Philosophical Anthropology: A Path to the Rule of Law

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Departing from the experience of dictatorships in Latin America and the statement that every system of law has a concept of man behind it (Francis Fukuyama), this brief study aims to demonstrate, through a philosophical method, the deep relation between Anthropology and Law and the importance of anthropological knowledge to reflect and build a free, fair and just political society regarding the Rule of Law, as Charlens Dickens affirmed: “The human is the key for the social”.

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1. Introduction

Of all the dreams that drive men and women into the streets, the rule of law is the most puzzling. —George Fletcher

Since the end of the last Century, Latin America is really collapsing with semi-dictatorships, in Argentina, Bolivia, Colombia, Brasil, getting to an extreme tyranny in Venezuela. Paternalism and disguised self or group interests lead to a deep crisis caused by institutional corruption.

Getting to the roots of this devastating behavior of Presidents, Legislators and Courts, through the study of Jurisprudence and Philosophy of Law, we could

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understand Francis Fukuyama’s statement that every system of Law has a conception of man behind it, and founded on that, the powers will rule him, either helping him to grow as a free and responsible human being or nudging, manipulating and subjecting him.

Trying to find a long-lasting solution to rebuild the country - also based on Korean initiatives towards education - we developed a program in Philosophical Anthropology for law students, who are mainly the future judges and politicians, so that they could deepen the questions on the nature of man; freedom; political society; law; economy; institutions and so on, aiming an ethical, efficacious and efficient practice.

Thus, they could get to the real meaning of Law in a society - “good fences make good neighbors” - based on rationality, relationality, freedom and responsibility - and work for the complete human flourishing and common good as well.

Our goal is to share our positive experimental methodology with scholars of different countries in order to show the importance of anthropological knowledge, and how it can help law students to reflect on their deep role in society and what a real Rule of Law can mean in terms of justice and respect for people as well.

2. Delimitation of Concepts: Law, Anthropology, Society and Rule of Law

(...) with desire to restore the primacy of certain conceptions which are in danger of disappearing from our modern thinking (...).

— Alexander Thomas Ormond

As John Finnis states: “the proper method in social sciences, including the political theory of which legal theory is a part, requires that the selection of concepts for use in general descriptions and explanations be guided by the very same criteria that the theorist employs when judging what is good for a society (and therefore also what is bad for it), that is, when judging what are good reasons for actions in the kinds of situation encountered by and in the theorist’s own society”.

On the other hand, the limits of each concept in a scientific study is essential to achieve a deep and global understanding of what it really means and wants to transmit, mainly in humanities.

Although pragmatists affirm that concepts are not useful anymore and the question “How” was replaced by “What”, we do confirm that it is impossible to work in Law - and other sciences as well - if we don’t know the status or nature of things. How could we draft a contract, for instance, if we do not know what it exactly is?

Therefore, we start our brief study defining the concepts we will work with, so that we can speak the same language and get to the meaning with an efficacious comprehension.
These concepts, though, are not mere definitions, but expressions of the reality they represent.

Thus, we define:

a) **Law**: The rational ordination directed to offer the basis for the common good to be promoted by citizens, departing from their constitutive freedom;

b) **Anthropology**: The study of man in its essence, nature and individuality, as the one who can interpret his own existence and environment;

c) **Society**: Organized order founded on the natural vocation of men “to be” with others and coexist in order to develop their own selves in interdependence.

d) **Rule Of Law**: The respect of the form of Law, sustaining its contempt, departing from the human nature and constitutive freedom and aiming its flourishment and the common good.

These are the meanings we attribute for each concept, so that we can reflect in a logical way and get further in our conclusions.

3. **Latin America Political Situation**

*To be a tyrant is not to be and not let others be.* — Quevedo

Although nowadays we have extraordinary means of communication, we all know that sometimes news is deeply manipulated; hiding facts; exaggerating; nudging the thought or simply lying, as we could see in Latin America with our neighbors from Venezuela, for example. Since Chavez, a populist who got to the power by deceiving the poor, we have exactly the opposite of a Rule of Law, with the empowerment of the Executive branch, which also absorbed - but in a disguised way - the Legislative Power and the Supreme Court as well, in a perfect Dictatorship.

Maduro, who followed Chavez, took harsher measures, violently persecuting opponents, since students to political parties and even civil population. The government also took medicines and food, which were only offered to those who supported the party. Even the beautiful places in the country were forbidden to those who are against the political situation.

This populism is common in America, where paternalism is a “comfortable” way to survive, accepting the rules of the Government just to receive benefits in change. Mutatis mutandis, we can also find this regrettable attitude in Bolivia, Argentina, Colombia and so on.

