

# THE RIGHT AND THE GOOD, AND THE PLACE OF FREEDOM OF RELIGION IN HUMAN RIGHTS<sup>1</sup>

PAOLO G. CAROZZA

“[T]he centrality of religious freedom to the protection of human dignity is, in fact, key to the coherence and viability of the entire human rights project.”



There is, of course, a long and deep philosophical debate about the relationship of the right to the good, and the priority of one over the other.<sup>2</sup> We can see some of it in the other articles of this volume, such as David S. Crawford’s critique of John Rawls’s *Political Liberalism*. Some of that literature also offers important theological insights that lead to powerful critiques of the metaphysical premises of the liberal claim to separate right from good

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1. Paper delivered at the conference, “*Dignitatis Humanae* and the Rediscovery of Religious Freedom,” at the Pontifical John Paul II Institute at The Catholic University of America in Washington, D.C., 21–23 February 2013.

2. See Michael Sandel, *Liberalism and the Limits of Justice*, 2<sup>nd</sup> ed. (Cambridge: Cambridge University Press, 1998); Michael Sandel, ed., *Liberalism and Its Critics* (New York: New York University Press, 1984).

at all. My own discipline and method, however, is that of a jurist, and therefore I do not pretend to engage those discussions directly. Instead, I propose to approach the problem from the specific perspective of someone who both inside and outside of the academy has been particularly concerned with the idea and practice of human rights. This has at least two implications for my discussion here. First, I will be reasoning about and from the starting point of legal experience; second, I am necessarily concerned in the end with trying to identify those practices—those rules and principles, processes, and institutions—by which we can best order our common life toward the protection of human dignity and the flourishing of the community.

My aim will be to show that, to the extent that the project of defining and protecting human rights in the post-World War II era has in fact represented a systematic effort to place the priority of rights over the good, it has both failed on its own terms and also can become quite dangerous to human dignity and liberty. From that perspective, the endorsement and deployment of the language on concepts of human rights in *Dignitatis humanae* and contemporaneous or subsequent magisterial documents, can be seen as puzzling and perhaps problematic. At the same time, there is another, more limited, way to understand and to pursue the legal and political protection of human rights in practice that is more defensible and coherent, as a recognition and respect for the structural openness of the human person to the truth, and as an articulation of certain aspects of the common good. This latter approach to human rights can hold, if at all, only insofar as there is a robust primacy given to the right of religious freedom within the canon of human rights. In this way, the centrality of religious freedom to the protection of human dignity is, in fact, key to the coherence and viability of the entire human rights project.

Let me begin with the birth of the contemporary effort to articulate a global ethic of human rights after 1945. This was not, of course, the beginning of the idea of human rights as such, which has a much longer history, a history that predates Enlightenment liberalism by at least two centuries.<sup>3</sup> The mid-

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3. See Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150–1625* (Atlanta: Scholars Press, 1997).

twentieth century, however, witnessed the first attempt to arrive at a shared agreement about the basic principles of human rights across a plurality of different cultural contexts, religious traditions, and theoretical premises. The story of the genesis of the 1948 Universal Declaration of Human Rights is well known, and Mary Ann Glendon and others have narrated in rich detail how the individuals involved in the drafting and adoption of the Universal Declaration succeeded in such an unprecedented effort.<sup>4</sup> As that record shows, the generation of jurists, scholars, and politicians who drew up and secured approval for the Universal Declaration of Human Rights knew very well that they all came to the discussion with profoundly incompatible first principles—they were Catholics and Muslims and secular liberals and socialists and Confucians, just for starters. Famously, whenever he was asked how it was possible that adherents of such radically opposed philosophies could reach agreement on a declaration of fundamental rights, Jacques Maritain—himself a Catholic, Thomist philosopher, and diplomat who was heavily involved in the adoption of the Universal Declaration of Human Rights—liked to say, “Yes, we agree about the rights, but on condition that no one asks us why. It is with the ‘why’ that all the disagreements begin.”<sup>5</sup>

In other words, the whole enterprise of the Universal Declaration can be said to be constructed not on any one tradition of rights—whether that of Enlightenment liberalism or of the pre-modern Catholic idea of natural rights—but instead on the basis of a deliberate abstention from strong agreement about foundational principles. The basis for their consensus on a declaration of basic human rights was neither a substantive agreement about foundations nor the discovery of a transcendent global ethic that unified them. Rather, their project was based on a more modest and limited aim: to reach a practical consensus on the articulation of human rights while setting aside the goal of attaining any thicker consensus about where those rights come from, why we should regard them as pertaining to human per-

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4. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002).

