

Proposal
Joint research project
of the
MCC Center for Constitutional Politics
and the
Department of Public Law
Pontificia Universidad Católica de Chile

Common Good and Subsidiarity

The Role of Natural Law in Regional Human Rights Adjudication

I. TEAM OF RESEARCHERS

1. **Kálmán Pócza**, Head of the MCC Center for Constitutional Politics
2. **MCC Visiting Fellow**
Dr. Gonzalo Candia, Professor of Constitutional Law and International Human Rights Law, *Pontificia Universidad Católica de Chile*
3. **MCC Visiting Fellow**
Dr. Cristóbal Orrego, Professor of Jurisprudence, *Pontificia Universidad Católica de Chile*
4. **Márton Csapodi** (research fellow, MCC Center for Constitutional Politics)
5. **Róbert Papp** (research fellow, MCC European Center of Political Philosophy)
6. **Márk Dudás** (junior research fellow, MCC Center for Constitutional Politics)

II. TIME PERIOD

2024 September -2026 September (2 years)

III. RESEARCH PUZZLE

Originally both courts the European Court of Human Rights and the Inter-American Court of Human Rights relied heavily on the margin of appreciation doctrine established as a standard of review for resolving sensitive issues lacking consensus within the relevant communities. Under this standard, both courts had to exercise **deference** when addressing matters of moral, cultural, economic, and political controversy. By doing so, the courts aimed to prevent the system from disproportionately intervening in the **democratic processes** of the **nation states**.

However, over time, there was a gradual shift in the **behavior** of these supervisory **international bodies**. They began to **expand** their areas of decision-making by various means: (i) by broadening their jurisdiction by applying new treaties and non-binding declarations to cases; (ii) by restricting the margin of appreciation given to national judicial bodies; (iii) by adopting the “living instrument” and the

“pro-homine” theories of interpretation; (iv) by declaring that nation states were bound by all decisions made by supervisory bodies, regardless of the state’s involvement in the procedures; and (v) by declaring new implied rights not explicitly stated in the text of both treaties.

This **informal expansion of authority** of both courts **European Court of Human Rights** and the **Inter-American Court of Human Rights** has given rise to multiple problems concerning the **legitimacy** and **functionality** of both systems. These problems must be addressed if both systems aim to have a meaningful impact in their regions during this century.

This research project looks at the problems described above from a new point of view of the **natural law theory**. Natural law theory has formulated a comprehensive stance on how domestic and international bodies should act to foster fair and just relations between them. In this regard, natural law theory offers a principled solution to the challenge of coordinating the interaction between national and international authorities: **subsidiarity**. According to this principle, international bodies exist not to supplant the authority of the nation state, but to assist it in areas where addressing specific problems demands coordination among various actors at the supranational level.

This comprehension is exceedingly vital for enhancing the **legitimacy** of any regional human rights system, as its credibility largely hinges on its fairness and impartiality. Notably, both the European Court of Human Rights and the Inter-American Court of Human Rights lack the power to enforce the implementation of their judgments on nation states. Therefore, the actual enforcement of these decisions relies only on the willingness of the nation states themselves. If nation states do not perceive regional courts as acting just, fair, and impartial, they are unlikely to enforce these judgments, rendering the adjudicatory powers of regional courts ineffective. This underscores the importance of defining the *conditions of legitimacy* under which regional human rights bodies must operate, a task for which **natural law theory** provides essential concepts and criteria, like the principle of **subsidiarity**.

Furthermore, **natural law theory** has introduced the concept of **common good** as the ultimate objective of any exercise of both national and international authority. It is within this framework that discussions about the powers of regional human rights courts and nation states should be conducted. Promoting the regional common good requires that regional human rights bodies operate within their legal powers, and with the aim of assisting nation states in creating conditions under which individuals and their communities can flourish. Consequently, supervisory bodies must use their treaty-based powers to aid domestic authorities in promoting and safeguarding basic human goods, such as life, personal integrity, and marriage, which are the objects of human rights norms. Furthermore, supervisory bodies should perform their roles without assuming responsibilities that are the sole prerogative of nation states. By doing so, supervisory bodies reinforce democratic

rule within political communities, allowing their authorities and people to resolve their most contentious issues by themselves.

In conclusion, this research project seeks to **evaluate** the **challenges** currently faced by both the European and the Inter-American **human rights systems** from a **Natural Law perspective**. This approach is chosen because Natural Law Theory offers valuable insights into the central debates surrounding International Human Rights Law, thereby contributing to the finding of solutions to the key challenges that characterize this field in the 21st century.

IV. OBJECTIVES OF THE RESEARCH PROJECT

General objectives

Given the **inevitable tensions** between **supranational and national judicial bodies** within the European and Inter-American human rights systems, this research project aims to illustrate how a **natural law theory** contributes to **mitigating** these **tensions** by **proposing innovative** perspectives for assessing their nature.

Specific objectives

- To **identify** the primary **institutional challenges** that each regional human rights court faces when adjudicating human rights cases.
- To **compare** how the European and Inter-American Courts of Human Rights have addressed these institutional challenges in their decisions.
- To define **how Natural Law Theory**, particularly—but not exclusively—as expounded by John Finnis, aids in **resolving institutional issues** inherent in international human rights adjudication, thereby preserving both their legitimacy and functionality.

