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Person as the “homo larvatus” and Knowledge with other People

(“cum alio scientia”) as Bases of Morals and Law

ABSTRACT: In our cultural tradition, the person has been defined primarily by incommunicability and loneliness. Without disregarding this fact, Thomas Aquinas insists on ‘social’ own personality training, because each person is one at all, and all are in each person. Hence, awareness or consciousness is set up from the ‘knowledge with others’, *how alio scientia*. Considerations behaviorists on the social formation of the personality are insufficient to explain the personality. And the person is ‘*homo larvatus*’, to which the raises to the rank of the *substantia prima* which talked about Aristotle in his metaphysics. Consideration of these ideas, especially the formation of *homo larvatus* as the *substantia prima*, have to consider that being or the universe are primarily personal in nature.

Keywords: Person, Ethics, Community, dignity

Schlagworte: Person, Ethik, Gemeinschaft, Würde

I. Introduction

The ethical doctrine that dominates nowadays in the bases of the theories about Law is the one on Human Rights. Besides rights it often appears either the current theories about Justice – mainly Habermas and Rawls – or the hermeneutic questions Dworkin’s work has aroused. These theories are usually made on nominalist assumptions, so that nobody can affirm that the human being is a person. So we reach the present paradoxical situation, when some people maintain that we men have many rights, but nobody has a right to be a holder of those rights. According to them, the rights declared on paper in different Declarations of Rights historically manifested exist, and people are only ideal points of attribution of some of those rights. We may say the same thing about the theories on Justice: before the absence of people, these theories lay on imaginary points and the most a human being can aspire to is to benefit – being an imaginary point – from the consequences of any of them.

We haven’t advanced too much in doctrine since 1948 to present time, other than the increase of the specific rights recognized or “created” (made positive). States and International Organisations act according to the ways of facts. I mention 1948 because it was then when the Universal Declaration of Human Rights made by the UN appeared. This Declaration was born ill, because it was done by left-wing liberals who were nominalists and were not in condition to declare the bases by which human being has these rights.

It is well known the sentence attributed to one of its writers: “We all agree on the condition that we are not asked why”. This Declaration and some other ones that have come later, in the lack of a theoretical basis, have appeared as “facts” in which it is necessary to be in agreement. The imperative question, seeing the individualistic nature of most of these documents and how debatable are some of the rights which are proclaimed, is: Why must we accept them?

At that time, we calmed down our conscience momentarily with this Declaration, but as human being seeks theoretical bases to what he has or wants, without being enough to increase in fact the amount of the declared rights, soon the rights dictated in 1948 required a theoretical basis which explained them. Since at the beginning they understood that the consensus about them was enough to demand its validity; so, the inter-subjectivity of the consensus replaced the lack of other bases. But the very truth is that it still lacks consensus about their most theoretical ground and their scopes. The fact that Classical Juridical Positivism (let us think of Bergbohm, Kelsen, Bobbio or Hart), which insisted on Justice as a matter of individual feelings depending on cultural factors, have been put away, shows us that times have changed.

Exactly, the exquisite logical analysis on juridical “rules”, as it is shown to us, for example, in Kelsen’s Pure Theory of Law, has fallen from its pedestal. The reason is? Nobody explains his social life exclusively according to an only kind of laws which can be explained by the same logical rules; besides, it would be quite difficult to divide our life in personal one and social one. Bobbio or Hart wanted to impose, by the strength of their intimate rationality, well coherent bodies of logic, creating systems. This way they got to become quite impregnable, because in the build of the system, axioms base consequences and these ones axioms, so that the argument goes and comes from an extreme to the other one. This was one of the first Hobbes’ scientific requirements.¹

Hand in hand with this kind of *systematic* theories came what it was called “ideologies”, and during some time our culture understood that an ideology can only be combated by another ideology. This is a nonsense: supporting one or another theory is not the result of exercising a subjective right, which is a kind of a right in which his holder needn’t give any reason to anybody of what he does under his subjectivity.² What it is subjective has its own moments and it is not the only prototype of every juridical relation. Let the reader judge the esteem that can deserve a theory about Justice coming from Apel or Rawls.

They speak about ideologies or nominalist theories. (They don’t use the word Nominalism, which it seems referring to late Middle Ages and not to XXI century. But they

1 Thomas Hobbes, *Elements of Philosophy*, London, 1839, 6–8.

2 Hegel didn’t understand this function of the subjective rights, because he wrote that “besides crime ... namely, besides the contingency of the will of evil, it exists legal actions and ownership social customs which are allowed and links externally as well the personal will with other individuals and with public institutions which have a common aim. Because of this general characteristic, private actions become a contingency which escapes from my power and may cause or just causes harms and injustices to other people”. Friedrich Hegel, *Principios de la Filosofía del derecho o Derecho natural y ciencia política*, Buenos Aires, 1975, I quote § 232.

must recognize that their Phenomenalism adds nothing to that one from XIV century and Modern Age). These theories are only ways of speaking characteristic of the august chairs in Universities and their books, which have nothing to do with the daily routine, as daily as real. Because the daily and real man gets angry when he finds out a politician doesn't know how to explain the origin of a large fortune or when somebody scratches the paint of his car. The immediacy of the feeling of injustice, with the resulting affective reaction it provokes – indignation –, has nothing to do with the theories about Justice we use nowadays. It helps nothing to the citizen to be told that he is included in an ideal conversation and that his way to evaluate what it happens will be taken into account: an old saying establishes that in a nail painted on a wall, you can only hang a jacket painted on the wall. This very thing happens in an ideal conversation in which all of us would be represented: finally someone – our *representative* – will have to declare which is the ideal conclusion which is deduced from such a conversation, and we depend again on a judge as subjective as alien.

