UNIO - *EU Law Journal*. Vol. 8, No. 1, December 2022, pp 143-160.

School of Law – University of Minho

Humanistic legal sciences: notes for a rescue on fundamental research in law

Ricardo de Macedo Menna Barreto*

ABSTRACT: This paper proposes a reflection on fundamental research in law, which, according to Paulo Ferreira da Cunha, has its own name: humanistic legal sciences. In this sense, it addresses a problem identified five decades ago by Francisco Puy in Spain and taken up by Sebastião Cruz and Paulo Ferreira da Cunha in Portugal: the displacement, reduction or exclusion of humanistic legal sciences from the teaching plans of law courses, which has been creating a scenario of "epistemological sterility". When not excluded, these sciences are attacked or are the object of disregard by many practical lawyers and students, who unthinkingly and blindly reproduce a posture of overvaluing dogmatic-legal knowledge to the detriment of legal-humanistic knowledge. The aim is thus to rescue the role of humanistic legal sciences in legal education, in addition to presenting the main arguments in defence of Puy, Cruz and Ferreira da Cunha.

KEYWORDS: Humanistic legal sciences – fundamental research in law – law epistemology.

* PhD in Law. Invited Professor at School of Law of the University of Minho.

> *The best thing about the sciencesare its philosophical ingredients, like life in organic bodies. Dephilosophize the sciences, and what is left? Earth, air, and water*
> Novalis[1]

1. Introduction

The young poet Novalis (1772-1801) – one of the great names in the poetry of the first generation of German Romanticism – puts in the poetic fragment in the epigraph an idea with which we agree: the philosophical ingredients are what is best in the sciences. Once these elements are removed, perhaps there is little left of them. We are not, however, operating with a particularly uncontested idea, especially in Law. Alejandro Nieto has well pointed out that "*on the legal planet there is not a single square metre of peace and concord where we can rest for a moment*".[2] The present text is, therefore, the result of the author's lack of rest when he delves into the ideas contained in a special work from the vast doctrinal production of Paulo Ferreira da Cunha: "*Amor Iuris: filosofia contemporânea do direito e da política*".[3]

In his work, Ferreira da Cunha takes up what he identifies as the "*two founding texts of fundamental research in law*", authored by Francisco Puy and Sebastião Cruz, to subsequently carry out his own epistemological approach on the so-called humanistic legal sciences. Our interest in the subject is mainly due to the fact that we have, over the last decade, dedicated our teaching practice specially to researching and teaching humanistic legal subjects, such as Introduction to the Study of Law, Legal Hermeneutics and Argumentation, History of Law and Philosophy of Law. In this sense, it may not seem strange to state that our choice to rescue the epistemological role of the humanistic legal sciences may, in certain aspects, amount to a kind of reflexive rescue of the author of this text.

The problem we will address – identified five decades ago by Puy in Spain and taken up by Cruz and Ferreira da Cunha in Portugal in the following years – involves the "epistemological sterility" that dominates Law Schools as a result of the displacement, reduction or exclusion of humanistic legal sciences from the teaching plans of law courses. When they are not excluded, these sciences are attacked, or are the object of disregard from a good number of practical lawyers and students, who begin to reproduce, unthinkingly and blindly, a posture of overvaluing dogmatic-legal knowledge to the detriment of legal-humanistic knowledge.

However, this trend is not confined to the countries mentioned (Spain and Portugal). In Brazil, for example, the situation is even more serious. The "technicisation" of Brazilian legal education has reached the level not only of excluding some humanistic legal subjects from the teaching plans of some Law Schools, but recently (in 2021), the Brazilian Ministry of Education recognised "Technical Courses in Legal Services" – courses which had already existed unofficially for years, under the supposed need for "professionalising legal education". In effect, the emergence of courses of this nature only demonstrates the high degree of technicisation to which Law has reached on Brazilian soil.

---

[1] Novalis, *Fragmentos são sementes,* trans. João Barrento (Lisboa: Roma Editora, 2006), 34. Note: all direct quotations from the referenced works have been freely translated into English by the author of this text.
[2] Alejandro Nieto and Agustín Gordillo, *Las limitaciones del conocimiento jurídico* (Madrid: Editorial Trotta, 2003), 14.
[3] Paulo Ferreira da Cunha, *Amor Iuris: filosofia contemporânea do direito e da política* (Lisboa: Cosmos, 1995).

This rescue of the role of the humanistic legal sciences in legal education – in addition to presenting the main arguments in defence of Puy, Cruz and Ferreira da Cunha – will initially offer an approach to the historical-epistemological aspects that led to the prevalence of dogmatic thinking in Law Schools. This prevalence, as we shall see, demands a re-signification by current jurists of the role of fundamental research in Law, with a view to preventing the humanistic legal sciences from being excluded, or having their importance diminished, in the face of the legal-dogmatic disciplines.

2. Pure legal science, legal dogmatics, and humanistic legal science

Paulo Ferreira da Cunha has emphasised the characteristic plurality of legal thought, exemplifying, in reference to the legal-dogmatic field, that "*the way of thinking of a civil lawyer is different to that of a criminal lawyer, and both reasons differently, worrying about different issues (or giving the same things different colours and shades) from those that torment a constitutionalist. Of course, they all share the common juridical forma mentis*".[4] Now, if in the dogmatic field the differences are, as a rule, so pronounced, as the author suggests, the distances become even more continental between the cultivators of legal dogmatic and those of the humanistic legal sciences. For the purposes of this study, we shall use the nomenclature used by Francisco Puy,[5] in distinguishing the "pure legal sciences" from the "humanistic legal sciences". This distinction will also appear in Ferreira da Cunha's proto-theses, as we shall see below.

2.1 Legal science, dogmatics, and legal praxis

Commonly, in legal thought, "*when the science of law is mentioned, reference is made to legal dogmatics*" – this is the "traditional concept", Luís Alberto Warat explains to us.[6] It is an attempt to describe the legal order without relying, as a rule, on sociological and political references, presenting a theoretical-conceptual construction that is supposedly objective and rigorous, a conceptual elaboration of the law in force without questioning its ideological-political dimension.[7] With this reference to the Waratian thought, we have an initial approximation to the "pure legal sciences". However, we believe it is necessary to observe certain historical aspects involving the science of law in order to understand the success among jurists of the pure legal science model crystallised in the form of legal dogmatics.

