INTERSECTING VISIONS OF JUSTICE:
THE PHILOSOPHICAL TAPESTRY OF HUMAN RIGHTS
AND HUMAN NATURE IN THE THOUGHTS OF MACINTYRE,
ARENDT, NINO, AND HABERMAS

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Abstract: This study explores the philosophical foundations of human rights concerning freedom, equality, and solidarity through the lenses of Iusnaturalism, Iuspositivism, and Ethical Constructivism, with a special focus on Alasdair MacIntyre, Hanna Arendt, Carlos Santiago Nino, and Jürgen Habermas. It examines MacIntyre's revision of Iusnaturalism with an Aristotelian approach, Arendt's methodological Iuspositivism highlighting legal frameworks, Nino's rationality-based human rights theory, and Habermas' emphasis on communicative action and social constructs. This research navigates the dynamic interplay of these theories, offering a multi-dimensional perspective on the evolution, validation, and application of human rights in contemporary society. Significantly, it introduces a dialectical perspective on rationality as a dynamic and evolving human attribute, addressing the constructivist necessities in defining human nature amidst prevailing uncertainties.

Keywords: Human Rights, Ethical Constructivism, Iusnaturalism, Iuspositivism.

INTRODUCTION

Every research purpose comprises two intrinsic factors: an objective one and a subjective one. The objective factor involves the concrete understanding of the reality inherent in the research problem, bridging theory and practice to modify, reshape, or transform its functioning to address the proposed problem. In the case of this research, the purpose revolves around the analytical and critical foundation of human rights from philosophical perspectives such as iusnaturalism, positivism, and ethical constructivism.

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The subjective factor of any research purpose plays a fundamental role as it enables materialization. It refers to the motivation that drives the scientist to engage in the analysis, critique, discovery, innovation, or systematization of the subject under study. In the context of this research, the subjective factor emerged from a debate in a free-thinking forum where a participant defended the slogan "human rights are for the right humans" This slogan could be regarded as reactionary, fostering sexist and xenophobic views. The implicit statement in the saying suggests that some human beings may be considered second-class, inferior, or deviant based on their condition or nature.

While the widely accepted definition of human rights implies their inherence to all human beings without distinction of nationality, place of residence, gender, ethnic origin, color, religion, language, or any other condition, there is still a lack of recognition and protection of fundamental rights for hundreds of millions of people due to structural violence and inequality, which undermines human dignity.

International and regional systems for protecting human rights, as well as internationally organized civil society and national institutions, promote the safeguarding and realization of these rights (Noli *et al.,* 2018). However, beyond the importance of achieving pragmatic commitment to human rights from all collectives, it is imperative to analyze and debate their theoretical foundation. Otherwise, there would be a lack of arguments to confront those who object to their defense and recognition. As will be discussed later, no argument, such as the content of the slogan "human rights are for the right humans" which reduces the scope of human rights, can be defended theoretically.

The slogan "human rights are for the right humans" refers to hate speech that denies the juridical reality implied in the universality of human rights. It has been promoted not only in various forums but also by public officials, as happened in late 2018 with the arrival of Central American migrants in Mexico. Juan Manuel Gastélum, in his capacity as mayor of Tijuana, a city in the state of Baja California and a representative of the Christian political party National Action Party, reproduced the slogan above in a public statement rejecting the presence of Central American migrants (Castro Neira, 2019).

The former Vice President of Brazil, Hamilton Mourão, also reproduced the same slogan in a public declaration with a militaristic and anti-system nature during Jair Bolsonaro's presidential campaign in 2017 (Lissardy, 2018). Likewise, it is often reiterated in various forums and digital media when addressing conflicts, such as occupations of weaker nations by more powerful ones, exoduses of migrants from different countries, controversies involving ethnic, religious, or cultural minorities, and violent conflicts leading to forced displacement or "social cleansing," referring to selective killings of specific social groups.

The slogan "human rights are for the right humans" inherently contains political propaganda that implies the existence of disposable human beings deprived of rights, contributing to discrediting, stigmatizing, and criminalizing vulnerable groups.

While one can establish a defense of human rights based on their importance or history, mere activism in favor of these rights is not enough. If an idea lacks a solid foundation, no matter how noble it may seem, it would be susceptible to being considered mere opinion. If human rights were merely a beautiful idea, someone could attempt to invalidate them in the face of religious and political fundamentalism, xenophobia, racism, aporophobia, inequality, or any doctrine that advocates intolerance. Human rights hold universal juridical value and a sufficiently robust philosophical foundation that prevents them from being reduced to mere opinions. The following section presents the evolution and perspectives of the foundation of human rights.

THE EVOLUTION OF HUMAN RIGHTS

At the end of the 18th century, the French Revolution gave rise to the Declaration of the Rights of Man and of the Citizen, one of the most influential legal documents in the history of law. It was based on the concept of human beings' natural and inalienable rights and declared certain personal and collective rights of French citizens as universal (Arrieta et al., 2018). The declaration consists of seventeen civil and political rights, including freedom, equality before the law, the right to private property, the separation of powers, freedom of conscience, and the presumption of innocence. This declaration established new principles that served as a basis for legitimizing the abolition of the Old Regime based on absolute monarchy.

Other historical declarations of rights based on freedom, such as the English Bill of Rights that banned absolute monarchy in England since the 17th century and the 1926 Geneva Convention on Slavery, form the foundation of the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights (1948) is an international instrument created by representatives from all continents, representing different cultural, traditional, and legal backgrounds. It was adopted by the United Nations General Assembly as a sublime aspiration for all individuals and peoples, without distinction of any kind.

The Declaration encompasses rights and freedoms understood as universal for all human beings. Moreover, the legal developments surrounding human rights have evolved their scope and nature. Currently, there are three generations of human rights whose entitlement extends beyond mere individuality.

