International Law Clients: The Wisdom of Natural Law

Robert John Araujo

Copyright ©2000 by the authors. Fordham Urban Law Journal is produced by The Berkeley Electronic Press (bepress). http://ir.lawnet.fordham.edu/ulj
Abstract

This Article discusses natural law, the foundation of many international law principles. First, it describes the natural law and its bearing on the practice of international law. Second, it describes the concept of “the common good,” a foundation of natural law. Third, it introduces the term “solidarity” and its relation to achieving the common good. Fourth, it describes the concept of “subsidiarity,” a form of decision-making necessary for natural law to inform international law. Finally, it explains the suum cuique, a critical precept in natural law as it applies to international law. The Article concludes that natural law principles that rely on practical reason can make important substantive contributions to international law practice today.

KEYWORDS: international law, natural law, common good, solidarity, subsidiarity, suum cuique
INTERNATIONAL LAW CLIENTS:
THE WISDOM OF NATURAL LAW

Robert John Araujo, S.J.*

INTRODUCTION

Academic and professional interest in international law has soared in the last several decades. The number of students now desiring to study this field has necessitated the introduction of a wide variety of courses into law school curricula. In this regard, the proliferation of many new graduate programs in international law has paralleled the growth in graduate legal education generally. Interestingly, the increased interest in international law has not been limited to the academy. Indeed, the interests of the academy only reflect a surge in the number of lawyers now confronting international legal issues at work. Lawyers in numerous practice areas, including military practice, corporate law, and labor-management relations are finding it essential to expand their knowledge of international law.

This essay will not serve as a primer in international law. Rather, it will alert the reader to the foundation of many international law principles—natural law. The natural law can be distinguished from the positive law which is defined as any source of legal authority posited by human beings. Illustrations of the positive law are as diverse as the Internal Revenue Code of the United States1 or the Racial Purity Laws of Nazi Germany.2 Today, many practitioners find themselves dealing with multilateral instruments, such as treaties, as their principal source of law. If the elements of these instruments come from negotiations amongst the human parties, are the instruments examples of positive law? In one sense, the answer is “yes.” However, even instruments that codify the international law principles, such as modern treaties, often rely on fundamental principles stemming from the natural law.3

* Professor of Law, Gonzaga University; Stein Fellow, Fordham University School of Law, 2000-2001. A.B., J.D., Georgetown University; Ph.B. St. Michael’s Institute, Gonzaga University; M.Div., S.T.L., Weston Jesuit School of Theology; B.C.L. Oxford University; LL.M., J.S.D., Columbia University.


Codified international law often relies on international law principles derived from custom—the unwritten evolving law of nations. At the heart of custom is the natural law. Hugo Grotius, no stranger to the natural law and sometimes considered the father of modern international law, acknowledged his debt to predecessors such as the Spanish theologians Francis di Vitoria and Francis Suarez. As commentators on the political institutions of the late fifteenth and early sixteenth centuries, they relied on the Scholastic tradition and the natural law principles upon which it was based. These writers contributed to customary principles that had been recognized by many states that were politically and economically involved with their fellow nations.

Part I of this essay will describe the natural law and its bearing on the practice of international law and the legal relationships of the world's peoples. Part II describes the concept of "the common good," a foundation of natural law. Part III introduces the term "solidarity," and the collaboration required to achieve the common good. Part IV describes the concept of "subsidiarity," a form

4. Id. at 28.
5. See, e.g., Hugo Grotius, De Jure Belli Ac Pacis Libri Tres in 2 CLASSICS OF INTERNATIONAL LAW 925, 929 (James Brown Scott ed. & Francis W. Kelsey trans. 1925) (1625). Grotius's reliance on (and occasional disagreement with) the work of di Vitoria and Suarez can be found in the list of authors cited at pages 925 (Suarez) and 929 (di Vitoria, sometimes referred to as de Victoria).
8. For an extremely helpful explanation of the role of natural law in international law, see James V. Schall, S.J., Natural Law and the Law of Nations: Some Theoretical Considerations, 15 FORDHAM INT’L L.J. 997 (1991). In particular, this author states:

[T]he law of nations itself was a necessary derivative from natural law. It was based on the principle that human beings throughout time and space were the same in their essential structure, in that they each possessed reason, and that reason could be formulated, communicated, understood, and debated wherever men sought understanding. The theories and actions of anyone, even rules, could and should be tested by reason. This testing would result in an agreed upon law if the reasonable solution could be found. It would result in violence, disagreement, and even war if it could not.

Id. at 1017.
9. See discussion infra Part III.
of decision-making necessary for natural law to inform international law. Part V explains the *suum cuique*, a critical precept in natural law as it applies to international law. This essay concludes that natural law principles that rely on practical reason can make important substantive contributions to international law practice today.

