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LA THÈSE A ÉTÉ
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THE FOUNDATION OF HUMAN RIGHTS IN THE THEORIES OF MARITAIN
AND RADHAKRISHNAN: A COMPARATIVE AND CRITICAL STUDY IN
SEARCH OF A COMMON GROUND FOR THE POSSIBILITY OF A FRUITFUL
DIALOGUE

BY

KUSUM JAIN

A Thesis submitted to the School of
Graduate Studies and Research
of the
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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	i
KEY TO PRONOUNCIATION	x
LIST OF SHORT TITLES	xi
CHAPTER I: <u>MARITAIN</u>	1
I. THE CONCEPT OF MAN	4
(i) Individuality	7
(ii) Personality	9
II. MAN AND SOCIETY	20
(i) The Origin of Society	20
(ii) The Aim of Society	23
(iii) Common Good	23
(iv) Man's Relationship to Society as an Individual	32
(v) Man's Relationship to Society as Person	36
III. NATURAL LAW	44
(i) The Ontological Element in Natural Law	45
(ii) The Gnoseological Element in Natural Law	46
(iii) The Law of Nations	51
(iv) Positive Law	54
IV. HUMAN RIGHTS AND NATURAL LAW	56
(i) The Three Levels of the Determination of Rights	66
(ii) The Distinction Between the Possession and the Exercise of Rights	69

	<u>Page</u>
V. (i) Right to Life	76
(ii) Right to Freedom	81
(1) Freedom of Choice	83
(2) Freedom of Spontaneity	86
(iii) Right to Property	104
(1) The Concept of Factibile	107
(2) The Concept of Agibile or Usus	110
(iv) Right to Equality	115
(1) The Nominalist View	116
(2) The Idealist View	118
(v) Some General Characteristics of Maritain's Concept of Rights	126
NOTES TO CHAPTER I	129
CHAPTER II: <u>RADHAKRISHNAN</u>	139
I. THE CONCEPT OF MAN	148
(i) The Concept of Brahman	149
(ii) The Idea of Īśvara - The Saguna Brahman	152
(iii) The Concept of Māyā	156
(iv) Man on the Transcendental Level	160
(v) Man at the Empirical Level	164
II. MAN AND SOCIETY	171
(i) The Origin of Society	171
(ii) The Aim of Society	173
(iii) The Four Fold Puruṣārthas	174
(1) Artha	175

	<u>Page</u>
(2) Kāmā	177
(3) Dharma	178
(4) Mokṣa	184
(iv) Man's Relation to Society	191
(1) Man's Relationship to Society as Jiva	192
(2) Man's Relationship to Society as Ātmān	196
III. THE CONCEPT OF DHARMA	201
(i) The Sources of Dharma	201
(ii) The Two Aspects of Dharma	204
(1) Sādhāraṇa Dharma	204
(2) Svadharma	206
(A) Varṇa - Dharma	207
(a) Brāhmins	207
(b) Kṣatriyas	208
(c) Vaiśyas	209
(d) Śūdras	210
(B) Āśrama - Dharma	217
(a) Brahmācārya	218
(b) Grihastha	219
(c) Vānprastha'	221
(d) Sañnyāsa	221
IV. HUMAN RIGHTS AND DHARMA	225
The Multi-Levelled Determination of Rights	227
V. (i) Right to Life	232
(ii) Right to Freedom	235
(iii) Right to Property	247

	<u>Page</u>
(iv) Right to Equality	255
(v) Some General Characteristics of Radhakrishnan's Concept of Rights	264
NOTES TO CHAPTER II	266
CHAPTER III: <u>COMPARATIVE ANALYSIS</u>	278
I. COMPARISON OF KEY-CONCEPTS	279
II. SIMILARITIES IN THE GENERAL CHARACTERISTICS OF RIGHTS	289
(i) The Spiritual Origin of Rights	289
(ii) Positive as Opposed to the Negative Character of Rights	293
(iii) The Goal-Oriented Character of Rights ..	303
(iv) Correlation of Rights and Duties	315
(v) Centrality of the Right to Freedom	321
(vi) Balancing of Universality With Relativity	326
III. DIFFERENCES IN THE GENERAL CHARACTERISTICS OF RIGHTS	333
IV. SOME BRIEF CONCLUDING REMARKS	346
NOTES TO CHAPTER III	350
CHAPTER IV: <u>CRITICAL EVALUATION AND CONCLUSION</u>	353
I. WEAKNESSES	357
II. STRENGTHS	405
III. CONCLUDING REMARKS	419
NOTES TO CHAPTER IV	422
SELECTED BIBLIOGRAPHY	426
ABSTRACT OF THE THESIS	442

INTRODUCTION

Aim of the Work

This thesis is an attempt to present a critical and comparative analysis of the foundations of the theories of human rights propounded by Jacques Maritain and Sarvepalli Radhakrishnan. The primary aim of this comparative analysis is to prepare a common ground for the possibility of a fruitful and constructive dialogue between these foremost modern representatives of two age old traditions, and to assess the scope and extent of the possible agreement and cooperation between the philosophical systems they represent in their writings.

Motivation

The basic motivating factor in undertaking this work is my strong belief that in our present day world, which is overridden with antagonistic attitudes and polemical approaches, there is an urgent need to develop theories which encourage mutual understanding and respect between different cultures and traditions. Science and technology have made the world 'one body'. Political and economic interdependence has created an outer uniformity, and people from different backgrounds have come to face each other more closely than

ever before. But this outer uniformity has not resulted in an inner unity of mind and spirit. On the contrary it has led mankind to a point where there are only two alternatives before it: recognition of the universal brotherhood of man or annihilation of man and civilization. Obviously, any rational person in his senses will choose the former alternative. But for that, we need to understand each other's point of view, each other's culture, values, outlook, history and traditions. On major issues, we must develop theories which incorporate whatever is of value in different cultures and traditions, and provide more comprehensive views on the subject.

The present work is an attempt in this direction. I have chosen the concept of human rights and have compared the views of Jacques Maritain and S. Radhakrishnan on this issue of universal significance. As mentioned earlier, these thinkers are the most prominent representatives of two of the most important ancient traditions. While Maritain represents the Thomistic school of the Christian tradition, Radhakrishnan is the modern spokesman of the Vedānta school of the Hindu tradition. Both of these thinkers have actively participated in various human rights movements and conventions, and have exerted enormous influence on the shaping of a global view of this concept. Both have held important key

positions in their own countries and have represented their nations to the "outside world in different capacities on different occasions.

A comparison of their views, I hope, will give us some clues in the direction of building a theory of rights which incorporates the major strengths of their respective traditions and remains free of their weaknesses.

There is a secondary motivation that has animated this work. It is a popular misconception, (not only in the West but surprisingly also in the East), that the concept of human rights is exclusively a Western concept, and the philosophies of the East are incapable of providing a sound foundation for a plausible theory of rights. It is sometimes claimed that the true appreciation of the dignity and the worth of the individual human being is a distinctly Christian contribution to world-culture, and Eastern philosophies, especially idealistic schools of Indian tradition, not only ignore the importance of the individual, but also deprive him of his basic rights and dignity as a human being.

This misconception is rendered plausible by Western thinkers who believe that Indian philosophy is essentially world-negating, other-worldly, pessimistic and passivist in

character. It has no place for human activity and freedom, and its ideal of mokṣa makes life on earth a meaningless enterprise.

One important reason for undertaking this work has been to dispel this prevalent misconception and to present a more informed, unbiased and objective analysis of the basic principles of an important school of Indian philosophy. A significant outcome of this analysis, as we shall subsequently see, is that it establishes that Indian tradition not only provides a foundation for building a plausible theory of human rights but is also capable of improving our present understanding of the notion of rights.

The refutation of this misconception though, as mentioned earlier, was only a secondary factor in motivating the present work; nonetheless, I considered it important and urgent, because unless such misconceptions are cleared away, we cannot move forward in the direction of attaining a truly global concept of human rights. Agencies like the United Nations can only provide a platform for moral (and to some extent political) persuasion towards recognition of these rights. But unless we develop a mutual understanding of how these rights are perceived in different traditions, they will remain merely slogans to be used and exploited by the

politicians for their own vested interests, and will never become a universal reality.

The present work, as I have earlier said, is a modest attempt in the direction of developing this mutual understanding, and it is hoped that in spite of its various limitations and deficiencies, it will prove to be a useful study. As one of the first attempts on the subject, even if its comparisons and conclusions cannot give finally acceptable opinion on the topic, it can at least serve as a guide to further study and research and can inspire many other works in the same direction.

General Plan of the Work

The work is divided into four chapters. Chapter One is devoted to the analysis of the different aspects of Maritain's theory of rights. The chapter contains five sections. Section One provides an analysis of Maritain's concept of human nature, and in this connection discusses the notions of individuality and personality. Section Two analyses Maritain's views regarding man's relationship to society and explains his ideas concerning the origin and the aim of society. This section also contains an analysis of the different aspects of the idea of common good and explains

the two levels of man's relationship to society. Section Three is primarily devoted to the exposition of the concept of natural law which Maritain considers to be the foundation of the concept of human rights. In this section different aspects of the concept of natural law are explained and an analysis of its relationship with the law of nations and positive law is presented. Section Four presents a general analysis of Maritain's concept of human rights and specifies different categories of rights. It also contains an analysis of the different levels of the determination of rights, and explains Maritain's distinction between the absolute and substantial inalienability and the possession and the exercise of rights. Section Five contains an analysis of Maritain's views on different specific rights, such as the right to life, right to freedom, right to property and right to equality. On the basis of this analysis some general characteristics of Maritain's concept of rights are deduced and the distinguishing features of his theory of rights are briefly pointed out.

To facilitate the comparative analysis of the views of Maritain and Radhakrishnan and to provide the necessary setting for initiating a dialogue between them, Chapter Two is also divided into five major sections and the pattern of division is similar to the pattern of Chapter One. Unfor-

Unfortunately, unlike Maritain, Radhakrishnan does not provide any systematic account of his political and social philosophy in general and his theory of rights in particular. His views on this subject are scattered in his various writings and must be organized in the light of the basic principles of his metaphysical theory. His statements regarding the concept of rights need to be conveniently assembled and responsibly interpreted. In this presentation I have tried to be true to the general spirit of his philosophical insight and have interpreted and explained the basic principles of his theory of rights in the light of his theory of reality. Section One contains an analysis of Radhakrishnan's concept of human nature and in this connection discusses the concepts of Brahman, Īśvara, māyā, ātman and jiva. Section Two analyses Radhakrishnan's views concerning the origin and the aim of society and explains the idea of four-fold puruṣārthas. It also discusses the two levels of man's relationship to society and explains how dharma, one of the four basic puruṣārthas, provides the foundation for the concept of human rights. Section Three is primarily devoted to the exposition of the concept of dharma. Different sources of dharma are pointed out and an analysis of its various aspects is presented. In this connection the concepts of varṇa-dharma and āśrama-dharma are analysed in detail and some specific features of the varṇāśrama-scheme are explained. Section

Four contains an analysis of Radhakrishnan's concept of human rights in general and explains how the concept of dharma gives rise to the idea of multi-levelled determination of rights. Section Five presents an analysis of Radhakrishnan's views on different specific rights such as the right to life, right to freedom, right to property and the right to equality and concludes with a brief explanation of some general characteristics of his concept of rights.

Chapter Three presents a comparative analysis of the fundamental principles of the theories of Maritain and Radhakrishnan. It is divided into four sections. Section One contains a brief discussion of some of the basic similarities and differences between the key concepts Maritain and Radhakrishnan use to formulate their concept of rights. In this connection Maritain's concept of personality, individuality, common good and natural law are compared with Radhakrishnan's concept of atman, jiva, purusarthas and dharma respectively. Section Two is devoted to the discussion of the basic similarities between the general characteristics of their theories of rights and Section Three is devoted to the analysis of their differences. Section Four offers some brief concluding remarks and prepares the background for Chapter Four.

Chapter Four presents a critical evaluation of the fundamental features of the theories of the two thinkers. It is divided into three sections. Section One contains an analysis of the basic weaknesses of their theories. Section Two presents an analysis of the fundamental strengths of their theories and in the light of the preceding discussion, Section Three offers some concluding remarks.

KEY TO PRONOUNCIATION

SINCE it is not possible to find exact equivalents for Sanskrit sounds in English, the followings are only approximations.

Vowels

Vowels may be short or long. Long vowels are indicated by a dash above:

a	as in: but, cup; silent if occurs at the end of a word
ā	as in: calm, father
i	as in: bit, sit
ī	as in: seen, feet
u	as in: foot, put
ū	as in: spoon, room
e	as in: say, may
o	as in: joke, lone
ai	is a diphthong and is pronounced as in: like, kite, my
au	is a diphthong and is pronounced as in: how, bough
ṛ	is considered a vowel and is pronounced as in: rude, prune

Consonants

c	as in: chop, reach
ḡṅ	is pronounced as: gnya
ṅ	and m are pronounced nasally
ṭ	ḍ and ṇ should be pronounced with the tip of the tongue bent back to touch the roof of the mouth
t	ḍ an n are pronounced with the tip of the tongue against the top teeth, as in French
h	is pronounced with slight aspiration
ṣ	and ṣ are pronounced as in shine, shower
ṅ	is pronounced as in: canyon, onion

All consonants followed by h are slightly aspirated.

LIST OF SHORT TITLES

(1) Works of J. Maritain

- Integral Humanism - Integral Humanism : Temporal and Spiritual Problems of New Christendom
- Rights of Man - Rights of Man and Natural Law
- Theonas - Theonas : Conversations of a Sage

(2) Works of S. Radhakrishnan

- Eastern Religions - Eastern Religions and Western Thought
- "Fragments of a Confession" - "The Religion of The Spirit and World's Need" (Fragments of a Confession), in Schilpp, Paul Arthur (ed.), The Philosophy of Sarvepalli Radhakrishnan
- Kalki - Kalki : Or The Future of Civilization
- The Brahma Sūtra - The Brahma Sūtra : The Philosophy of Spiritual Life

Note : Whenever a work is referred for the first time in the Thesis, complete bibliographical details are provided. In subsequent references, only the titles and page numbers are mentioned. However, all works referred are included in the bibliography.

Some translators of Maritain's works have used upper case letters for terms like Natural Law, the Law of Nations, and Positive Law. Some others have used lower case letters instead, e.g. natural law. While quoting, I have maintained the translators' version. However, in my own writing I have used lower case letters for these terms.

CHAPTER I

MARITAIN

CHAPTER I

MARITAIN

As mentioned in the Introduction, this chapter presents an analysis of Maritain's theory of human rights in light of his metaphysical framework in general and his socio-political philosophy in particular. Maritain has written extensively on this subject and has devoted several essays and a whole book¹ exclusively to the exposition of its various aspects. However, his notion of rights must be seen within the vaster context of the writings in which he expounds the central ideas of his general metaphysical system.

These ideas not only provide an indispensable foundation for his political and social philosophy, but to a great extent, also determine the nature and the scope of his theory of rights. Obviously, any study of Maritain's concept of rights necessarily requires at least a brief exposition of those key concepts which are metaphysical in character, but still play a fundamental role in the development of his theory of rights. The idea of man and his relation to society, the distinction between personality and individuality, the idea of natural law, the concept of God and the notion of common

good are some of those concepts which have a direct bearing on Maritain's notion of rights. Due to obvious limitations of time and space, this discussion will be confined only to those aspects of these concepts which are strongly pertinent to the main issue of this thesis.

For the sake of clarity, this chapter has been divided into five sections. The first section contains an analysis of Maritain's concept of human nature. Maritain defines man in terms of his individuality and personality, and therefore in this section an analysis of the different characteristics of these two concepts (i.e. individuality and personality) is presented. ✓

In the second section, man's relationship to society is discussed and in this connection Maritain's ideas concerning the origin and the aim of society are analysed. This section also contains a discussion of Maritain's concept of the common good, and attempts to explain how, in his system, this concept becomes the key factor in determining man's relationship to society.

The third section is primarily devoted to the exposition of the concept of natural law. Since Maritain considers it to be the foundation of his

concept of human rights, different aspects of this concept are discussed in detail, and an analysis of the relationship between the natural law, the law of nations, and the positive law is presented.

The fourth section concentrates on Maritain's concept of human rights in general. In the light of the discussion contained in the preceding three sections, different categories of rights are specified and different levels of their determination are analysed. This section also contains an analysis of Maritain's distinction between the absolute and substantial inalienability of rights and explains the difference between the possession and the exercise of rights. An attempt is made to explain how these distinctions operate within the framework of Maritain's scheme of rights and how these help him in solving some of the fundamental problems of his theory of rights.

The fifth section contains an analysis of Maritain's views on different specific rights, such as the right to life, right to freedom, right to property and right to equality. On the basis of this analysis certain general characteristics of Maritain's concept of human rights are deduced and the distinguishing features of his theory of rights are briefly pointed out.

I

THE CONCEPT OF MAN

According to Maritain, the need for having a correct conception of human nature to formulate a plausible conception of human rights cannot be overestimated. Emphasizing this need, he writes, "Every great period of civilization is dominated by a certain peculiar idea that man fashions of man. Our behaviour depends on this image as much as on our very nature."² That is why, just after declaring that "an essential characteristic of any civilization worthy of the name is respect and feeling for the dignity of the human person. We know that in defence of the rights of the human person, just as in defence of liberty, we must be ready to give our lives,"³ he immediately asks: "What worth deserving such sacrifice is then contained in man's personality? What precisely do we mean when we speak of the human person?"⁴ He believes that only by answering these questions can one establish a rational foundation for the notion of human rights.

Maritain begins his own answer with the following statement: "Man is an individual who holds himself in hand by his intelligence and his will. He exists not

merely physically; there is in him a richer and nobler existence; he has spiritual superexistence through knowledge and through love. He is thus in some fashion a whole, not merely a part; he is a universe unto himself, a microcosm in which the whole great universe can be encompassed through knowledge; and through love, he can give himself freely to beings who are, as it were, other selves to him."5 Emphasizing the uniqueness of this relationship he says,

For this relationship, no equivalent is to be found in the physical world. All this means in philosophical terms, that in the flesh and bones of man there lives a soul which is a spirit and which has a greater value than the whole physical universe. However dependent it may be on the slightest accidents of matter, the human person exists by virtue of the existence of its soul, which dominates time and death. It is the spirit which is the root of personality.

The notion of personality thus involves that of totality and independence; no matter how poor and crushed a person may be, as such, he is a whole, and as a person, subsists in an independent manner. To say that a man is a person is to say that in the depth of his being he is more a whole than a part and more independent than servile. It is to this mystery of our nature that religious thought points when it says that the human person is the image of God. The worth of the person, his liberty, his rights, arise from the order of naturally sacred things, which bear upon them the imprint of the Father of Being, and which have in Him the goal of their movement.

A person possesses absolute dignity because he is in direct relationship with the absolute, in which alone he can find his complete fulfilment.

Despite its brevity and generality, this paragraph contains the outlines of Maritain's entire philosophy of man. I shall briefly discuss some of the important points mentioned in it.

First, Maritain characterizes man as an individual who possesses personality. Personality, in his view, is a characteristic which distinguishes man from all other individuals of the created universe. This distinction between individuality and personality lies at the heart of Maritain's socio-political thought, and it is repeatedly and emphatically stressed by him in most of his writings dealing with the matters of practical philosophy. "There is nothing new," he admits, "in this distinction; it is indeed a classical distinction, belonging to the intellectual heritage of humanity".⁷ Widely different schools of thought have appealed to it. For example, "The distinction between the ego and the self in Hindoo philosophy is - with other metaphysical connotations, - its equivalent."⁸ In Thomistic philosophy, it plays the most fundamental role. Nevertheless, the exact significance of this metaphysical distinction

is rarely grasped and recognised in modern socio-political thought.

The constant confusion between individuality and personality, according to Maritain, has led to disastrous consequences in the field of practical philosophy and has given rise to many misleading theories of rights. He firmly believes that in order to develop a plausible theory of rights, this distinction must be properly understood and carefully applied. Therefore, he sets himself the task of clarifying the various aspects of this two-fold characterization of man's nature.

(i) Individuality

Following St. Thomas, Maritain defines individuality as that aspect of man's being which is primarily rooted in matter. "The word matter," he explains, "designates here, not a concept used in physics, but in philosophy: that of the materia prima, pure potentiality, able neither to be nor to be thought by itself, and from which all corporeal beings are made. Prime matter or 'matter absolute' is a kind of non-being, a simple power of receptivity and of substantial mutability, an avidity for being."⁹

In this sense, individuality can be called the principle of differentiation. It is by virtue of the matter, the material constitution, that a thing exists as a unique individual within a species.¹⁰ Individuals, however, exist as parts of a given whole, and not only their nature but their very existence also depends on the existence and nature of the species they belong to. In themselves, they form irreducible units which posit their existence as totally distinct from every other being.

Maritain beautifully summarises the essential characteristics of individuality as follows:

In each of us, individuality, being that which excludes from oneself all that other men are, could be described as the narrowness of the ego, forever threatened and forever eager to grasp for itself. Such narrowness in flesh animated by a spirit derives from matter. As a material individuality, man has only a precarious unity, which tends to be scattered in a multiplicity. For of itself, matter is inclined toward disintegration just as space is inclined to divisions. As an individual, each of us is a fragment of a species, a part of the universe, a unique point in the immense web of cosmic, ethnical, historical forces and influences and bound by their laws. Each of us is subject to the determinism of the physical world.¹¹

(ii) Personality

But unlike individuality, personality is rooted in the spirit, and its deeper mystery is far more difficult to discover. In contrast to individuality, personality involves the notions of totality, unity, independence, freedom and wholeness. Because of its spiritual origin, it bears the mark of the Eternal, and is internally related to the absolute and sacred order of the Ultimate Being. Maritain has presented a detailed analysis of the different aspects and characteristics of personality. The following passages will briefly discuss some of these characteristics and will explore their implications for his idea of rights.

Firstly, among all the creatures on earth, the term 'person' is uniquely applicable to man. Since the notion of personality is exclusively rooted in the spirit, it necessarily relates to the deepest and the highest dimensions of being, which, in Maritain's view, in the case of man, is the order of immaterial and substantial soul. It is this immortal soul which informs matter and yet is beyond the limitations of space, time and death. It constitutes the deepest layers of the human person's dignity. As he states:

The human person not only bears to God the common resemblance born by other creatures; it resembles Him in a proper and peculiar fashion. It is the image of God. For God is spirit, and the person proceeds from Him, having as its principle of life a spiritual soul, a spirit capable of knowing and loving, and of being elevated by grace to participate in the very life of God, so as to finally love Him and know Him as He knows and loves Himself.¹²

This, in other words, is the principle of ultimate fulfillment of man's endless quest for self-realization in the form of 'beatific vision'. According to Maritain, this vision can be described as man's final and everlasting direct communion with God Himself. "The beatific vision," he writes, "is therefore the supremely personal act by which the soul, transcending absolutely every sort of created common good enters into the very bliss of God and draws its life from the uncreated Good, the divine essence itself, the uncreated Common Good of the Three Divine Persons."¹³

Again, since the essential structure of a person is that of a spiritual substance equipped with unique properties, and since this substance is constantly acted upon and acted by the instrumentalities of its potencies, it inevitably involves the notions of intelligence and will. These are the capacities for which no

equivalent can be found in the non-human corporeal world. Occasionally, higher animals may seem to manifest something that resembles human intelligence and purposiveness of action, but they still remain infinitely far removed from the complex mental processes of human beings. Maritain very often stresses this point in his writings. As he observes: "That by which man is most truly man is the intellect, which in him is something divine and by which he participates in the nature of spirits."¹⁴ Thus knowledge and love, or reason and will, are two characteristic elements of personality.

Another important characteristic of personality is that it involves the notions of unity, independence, wholeness and freedom. If matter is that which individuates, the spirit is that which unites one individual with the other. Consequently, thanks to its spiritual origin, personality can be called the principle of unity and integration. This principle of unity is essentially marked by a unique kind of independence and wholeness. These attributes are totally alien to individuality. The self-sufficiency and the self-subsistence of spirit bestow upon personality an undivided wholeness and free it from any kind of dependence on anything other than

itself. This is why, unlike individuals, who as members or parts of a species exist for the sake of that species, persons exist only for their own sake. They are ends in themselves and therefore should never be used as means. All the other created things in the world exist to serve as means to the ends of persons, but the ends of persons transcend every limitation of the created world. They are the only entities which, in the words of St. Thomas "are ruled by God as though He cared for them for their own sake, while other creatures are ruled as being directed to rational creatures.... Therefore the intellectual nature alone is requisite for its own sake in the universe, and all others for its sake."¹⁵

The concept of a complete and unrestrained freedom follows logically from the attribute of being an independent whole. Maritain emphasizes this aspect of personality at great length and discusses the various forms and modes that freedom, inseparably associated with the notion of personality, may take or ought to take. The concept of freedom will be dealt with at greater length in the fifth section, but at this point, one important consideration should be noted.

Maritain characterizes personality with the attributes of freedom, independence, wholeness, internal unity and self-sufficiency. But all these characteristics of personhood, he warns, when attributed to man, should be taken only analogically. These attributes in their fullest sense and perfection can only be applied to God. He is the only uncreated wholeness and liberty. Only in Him is the idea of 'person' fully and absolutely realized.

Therefore, if one asserts that a "Person is a free independent whole," one should immediately qualify it by adding that he is only "relatively independent." He is an "end in himself" but only relatively. In Maritain's own words:

The notion of person is an analogous notion which is realized in different degrees and on essentially different planes of ontological being. The human being is a person, that is to say a universe or whole of a spiritual nature, endowed with freedom of choice and intended to enjoy freedom of autonomy. He is no more a pure person than he is pure intellect. On the contrary, just as he is at the lowest level of intellectual beings, so is he also at the lowest level of personality. To forget this would be to confuse the personality of man with the personality of Angels or again of the Divine Persons in Whom alone (because the Divine Person is subsistent Being and subsistent Freedom of Autonomy) is

realized in purest form - in Pure Act -
the perfection denoted by the word
Personality...¹⁶

According to Maritain, another important characteristic of personality is that it signifies the interiority to self. It indicates man's essential subjectivity. To know a person as an object is to misunderstand his true nature. It is to separate him unjustly from himself and to wound his very identity. In other words, personality finds its authentic expression only in and through subjectivity. But this subjectivity is not the isolated unity of the windowless monads of the Leibnitzian system. On the contrary, by its very nature subjectivity demands the communication of knowledge and love. Its very essence requires a dialogue by which it can give itself and in which it finds itself really received. Though the secret springs of the ontological structure of personality are eternal sources of a dynamic unity and unification from within, and in this sense man is an independent whole, yet this equally powerful need for communication and the generosity and expansivity of being essentially associated with personality arouses in man a strong craving for family and society. This is why, despite his inherent freedom and independence man seeks to share

with and receive from others, and for that purpose builds political and social communities, establishes a family and enters into the relations of friendship with other beings. Through these relationships, he tries to express the inexhaustible depth of the inner structure of his true self.

But unfortunately, this intense urge for real communication is rarely fulfilled. To his fellow human beings, man is rarely known in his true nature, i.e., in his own subjectivity. Because of their own limitations, his fellow human beings generally know him as an object and therefore remain unaware of the depth and complexity of his existence. Knowing man as a an object, and not as a subject, is to do an injustice to him, no matter "whether the he whom they see condemns the I or whether as occurs more rarely, the 'he' does honour to the 'I'".¹⁷ The impossibility of a dialogue with fellow beings on the plane of pure subjectivity inevitably burdens the human person with an experience of endless suffering, frustration and dissatisfaction.

This experience of helplessness eventually leads man towards God, because only He is capable of perfectly knowing man as subject and only in His inexhaustible loving

knowledge all the dimensions of his (man's) subjectivity and being are unfolded and truly reflected. Only in the absolute divinity of God is man totally fulfilled. God no longer remains simply the first beginning and the cause of man's being, but also becomes his absolute ultimate end. Therefore, Maritain says:

Thus the effort towards heroism, the hope of overpassing the limitations of human life, has its root in the very nature of man, so that it is a betrayal of human nature to persuade men to 'know only what is human, mortals to know only mortal things,': it is towards the immortal and the divine that human nature must reach out.¹⁸

Explaining this unique relationship between man and God, elsewhere he writes "the entire person is relative to the absolute, in which alone it can find its fulfillment. Its spiritual fatherland is the whole order of goods having an absolute value, and which serve as an introduction to the absolute Whole, which transcends the world".¹⁹

But this relativeness to the absolute in no way diminishes or degrades man's real worth. On the contrary, it provides him with the dignity of possessing the attributes which have their origin and fullest

perfection in God alone, and thus, in a sense, make him capable of rightfully transcending every created common good of temporal society.

This, in brief, is the analysis of the different aspects of individuality and personality provided by Maritain. In summary, the distinction between the two can be indicated as follows: individuality is the principle of division, materiality, instrumentality, and bondage; personality is the principle of spirituality, unity, totality, wholeness, intrinsic worth, independence and freedom.

But this distinction between personality and individuality has often been misunderstood by the thinkers who treat these two as mutually exclusive realities and therefore fall into an embarrassing trap of dualism.²⁰ Maritain warns against any such confusion and carefully points out that rather than being two separate things, these are two metaphysical aspects of the same reality (man) and are inextricably interwoven in his ontological structure. He states:

However evident it may seem, in order to avoid misunderstandings and nonsense, we must emphasize that they are not two separate things. There is not in me one

reality, called my individual, and another reality, called my person. One and the same reality is, in a certain sense an individual, and, in another sense, a person. Our whole being is an individual by reason of that in us which derives from matter, and a person by reason of that in us which derives from spirit.²¹

Explaining it further, he supplies the example of a painting. Just as a painting, in its entirety, is a physico-chemical complex by reason of the colouring material out of which it is made, and a work of beauty by reason of the painter's art, similarly, man is both an individual and a person at the same time. Both aspects of his being are equally real, and it is important to realize that: (1) the properties of one should not be confused with the other, and (2) each should be given its proper place in theoretical speculation, as well as in practical philosophy.

Explaining the second point further, Maritain observes that "material individuality is not," as it is sometimes supposed to be, "something evil in itself. Obviously, as the very condition of our existence, it is something good."²² Therefore, a total neglect of individuality in favour of personality is not a correct approach toward this distinction. The requirements of

human individuality cannot be ignored altogether. Even to exist as a person, one needs to exist as an individual first. The principle of "Death to the individual! Long live the person!" cannot work, because "unfortunately, when one kills the individual, one also kills the person."²³

But in emphasizing the importance of human individuality one should not forget that "it is precisely in relation to personality that individuality is good."²⁴ The importance of individuality lies not in its development for its own sake, but in its becoming a means to serve the higher purposes of man's being. If individuality becomes more than a means for the development of personality and is cherished for its own sake, it will lead to disastrous consequences. Emphasizing this point Maritain observes,

If the development of the human being follows the direction of material individuality, he will be carried in the direction of the 'hateful ego', whose law is to snatch, to absorb for oneself. In this case, personality as such will tend to adulterate, to dissolve. If, on the contrary, the development follows the direction of spiritual personality then it will be in the direction of the generous self of saints and heroes that man will be carried. Man will really be a person, in so far as the life of-spirit and of freedom will dominate in him that of passion and of the senses.²⁵

This analysis of the different aspects of human nature leads to the question of man's relationship to society. It raises the question of how man, who is characterized as "an individual possessing personality," is related to society and his fellow human beings. Obviously, an answer to this question will in great part determine the nature and kinds of rights human beings are supposed to legitimately enjoy in their earthly existence.

II

MAN AND SOCIETY

The very first important question regarding man's relation to society concerns the origin of society itself. Why, after all, men enter into the interpersonal relationships which eventually give rise to society and its different institutions?

(i) The Origin of Society

The roots of society, according to Maritain, lie in the very nature of man's being. Society originates as an outward expression of the essential structure of man's inner nature. We have seen that Maritain

characterizes man as having the attributes of individuality and personality. Society, in his view, comes into being on account of both these characteristics. Man requires membership in a society both because of his dignity as a person and his needs and deficiencies as an individual.

In the discussion of the concept of subjectivity (an essential characteristic of personality), it was noted that despite all the independence, freedom and wholeness associated with personality, the human person seeks to live in a society because of his inner urge to communicate knowledge and love. He tries to fulfill this urge by entering into relationships with other persons.

In its radical generosity, the human person tends to overflow into social communications, in response to the law of superabundance inscribed in the depths of being, life, intelligence, and love.²⁶

This is why "the person as such aspires naturally to the social life; it is a whole which seeks to be united to other wholes in spiritual exchanges of intellect and of will."²⁷ Here it should be carefully noted that the concepts of superabundance and radical generosity are cited as among the most basic grounds for the

existence of society. This, as will appear subsequently, plays a very significant role in determining the nature of rights in Maritain's system.

Another reason for the birth of society lies in man's needs and deficiencies derived from his material individuality.

In this respect, unless it is integrated in a body of social communication, it cannot attain the fullness of its life and accomplishment. Society appears, therefore, to provide the human person with just those conditions of existence and development which it needs. It is not by itself alone that it reaches its plenitude but by receiving essential goods from society.²⁸

But the needs referred to above are not merely the material needs related to survival such as food, clothing and shelter. Of course, these needs are fulfilled or are expected to be fulfilled by society, but above all of these, the reason why man needs to live in society is to "do the work of reason and virtue, which responds to the specific feature of his being."²⁹ The fulfillment of these needs is indispensably required for the accomplishment of human dignity, and society is primarily required to provide assistance and opportunities for this purpose.

(ii) The Aim of Society

The above discussion makes it clear that according to Maritain, the primary aim of society is to assist the human person in nourishing and developing the different aspects of his essential inner structure. To accomplish this purpose, it naturally needs to develop certain institutions and practices, and has to structure its different parts to fulfill different functions. Now, the important question is, in structuring any society, what should be the guiding principle? In other words, which principle should regulate the various operations of society?

Maritain provides a very clear answer to this question by asserting that the idea of the common good constitutes the end of society, and therefore it should be the guiding and regulating principle for all social institutions.

(iii) Common Good

In the history of political thought, few phrases have been more often misused, abused and misinterpreted than the term 'common good'. Well aware of the

consequences these misinterpretations may lead to, Maritain takes extra care to define this term as clearly as possible.

He begins his explanation by defining the 'common good' negatively, that is, by explaining what it most definitely is not. Firstly, the common good or the aim of society, according to him, is neither the individual good nor the mere collection of the individual goods of each of the persons who constitute it. If that were the case, then society as such would be dissolved for the benefit of its parts and this would lead to an 'anarchy of atoms'. In Maritain's words, "it would amount either to a frankly anarchic conception or to the old disguised anarchic conception of bourgeois materialism, according to which the entire society consists in seeing that the freedom of each one be respected, thereby enabling the strong freely to oppress the weak."³⁰

Again, common good should also not be confused with merely the good of the whole or of the group as such, because "this formula would lead in its turn to other errors, of a collectivist type or to a type of state despotism."³¹ To avoid this error, while explaining the idea of common good, one should always emphasize

that the aim of the society is the 'common good' of 'human persons' who in themselves are 'wholes'. Society itself is a 'whole' made up of these 'wholes' and cannot treat persons merely as parts.

In this sense, common good must be differentiated from the idea of the proper good of the whole. The latter consists in the good of the whole and might benefit its parts also, but these benefits are bestowed on the parts only to serve the purposes of the whole.

It is merely in order that the whole itself might subsist and be better served that its parts are kept alive or maintained in good condition. Thus, they partake of the good of the whole but only as parts of the whole.... Such a good is a common good in a general and improperly social sense.... It is common to the whole and to the parts only in an improper sense, for it does not profit the parts for themselves at the same time as for the whole according to the characteristic exigencies of a whole constituted of persons. It is rather the proper good of the whole - not foreign to the parts to be sure, but benefiting them only for its own sake and for the sake of the whole.³²

The proper good, according to Maritain, characteristically belongs to an animal society or to a society of individuals only, not to the society of persons. The common good of a society of persons in its true sense

is neither a collection of private goods, nor the good of a whole which uses its parts merely as a means to serve its own purposes. It is the good human life of 'persons', and therefore is common to the whole and to the parts. It flows back to its members and benefits them for their own sake. It implies the recognition of their basic rights and respects their dignity as human beings. "It involves as its chief value, the highest possible accession (an accession compatible with the good of the whole) of persons to their life as persons, and to their freedom of expansion, as well as to the communication of goodness which in turn proceeds from it."³³

Moreover, the common good of a society is not simply the collection of public commodities and services, such as roads, ports, schools, sound fiscal condition, military power, formal laws, customs, institutions, historical treasures, cultural traditions. No doubt, common good includes all these, but there is something additional in its framework. It is constituted, according to Maritain, more importantly by

....the sum or sociological integration of all the civic conscience, political virtues, and sense of right and liberty, of all the activity, material prosperity and spiritual riches, of unconsciously

operative hereditary wisdom, of moral rectitude, justice, friendship, happiness, virtue and heroism in the individual lives of its members. For these things all are, in a certain measure, communicable and so revert to each member, helping him to perfect his life and liberty of person. They all constitute the good human life of the multitude.³⁴

From the above description, one can easily note the three essential characteristics of the common good.

Firstly, the common good implies the concept of redistribution. It is precisely this characteristic which distinguishes common good from the proper good of the whole, sometimes improperly understood or misunderstood to be the common good. Maritain repeatedly emphasizes this characteristic, and maintains that unless the good of the whole flows back to its members and serves their own ends as wholes or persons, it cannot be called common good in the proper sense of the term.

The second important characteristic of common good is its intrinsic morality. To be true to the real sense of the term, common good must be something morally good and just in itself. Emphasizing this point, Maritain himself says:

The common good is not only a system of advantages and utilities but also a rectitude of life, an end, good in itself, or, as the Ancients expressed it, a bonum honestum.... Only on condition that it is according to justice and moral goodness is the common good what it is, namely, the good of a people and a city, rather than of a mob of gangsters and murderers. For this reason, perfidy, the scorn of treaties and the sworn oath, political assassination and unjust war, even though they be useful to a government and procure some fleeting advantages for the people who make use of them, tend by their nature as political acts - acts involving in some degree the common action - to the destruction of the common good.³⁵

Although Maritain has not said so explicitly, this paragraph makes it sufficiently clear that his idea of the common good is very different from the utilitarian principle of "the greatest good of the greatest number". Neither the question of the number of people involved, nor the utility of the act, as perceived by these people is the determining factor of the authenticity of the common good. Rather, its intrinsic justness and moral goodness gives it its real status. This also makes the idea of the common good very different from the idea of a mutually agreed upon contract based upon free consent of all members of society. The contractual thesis does not hold good in this regard, because common good derives its real strength not from the fact of being

mutually consented to by its members (however free and rationally calculated this consent may be), but from the very inner morality which forms one of the essential elements of its constitution. This is why Maritain strongly maintains that "The common good is something ethically good,"³⁶ and the members of the society which aims at it, are organized not by the relations of force but by the force of justice.

A third characteristic of the common good relates to authority in society. "Common good," according to Maritain, "is the foundation of authority".³⁷ The strength of intrinsic morality undoubtedly makes common good the most authoritative element in the structure of any society. Indeed, the authority enjoyed by any society becomes legitimate only when it is exercised for the promotion and development of the common good. In Man and the State, Maritain presents a very clear and elaborate discussion of the concept of authority and analyzes its differences from the closely related notions of sovereignty and power.³⁸ I shall not go into the details of this discussion here, but it might be noted in passing that sovereignty for him is a concept to be totally discarded because it is one with the concept of Absolutism and means nothing but power

without accountability.³⁹ Authority, on the contrary, necessarily involves the principles of righteousness and justice, and therefore is very different from the concept of power. Distinguishing these two, Maritain says "Power is the force by means of which you can oblige others to obey you. Authority is the right to direct and command, to be listened to or obeyed by others. Authority requests power. Power without authority is tyranny."⁴⁰

The authority commanded by the common good because of its very nature, in some sense, is also enjoyed by the society which aims at it. Therefore the common good, working as the guiding principle of a society, on the one hand forces the society to recognize and respect the basic rights and liberties of its members, on the other hand, also demands a commitment to obedience on the part of these members and thus functions as a limiting condition on the exercise of the very rights which it grants and recognizes. Later in this chapter, I shall discuss exactly how common good limits the exercise of the inalienable rights possessed by human persons. For the present, however, Maritain's own words may conclude the discussion. Describing the relationship of man to common good, he observes:

To characterize these relations, we might use the following formulae: just as the person requires society both on account of its abundance or as a person, and on account of its poverty or as an individual, so the common good, by its very essence, directs itself to the persons as persons and directs the persons as individuals to itself.⁴¹

This remark naturally leads to the problem of man's relationship to society. The question is, how free is man to use society for his own ends (temporal as well as transcendental), and how far can society legitimately claim the obedience of its members and ask them to surrender their interests? In case of any conflict between the interests of the two (which unfortunately too often arises), who is to take precedence, man or society? In other words, whose rights are prior and more important: those of the individual person or of the collective body?

Maritain tries to come to grips with this thorny issue. He begins his attempt to solve the problem by addressing the question in a very blunt, straightforward manner. "Does society," he asks, "exist for each one of us or does each one of us exist for society?".⁴² And as expected, he arrives at a solution which uses his cherished distinction between individual and person.

"This question," he says, "...involves two aspects, in each of which there must be some element of truth. A unilateral answer would only plunge us into error".⁴³ Obviously, here again Maritain uses the essential bipolarity of human nature to solve this problem, which he himself refers to as "the typical paradox of social life". This paradox, according to him, "is linked to the fact that each of us is altogether an individual and altogether a person."⁴⁴ And therefore, our relationship to society has to be determined on both these levels.

(iv) Man's Relationship to Society as an Individual

In the first part of Maritain's bilateral answer to the above question, he explains how according to him, man as an individual is related to society. "If human society," he observes, "were a society of pure persons, the good of society and the good of each person would be one and the same good."⁴⁵ Naturally, then, the conflict between man and society would never have arisen. Unfortunately, that is not the case. Man is far from being a pure person, and his existence on earth is always equally rooted in material individuality. Now, if we recall the characteristics of individuality

as enumerated by Maritain, it becomes immediately clear that as an individual man can be related to society only as a part is related to the whole. In a part-whole relationship the whole is supposed to be larger, better and more important than its parts, and therefore naturally surpasses the interests of the parts by rightfully using them to serve its own ends. In other words, in a part-whole relation, the interests of the parts are subordinated to the interests of the whole and whenever a conflict between the two arises, the interests of the latter are supposed to dominate those of the former.

By virtue of their material individuality, human beings bear the same relationship to society as the parts bear to the whole, and therefore can legitimately be subjected to various kinds of restrictions and limitations in the interest of society. Their individual good, even the sum total of their individual goods, always remains inferior to the common good of the society and therefore the society can use them as means to serve its common good. In Maritain's own words:

The human person is a part of the political community and is inferior to the latter, according to the things which compensate in him the needs of material individuality: that is to say, according to the things which, in him and of him,

depend as to their very essence on the political community, and can be called upon to serve as means for the temporal good of this community.⁴⁶

Therefore, it can be concluded that it is "in the nature of things that man should surrender his temporal goods and if necessary even his life for the welfare of the community; and that social life should impose on him as an individual, as part of the whole, many restraints and sacrifices".⁴⁷

But to avoid any misunderstanding or confusion, it is necessary to note that Maritain insists on qualifying the above statement with an additional explanation. For this purpose, he points out the basic difference between the following two statements. The first is: "Man, by reason of certain things which are in him is in his entirety engaged as a part of political society." The second statement is, "Man is part of political society by reason of himself as a whole and by reason of all that is in him." According to Maritain, while the first is true, the second is totally false. Those who believe that the first statement is true are necessarily led towards totalitarianism in which individual members of society are treated as mere means to serve the interests of the State. But a simple denial of the first statement can also lead to an erroneous political theory. It can

lead to anarchical individualism in which individual members of the society are treated as 'little gods' who use society simply to serve their own interests.

The truth of the matter is the entire man is a part of political society and exists with a view to its common good, but not by reason of himself as a whole...not by virtue of all that is in it nor of all that pertains to it. By virtue of still other things which are in it, the entire human person is also above political society. There are in it things - and the most important and the most sacred - which transcend political society and which raise the entire man to a position above political society....There are in me gifts, rights and values which exist neither by the State, nor for the State and which are outside the sphere of the State.

This is why Maritain insists that the part-whole relationship of man to society should not be conceived on the pattern of quantitative or mathematical structures, in which the individual is considered merely a cell in a unit, a cog in the machine of the universe, with no other function but to contribute his own tiny share to the well being of the whole unit. The relation of the individual to the society must not be conceived on the pattern of animal societies in which the freedom and independence of the person is engulfed by the body of the social community or of the State, and the man is virtually enslaved to work for the abstract totality. But this relation also must not be

conceived on the atomistic or mechanistic pattern of bourgeois individualism which suppresses the principles of organic totality. In Maritain's view, " the relation of the individual to the society must be conceived according to a type irreducibly human and specifically ethico-social,—that is, both personalist and communal, and this will then mean an organization of freedoms."⁴⁹

In other words, though as an individual man can be treated as a part of the societal whole, he cannot be treated 'merely' as a part. Man is not 'merely' an individual. He is a person, too, and therefore naturally bears a two-fold relationship to the society. This brings us to the second part of Maritain's bilateral answer to the question concerning man's relationship to society.

(v) Man's Relationship to Society as Person

As a person, man holds a totally different relationship to society: "If it is a question of the destiny which belongs to man as a person, the relation is inverse, and it is the human city which is subordinate to his destiny."⁵⁰ The positions are neatly reversed; the relationship is no longer of a part to a whole but of a whole to another whole. "To say... that society is a whole composed of persons is to say that society is a whole composed of wholes."⁵¹

If we recall the characteristics of personality (discussed earlier in this chapter), we realize that as person, man can be described as a spiritual totality who is "ordained to the absolute and summoned to a destiny beyond time."⁵² This ordination, according to Maritain, makes persons superior to all temporal societies and their institutions, including the State. In his words, "...by reason of his destination to the absolute, and because he is called upon to fulfill a destiny superior to time, - in other words, according to the highest exigencies of personality as such, the human person, as spiritual totality, referring to the transcendent Whole surpasses all temporal societies and is superior to them."⁵³

In essence, the very fact that a person's ordination, unlike society's, is not restricted to the realm of the temporal, and that he naturally aspires to transcend the immediate destiny of earthly life, raises the status of human person above the authority of the society. Since as a person man is ordained to the supra-temporal ends of divine order, he cannot be completely subjected to the regulations and restrictions of the temporal order. His transcendental destiny takes him beyond the limitations of earthly institutions,

including the State. He does not exist for these institutions; rather, these institutions exist for him and derive their meaning only through assisting him in the realization of his final goals as a spiritual being. Explaining this, Maritain says:

From this point of view...both Society itself and its common good are indirectly subordinated to the perfect accomplishment of the person and its supra-temporal aspirations as to an end of another order - an end which transcends them. A single human soul is worth more than the whole universe of material goods. There is nothing higher than the immortal soul, save God. With respect to the eternal destiny of the soul, society exists for each person and is subordinated to it.⁵⁴

Thus we see that Maritain supports an instrumentalist conception of the State. The State, for him, is merely an instrument in the service of man and is not an end in itself. Contrasting his view with that of the absolutist or despotic notion of the State, he says "...the State is neither a whole nor a subject of right, or a person."⁵⁵ On the contrary, it is simply a part of the body politic and is "...especially concerned with the maintenance of law, the promotion of the common welfare and public order, and the administration of public affairs."⁵⁶ To fulfill this purpose it might be entitled to use power and coercion, but even in that

it must preserve the principle that it exists primarily to serve human persons and not to rule them. Consequently, even the use of power and coercion should be directed towards the ends of human persons. "Man", he clearly says, "is by no means for the State. The State is for man."⁵⁷ And therefore, the interests of the human person should definitely be given primacy over the interests of the State.

But as noted earlier, the life of man on earth is not all that simple. It is marked by a fundamental bipolarity, and therefore man has to live in society not only as a person but also as an individual. "Man and the group are therefore intermingled one with the other, and they mutually surpass each other in different frames of reference. Man finds himself by subordinating himself to the group, and the group attains its goals by serving man and by realizing that man has secrets which escape the group and a vocation which the group does not encompass."⁵⁸ Obviously, this situation creates a paradox, a tension or a conflict, which in Maritain's view, is something very natural and inevitable. But its solution, according to him, is not static, it is dynamic; it provokes movement and is accomplished in movement only. More particularly, it generates a double

movement, a movement which is much deeper and more profound than the dialectical movement to which the marxists appeal.

The first of these is the horizontal movement, which concerns the progression of societies evolving within time, and is regulated by a great law, referred to by Maritain as the double law of the degradation and revitalization of the energy of history. In On the Philosophy of History,⁵⁹ Maritain provides an illuminating and detailed analysis of the various aspects of this law, which he sometimes calls "the law of two-fold contrasting progress". Here I shall not go into detail, but it is important to note that according to this law, the life of human societies is governed simultaneously by two kinds of movements, one rising upward, the other going downward. Though in certain periods of history one may prevail and dominate the other, the other exists simultaneously to one degree or another.

Thus the life of human societies advances and progresses at the cost of many losses. It advances and progresses thanks to the vitalization or superelevation of the energy of history springing from the spirit and from human freedom. But, at the same time, this same energy of history is degraded and dissipated by

reason of the passivity of matter. Moreover, what is spiritual is to this very extent above time and exempt from aging.⁶⁰

According to Maritain, this notion of progress sharply distinguishes the genuine philosophy of history from the spurious ones. (Maritain puts the theories of Hegel, Marx, and Comte in this category.) On the one hand, it dispels the illusory notion of necessary rectilinear and inevitable progress, and thus creates room for human freedom and initiative in the shaping of events; on the other hand, it refutes the pessimistic idea of negation of any progress, which prevails today among those who have lost all faith in man and freedom.

The second kind of movement is called the vertical movement and it concerns the life of persons themselves inside society. This movement is marked by "the difference of the level between the plane on which the person has the centre of its life as person, and the low-water mark, where it constitutes itself as a part of a social community."⁶¹ It is precisely due to this difference of level that a person craves for society and yet always tends to surpass it until it enters into "a society of pure persons, that is, into the Society of the Divine Persons which overwhelms it with the gift of

infinitely more than that to which it could of its own nature properly aspire."⁶² In this process, man begins as a member of the family group. From there, he proceeds toward civil society and with his free choice accepts membership in different clubs and institutions to develop his intellectual moral life. But after a while these institutions also fail to satisfy his inner cravings for true communion. He therefore desires to go beyond the level of civil society and seeks to fulfill himself through the loving depth of God. In Maritain's words, "Above the level of civil society man crosses the threshold of supernatural reality and enters a society which is the mystical body of an incarnate God, and whose office is to lead him to his spiritual perfection and full liberty of autonomy and eternal welfare."⁶³

From the above, it is clear that Maritain strongly believes that the destiny of the human person transcends the temporal order. In his view this supra-temporal destiny gives man certain fundamental rights which are anterior to those of society and to which society must necessarily yield. These are rights which society does not give to man but simply has to recognize and respect. They originate from a realm far beyond and superior to society, and therefore, are free of any dependence upon societal laws.

Man is constituted a person, made for God and life eternal, before he is constituted a part of the city; and he is constituted a part of the family society before he is constituted a part of the political society. This is the origin of those primordial rights which political society must respect and which it may not injure when it requires the services of its member.⁶⁴

"The human person," he explains, "possesses rights because of the very fact that it is a person, a whole, master of itself and of its acts, and which consequently is not merely a means to an end, but an end, an end which must be treated as such. The dignity of the human person? The expression means nothing if it does not signify that by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights. There are things which are owed to man because of the very fact that he is man."⁶⁵

Notice the mention of the idea of natural law as the foundation for the idea of the rights of man. Natural law, as we shall see, is one of those important key concepts which Maritain uses to propound and establish his theory of rights. "The same natural law," he says, "which lays down our most fundamental duties, and by virtue of which every law is binding, is the very law which assigns to us our fundamental rights."⁶⁶

III

NATURAL LAW

The idea of natural law, according to Maritain, is the heritage of Christian and classical thought. It is the principle contained "within the being of things as their very essence."⁶⁷ In this sense, any kind of thing existing in nature - a plant, a horse, a dog - has its own natural law, because as the principle of the essence of things, natural law indicates the 'normality of their functioning'. It indicates "the proper way in which, by reason of its specific structure and specific ends, it should achieve fullness of being either in its growth or in its behaviour."⁶⁸ Since man is a being naturally endowed with intelligence and will, and is capable of determining his own ends, the natural law, when applied to human order, means "that there is, by virtue of human nature, an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the essential and necessary ends of the human being. The unwritten law, or natural law, is nothing more than that."⁶⁹

In Maritain's view, there are two essential elements in natural law: the ontological and the gnoseological.