According to Ulfrid Neumann (quoting Troje) the question as to whether and to what extent legal science could be considered a science was already a matter of concern for philosophers and legal scholars in the 16th century.[8] In an attempt to present the historical features of this discussion, António Hernández Gil explains that traditional (or dogmatic) legal science supposes a certain attitude towards law, science and methodological behaviour. It is not, however, an attitude that arose out

[4] Paulo Ferreira da Cunha, *Introdução à teoria do direito* (Porto: Res Editora, 1988), 164.
[5] Francisco Puy, "Filosofia del derecho y ciencia del derecho", in *Boletim da Faculdade de Direito da Universidade de Coimbra*, v. 48 (Coimbra: 1972), 145-172.
[6] Luis Alberto Warat, *Introdução geral ao direito, II – A epistemologia jurídica da modernidade* (Porto Alegre: Sérgio Antônio Fabris Editor, 1995; Reprint, 2002), 15.
[7] Luis Alberto Warat, *Introdução geral ao direito, II – A epistemologia jurídica da modernidade,* 16.
[8] Ulfrid Neumann, "La teoría de la ciencia jurídica", in *El pensamiento jurídico contemporáneo*, ed. Arthur Kaufmann, Winfried Hassemer, Gregorio Robles Morchón (Madrid: Editorial Debate, 1992), 351.

of nowhere, at the mere whim of chance, but one that found its most important epistemological turning point in Savigny, a German jurist who carries a kind of positivism that is inseparably associated and subordinated, says Hernández Gil, to his basic historicism. In this sense, as we know, Savigny's theoretical legacy to legal science will include not only the historical factor, but also the systematic factor, with both being associated – it being, however, systematic knowledge, as Hernández Gil states, that will qualify legal knowledge as a science.[9]

Savigny greatly contributed – with his understanding of law and its science as history and system – to the elaboration of the model of legal dogmatics. As much as he shouted and raised the historicism flag, when proposing his model, he contradictorily ended up superimposing the logical-systematic components to the historical elements. With this, says Hernández Gil, Savigny managed to achieve a certain rationalisation of the legal discourse that had not been achieved up to that point regarding positive law.[10]

Nevertheless, for Hernández Gil, the first theoretical formulation of dogmatics is mainly due to the first Jhering, because until then, there was a "great explanatory void" in the epistemological elaboration of legal science. In this sense, comments the Spanish jurist that "*the epistemological and methodological status of dogmatics, according to Jhering's formulation, is nourished, above all, of logical components, with the cooperation of criteria coming from language (not, strictly speaking, from linguistics) and natural history*".[11]

From this point onwards, the legal-dogmatic thought would have different theoretical developments, which gradually allowed dogmatics to dominate legal science in a large part of continental Europe and Latin America over the following century. This enabled a significant number of jurists to share a "common language", explains Hernández Gil, since the different normative object-languages could be approached by a coincident, perhaps even universal, metalanguage.[12]

This character of systematicity, rigour and universality of legal science has greatly seduced practical jurists. As for science, the practical jurist, argues Stephan Kirste, expects from legal science only "*practical instructions, the development of principles and systematics. And he is not alone; legal scientists also consider praxis as the centre of their activity and as that which gives it meaning. At this point, the question is whether the intellectual occupation with law is, after all, a science (Επιστήμη, scientia), or whether it would not rather be a practical prudence (φρόνησις, prudentia), iuris-prudentia.*" [13]

An important distinction can be perceived in Kirste's reflection, which allows us to perceive to what extent legal praxis (understood as the field operated by practical jurists) can be differentiated from the Science of Law (a concern, in principle, of theoretical jurists). For Kirste, it is the Science of Law that can demonstrate, for example, that regulations are incorrect because they lack systematicity since they do not logically correspond to the facts. Legal praxis, on the other hand must, above all, "*accept these legal rules as binding models of action*", says Kirste, concluding that, "*although it is certain that the Science of Law, as Jurisprudence, experienced its beginnings in close connection*

[9] António Hernández Gil, "La ciencia jurídica tradicional o dogmática", in *Saber jurídico y lenguaje*, ed. António Hernández Gil (Madrid: Espasa-Calpe, 1989), 115-117.
[10] António Hernández Gil, "La ciencia jurídica tradicional o dogmática", 118.
[11] António Hernández Gil, "La ciencia jurídica tradicional o dogmática", 119.
[12] António Hernández Gil, "La ciencia jurídica tradicional o dogmática", 122.
[13] Stephan Kirste, *Introdução à filosofia do direito*, trans. Paula Nasser (Belo Horizonte: Editora Fórum, 2013), 40.

between theory and praxis, the fact is that, throughout history, the placement of the problem in theory has nevertheless differed from the placement of the problem in praxis."[14]

We understand that it was this internal differentiation of legal science that, to a certain extent, ended up creating a gnoseological abyss between the "true" legal scientists/theorists and dogmatic jurists (cold cultivators of the pure legal sciences and operators of the praxis). In other words, although they share a metalanguage with the legal scientists, the practical jurists have managed, to a certain extent, to isolate their concerns and reproduce the legal system in a way that is often disconnected from the theoretical-conceptual constructions and the real concerns of legal science. In this sense, according to Kirste, legal science "*consequently serves legal praxis, insofar as it offers solutions to its problems; the latter raises before the former the claim that the theory, on which practical jurists necessarily base their decisions, may be justified by their knowledge.*"[15]

The knowledge with which practical (dogmatic) jurists are concerned is equivalent, within the gradation of legal knowledge proposed by Luís Cabral de Moncada, to a "*proper knowledge of law, or legal knowledge of the legal.*"[16] This type of knowledge, which understands law as a world of thoughts and value judgements that appear crystallised in the form of positive law, involves not only an apprehension of the historical dimension of law (that which was and that which is law), but an understanding of the legal as something real and existing, "*in its specific objectivity as a cultural object*", explains Cabral de Moncada.[17] Within this gradation of legal knowledge established by the famous Portuguese jurist, we find the philosophy of law figuring in a fourth position alone, given its important role. In this study, although we do not disregard Cabral de Moncada's classification, we will start from a dichotomous view, emphasising the distinction between pure legal sciences and humanistic legal sciences, as we mentioned earlier.

2.2 Pure legal science and humanistic legal science: some introductory notes

Pure legal sciences (also called "authentic legal sciences") are, according to Francisco Puy, those responsible for the study of actual concrete legal phenomena. We can understand them, therefore, as belonging to a strict type of legal science.[18] The pure legal sciences, concerned with the positive legal order, correspond today to a significant part of the subjects on the law school curricula. Occupying, therefore, a considerably extensive role – and let us acknowledge, an attractive one, especially for those seeking their "practical side" in law studies – the pure legal sciences have become isolated in a world that is exclusively directed towards concrete legal problems and the very reproduction of the legal system. This, however, has reduced the space for reflection stemming from the humanistic legal sciences.