Among these nations, Brazil fought hard for the impeachment of the President, who wanted to impose a similar regime to Cuba and Venezuela, and is now confronting the institutional corruption and scandals in the management of public money. The Nation is really trying to survive and get out of the crisis, giving an example for the continent, although it is still far way of a stable solution. Despite
the difficulties departing from those who want to keep power and mainly economic benefits, there are serious projects in discussions on tax, labor law, politics, in social security and to end up with a large and predatory bureaucracy, which consumes almost all the public budget.

But to sustain these reforms and give them continuity, there is a very important issue that is, all things considered, the source of the institutional corruption: the educational system: when people are ignorant and it is much easier to manipulate them. Let us see how it works.

4. Education and Ideology

Only those who are educated can be free. — Epicteto

Education should be the light in the darkness for these countries since it is impossible to have a solid structural change without personal changes. Thus, an ethical project could mean an important step way out of the crisis: to make people reflect to be able to transform political and social life.

Philosophy, since Aristotle with his “Nichomachean Ethics”, showed itself as a way of reflection about the individual and the polis. After the II World War, Hannah Arendt also helped us to reflect with the “Origins of Totalitarianism”. Today, Professor Michael Sandel, in Harvard, stimulates students to think about the ethical limits of the market, for instance. However, creating the habit of reflection can be a challenge for Latin America, including Brazil, because this is not fostered nor expected from people, who are “nudged” in a bad way through the reign ideology.

Actually, superficial slogans substitute academic freedom and students are caught up in their laziness, finding it hard to study and think. Their own ignorance is the weapon to manipulate them. Then, sunk in technology - with no temperance - and empty novels on TV, which replace books, we have a whole handicapped generation. But, we cannot underestimate student’s rational and relational capacity, full of ideals and desire for excellence, truth and the good. They are simply waiting for a real help: professors can’t have a pact on mediocrity. As Lon Fuller would say, we change society, not with wrists, but with elbows. It is urgent to face the threat since education in Latin America is not a priority in investments, but ideology is. As we can see, for instance, a recent report in a famous newspaper stated the most important aspect referred in the last Cense of Superior Education is the fall of the numbers of students at the Universities. People get enough learning technics, without thinking. Besides, last OCDE reports show the insufficient budgets and expenses in education, compared to the maintenance of an extent bureaucracy. The level of basic education is very low. Besides, by the end of their final high school year, 40% of all Brazilian students are illiterate. The rate of teachers’ absence during the year is high and those who manage to start university have real difficulty to achieve a degree. In this context, it is also hard to value the
job of a teacher as fundamental to the development of the country. As Professor Mary Paula Arends-Kuenning of University of Illinois states: “children who had good teachers are generally successful adults economically”. And we could also add other areas too which are basal for a complete flourishing.

Through this brief essay we hope to show the key role humanities could play in this scenario so that education could maximize freedom and self-determination towards the common good, like other samples we have in history. The words of a famous Brazilian, author, Guimaraes Rosa, could be applied to this academic enterprise: “living we learn, but what we most learn is to ask more questions, the biggest ones” and get to the radical and constitutive answers humanities can lead us to, so that we can really do something for our time and nations.

5. Fundamentals of Anthropology in Education: An Experience

*Practice needs to be built over a good theory, always.*

—Leonardo da Vinci

When we speak about improving education we don’t only refer to general knowledge, but specifically, about humanities. And among the different branches, we thought about starting with Philosophical Anthropology, since it is basic to reflect on what is the man - the main question in this science - and what is society for, with all consequences.

Thus, we started a pilot plan at Universidade Federal do Rio Grande do Sul, with graduation students, so that they could also think about the role of their jobs regarding society.

Though it was an optional subject, the classes were full and people would come from different courses to join it: Law, Journalism, Education, Management and so on. They were interested in all themes and would exclaim: “that’s me” or “that makes sense!”. Every week they could come with new experiences of reflections, departing from movies they watched; professional issues; family problems, etc., where they could apply the concepts they learned to the reality which surrounded them in order to give deeper and better solutions.

Some of them changed their professional choices, dedicating themselves to the academic life, for example, but mainly because each of them started to think about helping society and making the unique difference they could give by putting their talents in service of the community.

Other colleagues decided to implement this same course for future politicians of any party to help they think about a vocation regarding the public life and not only a way to earn money, stability and control interests. Therefore, in the last elections, without corrupted campaigns, some of these students won the polls through values.

The topics we developed during a semester were basically the following:

1. Anthropology as a Science.
The main results we check were a deep view of three fundamental concepts:

1. The personal responsibility towards society, realizing that all you do can be prosperous for the common good as well, founded in our relational nature.
   As John Finnis states:
   The essence of friendship is this: A is interested in B’s well-being for B’s sake, and B in A’s for A’s sake; and so A has reason to be interested in A’s own well-being not only for its own sake but also for B’s; and B likewise. So the interest of neither person comes to rest solely on that person’s own well-being, nor solely on the other person’s well-being. Thus the relationships of interest (will, choice, action, affection) is, and is directed towards, a truly common good. This common good gives their relationships its self-sufficient point. Egoistic self-love is transcended. Or rather, it becomes clear that egoism is a form of self-mutilation, a dead-end deviation from the way to integral human fulfilment.

