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## ENTITLEMENTS: UNINTENDED PARADOXES OF THE GENEROUS STATE

JAMES V. SCHALL, S. J.\*

There will always be a wide range of difficult situations, as well as hidden and grave needs, which the manifold providence of the State leaves untouched, and of which it can in no way take account. Wherefore, there is always widespread scope for human action by private citizens and for Christian charity. Finally, it is evident that in stimulating efforts relating to spiritual welfare, the work done by individual men and by private civic groups has more value than what is done by public authorities. — John XXIII, *Mater et Magistra*<sup>1</sup>

### I.

A cartoon in *The New Yorker*<sup>2</sup> puts us in the living room of an uppity, probably Manhattan apartment. We see a reading lamp and, on the wall, a painting of what appears to be an odalisque. A father in his reading glasses and comfortable turtle-neck sweater is sitting in the sofa-chair paging through what looks like nothing so much as *The New York Times*. Beside him at the chair's right arm is his young son, about age five. The son is stationary holding in his hand the cord of a toy fire truck that he has obviously been pulling around the room while his father was reading the paper. The boy is now, however, standing alert, looking wide-eyed at his parent who has momentarily turned aside to speak to him in a most fatherly fashion, as if he were revealing the secrets of one generation to the next. The father, with a bemused, if not devilish, look on his face, off-handedly addresses the astonished boy. "By the way, Sam," he tells him, "as someday you'll be paying for my entitlements, I'd like to thank you in advance."

This cartoon, in fact, is as good an introduction to entitlements as any more scholarly one could be. We have here both the name "entitlement" — you know it is an "in" word when it

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1. JOHN XXIII, *MATER ET MAGISTRA* para. 120 (1961) reprinted in *SEVEN GREAT ENCYCLICALS* at 244 (1963).

2. J.B. Handelsman, *THE NEW YORKER*, Apr. 1, 1996, at 67.

appears in a *New Yorker* cartoon — together with current intimations about what it means. The lore about entitlements is that the younger generations will, much to their chagrin and expense, have to support, at rapidly increasing cost, the tremendous economic burden that the aging generations are going to cost. Notice here that we find implied nothing of the old-fashioned notion that families support each other in youth and old age via their own provisions and foresight. The son, whether he likes it or not, will take care of the father through the intervention of the all-powerful state. The son is expected, precisely, to “pay” for his father’s entitlements.

The father, be it further noticed, is not working to leave his son an inheritance so that his son can have a better start in the world. Nor is the father saving for his own retirement. The father expects to be provided for by the mandatory entitlements that his son’s generation will have to work to finance. And lest he, the father, seem ungrateful for this bounty, he is giving Sam, his son, an advanced word of appreciation while he (the father) is thinking of it. Sam, needless to say, stands bug-eyed before this inexplicable information that dooms him to slave away all his life to provide for his own and others’ of his age parents. The father is obviously pleased at this ironic turn of events as it lets him off the hook for providing for his declining years. Probably the only cloud on his horizon is mandatory euthanasia when the entitlements’ burden becomes too high for keeping dottering old men alive.

The morning I began these considerations, to continue these introductory remarks, I boarded the D.C. Metro Subway at Rosslyn, in Virginia, to go to Metro Center in the District of Columbia. I had to go there to buy four \$10 senior citizen Metro tickets, to which I am entitled, having duly proved and registered my chronological age at a local library on Wisconsin Avenue and R Street. The only place where I can buy these tickets, however, is at Metro Center. If I am out of pre-purchased tickets, I cannot use the normal fare kiosks at Metro stations for the special senior ticket. Without my entitled, pre-purchased ticket, I have to pay the regular steep fare. With these tickets, I cut the cost of a regular Metro fare more than half. Whether I am rich or poor does not make any difference in acquiring these tickets. Age, not need or merit, alone counts. Similar reductions exist for children. To use another word, I might say that I have a “privilege,” a private law or arrangement to cover a special case that the legislator deems worthy. Presumably, the regular fares on Metro or general taxes are levied to pay for my less expensive ticket. Just as there is no such thing as a free lunch, so there is no such thing

as a reduced Metro fare for which someone does not have to pay the difference, though I grant the free enterprise possibility, to which public entities are notoriously blind, that lower fares may in fact induce more to use the system and thus increase revenue!

