The Threads of Natural Law

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The Threads of Natural Law

Unravelling a Philosophical Tradition

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Foreword

Francisco José Contreras

Yet another work on natural law requires a justification, particularly since many a reader will consider that the "natural law theory vs. legal positivism" tension has lost much of its bite in the last three or four decades. Indeed, some may feel that both sides in that debate have progressively become aware that they were fighting "straw men": the straw man of an "ideological positivism" allegedly willing to sanction any formally valid law as "just" (and, thus, as deserving unconditional compliance); on the other hand, the straw man of a natural law doctrine unrealistically determined to deny the legal character of immoral laws (which would not be law, but "corruption of law"). But the truth is that very few relevant authors – whether natural lawyers or positivists – have defended such theses recently (and it is even doubtful that anybody *ever* defended them). Thomas Aquinas himself conceded – in the famous passage where he claimed that the unjust (positive) law "has the nature, not of law, but of violence" – that immoral positive law "retains the appearance of law" because it is "framed by one who is in power".[1] And then, he admitted that it may be prudent to obey it "in order to avoid scandal or disturbance"[2]: he thus wavers when it comes to extracting the practical conclusions of his theoretical denial of the unjust law's juridicity. At any rate, many exponents of contemporary natural law doctrine[3] accept the idea that the validity of legal rules does not depend on their moral excellence but on their satisfying the conditions of

[1] *Summa Theologica*, 1–2, q. 93, a. 4.

[2] *Summa Theologica*, 1–2, q. 96, a. 4.

[3] "A more reasonable interpretation of statements like "an unjust law is no law at all" is that unjust laws are not laws "in the fullest sense". (…) This is almost certainly the sense in which Aquinas made his remarks, and the probable interpretation for nearly all proponents of the proposition" (Bix 1999, 226).

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validity (of a technical-procedural, rather than material, nature: being passed by Parliament, etc.) defined by what H.L.A. Hart named the "rule(s) of recognition". The Thomist thesis of *corruptio legis* should, therefore, be interpreted as meaning that unjust laws are defective, undesirable laws (laws that had better be rectified, or even disobeyed), but not as meaning that unjust laws are no law at all: John Finnis, for example, has made this point clear.[4]

But, just as natural law theory admitted that unjust laws do exist (that is, they are true laws, albeit deserving criticism and perhaps disobedience), thus watering down the solid connection of law with morality it is usually associated with, legal positivism was revising the conceptual separation of law and morals that had characterized its classical exponents (Austin, Kelsen): a convergence of natural law doctrine and legal positivism upon a certain common ground was underway. Hart explicitly acknowledged that the rule of recognition could include moral criteria as conditions of legal validity (he still considered himself a legal positivist because, when this is the case, moral principles acquire legal relevance, not "in their own right" or *proprio vigore*, but insofar as the rule of recognition has so established, thereby *incorporating* those moral principles into the law). This idea has been further developed by Jules Coleman's and W. J. Waluchow's "inclusive legal positivism".[5] On the other hand, the notion that the legal validity of a rule does not automatically entail the citizen's moral duty to abide by it is widely accepted by mainstream legal positivism: actually, many positivists hold that the neat conceptual separation typical of positivism enables – instead of precluding – an attitude of critical watchfulness vis-à-vis positive law, insofar as it makes clear that what is legally valid does not necessarily coincide with what is morally right (as stated by Austin: "the existence of law is one thing, its merit or demerit is another").[6]

In the meantime, the idea that the original positivist tenet of a strict separation between law and morality simply does not fit the facts of real social life was also dawning on authors who were neither iusnaturalists nor positivists: Lon Fuller argued that any legal system automatically entails – by its mere existence – an "inner morality of law"[7]; H.L.A. Hart had already pointed out in *The Concept of Law* that law must necessarily include a "minimum content of natural law" if it is to fulfill its minimum function (namely, ensuring the survival of human beings)[8]; Ronald Dworkin highlighted the legal relevance of moral principles (whose validity is not mechanically ascertainable by means of a "pedigree test")[9]; Robert Alexy

[4] "Far from "denying legal validity to iniquitous rules" [as Hart claims it does], the [natural law] tradition explicitly (by speaking of "unjust *laws*") accords to iniquitous rules legal validity, whether on the ground and in the sense that these rules are accepted in the courts as guides to judicial decision, or on the ground and in the sense that […] they satisfy the criteria of validity laid down by constitutional or other rules […]" (Finnis 1988, 365).

