# *Justice and Human Rights: A Gewirthian-Thomistic Perspective*

**ROBERT A. MONTAÑA**
Department of Philosophy,
University of Santo Tomas
ramontana@ust.edu.ph

*Former President of the Philippines Rodrigo Duterte, irritated by questions on the alleged human rights violations of his regime, argued that he is for human lives rather than for human rights. This raises the question as to whether, in some cases, human rights may be violated to save lives. Other issues come into play, such as the supposed suppression of rights by Lee Kuan Yew that paradoxically led to the economic success of Singapore. President Ferdinand R. Marcos Jr., in the Second Summit for Democracy, contrary to his predecessor, vowed to establish a human-rights-based approach to his governance. But how would this be made different from the previous regime? To clarify the interplay of human nature and rights, this article will first expound on the contemporary complexities in the application of human rights by governments utilizing local and international law, exposing the weaknesses of some theories, such as positivism. Second, it would expound on the argument of St. Thomas Aquinas that human rights ought to be founded on justice. Third, an attempt would be made exposing the argument that such a concept can be further enhanced by tracing the necessary implications of agency leading to the Principle of Generic Consistency (PGC) by Alan Gewirth. In other words, it is hoped that obscurities surrounding human nature, agency, and rights could be clarified by considering that justice as a virtue links human rights to the person as its subject whose acts lead to the generic rights of freedom and well-being as universalized for all by the PGC.*

Keywords: Human Rights Law, Justice, Neo-Thomism, Alan Gewirth, Principle of Generic Consistency

**Copyright:**
Online: Asean Citation Index, DOAJ. This work is licensed under the Creative Common Attribution License © 2025. Print: Philippine Copyright © March 2025 San Beda University

**How to cite this article:**
Montaña, R. (2025). Justice and Human Rights: A Gewirthian-Thomistic Perspective. *Scientia - The International Journal on the Liberal Arts,* 14(1), 1–13. https://doi.org/10.57106/scientia.v14i1.193

**Dates:**
Submission: May 6, 2024
Revised: January 25, 2025
Accepted: March 21, 2025
Published(Online): March 31, 2025

**Read online**

Scan this QR code with your smart phone or mobile device to read online

## Is Respect for Human Rights an Expendable Mandate?

The field of rights and its application and protection is one of those paradoxes in political philosophy where universal documentation, enactment, and agreement have not translated to actual implementations; and this has spurred debates, denials, and an abundance of theories as to why human nature seems to be unable to integrate such a basic habit in its system of acts. The presence of conflicts in cases involving human rights law exposes the inadequacies in resorting to literal – and even legal - interpretations of declarations and treaties, giving way to the necessity of delving into the presuppositions and the conceptual structural paradigms that give meaning to rights as foundationally human, first and foremost. Mark Gibney, for instance, raised the complexities involving a decision of the International Court of Justice (ICJ) in 1986 (Nicaragua vs. the United States) when the United States militarily supported the *contras* - the counterrevolutionary group fighting the ruling party *Sandinistas* – in Nicaragua. When the issue was raised about the legal responsibility of the United States for the human rights violations of the *contras*, the ICJ disagreed, arguing the lack of "effective control" by the superior country despite such assistance. Gibney found the decision problematic for two reasons: first, the level of control required for responsibility was set to high, short of an invasion; and second, accountability was treated as a binary concept, an either-or scenario that prevented the consideration of proportionate responsibility for partial control. [1] In Thomistic Ethics, this case falls under indirect volition, where Paul Glenn has integrated responsibility in the presence of foreknowledge and free choice for an act which is *per se* morally wrong – something which is less stringent than the form of effective control required by the ICJ.[2] This issue raised by Gibney is one of the myriads of examples that show the seeming redoubt in legal jurisprudence established by some courts against the integration of morality in the resolution of cases.

In a similar vein, discussing ethics and its relationship with international politics, Luigi Bonanate argues against the idea that ethics is the effect of material progress and interdependence in international relations. He noted that as early as 1648, states had already considered themselves as communities, imbued with sufficient reasons for formulating rules that can reflectively evaluate the values that govern them, eventually possessing the foundational concept of universal morality.[3]

The normative positions expounded by these authors exhibit a linear form of argumentation that extends the idea of the rational choice theory to international dimensions, implying that the moral paradigm operates within its framework. A more comprehensive and in-depth consideration of ethics vis-à-vis philosophy of law, however, ought to view this linearity as severely limiting since it reduces the teleological nature of morality into mere rationalizations. In this paper, it is assumed and

[1] Tackling the effects of such a decision, Gibney explains: "The bottom line is that what really prevails is not state responsibility but state (non) responsibility – or worse, the promotion of state irresponsibility. *Nicaragua* says to countries that international law allows them to get in bed, as it were, with the worst of the worst – and yet (somehow) not bear *any* responsibility for *any* of the crimes and human rights violations that might ensue from doing so." Here, Gibney seems to imply the dangers of jurisprudence that set rationalities against responsibilities by state actors for individual human rights violations. See Mark Gibney, *International Human Rights Law: Returning to Universal Principles, Second Edition,* (Rowman & Littlefield, 2016), 25.

[2] See Paul Glenn, *Ethics: A Class Manual in Moral Philosophy,* (B. Herder Book Co., London, 1930), 14-15.

