

## TEACHING LAW AND SEARCHING FOR TRUTH IN IDEOLOGICAL TIMES

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### INTRODUCTION

One of the biggest issues that concern Christian-oriented universities today is how to communicate, pursue, discover or rediscover the truth. How to speak about truth; what is truth and what is false. At a time when certain “social codes” of human communication have begun to prevail, the truth has come to be seen, in certain environments, as an “oppression.” What was formerly nothing more than a discomfort (to speak truthfully and about the truth of things) or, at best, a way of liberation –because the knowledge of what is true freed us from error–with truth today some people think that one can “discriminate” and “mistreat,” play the “power” and “privilege” card, or “maintain a system of oppression.” This is a concern, of course, when a university takes seriously the goal of seeking and communicating the truth and not simply leaving it as a mere ornament or symbolic addition in its shield.<sup>1</sup> As John Paul II said it once, “it is the honor and responsibility of a Catholic University to consecrate itself without reserve to *the cause of truth*.”<sup>2</sup>

It can be said that truth has always been a difficult question. The concept of “truth” is also the subject of some difficulties. This point will

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<sup>1</sup> How much commitment exists in a university for “the truth” in the strict sense of the term is a difficult question to determine. However, in some universities the symbolism of their coats of arms (which explicitly use the expression “truth”) seems to contrast with their Mission Statements (entirely absent,) as is the case, for example, with the universities of Yale and Harvard. The former has in its shield the inscription “Lux et Veritas” (Light and Truth,) but its Mission Statement seems to disregard any reference to it. The latter, although has in its shield the word “veritas,” states that its mission “is to educate the citizens and citizen-leaders for our society. We do this through our commitment to the transformative power of a liberal arts and sciences education.”

<sup>2</sup> JOHN PAUL II, EX CORDE ECCLESIAE 4 (1990).

not be discussed here, nor the problematic issue about how much truth can be expounded in the social sciences and in law and how much there is of opinion, power or politics. Instead, what is proposed as a starting point is the importance of truth as an essential aspect of human life and without which we would have serious difficulties: we could lie or lie to ourselves and to each other, and nothing would happen. But we know that is not reasonable nor desirable. It is the truth, if it is preferred, as a value, or as John Finnis would say, as something “referring to a general form of good that can be participated in or realized in indefinitely many ways on indefinitely many occasions”.<sup>3</sup> In this respect, truth –the search for truth– is a human inclination from which we all hope to participate.

A more detailed description of this problem, of the difficulties of truth in the academic world of our days, and of the most appropriate symbols and concepts to deal with it, will be given in the following pages. Likewise, an indication will be made about the possible ways of restoring teaching in a time of crisis, and the price we would have to pay –whether as professors or students– if we hope to speak *the* truth, or *about* the truth again.

## I. WHEN THE TRUTH BECOMES CONTROVERSIAL

Those of us who are dedicated to teaching at law schools, and especially in those subjects related to political life, human rights, or the moral foundations of the law, know how difficult has become to speak to a group of students about the right to life, or the Aristotelian distinctions between the good man and the good citizen, or to carry out a critical evaluation of the arguments used in a judicial decision on the meaning of “marriage.” A couple of years ago a Harvard law professor complained about how difficult it has become to give a class about rape laws.<sup>4</sup> She

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<sup>3</sup> JOHN FINNIS, *NATURAL LAW & NATURAL RIGHTS*, 310 (Oxford University Press, 2nd ed. 2011).

<sup>4</sup> See Jeannie Suk Gersen, *The Trouble with Teaching Rape Law*, *THE NEW YORKER* (Dec. 15, 2014), <https://www.newyorker.com/news/news-desk/trouble-teaching-rape-law>. (“[I]ndividual students often ask teachers not to include the law of rape on exams for fear that the material would cause them to perform less well. One teacher I know was recently asked by a student not to use the word ‘violate’ in class—as in ‘Does this conduct violate the law?’—because the word was triggering. Some students have even suggested that rape law should not be taught because of its potential to cause distress”).

