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## The Equality of Persons and the Culture of Rights

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## KEYNOTE ADDRESS

# THE EQUALITY OF PERSONS AND THE CULTURE OF RIGHTS

JEAN BETHKE ELSHTAIN\*

Human beings are soft-shelled creatures. All bodies are fragile. But some bodies, in some circumstances are more vulnerable than others. In her powerful prison memoirs—the book is entitled *Eyes of the Tailless Animals* for in North Korea’s gulags and torture centers, prisoners are called “tailless animals” and reduced to less than human status—Soon Ok Lee writes of a prison cell in which she found herself after she had survived a series of brutal tortures:

Six pregnant women were lying on the cold cement floor, which was not even covered with a mat. I thought, *Even animals receive better treatment outside this prison.*

The women were giving birth to their babies. The babies were supposed to be stillborn. Because Kim Il Sung had ordered all anti-Communists be eliminated within three generations, prison policy said that prisoners, who were considered anti-Communists, could not have babies in prison. When pregnant women came to prison, they were forced to abort their babies. Poison was injected into the babies cuddled in their mothers’ wombs. After the injection, the pregnant woman suffered tremendous pain until the babies were stillborn about twenty-four hours later. Medical officers walked around the pregnant women and kicked their swollen bellies if they screamed or moaned.

Miraculously, some of the babies were born alive. They cried like normal babies do. When a live baby was born, a medical officer said to the medical prisoners, “Kill it! These criminals don’t have any right to have babies. What are you doing? Kill it right now!”

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The mothers of these newborn babies just laid on the floor and sobbed so helplessly while a medical prisoner's shaking hands twisted the baby's neck. . . . The babies struggled for a short second, but they died so easily. Male prisoners wrapped the babies in rags and dumped them into a basket.

I was shocked. This was the most cruel human behavior I had ever seen in my life. Even today, I dream about the women who had just given birth to their babies.<sup>1</sup>

Soon Ok Lee is one of the few to survive the North Korean gulag. Most prisoners die within four months. She entered a convinced, if bewildered, communist, wondering why she had been singled out—evidently the local commissar simply had a quota to meet and trumped up some charges against her because he was irritated with her for refusing him a favor—and she escaped a committed Christian. She became a Christian while in prison because she saw how Christians were singled out for abuse—men, women, and children—and how they loved one another, even in that hell on earth. And because—thinking of those babies who survived attempted, coerced abortion crying feebly, their necks then wrung—*they died so easily*. We die easily in any and all of the past and present hells on earth.

Human rights is supposed to do something about all of this. Human rights posits the moral equality of all persons. But what does it mean to speak of human equality? Or a culture of human rights? Are all rights created equal or are some more basic than others? These are daunting questions that would require an elaborate analysis to cover adequately. In a single essay this is not possible. What follows is but scratching the surface of a larger question. I will do three things: First, I will reflect on contrasting understandings of persons and the rights that are said to attach to persons, going on to explore how alternative construals of rights and rights-talk help to underwrite one sort of rights culture or another, as the case may be. Second, I will display the Catholic understanding of human rights, arguing that this way of construing rights offers a powerful ground for rights and a defense of human dignity. Third, I will ask whether our contemporary human rights culture is sufficiently robust to protect human dignity over the long haul.

## I. PERSONS, MORAL EQUALITY AND RIGHTS

I turn to my first issue, a reflection on contrasting understandings of persons, equality, and rights. Why is this so critical a concern? A quick answer would be that we rightly fret that unless the presupposition of human equality has a secure basis or ground, this presupposition will fail to sustain the rights that have become attached to persons by virtue of their

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1. Soon Ok Lee, *Eyes of the Tailless Animals: Prisoner Memoirs of a North Korean Woman* 90-91 (Living Sacrifice Book Co. 1999).

being persons. History teaches us that one of the first moves made by tyrannical and intolerant regimes is to strip certain persons, whether as individuals or as members of particular groups, of their status in the civic community, followed by a denial of their standing in the human community. This is the trajectory Hannah Arendt pointed out: destroy civic standing, and the negation of human standing likely follows.<sup>2</sup>

And if it does, there is little—save counter-force or interdiction from opponents of such regimes, whether from within or without—that will stop the too cruel and powerful in order to spare those whose moral and civic equality has been negated by arbitrary fiat.

