Chapter 14
Public Reason, Secularism, and Natural Law

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> *Reading Aquinas' Summa Contra Gentiles, I am struck by the complexity, the sheer degree of differentiations, the gravity, and the stringency of a dialogically constructed argument. I am an admirer of Aquinas.*
>
> Jürgen Habermas

14.1 Introduction

John Rawls' and Jürgen Habermas' theoretical proposals constitute the most outstanding contemporary attempts to establish some discursive and procedural guidelines that may make possible an agreement among the citizens of modern democratic and pluralistic societies. A fair society is the ideal of the former, while social cohesion in post-secular society constitutes the *telos* of the latter. Given that I have studied said proposals elsewhere, particularly regarding the visibility and

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public admissibility that arguments of a philosophical or religious nature[1] have in each of them, in this text I intend to deal with the question of their similarities and differences with respect to the classic theory of natural law.

The justification for this is found in the fact that, like the conception of public reason[2] in Rawls and Habermas, natural law also purports to be a sort of "universal language", or a point of convergence regarding the question of good, and of the most significant aspects of civilized co-existence.[3] The aforementioned is summarized, according to Berlin, in the consideration that human ideals are the same everywhere and at all times: *quod ubique, quod semper, quod ab omnibus*, i.e., what has always been accepted by all men in all places.[4] Hence, "natural law is nothing other than a doctrine of public reasons, i.e., of reasons that would demand a universal consensus under ideal conditions of discourse and while they are at the disposition of, and may be accepted by, anyone willing and able to give the fair and adequate attention to them".[5] From this, it may be deduced that "the objective norms governing a just action are accessible to reason, dispensing with the content of revelation".[6]

Although the discussion about natural law is very broad, in this paper I assume as its concept the same definition as that given by Thomas Aquinas, according to which it is man's "natural participation of the eternal law".[7] Here, law is understood as a mandate of reason that orients human action,[8] the purpose of which is to "make those to whom it is given, good".[9] Commenting on Aquinas, John Finnis highlights that the first principles of natural law, those that specify the basic forms of good and evil and that can be properly grasped by anyone possessing the use of reason (and not only by metaphysicians), are *per se nota*, i.e., evident and indemonstrable. That is to say, "they are not inferred from speculative principles. They are not inferred from facts. They are not inferred from metaphysical propositions about human nature, or about the nature of good and evil, or about the "function of a human being"; nor are they inferred from a teleological conception of nature or any other conception of nature.

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[1] See Garzón Vallejo (2010, 2012).

[2] Although in the strict sense, said concept is only used by John Rawls, I will use it here to encompass Habermas' concepts of public use of reason, discursive ethics, and deliberative politics, since they share a family resemblance. For a panorama of the different versions of public reason, one may see Tollefsen (2007).

[3] In 1952, Jacques Maritain also proposed a coincidence regarding the essential nucleus of human rights among the different philosophical and religious traditions, regardless of the foundations invoked by each one of them. He denominated this convergence "temporary or secular faith", and it contained the practical convictions that reason may try to justify. See Maritain (1997), 127–133. For a comparative analysis of Maritain's and Rawls' proposals, see Migliore (2002), 194–196 and 199, footnote 205.

[4] See Berlin (2010).

[5] George (2009), 148.

[6] Benedict XVI (2010).

[7] Aquinas (1948), *II*, part I-I, q. 91, a. 3.

[8] See ibíd., q. 90, a. 1, 704.

[9] Ibíd., q. 92, a. 1, 718.

They are not inferred or derived from anything", the professor clarifies,[10] as he deals with the common critique of incurring in the "naturalistic fallacy" or Hume's Law,[11] which, in synthesis, consists of the undue transition from is to ought.[12] In this sense, as professor Massini-Correas explains, "[…] the "transition" from the ontological dignity of the human being to the deontic plane of the enforceability of rights, is produced by means of intelligence; indeed, it is practical understanding that, by means of evidence and discourse, grasps real deontic relations and presents them to the will as ethical demands. Through evidence, the understanding apprehends the first practical principles that found basic human rights and through reasoning, it determines those principles substantiating them in ever more determined precepts".[13] Of course, the basic forms of good grasped by practical understanding manifest what is good for human beings with the nature they possess.[14] To put it another way: with a different nature, basic human goods would also be different.

At this point one can begin to see some similarities and differences between the concept of natural law and public reason. Hence, the question that precedes this work appears not only as significant, but also as relevant: Does public reason in Rawls and Habermas constitute a secular reformulation of the theory of natural law?

