

## HUMAN RIGHTS, NATURAL LAW, AND THOMAS AQUINAS

Fr. Joseph M. de Torre  
University of Asia and the Pacific

*At the end of February 2000 the Pope fulfilled a longed-for dream in his visit to Egypt, culminating in his ascent to Mount Sinai. Here the Pope displays once again a perfect intertwining of reason and faith, philosophy and theology. This paper delves into the metaphysical ground of social ethics, as Fr. de Torre did in the 1977 book, *The Roots of Society*.*

### The Pope at Mount Sinai

At the end of February 2000 the Pope fulfilled a longed-for dream in his visit to Egypt, culminating in his ascent to Mount Sinai.

“In this year of the Great Jubilee,” he said there, “our faith leads us to become pilgrims in the footsteps of God. We contemplate the path he has taken through time, revealing to the world the magnificent mystery of his faithful Love for all humankind. Today, with a great joy and deep emotion, the Bishop of Rome is a pilgrim to Mount Sinai, drawn by this holy mountain which rises like a soaring monument to what God revealed here. Here he revealed his name! Here he gave his Law, the Ten Commandments of the Covenant!

“How many have come to this place before us! Here the People of God pitched their tents (cf. Ex 19:2); here the prophet Elijah took refuge in a cave (cf. 1 Kgs 19:9); here the body of the martyr Catherine found a final resting-place; here a host of pilgrims through the ages have scaled what Saint Gregory of Nyssa called “the mountain of desire” (The Life of Moses, II, 232); here generations of monks have watched and prayed. We humbly follow in their footsteps, to ‘the holy ground’ where the God of Abraham, of Isaac and of Jacob commissioned Moses to set his people free (cf. Ex 3:5-8).

“God shows himself in mysterious ways—as the fire that does not consume - according to a logic which defies all that we know and expect. He is the God who is at once close at hand and far-away; he is in the world but not of it. He is the God who comes to meet us, but who will not be possessed. He is “I AM WHO I AM” –the name which is no name! I AM WHO I AM: the

divine abyss in which essence and existence are one! The God who is Being itself! Before such a mystery, how can we fail to “take off our shoes” as he commands, and adore him on this holy ground?

“Here on Mount Sinai, the truth of ‘who God is’ became the foundation and guarantee of the Covenant. Moses enters ‘the luminous darkness’ (The Life of Moses, II, 164), and there he is given the Law ‘written with the finger of God’ (Ex 31:18). But what is this Law? It is the Law of life and freedom!

“At the Red Sea, the people had experienced a great liberation. They had seen the power and fidelity of God; they had discovered that he is the God who does indeed set his people free as he had promised. But now on the heights of Sinai, this same God seals his love by making the Covenant that he will never renounce. If the people obey his Law, they will know freedom for ever. The Exodus and the Covenant are not just events of the past; they are for ever the destiny of all God’s people!

“The encounter of God and Moses on this Mountain enshrines at the heart of our religion the mystery of liberating obedience, which finds its fulfillment in the perfect obedience of Christ in the Incarnation and on the Cross (cf. Phil 2:8; Heb 5:8-9). We too shall be truly free if we learn to obey as Jesus did (cf. Heb 5:8).

“The Ten Commandments are not an arbitrary imposition of a tyrannical Lord. They were written in stone; but before that, they were written on the human heart as the universal moral law, valid in every time and place. Today as always, the Ten Words of the Law provide the only true basis for the lives of individuals, societies and nations. Today as always, they are the only future of the human family. They save man from the destructive force of egoism, hatred and falsehood. They point out all the false gods that draw him into slavery: the love of self to the exclusion of God, the greed for power and pleasure that overturns the order of justice and degrades our human dignity and that of our neighbor. If we turn from these false idols and follow the God who sets his people free and remains always with them, then we shall emerge like Moses, after forty days on the mountain, ‘shining with glory’ (Saint Gregory of Nyssa, The Life of Moses, II, 230), ablaze with the light of God!

“To keep the Commandments is to be faithful to God, but it is also to be faithful to ourselves, to our true nature and our deepest aspirations. The wind which still today blows from Sinai reminds us that God wants to be honored in and through the growth of his creatures: *Gloria Dei, homo vivens*. In this sense, that wind carries an insistent invitation to dialogue between the followers of the great monotheistic religions in their service of the human family. It suggests that in God we can find the point of our encounter: in God the All Powerful and All Merciful, Creator of the universe and Lord of history, who at the end of our earthly existence will judge us with perfect justice.” (Official translation)

Here the Pope displays once again a perfect intertwining of reason and faith, philosophy and theology: In this paper I intend to delve into the metaphysical ground of social ethics, as I did in the 1977 book, *The Roots of Society*.