Small wonder, then, that we hear phrases like “every human being is sacred” or “every human being possesses dignity simply by being human” when rights are being discussed. What follows from this claim is an insistence that there are some things that should never be done to persons, whatever the circumstances, and some things that should be done for persons, whatever the circumstances. The strongest statement of this position insists that situational factors should never come into play where positive rights are concerned; others argue that situational factors must be taken into account in determining whether or not certain goods can be made available to all persons without distinction in a given society at a given time. On the negative side of the ledger, however, there is no problem with resources and distribution. Here, it is simply a matter of governments or nongovernment actors to cease and desist from “disappearing people,” arresting people arbitrarily, executing them without trials, and the like.

Questions as to whether the things that ought never to be done are prior to those cast positively, the things that ought to be done, is a separate question, at least for the moment. For now, the foundational claim is that every human being possesses a dignity that is given by virtue of being human, rather than being the revocable bestowing of a status of a particular kind within a particular polity at a particular time. This dignity cannot be revoked in principle whatever is going on in actual practice. Equal regard, in our time, has taken shape as, and congealed around, the idea of human rights within the frameworks of states and civil societies.

The dignity of the person assumes an equal *dignitatis* as a beginning point from which rights derive. Decades of heated debate have centered on whether some such claim is required in order to institutionalize a sustainable human rights regime. I emphasize sustainable for a reason. It is certainly possible to make human rights claims on utilitarian or conventionalist grounds, as, for example, in the approach of American philosopher and pragmatist Richard Rorty: just the way we happen to do things around here. But is that claim sufficiently robust to sustain a commitment to human rights over the long haul? And, further, what sort of culture of rights would

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2. See Hannah Arendt, *The Origins of Totalitarianism* (Harcourt, Brace & Co. 1951).

be sustained on utilitarian or conventionalist grounds? Legal scholar Michael Perry argues that Rorty's claim and others like it cannot ground rights for "[T]here is no intelligible (much less persuasive) secular version of the conviction that every human being is sacred; the only intelligible versions are religious."<sup>3</sup> I am inclined to agree, but one must do more than simply assert the point. A complicating factor is that, in a pluralistic society peopled by citizens with a variety of religious commitments or none at all, we want human equality and rights to stand on their own, so to speak. We do not want to be obliged to go to the ground on which rights rest at each and every point, although, in principle, that ground could be displayed. One way or the other, one must speak out in a manner that is clear: human dignity is not just a habit of some cultures; rather, it is a claim about all people in all cultures.

Those who disagree with this general assertion make several kinds of arguments. One is to insist that diffuse sentiment alone can do the job of sustaining rights. We do not need to talk about God-given dignity and equality that cannot be revoked by governmental decree. Such critics want statutory rights "plus," so to speak. The "plus" is the super-added strength given to particular human rights regimes by the diffuse human sentiments of a wider, international human rights culture. Are such cultures strong enough to prevent human rights abuses of the most egregious sort, up to and including genocide? The historic evidence suggests not. The critic might continue, however, by claiming that a God-given human dignity has not protected persons in desperate circumstances, either. This prompts a question that might well admit empirical exploration: Is the presupposition that human rights flow from a nonarbitrary, objective (if nonstatutory) ground (God, natural law) a stronger hedge against disaster than a resort to diffuse sentiments? By disaster I refer to imperious claims by the state that may, over the long run, undermine human dignity, perhaps, and only apparently paradoxically, in the name of rights. (I will have more to say on this latter possibility below.)

Let us take up the conventionalist argument of Richard Rorty. Rorty, so I shall argue, offers the best refutation of his own position, although that is certainly not what he intends. Here is an example that makes the point. In a talk at Columbia University in 1946, Albert Camus characterized what he called a crisis in "human consciousness" forced upon humanity by the horrors of World War II. He illustrated this crisis through four vignettes, spare descriptions of events. One vignette was as follows:

In Greece, after an action by the underground forces, a German officer is preparing to shoot three brothers he has taken as hostages. The old mother of the three begs for mercy and he consents to spare one of her sons, but on the condition that she

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3. Michael J. Perry, *The Idea of Human Rights: Four Inquiries* 11 (Oxford U. Press 1998).

herself designate which one. When she is unable to decide, the soldiers get ready to fire. At last she chooses the eldest because he has a family dependent on him, but by the same token she condemns the two other sons, as the German officer intends.<sup>4</sup>

