

## CHAPTER I

### AT THE BEGINNING

#### 1. *If You Have Nothing to Say...*

...DO NOT say it: Those are simple words of wisdom, never more applicable than to me in this setting. It is so painfully obvious that I may as well confess it at the beginning, *excusatio propter infirmitatem*. Nevertheless, I hope I can make you wonder and try to use this opportunity to think aloud about what I perceive to be *our* problems (eternal corruption<sup>1</sup>, patronage, clientele, and all their consequences in bad public governance<sup>2</sup>). Plus, the uselessness of our countries' assets in such a local cultural environment<sup>3</sup>. Maybe some among you can get inspiration from a different reality and a

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<sup>1</sup> Corruption is eternal and universal. What matters is how strongly and effectively we fight it. For a comparative perspective see JOHNSTON, DAVID / ZIMERMANN, REINHARD (eds.), *Unjustified Enrichment. Key Issues in Comparative Perspective*, Cambridge University Press, Cambridge, United Kingdom, 2002. It has been said that "the social system of many of these countries also contributed to swell the debt: some of the loans benefited only the middle and upper classes, the money merely passing through Latin America before being placed in Europe or the United States", *op. cit.*, p. 31.

<sup>2</sup> Many writers have tackled the problem of our tradition of non-compliance with the law. I first dealt with it in *La administración paralela. El parasistema jurídico administrativo*, Madrid, Civitas, 1982, 4<sup>th</sup> printing, 2001; NINO, CARLOS, *Un país al margen de la ley*, Buenos Aires, EMECE, 1992; DE SOTO, HERNANDO, *El otro sendero*, Buenos Aires, Sudamericana, 1987, 1<sup>st</sup> ed.; PORTES, ALEJANDRO (ed.), *The Informal Economy*, John Hopkins University Press, 1989. I must admit that even though my ideas and proposals of 1982 to solve the problem were in fact adopted, they proved to be not enough. This, therefore, is stronger medicine.

<sup>3</sup> It is useless to remind us how many natural assets we have (as in THE CLUB OF ROME, *Latin America, facing contradictions and hopes*, Bilbao, BBV, 1993, by ROSENTOHN, NICOLE / SCHNEIDER, BERTRAND, p. 119), when we lack the capabilities that are needed to use them; the reverse happens with Japan, devoid of natural assets but with a culture that manages to overcome those difficulties.

point of view as foreign to you as your own setting is to me. I cannot come up with anything directly useful, only the hope that these ruminations may, by some hopeful leap of the mind, spark pertinent thoughts among you.

## 2. *The Extent of This Conjecture*

To complicate things, the earlier drafts of this work have aroused a mixed response from those colleagues and friends who were kind enough to read and comment it: Latin Americans living in their own countries seem to agree, unless they adhere to the belief in the globalization and neoliberalism conspiracy theory; those living abroad, and both Europeans and Americans residing in their own countries seem to agree on the facts, but are not convinced by the proposal. Yet, even in disagreement, they still tell me the debate is good and necessary and that I should continue with this project. It is almost as if they feel that even if I am not on target, at least I am close enough to it so as to merit eliciting further discussions until someone comes up with a better idea. It is thus with real humility that I ponder on with what seems to be an unconvincing yet somehow intriguing idea.

Of course, if someone would make a better suggestion, I would immediately adhere to it. This book already reflects changes that I have made according to criticisms or suggestions previously received.

## 3. *A Reverie*

“Imagination is more important than knowledge:” many individuals get inspiration “half sleep, half waking”<sup>4</sup>. I am taking the lead from SHAKESPEARE’S *A Midsummer Night’s Dream*, and I would dearly like to ask of him “Write me a prologue,”<sup>5</sup> but I can only muster this:

Hear this midwinter’s day reverie,  
Noble lords, by this one jester, me.  
I will be tedious but pray, not brief;  
Yet you may well slumber, if you please.<sup>6</sup>

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<sup>4</sup> Not that SHAKESPEARE meant that, I only use his words: *A Midsummer Night’s Dream*, Act IV, Scene 1, 144. I further comment the creative process in my book *El método en derecho. Aprender, enseñar, escribir, crear, hacer*, Madrid, Civitas, 1988, 4<sup>th</sup> printing, 2001.