The first two generations of human rights are found in the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social, and Cultural Rights (1966). These covenants consecrate and protect both liberty and equality rights. However, on October 8, 2021, the United Nations Human Rights Council, composed of 47 states, adopted, with a broad majority through Resolution A/HRC/48/L.23, the human right to a clean, healthy, and sustainable environment. This right belongs to the third generation of human rights, with a dual nature of individual

and collective entitlement, and is grounded in universal solidarity. It addresses global problems specific to the 20th and early 21st centuries, particularly the degradation of natural ecosystems and their disastrous consequences for people's quality of life (Arrieta-López, 2020; Markhayeva *et al.,* 2023).

While the first generation of human rights was primarily supported by developed Western states, the second and third generations of these rights have been significantly driven by developing countries. During the Cold War, Western powers focused their discourse on human rights on civil and political rights, while the Eastern bloc emphasized economic, social, and cultural rights. This led to intense negotiation sessions that resulted in the approval of the two major covenants.

The tension primarily lay in the economic models of the Cold War era. While civil and political rights require the state to refrain from interfering with individual freedoms, economic, social, and cultural rights necessitate significant state intervention as they require substantial economic investments to ensure their full enjoyment (OHCHR, 2009). Both covenants function harmoniously, with the International Covenant on Economic, Social, and Cultural Rights requiring signatory states to avoid interference with individual liberties (Cortés, 2020).

According to the United Nations (2022a), out of the 193 UN member states, 173 states have ratified and incorporated the International Covenant on Civil and Political Rights (1966) into their domestic legal systems. These are first-generation human rights based on individual liberties, recognizing rights such as the right to life (Art. 6), freedom from torture or cruel, inhuman, or degrading treatment (Art. 7), freedom from slavery or servitude (Art. 8), freedom and personal security (Art. 9), freedom of movement (Art. 12), access to justice (Art. 14), privacy (Art. 16), freedom of thought, conscience, and religion (Art. 18), freedom of opinion and expression (Art. 19), peaceful assembly (Art. 21), association (Art. 22), family and marriage protection (Art. 23), protection of children and nationality (Art. 24), political participation (Art. 25), and equality before the law (Art. 26).

The International Covenant on Economic, Social, and Cultural Rights (1966) has been ratified by 171 states (United Nations, 2022b). These are second-generation human rights based on the principle of equality, ensuring access to services, goods, and economic and social circumstances to improve people's living conditions with dignity. It recognizes rights such as work (Art. 6), fair and favorable working conditions (Art. 7), the right to form and join trade unions and the right to strike (Art. 8), social security (Art. 9), an adequate standard of living, including housing and food (Art. 11), the enjoyment of the highest attainable standard of physical and mental health (Art. 12), education (Art. 13), participation in cultural life and the benefits of scientific progress (Art. 15).

The evolution of human rights toward third-generation rights marks a pivotal shift in international law and ethics, acknowledging the complex interplay of global challenges. These rights, as detailed by Macklem (2015), extend beyond traditional liberties and

equality rights to encompass collective and individual dimensions, such as the human right to peace, sustainable development, a clean and healthy environment, self-determination, data protection, cultural heritage, and access to scientific advancements.

The United Nations Human Rights Council's Resolution A/HRC/48/L.23/Rev.1 in 2021, later endorsed by the UN General Assembly through Resolution AG/76/300 in 2022, signified a historic step by recognizing a healthy environment as a fundamental human right. This development, pivotal in global environmental governance, illustrates the intrinsic link between human welfare and environmental stewardship.

These advances in human rights are not isolated but part of a broader shift toward global solidarity and shared responsibility. They address urgent issues like climate change, data privacy, and equitable scientific access, necessitating collaborative, cross-border solutions (Arrieta-López, 2022).

Significant declarations, such as the Santiago Declaration on the Human Right to Peace (2010, 2017, and 2019), further highlight the dynamic evolution of human rights. These declarations encapsulate humanity's cooperative aspirations, advocating for global peace, a clean and healthy environment, sustainable development, and protection of the common heritage of mankind, crucial for the dignity and survival of future generations.

The acknowledgment of third-generation rights by key UN bodies signifies more than legal expansion; it marks a transformative shift in human rights conception and application. It reflects a dynamic understanding of rights, adapting to the interconnected challenges of the 21st century.

This progressive conception of human rights aligns with the need for an integrated approach to human development and environmental sustainability. It underscores the interconnectedness of human rights protection and planetary stewardship, advocating for a holistic view that considers both individual and collective well-being.

THE NATURAL LAW PERSPECTIVE

The Declaration of the Rights of Man and the Citizen (1789) stipulates that it contains "the natural, inalienable, and sacred rights of man" This document embraces a natural law perspective, which implies that the origin of the rights it contains does not reside in positive law but rather arises from the inherent nature of human beings.

Legislators create the laws commonly known in a broad sense from public institutions. However, when certain rights are referred to as natural, it implies that such rights are pre-political, meaning they precede the creation of any political community. This one is a rationalist type of natural law defended initially by authors such as Hugo Grotius, Samuel Pufendorf, or Baruch Spinoza and later by classical contractualists like John Locke and Jean-Jacques Rousseau (Fernández, 1984), which differs from the teleological medieval natural law, according to which natural rights originate in divine reason.

For example, Augustine of Hippo (1985), in his work "The City of God" expresses his mistrust in human reason as he argues that the order of the cosmos is based on the reason and will of the deity, from which the eternal law derives. On the other hand, Thomas Aquinas (1964) coins the term "natural law" to express that while a man uses his reason, he does so to discover the natural law that is revealed by the deity.

Teleological natural law could serve as a foundation for the slogan "human rights are for right humans" Those deemed "human rights" would be those capable of discovering and following the natural reason revealed by the deity, thus leaving room for twisted or second-class humans, those not aligned with the eternal law. In the medieval legal universe, there was room for nobles, clerics, serfs, slaves, and men prevailing over women.

It is worth mentioning that women had an inferior role to that of men due to the two images that scholasticism sought to imprint on its model of society. The image of Eve, the woman created from Adam's rib, who, by her disobedience, brought about the expulsion from paradise, and the image of Mary, representing her virginity and self-sacrifice as a mother and wife, which implied chastity until marriage and sexual duty as an act of procreation stripped of pleasure.

