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RIGHTS OF ENTITLEMENT:
A ROMAN CATHOLIC PERSPECTIVE

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I. INTRODUCTION

To every action there is a reaction. That basic axiom has once again been proven valid not only in physics but politics. As commentator after commentator has observed, the decades of the sixties and seventies were a period in which more and more people claimed more and more rights. Indeed, there was a veritable explosion of rights-language. All manner of disputes were described as conflicts over rights; almost every incident of injustice was portrayed as a violation of rights; all sorts of public complaints stemmed from a failure to acknowledge the alleged rights of the offended party. Now, in the nineties, the reaction has set in and people across the spectrum of political ideologies are reconsidering the way Americans have used (exploited?) the discourse of rights.

A watershed period for the language of rights in this nation occurred during the fifties and sixties with the civil rights movement. As legal scholars know, the issues of constitutional law which were argued before the U.S. Supreme Court previous to that time were largely focused on the relation between federal and state authority or the division of power among the three branches of the federal government. Cases of personal liberty — free speech, rights of defendants, freedom of association — were either not litigated or viewed as matters for state courts. As the incorporation doctrine based on the Fourteenth Amendment developed and the Bill of Rights was taken to apply to states as well as the federal government, there was an acceleration of judicial review by the Supreme Court in order to protect individual rights. Now in the present age, the greatest number of cases before the Court address claims that an individual's right has been violated.¹

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¹ MARY ANN GLENDON, RIGHTS TALK 3 (1991). I have relied upon Glendon for much of this introduction. See chapter 1 of her book.
As a result of the concentration on the Bill of Rights and the courts, the locus of attention for social reformers came to be the judiciary rather than the legislature since the "test case [w]as preferable to ordinary politics."\(^2\) Much of this was understandable, given the experience of civil rights activists. Years and years of working with prejudiced local officials and entrenched opposition in county and state governments led to frustration and disillusionment. When compared to the sweeping change ushered in by *Brown v. Board of Education*\(^3\) and the moral legitimacy given the civil rights movement by a unanimous Supreme Court decision, the traditional approach of working through political debate and legislation seemed inefficient and inadequate.

In retrospect, one can see that many people came to expect too much from the courts and too little from politics. As time went on it was not only the Supreme Court but lower federal court judges who took on activist roles "using their remedial powers to oversee the everyday operations of prison, hospitals, and school systems."\(^4\) All of this led to America becoming a land obsessed with the language of rights and where litigation and legal briefs replaced political organization and legislation as the preferred strategy for achieving social reform.

A mistake by way of reaction to this development, however, would be to dismiss the language of rights altogether. It is not that the idea of rights *per se* is wrong, but rather that a new way of talking about rights has crept into our public discourse. As Mary Ann Glendon has written, "current American rights talk is but one dialect in a universal language" which has evolved during a period of intense focus on civil and human rights. The American dialect of rights-language is different than that spoken in other liberal democracies due to "its starkness and simplicity, its prodigality in bestowing the rights label, its legalistic character, its exaggerated absoluteness, its hyper individualism, its insularity, and its silence with respect to personal, civic and collective responsibilities."\(^5\) Rights are played like trump cards to cut off discussion and debate, suggesting that complex issues can be resolved merely by announcing a claim. All manner of rights have been asserted to give humans claims to all sorts of wants and desires, and the roster of claims has even been extended to include non-humans. When all public controversy is framed as an instance of rights in conflict, it is hard to find a middle

\(^2\) *Id.*

\(^3\) 347 U.S. 483 (1954).

\(^4\) Glendon, *supra* note 1, at 7.

\(^5\) *Id.* at x.
RIGHTS OF ENTITLEMENT

ground where compromise or consensus can attain public peace. The temptation to think of rights as absolutes which admit of no exception or regulation creates an air of unreality in public life, and the spotlight given to rights puts the language of duty and responsibility in the shadows of our social life. It is as if “our current rights talk is a verbal caricature of our culture — recognizably ours, but with certain traits wildly out of proportion and with some of our best features omitted.”

A special concern for rights-talk, highlighted in this nation by the current debates over government social spending, are those rights called entitlements or social welfare rights. Entitlements come in all shapes and sizes: there are direct payments like farm program subsidies and social security checks; then there are entitlements in the form of tax breaks like the home mortgage deduction; and entitlements also come in the form of services like Medicare coverage. In the minds of many Americans these examples are not entitlements, however, for that term conjures up an image of the poor getting government aid. Consequently, although government spending on the non-poor far exceeds expenditures directed to the poor, it is the entitlement programs aimed at the poor which have received the scrutiny of the budget-cutters and provided ammunition to the enemies of big government. So when thinking about the specific rights we call entitlements, it is important to see that within the American context welfare rights or entitlements are not all equal.