Humanistic legal sciences, in turn, may be defined, according to Ferreira da Silva, Aguiar e Silva and Lemos Soares, as "*those disciplines of knowledge in general that, focusing on Law as their main object, and normally exercised by jurists or specialists with solid legal training, aim to clarify the deeper being of Law, in its unity and diversity in all its coordinates, and*

[14] Stephan Kirste, *Introdução à filosofia do direito,* 41.
[15] Stephan Kirste, *Introdução à filosofia do direito*, 42.
[16] See Luís Cabral de Moncada, "Sobre a epistemologia jurídica", in *Estudos de Filosofia do Direito e do Estado*, ed. Luís Cabral de Moncada, v. 2 (Lisboa: Imprensa Nacional-Casa da Moeda, 2004), 65.
[17] Luís Cabral de Moncada, "Sobre a epistemologia jurídica", 69.
[18] Francisco Puy, "Filosofía del derecho y ciencia del derecho", 146.

contribute, through their lessons, to a more just Law, and may draw methods and inspiration from areas that are not specifically legal but are humanistic – Philosophy, History, Sociology, etc."[19]

We can see how, as a rule, these sciences find scholars willing to transcend the disciplinary boundaries of law, seeking in other (humanistic) areas of knowledge those lenses that are more apt to provide new insights into the legal phenomenon. It is not, however, a question of an "external look" at law, because if this were the case, we would be faced with "*pure, exact, natural, social or even humanistic sciences which, even though they are often integrated into Law degree plans, contribute towards the integral formation and even the general culture of jurists.*"[20] In other words, those who study these humanistic legal sciences are above all jurists. We are thus referring to an internal look at law, even though it normally involves observations that make use of external lenses (philosophical, anthropological etc.).

Even so, many scholars of contemporary dogmatic technicality maintain that humanistic legal science is merely accessory, complementary, and external in nature ("non-legal", therefore), contributing little or nothing to legal education. However, without the foundations forged by the humanistic legal sciences, legal education would become a fragile castle of sand. In fact, these are precisely the sciences that contribute not only to a solid legal education, but also to the human education of jurists. It is worth remembering that law has its origin, its development, and its consolidation *hominum causa*, according to Paolo Grossi, which means that law is born with human beings and for human beings, being completely and inextricably linked to human vicissitudes in space and time.[21]

Although the *human dimension* of the legal phenomenon may seem obvious even to a non-law novice, the fact is that some of the practitioners of pure legal science have identified with the normative dimension of law to such an extent that, for them, being a "jurist" is equivalent to being just a "man of laws". Such jurists, explains Javier Hervada, are normativists, those who understand that law is law. However, law and law are not the same thing, although normativism is today the dominant conception of law.[22] Strongly identified with laws, normativists (we could also call them "pure legal scientists", "practical jurists", etc.) isolate and protect themselves in an ideal world that is closed to other dimensions of legal knowledge. This enclosure, which is sometimes coated in more audacious acts – such as the attempt to exclude humanistic legal sciences from teaching plans – has already been the object of critical reflection and defence by Francisco Puy and Sebastião Cruz, in addition, as we shall see, to Paulo Ferreira da Cunha. The following chapter aims to summarise the main arguments in defence of these three important jurists.

[19] Paulo Ferreira da Cunha, Joana Aguiar e Silva and António Lemos Soares, *História do direito*: *do direito romano à constituição europeia* (Coimbra: Almedina, 2010 [Reprint of the October 2005 issue]), 41.
[20] Paulo Ferreira da Cunha, Joana Aguiar e Silva and António Lemos Soares, *História do direito*: *do direito romano à constituição europeia,* 40.
[21] Paolo Grossi, *La primera lección de derecho*, trans. Clara Álvarez Alonso (Madrid/Barcelona: Marcial Pons, Ediciones Jurídicas y Sociales, 2006), 22.
[22] Javier Hervada, *O que é o direito? A moderna resposta do realismo jurídico*, trans. Sandra Martha Dolinsky (São Paulo: Martins Fontes, 2006), 4-5.

3. Francisco Puy and Sebastião Cruz in defence of humanistic legal sciences. The humanistic-legal proto-theses of Paulo Ferreira da Cunha

In 1972, Francisco Puy grew concerned about a profound crisis that was taking root in the teaching of law. One of the most serious signs of this crisis was the attempt to exclude humanistic legal sciences from the teaching plans of Spanish Law Schools. This crisis, in the following decades, would also gain the attention of Sebastião Cruz and, later, of Paulo Ferreira da Cunha, in Portugal.

While Puy and Cruz put emphasis of the defence of the importance of the disciplines taught by these professors (Philosophy of Law and Roman law, respectively), in Ferreira da Cunha there is a broader reflection, in defence of all and any humanistic legal science, even though Ferreira da Cunha's discourse is, like Puy, Philosophy of Law. We shall present the main arguments of these three jurists in defence of humanistic legal science.

3.1 Francisco Puy in defence of philosophy of law

In 1972, Francisco Puy published the text "*Filosofía del derecho y ciencia del derecho*" in the Bulletin of the Faculty of Law of the University of Coimbra.[23] The starting point of the problem: the General Law on Education and Financing of the Educational Reform (Law 14/1970). This was a law that granted autonomy to all Spanish universities, including giving them the competence to draw up new study plans in all their Faculties – Law Faculties, in this case, being no exception.[24]

Supported by the aforementioned law, Puy perceived, at the time, "*a generalised and perfectly organised and instrumented current of thought, which advocates the suppression of all the subjects that we might call fundamental, or humanistic, or non-technical and pragmatic in the broad sense, from the syllabus of legal studies.*"[25] In other words, we could see an organised movement of legal-dogmatic thinkers seeking the elimination of those subjects that had long figured in the study plans of Law Faculties. As an example, Puy cites, among other subjects, Philosophy of Law, Natural Law, Roman Law and the History of Law.

