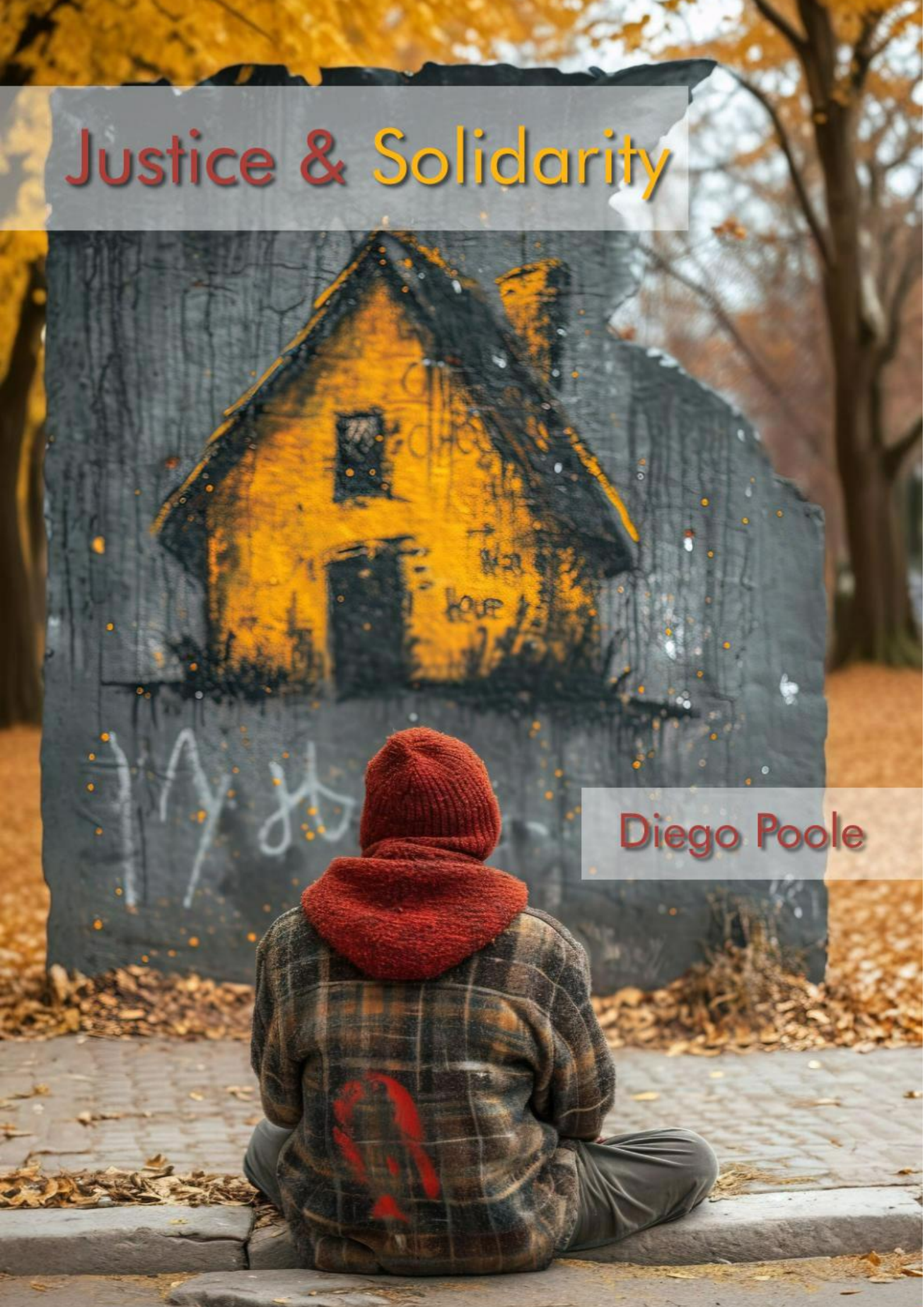
Justice & Solidarity



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It is often said that the dominant political and legal philosophy is positivism. I believe it is not. The dominant legal philosophy today is iusnaturalism, but a modern and individualistic iusnaturalism. And it is this individualistic iusnaturalism that underlies the philosophy of human rights. This individualism is the main difference between modern iusnaturalism and that of St. Thomas, for whom natural law is the bond between human beings, based on the principle of solidarity. Modern individualism has overturned the classical notion of justice by detaching it from the common good. It has completely forgotten the notion of general justice. It has reduced the notion of justice, at best, to a vindication of one's own freedom. From the modern perspective, solidarity is a dressing, an addition to this reduced notion of justice, whereas in classical iusnaturalism solidarity is the manifestation of general justice. In this article, I will first present the most salient features of individualistic iusnaturalism, and then the essentially solidary dimension of St. Thomas's iusnaturalism. This article concludes that solidarity is the essence of all justice, and that a moral life is essentially one of solidarity. By contrast, Modern iusnaturalism, which is at the basis of the philosophy of human rights, is individualistic and unsupportive, because it weakens the sense of responsibility towards the common good. The basic error of modern iusnaturalism is a deficient understanding of human freedom. The multiplication of new contradictory "human rights" is one of the manifestations of the inconsistency of modern iusnaturalism.

