of the natural law are carried out. The fundamental moral experience of man is not that of following a 'law', but the experience of the truth of good, and in more precise terms, in the light of the first practical principle, the experience of bonum faciendum, of 'the good to be done'. However, in knowing explicitly the participated character of these practical judgements, man is able to understand that his autonomy is expressive of a theonomy: he will understand the good known by him not only as a 'good to be done' but also as the will of God. (35) St. Thomas Aquinas, in fact, on this aspect of the natural law, says rather little. As a good Aristotelian (36) , he emphasises, rather, the other aspect, that is to say the prescriptive and driving nature of practical reason, which it is thus capable of specifically actuating as 'natural law'. In this sense, St. Thomas does not hesitate to affirm that reason, which is the principle of morality, in man relates to his proper good just as the prince and the judge relate to the good of the State. (37)

THE NATURAL LAW AS THE ORDINATIO OF PRACTICAL REASON: THE APPROACH OF ST. THOMAS AQUINAS (38)

Human reason in the context of the natural inclinations

Having arrived at this point, and to save the idea that the natural law and the "natural order to be known and applied" have the same identity, one could make the objection that God in fact reveals himself 'in nature' and that reason is participation of the eternal law of God precisely to the extent to which it knows and makes its own an order that is inserted into nature. Indeed, such a notion of the natural law and its relationship with the eternal law is well known in history. We have here the Stoic notion, which influenced the tradition of natural law that came down to us through Roman law. The idea, typical of Stoa, that the eternal law is to be identified with the cosmic order and that it is therefore decipherable through knowledge of nature, of which man is a part, opens the way to a notion of law and natural right which in the Western tradition has had great importance.

This historical tradition certainly contains a part of the truth. However, a majority of the Fathers of the Church, who were themselves influenced by Stoicism, placed emphasis on the rational, intellectual and cognitive character of the natural law and thereby introduced a significant transformation into their reception of Stoic philosophy. (39) The Fathers perceived nature as the creation of a God and coming from an eternal law, which are transcendent and thus not to be identified with the natural order. For the Stoics, human ratio is not the participation and image of a transcendent ratio, but a logos that is inherent in nature itself. The human ratio thus becomes a kind of reflection of what nature already contains in terms of inclinations and ends; man, in oikeiosis, rationally assimilates this natural order. (40) It is thus that one explains the famous formulations of Cicero which, read within a post-Stoic and even Christian context, appear rather ambiguous or at least insufficient: law is said to be "highest reason, inherent in nature which commands us as to what must be done and forbids the contrary" (41) . It seems no less ambiguous and insufficient to speak about an "unwritten but naturally given law...which we grasp, take and tear from nature" (42) , and finally, to cite the most famous formulation made by Cicero, to call the natural law simply 'right reason, in agreement with nature' (43) .

For the Fathers of the Church, the imago of this God in the world is neither nature nor the cosmic order: the image of the Creator is present solely in the spiritual soul of man, in particular in his intellect and thus in his acts of practical reason. Practical reason does not simply reflect nature but in being active participation of the divine intellect, human reason in its turn illuminates nature, rendering it fully intelligible. This is how one explains the statements on the natural law such as the one cited above of St. Ambrose, which agrees perfectly with the Thomistic notion of the natural law because it emphasises

its cognitive character: "...id quod malum est naturaliter intellegimus esse vitandum et quod bonum est naturaliter nobis intellegimus esse praeceptum.' It seems evident that the author of these words conceives of the natural law first and foremost as a form of moral knowledge: the practical and natural knowledge of good and evil, which, for St. Ambrose, is 'the word of God' within us: we do not find the divine logos either in nature or on 'tablets of stone', but 'imprinted in our hearts, because of the living Spirit of God. Thus the judgement of our conscience constitutes a law to itself" (44) .

Nature as a "given natural order" and in this sense an object for reason, belongs to the concept of the natural law in yet another fashion: once it has been established that the natural law is the natural way of achieving practical knowledge of the human good, we are directed to the question of how such natural practical knowledge of good can be acquired. In order to understand this, it should be borne in mind that man, although he has an intellectual faculty, is not his intellect. Analogously, not even the - both theoretical and practical - acts of the intellect or reason are carried out by intellectual power alone. Actus sunt suppositi: acts are not of the individual faculties but of the concrete subject in the totality of his being. It is not reason which knows but the person in the globality of his or her corporeal-spiritual being who knows through his or her reason. Man is a set of tendencies and vital, sensual and intellectual/volitional inclinations. The person is all of this.

It is certainly the case that man is a 'person' thanks to his spirituality, but the 'human person' is all that is formed by the spirit and body in a unity of substance. Man is not an embodied spirit since he does not belong to the order of spirits. Man belongs to the order of animals, and before anything else he is an animal. (45) The human person is essentially a living body, animated, however, by a spiritual soul that allows this living body, this animal, to carry out not only spiritual acts but also all the other acts of his animal character in a way that is impregnated with the life of the spirit and thus under the guidance of reason: the unity of substance of corporeity/animal character and of spirituality transforms the meaning and the contents of man's corporeity and animal character themselves. Inversely, however, they also confer on the spirit being of man its specifically human and earthly character, the character that is to say of a spiritual existence which never takes place at the margin of the same natural corporeity and animal character of man and his natural environment (the world), but specifically through it. This applies both to all the acts of the speculative intellect, which without a body are not possible for us, and of those of the practical intellect, which without the natural inclinations could not be practical and move towards action.

At this point, however, the question poses itself: how can we understand these natural functions and inclinations, in particular those that arise from the corporeal and animal being of man? Undoubtedly, these tendencies and inclinations - we may think for example of the inclination to conserve oneself or the sexual inclination - are obviously practical, that is to say they push the agent to pursue their good and their own end and thus move towards action. Every natural inclination possesses a natura its own good and end (bonum et finis proprium). However, at the level of their mere naturalness, does following the tendency to conserve oneself or the sexual inclination also mean following the good and end due to man? How can we know what is not only specific to these inclinations according to their particular nature but also due to the person, that is to say at the moment of following these inclinations, good for man as man? (46)

It is at this point that there begins in a real sense the analysis of the internal structure and of the functioning of the natural law. This analysis, in fact, will explain how the natural law forms a part of the order of nature, expresses it, and in a certain sense constitutes it. However, this natural order, to repeat the point once again, is not an entity that man as a knowing and acting agent finds himself, so to speak, in front of. It is a natural order of which the same natural cognitive acts - the natural acts of practical reason - form a part. Thus one discovers a reason that is also specifically nature (a kind of ratio ut natura). It is for this reason that the natural law can really be called 'inside man' and that one can say that it is 'engraved in his soul'.

But how can one say that the natural law, understood as practical reason which naturally moves towards good, constitutes the moral order? It is possible to say that it does precisely because the lumen rationis naturalis so much spoken about by St. Thomas Aquinas is created ad imaginem by divine reason. (47) Specifically because the natural law is a real participation of the eternal law - and this in the particular case of the rational creature in an active way - the natural law can be considered properly as constituted by natural reason, just as the entire order of good is at its origins constituted by divine reason, which is the eternal law. (48) This participation displays itself not only in subjection to the eternal law, but also in the participation of the specific ordering function of the eternal law which is that of constituting the moral order, even if human reason, as only participated and created cognitive light, does this not by creating any truth at all but by knowing it and thereby finding it in its own being, essentially constituted by the natural inclinations as well. (49)

To re-read Summa Theolgiae I-II, q. 94 a. 2

The locus classicus where St. Thomas Aquinas expounds the genesis and the cognitive structure of the natural law is the famous article 2 of Quastio 94 of the Prima secundae. Here St. Thomas affirms three things:
1) the natural law is the work of practical reason, which has its own starting point and does not derive its principles from speculative reason;
2) the natural law is a practical and preceptive knowing of the human good which unfolds on the basis of the embedding of human reason in the dynamism of the natural inclinations;
3) grasped by practical reason, the goods and ends of the natural inclinations are understood and affirmed as constituting human good; at the same time, however, these inclinations with their goods and ends are regulated and ordered by reason, that is to say integrated into the whole of the corporeal-spiritual being of the human person, and thereby also transformed. Only as such do they belong to the natural law and are the natural law.
I will now explain these three points in greater detail, keeping closely to the text of I-II, 92,2 as I do this.
The Natural law is the work of practical reason, which has its own starting point and does not derive its principles from speculative reason. (50)
As St. Thomas Aquinas expounds at a detailed level, the precepts of the natural law have a relationship to practical reason which mirrors the relationship of the demonstrative principles to speculative (or theoretical) reason. The precepts of the natural law are, therefore, principles - practical principles - and thus are not derived from other forms of knowledge. The practical principles or precepts of the natural law are not applications of forms of speculative knowledge of human nature. Rather, they are acts in which the natural order of human good at its origins manifests itself rationally, that is to say as an ordo rationis. The practical principles, having their own point of departure, which is not derived, are thus immediately intuited (otherwise these precepts of the natural law would not be principles, as, however, affirms St. Thomas). Just as the speculative intellect has its starting point in the experience of being and in the evidence of absolute contrary nature of a being and a non-being, and in this way comes to formulate its first principle, which is that of non-contradiction, so also, not in a consecutive or derived way but in parallel fashion, practical reason, too, begins from a primary experience, irreducible to other experiences, the experience, that is to say, of 'good' as a correlate and formal content of our tendencies (bonum est quod omnia appetunt). (51)
From this point of departure there springs, in an immediate and indemonstrable way, the first principle of practical reason, which is also the first precept of the natural law: bonum est faciendum et prosequendum, et malum vitandum. Just as the principle of non-contradiction is not a principle apart, from which would be deduced other forms of knowledge, but rather a founding principle that is implicit in every other form of knowledge of being, so also from the first principle of practical reason nothing

more concrete can be derived. It is, rather, the foundation, which is implicitly always present, of every further form of practical knowledge of both a universal and particular kind. This principle confers on the judgements of practical reason the operative dynamic of the prosecutio or of the fuga. These last are what we can call the 'practical copula' which is not that of theoretical ingòeseaffirmation and negation, but a specifically practical kind of affirmation/negation, which, in fact, moves: it makes good be done and evil be avoided.

The first principle of practical reason is not, therefore, a purely logical principle, a kind of 'logical structure' of the practical precepts, but rather already the first principle of practice, and at the same time the first principle of morality. (52) This first principle of practical reason, which St. Thomas Aquinas identifies with the first precept of the natural law, constitutes man jointly as a practical subject and a moral subject. All the subsequent principles formulated by practical reason, that is to say all of the natural law, will participate in this double function. The natural law, in fact, has this double meaning of being: at one and the same time, a principle of practice and a principle of morality - the natural law in its original and deepest meaning is not a norm which from the outside regulates human action. It is, instead, the intrinsic principle itself of human practice, and this in the real meaning of the term: it ensures that man acts. But this human acting is from the outset moral acting, that is to say in virtue of the natural law itself it takes place from the outset within the moral difference of good/evil.

2) The natural law is a practical and preceptive knowing of the human good which unfolds on the basis of the embedding of human reason in the dynamism of the natural inclinations.

The second step of I-II 92, 2 is an explanation of the genesis of the other precepts of the natural law (or the other principles of practical reason). These already have a more specific content. They are not deduced, as has already been observed, from the first principle, but they constitute themselves through a natural and spontaneous process in which practical reason - always under the influence of the 'practical copula' which commands doing and pursuing good and avoiding evil - understands the individual goods (ends) of the natural tendencies or inclinations of its own being. This is a genuine experience of the human subject, an experience which is eminently and essentially practical, and which is not derived from any other form of knowledge. (53) It is the originating experience of itself as being moving towards good in the multiplicity of the natural inclinations specific to man, and is, therefore, of a practical and moral character. It is also constitutive of every other experience of specific human nature, just as it is also the point of departure for subsequent investigations through theoretical speculation. For this reason the metaphysics of man (philosophical anthropology) pre-suppose this practical experience of the natural law: the natural law as natural knowing of good is the pre-supposition for knowledge of human nature. (54)

As a consequence, the natural law is a practical and preceptive knowing of the human good that good which unfolds on the basis of the embedment of human reason in the dynamism of the natural inclinations. Practical reason has the character of an imperium, it is, that is to say, a reason that orders and moves because it is reason that operates within an 'inclinational environment'. (55) Through practical reason, the natural tendencies and inclinations become a good for reason, they are rationally ordered, and in the order of reason - but only at this intellectual level - they are confirmed as human goods.

In this second step, St. Thomas Aquinas affirms, therefore, that on the basis of the dynamics of the first practical principle, everything that practical reason understands as human good, forms a part, as a good to be done or an evil to be avoided, of the precepts of the natural law. (56) On the basis of this formulation, it now becomes clear that the natural law is specifically constituted in the process of the deployment of practical reason within the dynamics of the natural inclinations. For this reason, St. Thomas can go on and engage in the affirmation that "reason naturally grasps everything towards which man has a natural inclination in considering them goods, and as a result as something to pursue with works, and their contrary as an evil to be avoided. Thus, the order of the precepts of the natural law follow the order of the natural inclinations". (57)

St. Thomas Aquinas begins at this point to speak about the individual natural inclinations without further entering into details about their rational constitution, beginning from these inclinations of the precepts of the natural law. He does not speak about them, in my opinion, for rather obvious reasons: firstly, because the subject of this article is simply the demonstration that the natural law does not consist solely of a single precept but contains a plurality of them. (58) Having explained that the genesis of the precepts of the natural law is due to the constituent relationship between practical reason and the natural inclinations, and that within man is to be found a plurality of such inclinations, the purpose of this article has been fully achieved. The second reason why St. Thomas here does not need to enter more into the details lies in the fact that other aspects that refer to the nature of law in general and the natural law, as well as the fundamental doctrine on reason as a measure and rule of the morality of human acts, have already been addressed in previous articles. (59) However, St. Thomas makes a brief reference to this doctrine in the reply to the second objection. Thus it is that we come to the third point.

3) Grasped by practical reason, the goods and ends of the natural inclinations are understood and affirmed as constituting human good; at the same time, however, these inclinations with their goods and ends are regulated and ordered by reason, that is to say integrated into the whole of the corporeal-spiritual being of the human person, and thereby also transformed. Only as such do they belong to the natural law and are the natural law.

In his answer to the second objection, St. Thomas states that "all the inclinations of any part of human nature, that is to say the concupiscible and irascible parts, as they are regulated by reason, belong to the natural law..." (60) The natural inclinations in their pure naturalness are not yet the 'natural law'. They form a part of it because they are regulated by reason; what, however, formally is the natural law is the judgements of practical reason whose object is the individual goods and specific ends of the natural inclinations. In these practical and preceptive judgements these specific goods and ends become, in the order of reason, judged as what is due, that is to say as ends, goods and due acts. This is the terminology employed by St. Thomas: in participating through the possession of the lumen rationis naturalis in the eternal law - the ordering reason of God - man is not simply guided by the different natural inclinations towards their own acts and ends. But possesses, at a rational level, a specific natural inclination ad debitum actum et finem. (61)

This agrees perfectly with the doctrine of St. Thomas Aquinas on the constitution of the moral object by reason. Indeed, the rational constitution of the human good in the sphere of the specific goods and ends of the individual natural inclinations, on the one hand, and the constitution of the moral object, differently from the object in the pure genus naturae, on the other, are, at different levels, analogous processes. The similarity is explained by the fact that "in human acts good and evil are determined in relation to reason" (62) . This analysis of the constitution of human good also agrees with the statement by Aquinas to the effect that moral acts, in their kind, "are made up of forms because they are conceived by reason" (63) . Indeed, reason has a relationship to the natural inclinations - because they are natural - which mirrors that of the relationship between form and matter. Together they form a complex unity (the same applies to the moral object, which is made up of materia circa quam and the formal part, which comes from reason (64)). The naturalness of good, as it is formulated in the natural law, cannot, however, be reduced to the simple naturalness of the individual natural inclinations and their goods, ends and own acts. Such a reduction would be equivalent to reducing the genus moris of an act to its genus naturae, to confusing the 'moral object' and the 'physical object' of a human act. The natural law, as the above-quoted text by Leo XIII affirms, inclines man ad debitum actum et finem and thus makes the eternal law itself effective. This, without the regulating and ordering act of reason, would not be possible.

The natural law as practical and preceptive knowledge of human good

In this way it become possible to do full justice to the preceding statements on the law in general and on the natural law in particular. According to St. Thomas, the law in general is what regulates human acts. This, however, is the task of reason: it is for reason to order to an end. For this reason, the law is aliquid pertinens ad rationem (65) . At a more concrete level, by law is meant the "universal practical judgements (propositions) of practical reason, ordered to acting" (66) . In this sense, the natural law, too, est aliquid per rationem constitutum, and, like every judgement, is an opus rationis (67) .
To be precise, the natural law, therefore, is a conjunction of the natural judgements of practical reason which in a preceptive or imperative way express the good to be done and the evil to be avoided in the sphere of the ends indicated by the natural inclinations. The conjunction of the natural inclinations, ordered by reason, constitutes and defines human identity, and thus also the natural moral order of man. It is thus the natural law that makes human nature appear and that order of reason which is normative for action. As a result, the manifestation of the foundations of the objective moral order already pre-supposes the cognitive presence of the natural law. This last cannot deduced from such an order since it is the natural law itself which makes this order known.
The natural law, in concrete terms, is the set of judgements of practical reason which contain what is "by nature reasonable". In truth, within these judgements there is a certain complexity: there are judgements which are immediately evident and carried out with natural spontaneity (the first principles or very common principles, such as for example the golden rule (68)), and others which, through the inventive principle of natural reason, are not deduced from the first but discursively found in the light of the first principles (the secondary precepts of the natural law, which already refer to types of action such as 'respecting other people's property, "don't kill", etc. (69)). These preceptive imperative practical judgements (which those of prudence, at the level of particular judgements, are) move towards acting (or dissuade from acting). In this sense, the precepts of the natural law are not properly 'norms' which, when applied by the moral conscience, regulate the freedom of the person and his or her acting. These practical judgements of natural reason, which form a natural law, are rather the foundation and the point of departure of acting as moral acting. As has already been observed in this paper, these judgements or forms of practical knowledge, constitute the person as a practical and moral subject, both at a general level and in the various spheres of human action, corresponding to the various moral virtues. For this reason St. Thomas Aquinas can state that "the first orientation of our actions to an end takes place through the natural law" (70) . This statement means that without the natural law there would not be in the least any acting since every acting pursues an end, and without such pursuing, action would not take place.
Conjointly, however, the natural law is a set of judgements about the fundamental goods which should be achieved, the goods that define the order of moral good which is an ordo rationis. Therefore, speaking formally and in a proper way, the natural law is not known on the basis of a moral order, or deduced from it, but it is precisely the natural law that constitutes and realises the moral order as an ordo rationis: it is this order which manifests 'human nature' in its morally normative meaning. The order of reason, however, is none other than eternal law which is manifested through and in the natural law because the natural law is the eternal law, present in human practical reasonableness.

The natural law and the moral conscience

However, this is not everything. It is important to emphasise that the intellect, as a spiritual faculty, has the capacity to reflect in an unlimited way on its own acts. For this reason, the human intellect reflects on these natural judgements of practical reason, thereby discovering this moral order and this 'human nature' as an object of the speculative intellect, as an anthropological reality full of normative meaning. But great care should be employed here: this normativeness is not deduced from or read in a nature that is in front of knowing man - on the contrary, it is the original normativeness of practical reason itself which, due to its location within the dynamics of the natural inclinations, explains itself through natural

judgements the on human good. These last form an original, irreducible and fundamental experience. It is an experience in which simultaneously the human being, the anthropological identity of the subject, as well as the normative aspect of this human identity, manifest themselves.
In analysing the level of reflection on this moral experience, one comes to a second concept of natural law, not in the formal but in the material sense. This derived concept refers solely to the propositional contents of these judgements of practical reason and the corresponding moral experience, which, in a proper and primary sense are the natural law. Through reflection of the intellect on its own practical and ordering acts a habitus of forms of normative moral knowledge is formed, which is the natural law as a habitus of the principles and foundation of moral science (this habitus of the first principles is also called synderesis (71) These forms of knowledge are normative enunciates, or moral norms, which, in virtue of the natural way of manifesting themselves in the first judgements of practical reason, appear in the conscience as the voice of a truth, to which the subject must subject himself or herself, and which are applied to concrete acting through the judgement of the conscience. I will confine myself here to this brief reference to this question, to which I have dedicated a more detailed exposition elsewhere. (72)

The natural law and natural right

We have seen that the natural law is a combination of the judgements of practical reason which in a preceptive or imperative way expresses the good that is to be done and the evil to be avoided in the sphere of the ends indicated by the natural inclinations. These inclinations are many in number and arise from all the other strata of the complex nature of the human person. St. Thomas Aquinas speaks about the inclination to conserve oneself, which is a basic tendency, but when pursued within the order of reason it is pursued in concordance with the other needs, for example, of justice, of benevolence towards one's neighbour, of respect for the common good, etc. 'Conserving oneself', as something contained within the natural law, is not only the simple natural inclination in its pure naturalness. Man is also able to sacrifice his own life for the good of others.
The same is applicable to the other example mentioned by St. Thomas: the sexual inclination between a man and a woman. Grasped by reason as a human good and made the content of a practical judgement, the object of this inclination is more than an inclination found in pure nature. It is more than that which, in the words of the Roman jurist, Ulipan, "nature has taught all animals" (73) . This natural inclination, grasped by reason and pursued in the order of reason - at the personalistic level - becomes love between two people, love with the requirement of exclusiveness (uniqueness) and of indissoluble faithfulness between persons (it is not mere attraction between bodies!), persons who understand that they are united in the task of transmitting human life. Faithful and indissoluble marriage between two people of the two sexes, united in the shared task of transmitting human life, is precisely the truth of sexuality; it is sexuality understood as the human good of marriage. Like all the other forms of friendship and virtue, this specific type of friendship, which is what marriage is, is not found "in nature". It is the property and norm of a moral order, to which man has access through the natural law as an ordinatio rationis. What, according to Ulpian, 'nature has taught all animals', is certainly a pre-supposition for human love as well, but it does not yet express adequately the natural moral order to which this love belongs. As a result, in the case of man, what 'nature has taught all animals' is not even sufficient to establish any dutifulness or normativeness. If the animal does what its nature, endowed with a richness of instincts, prescribes to it, it performs its function. Can the same be said of man?
The most important inclinations, however, arise immediately from the spiritual nature of man. St. Thomas mentions the natural inclination to know the truth, in particular the truth about God, and the natural inclination to live in society. Man naturally flees from ignorance and tries not to offend other men. Indeed, it is the natural law that constitutes the first notions of justice - as of every other virtue - and which also makes possible the notion of 'natural right', that is to say something which is 'right by

nature'. Any notion of a natural right already pre-supposes the active presence or the deployment within the subject of the natural law. If the natural law, and with it the ordinatio of practical reason, did not form principles of justice, nothing could ever be perceived as something which was 'naturally right'. Every notion of right would be derived from a positive, or divine (revealed) or human law. The notion of what was 'right' would be nothing, as Thrasimacus says, but the self-interest and the advantage of the strongest. (74) Not only the condition of a 'natural right' would be unthinkable, but so too would be the very concept of right as 'good' and as due to somebody.

At times, the terms natural law and natural right are used indistinctly and as synonyms. This, however, causes a great deal of confusion. For the pre-modern tradition, the ius naturale is the same as iustum naturale, that is to say the right is something that on the basis of a certain convenience is due to somebody (in the way, for example, in the case of an action of buying and selling, every commodity has its price: while the concrete price, according to St. Thomas Aquinas, can be established in line with convention, the fact that a commodity has a price, and thereby a 'commodity-price' relationship, is natural; to pay a price thus corresponds to the ius naturale (75) The modern concept of 'right' is semantically somewhat different: it becomes above all else a subjective right, that is to say a claim or right, that is to say a right to something (76) . This is what is meant by the rights of freedom and in general human rights. The ius naturale, as we find it in the Thomistic tradition, is a given fact, a convenience secundum naturam, the foundation of the order of justice. The ius is specifically the object of the virtue of justice (which is defined as the 'firm and constant willingness to give each person his or her due'). For this reason as well, the terms natural law and natural right should be distinguished: the natural law does not refer only to justice concerning acts in relationship with other people; the natural law regulates all the moral virtues, also the acts that concern the agent subject himself or himself, like those that belong to the sphere of temperance or fortitude (courage).

It is, however, of the greatest importance to underline that the notion of 'ius' is not self-founding and is not even simply 'given' in nature. Like all moral notions, the notion of right is instead constituted specifically within the deployment of the natural law. What is a natural given fact, which is relevant in some aspects and pre-supposed for the formation of the natural law, are certain relations of convenience (such as, for example, the famous coniunctio maris et feminae as a natural relation of adaequatio, or the relationship between commodity and price, and also many other conveniencies and Sachverhalte, which are intuitively graspable "from the nature of things", as we are taught by the classic Roman jurists of the epoch of the Principate (77). However, the normativeness of these 'conveniencies' or adaequationes and the very notion of due (debitum) come from practical reason which alone is able to order these conveniences towards the end of virtue, which is the good of the human person. Certainly, these notions come from natural reason, and in this sense are they indeed natural. They are natural in the same sense in which the natural law and the reason which constitutes it are natural. Through it, all these notions that belong to the order of justice are constituted. What St. Thomas states in general regarding the relationship between law and right can also certainly be applied to the relationship between the natural law and natural right, that is to say lex non est ipsum ius, proprie loquendo, sed aliqualis ratio iuris: 'the law is not, in a proper sense, right, but rather that which in a certain sense ensures that what is a right is a right (78) .

A natural right, therefore, is not properly a normativeness deduced from nature or read in it, but rather the result of a reading of the natural structures in the light of the principles of the natural law. Bearing this in mind is of importance in order not to fall into a vicious circle or to become guilty of a petitio principii at the moment of establishing arguments based upon the natural law. Notions such as that of "something due" to one's neighbour, of "not offending", of "not harming", the notion itself of reciprocity, expressed by the golden rule, and of equality, of which every form of justice is a determined type, come from this natural inclination to live in society with other men, to communicate with them, to relate to them with acts of exchange and distribution, etc. Without the natural law there would be no notion of 'a right' and of 'something being right', since every notion of normativeness or

dutifulness in relations between men would be absent. At this completely fundamental level, too, lex non est ipsum ius, proprie loquendo, sed aliqualis ratio iuris applies.
Furthermore, the notion of due and of right (ius) as well, which is inherent in every relationship of justice, is not yet sufficient. So that what is due can fall under the principle of the natural law (bonum faciendum etc.), the right must manifest itself as a good. Indeed, St. Thomas Aquinas says that "to give somebody what is due has the property of a good" (79) . One needs, therefore, to lead back the notion of right and due to the notion of good or of bonum humanum. Why is the right a human good for he who in this way places himself in a relationship with another person? It is such on the basis of the golden rule, which forms part of the first principles of the natural law, and which for its part pre-supposes the fundamental recognition of another person as being 'equal to me'. Such a recognition, the foundation of every justice, is once again the work of reason. (80)

TO UNDERSTAND THE NATURAL LAW IN THE CONTEXT OF ETHICS OF THE VIRTUES

The author of these pages is convinced that from the Thomistic conception of the natural law are derived a multitude of consequences of great importance and fertility for moral philosophy, both as regards its basic approach and in terms of its internal structure. (81) I would, however, like to confine myself to concentrating on some aspects which appear to me of particular pertinence in the present context.

The natural law and the ethics of the virtues

Were we to dismiss the rather simplistic idea that the natural law is simply a conjunction of norms to be read in a natural order 'that is in front of our eyes', and we realised, instead, that the natural law is specifically something constituted in the natural judgements of the natural reason of each man, and thus knowing what is 'reasonable by nature', we would then understand better that the natural law is really 'written and engraved' in the human soul. In the meanwhile, the natural law has become recognisable also as regards its ontological meaning, that is to say as an expression of human nature and the moral order rooted in this nature. Indeed, this law emanated by the practical reason of the subject is specifically human nature in its normative dynamics: it is simultaneously self-possession of the subject - a real autonomy, which is participated theonomy - and also an objective norm which, in front of the moral conscience, imposes itself with the force and the authority of truth.
To conceive of the natural law, as St. Thomas Aquinas does, as a set of natural principles of practical reason opens up the road to understanding the intimate connection between the precepts of the natural law and the moral virtues. Indeed, the moral virtues, too, are essentially a type of ordinatio rationis: as habitus they are the order of reason, "sealed and imprinted" in the concupiscible (temperance) and irascible (force) inclinations and in the rational appetite called will (justice). (82) Given that man is essentially formed of a rational soul, he also has a "natural inclination to act according to reason", and this is to live the virtues whose acts are, therefore, imposed by the natural law. (83) The moral virtues are the fulfilment at the level of concrete acting of the natural law since they are the habitus of choosing what is good for man at a concrete level. (84) For this reason, the precepts of the natural law are precisely the principles of prudence. (85) The "truth of subjectivity", of which the natural law at the level of the principles is the foundation, is ultimately guaranteed through the possession of the moral virtues, whose function, as Aristotle taught us, lies in ensuring that there appears as good to the subject that which is also good according to truth. (86) The individual virtues do this by deploying the 'appetitive' part of the human being, the sense tendencies, and the will, according to the requirements of reason. In this way, the secundam rationem agere (87) , founded in the natural law, is fulfilled in the moral virtues, which, however, also manifest their function of giving full efficacy and functionality to

the natural law. The intimate nexus between the natural law and moral virtue explains that it is indeed vice that is one of the principal causes of the obscuring of the natural law in man. The Thomistic conception thus opens the road to an approach of ethics and moral theology that is not simply centred on the 'law' but rather on the virtues.

The permanence of the natural law and contemporary questions connected with respect for human life

At the present time there is no absence of voices which affirm that the natural law, and with it respect for natural right, has fallen into oblivion or has become irrelevant both for people and for political society and the laws on which that society is based. In this view, the lack of respect for, and even the denial of, the natural law is to be found in the widespread diffusion of contraceptive practices, abortion, technologies of reproduction, which bring about the serious problem of human embryos frozen while waiting to be used in a useful way, the attempts to use them for the attaining of stem cells for medical research, therapeutic cloning, etc.

In my opinion, the diagnosis to the effect that the above-mentioned phenomena attest to the loss or the oblivion of the natural law within the hearts of men is not entirely correct. It seems to me important to test the diagnosis well in order not to have an erroneous form of subsequent treatment. Indeed, if one were to argue that the natural law is a given fact, which is easily and by self-evidence decipherable in the 'nature of things' in such a way that those who are not capable, or deny the existence, of such a 'law of nature', would be mere deniers of an evident truth, then the only therapy would be to attempt to overcome such obstinate deniers of the truth through an insistent affirmation of the contrary. This seems logical: the person who denies what is evident and intuitively knowable should not be answered with arguments but rather with blame, rebukes and indignation.

I think, however, that things are infinitely more complex. I do not believe that our contemporaries deny what is evident and intuitively knowable. I do not believe, therefore, that they specifically deny the fundamental precepts of the natural law. Indeed, in relation to what is evident, that is to say the first precepts of the natural law, there is at the present time a surprising consensus. This consensus bears witness to the presence of the natural law in the consciences of man. Otherwise, the fact that forms of behaviour such as, for example, killing innocent people, adultery, lying or theft, hating one's neighbour, envy, rash judgements, defamation, and many similar things, are generally seen as being dishonest, would be incomprehensible. Obviously, this does not change the fact that in reality innocent people are killed, slander is used for private and public purposes, and theft, hatred and defamation and so many other kinds of injustice are the order of the day. But this, due to human wickedness and weakness, has always been the case. And right up until our days, these forms of behaviour have always been disapproved of by people who are seen as being endowed with healthy judgement. Without the effective presence of the natural law in the hearts of men this would not be possible and indeed the very notions of adultery, of murder, of lying, of theft, etc., all of which imply that a person possesses a concept of justice, which is also a work of the natural law, would themselves not be possible.

It is certainly true that in contemporary culture there exists a very widespread tendency of not wanting to accept, in principle, an 'objective' and universal morality. This phenomenon of ethical individualism and subjectivism at a personal level, is, however, and paradoxically, linked to another, which from certain points of view is in opposition to it: today for public life and the assessment of both individual and institutional human action in the social, political and economic fields, more than at any previous time in history, moral norms (bearing the name of human rights) which declare themselves to be universal and impose themselves with the force of their objective value, are considered the obligatory point of reference. This seems to be another sign of the fact that the natural law is far from having fallen into oblivion.