From the start, I recognize an obstacle in the posing of the problem, and it is that, in the case of John Rawls, he explicitly denies that his political conception of justice is an instance of a doctrine of natural law.[15] On the other hand, Jürgen Habermas has also warned of something similar.[16] Consequently, I clarify that, beyond what these two authors acknowledge, I believe that there are sufficient motives to pose the comparison, since the quest that both Rawls and Habermas undertake in order to identify moral and political principles that may be reasonably affirmed without having to appeal to theological statements or any religious authority, is precisely a relatively correct description of what is known as the theory of natural law.[17] In this sense, "a theory of natural law claims to be able to identify conditions and principles of practical right-mindedness, of a good and proper order among persons, and in individual conduct".[18]

In order to tackle this problem, I will pursue the following itinerary: first, I will briefly outline the notion of public reason in Rawls and Habermas; secondly, I will indicate the points in common and the points of divergence between this concept and the theory of natural law.

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[10] Finnis (2011), 33–34. In the same sense, one may also see George (1994), 34.

[11] See Finnis (2011), op. cit., 36–42.

[12] A synthetic exposition of the naturalistic fallacy may be read in Massini-Correas (comp.) (1996), 199–201.

[13] Massini-Correas (1996), 214.

[14] See ibíd., 67.

[15] See Habermas and Rawls (1998), 113.

[16] See Habermas (2008b), 64–65.

[17] See George (2009), 123.

[18] Finnis (2011), 18.

14.2 Public Reason in Rawls and Habermas

14.2.1 Public Reason in Rawls

The problem that John Rawls' liberal theory faces is: how to explain the possibility of the existence of a stable and fair society of free and equal citizens that is at the same time deeply divided by religious, philosophical and moral doctrines, which are, in turn, both reasonable and incompatible with each other?[19]

With the aim of finding these constitutional and political justice principles upon which all citizens may agree, Rawls suggests assuming a constructivist conception, philosophically skeptical, political, and not metaphysical. For this purpose, he resorts to the elusive method, which consists of avoiding in-depth exploration of metaphysical problems that refer only to political matters. In this way, the conception of justice does not advocate any specific doctrine of a metaphysical, anthropological, or epistemological nature, beyond those which are implicit in the political conception itself.[20]

The political agreement Rawls intends to arrive at is denominated *overlapping consensus*. It deals with the essential constitutional and basic justice elements needed to achieve democratic stability.[21] For that purpose, he does not attempt to confront religious and non-religious doctrines with a general liberal doctrine. Neither does he pretend to discover a balance or a happy medium between the known general doctrines, nor does he seek to reach a compromise among a sufficient number of the doctrines existing in society, thus designing a political conception that fits them all. On the contrary, overlapping consensus seeks to formulate a liberal political conception that non-liberal doctrines will be able to accept, suggesting a conception that supports itself through its own political and moral ideal, and which is can be explained to others.[22]

But now, this conception of justice has to be discussed politically, and decided in its concrete form in accordance with *public reason*. This summarizes the conditions of public justification which any discourse aiming to have political validity must contain. Its function is neither to determine nor to settle the disputes regarding controversial questions about law or politics, but rather, to specify the public reasons in terms of which such questions are to be *discussed* and *decided* politically.[23] Therefore, it should not be conceived of as a specific idea of public institutions or policies, but rather as a procedural conception regarding how they are to be explained and justified before the citizenry that deals with the question by means of the vote.

[19] See Rawls (2006), 13.

[20] See ibíd., 35.

[21] See Rawls (2009), 32–33.

[22] See Rawls (2004), 23, 99.

[23] See ibíd., 103.

In Rawls' conception, it is expected that citizens adhere to public reason from the very interior of their own reasonable doctrines, and not as a mere *modus vivendi*.[24] In this context, as reasonable and rational beings, and knowing that they profess a diversity of reasonable doctrines, whether they be moral, religious or philosophical, the citizens must be able to explain to each other the foundations of their acts in terms that each one reasonably expects others may subscribe to as well, as long as they are consistent with their freedom and equality in the eyes of the law.[25] This is what Rawls calls the *criterion of reciprocity*.

Citizens must adhere to the guidelines of public rationality mainly when they vote on the basic questions of justice and constitutional principles. However, citizens are not the only ones who must proceed politically in conformity with public reason. Actually, those upon whom said imperative mainly falls are the principal protagonists of the public political forum: high government officials and those who publicly aspire to elected office, i.e., judges, especially the Justices of the Supreme Court; public officials, high-ranking officials of the executive and legislative branches, as candidates for public office and their campaign directors.[26]

Public reason is above all a procedural proposal of public discussion, therefore, general reasonable doctrines, either religious or non-religious, may be introduced in public debate at any time, as long as appropriate political reasons are offered – and not just reasons derived from doctrines – in order to support what they propose.[27] Rawls calls this requirement *stipulation*. This concept suggests that there are no restrictions or substantive requirements for the expression of religious or secular doctrines, but it imposes on them the epistemic condition of being presented as politically valid reasons, and said validity depends on their potential for achieving social consensus. Stipulation generates in citizens the epistemic duty of *translating* the elements of their comprehensive doctrines into arguments of a political nature. Nevertheless, if on the basis of the comprehensive doctrines it is not possible to establish compatibility between their content and the overlapping consensus, the citizen must be guided by constitutional guidelines, in the understanding that these principles guarantee certain basic rights and political liberties, and establish democratic procedures to moderate political rivals, as well as to determine questions of social policy. Now, even if Rawls seems to be willing to remove any obstacle that may hinder the advent of overlapping consensus, he does not raise any doubt that stipulation is not a procedure within reach for those who only have a single language – such as the moral or ethical one, the metaphysical or the religious one – to intervene in the public political forum. His normative proposal entails quite a few dilemmas which will not be examined here.[28]

[24] See ibíd., 104.