### Physis (natura) and Logos (ratio): Order in Nature and in Society

Everything in this world seems to be changing. Motion seems to be a universal law, to the extent that ever since Heraclitus (6th century B.C.) many philosophers have come to the conclusion that the only thing that is real is sheer becoming, that there is no thing, but a continuous process. This mirage continues to haunt contemporary man, but with a compound tale of technological break-throughs which have intoxicated him into thinking that he is the creator of this changing world, and that the change is always for the better: *hubris* keeps recurring.

That this is a mirage, a hallucination, that outside man there is more than meets the eye, can be shown by the fact that the history of man is by no means always progressive, if one takes as the standard of progress the moral goodness of men and societies. The actual statement that “everything is changing” has such a static and immutable ring about it that not even the most rabid “dynamic” thinker would deny it. Evidently not everything changes, since then nothing that we say would have any sense whatsoever. This is precisely the specific role of reason (logos): to pierce through the changeability proper to matter and to our senses so as to understand the patterns of development, to disengage the essential from the incidental, to discover the order of things, i.e., the end to which they tend by their inner dynamics, to let logos (reason) penetrate *physis* (nature).

It has been said that this would be a case of anthropomorphic thinking projecting into things our own way of acting with purpose or intention. But it is rather the other way around: our reason first discovers that there is no motion without direction, no action without objective or end (telos or finis); then we see our own (rational) way of directing or ordering ourselves, by free choice and design, to ends we set to ourselves; and this will lead our unprejudiced reason to the conclusion that there must be a Supreme Reason ordering all things to their respective ends, since ordering to end is again a distinctive role of rationality: from the *chaos* of *physis* to the *cosmos* of *logos*.

By discovering the *end* as the perfection of being to which everything tends, our reason comes to the understanding of what is good—*quod omnia appetunt*, said St. Thomas Aquinas, “that to which everything tends.” So that things are not just static beings, but constantly moving towards their fullness of being. A thing is “in good working order” when it is fulfilling its purpose, i.e.,

tending to its end unhampered and undisturbed; otherwise it is “out of order” or “no good.” In a multiplicity of things there is order when they are all arranged in relation to a *common* end, which unifies them into a totality of order (*cosmos*). This pervasive teleology of reality, thoroughly explored by Aristotle and Aquinas, was also noticed by Kant in his *Critique of Judgment*.

In human society there is order, and thereby progress toward its fullness of being, when all of its members tend to their common end or common good. This is the stability of society that ensures its unfailing progress: the cooperation (i.e. the working together) of all of its members united by their love for, or tendency to their common good.

### Transcendent Common Good and Immanent Common Good

God is the transcendent common good of society, as well as of absolutely everything that exists, since he is the fullness of being and all other things are participants in being.<sup>1</sup> When our reason perceives that everything we see is only a limited actuality always capable of further actuality of being we come to the conclusion that none of them possesses the act of being from its own essence, and therefore they must have received it from One who is the fullness of being—*Ipsum Esse*, To Be Itself, said St Thomas Aquinas, who reached this insight through his reading of the famous passage of the Bible, quoted by the Pope at Mount Sinai:

“Moses said to God: Lord, I shall go to the children of Israel, and say to them: The God of your fathers hath sent me to you. If they should say to me: What is his name? What shall I say to them?

“God said to Moses: I AM WHO I AM. He said: Thus shalt thou say to the children of Israel: HE WHO IS hath sent me to you.”<sup>2</sup>

But the Bible also calls God “Alpha and Omega,” “beginning and end,” “first and last.”<sup>3</sup> He is not only the beginning of all beings which only partake of the act of being, but also their end. For it is proper to imperfect (participated) beings to be ordained to their end, which is their good or perfection, and in this there is a subordination or hierarchy of beings in the universe, wherein man is the summit. But God is the very Perfection of Subsistent Being, and therefore He has no end to achieve: He is the End, or Good Itself—the Last End.

This is how St Thomas Aquinas explains it:

Now if we wish to assign an end to any whole, and to the parts of that whole, we shall find, first, that each and every part exists for the sake of its proper act, as the eye for the act of seeing; secondly, that less honorable parts exist for the more honorable, as the senses for their intellect, the lungs for the heart; and, thirdly, that all parts are for the perfection of the whole, as the matter

for the form, since the parts are, as it were, the matter of the whole. Furthermore, the whole man is on account of an extrinsic end, that end being the fruition of God. So, therefore, in the parts of the universe also every creature exists for its own proper act and perfection, and the less noble for the nobler, as those creatures that are less noble than man exist for the sake of man, whilst each and every creature exists for the perfection of the entire universe. Furthermore, the entire universe, with all its parts, is ordained towards God as its end, inasmuch as it imitates, as it were, and shows forth the divine goodness, to the glory of God. Reasonable creatures, however, have in some special and higher manner God as their end, since they can attain to him by their own operations, by knowing, and loving him. Thus it is plain that the divine goodness is the end of all corporeal things.<sup>4</sup>

If God is the transcendent (beyond it) common good of society, the immanent (within it) common good of society must, therefore, be a social order which empowers or facilitates every individual in it to attain his or her own perfection, i.e. God, beyond this life and therefore beyond society (earthly society) through the immortality of his or her soul. In other words, what is material (purely earthly) must be for the sake of what is spiritual (transcending the material universe), not for its own sake.<sup>5</sup> And the common good is the supreme good, not because it is “common,” but because it is “good.”

