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THE PERSON AND THE DEFINITION OF HUMAN RIGHTS

LA PERSONA Y LA DEFINICIÓN DE LOS DERECHOS HUMANOS

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ABSTRACT

The article analyses the philosophical and practical complexities of human rights, emphasising the central role of the person as the foundation of these rights. It explores the metaphysical and anthropological foundations of human rights, highlighting the person's intrinsic dignity and relational character. It also reflects on the historical evolution of human rights and the categorisation into generations, addressing criticisms of their expansion and division. The tensions between universalism and cultural relativism are highlighted, as well as the need for a global consensus in a context marked by global justice challenges and colonialism's historical legacy.

Furthermore, the text criticises the reductionist view of legal positivism, which detaches human rights from their ethical and anthropological foundations and calls for a deeper reflection on human dignity and its centrality in shaping political communities and normative systems. It is argued that the defence of human rights requires a holistic

understanding of the person that transcends the boundaries of legal and political structures to promote justice and equity in all dimensions of social life.

Keywords: Human rights; Personhood; Dignity; Natural law; Anthropological foundation; Metaphysical foundation.

RESUMEN

El artículo analiza las complejidades filosóficas y prácticas de los derechos humanos, haciendo hincapié en el papel central de la persona como fundamento de estos derechos. Explora los fundamentos metafísicos y antropológicos de los derechos humanos, destacando la dignidad intrínseca de la persona y su carácter relacional. También reflexiona sobre la evolución histórica de los derechos humanos y la categorización en generaciones, abordando las críticas a su expansión y división. Se destacan las tensiones entre universalismo y relativismo cultural, así como la necesidad de un consenso mundial en un contexto marcado por los retos de la justicia global y el legado histórico del colonialismo.

Además, el texto critica la visión reduccionista del positivismo jurídico, que desvincula los derechos humanos de sus fundamentos éticos y antropológicos, y reclama una reflexión más profunda sobre la dignidad humana y su centralidad en la configuración de las comunidades políticas y los sistemas normativos. Se argumenta que la defensa de los derechos humanos requiere una comprensión holística de la persona que trascienda los límites de las estructuras jurídicas y políticas para promover la justicia y la equidad en todas las dimensiones de la vida social.

Palabras clave: Derechos humanos; Persona; Dignidad; Derecho natural; Fundamento antropológico; Fundamento metafísico

1. INTRODUCTION: ‘HUMAN RIGHTS’

Suppose we start with a conventional statement about human rights. In that case, we can generalise that human rights are defined as inalienable rights that every person has, without discrimination, because they are human beings. They are thus universal fundamental rights essential for human dignity, survival and development. Human rights are, therefore, indivisible and interdependent. This theoretical simplicity, which does not imply a simplistic view, supports, in turn, a practical complexity since this leads, by the very weight of conceptual history (Ishay 2008) and its jurisdictional implication, to the fact that states are called

upon to respect them, The same applies to a plethora of them, which we have been dividing into at least three generations for the last 45 years, following the distinction made by the Czech-French jurist Karel Vašák in the conference he gave for the International Institute of Human Rights in Strasbourg in 1979 (1979; 1977). It has become a convention to speak of civil and political rights (freedom), for example, the right to life, freedom of association and freedom of religion; economic, social and cultural rights (equality), for example, the right to work, education and social security; and 'third generation' rights (solidarity as a development of fraternity): for example, the right to development and a clean and healthy environment. This generational convention's strength is that even critics recognise the practical existence of separate groups with specific characteristics.

In the 1980s, Philip Alston (1982) wondered about the impact of this generational categorisation on the protection of law, especially about the so-called third generation of solidarity rights, which meant that the main categories or sets of human rights (civil and political rights on the one hand, and economic, social and cultural rights, on the other) were not sufficiently flexible or dynamic to be able to respond adequately to the circumstances of the late twentieth century. For Alston, to speak of 'generations' of human rights would seem misleading since dividing human rights into different categories would risk violating the principle of indivisibility of human rights.

For his part, Jack Donnelly (2013, 40-54) has more recently pointed out how this third generation of economic rights is a challenge to the model of the Universal Declaration. This division has led to a division of opinion between conservative Anglo-American philosophers and politicians who have questioned the status of economic and social rights and many others, more attached to the realm of socialist-rooted social democracy. This has led to questioning the restriction of internationally recognised human rights almost exclusively to individual rights. According to Donnelly (2019, 57–79), there are many things of moral importance in international relations that fall outside the realm of human rights, but this does not mean that it is not favourable to put questions of right and wrong at the centre of international debate, just as the rise and persistence of human rights as a normative international political ideal is an encouraging sign for the future.

For his part, Hurst Hannum (2019, 57-79) points out that one of the most common criticisms of human rights is that they have expanded beyond recognition, undermining their universal and fundamental character. According to the author, the unwarranted expansion, or attempted expansion, by the UN Human

Rights Council and its appointed experts has included a focus on increasingly discrete categories of people (such as those living in extreme poverty or suffering from albinism, peasants, sex workers), as well as on issues dealing with international relations, individual human rights, the creation of a democratic and equitable international order, foreign debt, mercenaries and the disposal of hazardous waste. The author does not doubt the legitimacy of the issues addressed but points out how this expansion leads to a deficit of attention to the legal obligations of governments, sometimes deliberately, resulting in a departure from the fundamental and universal nature of international human rights law.

The reflection of these three authors is an example of how even critics of the concept of generations of law recognise the practical existence of separate groups with specific characteristics (Domaradzki, Khvostova, & Pupovac 2019, 423). Characteristics are increasingly becoming more lax and calling for new categories, as is the case with fourth-generation rights, which have had various objects. This category includes emerging rights, from 'rights related to genetic engineering' to 'digital rights'[1] or 'the rights of peoples' (De Baets 2001). or 'Indigenous peoples' rights' and the "right to a life-supporting environment", i.e. rights that are in the process of being established. i.e. rights that are in the doctrinal debate as to their recognition or prohibition of certain activities. We could include in the same category the so-called rights of future generations, as well as rights that cannot belong to an individual or to social groups, including nations, but only to humanity as a whole. The rights of humanity would deal with the common goods of all humanity. They are thus rights that are partly based - as Guillaume Bernard states (2019) - on a dignity that no longer derives from the nature of each human being, of all human beings, but from the capacity of each of them to use their power'.