On the other hand, even amongst the many defenders of the existence of a natural law, there exist discordant opinions as to what its contents really are, that is to say on what human reason naturally

points out to us as being good and a matter of duty. A consensus exists only at the level of the most important shared and specific precepts. But there exists a whole level of so-called 'remote' precepts which, according to St. Thomas as well, are difficult to understand for most men, and which, in his view, can be understood without error only by 'the wisest'. (88) Indeed, it is at this level that there exist both amongst believers and amongst non-believers great differences of opinion. Questions such as contraception, divorce, even abortion from certain aspects (when it is, that is to say, practiced with a contraceptive mentality (89)), the prohibition of therapeutic cloning or in vitro fertilisation, are, from the point of view of the 'natural law', rather remote subjects, at times rather difficult to perceive when it come to their intrinsic moral quality. Instead, it is easy for everyone, even today, to understand the disordered character of killing, of adultery, of lying and of theft, of hatred for one's neighbour, of envy, of rash judgements, of defamation, etc., forms of behaviour and inner attitudes to which the principal precepts of the natural law refer.

With technological progress the possibilities of intervening on nature - on that which is given and pre-supposed - are constantly increasing. The power of man is being extended to what in past periods was simply something to be accepted as 'natural' or as 'immutable' and which presented itself to man in the form of a destiny to which man had to bend in docile fashion. We have arrived at the point of having the power to change - at least in many aspects - the 'human condition', to modify it in line with our perspectives, which are not necessarily illicit, of happiness and well-being (one may think here of reproductive technology, genetics, etc.). Finally, in modern society the autonomy of the individual has grown to an extent that has never taken place before. The identity of persons is not inexorably defined on the basis of determined social roles, which are pre-established for insertion into a specific historical, social or family context. In my opinion, this process at the level of principle should be evaluated as a great gain. But it is logical that this development, at least as regards the aspect of their social utility, also renders certain absolute moral prohibitions less intelligible. Where the social context no longer pre-defines determined roles for every individual person or for groups of people (defined, for example, according to their sex) it becomes more difficult to understand certain moral values and norms which in the past were supported by the processes of socialisation and the general configuration of society and by the constrictions imposed by the shared circumstances of life.

Let us take a contemporary example: experimentation on human life for beneficial motives, such as those of wanting to treat illnesses, has always been a dream of men, and not only of scientists. Today it seems that we are able to do this, and the pressure increases not because the natural law is no longer recognised but because the power of man over nature has increased, and this generates challenges - because of the intrinsic intelligibility of the moral order established by this law - which have hitherto been unknown.

The person who today opts for experimentation on human embryos and in this contexts affirms emphatically that an embryo is not yet a being with the dignity and the rights of a human person, does not deny the natural law but specifically (albeit implicitly) confirms it: in fact he or she does not want to exploit a human person for a good end and thus sees himself or herself forced to deny that an embryo has the status of a person. The error here is not connected with the natural law, it is not properly an error of practical knowledge, but first of all an error of a theoretical kind. This is a case of an erroneous statement about reality; an error of metaphysical anthropology which certainly causes a grave injustice - the exploitation of certain human individuals for the benefit of other people. Nobody wishes to advocate that the personal dignity of some human beings may be licitly violated in order to benefit the majority; this would clearly contradict the natural law. Instead, one simply denies the status of a person of these human beings, so as to "exempt" them from what natural law commands.

In other cases, however, such an error can be due to a real and proper act of discrimination arising from an unjust will which searches above all else for its own well-being, self-determination, or the achievement of personal project, which many times are perhaps licit but which are pursued at the expense of other people. In this context of injustice, the error of not recognising the dignity and the

rights of unborn human beings, even in the embryonic form of human life, expresses itself as an authentic practical error, that is to say as injustice. (90) To be habitually involved in such an error causes the obscuring of the natural law in one's own heart, and gradually renders ineffective the light of natural reason in guiding one's own action towards the true good of man.

To appeal in such a situation to the self-evidence of the natural law, or natural right, cannot be of great help for those people who are in this way involved in evil. Yet at the same time, those who out of good faith or simple ignorance, due also to the pressures of the environment in which they live, need to be instructed in the truth; appeals to presumed forms of self-evidence which are not forthcoming except in certain conditions are not sufficient. By this I want to say the following: very many, perhaps the majority, of the moral problems that are disputed today refer to matters that one would say are to do with precepts of the natural law which are rather 'remote'. At this level, indeed, there is no self-evidence. The inventive process of natural reason can be seriously misled by the concrete forms of conditioning to which the subject is exposed in his or her social environment, by his or her biographical or cultural context, and by the pressures and material constraints of the world of work. One may think here, for example, of children and young people who grow up in a society in which divorce and thus 'articulated' families ('children with four parents' etc.) have become normality. In such a situation appeals and forms of self-evidence cannot be of much help. One wants on the one hand arguments, and on the other, for those people who have the grounding to accept it, instruction by means of a recognised authority.

But this is not all. It should also be mentioned that the self-evidence of certain requirements of the natural law can be justified only in the context of Christian faith and with the grace that is conferred within the context of a Christian life to live out all the requirements of the natural moral order within the perspective of the mystery of the Cross. This order, even though it is in itself intelligible to everyone, includes for real man some difficulties and has at times a paradoxical character which renders the human good unintelligible. Only in the light of the faith, does the natural law also recover all its intelligibility and humanity. This is not because it is in itself not rationally knowable but because outside the order of the redemption this intelligibility can often seem illusory and even a burden to the extent of formulating inhuman requirements which are incompatible with the desire for happiness inserted into the human heart. (91) Moreover, for the natural law to reveal itself as a part of that truth which makes us free, what is needed is a patient work of diffusion of good, and of the light of faith, and a subsequent permeation of social structures with the spirit of Christ.

NOTES

(1) J. FUCHS, Lex Naturae. Zur Theologie des Naturrechts (Düsseldorf ,1955), trans. by H. Reckter and J. Dowling as Natural Law: A Theological Investigation (New York, 1965) For more details see: M. RHONHEIMER, Legge naturale e ragione pratica. Una visione tomista dell'autonomia morale (Armando, Rome, 2002), pp. 36ff.. (original edition: Natur als Grundlage der Moral. Die personale Struktur des Naturgesetzes bei Thomas von Aquin. Eine Auseinandersetzung mit autonomer und teleologischer Ethik (Tyrolia Verlag, Innsbruck-Vienna, 1987), pp. 30ff.; English edition: Natural Law and Practical Reason: A Thomist View of Moral Autonomy (Fordham University Press, New York, 2000), pp. 8ff..

(2) J. FUCHS, Lex Naturae, pp. 13-16 (engl. trans.: pp. 6-9)

(3) Cf. ibid.: 'In these (texts concerned with the ontological aspect) the being, the very essence or nature of man as composed of body and spirit appears as a norm of moral behavior and of law (...) reason reads the natural law int the nature of all things and particualrly in the nature of man. FUCHS's assertion that this schema expresses in a completely general way the opinion of traditional moral

theology is certainly not correct. Cf. M. RHONHEIMER, Legge naturale e ragion pratica, p. 37f. (Natural Law and Practical Reason, pp. 9ff.).
(4) ST. AMBROSE, De Paradiso, 8, 39, in Sancti Ambrosii Episcopi Mediolanensis Opera (Tutte le Opere di Sant'Ambrogio, ed. bilingue), 2/I, recensuit Carolus Schenkl, introduction, translation, notes and indexes by P. Siniscalco (Biblioteca Ambrosiana, Milan/Città Nuova Editrice, Rome, 1984), pp. 98-99. Cf. also A. TRAPÉ, L'universalità e l'immutabilità delle norme morali e l'oggettività del giudizio morale secondo i Padri latini, in particolare secondo Sant'Agostino, in Universalité et permanence des Lois morales, S. PINCKAERS and C.J. PINTO DE OLIVEIRA (Éditions Universitaires, Fribourg/Éditions du Cerf, Paris, 1986), pp. 90-101.
(5) Cf. also ST. AUGUSTINE, who speaks in his De libero arbitrio, I, 6, 15, 48 of "illa lex quae summa ratio nominatur, cui semper obtemperandum est et per quam mali miseram, boni beatam vitam merentur..."
(6) M. RHONHEIMER, La prospettiva della morale. Fondamenti dell'etica filosofica (Armando, Rome, 1994), pp. 159ff.
(7) St. THOMAS AQUINAS, De Veritate 10, 1: "Quia vero rerum essentiae sunt nobis ignotae, virtutes autem earum innotescunt nobis per actus..."
(8) Id., Summa Theologiae I-II, 17, 1 ad 2: "Ex hoc enim voluntas libere potest ad diversa ferri, quia ratio potest habere diversas conceptiones boni".
(9) Cf. ARISTOTLE, Physics, II, 8.
(10) For a broader exposition of the notion of bonum rationis see M. RHONHEIMER, Praktische Vernunft und Vernünftigkeit der Praxis. Handlungstheorie bei Thomas von Aquin in ihrer Entstehung aus dem Problemkontext der aristotelischen Ethik (Akademie Verlag, Berlin, 1994), pp. 124ff.
(11) In my judgement, the incorrect approach of so-called autonomous morality has its roots precisely in this dualistic fallacy and the consequent physicistic understanding of the natural law, 'liberation' from which is sought by turning terms upside down, by declaring that reason is 'autonomous' in relation to nature, but in a way which does not go beyond but instead continues, in opposite terms, the traditional dualism. I have engaged in a broad analysis of this in my study: Legge naturale e ragione pratica.
(12) Cf. M. RHONHEIMER, Legge naturale e ragione pratica, pp. 39ff. (Natural Law and Practical Reason, pp. 11ff.).
(13) ST: THOMAS AQUINAS, Summa Theologiae, I-II, 90, 1 e 4.
(14) It is true that St. THOMAS AQUINAS also calls a 'law' not only that which regulates but also that which is regulated by certain laws, such as the inclinations that come from some laws. This, however, is not called law essentialiter, sed quasi participative. In its own sense, however, that is to say in the sense of that which regulates, lex est in ratione sola (I-II, 90, 1 ad 1).
(15) Thus, for example, Johannes Messner wanted to assimilate the concept of natural law in the moral field to that to be found in the natural sciences. Cf. J. Messner, Das Naturrecht (Tyrolia Verlag, Innsbruck-Vienna, 1966), pp. 55. In his unfavourable critical review of my book Natur als Grundlage der Moral (Legge naturale e ragione pratica), A. F. Utz refers explicitly to the position of Messner, calling it the authentic position of St. THOMAS AQUINAS: 'Naturgesetz ist bei Thomas zunächst ein Gesetz im natur-wissenschaftlichen Sinn, d.h. ein Gesetz des Seins....' (A. F. Utz, 'Wonach richtet sich das Gewissen?, Die neue Ordnung', Heft 2 (1988), pp. 152-156; 155. However the criticism of Utz is based upon a very serious misunderstanding, cf. the 'Postscriptum' to Legge naturale e ragione pratica, pp. 521ff. (Natural Law and Practical Reason, pp. 560f.).
(16) Thus is explained how the definitio legis, which contains all the essential elements in a real sense, is that of civil law: cf. I-II, 90, 4: "...definitio legis, quae nihil est aliud quam quaedam rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata." For the practical-political origins of the notion of law in St. THOMAS AQUINAS see W. Kluxen, Philosophische Ethik bei Thomas von Aquin (1964), Felix Meiner, 1980 e 1998, pp. 230ff.

(17) ST. THOMAS AQUINAS, Summa Theologiae, I-II, 90, 1.
(18) Ibid., I-II, 94, 2.
(19) . "...lex naturae (...) nihil aliud est nisi lumen intellectus insitum nobis a Deo, per quod cognoscimus quid agendum et quid vitandum. Hoc lumen et hanc legem dedit Deus homini in creatione" (In duo praecepta caritatis et in decem legis praecepta expositio, Prologus I).
(20) ID., Summa Theologiae, I-II, 94, 1.
(21) Ibid.
(22) JOHN PAUL II, Veritatis Splendor, n. 42.
(23) "....promulgatio legis naturae est ex hoc ipso quod Deus eam mentibus hominum inseruit naturaliter cognoscendam" (ST. THOMAS AQUINAS, Summa Theologiae, I-II, 90, 4 ad 1).
(24) I-II, 93, 1: "lex aeterna nihil aliud est quam ratio divinae sapientiae, secundum quod est directiva omnium actuum et motionum".
(25) Ibid.: "...ratio divinae sapientiae moventis omnia ad debitum finem, obtinet rationem legis".
(26) Cf. Veritatis Splendor, n. 41. On this subject see the excellent article by J. De Finance, 'Autonomie et théonomie', in M. Zalba (ed.), L'agire Morale ('Atti del Congresso Internazionale Roma-Napoli - 17/24 Aprile 1974: Tommaso d'Aquino nel suo settimo centenario, Vol. 5') (Edizioni Domenicane Italiane, Naples, 1974), pp. 239-260. I took full advantage of this article in my book Legge naturale e ragione pratica, pp. 308 ff. (Natural Law and Practical Reason, 319ff.)
(27) I-II, 91, 2: "lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura".
(28) Ibid.: "Fit providentiae particeps, sibi ipsi et aliis providens".
(29) I-II, 19, 4 ad 3: "Licet lex aeterna sit nobis ignota secundum quod est in mente divina; innotescit tamen nobis aliqualiter vel per rationem naturalem, quae ab ea derivatur ut propria eius imago; vel per aliqualem revelationem superadditam".
(30) I-II, 91, 2: "'...quasi lumen rationis naturalis, quo discernimus quid sit bonum et malum, quod pertinet ad naturalem legem, nihil aliud sit quam impressio divini luminis in nobis".
(31) Cf. BASTIT, M., Naissance de la loi moderne. La pensée de la loi de saint Thomas à Suarez (P.U.F., Paris, 1990), pp. 338ff.
(32) 79, 11: "... verum et bonum se invicem includunt: nam verum est quoddam bonum, alioquin non esset appetibile; et bonum est quoddam verum, alioquin non esset intelligibile (....) obiectum intellectus practici est bonum ordinabile ad opus, sub ratione veri. Intellectus enim practicus veritatem cognoscit, sicut et speculativus; sed veritatem cognitam ordinat ad opus".
(33) For the concept of 'practical truth' in this context see M. RHONHEIMER, Praktische Prinzipien, Naturgesetz und konkrete Handlungsurteile in tugendethischer Perspektive. Zur Diskussion über praktische Vernunft und "lex naturalis" bei Thomas von Aquin', Studia Moralia 39 (2001), pp. 113-158.
(34) Cf. ST: THOMAS AQUINAS, Summa Theologiae, I-II, 104, 1: '....praeceptorum ciuscumque legis quaedam habent vim obligandi ex ipso dictamine rationis, quia naturalis ratio dictat hoc esse debitum fieri vel vitari. Et huiusmodi praecepta dicuntur moralia: eo quod a ratione dicuntur mores umani.' Cf. for this question M. RHONHEIMER, Praktische Vernunft und Vernünftigkeit der Praxis, pp. 531ff.
(35) In this sense, but only in this sense, the natural law can be understood as the 'principium exterior' of human acts (cf. I-II, 90, Prooemium): because the natural law is participation of the eternal law it 'comes from without', but because it is the natural law, one is dealing, rather, with an intrinsic principle of action. One should also take into consideration the biblical context of the moral theology of St. Thomas, who wanted to insert Aristotelian practical reason into a theological context that was deeply characterised by the biblical tradition of law.
(36) For the profoundly aristotelian structure of Aquinas' moral philosophy see K. L. Flannery, Acts Amid Precepts. The Aristotelian Logical Structure of THOMAS AQUINAS's Moral Theory, The Catholic University of America Press, Washington D. C., 2001, and my Praktische Vernunft und Vernünftigkeit der Praxis, cit..

(37) ST. THOMAS AQUINAS, Summa Theologiae, I-II, 104, 1 ad 3: 'ratio, quae est principium moralium, se habet in homine respectu eorum quae ad ipsum pertinent, sicut princeps vel iudex in civitate.'
(38) For further clarifications I take the liberty of referring the reader to my above-cited works: (Legge naturale e ragione pratica (Natural Law and Practical Reason); La prospettiva della morale; Praktische Vernunft und Vernünftigkeit der Praxis) in which I examine this whole subject in detail. In addition, clarifications and additions can be found in the Spanish edition of La prospettiva della morale (La perspectiva de la moral. Fundamentos de la ética filosófica, Rialp, Madrid, 2000) and even more in the German edition (Die Perspektive der Moral. Philosophische Grundlagen der Tugendethik, Akademie Verlag, Berlin, 2001). Finally, and to avoid any misunderstanding, readers may find it useful to consult my article 'Praktische Vernunft und das "von Natur aus Vernünftige". Zur Lehre von der Lex naturalis als Prinzip der Praxis bei Thomas von Aquin', Theologie und Philosophie, 75 (2000), pp. 493- 522.
(39) Some aspects are addressed by M. Spanneut, 'Les normes morales du stoïcisme chez les Pères de l'Église', in Universalité et permanence des Lois morales, pp. 114-135.
(40) On the doctrine of oikeiosis cf. M. FORSCHNER, Die stoische Ethik. Über den Zusammenhang von Natur-, Sprach- und Moralphilosphie im altstoischen System (Klett-Cotta, Stuttgart, 1981), pp. 142ff.
(41) "lex est ratio summa, insita in natura, quae iubet ea quae facienda sunt, prohibetque contraria" (De Legibus, I, 6, 18.)
(42) "non scripta, sed nata lex... rerum ex natura ipsa adripuimus, hausimus, expressimus..." (Pro Milone., IV, 10, in M. Tulli Ciceronis Orationes, ed. A. C. Clark, e. typ. Clarendoniano, Oxonii 1964).
(43) "recta ratio naturae congruens" (De Re publica III, 22, 33).
(44) "Dei autem praeceptum non quasi in tabulis lapideis atramento legimus inscriptum, sed cordibus nostris tenemus impressum spiritu dei vivi. Ergo opinio nostra sibi legem facit" (De Paradiso 8, 39, p. 98).
(45) For an excellent approach to the question cf. D. Braine, The Human Person. Animal and Spirit (University of Notre Dame Press, Notre Dame, Ind.), 1992.
(46) The important and significant distinction between "actus et finis proprius" and "actus et finis debitus" (o conveniens), often ignored by the interpreters, is found in I-II 91, 2, or in In Quattuor Libros Sententiarum, IV, 33, 1, 1. I sought to bring out this distinction in a suitable way in my Legge naturale e ragion pratica, pp. 89 e 98; cf. also G. Abbà, Felicità, vita buona e virtù. Saggio di filosofia morale (Las, Rome, 1989), p. 183.
(47) I-II, 19, 4 ad 3. The commentary of St. THOMAS AQUINAS on the Gospel according to St. John is very interesting, the principal texts of which are brought together in Legge naturale e ragion pratica, pp. 261f. (Natural Law and Practical Reason, pp. 264ff.).
(48) Therefore, as has already been observed, St. THOMAS AQUINAS does not hesitate to call the lex naturalis in I-II, 94, 1 "aliquid per rationem constitutum: sicut etiam propositio est quoddam opus rationis".
(49) The natural inclinations, too, in their natural being, are participation of the eternal law, but in a merely passive manner, as something that is regulated by the eternal law but not as that which regulates, as in the case of man (cf. I-II, 91, 2), or rather, to employ another terminology, per modum principii motivi, and not in an active way, that is, per modum cognitionis (I-II, 93, 6). The question is addressed with great clarity in G. Abbà, Lex et virtus. Studi sull'evoluzione della dottrina morale di San Tommaso d'Aquino (Las, Rome, 1983), 260f.
(50) For a better understanding of this point I am much indebted to G. Grisez, 'The First Principle of Practical Reason: A Commentary on the Summa Theologiae, 1-2, Question 94, Article 2, Natural Law Forum 10 (1965), pp. 168-201; an abbreviated (but not authorized and not fully satisfactory) version can be found in A. Kenny (ed.), Aquinas: A Collection of Critical Essays (London/Melbourne, 1969), pp. 340-382.

(51) The following is the whole text: "Sicut autem ens est primum quod cadit in apprehensione simpliciter, ita bonum est primum quod cadit in apprehensione practicae rationis, quae ordinatur ad opus: omne enim agens agit propter finem, qui habet rationem boni. Et ideo primum principium in ratione practica est quod fundatur supra rationem boni, quae est, 'Bonum est quod omnia appetunt". Hoc est ergo primum praeceptum legis, quod bonum est faciendum et prosequendum, el malum vitandum. Et super hoc fundantur omnia alia praecepta legis naturae...' The profoundly Aristotelian impress of this text becomes even clearer if one reads it in the light of the commentary of St. THOMAS AQUINAS on the De Anima of ARISTOTLE, where he states that the point of departure of the practical intellect is 'the desirable': 'ipsum appetibile, quod est primum consideratum ab intellectu practico...' (In de Anima III, lect. 15).
(52) I tried to show this, in opposition to the interpretation proposed by L. Honnefelder and by G. Wieland, in my essay 'Praktische Vernunft und das "von Natur aus Vernünftige". Zur Lehre von der Lex naturalis als Prinzip der Praxis bei Thomas von Aquin', Theologie und Philosophie, 75 (2000), pp. 493- 522. In this essay my interpretation also differs from the interpretation mentioned above advanced by G. Grisez, for whom the first principle is not in all respects a moral principle, but is in some respects pre-moral, a thesis which I have difficulties in fully understanding.
(53) Many induce from the statement to be found in I, 79, 11 (sed contra) 'Intellectus speculativus per extensionem fit practicus'(a paraphrase of De Anima III, 10 433a 15, to be found in the body of the article correctly quoted as '(intellectus) speculativus differt a practico, fine'), that here we have proof that in fact practical reason depends on its acts on speculative or theoretical reason, denying it thereby its own and independent point of departure. As I sought to demonstrate in Legge naturale e ragion pratica, pp. 53ff. (Natural Law and Practical Reason, pp. 24 ss), the quoted statement by St. Thomas only refers to the intellect considered as intellectual power: it means that the acts of the practical intellect do not come from another intellectual power, but by way of extension from the acting of the same intellect, which is also the speculative intellect. This extensio, which refers to the faculty, is not given, however, in the judgements of this faculty: the statement that practical reason has its own point of departure refers solely to the practical judgements which, however, as St. Thomas says explicitly, are not derivates from previous theoretical judgements. This does not hinder the maintenance, at the level of the faculty and the being of the person, of the deep unity between theoretical and practical intellect. And in practical reason itself (the 'practical syllogism') premises are also wanted that are simple statements about reality, that is to say judgements of a 'speculative' kind; cf. my analysis in La prospettiva della morale, pp. 98ff.
(54) I addressed this subject in detail in Legge naturale e ragion pratica, pp. 51-75 (Natural Law and Practical Reason, pp. 22-42). The same approach can be found in J. FINNIS, Fundamentals of Ethics (Georgetown/Oxford University Press, Georgetown/Oxford 1983), pp. 10ff.; 20ff., even though it does not seem to me right to call the Aristotelian doctrine on the 'ergon idion' an 'erratic boulder' (cf. my criticism in Praktische Vernunft und Vernünftigkeit der Praxis, pp. 53ff.). On the other hand, the critical observations made by R. McInerny in Aquinas on Human Action. A Theory of Practice (The Catholic University of America Press, Washington D.C. 1992), pp.184ff., seem to me to be based upon a confusion between 'ethical reflection' and 'practical knowledge' (cf. p. 188). "Ethical reflection" already pre-supposes the practical knowledge from which originally springs the experience of human good and of one's own human nature. The subject of FINNIS's (as of my own) analysis is precisely this original practical knowledge of the acting subject, not the subsequent "ethical reflection" based upon it. For this reason, in the exposition by McInerny of the thought of FINNIS, that thought is to some extent falsified.
(55) Cf. I-II, 17, 1: 'Unde relinquitur quod imperare sit actus rationis, praesupposito actu voluntatis." This "imperative" structure applies to practical reason at all levels. Cf. once again the comment on De Anima, III, lect. 15: 'Quia enim ipsum appetibile, quod est primum consideratum ab intellectu practico,

movet, propter hoc dicitur intellectus practicus movere, quia scilicet eius principium, quod est appetibile, movet.'
(56) "'.... ut scilicet omnia illa facienda vel vitanda pertineant ad praecepta legis naturae, quae ratio practica naturaliter apprehendit esse bona humana".
(57) "Quia vero bonum habet rationem finis, malum autem contrarii, inde est quod omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda. Secundum igitur ordinem inclinationum naturalium, est ordo praeceptorum legis naturae".
(58) The title of article 2, in fact, reads: "Utrum lex naturalis contineat plura precepta, vel unum tantum".
(59) This is suitably brought out in J. Tonneau, Absolu et obligation en morale (Inst. d'études médiévales /J. Vrin, Montréal/Paris, 1965), pp. 89f.
(60) "... omnes inclinationes quarumcumque partium humanae naturae, puta concupiscibilis et irascibilis, secundum quod regulantur ratione, pertinent ad legem naturalem..." (I-II, 94, 2 ad 2).
(61) Ibid.,I-II, 91, 2.
(62) "In actibus autem humanis bonum et malum dicitur per comparationem ad rationem" (I-II, 18, 5). That this principle of St. Thomas should be taken seriously was demonstrated years ago with clarity and in a way that is still valid by L. Lehu, La raison, règle de la moralité d'après Saint Thomas (J. Gabalda et Fils, Paris, 1930).
(63) "species moralium actuum constituuntur ex formis prout sunt a ratione conceptae" (I-II, 18, 10; cf also In Sent. II, 39, 2, 1).
(64) Because human acts are voluntary acts, the object is always an object of the will. However, it is essentially and solely reason which presents the will with its object. For this reason, the goodness of the will, because it depends on its object, specifically depends on reason.(ID., Summa Theologiae, I-II, 19, 3). The movement of the will cannot refer itself to something good without this being previously grasped by reason (ibid., ad 1). Rightly, the movement towards the due end (finis debitus) completely depends on the cognition of the end of which only reason is capable. Furthermore, any object belongs to the genus moris and is effective in causing moral goodness in the act of the will exactly to the extent to which it falls under the order or reason: "Ratio enim principium est humanorum et moralium actuum..." (Ibid.,I-II, 19, 1 ad 3).
(65) Ibid., I-II, 90, 1.
(66) Ibid., ad 2: "... propositiones universales rationis practicae ordinatae ad actiones..."
(67) Ibid., I-II, 94, 1.
(68) Cf. ID., In duo Praecepta caritatis et in decem legis praecepta, Prologus I: "Nullus enim ignorat quod illud quod nollet sibi fieri, non faciat alteri, et cetera talia".
(69) For the inventio of the secondary precepts I refer the reader to Legge naturale e ragione pratica, pp. 265ff. St. Thomas's texts on the primary and secondary precepts of the natural law were helpfully assembled in R.A. Armstrong, Primary and Secondary Precepts in Thomistic Natural Law Teaching (Martinus Nijhoff, Den Haag, 1966. - The inventio of the secondary principles, however, is not a deductive and instantaneous process but pre-supposes concrete experience and takes place in time, that is to say in a certain sense it possesses a narrative structure. I would like to refer the reader here to my works:'Praktische Vernunft und das "von Natur aus Vernünftige", pp. 511ff. and Die Perspektive der Moral, pp. 253ff. (o La perspectiva de la moral, pp. 301ff.).
(70) "nam omnis ratiocinatio derivatur a principiis naturaliter notis (...) Et sic etiam oportet quod prima directio actuum nostrorum ad finem, fiat per legem naturalem" (I-II, 91, 2 ad 2).
(71) Cf. I-II, 94 1 ad 2: "synderesis dicitur lex intellectus nostri, inquantum est habitus continens praecepta legis naturalis, quae sunt prima principia operum humanorum". Cf. also I, 79, 12.
(72) Cf. for example RHONHEIMER, La prospettiva della morale, pp. 255ff. This approach agrees with the famous passage in JOHN PAUL II, Gaudium et spes n. 16: "Deep within his conscience man

discovers a law which he has not laid upon himself but which he must obey. Its voice, ever calling him to love and to do what is good and avoid what is evil...For man has in his heart a law inscribed by God..." In the encyclical Veritatis Splendor n. 60, the connection between conscience and the natural law is explained further. Natural law is the norm of truth for the conscience: 'The judgement of conscience does not establish the law; rather it bears witness to the authority of the natural law and of the practical reason with reference to the supreme good...'; and n. 61: "The truth about moral good, as that truth is declared in the law of reason, is practically and concretely recognized by the judgement of conscience ....." (the emphasis is added).

(73) In the first book of his ULPIAN, Institutiones (D. I, I, I, 3): "Ius naturale est, quod natura omnia animalia docuit'. For Ulpian, one example (cited by St. Thomas in I-II, 94, 2), is 'maris atque feminae coniunctio, quam nos matrimonium appellamus..." (quoted following M. BRETONE, Geschichte des römischen Rechts. Von den Anfängen bis zu Justinian (C. H. Beck, Munich 2 , 1998), pp. 232 e 337; original edition: Storia del Diritto Romano (Laterza, Rome/Bari, 1987).

(74) PLATO, The Republic, 338 E - 339 A.

(75) ST. TOMAS AQUINAS, Summa Theologieae, II-II, 57 2: "ius sive iustum, est aliquod opus adaequatum alteri secundum aliquem aeuqalitatis modum. Dupliciter autem potest alicui homini aliquid esse adaequatum. Uno quidem modo, ex ipsa natura rei: puta cum aliquis tantum dat ut tantum recipiat. Et hoc vocatur ius naturale". The second form is that called ex condicto, which can be either private or public. The former is held to correspond to the lex dicta, known in Roman law and belonging to the ius privatum, to be distinguished from the ius publicum. The distinction is not in concordance with the modern one between public law and private law (cf. G. DULCKEIT, F. SCHWARZ, and W. WALDSTEIN, Römische Rechtsgeschichte, C. H. Beck, Munich, 1995, p. 49ff.).

(76) In the view of Michel Villey, the genesis of the modern concept of subjective right goes back to Occam: M. Villey, 'Droit subjectif I (La genèse du droit subjectif chez Guillaume d'Occam), in M. Villey, Seize Essais de Philosophie de Droit dont un sur la crise universitaire (Paris, 1969), pp. 140-178. However, the differences are sometimes exaggerated. For a contrasting view see J. FINNIS, Natural Law and Natural Rights, Oxford University Press, Oxford 1980 (chapter VIII.3 and note on page 228).

(77) Cf. W. WALDSTEIN, "Naturrecht bei den klassischen römischen Juristen", in Das Naturrechtsdenken heute und morgen. Gedächtnisschrift für René Marcic, edited by D. Mayer-Maly and P.M. Simons (Duncker & Humblot, Berlin, 1983), pp. 239-253; and see by the same author the detailed study 'Entscheidungsgrundlagen der klassischen römischen Juristen', in Aufstieg und Niedergang der römischen Welt. Geschichte und Kultur Roms im Spiegel der neueren Forschung, edited by H. Temporini and W. Haase, II: Principat, Fünfzehnter Band, edited by H. Temporini (Walter de Gruyter, Berlin, New York, 1976), pp. 3-100.

(78) ST. TOMAS AQUINAS, Summa Theologieae, II-II, 57, 1 ad 2.

(79) reddere debitum alicui habet rationem boni (II-II, 81, 2).

(80) Cf. M. RHONHEIMER, 'Sins against Justice' (IIaIIae, qq. 59-78), in S.J. Pope (ed.) Essays on the Ethics of St. THOMAS AQUINAS (Georgetown University Press, Washington D. C., 2002), pp. 287-303; 290. For the cognitive genesis of the principle of 'justice" see in addition La prospettiva della morale, pp. 242ff.

(81) Cf. the introduction to La prospettiva della morale, and for a more detailed analysis the introduction to the German edition Die Perspektive der Moral. Philosophische Grundlagen der Tugendethik (Akademie Verlag, Berlin, 2001).

(82) Cf. De virtutibus in communi, q. un., 9: 'virtus appetitivae partis nihil est aliud quam quaedam dispositio, sive forma, sigillata et impressa in vi appetitiva a ratione.'

