

The disuse of the concepts of natura and human nature as a criterion for an assessment of the current state of legal research and legal science*

O desuso dos conceitos de natureza e natureza humana como critério para uma avaliação do estado atual da pesquisa jurídica e da ciência do direito

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Abstract

The analysis of the current state of legal research is hampered by the existence of different research paradigms. Works informed by divergent paradigms can hardly be subjected to common analysis criteria, and it is a requirement of reasonableness to understand that each individual work deserves to be judged according to its own assumptions. For this reason, the current paper adopts the *via negativa* or apophatic strategy, which is the analysis of elements that are typically missing rather than existing qualities shared by various scientific publications. The extent of the paper determines an examination of the absence of two concepts considered essential and, for that reason, used throughout the history of ethical, political, and legal thought: nature and human nature. The relevance of the two concepts is demonstrated by examining their role in the history of ideas. The relevance of the two concepts is demonstrated by examining their role in the history of ideas, after which it is possible to criticize the general character of current academic production and the current state of legal science.

Keywords: Nature. Human nature. Reason. Voluntarism. Philosophy.

Resumo

A análise do estado atual da pesquisa jurídica é obstaculizada pela existência de diferentes paradigma de investigação. Os trabalhos informados por paradigma divergentes dificilmente podem ser submetidos a critérios de análise comuns, e é uma exigência de razoabilidade entender que cada trabalho individual merece ser julgado segundo seus próprios pressupostos. Por essa razão, o presente artigo adota a estratégia de via negativa ou apofática, isto é, a estratégia de análise de elementos tipicamente faltosos, e não das qualidades existentes, compartilhadas por diferentes publicações científicas. As dimensões do presente escrito determinam um exame segundo a ausência de dois conceitos considerados imprescindíveis e, por essa razão, empregados durante toda a história do pensamento ético, político e jurídico: natureza e natureza humana. A relevância dos dois conceitos é

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demonstrada através do exame do seu papel na história das ideias. O exame conduzido a partir de tal ponto de partida determina a crítica do caráter da generalidade da produção acadêmica atual, que corresponde a juízo crítico do estado presente da ciência do direito.

Palavras-chave: *Natureza. Natureza humana. Razão. Voluntarismo. Filosofia.*

1 Introduction

The study of law can be conducted according to different methodological orientations, and there is no unanimity regarding the methods proposed for the understanding of legal phenomena. This diversity makes it difficult to analyze the state of the art of contemporary legal research, and this, it is argued, stems from the impossibility of identifying universal criteria for judging works produced according to divergent paradigms¹. One must also assume the injustice of imposing criteria common to all legal writings: with justice, each writing should be judged according to its own presuppositions.

The injustice of the common criteria, suggested, does not, however, remove the requirement of an examination of the state of the art. Without understanding the current state of research, it is not possible to identify present ambitions and challenges, or to recognize vices and deficiencies. Consequently, there is an inescapable need to elect methods and criteria of judgment which, while imperfect, are to some degree reasonable.

The present assumed writing, as a reasonable method, is *via negativa* or apophatic. This is a strategy of identifying not present or existing elements, shared by the generality of legal writings, but of the missing elements, or rather, of the gaps that characterize the generality of recent legal literature. The consideration of common gaps can therefore be understood as a method of reasonable judgment.

The dimensions of this writing impose a limitation on the judgment allowed by the *negative route*. This judgment is limited by a notable omission, the non-existence, in almost all recent legal literature, of express references to the concepts of nature and human nature. As fundamental issues, and sources of the legal phenomenon, the organization of reality and the constitution of the human species should be the object of lengthy analyses, as they have been during the entire history of legal thought. The sloppiness of recent legal literature is thus equivalent to the construction of a house

¹ On the other hand: there are no easily identifiable characteristics, common to all research paradigms, and this seems to inhibit most attempts to analyze the state of the art. It should be noted that there is not even a consensus regarding the concept of law.

on sand, or worse, on swampy land. This, it is argued, calls into question the scientific rigor of most of the existing legal literature².

