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Cicero and Natural Law*

ABSTRACT: Marcus Tullius Cicero (106 BC–43 BC) was the first legal philosopher in history. In Cicero's thought we can find the Stoic conception of Natural Law, i. e., that Law is derived from God, Nature (Universe) and Human Reason. Indeed, Cicero inherits from Stoicism the Pantheistic view of Natural Law as right Reason in agreement with Nature and God (who is its author, its promulgator and its enforcing judge as well). It is a true Law of universal application, unchanging and everlasting, valid for all nations and all times. While Cicero derived many ideas on Natural Law from the Greeks, he also contributed some key ideas of his own, for instance, that whoever seeks to disobey the Natural Law flees from himself and rejects man's nature. In other words, when man obeys the Natural Law he is obeying not only a natural and divine rule but also a rule that he gives himself as a fully rational and autonomous legislator. In this piece of research I will focus on the key aspects of Cicero's Natural Law Theory through three masterpieces of his legal and political thought: *De Re Publica*, *De Legibus* and *De Officiis*, which had great influence over the medieval Christian conception of Natural Law through Lactantius (one of the Church Fathers) and Thomas Aquinas (the father of Thomism and considered the greatest theologian and philosopher of the Church).

I. Marcus Tullius Cicero: The First Legal Philosopher in History

Marcus Tullius Cicero (106–43 BC) was one of the great names of the Roman Republic's final days. Despite being a *homo novus* and having been born outside the aristocracy, he received as a young man an impressive education at the hands of some of the greatest philosophers, orators, jurists, and public figures of the day.¹ As an intellectual polymath, Cicero perfectly embodied the classical scholar who cultivated all the "humanist" disciplines (*omnium doctrinarum studiosus*). According to this republican intellectual model, the orator could be at the same time a jurist and the philosopher could end up a government man capable of averting any attempt to subvert or threaten Rome's institutions and traditions.²

Of the painstaking study of and consecration of his life to these three intricately linked disciplines – law, oratory, and politics – Cicero gave elaborate testimony in some of his most influential works.³ Thus is it that, from a strictly legal perspective for example,

* English Translation: Rosa Lineros

1 Of Cicero's teachers, it will suffice to mention such rhetoricians and orators as Apolonius Molon; philosophers as the Skeptic Philo of Larissa, the Epicurean Phaedrus and the Stoics Diodotus and Posidonius; and jurists of such renown as the two Q. Mucius Scaevola (the Augur and the Pontifex).

2 See Mario Bretone, *Tecniche e ideologie dei giuristi romani*, Napoli, 1984, 85. Michael von Albrecht, *Cicero's Style. A Synopsis*, Leyden-Boston, 2003, 220.

3 See Mario Bretone, *Diritto e pensiero giuridico romano*, Firenze, 1976, 28–40.

apart from his treatise on laws (*De Legibus*, 51 BC), there are descriptions of a treaty (*De Iure Civile in Artem Redigendo*, c. 55 BC) that did not survive to our day in which Cicero proposed the systematization of a veritable heap of jurisprudence until then to his eye disordered.⁴ As for oratory, although Cicero distinguished among diverse forms, he preferred to consider himself above all a legal orator, as he declared in the first book of his treatise *De Oratore* (46 BC). The profession demanded a mastery of public and private law, in addition to eloquence and persuasiveness.⁵ In this regard, according to Jill Harries, although Cicero claimed that he knew only as much law as he needed to get by as an orator, “knowledge of law in its most technical and occasionally even pedantic sense was part of his culture.”⁶ With respect to politics, the works that best reflect his commitment to republican ideals and his calling to serve his country are, without a doubt, *De Re Publica* (51 BC) and *De Officiis* (44 BC). According to the patriotic and republican principles that inform Ciceronian political thought, the scholar who fails to involve himself in public affairs is wasting his wisdom. For this reason, in the first book of his treatise on the commonwealth he claimed that whosoever wished to serve Rome must acquire power and influence, for only from a position of civic responsibility can one aid his country.⁷ Finally, as a philosopher Cicero was not an original thinker, but rather an eclectic. Diverse sources of Hellenic philosophy converge in his doctrine, most importantly Platonism, Aristotelianism and Stoicism⁸. Yet, for many historians of Greco-Roman legal thought, this lack of philosophical originality in no way precludes recognizing in Cicero a sincere and impassioned interest in philosophy.⁹ More important still, due to his flair for systematization and talent as a writer, Cicero notably advanced the study of philosophy in Rome by first planting questions, opening them up to debate, and then expounding and disseminating the answers of the Greek philosophical greats. This explains why, even though Cicero did not pertain to that lofty category which Karl Jaspers referred to as “*die grossen Philosophen*” (the Great Philosophers) and even though, for that reason, the importance of his philosophical thought be limited (above

4 According to Alfonso Castro, this treatise of Cicero's served as inspiration to the youngest, most progressive jurists of the day, as for example in the case of his friend Servius Sulpicius Rufus. See Alfonso Castro-Sáenz, *Cicerón y la jurisprudencia romana. Un estudio de historia jurídica*, Valencia, 2010, 293.

