January 2010

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International and EU politics are increasingly pervaded by a discourse on 'human rights', which aims to streamline policy decisions and subordinate them to what are described as 'our fundamental values': liberty, equality, solidarity. To take care of these values, a huge amount of domestic and international legislation is adopted, and huge new bureaucracies are set up. And if all this were not sufficient, a wide array of non-governmental organisations and free-lance 'human rights activists' also make use of human rights language to promote their political agendas, which can range from the liberation of dissident politicians in dictatorial rogue states to the protection of ethnic minorities and from the improved care for handicapped or socially excluded people to the promotion of health, housing or education policies. Everybody, it seems, agrees that human rights should receive (better) protection. And our politicians, academics, and civil society organisations spare no effort to make it happen.

Is this not something we should be pleased about? Should we not be happy that, through new legislation and/or novel interpretation of existing texts, we seem to acquire new rights every year?

There is something in this recent inflation of human rights language that we should be concerned about. While the concept of human rights is expanded, it is also diluted: as a consequence, it changes its meaning. Human rights language is today at the disposition of everyone wishing to promote his own political agenda, and some of these agendas seem to have only very little to do with what we came to understand under that term during the cold war at the time of heroic dissenters such as Sakharov, Solzhenizyn, Vaclav Havel, or, more recently, Aung San Suu Kyi. Of the political projects embellished with abundant use of human rights vocabulary, some are highly controversial, while others are even in open contradiction to the perennial moral insights of our society. For exam-

ple, it appears that attempts to (inter alia) define access to abortion on demand or the legalization of homosexuality, euthanasia, the destruction of human beings for research purposes figure at the very top of the political agendas of multinational institutions such as the UN, the Council of Europe, or the European Parliament, as well as of the governments of some (mostly European) countries: what once was called a 'crime' is now turned into a 'right', or even a 'fundamental right'.

In view of the newly acquired fluidity of the concept, it is clear that one cannot any more give unreserved support to all political agendas that sail under the flag of 'promoting human rights'. Instead, we have to re-examine the meaning of the term and identify the variations it has undergone.

The term 'human rights' first appears in the *déclaration des droits de l'homme et du citoyen*, adopted by the French National Assembly on 26 August 1789. Similar texts adopted before or thereafter (such as the American *Bill of Rights*, or the Austrian *Staatsgrundgesetz*) contain catalogues of specific rights, but do not call them 'human rights'. The term 'human rights' reappears in the Universal Declaration of Human Rights (1948), and it is only from that time onwards that it is of current use.

It belongs to the narrative of modern history that 'human rights' are a fruit and an accomplishment of the 'enlightenment era' or of the French Revolution. Certain authors, however, try to 'baptize' human rights, enlightenment and revolution, claiming that the ethical and philosophical foundations for these achievements had in fact been laid by Christianity. In that sense, it would be the Christian spiritual heritage that unfolds itself in contemporary 'human rights'. But can such theories hold true if, as one cannot fail to notice, the contemporary human rights discourse stands at times in radical contradiction to the perennial moral teaching of the Church, for example on the sanctity of life or on the family?

It therefore seems necessary to take a closer look at this claim that human rights were derived from Christian teaching.

In the first place, it should be noted that the intellectual upheaval of the 'enlightenment era' and the French Revolution cannot be seen as an attempt of loyal Christians to reform the Church from within (in the way St. Francis and St. Dominic had in their time worked for a reform of the Church); instead, they were driven by a strong resentment against the Church, its role in society, and its doctrine. Of course, every opposition is defined by what it is opposing: in that way, it is true that neither 'enlightenment' nor revolution would have been possible without Christianity, like Communism would not have been possible without Capitalism. But that does not change the fact that enlightenment wanted to subvert Christian teaching, rather than unfolding it. Indeed, the adoption of the *déclaration des droits de l'homme et du citoyen* was, in a certain sense, an act of emancipation from the Divine Law: the makers of the declaration wanted to demonstrate that neither the authority of a king, nor the Christian belief, was needed to make good and reasonable laws. But their legal thinking was still so strongly influenced by the tradition in which they had been educated that they invoked Natural Law (and not the arbitrary will of democratically elected legislators) as the source of all law. And the substantial rights included in the Declaration were also to a wide extent based on that tradition (it is only in our days that, all of a sudden, we are confronted with novel interpretations of 'human rights' that seem to radically *contradict* Natural Law).

As a second point, it would be utterly mistaken to believe that everybody was completely deprived of any rights prior to the French Revolution. Surely, there was no equality (the nobility and clergy, and to a lesser extent the emerging *bourgeoisie*, enjoyed important privileges); yet it was undisputed that every human person enjoyed rights by virtue of being a human person. It was for this reason that Christianity was able to overcome the practice of slavery (which had been common in antiquity), and that when this abuse re-appeared with force in the context of the colonisation of the Americas, Pope Paul III, in his encyclical *Sublimus Dei*, vigorously objected to it, writing that *"the Indians, and all other people who may later be discovered by Christians, are by no means to be*

deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property; nor should they be in any way enslaved".