On coming back from Metro Center, moreover, I took another line and got off at Dupont Circle, a stop that enabled me to use a bus transfer without having to pay extra. When I walked over to P Street, I noticed that several people were waiting for the G-2 Bus, which, as my good luck would have it, had just pulled up. As the first lady in line started to get on the bus, the driver asked her to stand back. Suddenly, noise of whirring machinery indicated that the lift for disabled passengers, installed by law in every city bus, was in operation. When it had extended itself, a gentleman in a wheel chair was efficiently lifted down to the sidewalk. He proceeded to wheel himself away and we all boarded the bus after the lift had been replaced. This man was again entitled to have the same ease of transportation as normal citizens, whatever the added cost of installing the lift mechanism on every bus might be.

These somewhat random but common incidents of humor and every-day existence serve to call our attention to the meaning and problems that occur in a political society in which entitlements have come to play an unexpectedly large role. At first sight, entitlements appear both as rights and as gifts from a generous state honorably seeking to provide for everyone. On the other hand, someone must pay for this generosity. What appears to be free usually is not. And secondly, entitlements, particularly those administered by the government, seem to undermine personal initiative and responsibility so that they become but another example of the growth and extent of the control of modern state in the lives of its citizens. Clearly, entitlements deserve serious examination.

## II.

The word "entitlement" cannot be found in Aristotle's *The Politics*<sup>3</sup> or in St. Thomas' discussions of natural law, *jus gentium*, or justice, though one might argue that hints of it can be found in certain aspects of their discussions of distributive justice and *epichia* or equity. It does not appear in the Ten Commandments, in the Declaration of Independence,<sup>4</sup> in the Constitution,<sup>5</sup> or in

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3. ARISTOTLE, *POLITICS* (Carnes Lord trans., University of Chicago Press 1984).

4. THE DECLARATION OF INDEPENDENCE (U.S. 1776).

5. U.S. CONST.

the first Ten Amendments.<sup>6</sup> One searches in vain for it in the 1935 Edition of the *Encyclopedia of the Social Sciences*,<sup>7</sup> nor is it in the 1968 *International Encyclopedia of the Social Sciences*.<sup>8</sup> The word is not in the Spell-Check of Word Perfect 6.0, but it is in the *Random House College Dictionary* of 1975, where "entitle" itself means "to give a person or thing a title, right or claim to something; furnish with grounds for laying a claim." Evidently the "title" is "given" not "due" or "earned." The verb "entitle" has overtones of giving titles of nobility, of something to do with honor more than justice or debt. Entitlement first appears in the *Readers' Guide to Periodical Literature* in 1988 with no specific journal entry, but with this interesting note, "See Economic Assistance, Domestic."<sup>9</sup> As a technical word, the term has been in the courts since the late 1960's. Only after 1991 does it appear with any regularity in the Periodical Indices.

Interestingly enough, what we can learn from this brief survey is that in the beginning of its recent development, "entitlement," for the index classifiers at least, seemed to be understood as a domestic variant of "foreign aid." And "aid" in any form usually had the connotation of something temporary, something supplied to get some project or work started, something supplementary or helpful, something due to largess. The first entitlement entry in the *Social Science Index*<sup>10</sup> was in 1991, in which an article from *The Economist*<sup>11</sup> of London was listed with the instructive title, "The Entitlement Mentality," as if it were some sort of mind-set, if not a disease. At first the word seemed to be merely a budgetary term, a way to account for the disbursement of certain government monies, without any implied philosophical implications about the theoretic grounds to explain why such monies should be offered. In its usage all along, the word hovered very closely to the word "right," itself a word of some considerable ambiguity in modern thought and one always in need of clarification about how it is being used.

The Latin word for "right" in pre-modern thought was *jus*, a word that meant something objective, something apart from human will, some norm of reason which the will searched out and to which it was obligated. *Jus* meant what was objectively right or due in an exchange or relationship, what one was

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6. U.S. CONST. amend. I-X.

7. ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 5 (1931).

8. INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 5 (1968).

9. *Entitlement Programs (U.S.)*, 48 READERS' GUIDE TO PERIODIC LITERATURE 666 (1989).

10. *Entitlement Spending*, 18 SOC. SCI INDEX 623 (1992).

11. *The Entitlement Mentality*, ECONOMIST, Sept. 28, 1991, at 26.

obliged to whether he liked it or not. *Jus* called us because of what it was, because of its rightness. After Hobbes, however, the word "right" in most modern thought lost its objective grounding and became, following perhaps Suarez, subjective.<sup>12</sup> It began to mean what was thought to be due to someone, what someone else owed us. *Jus* had an otherness and objective emphasis; "right" has an individualist and subjective stress. "Right" was not correlative to anything objective. Right was what was "owed" to us whether we did anything to deserve it or not. For Hobbes in the state of nature we literally had a right, no restriction, to everything and anything. And as the list of "rights" began to expand to cover more and more aspects of life, modern thought began to search for someone or something to give us our due, our rights, when we could not simply "take them" by our own powers.