5. Jacques Maritain, introduction to *Human Rights Comments and Interpretations, symposium*, ed. UNESCO (London: Wingate, 1949), 9.

sons, or what the underlying goods are to which they relate. The human rights enterprise is built on a limited practical agreement, *tout court*.

In that sense, the Universal Declaration, and by implication the entire edifice of contemporary human rights law and institutions, could be characterized as a systematic attempt to prioritize the right over the good, to bracket and set aside any comprehensive accounts of justice, the human person, or the common good, in favor of a catalogue of rights within which any number of competing and incompatible world-views could coexist. On this account, the Universal Declaration might be seen as, at best, a paradigm of Rawlsian public reason (twenty-three years before *A Theory of Justice*), and at worst a recipe for absolute relativism with regard to the meaning and ends of human existence.

But there are at least three reasons why this view of what the Universal Declaration is and does is not tenable, especially over time.

First, if it were true that the Universal Declaration of Rights was entirely protean in its ability to accommodate any conception of persons and society and the relationships of justice among them, then of course the effort would be self-defeating from the start because it would not in fact represent a cross-cultural agreement on anything at all. So we have to see right away that notwithstanding the method of bare agreement on a limited set of practical principles, the Universal Declaration does embody at least some important anthropological premises. For instance, it appeals to inherent human dignity as the foundation of rights (see the Preamble and Articles 1 and 22). In doing so it makes clear that every human person has a moral value that is ontological and precedes the state and positive law, and to which all public authority must therefore be accountable. The agreement over which rights to include or exclude in the document also depends on unstated premises, notwithstanding the drafters' incapacity to discuss "why." The Universal Declaration does not include the right not to be alienated from the fruits of one's labor, for example, but it does include a recognition that the family must be protected as the fundamental unit of society—thus there is decidedly, even if only implicitly, an affirmation of a certain conception of the good in the enumeration of these rights rather than others.

Still, one could reasonably respond that despite these choices, the Universal Declaration is still quite minimalistic in its embodiment of a substantive vision of the human person and of society, and still quite capacious in its ability to accommodate multiple competing and indeed even incommensurable understandings of the good. In this sense it still prioritizes to a substantial degree the right over the good (or at least any “thick” conception of the good).

There is, however, a second reason—and, over time, a much more important and powerful reason—why the universal human rights project is inevitably self-defeating in its pretense of prioritizing rights while bracketing thicker conceptions of the good: its principles are intended to be a guide to practice; it is meant to be implemented, not merely to sit on a library shelf. What necessarily happens when the principles of the Universal Declaration are called upon in practice, in the experience of law as a social reality governing and coordinating the common life of a community? In the interpretation and application of the rights, the ambivalence of the norms must be reduced in favor of specification of the rights, and in that process clear choices emerge from what were previously unresolved disagreements and contested premises.

This happens in a multitude of forms, all very familiar to any observer of the contemporary practice of human rights law:

- What is the scope of a given right? For instance, does the right to found a family extend to the use of artificial methods of reproduction? Does the right to life include the right to water, food, and health care?
- When should “new rights” be recognized, in virtue of the same human dignity that justifies the initial list? Should there be a recognized right to development, or to a healthy environment, for example?
- How do we resolve conflicting claims of rights? Where does my right to freedom of expression end and your right to privacy and to honor begin? When should freedom of association give way to equality? These judgments require some sort of hierarchy of value within the catalogue of rights.
- Who is the holder of a right, and who is the bearer of any correlative duty? Is my right to be free from cruel, inhuman, and degrading treatment only opposable to the state, or also to other private parties? Does the state have an obli-

gation to protect my rights against the violence of another person? Can citizenship in a political community ever be a necessary requisite for the exercise of a basic human right?

