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THE THOMISTIC PERCEPTION OF THE PERSON AND HUMAN RIGHTS

The rhetoric of human rights originates from the tradition of the School of the so-called Modern Natural Law and forms part of the inheritance of the Revolutions of 1776 and 1789. The perception of the inalienability of human rights constitutes the climax of the whole tradition of modern natural law, since it lies in the foundation of a "legal humanism" focusing on man as a source and "end" of law.[1]

Thus, the idea of human rights is connected to the modern perception of law founded on subjectivity, in the context of which rights are authorizations of individual action versus a higher authority, resulting in a subjectivism of law.[2] In this context, the concept of human rights sets aside the naturalistic theory of dominance, referring instead to a fully subjective, conventionalist perception of the legitimization of

[1] Michel Villey is opposed to legal humanism and modern "ideology of the rights of man" (M. Villey, *Seize essais de philosophie du droit* (Paris: Dalloz, 1969), 140; idem, *Le droit et les droits de l'homme* (Paris: Presses Universitaires de France, 1998). See also Luc Ferry, Alain Renaut, *Philosophie politique* (Paris: Presses Universitaires de France, 2007), 480. Edmund Burke has also been a fierce opponent of the idea of rights, calling the rights of men "political metaphysics" (E. Burke, *Reflections on the Revolution in France* (Oxford University Press, 1993), 58).

[2] The idea of rights originates from the idea of "subjective right" (see Michel Villey, "La genèse du droit subjectif chez Guillaume d'Occam," *Archives de philosophie du droit* IX (1964): 97–127).

political order; more specifically, it refers to the idea that man is a subject of law, laying agreements among individuals as a foundation for political legitimization.

Therefore, the idea of human rights is founded on the idea of the person and is closely associated with the idea of a constitutional state and the issue of political legitimization. One should also note that the foundation of rights is accompanied by the emergence of the concepts of society/state, constituting part of the political program of liberalism.[3]

When reviewing these intellectual developments of the modern era, one should consider closely the huge importance of Thomistic philosophy in re-evaluating the issue of relations between the individual and society, as well as relations between law and state, since Thomas Aquinas foresaw what we call "rights of man;" a man, who, thanks to his natural reason "possesses the human dignity (*dignitas*) consisting of being born free and existing for one's self."[4]

The Thomistic perception of the person, in the context of reality as a whole, allowing for a unified approach to human existence and conscience within the framework of society and its practices, constitutes the foundation of Western thought.[5] The Thomistic approach to the person as an individual substance correlated with the ontological superiority of the human being created in the image and likeness of God, leads to the acknowledgement of his particular individual existence as a natural individual. This is an event of paramount importance for the modern era.[6] The value of the person is founded on its ontological autonomy, originating from the rationality of human nature, thanks

[3] The philosophical distinction of society/state has been expressed in Kant's Theory of Law. According to Renaut, the distinction between society and state forms an integral part of liberalism (Ferry, Renaut, *Philosophie politique*, 518).
[4] Thomas Aquinas, *Summa Theologiae*, II–II, 64, 2, ad 3. Hereafter: *ST*. Available at: http:// www.newadvent.org/summa/.
[5] *ST*, I, 29–43.
[6] Eleni Procopiou, *Το πρόσωπο ως υποκείμενο δικαίου στο έργο του Θωμά Ακινάτη* [*The Person as a Subject of Law in the Thought of Thomas Aquinas*] (Athens: Herodotos, 2013), 581.

to which he becomes an autonomous source of actions. Humans develop into "persons," subjects of actions, because they are "not manipulated by others but by themselves, by their own actions towards an aim that coincides with human good."[7]

The human person, rational, sovereign and free of external obligations as it is, though still submitting to the requirements of reason, is founded on the Christian concept of freedom: freedom in a spiritual context; freedom of will of a moral being responsible for its actions.[8] The ontological status of man, combined with the idea of his sovereignty, lays the foundation for the personal responsibility of a subject for his personal actions. Thus, the person, in a metaphysical context, is associated with natural order, since natural sociability forms the basis of a person's supernatural fulfillment. Because of his social nature, the person is also a carrier of social relations and a product of his own encounter with other persons. His participation in social life constitutes his first step, as in the Thomistic system of thought there is continuity between the natural and supernatural orders. Aquinas' moral teachings manifest the practical and specific character of the person, particularly in the sphere of justice, which allows for a new framework for the understanding of the person as a product of relations between men and regulations of a moral-legal nature.