5 Cicero's participation in the tribunals owed itself in part to his belief that it was a moral duty as *patronus* to defend his friends and *clientes*, as well as the opportunity that legal oratory presented for social and political mobility. See Francisco Pina-Polo, F., *Marco Tulio Cicerón*, Ariel, Barcelona, 2005, 332. According to this reasoning, Richard A. Bauman has written: “Cicero glorifies oratory at the expense of law”. See Richard A. Bauman, *Lawyers in Roman Transitional Politics. A Study of the Roman Jurists in their Political Setting in the Late Republic and Triumvirate*, München, 1985, 23. Similarly: Ann Vasaly, Cicero's Early Speeches, in: *Brill's Companion to Cicero. Oratory and Rhetoric*, ed. by: J. M. May, Leiden-Boston-Köln, 2002, 81. Emanuele Narducci, *Cicerone. La parola e la politica*, Roma-Bari, 2009, 310ff.

6 Jill Harries, Cicero and the Law, in: *Cicero the Advocate*, ed. by: J. Powell and J. Paterson, Oxford, 2006, 153. Actually, Cicero had learned the Twelve Tables by heart as a boy; at Rome, he was a student of Q. Mucius Scaevola the Augur and of the younger Q. Mucius, the Pontifex (*De Amicitia* 1). For both he retained a lifelong admiration, as seen in his dispute with the young *eques* and legal expert, C. Trebatius Testa (*Ad Familiares*, 7.22).

7 *De Re Publica*, I, 10

8 See Erik Wolf, *Grosse Rechtsdenker*, Tübingen, 1963, 199.

9 See Guido Fassò, *Storia della filosofia del diritto. Volume I: Antichità e Medioevo*, Bologna, 1966, 133. David R. Shackleton Bailey, *Cicero*, Duckworth, London, 1971, 8. Similarly: Antonio Truyol y Serra, *Historia de la Filosofía del Derecho y del Estado. 1. De los orígenes a la Baja Edad Media*, Madrid, 2004 (9th ed.), 189ff. Anthony Long, *From Epicurus to Epictetus. Studies in Hellenistic and Roman Philosophy*, Oxford, 2006, 285.

all if one compares it with that of Aristotle or Plato), his work has nevertheless enjoyed such extraordinary renown in the history of philosophy. On this note, one might highlight from amongst his philosophical treatises *De Finibus Bonorum et Malorum* for its ethical ideas and *Tusculanae Disputationes* (both from 45 BC) for its dialogues on happiness.

The multidisciplinary nature of Cicero's doctrine allows different readings of the same material (specialized or comparative), depending on the approach one uses to analyze his work. The present study aims to examine but one of these multiple dimensions – perhaps one of the least familiar of his extensive bibliography, yet also one of the most suggestive and original from a thematic point of view due to its combining the two disciplines to which Cicero most dedicated himself: Philosophy and Law. Though Cicero was less an original philosopher than a compiler and disseminator of Greek philosophy, and though he was not a lawyer as his teachers the Scaevola or his friends Servius Sulpicius Rufus and Gaius Trebatius Testa (to whom Cicero dedicated a dense legal treatise by the name of *Topica*)¹⁰ were, but rather a consultant (as a young man) and an expert witness or authority on law as an adult (not without reason does the Anglo-Saxon tradition simply consider him a legal advocate) it is clear that, as Guido Fassò suggests, the vast legal experience our author acquired over the course of his career as a forensic orator and professional politician forced him to frequently treat problems of legal philosophy. Hence that, for those historians of legal thought, Cicero should be considered the first true philosopher of Law.¹¹

Although jurisprudential questions arise frequently in Cicero's writings, above all those questions surrounding situations which arise in everyday life and which have to do with justice and the law, the works that most interest us from a legal-philosophical point of view are essentially the three treatises *De Officiis*, *De Legibus*, and *De Re Publica*.¹² The following section will focus on one of the more subtle aspects of Ciceronian legal philosophy: his conception of the natural law (*lex naturalis*) as a law born from right reason (*recta ratio*) and not from the edicts of the praetors or the laws of the Twelve Tables. As such, it entails an unwritten and universal law, distinct from positive law (*ius positum*) and whose understanding requires us to probe the very heart of philosophy (*ex intima philosophia*), wherein we learn that the Reason all of humanity holds in common is the source of the natural law. Thus, Cicero concludes that the nature of Law is derived from Human Nature.¹³