I. THE NATURAL LAW

The definition of the natural law must be addressed at the outset. In the Scholastic tradition, it is not a body of substantive law in itself. Rather, it is a means by which the human mind formulates legal principles that can then be applied to govern a specific jurisdiction. These principles include "the common good," "solidarity," "subsidiarity," and the "*suum cuique*." Professor Charles Rice has argued that natural law is a "guide to individual conduct" and "serves as a standard for the laws enacted by the state." As the celebrated canonist Gratian, who most likely compiled his collection of canon law principles during the mid-to-latter part of the twelfth century, noted in the *Decretum*: "Natural law is common to all nations because it exists everywhere through instinct, not because of any enactment." In his commentary, Gratian explained that the natural quality of law means "an instinct of nature proceeding from reason." In *Summa Theologica*, Thomas Aquinas identified natural law as those precepts "appointed by reason."

---

10. The complete phrase is *suum cuique tribuere*, meaning "[t]o render to everyone his own." BLACK'S LAW DICTIONARY 1447 (6th ed. 1990).
11. My treatment of what is natural law consists of the briefest of introductions. Its brevity does not do it justice. It is simply an introduction that dispels some myth about this crucial foundation of western legal thought.
12. See generally BLACK'S LAW DICTIONARY supra note 10.
14. GRATIAN, THE TREATISE ON LAWS (DECRETUM DD.1-20) WITH THE ORDINARY GLOSS. Distinction 1, C.7, § 2 (Augustine Thompson & James Gordley trans., The Catholic University of America Press 1993) (1140). Gratian defined "civil law" as that which "each people and each commonwealth establishes as its own law for divine or human reasons." Id. at C.8. The law of nations was given the explanation that "all nations make use of it," and it "deals with the occupation of habitations, with building, fortification, war, captivity, servitude, postliminy [the law under which something lost as a result of captivity is restored to the original owner from whom the item was taken], treaties, armistices, truces, the obligation of not harming ambassadors, and the prohibition of marriage with aliens." Id. at C.9.
15. GRATIAN, supra note 14, at C.7, § 2.
His first principle of practical reason is as follows: "[G]ood is to be done and pursued, and evil is to be avoided." In the present day theories of natural law, the role of reason, especially practical reason, is critical. For example, Professors Germain Grisez and John Finnis have recognized the importance of practical reason to natural law theory and have elaborated upon Aquinas's first principle. Professor Robert George has described the contemporary views of Professors Finnis and Grisez as the "new classical theory." As George states:

According to this theory, the first principles of natural law are not themselves moral principles. They are principles that extend to and govern all intelligent practical deliberation, regardless of whether it issues in morally upright choice, by directing action toward possibilities that offer some intelligible benefit (and not merely some emotional satisfaction). Such principles refer to non-instrumental reasons for action. Reasons of this sort are provided by ends that can be intelligently identified and pursued, not merely as means to other ends, but as ends-in-themselves.

Although present day philosophers and legal theorists may disagree about the place of moral considerations in natural law theory, there is little dispute about the role of reason. Reason and cogni-

of the same question goes on to argue that practical reason is a self-evident principle. See infra note 17.
17. According to Rice, "[t]he first self-evident principle of the practical reason is that 'good is that which all things seek after.'" Rice, supra note 13, at 117 (quoting Aquinas, supra note 16, at q. 94, a. 2, p. 1009).
18. Aquinas, supra note 16, at q. 94, a. 2, p. 1009. As Ralph McInerny has stated: Natural law is a dictate of reason. Precepts of natural law are rational directives aiming at the good for man. The human good, man's ultimate end, is complex, but the unifying thread is the distinctive mark of the human, i.e., reason; so too law is a work of reason. Man does not simply have an instinct for self-preservation. He recognizes self-preservation as a good and devises ways and means to secure it in shifting circumstances.
19. John Finnis, Natural Law and Natural Rights 23 (1980) (stating that practical reasonableness distinguishes "sound from unsound practical thinking and ... provide[s] the criteria for distinguishing between ... reasonable and unreasonable acts"); Germain G. Grisez, The First Principle of Practical Reason, 10 Nat. Law F. 168, 193-94 (1965) ("For practical reason, to know is to prescribe").
20. Professor George, the distinguished McCormick Professor of Jurisprudence at Princeton University, gave the inaugural lecture in November of 2000 at the Fordham Natural Law Colloquium.
22. Id. Professor McInerny, among others, concludes that the first principles of natural law have a nexus with moral choice. See generally McInerny, supra note 18.
tive function have played a crucial role in the evolution of law. As Aquinas acknowledged, law may be understood as "an ordinance of reason for the common good, made by him who has care of the community." The use of reason eventually leads to the notion of the common good—a principle that supports the existence of international law.