[25] See ibíd., 110, footnote 23.

[26] See Rawls (2001), 158.

[27] Ibíd., 177.

[28] See Garzón Vallejo (2010), 39–63.

14.2.2 Deliberative Politics or the Possible Understanding Among Believers and Agnostics

Jürgen Habermas is a "post-enlightenment" or "end-of-enlightenment" author, for he firmly believes in the possibility of restoring the fundamental nature in individual and social life to human reason. His philosophical task has consisted in the *reconstruction* of the theory of modern rationality, with the aim of saving the best of the enlightened proposal,[29] and taking it to its ultimate consequences. From the rational dynamics he accentuates, above all, its communicational nature, i.e., the possibilities it offers for inter-subjective understanding, and with it, its potential for consensus.

Deliberative politics is a new modality of participatory democracy that links the rational resolution of political conflicts to argumentative or discursive practices in different public spaces: the political system, the public sphere and civil society, i.e., in the fora of political communication.[30] Said conception poses a profound revision of modern democracy, for it proposes going beyond the traditional ambits of deliberation and decision, thus putting democracy within the reach of all citizens. This happens, furthermore, at different moments, and not just in those established by institutional entities. This model is based on a belief in the catalyzing nature of the effect that public deliberation and rationalization have on political decisions. Thus, rational debates would function somewhat like "washing machines" that filter what is rationally acceptable for everyone, separating questioned and invalid beliefs from those that obtain license to recover the status of non-problematic knowledge.[31]

Deliberative politics represents a sort of relocation of the theory of communicative action to the political ambit, and in this sense, the discursive emphasis constitutes the most important element of Habermas' conception of politics and law. While the model maintains significant differences with respect to the liberal tradition, it conserves an evident kinship with the republican tradition and, more than a conception of politics, it is a proposal that refers to the democratic form of government. Hence, I conceive of it as being *semi-republican*.

Similarly to John Rawls, Jürgen Habermas also intends to propose both a secular and non-secularist reading of the politico-religious context at the core of the democratic constitutional state, and consequently, of the relations between believers and agnostics in post-secular society. Within this framework, the function of secularization is not that of a filter that eliminates the contents of tradition, but rather that of a "a transformer which redirects the flow of tradition".[32] From this perspective, and as a consequence of the modern division of labor between politics and metaphysics, there

[29] See Suárez Molano (2006), 66–67.

[30] See Habermas (2009a), 158–166.

[31] See Habermas (2003), 84.

[32] Habermas (2010), 18.

is a complementary relation between public agnosticism and privatized confession, i.e., between the neutral power of a state that remains blind to confessional colorings and the enlightening force of worldviews that compete for truth.[33] With this, Habermas disassociates himself from a secularist conception of modern rationality, suggesting a secular hermeneutics for it, which has its origin in the dialectical (and not disjunctive) relation that has historically existed between it and religious reason, or between philosophy and theology.[34] Within this framework the transit from the liberal state to the constitutional state is insinuated and, in spite of their irreducible differences, the author proposes that both believers and agnostics conceive of secularization as a mutual and complementary learning process.[35] If one takes into account the dominant theoretical context, said proposal is audacious, albeit not novel in its development, since deliberative politics contains within itself the purpose of inter-subjective learning.

The mutual learning process starts from the cognitive standpoint, and some practical demands for the state, for believers, and for agnostics are supported on those grounds. In the face of political debate, the main consequence is that believers and agnostics mutually take each other's contributions seriously on controversial public subjects. Habermas' openness towards the influx of religious traditions is due to several motives. Some of them are:

(a) The "motivational deficit" that citizens experience, or the fragility of legal bonds to mobilize a sense of community identity.
(b) Solidarity is the ruling principle of deliberative politics.
(c) The constitutional state cannot seek to content itself with a mere *modus vivendi* between believers and agnostics.
(d) Religious traditions are reserve sources of identity, meaning, solidarity and cohesion among citizens.
(e) Although the constitutional state maintains strict neutrality in the face of the diverse beliefs that inhabit society, it cannot fail to acknowledge the normative and cohesive potential that religious traditions contribute. This entails a certain functionalistic – albeit non-instrumentalizing- conception of religion.
(f) In disputes about legalization of abortion, euthanasia, bioethical problems of reproductive medicine, or about issues such as the protection of animals and environmental change, among other things, the arguments are so controversial that in no way it may be considered beforehand *that one of the parties possesses the most convincing moral intuitions*.[36]

According to Habermas, philosophy has not yet exploited the whole semantic and communicative potential of religious doctrines. Said potential has not yet been translated into the language of public reasons, i.e., of the reasons that are potentially

[33] See Habermas and Rawls (1998), 159.