[3] Bonanate clarifies such interplay: "Values have evidently changed, deriving, in turn, from the success of one power rather than another. What has not changed are the reasons that govern the elaboration of the rules necessary to discuss values themselves – to judge them, compare them, and, ultimately, to counter them. Individuals have joined together into families, families into states, and states into an international community. It is the latter, therefore, which is the subject of *universal morality*, both because it enjoys a material primacy over more limited local (state) normative systems, and because it encompasses the entire planet." See Luigi Bonanate, *Ethics and International Politics,* translated by John Irving, (Polity Press, Great Britain, 1995), 38.

proposed that morality – as it deals with human acts in its generic stature – encompasses all means-to-end structures of life and this includes all modes of enforcement. In other words, morality does not merely serve as a foundation but that it includes law – including international law – in its ambit of influence and control.

While it is easy to academically accept such a position – especially for ideal institutions like universities, foundations, non-government organizations (NGOs), and other cause-oriented groups – political expediency oftentimes mire the black-and-white binary notion of what is right and wrong in government policy implementations. Complexities enter the picture and, oftentimes, officials opine that they have more to consider than ethics in dealing with real-world problems; and this preference, I believe, has sidelined ethics within the confines of solvent opinions with little illocutionary force in most politically-charged boardrooms. Providing an analysis of the development of human rights, Wiktor Osiatynski noted that the powerful states after World War II had historically viewed this concept as a mere concession to weaker ones, also of little priority whenever these would get in the way of national interest, citing domestic jurisdiction and state sovereignty as rational buffers against interference. This isn't surprising because, up until now, state actors adhere to a serial prioritization of domestic concerns over international agenda even if the latter involves such a humanistic pressing concern such as generic rights that emanate from the species itself, adhering more to the idea that the relationship of the state vis-à-vis the individual is that of absolute unity rather than that of a unity of order.

Jacques Maritain, aware of the atrocities of the previous world war, clarified, through the teachings of St. Thomas Aquinas or the Angelic Doctor, that the membership of a person in society emanates primarily from the natural urge to communicate knowledge and love, and only secondarily to fulfill his or her material needs.[4] For this reason, within the purview of the common good of human persons, an attempt must be made to avoid two perspectives: first, a preference towards radical individualism that leads to anarchy; and second, falling to the extremes of totalitarianism where the individual is dissolved in the whole, reducing the person into a mere cog in a machine. This philosophical problem revolves around the metaphysical intricacies between individuals, the collective, and the common. Confusions over these basically overflowed in debates in international law about the statuses of individuals as either subjects or objects, and their rights and obligations in international law especially in abnormal or specialized circumstances such as during wars or when they are temporarily/ permanently stateless. For instance, as early as 1985, the United Nations General Assembly had already adopted the *Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live* which specifically grants the rights to life and security, equality before the courts, freedom of thought, religion and conscience, among others. This document is based on the rationale that rights are universal and that states must adhere to their duty not to discriminate. Despite such enactment, however, we could observe how, even in the United States, Mexican illegal immigrants live in constant fear of deportation, making them vulnerable to abuse and harassment. Recently, due to the rise of terrorism and puritanical

[4] This emanates from the Thomistic notion of personality as distinct from mere individuality. Maritain explains: "Metaphysically considered, personality is, as the Thomistic School rightly asserts, 'subsistence,' the ultimate achievement by which the creative influx seals, within itself, a nature face to face with the whole order of existence so that the existence which it receives is *its own* existence and *its own* perfection. Personality is the subsistence of the spiritual soul communicated to the human composite." See Jacques Maritain, *The Person and the Common Good,* translated by John Fitzgerald, (University of Notre Dame Press, 1966), 40–41.

Islamic fundamentalism, including its sporadic manifestations,[5] Islamophobia continues to rise despite the defeat of ISIS in Marawi and, beyond legal considerations, is victimizing even innocent Muslims who are just willing to live normal lives. This is a far cry from the ideal notion of Maritain when he envisioned the common good as communicative and reflective back to the personhood of society's recipients.

While this paper does not endeavor to provide a resolute paradigm to the enigmatic and dynamic intricacies of ethics vis-à-vis human rights law, it will nonetheless evince the position that grounding universal legal provisions on a superior moral system would greatly enhance not only the rationale of law, but also its pragmatic applications. I argue that clarifying the metaphysical nature of human rights and justice would eventually provide a beacon of moral light whenever legal professionals and policymakers end up losing sight of the ultimate reasons of law when floating in the vast sea of positivistic theories.

## The Thomistic Notion of Right as an Object of Justice

Bridging the political and cultural gap spanning centuries of differences between the Angelic Doctor and contemporary theorists on human rights law is a difficult and academically precarious endeavor. The nuances in transitions of meaning by translations and the introduction of equivocations could easily lead some scholars to the pitfalls of the historical fallacy unless it is recognized that fusions of horizons carry with it the bias of intent. From this perspective, it can be said that when the Angelic Doctor speaks of right – being devoid of the experiences of history covering the awakenings of the Enlightenment and the horrors of the world wars – he wouldn't be including in it the burden of revolutionary and emancipatory theories nor would he have inserted preventive provisions against state abuses; rather, he simply laid down a moral and foundational paradigm by equating the concept of right with "jus" (or "*ius*" in Latin) which makes it "just" (or "*iustum*"). While this may sound linguistically redundant, the Angelic Doctor nonetheless clarifies that right just directs man to a proper relationship with his fellowman ("… *ordinet hominem in his quae sunt ad alterum*"). This relationship is defined in two ways, to wit: first, it denotes equality, adjusting whenever an imbalance occurs; and second, as a form of equality that pertains to others, the perfection of which not only includes the self but also the self-in-relation-to-another. Because of the latter, justice is provided with a special object as compared to other virtues, this being what is just or right. The Angelic Doctor, illustrating this, gives a direct example of such equality when a man, who has rendered service, is paid what is due him. Equality, in this sense, could further be effectuated naturally – where nature establishes the balance – or through private and public agreements, giving way to both natural and positive rights.

