The Idea and Values of Europe

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From Antigone to the Charter of Fundamental Rights

Edited by

Angelo Santagostino

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The cover symbolizes roots, compatibilities and final landing of the European values through three iconic monuments: The Parthenon, Hagia Sophia and the Monastero dos Jeronimos. The latter is also the place where the EU Charter of Fundamental Rights was signed on 13 December 2007.

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SYNOPSIS

Chapter 1. Antigone, Cicero and natural law

The opening chapter provides an insight into natural law from Greece to Rome. The political and legal understandings built on it have a long history in Western ideas. By any means, the most advanced form of natural law was that of Sophocles. The play *Antigone* was based on the concept of a law that was written and not written. It can be deduced from *Antigone* that certain universal principles of justice apply to all societies and to all humans. The chapter continues with a brief overview of political philosophy developed by Marcus Tullius Cicero with an aim to highlight the key ideas that ground what we now call European values. It holds that the theory of universal natural law is a major conceptual contribution that Cicero has made to the modern understanding of law, constitutionalism, and human rights. It starts with positioning Stoic political philosophy in general and Cicero's specific ideas within a bigger picture of Hellenistic and Roman thought to come up with a conclusion that Ciceronian theory of natural law, however eclectic, can be identified as rationalist and contractual. This feature contrasts both with rival Greek and Roman political theories of natural law, and with Enlightenment's versions of contractualism. The closest analogue to Cicero's ideas can be found in Kantian moral and political philosophy. The Ciceronian concept of natural law is exposed according to its main traits comprising universality and rationality.

Chapter 2. European Values, Fundamental Rights and Christianity

Christianity is part of the philosophical and religious traditions that have played an important role in European history. In the first part of this chapter, we will present the *core of Christianity*, its double "commandment of the love of God and neighbor", which is the major source of its values. Then, we will examine the context in which *the theory of rights* was born after the Wars of Religion, which devastated Europe in the 16th and 17th centuries as well as the role that Christianity played in the birth of this theory. Finally, we will present *the Christian reflection on social life*, as it has been explained in the *Social Doctrine of the Catholic Church* since the end of the 19th century up to now. In conclusion, in the light of Pope Francis' last Encyclical Letter (*Laudato Si'*) we will leave the anthropocentric perspective and focus on *the environmental challenge*, revealing human

greed and violence, which, together with the humane welcoming of migrants, are among the most urgent issues facing the EU and the world today.

Chapter 3. European Values and Islam

This chapter aims to find out and clarify whether the fundamental values of Islam are compatible with the human rights and European values set out in the European Convention on Human Rights and the UN Declaration of Human Rights, and if Islam has common principles and values with Western civilization. In order to answer these questions, the chapter has determined the principles underlying the concept of Islamic values; then to what extent the Islamic values are compatible with European values. As a result of the evaluations, the chapter has revealed that substantially there is no conflict between the fundamental values of Europe and the major values of Islam. All values that are in agreement with the principles enunciated in the *Qur'ân* and the *Sunnah* are considered as Islamic values, even if the society is a non-Muslim society such as Europe. Even secular values, if they are in accordance with the *Qur'ân* and *Sunnah,* are considered to be Islamic values. Islam accommodates all those values, regardless of their origins, provided they are in conformity with its principles. On the contrary, the issues considered as conflicts, even though those values are in agreement with the principles enunciated in the *Qur'ân* and the *Sunnah,* are actually composed of cultural and historical interpretations of basic values of Islam.

Chapter 4. Human Rights and Enlightenment

In the charter of fundamental rights of the European Union, dignity, freedom, equality, solidarity, citizens' rights and justice are deemed to be fundamental rights that are considered to be the common values for a peaceful union. These fundamental rights situate the individual at the heart of the Union. In other words, the individual is defined as the subject of all these rights. Human rights and the civilization perspective based on these rights are one of the most distinctive features of the European cultural basin. The mentioned rights or concepts were mostly developed in Western thought on both sides of the Atlantic in the eighteenth century. The Enlightenment movement and thought became one of the main turning points for the current use of these rights. In this chapter, traces of this transformation process are examined.

Chapter 5. The idea of Europe and its values. A liberal perspective

The idea of Europe, which is the constituting element of the uniting of Europe, is based on liberal thought. In the Treaties we find concepts elaborated by liberal thought. Point 1 of Article 3 of the Treaty on European Union (TEU) says: "The Union's aim is to promote peace"; while according to point 3 of the same article the EU is founded on "a highly competitive social market economy". The social market economy is an exquisitely liberal concept.