We see, then, that human rights are currently in a paradoxical situation: on the one hand, a growing number of civil, political, social, economic and cultural rights are proclaimed in various legal texts; on the other hand, however, these same rights are becoming utopian ideals insofar as their hyperinflation has profoundly altered the universe of traditional individual rights (Barretto 1998, 1), and has served as a breeding ground for multiplication and spread of so-called fundamental rights beyond the imaginable and beyond the normative (Sánchez 2010, 303). Indeed, the continuous proliferation of new categories of rights does not contribute to increasing their protection, but "rather distracts from the real issue in this domain - the implementation of the bill of human rights as expressed

1 Some speak of the 'right to the exercise of a genuinely human intelligence'. Cf. Risse, 2021.

in the Universal Declaration and the International Covenants" (Pocar 2015, 52-53).

Confusion often leads to and justifies their systematic violation by social groups and governments. The question we have to face is whether we can continue to claim, with some basis, as actual rights, all the incessant desires and longings, without denaturalising the very concept of human rights (Laporta 1987, 23), without rendering the fundamental rights themselves operative, and without ultimately emptying them of their content. The question arises of broadening the semantic field of the expression 'human rights' and its normative correlates - 'fundamental rights' or 'subjective public rights' - without depriving them of their original nature and questioning their absolute operability and validity. Perhaps it would be more appropriate, instead of categorising the so-called third-generation rights, to recognise that, in the determination of space and time, it is necessary to normative certain conditions that make possible and guarantee the enjoyment of human rights without having to categorise them as additional and independent rights.

In the background, there is a plurality of interpretations of the scope, the system of protection and the very basis of human rights. This conflict between universal values, legal texts and juridical-political practices has led to the view that human rights are no more than a utopian promise destined to disappear into the ethereal world of unfulfilled ideals. It is necessary to reflect on the expression 'human rights' as the basis of the legal good to be defended by their positivisation as fundamental rights.

The pragmatic plurality of the term 'human rights' from the modern paradigm that postulates that different interpretations of human rights should be understood as expressions of different interpretations of the objective (or purpose) of human rights practice reflects the need for the advancement of a conceptual precision that does not depend solely on the multiplicity of its uses, which indicates, above all, the lack of an everyday basis that could contribute to the universalisation of its meaning. A right is established concerning the jusnatural or positive tenor of the concept of human rights itself.

Many authors take the expression 'human rights' as a determination of 'natural rights', the former being, in Finnis, the modern version of the latter (Finnis 1989, 198), developing from a complete, traditionally rooted and comprehensive theory of natural law. Drawing heavily on Aristotle and Aquinas, in dialogue with modern understanding, Finnis asserts that, without needing to believe in God, human beings can discover what is intrinsically good and the practical rules for realising those goods in connection with justice and the scope of human

rights. In this view, questions and answers about human life and social existence point to an ultimate creator, and he speculates on the relationship between eternal law and human law. In this intellectual context, Finnis stresses that what is crucial to natural law theory is a set of claims about moral truth and an accompanying vision of the place of moral understanding in philosophising about social institutions: "A theory of natural law aims to be able to identify the conditions and principles of practical mental rightness, of good and proper order among men and in individual conduct" (Finnis 1989, 18). Finnis underlines how to describe and analyse social facts. Understanding and searching for what is good and how it can be achieved is necessary. As early as 1936, Heinrich A. Rommen traced the tradition of natural law back to its displacement by legal positivism and concluded by revitalising natural law thinking in more recent times both in philosophical research and in constitutional interpretation (Rommen, 1998), which later led him also to point out the determination of natural rights in the shaping of the human being (Rommen 1955, 624). In this sense, for many authors, human rights are presented as a reference for the ordering of the world in order to achieve the common good. For Pierre Manent, beyond the dichotomy introduced by modern philosophy, natural law makes it possible to positively determine the rules that make an action just and beneficial to the common good and makes it possible to combat the effects of liberalism to promote those realities urgently needed (Manent 2018).

Other authors, such as Michel Troper, maintain that the Universal Declaration of Human Rights is undoubtedly established by the will of the constituent so that the legislator does nothing more than a formal conception of rights, which means that its content derives from constitutional hermeneutics (Troper 1994, 328). In other words, we speak of positivism insofar as for Troper, a declaration of natural rights that man possesses by essence and that is therefore prior to their recognition is an iusnaturalist conception, and if it results from the expression of the will, it is called a positivist (Troper 1989, 13).

There are those who, however, consider the expression 'human rights' to define the set of rights that would be defined in international and legal texts. This does not mean that "new rights cannot be enshrined in the future" (Mello, 1997, 5). In the sense that we have spoken of the extension of rights. In both Troper and Mello, human rights would be confused with fundamental rights of a juridical nature.

In this discussion, the question of universalisation is oriented from the pole of the universal foundation as a concept of law. However, some call for a debate on the universalisation of human rights based on the specificity that underpins

these rights, i.e., the concept of the human being and its concomitant concepts of dignity and personhood.

Human rights, as affecting the legal order's primary organisation, are also reflected in the political debate and the model of states. From his neo-contractual position, John Rawls (1999) defines fundamental human rights in a theoretical position in terms of fairness as a 'minimum standard' of political institutions with a special status since a minimum standard of conduct must apply to all states that embody a just political society of people. According to Rawls, human rights differ from the constitutional guarantees normativism in fundamental rights since the latter constitute the ultimate limit to pluralism among peoples. Rawls has in mind the ethical and metaphysical controversies about what should be considered the essential foundation of these rights and his contractual position. Rawls is aware that the independent elements that justify justice have disappeared in modern 'post-metaphysical' thought, which leads him to rest the moral and legal foundations on the autonomous subject. From his Kantian reading, he seeks to elaborate on principles of justice, free of prior and transcendent obligation, which free and equal persons can choose in a position of contractual choice, which implies that the basis of a criterion of justice is not independent of the conditions of the deliberation itself. In human rights, metapolitical prerequisites appear, especially concerning the inviolability of the person, which is not metaphysical per se. However, they require a metaphysical stance, the reduction of meaning presupposed in the stance of the original position. Which is nothing but an ontological fiction, or as Paul Ricœur puts it: "No doubt a foundational fiction, but a fiction nonetheless" (Ricœur 1991, 213).