From this, the Angelic Doctor posits the distinction between natural rights and the right of nations *("ius gentium")*.[6] Dealing with the

[5] The manifestations of this puritanical perspective, as it spreads around the globe, can be considered, in terms of Edward Said, as a traveling theory. In his *Traveling Theory*, he argued that the radical form of defiance that accompanies theories is weakened as the critical consciousness is dulled by the conceptual walls created around it during assimilation. However, in his later work *Traveling Theory Reconsidered*, he opened up the possibility of this radicalism being restored whenever certain political and social conditions are present. With the rise and fall of the Islamic State of Iraq and Syria (ISIS), the Israel-Hamas War, including the continued radicalization of some Muslims in the Philippines, Indonesia, and Malaysia, it appears that certain conditions such as neglect and repression have contributed to this revitalization. If the interpretation of Said is to be followed, then these governments must go beyond military solutions to solve this problem. See Edward Said, "Traveling Theory," *The Edward Said Reader,* edited by Moustafa Bayoumi and Andrew Rubin, (Vantage Books, New York, 2000), 195–217.

[6] Explaining the etymology of the word, Luther Mcdougal III avers: "Since the seventeenth century, the phrase *ius gentium* has been employed to denote the law of nations or 'public' international law. But the phrase was not so employed during the Roman Empire. *Ius*

contention that slavery is both a natural right and a right belonging to the right of nations, he clarifies that, absolutely, such a relationship is natural only in the sense of some resultant utility *("utilitatem consequentem").* This distinction, albeit conceptual, is crucial because by setting a rationalized parameter to this relation, the Angelic Doctor has required utilitarian justifications in the treatment of slaves – something which would be conspicuously absent in theories positing slavery as absolutely natural.[7] For instance, as regards the question of whether a slave can marry without his master's consent, he argued that since slavery belongs to positive law – something superadded to nature – and marriage is founded on the natural inclination for procreation, then such consent is not necessary. Even though the Angelic Doctor has allowed masters to strike slaves for corrective purposes in the same way as parents discipline their children, he nonetheless limited this prerogative by disallowing the act of maiming them.

While it is not exemplary that the Angelic Doctor has allowed slavery, anathema to present-day standards, he nonetheless paved the path for the ideals of human self-determination and, consequently, to possess the right to development. His utilitarian considerations would basically reduce his adherence to slavery to a temporary and contingent policy based on the political, economic, cultural, and social conditions of any time under consideration. As can be seen in today's standards, and with the Universal Declaration of Human Rights prohibition of any form of slavery or servitude or the slave trade, and the network of services employment can provide, the utilitarian justifications for the master-slave relations existing during the time of the Angelic Doctor are no longer present. For reasons like these, it can be said that Thomism runs counter to dogmatic and statist paradigms as it opens up avenues for historical adaptations, especially in issues pertaining to rights and justice.

After clarifying the concept of right, the Angelic Doctor defines justice as "the perpetual and constant will to render to each one his right."[8] This definition exposes that, even during the Medieval Period, justice was already considered as being founded on the permanency of the human will to establish the proper order in his relationship with others, setting justice as a convergence of man's subjective adherence to virtue and the establishment of balance in his moral relation with his fellowmen.[9] This is

*gentium* was a body of law initially developed by the *praetor peregrinus* to resolve disputes between foreigners or between a foreigner and a Roman citizen… *Ius gentium* thus was originally what is now commonly called 'private' international law." However, for the Angelic Doctor, this concept cannot be understood without reference to generic human law by virtue of natural law. See McDougal III, L.L., "Private International Law: Ius Gentium Versus Choice of Law Rules or Approaches," *Am. J. Comp. L., 38*, 1990, 521.

[7] Paul Sigmund presents this position as the Angelic Doctor's attempt at reconciliation of two authoritative positions: "The most striking difference from modern liberalism is Aquinas's treatment of slavery. Here he is attempting to reconcile two conflicting traditions. On the one hand, Aristotle (in Book I, Chapter 5, of the *Politics*) argued that the enslavement of those who are incapable of living a moral life is justified by nature. On the other hand, the Fathers of the Church wrote that all men are equal by nature and viewed slavery as a consequence of sin. Aquinas's answer is to refer to Aristotle's argument, to describe slavery as an 'addition' to the natural law 'that has been found to be convenient both for the master and the slave,' and to limit the master's rights over his slave in the areas of private and family life as well as the right to subsistence." See Paul E. Sigmund, "Law and Politics," *The Cambridge Companion to Aquinas,* edited by Norman Kretzmann and Eleonore Stump, (Cambridge University Press, USA, 1993).

