NATURAL LAW THEORY IN SPAIN AND PORTUGAL

ANTONIO-ENRIQUE PÉREZ LUÑO[1]

Abstract: This article intends to approach briefly the development of Natural Law theories in the Iberian peninsula, focusing in more detail on their evolution and tendencies in the 20th and 21st centuries when they are at a crossroad. Due to this succinctness, the approach will be fundamentally descriptive, however it will try to consider the wide and heterogeneous character of such theories as well as their implications for the doctrine of human rights.

Keywords: Natural Law, Human Rights, Philosophy of Law, Moral Values.

Contents: I. METHODOLOGY, SCOPE AND PHILOSOPHICAL CRITERIA; II. NATURAL LAW IN THE SPANISH AND PORTUGUESE TRADITIONS; III. 20TH CENTURY REPRESENTATIVE SCHOLARS AND TENDENCIES; IV. NATURAL LAW IN PRIVATE LAW; V. NATURAL LAW AND HUMAN RIGHTS; VI. NATURAL LAW THEORIES IN 20TH-CENTURY PORTUGAL; VII. CONCLUSION: PREMISES FOR AN ASSESSMENT

I. METHODOLOGY, SCOPE AND PHILOSOPHICAL CRITERIA

Designing a summary approach to the current scenario of Natural Law theory in Spain and Portugal is not an easy task. Traditionally, theologians, philosophers, sociologists and lawyers have displayed a committed interest in this area over the centuries and hence produced abundant literature that renders any synthesis attempt quite a complex enterprise. On the other hand, there is an undeniable plurality of perspectives dealing with Natural Law, which makes it appropriate to adopt the open and flexible rationale mentioned by Entico Pattaro in his presentation to his *Legal Philosophical Library* (Pattaro 1982, p. 17).

Considering the wide and heterogeneous character of Natural Law theories in Spain and Portugal, to establish sharp and aprioristic distinctions may be useful just for partial research projects, but it stands as an inadequate choice for the general scope adopted in this paper. The aim and extension of this essay also recommend a fundamentally descriptive approach, which does not entail a total discard of personal positioning when this when this would appear to be unavoidable. Besides, these boundaries imply that scholars, issues and theories are addressed in a necessary non-exhaustive fashion.

[1] Professor of Philosophy of Law (Universidad de Sevilla, Spain).

Comments need also to be made regarding some fundamental methodological groundings. Bearing in mind that it is our *current* philosophical and legal panorama which this paper attempts to describe, it seems advisable to consider theories as something alive, in-the-making, so to say, thus excluding the acceptance of a slant drawn upon rigid, well-established and unalterable doctrinal conceptions. The scholar who attempts a historical study of their present time undertakes some form of *ursprüngliche Geschichte*, in its Hegelian meaning. He counts on a close look based upon his direct experience as both actor and chronicler of the described reality, but, at the same time, he lacks the sort of certainty that only distance may grant.

One final warning. There are some shared historical and cultural features that enable the joint treatment of both the Spanish and Portuguese Natural Law theories. Yet, it would certainly be a mistake to assume an undifferenced approach to these two traditions, which count on their own history and peculiarities. Consequently, a common treatment is provided for the forging era of these traditions, in which the interchange of ideas and approaches was more intense; while a separate presentation is considered more appropriate for 20th century theories, where differences are more acute.

II. NATURAL LAW IN THE SPANISH AND PORTUGUESE TRADITIONS

The Spanish institutionalized study of Natural Law may be considered to coincide with the founding in 1228 of the oldest Spanish University – the University of Salamanca. Ius commune, Civil Law and Canonical Law were studied at this institution prompted by deep theological, philosophical and political concerns. At the same time, many issues that are currently included within the scope of Legal Philosophy were treated in *Philosophia practica* classes, where an Aristotelian model inspired the approach to moral, legal and political problems. In contrast, little interest was shown for positive law during a long period. This piece of information did not passed unnoticed for Chaim Perelam, who remarked, in his study on *"La réforme de l'enseignement du droit et la nouvelle rhétorique"*, that the famous University of Salamanca library dedicates little space for classical works on Spanish Law, while literature devoted to Theology, Moral Philosophy and Natural Law is widely abundant (Perelman 1975, p. 5).

From the beginning of the 15th century, and especially during the 16th and 17th centuries, scholars pertaining to the so-called "Escuela de Salamanca" (Salamanca School), also known in a broader manner as "Clásicos españoles del derecho natural" (Spanish Natural Law Classics), produced copious literature gathered under the titles *De Justitia et iure* and *De legibus*, which can inform an understanding of the configuration of modern Natural Law. Even more, the very expression "Natural Law" appears to have been first used by a Spanish scholar, Fernando Vázquez de Menchaca (1512-1569) in his *De vero iure naturali* (circa 1560), and not by Hugo Grotius, as it is sometimes assumed. This era, doubtlessly one of the most brilliant epochs for the Spanish legal-philosophical thinking, did not only see the forging of modern Natural Law, but also the birth of Criminal Law

theory thanks to the contributions of Alfonso de Castro (1495-1558) as well as the new conceptions of the Law of the Peoples due to the decisive works of Francisco de Vitoria (1492-1546) and the aforementioned Vázquez de Menchaca. A crucial factor for the vigour of Natural Law thinking in this era was its antidogmatism. Spanish scholars did not limit themselves to a servile reception of scholastic sources. On the contrary, they subjected those sources to a critical revision according to the exigencies of that time. They also showed an independent attitude, sometimes daring to overtly criticize the established power. It was this attitude that led Francisco de Vitoria and Bartolomé de las Casas (1474-1566) to defend a position contrary to the political interests of the Crown, designing the exigencies for an admissible legal status for the recently conquered peoples of the New World. In this cultural atmosphere, Domingo de Soto (1494-1560) and Francisco Suárez (1548-1617) proposed valuable theses in order to identify the democratic grounding of the government, while Jesuit father Juan de Mariana (1536-1624) established a definite characterization of the right of resistance. It comes as no surprise that the Spanish Legal-philosophical thought served in this age as a model for the renovation of Natural Law undertaken by Grotius and for the theoretical justification of popular sovereignty launched by Althusius (Pérez Luño 1994; Trujillo 1997; Truyol y Serra 1975).

The University of Coimbra in Portugal, playing an analogous role as a spreading focus of philosophical and legal thought within the country, assumed a similar position to that of the University of Salamanca in Spain. In the Renaissance era, cultural relations between these two countries were intense and the theses of the Spanish classics of Natural Law found in Portugal a receptive soil for its diffusion and development.