Once again, there is a tendency to understand human rights as being confused and unrelated to fundamental rights (Arendt 1962, 290), which causes, as Hannah Arendt would call it, a 'perplexity' regarding human rights insofar as fundamental rights (as an authentic expression of human rights) given in a national state could be identified with the idea of nationality and break with any possibility of universalisation that the concept itself should have. This means that fundamental rights and their doctrine, the foundation of neo-constitutionalism, are questioned on all fronts, especially about the evanescence of their limits.

As in the debate from the eminently legal-constitutional sphere, political reflection encounters difficulties in establishing a universalisation from the 'political' thematisation of the concept of law. In these positions on the search for the foundations of human rights, the rational and deontological element stands out. Human rights would derive from a categorical legal imperative insofar as they do not condition the entitlement to such rights on the particular conditions

of human beings, such as nationality, wealth, religion, gender, etc. (Nino 1989, 45) The principles of inviolability, autonomy and the guarantee of a value intrinsic to the ideals of excellence of the human person are based, in principle, on the dignity of the person, by which access to the right is enshrined (Anchústegui 2008), regardless of circumstances such as race, religion, sex, social group or political affiliation.

It is, therefore, impossible to ensure moral principles and a legal positivisation of human rights without taking into account the concept of the human being, which bears all the characteristics, even if we understand these rights as categorical principles as "a guiding institution" (Habermas 1997). The human character of human rights must be added to the reflection on the legal and legal character of human rights.

Human rights entail a debate on the 'legitimate and illegitimate' of people's everyday lives and are inherent to the space for dialogue on which the democratic regime is based.

The effort to reflect on and deepen the meaning and value of human rights is the surest way to oppose the sometimes disproportionate extensions of individual autonomy, of a disembodied reflection that risks marking the end of politics, since from the sphere of juridical-political subjectivism and individualism they would become selfish claims detached from any collective deliberation. It is, therefore, necessary to give human rights their whole meaning (Lacroix & Pranchère 2019), their a-temporal character, and the authentic root of their practice in society since, as Michel Levinet (2006 164) states, "the human person constitutes the cornerstone of any society". It is relevant, if not necessary, to consider the anthropological roots (the human) of human rights. In the same way as in the discourse centred on the notion of law, on its universality and rationality, it is unavoidable to rethink modern, enlightened, contractual sources in order to take on new formulations such as neo-contractualism or dialogical thinking (the 'law' of human rights). We start from the hypothesis that turning to the anthropological foundation, to the basic notion of the person, means focusing on the moral and legal good to be protected since it involves the central concept of the human being. Reflection on this concept can help us to better understand and offer solutions to the triad of 'singularity, universality and plurality', whose historicity is unquestionable and whose search for a common understanding is often uncertain.

2. THE METAPHYSICAL FOUNDATION OF HUMAN 'RIGHTS': ETHICAL-LEGAL ASPECTS

It is now a cliché to turn to the position reflected by Jacques Maritain, head of the French delegation, based on an agreed catalogue of human rights based on practical cooperation to overcome the disparate positions of humanity divided on intellectual disagreements. Practical agreement between men with opposing theoretical positions was a significant advance for world unification, but the idea that men mutually opposed in their theoretical conceptions could reach a purely practical agreement on an enumeration of human rights did not, on the contrary, eliminate the question of the basis of 'human rights' as 'rights' and as 'human'. Maritain is aware of this difficulty. Indeed, the "babel of modern thought" (Maritain 1960, 52) may demand a practical stance on human rights, but if there is no reflection, this practicality will likely break down. According to the French philosopher, the concept of 'human rights' needs to be clarified from an ethical, cultural and anthropological point of view, especially since the development of the rights proclaimed in the various declarations of rights before and after 1948 has been marked by a plethora of different ideologies. And in the face of this ideological plurality, conciliation or synthesis becomes difficult. Maritain proposes enlightenment as a collective work of humanity (Maritain 2005, 229-230). However, if we do not want to fall into a certain naivety, this intentionality becomes extremely difficult from post- and anti-metaphysical positions.

Indeed, we assume - almost cordially - that human rights are unanimous in all cultures and bind humanity. Thus, there has been much talk of 'human rights' in current times; the question is whether this communicative maelstrom corresponds to an attempt to elucidate their real nature. If human rights, and with them their legal formulation, which is not the same thing, 'fundamental rights', are so frequently invoked in courts or diplomacy, it is surprising that so little thought has been given to what exactly they are. The truth is that an inverse proportionality is at work: the more the importance and role of human rights are discussed, represented and put in the limelight, the less their essence is questioned.

This can be seen if we refer to the questions posed by former UN Secretary General Kofi Annan: "Who can deny that we share the same horror of violence? Who can deny that we seek freedom from fear, from torture, from discrimination? Who can deny that we seek to express ourselves freely and achieve the goals we have set for ourselves? Have you ever heard the voice of a free man calling for the abolition of freedom? Have you ever heard an enslaved person

defend slavery? Have you ever heard a victim of torture condone the actions of the torturer? Have you ever heard the men of tolerance call for intolerance?" (Annan 1998). The evidence of the questions refers to the globalisation of their answers, to the global assent (to the quantitative act). However, they do not explain their universality (the qualitative reality) because let us remember that there have been times when violence was justified, slavery was seen as an everyday fact, that there were convicts who acted as jailers, or theories that justified intolerance by virtue, for example, of a race or an identity. Global perception does not, therefore, stand as a qualitative criterion of conceptual measurement since, as it has a quantitative value, it can vary: a new idea, a cultural crisis, the elimination by some of the legal personalities of others, etc., is all that is needed to eliminate globality; it is, therefore, necessary to seek an actual (qualitative) basis for the universalisation of these rights that transcends spatiotemporal contingency, even though it is there that they must be exercised.