[8] As may be distinguished from the legal and positivist views on justice, the Angelic Doctor associates this concept with the permanency found in virtues. He explains: "For since every virtue is a habit that is the principle of a good act, virtue must be defined by means of the good act bearing on the matter proper to that virtue. Now the proper matter of justice consists of those things that belong to our intercourse with other men…" and "Now, in order that an act bearing upon any matter whatever be virtuous, it requires to be voluntary, stable, and firm, because the Philosopher says (Ethic. ii, 4) that for an act to be virtuous it needs, first of all, to be done 'knowingly,' secondly to be done 'by choice,' and 'for a due end,' thirdly to be done 'immovably." Here we could deduce that, for the Angelic Doctor, the operational circumstances surrounding justice must be rooted in the moral stature of the human person – something which requires an adherence of that person to a standard higher than positive law. See *Summa Theologiae* IIaIIae. 58. 1c.

[9] Interpreting a concept from a different historical epoch must, however, take note of the differences in paradigms of thought compared to its contemporary equivocal term. In discussing the relationship between man and state, Jacques Maritain exposes this: "As I just put it, the historical climate of modern civilization, in contradistinction to medieval civilization, is characterized by the fact that it is a 'lay' or 'secular,' not a 'sacral' civilization… On the other hand, the root requirement for a sound mutual cooperation between the Church and the body politic is not the unity of a religio-political body, as the *Respublica Christiana* of the Middle Ages was, but the very unity of the human person, simultaneously a member of the body politic and of the Church, if he freely adheres to her." See Jacques Maritain, "The Rights of Man; Church and State," *St. Thomas Aquinas on Politics and Ethics,* edited by Paul E. Sigmund, (Norton and Company, New York, 1988), 173.

a teleological position that is not a conceptual product merely by the elimination of factors in the same way as Herbert Lionel Adolphus Hart has viewed the dogmatic assertion that international law is moral in aspects that are not backed up by threats. He correctly concludes that an expanded view of morality in this negative sense would create a concept where even the rules of games, clubs, and etiquette would be included, rendering such practically useless.[10]

We could more succinctly fathom the distinction between Thomism and this latter view when we take into consideration the reasons propounded by the Angelic Doctor when he tackled the question of whether justice is a general virtue. He averred that justice directs man both to his relationship with others in particular and others in general, the latter being directed to a common good. In this sense, justice ensures harmony with the law as it renders order of virtues towards this good. Hence, morality understood in this sense cannot simply be equated to personal relations that govern rules of games, clubs, and etiquette; rather, the transactional periphery emanating from this extends towards the larger social, cultural, and political governance, encompassing the scope of global justice. Insofar as justice is directed towards the common good – which is superior to the individual good – and because its praiseworthiness is educed from the virtuous person's relation with the other, being founded on the rational appetite, the Angelic Doctor has affirmed the superiority of justice over the other moral virtues.

Justice, in this sense for the Angelic Doctor, depends on the relation between one part to other parts (commutative) and between the part to the whole (distributive), with the former utilizing arithmetical proportion and the latter, geometrical proportion. Thus, in person-to-person transactions, commutative justice ensures a state of quantitative equality while in a person-to-state reciprocal relationship, distributive justice establishes geometrics by establishing a proportion based on prominence – which is dependent on what the government deems appropriate such as virtue, wealth, liberty and the like. When such structure is established, a law that is created for the common good is enacted and thus legal justice is constituted.

With the other moral virtues dealing with passions, thereby having a rational mean where the comparison is gauged on the virtuous man himself, the Angelic Doctor averred that justice, on the other hand, is based on the real mean where the measure is founded on a real proportion of equality between persons and things. This position solidly grounds justice well within the confines of realism as it establishes moral objectivity in its determination. It also avoids the excesses and dangers of severity where a fundamentalist and ideal interpretation of legal provisions is sometimes irrationally applied to the detriment of the spirit of the law, reversing the original intent of its framers.

Consistent with this perspective, law is viewed by Thomism as working within the parameters of *epikeia* or equity – similarly a virtue and is an integral part of justice – although, in some cases, it prioritizes the application of justice over and above the strict implementation of legal provisions. From this, it can be surmised that realism pierces through the distinction between the ideals of law and the practical or even pragmatic implications of contingent singulars.

[10] Despite the use of moral exhortations in international law, H.L.A. Hart placed a strict wedge between law and morality: "In the particular case of international law there are a number of different reasons for resisting the classification of its rules as 'morality'. The first is that states often reproach each other for immoral conduct or praise themselves or others for living up to the standard of international morality. No doubt *one* of the virtues which states may show or fail to show is that of abiding by international law, but that does not mean that that law is morality." See H.L.A. Hart, *The Concept of Law (2nd Edition)*, (Clarendon Press, Oxford, 1961), 228.

This nature of *epikeia* makes it – at first glance – a rebellious concept because it prioritizes the ends of justice over a literal and strict interpretation of provisions, such as not returning a weapon to its owner while in a state of madness. Yet it ought to be noted that prioritization in Thomism is dependent on holistic metaphysical statuses and relations that go beyond a blind adherence to parcels of reality.

This, I construe, is the weakness of empirical and positivist interpretations of law since such theories undermine the moral underpinnings of statutory construction, leading some contemporary philosophers of law to posit that legal interpretation carries with it some form of moral imperative. Thus, despite the apprehensions of some theorists in applying traditional notions of natural law to contemporary legal problems,[11] it can nonetheless be argued that Thomism continues to provide a fundamentally clear framework that can provide a sound and rational basis for legal interpretation.