What Americans understand by welfare is different than what most of our European allies mean by the idea of welfare or entitlement rights. In these other nations welfare is understood to encompass social expenditures for education, health, old age, and unemployment insurance. All but education is understood as an insurance program to which individuals make contributions during their working lives; while education is paid for by a tax. All four programs are meant to cover the entire population. Those people requiring more are expected to be small in number since if people have received a good basic education and have adequate health care the presumption is that most people will be able to be self-supporting. But there is the realization that some folks will require greater assistance from social workers, child care providers, or special occupational training. For a variety of historical and cultural reasons, Americans have always drawn a sharp line between programs of the second type and those of the first. Perhaps it is that our pioneer and immigrant experiences have encouraged self-reliance, or it may be that our

6. Id. at xii.
racial and ethnic divisions have prevented a spirit of national solidarity; but for whatever reason(s) the United States has taken a different approach than our European counterparts. The two great exceptions to this general national consciousness in America were the New Deal and the Great Society eras.7

Interestingly, the Roman Catholic Church, after centuries of shying away from rights-language, has become one of the great exponents of rights in its social teaching. Why that is so and what the Catholic Church's teaching on rights has to offer the national debate in the U.S. is the subject matter of this essay. Before proceeding with a treatment of the why and what of the Catholic perspective, however, it will be useful to review the distant context of the present American dispute over rights which is to a large extent, though not exclusively, an argument over entitlements.8

II. LIBERALISM AND RIGHTS-LANGUAGE

Liberalism in the English-speaking world, as articulated by John Locke, was a theory born out of the changing dynamics of an evolving social order. It gave a prominent place to the idea of rights. The world of Locke was no longer the medieval world, as a new order was emerging after the decline of the great institutions of empire and papacy. The loss of power by these formidable social forces was accompanied by a rise in prestige and influence of the nation-state. This new locus of social power increasingly sought to acquire the prerogatives previously reserved to the emperor and pope. Even though this occurred largely for pragmatic reasons, there was need for a theory to explain such a series of events. How might this new sovereign power of the leader of the nation-state be justified? Since the deity was the source of all power, the new monarchs had to demonstrate how they legitimated their authority and this was done through the theory of the divine right of kings. In the face of this development, there was the sharply felt need for a coun-


8. I say not exclusively since some of the current controversy entails differences about civil liberties. For example, use of the internet to transmit offensive pictures and language, freedom to burn the American flag, regulation and licensing of guns for personal use, freedom to procure an abortion, to marry a partner of the same sex — all of these are issues which evoke strong disagreement among citizens today. Entitlements are a particular form of discourse about rights but not the only or necessarily the most important nor the most controversial.
tervailing force to balance the claims of the monarch; but because all other groups, including churches, had come to be dependent on the state, no rival social institutions able to play that balancing role were apparent.

It was in such a context that John Locke wrote his treatises on government. His was a theory which sought to defend the individual from the absolutist claims of monarchs. In doing this he proposed that there were rights which each person possessed and which made certain realms of life sacrosanct and immune from state power. Although Locke never used the term in his writing, these rights came to be called "natural rights." It was this notion of the individual, invested with rights in a state of nature prior to the construction of the state, which was to serve as a bulwark against the overreaching ambitions of the new national monarchs. Liberalism, then, was forged in the struggle to

10. Though the legislative, whether placed in one or more, whether it be always in being or only by intervals, though it be the supreme power in every commonwealth, yet, first, it is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people. For it being but the joint power of every member of the society given up to that person or assembly which is legislator, it can be no more than those persons had in a state of Nature before they entered into society, and gave it up to the community. For nobody can transfer to another more power than he has in himself, and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, as has been proved, cannot subject himself to the arbitrary power of another; and having, in the state of Nature, no arbitrary power over the life, liberty, or possession of another, but only so much as the law of Nature gave him for the preservation of himself and the rest of mankind, this is all he doth, or can give up to the community, and by it to the legislative power, so that the legislative can have no more than this. Their power in the utmost bounds of it is limited to the public good of the society. It is a power that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects; the obligations of the law of Nature cease not in society, but only in many cases are drawn closer, and have, by human laws, known penalties annexed to them to enforce their observation.
Id. at 185.
11. [T]he supreme power cannot take from any man any part of his property without his own consent. For the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires that the people should have property, without which they must be supposed to lose that by entering into society which was the end for which they entered into it; too gross an absurdity for any man to own. Men, therefore, in society having property, they have such a right to the goods, which by the law
defend individual liberty against the power of the state as embodied in the monarch. "This confrontation of crown and subject and the discussion of the relations between them has characterized the whole life and thought of the politics of modern man." The appeal to rights served the purpose of maintaining and securing that natural freedom of the individual which Locke proposed as the human condition prior to the social contract. The state is created by that contract as a convenient instrument for the protection of pre-existent rights, preserving an individual's right to security in the exercise of other rights. Locke's theory was a defense of certain spheres of immunity, of governmental

of the community are theirs, that nobody hath a right to take them, or any part of them, from them without their own consent; without this they have no property at all. For I have truly no property in that which another can by right take from me when he pleases against my consent.

. . . This is not much to be feared in governments where the legislative consists wholly or in part in assemblies which are variable, whose members upon the dissolution of the assembly are subjects under the common laws of their country, equally with the rest. But in governments where the legislative is in one lasting assembly, always in being, or in one man as in absolute monarchies, there is danger still, that they will think themselves to have a distinct interest from the rest of the community, and so will be apt to increase their own riches and power by taking what they think fit from the people.

Id. at 188.


13. To understand political power aright, and derive it from its original, we must consider what estate all men are naturally in, and that is a state of perfect freedom to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of Nature, without asking leave or depending upon the will of any other man.

LOCKE, supra note 9, at 118.

14. If man in the state of Nature be so free as has been said, if he be absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom, this empire, and subject himself to the dominion and control of any other power: To which it is obvious to answer, that though in the state of Nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit this condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name—property.

Id. at 179.
non-intervention. Locke set the parameters for state activity by elaborating the areas of life in which the individual had the freedom to act as one pleased. This belief, in rights of autonomy and immunity from government action, grew in the West and was enshrined in declarations in England, France, and the United States.