even cited an example “where a student had asked a colleague not to use the word ‘violate’ – as in ‘does this conduct violate the law’– because the term might trigger distress.” Another law professor, also from Harvard, added to this: “I (have to) tell my students the entire course is one painful, horrifying episode of human misery after the other (.). It is impossible to know which part of the class might trigger trauma. Is it going to be divorce? Is it going to be a child born without an intact nervous system? Is it going to be getting falsely accused of a crime? Is it going to be having a war break out in your neighborhood?”<sup>5</sup>

One would like to think that these are isolated prejudices towards certain experiences of life, especially those that have caused us a great amount of pain. Or toward specific sectors of knowledge (such as politics, law or philosophy) or even towards the “religious,” as when a student from Oklahoma Wesleyan University complained a few years ago of being victimized by a sermon he heard in the university chapel, centered on 1 Corinthians 13.<sup>6</sup> However, it is an attitude that goes further, to any field or to anything in front of which someone “feels” threatened, or that does not fit the way he or she sees the world; and it is also an attitude that keeps growing. According to the Foundation for Individual Rights in Education, 2016 saw a record number of students wanting to keep what they considered “controversial speakers” from being heard on campus,<sup>7</sup> something that, as we all know, has not been exclusive to colleges and universities. A very recent example, which occurred in a middle school in California, speaks of a teacher who was fired (or “forced to retire”) for displaying the Confederate flag in a class he was about to give about the

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<sup>5</sup> See generally Ruth Sherlock, *How Political Correctness Rules in America’s Student ‘Safe Spaces’*, THE TELEGRAPH (Nov. 28, 2015), <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/12022041/How-political-correctness-rules-in-Americas-student-safe-spaces.html>.

<sup>6</sup> See e.g., Todd Starnes, *University President Rebukes ‘Self-Absorbed, Narcissistic’ Students*, FOX NEWS (Nov. 30, 2015), <http://www.foxnews.com/opinion/2015/11/30/university-president-rebukes-self-absorbed-narcissistic-students.html> (President of University talking about love).

<sup>7</sup> See generally Alex Morey, *Campus Disinvitations Set Record in 2016*, FIRE: FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION, (Dec. 20, 2016), <https://www.thefire.org/campus-disinvitations-set-record-in-2016/>.

civil war. It is worth mentioning that a Union flag was also being displayed.<sup>8</sup>

The phenomenon described can be easily multiplied, reaching not only the United States but globally, as a plague that has been inserted in the cultural language of our societies, which seeks not only to silence the truth, but also to persecute and punish those –professors and students alike– who do not say certain things or say things that are not shared by the thought police.<sup>9</sup> A handful of cases proves this: very recently, a professor in Spain was dismissed as head of studies at her institute for denouncing the flaws of gender ideology and publishing a book on the matter;<sup>10</sup> in Canada, a psychology professor has been threatened with imprisonment for refusing to use “transgender pronouns” and defending his right to “stick to the English language”;<sup>11</sup> in England, the renowned biochemist Tim Hunt, winner of the Nobel Prize, was vilified by a misinterpretation of some humorous and partly unfortunate comments he made at a conference, until he finally had to resign from his honorary post at University College London and from several other science boards and committees;<sup>12</sup> in Scotland, a university denied affiliation to a group of students because they were in favor of defending the rights of the

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<sup>8</sup> Dave Huber, *Teacher Displays Confederate Flag During Civil War Lesson, Is Then Forced To Retire*, THE COLLEGE FIX, Jan. 28, 2017, <http://www.thecollegefix.com/post/30937/>.

<sup>9</sup> See generally Regis Nicoll, *The Iron-Fisted Tyranny of Political Correctness*, CRISIS MAGAZINE (Mar. 10, 2017), <http://www.crisismagazine.com/2017/iron-fisted-tyranny-political-correctness>.

<sup>10</sup> See e.g., Alicia Rubio, *Cesada Como Jefe De Estudios En Su Instituto Por Denunciar La Ideología De Género*, RELIGIÓN EN LIBERTAD (May 1, 2017), <http://www.religionenlibertad.com/alicia-rubio-cesada-como-jefe-estudios-instituto-por-56516.htm>; see also Cesan A Alicia Rubio, *Como Jefa De Estudios Por Publicar Un Libro*, LA GACETA (Apr. 20, 2017), <http://gaceta.es/noticias/gran-escandalo-cesan-alicia-rubio-jefa-estudios-lucha-ideologia-genero-28042017-0905>.