The issues surrounding the principles established by the Angelic Doctor as regards right, justice, and equity can be applied, for instance, in Ronald Dworkin's analysis of a case on reverse discrimination. The facts of this case revolve around the two admissions programs of the Medical School of the University of California, handled by the full and the special admissions committees. With an entering class of 100 students, the regular admissions program would utilize standard bases – such as admissions tests, letters of recommendation, and extracurricular activities – for the benchmark scores of the applicants. The special admissions program, on the other hand, catered to those who considered themselves as economically/ educationally disadvantaged or as persons belonging to minority groups. While these disadvantaged applicants are rated normally, they were neither required to meet the grade point cutoff nor ranked against their counterparts. This latter program would continue to recommend until their quota of 16 is met.

With this system in place, Allan Bakke applied for a slot and was processed under regular admissions with a strong benchmark score. Having submitted his application late, such was rejected as other applicants already received under the same process received higher scores. In the special program, however, some applicants who were disadvantaged or belonged to minorities were received despite having a lower benchmark score compared to Bakke. Sensing that he was rejected because of his race – which paradoxically is not supposed to be disadvantaged – he filed a case against the school for violating his rights to equal protection under the laws of California. Deliberating on these issues, the California Supreme Court ordered the admission of Bakke and ruled that the special admissions program violated their laws on equal protection. After an appeal was made to the US Supreme Court, it upheld the admission of Bakke but allowed the consideration of race in its future admission programs.

Ronald Dworkin agreed with Archibald Cox of the Harvard Law School who spoke for the University of California and argued for the need for affirmative action programs to correct imbalances, for instance, in the number of black doctors. Both disagreed with the California Supreme Court's recommendation to attempt to pursue such programs utilizing programs that do not take race into consideration, with Dworkin calling such a recommendation hypocritical due

[11] One such philosopher is Kai Nielsen who argued thus: "The natural moral law theory only makes sense in terms of an acceptance of medieval physics and cosmology. If we give up the view that the universe is purposive and that all motions are just so many attempts to reach the changeless, we must give up natural moral law theories." See Kai Nielsen, "An Examination of the Thomistic Theory of Natural Moral Law," *St. Thomas Aquinas on Politics and Ethics*, 1988, 212.

to the simple fact that it is impossible in actual terms.

In dealing with the argument that Bakke has rights that supersede the ideals of affirmative action, Dworkin, with intellectual acuity, noted that the principle which he relied on - i.e. that no one ought to suffer by being a member of a group which is not worthy of respect – is the very same principle that supports affirmative action itself. The other slogans utilized by Bakke and agreed upon by the California Court, such as that he should be judged individually or by merit, were ultimately shown by Dworkin to be vague since one's race is just one of the myriad of other factors that differentiate people from one another and, for this reason, any judgment that disregards one criterion could be used as well to strike down another criterion, and vice-versa. This makes any judgment by merit or individuality basically abstract, vague, and arbitrary.[12]

In justifying its decision to allow race to be used as a criterion for future admissions, the US Supreme Court distinguished between suspect classifications that disadvantage minorities and those benign categories that benefit the disadvantaged and accommodate the goals of government. Although this may be quite problematic in future cases due to the arbitrariness in classifications, Dworkin insists that this distinction is morally significant. Elsewhere, in a subsequent book, he argued for a moral reading of the American Constitution.[13]

The fundamental contribution of Dworkin's position and analysis of the Bakke case revolves around the recognition of morality as a basis for interpreting laws, specifically the constitution. I argue that Dworkin's position is an affirmation of the basic tenet of the Angelic Doctor's exposition of the nature and application of justice, making the latter relevant or even pedagogically necessary even in the contemporary specifications of cases.[14] His insistence, for instance, on Bakke respecting the measures to eradicate racial injustice even though that its existence is not his fault exposes an adherence to the Thomistic idea that justice is a constant will to give everyone what is due them and that his commutative concerns must be implemented with distributive justice in sight.

In this specific example and analysis, we could surmise that the confluence of contemporary factors in legal determination does not really stray from the necessity of establishing the moral fundamentals of legal structures. It is the position of this paper that such rational foundationalism can be clearly seen in the argument presented by Alan Gewirth as regards the progression from action to the Principle of Generic Consistency (PGC). It further contends that once the PGC is integrated with the teachings of the Angelic Doctor on the nature and application of justice, this fusion could serve as a stable structure from which many conflicts of rights could be resolved.

---

12 Just like any other applicant who was rejected, Dworkin espoused sympathy for Bakke. Nonetheless, there are other more universal and pressing considerations: "Each is disappointed because places in medical schools are scarce resources and must be used to provide what the more general society most needs. It is not Bakke's fault that racial justice is now a special need – but he has no right to prevent the most effective measures of securing that justice from being used." See Ronald Dworkin, *A Matter of Principle*, (Harvard University Press, Cambridge, Massachusetts, 1985), 303.

13 Dworkin explains that this moral reading is a part of the process of interpretation: "Most contemporary constitutions declare individual rights against the government in very broad and abstract language, like the First Amendment of the United States Constitution, which provides that Congress shall make no law abridging 'the freedom of speech.' The moral reading proposes that we all – judges, lawyers, citizens – interpret and apply these abstract clauses on the understanding that they invoke moral principles about political decency and justice." See Ronald Dworkin, *The Moral Reading of the American Constitution*, (Harvard University Press, Cambridge, Massachusetts, 1996), 2.