Over time, the focus on individual freedom became concentrated on economic freedom. More than a century after Locke, Adam Smith and other social theorists encouraged the viewpoint that the freedom of the market was a crucial locus for individual liberty. Guided by an “invisible hand” the exercise of individual liberty would also lead to the general welfare of society. Thus, economic liberty was made central to any strategy for human well-being, and the Lockean right of private property was interpreted to include the new forms of property being produced under industrial capitalism. The “natural” working of the market, the laws of supply and demand, became identified with the natural law which governed human behavior. To work against such laws was both folly and wrong.

15. “For Smith capitalism is essential because it was the period of history in which freedom appeared. Smith sees commercial society, as he designates the early capitalism of his day, as a time in which ‘natural liberty’ finally emerges as the organizing principle of society, in place of feudal or mercantilist restrictions.” Robert Heilbroner, The Man and His Times, in The Essential Adam Smith 8-9 (Robert Heilbroner & Laurence Malone eds.) (hereinafter ESSENTIAL ADAM SMITH). In Smith’s view once society had progressed beyond earlier forms of economic arrangements by adopting capitalism the inevitable result would be liberty. “All systems either of preference or of restraint, therefore, being thus completely taken away, the obvious and simple system of natural liberty establishes itself of its own accord.” Adam Smith, The Wealth of Nations, Bk. IV, ch. 9, in Essential Adam Smith 289.

16. As every individual, therefore, endeavours as much as he can both to employ his capital in support of domestic industry, and so direct that industry that its produce may be of the greatest value; every individual necessarily labours to make render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. By preferring the support of domestic to that of foreign industry, he intends only his own security, and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it.

17. The natural effort of every individual to better his own condition, when suffered to exert itself with freedom and security, is so powerful, that it is alone, and without any assistance, not only capable of
half of the nineteenth century, therefore, the efforts of most liberals were directed toward enlarging and consolidating the liberty of individuals, including their freedom in the marketplace, from the encroachments of the state. Historically, this is the first stage of liberal rights.

A second stage was to follow, and it was brought about by new threats to human freedom. Locke's theory was an important development in response to a clear threat, but times change and new theories were formulated to respond to the new threats to human well-being. As complex industrial societies emerged in the West there was a perception that governmental non-interference in the economy was not enough to guarantee personal liberty. The exercise of individual freedom required certain preconditions. There were other constraints on liberty besides absolutist rulers which had to be taken into consideration. A number of liberals began to acknowledge that the significant concentration of economic power in private hands could endanger persons in a manner similar to how the concentration of political power in the hands of a despotic state does. Thus, there arose a split within liberalism, and one that was predictable, since utilitarian liberals and free market liberals were not of one mind on the right to economic freedom within a market system.

Utilitarians like Bentham and Mill were initially committed to the free market because, like Smith before them, they thought that a minimal state and unregulated economic liberty served the good of all. But the harsh realities of an unchecked economic liberty became too obvious to ignore in the later decades of the nineteenth century. To remedy the worst suffering, certain

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carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the folly of human laws too often encumbers its operations.

As quoted without citation in Essential Adam Smith 324.


19. Mill, reflecting his classical liberal bias, makes clear that the burden falls "not on those who resist, but on those who recommend, government interference. Laissez-faire, in short, should be the general practice: every departure from it, unless required by some great good, is a certain evil." He then proceeds, however, in the same work to show that a number of exceptions to the general practice should exist including funding of public education, poor relief, limitations on the length of the workday, child labor laws and other such reforms which were opposed by those liberals who saw such government interventions as violations of free contract or the funding of which violated property rights. John Stuart Mill, Principles of Political Economy 334-35 (Jonathan Riley ed., 1994).
reforms, like female and child labor laws, became popular. Once it was evident that some state regulation of the economic marketplace was enhancing the public good, the utilitarians supported the state action. Utilitarians were able to embrace such social reforms since their moral norm was the greatest happiness for the greatest number. Free market liberals, however, held to the earlier understanding of natural rights protecting freedom of contract, private property, and general economic liberty. For them it was not possible to jettison these rights in the name of social utility because these rights were not a matter of means but of fundamental principle. Utilitarians were disdainful of such claims being used as obstacles to social change and, to use Bentham’s phrase, dismissed the talk of rights as “fictitious entities.”

By the twentieth century another group of liberals sought to reinvigorate rights-language while also permitting the sort of state activity which free-market liberals opposed. These new liberals, neither purely utilitarian nor committed free-marketeers, believed that the classical civil and political rights of liberalism ought still be honored but that these rights no longer stood alone. A renewed rights-language evolved which gave voice to people’s claims to social and economic goods as well as civil and political liberties. These proponents of social and economic rights saw the state as a necessary agent to regulate the market and private economic power, but as liberals they advocated civil and political rights which limited both the manner and scope of state activity. Rights were meant to serve freedom, the welfare liberal maintained, but unchecked economic as well as political power could undercut personal freedom. The free individual required a set of economic and social entitlements to complement civil and political liberties. With this development the framework was set within which many political disputes in the English-speaking world took place. Free-market liberals, utilitarian liberals, and welfare-state liberals would continue the argument about how much state activity was proper and

20. Bentham, a notoriously convoluted writer, was always clear that the fundamental axiom of social reform was simple: “It is the greatest happiness of the greatest number that is the measure of right and wrong.” Jeremy Bentham, A Fragment on Government, reprinted in A BENTHAM READER 45 (Mary Peter Mack ed., 1969).