These more recent theories, which appeared after the II WW, with their individuals and ideal conversations, can only be useful for an ideal world. The truth is that these ideal conversations only get to revive the *regula aurea* or old and medieval evangelical rule: “Treat people as you would want to be treated by them”. If we don't like to speak about this Christian rule, we may allude to “the generalization of Kant's categorical imperative” (a generalization which, expounded this way, doesn't exist in Kant).³ It doesn't matter. If the official culture resulting from a millennium of an increasingly developed culture has been useful in order to go back to a basic starting point, everything indicates that this human constant which develops in history is deeper than those theories which have been proposed beginning from them. The most sensible statement I have found about this problem is A. Macintyre's commentary: “If those who try to be able to formulate principles with which any rational agent would agree, cannot assure this agreement for the formulation of those basic principles from some colleagues who share their basic philosophical purpose and their method, there is an evidence, once more, *prima facie*, that the project has failed”.⁴

I was speaking about Nominalism which has made necessary to start from ideal individuals in ideal situations. Is it viable this Nominalism that emerges in empiricist attitudes which, later on, takes other forms in the works of each author? Because if they remained empiricists, they would have nothing to say. Come on a thesis, namely: Empiricism cannot explain the universality of daily life.⁵ Nominalism is questioned above all

3 Vid. My study (www.franciscocarpintero.com): Francisco Carpintero, Nuestrs utilitaristas malentendidos a Kant, in: *El pensamiento jurídico. Pasado, presente y perspectiva. Libro Homenaje al Prof. J.J. Gil Cremades*, ed. El Heraldo de Aragón, 2008, 141–166.

4 Aslaidair MacIntyre, *Tras la virtud*, Barcelona, 1987, 37.

5 The decisive reason to condemn Empiricism was definitively expounded by Hegel. He explained that “What I feel is only mine, it belongs to me as a particular individual; but as tongue always expresses the universal, I cannot express what it is a sentiment of mine exclusively. What cannot be named or communicated, namely, senses and sentiments, are not the most important or real issues; they are, on the contrary, the most insignificant and the least true ones. When I say: *the individual, this individual, here and now* – all these sentences are universalities, and albeit by all and each one of them, though it is a sensitive *here and now*, it

by the universal level in which man develops: and, apart from the personal man's nature, it is also the case of duty, a reality that cannot be perceived either scientifically or logically. And, in addition to these issues which can be known only metaphysically, the Phenomenism characteristic of the empiricist attitude fails as well in the level (more modest but not, because of it, less important) characteristic of the ontological knowledge. Later on we see that it is unviable also in the ontological level: since pupils can demand his teacher to explain clearly, and to drive carefully. And both demands have nothing in common because they cannot be broken off from the same axioms or, as a consequence, they cannot be developed hand in hand with argumentative expressions which can be inserted in the same logical body. Teaching and driving are different “things” though they are cherished things in our everyday life.⁶

II. Two specific issues

From the imposed Nominalism we go into the fields of apories. Now I don't refer to Hegel's general denunciation already expounded, but to the development of more specific troubles, already alluded. Let us see: sometimes those political parties which form the government are left parties, and are proud to be agnostic in metaphysical issues, and that's why they admit neither human personality nor the *duty* to be obeyed which is originated by Law. But no ruler will say that he doesn't believe in the duty of citizens to obey those laws he issues. If these kind of “agnostic” use these terms, these words, in their mouths, don't go beyond the level of words, that is, they remain as sounds of voice without any background. *Per pugnam sine justitia*: nobody believes in the electoral system but all of us go to vote and all of us will obey those laws which we haven't a *duty* to obey. It has been said historically that duty consists of law foresee a punishment in the case it be broken;⁷ but there is no duty because there be a previous punishment, but a punishment is imposed because a duty has been broken.⁸

wants to be expressed individual things, all these words denote the general. *Enzyklopädie der philosophischen Wissenschaften*. Zweiter Teil, § 254. I quote by Suhrkamp's edition, Frankfurt am Main, 1970, § 20. (The translation is mine).

- 6 Hegel wrote that “Experiences, experiments, observations don't know what they really do, they don't know that the only interest they take in things is precisely the inner unconscious certainty of reason to be in the very reality”. Friedrich Hegel, *Lecciones sobre la historia de la filosofía*, México 1985, vol. III, 223. Indeed, every individual's reason wants for himself the (relative) security of the object he knows because in knowledge it arises that personal state described by Heidegger: “In the closer area of the entity we believe to be at home. The entity is familiar, safe, inspires confidence”. *La época de la imagen del mundo*, in “Caminos del bosque”, translated into Spanish by H. Cortés y A. Leyte, Alianza, Madrid, 1997, p. 46.
- 7 *Vid.* my study (www.franciscocarpintero.com): Francisco Carpintero, *Deber y fuerza: la Modernidad y el tema del deber jurídico*, in: *Obligatoriedad y derecho. XII Jornadas de Filosofía Jurídica y Social*, Universidad de Oviedo, 1991, 151–182.
- 8 So Samuel Coccejus – the jurist whom the Kaiser commissioned the drafting of the German Civil Code – in *Tractatus Iuris Gentium de Principio iuris naturalis unico, vero et adaequato*. Francofurti ad Viadrum, 1702, 25. Reply to the “Observaciones “that an anonymous author published in 1700, July, in the “Monatlichen Aufzug aus allerhand neu herausgegebenen nützlich und artigen Bücher”.