[5] Waluchow (1994).

[6] Austin (1995), 157.

[7] Fuller (1964).

[8] Hart (1961), 189 ff.

[9] Dworkin (1978).

showed legal regulation to inherently contain a "claim to correctness": law purports to be perceived as legitimate by its subjects[10] (and such a perception plays a crucial role in citizens' abiding by it: legal systems that rest only on sheer coercion have been very rare in history, if they ever existed).

In light of these developments, one might be led to conclude that this convergence of legal positivism and natural law theory renders both redundant (insofar as each of them somehow made sense as a counterweight to the excesses of its counterpart). If – as claimed by many[11] – the historical function of natural law doctrine lay in providing a critical perspective from which positive law could be evaluated (and, depending on circumstances, rejected or resisted), one could conclude that, given the growing acknowledgment – even on the positivist side – of an intrinsic link between law and morals, such a function has become obsolete: the danger of *Gesetz als Gesetz* (famously denounced by Gustav Radbruch after the Nazi period)[12] would have definitely vanished. But, as noted by Neil MacCormick, the legal risk in real society probably has to do less with cynical lawgivers – determined to enforce *Gesetz als Gesetz* or to unscrupulously use law to pursue their self-interest – than with well-intentioned, "idealistic" lawgivers who believe in the continuity of law and morality, and will therefore attempt to have law embody their… *mistaken* moral views. Nazis and Communists were not Kelsenian positivists who rejected the "moral contamination of law": on the contrary, they used law to implement a perverse morality (even if they regarded it as right).[13] Therefore, the iusnaturalist-positivist common ground – namely, the increasing recognition of some conceptual link between law and morals – *does not protect us from much*.[14] The key question is no longer "does law have any connection with morality?" but "*which* morality is law connected to?"

For example, Ronald Dworkin is perhaps the contemporary philosopher who has most contributed to the blurring of the law-morality boundary (with his claim that law does not only consist of rules, but also of "principles" and "policies", his "interpretive approach" to law, etc.). In *Freedom's Law*, Dworkin proposed a "moral reading of the [American] constitution": the Fathers, so it is claimed, wove some general principles into the fabric of the constitution; such principles purportedly need to be actualized and developed by current judges. But this "moral reading" leads Dworkin to the surprising conclusion that, for example, the Constitution grants pregnant women the right to kill their pre-born children: admittedly, the Constitution

[10] Alexy (1989).

[11] Fassò (1966), 6.

[12] Radbruch (1972), 355 ff.

[13] "The problems of the real world do not seem often to arise from people passing legislation which they only pretend to think just, while secretly intending some nefarious purpose. […] They have a great deal more to do with the holding of perverse moral opinions and the legislative implementation of these" (MacCormick 1992, 113).

[14] "The fact that there are certain moral aspirations which are conceptually intrinsic to law (though not conditions of its validity) could never stop perverted opinions about relevant values being transformed into perverted laws" (MacCormick 1992, 114).

does not contain a single mention of abortion, but Dworkin interprets this "right" to be included in the "the right of woman to control her role in procreation", which, in turn, would be implicit in her right to privacy (and this right to privacy would be implicit in the rights to a due process of law and to equal protection of the laws).[15]

The "moralization" of law (blurring of the law-morality divide) thus drives Dworkin to the vindication of abortion (which is viewed by many – and certainly by the author of this foreword – as abhorrent). Opening confidently the gates of law to morality can be very dangerous … when the moral views awaiting legalization are erroneous.[16] This is, precisely, the point where the great natural law tradition can be very helpful. This is not only because the idea of natural law contains an (affirmative) answer to the question "does law have anything to do with morality?" (we have already seen that acknowledging this link is not much of a guarantee). It is also because natural law theory possesses an answer to the further question "*which* morality should inform law?" Natural law doctrine is not just a theory *about* the connection of law and morality: it is also a *moral* theory.

And the essence of natural law doctrine as a moral theory is, obviously, the notion that ethics is somehow grounded in nature. The concept of "nature" is, to be sure, an ambiguous and polisemic one (Christian Thomasius referred to the *difficilis quaestio de natura naturae*). Broadly speaking, the *metaphysical* account of nature (nature as the "program of realization"[17] of a given entity: a set of potentialities whose actualization implies the flourishing, the fulfilment or end [*telos*] of such entity)[18] has prevailed over the *cosmological* one (nature as the total sum of entities). Morally right actions will be those that lead to the full realization of human nature.[19] Most accounts of natural law have understood this accomplishment of human nature to be

[15] Dworkin (1997), 46 ff.

