There has long been an investigation, especially amongst modern political theorists, into the degree to which medieval theology and philosophy have or have not some bearing on modern conceptions of natural rights.¹ Late medieval scholasticism has been thought to reveal objective and subjective natural right(s) and the modern western world is certainly filled with claims to a plurality of subjective rights. There were, in fact, different medieval traditions of rights discourse—that of civil lawyers, that of theologians to name only two. Here I want to discuss the perspectives of Franciscans, especially Franciscan theologians of the fourteenth century, and what they mean when they used the word *ius*.

Some today think that the older natural law references to *ius/iura* and the post-Enlightenment reference to natural or human rights say much the same things. I happen not to think this always to be the case although certain contemporary references to human rights often rely on, unacknowledged, an earlier Christian foundation. My aim here is to focus not on what today we seem more comfortable with: the individual’s just claims to entitlements or even that subjective desires be acknowledged. Rather, I want to bring to your attention a language that was especially vibrant amongst Franciscans concerning what is owed to members of our species and how we arrive at this knowledge. My perspective, because I think it is theirs, attempts a highlighting of duties: to God, oneself and to others, simultaneously downgrading

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It is acknowledged that medieval rights language developed concurrently with wider notions of liberty. Some spoke of liberties as exemptions from law while others spoke of liberty as a possession, a power of the soul capable of exercise without appeal to some higher, external human authority in the making of choices and performance of acts. Here, the exercise of one’s liberty was a *ius*, a power, taken as an inherent species-specific quality, relying on a normative conception of human nature with its moral power to pursue the good and avoid evil. This was a *ius*, a capacity that characterized the functional operations of the soul in reasoning and willing to act in one way or another. Generally, *ius* is what *iustum est*, what is just; *ius* could also refer to civil, positive and legal capacity. Can we discern a distinctive Franciscan voice in the employment of these terms? I think we can and it contrasts especially with that of their Dominican contemporaries.

The Franciscan voice emerges out of their evolving perspectives, first: on the pre-lapsarian conditions of Adam and Eve; then: on what occurred after the Fall but before cities were established; and thirdly, on what politics now is for us in cities. Of course, in Gratian’s vast canon law compendium, the *Decretum*, we are already told of the natural community of goods by *ius naturae*, distinct from custom and constitutions. But for Franciscans, and peculiar to their vow of poverty, the burning question was whether there now is a possibility to renounce property in “cities” and still not destroy the significance of politics in the here and now.

We shall have to become familiar with their distinctive and evolving understandings of different kinds of *dominia*, that is, *dominium* in the state of innocence and *dominium* after the Fall. The focus on this word especially as the fourteenth century progressed with increasing turmoil for the Order is a complex one. In the state of innocence, some Franciscans observed that the *ius naturae* was a principle of indistinct

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3 D.8 dictum Gratiani col. 12: Differt etiam ius naturae a consuetudine et constitutione. Nam iure naturae sunt omnia communia omnibus quod non solum inter eos servatum creditur... CIC. I Decretum Mag. Gratiani D. 1 cap. 7 col. 2: *Ius naturae est commune omnium nationum, eo quod ubique instincut naturae, non constitutione aliqua habetur, ut... communis omnium possessio et omnium una libertas, acquisitio eorum quae cela, terra, marique capiuntur....