The starting point in judgments on fundamental issues is an inescapable requirement for the scientific enterprise. The identification of safe foundations should be assumed as the primary and indispensable phase of research, without which the entire subsequent path is flawed. In the case of the study of law, limited to the limits of language, the absence of an examination of remote presuppositions determines the compromise of the entire discursive itinerary.

The idea of nature allows the articulation or structuring of the sensible world, prior to research efforts: only by resorting to this concept is it possible to understand the diversity of phenomena as manifestations of a reality endowed with regularities, and, fundamentally, governed by laws. Without this structuring of reality, the occurrences of the world cannot be apprehended as anything other than atypical manifestations.

The idea of nature has the effect of converting phenomena into expressions of a supersensible reality, subject to the human intellect. The same idea allows for the establishment of causal chains. Therefore, without this idea generalization is not possible, and without generalization, it is known, there is no scientific knowledge. Human reason only becomes a tool for obtaining knowledge after the assumption of the existence of such an organized reality.

The admission of the existence of a human nature has the same effect: human phenomena are understood from then on with reference to a reality which precedes them, and of which they are instantiations. This reality (human nature) makes it possible, to some extent, to identify regularities and propose generalizations. Since law concerns the world of conduct, its scientific status depends on recourse to the idea of human nature.

In summary, it can be stated that it is impossible to obtain knowledge without the previous acquisition and fixation of such concepts. This assertion can be ratified both through the history of philosophy and through philosophical speculation itself.

The discourse itinerary determined by such assumptions presents the following structure: (i) the examination of the pre-philosopher world, that is, the one existing before the knowledge of the concept of nature and the emergence of philosophy; (ii) the effects of the discovery of the idea of

² The present writing, however, does not seek to fix the content of the concepts of nature and human nature. It must be asserted: It is not intended to present specific concepts of nature and human nature.

nature among the Greeks; (iii) the development and fruits of the idea of human nature; and (iv) conclusion, in which the two concepts guide the judgment of the current state of the legal literature, corresponding to a judgment of the present state of the science of law and identification of the political consequence of the disregard of the concepts of nature and human nature.

2 The pre-philosophical world

The world before philosophy knew a variety of thought not disciplined by the modes of philosophical and scientific cognition. This thought, pre-philosophical and pre-scientific, comprised an intuitive way of apprehending reality, motivated by the universal human aspiration to transcend the chaos and incoherence of sensible experience. The human being, it must be admitted, aspires to order and coherence, but is not capable of satisfying this aspiration from empirical. This is due to the fact that the occurrences of the sensible world, considered in isolation, cannot be assimilated to an order: the idea of an order of the sensible world depends on the identification of universal causes and laws, according to which each incident can be apprehended as a typical occurrence (Frankfort; Frankfort, 1977, pp. 1, 3-4, 6, 15.).

Pre-philosophical man evidently knew the connection between cause and effect, but he did not recognize, in such a relation, the impersonal operation of universal laws. Even so, according to the predilection of the human species for order, coherence and meaning, the man devoid of philosophy made use of abstract and imaginative thought, from which he tried to go beyond the apparent chaos of phenomena and, thus, explain and unify the experience of the world (Frankfort; Frankfort, 1977, pp. 3-4, 8, 15).

The pre-philosophical organization of the world was characterized by the ignorance of opposition, distinction and limits between the human domain and the physical domain or the inert matter. Consequently, life events were correlated to a set of active and personalized forces. At the same time, such forces were understood from human models, and, in this way, the phenomena of the sensible world were interpreted from human experience and attributes. Thus, if man conceived himself as a creature put into action by desire, love, hatred, envy and resentment, the occurrences of the sensible world were apprehended as manifestations of powers endowed with the same impulses (Frankfort; Frankfort, 1977, p. 26).

From this perspective, the relationship between man and the rest of things was not conceived as a relationship between knowing subject and knowable objects: there was no recognition of the distinction between man, an active being, and an inanimate being, the object of human action. The experience of reality by pre-philosophical man occurred between the subject and the entities of a world to which, as indicated, human characteristics were attributed. It is, therefore, a reciprocal relationship between the subject and a universe of living forces. These forces possessed individuality, constantly confronted: thunder; a sudden shadow; a stone causing injury. The occurrences, personalized, were narrated as interventions by entities possessing agency and volition (Frankfort; Frankfort, 1977, p. 4-6, 11; Crawley, 1909, p. 43.).