Teleological natural law could not provide the foundation for the theory of human rights. However, rational natural law represents a break between the deity and natural law, understanding human reason as intrinsic to the nature of individuals, and its use in the human realm serves as the instrument to consider the laws of nature.

In contemporary natural law, the work of Orrego Sánchez (2015) stands out and is considered for the present study. Contemporary natural law has been defended by a wide variety of authors like Villey (1979), who distinguishes between natural law and natural right, explaining that natural law belongs to the ethical realm, and natural right is composed of the relationship between conventional and natural elements. Kalinowsky (1973), through the logic of norms, defends the relationship between morality and law, establishing that the latter consists of an action that must be correct, not an object or thing.

Alasdair MacIntyre's Natural Law

It is worth mentioning the author MacIntyre (2001), who has gained prominence in the field of theories of justice, advocating for his communitarian perspective that seeks to be grounded in moral values and fundamental social entities, in contrast to the proposals of liberalism and socialism in the field of moral philosophy.

This perspective starts from the assumption that the human being is not an independent individual who favors his interests through a social contract and agrees to coexist with others through mainly political and economic agreements. Instead, the communitarian proposal involves the human being with the community from which they come, where culture, values, history, and blood ties constitute the foundation of unity and identity for individuals. Moreover, communitarianism differs from socialism as it

considers the possibility of constructing a social ethos without disregarding tradition and its consequences.

According to MacIntyre, the possibility of correcting that tradition arises after the reception of morality acquired by a person from a specific tradition to which they belong. In other words, the praxis of tradition does not merely consist of repeating the past but continuing it, giving way to accumulated customs and practices in the cooperative mode of valuable goods such as raising children, caring for health, cultivating the land, etc., while adapting to the challenges of the present without losing sight that the practice of virtue is affirmed in history.

Regarding MacIntyre's rationalist natural law, it must be said that it is a proposal endowed with innovative elements. It demands the revitalization of ethics from an Aristotelian and Thomist perspective, contrasting with the rationalist proposals stemming from the Enlightenment and Nietzsche's vitalism framed in his genealogy of morals. MacIntyre proposes a Thomistic natural law as a rule of reason based on tradition as the substrate of morality that individuals require to evolve in their purpose (Orrego Sánchez, 2015).

Though with nuances, generally, natural law authors are based on two theses. First is the dualist concept of law, in which both natural and positive laws coexist. Natural law has universal validity for all peoples and historical periods, consisting of moral norms of justice that exist before positive law. Its universality characterizes it and constitutes an objective unity. In contrast, positive law is determined by its relativity, meaning its validity is delimited by historical time and space, and its mutability, its constantly changing nature due to decisions made by political authorities.

The second thesis is the preponderance of natural law over positive law. Natural law is superior and prevails over any human creation of law. Thus, positive law that contradicts natural law cannot exist.

The rationalist natural law theory supports human rights as natural rights inherent to human nature. Thus, human rights are objective, meaning they are unique and equal for all and preexist the existence of any positive law, including the Universal Declaration of Human Rights, the Declaration of the Rights of Man and the Citizen, and the Bill of Rights.

Human rights are also universal and immutable, implying their validity for all individuals, regardless of time and circumstances. Additionally, human rights have always existed and have never changed over time. Finally, they are superior to any legal manifestation as they possess the character of justice. Therefore, no positive law could contradict them, all rooted in their consubstantiality with reason stemming from human nature.

Although the natural law tradition holds a prominent place in the history of law, it must be said that it faces several unresolved problems. Concerning the characterization of natural law as universal and unique, there are a variety of authors with different proposals,

granting diverse and even contradictory contents to natural law. Natural law has been embraced by authors from all profiles, from monarchists and republicans to liberals and conservatives, each according to their ideological background, granting different scopes that often contradict those of other authors.

In summary, the objective determination of natural rights remains unknown. Another complex and still undetermined issue is their superiority, implying a metaphysical reality that is impossible to demonstrate through empirical methods.

Another problem arises when the current rationalist natural law places reason in the nature of man, as there is still no unified theory on human nature, especially when new paradigms emerge, such as transhumanism, suggesting that individuals could surpass their own limits through cybernetic incorporations and eventually separate human consciousness from the body.

Significant investments are currently aimed at achieving the fusion between humans and machines. Elon Musk, the co-founder of Neuralink, is advancing a project based on the implantation of integrated electronic circuits in the human brain (Guillén, 2020) with the purpose of better understanding the human mind, curing diseases, overcoming disabilities, and enhancing the capabilities of the human brain.

At present, humans face complex paradigms that even have the potential to increase profound human inequalities by giving rise to a group of new, improved, more competitive, and intelligent beings compared to others who cannot access such technologies. If transhumanism becomes a reality, the current human limits would be surpassed, adding new elements to the still-unknown nature of humanity.

THE POSITIVIST PERSPECTIVE

According to this perspective, the only law that exists and can be considered as a product of legal science is the current positive law, which implies that a legal norm involves a technical-scientific process. This presupposition denies the metaphysical existence of natural rights.

However, positivism also presents different perspectives and scopes. On the one hand, ideological positivism denies the possibility of law as an aspiration. It considers law obligatory simply because it exists, and citizens must fully obey its provisions even if they have critical moral reservations towards them. According to this type of positivism, there is no unjust law, and any societal claim against power, including the legal system, even if it becomes repressive, would be illegal.

This version of positivism has incompatibility problems with the Universal Declaration of Human Rights (1948), which limits national legal systems that may exist in the global village. If a valid law in a national State is incompatible with human rights, the declaration allows for the "supreme remedy of rebellion against tyranny and oppression."

On the other hand, there is conceptual positivism studied by Nino (1980) and Hart (2007), which establishes a theory of law in which legal norms are the object of investigation of legal science through legal propositions. According to the conceptual perspective, law should be characterized according to its descriptive properties, which entails that legal propositions must be tested according to empirically verifiable facts.

