

REPLY TO GOTTFRIED

Frank van Dun*

I have few and then only minor quarrels with Prof. Gottfried's remarks.¹ Indeed, they would be pertinent criticisms *if* they were directed at positions that I had stated explicitly or implied unambiguously in my paper on human rights. However, I certainly did not intend to defend the positions Gottfried ascribes to me, and I find no evidence that I inadvertently did so. His comments are, therefore, a criticism of a paper I have not, and do not wish I had, written.

The reader is reminded that the argumentative framework of my paper was set by Hans Crombag's interpretation of the present doctrine of human rights as a sympathetic but naïve legacy of the classical theory of natural law. It is Crombag's view—one that is shared by many positivists like him—that that theory is basically the same whether it is presented by an Aristotle, a Thomas Aquinas, or a John Locke. It is not my view.

Indeed, as I wrote in the paper, I did “not intend to add to or comment on the long debate . . . on the relationship between the classical theories of natural law (in the tradition of Saint Thomas) and natural rights (the Lockean tradition).” For my purpose, it was enough to argue that the present doctrine of human rights fits a Hobbesian view of human beings and their relationships, but does not fit either a Lockean or a Thomistic or an Aristotelian view of those things. It was not necessary—indeed it would have been false—to argue that the latter authors share the same view. Moreover, the crux of my argument was to note the conceptual and logical differences between “natural rights” and “rights to.” It does not depend on any claim concerning who influenced whom.

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¹Paul Gottfried, “Locke, Hobbes, and the UD: Comment on Van Dun,” *Journal of Libertarian Studies* 16, no. 3 (Summer 2002), pp. 83–87.

That being said, let me reply briefly to Prof. Gottfried's remarks and criticisms in the order that he makes them. He writes that Allan Carlson has "demonstrated exhaustively" that the Universal Declaration is full of neo-Thomist ideas. However, it has been demonstrated that it is also full of other ideas, e.g., socialist, syndicalist, and democratic.² As I wrote in the paper, without elaborating the point, "[i]n truth, the UD was a political compromise." I added that "[w]hatever the actual history of its drafting, . . . the whole document has come to be seen as a statement of a coherent doctrine of human rights." *Pace* Carlson perhaps, it is beyond dispute that the cohesion of that doctrine is *not* provided by a Maronite or Catholic neo-Thomist framework. Gottfried's statement that "[i]f the UD points in any direction, it is . . . toward a neo-medieval view of society," I can only regard as fanciful.

As for the "corporatist" character of the UD, it is necessary to distinguish between the nineteenth century neo-Thomist corporatism, which was neo-medieval and in fact directed against the notion of the absolute sovereignty of the legislative power of the liberal bourgeois state in the French style, and the corporatism of the Interbellum. The latter type of corporatism was not neo-medieval. On the one hand, it was an attempt to free government (the executive power) from parliamentary control and the vicissitudes of party politics (in its dominant manifestations in Southern Europe, e.g., in Portugal and Italy). On the other hand, it was an attempt to overcome the crisis of legitimacy of the democratic state without giving up its framework of formal democracy. This was achieved by accommodating powerful organised pressure groups into the processes of making, implementing, and revising policies (in its dominant manifestations in Western and Northern Europe, e.g., in the Netherlands, Belgium, France and Sweden). It was the latter Interbellum-variant (which, after the war, developed into variants of the welfare state) that entered into the modern human rights doctrine, not the nineteenth century neo-medieval variant.

Prof. Gottfried writes that there is no reason to presuppose a critical continuity between Aristotelian natural law and Lockean natural right. I agree. As I stated above, my argument was that there is no continuity between the present doctrine of human rights and either Locke or Aquinas. Surely, that argument does not commit me to the position Gottfried ascribes to me, that there is continuity between Saint Thomas (let alone Aristotle) and Locke.

²See, e.g., Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999).

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Gottfried finds it necessary to remind us that “ethical prescriptions and moral imperatives” are about different things than “the right to be left alone.” Again, I agree, but apparently Gottfried did not pick up the point I made when I said that “[n]o doubt, the Aristotelian–Thomistic ‘natural law theory’ belongs rather to moral philosophy (‘ethics’) than to the philosophy of law.” At any rate, he did not connect that remark to my clarification about the concept of law in footnote 15.

According to Gottfried, I make “too much of the fact that Hobbes explicitly attacks Aristotle in *Leviathan*.” He also writes that I make Locke “appear as a traditional political theorist who quotes Aristotelians to undergird his natural rights arguments.” I cannot find any targets for these remarks in my text, and Gottfried does not identify them. I do not doubt that both Hobbes and Locke can be described as theorists of individualism. In such a classification, they are both in opposition to Aristotelian and Thomist views on society. However, it does not follow that Hobbes’s individualism is of the same kind as Locke’s, nor does it follow that Hobbes’s natural right is of the same kind as Locke’s.

Gottfried suggests that I “scurry around for evidence that Locke, the political theorist, was a latter-day Aristotle or Aquinas.” That was not my intention, and, to be honest, I cannot find any basis for that charge in my text. To repeat, I did criticise Crombag for maintaining that modern human rights are a legacy of the tradition of natural law and natural rights (which for him does encompass Aristotle, Aquinas, Locke, and many others, but not Hobbes). It is, however, a mistake to read my criticism of that claim as an endorsement of Crombag’s (and most legal positivists’) assumption that everything that goes under the name of natural law or natural rights is basically the same thing.

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