(83) Cf. I-II, 94, 3: 'Unde cum anima rationalis sit propria forma hominis, naturalis inclinatio inest cuilibet homini ad hoc quod agat secundum rationem. Et hoc est agere secundum virtutem.Unde

secundum hoc omnes actus virtutum sunt de lege naturali: dictat enim hoc naturaliter unicuique propria ratio, ut virtuose agat.'
(84) See Rodríguez Luno, La scelta etica. Il rapporto fra libertà e virtù (Edizioni Ares, Milan, 1988).
(85) Cf. M. RHONHEIMER, Praktische Vernunft und Vernünftigkeit der Praxis, pp. 530ff.
(86) ARISTOTLE, Nicomachean Ethics, III, 4, 1113a 29f.: 'The person who is virtuous, in fact, judges every thing rightly and in each thing there appears to him what is true'. For the importance of this principle within Aristotelian ethics taken as a whole see G. Bien, 'Die menschlichen Meinungen und das Gute. Die Lösung des Normproblems in der aristotelischen Ethik', in M. Riedel (ed.), Rehabilitierung der praktischen Philosophie, I (Verlag Rombach, Freiburg/Br., 1972), pp. 345-371
(87) ST. TOMAS AQUINAS, Summa Theologieae, I-II, 94, 3 (quoted above).
(88) Cf .Ibid., I-II, 100, 1.
(89) Cf. M. RHONHEIMER, Contraccezione, mentalità contraccettiva e cultura dell'aborto: valutazioni e connessioni, in SGRECCIA E., LUCAS LUCAS R. (ed.), Commento interdisciplinare alla «Evangelium Vitae» (Pontifical Academy for Life, Italian edition edited by E. Sgreccia e R. Lucas Lucas, Libreria Editrice Vaticana, Vatican City, 1997), pp. 435-452. See also my study Sessualità e responsabilità, in M. RHONHEIMER, Etica della procreazione. Contraccezione - Fecondazione artificiale - Aborto (Edizioni PUL-Mursia, Milan, 2000), esp. pp. 95ff. (engl. original: Contraception, Sexual Behavior, and Natural Law. Philosophical Foundation of the Norm of "Humanae Vitae",' The Linacre Quarterly, Vol. 56, No.2 (1989), pp. 20-57 and in "Humanae Vitae": 20 anni dopo. Atti del II Congresso Internazionale di Teologia Morale Roma, 9-12 novembre 1988, Milano 1989, pp. 73-113.)
(90) See my article 'Diritti fondamentali, legge morale e difesa legale della vita nello stato costituzionale democratico. L'approccio costituzionalistico all'enciclica Evangelium Vitae, Annales Teologici, 9 (1995), pp. 271-334, published again under the title 'La difesa legale della vita nello Stato costituzionale democratico e la legge morale', in M. RHONHEIMER, Etica della procreazione, pp. 195-250.
(91) On this subject see M. RHONHEIMER, Is Christian Morality Reasonable? On the Difference Between Secular and Christian Humanism', Annales Theologici, 15 (2001), pp. 529-549; 'Über die Existenz einer spezifisch christlichen Moral des Humanums', Internationale katholische Zeitschrift 'Communio', 23 (1994), pp. 360-372; Legge naturale e ragion pratica, pp. 509ff.

FRANCESCO VIOLA

NATURAL LAW: STABILITY AND DEVELOPMENT OF ITS CONTENTS

In the context of this paper I will regard lex naturalis and jus naturale substantially as being synonymous. Even if one were to distinguish between them, relating lex naturalis to the problem of obligation (debitum morale) and jus naturale to that of a virtual juridical order (debitum legale), which in the name of humanity and in the absence of an international juridical power could be made effective by official judicial authorities and even by single individuals, (1) there would be not be -for the purposes of the contents and their evolution- any difference. Indeed, if -following Aquinas- we regard jus naturale as ipsa res iusta,(2) i.e. as a just act with regard to its object, then it is determined by the law, whether this be natural or positive. The content of natural law is the conclusion drawn from the use of the principles of practical reasonableness.(3) We might say, à la Wittgenstein, that the sense of the principles of natural law lies in their use.

AMBIGUITY OF THE PRESENCE OF NATURAL LAW TODAY

In the long history of the conceptions of natural law, there have been numerous attempts to demonstrate its actuality and its lasting presence in concrete historic events. Some of these attempts have gone so far as to hypothesize an opening-up of natural law to historicity and to the mutability of beliefs. I recall that Leo Strauss(4) emphasized the difference between the Aristotelian conception, which - in his opinion - was probably favourable to a mutable natural law, and that of Aquinas, who asserted its immutability.(5) Michel Villey is more sensitive to the mutability of natural law, influenced as he is by the practice of Roman law, and a supporter, for this reason, of a clearer distinction between lex naturalis and jus naturale.(6) Others have spoken of "natural law of variable content", of "historical natural law" and of "diritto naturale vigente" (enforced).(7) But I do not think this is the most felicitous way of demonstrating the permanence of the contents of natural law.

The question of the evolution of natural law obviously takes on some theoretical importance if in some way it refers to a substantial change in it. For it is no problem if the moral conscience of humanity evolves - it is a problem if it is stated that the fundamental contents of ethics change. The problem of the mutability of natural law is therefore either a false problem or else it poses itself only for those conceptions of natural law that make no distinction between principles and their conclusions. I am referring of course to the modern doctrine of natural law, which, abandoning the meaning of practical reason, has conceived natural law as a body of pre-defined, eternal and immutable norms. But in a conception like that of Aristotle or Aquinas, for whom natural law is the exercise of practical reasonableness and its result, the problem of change does not exist, as the principles of natural law are unchangeable and known to all, while their conclusions may not be known to all and may vary to some extent according to circumstances. And it is here - as is well known - that Aquinas makes the distinction between «ut in pluribus» and «in aliquo particolari, et in paucioribus, propter aliquas speciales causas impedientes observantiam talium praeceptorum».(8)

Once the idea is accepted that natural law is the fruit of practical reasoning, the question of the proper exercise of reason becomes one of crucial importance. It implies the identification of the prime principles and the arguing of their conclusions. The controversial character of the principles and the debate on the correctness of the conclusions constitute the principal reasons for the instability of natural law in the conscience of contemporary man.

Another source of confusion is the widespread conviction of the identification of natural law with human rights. Human rights cannot in fact themselves alone provide an ultimate justification and require to be justified both in their attribution and in their exercise. It is possible to have a right and use

it badly, i.e., against natural law - it is plainly true that courts of justice pass judgement on the correct use of rights.(9) In the conscience of contemporary man, law in the subjective sense has separated itself from duty, i.e., from the rule, and this has destabilized natural law, to which both law in the subjective sense and the norm belong. Rights are attributed on the basis of natural law, but when they are ill used they contravene the principles of practical reasonableness which nonetheless belong to natural law. A conflict is thus created within natural law itself.

On the basis of these considerations it seems to me particularly necessary today to reflect on the manner of interpreting practical reasonableness, on its principles and on its articulations, bearing in mind that here inevitably we come upon the question of natural law and its contents. From this point of view, contemporary juridical and political culture is going through a phase of ambiguity, because on the one hand it is particularly open to natural law and on the other it is certainly not favourable to the stability of its contents.

Law is born out of reason and then becomes an act of volition. The need for a co-ordination of social actions gives rise to rules that time purifies in the test of reason. Social stability helps to preserve these rules from change, protecting them with the mark of authority. What is born as the rule of reason is reclassified as a source of law in a positivistic sense.(10) But in this way the principle of authority prevails over practical reasoning and the demand for stability of the contents of positive law does not always allow it to adapt to the complexity of concrete problems. Today, from different points of view, we are witnessing a profound transformation of the juridical-positive structure of the past - now law must once again knock on the door of reason, i.e., of natural law.

However, if we take another point of view, that of contemporary pluralism, of the widespread refusal to accept that there are models of behaviour valid for all persons - even only those belonging to one and the same political community - and to believe that the solutions to todays problems may be valid for those of tomorrow, then recourse to reason and to reasonableness will take on a purely contingent character with regard not only to the conclusions but also to the very principles themselves. And this is not favourable to natural law and the stability of its contents. The return to reason is therefore not sufficient to rediscover the meaning of natural law, as this is related to a specific use of reason and practical reasonableness.

It is my belief that a supporter of natural law has today two obligations: the first is to show that the juridical reasoning actually practised in courts of justice is from the point of view of argumentative structure not in conflict with the use of the reasonableness that is proper to natural law; the second is to show that the tradition of natural law is able to provide the most appropriate justification of the principles of practical reasonableness. Here I will seek to indicate in summary and very general fashion how - in my opinion - these two tasks should be performed.

THE PRINCIPLE OF REASONABLENESS IN POSITIVE LAW

It is an incontrovertible fact that the principle of practical reasonableness has now attained the rank of constitutional value. The constitutionalization of human rights necessarily implies the consideration of reasonableness as a constitutional value, even if it is not explicitly formulated. This means something more than the observation that the quality of reasonableness is prescribed for the exercise of all public functions (and therefore also those of the Constitutional Court).(11) This means that the constitution is not a table of values and principles to be applied in the automatic manner of subsumption, which is the directive idea of juridical rationality, but is rather a set of orientations that takes on a precise appearance and an organic composition only in concrete cases. It is the language of principles that suggests the idea of a process of law that starts with the constitutional text but is fully achieved only in its application, of which ordinary law is itself the first step and the constitutional sentence is the last. Application of the constitution is not the same thing as application of a law. Traditional literal and logical interpretative methods are not enough for a constitutional judge. What are necessary are

substantial confirmations of conformity to the constitutional law and forms of judgement that are clearly oriented towards an assessment of the consequences of the legislative act and towards a verification of the material rationality of normative prescription, i.e. of its capacity to achieve objectives of social well-being and to relate the means and ends of state action in a reasonable relationship.

Now, the general rule in this process is precisely reasonableness. Reasonableness is thus a much more comprehensive and basic concept than the juridical concept of subsumptive rationality. It is at once - according to constitutional jurisprudence - a means-concept and an end-concept, a technique and a goal that juridical processes have to strive for. Reasonableness is a means for the satisfaction of values and is itself a value without which other values could not be adequately achieved.(12)

It is part of the spirit of constitutionalism that human dignity should be not merely an abstraction but rather something to be respected to the greatest possible extent. If that is the case, reasonableness is necessary both because of the statute of the "ultimate end" (i.e., not subordinate) of fundamental rights and because of the need to meet the demands of the expectations of particular events in life, the demands of concrete cases of justice.(13)

In an ethico-juridical regime governed by the ethic of rights, as we have today, the principle of duty - necessary for the practicability of any ethic and intended as a measure or, in one word, as a "rule" - is entirely concentrated in reasonableness.(14) Reasonableness transforms principles into rules. This value expresses, for individuals, the need to give to their actions, habits and customs a general order sensitive to integrity and authenticity,(15) while for communities it is an occasion to harmonize the expectations of their members in order to guarantee certainty as well as justice. At the end of the day, every juridical initiative justifies itself on the basis of practical reasonableness, i.e. of the need to co-ordinate social actions not in any way whatever but according to fairness and justice.

The constitutional doctrine of European and non-European countries is endeavouring in different forms to define more precisely what exactly the "judgement of reasonableness" consists in, on the assumption that it possesses an identity of its own with respect to other decisional processes employed by constitutional judges.(16)

The evolution of the constitutional judgement of reasonableness clearly records its progressive autonomy from the judgement of equality when we realize that this judgement is not merely formal and necessarily implies value judgements that require to be justified. We consequently perceive that the judgement of reasonableness in the strict sense no longer possesses an intra-systematic character, i.e. internal to an already established set of norms, but has an extra-systematic character, inasmuch as it evaluates a norm on the basis of parameters that are in some way "external" and can be found juridically in constitutional values related to judgements of functionality, suitability and proportionality, as also of equity.

A further step in this direction is made when it is necessary to operate a balancing of rights. In this case it is particularly evident that an interpretative-type technique of judgement is flanked by a predominantly argumentative type of process. This balancing is itself a form of decision that is not derived from a judiciary syllogism, but on the contrary is intended to formulate the judgements of value that are necessary for the selection of the premises of the syllogism itself. Here reasonableness achieves its maximum independence from the merely applicative functions that are usually attributed to a judge. In reality the technique of balancing initiated by a constitutional judge is legitimate only if it is possible to demonstrate that the paths of reasonableness that have been tried are very different from the logic of political convenience and from ideological choices. As Bickel has observed, courts of justice do not compete with the rules of democratic representation only inasmuch as they offer it a contribution that only they can give, i.e. the contribution of arguments related to an institutional history and not to political contingency.(17) These reasons refer directly to values that are widely accepted and are absolutely indispensable for civil co-existence, values that are profoundly sensitive to equal respect for all persons, without which the procedures of democratic representation could not function correctly.

It would be possible to demonstrate a similar evolution of the concept of "reasonableness" in relation to international law and the use of such a principle by the International Court of Justice and in the interpretative practice of international treaties. I must not dwell long on the subject,(18) but I can say that here too the attractive force of the idea of reasonableness induces one to seek the maximum possible achievement of justice in concrete circumstances marked by the normative equality of national states. We may therefore consider reasonable all those solutions which tend to make international society more respectful of individual and collective rights, in the least conflictual manner, and which increase the possibilities of co-operation and understanding.

It is not rare to find pronouncements by the International Court of Justice that refer to intentions that may reasonably be attributed to States as a function of circumstances. More generally it is said that the purpose reasonably pursued by a State is to be taken into consideration. But this is evidently a juridical construction: it is rather the purpose it should have pursued rather than the purpose it did in fact pursue. The expression "should have" does not suggest an ideal model of behaviour but rather that which we might have expected, given the current condition of the international order. And yet this does not merely indicate an adaptation to a status quo dominated by sovereign States, because it is undeniable that objective obligations that are above the will of States are increasingly common in international law. Jus cogens is one of the fruits of the exercise of reasonableness in international juridical practice. To insist that this method of reasonableness follows (or should follow) standards that are nevertheless juridical and not extra-juridical makes sense only on condition that it does not exhume the old dispute between natural law and legal positivism(19) and provided it takes cognisance of the fact that international legality does not reside in the empirical will of States but in the interpretation made of this by a juridical practice that is already marked by fundamental values and specific guarantees. In the absence of the social consensus of a specific community (whether national or international), it may be assumed that there are resources internal to juridical practice for the determination of the concept of reasonableness - some goods are properly speaking juridical inasmuch as they may be obtained only through the law and enjoyed within the law, i.e., within the practice of legality.

THE FORMS OF REASONABLENESS IN POSITIVE LAW

If we take even a cursory look at the forms of juridical argumentation adopted by constitutional jurisprudence, which in this respect is for obvious reasons much more advanced than international jurisprudence, we can see that certain typical common paths of reasoning are beginning to be identifiable. These are not exactly "argumentative techniques", as each of them sets itself an objective that could be achieved by different technical procedures. In general, we are all agreed that there are reasonable and unreasonable ways of doing certain things. And we might add that what is in this sense "unreasonable" also appears "unnatural", i.e. contrary to the "nature of things". This means that forms of reasonableness must take into account the social and historical contexts in which they operate.

If we consider the problem from this extremely comprehensive viewpoint, we will notice that a comparison between the jurisprudences of various constitutional courts reveals «una certa koiné degli strumenti argomentativi».(20) There are of course notable differences, because the constitutional practice of reasonableness depends on the cultural conception of "a constitution". For example, argumentative processes are indubitably affected by the question whether or not a specific constitution has formulated values according to a hierarchy of priorities. However, despite all the possible variants, we are able to identify some maxims of "common sense" or "sensible" maxims that are present in the constitutional practice of different countries. Here I can indicate only a few, but only somewhat approximately and incompletely:

A legal decision that without an acceptable justification damages a fundamental value or prevents its realization is not reasonable (criterion of legitimacy).

It is reasonable to limit a fundamental right only if this is justified by the necessity to protect an essential public interest(21) or another fundamental right (criterion of necessity).
A measure restricting a fundamental right is reasonable if, besides being necessary, it is the only practicable means or the mildest of the practicable means available (criterion of least damage).(22)
It is unreasonable to formulate a measure restricting fundamental rights in terms so vague as to allow extensive interpretations (criterion of determinateness).(23)
It is unreasonable to limit a fundamental right to the point of substantially nullifying it (criterion of essential content).
It is reasonable to require that preordained legislative means should be adequate (or not patently inadequate) for the achievement of the purpose (criterion of adequacy).(24)
It is interesting at this point to observe the similarity between these argumentative jurisprudential constraints and the methodological exigencies of practical reasonableness that since time immemorial have been the object of philosophical reflection. Their presence shows that practical reasonableness itself is a fundamental value that is necessarily present at the moment of the achievement and realization of the other values. Substantially it is a question of the value of the rule and of the measure, without which value the participation in other values would be rendered false or impossible. It is not sufficient to aim at a fundamental good - one must do so with a sense of measure and order, otherwise one will be at the mercy of the "tyranny of values", with devastating effects.
John Finnis has spoken of the «basic requirements of practical reasonableness», recognizing therein the «method of natural law», i.e., the specific way in which it is possible to draw the moral principles of natural law from first practical principles.(25) I do not mean to say that there is complete identity between these maxims of constitutional jurisprudence and the exigencies of practical reasonableness identified by philosophers, although one cannot avoid in some way justifying the mutual similarity. The principles from which a judge draws his conclusions on the basis of reasonableness are not the first principles of natural law, but constitutional rights, i.e., principles already in some way positivized that in turn are conclusions drawn from more fundamental principles. But at this point the positivist constitutional judge calls a halt: he does not return to the principles of natural law, and invokes as his constraint social consensus, i.e. positive morality, interpreting constitutional values as the public ethic actually accepted by the members of a society. Social consensus plays the same role of the first principles of natural law, with the difference that it is (or is at least thought to be) an empirical fact. What I am most interested in showing here is the closeness between the argumentative structure of juridical reasoning, applied to rights and constitutional values, and that of the tradition of natural law. But the difference, which is certainly not a matter of little account, lies in the way of considering principles and of understanding their content. Each of us sees how important this difference is as regards the permanence and stability of the content of natural law.

PLURALISM AND JUSTICE

I certainly do not intend to tackle here the difficult problem of the justification and foundation of the first principles of natural law, as I do not wish to lose sight of the reference to current juridical and political practice. I will limit myself to observing that the substitution of social consensus for the first principles of natural law is not in itself convincing and is no longer acceptable in todays context.
The criterion of social consensus no longer functions as a univocal constraint for the judge. Constitutional courts all over the world are accused of deciding on the basis of their political and ethical criteria. Political societies have lost the compactness of their basic culture and, as a result, social consensus on a nucleus of shared values - and especially on the manner of interpreting them - is breaking up. Even the concerted appeal to rights reveals itself to be a fragile form of unity when we observe how differently these are interpreted and practised. The conviction is therefore strengthened that only through the reasonableness of ends (and not only of means) will it be possible to face

pluralism. In this sense a return to natural law in the full sense becomes necessary. However, at this point, I must pass from the philosophy of law to moral and political philosophy, whatever value such distinctions may have within the realm of practical knowledge.

It is significant that the current debate in political philosophy is so strongly attracted by the question of reasonableness and public reason.

Today reasonableness is generally understood as a willingness to take into account the consequences of ones actions for the good of others, i.e., an attitude that predisposes one to participate in a co-operation that is fair, respectful of others as free and equal persons, and characterized by reciprocity. To be reasonable means to recognize that others have the same rights to pursue their aims and that therefore it is necessary to seek conditions that are acceptable to all.(26) A reasonable person perceives as a fundamental value that is an end in itself a social world in which all can co-operate as free and equal individuals, on conditions that are acceptable to all, in full reciprocity and with mutual benefit.(27)

What meaning are we to give to this way of understanding the reasonable person? There may be many meanings, not necessarily all mutually compatible. But it undoubtedly expresses a perfectly clear general tendency that is excellently put in the words of an Italian constitutionalist: «"ragionevole"... è colui che si rende conto della necessità, in vista della coesistenza, di addivenire a "composizioni" in cui vi sia posto non per una sola, ma per tante "ragioni". Non lassolutismo di una sola ragione e nemmeno il relativismo rispetto alle tante ragioni (una o laltra, pari sono), ma il pluralismo (le une e le altre, per quanto possibile, insieme)».(28)

The fact of pluralism is understood as the Kantian "fact of reason", i.e., as the institution of a new condition of truth between absolutism and relativism, between the only truth and no truth. Absolutism would mortify pluralism inasmuch as it would delegitimize opinions not in conformity with the only truth; relativism would deprive pluralism of all epistemic dignity. We do not content ourselves with having our preferences satisfied: we want our preferences to be recognized as right and proper. And this is not hard to understand, for in this way such preferences have social dignity and are not a mere caprice. But it is impossible that at one and the same time A and non-A should be right and proper, as we learn from the no-contradiction principle of classical metaphysics.

It is no fortuitous matter that the conception of justice that seeks to attribute philosophical significance to this demand is clearly Hegelian in origin. Michel Rosenfeld has thus defined his "comprehensive pluralism": «in a contemporary pluralistic society there are many competing conceptions of the good, each good in itself, but none good enough to be embraced by all. Under these circumstances, it becomes imperative to imagine an overriding conception of the good which would encompass all others in the context of an elaboration of a community of communities. While working on breaking free from the impasse resulting from clashing visions of the good, it should become apparent that there is no escape from plurality, but the plurality of conceptions of the good can itself become a good - or, more precisely, the good that may bind together other goods. And once this becomes accepted, all that can be done is to embark on a dialectical quest to harmonize the plurality of goods ».(29)

It is characteristic of Hegelian dialectic to embrace all the opposed conceptions of truth and good in a single process and in a supreme synthesis, but this is possible precisely on the basis of an "absolute knowledge" that is certainly not the outcome desired by contemporary pluralism. For this reason Rawls has more prudently left the question of truth and good outside the door of political justice.(30) In his opinion it is not political philosophy that has to resolve the epistemological difficulties of pluralism. Its task is only to design fair institutions in the cultural conditions prevailing today. I will now consider whether this is possible without taking into consideration the principles of natural law, and as a paradigmatic case I will take the thought of John Rawls.

THE PRINCIPLE OF CO-OPERATION

Rawls use of reasonableness rests entirely on the "principle of co-operation", without which no civil social existence could ever develop.(31) Even in a plural society, by virtue of its being a society, the mere co-ordination of actions that might derive from strategic action or rational choice is not sufficient. It is not sufficient because a society needs some common quality if it is to be something other than a mere modus vivendi. But there is no common quality when it acts simply on the basis of expectations of other peoples probable actions. There must also be a co-operative attitude, which however in consideration of pluralism cannot consist in a previous sharing of purposes.

No one deny both the necessity of social co-operation and the idea of a fair system of social co-operation. But one may ask oneself whether this idea can itself alone take on the role of the principle of justice without any presupposition. How can we judge whether a system of co-operation is fair without presupposing the characteristics of the persons who co-operate and of the good that has to be distributed? Strangely enough, in Rawls thinking, the idea of equal, i.e. reasonable, co-operation comes before the concept of person and indeed it is precisely the idea of the right terms of co-operation that shapes the characteristics of the persons who participate in it.(32) In this way political theory closes in on itself and has no need to turn to "external" anthropological or ethical principles.

What do ordinary "free and equal" persons, as such, have in common? One might answer: nothing at all! The equality of equal beings does not in itself imply commonality and reciprocal aid. On this basis alone it would not be possible to understand the reason for co-operation. Why should people who consider themselves to be "free and equal" wish to co-operate? But to Rawls way of thinking such questions are meaningless inasmuch as persons can be thus considered only if one presupposes the idea of fair social co-operation: i.e., such persons are already "citizens" or political persons, endowed with co-operative attitudes. But this has every sign of being a case of petitio principii: here the nature of society is not drawn from peoples way of being - on the contrary, it is they who configure themselves on the basis of a presupposed idea of fairness. But where is this idea of fairness taken from? A supporter of natural law would have recourse to a principle of natural law, but for Rawls the matter is a postulate of political theory. Nor are these points of view that might ultimately be compatible, for from the manner of derivation of the principle of co-operation it is also possible to infer its interpretation and the use within it of the exigencies of practical reasonableness, as more careful analysis will show.

A central element of Rawls principle of co-operation comes from the idea of reciprocity, according to which all those who co-operate in obedience to established rules derive an appropriate benefit.(33) It must therefore be recognized that behind Rawls principle of co-operation there is always the factor of personal interest. It must be clarified at once that this idea of reciprocity is halfway between the altruistic idea of impartiality and the egoistic idea of reciprocal advantage. We therefore find ourselves with three models of political justice: the impartial model, which consists - as Barry pointed out - in taking everyones point of view into account and acting without considering self-interest;(34) the model of reciprocal advantage, which takes into account the constraints that induce a person guided by self-interest to pay the lowest price possible to obtain the co-operation of others; and the model of Rawlsian reciprocity, which does not consider the exchange in particular but rather a general system of co-operation that assigns to all the same basic rights and duties and establishes rules for a fair distribution of the benefits produced by everyones efforts. This last is different from mutual advantage since it is not motivated egoistically, i.e. also at the cost of damage to others, and it is different from impartiality since it does not eliminate personal interest, inasmuch as no one would support a social order without expecting some advantage from it. It is therefore, to use Adam Smiths term, a case of uninterested interest.(35)

It is important to note that this idea of reciprocity pursues two objectives: that of not renouncing self-love and that of finding some commonality among persons. Both these exigencies seem to be worthy of our attention. There is however much to contest with regard to the way Rawls seeks to pursue them and

to the manner of their justification. And it is precisely from this angle that I wish to demonstrate the superiority of the principles of natural law.
To put it in short, Rawls strategy is to elaborate the concept of a political person who, though aiming at his own interest, adopts principles of action that can be accepted by all. Rawls would say that this requires the conception of a person detached from his own ends (the unencumbered self) and from his own identity.(36) Only the person who has the moral power to suspend the point of view that identifies him can defend principles that all can accept. This is also a conception of reasonableness in political life. A person is reasonable when he is ready to propose - and to accept when they are proposed by others - those principles that are necessary to specify what can be accepted by all as fair terms of social co-operation.(37) Reasonableness is the capacity to be sensitive to what others are able to accept. We cannot ask sacrifices of others which they cannot accept. In the absence of social consensus because of pluralism, it is necessary to construct the conditions of "ideal consensus" by means of the neutralization of all personal points of view. What is at stake is clearly the idea of the common good, i.e., of a common accord regarding principles that can (and must) be accepted by all.
How is one to know what can be accepted by others? One might ask people in the public square. But this way - according to Rawls - would be too empirical and contingent, and certainly inappropriate for the construction of a political theory. Nor can one subscribe to Kants idea that everyone discerns moral law thanks to practical reason, which satisfies rigorously cognitive demands, because according to Rawls one can expect from a contracting party only decisions that are rational as regards their purpose. The only thing left to do is, within the person, to isolate reasonableness from rationality so that on the basis of reasonableness one may propose to others equal, and for that reason, acceptable terms of collaboration. But in this way what remains obscure and unjustified is the type of bond that people have between them. Everyone hopes that co-operation will provide more benefits than one might obtain by remaining alone, but that is not sufficient to adequately justify the relationships and bonds that people have between them. Consequently, the idea of the common good is also merely instrumental to the interests of persons seen as single individuals.(38) When all is said and done, Rawls prime principle from which he derives social co-operation is always only that of reciprocal advantage, and from this one draws a conception of justice as reciprocity, which remains within this paradigm and is certainly not an alternative model to it. We might call it the conception of "mutual far-sighted advantage".

THE GOLDEN RULE

I now wish to show that the just attempt conjugate self-love with the common good - certainly present in Rawls thinking - could be adequately achieved by having recourse to a traditional principle of natural law, that of the Golden Rule.
Both in its negative formulation ("do not do unto others that which you would not they did unto you") and its positive formulation ("do unto others as you would they should do unto you") the golden rule substantially states the principle "Love your neighbour like yourself".(39) This principle is so widely present in nearly all cultures and religions that it can be numbered among the éndoxa of all mankind, i.e. among the moral intuitions rooted in the general practice of social life.(40) Its normative role has however been subjected to such criticism that one cannot help thinking that it is at most a maxim of common sense or that it is valid only in relation to some religious faith;(41) whatever the case, it can be excluded as the basis of any ethical or political theory.
These criticisms have been taken up by Hans Kelsen, following Kant,(42) but they are totally unfounded. On the one hand, it has been affirmed that the golden rule leads to such contradictory results as to be ruinous for law and morality, while, on the other, it has been argued that even if one accepts its validity the golden rule is tautological and empty, and consequently cannot provide any true and proper moral directive. Only the second order of objections is however worthy of consideration.

The golden rule, if we consider it, leads to contradictory results only when one takes it to mean that one should wish for others that which one wishes for oneself without qualifying this wish in a strictly normative sense. One cannot transform ones own personal preferences into the preferences of others and, consequently, be obliged in this way. We are obviously not dealing here with personal preferences or inclinations. The meaning of the golden rule is without a doubt as follows: the good that I would like to be done to myself, i.e. that I desire as a good for myself, as my good, must be desired as a good for others, i.e. as a good for all and a good per se. In his comment on Matthew 7.12, St Augustine had already noted that in the traditional formula of the golden rule one has to infer the term "good", i.e. one must do unto others that which is good, and that this is implicit in the reference to will, which is the faculty of that which is good, while greed, not will, is proper to evil actions (43).

It is this specification of the formulation of the golden rule that is the object of the second and more serious criticism. This seeks to show the uselessness of the golden rule in determining rules of moral rules and behaviour. Indeed - says the objection - if only morally justified desires are important, one is presupposing the existence of a normative order that determines which desires are morally justified and which are not. The golden rule would therefore not be the first principle of moral life - it would be this presupposed normative order. The golden rule consequently becomes purely tautological or empty as it finishes simply by stating that I must treat others as others must be treated, i.e., applying general norms impartially, in other words without making any exceptions. But the golden rule does not in itself say what the content of these general norms should be, but only that once the norms are presupposed they must be applied without exception. Going by the golden rule, one would not be able to examine the content of moral norms but only reaffirm the manner of their application, which in any case would be superfluous.

It is not in fact true that the golden rule plays no part in the determination of the content of moral norms, for no one can deny that at least it excludes the validity of all norms discriminating between people. It maintains that the single person to whom an imperative is directed and the others (all persons) towards whom his behaviour is directed all belong to the same category of beings and that it is forbidden to make discriminations within this category. It affirms the substantial equality of all persons with regard to the good and, at the same time, their commonality in that good.

If we formulate the golden rule in the following terms: "I must do (or not do) to others what I justifiably desire (or do not desire) for myself", the difference from Kants principle of universalization will appear all the clearer. This principle completely excludes any reference to a subjectivity desiring the good and concentrates on the fact that it can be accepted that the maxim of ones own action may become a prescription that is valid for all in similar circumstances, i.e. a universal law. But in this way we separate the desire from its justification and the good becomes a duty.(44) For there to be a good, there has to be desiring subjects, in the same way as the sense of value lies in participation in that value. Now, the golden rule is criticized precisely because it does not admit this separation between desire and its normative justification, but it is also precisely here that its significance lies: the universal and communicative desire of good.

The measure of this commonality is given by self-love if this is meant not as an attachment to ones personal preferences and life projects, nor even as the possibility of a separation of oneself from myself in order to enucleate a detached and neutral ego, but rather as an attention for all the basic human aspects that every man finds before him and for which reason - as Aristotle says - he must be "his own friend".

The proof of self-love, i.e. the verification of its rectitude, is given by the fact that it is not in opposition to love for another. If, in himself, man loves what is human, then love of ones neighbour is something natural.(45) I cannot love another for what he is other than on the basis of loving oneself for what one oneself is, on the horizon of similitude. A friend is "another self".(46) The similitude permits a link between self-esteem and solicitude for another person. I cannot rightly esteem myself without esteeming the other like myself.

And here we come upon the idea of reciprocity that is peculiar to the golden rule: each man loves the other for what he is for himself.(47) To love another for what the other is corresponds to loving oneself for what one oneself is, which is the self-love of the golden rule. It is possible to put oneself on the side of the others point of view only on the basis of the communication of perspectives.
A distinction has been made between "mere reciprocity", thanks to which one recognizes that the other man has his own point of view, and "reversible reciprocity", thanks to which one identifies oneself in the other mans perspective.(48) This distinction does not exist on the level of the golden rule that supports the communication of perspectives in the framework of basic human values. It introduces the notion of humanity as a mediating term between the diversity of people, overcoming the dissymmetric character, due to otherness, of an intersubjective relationship. Whatever the case, owing to the golden rule, "reciprocity" does not mean "mutual advantage", even in the long term. It does not say: "do not do unto others that which you would not they did unto you if (and only if) they do not do it unto you". In this sense it prescribes the love of benevolence and prefigures social relations between «givers of gifts».(49)
In the golden rule there is therefore self-love and the principle of benevolence. But this is a very general and comprehensive horizon that regards all moral life and the multiplicity of intersubjective relations. On the plane of social and political ethics the golden rule introduces the principle of solidarity and mutual aid. As there is a general commonality with regard to basic human goods, to promote them for others is the same thing as promoting them for oneself. Single individuals become parts of a whole which they help to feed and from which they draw their resources.(50) Their very realization is a constituent part of this community. This is not yet a political community - it is the moral community of all human beings that is immanent in every concrete community, one for which every person has the right to be treated as "one of our own sort".(51) It is evident here that without a principle of solidarity there could not be any general concept of the common good, which therefore precedes that of justice.
We have regarded the golden rule as a prime principle of natural law and as such it precedes any theory of justice, and provides this with a general set of concepts. It will however be necessary to proceed to further determinations, also in the light of concrete historical circumstances. Reasonableness is the means to treat such questions in such a way as not to break the golden rule, although it would be wrong to consider them to be already resolved by the golden rule itself. My purpose was only to show that it is not an empty formula and that it is indispensable for the foundation of the principle of co-operation.