<sup>5</sup> 3.1.15.

<sup>6</sup> Or, if you prefer, consider *Prologue* in 5.1.108-14; also 5.1.209-12.

I can quote him, however, on this other one:

“Gentles, perhaps you wonder at this show;  
But wonder on, till truth make all things plain.”<sup>7</sup>

4. *A Subject too Delicate for a Letter*<sup>8</sup>?

Even as I invoke the Bard in a Dream, one of the contributions that I can try to convey to you with my conjectures is straight talk about my problems. I am aware that not all people consider this polite, anywhere in the world, but I also know that the brightest people dislike pointless riddles except when coming from poets.

I ask in advance for your understanding of my words, barren of elegance. I have been attending the meetings of the European Public Law Center coming from far away once or twice a year, for a few years now, out of the greatest respect and admiration that I have for all of you. I hope I made that clear when I paid my tribute to Monsieur GUY BRAIBANT last September in Spetses<sup>9</sup>, Greece.

I once unwittingly made a joke in poor taste in a language not my own<sup>10</sup>, and offended, without meaning to, the person I was talking to<sup>11</sup>. I never had the chance to say I am sorry, for I am not fast enough with a foreign language. I always humbly apologize, if only in my mind, for I cannot do

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<sup>7</sup> 5.1.125-6.

<sup>8</sup> COLERIDGE, also cited by The Globe's publications.

<sup>9</sup> See Annex below: Monsieur GUY BRAIBANT was honored at the Annual Conference of the European Public Law Center in Spetses, Greece, in September 2002. Since I have known and respected him for many years, and owe him a lot, I asked Director SPYRIDON FLOGAITIS to allow me to also pay tribute to him, and he graciously gave me the floor. The first draft for this book was prepared in September 2002, after delivering the above mentioned eulogy, and from then on I worked almost exclusively on this book and a presentation to the EPLC April 2003 Conference “Civilizations and Public Law”, in Athens, on: “Civilizations and Public Law: A View From Latin America”. I sensed once again the drama of the situation in my country and my continent and did, therefore, my best effort. This book has been born out of the original laudatio.

<sup>10</sup> Jokes are, on the surface, about something. But a little deeper, they really tell something about us. FREUD explained that all too clearly. I thought I could pull the trick of showing the darker, funny, side of ourselves (second level of meaning), while telling a joke about some imaginary thing (first meaning).

<sup>11</sup> I intended to make a verbal summersault on a high tight rope. I missed the rope and hit instead the ground, head on. Can I hope for forgiveness, now?

so in person: I have never got the chance<sup>12</sup>. So please allow me to present my excuses beforehand if I unwillingly say something distasteful.

### 5. *The Merits of EU Participation in Regional and World Public Governance*

It is not my ambition to neatly try to solve every single aspect of the main idea of an Inter-American Supranational State with minority US and EU participation, or win agreement on every point. Rather, I would like to just make you think about those problems, perhaps to leave you interested and questioning the facts that I think I observe, my conjectures for the future, my reasoning, or alternative ideas. I admit that the idea is not yet ripe for action or decision, and probably will not be for some time to come. Maybe the time for action is not now<sup>13</sup>: but now may still be the time for reflection. After all, science fiction writers have already designed the far future, some kind of world or even galactic government. But there are a few intermediate steps before we get there, if at all. I would like to consider here one of the possible steps. We already have an international “web of multilateral agreements, global and regional institutions and regimes, transgovernmental policy networks and summits”; that is “much more than a system of limited intergovernmental cooperation”, it is an “emerging global governance complex.”<sup>14</sup>

That web is growing and thickening, so that this proposal is not against the tide of the foreseeable future.

I quite understand that some proposals for the EU involve heavy decisions about subsidies, budgetary responsibilities, balance of power, cultural inclusion, monetary union, that are all very difficult to take and require many steps with multilateral parties. What I am proposing here is

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<sup>12</sup> Should you provide compassion for people with special needs? JAMES NEILSON, a British-Argentine journalist, calls the others “monoglots:” “Argentina for export”, *Buenos Aires Herald*, October 10, 2002, p. 16.