### The Natural Law

It is natural (instinctive) for both animals and men to form communities for mutual help. But man is also intelligent: he seeks to understand the world he lives in, and himself. With this power geared to being as such, he turns toward totality of being while perceiving the fragmentation of beings, toward infinity of being while perceiving the limitation of beings, toward perfection of being while perceiving the perfectibility of beings, toward essential being (*ipsum esse*) while perceiving the mere participants in, or receivers of being.

This thrust of man’s intelligence is what leads him to both the acceptance of God’s existence as the only Being who really is in the fullness of being (neither static nor dynamic, but eternal), and the acceptance of an eternal law (reflection of the infinite wisdom of the Creator), i.e., a universal and ever-valid order (the moral order for rational beings: St. Thomas Aquinas defines the natural moral law as the participation<sup>6</sup> of the eternal law in the rational creature)<sup>6</sup> binding all beings to God as their last end, but in the case of man in a conscious and self-determining way: man is the only being in the visible universe who has the power to know and to love God, and to obey him freely.

Thus, man seeks a perfect social order based on reason and love (justice and benevolence, rights and duties and friendship), because with his rationality, i.e., with his capacity to understand what is ultimately good and be motivated by it with the self-determination of his free will, he transcends society as such and is prior to it (society is for man, not man for society). Consequently he tries to embody in his social life as faithfully as possible that ordering to the last end which he can perceive with his reason.

At the same time, however, he is more bound to his fellows than animals are to one another (a human being is born at a much more undeveloped stage than any other animal), particularly to his own parents (the human family is naturally a stable institution), and hence the effort to bring about a just social order is not only an aspiration but a strict duty: man owes himself to society inasmuch as he orders himself to his last end, i.e., to the common good, and society is the means to this end.

### From Athens to Jerusalem

For the Greeks the concept of society (POLIS) was that of civilized society, based on a constitution, a product of reason, the rule of law to guarantee a harmonious living together. Man, says Aristotle, is a political animal (ZOON POLITIKON): he lives in cities based on the rule of law. Animals, on the other hand, live in natural communities based on instinct. According to Aristotle also, a man who is not fit to live in society is either below man (a beast) or above man (a god). So, reason is what makes man social or “political”: the rule of *logos* over *physis*.

This does not mean that the links of affection (more instinctive, less rational) have no part to play in the making of human society. In fact, without love and trust the most perfect set of laws is bound to break down: as the Romans put it later, *summum ius summa injuria*, the most perfect justice among men ends up as the most perfect injustice.

Plato had considered the force of love (EROS)<sup>7</sup> or tendency to perfect good as the inner source of creativity in man, the source of that wisdom which would empower him to create a perfect society after the pattern of eternal ideals. This emphasis on the vertical or transcendent dimension of man was balanced in Aristotle by giving the primary role, for a successful social life, to the virtue of friendship (PHILIA),<sup>8</sup> rather than to the juridical order as such. In other words, the juridical order must be rooted in friendliness or amity, and can only work on this basis, in the same way as the soul can only work with the body.

In the New Testament (written in Greek) there occur the concepts of friendship (PHILIA) and of brotherhood (PHILADELPHIA), but there is a new concept which surpasses these: that of charity (AGAPE). This is the love

that God has for his creatures: purely disinterested, not seeking anything in return, because he has no needs since he is the fullness of being. In other words, it is pure self-giving. This term (AGAPE) is used by Jesus Christ, for example, in the famous text of St John's Gospel:<sup>9</sup>

"I have a new commandment to give you, that you are to love one another (AGAPATE ALLELOUS); that your love for one another is to be like the love I have borne you. The mark by which all men will know you for my disciples will be the love you bear one another (AGAPEN ECHETE EN ALLELOIS)."

Here the disciple of Christ is asked to love others with and through the love of God, i.e., to reciprocate God's love in order to be able to love his neighbor as himself. A Christian social life must therefore be inspired in the love of God. The POLIS was based on law and friendship, but the Christian community (KOINONIA) has to be based on the love of God and of one another, with a juridical order of rights and duties reflecting these principles. Christian social ethics will always take as its starting point this insight communicated by divine revelation.

### The Shaping of Society

St Augustine (354-430) says that love, (AMOR, DILECTIO) is the creator of society. Society is the result of love, because society is formed the moment men agree on a common goal which they all love:

"Two loves formed two cities: the love of self, reaching even to the contempt of God, an earthly city; and the love of God, reaching to the contempt of self, a heavenly one."<sup>10</sup>

Society comes about by the establishment of a common good as an end, and the love for, or natural tendency to that end keeps the people together. But is that end what actually produces society, or is it rather that for the sake of which society is produced? We have to distinguish between the efficient cause of society (what produces it) and the final cause of society (that for the sake of which it is produced).