The idea on which the founding fathers based themselves is the product of the 200-year evolution of liberal thought: Erasmus, Immanuel Kant, Richard Cobden, Ludwig von Mises, Friedrich von Hayek and finally Luigi Einaudi. Yet the many stories of the idea of Europe, in illustrating the numerous projects for the construction of European unity from the Middle Ages to the twentieth century, do not recognize the liberal thinkers' contribution, or do so only marginally. This chapter aims to fill this gap. Finally, the chapter compares the principles of the Liberal Manifesto of Oxford of 1947 to the Charter of Fundamental Rights of the EU.

Chapter 6. The making of the Charter of Fundamental Rights of the European Union

The institutions of the EU make decisions and implement policies, which is to say, they imperatively dictate social values. The regime of the EU political system has inserted ethical and genuinely human values one step at a time: The Charter of Fundamental Rights was the official announcement of this. This chapter analyses the internal and external factors that led to the legal recognition of human rights in the European Union Treaties and the proclamation of the EU Charter of Fundamental Rights. The chapter addresses some fundamental questions related to this process. Are the values that gave rise to the integration process the same as those that nowadays guide the choices of the European institutions and Member States? Can the EU Charter represent at the same time a conquest and a starting point for further developments for an even better foundation of EU citizenship? What is the awareness of the rights set out in the EU Charter? The main hypothesis driving this chapter is that the legitimacy of the EU through values and rights, and no longer solely through a mere "cost-benefit" calculation, can represent the key to accelerating the path towards political union.

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Angelo Santagostino
Ankara Yildirim Beyazit University, June 2020

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INTRODUCTION

THE EUROPEAN VALUES FROM ATHENS (442 BC) TO LISBON (2007): A 2450-YEAR-LONG HISTORY

ANGELO SANTAGOSTINO
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The Charter of the Fundamental Rights of the EU enshrines European values. The Charter became juridically binding for EU Member States in 2009, after being signed in 2007 in Lisbon. The year 2019, when the various chapters of this book were written, marked the 10th anniversary of the Charter. Chronologically, the Charter is the last document on human rights. Human rights have a very long history, with roots in the ancient world. As a good approximation, the birth of human rights can be indicated as the year 442 BC. In that year in Athens, the great tragedy of Sophocles' Antigone, was represented for the first time. Antigone set the bases of the ancient doctrine of natural law. That doctrine went through an evolution which lasted for about two and a half millennia. But no endpoints have been set.

This book goes through this long period, with the aim of analysing the most salient moments of the creating of human rights. However, the historical and doctrinal reconstruction of the making of the Charter is not the only aim of this book. Our ambition is higher. It is to fill a lacuna. In fact, the European debate on fundamental values, starting with the official one, has never dug into their doctrinal origin, nor has it verified their compatibility with cultures alien to that of Europe. Rather, it sought to gain consensus on the basis of a legal document, free from cultural or spiritual ties. In other words, pretending to construct a culture of fundamental rights starting from law, from a legal document, be it a Charter, a Constitution or a Treaty. The Charter starts with these words: "Conscious of its spiritual and moral heritage, the Union is founded…". Slightly too few, to say the least,

to summarize such an ancient, rich and deep culture.[1] That half-line has the pretence to be the synthesis of a long debate, often dotted with unflattering polemics. A euthanistic competition between those most committed to eradicating their own roots.

This book aims to provide not only the cultural background of the "spiritual and moral heritage" of the European Union, but to go further, showing how these values are compatible with the principles of a non-European culture and religion, like Islam. Providing thus the "spiritual and moral heritage" with a broader base and acceptance.

The incipit of the Charter is not the result of a case. In the creation process of the Charter, of the European Constitution and later of the Lisbon Treaty, as in the whole debate that accompanied all of them, the European identity has been systematically buried for precise political reasons. An imperative that was "politically correct", but culturally incorrect, led to opting for an insipid shortcut. Simply: to avoid discussion about a specific root, all of them have been ignored. Politics abolished culture. The result is that the Charter has been deprived of its soul. It is a legal document, without any background. Because it is aseptic, the Charter risks being unappetizing, or at least much less attractive and interesting, not only for European citizens, but also for the citizens of those candidate countries expressing a culture that is different from the one to which human rights are attributable. The search for roots, or compatibility with roots, is the best way for a greater acceptance of human rights and the contents of the Charter. For the conscious acceptance of universal principles and values, the articles of a Charter are by no means enough. It would be tantamount to their uncritical or unconscious acceptance, only because they are written in a document which, moreover, could also be changed. Only by binding these articles to a transcendental thought, or to a thought that is the fruit of the elaboration of the human mind, can the individual truly make them his own, love them and make them love him/her. This is our belief, and the main reason for this book.