II. THE COMMON GOOD

By way of introduction, Aquinas noted in his discussion of the natural law that "other matters of law are ordained to the moral common good." Relying on Aquinas's work, Professor John Finnis has observed that "the good that is common between friends is not simply the good of successful collaboration or coordination, nor is it simply the good of two successfully achieved coinciding projects or objectives; it is the common good of mutual self-constitution, self-fulfillment, self-realization." In a fundamental way, the notion of the common good entails a sense of reciprocity in which the Silver Rule and the Golden Rule have a role. Professor Finnis has similarly commented on the importance of community to the common good, for "the common good is the good of individuals, living together and depending upon one another in ways that favour the well-being of each." The concern about the common good as a social, political, and legal subject reaches back to the classical era of ancient Greece and Rome. Aristotle noted, "[e]very state is a community of some kind, and every community is established with a view to some good." In looking at the political institutions established to govern the community, he noted that just governments are those "which have a regard to the common interest." In assessing what Aristotle considered to be just, one

24. A review of classical and contemporary writings on natural law will demonstrate the connection between natural law and the common good. This is best illustrated through the adoption of the 1787 Constitution in the United States and the impact of John Locke's Second Treatise on Government. U.S. Const.; John Locke, Second Treatise on Civil Government (Prometheus Books 1986) (1690).
25. Aquinas, supra note 16, at q. 94, a. 3, p. 1010; q. 95, a. 4.
26. Finnis, supra note 19, at 141.
27. Tobit 4:15 ("Do to no one what you yourself dislike.").
28. Matthew 7:12; Luke 6:31 ("Do to others whatever you would have them do to you.").
29. Finnis, supra note 19, at 305.
31. Id. at 629-30.
can turn to his discourse on ethics where he supplied the foundation for a vital theme: that justice is reciprocity and mutuality through relationship. In placing the notion of reciprocity into the human community, Aristotle contended that the truest or best form of justice is the reciprocal display of friendship. Through the use of reason, a person begins to recognize the role that mutuality and reciprocity in human relationships have in developing the common good. The ancient Roman Marcus Tullius Cicero shared the sentiments of Aristotle when he suggested that a commonwealth, or social order, emerges from the communal spirit of people who make the commonwealth their “property.” This idea is based on the principles of “respect to justice” and “partnership for the common good.” In writing for the emerging Christian community, St. Augustine reflected some of the views of Aristotle and Cicero when he argued that the human race is not simply united “in a society by natural likeness,” but it is or should be “bound together by a kind of tie of kinship to form a harmonious unity, linked together by the ‘bond of peace.’” Later, in the Middle Ages, Thomas Aquinas, who was influenced by the ideas of Aristotle and Augustine, continued to examine the common good. According to Aquinas, the object of justice was to keep people together in a society in which they share relationships with one another. Specifically, Aquinas noted that “justice is about our dealings not only with others, but also with ourselves.” The notion of justice being the reciprocity shared among members of society was further refined by Aquinas when he argued “the virtue of a good citizen is general justice, whereby a man is directed to the common good.” Furthermore, Aquinas saw that:

[T]he good of any virtue, whether such virtue direct[s] man in relation to himself, or in relation to certain other individual persons, is referable to the common good, to which justice directs: so that all acts of virtue can pertain to justice, in so far as it directs [each person] to the common good.

33. Id. at 502-03.
37. Id. at art. 6, p. 1438.
38. Id. at art. 5, p. 1438.
The twentieth century Christian philosopher Jacques Maritain brought Aquinas’s understanding of the common good into the present. Maritain recognized the need to separate the dignity of the individual human being from the dangers of the primacy of the isolated individual and the promotion of the private good. For Maritain, the common good was “the human common good” which includes “the service of the human person.” In large part, Maritain, who was to have a role in the development of the Universal Declaration of Human Rights, was responding to the threats posed to the dignity of the human person by three forms of states in the first half of the twentieth century: (1) the bourgeois liberal state, (2) the communist state, and (3) the totalitarian state. Maritain stated that the emphasis on individualism at the expense of community results in “the tragic isolation of each one in his own selfishness or helplessness.”

Through his perceptive understanding of mid-twentieth century social conditions, Maritain acknowledged that evil arises when “we give preponderance to the individual aspect of our being.” He recognized individualism as an evil because he understood that the human being, as an individual, is, at the same time, a member of the human community—a community in which the interests of each complements the interests of all. Maritain concluded that “bourgeois liberalism with its ambition to ground everything in the unchecked initiative of the individual, conceived as a little God” was a threat to the dignity of the human being and the common good. For Maritain, a definitive element of each human being is the “inner urge to the communications of knowledge and love which require relationship with other persons.” Maritain stated that the individual human being and the community are not in conflict with one another because their vital interests are complemen-

41. See generally Maritain, supra note 39.
42. Maritain, supra note 40, at 81.
43. Id. at 82-83.
44. Id. at 33.
45. Id. at 81-82.
46. Id. at 37.
tary rather than contradictory. The words of Maritain are compelling and insightful in this regard:

