**Dignity & Natural Law Tradition**

**ABSTRACTS**

[1 Dr. Diego Poole. Profesor Titular de Filosofía del Derecho. Universidad Rey Juan Carlos (Madrid, SPAIN) 1](#_Toc5639119)

[The "Kantianization" of St. Thomas by Grisez-Finnis 1](#_Toc5639120)

[2 José María Carabante (Centro Universitario Villanueva-Universidad Complutense de Madrid, SPAIN) 2](#_Toc5639121)

[Order and Nature The conception of Law in Eric Voegelin 2](#_Toc5639122)

[3 Agata Czarnecka, PhD (Nicolaus Copernicus University in Torun, POLAND) 2](#_Toc5639123)

[Shaping Citizens. New Natural Law Theory 2](#_Toc5639124)

[4 Dra. Carolina Pereira Sáez (Faculty of Law, University of A Coruña, SPAIN) 3](#_Toc5639125)

[Legal Nihilism: Abandoning the Foundations 3](#_Toc5639126)

[5 Dr. José Antonio Santos (Faculty of Law, Universidad Rey Juan Carlos, Madrid, SPAIN) 3](#_Toc5639127)

[Human Dignity, Post-natal Abortion and Historical Time 3](#_Toc5639128)

[6 Dr. Juan Antonio Martínez (Profesor Titular Filosofía del Derecho, Universidad Complutense de Madrid, SPAIN) 3](#_Toc5639129)

[Human dignity and legal personality 3](#_Toc5639130)

[7 Dr. Oscar Vergara (Faculty of Law, University of A Coruña, SPAIN) 4](#_Toc5639131)

[Attempts to rehabilitate the practical reason of Aristotelian roots in contemporary bio-medical ethics. Critical approach 4](#_Toc5639132)

[8 Renato Rabbi-Baldi Cabanillas (University of Buenos Aires, ARGENTINA) 4](#_Toc5639133)

[The Principle of Proportionality, Human Dignity and the Jurisprudence of the Argentinian Supreme Court. An Analysis Based on the Thought of Robert Alexy 4](#_Toc5639134)

[9 Tobias Schaffner Ph.D. (Cambridge) 5](#_Toc5639135)

[Peace and Justice as the Common Good of the Political Community: Philosophical ideal or shared practice? 5](#_Toc5639136)

[10 Dr. Julian Vara (San Pablo Ceu University, Madrid) 5](#_Toc5639137)

[A new approach to ST I-II, Q. 94, A. 2 5](#_Toc5639138)

# Dr. Diego Poole. Profesor Titular de Filosofía del Derecho. Universidad Rey Juan Carlos (Madrid, SPAIN)

## The "Kantianization" of St. Thomas by Grisez-Finnis

In this paper I will try to explain why it is a common mistake to interpret the Thomistic doctrine of natural law as if it were a moral doctrine. This error has recently been amplified by the doctrine of Grisez-Finnis when they try to "complete" the work of St. Thomas.

Grisez and Finnis intend to build a "Thomist" moral doctrine with normative criteria (modes of responsibility / demands of practical rationality), leaving the moral virtue in the background. Such pretension, typical of the modern thought, is a kind of “kantinization” of St. Thomas.

In the Aquinate we do not find a method of knowing more specific precepts based on the universal principles of action. But instead there is a doctrine of virtue as the source par excellence of moral knowledge.

In my paper I explain why the moral thought of St. Thomas and his doctrine about *natural law* are distorted when presented as the source of Thomistic ethics

# José María Carabante (Centro Universitario Villanueva-Universidad Complutense de Madrid, SPAIN)

## Order and Nature The conception of Law in Eric Voegelin

Eric Voegelin is, without a doubt, one of the main theorists of politics. Less known is his legal theory. Voegelin was a disciple of Kelsen and it was precisely his skepticism before the pure theory of law that led him to delve into the field of theory of politics. In this sense, in my communication I intend to point out the main components of Eric Voegelin's theory of law and, in particular, reflect on the legal dimension of his notion of order.

Voegelin starts from the idea that every society is structured around an idea of order, differentiating between the substantive order and the empirical order. Order is not only what sustains the identity of a society, but also constitutes the normative point of view to which the positive and legal order must adapt. Furthermore, the substantive order offers a criterion of material correction that Kelsen's normative theory lacks.

As we will try to show, Voegelin's theory is interesting today because it demonstrates the deficiencies of positivism and reveals its ideological configuration, as evidenced by the dialogue between Kelsen and Voegelin about the concept of political religions, on which we will also deepen in our communication.