A second reason for the book is to dig into the doctrinal bases of the EU. It is needless to look in the preambles of the Treaties. There is no trace of them. Our inquiry into the origins of the idea of Europe took us to classical liberal, political and economic thought.

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[1] The reference introduced with the Constitution of the EU and then transferred into the Lisbon Treaty is a little more exhaustive: "Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law".

Today, the idea of Europe is challenged by sovereignism; the application of the Charter, ten years later, does not produce exciting results, as we will see in the conclusions. Dropping projects from above without a substrate, or without the will to explain, is among the causes of the spread of scepticism towards the European construction.

The journey of our ship loaded with the "spiritual and moral heritage" of Europe ideally leaves the port of Piraeus in 442 BC, then it reaches Rome to find Cicero. From the tragedy of Sophocles' Antigone, it can be drawn that "there are certain universal principles of justice that apply to all societies and to all human beings". A higher law than human law exists, "laws enthroned above, heavens created them, Olympus was their father", as the choir of Antigone says. Natural law is universal. Consequently, positive law cannot in any way be contrary to natural law. All positive law must be compliant with natural law. "No Senate, no people can exempt us to obey it" writes Cicero in *De Republica*. However, and Cicero insists on this, the doctrine of natural law does not imply blind respect for tradition, the adoption of the habits of the ancestors (*mos majorum*). Laws are universal and eternal, but conventions can be changed in time and space; conventions can be questioned by the critical mind. Natural law is the *Logos* evocated by the Stoics. *Logos* is God, according to them. But not a God attributable to any religion. It is a natural God that we must detect through natural means. Natural law is something that we discover continuously, day by day, with experience and through logical reasoning. In such a perspective the EU Charter is an attempt to perfect natural law.

Then our journey meets the preaching of Jesus and the Social Doctrine of the Catholic Church, both with their emphasis on human rights and on the principles of subsidiarity and solidarity. The "Parable of the Good Samaritan" tells us about the concept of a good neighbourhood. A "Neighbour is anyone in need with whom one comes into contact, and to whom one can show pity and kindness, *even beyond the bounds of one's own ethnic or religious group*". Article 21 on Non-discrimination (Chapter III, Equality) and article 34 on Social security and social assistance (Chapter IV, Solidarity), are a manifestation of the "spiritual and moral heritage" endowing Europe. Another moment of the "religious inheritance" of Europe is the Social Doctrine of the Church. According to the SDC, the human person is a material and spiritual whole, unique and unrepeatable, an end and not a means, free, of equal dignity with all others and a bearer of rights. The echoes of these principles in the Charter are irrefutable. Christian love is an action, a human action. Consequently "Christian love leads to wanting law as well as principles and values, rights and duties, and rules and

institutions. Vice-versa, without love, all of these are at risk of becoming empty shells. While mere laws, principles and values, rights and duties, and rules and institutions do not create love, love does create the others. From a Christian point of view, love is (should be) their soul".

The effects of the a-cultural and strictly legal approach to human rights embodied in the Charter emerge in Chapter 3: European values and Islam. "The values established by the West do not make any religious or theological references and aim to protect the rights, dignity and freedom of individuals in this world and to regulate their relations with others, while the rights and values established by Islam aim to realize and maintain the rights and dignity of individuals in this world due to its theological backgrounds […] While the nature and function of the principles underlying the values adopted by the West differ according to time and place and depending on sociological and cultural differentiations, the principles that are at the source of the values determined by Islam have a universal character that does not change by time and space". Western, and particularly European efforts to cleanse human rights of their roots have thus produced the effect, in a Muslim perspective, to look at them as local and circumstantial, contingent. Where the European world has driven out its soul, the Muslim world has preserved its own. Actually, the essence of the Muslim approach to human rights is the link with the transcendent. Accompanied by pride for such a vision.

Is there a common denominator between the Ancient World, Christianity and Islam, concerning human rights? In light of the contents of the first three chapters, the answer is positive. They come from God; they have a divine origin, regardless of differences on the concept of God.