(i) The Ontological Element in Natural Law

Considered in its ontological aspect, natural law refers to the 'normality of functioning', grounded in the very essence of man's being. It is a law which lays down the principles of the "proper way in which, by reason of their specific nature and specific ends, they should achieve fullness of being in their behaviour."⁷⁰

The 'should' used in the above statement, Maritain explains, has only a metaphysical meaning in the sense in which we say that a good or a normal eye 'should' be able to read what is written on a ~~blackboard~~ from a reasonable distance. But when we come to deal with man, who is a free agent, the word 'should' also acquires a moral meaning, and for man, natural law also becomes a moral law.

Since man, unlike other creatures on the earth, has natural freedom to obey or disobey the law, the 'should' for him also implies a moral obligation. For him, the natural law not only describes 'ontological' reality,

but also describes an 'ideal' formula of development. "Let us say, then," Maritain observes, "that in its ontological aspect Natural Law is an ideal order or a divide between the suitable and the unsuitable, the proper and the improper, which depends on human nature and its essential ends. In this first consideration (ontological) Natural Law is co-extensive with the whole field of moral regulations which concern man as man - even if they are grounded on the most subtle and refined considerations - with the whole field of ethical philosophy, as universally valid."⁷¹

(ii) The Gnoseological Element in Natural Law

The second important element of natural law is related to its knowledge. Unlike the written codes of positive law, natural law is an unwritten law and therefore has to be naturally known; "that is to say, known through inclination, by way of congeniality or connaturality, not through conceptual knowledge and by way of reasoning."⁷² This, in Maritain's view, is a crucial point with respect to the knowledge of natural law. Natural law, he maintains, is made manifest to human practical reason in certain judgements. But these judgements, he insists,

do not proceed from any conceptual discursive, rational exercise of reason. They proceed from connaturality or congeniality through which what is consonant with the essential inclinations of human nature is grasped by the intellect as good; what is dissonant, as bad. And they therefore remain always more or less immersed in the vital and experiential, conceptually inexpressible dynamism of inclinations and tendencies. The motive power on which they depend is not reason, demonstration, logos, but, nature and nature's root inclinations. Thus it is that Natural Law is in the fullest sense of this word, unwritten law. And by the same token, it appears that Natural Law considered not in its ontological component alone but also in its gnoseological component, only embraces those requirements of the human being's normality of functioning which are known through inclination - in other words, the principles "immediately" known (that is, without conceptual or rational medium) of human morality.

For a proper understanding of this statement, two important points must be noted: the 'inclinations' referred to above are not simple animal instincts qua-animal, but are rooted in the rational nature of man as a human person and these natural inclinations, which are rooted in human nature, according to Maritain, presuppose the primary, self-evident principle that "The good is to be done, the evil is to be avoided." This is the preamble and the first principle of natural law (though not the law itself), and it is naturally known to all men. In this sense, natural law can be described as the

ensemble of things to do and not to do, which follow from this principle in a necessary fashion. But since the determination of these principles, on the second level is necessarily influenced by the level of a society's cultural and moral conscience, its socio-economic conditions, its historical development and political condition, there is bound to be variability in man's knowledge of the basic precepts of the natural law. Moreover, since there is no fixed rational method of knowing the precepts of natural law (these are known through the guidance of the inclination of human nature), every sort of error and deviation is possible in the determination of these precepts. But this possibility, according to Maritain, "proves nothing against natural law, any more than a mistake in addition proves anything against arithmetic, or the mistakes of certain primitive people, for whom the stars were holes in the tent which covered the world, prove anything against astronomy."⁷⁴ On the contrary, it explains just why there is an immense amount of relativity and a large measure of variability in the particular rules, customs and standards observed by people at different times in different parts of the world. It also explains why the knowledge of natural law increases and develops in proportion to the degree of development of men's

conscience, social and moral experience, and the self-reflection of which different men are capable of under varying historical conditions. In other words, it can be said that "Man's knowledge of the content of Natural Law was progressively formed and molded by the inclinations of human nature, starting with the most basic ones."⁷⁵ Gradually, by distinguishing genuine inclinations from the spurious or perverted ones, men came to form clearly determined precepts of the dynamic structure of the natural law.

At this point, another important question arises which concerns the very foundation of the natural law itself. This leads us to the concept of Eternal Law. Every law is a work of reason and, therefore, reason must be at the source of natural law also. Human reason, as we saw, in its rational exercise, is not even capable of fully knowing natural law, let alone its authorship. Man, through his inclinations, may come to know various precepts of natural law to a greater or lesser degree, with more or less accuracy, but he cannot create these. It is Divine Reason alone, Maritain believes, which can be the author of natural law. Only the Subsistent Reason, the intellect which is one with the 'First Truth itself', can be the author and creator

of natural law, and it is only because natural law participates in the Eternal Law established by the Divine Reason, that it is binding in conscience. In other words, natural law derives its obligatory character only through its participation in Eternal Law and therefore, the thinkers who tried to understand and explain natural law without any reference to the Eternal Law established by God, in Maritain's view, merely presented a "rationalistic deformation" of the concept of natural law. And this is why speaking of natural law, Maritain strongly emphasizes that "it is from the divine reason that it possesses its rational character, and consequently, it is from the Divine Reason that it possesses its genuine nature as law and its obligatory character."⁷⁶

It must be noted that two points follow from the above discussion by necessity. Firstly, the character or the notion of law as such is essentially analogical and is realized in its true sense in Eternal Law only. Secondly, the dependence of natural law on Eternal Law as its foundation also explains the characteristics of universality, invariability and immutability generally associated with the precepts of natural law. It also explains why natural law can claim

universal obedience and can be placed as the highest authority over any other human law.

In the next section, I shall discuss the relationship between human rights and natural law, but before that, it will be useful to explain briefly the notions of the law of nations and positive law, and their relation to natural law, because as we shall see, this relationship has an important bearing on Maritain's theory of rights.

(iii) The Law of Nations

The law of nations or the jus gentium, Maritain admits, is a difficult concept to define because it is intermediary between natural law and positive law. But in general the law of nations or 'the common law of civilization', like natural law, also deals with the rights and duties implied by the first principle "Do good and avoid evil", but with a very specific difference. This difference is related to the gnoseological component of the natural law, that is, to the manner in which it is known. Unlike natural law, the law of nations is not known through inclination but through the conceptual exercise of human reason. The precepts of

the law of nations are derived as conclusions conceptually inferred from the primary principles of natural law and thus, unlike natural law, are the outcome of logical or conceptual exercise and rational deduction. This is to say that unlike natural law, the law of nations allows the intervention of human reason in its domain not as the author of the existence of the law, but only with respect to the knowledge of the law.

This means that the law of nations may sometimes even include regulations pertaining to the natural law, because the principle of distinction between the two does not concern the content of the law, but the manner in which the knowledge of the law takes place. "Hence the same thing may belong to the natural law if it is known through inclinations and if the divine reason is the only operative principle causing it to be known as well as to exist, and to the law of nations if it is known by human reason which, intervening between the Divine Reason, the cause of nature, and the knowledge of the precept, acts on its own account and thus introduces an element of positive law."⁷⁷ For example, the prescription "We must obey the laws of the social group" is a norm known through inclination in conformity with the radical tendency which urges men to dwell in society

(in this case, it is a principle of natural law). However, it can also be deduced by common sense as a rational conclusion, established through the logical exercise of reason and derived from a more primitive principle? "Men should live in society," and in this case, it becomes a precept of the law of nations. Again in some cases, we might have a precept of the law of nations which is not a precept of the natural law. Take, for example, the principles: "do not condemn anyone without a hearing" or "Treat prisoners of war humanely". These rules, Maritain insists, are not first known through inclination; rather, these are known only through a logical operation accomplished by human reason starting from a first principle of the natural law.

As a result of these interventions of human reason, unlike natural law, the law of nations also acquires the character of formal juridical order (although not necessarily encoded), and no longer remains merely virtual. But this juridical character does not make the precepts of the law necessarily promulgated by social authority and applied by judicial authority. These may be formulated juridically and indeed, they seek to be, but are not necessarily so formulated.

Again, due to the work of human reason involved, the law of nations is regarded as pertaining more to the social domain and especially to the international realm. But Maritain thinks that it is absurd to reduce the law of nations merely to the laws of international morality. According to him, "Every norm of conduct which is universally valid, but which is known to common consciousness because necessarily deduced by human reason, is part of jus gentium or the common law of civilization,"⁷⁸ and therefore, the precepts of the law of nations not only relate to the rules of international morality but in a sense also include the rules of formal juridical order within their sphere.

(iv) Positive Law

According to Maritain,

Positive Law (statue law), or the body of laws in force in a community, deals with the rights and the duties which follow from the first principle, but in a contingent manner, by virtue of the determinate ways of conduct set down by the reason and the will of man when they institute the laws or give birth to the customs of a particular community.⁷⁹

In this sense, positive law has certain peculiar characteristics. Human reason intervenes in positive law as a

creative factor not only with the respect to the knowledge of the law but also as the author of the very existence of the law. In other words, it is uniquely a work of human reason.

Nevertheless, the very binding force of this law is still derived from the moral force of the natural law. Any prescription of positive law (and, for that matter, also of the law of nations), obliges men in conscience only when it is in conformity with the primary principle of the natural law. From this, it follows logically that "an unjust law is not a law."⁸⁰ In order to be obligatory, positive law has to be in conformity with ~~the~~ natural law (which in itself is rooted in the Eternal Law.) Any regulation of positive law which goes against the basic principles of justice laid down by natural law loses its obligatory power and thus becomes susceptible to legitimate disobedience. In Maritain's view, it is by virtue of natural law that the law of nations and positive law take on the force of law and become morally binding. He also maintains that the natural law itself requires that whatever it leaves undetermined must subsequently be determined "either as a right or a duty existing for all men by reason of a given condition of fact, or as a right or a duty existing for certain men by reason of the human regulations proper to the community of

which they are a part."⁸¹ This shows that there are imperceptible transitions between natural law, the law of nations and positive law. Through an inner dynamics the fundamental precepts of the natural law (which are determined by the simple, intrinsic constitution of human nature) are transformed into the rules of positive law and the unwritten law is made the basis for the human law.

In the latter part of the following section, I shall explain how the interrelationship among these three levels of law (natural law, the law of nations, and positive law) becomes the basis for the multi-levelled determination of rights. But let us first see how the idea of natural law is related to the concept of rights in general.

IV

HUMAN RIGHTS AND NATURAL LAW

As previously noted, in Maritain's view the idea of human rights is rooted in natural law which is the very principle of the essence of being human. "The same natural law which lays down our most fundamental duties, and by virtue of which every law is binding, is the very

law which assigns to us our fundamental rights."⁸² In other words, according to Maritain, in the very essence of man's being are inscribed certain rights, which he naturally possesses and which are prior and superior to any written legislation or agreements between governments. What exactly is the source of this dignified status of man? We know it already. It is his personality, the spiritual aspect of his nature which is the foundation of his basic rights. The spiritual soul in man leads him to a supra-temporal society, and man becomes naturally endowed with certain privileges or rights which are necessary to fulfill his destiny. "If man is morally bound to the things which are necessary to the fulfilment of his destiny, obviously, then, he has the right to fulfil his destiny; and if he has right to fulfil his destiny he has the right to the things necessary for this purpose."⁸³

From the very concept of these rights, two fundamental points follow as corollaries. Firstly, civil society does not 'grant' but simply has to 'recognize' these rights. The source of these rights does not lie in any human authority or social institution. They come from a supra-temporal, transcendental source and society simply has to 'recognize' them. Obviously, if society

is not the granting agency of these rights, it also has no authority to abolish them. To say it differently, society or any other human agency has no right to deprive man of his basic human rights. These rights follow from his nature and in this sense, are inalienable. Inalienability here does not mean that in actual practice, these rights can never be forfeited or there can never be any limitations on their exercise (society sometimes does put and has to put certain limitations on the exercise of these rights, and it sometimes even deprives man of these privileges if he uses them for anti-social purposes and against the common good). But these rights are called inalienable in the sense that they belong to man intrinsically by virtue of his natural dignity as person; and therefore, any arbitrary deprivation can only be an injustice. "They are inalienable," Maritain explains, "since they are grounded on the very nature of man, which of course no man can lose."⁸⁴

Here, Maritain makes an important distinction between the rights which are absolutely inalienable and the ones which are only substantially inalienable. Every law (in particular, the natural law) naturally aims at the common good. Thus, human rights, which are

derived from natural law, have an intrinsic relationship to the common good. The division of rights into those which are absolutely inalienable and those which are substantially inalienable is determined by the relation of each right to the common good. Some fundamental rights are by their nature necessary to the common good; if society in any measure restricted the natural possession of these by man, the common good would be jeopardized. Consequently, these rights are called absolutely inalienable. The right to existence is one such right. But there are other rights, such as the right of association or of free speech, which by their nature would threaten the common good if society in some measure could not restrict them and therefore these rights are called only substantially inalienable.⁸⁵

The second point to be noted is that since the basis of human rights lies in the dignity of the human soul and since no soul is of more value in the eyes of God than another, these rights cannot be the special privilege of a chosen class or of a few members of any society. If they exist at all, they must be common to all. In other words, the basic rights of man belong to all men universally and transcend the narrow boundaries of culture, history, nationality, race and sex.

Now, the question is, what are these rights which are universal and inalienable in character and are owed to man by his very nature? Maritain presents an extensive list of these rights and divides them into three broad categories: the rights of the human person; the rights of the civic person; and the rights of the working person. In the first category, the rights of the human person, the following rights are included: the right to existence; the right to personal freedom; the right to the pursuit of the perfection of rational and moral human life; the right to equality; the right to private property; the right to self-government and to the opposition of unjust laws; the right to conduct one's own life as master of oneself and of one's acts, responsible for them before God and the law of the community; the right to the pursuit of eternal life along the path which conscience has recognized as the path indicated by God; the right of the Church and other religious families to the free exercise of their spiritual activity; the right to pursue a religious vocation; the freedom of religious orders and groups; the right to marry according to one's choice and to raise a family, which will in its turn be assured of the liberties due to it; the right of the family society to respect for its constitution, which is based on natural

law, not on the law of the State, and which fundamentally involves the morality of the human being; the right to keep one's body whole, and finally, the right of every human being to be treated as a person, not as a thing.⁸⁶

In his list of the rights of the civic person, Maritain includes "the right of every citizen to participate actively in political life, and in particular the right of equal suffrage for all. The right of the people to establish the constitution of the State and to determine for themselves their form of government. The right of association, limited only by the juridically recognized necessities of the common good, and in particular the right to form political parties or political schools. The right of free investigation and discussion (freedom of expression)."⁸⁷ Other rights included in this list are the right to "political equality, and the equal right of every citizen to his security and his liberties within the State." The equal right of every one to the guarantees of an independent judiciary power. Equal possibility of admission to public employment and free access to the various professions."⁸⁸

The rights of the social person or working person according to Maritain include the following rights: "The right freely to choose his work. The right freely to form vocational groups or trade unions. The right of the worker to be considered socially as an adult. The right of economic groups (trade unions and working communities) and other social groups to freedom and autonomy. The right to a just wage. The right to work. And wherever an associative system can be substituted for the wage system, the right to joint ownership and joint management of the enterprise, and to the 'worker's title'. The right to relief, unemployment insurance, sick benefit and social security. The right to have a part, free of charge, depending on the possibilities of the community, in the elementary goods, both material and spiritual, of civilization."⁸⁹

It is a fairly long list and the rights included under these three categories cover almost all aspects of human life. But, as one can easily notice, the nature and scope of the rights included in the first category significantly differ from that of the rights included in the latter two.

The rights of the human person are the rights which belong to all men simply by virtue of their existence as human beings. These are the rights which all human beings possess irrespective of their biological, sociological, geographical, political and economic differences. In Maritain's view, these rights follow necessarily from the essential characteristic of human nature, and therefore, strictly belong to the domain of natural law. Since they follow directly from the precepts of natural law they are universal in scope and absolutely inalienable in character. In other words, since the origin of these rights lies in the supra-temporal destiny of man's being, they naturally transcend all the limitations of Nation, State or Society and their universal possession is safeguarded against all the particularities of men's earthly existence.

But the rights belonging to the latter two categories do not spring directly from the natural law. They depend on natural law, but only indirectly. Strictly speaking, they belong to the domain of positive law and therefore vary (in form and content) according to the socio-political, cultural and economic conditions of different societies. These rights are owed to man, not simply by virtue of his existence as man, but by

virtue of his membership in a particular group or society and therefore, necessarily involve the consideration of those aspects of man's nature which are primarily related to his socio-economic, political and cultural functions within his community. Obviously, these rights can neither be universal in scope, nor can they be absolutely inalienable in character. They are inalienable, but only substantially. That is to say, not only their exercise but their possession also can be subjected to the regulations of civil authority. Again, unlike the rights of the human person, these rights are not absolutely universal because the form and mode of their application largely depends on the socio-economic conditions of different political communities, and varies accordingly. Moreover, since they belong to a domain which, unlike natural law, permits the intervention of human reason, the binding power of these rights is affected by the relativity of human knowledge, and they naturally are limited in their scope.

But the relative and limited character of these rights should not be over-emphasized. It is true that due to the variability of positive law, the rights of the civil person and the rights of the working person become relative to the positive codes of the particular

societies. As mentioned earlier, however, it is also true that the authority of these positive codes itself depends on their conforming with the precepts of natural law. We have noted Maritain saying that, "it is by virtue of natural law that the law of Nations and positive law take on the force of law, and impose themselves upon the conscience. They are a prolongation or an extension of natural law, passing into objective zones which can less and less be sufficiently determined by the essential inclinations of human nature."⁹⁰ In other words, though positive law is connected to natural law in a contingent manner, it has to be in conformity with the basic precepts of natural law in order to be morally binding. Therefore, the rights belonging to different positive codes should not be totally different or contrary to each other.

Moreover, as we shall see shortly, since positive law and the law of nations are primarily concerned with the determination of particular modalities of the rights granted and recognized by the natural law, man's rights as a civic person, as well as a working person, naturally come within the fold of his basic rights as a human person. In this sense, the rights of the human person can be called the 'primary rights' and the rights

belonging to the other two domains can be designated as 'secondary rights'. In what follows, I shall focus primarily upon these 'primary rights' and shall ~~try~~ to analyse Maritain's views regarding the rights which are owed to man simply by virtue of the fact that he is a man. But before discussing different specific rights belonging to this category, two important points must be noted with regard to the nature of these rights in general.

(i) The Three Levels of the Determination of Rights

As mentioned earlier, each of the rights listed above, according to Maritain, is determined at three different but related levels. The first level of the determination of these rights lies just at the point of their origin, that is at the level of the natural law itself. At this level, rights manifest themselves in their full strength and are possessed by all men universally and absolutely; they belong to men qua men and are possessed by them simply by virtue of their nature. The form and character of these rights remain fairly universal. They are possessed by all members of the human community irrespective of the differences pertaining to their social, cultural, historical, racial, national and religious backgrounds.

Again, the intrinsic relationship between common good and the natural law (natural law essentially aims at the common good), makes these rights relatively free from limitations imposed by any human institution including the State. In other words, at the level of natural law, rights remain outside the authority of societal institutions and therefore cannot be taken away or mutilated by any human agency. But to become effective in the actual life of human persons, the rights granted by natural law must be incorporated in the social and legal codes of the community; they must become part of the law of nations and positive law.

At the second level that is, at the level of the law of nations, the natural rights acquire a more formal and juridical character and begin to vary according to the form and state of the development of different societies. As noted earlier, unlike natural law, the law of nations permits intervention of human reason with respect to its knowledge. This element of human intervention, apart from introducing the possibility of differences in form and character, makes these rights subject to the limitations imposed by society. Moreover, since the relationship of common good to the law of nations is not as close and as intrinsic as the

relationship with the natural law, rights at this level become more susceptible to the restrictions of societal institutions.

The third level of determination of rights concerns the point when they are included in the actual positive codes of a community and become strictly legal entities. Since positive law is entirely a human creation (both in its content and its knowledge), there remains ample room for variations in the form and content of the rights. At this level, the various modalities of these rights are determined, and considerations of socio/cultural, political and economic background of the community play an important role. In light of these particularities various modalities of the form and content of these rights are determined. Moreover, since positive law follows from the first principle of the natural law only in a 'contingent' manner, the rights granted by it can be subjected to stronger restrictions and limitations than those of the other two levels. Thus it can be said that the farther a right is removed from natural law (and therefore from the common good), the more it is subject to the limitations and restrictions of the institutions of human society, the closer it is to the natural law, the more absolute it is, and the less subject to limitations in any respect.

The next section will give some examples to show how this process of determination of rights at these three levels takes place. However, a second important point which relates to Maritain's distinction concerning the possession and the exercise of rights remains to be considered.

(ii) The Distinction Between the Possession and the Exercise of Rights

As indicated earlier, Maritain makes a distinction between the possession of a right and its exercise. This distinction, in his view, is of crucial importance to any human rights theory and is essentially required to understand his own conception of man's basic rights. We have seen that he makes the distinction between the absolute inalienability and the substantial inalienability of rights. To reiterate, the rights which are of such a nature that the common good would be jeopardized if society in any measure restricted their possession by all men, are called 'absolutely inalienable rights'. Right to life is an example of such a right. On the contrary, there are some rights which are of such a nature that the common good would be jeopardized if the body politic could not, (in some measure), restrict

their possession by men. These rights are referred to as 'substantially inalienable rights'. The rights of association and of free speech come under this category.

But now Maritain introduces another distinction and maintains that "... even absolutely inalienable rights are liable to limitation, if not as to their possession, at least as to their exercise".⁹¹ In other words, one must distinguish between the possession and exercise even of absolutely inalienable rights - the latter being subject to conditions and limitations dictated by justice and essentially required by the common good. This means that a person may 'possess' a right, but can still be deprived of the possibility of justly claiming its exercise. Take for example the case of a criminal who is sentenced to death. According to Maritain, the right to life is an absolutely inalienable right, that is, it is grounded in the nature of man, and cannot be taken away unless man loses his nature ("which of course no man can lose").⁹² But, if a person can be condemned to die, can we still call the right to life an 'inalienable' right? How can a right be inalienable and still justifiably be taken away?

Maritain tries to solve this paradox by distinguishing between the possession and the exercise of rights. "If a criminal can be justly condemned to die," he explains, "it is because by his crime he has deprived himself, let us not say of the right to live, but of the possibility of justly asserting this right: he has morally cut himself off from the human community, precisely as regards the use of this fundamental and "inalienable" right which the punishment inflicted upon him prevents him from exercising."⁹³ Therefore, in the case of capital punishment, man does not lose the 'possession' of his right to life. He is deprived only of the 'exercise' of this right, and therefore, the 'right to life' can still be called his inalienable right.

Whether or not the distinction between the possession and the exercise of rights can be applied to the right to life is a debatable issue in itself and I shall discuss it in the last chapter of the thesis. Nevertheless, it is important to note that Maritain not only believes that his distinction can be applied to all kinds of rights, but also uses it to solve most of the problems concerning the limitations of rights. More particularly, whenever the absolute inalienability of a right poses problems for the concept of common good or

conflicts with the requirements of justice, Maritain uses this distinction, and tries to resolve the conflict by maintaining that the limitations imposed upon the exercise of a right do not necessarily limit or annihilate the possession of the right. Therefore, even an absolutely inalienable right can justly be limited in its exercise.

Another way in which the 'exercice' of a right naturally 'possessed' can be hampered relates to the development of social structures in different periods of time. There are certain rights which men possessed but could not claim or exercise due to certain elements in the social structure of the particular time and place, for example the right to receive the heritage of human culture through education or the right to education for all in the slave society of ancient Rome or the feudal society of the Middle Ages. "In such cases", Maritain notes, "what remains is to endeavor to change the social state involved."⁹⁴ In other words, the deprivation of the possibility of exercising a right does not necessarily have to be accepted as such. Sometimes it should generate the process of the transformation of the social structure itself. This is why, Maritain says, "the basis for the secret stimulus which incessantly

fosters the transformation of societies, lies in the fact that man possesses inalienable rights but is deprived of the possibility of justly claiming the exercise of some of these rights because of the inhuman element that remains in the social structure of each period."⁹⁵

Sometimes we may even be required to voluntarily forego the exercise of certain rights we possess, so that the interests of the community and the common good are better served and, despite rapid changes in the socio/economic conditions, our life in society remains constantly harmonious and fruitful. Explaining this point Maritain says:

This distinction also enables us to understand that it is fitting at times, as history advances, to forego the exercise of certain rights which we nevertheless continue to possess. These considerations apply to many problems concerning either the modalities of private property in a society that is in the process of economic transformation, or the limitation on the so called "sovereignty" of States in an international community that is in the process of being organized.⁹⁶

From the foregoing discussion, two points become clear. First, though Maritain believes in the absolute inalienability of rights, he does not consider them to

be beyond all limitations. Human rights, in his view, are absolute, but not in the sense that no limitation can be put on them in any circumstance. They are absolute only in the sense that they are rooted in the absolute values associated entirely with the concept of personality and belong to a realm which is absolute and supra-temporal in character. But this does not mean that they cannot be subjected to any restrictions. Human rights are not divine rights. Therefore, they should not be confused with the absolute and unlimited rights of God. A philosophy based on such a confusion cannot provide any "solid foundation for the rights of the human person, because nothing can be found on illusion".⁹⁷ Maritain blames Rousseau and Kant for encouraging such a confusion and believes that their philosophy

compromised and squandered these rights, because it led men to conceive them as rights in themselves divine, hence infinite, escaping every objective measure, denying every limitation imposed upon the claims of the ego, and ultimately expressing the absolute independence of the human subject and a so-called absolute right - which supposedly pertains to everything in the human subject by the mere fact that it is in him - to unfold one's cherished possibilities at the expense of all other beings.⁹⁸

But, though human rights are not absolute and unlimited like divine rights, they can not be subjected to

arbitrary limitations. The 'exercise' of the absolutely inalienable rights 'possessed' by all men, can be restricted only in accordance with the requirements of justice and the common good. In other words, any limitation imposed upon man's basic rights must be justified on the basis of common good, and only when it is established that to promote common good it is essential that some rights must necessarily be curtailed to some degree, may the exercise of human rights be legitimately restricted.

This also shows that, according to Maritain, while rights derive their existence through natural law, their exercise is determined by the concept of 'common good'. In other words, though men 'possess' rights by virtue of the natural law, they must exercise these rights in accordance with the requirements of the common good. This obviously points to the intrinsic relationship between the idea of natural law, common good and the concept of human rights. Rights originate from natural law. But since natural law aims at the common good, rights also aim at common good and therefore, in a sense, are governed by the fundamental postulates of the idea of common good.

After these preliminary remarks regarding some general characteristics of Maritain's conception of human rights, I shall discuss some of these basic rights in particular. I shall primarily concentrate on those rights which are included in the first list, namely, the rights of the human person. (As indicated earlier, the rights included in the other two categories are basically different modalities of the rights listed under the first category.) The rights of the first category can be presented under four main headings, namely, the right to life, right to freedom, right to property and the right to equality. In what follows I shall discuss each of these rights separately and analyse Maritain's views in this connection.

V

(i) Right to Life

The right to life or the right to existence, in Maritain's view, is one of the most fundamental rights man possesses by nature. Human life in itself involves a sacred right, and has a transcendental value. According to Maritain, the first and foremost duty of any society is to respect man's right to existence. Any

abuse of this right on the part of society or the State must be deemed unjust and therefore should be opposed vigorously. Maritain maintains that the life of a person is "superior to every value of mere social utility. For it is the life of a substance endowed with a spiritual soul and possessing a right to its own existence."⁹⁹ This is why he believes that it is a crime to kill an innocent man just to rid society of a useless member. It is a crime to doom a prisoner to death in order to test some drugs which may save thousands of lives. So strong is man's right to life that even if it is a question of the salvation of a whole city, the state cannot decree the death of a man for this purpose.

Does this mean that the social body can never demand its members risk their lives for any purpose? No, that is not the case. There are certain special circumstances in which society can ask its members to expose their lives to various risks. It may request them to volunteer for such exposure. But this sacrifice can be demanded of men only if it is to serve the common good of the society in its true sense. "The social body", Maritain observes, "does have the right, in a just war, to oblige its citizens to expose their lives

in combat.... When it is a question of special missions in which men go to certain or almost certain death, volunteers are called for." But "this fact," in his view, "is itself an additional testimony to the right of the human person to life. Even in these extreme cases, something still bears witness to the transcendent value of human life in so far as it is the life of a person. The person can be obligated in conscience and, if necessary even constrained to expose its life, but never can it be branded like an animal for the slaughterhouse. It is still as master of itself and by an act of virtue that it faces death."¹⁰⁰

It is true that according to the most basic precepts of natural law, a primordial and most general end of human nature is to preserve being - the being of that existence who is a person, and a universe unto himself; and existence is man's first prerequisite to fulfill his higher ends. But it is equally true that, "the sheer fact of existing is neither the supreme good nor any one of the absolute goods to which the person as such is ordained."¹⁰¹ Mere existence is never an end in itself for man. It is a means to fulfill the other higher requirements of his being, and therefore, it may be sacrificed voluntarily. Indeed the occasion

may arise when he may feel that it is better to die for a particular cause than to live in demeaning circumstances. In other words, though man derives his right to life by virtue of his personality, the very demands of his personality may require him to risk his life.

Moreover, apart from these ultimate demands of man's dignity as person, there are other reasons for which man is duty bound, in justice, to risk his own existence for the good of the whole. More particularly, when the existence of the whole is imperilled, man is obliged to risk his life. He is so bound precisely because besides being a person, man is also an individual; and as an individual, he is part of the community from which, in a fashion he has received all that he is. And therefore, when the very life and existence of the whole is threatened, man as a part of it is obliged to sacrifice his own existence. But he is thus obliged, Maritain reminds us, "only because the terrestrial common good itself includes supra-human values and is indirectly related to the absolutely ultimate end of man."¹⁰²

Thus, we see that according to Maritain, a human person's right to life is rooted in his very nature, and

his dignity as person requires that this right be recognized and respected to its fullest extent. The only power which can legitimately demand him to sacrifice his life is the power of his own dignity as person. If he can be asked to risk his life at all, it should be only to fulfill the demand of his supra-temporal destiny and not for the good of the State.

In other words, according to Maritain, the right to life is one of the most fundamental rights of human beings. It is an absolutely inalienable right and therefore men cannot be deprived of its possession. However, in some circumstances men can be deprived of the exercise of this right. This applies when one commits a crime for which he is condemned to die, or when the common good demands that some people risk their life voluntarily. But even in these cases, any restriction on the exercise of this basic right has to be justified by proving that it is not contrary to man's dignity as a person; that man is not 'forced' but is only asked to risk his life, voluntarily; and if he is condemned to die for a crime, this punishment is executed in accordance with the rules of justice.

(ii) Right to Freedom

Another important right which man possesses by virtue of his nature is his right to freedom. We have seen that one of the most significant characteristics of personality, according to Maritain, is its freedom. Freedom is the essence of man's being and it cannot be taken away from him without destroying his very being. "The root of freedom consists ... in reason; to be free is of the essence of every intellect."¹⁰³ Explaining how basic this right to freedom is, Maritain says:

A person is a universe of spiritual nature endowed with freedom of choice and constituting to this extent a whole which is independent in face of the world - neither nature nor the State can lay prey to this universe without its permission. And God himself, who is and acts within, acts there in a particular manner and with a particularly exquisite delicacy, which shows the value He sets on it: He respects its freedom, at the heart of which He nevertheless lives; He solicits it, He never forces it.¹⁰⁴

Some brief preliminary points are important to the understanding of Maritain's views in this regard.

Firstly, according to Maritain, there is no opposition between freedom and nature as is believed by

important modern thinkers such as Kant. Indeed, the order of freedom and the order of nature are closely related to each other in the sense that the former necessarily presupposes the latter. In this connection, Maritain remarks that St. Thomas, from whom he draws the inspiration for his philosophy of freedom, "in place of opposing the order of Freedom to the order of Nature or of Being, ... unites without confusing them, and grounds the former on the latter."¹⁰⁵

But this relationship between the two orders does not make them identical. Although the world of freedom originates in nature, it is distinct from the order of Nature "and constitutes a world apart."¹⁰⁶

The essence of this world of freedom consists in its essential dynamism. To understand that, we must consider the very meaning of the word 'freedom'. The term freedom is loaded with many diverse kinds of meanings and in its actual uses conveys a great number of things. But there is something common to all these widely different meanings. "All the varied senses of the word freedom which have importance for mankind presuppose this primordial freedom, this fact that our Will in its inner fortress is free not only from all

external constraint but also from any kind of inherent necessity that would determine it ad unum."¹⁰⁷ The above remark suggests that there are 'two principal lines of significance' or 'two directions' in which the concept of freedom has to be understood. One of them concerns freedom as an 'absence of constraint' and the other as an 'absence of necessity'. In other words, while the one indicates the freedom of spontaneity or the freedom of autonomy, the other relates to the freedom of choice or free will. The distinction between these two directions or two kinds of freedom is very important, and in Maritain's view, the confusion between them has caused many grave errors in the history of philosophical thought.

(1) Freedom of Choice

The 'first freedom' or the 'freedom of choice' is what is referred to as 'free will' in philosophical discussion. This is the freedom we are born with and which is an indispensable part of our nature. "Free Will is indeed the source and spring of the world of Freedom: it is a datum of metaphysics; we inherit it with our rational nature, we do not have to achieve it: it appears within us as an initial form of Freedom."¹⁰⁸

Maritain believes that the fact of free will is so self-evident that there is no point in wasting time in proving its existence. "It is", he insists, "the most certain fact there is".¹⁰⁹ From our own experience, we all know that we possess freedom of choice. We know it so clearly because it is "an immediate datum of consciousness; it is perceived by an intuition as infallible as the intuition of the active self by the consciousness, or of the external world by the senses, or of being by intelligence."¹¹⁰ Contrary to the opinions of all determinists who refuse to accept its existence, free will unmistakably manifests itself in all actions of rational creatures and needs no further proofs to establish its presence.

Freedom of choice manifests itself in human action as a power to transcend all necessity, and it activates self-determination. "An act of free will is an act that no necessity, be it completely internal and exempt from any external pressure, determines."¹¹¹ But does it mean that free will consists in mere choosing without any regard to any principle whatsoever? No, that is not the case. The first freedom we are naturally endowed with "is not the absurd power of choosing without motive or in spite of motive, but the power of choosing

according to reason."¹¹² "The act of free will thus appears as the common offspring of reason and of will enveloping one another in a vital union."¹¹³ This is why Maritain insists that the "freedom of choice is not an irrational element thrust on the philosopher by the moral consciousness; it is a thing proper to a certain nature, in short, to the rational or intellectual nature."¹¹⁴ And therefore, freedom of choice consists not in being able to do whatever one wants, rather it is best expressed in one's mastery over oneself. "To be free is to be master of one's judgment, liberi arbitrii. The will is able to control the judgment which determines its acts and by virtue of this control it has complete mastery of its action."¹¹⁵

This freedom of choice, as is obvious, is one of the most important elements which make a human being characteristically a human person and therefore, it naturally acquires a significant place in the list of basic rights which man possesses by virtue of his personality. But however important this freedom of choice might appear to be, according to Maritain, it cannot be considered an end in itself. In other words, freedom of choice is never its own proper end and its meaningfulness consists not in its own existence and

exercise, but in the achievement of another kind of freedom: freedom in the sense of autonomy or the freedom of spontaneity.

(2) Freedom of Spontaneity

Freedom of spontaneity, according to Maritain, is quite unlike free will, which is a power of choice which transcends all internal and external necessity and determination. Rather, freedom of spontaneity is conceived as the absence of outer constraints. It is supposed to belong to every being which acts in accordance with its nature and therefore admits of different degrees depending upon the degree of being it belongs to. Distinguishing these two kinds of freedom, Maritain says, "It does not imply the absence of necessity but only the absence of constraint. It is the power of acting in virtue of one's own interior inclination and without undergoing compulsion imposed by any exterior agent."¹¹⁶ In this sense, freedom of spontaneity is the fundamental principle of man's being and activity. Maritain describes the four degrees of this freedom arranged in ascending order.

At the lowest level, there is the spontaneity of material nature in general. For example, "...a stone falls freely when nothing hinders it from obeying the law of gravitation, which is a law of its nature."¹¹⁷ The organic bodies having a vegetative existence represent the second degree of spontaneity. The third degree of spontaneity is expressed by sensitive life and is found in the animal kingdom. "The animal is free with respect to the structural conditions or the constitutive structures, which it has received from nature, in the sense that its activity in space depends on forms or patterns of movement which are perceptions, that is, acts of sensitive knowledge."¹¹⁸ But the spontaneity enjoyed at this level is still in a weaker form in the sense that it does not give itself the 'ends' of its own activity. They are pre-established by nature, and activities performed at this level are accomplished according to the psychic structures and instincts endowed by nature.

At the fourth degree we enter into the realm of spontaneity of intellectual life, the life of the human being. Man as an intellectual being is capable of setting his own ends and does not necessarily act according to the forms and patterns pre-established by

nature. "Able to exceed the realm of the sense, able to know being and intelligible natures, he knows both what he does and the ends of his activity as such."¹¹⁹

Starting with the fourth degree, we enter into the supreme level of creation, that is the world of spiritual beings. And as soon as we cross the threshold of the realm of spirit, the freedom of spontaneity becomes the freedom of independence.

To this extent it does not consist merely in following the inclination of nature, but rather it consists in being or making oneself actively the sufficient principle of one's own operation; in other words, in possessing, perfecting and expressing oneself as an indivisible whole in the act that one brings about. This is why freedom of independence exists only in beings which also have free will, and presupposes the exercise of free will in order to arrive at its own end.¹²⁰

This means that freedom of spontaneity and personality are inseparably related to each other, for the very mark of personality consists in the fact of being independent and of being a whole to oneself.

At this point, two basic truths must be noted. As a spiritual being, man is a free and independent whole, yet since he is at the lowest degree of personality, his

freedom is also of a lower degree. Man's personality is always bound with the material individuality of his nature and therefore is inevitably constrained by bodily conditions. The only being in whom personality is fully realized in its truest sense is God, and therefore only in Him the freedom of spontaneity and independence exists in its perfect form. This, we may call the fifth degree of freedom of spontaneity.

Secondly, in spite of the low level of personality, man naturally tends towards the freedom of spontaneity and aspires to repair the defeats which are inflicted on him by his material nature. In other words, he tends to move from the freedom of choice (which he naturally enjoys) to the freedom of spontaneity, which he has to win; and in that he uses the former as a means to achieve the latter. This dynamic movement from one kind of freedom to the other kind is referred to by Maritain as the conquest of freedom.

The freedom of choice, the free will, is not its own end. It is ordained to the conquest of freedom in the sense of freedom of exultation or autonomy. And it is in this conquest, demanded by the essential postulates of human personality, that the dynamism of freedom consists. 121

This dynamism takes two directions according to the two kinds of aspirations of human personality. The first one, or the connatural aspiration tends to a relative freedom compatible with the conditions here below, while the second, the transnatural aspirations tend to super human freedom, that is, freedom pure, simple and perfect. Freedom in this perfect form, as we know, is realized in God only, and therefore, man can tend towards it only in an inefficacious manner. If at all he becomes able to achieve it in some form, it is only through the aid from Him, that is, through God's grace. This is why, according to Maritain, the atheist, who denies the existence of God and the immanentists and pantheists who deny His transcendence, have never been able to understand the true nature of man's freedom, more particularly his transnatural aspiration, and therefore have always advocated a false conquest of freedom which is illusory and homicidal, instead of being "a true conquest, which is for man truth and life."¹²²

The essence of this true conquest, according to Maritain, lies in the fact that not only the freedom of choice is made a means to attain freedom of autonomy but even this latter freedom is directed towards something

else, the union with God in beatitude. "It is with the liberty of God Himself that the man of perfect soul is free."¹²³ Because God is the ultimate end of all human endeavour, in his union of love with God man finds his perfect freedom of autonomy. In fact, at this stage, freedom of autonomy becomes the freedom of exultation and manifests itself through the perfect spontaneity of a spiritual nature. As Maritain says: "Besides, it is not of themselves or by themselves, it is by union with One who is Other and who is Source of all Being and of all Goodness, that created spirits are able to reach such a perfection of spontaneous life... God being the perfection of personal existence and man being also, though precariously, a person, the mystery of the achievement of freedom is contained in the relation of these two persons."¹²⁴ A peculiar feature of this relationship consists in the fact that though man is given freedom of choice in order to reach the freedom of autonomy or the terminus of freedom, yet

freedom of autonomy is so little bound up with freedom of choice that in the supreme act of beatitude the latter finds no room for exercise.... How can one make a fresh act of choice when one is at last in possession of that which one has chosen in preference to all? The power to exercise a free choice will survive in all things else; it will not survive before subsisting Good seen face to face.

And yet nowhere more fully than in the beatitude of love is there freedom of autonomy, for it is in accordance with the very law of its being that the will cannot then not love. There is no act that is more voluntary and yet it no longer exhibits the lofty indifference that is proper to freedom of choice.¹²⁵

Thus we see that according to Maritain, in the spiritual realm, the true conquest of freedom essentially consists in attaining the state of beatitude or the union with God. Consequently, any philosophy based on atheism or pantheism cannot understand the true nature of freedom.

Maritain believes that even in the social realm, i.e. with respect to the connatural aspiration also, the true nature of the conquest of freedom is never fully understood by contemporary thinkers. At this level, the prime error, which subsequently gives birth to many related errors, lies in the confusion of the two kinds of freedom.

This error makes the highest form of freedom consist in freedom of choice; as if the reason for choosing were not to escape having to choose again! Free choice becomes an end in itself, and man condemned to recurrent acts of choice without ever being able to bind himself, is launched into a dialectic of freedom which destroys freedom.¹²⁶

This is why, in spite of the fact that the idea of freedom dominates most of the political philosophies of modern times, we still lack a true understanding of the nature of freedom.

Bourgeois liberalism or individualism, which dominated nineteenth century thought, exemplifies the above stated error. This theory tends to understand freedom solely in the sense of freedom of choice and therefore conceives of a society in which the primary aim of the social body consists in preservation of something which is already given - the free will of man. It is supposed to be done in such a way that "all possible acts of free choice may be available and that men may appear like so many little gods, with no other restriction on their freedom save that they are not to hinder a similar freedom on the part of their neighbour."¹²⁷ Freedom, taken in this sense of an end in itself, according to Maritain, leads to tragic consequences in the social realm. Firstly, it provides an absolute right to each part to realize its choice without constraint, which eventually dissolves the whole in anarchy, and any realization of freedom in the sense of achieving autonomy within social order becomes impossible. Secondly, it makes freedom the privilege of the

few, who enjoy it only by oppressing others by the force of their might. In Maritain's view, this theory of freedom is rooted in the 'anthropocentric' conception which Rousseau and Kant had of the autonomy of the person. According to this conception, one is free only if he obeys himself alone and man is constituted by right of nature in this state of freedom. Rousseau believed this state to be lost by the fact of corruption inseparable from social life and Kant relegated it to the noumenal world). "In short," Maritain observes, "we have here a divinization of the individual, of which the logical consequences, in the social and political order, are: 1) a practical atheism in society... 2) the theoretical and practical disappearance of the idea of the common good; 3) the theoretical and practical disappearance of the idea of the responsible leader and of the idea of authority, falsely regarded as incompatible with freedom."¹²⁸

Thus we see that:

Through an inevitable internal dialectic, the social divinization of the individual, inaugurated by "bourgeois" liberalism, leads to the social divinization of the State, and of the anonymous mass incarnate in a Master, who is no longer a normal ruler but a sort of inhuman monster whose omnipotence is based on myths and lies.¹²⁹

Freedom, taken in the sense of mere freedom of choice, reduces man's right to freedom to a legal fiction, and eventually gives way to revolutionary totalitarianism.

Another political philosophy, while it avoids this error by believing that society should be based not on freedom of choice but on the freedom of autonomy, falls into another kind of error by misconceiving the nature of this latter freedom.

This philosophy conceives Freedom of Autonomy as a type of transitive action, expressing itself in production and control; in material accomplishment, in the realization of power. It is at the hands of the political community itself or of the State that this philosophy seeks the fulfilment of freedom in the field of history, for it sees in the State the highest manifestation of forces pregnant with futurity. One may call this conception of freedom imperialist or dictatorial.¹³⁰

Maritain believes that this kind of conception makes its way steadily in the world in German and Russian dress.

Obviously, freedom taken in the sense described above is simply an illusory freedom where man is turned into a 'happy slave' gladly sacrificing his soul's freedom of expansion for procuring the productive and economic welfare of the collective whole. But since

"The Collective God of a million arms tends also of his own nature to his own destruction,"¹³¹ eventually, even this illusory freedom also vanishes and man is left with nothing but chains of materiality binding him from all sides.

Thus we see that both bourgeois individualism and communist anti-individualism (along with dictatorial anti-communism and anti-individualism) are incapable of understanding the true nature of man's freedom, and therefore fail to present a correct notion of man's right to freedom.¹³²

The true conception of man's right to freedom, according to Maritain, "has for its principle a conception of the autonomy of the person that is in conformity with the nature of things and therefore 'theocentric'. According to this notion, obedience, when consented to for the sake of justice, is not opposed to freedom. It is, on the contrary, a normal way of attaining to freedom."¹³³ Elsewhere he says,

The autonomy of an intelligent creature does not consist in its receiving no rule or objective measure from a being other than itself. Rather, it consists in its

voluntarily conforming itself to such rules and measures, because they are known to be just and true, and because of a love for truth and justice.¹³⁴

In Maritain's view, this conception of freedom is free from the errors of individualism as well as of dictatorial collectivism. It avoids the errors of extreme individualism by maintaining a fundamental dynamism in the concept of freedom and making freedom of choice simply a means to achieve the freedom of autonomy. In other words, it respects freedom of choice as a privilege of human personality but does not idolise it as a supreme end and thus restrains irresponsible use of this initial freedom by individual human persons.

But, by defining freedom of autonomy in essentially spiritual terms, the 'theocentric' view also avoids the pitfalls of dictatorial collectivism. Due to its spiritual character, freedom of autonomy becomes the guiding principle of society and the temporal common good of the community is subordinated to its demands. In other words, society is duty bound to respect the freedom of the human person, and therefore is not allowed to treat its members merely as parts of a collectivity. Explaining this Maritain says,

By virtue of the dynamism of freedom we have described it would extend from the state of initial freedom or freedom of choice ... to the terminal or spiritual freedom of its citizens, the business of community being to provide conditions and means that will take account of the common good of the temporal order, and to promote certain beginnings and aspirations the complete achievement of which transcends the order that is proper to social life and the terrestrial City.¹³⁵

This conception of freedom, according to Maritain, is neither individualist nor collective; rather it is communal and personal at the same time. It is 'communal', because in it society "is ordered to a common good which is specifically other than the simple arithmetical sum of the particular goods of the citizens taken singly and nobler (taking them both on the same plane) than the individual good."¹³⁶ It is 'personal' because contrary to the theories which perceive man simply as a material individual and hence treat him merely as part, it perceives man basically as a person and treats him as an independent whole.¹³⁷

From the above discussion two points become abundantly clear. Though man possesses his right to freedom by virtue of his very nature, he possesses it merely in potential form. The full realization of this right requires constant effort, both on the part of the

individual person and on the part of society. Therefore, for Maritain, freedom is not simply a 'matter of fact'; it is also an end to be realized. Freedom is something to be won by persistent human activity. As he observes,

Man is not born free, except in the basic potencies of his being: he becomes free, by warring upon himself and enduring many hardships. Through the work of the spirit and virtue, by exercising his freedom he wins his freedom, so that, at long last, a freedom better than he expected is given him.¹³⁸

Further, it is not in the total absence of all regulations that man's right to freedom is best expressed; this right can be exercised properly only under the condition of rational regulation.

In the light of the above analysis, it is not difficult to see that when Maritain talks about various kinds of freedom which men possess as 'rights', he is talking of a very rich and complex notion. In his list, as we have seen, he includes the freedom of conscience, the freedom to follow any religious order, freedom of investigation and discussion, and the freedom of expression. These freedoms as we now know, are neither absolutely unlimited, nor totally unrestrained. Rather,

for their effective exercise, they must be constantly regulated by the principle of common good. For example, consider man's right to freedom of expression. This right, according to Maritain, corresponds to one of the basic aspirations of human nature and therefore is granted by natural law as a basic inalienable right. But in its actual exercise, this right necessarily has to be subjected to regulations of positive law.

For it is not true that every thought as such, and because of the mere fact that it was born in a human intellect, has the right to be spread about in the community. The latter has the right to resist the propagation of lies or calumnies; to resist those activities which have as their aim the corruption of morals; to resist those which have as their aim the destruction of the State, and of the foundations of common life.¹³⁹

But this does not mean that the social body necessarily has to take recourse to censorship and police methods to do this job. In fact, these are the worst methods and run against the spirit of a democratic society. Instead of using repressive measures, the social body should take recourse to those methods which are consistent with the basic principles and inner energy of human personality, for example the "spontaneous pressure of the common conscience and public opinion, which spring from the national ethos when it is firmly established."¹⁴⁰

But it does not mean that a democratic society must be an unarmed society, "which the enemies of liberty may calmly lead to the slaughter-house in the name of liberty."¹⁴¹ One necessarily has to defend the basic principles of a democratic society which primarily include liberty and mutual civil respect. But for that, a reasonable use of force can be allowed, for what distinguishes "a society of free men from a despotic society is that this restriction of the destructive liberties takes place, in a society of free men, only with the institutional guarantees of justice and law."¹⁴²

Maritain has written extensively on freedom of the press and freedom of expression of thought. He maintains that freedom of expression is one of the most fundamental human rights, but it is only a 'substantially' and not 'absolutely' inalienable right. There are certain limits to this freedom which are necessarily demanded both by the common good and by itself. If it is made absolute and limitless it would destroy itself.

Maritain firmly believes that in serious circumstances, the State is entitled to impose limitations on the freedom of expression of its people. But these

limitation, he insists, should be imposed only in a manner which is consistent with the basic principles of democracy and is beneficial to the common good. In other words, man's basic freedoms should not be regulated in a dictatorial or totalitarian way but in the pluralist way, that is, by justice and a progressive self-regulation. Emphasizing this point he says,

When it comes to higher matters, in which freedom of inquiry and the inner values of intelligence and conscience are involved, and with regard to the most vital and spiritual ingredients (which in themselves are the most important) in the common good, the factual limitations to be brought to bear on freedom of expression depend on the constructive and regulative institutions, organs and agencies and the free activities spontaneously developed in the body politic.¹⁴³

Other rights related to the concept of freedom, such as freedom of investigation, freedom to follow the religion of one's own choice, and freedom of association, must be viewed in the same manner. These freedoms, Maritain firmly believes, are possessed by all human beings as their natural right. But he is also convinced that like freedom of expression, a completely unregulated and unrestricted exercise of these freedoms will not only cause problems for the civil society, but will also prove to be self-destructive. Hence, it is

important to remember that: Man is free, but only relatively free; his freedom cannot be the absolute, limitless freedom of God; the regulations imposed on his freedom necessarily have to be in conformity with the essential ends of his personality; and therefore, instead of curbing his freedom, they should aim at providing better opportunities for its effective exercise.

The discussion of the right to freedom has become relatively lengthy; but considering the immense importance Maritain gives to the concept of freedom, it was necessary to present at least the fundamental points of his analysis in this regard. I shall conclude this discussion with Maritain's own words, which, I believe give the gist of his views on this issue.

All exterior regulation is useless unless its aim is to develop in the person the sense of his own creative responsibility and the sense of communion. To feel responsible for one's brothers does not lessen freedom, though it puts on it a heavier load.¹⁴⁴

(iii) Right to Property

In Maritain's list another important but controversial right is the right to property. Right from the beginning, Maritain makes it sufficiently clear that he supports the right to individual ownership of material goods - the right to private property. "Neither legislation, nor custom," he declares, "has any power to abolish the principle of private property, for this would involve a violation of natural law."¹⁴⁵ The question is, what are those elements in human nature on which the right to own private property is founded? What is it in human nature which can become a universal ground for the individual appropriation of material goods, independently of the particular 'modes' or titles of acquiring property such as occupation, succession or contract?

Before discussing the answer to this question, let us first recall the basic points of Maritain's analysis concerning the three levels of the determination of a right. In the case of the right to property, these three stages can be distinguished as follows:

The first stage concerns the natural law. Man, considered in his specific nature has a general right of appropriation over all material things. In other words, "Mankind is naturally entitled to possess for its common use the material goods of nature."¹⁴⁶

The second stage pertains to the law of nations. On the basis of the first stage or the natural law, reason necessarily concludes that this general right to appropriation should normally be expressed through individual ownership. The reason behind this conclusion lies in the fact that for proper and effective management and administration, the material goods of nature should be privately owned.¹⁴⁷

The third level of the determination of this right concerns the positive law of the land. Here, the particular modalities of this right are determined which may vary according to the state of the development of the economy of different societies. History, culture, tradition, customs and social structure are the factors which contribute towards the final determination of these modalities, and therefore this general right to private property appears in variable forms in different societies.