Manuel Paulo Merêa, the most important figure in Portuguese 20th century legal historiography, dedicated an interesting book to the study of Spanish Jesuit Francisco Suárez, paying special attention to his time as a professor in Coimbra (Merêa 1917). Another Spanish Jesuit, Luis de Molina (1535-1600) lectured in both Coimbra and Evora Universities, contributing to the forming of a relevant school of scholars devoted to Natural Law in the latter one (Díez-Alegría 1951). Balancing this flow, some Portuguese intellectuals developed their work in Spain. The most remarkable was Lisboan Serafim de Freitas (1570-1633), who lectured in Valladolid and opposed the theses on freedom of navigation of Fernando Vázquez de Menchaca, while sharing University location in the Castilian city. Menchaca's ideas were furthered by Grotius in his work *De mare liberum.* Freitas contested both scholars with his *"mare clausum"* theory, in which he rejects the idea that the seas may be considered as "common things" (*res communes*) that may not be object of occupation, appropriation or limitation of use. The life of Portuguese Antonio Vieira (1608-1697) may be considered to run parallel to that of the Spanish Dominican Bartolomé de las Casas. Born in Lisbon, he spent most of his life in Brazil, where he contributed to the defence of the dignity and liberty of Amerindians in the name of the ethical, legal and political exigencies he managed to derive from his humanist conception of Natural Law.

The 18th century saw the inception of an era of decadence in the study of Natural Law, as a reflection of the profound economic, social and political crisis that was striking Spain at that time. By the middle of the 18th century, the academic vices that pervaded the University of Salamanca were not limited to the lecturing and research realms. The very structure of the University showed signs of corruption, made evident through the selling of professorships and degrees. There is certainly quite an abyss between the University of Salamanca that served as a spreading pole for the Spanish classical Natural Law doctrines during the Renaissance and Baroque era and the deteriorated version found at the beginning of the 18th century. The crisis did not hit the Portuguese Universities that hard thanks to policies inspired by the European Enlightenment adopted by Marqués de Pombal. By the end of the century, Spain also initiated an Enlightenment movement during the rule of King Carlos III. In this time, Portugal and Spain experienced the penetration of rationalist versions of Natural Law, which encountered special diffusion in the so-called "Escuela Iluminista Salmantina" (Salamanca Illuminist School). The penetration of the spirit of Enlightenment brought fresh air to the Salamanca academic atmosphere, saturated by the practice of corruption and indulgence in fruitless routines. This intellectual renovation was facilitated, in the case of Legal Studies, by the emergence of a committed interest in the study of *Ius Naturae et gentium*, which started to be taught in *Reales Estudios de Madrid* and later in the universities of Valencia, Granada and Zaragoza. No special chair or professorship was created in Salamanca for this discipline, but it was cultivated as a part of other subjects. The first professor to hold a chair for this specific area in Madrid was Joaquín Marín y Mendoza (1721-1782), author of the work *Historia del derecho natural y de gentes (History of Natural Law and Law of the Peoples)*, which played a pioneering role in the penetration of Enlightenment Natural Law theories.

During the 19th century, the institutionalization of Natural Law as an academic discipline became one of the main topics within the ideological controversy sustained by liberals and traditionalists in university. At the beginning of that century, liberal ideology promoted the establishment of Chairs of Natural Law in the Law Faculties, with syllabuses inspired by rationalism and contractualism, thus opposing the conservative and traditionalist tendency to defend a merely scholastic study of Natural Law in the Philosophy faculties. The influence and diffusion of German Idealism contributed to renovate Natural Law theories. Some local peculiarity needs to be acknowledged here, since the most studied idealist scholar was Krause, thus leaving aside the great masters of this trend: Kant, Hegel, Fichte… In contrast, the spread of Legal Historicism and Philosophical Positivism led to a gradual decline of Natural Law theories which aggravated by the end of the 19h century (Pérez Luño 2007; Truyol y Serra 2004).

III. 20TH CENTURY REPRESENTATIVE SCHOLARS AND TENDENCIES

The 20th century saw the initiation and development of the main trends and philosophical movements that still currently prevail. A thorough analysis of the works and doctrines of the last century falls quite beyond the reasonable boundaries of this essay.

Instead, a sensible summarizing approach will attempt to provide a description of the cultural horizon covering the reflections on Natural Law developed in Spain during the last century. With such an aim, the different theoretical positions and research topics will be grouped in three representative trends: legal naturalism based upon axiological groundings and Neokantian adscription; Neo-Scholastic Natural Law doctrines; and, finally, those versions characterised by their innovative, vitalist and experiential approach to Natural Law. Through the 20h century several doctrines developed within Legal Theory and Philosophy that build up the different versions of Natural Law. The majoritarian adscription of philosophers to Natural Law does not entail some sort of uniformity regarding the fashion by which the very concept of Natural Law is understood and defined. In fact, a direct assumption of a high degree of conceptual heterogeneity is found among Spanish 20th -century Natural Lawyers. The frequently denounced "multivocality and equivocalness" of Natural Law found a firm confirmation through this variety of Natural Law theories, no matter how much diffusion and preponderance one single version may have achieved. Hence, the need to establish some theoretical distinctions when approaching this general philosophical trend.

III.1. Axiological and Neo-Kantian approaches

When addressing the situation of Natural Law in Spain before the 1936 Civil War, reference needs to be made to a group of scholars whose activity focused on the study and diffusion in Spanish soil of some of the most influential legal-philosophical movements developed in the first half of the past century. These scholars tried to place the basis for their Natural Law conceptions away from 19th-century Neo-Scholastic and Krausist doctrines that then prevailed within foreign Legal Philosophy. This new grounding for Natural Law undertook, in most cases, axiological and Neo-Kantian approaches.

One of the most relevant representatives of the Neo-Kantian trend was Adolfo Bonilla San Martín (1875-1926), according to whom every legal rule has both content and form. The content is something established by experience, while the form is an *a priori* element. The so-called Natural Law cannot be but a study of the *a priori* forms of legal experience, a sort of legal Logics, a specific normative formal structure with no concrete subject or content of any kind (Bonilla San Martín 1897).

A higher degree of fidelity to Neo-Kantianism may be found in the works of Francisco Rivera Pastor and Wenceslao Roces, who, though influenced especially by Stammler, showed a relevant methodological freedom in their attempts to draw from some other philosophical proposals in order to mitigate Stammler's exacerbated formalism. Wenceslao Roces (1897-1992) played a decisive role in the diffusion of Neo-Kantian Legal Philosophy in Spain through his exemplary translations of the main works of Radbruch and, particularly, Stammler. Francisco Rivera Pastor (1878-1936) wrote some relevant studies on the legal projection of Kantian thought which include his essays *Algunas notas sobre la idea kantiana del derecho natural (Some notes on the Kantian idea of Natural Law)* and *La*

razón pura en sí misma y como fundamento del derecho (Pure Reason by itself and as a Grounding for Law). His most ambitious attempt to project Kantian or, to be more accurate, Neo-Kantian ideas on the Legal realm was his monograph *Lógica de la libertad* (*The Logics of Freedom).* The main aim of this work lies precisely in thinking and re-elaborating the basic concepts and categories within Legal Theory from a Neo-Kantian Natural Law perspective. The influence of Radbruch and Stammler may be noticed in Rivera Pastor's purpose aiming at overcoming Kantian formalism (Rivera Pastor 1913).