[34] See Habermas (2001), 187.

[35] See Habermas and Ratzinger (2006), 43–44; See Habermas (2009b), 227–228.

[36] See Habermas (2008a), 8. (The highlighting in italics is mine.).

convincing for everyone to the same degree.[37] Therefore, his main proposal consists in the fact that believers must *translate* their religious doctrines in such a way that they may be understood by those who do not share them.[38] In this order of ideas, I distinguish two types of translation:

(a) Translation *inwards*, i.e., in the believer's own heart and intellect. This basically entails recognizing that the state does not take a position regarding religious conceptions and holds an ideological neutrality that materializes, in legal terms, in equal rights and guarantees for all citizens. Translation "inwards" consists of putting said secularized context into religious, ethical, and spiritual terms and categories, as that which has resulted from a long historical process, and which is presented as the most convenient for all citizens.

(b) Translation *outwards*, which intends to give greater effectiveness, i.e., greater public visibility and significance to said arguments in public discourse, since in this way, they will more readily be taken into account.[39] Consequently, in the public sphere and in civil society, the translation of philosophical and religious arguments does not constitute an admissibility requirement of said arguments. The same does not occur in the political system (courts, parliament, institutional ambits of the executive branch, etc.), where translation is a *sine qua non requisite* for the admissibility of philosophical and religious arguments in debates in which the political and legal institutional ambits constitute the epicenter.[40] Thus, believers must make an argumentative effort to present their beliefs and convictions of a philosophical or religious nature in such a way that, without renouncing their truth or their essential contents, they express them in a manner in which they may be understood, and perhaps even appropriated, by those who do not share the same religious, philosophical, or epistemological assumptions. The fact that translation seeks to have greater possibilities of public impact and persuasion among those it addresses explains the inclusion of "strategic translations", i.e., those translations that are addressed to a specific sector of culture and public opinion.[41]

14.2.3 Public Reason and Natural Law: Convergences and Divergences

The following table summarizes the main differences and similarities between public reason – specifically from the approach that John Rawls and Jürgen Habermas take regarding it –, and the doctrine of natural law, assuming 11 comparison criteria. I

[37] See Habermas (2001), 201.

[38] Habermas (2009a), 79; (2009b), 56–57; Habermas and Ratzinger (2006), 46–47.

[39] See Habermas (2006), 140.

[40] See Habermas (2009a), 79.

[41] See Habermas (2001), 99.

am aware of the difficulty that such a synthesis entails, and that a comparative table cannot express the different nuances that the different authors have given to the subject, and from which the relevance of subsequent explanation and analysis derives.

Comparison criteria	Public reason	Natural law theory
Representatives	Immanuel Kant, Thomas Hobbes, Jean Jacques Rousseau, John Rawls, Jürgen Habermas	Thomas Aquinas, Classic and Modern Iusnaturalists, Catholic Church Magisterium, Catholic Intellectuals
Type of rationality	Practical reason	Practical reason
Methodological plane	Normative	Normative
Epistemological focus	Procedural	Substantive
Contents	Political, legal and ethical	Anthropological, ethico–moral and legal
Foundations	Language and factical pluralism	Human nature and practical reasonability
Attitude toward whatever appears	Skepticism and constructivism	Realism and Objectivism
Aim or objective	Political consensus, dialogue and coexistence	Truth, dialogue and coexistence
Scope	Western world	Universal
Central topic	Justice – Correction	Good
Position regarding transcendence	Immanentism	Openness

14.2.4 Convergences

Convergences or points in common between the two proposals are basically synthesized in:

14.2.4.1 The Value of Practical Rationality

Both public reason and the theory of natural law place their focus on practical reason and not on speculative rationality. At the same time, both proposals attempt to exercise rationality so as to allow it to be a vehicle of access to the principles that are proposed in the public ambit. Thus, both Rawls and Habermas coincide in proposing that believers undertake a "translation" of their philosophical and religious arguments, which resembles the natural law imperative of grasping and expressing objective moral principles in a strictly rational way. But at the same time, as rational, they expect them to be subscribed to for their intellectual merits (and not for other motives). Although Habermas considers that it is only for agnostics that reason determines in its own right what counts as a valid or invalid argument in each

case,[42] theorists of natural law sustain that one of its essential aspects is the possibility of being understood through the natural light of reason – indeed, its "natural" character is due to the fact that the reason promulgating it is proper to human nature.[43] In other words, they do not argue against abortion, against euthanasia, or in favor of family – to cite just a few cases that are symbolic nowadays, although in a strict sense, these issues are not specifically religious[44] – from faith, but from reason.[45] Thus, the ideas of natural law, secular liberalism or democratic republicanism, "should stand or fall on their own merits", and whoever asks whether they are logical or illogical should carefully and dispassionately consider the arguments supporting them and the counterarguments that their critics point out.[46]