This conception of the world allowed, as can be seen, questions about the causes or origin of things, the "whys" of occurrences, but it did not authorize going beyond individual events. Within a mental horizon defined by the personalization and individuation of entities later recognized as inert objects, the narrative presented itself as the only way to report and explain the events. This was the world of myth, and not of the rigidity of logical chains or analyses followed by conclusions. Myth does not allow theoretical assertions, that is, propositions endowed with generality and universality (Frankfort; Frankfort, 1977, pp. 4-7, 10-11).

From the mythical perspective, the occurrences of the sensible world would be the result of arbitration, and not of laws. The individuation and personalization of explanations attributed to events their origin in acts of beings similar to men, that is, gods put into action by impulses and passions. The world's mode of being, it could then be assumed, was determined by unintelligible and inconstant powers, and not by a structure or order underlying phenomena. Droughts, storms and other events would have as their ultimate cause the will of the deities (Frankfort; Frankfort, 1977, p. 10; Guthrie, 1985, Vol. I, pp. 26-28, 44). The world of mythical narrative, it may be noted, was understood from the category "will," and phenomena were therefore manifestations of acts of will. It was not a world ordered by a higher reason, like the one later attributed to the God of Christianity, for example, with the idea of *potentia dei ordinata* (Traversino Di Cristo, 2022, p. 26).

It is understood, then, that the rational ordering of reality, ignored by myth, depends on impersonal chains of causality, involuntary and regular, identified on a plane distinct from mere sensory experience. Only through such a specific conception of causality is it possible to unify the data of experience. A modern example is the idea of gravitation, postulated by Isaac Newton (1643-

1727), with a starting point in phenomena that, from simple observation, are not obviously related: falling objects; the movement of celestial bodies; and the alternation of tides (FRANKFORT; Frankfort, 1977, pp. 15-16). The operation of Newton's mind was to confer unity and coherence on the infinity of individual sensible phenomena.

3 The idea of nature and the possibility of knowledge

Newton, of course, was not the first to seek unity in seemingly unconnected phenomena, and thus he was not the first to challenge the idea of a disordered universe. This kind of speculation began among the Greeks, with the recognition of the relevance of the idea of *physis*. The notion of nature, in fact, was fundamental for the emergence and development of philosophical speculation (Cornford, 1991, pp. xvi, 7-9).

The noun "nature", in a non-exhaustive way, was used by the Greeks as a synonym for: quality or character of something; inherent and permanent character of something (as opposed to transient or anomalous manifestations); the real (in contrast to the apparent); and the preponderant element or substance, constitutive of an entity. All these meanings are important to understand the relationship between the category "nature" and Philosophy, especially when it is noted that "nature" appears among pre-Socratic philosophers as a means to distinguish and contrast the intrinsic qualities of matter from superficial and sensible data (Lovejoy; Boas, 1973, p. 105).

The idea of *physis* allowed the Greeks to go beyond the seemingly unconnected incidents of the sensible world. The infinite variety of occurrences was henceforth understood with reference to a previous, supersensible order. The idea of nature, therefore, did not originate from the empirical plane, and, consequently, the birth of philosophy cannot be described as the product of the unqualified observation of incidents (Cornford, 1991, pp. 3-5).

Philosophy began, it must be asserted, with a conceptual (meta-empirical) structuring of the sensible world, only allowed by the idea of nature. This also means that the first philosophers emerged not as privileged observers of the phenomena, but rather as heirs of a specific tradition, within which the conception of *physis* was recognized (Cornford, 1991, pp. 3-5; Strauss, 1965, pp. 90-91).