There is a correlation between this notion of the person as social unit and the notion of the common good as the end of the social whole. They imply one another. The common good is common because it is received in persons, each one of whom is as a mirror of the whole . . . . The end of society, therefore, is neither the individual good nor the collection of the individual goods of each of the persons who constitute . . . the social body. But if the good of the social body is not understood to be a common good of human persons, just as the social body itself is a whole of human persons, this conception also would lead to other errors of a totalitarian type. The common good of the city is neither the mere collection of private goods, nor the proper good of a whole which, like the species with respect to its individuals or the hive with respect to its bees, relates the parts to itself alone and sacrifices them to itself. It is the good human life of the multitude, of a multitude of persons; it is their communion in good living.47

Within the international order, Maritain’s views suggested that the rights of an individual and the interests of the community are compatible, harmonious, and complementary. The fundamental rights of people and those of the society in which each person lives share as the principal value “the highest access . . . of the persons to their life of person and liberty of expansion, as well as to the communications of generosity consequent upon such expansion.”48 For Maritain, the expansion of each person’s rights needs the community. If a person is cut off from others, he is alone and must fend for himself. However, when in a community (including the community of nations), he can rely on the generous support of others to be a more complete human person.

As can be observed in many areas of international law practice today, protection of the human person in all of his or her dignity

47. Id. at 39-40 (footnote omitted).
48. Id. at 41. While writing from the perspective of a witness on the eve of World War II, Maritain suggested that:

It is the task of a supreme effort of human freedom, in the mortal struggle in which it is to-day engaged, to ensure that the age which we are entering is not the age of the masses and of the shapeless multitudes nourished, brought into subjection and led to the slaughter by infamous demigods, but rather the age of the people, and of the man of common humanity-citizen and co-inheritor of the civilized community — cognizant of the dignity of the human person in himself, builder of a more human world directed toward an historic ideal of human brotherhood.

Jacques Maritain, Christianity and Democracy 64 (1946).
requires insertion and participation in, not insulation and separation from, the community. The community prospers when its members contribute of themselves in making it prosperous; it withers when they turn within and tend only to their private cares.\textsuperscript{49} If taken to extreme, such withdrawal leads to:

\begin{quote}
[A] world in which men and women do not exist for others; in which, although there are no public censors, there can also be no public goods \ldots \text{In this world, there can be no fraternal feeling, no general will, no selfless act, no mutuality, no species identity, no gift relationship, no disinterested obligation, no social empathy, no love or belief or commitment that is not wholly private.}\textsuperscript{50}
\end{quote}

The notion of the common good raises human consciousness about living a life that is interdependent rather than purely autonomous. A recent international conference on the global environment held by environmental ministers under the auspices of the United Nations at Malmö, Sweden, illustrates this point.\textsuperscript{51} The ministers' discussions centered on possible solutions to problems that threaten the common good such as environmental problems. The ministers suggested the most effective solutions would be implemented by all the nations of the world, because solidarity, not disunity, will be most effective in reducing environmental problems of global impact.\textsuperscript{52} The concept of collaboration and coordination to help solve mutual problems leads to the topic of solidarity.

\section*{III. Solidarity}

As the term suggests, "solidarity" within the context of natural law theory takes account of bonds between one person and another. The bonds exist not simply because people desire them; they exist because people have, through the application of their reason, discovered that problems they face in common are best addressed through cooperation. Cooperation enables nation-states to

\begin{footnotesize}
\begin{footnotes}
\textsuperscript{49} \textit{Benjamin R. Barber,} \textit{Strong Democracy: Participatory Politics for a New Age} 4 (1984). ("From this precarious foundation [of individualism and privacy], no firm theory of citizenship, participation, public goods, or civic virtue can be expected to arise").

\textsuperscript{50} \textit{Id.} at 71-72.


\textsuperscript{52} \textit{Id.} \S\S 1, 3, 21.
\end{footnotes}
\end{footnotesize}
come to one another's mutual aid, as well as to benefit those who are harmed or threatened.\footnote{53}

An important illustration of solidarity within the realm of international law is found in the \textit{Charter of the United Nations}.\footnote{54} A major purpose of the United Nations Organization is to "achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character."\footnote{55} It is properly assumed that such cooperation amongst nations, regardless of size, wealth, or resources, is essential to combating whatever threatens the peace and security of mankind.\footnote{56} Of course, such cooperation requires those friendly relations essential to universal peace.\footnote{57} In the advancement of universal human rights, "friendly relations between nations" is essential, and nations "in co-operation with the United Nations" must pledge themselves to "universal respect for and observance of human rights and fundamental freedoms."\footnote{58}