Key words: justice, solidarity, individualism

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1. The individualism of the modern iusnaturalism

Modern political philosophy has been built on the idea of a human being as an individual in a supposed "state of nature", prior to social life, enjoying full original freedom, a freedom composed of "liberties" expressed as "natural rights." Such rights would be limited when the individual "entered" social life, in exchange for receiving other goods such as security or equality. The individual is the only natural human reality. Thus, natural rights can only be individual and pre-political rights; rights that are claims against other individuals and against society as a whole.

For modern iusnaturalism, the political community has only an instrumental role in protecting these original freedoms or natural rights. This is precisely the key to all liberal thought. This was proclaimed in Article 2 of the *Declaration of the Rights of Man* of 1789: "The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression." The approach whereby natural rights are seen as natural liberties is very clear in classics such

as Pufendorf, Hobbes, Rousseau, Locke or Kant. And, more recently, in authors such as Rawls and Nozick.

The function of the state is to protect the natural rights of individuals, their freedoms, at the cost of limiting them. That is to say, the state guarantees more protected freedoms in exchange for a renunciation of other freedoms. It is like an exchange of freedom for security and safety. Locke explains it very clearly:

> "If man in the state of nature is as free as I have said he is, if he is absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom? Why will he give up this lordly status and subject himself to the control of someone else's power? The answer is obvious: Though in the state of nature he has an unrestricted right to his possessions, he is far from assured that he will be able to get the use of them, because they are constantly exposed to invasion by others. All men are kings as much as he is, every man is his equal, and most men are not strict observers of fairness and justice; so his hold on the property he has in this state is very unsafe, very insecure. This makes him willing to leave a state in which he is very free, but which is full of fears and continual dangers: and not unreasonably he looks for others with whom he can enter into a society for the mutual preservation of their lives, liberties and estates, which I call by the general name 'property'." "The great end of men's entering into society, being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society; the first and fundamental positive law of all commonwealths is the establishing of the legislative power; as the first and fundamental natural law, which is to govern even the legislative itself, is the preservation of the society, and (as far as will consist with the public good) of every person in it."[1]

Natural rights (and then human rights) are therefore understood as individual freedoms, prerogatives over others, especially over political power. Natural rights are like a shield that protects the individual as much as it isolates him from others. And the basis of such rights is not participation in a political community, but the prior fact of belonging to the human species.

If natural rights are thought to precede society, society can only be a pact born of fear—never the kind of community in which human beings come into the fullness of their form and their complete identity.

For the philosophy of "natural rights", the common good and the individual good are presented as competing values. It is not surprising that in modern political philosophy the notion of the common good has disappeared, because what counts is the good of the individual.

Dworkin clearly adopts and articulates this position. For Dworkin, natural rights are like "trumps" in conflicts of interest between the common good and the individual. To seriously assert a right is to recognize that the individual can perform an action even if it is detrimental to the good of society:

> "Individual rights are political trumps held by individuals. Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them."[2]

1 J. Locke, *Second Treatise of Government* (J. Bennett ed., 2005), §123 and §134

2 R. Dworkin, "Rights as Trumps", in *Theories of Rights*, Jeremy Waldron ed. (Oxford University Press, 1984), 153.

The fundamental theme of modern political philosophy will be to justify the existence of the state as an organization which, if it limits freedom, does so only for the sake of a more effective protection of natural rights predating social life. Thus, almost all modern philosophers begin their political theory by theorizing about a hypothetical state of nature whose liberties must be preserved in common life.

This independence is not only in relation to others, but also in relation to nature itself (now we do not have the space to develop this idea, but it is the basis of transhumanist and transgender approaches). The moderns identify natural rights with freedom, and they understand freedom as indeterminacy. This way of understanding freedom begins in the 14th century with Ockham, and it is perhaps the basic nucleus, the epicenter, of all the change that takes place in the moral philosophy of modernity, and therefore, also in legal and political philosophy.

The modern will is no longer attracted by the good—it creates the good. Ockham, not Hobbes or Kant, is the real revolutionary.

This conception of law as freedom presupposes a notion of freedom understood as independence from others. For example, for Hobbes, "liberty is the absence of all the impediments to action that are not contained in the nature and intrinsical quality of the agent."[3]

Although Rousseau's concept of freedom is not as simple as that of Hobbes, it is based on the idea of a natural freedom understood as the absence of subjection; a freedom that is pure in the "state of nature," where man is not subject to any authority or obligation that compels him to do what he does not want to do.[4]

The moderns no longer conceive the will like the classics did: as a motor moved by the attractive force of the good, but as pure originality. This is a radical *deformation* of the will, because it deprives the will of its form: now the will is understood as the capacity for self-determination in any direction. The human will is no longer understood as a natural inclination toward the good, but as indeterminacy. An indeterminacy that is absolute only in God, while in humans it is a limited indeterminacy, precisely because of the divine will. When the will is no longer an inclination but indetermination, the first cause of human action is no longer the final cause (as St. Thomas would say), but the efficient cause of the will itself, the will being understood as the radical and absolute principle of action. Since Ockham, most of the thinkers have spread the idea that in order for the will to be free, it must not be provoked by anything, but only by one's own decision. The Thomist idea of the will as a natural response to the call of the good has been forgotten. Ockham writes:

3 T. Hobbes, *The Elements of Law, Natural and Politic*, Ch. 9, Sec. 9. With more profusion he will later develop the notion of liberty in his *Leviathan*, especially in Chapter 21, entitled *Of the Liberty of Subjects*, where he defines liberty as "the absence of opposition (by opposition, I mean external impediments of motion)."