22. A brief and very clear account of the evolution of liberal thinking on rights, governmental action and social change is JOHN DEWEY, LIBERALISM AND SOCIAL ACTION (1935).
advantageous; how much freedom there should be in the marketplace; and what was the greatest threat to personal liberty. The unquestioned premise in the liberal argument was that freedom was the foundational touchstone.

III. THE ROMAN CATHOLIC HERITAGE

Roman Catholic social theory draws upon many sources, but without question the medieval heritage has played a large part in its formulation. Beyond the influence of any one thinker or theme is a fundamental conviction which has served to guide the development of the Church's teaching. That conviction is the belief that society must be viewed organically. That is, society viewed as an organism was differentiated, complementary, and related. There were different parts to the social body, each part made its contribution to the common good, and each part was linked to the other through a hierarchical scheme of social relations. A consequence of this outlook was that emphasis was placed on a person's duties in fulfilling his or her state in life rather than on a person's rights. The differences of rank and obligation within this scheme of social roles and duties was not seen as arbitrary but based on right reason in its search for appropriate means of attaining the common good. The social hierarchy was an illustration of the great chain of being in which all creation was ordered so as to reflect God’s wisdom and plan.

Society is established neither because of sin nor the formation of a social contract but is due to the very nature of persons. Sociality is understood to be as essential a part of our humanity as rationality. That is, the person is viewed relationally — by the relationships he or she has with God, other persons, other creatures. Unlike the classical liberal model of society as a contract between independent individuals, the medieval model emphasizes reciprocity and mutuality. If life is to flourish, it is necessary for human beings to give and receive in relationships.

The Catholic tradition could not permit this communitarian theme to lapse into a collectivism because of another aspect of theological anthropology, namely, that each person is created in the image and likeness of the Creator. Each person is viewed as being worthy of care and concern, for as a creature loved by God every person deserves to be treated reverently. The rational and free nature of human beings means that no person could be

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23. HENRICH A. ROMMEN, THE STATE IN CATHOLIC THOUGHT: A TREATISE IN POLITICAL PHILOSOPHY 123-36 (1945). Rommen's work is the best available presentation of the classical Catholic understanding of the state's nature, purpose and organization.
treated simply as an instrument for a collective good. As a creature of God destined for union with God the dignity of the person is to be served by society. The common good cannot be defined in abstraction from the well-being of the individuals who make up society. The personalist strain of Catholic social teaching is directly tied to the underlying theological claim about the origin and destiny of each person.

Catholic social teaching of the modern era, as articulated in papal encyclicals, episcopal statements and conciliar decrees, reflects the heritage of medieval thought (and biblical thought as well) through its commitment to a communitarian outlook. As the more recent teaching has revised and deepened its understanding of the person, it has given more weight to liberty and equality than the medieval tradition but it has not abandoned the foundational perspective of communitarianism. Without question a major influence that has caused the revision and rearticulation of the tradition has been Catholicism's encounter with liberalism. The fruit of that dialogue has been an enriched understanding of the person and the common good.

Nineteenth and early twentieth century popes expressed serious reservations about many of the civil liberties championed by liberalism. Freedom of speech and the press might permit the propagation of error among a general population which lacked the necessary abilities to discern properly. Freedom of religion was particularly problematic since it seemed, in the eyes

24. Michael J. Schuck, That They Be One: The Social Teaching of the Papal Encyclicals 1740-1989 (1991) provides a detailed and persuasive account of communitarian thought being at the heart of Catholic social teaching.

25. An excellent collection of essays which explores various dimensions of this encounter is Catholicism and Liberalism (R. Bruce Douglass & David Hollenbach eds., 1994).

26. Among the better known papal denunciations of liberal ideas is Mirari Vos promulgated by Gregory XVI: "This shameful font of indifferentism gives rise to that absurd and erroneous proposition which claims that liberty of conscience must be maintained for everyone... Thence comes transformation of minds, corruption of youths, contempt of sacred things and holy laws — in other words, a pestilence more deadly to the state than any other." Pope Gregory XVI, Mirari Vos para. 14 (1832), in 1 The Papal Encyclicals 235, 238 (Claudia Carlen ed., 1981). "Here We must include that harmful and never sufficiently denounced freedom to publish any writings whatever and disseminate them to the people, which some dare to demand and promote with so great a clamor." Id. at para. 15. A good overview of the early papal reaction to liberalism can be found in Schuck, supra note 24, chapter 1. More historical background on the early papal reaction is provided by Peter Steinfels, The failed encounter: the Catholic church and liberalism in the nineteenth century, in Catholicism and Liberalism, supra note 25, at 19-44.
of the Church, to enshrine governmental indifference to religious truth which was a part of the common good. From the papal perspective, what lay behind these alleged rights was liberalism’s exaltation of the individual over all claims to divine truth, revelation, tradition, and authority. Despite this suspicion, the papacy, beginning with Leo XIII, began a dialogue with liberalism that eventually led to an appreciation of just how essential an attribute personal freedom was for human dignity. By the time of Vatican II the Church could celebrate freedom as a special sign of the image of God within the person.