Man has a natural "right" to everything, to repeat the view of Hobbes and his modern followers.<sup>13</sup> Eventually this "right" came to be guaranteed by the all-powerful state that took over, by an incontrovertible logic, the dire consequences of everyone having a right to everything — the war of all against all. From its subsumption of all rights into itself, the state took on the the duties of assigning rights according to its own purposes. Rights became what the state enforced with effective penalties. Hobbes was subsequently considered one of the main founders of modern liberalism because his all-powerful state took away all reasons for theological and philosophical controversy or warfare.<sup>14</sup> As a result of its imposed peace, the state became richer and richer. There was more and more to distribute. The state's contract with its citizens decided their rights, apart from which, having abandoned the state of nature, no rights in effect existed. The last vestiges of the classic natural rights which limited the state were almost totally subsumed into the unlimited state as itself a rights defining and dispensing institution. The negative state that prevented strife and war and guaranteed justice became the welfare state, or what I will call "the Generous State," the one that distributed benefits according to its own perception of what citizens want and need.

Legally, rights were often originally "liberties", a stated freedom from certain laws and customs, a limitation on govern-

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12. See JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHT* 198-230 (1980).

13. See E.B.F. MIDGLEY, *HOBBS: LEVIATHAN* (Editorial Magisterio Español, 1987).

14. See LEO STRAUSS, *THE POLITICAL PHILOSOPHY OF HOBBS: ITS BASIS AND ITS GENESIS* (1952). See THOMAS HOBBS, *On the Rights of Sovereigns by Institution, THE LEVIATHAN* 288-39 (C.B. Macpherson ed., Penguin, 1972) (1651).

ment.<sup>15</sup> Government was seen initially as an institution preventing individual liberties from coming forth. But it soon came to mean the institution that "guaranteed" and fostered rights and liberties and eventually the institution that defined and made rights possible. Rights were also originally considered to be consequent on duties. Rights look at what is due to an individual or what someone cannot be prevented from doing or having. Duties, on the other hand, refer to what someone ought to do. If we only had rights but no one had duties to us, we would profit nothing from them. For example, if I have a "right to life" but no one has a moral or legal "duty" not to kill me, the "right" really profits me little. Governments existed to enforce the rights that free will and voluntary negotiation could not effect.

Classic "bills of rights" from the English, French, and American Revolutions did not talk of entitlements, but the lists of "rights" that came into fashion with international organizations after World War II did have "economic and social" rights, notions that come pretty close to what we mean by entitlements.<sup>16</sup> Economic and social rights were much more ambiguous than classical natural rights, themselves also denied any ontological status in modern philosophy.<sup>17</sup> With economic and social rights, it is much more difficult to identify just who owes what to those said to be entitled.<sup>18</sup> Obviously, a poor society cannot entitle its citizens to benefits it cannot produce. Economic or social rights or entitlements had something vague about them, something whose existence depended on something else, the existence of which it did not profoundly concern itself. This something that provided a rational and definition of rights due was more and more the all-powerful state. Human flourishing and well-being were not so much the responsibility of the individuals but of the state. Paradoxically, claims against the state were made in the name of definitions about individual welfare formulated by the state itself.

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15. See Heinrich A. Rommen, *The Genealogy of Natural Rights*, 29 THOUGHT 403 (1954).

16. See JACQUES MARITAIN, *THE RIGHTS OF MAN AND THE NATURAL LAW* 152-89 (1986).

17. See Raymond Dennehy, *The Ontological Basis of Human Rights*, 42 THOMIST 434 (1978); James V. Schall, *Human Rights as an Ideological Project*, 42 AM. J. JURISPRUDENCE 47 (1987).

18. See MAURICE CRANSTON, *WHAT ARE HUMAN RIGHTS?* (1973); HENRY VEATCH, *HUMAN RIGHTS: FACT OR FANCY?* (1985); LEO STRAUSS, *NATURAL RIGHTS AND HISTORY* (1953).

## III.

"What are entitlements?" Peter Peterson and Neil Howe ask in their 1988 study *On Borrowed Time*.

The term *entitlement* usually refers to those benefits — whether in cash or in kind — that the federal government automatically pays to qualified individuals. As a rule, entitlement programs ostensibly contain some strong social welfare dimension, though in the case of Social Security and Medicare, this is obscured by the insurance metaphors commonly used to describe payroll taxes and benefits. As defined by the House and Senate Budget Committees, entitlements consist of any federal outlay that either requires no annual appropriation by Congress or must be appropriated by Congress according to the terms of some underlying statute or program legislation. Thus, as long as a given law remains in force, an "entitled" beneficiary can sue the government for failure to pay benefits. If the underlying statute were to be amended or abolished, however, program participants . . . would have no legally enforceable right to receive their payments.<sup>19</sup>

Similar provisions are found in most modern states and in most state governments in the United States.