[16] The fact that the early Dworkin insists on moral principles pertaining to law does not necessarily render his work more acceptable for a natural law theorist than, for example, the work of a "soft" positivist like the late H.L.A. Hart or a post-positivist like Neil MacCormick. As Robert P. George rightly remarks: "Some people who are loyal to the tradition of natural law theorizing are tempted to suppose that Professor Dworkin's position […] is the one more faithful to the tradition. This temptation should, however, be resisted" (George 2000, 165). By contrast, a normativist vision like judge Bork's could be closer to natural law theory (while natural law theory maintains that positive law should be based on natural law, it does not maintain that the positivization of natural law must be necessarily undertaken by all-knowing judges, entitled to grasp principles that override rules): "Judge Bork's idea of a body of law that is properly and fully (or almost fully) analyzable in technical terms is fully compatible with classical understandings of natural law theory" (op. cit., p. 165).

[17] "Cuando nos remitimos a la naturaleza de un ser libre, estamos aludiendo a su programa de realización, […] que deberá asumir esenciales exigencias éticas, so pena de condenarse a ser de hecho inhumano" (Ollero 2008, 215).

[18] "Human beings are rational animals and the powers which they need to develop and exercise, if they are to flourish, are both animal and rational. So they have to find a place for a variety of goods in their life. What makes each such good a good is the fact that its achievement conduces to or partly constitutes their flourishing qua human beings" (MacIntyre 2009, 46).

[19] "[L]a posibilidad de distinguir entre el bien y el mal en estos términos reside en advertir que ciertos modos de obrar realmente son convenientes a nuestra naturaleza, mientras que otros no lo son" (González 2010, 158–159).

part of a more grandiose, comprehensive design: for the Stoics, human rationality was a reflection of the Logos that informs the whole cosmos; for Thomas Aquinas, compliance with the natural law was the human form of participation in eternal law (God's rational plan for creation).

The key to the appeal of the natural law doctrine – and to its "eternal return" (Rommen)[20] – is probably the fact that the notion of human nature seems to furnish us with a neutral, objective, solid basis on which a "minimum" morality can be founded, in times when widespread religious and philosophical disagreement precludes a "morality of maximums".[21] Persons – and cultures – that disagree over the existence of the divine, the beginning of all things, the absolute reality, etc., are expected to be able to agree at least on the existence of a common human nature, and on the possibility of deriving certain moral criteria therefrom.[22] The first historical formulation of natural law – the Stoic one – actually emerged in such a context: contacts with other Mediterranean peoples had made the Greeks aware of the historical-cultural variability of morality. This is when the idea of "life according to reason" or "life according to nature" took shape: it purported to be a firm reference that would preclude the lapse into relativism, a universal ethics that would transcend cultural differences. On a similar note, Christianity resorted to the idea of natural law as a kind of "moral Esperanto", a language that would be intelligible also to non-Christians (those who, even if they do not believe in the God of the Bible, have "the [natural] law written in their hearts", Rom. 2, 15).[23] And the idea of natural law thrived once again in the seventeenth century – in the aftermath of the breakdown of Christian unity and the European religious wars – in a new and more explicitly secular version (Hugo Grotius: natural law would hold good "even if God did not exist"). Natural law also experienced a certain revival (Radbruch, Welzel, Maihofer, Ellul, etc.) after the Second World War, when the West was trying to rediscover a firm ethical ground after the totalitarian nightmare.

The present volume includes various studies about prominent historical milestones in the development of natural law doctrine, comprising both mainstream authors and others whose attachment to the natural law tradition might seem more questionable. Such is the case of Aristotle, whose explicit contact with the natural law idea consists just in the well-known part of the *Nicomachean Ethics* where he discusses the distinction between "natural justice" and "legal justice", as well as

[20] Rommen (1947).

[21] "[Natural law] seems to promise a clear moral criterion in a world affected by moral ambiguities and disagreement" (González 2008, 1).

[22] "What the natural law was held to provide was a shared and public standard, by appeal to which the claims of particular systems of positive law to the allegiance could be evaluated" (MacIntyre 2000, 103).