4 The notion of freedom in Rousseau's work is much deeper than in that of Hobbes, because it is not limited to the mere absence of external obstacles to the realization of one's own will. Rousseau distinguishes, on the one hand, a "natural liberty", which consists in acting according to one's own desires and without being subject to anyone; a liberty that would be proper to the idyllic state of nature, a liberty thrown away when private property and the "oppression of the powerful" arose, and, on the other hand, a "civil" or "moral" liberty that consists in adhering to the true good of man, that is, a common good, which is manifested in his adherence to the "general will." "[W]hat man loses with the social contract is his *natural liberty* and an unlimited right to all that he desires and can attain, what he gains is *civil liberty* and all that he possesses." J.J. Rousseau, *The Social Contract*, Book 1, Ch. 8. For an in-depth study of the notion of freedom in Rousseau, see D. Poole, "La idea de naturaleza humana en Rousseau, en contraste con la filosofía escolástica", in *La libertad religiosa en España y en el derecho comparado* (Iustel, 2012), 165–194.

> *voco libertatem potestatem qua possum indifferenter et contingenter diversa ponere, ita quod possum eumdem effectum causare et non causare, nulla diversitate existente alibi extra illam potentiam.*[5]

For the liberal philosophy behind the Declaration of Human Rights, freedom is the fundamental human right, but this freedom is understood as pure self-determination. A self-determination that is also—and this is the most important thing—*self-definition*. Everyone is free to be what they want to be (or not to be at all). As Pierre Manent puts it, "modern freedom was born as nature liberated, as nature unbound; freedom, for the moderns, is first of all the removal of impediments to nature."[6]

If freedom is pure self-definition, then every desire could demand the status of a right.

This is precisely the liberal conception of human "dignity", according to which the value of human beings lies in their capacity for autonomy or self-definition. And law is justified only as a means of protecting this autonomy. Kant puts it plainly: "Autonomy is the foundation of the dignity of human nature and of all rational nature"[7], and elsewhere adds: "The moral law, which underlies the dignity of a rational being by giving him the capacity to legislate universally by means of his will, is the only unconditioned and absolute principle."[8] This autonomy can be expressed in as many ways as there are fundamental rights. Along with traditional rights, new rights are appearing such as... the right to choose whether one wishes to live or not to live, the right to define one's sexual identity as one pleases…

At the bottom of it all, whether we like it or not, there is Sartre's philosophy of freedom (man defines his own nature), and, in a way, also Nietzsche's, with the difference that the emphasis is on the will to determine, with lesser or greater or creative force, one's own nature. The positions of Nietzsche and Sartre are the logical consequence of the denial of a creative and provident being. For both, human life has no inherent meaning; it is each individual who chooses what their life means. The difference between Nietzsche and Sartre lies in the emphasis either of them places on the consequences of this freedom: Sartre focuses more on the anguish of individual responsibility for the configuration of one's existential framework with its consequent "values", while Nietzsche celebrates this creative capacity of man, which frees him from the chains of traditional morality and allows him to affirm his own personality without any limits. Sarte says it very clearly:

> "Man is nothing else but what he makes of himself. Such is the first principle of existentialism. The existentialist, on the other hand, finds it extremely distressing that God does not exist, for there disappears with Him all possibility of finding values in an intelligible heaven. There can be no values a priori. Thus, to begin with, we must note that man is responsible for what he is. As soon as he acts, he creates a value for himself. So the existentialist does not believe in the pre-existence of values, and as a result, has to invent the meaning of his life."[9]

Nietzsche in the chapter "On the Three Metamorphoses" of his book *Thus Spoke Zarathustra*, describes the process by which man must create himself through three stages, represented by three figures, the camel, the lion and the child. Nietzsche exalts the fierceness of the lion to break with the established and the naivety of the child to create a new world of values. And further on he adds:

> "This self you would then create from your own taste of good and bad, high and low, sweet and sour, and

5 W. Ockham, *Quodlibet septem*, I, q. 16.

6 P. Manent, *Natural Law and Human Rights* (Notre Dame Press, 2021), 95.

7 I. Kant, *Introduction to the Metaphysics of Morals*, vol. 4, 436.

8 I. Kant, *Critique of Practical Reason*, vol. 5, 86.

9 J.P. Sartre, *Being and Nothingness*, I, 2

> everything which speaks to your soul and which makes you shudder. You have only become the person that your conscience and desire spoke of when you cannot go any longer—when you have reached the top of the ladder on which you were to climb to yourself. The prize at the end of the rainbow is merely to own yourself, to have created yourself, to have become yourself."[10]

Natural rights are conceived as something that humans give to themselves. And when we speak of "natural law" (an expression that is used less and less) it is only to refer to the consequences for others of the affirmation of these natural rights. The law imposes an obligation of respect for (fulfilment or promotion of) natural rights, understood as freedoms. But the cause of its lack of normativity is precisely this grounding of natural law in pure freedom, in the indeterminacy of the will. Pierre Manent says it clearly:

> "The error of modern natural law, its irreparable error, its unforgivable error, because it presupposes a willful blindness, lies in the idea that the command could be produced from a condition of non-command, from a state of nature or of natural freedom in which all command is ignored."[11]

This is basically Kant's mistake, that of wanting to make an "autonomous" ethics. By contrast, St. Thomas explained that law (every law) is a rule or measure that disposes human actions towards the common good, and ordering to the common good corresponds to the community as a whole or to whoever takes its place. Hence, contrary to what Kant says, we think, following St. Thomas, that, strictly speaking, no one is a legislator of himself, because the ordering to the end belongs to the one whose end it is proper to, that is, to the people or their representatives.[12] Therefore, it cannot be said that "each one is for himself the law", unless natural law is understood as the impression of the ruler's plan in the measured, that is, in the person. It is in this sense that St. Thomas interprets Rom. 2:14: "When the Gentiles, who are without law, guided by natural reason, fulfill the precepts of the law, they themselves are their own law." And in this sense each one is the law for himself inasmuch as he participates in the order that emanates from a regulative principle.[13] Further on, in q. 93, it clearly states that: "Nullus, proprie loquendo, suis actibus legem imponit" (Strictly speaking, no one is the legislator of his own actions).[14]

Human beings reduced to 'mere humanity'—Arendt saw this as the prelude to total domination.

The anthropology underlying modern iusnaturalism is that of an abstract, solitary, and anonymous individual, unrelated to any concrete political community and therefore essentially non-solidary and non-supportive. It is based on a conception of man without a homeland and without history, of a typical human being, who possesses nothing other than his or her pure nature. This person is, as Hannah Arendt said, one without a political status, an individual whose citizenship does not matter. This is one of the fundamental theses of Hannah Arendt's *The Origins of Totalitarianism*. In this book, Arendt points out the danger of considering human rights independently of the political community in which one participates. The aim of the extermination camps of totalitarian regimes was precisely to reduce people to a "mere humanity", an abstraction, as a penultimate step to reduce them to animality and, finally, to eliminate them:

10 F. Nietzsche, *Thus Spoke Zarathustra*, ch. 2, 20–21.

11 P. Manent, *Natural Law and Human Rights*, 79.

12 T. Aquinas, *Summa Theologiae*, I-II, q. 90, a. 3, s.

13 *Ibidem*, q. 90, a. 3, ad. 1.

14 *Ibidem*, q. 93, a. 5.

The survivors of the extermination camps, the inmates of concentration and internment camps, and even the comparatively happy stateless people could see without Burke's arguments that the abstract nakedness of being nothing but human was their greatest danger. Because of it they were regarded as savages and, afraid that they might end by being considered beasts, they insisted on their nationality, he last sign of their former citizenship, as their only remaining and recognized tie with humanity. Their distrust of natural, their preference for national, rights comes precisely from their realization that natural rights are granted even to savages. Burke had already feared that natural 'inalienable' rights would confirm only the 'right of the naked savage', and therefore reduce civilized nations to the status of savagery. Because only savages have nothing more to fall back upon than the minimum fact of their human origin, people cling to their nationality all the more desperately when they have lost the rights and protection that such nationality once gave them. Only their past with its 'entailed inheritance' seems to attest to the fact that they still belong to the civilized world.[15]

But that kind of human being, without a fatherland or flag, exists only in the imagination of modern philosophers. The pure human being does not exist. All people are conditioned, and, in a certain way, defined by their relationships and commitments. The political community is not the sphere in which the various personalities that have already been configured enter into relationship, but the sphere in which these personalities emerge and are configured. Professor Alfredo Cruz explains it very clearly:

> **Without a common good, rights multiply, collide, and finally devour each other.**

"The polis is not ordered to peacefully reconcile the various identities that citizens may have prepolitically, as members of other communities that are not the polis itself. The purpose of the polis is not to provide better conditions—political conditions—for the development of non-political identities, subjectively preferred by individuals. The polis represents the creation of a higher level of community and identity, from which other identities are reformulated and reevaluated […] A true identity, strictly speaking, is a condition that says of its subject something more than what the abstract and generic human condition says of him or her, for there is no such thing as acting and living that are purely and absolutely human. If identity is a practical condition, the true identity of a human being—personal and communitarian—cannot be found in what he or she is before and at the margin of any human decision, personal or collective. To search for identity is not to look for something in the subject that is a purely passive datum."[16]

15 H. Arendt, *The Origins of Totalitarianism* (Schocken Books, 1951), 300. Similarly, Pierre Manent argues that the modern doctrine of human rights is a manifestation of anarchic individualism, in which natural rights are freedoms without purpose. See P. Manent, *Natural Law and Human Rights*, *passim*. As John von Heyking says, "[w]hile contemporary critics are concerned with how an abstract doctrine of human rights unrestrainedly multiplies rights, including many frivolous ones, in truth the abstract universal humanity of contemporary human rights doctrines is not altogether that different from the aim of extermination camps to produce 'naked savages' because both regard our personhood as nothing more than a collection of impulses. One is reminded of Aristotle's observation that those outside the polis are either god or beast." J. Von Heyking, "Civic Friendship, Natural Law, and Natural Rights," in *Natural Law and Human Rights*, T. Angier, I.T. Benson, M.D. Retter eds. (Cambridge University Press, 2023), 276.