CONCLUSION

If in conclusion we now once again consider Rawls theory of justice, we can see that it breaks the golden rule in a number of decisive ways.
First of all, Rawls believes that it is possible to grant the role of prime principle to the principle of co-operation, even with respect to the notion of a political agent, and this is impossible as it is clearly subordinate to the principle of benevolence and to that of solidarity. These principles end up by being implicitly presupposed without themselves being thematized, thus avoiding the onus of interpretation and justification.
Secondly, Rawls believes it is possible, within the person and among persons, to separate self-love from the co-operative attitude and from reasonableness. In this way, however, the juxtaposition of interests prevents the idea of justice from rising to achieve true recognition and a solidarity in which each of us feels a debt towards everyone else.(52)
Thirdly, in Rawls thinking, there is no real idea of solidarity. Normative equality, which is not an existential similitude, is not enough to motivate people to co-operate among themselves and to justify the principle of co-operation. This does not mean that the principle of co-operation cannot give an important contribution to the evolution of natural law and to the quest for practical truth. Respect of

another persons rights is respect for truth as it is part of a persons good not only to have beliefs that are true but also beliefs that are not only aware but also reached in full liberty. The authentic way of practising benevolence does not oblige one to make other peoples aims ones own but to make it possible for them to assert themselves in a fair society.

Fourthly, and lastly, in this way the question of pluralism is not tackled but avoided. The elimination of the identity of the political person put pluralism in parentheses. Rawls idea of co-operation requires the idea of the neutralization of pluralism, while in reality the challenge today is how one must and can co-operate in conditions of pluralism. In this sense an extremely rich concept of common good helps one to understand and confront contemporary pluralism much more than unduly restricting it. Is not our global and plural society the amplest and most suitable place to seek the truth without prejudices and preclusions?

I believe that use of the golden rule might have given Rawls theory a more solid foundation. Certainly there are aspects of the one that are not compatible with those of the other, especially with regard to the amplitude of the concept of "common good". There are however also implicit and unconscious confirmations of the perennial actuality of this prime principle of natural law.

It may be pointed out that I have not dealt with the stability and evolution of the contents of natural law but only with the actuality of its prime principles and the permanence of its argumentative structure. But I am confident that these elements are much more important than fundamental values because they affect their justification, interpretation and realization.

NOTES

(1) See MARITAIN J., La loi naturelle ou loi non écrite, Fribourg: Éditions Universitaires, 1986:47-51.
(2) AQUINAS, Sum. Theol., II-II, 57, 1, to 1m.
(3) Ibid., I-II, 94, 2.
(4) STRAUSS L., Natural Right and History, Chicago: Chicago U.P., 1953.
(5) For a critique, cf. KALINOWSKI G., Notions de Nature. Sur la muabilité du concept de nature et l'immuabilité de la loi naturelle, in MAYER-MALY D. and SIMONS P.M. (ed.), Das Naturrechtsdenken heute und morgen. Gedächtnisschrift für René Marcic, Berlin: Duncker & Humblot, 1983:52 ff.
(6) Cf. KALINOWSKI G. and VILLEY M., La mobilité du droit naturel chez Aristote et Thomas d'Aquin, Archives de Philosophie du droit 1984, 29:190-199.
(7) For the presence of this tendency in Italian juridical philosophy cf. VIOLA F., Italian Natural Law, in Law and Politics between Nature and History, European Journal of Law, Philosophy and Computer Science, 1998, 2:355-367.
(8) AQUINAS, Sum. Theol., I-II, 94, 5c.
(9) I considered this question in VIOLA F., Etica e metaetica dei diritti umani, Torino: Giappichelli, 2000:137-158.
(10) VIOLA F. and ZACCARIA G., Diritto e interpretazione. Lineamenti di teoria ermeneutica del diritto, III ed., Roma-Bari: Laterza, 2001:407.
(11) For this, cf. PALADIN L., Ragionevolezza (principio di), in Enciclopedia del diritto, Agg., I, Milano: Giuffrè, 1997: 899 ff.
(12) See RUGGERI A, Ragionevolezza e valori, attraverso il prisma della giustizia costituzionale, Diritto e società 2000, 4:569-570.
(13) See Zagrebelsky G., Su tre aspetti della ragionevolezza, in BARILE P. et al., Il principio di ragionevolezza nella giurisprudenza della Corte costituzionale. Riferimenti comparatistici, Milano: Giuffrè, 1994:189-190.
(14) Cf. VIOLA, Etica e metaetica..., pp. 107-136.

(15) Cf., also for the philosophical roots of practical reasonableness, FINNIS J., Natural Law and Natural Rights, Oxford: Clarendon Press, rep. 1992: 88.
(16) Cf., in general, SCACCIA G., Gli "strumenti" della ragionevolezza nel giudizio costituzionale, Milano: Giuffrè, 2000.
(17) See Bickel A., The Least Dangerous Branch: The Supreme Court at the Bar of Politics, II ed., New Haven: Yale U.P., 1986.
(18) I refer to Corten O., L'utilisation du "raisonnable" par le juge international, Bruxelles: Bruylant, 1997.
(19) As in CORTEN O., L'interprétation du "raisonnable" par les juridictions internationales: au-delà du positivisme juridique?, R.G.D.I.P. 1998, 1:5-43.
(20) «a certain koiné of the instruments of argumentation». CERRI A., I modi argomentativi del giudizio di ragionevolezza delle leggi: cenni di diritto comparato, in BARILE et al., Il principio di ragionevolezza..., p. 135.
(21) This is what the Supreme Court of the United States has called «compelling public interest» and the German Constitutional Court «überwiegende Interesse der Allgemenheit». For the Italian Constitutional Court it must be an interest that is always constitutionally protected.
(22) It may be thought that in a broad sense Rawls' second principle of justice takes its place in this exigency for fairness according to which the expectations of those who are in a more favourable situation are protected insofar as this serves to improve those who are least advantaged. This criterion has served to justify compensative types of judgement.
(23) The American Supreme Court has spoken of a «vagueness test».
(24) I refer of course to the syndicate of Verhältnismassigkeit of the German Constitutional Court.
(25) FINNIS, Natural Law..., p.103.
(26) Rawls J., Political Liberalism, New York: Columbia U. P., 1996:48-54.
(27) I point out that the primacy of comprehensibility makes hermeneutics particularly predisposed to support this sense of "reasonableness". Cf. the issue of the Revue de Métaphysique et de Morale dedicated to Équité et interprétation, 2001:1.
(28) «A 'reasonable' man ... is one who realizes the necessity, in view of circumstances, of achieving 'compositions' in which there is room not for one but for many 'reasons'. Not the absolutism of a single reason nor even relativism with respect to the numerous different reasons (one or the other, they are all the same), but pluralism (the ones and the others, as far as possible all together)». Zagrebelsky G., Il diritto mite, Torino: Einaudi, 1992:203. See also Viola F. e Zaccaria G., Diritto e interpretazione..., pp. 41-43.
(29) ROSENFELD M., Comprehensive Pluralism is neither an Overlapping Consensus nor a Modus Vivendi: A Reply to Professors Arato, Avineri, and Michelman, Cardozo Law Review 2000, 21:1997. In general see ID., Just Interpretations. Law between Ethics and Politics, Berkeley: University of California Press, 1998.
(30) For this theme, see VIOLA F., Giustizia e verità, Filosofia e Teologia 2001, 15: 490-503.
(31) «The most fundamental idea in this conception of justice is the idea of society as a fair system of social cooperation over time from one generation to the next (Theory, §1: 4). We use this idea as the central organizing idea in trying to develop a political conception of justice for a democratic regime». RAWLS J., Justice as Fairness. A Restatement, ed. by E. Kelly, Cambridge, Mass.: The Belknap Press of Harvard U.P., 2001:5.
(32) «Since we begin from the idea of society as a fair system of cooperation, we assume that persons as citizens have all the capacities that enable them to be cooperating members of society». RAWLS, Political..., p.20.
(33) «Fair terms of cooperation specify an idea of reciprocity: all who are engaged in cooperation and who do their part as the rules and procedure require, are to benefit in appropriate way as assessed by a suitable benchmark of comparison». Ibid., p.16.

(34) «The desire to act in ways that can be defended to oneself and others without appealing to personal advantage». BARRY B., Theories of Justice, Berkeley and Los Angeles: University of California Press, 1989:7-8, 361-364 and cf. also GIBBARD A., Constructing Justice, Philosophy & Public Affairs 1991, 20:264-279.
(35) Smithian self-interest is not egoism, i.e. the acquisition of personal advantages to the detriment of others, but properly indifference towards others and an incapacity to see things from other people's point of view, abandoning one's own.
(36) As is well known, this conception of the person was criticized by SANDEL M. J., Liberalism and the Limits of Justice, Cambridge: Cambridge U. P., 1982. Cf. also Political Liberalism, reviewed by M.J.Sandel, Harvard Law Review 1994, 107:1765-1794.
(37) RAWLS, Justice as..., pp.6-7.
(38) Here I do not discuss Rawls' theory of "primary goods", i.e. of the social conditions and the means necessary for all ends, that make it possible for people to develop their moral powers and pursue their particular conception of it is good. On the one hand, this thin conception of the common good prevents human sociality from being understood as a value in itself; on the other, I believe that a more attentive analysis of this primary goods could lead to implications that make this conception much thicker than it appears.
(39) Although Aquinas never calls it so, he makes explicit reference to it (I-II, 94, 4 ad 1) and affirms that all moral principles and norms are implicitly contained in it. (I-II, 91, 4; 99, 1 ad 2; 100, 2 e 3). Cf. also FINNIS J., Aquinas, Oxford: Oxford U. P., 1998:138.
(40) Cf., lastly, WATTLES J., The Golden Rule, Oxford: Oxford U.P., 1996.
(41) The thesis of convergence between what is dictated by reason and what is taught by faith is different from dependence on the ethical-religious perspective. Cf. D'AGOSTINO F., La «regola aurea» e la logica della secolarizzazione, in LOMBARDI VALLAURI L. and DILCHER G., Cristianesimo, secolarizzazione e diritto moderno, vol. II, Milano: Giuffrè, 1981:941-955.
(42) See KELSEN H., Das Problem der Gerechtigkeit, Wien: Franz Deuticke,1960.
(43) AUGUSTINE, De Sermone in monte, II, sec. 74.
(44) For this reason I do not share Ricoeur's thesis, according to which Kant formulated the golden rule more rigorously. In reality the principle of universalization is something different. Cf. RICOEUR P., Soi-même comme un autre, Paris: Éditions du Seuil, 1990.
(45) «Est autem omnibus hominibus naturale ut se invicem diligant. Cuius signum est quod quodam naturali instinctu homo cuilibet homini, etiam ignoto, subvenit in necessitate, puta revocando ab errore viae, erigendo a casu, et aliis huiusmodi: ac si omnis homo omni homini esset naturaliter familiaris et amicus». AQUINAS, Contra Gent., 3, 117.
(46) ARISTOTELE, Et.Nic., IX, 4, 1166 a 32 (transl. by D. Ross).
(47) Ibid., VIII, 3, 1156 b 9: friends «wish well alike to each other qua good, and they are good themselves».
(48) ROSENFELD M., Affirmative Action and Justice. A Philosophical and Constitutional Inquiry, New Haven: Yale U.P., 1991: 247-249 and, for the distinction between law (mere reciprocity) and ethics (reversible reciprocity), see ID., Just Interpetations..., 69 ff.
(49) Cf. HITTINGER R., Razones para la sociedad civil, in Alvira R. et al. (ed.), Sociedad civil. La democracia y su destino, Pamplona: Eunsa, 1999, pp.27-42.
(50) FINNIS, Aquinas, p.118.
(51) Cf. Habermas J., Justice and Solidarity, in Michael Kelly (ed.), Hermeneutics and Critical Theory in Ethics and Politics, Cambridge,Mass.: Mit Press, 1990, p.47.
(52) This is noted by RICOEUR P., Liebe und Gerechtigkeit - Amor et Justice, Tübingen: Mohr, 1990.

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NATURAL LAW, POSITIVE LAW AND THE NEW PROVOCATIONS OF BIOETHICS

The reference to nature and, consequently (in a doctrinal perspective), to natural law in bioethical debates is significantly frequent. Biomedicine and its provocative discoveries and realizations manipulate, and so place in question, a natural order that is traditionally considered (wrongly, as we know too well) immutable, but that is still felt by many (especially at the level of common sense) as just. A specific and preliminary duty for bioethics follows from this: that of subjecting, in its own analyses, the legitimacy of the appeal to nature (and to natural law) to critical assessment. In the considerations that follow I could like to limit myself merely to pointing out some difficulties in this regard, in general not perceived, or underestimated.

In these reflections I do not intend to go into the distinction between natural law and natural right, nor to reflect on the specifically ethical values of the doctrine of natural law. Still less do I intend to review the traditional dialectic established (from multiple viewpoints) between natural law and positive law in the history of philosophy, or to suggest what a suitable reformulation for that dialectic might be today.(1) I presuppose that the history of the doctrine of natural law is known in its essential lines and that it has become crystallized in a paradigm that, in my view, still remains as culturally powerful as it is culturally weak. However - and this is the first point to which I would like to draw attention - the emergence of the new bioethical problems, and more generally the new significance assumed by the problems of life and its defence, are not only opening new and problematic horizons to jurists,(2) but more especially causing a profound, and in general little felt, alteration in the dialectic between natural law and positive law, in the way it has been generally conceived.

The first alteration is perceptible at the functional level. According to the traditional (and not only Catholic) doctrine, the fundamental and principal function of the dialectic between natural law and positive law is that of directing positive law according to justice, and consequently controlling and unmasking any arbitrary exercise of the legislative function. In this sense, to use an old expression, emphatic but not improper, of Giorgio Del Vecchio, natural law is the "enemy of any form of tyranny"; it is the point of reference, in the name of which objective legitimacy is given to the repudiation of power, whatever be the social and personal risk that such objection may incur for the person making it. This doctrine undoubtedly retains its validity in our time, even though it has been reformulated in recent decades, using the paradigm of fundamental human rights, rather than that of natural law; it is not difficult to perceive, however, that the two paradigms are reciprocally convertible, even if at times at the price of not negligible and not always acceptable theoretical reformulations.

It should be pointed out, however, that the argument against the doctrine of natural law has never had as its objective that of legitimizing the self-referential nature of power (unless in extreme cases, whose examination might perhaps reveal surprises). When it has been expressed, it has rather been aimed at a critique of the abstract and anti-historical character (or, depending on context, metaphysical and/or religious character) of the principles of the doctrine of natural law. The hypothesis may even be advanced that in the Western tradition the knowledge of positive law has been structured as a science precisely and exclusively because it has always been conceived on the basis of its foundation in natural law: this foundation - authentic ghost in the machine - is allegedly demanded by the functional logic of law itself, because it is the only force able to activate the necessary dynamics of normative innovation in law. (Another question - in this significant context - is whether this foundation should be conceived

and theorized as psychological, ethical, political, or at any rate pre-juridical: what would remain unprejudiced in any case is the necessary appeal of positive law to this foundation as to force outside itself, such as a motor, or a fuel, or to a principle of endowing the positive system with meaning).

In the current bioethical debate, or at least in a large part of it, the scheme presented above has almost dissolved. Many of the strongest and more widespread bioethical claims(3) are in general characterized by libertarian impulses that are transformed, at the level of positive law, into claims for delegalization, at times to the point of creating what the German doctrine calls "a space free of law", a rechtsfreier Raum, i.e. a sector in which the law does not apply. It is argued that, in the bioethical field (but not only in that), the best law would be no law at all; or, subordinately, that the best source of law, to which some legitimacy could be granted, would be that calculated to produce mere administrative decrees. The right to control, or pass judgement on, claims and experiences that determine at their source the relation of citizens with life ought, it is argued, to be precluded to the legislator - i.e. to the one who is traditionally conceived as the subject institutionally called to guide citizens in a general, abstract and axiologically binding way. At most a merely technical function, i.e. that of strengthening the fluidity of self-referential social practices through decrees, i.e. through norms characterized by a purely pragmatic and hence (in the scale of values) significantly reduced rank, would be recognized to the legislator.(4)

On what theoretical and/or symbolic presuppositions are such claims based? I don't think that they should be referred to particularly structured horizons of meaning; those who formulate them do not in general incorporate them in the framework of more complex political or ideological arguments (a proof of this is the fact that many initiatives in this field cross party divides in parliament). Nor are there very many who consider that the hard cases can be resolved in bioethics by recurring to merely procedural criteria. It also seems to me that not even the utilitarian perspectives can provide an adequate foundation to these claims, given that in many of these situations it is doubtful whether the hoped-for permissiveness corresponds to the optimization of the interest of the greater number of beneficiaries or other of the classic canons of the various schools of utiliarianism. I think that we are faced, on the contrary, by an unexpected variant of the paradigm of natural law, by a renewed, even if confused and far from explicit, appeal to the symbolic code of nature. The nature, to which reference is made here, is not understood in an always coherent or unambiguous way. At times it is identified with the pre-logical (and in some sense impersonal) dynamics of the subjective desire; in such cases one arrives fairly rapidly at forms of bioethical sacralization of the principle of autonomy, as when for example so-called rational suicide is defended as a fundamental human right. In other cases the appeal to nature is manipulated to make it coincide with that of the defence of female subjectivity as a specific good in itself (e.g. the claimed irrevocability, or uncontestability, of a woman's choice to have an abortion). The biological good of the species, as natural good, is increasingly invoked to justify eugenic practices (many abortions, besides, are of this character). And the appeal to campaign for the defence of the biosphere is also becoming ever more widespread; the biosphere is seen as the one authentic source of values (these and similar positions are frequently encountered also among animal-rights activists). The calls to recognize voluntary non-therapeutic sterilization as a private and unchallengable decision are also rooted, in the last analysis, in a curious motivation of naturalistic character: human sexuality, it is argued, could only be fully expressed in its more authentic dimension, hence the only one that is truly "natural", if (technologically!) it were freed from any procreative risk. By "deceiving" nature, i.e. by procuring an "artificial" sterility, it would in short be possible for nature to regain control over herself. Similar arguments have been used to formulate various paradigms to refute the unnatural character of homosexuality. Bioethics and appeal to nature thus seem to be combined, according to objectively disconcerting procedures. And since the appeal to nature has always coincided - at least psychologically - with an appeal to justice, we ought not to be surprised by the fact that many new libertarian requests in bioethics are formulated with remarkably passionate intensity, by subjects who

feel themselves morally in the right: they claim not that their subjective desires be socially gratified, but that the voice of nature, that is instinct in them and that is expressed through their desires, be not suppressed.

In the context of the bioethical controversies of our time, new and unprecedented tensions therefore seem to be emerging in the relation between natural law and positive law. The claim of a "new libertarian doctrine of natural law" (neogiusnaturalismo libertario) in bioethics is therefore not that of constituting the foundation of legitimacy and justification of positive law (according to the models of the "traditional" defence of natural law), but that of operating on positive law, and forcing it progressively to retreat from its socially normative function and reducing it to a mere and extrinsic guarantee of new dimensions of autonomy. A presupposition for this project to become credible and possible is that the "new doctrine of natural law" (neogiusnaturalismo) should formulate a suitable strategy of attack against positive law. This strategy is increasingly taking the form of an accusation: the indifference, or worse the hostility, to the new bioethical claims of libertarian character is proof, it is argued, of the unacceptable intention of the positive law to unduly ignore and injure the needs of "material life". Subjected to such an unexpected attack, the system of positive law is taken off guard. It reacts in confusion; it either succumbs to indecision - the Italian case of the lack of regulation of assisted fertilization is emblematic(5) - or tends to enter a situation of instability and contradiction, testified by the jurisprudential oscillations of many countries, when judges, called to resolve complex and unprecedented disputes of a bioethical nature, use (perforce: they would not know how to do otherwise) their traditional and antiquated conceptual arsenal of weapons.

From what forces does this new paradigm of natural law draw? The question is not prompted by a vague curiosity of historiographical type (however legitimate), but by precise theoretical needs. It is surely not irrelevant to ascertain where this new paradigm may have its historical roots: to examine, for example, whether it may have its roots in sadist libertinism,(6) or at any rate in the spirit of "modernity". I put forward the hypothesis, however, that mere historiographical investigation is insufficient to understand the novum we must come to grips with. I think that, through what I have called the "new libertarian defence of natural law" we unexpectedly find ourselves confronted by the emergence, in current culture, of dynamics that need to be referred not to a specific epoch of Weltgeschichte, but to the formation itself of the human identity in general - and consequently of the ethical and juridical conscience.(7) These dynamics can be reconstructed more through the work of philosophers than that of historians; and more particularly through the analysis of the language of myths or of the potential for expression of the psyche.(8) They are dynamics comparable to those chthonic, telluric or subjective forces, whose exploration cannot be entrusted to the mere resources of the calculating reason and that refer to a beginning that should not be confused with a point of departure, but should rather be identified with an arché, which does not possess chronological but ontological character.(9)

Nature as a foundation of law cannot be grasped in these archaeological dynamics; and neither continuity nor correlation can be established between jus naturale and jus civile (according to the dominant line, as we have said, in the history of the West). The relation between them is neither more nor less than conflict. Jus naturale expresses - in this horizon - the needs of material life, a warm and unreflecting life, characterized by repugnance to constraints, rules and institutions - the dimension alluded to when we speak for instance of the "female principle", the "maternal code", or psychoanalytically of the world of the Es (the Id) - while jus civile would express those of the spiritual, cold and reflecting life, amenable to the sacrifice of natural spontaneity and to the acceptance of rules and institutions, in the name of the higher needs of civil life - psychoanalytically the world of the Ich, that must occupy, no matter the cost, the magmatic space of the unconscious: wo Es war, soll Ich

werden;(10) or, if we prefer to express it, the "male principle", the "paternal code".(11) Imagining a conciliation - other than provisional and occasional - between the two worlds is not possible: their antinomy can be removed or concealed, but is in principle incurable. A splendid exemplification of this antinomy is provided by the unequalled clarity of the words of a great Latin poet, and an attentive investigator of myths. "Nature" had aroused in Myrrha an invincible love for her father Cinyras, king of Cyprus; the woman is very conscious that her incestuous passion is sinful (nefas), but cannot but wonder whether it could be considered a crime (si tamen hoc scelus est), given that this love is permitted by nature to all animals, whereas only man does it bind: and yet it is man, and not nature, who had given himself this law and prescribed it: humana malignas/cura dedit leges, et quod natura remittit/invida jura negant.(12) Centuries later, Michel Foucault made the same point, albeit with lesser expressive force: "What desire could be contrary to nature, since it was instilled in man by nature itself, and since he was taught by it in the great lesson of life and death that the world does not cease to repeat?".(13)

Should the new paradigm of the natural law be opposed? Undoubtedly yes. It should be opposed for a fundamental reason: because its ascendancy (perhaps even against the intentions of those who allow themselves to be fascinated by it), i.e. the imposition of such a jus naturale over jus civile, would remove from subjectivity the possibility of conquering itself, of assuming, as Hegel would put it, an erect position.(14) It should be opposed in the name of the specific dignity that man has conquered in the course of his history and that has become incorporated in the principle of law, in that jus civile through which the human being, without renouncing his telluric nature, rises to the recognition of his identity as zoon politikón, of civis, in other words of relational subject, constrained by the objective duties of interpersonal relationships. The very ancient intuition, according to which the bios of man has a need for the polis, because only in it is the nomos given,(15) effectively summarizes this whole issue.

With what strategies should the new paradigm of natural law be opposed? They may be significantly different. A first possible strategy is characterized by its specifically philosophical character. By showing the ambiguity of the category of nature,(16) and emphasizing the need for a rigorous theoretical control of all its thematic implications, we may seek to divest the "new defence of natural law" of its foundation, i.e. its essential link with nature. In this line it is possible to show, albeit with different terms, the distance, if not the contradiction, between empirically ascertainable nature and metaphysically construable nature; the consequence would be that the question as a whole would be modulated according to the criticisms that a theoretically "good" form of defence of natural law may mount against a "bad" one. This approach possesses, in my view, interesting theoretical potential, but seems somewhat ineffective. It is hampered by the fact that in present-day bioethical debates the "new defence of natural law" is not the result of victorious theoretical constructs, but represents the collective emergence of private forms of sensibility that powerfully qualify the culture dominant today and that are expressed through symbolic codes instead of through speculative paradigms. Just one example will suffice to show the scale of the problem. The long debate on abortion, which exploded at the world level some thirty years ago, had begun by placing in question the ontological status of prenatal life, whose intrinsically "human" character was denied. Rigorous speculative endeavours and intensive debates have led, without the shadow of a doubt, and with the decisive help of scientific reason, to the demonstration (or, rather, to the confirmation) of the authentically human, individual and personal character of prenatal life. The inference that ought to have been drawn from this is the need to reinforce the juridical protection of prenatal life that traditionally formed part of the positive law of almost every country in the world, even if with diversified "technical" formulations. But that did not happen: the logic of liberalization, in more or less explicit form (or more or less hypocritical form, as would be more correct to say), won the argument, in the space of a few years. How could that have happened? With a subtle change of strategy, the new defence of natural law no longer called for (as it did at the

beginning of the debate) the liberalization of abortion by denying that foetal life has the character of genuinely human life. Instead, it simply postulated that the mother's right to choose for herself whether to have an abortion is irrevocable: that such a choice cannot be challenged and is therefore not subject to the parameters of the law.(17) It is not difficult to show the ascendancy of the same guiding dialectic in almost all the other burning issues of bioethics.

The new paradigm of natural law thus came to prevail as a new and powerful symbolic code of interpretation and management of everything that pertains to life.
If we want to adopt an alternative approach, we need to recognize the need to proceed to the elaboration of new symbolic codes. In the context of symbols, however, it is not necessarily the case that the new should be irreducibly different, in an antagonistic logic; the new is what has the potential to express meanings that the old is no longer able to express. Nor is it necessary to posit or insist on the antinomy between jus naturale and jus civile: an open conflict between the two principles would confirm, or at most foment, what is already under everyone's eyes, namely the factual precedence of the former over the latter. We need on the contrary to affirm that jus civile does not falsify jus naturale, nor does it necessarily lead to its delegitimization or demystification, but rather to its overcoming/corroboration (superamento/inveramento). Jus naturale has a genuine grasp of reality and, at least in some respect, is incapable of mystifying it (just as it is incapable of legitimizing it); but it is also incapable of comprehending it; and that is so for the simple reason that the reality that it is able to perceive is spiritually blind and obtuse. Jus civile is not the proponent of a good that is alternative to that proposed by jus naturale, because their antinomy does not consist in the perception and defence of different goods, but in the capacity of the one (jus civile) to perceive human good, in contrast to the total incapacity of the other (jus naturale) to perceive good in general. The antinomic nature of the two dimensions of law is real, but only in the sense that it is impossible to elaborate them contextually. But it does permit (or even demands) a kind of dialectical synthesis between them: for the cold and normative force of the principle of jus civile, even though it seems to violate the warmth of the principle of jus naturale, in fact guarantees its survival. On the other hand, the undifferentiated expansion of jus naturale at the expense of jus civile may indeed give the illusion of the rightful triumph of spontaneity over artifice, individual freedom over social constraints, love over legality, but in the long run it produces undifferentiation, in other words, the negation of subjectivity. In the famous metaphor of Aristotle, the spirit (nature) feels the weight of the body (the laws) with the same repugnance with which a living body would feel the fetters that kept it chained to a corpse.(18) But man is incarnate spirit; and the fetter that seems repugnant to the new libertarian defence of natural law, is in reality the one condition for the possibility of life itself, for the life of the bios as for that of the spirit.(19)

If this dialectical synthesis between jus naturale and jus civile is not achieved, experiences of insoluble contradiction are activated: jus naturale, so warmly vindicated, instead of opening doors to the abolition or sublimation of law - according to an ever recurring dream in the history of humanity(20) - is revealed as, or transformed into, a regressive utopia;(21) and jus civile, in its inability to resist the libertarian pressures of the new defence of natural law, rapidly assumes a doubly hypocritical face, or as André Gide puts it, it begins to "lie with absolute sincerity", altering and distorting the meaning of the practices that it liberalizes.(22) The liberalization of abortion has been historically revealed not only as a practice in substitution of the abandonment of the newborn,(23) but as a real form of 'anticipated infanticide' (to use a rough, but objectively correct term). The liberalization of euthanasia, claimed and approved as a measure of paradoxical aid of the terminally ill, has led, in the huge laboratory of libertarian experiences represented by the Netherlands, to the legal endorsement of the suppression of elderly persons devoid of specific pathologies, but simply depressed or "tired of life".(24) The inability to continue to qualify human sexuality in an objective way, and the substitution of the category of sex

by that of gender,(25) has had a chain effect, including, in growing order of gravity, those concerning the endorsement of practices of voluntary sterilization;(26) the justification of practices involving the manipulation, or even the mutilation, of the human body;(27) the spurious equivalence drawn between homosexual and heterosexual relationships - with the consequent mess in defining the juridical status of cohabiting couples(28) - and, last but not least, the significant argumentative void that is being spread in terms of paedophilia (a void that the politicians fill, for the time being, with declarations of intent sufficiently comforting in substance, but depressing in terms of their lack of logical vigour).

While it is our duty to hope for the formulation of the new symbolic codes of bioethics which I mentioned above, and which I consider essential for opposing the new libertarian defence of natural law, it is not easy to perceive the signs of their possible emergence in the current bioethical debate. It is however possible to identity some signals, some traces to which it is useful to draw attention. It is easy to perceive that the consternation caused in public opinion by extreme biomedical practices does not tend to diminish, as the years pass, as many had hastily predicted, assuming that the healing process of time would re-absorb what was considered as no more than a culture shock. To such pathetic and in their way (as we have already pointed out) genuine and fervent claims, the common human intellect, to which Kant rightly gave so much credit, does not succumb; it continues to rebel, even if it hardly ever succeeds in expressing in exact terms the reasons for its instinctive rebellion, or in adequately opposing those claims that disturb it so much. The fact is that the bioethical issues generate a sense of anguish and loss, and not fear. If it were only fear - i.e. that providential mechanism of defence with which we are all biologically provided to defend ourselves against foreseeable and particular dangers - there is no doubt that the biomedical sciences themselves, that arouse this fear, would equally be able to manage it and even dominate it.(29) But since what is aroused here is not fear, but anguish - i.e. the ontological consciousness of our finiteness, which is also expressed in our absolute vulnerability to the unpredictability that is structurally inherent in possibility(30) - no "scientific" response that comes from biomedicine and from the sciences connected with it, however reasonable, however reassuring, can ever be adequate. It may help us effectively to control our anxiety, but will be powerless against the emergence of our anguish. Neither the symbolic code of progress, nor that of subjectivity, may give a response to anguish. For the code of progress enters into contradiction with what is the very essence of anguish: given that biomedical progress is undifferentiated opening to the future, it will necessarily foment that anguish rather than reduce it; for the anguish we feel is aroused precisely by the unpredictability of an open future. But not even the code of subjectivity may furnish an adequate response to bioethical anguish, because it presupposes a subject stable in its identity, strong in its demands, and determined to obtain their realization: precisely the contrary, that is, to present subjectivity, weak, uncertain, fragmented, dismayed by the multiplication of possibilities, "multiple".(31)

If what I have said has any sense, it may be argued that a new symbolic code of bioethics will succeed in emerging and prevailing only if, with an effort that must be at the same time theoretical, cultural and spiritual, it succeeds in taking seriously the fact that what contemporary man is seeking is not only a pragmatic response to his own fears, but a wise response to his own anguish: a response that may not have any operative character, but that absolutely must have a revelatory character. Revelatory of what? Of the fact that when he comes to the consciousness of its own finiteness (in existentialist terms, of that void that comes to light through anguish) man expresses the whole of himself in a single great, indeterminate demand for help. Whoever succeeds in understanding the depth of this demand, and in not confusing it with the banal need of the individual to be relieved of his own anxieties, very soon acquires the consciousness that in response to this great, indeterminate demand for help, scientific thought is powerless: its symbolic code is necessarily objectifying, and does not enable it to perceive this demand adequately, still less to manage or assuage it. The new symbolic code we hope for must

move in another dimension: in that technically not easily definable, but psychologically perceptible sphere represented by comfort; a synthesis of understanding, solidarity, sympathy, care, concern, sharing, support, aid, disinterested friendship. I don't know whether comfort may help someone suffering from the sense of loss, of uprootedness, induced by anguish to refind his place. But I imagine that this is its real task and that merely the act of consciously assuming it is tantamount to furnishing a compass to someone who is moving without a map in an utterly unfamiliar territory.