In his analysis, Maritain seems to be more concerned with the second stage of the determination of this right, and therefore devotes his discussion primarily to answering the question, why should the general right to appropriation of material goods take the form of private ownership? In other words, on what grounds may the right to private property be derived from the right to general appropriation of material goods by mankind as a whole?

According to Maritain, the grounds for this derivation lie in the activity of man as artist or as maker. This is an activity which springs from the very essence of human personality and makes personal ownership a matter of necessity. Here, the term 'artist' is used in a very broad sense; 'art' refers to an intellectual activity that has to do with the production of a work or the elaboration of material. Art, Maritain emphasizes, is the use of right reason in the making of things, and therefore the exercise of art work presupposes the rational nature and personality of the artist or workman. This explains why non-human creatures on earth, such as the bee or beaver, despite their activity, are not entitled to individual ownership. Since the operation of reason is a necessary ingredient of art or of

work, personality becomes the essential element for the right to property. And since this element is absent in the non-human creatures of the earth, they cannot have this basic right enjoyed by all human beings.

To explain his notion of 'work' or 'art' and its relation to proprietary rights, Maritain invokes the distinction between 'factibile', the thing to be made or produced, and 'agibile', the act to be done (from the moral point of view). I shall discuss the notion of 'agibile' later. Let us first understand the concept of 'factibile'.

(1) The Concept of Factibile

"In the ontological and immanent order," Maritain observes, "each person possesses a proprietary right over himself, over his nature and action; a mastery over himself, and over his acts. So in the theological order the Person of the Word possesses his human nature as proper to him. This is in the metaphysical order the root principle of individual ownership, but it can only pass to ownership of material and external goods by way of the factibile, the exercise of art or work."¹⁴⁸ In other words, the proprietorship that the person has

over himself extends to the ownership of external things through the 'factibile' - the exercise of art or work. How does it come about? The answer lies in the concept of 'habitus' - the stable disposition that perfects the subject, especially in the field of action.

In contrast to the artistic work of the bee - which proceeds from its 'specific nature' - the productive work of man proceeds from his 'habitus' which necessarily requires the personal power of management and use over material things and an exclusive, lasting, permanent possession of the necessary means for executing the work. In Maritain's words,

The vocation of human nature to elaborate raw material according to a rational design requires generally that external things on which and by which this elaboration is wrought should be possessed as of right by the person whose rational activity is in operation. Here is the metaphysical root of the two fundamental titles to individual property, namely occupation (the first occupier laying hold of certain goods with a view to their later elaboration) and work.¹⁴⁹

Maritain maintains that the various modes of individual ownership usually correspond to the work to be done (factibile) and the exercise of work. For example, the work done on the soil, even if mechanical

processes are used, typically takes the form of family type of ownership, though in its extended form it may include a certain number of associated co-workers or wage earners. On the other hand, the industrial method of production particularly in the manufacturing industries normally tends to take the form of a corporate type of ownership where the reward of the work of technicians and wage earners is substituted by their salary.

Maritain accepts the idea of state ownership for the works which owing to special circumstances, lie outside the scope of private management, (for example the public services of the state or different undertakings which come under its control), but simultaneously emphasizes that "It is in the nature of things that such work should be exceptional and limited to what directly concerns the common good of the community."¹⁵⁰ In other words, the state should be allowed minimum interference in the management of property and the principle of individual ownership should be preferred over the principle of State ownership.

The above discussion might make Maritain look like a whole-hearted supporter of capitalism. It might

appear as if he is not only unaware of the theoretical weaknesses of the capitalist theory, but is also insensitive to the problems of millions who are constantly suffering from the abuses of the capitalist system. This impression would have been close to truth if Maritain did not make the concept of 'agibile' an essential ingredient of his theory of property rights. But by using the notion of 'agibile', Maritain makes it clear that he is not only aware of the weakness of capitalism but is also concerned to find solutions for the problems involved in operation of a system which bases itself on the principle of private ownership. Let us see what this concept of 'agibile' is.

(2) The Concept of Agibile or Usus

Man, as we know, is not only an artist or a worker, but also a moral agent capable of exercising his free will. It is in this capacity that the principle of 'usus' operates on his acts. As an artist man is entitled to appropriate and to own things privately, but as a moral agent he is required to use the things appropriated for the good of all or for the common good. Both these aspects of man's nature are inseparable from each other and if one gives a right, the other lays down

the rules to exercise that right. "In every human act," Maritain says, "that has to do with external goods, these two aspects of factibile and agibile of operation and moral use, appear. The one and the other, individual appropriation and common use, should shine forth in every act which concerns external goods"¹⁵¹

The law of 'common use' is not imposed externally but is derived from the very principle of natural law, which grants the right to private property. 'Common use' is derived in this way, because the natural law dedicates earthly goods not to individual man but to mankind in general. The individual appropriation of these things is conceived later by reason simply as the best possible means to administer and manage these goods in the interest of the whole of human kind. Secondly, our acts are personal, that is, we can have rights over them as our own.

But the relation of this act to external things gives me no right to own them; the act presupposes the right. It would only confer the right if I were personally the object and end of this utility; if it were by nature destined for me, which is not the case since its natural destiny is to man in general; or if the fact of freely relating a good to myself as end, to my natural love of self, sufficed to give me a right to this good, which equally is not the case.¹⁵²

Thus, according to Maritain, the principle of the 'common use' is inseparably related to the principle of private ownership, and consequently, a failure in the observance of the one necessarily leads toward the failure of the other.

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Both modern capitalism and communism are guilty of violating this fundamental principle in one way or another. Capitalism, dominated by liberal individualism, undermines the importance of the principle of common use and concerns itself primarily with the principle of individual ownership. The result is an inevitable disorder in the society which eventually leads towards violent revolution and generally gives rise to the state dictatorship. Communism, though it rises as a reaction against this situation, seeks the remedy for the abuse of individualism in the abolition of private property itself, and thus violates one of the basic principles of natural law.

Even in its emphasis on the principle of 'common use' communism does not seem to take the right approach, because it seeks to safeguard 'common use' exclusively through state machinery and for that purpose advocates the use of artificial and tyrannical methods. In

communist theory man is conceived primarily as a material individual, and therefore is reduced to the status of a mere instrument in the service of the State. The spontaneous requirement of man's personality to direct itself towards common good escapes the communist theory and thus it ignores one of the most important aspects of human nature. This is why Maritain thinks it is important to make clear that

...it is not a "Statist" or Communist form, it is an associative form that property...should take in the industrial economic sphere, so that the regime of co-ownership should substitute itself there as much as possible for that of wage-earning, and that the servitudes imposed by the machine should be compensated for the human person by the participation of the worker's intelligence in the management and direction of the enterprise.¹⁵³

Maritain makes it clear that when he speaks of the associative form of industrial ownership, he is speaking of a society of persons in which the co-ownership of certain material goods or means of work are perceived as an efficacious aid to personality and which does not aim at the depersonalized possession. The means of production, he insists,

should serve as the material basis for a personal possession no longer of a thing in space but of a form of activity in time, for the possession of "charge" or of a title of work, assuring man that his employment is rightly his, attached to his person by a juridic link...it should serve to give a title and a social guarantee to the bringing into action of that which is fundamentally and inalienably the property of the worker: his personal forces, his intelligence and his arms.¹⁵⁴

Such a personal possession, Maritain believes, arouses in man a concern for work and a sense of the dignity of work. It promotes the feeling of operative responsibility in the worker. Such a feeling is necessary for the success of a system which bases itself on the communal organization of production. Such organization should naturally entail the possessions of a common patrimony which would have a direct personal significance for the worker and would translate itself concretely in the form of personal payments of various kinds.

A society which adopts the principle of associative form of property and organizes itself in communal form, in Maritain's view, provides a remedy both for the problems of communism and the abuses of individualism in the use of property. The remedy, he maintains, should not be sought in the abolition of private property, but

"in the generalization, the popularization of the protections with which it fortifies the person."¹⁵⁵

"The problem", he concludes, "is not to suppress private interest, but to purify it and to ennoble it; to hold it in social structures ordered to the common good, and also (and this is the capital point) to transform it interiorly by the sense of communion and fraternal friendship."¹⁵⁶

(iv) Right to Equality

Another important right which Maritain discusses at length is the right to equality. The idea of equality, Maritain admits, is very difficult to deal with, mainly because in the first place the word 'equality' carries such a heavy emotional connotation that it becomes difficult to understand it rationally. If not so, it inevitably carries with it certain mathematical connotations which are hard to get rid of, and which usually distort the perspective in which this issue has to be analysed. This is one reason why Maritain prefers to speak of 'unity' rather than of 'equality'. To say that men are equal is to say that they are united or share in one common human nature. "The term unity of mankind",

he says, "is the Christian name and the truest name, of the equality in nature between men. It helps us to purify the idea of that equality from all erroneous associations and implications, whether they arise from a geometric imagination or from a passion for levelling."¹⁵⁷

Maritain believes that his own view of equality is essentially 'realist' in the sense that it is grounded neither on exclusively logical or mathematical reasoning nor on metaphysical abstractions. Instead it bases itself on the concrete ontological reality of human nature. In that, it differs radically from the erroneous theories propounded by nominalist or empiricist thinkers on one hand, and from the idealists on the other.

(1) The Nominalist View

The nominalist or empiricist view, represented by "cheap Nietzschean, Machivellianist, rightist-Hegelian or rightist-positivist leaders of modern politics,"¹⁵⁸ overemphasizes the various inequalities that exist among men pertaining to the physical, intellectual, social, political and biological aspects of their nature. In

this view, the concept of equality is treated as a mere 'myth' and it is believed that the organization of human society should be based on the principle of inequality rather than equality. The logical outcome of such a doctrine is the creation of pseudo-specific categories into which men are divided on the basis of social or biological 'pseudo-essences'. Consequently, people are led to believe that by 'nature' some men are superior or inferior to others, and therefore, possess different kinds and degrees of rights corresponding to their specific category.

Although Maritain does not deny that inequalities amongst men do exist, he insists that the primary error of empiricism consists in seeking inequalities only and in totally ignoring the fundamental equality of human nature on which these inequalities are grounded. The practical consequence of this erroneous theory is that it results in what can be called the philosophy of enslavement. The Nazi concept of the 'Herrenvolk' and the concentration camps of Dachau and Buchenwald, according to Maritain, are modern examples of this philosophy.

(2) The Idealist View

The idealist view, which Maritain calls "pseudo-christian egalitarianism", is the one represented by "cheap Rousseauist, enlightenmentist, Tolstoyan, leftist-Hegelian or leftist-positivist leaders of modern politics."¹⁵⁹ The error of pure idealism, according to him, lies not in thinking that there is a fundamental equality among all men, but in conceiving this equality as "the unity of a subsisting Idea, of a Man-in-himself, existing outside time, and of whom all individuals involved in concrete life are merely shadows without substance; in their eyes this realized abstraction is reality itself."¹⁶⁰

This kind of absolute egalitarianism ignores the facts of life and undermines the importance of the inequalities essentially inscribed in man's life on earth. Explaining the significance of these inequalities, Maritain says that "these individual inequalities, despite the burden of sorrow or injustice which the sins of men or the vices of institutions may superimpose on them, are in themselves as necessary for the development and flowering of human life as the diversity of parts for the perfection of a flower or a poem."¹⁶¹ But

since the absolutist view of equality demands a rigorous levelling of all men and totally ignores the value of natural gifts and acquired virtues which are essential for the development of culture and tradition, it cannot be accepted by any rational person. Maritain's own view of equality, which he believes comes from "an inheritance of the judeo-christian tradition" is realist in character and lies in between the two opposing positions stated above.

The equality in nature among men consists of their concrete communion in the mystery of the human species; it does not lie in an idea, it is hidden in the heart of the individual and of the concrete, in the roots of the substance of each man. Obscure because residing on the level of substance and its root energies, primordial because it is bound up with the very sources of being, human equality reveals itself, like the nearness of our neighbour, to everyone who practices it.... It is the natural love of the human being for his own kind which reveals and makes real the unity of species among men.¹⁶²

Such a view, Maritain believes, on the one hand avoids the errors of pure empiricism according to which inequalities are the only reality, and on the other hand avoids the errors of absolute egalitarianism according to which inequalities are simply non-existent. It recognizes that although there is a unity of nature, the

nature manifests itself differently in each man and thus gives rise to those inequalities which, to some extent, are necessary and good for the development of mankind.

In one of his very bold passages, Maritain declares:

Christianity fearlessly asserts the necessity of these inequalities; it respects them, furthers them, favours them, for it knows that...as long as the human will, by a kind of perversion, does not undertake to make them serve as means of exclusion rather than of communication and make them crush the essential equality and the primordial community which they presuppose - the inequalities, which lend variety to human life and intensify the richness of life's encounters, in no way injure the dignities which befit the unity of mankind and the rights which are grounded on this unity. On the contrary, these inequalities make such a unity all the more manifest. Every man is a man in his very essence, but no man is man in essence, that is exhausts in himself all the riches of the various perfections of which human-kind is capable.¹⁶³

What implications would such a view of equality bear on the question of rights and duties of man in the social order? Maritain does not leave his readers in doubt and makes it sufficiently clear that though as persons all men enjoy a fundamental equality, and are entitled to an equal share of benefits, in society they have to live as parts of the social whole. Therefore:

It is just that that part which by innate or acquired superiority renders more services to the whole should receive more in return. It is also just or equitable that individuals should receive in proportion not to their needs or desires, which tend to become infinite, but to the necessities of their life and development, the means for putting to use their natural gifts. In this sense, the more a man has, the more he should receive.¹⁶⁴

In other words, according to Maritain, what man receives from society has to be in proportion to what he is capable of giving in return. He calls it 'proportional equality' and believes that in the domain of relations between the social whole and its parts, only a proportional equality can be truly justified. In his view, respect for the differences and hence for the concrete inequalities must be considered a basic principle of a democratic society. The right to equality must not be taken to mean a right to receive everything from society irrespective of one's merits. Equality, he believes, must be understood as equality of proportion, "that characterizes distributive justice, which latter deals with each in accordance with his merits."¹⁶⁵

Does this mean that Maritain considers the fact of existing social inequalities not only as valuable but also as necessary and wants to maintain these forever?

Is he totally unaware of the pains some of these inequalities have inflicted on human kind in the past and still continue to do so? A thinker like Maritain, who is so concerned with the problems of the common man, and has so strongly advocated the ideal of common good, could not be totally unaware of these facts of reality and history. In my view, Maritain is aware of the problems involved in social inequalities and is also concerned to find their solution. In fact he advocates the notion of proportional equality, not because he seeks to perpetuate inequalities, but precisely because he thinks that the ultimate aim of proportional equality is to lead towards more concrete and effective equality. Social equality, he believes, "is not a condition of existence set by "nature" for "all men", like their arms and legs or the colour of their eyes, which social life, unexpectedly coming into being, needs thereafter only to protect".¹⁶⁶ On the contrary, it requires a movement of progressive conquest of man over nature and over himself. "Social equality", he insists, "is not something ready made; it implies in itself a certain dynamism. Like liberty, it is itself an end to struggle for, and with difficulty, and at the price of a constant tension of the energies of the spirit. If, by postulates of nature, it is, in its most general forms, basic and

primary, social equality is yet only a seed which must develop and which works in the direction of fruition."¹⁶⁷

How should this development be brought about? With effective exercise of the principles of redistributive justice. Maritain insists on this point, because he thinks that his principle of proportional equality favours the differences in growth and development, but requires that "these natural inequalities be compensated for by a process of organic redistribution, by virtue of which the weak and the less favoured share in the benefits which the social whole owes to others."¹⁶⁸

The process of compensating, in Maritain's view, can be carried on in two ways: firstly, by providing equality of conditions, that is by making the conditions to which these inequalities correspond open and not closed, and secondly, by providing equal opportunities to every one to strive for the fullness of human development. It does not mean that Maritain believes that all people must have at the start strictly identical opportunities to mount to the highest degrees in social life. To wish to be so is in his eyes a very naïve way of thinking. What it all means, according to him, is that

It is proper that the highest social conditions should not of themselves be closed to anyone, and even more important, it is proper that in whatever social structure men are involved, they should have the same opportunities to achieve - each one according to his effort and his condition - their human fullness, those fruits of wisdom and human virtue whose savour is not identical, but similarly good in each, whether he spends his life in working the earth, in philosophizing or in governing the State.¹⁶⁹

It might be noted that Maritain makes a distinction between the notion of equality in the social realm and the equality which operates in the field of fundamental human rights. As far as man's fundamental rights are concerned, Maritain wants to maintain that since they belong to a realm which is exterior to the domain of civil society, social inequalities should not influence the equality of rights possessed by all men in nature. In other words, as far as the possession of fundamental rights such as the right to exist, to liberty and to keep one's body whole are concerned, the principle of equality operates in its pure and simple form, not in the proportional form. But since "the fundamental rights of the human person are in themselves anterior to civil society, and the equality of these rights has social value only in so far as society recognizes and sanctions them in its order,"¹⁷⁰ the aim of justice should be to lead society toward a way of life in which

inequalities are not suppressed, but compensated, and subordinated to the high equality of the common use of the good things which nourish and exalt our rational nature. Maritain concludes:

In sum, the error has been to seek equality in a regression toward the basis set up by "nature", and in a levelling down to this base. It should be sought in a progressive movement toward the end which is composed of the good things of rational life becoming in so far as possible and in various degrees accessible to all, and this, thanks to the very inequalities themselves, by justice and fraternal friendship turned away from seeking domination and toward helpfulness and cooperation.¹⁷¹

Thus we see that Maritain neither accepts reductionist egalitarianism nor exalts natural inequalities for their own sake. He believes in the fundamental ontological equality of all human beings and accepts the principle of equality of opportunity. But he is also aware of the importance of the natural inequalities in the development of both person and society. And therefore he propounds a theory in which harmful social inequalities are eradicated through a process of spiritual revolution, that is, by promoting the sense of civic friendship and justice, and natural inequalities are perceived as a means to realize higher ontological equality or the unity of mankind.¹⁷²

(v) Some General Characteristics of Maritain's
Concept of Rights

On the basis of the preceding analysis one can easily deduce the following points with regard to the general characteristics of Maritain's concept of rights.

- (1) In Maritain's view, the primary source of man's basic rights lies in the spiritual aspect of his nature, and it is owing to his personality that man becomes the possessor of certain fundamental privileges, called his inalienable rights.
- (2) Though rights are intrinsically valuable in themselves, they are also means to certain goals, and in general they derive their meaning only through the realization of these goals.
- (3) There is an intimate correlation between rights and duties. Each right not only corresponds to but also originates from a specific duty and must be perceived as an instrument to fulfill that duty.

(4) Though human rights are fundamentally universal and absolute in character in their particular modalities, that is, at the level of positive law they are influenced by the local culture, customs, history, traditions, politics and socio-economic structure of different societies at different points in time. Due to these factors, rights become relative and variable in their actual application. But in order to keep a system of rights relevant to the changing times, this variability is essential and beneficial.

(5) Though rights primarily originate from the spiritual aspect (personality) of man's nature, the material aspect of his well-being should not be ignored, and the rights pertaining to man's individuality should be given equal emphasis. In other words, in a system of rights, one should always keep a healthy balance between the material and the spiritual aspect of man's being.

In the third chapter I shall explain these points in detail and shall compare the general characteristics of Maritain's concept of rights with that of Radhakrishnan's concept. But before that, in the next chapter I shall analyse different aspects of Radhakrishnan's theory of rights.

NOTES TO CHAPTER I

1. Maritain, J., The Rights of Man and Natural Law, (London: Geoffrey Bles, 1958), (hereafter cited as Rights of Man).
2. Maritain, J., The Range of Reason (New York: Charles Scribner's Sons, 1952), p.185..
3. Maritain, J., Rights of Man, p.5.
4. Ibid.
5. Ibid., p.6.
6. Ibid.
7. Maritain, J., Scholasticism and Politics, Trans. Mortimer J. Adler (New York: The Macmillan Co. 1940), p.58.
8. Ibid., pp.58-59. Emphasis original.
9. Ibid., p.60. Emphasis original.
10. But the individuality of spiritual beings such as God and Angels, is different from the individuality of animate or inanimate corporeal beings such as atoms, molecules, plants, animals and men. Explaining this Maritain writes, "With spiritual beings, as Angels, it is not the same; their individuality is rooted not in matter (they have no matter) but in their form itself, that is to say their essence (which is pure form); each Angel being his own specific nature and differing from another Angel as the lion differs from man and from the oak. They are individuals, they are not individualized. God is at the summit of individuality, but He is not individualized. In him, individuality and personality are one and the same, as all his perfections." (Ibid., p.61, footnote 1).
11. Maritain, J., The Person and the Common Good, Trans. John J. Fitzgerald (Notre Dame: University of Notre Dame Press, 1966), pp.37-38. Emphasis original.
12. Maritain, J., Scholasticism and Politics, p.64.
13. Maritain, J., Person and the Common Good, p.21.

14. Maritain, J., Theonas: Conversations of a Sage, Trans. F.J. Sheed (New York: Sheed & Ward, Inc., 1933), p.22.
15. Aquinas, T., Sum Contra Gentiles, III, 113, quoted by Maritain in Person and the Common Good, p.19.
16. Maritain, J., Freedom in the Modern World, Trans. Richard O'Sullivan, K.C. (London: Sheed & Ward, 1935), p.47. Emphasis original.
17. Maritain, J., "Subjectivity and the Human Person", in A Maritain Reader, eds. Donald and Idella Gallagher. (New York: Image Books, 1966), p.172. Emphasis original.
18. Maritain, J., Theonas, p.22.
19. Maritain, J., Scholasticism and Politics, p.64.
20. Maritain criticizes Descartes for encouraging such dualism and observes, "...the human soul, together with the matter which it informs, constitutes one substance, which is both carnal and spiritual. The soul is not as Descartes believed, a thing - thought - existing on its own as a complete being, and the body another thing - extension - existing on its own as a complete being. Soul and matter are the two substantial co-principles of the same being, of one and the same reality, called man" (Maritain, Person and the Common Good, p.36).
21. Maritain, J., Person and the Common Good, p.43.
22. Ibid.
23. Maritain, J., Scholasticism and Politics, p.66.
24. Ibid., p.65.
25. Ibid., pp.65-66. Emphasis original.
26. Maritain, J., Person and the Common Good, pp.47-48.
27. Maritain, J., Freedom in the Modern World, p.49.
28. Maritain, J., Person and the Common Good, p.48.
29. Ibid.
30. Maritain, J., Rights of Man, p.8.

31. Ibid.
32. Maritain, J., Person and the Common Good, pp.49-50; footnote 28. Emphasis original.
33. Maritain, J., Scholasticism and Politics, pp.69-70.
34. Maritain, J., Person and the Common Good, pp.52-53. Emphasis original.
35. Ibid., p.53. Emphasis original.
36. Ibid.
37. Maritain, J., Rights of Man, p.9.
38. See Jacques Maritain, Man and the State, (Chicago: University of Chicago Press, Phoenix Books, 1951), pp.126-139.
39. See Ibid., pp.49-51.
40. Ibid., p.126. Emphasis original.
41. Maritain, J., Person and the Common Good, p.76.
42. Ibid., pp.11-12.
43. Ibid.
44. Maritain, J., Scholasticism and Politics, p.71.
45. Ibid. Emphasis original.
46. Ibid., p.75. Emphasis original.
47. Maritain, J., Freedom in the Modern World, p.50.
48. Maritain, J., Rights of Man, p. 12.
49. Maritain, J., Scholasticism and Politics, p.82. Emphasis original.
50. Maritain, J., Three Reformers (New York: Charles Scribner's Sons, 1929), p.22. Emphasis original.
51. Maritain, J., Person and the Common Good, pp.56-57. Here Maritain reminds his readers that like the idea of 'person', the idea of society is also an analogical idea, and in its fullest sense is realized

only in the society of the Divine Persons. "In the Divine Trinity", he says, "there is a whole, the divine Essence, which is the common good of the three subsisting Relations. With respect to this whole, the Three who compose the Trinitarian society are by no means parts, since they are perfectly identical to it. They are three wholes who are the Whole" (Ibid., p.57). In his Freedom in the Modern World he reemphasizes this point and observes, "In the Holy Trinity the idea of Personality reaches the plenitude of Pure Act. We have there a society divinely perfect where three Persons equal and consubstantial have for common good their own Nature and where each is as much as the three together, in other words, where the notion of individuation and part has entirely disappeared." (p.48).

52. Maritain, J., Person and the Common Good, p.61.
53. Maritain, J., Scholasticism and Politics, p.72. Emphasis original.
54. Maritain, J., Person and the Common Good, p.61. Emphasis added.
55. Maritain, J., Man and the State, p.24
56. Ibid., p.12.
57. Ibid., p.13.
58. Maritain, J., Rights of Man, p.13..
59. Maritain, J., On the Philosophy of History, ed., Joseph W. Evans, (New York: Charles Scribner's Sons, 1957).
60. Ibid., p.47.
61. Maritain, J., Scholasticism and Politics, p.75.
62. Maritain, J., Freedom in the Modern World, p.51.
63. Ibid., pp.51-52.
64. Maritain, J., Person and the Common Good, p.74-75. Emphasis added.
65. Maritain, J., Rights of Man, p.37.. Emphasis added.
66. Ibid.
67. Maritain, J., Man and the State, p.82.

68. Ibid., p.87. Emphasis original..
69. Ibid., p.86.
70. Ibid., p.87. Emphasis original.
71. Maritain, J., "Natural Law and Moral Law" in Challenges and Renewals, eds. Joseph W. Evans and Leo R. Ward. (Cleveland and New York: The World Publishing Co., Meridian Books, 1966), p.214. Emphasis original.
72. Ibid. Emphasis original.
73. Ibid., pp.214-215. Emphasis original.
74. Maritain, J., Man and the State, p.90.
75. Maritain, J., "Natural Law and Moral Law" in Challenges and Renewals, p.215.
76. Ibid., p.219. Maritain also says, "In reality, if God does not exist, the Natural law lacks obligatory power. If the Natural Law does not commit the divine reason, it is not a law, and if it is not a law, it does not oblige" (Ibid).
77. Ibid., p:225.
78. Ibid., p.226. Emphasis original.
79. Maritain, J., Rights of Man, p.40. Emphasis original.
80. Maritain, J., "Natural Law and Moral Law" in Challenges and Renewals, p.228.
81. Maritain, J., Rights of Man, p.40.
82. Ibid., p.37.
83. Ibid..
84. Maritain, J., Man and the State, p.101.
85. See Ibid.
86. See Maritain, Rights of Man, pp.60-61, and Man and the State, pp.25,100.

87. Maritain, J., Rights of Man, p.61. Here in a footnote Maritain explains, "The right of association and right of free investigation and discussion involve the human person considered simply as such, but they manifest themselves in an especially important manner in the sphere of political life". (Ibid.).
88. Ibid.
89. Ibid., pp.61-62.
90. Maritain, J., Man and the State, p.99.
91. Ibid., p.101.
92. Ibid.
93. Ibid., pp.101-102.
94. Ibid., p.102.
95. Ibid. Emphasis original.
96. Ibid., pp.102-103.
97. Ibid., p.84.
98. Ibid.
99. Maritain, J., Person and the Common Good, p.67.
100. Ibid., pp.68-69.
101. Ibid., p.66.
102. Ibid., p.69.
103. Maritain, J., Some Reflections on Culture and Liberty (Chicago: The University of Chicago Press, 1933), p.12.
104. Maritain, J., Integral Humanism: Temporal and Spiritual Problems of a New Christendom, Trans. Evans, J.W., (Notre Dame: University of Notre Dame Press, 1973), p.9.
105. Maritain, J., Freedom in the Modern World, p.4.
106. Ibid., p.5.
107. Ibid., p.5. Emphasis original.

108. Ibid., p.30.
109. Maritain, J., Bergsonian Philosophy and Thomism, Trans. M.L. and J.G. Andison (New York: Philosophical Library, 1955), p.252.
110. Ibid.
111. Maritain, J., De Bergson, à Thomas d'Aquin: Essais de métaphysique et de moral (Paris: Paul Hartmann, 1947), p.189, quoted in Jean-Louis Allard, Education for Freedom: The Philosophy of Education of Jacques Maritain, Trans. Ralph C. Nelson (Ottawa: University of Ottawa, Press, 1982). p.31.
112. Maritain, J., Bergsonian Philosophy and Thomism, p.275.
113. Maritain, J., Freedom in the Modern World, p.9.
114. Ibid., p.5. Emphasis original.
115. Ibid., p.10. Emphasis original.
116. Maritain, J., "The Conquest of Freedom", in The Social and Political Philosophy of Jacques Maritain, eds. Joseph W. Evans & Leo R. Ward (New York: Image Books, 1965) p.28.
117. Maritain, J., Scholasticism and Politics, p.131. Emphasis original.
118. Ibid., pp.131-132. Emphasis original.
119. Ibid., p.132.
120. Maritain, J., "The Conquest of Freedom", p.28.
121. Maritain, J., Scholasticism and Politics, p.136. Emphasis original. To avoid any confusion, Maritain makes it very clear that here 'the freedom of autonomy' should be taken in the Pauline sense and not in the Kantian sense.
122. Maritain, "The Conquest of Freedom", p.30. Emphasis added.
123. Maritain, J., Freedom in the Modern World, p.37.
124. Ibid., p.36.
125. Ibid., pp.34-35.

126. Ibid., p.31.
127. Ibid., p.40.
128. Maritain, J., "The Conquest of Freedom", p.33.
129. Ibid.
130. Maritain, J., Freedom in the Modern World, p.41.
131. Ibid., p.42.
132. For further details on Maritain's reasons for rejecting these theories, see Person and the Common Good, pp.95-105, Freedom in the Modern World, pp.39-60.
133. Maritain, J., "The Conquest of Freedom", p.33.
134. Ibid., p.31.
135. Maritain, J., Freedom in the Modern World, p.46. Emphasis original.
136. Ibid.
137. For further details on Maritain's idea of an ideal society see Maritain, J., Integral Humanism, more particularly Ch.IV and Ch.V which deal with "The Historical Ideal of a New Christendom", pp.127-210.
138. Maritain, J., "The Conquest of Freedom", p.31. Emphasis original.
139. Maritain, J., The Rights of Man, pp.49-50.
140. Ibid., p.50.
141. Ibid.
142. Ibid.
143. Maritain, J. Man and the State, p.117, footnote 3. Emphasis original.
144. Maritain, J., Integral Humanism, p.182-183.
145. Maritain, J., Freedom in the Modern World, p.195. In its Appendix 1, titled "Person and Property", Maritain provides elaborate analysis of the concept of property, pp.193-214.

146. Maritain, J., Man and the State, p.100.
147. In his Freedom in the Modern World, p.195, Maritain quotes Thomas Aquinas in support of his own views in this connection. "If a particular piece of land be considered in the absolute there is no reason why it should belong to one man rather than to another; but if it be considered from the point of view of convenience of culture and peaceful use of the land, there is a certain fitness in allowing it to be the property of one man to the exclusion of all others" (Thomas Aquinas, Summa Theologica, II-II, 57,3).
148. Maritain, Freedom in the Modern World, p.198. Emphasis original.
149. Ibid., pp.201-202.
150. Ibid., p.199.
151. Ibid., p.207. Emphasis original.
152. Ibid., p.206.
153. Maritain, J., Integral Humanism, p.186. Emphasis original.
154. Ibid., p.188. Emphasis original.
155. Ibid., p.185.
156. Ibid., p.87.
157. Maritain, J., Redeeming the Time (London: Geoffrey Bles: The Centenary Press, 1946), p.18. Emphasis original.
158. Ibid., p.2.
159. Ibid.
160. Ibid., p.9.
161. Ibid., p.10.
162. Ibid., p.15.
163. Ibid., p.18. Emphasis added.
164. Ibid., p.21.

165. Ibid., p.25. Emphasis added.
166. Ibid., p.23.
167. Ibid., p.25.
168. Ibid., pp.23-24.
169. Ibid., p.24. Emphasis original.
170. Ibid., p.23.
171. Ibid., p.27.
172. In an essay titled "Human Equality -- Utopia or Reality? Some Elementary Reflections", Jean-Louis Allard has presented a good analysis of different aspects of Maritain's concept of equality and has clarified Maritain's position on many important points. In this, he raises the question of means to realize equality and explains his reasons for preferring spiritual revolution over a political revolution. (A paper presented at Le Colloque 1984 de L'Association Canadienne Maritain, held in Ottawa, Oct. 11-12, 1984.)

CHAPTER II

RADHAKRISHNAN

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Following the plan set forth in the Introduction, I shall now present an analysis of Radhakrishnan's theory of human rights in the light of the fundamental postulates of his metaphysical system in general, and his socio/political thought in particular.

As has been mentioned earlier, both as a politician and as a philosopher Radhakrishnan has always strongly supported the notion of human rights, and has actively contributed to the cause of defending the fundamental freedoms of all men. His strong belief in the unique significance of the basic dignity of human beings makes him speak of human rights with almost a religious fervor: "The human individual is the highest, the most concrete embodiment of the spirit on earth, and anything which hurts his individuality or damages his dignity is undemocratic and irreligious."¹ He further observes, "the common man is not common. He is precious, has in him the power to assert his nature against the iron web of necessity. To tear his texture, to trample him in blood and filth is an unspeakable crime."²

What is the source of such a passionate advocacy of man's basic dignity? What is the underlying principle from the depth of which Radhakrishnan's idea of human rights springs forth? For a proper answer to this question, we have to go into the depth of Radhakrishnan's metaphysical system, because his views about the nature of ultimate reality govern his political thought in general and provide the fundamental principles for developing and structuring his theory of human rights in particular.

Unfortunately, Radhakrishnan himself never attempted to systematically organize his thoughts concerning the notion of rights. His views on this subject are scattered among his various writings and speeches, and as one can easily notice, are inescapably tied up with his general metaphysical outlook. Even a superficial acquaintance with his theoretical framework makes it sufficiently clear that his notion of human rights, like his other ideas in the realm of political and social philosophy, is derived from and is determined by the fundamental postulates of his ontological system, and therefore a systematic explanation of the presuppositions and implications of his theory of rights necessarily requires at least a brief presentation of his metaphysical principles. In this

connection Radhakrishnan himself has observed, "Any ethical theory," and for that matter any political and social theory, "must be grounded in metaphysics, in a philosophical conception of the relation between human conduct and ultimate reality. As we think ultimate reality to be, so we behave. Vision and action go together."³

As far as his general metaphysical stand is concerned, Radhakrishnan has declared himself to be an 'idealist' at various places in his writings. But in the opening section of An Idealist View of Life he clearly defines what he means by 'idealism'. According to him,

An idealist view finds that the universe has meaning, has value. Ideal values are dynamic forces, the driving power of the universe. The world is intelligible only as a system of ends. Such a view has little to do with the problem whether a thing is only a particular image or a general relation... Nor is it committed to the doctrine that the world is made of mind, an infinite mind or a society of minds. Idealism in the sense indicated concerns the ultimate nature of reality, whatever may be its relation to the knowing mind. It is an answer to the problem of the idea, the meaning or the purpose of it all. It has nothing in common with the view that makes reality an irrational blind striving or an irremediably miserable blunder. It finds life significant and purposeful. It endows man with a destiny that is not limited to the sensible world.⁴

In this sense the term 'idealism' seems to have a very wide connotation and can be applied to many different types of world views. Therefore, further clarifying his position Radhakrishnan declares that among all the forms idealism can take or has taken in the East or in the West, the one closest to his views is 'Absolute idealism' because "It is my opinion that systems which play the game of philosophy fairly and squarely, with freedom from presuppositions and with religious neutrality, end in Absolute Idealism."⁵

Absolute idealism, according to him, is a theory which holds that the Absolute is the only ultimate and complete reality. The empirical world is simply a secondary reality, relative and dependent for its existence on the Absolute. Since the ultimate reality (or the Absolute) is essentially spiritual in character, "the ultimate principle of reality is not matter, solid, stubborn, unconscious. It is the very essence of spirit, self-active motion"⁶, the material world cannot be called 'real' in the true sense of the term. It can be called only relatively real.

This strong commitment to 'Absolute idealism' brings Radhakrishnan into the Vedāntic stream of thought in Indian philosophy. But even in the Vedānta

system there are many different schools of thought. Amongst them two are the most prominent and are supposed to have exerted crucial influence on Indian thought and life. The first is the Advaita school propounded by Śaṅkara, an 8th century philosopher, who established the system of absolute non-dualism according to which 'Brahman', the ultimate reality, is one, non-dual, transcendent being, and is impersonal in character. The other school is founded by Rāmānuja, an 11th century thinker, who in opposition to the absolute, unqualified non-dualism of Śaṅkara, advocated qualified non-dualism and established the 'Viśiṣṭādvaita' school of Vedānta which believed in personal theism.

The question is, to which of these two schools does Radhakrishnan belong? Amongst the scholars of Radhakrishnan's philosophy there is a strong difference of opinion in this regard. Some of them maintain that his unconditional commitment to Śaṅkara's absolute non-dualism is totally unquestionable. According to them, Radhakrishnan definitely belonged to the 'Advaita' school of Śaṅkara and totally rejected the qualified non-dualism or the personal theism of Rāmānuja.⁷ But, in the opinion of some other learned scholars, Radhakrishnan's thought seems to be more inclined towards

the 'Viśiṣṭadvaita' school of Rāmānuja than that of Śaṅkara. These thinkers claim that Radhakrishnan clearly shows his preference for personal theism over absolute non-dualism and his political and social thought is fundamentally derived from the basic tenets of Rāmānuja's system.⁸ There is still a third group of scholars who maintain that to categorize Radhakrishnan's philosophy in terms of any one of the two watertight compartments is to do injustice to the inner spirit of his thought. Radhakrishnan, in the opinion of these thinkers, did not belong exclusively to any one of these two schools. Instead, he has attempted to produce a creative synthesis of the basic metaphysical tenets of the two schools and has built up a system of his own which is supposedly free from the weaknesses of both and still is comprehensive enough to explain and reconcile these apparently conflicting views about the nature of ultimate reality.⁹

Each of these groups of scholars has provided a long list of arguments in support of its position and has quoted extensively from Radhakrishnan's writings to substantiate its claim. This debate in itself is very important and highly interesting from the metaphysical point of view, but due to the obvious limitations of the topic, I cannot go into its details. Here I shall

only note that the position of the third group seems closest to reality and provides better understanding of Radhakrishnan's thought.

In my opinion, instead of following any one of the two schools blindly and rigidly, Radhakrishnan presents a metaphysical system which not only consistently incorporates the fundamental insights of both Śaṅkara and Rāmānuja, but also adds new dimensions to them. It seems that, while Radhakrishnan's theoretical framework remains essentially Śaṅkarite in its general character, it also consistently assimilates whatever is of value in Rāmānuja's thought. This process of assimilation provides a specific dynamism to Radhakrishnan's views and makes his system profoundly comprehensive and imaginatively creative. In this connection Radhakrishnan himself says:

While the general spirit of Śaṅkara's philosophy is commended in my writings, on many essential points I have developed on independent lines. My endeavour has been to expound a philosophy, not to state a dogmatic theology, a philosophy which offers an interpretation of the universe, which is at once rational and spiritual, which depends on logical reflection and not on acts of faith.¹⁰

As we go along, I shall try to show how this 'interpretation of the universe' influences the fundamentals of Radhakrishnan's theory of rights.

In order to present a proper analysis of the foundation, presuppositions and implications of Radhakrishnan's concept of human rights, this chapter is divided into five major sections. The first section deals with Radhakrishnan's concept of human nature and tries to locate man's place in the general framework of his metaphysical scheme.

The second section deals with the questions concerning man's relationship to society and discusses Radhakrishnan's ideas concerning the origin and the aim of society. In this connection the idea of the fourfold aspirations of man (the four 'puruṣārthas') is explained and an attempt has been made to see what significance it has in determining man's relationship to society.

The third section is primarily devoted to the discussion of 'dharma', which is one of the four basic 'puruṣārthas' discussed above, and is the key concept for understanding the idea of rights in Radhakrishnan's system. After a brief discussion of the meaning, source and the nature of 'dharma', an

analysis of its various aspects is presented and the notions of 'Varna dharma' and 'Aśram dharma' are explained and clarified in relatively more detail.

The fourth section primarily concentrates on Radhakrishnan's conception of human rights in general and attempts to explain how the idea of 'dharma' gives rise to the multi-levelled determination of rights.

The fifth section contains an analysis of Radhakrishnan's views on different specific rights, such as the right to life, right to freedom, right to property and the right to equality. This section also contains a brief explanation of certain general characteristics of his concept of rights and concludes with a brief note pointing to the distinguishing features of Radhakrishnan's theory of rights.

As is obvious, the pattern of division followed in this chapter is similar to the pattern of the previous chapter. As mentioned earlier in the Introduction, this has been done deliberately because it facilitates the comparative analysis of the views of these two thinkers and provides the necessary setting for initiating a dialogue between them.

THE CONCEPT OF MAN.

As stated earlier, I shall begin my analysis with Radhakrishnan's concept of human nature. This concept, in his view, is the most crucial factor in determining the character not only of man's rights but of the whole civilization as such. In Religion and Society he states:

The character of a civilization is derived from its conception of the nature of man and his destiny. Is man to be regarded in biological terms as the most cunning of animals? Is he an economic being controlled by the laws of supply and demand and class conflict? Is he a political animal, with a raw excessive politicalism occupying the centre of the human mind, displacing all knowledge, religion and wisdom? Or has he a spiritual element requiring him to subordinate the temporal and the expedient to the eternal and the true?¹¹

In answering this question, Radhakrishnan lays the foundation of his theory of rights. He makes it sufficiently clear that one of the most fundamental postulates of his metaphysical scheme consists in the firm assertion that man in his true nature is identical with the ultimate reality, the Absolute Brahman. Man is one with Brahman and therefore he not only shares in His nature but, like Him, also constitutes the founding principle of the universe. This essential non-duality of man with the ultimate reality makes man the highest and the most valuable

entity in the whole universe and endows him with a unique dignity and absoluteness.

But what is the nature of this ultimate reality with which man is supposed to be identical? In other words, what are the essential characteristics of the nature of Brahman, the non-dual Absolute, man is one with?

(i) The Concept Of Brahman

Right from the time of Vedas and Upaniṣads, Indian philosophers have maintained that, strictly speaking, the nature of Brahman cannot be described. All forms of human understanding and conceptual analysis fall short of fully comprehending and expressing the inexhaustible depth of the ultimate Being. Brahman, whose transcendence defies all characterization, if it can be described at all, can be described only negatively or through seemingly contradictory descriptions. As Yājñavalkya, the Upaniṣadic sage says, "There is no other or better description of Brahman than this: That it is not-this: That it is not-this, not-this (neti-neti)".¹² Śaṅkara also describes Brahman as nirguṇa (without qualities), nirākāra (without form), nirvśesa, (without particularity), nirupādhika (without limitations) and finally notes that "it is what it is." But "there is," Radhakrishnan warns, "a danger in these negative descriptions. By denying all attributes and relations we expose ourselves to the charge of reducing the ultimate-

being to bare existence which is absolute vacuity.’’¹³ But that cannot be the case with Brahman who is believed to be the sole positive entity in the universe and the ground of all existence. Therefore Radhakrishnan further explains, ‘‘The negative account is intended to express the soul’s sense of the transcendence of God, the ‘Wholly other’ of whom naught may be predicted save in negations...’’¹⁴ The purpose of this negative approach is simply to demonstrate the inadequacy of our conceptual forms for fully understanding the true nature of the Absolute. But we should not forget that it is the inexhaustible positivity of Brahman which bursts through all our conceptual expressions and serves as the ground for all that is experienced and known.

This is why, in spite of an emphasis on this negative approach one finds detailed positive descriptions of Brahman. The most prominent amongst them is its characterization as ‘‘saccidānanda’’, the identity of Pure and perfect Being (Sat), consciousness (cit), bliss and freedom (ananda). It is described as self-luminous, undifferentiated, pure and simple eternal consciousness which is the unity of truth, knowledge and infinity (Satyam jñānam anantam Brahman). It is the impersonal self, the self-identical immutable principle of reality which transcends all categorization and opposition of permanence and change, whole and part, subject and object, motion and rest and is beyond the limitations of space and time. It is

the non-dual spiritual principle of pure unity, the one without the other, and is characterized as the sole foundation of all actuality and possibility.

Naturally the question arises, if such an absolute Brahman is the sole reality, then how does the world of our everyday experience (which seems to be constituted of matter as well as of spirit) come into being? If non-dual, undivided, pure and impersonal consciousness is the only reality, how and why do we observe and experience multiplicity and plurality of selves? In other words, what is the ontological status of the empirical world and the individual selves vis-a-vis Brahman? Are they mere illusions? Is this material world with all its multiplicity and individual selves a total non-being, simply an unreal appearance of the Absolute?

Some of the orthodox interpreters and critics of Śaṅkara's Vedānta have answered these questions in the affirmative and have tried to support their position by referring to his doctrine of 'māyā'. But Radhakrishnan emphatically rejects this view and strongly maintains that the manifold universe and the individual selves are neither totally unreal nor mere illusions. Rather, they have a specific kind of reality of their own. In support of his view, Radhakrishnan invokes the classical distinction between Nirguṇa and Saguṇa Brahman and presents a fresh and authoritative interpretation of the concept of māyā. In

what follows, I shall very briefly discuss both of these points and shall try to analyze their implications for Radhakrishnan's concept of man.

(ii) The Idea Of Īśvara - The Saguna Brahman

We have noted that according to Radhakrishnan, 'Saccidānanda-Brahman', the unconditional immutable, changeless, all pervasive, absolute consciousness, which is free of all determinations and distinctions, is the sole and ultimate reality. But this ultimate reality, Radhakrishnan further explains, has two aspects. In its first aspect, it is called 'Nirguna Brahman', the non-dual, undifferentiated, nameless, formless, and quality-less, impersonal Absolute as described above.

But this very same Absolute has another aspect which is manifested in and through its free creative activity. In this aspect it is referred to as 'Saguna Brahman' or 'Īśvara', the personal God, who is believed to be the abode of all good qualities in their fullest perfection and is worshipped as the creator, sustainer, saviour and judge of the world. He is conceived as the self-conscious, self-blissful, supreme personality whose infinite love, wisdom and mercy arouses feelings of devotion in human hearts and inspires them to surrender their narrow ego into the unlimited ocean of His personality and grace.

Naturally the question arises, how are these two aspects of the Absolute related to each other? Generally, personalistic theism and non-dualistic absolutism are considered to be two opposite and conflicting theories regarding the nature of the ultimate reality. The conflict between the metaphysical schemes of Śaṅkara and Rāmānuja centers precisely around this issue. But Radhakrishnan tries to reconcile these two conflicting views by presenting a dynamic view of the Absolute. He defines Brahman as the eternal abode of infinite possibilities who delights in revealing Himself through enormous dynamic manifestations, one of which takes the form of the 'Personal God', whose creative freedom expresses itself in and through the world of space and time, and becomes the source, the ground and the active principle of the cosmic process. Explaining this, Radhakrishnan says:

There are two sides of the Supreme, Essential Transcendent Being which we call Brahman; free activity which we call Īśvara: the timeless, spaceless reality and the conscious active delight creatively pouring out its powers and qualities, the timeless calm and peace and the timeful joy of activity freely, infinitely expressing itself without any lapse into unrest or bondage. When we refer to the free choice of this specific possibility, we deal with the Īśvara side of the Absolute.... Īśvara is the absolute in action as Lord and Creator.¹⁵

Further explaining the relationship between the Absolute and the God, Radhakrishnan notes:

While the Absolute is the transcendent divine, God is the cosmic divine. While the Absolute is the

total reality, God is the Absolute from the cosmic end, the consciousness that informs and sustains the world.¹⁶

Etymologically, the term 'Brahman' is derived from the root 'brh', which means to grow, to burst forth, to manifest or to expand. It is easy to see that by defining God as the creative aspect of Brahman, Radhakrishnan emphasises this root meaning, and thus tries to resolve the conflict between the two. He maintains that "While the Absolute is pure consciousness and pure freedom and infinite possibility, it appears to be God from the point of view of the one specific possibility which has become actualized."¹⁷ "God", he continues, "is the Absolute from the human end. When we limit down the Absolute to its relation with the actual possibility, the Absolute appears as supreme Wisdom, Love and Goodness.... We call the supreme the Absolute when we view it apart from the cosmos. God in relation to the cosmos. The Absolute is the pre-cosmic nature of God, and God is the Absolute from the cosmic point of view."¹⁸ On the basis of this inner unity between the idea of Brahman and the concept of God Radhakrishnan declares:

There cannot be a fundamental contradiction between the philosophical idea of God as an all embracing spirit and the devotional idea of a personal God who arouses in us the specifically religious feelings...though the supreme spirit in its essential aspect is the changeless noumenal reality, its representation in the form of a Personal God who is the source, guide and destiny of the world seems to be the highest open to the logical mind. The difference between the Supreme

as spirit and the Supreme as person is one of standpoint and not of essence, between God as he is and God as he seems to us. When we consider the abstract and impersonal aspect of the Supreme, we call it the Absolute; when we consider the Supreme as self-aware and self-blissful being, we get God.¹⁹

This is why he concludes that though philosophers may quarrel about the Absolute and God, in fact, there is no opposition between the two. The religious consciousness has always felt that the two are one and express two aspects of the same reality.²⁰

There is neither space nor need for an elaborate discussion on whether or not Radhakrishnan fully succeeds in reconciling the conflict between Absolutism and personal theism. What interests us more at this point is the fact that by defining God and His creation as an aspect of the Absolute itself, Radhakrishnan gets rid of the idea of the unreality of the world and individual selves, long associated with the Advaita system. If the world is an expression of the creative aspect of the Absolute, it cannot be an illusion, a total non-being. As he himself says, "This world is not an illusion; it is not nothingness, for it is willed by God and therefore is real."²¹

Does it mean that the reality of the world is of the same order, of the same kind as that of the Absolute? No, Radhakrishnan emphatically denies that and maintains that, "Its reality is radically different from the being of

Absolute-God. The Absolute alone has non-created divine reality; all else is dependent created reality."²² The world is an expression of the Absolute but not the Absolute itself. Unlike the Absolute it has only a contingent and derived reality. It is essentially transitory in character and therefore comes to an end.

In other words, according to Radhakrishnan, the world is neither absolutely real²³ (Parmārthika sattā) nor absolutely unreal²⁴ (Asat—like hare's horn); rather it belongs to a third level of reality called Vyavahārika sattā, the empirical or practical reality. The phenomenal and relative character of this empirical world is denoted by the term 'māyā'. The doctrine of maya, in Radhakrishnan's view, does not entail the illusory character of the empirical world. Rather, it primarily expresses its status as a contingent, dependent and secondary reality, a reality of a lower order in comparison to the transcendental ultimate reality of Brahman.

(iii) The Concept of Māyā

The concept of māyā is one of the most popularly known and philosophically used doctrines of Vedānta system. But it is also the most frequently misinterpreted concept.

Radhakrishnan, being aware of these misinterpretations, sets himself the task of redefining this concept and attempts to clarify its various meanings and implications.

The term 'māyā' is derived from the root 'mā', which originally means the capacity to build or produce forms. It gradually came to be associated with the creative energy or the form building power of God, but with no suggestion that the forms produced by māyā were totally illusory.

Radhakrishnan, after a detailed and extensive study on this issue, brings together six different significations in which the term māyā is used in Advaita philosophy,²⁵ and finally comes to the conclusion that from the ontological point of view,

The phenomenal character of the empirical self and the world answering to it is denoted by the word māyā, which signifies the fragility of the universe. Māyā does not mean that the empirical world with the selves in it is an illusion, for the whole effort of the cosmos is directed to and sustained by the one supreme self, which though distinct from everything is implicated in everything.²⁶

From the epistemological and psychological point of view, māyā is described as 'avidyā' which has two properties or functions. The first is called 'āvarṇa śakti', the property of concealing or hiding the true nature of the reality. In this capacity, it creates a veil which conceals the intrinsic non-dual character of the Absolute. In its second function 'vikṣepa-śakti' it not only conceals, but also misrepresents or distorts the reality by projecting something else in its place.

When operating on the level of the individual, by its two-fold power, māyā or avidyā at first conceals the reality

of the ultimate identity of man with the Absolute Brahman, and then, through its vikeṣepa-sakti, projects multiplicity as ultimately real. Thus māyā makes men identify themselves with their separate narrow egos, limited by the confines of body, mind and the selfish desires. In other words, māyā conceals the true nature of the non-dual ultimate reality and makes the world of multiplicity appear as ultimately real.