14.2.4.2 The Normative-Methodological Aspect

The normative dimension of said ideas derives from their practical nature, i.e., both public reason and the theory of natural law aim to indicate conduct guidelines or standards of behavior that take a concrete form in the social realm. In this sense, both of them are situated on a normative methodological plane or one of "what ought to be". This being the state of things, in the case of the first principles of natural law, they are *practical* principles that prescribe that each person *participate* in the basic forms of good, through *practically* intelligent decisions and through free *actions* that make each one the person he or she is and *should be*. Such principles dictate the fundamental notions of everything one could reasonably *want to do*, *have* and *be*.[47] Hence, thanks to natural law, human beings know what ought to be done and what ought to be avoided.[48]

In the same sense, Habermas points out a series of practical burdens for the state,[49] the believers,[50] and the agnostics[51] that derive from public reason. John Rawls does the same when signaling the *duty of public civility*[52] as well as the *stipulation* or *translation* of reasonable moral, philosophical, and religious doctrines into political debate on the part of those who support them.[53]

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[42] See Habermas (2008a), 14.

[43] See John Paul II (1993), n. 42.

[44] See Cortina (2011), 29.

[45] See Contreras (2010), 141.

[46] See George (2009), 20–21 (my translation).

[47] See Finnis (2011), 97.

[48] See John Paul II (1993), n. 40.

[49] See Habermas (2006), 137 and 310.

[50] See Habermas (2009a), 79.

[51] See Habermas (2006), 147 and 313.

[52] See Rawls (2006), 13.

[53] See Rawls (2001), 169 and 170, 177–178.

14.2.4.3 The Common Purpose of Suggesting Some Guidelines for Dialogue and Harmonious Coexistence in Modern Societies

Public reason and natural law theory aim to propose some guidelines for dialogue among the citizens of modern societies, which are fragmented or composed of a series of ethical, philosophical, and religious doctrines. In both Rawls and Habermas said guidelines are basically procedural,[54] while the natural law theory is centered on substantive ethical aspects, for which reason, said guidelines are nothing other than the common elements that permit an understanding of citizens among themselves.[55] The consequence of dialogue is harmonious coexistence, for said common elements make it possible to overcome radical differences and to achieve internal cohesion in society around principles which, due to their very nature, everyone would desire. Thus, the goal of both is "to identify principles and norms that can be reasonably accepted both by believers and non-believers, and publicly affirmed by them whatever their convictions may be regarding "religious" questions that have to do with human nature, dignity and destiny".[56] Now, beyond the convergence on this aspect, it is convenient to note a paradox regarding the theory of natural law, and it is that, in the current context of discussion, the notion of natural law seems to fall far from being able to achieve the consensus to which it aspires, in virtue of its own pretension of universality. The paradox to which Alejandro Vigo adverted becomes notorious: a notion that seeks to account for the very fact of the existence of a shared moral patrimony, by means of reference to the formative features of the nature common to all men, does not seem to be able at present to lead to the type of universal consensus, the very possibility of which it aims to establish.[57]

14.2.4.4 Coincidence in an Ethical Proposal as Background

John Rawls is very emphatic in pointing out that his political liberalism does not constitute any sort of comprehensive liberalism *à la Kant or à la Mill*, i.e., that it does not have a cosmovisional scope. Neither has Habermas sought to propose an

[54] Some, like professor George, doubt that issues of such profound moral significance can be satisfactorily resolved through merely procedural solutions, since neither one of the two parties in dispute (believers and agnostics) are willing to accept a procedure that does not guarantee the triumph of the substantive policies that each one of them supports. And they do not do it out of obstination, the Princeton professor clarifies, but rather because it has to do with long-matured judgments in which fundamental questions of justice are at stake, and which, therefore, are not negotiable. See George (2009), 121–122. In a similar sense, Dworkin proposes changing the rules of election to the Supreme Court, for he foresees that, judging by its recomposition, its decisions will not favor his liberal position. See Dworkin (2008), 197–198.

[55] See International Theological Commission (2010), 85.

[56] See George (2009), 123 (my translation).

[57] See Vigo (2010), 106.

ethical conception or one of individual good, in the idea (in which he coincides with the modern liberal tradition) that such an enterprise is the concern of each individual and is, furthermore, proper to philosophical perfectionism.[58] Given this state of things, public reason in Rawls and Habermas makes manifest a discontinuity between personal ethical convictions and the political conception of justice.[59]

Nevertheless, some elements of an ethical nature underlie both Rawls' political conception of justice and Habermas' discursive proposal, since rational dialogue, communication, consensus, pluralism, the deliberation of political questions and questions of justice, and the consolidation of democratic regimes, among other things, are considered both reasonable and advisable. These ideas, and others that are implicit, make it possible to get a glimpse of an ethical or moral proposal. It is certainly not one of the good life or of human perfection as is proposed from the perspective of natural law theory, but definitely one of "good citizenship", or even of "civic or political virtue".[60] In this sense, in both public reason and in natural law theory there would be a convergence with respect to an underlying ethics or moral values.