II. Natural Law as *Ratio Summa, Insita in Natura*

One clearly sees in Cicero's philosophy of natural law the influence of the Stoic belief in a divine *recta ratio* woven into nature that acts as the foundation of Law. Even though Cicero does not explicitly defend his idea of natural law until the third book of his treatise *De Re Publica* and even more so in *De Legibus* (considered by many to be the first work of legal philosophy in the history of human thought), it is clear that thirty years before he had already referred to the idea, situating it in the forensic context of the practice of law. Strictly speaking, he treats it as a rhetorical *topos* under the

10 Castro-Sáenz (Fn. 4), 375.

11 Fassò (Fn. 9), 133.

12 Fassò (Fn. 9), 134. The essay *De Inventione* (86 BC) from Cicero's youth as well as the aforementioned *De Finibus Bonorum et Malorum* and *Tusculanae Disputationes* are also of interest despite their indirect connection with legal argument.

13 *De Legibus*, I, 5, 17

heading of *inventio*. According to Cicero's view, the theory of Natural Law provides the orator with arguments that permit him to amplify the Civil Law and to compare it with non-judicial principles. Therefore, a strategy of argument based on Natural Law is particularly helpful when the speaker wants to persuade his hearers that a given act, although illegal, is nonetheless right.¹⁴

As a legal orator, Cicero was fully aware that in Republican Rome the *ius civile* was the only law that bound. The Roman civil law did not depend on any standard other than itself for its legitimation. In the same way, he knew that Roman jurisprudence did not differentiate between the two meanings (objective and subjective) that the term *ius* could possess. That is to say, on the one hand understood as law and on the other as right. For the Roman legal experts, whose vision of the *ius* was formalist, something was deemed right in virtue of the fact that it was what the law enjoined. Although the rights derived from Natural Law had no normative bearing on Civil Law, Cicero believed that the orator could invoke Natural Law as an ethical principle, in connection with which he used the terms *aequum* and *ius*, as a means of appealing to the moral sentiments of the court in cases where the Civil Law, applied literally, would disadvantage his cause.¹⁵

It is clear Cicero was convinced from the start of his career as a forensic orator that the same limitations constraining Positive Law, embodied in the *ius civile*, did not bind Natural Law. Although Positive Law and Natural Law both govern human behavior, they are distinct in that while Positive Law is a human product and thus its written norms transient and particular (the force of the *ius civile* was limited to Rome and her citizens), Natural Law is an unwritten code of laws whose origin is divine and human (given that it proceeds from the *naturae ratio* which is the law of gods and men), of a universal, eternal and immutable nature.¹⁶ For Cicero, Natural Law required no positive formulation or recognition, for it is a reality unto itself, "a supreme law which has its origin ages before any written law existed or any State had been established."¹⁷

Cicero's theory of Natural Law achieved its fullest extension in two essays representative of his last intellectual phase: *De Re Publica* and *De Legibus*. With respect to the first of these, there is an extremely relevant text transmitted by Lactantius¹⁸ in which Cicero refers to a "true law" that is "right reason" in agreement with nature: ("*est quidem vera lex recta ratio naturae congruens*"). He then characterizes Natural Law in the following way:

"It (Natural Law) summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishment."¹⁹

14 *De Inventione*, II, 22, 65–68; *Topica*, 23.89. I have borrowed this quotation from Marcia L. Colish's book: *The Stoic Tradition from Antiquity to the Early Middle Ages. I. Stoicism in Classical Latin Literature*, Leiden (The Netherlands), 1985, 88.

15 Loc. 88

16 *De Officiis*, III, 5, 23.

17 *De Legibus*, I, 6, 19

18 *De Divinis Institutionibus*, VI, 8, 6–9

19 *De Re Publica*, III, 22, 33

Many a commentator on this fragment, found in Book III of *De Re Publica*, has agreed that Cicero's ideology appears here in a confusing way.²⁰ In effect, the three possible versions of Natural Law (divine, physical or naturalistic, and rationalist) coincide in the same text. This is because Cicero adheres to the pantheistic tenet of Stoicism according to which God, Nature, and Reason are the same. Nonetheless, in the final chapter of the text lies a clue that greatly aids any attempt to better understand Cicero's conception of Natural Law. The Natural Law flows from the *mens divina*, since God is its supreme legislator and judge, and it is inherent in human nature itself. For this reason, asserts Cicero, the man who fails to respect it renounces his own nature ("cui qui non parebit, ipse se fugiet ac naturam hominis aspernatus"). It follows that the *natura* from which this law is derived is not some objective reality outside of man, but rather inherent to him, forming part of his essential rationality. Upon closer examination, this idea is simply the Greco-Roman conception of Natural Law understood as *recta ratio*. Conversely, when Cicero speaks of "Nature" it is a different nature than his Greek philosophical predecessors (such as Pythagoras or Empedocles) imagined, and different too from that meant by jurists from Imperial Rome (such as Ulpian).²¹ In contrast to Cicero, these authors understood Nature as a pre-existing entity; an objective physical order prior to Man whose norms applied equally to him as to the rest of Creation: "*Ius naturale est, quod natura Omnia animalia docuit.*"²²

