

## **HOW TO DEDUCE HUMAN RIGHTS FROM NATURAL LAW AND OTHER DISCIPLINES.**

COMO DEDUCIR DERECHOS HUMANOS DE LA LEY NATURAL Y DE OTRAS DISCIPLINAS

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**Abstract:** This research aims to detect the methodologies scholars use to conclude what is a human right or a natural right. For most of them, the mere citation of an article of the constitution or law does not provide enough justification for rights, and they usually resort to other supra-positive elements which are summarized in the “Natural Law Formula”. Commonly, they will appeal to human dignity, some psychological or natural inclinations, the values of society, some important goods, goals and means, and to certain principles coined in different places of the legal system. This Article discuss how authors deal with these starting points in their analysis, which precisely are the main elements of the mentioned formula. After showing how the formula works in the human rights field, we consider new possible applications of the versatile formula. It can be used deducing legal conclusions from general principles, ends, values and other elements, and inferring general standards from specific cases, as well. While scholars tend to use the deductive methodology that goes from the general to the particular, courts use the inductive methodology that goes from the case law to the general rules and standards. Finally, the Article introduces new applications of the formula in different sciences and arts related to the human being, like anthropology, ethics, and economics. Thus, this study shows how the formula can be used to develop interdisciplinary studies.

**Keywords:** Human rights, natural rights, legal methodology, Natural Law Formula.

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**Resumen:** Esta investigación tiene por objetivo detectar las metodologías que utilizan los diferentes autores para concluir qué es un derecho humano o un derecho natural. La mayoría de los autores no considera que la mera cita de un artículo de la constitución o de la ley sea suficiente justificación de los derechos, pues suelen recurrir a otros elementos suprapositivos que se resumen en la “Fórmula de Derecho Natural”. Comúnmente, apelarán a justificativos como la dignidad humana, algunas inclinaciones psicológicas o naturales, los valores de la sociedad, algunos bienes, fines y medios importantes, o a ciertos principios acuñados en diferentes lugares del sistema legal. Este artículo analiza cómo los autores manejan estos puntos de partida en su análisis, que son precisamente los principales elementos de la mencionada fórmula. Después de mostrar cómo funciona la fórmula en el campo de los derechos humanos, se consideran otras aplicaciones posibles de la versátil fórmula. Ella puede utilizarse deduciendo conclusiones jurídicas a partir de principios generales, fines, valores y otros elementos, así como infiriendo normas generales a partir de casos específicos. Mientras los académicos tienden a utilizar la metodología deductiva que va de lo general a lo particular, los tribunales utilizan la metodología inductiva que va de la casuística a las normas y estándares generales. Finalmente, el artículo introduce nuevas aplicaciones de la fórmula en diferentes ciencias y artes relacionadas con el ser humano, como la antropología, la ética y la economía. Así, se explica cómo la fórmula puede servir para desarrollar estudios interdisciplinarios

**Palabras clave:** Derechos humanos, derecho natural, metodología jurídica, Fórmula de la Ley Natural.

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**Summary.** I. Introduction. II. Discovering natural and positive rights. II.1. Distinguishing natural rights, positive rights and human rights. II.2. How to deduce natural rights from natural law. III. How does the “natural law formula” work. IV. Using the formula in law, ethics and other sciences. V. Conclusion. References

## **I. INTRODUCTION**

After conducting an extensive quantitative and qualitative research into the methodologies employed by scholars to identify elements of natural law (e.g., principles, rules, or duties), it has been observed that authors often focus on commonplaces in their arguments, transitioning from certain elements to others that remain consistently recurrent. Each author typically emphasizes a subset of these elements in their analyses. For instance, John Finnis is renowned for deriving rules and natural rights from the concept of the seven basic goods, while Thomas Aquinas derives what is beneficial for individuals from human powers and their inclinations.

In the aforementioned study, all the interrelated components employed by proponents of natural law have been connected to elucidate the comprehensive aspects of the "Natural Law Formula." In brief, this formula sequentially links the following elements, which have relevance to reality, the human intellect, and the power of the will: Being – Potencies, objects, and inclinations – Goods and values – Ends and means – Principles – Rules – Rights – Personal relationships, cases, and circumstances. The nature of the eight interlinked components of the chain and their intrinsic connections has been elucidated. This connection implies that any alteration of a single variable within this equation will result in a transformation of the entire system, leading to different outcomes. However, the focus of this article diverges from a mere exposition of the formula's structure. Instead, it is dedicated to illustrating the practical application of this formula, with a particular emphasis on the methodologies employed by various authors in deducing human rights from anthropological, axiological, and teleological sources, among other contexts.

The analysis commences with concrete examples of how scholars derive human rights from specific sources, showcasing the practical implementation of segments of the formula. Subsequent sections delve into novel applications of the formula, demonstrating how it can be employed to draw conclusions about justice, how it can establish connections between various disciplines (including sociology, anthropology, ethics, economics, among others) and human rights, and the potential perspectives it offers within the realm of law.