16 A. Cruz Prados, *Filosofía Política* (Eunsa, 2016), 33–34.

If natural rights are based on the capacity for individual autonomy, rights will multiply like desires. When rights are not tied to a shared common reality, rights become aspirations, sometimes legitimate (sometimes not), and often impossible to realize. For example, from whom can I demand a job to satisfy my right to work? Who can provide me with decent housing in a State that does not even have the means to repay its public debt? A right which does not imply a real obligation on the part of others, and which does not presuppose the real existence of what is claimed, is not really a right; and if there is nobody who is obliged to satisfy it, it is not an injustice that I do not have a house or a job.

The language of "values" introduced in the philosophical reflection about law and rights is one more ingredient that has contributed to the creation of confusion. The language of values is a manifestation and, at the same time, a cause that feeds the existence of contradictory human rights. For most people, value means what something is worth to someone. In this sense, values are projections of subjective preferences whose justification is the simple fact of being objects desired by the bearer of the value, who is none other than the bearer of an interest. In fact, for the prevailing relativistic mindset, values are nothing more than interests, whether personal or collective.

If the value of things only depends on our desires, everything could have value, and rights would only be a projection of our desires.

From this individualistic perspective, the priority of one right over another is determined by the preferences of each individual. There is no objective criterion that transcends subjective preferences; there is no criterion that serves as a measure to determine the priority of one right over another. We see today how some rights "conflict" with others: the right to life and the right to abortion; the right to freedom of expression and the right to freedom of religion; the right to one's own culture and the right to asylum; the right to mobility and the right to health (see the health crisis caused by COVID).

The liberal philosophy that gave rise to human rights lacks a reference to an objective reality, to a political framework of coexistence, that would allow us to determine the existence and concrete content of rights. And it is not a matter of "limiting" one pre-existing right at the expense of others, but of *defining them*. Context defines rights. For example, in a society of survivors of a plane crash trapped in the Andes, the rights of each individual depend on the real possibilities and the survival plan of the group. The right to food is not "limited" when the little food that is available is rationed: the right is simply "defined" according to the situation (possibilities, needs, common projects, etc.).

But beyond the language of values, where the meaning of reality is a projection of human interest, things have meaning if they have been previously finalized, created for something. Things are good or bad to the extent that they serve or do not serve their purpose. A screwdriver is a good screwdriver insofar as it serves to tighten or loosen screws, and if it does not serve that purpose, it is not a screwdriver. Or imagine a football game where the referee allows anyone in the crowd to play, with no limit on the number of players on the pitch. That would no longer be a football match. It would be something else. We wouldn't even call it a game of football if there were no rules.

Things are defined by their purposes. And created nature is no different in this respect. If there is an end, then there is good; and if there is good, then we can speak of progress or corruption, of better or worse. If not, everything is pure meaningless change. But if things are meaningless, things are worth whatever we want them to be worth. Our desires, completely arbitrary, will be the only source of value. We no longer desire things because they are inherently good, but consider them valuable only because we desire them. This is the essence of existentialism, radical freedom from the world's own

meaninglessness. The language of values has permeated the language of human rights. The language of values has replaced the classical language of ends. The language of ends presupposes a meaning in reality that people do not invent. A meaning that, in turn, presupposes a creative and provident intelligence, because the alternative is chance, and chance is, by definition, meaninglessness.

power, he logically proposed a limitation of this power of the citizens by the political power.[17]

If rights are only manifestations of the capacity of mastery over oneself, then, in the exercise of that capacity, one can renounce all one's rights. However, as the moderns put it, there is no renunciation of any right; only a different way of exercising it. Any intervention

Man is fully constituted through historical and concrete social life, and it is from that social life that his rights emerge, not before.

Natural rights iusnaturalism defends unlimited and absolute rights for the same reason that it justifies contradictory rights. If rights are based only on the subject's own capacity to dominate, there is no objective measure of rights beyond the freedom or interest of each individual. Every interest can be equally worthy of protection if it is based on the autonomy of each individual.

It is said that one's freedom ends where the freedom of the other begins. But that is like saying nothing: who decides where my freedom ends and the other's begins: the other or I? Years ago, a friend of mine, a train engineer, told me that when he was working on the London Underground a colleague made a remark about the strong smell of the cologne he used to wear, especially in such a poorly ventilated space as the Underground offices. My friend thought the correction was fair. But a few days later, the same colleague made another remark about the tie he was wearing, saying that it had very intense colors and that he got nervous every time he saw it. Then my friend began to doubt the efficacy of the principle that one's freedom ends where another's begins.

This perception of violation of one's freedom can also be distorted by default, because the person being attacked is consenting to the aggression. Consider a masochist who claims to enjoy being physically and sexually abused. In this case, too, there would be no violation of any right. One could even sell oneself into slavery if one freely wished to do so. Hobbes was clearly aware of this *ius in omnia* to which the new natural right gave rise, and, instead of presenting it as a limit to political

by other people to protect my rights against my will is considered as a "violation of my freedom", an "intolerable manifestation of paternalism", which is an attack on the "dignity", whose meaning is precisely this capacity to decide about oneself in *any* sense.