NOTES

(1) I may refer the reader to FINNIS J., "Natural law - positive law," in: "Evangelium Vitae" e diritto. Acta Symposii Internationalis in Civitate Vaticana celebrati, 23-25 maii 1996, Libreria Editrice Vaticana, 1997, pp. 199-212.

(2) On this problem I have already intervened on various occasions: inter alia, "Medicina e diritto: riflessioni folosofiche," in Iustitia, 40 (1087), pp. 69-71; "Etica e diritto in bioetica," in Quando morire? Bioetica e diritto nel dibattito sull'eutanasia, ed. VIAFORA C., Padova: Gregoriana, 1996, pp. 69-86; "La bioetica come problema giuridico: brevi analisi di caratteri sistematico," in Le radici della bioetica, Atti del Congresso Internazionale, eds. SGRECCIA, MELE, MIRANDA, Milano: Vita e Pensiero, 1998, pp. 203-211. All these studies are now collected in D'AGOSTINO F., Bioetica, nella perspettiva della filosofia del diritto, Torino: Giappichelli, 19983.

(3) I allude to the demands for the liberalization of abortion, sterilization, euthanasia, assisted fertility, sex change. But I also allude to the calls to modify consolidated opinions on eugenic questions, to pre-determine the sex of children, or not to obstruct research on cloning, as well as claims for the compensation of a wrongful life, etc.

(4) Here a complex question is touched on, long felt by the most subtle sociologists of law. Cf. for example CARBONNIER J., Flessibile diritto, (Italian translation), Milano: Giuffrè, 1997.

(5) Cf. the remarks of BUSNELLI F.D., in the chapter on assisted procreation in his Bioetics e diritto privato. Frammenti di un dizionario, Torino: Giappichelli, 2001, pp. 181 ff., and the present author's contribution "The Italian Experience of Legislation on artificial Fertilization," in Evangelium Vitae. Five Years of Confrontation with Society. Proceedings of the Sixth Assembly of the pontifical Academy for Life, ed. by Via Correa J. and Sgreccia E., Città del Vaticano: Libreria Editrice Vaticana, 2001, pp. 257-261.

(6) On the sadist character of the modern calls for the liberalization of abortion, an exemplary study was written by LOMBARDI VALLAURI L., "Abortismo libertario e sadismo," in Jus, 1975, and also in his book (?...), Milano: Scotti Camuzzi Editore, 1976. It should be pointed out that, to the sincere regret of many of his admirers (including the present writer), Lombardi seems to have lost the theoretical lucidity he possessed in his full maturity.

(7) Some authors consider that this arché is prolonged in the present and assumes historico-empirical forms of expression. Describing what is in his view one dimension of the Indian spirit, Pannikar writes: "Man here is not pure conscience, nor is his life ruled by 'clear and distinct' ideas; it might be said that his reactions and decisions are motivated neither by pragmatic ideas, nor by expressed convictions, but by cosmic instincts, or, if you will, by telluric forces, by chthonic factors. Man, for the Hindus, is just one thing among others, he is but one being more in the creation and forms an inseparable whole with the universe... what guides him, or what makes him a man, is not only his reason, and not even his self-interest: he is man with all his being. He accepts the gift of his simple life and of his total and undivided existence. He has developed no view of nature, nor does he consider himself lord of the creation, with a lordship of divine service. It follows that he is not even a spectator of nature, but part

of nature itself" (PANNAKAR R., La India. Gente, cultura y creencias, Madrid: Rialp, 1960; Italian translation, L'India. Populazione, cultura, credenza, Brescia: Morcelliana, 1964, pp. 104-105).
(8) An excellent example is furnished by the work of NEUMANN E., Ursprungsgeschichte des Bewusstseins, Zürich: Rascher Verlag, 1949; Italian translation, Storia delle origini della conscienza, Roma: Astrolabio, 1987.
(9) I have already worked along these lines in my book Per un'archeologia del diritto, Milano: Giuffrè, 1979.
(10) As is well known, this is the extraordinary and pregnant formula with which Freud sums up the dynamics of archaeological maturation of subjectivity; cf. FREUD S., "Neue Folge der Vorlesungen zur Einführung in die Psychoanalyse," in Gesammelte Werke, Frankfurt a.M., 1940-1953, vol. XV, p. 86; Italian translation Introduzione allo studio della psicoanalisi, Roma: Astrolabio, 1948, p. 426.
(11) On the dialectic of the two principles, of, if you prefer, on the antinomy between maternal right and paternal right, the obligatory point of departure remains BACHOFEN J.J., Versuch über die Gräbersymbolik der Alten and Mutterrecht. Both works are now available in Italian translations: Il simbolismo funerario degli antichi, Napoli: Guida, 1989, and Il matriarcato, 2 vols, Torino: Einaudi, 1988. On Bachoven, cf. Uwe WESEL, Der Mythos von Matriarchat. Über Bachofens Mutterrecht und die Stellung von Frauen im frühen Gesellschaft, Frankfurt a.M., 1999 and, in the Italian literature, CASCAVILLA M., "Johann Jakob Bachoven: dalla parte del diritto femminile," in Hermeneutica, 1989, pp. 163-200. Also essential in this regard are the remarks of MANCINI I., Filosofia della prassi, Brescia: Morcelliana, 1986, pp. 229-280.
(12) OVID, Metamorphoses, 10, 321 ff and in part 329 ff: "Human anxiety/issued evil laws and that which nature grants/invidious laws forbid".
(13) FOUCAULT M., Histoire de la folie à l'âge classique, Paris 1961, p.296. Whatever may have been Foucault's specific theoretical intentions (of little concern to us here), it should be pointed out that his observations would suffice to justify fully what Hegel once called "der ungeheuerste Unglaube an die Natur", the most unbounded disbelief in nature ("Der Geist des Christentums und sein Schicksal," in HEGEL G.W.F., Theorie Werkausgabe, vol. 1, Frühe Schriften, Frankfurt a.M.; Suhrkamp, p. 274.
(14) That, said Hegal, is the first thing that man must learn: "das erste, was hier gelernt werden muss, ist das Aufrechtstehen" (HEGEL, Encyklopädie der philosphischen Wissenshaften, § 396, Zusatz).
(15) DEMOCRITUS, fr. 248 (Diels-Kranz).
(16) Cf. for example COTTA S., Diritto, persona, mondo umano, Torino 1989, esp. pp. 95 ff.
(17) Exemplary - genuine Holzwege - are Natalia Ginzburg's agonized reflections on abortion: "To abort is to kill, but it is a killing that cannot be compared with any other. (...) since this choice (to abort) is different from any other, our usual considerations of a moral order cannot enter into it: here they seem unusable. We know very well that killing is evil; but here, in the presence of a possibility that is alive but enveloped in darkness, even the idea of good and evil is enveloped in darkness. In such a choice, the light of reason, the light of logic, the customary light of moral considerations, cannot enter; they would not bring any aid, because they are not logical responses or considerations when everything is enveloped in darkness; it is a choice in which the individual and destiny confront each other, in darkness. Such a choice therefore can only be individual, private and shrouded in darkness. Among all the human choices, it is the most private, the most anarchic, the most solitary. It is a choice that belongs to the mother's right. It belongs only to her. And it belongs to her alone not because there exists, in every circumstance of life, a free right of choice; and not because 'my belly belongs to me and I'll do with it just what I like': I think that never as in such a choice do persons feel that nothing belongs to them, least of all their own bodies: all that belongs to them is a horrible faculty to choose a form without voice and eyes, life or nothing. It's a faculty as heavy as lead, a freedom that drags behind it irons and chains: because the person who chooses must choose for two, and the other is mute. What it means is to lacerate a part of oneself, murder a part of oneself, tear out from one's own body for ever a precise possibility of unknown life. It is a choice that is mute and dark, just as the understanding that

runs underground and that is bound up with that hidden life is mute; and the relation between the mother and that living, unknown and hidden form, is in truth the most immured, the most fettered and the darkest that exists in the world; it is the relation that is the least free of all relations and concerns no one. Such a choice concerns no one, least of all the law. It is clear that the law has the right neither to prohibit nor to punish it (...)" (GINSBURG N., "Aborto: la donna è sola," in Corriere della Sera, 7.2.1975, reprinted with the title "Dell'aborto" in IDEM, Non possiamo saperlo: Saggi 1973-1990, ed. SCARPA D., Torino: Einaudi, 2001, pp. 28-29.

(18) Protreptico, 10b, Italian translation in ARISTOTLE, Opere, vol. XI, Costituzione degli Ateniesi e Frammenti, Roma-Bari: Laterza, 1973, pp. 150 ff.

(19) Cf. D'AGOSTNO, "Zoé, bios, psyché: fondazione concettuale e conseguenze pratiche del discorso sulla vita," in Nuove Frontiere del diritto. Dialoghi su giustitia e verità, Bari: Dedalo, 2001, pp. 109-118.

(20) Cf. inter alia BACHOFEN, Il matriarcato, cit., vol. I, pp. 316-317: "Decoupling itself of every material ballast or mixture, law becomes love".

(21) MANCINI, Filosofia della prassi, cit., pp. 260 ff.

(22) Good examples of this linguistic (but not only linguistic) form of violence as regards artificial fertilization: PALMARO M., "La fecondazione extra-corporea tra diritto naturale e diritto positivo," in Fecondazione extra-corporea: pro e contra l'uomo?, ed. GARRONE G., Milano: Gribaudi, 2001, pp. 69 ff.

(23) Cf. the wide-ranging and impressive research of BOSWELL J., The Kindness of Strangers, 1988; Italian translation L'abbandono dei bambini, Milano: Rizzoli, 1991.

(24) See the figures reported by KIMSMA G.K., "La dolce morte e la misura della sofferenza," in Janus, anno I, no. 1, 2001, pp. 80-92.

(25) Cf. inter alia LORBER J., Paradoxes of Gender, Yale University Press, 1994; Italian translation, L'invenzione dei sessi, Milano: Il Saggiatore, 1995.

(26) Cf. AMATO S., "Tendenze nichilistiche del diritto moderno: la sterilizzaazione," in Archivio Giuridico, 1/2000, pp. 7-22.

(27) They are practices that public opinion has difficulty of grasping and that are in general disguised as phenomena of fashion, attributable to extreme forms of tattooing or piercing. The reality is very different. It's enough to look at the photographic documentation collected in an American cult book like Modern Primitives, also available in an Italian translation, with the (in my view intentionally or reductively) misleading title: Tatuaggi, corpo, spirito, Milano: Apogeo, 1994.

(28) Cf. LEROY-FORGEOT F./MÉCARY C., Le couple omosexuelle e le droit, Paris: Odile Jacob, 2001.

(29) LUHMANN N., Comunicazione ecologica.

(30) The theme to which I allude, explicitly pointed out for the first time by Kierkegaard, represents, as is well known, one of the main components of Heidegger's thought. For our purposes, it will be enough to refer to his classic study What is Metaphysics? of 1929, now in HEIDEGGER M., Wegmarken, Frankfurt.a.M., Klostermann, 1976; Italian translation, Segnavia, Milano: Adelphi, 1987, esp. pp. 67-68.

(31) Cf. GALZIGNA M., "La sfida dell'altro. Per una critica dell'io unitario," in La sfida dell'altro. Le scienze psichiche in una società multiculturale, ed. M. GALZIGNA, Venice, 1999, pp. 11-26.

JOSEPH SEIFERT

THE RIGHT TO LIFE AND THE FOURFOLD ROOT OF HUMAN DIGNITY

We witness today a steadily intensifying and almost world-wide attack on the right to life and on the inviolable dignity of each and every human being. The practice of abortion, of discarding superfluous embryos from IVF, the use and killing of embryos for stem-cell research, euthanasia and many other anti-life acts are spreading in overt and covert forms world-wide and constitute a practical and terribly real bloody war against the dignity of human life and the right to life. But also on the level of ideas, a world-wide war is being fought against the right to, and dignity of, each human life.

HUMAN DIGNITY, THE OBJECTIVELY JUST (IUSTUM) AND THE RIGHT TO LIFE (IUS)

The two terms dignity and right to life are closely related but refer to quite different things: Dignity is an inherent value-property of the person and not a just claim to life in relation to other persons; therefore the dignity of human life is also possessed by a Robinson Crusoe who lives alone on an island where his situation prevents his potential right to life from being an actual issue.

The natural law in the sense of what is objectively right and appropriate to human dignity (the iustum) can also be regarded as a certain 'law' and indicates an objective appropriateness of certain acts to the goods which are their objects. This iustum is not the dignity itself of the person but a consequence thereof for the sphere of acts directed at persons.

The right to life instead indicates not the intrinsic value of life as such, nor the objective iustum, but rather a certain objective claim, grounded in the nature of life and its value, to this life; or better said, the right to life is a certain objective entitlement to life; it is not so much a right to life as a right not to be deprived of one's life by others. This rightful claim results from the dignity of human life but is distinct from it. Moreover, while dignity belongs to human life also before God, the right to life is a claim that has its reality only in relation to other human beings, not vis-à-vis God who can rightfully end our lives on earth. Therefore, the right to life presupposes not only the value of human life but also the limits of knowledge, power, and authority which are the reason why human beings lack certain metaphysical rights and why therefore we are not lords over the life and death of other human beings or over our own life and death.(2) Hence the right to life is a unique kind of right which does not give us the power to dispose over it but is inseparable from the obligation to preserve it. Furthermore, while we have a right to life in relationship to other human or finite persons, we do not have such a right in relationship to God.

In contrast to the right to life, dignity is possessed absolutely speaking by a person also when the situation in which we can make a claim to our life is absent. The difference between the two is further evidenced by the fact that the infinite divine dignity of the person does not include a divine right to life. For any right to life presupposes, besides dignity, also the contingency of the life of the subject of such a right, and a possible threat to life. These elements are in no way parts of what dignity is; on the contrary, the dignity of a person is greatest when a person does not possess a right to life or a need thereof, as is true of the dignity of angels and of God.

Notwithstanding this sharp distinction, the fundamental right to life which is violated whenever innocent human persons are intentionally killed by others, is intimately connected with human dignity and possesses in it its primary condition.

THE ROOTS OF THE FIGHT AGAINST HUMAN DIGNITY OF EACH HUMAN BEING

The intense theoretical fight against human dignity of each human being and against his right to life has assumed many forms and has many roots which I wish to enumerate here but cannot subject to an extensive criticism here but hope to overcome by the implications of what I am going to say.
1) The attack on the right to life can be first grounded in denying an essential distinction between man and animal because of an evolutionist account of life.(3)
2) Often, this evolutionism has its root in an atheism that denies the character of the human person as a creature and image of God and thus the metaphysical and religious foundation of human dignity.
3) A third reason for rejecting human dignity lies in a reduction of the being of the person to what might be called his or her performance as a person, a performance as person absent in embryos and in many other human beings.(4)
4) The actualistic position and the reduction of persons to their conscious activities are also closely linked to a fourth possible reason for denying a universal right to life: the introduction of a distinction between human being and human person, attributing human personhood only to awakened human beings capable of acting as persons, thus denying personhood to small infants and to permanently unconscious persons in irreversible coma as well as to the so-called brain dead. This distinction between biologically defined human beings and human persons is of course closely connected with actualism as a denial of a substantial personal subject or soul.(5)
5) Other negations of a universal human dignity and right to life are based on denying natural law and fundamental human rights grounded in the nature of being and values, accepting solely positive laws implemented by law-makers as sources of rights.
6) A further theory that lies often behind the negation of human dignity is a general skepticism and relativism of values which denies any values that are independent from subjective opinions or of what Spaemann calls 'revozierbare Toleranzedikte' (revocable edicts of tolerance).(6)
Against this brief sketch of some of the most frequent reasons for the negation of human dignity and the right to life, we must seek to gain a theoretical understanding, and give an explanation, of the unique value of human life and of human dignity as the foundation of the right to life and of other fundamental human rights. Let us begin and ask what the 'dignity' of human life means and then proceed to discuss its four-fold root.

WHAT IS 'DIGNITY'?

Dignity as a unique excellence of value

In the first place, dignity designates an objective and intrinsic value. Qualities of the subjectively satisfying as they are the object of acts such as "I like chocolate," while other persons dislike it, can never be the appropriate category for human dignity. If anyone would apply such an expression to human dignity and, torturing a child or raping a woman, retort to our expression of outrage: "You do not like that but I just like to do that; don't meddle with my subjective preferences", we would see immediately the category mistake involved in this: the value called 'dignity' is an intrinsic preciousness and goodness of a being that is in no way dependent on our subjective likes or dislikes. If it were just such a subjective preference, it would be no dignity at all. 'Dignity' does not only mean an objective intrinsic value of persons but a very high, sublime value. But also this is not enough to describe this value because we are faced in a work of art such as Leonardo's Last Supper with a very high and sublime objective value of beauty without attributing dignity properly speaking to a work of art because it lacks the degree of reality necessary for a being to possess dignity properly speaking. The term 'dignity' then, thirdly, designates not all sublime values but only the value of a really existing being such as a person. The term 'dignity' has been applied recently by the Swiss law(7) to all creatures including plants and animals and even life-less things.(8) And even though this has some justification

because all really existing beings of which nature is made up have some special value meant by the term 'Würde der Kreatur,' nevertheless non-personal entities do not properly speaking possess dignity. This term then designates, fourthly, a unique value which not only endows each person with an intrinsic and objective preciousness - for this can also be said of animals and of all living beings as well as of dead material things - but which also raises the person to an incommensurably higher level of value, to an axiological level incomparable with any other value which does not merit the lofty title of dignity.

Dignity is inseparable from personhood - personhood inseparable from dignity

Dignity then signifies an excellence of value which is so closely linked to the nature of a person that it cannot be understood independently of grasping the essence of the person in whose nature it is rooted. When we consider the person as an individual, unique, unrepeatable subject of rational nature we grasp dignity grounded in it. Hence the definition of the person through Alexander of Hales in terms of this dignity: "the person is a substance which is distinguished through a property related to dignity".(9) The essence and real existence of persons give rise to an ontological dignity, of which we understand that it belongs to a subject endowed with a nature making it capable in principle of understanding, free acts, moral conscience, religious acts, etc. - in a word, to a person. And this value, dignity, in its turn, though it springs from the essential caracteristics of a person, belongs so intimately to the essence of the person that it itself distinguishes persons from other beings and is therefore rightly included in the cited axiological definition of the person.

On the inalienability of dignity

Dignity is also called 'inalienable.' This term does not really apply to all forms and dimensions of dignity as we shall see but it does apply to the ontological value of the person as such which is intelligibly rooted in the being and essence of the person.(10)

The inviolable character and sacredness of dignity and its nonnegotiable nature: dignity as object of unconditional (absolute) moral and legal respect and of an intrinsece malum.

But dignity not only means an excellence of value as such but also bears an intrinsic relationship to being the object of morality and of moral imperatives, nay even more: to being object of a special type of 'absolute' and unconditional moral imperatives.(11) It signifies not only a high and noble value such as that of an animal which ought to be respected but which allows under circumstances to slaughter or kill the animal or to use it for food or for getting its fur for aesthetic purposes. The inviolable nature of personal dignity forbids any such acts.

This can also be called the sacredness of this value which prompted already the Romans to say homo homini res sacra est (man is for man sacred a sacred thing).(12) And this sacredness includes also the human body and the sexual sphere so intimately connected with the spiritual human person.

Dignity is then a specially clear case of a morally relevant value the violation of which constitutes not merely an immoral act but a special moral outrage.

Furthermore, dignity signifies such a morally relevant value that is able to ground an intrinsece malum. Actions which are essentially and seriously (gravely) directed against this dignity are also essentially directed against morality, i.e., they are essentially and intrinsically evil and cannot become good and permissible under certain circumstances or when they are performed for certain good purposes.(13) Dignity indicates a certain 'sacrosanctness' of the person which makes the person's value inviolable forbidding to act against this dignity for any reason whatsoever.

Kant says that dignity is a value for mich no equivalent can be offered ("an dessen Stelle" nicht "etwas anderes als Äquivalent gesetzt werden" kann), i.e., which has an absolute character in that it does not permit some negotating or some offense of this dignity weiging that in a balance of goods its offence counts is outweighed by other goods. A being that possesses dignity also does not allow its violation

for any pragmatic reasons, even for a quantitatively speaking higher good. Kant goes on saying that the dignity of the person excels over anything that has a price, it is the irreplaceable value of a being which can never be negotiated (das "über allen Preis erhaben ist, mithin kein Äquivalent verstattet.").(14) Therefore to man is owed respect (Achtung) absolutely and in a way which does not allow ever to use a human being just as a means.(15) Any form of purely teleological and consequentialist foundation of moral norms fails to recognize this aspect of dignity and must therefore be rejected.(16). Inviolable dignity of course cannot have the sense that that which possesses it cannot be violated but it has the sense that a person endowed with dignity ought never to be violated with respect to that which constitutes this dignity.

Dignity and that greater than which nothing can be conceived.

The peculiar moral absoluteness and inviolability of the dignity of human life and of the human person was always seen to be both a consequence of, and a reason for, man's being in a special way similar to the id quo maius nihil cogitari possit (that greater than which nothing can be conceived); to his character of image of God.(17) For the highest and supreme dignity belongs precisely to that being which is of pure infinite perfection, to God as the only absolutely perfect being greater than which nothing can be conceived.(18) Saint Thomas refers to this relation to the absolute divine perfection in his explication of the definition of the person in terms of human dignity:
I answer that, person signifies what is most perfect in all nature-that is, a subsistent individual of a rational nature. Hence, since everything that is perfect must be attributed to God, forasmuch as His essence contains every perfection, this name "person" is fittingly applied to God; not, however, as it is applied to creatures, but in a more excellent way; as other names also, which, while giving them to creatures, we attribute to God; as we showed above when treating of the names of God (Q13, A2).(19).. Although this name "person" may not belong to God as regards the origin of the term, nevertheless it excellently belongs to God in its objective meaning. For as famous men were represented in comedies and tragedies, the name "person" was given to signify those who held high dignity. Hence, those who held high rank in the Church came to be called "persons." Thence by some the definition of person is given as "hypostasis distinct by reason of dignity." And because subsistence in a rational nature is of high dignity, therefore every individual of the rational nature is called a "person." Now the dignity of the divine nature excels every other dignity; and thus the name "person" pre-eminently belongs to God.(20)

4. THE FOUR ROOTS AND SOURCES OF HUMAN DIGNITY

What man is as person, not just what he accidentally has - his essence, being, and substance - as source of human dignity.

The first source of human dignity becomes apparent when we consider that no human conscious experiences and acts can exist in themselves. They require necessarily a subject. This subject must stand in itself in being. Never can functions, qualities of things, etc. be persons. It is evident that a property of something else, a function of the brain or of society cannot be the subject of conscious experiences and thus cannot be a person. Human experiences and acts always are of a subject which is not only more than these experiences and irreducible to them but performs them, lives them, does them or originates them in other ways. Moreover, this ultimate subject which stands in itself and is subject of rational acts cannot be just any subject such as a brain composed of millions of cells but must be a simple, spiritual subject. And this subject is a person only if it possesses a rational nature.(21)

Those who seek to restrict human dignity to the sane and healthy and intelligent members of the species man deny that the very existence and substantial nature of the human person is the source of his dignity. Authors who deny the dignity of the person to each and every man and restrict it to certain exemplars of the human kind seek to assign man's dignity to his accidental features and remove it from his essence. But we can clearly see that the being of the person, and hence also his dignity of a person qua person, does not reside only on the level of acts and accidents but resides on the level of his essence and substantial nature, and hence is given with his very existence.

To be a person, whether healthy or sick, whether male or female, whether old or young, whether conscious or in coma - is the first ground of human dignity. For the freedom and consciousness and knowledge as well as the character of an I and self which belong to the essence of the person demand clearly a subject who lives and stands in himself in being and neither is dependent on these acts nor just inheres in another thing as an accident.

Moreover, the being of the person, which is the first source of human dignity, requires both the rational and intellectual essence as well as the concrete individual existence of the subject which we designate as person. Persons are never abstract essences but always existing and incommunicable individuals. This was clearly recognized by Richard of St. Viktor who said that the person is "the incommunicable existence of an intellectual nature" (persona est intellectualis naturae incommunicabilis existentia), and that "it exists in itself alone according to a singular mode of rational existence" (existens per se solum juxta singularem quendam rationalis existentiae modum).(22)

Thus the essence of a rational being and the real existence and life of an unsubstitutable individual of such a nature interpenetrate each other in the origin of personal dignity.(23) A human being possesses inalienable dignity not only "when he functions as a person" but he possesses this dignity in virtue of "being a person".(24)

In Aristotelian terms, it is the substantial being of a man and its potencies which ground this dignity, and not only their actualisation. (25) Also when men are sleeping, they possess this dignity. Also when they fall into a state of unconsciousness or coma, they possess tis dignity. Also the embryo who cannot use his intellect yet - but possesses it as a condition of the possibility of ever using it - is endowed with this dignity of the person. We cann call this the "purely ontological dignity of persons.

THE SECOND SOURCE OF HUMAN DIGNITY: CONSCIOUSNESS AND ACTUALIZATION OF PERSONHOOD

Blaise Pascal says that "our whole dignity consists in thought".(26) This beautiful word indicates that only in rational conscious life the person realizes his being qua person. A person in an unconscious state is as it were sleeping and possesses only potentially the awakened being of a person. One could almost say that the purely ontological unconscious being of the person compared to his awakened state relates to each other as potency to act. Rational conscious life is it were the actus of personal existence. But if the person's whole dignity consisted in thought, this seems to deny dignity of the unborn or unconscious wo cannot think. Hence if Pascal is right, we must ask: is human dignity truly found in all members of the species man or do we really fall into what Singer calls 'speciecism' if we hold that?(27) Singer speaks of his "proposal that we reject the sanctity of human life".(28) He thinks, apparently as Pascal, that the value of human beings can only lie in their actual capacity to think, to will, etc. He goes as far as to defend the view that retarded and otherwise handicapped children are less endowed with dignity than pigs or chimpanzees.(29) Thus the right to life would have to be restricted to some human beings only. But would then abortion have to be allowed if really man's whole dignity consisted in thought and in conscious and free acts?

While we totally reject, for the reasons expounded above, Singer's negation of the first and most foundational level of human dignity, we do not deny that actual consciousness originates a second and new dimension of the dignity of persons.

This second source of the dignity of the human person lies in the conscious actualization of the person, in the awakened personal consciousness which is in some sense the actus of personal being. This can be absent or reduced in seriously retarded persons or in human beings in the permanent vegetative or in unconscious states.(30) Also in this consciously awakened being of the human person we find indeed the root of a new dimension of dignity which expresses itself in the acquisition of those human rights which are not - as the right to life - grounded in the very being of a person, in the substantial character of personhood, but in the different degrees of consciousness and maturity. For example the human right to freedom of speech and of movement, or to education, cannot be attributed to a small child, as little as the human right to marry, to educate children, etc. These rights which are grounded only in awakened and consciously lived personhood of a certain level of maturity are unlike the right not to be subjected to murder, to mutilation, or to undignified treatment etc., which are rooted in the first source of human dignity, the living human person as such.(31)

This second source of human dignity and of human rights can indeed be lost through so-called brain death, irreversible coma, etc.(32) Thus this second dimension of the dignity of a human person and the rights grounded in it are not as inalienable as the dignity and rights which are grounded simply in the substance, existence and essence of the person, in the first source of human dignity. Nevertheless, also this second dimension of personal dignity is inalienable as long as a person lives consciously. It does not depend on qualitative values, except in the weak sense explained below: the evil man possesses it just as the good man.

We can call it the dignity of awakened personhood or the dignity of actual rational consciousness. With regard to it we find in medicine and society today a paradoxical mixture between overrating and underrating this second source of personal dignity.

This dignity is deeply underrated when in terminal sedation and other acts directed against conscious life of persons one just puts human persons to sleep as if they were animals so that they cannot live and die in the awakened state and in form of conscious personal acts. Then only their ontological dignity is respected but even with regard to it one overlooks that it is in no way divorced from the second source of dignity which rather constitutes its actualized state: all the specific personal characteristics of mind and free will, of feeling and happiness, can only be realized through the conscious life of persons. Thus medicine should never deprive persons of consciousness for a prolonged period of time except for serious reasons. One must never forget the fact that the grave evil of falling into a state permanent unconsciousness or of being deprived of fully living a personal conscious life by serious retardation is precisely due to the great dignity pertaining to rational conscious life, to knowledge and free acts, to feelings of love and happiness.

The second source of dignity is immensely overrated, however, when persons with no or gravely diminished rational consciousness are denied the necessary quality of life required to protect their lives from abortion and euthanasia and when the dignity of human life is regarded as being founded only on the level of personal consciousness.

Most importantly, the second source of dignity of persons, however sublime, can never replace the first and most foundational level and source of personal dignity which remains the foundation of the right to life and of the dignity that forbids us to kill an innocent human being. Indeed, while the second dimension of dignity, as the dignity of actual personal consciousness and as condition of all personal acts is in a sense loftier and more evident than the first one (that would belong also to a life-long unconscious human being), the first and purely ontological dignity of the person remains the foundation of all human dignity and of the right to life. Nevertheless, the first ontological dignity is so profoundly ordained to find fulfillment in the second one that the idea of an eternally unconscious person appears almost a contradiction in terms. Yet high and crucial for the right to life and other

fundamental human rights issues as the first two dimensions of personal dignity are, they are far from the highest and most important source and dimension of personal dignity. Never forget: even the devil or a demonic human person possesses the first two dimensions and sources of dignity.

THE THIRD SOURCE AND A NEW SENSE OF QUALITATIVE PERSONAL DIGNITY: FULFILMENT OF THE PERSONAL VOCATION TO TRANSCENDENCE AND MORAL DIGNITY

Thirdly, there is a human dignity which is the result only of the good actualizations of the person through knowledge of truth, and above all through the moral perfections of justice, love of truth, kindness, etc. This self-transcending fulfilment of the person includes also the relation to a 'thou,' to another person, and ultimately the gift of self in love and in the formation of a communio personarum.(33) The mere actualization of personhood is not sufficient to ground this qualitative and mainly moral level of human dignity which also gives rise to many new human rights.

As a matter of fact, without the achievement of a minimal level of moral dignity of behaviour the privation of the right to exercise certain human rights which are grounded in the conscious existence of the person becomes legitimate, for example the privation of the freedom of movement. It is this case to which we alluded above: a minimal level of dignity in the third sense is a condition for the fullness of possession of the rights which are rooted on the second level of human dignity. For the criminal can be deprived of such elementary rights as the right to freedom of movement, of the rights to marriage, to educate his children, and others. But he must never be deprived of other human rights which are also rooted entirely and solely on the second level of personal dignity: for example the right to a fair trial, to defend himself in court, to the freedom of conscience and religion. Thus some of the human rights rooted in the consciousness of living persons are absolutely inalienable as long as they live, and whatever crime they committed. Others that are rooted on the second level can be lost when their abuse is great and when the justice of punishment requires it.(34)

Now this third dimension of dignity, as also the fourth, can only be understood in terms of the transcendence of the person:

We have insisted elsewhere(35) on the wrong conception of man implied in Aristotle's ingenius definition of the living animal as entelechy. Brilliant as this description is for plants and animals and for many dimensions of human life and soul, it is utterly misleading when it comes to be used as description of man's essence as person. For inasmuch as man's life is personal and mental life, it is in all its aspects governed, in the sense of a vocation, by a principle of transcendence in various senses of the term: In knowledge, we find a receptive transcendence, in which the being and essence of things disclose themselves to the mind. We find a reaching of mental life beyond its own immanent actuality, an openness of its subject to that which is beyond our own life, a participation in that and how things themselves are. In absolutely certain knowledge, this transcendence and the discovery of things themselves and of things in themselves, as they exist independently of human consciousness, become indubitable.(36)

In love and in moral acts we transcend ourselves in quite another sense: through the right use of our freedom, namely in freely recognizing and acknowledging the being and value of someone else in his or her intrinsic preciousness, dignity and significance.(37)

This value-responding attitude towards beings because of their intrinsic worth culminates in the essence of the religious act within which adoration, a completely transcendent affirmation of the absolute Good, constitutes the central core of all religious acts, as Max Scheler has shown in his highly original philosophy of religion.(38)

About this level of the moral dignity of the person Gabriel Marcel says rightly that it is a conquest and not a possession.(39) The totally new dimension and source of personal dignity meant here emerges

clearly in its irreducibility to the first two sources thereof when one contemplates the fact that it depends on the good use of intellect and freedom. This dignity is not inalienable nor does it automatically belong to us as persons. It is the fruit of morally good acts and thus radically distinct from the first type of dignity. It also has a distinct and unique quality which, as Kant rightly points out, culminates in holiness. This dignity differs from the purely ontological dignity of persons in that it knows opposites: it constitutes the radical contrast to the moral indignity and wretchedness, or maliciousness of a Hitler who loses any moral dignity through his actions. Evilness thus can make a person lose temporarily or for ever this dignity.