In Radhakrishnan's view, the world is not merely a 'phantom' or 'figment of the imagination', and the concept of māyā does not negate the world, but only 'reinterprets' it. He believes in the concept of an hierarchically ordered universe. Radhakrishnan seems to maintain that there are different levels of reality, each of which can be graded as lower or higher according to the level or degree of its reflection of the essential nature of the Brahman. Even if we leave aside the minor distinctions of the other levels, in Radhakrishnan's system, at least three levels can clearly be identified. The first is the level of Brahman, the ultimate reality in its true and perfect form. This can be called the transcendental level of reality. On the second level comes God, the personal and creative aspect of the Supreme Being, described as 'Saguṇa Brahman'. The third level is comprised of the empirical world which is also an expression of the Absolute but of a lower order and has only a derived and secondary being, totally contingent and dependent on the will of God.

Later, we shall see how this idea of the degrees or levels of reality influences Radhakrishnan's conception of man, but for now, let us note an important point in this regard. When Radhakrishnan talks of the hierarchy of the different levels of reality, he is not referring to a static structure, a hierarchy where each being is allotted its 'right place' which is fixed for ever. Rather, he is talking of a dynamic process in which the lower is always striving towards the higher. It is a process of continuous transformation which ends only when identity with the ultimate reality is achieved and a perfect non-dualism is established. The most peculiar feature of this process lies in the fact that not only the world of experience, but also its creator, the Saguna Brahman or the Personal God is believed to ultimately lapse into the Absolute, the Nirguna Brahman.²⁷ 'The temporal series', Radhakrishnan says, 'is the scheme through which eternal values unfold themselves',²⁸ and therefore, 'the world process is not an incessant fluctuation comparable to a surging sea. It is a movement with a direction and a goal.'²⁹ To achieve this goal, he contends,

All things move towards the creator. When the creator and the created coincide, God lapses into the Absolute. Being in a sense which both attracts and eludes our thought is the ideal goal of becoming. In attaining this goal, becoming fulfils its destiny and ceases to be.³⁰

But unlike God and world,

The Absolute transcends not merely its finite but also its infinite expressions taken singly or in a finite number.... The question of immanence and transcendence does not arise with reference to the Absolute. For immanence implies the existence of an Other in which the Absolute is immanent. But the Absolute represents the totality of being and there is nothing other than it. The Absolute is in this world in the sense that the world is only an actualisation of one possibility of the Absolute and yet there is much in the Absolute beyond this possibility which is in process of realisation.³¹

So far I have discussed the different levels of reality on a general plane. This analysis of reality is also reflected in Radhakrishnan's conception of man in which there are the same or more or less corresponding levels of human existence. In Radhakrishnan's words, man "is a multilevelled being."³² According to him, "In man is an intersection of several worlds none of which completely contains his true self. It exists on several planes and is permanently in a process of creative change."³³ At another place he observes, "Man is a complex multidimensional being, including within him different elements of matter, life, consciousness, intelligence and the divine spark".³⁴

(iv) Man On The Transcendental Level

Man on the transcendental level is described as 'ātman'. The term ātman originally meant breath, and since breath is supposed to be the essence of life, it has been subsequently used to signify not only the life in general, but also the Self or the essence of man's being. Man as

ātman is conceived as unborn, uncreated, eternal, immutable and undifferentiated pure spirit which is also the self-luminous, self-shining, all pervasive principle of pure and absolute knowledge. On the level of ātman, man can be described as the unconditional and imperceptible principle of pure consciousness which is beyond the limitations of time, space and death, and is the silent witness of the temporal world of change and appearance. In its essential nature it transcends all distinctions of subject and object, external and internal, finite and infinite, knower and known. In other words, it is free of all dualities and represents the state of pure bliss and eternal freedom.

This description of man as ātman seems to be almost identical to the description of the Absolute Brahman given earlier in this chapter. And in this identity lies one of the most crucial points of Radhakrishnan's system. As has been said earlier, Radhakrishnan is a firm believer in the non-duality of the ultimate reality and therefore maintains that man as atman is completely identical with the absolute Brahman. Radhakrishnan's writings are full of passages in which he strongly supports Śaṅkara's idea of man's identity with Brahman. In describing Śaṅkara's position he approvingly says, "Śaṅkara's advaita or non-duality has for its central thesis the non-difference between the individual self and Brahman."³⁵ At another place he contends, "The fundamental truths of a spiritual religion are that, our real self is the supreme being, which it is our business to

discover and consciously become, and this being is one in all.³⁶ Radhakrishnan puts great emphasis on this basic oneness of man with Brahman and maintains that the very nature of the ultimate reality is such that the most plausible mode of relationship between the two can be of identity only.

Man as ātman cannot be a part of the Absolute because the Absolute is without parts. He cannot be totally different from the Absolute, because the Absolute is one without a second and there is nothing different from Him. He cannot even be a modification of the Absolute, because in its essential nature, the Absolute is unchangeable. Thus, ātman is neither different from, nor a part of, nor a modification of the Absolute. It is the Absolute itself. This basic identity between the essential nature of man and the Absolute constitutes one of the most fundamental theses of Radhakrishnan's metaphysical system and he supports it by quoting various great-sayings (Mahā-Vākya) from the Vedas and Upaniṣads.

Some of the most famous and often quoted sayings which lend a clear support to Radhakrishnan's position are, "Tat Tvam Asi",³⁷ (that thou art), "Aham Brahmāsmi",³⁸ (I am Brahman), "Ayam Atmā Brahman",³⁹ (This self is Brahman). On the basis of this strong and authentic support from the Upaniṣads, Radhakrishnan concludes, "the true and ultimate

condition of the human being is the divine status."⁴⁰

Explaining it further, he says,

There is in the self of man at the very centre of his being, something deeper than the intellect, which is akin to the Supreme....The consubstantiality of the spirit in man and God is the conviction fundamental to all spiritual wisdom."⁴¹

The strong belief in the basic unity between man and Brahman, according to Radhakrishnan, is the characteristic feature of Hindu thought as such, and constitutes one of the most fundamental postulates of Hindu social and political structure. "For the Hindu," he says, "the spiritual is the basic element of human nature,"⁴² and therefore, "the destiny of the human soul is to realize its oneness with the supreme."⁴³ "The Supreme Reality", he says, "is not out there but is one with our deepest self. Brahman is ātman, the Universal spirit."⁴⁴

Thus, according to Radhakrishnan, on the transcendental level man is ātman, and as ātman he is not different from Brahman, the ultimate reality. Whatever is true of the nature of Brahman is also true of man on this level and the description of Brahman as the unity of pure existence, pure consciousness, pure bliss and pure freedom (saccidānanda) is equally applicable to man also. Naturally, this identity with the Brahman provides man with a unique status and extraordinary dignity, and makes him the centre of the whole universe.

But man, Radhakrishnan simultaneously recognizes, does not belong exclusively to the transcendental level. In his earthly life he also belongs to the other order: the order of the phenomenal or the empirical level of being.

(v) Man At The Empirical Level

Man at this level is described as 'jiva', the individual empirical ego. Defining jiva, Radhakrishnan says,

It is the systematic unity of the conscious experiences of a particular individual centre, which is itself defined or determined at the outset by the bodily organism and other conditions. The body, the senses, etc., enter into its experience and introduce a sort of unity and continuity into it. The consciousness linked up with the organism is purely a finite one, which includes bodily states as part of the content of consciousness. As the body is built up gradually, so also is its conscious experience. The finite self is not the ultimate cause of its own consciousness. The ego is the felt unity of the empirical consciousness which is evolving in time.' '45

Contrary to the metaphysical subject or I, this felt unity of empirical consciousness is believed to be the psychological subject or the 'me', and emerges as an observed fact of introspection. Radhakrishnan maintains that the individual self or the empirical ego is not an atomic unit, but a unit with a very complex structure. It is the psychological organism consisting of 'the organic body, made up of the gross elements, which the soul casts off at death, the life organs (prāṇas) and the subtle body,

made up of the subtle portions of the elements which compose the seed of the body.... The basis of individuality is to be found not in Ātman or the Upādhis, but in moral determination, which is a complex of knowledge (Vidyā), works (Karma) and experience (Prajñā).⁴⁶

Following the analysis of Śaṅkara, Radhakrishnan presents an elaborate account of the nature, structure and functions of the empirical self and explains how by a process of misidentifications, ātman, the only reality, is associated with different levels of appearances. In his account, which sometimes is described as 'phenomenology of consciousness', Śaṅkara describes four states of consciousness: waking consciousness (Jāgrata-sthāna) or the primitive 'I' consciousness which is intentional, time bound, analytic and engrossed in the pleasures of physical level; dream consciousness (svapna-sthāna), which is inwardly cognitive, sensuous and passionate, quasi-liberated or independent of spatial-temporal relationships and operative at the level of subtle body; deep sleep (susupti) which is characterized by the absence of objects, desires and activities, is unified and integrated and is marked by bliss (ānanda); transcendental consciousness (turiya - avasthā), the pure experience of non-dual Reality (savikalpa samādhi), which is beyond the distinction of external and internal, and finally leads towards the state of nirvikalpa samādhi in which self is not aware of the Reality but is the Reality itself.

According to Eliot Deutsch,

The Advaitic analysis of the self into four states of consciousness shows there is no discontinuity of consciousness, that there is but one consciousness, namely that associated with Ātman, which appears in different states because of various upādhis or mis-identifications of self with one or more aspects of phenomenal self-hood. The four states of consciousness, then, are really stages in the development of one's power of awareness and are brought into correspondence with the ontological levels recognized by Advaita. The waking and dream states, which can be brought together under a single category, correspond to the phenomenal world of gross and subtle bodies (termed in this context virāt and Hirenyagarbha); the state of deep sleep and of Savikalpa-samādhi to the qualified Brahman (Saguna) or the Divine (Īśvara); and transcendental consciousness, turiya avasthā, nirvikalpa samādhi, to nirguṇa Brahman or Reality."⁴⁷

As is obvious, jivas (the individual selves) are considered to be on the same footing as the empirical world. They come under the realm of māyā or avidyā, and therefore, like world, have a phenomenal character. The question is, "How does the unchanging ātman appear as limited, how can the eternal light of intelligence be darkened by any agency whatever, since it is free from all relations? It is the old question, How does the real become the phenomenal?"⁴⁸ "It is the relation," Radhakrishnan answers, "of Ātman to the upādhis of body, senses, mind and sense objects that accounts for its phenomenal character; but this relation," he admits, "is inexplicable, māyā or mysterious."⁴⁹ The only way one can possibly explain it is through the help of metaphors, similes and analogies, which

at best are only suggestive and in no case should be taken literally.

The two most commonly acknowledged analogies in this connection, are 'Pratibimba-Vāda' or the theory of reflection and 'Avacchedaka -vāda' or the theory of limitation.

According to the theory of reflection, just as the appearance of sun and moon in water is a mere reflection and nothing real, or as the appearance of red colour in a white crystal is a mere reflection of the red flower and nothing real, (since on removing the water, sun and moon only remain, and on removing the red flower, the whiteness of the crystal remains unchanged), 'even so the elements and the individual souls are reflections of the one reality in avidyā and nothing real. On the abolition of avidyā the reflections cease to exist and only the real remains. The Absolute is the original (bimba) and the world is the reflection (pratibimba)'.⁵⁰

Moreover, just as the differences in the reflections are traced to the mirrors, different individuals appear as reflections of the Absolute in different internal organs. And just as the reflection of a thing varies according to the different states of the water, calm or turbulent, clean or dirty, so the reflection of the Brahman varies according to the state of avidyā upon which it is reflected. This is why, the same Reality (Brahman) appears as different

individuals having varying tendencies and intellectual, mental and physical capacities.

The second theory, 'Avacchedakavāda' or the theory of limitation maintains that the individual self is not so much a reflection of universal consciousness as it is a limitation of it. It is a limitation constituted by the upādhis or limiting adjunct of ignorance, and owing to this, the pure, undifferentiated, infinite Absolute appears as conditioned and finite individual. Śaṅkara uses the simile of one cosmic space and different particular parts of space to explain this theory. "Just as space (ākāśa) is really one but is seen through limitation as if it were divided into particular spaces like the space in a pot or a room, so is the self — it is one but is seen through limitations as if it were multiple."⁵¹ When the limitations caused by the pot and the like are removed the limited spaces merge in the one cosmic space; in the same manner, when the limitations of space, time, causality and materiality are removed, the jivas become one with the Absolute self.

Despite many differences, both these theories are guided by a common intent. Both maintain the essential identity of ātman with Brahman and give a status of qualified or conditional reality to jiva qua jiva. Several objections can be raised against these theories on metaphysical and logical grounds, but these are not relevant to the present argument.

what is important at this point is the fact that though Radhakrishnan analyses human nature in terms of two levels, by lending support to these theories and to Śaṅkara's analysis of different stages of consciousness, he makes it sufficiently clear that in his view, despite their distinctness, these two levels are not discontinuous or isolated. These are intrinsically related and represent two different stages of the evolutionary journey of the same consciousness. As he says, "The realm of spirit is not cut off from the realm of life. To divide man into outer desire and inner quality is to violate the integrity of human life....The two orders of reality, the transcendent and the empirical, are closely related."⁵²

Man as ātman and man as jiva are not two realities, not even two different parts of the same reality; rather, these are two different states or manifestations of the same reality, the Absolute Brahman which as ātman is one with the Universal Spirit. This pure universal consciousness appears as jiva when it identifies itself with the limiting adjuncts of body, mind, senses and intellect and considers itself to be an exclusive unity, a separate

ego, "sharply marked off from whatever lies outside his body in space and beyond his experience in time.",⁵³

But the goal of human life is to achieve the state of universal spirit through the realization of a true identity with the ultimate reality. The way to achieve this goal, Radhakrishnan emphasizes, is not by discarding or rejecting the empirical level, rather it consists in transforming it, raising it to the transcendental level. The success of true human endeavour lies neither in keeping balance between the two levels, nor in discarding one in favour of the other; rather it consists in engaging in the dynamic process of transforming the lower into the higher. In Radhakrishnan's words, "the ultimate aim of life is not simply to maintain but to elevate the plane."⁵⁴ And therefore, "Nothing is to be rejected; everything is to be raised".⁵⁵

The endeavour of religion is to get rid of the gulf between man and God and restore the lost sense of unity. It is a progressive attempt at self-realization, the lifting of empirical ego into the transcendental plane, mind in its immediacy into mind in its ideal perfection.⁵⁶

In the light of the preceding discussion, I shall now explain how Radhakrishnan characterizes man's relationship to society.

II.

MAN AND SOCIETY

Following the pattern of the previous chapter, I shall begin the discussion with the question of the origin of society. I shall try to explain why, according to Radhakrishnan, man, the free, independent, spiritual being enters into interpersonal relationships with other human beings and builds society, which itself is an organized structure of complex and intricate institutional relations.

(i) The Origin Of Society

The roots of society, according to Radhakrishnan, lie in the very essence of human nature. In his view, man is essentially one with the ultimate reality, Brahman. He is identical with the universal spirit which is essentially non-dual, the one without a second. This inherent oneness rooted in the very depth of man's soul impels him to enter into close interpersonal relationships with other human beings. Obviously, if you and I are ultimately expressions of the same Being, indeed, are essentially the same Reality, how can we live totally aloof from each other? The very essence of our being inevitably leads us to form a society through which we try to express the inner unity necessarily experienced by all of us due to our identity with the universal spirit. As Radhakrishnan says,

Man is not only himself, but is in solidarity with all of his kind. The stress of the universal in its movement towards the goal of the world is the source of man's sociality. Society is not something alien, imposed on man, crushing him, against which he rebels in knowledge and action. There is a profound integration of the social destiny with that of the individual. Human society is an attempt to express in social life the cosmic purpose which has other ways of expression in the material and the supramaterial planes.⁵⁷

In Radhakrishnan's view, society is a realized manifestation of the essence of human nature. In spite of all the apparent differences and multiplicity, the 'One' residing within 'all' impels men to come out of their narrow limits and join together. A natural superabundance and overflow of love and fellowship ingrained in the very being of man inspires him to strive for a fuller and more creative manifestation of the unity underlying the multiplicity, and society comes into being as part of the process of this realization. The family, the tribe, the clan, the nation, all are successive stages in this constant approach to universality. Explaining this, Radhakrishnan says,

The soul that has found itself is no longer conscious of itself in its isolation. It is conscious rather of the universal life of which all individuals, races and nations are specific articulations. A single impulsion runs beneath all the adventures and aspirations of man. It is the soul's experience of the essential unity with the whole of being...the secret solidarity of the human race we cannot escape from. It cannot be abolished by the passing insanities of the world.⁵⁸

Moreover, society not only fulfills man's aspirations on the transcendental level, it also fulfills his various

ends and aspirations at the empirical or phenomenal level. Despite all the perfections associated with man at the transcendental level, in his earthly existence he still remains a weak and fragile creature. At every stage of life he needs the help and coöperation of his fellow beings. The overall development of his personality necessarily requires the active assistance of different social institutions.

In short, the social life is a necessary preliminary to man's ultimate self-realization. It is also the backdrop against which alone man can hope to actualize his various earthly aspirations. In other words, man needs society both as ātman and jīva and the primary aim of society is to assist man in realizing his ends both at the transcendental as well as the empirical level.

(ii) The Aim of Society

Radhakrishnan explains the aim of society in terms of the fourfold ends or aspirations of human life.

The Hindu view of the individual and his relation to society can be best brought out by a reference to the synthesis and gradation of (i) the four-fold object of life (puruṣārthas), desire and enjoyment (kāma), interest (artha), ethical living (dharma), and spiritual freedom (mokṣa); (ii) the four-fold order of society (varṇa), the man of learning (Brāhmin), of power (Kṣatriya), of skilled productivity (Vaiśya), and service (Sūdra); and (iii) the four-fold succession of the stages of life (āśrama), student (brahmcāri), householder (grihasthā), forest recluse (vānprastha), and the free supersocial man (saṅnyāsīn). By means of this threefold discipline the Hindu strives to reach his destiny, which is

to change body into soul, to discover the world's potentiality for virtue, and derive happiness from it.⁵⁹

I shall begin the analysis with the first part of this threefold discipline and shall try to see how the concept of Puruṣārtha affects man's relationship to society.

(iii) The Fourfold Puruṣārthas

The term 'puruṣārthas' literally signifies 'What is sought by men' and is usually taken to mean a human end or purpose. It is a compound term having 'puruṣa' (human person) as its first element. The qualifying word 'human' may suggest that the term is not applicable to the ends which man seeks in common with lower animals. But that is not the case. The term is also used with reference to the ends like food and rest which animals also seek. In fact, the word 'puruṣa' is used to signify the activity of deliberate and conscious pursuit uniquely associated with man who acts not merely instinctively, but is also capable of setting certain ends before himself and working consciously to achieve them. Obviously, 'the significance of the first element (puruṣa) in the compound is not, accordingly, the restriction of the scope of the ends sought, but only of the manner of seeking them.'⁶⁰

From very early times, four main puruṣārthas were commonly recognized in India: artha, kāma, dharma and mokṣa. According to Radhakrishnan, these 'four ends of

life point to the different sides of human nature, the instinctive and the emotional, the economic, the intellectual and the ethical and the spiritual.'⁶¹

(1) Artha

The term 'artha' is generally used to refer to the economic aspect of man's life. In that sense, artha primarily relates to the material well being of man, which he is supposed to obtain through the attainment of wealth and worldly prosperity. It is defined as the "whole range of tangible objects that can be possessed, enjoyed or lost and which we require in daily life for the upkeep of a household, raising of a family and discharging of religious duties, i.e. for the virtuous fulfillment of life's obligations."⁶²

In other words, artha fundamentally refers to the acquisitive aspect of human nature which expresses itself in and through the activities of production, distribution, consumption and possession of different goods. The recognition of artha as one of the four most basic fundamental ends of human life shows that despite its predominantly spiritual and transcendental character, the Hindu value scheme does not ignore the material aspect of man's well being and takes proper care of his natural acquisitive tendency. In this connection, Radhakrishnan observes,

There was never in India a national ideal of poverty or squalor. Spiritual life finds full scope only in communities of a certain degree of freedom from sordidness. Lives that are strained and starved cannot be religious except in a rudimentary way. Economic insecurity and individual freedom do not go together.⁶³

Property in Hindu political and social thought has always been considered as one of the necessary means for discharging some of the fundamental social obligations a man owes to his family and fellow beings during the household stage of his life. And therefore, a considerable amount of attention is paid to the issues concerning various forms and modes of property and various ways of acquiring it; and several rules and laws are laid to govern and regulate the operation of acquisition of goods. We need not go into the complex details of these extensive discussions. But at this point, it is important to note that though artha is duly recognized as one of the most basic ends of human life, still it is of instrumental value only, and not an end in itself. It is invariably subordinated to dharma, the third puruṣārtha, which itself finally becomes a means to the realization of mokṣa, the ultimate puruṣārtha. Radhakrishnan, stating his view in this regard says, "There is more in life than economic values. We are men, not merely producers or consumers, operatives or customers."⁶⁴ And therefore he believes that:

It is only in a very restricted sense that we can say that the economic system of a society is the real basis of all legal, political and intellectual phenomena. These phenomena cannot

exist independently of it. There can be no plant without soil. But plants grow not only by the soil, though they grow out of it. The seed must be sown and other conditions should be provided. Even so the ideological superstructure requires the economic system but is not explained by it. There can be no good life without life; but mere life does not account for the values we cherish.⁶⁵

(2) Kāma

'Kāma' is a comprehensive term which primarily refers to the emotional aspect of man's being, and in its sphere includes his feelings and desires ranging from the cravings of the flesh to the yearnings for the highest kind of aesthetic pleasure. In ordinary usages, it is generally associated with the sexual aspect of man's life but though sexual pleasures form an important part of kāma, it is definitely not limited to sex. In its sphere it includes not only sexual, but also the non-sexual desires of man which range from love of other human beings to the love of art and art experience. This becomes all the more clear from the definition of kāma given by Vātsyāyana, the author of the famous Kāma-Sūtra:

Kāma is the enjoyment of appropriate objects by the five senses of hearing, feeling, seeing, tasting and smelling assisted by the mind together with the soul. The ingredient in this is a peculiar contact between the organ of sense and its object, and the consciousness of pleasure which arises from this contact is called kāma.⁶⁶

In other words, kāma refers to the sensuous and emotional aspect of man's nature which seeks satisfaction

not only through pleasures of sex but also through the pleasures related to the highest kind of aesthetic experience. Under its heading, we find both the most elaborate treatise dealing with various aspects of sex, and the classics explaining the intricate details of various art forms.

As in the case of artha, kāma is also recognized as an instrumental value only, and is subordinated to the regulations of dharma. Its true significance lies in its becoming the means to the spiritualization of man's life, and therefore its pursuit should never become an end in itself. The use of arts as a means to refine and purify emotions is not something uncommon; but in India, one finds instances, where even sex is given spiritual orientation and is used as a preparing ground for spiritualization.

(3) Dharma

'Dharma', the third puruṣārtha, enjoys the place of central importance in Hindu thought and social structure. It is the commanding puruṣārtha and operates as the regulative principle on all the other puruṣārthas and goals of human life. Due to the extreme complexity of this concept, it is almost impossible to translate the term in any other language. Even in Sanskrit, it acquires different meanings in different contexts and is believed to bear a wide range of interpretations in each context. According to

Radhakrishnan, it is a word of protean significance which includes duty, morality, righteousness, responsibility, justice, religion, order, rule, good, essence, nature and truth within the range of its meanings.

Etymologically, the term 'dharma' is derived from the root 'dhr' meaning to uphold, to sustain, to nourish, to support. In this sense, dharma stands for the principle of cosmic order and moral harmony which sustains and supports the universe as one, unified, orderly whole. It is described as the law of being by virtue of which a thing is what it is. In this sense, dharma is the expression of the essential nature of each being in the universe and "each man and group, each activity of soul, mind, life and body has its dharma."⁶⁷ To maintain the orderliness and harmony of the universe each being must remain in conformity with its own dharma, and all its activities must flow from the very nature of its essential being.

Inanimate objects and non-human entities naturally follow their own dharma, the law of their nature. But man as the unique possessor of free will is capable of defying it; in his case, dharma not only stands as a descriptive term expressing the essence of his nature, but also acquires a prescriptive connotation which emphasises the moral and obligatory aspect of dharma. In this sense, dharma is conceived as the most fundamental moral norm which is grounded on truth and is primarily concerned with the

maintenance of justice, righteousness and order in the universe. It is perceived as the principle of value prescribing man's most fundamental duties and obligations. In other words, it can be said that dharma is the principle of both reality and ideality and is the chief regulative factor in developing a harmonious coordination between different aspects of human personality. In the third section of this chapter, I shall have occasion to discuss various aspects and sources of dharma in relatively greater detail. For now, it is sufficient to present a definition of dharma which is comprehensive enough to include the elements of both reality and ideality in its scope.

That which holds a thing together, makes it what it is, prevents it from breaking up and changing into something else, its characteristic function, its peculiar property, its fundamental attribute, its essential nature, is its dharma, the law of its being.... That scheme or code of laws, which binds together human beings in the bonds of mutual rights and duties, of causes-and-consequences of actions arising out of their temperamental characters, in relation to each other and thus maintains society, is human law, mānava dharma. Yet again, the code of life based on Veda (all-science of the laws of nature in all her departments), the due observance of which leads to happiness here and hereafter is Dharma. Briefly, Dharma is characteristic property, scientifically; duty, morally and legally; religion with all its proper implications, psychologically and spiritually; and righteousness and law generally; but duty above all.⁶⁸

Emphasizing the duty related aspect of dharma, Radhakrishnan equates it with the "rule of right practice",⁶⁹ and following the traditional Hindu view

maintains that dharma is the measuring and controlling stick to be applied on all human desires and goals. It is the ultimate touchstone which determines the moral quality, good or bad, right or wrong, of all human actions and helps men in resolving conflicts arising between their various desires and aims. It is the commanding puruṣārtha and supplies the ethical code one has to follow in one's pursuit of other puruṣārthas. Though artha and kāma are important puruṣārthas in themselves, yet they have to be regulated according to the precepts of dharma, which is referred to as the 'sacred eternal law' and is expressed in terms of universal, unconditional moral imperatives. These imperatives generally take the form of prescriptive (vidhi) and prohibitive (niśedha) commandments and include within their scope almost all aspects of human life and its activity.

The primary purpose of these commandments is to bring a basic integration and coherence into the different aspects of man's personality and his social structure. In Radhakrishnan's words, "Dharma gives coherence and direction to the different activities of life. It is not a religious creed or cult imposing an ethical or social rule. It is the complete rule of life, the harmony of the whole man who finds a right and just law of his living."⁷⁰ At another place Radhakrishnan observes, "Under the concept of dharma, the Hindu brings the forms and activities which shape and

sustain human life. We have diverse interests, various desires, conflicting needs, which grow and change in the growing. To round them off into a whole is the purpose of dharma.,⁷¹ In other words, in Hindu thought, the concept of dharma permeates the whole life of man, and all modes of human activity derive their meaning and significance only when integrated into a meaningful pattern provided by dharma.

The detailed and unambiguous practical code of morality supplied by dharma serves as the basis for building and developing various institutions in the society and provides a basic outline for structuring man's personal and social life. According to Radhakrishnan, "The complex of institutions and influences which shape the moral feeling and character of the people is called the dharma which is a fundamental feature of the Hindu religion.,⁷²

Under the concept of dharma, even the most minute and intimate details of man's personal and social life are given thorough consideration and a well structured pattern of life is prescribed. This pattern is primarily expressed in terms of the fourfold scheme of varna and asrama dharma which not only lays down the rules for 'right living' for all, but also provides a system of rights and duties deduced and organized on the basis of the most dominant aspect of a man's essential nature. This fourfold scheme occupies such an important place in Hindu thought and life that

Radhakrishnan thinks it befitting to define dharma "as the whole duty of man in relation to the fourfold purposes of life (dharma, artha, kāma and mokṣa) by members of the four groups (cāturvarṇa) and the four stages (caturāśrama).",⁷³

From the above, it becomes clear that dharma as one of the primary puruṣārthas constitutes the most fundamental end of human life, and all other human activities related to artha and kāma must be regulated by and directed towards dharma as their end. But despite its all embracing regulative role, dharma is not considered to be an end in itself. It is not "parama puruṣārtha", the ultimate end of life. Rather it is only a means to it. The place of parama puruṣārtha is accorded to mokṣa, the final liberation, and dharma is designated as the sole means to achieve it. Mokṣa, the spiritual liberation, is attained through the realization of one's identity with Brahman. According to Radhakrishnan, "it is parama puruṣārtha, the supreme end of life; and the means to it is dharma."⁷⁴ Further explaining the instrumental character of dharma Radhakrishnan notes,

The dharma and its observance are neither the beginning nor the end of human life, for beyond the law is spiritual freedom, not merely a noble manhood but universality, the aim which ennobles the whole life of the individual and the whole order of society. Man's whole life is to be passed in the implicit consciousness of this mysterious background.⁷⁵

In other words, in Radhakrishnan's view, the importance of dharma primarily lies in its becoming a means to attain mokṣa, the transcendental purpose of life.

But this transcendental purpose is not something alien or exterior to the structure of dharma. Rather, transcendence is an essential aspect of its inner constitution and dharma cannot be conceived in the absence of mokṣa. Dharma essentially aims at mokṣa as its ultimate end, and therefore Radhakrishnan declares, "The basic principle of dharma is the realization of the dignity of the human spirit, which is the dwelling place of the Supreme. The knowledge that the Supreme Spirit dwells in the heart of every living creature is the abiding root principle of all dharma.",⁷⁶

(4) Mokṣa

As mentioned earlier, mokṣa, the spiritual liberation, is considered to be parama-puruṣārtha or the supreme end of human life, and all other ends are supposed to serve it. In Radhakrishnan's words, "Mokṣa is self-emancipation, the fulfilment of the spirit in us in the heart of the eternal. This is what gives ultimate satisfaction, and all other activities are directed to the realisation of this end.",⁷⁷ At another place he says, "Mokṣa or spiritual freedom is the aim of all human life...It assumes that the fundamental reality is the soul of man.",⁷⁸

From the ontological point of view mokṣa can be described as that state of existence in which the identity between man and Brahman is completely realized and a perfect non-duality is established. This is the state in which man as jiva elevates himself to the stage of man as ātman and realizes his oneness with Brahman, the ultimate Being.

Epistemologically speaking, mokṣa can be characterised as the state of complete and perfect knowledge (jñāna or vidyā) in which man acquires the capability of seeing through the delusive veil of māyā or avidyā and realizes the true nature of the self. He no more identifies himself with body, senses, mind, intellect, ahankāra or narrow selfish ego, and achieves universality of spirit through identity with the Absolute. This realization leads to the spiritual liberation which is manifested in the soul's release from the bondage of death and rebirth, and man attains freedom in the truest sense of the term.

Describing mokṣa, Radhakrishnan says,

Negatively release is freedom from hampering egoism; positively, it is realization of one's spiritual destiny. The abandonment of the ego is the identification with a fuller life and consciousness. The soul is raised to a sense of its universality.⁷⁹

Before proceeding further, some important points with regard to Radhakrishnan's characterization of the concept of mokṣa must be noted. Firstly, mokṣa is a supra-ethical

state of freedom which transcends all moral and ethical categories. Spiritual liberation "is something more than ethical goodness, though it cannot be achieved without it. The difference is that between perfection and progress, between eternal life and temporal development, between time suspended and time extended. One is an improvement of human nature, while the other is a reorientation of it."⁸⁰ "The spiritual," he further observes, "is not the extension of the ethical. It is a new dimension altogether, dealing with things eternal."⁸¹ Moreover, since mokṣa or spiritual liberation belongs to a higher order of reality, to attain it, one must transcend the ethical plane. The spiritual, Radhakrishnan believes, cannot be achieved by ethics. "While ethical life can give rise to better existence, it by itself cannot effect release, which requires the shifting of the very basis of all life and activity."⁸²

Liberated souls, Radhakrishnan further emphasizes, rise above distinctions of good and evil, right and wrong. They cannot be judged by the ordinary rules of our moral system. In their lives, external authority gives way to inward freedom and they act from inner necessity, not under the pressure of outer coercion. But this freedom is not "madness of licence,"⁸³ to do any evil. "When upaniṣad says that 'sin does not cling to a wise man anymore than water clings to a lotus leaf' it does not mean that the sage

may sin and yet be free, but rather that anyone who is free from worldly attachments is also free from all temptation to sin.... When the individual spirit realizes his divine nature and acts from it, he transcends the distinctions of good and evil... it is impossible for him to do wrong.’⁸⁴ Such souls not only realize values but also reveal them. They become law unto themselves. ‘Morality becomes the very condition of their being, and law is fulfilled in love.’⁸⁵

Another important point in Radhakrishnan’s characterization of mokṣa is that following Śaṅkara, he believes in the possibility of ‘jivan mukti’. According to Hindu tradition, liberation can take two forms, videha-mukti and jivan-mukti. The former refers to deliverance after a man’s physical death, whereas the latter is the state in which man is liberated while living his life on earth. Radhakrishnan not only accepts the possibility of jivan-mukti, but unlike most of the orthodox advaitins he tries to relate it to the concept of sarva-mukti or universal salvation., ‘There is no such thing,’ he declares, ‘as individual salvation, for it presupposes the salvation of others, universal salvation, the transfiguration of the world.’⁸⁶

In Radhakrishnan’s view, salvation is essentially social in character and embraces the whole of human kind as unity. ‘No one,’ he says, ‘can attain perfect inner

harmony until the world outside is harmonized with him.... No one is truly saved until the world is saved.”⁸⁷ And therefore, the one who attains liberation cannot remain isolated from the world and indifferent to the sufferings of unredeemed souls. Since complete freedom is impossible in an imperfect world and “complete liberation implies not only harmony within the self but also harmony with the environment.... Those who have attained to the consciousness of the Eternal work within the world to set other men forward in their journey toward the goal.”⁸⁸ Radhakrishnan refers to this invisible solidarity and kinship of all human beings as the principle of “lok-samgraha (the holding together of the human race),”⁸⁹ and maintains that jivan-mukta or the one who attains salvation in this life necessarily devotes himself to the active service of the others. He achieves the universality of spirit which is naturally expressed through a life of universal love, spontaneous service and voluntary sacrifice. In Radhakrishnan’s view, the destinies of all human beings, ‘liberated’ or ‘not-yet liberated’, are bound together and therefore, salvation of all is the precondition for the salvation of one. In other words, the ideal of self-perfection inevitably leads towards the goal of perfection of all and therefore, “In a true sense the ideal individual and the perfect society arise together.”⁹⁰

Radhakrishnan thinks that this view of salvation helps in bridging the gap between individual good and the social good, and also answers the oft repeated criticism directed against Indian thought that it is world-negating and that its ideal of mokṣa encourages the life of withdrawal and inactivity.⁹¹ The idea of social redemption implied in the concept of universal salvation, according to him, not only strengthens the inner unity of the society but also encourages the desire to devote oneself to the service of the society.

No one, not at any rate he who has perfected himself, can be at ease when the world cries for help....He can no more help loving humanity than a sunflower can help pointing to the sun. To be saved is not to enter a region of blissful ease and unending rest. The saved one becomes an elemental force of nature, a dynamo of spirit, working at a stupendously high velocity. The renunciation he has practised does not require him to flee from the world of works but only to slay the ego sense. Eternal life is here and now.⁹²

The active lives of Buddha and Śaṅkara, according to Radhakrishnan, are good examples of the life of those who attain eternity and the universality of spirit here and now.

Later, I shall explain how this concept of universal salvation crucially influences Radhakrishnan's notion of rights, but first I shall discuss his answer to another often repeated charge against the advaitic concept of mokṣa. It is generally argued that mokṣa in advaita vedānta aims at an individual annihilating unity which renders individual self

totally insignificant. Radhakrishnan strongly rejects this charge and maintains that although in the state of mokṣa, "individual being is absorbed in the Supreme,"⁹³ and "the privacy of the individual self is broken into and invaded by a universal self which the individual feels as his own,"⁹⁴ this in no way renders individuals insignificant; rather it elevates, dignifies and exalts their status in a very important way. In the process of self-realization the distinction between 'I' and 'thou' dissolves and a more comprehensive reality emerges in whose unity the individual self is neither lost nor reduced to the status of an insignificant part of a whole. On the contrary, an enlargement of the self takes place and the individual is transformed into a universal being. Radhakrishnan explains, "We are not, through this process, abolishing our individuality but transforming it into a conscious term of the universal being, an utterance of the transcendent divine."⁹⁵

Moreover, even after the liberation, individuals retain their individuality until the consummation of the cosmic process is achieved. "An individual is free when he attains universality of spirit, but his liberated self retains its individuality as a centre of action so long as the cosmic process lasts."⁹⁶ And, therefore, Radhakrishnan believes that instead of being charged for the annihilation of the individual, the advaitic concept of mokṣa should be

praised for elevating the status of the individual to the level of universal being and for making him an important and active factor in bringing about the universal salvation.

Thus we see that the scheme of fourfold puruṣārthas (ends of human life) primarily concerns itself with the goal of developing an integrated personality and therefore gives proper recognition and importance to all the aspects of human nature. Though mokṣa or the goal of spiritual realization is constantly emphasized as the ultimate end of all human endeavour, the earthly social life is neither neglected nor considered totally insignificant. Rather, by including artha and kāma amongst the primary ends of human life it accords due importance to the acquisitive and emotional aspects of man's nature. The deliberate emphasis on acquiring wealth and cultivating skills to fulfill one's social and family obligations clearly suggests that the puruṣārtha scheme neither legitimizes poverty nor neglects the need to attain material gains and artistic skills to satisfy the emotional aspects of one's life.

But the significance of these values or ends is seen in a proper perspective. They are given the place of subordinate and instrumental value only, and it is insisted that they must not be pursued for their own sake. Presence of the regulative factor of dharma constantly keeps check on their pursuit and necessarily orients them towards mokṣa. But this orientation neither belittles nor devalues the

significance of these values. On the contrary, the regulation of dharma transforms these earthly values into a means to spiritual realization and thus idealizes their pursuit. Indeed, the specificity of the puruṣārtha scheme, according to Radhakrishnan, lies in the fact that, instead of perceiving a conflict between phenomenal and transcendental, material and spiritual, it attempts to link them in an integrated pattern and transforms their apparent opposition into an efficient means — end relationship. The four values, recognized as four ends of man's life, answer the different needs of the human person at different phases of his life and thus promote an overall development of his personality.

(iv) Man's Relation to Society

After the discussion of the fourfold aspirations of man, I shall return to the question raised in the beginning of this section. I began by asking, what is the relationship of man to society in Radhakrishnan's philosophy? In his view, how are men related to their fellow beings and which principle governs their interpersonal relationships? We have seen that according to Radhakrishnan, the primary purpose of society is to assist man in his pursuit of the fourfold ends, and this purpose governs the reciprocal relationship of man and society.

We have also seen that these fourfold ends involve two states or levels of man's being, namely the empirical and the transcendental. Though there is no discontinuity between these two states, still these are two different planes or levels of man's being. And therefore, the mode of man's relationship to society naturally varies and takes different forms accordingly. In other words, the nature of man's relationship to society as jiva differs from his relationship in the state of ātman, and therefore any discussion on this issue necessarily has to take into account the differences pertaining to these two states or levels. In what follows, I shall briefly indicate some of these differences and, later, shall try to see what implications they have for Radhakrishnan's notion of rights.

(1) Man's Relationship to Society as Jiva

Man as jiva belongs to the phenomenal level of being and therefore is bound by the limitations of time, space, death and rebirth. According to Radhakrishnan, in this state man can be described as an embodied soul, who due to avidya or ignorance perceives himself as a distinct, separate and independent entity and therefore always strives to satisfy the demands and interests of his narrow, self-centered ego. The finiteness of man's vision in this state prevents him from establishing harmonious relationships with the external environment and his fellow

beings; therefore, there always exists the possibility of a clash between the good of the individual and the good of the other members of society. There is always a danger that this conflict would eventually result in the total disintegration of society and would ultimately lead towards an anarchical state, in which nobody's interests could be realized. To avoid such a situation society has to devise institutions to control and regulate the conduct of its members so that different puruṣārthas can be achieved in a disciplined and well-balanced manner.

The main aim of these institutions is to keep a check on the anarchic, impulsive and egoistic tendencies of the individual so that he does not indulge in an imbalanced pursuit of his selfish desires and thereby create disorder not only in society but also in his own personal life. Since the source of these tendencies lies in avidyā or ignorance, in normal circumstances the means adopted to correct or check these should be education, persuasion and the force of character. But in some exceptional circumstances the use of force or coercion can also be permitted. 'The Hindu scheme' Radhakrishnan says, 'permits the use of force for the maintenance of order and enforcement of law, occasionally even to the point of the destruction of human life. In a perfect society where everyone is naturally unselfish and loving, there would be no need for government or force.... In the actual imperfect

conditions the State will have to exercise force on recalcitrant individuals. The need for force is, however, a sign of imperfection . . .⁹⁷ But this use of force, Radhakrishnan insists, should be 'limited to occasions where it is the only alternative and is applied for the sake of creating a more suitable environment for the growth of moral values and not for the activities which can hardly fail to result in social chaos.'⁹⁸ At another place he says, 'while we cannot obviate the necessity for the use of coercion in political arrangement, so long as sinful ambition, pride, lust and ~~greed~~ greed are operative in human nature, it is essential to guard against its abuses and remember that there is a higher obligation of love that transcends the requirements of mere justice, in the light of which all codes of justice are to be judged.'⁹⁹ Moreover even when force is the only available means to keep order and harmony in the society, its use should be regulated by the precepts of dharma and it must be applied in an ethical way.

According to Radhakrishnan, there is a reciprocity in the relationship between man and society at the phenomenal level. The primary aim of society is to assist man in realizing the fourfold ends of his life. But due to the imperfections associated with his jiva-state, man needs to be guided and controlled by social institutions. This control sometimes may take coercive forms and man in some

cases can legitimately be subjected to certain limitations and punishments. But this is done so that the social order and harmony required for the pursuit of different ends can properly be maintained and man can achieve his ends in a disciplined and balanced way.

Explaining this reciprocal interrelationship Radhakrishnan observes, 'Between man and society, there exists such a deep, mysterious, primordial relationship, a concrete interdependence, that a divorce between them is impossible. This natural sympathy is countered by the unnatural selfishness of individuals and the egoism of collectivities.'¹⁰⁰ And therefore, for a proper and balanced development, both have to put some limitations on their demands and expectations:

Even as the individual has no right to look upon himself as the final end of existence and claim the right to live for himself, without taking into account the needs of society, the social group has no right to demand the absolute surrender of the individual's rights. The two principles which must govern all group life are the free and unfettered development of the individual and the healthy growth of society. The individual and the society are interdependent. The sound development of the individual is the best condition for the growth of the society and a healthy condition of society is the best condition for the growth of the individual.¹⁰¹

Although society exists as a means to the fulfillment of man's material and spiritual ends, Radhakrishnan believes that man in his temporal and phenomenal existence (as jiva), is bound to obey social laws and regulations and can

rightfully be subjected to some limitations and restrictions. However, since these restrictions are basically meant to facilitate man in the realization of his four-fold ends, they ultimately serve his own interests.

(2) Man's Relationship to Society as Ātman

According to Radhakrishnan, man does not belong to the temporal and phenomenal order only. He is not only jiva, but is also and more truly ātman. In his true nature he belongs to a higher level and his destiny transcends all that is finite, relative and temporal. "The heart of religion," says Radhakrishnan, "is that man truly belongs to another order, and the meaning of man's life is to be found not in this world but in more than historical reality...God and not the world of history is the true environment of our souls."¹⁰² This is why man naturally inclines towards the transcendental and the spiritual. Only in the infinity of the ultimate being, his soul finds its true resort.

Man's incapacity to be satisfied with what is merely relative and remain permanently within the boundaries of the finite and empirical reality cannot be denied. Man stands before the shrine of his own mystery. He enters it the moment he becomes aware of his own eternity. Apart from eternity there is nothing that can strictly speaking be called human.¹⁰³

This eternal, trans-historical destiny of man naturally takes him beyond the confines of society and its law. "The core of the individual's life takes him beyond the social forms, though he has need of them. The social life is a movement in our destiny, not the terminus."¹⁰⁴ Though society and its institutions play an important role in the development of the individual, still "the individual cannot be dissolved completely in the social whole."¹⁰⁵ Man is not merely a social animal. He is basically a spiritual being and therefore, "the stature of man is not to be reduced to the requirements of the society. Man is much more than the custodian of its culture or protector of his country or producer of its wealth. His social efficiency is not the measure of his spiritual manhood. The soul which is our spiritual life contains our infinity within it."¹⁰⁶

Since on the transcendental plane man rises above the limitations of all that is temporal, finite and historical, nothing social and institutional can ultimately bind him. But does this mean that at this level the individual is allowed to behave in a totally unrestricted manner? Is he permitted to use society merely as a means to serve his own selfish interests? Is he allowed to indulge even in anti-social activities? All these questions and the fears implied in these, according to Radhakrishnan, are relevant only when we consider man in the state of jiva. As soon as we transcend that level and think of man as ātman,

these questions become irrelevant and the fears lose their meaning.

We know that in Radhakrishnan's scheme, man as ātman is not different from Brahman, the universal Being. And since at the transcendental level ātman or Brahman is the only reality, all the distinctions concerning the individual and the group, part and whole, finite and infinite, means and ends, completely disappear in its unfathomable depth. In such a state, there is no need to control man through external regulation because the good of the individual does not differ from the good of the society, and therefore, the question of conflict between the two does not arise at all.

In other words, the state of perfect identity naturally results in the state of perfect harmony and the absence of conflict leaves no place for external regulations. Since man as ātman realizes the universality of spirit, nothing remains external to his being and so in serving his own interests he serves the interests of all. He is guided by his own inner freedom and is himself the source of all authority and power. Nothing external can bind him and all that exists ultimately belongs to him. In other words, the spiritual destiny of man makes him the centre of the universe and everything else finds its true meaning and significance in and through his being.

In all his writings, Radhakrishnan puts special emphasis on this spiritual and transcendental destiny of man and treats the state of jiva only as a transitional stage from which man advances to a higher level of reality. Emphasizing this aspect of man's being, Radhakrishnan quotes a Sanskrit verse which reads: 'For the family sacrifice the individual; for the community the family; for the country the community, and for the soul the whole world. (ātmārthe pṛthivim tyājet)'¹⁰⁷ This verse explains in a nutshell the implications of man's status as ātman and points to the source of his unconditional, universal and inalienable rights. It establishes that the roots of man's rights lie in the spiritual aspect of his being.

Man's transcendental destiny takes him beyond the boundaries of society, state, nation, tribe and family, and provides him with some fundamental rights which neither originate from nor can be curtailed by any human institution. 'There is nothing final or eternal about states and nations, which wax and wane. But the humblest individual has the spark of spirit in him which the mightiest empire cannot crush. Rooted in one life, we are all fragments of the divine, sons of immortality, amṛtasya putrāḥ.'¹⁰⁸ Therefore, in Radhakrishnan's scheme man's most basic right consists in his freedom to realize his spiritual destiny and nothing earthly can take away this basic freedom from him. In other words, 'to be himself' is man's most

natural right and the primary aim of all human institutions is to assist him in enjoying this right in its most developed and perfect form. This aim, in Radhakrishnan's view can only be realized by following the precepts of dharma or the law of one's essential being.

I have already noted that for Radhakrishnan, dharma is the only means to achieve mokṣa, the ultimate end of human life, and only through dharma can jiva elevate himself to the level of ātman, wherefrom all his rights originate. In other words, the principles of dharma provide the basic structure for realizing the rights man owns by virtue of his essential nature, and only through the regulation of dharma can man's relationship to society and his fellow beings be determined. This, as we shall see, gives rise to a system in which rights are determined with reference to duties and duties originate from dharma, the principle of man's essential nature.

Keeping in view the importance of the role dharma plays in structuring the theory of rights in Radhakrishnan's system, in the following section I shall discuss various aspects of the concept of dharma, and in the next section shall try to see how on the basis of dharma Radhakrishnan determines the nature and scope of different rights.

III

THE CONCEPT OF DHARMA

In the preceding section while discussing the fourfold puruṣārtha scheme, I have already discussed different meanings of the term 'dharma' and have analysed its relationship to other ends of human life. In what follows, I shall first discuss different sources of dharma and then shall present Radhakrishnan's analysis of its various aspects.

(i) The Sources Of Dharma

The concept of dharma in Hindu thought expresses the essence of man's being and manifests itself in the orderliness, non-arbitrariness, and law abidingness of nature. In Radhakrishnan's view, dharma not only expresses the 'sat', the essence of things but also and more importantly so, 'satya', the truth of things, and therefore it functions as a transcendental moral norm which provides guidelines for organizing man's personal life as well as his social life. At the existential or ontological level, the essence of dharma is expressed in the recognition of the spiritual dignity of human beings. 'The knowledge that the Supreme Spirit dwells in the heart of every living creature is the

abiding root principle of all dharma.”¹⁰⁹ At the moral level or the level of action, dharma expresses itself through the general rule, “refrain from doing unto others what you will not have done unto yourself.”¹¹⁰ But to provide the moral guidelines for human behaviour, this abstract and general norm has to be translated into specific and concrete modes of moral action, and to do this, we have to seek the sources of dharma.

According to Radhakrishnan, there are four sources of dharma: “(1) the Śruti or the Vedas (ii) the tradition and practice of those that know it, (iii) the conduct of virtuous men, and (iv) individual conscience.”¹¹¹

The first source of dharma is ‘Śruti’ or the Vedas. The vedas are part of an oral tradition and are believed to have been heard and memorized by the rishis, the sages. Generally, the Vedas are considered to be divine revelations but Radhakrishnan does not accord them infallible authority. However, he believes that they have a unique and special kind of authority, because they contain the statement of seers who directly perceived the transcendental truth.

The vedas are believed to contain eternal truths but they do not contain a systematic account of dharma. They only indicate the ideals and mention certain practices. The rules and commands to be followed in practice are presented in Smṛtis and the Dharma - Śāstras. Smṛtis literally refers

to what is remembered by the sages, and therefore, if Śruti and Smṛti conflict, the former is to be accepted.¹¹²

Tradition or custom forms the second source of dharma. But Radhakrishnan maintains that to be authoritative customs should not be immoral or opposed to public interests.

Another important source of dharma is the practice or the conduct of disciplined (śiṣṭa) and virtuous men. The way virtuous and learned men behave can become a guide to conduct because they act according to the ideals set forth in the scriptures.

Along with the practice of the śiṣṭa, the good conscience is also recognized as a source of dharma. But it should be the conscience of the disciplined, not the caprice of the shallow. Another characteristic of good conscience is that it should be based on unbiased objective analysis and sound reasoning.

Amongst these four, Śruti is the highest authority. Next is "Smṛti or the tradition set up by human beings; and it is authoritative in so far as it is not repugnant to the Veda from which it derives its authority. Practices or customs (ācāra) are trustworthy if they are adopted by the cultured."¹¹³

Human life is so complex that none of these sources could provide a detailed code of action for every conceivable case. The Vedas and Śmṛti lay down only certain general principles which can be extended to new cases with proper discrimination and judgment. To solve cases of doubt and dispute recourse to the conventions established by the virtuous has to be taken. When vital changes in the life of the community have to be introduced, the judgment of pariṣads or assemblies of wise men should be taken into account. But in times of crisis, when an assembly cannot be formed, 'even a single individual of insight and self-control can function as a pariṣad.'¹¹⁴

(ii) The Two Aspects Of Dharma

Radhakrishnan classifies different aspects of dharma into two broad categories: sādharmaṇa dharma and svadharmā. The latter is further divided into two categories, varṇa dharma and āśrama dharma. Apart from these two, he also discusses the notions of āpāda dharma and yug-dharma.

(1) Sādharmaṇa Dharma

The term 'sādharmaṇa dharma' refers to those universal duties which are obligatory on all human beings irrespective of the various differences pertaining to their race, sex, colour, religion, nationality, culture and profession.

These duties are obligatory on man just because he is man and therefore sometimes are referred to as mānava-dharma or human duties. Radhakrishnan calls it nitya (eternal) dharma because it contains eternal moral obligations to be fulfilled by all human beings and, according to him, the observance of these obligations alone distinguishes man from animals.

The essence of sādharma dharma, according to Radhakrishnan can be stated as 'refrain from doing unto others what you will not have done unto yourself;' ¹¹⁵ or in other words, 'treat all human beings as your own self'. This principle is an expression of the ontological assumption that this universe is a manifestation of one non-dual reality called Brahman. According to this metaphysical stance, since ultimately we are all one with Brahman, the universal spirit, my self is essentially identical or non-different from yours, and therefore I am naturally obliged to treat you as myself. The non-differential unity of essence gives rise to some universal obligations on the part of each of us and the virtues of honesty, love, forgiveness, charity, non-violence, compassion, justice and purity of conduct naturally follow as different expressions of this obligation. These different virtues are broadly classified under the headings of śaucam (purity of thought, words, and deeds), indriyanigraham (self-control), vairāgya (detachment), satya (truth) and ahimsā (non-violence), and

are believed to have universal applicability. Later on, I shall explain how the binding character of these obligatory duties provides a foundation for Radhakrishnan's concept of human rights.