III.2. Neo-Scholastic Natural Law doctrines

Most of the Neo-Scholastic Natural Law doctrines were developed after the end of the Civil War, a period in which they attained an almost absolute preponderance among the Legal Philosophers of that time. These theories tried to refer to and/or draw upon classic sources, particularly those pertaining to the Spanish School. There were, nonetheless, attempts of assimilation of the main contemporary Catholic Natural Law tendencies, most of them aimed at rendering them compatible with the traditional thought with a higher or lower degree of flexibility.

One of the most significant focuses of Natural Law think was created in the first decades of the 20th century in the University of Zaragoza, around the figure of professor Luis Mendizábal Martín. Among his disciples we find his own son Alfredo Mendizábal Villalba, as well as Miguel Sancho Izquierdo, Enrique Luño Peña, and, at the beginning of his academic career, Luis Legaz Lacambra.

This group of scholars, which I proposed to call the "Aragonese School of Natural Law" back in the 70s, though much bounded to Neo-Thomism, were also influenced by the Neo-Kantian Legal Philosophy of Stammler, Radbruch and fundamentally by Giorgio Del Vecchio.

Luis Mendizábal Martín (1859-1931) stands as a linking piece between the 19th century treatises and the Natural Law cultivated at the beginning of the 20th century. The works of Professor Mendizábal Martín, initiated in 1980 with his *Elementos de derecho natural* (*Elements of Natural Law)* and continued through the seven editions of his *Tratado de derecho natural (Treatise of Natural Law)* –the last of which was re-elaborated by his son Alfredo Mendizábal Villalba (1897-1981)– represent at the same time the hindmost example of 19th century Natural Law ways and concerns and the opening to the new horizons and problems of the discipline at the beginning of the following century. Mendizábal Martín defines Natural Law as a Law enacted by properly driven reason, based upon facts and founded on the Divine Law. His conception of Natural Law does not fall into inflexibilities, neither it is incapable of taking into account historical circumstances; rather, following a common doctrine of Hispanic Natural Law, Mendizábal conceives Natural Law as a reality in tension with the requirements of daily life.

Mendizábal Martín's disciples, Miguel Sancho Izquierdo (1890-1988) and Enrique Luño Peña (1900-1985), followed the philosophical guidelines established by their Master in the structure of their treatises on Natural Law. They both start from the idea of order, to establish the relationships between the moral order and the legal order. The latter is determined by an aim that works as its regulating principle, which is the notion of common good in its most rigorous Thomist sense. Following the doctrine of the Salamanca School, Luño Peña sustains the need to concrete the primary principles of Natural Law, that is, to project the consequences deduced from Natural Law on to the sphere of practical and historical situations. This deductive method is implemented through necessary conclusion and approximate determination. When addressing the relationship between Morals and Law, he synthesised the Salamanca School theses by proposing a union without unity and a distinction without separation between these two normative realms of the human conduct (Luño 1968; Mendizábal Martín 1925; Mendizábal Villalba 1928; Sancho Izquierdo 1955).

In the first half of the 20th century, a mention needs to be made to the works of University of Madrid-based Professor Pérez Bueno, who as a PhD scholar in the Spanish College at Bologna, defended his dissertation titled *Breve esposizione delle dottrine etico-giuridiche di Antonio Rosmini (A Brief Exposition of Antonio Rosmini´s Ethical-Legal Doctrines)* in 1902. He was the main diffuser of Rosminian thought in Spain, as it may be noted in in his book: *Doctrinas ético-jurídicas de Antonio Rosmini (Rosmini's Ethical-Legal Doctrines).* He professed a Thomism-inspired Natural Law, but he was also open to other tendencies, as his interest in Sociology and the grounding of Human Rights shows. The end of the Civil War surely meant the beginning of a new stage for the evolution of Natural Law in Spain. The variety of theoretical directions prior to the 1936-1939 Civil War, reflecting an ideological pluralism, was substituted by the overwhelming supremacy of "Catholic Natural Law", which reigned during Franco's authoritarian regime. The literature dedicated to Natural Law in Post-War Spain is strongly uniform. Neo-Scholasticism, which had already counted on the highest number of followers in the previous period, becomes followed practically by every Legal Philosopher, as well as by most theoreticians specialising in Public and Private Law from 1939. Even scholars with no Thomist background, such as Luis Legaz, Enrique Gómez Arboleya and Salvador de Lissarrague produced studies in which they showed an interest in Natural Law and, especially, in the Salamanca School. It would clearly be an overstatement to sustain that the political regime established in Spain by Franco after the Civil War pretended to support a "revival" of the Spanish Natural Law Classics. It is obvious that the so-called *Movimiento Nacional* (National Movement) had to address more urgent issues, culture not being among their primary concerns. Nevertheless, peculiar circumstances explain a favourable context for an invocation and manipulation of the Salamanca School as it had never been known before. Several reasons may be adduced in order to explain this situation. The most evident one was the international isolation to which Franco's regime was subjected after the defeat of both Nazi and Fascist totalitarian regimes. Lacking an *external* political legitimacy before their coetaneous democracies, the dictatorship had no choice but to look for an *internal* legitimation rooted in the past. This phenomenon conducted to an exacerbated

ideological nationalism, spurred by a distrust and hostility towards anything that could hinder the cultural policies of monolithical unity imposed by the regime. The Salamanca School was therefore chosen as an autochthonous thinking model with which the glories of the lost Empire could be restored.

Among the most representative Natural Lawyers of the Franco era we find Professor Francisco Elías de Tejada (1917-1978). He proposed a Catholic Existentialism based upon the idea that God assumes a decisive role and that this belief renders it possible to find acceptable reasons for an objective-values-based human agency. Elías de Tejada's disciple, Francisco Puy, coordinated and authored *El Derecho Natural Hispánico (Hispanic Natural Law)*, whose title may be equivocal, since not all the scholars there referred were Spanish and neither could they be considered followers of the Salamanca School *strictu sensu*. It is, albeit, true that some of the most relevant contemporary Spanish Neo-Scholastic Natural Law trends were there contained. Puy summarizes the aim of Legal Philosophy, conceived in strict Neo- Scholastic terms, in the double function of guiding Law and Politics according to a transcendental and therefore transcending (God, the absolute goodness) goal, i.e. Natural Law, an idea that may synthesize the whole conception of this School (Puy). Eustaquio Galán (1910-1999) also advocated for a strictly Neo-Scholastic Natural Law. Natural Law would imply, as Galán defends in his *Ius naturae*, the belief in a *iustum* given by God or Nature, and hence, pre-positive and more valuable than positive Law; the latter having therefore to conform to the former, which functions as a paradigm or canon (Galán).