After assessing the compatibility of Islam with the discourse on human rights, the book plunges into the centuries of Enlightenment. The perspective is deeply different. Or, better, goes through a transformation. While the previous elaborations were essentially moral, the Enlightenment transforms them into rights, adding the legal dimension. "By all means, we do not often directly observe the usage of the concept of human rights in the philosophical terminology of the eighteenth century. Instead, notions such as freedom, equality, and justice have been mainly developed in the context of the natural rights and they were transformed into the rights of man by the end of the century especially in the Declaration of the Rights of Man and Citizen in France in 1789". Or even much before because the "tradition of human rights in the history of Western political thought was initiated with the adoption of Magna Carta in 1215". The individual is at the centre of the analysis of thinkers of the XVII, XVIII, and first half of the XIX centuries. That is the great innovation brought up by the Enlightenment. From Grotius

to Hobbes and Locke, from Rousseau to Kant, the moral principles inherited from the past are subjectivized. The legal order, the rule of law, is the guarantee for the preservation of the moral and inalienable values–rights, like freedom, justice, equality and solidarity, which are inherent to the human being. The Enlightenment was a secular movement, often anti-religious and, specifically, anti-Christian, rejecting the idea of revealed truth, and argued that men should seek it using their own reason. In the search for their own moral truth they did not go far from the revealed one.

Chapter 5 explores liberal-federalist thought which gave birth to what we today call the EU. Here we find the very roots of the idea of Europe. The forerunner was Erasmus. He had the capacity to individuate peace as a promoter of welfare and progress in Europe. Rulers, be they kings, emperors, sultans or princes, were responsible for wars, because of their lust for power. Immanuel Kant developed these ideas, giving them a legal dignity, with his work "For a Perpetual Peace". During the XIX and XX centuries the liberal-federalist economists and political thinkers developed these ideas, formulating the political and economic theories underpinning the European construction. In 1943-44 Luigi Einaudi prepared a project for a possible European Federation, which has been gradually (but partially) transposed into the treaties, from Paris (ECSC, 1952) to Lisbon (EU and TFEU, 2009). In 1947 the Oxford Manifesto of the Liberals anticipated so many principles of the Charter. A genuinely liberal principle, that of a social market economy, was adopted by the EU with the Amsterdam Treaty of 1998.

Finally, after a long journey of 2451 years, extended over 26 centuries, our ship, with its precious "moral and spiritual" load, reaches the shores of Lisbon in 2009, when the Charter became legally binding for EU Member States. With the Charter and the new Treaty, the EU entered into what a scholar like Antonio Papisca called a "human-centric legal development" phase with "plenitudo iuris". The "fullness of law, a type of state of grace in which the judicial systems, founded on respect for the supreme value of human dignity and rights inherent to dignity, linked up, at least formally. These systems are, and must be, open to every person on their operating territory: the fullness of law indeed requires the fullness of citizenship". A plural citizenship which is added to the national one, does not replace it, but unites the citizens of the Member States in diversity.

In December 2019 the European Parliament celebrated the 10th Anniversary of the Charter and the entry into force of the Lisbon Treaty, with a plenary session in Strasbourg. In the same session the award ceremony of the Sakharov Prize took place. As a conclusion of this book, excerpts from the speeches by David Sassoli (President of the European

Parliament), Charles Michel (President of the European Council), Ursula von der Leyen (President of the European Commission) and the daughter of the award winner Ilham Tohti, have been included as well as the main findings of the 2018 Report on the application of the Charter.

Our Europe is rich in diversities, but with a shared, and equally rich, culture that represents our common denominator: the European values and identity. It is our glue. It is the core of European citizenship. We want to believe that deeper knowledge and consciousness of the origin of these rights and the idea of Europe, will lead to a better acceptance of, and respect for, our common European values and greater love for our shared Europe.

Sophocles (497/496-406/405 BC) and Cicero (106-43 BC)

CHAPTER 1

ANTIGONE, CICERO AND NATURAL LAW

LEONID V. NIKONOV AND MÜMIN KÖKTAŞ
AYBU

Key values, forming the ground for the modern project of a united Europe, have a long history that can be traced down to Antiquity. They were changing and taking different conceptual forms on the way. But looking back from the point where we are now, we still can notice a clear line of succession connecting us to the Greeks and Romans, as well as to the ideas they invented.

1. Natural Law in the Ancient Philosophy and Antigone [1]

Natural law and the political and legal understandings built upon it, have a long history in Western ideas. The tradition of natural law is not only philosophically important. It also contributed to the practical provision of liberal values in Western political life. Historically, it has long been thought that natural law is an integral part of the concepts of religion and God, whereas natural law was a feature of the human reason for the Ancient Greeks. Nevertheless, it should not be neglected that mythological and religious elements also existed in Ancient Greek thought.