The conceptual approach distinguishes between the "being" and the "ought to be" in law. There is an existing law, and another could be aspired to. This perspective proposes neutrality to avoid evaluating law from a metaphysical approach devoid of methodological support. Neutrality is a methodological guarantee that allows for debate, controversy, and validation of the obligatory content of norms. This contrasts natural law and its principles of absolute justice that have served as the basis for dictatorial regimes, such as those based on Nazi Germany or segregationist ideologies.

Conceptual positivism acknowledges that law has been influenced in all times and places by social morality and the application of critical moral processes. However, its formulation of neutrality rejects the idea that a legal system must conform to any specific morality to validate its existence.

From the conceptual perspective of positivism, human rights are legal rights resulting from formal criteria that obey methodological processes through which a descriptive norm is validated for all individuals that make up the global village without distinctions. The preceding implies a conception that starts from presuppositions to shape valid legal relationships.

The Methodological Positivist Approach of Hannah Arendt

According to the Universal Declaration of Human Rights (1948), "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality" (Art. 15). Nevertheless, Arendt (2004) provides an empirically grounded insight in her work "The Origins of Totalitarianism" based on her experiences under Hitler's regime.

> The civil wars that arose and unfolded over twenty years of uneasy peace were more bloody and cruel than all preceding wars. They were followed by migrations of groups that, unlike their more fortunate predecessors in religious wars, were not well received anywhere and could not be assimilated anywhere. Once they left their country, they were left without shelter; once they left their state, they became stateless; once they were deprived of their human rights, they lacked rights and became the scum of the Earth (p. 225).

> The Rights of Man, after all, had been defined as "inalienable" because they were supposed to be independent of all governments. Still, it turned out that when human beings lacked their own government and had to resort to their minimal rights, there was no authority to protect them or any institution

that wished to guarantee them. Or when, as in the case of minorities, an international body assumed a non-governmental authority, its failure was evident even before its measures were fully implemented (p. 243).

Arendt (2004) narrates the vicissitudes and sufferings of stateless minorities during the two world wars, who were displaced and expelled from their nation-states, experiencing the absence of a political and legal framework to guarantee the protection of their most basic human rights. The Declaration of the Rights of Man and the Citizen, expressing certain rights as natural and inalienable, is, in any case, inapplicable if nation-states do not recognize and incorporate them into their domestic legal systems.

Therefore, human rights cannot be claimed within a metaphysical right; instead, they must be verified, systematized, and composed in existing legal frameworks that allow for their safeguard against the enormous injustices suffered by the most vulnerable through a methodological process that validates legal norms where processes of rationalization regarding their contents and scopes are evident.

Methodological positivism is a legal stream that argues that the rights and obligations of individuals are created by human will and established in positive laws and norms. According to methodological positivism, Human Rights are rights recognized and protected by the laws of a particular legal system, as opposed to natural or inalienable rights.

In her principal work, "The Origins of Totalitarianism," Arendt analyzes totalitarian regimes and the loss of human rights during those historical periods. Through her analysis, Arendt emphasizes the importance of legal institutions and the rule of law in protecting the fundamental rights of individuals.

Arendt asserts that human rights are based on a legal foundation, as they require a political and legal system that recognizes and protects them. In this sense, her perspective aligns with methodological positivism.

However, it is essential to note that Arendt emphasizes the importance of rights as safeguards against the state's power and institutions. For her, Human Rights are not merely legal conventions but possess a deeper meaning and significance as conditions for individuals' dignified and free existence in the public sphere.

The Philosophical Foundation of Human Rights: Distinction Between Social Morality, Positive Morality, and Rational Morality

The theories that underpin human rights lie within the realm of moral philosophy, which necessitates reasoning about morality and theories of justice. To determine what may or may not be moral, it is imperative to distinguish between social morality and rational morality, for which the studies of Martínez Zorrilla (2014) and Pérez Triviño (2016) are taken into consideration.

Social morality refers to the ideas, opinions, or moral principles shared by most members of a society during a specific period of time. This type of morality is linked to

a specific society's economic, social, and cultural context and is also delimited by the historical context of the moment. Social morality cannot be universal and tends to mutate according to temporal and cultural circumstances.

In ancient Greece, Rome, and the Middle Ages, slavery enjoyed moral acceptance, but since the Renaissance and the Enlightenment, it began to be opposed and is now considered entirely immoral.

Social morality also tends to establish differences within the same period of time. When social morality is found in contemporary phenomena, it is referred to as positive morality (Laporta, 1997). In other words, positive morality is the current social morality. For example, currently, in the United States, access to, possession of, and carrying of lethal weapons by individuals is morally accepted by the majority of Americans, while in Latin America and the European Union, it is morally accepted that only police and military authorities can access and carry such weapons. Topics such as abortion, the death penalty, women's freedom and access to decent work, religious freedom, and secularism enjoy diverse positive moral considerations in different countries and regions.

On the other hand, in rational morality, judgments or moral principles are the product of profound analysis. Rational morality requires the development of a foundation based on critical reflection with valid arguments, i.e., free from cognitive biases and verifiable. For instance, when making a moral judgment about racism, xenophobia, or homophobia, a process of rational morality reveals that these forms of intolerance have always, at all times and in all places, been unjust, as human beings ontologically possess intrinsic and inalienable value regardless of their race, origin, or sexual orientation, even without regard to times or contexts.

Human dignity is ontological because it corresponds to the subject by the mere fact of being human; thus, dignity resides in the being, not in the capacity or actions of the being. Therefore, all human beings without any distinction deserve respect and consideration. Human dignity is founded on its specificity and transcends any metaphysical or abstract prescription, as it encompasses modes of interrelation, treatment, and deference among individuals.

All individuals possess human rights simply by being human. According to ethical constructivism, these are moral rights because they stem from critical reflection, characteristic of rational morality. As can be observed, universal validity can be granted to human rights only within the domain of rational morality.

THE ETHICAL CONSTRUCTIVIST PERSPECTIVE VERSUS MORAL RELATIVISM IN PHILOSOPHY OF LAW

Ethical constructivism provides a theory of morality while dispensing with the considerable metaphysical demands underpinning other human rights foundation approaches. It also addresses the basis for the recognition and scope of human rights through rational discussion under the lens of moral philosophy, thereby avoiding the classic problem of justification of rights presented by various positivist perspectives.