2. The second main point is to respect freedom, understanding its real meaning, that is, in a positive way. With this capacity we are able to be creative and direct ourselves to the good, serving others with our talents and gifts. Thus, other’s freedom is not a limit for oneself’s freedom, but an addition and a common treasure to be developed and cultivated. Therefore, respect in this sense is not an opposition. On the other hand, freedom is not conceived in an absolute way. It is ruled by the law of nature. We should not be doing whatever we want, like killing, stealing, cheating, lying, for example. That would mean to enslave a whole society.
   As Lon Fuller states, since we are children, we know:
   “I am not supposed to do that!”. This is a way to freedom, in an aristotelian conception. If we live like this individually and in families, we can also think it bigger, applying to the State:
If a State, through the Law, guaranties personal freedom of all citizens it accomplishes its most ethical goal, and, in this sense, the richest in self determination. The political progress should not be understood in a negative way, where one’s exercise of freedom prevent the exercise of freedom of others, but in a positive way, where one’s exercise of freedom potencializes the exercise of freedom of the others. A historical task, difficult and arduous, but possible.

3. The third would be the necessity of a deep education, in the sense that it is not only all about knowledge, but to build up a character and teach to act ethically so that people are really prepared to help the society with an efficacious practice. Indeed, as Hannah Arendt states:

“Education is the point at which we decide whether we love the world enough to assume responsibility for it, and by the same token save it from that ruin which except for renewal, except for the coming of the new and young, would be inevitable. And education, too, is where we decide whether we love our children enough not to expel them from our world and leave them to their own devices, not to strike from their hands their chance of undertaking something new, something unforeseen by us, but to prepare them in advance for the task of renewing a common world”.

6. Ethical and Efficacious Practice Towards the Rule of Law

But what does it mean to live under rules, governed by “the concept of ordered liberty”? —George P. Fletcher

When citizens are formed to care about their own society is much easier to get to a fair and just social order where the rules are respected. As Robert Frost wrote:

“good fences make good neighbors”.

But what is exactly a Rule of Law and why anthropological-philosophical knowledge could lead to an ethical and efficacious practice regarding it?

Basically, the Rule of Law is the successful result of the enterprise of setting rules by the people and for the people, respecting nature and constitutive freedom as a principle of social order to allow the flourishment of the common good.

Three components are elemental for the consecution of a Rule of Law:

a) laws which respect nature and democracy as well;

b) independence of powers (mainly three: Executive; Legislative and Courts) and in some cases a Constitutional Tribunal;

c) protection of institutions through the form and content of the Law.

But the background to foster this ideal are people who can face and undertake this job in a serious, constant, and transcendent way, namely, not self-interested.
Therefore, with an ethical and deeper education which teaches to reflect to act in an “all things considered style”, we get to better results in all senses, including efficiency and economic targets.

In this sense, after graduation students are ready, or at least warned, to be judges, lawyers, politicians, legislators, entrepreneurs and so on, thinking bigger and not squared by narrow minded goals. Knowing what real freedom or a political society means or what the laws are for and which are the constitutional rights and if they really recognize the constitutive rights of a human being.

The Rule of Law would be like a musical score for citizens to compose and play a free symphony, organizing the society in a melodious, harmonic and peaceful way.

7. Conclusion

Are short term goals sufficient? A short-term meaning may not compensate a long term broad purpose. — Peter Kreeft

We realize that the lack of knowledge added to a lack of sense and meaning, except economic - personal or group - interests to be achieved by the subjection of the populace with an almost “bread and circus” politics is the cause of institutional corruption.

Our proposal may be capillary and may take time but can be a solid one. Sometimes people want changes but don’t want to change. To help this situation we must treat them as rational and relational, offering knowledge and values so that they can open themselves to hope and freely give their contribution to build a better social order. Philosophical Anthropology can be the right path for that.

Besides, if we start to get deeper in the topics we brought up in this brief study we will never be the same again, like the hobbit of the Lord of the Rings, who left his zone of comfort to fight injustice in the Middle-earth, but we will surely be happier and so will be the world.

Indeed, the human is the key the social: In a more colloquial approach, Mathew Kelly explains this talking about a familiar episode, while trying to start to prepare a lecture while his child spent her energies with a puzzle of the world map. When he saw that the boy finished the task in a very quick way, he asked him how he could have done that. He showed the reverse side where there was a figure of a man, concluding with simplicity: “If you get the man right, you get the world right!”.

Footnotes


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