Philosophy, therefore, was born from an observation qualified by the idea of nature, and therefore with the transcendence of mere empiricism. This conclusion corresponds to an evident

but generally forgotten fact: the entities of the sensible world were not objects immediately subject to the intellect of the first philosophers (Cornford, 1991, pp. 2-4). Thus, philosophical speculation was only allowed by a pre-existing conceptual framework, through which the Greeks began to think about totality and seek the unity underlying phenomena. This ambition found first expression with the idea of *arché*, the original substance of all things and the principle of movement and transformation of matter. Fundamentally, a connected and simplified reality was conceived, endowed with its own structure and logic of operation (Guthrie, 1985, v. I, pp. 30-31, 37-38, 54-57, 67, 70, 78, 82-83.).

The existence of such an ordered world allowed the beginning of rational investigation. Knowledge is not possible without generalization, and thus cannot begin with a worldview composed of atypical and disconnected phenomena, produced in an unpredictable way by the whim of capricious deities. For this reason, it can be reiterated, the investigation of the causes of occurrences requires a guiding idea. The idea of *physis*, which can be taken as a synonym for *arché*, emerged as this kind of script or north (Guthrie, 1985, Vol. I, pp. 37-38, 45, 54, 57.; Naddaf, 2005, p. 20).

The first use of *physis* is recorded not in the writings of a philosopher, but with *Homer's Odyssey*. In the work, Hermes reveals to Odysseus the *physis* of the *móli*, a plant possessing divine origin and healing power: the plant has black roots and white flowers, and can hardly be pulled from the ground, except by the gods. In addition to the external, visible form, it should be noted that the *physis* revealed by Hermes includes its origin and its properties, that is, internal or invisible traits. Without the presentation of such data by the deity, the plant could not serve the purpose of defending Odysseus from Circe's sorcery. Fundamentally, the protagonist of the *Odyssey* must understand the *physis* of the plant: its growth process, from beginning to end (Naddaf, 2005, pp. 11-13-14).

The Greek language allows the constitution of nouns from any verb, through the use of the suffix *-sis*. More precisely, the aggregation of such a suffix converts the stem into the object of a transitive verb. The root of *physis* derives from the transitive verb *phyo* (*phyomai* in the first person of the present tense), whose origin is in an Indo-European root related to "to grow," "to produce," and "to develop." Thus, the active and transitive forms of *phyo* express the notion of "producing" and "generating" something (the object of action); and, in the passive and intransitive forms of *phyomai*, "sprouting," "coming into being," and "becoming." In this way, the term *physis* can be

translated as the complete realization of a transformation, or rather, the updated nature of something, with all its properties. *Physis*, then, can be defined as the integrality of the process of growth of something, from birth to maturity (Benveniste, 1948, pp. 80, 82, 85; Naddaf, 2005, pp. 14-15).

The meaning of *physis* known in Homer found continuity in Heraclitus of Ephesus (c. 575 - c. 435a. C), proponent of the idea that the explanation or revelation of the present state of something requires an analysis of its nature. The term *physis* had, it can then be seen, a specialized or strict meaning, to indicate both the essential character of something and the processes that led to the manifestation of such character. The fundamental fact is that, among the pre-Socratics, the term is never used to designate a static reality (Kahn, 1960, pp. 201-202; Naddaf, 2005, pp. 14-15).

The relationship between "nature" and philosophy among the pre-Socratics was, then, in the notion that things have a distinct constitution from the traits presented to the senses. Or rather, the idea of nature conveys a dimension of objectivity, or the distinction between the objective (hidden) and the subjective (visible) dimension (Frankfort; Frankfort, 1977, pp. 19-20; Guthrie, 1985, v. I, p. 72).

The idea of causality is as important as the recognition of the distinction between objective reality and mere perception. Causality, in this specific context, means the recognition of impersonal and regular cause and effect relationships, capable of producing, under the same conditions, the same effects. From the notion of cause, one can understand concrete phenomena not from their peculiarities, but from general principles. Thus, a relationship between abstract principles and concrete phenomena was recognized (Frankfort; Frankfort, 1977, pp. 24-25).

It is also possible to identify a comprehensive or broad use of *physis*. This comprehensive use can be seen in the language employed by Anaximander (c. 610 - c. 546 BC), the first to use the expression *peri physeos* ("on nature") and the creator of a tradition of investigation aimed at the composition of a *historia peri physeos*, an investigation of the nature of things. Within such expressions, *physis* indicates: (i) an *arché* absoluta, that is, an element or cause that constitutes and generates all things; (ii) the process of growth or realization itself; and (iii) the result or product of such a process (Kahn, 1960, p. 7; Naddaf, 2005, pp. 16-21).