- For what reasons and under what circumstances can we limit or derogate from a human right? Is it ever justifiable to torture a person? When can a religious practice that is harmful to public morality or public health be restricted?

Note that these are not “hard cases,” nor just hypothetical exercises pondered in the tower of academia. They are the questions of every day work in human rights, cases that we are called to resolve in the fora of public life. In addressing any of them we see judgments having to be made, more or less explicitly, about the underlying conceptions of the good—the good of persons, the common good of communities, and the relationships between them.

Over time, the scope and content of the broad and open principles of the Universal Declaration of Human Rights incrementally acquire greater specification and “positivization,” whether by subsequent treaties and declarations or by the adjudication of concrete disputes. As they do so, choices must be made at least passively among the competing and incommensurable premises that the looser boundaries of the Universal Declaration had initially drawn. And so eventually, a stronger conception of the good (although not necessarily a consistent or coherent one) becomes manifest as the foundation and supporting structure of any more fully articulated practice of human rights.

A third and quite different reason that the initial pretense of affirming fundamental human rights without any thick account of the good is ultimately self-defeating is that it is incapable of sustaining itself as a social and political practice. What generates the conditions and commitments necessary to sustaining the pre-political values that are needed to make the law effective? Even Jürgen Habermas—he of “constitutional patriotism” and the self-sufficiency of the liberal legal state—came to acknowledge that: “An abstract solidarity, mediated by the law, arises among citizens only when the principles of justice have penetrated more deeply into the complex of ethical orientations

in a given culture.”<sup>6</sup> In short, the thin practical consensus on human rights alone is not self-sustaining; it depends on deeper sources of consensus about the status and worth of human persons and deeper sources of commitment to respecting that status and worth, because to generate a culture of respecting human dignity one needs a thicker understanding of what human dignity is, where it comes from, and what responsibilities it entails for us as neighbors and fellow citizens.<sup>7</sup>

In short, the strategy of trying to construct a global law for protecting human dignity merely on the basis of a very thin practical consensus on rights prior to and prescinding from any (or any strong form of) judgment about the good of human persons and their communities is both incoherent and unsustainable over any length of time. In the meantime, though, it can and sometimes does result in a number of very troubling tangible consequences, that are all traceable in some degree to the thinness of the practical agreement on which the human rights project rests. I will try to be as synthetic as possible, but let me at least mention seven of these dangers.<sup>8</sup>

First, it contributes to the wide and enduring gap between the formal international legal norms and instruments of human rights law, on the one hand, and the local social, political, and cultural realities in which they are supposed to be operative in practice, on the other. This helps explain the very high degrees of noncompliance and ineffectiveness that we find in virtually all systems of international human rights law.

Second, given that—as I have already pointed out—in the end it is impossible to avoid, at least passively, making judgments and decisions on the basis of the deeper and more contested premises about the nature of the human person and the meaning of human life, acknowledging practical agreement alone only

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6. Jürgen Habermas, “Pre-Political Foundations of the Democratic Constitutional State?” in Jürgen Habermas and Joseph Ratzinger, *The Dialectics of Secularization: On Reason and Religion* (San Francisco: Ignatius Press, 2006), 19.

7. See generally, Christopher McCrudden, ed., *Understanding Human Dignity* (Oxford: The British Academy, forthcoming 2013).

8. See Paolo G. Carozza, “Human Rights, Human Dignity, and Human Experience,” in *Understanding Human Dignity*, ed. Christopher McCrudden (Oxford: The British Academy, forthcoming 2013).

obscures the deeper differences that in fact persist. Bracketing the underlying assumptions about the good only makes those differences less transparent and therefore less subject to reasoned discussion and debate. And from there the problems become more acute.

Third, the masking of whatever good is, nevertheless, in fact always in play in assertions of human rights. This opens the danger that the practice of human rights, rather than being oriented to the priority of the person, to which in principle an authentic regime of universal human rights aspires, becomes instead a Trojan horse for trading in ideologies. It distances the interpretation and development of the content of human rights from the reality of what is or is not conducive to human flourishing in different times and places. Instead, it privileges highly contingent cultural and political preferences over genuine human experience.