Let us go on specifying the problem. If we don't accept an objective Ethics or Morals, equal for everybody, could we go on speaking about "duty"? A fiction has been collectively used: nobody mentions the word Morals, but Ethics. There is even a saying which says that "There may be a lot of Morals, but there is only one Ethics". But an elementary observation shows that those who use the term Ethics use it as a synonym of Morals. In front of this scenario which avoids the term morals, it would fit the pragmatic attitude explained by Rawls. This attitude means that our social system works, that we have advanced since XVIII century until nowadays in men's welfare, and that what we have to do is going on advancing. We could sum it up saying "It works, so it is valid". But we men are not so simple. Since XVIII century until nowadays our mentalities have changed quite a lot, and we all have verified that what some years ago it was a scandal which made a government resigned, nowadays it is not so important. It is a question of not "advancing" this way. Many think we have spent interest and now we are spending capital.

There is an extensively shared opinion which understands that now we haven't got those bases which made possible in the past time the Social Rule of Law.

The second relevant issue is the human ontological knowledge. I mentioned the examples of teaching and driving vehicles. Nobody can claim that it is not a teacher's duty to explain clearly or it is not a driver's duty to drive carefully. Fromm pointed out "In this sense Man's Science, when constructing a "model of human nature", doesn't differ from other sciences which work with concepts of entities based on deductions inferred from data, observed or controlled by them, and not directly observable in themselves".⁹ Let us leave the explanation of this issue for later on.

III. People and Individuals

Our culture learned soon to affirm that any man is a person; because all of us are individual beings with a rational nature. Theologians, who for centuries were the only scholars who studied this issue, characterized Person as a *suppositum* or support who has the characteristics of incommunicability, solitude and dignity.

Roles were unclear for a long time because late Middle Ages and XVI century nominalist philosophers and theologians used widely the notion of person, whilst aristotelians hardly made emerge this term within the pages of their books. Exactly, Thomas of Aquinas, when dealing with virtues doesn't allude to or mention people, but he speaks directly about "virtuosus", and when he alludes to a contract, he speaks about the depository or the buyer. But this drought in the use of this notion can deceive the reader, because Thomas of Aquinas was the only philosopher who paid attention explicitly to studying what we could call nowadays people's ontological statute. Let us spell out his explanations

9 Erich Fromm, *Ética y psicoanálisis*, México, 1980, 37.

We must not confuse individual and person. Some university lectures explain that the term person already bears into itself, as syllogisms, several values and they understand that in order not to be seduced by these anticipated contents, it is preferable to speak about men or individuals. The reader of these pages will judge the suitability or not of this mentality.

The *suppositum* referred to by Scotus and Nominalists when dealing with this issue is the incommunicable individual. But the individual can be the fiercest enemy of the person, because the individuality is got excluding all that it is alien to the very ego, so that every individual tends to be the whole of reality. It happens that man is in a tension between his individual characteristic and his universal nature; because as well as the moment of the individualisation is the one of the exclusion or excluding affirmation and doesn't recognize any other law than its infinitude, the person, however, is the moment of the universality which makes that the subject goes out of the narrow area of his own individuality and looks for ways of social relationship which exceed widely what the sociologist can say about groups. Effectively, a behavioural researcher would study those relations in similar ways as the way he studies relations among animals. But without detriment to the good part of rightness of these kind of studies, the universality that the dignity characteristic of the personality involves, makes emerge rights and duties alike from what apparently are only “natural facts”.

When we speak about Justice and people's welfare we don't limit ourselves to establish those rules which must govern the good functioning of a poultry or livestock farm.¹⁰ If we pay attention to the complexity which is carried by the universality, it is clear that we cannot isolate one only moment of human life and refer, for instance, only to the safe or with a minimum of safety coexistence; in this line, it seems that the modern Rawls' proposal is more similar to the creation of a Mutual Insurance Company than to a theory which bases Justice.

Individualism that supposed the existence of isolated or independent beings, with free will, led historically to contract law in order to explain human realities. Contractualism prevailed in Modern Age thinking that the contract is the basis of all rights and duties. But not all rights and duties are caused by agreements of wills but frequently they are already socially and juridically institutionalized before the specific wills intervene. We are speaking about the overlapping and the interferences in human beings lives, and these overlapping are not accidental or exceptional, because men must follow ways in which *necessarily* both interfere.