The exclusion of these disciplines would, for Puy, cause irreparable damage to the education of future jurists, who would have a study plan consisting only of those disciplines considered to be "authentic legal sciences" – the so-called "pure legal sciences" – that is, only those disciplines responsible for the study of "concrete current legal phenomena". The argument put forward by the supporters of the radical reform, which advocated the exclusion of the humanistic legal sciences, was that certain disciplines – such as Philosophy of Law, or Natural Law, for example – would not be "authentic legal disciplines", which generated an (unfounded) understanding that the scholars of the humanistic legal sciences were not, therefore, "authentic jurists". Hence, authentic jurists would only be those who occupied themselves with the positive law in force.[26]

In order to deconstruct a "personalised" version of this argument, Puy lists a number of Spanish professors linked to the humanistic legal sciences who have

[23] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 145-172.
[24] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 145.
[25] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 145.
[26] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 146.

developed "practical" activities with success and great recognition, such as Ruiz-Giménez, Galán Gutiérrez, Luño Peña, Legaz Lacambra, Ruiz-Giménez Cortés, etc. With this, Puy seeks to demonstrate that jurists linked to humanistic legal sciences naturally also possess legal competences to develop those activities that are generally linked exclusively to "practical jurists." [27]

However, it is not in this sense (*intuitu personarum*) that Puy will carry out the defence of the so-called humanistic legal sciences and, in particular, of the philosophy of law. His problematisation will be planned epistemologically, in the sense of knowing whether the Philosophy of Law is, or is not, an "*authentic juridical science*". To this end, Puy will initially verify the delimitation between the philosophy of law and the legal sciences. From a historical-temporal point of view, the Spanish jurist reminds us that the philosophy of law has never had to "*beg*" for a place in the tree of sciences, since it was born in very remote days, with the works of Plato and Aristotle, while legal science, on the other hand, "*did not see the light of day until the 19th century, or at the latest, until the late medieval reception.*"[28]

Exploring the paths taken towards the "negation of the Philosophy of Law" – such as those pointed out by Ricardo Orestano and Enrico Opocher, cited by Puy[29] –, the problem on which the Spanish jurist focuses then involves the "scientificity of the Philosophy of Law", raising the question whether philosophical reflection has scientific objectivity or not. About this, Puy will say "*for what happens is that the whole aporia of the scientificity of philosophy, compared to the scientificity of science, is based on a misunderstanding. The misunderstanding lies in the fact that the word science has two technical meanings: a broad one, which is connected to the Greek concept of episteme; and a narrow one, which stems from the Renaissance concept of scientia. Episteme is – as opposed to opinion, doxa – certain and evident knowledge acquired by demonstration. Until the Renaissance there was no episteme other than philosophy. Since the Renaissance, on the other hand, there are two kinds of episteme: that of scientia, which is certain and evident knowledge acquired by demonstration of ultimate causes or first principles. In short, "philosophy" is an objective science, because it is an episteme, even if it does not have the kind of scientific objectivity that typifies scientia.*"[30]

With that, however, the question will still remain: how to distinguish the Philosophy of Law from the Sciences of Law? This involves the need for another distinction, says Puy: between *philosophy* and *science*. Starting from this distinction, then, one needs to consider two criteria: i) the different way in which the two disciplines consider the same object (the juridical); and ii) the different approaches with which the two disciplines take it as the object of their research. On this basis, says Puy, the Philosophy of Law is distinguished from legal sciences, firstly, because what we seek to know with the Philosophy of Law is distinct from what we wish to know with legal sciences; consequently, because with the Philosophy of Law we wish to investigate the legal entity as a whole, whereas with legal sciences we wish to investigate the legal whole in parts.[31]

By presenting, based on different legal philosophers, the differentiating aspects of legal philosophy and legal science, Puy highlights the different levels of knowledge of both – emphasising that both are "scientific" in the sense of

[27] Francisco Puy, "Filosofía del derecho y ciencia del derecho", 147.
[28] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 148.
[29] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 149.
[30] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 150.
[31] Francisco Puy, "Filosofía del derecho y ciencia del derecho", 150-151.

constituting an *episteme*, which makes them equally necessary and independent in the field of legal knowledge. Puy said: "*Without science, we would not know everything that can be known about law. But without philosophy, neither: and, moreover, if philosophy is excluded, science itself is left without a basis*", moreover, he adds: "*it means, finally, that the science of law only asks itself how law works?, while philosophy of law dares to reply to all its answers – from the most vulgar to the most sophisticated or elaborate – with a further question: why does law work in this way?*" [32]

Having seen these general aspects involving Puy's defence of the Philosophy of Law, we shall not depart to the distinctions made by the author (between the Philosophy of Law and the General Theory of Law and legal sociology). Of the main arguments put forward by the Spanish professor in defence of humanistic legal sciences, we can initially highlight that the problems posed by the philosophy of law are authentic legal problems and endowed with a peculiarity: "*in addition to being problems of man as a jurist, they are also problems of the jurist as a man.*"[33] Consequently – and perhaps this is one of the most important warnings given by Puy: "*when the Law Faculties do not impart more than technical and pragmatic knowledge, their level will drop to that of medium-level technical schools; in fact, they will no longer be in the higher sphere of university institutions.*"[34]

In view of the above, we can see how fifty years ago Puy had already warned about the problem of law school curricula favouring technical-dogmatic approaches to the detriment of humanistic legal sciences. The scenario perceived and criticised by Puy, however, has gradually worsened up to the present day.

3.2 Roman Law and legal education: the contribution of Sebastião Cruz

Sebastião Cruz, former professor at the Faculty of Law of the University of Coimbra, is responsible for one of the most important works on Roman Law ever written in Portuguese. He also makes an open defence of his discipline, just as Puy did in Spain with the Philosophy of Law. In 1968, after five years of intense work, Cruz, who had been in charge of the subject of Roman Law since 1963, published the first edition of his famous Lessons on Roman Law (*Ius Romanum*), a work that would reach its fourth edition in 1984 – the edition we consider in this article.

In the prologue of that work, Cruz exposes his dissatisfaction with the time devoted to Roman Law in the Portuguese teaching plan of the time: three hours of theoretical lessons per week, over just one academic year. The author criticises this: "*Nowhere in Europe – not even, practically, in France – and in no country of the civilised world is so little time devoted to the teaching of the Ius Romanum as it is nowadays in Portugal*". As if the little time devoted to Roman studies were not enough, Cruz also highlights, in the prologue of his work, the unfavourable opinion of several people to the expansion of the teaching of Roman Law. This movement, according to Cruz, was internal (that is, originating from the legal field itself): "*It is unbelievable, truly incomprehensible, how, among us, certain people with responsibilities speak and write against the advantages of teaching Ius Romanum in the current Faculties of Law.*"[35]

With a view to demonstrating the absurdity of the opinions unfavourable to Roman Law, Cruz also presents, in the prologue to his Ius Romanum, a list of

[32] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 153.
[33] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 168.
[34] Francisco Puy, "Filosofia del derecho y ciencia del derecho", 170.
[35] Sebastião Cruz, *Direito romano* (*Ius Romanum*), 4th edition (Coimbra: 1984), 21-22.

renowned doctrinaires, such as Álvaro D'Ors, Franz Wieacker, Cabral de Moncada, Guilherme Moreira etc., all defending the importance of this discipline in the training of jurists and its maintenance in the study plans of Law Schools.[36] However, as Paulo Ferreira da Cunha[37] says, it will be in the postface to Cruz's work that we will find the observations that go against Puy's concerns, involving the Reform of Law Schools (Decree no. 364/72, of September 28) in Portugal.