[23] "Unlike other great religions, Christianity has never proposed a revealed law to the State and to society, that is to say a juridical order derived from revelation. Instead, it has pointed to nature and reason as the true sources of law – and to the harmony of objective and subjective reason, which naturally presupposes that both spheres are rooted in the creative reason of God" (Benedict XVI 2011).

another passage where he alludes to a certain "law common to all peoples [*nómos koinós*]". Jesús Vega's essay "Aristotle on Practical Rules, Universality, and Law" propounds an innovative reconstruction of Aristotle's legal thought, wherein a place is found for the idea of natural law (not so much in Aristotle's explicit references to what is "just by nature" as in the universality of the rules of "legal justice": a universality which is paradoxically compatible with the particularity characteristic of conventions).

Fernando Llano examines Cicero's legacy, an eclectic crossroads in the history of legal thought. Cicero inherited and tried to harmonize (in a typically Roman pragmatic spirit) a variety of Platonic, Aristotelian and Stoic influences, their possible objective contradictions notwithstanding. This "irenistic" inspiration is particularly salient in his famous definition of natural law ("right reason in agreement with nature …", etc.), included in *De re publica*. Cicero here blended three conceptions that were actually distinct: the Stoic idea of "life according to nature" as a conscious submission to a pantheistic and inescapable cosmic order; natural law as a commitment to the specifically human nature (hence Cicero's claim that the man who fails to abide by natural law will be "fleeing from himself [*ipse se fugiet*]"); and, finally, natural law as the command of a personal God (as Cicero also asserts that God is "the author of this law, its promulgator, and its enforcing judge").[24]

This eclecticism of the Ciceronian account of natural law proved to be troublesome when the account was inherited by Christian philosophy: there arose disagreements between "voluntarists" who conceived of the precepts of natural law as mere divine commands (which could have had a content different from the one they actually had) and "rationalists" who considered natural law to be rationally derivable from the examination of human nature: in their view, natural law simply enjoins those behaviours that objectively entail the fulfilment of human nature, the accomplishment of the human *telos*. The latter vision assigns natural law a consistency of its own, even vis-à-vis the divine will: once God created man with precisely this (and not another) nature, natural law could not but have the content it actually has. God remains the author of natural law, but not *directly*, qua legislator (who decrees such-and-such, just as he could have decreed something else), but rather, *indirectly*, as the creator of a human nature comprising a variety of inclinations wherefrom the precepts of natural law are rationally derivable. The "rationalist" vision found its most accomplished statement in the work of St. Thomas Aquinas (especially, in the famous quaestio 94, art. 2 of the Prima Secundae of the *Summa Theologica*).

Given the centrality of Aquinas in the history of natural law doctrine, three essays of this volume discuss his thought, from various standpoints. Diego Poole's chapter ("Natural Law: Autonomous or Heteronomous?") presents a number of reflections about the quaestio 94, art. 2 of the *Summa Theologica*. Most importantly, it asks: how are we to proceed from the inclinations (to individual self-preservation, to perpetuation of the species, to social life and the knowledge of God) discernible in human nature (which are *facts*) to the precepts of natural law (which are *norms*)? According to the

[24] Cicero, *De re publica*, III, 22, 33.

interpretation of Aquinas proposed by Poole, natural law does not simply "confirm" the inclinations of human nature; rather, it regulates them rationally, "often supporting them, and other times restraining them", always pursuing the fulfilment of the human *telos*: that man may attain "the fullness of his form".

Anna Taitslin ("The Competing Sources of Aquinas' Natural Law"), instead, understands the quaestio 94 as an attempt to harmonize various conceptions of natural law that are actually very hard to reconcile: natural law as the ability to rationally identify behaviour which is good or bad *per se* (a conception whose precedent was Huguccio da Ferrara, who defined in 1188 natural law as "a natural power of the soul by which the human person distinguishes between good and evil"); natural law as a *conatus* of all beings towards excellence and self-preservation (an account Aquinas is likely to have inherited from Roland of Cremona); natural law as a set of inclinations discernible, not in all beings whatsoever, but in all animals (a conception drawn from Ulpian, whom Aquinas explicitly quoted in quaestio 94); and finally, natural law as a set of precepts regulating the search for truth and social life (the third inclination listed by Aquinas). Anna Taitslin discusses the recurrent hesitations – not just of Aquinas, but of Christian natural law doctrine in general – between those differing versions of the concept, extending her analysis to later figures like Suárez, Maritain and Finnis.