Law really already lived, which has created the institutions we know, uses to be the first fact and theories about Justice developed by their authors are later data which only are worthy of attention according to the personal and subjective dispositions of each

10 In his critical work, (it appeared anonymous) Johann Friedrich Homberg, *Dubia Juris Naturae*, Hallae, 1719, cap. 1, § 22, indicates that Hobbes erased the differences between men and animals. Afterwards he maintained that natural law isn't limited to the “flesh” (to what it is common with animals) Op. quoted chap. 2, § 5. Later on, maintained the same thesis: Adam Ferguson, *Un Ensayo sobre la historia de la sociedad civil*, Madrid, 1974 (1777), 4.

person. That's why John Austin, in the interior of this same jurisprudential spirit, maintained that things law must be studied before people law.¹¹

But this study must be limited to the very personal moment in Law, and so the chosen *subjectum* is the one belonging to the scope and operability of the personal quality in the legal experience. It is necessary to be prepared for a first trap, namely: the notion of person is accompanied, since Modern Age, with the imaginary representation of lonely individuals who, in principle, have no limit for their actions and who will only assume duties agreeing contractually.

In this line some well-intentioned people maintain, *more kantiano* that a person's freedom finishes where it begins the other people's freedoms. This is true, but enormously insufficient; and, besides, it is usually false because Law as well is the instrument to determine the other people's lives in the name of something more than the mere will: when the teacher demands some knowledge from his pupils he is interfering positively in their lives, and, of course, he doesn't limit himself to abstain before their personal Spheres of Freedom (*Freiheitsphären*, according to the terminology of Kant's disciples). Proposing this issue – also now – this way, our age doesn't know how to reconcile the infinitude of each individual will and the limits imposed by the characteristic realizations of the civic and political coexistence. Today we go on having the effects of this disproportion because, in fact, each one is educated in the consciousness of his rights, in his freedom, in order to – in a later moment – to be obliged to put himself at the service of social aims, as it is to pay taxes in order to eradicate poverty or to improve the National Health Network.

IV. The *homo larvatus*

We must distinguish doctrinal relations among people as people and as legal people in order to be in condition to recognize the functions of so many factors that influence in people's rights and continuously modify their scope. Between these two notions it exists a very thin distinction that continuously slides from an extreme to the other one. Since human person is both an unrepeatable being and the bearer of functions that don't always admit an autonomous treatment out of their interweaving and social crystallizations. But this approach, if it is excessively generalized, separates what it is the personal or real life from what it would be the impersonal or unreal life, such as some mid-XX century existentialist philosophies maintained.

What it really seems to be more in accordance with reality is to recognize that society makes every subject go out from his own ego and he himself be considered in a person-

11 John Austin emphasized repeatedly that in first place we have to study things law and only afterwards people law. *Vid. Lectures on Jurisprudence or the Philosophie of Positive Law*, London, 5th ed., 1911, 721, among many other places. His most basic thesis is that things determine the extent of every person's law. *Vid. op.* quoted page 46. Exactly, the personal possibilities are determined by the condition of teacher or driver. Not in vain James Lorimer believed, quoting Hegel, that the *Jurisprudence* is somehow the realm of the realised freedom. *Vid. The Institutes of Law*, 2^a ed., 1880, 2.

alised way – beyond the mere individuality – also from the objective characteristic that his actions have in so many specific situations, so that the recognition of the social functions don't degenerate in a sociologism that marginalise people in one of their social conditions. In other words, person inserts himself, in one way or another, in that process of getting the right in which he is the main character, *but not the only one*.

Together with his legal people, every human individual is a “person as person”, *persona ut persona*.¹² This is the *substratum* or *subjectum* of all the expressions of personality, and Aquinas thinks that the “person as person” is the *homo larvatus*,¹³ apparently that man still in germ who has before him his potentialities and his future and different possible updates.

The reality of the *homo larvatus* needs a brief explanation. The temptation of the western man is to suppose that it exists a substantiating body or *subjectum* that “supports” other smaller forms of being. John Locke had in mind only this notion of *subjectum* when he referred to the Hindu myth which explained that the earth was on a giant's shoulders, the giant was on an elephant, and the elephant lay on a turtle: what did the turtle lie on? Locke asked ironically.¹⁴ Hand in hand with this way to understand substances, it would seem that the *homo larvatus* is that *subjectum* to whom, after his genesis, other determined issues are added.¹⁵ It would be something similar to putting the chair on the horse. In fact, Boetius seemed to understand this way the most general terms of this problem.

In a second moment, given our cultural ease to divide matter and form, it would be possible to understand that the *homo larvatus* is the “matter” that supports the determined issues¹⁶ which constitute the specific forms of being of each man, so that we could only think in a hypostasis or *subjectum* of a material nature.

Thirdly, logic may lead to think that the universal concept of human being is the “universal substance”, the way by which man is man or the universal concept of man. As a universal concept is said of an indeterminate multitude of beings, the so understood

12 Vid. My study (www.franciscocarpintero.com): Francisco Carpintero, Persona y “oficium”: derechos y competencias, *Rivista Internazionale di Filosofia del Diritto*, LXXIII (1996), 3–59.

13 Thomas Aquinas, *IV Sententiarum (In Primum et Secundum Sententiarum)*, Tomus Sextus, “Opera Omnia”, Romae, 1570, L. I, Dist. 23, q. 1.