## **II. DISCOVERING NATURAL AND POSITIVE RIGHTS.**

In the contemporary era of human rights, a paramount challenge facing natural law is the definition and delineation of natural rights. None of

the great Greeks, Romans, or Scholastics, in their respective eras, systematically formulated a comprehensive theory of "rights." This should not be attributed to any fault on their part. To them, "*ius*" or "*to dikaion*" represented a concept rooted in reason, a matter to be judiciously determined after weighing various aspects of the legal relationship. The idea of "rights," or "*ius*" as a subjective legal power held by the individual, had only limited application in the late Middle Ages. It was only many centuries later that "*ius*" and its equivalent terms in Romance languages (such as "*derecho*," "*diritto*," "*droit*," etc.) would come to be widely and extensively used with the subjective connotation of power.

During the Enlightenment period, a plethora of new rights emerged, accompanied by a few "codes of natural law." Nevertheless, these developments were situated within the context of rationalism, which often created a blurred line between morality and law. As a result, one of the primary responsibilities of the current generation is to craft a precise and more comprehensive theory of natural rights, a task that remained unfulfilled by preceding generations of thinkers. To tackle the question of deducing natural rights from natural law, it becomes essential to initiate with a clear definition of what constitutes a natural right. Furthermore, it is imperative to distinguish between natural rights and positive rights.

### ***II.1. Distinguishing natural rights, positive rights and human rights***

In general, rights are seen as something that someone can ask another for, by virtue of some legal ground. Therefore, any right needs a justification. The nature of this justification will distinguish two kinds of rights. While positive rights are patently founded on positive laws (e.g., the constitution, statutory laws, or customs), natural rights resort to other foundations that tend to be more rational.

Supporters of the natural law tradition frequently equate human rights, particularly those they believe are well-founded, with natural rights. This alignment allows them to engage in discussions regarding the validity of each human right. If human rights are considered legitimate due to sound rational arguments, the basis for discussion lies not in their formal source (e.g., parliament or courts) but in the underlying rationale that justifies them.

In contrast, those who reject the natural law theory tend to ground human rights in declarations, agreements, treaties, or positive law. Nevertheless, when they seek the recognition of a new right, they often present compelling cases in courts and engage in extensive arguments about the importance of protecting the individual in these instances. In doing so, they provide a rational justification for the right. Thus, regardless of the

philosophical stance of the author, human rights are predominantly perceived as subjective powers vested in the individual, underpinned by a rational justification that necessitates their formal recognition within the legal system.

Various non-positivist foundations exist for rights. For instance, rights can be underpinned by theological arguments, such as when they are explicitly commanded by a divine authority (e.g., God's explicit commands). They can also be rooted in evidence, like the right to self-defense when one's life is threatened, or in human experience. Additionally, rights can be deduced through practical reason and other less-rational arguments that are not strictly derived from logic, such as intuitions, the spontaneous nature of human beings, or psychological reactions. It's important to note that not all of these arguments are universally accepted by all proponents of natural law, and thus, each of them warrants individual discussion.

First, one can consider the limitations of using theological arguments. Christian, Islamic, and Buddhist perspectives on natural law often rely on theological arguments to establish or shape natural rights. The challenge with these arguments is that they may be difficult for those who do not share the same faith to accept. However, it remains true that theological arguments can provide unique perspectives and profound insights into natural law. They offer a broader context that allows for the comparison of the reasonableness of rights across different religious frameworks. This approach can be valuable for understanding and evaluating the foundations of rights, even for those who do not adhere to a particular faith. On the opposite extreme, we have those who want to deduce ethical or legal rules from nature.

In the realm of natural law, several authors have made attempts to integrate findings from evolutionary biology, neuro-law, and legal psychology. Some scholars, particularly those rooted in the Aristotelian and Thomistic tradition, are hesitant about this "naturalistic" approach, which seeks to derive behavioral patterns and rules directly from natural facts. However, even within this tradition, there are proponents who recognize the importance of directly studying the human body and psychology to identify pre-conscious inclinations that are subsequently rationalized by practical reason.

For instance, Craig has undertaken the task of correlating evolutionary data with the natural inclinations mentioned in Aquinas's *Summa Theologica* (1922). He observes that many of these inclinations, such as the inclination toward self-preservation, mating, and eating, can be traced through a long process of evolution. Craig further contends that these

inclinations, along with the information generated by them (e.g., the knowledge that "milk is good" in breastfeeding), provide natural reason with the initial data regarding what is good. This foundational information is crucial because it serves as the basis for the first principles of practical reasoning to function effectively.

First and foremost, it's important to note that rational and non-rational arguments are not inherently contradictory, provided they do not lead to conflicting conclusions. Within the human experience, all elements, including reason, institutions, inclinations, and experiential knowledge, collaborate for the betterment of the individual. Well-structured arguments concerning optimal community policies often originate from intuitions rooted in the collective experience of past errors in life. While non-rational arguments may not offer definitive conclusions, they can serve as the initial information needed for reflection and practical reasoning.