The human person as a historical existence in the context of a socio-political order, is bound by two limitations: identity and relation with the "other,"[9] that is, a relation of justice which, according to Aristotle, is a "relation to another."[10] By placing Aristotelian justice in the

[7] *Ibid.*

[8] On the compatibilism of the freedom of will with the determination of an individual vis-à-vis the "other," see Norman Kretzmann, "Philosophy of mind," in *The Cambridge Companion to Aquinas*, ed. N. Kretzmann, E. Stump (Cambridge University Press, 1993), 128–159.

[9] Stamatios Tzitzis, *La personne, l'humanisme et le droit* (Les Presses de l'Université Laval, 2001), 38.

[10] Aristotle, *Nicomachean Ethics*, E1129b, 31-33. Available at: http://classics.mit.edu/Aristotle/nicomachaen.html.

heart of his theological elaboration, Thomas Aquinas focused on the system of relations among individuals, placing justice in the service of the community, within an objective order surpassing individuals.[11]

A person, in his natural form, is part of a whole; part of a city, and a carrier of relations of justice, through which he is subjected to common good. However, in a metaphysical context he has a metaphysical destination, his own vocation, which makes him independent of social relations and groups. This destination he reaches as part of human nature and mankind, but also individually through his personal value.[12]

Thus, we see that a person is not transcendent, detached from the world and social life; nor, however, does he fully identify with his social existence, his social roles.[13] Man, as nature, is beyond and above social roles and relations. Man as a natural person, a subject of History, is a carrier of relations of justice, via which he is placed in a natural social order.

In this way, Thomas Aquinas makes a synthesis of man per se, as part of mankind, and man as a person vis-à-vis others in the sphere of justice, consisting 'in rendering to each one his right' (*ius*).

So what is law (*ius*)? Law is the object of justice (*ius*); a just relation among persons subjected to an objective reality that establishes equality in social relations. It is the right proportion of things distributed among members of a political group. Law (*ius*), as proportion, a de facto rightful means, is a thing. Therefore, it is not "freedom," and law as relation stands opposite to law as freedom.[14]

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[11] Michel Villey, *La philosophie du droit*, vol. I (Paris: Dalloz, 1978), 86.
[12] *ST*, II–II, 64, 2, ad 3; and idem, *Summa Contra Gentiles*, III, 113, available at: http://dhspriory.org/thomas/ContraGentiles.htm.
[13] MacIntyre believes that, according to medieval perspective, an individual identifies with the roles that tie it with a community. Alasdair MacIntyre, *After Virtue* (London: Duckworth, 1981), 160.
[14] Villey, *Le droit et les droits de l'homme*, 68.

Law is proportional, not the same for all. Thus, in the naturalistic Thomistic perception of law, there is no one "person" but many persons, and law is analogous to the particularities of each.

Thus, the idea of "human rights" of the modern era was not only non-existent in Antiquity and the Middle Ages, but also incompatible with a realistic approach of law, based on the being, not the subject, and an agreement or consensus between subjects.

The objective nature of justice, aiming at *ius* as a just relation between persons vis-à-vis things, emerges from the nature of things and social relations, perceived as the foundation of natural law. In the context of this "naturalistic" perception of law, nature and convention are the origins of law (by nature and law). Therefore, human intervention complements nature as a foundation of law.

Thus, law (*ius*), as "what is due" objectively, is not a subject's attribute, nor a person's right, but the share of things corresponding to persons, according to the terms of a distributing and commutative justice. This is an "objective" law; a product of pre-existing relations of law in the context of social reality, mixed with duties and obligations.

This has nothing to do with law as an "advantage," as perceived throughout the 20th century. With Aquinas, law is "a rightful thing itself," that is, actions, objects and states of things constituting objects of justice. A perception of *ius* as a "righteous thing" is relevant, after all, with the usual legal use of *ius*, focusing on a "thing."[15] *Ius* is a relation of justice concerning what is right (*iustum*) from the point of view of the other, "to whom something is due." *Ius* is *ius suum cuique tribuere* in justice, that is, to render each one what belongs to him.[16] *Ius* is to be fair, not a person's moral authority (*facultas*), as with Suarez; or, a person's moral quality, as with Grotius, who emphasizes the power of the

[15] Finnis has correctly noted that lawyers view rights as a relationship between two factors: persons and a thing; that is, as a relationship focused on a thing. See John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 1980), 202.
[16] *ST*, II–II, 122, 1, and II–II, 58, 1.

possessor of a right; or, the freedom of an individual, a human right for absolute freedom, as with Hobbes, resulting in the theory of human rights.