Interestingly, from the antipodes of the foundations of human rights, Norberto Bobbio (1990) states that it is not necessary to seek what he calls an 'absolute foundation' of human rights, but rather that what is needed today is to seek means to protect them and make them effective. This conception assumes a moderate positivism in which law "serves, by virtue of its existence, independently of the moral value of its norms, to achieve certain desirable ends, such as order, peace, certainty and, in general, legal justice" (Bobbio 2011, 32). A self-referential legal justice that is reduced to conformity to the law. It is a position proper to the theory of law, the meta-legal study, and, therefore, beyond ontology and metaphysics, even of law. It is concerned with the formation of the jurist of the modern State (Bobbio 2011, 90). From this perspective, human rights, although conceptually universal, are nevertheless 'historical rights' whose content is a variable that depends on the evolution of humanity's moral and legal conscience.

The same thesis of Bobbio, in its sense of non-foundation, is defended by Richard Rorty (1998 170) when he states that "the question of whether human beings really have the rights enumerated in the Helsinki Declaration is not worth raising". The argument of historicity and heterogeneity are typical of this positivism. In this sense, faced with the impossibility of an absolute foundation for human rights as an objective datum such as human nature, Bobbio calls for a non-absolute foundation in the present era: the consensus of humanity. The Italian philosopher - recalls Carlos Isler (2022) - is part of a not inconsiderable line of authors committed to a sceptical position towards human rights that goes beyond utilitarianism and positivism. In addition to Bentham, author of a famous critique of human rights (Hoffman 2001), this notion is rejected by an illustrious

list of philosophers, including Burke (2009), Marx (1976) and MacIntyre (1984 69-71), or more recently Milbank (2012; 2014), who follows in particular Michel Villey (1983) and Joan L. O'Donovan (2003).

These positions downgrade universality to globality, modifying the qualitative (metaphysical) criterion to a quantitative (sociological and empirical) criterion. Bobbio's position seems superficially similar to Maritain's, both praising the existing consensus among the signatory countries of human rights instruments; but, unlike Bobbio, Maritain does not claim to base human rights on such a consensus but suspends his judgement for the sake of a practical criterion. Indeed, consensualism has more than a few problems concerning reaching a consensus among human beings, even in terms of the representativeness of international bodies. For example, this can be seen in the limited causal power that international human rights bodies have over the decisions of countries (and the collision between constitutional and international law in terms of fundamental rights), as well as in the temptation of a social design (Lázaro,2022a, 106-120).

This position also has its detractors. Thus Saldaña points out the real theoretical difficulty of the practical consequences of basing human rights on the epistemology of consensus derived from Bobbio's proposal, which understands the absolute foundation of human rights to be based on an illusion, if "as Dworkin says, we want to take rights seriously" (Saldaña 2001, 214). For his part, Aldo Schiavello points out the contradiction involved in the supposedly neutral affirmation of the 'era of rights' as Norberto Bobbio's idea of a universal consensus, understood as moral progress, a kind of legal-moral lingua franca, which implies a change in the social model, since the end of the era of rights is decreed in the presence of a public discourse entirely - and univocally added – "centred on rights and their protection" (Schiavello 2013, 144-145).

Indeed, without a rationale for human rights, even if they are to be protected, it seems necessary to determine their scope and number and how to resolve collisions between them and other goods. For example, it is difficult to know how many and which rights there are, their extent, and how to resolve conflicts between them and with other moral and political goods, such as national security, sovereignty and democracy.

Consensus is not a univocal criterion, since it is a fact, and as such cannot, without some other normative premise, generate any normative consequences. Everything points once again to the need to find a foundation if they are to be anything more than truths of faith.

For his part, Dworkin has formulated a critique of legal positivism that brings it closer to iusnaturalism. However, Dworkin refuses to base rights on a

supposedly independent moral order that the legislator or judge would have the task of discovering when making law. Dworkin - partly inspired by John Rawls but applied to the legal sphere - substitutes principles of law for natural law. The latter are not independent moral truths but moral criteria that can be rationally constructed. This leads him to formulate that rights, in the primary sense, protect individual freedom from government intervention; in the secondary sense, rights are indispensable for the individual (Dworkin 1978, 191-192). The critique of utilitarianism leads him to legal constructivism, where the legal subject is reduced to a mere individual.

In this tension between positivism and more jusnaturalist positions - which we have pointed out in the quantitative and qualitative transposition into globalist and universalist positions - relativist objections that point to possible tensions between cultural minorities and human rights also come into play. Given this, it is necessary to articulate universal human rights that always apply to all cultures (Shute & Hurley, 1993).

For his part, Princeton professor Charles Beitz (2009, 128) has brought the human rights debate into the political sphere based on the functionality criterion. From an individualistic perspective of the metaphysical understanding of the human being, in which he does not perceive the relational character, human rights are reduced to the game of politics in such a way that a debate is established as to whether human rights should be the main criterion for evaluating political legitimacy and in the most common language for making social demands. The way out of this dilemma is established in the terms that rights are not only the precondition for democracy but that democratic politics is the only reliable foundation for rights. We could speak of political positivism.

The dispute is long; the solutions take work. In this sense, with Ollero, we can point out that "the honourable burden of guaranteeing the 'essential content' of human rights and of making their ethical demands real and effective is imposed on us, even if this means challenging - against the tide - the repressive tolerance of aesthetic anti-fundamentalisms" (Ollero, 2001, 195). For his part, Pérez Luño, in a now-classic study in which he asks himself about the foundations of human rights and their debate, recalls Vitoria and how in the introduction to his *Relectio de Indis* - which he considers key in the process of affirming freedoms - he already asks himself about the question of the foundations of rights: 'I believe,' he states, "that [Vitoria's testimony] constitutes a useful leitmotiv for any attempt to establish the foundation of human rights, because it proves: that doubts about the efficacy of such a reflection are nothing new; that it is convenient to approach it from a rigorous self-critical perspective; but that,

all in all, and as can be seen from the subsequent repercussion of Vitoria's ideas, it is a theoretical work that can have a notable impact on practice". (Pérez, 1983, 7–8). It does not seem unreasonable to look into the theological and philosophical-legal tradition as a reference that invites a re-reading in the current debate.