Liberalism’s advocacy of equality was also viewed skeptically by a Church that spoke confidently about the duties of a person’s station in life. Demands for equality upset the stability of a social order which the Church had presumed and heightened the expectations of social change that might be destructive of the class order and system of hierarchy familiar to ecclesiastical leaders. Equality of dignity before God was, of course, central to Catholic teaching, but the social implications of such a theological conviction were not adequately grasped by the leadership of the Catholic community. It was part of liberalism’s achievement that it helped induce the Church to reflect upon the political,

27. Leo engaged liberalism at several levels — philosophical, political, economic. An example of his response to the philosophical challenge was Aeterni Patris in 1879 where he called for a revival of Thomism in response to the individualism and utilitarianism of liberalism. Among his many letters on politics, government and democracy, Immortale Dei in 1885 is perhaps the most significant statement of the Leonine corpus on liberal political theory. Undoubtedly, Rerum Novarum in 1891 is the most important explanation of the Catholic reaction to economic liberalism. All of these can be found in The Papal Encyclicals 17-27, 107-19, 241-61 (Claudia Carlen ed., 1981).

28. “For its part, authentic freedom is an exceptional sign of the divine image within man.” Gaudium et Spes: Pastoral Constitution on the Church in the Modern World para. 17 (1965), in Catholic Social Thought: The Documentary Heritage 166 (David J. O’Brien & Thomas A. Shannon eds., 1992) (hereinafter Catholic Social Thought). As is customary with Church documents, citations refer to paragraph, not page number.

29. Let it be laid down, in the first place, that humanity must remain as it is. It is impossible to reduce human society to a level. . . . There naturally exist among mankind innumerable differences of the most important kind; people differ in capability, in diligence, in health, and in strength; and unequal fortune is a necessary result of inequality in condition. Such inequality is far from being disadvantageous either to individuals or to the community; social and public life can only go on by the help of various kinds of capacity and the playing of many parts, and each man, as a rule, chooses the part which peculiarly suits his case.

economic, and social dimensions of the equality in religious dignity taught by the papacy.

As time passed Catholicism came to employ rights-language in its own social teaching, despite the fact that in the early state of the dialogue between liberalism and Catholicism the use of rights-language, so central to the liberal project, was viewed with concern by many Church leaders. As a result of its encounter with liberalism there has been an integration of a fuller understanding of liberty and equality into Catholic teaching, and this has permitted the Church to reconsider the validity of rights-talk. However, Catholicism has not simply adopted the liberal framework in its entirety but has been able to articulate a form of rights-language which owes a debt to liberalism but which also offers a number of important correctives to how rights have been framed within liberalism.\(^{30}\)

IV. CATHOLICISM AND RIGHTS-LANGUAGE

Simply put, the communitarian perspective of Catholic social teaching has led the Church to place all rights within the context of community and to endorse a broader array of rights than the classical liberal account of rights founded on personal liberty. Catholic rights-language, in a style similar to welfare-state liberals, employs economic and social rights as well as civil and political liberties, but the basis for rights-language is a communitarian reading of the person rather than the liberal foundation of individual liberty.\(^{31}\) Advancing strategies of empowerment

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31. Man's social nature makes it evident that the progress of the human person and the advance of society itself hinge on each other. For the beginning, the subject, and the goal of all social institutions is and must be the human person, which for its part and by its very nature stands completely in need of social life. This social life is not something added on to man. Hence, through his dealings with others, through reciprocal duties, and through fraternal dialogue he develops all his gifts and is able to rise to his destiny.

Among those social ties which man needs for his development, some, like the family and political community, relate with greater immediacy to his innermost nature. Others originate rather from his free decision. In our era, for various reasons, reciprocal ties and mutual dependencies increase day by day and give rise to a variety of associations and organizations, both public and private. This development, which is called socialization, while certainly not without its dangers, brings with it many advantages with respect to consolidating and increasing the qualities of the human person, and safeguarding his rights.
through social and economic goods like housing, health care, and education entails rights of entitlement besides those rights of immunity so dear to classical liberalism. The Catholic concern for a person’s ability to participate in the life of a community rather than any individualistic notion of freedom abstracted from social relations offers an alternative formulation of entitlement rights.

From the outset it should be made clear that Catholic teaching acknowledges that a distinction exists between legal and moral rights. A legal right is sanctioned by civil law; a person can appeal to the state for its enforcement. Such rights, moreover, may be constitutional or statutory: a constitutional right is one that is protected by existing constitutional law; a statutory right is one which is guaranteed by legislation on the federal or state level. In order to have legal rights, the subject of such a claim must belong to the given political or legal community. Moral rights, on the other hand, are rights which are warranted by appeal to convincing ethical reasoning and argument. Furthermore, these rights can be, and often are, implemented as legal rights; but the two categories (legal and moral) are not perfectly congruent and can even be in conflict. Indeed, moral rights can at times be violated by existing legal rights. For example, the right to freedom was violated by those countries which had legally institutionalized slavery. In short, moral rights may be embodied in legal systems and frequently are; but whether they are or are not, they are still rights that are grounded on ethical argument rather than positive law.

Failure to keep the distinction between moral and legal rights clear results in considerable confusion when arguing for a right because the word “right” means different things to different people.

In the mouth of the lawyer, the sociologist or the historian, [a right] is quasi-descriptive, i.e. it means that there is an established rule, whether legal or conventional, which accords the rights. But in the mouth of the reformer and moralist, it must necessarily mean: “I believe (for reasons I am prepared to give) that X ought to have R if he wants it.”

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Gaudium et Spes, supra note 28, at para. 25, in Catholic Social Thought supra note 28, at 166.

32. For example, see the rights listed in note 34 infra.

Lawyers customarily appeal to existing law to establish the validity of a particular rights-claim when we are in the realm of legal rights. But the matter of moral rights involves another kind of appeal. Rights in Catholic teaching are moral claims which ought to have legal standing because the claims made pertain to goods which are essential for a person to participate with dignity in the life of a society. While some moral rights are protected by law, the primary basis for any moral right is not law *qua se*, but a moral argument. This approach to rights-language necessarily leads to a question about the moral argument that is found in Catholic social teaching for the validity of a right.