Certain benefits thus are due to certain defined classes or types of citizens or oftentimes to all citizens. The origin of these benefits is founded in legally enacted public purpose, one that the courts have generally expanded in liberal fashion. It is assumed that these benefits help and do not hinder the recipients or the polity that distributes them. Very often it takes some time to evaluate the effects of such entitlements. Aid to dependent children, clearly well-intentioned, may, in fact, end up undermining the integrity and existence of a two-parent family and the well-being of children themselves. Good intentions alone do not always or even usually make good laws. No doubt the least studied aspect of the modern state system is the analysis of the dire effects of legislative and judicial good intentions. Once one falls under the defined categories, in any case, he can expect his benefit and can sue the state if it or some other entity under its jurisdiction fails to provide for what it has promised. If rights, privileges, and liberties were originally conceived to be limits to or exemptions from state jurisdiction, entitlements seem to emphasize rather what the state "owes" to its citizens, wherein

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19. PETER G. PETERSON AND NEIL HOWE, *ON BORROWED TIME: HOW THE GROWTH IN ENTITLEMENT SPENDING THREATENS AMERICA'S FUTURE* 77-78 (1988).



the state keeps the power both to define what the citizen is, no matter what his existential status as a human being from nature, and what benefiting him means. Rights and entitlements do not come from outside of but from within the state.

Politically, most states have found that they cannot easily restrict entitlements once their citizens have come to "expect" them from their government. Entitlements come close to defining and spelling out what states "owe" to their citizens. The purpose of entitlements often is to bring everyone up to a certain minimum judged to be necessary for human well-being. All the resources of the state are commanded to meet this need to which someone is entitled. Conceived in this fashion, the state claims a moral purpose, a compassionate or paternal purpose. The state assumes into itself more and more the private aid-giving institutions when their moral or religious impetus or inspiration flags or fails. Behind this notion of entitlement we must at least ask about where this principle that the state "owes" anything to its citizens comes from? What might entitlements imply about human nature and the state? Is the state the only or major source for confronting the needs that entitlements are designed to meet?

The discourse of entitlements is almost always lofty and noble in intention. The results of their enactment into law, however, frequently seem less exalted, often appearing to foster laziness, dependence, and state control of all phases of human life. On the obvious assumption that whatever the state distributes must come from someplace other than itself, from what citizens produce or earn, entitlements, unlike say the original Homestead Act of the last century, emphasize not the producing aspect of public life or the principles and attitudes that are required for it but the distribution aspect. It takes no great subtlety to see how such differing mentalities that emphasize distribution or production can come into conflict in practice.

Aristotle's famous virtue of munificence, *Nicomachean Ethics*,<sup>20</sup> saw great virtue in allowing the very rich to distribute their wealth privately in the form of things that foster the good, the true, the beautiful, or help for the needy. This Aristotelian virtue recognized that wealth, legitimately acquired, could be used for good or evil purposes. The virtue sought to orient the soul to those things that were noble and worthy, that provided for a level of living and worth attained only by those who understood the value and purpose of higher things in the community. While this

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20. ARISTOTLE, *NICOMACHEAN ETHICS* Book IV (Terence Irwin trans., Hackett Publishing Company 1985).

virtue still exists in free societies, the fact is that high taxing policies, often caused by needs to pay for entitlements, minimize this capacity and resource of munificence in the population. Moreover, with increasing control of the definitions of good, beautiful, true, and what is needed, the state gains more and more control of the culture. It is no accident that higher education, humanities and arts policies, and shows in museums reflect this concentration of distribution capacities in the hands of the state.

Obviously, the term "entitlement" has been fashioned to cover a phenomenon of the modern state, one almost has to say, of the "welfare state." The dictionary definition of the welfare state is, interestingly, "a state in which the welfare of the people in such matters as social security, health, education, housing, and the working conditions is the responsibility of the government."<sup>21</sup> Presumably, a non-welfare state would be one in which the "social security, health, education, housing, and working conditions of the citizens were not the responsibility of the government" but of the citizens themselves or of some other social body. At least some people in modern political thought have seen such a welfare state as a "servile" state, a state in which well-being is exchanged for government control, even if the government be democratic and supposedly benign in form. The essence of the "servile" state is one wherein the citizens must work for those who do not work productively, be they capitalists or bureaucrats.<sup>22</sup> Dependency on entitlements can be looked on from this angle as a means to make the vast majority of citizens incapable of any free movement because it would jeopardize their welfare. Their entitlements, in other words, far from freeing them, have tamed them; they have no independent liberty, such as property was originally designed to give them, from the taxing or coercive power of the state.