3. METAPHYSICAL FOUNDATIONS OF 'HUMAN' RIGHTS: ANTHROPOLOGICAL ASPECTS

The notion of the person appears as a core concept in elaborating a reflection on the individual specificity open to a relationship. Elements such as dignity or natural law, which some present as essential in the proto-formulation of human rights (Boeira, 2016), are found in the person. Indeed, there is an inseparable union of reflection between natural law and the human being understood as a person. Natural law is in part not natural at all, for it does not express nature in man, but the nature of man; it marks in a specific way, beyond the natural, the divine influence and assistance which underlies all things in order to exist and which makes them move in order to act. Now, what requires supernatural assistance and contradicts nature remains on the natural plane outside man's free will. Thus, natural law manifests the degree of dignity of human nature and leads to a view that starts from the metaphysical status. Ontologically, it is inseparable from the impulse that leads to man's natural perfection and contributes to the development and effectiveness of human values in this world. At the same time, it does not fail to consider the sphere of the supernatural as the realisation of human perfection.

The introduction of the referentiality of the person in authors such as Vitoria, Domingo de Soto or Suárez (Loureiro, 2018) - provided we free ourselves from the prejudices of the dichotomy of the continuity of thought and the myth of modernity - allows us to see that the position of such a law attests to the presence of God in man, the irreducibility of the divine to the human and the participation of the human in the divine. It gives the finite the idea of the infinite from the ethical point of view. At the same time as it establishes the conditions for its preservation, it must find humanity in man (namely the person, 'individual substance of rational nature', as Boethius said) or the possibilities of his becoming human in the social and historical world.

However, it would be a mistake to identify the concept of personhood with a naturalistic idea. We cannot ignore that, together with Boethius, in the concept of person, we have Augustine's apprehension of personal intimacy from the sub-

stantial relationship. For his part, Ricardo de San Víctor inclines his understanding of the person towards the pole of existence: the person 'is individual existence of a rational nature' or 'incommunicable existence', but relational. Finally, the masters of scholasticism conceive the person as the singular distinction of a hypostasis distinguished by a property belonging to dignity (Lázaro, 2006).

Balancing the medieval proposals, the relational presupposition illuminates the definition of person, both in its original divine definition and in its analogous human understanding. It thus responds to the vocation and essence of the subjects and natures that hold the category of person. Man, the sustenance of rights as a person (as it appears in the declaration) is an *ultima solitudo*, Duns Scotus will say: unique beings, worthy singularities. Socrates, 'Manuel', and 'James' are ultimately 'Socrates', 'Manuel', and 'James'. They are pure identity, so this is the meaning of personal identity. Personal identity is defined by being unique and singular and is perfected on the 'presupposition', which cannot be given except in specificity. A specificity that allows us to action capable of leaving the game or the immanent and imposed narrative. We can say that affirming transcendence also implies being in the game. Even if it were so, the proponent of the game changes. Suppose the external transcendent principle has the metaphysical dynamic of the communication of good and love (intrinsic to the Trinitarian God). In that case, the other (the intrinsic immanent principle, the supra-organisation) is moved by natural implosive and entropic energies, for that nature cannot - being immanent - have an expressive principle on which to be founded and from which to escape.

Being an image involves our being in the capacity to relate. We are beings of encounter and expression. Hence, 'person' implies *a relational character based on singularity*. The common assumption in which man widens his humanity and expands as a subject by being summoned singularly makes possible the encounter and communication in beings who have a face to communicate[2]. *A priori*, a person cannot establish meaningful communication without recognising in the other a valid interlocutor, i.e. an equal with whom to speak.

This relational singularity is intimately worthy, far removed from a relativism of linguistic practice, and uses language very much in connection with moral relativism. Relativism is closely dependent on denying any glimpse by a man of truths underpinning practical and linguistic actions. Confirmed: no one

2 We must bear in mind that "the meaningful essence (*significatio*) of natural entities projects the suppositional quiditative immanence *(suppositio)*." (Lázaro, 2019, 72).

denies dignity. However, it is no less evident that its meaning slides along very diverse paths that blur its meaningful boundaries and the extent of its reference and thus actually empty its content. It is not strange, on the contrary, that the attribute 'dignified' is applied to circumstances and facts that can be described as dichotomous and aporetic.

It could be said that thinking about the person opens the way to a reformulation of the conception of human nature, which, anthropologically, is autonomous from the thesis of original sin, marked by the insistence on the corruption of man's essence and inclinations and which has so influenced modern contractual formulations (Lázaro, 2022b). The anthropological vision thus presents the reality of rights for all men (Pliego, 2014). The philosophical and theological anthropology of the person has a character of juridical reflection, which can point out ways of reflection in today's world. On the other hand, anthropological reflection as a basis for understanding law is unique in the School of Salamanca, and its conceptual results will have different juridical (Anchústegui & Lázaro, 2021) and political echoes (Lázaro, 2016).

This perspective, in turn, allows us to overcome barriers inherent in discourses born from cultural studies that construct a new history and theory of human rights and a fuller understanding of international human rights law in the context of modern colonialism and the struggle for global justice (Barreto, 2013). Indeed, we can see in the authors around the School of Salamanca new discourses based on a substantiated idea of the human person, based, above all, on Christian teachings. A discussion derived from the effects of colonisation was a specifically Spanish phenomenon, as it did not occur, at least with the same intensity, in any of the other colonising powers such as Portugal, England, Holland and France (Calafate, 2015). It is from this debate around the concept of the person that was constructed during these disputes that we can, today, introduce an essential historical reference for the affirmation of human rights and a fundamental contribution to understanding their meaning in the contemporary context, without falling, as we pointed out, into a historicist position.

In this sense, underlining the personal character of rights can help clarify the meaning of the 'subject' of those rights, an issue debated in rights theories. Traditionally identified as a feature of modern legal thought, individualism is reflected in philosophical and political choices and the technical constructions that have contributed to the definitions of rights that are still very much in force. Legal historiography has stopped at the search for the origins of what is considered the structural element of modern rights - subjectivism - in disrupting a scholastic paradigm of law. However, the expansion of the sources used in that

research concerning the person may help us to suggest that the modern 'legal subject' as a 'subject of rights' is drawn from a less disruptive concept and, therefore, the modern notion of 'rights' is structurally more complex. The concept of personhood makes it possible to emphasise the existential character of rights, a key idea Professor Rabinovich (2017) advocates. Existential rights, those that are given in the person, allow us to avoid anachronisms and open the debate on the history of rights to a growing legal reality: the rights of existence, of existences, those rights that, little by little, will gradually add more and more beings, beings that will enrich their lives with more and more rights.