14 In a public conversation with John Finnis at the University of Toledo College of Law in 2016, the legal philosopher noted the evolution of legal positivism from strict adherence to neutrality from morality to an adherence to the idea that the philosophy of law is broader than positive law. While this does not indicate a paradigm shift to natural law theory, I would interpret this as a positive assertion of the rationality that supports the Thomistic position.

## Human Right as a Necessary Implication of Action

The major contribution of the Gewirthian argument is the establishment of the conceptual link between action and the PGC as the supreme moral principle that mandates that agents must act in accord with the generic rights of their recipients as well as of themselves. This is done by one's reason – acting minimally and deductively – affirming the entailments of action understood in its generic sense. He begins by explaining that action has features that are common to all: voluntariness which can be construed as the agent's freedom and purposiveness which constitutes his well-being.

In gist, Gewirth argues that the agent who engages in action, with its generic features of freedom and well-being, should reasonably accept three entailments, namely: first, he makes an evaluative judgment about the necessary goodness of his freedom and well-being; second, his reason moves to accept from this evaluation the deontic judgment that he claims a right to these generic features, leading to what he termed as "generic rights"; and third, he applies the Principle of Generalizability[15] that all the other prospective purposive agents have similar rights. The first entailment where the agent imputes value to action and its generic features would lead to the consideration of the latter as *generic goods*. The second entailment as justificatory becomes now the agent's *generic rights to freedom and well-being*. This third entailment – with the agent logically recognizing the generic rights of other prospective purposive agents and his duty at least not to interfere with the pursuit of others to achieve their freedom and well-being – comprises the formulation of the Principle of Generic Consistency: *Act in accord with the generic rights of your recipients as well as of yourself*. The foundational structure of the PGC was subsequently applied both by Gewirth and other scholars to the various simple to complex ethical and legal problems facing the contemporary world. Thus, it not only clarified the link between ethics in terms of action and respect for human rights, but it also created a rationalist foundation of these rights by introducing an interactive paradigm of correlative rights and duties among agents. Conflicts of rights, such as the Bakke case, would be resolved by understanding the nature of rights held on by each party, establishing their duties to each other, and resolving each conflict in accord with the kind of freedom or well-being being defended by each, prioritized based on how fundamental these claims are.

Hypothetically, the PGC would confirm the right of schools to achieve their goals - especially noble ones such as integrating affirmative action in their policies - affirming at the same time the constitutional rights of Bakke. Concurrently, however, is the strict duty of the parties to respect each other's claim to their generic rights to freedom and well-being which, in this case, is Bakke's duty to allow his school to determine their policies and the school's duty to refrain from letting their policies hinder Bakke's right to self-determination as long as he meets the rational criteria of schools. As can be observed, it is in the justifications of these criteria that Dworkin found problematic; yet even with the anticipated problems he saw in future court determinations of similar problems, it can be surmised that the US Supreme Court inadvertently utilized the requirements posed by the PGC, including the illocutionary force needed for its mandatory imperatives.

[15] Gewirth defines this principle in this way: "The logical principle of universalizability is given a deontic or moral application by interpreting the predicate P in the above pattern as a deontic or moral predicate. It may then be formulated, among other ways, as follows: if one person S has a certain right because he has quality Q (where the 'because,' as before, is that of sufficient condition, now understood as justificatory), then all persons who have Q must have such a right." See Alan Gewirth, *Reason and Morality,* (The University of Chicago Press, Chicago and London, 1978), 106.

One difference between the Angelic Doctor's concept of right as an object of justice and the Gewirthian formulation of universalized commitment to act in accord with every agent's generic right is that the former emanates from an objective affirmation of natural law as determining the real relations of things while the latter draws out its imperative from the implications and universalization of one's rational processes as it assesses the necessary entailments of action. While Gewirth himself, including subsequent scholars on the PGC, have placed the objectivity of this principle upon the reality of action and its generic features, I take the position that establishing the extent of one's right upon the proportional extent of one's agency disregards certain metaphysical relations that could serve as the substantial bases for rights.

Thus, when Gewirth took the position that in cases of conflicts between the generic right of the mother as against the fetus in her womb, her rights could take precedence,[16] I would construe this as limiting the rights of that fetus to its capacity for agency – something which disregards metaphysical issues such as the subject of being (*ens*), the act of being (*esse*), and the essence of this fetus as the bases of its rights. This is the same pitfall where the arguments of Peter Singer fell when he questioned the notion that a fetus is a human being for the reason that it does not exhibit the rationality and self-consciousness of a fully formed human.[17] This too disregards the substantiality in the fetus that serves as a cause for functions that merely manifest humanity, not determine it. Hence, the lack of these manifestations does not logically lead to the absence of humanity; on the contrary, the presence of human potentialities fundamentally signifies that the fetus is already human.