Another relevant figure in contemporary Spanish Neo-Scholastic Natural Law is José Corts Grau (1905-1995) who held the position of vice-chancellor in the University of Valencia for a long period. His thought stands as a radical denial of one the nuclear dogmas of Legal Positivism: the separation between Law and Morals. He defended in his *Curso de derecho natural (Natural Law Course*) that the legal and moral orders may not be either metaphysically or psychologically separated. Such a divorce would mean a failure to acknowledge the universal order, or a breakdown in both the divine unity and the human unity, a denial of our own nature. Moral subjects and legal subjects are the same and their ends, far from excluding each other, they complement and help each other. That is why many scholars consider morality as an end and Law as a mean to fulfil its realization. Defending a divorce between the moral and the legal orders entails –according to Corts– an attack on legal dignity, since Law is rooted in a moral act and not only originates from morality but also returns irremediably to its bosom. José Corts Grau undertook the intellectual challenge of introducing new contemporary trends in the heart of Neo-Scholastic Natural Law. With such an aim, he devoted to the study of the contributions made by legal institutionalism or existentialism, paying especial attention to Martin Heidegger (Corts 1970).

Natural Law pertaining to the *classical tradition*, either in its Neo-Scholastic version or in some other conceptions linked to Christian philosophy, still holds importance for a considerable group of lecturers and scholars in contemporary Spain. The direct

references to Neo-Scholastic Natural Law made in some John XXIII Encyclicals, particularly *Mater et Magistra* and *Pacem in Terris*, as well as the social and political implications of some Vatican II Constitutions, which bear an unquestionable humanist and democratic character, prepared the path for the rehabilitation of Christian Natural Law making it compatible and conversant with contemporary culture. Later pontifical and pastoral activities have obtained an ambivalent signification: some actions and documents have followed the aforementioned humanist trend, while some other contexts have seen openly involutive positions that reveal an unfortunate misunderstanding of modern values. These two tendencies have influenced the most recent Spanish Catholic Natural Law, directed towards positions of *aggiornamento*, so to say, of Natural Law in some occasions, while also adopting clearly pre-conciliar approaches in other instances. A wide group of Legal Philosophy lecturers from different Spanish universities have resorted to traditional Catholic Natural Law in order to claim for the necessary moral grounding of positive Law, advocating a moral objectivism before ethical relativism and making use of these theses to address diverse contemporary moral and political concerns. Issues related to marriage, divorce, abortion, euthanasia, reverse gender discrimination, secularization and laicism have been treated in a dense literature by scholars like Jesús Ballesteros, Francisco Carpintero, Francisco Contreras Peláez, Francisco José Lorca Navarrete, Alberto Montoro Ballesteros, Andrés Ollero and Ernesto Vidal, among others.

III.3 Innovative Natural Law trends

In the last decades of the last century some theoretical attitudes representing innovative points of view come into scene. They sometimes even represent a critical position before the so far dominating Neo-Scholastic Natural Law. It is true that the main exponents of what I have called "Aragonese School of Natural Law", as well as some other Neo-Scholastic Natural Lawyers like José Corts Grau, showed an open and receptive attitude towards some 20th century philosophical, legal and sociological trends, such as existentialism, institutionalism, or solidarism, but for the following scholars the innovative and/or critical will was central to their understanding of Natural Law. It is, albeit, important to notice that these innovative and critical formulations were not proposed against Natural Law, but designed within Natural Law itself as an attempt to clarify their meaning and adapt their theses to new contexts and concerns.

When trying to understand contemporary Spanish Legal Philosophy, no diligent scholar should overlook the fact that two of our most international Legal Philosophers, Luis Legaz Lacambra and Luis Recaséns Siches shared two basic particularities: the influence of Ortega y Gasset's ratio-vitalism in their formative years and their interest in legal experience showed in some of their latest most influential works. If Ruiz-Giménez proposed an approximation between institutionalism and ratio-vitalism, Legaz and Recaséns have the merit of having noticed the similarities between some ratio-vitalist premises and the philosophy of legal experience.

Luis Legaz Lacambra (1906-1980) elaborated in his early years a concept of Law that shows the imprint of two opposing influences: Kelsenean formalism and Ortega's ratio-vitalism. In his foreword to the second edition of his *Filosofía del derecho (Philosophy of Law)*, published in 1961, Legaz asserts his aim of characterising his conception using a clearer notion of Natural Law than the one usually used, thus conceding Natural Law a central role in his legal theory. Natural Law would then be responsible for the concretization of the scope of a "point of view on justice" that constitutes the valorative dimension of Law. This dimension had a merely formal character in Legaz's early years. Law –Legaz would point in his second stage– is always a "point of view on justice" and accordingly Natural Law must be the best possible point of view on justice –justice in its purest programmatic form (Legaz 1961).

Luis Recaséns Siches (1903-1977) deems the axiological dimension of Law the object of Natural Law, which he referred to for a portion of his career as "*estimativa jurídica*" (legal estimative). Later on, he preferred to return to the traditional label to avoid the logomachy implied in using two names for the same object. For Recaséns, Natural Law is built upon ideal objective values from which necessarily valid guidelines are derived. These values belong to the human existence and, particularly, to specific situations experienced through life. Natural Law must not therefore be understood as an expression of facts, since in the realm of being there are good and bad phenomena, fair and unfair, convenient and inconvenient facts, virtues and vices, health and illness. Natural Law must be understood as a set of normative principles and not descriptions of ontological realities: it does not express a being, but an "ought-to-be" conceived as an identification of what the author calls estimative criteria (Recaséns 1961; 1983).

One of the most solid and stimulating innovative attempts within contemporary Spanish Natural Law may be found in the works of Professor Antonio Truyol y Serra (1913-2003), who elaborated a systematic and historical summary of Natural Law thinking during the 50s. There, he proposed an interrelation between law and morals, conceived as different normative realms. This conceptual distinction does not entail the sort of separation alleged by Legal Positivism. The intertwining of both orders reaches its most important expression, according to Truyol, in social morality, that is, that part of morality that determines one's duties as a member of society (Truyol 1950).

An innovative character may also be appreciated in the thought and works of Joaquín Ruiz Giménez, who held the Legal Philosophy Chair at the Complutense University of Madrid. His doctoral dissertation, published later, became a pioneering research within Spanish Legal Institutionalism. An effort to renovate Natural Law may also be noticed in the theses of Professor Mariano Hurtado and Professor José Mª Rodríguez Paniagua. The latter is responsible for a suggestive Natural Law conception based upon Legal Axiology. It is widely recognized that Professor José Delgado occupies a leading role in the critical review of Natural Law topics. There are three basic aspects that articulate his innovative attitude. Firstly, his prospective reading of the Salamanca School; secondly, his

interest in facing one the greatest challenges that contemporary culture poses before classical Natural Law: the problem of historicity in legal categories; and finally, his aim of overcoming the secular tension between Natural Law and Legal Positivism. That is why he interprets some of the most solid legal-philosophical constructions of our time (Hart, Rawls, Dworkin, Alexy…) as theoretical attempts aiming at showing the crisis experienced by Legal Positivism, but without formally taking sides with traditional Natural Law. An undeniable innovative character prompts the conception of Natural Law proposed by José Luis López Aranguren, who accepted Natural Law as bearing a legal pretension and keeping Law open to historical, cultural, political and social realities. Much influenced by Aranguren's theses as well as the teachings of Ruiz-Giménez and Peces-Barba is the intellectual career of Professor Eusebio Fernández, who opts for a critical and deontological Natural Law, understood as a compound of exigencies of public morality that must inspire and limit positive Law (Pérez Luño 2007).