Moreover, a completely new type of esteem is owed to a person in virtue of this third source of human dignity, an esteem in a far more literal and deep sense than the one which is the adequate response of respect owed to any being which bears human countenance. This appropriate response to the third kind of dignity of persons reaches from esteem to veneration and, if this dignity is infinite, adoration. It is in an entirely new sense sacrted and holy compared to the first.

The third level of personal dignity, in this respect like the second one, can undergo innumerable degrees. It is less foundational than the first two but more sublime in value so much so that it constitutes the unum necessarium: that value that decides over the eternal fate of man, that value which accounts for the distinction between good and evil, and between winning or losing one's soul. Without it the first and second dimensions of dignity, which also the demon possesses, are of no use to a man's soul. In this purely axiological respect the third dimension of personal dignity is the most important one and is in now way guranteed by the ontological dignity of the person. A minimal degree of it is presupposed even for rights such as that to freedom of movement which a criminal can therefore lose. New human rights, such as the right to a good moral reputation and to one's honour being preserved in society, have their root in this dignity and cannot be claimed where this dignity in the moral sense of the term is largely or wholly lost.

DIGNITY AS GIFT - A FOURTH SOURCE OF HUMAN DIGNITY: EXTRINSIC RELATIONS AND INDIVIDUAL GIFTS OF VARIOUS KINDS

A fourth source of the value of a personality but also of the dignity of the person himself in his very being does not depend on the person himself, neither on his substantial being as a person nor on his consciousness, nor on the good use of his intellect and freedom. Rather, this dimension of the dignity of the person proceeds from gifts which go beyond anything purely situated within the person or his or her intellectual or moral acts and which neither each person possesses nor does each person who has dignity derivbed from these sources, necessarily possesses it in the same degree.(40)

Regarding this dimension of dignity, as with respect to the first two, many differences and no equality exist among human persons. Nevertheless, inequality among men regarding dignity is not the whole truth. Against intimations to the contrary by Marcel or Scheler, on the level of the first source of human dignity possessed in virtue of the substantial character of a human person, we must uphold a universal equality of all men with regard to their dignity. For this dignity has no other conditions besides human nature and does not come in degrees. We are obliged therefore to oppose any attempts to deny this level of equal human dignity as a foundation of the right to life.

We must therefore distinguish the being equally a human person of every man, who possesses the same fundamental human rights and is equal to all others, from other respects in which it simply is not true that all men are equal.(41)

These gifts which endow either all men or some men with a special dignity can be natural gifts immanent in persons, such as beauty or intelligence, genius or charme, strength of character, etc. These latter gifts constitute a special dignity of the genius, of the artist, etc.

Also social roles and functions can give a person new dimensions of dignity, resulting in new human rights: for example the office of the judge bestowed upon a man or woman by society gives rise to a new dignity and to a new human right: the right to the independence of the judge. Likewise, offices of authority such as that of the policeman, of the statesman, or of the king, etc. give their bearers new sorts of dignity and new rights.

The gifts from which this new dignity derives can also be gifts received through relations with other persons, such as the 'being tamed' of the fox in Le petit Prince. St. Exupery's notion of 'être apprivoisé' in the Petit Prince refers to a uniqueness a rose or an animal receive in virtue of its being loved by persons. Symbolically, this stands for similar values of uniqueness received by human beings through becoming the object of the love of other persons. Of course, personal uniqueness already precedes and motivates human love but a new dimension of uniqueness results from being loved. To this source of dignity belong as well the value of the individual through being the object of interhuman love, the value of a person as member of a community, as well as the social acceptance of a child through his parents or through society.

The human dignity which proceeds from gifts which go beyond the immanent rational nature of persons can also refer to a religious-theological and simultaneously ontological dimension of such gifts, the highest source of this dignity such as the dignity of the person loved and redeemed by God, endowed with sanctifying grace, etc.

Gabriel Marcel's 'existentialist foundation' of human dignity also refers to this fourth source of dignity. Marcel sees human dignity and brotherhood founded in the gift of a common fatherhood, which also those non-believers in God who defend human dignity unconsciously may accept in a faith deeper than their actual atheist beliefs and opinions. Marcel thinks that only such a reference to a common father renders intelligible the sense of brotherhood which also many atheists feel in relation to other men and which is conceived by Marcel as standing in some tension to equality. Thus both brotherhood and the ultimate human dignity presuppose the relationship of the bearer of human dignity to a Thou.(42)

This notion of dignity of the person, in its specifically religious aspects inasmuch as these are based on revelation, lies beyond the reach of philosophical knowledge but we can see in a philosophy of religion that this deepest religious source of dignity of persons is possible and constitutes, if it exists, quite another type of dignity in comparison with the dignity which simply immanently proceeds from a person's nature: e.g., the dignity of the person on the order of grace and of God's love and presence through grace in a soul. Moreover, the religious dimension of such gifts as the redemption and rennovation of nature,(43) if it indeed exists, as the religious believer accepts, constitutes a completely different dimension of human dignity that results from gifts in comparison with which the new dignity through interpersonal acceptance by society completely fades.(44)

As the second and third which, so also this fourth source of human dignity knows many diverse forms and can be lost because it is - at least in most of its dimensions - not given to all or necessarily.(45)

One of the chief reasons for the negation of the right to life of the unborn consists in reducing the dignity of the embryo to this fourth level of human dignity, interpreted in a completely secularised way: only the value attached to an embryo by the acceptance or love of the parents or society would bestow value on the child. This forgets not only the deeper dimensions of this fourth source of dignity but also the fact that this fourth source of dignity presupposes the first and builds upon it. This is even true of the divinely bestowed dignity, let alone of the humanly bestowed one.(46) Moreover, in believing that only if parents accept and love an embryo as their child, the embryo deserves legal protection, and tat otherwise abortion can be allowed, stem-cell research can be permitted, etc., one identifies the whole human dignity with its fourth source in its purely social interhuman aspects. This profoundly mistakes the whole of human dignity for a small portion of its fourth dimension. It also fails to see that the foundation and condition of all forms of dignity lies in the first source, the purely ontological dignity.

Thus all four dimensions of personal dignity refer back to the first inalienable one which is the most important one for the right to life and the value of human life that is violated in human acts directed against life.
At the same time the supreme dignity of the human person lies in the perfection of the person which in turn involves the deepest form and raison d'être of human dignity which can only be reached through self-transcendence and loving self-donation as it culminates in the love of God and in a holiness which entails a cooperation between freedom and grace and hence between the third and fourth dimension of dignity of persons.
In depriving the unborn or other human persons of their life, one deprives them also of the possibility to realize this deepest dimension of their vocation to a higher dignity than that of just living as persons.

NOTES

(1) See the detailed discussion of this source of moral obligations in Dietrich von Hildebrand, Moralia. Nachgelassenes Werk. Gesammelte Werke Band V. Regensburg: Josef Habbel. 1980.

(2) Such an account of human life can have other consequences such as a naturalistic relativism. See ANDRZEJ SZOSTEK's paper to this Meeting. See also JOSEF SEIFERT, Philosophy and Science in the Context of Contemporary Culture. A Culture of Life Based on an Image of Man as Person Versus an Anti-Culture of Death Based on an Image of Man as a Product of Matter and Chance, and A Critical Review of the Theory of "Evolution" Opening lecture given by invitation of the Pontifical Council for Culture in Rome, on May 23rd, 2000, Jubilee for Men and Women from the World of Learning. International Conference on Faith and Science; The Human Search for Truth. Philosophy - Science - Faith: The Outlook for the 3rd Millennium, to be published in the Proceedings.

(3) The second reason often, but not always, goes hand in hand with the first, for example in PETER SINGER. Singer's explicit evolutionistic program of unsanctifying human life launches, in quite radical form, a movement which denies any essential dignity of the human person and consequently also a universal right to life, implying that human life deserves legal protection only at a certain level of consciousness and quality of life and that the life of a healthy pig can be more worthy of legal protection than that of a seriously handicapped human being. To attribute to human life an essentially higher life and dignity he calls 'speciesism', an unfounded pride to belong to the human species. PETER SINGER, Unsanctifying Human Life, in: PETER SINGER, Ethical Issues Relating to Life and Death (Melbourne, 1979), pp. 41-61; the same author, Muß dieses Kind am Leben bleiben? (Erlangen: Harald Fischer Verlag, 1993). Besides being frequently based on an evolutionism that denies an essential distinction between human persons and animals, this position can also be based on the deflationist theory of man and on the negation of a personal subject that stands behind all conscious states and is more than them. This Humean negation of a substantial self or other forms of an actualism that sees personhood only in acts and not in a substantial spiritual subject, are likewise very widespread and do not have to be based on an evolutionist theory which Hume did not yet know.

(4) See on this ROBERT SPAEMANN, Personen. Versuche über den Unterschied zwischen etwas und jemand (Stuttgart: Klett-Cotta, 1996); see also JOSEF SEIFERT, Is Brain Death actually Death?, The Monist 76 (1993), 175-202. See also D. Alan Shewmon, 1997a, Is Brain Death Actually Death? An Autobiographical Conceptual Itinerary, Aletheia VII (1995-2001).

(5) See ROBERT SPAEMANN, Über den Begriff der Menschenwürde, in: E.-W. BÖCKENFÖRDE und R. SPAEMANN, Hrsg., Menschenrechte und Menschenwürde. Historische Voraussetzungen - säkulare Gestalt - christliches Verständnis (Stuttgart: Klett-Cotta, 1987), pp. 295-313, especially pp. 295.

(6) Fortpflanzungsgesetz and other laws governing genetic engineering.

(7) The Swiss law speaks of the "Würde der Kreatur", thus expanding the meaning of dignity to all living beings.

(8) ALEXANDER OF HALES, Glossa 1, 23, 9.

(9) Cf. also JOSEF SEIFERT, Sein und Wesen (Heidelberg: Universitätsverlag C. Winter, 1996); ID., Essence and Existence. A New Foundation of Classical Metaphysics on the Basis of 'Phenomenological Realism,' and a Critical Investigation of 'Existentialist Thomism, Aletheia I (1977), pp. 17-157; I,2 (1977), pp. 371-459.

(10) It is morally relevant. For the fundamental distinction between morally relevant and moral values see DIETRICH VON HILDEBRAND, Ethics, 2nd ed. (Chicago: Franciscan Herald Press, 1978), ch. 19.

(11) Of course, in the Jewish, Christian and Muslim faith this sacredness of dignity is explained by the character of the created person as an image of God but - if we think back of Cicero - the dignity of a person as source of moral obligations was seen clearly by the Romans as well. Cicero, De leg bus, I. vii. 22: "... animal hoc providum, sagax, multiplex, acutum, memor, plenum rationis et consilii, quem vocamus hominem, praeclara quadam condicione generatum esse a supremo deo; solum est enim ex tot animantium generibus atque naturis particeps rationis et cogitationis, cum cetera sint omnia expertia. quid est autem non dicam in homine, sed in omni coelo atque terra ratione divinius? quae cum adolevit atque perfecta est, nominatur rite sapientia. est igitur, quoniam nihil est ratione melius homine et in deo, prima homini cum deo societas..."
Dignity is not only a sublime value but it is also different from the sublime value as we find it in art which fails to bind our moral conscience. Rather, dignity signifies a preciousness of the person which is both so essential for personhood and so imposing that it issues moral imperatives to respect it, nay more: Dignity imposes a strict obligation to respect a being endowed with it both legally and morally in an essentially higher and more absolute manner than those beings which also possess morally relevant value but lack this dignity, as for example animals. Certainly, also cruelty to animals is morally evil but it cannot be compared to the violation of persons endowed with this lofty and morally imposing value: dignity. When therefore in 1993 a Swiss animal rights group repeatedly distributed material against the "Pig KZ" of the Prince of Liechtenstein in Austria, the equalization implicit in such flyers of the undoubted value of pigs and of the dignity of the persons who were murdered in Auschwitz and other concentration camps is ludicrous.

(12) The Encyclical Evangelium Vitae makes this point clearly:
procured abortion is the deliberate and direct killing, by whatever means it is carried out, of a human being in the initial phase of his or her existence, extending from conception to birth. (Ibid., 58). In the same chapter of Evangelium Vitae he states that in "procured abortion ... we are dealing with murder". This would also be false if the teaching on delayed infusion of the soul were true. Again, the Pope quotes the document Donum Vitae which expresses the same thought clearly: "The human being is to be respected and treated as a person from the moment of conception; and therefore from that same

moment his rights as a person must be recognized, among which in the first place is the right of every innocent human being to life. Donum Vitae I, 1: AAS 80 (1988), 78-79. But how should his "rights as a person be recognized" if he were not a person! Evangelium Vitae adds: "Human life is sacred and inviolable at every moment of its existence, including the initial phase which precedes birth". (JOHN PAUL II, Evangelium Vitae, ibid., n. 61).
Pope JOHN PAUL II also quotes Pope Pius XII, John XXIII, and others with similar statements (ibid., n. 62).
Also his condemnation of each and every abortion from the moment of conception on as an intrinsece malum in a quasi-dogmatic and if so, infallible, passage (ibid., 62), proves that the moral doctrine of the Church today (not at Saint Thomas's time) absolutely requires to admit the personal being of each human being from conception on. Let us read this magnificent text in which the glorious beauty of the authentic notion of the Magisterium shines forth:
Therefore, by the authority which Christ conferred upon Peter and his Successors, in communion with the Bishops .... I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being. (Evangelium Vitae, n. 62).
For under its assumption it could not be apodictically, if not even dogmatically be asserted by the Pope in Evangelium Vitae that even in the case of danger to the mother's life (a person's life) the killing of the fetus is morally wrong (intrinsically and always wrong)! This position, as also Church history shows at the time of the universally accepted theory of "unformed fetuses," it is far from evident, if not even counterevident, that in the case of a conflict between a person and a non-personal life, the person would not have precedence.

(13) I. Kant, Grundlegung zur Metaphysik der Sitten, 434: Im Reiche der Zwecke hat alles entweder einen Preis, oder eine Würde. Was einen Preis hat, an dessen Stelle kann auch etwas anderes als Äquivalent gesetzt werden; was dagegen über allen Preis erhaben ist, mithin kein Äquivalent verstattet, das hat eine Würde. Vgl. Ebd., 436: Diese Schätzung giebt also den Werth einer solchen Denkungsart als Würde zu erkennen und setzt sie über allen Preis unendlich weg, mit dem sie gar nicht in Anschlag und Vergleichung gebracht werden kann, ohne sich gleichsam an der Heiligkeit derselben zu vergreifen. Vgl. auch Metaphysik der Sitten VI, 434: Allein der Mensch, als Person betrachtet, d.i. als Subject einer moralisch-praktischen Vernunft, ist über allen Preis erhaben; denn als ein solcher (homo noumenon) ist er nicht blos als Mittel zu anderer ihren, //VI435// ja selbst seinen eigenen Zwecken, sondern als Zweck an sich selbst zu schätzen, d.i. er besitzt eine Würde (einen absoluten innern Werth), wodurch er allen andern vernünftigen Weltwesen Achtung für ihn abnöthigt, sich mit jedem Anderen dieser Art messen und auf den Fuß der Gleichheit schätzen kann.
Die Menschheit in seiner Person ist das Object der Achtung, die er von jedem anderen Menschen fordern kann; deren er aber auch sich nicht verlustig machen muß.

(14) See his famous text from his Foundations B 64/65: But suppose there were something the existence of which had itself absolute worth, something which, as an end in itself, could be a ground of definite laws. In it and only in it could lie the ground of a possible categorical imperative, i.e., of a practical law.
Now, I say, man and, in general, every rational being exists as an end in himself and not merely as a means to be arbitrarily used by this or that will...All objects of inclinations have only a conditional worth, for if the inclinations and the needs founded on them did not exist, their object would be without worth... And the German original: Immanuel Kant, Grundlegung zu einer Metaphysik der Sitten, BA 64, 65: Gesetzt aber, es gäbe etwas, dessen Dasein an sich selbst einen absoluten Wert hat, was als Zweck an sich selbst, ein Grund bestimmter Gesetze sein könnte, so würde in ihm, und nur in ihm allein, der Grund eines möglichen kategorischen Imperativs, d.i. eines praktischen Gesetzes, liegen.

Nun sage ich: der Mensch und überhaupt jedes vernünftige Wesen, existiert als Zweck an sich selbst, nicht bloß als Mittel...Alle Gegenstände der Neigungen haben nur einen bedingten Wert; denn wenn die Neigungen und darauf gegründeten Bedürfnisse nicht wären, so würde ihr Gegenstand ohne Wert sein. Vgl. auch Kant, KpV 61, 62.

(15) The dignity of the person forbids for example absolutely to rape a woman, even if such an action can save ten other women from a similar fate: because such an attack against freedom and sexual integrity is essentially an attack against the inviolable human dignity both of the woman and of the rapist and is therefore essentially and intrinsically wrong. This inviolability that is inseparable from the dignity of the person belongs both to the person himself and to the rights which issue from the person. Cf. J. Seifert, "Absolute Moral Obligations towards Finite Goods as Foundation of Intrinsically Right and Wrong Actions. A Critique of Consequentialist Teleological Ethics: Destruction of Ethics through Moral Theology?", Anthropos 1 (1985), pp. 57-94.

(16) Anselm of Canterbury (Aosta), Proslogium, ch. 2-3.

(17) Cf. on this the deep analysis of the unique divine dignity in Otto, Rudolf, Das Heilige. Über das Irrationale in der Idee des Göttlichen und sein Verhältnis zum Rationalen, pp. 14 ff., 66 ff. Otto analyses moments such as the 'tremendum', the 'sanctum', the 'augustum', the unique majesty and other numinous values which exclusively pertain to God but archetypically and most perfectly constitute personal dignity. He investigates also the strict intentional correlation between these moments of the Holy and the corresponding moments of the religious act. Cf. also R. Otto, "Wert, Würde und Recht", as well as R. Otto, "Wertgesetz und Autonomie".

(18) Summa Theologiae, I, Q 29 A 3 Rp 1.

(19) See THOMAS AQUINAS, Summa Theologica I, Q. 29, a. 3, Ra 2:
RA2
Ad secundum dicendum quod, quamvis hoc nomen persona non conveniat deo quantum ad id a quo impositum est nomen, tamen quantum ad id ad quod significandum imponitur, maxime deo convenit. Quia enim in comoediis et tragoediis repraesentabantur aliqui homines famosi, impositum est hoc nomen persona ad significandum aliquos dignitatem habentes. Unde consueverunt dici personae in ecclesiis, quae habent aliquam dignitatem.
Propter quod quidam definiunt personam, dicentes quod persona est hypostasis proprietate distincta ad dignitatem pertinente.
Et quia magnae dignitatis est in rationali natura subsistere, ideo omne individuum rationalis naturae dicitur persona, ut dictum est.
Sed dignitas divinae naturae excedit omnem dignitatem, et secundum hoc maxime competit deo nomen personae.
He also speaks of a "Distinctio supereminentis dignitatis" (THOMAS AQUINAS, In Sent., pag. 133, 136, 137, 228-229). Cf. Urs von Balthasar, "Zum Begriff der Person," cit., p. 98.

(20) Cf. JOSEF SEIFERT, Leib und Seele. Ein Beitrag zur philosophischen Anthropologie (Salzburg: A. Pustet, 1973); and the same author, Das Leib-Seele Problem und die gegenwärtige philosophische Diskussion. Eine kritisch-systematische Analyse (Darmstadt: Wissenschaftliche Buchgesellschaft, 21989). This very subject of consciousness must be a spiritual entity, wherefore man can only be a person in virtue if his rational soul; for the unity and singleness of the subject of trillions of experiences necessarily is a spiritual, non-material subject. And in this subject of rational nature we discover the first source of personal dignity. Boethius saw this clearly when he said: "Persona est rationabilis

naturae individua substantia" (the person is an individual substance of rational nature).Boethius, Contra Eutychen et Nestorium, cap. 3.

(21) Richard von St. Viktor, Trin. 4, 22; ebd. 4, 25. The reality of individual existence, and even the absolute uniqueness and non-substitutability of the person as a subject endowed with a rational nature, is a condition of human dignity and of any personal dignity.

(22) We may add here a point which is more easily accessible from a linguistic standpoint and which Stephen Schwarz has emphasized in his important recent book on the moral question of abortion. See Stephen Schwarz, The Moral Question of Abortion (Chicago: Loyola University Press, 1990).

(23) Schwarz, ibid., pp. 100-113. The root of the dignity of the person thus lies in his substantial reality and this excludes that the person possesses his dignity only in terms of functioning as a person.

(24) For this reason, it is unfortunate that Scheler thinks that he can save the category of person only by denying the substantial being of the person as standing in himself in being. So he says in Die Stellung des Menschen im Kosmos, p. 39:
Das Zentrum des Geistes, die "Person", ist also weder gegenständliches noch dingliches Sein, sondern nur ein stetig selbst sich vollziehendes (wesenhaft bestimmtes) Ordnungsgefüge von Akten.

(25) See Blaise Pascal, Thoughts, 5th ed., transl. and introd. by A.J. Krailsheimer, (London: Penguin, 1973):
146. Man is obviously made to think. It is his whole dignity and his whole merit; and his whole duty is to think as he ought. Now, the order of thought is to begin with self, and with its Author and its end.
See also Blaise Pascal, ibid.:
346. Thought constitutes the greatness of man.
347. Man is but a reed, the greatest in nature; but he is a thinking reed. The entire universe need not arm itself to crush him. A vapour, a drop of water suffices to kill him. But, if the universe were to crush him, man would still be more noble than that which killed him, because he knows that he dies and the advantage which the universe has over him; the universe knows nothing of this.
All our dignity consists, then, in thought. By it we must elevate ourselves, and not by space and time which we cannot fill. Let us endeavour, then, to think well; this is the principle of morality.
348. A thinking reed.- It is not from space that I must seek my dignity, but from the government of my thought. I shall have no more if I possess worlds. By space the universe encompasses and swallows me up like an atom; by thought I comprehend the world.
And again ibid.:
365. Thought.- All the dignity of man consists in thought. Thought is, therefore, by its nature a wonderful and incomparable thing. It must have strange defects to be contemptible. But it has such, so that nothing is more ridiculous. How great it is in its nature! How vile it is in its defects!
But what is this thought? How foolish it is!

(26) PETER SINGER, "Unsanctifying Human Life", in: Ethical Issues Relating to Life and Death (Melbourne, 1979), pp. 41-61.

(27) Singer, ibi., p. 59, Ebd., p. 43; p. 50.

(28) In rejecting this dignity founded on the very substance of the person, Singer makes an excellent point regarding abortion insisting that his view would be inadmissible and abortion would be wrong if man's potentiality already made him a person and if he possessed a soul.

See Singer, ibid., p. 50:
I will only point out that if we believe it is the potential of the infant that makes it wrong to kill it, we seem to be committed to the view that abortion, however soon after conception it may take place, is as seriously wrong as infanticide.

(29) Fichte and Engelhardt assume that the state of actualized personhood is reached by normal children only after the second year of life; one could also put it at a much later or earlier date. For the consciously awakened being of the person undergoes an infinity of shades and degrees, from the first prenatal experiences in the embryonic state to the early childhood until adulthood.

(30) Cf. J.-M. Palacios, ibid., p. 262.

(31) One of the first sharp critics of the identification of death with brain death was Hans Jonas. Cf. H. Jonas, 'Gehirntod und menschliche Organbank: Zur pragmatischen Umdefinierung des Todes' (abbr. 'Gehirntod'), in: Jonas, H.:Technik, Medizin und Ethik. Zur Praxis des Prinzips Verantwortung, (Frankfurt a.M.: Insel Verlag, 1985), pp. 219 241. Cf. also Hans Jonas, Philosophical Essays: From Ancient Creed to Technological Man (Chicago and London: The University of Chicago Press, 1974), and Jonas, "Against the Stream: Comments on the Definition and Redefinition of Death", in: Philosophical Essays: From Ancient Creed to Technological Man, Prentice-Hall (Englewood Cliffs, N.J., 1974), pp. 132-140.
See also my critique of the notion that brain death is actually human death in J. Seifert, "Is 'Brain Death' actually Death? A Critique of Redefining Man's Death in Terms of 'Brain Death'"; in: R.J. White, H. Angstwurm, I. Carasco de Paola (Ed.), Working Group on the Determination of Brain Death and Its Relationship to Human Death, Pontifical Academy of the Sciences (Vatican City, 1992, S. 95-143. See also my "Hirntod: Ein Beitrag zur Kritik der philosophischen Korrumpierung der medizinischen Technik", in: Ethik und Technik (Zürich: M&T edition, 1988). See likewise my paper "Is Brain Death Actually Death?", forthcoming in the Monist, Summer 1993. See also my "Ist 'Hirntod' wirklich der Tod?" in WMW. Diskussionsforum Medizinische Ethik, Nr. 4, October 1990, D2, 4 pp.; and my "Erklären heute Medizin und Gesetze Lebende zu Toten?" in Organspende: Kritische Ansichten zur Transplantationsmedizin, ed. R. Greinert and G. Wuttke, (Göttingen: Lamuv Verlag 1991), S. 185-208; 23 pp.

(32) Many thinkers of the 19th and 20th centuries have insisted on this: Feuerbach, Martin Buber, Gabriel Marcel, Dietrich von Hildebrand, Hans Urs von Balthasar, and others.

(33) Palacios has expressed excellently the difference between the second and third level of human dignity:
Personalistic philosophy thus attributes to the person an ontological dignity which constitutes the foundation of a part of his moral dignity. On the one hand, then, the person is partly endowed with dignity by the mere fact of his existence as person, and this fact makes him merit to be treated in a certain manner, which can already be regarded as a form of moral(ly relevant) dignity. But, on the other hand, any person makes himself worthy or unworthy morally in a more proper sense in turning into such or such a person - into a good or into an evil person, as we say in plain English - in virtue of the moral acts which he performs.
La filosofía personalista atribuye, por tanto, a la persona una dignidad ontológica que constituye el fundamento de una parte de su dignidad moral. De una parte, pues la persona es, por una parte, ontológicamente digna por el mero hecho de ser persona, y ello la hace acreedora a ser tratada de una cierta manera, lo cual puede ya considerarse como una forma de dignidad moral. Mas, por otra parte, cada persona humana se hace digna o indigna moralmente en sentido más propio al convertirse en tal o

cual persona - en una buena o una mala persona, como decimos los españoles - en razón de los actos morales que realiza.
J. - M. Palacios, ibid., p. 261.

(34) See my Essere e persona. Verso una fondazione fenomenologica di una metafisica classica e personalistica. (Milano: Vita e Pensiero, 1989), ch. 9.

(35) See my Back to Things in Themselves.

(36) Works of art or other persons possess their value completely independently of our own interests and of the fulfillment of our desires and we are able to respond to them because such an admiration, respect, or love are due to these beings and persons. The central discoveries of value-response in Dietrich von Hildebrand's ethics and the philosophy of love and of the personalistic principle in Polish ethics elucidate this profound essential mark of the person. See Dietrich von Hildebrand, Ethics, ch. 1-3, 17-18; the same author, Das Wesen der Liebe, ch. 1-5, 9. See Karol Wojtyìa, Love and Responsibility, trans. by H.T. Willetts (San Francisco: Ignatius Press, 1993), see Tadeusz Styczeî, "Zur Frage einer unabhängigen Ethik", in: Tadeusz Styczeî, ANDRZEJ SZOSTEK, Karol Wojtyìa, Der Streit um den Menschen. Personaler Anspruch des Sittlichen (Kevelaer 1979), and ANDRZEJ SZOSTEK, ibid.

(37) MAX SCHELER, "Probleme der Religion", pp. 101 ff. Think of Scheler's beautiful 'definition' of the essence of man in terms of transcendence and self-transcendence:
Thus the intention and directedness of man beyond himself and beyond all life constitutes his essence. This precisely is the proper essential concept of "man": He is a thing which transcends himself and his life and all life. His essential core - prescinding from his special constitution - is exactly that movement, that spiritual act of self-transcendence!
The text continues: "This fact, however, is in equal measure misconceived and ignored by "humanistic" and by "biological" ethics.This translation is mine. For the original text see MAX SCHELER, Der Formalismus, p. 293:
So macht die Intention des Menschen über sich und über alles Leben hinaus eben sein Wesen aus. Das eben ist der eigentliche Wesensbegriff des "Menschen": Er ist ein Ding, das sich selbst und sein Leben und alles Leben transzendiert. Sein Wesenskern - abgesehen von aller besonderen Organisation - ist eben jene Bewegung, jener geistige Akt des Sichtranszendierens! Dies aber verkennen die "humane" Ethik und die "biologische" Ethik in gleichem Maße.
See also the official English translation of Scheler's main work: M. Scheler, Formalism in Ethics and Non-Formal Ethics of Values. On man as a trans-telechy rather than an en-telechy see also J. Seifert, Essere e persona, ch. 9.

(38) This would not be true about the first ontological level of personhood and only true in a very restricted sense about the second level and source of the dignity of a person. Through education, through refinememnt of thought, but much more through the acquisition of moral values this dimension of personal dignity is increased.

(39) With regard to these gifts fundamental inequalities exist so that a fraternal recognition of the value of each person seems to stand in contrast to the claim to total equality, as thinkers such as Gabriel Marcel or Erik Kühnelt-Leddin have pointed out. The cry for fraternité of the French Revolution contradicts in some measure, so these thinkers pointed out, the cry for egalité of the same revolution. As a matter of fact, as MAX SCHELER sought to demonstrate, a claim to equality that denies the existing differences of talents and gifts of various kinds would result from a root of ressentiment rather

than from an insight into a universal equality of human nature. For, quite simply put, with respect to the fourth, as well as with respect to the second and third, source of human dignity men are not equal. Cf. MAX SCHELER, Das Ressentiment im Aufbau der Moralen.

(40) And to claim an equality of dignity with respect to these inequalities can be the fruit of ressentiments and envy rather than of truth. This does not exclude that the fourth source of dignity through extrinsic gifts could in principle also be bestowed upon all men - as the religious person believes this to be true of such values as 'being the object of divine mercy' or 'being redeemed by Christ'.

(41) Cf. Gabriel Marcel, The Existential Background of Human Dignity. Cf. also Gabriel Marcel, Die Menschenwürde und ihr existentieller Grund, pp. 139-162; 163 ff. Cf. also Erik Kühnelt-Leddin, Liberty or Equality. The Challenge of Our Time.

(42) The old prayer of the Tridentine liturgy expressed this dimension of dignity saying: "Deus, qui dignitatem humanae substantiae mirabiliter condidisti et mirabilius reformasti.."

(43) Of this religious gift of a new dignity through grace THOMAS AQUINAS speaks in Summa Theol., a Iiae, Q. 63, a.2. co:
Et quia personarum acceptio est cum aliquid personae attribuitur praeter proportionem dignitatis ipsius, considerare oportet quod dignitas alicuius personae potest attendi dupliciter. Uno modo, simpliciter et secundum se, et sic maioris dignitatis est ille qui magis abundat in spiritualibus gratiae donis. Alio modo, per comparationem ad bonum commune, contingit enim quandoque quod ille qui est minus sanctus et minus sciens, potest maius conferre ad bonum commune, propter potentiam vel industriam saecularem, vel propter aliquid huiusmodi. Et quia dispensationes spiritualium principalius ordinantur ad utilitatem communem, secundum illud I ad Cor. XII, unicuique datur manifestatio spiritus ad utilitatem; ideo quandoque absque acceptione personarum in dispensatione spiritualium illi qui sunt simpliciter minus boni, melioribus praeferuntur, sicut etiam et deus gratias gratis datas quandoque concedit minus bonis.

(44) We do not deny that the existence and life of a person, too, can be rightly interpreted as gifts but they do not have the peculiar character of extrinsic gifts intended here. Existence and life of the person are not elements which go beyond the possession of human being and nature. At the same time, they are not within the power of the man who is endowed with dignity, as the third source of moral dignity largely is.