14.2.5 Divergences

Just as convergences have some non-substantial nuances and differences, it must be noted that the divergences may be supported by radical and irreconcilable differences, or differences of nuance and focus. Thus, public reason and natural law theory are differentiated from each other in terms of the following:

14.2.5.1 Epistemological Focus

While the proposal of both Rawls and Habermas basically constitutes a procedural theory in which the guidelines regarding how public matters should be discussed publicly, natural law theory lacks said focus and seeks, on the contrary, to indicate a nucleus of substantive contents, of practical principles that are to be realized and put to work, and which may be discovered by each person through his or her own reason and conscience. This does not imply, as has quite frequently been interpreted, that said nucleus of contents is predetermined or that there is an innate content[61] from which even the most minute details derive. This idea, commonplace in the rationalistic iusnaturalist tradition, has propitiated the image of natural law theory as a catalogue of good-doing similar to the innate ideas supported by some

[58] See Massini Correas (1998), 92–93.

[59] See Dworkin (1993), 59–63.

[60] It is interesting to highlight the fact that Habermas suggests that the practice of tolerance in the constitutional state requires assuming it as a political virtue. See Habermas (2009c), 191.

[61] See Finnis (2011), 34–35.

modern philosophers. For this reason, even if according to natural law there is a nucleus of underived contents that are nothing other than *the first principles of doing*, the role that synderesis and prudence play in their concrete determination cannot be ignored.

14.2.5.2 The Content

While the proposal of Rawls and Habermas has an evident political and legal emphasis, natural law theory has traditionally had a predominantly anthropological and ethical focus. In my opinion, this is not a radical divergence, but simply one of nuance, since, as I pointed out earlier, one aspect in which the two proposals meet is in their ethical background, in which, although it is more patent in natural law, there is still a concern for the social, political and legal ambit, even though it is less extensively and explicitly postulated. Perhaps one reason for this difference is that public reason has been developed by political and legal philosophers, while it has been mainly theologians and philosophers, experts in ethics and morality, that have dealt with natural law theory.

Others, however, consider this divergence as to the content to be transcendental. For example, for Francisco José Contreras, public reason or the doctrine of "public reasons" entails a subtle form of discrimination against Catholics since it excludes the possibility that believers can make the arguments supported by their religious convictions be heard in legal and political debates.[62] And, in fact, "a true debate does not substitute for personal moral convictions, but it presupposes and enriches them".[63] Nonetheless, the same author recognizes that one of the available options for believers is to show that their arguments are public reasons that can be understood by everyone, and not merely religious reasons,[64] i.e., accepting combat on the common ground of natural practical reason, showing that they possess more powerful arguments and rejecting the imputations of mere confessionality.[65] In this sense, there is a certain contradiction in public reason between the determination of the content and the nature of practical reasonability, for, as Robert P. George notes: "practical reason consists of reasoning as much about what is "right" as about what is "good", and both of them are connected".[66]

[62] See Contreras (2010), 138.

[63] International Theological Commission (2010), 29.

[64] See Contreras (2010), 140–143. According to the Universidad de Sevilla professor, the other option is to reject the neutrality of the state and to show that the state always needs to accept some background metaphysical doctrine, and that laws and political decisions are based on a specific conception of the world. In my opinion, this alternative does not exclude the former.

[65] See ibíd., 145.

[66] George (2009), 22 (my translation).

14.2.5.3 The Attitude to Whatever Appears, and the Foundations

Is it possible to reach social and political consensuses without basing them on a common conception of a metaphysical nature or, simply, of good? Both Rawls and Habermas are not only convinced that it is possible, but their theoretical proposals are set forth in decidedly anti-metaphysical terms. Consequently, the former establishes the "fact of pluralism" as the foundation of his liberal proposal, while the German author places language and dialogue as the cornerstone of his. In this way, public reason is framed within a skeptical and constructivist philosophical tradition.