Jesús Ballesteros is considered José Corts Grau's main disciple. He wrote a very meticulous PhD dissertation that was later edited a book in 1973 under the title *La filosofía jurídica de Giuseppe Capograssi (Legal Philosophy in Giuseppe Capograssi).* This work highly contributed to raise an interest in Spain for the most important representative of the Italian Legal Experience conception, Giuseppe Capograssi. Ballesteros offers a Natural Law interpretation of Legal Experience according to which legal knowledge is not understood as a sheer external projection of certain logical methods, because knowledge cannot be separated from human action –Law is considered as a product of life experience, life itself being regarded as an ethical experience (Ballesteros 1973; 1984).

Spanish Natural Law tradition has drawn on a wide number of scholars especially committed to providing an historical approach to Natural Law. This tradition has weakened lately, but it still produces some relevant contributions. Among those who develop their historiographical reflections within Legal Experience, Professor Francisco Contreras Peláez stands out thanks to his valuable contributions analysing Kant and Savigny from a Natural Law and Legal Philosophy perspective (Contreras 2005). In a similar fashion, Fernando Llano Alonso is responsible for a relevant work on Immanuel Kant's cosmopolitan Humanism (Llano 2002). Carlos López Bravo undertakes a firm historiographical vocation aimed at studying the sources of Natural Law, particularly, drawing upon a suggestive critical review of Paul of Tarsus and Isidore of Seville. Nevertheless, his main contribution to Natural Law historiography lays in his monograph on Philosophy of History and Philosophy and Natural Law in Giambatista Vico (López Bravo 2003).

Reference needs also to be made to my own intellectual experience, which has involved a long-term engagement with these innovations in Natural Law. Having studied the scholars pertaining to the Salamanca School through the teachings of my uncle Professor Enrique Luño Peña, I never abandoned my interest towards their doctrinal legacy. I have, consequently, had the chance to produce different papers as well as a comprehensive general book in which, celebrating the fifth centenary of the discovery of

the New World, I tried to renovate the *spanische Naturrechtslehre Forschung* in a threefold fashion: addressing those thinkers or topics that had been neglected or insufficiently studied; performing a "meta-theoretical sieve" on those doctrinal studies so far developed in order to test their critical liability; proposing prospective analyses to explore the contemporary projections of this theoretical legacy (Pérez Luño 1994). The teachings and stimuli received from other Legal philosophers had a similar importance in my attempts to renovate Natural Law. My PhD dissertation, written in University of Bologna under the direction of Guido Fassò, was defended in 1969. It analysed the tensions between Natural Law theories and Legal Positivism in contemporary Italy. Its Spanish version was published two years later, counting with a foreword by Professor Fassò himself (Pérez Luño 1971). I then transferred to University of Freiburg where I had the chance to receive the teachings of Professor Eric Wolf. In the following years, my contact and scientific relations with different Spanish and foreign colleagues allowed me to settle my ideas and innovative intentions regarding Natural Law. Bearing such an aim in mind, I have always found it appropriate to distinguish between an *ontological, dogmatic or radical* Natural Law, which defends a metaphysically objectivistic order from which absolute and extemporal values may be deduced; and a *deontological, critical or moderate* Natural Law, which does not deny legal character to unfair Positive Law, but establishes certain criteria in order to assess such a regulation and therefore set grounds for its criticism and substitution by a just system. Regarding the first version, I deem it incompatible with important values and exigencies of our contemporary humanist culture, so I consequently endorse a rationalist, deontological and critical Natural Law. Some have argued that it is possible to admit the existence of values prior to Positive Law with no alignment with Natural Law whatsoever as long as they are kept in a moral or social, but not legal, realm. I cannot share this position, because it seems quite paradoxical that legal scholars from both past and present times would sustain that the criteria used to identify proper or correct Law are not legal. This attitude finds no match within epistemology, where no one argues the logical character of the criteria that enable one to tell truth from falsity; just as no one questions the aesthetical character of the criteria that tell beauty from ugliness and there is no controversy on the moral nature of the postulates that tell good from evil (Pérez Luño 2006).

IV. NATURAL LAW IN PRIVATE LAW

The spread of Natural Law during Franco's regime did not limit to the legal-philosophical sphere. It also reached some other relevant areas of the legal life and, especially, the methodological attitudes of scholars specialising in Private Law. The methodological incidence of Natural Law expressed itself as an attempt to overcome formalism and therefore ground the interpretation and application of Law upon valorative premises that, in that time, would be specified according to Neo-Scholastic ethical postulates. For Spanish Private Law scholars of that time, the methodological approach to Law would usually be carried off according to Christian Natural Law. This fact responded to the belief, exposed by Civil Law scholar Antonio Hernández Gil (1915-1994), that the

highest and most genuine Spanish Legal Theory could not be but Natural Law. This tendency was the most popular one among those of our legal scholars that approached the basic concepts and concerns of legal theory and methodology in that historical-cultural context.

According to Hernández Gil, this theoretical option enabled the avoidance of risky openly anti-philosophical tendencies embraced by legal scholars in other countries, allowing this way an overcoming of a pretended antagonism between philosophical and legal methodologies from a Natural Law perspective (Hernández Gil 1945).

This spirit also inspired Private Law scholar Felipe-Clemente de Diego (1886-1945), who considered that method meant order as long as it served diverse human ends, came from human nature itself and found a fundamental explanation in the science of the ultimate causes and reasons, that is, in philosophy. That is why this task cannot be merely mechanical, as Legal Positivism pretends, but it requires a valorative position that stays openly in tension with the needs of legal praxis, an attitude that only a Natural Law methodology may propitiate. For Federico de Castro (1903-1983), positive Law always requires a justification. This comes expressed in a chart of immutable values that legitimize legal instances that respect them while reducing to sheer un-legal arbitrariness those pieces of legal production that contradicts them. Natural Law offers criteria to judge Positive Law, but since human weakness and the indifferent character of certain acts render it impossible to apply in the world or the State a regulation totally coinciding with Natural Law, their relationship needs to be determined. Following Thomas Aquinas, De Castro points that human law may be derived from Natural Law, either *per modum conclusionis*, establishing consequences and particular applications of a general principle of Natural Law, or *per modum determinationis*, concretising what has to be done within the scope offered by the Natural Law. Positive Law thus acts based upon the generality or indeterminacy found in Natural Law. Civil Law Professor and President of the Supreme Court José Castán Tobeñas (1889-1969), considered it urgent in our post-civil war scenario to follow both Spanish and universal, classical and modern Natural Law. He pointed out in his works that the requirements of Natural Law came from the practical needs of interpreting and elaborating our positive law, always created with an ethical perspective, as well as from the theoretical advantages that classical Natural Law provides as a fundamentally homogenous doctrine within the history of Western thought, accessible by all and scientifically and popularly grounded at the same time. This characterisation contrasts with the compound of modern philosophical theories that continuously are born and die without effectively penetrating in the soul of society or acquiring a sound comprehension by legal scholars themselves (Legaz 1975; Pérez Luño 2007).