The perception of law as a reality surpassing individuals consists of relations of justice among persons, being a product of a correlation of things that renders persons subjects of law, in the context of a community whose relations in law are horizontal, that is, they concern the settling of disputes occurring from particular justice.

Confronted with the theological and philosophical thought of his time, Thomas Aquinas turns to man not only as a making of God in His image and likeness and a person in the metaphysical sense (a product of an individual's personal perfection), but also as a person in a position to possess goods specified precisely by *ius suum* of justice and law. Such a person is a subject of law, able to play "parts" vis-à-vis things, in a framework of relations within a community, being subject to it and the common good. As with the Romans, *ius* is not an authority but an obligation, such as, for example, the relation between a lender and a debtor.

Within this framework of relations, law is the boundary of the authority of an individual, not serving its authority. It is the boundary set by justice as order of a being and "debt" (*debitum*), creating an obligation for balance.[17] *Ius* is a status attributed to a person in relation to other persons or a class of persons. It is not subjective but objective, the outcome of a distribution, not authority over things.

However, the perception of natural law does not concern only man as a citizen, a subject of "political rights," as with Aristotle,[18] but also man *per se*;[19] this being a view with great philosophical and anthropological consequences, since it allows man, as a natural being and

[17] "*Iustum naturalis* (*ius*) is what is balanced by nature or relevant to another . . ." (*ST*, II–II, 57, 3).
[18] *Ius divinum* surpasses the boundaries of a state and the political nature of law. See Giorgio Del Vecchio, "Sur le prétendu caractère 'politique' du Droit," in *Déontologie et discipline professionnelle* (Paris: Editions du Recueil Sirey, 1953–1954), 145–162.
[19] *ST*, II–II, 57, 2, ad 3.

person, his supernatural destination, removing him from Aristotle's *polis* and directing him to his supernatural life, so that a Christian "person" may transcend a state and become a whole in itself; a "value *per se*;" a purpose superior to those of a state.[20] On the other hand, a person as purpose is superior to a state only in the supernatural sphere, as *persona Christiana*; while being subject to a *polis* and a community in the physical sphere.

Consequently, the image of a fully developed human being is different than the one found in *Nicomachean Ethics*, since "a man's soul is independent," as stated by Seneca, and man is sovereign (*mens est sui iuris*).[21] Thomas Aquinas stresses the political nature of law by emphasizing man's social nature and the positive function of political communities and governments; while also stressing that the spiritual and moral side of a human being make it something more than a simple member of a collective entity, since man's "free side" is considered a forerunner of human rights. Michel Villey rightly notes that Aquinas' legal system does not simply copy that of Antiquity, since it bears the seed of modern law,[22] as demonstrated by the following three issues which, in my opinion, lead to the conclusion that Aquinas is a forerunner of human rights of the modern era:

- The issue of natural equity and "release of domination."
- The issue of unjust law and obedience.
- The issue of political legitimization.

The recognition of a man's "free side" vis-à-vis society and legal structures constitutes, as already stated, a forerunner of human rights, since it is based on the acknowledgement of a person as a subject of actions, and personal responsibility as a product of freedom of will and conscience; because, as Aquinas stresses, it "concerns the body's exter-

[20] *ST*, I–II, 21, 4, ad 3.
[21] "We are not obliged to obey men but only God . . . we obey men only as regards the external functions of a body . . ." (*ST*, II–II, 104, 5).
[22] Michel Villey, *Leçons d'histoire de la philosophie du droit* (Paris: Dalloz, 2002), 143.

nal energies . . . while, as far as the nature of the body is concerned, we are not obliged to obey men but only God, since men are naturally equal, as far as food and reproduction are concerned . . ."[23]

With this very important statement, Thomas Aquinas explicitly expresses his belief in the inalienable freedom of the human spirit vis-à-vis any human authority, since a person is subject to political community only as far as "external actions" are concerned, "and only within a stated field" (II–II, 104, 5, resp. and ad 2), not as regards issues concerning the whole of his life; and then, "only to the extent demanded by an order founded on justice" (104, 6).

Furthermore, Aquinas also states clearly that an individual is naturally entitled to dispose freely of his body in ways concerning the natural preservation of life and its reproduction. Thus, life becomes independent of any human authority as regards also this matter. This perception of the free side of man is clearly founded on the principle of natural law (*lex naturalis*) and a justification originating from the order of justice, that is, the order of natural law (*ius naturale*). In other words, it presupposes that common truths of human existence are principles accessible to all, constituting the context of natural law[24] and an object of natural reason. It also presupposes a secular order of law, regarding human affairs in the sphere of social relations concerning "things," since "men communicate with each other through actions and external things . . ." Thus, "justice does not concern the whole of moral virtue but only actions and external things . . . since through them men are juxtaposed with other men" (II–II, 58, 8).