When we read this story we are overwhelmed with horror. We think of a brutal violation. We think of atrocity. We think of the evil that was National Socialism—evil because of its systematic assault on human dignity and equality. In an essay on the philosophy of Professor Rorty, I insisted that there was no way one could, as Rorty suggests, redescribe this horrible event in a way that makes the actions of the German officer look good.<sup>5</sup> One of Rorty's claims is that because we all describe with an eye to making ourselves look good, it follows that anyone can put any spin on anything. There is no such thing as "getting it right" because we are simply imposing our own subjective opinions when we claim we are doing so. Fortunately for some of us, the way our culture gets things done differs from the way the Nazis got things done, so we would object to what the Nazis did—for that just is not our way. But we cannot make a stronger claim lodged in a presupposition about the objective dignity of the human person.

In a response to my critique, Rorty argued that one could quite readily redescribe the German officer compelling the mother in ways that make his actions look not only acceptable, but heroic. He imagines that the German officer and his friends were college students before the war who had learned to "rise above slave morality" and to

outdo each other in scorn for the weak . . . and a concomitant contempt for everything stemming from Platonism and Christianity. Home on leave, the officer tells his friends the story of how he broke a Greek mother's heart. . . . His friends, hearing his story, are envious of the robustness of his moral stance. . . . They swear to themselves that, when they return to their posts, they will imitate the good example their friend has set.<sup>6</sup>

Everybody, Rorty concludes, "tries to whip up a story according to which he or she did the right things," and nobody (he says this is a bit of truth derived from Socrates, with whom he otherwise disagrees) "knowingly does evil."<sup>7</sup>

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4. Jean Bethke Elshtain, *Augustine and the Limits of Politics* 69-70 (Notre Dame U. Press 1996) (quoting a speech delivered by Albert Camus at Columbia University in 1946 entitled *The Human Crisis*).

5. See Jean Bethke Elshtain, *Don't Be Cruel: Reflections on Rortyan Liberalism*, in *The Politics of Irony: Essays in Self-Betrayal* 199, 199-217 (Daniel W. Conway & John E. Seery eds., St. Martin's Press 1992).

6. Richard Rorty, *Robustness: A Reply to Jean Bethke Elshtain*, in *The Politics of Irony: Essays in Self-Betrayal*, *supra* n. 5, at 219, 219-20.

7. *Id.*

When I read Rorty's response, I was, of course, forced to ponder it. No one knowingly does evil? Everyone always whips up an exculpatory tale? Since when? But answering those questions is not my main concern. My main concern is this: What are the implications of calling Camus's description of that horrific tale from World War II and an imagined post-script in which a German officer tells friends that he did a noble day's work two descriptions of the *same* event? For starters, we make Albert Camus and a brutal Nazi equally legitimate (because subjective in each case) describers of the world. Camus's story has prevailed, and we like it better than the other one. Presumably, if the allies had lost World War II, we would come around to sharing the German officer's high opinion of himself. There is no way to get it right. All of us arbitrarily pick and choose as we see fit in order to make ourselves or our cause look good. Radical conventionalism of the sort Rorty advances affords no guarantee of human equality and dignity, hence a culture of rights. Indeed, Rorty here provides a compelling reason for why none of us would wish to live in a world of arbitrary redescription.

That alone does not commit one to the view that human rights need God, so to speak. One could say that human rights need a guarantee of some sort, and that guarantee, that writ, cannot be manipulated in order to put a thumb on the scale in favor of some claimants in contrast to some other. Radical redescription and conventionalism clearly afford no such guarantee. By contrast, some versions of religiously-derived (if not religiously-justified) human rights *are* capable of doing more of the hard work of sustaining a human rights culture consistent with human equality and dignity. My concern, hence the Rorty-Camus colloquy, is that radical constructionism or conventionalism has so thoroughly saturated so much of our modern rights culture that it is often difficult to sort out stronger claims that refer back implicitly, if not explicitly, to the sacral grounding of rights by contrast to others that have no such point of origin and reference. This leads to a related issue, namely, how contrasting understandings of rights ground different human rights cultures.