Natural rights cannot be directly deduced from intuitions, experience, or factual knowledge (which may be provided, for example, by biology, evolution, or initial emotional reactions), as they do not inherently dictate what actions must be taken. The initial legal argument must be substantiated with a stronger foundation. For instance, the intuition that "life must be protected" necessitates an appreciation of life as a value and a good, the underlying principle that "the good must be protected," and an analysis of the type of legal protection it deserves. This forms the fundamental argument of practical reason. However, it's crucial to recognize that, in practice, reason often begins its work with partial data, relying on mere intuitions based on prior knowledge and experiences.

Viola (1999), along with other scholars, interprets natural rights as "moral rights" that find their foundation in moral reasoning. This perspective is accurate as long as "moral reason" entails a rational argument that leads to conclusions regarding what is just or legal. For example, if a rational argument dictates that one person must compensate another for reasons of justice (i.e., the latter has a right), then morality, law, and even initial legal principles converge on the same point.

Similarly, ethics, human rights, and initial legal principles can concur, employing analogous arguments, that "rights should be protected and nurtured" because it is fundamental that human beings must be safeguarded in their essence as free beings. In this context, morality, law, and initial legal principles align in their affirmation of these rights.

However, differences in aims and methods between these first disciplines cannot be overlooked. Although all human disciplines point to achieving the common good as an ultimate end, this is more of an immediate aim in personal morality, which seeks to develop virtues for that purpose. It

is a more primary aim in social morality, which primarily seeks the common good. In contrast, the law primarily aims to achieve justice for the sake of the common good. Instead, economics only pursues one specific part of the common good, namely, economic welfare. Not all claims based on the common good can be strictly considered as “rights.” The highest standards of trust and transparency are highly desirable in any society and market, but the law cannot impose them. Trivial vices should be tolerated. Therefore, not all moral or economic 'ought to be's' produce rights; only those shaped by a legal framework do.

The different methodologies of each discipline are even more distinct. Social morality explores the possible actions that can promote the common good, analyzing the convenience of these actions and their consequences. In contrast, the law aims to define who has rights and obligations, when and where, what legal grounds it is based on, what legal rules come first, and how they should be interpreted. Lastly, economics prefers more quantitative methods. So, although the principle "the common good should be protected and fostered" is the same in text for every human discipline, each science will assess this principle from its unique perspective, using its own methodology, and for a different purpose.

## ***II.2. How to deduce natural rights from natural law.***

Several methodologies have been used to identify both new and established human rights. In this context, the typical human rights argumentation in the courts bears a resemblance to that of proponents of natural law. They generally start from similar premises: factual evidence, the argument of dignity, and the principles of non-discrimination and *neminem laedere* are employed by most practitioners, regardless of their respective backgrounds.

Factual evidence, such as that provided by legal scholars, ethnographers, and evolutionary biologists, is also employed to support the recognition of human rights. These methods and arguments have been utilized by natural law theorists throughout history to determine what is just and, ultimately, what individuals can expect. These methodologies can be grouped as follows:

### **a) Methods based on dignity.**

Today, natural law and natural rights commonly find their foundation in the concept of dignity. Dignity is also a prominent argument

on the international stage when it comes to defending human rights. An illustrative example of this is the diligent effort made by Jacques Maritain, the French drafter of the Universal Declaration of Human Rights, who attempted to incorporate "human nature" as the primary justification for human rights in the document. As the term "nature" posed ambiguity, particularly in certain Eastern cultures, such as China, it was eventually replaced with the phrase "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family." Since then, dignity has been widely regarded as the cornerstone of human rights by numerous scholars, even by those who do not adhere to any natural law principles.

Nonetheless, "dignity" is a multifaceted and complex concept. It has been interpreted in various ways. Undoubtedly, it is closely associated with the absolute value and inviolability of the individual. However, it is not always evident why a person deserves this value. Many aspects of humanity could be considered invaluable: the faculties of intellect and will, freedom, acts of heroism, the unique human consciousness that crowns the evolution of life on Earth, and even different aspects of our physical bodies. Philosophers like Leonardo Polo prioritize, above all else, the act of being itself, which defines the essence of a person. Theologians may include divine grace and divine filiation, which bestow upon individuals the life of God.

Among the various methods for deriving rights from dignity, three are particularly prominent in constitutional and human rights courts and other forums. The first and perhaps the simplest is the application of the principle of the full dignity of the individual, a concept recognized in the earliest jurisprudence of common law. This principle asserts that the immeasurable value of each individual entitles everyone to demand respect for their right to life, mind, and body, as well as protection from any form of attack. This argument is commonly invoked in cases against torture and serves as a justification for the right to privacy. However, it is often challenging to directly derive other rights from dignity, and rights like rest and leisure find less support in this argument.