[23] *ST*, II–II, 104, 5.

[24] Natural law, which forms part of God's eternal law on logical beings, functions only though their natural inclination towards their own activities and purposes, since reason is capable of perceiving what is good for man by following the order of our natural inclinations. See Ralph McInerny, "Ethics," in *The Cambridge Companion to Aquinas*, ed. N. Kretzmann, E. Stump (Cambridge University Press, 1993), 196–216. *ST*, I–II, 95, 2.

The acknowledgement of man's spiritual freedom and "free side," out of which subsequently originated the freedom of opinion and all human freedoms, is closely associated with Aquinas' viewing of a person, thus laying the philosophical foundation of natural equality among men that led to the transfer of "domination" (*dominium*) from God to man. The concession of a part of God's dominium to man concerns mankind as a whole, being an attribute of human beings that led to a gradual concession of personal and civil liberties.

The same perception also applies in the sphere of natural law (the moral law for human beings[25]), as well as in the secular order of justice and law, in whose context human persons exist legally, in association with the order of "things." This framework regulates social relations as legitimate relations among persons concerning things, on the basis of "principles of justice" (*praecepta iustitiae*); with justice obliging us "to render all that is due to them" (II–II, 122, 1 ad 6), being the "cause of debt."

This view raises an egalitarian demand, in the spheres of both natural law (as a moral demand) and law as such, as regards the relation of persons with things. In other words, a demand is raised regarding social rights concerning justice in social relations, being a state of affairs that brings equality in "real" relations among men, according to terms of particular justice (both distributive and commutative).

This view constitutes a starting point for an acknowledgement of the duties of both society and state vis-à-vis individuals in terms of both human existence and its preservation (from which there subsequently originated the so called "droits-créances"[26]), and the acknowledgement

[25] Natural law (*lex naturalis*) is first mentioned by Cicero: "Est quidem vera lex, recta ratio, naturae congruens, diffusa in omnes, constans sempiterna" (*De republica*, III, 22). Available at: http://www.thelatinlibrary.com/cicero/repub.shtml.

[26] On the tension between *droits-libertés* and *droits-créances*, see Bernard Bourgeois, *Philosophie et droits de l'homme. De Kant à Marx* (Paris: Presses Universitaires de France, 1990), 8. See also Danièle Lochak, *Les droits de l'homme* (Paris: La Décou-

of an egalitarian system in relation to an equal distribution of advantages and onuses among members of a community. Thus, it introduces a demand for an equalization of opportunities valid to this day, on which the welfare state was founded; also, above all, a demand for a distribution of common good, being the object of distributive justice; that is, a demand for equality within horizontal social relations, which constitutes the aim of law par excellence.

A second issue raised by Aquinas, relevant to the former, is the denial to commit one's conscience to unjust human laws, this being an expansion of his view on the freedom of conscience.

The denial to commit a conscience to unjust laws is also founded on the philosophy of natural law and the order of justice, that is, natural law as a founding stone of positive law, in the context of which the issue of the connection of law with justice, as well as that of obedience, is raised.

> We are only obliged to obey temporal leaders so long as order based on justice demands it. Therefore, if leaders hold power in excess, that is, unjustly, or if their orders are unjust, their subjects are only obliged to obey them exceptionally, to avoid a scandal or danger.[27]

The option of a refusal to obey human law, that is, positive law, is given in the framework of the political community of a *polis*, in whose context laws "opposing common good and divine good" are deemed unjust, being (as he stresses) more an "exercise of violence than laws" (I–II, 96, 4).[28] Denial to obey an unjust law, or (to put it differently) a connection of law (written law) with justice, on one hand, and obedience with the just character of lawful order, on the other, un-

verte, 2002), 46. On the necessity of the interference of the state in order to protect the social destination of richness, see *ST*, I–II, 105, 2.

[27] *ST*, II–II, 104, 6, ad 3.

[28] In order to obey them, one "must forfeit his right" (*ius suum*).

doubtedly constitute a statement of worldwide importance, foretelling the theory of human rights.

Common good, set by law as an objective and being the highest objective of a state (*bonum commune*), sets the limits of the use of *ius* by individuals, vis-à-vis both each other and the state.