(45) Thomas regards even the divinely given dignity through redemption as the fruit of a certain recognition from the side of God of the ingherent dignity of human nature. See his De rationibuis fidei, cap. 5:
Homo enim suam infirmitatem cognoscens, si ei promitteretur quod ad beatitudinem perveniret, cuius vix Angeli capaces sunt, quae scilicet in visione et fruitione dei consistit, vix hoc sperare posset, nisi ex alia parte sibi dignitas humanae naturae ostenderetur, quam tanti aestimat deus, ut pro eius salute homo fieri voluit. Et sic per hoc quod deus factus est homo, spem nobis dedit ut homo etiam posset pervenire ad hoc quod uniretur deo per beatam fruitionem.

MARIA DOLORES VILA- CORO

THE RIGHTS OF MAN AND THE RIGHT TO LIFE

INTRODUCTION

The scientific revolution of the last 50 years is advancing more and more rapidly; it has resulted in a wary society. Nowadays, the application of Biotechnology on man is such that it can have influence upon the constitutive essence of the human being and the structure of the family and of society. It can even modify the very identity of the individual and the human species by means of irreversible transformations: cloning, the manipulation of gametes and embryos, replacing a human prenatal habitat by an animal one, interspecies fertilisation..
This situation makes it necessary to adopt clear positions, points of view and criteria which do not deform moral consciences, and do not give rise to the legalisation of activities which are contrary to the respect for human life and the dignity of the individual. It is worth pointing out the error of positions taken up by some experts in Bioethics. These errors have led in Spain to some laws and Court judgements which do not protect the fundamental right to life.
My starting point will be to describe, from a human rights perspective, the present situation. I use Spain as an example of what could be happening in other countries.

HUMAN RIGHTS

A consideration of the origin and formation of human rights can lead to the study of fundamental rights. These arose in order to enable man to develop and use his personality to the full. They have a double perspective; firstly, the authority for man to exercise his power within his ambit or dominium and secondly, the capacity to prevent disturbance of the peaceful enjoyment of the space in which his legitimate power is exercised.
The Law must grant man certain freedoms and rights over and above the state and the political community(1). In accordance with Bodin "a human right is a right which man has established in accordance with nature and for its usefulness" (2).
The origin of human rights can be attributed, principally, to two clearly differentiated sources.

Iusnaturalism

For the followers of this theory Human Rights have their basis in the values and principles of Natural Law. These are notions of such obvious certainty that nobody can deny them unless they are stripped of their true meaning, of their moral evidence which is something akin to a natural sensory perception(3). The expression natural justice was used by the Roman legal experts in a very wide sense: what nature has taught all animals(4). With specific regard to man, natural justice refers to man's natural essence. It presupposes reason as the faculty of considering a thing in relation to that which derives therefrom: thus the ability to make deductions or inferences(5).
Christianity developed and advanced iusnaturalist principles considering them to be an essential characteristic of man, a natural result of his human condition and inherent to his dignity. Their origin lies in Natural Law which in turn partakes of Eternal Law, so natural rights are constitutive elements of the order of the Universe. They are previous to all positive Law. Positive Law crystallises them in specific norms and assimilates them as a foundation for juridical ordinances. Natural rights correspond to man because they are demanded by his nature and dignity; they are ontological in kind.

In the XVII century we witness a new concept of natural rights. This concept has its basis in a system of moral values, is utilitarian and individualistic, is disconnected from duties and emphasizes vindicative aspects. It leaves man without social bonds and leads to a conflictive existence with the others who are all fighting for their rights. This new concept was principally the work of two English ideologists who broke with the Scholastic tradition; namely Thomas Hobbes and John Locke. Scholasticism provided a global conception of ethics and politics presided over by theology. Rights were subordinate to the idea of duty, man being a creature of God who must obey the commandments.

Hobbes's laws of utilitarian morality are pragmatic and reasoned orders formulated with a view to achieving a proposed aim. They are, in effect, a justification for the most blatant and ruthless bourgeois egoism. They do not seek to do good in itself but rather to avoid the evils caused by remaining in a natural state. Locke modified the Hobbesian model and based human rights on the concept of property. This concept includes life as well as freedom and property in the sense of dominion over things, The man of property is the basic anthropological concept of the philosophy of liberalism.(6)

For Millán Puelles it is Kant with his idea of strictly defined law who opens the door to positivist juridical theory. Kant states that law pure and simple is correlative to the possibility of using physical means of coercion. For Kant, strictly defined law is that which has no ethical component of any kind. When Rosseau laid the foundations of the modern theory of democracy, he put forward the opinion that rights only exist in so far as they are generated by the general will which is both the source and the guarantee of natural rights. The citizen expresses his will in Laws and these laws in turn express natural principles. Rosseau does not take into account that the general will cannot be extrapolated because it is the citizens themselves who make the laws and grant rights. The followers of this theory subscribe to juridical positivism.(7) Bioethics based on consensus, which some seek to impose today, is heading in this direction.

Positivism

The other source of rights is legal regulation in itself which does not recognise inherent rights of man; it is laws which grant him such rights. This is the position of juridical positivism which reacts strongly against anything metaphysical in law - Natural Law in effect - which might affirm the existence of an order of extrajuridical values.(8) Both the historical German School of Law, influenced by Romanticism, and the French school of exegesis, a consequence of rationalism, declare themselves against Natural Law.(9) These positivist positions only admit rights established by norms, with the result that the citizen is entitled to these rights only if the legislative body sees fit to grant them.

To sum up, we can see that the concept of human rights has two distinct perspectives. Iusnaturalist principles consider that these rights belong to man and are inherent to his nature. They are objective and universal because they address all men who share the same nature and condition. They are therefore previous to the State which merely recognises and protects them. The Positivist position views them purely from the perspective of Positivist Law. It admits those rights granted by norms although they may recognise certain rights inherent to man's condition.(10)

Rationalism and Scientificism have contributed to the formation of technoscientific thought which rejects anything transcendental and, consequently, does not accept any kind of natural moral law being limited to the quantitative aspect of matter. Since the human mind has been granted the ability to exceed any and all frontiers the situation is thus ripe for subjectivism to present its perspective of ethics. "That which I believe to be good I can express in a norm". In order to avoid solipsism the fact that the individual might know the truth is questioned. Contractualism is thought to have found the perfect formula since the capacity of understanding "to know" is achieved by the contrasting of

opinions in order to find the agreed norm which will be accepted by everyone as valid. To make this easier, bioethics based on minimums as a result of consensus is promoted.

DIGNITY OF THE PERSON

The Spanish Constitution -article 10- proclaims: "The dignity of the individual person, inviolable rights which are inherent to him, the free development of the person and a respect for law and the rights of others which are the foundation for political order and social peace". The rights of the human person are derived from dignity. Among these rights, the right to life has been defined as fundamental and central, for without it no others exist. This article was inspired by the German Constitution "The dignity of man is sacred and it is the duty of all the authorities of the state to protect and respect it". Spanish laws are heirs to the Greek philosophical tradition, Roman law and Christian culture. Christianity to be taken here as an anthropological conception of man not purely in its religious aspect. In the Civil Code we come across some concepts which need no further explanation in order to be understood. Everyone understands, respects and accepts these concepts which appeal to moral principles; standards like bona fide, the prudent paterfamilias or reasonable man, proper prudence ... which relate to an underlying objective morality which clarifies, completes and above all lays the foundation for the norm.

The pool of values and principles shaped by our minds contemplate man from a spiritual dimension which brings together the values and principles in existence throughout our History. Given that human life is superior it can thus be consistently deduced that it is sacred for man; that is, intrinsically sacred due to its very nature and thus worthy of the greatest respect.

The fundamental dignity of the person is at the root of all basic rights, although in some rights it is more patently obvious than in others, as in the right to physical and moral integrity; to religious and ideological freedom; to personal freedom; the right to honour, personal and family privacy; freedom of expression, education and conscientious objection. According to Lucas, anthropological reflection contemplates man from a corporeal-spiritual dimension.(11) The Constitutional Court(12) recognised this on stating that the Constitution has "elevated the dignity of the person to a fundamental juridical value along with the value of human life and essentially related to the moral dimension of the latter. This dignity, without prejudice to inherent rights of the person, is closely linked to the full development of the person (Art 10) and the rights to physical and moral integrity (art 15) and to personal and family privacy (art 18.7)...Torture and mutilation, degrading and inhuman treatment are attacks on the very essence of dignity and imply forgetting the human condition of those who suffer them".(13)

The formula which proclaims human dignity as a value and a guiding principle of Law is in accordance with the reality of man and, for this reason, it has been accepted by all countries subscribing to the U.N's Universal Declaration of Human Rights. In this declaration the defence of dignity is claimed as a fundamental and guiding principle for all rights.

Declarations of Human Rights, constitutions of the states in the western world, numerous documents and reports of International organisations proclaim the dignity of the person and fundamental rights amongst which the right to human life, considered by some to be sacred, stands out(14). Yet, as will be seen later, a series of norms related to the application of scientific and medical advances on human beings, and some Court Judgements respect neither the dignity of the individual nor his right to life.

The anthropological importance of man, which goes far beyond mere biology because it is open to transcendence, is the key to argumentation about the dignity of the person. It is an approach which does not necessarily require a religious belief, for although an approach to God may be the ultimate foundation of the value, there is another foundation which is close to it; that of not reducing everything to mere biology. It is opposed by Engel's materialist vision of human life occording to which life is

purely one of various forms of movement of matter. From this a view of Law is derived which does not observe superior values in man and consequently does not recognise that he has rights.
Utilitarians do not accept, and therefore deny, the sacredness of human life by which we mean that it cannot be disposed of at will; utilitarians accept that it can be disposed of at will, that is, it can be made use of. By not accepting that life is a value in itself, they do not accept either that life is worth living unless it has a certain quality: quality of life is considered more important than life itself. But they do not realise that both viability and quality of life have their origin and foundation in life itself, from which they derive their value. In this way logical order is altered and the accident is elevated above the substance. We have here a categorical fallacy which consists of introducing terms from different categories of reasoning.

THE RIGHT TO LIFE

The Right to Life does not figure in any Spanish Constitution until 1978. When Article 10 of the 1978 Constitution was being discussed in the Senate the law Professor Sánchez Agesta affirmed that in the Spanish tradition individual rights date from the XII century. They appear in the Charter of Leon (Fuero de León), referred to as the Magna Carta by some historians, one century before the English Magna Carta(15) which John Lackland granted to his English subjects in 1215 abolishing the death penalty. In 1976 the Virginia Declaration proclaimed the right to life, which was then included in the United States Declaration of Independence and the Declaration of the Rights of Man and of the Citizen in 1789. Romeo Casabona affirms that it is a clear recognition which does not only have symbolic value.(16) Although in this author's opinion this recognition implies a binding obligation and carries with it an authentic juridical duty for those the norm is aimed at some laws, as we will see later, fall outside the framework within which human life must be protected and clearly subscribe to utilitarianism.
The special characteristic of the right to life is that it constitutes an anthropological prius. It is more than a fundamental right; it is the condition which makes any subsequent right possible: life is empirical not theoretical. "The fact of life is an entitlement to the right to life".(17) To be absolutely precise we cannot say that human life is only a right because it is in fact the support and the raison d'être of all other rights. Without life there can be no power which is the intrinsic basis of all rights. "The first attribute of this radical reality which we call "our life" is the sheer fact that it exists for itself, it is aware of itself, it is transparent to itself. This alone means that life and all that which forms part of its is indubitable and, precisely because it is the only indubitable, so it is radical reality".(18)
In the Spanish Constitution, Chapter II, Section 1 Regarding fundamental rights and public freedom, we find article 15 in first place in order to make clear its prominent position with regard to other rights... "Everyone has the right to life and to physical and moral integrity and cannot under any circumstances be subjected to torture or inhuman degrading punishment or treatment. The conservation of life is a right of the human being which is protected by the Constitution because it comprises a fundamental value which is absolute in the sense that it is a vis-à-vis the whole world. Although it is absolute it is constrained by the rights of other individuals.
Human life does not consist only of maintaining existence; being born, growing, developing. It is a gradual process of self-formation, a task which is carried out in a set environment which determines whether some or other genes are expressed, a habitat in which the human being grows and develops in the exercising of the superior faculties he possesses.
Of the greatest importance in this respect is what I call the prenatal habitat. The protection of life also includes the protection of the closed space in which the human being is formed. This first habitat

ordained by nature is denied by the donation of ovules and by surrogate motherhood, when the child has to grow in a different womb from that of the mother who produced the ovule.
Article 45 of the Spanish Constitution establishes that "Every person has the right to enjoy an environment appropriate for personal development as well as the duty to conserve it".(19) The legally protected value is that of a suitable habitat for the development of the individual. Given that the human being requires an appropriate physiochemical and biological environment as well as an emotional, intellectual and moral one. I am of the opinion that "environment" should refer to all that which has regard to the different stages of man's development.
One of the laws generated by article 45 of the Constitution is Law 4/89 regarding the Conservation of natural spaces and plant and animal wildlife. This law was the object of an appeal of inconstitutionality. In the Court Judgement resolving the appeal the Constitutional Court defined medio ambiente (environment) as a set of circumstances in which a person lives, the harmonious ordering of the setting of man's life which conditions his existence, identity and development".(20)
When our Constitution was proclaimed (1978) it could not be imagined that a human being might develop in a womb that was not the mother's. Obviously article 45 was not formulated with this possibility in mind. But is clear that it should include this first intimate and very personal environment which is of utmost importance for the formation and development of the individual during the early stages of existence. UNESCO'S Universal Declaration on the Human Genome, article 4, states that genes are expressed in different ways depending on the natural and social environment of the individual. Environmental influence is determinant because it directly affects the formation and development of the individual and thus the right to life.
By allowing a woman without a partner access to artificial fertilisation the child is deprived of the presence of the biological father. If the woman is in a homosexual relationship the child is placed in a family environment which goes against the natural order of things, where the masculine role, with its inherent defining and characterising elements, is assumed by a woman. The same occurs in the adoption of children by homosexuals. In the cases where the couple make use of an anonymous donor, whether it is the mother or the father, the relationship of phylogenetic causality will have been broken and a person will have been deprived of a necessary reference in order to establish his personal identity. Besides, concealing the identity of the father may have consequences that have not been sufficiently evaluated; amongst others the risk of consanguineous unions.
The neurobiologist Rodríguez Delgado explains how genetic plans are basic for the initial phases of cerebral formation and development and that they are connected with the establishment of systems and ways of learning, but, and I would like to draw the reader's attention to this point, "these initial phases are influenced considerably by the impact of sensorial perceptions which supply information...".(21) In short, by dissociating genetic continuity, an alien learning environment is introduced; the habitat of the child has been altered to the effect that he will receive an information impact alien to his own habitat which constitutes his natural continuity.
Today there is great concern about the environment as shown by the large number of congresses and meetings which are called to this end. In the international sphere the Summit Conferences of Río de Janeiro in 1992, Kioto in 1997 and Buenos Aires in 1998 stand out. The Maastrich Treaty includes a section on environmental protection, Regulations have multiplied in Europe with Community Directives and Recommendation of International Organisms and Conferences and include provisions regarding natural spaces, the conservation of threatened species (plants and animals)... atmospheric pollution and noise pollution, conservation of the ozone layer and biodiversity, amongst many others.(22)
We should show a similar concern for the specific environment of the human being during its initial stages of development.

PERSON VERSUS LEGAL PERSONALITY

During the parliamentary stage prior to the passing of the Spanish Constitution which is currently in force there was a debate as to whether the right of "every person" included that of the conceived but unborn child. To avoid any doubt in interpretation the formula "every one has a right to life was chosen. Nevertheless, when abortion was decriminalised in some cases, it was paradoxically alleged that the conceived but unborn child was not a person and thus was not included in the term "everyone". According to dictionary definitions:
Person: refers to an individual of the human species. A human being.
Personality: refers to the way of being of a particular person; the qualities that characterise that person.
The Person can exist independently of personality. Legal personality means that the Law recognises the legal status of "someone" who thus occupies a place in the Legal Order. This is so patently true that the Civil Code states that legal status is "determined" by birth, as long as the requirements of the article 30 are met, requirements which, according to the article itself, have effect in Civil Law. It is important to insist on this point because with regard to Penal Law the Code recognises de facto the legal status of the newborn child by imposing penalties on those who commit an abortion. And killing a newborn child before 24 hours have passed, and therefore before civil personality has been determined, constitutes a homicide. Abortion figured in the Rubrica Crimes against the Person of the Civil Code in force until 1996 and constituted a clear recognition of the unborn child's status as a person. In the present Code this epigraph has been eliminated.
According to the Universal Convention of the Rights of the Child, the child is entitled to have his legal personality recognised from the moment of birth. This Declaration modifies the above mentioned articles 29 and 30 because it is an international treaty ratified by Spain. But in practice, newborn children are not allowed to be registered. Their legal personality is not recognised because this would imply conflict in the case of live-born aborted foetuses which are left to die under the pretext that they "are not viable" having recourse to laws 35/88 and 42/88. In some legislations, such as the German and Italian, the only requisite in order to have civil personality recognised is that of being born alive.
It so happens that the woman who is going to give up her child for adoption is obliged to recognise this child by registering it to her name as the mother, thus increasing the risk of her opting for an abortion if she wishes to conceal her pregnancy, as mentioned previously. The National Registry Office states that the previous interpretation of the law which permitted a mother not to reveal her identity in medical records of the birth is not valid. The reason given is that the child has the right to know his or her genetic origin, a right which is denied to the children of anonymous donors.
The fact that the nasciturus is subject to law is demonstrated by diverse articles of the Civil Code and penal law. In spite of the fact that all these rights require a subject, which the legal code itself recognises, it is said in some circles that the conceived but unborn child is not yet a person because legal personality has not been recognised!.
In article 16 of the Spanish Constitution ideological and religious freedom are guaranteed. On occasion, conflict arises between certain religious norms and the right to life. In hospitals it is necessary to go to court, when the parents, Jehovah's Witnesses, will not permit a minor to be given a life-saving blood transfusion. This is an example of the limits of paternal authority and guardianship. Both must be exercised to the benefit of the child, otherwise the right is lost. Such is the case of embryos which were frozen in banks for reproductive purposes and regarding which parental authorisation is sought in order to use them for experimentation.

SPECIFIC LAWS REGARDING BIOMEDICAL TECHNIQUES(23)

Regarding abortion and euthanasia

Abortion is still a crime when it is practised without the woman's consent and outside the cases permitted by the law.
This crime figured in the Title Vlll Crimes against the person in the Penal Code in force until 1996. In the present Code it is denominated On abortion and the conceived unborn child's condition as a person is omitted. Under this new Title there are only two articles; abortion committed without the woman's permission and that which falls outside the cases permitted by law. The three cases for decriminalisation, article 417, of the previous Penal Code remain in force by means of fancy legal footwork. The practice of abortion in the following three cases is expressly declared non-punishable:
"Serious danger to the life of physical or mental health of the pregnant woman".(24)
"In the case of rape", in the first 12 weeks.
"Presumption that the foetus will be born with serious physical or mental abnormalities", within the first 22 weeks.
The law determines the previous verifications which must be made and recorded, the express consent of the pregnant woman, and requires that the abortion be carried out by a medical doctor, or under his supervision, and in authorised public or private centres.
The introduction of "mental health" as grounds for decriminalisation poses the difficulty of determining exactly what "mental health" is and when it is in danger. The result has been to open the door to any type of abortion. On the other hand, as no time limit exists in the case of danger to the life or health of the pregnant woman, many children are born alive. They are left to die, having recourse to law 35/88, under the pretext that they are not viable, that they have no probability of continuing to live. State of health is presupposed and a subjective criterion is imposed which goes against the factual reality which shows that the infant is alive. The births of infants are not registered which does not comply with that which was established in the Universal Declaration of Children's Rights, as previously stated.
Judgement 53/1985, which will be explained later, resolves the appeal of inconstitutionality which at the time was brought against the decriminalisation of abortion. This judgement, together with the two which were pronounced to resolve other appeals against laws 35/88 and 42/88, are explained with the aim of showing the progressive depreciation of human life.
Euthanasia as such is not typified in our Code. Article 143 section 4 regarding the crime of assisted suicide describes activities which are the same as euthanasia and the penalty to be imposed.(25)
Despite the interests manoeuvring for decriminalisation, it is at the present time still considered criminal behaviour.

Law 35/88 regarding assisted reproduction techniques

In the Preamble it is said that "it is necessary to guarantee scientific and research freedom, in accordance with the values recognised in the Constitution such as the protection of human body and life, the affected person's capacity for decision and human dignity. Scientific activity undertaken with regard to ethical and moral considerations is a conquest of the democratic and civilised world in which social and individual progress must be based on respect for human dignity and freedom".
These affirmations appear very attractive at first sight. But the articled text shows that the word dignity is being used to give prestige to the law and to predispose the citizen in its favour. Contrary to what it appears to indicate, everything which is proclaimed is then legislated against. The ordinary citizen is unable to perceive what is permitted in the articled text, because this is hidden in a forest of euphemisms. The activities which are permitted interfere with the right to life of the person and do not

respect his dignity. They constitute yet more proof of the manipulation of language to which we have alluded.

By way of example we can mention the selection of sex which is authorised "for therapeutic reasons". Some illnesses, such as haemophilia, are only suffered by males; females do not suffer from the illness but they transmit it to following generations. Selection of sex consists of eliminating the males and implanting in the womb of the mother only the female embryos. There is no therapeutic function for the sick person: it is not a medical act because not only does it fail to cure him but it destroys him... No therapy has been carried out; the appearance of the illness has just been displaced to future generations.

Another example of arbitrariness is revealed in the matter of the right of every person to know his genetic origin. In accordance with article 39 of the Constitution and 127 of the Civil Code children have a right to know their genetic origin, even to the extent of using biological proof. These two articles constitute a new development in our Law. They did not use to exist in order to protect the family form the perturbation which could result from recognising vis-à-vis the whole world children born outside marriage. Now this recognition is permitted but it is denied to those conceived by means of artificial reproduction, thus protecting the donors to the detriment of the child's right.

The anonymity of the donor's identity is a condition imposed by this law on those making use of artificial reproduction techniques. Neither does the register of Births permit any allusion which could reveal the donor's identity or even the circumstances of conception; deception has been institutionalised. Article 14 of the Constitution declares that all Spanish people are equal in Law; article 39 ensures the complete protection of children, equal in law irrespective of their filiations.... Children conceived by means of artificial reproduction techniques with an anonymous donor are discriminated against.

Artificial insemination/fertilization with sperm from an anonymous donor is provided for women without partners who then bring a fatherless child into the world. The one-parent family, a sad consequence of divorce of the parents, is encouraged and promoted by means of these techniques. The children of separated parents and widowed mothers do have at least referential knowledge of the father: they know his identity and his lineage which enables them to feel integrated in the family filum. But a further difficulty for those conceived by anonymous donor is that they lack any paternal or maternal reference (if they are the product of a donated ovule). On the other hand the risk of consanguineous unions has not been fully evaluated.

It is article 13.2 which most clearly and indisputably interferes with the dignity and the fundamental rights of the person. "Any intervention on the live embryo or foetus in the womb or on the viable foetus outside the womb will have a single therapeutic purpose, that of promoting its well-being and favouring its development". One must make an "a sensu contrario" interpretation and eliminate euphemisms in order to capture the true meaning of this article. It authorises the use of live foetuses outside the womb for therapeutic purposes which do not promote their well-being if they are not considered viable, e.g. the transplanting of their organs for the benefit of third parties. The Judgement which resolved the appeal of inconstitutionality against this law will be commented on more fully in this article.

Law 42/1988 regarding donation and use of human embryos and foetuses or their cells, tissues or organs

In the same line as the previous law, in accordance with article 5.4, "Foetuses expelled prematurely and spontaneously, and considered biologically viable, will be treated with the sole aim of favouring their development and autonomy of life". "A sensu contrario", non viable foetuses will not be treated clinically with the sole aim of favouring their development and autonomy of life: they will be left to die.

In the chapter dealing with infractions and sanctions art. 9.e considers that experimentation using live embryos or foetuses constitutes a very serious infraction unless they are non-viable, outside the womb and the experimentation has been approved by the relevant public authorities or, if previously established by regulation, by the National Commission (which has not been formed).
On resolving the appeals of inconstitutionality against these laws the Constitutional Court did not consider, surprisingly, that the afore-mentioned articles were inconstitutional, that is to say they did not find that they were contrary the right to life protected by article 15 of the Spanish Constitution. It is important to take into a account that here we are not dealing with "in vitro" embryos or conceived and unborn children but with newborns.

Royal Decree 413/1996 of 1 March regarding requisites of health centres and services related to assisted reproduction techniques

This norm establishes the operational and technical requisites necessary for the authorization and standardization of health centres and services related to assisted reproduction techniques.
To judge from its title this decree refers to administrative aspects but in fact it regulates nothing less than the donation of gametes and embryos with a clear lack of grammatical and terminological accuracy.
With regard to embryos it states in article 12-a "They will not be used for purposes of 'in vitro' fertilisation in another woman not of the couple, unless the man and woman agree to donation in writing... This requisite of the man's authorization is not stated in the case of abortion, even though the conceived child is already implanted in the woman and is more developed and more viable. This permission is not sought either when it is said that the "only possible alternative" for the almost 300.000 frozen embryos is to destroy them and use them for research... Every imaginable difficulty is presented to prevent implantation in another woman who will take the pregnancy to term, although this is permitted by law and there is a list of women willing to adopt prenatally.

JURISPRUDENCE OF THE SPANISH CONSTITUTIONAL COURT

Judgements of the Constitutional Court on the right to life in its initial phases.
In Spain there are three judgements referred to resolve three appeals of inconstitutionality regarding the juridical status of the conceived but unborn child. I must record that in none of the three appeals was biological evidence presented by expert witnesses to prove the biological nature of the conceived but unborn being from the moment of conception. No experts in medicine, embryology or biology were called on to prove the condition of being human from the moment the ovule has been fertilised. The Constitutional Court made its ruling from perspectives which did not take into account the biological view of the beginning of life because no dictums, reports, or new information of any kind were adduced which might increase knowledge and enlighten the magistrates.
Judgement 53/1985 resolves an appeal presented against Organic Law 9/1985 of 5 July which decriminalises voluntary abortion in certain cases. Judgement 212/1996 resolves that against Law 42/1988 On the Donation of Embryos and their Structures and Cells. Judgement 116/1999 deals with Law 35/1988 On Assisted Reproduction Techniques.

Judgement 53/1985

This Judgement lays down an interpretation of the right to life as contained in article 15 of the Spanish Constitution. In ratio desidendi 5 it points out that "human life is a slow process of development which begins with gestation during which a biological reality gradually takes bodily form and human shape

and which finishes with death... the life of the nasciturus, inasmuch as it embodies a fundamental value (human life) guaranteed in article 15 of the Spanish Constitution, constitutes a legally protected value according to the aforesaid constitutional precept..." "This protection implies two obligations for the state; that of refraining from interrupting or obstructing the natural process of gestation and that of establishing a legal framework which would protect life effectively and which, given the fundamental character of life, would include penal norms"·

As it can be observed, in this judgement the court reaffirms the protection of the nasciturus to the extent of linking it to article 15 which is the first among the fundamental rights and public freedoms of the Spanish Constitution and according to which "everyone has the right to life". But it is considered merely a legally protected value. This judgement resolves the issue of abortion in the case of conflict between the mother and the foetus by giving preference to the mother. It is, in a way, as if the exemption of necessity was being applied in a very lax way. The problem appears when it permits the abortion of embryos and foetuses with serious physical defects, thus promoting euthanasia.

Judgement 212/1996

The Constitution Court Judgement marks a change of course in the consideration of the value of human life by granting less protection than the previous judgement. The hierarchy of values is altered by placing viability (the probability of life continuing over the reality that the child is alive). It considers the aforementioned article 5.4 to be in accordance with the law. "Foetuses expelled prematurely and spontaneously, and considered biologically viable will be treated clinically with the sole aim of promoting their development and autonomy of life". It can be inferred that a live-born foetus which is not considered viable will not have the right to be treated clinically with the aim of promoting its development and autonomy of life; it will have no right to life. It must be taken into account that we are not dealing here with a nasciturus, as stated previously.

It is worth stopping to consider the meaning of viability because it is a criterion which has been imposed in order to justify the destruction of embryos and the use of embryos and foetuses for experimentation. It should be remembered that in accordance with the first additional Provision section e) of Law 42/1988 the Government will establish, within six months of the promulgation of this law, "The criteria of viability or non-viability of the foetus outside the womb with effect to this law". The Government has not announced any such criteria. But, even if they had done so, when we are dealing with a live born foetus viability is simply a prognosis, it is not an objective criterion; it is a subjective opinion which is projected over an uncertain future. If viability is judged by the degree of maturity of the live-born infant there is no applicable parameter for measurement. Prognosis in medicine is based on statistics and these change according to technological advances. Today children not weighing more than 500 grams at birth survive, something which would have been unimaginable a few years ago. The prognosis is opposed by the diagnosis which is the recording of a present fact, not the future uncertainty of the prognosis, but a present situation which can be verified by the doctor. In the case of a live-born foetus not even the opinion of a professional is necessary because the evidence that it is alive is plain to see. As Magistrate Gabaldón expressed it: "if life is to be protected, the only term of exclusion will be that there is no longer life in the organism".

Is there any difference between a live-born foetus and a premature child?. There is no such difference. Neither our legal code, nor the U.N.O. Convention on The Right of the Child - subscribed to by 157 countries including Spain - make any such distinction, in fact quite the reverse. The aforementioned Convention demands the recognition of the legal personality of the live-born child from the moment of the birth without placing any limit of weight or period of gestation. Because it is an international treaty it overrides article 30 of the Civil Code which requires the child to have lived 24 hours outside the womb in order for the legal personality to be recognised, as stated before.

This judgement states that the law appealed against is essentially in accordance with the Constitution. Once the hierarchy of values has been altered and viability comes before the right to life it is not difficult to venture that the door to euthanasia has been opened. Why not apply this criterion to the sick even if they are not necessarily terminally ill nor exclusively of very advanced age?

Judgement 116/1999

This Judgement resolves the appeal against Law 35/1988 on Assisted Reproduction Techniques. The Constitutional Court does not take the essential points of the appeal into consideration. It insists on putting health and viability before the right to life. The ratio desidendi nº 11 permits the use of human beings for research and scientific experiments; it states that "pre-embryos that have not been implanted (...) are not human individuals so the fact that after a fixed period of time they are at the banks' disposal can hardly be considered contrary to the right to life (article 15 Spanish Constitution) or human dignity (article 10.1 Spanish Constitution)".
The judgement also states that "in vitro" pre-embryos do not have the same protection as those that have been transferred to the womb". It is possible to advise against their transfer to the womb (to destroy them) if they are carriers of hereditary disease. The Constitutional Court has "resolved" the polemic over the destiny of these frozen embryos by declaring that the embryo which has not been implanted is neither a human life, nor a person and has no right to life. Well then, apparently it does not even exist; it must be a "virtual embryo". The judgement states that "using these embryos for experimentation is not therefore an infringement of their rights" (because it denies that they have any such rights). So, pre-embryos have less protection than those already implanted but the latter, which are already in the womb, can be destroyed too, if they are carriers of malformations.
The most serious aspect of this judgement is that It considers article 13.2 of law 35/88 to be in accordance with the Constitution. Again it can be inferred that live-born foetuses outside the womb (newborn children) which are not considered viable can be used for other therapeutic purposes which do not promote their well-being; namely using their organs and structures for transplants, or for producing medicines.
The criterion for viability has not been defined, which leads one to understand that it could refer to the degree of maturity and not to acephalous foetuses with teratological deformities.
Those who made the appeal did not present any evidence which would have helped the Court and they did not even mention recommendation 1100 of the Council of Europe. Article 13.3 of Law 35/88, the object of this judgement, remains in force; it has not been declared inconstitutional. It leaves the door open to the legalisation of experimentation on live-born foetuses which are not considered viable due to their degree of maturity, but which are, to all effects, newborn children whose right to life is unquestionable.
What protection remains for the "in vitro" or frozen embryo?. Please note that the pretext of whether it is a person or not, whether it is in the womb or not, are just subtle distinctions which are in any case overridden by viability which is a subjective criterion applying not only to the embryo but also to the foetus, even live-born, and in this latter case it refers to something imprecise, variable and dependent on technological advances, for example the degree of maturity.