The second method is the teleological approach, which is extensively utilized in courts. Following the Kantian dictum, it emphasizes that each person should always be treated as an end in themselves and never merely as a means to an end. Human rights treaties and constitutions frequently incorporate this idea, either explicitly, such as when the Universal Declaration of Human Rights mentions "social and cultural rights indispensable for human dignity," or implicitly, as seen in the U.S. Constitution's promotion of the general welfare for all human beings in its



preamble. This programmatic argument necessitates the selection and adoption of means to acknowledge, protect, and cultivate all rights.

Another method commonly employed involves the principle of equality, aimed at preventing unwarranted disparities in matters pertaining to human dignity. If all individuals share the same immeasurable dignity, they are entitled to equal treatment concerning matters related to their dignity. Building on this premise, the first Article of the Universal Declaration of Human Rights asserts that "all human beings are born free and equal in dignity and rights." Under this provision, the treatment of two citizens by authorities could be subject to a proportionality test to evaluate the reasonableness of their actions.

### **b) Methods based on inclinations.**

Following the paths laid out by question 94 of the *Summa Theologica*, which summarizes all human inclinations into three categories (self-preservation, sensitive, and rational inclinations), many authors have identified certain rights related to these inclinations. These rights include the right to legitimate self-defense, access to nutrition, marriage, or political participation. All of these rights can be traced back to the human inclination toward self-preservation. Wroczynski takes this analysis a step further by observing that these inclinations are primary and establish a certain order in natural rights. Some authors, however, have taken a more narrow approach, attributing natural rights fundamentally to the desire for self-preservation or what they term "associational inclinations," as exemplified by John Locke.

Although limited in number, some scholars delve into first-hand experiences, ethnography, and findings from evolutionary biology to gain insight into the spiritual and physical inclinations of human beings. However, none of them directly derive rights from these inclinations. The primary reason lies in what is often referred to as the "natural law fallacy," which highlights that not every initial human desire or need translates directly into a human right. In fact, many authors emphasize that the deepest yearnings of the human heart point toward the infinite, and it remains unclear whether we possess a right to attain God or heaven.

The argument concerning human inclinations is typically more elaborate. For example, Boyd (2004) employs this argument to demonstrate how various instincts related to health, self-preservation, and marriage, which developed over an extended period of evolution in primates, provide essential insights into what contributes to human well-being and what poses risks. Even the aversion to the smell of certain plants helps prevent us from

consuming substances that could be harmful to our bodies. Consequently, the customary articulation of this argument often involves three premises or considerations:

- (i) The identified inclinations offer insights into what is beneficial for the individual or what takes precedence for each person.
- (ii) Every human being deserves to be treated as a human, as an end in themselves.
- (iii) The legal system should uphold and ensure "the things necessary for this purpose" under specific circumstances.

Hence, this approach establishes a connection with the following methodologies.

### **c) Methods based on goods and values.**

Many scholars from diverse backgrounds associate human rights with fundamental individual needs, arguing that if something is essential for survival, it should be considered a right. This perspective becomes particularly prominent in extreme circumstances, with a widespread acknowledgment that individuals may appropriate someone else's property "in cases of obvious and urgent necessity when it is the sole means to provide for immediate, essential needs such as food, shelter, clothing, and the like." However, this well-established theory has limitations in justifying rights that are not directly related to basic or extreme needs, such as the right to culture, privacy, or leisure.

Instead of anchoring rights in needs, Finnis (1983, 2011, 2013) opts to ground them in seven fundamental goods, which represent the sole path to attain human flourishing. In this framework, rights are considered as "fundamental elements of human flourishing," contrary to Hart's assertion that they are rooted in human needs. According to Finnis (1983, 2011, 2013), the concept of a "common good" in the past natural law tradition has been expanded by "modern rights-talk," providing a useful and comprehensive framework for understanding the various facets of human flourishing. Since human flourishing is contingent upon achieving these basic goods, the law should acknowledge and safeguard them as rights. Rights are not a matter of choice but a means to directly or indirectly facilitate the realization of the seven basic goods upon which they are founded.

Distinct from the theories of natural law grounded in the goods of human nature, there exist approaches based on abstract values. For example, Butculescu (2016) lays the foundation for human rights in a concept of natural law that he describes as "a set of universal, timeless values that

preexist human society." From this perspective, fundamental rights are seen as "emanations of the natural law."

Others take a more concrete stance in natural law theory, which first connects values with human rights and constitutional law. Their aim is not solely to provide theoretical underpinning for rights but primarily to guide the law in specific cases. By weighing the significance of "real," "timeless," or "universal" values, or by assessing "necessary truths" in the context of a contingent reality, they strive to discern what is just and who possesses the right.

#### **d) Methods based on ends and means.**

García (2006) has underscored that bodily inclinations, instincts, natural estimations, and even the first principles of natural law do not inherently represent rights but rather become such to the extent that they are assumed by practical reason and deduced as necessary achievements. Additionally, human rights are not directly linked to the first desires of human nature (that is, the desires of natural man), but they pertain to "the primary, immediate, and most effective means of attaining the aforementioned desires. Although these means must still be desired with a certain necessity, that necessity is no longer absolute but conditioned and falls under the *voluntas ut ratio*" (pp. 175-178).