The case of the right to life is very illustrative. From this perspective, the right to life is understood as the *right to decide whether one wants to live or not*. The right to life is considered full when it includes the power to freely end one's own life. And the state must also facilitate the exercise of this right, helping me to fulfill it. It is no longer a right to protect life against others, especially against political power.[18]

17 See A. Cruz Prados, *Sobre la realidad del derecho* (Eunsa, 2021), 263.

18 Another issue is that legislators would decide the conditions under which one may or may not renounce one's own life, which contradicts the freedom this 'right' is based on. This means that the euthanasia debate is approached from a freedom-based perspective. One of Spain's best-known legal philosophers, Manuel Atienza, has no qualms about expressly defending the idea that having the right to life means having the right to choose whether one wants to live or not. M. Atienza, *Tras la justicia. Una introducción al derecho y al razonamiento jurídico* (Ariel, 1993), 103, 133, 134. It is true that most liberal authors, including the majority of the Spanish Constitutional Court that endorsed the euthanasia law in 2023, base this autonomy not so much on the "right to life", as on an even more generic and fundamental right that serves as a wild card to justify most of their liberal claims: the "right to personal self-determination", expressed, for

2. For St. Thomas, man is essentially a being of solidarity

The above vision is far from that of St. Thomas, for whom society is the sphere of human fulfilment and the catalyst for the realization of human potential. Following Aristotle, St. Thomas understands social and political life as the *telos* of human existence. It is from this concrete, historical and communal life that human rights and duties are defined.

There is no vision in St Thomas of man as an individual, complete or full, prior to political life, with his list of "natural" rights, which he tries to preserve as much as possible when he "enters" political life. St. Thomas understands man as a naturally social being, who is constituted with his rights and obligations within the framework of concrete communities.

The "pre-social individual" is a fictitious man who, if he existed, would be an *amorphous* individual, because for St. Thomas the fullness of the human form is only acquired within the framework of concrete and historical communities. Thomas Aquinas repeats many times that the part is ordered to the whole, as the imperfect to the perfect, and so man is ordered to society.[19] In this he faithfully follows Aristotle, for whom "the polis is by nature prior to the house and to each one of us, because the whole is necessarily prior to the part." This is a practical priority because, when it comes to taking action, the end comes first. As Aristotle argues:

> "The state is by nature clearly prior to the household and to the individual; for the whole is of necessity prior to the part. For example, if the whole body be destroyed, there will be no foot or hand, except in an equivocal sense, as we might speak of a stone hand; for when destroyed a hand will be no better than that. All things are defined by their function and capacity; so when these are no longer existing, neither are the things themselves said to be the same, but only to have the same name. The proof that the state is a creation of nature and prior to the individual is that the individual, when isolated, is not self-sufficing; and therefore he is like a part in relation to the whole. He who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god."[20]

Man is a being who only becomes fully human to the extent that he participates in the common life. This is precisely the understanding of man as a *social animal*. To put it in more modern terms: *man is essentially a being of solidarity*. This does not mean that man is subordinated to the community, but that he is *constituted* or becomes fully human by participating in the common. In the same way that a musician who joins an orchestra does not thereby subordinate himself or herself to the orchestra, but in it and through it he or she becomes a musician.

The modern mentality identified the particular with the individual, when *particular* evokes one's share in the common. With so much *personalism* and so much talk about the "infinite dignity" of the individual, the understanding of a person as part of a whole has been lost. And the good of something that is a part consists in being adequately disposed towards the whole of which it is a part.

The very notion of "general justice" as a form of all justice, which Aristotle explained in the *Nicomachean*

example, in Article 10 of the 1978 Spanish Constitution. And on that basis, the Constitutional Court defended euthanasia by stating: "The right to self-determination that stems from the dignity of the person and the free development of the personality includes the power to decide freely and consciously about one's own life and one's own process of dying" (Ruling of the Spanish Constitutional Court, case 19/2023).

19 See T. Aquinas, *Summa Theologiae*, I-II, q. 90, a. 2, s. and I-II, q. 96, a. 4, s. When he discusses the virtue of the ruler, who watches over the common good, he explains that the prudence of the ruler is more perfect than the prudence of the subject, even though all must watch over the common good (see. S.T., II-II, q. 47, a. 11, s. and ad. 3). And when he discusses whether it is licit to kill the wicked, he writes: "For every part is ordered to the whole, as the imperfect to the perfect; and therefore every part is naturally for the sake of the whole. Hence we see that if it be necessary for the health of the whole human body to amputate a member, because it is decayed and may infect the others, such amputation is praiseworthy and healthful. Now a single man is to the community as a part is to the whole. Therefore, if a man is dangerous to the community and corrupts it by some sin, he may be laudably and expediently killed for the preservation of the common good; for, as 1 Corinthians 5:6 says, 'a little leaven corrupts the whole lump." See T. Aquinas, *Summa Theologiae*, I-II, q. 64, a. 2c.

20 Aristotle, *Politics*, L. 1, 1253[a].

Ethics, and St. Thomas developed in the *Summa Theologica*, consists precisely in the right disposition towards the common good. It is not surprising that it is so difficult for the modern mentality to understand the notion of general justice, precisely because it does not understand that man is primarily a citizen, and not simply an individual. Alfredo Cruz expresses it very clearly when he writes: "[j]ustice, properly and fully said, consists in giving to each one his own, *in reason of the common good*, by reason of its demands: not in reason of the particular good of each one."[21]

For St. Thomas, law (all law) is, by definition, an ordination to the common. Law is not therefore a law of individuals, a personal law, not even natural law. All law is the ordering of a community. Natural law, according to St. Thomas, is intimately linked to the existence of natural communities, even if they are always culturally modulated. Therefore, if the existence of natural communities is denied, the idea of natural law disappears.