Known as the "Veiga Simão Reform", this change, according to Rui Manuel de Figueiredo Marcos, "*translated the victory of a very little university concept of short higher education that sacrificed everything that could not constitute a valid ornament on the altar of utilitarianism.*"[38] With it, the teaching of Roman Law was then moved from the 1st to the 4th year, making it lose its place as a propaedeutic subject. Sebastião Cruz, on the reform of the study plan, observes with perspicacity: "*to begin the teaching of Roman Law in the 4th year is an error; a serious error; and to a certain extent, an absurdity, which could well be compared to the attitude of someone who, in the construction of a five-storey building, pretends to place the foundations or the bases of the building on the fourth floor.*"[39]

This reform portrayed a not at all subtle movement towards the professionalisation and technicalisation of law courses, to the point where Braga da Cruz, quoted by Figueiredo Marcos, stated that "*the aforementioned reform made Law Faculties into mere schools for preparing bachelors, putting all the practical subjects at the head of the course and relegating the cultural subjects to the degree course.*"[40] An attempt was thus openly being made to transform the humanistic legal sciences into a kind of adornment in the teaching plans, favouring the dogmatic subjects. Such a move led Sebastião Cruz to suspect that the reform was only an initial movement, which could result in something much worse: the very exclusion of these subjects from the teaching plans. In this sense, Cruz stated "*error and absurdity so strong that, in the medium or short term, they could lead to eliminating the teaching of this university subject from our law faculties. But – beware! – the suppression of Roman Law, History of Law, Philosophy of Law (and the latter has already disappeared in practice, as it is not even expressly suggested as an optional subject) as well as other humanistic legal subjects, would lead to a purely technical teaching of Law.*"[41]

Cruz thus recognised the important role of humanistic legal disciplines/sciences in the training of jurists. With regard to this reform, he highlighted how Law teaching would end up being downgraded and technicised, losing its university vocation. Legal education would be reduced, said Cruz, to that of a secondary school, making room for a technocratic ideology that would end up leading to the deformation of the jurist – just as we see today. According to Cruz, the reform could even lead to the suppression of humanistic legal science, thus causing the greatest disaster of all: "*we would be witnessing*", explained the author, "*the first battle to suppress Law Science from the sphere of university science within a certain period of time, by decapitation: because an unphilosophical, unhistorical and unhumanistic Law Science is equivalent to an acephalous Law Science...*".[42]

---

[36] Sebastião Cruz, *Direito romano* (*Ius Romanum*), 23-36.
[37] Paulo Ferreira da Cunha, *Amor Iuris: filosofia contemporânea do direito e da política* (Lisboa: Cosmos, 1995).
[38] Rui Manuel de Figueiredo Marcos, *A história do direito e o seu ensino na escola de Coimbra* (Coimbra: Almedina, 2016), 84.
[39] Sebastião Cruz, *Direito romano* (*Ius Romanum*), 610.
[40] Rui Manuel de Figueiredo Marcos, *A história do direito e o seu ensino na escola de Coimbra*, 84.
[41] Sebastião Cruz, *Direito romano* (*Ius Romanum*), 610.
[42] Sebastião Cruz, *Direito romano* (*Ius Romanum*), 611.

These were some of Sebastião Cruz's main arguments in defence not only of the *Ius Romanum*, but of the humanistic legal sciences in general. Dogmatic technicality was thus advancing at a strong pace, at the expense of the displacement, diminution or even exclusion of some humanistic legal disciplines. The defence, however, did not end at this point: some decades later, Paulo Ferreira da Cunha would once again strongly defend the legal sciences in his legal-humanistic proto-theses.

3.3 Paulo Ferreira da Cunha's legal-humanistic proto-thesis: theoretical synthesis

Ferreira da Cunha's proto-theses are found in *Amor Iuris*, a work that provoked us to rescue the importance of humanistic legal science. Ferreira da Cunha's starting point in Amor Iuris was the symbolic meeting of the two texts summarily presented above: Francisco Puy's article "Filosofía del derecho y ciencia del derecho" and Sebastião Cruz's "Direito romano" (notably the work's afterword). Based on these two texts, Ferreira da Cunha addresses the problem of humanistic legal sciences, outlining "*a first contribution to their epistemological construction – not as a novum (which they are not) but really as a rediscovery of forgotten treasures*", explains the Portuguese philosopher of Law.[43]

In an attempt to avoid redundancy in Ferreira da Cunha's presentation of the arguments of Puy and Cruz, we will attempt to address the author's own arguments, contained in his so-called "legal-humanistic proto-theses". And while the proto-theses are openly inspired by the texts of Puy and Cruz, we believe that Ferreira da Cunha has made a significant advance in his contribution, bringing valuable elements for us to rethink the defence of humanistic legal sciences.

In his proto-theses, Ferreira da Cunha initially argues that "*the humanistic legal disciplines are scientific, but not, like the particular sciences, geared towards technical developments. They are first (or ultimate) sciences, they do not cure from proximate causes like the Renaissance scientia (and post-Renaissance – modern, in a word), but rather from a sapientia, which is of ultimate causes (or first causes, that is, further away from immediacy and immediacy).*"[44] The distinction between *scientia* and *sapientia* seems very opportune to us since, on this basis, we perceive the technical (scientific) dimension that is proper to the particular (or pure) sciences, while the humanistic legal sciences are, in turn, occupied in discussing ultimate or first causes. In this sense, the author explains, "*if we identify science with episteme, the humanistic legal disciplines will be fully recognised as sciences, a type of epistemai, that of sapientia.*"[45]

Consequently, Ferreira da Cunha argues, "*the humanistic legal disciplines are still vital to the non-humanistic (or properly scientific, da scientia) legal sciences. For they are the only ones capable of discussing and criticising the data, the only ones capable of questioning the postulates which legal axiomatics tout court must presuppose.*"[46] We know, in this sense, how the pure legal sciences, being practical and dogmatic sciences, are as a rule more closed to discussion of their premises. Ferraz Jr. explains: "*legal dogmatics is more closed, since it is bound to fixed concepts, forcing itself to interpretations capable of conforming the problems to the premises and not, as happens in [legal] zetethics, the premises to the problems.*"[47]

---

[43] Paulo Ferreira da Cunha, *Amor Iuris*, 78.
[44] Paulo Ferreira da Cunha, *Amor Iuris*, 81-82.
[45] Paulo Ferreira da Cunha, *Amor Iuris*, 82.
[46] Paulo Ferreira da Cunha, *Amor Iuris*, 82.
[47] Tércio Sampaio Ferraz Jr., *Introdução ao estudo do direito: técnica, decisão, dominação,* 10th edition (São Paulo: Atlas, 2018), 51.