In the context of the Catholic Church's long involvement with the international order based on natural law and the establishment and preservation of the international community, the Second Vatican Council concluded in 1965 that the solidarity of mankind necessitates "a revival of greater international cooperation in the economic field."\footnote{59} The Council continued by stating that although most "peoples have become autonomous, they are far from being free of every form of undue dependence, and far from escaping all danger of serious internal difficulties."\footnote{60}

\footnote{53. Within the Roman Catholic tradition, the concept of solidarity has appeared in many documents treating the social teachings of the Church. See \textsc{Charles E. Rice, Fifty Questions on the Natural Law: What Is It and Why We Need It} 228-29 (1993); \textit{see also} \textsc{Pope John XXIII, Pacem in Terris: Encyclical Letter of His Holiness Pope John XXIII N. 98} (William J. Gibbons ed., 1963); \textsc{Pope Paul VI, Populorum Progressio: Encyclical Letter on the Development of Peoples} nn. 17, 44, 48, 52, 62, 64, 65, 67, 73, 84 (1967).

\footnote{54. See \textit{generally} U.N. \textsc{Charter}.

\footnote{55. U.N. \textsc{Charter} art. 1, para. 3.

\footnote{56. U.N. \textsc{Charter} arts. 1-2.

\footnote{57. U.N. \textsc{Charter} art. 1, para. 2. Aristotle once suggested in his \textit{Nichomachean Ethics} that the truest form of justice is "true friendship" where the interests of the other are placed before the interests of the self. \textit{See Aristotle, supra} note 32, at 502-07.


\footnote{59. \textsc{Vatican Council II, Pastoral Constitution on the Church in the Modern World (Gaudium et spes)} ¶ 85 (Dec. 7, 1965).

\footnote{60. \textit{Id.}}}
Without solidarity, issues vital to resolving conflict and other problems encountered by the international community may remain irresolvable. The relevance of solidarity between peoples and states does not imply, however, that there must be one global authority responsible for maintaining it. Instead, the concept of subsidiarity holds that a central organization should perform only those tasks that cannot be implemented at a more local level.

IV. Subsidiarity

The concept of “subsidiarity” in natural law theory generally encompasses the importance of reasoned decision-making at the lowest level of social and political structures in which decisions are implemented. It has been noted that the doctrine of subsidiarity provides latitude for achieving the common good. As Professor E.B.F. Midgley observed some years ago, “just as the natural law does not specify . . . the correct size and scope of a part of humanity which should properly be organized as one political unit . . . the natural law does not dictate any specific detailed hierarchy of political authorities as the correct means for the perfecting of the political organization of both the parts and the whole of the human race.” In essence, subsidiarity is a fundamentally democratic and egalitarian principle identified by practical reason that acknowledges the right of self-determination of peoples. It is especially pertinent to note that under international law the fundamental unit of society is the family, not the state. The principle of subsidiarity is recognized as a fundamental principle of the United Nations Organization. As the Charter of the United Nations declares, one of the primary purposes of the United Nations is “[t]o develop friendly relations among nations based on respect for the principle

61. “Subsidiarity” is a sociological theory holding that “functions which subordinate or local organizations perform effectively belong more properly to them than to a dominant central organization.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2279 (1st ed. 1986).
63. Id.
65. See, e.g., U.N. CHARTER art. 1, para. 2.
of equal rights and self-determination of peoples.” 66 The United Nations promoted this purpose on December 14, 1960, when the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples, thereby recognizing the sovereignty of subjugated peoples against colonial powers. 67 In this declaration, the approving U.N. members stated that “all peoples have an inalienable right to complete freedom, the exercise of their sovereignty, and the integrity of their national territory.” 68

The concept of “self-determination”—an exercise of subsidiarity—appears to enjoy a protected status in the world of international law. 69 It is a concept synthesizing the interests of the individual with those of the community. 70 The interests of both the individual and the community converge on the ability of individuals to exercise their preferences for how they wish to live their lives. 71 Professor Brownlie has noted the overlap of interests be-

66. Id. In attempting to define for international law the meaning of the term “peoples,” the Permanent Court of International Justice, in the Greco-Bulgarian “Communities,” defined the term to mean “a group of people living on a delimited territory, possessing distinct religious, racial, linguistic, or other cultural attributes and desiring to preserve its special characteristics.” 1930 P.C.I.J. (ser. B) No. 17, at 21 (July 31). As Prof. Wolfrum has pointed out, “[t]his definition may seem to be rather superficial, but a better one has not been found.” See The Charter of the United Nations: A Commentary 64 (Bruno Simma ed., 1995) [hereinafter Charter Commentary]. Furthermore, as Pope John Paul II has noted, “[e]very nation . . . has also the right to shape its life according to its own traditions, excluding, of course, every abuse of basic human rights and in particular the oppression of minorities. Every nation has the right to build its future by providing an appropriate education for the younger generation.” Pope John Paul II, Address of His Holiness, Pope John Paul II to the Fiftieth General Assembly of the United Nations Organization (Oct. 5, 1995).