Yet courts of law merely consult philosophical theories alongside other academic disciplines from the viewpoint of positivism, believing that such perspective places them in an objective position. Ideally, the *Universal Declaration of Human Rights* has declared in Article 3 that "Everyone has the right to life, liberty and security of person" while the *International Covenant on Civil and Political Rights* recognizes in Article 6 that "Every human being has the inherent right to life." Confusion on the essence of a fetus and the insertion of other corollary and parallel rights such as the right to privacy and appropriate health care for women would, in some instances, conflict with the idea that the life of a fetus ought to be absolutely protected. In Roe vs. Wade, the US Supreme Court argued that Texas cannot utilize one of the theories of life in order to override the rights to privacy of a pregnant woman; on the other hand, with the preservation and protection of maternal health as a basis, it has pinpointed the end of the first trimester as the *compelling point* whereby the physician in consultation with the patient can terminate the pregnancy without state interference. Paradoxically, 33 years later, the primary beneficiary and plaintiff of this case, Norma McCorvey, requested the court to overturn its decision, arguing that recent technology has revealed that life begins at conception. If the current Trump administration

16 Consider Alan Gewirth's explanation: "The fetus, of course, lacks the abilities, except in a remotely potential form. In addition, it also lacks any purposes of even the most rudimentary sort, because of its lack of any physically separate existence and of even an initial acquisition of memories. Hence, its generic rights, by comparison with the rights of its mother, are minimal." Here we could see those exclusions of metaphysical concepts such as the cause and effect relationships between essence and nature, and substance and accidents could lead to the disregard of the reasons why potentialities exist in the first place. See Alan Gewirth, *Reason and Morality*, 142.

17 Peter Singer's position is clear: "We can now look at the fetus for what it is – the actual characteristics it possesses – and can value its life on the same scale as the lives of beings with similar characteristics who are not members of our species… For on any fair comparison of morally relevant characteristics, like rationality, self-consciousness, awareness, autonomy, pleasure and pain, and so on, the calf, the pig, and the much-derided chicken come out well ahead of the fetus at any stage of pregnancy – while if we make the comparison with a fetus of less than three months, a fish would show more signs of consciousness." See Peter Singer, *Practical Ethics, 2nd Edition*, (Cambridge University Press, New York, 1993), 150-151.

would make good its promise to appoint judges who would overturn the resolutions of this case, it would have to re-assess the metaphysical basis of human life regardless of whether science supports it or not, else it would be confined to a validation process dependent and limited to observable phenomena.

While Gewirth and Singer stood by the same moral redoubt as regards the extent of human value vis-à-vis capacities, the Gewirthian emphasis on the entailments of agency nonetheless provides a more stable foundation for positing rights in the universal sense. The emphasis by Gewirth on establishing logical consistency as regards the entailment of action, however, has weakened the role of essence and nature as the basis of rights – something which realism can fill in.[18] Hence, for these and other reasons, I argue that integrating Thomistic realism as regards justice with the Gewirthian dialectically necessary method would provide a more holistic determination of the humanity in the fetus which would consequently allow its developing nature to substantiate its generic rights. The ennoblement by Thomistic realism of the Gewirthian methodology could thus lead to an objective justification of local and international laws governing not only the right to life but also the right to self-determination and development.

18 This position of Gewirth can be seen in his argument: "One difficulty with the attempt to derive human rights from such inherent dignity is that the two expressions, 'A has human rights' and 'A has inherent dignity,' may seem to be equivalent so that the latter simply reduplicates the former… If, however, the two expressions are thus equivalent in meaning, the attribution of dignity adds nothing substantial to the attribution of rights, and someone who is doubtful about the latter attribution will be equally doubtful about the former. Thus, the argument for rights based on inherent dignity, so far, does not satisfy the requirement of noncircularity." From the point of view of Thomism, however, dignity is "absolute and pertains to the essence," and from this we could deduce that, for the Angelic Doctor, right does not emanate from dignity; rather, both emanate from the person as a rational *supposit*. While both philosophers agreed that the argument is *non sequitur*, they substantially differ as to why it is so. See Alan Gewirth, *Human Rights,* (The University of Chicago Press, London and Chicago, 1982), 28; and *Summa Theologiae Ia. 42. 4. ad2.*

While the right to life is a prerequisite to the realization of other rights, the right to self-determination and development that follows from this is necessary for a quality life that is commensurate to human dignity. This right, from the Gewirthian perspective, emanates from voluntariness or freedom as a generic feature of action. Adhering to the moral mandate by the PGC to respect or at least not to interfere with the freedom and well-being of agents becomes complicated when this right conflicts with state interests – such, for instance, in mandatory military conscriptions. One such case revolves around Cassius Marsellus Clay (otherwise known as Muhammad Ali), who, for being a Muslim, refused to be inducted into military service to fight in the Vietnam war because it was against his religious belief. To qualify as a conscientious objector, a person must be opposed to war in any form, that it must be based on religious training and belief, and that he must be sincere. Upon such petition, the Department of Justice advised denial, and thereupon the Appeals Board denied it without providing reasons, requiring Clay to report for induction. Upon his refusal to do so, he was subsequently convicted. The US Supreme Court, resolving this case (Clay vs. United States), decided that the error of law by the department in not providing the grounds for denial warrants the reversal of their decision.

This methodological process by the US Supreme Court setting up justificatory requirements in resolving individual applications of law reflects the Gewirthian argument that seeks to ground all legal resolutions to the PGC since the supreme moral principle is based on the necessary entailments of action and its generic features. Gewirth, in dealing with issues where individual rights conflict with political or state rights, would consider this as an element of distributive justice - in the sense of providing equality of generic rights - arguing that ethical

individualism must be both egalitarian and constitutive of correlative duties that establishes restrictions in the exercise of freedom.

The whole application of the PGC covers direct applications of individual agents in non-institutional situations and indirect applications covering actions vis-à-vis social rules and institutions. Gewirth avers that insofar as the latter is justified by the PGC, it takes precedence over direct applications, further clarifying that in order for such to be justified, it must be minimal, supportive, and democratic. Hence, with these qualifications, obligations on the part of individuals are regulated by the PGC inasmuch as the state or political instrument protects the generic rights of all its citizens under its territorial jurisdiction.