Humanistic legal sciences are – if understood from this dogmatic/zeethical dichotomy – zethical legal disciplines. In other words, they are disciplines open to questioning. In this respect, zethetic problems involve infinite questions, which does not mean, however, says Ferraz Jr. "*that there are absolutely no established starting points of investigation. This is not to say that some premises are not, albeit provisionally and precariously, put beyond doubt. Thus, for example, a sociology of law (zetethics) starts from the premise that the legal phenomenon is a social phenomenon. This, however, should not be confused with a dogmatic investigation.*"[48]

Following on from the study of Ferreira da Cunha's proto-theses, we find an open defence of the Philosophy of Law in the field of humanistic legal sciences. In this respect, Ferreira da Cunha warns that "*we must not forget that within the humanistic legal disciplines, in fact, the first, the most encompassing and fundamental, is the Philosophy of Law.*"[49] As in many of his other works, Ferreira da Cunha therefore comes out in clear defence of legal philosophy as the basis for preparing jurists. When referring to Philosophy of Law as the most "encompassing" of the humanistic legal sciences, Ferreira da Cunha wishes to point out that when going through hermeneutics, methodology and ethics in legal studies, we inevitably enter philosophy. In this sense, the author says in his most recent work, *Legal Methodology*: "*the preparation of jurists is legal, naturally, but it has to be interdisciplinary and, above all, hermeneutic and ethical. Therefore, philosophical. There is no methodology without hermeneutics. There is no methodology without philosophy.*"[50]

Ferreira da Cunha also makes an important warning in his proto-theses: "*humanistic legal sciences are legal disciplines and, as such, they are at the service of life, real and concrete life, and cannot be confused with dull and sterile knowledge, the occupation of idlers, the flower in the buttonhole of dilettantes, the resource of intellectuals with no feet, no hands... and no head, because they have so much head.*"[51] It is, however, worth a warning: we are obviously not talking about disciplines taught by philosophers, sociologists, anthropologists etc., as we are talking about *legal disciplines*.

In outlining a "minimal epistemology", Ferreira da Cunha – recognising that Puy and Cruz went through the concept of humanistic legal sciences without, however, dwelling on it (given its transparency) – opts to "*move on from atomism, from the gathering of disciplines only, to the creation of a scientific force field, encompassing them in a polarising motif: we would then move on to the concept of Humanistic Legal Sciences.*"[52] Ferreira da Cunha, from then on, will analytically expose the concepts of "Sciences", of "Legal Sciences", until arriving at the "Humanistic Legal Sciences". The latter, the author explains, "*are disciplines which we consider can be called sciences without reservation (...) We have decided that Science is an area of knowledge, it is Wissenschaft, it is Episteme. Therefore, these Humanistic Legal Sciences are sciences, and they are particularly sciences of sapientia, not so much scientia in the scientific sense of modernity.*"[53]

Humanistic legal sciences are therefore *legal sciences*, which means that they are concerned with law and are the object of study of jurists (and not of philosophers, anthropologists etc. – although obviously nothing prevents them from being

[48] Tércio Sampaio Ferraz Jr., *Introdução ao estudo do direito: técnica, decisão, dominação,* 50.
[49] Paulo Ferreira da Cunha, *Amor Iuris*, 83.
[50] Paulo Ferreira da Cunha, *Metodologia jurídica*, 4th edition (Coimbra: Almedina, 2021), 197.
[51] Paulo Ferreira da Cunha, *Amor Iuris*, 85.
[52] Paulo Ferreira da Cunha, *Amor Iuris*, 92.
[53] Paulo Ferreira da Cunha, *Amor Iuris*, 92.

concerned with law). Besides this, being a concern of jurists themselves, the humanistic legal sciences are not speculative or self-contemplative in nature, but rather transitive and practical, explains Ferreira da Cunha.[54] Thus, against all and any misunderstanding that may still persist, the Portuguese jurist stresses: "*these are studies of jurists, by jurists, primarily aimed at jurists and with relevance mainly in the legal world (...)*".[55] Having presented what we understand to be Ferreira da Cunha's main legal-humanistic proto-theses, we shall now reflect on the attacks on the humanistic legal sciences, which are the result of the very weaknesses of legal-dogmatic thought.

4. Humanistic Legal Sciences: from the attacks suffered to the need to rescue fundamental research in Law

The rescue of humanistic legal sciences presents itself as a necessary movement in the search for alternatives to overcome the crisis in legal education, a crisis characterised by the technicalisation and emptying of the legal-humanistic content of Law Schools in different countries. If, as Ferreira da Cunha states, the "citadel of law" is surrounded by powerful enemies – counting on the legal-humanistic disciplines as its important defence mechanisms, as the real walls and brains of law[56] – we need to identify, initially, *who the enemies* are that have created so much animosity in the academic-legal field, to the point where we now have a real *opposition* installed within Law.

4.1 The attack comes from inside: opposition, separation, and disciplinary closure

The enemies of humanistic legal sciences are internal, which means that the attack comes from within law itself. Ferreira da Cunha, decades ago, had already warned: "*the worst enemy of law is law itself, that is, a false understanding of itself.*"[57] When we speak of "opposition", we are referring to that which exists between the scholars of pure legal science and those of humanistic legal science. This opposition originally arises from a distinction made within legal knowledge. Naturally, "distinguishing" legal sciences (between pure and humanistic, in addition to other internal distinctions) is a useful and even necessary procedure, not only from a legal point of view, but also from a pedagogical-institutional point of view, since it allows us to demonstrate how legal knowledge is distributed and organized in a disciplinary manner. However, if, instead of distinguishing, we operate a *separation* – distancing the disciplines from each other and taking them as watertight, isolated, and even incommunicable knowledge –, we will have an impoverishment both at an epistemological and practical level, fostering a simplifying and reductionist understanding and attitude in students and future lawyers.

Therefore, the most powerful enemies that surround the "citadel of law" – to use here the expression of Ferreira da Cunha – are naturally the dogmatic or practical jurists themselves (keeping in mind that we are not generalising here). We are referring, in particular, to those jurists who are always ready to question the need for the foundations (the humanistic legal sciences) of law. It is worth remembering,

[54] Paulo Ferreira da Cunha, *Amor Iuris*,. 93.
[55] Paulo Ferreira da Cunha, *Amor Iuris*, 93.
[56] Paulo Ferreira da Cunha, *Amor Iuris*, 86.
[57] Paulo Ferreira da Cunha, "Do direito, do seu estudo; dos juristas e da sua função. Propósito e forma da presente obra", in *Instituições de direito*, ed. Paulo Ferreira da Cunha (Coimbra: Almedina, 1998), 6.

however, Hölderlin's warning in his famous Patmos: "*But where there is danger there grows/ Even that which saves.*"[58] We suggest, with this passage, that salvation cannot be found "outside", but "within" law itself. Yet, within the law understood in its complexity, in its unity in multiplicity (*unitas multiplex*), and not of a fragmented law, divided into disciplines closed in themselves and incommunicable.