<sup>11</sup> See e.g., WATCH: *Fire Me, Fine Me, Jail Me. I Won't Back Down to Speech Of Police, Say U of T Prof*, LIFE SITE NEWS, (Oct. 28, 2016) (Can.), <https://www.lifesitenews.com/news/watch-fire-me-fine-me-jail-me-i-wont-back-down-to-speech-police-says-u-of>; see also Jordan Peterson *Exposes The Creeping Dictatorship Of Gender-Rights Movement*, LIFE SITE NEWS, (Nov. 4, 2016), <https://www.lifesitenews.com/opinion/jordan-peterson-exposes-the-creeping-dictatorship-of-gender-rights-movement>.

<sup>12</sup> Brendan O'Neill, *The Illiberal Persecution of Tim Hunt: An Old Guy Tells A Bad Joke And Academia Descends Into A Frenzy*, REASON: FREE MINDS AND FREE MARKETS (June, 13, 2015), <http://reason.com/archives/2015/06/13/the-illiberal-persecution-of-tim-hunt>.

unborn;<sup>13</sup> in Belgium, a professor of philosophy of law was suspended from the university for publishing a paper against abortion;<sup>14</sup> in Argentina, another law professor was fiercely attacked by the media for defending traditional marriage<sup>15</sup>. And the list can go on.

The question of what has caused this phenomenon is mandatory. Have there been new scientific investigations that have nullified or invalidated what teachers taught about history, good governance or marriage? Or about the “proper use” of language? Have new scientific data on the origin and development of human life appeared? At the beginning of 2017, an article appeared in *The Atlantic* with the title “How Ultrasound Pushed the Idea that a Fetus is a Person.” The author, a *doctoral* candidate in comparative literature at Yale, said that ultrasound technology has been used to make us believe that a heart is beating at six weeks. This is a very good example to expose what has happened, by the absurd. *The Atlantic* received letters from medical experts where they exposed the author's ignorance in basic embryology, which forced them to change the title of the article and write a clarifying note.<sup>16</sup> However, with astonishing calm, the author insisted on her central narrative that ultrasound imagery is a sort of perversion espoused by a subversive pro-life agenda.<sup>17</sup>

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<sup>13</sup> See *University Bans Students from Forming Pro-Life Group*, CITIZENGO (Apr. 20, 2016) <http://citizengo.org/en/lf/34191-students-banned-forming-pro-life-group>; see also: *Herald View: The Right to Free Speech at University*, THE HERALD (Apr. 10, 2016) [http://www.heraldscotland.com/opinion/14417981.Herald\\_View\\_\\_The\\_right\\_to\\_free\\_speech\\_at\\_university/#comments-anchor](http://www.heraldscotland.com/opinion/14417981.Herald_View__The_right_to_free_speech_at_university/#comments-anchor).

<sup>14</sup> Carly Hoilman, *Pro-Life Professor Speaks Out After Being Banned From Catholic University*, CBN News: The Christian Perspective (April 2, 2017), <http://www1.cbn.com/cbnnews/us/2017/april/pro-life-professor-speaks-out-after-being-banned-from-catholic-university>.

<sup>15</sup> *Un catedrático argentino sufre una furibunda campaña por defender el matrimonio natural*, Actual, July 9, 2016 (S <http://www.actuall.com/familia/linchan-a-un-profesor-de-derecho-en-tucuman-por-criticar-el-matrimonio-igualitario/>); See *Ampliaron el planteo contra un docente*, La Gaceta, (Aug. 9, 2016), <http://www.lagaceta.com.ar/nota/693666/politica/ampliaron-planteo-contra-docente.html>.

<sup>16</sup> See e.g., Moira Weigel, *How Ultrasound Became Political*, THE ATLANTIC (Jan. 24, 2017), <https://www.theatlantic.com/health/archive/2017/01/ultrasound-woman-pregnancy/514109/>.

<sup>17</sup> See Alexandra Desantis, *Why the Left Feels Ultrasound Technology*, NATIONAL REVIEW (Jan. 24, 2017), <https://www.nationalreview.com/2017/01/atlantic-ultrasound-abortion-article-makes-bizarre-attack-science/>.