14 John Locke, Essay of Human Understanding, in: *The Works of John Locke*, London, 1823, vol. I, 167.

15 “Aliud vero est quod est fundamentum accidentibus sustentans ipsa; et pro tanto dicitur substare. Sic ergo substantia quae est subiectum, in quantum subsistit, dicitur ousiosis vel subsistentia; in quantum vero substat, dicitur hypostasis secundum Graecos, vel substantia prima secundum Latinos. Patet ergo quod hypostasis et substantia differunt ratione, sed sunt idem re”. Thomas Aquinas, *De potentia*, q. 9 art. 1. Those quotes in which I don't indicate their origin are taken from the *Editio leonina* put in Internet by E. Bernot y E. Alarcón.

16 “Rationes quae sunt in oppositum, concedimus; tamen sciendum, quod Boetius aliter accipit ista nomina in commento praedicamentorum, quam sit communis usus eorum, prout exponit ea in Lib. de duabus naturis. Attribuit enim nomen hypostasis materiae quasi primo principio substandi, ex qua habet substantia prima quod substat accidenti: nam forma simplex subiectum esse non potest, ut dicit idem Boetius in Lib. de Trinit. Nomen autem ousiosis vel subsistentiae attribuit formae quasi essendi principio, per ipsam enim est res in actu; nomen autem ousia vel essentiae attribuit composito”. Thomas Aquinas (note 15).

form is common to all men and it cannot be an individual or personal reality. And Aquinas maintained repeatedly that is always a “second substance”.

Finally, it would be possible to understand that this *prima substantia* names the human soul, in general terms. This is not possible because soul is only a part of the human species and, though it can be considered in a universal way out of the body, it keeps the *unibilitas* that characterizes the whole human species and that’s why it cannot be a hypostasis that names an specific reality: its problem would be the same one as the one belonging to the universal form of man. Against these kind of imaginations, we must understand that the *homo larvatus* is an individual substance.¹⁷ It is clear that we are in front of two kind of universality. Because from one side the concept of horse must be necessarily universal, and if it were not so we couldn’t recognize the horse as such: what implies that the universal concept repeats itself as many times as horses exist, and therefore it is a *substantia secunda*. But the universality of person is different; he is not a concept that is dissolved in as many individuals as individuals exist, but it directly raises to the universality each *substantia prima*, which this way is the most excellent of what there is, prototype of what a substance must be.

When he expounds person this way, he goes into a land that is opened to solid digressions. The only *prima substantia* should be God, and people would be “personal substances” by participation of the divine personality. But this doctrine based on the “participatio” is not possible because each personal being is a “first substance”. We arrive to a dead end, or rather, to one only exit, namely, that God and “first substances” (men among them) make up the ultimate structure of what exists, so that the Universe has above all a personal structure.

This is not the moment to go into more considerations about this issue. It is enough to point out that the *homo larvatus*, far from being a *potentia universalis* with regard to what it is human, it is more like a moment of the reality which raises to each man to the level of the *prima substantia* and makes him able to carry universality to its determined issues, to the social determined issues too, namely, also to those ones imposed by society or those ones he creates together with the other men.

It happens that humanity is necessarily the universal basis of the formal synthesis of the whole Law, because any tendency or specific human interest only gets the legal status – namely, *universal duty* – by its referral to the personality of the subject who is the bearer of the right or the duty. Perhaps the basic problem be to distinguish those interests that must be taken into account by Law from those ones which are, simply, the interests of any person. Every right has, in its more spontaneous and superficial expression, the form of an interest, but the interest goes beyond itself and abandons the strictly individual level (the Brinz’s *reine Individualinteressen*) in order to go to a different onto-

17 “Sed substantia secunda non potest poni in definitione personae: esset enim oppositio in adiecto, – cum dicitur substantia individua – nam substantia secunda est substantia universalis. Similiter autem neque substantia prima, nam substantia prima est substantia individua”. Thomas Aquinas (note 15), q. 9 a.2, arg. 7. “Unde concludit quod determinandum est de hoc, idest de subiecto vel de substantia prima, quia tale subiectum maxime videtur substantia esse. Unde in praedicamentis dicitur quod talis substantia est quae proprie et principaliter et maxime dicitur”. Thomas Aquinas, *Sententia Metaphysicae*, lib. 7 l. 2 § 5.

logical and metaphysical level, which is the characteristic one of the universal interest that must be protected or promoted by Law. Bentham didn't know how to explain this apory because – in his such a superficial philosophy of *common sense* – he stayed in the level of the mere interests in principle – according to him – all equally “private”, which by themselves hadn't the condition of universalizable, and he wasn't able to explain that the universal is a reality different from the general. Agnosticism in ethical issues leads to these paradoxes.

The *homo larvatus* is a dimension of what it already exists, such as men are in society: it doesn't name a peculiarity of origin which is lost later, in the determined issues. For this very reason no person allows to be reduced to what he is socially, because every individual lives over all determined issue. Exaggerating, there is always a possibility that someone declares that he encapsulates – so to speak – his life, that he has moved away affectively or intellectually from it,¹⁸ and that he lives as an individual radicality which doesn't allow to be dissolved in any way in his determined issues. Sometimes this way of acting will be viable and advisable, because Scotus was right when he said that each person is the last solitude of the being.¹⁹ The universality of person prevents someone from remaining wholly dissolved in his being-there in society.

But who does it, must be careful with linguistic traps, because the ambivalent structure of our language leads us to fallacies because we say that Peter has a car, has a basketball or has a house; but a house is much more than the materiality of its walls.