We know how the disciplinary development of sciences led to an excessive division of knowledge and work, which certainly brought advantages. However, according to Edgar Morin, this development also brought some disadvantages, such as, for example, the over-specialisation, the enclosure and the fragmentation of knowledge.[59] In fact, this seems evident in law, since a "dogmatic-legal citadel" has long been built and strengthened, composed of several walled parishes (the pure legal sciences), most of which are under permanent attack (if not *disregarding*) their "common enemies" (the humanistic legal sciences), which are, by the way, those sciences which form the very foundations of the dogmatic-legal citadel – making this image somewhat unusual: a citadel fighting against itself, destroying its own foundations, thus creating the conditions for its own collapse.

In this confrontation, however, there is an unequal play of forces, in which the pure legal sciences have a certain advantage over the humanistic legal sciences. The advantage is given by the fact that their scholars/jurists embody the role of "agents of state law", reproducing, in Law faculties, a type of (dogmatic) knowledge that is quite closed to dialogue with the humanistic legal sciences. In this respect, Warat explains that the role of the contemporary university is to convert, to evangelise, since "*only truths that are incorporated into an institution, bound to a system of interdictions, secrets and privileges exist.*"[60] The Law Schools are therefore largely responsible for establishing, subtly or openly, "*the inhibitions, silences and censures of all the discourses of the so-called human sciences*", Warat explains.[61] This requires finding ways to neutralise such movements, (re)opening due space for the humanistic legal sciences.

4.2 Neutralising the attack (I): unveiling the dogmas and fetishism of dogmatic jurists

As we have observed, the humanistic legal sciences find their main opponents within the Law Faculties themselves. This opposition is taken outside university walls and even affects "less academic" jurists, who will blindly reproduce the idea that these humanistic sciences are of little importance for legal training. With this, we can see how the teaching discourse occupies a place of power, establishing formulas that, according to Warat, Rocha and Cittadino, constitute the theoretical imaginary of jurists and ends up organising their different discourses. Based on this dominant legal knowledge, jurists begin to assume the main categories of their knowledge "*as obvious and unproblematic things. This latent topical universe, based on customary points of view, is what robs jurists of the possibility of understanding the role of the legal in social games not foreseen in the postulated topical system.*"[62]

---

[58] Friedrich Hölderlin, *Todos os poemas – seguido de esboço de uma poética*, trans. João Barrento (Porto: Assírio e Alvim, 2021), 464.

[59] Edgar Morin, *Ciência com consciência*, trans. Maria D. Alexandre and Maria Alice S. Dória, 8th edition (Rio de Janeiro: Bertrand Brasil, 2005), 16.

[60] Luis Alberto Warat, *Introdução geral ao direito, II*, 69.

[61] Luis Alberto Warat, *Introdução geral ao direito, II*, 69.

[62] Luis Alberto Warat, Leonel Severo Rocha and Gisele Cittadino, "O poder do discurso docente das escolas de direito", *Sequência – Estudos Jurídicos e Políticos*, 2(02) (1980): 150.

In this way, they begin to reproduce, widely and blindly, what Warat called "Legal Theoretical Common Sense".[63] In other words, practical jurists freely share their knowledge, beliefs and fetishes that lack problematisation and critical sense, as untouchable dogmas, closed in on themselves. This is why Warat, Rocha and Cittadino speak of the existence of a "fetishised teaching discourse", "*that prevents the subjects of the teaching/learning process to understand the social functions of the proposed information and the true functions that the law school fulfills to prevent the constitution of a place outside power. We state, then, that law schools are schools of innocence that place us in a fatal relation of alienation, characterised more by what forces us to speak than by what prevents us from saying.*"[64]

Amongst the dogmas reproduced by the fetishised teaching discourse, there is a tangle of common beliefs that inhabit the established jurists' imaginary: that justice is neutral; that the judge is or should be impartial, neutral, insensitive and rational; the belief that the legal system, in its positive dimension, offers answers to all social problems, etc. The maintenance of such ideas, typical of "Legal Theoretical Common Sense" (although they are important for the reproduction of the legal system),[65] under certain circumstances clashes with the humanistic legal sciences, as it is they who, through their questioning, turn the "dogmatic ground" upside down, making it too sandy for practical jurists.

We know that the pure legal sciences tend to imprint an ideal of security on jurists who are occupied with legal dogmatics, an ideal forged in "certainties" founded on the "past" (positive law). On the other hand, the humanistic legal sciences allow for constant questioning, opening to problems more easily. In other words, they are receptive of the "future", often even of the "strange". However, many practical jurists seem unaware that "all knowledge is a battle with something foreign", as María Zambrano[66] reminds us. As jurists, we battle with the strange daily, in this complex and uncertain world, which makes any ideal of security a fragile belief. While for the scholars of pure legal sciences the problems are, above all, those whose solutions can easily be found in positive law, scholars of humanistic legal sciences may agree with Karl Popper, when this philosopher states that "*with every step forward we take, with every problem we solve, we discover not only new unsolved problems, but we also find that when we thought we were standing on firm, secure ground, everything is in fact uncertain and shaky*".[67] This uncertainty is therefore part of the game of knowledge.

On the other hand, according to Popper, "*knowledge is not based on perceptions, observations or the collection of data or facts, but on problems. Without problems there is no knowledge, just as there is no knowledge without problems.*"[68] However, the question that arises is: what kind of problems are we talking about?

For many dogmatic jurists, the problems with which humanist jurists are concerned (above all, philosophers of law) are vain and sterile digressions. They are

[63] Luis Alberto Warat, "Saber crítico e senso comum teórico dos juristas", *Sequência – Estudos Jurídicos e Políticos*, v. 3, no. 5 (1982): 48-57.
[64] Luis Alberto Warat, Leonel Severo Rocha and Gisele Cittadino, "O poder do discurso docente das escolas de direito", 152.
[65] See Ricardo de Macedo Menna Barreto, *Estudos críticos do discurso jurídico* (Campinas: Pontes Editores, 2021), 84.
[66] María Zambrano, *Dictados y sentencias*, trans.. Antoni Marí (Barcelona: Edhasa, 1999), 33.
[67] Karl Popper, "A lógica das ciências sociais", in *Em busca de um mundo melhor,* ed. Karl Popper, trans. Teresa Curvelo (Lisboa: Editorial Fragmentos, 1989), 71.
[68] Karl Popper, "A lógica das ciências sociais", 72.

terribly mistaken, however. Besides the fact that philosophy is not as distant from the sciences as it may be perceived, although there are certainly differences. Karl Jaspers explains: "*The study of philosophy is, moreover, linked to that of the sciences. It presupposes the advanced state that these have reached in the present age, but philosophy has another origin and meaning. It arises, before any science, when men awaken*".[69] Awakened, the philosophers of law are "on the way" in the long and winding road of legal knowledge, because according to Jaspers, "*philosophising means to be on the way. The interrogations are more important than the answers and each one of them becomes a new interrogation*".[70]

However, for dogmatic jurists, the answers to problems will always be more important than the questions. In legal dogmatics, there is a very particular way of objectifying legal problems in order to face them. That is by preparing the answers (the legal text is a good example of this). A scenario is thus created in which practical jurists are alienated from the *real problems* that are revealed to jurists daily and which require a different type of understanding.