Thus, the obligation to comply with a legal system depends on certain preconditions of both law and the legal system as a whole; meaning that a law complies with natural law and serves a common interest; a lawmaker does not exceed his jurisdiction; and the onuses of law fall justly upon citizens. If not, there is a case of *lex iniusta*, and *lex iniusta non est lex*, resulting in no commitment for compliance.[29]

In Thomas Aquinas' theory of natural law, the exercise of power and the passing of a law are viewed against a background of common good concerning primarily the implementation of distributive justice as regards the distribution of common reserves, as well as the implementation of commutative justice.

Beyond the determination of common good as a criterion for the righteousness of a law, the extent of its potential injustice is relevant to the manner of its institutionalization. Thus, the exercise of power via law occurs through a system of regulations whose authority stems from the rules of their institutionalization as well as their origin and suitability to serve justice and the common good.[30] The binding force of a law,

[29] Bix considers Aquinas the greatest representative of the traditional theory of natural law (*ius naturale*), erroneously setting him on a par with Cicero, a stoic philosopher of natural law (*lex naturalis*). See Brian Bix, *Jurisprudence, Theory and Context* (London: Sweet and Maxwell, 2006), 65ff. This is due to confusion between *lex naturalis* and *ius naturale*, as a result of the fact that in English both terms are translated as "natural law."

[30] Finnis, *Natural Law and Natural Rights*, 355. A combination of the two criteria of a just law works in a completely anti-positivist direction, because there is no sharp distinction between jurisprudence and morality, as Finnis rightly points out. Therefore, the view of Finnis that the idea of common good is articulated in the principle of "love of neighbour" and that the content of common good is founded on the respect of rights (see John Finnis, *Aquinas Moral, Political, and Legal Theory* (Oxford University Press, 1998), 132ff), is not compatible with the Thomistic approach to common good.

which is in direct relevance with its suitability in the context of justice, sets its formal character in the service of the context of a legal system, while preserving its autonomy from morality.[31]

Thus, in the context of this understanding, the principles of justice are not identical with those of legality,[32] though they include them.

For this reason, debates on legal systems do not concern their regulating framework, nor are they simple disputes on the preservation of institutions (as according to Finnis). Indeed, they relate primarily to the real issue of law, that is, the state which safeguards justice; in other words, relations between persons and things.

Thus, in the context of the Thomistic tradition of natural law nothing immoral may be "just,"[33] and no unjust laws are righteous. However, the injustice of a law does not concern its moral implication but its relevance to a demand for justice *in re*.

The non binding essence of an unjust law allows the option of non obedience for an individual; not because of the immorality of the law, but due to its injustice arising from the fact that the order of justice is founded on the nature of things.[34] An unjust law is not binding not because it is immoral, but because it does not correspond with the demands of justice (both distributive and commutative).

The classical tradition of natural law, whose part is also Aquinas, stresses the political nature of law and its close association with common good, so that unjust laws may not be considered real laws, not

[31] There is neither a separation of judicial practice from morality (positivism) nor an identification of the two (autonomy), as, in fact, there is neither a sharp distinction between jurisprudence and ethics, nor an identification of law or judicial decision with morality, since law, as a state of affairs in accordance with justice, is not a moral but a real issue. See Finnis, *Natural Law and Natural Rights*, 358.

[32] As with Hart (in Herbert L. A. Hart, *The Concept of Law* (Oxford University Press, 1961), 156–157, 202).

[33] For Hart, something immoral cannot constitute law, and unjust laws are not lawful: "unjust laws are not laws" (*Ibid*., 205, 206).

[34] *Iustum* is a form of equality arising either from the nature of things (in the case of *ius naturale*) or by convention, private or public (in the case of positive law). *ST*, II–II, 57, 2.

because they do not have a moral value, as Bix believes, but because they are not lawful, that is, they are not an expression of natural law aiming at equality in human relations concerning "things" (goods);[35] also, because natural law does not simply consist in a duty to support just institutions.[36]

The option of public disobedience to an unjust law (considered as such not simply from a moral point of view, as already stated, but because it is not compatible with justice) constitutes, in our view, the best option of an individual's autonomy in the framework of a legal system, within which Aquinas favours a "minimum public compliance"[37] to an unjust law, for the sole purpose of not causing greater scandal or damage.

The minimum public compliance for the purpose of avoiding a greater scandal or damage constitutes a social good par excellence; that being public order, whose violation also poses a threat to common good.

The third important issue, which forecasts the modern era, according to Aquinas is that concerning the demand for a political legitimization, which emerges from the classical tradition of natural law in Antiquity.