While the theory of moral rights has been defended in the Anglo-Saxon world by prominent authors like John Rawls, Carlos Santiago Nino offers a robust theory on the foundation and scope of human rights as moral rights that, by virtue of their foundation and scope, must be recognized by existing legal systems.

Nino's theory emerges as a reaction to rationalistic natural law and moral relativism. Concerning moral relativism, as discussed earlier with respect to natural law, it must be noted that moral relativism denies the possibility of universal human rights. However, moral relativism itself is ambiguous. Firstly, its distributive approach implies that if societies are isolated, each possesses its own form of morality, thereby rendering it impossible to establish a morality based on shared values. Secondly, its attributive approach suggests that diverse moral systems exist even if societies are close or in confrontation.

The distributive approach has served as a foundation for regimes that pursue moral absolutism, as some moral systems are deemed superior to others. This is because, with different moralities, it is possible to structure or order them axiologically, with one ultimately imposing itself as the sole valid system.

On the other hand, the attributive approach also presents problems. For instance, if nation A engages in violent or repressive social practices that threaten the survival of nation B, moral relativism considers A's practices equally valid as those of B.

Ethical constructivism tackles the notion that what is just or right depends on metaphysical or external components like natural rights inherent in human nature. It also challenges moral relativism, which essentially denies the possibility of a theory of moral objectivity.

The ethical constructivist theory does not belong to legal theories but rather to philosophical ones that serve as the foundation for human rights. Therefore, the moral validity of human rights will depend solely on the consistency and strength of the reasons presented in rational argumentation.

It is necessary, however, to clarify a point about the rationality of ethical constructivist theories and rationalistic natural law. In natural law, human rights are pre-state and superior natural rights, as they are inherent in human nature. In contrast, according to ethical constructivism, human rights are moral rights because they result from reasoning validated by logic and moral rationality.

The Ethical Constructivism of Carlos Santiago Nino

To approach Santiago Nino's constructivist theory were, considered the works of Nino (1989), Martínez Zorrilla (2014), and Alexy (2003).

First and foremost, it is essential to emphasize that, according to Nino's proposal, human rights in all their categories or generations derive from the production of human rationality, with reason being a constitutive component of human beings.

Consequently, the assertion that human rights must be obeyed and safeguarded is based on a moral discourse derived from rational argumentation, understanding the capacity of human beings to engage in moral discourse as an inherent faculty of their humanity.

According to Nino, human beings can reason and establish a moral discourse; however, the discourse must be endowed with autonomy to reach a consensus as a synthesis of the discourse. This implies that the discourse must occur without impositions, obedience to any authority, divine or human, without threats, favors, lies, tricks, or schemes.

Nino proposes a method of moral objectivity, wherein a moral precept will be valid if accepted by individuals who are informed about relevant events, impartial, and rational. However, for a moral precept to be valid, it must meet the following formal circumstances:

a) Publicity. The precept cannot be derived from religious or personal revelations or be esoteric or hidden. It must be endowed with publicity and be known by all individuals.
b) Generality. A moral precept can serve as a norm of behavior if it does not derive from specific or individual situations; therefore, it must apply to generic situations.
c) Supervenience. The generic situations that determine moral precepts must have factual value, i.e., they must be facts that can be verified by all individuals, making all generic situations equally morally relevant.
d) Universality. The moral precept must be applicable to all cases in the same manner, provided they share equivalent generic situations.
e) Ultimate Reasons. Behaviors can only be justified if moral precepts are validated through moral reasons.

While the formal circumstances are essential for the validity of a moral precept, according to Nino, impartiality is also required as a substantive circumstance. This material implication regarding the involved parties in moral discourse means that they must equally consider the interests of all affected parties, and their own or third-party interests cannot outweigh those of others.

Alexy (2003) considers the proposal of impartiality as a substantive requirement as an achievement in Nino's theory, as the formal criteria are insufficient to reach a consensus on moral matters. He also deems it comparable to Rawls' thought experiment, the original position.

According to Nino, the formal and material circumstances described above would guarantee the necessary rationality to justify certain moral precepts, which lead to the following fundamental precepts:

1. The precept of personal autonomy. The State must guarantee and never limit it, as should public and private entities. It concerns the free choice and personal realization according to life plans that individuals have set for

themselves. However, there are limits, as the pursuit of a life plan cannot infringe upon the life plans of others. Nino also believes that the State and the community formed by territorial entities must commit to more than just ensuring free choice because, without necessary conditions, individuals could not realize their life plans.

2. The precept of hedonism. It complements personal autonomy; pleasure and the absence of pain are prima facie morally valuable and legitimate. According to Alexy (2003), Nino incidentally incorporated the hedonistic principle. Ensuring people's well-being should also be an obligation of the State.

3. The preceptof inviolability of the person. It constitutes a double prohibition. First, it prohibits depriving individuals of valued goods specified in the first two principles to benefit other individuals, entities, or metaphysical values, including the people, community, or religion. The second prohibition is of a socio-state nature, as the principle of personal autonomy would have limits in the impairment of others' autonomy. In summary, actions that violate human rights are prohibited.

4. The precept of human dignity. The will and desires of individuals must be highly regarded and safeguarded by law and the State, concerning both benefits and burdens. Individuals should be judged by their voluntary actions and never by particulars like race, creed, gender, social, economic, or cultural status, origin, or any other condition or characteristic. This extends to the State, which must guarantee the human dignity of individuals against any form of discrimination.

The system proposed by Nino implies that moral discourse constitutes the foundation of all morality; therefore, it is a process of rational or critical morality that begins with four formal circumstances: publicity, generality, supervenience, universality, and ultimate reasons, as well as impartiality as a substantive circumstance.

By grounding moral discourse in formal and substantive circumstances, the four moral precepts previously explained are justified: personal autonomy, hedonism, inviolability of the person, and human dignity.