Physis indicated, it may be noted, the origin and growth of the universe, from beginning to end. At least initially, it can be pointed out that the pre-Socratics did not have the ambition to describe the universe, but to know the history of the universe, something informed by the literalness

of "cosmogony". They claimed to know the origin (*physis* as *arché*) of the universe; the stages of development of the universe (*physis* as a process); and, finally, the result of such a process, the *kosmos* (*physis* as a result). As a starting point in the conception of a primitive chaos, they wish to explain the emergence of the ordered or structured state of the totality of the universe, in which all things have an adequate place (Naddaf, 2005, pp. 20-21). The world, previously subject to the will of the gods, came to be conceived as an order (*kósmos*) autonomously governed by laws (Graham, 2006, pp. 33, 92).

4 The idea of human nature and the possibility of man's knowledge

The concept of *physis* was used by the Ionian philosophers not only in the meanings already identified, linked to the problem of the origin and development of the world. The term was also used to designate the constitution or form of certain sensitive entities. In the fifth century B.C., it is possible to attest to the use of the term to designate human nature, this being the moment of composition of the Hippocratic writings, to which it is possible to attribute the origin of the expression "human nature". The Hippocratics highlighted the knowledge of the *physis* of men in general and the *physis* of the individual patient as conditions for medical treatment (Guthrie, 1985, v. I, pp. 351-353).

The new medical science began within the *historia peri physeos*, and thus after the emergence of the ambition to discover impersonal causes and operative principles underlying the sensible world. Medical science came up with the idea that the same kind of operative force would be at work inside human bodies, as it would be responsible for vital processes and diseases. Like the occurrences of the sensible world, the manifestations of the human body would have underlying rather than apparent causes. The symptoms presented by a patient would no longer be understood as a reflection of the action of the deities or the *patient's daimon* (Holmes, 2010, pp. 3, 118; Jaeger, 1946, v. I, p. 306), that is, they would no longer be products of wills or fate.

The new science has not only moved away from myth. With an emphasis on empirical research, he also distanced himself from the cosmological hypotheses used by the natural philosophy that existed at the time. In criticism of the cosmological hypothesis, the doctors claimed, medicine would be the only natural science based on experience and safe knowledge. According to this new methodological orientation, the author of the Hippocratic treatise *On ancient*

medicine affirmed the *physis* of man as the best starting point for the acquisition of knowledge (Jaeger, 1946, v. II, pp. 32-33).

The idea of *physis* was not the only source for the emergence of the conception of human nature, and the study of the governing laws of the human spirit was also made possible from the previous notion of *kosmos*. The investigation of the governing principles of the human soul only became possible after the conception of an ordered reality. With this, immanent principles, governing his life, internal laws, through which he would be able to manifest his physical and intellectual powers, would be attributed to man. The movement of the Greek mind took place, it may be noted, from the external world (*kosmos*) to the internal world (*psyche*) (Jaeger, 1946, v. I, pp. xxii, 150-153, 306).

As well as the notions of *physis* and *kosmos*, the notion of soul (*psyche*) participated in the emergence and structuring of the idea of human nature. The theory of human nature emerged, with clearer contours, as a theory of the soul (*psyche*), a conception unknown until the time of Homer. The author of the *Odyssey* designated, through the term *psyche*, a simple vital force, and not something corresponding to the totality of the individual psyche (Bremmer, 1983, p. 3; Snell, 1953, 14).

Heraclitus was the first to use the concept of *psyche* to designate the totality and unity of the individual psyche. The soul, according to the philosopher, carries the identity and character of a man, and does so throughout life, during which it functions as the center of organization of intellect and action. Or rather, the soul is assimilated to an individuated agent: the *psyche* would be an underlying element that confers unity to a complex structure (Hussey, 2005, pp. 88-112, pp. 101-102; Snell, 1953, p. 17; Lloyd, 1966, pp. 17-18).