## II. EXPLOITING “FEELINGS” AND “DESIRES”: THE TIMES OF THE EGO

We live, certainly, in ideological times. Living in times dominated by ideologies has the peculiarity of being existentially difficult. By this is meant, at least, two things: First, that these are not times characterized merely by intellectual discussions. A few years ago, one could disagree, dissent, argue, even sourly, with other colleagues or students, and nothing serious would happen, nothing humanly discordant would follow. We would leave the classroom after the discussion and go together for coffee, and the world would run its course normally. The discussion of ideas was the norm. Today this is not possible. As much as someone would like to prove to the author of *The Atlantic* that there is scientifically something much more significant in ultrasounds than a political struggle, or something less scientifically sophisticated –like the tears of joy of a mother who watches her baby forming in her belly–, she will persist in her purpose to say that it is something perverse, because her motivation has already been conditioned by a dogma previously assumed. That is why ideological times are times in which rationality –or *reasons for* something– become secondary, i.e. irrelevant. Something more about this will be discussed later.

Second, ideologies seek to impose themselves without conditions in all and against all. Ideologies, in fact, are characterized not only by the transformation of one part of reality into something else –what Eric Voegelin called the “Second Reality”<sup>18</sup>– but also by requiring a blind obedience to what that second reality demands. The invention of fictitious symbols for the purpose of creating a new understanding of, for example, human sexuality, has led an entire generation to be educated on the basis of falsely acquired or, at best, highly disputed premises which, however, are maintained as an immovable paradigm of a new rationality. There is perhaps no more problematic field, scientifically speaking, that less consensus and more questions result from, than the one referred to the theses defended by what is known as gender theory.<sup>19</sup> And yet,

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<sup>18</sup> ERIC VOEGELIN, *SCIENCE, POLITICS AND GNOSTICISM*, 35 (Isi Books, 2005).

<sup>19</sup> See e.g., Margaret H. McCarthy, *Gender Ideology and the Humanum*, COMMUNIO: INTERNATIONAL CATHOLIC REVIEW 9 (Summer 2016).

however, there is no field in which public policies are being imposed more ferociously, persecuting those who question them, or penalizing freedom of expression when confronted with their theses and conclusions. The idea that ideologies are existentially difficult has to do with the fact that we are forced to be silent at some point, as well as with the very loss of the possibility of entering the discussion. But even more, obviously, has to do with the real damage that those policies cause in the lives of so many people.

Once the Second Reality is created, says Voegelin, ideology demands silence as a condition. The prohibition of questioning is a constant of all ideologies precisely because the Second Reality presents deficiencies and loose parts; the ideologist knows this and, therefore, demands silence.<sup>20</sup> The prohibition of questioning is the symbolic form by which Voegelin explains a phenomenon that has many variants and gradations, ranging from imposition by the institutionalized force of the State –for example, through laws that penalize certain speeches– to mere propaganda, the pressure of the media or the use of insults. It is what we see with the popularly known “political correctness,” which demands codes of correct language and narratives that we are all obliged to follow, regardless of how false they are, because, otherwise, we will suffer reprisals. The pressure, especially of the media, is so strong on certain issues, that some have been forced to fall into these dark waters of political correctness. More and more universities, even some that embrace a Christian inspiration, have had to internally revise their teaching methods, or have had to create new language codes for their teachers to avoid certain subjects in their classes, or established guidelines to mention them in certain ways.

The examples given so far of the difficulties we have in pursuing, seeking and communicating the truth are only a sample of what really constitutes a great variety of subjects submitted today to the scrutiny of political correctness. Still, it is quite possible that the issue will be aggravated if we look in our own backyard and realize that we have

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<sup>20</sup> *Supra* note 18, at 22, “[W]e are confronted here with persons who know that, and why, their opinions cannot stand up under critical analysis and who therefore make the prohibition of the examination of their premises part of their dogma”.

unwittingly been replicating “second realities” and “prohibitions” in our areas of legal expertise, or in the subjects we teach, or perhaps we would be astonished to see that we are reproducing their deceptions. We may now realize that some of them were just parts of the ideological phenomenon we now recognize. Or that we, too, unconsciously, were a sort of elements of a disturbing game of what C. S. Lewis called, in *The Abolition of Man*, the “Conditioners,” a group of powerful people who decided at some point to control men, knowing “how to produce conscience” and deciding “what kind of conscience they will produce.”<sup>21</sup>