According to this perspective, rights are viewed as the means to achieve the common good first and human flourishing (ultimate ends). Some of these means are deemed necessary (e.g., the right to life is a prerequisite for any form of life), while others are not (e.g., various traffic management policies are conceivable). When the process of deductive reasoning yields what is just with a certain degree of necessity, it results in natural rights. In contrast, if this process only yields rights with a certain level of contingency, these are categorized as cultural or positive rights.

Barnett (1997) employs a similar methodology with additional elements in his analysis. He begins by addressing and challenging natural law principles, human objectives (first-order, second order, and prosperity), and natural rights to provide justification for them. This approach also centers on working with principles, which we will delve into further in the next section:

#### **e) Methods based on first principles**

As discussed in a previous article, legal principles are understood as the fundamental components of legal reasoning that serve to justify the law. Specifically, a legal principle is a proposition or premise that holds logical precedence and justifies more intricate arguments, rules, rights, duties, or any other legal elements that either implicitly or explicitly incorporate the preceding proposition. Consequently, these subsequent elements can be logically underpinned by several principles, which may have varying degrees of interconnection.

An example can illustrate how this framework of principles functions. Consider a situation where a police officer imposes a fine on a taxi driver who ran a red light. In this scenario, the first principle dictates that anyone who violates a red light should be fined \$100 (premise 1), and the taxi driver indeed ran a red light (premise 2). Thus, the driver is obligated to pay a \$100 fine. Both premises serve as the justificatory principles for the right-duty relationship concerning the fine, as the police officer cannot impose a penalty without them. In turn, both premises are underpinned by simpler and earlier premises, such as the obligation to obey the law, the purpose of the law in promoting the common good, and the prohibition against drivers running red lights, which endangers others.

Following this deconstruction of arguments, we arrive at the most fundamental and overarching legal principles, as well as the initial postulates of human rights, which are expressions of what is considered valuable or good (pro-life, pro-security, pro-common good). Ultimately, these principles lead us to the foundational principle of practical reason: “Good is to be pursued and done, and evil is to be avoided.” Aquinas (1922) asserted that this overarching principle encompasses all the principles and precepts of natural law, and we can extend this to suggest that it also In this passage, there are some grammatical and style issues.

Human rights and constitutional courts often extract a small phrase from a norm's article to proclaim that a treaty or constitution upholds a legal principle, such as *pro natura* or *pro homine*. These fragments of the norm then serve as a kind of guiding light for interpreting other articles, a directive that indicates the potential expansion of the legal system, and even an "optimization command," to borrow the renowned words of the German scholar Robert Alexy (2000). According to Alexy, legal principles are essentially optimization commands that grant the judiciary a certain degree of discretion in creating rights, policies, and standards. While legal principles encompass more than this, they certainly play a pivotal role in providing a rational basis for more sophisticated and intricate legal reasoning (Alexy, 2000).

Linking "universal principles of law" to specific cases is a challenging endeavor. Cicero and other jurists from the classic Roman period attempted to do this by applying the virtue of prudence. For centuries, common law judges have also utilized the principles of natural law to make case decisions, although not always with precision. This practice led to Jeremy Bentham's critique of "Judge & Co.," who often initiated their judgments with abstract notions, ultimately reaching diverse conclusions. In some of their less meticulous judgments, they could paradoxically argue that, while individuals are naturally free, slavery could be introduced through positive law.

In contemporary times, many high courts have adopted the practice of establishing "enumerated" and "unenumerated rights" grounded in constitutional principles. For instance, in Ecuador, the Constitutional Court has played a significant role in creating essential environmental rights and standards by applying select portions of the constitutional text containing multiple principles. This process has led to the development of a legal framework that surpasses the scope and influence of ordinary laws in the country.

It's important to note that merely mentioning a general principle is insufficient to create rights. To establish the existence of a natural right, a multitude of primary and secondary principles must be engaged and applied to specific individuals, objects, situations, and contexts.

#### **f) Two possible ways to detect rights**

The analysis aimed at discerning what is due to the individual can commence by evaluating either what must be done (duties) or what each person is entitled to do (rights). The former approach is known as the *via negativa*, while the latter is the *via positiva*.

Certain scholars prefer the *via negativa*, which initiates by delineating duties as a means of uncovering rights. For instance, Rousseau (1982) asserts that individuals can claim 'natural rights' only when they first acknowledge their duties towards the rights of others. In this framework, there should be a reciprocal natural right corresponding to each natural duty. For instance, if natural law obligates someone to maintain a secret or obey authorities, there should be a corresponding natural right to privacy and another natural right for the authorities to be obeyed.

Conversely, some scholars favor the *via positiva*, which directly seeks to identify what constitutes a right, employing one of the methods mentioned earlier. For instance, Maritain (1943) derives the fundamental

rights of every person from their natural inclination to direct actions toward their own well-being and the well-being of others. Other authors deduce rights directly from goods, which, in turn, are indicated by human inclinations.