Fourth, the practice of human rights also inevitably becomes reduced to an exercise of power, especially the power of a relatively circumscribed cultural elite. The assertion of human rights without a human good as their concrete reference point thus legitimates the very thing that human rights norms were originally supposed to limit and discipline. Control over the means of the institutions and processes of interpretation and application of the rights determines in large part what gets defined or recognized as a human right, which human rights become developed or enforced, and which rights are forgotten or denied. The institutions of international and constitutional law (many of which are distinctly and deliberately removed from political accountability to any popular constituency) have enormous control over the definition and development of human rights, as do a small handful of non-governmental actors that have become players in it as well. The world of human rights thus sometimes resembles a rather tightly drawn oligarchy, in which dissent and difference are strictly limited. And like in many oligarchic systems, a well-financed effort to advance a particular right or rights can be quite effective because there is a relatively narrow elite that needs to be influenced.

Fifth, rights without the good foster a persistent cultural and historical amnesia. The circulation of human rights norms takes place without any real reference to the way that human dignity and the common good have been sought and worked out

in concrete ways within a variety of different human civilizations throughout history. Thus it encourages an ignorance of historical identity and a homogenization of cultures. There is no real place for the recognition of legitimate pluralism in the specification of basic principles of human rights. On the contrary, the ideology of human rights traffic is generally hostile to the notion that human rights norms require great sensitivity and respect for the concrete social contexts in which human persons live and seek meaning and fulfillment.

Sixth, it elevates bureaucratic authority over practical reason and politics. It is an example of what Pierre Manent laments as the “depoliticization” of our societies,<sup>9</sup> because the dynamic of rights succeeds in removing more and more contested and difficult questions about the good of human persons and communities from the sphere of collective rational deliberation, and puts them in the hands of the staffs of institutions that are much more removed from the messy but necessary give-and-take of dialogue, persuasion, and decision in political communities. There is less need to appeal to the practical reason of others and to convince them that a particular course of justice is correct, if instead one can more conveniently discover or invent a right that removes the question from debate.

Finally, without a good which human rights are derived and to which they refer, the idea of human rights increasingly tends to be treated as encompassing the totality of the good. There is nothing else to which it is accountable as a limiting criterion of its proper scope. Thus, rather than remain the limited instantiation of certain discrete aspects of the common good, it tends to colonize every aspect of social and personal life. In the insatiability of our human desire, the object of every desire becomes a human right, and every limitation of desire is then a violation of our rights.

Against all of this, what are we to do with the language of rights? There is a great temptation merely to throw it all overboard. And yet, it is also true that the language of rights represents a powerfully human longing for justice and for freedom. From its earliest emergence in the sixteenth-century encounter of Europe

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9. Pierre Manent, *A World Beyond Politics?: A Defense of the Nation-State* (Princeton: Princeton University Press, 2006), 63.

with the peoples of the New World, the language of human rights has expressed recognition of the universal nature of the human person, of the membership of each in a common human family, and of our responsibilities for the well-being of our brothers and sisters.<sup>10</sup> And even today, for all of the corruptions of dignity and justice and the common good that are perpetrated in the name of a free-floating relativism of rights, vastly more claims of rights around the world do spring directly from the hearts of those men and women and children who suffer from massive and undeniable injustices, from systematic policies of oppression and violence and neglect. We may in the end conclude that the rights paradigm is a fatally flawed way of dealing with these urgent and elementary human needs, but their reality demands that if we are unwilling to speak the language of rights then we must have something else on offer—and in particular, something that takes into account with Christian realism the permanent threat that is represented by any human beings who control, and who will at times abuse, the concentrated powers of the modern state. For now, no other alternative is obvious.

So, can we instead hope to tame the hubris of the human rights project in some way, to help direct it toward a more authentic good and to limit the pathologies to which it is congenitally susceptible? This is where *Dignitatis humanae* and the “rediscovery of religious freedom” are indispensable.