In any case, it is not difficult for a legal scholar to recognize the strength it has had, for example, in constitutional law, the rhetorical invention of the idea of a “living constitution” and its accompanying myth of “judicial supremacy,” a doctrine that has been installed in the heart of several generations of lawyers, through which supreme courts around the world have modified, to their liking, the breadth and depth of our will as a political society, in fundamental aspects of our coexistence. Not to mention the so-called “mysterious clause” expressed in *Planned Parenthood v. Casey*,<sup>22</sup> extended not only to the law of the United States but to that of many other countries, by which so many evils or institutions contrary to the natural order have been legalized. That clause, so vaporous (foggy) and obscure, and so open, which says so much and so little at the same time –described by William Bennett as “an open-ended validation of subjectivism”<sup>23</sup>– the Colombian Constitutional Court has used explicitly –together with the living constitution– to promote changes in family law and marriage, drug-use, euthanasia, abortion, sex-change surgeries, and so on. In 2011, it has even opened the possibility that, in the future, polyandry and polygamy can be considered as rights protected by the constitution.<sup>24</sup>

These and other examples of second realities embedded in the language of the law or in our legal practice are indications of, as it was

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<sup>21</sup> C. S. Lewis, *The Abolition of Man* (HarperCollins, 2001).

<sup>22</sup> *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”

<sup>23</sup> Williams J. Bennett et al., *The End of Democracy? A Discussion Continued*, FIRST THINGS, (Jan. 1997).

<sup>24</sup> See e.g., Colombian Constitutional Court, “Sentencia C-577 de 2011 (G. Mendoza).”



previously mentioned, what C. S. Lewis calls the production of new conscience by the "Conditioners." These partially deformed realities are like pieces of a puzzle that we now begin to look at it, as a whole, with its perverse image, with its title of "a new order for a new world," with its promises of "a new man." No matter what we call it –political correctness, cultural Marxism, or, as Robert George once suggested, secularist orthodoxy<sup>25</sup>– the truth of the matter is that we are facing an ideology whose purpose seems to destroy the values that have inspired the Judeo-Christian tradition and the modes of the noetic experience of classical Western philosophy. This is not, of course, a new phenomenon in history. What characterizes all ideologies, including this one, is its struggle against truth and its replacement by something different. The novelty is the formidable expansion of this ideological way of thinking in the torrent of our society and in our culture, its totalizing character, its astounding attack on "common sense" and its struggle against the moral and anthropological goods that underpin the Judeo-Christian civilization.<sup>26</sup>

The mysterious clause of *Planned Parenthood* reflects very well the moral state of that reality that surrounds us. The right to an exalted individualism has granted a kind of "permanent" license in the collective subconscious, in such a way that each one believes that he or she is the owner and holder of a right to claim what he or she wants: his or her concept, as arbitrary as it may sound, of human life and human existence, or the meaning of the universe, and "the right" to live accordingly. Perhaps this explains in part the expansion in recent years of what are called "trigger warnings." In its exaltation of the ego, the dominant ideology is characterized above all by exploiting the "emotions" and "feelings," the "desires" of each. Nobody is better than Cardinal

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<sup>25</sup> See generally ROBERT P. GEORGE, *THE CLASH OF ORTHODOXIES: LAW, RELIGION AND MORALITY IN CRISIS*, (ISI Books, 2001).

<sup>26</sup> At other times, attacks on the truth could be identified with some ease. One could, for example, know about the existence of sects or specific countries governed by ideologies. The former Soviet Union, or the "axis powers," or any other gnostic group of the past. Today, however, the phenomenon does not have much to do with concrete "spaces" or "borders," but with human attitudes that have mingled among us.

Ratzinger in explaining this phenomenon, on the Mass “Pro Eligendo Romano Pontifice” in April of 2005.