- a. Final cause-common good (end).
- b. Efficient cause-whatever agencies bring about the formation of society.
- c. Formal cause (what makes society to be a society)-the moral union of all the wills aiming at the same common good.
- d. Material cause (what makes up society)-In the case of civil society, the immediate material constituting society is the families; the individuals are only the remote material: both individualism and

socialism disagree with this view and downgrade the family. The former puts the individual and his selfishness above family and society. The latter puts society above family and individual, thus threatening the rights of both family and individual.<sup>11</sup>

In addition to these causes, a *sine qua non* condition of society must be mentioned as well in this metaphysical analysis, namely authority. The common good is the supreme good of society; but taking into account the natural division of labor in society,<sup>12</sup> society needs an agency that will see to it that the common good is pursued by all: this is called political authority. It can take many forms, but it is always necessary, so that its destruction carries with it the destruction of society itself. Anarchism is a regression of *logos* back into *physis*, of *cosmos* into *chaos*.

Division of labor means that there must be differentiation in society. In this sense men are not equal, i.e., they are not mass-produced items, as socialism tends to regard them. On the other hand, they are equal in the dignity of being human persons with basic, natural and inalienable rights, a point overlooked by individualism.

### Rights and Duties in Relation to the Common Good

As mentioned earlier, the common good denotes a *juridical* order of rights and duties in order to balance the principle of subsidiarity (respect for rights) with the principle of solidarity (fulfillment of duties). A clarification of those two correlative concepts (right and duty) is therefore required at this point.

The word *right* (from the German *recht*) translates the Latin *ius, iuris*, which means what is due or owed (du-ty)—when everyone receives what is due to him, then there is *iustitia*, justice.

In answering the question “Whatever right is the object of justice,”<sup>13</sup> St Thomas Aquinas states the following:

“It is proper to justice, as compared with the other virtues, to direct man in his relations with others: because it denotes a kind of equality, as its very name implies; indeed we are wont to say that things are adjusted when they are made equal, for equality is in reference of one thing to some other. On the other hand the other virtues perfect man in those matters only which benefit him in relation to himself. Accordingly that which is right in the work of the other virtues, and to which the intention of the virtue tends as to its proper object, depends on its relation to the agent only, whereas the right in a work of justice, besides its relation to the agent, is set up by its relation to others. Because a man’s work is said to be just when it is related to some other by way of some

kind of equality, for instance the payment of the wage due for a service rendered. And so a thing is said to be just, as having the rectitude of justice, when it is the term of an act of justice, without taking into account the way in which it is done by the agent; whereas in the other virtues nothing is declared to be right unless it is done in a certain way by the agent. For this reason justice has its own special proper object over and above the other virtues, and this object is called the just (*ius*), which is the same as right. Hence it is evident that right is the object of justice.”

There are two more important derivations from the word *ius*:

1. *jurisprudence*, i.e., prudence (reason ruling action) applied to the discernment of rights, i.e., application of the law to individual cases, which is what the judge does in a court trial (civil law), and what conscience does in every human decision (moral law);
2. *juridical*, i.e., anything related to rights. Thus a “juridical order” is a system of rights and duties in society: civil law.

### The Rule of Law as Basis of Freedom

Without a juridical order no justice is possible, and therefore no freedom, because then “might is right”: the individual will of the most powerful (material strength) tends to replace the “ordinance of reason for the common good, made by him who has care of the community, and promulgated,” which is how St Thomas Aquinas defines law.<sup>14</sup>

The concept of law (NOMOS) as reflecting the immutable order of justice (DIKE), was highly developed by the Greeks, particularly Plato and Aristotle,<sup>15</sup> perhaps due to the fact that they were constantly afflicted by tyrannies, and were searching for a perfect constitution (set of laws) which would enshrine that perpetual and transcendent order of justice which does not depend on the changeable and arbitrary will of an individual man, group or class, and which would guarantee the freedom of the citizens.<sup>16</sup>

The Romans also had a very advanced juridical order with their motto: *Servi legum sumus ut liberi esse possimus*, “We are slaves of the laws so that we can be free.”

The term *lex* (law) comes from the verb *ligare*, to bind. This binding of the law whereby acts are directed to their own end or goal is the order to end or to the common good, made by reason, which conditions the attainment of freedom of movement just as the observance of the set of rules governing car driving and traffic movement enables the driver (i.e. makes him free) to reach his chosen destination.

“Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: for *lex* (law) is derived from *ligare* (to bind), because it

binds one to act. Now the rule and measure of human acts is the reason, which is the first principle of human acts...since it belongs to the reason, to direct to the end, which is the first principle in all matters of action...Now that which is the principle in any genus, is the rule and measure of that genus...Consequently it follows that law is something pertaining to reason.”<sup>17</sup>

### Law, Love, and Happiness

Law is opposed neither to freedom nor to love, if love is understood as the natural tendency to the good. In fact, law makes both freedom and love possible, because no freedom is possible without the movement toward possession and enjoyment of the good (love). But no love is possible without justice (there is no charity without order: charity is not sentimentality), and no justice is possible without law. Law is thus the vehicle of love, and love secures the freedom of the individual and thereby his happiness (rules and discipline are the condition for liberation), precisely to the extent that it is geared to the attainment of the common good.

“The law,” writes Aquinas, “belongs to that which is a principle of human acts, because it is their rule and measure. Now as reason is a principle of human acts, so in reason itself there is something which is the principle in respect of all the rest: wherefore to this principle, chiefly and mainly, law must needs be referred—Now the first principle in practical matters, which are the object of the practical reason, is the last end: and the last end of human life is bliss or happiness.. Consequently the law must needs regard principally the relationship to happiness. Moreover, since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness. Wherefore the Philosopher, in the above definition of legal matters mentions both happiness and the body politic: for he says (*Ethic.* v, 1,) that we call those legal matters ‘just’, which are adapted to produce and preserve happiness and its parts for the body politic’: since the state is a perfect community, as he says in *Politics* i, 1.

“Now in every genus, that which belongs to it chiefly is the principle of the others, and the others belong to that genus in subordination to that thing.. Consequently, since the law is chiefly ordained to the common good, any other precept in regard to some individual work, must needs be devoid of the nature of a law, save insofar as it regards the common good. Therefore every law is ordained to the common good.”<sup>18</sup>

In the New Testament is found a striking confirmation of the need to bind oneself to the law as the expression of love and the way to freedom:

“Do not think that I have come to destroy the Law or the prophets. I have not come to destroy, but to fulfill. For amen I say to you, till heaven and

earth pass away, not one jot or one tittle shall be lost from the Law till all things have been accomplished.

“Therefore whoever does away with one of these least commandments, and so teaches men, shall be called least in the kingdom of heaven; but whoever carries them out and teaches them, he shall be called great in the kingdom of heaven.”<sup>19</sup>

What Jesus Christ condemned in the Pharisees was not their adherence to the Law, but their fulfillment of it without the love of God and neighbor as the greatest commandments, which had led them to missing the forest for the trees and getting side-tracked by persnickety and all too human matters.

Law is and will always be the condition for love and happiness, while anarchy (literally: no government, i.e., no direction to the end), i.e. the negation of law, is the substitution of egoism for love. When law is ignored or disregarded, personal preference and favoritism, with the consequent injustice, become the dominant forces of a disintegrating society. On the other hand, the effect of law is to make people good, as St Thomas Aquinas explains:

“A law is nothing else than a dictate of reason in the ruler by whom his subjects are governed. Now the virtue of any subordinated thing consists in its being well subordinate to that by which it is regulated: thus we see the virtue of irascible and concupiscible faculties consists in their being obedient to reason; and accordingly ‘the virtue of every subject consists in his being well subjected to his ruler,’ as the Philosopher says (*Politics* i). But every law aims at being obeyed by those who are subject to it. Consequently it is evident that the proper effect of law is to lead its subjects to their proper virtue: and since virtue is ‘that which makes its subject good,’ it follows that the proper effect of law is to make those to whom it is given, good, either simply or in some particular respect. For if the intention of the lawgiver is fixed on true good, which is the common good regulated according to divine justice, it follows that the effect of the law is to make men good simply. If, however, the intention of the lawgiver is fixed on that which is not good, but useful or pleasurable to himself, or in opposition to divine justice, then the law does not make men good simply, but in respect to that particular government. In this way good is found even in things that are bad of themselves: thus a man is called a good robber, because he works in a way that is adapted to this end.”<sup>20</sup>

### Natural Right and Positive Right

St Thomas Aquinas explains them as follows:

“As stated above (see note no. 13) the right or the just is a work that is adjusted to another person according to some kind of equality. Now a thing can be adjusted to a man in two ways: first by its very nature, as when a man gives

so much that he may receive equal value in return, and this is called natural right. In another way a thing is adjusted or commensurated to another person by agreement, or by common consent, when, to wit, a man deems himself satisfied, if he receive so much. This can be done in two ways: first by the agreement, as that which is confirmed by an agreement between individuals; secondly, by public agreement, as when the whole community agrees that something should be deemed as though it were adjusted and commensurated to another person, or when this is decreed by the prince who is placed over the people, and acts in its stead, and this is called positive right.<sup>21</sup>

So, what is due to another may be so either:

1. by its very nature: natural right, or
2. by human law: positive right, which may be
  - a. public—a right established by public law (applying to all), e.g., the right to a minimum wage;
  - b. private—a right that derives from a contract between citizens, also protected by law.