#### IV.

Entitlements refer to the distribution of society's benefits, usually financial but also benefits in kind, like Food Stamps, to those who fall into this or that legislatively defined category. Entitlements seem to be products of what I am calling here not the welfare state but "the Generous State," for they do not merely address dire, temporary conditions but long-range ones that need not always exist but which are nice or helpful when they do exist. The citizens of the Generous State are often well-off, pre-

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21. THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 2157 (2d ed. unabridged 1987).

22. See HILAIRE BELLOC, *THE SERVILE STATE* (1946).

sumably because of the benefits they receive. That is, in terms of average income, compared to other societies, those on entitlement income seem rich in terms of goods and services. Generous states in the modern era, however, are running into increasing public debts and concerns about bankruptcy because, following a principle already found in Plato, desires for benefits, once set in motion, seem unlimited. Since the state itself produces nothing, its so-called "generosity," a name properly used of individuals in their personal relations to others, comes from others, from monies garnered through the taxing process. The irony of being "generous" with someone else's money does not lessen when the state itself is said to be generous.

Some entitlements are for everyone; some for this or that group within society, often initially perceived to be given on a "need" basis. It is clear that organized and active societies can and do produce enormous wealth precisely because they are so organized with an enterprising population. The principle of specialization is also a principle for societal wealth production. The world is not really a zero-sum game, wherein everyone has to produce everything or wherein there is a fixed amount to be distributed such that if we give to some, we must take from others. Belief in such a position, such as we often find in modern ecologists or environmentalists, is one of the major causes for the increased power of the state in recent times.

The ultimate source of wealth, however, is not material goods or things in the ground but the human brain, intelligence, which to all practical purposes is unlimited. If we add the human brain and its innovative capacities to the gifts of the earth, unexpected, enormous riches result. Entitlements are based on the share of this wealth that is commandeered and distributed by the state on some public basis defined in its law. Entitlements can thus be conceived as incentives, rewards, compensations, and free givings, but their cost can also be burdensome and counter-productive so that they actually are a drag on society, especially when they are looked upon independently from the problems and conditions of production and the nature of human intelligence.

In their present form, entitlements could not exist, however, if the state did not exist and did not command some portion of what is produced by citizens to be distributed on its (the state's) and not the citizen's own criterion. The state as such is rarely, if ever, a producer of wealth. This is, among other things, the lesson of modern socialism and communism. Payments to a state's own bureaucrats and administrators, moreover, can turn out to be a huge cost, especially in states wherein the well-being provi-

sions themselves require a large voting bureaucracy to distribute the entitlements. Indeed, the entitlements of state employees in terms of vacations, retirement benefits, health care, and other privileges often are far in excess of those available to non-state employed citizens. The employees of the state become major political actors seeking to protect or extend their benefits and their own entitlements.

What the state has to distribute, however, must be taken from what is produced by someone other than its own employees. The experience of modern states is that, however necessary a stable public order may be, these states are themselves notoriously poor producers of wealth and often fail to understand how wealth is produced at all. Poverty in the modern world is often caused, not by lack of resources, but by the state's selecting the wrong intelligence about wealth and the conditions of its increase. The ability of a state to offer entitlements is always jeopardized by its taking, usually through taxes, of much too high a percentage of the wealth of its people. This is why the best entitlements policy must always be that which leaves as much as possible with those who produced the wealth in the first place for their own provisioning of their needs. It is not just a question of the volume of money collected from the productive citizens but of resultant lowering or destruction of incentives. In this sense, the claim to entitlements brings us straight to profound questions in economics and political philosophy.

## V.

Perhaps the oldest efforts to distribute benefits came from the wars, from pensions and allotments of land or money, later to G.I. Bills and guaranteed benefits on retirement, payments, PX privileges, Veterans' Hospitals and Homes. Here, in the case of the military in all societies, there was the relation between military compensations to distributive justice and to the unequal bearing of others' burdens in war and defense. Soldiers in the Roman legions looked for grants of land on being mustered out of service. Those who fought in battles or served in armies were considered to be entitled to special rewards or benefits, in many cases to lifetime care, from a grateful citizenry whose freedom the armies had defended or preserved. Failure to carry through promised recompense was in many societies a course of civil disturbance if not governmental overthrow.