(2) Svadharmā

The term 'svadharmā' literally means one's own dharma (duty) which, according to Radhakrishnan, is essentially correlated with svabhāva or one's own specific nature.¹¹⁶ The inner correlation of svabhāva with svadharmā is expressed in terms of the two aspects of svadharmā, the social and the individual, which are reflected respectively in varṇa dharma and the āśrama-dharma. The former deals with the duties assigned according to men's position in society which is determined by their character (guṇa) and function (karma); the latter deals with the duties relevant to different stages of man's life.¹¹⁷ I shall begin the discussion with Radhakrishnan's account of the concept of varṇa dharma, and since the limitation of space does not permit me to go into the details of his closely reasoned and subtle analysis of the various aspects of this concept, I shall try to present only a brief exposition of its most salient features.

(A) Varṇa-dharma

As mentioned earlier, varṇa-dharma classifies human beings into four-basic groups on the basis of the dominant trait of their character and psycho-physical make up, and assigns different duties and functions accordingly. The four groups are: brāhmins, the men of learning and knowledge; ksatriyas, the men of power, action and administration; vaiśyas, the men of trade, commerce, technical ability and skilled craftsmanship; and śūdras, the men of service and labour.

(a) Brahmins

The brāhmins represent the pre-eminently intellectual class in society. Their primary function is to seek knowledge and communicate it to others. They are supposed to provide moral guidance to the society and are expected to refrain from mere intellectualism without accompanying ethical elevation. Serenity, humility, self-restraint, authority, purity, simplicity, wisdom, knowledge of dharma, an abiding sense of humanity and an earnest desire to seek truth are the characteristic attributes of a brāhmin.

Although brāhmins provide the vision and the blue print for the social organization and are believed to enjoy moral and spiritual power and superiority over all the other classes in society, yet they are expected to refrain from

indulging in power-politics, practical administration, pursuit of wealth and excessive possession of material objects and comforts. 'They reveal but do not enforce ... they keep clear of the love of power as well as the pressure of immediate needs.'¹¹⁸ They are supposed to do so because,

The Hindu believes that anyone immediately and deeply concerned with the exercise of power cannot be completely objective. The rulers will be concerned with government and the thinkers with values. If society is not to be led by the blind, we must have the contemplative thinkers at the top. Every society needs to have a class which is freed from material cares, competitive life, and is without obligations to it....A class of disinterested seekers of truth supported by society, influencing it, and placed above the corrupting tendency of power, is the very life of social stability and growth. After all, civilization is based on a vision.¹¹⁹

(b) Ksatriyas

Kṣatriyas form the ruling, administrative and warrior class of the society. 'While it is the business of the Brāhmin to lay down the science of values, draw out the blue prints for social reconstruction, and persuade the world to accept the high ends of life, it is the business of the Kṣatriyas to devise the means for gaining the ends.'¹²⁰ A heroic determination, a dynamic spirit of adventure, undaunted courage, fearlessness and a natural aptitude for seeking power and authority are the characteristic qualities of the members of this class. They embody the political, administrative and military powers of the society, and therefore are considered responsible for the enforcement of

justice, maintenance of law and order, and protection of members of society. In a sense, they basically perform some of the functions of the modern state and for that purpose are permitted to use force to some extent. But as has been said earlier, this use of force must be guided by a spirit of justice and love, and a sense of duty must prevail over the mood of revenge and vindictiveness. In the performance of their administrative and executive duties kṣatriyas are believed to be bound by the laws of dharma and are supposed to follow the advice of brāhmins. According to Radhakrishnan, in this scheme,

The users of force are not the ones to judge the causes for which it has to be employed. The Kṣatriyas rule only as the guardians and servants of law. They have an executive power over the community which is valid only so long as they carry out the law, which is placed under the control of the Brāhmins and the seers and protected from interference by political or economic power.' '121

(c) Vaiśyas

Vaiśyas represent the commercial class in the society which 'brings into relief the tendency of life to possess and enjoy, to give and take.' '122 Practical mindedness, adaptive skills, enterprising spirit, a natural tendency towards the pursuit of wealth and a desire for the efficient exploitation of natural resources are the chief characteristics of the members of this class and their primary duty consists in taking care of the economic and

material needs of the society. To perform that, they cultivate land, engage in commerce and industry, and manage the matters related to money and property. But again, as in the case of kṣatriyas, they are also guided by the moral and spiritual ideals of dharma and are expected to suppress their greed, refrain from exploiting other classes, and perform their duties in the spirit of justice.

(d) Śūdras

The fourth class consists of men whose nature finds its outlet in work and service. They are physically strong and are capable of good laborious work. Generally, the activities of the members of this class are governed by instincts and not by the ideals of knowledge, strength or wealth. Their actions primarily spring from the motive of enjoying pleasures at the physical level. "They fulfil their duties for the satisfaction of their primary needs, and when these are gratified they tend to lapse into a life of indolence and inertia. An instinctive obedience and a mechanical discharge of duty are their chief contributions."¹²³

Before proceeding further, let me clarify a point concerning the classification of individuals on the basis of their guṇa or qualities. The four-fold classification, in Radhakrishnan's view, represents the dominant and not the exclusive characteristics of the members of each group. In

other words, it should not be assumed that the qualities described as the characteristic attributes of the members of these four classes are exclusive of one another. On the contrary, the four-fold spirit is present in every member of the society, and there is hardly any individual who does not possess all these qualities in some degree.

There is no life, in so far as it is human, which is not at the same time an inquiry into truth, a struggle with forces inward and outward, a practical adaptation of the truth to the conditions of life and a service of society. Everyone in his own way aims at being a sage, a hero, an artist and servant.¹²⁴

But the conditions of life are such that no one can develop all the different types of excellences in one single life. Actually, the pursuit of one type of excellence or perfection naturally sets limits on the development of the others and therefore, for a sound and fruitful realization of individual potentialities each person must devote his energies towards the development of the predominant characteristic of his natural constitution.

By assigning duties according to one's svabhāva, the four-fold scheme not only provides individuals with the opportunity to grow and develop themselves according to their natural aptitude but also helps in increasing the overall efficiency of society. A social structure in which individuals perform only the specific functions which eminently suit their natural constitution necessarily succeeds in bringing out the best from each and the whole

society benefits from their natural talent. In a way, it can be said that in the varṇa-system individual initiative and social efficiency are so closely related that they occur simultaneously.

In his various writings, Radhakrishnan has enumerated many strengths of the varṇa-system and has presented a highly logical and closely reasoned analysis of its underlying principles. In what follows, I shall briefly discuss some of the points of his analysis and later on shall try to show how it affects his concept of rights.

As far as the origin of the varṇa-system is concerned, scholars have pointed to many different theories in this respect, each of which reflects a long and complex history of the development of this institution. I shall not go into the details of these theories, here it is sufficient to mention that Radhakrishnan refers to two of these theories. The first associates the varṇa-system with the basic colour distinction between Āryans who were fair, and the aboriginal people of India who were dark-skinned.

One of the many meanings of the sanskrit term 'varṇa' is colour¹²⁵ and according to this theory, the varṇa system was devised to keep racial purity, and to establish social harmony between different groups which not only had differences in the colour of their skin but also belonged to different cultures. By creating individual autonomous classes within each of these groups, the varṇa system on one

hand attempted to preserve racial purity and on the other hand, tried to absorb different races into a big harmonious whole.

According to the other theory, the structure of the varna-system basically indicates the classification of men into different occupational or functional groups on the basis of their specific guna (qualities) and karma (functions). According to the supporters of this theory, the varna scheme was primarily designed to promote social efficiency by providing individuals with appropriate opportunities to cultivate and develop the predominant qualities of their nature in a suitable environment of group solidarity. In Radhakrishnan's words,

The system was designed to unite, first the heterogeneous populations of India, and then of the whole world, in one common economic, social, cultural and spiritual bond. By assigning definite functions and duties, and according rights and privileges, the different classes were expected to work in co-operation and to achieve racial harmony... the basis of varna-dharma is that every human being must try to fulfil the law of his development. We must discipline our life in conformity with the pattern of our being, instead of wasting our energies in following those which we lack. 126

Whatever may be the origin of the varna-system, there are two things which one can say about it categorically. First, it has been part of Hindu thought and social structure almost since its beginning. And second, though varna and caste are sometimes used as almost synonymous terms, the character of the latter is very different from the former.

According to Radhakrishnan, caste is a degenerate form of varna. The basic difference between the two lies in the fact that unlike varna, caste is determined on the basis of birth and therefore does not allow the possibility of the change of caste. "The substitution of the principle of birth for virtue and valour has been the main factor in the process of social crystallization and caste separation."¹²⁷

This separation has been reflected in the practice of endogamy (every member of caste must marry a member of the same caste), and commensual restrictions (regulations imposed regarding the acceptance of food and drink from members of other castes). These restrictions eventually not only caused further division of society into innumerable castes and subcastes, but also gave rise to the idea of outcasts and untouchables.

In some places (especially in his early writings), Radhakrishnan seems to support the caste system and recognizes the practical utility of the criterion of birth and heredity in determining the class of an individual. But in his other works, he repudiates the caste system for its obvious evils and holds it responsible for developing the sinful practice of untouchability.¹²⁸ This system, he contends, makes no provision "for high born incompetents and low born talents",¹²⁹ and thus blocks the road to progress. This change of attitude creates an inconsistency in Radhakrishnan's account of the varna system. I shall discuss this point in detail in the fourth chapter.¹³⁰ It is sufficient to mention here that though

he remains ambivalent in his views about the caste system, he whole-heartedly supports the fundamental principles of the varna system.

The varna-system, which correlates svabhāva (one's specific nature) with svadharma (one's specific duty), according to him, is not only efficient but is also essentially democratic in character. In his Eastern Religions and Western Thought, Radhakrishnan offers several reasons in support of his view which can briefly be stated as follows: ¹³¹ first, the varna system is based on the spiritual equality of all men and it recognizes each individual's right to grow in his own way; by providing each individual with the type of social duty for which he is best fitted "it makes for individuality in the positive sense"; ¹³² it insists on the usefulness and importance of all kinds of works; it frankly recognizes the inherent inequalities of men and gives individuals sufficient scope to exercise their natural energies. It does not "attempt to equalize capacities or level up the requirements", ¹³³ and offers a fairly just scheme of rights and opportunities.

In a true democratic spirit, the four-fold scheme puts restrictions on absolute power so that no one class can make unlimited claims. From the division of labour, division of power naturally follows and since legislative, executive and economic functions are assigned to separate autonomous groups, a healthy balance of power is ensured. While this

scheme provides each group complete freedom and independence to discharge its specific functions in its own way, it also simultaneously restricts them from overstepping their clearly marked jurisdiction and thus not only keeps check on unrestrained power struggles but also ensures freedom of growth for each group in the society.

This scheme, in Radhakrishnan's view, is very different but is more democratic than our modern day social structure in which the functions of state are practically unlimited and embrace almost the whole of the social and personal life of the individual. By making the state simply a part of one of the four organs (kṣatriya) of the social structure, the varṇa-scheme delimits its functions to the maintenance of law and order and thus saves the individual from its excessive interference and unrestrained subjection.

Another salient feature of the varṇa-scheme consists in its organic conception of society. In it, society is symbolically conceived as one human body whose limbs represent different classes, and like different organs of the body, each class is believed to have a distinctive function of its own.¹³⁴ Again, like bodily organs, these classes not only mutually depend on one another, but also complement each other in their functions. And therefore, instead of competing with each other as warring groups, they naturally co-operate and unite with a sense of belonging

together for good or evil. In other words, according to the varṇa scheme, society is not an outcome of a terminable contract, but an organic whole in which different groups and individuals bind together with a sense of inner unity.

(B) Āśrama Dharma

While varṇa-dharma emphasizes the social aspect of human life, āśrama-dharma concentrates more specifically on the personal aspect of the individual's development. It represents human life as consisting of four consecutive stages, each of which is associated with specific ends, duties and rights. The term 'āśrama' comes from the root 'śrama' which means 'to exert energy or to toil'. The four āśramas therefore are supposed to embody four gradual stages of life, each of which involves unique efforts leading towards specific ends and all four of which are ultimately directed towards the realization of mokṣa, the state of ātman-Brahman identity.

For Radhakrishnan, āśramas represent "the different steps by which man gradually purifies himself from all earthly taint and becomes fit for his spiritual home."¹³⁵ And therefore, it can be said that while varṇas stress human nature, āśramas emphasize human nurture. According to Radhakrishnan, "The four stages of brahmacārya

or the period of training, grihastha or the period of work for the world as a house holder, vānprastha, or the period of retreat for the loosening of social bonds, and saññyāsa or the period of renunciation and expectant awaiting of freedom, indicate that life is a pilgrimage to the eternal life through different stages.”¹³⁶ These four stages can also be seen as four gradual stages of preparation, production, service and retirement. “They constitute a rhythm of inner-direction and outer direction. The first is an inner-directed stage of training for the second and third, which are both outer-directed. In the second stage, the person maintains the entire society, and in the third he shares his experiences for the good of all. The final stage is again inner-directed; the individual having contributed at least as much as he has received, now prepares himself for release from life itself.”¹³⁷

(a) Brahmacārya

The first stage of life is that of training and discipline of body and mind. The student is taught different arts and sciences and is prepared for carrying the responsibilities of later life. In ancient India at this stage the individual was kept free from the responsibility of earning and discharging other social and family duties. But in return, he was expected to lead a very simple and disciplined life of self-control, and was bound to observe

complete chastity. Obviously, times have changed and the conditions of the world are not the same now as they were when this ideal was first formulated. But still, whenever we try to clarify the aim and methods of education, this idea seems quite relevant because it emphasizes the need to treat the formative period of man's life as an initiation into the life of spirit and not merely as schooling for earning one's livelihood. It insists on imparting wisdom, not only information and technical skills. In Radhakrishnan's words,

The aim of education is not to pour knowledge into the resisting brain and impose a stereotyped rule of conduct on his struggling impulses: it is to help the child to develop his nature, to change him from within rather than crush him from without.¹³⁸

(b) Grihastha

At the second stage comes the life of a householder through which man enters into the rich complexity of family and social life. The primary duties associated with this stage consist in getting married and discharging one's obligations towards one's ancestors, teachers, family and the rest of the members of the society. Kāma and artha constitute the primary puruṣārthas at this stage and man is allowed to pursue material wealth and the pleasures of senses. But this pursuit has to be regulated by dharma, and the rules of the varṇa scheme should be followed. Marriage is considered to be a religious sacrament and therefore is

not looked upon merely as a personal affair or a social institution with a limited purpose, but as a spiritual training ground in which man gradually opens up his heart to his immediate family and to the other members of the society and finally moves towards the realization of the universality of spirit. Explaining this, Radhakrishnan says, "there is nothing unwholesome or guilty about the sex life. Through the institution of marriage it is made the basis of intellectual and moral intimacies. Marriage is not so much a concession to human weakness as a means to spiritual growth." 139

Due to the socio-spiritual obligations attached to the second āśrama, the life of a householder is exalted to a great extent in Hindu tradition. Since this āśrama is believed to be the sustainer of all other āśramas in the sense that people in other āśramas depend for their maintenance on the activities of the householder, the state of the householder is looked upon as the mainstay of social life. According to Radhakrishnan, "one must learn the social and spiritual lessons of the earlier stages before one can pass on to the later. One must learn to be sober before striving to become a saint. He who does not know what it is to love as a child, or a husband or a parent cannot pretend to the love which contains them all..... The way to a higher life is normally through the world." 140

(c) Vānprastha

After fulfilling responsibilities towards one's family and the other members of society, one enters into the third stage of life which is characterized by a gradual development of an attitude of non-attachment and indifference towards materialistic desires. At this point, man is supposed to move out of the confines of family life and is expected to lead a life of a forest-dweller. But the non-attachment here does not mean non-concern; rather it is equal attachment to the whole of mankind and therefore at this stage, man is supposed to be always available to give objective advice in matters of civic and social life so that society can benefit from his experience and wisdom acquired during the earlier years of his life.

(d) Saṅṅyāsa

Saṅṅyāsa is the final stage of a man's life and is characteristically marked by universal love and compassion, complete overcoming of ego, strict observance of celibacy, perfect self-control, disinterested service and a complete renouncing of all worldly possessions. A saṅṅyāsin rises above the distinctions of varṇa, nation, state or community and is not obliged to practice any formal rituals of social life. "He belongs neither to his language, nor to his race but only to himself and therefore to the whole world."¹⁴¹

According to Radhakrishnan, the state of saññyāsa represents the highest ideal and the ultimate goal of man's life.

Summing up the characteristics of a saññyāsin he says, "He carries within himself the dynamism of spirit He has no fixed abode and is bound to no stable form of living. He is released from every form of selfishness.... He is master of his own conduct. He is not subject to rules, for he has realized in himself the life which is the source of all rules and which is not itself subject to rules."¹⁴²

From the preceding discussion, it becomes clear that following the Hindu tradition, Radhakrishnan maintains that life is a progress through specific stages. Each stage gradually prepares the way for the latter stage, and through a constant reinforcement of the ultimate ideals leads towards the state of perfect liberation. With each stage, some specific duties and rights are associated, and only by performing these duties may one become entitled to the corresponding rights. Radhakrishnan admits that this scheme is not totally indispensable. Exceptional people like Śaṅkara can reach the fourth stage without going through the second and third; but ordinarily, people should follow the rules of this scheme and their rights and duties

should be determined according to the particular āśrama they belong to.

The progressive order of the duties and rights attached to each āśrama, according to Radhakrishnan eventually results in a system in which responsibilities are distributed according to one's capacities and no one is given a burden too heavy to bear.

Besides sādharma dharma and svadharma Radhakrishnan also recognizes the legitimacy of the concept of 'āpaddharma' and maintains that in the times of distress, one must be allowed to deviate from the regular course of dharma. "Necessity," he says, "knows no law, and any form of conduct essential for self-preservation is allowed under the rules of āpaddharma." 143

Moreover, Radhakrishnan also talks of 'yug-dharma' which basically involves the notion of change according to the requirements of the conditions of a particular age or time-period. Discussing this, he says, "A living society must have both the power of continuity and the power of change.... There must be no violent break with social heredity, and yet the new stresses, conflicts and confusions will have to be faced and overcome. While the truths of spirit are permanent, the rules change from age to age." 144 And therefore, "To uphold the sanātana dharma is not to stand still. It is to seize the vital

principles and use them in modern life. All true growth preserves unity through change.”¹⁴⁵ Dharma, he believes, is absolute; but it has no absolute and timeless content.

“The rules of dharma”, he observes, “are the mortal flesh of immortal ideas...”,¹⁴⁶ and therefore, can be or ought to be perpetually renewed according to the changing conditions of different periods of history.

But whatever changes dharma might incorporate within its fold, the one principle which can be said to characterize it permanently is that it “does not believe in any permanent feud between the human world of natural desires and social aims and the spiritual life with its disciplines and aspiration on the other.”¹⁴⁷ It believes that, “the eternal is manifested in the temporal, and the latter is the pathway to the former.... Renunciation is the feeling of detachment from the finite as finite and attachment to the finite as the embodiment of the infinite. The two are bound to each other and to separate them is ruinous.”¹⁴⁸

IV

HUMAN RIGHTS AND DHARMA

In the foregoing discussion, I noted that according to Radhakrishnan, dharma is the law of man's essential being and this law expresses itself through the recognition of man's spiritual dignity and transcendental destiny. According to the fundamental principles of dharma, man is essentially a spiritual being and the ultimate aim of his life is to achieve mokṣa, the transcendental state of spiritual liberation. In Radhakrishnan's view, this transcendental destiny, which on the one hand binds man with certain necessary obligations and duties, on the other hand also endows him with some fundamental rights. These rights have a significant correlation with man's basic duties, and are essentially rooted in his spiritual destiny as ātman. On the transcendental level, man as ātman is ultimately one with the saccidānanda Brahman. The very first implication of this ātman-Brahman identity is that like Brahman, man not only becomes the centre of the whole universe, but can also be described as the unity of perfect existence (sat), pure consciousness (cit), and absolute freedom (ānanda or bliss).

The very nature of man's transcendental existence is such that he becomes the possessor of certain unique characteristics which we can refer to as man's fundamental rights. In other words, what we call man's fundamental rights pertaining to life, freedom and equality are not something externally 'granted' or 'given' to him by some human or non-human agency; rather, they are fundamental characteristics of his essential being. They are part of his natural constitution, and therefore are inalienable and universal in character. Moreover, since the source of these rights lies in the supra-temporal realm, all men, irrespective of their temporal differences, are entitled to their equal enjoyment, and no temporal institution has any right to deprive man of possession and exercise of these rights.

But as we know, according to Radhakrishnan, man does not belong only to the transcendental level. In his embodied existence as jiva, he also belongs to the phenomenal order. At this level he is not only bound by the various limitations of time and space, but also suffers from imperfections associated with the narrowness of ego. Here, the fundamental non-duality of the ātman-Brahman relation is tainted by the jiva-jagat duality and consequently, the universal absoluteness of the transcendental level begins to give way to the particular relativities of the phenomenal level. The basic

differences of these two levels are also reflected in the character of rights, and this gives rise to the idea of the multi-levelled determination of rights.

The Multi-Levelled Determination of Rights

In Radhakrishnan's scheme, the first two levels of the determination of rights are related to the two levels of man's existence, namely his existence at the transcendental level and his existence at the phenomenal level. But since the phenomenal level itself consists of many different levels, rights at this level are further differentiated and determined according to these levels.

As stated earlier, at the transcendental level man's rights exist in their pure, perfect and absolutely unconditional form. But when they are translated to the phenomenal level, their universality and absolute unconditionality is affected by the particularities and relativities of man's existence as jiva; and consequently, rights become subject to further determinations according to the different levels and modes of man's earthly existence. More particularly, at this level the classification of rights follows the classification of various kinds or levels of dharma; and from each set of dharma a corresponding set of rights emerges. Here,

rights are essentially correlated with duties and are perceived primarily as means to fulfill these duties.

According to this scheme the rights which flow from the concept of sādhārṇa dharma are as universal and as general in character as are the duties pertaining to this level. As stated earlier, sādhārṇa dharma is the dharma of a man qua man, and therefore the duties prescribed at this level are universally obligatory.

The basic duty of this level essentially consists in treating other persons as one's own self and respecting their dignity and freedom in all respects. By performing this duty man necessarily becomes entitled to certain rights, namely the right to life, the right to freedom, the right to equality, the right to self-determination, and the right to property. Despite their universality, the characterization of these rights remains very general at this level and the determination of their modalities is left for the level of svadharma.

At the level of svadharma, rights are determined according to the varṇa and āśrama of a person, and therefore they become relatively specific and particularized. They vary according to the specific requirements and duties associated with different varṇas and āśramas. Since rights are means towards the fulfillment of duties, if duties vary, the modalities of the

corresponding rights also vary, and therefore the form and mode of the same right may differ for the people belonging to different varṇas and at different stages of life. For example, since the duties of a brāhmin necessarily differ from the duties of a kṣatriya, or of a vaiśya, their rights also differ accordingly. As mentioned earlier, a brāhmin, according to the principles of varṇa-dharma, led a highly virtuous, self-restrained, priestly life. He was not allowed to engage in money-making activities and was expected to refrain from accumulation of wealth and seeking of political or military power. He must follow detailed restriction of diet (e.g. he was not allowed to eat meat and drink wine), and marriage, (he could marry only within his own varṇa), and must abstain from lower sensual pleasures. His primary duty consisted in devoting himself exclusively to the search for truth and spiritual wisdom, and he followed a strictly disciplined life by observing certain daily rites.

Performance of these duties endowed brāhmins with some special modalities of the general rights described above. For example, they were freed from state taxation, they could not be given capital punishment, they received lighter punishment for certain offences, and in general, they enjoyed some special political and social immunities.

But these special rights and privileges were balanced by proportionately severe punishments and restraints. For certain offences brāhmins were punished more severely as compared to the members of other varṇas. For example, according to Manu-Dharma Sāstra,¹⁴⁹ a śūdra who steals is to be fined eight times the worth of the stolen goods; a vaiśya sixteen times, a kṣatriya thirty two times; and a brāhmin one hundred twenty eight times.

This pattern of punishment obviously contradicts our modern legal codes, according to which, for the same crime, generally the same punishment should be inflicted. Radhakrishnan also admits that, "In actual practice the setting up of different standards of punishment for offenders of different castes is the weakest part of the system."¹⁵⁰ But he immediately adds, "In fairness to the lawgivers, it may be said that they made out that the higher the caste the greater is the offence when moral rules are violated."¹⁵¹

A similar pattern is followed in the determination of the rights of the other varṇas. For example, śūdras, due to the less strict character of their duties, on one hand enjoyed less privileged status in the society and were highly restrained in their freedom of choosing a vocation. They were also punished relatively severely for certain offences. But on the other hand, following the rule that

“the higher the man, the fewer are his rights and the more numerous his duties,”¹⁵² they were given certain privileges not enjoyed by the members of the other three varṇas. For example, unlike other varṇas, they were given greater freedom with respect to marriage and sex life; they were freed from dietary restrictions; pursuit of sensual pleasures was not forbidden to them, and they were allowed to enjoy greater freedom and lesser responsibility with respect to observance of religious and social customs and traditions.

Again, a similar pattern is followed with respect to the determination of rights on the basis of āśrama-dharma. At each stage of life there are specific ends to be achieved. Corresponding to these ends are specific duties; and corresponding to these duties are specific rights. For example, by virtue of the special character of his duties a grihastha is given some special property-rights which are not enjoyed by a student or a saṅṅyāsi; but there are some rights and freedoms which only saṅṅyāsi can enjoy and a grihastha cannot.

In short, the whole system is based on a correlation between svabhāva, svadharmā and svādhikāra. From one's specific nature certain specific duties follow and those duties create certain rights. Obviously, due to the variability of svabhāva, modalities of rights also vary,

but this variability in the distribution of social, economic or political rights, according to Radhakrishnan, does not hamper the progress of society. Nor is it against the democratic spirit. On the contrary, it enhances the growth and stability of democratic society by providing special opportunities to each person to develop according to his own law of nature.

After these general preliminary remarks, I shall explain how Radhakrishnan analyses different specific rights.

V

(i) Right To Life

According to Radhakrishnan, right to life is one of those most basic rights of man which he owes simply by virtue of his existence as a man. This right, in his view, is not a privilege but a fundamental necessity of human existence, because "One must live before one can live according to dharma."¹⁵³ At many places in his writings he refers to the 'sacredness' and 'preciousness' of human life, and maintains that no human institution, including the state, has any right to deprive man of this fundamental right. So strong is his conviction of the primacy of this right that he says, "There is nothing

final or eternal about states and nations, which wax and wane. But the humblest individual has the spark of spirit in him which the mightiest empire cannot crush. Rooted in one life, we are all fragments of the divine, sons of immortality, amṛtasya putrāḥ.”¹⁵⁴

Obviously, in Radhakrishnan's view, the roots of man's right to life lie in his spiritual dignity. It is his soul which makes his body sacred. It is from the spiritual that the physical derives its true value. But “soul and body however different, are yet closely bound together. The things of spirit are in part dependent on the satisfaction of the body.”¹⁵⁵ And therefore,

As the expression of the spiritual, the perfection of the physical is an integral part of man's complete living. While it is desired to some extent for its own sake, it is desired more for its capacity to further human activity which has for its aim the discovery and expression of the divine in man (dharmasādhanam).”¹⁵⁶

In other words, even for the realization of his spiritual destiny and to fulfill his soul's demands, man needs the instrumentality of body, and therefore, preservation of human life should be considered as one of the most fundamental duties even of those social systems which concern themselves primarily with the spiritual elevation of the human person. Speaking of the Hindu

view in this connection, Radhakrishnan says, "The body is a necessity for the soul. A system which believes in rebirth cannot despise bodily life, for every soul has need of it."¹⁵⁷

From the foregoing discussion, the following points become sufficiently clear. In Radhakrishnan's system, right to life occupies a very important place. But this importance is only of instrumental character. Life is not valued for its own sake. Its true significance lies in its becoming a means of spiritual realization. Preservation of the body, in Radhakrishnan's view, is not a sādhyā or an end in itself. It is only a sādhan (means) to realize dharma in one's life.

The recognition of the instrumental character of the right to life does not diminish the importance of this right; rather it increases it, because then, even in those exceptional circumstances in which society demands the sacrifice of a man's life in the interest of the whole, it must provide a spiritual justification. In other words, any interference in man's right to life is unjustified unless it is proved that such interference did not violate his spiritual dignity and was required to serve his interests as a spiritual being.

An important implication of this recognition is that 'right to life', in Radhakrishnan's system, is no longer confined to the mere preservation of life, and it is not only the killing of human persons which counts as the deprivation of this right. Rather, every form of slavery, bodily and mental torture, and even poor conditions of living are considered to be a violation of this right. This is why Radhakrishnan not only opposes those social and political systems which encourage or permit indiscriminate killing of human beings, but he also criticizes those which fail to provide a dignified environment for living a respectable life.

Thus, we see that in Radhakrishnan's view, 'right to life' extends far beyond mere physical survival, and includes within its fold all those elements which directly or indirectly affect man's life as a spiritual being.

(ii) Right to Freedom

If there is any concept which can express the essence of Radhakrishnan's system of rights, it is the concept of freedom. Freedom is the essence of Radhakrishnan's idea of the Absolute Being. "Absolute Being", he says, "is also absolute freedom... . The

Absolute is both Being and Freedom.”¹⁵⁸ In fact, freedom and being are not two different things in the Absolute. They imply each other and are inseparable from each other.

“Freedom is the primordial source and condition of all existence. It precedes all determination.”¹⁵⁹ And therefore, man, who is ultimately identical with the Absolute, inherits the right to freedom as one of the most fundamental characteristics of his essential nature.

In other words, freedom constitutes the essence of man's being, and therefore any denial of freedom not only deprives man of his dignity but also of his true existence. This is why Radhakrishnan declares, “without this freedom, whatever else we may have, we are dead.”¹⁶⁰ He firmly believes that “In the last resort, man lives by what cannot be regulated,”¹⁶¹ and therefore, any social order which violates or injures his right to freedom not only commits a crime against the person but also deprives itself of the right to exist.

As noted earlier, in Radhakrishnan's view, the primary aim of society is to assist the human person in realizing the four-fold puruṣārthas or the ends of human life. But since the ultimate aim of the first three puruṣārthas (artha, kāma and dharma) is to attain mokṣa, the spiritual freedom, the primary aim of the society is

to help men in realizing this freedom. Any society which fails to perform this function inevitably loses all moral grounds or justification for its existence. "The inviolable sanctity of the human soul, the freedom of the human spirit, is the sole justification for the State.",¹⁶² And therefore, "Any social order built on the ruins of spiritual freedom is immoral.",¹⁶³

An important implication of conceiving spiritual freedom or mokṣa as the final end of all human endeavours is that even if a society provides all that is needed to fulfill man's aspirations related to the material and emotional aspects of his life, its real purpose is not fulfilled until it provides the opportunities to realize mokṣa. This is why, in Radhakrishnan's scheme, 'right to freedom' occupies the place of central importance and all other rights, such as right to property, right to life and right to equality derive their meaning only in relation to this right. Their significance basically depends on becoming means to the realization of this freedom, and therefore, in his view,

The value of a society is to be measured, not so much by the sort of public order and efficiency it maintains, as by the degree to which its ways of action allow freedom of thought and expression, encourage moral decision, and contribute to the development of the intelligence and goodwill of its members.¹⁶⁴

So deep is Radhakrishnan's faith in human freedom that he proclaims that, "The progress of the consciousness of freedom is the essence of human history."¹⁶⁵ And therefore, "If civilization is to survive, we must accept that its essence does not consist in power, glory, strength, wealth and prestige, but in the free activity of human mind, in the increase of moral virtue..."¹⁶⁶ In his writings, Radhakrishnan analyses various aspects of communism and admits that as far as the socio/economic aspect of man's life is concerned, communism has made important contributions not only in the field of theory, but also in the realm of practice. He also recognizes the importance and value of the ideal of distributive justice advocated by socialist theorists. But he still repudiates communism, because he thinks that it spells great danger to human freedom and in it man loses his dignity as a spiritual being. "There are certain things," he says, "without which we cannot live."¹⁶⁷ But there are "certain other things without which we should not care to live,"¹⁶⁸ and freedom in his view, is definitely one of those things without which we should not care to live.

But despite this passionate advocacy of the supremacy of freedom, Radhakrishnan does not forget that it is one of the most misunderstood and misused concepts

of our modern world. It "is one of those words which it is easy to use but difficult to define."¹⁶⁹ "Freedom," he reiterates, "seems to be one of those portmanteau expressions, a sort of hold-all in which you can put anything you like."¹⁷⁰ And therefore he is careful to point out that though the term freedom can be used in many different ways in many different contexts, its true essence lies in its spiritual aspect. In other words, spiritual freedom is the first and foremost of all kinds of freedoms, and all other freedoms derive their meaning and value in and through the realization of this freedom. Radhakrishnan discusses many different kinds of freedom such as political freedom, constitutional freedom, economic freedom, legal freedom, social freedom, freedom from bodily slavery, but maintains that,

All these, however, are means and not ends in themselves, the essential requisites to help us realize the deepest energies of the human spirit. The chief purpose of social organization is to foster the spiritual freedom of the individual, human creativeness, to help him to think, feel and adore as he chooses, without the constraints of oppressive laws and customs. Occasions may arise in which we may be called upon to sacrifice our rights and property for the sake of an equitable economic order. We have to sacrifice national freedom for the sake of an international order; but spiritual freedom is an ultimate, an absolute, which can be surrendered only at the cost of one's soul.¹⁷¹

On the transcendental level this freedom is expressed through the universality of spirit and the non-duality of the ultimate Being, (in Radhakrishnan's words, "An individual is free when he attains universality of spirit").¹⁷² At the empirical level, it expresses itself in the form of a 'right to self-determination'. In the liberty to determine one's own course of action and to realize one's specific potentialities through the creative activity of the spirit lies the foundation of all other liberties, and therefore, "If for any reason whatsoever we compromise with this essential liberty, all other liberties will disappear."¹⁷³

"Freedom to be himself is the right of personality"¹⁷⁴ and freedom of conscience, freedom of expression, freedom to invent and investigate, freedom to follow a religious path, freedom to choose one's occupation, freedom from subjection by any other group or person, and freedom to oppose unjust laws, according to Radhakrishnan, are different expressions of this fundamental freedom. The primary aim of human society is to maintain and develop this precious freedom, and the test of the success of a social order is the extent to which it removes constraints and provides opportunities to realize this basic freedom. The varna-system with its emphasis on recognizing the right of every human being to

grow and develop according to his own law of being (dharma), in Radhakrishnan's view, presents a good example of such a social order. By assigning rights and duties according to one's own nature (svabhāva) this system not only protects man from the excessive interference of society and other human beings, but also gives him opportunities to express the potentialities of his inner being freely and creatively.

As we have seen, the basic strength of the social order based on the principles of varṇāśrama-dharma, according to Radhakrishnan lies in the fact that in it each individual is given ample freedom to manifest the unique in him. But this is not done at the cost of the freedom of others. Rather, the realization of the freedom of one is made the essential precondition of the realization of the freedom of the other and thus a unique conception of freedom is achieved, in which freedom of one does not hinder the freedom of the other but rather enhances it.

As earlier noted, Radhakrishnan firmly believes in the concept of universal salvation. In his view, an individual can attain mokṣa or freedom in its pure and perfect form, only when everyone else in the world has attained it. "Complete freedom", he

believes, "is impossible in an imperfect world,"¹⁷⁵ and therefore, as long as there is even a single person who is denied the basic freedom and dignity appropriate to a human being, none of us can hope to enjoy it in its completeness. The very nature of this freedom is such that no one can realize it unless everyone else realizes it; and therefore, one person's right to freedom necessarily involves the recognition of the same right to all others. In Radhakrishnan's words, "there can be no real freedom in any section or class in a society as long as others are in bondage."¹⁷⁶

Thus we see that by making individual salvation dependent on the cosmic or universal salvation, Radhakrishnan on one hand attempts to bridge the gap between individual and society ("the ideal individual and the perfect society arise together"),¹⁷⁷ and on the other hand, frees the conception of freedom from the negative connotations essentially associated with our modern understanding of this notion. If freedom of the individual and the freedom of the society as a whole are mutually dependent, then, instead of fighting with each other, both will naturally join together to establish an order in which freedom of each is given due recognition and respect.

Again, contrary to the ordinary liberal conception, in which one person's freedom limits the freedom of the other, and the right to freedom is viewed primarily as a device to protect the individual from undesirable interference by the other members of society, Radhakrishnan's conception of freedom sets the ground for a theory in which one person's freedom neither negates, nor limits the same right of other persons. Rather it enhances the freedom of the others and thus the right to freedom is primarily viewed not merely as a protective tool, but as an essential aid to establish a system of perfect social harmony. In other words, in Radhakrishnan's system the idea of freedom as a negative principle of non-interference is transformed into a positive principle of promotion of the freedom of all, and freedom becomes an expression of the essential unity which is inscribed in the very nature of man's being.

Again, it should also be noted that in the spiritual aspect of freedom Radhakrishnan does not undermine the importance of its material and social aspect. He is aware of the fact that, "To realize this freedom of spirit, liberty from physical and social constraints is essential."¹⁷⁸ In this sense, liberty can be interpreted in two ways.

There is the liberty which saves from social compulsions; the other tries to save us from material compulsions, to liberate us from wants which can be satisfied only through right economic and social relationships. Each is a means to the good life. Each, when complete, demands that society should not only protect individuals and groups from these compulsions, but also provide opportunities for achieving the values which the compulsions inhibit. While liberty may be defined negatively as the absence of compulsion, it is positively the means to the good life.¹⁷⁹

But the negative freedom or the absence of compulsions does not imply the absence of all discipline and regulation. In fact, according to Radhakrishnan, true freedom can only be realized through a voluntarily accepted pattern of regulated control. "Freedom can be obtained only through bonds of discipline ..."¹⁸⁰ "True liberty", he says, "does not lie in the individual's independence of social control. It consists rather in the deliberate regulation of social forces for the positive development of the individuals who constitute society."¹⁸¹ In other words, the essence of freedom does not lie in lawlessness and limitlessness; rather, it consists in a willing acceptance of the responsibilities and limitations based on one's own law of being. "True law which develops from within is not a check on liberty but its outward image, its visible expression."¹⁸² Such a law is neither a limitation nor a denial of freedom; on the contrary, it is a means

to achieve freedom. "Regulated control," he believes, "even if coercive, is less tyrannical than blind competition. It secures for the largest number of individuals effective freedom in non-economic and cultural spheres. Regulation in the interests of a fuller measure of freedom is not the same as the total subjection of the individual to the State."¹⁸³

This shows that freedom and regulation, in Radhakrishnan's view, do not oppose but complement each other. Freedom, he contends, "is attained not through an escape from limitations but through the willing acceptance of obligations."¹⁸⁴ The significance of this statement becomes clearer when one reads it in the light of the principles of the varṇa-āśrama system, in which realization of the ultimate freedom is made dependent on voluntary performance of one's duties in accordance to one's varṇa (class) and āśrama (the stage of life).

This view of freedom obviously does not encourage individualism or self-centered egoism. But it does not support collectivism either. It seeks a healthy balance between the two, and therefore, despite recognizing the essential divinity of the human person, binds him

with certain obligations. But since these obligations are not imposed by the collectivity, but rather are derived from the very law of man's inner being, they do not curb his freedom. Instead, they help him in realizing the ultimate freedom.

But as mentioned earlier, Radhakrishnan does not confine freedom to its negative sense of the absence of compulsions. He puts equal emphasis on its positive aspect and maintains that right to freedom not only protects man from external compulsions, but also points to the direction in which the exercise of this right should lead. The dual aspect of freedom, according to him, is best expressed in the following vedic prayer.

From the unreal lead me to the real!
 From darkness lead me to light!
 From death lead me to immortality!185

Freedom in this sense not only involves the concept of 'freedom from...' but also indicates 'freedom to....', and therefore necessarily expresses itself through creative activity. Removal of barriers is not enough; it also must be manifested through spontaneous action leading towards the realization of mokṣa, the ultimate freedom.

This view of freedom not only puts some responsibilities on society, but also binds man with some moral obligations. It extends the area of society's responsibilities towards its members, because in it, society is not only bound to remove hindrances in the path of freedom, but is also obliged to provide conditions appropriate for the exercise of freedom. In other words, society not only has to guarantee non-interference in the exercise of individual freedom, but also has to create structures and institutions which enhance the creative manifestation of the right to freedom.

For the individual person, the right to freedom in this view does not connote the right to do whatever one wishes to do. Rather, it indicates a specific direction in which the exercise of this right should lead and thus obliges man to use his freedom in a responsible manner.

(iii) Right to Property

In the foregoing discussion I noted that according to Radhakrishnan, freedom of spirit does not consist merely in the removal of social compulsions; it also has to express itself through the freedom from material

compulsions. Unless men are freed from material compulsions and are provided with proper opportunities to satisfy their economic aspirations, they cannot enjoy freedom in the true sense. To some extent, even the exercise of the freedom of thought and expression depends on the material well being of human persons, and therefore, right to property acquires an important place in the list of man's fundamental rights.

Radhakrishnan emphasizes the need to have a sound economic system, and maintains that the right to property should be considered an inalienable right of all human beings. "Democracy", he says, "is not only political but economic also,"¹⁸⁶ and therefore, "We cannot have an effective democracy so long as its material basis which is its economy, is defective."¹⁸⁷ Artha, he thinks, constitutes one of the four basic ends or aspirations of human life, and therefore the rights related to it should be given a proper place in the system of human rights.

But despite recognizing the central importance of the right to property, nowhere in his writings does Radhakrishnan present a systematic account of his views in this regard. What one gathers from his remarks at different places gives the impression that he seeks

to build an economic system which is free from the evils of capitalism as well as of communism. He prefers to take a middle path and defines right to property accordingly.

He puts exceptional emphasis on the need to remove economic disparities between different members of the society, and insists that society should adopt that system of distributive justice which aims at establishing economic equality amongst all human beings. The achievement of this equality is so important that, if necessary, even the state-ownership of natural and economic resources can be permitted.

"Democratic states," he observes, "if they are truly representative of the general will, are required to control the productive effort of individuals. The control of natural and economic resources cannot be left to the free play of individual competition... No society can exist without a large measure of social co-operation and control."¹⁸⁸ And therefore, in his view, "there is nothing wrong in the ideal which attempts to make the state the owner of all public utilities for the benefit of all."¹⁸⁹ He also agrees that, "an economic order based on social ownership of large sources of wealth and power would be far less

dangerous to ethical life and more helpful to social fellowship."¹⁹⁰

But this does not mean that Radhakrishnan lends his uncritical support to communism and is against the concept of private property as such. Despite recognizing the value of the ideal of distributive justice advocated by communism, Radhakrishnan firmly maintains that communism cannot be accepted as a way of life. He agrees that workers must be liberated from excessive toil, poverty and misery, and should be given important places in the process of production and its management. He also maintains that the glaring inequalities of wealth and income should be diminished, and the principle of giving according to one's capacity and taking according to one's needs, should be followed. He does not, however, believe that to ensure these ends, it is necessary to abolish all private property. Such a demand, in his view, is an instance of "the blind uncritical devotion to an idea or a cause which is so sure of its own rectitude that it refuses to argue or examine evidence...".¹⁹¹ Such fanaticism, he believes, is opposed to the spirit of democracy and should not be encouraged in any civilized society.

In Religion and Society, Radhakrishnan presents a detailed critique of the various aspects of communist theory and practice.¹⁹² There he makes it sufficiently clear that though he is sympathetic to the communist ideal of economic justice, he neither agrees with its principle of abolishing private property, nor does he support its idea of violent revolution to establish economic equality. He firmly holds that the changes in socio-economic organization of a society can and ought to be brought about not through force, violence and suppression of human freedom, but by education, moral persuasion and gradual transformation of public opinion. But communism, in its preoccupation with economic factors, fails to appreciate the value of spiritual and intellectual freedom and leaves hardly any room for individual action and initiative.

In its negation of the idea of private property, communism negates an important aspect of human nature and undermines the value of a vital element of human personality. Explaining this, Radhakrishnan observes,

Artha takes note of the economic and political life of man, the craving for power and property. The urge which gives rise to property is something fundamental in human nature. Unless we change the very constitution of the human mind, we cannot eradicate the idea of property. For

most men property is the medium for the expression of personality and intercourse with others."193

Obviously, to deprive man of his right to property is to deprive him of something essential to his very constitution. The idea of private property, in Radhakrishnan's view, not only gives due recognition to the freedom and independence of individual persons, but also develops a sense of social responsibility in the members of a society. It allows them to take creative initiatives and encourages them to actively participate in the economic affairs of the community.

He firmly believes that men should be rewarded according to the nature of their work and their capacities to discharge their duties. And since these capacities and the nature of their duties vary, the rewards should also vary. "Economic rewards," he observes, "should not be divorced from services,"¹⁹⁴ and therefore, though an equitable distribution of wealth is desirable, "equalization of rewards is impossible."¹⁹⁵ The acquisition of wealth, he strongly holds, should be related to the discharge of social functions, and hence, inequality of earnings can within limits be justified. However, in order to prevent the growth of glaring inequalities, "huge incomes can be restricted by means of

taxes."¹⁹⁶

Explaining his idea of inequality of rewards he observes, "Mechanical work should be economically more paying than even that of the artist or the statesman."¹⁹⁷ It should be so, because while "in the latter case work is its own reward,"¹⁹⁸ "in factory labour where men are mechanised, where they have little to do with the finished product, and cannot take any pleasure in its production, work is mere labour, and it does not satisfy the soul."¹⁹⁹

The more the work tends to become mechanical and monotonous, the more necessary it is that the worker should have larger leisure and a better equipment for the intelligent use of it.²⁰⁰

He supports his theory by referring to the structure of the Hindu varṇa system. "In ancient India," he says, "the highest kind of work, that of preserving the treasures of spiritual knowledge, was the least paid. The Brāhmin had no political power or material wealth."²⁰¹ He thinks "there is some justification in this arrangement, which shows greater sympathy for those whose work is soul-deadening."²⁰²

Thus we see that Radhakrishnan not only supports man's right to property, but also believes in the idea of inequality of rewards for different kinds of services.

He is a strong supporter of individual freedom and he accepts the concept of private property because he thinks that property is one of those things through which man can express his freedom and creative independence. But this acceptance does not mean that he is unaware of the evils of capitalist system. As in the case of communism, he critically analyses the foundations of capitalism and repudiates it for encouraging the exploitation of the poor by those few in whose hands power and wealth is concentrated. He maintains that the principle of unregulated free enterprise leaves the fate of the masses in the hands of the rich and powerful and makes them the victims of the free play of commercial greed and competition. He compares the basic weaknesses of liberal capitalism and communist socialism, and comes to the conclusion:

Liberals failed because they were not sufficiently socialistic. Communists failed because they were not sufficiently democratic.²⁰³

He stresses the need to avoid the weaknesses of both and maintains that while we should recognize that right to property belongs to man by virtue of his very nature, we should also take sufficient care to ensure that this right is not used as an instrument of exploitation. This, he believes, can

be done only by following the postulates of the puruṣārtha scheme which, on one hand accepts the legitimacy of the right to property and designates artha as one of the fundamental goals of human life, but on the other hand, also subordinates it to the regulation of the principles of dharma, and thus ensures that this right would be used in an ethical manner and only for moral purposes. The individual ownership of property, he insists, should necessarily be related to the principle of use of the property in the service of society; commercial competition should be replaced by the spirit of cooperation. In other words, though as an expression of human freedom, right to property should be given an important place in the list of man's fundamental rights, the exercise of this right should necessarily be regulated by the moral principles of dharma.

(iv) Right to Equality

Another right which necessarily follows from the basic postulates of Radhakrishnan's metaphysical system is the right to equality. If all human beings are ultimately identical with Brahman and if each is a reflection of the Supreme, then no one can be of more worth than another. All are equal and deserve to be

treated as equals by virtue of their very nature. In Radhakrishnan's words, "The recognition of the spirit in man is the essential feature of Hindu religion, and in this respect all men are equal."²⁰⁴

The concept of equality, Radhakrishnan insists, constitutes one of the founding postulates of Hindu social structure, because from the very beginning,

It recognizes that every soul has in it something transcendent and incapable of gradations, and it places all beings on a common level regardless of distinctions of rank and status, and insists that every individual must be afforded the opportunity to manifest the unique in him.²⁰⁵

But the assertion of the spiritual equality of all men does not imply a denial of all inequalities. In fact, the very principle which gives universal equality to all human beings also leaves room for the recognition of some basic inequalities amongst them. It is true that on the transcendental level, as *ātman*, men are absolutely equal to each other. They all reflect Brahman, and therefore, are all of equal worth. But since there are degrees of reflection, and each man reflects the ultimate reality in his own manner, some natural inequalities are bound to occur. Though all men ultimately are one with Brahman because they are different manifestations of the Supreme Spirit, in their phenomenal existence they are separated by material limitations and reflect the Supreme in varying degrees. They differ from each

other in their level of self-realization, and this difference naturally is reflected in their socio-cultural status. In other words, the spiritual equality of the transcendental level is qualified by the material inequalities of the phenomenal level, and this gives rise to a hierarchical system in which people are placed on a higher or lower level according to their capability of reflecting the ultimate reality.

The varṇa system, in Radhakrishnan's view, is an expression of this spiritual hierarchy in the social realm. He maintains that:

The four classes represent four stages of development in our manhood. Every human being starts with a heavy load of ignorance and inertia. His first stage is one of toll demanded by the needs of the body, the impulse of life, and the law of society.... From the lowest stage we rise into a higher type when we are driven by the instinct for useful creation. We have here the vital man. At a higher level, we have the active man with ambition and will power. Highest of all, is the Brāhmin, who brings a spiritual rule into life. Though something of all these four is found in all men in different degrees of development, one or the other tends to predominate in the dealings of the soul with its embodied nature, and that becomes the basis for future development.²⁰⁶

Hierarchy, in Radhakrishnan's view, does not signify coercion. On the contrary, it is "a law of nature,"²⁰⁷

and therefore, should be given necessary consideration in the socio-cultural structure of society. The varna-scheme, Radhakrishnan believes, gives due recognition to the natural inequalities of human beings and classifies them according to their specific capacities and qualities. Instead of ignoring or suppressing individual differences, it attempts to build up a social structure in which every person has equal opportunity to develop his or her own specific potentialities. It recognizes that, "while, from a spiritual standpoint, all work has in it the power to lead to perfection, a natural hierarchy binding the position in society with the cultural development of the individual arises."²⁰⁸

Radhakrishnan seems to be so convinced of the inevitability of such a hierarchy that at one place he observes: "It is not true that all men are born equal in every way, and everyone is equally fit to govern the country or till the ground. The functional diversities of workers cannot be suppressed. Every line of development is specific and exclusive. If we wish to pursue one, we shall have to turn our attention away from others."²⁰⁹

As mentioned earlier, Radhakrishnan holds an organic view of society which implies the recognition

of the diversities of functions and differing levels of excellences. Organic equality cannot be conceived as the uniformity of functions and capacities. To do so would be to conceive of a body in which every organ is a stomach or a brain. But "society", he maintains, "is a pattern or an organism in which different organs play different parts. Excellence is specific and cannot be universal."²¹⁰ And therefore,

While we should remove the oppressive restrictions, dispel the ignorances of the masses, increase their self-respect and open to them opportunities of higher life, we should not be under the illusion that we can abolish the distinctions of the genius and the fool, the able organizer and the submissive worker.²¹¹

This shows that equality in Radhakrishnan's view is not equivalent to uniformity. Nor does it require levelling of requirements. It "is not the standardising of everyone so as to obliterate all peculiarity. We cannot put our soul in uniform. That would be dictatorship. Democracy requires equal right of all to the development of such capacity for good as nature has endowed them with.... Society is a living organism, one in origin and purpose though manifold in its operations."²¹² Obviously, for a proper organization of society, functional and qualitative inequalities are not only inevitable, but are also extremely useful

and necessary. To recognize and accept these inequalities as social fact is not to go against the principles of democracy. "It is wrong to assume that democracy requires all men to be alike."²¹³ On the contrary, it requires that differences of character and capacities be recognized and respected.