One of the major difficulties Christian natural law doctrine must face lies in those Biblical passages in which God seemingly orders immoral conduct: for example, God orders Abraham to sacrifice his son Isaac (Gen. 22); He orders Oseas to have sexual intercourse with a prostitute (Os. 1, 2); He encourages the Israelites to steal goods they had borrowed from the Egyptians (Ex. 12, 35–36), etc. Matthew Levering's chapter "God and Natural Law" deals with the treatment this problem received in Aquinas' and Duns Scotus' thought. Scotus endorsed a voluntarist conception of natural law (at least, with regard to the precepts pertaining to the "second tablet" of the Decalogue, from the fourth commandment onwards): "divine will is the cause of the good, and therefore a thing is good insofar as God wills it".[25] The good is good because it is enjoined by God: precepts like "you shall not murder" or "you shall not steal" are divine commandments; the God who decreed them can as well suspend them on exceptional occasions (He could not, however, suspend or repeal the two first commandments of the Decalogue – "you shall love God above all things" and "you shall not take the name of the Lord in vain" – for supreme "loveability" and respectability are part of the divine essence, and God could not deny himself). Exceptions of the Abraham-Isaac style are harder to accommodate into a *rationalist* conception of natural law such as that of Aquinas. Yet the Doctor Angelicus met the challenge boldly. Obeying the natural law is, for human beings, the "standard" way to cooperate in the divine plan (that is, to participate in eternal law: "Divine Wisdom, as moving all things to their due end"). In exceptional circumstances, God may propose man other forms of cooperation in his plans: forms which – like in Abraham's case – may even involve the violation of natural law. Such

[25] Duns Scotus, J., *Opus oxoniense*, III, d.19, q.1, nº7.

exceptions deviate from natural law, but not from eternal law (for they are included in God's rational plan for the universe).

Immanuel Kant's relationship with the idea of natural law was ambivalent: his aspiration to produce a purely deontological ethics – *a priori* and "fully cleansed of everything that might be in any way empirical and belong to anthropology"[26] – seems incompatible with the classical natural law perspective, which relies on the possibility of inferring moral instructions from the analysis of human nature. Ana Marta González nevertheless shows in her paper "Natural Right and Coercion" that the notion of natural law plays a role in Kant's work (especially in the *Metaphysics of Morals*), albeit in a sense that departs from the traditional one. In fact, "natural law" seems to represent for Kant an informal pre-state law, one that would already be in force, if precariously, prior to the social contract (even though the social contract is for him "a mere idea of reason", not a historical fact). This implies that positive law cannot have any content whatsoever: the task of positive law consists in reaffirming natural law, ensuring more effectively "the distinction of mine and thine" and securing the possessions of everyone.

Marta Albert devotes her article "Natural Law and the Phenomenological Given" to the discussion of the similarities and differences between legal phenomenology (especially, Adolf Reinach's doctrine) and the natural law tradition. A variety of signs could be interpreted as leading to the conclusion that no bond exists between them: Reinach himself thought his theory had nothing in common with natural law doctrine; moreover, the "a priori legal essences" discovered by conscience by means of the "eidetic reduction" are not normative, but "prenormative", so to speak. Authors like Crosby or Seifert, however, have shown that Reinach's "legal essences" (for example, the idea of a promise) are normative in a peculiar sense. Marta Albert herself suggests a process of "normativization" of legal essences relying on Max Scheler's idea of "functionalization": *a priori* structures are normative in the sense that they set objective limits to any viable human practice. And, actually, legal phenomenology had an impact on Gustav Radbruch's and Hans Welzel's theories of the "nature of things" and the logical-objective structures of law (usually counted among the natural law theories).

Ignacio Sánchez Cámara undertakes a similar task in the chapter "Perspectivism and Natural Law", where he explores the similarities and differences between José Ortega y Gasset's perspectivism (inspired, in its turn, by Max Scheler's and Nicolai Hartmann's "material ethics of values") and natural law doctrine. A common thread between Ortega and Scheler, on the one hand, and iusnaturalism, on the other, is the defence of ethical cognitivism: according to these theories, values are objective properties of entities; man is not the "lord of values", but, rather, their servant and witness. In Ortega's case, this emphasis on the objectivity of values is combined with a vitalist philosophy (human life as *faciendum*) to generate "perspectivism": the realm of values is objective, but also varied (values are manifold), which allows for various perspectives on it, none of which is absolute or exhausts its wealth. Sánchez

[26] Kant (2002), 5.