On retirement from the military, which happened by comparative standards at quite an early age in recent times, the veteran could go to work and make whatever sort of income he

could garner. Aside from income tax totals, his military income was simply a regularly received payment or allotment. The veteran considered that he was entitled to it, even that he earned it. If he did not want to do another thing the rest of his life, that was fine too. This distribution of benefits was looked upon as a matter of justice. And that word justice brings us back to the classical discussions of general and special justice, of commutative and distributive justice, of equity and fairness. Entitlements did not seem to have quite the aura of justice or right connected to them.

All forms of justice had the connotation of "rendering what was due." Justice relationships needed to be defined in terms as clear as possible to be understood, preferably in mathematical or proportional terms. It needed to be evident that someone was not getting something for nothing, but for a title, a reason. Getting something for nothing was indeed a very high form of exchange, perhaps the highest, something we call gift or benefice, but it was not justice and did not fall under the aura of the state. A world of only justice was a terrible world since it only looked to exchanges, to abstract relationships, not to the persons who did the exchanging in their particularity. But still justice was a reality and could not be overlooked except, again, voluntarily or freely. Notions of forgiveness and repentance were designed to mitigate the rigidities of justice. There was something particularly noble about not demanding justice. One could accept another's burden or give of what was justly his without demanding anything in return. Justice indeed seemed to exist for something beyond itself; it seemed limited.

Entitlements somehow appeared to recognize that this something beyond justice can be articulated even by the state, though one might still argue whether what is being gotten at by entitlements is the best way for a society to meet its problems, even its peripheral problems. "Rights talk," as Mary Ann Glendon called it, or "entitlements talk," as I will call it here, seems to bear the connotation of a demand that something be given freely, an obvious contradiction.<sup>23</sup> If something is given freely, and that is our perfection in a way, it is not by way of right, which has the implication of something due, that is, something not given freely but given because something objective obliges.

Commutative or rectificatory (making right) justice was that exchange that took place either because of damage done by accident or deliberation, such as skidding into another car because

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23. MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF PUBLIC DISCOURSE* (1991).

of a flat or because of stealing, or because of advantages gained by voluntary agreement. What is characteristic of all forms of justice is the mutual and equitable exchange. What is owed is what is to be returned. Justice enabled damage to be repaired or it enabled something new to enter the world through entrepreneurship. Careful accounting of who did what, of who was responsible for what, was in effect in commutative justice. On this basis of surety, one could go ahead and plan rationally and expect results of one's foresight and work to be apportioned out fairly. Justice wants rewards to be assigned exactly and with reason, with title.

Insofar as the state entered into these agreements or exchanges, it was primarily to hold the contractors to their pledged word. Without the assumption of justice, very little would be undertaken. In the case of distributive justice in which the common goods or burdens of society were assessed and meted out, however, the principle of exchange was after the manner of proportionate contribution or proportionate burden. Civil disturbances or unrest, Aristotle had told us in the Fifth Book of *The Politics*,<sup>24</sup> occurred when those who contributed more felt they were rewarded less or when those who had no distinction thought that everyone ought to be treated absolutely equally, no matter what more they did. The polity, in any case, was recognized as an arena in which there was a common good, that is, where many different private and individual goals and institutions could flourish because there was a settled order so that everyone did not have to do everything. The state did not "do" everything but provided the settled order in which myriads of individuals and their organizations could operate to do what they saw fit. If the state tried itself do everything, it would violate its own common good. The Platonic undercurrent to this principle simply meant that spiritual and material riches of the whole required that many different talents be allowed to flourish. Not everyone could or had the time to do everything.

## VI.

In his book, *Thoughts on Machiavelli*, Leo Strauss remarked that one of the causes of disorder in the modern state was precipitated by Christianity in a rather paradoxical fashion.<sup>25</sup> Strauss' point is a subtle one. He argued that revelation had caused an elevated expectation about what human nature by itself could and would be able to accomplish. That is, ideas of charity,

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24. ARISTOTLE, *supra* note 3.

25. LEO STRAUSS, *THOUGHTS ON MACHIAVELLI* 86, 174 (1958).

mercy, forgiveness, and sacrifice, which came into existence by virtue of doctrines and inspirations resulting from grace, from revelation, began to evaporate in modernity. What did not change so much, however, were the ideals or goals that these teachings put into existence. That is, the elevated expectations were still in the souls of the populace so that, even with the decline of belief and moral virtue, the accomplishment of these ideals became the duties not of charity or church but of the modern state, whose instruments of action did not include mercy. At the foundations of the modern state is a sense of compassion divorced from grace. Compassion apart from grace in practice is pride, the claim that what is not within our powers is capable of being accomplished by us by non-revelational means, by our own capacities, in other words. For our purposes here, this means that the state has come to be responsible for goals that were not conceived possible by normal political or economic institutions, but which were anticipated by grace. In a sense, the Kingdom of God came to mean something happening primarily in this world through political means.