68. Id. These principles were reiterated on February 23, 1998, when approving U.N. members reiterated that in “respect for the principle of equal rights and self-determination of peoples . . . all peoples can freely determine, without external interference, their political status and freely pursue their economic, social and cultural development” and that “it is the concern solely of peoples to determine methods and to establish institutions regarding the electoral process . . . .” Respect for the Principles of National Sovereignty and Non-Interference in the Internal Affairs of States in their Electoral Processes, G.A. Res. 52/119, U.N. GAOR, 52nd Sess., 70th plen. mtg., U.N. Doc. A/RES/52/119 (1997).


tween the individual and the identifiable group. He defines self-determination as "the right of cohesive national groups (to choose for themselves a form of political organization and their relation to other groups)."

This theme appears in the Charter of the United Nations. The founders of the U.N., applying the practical reasoning of natural law, agreed that the organization existed to encourage friendly relations amongst nations "based on respect for the principle of equal rights and self-determination of peoples." The historical importance of self-determination and subsidiarity surfaced in the case Barcelona Traction, Light & Power Co., when Judge Ammoun stated in his separate opinion:

Thus, among these principles there is the right of self-determination demanded for centuries by the nations which successively acquired their independence in the two Americas, beginning with the 13 Confederate States in North America, and in Central and Eastern Europe; many times proclaimed since the First World War; enshrined finally in the Charter of the United Nations, added to and clarified by the General Assembly's resolution of 16 December 1952 on the right of self-determination and the historic Declaration by the Assembly on 14 December 1960 on the Granting of Independence to Colonial Countries and Peoples, the consequences of which have not yet fully unfolded . . . . Against the defenders of the last bastions of traditional law, there thus stand arrayed, once again, with the support of a Western minority, the serried ranks of the jurists, thinkers and men of action of the Latin American and Afro-Asian countries, as

72. Ian Brownlie, Principles of Public International Law 599 (5th ed. 1998) ("It is not necessarily the case that there is a divorce between the legal and human rights of groups, on the one hand, and individuals, on the other.").

73. Id. Brownlie continues by stating that "[t]he choice may be independence as a state, association with other groups in a federal state, or autonomy or assimilation in a unitary (non-federal) state." Id. As Professor Cassese has pointed out, "there is no self-determination without democratic decision-making." Cassese, supra note 70, at 54.


75. (Belgium v. Spain), 1970 I.C.J. 3, 311-312 (Feb. 5)
well as of the socialist countries. For all of them self-determination is now definitely part of positive international law. As is known, furthermore, a majority of States, through their representatives at the 1969 Vienna Conference on the Law of Treaties, pronounced in favour of a solution to the problem of jus cogens capable of giving definitive sanction to the principles of the Charter, regarded by them as imperative juridical norms. It thus seemed appropriate that those principles—not excepting those deriving originally from the spirit of the American or French Revolutions—the religious inspiration of which is not unknown, should be solemnly reaffirmed . . . .

Today, the principle of self-determination and the correlative principle of subsidiarity are pillars of international law.

Many states, even those emerging from totalitarian dictatorships, have provided a context for the concept of "self-determination." For example, the Croatia Index Constitution of 1990 speaks of "the generally accepted principles in the modern world and the inalienable, indivisible, nontransferable and inexpendable right of the Croatian nation to self-determination and state sovereignty, including the inviolable right to secession and association." The

76. (Belgium v. Spain), 1970 I.C.J. 3, 311-312 (Feb. 5) (separate opinion of Judge Ammoun). Professor Cassese has cautioned against too widespread a use of Judge Ammoun's separate opinion. In Professor Cassese's words, "these views cannot be held to reflect State practice, although they are highly indicative of the new trends emerging in the international community and may contribute, and have indeed contributed, to the evolution of State practice." Cassese, supra note 70, at 136. Cassese further suggests that at the time Barcelona Traction was decided in 1970, Western states still had great investments in colonial domains; therefore, they "opposed the provision on self-determination either on account of their colonial interests, or out of fear that the paragraph relating to the free disposition of natural resources imperiled foreign investments and enterprises in developing countries." Id. at 50.

77. Ian Brownlie, renowned publicist and practicing lawyer states:

The present position is that self-determination is a legal principle, and the United Nations organs do not permit Article 2, paragraph 7, to impede discussion and decision when the principle is in issue. Its precise ramifications in other contexts are not yet worked out, and it is difficult to do justice to the problems in a small compass. The subject has three aspects. First, the principle informs and complements other general principles of international law, viz., of state sovereignty, the equality of states, and the equality of peoples within a state. Thus, self-determination is employed in conjunction with the principle of non-intervention in relation to the use of force and otherwise. Secondly, the concept of self-determination has been applied in the different context of economic self-determination. Lastly, the principle appears to have corollaries which may include [territorial sovereignty, considerations involving statehood and its recognition, legitimacy of certain liberation movements, and establishment of new sovereign territories.]