Is the explicit endorsement of rights, of freedom from coercion, and of constitutional limits on the exercise of public power in *Dignitatis humanae* as well as other contemporaneous documents of the Council and the popes merely a mistake of epochal proportions? Was it a historical blunder that the Council “greet[ed] with joy” as a sign of the times the recognition of the right to religious freedom in international documents like the Universal Declaration?<sup>11</sup> Or perhaps does the different way of conceiving the relationship between the right and the good, between freedom and truth, that we find in *Dignitatis humanae* give us a tool for tempering (note, I do not say “curing”) the vices of the rights project?

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10. See Paolo G. Carozza, “From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights,” *Human Rights Quarterly* 25 (2003): 281–313.

11. *Dignitatis humanae*, 15.

Like the many magisterial pronouncements using the language of rights that came before it, like *Lumen gentium* and *Pacem in terris* in its time, like the language of rights deployed routinely in the encyclicals and speeches of John Paul II and Benedict XVI, the discourse of rights in *Dignitatis humanae* does not merely conform to or appropriate a liberal idea and its premises. There is convergence and overlap in key ways, to be sure, but also a critical distance and tension between the paradigmatic Enlightenment assertions of rights and that of the Catholic tradition.<sup>12</sup>

Most critically, the rights pertaining to the human person in the tradition of thought in which *Dignitatis humanae* is situated are not the rights of the person who chooses his ends and his good, who constructs his destiny, or who is defined essentially as an autonomous monad. It is instead a tradition of speaking about rights that strictly links the person to a destiny that is given and an objective good that is to be acknowledged and accepted in freedom. The human person is by nature a seeker of the truth, someone structurally oriented toward the quest to encounter his destiny. This basic premise of *Dignitatis humanae*, while pervasively evident throughout the document, is expressed very succinctly in this passage:

It is in accordance with their dignity as persons—that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility—that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom. Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order be observed.<sup>13</sup>

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12. Paolo G. Carozza and Daniel Philpott, “The Catholic Church, Human Rights, and Democracy: Convergence and Conflict With the Modern State,” *Logos: A Journal of Catholic Thought and Culture* 15, no. 3 (2012): 15–43.

13. *Dignitatis humanae*, 2.

Is the distinctive understanding of the origins and nature of fundamental human rights in the Catholic tradition, as exemplified here, plausibly compatible with the enterprise of human rights as it is concretely manifested and practiced in the legal and political experience of the world today?

When one gives the Universal Declaration a short glance, it is not unreasonable to think that the answer may be a tentative “yes.” When read as an integrated whole and not deconstructed merely into fragmentary echoes of human dignity, the Universal Declaration is certainly more conducive to being interpreted in the light of a Catholic anthropology than most people realize. Explicitly rooted in human dignity, it offers the portrait of a person formed in the family, constituted by relationships, having duties and responsibilities, embodied with material needs as well as a thirst for freedom.<sup>14</sup> The Universal Declaration can be characterized as a noble attempt—even if imperfect as such attempts will always be—to provide a helpful degree of specification of certain aspects of the universal common good.<sup>15</sup> And in fact, it would be difficult to deny that its provisions, with few exceptions if any, are necessary to the protection of dignity or conducive to a flourishing human life. The historical record of the role that Catholics played in the genesis of the Universal Declaration is not to be dismissed entirely, either<sup>16</sup>—that explains, in part, how much some of the document’s articulations of specific principles, such as the protection of the family and the contours of religious freedom, tend to be much more hospitable to Catholic social doctrine than are, for example, the French Declaration of the Rights and Duties of Man or the U.S. Bill of Rights. In short, I do not think it was a confused blunder for John Paul II to have regarded it as “one of the highest expressions of the human conscience of our time,”<sup>17</sup> or for Benedict XVI to emphasize how

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14. “Universal Declaration of Human Rights,” <https://www.un.org/en/documents/udhr/>.