A further element in this consideration has to do with the modern idea of rights. The modern idea of rights has its origins in Hobbes and his state of nature.<sup>26</sup> Rights, contrary to the older natural law thinking, were presupposed to nothing. Man had a natural right to everything, a right that required no natural or divine law. Rights came to mean, as we have indicated, what the government, the Leviathan, granted to us. The modern notion of rights had connected with it a kind of arbitrariness. Rights were not "natural" but "civil." The state was designed to define and protect rights, but rights in the first place were what the state granted. Rights were created by legislation. We knew what was a law because we could see what the state enforced. Once we gave up our natural right to everything by entering the state, we did not have a right to anything but what the state enforced or defined. No one had to bother about some sort of "higher law."

If we put these several ideas together, we can begin to understand what is behind the question of entitlements. "[R]ights . . . are demands for government goods and services," R. Shep Melnick has written, "rather than for demands for protection against government intrusion — entitlements, rather than liberties. . . . [T]he traditional American emphasis on individual rights has melded with the modern welfare state. If the older view of rights as individual liberty delayed and stunted the

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26. THOMAS HOBBS, *On Rights of Sovereigns by Institution*, in *THE LEVIATHAN*, *supra* note 14, at 228-39.

growth of the welfare state, then the newer view of rights as entitlements has helped it to flourish.”<sup>27</sup> We have here stated in clear terms the problem that entitlements present. The earlier view of rights was a means to restrict the state. This was Locke’s idea that that government governs best that governs least. The government was conceived to be primarily an impediment to individual liberty. The government was designed to protect this individual liberty. It is with Rousseau and Mill that individual liberty becomes social liberty, that what we want is what the state wants for us.<sup>28</sup>

Why have entitlements enabled the government to flourish? One aspect of this question would be that the size of government increased to administer the entitlements themselves designed to provide for the people. Government itself became a major cost. Those who worked for the government, in terms of vacations, health insurance, retirement, conditions of labor, turned out to be the most protected group in society. Entitlement programs also became the vested interest of those who administered the program. Government workers did not work for good will or charity. The service structure to administer politicized compassion was itself a great independent cost. A certain significant percentage of every sum spent on compassion and entitlement went to those who administered the program. Thomas Sowell has pointed out that in terms of foreign aid, the amount of money returned to the Third World from families of immigrants or guest workers exceeded all the public foreign aid of all the nations. We can wonder whether some analogous system not on the state level might not be a better one to achieve the purposes that entitlements were designed to accomplish.

## VII.

From the viewpoint of political philosophy, in conclusion, how does one take the measure of entitlements? There is an ancient argument about the state and its justification. The first argument stems from Aristotle and Aquinas, both of whom understood the darker side of human nature, especially the tyrannical tendencies that are often found in human experience. Their positive argument maintains that, in spite of the admitted

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27. R. SHEP MELNICK, *BETWEEN THE LINES: INTERPRETING WELFARE RIGHTS* 274 (1994).

28. See JEAN-JACQUES ROUSSEAU, *ON THE SOCIAL CONTRACT* (Donald Cress trans., Hackett Publishing Company 1983); Henry M. Magid, *John Stuart Mill, in HISTORY OF POLITICAL PHILOSOPHY* 784, 796-800 (Leo Strauss & Joseph Cropsey eds., 3d ed. 1987).



defects of actual human nature, the state is a natural institution. Man is by nature a political animal, but not only a political animal. Or better, it can be argued that in being a political animal, man is still a being whose end and purposes transcend anything limited to the state's purposes itself. This means that by the very fact of his following his given nature, man should set up a civil polity to enable him to do many things that could not be done or done as well outside of this formal organization. But it also means that even with the state institutions in effect, these civil institutions do not exhaust or define man's highest purposes.

This state could be organized according to various ends, not all of which were noble. The question of the best regime and its location was a crucial one, even though the best regime that could be expected in politics in this world existed only rarely. All actual regimes were in practice less than the best. Man's disordered soul could reflect itself, as Plato knew, in his political organization *The Republic*, Books VIII-IX.<sup>29</sup> But implicitly, the state existed that the myriad forms of good that man could cause and ought to cause could come to pass. The state existed, in other words, that the highest things might exist, things that were mostly beyond the state. Human actions, however, were legitimate and their expressions in terms of habits and laws were the proper, if limited, arena of the state.