The ancients dealt with the question of what a natural phenomenon is from a moral point of view. Rather, they evaluated nature as a quality of defining physical existence. In this respect, there is a descriptive quality in the natural. And this naturalness would be decisive in an understanding of the law of antiquity. It is possible to find the first traces of the idea of law in Homer's writings. Homer does not have a conception of law based on the power of tradition or of the king with legislative authority. Instead, Homer mentions *themis*, which is a difficult concept to understand. At the center of this concept we find the understanding of decisions inspired by the gods,

[1] By Mümin Köktaş.

but morally correct for both gods and people. In this respect, *themis* is an explanation of divine wisdom because laws are not made by man. Rulers must derive these laws from this wisdom. In other words, these laws should be discovered and interpreted. The important point here is that the laws are not directly expressed by God. The right behavior will thus be compatible with this divine insight and as a result with the nature of the world (Boucher 2009: 19-20).

However, the idea of natural law only arises where it is not assumed that the law is unchangeable and irrevocable. With a critical mind and historical observation, people will discover that there is a distinction between divine law and human law. Certainly, when they question why human law is binding, they will see that it has a moral basis (Rommen 1998: 4).

After Homer, Greeks distinguished nature (phusis) and convention (nomos). *Nomos* represented law and became associated with *nous* (intelligence) and *logos* (reasoning). Thus, the law came out of a divine framework and had a meaning that refers to a universe outside of the gods. In other words, the concept of law replaced *themis* and became almost secular. An important issue in this context is where morality is located. Morality is within the domain of *nomos*. Philosophers such as Antiphon, Hippias, Callicles, Democritus, Protagoras, Thrasymachus, and Glaucon thought that morality is a matter of convention and emerges from self-interest. In the different approaches of these people, morality means an expression of self-interest or having a dimension to control the harmful effects of self-interest (Boucher 2009: 21). In his famous expression, Heraclitus of Ephesus observes that “all things flow”, but also realized that there is an eternal unchanging order in this ever-changing world. Reason rules natural phenomena, and this creates an order (Rommen 1998: 5). The law thus became sovereign of this order. While Socrates explains why he should obey the laws in *Crito*, the initial framework he applies is this conception of law as sovereign. For Greeks, the law was the main force that stood on society and held it together. Therefore, according to them, there is no difference between the science of politics and the science of jurisprudence. The best government is to find an administration in which one can fully develop oneself and in so doing it is also to put forward the best theory of law. In this context, it should be remembered that Pythagoras also assumed equality as the principle of justice (LeBel 1949: 8-9, 19).

Socrates, Plato and Aristotle constitute the three main pillars of ancient Greek thought. Socrates argued that virtue was present in knowledge and values such as goodness, beauty, and justice could be known in this world. And also, for Socrates, the principles of natural justice are

applicable everywhere (Rommen 1998: 11). Plato was interested in the idea of justice all his life and confronted the world of experiences with the rational world of the cosmos. From this point, law or justice was for him something that could be discovered rather than made (Boucher 2009: 23). Aristotle makes a distinction between natural justice, legal justice, and political justice. It is highly difficult to interpret Aristotle's understanding of justice because of these distinctions. Apart from the discussions in the literature, it can be stated that Aristotle's idea of natural justice focuses on what is "unchangeable". This justice is everywhere, and Aristotle contrasts natural justice with changeable legal justice (Burns 1998: 146).
Hesiod was the first person to use the word law in his famous poem *Work and Days*. In this poem, an understanding of law and justice was asserted independently of the will of the legislator. By any means, the most advanced form of natural law was in the writings of Sophocles. The play *Antigone* was based on the concept of a law that was written and not written. Thucydides also accepted the concept of unwritten law (LeBel 1949: 11-15).

A passage in Sophocles' *Antigone* is often considered as one of the most important of the first emphases on natural law in the history of Western political thought. The passage is as follows: "That order did not come from God. Justice, / That dwells with the gods below, knows no such law. / I did not think your edicts strong enough / To overrule the unwritten unalterable laws / Of God and heaven, you only being a man. / They are not of yesterday or today, but everlasting, / Though where they came from, none of us can tell. / Guilty of their transgression before God / I cannot be, for any man on earth" (Burns 2002: 545). This passage clearly shows a conflict between natural law and positive law. This is the story behind these statements: King Creon of Thebes believes in the importance of obedience to man-made laws and therefore opposes the burial of Polyneices. Creon issued a legal edict on this matter. This can be seen as a positive law. Antigone rejects this law by referring to what could be called natural law. Because God commands the proper burial of the dead and a person has duties to his brother, Antigone didn't follow the law of Thebes. Antigone also honored God by opposing the king and burying his brother. In carrying out this action, Antigone believed that he had obeyed a higher law than human law. In order to express the idea of a law independent of human will, Sophocles makes the choir say: "For there are laws enthroned above; / Heaven Created them, / Olympus was their father, / And mortal men had no part in their birth" (Boucher 2009: 22-3). Antigone was seen as a traditional heroine of natural law. One might think here, how could Antigone see natural law? This is mainly due to the fact that Antigone managed to remain outside the context