True democracy does not impose uniform standards of development. Nor does it imply that everyone will grow in a similar fashion. Instead, it provides each one with the opportunities to grow according to his own law of being and assists individuals in their journey to ultimate self-realization. This is why, in a true sense,

Equality refers to opportunity and not to capacity. While it recognizes that men are unequal in scale and quality, it insists that every human being shall have the right and the opportunity to contribute to human achievement, as far as his capacity goes. Society must be so organized as to give individuals sufficient scope to exercise their natural energies without being interfered with by others.²¹⁴

In a true democracy, there should be no attempt to equalize capacities or level up the requirements.

Instead, it should provide equal opportunities to develop the

specific (and unequal) capacities each person possesses by virtue of his own law of being. In other words, individual differences should not be curbed, but respected; and inequalities of nature should be compensated by equalities of opportunities.

Radhakrishnan appears to be too bold in his recognition of human inequalities, and his conception of social hierarchy seems to be in striking contrast to his assertion of the fundamental spiritual equality of all human beings. But, I believe, the metaphysical postulates of his system provide sufficient justification for holding these apparently contrary positions. In this connection, two important points must be noted carefully.

Firstly, in his view, elevated status in the hierarchy does not necessarily imply a higher level of rights or a higher level of material power. On the contrary, in most cases, the order seems to be reversed. "The higher the man, the fewer are his rights and the more numerous his duties."²¹⁵

He also states, "the higher a person is in social scale, the greater are the obligations"²¹⁶ This is so, because hierarchy in Radhakrishnan's system is not

based upon the level of man's material achievement. Rather, man's status in his society is determined by the level of his spiritual development, his character, and the specific nature of his capacities.

This is why the higher the man on the spiritual ladder, the greater are his responsibilities towards his fellow beings and society, and the greater is his offence if he fails to fulfill his obligations. The life of the person at the top is not the life of pleasure and privileges, nor is it the life of leisure and luxury. Rather, the person at the top is expected to lead an extremely simple and strictly disciplined life. He is to demonstrate qualities of self-control and restraint and has to devote himself totally to the service of mankind. As Radhakrishnan explains, "the general tendency of men of all classes to strive to the summit is due to the impressions that the position at the top is one of pleasure, profit, and power.... But in Hindu Scheme, life becomes more difficult as we rise higher. A brāhmin should do nothing for the sake of enjoyment... Those who seek the higher place will lead a life of simplicity and self-denial."²¹⁶

Secondly, Radhakrishnan makes it sufficiently clear that though he recognizes and accepts the fact of social and natural inequalities, he does not believe in their ultimacy. Equality, in his view, is more fundamental and primary than inequalities, and therefore, even the recognition of inequalities should primarily aim at the realization of the ultimate equality. The hierarchical inequalities of the phenomenal level, he insists, are in no way inconsistent with the spiritual equality of the transcendental level. On the contrary, if used properly, these inequalities become a means to achieve the latter. If each person is given the opportunities to develop and grow according to his own specific nature and capacities, he would be in a better position to attain the state of self-realization. Since he would not be burdened by the duties and responsibilities which might be contrary to his nature, he would be able to grow in a smoother and faster manner. His energies would be directed towards the goals which are consistent with his essential nature, and this would enable him to realize the true nature of his self. In other words, he would be able to attain the state of mokṣa, which is also the state of ultimate equality.

This shows that Radhakrishnan neither ignores the fact of inequalities, nor undermines the value of equality. He recognizes the importance of both and instead of presenting them as two contradictory elements, he attempts to build up a system in which inequalities are made a means to achieve universal equality.

(v) Some General Characteristics of Radhakrishnan's Concept of Rights

From the preceding discussion the following general characteristics of Radhakrishnan's concept of rights emerge:

- (1) The concept of human rights is primarily rooted in the spiritual aspect of man's nature.
- (2) Though rights are valuable in themselves, they need to be perceived as means to certain higher ends and should essentially be defined as instrumental to those ends.
- (3) There is a strict duty - right correlation in which specific rights originate from specific duties, and the nature, mode and form of each right essentially depends on the nature, mode and form of the corresponding duty.
- (4) Though, in general, man's basic rights can be said to be universal and absolute, in their

actual application they are influenced by the local culture, history, tradition, customs, politics and socio-economic structure of different societies at different points in time, and therefore become relative and variable in their particular modalities.

- (5) Rights can be arranged in a hierarchical order in which rights pertaining to the spiritual aspect of man's nature acquire a higher place than the rights pertaining to the material aspect and therefore, in case of a conflict, the former should be given priority over the latter.

In the next chapter I shall discuss these points in more detail and shall compare these with the general characteristics of Maritain's concept of rights. This comparison, I believe, will give a fair view of their points of agreements and disagreements, and will provide the basis for a critical analysis of their common strengths and weaknesses.

NOTES TO CHAPTER II.

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4. Radhakrishnan, S., An Idealist View of Life, (London: George Allen and Unwin Ltd., 1932), p.15.
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6. Radhakrishnan, S., Religion and Society, (London: George Allen and Unwin Ltd., 1969), p.29.
7. See Webb, Clement, C.J., "Theism and Absolutism in Radhakrishnan's Philosophy", in The Philosophy of Sarvepalli Radhakrishnan, (ed.) Schilpp, Paul Arthur, (New York: Tudor Publishing Company, 1952), pp.385-390; Roy, M.N., "Radhakrishnan in the perspective of Indian Philosophy", Ibid., pp.543-564, Puligandla, R., Fundamentals of Indian Philosophy, (New York: Abingdon Press, 1975), pp.269-70.
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10. Radhakrishnan, S., "Reply to Critics", in The Philosophy of S. Radhakrishnan, p.820.

11. Radhakrishnan, S., Religion and Society, p.21.
12. Bradhya - Āraṇyaka Upaniṣad, II, 3.6.
13. Radhakrishnan, S., An Idealist View of Life, pp.101-102.
14. Ibid., p.102.
15. Radhakrishnan, S., "The Religion of the Spirit and the World's Need" (Fragments of a Confession), in The Philosophy of S. Radhakrishnan, p.39.
16. Radhakrishnan, S., "The Spirit in Man", in Contemporary Indian Philosophy, (eds.) Radhakrishnan, S., and Muirhead, J.H., (London: George Allen and Unwin Ltd., 1966), p.498.
17. Radhakrishnan, S., An Idealist View of Life, p.343.
18. Ibid., pp.344-45.
19. Ibid., pp.107-108.
20. See Ibid., p.109.
21. Radhakrishnan, S., "Fragments of a Confession", in The Philosophy of S. Radhakrishnan, p.41.
22. Ibid.
23. In Advaita philosophy the term 'real' is defined as that which is permanent, eternal, infinite, changeless and "trikālābādhita", never sublated at any time by another experience. Brahman alone fits this definition.
24. According to Advaita Vedānta 'unreal' is that which never appears as an objective datum of experience due to its self-contradictoriness, for example, son of a barren-woman, square-circle etc. Since the world appears as a datum of experience at some level, but is also sublated by another experience of a higher level, it can neither be called real nor totally unreal. In the words of Bhagvadgītā "... of the non-real there is no coming to be; of the real there is no ceasing to be." (Bhagvatgītā, 11,16):

25. See, Radhakrishnan, S., Indian Philosophy, Vol. II, (London: George Allen and Unwin Ltd., 1948), p.573-574. He presents the following six meanings of the term māyā:

"(1) That the World is not self-explanatory shows its phenomenal character, which is signified by the word māyā. (2) The problem of the relation between Brahman and the World has meaning for us who admit the pure being of Brahman from the intuitive standpoint and demand an explanation of its relation to the World, which we see from the logical standpoint. We can never understand how the ultimate reality is related to the world of plurality, since the two are heterogenous, and every attempt at explanation is bound to fail. This incomprehensibility is brought out by the term māyā. (3) If Brahman is to be viewed as the cause of the world, it is only in the sense that the world rests on Brahman, while the latter is in no way touched by it, and the world which rests on Brahman is called māyā. (4) The principle assumed to account for the appearance of Brahman as the world is also called māyā. (5) If we confine our attention to the empirical world and employ the dialectic logic, we get the conception of a perfect personality, Īśvara, who has the power of self-expression. This power or energy is called māyā. (6) The energy of Īśvara becomes transformed into the upādhi, or limitation, the unmanifested matter (avyākṛta prakṛti), from which all existence issues. It is the object through which the supreme subject Īśvara develops the Universe."

26. Radhakrishnan, S., Eastern Religions, p.27. Emphasis original.
27. In his Indian Philosophy, Vol. II, pp.541-561, Radhakrishnan presents a detailed critique of the problems involved in considering Personal God as the Ultimate Being, and finally notes, "Personality is not the ultimate category of the Universe", (p.560).
28. Radhakrishnan, S., An Idealist View of Life, p.319.
29. Radhakrishnan, S., "Fragments of a Confession", p.27.
30. Radhakrishnan, S., "The Spirit in Man", p.500.
31. Ibid., p.501.

32. Radhakrishnan, S., Eastern Religions, p.25.
33. Radhakrishnan, S., The Brahma Sūtra: The Philosophy of Spiritual Life, (London: George Allen and Unwin Ltd., 1960), p.149.
34. Radhakrishnan, S., The Bhagvadgītā, (London: George Allen and Unwin Ltd., 1948), p.46.
35. Radhakrishnan, S., Eastern Religions, p.87. Emphasis original.
36. Ibid, p.32.
37. The Chāndogya Upaniṣad, VI, 8 ff.
38. The Kena Upaniṣad, I, 1-9.
39. The Brahadāranyaka Upaniṣad, I, IV, 10.
40. Radhakrishnan, S., An Idealist View of Life, p.102.
41. Ibid., p.103.
42. Radhakrishnan, S., Eastern Religions, p.77.
43. Ibid., p.96.
44. Radhakrishnan, S., The Brahma Sūtra, p.122. Emphasis original.
45. Radhakrishnan, S., Indian Philosophy, Vol. II, p.603-604.
46. Ibid., pp.596-597.
47. Deutsch, Eliot, Advaita Vedānta: A Philosophical Reconstruction. (Honolulu: East-West Centre Press, 1969), p.63.
48. Radhakrishnan, S., Indian Philosophy, Vol. II, p.604.
49. Ibid.
50. Ibid., p.607.
51. Deutsch, E., Advaita Vedānta, p.53.
52. Radhakrishnan, S., Bhag vadgītā, p.13.
53. Radhakrishnan, S., Eastern Religions, p.97.

54. Radhakrishnan, S., Kalki: or The Future of Civilization, (London: Kegan Paul & Co., 1929), p.44.
55. Radhakrishnan, S., An Idealist View of Life, p.115.
56. Ibid., p.111.
57. Radhakrishnan, S., Eastern Religions, p.355. Emphasis added.
58. Ibid., p.32.
59. Ibid., p.351. Emphasis original.
60. Hiriyanna M., Popular Essays in Indian Philosophy, (Mysore Kavyalya Publishers, 1952), p.65.
61. Radhakrishnan, S., Eastern Religions, p.354.
62. Zimmer, Heinrich, Philosophies of India, (London: Routledge & Kegan Paul, 1953), p.35.
63. Radhakrishnan, S., Eastern Religions, p.353.
64. Radhakrishnan, S., Religion and Society, p.61.
65. Ibid., p.37.
66. Vātsyāyāna, Kāma Sūtra, I, l.f., also see Bhāgavata, i,2,10.
67. Radhakrishnan, S., Eastern Religions, p.353. Emphasis original.
68. Bhagvan Das, Science of Social Organization or the Laws of Manu in the light of Atmavidyā, Vol. 1., (Adyar: Theosophical Publishing Society, 1932), pp.49-50.
69. Radhakrishnan, S., Eastern Religions, p.353, also see his Hindu View of Life, p.77.
70. Radhakrishnan, S., Eastern Religions, p.353. Emphasis original.
71. Radhakrishnan, S., Religion and Society, p.105.
72. Radhakrishnan, S., The Heart of Hindusthān, (Madras: G.A. Natesan & Co., 1936), p.14. Emphasis original.
73. Radhakrishnan, S., Religion and Society, p.107.
74. Ibid., p.104.

75. Radhakrishnan, S., Eastern Religions, p.354. Emphasis original.
76. Radhakrishnan, S., Religion and Society, p.107.
77. Radhakrishnan, S., Hindu View of Life, p.81.
78. Radhakrishnan, S., The Heart of Hindusthan, p.23.
79. Radhakrishnan, S., Eastern Religions, p.97.
80. Ibid., p.94.
81. Ibid., p.304.
82. Ibid., p.103.
83. Radhakrishnan, S., Indian Philosophy, Vol. I., p.228.
84. Radhakrishnan, S., Eastern Religions, pp.102-103.
85. Radhakrishnan, S., Indian Philosophy, Vol. I, p.229.
86. Radhakrishnan, S., "Fragments of a Confession", p.64.
87. Radhakrishnan, S., Kalki, pp.45-46.
88. Radhakrishnan, S., "Fragments of a Confession", p.43.
89. Radhakrishnan, S., "Reply to Critics", p.841.
90. Radhakrishnan, S., "Fragments of a Confession", p.43.
91. In his Eastern Religions, Radhakrishnan has written a lengthy rejoinder to counter Albert Schweitzer's arguments against the Indian concept of Mokṣa - see pp. 58-114. For Schweitzer's criticisms, see Schweitzer, A., Indian thought and its development, (Trans.) Mrs. Charles E.V. Russell, (London: Adam and Charles Black, 1951), pp.3-10 and 19-66.
92. Radhakrishnan, S., Eastern Religions, p.53.
93. Radhakrishnan, S., Indian Philosophy, Vol. I, p.230.
94. Radhakrishnan, S., An Idealist View of Life, p.92.
95. Radhakrishnan, S., Eastern Religions, p.37.
96. Radhakrishnan, S., "Fragments of a Confession", p.43.
97. Radhakrishnan, S., Eastern Religions, p.361.

97. Radhakrishnan, S., Eastern Religions, p.361.
98. Ibid., p.362.
99. Ibid., p.361.
100. Radhakrishnan, S., Education, Politics and War, p.98.
101. Radhakrishnan, S., Eastern Religions, p.356.
102. Ibid., p.83.
103. Ibid., p.81.
104. Radhakrishnan, S., Religion and Society, p.108.
Emphasis added.
105. Ibid., p.65.
106. Radhakrishnan, S., Hindu View of Life, p.90.
107. Ibid.
108. Radhakrishnan, Religion and Society, p.66.
109. Ibid., p.107.
110. Ibid., p.108.
111. Ibid.
112. See Ibid., p.109.
113. Ibid., p.111.
114. Ibid.
115. Ibid., p.108.
116. See Radhakrishnan, S., "Reply to Critics", p.840.
117. See Radhakrishnan, S., Eastern Religions, p.355.
According to Gopalan, "Dharma is the law of one's own being. From this it follows that the dharma of individuals is not one and the same for all, nor is it the same for one and the same individual at different periods in his life. Each individual has to grow to his best according to his own dharma. This principle of individual growth is called svadharma." Gopalan, S., Hindu Social Philosophy, (New Delhi: Wiley Eastern Limited, 1979), p.175.

118. Radhakrishnan, S., Eastern Religions, p.357.
119. Ibid., p.358.
120. Ibid., p.359.
121. Ibid., p.362.
122. Ibid., p.363.
123. Ibid., p.364.
124. Ibid., p.365.
125. The term 'varṇa' also means species, kind, character, nature and form.
126. Radhakrishnan, S., Religion and Society, p.131. In this connection also see his Hindu View of Life, p.93-129.
127. Radhakrishnan, S., Eastern Religions, p.373.
128. See Radhakrishnan, S., Religion and Society, pp.129-135.
129. Radhakrishnan, S., Hindu View of Life, p.104.
130. See pp. 397-402 of this thesis.
131. See, Radhakrishnan, S., Eastern Religion, pp.367-372.
132. Ibid., p.367.
133. Ibid., p.368.
134. "The earliest reference to the four classes is in the Puruṣa Sūkta of the Ṛig Veda, where they are described as having sprung from the body of the creative spirit, from his head, arms, thighs, and feet." (Radhakrishnan, S., Eastern Religions, p.355). Varṇa produced from the different parts of the body of the cosmic man (Puruṣa) are believed to have a correlation with the respective functions of these parts. For example, Brāhmins (the intellectual class), are produced from the head (the source of intellect); Kṣatriyas (the warriors), come from arms (the symbol of valour), and so on.

135. Radhakrishnan, S., Indian Philosophy, Vol. I., p.220.
136. Radhakrishnan, S., Hindu View of Life, p.82.
137. Organ, T.W., The Hindu Quest for the Perfection of Man, (Ohio: Ohio University, 1970), pp.230-231.
138. Radhakrishnan, S., Eastern Religions, p.379.
139. Radhakrishnan, S., Hindu View of Life, p.84.
140. Radhakrishnan, S., Eastern Religions, pp.379-380.
141. Ibid., p.381.
142. Ibid.
143. Radhakrishnan, S., Religion and Society, p.110. Emphasis original.
144. Ibid., p.113.
145. Ibid., p.115.
146. Ibid., p.108.
147. Radhakrishnan, S., Hindu View of Life, p.79.
148. Ibid.
149. See Manu-Dharma Śāstra, VIII. 336-338.
150. Radhakrishnan, S., Eastern Religions, p.374.
151. Ibid. Radhakrishnan also quotes Manu. "Manu says that a king should be fined a thousand times as much as a common man for the same offence (VIII.336), The Mahābhārta is even stronger. Even priests should be punished, the weightier the men, the weightier should be their punishment (XII.268-15)", Ibid., Footnote 1.
152. Radhakrishnan, S., Hindu View of Life, p.119.
153. Radhakrishnan, S., Religion and Society, p.111.
154. Ibid., p.66.
155. Radhakrishnan, S., Eastern Religions, p.379.
156. Ibid., p.99. Emphasis original.
157. Ibid., p.32.

158. Radhakrishnan, S., "Fragments of a Confession", p.39.
159. Ibid., p.40.
160. Radhakrishnan, S., Religion and Society, p.66.
161. Radhakrishnan, S., Address to UNESCO Conference - 24th May, 1950. Published in General Records of the UNESCO, 1950.
162. Radhakrishnan, S., Religion and Society, p.61.
163. Ibid., p.62.
164. Ibid., p.64.
165. Radhakrishnan, S., (ed.) Introduction to Mahātma Gāndhi, (London:- George Allen and Unwin Ltd., 1939), p.20.
166. Radhakrishnan, S., Religion and Society, p.66.
167. Ibid., p.65.
168. Ibid.
169. Ibid., p.58
170. Ibid.
171. Ibid., p.59. Emphasis added.
172. Radhakrishnan, S., "Fragments of a Confession", p.43.
173. Radhakrishnan, S., Religion and Society, p.61.
174. Radhakrishnan, S., "Fragments of a Confession", p.66.
175. Ibid., p.43.
176. Radhakrishnan, S., Hindu View of Life, pp.116-117.
177. Radhakrishnan, S., "Fragments of a Confession", p.43.
178. Radhakrishnan, S., Religion and Society, p.63.
179. Ibid. Emphasis added.
180. Radhakrishnan, S., Hindu View of Life, p.80.
181. Radhakrishnan, S., Freedom and Culture, (Madras: G.A. Natesan & Co., 1946), p.118.

182. Radhakrishnan, S., Eastern Religions, p.371.
183. Ibid., p.367.
184. Ibid., p.368.
185. Brahm-Āraṇyaka Upaniṣad, 1.3.28.
186. Radhakrishnan, S., Freedom and Culture, p.112.
187. Radhakrishnan, S., Education, Politics and War, p.13.
188. Radhakrishnan, S., Freedom and Culture, pp.113-114.
189. Radhakrishnan, S., Education, Politics and War, p.13.
190. Ibid., p.42.
191. Radhakrishnan, S., "Address to UNESCO Conference", 24th May, 1950.
192. See Radhakrishnan, S., Religion and Society, pp.24-49.
193. Radhakrishnan, S., Hindu View of Life, p.80. Emphasis added.
194. Radhakrishnan, S., Education, Politics and War, p.42.
195. Ibid., p.44.
196. Ibid., p.42.
197. Radhakrishnan, S., Hindu View of Life, p.115.
198. Ibid., p.115.
199. Ibid., p.114.
200. Ibid., p.115.
201. Ibid.
202. Ibid.
203. Radhakrishnan, S., Education, Politics and War, p.8.
204. Radhakrishnan, S., Religion and Society, p.130.
205. Radhakrishnan, S., Hindu View of Life, p.117.
206. Radhakrishnan, S., Eastern Religions, p.366.

207. Ibid.
208. Ibid.
209. Radhakrishnan, S., Hindu View of Life, p.114.
210. Radhakrishnan, S., Eastern Religions, p.368.
211. Radhakrishnan, S., Hindu View of Life, p.114.
212. Ibid., p.116.
213. Radhakrishnan, S., Eastern Religions, p.368.
214. Ibid. Emphasis added.
215. Radhakrishnan, S., Hindu view of Life, p.119.
216. Radhakrishnan, S., Eastern Religions, p. 370
217. Ibid., p.370.

CHAPTER III

COMPARATIVE ANALYSIS

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The last two chapters not only have introduced the theories of human rights proposed by Jacques Maritain and S. Radhakrishnan, but also have explained the basic metaphysical principles underlying these theories. As stated earlier in the 'Introduction', in this chapter, I shall present a comparative analysis of the fundamental features of these theories and shall try to find out if there are any possibilities for a fruitful dialogue between these two modern representatives of the two age-old traditions. For this purpose, the chapter is divided into four sections.

The first section will contain a very brief discussion of some of the basic similarities and differences between the key concepts Maritain and Radhakrishnan use to formulate their conception of rights. The second and third sections will explain how these similarities and differences are reflected in their theories of rights. The second section will primarily be devoted to the discussion of similarities and the third section will focus on differences. In a way, in these two sections I shall present a comparative analysis of the general characteristics of their concept of human rights, and finally in the fourth section shall offer some brief concluding remarks.

I

COMPARISON OF KEY-CONCEPTS

Maritain bases his theory of rights on his conception of human nature, which he defines in terms of its two aspects, personality and individuality. Corresponding to these two aspects, there are two levels of man's relationship to society. In his material individuality, man is considered to be a part of society, and therefore, can legitimately be subjected to its coercive regulations and limitations. But the freedom and independence essentially associated with personality give man a unique dignity and make him capable of transcending all the limitations of a temporal society. Natural law, which is essentially an expression of man's spiritual dignity, provides the foundation for spelling out the various privileges man possesses by virtue of his personality. In our modern terminology these privileges are referred to as man's 'fundamental rights'. In Maritain's view, the expression "The dignity of the human person" essentially means that by virtue of natural law, the human person possesses certain rights "which are owed to man because of the very fact that he is man",¹ and which ought to

be respected by everyone, in all circumstances. But since natural law essentially aims at the common good, the extent and scope of the exercise of these rights naturally is determined by the various implications of the idea of common good, and rights become means to the realization of the ends laid down by it.

We have seen how the concept of natural law and the idea of common good constantly provide the basis for Maritain's distinctions concerning the absolute and the substantial inalienability and the possession and the exercise of rights. Maritain's analysis of various human rights is also guided by the fundamental principles of these key concepts, and these concepts not only determine the general character of his conception of rights but also influence the overall structure of his political and social philosophy.

In the second chapter we saw that like Maritain's theory, Radhakrishnan's theory of human rights also evolves out of his conception of human nature, which he explains in terms of the two levels of man's being: the transcendental level as *ātman*, and the phenomenal or empirical level as *jiva*. As *jiva*, man is bound by the limitations of time, space and death, and suffers from

the narrowness of the ego which is a product of māyā or avidyā (ignorance), and therefore, has only a phenomenal reality. But as ātman, man transcends all these limitations and becomes one with the ultimate reality 'Brahman', which is characterized as the unity of sat (pure existence), cit (pure consciousness), and ānanda (pure and perfect bliss and freedom). A natural consequence of this ātman-Brahman identity is that, like Brahman, man also becomes the ground and the centre of the whole universe, and the rights to life, freedom, property and equality become the expressions of the essence of his very being. Dharma, which is characterized as the law of man's being, provides the foundation for these rights and determines their various modalities in the light of the scheme of four-fold puruṣārthas. But since dharma itself aims at mokṣa, rights rooted in dharma naturally aim at mokṣa as their ultimate end and serve as instruments for the realization of man's ultimate destiny, complete spiritual liberation.

The discussion in the two preceding chapters makes it sufficiently clear that while the key concepts which determine Maritain's theory of rights can be described as the concept of person, the concept of individual, the idea

of natural law and the idea of common good, in Radhakrishnan's system the concept of ātman, the concept of jiva, the idea of dharma and the idea of puruṣārtha can be said to play the same role. One can hardly miss the correspondence between these two sets of key concepts. As is evident, this correspondence not only concerns the role each of these concepts plays in the formulation of their respective theories of rights, but is also reflected in their description of the nature of these concepts and thus provides a suitable background for a comparative analysis of their theories. In what follows, I shall briefly point to some of the most fundamental similarities and differences in the characterization of these concepts, and in the following section shall try to analyze how these influence the overall character of their theories of rights.

I shall begin with pointing out the similarities between Maritain's concept of person and Radhakrishnan's concept of ātman. Person and ātman are both principles of spirit. They represent the inmost being of man which is generally referred to as the soul of man. They are eternal principles of consciousness and are beyond the limitations of time, space and death. Perfect freedom and absolute independence constitute the essence of

person as well as of ātman and both imply the transcendental supra-temporal destiny of man. Neither person nor ātman is part of a whole. Both are ends in themselves, and therefore cannot be treated as means to serve the purposes of any external entity, whether it is society or any other human being. Both are represented as the principles of unity and are believed to be the sources of universal, unconditional human rights. Their intimate relationship with the ultimate reality gives man a unique dignity. As person man is described as the 'image of God', while as ātman he is believed to be 'identical' with the Absolute Brahman.

There is also a correspondence between the concept of individual and the concept of jiva. Both are rooted in matter, are finite, and are conditioned by the limitations of time, space and death. Due to their essential materiality they become the principles of division and give rise to the narrow self-centered ego, which manifests itself in selfish desires, feelings of separation and exclusion, narrowness of vision and imperfection of knowledge and action. Their materiality not only subjects them to the determinations of the physical world but also delimits their freedom and independence and therefore the exercise of their basic

human rights. Indeed, as individual or as jiva, man not only can be subjected to the regulations of society and its institutions, but can also be treated as a part or as a means to serve the interests of the whole, and thus, the extent and the scope of his rights is limited by the relativity of his material existence.

The same kind of similarity is reflected in the conceptions of natural law and dharma. Both of these principles are expressions of the essence of man's being and are descriptive as well as prescriptive. These are not only the expressions of ontological reality but are also the principles of ideality, and a characteristic feature of their structure lies in the fact that their normative aspect is derived from their descriptive aspect. Both natural law and dharma aim at the spiritual destiny of man, (natural law aims at common good and the aim of dharma is to realize mokṣa), and provide the foundation for his fundamental rights. They both function as the primary regulative forces in man's personal and social life, and provide the criteria for determining the legitimacy of different human institutions. Another characteristic which is common to the constitution of natural law as well as of dharma is that both accommodate relativity within

universality and change within permanence. The absolute universality of the first principles of these concepts does not prohibit the inclusion of the considerations of relativity within their fold and both provide a basis for introducing changes into the virtually permanent structure of their essential constitution.

One can also see some basic similarities in the concept of common good and the concept of *puruṣārtha*. Both of these concepts play a similar kind of role in their respective theories of rights. Both are the ends of human life and it is believed that the primary aim of society is to assist man in the realization of these ends. Both include material as well as spiritual aspects of man's well being. But in both, the spiritual is given primacy over the material, and the material is primarily conceived as a means to attain the spiritual. Justice (righteousness) and moral goodness are intrinsic to the essential constitution of common good as well as of *puruṣārtha*, and in both the ultimate end of human life is described in terms of man's transcendental, supra-temporal destiny. These concepts not only serve as the guiding principles of all

human activities and endeavours, but also function as limiting conditions on the rights of individuals and of society; and thus, they determine the extent, scope and mode of the exercise of man's basic rights.

Obviously, there are some fundamental similarities between the key concepts of the systems of Maritain and Radhakrishnan. But the foregoing enumeration of these similarities should not lead one to assume that there are no differences between them. The discussion in the preceding two chapters makes it sufficiently clear that along with these fundamental similarities there are also some important differences.

Despite all the similarities I have earlier pointed out, one cannot deny that in some respects, Radhakrishnan's concept of ātman is very different from Maritain's notion of person. First of all, ātman, according to Radhakrishnan, is not a person. In his view, the essence of personality lies in its distinction from other existences. But since ātman is ultimately one with the non-dual Brahman, it has no other independent existence and therefore it cannot be a person.² Moreover, while for Maritain personality is the highest reality

and therefore occupies the place of the ultimate value in his system, for Rādhakrishnan, it is only of a transitory value and ultimately needs to be transcended. "Personality", he says, "is not the ultimate category of the universe,"³ and therefore, in his system, even God, who is described as pure Person, ultimately lapses into the Absolute.⁴

Again, in Maritain's system, man as person is believed to resemble the ultimate reality, God. He is the image of God. But in Rādhakrishnan's view, ātman is identical with the ultimate reality. In Rādhakrishnan's absolute non-dualism there is no place for the 'other' at the transcendental level. But in Maritain's personalistic theism, such a non-dualism is an absolute impossibility. In his system, man as person undoubtedly can transcend various limitations imposed by the material individuality, but he can never be 'one' with God, and therefore, even at the highest level of man's being God remains as the objective external authority for him.

Moreover, while in Maritain's view, personality and individuality are two aspects of man's nature, each of which is equally real, ātman and jiva according to Rādhakrishnan are not two aspects but are two states

or two levels of man's being; and the latter has only a phenomenal reality. Jiva is only a transitory stage in man's journey towards the realization of ātman, and therefore, cannot be considered to be ultimately real.

This difference in the nature and status of the individual and jiva leads to another difference. While in Maritain's system the highest ideal for man consists in seeking a healthy balance between individuality and personality, in Radhakrishnan's system, the goal is not to balance, but to transcend the state of jiva. Individuality, in Maritain's view, is not an evil in itself. Indeed, if kept within its proper limits, it is something good, and therefore only needs to be balanced with personality. But in Radhakrishnan's view, the state of jiva, though also not an evil in itself, is still considered to be a product of māyā or avidyā (ignorance) and therefore, instead of being balanced, must be transcended through knowledge and wisdom.

These differences are of substantial importance and to some extent influence Maritain and Radhakrishnan's concepts of rights. In the following sections, I shall show how the similarities and differences between these key concepts are reflected in their theories of rights, and shall try to find out in what respects they share their views and in what respects they differ from each other. In other words, the following two sections will contain a comparative analysis

of the general characteristics of the concept of rights expounded in the theories of Maritain and Radhakrishnan.

II

SIMILARITIES IN THE GENERAL CHARACTERISTICS OF RIGHTS

From the discussion in the last two chapters, it becomes sufficiently clear that the central common feature of the theories of Maritain and Radhakrishnan consists in the fact that they share a common universe of values. A characteristic feature of this universe is that the spiritual is given primacy over the material and not only the metaphysical concepts, but also the principles of political and social thought, (including the concept of human rights), are derived from and determined by the implications of the notion of spirit. Given the predominantly spiritual character of their universe of values, the concept of human rights acquires a unique significance in their systems, and as we shall see later, becomes the chief determining factor of their political and social philosophy.

(i) The Spiritual Origin of Rights

Both Maritain and Radhakrishnan strongly believe that the roots of human rights lie in the spirituality of human nature. It is true that these

rights are owed to man as man, but it is also true that it is the spiritual aspect of man's being which distinguishes man from the rest of the creatures of the created universe and makes him the unique possessor of some universal, inalienable rights. Amongst all the earthly creatures, only man has the privilege of enjoying these rights because it is only man who has the privilege of sharing in the spiritual nature of the ultimate reality. This is why Maritain believes that, "...every right possessed by man is possessed by virtue of the right possessed by God ..."⁵ In Radhakrishnan's words, "Apart from eternity there is nothing that can, strictly speaking, be called human,"⁶ and therefore, "There is nothing final or eternal about states and nations, which wax and wane. But the humblest individual has the spark of spirit in him which the mightiest empire cannot crush."⁷

Clearly, for both Maritain and Radhakrishnan, the primary source of man's basic rights lies in the spiritual aspect of his nature, to which Maritain refers as the personality or the personhood of man and Radhakrishnan refers to as the *ātman* in man. However, neither Maritain nor Radhakrishnan totally discard the material aspect of man's nature. Nor do they undermine its importance. On

the contrary, they clearly recognize that the material is a necessary means to achieve the spiritual. For Maritain, "Material individuality is not something evil in itself. Obviously as the very condition of our existence it is something good."⁸ He also goes to the extent of maintaining that "When one kills the individual, one also kills the person,"⁹ and therefore, in order to fulfill the demands of personality, the requirements of individuality must also be fulfilled. Radhakrishnan also recognizes that the body is a necessary means to realize dharma (dharma sādhanam), and though jiva is simply a transitory stage in man's journey towards eternity, its importance as an instrumental value cannot be denied.

But despite this recognition, neither Maritain nor Radhakrishnan believe that the source of man's dignity and his rights can lie in his materiality. On the contrary, both of them firmly hold that the material aspect of man's being cannot provide the foundation for his inalienable rights. Man as an individual or as jiva is not only conditioned by the limitations of the physical world but can be subjected to the coercion of society and its institutions. It is only his supra-temporal, spiritual destiny as person or

as ātman that makes man capable of transcending all the limitations of temporal societies and provides him with some primordial rights. In Maritain's words, "Man is constituted a person, made for God and life eternal, before he is constituted a part of the city; and he is constituted a part of the family society before he is constituted a part of the political society. This is the origin of those primordial rights which political society must respect and which it may not injure when it requires the services of its members."¹⁰

Radhakrishnan expresses much the same feelings when he quotes a sanskrit verse approvingly, which reads, "For the family sacrifice the individual; for the community the family; for the country, the community and for the soul the whole world."¹¹ This verse according to him, explains in a nut-shell the implications of man's status as ātman and points to the source of his fundamental rights.

As is evident, both Maritain and Radhakrishnan believe that the origin of human rights lies in the spiritual aspect of man's being, and the attributes of unconditional universality and absolute inalienability generally associated with these rights can be explained only in terms of this spiritual origin. Only spirit transcends the limitations of time and space, history

and culture, nation and state, race and sex; and only through spirit may men share in the universal oneness of the human race irrespective of their individual particularities. Consequently, only the rights originating from spirituality can be called universal in the true sense of the term.

Moreover, the inalienability of rights can also be derived only from their spiritual origin. Rights based on human materiality and granted by temporal societies can never be truly inalienable. Only the rights which originate in a transcendental realm of supra-temporal nature can be absolutely inalienable, because only these rights can surpass the limitations imposed by temporal human institutions.

(ii) Positive as Opposed to the Negative Character of Rights

Another significant characteristic of the concept of rights which Maritain and Radhakrishnan both share is its predominantly positive character. In their view, rights are not merely defensive weapons to be used in the individual's war against society; rather they are positive expressions of the inner unity of human persons and are primarily meant to be used as the most effective

means for realizing their essential dignity. Obviously, the roots of this positive character also lie in the spiritual origin of rights.

Since matter is what individuates and divides, and the spirit is what unites one man with the other, rights originating in the spirit naturally become expressions of the essential unity of the human race. In Maritain's view, while individuality is the principle of division and disintegration, personality is the principle of totality and unity. "In each of us," he says, "individuality, being that which excludes from oneself all that other men are, could be described as the narrowness of the ego, forever threatened and forever eager to grasp for itself.... As a material individuality, man has only a precarious unity, which tends to be scattered in a multiplicity.... As an individual, each of us is a fragment of a species, a part of the universe, a unique point in the immense web of cosmic, ethnical, historical forces and influences -- and bound by their laws."¹² On the contrary, personality in us is the "principle of creative unity, independence and liberty"¹³ and "...bears witness in us to the generosity or expansivity of being which, in an incarnate

spirit, proceeds from the spirit and which constitutes, in the secret springs of our ontological structure, a source of dynamic unity and unification from within."¹⁴

Radhakrishnan also maintains a similar position. In his view, while jiva is the principle of differentiation, ātman is the principle of essential oneness. Jiva, according to him, is that state of man's being in which, due to ignorance, he conceives himself as a separate ego and identifies himself with body, senses, mind or intellect. "It is the ego sense; the illusion that each of us is an exclusive unity sharply marked off from whatever lies outside his body in space and beyond his experience in time."¹⁵ But ātman, on the contrary, expresses the universality of spirit which can be realized only through the realization of the essential unity of all living beings.

Obviously, in the schemes which maintain that rights originate from ātman or from personality, the foremost characteristic of rights will necessarily be manifested through their positive character, and they naturally will become expressions of the essential solidarity and unity of the human race. In the systems of Maritain and

Radhakrishnan, this characteristic is best reflected in their views concerning the origin of society. Society, according to them, is neither a product of a contract conceived as the only sensible solution to the state of a constant war of each against all others, nor does it come into being as a result of a rational calculation of the interests of self-centered individuals. In other words, the roots of society, in their view, lie neither in a negative feeling of fear (the fear of the individual that since all other individuals are his 'natural enemy', to avoid complete destruction and death, he should protect himself by entering in to a collective contract where people trade in some of their freedoms in order to gain the assurance of survival), nor in a utilitarian calculation of interests (which may be positive in character but is usually based on a highly individualistic and narrowly self-centered outlook). On the contrary, society in their view comes into being as an expression of the inherent unity underlying the essence of man's being.

According to Maritain, human persons build a society or seek to live in a society mainly because of their inner urge for the communication of knowledge and love. In the very depth of man's

being is inscribed a radical generosity, which in response to the law of superabundance tends to overflow into social communications. This superabundance manifests itself in the form of man's essential 'subjectivity', which can fulfill the basic demands of its existential structure only through giving itself to others and making others part of itself by the union of love. The real source of human society, according to Maritain, lies in this self-giving love which forms the essence of man's personality, and the idea of common good, which is society's aim, is nothing but an expression of this dynamic unity of love.

In Radhakrishnan's system, this inner urge is manifested in even stronger form. In the absolute non-duality of the Atman-Brahman identity, ultimately, there can be no place for the 'other'. As manifestations of the same ultimate reality, men naturally tend to feel a unique oneness with their fellow beings. This inherent oneness rooted in the very depth of men's souls, impels them to break the narrow limits of the self-centered ego and inspires them to strive for creative manifestation of the inner unity underlying the phenomenal multiplicity. Society comes into being as an essential

stage in the process of the realization of this unity. As Radhakrishnan says, "The stress of the universal in its movement towards the goal of the world is the source of man's sociality. Society is not something alien, imposed on man, crushing him, against which he rebels in knowledge and action.... Human society is an attempt to express in social life the cosmic purpose which has other ways of expression in the material and supermaterial planes."¹⁶ This is why he firmly believes that "Left to himself, man feels kinship with the whole universe, especially with living things and human beings. The sense of community is latent in the hearts of men. Even in this artificial world, where intellect has imposed on us the restrictions of tribe, race, and nation, the fundamental humanity of man wells up on occasions.... One touch of nature makes the whole world kin. The feeling of fellowship with the whole of humanity is implanted in our nature."¹⁷

Maritain and Radhakrishnan both believe that men form society and enter into interpersonal relationships neither because they are afraid of each other's inherent animosity, nor because it best serves their self-interests and suits their calculations. Rather they feel compelled to join together in the form of a society

due to the inherent unity of their essential being. Though society comes into being due to a necessity, this necessity is neither imposed by any external state of affairs (as is believed by most of the social contract theorists), nor is it negative in character, that is, its primary aim is not to avoid certain undesirable states. The motivation to form society

is rooted in the essence of man's nature and consists of a positive hope of actualizing the potential dimensions of man's being.

Naturally, such a non-contractual, non-utilitarian explanation of the source and foundation of society will significantly influence the character of the system of human rights. Rights, in such a world-view, will be perceived not as tools to protect the individual from the possible attacks of his potential enemies (his fellow beings or the society as a whole). On the contrary, the primary aim of the system of rights will be to assist men in the process of actualizing their potential unity with fellow men. "Under the insight of such a faith," Radhakrishnan observes, "our fellow men become something more than creatures of time and place separated from us by the accidents of nature, set against us by the

necessities of animal existence....Spirits in unity with themselves must in the end be in unity with one another....Ahiṃsā or fellow feeling for all living things, enfolding in its merciful arms even the lowest forms of animal life, is the natural fruit of abhaya or spiritual life."¹⁸ And therefore, a system of rights rooted in the spiritual aspect of man's being will naturally portray rights as positive means to realize this unity. Maritain and Radhakrishnan's analysis of the right to freedom is a good example of such a conception of rights.

Contrary to the current trend of human rights theories which maintain that the main objective of the system of rights is to secure freedom and independence of the individual over and against the society he is a member of, Maritain and Radhakrishnan define the 'right to freedom' in terms of freedom of expansivity, which can be realized only in and through a creative manifestation of the inner unity of the whole human race. Consequently, according to them, the right to freedom cannot be or should not be confined to the guaranteeing of 'non-interference' from external forces, such as society,

the State, or other human beings. Rather, it should be extended beyond this limited objective and must primarily be directed towards creating and developing those structures and institutions which lead towards the realization of the freedom of spontaneity which ultimately manifests itself through spiritual liberation. The reader is aware of Maritain's distinction of 'freedom of choice' and 'freedom of autonomy'. His discussion of these concepts makes it sufficiently clear that for him, the essence of the right to freedom lies not merely in the absence of necessity and constraints, but primarily in achieving that state of being in which, in the unity of the Supreme, man's freedom of expansion is fully realized.

Radhakrishnan expresses the same feelings when he insists that true freedom consists not merely in escaping from all regulations and obligations but in realizing the universality of spirit. And therefore, a system of rights which aspires to grant man his fundamental freedom cannot satisfy the demands of its essential structure merely by guaranteeing 'non-interference' on the part of others, but also has to make sure that society provides man positively with all those opportunities

which are essential to realize his spiritual freedom. As he says, "...society should not only protect individuals and groups from these compulsions but also provide opportunities for achieving the values which the compulsions inhibit."¹⁹

But this spiritual freedom in Radhakrishnan's view, is essentially social and universal in character. In the discussion of his concept of universal salvation I have already pointed out that in his view, there is no such thing as individual salvation. 'Freedom of all' is the essential precondition of the 'freedom of one' and no one can attain freedom in its true sense unless everyone else attains it. In other words, one person's freedom neither negates nor delimits but enhances the freedom of others and thus, in his system, the idea of freedom as a negative principle of 'non-interference' is transformed into a positive principle of promotion of the spiritual 'freedom of everyone'.

From the foregoing discussion, it becomes clear that, for Maritain and Radhakrishnan, the right to freedom not only involves the concept of 'freedom from' but is also concerned with the idea of 'freedom to....' In other words, though freedom from

necessity, compulsion and interference may constitute an essential part of the right to freedom, its full realization, according to them, is possible only within a framework of institutions which not only assure non-interference but also provide opportunities to attain freedom in the positive sense, that is, spiritual freedom of a universal nature. Their analysis of other rights such as the right to life, right to equality, and right to property also reflects a similar approach. These rights are not simply protective measures to save individuals from possible attacks of society or the state; they are primarily meant to assist individuals in achieving certain positive values. This characteristic of rights leads us to the discussion of another significant feature of their theories which, as we shall see, not only manifests a fundamental agreement between these two thinkers but also distinguishes them from most of the other modern human rights theorists.

(iii) The Goal-oriented Character of Rights

Contrary to popular belief, Maritain and Radhakrishnan both seem to maintain that though human rights are most fundamental expressions of human dignity, these rights

should not be taken as ends, in themselves. Though both of them firmly hold that respect of man's basic rights should be considered the most significant factor in the regulation of human affairs, they also firmly believe that these rights should not be cherished for their own sake. They are important, but their importance primarily lies in their becoming means to achieve some specific goals. This goal-oriented character of rights, I believe, is an essential feature of the theories of Maritain and Radhakrishnan, and is a logical outcome of their general metaphysical stand. My reasons for saying so can be pointed out as follows.

Maritain and Radhakrishnan ground their conception of human rights in the idea of 'natural law' and the idea of 'dharma' respectively. But both maintain that natural law and dharma are essentially teleological in character. While natural law aims at the common good, the very essence of dharma consists in achieving mokṣa. As explained earlier, the very structure of these principles is such that they not only express the essence of reality but also imply the realm of ideality and therefore rights rooted in these principles naturally

acquire a goal-oriented character. In Maritain's system, rights are characterized as a means to achieve the common good, while in Radhakrishnan's system they serve as instruments for attaining the goal of mokṣa. This goal-orientedness not only characterizes their general views on rights, but is also manifested in their analysis of different particular rights. Take for example their analysis of the right to life .

Both Maritain and Radhakrishnan acknowledge that human life involves a sacred right, and this right is essentially rooted in the dignity of man as spiritual being. However, they also insist that "the sheer fact of existing is neither the supreme good nor any one of the absolute goods to which the person as such is ordained."²⁰ In Radhakrishnan's view, while "Body and mind are the conditions or instruments of the life of spirit in man," they are "valuable not for their own sake but because of the spirit in them."²¹ And therefore, while the right to life in his system "is desired to some extent for its own sake, it is desired more for its capacity to further human activity which has for its aim the discovery and expression of the divine in man (dharmasādhanam)."²²

In other words, though Maritain and Radhakrishnan both believe in the preciousness of human life and acknowledge the fundamental importance of man's right to life, they do not consider this right to be an end in itself. They firmly believe that it should be respected and cherished not for its own sake, but as a means to assist men in achieving those goals which are required by the very structure of their being, and are realized only in their perfect unity with the ultimate reality.

The same is true of their analysis of the right to property. This right is also neither desired for its own sake nor is it considered a supreme end in itself. Rather, it is valued as an expression of human freedom and independence, and its importance lies in its becoming instrumental to the fulfillment of the higher spiritual goals of man's essential being.

Again, not only are rights in general believed to aim at some specific goals, but within the framework of each particular right, there are different levels and it is maintained that the true meaning and significance of each level lies in its becoming a means to reach the upper levels. Maritain's analysis of the right to freedom is a good example. As stated earlier,

Maritain makes a distinction between the freedom of choice and the freedom of spontaneity. The first kind of freedom, according to him, is something given. All human beings inherit it as part of their essential nature. But in spite of its fundamental importance, this freedom in Maritain's view is not its own end. It cannot be valued for its own sake. To be meaningful, it must orient itself towards the other freedom, the freedom of spontaneity or autonomy. "The freedom of choice, the free will", he says, "is not its own end. It is ordained to the conquest of freedom in the sense of freedom of exultation or autonomy. And it is in this conquest, demanded by the essential postulates of human personality, that the dynamism of freedom consists."²³ This second freedom, though essentially rooted in man's personality, still must be attained by conscious voluntary efforts. It is not simply 'given', as is the first freedom (the freedom of choice). Rather it has to be gradually realized. But this realization necessarily presupposes the exercise of the former freedom and cannot be achieved in its absence. In other words, man wins the freedom of autonomy by exercising the initial freedom and thus moves to an upper level of freedom. But the dynamism of freedom does not stop

here. It proceeds further and freedom of autonomy itself becomes a means to the realization of the ultimate goal of human existence, which consists essentially in attaining the state of beatitude or the perfect communion with the Divine.

Radhakrishnan's analysis of freedom also manifests a similar approach. Different levels of freedom are defined in terms of the degrees of their reflection of the Absolute and it is maintained that the essence of human life consists in gradually moving from the lower to the higher order of freedom until one reaches the point where Brahman, the Freedom incarnate, is reflected at its fullest, and man, in his absolute identity with Him, realizes the absolute freedom. Moreover, Radhakrishnan talks of different kinds of freedom, such as political freedom, legal freedom, social freedom and freedom from bodily slavery, and maintains that there is a means-end relationship between these freedoms and spiritual freedom. "All these," he says, "however, are means and not ends in themselves, the essential requisites to help us to realize the deepest energies of the human spirit."²⁴

Maritain and Radhakrishnan both insist on the positive character of the right to freedom. This insistence also implies the goal-orientedness of their conception of freedom. If freedom consists not simply in freedom from compulsions but also involves the freedom to realize certain positive states of being, then goal-orientedness becomes an intrinsic part of the very structure of this right.

The same is true of their analysis of the right to equality. For both Maritain and Radhakrishnan, the initial equality which all men enjoy by virtue of their spiritual nature, is a means to achieve that higher equality which expresses itself through the true unity of mankind and is achieved only through a movement of progressive conquest. In other words, the equality of the primary ontological level is directed towards the equality of the ultimate order which is realized in the state of 'universal salvation' for Radhakrishnan and in the 'unity of the human race' for Maritain.

Thus, we see that Maritain and Radhakrishnan both believe that rights are not to be cherished for their own sake. In their systems, rights are viewed, not as ends in themselves, rather, as means to certain ends.

They emerge as constitutive parts of a comprehensive teleological system and their true significance and value is supposed to lie in their becoming instrumental to the realization of the ultimate goal of this system.

A question arises, does this instrumentality and goal-orientedness diminish the importance of rights? In other words, by making rights means to achieve some specific goals, do Maritain and Radhakrishnan undermine their true importance? In my view, they do not. On the contrary, by providing rights with some necessary goals, they add a new dimension to their significance. My reason for believing so can be explained as follows.

Maritain and Radhakrishnan could easily be accused of undermining the importance of rights if they held that rights were instrumental to achieve ends which were totally exterior to their own nature. But, on the contrary, both these authors maintain that the goals towards which rights are aimed spring from the origin of the rights themselves and thus can be said to be an intrinsic part of their own inner structure.

To make this clearer, let us recall that according to Maritain, the origin and foundation of human rights lies in the concept of natural law. But natural law, as has been earlier noted, in its very ontological element also involves an ideal order. Natural law is an

expression of the 'normality of functioning' of all beings, but in the case of human beings, this expression acquires a specifically moral character and becomes the ideal formula of their development. It lays down the principles of the "proper way in which, by reason of their specific structure and specific ends, they should achieve fulness of being in their behaviour".²⁵ In other words, natural law not only expresses the essential characteristics of human nature, but simultaneously lays down the goals which are essentially implied in its very structure.

"There is," Maritain observes, "by the very virtue of human nature, an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the essential and necessary ends of the human being. The unwritten law or natural law, is nothing more than that."²⁶ Thus we see that the natural law, which provides man with his fundamental rights, also sets down the ends which these rights are supposed to attain. In other words, the origin of the rights and the origin of the ends to which they are means is the same, and therefore, these goals are not externally imposed on rights. Rather,

these ends are intrinsic to their inner constitution. This means that the goal-orientedness of human rights is not an accidental quality or an externally imposed attribute. It is a characteristic which emerges out of the very postulates of their essential structure and therefore is as natural and as important to man as are his basic rights.

Exactly the same can be said with regard to Radhakrishnan's analysis of the concept of dharma and its relation to rights. At various places, I have noted that dharma, in Radhakrishnan's view, is not only the principle of reality, but is also the principle of ideality. While on the one hand it describes the nature of reality, on the other hand, it prescribes the ends which flow from the very structure of its inner constitution. In other words, dharma not only provides the foundation for man's natural rights but is also the source of his natural goals or ends. Due to this identity of the source, rights and goals become intimately related. Indeed, rights presuppose certain ends or goals, and their existence can be justified only in terms of these goals.

But this goal-orientedness, as we can now see, in no way diminishes or lessens the importance of rights.

On the contrary, it seems to add to it. Since the goals pursued through rights are not only intrinsic to the very constitution of human nature, but are also the ultimate ends of human life, in a goal-oriented conception rights are viewed not only as the most significant expressions of basic human dignity, but are also held to be the most effective instruments for the realization of this fundamental dignity in its fullest and purest form. In other words, rights no longer remain simple and passive expressions of the essence of human nature but also become active instruments in realizing this essence and hence should be taken more seriously. This also explains why, despite the goal-oriented character of their concept of rights, the theories of Maritain and Radhakrishnan cannot be considered utilitarian in approach. It is true that both Maritain and Radhakrishnan perceive rights within a teleological framework and define them in relation to certain goals; but it is also true that unlike utilitarian theorists they do not consider rights as 'mere instruments' to be used to attain some external ends. Rights, in both these views, are valuable in themselves and have an intrinsic worth. They can be used as a means to

achieve certain goals, but these goals must form part of the inner constitution of the rights themselves, and must not be imposed externally. Rights aim at certain goals, but these goals must emerge from their own essential structure. In other words Maritain and Radhakrishnan do not perceive rights as mere instruments of utility; rather, they consider them (i.e. rights) to be the most significant expressions of human dignity and recognize their intrinsic worth.