The influence of Neo-Scholastic Natural Law on the Spanish legal scene during Franco's regime was not bounded to the scholarly sphere, but it also had an impact on case-law. Most of the solemn invocations to Natural Law produced by the courts were but sheer declarations of principles, though. If we take a superficial look at the decisions taken by our

Supreme Court during Franco's regime, in cases related to values and principles of justice and morality, we may think that judges did really try hard to stay away from the political bindings of that time. There is, actually, an argumentation trend found in case-law that insists on the *supra-historical* and *meta-temporary* character of their moral assessments (Pérez Luño 1990; Pérez Ruiz 1987).

V. NATURAL LAW AND HUMAN RIGHTS

Legal thinking cannot exist or be intelligible if it is regarded aside from the political, cultural and social circumstances that delimit its spatial-temporal context. Theories and works belonging to one determinate historical stage of Natural Law cannot be comprehended regardless of a determinate system of collective experiences. One cannot understand the peculiarities of the topics and perspectives that characterise Spanish Natural Law in the last years without an account of the new circumstances that contextualise its development. The political changes taken place in our country by the end of the 70s meant a substitution of an authoritarian regime by a democratic State fully respectful of the rule of law. This fact has directly and decisively influenced the research and activities undertaken by current Legal Philosophers. In my opinion the most important event having a decisive impact on Spanish Natural Law has been the enactment of the 1978 Constitution. The civic and intellectual mobilisation that the Spanish Constitution brought about also implied a commitment, a challenge and a renovated scientific enterprise. The Constitution has represented for many legal philosophers and theoreticians of my generation a true milestone that has shaken both our condition of citizens and our intellectual career. The enactment of the Constitution meant the beginning of a still on-going research venture for the Spanish legal culture.

The leading role played by fundamental rights in the 1978 Constitution has made them a crucial aspect of our legal culture. In fact, fundamental rights are assigned the task of guiding the performance of public powers and articulating the implementation of the active subjective status of citizens. According to certain viewpoints assumed by a version of critical Natural Law version that lays close to the ideas of the Frankfurt School, the rights and liberties granted in our current Constitution have been considered as institutionalised vindictive channels for the great aspirations and needs of the Spanish society and, in fact, it cannot be denied that that this has actually been the case. From other perspectives, linked to the liberal Natural Law tradition, the meaning of these rights and liberties have been specified as an explicitation of the superior values that ground our *Rechtsstaat* (art. 1.1 Spanish Constitution). There is no doubt that fundamental rights contain an undeniable axiological character and that they evoke this condition with their very name as it may clearly be noticed in the Spanish Constitution wording, where "los derechos fundamentales" (…) "son fundamento del orden político y la paz social" ("fundamental rights" (….) "are the foundation of political order and social peace") (art. 10.1 Spanish Constitution). Other theses, inspired by versions of Natural Law versions that show a more sensitive attitude to History, have insisted on the idea that liberties have a

"proteic" character and they necessarily adequate to the cultural, social and economic mutations that have prompted recent Spanish politics.

Some Legal Philosophers, like Javier Antuátegui, Rafael de Asís, Gregorio Peces-Barba, Luis Prieto Sanchís, Gregorio Robles, among others, have attempted a positivist grounding of what the revolutionary French agreed to call "droits de l'homme". Yet, a grounding based upon Natural Law allows a better explanation of the legal vocation of these rights. This may be shown by drawing on Romanic languages, where the same root explains the words Law (*derecho, diritto, direito, droit*) and rights (*derechos, diritti, direitos, droits*), alluding to a both normative (legal) and moral (right) reality. Thus, it is much harder and less convincing to explain the scope of the term "derechos" (rights) in the expression "derechos humanos" (human rights) from positivist premises than from a Natural Law background. This is due to the fact that Positivism is a *monist* theory and therefore it only attributes legal character to positive Law. From this perspective, talking about any natural, human, moral or pre-normative right, as something different from positive law constitutes a *contradictio in terminis*. Natural Law theory, as a dualist legal theory, distinguishes two different normative systems: a Natural Law conformed by a compound of values prior to positive law that must ground, guide and critically limit every legal regulation; and positive law, established or imposed by the binding force of those holding the power in society. They are "rights" with a diverse deontic status but with no independence, because every natural right tends to be positivised and every positive right, as long as it pretends to be fair, must follow Natural Law. Natural Law has had the persistent historical function of establishing limits to power. Pervading the civic conscience with the idea that there are values inherent to the human being that no political authority may breach, modern Natural Lawyers offered an explanation of the very rationale of rights that cannot be discarded without weakening the grounding of human rights at the same time. The historical attempts to offer a positivist alternative to the Natural Law conception of human rights inevitably lead to compromising their political efficacy. Suffice it to think about the relevance acquired in the 19th century by the category of *subjective public rights*, coined by the German Public Law School as an effort of substituting the idea of natural rights as liberties enjoyed by citizens before their government through the introduction of some subjective status that depend upon the government's self-limitation. We should recall, following Antonio Truyol y Serra, that this fashion of understanding rights was connected to the idea of denouncing the legal character of an International Law exclusively built upon the "will of the States" and conceived more as a set of moral or courtesy rules followed by nations (*comitas gentium*) than as true Law (Truyol 1968; Ballesteros 1992; De Castro Cid 1982; Fernández 1984; Pérez Luño 2005; Vidal 2002).

The Natural Law grounding of human rights has also manifested itself regarding current important concerns such as the legal impact of new technologies, quality of life and environmental issues or the risks that biotechnology poses to citizen's rights.

The study of the *legal projections of New Technologies* (NT) has raised a growing interest among our legal philosophers and theoreticians. This topic that, paraphrasing Ortega, could be labelled as the "theme of our time" could not help but to draw the attention of Natural Lawyers just as it has involved the main legal research areas in developed countries. In the last decades, the conceptual and textual universe of legal scholars has seen a profound and radical change due to the transformation of the cultural, political and economic premises experienced in contemporary technological societies. The phenomenon called "*liberties' pollution*" in English-speaking countries deserves special attention. It refers to the new forms of breach that rights and liberties might suffer through the abusive use of informatics and, particularly, Internet (Garriga 1999; González-Tablas; Pérez Luño 1976; 2004).