Here is the question: What construals of human rights underlay, or are consistent with, what versions of a human rights culture? This is important because there can be a human rights culture in which "things just happen to have worked out this way," one in which rights become a kind of shopping list. Rights keep on proliferating; indeed, it is difficult to keep up with them. Often these rights are adumbrated when groups of claimants with sufficient political clout push through a claim they couch in the language of particular rights that apply specifically, if not exclusively, to their group. This is different from insisting that a group of claimants belong within the broad category of human persons whose dignity is given, and, therefore, fundamental human rights apply without distinction. If they are being denied precisely such rights it is because their human status has been denied

or diminished, perhaps on some particularistic ground. This makes it all the more vital that a nonparticularistic ground be asserted to counter mistreatment.

For example: Do we really require separate rights that apply to people by virtue of their location in what, as a student of political science, I have learned to call “ascriptive characteristics”? “Ascriptive characteristics” refer to accidents of birth—race and gender are two primary categories. To be born human is no accident of birth, of course, but, instead, definitional of it. Surely humanness is the great leveler: Who belongs definitionally within the category “human”? If African Americans or women are being denied rights, it is their human status that is assaulted. With this as a backdrop, I turn to an argument defending the power and robustness of a version of human rights argument that flows from Catholic Social Teaching. The articulation of human rights within the Catholic tradition begins with strong claims about human dignity. Because the great social encyclicals are addressed to all persons without distinction, they articulate and defend a culture of rights that pertain to Christians and non-Christians alike.

## II. CATHOLIC TEACHING ON HUMAN RIGHTS

I begin with *Dignitatis Humanae*, written in 1965. The document proclaims the dignity of the human person, insisting that dignity involves “enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty.”<sup>8</sup> The rightful exercise of rights is tethered to responsible freedom, a notion conspicuously absent from contemporary rights talk of the sort that equates rights to preferences rather than to the responsible exercise of freedom. This market-model of rights rests on the presuppositions of a version of contractarianism within which the self is presented as primordially free in a way that underscores self-sovereignty, even asociality. Freedom means to be free from all external impediments, at least if one’s reference point is Thomas Hobbes.<sup>9</sup> Hobbes and others associated with radical nominalism saw persons as entities driven by irresistible desires and a relentless power urge. Any rights culture derived from such premises becomes a way that we confront and are protected from one another. An objective orientation toward freedom of the sort contained within Catholic Social Teaching, within which rights are located in an undeniably teleological framework, is denied.

Here it is necessary to deepen the contrast between rights talk as reducible to importunate human urges and desires and the alternative I have begun to unpack drawn from Catholic Social Teaching. I will examine and

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8. Documents of II Vatican Council, *Dignitatis Humanae*, ¶ 1 (December 7, 1965) (available at [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat\\_ii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat_ii_decl_19651207_dignitatis-humanae_en.html)) [hereinafter *Dignitatis Humanae*].

9. See Thomas Hobbes, *The Leviathan* (C.B. Macpherson ed., Penguin Books 1968) (especially the section *Of Man*).



weave together three criteria: (1) anthropological presuppositions, or understandings of the human person; (2) the concept of rights itself; and (3) the good toward which rights tend. If my argument is in any way compelling, it should help to reveal a late modern dilemma: we cannot do without human rights. But the ways in which rights are generalized and universalized may, over time, prove incapable of sustaining those rights because too much of the background and justification for rights has been jettisoned along the way.

When I was in graduate school, we talked about contrasting views of human nature. That way of talking has been ruled out by poststructuralism and postmodernism: nature and the natural can never be appealed to, we are told. An all purpose epithet, “essentialism” is trotted out as a stick to beat “nature” or the “natural” whenever and wherever these terms appear. Erroneously, the claim is that those who evoke nature are committed to the deterministic view that human beings are not shaped in any fundamental way by their social and political environments and history. This is balderdash, but it is a charge that has stuck. That said, it seems to me better to begin with anthropological presuppositions rather than human nature. Why? Because at least some human nature arguments have historically smuggled in a hard determinism, even if they didn’t state one outright. The *telos* underwriting human rights within Catholic Social Thought, by contrast, avoids hard determinism by acknowledging the many ways in which we are “pressed” by the world—to use St. Augustine’s wonderful imagery of human beings as akin to grapes in the grape press.<sup>10</sup> The Catholic defense of rights frames all considerations of human projects within a strong notion of the good toward which human beings, and human society, tend.