What could be the best approach to identifying human rights? Presently, human rights activists and courts tend to favor the *via positiva*. However, more traditional authors often reject this approach, which they perceive as leading to an endless proliferation of artificial rights. In my view, both methods are valid, and they should be utilized to achieve the best outcomes. Duties and rights are interconnected facets of the same concept. Human rights may appear noble in historical declarations, but without an understanding of who bears the duty to uphold them, they remain empty words, akin to children "that never had a father" (Bentham, 1952, p. 334) or checks without funds that cannot be cashed (MacIntyre, 2007). Conversely, to establish a human duty, we need a positive argument that can clarify why someone is entitled to something—only when something is deemed valuable should we endeavor to protect it.

Gandhi (1910) had lamented "the farce of everybody wanting and insisting on... rights, nobody thinking of... duty" (p.). Both sides of the coin must be considered. In many fields of study, double-checking is a prudent practice. Professional accountants meticulously record every financial transaction twice, in both the debit and credit columns, to ensure accuracy. Similarly, professional statisticians scrutinize their findings twice, assessing both probabilities and non-probabilities of the same event. In matters concerning human rights, we cannot afford to be amateurs.

### **III. HOW DOES THE “NATURAL LAW FORMULA” WORK**

The preceding section elucidated how various components of the Natural Law Formula (e.g., ends, values, inclinations, or principles) can assist in discerning and shaping natural rights. However, the formula can also be employed to uncover other elements contained within the same formula: Being – Potencies, objects, and inclinations – Goods and values – Ends and means – Principles – Rules – Rights – Personal relationships, cases, and circumstances.

While this might initially seem intricate, the formula provides the most innate means of comprehending the foundational concepts of law. In a previous study, it was demonstrated how newborns gradually acquire knowledge of being, its potentials, and goods through their interactions with parents and the environment. Subsequently, they evaluate what holds value

in their lives and aspirations, setting objectives and deducing the initial natural principles through their experiences. As time progresses, more complex reasoning evolves through reflection, influenced by the individual's cultural perspective and psychology. Eventually, the willpower comes into play, choosing specific agreements, rules, or legal actions within a particular place and time, thereby concretizing everything within a legal relationship.

Without a basic understanding of the initial principles of law in their everyday lives, laypersons would struggle to comprehend the foundations of universal natural law. Consequently, the debate surrounding positive law would be jeopardized due to the absence of shared concepts upon which to base meaningful discourse. In the absence of common words and shared understandings, as if after the fall of the Tower of Babel, meaningful dialogue, discussion, and democracy become unattainable. This marks the dissolution of community.

The Natural Law Formula can be likened to a bustling street traversed by many people. The length of this street can be navigated casually by an amateur or professionally raced with practice and technique. In this and a previous study, it has been expounded how we can transition from universal to specific rights in a methodical manner, as the very existence of natural law hinges on the linkage of these two ends. Bentham's criticisms of magistrates who, by invoking natural law and reason in their judgments, based their decisions solely on personal sentiment or caprice were not entirely unfounded. As seen, their imprecise methodology led to the paradoxical conclusion that, while individuals were free by the law of nature, slavery could be introduced through positive law.

The Natural Law Formula is not the sole conceivable route on the map to reach natural law. Many individuals arrive at similar understandings through their traditions, by examining art, or by hearing proverbs rooted in popular wisdom. Intuitions, culture, enthymemes, and even faith also serve as pathways to arriving at certain natural law conclusions. Nevertheless, the complete formula appears to be the most comprehensive method, ensuring a robust connection between reality, personal perceptions and aspirations, community laws, and the most specific circumstances of individuals.

The Natural Law Formula fundamentally functions as a coherent set of elements, inherently interconnected, working in unison to elucidate what natural law entails. As in any equation, altering one variable has repercussions on the entire equation. If everything culminates with death, morality takes on a different hue: "Let us eat and drink, for tomorrow we die." In the absence of genuine interpersonal relationships, such as that experienced by Robinson Crusoe on his solitary island, true rights become

nebulous. If freedom is perceived as an illusion, with humans being mere mechanistically driven, evolved animals guided by obscure psychological forces, ethical or legal responsibility is rendered moot. Concurrently, misunderstandings about what is in the best interest of the individual can impinge upon the comprehension of human ends and the objectives of the legal system. All the elements of the formula collaborate harmoniously, reinforcing one another.

Natural lawyers predominantly favor the deductive method. In the *Summa Theologica*, the author gives prominence to this approach, progressing from the broad possibilities inherent in human nature (Part I) and a universal concept of happiness (introduced at the outset of Part I-II) to the more specific virtues (elaborated in Part II-II). This "ontological order" was already articulated by Aristotle, who noted that the essence of the soul serves as the foundation for potencies, the potencies underlie actions, and the actions form the basis for knowledge of objects. When Maritain (1943) grounds human rights in dignity, Rousseau (1982) in human social nature, and foundationalists establish human rights in a pre-political moral framework to which positive legal and political institutions must conform, they traverse the formula from the general to the specific. Similarly, scholars like Finnis (1983, 2011, 2013), Tasioulas (2012), Andorno (1998, 2001), Griffin (2002), and many others ground human rights in a comprehensive understanding of liberty, "basic goods," or "universal values."