The first natural community is the family, and the basic laws that articulate the relationship within the family are the first natural laws. Above the family is the political community, which is also natural in its basic articulation, because the family is not sufficient to itself, and thus arise tribes, clans, cities, kingdoms, states, etc. This is the essential naturalness of the law: that of constituting the basic structure, the skeleton of these communities, which are modulated and perfected by culture.

St. Thomas does not confuse basic human needs with rights, because every right is always an existing reality attributed to someone and owed by someone else. If there is no such thing that satisfies the need (because it does not exist or because there is no possibility of producing or obtaining it), there is no right, properly speaking, even if there is a need, even a vital need.[22] No one has a right to the impossible.

Let us recall the example I gave earlier of the plane crash in the Andes where some passengers survived. No matter how much they need food and shelter to survive, their rights in that situation will only be their possible share in that society of survivors, even if what little there is does not suffice to survive. For St. Thomas, a right is something real, it is the part that corresponds to everyone in a particular community at a particular time.

Likewise, if there is no community, if one were to live alone, one would have no rights either, even if one possessed all kinds of goods: one speaks of rights when something can be demanded from another who *must and can* respect or satisfy it. Thus, it is not a pre-social human nature, nor a pure human nature understood "in a metaphysical sense", but the position one occupies in a common project that is the basis of rights.[23]

21 A. Cruz Prados, *Ethos y Polis* (Eunsa, 2006), 349.

22 There are those who think that the natural inclination towards a good would make that object a natural right. For example, because I am inclined towards the preservation of life, the food necessary to satisfy this inclination would be my right. This is how Massini or Kalinowski, for example, think. C.I. Massini, *El derecho, los derechos humanos y el valor del derecho* (Abeledo-Perrot, 1987), 212; G. Kalinowski, *Concepto, fundamento y concreción del derecho* (Abeledo-Perrot, 1982), 98.

23 Roland Minnerath, in his study *Natural Law and Human Rights in Catholicism*, shows that part of this confusion can be motivated by a literal interpretation of some writings of the Magisterium of the Church, and he refers, among others, to § 9 of *Pacem in Terris* of John XXIII, where he says: "every man is a person, that is, nature endowed with intelligence and free will, and that, therefore, man has by himself rights and duties, which flow immediately and at the same time from his own nature. These rights and duties are, therefore, universal and inviolable and cannot be renounced on any account whatsoever." R. Minnerath, "Natural Law and Human Rights in Catholicism", in *Natural Law and Human Rights*, T. Angier, I.T. Benson, M.D. Retter eds. (Cambridge University Press, 2023), 227. For his part, one of the Spanish authors best known for his defence of "classical legal realism", Javier Hervada, is misleading when he writes: "Nature, the foundation of natural law, was for Aristotle and St. Thomas, as well as for most of the followers of classical doctrine, nature in the metaphysical sense." J. Hervada, *Historia de la ciencia del derecho natural* (Eunsa, 1987), 262. And it is even more problematic when he writes: "natural law is something objective, a naturally given object of knowledge, which is not dependent more than the pure natural datum; it is knowledge of nature, of the human being, independently of his state or social or political condition, etc." J. Hervada, *Lecciones propedéuticas de filosofía del derecho* (Eunsa, 1992), 539. Nowhere in his extensive work does St. Thomas say that natural law is based on a human nature understood in a metaphysical sense. It is quite another thing if the more general principles of natural law—but not of natural right—are based on the basic common inclinations of the majority of human beings (see T. Aquinas, *Summa Theologiae*, I–II, q. 94, a. 2).

We have just seen that law (all law, whether divine, natural, positive, etc.), according to St. Thomas, is ordination to what is common. The political common good is not only the end of law, but also the raison d'être of rights, of ius (understood as what is just). *We only have the power to demand respect for our things if our possession of such things is also something good for others.* If our rights were strictly individual goods, completely unrelated to the fate of the community, we could not demand duties towards ourselves by virtue of such rights, nor could we ask the state to put its institutions (judges, police, public administration and the like) at the service of our interests.

A right is never a private privilege: it is always a share in the common good—or it is nothing at all.

The very notion of general justice, as understood by Aristotle and St. Thomas, supports this compression of rights: justice is essentially the correct disposition towards the common good and, mediately, towards the good (the right) of a singular person. Particular justice is only a manifestation of general justice, which *is the form of all justice*. General justice is the genus with respect to its species, or rather, as the end with respect to the means.[24]

Before coming to the conclusions, I would like to quote a text written by Alfredo Cruz, which I consider to be of extraordinary importance and depth, and which reveals this intimate relationship between the right of each individual and the common good:

> "It is the relationship to the common good that makes one's rights true rights, for it is that relationship that generates the corresponding obligation in others. What compels us to satisfy another individual's subjective claim? What justifies our having to collectively guarantee—by recognizing it as a right—the fulfillment of an individual's claim to something that he or she considers a good for himself or herself? By virtue of what can a subject compel others to engage in conduct that satisfies his or her particular expectations, needs, and interests?
> The answer to all this cannot be the claimant's own good, as a particular and exclusive good, that is, as the good of another insofar as he or she is *another*. If this were the case, we would fall into complete heteronomy: we would be bound to a good that is completely alien to us, from which we are completely excluded. The link with respect to an alien good can only constitute a form of instrumentalization or coercion. Nor can that answer be found in the particular good of oneself, of the subject who is obliged, since in that case it would not be a genuine obligation, but only a self-interested and instrumental action, a mere strategic and always circumstantial calculation.
> (...) This participation is the right. Therefore, the right is only an authentic right, only accompanied by the corresponding obligation on others, insofar as it constitutes participation in a common good, which corresponds to a particular subject. To attribute to a subject—to every subject—their right is nothing other than to make the common good real: to make it effectively *common*. In other words, it is to make a shareable good—a common good—effectively shared: actualized as a shareable or common good. The mandatory nature of the right—the obligation to attribute and give each person their right—is no different from the obligation to realize the common good."[25]

This constitutive of law towards the common good also allows us to gauge the justice or injustice of the laws,

24 See D. Poole, "Iustitia in se omenm virtutem complectitur", in *Actas del VI Congreso Internacional de Filosofía de la Educación* (Dykinson, 2008), 305–313.

25 Cruz Prados, *Ethos y Polis*, 346.

and to understand that one of the greatest perversity of the ruler is to divide his people by disassociating them from their commitment to a common project

3. Some conclusions

In a telegraphic manner, some conclusions can be drawn from what has been said up to this point.

1. Solidarity is not a requirement different from justice, but is the essence of all justice.
2. Ethics is essentially solidarity.
3. The purpose of positive law is to guarantee a minimum of solidarity, which will be greater or lesser, depending on the real possibilities of each community.
4. According to St. Thomas, every law, including the moral law, is a disposition towards the common good. There is no law of the individual, there is no individual moral law.
5. Modern iusnaturalism, which is at the basis of the philosophy of human rights, is individualistic and unsupportive, because it weakens the sense of responsibility towards the common good.
6. The basic error of modern iusnaturalism is a deficient understanding of human freedom. The multiplication of new contradictory „human rights" is one of the manifestations of the inconsistency of modern iusnaturalism.[26]
7. Understanding rights as individual freedoms independent of common projects leads at best to a „society of tolerance", where individuals coexist. Between such individuals, the relational principle is *respect*, but not *cooperation*.
8. There is a need to broaden the scope of the common. There is no true society where there are no shared goals. Tolerance of difference is celebrated as a social conquest, which is not a bad thing, but often at the cost of gradually reducing the space of commonality, and with this, nations disappear.
9. The less the members of a society have in common, the more government control is necessary to keep them together.

26 The Catholic Church has exalted the UDHR because the contents of the Declaration of 1948 were all acceptable to Christian morality. The *Compendium of the Social Doctrine of the Church* states: "The Magisterium of the Church has not failed to evaluate positively the Universal Declaration of Human Rights, proclaimed by the United Nations on December 10, 1948, which John Paul II has defined "a milestone on the road to the moral progress of humanity" (Speech of John Paul II on October 2, 1979 at UN Headquarters)", *Compendium of the Social Doctrine of the Church*, April 2004, No. 152.
But the recent proliferation of immoral "human rights", also sponsored by the UN, with the same enthusiasm with which it supported the 1948 list of rights, puts the Catholic Church in a very delicate position: on what grounds will it be able to reject the new rights when their foundation remains the same as that which justified the first ones? This is a job to be done. In a way Roland Minnerath addresses this question, but I think he does not answer it satisfactorily. His argument is that the Church's support for the 1948 declaration was also partly motivated by the great danger of Marxist collectivism, and by the rise of personalism among Christian authors.
"This accent on 'individual rights' is explained by the rejection of collectivist ideologies that conceive of right as originating only from the state. It was necessary to counteract those who claim there is no man other than collective man, and that human nature resides in this abstraction. It was necessary to restore to the individual his or her quality of personhood, and thus the individual realization of human nature. Individuals, not the collective, are original bearers of human rights. Behind these formulations lies personalist philosophy. The problem of collectivism was thus resolved, but not that of the notion of subjective right itself. It cannot be emphasised enough that it was John XXIII's encyclical *Pacem in terris* that brought the language of the Catholic Church closer to that of contemporary subjective human rights. Since then, the social discourse of the Magisterium regularly affirms that human rights are derived from the human person. But this formulation surprised many adherents of traditional natural law." Minnerath, "Natural Law and Human Rights", 226.
James Chapel, in this same collective publication, argues with very precise data that the natural law tradition and Christian doctrine in general had little influence on the genesis of human rights. Likewise, Pierre Manett, in his recent book *Natural Law and Human Rights*, originally published in French in 2018, leaves clear evidence of the radical individualism that informs the original doctrine of human rights. For his part, the enthusiastic plea of Francisco Javier Ruiz Bursón *(Los derechos humanos en el Magiserio de la Iglesia*, Fundación San Pablo Andalucía CEU, 2019), in defense of the link between Christian doctrine and that of human rights, is not compatible with the arguments of the most recent historical studies to which we have referred throughout this work.

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