of polis and history. History and human conventions can be an obstacle to the process of human perception (Alford 2006: 8-9). It can therefore be deduced from the Antigone play that there are certain universal principles of justice that apply to all societies and to all human beings (Burns 2002: 548).

2. Marcus Tullius Cicero[2]

Marcus Tullius Cicero was a Roman aristocrat, Stoic philosopher, and statesman in the first century BC. For some specific time, he was a Roman senator who went on to become a consul, gaining and contributing his theoretical intellect to the contemporary politics of the time. Cicero is often regarded as one of the founding fathers of the philosophy of law, and his writings comprise a conceptual understanding on normative ideas of law, justice, and civil virtues. There is a considerable quantity of scholarly literature reconstructing his theory in detail and positioning it within the history of Western sociopolitical thought. Yet a good starting point for further readings on this can be found in a recent book by Jed Atkins (2013). However, for there is always a space for further interpretations in new contexts, those involved in the uniting and making of what is today known as Europe have plenty to grasp from Cicero's thoughts and the overall consolidation project that Roman civilization truly used to be.

The historical period of Cicero's lifetime saw many levels of fusion and thus may also be considered as a "time of fusion". Let us see how the Roman republic and later the empire not only unified and mixed cultures, peoples and social orders, but also, amalgamated theories and beliefs, intensively coalescing to form sometimes grotesque constructions. Exactly like the religious cults of Mithraism and Zoroastrianism, different local forms of polytheism coming from Greece, the Apennines, and Egypt, as well as Christianity a century later were intermixed to exist side by side in the Mediterranean under Roman rule. Not to forget, even the scientific and philosophical ideas were also communicated and merged. This period in the history of thought is called the Hellenistic era, when the genial insights of the Greek classics were spread, multiplied, translated and re-read.

Cicero's thought is a brilliant example of Hellenistic scholarship assembling the ideas that were common at that time in Roman society but originally ascending to the main schools of Greek philosophy. He borrowed from Plato a form of dialogue for his books, from Aristotle the focus on moral virtues, and especially on justice as a primary social virtue, but he

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was conceptually closer to the Stoics with their ideas of cosmic fate, the autonomy of a person accepting his or her fate, individual freedom as the main value, and rational laws ruling both the universe and human societies. The political theory developed by Cicero is eclectic and to some extent controversial. Despite having been appointed to a top position in the republic he was an enthusiastic supporter of monarchy by which of course is meant a rule in accordance with law, traditions and justice, not the despotism of a ruler. This monarchy should also feature a division of powers between a ruler, the aristocracy and the masses: "Since that is the case, of the three primary forms my own preference is for monarchy; but monarchy itself is surpassed by a government which is balanced and compounded from the three primary forms of commonwealth" (Cicero 1999: 31).

Justice, as one of the cornerstone values of what we call Western civilization, is presented by Cicero in a very contemporary way. "Of justice, the first office is that no man should harm another unless he has been provoked by injustice; the next that one should treat common goods as common and private ones as one's own. Now no property is private by nature, but rather by long occupation (as when men moved into some empty property in the past), or by victory (when they acquired it in war), or by law, by settlement, by agreement, or by lot" (Cicero 1999, 9). Although it is a rehearsal of a classic definition of justice as giving everyone his due, Cicero's formulation sounds more concrete and less vague.

He further mentions that the concept of justice etymologically reminds us not only about the equity among people, but also the rational ability to make a decision and establish agreements with other people: "Its name in Greek is derived from giving to each his own, while I think that in Latin it is derived from choosing. They put the essence of law in equity, and we place it in choice; both are attributes of law" (Cicero 1999: 111-112). For Romans, the very word "justice" sounded unequivocal though, it rather denoted what we reasonably choose when we are to decide on matters engaging other people around composing res publica, or in other words a commonwealth.