Brownlie, supra note 72, at 601-02.

78. Croat. Const. pmbl.
French Constitution of 1958, echoing President Abraham Lincoln’s *Gettysburg Address*, speaks of “government of the people, by the people, and for the people.”79 In the 1949 German constitution, the Basic Law for the Federal Republic of Germany, the authors declare that the people “have achieved the unity and freedom of Germany in free self-determination.”80

In 1975, the International Court of Justice further defined the term self-determination in an advisory opinion concerning the region of the Western Sahara.81 In noting the possible application of Article 1.2 of the *Charter of the United Nations*, the Court acknowledged that the United Nation’s *Declaration on the Granting of Independence to Colonial Countries and Peoples*82 enunciated the “principle of self-determination as a right of peoples” and the application of this right “for the purpose of bringing all colonial situations to a speedy end.”83 In its commentary, the Court noted that the right of self-determination “requires a free and genuine expression of the will of the peoples concerned” with the exercise or attempted exercise of this right.84 On several occasions, the Court offered a basic definition of this right as “the freely expressed will of peoples”85 or “the free expression of the wishes of the people.”86

79. *Constitution de 1958* art. 2 (R.F.) This language from the 1958 French Constitution might be read in the context of Abraham Lincoln’s *Gettysburg Address*, in which the President concluded his remarks by saying: “The world will little note nor long remember, what we say here, but it can never forget what they did here. It is for us, the living, rather, to be dedicated here to the unfinished work which they who fought here have, thus far, so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us... that we here highly resolve that these dead shall not have died in vain, that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth.” President Abraham Lincoln, Address Delivered at the Dedication of the Cemetery at Gettysburg (Nov. 19, 1863), *reprinted in The Collected Works of Abraham Lincoln* 21 (P. Bayer ed., 1953) (emphasis added).


82. G.A. Res. 1514 (XV), *supra* note 67.

83. *Western Sahara, Advisory Opinion*, 1975 I.C.J. 12 (Oct. 16) at 31. Professor Brownlie implies that this Declaration “regards the principle of self-determination as a part of the obligations stemming from the Charter [of the United Nations], and is not a ‘recommendation’, but is in the form of an authoritative interpretation of the Charter.” *Brownlie, supra* note 72, at 600.


85. *Id.* at 33.

86. *Id.* at 35. Professor Cassese argues that this discussion from *Western Sahara* offers a principle with a “very loose standard”—as he says, “the principle sets out a general and fundamental standard of behaviour: governments must not decide the life and future of peoples at their discretion. Peoples must be enabled freely to express their wishes in matters concerning their condition.” *Cassese, supra* note 70, at 128.
In 1986, the United Nations General Assembly reiterated these points in its Declaration on the Right of Development. By recalling the right of peoples to self-determination, the General Assembly asserted that:

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

The General Assembly restated this position in a 1997 resolution addressing the respect for principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes.

The notion of subsidiarity is also enshrined in international legal instruments. For example, two of the Universal Declaration of Human Rights's ("UDHR") most notable progeny are the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR"); both state at the outset in their common Article 1 that "[a]ll peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

---

88. Id.
93. ICCPR supra, note 91, at art. 1; ICESCR supra, note 92, at art. 1. Article 21.3 of the Universal Declaration of Human Rights would appear to offer a basis of support for the common Article 1 of the ICCPR and the ICESCR in stating that "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." UDHR supra, note 90, at art. 21.3. One commentator has observed that Article 21 of the UDHR "is more basic than the legal rights described [earlier] because it gives people the human right to help codify the moral principles of the other legal human
This statement brings together subsidiarity, popular sovereignty, human rights, and self-determination into a legal synthesis.

As normative texts that generate legal obligations for more than one hundred and forty nation-state parties, the ICCPR and the ICESCR have served as the basis for ongoing recognition of the legal status of self-determination and the principle of subsidiarity in international law. Even though specific applications of the common Article 1 may present special challenges, the idea of "self-determination" has been given political as well as social, economic, and cultural contexts. Although their respective second articles are different, each covenant acknowledges state responsibility to "respect," "ensure," "achieve," or "guarantee" the rights specified in the applicable covenant.

Although the ICCPR acknowledges that some restrictions on protecting rights may exist during times of "public emergency," certain rights (e.g., (i) the right to life; (ii) freedom from torture, rights into their own domestic systems. Most of what a government does is to write laws, which is why one early version of Article 21 speaks of everyone's 'right to take an effective part directly or through his representative in the formation of law.'" Morsink, supra note 90, at 69. Matthew Craven has noted that since the ICESCR shares this common article with ICCPR and since the latter covenant has been understood to protect civil and political rights, the same provision in the ICESCR would protect rights to economic self-determination. See Matthew Craven, The International Covenant on Economic, Social, and Cultural Rights: A Perspective on Its Development 24-25 (1995). See also Cassese, supra note 70, at 66.