We are in the presence, he said, of a “dictatorship of relativism that does not recognize anything as definitive and whose ultimate goal consists solely of one's own ego and desires.”<sup>27</sup> What differentiates this ideology from others is that it is installed in the very heart of man, empowering him to *feel* he can have and get what he wants. Whether it is hard evidence like the one provided by ultrasound, or the recounting of historical documents that are read accurately in the classroom, or the hard and clear text of a law stating, for example, that marriage is composed of the union between a man and a woman; anything that does not fit into the narrative and feelings of the *Übermensch*, of a person “locked up” in itself, becomes the target of their attacks and threats.

### III. THE RIGHT “OF,” AND THE RIGHT “TO” TRUTH

What can be done? Well, what should always be done when ideologies invade us. Recognize them, and fight them back. Or, to put it simpler, we cannot give up the search for truth, nor the right we have to express it. Despite the crudeness of the events that are being presented day by day, some have begun to look elsewhere. In good faith, one could understand the need for changes in the “form” of expressing the truth, that is, to do so in an extremely more respectful and charitable way. In *Ex Corde Ecclesiae*, Pope John Paul II stated that the source of a Catholic University “springs from a common dedication to the truth, a common vision of the dignity of the human person and, ultimately, the person and message of Christ which gives the Institution its distinctive character. As a result of this inspiration, the community is animated by a spirit of

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<sup>27</sup> Cardinal Joseph Ratzinger, Homily at the Pro Eligendo Romano Pontifice Mass (Apr. 18, 2005), “We, however, have a different goal: The Son of God, the true man. He is the measure of true humanism. An “adult” faith is not a faith that follows the trends of fashion and the latest novelty; a mature adult faith is deeply rooted in friendship with Christ. It is this friendship that opens us up to all that is good and gives us a criterion by which to distinguish the true from the false, and deceit from truth.”

freedom and charity; it is characterized by mutual respect, sincere dialogue, and protection of the rights of individuals.”<sup>28</sup>

What is not understood, however, is that in addition to the *form*, some have also sacrificed the *substance*. In that spirit of *Ex Corde Ecclesiae*, the Pope also remembered: “If need be, a Catholic University must have the courage to speak uncomfortable truths which do not please public opinion, but which are necessary to safeguard the authentic good of society.”<sup>29</sup>

Seeking the truth and expressing it must begin first with the raw recognition of the values at stake and the nature of the problem we face. About the first thing, it is not necessary to insist more: they are the goods and values that have inspired and flourished with the Judeo-Christian civilization. With respect to the second, on the other hand, it can be said that sometimes we fail to measure the depth and breadth of what is happening. Because we are not in the presence of a purely rational problem, of philosophical schools, or something related to epistemological questions about what is true and what is false. It is a battle against an enemy that has settled –and this should be underlined– in the *minds* and *hearts* of ordinary people who live their lifestyles, all considered equally valid.

Accordingly, we cannot think that the best way to deal with this ideology is through the mere reading of some good texts or the demonstration, by logic, of conclusions that confirm true premises. We need to do that, but also, we need to start thinking about something else. Gerhart Niemeyer, professor emeritus of Notre Dame, used to tell that his students sometimes asked him, eagerly, about which book they should read to “return to natural law.” That is, sometimes we put our efforts to recover “something we have lost” in an old reading. We sometimes believe, naively, that reading Thomas Aquinas or Aristotle takes us back to natural law. Niemeyer replied that we are not prepared for a return to natural law if we do not have the requirements. By this he meant the (paradigmatic) experiences of philosophers who invented the symbols

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<sup>28</sup> John Paul II, Apostolic Constitution on Catholic Universities, *Ex Corde Ecclesiae*, (1990).

<sup>29</sup> See *id.*, 32.

with which they expressed the natural law, since without them we would only be able to know and learn their “discourse,” the set of sentences that do not necessarily convey what they really mean.

Those who invented the symbols of natural law did so because they experienced paradigmatic events in their own lives; for example, the discovery of the open soul and the *nous* as companion, but in turn different from *ratio*, was what put them on the way to be aware of a divine order that, somehow, was reflected in the human order, in things and in their natures.<sup>30</sup> This discovery must have been fascinating. It presupposed an enormous effort to clarify orders of human existence, with its hierarchies and subordinations, the virtues that came along with it, together with the reality experienced by them of the order of transcendence. In any case, what is “right by nature” began to acquire form, and with it, what distinguished it and in turn complemented with what is “right by human will.”