Thus, when Cicero asserts in *De Officiis* that the Reason which is in Nature (*naturalis ratio*) is the law of gods and men: ("*ipsa naturae ratio, quae est lex divina et humana*"),²³ what he really means is that in obeying the Natural Law, Man obeys a law which is both human and divine, but which ultimately he gives to himself as an autonomous legislator. Not without reason does Man encounter within himself, that is, in his own nature, the Principle of Law; for Reason forms part of his nature, of his human nature, and as such is not some external metaphysical entity.²⁴ Only in this semantic context does the definition Cicero gives of Natural Law in *De Legibus* as The Law of Reason achieve its full meaning:

"Law as the highest reason, implanted in Nature, which commands what ought to be done and forbids the opposite. This reason, when firmly fixed and fully developed in the human mind, is Law."²⁵

III. Cosmopolitanism and Natural Law: Towards an *Omnium Gentium Consensus*

As we have seen in the preceding section, for Cicero, all law emanates from a primordial Natural Law, universal, eternal, and prior to the creation of any written (positive) law as well as to any city-state. Law was neither founded in nor born from human laws. For this reason, justice and the legitimacy of the *ius* do not depend on their agreement with positive law, but rather on agreement with that *recta ratio divina* which is the

20 See Ursicino Vitoria, *Filosofía jurídica de Cicerón. Doctrinas del conocimiento del Derecho y del Estado*, Valladolid, 1939, 144. Fassò (Fn. 9), 137. Similarly: Reginaldo Pizzorni, *Il diritto naturale dalle origini a S. Tommaso d'Aquino*, Roma, 1978, 41. Mario Bretone, M., *Storia del diritto romano*, Bari, 1987, 329.

21 *De Re Publica*, III, 11, 19; *De Finibus Bonorum et Malorum*, III, 20, 67

22 *Digesta*, 1, 1, 1, 3

23 *De Officiis*, III, 5, 23

24 See Guido Fassò, *La legge de la ragione*, Bologna, 1966 (2nd. ed), 18; Fassò (Fn. 9), 139.

25 *De Legibus*, I, 6, 18

Natural Law.²⁶ The logic of Cicero's Natural Law argument seems unimpeachable. In response to the thesis (to Cicero unacceptable) that justice be identified with the *lex positiva*, Cicero replies:

"But if the principles of Justice were founded on the decrees of peoples, the edicts of princes, or the decisions of judges, then Justice would sanction robbery and adultery and forgery of wills, in case these acts were approved by the votes or decrees of the populace."²⁷

For Cicero, Justice is one (in contrast to Carneades' position).²⁸ Justice binds all human society, and is based on one Law, which is right reason applied to command and prohibition. Whoever knows not this Law, whether it has been recorded in writing anywhere or not, is without Justice. At the same time, justice must not be understood as conformity to written laws and national customs, for were it so, obedience to the law would depend on a simple calculation of utility on the part of those it governs. Basing himself on this observation, our thinker from Arpinum concluded that for there to be true Justice, it must be founded in Nature. Said another way, he who wishes to be in harmony with the general principles of Justice must observe the following two postulates of Natural Reason: first, that no harm be done to anyone; and second, that the common interests be conserved.²⁹ As such, Natural Law is neither an external law alien to Man, nor constituted by laws foreign to one's autonomy (as is Positive Law), but rather its commands are firmly imprinted in the human mind.³⁰

On account of Cicero's faith in human fellowship, owing to the power that the *recta ratio* of nature exercises over it as much in practice as in theory, he is often grouped with Greco-Roman Cosmopolitanism, which originated with Diogenes the Cynic and included such illustrious philosophers as Crates of Thebes, Zeno of Citium (the founder of the Stoic school), Chrysippus (who developed Stoicism into a full philosophical system), Panaetius and Posidonius (masters of the Middle Stoa) and then Cicero, Seneca, Epictetus and the Emperor Marcus Aurelius, with whose death, in 180, the Late Stoa effectively ended.³¹

Cicero's thought had the unique gift of perfectly combining Natural Law theory with Cosmopolitan Humanism. The firm humanist conviction that inspired his legal philosophy appears time and again throughout his work in texts as eloquent as the following:

"There is only one principle by which men may live with one another, and that this is the same for all, and possessed equally by all; and finally, that all men are bound together by a certain natural feeling of kindness and good-will, and also by a partnership in Justice."³²

The *recta ratio* that this underlying law embodies is common to all of humanity (*ratio summa, insita in natura*), though it is neither a product of human ingenuity nor of the will of the people. It is the very spirit of God, His sovereign reason. In this sense, departing from the idea that Right Reason is the closest to divinity existing between