It is not about retaking jusnaturalist residues, but about fidelity to Law we daily use, which we must explain according to several rational categories, not pretended or *postulated* because of lack of enough explanation.

A little antiquated jusnaturalist would ignore the truth of the thesis about the *homo larvatus* and would tend to refer directly to people as final title of all rights, as if by the fact of claiming the personal nature of man he had the solution for the most important legal problems. On the contrary, a cultivator who followed the old style of the Theory of Law would focus his attention on the analysis of rules. The former gets lost in the fields of abstraction, whilst the latter corners men against some of their social functions taken into account in the already existing legal rules or laws: not in vain Kelsen maintained that person in Law is only the point of attribution (*Zuschreibung*) of a sector of laws in the legal order.²⁰

Kelsen completed the movement, which already shows its splendour with Bergbohm even in XIX century, that tends to substitute the study of human problems raised by the logical categories of rules; so the result was – in an impeccable logical way according to his explanation – that Jews and the rest of lower races who lived in III Reich were points of attribution of the legal rules. Before the just pure legal moment – which is the

18 John Locke (note 14), 4–12. The secret of his philosophy, Locke explained, was that he placed himself over his Understanding. Thus, his work is a copy of his mind.

19 “Quia ad personalitatem requiritur ultima solitudo sive negatio dependentiae actualis et aptitudinalis ad personam alteri naturae”. John Duns Scotus, *In primum, secundum, tertium et quartum Sententiarum quaestiones subtilissimae*, Antwerpiae. 1626, L. III, q. 1, art. 4.

20 Hans Kelsen, *Reine Rechtslehre*, Wien, 1960, § 37, 192.

only one that Kelsen seems to take into account – and before the ideality of an isolated being, the science of Law which also pays attention to specificities must go in, because it goes hand in hand with the metaphysical and ontological specificities characteristic of each man in each moment.

Man, both in the moral and legal level, obeys to realities which shape himself as a rational being, so that nobody can recognize himself as being “him” rationally out of his social determined issues which finally are both social and personal.

Thomas of Aquinas insisted on this matter, and wrote that things are not measured by reason, but things shape reason: *Ratio non est mensura rerum sed potius e converso*.²¹

Exactly, if the researcher dispenses with his status as a husband, a father, a professional, a friend, a neighbour or a citizen, what does it remain of him? It would only remain the vague sensation of an ego who cannot recognize himself beside or before the other people. A person with no specificity would be a mere formal self-identity and therefore supposedly infinite because it falls on him the infinitude which is caused by the negation. Hegel saw clearly the normative non-existence of the undetermined and hence his disdain for what he called “abstract Law”. We know that every negation always inserts an infinitude, and before this infinitude, every affirmation is always specific because it places us before a determined issue with which we certainly specify and limit physically our possibilities. But at the same time they place our being-there in the world.

In another level, apparently only a social one, if someone dispenses with his determined issues and he thinks of himself as a being who owes nothing institutionally to the other people and the other people owe him nothing institutionally, he will remain with no criterion for his daily social actions, so that he will lack the guidelines in order to understand himself. Because even the concept of man cannot be known but insofar as he is measured by things.²²

Thomas of Aquinas defined conscience as “Cum alio scientia”.²³ The basis of Law is the rational being in his status of *cum alio scientia*. It may be easy occasionally to take the individual out of the polis, but it is useless to take the polis out of the individual.

That’s why Carolus Rössig – in the very age of the “states of nature” – was surprised because of those isolated individuals who, however, have very advanced social desires.²⁴

21 “Ratio humana non est mensura rerum, sed potius e converso”. Thomas Aquinas, *Suma teológica*, I–II, q. 91, art. 3 ad 2. Speaking about the Intellect, he explains that the very Intellect consists of the *species rerum* that it knows. *Vid.* Thomas Aquinas, *Quaestiones Disputatae*, Bologna, 1992, q. 22, art. 11, resp.

22 “Ad tertium dicendum, quod ratio intellectus divini aliter se habet ad res quam ratio intellectus humani. Intellectus autem humanus est mensuratus a rebus, ut scilicet conceptus hominis non sit verum propter seipsum, sed dicitur verus ex hoc quod consonat rebus”. *Suma teológica*, I–II, q. 93, art. 1. More references about this issue in. Thomas Aquinas, *Suma teológica*, I, q. 79, art. 13.

He is more radical when writing “Dicendum quod nomen mentis a mensurando est sumptus ... et ideo nomen mentis hoc modo dicitur in anima sicut et nomen intellectus: solus enim intellectus accipit cognitionem de rebus quasi mensurando eas ad sua principia”. Thomas Aquinas, *Quaestiones Disputatae*, cit., q. 10, art. 1.

23 “Et inde conscientia, quasi cum alio scientia, quia scientia universalis ad actum particularem applicatur”. Thomas Aquinas (note 13), L. II, Dist. 24, q. 2, art. 3.

24 Carolus Rössig, *De cautione in tractando jure naturae nostra in primis aetate maxime necessaria*, Lipsiae, 1758.

We are in front of institutes or institutions which are social because they necessarily involve the other people when solving an individual pretension.