Concepts and symbols like the previous ones have eroded over the centuries. Nowadays our students, with a few exceptions, are not equipped with such experiences, but, on the contrary, with an accumulation of ideas that little or almost nothing reflects them. Niemeyer takes one by one the central concepts of classical philosophers and theologians who spoke of natural law to show what they mean today. *Ratio*, for example, a sort of “instrument” to gain power over nature. *Nous*, completely non-existent. The values that represent the hierarchies of virtues are today understood as psychologized and subjectivized phenomena.<sup>31</sup> Nature, in turn, as a thing or *res extensa* in motion, without a trace of intrinsic “value,” perfection or perfectibility. “The corresponding concept regarding human actions” is now closer to “the order of desires”,<sup>32</sup> and so on.

Here lies our great challenge. How to achieve academic spaces of decontamination of false ideas and unreal concepts? How to do it in a law school? Although magical formulas do not exist, clues as to how to act

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<sup>30</sup> GERHART NIEMEYER, *What Price 'Natural Law'?* in AFTERSIGHT AND FORESIGHT: SELECTED ESSAYS, 261 (The Intercollegiate Studies Inst. and The Univ. Press of America 1988).

<sup>31</sup> See *id.*, p. 259.

<sup>32</sup> *Id.* at 257.

could be found among the very ruins that ideologies leave behind. Niemeyer mentioned that among those ruins three are of special care: first, (we see) a “confusion of philosophical concepts or their derivatives; second, impairment of perception of political institutions and their interrelations; and third, confusion regarding what is worthy to be worshiped and what is not so worthy”. Then he adds: “The soul that finds itself bereft of the most important means of orientation is a soul subject to [an] incapacity of moral judgment. The capacity of such judgment depends on [the] clarity of the mind regarding ontological premises.”<sup>33</sup>

Becoming aware of these evils of our time should lead us to explore ways of restoring what has been lost along the way. The centrality of God is the foremost of all. Voegelin said that what is common to all ideologies, past and present, its central issue, is the murder of God and his replacement by something else.<sup>34</sup> What is worthy of worship today is everything but God. There is also the absence of a correct understanding of reality and its replacement by false concepts, which appear before us as philosophical. And of course, the transmutation of all values with the formula according to which right and wrong are decided by feelings and desires. In the age of the superman, the natural is dictated by the will alone. And if someone gets lost in the process, he can ask the Supreme Court to dictate the “new morality” in accordance with his new set of feelings and desires.

In such conditions, it would be wrong to say that a few additional classes of philosophy of law or the incorporation into the curriculum, for example, of natural law as a subject, would fill the gaps or correct the course. Or that our students would be better off if they dedicate more study hours to Thomas Aquinas or Aristotle, or by reading John Finnis' magnificent book on natural law and natural rights. We, certainly, need to do all of this. But there is something else that is urgently demanded in our time.

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<sup>33</sup> GERHART NIEMEYER, *This Terrible Century in WITHIN AND ABOVE OURSELVES. ESSAYS IN POLITICAL ANALYSIS*, 53 (Intercollegiate Studies Instit., 1996).

<sup>34</sup> See generally *supra* note 18.

The experiences of those who have been captivated, in ideological times, by the natural law or by the order of goodness and justice, have taught us that real changes occur only in the depths of the soul. Solzhenitsyn –reflecting about his sufferings in the *gulag*– once said that “the absolute essential task is not political liberation (from ideologies), but the liberation of our souls from participation in the lie forced upon us”.<sup>35</sup> That process of liberation, in the case of Solzhenitsyn, is called by Niemeyer a process of a strong shock, a “soul-shaking experience” that, although through suffering, leads certain people to recognize the good in themselves and in others, and their own existence as a creature. Niemeyer used this example to make his comparison with the claim to “the return to natural law.” He said that a kind of deep shaking within us was the price we might have to pay because we have not realized that ideologies deprived us of a sense of sanity, and it might be too late when we wake up.