94. Not every state that is a party to one of the two conventions is automatically a party to both of them. Each convention requires its own independent ratification. In addition, many states ratify with reservations concerning specific issues.


96. For example, ICCPR art. 2, para. 1-2 states that "[e]ach State Party . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant . . . . [E]ach State party . . . undertakes to take the necessary steps . . . to give effect to the rights recognized in the present Covenant." ICCPR supra note 91, at art. 2. ICESCR art. 2, para. 1-2 states that "[e]ach State Party . . . undertakes to take steps . . . with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means . . . . The States Parties . . . undertake to guarantee that the rights enunciated . . . will be exercised without discrimination . . . ." ICESCR, supra note 92, at art. 2.

97. ICCPR, supra note 91, at art. 4.1. For an instructive discussion of this issue, see Jaime Oraá, Human Rights in States of Emergency in International Law (1992), where the author addresses violations of basic human rights in times of emergency and derogation under both treaty and customary law; notwithstanding der-
slavery, and imprisonment for debt; (iii) recognition as a person before the law; and (iv) freedom of thought, religion, and conscience) cannot be derogated. Under the ICESCR, no state, group, multi-national corporation, or person has the "right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized by the ICESCR." The ICCPR echoes this same provision.

Because most states are parties to the ICCPR and the ICESCR, they have obligations to respect the fundamental precepts of human rights defined by the political processes protected by the popular sovereignty of the people and in the exercise of the people's self-determination and the correlative principle of subsidiarity. Any external organ would be prohibited from imposing its view on a people who have given particulars to their rights as defined by these two important conventions in the exercise of their own sovereignty and self-determination.

V. THE SUUM QUIQUE

The maxim of the "suum cuique" is found in other ancient legal precepts. For example, there is juris praecepta sunt haec—honeste vivere; alterum non laedere; suum cuique tribuere—these are the precepts of the law: to live honorably; to hurt nobody; to render everyone his due. Another is a traditional definition of justice: justitia est constans et perpetua voluntas jus suum cuique tribuendi—justice is a steady and unceasing disposition to render everyone his due.

The concept underlying these various formulations may be summed up in the following manner. Justice—an issue of vital importance to most understandings of natural law—is a critical element of legal systems and international order. In the natural law realm, justice often is considered to exist in the context of the suum

---

98. ICCPR, supra note 91, at art. 4.3. For an examination about whether certain human rights are derogable, see Rosalyn Higgins, Derogations Under Human Rights Treaties, 77 BRIT. Y.B. INT'L L. 281 (1976).
99. ICESCR, supra note 92, at art. 5.1.
100. ICCPR, supra note 91, at art. 5.1.
101. BLACK'S LAW DICTIONARY, supra note 10.
102. See also BLACK'S LAW DICTIONARY, App. (7th ed. 1999) ("These are the precepts of the law: to live honorably, not to injure another, to render to each person his due.").
\textit{cuique}. In essence, the justice due someone relates to what is due others. Therefore, the justice for one cannot be determined until what is just for others involved with the same question is considered. In the context of international law, the \textit{suum cuique} in a natural law context plays a significant role.

For example, the Preamble of the United Nations’s Charter suggests the \textit{suum cuique} in that it states that the Peoples of the United Nations “are determined . . . to reaffirm faith . . . in the equal rights of men and women and of nations large and small.” The Preamble additionally states that such ends shall be furthered by employing “international machinery for the promotion of economic and social advancement of all peoples.” The substantive provisions of the Charter elaborate upon the principles of the equality of people and states.

The UDHR also elaborates on the interrelation of equality amongst all peoples when it states that a common standard of achievement “for all peoples and all nations” shall apply. The UDHR further acknowledges that the universality of rights when it states that “[a]ll human beings are born free and equal in dignity and rights.” Moreover, it declares that each person is “endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” But, as the \textit{suum cuique} requires, the UDHR speaks not just for some, but for all.

\section*{Conclusion}

In the final analysis, the subjects of international law stand the best chance of prospering when cooperation, solidarity, the common good, and subsidiarity are pursued. The shared method underlying these elements is the natural law—the use of reason, the gift of the human intellect, to see what challenges face the human family and what is needed to overcome these obstacles through the assistance needed by all, not just some. It is the natural law, and its first principle of practical reason, that informs decision-makers.
what is needed to allow all members of the human community to flourish.

As this brief essay has attempted to demonstrate, natural law is no stranger to the development of international law. Consequently, lawyers who practice in this area would profit by being familiar with the natural law and the contributions it has made and continues to make to international law.