26 Loc. I, 15, 42; II, 4, 10

27 Loc. I, 16, 43

28 In accordance with Lactantius' comment in Book III of *De Re Publica*, Carneades differentiates between two classes of Justice: Natural and Civil (the first has more to do with prudence than justice, and the second more to do with justice than prudence). See Lactantius, *De Divinis Institutionibus*, V, 16, 5–13

29 *De Officiis*, I, 10, 31

30 *De Legibus*, I, 6, 19

31 See Martha C. Nussbaum, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education*, Cambridge (Massachusetts)-London, 1997, 52. Similarly: David Heater, *World Citizenship. Cosmopolitan Thinking and its Opponents*, London-New York, 2002, 27. Kwame A. Appiah, *Cosmopolitanism. Ethics in a World of Strangers*, London-New York, 2006, XIV.

32 *De Legibus*, I, 13, 35

Heaven and Earth, some authors have concluded that Cicero shared with his Stoic teachers belief in a tie that binds gods and men at least insofar as laws and rights are concerned.³³ From this universalist perspective one might consider the world one great city in which gods and men coexist with one another. Precisely in this cosmopolitan context, for many more than a little utopian,³⁴ must one understand Cicero's appeal to a consensus between all people ("*omnium gentium consensus lex naturae putanda est*") as well as his desire that said accord be elevated to the order of Natural Law.³⁵

At this point one would do well to note that between the *ius naturae*, whose universal, eternal, and immutable principles are as seeds we possess innately, having been sown by God in the minds of men; and the *ius civile*, whose written norms are only in force within the particular boundaries of the *civitas* where they were created (*ius proprium civitatis*) – that is to say, whose norms apply not to the whole of humanity but rather to the *cives* of a specific state; Cicero interposes the *ius gentium*, understood as that Positive Law which all nations observe on account of its having been introduced to them through the *naturalis ratio*. Still, even though the classification of objective Law into these three categories was widely accepted by jurists both at the time of and well after Cicero,³⁶ and though Cicero appears to have been the first to employ the phrase *ius gentium*,³⁷ it is clear that on occasion Cicero contrasts the *ius civile* with the the moral order formed jointly by the *ius commune gentium* and the *ius naturale* so strongly that it is extremely difficult to distinguish these latter two. Worse still, there are times when Cicero goes so far as to identify the *ius gentium* with the *ius naturale* (or simply confuse the two), as occurs for instance in one well-known passage of *De Officiis*: "*Neque vero hoc solum natura. Id est iure gentium*": ("But this principle is established not by Nature's laws alone (that is, by the common rules of equity)."³⁸

One should add, for the sake of clarity, that the *ius gentium* is just like the *ius civile* a form of positive law. All that differentiates them is their corresponding areas of influence: the Roman *ius civile* did not take into consideration the other nations of the world while the *ius gentium* did. Nevertheless, as we have seen in the preceding passage of *De Officiis*, when Cicero distinguishes the *ius gentium* from the *ius civile* in the same terms he uses to differentiate *ius naturale* from the the *ius civile*, in practice he is establishing an equivalence between *ius gentium* and *ius naturale*.³⁹ This fusion (or confusion) of the two concepts seems a fruitful one for two reasons: in the first place, because it opens the way to a conception of Natural Law less abstract-intellectual than that of the Stoics and thus closer to people's actual experience of the Law, as Guido Fassò suggested;⁴⁰ in the second place, the interaction between the Natural Law and the Law of Nations gives greater internal consistency to the humanist-cosmopolitan project, both ethically and legally. This project, Cicero tells us, consists fundamentally

33 See Fassò (Fn. 9), 191. Similarly: Javier Peña, *La ciudad sin murallas. Política en clave cosmopolita*, Barcelona, 2010, 40.

34 See S. L. Utchenko, *Cicerón y su tiempo*, spa. transl., J. Fernández Sánchez, Madrid, 1977, 301.

35 *Tusculanae Disputationes*, I, 13, 30

36 See Emilio Costa, *Cicerone giureconsulto* (I), Roma, 1964, 21 ff. Mario Talamanca, *Instituzioni di diritto romano*, Milano, 1990, 50 ff.

37 See Francisco J. Navarro Gómez, *La razón de la ley. Un estudio, confrontación histórica y filosófica sobre el Derecho universal de G. Vico*, Sevilla, 2009, 39.