REGARDING HUMAN CLONING

Cloning constitutes a violation of the right to life in a truly human sense because it interferes with the identity and uniqueness of the person, without taking into account the large number of embryos which are lost at cloning attempts. The afore-mentioned Law 35/88 prohibits all kind of cloning, but the new Penal Code, article 161, punishes only the creation of identical human beings for the purpose of racial

selection. From this it can be deduced that cloning does not constitute a crime provided that it is not for the purpose of racial selection. In this specific case there has been a step backwards with regard to the protection granted by law 35/88. It must, in any case be remembered, that Spain ratified the Council of Europe Agreement on Biomedicine which rejects any kind of cloning, especially in its Protocol.
It is very interesting to reflect on points made in the Resolution of the European Parliament on Human Cloning.(26)
The embryo is referred to as human life from its first moments (pre-embryo). It is considered to have dignity and to be worthy of guardianship and protection and its destruction goes against moral norms.
There is a reaction against the manipulation of language "a new semantic strategy which seeks to weaken the moral significance of human cloning".
It points out that these techniques are contrary to public order and morality, and that cloning is an attack on the moral principles prevailing in Europe.
At no point does it make reference to religious norms or dogmas of faith, just dignity, morality and public order.
It addresses Members of Parliament of the United Kingdom to the effect that they should vote according to their conscience and not let themselves be influenced by external causes. It shows in this way that truth can be found in the conscience of the individual.
It considers that human rights and respect for human dignity and human life must be a constant aim of the legislative policy of Governments.

CONCLUSION

Who benefits from the degradation of the human individual?
As can be observed permissive attitudes towards or even clear support of experimentation, destruction of human embryos, abortion, artificial reproduction, and euthanasia belong to determinate political groups. If we stop to wonder what benefits are obtained it can easily be observed that economic interests occupy first place. Businesses in such areas move enormous volumes of money which make them some of the most profitable in Europe. But there are also political motives which promote such businesses. Those who defend these permissive positions allude constantly to rights, to personal freedom, never to responsibility or commitment; instant gratification of the individual's desire is legitimised.
The solution is not to proclaim more and more Declarations of Human Rights, although it is good to do so. In order to improve the situation these declarations must be accompanied by the appropriate information and education for all those who have some power and influence in society like politicians, magistrates, journalists, schoolteachers. This is especially important for young people who represented our hope for the future.
The list of Human Rights grows longer and longer but this increase devalues these very same rights because they are diluted in a sea of intentions. Man today has all the rights imaginable but what are, in effect, offences and violations against the true significance of human dignity become rights, or are demanded as rights. It can be observed that the granting of these supposed rights always leads to someone being harmed: the human beings who are victims of abortion, children adopted by homosexuals, children of lone women conceived by an anonymous donor; human embryos destroyed for therapeutic purposes.
On 17 November a judgement of the French Supreme Court caused great controversy followed by a lively debate because it was interpreted as having recognised the paradoxical right not to be born, a veritable paroxysm of human rights.

As it is known, in spite of the solemn Declarations, fundamental rights, in fact, are too frequently violated. But the current situation is more critical because these laws and judgements that I have commented are institutionalising these violations. They are not true juridical norms. We can only consider as laws those which are inscribed in the natural order.

NOTES

(1) LEGAZ Y LACAMBRA L., La noción jurídica de la persona humana y los derechos de hombre, Revista de Estudios Políticos, Madrid, 155: 45.
(2) BODIN, J. Expose du Droit universel, París : Presses Universitaires de France, 1985:17
(3) 4 Cf. WIEACKER F., Historia del Derecho Privado en la Edad Moderna, Madrid:Aguilar, 1957:249
(4) "Quod natura omnia animalia docuit". Cd. ULPIANO, Digesto, 1,1,1,S3.
(5) Cf. MILLÁN PUELLES A., Léxico Filosófico, Madrid:Rialp, 1984:223-224
(6) ROBLES G., Los derechos fundamentales y la ética en la sociedad actual, Madrid:Civitas, 1992: 37.
(7) Jellinek G., Savigny, Stahk follow this theory.
(8) Cf. FERNÁNDEZ GALIANO A., Lecciones de Teoría del Derecho y Derecho Natural, Madrid: Universitas, 1993:397.
(9) Cf. HERNÁNDEZ GIL A., Metodología de la ciencia del Derecho, Madrid:Antonio Hernández Gil, 1971: 89.
(10) VILA-CORO M.D., Introducción a la Biojurídica, Madrid:Universidad Complutense de Madrid, 1995: 173-ss.
(11) LUCAS LUCAS R., ¿Cuándo se inicia la persona humana? Individualidad biológica y existencia personal, in LOPEZ BARAHONA M., LUCAS LUCAS R., El inicio de la vida, Madrid:B.A.C., 1999:92
(12) Judgement 53/1985 11th April.
(13) GONZÁLEZ PÉREZ J., La Dignidad de la Persona, Madrid, 1986:84-86.
(14) Human Genome and UNESCO. The International Committee on Bioethics of UNESCO, set up by the Director General Professor Federico Mayor Zaragoza, formulated the first Universal Declaration on the Human Genome and Human Rights in which the inviolability of the human genome is proclaimed; it is the first universal instrument in the field of biology. This declaration was passed unanimously and acclaimed by the General Conference in its 29th meeting. It constitutes the first universal instrument in the field of biology The General Conference of the United Nations attached an application resolution to this Declaration in which it asked Member States to take appropriate measures in order to promote the principles declared therein and to encourage their application. The moral commitment made by States in adopting this Declaration is a starting point: it shows a worldwide awareness of the need for ethical reflection regarding sciences and technologies. The Director (UNESCO, ICB Noordwijk -La Haya-. December 1998) pointed out that the greatest challenge of the next millennium has an ethical dimension. It is a point of reference for States, as the general Assembly of the United Nations recognised when adopting this Declaration.
Article 2 states: "Every individual has the right to respect for his dignity and rights whatever his genetic characteristics are". This dignity prevents individuals from being reduced to their genetic characteristics and ensures that "the unique character and diversity of every one is respected".
In my opinion the human genome must be defined taking into account the prenatal habitat as a constitutive element because of its utmost importance in determining the way genes are expressed.

(15) TUCK R., Natural right theories. Their origin and development, Cambridge University Press, 1979, Chapter 1.
(16) ROMEO CASABONA C., El Derecho y la Bioética ante los límites de la vida humana, Madrid: Ceura, 1996:66.
(17) RECASENS SICHES L., Filosofía del Derecho, México:Porrúa, 1961:559.
(18) ORTEGA Y GASSET J., Qué es filosofía, Obras completas, Madrid:Alianza Editorial, 1983, Vol. VII:425.
(19) The first Environment Protection Law in Spain was promulgated in 1972.
(20) See VILA-CORO M.D., Huérfanos Biológicos, el hombre y la mujer ante la reproducción artificial, Madrid:San Pablo, 1997:59-66.
(21) RODRIGUEZ DELGADO J.M., La mente del niño, cómo se forma y cómo hay que educarla, Madrid:Aguilar, 2001:46-47.
(22) FERNÁNDEZ DE BUJÁN F., La vida Principio rector del derecho, Madrid:Dykinson, 1999.
(23) Organic Law 10/1995 of 23 November typifies the crimes of injury to the foetus: articles 157 and 158 of the Penal Code Title IV.
(24) This first case has always been in force in accordance with article 20.5 of the Penal Code which exempts from penal responsibility the person who, in a state of necessity in order to prevent harm to himself or to another person, injures or damages legal right of another person or infringes a duty, provided that certain requisites are met.
(25) Art.143.2: "The person who cooperates in acts necessary for suicide will be sentenced to two or three years in prison". Art.143.3: "If the cooperation reaches the point of causing death it will be six to ten years".
(26) EUROPEAN PARLIAMENT, Resolution on Human Cloning (8ht September 2000).

CARLO CAFFARRA

NATURAL LAW, MARRIAGE AND PROCREATION

STATUS QUAESTIONIS

I would like in the first place to pose in as precise a way as possible the question to which I will seek to give a reply in the following pages.

When an Italian poet wrote: "from the day when nuptials, tribunals and shrines enabled human savages to be kind", he expressed a deep-seated conviction possessed by every people and present in every culture: marriage, the administration of justice and religion mark the transition from the animal to the human kingdom. Animals do not get married; they have no courts of law; and they do not build temples. So, even marriage and its expansion in the family, is a peculiarly and exclusively human fact.

The aim of our present reflection is to identify the precise meaning of "peculiarly and exclusively human" that defines the content of marriage and the family as an institution. The question could be reformulated, at least initially, in the following way: what does the humanum of marriage consist of? Formulated in this way, the question would seem subsidiary to, or dependent on, another more radical question: in what does the humanum of the human person as such consist of? The problem on which we are reflecting takes us into the great anthropological debate that has characterized the theoretical process of modernity, and led to its nihilistic outcomes. And indeed this process is closely reflected in the conception of marriage and the family, in the way it has evolved down to its present outcome.

If the definition of the humanum is essentially attributable to man's freedom; if that definition is the work of freedom itself, it follows that the humanitas of marriage is its being simply and purely a creation of human freedom: created ... "ex nihilo sui et subiecti", in some sense. The introduction into European legislations of the recognition of homosexual couples, the attribution to such couples or to individuals of the right to procreate (in vitro!) or to adopt children, is the juridical translation of this point of view.

But the theoretical and practical process itself of reducing the whole truth about man to his freedom may also be interpreted and conceived from another point of view, that which concurrently and as a consequence excludes corporeity from the constitution of the human person. In the light of this exclusion, the diversity of the sexes and procreation as the consequence of their union would belong to the biological, and not to the peculiarly human dimension of the human person: it follows, therefore, that procreation may be legitimately replaced by artificial procreative procedures; the conjugal community founded on the diversity of the sexes may be legitimately replaced by the homosexual "conjugal" community. What remains? What "residue of the humanum" remains in this perspective?

The view of marriage as "pure relationship". That is the view expressed for example by A. Giddens in a book published in 1992.(1)

The conjugal experience as human experience thus assumes the nature of a covenant or contract between two quests for individual happiness that may also clash with each other, and in which the one decisive condition is "parity in the balance of give and take".(2) Marriage is increasingly a "private and subjective" fact: a purely private experience that the civil law must merely register, rather than a "duty" that the civil law must recognize.

And so it is understandable how para-matrimonial models could have been introduced (and even endorsed by laws): Ley de uniones stables de pareja in Catalogna (1998); Ley de parejas estables no casadas in Aragon (1999); Ley que adopta medidas de protecao de unido de facto in Portugal (1999); Pacte Civil de Solidarité (PACS) in France (1999). Confirmation of this trend towards the complete reduction of the humanitas of marriage and of the family to a mere contract between the partners is provided by the tendency for the relationship between parents and children to be progressively reduced to the jurisdictional level and for the intervention of the judge as protector of the rights of the individual to be progressively extended in the life of couples.(3)

In short: from a conception of marriage based on the needs of "natural law" we have passed to a conception of marriage based exclusively on the right of individual self-determination.
I think I do not succumb to theoretical over-simplification when I say that the status quaestionis implicit in the theme "Natural law, marriage and procreation" can be expressed in the following dilemma: is the humanitas of the conjugal and family community essentially attributable to the free self-determination of individuals, or does it have a content of its own that takes precedence over the free self-determination of individuals as truth takes precedence over freedom?
A final premise: I do not intend to tackle the question from a general point of view, since all the reports presented at this study Seminar will in substance do so.

THE NATURE OF MARRIAGE

We can begin to formulate our reply by taking as our starting point a reflection on two passages from John Paul II's Encyclical letter Veritatis Splendor. The first reads as follows: "At this point the true meaning of the natural law can be understood: it refers to man's proper and primordial nature, the 'nature of the human person', which is the person himself in the unity of soul and body, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end" (no. 50, 1). And then slightly further on: "Only in reference to the human person in his 'unified totality', that is, as 'a soul which expresses itself in a body and a body informed by an immortal spirit', can the specifically human meaning of the body be grasped. Indeed, natural inclinations take on moral relevance only insofar as they refer to the human person and his authentic fulfilment, a fulfilment which for that matter can take place always and only in human nature" (ibid.; EE 8/1531).
The answer to the question on the "nature" of marriage might therefore be formulated in the following way: marriage (and procreation as fruit of the sexual union of the two spouses)(4) is founded on the nature of the human person, inasmuch as it fulfils its sexual inclinations that are of a spiritual, psychological and biological order in unity, in conformity with the entire truth of the person himself. I would now like to explain this reply point by point, and demonstrate its truth.
I have signified the nature of marriage by affirming that it is "founded" on the nature of the human person. I have wished in this way to avoid two opposing errors present in reflection on our theme. The first is the error of affirming a "neutrality" or "axiological indifference" of marriage to the fulfilment of the person: the good of the person and marriage are, it is claimed, indifferent to each other. Marriage is neither good nor bad for the person. Second, the opposite error (frequently found in those who contest the moral value of Christian virginity): there exists no possibility for the true and complete fulfilment of the human person outside married life.
Speaking of the foundation of marriage and procreation in the human person means saying that marriage and procreation find their explanation and raison d'être in the nature of the human person: this nature is the foundation and principle of marriage and procreation, though without this nature demanding marriage for the single person.
But in the present context, what is meant by the nature of the human person as "foundation and principle" of marriage and procreation? It means the presence in it of sexual inclinations that are at once spiritual,(5) psychological and biological in kind, and that in their unity move the person to get married and generate life. This is the central point of our explanation and demonstration.
The thesis of the substantial unity of the human person, the validity of which I here presuppose, has theoretically significant consequences for understanding the meaning of sexual dimorphism. The human person is a female human person; or a male human person. Femininity/masculinity structure and configure the human person. Reciprocal attraction or inclination thus possesses an entirely human

sense: biological, psychological and spiritual. From the structural point of view, the biological, psychological and spiritual attraction/inclination is unitary.
This unity in three-dimensionality is the real theoretical crux that needs to be elucidated. What does it mean to say: the biological, psychological and spiritual attraction/inclination "is unitary"? Once again it is the thesis of the substantial unity of the human person that must guide us in seeking a reply.
The unity of the three dimensions of reciprocal attraction/inclination cannot be considered theoretically in terms of "dominion" and hence of the "use" of one dimension to dominate the other. I underline the word "theoretically": it is true that in the situation of the present human condition,(6) as is explained to us by the Christian faith, unity, or better unification, is the result of a dominion(7) of the dimension judged superior over the inferior. But for the time being we are not conducting an ethical argument. On the other hand, we would succumb to the grossest error if we thought of the unity in terms of a confusion between ontologically different realities, as are matter and spirit. Undivided and unconfused: we might say, to borrow a christological formula. From the phenomenological point of view it is the unity that exists between the "sign" and the "significance": the body expresses the person (quae in corpore manifestatur, cf. Veritatis Splendor, cit.); the specifically human significance of the body consists in this. The body is the sign of the person; the person is signified by and in the body.
However, we are speaking of "inclinations", hence of the movement of the human subject towards its fulfilment, i.e. towards its goal, in other words, towards its good. Not any kind of good, but the good of the person as person - the male person "inclined" towards the female person, and vice versa. In other words: we are speaking of the person in terms of his/her inclination to live together with other persons in the specific form of the societas coniugalis, of the consortium maris et foeminae. In what consists the good of the person considered in this way? The reply I will give below presupposes the critique of utilitarianism, even in its more sophisticated contemporary forms, as the only or prevalent reason for human cohabitation. The social theory of utilitarianisn is the consequence, in substance, of the negation of the capacity of reason to grasp a purely intelligible good.
The only good way of fulfilling the inclination/attraction between man and woman is that in which the person of each as such is recognized in his/her dignity, and in which the one ceases to be extraneous to the other because that person becomes part of the other. This way of fulfilling the reciprocal inclination is the love that is expressed and realized in the gift of self (this is not the place to conduct a complete exposition of the concept of love as gift of self). The good of the person consists of the gift of self. Being persons "quasi propter se procurantae, creaturae vero aliae ad rationales creaturas ordinatae" (Contra Gentes III, 112, 2856) ensures that they can only associate in justice, and in the love that is expressed in the gift of self.
I will now return to the problem of the unity of inclinations in their biological, psychological and spiritual dimensions. The unity consists in the fact that the biological and psychological dimension expresses the person in his/her spiritual dimension: a subject called to realize himself/herself in the gift of self.(8) What is significant is the person who realizes himself/herself in the gift of self. I would now like to further examine and clarify this unity, since we must try to avoid two opposing errors and especially see this unity we are discussing in its true light.
(The first error would be to suppose that) the reciprocal inclination of masculinity/femininity, if considered exclusively from the biological and/or psychological view, is not ordered, or rather is not directed, to the gift of self. Using the useful Thomist distinction between finis proprius and finis debitus, we would say that, if considered in this way, that inclination does not move the man and the woman to unite themselves in the gift of self: it does not have the gift of self as its "own end". Biologically understood, it has as its own end that of meeting the conditions for the conception of a new individual of the human species; psychologically understood, it has as it own end that of achieving the satisfaction of a need. In this sense, and understood in this way, the nature of the human person is not the principle and foundation of marriage. Must we therefore conclude that the significance (= fulfilment of the person in the gift) is imposed wholly extrinsically on a wholly neutral and indifferent

fact? That would be the opposite error to the first. "Totaliter ab intrinseco" or "totaliter ab extrinseco": to use the way in which St. Thomas characterizes these two opposing errors (cf. Summa Theol., 1,2,q.63, a.1).
The truth is that the biological and psychological inclination inasmuch as it is a human inclination asks to be inspired and governed by the spiritual inclination of the person, and inasmuch as the body is a human body it possesses the aptitude to be the expression of the human person in his spiritual dimension: the "modus rationis" (cf. Summa Theol., 2,2,q.14, a.3) is not simply, totally imposed ab extrinseco, but the peculiarly human mode in which the biological and psychological inclination towards the union of the sexes must be realized.
It should be noted, furthermore, that the person in his spiritual dimension, inasmuch as he is a spiritual subject, is naturally inclined to the good: naturally means preceding the election of his freedom. As St. Thomas Aquinas writes: "in ratione hominis insunt naturaliter quaedam principia naturaliter cogita tam scibilium quam agendorum, quae sunt quaedam seminalia intellectualium virtutum et moralium; et ... in voluntate inest quidam naturalis appetitus boni quod est secundum rationem" (Summa Theol., 1,2, q.63, a.1).
Let us now briefly resume the theoretical argument we have pursued so far. The principle and foundation of marriage and procreation is the nature of the human person, substantial unity of body and spirit, since marriage, understood as union between man and woman constituted by the gift of self, realizes in their unity the inclinations both of a biological-psychological and of a spiritual order inherent in the human person as man or woman. In short: the principle and foundation of marriage is the human person himself/herself as man or woman. The "nature" of marriage consists in this: in its being the due end (finis debitus) of the reciprocal inclination/attraction between the male human person and the female human person.
The humanitas of the conjugal and familial community is not exclusively attributable to the free self-determination of individuals, since the essence of humanitas is formed by the nature of the human person as man or woman, and by the unity of his/her inclinations both of a biological-psychological and spiritual order.
It remains for me to make some further explanatory remarks of a conceptual and terminological kind, as corollaries.
First corollary. Vatican II's Pastoral Constitution Gaudium et spes teaches: "Intima communitas vitae et amoris coniugalis, a Creatore condita suisque legibus instructa" ("The intimate partnership of life and of love which constitutes the married state has been established by the creator and endowed by him with its own proper laws") (no. 48, 1; EV 1/1471). The "own proper laws" of which the Council speaks are constituted by the nature of the human person as man or woman and by the unity of his/her biological, psychological and spiritual inclinations. The affirmation of marriage as the institution whose intimate configuration does not depend on the free determination of the persons getting married, is the necessary consequence of the foundation of marriage in the nature of the human person.
Second corollary. The conjugal community is not a merely contingent fact that continues for as long as the free self-determination of the partners makes it exist. It is a fact due (= dover-essere) to, conditional on, the good of the human person who freely wished to establish it, to bring it into being. As Vatican II once again teaches: "hoc vinculum sacrum intuitu boni, tum coniugum et prolis tum societis, non ex humano arbitrio pendet" ("for the good of the partners, of the children, and of society this sacred bond no longer depends on human decision alone") (Gaudium et spes, no. 48, 1). The conjugal community is required for the good of the person (intuitu boni); it is not simply due to the fact that it is desired and for as long as it is desired. This is the ultimate significance of fidelity and hence of indissolubility.
It is in this that the substantial difference from "de facto cohabitations or unions" consists. It is the structure of the relation itself as such that is different. And it is in this direction that the State must move: the two relations are different and cannot be in any way compared or equated: "Civil relations (civil in the sense that they are a productive of civilization, not in the sense of belonging to the civis,

i.e. to the citizen as individual who belongs to a political community) have their para- and meta-political rights (i.e. rights that precede and transcend state citizenship), which constitute the identity of the family, and, through it, the person... For that reason, for example, a provisional relationship does not have the same rights as a permanent one".(9)
Third corollary. The conjugal and family relationship cannot be conceived in terms of a "pure relationship". It is not reduced to the search for the useful good of the person: it is based on the honest good of the person (cf. Thomas Aquinas, Summa Theol., 2,2, q.145, a.3; "honestum dicitur quod propter se appetitur appetitu rationali, qui tendit in id quod conveniens rationi": ad 1 um).

VIDETUR QUOD NON: OPPOSITIONS

The complete reduction of the humanitas of marriage and the family to the free self-determination of the individuals seems to be largely prevalent today in Western culture. This prevalence poses problems both of a practical and a theoretical order. But here I wish to focus on the latter.
In the course of my previous reflection I more than once used the phrase "marriage understood as communion in the reciprocal gift between man and woman for the gift of life", when I tried to demonstrate the foundation of marriage understood in this way in the nature of the human person. But it is just in this theoretically decisive passage that the central theoretical crux of our whole discussion is concealed. I will try to express it in its essential terms.
What is meant by "marriage understood in this way"? It means that the definition of the marriage covenant and marriage as an institution as given to us by Vatican Council II in Gaudium et spes (no. 48, 1; EV 1/1471) and in the Code of Canon Law Can. 1055, § 1 and 1057, § 2, is deducible from the nature itself of the human person and from the unity of his/her inclinations, through the use of reason.(10) The "construction" that reason makes of the definition of marriage is a construction that is the work of reason, but of reason that is witness of a reality (that of the male or female human person) that is revealed through the exercise of reason, and that is not created by reason itself. The theoretically radical split between two forms of conjugal anthropology is coming fully to light in the current crisis of marriage as an institution: between the conjugal anthropology according to which "experience reveals the freedom of man and man himself as self-dependence in making himself dependent on the truth that does not depend on him", and the other that presupposes "an anthropology that presents the freedom of man and man himself as pure self-dependence, in other words as the power to determine the truth about himself, and hence the power to constitute his own being, his own nature".(11)
The groundlessness and illegitimacy of the second position can be demonstrated by showing how it leads to the complete reduction of the humanitas of marriage and the family to the free self-determination of individuals; basic data of experience - the knowledge that man has of himself - are progressively sacrificed in the process. This "sacrifice" has assumed the form of successive expulsions, or progressive separations, from what was defined as the pure form of humanity. I would now like briefly to review this process: it leads to marriage as "flatus vocis".
The first separation, by far the most serious, was the separation of sexuality from the person, caused by the separation of the body from the person. The result of this separation was that sexuality lost all seriousness: it ceased to be "a serious case" and became progressively transformed into a pastime, a form of amusement.
The process of the body's separation from the person was a long and complex process. I must limit myself only to a few brief remarks. The Thomist thesis of the substantial unity of the human person remained isolated in Western culture. For it failed to gain the upper hand over a view ultimately of Augustinian derivation, according to which the body has always maintained a complete segregation from the person. This segregation was always ambiguously conceived in either metaphysical or ethical terms. More simply put: the undeniable split between body and soul that each person experiences in

himself was interpreted not only in a contingent, or temporal, but also in an implicitly structural way. Due to this basic ambiguity, the fundamental principle of objectivity posed at the basis of modern science encountered no resistance in gaining the upper hand also in our conception of the human body. A process of the objectification of the body was thus unleashed. As a result of this process the person has fundamentally the same relation to his body as he has to nature. The naturalistic conception of the body, its depersonalization, has led to the negation that sexuality inherently has its own proper sense: all it possesses is the sense that is attributed to it by the creative freedom of the person.

And here a serious ambiguity is created. It is the ambiguity present in the relation between man and nature that came to be created in this culture which I would call one of disintegration. I might express this ambiguity with a very synthetic formulation: either human reason/freedom is without nature, or nature is without human reason/freedom. Let me explain what I mean.

(The split between man and nature, between body and soul, described above has led to the following train of thought:) Since sexuality is a fact ethically insignificant in itself, I can do what I want with it. The one condition that needs to be fulfilled is that if another person is involved in the exercise of sexuality, that person must freely consent to it. It's not true that heterosexuality is the only exercise of sexuality that is consonant with human dignity: homosexual practice has the same dignity and deserves the same recognition. And here a precise current of feminist ideology has its roots. It is based precisely on two affirmations. The first: the primordial relation between man and woman, is not a relation of reciprocity in the absolute equality of dignity, but a relation of conflict in the affirmation of the one at the expense of the other. And the second: the primordial vocation of woman is neither conjugality, nor virginity, nor maternity. A woman should be neither spouse, nor virgin, nor mother. That is what is meant by the proposition that human reason/freedom is without nature in the human sphere of which we are speaking.

But there also exists an opposite view: the view that sexuality is pure nature which must simply be followed, under pain of the infelicity of man. In principle, each "rule", each regulation, of the exercise of sexuality is to be considered contrary to the felicity of man, an undue oppression. The relativism of the first position is combined with the naturalist instinctivism of the second. Both together generate the sexual permissivism that is characteristic of our culture.

The breach of the connection between sexuality and person now legitimizes any exercise of sexuality, excluding that which conceives of sexuality as a total gift of self, open to the gift of life, in other words, excluding the conjugal exercise of sexuality.

The second separation is increasingly gaining ground within human reason and breaches the unity between eros and love, between psyche and spirit.

The terrain on which this separation has been able to implant itself and grow was that of the entrance into our Western ethos of the utilitarian view of man that was formulated coherently and comprehensively for the first time by Thomas Hobbes and has proved so successful. By utilitarian view I mean a conception of man according to which man is not endowed with a ruling reason capable of gauging and ordering his desires according to specific virtues. On the contrary: man is the bearer of desires, passions, interests, to the satisfaction of which reason is subservient. Appealing to a truth discovered by reason and hence to an intelligible good, by which to guide passions and desires, is (thus regarded as) an undue and unfounded limitation of man.

In spite of appearances, this anthropological proposal, instead of liberating man, has had the opposite effect: it has reduced him to an existence without freedom, other than that of blindly following his own instincts. It has made him renounce his inexhaustible and natural tension to the truth, to the desire for goodness, beauty, justice. It has decapitated the human reason. In the field of sexuality it has meant and means the expulsion from man's understanding of every reference to the truth of the gift of life, namely love. All that remains is the erotic dimension as the ruling dimension.

The separation of eros from love has thus legitimized a hedonistic view of sexuality. Now there is no doubt that a prevalently or exclusively hedonistic view concurs to a separation of sexuality from

marriage and, hence, of marriage from the family. Why? Because a hedonistic view of sexuality fundamentally deprives the person of responsibility for his own sexuality; it becomes an individualistic exercise.

There remains however one fact that obstinately refused to be integrated in this anthropo-doxy, in this illusion about man: the biological fact of the procreative capacity inherent in human sexuality. The crucial debate on Humanae Vitae is thus a central moment of the clash between the two anthropological positions.

The third separation breached the relation between the two capacities inherent in sexuality, the conjunctive and the procreative, in a twofold sense. The "ennoblement" of contraception separated in conscience (not only in conduct) the conjunctive from the procreative capacity. Vice versa, "artificial procreation" separated the procreative from the conjunctive capacity. So the circle was closed. Conjugal love is no longer directed at the gift of life, both because it was thought possible to have a true conjugal love that deliberately excluded the conception of life, and because man has excogitated a way of "producing" life, which completely dispenses with conjugal love and is the result only of desire.

To understand the cultural significance of this destruction of the concept of maternity/paternity, I want to draw your attention to two facts that have occurred in these years.

The first is that recourse to artificial procreation had originally been presented as a remedy for incurable sterility, within a legitimate couple. But then its scope was progressively expanded: it became a chance offered to anyone who felt a need to have a child. This is precisely the logic of "dominion" over nature for the satisfaction of one's own desires.

The second fact, only apparently contrary, to which I would like to draw your attention is the ennoblement of contraception. If the interpersonal communion between man and woman were not ordered or destined to the gift of life, or if the gift of life were not inherent in human sexuality, the possibility of removing the procreative capacity from human sexuality would be an enlargement of human freedom. The two attitudes, "a child at any cost" and "a child as an evil to be avoided", are born from the same spirit: the proposition that paternity/maternity are not essential dimensions of conjugal love. In other words: the proposition that paternity/maternity, conjugal love and human sexuality are three dimensions unconnected by any internal unity.

Having reached this stage of our reflections, it may be said that the reduction of the humanitas of marriage and the family to the free self-determination of individuals, is an event that has been completely achieved. If marriage is "the legitimate union of man and woman for the gift of life", the separation of the "gift of life" from the legitimate union and from human sexuality has destroyed the nature of marriage and the family.

We have reached perhaps the most deconstructive fact of the marriage-family relationship: the progressive legitimization of any kind of cohabitation, even between homosexuals, and the granting to it of equivalence with marriage and the family. Rights connected to "marriages" between homosexuals have already been recognized in various countries. As a consequence the right for such couples also to have children through artificial procreation is also being promoted.

(Seen from this viewpoint,) sexuality does not imply finality because it is not the gift of the person. Sexuality does not imply any responsibility of man towards himself or to others. Sexuality is conjunctive and procreative only de facto, not by right. Therefore: it is possible to have a relationship just for pleasure or amusement; it is possible to have a homosexual relationship that has the same value as the conjugal one; sexuality, love and procreation are unconnected. In other words: each link between marriage and family that is not a purely de facto bond is simply rejected. The nature of marriage and the family, and the intimate link between them, have been obscured.

CONCLUSION

The reconstruction of the conception of marriage and the family, based on the nature of the human person, involves three main tasks. The first is a task of thought that can no longer be deferred. This reconstruction may be based on the anthropology of the person and of the gift of life as its only complete realization, and also on a deepening of the criteria of the "communio personarum".
The reconstruction is, secondly, a task of educating people. This dimension of the task may be based on a profound theory of education as an act that introduces the person to reality: a theory that the Christian community seems today not to possess to a sufficient degree.
Reconstruction is, thirdly, a task of bearing witness to the holiness of marriage. This dimension of the reconstruction is the task of those who live in marriage, guided and helped by the pastors of the Church.

NOTES

(1) This is how he describes pure relationship: "A situation in which a relationship is formed by virtue of the advantages that each of the partners may derive from the continued relationship with the other. A pure relationship is kept stable so long as both partners consider they are deriving sufficient benefits from it to justify its continuation": A. GIDDENS, La traformazione dell'intimità-sessualità, amore e matrimonio nelle società moderne, Bologna: Il Mulino, 1995, p. 68.
(2) Ibid., p. 72.
(3) On this aspect see P.P. DONATI (ed.), Identità e varietà dell'essere famiglia. Il fenomeno della "pluralizzazione", Milano: San Paulo, 2001, pp. 323-324.
(4) The term procreation will always be understood as the sexual union of a man and a woman united in legitimate marriage, and capable of fulfilling the conditions for the conception of a new human person.
(5) In what sense I speak of the spirituality of the sexual inclination will become clear from my following remarks.
(6) According to the Catholic faith, in the primordial state of justice, the preternatural gifts with which the human person was endowed included also integrity, the harmony between the various dimensions of the human person according to their ontological hierarchy.
(7) To the term "dominion" should be attributed the ethical, and not the technological, connotation.
(8) Cf. the present writer's Etica generale della sessualità umana, Milano: Ares, 1992, pp. 51-66.
(9) P. Donati, Settimo rapporto..., cit. p. 479.
(10) "Aliquid dicitus naturale dupliciter: uno modo sicut ex principiis naturae ex necessitate causatum, ut moveri sursum est naturale igni etcet; et sic matromonium non est naturale, nec aliquid eorum quae mediante libero arbitrio complentur. Alio modo dicitur naturale ad quod natura inclinat, sed mediante libero arbitrio completur sicut actus virtutum dicuntur naturales, et hoc modo etiam matrimonium est naturale, quia ratio naturalis ad ipsum inclinat..." (in Sent. IV, dist, 26, q.1, a.1).
(11) Ibid.