Their concept of rights is effective in the practical realm also because an important consequence of such a goal-oriented view is that it obliges society not only to remove hindrances in the path of the exercise of rights, but also to provide men with the conditions appropriate for that exercise. It also clearly spells out the direction in which this exercise should lead and thus, besides giving purposiveness to the system of rights, also sets the limits for the proper exercise of these rights. In other words, the goal-oriented character of rights not only enhances the positive character of rights and extends the area of society's obligations towards its individual members, but also (by associating rights with specific goals) puts certain regulative limits on the exercise

of these rights by different individuals.

(iv) Correlation of Rights and Duties

The idea of the goal-orientedness of rights necessarily leads towards the discussion of another related point on which Maritain and Radhakrishnan seem to share their views. The foregoing discussion clearly suggests that according to these thinkers, there is an essential correlation between the concept of rights and the notion of duty or moral obligation. The idea of rights as means to an ideal goal is closely connected with the conception of rights as derived from the notion of duty or obligation. The ideal goal to which rights are believed to be instrumental is the goal which it is our duty to achieve. And it is to fulfill this duty that we need certain rights. Explaining this duty-right correlation, Maritain says, "If man is morally bound to the things which are necessary to the fulfilment of his destiny, obviously, then, he has the right to fulfil his destiny; and if he has the right to fulfil his destiny he has the right to the things necessary for this purpose."²⁷ Obviously, here rights are derived from the notion of moral obligation or the concept of duty. But it must be noted that this derivation is very different from the usual derivation of rights from duties or vice-versa. Generally the theories which accept rights-duty correlation characterize this relation in a manner which involves at least two persons. For example, A's rights give rise to certain corresponding duties on the part of B, or A's duties towards B become the basis of certain rights of B. But in the systems of Maritain and Radhakrishnan this correlation is defined in relation to one person only. A's rights are derived not from B's duties but from the duties of A himself. A person's duties give rise to corresponding rights in the sense that these rights are believed to be the necessary means to fulfill those duties.

As a human being, man has certain goals to achieve. These goals are intrinsic to his character as a human person and the very essence and the meaning of his existence consists in realizing these goals. In other words, he is morally obliged to achieve these goals, and to fulfill this obligation is his most fundamental duty. But the very process of the fulfillment of this duty requires that he possesses certain rights and that these rights be considered fundamentally essential and inalienable to his being.

In Radhakrishnan's system, this right-duty correlation emerges in an even stronger and more extended form. In the preceding chapter, I explained that in the framework of varṇa-āśrama-dharma, rights and duties not only correlate at the foundational level but also correspond at the subsequent levels. As mentioned earlier, according to Radhakrishnan, from svabhāva (one's nature) follows svadharma (one's duties) and from svadharma follows adhikāra or rights. In other words, a person's nature determines his duties and duties determine what rights he or she possesses. Not only the origin, but the nature, content and the scope of rights also depend on the nature of the corresponding duties. This duty-derivative

character of rights is best reflected in the scheme of varṇa and āśrama-dharma. As noted earlier, the classification of varṇa into four is fundamentally based on the kinds of duties each is supposed to perform.

The duties of brāhmins are different from the duties of the members of the other three varṇas, and so are their rights. A kṣatriya has some specific obligations and therefore has specific rights which are possessed exclusively by the members of his class, and so on. The same pattern is followed with respect to the classification of rights on the basis of āśrama-dharma. Corresponding to each stage of life are specific ends; corresponding to these ends, are specific duties; and corresponding to duties are specific rights. In the third chapter, I have discussed how this pattern of assigning rights on the basis of duties governs and regulates even the minutest details of Hindu social and legal structure. I also observed that though Radhakrishnan does not completely agree with all the details of this system, he basically approves of this classification and strongly supports the spirit underlying its fundamental postulates.

Thus, we see that in the systems of both Maritain and Radhakrishnan, rights are derived from duties and

are basically conceived as means to fulfill certain obligations. There seem to be some interesting implications of this right-duty correlation. Since duties are derived from nature and rights are derived from duties, two consequences follow:

(a) It presents an interesting example of the reciprocal derivation of 'ought' from 'is' and 'is' from 'ought'. From the nature of man follow his duties, that is, what he 'ought to do'. But from this 'ought' follow his rights, that is, what he is supposed to possess as a part of his nature.

(b) But rights, in such a scheme, not only have the character of a natural fact, but also acquire the character of a value. Their derivation from duties gives them element of 'value' and makes them parts of an 'ideal realm'. In the systems of Maritain and Radhakrishnan, this ideality of rights is clearly manifested in their analysis of different particular rights. Take for example their discussion of the right to freedom and the right to equality'. They both believe that in a way these rights are something 'given', something which men possess as part

of their natural constitution, but in another sense they are also values or ideals still to be achieved. Right to freedom in the sense of 'freedom of choice' may be inherent in man as a natural character of his personhood, but freedom in the sense of autonomy or spontaneity is an ideal and is to be attained through conscious voluntary efforts. "The whole order of human life is not ready made in nature and in things; it is an Order of Freedom; it has not just to be discovered and accepted; it has also to be made."²⁸ The same is true of the right to equality. The equality of the primary ontological level may be something already 'given', but the equality of the ultimate level, that is of the ~~state~~ of sarva-mukti (universal salvation) or the 'unity of mankind', still needs to be conquered or realized through constant efforts.

Another implication of the right-duty correlation is that, in such systems, the nature and status of different rights necessarily correspond to the nature and the mode of duties from which they are derived. The more fundamental and essential the duty is, the more fundamental and essential will be the corresponding right. In other words, the degrees of the inalienability, universality, absoluteness,

and unconditionality of rights will be determined by the mode and the degrees of the different characteristics of the duties for which these rights are supposed to function as means. This kind of approach will naturally lead towards hierarchical categorization of rights in which rights will be placed in order of their relative fundamentality determined by the fundamentality of the obligations or duties they are meant to fulfill. The multi-levelled determination of rights in the systems of Maritain and Radhakrishnan clearly exhibits this pattern of hierarchical ordering. The rights which are considered fundamentally inalienable and universal are the rights which are derived from the duties which are fundamentally inalienable and universal in character. Human rights are given priority over the rights of a civic person or the rights of a working person because, in comparison to the latter two, they flow from the duties which are more closely related to the most fundamental and essential aspects of man's nature. Even amongst different human rights, this hierarchical ordering seems to be operative.

Though neither Maritain nor Radhakrishnan has ever presented a clear account of the order of priority in which rights should be systematized at various places in their writings they suggest that they both believe in

the primacy of the 'right to freedom' over any other right. This leads to a discussion of another point of fundamental agreement between these two thinkers.

(v) Centrality of the Right to Freedom

As mentioned above, both Maritain and Radhakrishnan seem to believe that amongst all human rights, the 'right to freedom' is of central importance. They also define freedom in a similar manner and emphasize its teleogogical character.

We have seen that both Maritain and Radhakrishnan maintain that freedom not only constitutes the essence of man's being, but is also the prime value man should strive to achieve. In Radhakrishnan's system, mokṣa or spiritual freedom is described as 'param-puruṣārtha', (the ultimate and the highest end) and he maintains that all human activities, including activities related to the pursuit of artha, kāma and dharma should be directed towards the realization of this supreme end. In other words, since freedom is both the essence and the ultimate goal of human life, man's fundamental duty consists in achieving it in its purest and most perfect form. Due to the primacy of this duty, the right related to it

also acquires supremacy and is given priority over all other rights. As stated earlier, Radhakrishnan firmly believes that the right to life, right to property, and right to equality are important not because these are ends in themselves, but mainly because they are either expressions of man's basic freedom or are means to realize it. "The progress of the consciousness of freedom," he says, "is the essence of human history."²⁹ Therefore, "If civilization has to survive, we must accept that its essence does not consist in power, glory, strength, wealth and prestige, but in the free activity of the human mind..."³⁰ This is why "the value of a society is to be measured, not so much by the sort of public order and efficiency it maintains, as by the degree to which its ways of action allow freedom of thought and expression..."³¹

At another place he observes, "There are certain things without which we cannot live," but there are "certain other things without which we should not care to live."³² It seems that freedom, in his view, comes into the second category and, therefore, he even goes to the extent of saying, "without this freedom, whatever else we may have, we are dead."³³

All these remarks clearly suggest that in Radhakrishnan's view, the 'right to freedom' is the most

fundamental right amongst all the basic rights of man, and therefore should be given priority over all other rights.

Maritain also seems to share this view. In his system, freedom constitutes the essence of personality, and since human rights are rooted in man's personality, right to freedom inevitably acquires the most prominent place amongst all the other rights. In the discussion of Maritain's concept of the right to life, right to property and right to equality, I have clearly pointed out that like Radhakrishnan, Maritain also maintains that these rights are primarily meant to help man in the realization of the 'terminal freedom' (the freedom of autonomy) and therefore, in relation to the right to freedom, have only a means value. Maritain also holds that the entire history of man's fortunes and misfortunes "is the history of his effort to win together with his own personality, freedom of independence."³⁴ So great is his faith in man's basic freedom that he defines 'person' as "a universe of spiritual nature endowed with freedom of choice and constituting to this extent a whole which is independent in face of the world..."³⁵ He maintains that, "neither nature nor the state can lay prey to this universe without its permission. And God

himself, who is and acts within, acts there in a particular manner and with a particular exquisite delicacy, which shows the value He sets on it: He respects its freedom, at the heart of which He nevertheless lives; He solicits it, He never forces it."³⁶ In other words, like Radhakrishnan, Maritain also believes that freedom not only constitutes the essence of man's being but is also the supreme value to be realized, and therefore, the right to freedom should be placed at the centre of every human rights system. In Man and the State, his priority for the right to freedom becomes even clearer when he distinguishes his own personalist position from that of liberal individualism and communism, and maintains that what distinguishes his own theory is the fact that unlike the advocates of the other two, he sees the mark of human dignity first and foremost in man's freedom of autonomy.³⁷

Advocates of the other theories, he observes, may also "lay down on paper similar, perhaps identical, lists of the rights of man." But "they will not, however, play that instrument in the same way. Everything depends upon the supreme value in accordance with which all these rights will be ordered and will mutually limit each other. It is by virtue of the hierarchy of values to which we

thus subscribe that we determine the way in which the rights of man, economic and social as well as individual, should, in our eyes, pass into the realm of existence."³⁸ And Maritain leaves no doubt about it that in his 'hierarchy of values', freedom of independence or 'autonomy' enjoys the place of the 'supreme value' and therefore, the 'right to freedom' should be given primacy over all other rights.

But it should be carefully noted that this supremacy of freedom, according to both Maritain and Radhakrishnan, does not consist in total disregard for all the other values. Nor does it manifest itself necessarily through the absence of all regulations and obligations. On the contrary, in their view, freedom in its true sense includes all the other values as ingredients of its essential constitution and manifests itself through a willing acceptance of one's natural obligations. In Radhakrishnan's words, freedom "is attained not through an escape from limitations but through the willing acceptance of obligations."³⁹ Maritain expresses almost a similar view when he says, "The autonomy of an intelligent creature does not consist in its receiving no rule or objective measure from a being other than itself. Rather, it consists in its voluntarily conforming itself to such

rules and measures, because they are known to be just and true, and because of a love for truth and justice."⁴⁰

(vi) Balancing of Universality with Relativity

Another characteristic feature common to the theories of Maritain and Radhakrishnan relates to the dynamism of their approach, through which they try to balance universality and absoluteness of rights against the relativity and plurality necessarily associated with the progress of human history in time.

To achieve this balance, Maritain mainly uses the gnoseological element of the concept of natural law. We have seen that according to him, from the point of view of the ontological element, precepts of natural law are necessarily universal, immutable and absolute in character. But as soon as the element of human awareness of these is taken into consideration, some relativity necessarily creeps in.

Natural law, we are told, is an unwritten law. Men know it with greater or less difficulty, and in different degrees, through connatural inclinations. Though these inclinations are essentially rooted in man's being, knowledge through them is necessarily bound to be in proportion "to the degree of moral experience and self reflection and of social experience also, of which man is

capable in the various ages of his history."⁴¹ But, as we know, moral and social experience necessarily varies according to the political, social, cultural, religious and economic conditions of different societies, at different points in time. This is the reason why despite the universality of the self-evident first principle of the natural law, one finds an immense amount of relativity and variability in particular rules, customs and standards prevalent in different societies at different times. As regards the human knowledge of the natural law, this kind of variability is natural, and therefore must necessarily be taken into account in understanding the nature of the rights which flow from it.

The same precepts of natural law can be interpreted differently by different people at different times, and accordingly may give rise to the conception of distinct kinds of rights. It is also possible that, in some societies, people may not even be aware of certain postulates of this unwritten law, and therefore might not even be able to conceive of some rights which people in other societies, at the same time, might be using as the foundation of their social structure. Moreover, as human knowledge progresses, even people in

the same society may have different conceptions and interpretations of the basic postulates of natural law. This, in Maritain's view, explains the reason for the conflict between 'old' and 'new' rights. This conflict arises because sometimes, 'old rights' totally disregard the need for change, and instead of giving way to 'new rights', bitterly oppose them, and thus block the development of society. "That was the story of the right to a just wage and similar rights in the face of the right to free mutual agreement and the right to private ownership. The fight of the latter to claim for itself a privilege of divine, limitless absolutism was the unhappy epic of the XIXth century."⁴²

Conversely, sometimes 'new rights' wage war against the 'old' ones and cause them to be totally disregarded. "At the time of the French Revolution, for instance, a law promulgated in 1791 prohibited as "an attack on freedom and on the Declaration of the Rights of Man" any attempt by workers to associate in trade unions and join forces in refusing to work except for a given wage. This was considered an indirect return to the old system of corporations."⁴³

But this variability in the conception of rights and the conflict between different kinds of rights, in Maritain's view, proves nothing against the universality

of these rights. Despite all relativities and particularities, man's fundamental rights retain their universal character because, in the first place, man owns these rights as a man (by virtue of his nature as a man) and not as a member of a particular society; secondly, to a great extent, the relativity, variability and the conflicts occur mainly at the level of the law of nations and the positive law, where the specific modalities of the rights are determined. Though differences occur at the level of natural law also, they primarily relate to the knowledge of its precepts and prove nothing against the absoluteness and universality of their authority from an ontological point of view. Moreover, as Maritain himself says,

....it is natural law itself which requires that whatever it leaves undetermined, shall subsequently be determined, either as a right or a duty existing for all men by reason of a given condition of fact, or as a right or a duty existing for certain men by reason of the human regulations proper to the community of which they are a part. Thus there are imperceptible transitions (at least from the point of view of historical experience) between Natural law, the Law of Nations and positive law. There is a dynamism which impels the unwritten law to flower forth in human law, and to render the latter even more perfect and just in the very field of its contingent determinations.⁴⁴

It is because of this basic dynamism that rights rooted in natural law retain their universality, and still accommodate relativity when taking political and social form in particular communities.

Radhakrishnan adopts almost the same approach with respect to the concept of dharma. In the second chapter, I explained that in spite of recognizing the great importance of the eternal, absolute and universal truths contained in the vedas and smṛiti (the primary authoritative sources of dharma), he places equal importance on introducing new changes in the content of dharma as and when they are needed. In his view, "though dharma is absolute, it has no absolute and timeless content."⁴⁵ At another place he observes, "while the truths of the spirit are permanent, the rules change from age to age."⁴⁶ And therefore he maintains that "the rules of dharma are the mortal flesh of immortal ideas, and so are mutable."⁴⁷ But the recognition of this mutability does not make dharma less significant or less authoritative. On the contrary, it transforms dharma into a living and dynamic force which not only outlives different institutions which are products of different specific times, but also provides a concrete base for sustaining unity amidst diversity, universality

within relativity and permanence through changes. These characteristics of dharma are naturally reflected in the system of rights based on its postulates.

Explaining the reasons for variability in the precepts of dharma Radhakrishnan says, "There are universal moral principles based on human nature as such; there are variations in our understanding of them from one period to another. A change of circumstances alters the manner of their application. Institutions as applications of certain fundamental principles to contingent circumstances are subject to alteration."⁴⁸ (One can hardly help but notice the similarity of approach between Radhakrishnan and Maritain on this point.)

Besides pointing to the sources of relativity and contingency of the rules of dharma (and therefore of rights based on them), this statement also clearly suggests that universality and continuity are more fundamental features of dharma than the changes introduced from time to time. Indeed, the true strength of dharma lies in its sustaining power and endurance through changing times. "It endures because it has its roots in human nature, and it will outlive any of its historical embodiments."⁴⁹ In other words, the concept of dharma not only contains some universal, imperishable and eternal principles, but

also provides enough room for introducing relevant changes in accordance with the needs of different times and places. Radhakrishnan's definition of the concepts of āpad-dharma and yug-dharma also seems to follow from this characteristic of dharma. "To uphold the sanātana dharma," he says, "is not to stand still. It is to seize the vital principles and use them in modern life."⁵⁰ Those who have the inner apprehension of this truth, "will be able to handle new experiences and renew the sustaining power of dharma."⁵¹

Finally, dharma "is an elastic tissue which clothes the growing body. If it is too tight it will give way, and we shall have lawlessness, anarchy and revolution. If it is too loose it will trip us and impede our movement."⁵² The same is the case with the system of rights based on it. If it is absolutely universal and permanent in character, and does not provide any scope for relativity and change, it will block the progress of society.

("If the living faith of the dead becomes the dead faith of the living, the civilization will die.")⁵³ But if it is completely relative and does not have any immutable universal principles at the base, it will soon turn society into anarchy, where rights will be determined by might and lawlessness will be the law. This is why Radhakrishnan constantly insists on balancing the

elements of universality and relativity. In his view, the Hindu scheme of rights attempts to achieve this balance through its concept of varṇāśrama dharma, which on the one hand lays its foundation on the recognition of some basic universal principles of human nature, but on the other hand also takes care of the elements of relativity by distributing rights according to an individual's varṇa and the particular stage of his life.

Thus we see that there are some basic similarities between Maritain and Radhakrishnan's concept of rights. They share views on some fundamental points and seem to agree with each other on major issues concerning rights. The next section examines the major differences in their characterization of rights.

III

DIFFERENCES IN THE GENERAL CHARACTERISTICS OF RIGHTS

Along with these fundamental similarities, there are also some differences between the views of Maritain

and Radhakrishnan. Interestingly, the first difference concerns the very first similarity described above. In the beginning of the second section I noted that one of the fundamental points of agreement between Maritain and Radhakrishnan consists in the fact that they both ground their notion of human rights on the concept of spiritual unity. For both of them human rights are rooted in the spirit and are primarily expressions of man's ultimate unity with his fellow beings as well as the Supreme Being. Both believe that for any human rights theory which aspires to recognize and promote man's essential dignity, the idea of spiritual unity is crucially important and should be considered central to any conceptualization in this regard. But despite this initial fundamental agreement, they seem to approach the concept of unity from two different angles.

For Radhakrishnan, the idea of unity is fundamentally the idea of man's identity with Brahman - the non-dual Absolute. He begins with the assumption of this unity and explains plurality and differences in terms of it. In his absolute non-dualism, 'the One' which is ultimately real, is 'given'; it is the 'many' which must be explained and justified. In his scheme, the unity of pure consciousness, or the original and the ultimate

oneness of 'Being' is taken as the fundamental postulate of the system and all distinctions and individuating differences are explained merely as the differences pertaining to the mode and level of expression of the basic unitary entity. But contrary to this, in Maritain's system, we begin with 'plurality' and arrive at 'unity', which is explained as the principle of the spiritual essence commonly shared by all the members of the human society. Clearly for him plurality is 'given' and unity is explained on the basis of the common element present in the essential structure of all the individual members.

To put it in other words, in Radhakrishnan's system, spiritual oneness or unity of man's essential being is assumed as a self-evident principle, and the visible multiplicity with its individuating differences is explained in terms of the differences of the levels of reflection or manifestation of the ultimate non-dual Reality; in Maritain's system, the fact of visible multiplicity and the distinction individuals are accepted as 'given', and unity is explained as the unity of the spirit, which is grounded in the conception of God and is shared by all.

individuals as the essential element of their existence as persons. Obviously, there is a difference of approach. But it might be noted carefully that this difference is neither indicative of any fundamental, unresolvable contradiction between the views of the two, nor does it suggest that they have any unjustified bias for one concept against the other.

The assumption of unity does not lead Radhakrishnan to explain away individual differences and multiplicity as mere illusions or as totally unreal. Nor does Maritain's recognition of the reality of individuality imply that for him unity is simply a mental construction. I have explained earlier how vigorously Radhakrishnan defends advaitin metaphysics against the charge of rendering the empirical world illusory and how eager he is to save the meaning of individual existence. In the same manner, I have shown that Maritain also asserts the existential reality of the essential unity, which he explains in terms of 'personality' - shared by all individuals in and through the pure personality of the Supreme Person, God. Indeed, both Radhakrishnan and Maritain maintain the centrality of the concept of unity and recognize its importance in formulating the concept of man's basic rights. Their difference lies primarily in the manner in which they approach this concept. In the system of the former, the original

unity of the 'One' is perceived as enlarged and reflected into 'many', while in the system of the latter, the existence of 'many' is believed to receive its meaning in and through the unity of the Supreme Person. While in the former, multiplicity is explained as internal identity in externalized form, in the system of the latter, unity is explained through the internalization of apparent external relations. This difference of approach is reflected to some extent in their political and social philosophy in general, and influences their conception of rights in particular.

One area in which this difference clearly manifests itself concerns their views with regard to the ontological status and significance of material individuality. We have seen that despite putting great emphasis on the essential unity inscribed in the very depth of human personality, Maritain constantly reminds his readers that material individuality, with all its implications of division and distinctions, is equally real and important. The essential bipolarity of man's being is one of the fundamental postulates of Maritain's system and has greatly influenced his treatment of different political and social issues. I have noted that he not only identifies and explains the cause of the tension

existing in man's relationship to society in terms of this bipolarity, but also attempts to find the solution of this problem through it. He firmly believes that the 'paradox of social life' can be solved only through a proper recognition and treatment of this bipolarity. We have seen that Maritain believes that "each of us is in his entirety an individual and in his entirety a person."⁵⁴ In man, personality and individuality are not two separate things. "There is not in me one reality, called my individual, and another reality, called my person. One and the same reality is, in a certain sense an individual, and, in another sense, a person."⁵⁵ And therefore, to resolve the tension and conflict between man and society, we should explain their relationship both at the level of person as well as at the level of individual, and should try to keep a balance between these two levels. In other words, to resolve the 'paradox of social life', we not only need to explain man's relationship to society and his fellow beings from the point of view of these two levels, but should also emphasize the need to seek a proper balance between these two aspects of man's nature. Since both personality and individuality are equally real and important aspects of man's being, neither should be ignored or neglected in favour of the other, and the primary concern of a political and social theory should be to keep an 'ideal

balance' between the two. Maritain's own theory is an attempt to obtain such a 'balance' and he attaches great value to it.

But in Radhakrishnan's Absolute non-dualism, the concept of 'balance' gives way to the concept of 'transcendence' and 'transformation'. In his view, since the ultimate Reality with which we are essentially identical is spiritual in character, our final aim should not be to seek a balance between spirituality and materiality, but to gradually transcend materiality and move towards spirituality. As I have explained earlier, despite recognizing the importance of man's material existence as individual empirical self or as jiva, Radhakrishnan makes it sufficiently clear that, in his view jiva is simply a transitional stage in man's journey towards the state of ātman. It has only a phenomenal reality and therefore, in order to reach to the ultimate Reality, it must be totally transcended. In other words, spiritual liberty or self-realization, the ultimate goal of all human endeavours, consists, not in balancing the two antagonistic elements, but in transcending one in favour of the other.

In all fairness to Radhakrishnan it should be noted that, for him, transcendence does not necessarily mean

rejection or suppression. On the contrary, in his view transcendence truly consists in elevating or transforming one into the other. As he says, "Nothing is to be rejected: everything is to be raised."⁵⁶

At another place he states that in the process of spiritual self-realization, "we are not... abolishing our individuality but transforming it into a conscious term of the universal being, an utterance of the transcendental divine."⁵⁷ Man's ultimate goal, according to him, consists in a "progressive attempt at self-realization, the lifting of the empirical ego into the transcendental plane, mind in its immediacy into mind in its ideal perfection."⁵⁸

Obviously, unlike Maritain, Radhakrishnan believes that the point of moral and social efforts lies, not in attaining 'balance' between materiality and spirituality or individuality and personality, but in gradually transcending materiality and moving towards spirituality until the realization of the state of pure and perfect spirituality is fully attained. This difference naturally influences their theories of rights. Maritain's analysis of different rights clearly manifests the 'balancing-attitude'. He not only attempts to balance the rights related to the spiritual aspect of man's

being with the rights concerning his material aspect, but also tries to make sure that even in the analysis of each specific right, both these aspects are given equal consideration. However in Radhakrishnan's system, though the material aspect is not totally ignored or rejected, it is given only a secondary importance and the significance of the rights related to it is believed to consist primarily in becoming means to the realization of the spirituality of man's being.

This relative difference of opinion on the relationship between matter and spirit, individuality and personality gives rise to another important difference. Though both Maritain and Radhakrishnan oppose individualism as well as collectivism and try to save their theories from the weaknesses of both of these extreme positions, yet it seems that while Radhakrishnan primarily operates within the framework of a group-scheme, Maritain's scheme of rights can be said to be primarily individual oriented (individual here should be understood not in the sense of a material individual but as an individual entity - as a unit of society). I have shown that Radhakrishnan is highly conscious of man's dignity as a spiritual being and places great importance on the individual's

basic rights. He emphatically says that "...the humblest individual has the spark of spirit in him which the mightiest empire cannot crush. Rooted in one life, we are all fragments of the divine, Sons of immortality, amṛtsaya Putrāḥ."⁵⁹ But despite recognizing the dignity and the importance of the individual in the strongest terms, Radhakrishnan never attempts to disguise his firm conviction that man in his social life should primarily be seen as a member of a group, and not as an isolated, solitary independent individual. "Man," he says, "is not an abstract individual. He belongs to a certain social group by virtue of his character, behaviour, and function in the community."⁶⁰ And therefore, any theory which aspires to offer a profound and plausible scheme of human rights, according to him, should not conceive of man merely as an independent individual; rather, it should take into account his social background and group-affiliations and should distribute rights accordingly. In other words, for the purpose of assigning rights and duties, groups should be taken as primary units and the nature and the mode of an individual's rights should be determined on the basis of his group-membership. The varṇa system of Hindu tradition is unmistakably an example of such a scheme of rights, and I have shown

that Radhakrishnan not only presents a sympathetic exposition of the fundamental features of this fourfold scheme but also attempts to justify its basic postulates and offers strong arguments in support of its founding principles. I have discussed these arguments in the third chapter, so I shall not repeat them here. However, it might be noted that the concept of the group-scheme is not only consistent with the basic premises of Radhakrishnan's metaphysical system, but also suits his predominantly unity-oriented world-view. The idea of unity not only provides the foundation for Radhakrishnan's metaphysical system, but also provides the ultimate goal of his political and social theory. And the group-scheme is just one of the ways in which this unity-oriented ontology manifests itself through the social structure.

Groups, in Radhakrishnan's view, "are successive stages in man's constant approach to universality."⁶¹ And therefore, a political and social system which aims at this universality and defines rights as means to attain this goal, should operate within the framework of the group-scheme. In Radhakrishnan's system, the culminating point of this theory comes in his conception of 'sarva-mukti' or 'universal liberation', in which even the concept of freedom which generally is believed to have a predominantly individualist character, acquires a holistic

tone. We have seen that Radhakrishnan insists that the ultimate freedom of the individual can be attained only when humanity as a whole attains freedom and therefore an individual's right to freedom is truly realized only when each member of this universal group, that is, the whole of mankind, realizes it in its perfect form.

Maritain's outlook in this respect is slightly different from that of Radhakrishnan. In spite of all the emphasis he puts on the concept of 'spiritual unity', Maritain makes it sufficiently clear that the basic units of his political and social philosophy are individual persons and not the groups they are members of. In his scheme, rights are primarily defined as rights belonging to individual persons (distinct and separate from each other in their essential identity), and not as rights belonging to individuals as members of a particular group. Moreover, unlike Radhakrishnan, Maritain does not believe in the ultimate extinction of all individuality. Nor does he describe 'final liberty' as the state of perfect 'non-dual identity', as it is described in Radhakrishnan's absolute non-dualism. In his view, even at the transcendental level persons retain their separate identity and individuality, and therefore one does not find any corresponding idea of Radhakrishnan's concept of universal salvation in Maritain's scheme.

In short it can be said that while Maritain's system is primarily individual-oriented, Radhakrishnan's system is group-oriented. However, it might be noted that Radhakrishnan's group-oriented scheme is not a version of 'collectivism', nor does Maritain's individual-oriented view imply a 'bourgeois individualism'. Both Maritain and Radhakrishnan are totally against all forms of 'collectivism'. They strongly criticize all those theories which undermine the value of human freedom and dignity and they firmly maintain that society should be organized on the principles of democracy. This is why, despite his group-oriented scheme, Radhakrishnan holds that, "the individual is not a mere cell of the body or a stone of the edifice, a mere passive instrument of its collective life."⁶⁹ At another place he says, "the individual cannot be dissolved completely in the social whole,"⁶³ and therefore collectivism, which treats man simply as an instrument or a part of the 'whole', should not be accepted.

In a similar manner, despite his individual-oriented view, Maritain rejects 'liberal

individualism', which, according to him, makes individuals 'little gods', and thus undermines the very principles of social life. Liberal individualism, in his view, 'is not merely false in theory; it is finished in fact.'⁶⁴ It ignores the importance of man's communal life and thus deprives him of the very basis of his earthly existence. It inaugurates the social divinization of the individual and through an inevitable internal dialectic leads to the social divinization of the State, and finally gives way to revolutionary totalitarianism. Therefore, though respect for the dignity of an individual human being should be a fundamental principle of a human rights theory, this respect should not take the form of 'individualism', and the principles of communal life must not be violated.

IV

SOME BRIEF CONCLUDING REMARKS

From the foregoing discussion it becomes fairly clear that (1) despite all the differences

of their cultural background and religious and metaphysical outlook, Maritain and Radhakrishnan share a lot in their political and social philosophy. As is evident, the similarities of their view outnumber the differences, and in fact, at points one begins to think that they are trying to express the same ideas, though in different terminology.

(2) But this does not mean that the differences in their views are of no significance. On the contrary, as I have shown, though less in number, the differences in their metaphysical outlook are of fundamental importance and play a significant role in the development of their conception of rights. I have already explained how their differences regarding the nature of ultimate Reality influence their political and social philosophy, in particular, how their differences concerning man's relationship to the ultimate Reality affect their theories of rights.

(3) But without undermining the importance of these differences, one can still say that on major points, Maritain and Radhakrishnan generally agree with each other. Their agreements are of substantial importance while some of their differences primarily concern the method of their approach towards some commonly shared concepts. For example, consider their treatment of the spiritual aspect of man's being. As I have shown, both of them believe in the primacy of the spirituality and maintain that rights not only originate from the spiritual aspect of man but also aim at it as their ultimate goal. They also define spirituality in almost similar fashions, and see it as a distinctive characteristic of human nature. But they seem to approach it from two different ontological perspectives, and therefore at two slightly different conceptions of rights. While in Maritain's system spirituality is perceived only as one of the distinctive features of human nature, in Radhakrishnan's system, it is believed to be the only reality.

Undoubtedly this difference of approach influences their respective theories of rights. While Radhakrishnan's excessive emphasis on the spiritual aspect of the non-dual Reality leads him towards a specific kind of group-scheme and makes his concept of rights primarily holistic or unity oriented, Maritain's recognition of the bipolarity

of man's being makes his theory primarily individual oriented. Unlike Radhakrishnan, in Maritain's theory, the material aspect of man's being is given equal emphasis and consequently the related rights also become equally important.

But, as has been mentioned earlier, this difference of approach in no way makes their theories contradictory or totally opposed to each other. On the contrary, they seem to complement each other and thus pave the way for attaining a more comprehensive view of the notion of rights.

The other differences of their theories can also be analysed in a similar manner, and this provides the basis for developing a conception of rights which is more profound in its perspective and is wider in its scope.

In the next chapter I shall present a critical analysis of the basic features of the theories of Maritain and Radhakrishnan and shall try to point out the fundamental strengths and weaknesses of their concepts of rights.

NOTES TO CHAPTER III

1. Maritain, J., Rights of Man, p.37.
2. See Radhakrishnan, S., Indian Philosophy, Vol. II, p.484.
3. Ibid., p.560.
4. See Radhakrishnan, S., "The Spirit in Man", p.500.
5. Maritain, J., Man and the State, p.96.
6. Radhakrishnan, S., Eastern Religions, p.81
7. Radhakrishnan, S., Religion and Society, p.66.
8. Maritain, J., Person and the Common Good, p.43
9. Maritain, J., Scholasticism and Politics, p.66.
10. Maritain, J., Person and the Common Good, pp.74-75.
11. See Radhakrishnan, S., Hindu View of Life, p.90, Compare, "A single human soul is worth more than the whole universe of material goods. There is nothing higher than the immortal soul, save God" (Maritain, J., Person and the Common Good, p.61).
12. Maritain, J., Person and the Common Good, pp.37-38. Emphasis original.
13. Ibid., p.38.
14. Maritain, J., Existence and the Existent: An Essay on Christian Existentialism, trans. Lewis Galantiere and Gerald B. Helan (New York: Image Books, 1956), p.88.
15. Radhakrishnan, S., Eastern Religions, p.97.
16. Ibid., p.355.
17. Ibid., pp.39-40. Emphasis added.
18. Ibid., pp.45-46. Emphasis original.
19. Radhakrishnan, S., Religion and Society, p.63.
20. Maritain, J., Person and the Common Good, p.66.
21. Radhakrishnan, S., Eastern Religions, p.98.
22. Ibid., p.99.

23. Maritain, J., Scholasticism and Politics, p.136. Emphasis original.
24. Radhakrishnan, S., Religion and Society, p.59.
25. Maritain, J., Man and the State, p.87. Emphasis original.
26. Ibid., p.86.
27. Maritain, J., Rights of Man, p.37.
28. Maritain, J., Freedom in the Modern World, p.80.
29. Radhakrishnan, S., Introduction to Mahatma Gandhi, p.20.
30. Radhakrishnan, S., Religion and Society, p.66.
31. Ibid., p.64.
32. Ibid., p.65.
33. Ibid., p.66.
34. Maritain, J., "The Conquest of Freedom" in Freedom, Its Meaning, ed. Ruth Nanda Anshen, trans. Harry McNeil and Emmanuel Chapman (London: George Allen and Unwin Ltd., 1942), pp.215-216.
35. Maritain, J., Integral Humanism, p.9.
36. Ibid.
37. See Maritain, J., Man and the State, pp.106-107.
38. Ibid.
39. Radhakrishnan, S., Eastern Religions, p.368.
40. Maritain, J., "The Conquest of Freedom", in The Social and Political Philosophy of Jacques Maritain, p.31.
41. Maritain, J., Man and the State, p.94.
42. Ibid., p.103.
43. Ibid., pp.103-104.
44. Maritain, J., Rights of Man, p.40. Emphasis original.
45. Radhakrishnan, S., Religion and Society, p.114.

46. Ibid., p.113.
47. Ibid., p.108.
48. Radhakrishnan, S., "Reply to Critics", p.839.
49. Radhakrishnan, S., Religion and Society, p.114.
50. Ibid., p.115.
51. Ibid., p. 117
52. Ibid., p.119.
53. Ibid., p.117.
54. Maritain, J., Person and the Common Good, p.56.
55. Ibid., p.43.
56. Radhakrishnan, S., An Idealist View of Life, p. 115
57. Radhakrishnan, S., Eastern Religions, p.137.
58. Radhakrishnan, S., An Idealist View of Life, p. 111
59. Radhakrishnan, Religion and Society, p.66.
60. Radhakrishnan, S., Eastern Religions, p.356.
61. Ibid.
62. Ibid., p.370.
63. Radhakrishnan, S., Religion and Society, p. 65
64. Maritain, J., Freedom in the Modern World, p.63.

CHAPTER IV

CRITICAL EVALUATION AND CONCLUSION

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In the last three chapters I have presented an analysis of the metaphysical foundation of the theories of rights propounded by Maritain and Radhakrishnan and have compared the general characteristics of their concepts of rights. Chapters one and two are devoted exclusively to the exposition of the views of these authors respectively, and in the third chapter, a comparative analysis of their notion of rights along with an examination of the interrelationship between the key concepts of their theories is presented.

So far, with the exception of some occasional remarks, I have not put Radhakrishnan's and Maritain's views to any extensive critical examination. Indeed, as announced in the 'Introduction' my main objective in the preceding chapters was not to critically evaluate, but to present an analytic account of the views of these two thinkers as sympathetically as possible. And for this purpose, to use Radhakrishnan's own words, I "tried to adopt, what is acknowledged to be, the true spirit of philosophical interpretation,"¹ viz. to interpret the writers and their thoughts at their best. Such an approach not only does justice to the views of the thinkers studied, but also enhances and deepens our understanding of the complexities

and subtle intricacies of their systems. For the purpose of this thesis, this approach was all the more necessary for, as stated at the beginning, the primary aim of this project was to prepare the grounds for the possibility of a fruitful dialogue between these two thinkers and to assess the extent and scope of possible agreement and cooperation between the traditions they represent. In fact, this thesis is meant to be a preparatory step towards building a more comprehensive and more widely acceptable theory of rights, which not only goes beyond the boundaries of parochial nationalism but also transcends the narrow limits of cultural, racial and religious biases and prejudices.

Having primarily this purpose in mind, I made an effort to present these thinkers at their best, so that the important points of their respective theories might be clearly grasped and a mutual understanding of their fundamental principles developed in due course. For the sake of clarity in the presentation I wanted to keep the 'exposition' separate from the 'criticism'. But this omission of criticism was simply a device adopted to facilitate a clear, proper and sympathetic understanding of the views of these authors, and therefore, should in no way be taken to suggest that I am in total agreement with them, or am totally unaware of the problems and difficulties involved in their views.

Like any other philosophical theory, the theories advocated by Maritain and Radhakrishnan also have their weak points and howsoever sympathetic one might be in recognizing the strengths of their views, the presentation of their respective theories cannot be considered fairly objective unless it also includes an analysis of their weaknesses. In what follows, I shall critically evaluate the fundamental postulates of these theories and shall try to identify weak as well as strong points of their basic structure. But before attempting this task, let me make some brief preliminary remarks, which, I believe, will help in increasing the clarity of the ensuing discussion.

As I have been selective in the presentation of the views of the authors so I have to be selective in their critical assessment also, focusing attention primarily on those aspects of their theories which have a direct bearing on their conception of rights. Even in this selected area, I shall not go into the details of the metaphysical issues as such, and would rather direct my attention primarily towards the evaluation of their implications in the field of political and social philosophy. In other words, my criticism will not be purely metaphysical in nature. I shall not assess the truth and falsity or the plausibility and implausibility of the metaphysical concepts for their own sake. Instead, I shall concern myself mainly with the examination of

their tenability in providing a sound foundation for a theory of human rights and will assess their value only on the basis of their plausibility in this respect.

The points raised in the critical analysis can roughly be said to be of two kinds. Some of these will be concerned with problems related to the theoretical aspects of the systems of these authors. In other words, these points will deal mainly with those issues and problems which are primarily theoretical in nature and the adequacy or inadequacy of the concepts discussed will be evaluated on theoretical grounds only. The other points will be of a practical nature -- will primarily be concerned with the problems involved in the implementation of these theoretical principles in real life situations.

I shall try to analyse how, given their theories, these authors would respond to concrete problems concerning the implementation of rights, and how far they succeed in providing satisfactory criteria for settling disputes of a practical nature.

I

WEAKNESSES

I shall begin the critical evaluation by examining the very foundation of the concept of rights as presented in the systems of Maritain and Radhakrishnan. I have shown that both of them base their theories of rights on their concept of human nature and maintain that not only the existence of rights but also the nature and the scope of their exercise depends on the essential characteristics of man's true being. In what follows I shall examine the soundness of this foundation and shall try to identify its weak as well as strong points.

I shall begin my analysis with the discussion of Maritain's concept of human nature. Maritain defines human nature in terms of personality and individuality, and as we know, in this bipolar characterization lies the essence of his concept of man. In fact, the distinction between personality and individuality is of central importance to Maritain's philosophy of man, and as he himself asserts, the tenability of the basic principle of his political and social philosophy primarily rests on the validity and tenability of this distinction. Through it he tries to resolve the disputes

and dilemmas concerning man's personal as well as his social life, and as we have seen, only with the help of this distinction is he able to explain the paradoxical nature of man's relationship to society and its institutions. . Undoubtedly, the use of this metaphysical distinction in the field of political and social thought is one of the distinguishing features of Maritain's philosophical system and whatever he says with regard to man's relationship to society and its common good, his status vis-à-vis the authority of the state and the extent and the scope of his rights, must be interpreted in the light of the basic premises of this distinction. The distinction between personality and individuality constitutes the hard core of Maritain's political and social thought in general, and in particular, the validity of his theory of rights depends on the tenability of this distinction.

But is this distinction well founded and clear enough to support and sustain a theory of rights which is not only universal in its scope but is also efficient in its application and functioning? Maritain believes it to be so, and claims that since this distinction has been a part of the intellectual heritage of mankind for centuries and is presupposed by almost all cultures and philosophical traditions in one form or the other, it

can safely be assumed that it is sufficiently clear and wellfounded to yield a sound theory of rights. But there are some thinkers who disagree with Maritain on this point. They argue that despite all the importance Maritain gives to this distinction, he never succeeds in clarifying the basic principles underlying the concepts of individuality and personality. Some of these critics believe that Maritain is not only ambivalent about the meaning of this distinction but can also be accused of being arbitrary in its conceptualization. They also claim that rather than solving any difficulty, the dichotomy of the individual and person creates more problems for Maritain's political and social philosophy.²

In my view, the very first problem concerning this distinction arises with respect to its tenability in the metaphysical realm itself. Despite Maritain's persistent efforts, it never becomes sufficiently clear whether in his view, personality and individuality are two distinct elements in man's being or are simply the product of two different ways of looking at one and the same reality. At times, Maritain seems to incline towards the former alternative, but at other times he seems to support the latter one, creating a vagueness in his account of this distinction.

In some places, Maritain characterizes individuality and personality as two opposite poles³ (material and spiritual) each of which has its own "ontological physiognomy."⁴ These are described as "two substantial co-principles"⁵ of one and the same being namely man; and since human beings are held in between these opposite poles, their life in society is marked by typical paradoxes of part-whole relationships. Though not strictly Cartesian in character, this description still gives the impression of some kind of dualism, and therefore suffers from all those problems and difficulties dualist positions generally suffer from. Some of the major problems of dualist systems concern the difficulties involved in explaining the relationship between the two separate, independent entities. A thorough-going dualism either creates an unbridgable gulf between the two entities and thus fails to account for the reality of our unitary experience, or, if it tries to relate these entities, their relationship is generally explained by positing a third entity through which they relate to each other. But then, this third entity also must be related to the earlier two and this can be done only by positing another entity and so on. This explanation obviously leads to infinite regress, and therefore is not acceptable.

Maritain seems to be aware of these difficulties and therefore takes extra care to distinguish his

position from all kinds of dualism in general and from Cartesian mind-body dualism in particular. At many places in his writings he vehemently criticizes Descartes for creating an unnecessary separation between soul and matter and holds him responsible for all the problems and misconceptions which subsequently arose in the history of philosophy due to this separation. In differentiating his own position from that of Cartesian dualism he insists that in his theory, individuality and personality do not represent two separate things; rather, these are two metaphysical aspects of the same being. "There is not in me," he says, "one reality called my individuality and another called my personality. It is the same entire being which, in one sense, is an individual and, in another sense, a person. I am wholly an individual, by reason of what I receive from matter, and I am wholly a person, by reason of what I receive from spirit: just as a painting is in its entirety a physico-chemical complex, by reason of the colouring materials out of which it is made, and a work of beauty by reason of the painter's art."⁶

This statement brings Maritain closer to the latter alternative. Looked at from two different standpoints, the same being appears as individual as well as person

in its entirety. In other words, personality and individuality do not represent two separate things or elements in man's being, rather they represent two different ways of looking at him. In this interpretation, Maritain's view becomes free from the difficulties involved in a dualist position, but it suffers from some other difficulties of its own.

The fundamental difficulty of this position lies in the fact that however clear, neat and unproblematic it might appear in theory, it is extremely difficult to sustain in practice. The very first problem is, how, when and where to draw the line between these two aspects or points of view? In other words, how may we determine in which cases man should be treated as an individual and in which contexts he should be treated as a person? If in all contexts he has to be treated as a person as well as an individual simultaneously, then the question is, to what extent should his individuality be taken into consideration, and in what respects should his status as person be treated as the determining factor in settling the disputes concerning his relationship to society and his fellow beings? These questions are difficult to answer and this difficulty is inevitably reflected in Maritain's discussion concerning the idea of common good, man's relationship to society and its

institutions, and the conception of human rights.

In solving what he refers to as the "typical paradox of social life,"⁷ Maritain tries to overcome these difficulties but he does not seem to succeed completely. The best explanation he can offer of man's relationship to society is "...while the person as such is a totality, the individual as such is a part; while the person, as person or as totality, demands that the common good of temporal society should flow back to him, and while through his ordination to the transcendent whole, he even surpasses the temporal society, the same person, as an individual or as part, is inferior to the social whole, and must serve the common cause as a member of the whole."⁸ This statement simply indicates the tension and the conflict inevitably involved in man's relationship to society; but it does not seem to offer any solution to the problems we just raised. At the most it says that man has a twofold relationship to society. While as an individual he is subordinated to the social whole, as a person the society is subordinated to him and is made a means to achieve his supra-temporal ends. Obviously, it merely explains why a human being sometimes can be treated as a means to serve the interests of the society and, why at times he should be treated as an end in himself, and society

should be subordinated to him. But it does not explain when and to what extent he can be or should be treated in the manner described above.

Even if it is granted that from the point of view of his individuality, man is part of the social whole and can be treated as a means to its purposes, and from the point of view of his personality he is a whole and an end in himself, how would we decide which point of view should be taken into consideration when deciding a particular case? If in his entirety man is both a part and a whole at the same time, how would we determine when and to what extent he should be treated as a part and when as a whole?

Maritain does not provide any criterion to determine what are those circumstances in which a human being can legitimately be treated as an individual, nor does he clearly spell out what are those specific situations in which a man should necessarily be treated as a person. But if the distinction of personality and individuality is to be meaningfully applied to the concrete problems of practical life, a clear statement of such a criterion is essential. In my view, Maritain's discussion is substantially lacking in this respect and this creates a gap between the abstract principles of his theoretical system and the concrete problems involved in human affairs.

This gap is also reflected in his theory of rights. First of all, since Maritain bases his conception of human rights on his conception of human nature, and since he defines human nature in terms of two aspects of man's being, one naturally tends to expect that corresponding to these two metaphysical aspects, there would be two separate sets of rights - one related to man's personality and the other related to his individuality. But as we know, Maritain does not provide any such lists in which rights related to man's personality are clearly separated from the rights related to his individuality. Nor does he support the idea of having such separate lists. In fact, if he had offered two separate sets of rights, it would have created some serious problems in his system. It would have amounted to translating metaphysical dualism into the political and social realm. But as we certainly know by now, Maritain himself is strongly opposed to any dualistic scheme and therefore deliberately refrains from making sharp divisions between the rights related to individuality and the rights related to personality.

One reason which can plausibly explain and justify the absence of two separate lists of rights in Maritain's system is that since according to him rights are primarily rooted in man's personhood, and personality, not

individuality, is the source of his primordial rights, all human rights derive their being only from personality, and therefore, need not be divided into two separate sets or categories. But then, what role does individuality, (which is an equally essential aspect of man's being), play in this respect? In other words, how does man's existence as an individual affect his rights as a person?

Maritain's discussion of this issue clearly suggests that in his view, individuality is mainly responsible for putting limitations on the exercise of rights which are otherwise absolute and inalienable. Man's rights as a person or as a spiritual being are essentially absolute, inalienable and unlimited in character. But man is not a pure person. He is also an individual at the same time and therefore suffers from all the imperfections necessarily associated with materiality. Naturally, his rights are also affected by these imperfections and become subject to restrictions and limitations imposed by society. But the same problem which I raised earlier with respect to the practical applicability of the distinction of personality and individuality emerges here.

Again, how are we to determine when (in which cases) and to what extent man's rights as person can be curtailed

on the grounds of his existence as an individual? In other words, in what particular circumstances may the considerations of individuality become predominant over the considerations of personality, and precisely how far may the considerations of individuality be allowed to influence man's rights derived primarily from his personality? Maritain does not seem to provide any clear and satisfactory answer to these questions. Though, from his analysis of different particular rights (such as the right to life, right to freedom), one gets an indication of what may count as an answer to these questions, yet nothing seems clear enough to provide a satisfactory solution to the complex problems involved in the application of rights in the practical realm.

As noted in the second chapter, Maritain seems to suggest that the idea of common good provides the criterion on the basis of which one can explain when the absolute inalienability of rights should give way to relativity and when a person can legitimately and justifiably be deprived of the exercise of his rights. In making the distinction between absolute and substantial inalienability and the possession and the exercise of rights, Maritain indicates that, in his view, it is the idea of common good which determines precisely when and to what extent

limitations can be or should be imposed on the possession or the exercise of specific rights. If the possession of any right in its absolute form or its exercise in an unrestricted way jeopardizes the common good, this right can justifiably be limited or the society can totally deprive man of the exercise of this right. To what extent these limitations should be imposed can be determined on the basis of the level and extent to which a right jeopardizes the common good. Rights should be seen in the light of their relationship to common good, and the scope and manner of their exercise should be determined on the basis of their instrumentality towards enhancing the cause of common good.

It looks like a neat and simple solution to a complex problem. But there are some fundamental difficulties involved in the solution. The idea of common good itself is a problematic notion in Maritain's system, and therefore any solution based on it also suffers from the difficulties involved in the basic structure of its founding principle. Like the distinction between personality and individuality, the idea of common good is unclear and there is a great deal of confusion and dispute with regard to its true meaning. This has caused lengthy heated debates even amongst the thinkers of the Thomistic tradition, and in spite of Maritain's long

explanations, he has often been criticized (though sometimes wrongly) for misinterpreting the concept of common good. (see works listed in notes 14,15 of this chapter.)

In the second chapter I noted that Maritain distinguishes his concept of common good from that of 'public good'⁹ and 'proper good'.¹⁰ The concepts of 'public good' or of 'proper good of the whole', in his view, are applicable only to animal societies, because their members are only individuals and not persons. Common good is very different from these two, because unlike them common good is the good of the multitude of human 'persons' and not of mere individuals; it is essentially redistributed amongst all the members of the whole; and this redistribution is done in a manner that benefits individual members for their own sakes and not simply for the sake of the interests of the whole. Moreover, the common good is neither the individual good nor a mere collection of private goods. It is the good 'human' life of the multitude of persons; "it is their communion in good living."¹¹ But this good, Maritain insists, is not simply the collection of public commodities and services. It also includes the properties characteristically associated with the spiritual aspect of man's nature and thus cannot be defined only as a system of advantages and utilities;

it is also a rectitude of life, an end, good in itself.

At first glance, this characterization of common good appears to be quite plain and unproblematic. But a closer examination of it reveals that there are some questions which cannot be answered satisfactorily on the basis of what Maritain says. The very first problem is, if common good is the good of 'persons', then how does it relate to men as individuals? Can there be any such thing as the common good of individuals? Maritain's discussion seems to imply that there cannot be any such thing, because such a good inevitably turns into 'public good' or the 'proper good of the whole' and would not fulfill the basic conditions of the 'common good'. But then, how is man, who is both a person as well as an individual, related to a common good which is primarily the good of 'persons'? Maritain's answer is "... the common good, by its very essence, directs itself to the persons as persons and directs the persons as individuals to itself."¹² In my view, this answer still does not solve the problem. It merely reiterates that as individuals, men should serve the common good, while as persons, the common good should be directed to their service. This does not explain how, in a case of conflict, we would determine which part of this twofold answer should be given priority over the other. In other words,

how would we judge whether man should be treated as a person or as an individual in a particular case?

It might be noted that I am not saying that these questions cannot be answered in Maritain's system, nor do I believe that these problems are unresolvable. What I am pointing to is simply the fact that Maritain himself does not give clear answers to these questions, though he does give some hints in this direction.¹³

This lack of clarity has caused some other problems. Amongst the critics and scholars of Maritain's system, it has generated a debate and a series of arguments and counter-arguments concerning "primacy of person versus primacy of the common good." Though, in my view, this whole dispute is based partly on a misinterpretation of Maritain's statements in this regard, yet it cannot be denied that to some extent, Maritain himself is also responsible for that misinterpretation.