38 *De Officiis*, III, 5, 23

39 *De Haruspicum Responso*, XIV, 32

40 Fassò (Fn. 9), 139

in spreading solidarity and transforming the global political alliance of all with all into a truly universal society.⁴¹

IV. Cicero's humanism: beyond the *ius gentium*

In the same way that Cicero is a recipient – through Panaetius and Posidonius – of the Stoic doctrine of the natural Law, we can also conclude that if the Roman thinker deserves the title of 'humanist' it is due to the influence he exerts on the ethics of the early Stoics, in both: his concept of human nature and in his thesis on the brotherhood between men. For Cicero one of the most valuable things about the Stoics is their ability to reconcile the individual with the universal, i.e., the needs of the individual with the universal nature. This conception of man as a social animal with his individual rights and universal duties still existed in the times of Panaetius and Antiochus. It was through the teachings of both Stoic scholars as humanism was growing up in Cicero, whose main thoughts would be accurately reflected in his most relevant legal and political works, *De Re Publica* and *De Legibus* better than in his later philosophical treatises, such as *De Officiis*.⁴²

If in the Book III of *De Re Publica* Cicero supports the erudite aristocracy as the most suitable form of government for the republic, it is because he believes it is the only system capable of coordinating the rights of citizens in their dual condition as moral people and members of the same *commonwealth* ruled by the law and the *recta ratio*.⁴³ For Cicero, it could be said that the community exists only when the individuals who are part of it are held together by a partnership in justice.⁴⁴ In a parallel sense, Cicero maintains in his Book I of *De legibus* that Law works as a link to human society and it is constituted by a unique law: the law of reason.⁴⁵

However, neither the rationality of the Law nor the legal link that allows men to live together in society are based on human will but on nature itself. Besides the existence of a legal rule to guarantee men living together, whose ultimate legislative principle is the divine reason, it is necessary that a natural feeling of friendship arises between the members of the human community.⁴⁶

In relation to the natural tendency of humans to socialize, it should be pointed out that Cicero owes a debt to the most orthodox Stoic doctrine for his pantheistic view of nature. According to this doctrine, God, mankind and the Universe are only one entity, so that human rationality could be understood as a part of the divine reason. However, it would be a mistake to infer from Cicero's view that he refuses man's free will and that his concept of freedom is completely theocentric. There is certainly, as H.A.K. Hunt has pointed out, "a loosening of the bondage of man's complete subordination to the universe, which is supposed to characterize Greek thought, and there is a definite proclamation of the essential worth of man."⁴⁷ In the end Cicero achieved a sense of humanity which not only was far ahead of the old outlook of the city-state but also had a vitality far greater than that which the traditional Stoic attitude could be expected to achieve.

41 *De Legibus*, I, 5, 16. *Tusculanae Disputationes*, V, 36, 108: "Patria est ubicumque est bene."

42 Harold A. K. Hunt, *The humanism of Cicero*, Melbourne, 1954, 191–200.

43 *De Re Publica*, III, 35, 47

44 Loc., III, 33, 45

45 *De legibus*, I, 10, 32; I, 15, 42

46 Loc., I, 13, 35

47 Hunt (Fn. 42, 196).

Thus it seems that Cicero has a coherent system and it deserves the name of humanism because it was concerned with man first and foremost and with other things only in so far as they were relevant to man's position in the world. First it required into man's nature, the validity of his perception, the nature of his highest virtue, the condition of his happiness, the degree of his freedom and his relation to the forces which control the world; it ended by asserting a theory of freedom and a rule of conduct demanding the highest respect for a man and systematically based on the theory of human nature.⁴⁸

The philosophical foundation that characterizes Cicero's legal universalism is implied from the union operated between ethical principles of humanism and the natural Law's doctrine in Book III of *De Officiis*. As it could be inferred in the following excerpt for the thinker of Arpinum the *ius gentium* has a greater scope than the *ius civile* and it is used in a way that can be translated as the universal law.

"For there is a bond of fellowship – although I have often made this statement, I must still repeat it again and again – which has the very widest application, uniting all men together and each to each. This bond of union is closer between those who belong to the same nation, and more intimate still between those who are citizens of the same city-state. It is for this reason that our forefathers chose to understand one thing by the universal law and another by civil law. The civil law is not necessarily also the universal law; but the universal law ought to be also the civil law. But we possess no substantial, life-like image of true Law and genuine Justice; a mere outline sketch is all that we enjoy. I only wish that we were true even to this; for, even as it is, it is drawn from the excellent models which Nature and Truth afford."⁴⁹

In reference to this comment of Cicero on the sense of universality of the *ius gentium*, it could be added as was pointed out in the third part of this article, that its prescriptive nature comes from the *ius naturale*, which draws its ethical and legal foundation from the humanistic principle from the natural Law's doctrine *par excellence*. *The common bond of mankind*. The concept of *dignitas humana* is integrated *in nuce* in this humanistic principle to which almost two thousand years later Samuel Pufendorf (1632–1694) would refer as the main concept of the natural Law. Indeed, as it is pointed out by Hans Wezel⁵⁰ Pufendorf was the first philosopher of Law in history to defend the idea of the dignity of man, who is an ethically free human being, in his main legal work: *De iure naturae et gentium* (1672). The idea of dignity is the foundation of his whole natural Law system and from it, it would emerge the concept of human rights and freedom that would be so decisive throughout the 18th century (especially in the reflections of Immanuel Kant who views it as the main basis of the human rights, as it is understood in the second formulation of the categorical imperative):

"Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end."⁵¹

According to Kant's theory, the moral dimension of personality which has its foundation in freedom and in the individuals' autonomy. Therefore, it could be said, that for Kant human dignity involves not just the negative assurance that a person is not going to

48 Hunt (Fn. 42, 188–189).

49 *De Officiis*, III, 17, 69

50 Hans Wezel, *Naturrecht und Materiale Gerechtigkeit. Problemgeschichtliche Untersuchungen als Prolegomena zu einer Rechtsphilosophie*, Göttingen, 1955, 156.