From these moral precepts or principles, human rights stem. These rights would not be natural, i.e., products of a metaphysical, pre-state, and superior reality determined by human nature, but rather moral, i.e., products of a rational and critical moral discourse. Therefore, their justification is derived from the process of critical morality, not originating from a natural law.

The moral precepts then provide an argumentative justification for recognizing and protecting human rights. Interestingly, Nino offers a non-exhaustive list of rights that includes the first and second generation's liberty and equality human rights.

For instance, in his work "Ethics and Human Rights" (1989), Nino agrees with Hart regarding education, which is considered an inalienable right that not only describes conduct but also includes a set of duties. Nino explains, through the principle

of personal autonomy, that education is essential for choosing and materializing life plans that can lead to personal fulfillment. However, he believes that it cannot be any type of education but one that, in addition to critically transmitting conditions of intersubjective morality, offers means for conscious and autonomous choices in life projects without any dogmatic demands.

The process of critical morality allows for paternalistic measures by the State, such as in the case of education. Nino agrees with Bruce Ackerman's critique of Milton Friedman, who opposes state education, essentially opening the possibility for parents to exercise moral tyranny over their children.

Second-generation human rights are essentially equality rights and require State intervention for their realization. Nino establishes that paternalistic measures are entirely pertinent as long as they align with the principle of personal autonomy, meaning they do not undermine the freedom to choose one's way of life and personal fulfillment.

Fundation of Human Rights from Jürgen Habermas' Theory of Communicative Action

Max Weber conceives action as behavior with subjective meaning for the actor or actors involved, guided by conscious intention. He identifies four types of action: "The four types of action that Weber distinguishes are instrumental-rational action, value-rational action, affective action, and traditional action" (Weber, 1978, p. 26). On the other hand, Habermas (1999a) understands action as a process in the social system and is carried out through communication oriented towards achieving discursively determined goals or objectives. Accordingly, the action unfolds in the context of a communicative situation in which free and equal individuals interact and seek to coordinate their actions to achieve a common goal, grounding their relationship in communicative rationality. This process involves the construction of consensus about meaning and action, achieved through dialogue and rational argumentation (Solares, 2015). Regarding this topic, Morales states:

> The instrumental goal of the unilateral cognitive reason of teleological reason is replaced by a rationality that, founded on understanding, makes possible the creation of dialogue where universal principles of respect for cultural coexistence, truthfulness of argumentation, and freedom of practical action of the subject responding to communally recognized norms prevail (Morales, 1999, p. 68).

Now, Habermas (1999a) conceives the types of action differently from how Weber presents them. For him, action can be teleological or strategic, in which individuals act to achieve specific goals rationally and efficiently, based on means and ends instrumentally; normative action, which refers to action based on the validity of norms and values shared by a community to achieve common social goals, with the validity of norms grounded in acceptance by the community and their legitimacy in public discussion and consensus; dramaturgical action, which focuses on the expression of identity and mutual recognition

between individuals as complex beings with unique identities; and finally, communicative action, which Habermas explains as follows:

> Finally, the concept of communicative action refers to the interaction of at least two language and action-capable subjects who (whether by verbal or extraverbal means) establish an interpersonal relationship. The actors seek to understand a situation of action to coordinate their plans of action and thus their actions in mutual agreement. The central concept here, interpretation, refers primarily to the negotiation of situation definitions capable of achieving consensus. In this model of action, language occupies a prominent position, as we will see (Habermas, 1999a, p. 124).

Thus, the theory of communicative action focuses on society and communication. This theory is based on two main premises: first, that communication is a fundamental form of social action, and second, that society is composed of the constant interaction of individuals through communication. Communication is a cooperative activity aimed at mutual understanding among free and equal individuals. It is not simply an exchange of information but a shared quest for truth, justice, and solidarity, which is essential for constructing society and culture. Therefore, Habermas asserts, "Communication is action, in the sense that participants refer to each other's acts and coordinate their actions, while at the same time coordinating with one another by virtue of the understanding achieved about content" (Habermas, 1987, p. 85).

The importance of shared understanding as a necessary condition for coordinated action among participants in Habermas' proposal is emphasized. Thus, communication becomes a form of coordination based on mutual reference to the actions of others, grounded in a shared understanding of the content of the action. In this sense, understanding is a fundamental requirement for coordinating actions, as it allows actors to adjust their actions based on mutual knowledge of the world.

Therefore, communicative action becomes a central process for the construction of shared norms and values, where actors, based on communicative rationality, as Habermas (1994) argues, must be able to argue for and justify their positions and be willing to listen to and consider the positions of others. Habermas emphasizes the need to justify maxims, action strategies, and behavioral rules discursively. He argues that the distinction between autonomous and heteronomous actions is revolutionary regarding general moral consciousness and that justification can only be achieved through moral discourse. These discourses seek the impartial regulation of possible conflicts and must be free from egocentrism or ethnocentrism.

For Habermas, there is a temporal perspective that expects reason and knowledge to contribute to constructing a more just society. In this future, communication between human beings should not be limited by the oppressive power of the State. However, rational citizens should act in society freely and in the political sphere, recognizing the fundamental importance of communication. According to Habermas, this implies a discourse that allows authentic dialogue among individuals (Herrera, *et al*., 2014; Martin Fiorino *et al*., 2022).

Based on this paradigm, Habermas (1974) has developed a critical theory of society that starts from the idea that the norms and values governing social action must result from a democratic and participatory process in which citizens can freely express their opinions and perspectives. In this context, he argues that human rights are a historical and social product that has developed throughout history as societies have become more complex and new forms of oppression and domination have emerged. Thus, human rights stand as a means of protecting the freedom and dignity of human beings in the face of power structures exercised in modern societies.

Habermas distinguishes between two types of human rights: fundamental rights and social rights. Fundamental rights protect the freedom and dignity of individuals from interference by the State and other agents of power. These rights include freedom of expression, freedom of association, the right to privacy, the right to a fair trial, and the right to equality before the law. Habermas considers these rights as the foundation of any democratic and just society. On the other hand, social rights refer to those rights that guarantee individuals' access to the material and cultural conditions that allow them to lead a dignified and fulfilling life. These rights include the right to education, the right to work, the right to housing, and the right to health. Habermas considers these rights as fundamental for realizing equal opportunities and constructing a just and solidary society.