15. John Finnis, *Natural Law and Natural Rights*, 2<sup>nd</sup> ed. (Oxford: Oxford University Press, 2011), 214.

16. Glendon, *A World Made New*, 15.

17. John Paul II, Address to the Fiftieth General Assembly of the United Nations Organization (New York, 5 October 1995), [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1995/october/documents/hf\\_jp-ii\\_](http://www.vatican.va/holy_father/john_paul_ii/speeches/1995/october/documents/hf_jp-ii_)

it represents powerfully the conscience of man and the longing of the human heart for freedom.<sup>18</sup>

At the same time, of course, we saw earlier how the Universal Declaration is deliberately written to avoid representing any single strong conception of the good, and also how in any case the further specification and instantiation of rights in practice over time can, and has, superimposed other concepts of rights onto the framework of the Universal Declaration—some of which profoundly diverge from any Catholic vision. It would therefore be truly naïve and contradictory to suggest that we can content ourselves with a soft and generic compatibility of the rights project with the Catholic tradition. We will need to go a little deeper than that.

Maritain and his contemporaries knew as much, and in fact said clearly that consensus around a limited set of practical principles did not obviate the more difficult task of seeking greater common understanding of the underlying reasons and foundations of human rights. Although his method of working from a practical consensus is often cited, it is less commonly remembered that Maritain himself insisted that the practical consensus was nothing other than a starting point for inquiry, not an end point. It needed to lead to a further reflection on and engagement with the “why” question. It was meant to be a provocation to serious questioning and dialogue about the ends of human life, not the closure of that question. The strategy of practical agreement, the philosopher Richard McKeon stressed, would merely provide a “framework within which divergent philosophical, religious, and even economic, social and political theories might be entertained and developed.”<sup>19</sup> In other words, for at least some of the drafters and intellectual supporters of the Universal Declaration, the focus on practical agreement on principles and institutions was merely a methodological tool for engaging the chal-

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18. Benedict XVI, Address to the General Assembly of the United Nations Organization (New York, 18 April 2008), [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2008/april/documents/hf\\_ben-xvi-spe\\_20080418\\_un-visit\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/april/documents/hf_ben-xvi-spe_20080418_un-visit_en.html).

19. UNESCO, ed., *Human Rights Comments and Interpretations, symposium*, (London: Wingate, 1949), 35; Glendon, *A World Made New*, 147.

lenge of divergent first principles, not a roadblock to the inquiry. It was not presumed to be a sufficient permanent basis for the recognition and protection of universal human rights. Instead it was to be a provisional and partial overlap of commitments on the basis of which we would need to work (hard) toward a deeper understanding of the basis of that practice. At its best, the effort to reach practical agreement was a method to provoke, to force open, a more vital debate about the foundations too.

From this vantage point, two further observations then come into view. First, on this account it would not be quite right to say that the human rights project necessarily places the right before the good. At least, it is not necessary that it be regarded as doing so in a systematic and comprehensive way. Rather, it does so in a very partial, highly contingent, and limited way. It can be read at least in part as embodying a recognition that the good of the human being is the good of the freely seeking person, of the person structurally oriented toward a search for truth and needing the capacity to adhere to that truth in conscience and freedom. It places limits on public authority so that that search, in conscience and truth, can be pursued not only individually but also communally, without coercion from the state. In other words, the good itself that is embodied requires that certain rights must be recognized and protected that permit persons to search, individually and collectively, for the good, to communicate it among one another, and to adhere to it in such a way that it generates their acting and being in various other ways. There is in this approach a paradox of sorts: it is a conception of the good that prescribes that certain kinds of right be given contingent priority, in particular with respect to the power of the state to coerce recognition of and adherence to the good.

The second observation follows from there. If the coherence, meaning, and good of rights is fundamentally about the recognition of the structural need of the human person to be able to seek and adhere to the ultimate meaning of his life, to communicate and transmit it, and to generate a cultural life (in the broad sense that Antonio López describes in his paper in this volume), then human rights must be first and foremost oriented toward a recognition and protection of the religious sense of the human person, and *Dignitatis humanae* (among many other statements in the tradition of the Church) is entirely correct that re-

religious freedom takes on a singular importance to the integrity of the whole edifice. In a very strong way, freedom of religion is the heart of the enterprise, the fulcrum around which it turns; it is the “queen” of human rights. Without an understanding of human rights that places the religious sense of man (as individual and in community) at the center, the other freedoms do not make sense and are destined ultimately to be subordinated to some imposition of power or another, as outlined earlier and as we see around us today. In particular, human rights risk becoming the tools of a totalizing control rather than the expression of the human heart’s structural longing for freedom. Recognition of the religious dimensions of human nature is the only thing that puts the dignity of man beyond the dominion of every earthly power.