And then, he goes on to say:

The human will can, by common agreement, make a thing to be just provided it be not, of itself, contrary to natural justice, and it is in such matters that positive right has its place. If, however, a thing is, of itself, contrary to natural right, the human will cannot make it just, for instance by decreeing that it is lawful to steal or to commit adultery. Hence it is written (Isa 10:1): “Woe to them that make wicked laws.”<sup>22</sup>

### Subject and Foundation of Right

Right may be considered either objectively or subjectively. In the first case it is the object of justice or what is due to another: right is what is related to someone as belonging to him. “Belonging” is an analogical term, as there are many ways of belonging. This one is the most perfect form of belonging because it is something possessed with free mastery (*dominium libertatis*). This free mastery is the basic characteristic of right, and it implies responsibility, i.e. reason and self-determination.

Right considered subjectively is a relationship of someone to something as belonging to him. If something is related to me as mine, I am related to it as owner, master, or possessor. Who can be a subject of rights? Only someone who is possessor with free mastery, and this is the person, for only the person is by nature rational and free.

But has the person to be actually free there and then in order to be a subject of rights (e.g., a little baby)? No, because he may be prevented from the exercise of freedom while retaining its power. Rights are inherent in the nature of the person. Thus, for example, the unborn child as being human is already a

subject of rights, which should actually be specially protected by civil society (state laws and authority) due to his inherent weakness and helplessness.

Regarding the foundation of rights, after distinguishing between natural and positive right, St Thomas Aquinas goes on to distinguish between natural right and the Roman concept of civil right (*ius gentium*),<sup>23</sup> as “whatever natural reason decrees among all men” and “is observed by all equally.” He equates it to positive right, and thus makes positive law the immediate foundation of rights, and since positive laws are, through “natural reason,” based on the natural law, i.e., on the way things were made by God, the ultimate foundation of rights is the Eternal Law. And this is how he describes the Eternal Law:<sup>24</sup>

“As stated above (Q. 90, A. 1 ad 2; AA. 3,4), a law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community. Now it is evident, granted that the world is ruled by Divine Providence, as we stated in the first part (Q. 22, AA. 1,2), that the whole community of the universe is governed by Divine Reason. Wherefore the very idea of the government of things in God, the ruler of the universe, has the nature of a law. And since the Divine Reason’s conception of things is not subject to time but is eternal, according to Prov 8:23, therefore it is that this kind of law must be called eternal.”

Therefore the supreme right is the divine right, since natural rights are rooted in the natural law, which is rooted in the eternal law: natural law is the participation of the eternal law in the rational creature.

### Morality and Legality

In the light of the above, subjective right can be more accurately defined thus: a moral power belonging to a person, i.e. to someone of intellectual nature, to possess or to do something according to justice.

We are only the stewards of our rights, we do not own them absolutely, because natural rights (natural law) are rooted in the divine right (eternal law).

On the other hand, what is due because of justice is due because of the moral law. Therefore through the moral law rights are obligatory: no one has the right to suppress his own rights (they are “inalienable”), though he may waive them for a higher end (e.g. sacrifice one’s life for another). Therefore the study of rights belongs to ethics (morality), not only to legal philosophy (legality).

While general ethics studies human acts as ordained to their end, which is the happiness and good of the agent, social ethics studies the same human acts as ordained to their end through their ordination to other men. A right always has a social projection. Individual rights cannot be isolated from their

social projection. The object of social ethics is justice, which is the ruling principle of the relations among men, and the means to liberate man from his egoism, by making him think of others (what is due to others from us: our duties) rather than of himself.<sup>25</sup>

### Legal Positivism

Juridical or legal positivism is the absorption of morality into legality as a result of rejecting the natural law. While it had its forerunners in the ancient Sophists (Protagoras, in the 5th century B.C., absolutized man with his famous statement “Man is the measure of all things”), whom Socrates challenged for their inconsistent relativism and skepticism (they stated that “we cannot be sure of anything” without the slightest insecurity!), the voluntarism of Ockham and the political averroism of Marsilius of Padua in the 14th century paved the way for the full-blown legal positivism of Hobbes (1588-1679), who, in his famous *Leviathan*, absolutized the state, whose laws would determine what is morally right and wrong. Subsequently, Kant (1724-1804) paved the way for Hegel’s (1770-1831) even more radical absolutizing of the state, by grounding “theory” (pure reason) in “practice” (practical reason), thereby separating the juridical order from the moral order. According to him, with the exception of the natural right of men to freedom, there is no other right but positive or civil right. So, the ultimate foundation of right is the positive law, based on the customs of peoples (or on history, as Savigny and Stahl would later say): right has nothing in common with morality, for morality is natural but purely “formal” (without any “material” content), while right is always spelled out with a “material” content—the right to something.<sup>26</sup>

This deification of the state has led to the most appalling crimes witnessed by humanity in the notorious 20th century dictatorships, while the parallel deification of society at the expense of the individual, and of man at the expense of other men, has produced, also in the 20th century, a terrifying amount of innocent victims of abortion and infanticide.