# Agata Czarnecka, PhD (Nicolaus Copernicus University in Torun, POLAND)

## Shaping Citizens. New Natural Law Theory

I would like to focus on the new natural law theory not only as a revision of the Thomistic natural law theory as such, but as a way of adapting natural law theories to contemporary world and its problems. The new natural law theory seems to be interesting for two main reasons. Firstly, because it is a theory of natural law so often “accused” for being a positivist theory. Secondly, because its casuistry especially regards to issues of the beginning and the end of human life, makes it an attractive alternative for citizens raised on liberal principles. I would like to consider these two problems together because I believe that there is a connection between them. Even though the new natural lawyers’ claims concerning the practical reason, structure of values or the ultimate end of human life can be disputed, they seem to base their reasoning on the claim that there is a necessary relation between legal and moral orders. And since there is such relation not only are they allowed to discuss problems of the contemporary world but they are obliged to do so. I would also like to discuss ways the new natural lawyers actively support their theory not only in an academic sphere but also in a public life.

# Dra. Carolina Pereira Sáez (Faculty of Law, University of A Coruña, SPAIN)

## Legal Nihilism: Abandoning the Foundations

Despite their differences, both for Natural Law Tradition and classical Legal Positivism Law relies upon a previous ethical judgment and a socially shared minimum agreement on fundamentals concerning the good. This fundamental agreement was always understood as based on human nature. For classical Legal Positivism Law rests on security, taking it for granted, whether consciously or unconsciously, that it is a good. On the contrary, Natural Law Tradition generally prefers to rely on justice. In both cases, a previous judgment it was assumed on what is good, and according to both visions it depends on nature. Out of a wild variety of factors — not excluding the influence exerted by positivist theories in the real legal life, these days the most fashionable legal trends refer Law to no previous substantial reality. This attitude brings about the emptying or at least the loss of substance of Law itself — a fact that amounts to Legal Nihilism.

# Dr. José Antonio Santos (Faculty of Law, Universidad Rey Juan Carlos, Madrid, SPAIN)

## Human Dignity, Post-natal Abortion and Historical Time

The matter of this paper is to examine and offer constructive criticism of moral and legal justification of the ‘post-natal abortion’ in view of what happened in the past, by building up a legal and philosophical framework, sieved through memory. Assessing the present with the burden of the past, a sensible past aligned with political equity of all human beings, though. Here, it makes full sense the ‘duty of remembrance’ as a memory of oblivion which, as Ricoeur put it, basically means ‘the duty of never forgetting’, crossed in this case with a problematic concept such as human dignity. The starting point of my research is a practical philosophy that tries to drift apart from the mere desires and to operate cautiously with concepts such as nature, dignity or sympathy. It is thus pertinent the approach of anamnesis coined by Plato and developed by Aristotle, as this evocation of a past recollection brought to the memory. A remembrance that implies a search of this recollection and seeks, as a final goal, a memory of oblivion as Augustine of Hippo would put it. At the same time, there is a certain distance from this classic conception, since the historical-political coordinates are different from the current ones. For it, one delves into memory after Auschwitz to find out how much memory is wanted, but also how much memory can be taken in each model of State. A reinterpretation of the question of the European people’s memory is a problem that affects humanity.

# Dr. Juan Antonio Martínez (Profesor Titular Filosofía del Derecho, Universidad Complutense de Madrid, SPAIN)

## Human dignity and legal personality

The understanding of human dignity entails a certain complexity because of the aspects that it involves; it is also difficult to determine its legal implications. The conceptual precision of its meaning can be related to the determination of the factor or predominant factors of humanization and the implications that entail, especially the legal ones. This requires clarifying the type of subjectivity and anthropology underlying the various conceptions of law and, in particular, human rights.

The divergence between the different concretions of the dignity and personality of the human being and its repercussion in the History of Philosophy and in the legislation requires an evaluation of the measure to which they are accepted and the conditions for their inclusion in human rights texts.