51 Immanuel Kant, *Grundlegung zur Metaphysik der Sitten* (1785), in *Kants Werke* (hg. von der Königlich Preussischen Akademie der Wissenschaften), Bd. 4, Berlin, 1968, 428. See also: *Kritik der praktischen Vernunft* (1788), in *Kants Werke*, Bd. 5, 132.

be insulted or humiliated but it entails the positive statement of the full development of the personality of each individual as well.⁵²

Therefore, the naturalistic humanism's transition of the Greek Stoics into the modern humanism of the Enlightenment cannot be understood without the prior mediation of Cicero. As a thinker and figure of the late period of the Republican era, Cicero might be considered as a predecessor of Christian ethics for its ability to harmonize the natural world with the individuals' moral values. Christianity meant the discovery of the individual as a subject endowed with autonomy and spirit, which would justify the rights of the individuals in their capacity as rational beings.⁵³ Given its particular intermediate position between Greco-Roman and Christian ethics, the human condition has, within the legal philosophy of Cicero, a double meaning: objective and subjective. On the one hand, men are subordinate from their birth to the universal laws of nature whose author is God, its promulgator and enforcing judge.⁵⁴ The necessity for men to accept their human condition prevents them from facing the divinity, rebelling against the laws or changing the natural order of things.⁵⁵ But on the other hand, despite these limitations, Cicero's theory has made an advance beyond the orthodox Stoic position towards the Christian conception of God and has put forward grounds for human freedom without fully vindicating them. For Cicero, man's morality derives from his endowment of reason, which he shares with all men alike, and requires that he observes the true law which is an expression of the right reason. Therefore, Cicero insists that man has some degree of freedom and raises it to a form of morality ennobled by the notion of man's responsibility. So, it is in the conception of man's common endowment of reason as the basis of morality that the ultimate sanction for the doctrine of human brotherhood is to be found.⁵⁶

Moreover, the humanitarian ideal of Cicero, taken from the social equalitarianism of the Stoics is extended to the relation among the different peoples all over the world.⁵⁷ Acknowledging the close alliance that unites people and the natural fellowship (*naturalis societas*) that there is above the political boundaries and ethnic and cultural prejudices that only serve to separate them, Cicero states in Book III of *De Officiis* the following ideas:

"But no cruelty can be expedient; for cruelty is most abhorrent to human nature, whose lead we ought to follow. They, too, do wrong who would debar foreigners from enjoying the advantages of their city and would exclude them from its borders, (...) It may not be right, of course, for one who is not a citizen to exercise the rights and privileges of citizenship; (...) Still, to debar foreigners from enjoying the advantages of the city is altogether contrary to the laws of humanity."⁵⁸

With this universalist idea and non xenophobic position, Cicero manifests himself in favour of granting residence, allowing foreign people who wish to live and trade peacefully with the Roman citizens – thus anticipating many of the assumptions that already existed in the 16th century of our era and were again developed in the *ius communicationis* doctrine of Francisco de Victoria.⁵⁹ In reference to these previous reflections,

52 Antonio E. Pérez Luño, *La Filosofía del Derecho en perspectiva histórica*, Sevilla, 2009, 132.

53 Eduard Zeller, *Die philosophie der Griechen in ihrer geschichtlichen Entwicklung. Erste Abteilung. Allgemeine Einleitung. Vorsokratische Philosophie*, Leipzig, 1892 (5. Auflage), 136.

54 (Fn. 19).

55 *Tusculanae Disputationes*, III, 25, 60

56 Hunt (Fn. 42), 196–200.

57 *De Legibus*, I, 5, 16

58 *De Officiis*, III, 11, 47

59 See Francisco Vitoria, *Relectio de Indis* (1539), 1,3,1

we can conclude that Cicero bases his confidence in mankind on the belief that human nature is governed by the *recta ratio*, both in the speculative and practical order. Thus, Cicero understands the natural reason as a supreme principle which acts as a link between Heaven and Earth, God and men, at the same time seeing the world as if it was a single common town, human and divine governed by the rules of natural Law.