The present of human rights demands an adequate sensitivity towards the "ecological paradigm" from jurists and legal philosophers and theoreticians inserted in the Natural Law tradition. This requires a critical reflexive attitude that entails an assumption of the responsibilities derived from the new challenges and issues that environmental threats pose in the economic, social, political and legal spheres. Striving to improve quality of life and to guarantee a balanced and sustainable development along with biodiversity stands as an unavoidable task for both legal practitioners and theoreticians (Ballesteros 1995; Bellver 1994).

Natural Law has also shown a topical and relevant interest in the consequences that Biomedicine, Bioethics and Biotechnology have on human rights. It is a research area closely related to the socio-legal repercussions of New Technologies, quality of life standing as peculiar element that counts with its own significance. Hence the interdisciplinarity of this field. Human dignity, identity and privacy are values and rights that, from a Natural Law perspective, must be protected before certain biotechnological investigations. The notion of "human nature", a core aspect within the Natural Law tradition, gains new topicality and urgency concerning present bioethical issues (Cf. Ballesteros 2007; Marcos del Cano 2004).

VI. NATURAL LAW THEORIES IN 20TH-CENTURY PORTUGAL

The beginning of the 20th century meant a continuation and strengthening of the positivist trend within the Portuguese legal culture that had already been manifested in the last part of the 19th century, as we had the chance to mention earlier. The diffusion of a positivist and scientificist mentality contributed to lead Natural Law to a crisis and the study of this discipline became relegated to Seminaries and Theology Faculties. Among the most relevant circumstances that explain this situation we may refer the following ones:

1) The creation of the Law Faculty of Lisbon in 1913. This academic centre appeared from its origins as a lay and republican alternative before the conservative and traditional old Coimbra Faculty of Law. The new Lisbon Faculty had no place to keep the

Natural Law tradition, which was considered a reminiscence of the past incompatible with the open and progressive mentality that was expected to guide the education of jurists. The innovative character of this new Faculty soon also helped to stimulate the renovation of the old Coimbra Faculty of Law, whose lecturers were unwilling to stay away from the requirements of modernisation.

2) The diffusion of a legal methodology based upon the commentary and elaboration of legal rules in the Lisbon Faculty of Law and, slightly later, in Coimbra. The main feature of this methodology was the assumption of the exegetical French method. Some other versions of Legal Positivism, such as German Legal Dogmatics and General Legal Theory or British Analytical Jurisprudence, had a much lower impact. Some scholars showed an interest in utilitarianism, as well as in some evolutionist versions of positivism. All this determined a progressive abandonment of methods linked to Neo-Scholastic or Idealist-Krausist Natural Law theories that had reached a wide popularity by the beginning of the 19th century.

3) The adherence of some lecturers, researchers and students from the Coimbra and Lisbon Law Faculties to progressive, reformist or even revolutionary political ideologies. In the first years of the 20th century some lecturers pertaining to these two Portuguese Law Faculties were inspired by different forms of the so-called "Chair Socialism", as well as Marxism and Anarchism in their approaches to the concept, meaning and social function of Law (Cabral de Moncada 1960; Lacasta 1988; Merêa 1955).

A clear theoretical example of the attitudes of legal scholars opposing Natural Law is found in the first works of Public Law Professor Domingos Fézàs Vital (1888-1953). Much influenced by the legal sociologism of French Legal theoretician Leon Duguit, Fézàs Vital rejected the notion of subjective right. He considered this concept to be a continuation of the sort of metaphysical ideas defended within Natural Law, since it assumes the existence of legal faculties belonging to people even before the recognition by positive rules emanating from the State. His later positions are representative of the turning point that determines the crisis of Positivism and the beginning of what has been called "the eternal return of Natural Law" (Rommen 1947). Certainly, in the mid-1920s professor Vital abandons his positivism and legal sociologism to join Legal Institutionalism under the influence of Maurice Hauriou and Georges Renard, whose doctrines he helped to spread in Portugal. From that point on, he attempted to elaborate a Neo-Thomist Institutional theory that would set the grounding of legal institutions in Christian Natural Law. This attitude would make him one of the ideologues of the New State, personified by Antonio Oliveira Salazar's political authoritarianism and he would even become one of the inspirers of the 1933 Portuguese Constitution, key legal text within that legal-political system (Fézàs Vital 1929).

The restored Portuguese interest in Natural Law had Professor and Dean of the Coimbra Law Faculty Luis Cabral de Moncada (1888-1974) as its most representative

figure. He may be considered as the most prestigious 20th century Legal Philosopher in Portugal. From the end of the 1920s he committed to the criticism of positivism and its consequences on legal education. Accordingly, he promoted the inclusion of Philosophy of Law as a compulsory subject in the Law Faculties' syllabus. This intellectual attitude, always favouring Natural Law, evolved from Neo-Scholastic premises towards approaches closer to Phenomenology, Neo-Kantianism and Existentialism. Being deeply knowledgeable in German legal doctrine, he was influenced by Radbruch's and Stammler's theses and he critically studied the thought of Kelsen. His reputation became internationally acknowledged thanks to a *honoris causa* doctorate conferred by the University of Heidelberg (Jayme 1993). His Natural Law conception, open to the influence of Existentialism, finds concretion in his characterisation of the main mid-20th-century European beliefs: 1) the notion that social and political life must be built from inside out, as a projection of a deeper dimension than individual life itself and as a type of existence centred around the religious idea of salvation; 2) the conviction that State and Law are not ends in themselves or sheer instruments to achieve economic goals, but "tasks" of the human vocation of culture and, therefore, means to spiritual ends; 3) the belief that in order to fulfil those ends, it is necessary to appeal to objective, superior and non-historical values so that a superior axiological cosmos, alien to whims and fantasies, is reached. According to Cabral de Moncada, the problem of Natural Law is no longer metaphysical, but an ontological and axiological issue. This is so because, within the phenomenology of conscience and historicity, the autonomous sphere of the spiritual being has revealed itself as a new Logos, which is dependent, intertwined and conditioned by other vital circumstances, but still counting on its own laws, sense and aims. It is current Natural Lawyers' task to figure out the structure of those values that we call spiritual and identify the laws that are to be followed accordingly. Justice and the common good within human societies would deserve the highest position in the scheme. This Natural Law only requires a belief in the reality of the spirit, but does not need to depend upon any metaphysical or religious conception, although the *in limine* legitimacy of these conceptions is not altogether excluded. On the contrary, only these last versions comply fully with the aims of Natural Law, which does not only present a theoretical mental problem, but also a practical problem directed towards action. Intelligence is not required on its own, but is also demands the concurrence of human will. Man will never be a man if he is not able to find, in the depth of his convictions and beliefs, a perspective of the absolute, as a last resort where he may assert the final reason and sense of all his deeds and needs as an spiritual being in this world (Cabral de Moncada 1945; 1966).