However, he also insisted on the need for paradigmatic experiences of philosophers in the classroom. He thought, like many others, that we, as professors, could evoke in our students similar kinds of experiences that, little by little, were able to open their souls and hearts to what was worthy of admiration and truth. How to achieve, for example, that the humility of the philosopher is imbued in the student, so that both can recognize themselves as seekers and lovers of truth (the humility of every professor who knows, in continuous admiration, that is in the way for truth in his own field and wants his students to accompany him.) The philosopher does not impose his science on others or require them to follow him or follow the truth he has discovered. His communication is not about what he himself has achieved, but, rather, (he) evokes a vision “into the deepest movements of the soul, where the ‘order of being’ (has been) revealed itself in the experiences of the ‘tension between God and man.’ Such experiences, as *thanatos* (death), *eros* (love),

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<sup>35</sup> ALEKSANDR SOLZHENITSYN ET AL., *FROM UNDER THE RUBBLE*, 25 (Gateway Editions, 5th ed. 1989). In a similar sense, Eric Voegelin states that “[no one] is obliged to take part in the spiritual crisis of a society; on the contrary, everyone is obliged to avoid this folly and live his life in order.” *Supra* note 18, at 22-3.

*dike* (justice)<sup>36</sup> [he adds elsewhere “friendship”, “wisdom”, “hope”, “faith”] can evoke or convey those movements of the soul, becoming conscious in both the student and the professor. In this way, the ideological traces begin to collapse, giving way to the desire to know and to ask questions. “The eminently new experience of the philosopher –says Niemeyer citing Voegelin– was of the *nous*, the mind which could reflect on ignorance as a movement and mystery as an ‘object’. He found himself being ‘moved by some unknown force to ask questions, he feels himself drawn into the search.” And so, “the *nous* was experienced not as if it were an instrument, but rather as ‘divine or the most divine element within us’. ‘Wondering, searching, questioning’ became core concepts of a cluster of symbols ‘bringing forcefully home the philosopher’s understanding of the process in the soul as a distinct area of reality with an order of its own.”<sup>37</sup>

These reflections are promising. More than finding magic formulas, which do not exist, what we must do is to advance in those ways where truth can be crossed with admiration and with reason. Whatever the legal issue that we address, but especially those closest to the foundations of the law, we cannot ignore how much they are imbued and embedded with second realities. To lead our students to raise questions (to “force” them, as the philosopher, to ask the most important questions) would be an important step to strip ideologies of their certainties. How much can we do, for example, in bringing to the classroom the distinctions between the legal and the legitimate, the correspondence and the relations between the natural and the positive, the rational but also the ontological foundations of rights and of human dignity, or a chapter on the virtues of the exercise of our profession. Of course, an attempt to clear up the history of political and legal institutions from false narratives is imperative. Niemeyer argued that natural law was impossible if it was not also deprived of the philosophy of history that originated in the Enlightenment.<sup>38</sup> Without going that far, we must

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<sup>36</sup> Gerhart Niemeyer, *Greatness in Political Science in AFTERSIGHT AND FORESIGHT*, 207 (Intercollegiate Studies Inst. 1996).

<sup>37</sup> *Id.*

<sup>38</sup> *Supra* note 30, at 263.

recognize that among the many barriers we face is our constitutional positivism, which has usurped the place of natural law, something that could be defeated with some ease if we tell well the actual story contained in a handful of decisions of the Supreme Court and in the founding documents of this great nation.

### CONCLUSION

In any case, our task as law professors should be to seek with our fellow travelers, our students, a return to the simplicity of the great questions of all time. Those are also questions that we can ask in our legal science. In those questions, small pieces of truth appear. Especially the “why,” the “how,” and “for what,” because in them rests the ultimate sense of justice and the *raison d’être* of legal institutions and of our profession. With full responsibility, we will thus fulfill our duty to “heal the mind,” seek the “perfection of the intellect” –as Cardinal Newman once said<sup>39</sup>– and to “rediscover those human and moral truths that flow from the nature of the human person and that safeguard human freedom.”<sup>40</sup>

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<sup>39</sup> JOHN HENRY CARDINAL NEWMAN, *Introduction and Notes to THE IDEA OF A UNIVERSITY* 94-5 (M. J. Svalic, Univ. of Notre Dame Press 1982).

<sup>40</sup> Mission Statement of Ave Maria School of Law.