One can conclude from these lines that, for the Pope, liberty and the possession of properties were natural rights, to which every human person was entitled irrespective of his/her belief or social status. These rights were not conferred to anyone by the gracious decision of a legislator, but they were innate and had to do with the nature of the human beings so endowed. The Pope's reasoning was not based on any Human Rights Charter, but on what is called *Natural Law.*

Natural Law is by no means an invention of Christianity. Right from the beginning of legal reasoning up to our days, it was generally considered that the fundamental principles of morality and law were derived from nature and discernible through human reason: *est quidam vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna, quae vocet ad officium iubendo, vetando a fraude deterreat ; quae tamen neque probos frustra iubet aut vetat nec improbos iubendo aut vetando movet. Huic legi nec obrogari fas est neque derogari ex hac aliquid licet neque tota abrogari potest, nec vero aut per senatum aut per populum solvi hac lege possumus... nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit...*

These words, which have survived as an isolated fragment from Cicero's treatise *De Re Publica,* can be considered the classical definition of Natural Law. The true law, it says, is discerned by human reason, and it is consistent with nature (i.e., with the reality outside the lawyer's mind). It is known to all, immutable, eternal; it calls everyone to do his duty and to refrain from evil, yet while it will never fail to determine the actions of honest people, it is of no appeal to the dishonest. This law cannot, without dire consequences, be abrogated or replaced, nor can any parliamentary or popular vote absolve us from respecting

it. This law is not different, Cicero says, in Rome from what it is in Athens, nor is it different now from what it will be in later times, but it will apply to all people at whichever time in whichever place.

We may now ask: how can the true law be eternal and immutable if, as we all know, laws differ from country to country and are changed every now and then?

The answer is that *positive legislation* (i.e. the laws that are printed in the statute books) may differ from country to country, and may change over time. But Natural Law does not change. The purpose of positive legislation is therefore to implement Natural Law and to adapt it for the specific needs of a given society at a given time. Certainly, positive law is often necessary in a modern society, given that many aspects of life need to be regulated in a very detailed manner in order to ensure the smooth functioning of economic exchanges as well as of social and political institutions. Besides this, even in the absence of positive legislation, there can be customary law, which at times can be equally efficient: in the UK, for example, there is neither a Civil Code nor a written constitution. But a (positive or customary) law that stands in contradiction to Natural Law is no law at all; rather, it is injustice disguised as a statute.

For 'human rights', a similar status is usually claimed: they are called a 'pre-positive law', which means that they exist irrespective of a legislator's will and that all positive law must comply to them. Yet there seems to be a certain circularity in that claim: when we speak of 'human rights', we mean those rights that are enshrined in one of the internationally recognised human rights documents (such as the UHDR, the European Convention on Human Rights, or the International Covenant on Civil and Political Rights, to name just a few), which themselves are, in fact, positive legislation that, in order to acquire legitimacy, must be in conformity with Natural Law. These conventions may, according to the will of the legislators that have drafted and adopted them, enjoy precedence over other written law – but they are of lower rank than the Natural Law they must comply with. As written law, they cannot, at the same time, be 'pre-positive' law.

Certain 'human rights activists' however, when speaking of the 'human rights' that, according to them, should be protected, do not have in mind those generally recognised rights that are already enshrined in international conventions. What they are saying that the 'rights' they are talking about *should* receive formal recognition as high-ranking 'human rights'. In other words, they claim that these 'rights' are something like Natural Law (even if they do not call it by that name). Some of these claims are certainly justifiable: for example, when people militate for a world-wide prohibition of landmines or for a convention against child labour. Other such claims are preposterous: e.g. the attempt of certain radical feminist groups to assert that 'access to abortion' should be, or already is, recognised as a 'human right'. Whether preposterous or not: what underpins these assertions is the claim that women have some kind of 'natural' right to kill their own offspring during (the first months of) pregnancy. The interpretation of Natural Law on which those claims are based are thus skewed – but at the same time they imply that something like a Natural Law must exist. In that way, even persons who oppose or deny the most basic precepts of Natural Law are forced to recognise the existence of the Natural Law they are opposing: in fact, the debate is not on the existence, but of the content, of Natural Law.

How can we then discern what corresponds to Natural Law and what does not?

One criterion is that the rule in question should have been generally considered as such at different places and at different times: *securus iudicat orbis terrarum*. For example, the possibility to own private property has been recognised as a right at all times and everywhere, except under socialist regimes: a clear sign that socialism is adverse to Natural Law. By contrast, it seems difficult to argue that capital punishment is as such in contradiction to Natural Law, given that it has been applied at all times and nearly everywhere. (But of course, Natural Law does not impose any obligation to use the death penalty against certain offenders.)