<sup>13</sup> An earlier draft said, “The time for action is now”. A close friend of mine for nearly four decades, an American lawyer, convinced me of the opposite, which is the line I now take in the text. He is mentioned in the “Acknowledgements” and is also among those contributors of always that I have made a list of, in the Preface to the 4<sup>th</sup> edition of the first volume of my *Tratado de derecho administrativo* (now in its 7<sup>th</sup> edition, Lima, ARA and FDA, 2003; Belo Horizonte and San Pablo, FDA and Editora Del Rey, 2003, where the previous Prefaces have been reproduced).

<sup>14</sup> HELD, DAVID / MCGREW, ANTHONY (eds.), *Governing Globalization*, Cornwall, Polity, 2002, p. XI.

slightly simpler, for it does not imply much of a budgetary commitment, there is no immigration resulting from it, it does not change the balance of your cultures. It proposes instead a strengthening of supranational bonds, the commitment I am asking for being EU participation, first in helping it to be born, and then in decision-making at one or more, new supranational state(s) of underdeveloped or emerging countries.

I also understand that it is not too little, but at least it is not such an awesome decision as the enlargement of the EU to 25, 40 or 50 states with full rights and responsibilities.

It might even be an early exercise in public governance aid, instead of humanitarian aid, which is never quite everlasting.

#### *6. The Approaches to this Problem*

The problem of public governance for Latin America - and, indeed, the world - is not one that can be tackled from the viewpoint of a single science or expertise. It needs the criteria of the political scientist, the sociologist, the anthropologist, and also the statesmen's view, that of those whose life is the exercise of power. The lawyer has a role to play here as well.

Of course I cannot cover all those aspects with sufficient deftness; it is not a single individual's job. There are too many variables to render it possible to make an immediate definitive assessment of the whole theme. What is needed first is to eventually start the discussions and get people interested in the points raised or other pertinent points to the problem at hand, and from there on it will be up to many countries and very many people of different fields to determine what can or should be done in the future.

Lawyers are forced by their profession to consider the facts of the case, and for that they always need to try to borrow from other fields of knowledge; since all cases are different, so are equally different the fields of knowledge that the lawyer needs to understand, at least summarily, so as to present his case before the judge or the jury. Perhaps trying to understand reality is one of the finest parts of practicing law<sup>15</sup>.

Sometimes the lawyer has to explain the laws of physics; sometimes he has to delve into biology. In cases dealing with aboriginal cultures, he has to call on the expertise of anthropologists; if it is an insanity case, he has to

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<sup>15</sup> I explain this in my book *An Introduction to Law*, with a Preface by SPYRIDON FLOGAITIS, Director, European Public Law Center, Esperia Publications Ltd., London, 2003.

understand what the doctors and psychologists or psychiatrists have to say; if it is a bankruptcy case, he has to try to understand how that particular field of commerce or industry works, and so on.

Therefore, while I cannot but admit that my training obviously does not cover the various fields of knowledge that I shall try to put into play, as a lawyer I still have to do so, in order to build my case, from the facts as I see them, up to a conjecture<sup>16</sup>. Depending on what you think the law is, you might or might not think that this is a legal work in the usual sense of the word. It has purely “legal” aspects, but as in all law cases, everything has to do with the facts, first and foremost. If one gets the facts straight, then the problem is focused. I shall then begin with the facts as I see them (with the aid of other fields of knowledge), even if they are not as tangible as those of a murder, insanity or bankruptcy case.

### 7. *The Perfect Civilization and Public Law*

There is public law in the smallest tribe, no matter how apart from other civilizations it may be<sup>17</sup>. Who is to say that their public law is bad? If we judge by our contemporary values, it is easy: the better the society, the better its law; and better is the society where most people live longer, are healthier, and can provide best for their children. However, ethnocentrists say their own culture, their own system, is the best. That, from the anthropologists’ viewpoint, is not quite politically correct.

We all know, on the other hand, that having the most possessions is not the true sign of development, quality of life is; on the other hand, rich people live longer... If we judge by power alone, then the peak of civilization

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<sup>16</sup> Some would say “From Facts to Hypothesis to Proof”, but the real work takes place in a continuum, where all the hypotheses, facts and proofs are revised, all the time, as related parts of an integral whole. At the end, of course, we do not have “Truth”, just a more or less viable conjecture to keep pushing for, until someone proves it wrong, if it so is. As for steps of scientific creation, see my book *El método en Derecho*, Madrid, Civitas, 1988, 4<sup>th</sup> printing, 2001.