Nonetheless, the formula is not unidirectional but bidirectional. It is always plausible to employ the inductive method. Functionalists like Rawls (1999), Raz (2010), and Beitz (2009) adopt this approach in their investigations on human rights, commencing with "practice," the political circumstances in which rights emerge, the role of rights in constraining state sovereignty, or establishing claim-rights that states should recognize. In other words, they initially scrutinize the contextual reality, the laws ratified by national and international authorities, and eventually, they draw general principles governing the state. This discourse holds significant appeal for those who either eschew or lack a conventional philosophical background, or grapple with abstract concepts.

Numerous highways connect various towns, cities, and even isolated locations. Employing the inductive method enables us to reach several end points: abstract notions of human reality or particular anthropological conclusions, which need not necessarily be ethical or legal. If we delve into the faculties to augment our comprehension of being, we may arrive at metaphysics. Hence, the formula is not a cul-de-sac that leads solely to one destination (e.g., ethical or legal conclusions), but rather a broad



thoroughfare where travelers can access numerous destinations such as metaphysics, anthropology, ethics, law, or economics.

The deductive approach does not preclude the inductive one, and vice versa. Aristotle himself acknowledged the epistemological *via inductiva* when he posited that understanding human essence necessitates comprehending objects, thereby gaining complete knowledge of distinctive human actions, human potentialities, and ultimately human nature. However, it is generally more straightforward to descend from mountains than to scale cliffs. Deriving conclusions from general principles and applying them to specific legal issues is usually more accessible than discerning abstract values from individual cases. It's akin to assembling the pieces of countless cases to gradually reveal the entire picture.

The formula comprises multiple elements, each of which can serve as the starting or concluding point for analysis. Ideally, comprehensive research would scrutinize every component of the formula, though such meticulous examination is seldom undertaken. Such an endeavor would demand a considerable amount of effort, time, space, and an interdisciplinary approach. A prominent example is Aquinas (1922), who addressed various treatises in the *Summa Theologica* before addressing moral questions. Nonetheless, the formula still offers a horizon indicating where new studies can be pursued in the future.

Authors often focus on only a subset of variables within the formula. Many Thomists simply derive natural precepts from inclinations (following the arguments in q. 94, a. 2) without delving into dignity, human goods, ends, and principles in detail. The New Natural Law School also simplifies the methodology, primarily centering on certain self-evident basic goods linked in some manner to natural rights that should be pursued for human flourishing. This simplification is also evident in Ronald Dworkin (1978, 1985, 1986), who employed his triadic scheme of principles, policies, and rules, and in Fuller (1958), who aimed to connect facts, values, ends, and means in his molluscoïd illustration. The intention is not to suggest that authors should recreate the entire *Summa Theologica* in each paper, but to underscore the importance of acknowledging the comprehensive nature of the formula and the advantages of interdisciplinary studies in the context of natural law. The formula serves as a guide for integrating various disciplines and enhancing research outcomes. Periodically, it is beneficial to consult the map to ascertain our current position, the context, and to evaluate the best path forward to our destination.

The pros and cons of the abbreviated method are evident in the New Natural Law School. Its founders and some of its members initiate their

analysis by positing the existence of certain basic goods that are self-evident, underived, and incommensurable—a contentious assertion that has sparked extensive debate and generated substantial literature. By starting with this premise, they often forego offering a comprehensive explanation of how these goods can be firmly connected to human nature, a clarification typically omitted. This omission significantly simplifies the analysis, rendering the doctrine more accessible to audiences with less classical philosophical background. Furthermore, a certain level of self-evidence regarding the proposed basic goods, like those of Finnis (1983, 2011, 2013), can be accepted, even if they can be deduced from human powers. Similarly, some degree of underivability is acceptable since each basic good is correlated with a different human power, even though from a classical perspective, all goods are interconnected and "convertuntur" into being. Additionally, some level of incommensurability in our plans is admissible, despite the fact that objectively, they can be ranked based on their being, as previously mentioned. However, if the foundational connection of all basic goods to human nature is not established, they may lose the hierarchical structure and cohesion derived from the interrelated powers unified within the human being.

In conclusion, the expansive road of the natural law formula can be traversed using both inductive and deductive approaches, involving all links in the chain or just specific elements, and establishing connections among various components in diverse ways. The discussion has touched upon only a few of these approaches. The inclusion of more elements typically leads to more robust conclusions, whereas deliberately excluding any link may result in flawed outcomes.

#### **IV. USING THE FORMULA IN LAW, ETHICS AND OTHER SCIENCES**

The metaphor of the highway, with its various destinations, can be extended to the idea that within the natural law formula, each chain link and the related disciplines serve as different paths for exploration. At certain junctures, this extensive highway presents bifurcations, where each human science takes its distinctive journey.