### The Gradual Legal Recognition of Human Rights

The first comprehensive study of human rights in the context of natural law was made by Francisco de Vitoria (1486-1546), who devoted no less than a decade at the University of Salamanca to provide the basis for the equality of rights of the natives of the newly conquered lands by Spain and Portugal. He based his whole study on the teachings of St. Thomas Aquinas.<sup>27</sup> When Pope Paul III endorsed Vitoria’s condemnation of that “conquest” and threatened the colonists with excommunication, Emperor Charles V pledged to promulgate a

new code of laws guaranteeing the equal rights of the natives. This was the New Laws of the Indies (1542): the very first legal document on human rights as a whole.

This tradition was followed by the Scholastic theologians after the Council of Trent (1545-1563), such as de Soto, Cano, Vazquez, Suarez, Molina, Bellarmine, as well as Grotius and Pufendorf, and other Calvinist theologians who inspired John Locke (1632-1704) (in his opposition to Hobbes' royal absolutism), and motivated Thomas Jefferson and the other Founding Fathers to draw up the American Declaration of Independence and subsequent Documents enshrining Vitoria's tradition on human rights. These Documents are therefore the second major legal recognition of human rights, and they based their philosophy on the natural law rooted on God.

By contrast, the French *Constitution* of 1791 based its "rights of man" on a sovereignty of the people without God.<sup>28</sup> This document, therefore, did not follow Vitoria's tradition, and led to the self-destruction of the republic and the return to absolutism with Napoleon.

The third document had to wait for the U.N. Universal Declaration of Human Rights (1948), containing two groups of rights:

1. Civil and political rights recognized in democratic constitutions, such as rights to life, liberty, and the security of person; freedom from arbitrary arrest, detention, or exile; right to a fair and public hearing by an independent and impartial court; freedom of thought, conscience, and religion; and freedom of peaceful assembly and association.
2. Economic, social, and cultural rights, such as right to social security; right to work; right to education; right to participate in the cultural life of the community; and right to share in scientific advancement and its benefits, and to enjoy the arts.

Under the auspices of the Council of Europe, the western European nations signed in 1950 the European Convention on Human Rights and in 1959 they set up a European Court of Human Rights to enforce this convention.

Pope John XXIII in his encyclical *Pacem in Terris* (1963) listed twelve specific human rights based on the nature of the human person, understanding human life as originating from God and tending to him:

1. Right to life, bodily integrity, security, and employment;
2. Right to respect and good reputation;
3. Right to freedom of research and expression within the limits of the common good;
4. Right to truthful information from mass media;

5. Right to education, and technical and professional training in accordance with the standards of society;
6. Right to worship God according to one's conscience, both privately and publicly (this is the religious freedom from outside coercion, ratified by the Second Vatican Council,<sup>29</sup>
7. Right to choose state in life freely: to marry or not to marry (in the case of marriage, husband and wife have equal rights);
8. Right to work and enterprise, to decent working conditions, to a just remuneration, and to ownership;
9. Right of assembly and association, within the common good;
10. Right to emigrate and immigrate;
11. Right to take part in public affairs; Right to juridical protection of his rights: effective, impartial and inspired by justice.<sup>30</sup>

Pope John Paul II has made innumerable references to these rights flowing from the dignity of the human person, notably in his two speeches to the United Nations of October 2, 1979 and October 5, 1995.

### Notes

1. "Because just as that which has fire, but it is not itself fire, is on fire by participation." St. Thomas Aquinas, *Summa theologiae*, 1,3,4.  
"Something can be predicated of another in two ways: either essentially or by participation. For light is predicated of an illuminated body as partaking of, or participating in it; but were there a separated light, it would be predicated of it. Accordingly, being (*ens*) is predicated essentially of God alone, since the divine being (*esse*) is the subsistent and absolute being (*esse*); but it is predicated of any creature by participation, for no creature is its own being (*esse*) but has being (*nulla enim creatura est suum esse, sed est habens esse*)." St Thomas Aquinas, *Quodlibet.*, II, 2, 3."
2. Ex 3:13-14. St. Thomas (S.Th., I, 13,11) refers to this name of God (He Who Is), quoting Damascene, as revealing an "infinite ocean of substance". See the masterful exposition of Etienne Gilson in ch. II of *The Spirit of Medieval Philosophy* (New York, Scribner's, 1940).
3. Apoc. 1:8, 21:6 and 22:13.
4. S.Th., I, 65, 2.
5. "So, if the ultimate felicity of man does not consist in external things which are called the goods of fortune, nor in the goods of the body, nor in the goods of the soul according to its sensitive part, nor as regards the intellectual part according to the activity of the moral virtues, nor according to the intellectual virtues that are concerned with action, that is, art and prudence—we are left with

the conclusion that the ultimate felicity of man lies in the contemplation of truth.