V. Person as “Cum alio scientia”

It belongs to the very heart of the Aristotelian culture to think that if we have a sight it is because there are colours to see and if we have an ear it is because there are noises and voices to hear.²⁵ Man is, in some sense, a creation of its environment, from which he has emerged. By the same reason, we are people because we have been born among a group of personalities. If someone would want to “become emancipated” from the other people, he would only get to a wholly fictitious identity, in which any datum of his being-there as a person would get a hypertrophy to the detriment of the rest of his personality. Morals is not an addition to people: it is the reflection in everybody of the *cum alio scientia*. That factor *praecognitum* sometimes mentioned by Thomas of Aquinas is (said in a very generic way but not because of it less decisive) people’s genetic identity. It is not a call to esoterism in order to overcome difficulties out of rationality. It is to recognize that, the same way we have ears because there are sounds to hear, we are people because there are other people to live with. An isolated person – though we take it as a working hypothesis – would be an absurdity *in terminis*.

The basis of equality – beyond the mere legal or political equality – is possible aluding to that unfolding which implies the *cum alio*; a human being has no right to treat another one as if that other one were different from himself. If someone demands for him rights he denies the other ones, this shows above all that man is violating the dignity that he should bear, because every human being bears into himself the dignity of all humanity, so that when somebody sins, sins above all against himself,²⁶ namely, against everybody.

This is the basis of his guilt, to know he is not taking into account an universality he cannot make use of freely; since when demanding the criminal, as a condition for his penal imputation, to be able to distinguish between goodness and evil, he is required above all to know he has violated a necessarily universal requirement that he must bear into himself.

In this issue we travel with a lot of luggage, since the problem begins in XVII century. There would be quite a lot of those who thought that we didn’t need the personal guilt in order to fall into a legal punishment. Luis de Molina, in a very little nuanced way, had reduced all Law, penal Law too, to pacts.²⁷ He possibly succeeded doctrinally because

25 *Vid. my studies*: Francisco Carpintero, *Facultas, proprietas y dominium: tres antropologías en la base de la justicia*, in: *Persona y Derecho*, 52 (2005), 143–188; La “adaequatio hermeneutica” en Tomás de Aquino, in: *Philosophica*, 35 (2009), 95–120. Both of them are available in <http://www.franciscocarpintero.com>.

26 Thomas Aquinas, *Liber de Veritate Catholicae Fidei contra errores infidelium seu “Summa contra Gentiles”*, Roma, 1961, § 2948–50.

27 “Judicem, et quem jus dicit in civilibus, et quem causas tractat criminales, poenam justam infligit . . . quasi ex pacto cum Republica”. Luis de Molina, *De justitia et jure opera omnia*, Venetiis, 1614, Tract. II, disp. 12.

Hugo Grotius, usually moderate, did the same thing.²⁸ Francisco Suárez reacted against these opinions and established that “*Nulla poena sine culpa*”²⁹ and he repeated that, once guilt is removed there is no place for punishment in terms of punishment,³⁰ because punishment depends on guilt.³¹

Nowadays we are in a situation similar to the one of Suarez. There are many who confess to be agnostic in Morals, but can they question that *culpa pendet ex poena*? If it is universally recognized that only people who can distinguish between goodness and evil can be prosecuted, that evil which leads to prosecution must have a moral nature.

We are dealing with facts that can go unnoticed because not always it is necessary to bear in mind those lacks which must be corrected or the cooperation which is demandable to each person.

The most daily legal life doesn't need to determine expressly in each case the relation between a necessity and his legal regulation because in a mature legal order there are laws and rules which correspond automatically to the solution of the lack which is posed: every legal rule is either an specific problem already solved, or a construction which creates its object ruling it. These rules or institutions, since they have a common reason to be, become a common heritage, and they don't belong exclusively to anybody. Things like being an owner of an urban building, a father or a policeman, bear with them *their own* rationality.

Justice is always an universal issue, even when it depends on the will of a “private individual”, because we see how the universality which emerges both from the violation of a right and the necessities of people which can be socially solved or alleviated, makes the subject come out the field of what in principle it belongs exclusively to him, and in a public way which cannot be unknown by society, because he generates duties to society. When someone tells to an imprudent driver to stop driving that way, he doesn't create him any duty, but he remembers it to him. And these duties exist independently from the positive legislation because Morals doesn't stop being Morals because it be necessary or because – for this very reason – be taken into account in the existing Law.

If we go beyond the narrowness which characterises the *mos geometricus*, we see that every person relates to the other people in manners which are different from those contacts Geometry studies: since geometricians only recognizes different bodies when the limits among these bodies are not identical: this way they highlight initially and above

28 Anselm Feuerbach indicated that “Grotius der längst vergessene und unter dem Staub der Bibliotheken modernde Grotius scheint mir daher den wahren Grund des Strafrechts weit richtiger und klärer eingesehen zu haben, wenigstens der Wahrheit um ein Grosses näher gekommen zu seyn, als gar viele unserer neuer und sonst gründlich philosophierende Rechtsgelehrten. ‘In hanc re, sagt er, est aliquid quo ad contractum naturam accedit: quia, sicut qui vendit, etiamsi nihil peculiariter dicat, obligasse se videtur ad ea omnia que venditionis sunt naturalia, ita qui deliquit sua voluntate se obligasse videtur poenae, quia crimen non potest non esse punibile; ita ut qui directe vult peccare, per consequentiam et poenam mereri voluerit’”. D.J. ac P.L. II, c. XX, 2, n. 1. Anselm Feuerbach, *Anti-Hobbes oder über die Grenzen der höchsten Gewalt und das Zwangsrecht der Bürger gegen das Oberherrn*, Erfurt, 1798, 224.