Another criterion is that the rule must be reasonable and just. (This is what

prevents slavery, even if it has existed in many cultures and for a long time, from being a part of Natural Law: it is neither reasonable nor just that one man could 'own' another man, since reason holds that both have the same innate dignity.)

Finally, it should be noted that not all precepts of Natural Law are equally easy to detect: scholars distinguish primary directives of Natural Law, which are based on immediate moral insights everybody must share (e.g. the insight that it is wrong to kill another person), from secondary directives that can easily derived by any reasonable person from the first category (e.g. that it is allowed to kill another person in an act of legitimate and proportionate self-defence against an assault) and tertiary directives. These latter directives concern cases in which the 'right' solution, far from being self-evident, can only be found through study and careful reflection (e.g. the case where three shipwrecked persons find a life-boat that will carry only two of them).

We see from these examples that Natural Law is based on very simple and self-evident principles, but that, the more one wants to penetrate into its remotest ramifications, the more it gets complicated: everybody knows by intuition the rough whereabouts of the frontier between the licit and the illicit, but it is a task for learned specialists to determine the exact borderline (which is why we need lawyers and judges). Yet if a legislator draws a new borderline that is far away from any reasonable intuition, then the law is arbitrary and in contradiction to Natural Law.

From all this, we see that there are some important differences between classical Natural Law and contemporary 'human rights'. Natural Law is a single and organic law, whereas 'human rights' are multiple and anorganic. Natural Law gives an answer to whatever legal issue may arise at whatever time in whatever place: it will always be the one and only Natural Law. Human Rights by contrast, come as a parcel of different 'rights' (i.e., a right to life, a right to self-determination, a right to health, ...) and these rights may, at times, be at conflict with each other. And the more 'rights' are handed out by benign legislators, the

more frequently such conflicts will occur. Currently, for example, the benign legislators make great efforts to provide, through the adoption of a cross-cutting 'Antidiscrimination Directive', a new 'right to equality' to the citizens of the EU; unfortunately, however, this new right is likely to undermine another important right of the same EU citizens: that of self-determination.

'Human rights' therefore are an attempt of codifying the basic precepts of Natural Law, but they are not themselves Natural Law. They are positive law. And indeed, the very process of codification means that they represent, in the best of cases, a reductionist and simplifying derivate of Natural Law. In the worst of cases, they lend themselves to interpretations that are opposed to Natural Law; this is, for example the case when certain politicians or NGOs try to establish a 'right to abortion' or 'same-sex marriage' as 'human rights', or to 'find' such rights in existing human rights conventions.

The distortion of 'human rights' is, in actual fact, the result of a (purposefully?) distorted anthropology, i.e., a *revolt against nature*, which certain activists believe can be overcome by the adoption of new laws. This is seen in the context of abortion, where – contrary to all rational and scientific insight – it is denied that the foetus is a human being. It also becomes visible where LGBT rights activists proclaim the 'equality' of homosexual with heterosexual relations: yet sexuality serves the purpose of procreation, just as the eye serves the purpose of seeing and the ear the purpose of hearing. The pretended 'equality' of homosexual with heterosexual relations means that that sex is turned into some kind of purposeless game, of which procreation is an (often undesirable) side effect. Once this view is accepted, it follows that not only homosexual relationships, but all other kinds of social relationships must be treated on a par. The family is no more a natural given, but an artifice created by lawyers: this is why the 'Yogyakarta Principles', a paper that purports to strengthen the recognition of the human rights of persons with 'diverse sexual orientations' call for the equal treatment of *"all families, including those not defined by descent and marriage"*. In short: where Natural Law is not respected, everything becomes

completely arbitrary: *sic volo, sic iubeo, stat pro ratione voluntas.*

Many people believe that true freedom and self-determination consist in freeing themselves from all restraints imposed by nature, i.e., by Natural Law: man aspires to be his own creator. People should therefore be free to determine their own identity, including their 'gender identity' (again a novel concept heralded in by the 'Yogyakarta Principles, quoted above). This concept of self-invention means that everybody is bound only by the moral principles he invents and accepts for himself. Quite obviously, if such self-determination were practised on an individual scale, no human society could continue existing for long. But it is precisely this illusory concept of self-determination that nowadays, in the democratically constituted societies of Western Europe, underpins the concept of law-making: laws are solely based on the will of the people, as (supposedly) it is expressed by their elected representatives, and not on what is dismissed as 'pre-established reality'. The rejection of all pre-established realities means that in our laws the natural meaning of concepts like 'family', 'marriage', 'man', 'life', etc. is systematically discarded and replaced by what the legislator arbitrarily chooses to define by these terms. This mercurial approach ultimately puts law-makers and judges into a position that allows them to turn everything into anything.

By restraining the liberty of law-makers, Natural Law, where it is respected, therefore protects the liberty of everyone: the rules to which we all must abide are determined by reality, not by the whims of some politicos. *Nec vero aut per senatum aut per populum solvi hac lege possumus.*

(We thank Fundacja Pro Humana Vita in Krakow for their permission to print this article).