<sup>17</sup> See for instance CHANOCK, MARTIN, Neo-Traditionalism and the Customary Law in Malawi, *African Law Studies*, 16: 80, 1978, Fred. B. Rothman & Co., Littleton, Colorado; HANMETT, IAN, Chieftainship and Legitimacy: An Anthropological Study of Executive Law in Lesotho, Routledge and Kegan Paul, London, 1975; SLAATS, HERMAN / PORTIER, KAREN, The Implementation of State Law Through Folk Law: Karo Batak Village Elections, *Journal of Legal Pluralism and Unofficial Law*, n° 23, Foundation for the Journal of Legal Pluralism, Groningen, The Netherlands, 1985, p. 153.

is America. However, Americans say that China will be the most powerful country in a hundred years, as it was millennia ago. Theirs is certainly a different system. Will then theirs be the best? Alternatively, are we going for the middle way, as ARISTOTLE would? Moreover, how do you fancy doing just that?

This is another case for self-analysis, as in FREUD's chapter on empirical analysis. Therefore, instead of helping you, I ask you to help me, with your thoughts. Does someone selling flowers in public places, in the street, in restaurants, break the law? Technically yes, for he or she surely does not have an authorization by the competent administrative authority, nor does he or she pay any taxes at all. He or she does a little advertizing and a small PR presentation. Should I buy such flowers? By doing so, do I help someone not to be a violent thief or worse (which would be good), or rather do I help him or her cheat the established florist (which is bad)? Moreover, by doing so, am I also cheating the State, the Welfare State, whatever?

One of the actors and players who address the public in a European city, speaks of the taxman, in jest, as someone who richly deserves prison or worse. The often-heard "Do you need a receipt, Sir?" has a homey feeling: one feels at home, every time. The only difference is that we are charged a lower price without a receipt. Who teaches whom? Who learns from whom? The less exalted cheaters in my country add or discount VAT according to whether or not they get a receipt. Others are even more sophisticated and also calculate income tax when not giving or getting a receipt. Accountants doing this kind of work add capital gains tax and the price of risk. Economists take into account the benefits of keeping the money for some more time, *i.e.*, interest. So, when I do not get a receipt in Europe, the State is cheated, society is cheated. The problem is this: is it the only one cheated, or do I also cheat myself? Of course, I myself am a cheater, for not demanding a receipt when it is not being offered. However, such unsophisticated cheating is below our level of corruption. Talk about development.

Everyone is a shadow of his perfect self. Almost everyone at least once in a lifetime has cheated someone, be it the taxman, the treasury, his or her spouse, his or her kids, his or her conscience, his or her sense of duty. Almost everyone is a potential alien in disguise. A few men kill their wife and children, then themselves. Some people work more than others. Others only work. Some do nothing. Americans say they work on average 350 hours more, yearly, than Europeans. We, in turn, surely work less than Europeans. Many hunter-gatherers work only for nourishment. Who is the model? Perhaps God, but different people think differently about God, and

hear from Him different things through different holy books, and/or different holy organizations and holy authorities. Who is to say what is perfect?

Centuries ago, different imperial powers helped us forward to reach our present level of civilization. European immigration and investment continued that trend, up to the end of WW2. Afterwards the trend reversed, except for a brief interlude in the nineties. Some of us, as you yourselves once did, now bring our investments to you; others, again as you did in the past yourselves, came as political refugees: in both cases, those are useful immigrants in any country or continent. Nevertheless, modern emigration from Latin America, for the most part, is from the former middle classes who have descended in the social ladder to the point of utter subjective despair, rather than objective poverty. It is not the poorest and the hungry from Latin America that come to you. The problems they pose are different: their sense of entitlement far surpasses their sense of duty and their accomplishments. Many manage to readapt to the land of some of their ancestors, yet a few widen the fissures of *your* societies.