The nominalist disconnection operated in the individual reduction of the person and, therefore, of reality has allowed the sublimation of a new anthropological and juridical paradigm. This must necessarily break with the past metaphysical order, inaugurating a materialist eschatology that extends modern subjectivity while dissolving the subject in the indeterminacy of the public, destroying the essence of the political by administering and bureaucratising all human events. This process has had its effects on the debate on rights (Gallego 2019). In this sense, the underlying hidden complexity emerges in the study of the concept of the person, which already in the School of Salamanca is configured as a legal entity (Haar & Simmermacher, 2014) - and can help to clarify or enrich some contemporary jurisprudential debates on the nature of rights, especially human rights that clarify them in their legal relationship as endowed with legal 'personality'.

Human beings have several characteristics that define them uniquely and specifically, which lend themselves to relational, communal life (as a person), inviting human beings to elevate them to rights. In particular, it emphasises that the human being is a person. This reality has a specific configuration reflected in his genetic code in a biological form and constitutes his essentiality. An essentiality that is lived in a unique, individual way but open to relationships. Each human being shares his or her humanity with another human being in an exclusive and, at the same time, open, relational way.

The human being is thus an autonomous but not self-sufficient reality. Man develops his humanity always about the other; he is even able to understand his life better when he projects this relation to the total Other. His relational autonomy, born of his personality (of being a person) and of his essentiality, is the basis of his second characteristic: freedom. The human being is a free person, autonomously free, personally free, and relationally free.

His free personality leads to the fundamental dimension of dignity. A human being is a person who is freely open to relationships and thus puts his or

her humanity at stake. Each one of us, unique, memorable, free, represents the whole of humanity. If one day all of humanity were to become extinct and only one of us were to remain, even in a diminished form, we could say that one human being would remain and that humanity would not have died. Each person is the image of humanity and represents humanity, and this is the foundation of the dignity of the human being.

In the Roman world, dignity was held by the emperor's representative. This meant that he was treated as if he were the emperor. To entertain the one who represented the emperor, the one who was his dignity, meant to entertain the emperor himself. Dignity, therefore, implies the representation of the one who is the bearer of that dignity. Each unique and essentially human person represents humanity and is worthy of such recognition. To recognise the dignity of a person is to recognise humanity.

Life and dignity are not two parallel realities, nor are they summative; a conjunction does not join them; they occur together since human life can only be dignified, since the human being is always dignified by the fact of being so, not by the fact of how he or she develops that humanity. When we say that a person's conditions are not dignified, it does not mean that the person is not dignified or lives his or her humanity unworthily because he or she is an unworthy person, but that these conditions obscure in the eyes of the community the human dignity that belongs to him or her. It is the task of all human beings to help the dignity of all shine through, for in this lies the safeguarding of our humanity. Dignity implies recognising the humanity of the other person, our dignity, our value as human persons, and, in this, the dignity of all persons, our shared humanity. From this reality, we understand that the human being, a dignified person open to relationships, is the foundation of the equality born of human dignity. The ethical human rights born of the dignified, free and relational person with equals (metaphysical-anthropological instance) are the basis for the behaviour of human beings (ethics), which in society calls for its normative reflection (law). There is still much to think about, but it will be possible to do with this.

4. LA PERSONA EN EL CENTRO DE LOS DERECHOS HUMANOS DE LA COMUNIDAD POLÍTICA

The term ‘human rights’ is subject to conceptual tension due to the interplay of two fundamental dimensions. On the one hand, we find the normative and political character associated with the concept of ‘rights’. On the other hand, an

anthropological qualifier identifies them as 'human'. The key question that emerges is how these two terms are intertwined. This question leads to two levels of reflection.

The first reflection focuses on the nature of 'human rights', analysing whether they exist before their normative formulation. This answer will depend on whether they can be considered pre-political and thus ethical and metaphysical. In other words, the question revolves around whether these rights possess a referentiality that confers objective reality or are purely nominal constructions that acquire meaning only within a legal framework. As Roberto Casales points out: "To speak of the foundation of human rights is something that, in itself, presupposes an original ontology, since to found something implies, strictly speaking, giving that reason by virtue of which an event or state of affairs is maintained in being". (2014, 60).

Indeed, the nature of 'human rights' raises a fundamental philosophical question: Are these rights inherent to the human condition, existing prior to and autonomous from their normative formulation, or are they conceptual constructs that only make sense within a specific legal system? This question is not merely academic but has profound implications for how we conceive of and defend human rights.

If it is argued that human rights are pre-political, it is assumed that these rights have an ethical and metaphysical basis that makes them universal and timeless. In this view, human rights do not depend on their recognition by a state or a political community to be valid; they are inherent to the person simply by being human, and of being a 'person' in itself, and imply a metaphysical consideration of personal reality.

In contrast, if human rights are held to be nominal constructs, they would not exist independently of the normative framework that defines and protects them. From this perspective, human rights are the product of social and political agreements formulated in specific historical contexts to respond to specific needs or problems. In this case, their legitimacy and effectiveness depend on recognition and implementation in concrete legal systems, such as national constitutions or international treaties. This view, often associated with legal positivism, emphasises that human rights have no objective existence outside the legal systems that enshrine them. The legal charge of 'rights' negates their specificity, the fact that they are 'human' or rather that they emanate from the human person.

Most importantly, the debate between these two positions is not merely theoretical but has significant practical consequences. If human rights are considered pre-political, their violation constitutes a transgression of fundamental principles that transcend any legal order, justifying international interventions for their protection. On the other hand, if they are conceived as nominal constructs, their scope and application depend on each society's political and legal conditions, which may limit their universality.

Ultimately, resolving this question involves deep reflection on the nature of the person and his or her dignity, as well as on the role of political communities and legal systems in creating and protecting rights. This analysis clarifies the origin and rationale of human rights and provides tools to address contemporary challenges in their defence and promotion at the global level.

For this reason, the person's centrality must be reinforced philosophically, as we have tried to point out in the previous section. The person must occupy a central place in the reflection on human rights, as he or she constitutes the core around which both normative foundations and anthropological considerations revolve. This concept is not only the addressee of rights but also their origin and raison d'être. It implies recognising in the person an inherent dignity that transcends any normative or legal construction. From this perspective, human rights are not merely a legal concession the state or a political community grants. On the contrary, they derive from understanding the person as a unique and unrepeatable being (*ultima solitudo*), bearer of an intrinsic dignity that grounds and legitimises these rights. This dignity is the principle that makes it possible to consider the person not as a means to external ends but as an end in itself, ontologically projecting the claim of Kantian ethics and other philosophical traditions that have influenced the formulation of human rights.