This tradition acknowledges the necessity of natural law alongside the value of human law, from which emerges the concept of political legitimization (*preacepta iudicialia non remanebant ex necessitate . . . sed relinquebatur humano arbitrio*, I–II, 108, 3, ad 2, 3). Thus, the demand for the legality of political order, founded on the common good of a political community, leads to an acknowledgment of the value of politics per se, in whose context Aquinas raised the demand of the peo-

[35] *ST*, II–II, 60, 5.
[36] As with Rawls (in John Rawls, *A Theory of Justice* (Harvard University Press, 1971), 6).
[37] Finnis, *Natural Law and Natural Rights*, 116. On the contrary, according to Kant, a refusal to obey an unjust law is altogether unfair (see Bourgeois, *Philosophie et droits de l'homme*, 50).

ple's participation in governance long before the emergence of national assemblies, viewing the people as a whole, not as individuals,[38] thus paving the way for the modern concept of the people's sovereignty.

In the context of the Thomistic philosophy of law, the purpose of natural law is to philosophically justify positive law. Therefore, the legitimization of lawful order is not founded on the positive aspects of law, and may not be limited to a purely procedural demand for legality.

In the context of the Thomistic perception, the legitimization of political order arises from the combination of sovereignty and political rights of a people as a whole; furthermore, it is a product of legitimate law, not the rights of man as acknowledged in the context of modern individualism and liberalism that have led to a confrontation with the principle of the sovereignty of the people. It was this demand for the legitimization of political order aiming at a common good that provided the inspiration for a communitarian society, moving beyond the extreme individualism of the modern era and the collectivism of socialism.[39]

In this framework, "human" or "natural" rights are considered moral rights. However, in the sphere of law they are perceived only within the community and common good, by no means constituting exclusive and absolute rights but only rights corresponding with duties and obligations. Above all, they are modeled on certain beings through the many roles of persons and their relations with things; since in a relation of justice a duty occurs simultaneously with a right, as referring to the demands of justice regarding common good. Thus, the good of

[38] In a free (that is, democratic) society the people may make their own laws by unanimous approval, traditionally expressed independently of the authority of their leaders, who legislate as representatives of the people. In this sense, the people may legislate (*ST*, I–II, 97, 3, ad 3). Aquinas recognizes a true "political prudence" to every human being, even to the slave because of the *liberum arbitrium* (*ST*, II–II, 50, 2).

[39] Paul Sigmund, "Law and Politics," in *The Cambridge Companion to Aquinas*, ed. N. Kretzmann, E. Stump (Cambridge University Press, 1993), 217–231. See also Jacques Maritain, *La personne et le bien commun* (Paris: Desclée de Brower, 1947), 8.

each individual is *ius* rendered to it by justice[40] (*ius suum cuique tribuere*), a good received through the fulfillment of the duty of others.

However, individual good is a fundamental element of common good, since a whole consists of the parts that correspond to it (I–II, 92, ad 3), and the common good of a state is fulfilled in relation to individuals, being the sum of the terms of a common life, in the context of which each member has its own destination, preserving its entity and its ability to achieve its individual good.

Thus, the Thomistic perception of law stresses particular forms of justice corresponding with particular good and aims, leading to the elevation of the perspective of distributive justice, being completely different from the perspective of rights. Thanks to distributive justice, we are allowed a perception of human good compatible with individual development within a communal life.[41]

On the contrary, in Kant's liberal individualism a subject of law consists of its self determination as a subject of rights. Law, as a field of acknowledgment of a person's liberties, constitutes everyone's free space, being a subjective right or a "protected will,"[42] or a lawfully respected choice. On the other hand, law in the *Summa* emerges as a means par excellence of harmony in social relations. In the individualistic legal order of Kant and the modern era, law does not originate from objective law but is a means of coexistence among individuals having subjective rights. These subjective rights are dominant in the sociopolitical order as rights of a human person, viewed as personal demands in the framework of law.[43]

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[40] Finnis, *Natural Law and Natural Rights*, 210.

[41] Common good is the end of every person living in a community, as much as the good of the whole is the end of each part. However, the good of an individual person is not the end of another (58, 9, ad 3). Particular justice categorizes a person in relation to what belongs to others (58, 7).

[42] Villey, *Le droit et les droits de l'homme*, 96.

[43] On a critique of the rights-oriented liberalism which has been dominant over the past decades, see Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge University Press, 2008), 184ff.