The point is not merely whether we respect traffic lights, do not cross the streets except where supposed to, do not bring food and drinks into buses or coaches, watch our table manners, have adequate social skills. Even more, the problem is not really whether some of us really demented resort even to wholesale violence, murder or terrorism. The problem is whether you pick or not some of our peculiarities. Intermingling does sometimes that. I will go into that later.

## 8. *Some Possible Confusions*

### 8.1 *What is the Model?*

In fact, who can say who has the happier lives? Society works better for Europe, but it also fails: for instance, some of you lose income when you retire<sup>18</sup>. All developed pension schemes run the risk of being broke in the future. Ours has long ceased to exist but in name and for a pittance; the Indigenous groups never had one. God is God for everyone, but everyone has a different idea of Him. We die without knowing. Some practice Yoga,

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<sup>18</sup> Does that pose a Marxist's dream: the proof that the system does not really work? Or does it prove the opposite point, that you need capital? Personally, I adhere to POPPER, KARL R., *Conjectures and Refutations. The Growth of Scientific Knowledge*, Routledge and Kegan Paul, London, 1974, on his critic of Marxism.



others different kinds of meditation, others do drugs, some just work all the time, some have fun all the time, some work for fun. Some eat too much, some too little. Who is in the middle? The middle of what?

There is some simple mathematics to be done. It may be argued that everyone is free to choose the lifestyle that he or she prefers. It is frequent to find capable and intelligent people who say they have made a philosophical choice or even taken a philosophical stance. They want to enjoy their families, a simple lifestyle and so on and therefore not to overwork themselves. Leisure, or half leisure, is their thing. They would go on praising those in the world who choose a lifestyle of meditation, or free leisure time enjoying the wonders of mutual loving friendship and company. They do not want to enter the rat's race; they do not want to work more than is strictly necessary to what they perceive. They do not want to keep on studying for all their lifetime, they want to use their free time not studying or working for the sheer pleasure of doing so.

## *8.2 Thinking Logically*

Many authors outside the realm of philosophy would like to suggest that we can use different kinds of logic. LÉVI-STRAUSS was one of them. That line of thought, although well intended, has had an unforeseen pernicious effect in developing countries, for it has provided some of its intelligentsia with the justification to "think" outside the boundaries of normal logic, and pretend to be thinking "logically", by a different logic. That kind of different logic may be given a new twist or a new frame and may also then be used by international terrorism and state dictatorships alike. So I would like to stress a little what is happening with the different views of society that people in the world have all the right to entertain. Let me begin with those that espouse the kind of thinking that I have just mentioned in *8.1*. Let us call them, for simplification purposes, type "B." I shall add "A" and "C", of course.

I frequently find myself the sheer pleasure of doing nothing at all, until perhaps a new idea comes to my mind and I need paper and pencil or a computer. So I would not feel free to criticize any kind of lifestyle that any one might care to choose for him or herself, but I would not admit that either mine or theirs is the role model. There is a sequence of reasoning that has to be accepted:

### 8.2.1 Step 1

He or she within the type “B” model may not in my view be able to hold the moral high ground and invoke the model authority to criticize those who choose to work harder, to produce more: say, type “A”. Both choices are to be respected. Just as “B” wants respect for working less and enjoying more the simple pleasures of leisure, “B” is bound by logic to also respect those who choose to work more and enjoy the pleasures of life in a different order, “A”.

The different order that “A” has is: first, you enjoy the pleasure to work and be creative; second, you are then free and able to exercise the pleasure to enjoy the benefits that such a lifestyle may bring. You determine the flow.

### 8.2.2 Step 2

“B” should not then be deemed to be logical if he chooses to also criticize “A” for working harder and enjoying more benefits of work (mostly money but also the better things life and society can provide, if you have the financial means).

### 8.2.3 Step 3

But there is a further breakdown in logic in “B”'s reasoning. “B” also criticizes “A” for not helping “C”, those who work even less than “B” does, and therefore seem to have even a lower lifestyle. “B” wants the benefits “A” has at his or her disposal, to be given to “C”, while “B”'s role in this is just encouraging “C” to ask for it, and “A” to give it up. “B” may be willing to take up arms and give up his or her life for this purpose, but he or she is not willing to contribute to “A”'s effort, nor does he or she want “C” to work more. He or she just wants things to change or *others* to change. *He or she does not want to change him or herself.* One can respect his or her freedom of expression, but not abide by his or her logic.