Moreover, the person cannot be understood in isolation, but as a being in relation. His or her full realisation depends on his or her insertion in a community and on the conditions that this community establishes to guarantee his or her freedom, equality and development. This approach underlines the dialogical nature of human rights, in which the individual and community dimensions are balanced. Thus, the person is presented as a point of convergence between individual rights, which ensure their autonomy, and collective rights, which allow their integration into a society that recognises their value and capacity to contribute to the common good.

In short, placing the person as the central concept of human rights implies recognising him or her as the articulating axis between ethics, politics and law and as the foundation on which a political community is built that aspires to

justice, equity and mutual respect. This approach not only reaffirms the universality of human rights but also challenges us to deepen our commitment to their defence and promotion in all spheres of social life.

The second reflection, deriving from the previous one, delves into the link between the anthropological and political dimensions of the human rights-holding subject. This analysis is crucial because it connects the person's conceptualisation with the foundations of modern democracies, which are underpinned by fundamental normative principles. These principles, codified in constitutional or common law, not only provide the legal structure of the system but also guarantee the adequate protection of the rights of the political subjects that make up the community.

The anthropological conception underlying this political community is the central question that emerges. Any democracy, based on the person's dignity and equal rights, presupposes an idea of what it means to be human and how individuals relate to each other and to the collective. However, in contemporary democratic models, tension often arises between two poles: on the one hand, the individual as an autonomous subject of rights, and on the other, the community as a space of belonging and collective fulfilment. In this dynamic, there is a risk of blurring the concept of the person, which transcends individual autonomy and collectivity by integrating them into a harmonious relationship.

The person, understood as an 'individual in relationship', represents a key to overcoming this tension. This approach recognises that each person possesses an inherent dignity that makes him or her unique and unrepeatable, but at the same time, is called to live in community, as his or her identity and development are enriched in interaction with others. From this perspective, human rights cannot be reduced to individual demands detached from the social context or to mere tools at the service of the collective. Instead, they are configured as a meeting space where personal autonomy and responsibility towards others converge.

This vision of the person as a point of confluence invites us to rethink the foundations of the political community. It is about guaranteeing individual rights and building a social framework that fosters solidarity, mutual respect and recognition of the interdependence between members of society. Democracy, thus understood, is not just a system of government but becomes an ethical and political project that aspires to reflect the dignity and worth of every person in its structures, laws and practices.

Ultimately, placing the person at the centre of this reflection allows for a renewed commitment to human rights and modern democracies. This not only strengthens the legitimacy of these institutions but also opens up ways to address

contemporary challenges, such as polarisation, inequality and lack of social cohesion, from a perspective that integrates the richness of human diversity with the need to build a common project.

This thinking implies not confusing the concept of the person, which we are trying to emphasise here and which ends up being nominally confused with some of its characteristics as an individual or community (collectivity). Human rights are the rights of people in an ontological and political form. Hence, democracies do not belong to individuals or collectives but to the people who adopt them as the political form of their call to communal, i.e. common, life.

The individual character of the human being should not be confused with political individualism, understood as the centrality of the individual in the conceptual structure of the democratic state. While the concept of the individual is fundamental to understanding the ontological unity of the human being, it is problematic when approached exclusively from its ontological (quiditative) dimension, ignoring its inherent relational dimension, revealing its conceptual inadequacy.

The human being possesses the property of singularity, but this singularity does not imply isolation or impermeability; on the contrary, it allows and demands a relationship with other singularities. However, human singularity has been reduced to mere individuality in many discourses. This has led to the term 'individual' being used as a noun defining a quality inherent to the human being, when in reality 'individual' refers to a logical category that expresses a quantitative element of classification.

As Paul Ricœur (1987, 54) states, the individual is not only an indivisible sample of the human species but of any species in the logical sense of the term. Both 'individual' and its adjective 'individual' designate the particular and independent within a whole. For this reason, when the concept of the individual stands as the normative and civic horizon of liberal democracies, we are not highlighting the singularity of the human being but rather an atomised vision of society. This approach places a conception at the centre of social organisation that fragments human relations rather than recognising their intrinsically relational and communitarian character.

The modern understanding of the individual tends to reduce the human being to a solipsistic entity devoid of real ontological substance. Paradoxically, by attempting to ontologise the individual character of the person from a logical-linguistic perspective, the individual is deprived of a whole entitative reality. In this framework, the individual ceases to be conceived as a 'being', a participa-

tory entity in being and becomes a mere consciousness of the present self, detached from its objective reality. Modernity, while assuming the participatory character of the 'being' concerning being, replaces the ontological reference with a perception restricted to rational and emotive consciousness, dissociated from its entitative root.

This perspective reduces the individual to a caricature of his anthropological constitution, presenting him as a monadic and atomised unit within the social structure. The individual is forced to construct an equally empty existence without a factual ontological basis. In empiricist-inspired liberal thought, this subject is conceived as an experiential entity in which practical rationality is translated into moral emotivism. Thus, the interaction between singular wills, which initially seeks the common good, is transformed into a utilitarian calculation, where the good is understood as that which maximises collective utility. In this way, the sum of individualities shapes society and the political community, albeit without any real ontological connection.

The individual, reduced to the status of a pawn on the social chessboard, lacks genuine autonomy. His existence and actions only make sense regarding an external strategy that uses him as an instrumental piece. Even if he grants himself the rules of the game, his being remains subordinated to a system in which his autonomy is an illusion. The hand that moves the pawn, the transcendent 'I', remains alien to it, and its significance is restricted to the utility it can bring to the context. In this logic, pawns - atomised and rationalistic or emotional individuals - cannot transcend their individual nature to emerge as relational and dignified singularities. They cannot free themselves from the immanence of the chessboard, unable to imagine an existence beyond the rules that constrain them.