Within the Catholic tradition one finds a useful analysis of rights-language in the manuals of moral theology, those compendia of moral teaching which were used in Catholic seminaries for many years preceding Vatican II. There, rights were viewed as having four elements: the subject or holder of the right; the object or the matter of the right; the title or rationale provided to confirm the right; and the term or the person(s) who has the corresponding duty. It will be helpful to briefly comment on each of these elements in order.

i. *The subject of rights.* When the Church uses rights-language, it is ordinarily considering human rights. If a right is a human right, it must be a right which extends to all persons; it cannot be limited to some group or class of persons. A human rights-claim must be universal in scope. About this there is not much debate; the subject of a human right is any and all human beings.

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34. [T]here is a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable. Therefore, there must be made available to all men everything necessary for leading a life truly human, such as food, clothing, and shelter; the right to choose a state of life freely and to found a family; the right to education, to employment, to a good reputation, to respect, to appropriate information, to activity in accord with the upright norm of one's own conscience, to protection of privacy, and to rightful freedom in matters religious too.

Hence, the social order and its development must unceasingly work to the benefit of the human person if the disposition of affairs is to be subordinate to the personal realm and not contrariwise, as the Lord indicated when he said that the Sabbath was made for man, and not man for the Sabbath.


35. A good example of the manualists' treatment of rights is Marcellino Zalba, _Theologiae Moralis Summa II: Tractatus de mandatis Dei et Ecclesiae_ 425-432 (1953).
ii. The object of rights: A survey of human rights-language reveals that the objects of human rights-claims have varied considerably. Perhaps the single biggest development is the emergence of social and economic goods as objects for rights-claims. The variation in the range of objects for a human right has caused considerable skepticism on the part of those who cannot see how some could claim as an object of a human right that which was unknown to another generation. There is also a problem with specifying the object of a right in such a way that the claim is so exorbitant as to be impossible to attain.

iii. The title of rights. Perhaps the most troublesome aspect of rights-language is the title of any right. What is the ground for making a claim to some good? The appeal to self-evidence is unsatisfactory to many. If the appeal to rights-language is to be consistent and persuasive, then rights must be derived from a more fundamental concept which commands widespread respect and agreement.

iv. The term of rights: Finally, the difficulty exists of understanding whose duty it is to answer the legitimate claim of a human subject bearing rights. Who must respond to a claim made by a person that his or her rights are being violated?

The task as outlined, therefore, is to present the Catholic Church’s moral argument for human rights. Such an argument must present: 1) a convincing title for rights; 2) a defense of socio-economic rights or entitlements; and 3) an explanation of the duty incumbent upon others to protect a right. We shall take up each item through a presentation of the Church’s teaching as found in the pastoral letter of the American bishops, “Economic Justice for All.”

In their letter’s opening summary, the bishops make it clear that, in accord with the consistent teaching of the Church, it is the dignity of the person which must be served by all social institutions. Recapitulating the relational anthropology of Catholic personalism, the bishops then state, “Human dignity can be realized and protected only in community. In our teaching, the human person is not only sacred but also social.” And while they admit a variety of standards for measuring the health of an economy the bishops assert that “[t]he Christian vision of economic life . . . asks, Does economic life enhance or threaten our

37. Id. at para. 13.
38. Id. at para. 14.
life together as a community?" They go on to say that "[h]uman rights are the minimum conditions for life in community." In the body of the letter, in keeping with the communitarian outlook, the bishops begin their explanation of the ethical norms of economic life by presenting "the duties all people have to each other and to the whole community: love of neighbor, the basic requirements of justice, and the special obligation to those who are poor or vulnerable." Duties to others and the community are noted first, while individual rights are seen in correspondence to the duties. Life in community generates responsibilities and duties, including duties in the economic realm. The first duty is that of love of neighbor and solidarity with the neighbor both near and far, for "being a person means being united to other persons in mutual love."

The second duty entails justice and participation. Although our human vocation is to enter into the fullness of loving communion, we live in a sinful world, and this requires attention to the fact that the demands of love are sometimes difficult to know and hard to follow. As the bishops write, "sinful human beings need more specific guidance on how to move toward the realization of this great vision" of God’s loving plan for creation. Thus, the church offers assistance through its social teaching which provides norms of justice. These norms state "the minimum levels of mutual care and respect that all persons owe to each other in an imperfect world."

Finally, the third duty is to overcome marginalization and powerlessness. This is summarized by the bishops: "Basic justice demands the establishment of minimum levels of participation in the life of the human community for all persons." Overcoming any pattern of exclusion from the life of the community is fundamental to meeting the duties of justice according to Catholic teaching. This is because the communitarian perspective found in Church teaching emphasizes participation in community as essential to the realization of human dignity. A reflective reading of the episcopal letter suggests that "community" is the root metaphor for justice in the Catholic imagination and "justice as participation" is a way of summarizing the foundational theory which serves as

39. Id.
40. Id. at para. 17.
41. Id. at para. 62.
42. Id. at para. 64.
43. Id. at para. 68.
44. Id.
45. Id. at para. 77.
the title for rights-language in Catholic social teaching. "[P]articipation is an essential expression of the social nature of human beings and of their communitarian vocation."46

When the Church wishes to provide more detail as to the basic demands which are to be derived from its theory of justice as participation it does so by employing the language of human rights. In Catholic social teaching, human rights "are prerequisites for a dignified life in community."47 Among these prerequisite conditions for communal life are the "fulfillment of material needs, a guarantee of fundamental freedoms, and the protection of relationships . . . ."48