The identity between soul and person means that this formulation can be characterized as a theory of human nature, defined as a pronouncement on facts related to human character and human behavior (Berry, 1986, p. 33; Hussey, 2005, pp. 33, 101). The theory of the soul fulfills these requirements: according to this formation, the *psyche* not only appears as responsible for individual identity or characteristics, but as an explanation for the functioning of the members of the species.

The idea of *psyche*, as a theory of human nature, would have the same effects as the idea of nature (*physis*): the diversity of human phenomena would become intelligible with reference to a meta-empirical dimension, from which each individual manifestation would acquire meaning. The

idea of a human nature therefore concerns the behavior of men, and specifically the objective of giving meaning, order or reason to the apparent chaos of the expressions of the human spirit.

The concept of human nature, as well as that of nature, allows universal assertions. The existence of common attributes, defining humanity, is admitted, without this resulting in a denial of the differences between men. The very objective of identifying universal human attributes has as its starting point the recognition of the existence of differences (Berry, 1986, p. 58). As in the case of physical phenomena, one starts from the diversity of phenomena to identify common principles and causes. According to the idea of human nature, one starts from the differences between different men, towards the world of universal principles.

The starting point in diversity means, it should be emphasized, the recognition of a plasticity of human nature. The man described by Heraclitus is not immutable, nor does he have an ineluctable destiny. In each individual, human nature manifests itself differently and, for this reason, the philosopher highlighted habit as a factor of a person's specific character (*ethos*) (Hussey, 2005, pp. 103-104).

The use of the term *ethos* suggests an assimilation of character to habit, and the idea of the reciprocal influence of habits and character. From such a perspective, man can, and to some extent, reform his own nature. Thus, a theory of human nature is also a theory of the potentialities of human nature: this kind of theory not only describes the initial stage of human nature, but its progress and realization. The same is true, as previously noted, for the idea of *physis*, within the literary tradition of *historia peri physeos* (Hussey, 2005, pp. 103-104).

Human nature, relevantly, presents itself as a practical concept, and this is due to the fact that the deliberation prior to any decision regarding human action resorts to this concept. For this very reason, this concept has eminent relevance in the fields of ethics, politics and law, sciences that, from an Aristotelian perspective, concern human action, and, therefore, the world of practice (Berry, 1986, pp. xi, 30-33).

Thucydides' story exemplifies this practical use of the concept of human nature. Thucydides sought to explain the *raison d'être* of historical events according to the notion of causal regularity. Unlike Herodotus, the events of the human world would no longer be attributed to divine intervention, but to human nature. This nature then emerged as the key to understanding man's instantiations, no longer assimilable to simple chance, but interpreted according to causal relations (Jaeger, 1946, v. I, pp. 306-307, 390-391; Pohlenz, 2006, p. 352, 2006)

Hidden under the apparent chaos of the behaviors and peculiarities of individuals and groups, there would be something universal and constant, and this idea of nature, informing principles and causes, allowed Thucydides to attribute meaning to the various manifestations of human behavior. This is exemplified by the record of hostilities between Greek cities, through which the chaotic world of politics and war is attributed an immutable and predictable internal logic, arising from human nature, which is itself, to some extent, immutable and predictable (Pohlenz, 2006, pp. 353-355). This nature usually manifests itself during disasters, such as during the pestilence of the year 430 B.C., the cause of a scenario of disrespect for the laws (Thucydides, 2013, p. 122).

All men, according to the historian, would possess the same set of original impulses, which constantly erupt to supplant social conventions. The conjuncture, in this way, becomes intelligible when understood as an instantiation of active principles throughout the whole of human life, and, thus, through the totality of history (Jaeger, 1946, v. I, pp. 335; Pohlenz, 2006, pp. 353-355). According to these assumptions, human nature can be attributed with the loosening of passions and the abolition of morality that accompanies the state of necessity that arose with war. On the contrary, during peace, individuals and nations find it easier to act according to reason (Thucydides, 2013, pp. 212, 215).