In Thomas Aquinas the supernatural (spiritual) world of persons coexists in the theological-metaphysical sense with the world of persons as protagonists of the secular social order and law; that is, with the material world. By viewing an individual as part of a whole and a member of a community, Aquinas acknowledges the submission of an individual-citizen to the common good, that of the community. However, his belief in man's supernatural destination stops him from accepting a state's absolute authority.[44]

A state is primarily a natural institution of men, aiming at the promotion of both common and individual good. Therefore, Aquinas' political theory does not favour an individual's full submission to the state and is incompatible with both totalitarianism and extreme individualism (in liberalism). On the contrary, during the modern era rights have been historically associated with the formation of states, seen as the product of a conventional perception, related with a consensus among individuals.

In this context, the idea of human rights was not a novelty of the Enlightenment, having already been foreseen in a splendid manner during the Middle Ages[45] as a product of *lex naturalis*, constituting the contents of the tradition of natural law, whose origin is Christian. Thanks to it, Aquinas has become the forerunner of the idea of human rights in the modern era. Human-natural rights were set straightaway in the context of the theory of natural law, that is, in the context of "political rights" and the common good. They did not become subjective rights as personal demands vis-à-vis the state, nor did they take roots in the background of a total antithesis (or even confrontation) between

[44] This is the theory of the priority of common good, associated with the idea of the transcendence of the person (see Maritain, *La personne et le bien commun*, 72). According to Finnis, Aquinas is the first theorist of limited government authority (John Finnis, "Is Natural Law Theory Compatible with Limited Government?," in *Natural Law, Liberalism, and Morality, Contemporary Essays*, ed. R. P. George (Oxford University Press, 2002), 1–26).

[45] Fustel de Coulanges, "Considérations sur la France," in Fr. Hartog, *Le XIX siècle et l'histoire. Le cas Fustel de Coulanges* (Paris: Seuil, 2001), 269.

society and state,[46] as stressed by Villey, who reminds us of the antithesis between the tradition of natural law and the more modern one of natural rights, associated with nominalism and an emphasis on everything individual.[47]

Villey has rightly noted[48] that rights vis-à-vis the state as a response to positivism constitute a decomposition of the idea of law and a distortion of justice; that is, they constitute a denial of law as perceived in Aristotle's and Aquinas' classical theory of natural law, in the context of which law is founded on nature as outside world, both natural and social,[49] being a system of relations originating from the nature of things. Subjective rights have covered the vacuum caused by this loss of natural law, shifting the debate on law to a discussion on institutions, which is another form of a procedural perception of law, that is, another form of positivism that casts the demand for justice in the sphere of morality, creating a new emphasis on the meaning of the person and his rights over the state,[50] thus viewed as nothing more than a morality of individualism.

Thomistic political philosophy combines the tradition of natural law with the absolute and inalienable moral rights of human existence,

[46] This antithesis is also accompanied by a division of man, expressed through the distinction between the rights of a citizen and those of man; a distinction criticized by Marx (Karl Marx, *La Question Juive* (Paris: Aubier, 1971), 103).

[47] Ralph McInerny, "Natural Law and Human Rights," *American Journal of Jurisprudence* 36 (1991): 1–14.

[48] Villey, *Le droit et les droits de l'homme*, 154.

[49] As there is a "communion of essence between law and nature" (Pierre-Yves Quiviger, *Le secret du droit naturel ou après Villey* (Paris: Garnier, 2012), 176).

[50] Marx criticized the ideology of human rights juxtaposing the issue of real, essential rights and formal and abstract rights of bourgeois society. There followed an attempt to reconcile Marxism with the trend of human rights; see Ernst Bloch, *Droit naturel et dignité humaine* (Paris: Payot, 1976). Goldmann has a relevant view, speaking of *humanisme socialiste* and considering that a socialist society ought to restore the tradition of the values of Western humanism; see Lucien Goldmann, *Marxisme et sciences humaines* (Paris: Gallimard, 1970), 295 and 302. However, for Ferry and Renaut the liberal return of rights is a consequence of the defeat of Marxism (Ferry, Renaut, *Philosophie politique*, 597).

established on the ontological autonomy and freedom of man as person (*dignitas*), with the advance announcement of social rights of our era, demanding equality and justice. Thus, the Thomistic perception expresses both the free side of man vis-à-vis the state and its structures (in the spiritual level) and the egalitarian demand of law within social relations. Furthermore, it places the sphere of law on the background of common good and common interest.[51] In this way it avoids both liberal individualism and collectivist communism, since law requires a certain degree of individualism, a clear separation of "mine" and "yours," originating from the approach of a person as an individual, without the emphasis on the role of freedom of the modern era, which is hostile to law as an intersubjective reality.