29 Francisco Suárez, *Tractatus de legibus, ac Deo legislatore*, Conimbricæ, 1612, L. V, chap. 3, § 3.

30 “Ablata culpa non habet locum poena, ut poena”. Francisco Suárez (note 31), L. V, chap. 12, § 3.

31 Francisco Suárez (note 31), L. I, chap. 14, § 7, had already established that “*Poenam pendet ex culpa*”.

all the differences among objects which only have in common the spread in space; keep an eye on the typically modern necessity to homogenize the bodies to study. The reality of the *Cum alio scientia* determines that man, in addition to being social and political and having to recognize the others as people, be, more widely considered, an *alteritatio* being who knows together with the other people his social determined issues and, somehow, what he himself is.³²

VI. Reflections

Thomas of Aquinas agrees with Hegel studying man from his every possible determined issues. He doesn't focus his attention in an only moment of human life: sociability, ownerships or equality. From this approach it is obvious that he doesn't want to subsume man under general rules which expresses an only aspect of humanity. On the contrary, he follows the plural itineraries of human beings. This explains why his doctrine cannot be explained in the way we expound the modern ethical theories: he doesn't give a small amount of rules which try to subsume men's conducts in order to be developed axiomatically.

Thomas, when renouncing to the dictatorship which it usually characterises the formation of the specialized concepts, studies man's conducts in a similar way a biologist does it. He takes into account man's natural inclinations, that's why data given by senses enter through the main door in his doctrine. As the last of these natural tendencies is the capacity to reflect, he is in condition to explain the first principles of the practical reason, which come from a *participatio* of man's reason in God. And the *recta ratio*, which results from prudence guaranteed by virtues, does a good part of the task. Everything is under strict restrictions: he doesn't propose a direct intuition into goodness, like Plato. We only have the *similitudo*, the *adaequatio*, or the *convenientia*, in order to know what “it fits us”. Somebody could object that Ethics moves in other level, necessarily imperative. In fact, we Christians have the Decalogue. But Thomas of Aquinas explains that Ethics doesn't use the imperative verbal form which says “Fac hoc!” Do this!, but the present form, which indicates “This is so that you do it” *Hoc est tibi faciendum*.³³

32 Thomas of Aquinas, (note 24), I, q. 79 a. 5 ad 3, writes that “Oportet tamen quod ab uno principio in omnibus derivetur. Et sic illa communicatio hominum in primis intelligibilibus, demonstrat unitatem intellectus separati, quem Plato comparat soli; non autem unitatem intellectus agentis, quem Aristoteles comparat lumine”. Thomas Aquinas (note 28), L. 2 chap. 60 § 6, he indicates that: “Haec autem potentia est intellectus possibilis. Oportet igitur quod puero iam sit coniunctus intellectus possibilis antequam actu intelligat. Non est igitur continuatio intellectus possibilis cum homine per formam intellectam in actu, sed ipse intellectus possibilis inest homini a principio sicut aliquid eius”.

33 “Sed ratio potest aliquid intimare dupliciter. Uno modo absolute; quae quidem intimatio exprimitur per verbum indicativi modi: sicut si aliquis alicui dicat: *Hoc est tibi faciendum*. Aliquando autem ratio intimat aliquid alicui movendum ipsum ad hoc. Et talis intimatio exprimitur per verbum imperativi modi: puta, cum alicui dicitur: *Fac hoc* ... Ratio movet imperando, sit ei ex virtute voluntatis. Unde relinquitur, quod imperare sit actus rationis, praesupponitur actus voluntatis, in cuius virtute ratio movet per imperium ad exercitium actus ... radix voluntatis est voluntas, sicut subjectum; sed sicut causa est ratio”. Thomas of Aquinas, (note 24), I–II, q. 17, art. 1.

These same man's realities, mainly the *similitudo* or love that emerges from similarity, makes man doesn't uproot himself from his environment. Since human being "converts" to each thing he wishes in the name of the similarity or the *adaequatio*.

He has emerged from a specific context and he lives from that environment: he occupies "his" place in the world. The environment, however, doesn't dissolve man. This context can be natural or social, it doesn't matter, because if breathing is natural for man, travelling with security is also appropriate for him. The natural datum, which includes his everyday life, emerges day after day, and hand in hand with its doctrine we may speak about necessary and not necessary, important and not important things: but all of them are good because all of them are ordered for him because of their similarity or *convenientia* with him.

Man is a free being. He is not infinite, but he has a capacity to go into universality. Let us remember that every person is a *homo larvatus*: he is not a potential being, but this expression indicates he is the *sustancia prima* Aristotle speaks about in his Metaphysics. The universal concepts are "second substances" because they embody in a lot of in principle infinite things or entities.

Together with the recognition of the *homo larvatus*, man's conscience is constituted by the interaction with the other people, namely, by the *cum alio scientia*. The analysing and dissolving tendency which characterized modern science finds a final limit in human nature thus understood. Every man represents the totality of all men because he himself is that universality. This comment is not a *posterius* got from the behavioural observation of man. It is a reality without which man would remain unexplained as man.

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