The idea of human nature allowed Thucydides a vision of society based on causal relations, and this, in turn, appears as a condition for the acquisition of experience, and, in the end, for political planning. It is not by chance that the objective of Thucydides' story was to instruct politicians in the regularities arising from human nature. History, defined as the collection of human experience, could be taken as a source of useful knowledge for political activity. Even if historical facts are not repeated, the one who studies the instantiated course of events can deduce which impulses and forces of human nature will be at work in other conjunctures (Jaeger, 1946, v. I, pp. 389-390; Pohlenz, 2006, pp. 354-355).

5 Conclusion

According to the historiography presented, the conversion of human reason into an adequate tool for the task of explaining the functioning of the sensible world depends on a conceptual articulation: among the Greeks, "nature" and "human nature" respectively allowed the study of the

order of the world and the study of man. The beginning of any investigation demands, therefore, the establishment of concepts.

The conceptual interface is an indispensable condition for the exploration of the world by the mind, and this requirement, even isolated from any other considerations, allows us to appear negative about the current state of legal science. There is no investment of time and publications in the establishment of concepts, which are generally reproduced uncritically. Precariousness becomes even more evident when one takes as a parameter the use, or rather, the disuse, of the concepts discussed.

Scientific knowledge, as demonstrated, is not to be confused with knowledge of atypical occurrences. The typicality of an occurrence depends on the recognition of general and abstract precepts, to which each specific event can be assimilated. The recognition of such precepts imposes order on the sensible world, and establishes the field in which this dimension can be explored by human reason. The effect of the concept of human nature is similar, and human action is not subject to rational scrutiny until the typification of different behavioral manifestations.

The disuse of the concept of human nature by the generality of living legal scholars attests to the technicality of almost all Brazilian legal literature. Scientific rigor does not exist without the possibility of generalization, and generalization, in the case of a discipline focused on human action, depends on the establishment of a conception of human nature. This deprives the scholar of principles without which conduct could acquire meaning.

The state of the art is reflected in political practice, and, as a result, in the management of common life. Thus, to recognize this effect, it is enough to consider the fact that the establishment of law through the Legislative process depends on a prospective judgment on human conduct, or rather, on expectations related to human behavior: legal norms are produced according to expectations related to the conduct of the "average man", an expression that corresponds, in the end, to a certain conception of human nature.

The "average man" of the legislator, however, does not always correspond to the most accurate or adequate description of human nature, and may even become an absolutely unfaithful representation of human nature. For this reason, one of the roles of the science of law is to, through academic production, indicate to the legislator the validity of a certain description of man, thus becoming a guide to guide and limit the content of positive norms.

All these observations depend, of course, on the assumption that the best norm fits the laws of the human spirit. This, however, was the assumption assumed by the entire great political and legal tradition, with the idea that the just ordering of common life depends on the limitation of arbitrariness, that is, on the conformity of the will to the demands of reason. This rationality is not to be confused with merely formal reason, but is linked to an objective social reality, informed by the concept of human nature.

With the abandonment of such a criterion of rationality linked to the order of the world (nature) and the order of man (human nature), the subjects were left with formal and instrumental reason. This reason, untied from the demands of nature (of the world or of man), does not allow the efficient conformation of wills, and therefore favors arbitration³.

All these observations allow the conclusion that there is a crisis of the scientific status of law, which must be understood as a crisis of rationality, or as a crisis caused by the lack of knowledge of concepts that serve as a condition for rationality. This crisis is most likely an expression of a general crisis of rationality, initiated, it might be suggested, with the abandonment of the best foundations for reflection (classical), and, more obviously, by the subjection of intellectuals to the demands of a university vitiated by the modern emphasis on action (to the detriment of reflection).⁴

The practical effect of such a crisis is the restoration of the pre-philosophical worldview, founded on arbitrariness and caprice. The world is restored governed by the unfettered will, unqualified by reason, and therefore antagonistic to the spirit of law. Unfortunately, this reason finds expression both in parliaments and in the courts.

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³ Agency, as can be easily seen, is antagonistic to the spirit of humility inspired by the recognition of the real circumstances of the world and of man.

⁴ As demonstrated by the demand for frequent publications, which caused the multiplication of writings produced at small intervals, and therefore inferior to the products of a lengthy reflection.

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