The full range of human rights was first listed in Catholic social teaching in Pope John XXIII's "Pacem in Terris."49 Since then, subsequent popes have added to the list of rights enumerated by Pope John.50 But the teaching has been consistent in its claim that some human rights "are of a specifically economic nature" and "[f]irst among these are the rights to life, food, clothing, shelter, rest, medical care, and basic education."51 In most cases people will satisfy these rights by earning a living, typically in the American economy through wage-labor. The bishops go on in their letter to mention other economic rights such as

46. Id. at para. 78.
47. Id. at para. 79.
48. Id.
49. POPE JOHN XXIII, PACEM IN TERRIS paras. 11-27 (1963), reprinted in CATHOLIC SOCIAL THOUGHT, supra note 28, at 129.
50. The bishops at the 1971 Synod wrote of a "right to development" which is a "dynamic interpenetration of all those fundamental human rights" which allow for the advancement of those individuals and nations which are in inhumane conditions that deny human dignity. See SYNdOF BISHOPS, JUSTICE IN THE WORLD (1971), reprinted in CATHOLIC SOCIAL THOUGHT, supra note 28, at 287, 290. The present pope has written: "The right to a safe environment is ever more insistently presented today as a right that must be included in an updated Charter of Human Rights." POPE JOHN PAUL II, THE ECOLOGICAL CRISIS: A COMMON RESPONSIBILITY para. 9 (1990), reprinted in "AND GOD SAW THAT IT WAS GOOD": CATHOLIC THEOLOGY AND THE ENVIRONMENT 215, 219 (Drew Christiansen, SJ & Walter Grazer eds., 1996).
51. ECONOMIC JUSTICE FOR ALL, supra note 36, at para. 80.
security in sickness, old age, and unemployment. Thus, there is clear support for the idea of rights to basic material goods.

Church teaching recognizes that social and economic rights, entitlement rights, are different than political and civil rights, for they require a different means of implementation. "Freedom of worship and of speech imply immunity from interference on the part of both other persons and the government. The rights to education, employment, and social security, for example, are empowerments that call for positive action by individuals and society at large." The American bishops call for "a serious dialogue about the appropriate levels of private and public sector involvement" in securing entitlements and acknowledge that "[t]here is certainly room for diversity of opinion in the Church and in U.S. society on how to protect the human dignity and economic rights" of all persons. What must be done first, however, is to develop "a new cultural consensus that the basic economic conditions of human welfare are essential to human dignity and are due persons by right."

To sum up the teaching of the Church in this regard it can be stated that the Church 1) strongly and consistently maintains the existence of fundamental rights to basic material necessities to which all persons are entitled; and 2) accepts that there can be a legitimate diversity in the creation of the social institutions whereby these rights are to be satisfied. It is in this spirit that one can understand Pope John Paul II's remarks about the "welfare state" in his encyclical "Centesimus Annus."

The Pope readily admits a "task of the state is that of overseeing and directing the exercise of human rights in the economic sector." However, it is not the state alone or even primarily which has this responsibility, for the duty falls "to individuals and to the various groups and associations which make up society." John Paul is wary that the "so-called 'welfare state'" has expanded to the point where the principle of subsidiarity has been violated. While he accepts that the motivation behind such state expansion has been "in order to respond better to many needs and demands, by remedying forms of poverty and deprivation unworthy of the human person," he also charges that there have been "excesses and abuses" as well as "malfunctions and defects" all of

52. Id. at para. 81.
53. Id. at para. 84.
54. Id. at para. 83, supra note 49.
55. CENTESIMUS ANNUS, supra note 28, at 437.
56. Id. at para. 48.
57. Id.
58. Id.
which are "the result of an inadequate understanding of the tasks proper to the state."59

Because community is central to Catholic social teaching, there has long been respect for what the tradition refers to as subsidiarity and pluralism. Subsidiarity requires that no larger group should usurp the power and responsibility of a smaller group unless the common good demands that the larger group render assistance to the smaller entity. Pluralism posits that the test of a healthy society is the existence of a wide array of organizations and institutions which make participatory community possible. Within the Catholic tradition there is strong support for a rich variety of associations which give life and color to communal experience. Subsidiarity underscores that the state's role is to help these smaller communities achieve their proper aim and to intervene whenever they are unwilling or unable to make their distinct contribution to the overall well-being of the person or the larger community.

Subsidiarity, then, warns any state from assuming too great a role in public life; but it also warns against any state not fulfilling its duties to promote the common good. After all, the aim of multiple associations is to permit persons to realize the variety of goods which make for human well-being by fostering participation in communal life. Such participation is crucial, for in Catholic social teaching communal life provides the opportunity to acknowledge one's relationality by giving oneself away to another, and in so doing to more fully realize oneself. This applies as much in economic life as any other realm of human experience. Community exists not only to secure a person's rights but to locate a person's duties in the achievement of the common good. In this way we might see subsidiarity as an instrumental norm and pluralism as a practical test, both of which are meant to serve the foundational values of community and the common good which, in turn, make for personal well-being.