Unifying these two observations, one can say that the limited and contingent way in which the rights project can justifiably be said to place the right before the good depends for its justification and coherence on maintaining a robust and structural openness to man’s search for the comprehensive good of his life, one that is thrown open to the transcendent and that will have broad implications for the ordering of his life both alone and together with others. And conversely, where religious liberty is suppressed, one should expect therefore that the rest of the human rights enterprise will eventually decay, defeating its own stated aspirations, and become quite oppressive, in all of the ways that I described.

It is worth noting that this reading of the relationship of religious liberty to human rights, prompted by *Dignitatis humanae*, is supported also by some of the best available empirical evidence that we have today. We know that the respect for freedom of religion is an extremely sensitive and accurate indicator of a state’s respect for other fundamental rights and freedoms.<sup>20</sup> We know that in societies where religious practice is suppressed, violence tends to be greater,<sup>21</sup> while promotion of religious freedom is strongly correlated with a reduction of inter-religious con-

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20. Brian Grim and Roger Finke, *The Price of Freedom Denied: Religious Persecution and Conflict in the 21<sup>st</sup> Century* (Cambridge: Cambridge University Press, 2011), 206.

21. *Ibid.*, 212.

flict.<sup>22</sup> These are not by themselves definitive reasons for regarding religious liberty as having the special status among human rights that *Dignitatis humanae* and other documents claim for it, but they do provide critical support for that view. Catholic social teaching is grounded in reason and in what corresponds in experience to the good and flourishing of human life, therefore such evidence is important.

And this in turn gives us additional reason to be deeply concerned over the erosion of religious liberty, even in countries like ours where it has long been protected. Arguing for the centrality of religious liberty is neither special pleading for self-regarding and particular interests, nor exaggerated alarmism. It is essential to the protection of the basic human dignity of everyone in society.

In conclusion let me return to the beginning. As I stressed at the outset, I have tried here to reason neither as a philosopher nor theologian, but from the experience of the law and toward the concrete and present need to order society in ways most conducive to the common good. I have thus deliberately avoided entering directly into any discussion of the metaphysical premises that may underlie liberalism, constitutional democracy, rights, or religious liberty. Still, at least some readers will regard my attempt to rescue the place of religious liberty, and through it to reclaim some scope for the recognition and protection of fundamental human rights more generally, as fatally flawed because it inevitably imports the foundations of its own undoing.<sup>23</sup> That may in the end prove to be true. But in a world where, today and not merely when seen on an eschatological horizon, the demands of justice are urgent and the challenge of pluralism in society is a raw fact, and where we are (as Glenn W. Olsen cogently points out in his essay in this volume) inexorably situated in a specific historical and cultural context of which we were neither the makers nor are the masters, then what else have we to use? Certainly, if even the struggle for religious liberty is destined to fail in the end, there remains the possibility of prophetic witness

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22. Thomas Farr, *World of Faith and Freedom: Why International Religious Liberty is Vital to American National Security* (New York: Oxford University Press, 2008), 66.

23. See for example the essay by David S. Crawford in this volume.

and ultimately martyrdom. But in the meantime there is also the fact that the Church, as the historically extended presence of Christ in history, is generative of a new reality and a new humanity.<sup>24</sup> And so if for no other reason than that the freedom of the Church represents the only possibility for something authentically human to enter into our broken world, I would suggest that fighting for religious liberty is well worth our while. □

*PAOLO CAROZZA* is professor of law at the University of Notre Dame Law School.

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24. Luigi Giussani, *Why the Church?* (Montreal: McGill-Queen's University Press, 2001), 183.