Cámara suspects that the philosophy of values could provide an answer to one of the apparently intractable problems of natural law theory: that of the "naturalistic fallacy" (how to leap from the "is" of human nature to the "ought" of natural law?).

María Elosegui's contribution focuses on Luis Legaz, one of the leading Spanish legal philosophers of the twentieth century, who evolved towards an innovative approach to natural law, departing from the positivism of his early works (he was a disciple of Kelsen). Elósegui shows, moreover, the fruitful link that has existed for centuries between natural law doctrine and international law: an interaction that dates back to Francisco de Vitoria and Francisco Suárez, and which was further developed in the twentieth century by Alfred Verdross, Antonio Truyol y Serra and Legaz himself, among others. It was by reflecting on the foundation of international law that Legaz – like Verdross – came to explore the idea of natural law. International obligations of states persist irrespective of régime changes: there exists, therefore, at least one international legal rule – the *pacta sunt servanda* principle – that binds states beyond their will. But if the *pacta sunt servanda* principle cannot be understood as state law… then it cannot be but natural law: international law thus turns out to be ultimately founded on natural law.

Vitoria and Suárez pertain to the historical period of Spanish legal thought – the so-called "Spanish School of Natural Law" – that is best known internationally. Various factors – the relative Spanish isolation during Franco's régime, for example – have rendered the contributions of Spanish legal philosophy in the twentieth century less notorious. Antonio E. Pérez Luño offers – in the chapter "Natural Law Theory in Spain and Portugal" – a complete overview of the major streams of natural law thinking in the Iberian Paeninsula in that period.

The last four chapters of this volume deal with contemporary authors. In my contribution ("Is the New Natural Law Theory Actually a Natural Law Theory?") I discuss the renewal of the natural law perspective furnished by the (so-called) "new school of natural law" headed by Germain Grisez and John Finnis. Their innovation consists, basically, in a denial of the possibility of inferring natural law precepts from the observation of human nature; Grisez and Finnis consider, by contrast, that practical reason grasps directly the intrinsic worth of certain goods (knowledge, life, aesthetic experience, etc.): this practical knowledge is not itself derived from prior anthropological knowledge. This explicit denouncement and rejection of a "naturalistic fallacy" prompted the stern criticism of neoscholastic natural law theorists like Russell Hittinger or Henry Veatch: they claimed that, insofar as they dispensed with the possibility of deriving "ought" from "is", Finnis and Grisez were renouncing the very essence of natural law doctrine. But Robert P. George – among others – has responded to this criticism with convincing arguments.

One resolute opponent of the "new natural law theory" is Alasdair MacIntyre, whose gradual approach to natural law has been studied by Rafael Ramis in the chapter "Alasdair MacIntyre on Natural Law". In *After Virtue*, MacIntyre had diagnosed the failure of post-Enlightenment ethics, which he traces back to the abandonment of the Aristotelian-teleological moral scheme. In subsequent works, MacIntyre evolved towards Thomism; his account of natural law is, nonetheless, peculiar and characterised by an anti-intellectualist note that stresses the accessibility

of natural law to "plain people", the indispensability of a communitarian context (and not any sort of community, but one whose dimension does not exceed that of the ancient Greek polis) for moral education, etc.

Ronald Dworkin ranks as the most influential denouncer of legal positivism in the last three decades. Yet, his rejection of legal positivism does not automatically make him a natural law theorist, as noted earlier in this foreword. Lourdes Santos expounds in "Dworkin and the Natural Law Tradition" how Dworkin, in her opinion, has retrieved valuable ideas of the natural law legacy, raising a new debate about the relationship between law and morality in clearer and more rational terms.

Iván Garzón's contribution "Public Reason, Secularism, and Natural Law", finally, analyzes the parallels and differences between natural law doctrine and John Rawls' theory of "public reason". Both have functioned historically as "metaphysically neutral" paradigms: a common ground supposedly accessible to people who hold diverse religious and philosophical beliefs. Both purport to be an "ethics of minimums" whose acceptance does not require metaphysical concordance. However, the differences between them are also undeniable: natural law theory considers the appeal to human nature to be "neutral" and acceptable by everyone, yet the Rawlsian theory of public reason regards belief in human nature as just *one amongst* those comprehensive views that can and should be dispensed with when it comes to arguing in the public space.

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