# Dr. Oscar Vergara (Faculty of Law, University of A Coruña, SPAIN)

## Attempts to rehabilitate the practical reason of Aristotelian roots in contemporary bio-medical ethics. Critical approach

Intentos de rehabilitación de la razón práctica de raíz aristotélica en la ética bio-médica contemporánea. Aproximación crítica

Desde las últimas décadas del siglo pasado hay un debate muy importante en el ámbito biomédico acerca del modelo más adecuado para la toma de decisiones que entrañan un compromiso ético. Han aparecido así diversas formulaciones metodológi-cas, las más destacadas de las cuales son el principialismo de Beauchamp y Childress y el casuismo de Jonsen y Toulmin. Sin llegar a formar metodologías autónomas hay, asimismo, perspectivas que han sido propuestas para iluminar este aspecto ético de las profesiones sanitarias, como son el enfoque narrativo o la perspectiva hermenéutica. Llama la atención que desde los principales exponentes de las cuatro formulaciones mencionadas se tomen importantes elementos del modelo de razón práctica de Aristó-teles. Sin embargo, todos ellos presentan una visión incompleta o sesgada de dicho modelo. Éste es el caso también de otras formulaciones que pretenden declaradamente entroncar sus propuestas en la phrónesis aristotélica; como la ética deliberativa de D. Gracia; la «pequeña ética» de Ricoeur aplicada a la bioética e, incluso, la ética de las virtudes de Pellegrino y Thomasma, si bien esta última es la que más se acerca (si bien no plenamente). A través de esta comunicación, poniendo de manifiesto las insuficien-cias de todas las propuestas anteriores, se quiere poner de manifiesto que el modelo de razón práctica de Aristóteles tiene carácter sistémico y global, de modo que no puede ser asumido por partes ni ser injertado en otros modelos.

# Renato Rabbi-Baldi Cabanillas (University of Buenos Aires, ARGENTINA)

## The Principle of Proportionality, Human Dignity and the Jurisprudence of the Argentinian Supreme Court. An Analysis Based on the Thought of Robert Alexy

I propose to examine the relationship between “judgements of proportionality and human dignity”. Professor Alexy considers this to be “one of the most contested questions in the debate about the normative structure of human dignity”. With this in mind, I shall initially offer a brief review of some of the essential differences between rules and principles and its influence over the principle of proportionality and the concept of human dignity (II). I shall then apply these ideas on a renowned case in the Argentine Supreme Court (“Gualtieri Rugnone”, 2009) (III). Following this, I shall make some critical considerations to Alexy’s construction of human dignity as a “rule”, and propose, following freely Alexy’s thought, some ideas related to consider human dignity as a “principle” (IV).

# Tobias Schaffner Ph.D. (Cambridge)

## Peace and Justice as the Common Good of the Political Community: Philosophical ideal or shared practice?

In his 2011 Postscript to *Natural Law and Natural Rights*, John Finnis highlighted the practical orientation of natural law theory. He emphasized that natural law theory, unlike Hart’s legal positivism with its focus on the clarification of the concept of law, aims to offer citizens, statesmen and judges practical guidance on how to foster and maintain the common good. In *Natural Law and Natural Rights* Finnis adopted, however, an unhelpfully technical definition of this common good, describing it as a ‘set of conditions which enables the members of a community to attain for themselves reasonable objectives’. What this ‘set of conditions’ was, remained somewhat obscure.

It was only in his 1998 book on Aquinas that Finnis clarified that the common good of the political community consists in peace and justice: a peaceful and just society provides citizens with ‘the set of conditions’ which enable them to pursue their reasonable life plans. This later account omits, however, to clarify whether the ideas of peace and justice are mere postulates of natural reason and natural law shared only by Aquinas and a handful of natural law theorists (‘the wise’) or whether these idea(l)s are recognized, albeit perhaps imperfectly, by all of us and actualised in the everyday practices of our societies.

The present paper will argue that most of us do indeed share a broadly similar understanding of the main elements of peace and justice. This shared understanding is reflected in the practices and articulated in the positive laws of very many states around the globe. To see this, we need to move away from the mainstream concern with the concept of law, and return to the traditional study of private law, criminal law and public law understood as a response to the practical problem of fostering the common good. I will argue that natural law theory holds out important insights for such a study: insights which will bring us to understand that, despite the appearance of irreconcilable diversity of the 190 or more domestic legal orders, these orders reflect a broad agreement on the necessity of fulfilling contracts and of abstaining from murder, injury and theft to maintain peace and justice. The ideas of peace and justice are, then, not merely the ideals of a Thomas Aquinas or a John Finnis, but ideals which we share in common and to whose actualization we contribute through our daily lives.

# Dr. Julian Vara (San Pablo Ceu University, Madrid)

## A new approach to ST I-II, Q. 94, A. 2

Abstract: The communication that I propose intends to show, in a way that is not the usual one, the role that Natural Law plays in the moral education of man by introducing into the affective horizon of the agent other goods different from his own.

It will be from this progressive rational discipline of human affectivity that the agent will develop the rules of his moral action.

To do this I will show the nature of the moral problem, following Plato's exposition, the way the paradox is solved and its expression in Natural Law's exposition, particularly in I-II, q. 94, a. 2