To speak of an anthropology is to be open to cultural and historic specificity and the role of contingency in human affairs. But the grounding—the conviction that every human being possesses a God-given dignity—is not dependent on any particular cultural configuration. One asks: What sort of person is this human being? Catholic Social Thought answers: an intrinsically, not contingently, social being—one born to relationality. The dignity of the self cannot be dehistoricized and severed from the experiences of human beings as creatures essentially, not contingently, related to others. The modern social encyclicals speak of human rights in a way that avoids two extremes: either positing a primordially free, sovereign self that is a possessor of rights against others, or, contrastingly, positing a self so thoroughly defined by, and absorbed within, an overweening social entity that no one possesses rights against—only rights within. Catholic Social Thought steers a course that avoids either self-sovereignty or the over-

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10. See Jean Bethke Elshtain, *Augustine and the Limits of Politics* (U. of Notre Dame Press 1995) (for a detailed discussion of Augustine’s arguments concerning human freedom and its limits).

socialized self. The dignity of the human person conjures up a richer, more relational image than does the sovereign “individual” favored by libertarianisms of both the Left and the Right. In speaking of the person, one preserves a notion of individuality without sliding into individualism, and one speaks of the self-in-society without endorsing social determinism.

Within this Catholic vision, commonality is assumed and solidarity is an achievement consonant with the dignity of persons. What wants explaining within this frame is not solidarity, but isolation. By contrast, those oriented to the presuppositions of individualism strain mightily to figure out how such essentially, not contingently, selfish creatures as human beings might relate to one another in relatively non-fractious ways. The individualist thrust of contemporary culture, especially in the West, sees us as complete and whole unto ourselves. The self is sovereign and has proprietary interest in itself. When we speak it is monologic, not dialogic. The self is the sum total of its preferences. Choice is made absolute as the overweening human good. Choice in much contemporary debate is reduced to wants and preferences without any necessary reference to goods, ends, and purposes and how one might distinguish the more from the less worthy. Closely linked to the individualist strain of rights is one version of freedom, namely, the right of a sovereign self to choose values for itself in isolation from a community of belief and within a conceptual frame that has eliminated any notion of the normative ordering of goods.

The view of the self as sovereign-chooser is so deeply entrenched that in early twenty-first century Western culture it has become part of the cultural air that we breathe. Needless to say, this position casts a pall of suspicion over ties of reciprocal obligation and mutual interdependence. Presuppositions of self-sovereignty erode families, civil society, polities, even markets over time. How so? Because loosening up the ties that bind us to one another invites what political theorist William Galston calls “the plenipotentiary state” to move in and to establish more control over civil society. Catholic Social Thought, by contrast, embraces responsible freedom compelled by a realization that multiple, plural associations with their respective authoritative claims, are central to civic good and to human dignity.

*Dignitatis* also helped to launch a claim deepened in subsequent encyclicals, namely, that the right to religious freedom is *primus inter pares* among rights. How so? Because this right speaks directly to the *ur-ground*<sup>11</sup> of rights, namely, our selves geared to searching for the truth. It follows that “the right to religious freedom has its foundation not in the

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11. By “ur-ground” of rights, I refer to a pre-political status of the person *as given*. Namely, that we are creatures of the sort who search for truth, meaning, and purpose. This truth-seeking ur-ground of rights leads directly to religious freedom as the *civic* right specifically geared to, and flowing from, our status as truth-seekers.

subjective disposition of the person, but in his very nature.”<sup>12</sup> Because we have a right, and therefore a responsibility, to seek the truth, the right that speaks most profoundly to the search for truth is primary among our rights. These rights begin with a right to “immunity from coercion in matters religious.”<sup>13</sup> This immunity from coercion makes possible a form of human flourishing that, without it, is impossible. *Dignitatis* repeats this theme many times over. With that, let us turn to a few additional words on the impoverished anthropology at work in much contemporary rights talk.

As I already noted, the person nowadays is often defined by choices understood as preferences. Because this way of thinking is so pervasive, we have lost sight of just how inadequate it is. For is there not something not only inadequate, but extreme, in the view that we are most ourselves when we are all alone with our preferences? This position also makes it difficult for us to assess the negative, cumulative effect of thousands upon thousands of individual “choices,” let us say those leading directly to certain forms of environmental degradation. Because we cannot criticize any single individual choice (if it is “right” for him or her), our capacity to critically evaluate the overall direction of our political economy or our popular culture or anything else is denuded. The great gift and responsibility of moral autonomy atrophies if we reduce human freedom to a vast array of consumer choices in a world in which individual goods triumph and any possibility of a common good is lost.