“Indeed, this is the only operation of man which is proper to him, and in it he shares nothing in common with the other animals”

“In fact, all other human operations seem to be ordered to this one, as to an end. For, there is needed for the perfection of contemplation a soundness of body, to which all the products of art that are necessary for life are directed. Also required are freedom from external disorders, to which the whole program of government in civil life is directed. And so, if they are rightly considered, all human functions may be seen to subserve the contemplation of truth.

“However, it is not possible for man’s ultimate felicity to consist in the contemplation which depends on the understanding of principles, for that is very imperfect, being most universal, including the potential cognition of things. Also, it is the beginning, not the end, of human enquiry, coming to us from nature and not because of our search for truth. Nor, indeed, does it lie in the area of the sciences which deal with lower things, because felicity should lie in the working of the intellect in relation to the noblest objects of understanding. So, the conclusion remains that man’s ultimate felicity consists in the contemplation of wisdom, based on the consideration of divine matters.” St Thomas Aquinas, *Summa Contra Gentiles*, III, 37.

6. Cf. *Summa theologiae*, I-II, 91,2.

7. Cf. *Symposium*.

8. “Friendship we believe to be the greatest good of states and the preservative of them against revolutions; neither is there anything which Socrates so greatly lauds as the unity of the state which he and all the world declare to be created by friendship.” *Politics*, II, 4 (cf. III, 9).

9. Jn 13:34-35.

10. *De Civitate Dei*, XIV, 28.

11. Cf. my *Informal Talks on Family and Society* (Manila, SEASFI, 1990), Part Two.

12. Cf. Plato’s *Republic*, II, 368-371.

13. *Summa theologiae*, II-II, 57, 1.

14 *Ibid.*, I-II, 90,4.

15. “Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all; since armed injustice is the more dangerous, and he is equipped at birth with arms, meant to be used by the intelligence and virtue, which he may refuse for the worst ends. Wherefore, if he have not virtue, he is the most unholy and the most savage of animals, and the most full of lust and gluttony. But injustice is the bond of men in states, for the administration of justice, which is the determination of what is just, is the principle of order in political society.” *Politics*, II, 4 (cf. III, 9).

16. "He who bids the law rule may be deemed to bid God and reason alone, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers even when they are the best men. The law is reason unaffected by desire." Aristotle, *Politics*, III, 16.

17. *Ibid.*, I-II, 90, 1.

18. *Ibid.*, I-II, 90, 2.

19. Mt. 5:17-19.

20. *Summa theologiae*, I-II, 92, 1.

21. *Ibid.*, II-II, 57, 2.

22. *Ibid.*, ad 2. The work of Leo Strauss in our time on this subject is worth noting. See also Heinrich A. Rommen's classic, *The Natural Law* (Indianapolis, Liberty Fund, 1998).

23. *Ibid.*, II-II, 57, 2.

24. *Ibid.*, I-II, 91, 1.

25. Cf. *Ibid.*, I-II, 56, 6.

26. Cf. *Ibid.*, I-II, 56,6.

27. Cf. my article "Natural Law and Human Rights. Francisco de Vitoria (1486-1546)" in *Vera Lex*, Vol. XV, 1995.

28. Cf. my *Person, Family and State: An Outline of Social Ethics* (Manila, SEASFI, 1991), ch. XVII.

29. Cf. *Declaration Dignitatis Humanae* (1965).

30. This list of natural rights is logically derived from the precepts of the natural law, which St. Thomas Aquinas shows can be discovered as inherent in the nature of man. Here is his unparalleled metaphysical analysis:

"A certain order is to be found in those things that are apprehended universally. For that which, before aught else, falls under apprehension, is being, the notion of which is included in all things whatsoever a man apprehends. Wherefore the first indemonstrable principle is that the same thing cannot be affirmed and denied at the same time, which is based on the notion of being and not-being: and on this principle all others are based, as is stated in *Metaph. iv*, text 9. Now as being is the first thing that falls under the apprehension simply, so good is the first thing that falls under the apprehension of the practical reason, which is directed to action: since every agent acts for an end under the aspect of good. Consequently the first principle in the practical reason is one founded on the notion of good, namely that good is that which all things seek after. Hence this is the first precept of law, that good is to be done and pursued, and evil is to be avoided. All other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of natural law as something to be done or avoided.

“Since, however, good has the nature of an end, and evil, the nature of a contrary, hence it is that all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law. Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law. Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to the natural law, ‘which nature has taught to all animals’ (Pandect. Just., I. tit.i), such as sexual intercourse, education of offspring and so forth. Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society; and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.” *Summa theologiae*, I-II, 94, 4.