The Thomistic theory of justice, on which Aquinas' philosophy of natural law is based, raises the issue of the fulfillment of justice not as an ideal but as a possible and specific justice in re (such as, for example, the theory of a just price for merchandise or a just salary for work).[52]

The Thomistic approach of a human person in both the metaphysical-ontological and the social spheres is a response to the modern perception of legal subjectivity and the priority of individuals, associated with the ideology of rights and leading to a confrontation of individ-

[51] Eleni Procopiou, "Person and the Tradition of Common Good in Theory of Justice of Thomas Aquinas," *Disputatio philosophica* 16: 1 (2015): 189–198. According to Finnis the common good in the Thomistic context, is presented as serving the protection of human and legal rights (see Finnis, "Is Natural Law Theory Compatible with Limited Government?," 6). Therefore, this point of view is not 'Thomistic'.

[52] According to Villey, Marxism is a revival of Aristotelian Thomistic realism, that is, the inevitable dependence of law on things (on the nature of things) (Michel Villey, *Critique de la pensée juridique moderne* (Paris: Dalloz, 1976), 184). After all, according to Marx, history is founded on "real individuals," with the material terms of life in the particular wholeness of their individual substance as social individuals. Therefore, Aquinas' demand for "specific" justice refers neither to the "ideal" of society nor to the idea of an eternal and unchangeable natural law, on which Strauss erroneously based his view on the "natural law of the ancients" (see Léo Strauss, *Droit naturel et histoire* (Paris: Flammarion, 1986), 14ff).

ual and society and a division of man into natural man and citizen, a product of the antithesis between society and state.

The Thomistic approach corresponds with the need to move from Kant's transcendent subject to real man, in the context of the specific circumstances of his life, fulfilling the wholeness of his existence within relations of justice, that is, relations between particular persons and things (a demand of socialism), being relations of equality *in rebus*.

The Thomistic approach is a tool for a "return to law" as a just state of affairs, not as a theory of rights concerning ethics, providing modern debate on rights with a reference to a common good and an option of life within a community as a way that contributes to human development. This option may lead to a new synthesis of *modernes* and *anciens* and to a surpassing of the tension between rights and democracy.[53] In the final analysis, such a synthesis is made possible thanks to the Thomistic interpretation of a person which preserved human individuality from being confused with the "species," nature, or God,[54] hindering its absorption by the community, while emphasizing the social dimension of man like no other.

THE THOMISTIC PERCEPTION OF THE PERSON AND HUMAN RIGHTS

SUMMARY

The idea of human rights is connected to the modern perception of law founded on subjectivity, in the context of which rights are authorizations of individual action versus a higher authority, resulting in a subjectivity of law. The huge importance of the thomistic perception of the person is connected with the issue of relations between the individual and society, as well as relations between law and state, since Thomas Aqui-

[53] See Guy Haarscher, "Citoyenneté, droits individuels et supranationalité," in *Démocratie et Construction européenne*, ed. M. Telo (Editions de l'Université de Bruxelles, 1995), 133–140. On the demand for a synthesis of liberalism and classical medieval philosophy, see Christopher Wolfe, *Natural Law Liberalism* (Cambridge University Press, 2006), 185ff, 248ff.

[54] Saint Thomas, *Textes sur la morale*, ed. É. Gilson (Paris: J. Vrin, 1998), 12.

nas foresaw what we call 'rights of man'. Thus, the person, in a metaphysical context, is associated with natural order, since natural sociability forms the basis of a person's supernatural fulfillment. Because of his social nature, the person is also a carrier of social relations and a product of his own encounter with other persons. In this way, Thomas Aquinas makes a synthesis of man *per se*, as part of mankind, and man as a person vis-à-vis others in the sphere of justice, consisting 'in rendering to each one his right'. *Ius* is a relation of justice concerning what is right (*iustum*) from the point of view of the other, "to whom something is due." Aquinas can be considered a forerunner of human rights of the modern era, as demonstrated by the issue of natural equity, the issue of unjust law and obedience and the issue of political legitimization. In this framework, "human" or "natural" rights are considered moral rights. However, in the sphere of law they are perceived only within the community and common good, by no means constituting exclusive and absolute rights but only rights corresponding with duties and obligations. The Thomistic approach expresses both the free side of man vis-à-vis the state and its structures (in the spiritual level) and the egalitarian demand of law within social relations. Furthermore, it places the sphere of law on the background of common good and common interest. The Thomistic approach of the human person is a response to the modern perception of legal subjectivity and the priority of individuals, associated with the ideology of rights and leading to a confrontation of individual and society and a division of man to natural man and citizen, a product of the antithesis between society and state.

KEYWORDS

Aquinas, person, rights, natural law, justice.

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