This model produces a false perception of autonomy and freedom. The modern individual, considering himself free by creating his own rules of the game, lives a form of heteronomy since he remains a prisoner of the rules imposed by the immanent framework. On the contrary, true freedom and autonomy are not to be found in the immanence of the board but in the ability to transcend it. This transcendence is achieved by recognising and freely adhering to a foundation that gives meaning to the relational singularity of the person, allowing him or her to emerge as a genuinely autonomous and unique being in communion with an ultimate reality that transcends the game's limitations.

The modern individual, detached from the metaphysical, is condemned to individualism. As a pawn, he seeks to maximise his utility within the system, aspiring to a fictitious meritocracy that allows him to rise to a higher position.

However, this promotion within the chessboard is no more than an illusion, as it does not transform his fundamental essence. Only through the recognition of his transcendent dimension can the individual free himself from this fiction and achieve his full realisation as a person. This relational singularity transcends mere utility and is rooted in his intrinsic dignity.

The individual, empty of entitative reference and living with other individuals, goes, by reduction, from being a person to being a social character: occupying a place in society, playing a role in the framework of social rules. Sociology has tried to create an intellectual meshing between the individual and the system in which he or she remains heterogeneous and univocal. Human rights are reduced to an individual aspect of mere liberal defence; they are minimised in their normative facet as fundamental rights, becoming confused and seeking as a horizon of structuring principles of axiology the particular good as opposed to the tyranny of the state political community. Human rights are individual rights that guarantee the private good.

In this sense, the defence of the individual against his or her possible dissolution in the community becomes necessary in the face of the risks inherent in this relationship. In the modern conception of the democratic state, citizenship is presented as central and essentially linked to the concept of citizenship. However, the 21st century seems to be characterised by an excessive and often uncritical use of the term 'citizenship'.

Despite its frequency in public and academic discourse, citizenship is a concept that suffers from a notable lack of clarity. Many who use it do not fully recognise its complexities, and attempts to define it are often conditioned by the assumptions the term attempts to encompass. This results in diverse approaches and perspectives influenced mainly by disciplinary frameworks, such as the dominance of sociology in academic debate. This phenomenon, described as an 'intellectual dictatorship' (Turner 1994), tends to approach the term from already established parameters without reaching a profound reflection on its conceptual essence.

This widespread and sometimes misguided use of the term 'citizenship' results in a proliferation of meanings and semantic nuances that make it difficult to delimit precisely. In this sense, citizenship has become a polysemous and, in many cases, ambiguous concept, the interpretation of which depends on the context and perspectives from which it is approached, posing significant challenges for its critical analysis and application in various fields.

The concept of citizenship, which emerged in the Modern Age, is intrinsically linked to membership of a political community. This membership grants

the individual benefits that derive from his or her obligations and link to an established socio-political system, initially represented by the state or, originally, by the figure of the king (Bruschi 1996, 12). Being a citizen implies inclusion in a legal framework that not only confers fundamental rights but also cements collective identity and fosters a shared civic ethic.

Thus, a citizen is defined as a person legally recognised as an integral part of a state, with rights and duties inherent to that status. By this membership, every citizen is entitled to be treated with dignity and respect as an active participant in the political community. In a democratic state, citizenship stands as the foundation of equality and freedom, guaranteeing the protection of individual rights and the promotion of social cohesion.

However, the concept of citizenship has intrinsic limitations since the citizen's action is circumscribed to the borders of the state. Moreover, it acts as a restrictive element that prevents the citizen from transcending the sphere of the polis (understood as the political community represented by the state structure) as a whole. One is a citizen exclusively within and in the polis. Only within this framework can the individual exercise his or her capacity for action, whether through deliberation or participation.

Thus, the human being's entire ontological and practical potentiality is subordinated to his or her status as a citizen in the polis. In this context, the human being is reduced to a limited part of himself, as citizenship, culturally transformed into a reinterpretation of civitas, monopolises its relational dimension. Under the pretext that the polis constitutes the space where inter-subjective and civic relations are made possible, the other dimensions of the human being are restricted. This process entails a qualitative leap, where law and politics expand into the social and cultural, establishing citizenship as the central category that regulates all forms of shared activity between people.

In this dynamic, there is a reinterpretation of Hannah Arendt's approach to the relationship between people in the political sphere (Arendt 1997, 45-6). However, this view has led to a reductionist conception in which political interaction is limited exclusively to citizen relations.

This semantic drift implies that the struggle against individualism, confined to the private sphere, has resulted in a new form of enclosure: the citizen is reduced to his or her relations in the public sphere, which in turn is predominantly identified with the administrative sphere of the state. Thus, citizenship, far from expanding the relational possibilities of human beings, encapsulates them in a limited framework, subordinating their potential for interaction and action to the control and structures of state organisation. Human rights are diluted into claims

within the polis that seek homogenisation from the protagonism of the state. Human rights are reduced, once again, to basic norms, to fundamental rights that must be defended, on the contrary, from any possible individualisation and rupture of the community embodied by the state (even if it is democratic) in a single possible space: the public space. It is a matter of defending public rights against liberal individual rights, and to this end, the sphere of rights is generalised in endless, often nominal, waves.

The individual-public community poles have reductionistically phagocytised the ontological basis of the community: the person is open to a relationship. Defending human rights, therefore, requires the defence of the person in his or her unique and relational constitution, the basis of human dignity, which invites us to look at it ethically and at its normative positivisation in the political community. The meeting point of any legal system is the search for the common good through human rights that are (ontologically) prior to the normative formulation, rights that emanate from the human person and that have as their horizon a more profound reality than that which derives from the conflict between the private and public good: the common good that is visualised in the defence of human rights. This mental picture constituted the origin of an initial profound reflection on rights in the Western sphere embodied by the School of Salamanca in a debate of ideas that addressed what was central beyond the struggle of ideologies that have replaced the current debate.

The reflection on human rights cannot be detached from its anthropological and metaphysical foundation, centred on the notion of the person. Recognising the inherent dignity of every individual as the basis of these rights is essential to overcoming tensions between universalist and relativist perspectives, as well as between legal positivist approaches and ethical-ontological frameworks. By placing the person at the centre, the need for a holistic understanding of their singular and relational nature is emphasised, fostering coexistence that transcends the confines of legal and political structures. In this regard, human rights are not merely legal guarantees but expressions of the intrinsic value of the human being, requiring an ongoing commitment to their defence and promotion across all spheres of social and political life.

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