Meanwhile, natural law theorists have developed a philosophically realistic conception with pretensions of objectivity[67] and knowledge of truth. In this aspect, there are two differentiated tendencies in the natural law tradition, although they are both inscribed within a realist philosophical perspective. The first bases its conception of natural law on human nature, understood in metaphysical terms. According to this interpretation, "only by taking into account the metaphysical dimension of reality can we give natural law its full and complete philosophical justification".[68] In his description of the ways to provide a foundation for legal reasoning, Mora Restrepo denominates this the "ontological way", and argues that this may prove difficult for the contemporary mentality to digest, given that the study of metaphysics demands a high level of abstraction since the study of being is undertaken from the perspective of its universal causes and principles, i.e., of the phenomena that are farthest removed from the senses. However, it may turn out to be more necessary, as it allows a better or greater comprehension of the demands that arise in virtue of the first principles.[69]

For the second, justification of natural law is situated in practical reasonability. Does this mean that it is possible to talk about natural law without resorting to – or departing from- metaphysical premises? According to this second tradition, the answer is yes, it is possible, although without denying it but, rather, simply obviating it, methodologically considering it "a speculative appendage added by way of a metaphysical reflection, *not* a counter with which to advance either to or from the practical *prima principia per se nota*".[70] That is to say, situating the foundation of natural law elsewhere, in practical reasonability. A well-known example of this is that of John Finnis, who, along with other academics,[71] defends his endeavor on the basis of an interpretation of Aquinas because, according to the Oxford scholar, "for Aquinas, the way to discover what is morally right (virtue) and wrong (vice) is to ask, not what is in accordance with human nature, but *what is reasonable*".[72] However, he clarifies, "the proposition that our knowledge of basic human goods

[67] See International Theological Commission (2010), 85.

[68] Ibíd., 62. The same document is recurrent in pointing to human nature, understood in a metaphysical and divine creation sense, as the foundation of natural law.

[69] See Mora Restrepo (2009), 337 and 342–344.

[70] See Finnis (2011), 36 (The highlighting in italics is mine).

[71] Germain Grisez, Joseph Boyle, William May, Patrick Lee and Robert P. George may be cited here.

[72] Finnis (2011), 36 (The highlighting in italics is mine).

and moral norms is not derived from prior knowledge of human nature does not entail the proposition that morality has no grounding in human nature".[73]

Despite the differences pointed out between these two interpretations, it is worthwhile to specify that recognition of the philosophical or theological foundations of natural law does not condition spontaneous adherence to common values. In this sense, "the moral subject can put into practice the orientations of natural law without being capable, by reason of particular intellectual conditions, of explicitly comprehending them and their ultimate theoretical foundations".[74] In other words, although the two tendencies emphasize different aspects, they are nonetheless *complementary ways*, because they both converge in the same rational demand for respect for human dignity, in the promotion of their fundamental goods and in the greater realization or plenitude of the individual person. That explains why the supporters of one and the other response do not deny their opposite perspective.[75]

14.2.5.4 The Scope

Public reason is conceived of within and for the context of the modern technified and post-industrialized societies of the West and in order to succeed it requires a certain type of citizen: free and equal, but also informed, interested in participating in the public debate, and able to unfold or translate their most valued beliefs into a rational language that is universally accessible to everyone. Meanwhile, the natural law theory has pretentions of universality, given that it can be discovered by any human being, regardless of condition, race, sex, age or religion. In other words, natural law does not aim to be a normative parameter for western societies only. In fact, there are countess similarities between natural law and other intellectual and religious traditions that have been brought up by the Magisterium of the Catholic Church.[76] In summary, natural law, grounded in reason, which is common to all human beings, is the basis for collaboration among all men of good will, beyond or regardless of their religious, ethical, philosophical and cultural convictions.[77]

14.2.5.5 The Central Issue

While public reason arises from the prevalence of the topic of justice and political issues, it correlatively relegates the question of good and the ways of living to the individual ambit. This endeavor has little possibilities of success,[78] among

[73] George (1994), 35.

[74] International Theological Commission (2010), op. cit., 61.

[75] See Mora Restrepo (2009) op. cit., 346.

[76] See John Paul II (1998), n. 1; International Theological Commission (2010), 33–39.

[77] International Theological Commission (2010), cit., 29–30.

[78] See Garzón Vallejo (2010), 45–50; 53–63.

other reasons because, as Jeremy Waldron points out, because it is not possible to disassociate a conception of good from its corresponding conception of justice, adhesion to justice as impartiality is, in the best of cases, a mere *modus vivendi*.[79] In the same sense, Joseph Raz argues that recommending a theory of justice for our societies is equivalent to recommending it as the most just, truthful, reasonable or valid theory of justice. Therefore, there "can be no justice without truth",[80] and consequently, no sufficient reason has been given "for political philosophy to abandon its traditional goals of understanding the moral presuppositions of existing institutions and criticizing them and advocating better ones – in the full light of reason and truth".[81]

On the contrary, the doctrine of natural law vindicates the question of good, happiness and the plenitude of human beings, understood as common purposes.[82] In this sense, the document "The Search for Universal Ethics. A New Look at Natural Law" formulates in the very first line the following question: "Are there objective moral values capable of bringing people together and securing peace and happiness for them?".[83] In synthesis, if public reason gravitates over politics and law, the theory of natural law does so, in turn, over ethics and morality.