It must be stressed that subsidiarity should be understood not only in the historical context of past Catholic social teaching, but also in the context of contemporary public life and the threats to human well-being, community, and the common good which we find there. If we are to adequately grasp what subsidiarity demands, we must be able to presently assess what forces threaten the basic goods held up by the Church's social teaching. Surely, Pope Pius XI, who formulated the principle, was right that the state can endanger these goods, but other forces may also effectively block participation in communal life and thereby

59. Id.
prevent a person from making a contribution to the common good.\textsuperscript{60} Today, market forces are clearly threatening to large numbers of people who for a variety of reasons — age, infirmity, absence of skills — are at risk of having basic needs unmet, needs which they are entitled by right to have addressed according to the Church’s teaching. Such a prospect may then require of the state a more direct role in meeting the legitimate demands of people whose rights are endangered.\textsuperscript{61} But the precise strategy for securing those rights of entitlement remains open to public discussion and will undoubtedly entail a measure of trial and error in its formulation and execution.\textsuperscript{62}

\textsuperscript{60} The formulation of the principle by Pius XI reads: “it is an injustice and at the same time a grave evil and a disturbance of right order to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies.” Pope Pius XI, Quadragesimo Anno para. 79 (1931), reprinted in Catholic Social Thought 40.

\textsuperscript{61} [T]he free market is the most efficient instrument for utilizing resources and effectively responding to needs. But this is true only for those needs which are ‘solvent,’ insofar as they are endowed with purchasing power, and for those resources which are ‘marketable,’ insofar as they are capable of obtaining a satisfactory price. . . . It is a strict duty of justice and truth not to allow fundamental human needs to remain unsatisfied, and not to allow those burdened by such needs to perish. . . . Even prior to the logic of a fair exchange of goods and the forms of justice appropriate to it, there exists something which is due to man because he is man, by reason of his lofty dignity.

. . . In this sense, it is right to speak of a struggle against an economic system, if the latter is understood as a method of upholding the absolute predominance of capital, the possession of the means of production and of the land, in contrast to the free and personal nature of human work. In the struggle against such a system, what is being proposed as an alternative is not the socialist system, which in fact turns out to be state capitalism, but rather a society of free work, of enterprise and of participation. Such a society is not directed against the market, but demands that the market be appropriately controlled by the forces of society and by the state, so as to guarantee that the basic needs of the whole of society are satisfied.

\textsuperscript{62} The new federalism currently being championed by critics of the federal government, is not inherently wrong if it is really about pluralism and participation, an effort at enacting subsidiarity. When federalism becomes merely a code-word or strategy for budget cuts, however, it is unacceptable. Thus, it is quite proper to ask hard questions about recent actions which do away with entitlements and create block grants to the states. Undoubtedly, we have too many categorical grant programs at the federal level and permitting states more discretion to administer and distribute resources is a good thing. Concern for cost-effectiveness should not automatically be equated with indifference to the poor, but concern for cost should not be the first consideration, human dignity must be, and that requires attention to participatory community and the conditions which make it possible. When people are effectively marginalized from participation in community their
What drives the Church’s commitment to basic rights is that unless people are able to join in the life of a community in meaningful ways, there is an obstacle to the possibility of self-donation. The theological rationale for the emphasis on community is the doctrine of the Trinity. This fundamental claim about God as triune suggests that the very nature of God is loving communion between Father, Son, and Spirit. The God in whose image and likeness we are created is an eternal communion of self-giving love. For human persons, therefore, to enter into loving relationships whereby we give ourselves away to another is to reflect our true identity as creatures made in the image of a God who is Trinity. Thus, community is central as the setting which encourages our self-donation as an expression of true creaturehood. Rights in the Roman Catholic tradition, be they political, economic, civil or social, are determinations about the basic conditions necessary for participatory community. This is the distinctive aspect of Catholic rights-language: it is always contextualized by the moral standard of community and the obligation of individuals to participate in the community. Such community is demonstrated both through employment, and the group’s obligation to remove those conditions which effectively marginalize people from the community when employment is not available.

V. Conclusion

It should come as no surprise that a tradition which takes as its foundation the Gospel, which is “good news” for the poor, should pose a challenge to American society as our nation engages in a policy debate over entitlements. The nation’s bishops have proposed that we have an “obligation to evaluate social and economic activity from the viewpoint of the poor and the powerless [which] arises from the radical command to love one’s neighbor as one’s self.”63 This moral obligation, referred to within the tradition as “the preferential option for the poor,” is a reminder that “[i]n teaching us charity, the Gospel instructs us in the preferential respect due... the poor and the special situation they have in society: the more fortunate should renounce some of their rights so as to place their goods more generously at the service of others.”64 One of the disturbing aspects of our dignity is violated; when people refuse to contribute to the creation of community there is moral failure.

63. Economic Justice For All, supra note 36 at para. 87.
64. Pope Paul VI, Octogesima Adveniens: A Call to Action on the Eightieth Anniversary of Rerum Novarum para. 23 (1971), reprinted in Catholic Social Thought, supra note 28, at 263.
present situation concerning entitlements is that it is those entitlements aimed at assisting the poor which have received most criticism and undergone most scrutiny. Programs such as government subsidized school lunches and aid to homeless veterans have been put on notice but social security payments to upper-middle and high-income retirees, home mortgage deductions, and subsidies to business continue. By the standard of Catholic social teaching, this is a mistaken course of action. Here then are three lessons which the Catholic tradition offers to the policy discussion on entitlements. First, it is certain that the tradition of Catholic social thought defends the existence of entitlement rights. Second, the Church also accepts that a variety of means for securing those rights may be utilized and that a large federal governmental structure is not necessarily the most appropriate means. Finally, the Church's teaching appeals to our national and individual conscience to remember that in whatever strategies we adopt it is the rights of the most needy which have a priority over the entitlement claims of the rest of us.