For these reasons, Gewirth prefers voluntary service rather than involuntary military conscription because the latter requires the inductee to not only give up certain aspects of his freedom and well-being but in some circumstances, also his life. However, with the priorities mentioned above, including justifications by the PGC, military conscription can be morally applied when there is no other way by which the state or its instrumentalities could protect the equality of generic rights. This places conscription within the purview of reasonable justification without which the PGC would not allow restrictions to freedom and well-being which such a principle mandates with strong illocutionary force.

The complexities of contemporary legal cases and the jurisprudence upon which these are founded were not within the purview of the Angelic Doctor when he tackled issues on justice. He, nonetheless, laid the conceptual foundation of morality and law by clarifying that the force of law is dependent on the extent of justice, and that any deflection from the law of nature functioning as the first rule of reason would lead law to lose its force, effectively relegating it as a mere perversion of law. He further clarified that men who are subject to a higher law ought to obey a lower law only insofar as it does not conflict with the former.[19] Hence, in Thomistic terms, if one's conscience is in accord with synderesis and man's ultimate end, this moral foundation would constitute a higher authority upon which even the affairs and end of the state would be subservient.

Gewirth, in specifically dealing with the position of the selective conscientious objector in not inducting himself to fight some wars which he finds immoral, establishes the position that if the war is morally wrong, then such a person ought to be exempted; and that if the war is morally right but is believed to be wrong by the objector, then he still ought to be exempted but can be required alternative services.[20] With these considerations, he espoused that the objector's convictions be gauged on validity and justification.

## Some Additional Reflections

As can be gleaned from the discussions above, differences by which contemporary Thomists and Gewirthian scholars would approach specific legal issues on human rights can be traced upon the emphasis of the former on establishing harmony between eternal, natural, and human laws, and the latter's mandate to maintain consistency between the requirements of acting in accord with one's own generic rights and that

[19] See *Summa Theologiae Ia-IIae. 95. 2c.* and *96. 5c.*

[20] Gewirth, nonetheless, is aware of the role of conscience yet is wary of its possibility of being in a state of error: "Note, then, that I am not ascribing absolute value to conscience, since its content may be morally wrong in a very drastic way. But the effective freedom of the depth of feeling and belief which it represents is a value which deserves respect if that respect can be given without endangering policies and institutions which are morally right." See Alan Gewirth, "The Claims of the Selective Conscientious Objector," *Human Rights,* 357.

of others. The latter, however, limiting itself to the implications of what can be claimed, would exclude anything outside this linear justificatory process. Examples of this exclusion would cover substantive rights of undeveloped and developing human beings or the preservation of natural orders beyond the considerations of well-being. Hence, the broader form of realism as espoused by Thomism could not only complement but enhance the application of the PGC beyond man's interests and needs.

Thus, when human right is conceived primarily as foundationally based on justice and equity, then it becomes an expression of an ordered relation between man and his fellow, making such an essential component of human life. It would be impossible to be a staunch defender of human life without uplifting justice and equity that governs its relations. The vitality of this human life has further been established by the PGC as exhibiting freedom and well-being as necessary features, and when these are claimed, these become the agent's generic rights.

Thomistic ethics and the PGC could thus conceptually establish that human lives necessarily entail human rights, founded on justice and equity, having the basic mandate for everyone to respect freedom and to uphold the well-being of others.

## References


Bonanate, L. (1995). Ethics and International Politics (J. Irving, Trans.). Polity Press.

Dworkin, R. (1997). Freedom's law: the moral reading of the American constitution. Harvard University Press.

Dworkin, R. M. (1985). A matter of principle. Harvard University Press.

Gewirth, A. (1978). Reason and morality. University Of Chicago Press.

Gewirth, A. (1982). Human Rights. The University of Chicago Press.

Gibney, M. (2016). International human rights law: Returning to universal principles (2nd ed.). Rowman & Littlefield.

Glenn, P. J. (1930). Ethics; a Class Manual in Moral Philosophy, by Paul J. Glenn. B. Herder Book Co.

Lionel, H. (1961). The Concept of Law (2nd ed.). Clarendon Press.

Maritain, J. (1966). The Person and the Common Good (J. Fitzgerald, Trans.). University of Notre Dame Pess.

Maritain, J. (1988). "The Rights of Man; Church and State," St. Thomas Aquinas on Politics and Ethics (P. E. Sigmund, Ed.). Norton and Company.

McDougal III, L. L. (1990). "Private International Law: Ius Gentium Versus Choice of Law Rules or Approaches." Am. J. Comp. L.

Nielsen, K. (1988). An Examination of the Thomistic Theory of Natural Moral Law. St. Thomas Aquinas on Politics and Ethics.

Said, E. (2000). "Traveling Theory" . The Edward Said Reader , edited by Moustafa Bayoumi and Andrew Rubin.

Sigmund, P. (1993). "Law and Politics,." The Cambridge Companion to Aquinas edited by Norman Kretzmann and Eleonore Stump.

Singer, P. (1993). Practical Ethics (2nd ed.). Cambridge University Press.

Thomas, A. (1947). The Summa Theologica (the Fathers of the English Dominican Province, Trans.; Benziger Bros).