14.2.5.6 The Position Regarding Transcendence

The majority of natural law theorists are theists, although not all of them are.[84] The reason why is that there exists a set of moral rules, including rules regarding justice and human rights, that can be known through mere rational questioning, understanding and judgment, independently of any divine revelation.[85] In this sense, for some natural law theorists there are *further* practical questions such as, for example, whether human good has an further meaning or whether it is related to any more comprehensive participation of good. To avoid such inquiry is not reasonable, but above all, to pose the question implies the possibility of opening the way to a *more complete* explanation.[86] However, in the face of an understanding of natural law, this step in neither necessary nor indispensable.

The theoretical tendency that emphasizes that the foundation of natural law is human nature understood metaphysically also indicates that full compliance with it or its full realization is divine.[87] For this reason, "even if the natural law is an expression

[79] See Waldron (2005), 193–193.

[80] See Raz (1994), 70.

[81] Ibíd., 84.

[82] See Benedict XVI (2009), n. 59.

[83] International Theological Commission (2010), 25.

[84] See George (2009), 15.

[85] See ibíd., 18.

[86] See Finnis (2011), 371 and 405.

[87] See John Paul II (1993), n. 44 and 45.

of reason common to all men and can be presented in a coherent and true manner on the philosophical level, it is not external to the order of grace. Its claims are present and operating in the different theological states through which our one humanity has passed in the history of salvation". In this way, thanks to natural law, "men are able to examine the intelligible order of the universe in order to discover the expression of the wisdom, beauty and goodness of the Creator".[88]

The position regarding transcendence is one of the aspects that generates the greatest division between public reason and natural law because, although in the works of Rawls and Habermas there are no references to God, nor to the theological or transcendent dimension of the human being, they both seek to propose a secular,[89] *but not secularist,* conception of public rationality, i.e., a conception understood on the basis of assumptions that do not appeal to any theological principle or religious authority,[90] but which do not reject *de iure* any influence of this type either.

Thus, given that this a theoretically important divergence, since natural law theory does not point to belief in God or acceptance of revelation as a requisite for its discovery, it is possible to conclude that this difference does not impede exchanges and other similarities between said theory and public reason. Furthermore, this is possible despite the fact that there is something deeply alien to the philosophy of natural law in separating the search for moral and political principles from matters relative to human nature, dignity and destiny.[91]

14.2.6 Realistic Ethics and Openness to Transcendence: What Is Reformulated in Public Reason

Public reason can be considered a secular or agnostic reformulation of natural law, but one that is also philosophically skeptical. I call attention to the terms used: "reformulation" does not mean that there is a "new version" of natural law, since evidently the similarities between them are not sufficiently significant to group them within the same philosophical family. However, given that public reason basically seeks the same ends as natural reason, i.e., a more or less generalized agreement about fundamental ethical and political principles, we are in fact facing a reformulation of natural law. It is a skeptical reformulation not only because it rejects metaphysics, the foundation of an important version of natural law, but also because it rejects a basic common aspect of the two versions of natural law: a realistic ethical conception.

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[88] International Theological Commission (2010, 79–80); See Benedict XVI (2009), n. 59.

[89] On this concept, its modern genesis, and its relation to the religious dimension, see Taylor (2004), 116–123.

[90] See George (2009), 123.

[91] See ibídem.

Why is public reason a secular, lay, or agnostic reformulation? For two reasons. The first is that, because it does not rely on a realistic ethics, it closes the door to the possibility of formulating the ultimate questions about human existence, limiting its developments to the here and now. The second is that, because it retrieves the secularized character of contemporary societies as a datum and normative fact, and from there – and *only from there*, i.e., without any perspective of overcoming this situation – it develops its propositions, which positioning public reason as a historicist perspective.[92]

In synthesis, public reason is located on an immanentist plane or contrary to realistic ethics, and of non-openness to transcendence. These two aspects are central since all the other differences derive from them, i.e., the scope, the epistemological focus, and the main topics that are tackled. In other words, the skepticism and the agnostic character explain why public reason is posed as a procedural and non-substantive conception. They also explain why it deals with justice and democracy rather than with the good and realization of human beings and why its scope is strictly limited to developed, secularized and technified Western societies, rather than universal. Finally, it explains why its contents are basically political and legal, only secondarily ethical, and not, on the contrary, anthropological.

We cannot ignore the fact that, given the current disrepute of political philosophy due to the prevalence of a style of public debate featuring derogatory adjectives, insults and prejudices, public reason makes a strong contemporary sensitivity to questions of justice and discursive democracy evident. Given the hegemony of methodological positivism and the hard sciences, public reason involves a revaloration of practical rationality and the normative character of practical philosophy. Furthermore, in the face of a highly fragmented and de-politicized society, it realigns concern for agreement and consensus around political and democratic principles that will make a better life possible. This is not enough for some, but I do not think it should be underestimated. In fact, I believe it is encouraging.

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[92] See Grueso (2009), 29–30.

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