It follows from the above that human rights cannot be solely based on positive law, nor can they be solely based on universal principles and values. They imply a moral and juridical-procedural requirement that specific actions be accepted or rejected, permitted or prohibited by other social actors and that these actors must respect the norms underpinning these rights.

When it is stated that human rights cannot be defined or established solely based on positive law, it refers to the fact that positive law is a human creation and is thus subject to each society's historical, cultural, and political constraints. This implies that human rights must be based on universal and rational ethical principles that transcend each society's cultural and historical particularities and should not be reduced to mere conventions or social agreements. It is not the function of political or economic powers to establish human rights by their will; instead, these powers must protect and guarantee them.

Likewise, when it is stated that human rights cannot be grounded solely on universal principles and values as proposed by natural law, it refers to the fact that principles and values do not have intrinsic existence but are the result of a social construction process that has involved different groups and social sectors in a historical and cultural process of social construction, which is in constant evolution and change, taking into account different perspectives and values, seeking to build a consensus based on universal principles of equality, freedom, and justice.

Therefore, according to Habermas, human rights have a normative and practical foundation based on human dignity. They are a necessary consequence of how human beings interact with each other. In this sense, they are based on the idea that every person is a rights-bearing subject, that is, a human being with the right to be treated with dignity

and respect (Hermosillo, 2013). They constitute an expression of the capacity of human beings to act communicatively and reach agreements on shared norms and values.

Thus, the most important implication of this conception of human rights is that human dignity must be protected at all times and under all circumstances. Human dignity refers to the intrinsic and inalienable value of every human being, regardless of their origin, race, gender, religion, or any other condition. This value is based on the human capacity for reason and communication as essential elements. Human dignity is the basis of human rights, considering that the primary purpose of human rights is to protect and promote the dignity of all individuals, as it is a value shared by all cultures and societies and recognized by all individuals as inherently valuable. This means that human rights must be respected in any situation, regardless of the political, social, or economic situation. Furthermore, human rights are universal and apply to all individuals, regardless of race, gender, sexual orientation, or any other characteristic.

It follows that human rights must be grounded in a consensus resulting from a discursive process that allows all individuals to participate in the discussion about their scope and meaning. This procedure for consensus-building based on dignity and freedom inherent to every human being has essential implications for the validity and legitimacy of human rights.

Habermas' discursive procedure refers to an approach to political decision-making based on the idea that the validity and legitimacy of norms and rights depend on a process of rational and critical argumentation in which citizens and political actors engage in free and open dialogue to reach a consensus on what is just and proper. This procedure is based on the idea that democracy should be understood as a communicative process in which citizens can express their interests, needs, and values in an inclusive and participatory public space.

In this context, the public sphere is a space where citizens can freely discuss matters of public interest and reach consensus through dialogue and rational argumentation. In this space, citizens can express their opinions and arguments freely and openly and have the possibility to influence political decision-making. This is only possible in a democratic society where citizens can act autonomously and freely without interference from authoritarian or coercive power structures. This means citizens have the right to participate in the political process and decision-making (Habermas, 2020).

In this regard, the discursive procedure is crucial for defining human rights and grounding their validity and legitimacy, as they must be formulated and evaluated through a deliberation process that allows for citizens' participation and their commitment to democratic values. Therefore, they are universal because they can be demanded by any human being, regardless of origin, gender, race, or culture.

In this deliberative process, citizenship must work to identify the rights essential to guarantee a just and equitable society (Habermas, 1999b). This implies a commitment to equality and justice and the willingness to reach a consensus on the fundamental rights that society must protect. Once these rights have been identified, it is the responsibility of

the government and other social institutions to ensure that they are protected and respected in society. However, citizenship also has a vital role in monitoring and monitoring the implementation of human rights and fighting against any violations.

Based on the above, both Santiago Nino and Jürgen Habermas share the idea that human rights are fundamental rights that must be recognized for all individuals simply by being human, and that these rights are closely linked to human dignity and social justice. As we have noted, starting from the fundamental understanding of human rights, Habermas' reflection focuses on the concept of subjective rights that establish the limits within which an individual is authorized to assert their will and define equal freedoms of action for all individuals, whether considered as rights bearers or legal persons. In other words, Habermas considers subjective rights as fundamental in promoting equal opportunities and individual freedom and a necessary component for any legitimate and just social system (Habermas, 1998).

From the above, it can be understood that while Nino emphasizes the importance of the universality of human rights, Habermas highlights the role of communication and deliberation in defining human rights in a democratic society. For Habermas, human rights are a social construction that arises from citizen participation in dialogue and deliberation. Therefore, the Habermasian consensus should not be confused with that of Nino; as for Habermas, human rights must be grounded in rational consensus, that is, a consensus based on public discussion and the exchange of rational arguments constructed publicly and deliberatively.

CONCLUSIONS

Alasdair MacIntyre's perspective on Iusnaturalism brings a novel dimension to the classical dualist thesis. By integrating an Aristotelian monist approach, MacIntyre reinterprets natural law, aligning it more closely with practical reasoning and virtue ethics. This approach challenges the conventional narrative, presenting a unified, rather than dualistic, understanding of natural law. He posits that human rights and ethical values are not merely abstract concepts but are deeply rooted in social practices and community life.

However, MacIntyre's revision does not fully resolve the inherent complexities within Iusnaturalism. The varied interpretations of natural law by different authors, ranging from monarchists to liberals, lead to a diverse and often contradictory understanding of natural rights. This pluralism underscores a fundamental issue within Iusnaturalism: the lack of a universally agreed-upon set of natural rights. MacIntyre's critique opens the dialogue for a deeper exploration of these disparate views within the context of a unified theory.