### 8.2.4 Step 4

Please note that this is not a matter of social classes. Many in the upper middle classes choose a type “B” way of thinking, perhaps to atone for their guilt precisely for belonging to such classes (they are those kinds of

descendants who seem eager to loose everything they inherited from their more hard working ancestors). Many in the middle classes do feel compassion with those that do not have enough to eat, and use as much time as they can to feed the hungry, aid the needy, etc.: their ethos is "A", in this classification. So we are not thinking of classic class groups, rather groups or classes of thinking and behavior.

### *9. What is the Meaning of This?*

The meaning of the different types of reasoning is that, as everyone in the developed world only too painfully knows, hard sacrifice and smart choices have to be made. A country like Australia, without much water and with great heat, is still today growing, with only 20 million people whereas Argentina is always declining, with 36 million people and lots of water. Both countries, sharing many similarities in distance to the central world and an original emphasis on food production, have different attitudes and different cultures, which produce different results.

On a more general basis, poverty and indigent conditions are fast diminishing in Asia, while they are increasing in Africa and Latin America<sup>19</sup>. In Africa, part of the predicament is physical, as in many African backwaters; here, it frequently is more subjective: most of us view the world differently. And that seems to be getting worse, not better: in 2001-2003 we had three consecutive years where growth in Latin America has been slower than in Africa<sup>20</sup>.

If we are content with what we have, then all is fine. But if we complain of our poverty, inequality and underdevelopment, then we need to take a look inside, not outside. Allow me to delve into this further, well aware that those who espouse the criticism and denunciation of globalization and neoliberalism as the roots of all evils, will not see things this way.

### *10. A Convergence of Civilizations*

I would hope for a convergence of civilizations in Latin America, with the help of Europe and the US; a new culture emerging that improves what we now have in Latin America. Not a new European-(North) American

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<sup>19</sup> GUADAGNI, ALIETO ALDO, "Una nueva geografía de la pobreza", *La Nación*, 5-II-03, p. 15.

<sup>20</sup> FRAGA, ROSENDO, "La africanización de la Argentina", *El Cronista*, February 18, 2003, p. 8.

civilization, but a new culture emerging in *Latin America* with some influence from those kinds of civilization.

On the one hand, you have the powerful image and influence of America. They do not have the bigger challenges that they used to have: the old Soviet Union, middle twentieth-century China. Nevertheless, if we leave aside all challenges, that still leaves Europe at the forefront of ideological, political and cultural confrontation with the US, with Britain as a bridge. Being an island or a continent was once enough to solve the problem of contagion by unwanted immigration, but with modern travel, it is not, unless you are the center of the world.

Almost every European city painfully shows that foreigners, who sometimes can barely speak the language, hold more and more menial jobs. In addition, you already have too many languages to start with, not just one, like America. Those foreigners in Europe sometimes look foreign, sometimes not, but looks are not any more a sure sign of anything, except for the ablest and keenest of observers. In adequate numbers, you even *need* immigrants to work and pay VAT tax in consumption and other taxes that help sustain retirement plans, as LUIS ORTEGA once reminded us. We do the same with our own poorer neighbors and have a distorted reflection of your problems, as strange mirrors in an amusement park. I hope, thus, for a greater European and American influence on our decision-making process that might begin to change and improve regional and local public governance.

Were this project to be implemented, it would not of course bear immediate results. All these changes take at least decades to begin to take root, as the EU itself took decades to reach the present stage. There are no instantaneous and miraculous formulae, of course.

### 11. *Past, Present and Future of Public Law*

STARCK has suggested that there are important sources of public law in religion<sup>21</sup>. Religion still plays a role, but it is not uncontested. As we said elsewhere<sup>22</sup>,

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<sup>21</sup> STARCK, CHRISTIAN, *The Religious Origins of Public Law*, *European Review of Public Law*, vol. 10, n° 3, London, Esperia, 1998, p. 621; formerly G. LE BRAS, *Les origines canoniques du Droit administratif français*, in: *L'évolution du Droit public. Etudes Achille Mestre*, Paris, Sirey, 1956, pp. 305-412, followed by LEGENDRE, PIERRE, *Trésor historique de l'Etat en France. L'Administration classique*, Paris, Fayard, 1992, p. 16.