### III. WHAT SORT OF HUMAN RIGHTS CULTURE?

Human rights are by now inevitable. But the meaning and nuance of rights differs widely. In the American republic, the first noticeable mention of rights was the Bill of Rights appended to the U.S. Constitution. These rights revolved largely around civic freedoms—assembly, press, speech, free exercise of religion—and primarily concerned what the government could not do to you, say, commit an unreasonable search and seizure. As everyone knows, the Bill of Rights speaks directly to religious freedom, declaring at one and the same time non-establishment and the free exercise of religion. This touches on both the negative and positive side of rights—what should not be done to people and what should be afforded for people. Religious liberty is also central to pluralism given the historic link between confessional and social pluralism. This, in turn, provides a brake against overweening state power or cultural pressures that aim to make us “all alike.” Within Catholic Social Thought, of course, religious freedom is more than a civil right. It is a sign of human dignity, a mark of our humanity. Without religious freedom, other freedoms are weakened or diluted. This, at least, is the implication.

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12. *Dignitatis Humanae*, *supra* n. 8 at ¶ 2.

13. *Id.* at ¶ 4.

Mary Ann Glendon points out in her lively book, *Rights Talk*, that the dimensions of sociality and responsibility are missing when the rights-defined self stands alone.<sup>14</sup> Yet “me and my rights” seems to be where we have arrived. The human will is thereby made absolute, and rights are deployed in order to “institutionalize the sovereignty of the human will.”<sup>15</sup> To recognize any limit to the exercise of the will is, for us, to diminish the self. It appears to be a form of self-abnegation. Pope John Paul II addressed this issue at a Plenary Assembly of the Sacred College of Cardinals in 1979 when he observed that:

Very often, freedom of will and the freedom of the person are understood as the *right to do anything*, as the right not to accept any norm or any duty that involves commitment . . . . But Christ does not teach us such an interpretation and exercise of freedom. The freedom of each individual creates duties, demands full respect for the hierarchy of values, and is potentially directed to the Good without limits, to God. In Christ’s eyes, freedom is not first of all “freedom from,” but “freedom for.” The full enjoyment of freedom is love, in particular the love through which individuals give themselves.<sup>16</sup>

Within Catholic teaching, this freedom is underwritten by religious freedom. *Dignitatis* proclaims religious freedom a right that accords with the dignity of persons, that is lodged in a principle of our natures. We are endowed with reason and free will, and with that comes personal responsibility, including our “moral obligation to seek the truth, especially religious truth.”<sup>17</sup> As Pope John Paul II has argued, *Dignitatis* expresses “not only the theological concept of the question but also the concept reached from the point of view of natural law, that is to say from the ‘purely human’ position, on the basis of premises given by man’s own experience, his reason, and his sense of human dignity.”<sup>18</sup> The right to religious freedom is not a subjective claim, but the civil recognition of an objective truth. Without doubt this way of talking and thinking is unintelligible to many of our contemporaries. But, surely, absent some account of the human good and of how we are to evaluate and to rank rights, it is difficult to know what this right, or any other right, is all about.

Telling us what rights are all about provides a good bit of the heft and lift of the argument here assayed. A shopping list of rights distorts the matter by putting all declared rights on a par with one another. Thus, the

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14. See Mary Ann Glendon, *Rights Talk* (The Free Press 1992).

15. See Pierre Manent, *Modern Liberty and its Discontents* 99 (Daniel Mahoney & Paul Seaton eds. & trans., Rowman & Littlefield Publishers, Inc. 1998).

16. *Human Rights in the Teaching of the Church: From John XXIII to John Paul II* 161-62 (Giorgio Filibeck ed., Libreria Editrice Vaticana 1994) [hereinafter *Human Rights in the Teaching of the Church*].

17. *Dignitatis Humanae*, *supra* n. 8, at ¶ 2.