Another important political value found in the Ciceronian conception of justice is a recognition of natural equality among human beings. What we have fully embraced only by the twentieth century had been reiterated by Cicero ages ago and had become a crucial point for his philosophy of law: "Thus, whatever definition of a human being one adopts is equally valid for all humans that the whole human race is bound together" (Cicero 1999: 116). Of course, it was not a common sense for the slaveowners' society in which Cicero lived. This was a groundbreaking idea that emerged within Stoicism, the doctrine which Cicero followed, and later appeared to be one of the core values of European civilization. "Everyone

is equal before the law", so says article 20 of the Charter of Fundamental Values of the European Union.

But maybe the most interesting part of Cicero's political and legal theory relates to his conception of natural law. This idea, developed in classical liberalism, supplies the conceptual basis for the modern conception of unalienated human rights and democratic constitutional rule aimed to protect the fundamental rights. Cicero attributes his conception of natural law to the long-standing tradition of ancient philosophy. "Although Cicero does not name the Stoics, it is clear that he is following them closely" (Asmis 2008: 6). Moreover, "Cicero not only points out that Zeno agreed with his predecessors that the world is "governed by a divine mind and nature", but also assigns the idea of a "true, supreme law", which is identical with the rationality of god, to the entire Platonic-Aristotelian tradition" (Asmis 2008: 6). The common ground in law theory claimed by Cicero is that there is a universal law ruling over everything in this world, including social relations. As Elizabeth Asmis wittily noted, in this sense the meanings of "law" and "nature" are so close that "in strict Stoic terminology, the addition 'of nature' is redundant" (Asmis 2008: 3). This law is viewed as a product of a supreme reason, and as such it is intelligible by the means of human reason. Here is the point where rationalism and naturalism in Cicero's theory merge to become literally the same.

After drawing an outline of Cicero's political thought let us focus closely on his concept of natural law serving as a bedrock for the overall theory. It is not just an artifact excavated from the history of Roman philosophy, but one of the sources for the values put in the fundament of modern democratic societies, including the European Union. For as it is shown below this concept refers to an understanding of the universality of basic rights, liberties and legal principles.

The Preamble of the Charter of the Fundamental Rights of the European Union states the following: "Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice" (2000: 8). Indeed, the ambitious goal of uniting the diversity of European countries would be impossible without a sort of common ground connected to the values found in the history of European cultures. And logically speaking, these values can only function if another value is accepted, the value of universality. Because you can give up on your particularistic conceptions of right, humanity or society, only when you acknowledge the superiority of universal values over local ones.

That is why the fundamental values of the European Union are characterized as indivisible as they are cemented by a singular meta-value, or a second-order value of universality. They are basic not because at some point they have been accidentally chosen to be the principles for a united Europe, but because they are universally meaningful (with a capacity to involve every human being in the project).

On the Commonwealth Cicero claims: "True law is right reason, consonant with nature, spread through all people. It is constant and eternal; it summons to duty by its orders, it deters from crime by its prohibitions. Its orders and prohibitions to good people are never given in vain; but it does not move the wicked by these orders or prohibitions. It is wrong to pass laws obviating this law; it is not permitted to abrogate any of it; it cannot be totally repealed. We cannot be released from this law by the senate or the people, and it needs no exegete or interpreter like Sextus Aelius. There will not be one law at Rome and another at Athens, one now and another later; but all nations at all times will be bound by this one eternal and unchangeable law" (Cicero 1999: 71). This is an immediate expression of Cicero's attachment to the value of universality in legal philosophy. He makes an ambitious point that there is a law by nature that was not invented by people but can be discovered and interpreted by them with due prudence. All positive legislations should comply with this supreme law to save the essence of being a law as it is. Consequently, the natural law turns out to be universal in the meaning of applicability to any legal context in any given country.

The law in this sense differs from whatever legislature a society may have installed in that it is a source or a matrix for any positive law. "The most stupid thing of all, moreover, is to consider all things just which have been ratified by a people's institutions or laws. What about the laws of tyrants? If the famous thirty tyrants at Athens had wanted to impose laws, or if all the Athenians were pleased with tyrannical laws, is that a reason for calling those laws just?" (Cicero 1999: 120). For Cicero, "that true and original law, suitable for commands and prohibitions, is the right reason of Jupiter, the supreme god" (Cicero 1999: 133).