V. ACTIVITIES AND DELIVERABLES

1. **MCC Visiting Fellowship program** (Gonzalo Candia; Cristóbal Orrego)
2. Establishment of an **international network** of scholars
3. **Conferences and workshops**
 - a. One **international conference** scheduled for **2024 September** at **MCC Budapest**.
 - b. One **international workshop** in **Oxford** scheduled for **2025 September** (in cooperation with the Roger Scruton Legacy Foundation).
4. **Publications:**
 - a. One **edited volume** to be published at an **internationally renowned publishing house** (e.g. University of Notre Dame Press).
 - b. **Two academic articles** in renowned international journals.
5. **Tutoring** of MCC students fellows by Researchers No. 1 and 2.

VI. PREVIOUS COOPERATIONS

- a. The Purpose and Limits of International courts / International Conference, MCC Budapest, 1-2 June 2023
<https://mcc.hu/en/event/the-purpose-and-limits-of-international-courts-1>

VII. EXPERIENCE OF THE RESEARCHERS IN THEIR AREAS OF EXPERTISE

Professor Gonzalo Candia holds a doctoral law degree conferred by Georgetown University. Over the past decade, he has been a faculty member at the *Pontificia Universidad Catolica de Chile*, offering courses in Constitutional Law and International Human Rights Law. Since 2014, his primary research focus has revolved around critical examinations of developments within both the European and the Inter-American human rights systems.

In this time frame, Professor Candia has authored a dozen articles on this subject, published in both Spanish and English, within law journals in Chile, Colombia, Spain, Italy, and Germany. He is also the author of one of the few comprehensive books on International Human Rights Law written in Spanish, titled *“Introducción al Derecho Internacional de los Derechos Humanos. Análisis, Doctrina y Jurisprudencia,”* which was published in 2006. In his scholarly endeavors, Professor Candia has tried to approach issues within International Human Rights Law not only through a strictly positivistic legal lens, but also through a jurisprudential perspective, which explains his interest on rule of law issues. In 2022, the Max Planck Institute for International, European, and Regulatory Procedural Law (Luxembourg) invited Professor Candia to write the entry for its *Encyclopedia* on the standards of review in the Inter-American system of human rights.

Professor Candia has also practiced International Human Rights Law by working for the Chilean government in the international defense of the State in cases within both the Inter-American human rights system and the United Nations Human Rights Committees from 2019 to 2021. During those years, he was a member of the Chilean delegations that represented the State before human rights bodies in both Washington, D.C., and Geneva. Currently, Professor Candia is also engaged in representing human rights victims in cases against Perú and Argentina at the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) and the United Nations Committee on the Elimination of Racial Discrimination (CERD).

Professor Cristóbal Orrego holds a doctoral degree from *Universidad de Navarra* and he is a distinguished authority in the field of Natural Law Theory. Today, he teaches courses of Jurisprudence at *Pontificia Universidad Catolica de Chile*. Notably, he is renowned for his Spanish translation of John Finnis' seminal work, *“Natural Law*

and Natural Rights,” which was published in 2000. Professor Orrego has actively engaged in numerous workshops on Natural Law at the University of Oxford, fostering enduring academic relationships with eminent scholars, including Paul Yowell and John Finnis himself, spanning nearly two decades.

His prolific academic contributions comprise 11 books and 28 articles, published in both Spanish and English, across a spectrum of different law journals in Chile, Spain, Argentina, Colombia, Mexico, the United nation states, and the United Kingdom. While his work is anchored in Natural Law, Professor Orrego has also explored the intersection of Natural Law Theory with various domains of law, including International Human Rights Law. For instance, his paper titled “*The Relevance of the Central Natural Law Tradition for Cross-cultural Comparison: Philosophical and Systematic Considerations in Natural Law and Comparative Law*” was published in the prestigious Journal of Comparative Law in 2013. In 2008, he contributed another significant work to this vein, published in the journal “*Persona y Derecho*” of *Universidad de Navarra*, the article “*La gramática de los derechos y el concepto de derechos humanos en John Finnis,*” in which he delved into the treatment that Natural Law Theory offers in the context of human rights. He also studied the theoretical scope of the legal protection offered by human rights in the article “*La especificación de la acción y el alcance de la protección de los derechos humanos: la circunscripción del sujeto en Locke y Arendt*”, published in 2009.

Finally, it is worth noting that Professor Orrego was the sole Spanish-speaking author invited to contribute to the book “*Reason, Morality, and Law: The Jurisprudence of John Finnis,*” edited by John Keown and published by Oxford University Press in 2013 to officially celebrate the contribution made by John Finnis to the field of Jurisprudence.

The **academic and professional backgrounds** of **both researchers** are aligned with the subject matter of this project. Their knowledge, academic production and expertise will permit to advance this project accordingly. Likewise, both researchers have ventured beyond their primary areas of teaching, expanding their expertise to encompass broader domains. For instance, Professor Candia has approached International Human Rights Law issues from a jurisprudential standpoint, while Professor Orrego has applied the concept of Natural Law Theory to discussions on human rights. This dynamic demonstrates their ability to engage in academic discourse that bridges the gap between International Human Rights Law and Natural Law. This capacity is pivotal for the successful execution of this project, which will precisely evaluate human rights issues through not only the lens of International Law but also Jurisprudence.