<sup>22</sup> *An Introduction to Law*, *op. cit.*, chap. X, § 10.

“Some criticize iusnaturalists for trying to transmit a religious concept of the world and a series of religious values above the law. Certainly, there are societies in which religion and positive law coincide to some degree, but they are not usually presented as Western models of how law should work in a contemporary society. For those that are democratic and modern societies with a point in common between religion and law, they are not the general rule and cannot be represented as an established *system* of relationships between religion and law<sup>23</sup>.

Beyond the perceptions of every author, though, it seems that humanity, for whatever reason, has agreed with the idea that there exists a series of legal values that are superior to the national codes. This is a sort of iusnaturalism, even though the ecclesiastic origin of public law is accepted mainly as a historical element of it and not a current component<sup>24</sup>.

The old *jus gentium* has become the new imperative international law, with extraterritorial jurisdiction and sources of law that go beyond local criminal codes. Its custom, jurisprudence, and doctrine go against the criminal law we learned in Law School, as do its treaties. At least treaties comply, strictly speaking, with the function of putting in writing what was agreed to and applied by the concert of nations in the first place.

This phenomenon of international criminal law can be found elsewhere, albeit not to the same degree. As of now, the growing number of international tribunals (such as the European Court of Justice, the European and Inter-American courts of human rights, international administrative tribunals, and international arbitration tribunals), due to their diverse composition, must somehow agree on fundamental questions of law. Agreement is indeed found, on *the overarching principles and values of law*.

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<sup>23</sup> There are certain authors who are trying to build that system by starting from the doctrine of the Catholic Church. The same has been growing in Islam, as we all know.

<sup>24</sup> STARCK, *op. loc. cit.*

International treaties do not only deal with crimes against humanity. Human rights conventions, for instance, detail an array of individual fundamental rights superior to the rights of States. Other texts have started to include values like equity, justice, and efficiency as supranational principles (The Inter-American Convention against Corruption), and have even established sound supranational accounting practices (the International Convention against Transnational Bribery). It has been warned that taking such measures could further erode national sovereignty<sup>25</sup>, and the rules so far established seem to confirm this assumption.

It was impossible for international procedure not to have an internal reception. At that point, countries were forced to take notice of the primacy of principles and values above rules, and to acknowledge that there is no profound difference between the working of common law and contemporary European continental law: all tribunals employ the same method of approach to a case of law. Both 'systems' of law have always been and will always be nothing other than solutions to definite and individual cases, solutions that, in every litigation, will be final thanks to *res iudicata*, but will never contain the value of Truth<sup>26</sup>."

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<sup>25</sup> PEDRIERI, ALBERTO, Le norme tecniche come fattore di erosione e di trasferimento di sovranità, in: UNIVERSITÀ DI VENEZIA, *Studi in onore di Feliciano Benvenuti*, vol. IV, Mucchi Editores, Modena, 1996, pp. 1413 et seq.

<sup>26</sup> Judges are human, so they are fallible. Many people do not agree with the decision of the US Supreme Court to favor BUSH instead of GORE. The court (beyond its arguments - we are reasoning as suggested in *An Introduction to Law, op. cit.*, chap. V) clearly privileged security (by putting an end to a foreseeably long recount of votes that would delay the formal decision about the presidential elections) over justice (it then seemed "obvious" that GORE would have been the winner if the mistakes incorporated to the system were corrected). That is what is dealt with in justice: a process of making decisions that, in a definite moment, will be final, although they will not, and cannot, have the value of Truth. The key to judicial order is that judicial resolutions that close cases are complied with. All Americans are together on that point, and the ones who are not, do not understand what law is.

It may be that the future growth of public law will take place in supranational organizations<sup>27</sup> and that its sources will lie in the need for international redistribution of power. I will suggest here that such equilibrium requires more than European integration. It requires, once again, your involvement with those who can benefit from it.

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<sup>27</sup> It was suggested long ago by ATALIBA NOGUEIRA, *O perecimento do Estado*, San Pablo, 1966.