To support his cause for the natural law Cicero uses the conception of panpsychism which was very common in the ancient world. According to panpsychism, gods lived everywhere and animated the nature of the universe itself. This belief in turn connoted a vision of the psyche as a rational, non-emotional or sensitive one. From Anaxagoras through Plato and Aristotle to the Stoics, the concept of the living soul acquired a circuit of interrelated meanings: (1) it is a reason for the motion of the human body, (2) but at the same time it is literally a reason as a rational agency, (3) and

analogously, it causes all the motions in nature, (4) forming some kind of cosmic reason. As Cicero says: "All nature is ruled by the force or nature or reason or power or mind or will – or whatever other word there is that will indicate more plainly what I mean – of the immortal gods" (Cicero 1999: 112). The fact that he was so boldly indifferent to how to label that cosmic force is very symptomatic for Hellenistic thought in general that was seeking for a syncretism in everything including religion, metaphysics, or legal theory. This thesis was something obvious for Greek and Romans, yet Cicero incidentally sets out a logical argument justifying rationality of the universe and its laws: "And since all things endowed with reason are superior to those which lack reason, and since it is wrong to say that anything is superior to the natural universe, it must be admitted that the universe has reason" (Cicero 1999: 135). Indeed, the metaphysics underpinning Cicero's theory of natural law is no longer valid, but it must not be missed here that he strongly believed *in the universality of law as an eternal value*. We do the same when proclaiming universal principles for our societies, and the only difference is that we do not need to appeal to the whole universe to believe in them.

Another side of Cicero's theory of natural law refers to the "contractualist approach" to the state. Given that the world always abides by the law, human society should also not be an exception. It purported to be an exposure of that law among people. Humankind has an intellectual ability to learn or discover the natural law as long as the essence of reason that we experience in ourselves and in the world around is the same. So, what would be a tool for establishing a society for rational beings ruled by the natural law? Of course, the only way of action open to those endowed with reason is deliberation. Here is where a social contract shows up at the stage in Cicero's theory. "Now every people (which is the kind of large assemblage I have described), every state (which is the organization of the people), every commonwealth (which is, as I said, the concern of the people) needs to be ruled by some sort of deliberation in order to be long lived. That deliberative function, moreover, must always be connected to the original cause which engendered the state; and it must also either be assigned to one person or to selected individuals or be taken up by the entire population" (Cicero 1999: 18).

Although Cicero engages with the contractualist vision of society, his understanding of what a social contract would look like is remarkably different from other ancient versions of this theory, as well as from later Hobbesian or Lockean views. Perhaps one of the first contractualists in the history of political thought was the Greek sophist Gorgias, but the first full-blown conception of a social contract belongs to Epicurus. In Principal

Doctrines he holds that: "Natural justice is a symbol or expression of usefulness, to prevent one person from harming or being harmed by another… There never was an absolute justice, but only an agreement made in reciprocal association in whatever localities now and again from time to time, providing against the infliction or suffering of harm" (Inwood and Gerson 1994). This resembles the Hobbesian approach to human nature driven by self-interest or even the contemporary model of a rational maximizer of utility (Gauthier 1986). A similar theory developed by Carneades, a head of the Platonic Academy in the second century BC was popular in Cicero's time as well. Cicero criticizes this approach reiterating that justice and natural law together by definition cannot result from a calculation of utility. According to Carneades, our laws are observed because of a threat of punishment, not because of our natural inclination to justice. Cicero responds: "And if justice is obedience to the written laws and institutions of a people, and if (as these same people say) everything is to be measured by utility, then whoever thinks that it will be advantageous to him will neglect the laws and will break them if he can. The result is that there is no justice at all if it is not by nature, and the justice set up on the basis of utility is uprooted by that same utility if nature will not confirm justice, all the virtues will be eliminated" (Cicero 1999: 120-121). For Cicero, if there is no justice by nature, there is no justice, laws and morality at all.

This debate with Platonists and Epicureans places Cicero's contractualism closer to the Kantian version of a social contract with its link to eternal moral law (Kant 2009). If we are to reconstruct the Ciceronian argument for a social compact, it would be elaborated in a deductive way from a starting point of natural law and human rationality. It is acknowledging the universal rules that lead people to making an agreement on commonwealth, not their utilitarian motives. Such a version of contractualism is well-established among contemporary political theorists and philosophers. Beyond doubt, the most important contribution to this field has been made by Thomas Scanlon with his theory of mutual recognition as a basis of agreement (Scanlon 1998, Scanlon 2003). Again, this idea is very consonant with the meanings that are packed in what we call European values as they are chosen and written in Charts and Constitutions for their own sake, not because they are considered advantageous or useful.

To conclude, a few remarks about the problem of justice that has also been touched upon above. Cicero supported the traditional conception of justice based on property rights and saving equilibrium among property owners, so that everyone should be given their due. The modern world inherits such a vision of justice to employ it as a principle of law and