18. *Human Rights in the Teaching of the Church*, *supra* n. 16, at 321.

right to a paid vacation is just one right on a list with the right to religious and political freedom. Absent a way to sift and winnow rights, the recognition that human beings are drawn toward the truth by their natures is distorted or trivialized. Thus, we are borne full circle back to our central imperatives. The ends toward which rights tend cannot be evaluated absent a recognition that one must begin with an understanding of the human person. The Universal Declaration of Human Rights affirms the “inherent dignity” of all persons. This dignity is not free-floating, not an arbitrary principle picked up and found useful; rather, human dignity is lodged in the fact that we are creatures of a certain sort. Civil recognition and rights are the external sanctions and markers of this status, this fact.

Catholic Social Teaching fleshes this out further by insisting that if contemporary society has great difficulty figuring out an intelligible and defensible way to articulate *and* to limit rights, this is because it has embraced a nominalist construal open to arbitrariness. As a result, we proliferate pragmatic cut-off points about what is or is not permitted, but we are offered little guidance as to what counts as an offense, in the first instance, or what is a basic entitlement, in the second. So we face the rueful recognition that with the universalizing and proliferation of rights may also come their watering down.

In an article entitled “Human Rights: The Midlife Crisis,” Michael Ignatieff argued that a “cloak of silence” has been “thrown over the question of God.”<sup>19</sup> Ignatieff’s reference point is the series of deliberations that led to the Universal Declaration itself. In his words, “The Universal Declaration enunciates rights; it doesn’t explain why people have them.”<sup>20</sup> Communist and some non-Communist delegations at the time of the drafting rejected any reference to human beings as created in God’s image. Even “by nature” failed to pass muster. So “secularism has become the lingua franca of global human rights, as English has become the lingua franca of the global economy. Both serve as the lowest common denominators, enabling people to pretend to share more than they actually do.”<sup>21</sup> Can this be kept up indefinitely? Or will it lead over time to a watering down or distortion of human rights? Ignatieff himself is undaunted. He insists it is none too clear “why human rights needs the idea of the sacred at all. Why do we need an idea of God in order to believe that human beings should not be beaten, tortured, coerced, indoctrinated, or in any way sacrificed against their will?”<sup>22</sup> These insights, he continues, derive from a certain notion of moral reciprocity, a secularized version of a Golden Rule.

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19. Michael Ignatieff, *Human Rights: The Midlife Crisis*, 46 N.Y. Rev. Books 58, 58-62 (May 20, 1999).

20. *Id.*

21. *Id.*

22. *Id.* at 60.

Ignatieff calls his a minimalist anthropology that leaves those of strong religious persuasion unsatisfied. But how reliant is a notion of moral reciprocity absent a substantive notion of persons and their moral standing? Remember the way history's tyrants denied human status in order to strip categories of persons of their dignity and the protection dignity affords. One might agree that human beings "should not be beaten, tortured, coerced, indoctrinated, or in any way sacrificed against their will," but go on to claim that *this* group over here is not human, after all. So it matters not what harm comes to them. When Rwandan Hutus set out to slaughter Rwandan Tutsis *en masse*, they called it "killing cockroaches." The Tutsis were denied human status. To be sure, one need not bring the full panoply in a *sacral* or ontological argument for human dignity to bear in, or on, every discussion of rights, as I suggested at the outset. But to insist that it need never be brought to bear in any discussion or in any circumstance is going too far in the conventionalist, nominalist, and utilitarian direction.

Ignatieff downplays human arbitrariness, cruelty, and sheer cussedness when he embraces the view that "not much more than the basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for me" will sustain human rights culture over time.<sup>23</sup> I doubt that this is so; in fact, the evidence points the other direction. There is a lot more work one must do to make this doubt intelligible, if not acceptable, to those who disagree. But, for now, let me summarize: We must all be respectful as we stand before fundamental rights that have their source in the presumption of human dignity and moral equality. No state created these rights or their ur-ground, so to speak. States, and peoples, either recognize dignity-grounded human rights, and serve as their guarantor, or they do not.

What sort of culture of human rights, then? One tethered to moral dignity or one cut-loose from this mooring, one, therefore, in which rights may proliferate as human dignity plummets? You cannot think intelligibly about human rights without tending to the issues I have here raised. The Soon Ok Lees of this world—and their numbers are legion—remind us that these are not just abstract philosophical questions but, quite literally, matters of life and death.

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23. *Id.* at 62.