This research has primarily focused on legal and ethical matters. Lawyers might find it intriguing to delve into the sections related to virtues, a topic that holds a significant place in Aquinas's explanation of natural law (Aquinas, 1922) but is somewhat less emphasized in the field of law. Similarly, moralists may have raised eyebrows upon encountering

discussions about assets, legal relationships, and case-law. This discrepancy arises from the fact that we are dealing with two distinct disciplines—law and ethics.

It can be postulated that anthropology, economics, politics, and other disciplines should also make use of the natural law formula. Moreover, every human science should commence its inquiries by considering the initial links of the chain. To comprehensively understand the human condition, all human sciences and arts are called upon to share common insights regarding human beings, their faculties, the objects of these faculties, natural inclinations, basic goods and values, ultimate ends, general principles, and natural laws. However, it is evident that as each science and art progresses in its specific domain, the values, means, principles, and laws become increasingly diversified and concretized. During this process of progressive specification, each discipline might lose certain characteristics of universality, immutability, and necessity, which are intrinsic to human nature. For example, these characteristics are not typically found in highly specialized arts such as flamenco dance or shipbuilding, which have evolved significantly over the years, albeit within the bounds of material reality.

The natural law formula can also be integrated into economic studies to provide a structured framework for analysis. Here's a brief illustration of how this can be done within the context of economics:

a) What is economic reality? Economic reality encompasses the reality of human beings and the market, including production, distribution, and trade.

b) What really matters in the economy? The essence of economics lies in the satisfaction of human wants through the utilization of limited or scarce resources that are available and known.

c) What can be achieved? In the economic context, achieving what human powers can consume directly or indirectly, with a priority on securing the most essential goods, aligns with the axiological investigation.

d) How can these goods be achieved? Economic principles related to supply and demand, resource optimization, market equilibrium, price elasticity, and others come into play as guiding principles, distinguishing economics from secondary principles in other fields.

e) When and where should the means be used? To answer this question, more specific information about the relevant market is required.

The natural law formula serves not only as a tool that can lead to legal and ethical conclusions but also as a foundational structure that imparts meaning, unity, order, and coherence to knowledge pertaining to human beings. Legal systems, ethical norms, sociological constructs, and economic

organizations all represent human orders, and, as a result, the ultimate measure of these orders is the human being. This aligns with Protagoras's famous statement that "man is the measure of all things." While various factors can bring about unity among people, the person, as the most fundamental unit of humanity, remains the principal factor of unification. The individual serves as the ultimate focus of any human science, art, and order, providing the rationale for all rules, rights recognition, economic policies, and the convergence of everything. Morality, law, economics, and politics lack significance without the central role of the human being.

## V. CONCLUSION

The "Natural Law Formula" provides a comprehensive framework for understanding and justifying natural rights or human rights. It connects various elements of reality, culture, and acts of the will to deduce or induce conclusions regarding rights and their scope. The formula includes the following interconnected elements: the being – potencies, objects, and inclinations – goods and values – ends and means – principles – rules – rights – personal relationships, cases, and circumstances.

Scholars, courts, and individuals often employ the formula in different ways to determine what may constitute natural rights or human rights and to define their limits. There are five primary approaches used to analyze rights:

a) Dignity: The analysis begins with an examination of what dignity entails and its scope.

b) Human Powers and Inclinations: It focuses on the human powers, their objects, and inclinations, particularly the three inclinations outlined by Aquinas.

c) Consideration of the Good: It involves contemplating what is good and worthy, both in general and within specific situations.

d) Examination of Ends and Means: It reflects on the ultimate, proximate, and immediate ends, along with the means to achieve those ends.

e) First Principles: It relies on first principles that offer a rational justification for rights, a technique commonly employed by courts and human rights institutions.

The analysis can either focus directly on rights (*via positiva*) or begin with an assessment of the duties of the human being and then deduce that another person has the right to demand the fulfillment of those duties (*via negativa*).

The natural law formula is indeed a flexible framework that can be applied to various disciplines and areas of human knowledge. While human nature remains consistent across these disciplines, the formula's initial links related to human nature, capabilities, inclinations, and more provide a foundational understanding that can benefit all human sciences and arts. However, as each discipline delves deeper into its specific subject matter and purposes, it will develop its own unique elements and principles.

This implies the existence of distinct natural laws for different fields such as legal natural law, ethical natural law, political natural law, economic natural law, and so on, corresponding to the specific focus and goals of each discipline. These natural laws would be rooted in the common human basic goods, ultimate ends, and general principles, but they would also incorporate the values, aims, and principles specific to each discipline's domain.

The interconnectedness and shared foundations provided by the formula allow for interdisciplinary enrichment and a better understanding of the multifaceted dimensions of human existence. It underscores the idea that human sciences and arts can work together to contribute to a more comprehensive comprehension of the human condition and inform ethical, legal, political, and economic decisions.

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