When thinking about the relationship of humanity with the Cosmos, Cicero used to remember Socrates, his dislike of abstract speculation and because both shared the same concern for human affairs.⁶⁰ Thus, Cicero recognized the merit of Socrates for having been the first philosopher who sent down philosophical ideas from Heaven to Earth and places and introduces them into the cities and in the homes of men forcing philosophy to deal with every day matters and morals, good and evil included.⁶¹ Therefore, following this parallelism between the two authors, and in agreement with the thesis that I have raised throughout this section on Ciceronian humanism, it would not be an exaggeration to conclude it by stating the following ideas: that in the same way that Socrates was the first philosopher who humanized philosophy Cicero was the first jurist philosopher in history to humanize the natural Law.

V. Notes on the Influence of Cicero's Philosophy of Law in the History of Philosophy

The present essay began by highlighting the crucial role Cicero played in transmitting the ideas of the great masters of general philosophy (above all Plato and Aristotle) as well as his considerable work regarding the Stoic theory of Natural Law. Had he not first undertaken the compilation, adaptation, and transmission of the classics of Greek thought to Roman culture, their presence in Christian ethics would be inconceivable. As seen in the previous section, it was one of the Fathers of the Church, Lactantius (commonly known as the "Christian Cicero"), who transcribed the text of Book III of *De Re Publica* in which Cicero refers to "one eternal and unchangeable law," valid "for all nations and all times" and whose author is God, that survived to the present day.⁶² This same Book III received also the commentary of other Fathers of the Church, such as Augustine of Hippo with respect to Law's empire⁶³ and Isidore of Seville on the question of just and unjust war (which in the Medieval Ages would be taken up by Thomas Aquinas and which in the Modern Age would be reformulated yet again by such Spanish classics of the Philosophy of Law as Juan de Mariana and Bartolomé de Las Casas).⁶⁴

The term *humanitas*, so deeply rooted in the core of the Ciceronian-Stoic philosophy of Natural Law, conjured up throughout the Renaissance the image and work of the illustrious orator, thinker, and politician of Arpinum. Indeed, one of the most important essays on rhetoric and aesthetics of the period, written by as quintessential a humanist as Erasmus bore for a title, *Ciceronianus, sive, De optimo dicendi genere* (1528) and entailed, in reality, a critique of those humanists unjustly calling themselves Ciceronian⁶⁵. One encounters yet another test of the relevance of Cicero's doctrine to this age in the writings most representative of French humanism, specifically the 107

60 See Werner Jaeger, *Paideia. Die Formung des griechischen Menschen*, Bd. 3, Berlin und Leipzig, 1933–1947, Kap. II.

61 *Tusculanae Disputationes*, V, 4, 10

62 Lactantius, *De divinis institutionibus*, VI, 8, 6–9

63 Augustine of Hippo, *De Civitate Dei*, XIV, 23, 2; XIX, 21, 2

64 Isidore of Seville, *Etymologiae*, XVIII, 12

65 See Erik Wolf, *Rechtsphilosophische Studien*, Frankfurt am Main, 1972, 183.

Essays of Montaigne, in which quotations of Cicero's dialogues as well as of his major works abound.

The intellectual footprint left for posterity by Cicero is best embodied in the foundational work of the Law of Nations, *De Iure Belli ac Pacis* (1625), written by Hugo Grotius. Here, Cicero's defense of respectful treatment and hospitality toward strangers on account of their being members of the human race had a definite influence on the Just War Theory of the Dutch jurist.⁶⁶ Unmistakable elements of Stoic and Ciceronian philosophy appear also in his theory of a rational Natural Law.⁶⁷ Finally, as far as the combination of Cosmopolitanism and Natural Law theory that characterized Cicero's final intellectual phase is concerned, one need but mention that it was perhaps Immanuel Kant who best knew how to take advantage of the Stoic belief in a global citizenship and develop it into his cosmopolitan and humanist project in which – as Nussbaum remarks – he mapped out an ambitious program for the containment of global aggression and the promotion of universal respect for human dignity.⁶⁸ This humanist project, cosmopolitan and enlightened, whose foundations were laid out in Kant's most important political work, *Zum ewigen Frieden* (1795), is defended to this day by those champions of the Enlightenment's legacy as well as of the universality of human rights, among whom one might count John Rawls (1921–2002), Martha C. Nussbaum, Jürgen Habermas, and Ulrich Beck, a clear sign that, at least within the humanities, Cicero's philosophy still “enjoys good health.”⁶⁹

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66 Nussbaum (Fn. 31) 59.

67 Fassò (Fn. 24) 142–143.

68 See Martha C. Nussbaum, “Kant and Cosmopolitanism”, in: *Essays on Kant's Cosmopolitan Ideal*, ed. by James Bohman and Matthias Lutz-Bachmann, Cambridge (Mass.)-London, 1997, 27.

69 Employed here is the famous quotation often mistakenly attributed to the Spanish dramatist José Zorrilla, but which appears to have actually been coined by Juan Ruiz de Alarcón and Pierre Corneille.