The teachings and works of Cabral de Moncada had a significant influence on the thought of the most remarkable Portuguese legal philosophers from the second half of the 20th century: Castanheira Neves, De Brito and Machado. Joâo Baptista Machado (1917-1991) lectured International Law and Legal Philosophy in the new Oporto Law Faculty. In his first academic years, Machado paid special attention to Hans Kelsen, some of whose works he had the chance to translate into Portuguese, thus contributing to the diffusion of his thought within the Portuguese legal culture. In his mature years he intended to

overcome two basic premises of Kelsen's theory: normativist positivism within legal theory and axiological relativism within legal legitimacy. With such an aim, he elaborated a Natural Law theory that out forward the actualisation and revision of its traditional Neo-Scholastic version. Existentialism, in which Cabral de Moncada's influence may be noticed, Hermeneutics and justice, in which he shows his knowledge of contemporary thinkers like Habermas, Luhmann and Rawls, served as theoretical sources for his ambitious project to renovate Natural Law (Ferreira da Cunha 2006). Antonio Castanheira Neves, born in 1929, lectured Legal Philosophy in the University of Coimbra. He is also quite critical regarding Legal Positivism and Natural Law. His criticism of legal positivism articulates upon his opposition towards a legal reasoning based upon subsumptions and syllogisms. He also rejects the ideal and abstract character that pervades many Natural Law conceptions. Before these notions, he opposes a real, concrete and historical Law that finds concretion in empirical legal cases. The solution to such cases constitutes the content of Law in an on-going process. That is why courts' sentences are but the determination of what must be considered as legally correct within every legal system (Castanheira Neves 1993). Some analysts of the works of Castanheira Neves have detected some analogies with hermeneutical theories or even with Dworkin's integration theory. In one of his last works, Castanheira Neves nuances the possible coincidence with those theses and makes clear that his position is quite different, since it implies a higher emphasis on the experiential dimension of Law and entails, all in all, a necessary connection between theoretical reflection and real praxis within the legal sphere (Castanheira Neves 2003).

The 1974 Carnation Revolution, whose main legal and political result was the 1976 Constitution, determined the substitution of an authoritarian regime by a democratic State in Portugal. This important political transformation had its cultural consequences which were also manifested in the attitudes before Natural Law. So, within legal historiography, professor Antonio Hespanha, from the University of Lisbon, substituted traditional Natural Law, that had served as theoretical grounding for the conception of legal history of Paulo Merêa (1889-1976), by the philosophical premises of postmodern culture (Hespanha). Likewise, Coimbra professor José Gomes Canotilho replaced conservative Natural Law, predominant during the political rule of Antonio Oliveira Salazar and Marcelo Caetano, with critical legal conceptions clearly aligned with a progressive approach (Gomes Canotilho). Professor José Manuel Pureza, also pertaining to the University of Coimbra, has shown a deliberate intellectual purpose to revise cosmopolitan Natural Law as a grounding of International Law with an exigency of opening up to pluralism and multiculturalism. That way, Pureza tries to avoid an ideal and abstract universalism that might be mixed up with the standardisation of international legal principles and values (Pureza). Thanks to his research in Latin America, sociologist and legal theoretician Boaventura de Sousa Santos (Coimbra University) deserves special attention. De Sousa Santos opposes to the modernity paradigm –represented in the legal realm by the Natural Law cultivated in the Enlightenment era– a postmodern paradigm understood as a new critical conception of experience and a reformulation of legal and political common sense comprehended in emancipatory terms. Against the rationalist Natural Law rationality,

which he calls "indolent reason", he sets a utopic rationality committed to liberation and emancipation. The conversion of law into a myth promoted by Natural Law in the Enlightenment era requires a demystification, since the legal system has been proved unable to adequately solve some of the most important social issues. A scientific response to this progressive legal discredit demands a series of institutional mechanisms, procedures and reforms that may render law more accessible and more useful for the highest possible number of citizens (De Sousa Santos 1995; 1998; 2003).

VII. CONCLUSION: PREMISES FOR AN ASSESSMENT

As a summarial assessment, it may be pointed that Natural Law theory stays currently at a crossroads in both Spain and Portugal. New influences, profound changes and worrying uncertainties seem to characterise this scene. In our legal culture, the last years have passed under a syndrome of exhaustion and crisis of the paradigms that have traditionally articulated Natural Law and Legal Positivism. Just like the famous Pirandello's characters, many of the youngest Spanish and Portuguese legal philosophers and theoreticians are "in search of an author". During the last years, the wish to overcome the doctrinal background inherited from the recent past has served as an incentive for the urgent adoption of the imported theoretical models that are deemed more appropriate according to the circumstances. The new versions of Legal Positivism, under the ambiguous label of "Post-Positivism", different tendencies linked to Analytical philosophy, Neo-Constitutionalism, Multiculturalist topics, Feminism, Ecologism, criticism of global society… are some of the heterogeneous study programmes and/or theories which are object of scholarly attention. This renovating attitude is fully legitimate in terms of intellectual concern and anti-conformism and only the future will enable an adequate assessment of their results, since it is not possible to draw definitive conclusions from a panorama that still stays *in fieri*, to use a legal aphorism.

As a synthetic reflection, I understand that the biggest danger currently underlying the most innovative movements within Iberian legal theory and philosophy would be their eagerness to make a clean sweep of the past Natural law era, thus indiscriminatingly condemning tendencies that due to their secular history and plurality of meanings present a compound of implications and nuances that are hardly integrated in a simplifying criticism. Natural Law has enabled an engaged attitude thanks to the penetration of moral values into Law throughout different times and legal cultures. This aspect of the historical function of Natural Law urgently needs to be clarified and taken into account. Otherwise, Spain and Portugal would paradoxically experience the rise and strengthening of attitudes opposed to Natural Law that at the same time appeal to rationally-grounded objective (even though in a historical-sociological sense) values and defend the need to recognise basic human rights and values as legitimising ends or guidelines for every legal system, thus claiming a connection between law and morals. These positions, therefore, implicitly admit well-known Natural Law premises. The opening up to human values and rights, as well as to a historical conscience, typical of the renovating Natural Law theses; the will of some critical

legal theories to rescue to most vivid aspects of humanist Natural Law defending the notion of human dignity (Ernst Bloch 1961); and the tendencies that try to rehabilitate practical reason as well as those that attempt to address the problems of our contemporary globalised and technological society from a renovated theory of justice, they all show the persistence of the big questions linked to the historical development of Natural Law doctrines. Because, in any case, as Karl Jaspers indicated in his 1949 *Vom Ursprung und Ziel der Geschichte*, the general image of history and the conscience of the present situation are both mutually interdependent: the more profound the conscience of the past, the more authentic the participation in the present moment.

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