A critical point in MacIntyre's analysis is the question of the superiority and empirical validation of natural law. He highlights the metaphysical challenge faced by Iusnaturalism: the difficulty in empirically demonstrating the existence of a higher, natural order of law. This underscores the ongoing debate about the metaphysical basis of natural rights and their relevance in contemporary legal and ethical discussions.

Hannah Arendt's perspective on Methodological Iuspositivism offers a unique lens to understand human rights. She emphasizes that human rights are a product of juridical processes and formal criteria that universally apply to all individuals, based on the concept of human dignity. Arendt's approach underscores the importance of legal frameworks and methodologies in defining and safeguarding human rights, moving away from metaphysical justifications to a more grounded, procedural understanding.

Arendt's narrative on the plight of stateless minorities during the world wars highlights the limitations of natural law in protecting human rights. She illustrates how the absence of national legal frameworks led to the erosion of basic human rights for these groups. This historical context underlines the necessity of embedding human rights within national legal systems, thereby making the protection of these rights more tangible and enforceable.

Her assertion that human rights cannot rely on metaphysical claims but must be grounded in existing legal systems is pivotal. Arendt advocates for a methodological process that validates human rights through rationalization, systematization, and legal codification. This approach ensures that human rights are not abstract ideals but are effectively integrated into the legal fabric of societies, providing a practical safeguard against injustices.

Habermas' theory of communicative action focuses on society and communication, asserting that communication is a fundamental form of social action. It is based on the idea that communication seeks to achieve mutual understanding among free and equal individuals. It is not merely about exchanging information but seeking truth, justice, and solidarity. Communication becomes a central process for constructing shared norms and values grounded in communicative rationality.

Habermas argues that human rights result from a democratic and participatory process in which citizens can freely express their opinions and perspectives. He distinguishes between fundamental rights, which protect the freedom and dignity of individuals against the power of the State, and social rights, which guarantee access to material and cultural conditions for a dignified life. Human rights are founded on human dignity and must be protected at all times and in all circumstances.

Methodologically, Habermas proposes a discursive procedure for consensus-building in which citizens engage in free and open dialogue to reach an agreement on what is just and proper. This democratic approach is based on the notion that the validity and legitimacy of norms and rights depend on rational and critical argumentation.

In contrast to Nino, Habermas argues that intersubjective consensus is insufficient to adequately ground human rights; their foundation requires public and deliberative argumentation that discusses and evaluates the reasons for and against their recognition.

For Habermas, there is a need to ground human rights in rational consensus based on public discussion and the exchange of rational arguments. This approach is more suitable for substantiating human rights as it relies on reason rather than mere social agreement.

Habermas asserts that human beings are communicative beings whose capacity for language and action develops through social interactions. In his theory of moral and cognitive development, he argues that acquiring knowledge and ethical values occurs through communication with others and participation in social and cultural structures.

In this regard, Habermas emphasizes that the nature of human beings is not predetermined but shaped and constructed through social relationships and material conditions of the environment. Social structures, institutions, norms, and systems of values influence how individuals relate to each other and construct themselves as human beings.

It is essential to highlight that Habermas also emphasizes the importance of autonomy and reflective capacity for individuals to question and transform existing social conditions. While material and social circumstances may influence the formation of human nature, Habermas maintains that individuals can critically reflect on these circumstances and seek changes that enable greater emancipation and human development.

It is considered that Carlos Santiago Nino's foundation, based on critical rationality, solidly establishes the preponderance regarding the recognition and safeguarding of human rights.

Although Nino focuses on civil and political rights, he also successfully substantiates economic, social, and cultural rights. However, Nino's early death prevented us from knowing the evolution of his theory. Therefore, we will forever have an initial Nino who did not have the opportunity to encounter the new discussions, perspectives, and advancements regarding human dignity in the first two decades of the 21st century, the last moral precept proposed by Nino.

We can confidently affirm that Nino's theory also substantiates third-generation human rights, with its particular characteristic of the dual nature of entitlement. This is because the precept of human dignity has both an individual scope and a social one, leading to the universal ascription of human dignity to all individuals.

It is necessary to emphasize that while Nino's theory substantiates human rights, it does not do so from a natural law perspective. In other words, Nino's theory is not of an original nature but rather derived, as it is not implicitly rooted in a metaphysical, pre-state, and superior reality determined by human nature. Instead, it is grounded in rational discourse. It comprises a critical moral analysis from which human rights are derived. Nonetheless, Nino considers rationality an inherent part of human nature; for Nino, rationality is inherent in human beings.

However, the nature of the human being remains undefined, as there is no total or unified theory regarding human nature, especially considering that different disciplines in the social and natural sciences propose various hypotheses and theories about human nature.

Thus, to address what the human being is and can be regarding their moral rights, social constructivism is required in Nino's ethical constructivism, that allows for a better explanation of the limits and scope of human rationality.

We believe that rationality does not reside in an unfathomable human nature but rather in a dialectical process that allows human beings to construct and evolve. In this sense, human beings do not possess a predetermined nature since they are the product of a constant social construction that enables them to interact with reality and life's challenges.

As a social being, the human does not possess a collective identity. Instead, their identity and consciousness emerge from an actual social construct resulting from their societal life. The subjectivity of the human being is built as they interact with different social entities such as the family, the classroom, the workplace, sports activities, etc. Additionally, culture and positive moral models within a specific community play an important role.

When we assert that human rights in all their categories or generations derive from the production of human rationality, we consider that human reason is constantly constructed within the realm of perfectibility. In this sense, the human being is not and will not be a finished being from which a complete or determined nature can be derived. Instead, the human being and humanity are in a constant construction process, allowing for evolution and adaptation to future challenges.

Consequently, human beings and humanity owe themselves a moral duty of reflection so that moral discourse can be improved. Moreover, individuals must be willing to modify their moral norms if other better-founded perspectives are demonstrated.

Therefore, we believe that Nino's argumentative process, which substantiates human rights, arises from four formal circumstances and one material circumstance, from which the four moral precepts that derive into human rights emerge. This process is determined by a rational procedure developed by imperfect individuals capable of constructing and improving themselves.

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