Some thinkers (amongst whom Prof. Charles De Koninck and Father Jules A. Baisnee can be considered the most prominent)¹⁴ believe that in putting too much emphasis on the dignity and value of the human person, Maritain diminishes the importance of the common good and thus fundamentally deviates from the Thomistic postulates of his own system. In their view, Maritain's 'personalism' is anti-Thomistic in character and therefore is inconsistent with his own initial position. The main

argument of these thinkers is that since God is the ultimate, intrinsic common good of the universe, common good cannot be subordinated to anything, whatsoever, in this created world. But there are various passages in Maritain's writings in which he seems to maintain that at times man as person can even transcend or surpass the common good, and that common good should be directed towards serving the requirements of human personality. This, in some sense, amounts to subordinating God to human persons, and therefore is inconsistent with Maritain's own Christian faith, the very foundation of which lies in the belief in the supremacy of God over any other being.

But thinkers like I. Th. Eschmann¹⁵ disagree with the arguments provided by Prof. De Koninck and his supporters. They try to defend Maritain against these criticisms and maintain that the attacks on his personalism are totally misguided and are solely based upon a distorted view of the fundamental principles of Thomistic theory. The main point of their defense can briefly be summed up as follows.

Maritain's defenders believe that the root mistake of Prof. De Koninck's attack on Maritainian personalism lies in the fact that he rashly assumes an absolute identification between God and the common good and thus turns the relative primacy of the common good into an absolute one.

But this identification itself is based upon a confusion between Thomistic notions of 'bonum universale in essendo' and 'bonum universale in causando'.¹⁶ "The very first and essential element of our ordination to God is not the fact that God is the first bonum universale in causando, the foundation of all communications, but that He is 'the bonum universale in essendo.'¹⁷ And, "the common good, and every common good, is formally bonum universale in causando; it is not formally, bonum universale in essendo."¹⁸ The notion of common good, properly speaking, belongs only to the practical, political human order and refers primarily to the highest good of the earthly city. But since, in a certain sense, God can also be called the last common good among men, that is, that good in which they finally must or should unite, the use of this term in the supra-temporal realm (or with reference to God) should be taken analogically only.

And this is why, in giving primacy to person (qua person) over common good, Maritain, according to these thinkers, does not deviate from Thomistic principles. Rather, he truly adheres to them, because in Thomism (if interpreted correctly), "the whole human order whose highest good is the common good is subordinated to things divine, among the first of which after God, is the created intellect, which is Capax summi boni,"¹⁹

and which belongs to none other than man in his capacity as a person.

These arguments, to some extent, can save Maritain from the attacks of critics like Prof. De Koninck. But it cannot be denied that Maritain himself should be held responsible for providing the basis for such attacks and criticisms. Maritain seems to use the term 'common good' in two different senses. In some context, by 'common good' he means the 'temporal' common good which, he defines as the good of the community or civil society, and he calls it "the authentic and true common good."²⁰ But in other contexts, by 'common good' he wants to refer to that uncreated; supra-temporal, eternal and absolute good, which is identical with God Himself.²¹ But many times in his writings he does not make clear in which sense he is using the term. And that creates problems and confusion. Obviously, if used in the former sense (the sense of terrestrial common good), common good can legitimately be subordinated to person qua person. "...because of the highest requirements of personality as such, the human person, as a spiritual totality referred to the transcendent whole, surpasses and is superior to all temporal societies. From this point of view, ...both society itself and its common good are indirectly subordinated to the perfect accomplishment of the person and its supra-temporal aspirations as to

an end of another order -- an end which transcends them."²²
But if the term is used in the latter sense, the human person can legitimately be considered inferior to the common good and can be subordinated to its requirements. As Maritain himself says, "thus, if we consider this grand City as living in its entirety upon a common good which is the very life of God, communicated to the multitude of the just and seeking out the errant, then each stone is for the City."²³

Obviously, if these two senses of the term common good are not kept separate and are not clearly indicated whenever the term is used, confusion and misinterpretation cannot be avoided. Unfortunately, Maritain does not take enough care to separate these two senses and at various places in his writings does not clearly indicate precisely in which sense he is using the term. And that causes misunderstandings and problems which eventually give rise to disputes concerning primacy of person versus primacy of the common good.

Another important concept in Maritain's theory of rights is his idea of natural law. As mentioned earlier, Maritain considers natural law to be the foundation of his theory and maintains that "the true philosophy of the rights of the human person is... based upon the idea

of natural-law."²⁴ But how sound is this foundation? First, let me make it clear that in what follows, the 'standard criticisms' of natural law theory in general will not be repeated.²⁵ Thanks to positivism, such criticisms and objections have become all too-well known and an interested reader can always find these in any book or essay written in defence of modern positivist and pragmatist doctrines. Instead of going into the details of these oft repeated objections, I am limiting myself to pointing out only those problems which are peculiar to Maritain's version of the natural law theory.

As far as the 'existence' of the natural law is concerned, Maritain takes it for granted as one of the basic assumptions of his theory, and believes that any attempt to prove it amounts to discussing nonsense. As he himself says,

Since I have not time to discuss nonsense (we can always find very intelligent philosophers, not to quote Mr. Bertrand Russell, to defend it most brilliantly) I am taking it for granted that we admit that there is a human nature, and that this is the same in all men. I am taking it for granted that we also admit that ... man possesses ends which necessarily correspond to his essential constitution and which are the same for all....This means that there is, by the very virtue of human nature, an order or a

disposition which human reason can discover and according to which the human will, must act in order to attune itself to the essential and necessary ends of the human being. The unwritten law, or natural law is nothing more than that."²⁶

Here the very first question arises. How far is Maritain justified in assuming all the things he takes for granted? Are his assumptions as absolute and as universal as he seems to believe them to be? In the presence of all the anti-natural law theories one confronts these days in the field of political and social philosophy, it is hard to answer this question in the affirmative. But even if it is granted that he is correct in his assumptions and that there really is an eternal unwritten law called natural law which provides man with all the precepts necessary to determine his rights and duties, the problem is, how do we know these precepts? How do we determine what the rule or the law is? Maritain's answer is that it is through the guidance of the inclinations of human nature (and not through conceptual judgements), that one acquires knowledge of the primordial aspects of natural law: "...the very mode or manner in which human reason knows natural law is not rational knowledge, but knowledge through inclinations. That kind of knowledge is not clear knowledge through

concepts and conceptual judgments; it is obscure, unsystematic, vital knowledge by connaturality or congeniality, in which the intellect, in order to bear judgment, consults and listens to the inner melody that the vibrating strings of abiding tendencies make present in the subject."²⁷ At another place he says, "...our knowledge of it is no work of free conceptualization, but results from a conceptualization bound to the essential inclinations of being..."²⁸

Though this is a simple and straightforward explanation, it does not seem to provide a satisfactory answer to our initial question. It does not explain how we ascertain which are the essential inclinations of human nature or what is the criterion upon which one can determine the inclinations which should be considered essential to human nature.

Maritain does not provide any clear answer to these questions. He merely asserts that the inclinations pertaining to life (conservation of one's being), family (sexual intercourse and the care of children), social life and the quest for truth are the most fundamental or essential inclinations of human nature. On the basis of this, he claims that the rights related to life, family and society are the most basic rights of human beings.

But this claim seems to suffer from some fundamental difficulties. First of all, as stated earlier, Maritain does not explain why these inclinations should be considered essential or fundamental to human nature. Secondly, even if we accept that these inclinations are 'essential' to human nature, the mere assertion of this 'essentiality' in itself is not sufficient to prove that these are also the inclinations which 'ought' to be pursued. In other words, the essentiality of certain inclinations, by itself, cannot establish their status as values. If one desires (as Maritain certainly does) to propound a theory of rights in which rights are derived from duties, the 'existence' of such inclinations must necessarily be supported by their ideality. Unless one does so, one cannot prove that man has a 'right' to satisfy these inclinations (howsoever 'essential' they might be for his nature). In other words, the argument should proceed from inclinations to obligations (or duties), and from obligations to rights. But in Maritain's analysis, the middle element is missing. From inclinations he directly moves to rights and does not provide any independent proof to establish the 'oughtness' and therefore the obligatoriness of these inclinations. In a way, he limits himself to the assertion of their essentiality and assumes that this in itself is sufficient to prove that men have, or ought to have the corresponding rights.

Another problem regarding the concept of natural law concerns the abstract and general character of its primary precepts. In one sense, this can also be considered its strength. As explained in the preceding chapter, this generality and abstraction of primary precepts helps Maritain to accommodate relativity and change within the dynamic character of his theory of rights. Since the first principle of natural law ('Do good and avoid evil') provides only a very general guideline for human actions and does not specify what different modes such actions can take or 'ought to take' in different contexts, the possibility of modifying or adding new dimensions to our existing set of principles always remains open. Besides enhancing the universal applicability of the precepts of natural law, this openness provides grounds for introducing considerations of a relative nature and thus takes care of the requirements of different societies at different places and different periods of time. In one sense, this increases the strength of Maritain's conception of rights and makes his theory relevant in universal as well as particular contexts.

But in another sense, this very same generality and openness also creates some problems in Maritain's theory of rights. I noted earlier that according to Maritain, at

the level of natural law only a very abstract formulation of man's basic rights is provided. All the particular modalities of these rights are determined at the levels of the law of nations and positive law. These three levels of law are connected in a specific manner. While the precepts of natural law are known through inclinations, the precepts of the law of nations are arrived at through rational deduction as conclusions conceptually inferred from the first principle of natural law. In other words, the rights and duties enumerated at the level of the law of nations are derived from the first principle of natural law in a 'necessary manner' and therefore, to some extent, are universally obligatory. But "Positive law, or the body of laws (either customary law or statute law) in force in a given social group, deals with the rights and duties which are connected with the first principle, but in a contingent manner."²⁹

Obviously, the precepts of positive law are less universal or less extensive in their scope, and are primarily related to the specific conditions of the particular society they operate in. To see how these three levels of law operate in connection with man's basic rights, let us take the example of the 'right to property'. As discussed in the second chapter, natural law only entitles mankind in general to possess for its

common use the material goods of nature. It does not specify what form this possession should take. It is at the level of the law of nations that reason necessarily concludes that for the sake of the common good, these material goods must be privately owned. But the particular modalities of this private ownership are still left unspecified at this level. It is at the level of positive law that these modalities are specifically spelled out and the particular mode of the application of this right is determined in accordance with the socio-cultural form of a society and the state of the development of its economy. The same is the case with other rights.

As we can see, the most important and practically most effective determinations of rights take place at the level of positive law. But this is also the level which is furthest removed from natural law and is most remotely and 'contingently' connected with its first principles. Due to this 'contingency', even within the framework of the same precept (or the first principle of natural law), totally different, and sometimes even totally opposed modalities of a right can be simultaneously generated. In such situations, it is very difficult to decide which one of the two conflicting modalities should be preferred over the others, because

generally, it would be possible to show that both are equally supported by the first principle (though in a contingent manner). Take, for example, one of the most basic rights of human beings, the right to life. In Maritain's view, this right belongs to all human beings, because according to a precept of natural law, "a primordial and most general end of human nature is to preserve being - the being of that existent who is a person, and a universe unto himself..."³⁰ At this level, the assertion of this right appears to be totally unproblematic. But the problems start arising as soon as one arrives at the level of positive law and attempts to determine its particular modalities.

Following this precept, a society can debar capital punishment because to take a human person's life is against the principle of preserving being. But on the basis of the very same precept another society can legalize capital punishment because the life of a habitual criminal or murderer can be dangerous to the lives of many persons in the society and that too would be against the principle of preserving being. Thus we see that one and the same precept of natural law can provide the basis for generating two different and opposed modalities of a right. And since both the modalities are consistent with the primary precept, it is hard to determine which one should be.

given preference over the other. The first principle "Do good and avoid evil" also cannot be of much help here, because it also is too abstract to provide the basis for resolving such conflicts. Moreover, due to its abstract character the chances of such conflicts rather increase, because this precept can always be purposely misinterpreted and misused.

Similar problems arise when one confronts the conflicts between 'old' and 'new' rights. Such conflicts are unavoidable and are too numerous and important to be totally ignored. But these are also too complex and difficult to be resolved merely on the basis of the first principle of natural law. This creates serious problems for Maritain's theory of rights; but unfortunately he does not provide any clear and satisfactory solution in this regard. He clearly recognizes that, "...in human history no 'new' right... has been recognized in actual fact without having had to struggle against and overcome the bitter opposition of some 'old rights'. That was the story of the right to a just wage and similar rights in the face of the right to free mutual agreement and the right to private ownership. The fight of the latter to claim for itself a privilege of divine, limitless absolutism was the unhappy epic of the XIXth century."³¹ Maritain also accepts that "conversely

'new' rights often wage war against the 'old' ones, and cause them to be unfairly disregarded. At the time of the French Revolution, for instance, a law promulgated in 1791 prohibited as "an attack on freedom and on the Declaration of the Rights of man" any attempt by workers to associate in trade unions and join forces in refusing to work except for a given wage. This was considered an indirect return to the old system of corporations. ³²

But though he recognizes the reality of these conflicts, and does not attempt to undermine their importance, he does not seem to provide any solutions to resolve them. He merely states that the antagonism between different categories of rights such as 'old' and 'new' rights, or 'social' and 'economic' rights is by no means insuperable or irreconcilable, but he does not offer any principle on the basis of which this antagonism can be reconciled. On the contrary, what he does say in this connection, gives the impression that these conflicts are practically unresolvable.

In Man and the State he observes that the various rights ascribed to human beings limit and restrict each other and "what creates irreducible differences and antagonisms among men is the determination of the degree of such restrictions, and more generally the determination of the scale of values that govern the exercise and the

concrete organization of these various rights. We are confronted with the clash between incompatible political philosophies. Because here we are no longer dealing with the simple recognition of the diverse categories of human rights, but with the principle of dynamic unification in accordance with which they are carried into effect."³³

But this principle of unification primarily depends on the 'hierarchy of values' to which we subscribe. "Everything depends upon the supreme value in accordance with which all these rights will be ordered and will mutually limit each other."³⁴ To resolve the conflicts between differing rights, one first needs to resolve the conflicts between different systems of values and has to obtain a universal consensus with regards to the nature of the supreme value. But though such a universal consensus is not theoretically impossible, practically, it still appears to be far from the existing realities of our present day world. Even the universal framework of natural law cannot be of much help in obtaining this consensus, because as mentioned earlier, its first principle ('do good and avoid evil') can be interpreted differently in different frameworks of thought, and this interpretation itself primarily depends upon the system of values these

frameworks subscribe to. In other words, disputes concerning the relative predominance of one right over the other are basically disputes concerning the ordering of different values in a hierarchical pattern. But since the first principle stated above can lend itself to various interpretations depending upon the ordering of different values in a particular system, the concept of natural law cannot provide a clear and categorical criterion for resolving these disputes.

Another important device through which Maritain tries to resolve such disputes is the use of the distinction between the possession and the exercise of rights. It is a valuable distinction in itself and has undoubtedly helped Maritain in solving some of the basic difficulties concerning the concept of authority and man's relationship to society and State. In Maritain's words, it also "enables us to explain the limitations that can be justly imposed upon the assertion of certain rights under certain circumstances, either by the guilt of some delinquent or criminal individual, or by social structures whose vice or primitiveness prevents the claim, legitimate in itself, from being immediately fulfilled without encroaching upon major rights."³⁵ "This distinction," he adds, "also enables us to understand it is fitting at times, as history advances, to forego the exercise of certain

rights which we nevertheless continue to possess."³⁶
These considerations, according to him, also apply to many problems concerning the modalities of private property in societies which are in the process of economic transformation, and to the limitations on the 'sovereignty' of the State in the process of building an international community.

But while on the one hand this possession-exercise distinction solves some basic difficulties in Maritain's theory of rights, on the other hand it also creates some new problems. In fact, this distinction seems to work well only with respect to certain kinds of rights, namely the rights which are only substantially inalienable. The right to property, right to association or right to freedom of speech are some of the rights which come under this category. But with respect to the other category of rights, -- the rights which are absolutely inalienable -- this distinction does not seem to work properly. Take for example, the right to life or existence. Maritain maintains that even in the case of this right, we must distinguish between possession and exercise -- the latter being subject to conditions and limitations dictated by the requirements of justice. He uses this distinction in his defence of the concept of capital punishment and observes, "If a criminal can be justly condemned to die, it is because of his crime he has deprived himself, let us not say of the

right to live, but of the possibility of justly asserting this right: he has morally cut himself off from the human community, precisely as regards the use of this fundamental and "inalienable" right which the punishment inflicted upon him prevents him from exercising."³⁷

In other words, Maritain is saying that in the case of capital punishment, the possession of the right to life remains intact, even when the exercise of the right has been prevented. But the question is, can this possession-exercise distinction be applied here properly? Can we maintain that there is a real distinction between the possession of life and the exercise of life? Is possessing life not equivalent to exercising it? In other words, is it not true that to cease to exercise life amounts to being dead? Maritain seems to suggest the contrary. But I feel that his views on this issue are not completely justified.³⁸

As stated earlier, I completely agree with him that the possession-exercise distinction is very valuable in itself. I also believe that he is right in emphasizing the various advantages of applying this distinction to certain kinds of rights. But along with that, I also want to maintain that there are certain limitations to the application of this distinction, and that these limitations should not only be recognized but should also be emphasized so that further confusion can be avoided.

Now I shall examine Radhakrishnan's theory of rights and shall try to see what weaknesses his system shares in common with Maritain's system, and what the problems are which are peculiar only to his system.

As mentioned earlier, corresponding to Maritain's distinction between individuality and personality, in Radhakrishnan's system we have the distinction of jiva and ātman. To some extent, this distinction also faces the problems which I raised in regard to Maritain's distinction of personality and individuality. But it seems that in some respects, Radhakrishnan's characterization has advantages over Maritain's description of this distinction. As we have seen, the basic problem for Maritain is to provide the criteria for 'balancing' these two equally real aspects of man's being. For him the prime question is, while considering particular cases, how do we ascertain which aspect of man's nature should be given dominance over the other? Particularly, in the case of a conflict between two rights (one primarily related to man's personality and the other to his individuality), how would we determine which one should be given priority over the other, and to what

extent can this priority be justified? We have seen that these ~~questions~~ pose serious problems for Maritain's system and he does not seem to provide any clear and satisfactory answer. But for Radhakrishnan, this problem is not that serious, for the question of 'balance' is virtually non-existent for him.

As explained earlier, jiva and ātman are not two 'aspects' of man's nature. They are two 'levels' of man's being, one of which (jiva) has only a phenomenal reality, and therefore must be transcended to reach the other. The state of jiva has a means value only, and must be transcended in order to attain the higher state of ātman. Indeed, since in Radhakrishnan's view, ultimately ātman is the only reality and jiva is simply a product of māyā or avidyā (ignorance), the question of 'balancing' the two states does not arise at all. In his system, the principle of priority is quite clear and the chances of confusion are very small.

Moreover, unlike Maritain, Radhakrishnan does not have to defend himself against the charges of dualism because in his absolute non-dualism there is no place for dualism. Nor does he need to provide the criterion for determining the relative significance of rights related to the state of ātman. On the basis of his metaphysical theory one can easily say that the former

(the rights related to the state of jiva) have only a transitory and instrumental value in his system, and can justifiably be subordinated to the latter (the rights related to the state of ātman). Obviously, in this respect Radhakrishnan does not have to face the problems which Maritain faces. But then Radhakrishnan has to face some other problems and objections which Maritain can easily avoid or answer.

Since Radhakrishnan does not believe in the ultimate reality of jiva and firmly adheres to the principle of ātman-Brahman identity, the material aspect of man's being does not seem to receive sufficient care and attention in his system. To some extent, this causes an imbalance in his theory and his conception of rights appears to be one-sided. In fact, at times it seems as if his view of man and his rights is too rosy to be credible and too idealistic to be applicable to the practical world of our day-to-day life. Moreover, in his absolute non-dualism, man as a material individual seems to be totally absorbed in the spiritual unity of Brahman, and his identity as an individual is virtually lost. Radhakrishnan himself seems to be aware of the problems involved in such a metaphysical view, and therefore, as I have suggested earlier,³⁹ he tries to answer some of the possible

objections in advance. His system, he insists, does not aim at individual-annihilating unity. Nor does it reduce the status of the individual self to a totally insignificant level. Rather, it elevates and exalts him (i.e. the individual) by insisting on his identity with the ultimate Reality. In his eagerness to prove that his scheme of rights does not undermine the importance of material individuality, in some contexts Radhakrishnan even goes to the extent of saying that rights related to man's material existence are prior to the rights related to his spiritual life. "One must live," he says, "before one can live according to dharma."⁴⁰ He also observes, "Necessity knows no law and any form of conduct essential for self-preservation is allowed under the rules of āpaddharma."⁴¹ But in spite of all these remarks, one constantly feels that though Radhakrishnan may try to argue to the contrary, the fundamental premises of his metaphysical system do not permit him to recognize or duly emphasize the importance of material individuality. If Radhakrishnan wants to maintain consistency between his metaphysical system and his political and social thought, he has to undermine the importance of man's claims as a material individual. If only the spiritual is ultimately real and the material is simply a product of avidyā (ignorance), then no

argument, however strong, can establish a 'balance' between the two. If 'non-duality' is the ultimate state of being, then individuality, which necessarily presupposes plurality, needs to be undermined and should be overcome by special efforts rather than being cherished through special rights.

Another problematic area of Radhakrishnan's system concerns his idea of dharma . The objections raised against Maritain's conception of natural law also seem to some extent to be applicable to Radhakrishnan's analysis of dharma . Here the problem of ascertaining the rules is equally difficult to tackle. The criterion for distinguishing the essential from the non-essential is equally required, but unfortunately equally unsatisfactorily provided.

As noted earlier, Radhakrishnan mentions four sources of dharma: the Śruti or the Vedas; the tradition and the customs of the society; the conduct of virtuous men; and individual conscience. Amongst these, the first (Vedas) has the highest authority and so, to be authoritative, all other sources must be in conformity with its basic precepts. But the Vedas lay down certain general principles which can be applied to particular cases, but only with essential

discrimination and judgment. In cases of doubt or dispute, pariṣads or assemblies of learned people can be formed but even their decision can be accepted only when one is convinced that they are totally unbiased and do not violate any principle laid down in the Vedas. In other words, according to Radhakrishnan, the Vedas are the first and foremost sources of knowing dharma. Though individual conscience, traditions, customs, and the conduct of the virtuous can also provide some guidance, the final authority lies in the Vedas, because even all these other sources derive their authority through following the precepts of the Vedas.

But "the Vedas," as Radhakrishnan himself says, "Do not contain a systematic account of dharma".⁴² They merely indicate the ideals and mention certain practices. They only lay down certain general principles, which need to be 'interpreted' when applied to particular cases. "We have to decide the right course of action in each context....We have to apply our reason and interpret the tradition."⁴³ In other words, if the rules of the Vedas are to be applied to the practical realm, they have to be interpreted according to the requirements of different contexts and the particular needs and conditions of the society at a particular

point in time. But this basically amounts to saying that the knowledge of dharma is ultimately a matter of interpretation of laws laid down in the Vedas, and since the laws themselves are very abstract and general in character, they can always be given different and sometimes even contrary interpretations. If two interpretations oppose each other, then the only method of resolving such disputes, according to Radhakrishnan, is to form assemblies of the learned and accept their decision. But all such decisions, as we know, are themselves a product of interpretation (the only difference is that now, this interpretation is supported by a majority of learned men) and might be biased. Radhakrishnan himself is aware of such possibilities and this is why he insists that those decisions can be accepted only when we are convinced that they are unbiased. But that makes the whole process circular. We form assemblies so that they can decide whether or not our particular interpretation of a vedic law is objective and unbiased. But since the decision of these assemblies can also be biased, we ourselves have to determine whether or not they are true to the spirit of the Vedas and are objective and unbiased in their interpretation. But that was precisely the question we started with when we decided to form an assembly to

obtain a correct answer. This shows that there are some fundamental difficulties involved in the process of determining the rules of dharma and Radhakrishnan does not seem to provide any satisfactory solution.

The problems involved in ascertaining the rules of dharma not only pose difficulties at the level of primary precepts or sādharana dharma; but also emerge at subsequent levels, particularly at the level of svadharma. The basic problem is, how do we ascertain the criterion for determining one's svadharma? What is the criterion for determining which varṇa a particular person belongs to? As we have seen, at times Radhakrishnan answers this question by maintaining that one's guṇa (qualities) and karma (functions) are the sole determining factors. But at some other places in his writings, he also seems to believe in the validity of the criterion based on birth and heredity. But both these criteria (the one based on quality and function, and the other based on birth and heredity) are inconsistent with each other, and cannot be held together. Radhakrishnan seems to be aware of this problem but does not provide any satisfactory answer. In fact, he seems to remain virtually undecided about his own position in this regard, and this causes some fundamental

inconsistencies in his account of svadharma.

In his Upton lectures, delivered at Oxford in 1926 and published as The Hindu View of Life, Radhakrishnan advances strong arguments in support of the caste system and considers it to be a great achievement of Hindu genius. But the caste, as we know, is based on the principles of birth and heredity and except in some rare cases does not allow people to change their caste according to their qualities and aptitude. Radhakrishnan seems to be conscious of this limitation of the caste system and shows an awareness of the enormous suffering it has inflicted upon millions of Hindus. Yet he tries to find a justification for the principle of heredity in the law of karma and rebirth; "...the individual life," he says, "is not a term, but a series. Fresh opportunities will be open to us until we reach the end of the journey. The historical forms we assume will depend on our work in the past."⁴⁴ And therefore, "We should do our duty in that state of life to which we happen to be called. Most of us have not a free hand in selecting our vocation. Freedom consists in making the best of what we have, our parentage, our physical nature and mental gifts."⁴⁵ This suggests that Radhakrishnan approves of the principle of heredity for determining the caste of individual

persons and considers birth to be an appropriate criterion. In the same book he also observes, "The author of the Bhagavadgītā believes that the divisions of castes are in accordance with each man's character and aptitude. Karma is adapted to guna, and our qualities in nature can be altered only gradually. Since we cannot determine in each individual case what the aptitudes of the individuals are, heredity and training are used to fix the calling."⁴⁶ Evidently, the principle of birth and heredity is not only theoretically justified but is also practically necessary, and therefore need not be abandoned.

* But a decade later, Radhakrishnan seems to become conscious of the obvious limitations and implicit unfairness of the principle of heredity, and therefore, in his Eastern Religion and Western Thought eschews the word 'caste' and prefers to speak of 'classes' which are based on qualities and functions and not on birth. Here he repudiates the caste system for its rigidity and extreme emphasis on birth. "The theory of rebirth," he says, "by which man's inborn nature and course of life are determined by his own past lives gives additional support to the view that man is born to the social function which is natural to him. It is not realized

that the fact of ancestry, parentage, and physical birth may not always indicate the true nature of the individual."⁴⁷ In this scheme, "the individual does not fall naturally into his place in society but is thrust into it by an external power."⁴⁸ But, "Any system", he insists, "where an abstract power, caste, or church decides a person's profession and place is an unnatural one."⁴⁹ The same kind of arguments recur in his Religion and Society (published in 1947). He emerges as a bitter critic of the caste system and its principle of heredity, and calls upon his countrymen to get rid of it. In his "Reply to critics" he boldly says, "I should like to make it clear that any scheme based on heredity is not only undemocratic but unspiritual."⁵⁰

But alongside this criticism goes a line of argument which suggests that Radhakrishnan still does not totally discard the criterion of birth and heredity and implicitly supports it as a principle of practical utility. "Caste," he says, "was the Hindu answer to the challenge of society in which different races had to live together without merging into one. The difficulty of determining the psychological basis led to the acceptance of birth as the criterion.... Besides, as the types fix themselves,

their maintenance by education and tradition becomes necessary and hereditary grooves are formed."⁵¹ The same spirit of defence is reflected when he supports the idea of designating the class of brāhmins as the leisured class in the society. Discussing the criterion for determining the membership of this class, he writes, "In China, boys and girls used to be selected for this class on the results of competitive examinations. But the special training cannot be postponed until the age of examinations. If the training is to start early enough we must choose the members soon after birth. Is it to be by lot? The Hindu assumed that birth in a family which had traditions of the leisured class might offer the best solution."⁵²

The foregoing statements clearly show that Radhakrishnan does not offer any categorical and straightforward criterion for determining the varna of individual persons. In fact, he himself does not seem to be decided about it. On the one hand, he recognizes the practical utility of having birth as the criterion for determining svadharma; on the other hand he also disapproves of its rigidity and undemocratic character. The criterion of guna and karma (qualities and functions) seem to present the ideal alternative and can be perfectly justified on theoretical grounds, but

does not seem to be suitable on the practical level. The practical difficulties involved in determining the psychological and spiritual qualities of individuals are too obvious to be discussed, and that makes Radhakrishnan lean towards the criterion of heredity. "The result is," as A.R. Wadia notes, "A bewildering conflict of statements, rendered all the more bewildering in Radhakrishnan by his habit of putting a certain facet of thought as forcibly as possible, leaving it to others to make what they can out of these contradictions."⁵³

Similar kind of inconsistencies occur at other places in Radhakrishnan's analysis of the varna-system. For example, at some places in his writings he seems to maintain that there is a natural hierarchy amongst men, and the varna-system is a manifestation of this hierarchy in the social realm. The four classes, he believes, are arranged in the order of lower and higher states of man's being, and therefore one of the fundamental duties of all men consists in trying to reach to the highest state which is represented by the brāhmin class. In his Eastern Religion and Western Thought he writes,

Hierarchy is not coercion but a law of nature. The four classes represent four stages of development in our manhood. Every human being starts with a heavy load of ignorance and inertia. His first stage is one of toil demanded by the needs of the body, the impulse of life; and the law of society.... From the lowest stage we rise into a higher type when

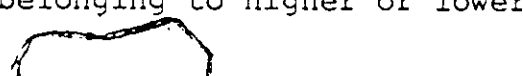
we are driven by instinct for useful creation. We have here the vital man. At a higher level we have the active man with ambition and will power. Highest of all is the Brāhmin, who brings a spiritual rule into life.⁵⁴

At another place he observes "Of the four ends the highest is spiritual freedom; of the four classes, the Brāhmin engaged in spiritual pursuits is the highest; of the four stages, that of saññyāsa is the most exalted."⁵⁵ And since "life is progress through stages", we should not "be content to remain for all time on the lower stages."⁵⁶ In other words, in order to attain spiritual liberation we all should try to attain the status of brahmin, which is best realized at the stage of saññyāsa. Clearly Radhakrishnan maintains that the four varnas are ordered in a hierarchical pattern and the goal of each person is to reach to the highest point of the hierarchy.

But in the very same book he also maintains that, "Man cannot ordinarily transcend his psychological endowment."⁵⁷ And therefore, in the fourfold scheme, "each individual has to follow his own nature and arrive at his possible perfection by a growth from within."⁵⁸ In other words, instead of trying to attain the state of another varna, one should try to follow the

laws of one's own varna, and only by doing so will one be able to achieve spiritual perfection. "To follow the law of another's nature", Radhakrishnan insists, "is dangerous".⁵⁹ It not only disturbs the social order, but also disrupts the inner harmony of a man's personal life and makes him incapable of reaching the highest state of perfection.

There is a shift of emphasis in these two sets of statements. While the former insists on the hierarchical ordering of the society and conceives individuals of different varnas as belonging to higher or lower levels of self-perfection, the latter statements emphasize the equality of all varnas by maintaining that one can attain the highest state of liberation by doing one's own duties and following the laws of the varna one belongs to. In Radhakrishnan's words, "Men of all classes, if they fulfill their assigned duties enjoy the highest imperishable bliss,"⁶⁰ and therefore, one need not necessarily become a brāhmin to attain mokṣa. Even a śūdra, if he fulfills the obligations of his varna perfectly, can attain mokṣa, and in that sense, all varnas are on an equal footing. In other words, from the spiritual point of view all varnas are equal and there cannot be any hierarchy amongst them according to which individuals can be graded as belonging to higher or lower levels of being.



Evidently there are some inconsistencies in this account of svadharma, and at times, Radhakrishnan's statements are difficult to reconcile. He does not provide a clear criterion to determine an individual's svadharma nor does he seem to be decided about the relative socio-spiritual status of the members of different varnas. While in the former case, he is unable to reconcile the criterion based on birth and heredity with the criterion based on quality and action, in the latter case he is unable to resolve the conflict between the hierarchical and the egalitarian interpretations of the varṇa system. But this causes a major weakness in Radhakrishnan's system of rights. As we know, the concept of dharma is the foundation of his theory of rights, and unless he provides a clear and consistent account of its various aspects, his analysis of rights will also lack in clarity and consistency.

II

STRENGTHS

But despite all the difficulties and the weaknesses enumerated above, there are some fundamental strengths

in the views of Maritain and Radhakrishnan which make their theories capable of providing a strong foundation for developing a sound system of human rights. Interestingly, most of the strong points of their theories are also the points on which they agree with each other. In other words, the fundamental strength of their theories primarily lies in the strength of those points which they share in common, and that is an encouraging sign for any project which aims at preparing a common ground for developing a meaningful dialogue between these modern representatives of two age-old traditions.

I have already discussed the major similarities between their theories of rights. Hence, I shall not discuss these points in detail. In what follows, I shall present a brief analysis of these points and shall try to explain why these points should be considered as the strengths of their systems.

In my view, the fundamental strength of the theories of Maritain and Radhakrishnan lies in the spiritual origin and the goal-oriented character of their conception of rights. These characteristics enable them to ground their system of rights on the assertion of some absolute, unconditional values, and also provide them with a built-in conceptual mechanism by means of which they can not only determine the limitations of these absolute and inalienable rights, but can also put checks on their misuse.

As explained in the third chapter, according to both Maritain and Radhakrishnan, the roots of human rights lie in the spiritual aspect of man's being. Owing to this spiritual origin, rights transcend the narrow limits of temporal society and acquire the character of absolute, unconditional values. Since they originate from a transcendental realm, no temporal institution, including the State, can legitimately deprive man of the possession of these rights. Since these institutions do not 'grant' these rights (they merely have to 'recognize' them), they cannot take them away; and man 'the noblest of all the creatures', can be said to be the possessor of some absolute, unconditional, inalienable right simply by virtue of

his dignity as a man.

So far the theories of Maritain and Radhakrishnan appear much like any other theory which advocates an absolutist conception of rights and conceives men as 'little gods', who have unlimited rights but no obligations. But the peculiarity of the views of these authors lies in the fact that in their theories rights imply their own limits. The conception of those limits is built in to the very conception of rights, and hence, despite their absoluteness rights cannot become licenses for madness.

If their spiritual origin gives rights an absolute character, it also sets their limits. Rights, according to these authors, not only originate in spirit but also aim at it, and therefore, inevitably are perceived as part of a teleological system. In their view, rights are means to achieve certain goals, and therefore must be determined and exercised according to the requirements of those goals. The fundamental strength of this goal-oriented view lies in the fact that it sets some objective limits to the generative principle of rights.

Behind every system of rights, there must be a principle on the basis of which one can determine which

rights should necessarily be included in the system and which rights should necessarily be excluded from it. While studying any national or international charter of rights, one can always ask, why is it so long and not longer? Why does it include only these rights and not others? Why does it include the right to certain things, such as the right to life, to freedom or to equality and not to many other things such as the right to deceive others or the right to kill a whole race?

To answer these questions, one needs a principle to explain why it is necessary that certain rights must be included in the list, and certain other rights must be excluded from it. In other words, one needs an objective generative principle of rights, and unless one provides that, the system of rights remains more or less arbitrary in character.

The goal-oriented view of rights adopted by Maritain and Radhakrishnan not only provides such a generative principle, but also provides the grounds for determining the various limitations of it. Since in their theories, rights are primarily perceived as means to attain certain goals, the generative principle takes the form of a normative proposition, according to which every human

being is entitled to all and only those rights which are necessary to make it possible for him to fulfill his fundamental duty of realizing the essential goals of his existence as a human being. In Radhakrishnan's system, this goal is defined in terms of the concept of mokṣa, while in Maritain's system the concept of supra-temporal common good serves a similar purpose.

As explained earlier, the nature of these goals is such that one can not attain these unless one has some basic rights such as the right to life, right to freedom, right to equality, and right to property. In the absence of these rights, realization of these goals is virtually impossible, and this explains why these rights should necessarily be included in a system which bases itself on the ultimacy of these goals. This also explains why certain other rights, such as the right to slavery, the right to discriminate on the basis of colour, or the right to kill all black-haired men cannot be included in this list. These rights cannot be instrumental in the realization of the aforementioned goals. On the contrary, they hinder the possibility of that realization, and therefore should necessarily be excluded from the list of a man's basic rights.

Though the generative principle stated above provides the necessary grounds for the inclusion of certain rights, it does not permit indiscriminate inclusion. In it rights acquire a strictly defined teleological character, and therefore cannot be generated arbitrarily. Since the inclusion of each right has to be justified by its instrumentality towards the ultimate goal, all and only those rights can be permitted which directly or indirectly help men to realize that goal. This puts an objective limit on the generative principle of rights and in my opinion, one of the greatest strengths of the theories of Maritain and Radhakrishnan lies in the recognition of the necessity of this limit. Any system which permits arbitrary inclusion of rights not only undermines their theoretical importance, but also lessens their empirical effectiveness and makes them subject to mere verbal juggling. If rights have to be effective in the practical realm, there should be some objective limits on their generative principle, and the goal-oriented character of the theories of Maritain and Radhakrishnan, in my view, supplies the basis for determining such limits.

The teleological character of rights not only prevents the inclusion of some absurd rights, but it also limits in scope the exercise of the rights already included. A

system in which rights are primarily perceived as a means to achieve certain ends cannot permit their unrestricted exercise. The system must specify the direction in which rights should lead and so must put some practical limits on the exercise of rights. Rights in such a system cannot be used as absolute, unconditional privileges; rather, they must be exercised in accordance with the requirements of the goals to be pursued.

In my view, certain restrictions on the exercise of rights are not only necessary and inevitable but are also useful and desirable. Undoubtedly, the concept of absolutely unlimited and unconditional rights appears very attractive in theory, but in practice, such rights tend to become unrestricted, unaccountable powers which inevitably centre in the hands of a few, and eventually turn into the tools of oppression. But since in the systems of Maritain and Radhakrishnan, rights are seen as means to certain goals, they cannot become unaccountable powers. Each time a person exercises his right, he has to justify it by showing that its exercise is not only in conformity with the ultimate goals of his essential being, but also enhances the realization of those goals. Unless a person establishes this, he cannot be permitted

to use his right.

This shows that the goal-oriented character of the theories of Maritain and Radhakrishnan not only prevents the indiscriminate inclusion of rights, but also prevents their indiscriminate use. Unlike most modern human rights theories in which rights are conceived as absolute powers, Maritain and Radhakrishnan perceive rights as authentic powers which are legitimate only as long as they are used for just purposes and in a just manner. In their view, rights are not licenses to do whatever one wishes to do; they are instruments which can be or should be used only for the realization of some specific goals and these goals have to be just.

Obviously, this puts a heavy responsibility on the person who exercises rights. But if rights are to become instruments of human development and not of human oppression or of tyranny, they have to be perceived as just and legitimate claims and not as unaccountable powers. Their exercise must be restricted according to the requirements of justice and they must be directed towards some specific goals.

As explained earlier, this instrumentality of rights in no way diminishes their importance. On the contrary, in my view, it seems to add a new dimension to their significance. In the third chapter, I have already

explained my reasons for believing so, and therefore, I shall not discuss these points in detail. Here, I shall only briefly indicate some of these reasons. Firstly, the goals that the rights are supposed to aim at are not externally imposed. They emerge from the very constitution of the rights themselves and therefore form an intrinsic part of their inner structure. In the systems of both Maritain and Radhakrishnan, the origin of rights and the origin of the ends or goals to which they are means is the same. Natural law and dharma are not only the sources of man's fundamental rights, but are also sources of the fundamental goals of his essential being. Because they are identified at the source, rights are naturally oriented towards these goals, and goal-orientedness becomes an essential characteristic of their own inner constitution. Secondly, in a goal-oriented conception, rights no longer remain passive expressions of the essence of human dignity. They become active instruments in the realization of this dignity in its pure and perfect form, and thus acquire a two-fold significance in the organization of human society. Moreover, since the goals which rights aim at are essentially supra-temporal in character, rights transcend the boundaries of temporal society and its institutions. Society and the State merely 'recognize' these rights.

The state may regulate the exercise of these rights, but since it is not the granting authority, it cannot take away these rights.

Even in regulating the exercise of these rights, the state must fulfill two responsibilities. It must remove all hindrances in the path of the exercise of rights and has to make arrangements to ensure an uninterrupted enjoyment of these basic privileges by all men, and it is also obliged to provide the conditions which are necessary for the realization of the goals rights are believed to aim at. Society is not only obliged to protect man from the influence of adverse or negative forces, but it is also obliged to create conditions under which the exercise of rights would necessarily lead towards the realization of their goals.

Thus, we see that the instrumentality of rights neither negates nor undermines their importance. On the contrary, it strengthens their theoretical plausibility and enhances their efficiency in the practical realm. Moreover, it also helps to maintain a healthy balance between the claims of the society and the claims of its individual members. If it extends the area of society's obligations towards its members, it also puts certain regulative limits on the exercise of rights by these

members and thus keeps a balance between the authority of the society and the autonomy of its individual members.

Another major strength of the theories of Maritain and Radhakrishnan consists in the positive character of their conception of rights. As explained earlier, unlike most of the contractarian theories in which rights are primarily viewed as defence weapons to be used in an individual's war against society, Maritain and Radhakrishnan perceive rights as expressions of the essential unity underlying the essence of man's being. In their analysis of the origin of society they make it sufficiently clear that in their view, rights not only originate from this unity, they also aim at this unity, and therefore the primary objective of a human rights system should be to assist men in realizing this unity in its purest form.

The basic strength of this view of rights lies in the fact that rights no longer remain confined to the mere guarantee of non-interference from external forces such as society or other human beings. Rather, they become positive instruments in the realization of certain universal values and oblige society to create and develop those structures and institutions, which, instead of separating one person from the other, unite the whole human race with a universal bond of love and friendship.

Obviously, this view also helps to bridge the gap between the interests of the society and the interests of its individual members. If rights are primarily an expression of human unity and if their primary objective is to assist the human person in realizing this unity in its perfect form, there cannot be a clash between the rights of the individual and the interests of society. Both will necessarily imply each other and in the absence of one, the other will not be able to survive. In our contemporary situation, this view of rights becomes all the more relevant because it attempts to resolve the conflict between individualism and collectivism, and gives due consideration to the interests of individuals as well as of society. Though sometimes Maritain seems to lean more towards the individual, and Radhakrishnan in his emphasis on the varna scheme seems to ignore the value of individual autonomy, as explained earlier, both of them seek to obtain a healthy balance between these opposite theories, and to some extent, succeed.

They also succeed to a limited extent in obtaining a balance between universality and relativity of rights, and as explained in the third chapter, accommodate change within permanence. In their theories, absoluteness of

rights does not block the path of human progress. They accept the idea of progressive knowledge of the principles of natural law and of dharma, and thus provide sufficient grounds for introducing necessary changes in the existing system of rights. In this sense, their system of rights can be called 'open'. But this 'openness' does not mean 'arbitrariness'. The ability to introduce new rights into the system does not imply the ability to include any right in the system. Rights, in their theories, have strictly defined teleological limits, and therefore cannot be added arbitrarily. But this very same teleology also opens the door to the introduction of changes. In order to attain the ultimate goal of human existence in different socio-historical circumstances, different rights are needed. And therefore, the possibility of introducing new rights and changing the form of existing ones could always be left open. Maritain and Radhakrishnan give due recognition to the importance of having an open generative principle of rights. But they simultaneously provide the necessary grounds for putting proper limitations on the indiscriminate use of this openness, and in this balance lies the major strength of their theories.

III

CONCLUDING REMARKS

Evidently, the foregoing discussion suggests that the strong points of the theories of Maritain and Radhakrishnan are also the points on which they agree with each other. In other words, their points of strength are also their points of agreement. This provides a common ground for initiating a dialogue between these thinkers.

In the beginning of this work I proposed to present a comparative study of the foundations of the theories of rights propounded by Maritain and Radhakrishnan. Through this study I hoped to prepare the grounds for a dialogue between the traditions they represent, and therefore I compared their views on all the relevant points. In the comparative analysis I noted that, despite all the appearances to the contrary, on substantial points they agree with each other, and indeed, their agreements outnumber their differences. In this chapter, I subjected their theories to critical evaluations, and pointed out some of the major weaknesses and strengths of their views. As mentioned earlier, one of the most

important results of this critical evaluation is that it shows that these thinkers share a remarkable unity of spirit and the points on which they agree with each other are also the points which constitute the major strengths of their theories.

It might be noted that by this I do not mean that the points on which they disagree with each other are necessarily the weak points of their systems. Undoubtedly, there are some aspects of their theories in which their approach is different, and yet these differences cannot be counted as their weaknesses. For instance, they differ in their views concerning man's relationship to the ultimate Reality. They also take different approaches with regard to the ontological status and the value of material individuality. But, as I have shown these differences are not necessarily indicative of the weaknesses of their system. On the contrary, to some extent, these can be considered as strengths of their theories. Maritain's emphasis on the individuality of man helps him to keep a healthy balance between the material and the spiritual aspects of human nature. Similarly, Radhakrishnan's concept of a non-dual Absolute seems to provide a stronger foundation for his idea of human rights.

But, though some of their differences may be considered their strengths, the major strength of their theories lies in those areas in which they share their views. This is an encouraging point for this project because it not only provides a strong foundation for initiating a meaningful dialogue between them but also encourages the development of a more adequate, more comprehensive theory which incorporates the strengths of their individual theories but is free of their weaknesses. This also provides a justification for my stronger emphasis on the similarities between these thinkers, for, as P.T. Raju puts it, "No one can be blind to the differences; and yet no one should miss the similarities. But similarities are more important than differences, because they touch the essence of man and offer hope for the future."⁶¹

NOTES TO CHAPTER IV

1. Radhakrishnan, S., Indian Philosophy, Vol. II, p.7.
2. See, Jung, H.Y., The Foundation of Jacques Maritain's Political Philosophy, (Gainesville, Florida: University of Florida Press, 1960), p.42,50.
3. See Maritain, J., Scholasticism and Politics, p.58.
4. Ibid., p.65.
5. Ibid., p.60.
6. Ibid., p.65. Emphasis added.
7. Ibid., p.71.
8. Ibid., p.73. Emphasis original.
9. See Maritain, J., Person and the Common Good, p.49.
10. Ibid., p.50-51.
11. Ibid., p.51.
12. Ibid., p.76.
13. See Ibid., p.73-74.
14. See De Koninck, Charles, De La primauté du bien commun contre les personalistes. Le principe de l'ordre nouveau, (Québec: Editions de L'Université Laval, 1943). Baisnée, A. Jules, "Two Catholic Critiques of Personalism", in The Modern Schoolman, Vol. XXII, No. 2, Jan. 1945, pp.59-75.
15. See, Eschmann, I. Th., "In Defence of Jacques Maritain", in The Modern Schoolman, Vol. XXII, No. 4, May 1945, p.183-208.
16. To explain the meaning of these terms Eschmann quotes St. Thomas: "The creature", St. Thomas says (Summa, I, 103.4); "is assimilated to God in two respects: first, with regard to this that God is good; and thus the creature becomes like Him by being good; and, secondly, with regard to this that God is the cause of goodness in others; and the creature becomes like God by causing others to be good". Ibid., p.196. Emphasis original.

17. Ibid. Emphasis original.
18. Ibid. Emphasis original.
19. Ibid., p.208.
20. See Maritain, J., Person and the Common Good, p.82. See also pp.50-55 and p.59.
21. See Ibid., p.88-89, also p.63-74 and pp.86-87.
22. Ibid., p.61. Emphasis original.
23. Ibid., p.86.
24. Maritain, J., Rights of Man, p.37.
25. For such criticisms see Bryce James, "The Law of Nature", in his Studies in History and Jurisprudence, (Oxford: 1901, Vol. II); Crowe, M.B., The Changing profile of the Natural Law, (The Hague: Martinus Nijhoff, 1977); Hart, H.L.A., the concept of law, (Oxford; Clarendon Press, 1970, Ch.9).
26. Maritain, J., Man and the State, pp.85-86.
27. Ibid., pp.91-92. Emphasis original.
28. Ibid., p.94. Emphasis original.
29. Ibid., p.99. Emphasis original.
30. Ibid., p.88.
31. Ibid., p.103; also see pp. 326-330 of this thesis.
32. Ibid., pp.103-104.
33. Ibid., p.106. Emphasis added.
34. Ibid., p.106.
35. Ibid., p.102.
36. Ibid., pp.102-103.
37. Ibid., pp.101-102; also see pp. 69-72 of this thesis.

38. Some other thinkers have also expressed their dissatisfaction in this regard, for instance, see Nelson, Ralph, "Some difficulties concerning the notion of inalienable rights", paper presented at Le Colloque 1984 de L'Association Canadienne Jacques Maritain, held in Ottawa, Oct. 11-12, 1984.
39. See Chapter II, part II, Section II, iii,4.
40. Radhakrishnan, S., Religion and Society, p.111.
41. Ibid., p.110.
42. Ibid., p.109.
43. Ibid., p.112.
44. Radhakrishnan, S., Hindu View of Life, p.126.
45. Ibid., pp.126-127.
46. Ibid., pp.111-112.
47. Radhakrishnan, S., Eastern Religions, p.374.
48. Ibid.
49. Ibid.
50. Radhakrishnan, S., "Reply to critics", p.840.
51. Radhakrishnan, S., Eastern Religions, p.373.
52. Ibid., p.359.
53. Wadia, A.R., "The Social Philosophy of Radhakrishnan", in The Philosophy of S. Radhakrishnan, p.777.
54. Radhakrishnan, S., Eastern Religions, p.366.
55. Ibid., p.383. Emphasis original. A similar view is expressed in his Hindu View of Life, "The Hindu thinkers distinguish between the less evolved in whom the powers of self-analysis and self-direction have not arisen, and the more evolved or the twice-born who were graded into the three classes of Brāhmins, Kṣatriya and Vaiśya. The different castes represent members at different stages on the road to self-realization." (p.120).
56. Radhakrishnan, S., Eastern Religions, p.382.

57. Ibid., p.367.
58. Ibid., p.370.
59. Ibid., p.367.
60. Ibid., p.366.
61. Radhakrishnan, S. and Raju, P.T., eds., The Concept of Man, (London: George Allen & Unwin Ltd., 1960), pp.36-37.

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ABSTRACT OF THE THESIS

This thesis is an attempt to present a comparative and critical analysis of the foundations of the theories of human rights propounded by Jacques Maritain and Sarvepalli Radhakrishnan. The primary aim of this comparative analysis is to prepare a common ground for the possibility of a fruitful dialogue between these foremost modern representatives of two age old traditions, Thomism and Hinduism.

The work begins with an analysis of the different aspects of Maritain's concept of rights and explains the fundamental principles of his theory in relation to his ideas concerning the concept of human nature and man's relationship to society. In this connection the concepts of individuality, personality, common good and natural law are discussed and Maritain's views on different specific rights such as the right to life, right to freedom, right to property and right to equality are analysed in detail.

The second chapter is devoted to the analysis of Radhakrishnan's theory of rights. Following the pattern of the first chapter it explains Radhakrishnan's concept of human nature and analyses his views on man's relationship to society. In this connection the concepts of Brahman, māyā, Īśvara, ātman, jiva, puruṣārthas and dharma are discussed in detail, and in the light of this discussion Radhakrishnan's views on the right to life, right to freedom, right to property and right to equality are analysed.

The third chapter is devoted to the comparative analysis of the different aspects of the theories of the two thinkers. It begins with an analysis of the basic similarities and differences between the key-concepts of their theories, and explains how these similarities and differences affect the

general characteristics of their concepts of rights. On the basis of this comparative analysis it is argued that despite their differences concerning the nature of man and his relationship to the Ultimate Reality, on points of major importance, Maritain and Radhakrishnan agree with each other. They both believe that rights originate from the spiritual aspect of man's being and must be perceived as a means to attain the essential goals of his spirituality. Rights are not mere defence-weapons in the individual's war against society, rather they are instruments in the realization of the unity of mankind. According to them there is a strict duty-right correlation in which specific rights must be defined in relation to the specific duties they are believed to perform. They agree that amongst all the basic rights, the right to freedom is the most fundamental and must be given primacy over all other rights. Though in general human rights can be considered absolute and universal in character, to be effective and relevant in actual application, they must accommodate change and relativity.

The fourth chapter presents a critical evaluation of the theories of Maritain and Radhakrishnan and points to the major weaknesses and strengths of their concepts of rights. A significant outcome of this evaluation is that, to a large extent, their points of strength turn out to be their points of agreement also, and that provides the basis for developing a theory of rights which avoids their weaknesses but incorporates their strengths.