Dogmatic jurists, therefore, nurture a certain type of fetishist stance, since as Warat notes, "*fetishism marks man's relationship with objects that alienate him*", where "*the fetishised object always comes to satisfy pre-existent, unfulfilled conditions.*"[71] In this sense, science, law, reason, among others, are the "*ultimate fetishised signifiers*", turning us, explains the Argentine jurist, into blind readers of life.[72] We believe, therefore, that one of the ways to escape this alienation condition involves rescuing the importance of fundamental research in law.

4.3 Neutralising the attack (II): rescuing the importance of fundamental research in law

As we have seen, Law Schools, in their search for a professionalisation that is summarised in a legal-dogmatic type of teaching, have for decades been creating a difficult scenario for humanistic legal sciences. Many students entering law courses unfortunately do not realise that "*only humanistic legal subjects can tell us what Law is, why it is this way and whether it should continue this way. Positivist legal sciences can only, at best, explain the superficial «how» of the legal order.*"[73] The difficulties faced by humanistic legal sciences are due to a double, subtle, and simultaneous movement on the part of dogmatic jurists: i) of disregard towards humanistic legal sciences and ii) of concealing the real limitations of legal dogmatics when divorced from a legal-humanistic knowledge.

It should be noted that the humanistic legal sciences began to lose space as the search for a "professionalisation of legal teaching" grew, stimulating students to become "practical lawyers", accessing exclusively a type of technical and systematised knowledge, aimed at solving practical and immediate problems of judicial life. In this way, on the academic benches, a slow and silent death of intellectual curiosity is being brought about. Instead of asking questions, students prefer to get answers. With the reduction of "thinking work", we see the proliferation and circulation in Law Schools of questionable types of material, such as "schemes", slides, summaries,

---

[69] Karl Jaspers, *Iniciação filosófica*, trans. Manuela Pinto dos Santos, 5th edition (Lisboa: Guimarães & Cª Editores, 1977), 10.
[70] Karl Jaspers, *Iniciação filosófica,* 14.
[71] Luis Alberto Warat, *Manifestos para uma ecologia do desejo* (São Paulo: Editora Académica, 1990), 35-36.
[72] Luis Alberto Warat, *Manifestos para uma ecologia do desejo*, 36.
[73] Paulo Ferreira da Cunha, *Amor Iuris*, 82.

abstracts of summaries, "mind maps", etc., strategies that even seem appropriate for "studying" (memorisation is perhaps the right word) of legal rules etc., but which sound like a real disaster for the study of humanistic legal sciences. These are only a few of the unfortunate reflections on the death of intellectual curiosity. Law Schools, therefore, urgently need to re-establish due (and historical) space for fundamental research in law (in other words, for the humanistic legal sciences), which are the only ones capable of proposing the problematisation of essential issues and awakening genuine intellectual curiosity. We do not aim at making a particular defence of a specific humanistic legal discipline, as we see value in each and every one of those which – despite the current dismantling of the curriculum in various countries – still subsist in different teaching programmes: Introduction to the Study of Law, History of Law, Philosophy of Law, Legal Methodology, among others.

It is in fact a matter of an urgent process of re-significance not only of legal teaching, but also of the University, because, as Ferreira da Cunha warns us, "*the University is not mould or breath of the past on the one hand, nor, on the other, the necessary stepping stone to a soulless career: it is the commitment of masters and students to science and knowledge, in a formative and research community.*"[74] In effect, the importance of fundamental research in Law will only be more clearly perceived when we witness its positive reflexes on the academic benches, with the revival of intellectual curiosity, with the capacity for systematic questioning and critical sense in students. However, this requires a commitment from jurists: an honest exercise in deconstructing the negative image that humanistic legal science has acquired over recent decades with the exacerbated technicalities of law courses.

5. Conclusions

The crisis affecting legal education today is the result, among other factors, of a history of displacement, reduction or exclusion of the humanistic legal sciences from the syllabus of Law Courses. In other words, it results from the disregard of a significant number of practical jurists for fundamental research in law – which, according to Ferreira da Cunha, has its own name: humanistic legal sciences.[75] Often restricted to post-graduate programmes (at Master's and Doctoral level), these sciences still encounter great resistance from students who are in the process of being trained as law graduates – and not infrequently resistance even appears at Master's and Doctoral level.

Resistance is due to the construction of an image that these humanistic sciences are of little use, a mere rite of passage to what "really" matters to a large proportion of law students: the study of dogmatic disciplines, based on access to their codes, laws, doctrine, the study and knowledge of jurisprudence, etc. Naturally, we do not remove the importance of these studies, however, the neglect of fundamental research in law creates a problem of lack of basis. In other words, the foundations of the citadel of law are today increasingly weakened by the lack of interest in research, reflection and problematisation of those issues that are essential to legal life.

---

[74] Paulo Ferreira da Cunha, "Contra-ataque humanístico – da elaboração de um manual de Filosofia do Direito à importância formativa dos manuais", *International Studies on Law and Education*, CEMOrOc-Feusp/IJI-Univ. do Porto, v. 11 (2012), accessed February 14, 2022, http://www.hottopos.com/isle11/31-38PFC.pdf.

[75] Paulo Ferreira da Cunha, *Amor Iuris*, 94.

As we have already observed, the warning about the problem had already been given fifty years ago by Puy and taken up in the following years in Portugal by Cruz and Ferreira da Cunha. The problem, however, persists, and in an aggravated form. Technical-dogmatism has reached such a level that the humanistic legal sciences themselves have been (as in Brazil) "dogmatised", that is to say, their questions, previously open-ended, have now been closed and resolved in "manuals" used in public tenders. This shows a low epistemological understanding of the role of these sciences, and it simultaneously demonstrates the difficult exercise it is to occupy oneself with the study and reconstruction of the foundations of the citadel of law when the detractors are in greater numbers.