The second view of the state, one associated with Augustine, held that the state was primarily a remedial institution; it only existed because of sin or the Fall, which itself ought not to have existed. Man is not by nature a political animal in this view.<sup>30</sup> The fact is, as any minimally observant person knows, that there is a wide scope for evil and greed in the world that constantly manifests itself, even in terms of law and political institutions. This situation was discussed in the classic authors in terms of decline of regimes or disordered regimes. The kings and princes, senators and rulers, that organize and rule the state are themselves subjected to the consequences of the Fall.

That is, the state can be the most dangerous of human institutions, multiplying evil as well as good. Not infrequently in history the state has been the most dangerous enemy of human dignity. The best the state can do is to keep disorder at a minimum without ever promising anything approaching perfection.

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29. PLATO, *THE REPUBLIC* Books VIII-IX (Richard W. Sterling & William C. Scott trans., Norton 1985).

30. See HERBERT DEANE, *THE POLITICAL AND SOCIAL IDEAS OF ST. AUGUSTINE* 116-53 (1963).

This is the sort of realism that greets us with any historical knowledge of human existence. And in terms of the topic of these reflections, of entitlements designed to benefit citizens and the operations of the Generous State, we can expect that such arrangements will be subject to abuse and in fact may serve to corrupt, in some unexpected but easily identifiable fashion, a whole society in the name of something that seemed like a worthy enterprise.

In examining the mechanisms of entitlement legislation over the years, it is not difficult to see the Augustinian side of what seemed to be a worthy proposal working itself out. In civil life as in personal life, it remains true that we judge legislation by what we intend it to do, but we must be honest enough to see that we must also examine it in the context of what it does do. Entitlement proposals seem to be a product of efforts to guarantee a stable and prosperous life for the citizens of modern states. The state sees itself as dispensing good things to its citizens, as fulfilling its obligations to them in terms of distributive justice.

The question remains, however, whether the state should be the institution that is primarily responsible for this otherwise laudable purpose. Certain minimal things must be granted to the state both as a directing and as a remedial institution. On the other hand, the state is one institution among others. It is, if we can put it this way, that institution that makes it possible for other institutions to exist and flourish. Likewise, it is, because of its coercive monopoly, that institution that can prevent their developing. The most important things are not found in the state. The temptation of all modern states is to deny this proposition, to assume into themselves those elevated expectations that were implanted into the soul of man by revelation but to assume that these expectations could be provided by means other than those indicated in that same revelation.

Once man is no longer seen as someone whose ultimate purpose and destiny transcends the state, his sights are lowered to this life. When this lowering takes place in the minds of individuals, then the relative rank of the state is elevated to that of the most important institution available to man. It has subsumed into itself those things formerly held to belong to something higher than the state. Aristotle had said that politics is the highest practical science, not the highest science as such. One could argue, as I do argue, that the modern discourse of rights and entitlements is the result of this subtle displacement of the position of the state from that of a natural institution subject to the nature and ends of man to that of the highest institution itself. The function of the state comes to be the defining and providing

function for all that is needed for human life, a provision that conceives its task in primarily this-worldly terms. The state expresses itself in terms of laws, rights, entitlements, and benefits. The growth of entitlements, of the state's increasing control of human well-being in all its phases, including primarily its very definition, is the case of a well-intentioned proposal going wrong because its authors' understanding of what it was about is motivated by ideas and provisions that work against human nature and destiny as that is understood in its fullness.

The redress of this growing control of the state through its benefit giving, generously motivated activities, it would seem, lies, at the institutional level, with a re-emphasis on the production side of human well-being, on what produces wealth and the virtues and essentially private but still social institutions that result when people are given the freedom and duty to provide for themselves.<sup>31</sup> Movements such as home schooling, removing education from state bureaucracies, innovative business generated through small capital beginnings reflect the vitality of a free and responsible people allowed to provide for themselves. Again here we need to be reminded that there is no substitute for accurate understanding of human purpose and human vice, of what resources are available to us in both traditions of virtue and in traditions of revelation. What has caused the modern state the freedom to incorporate into itself ideas and institutions that have worked against human worth has not originally been the state itself. The first disorders of a society always originate in the minds and hearts of the dons, academic and clerical. It is true that we can suggest, as I have done here, the consequences of these disorders in political terms. The fact remains, following a suggestion of Edmund Burke, that a virtuous people can make even bad institutions plausibly work for worthy projects and an unvirtuous people can ruin even the best of political or economic arrangements.<sup>32</sup>

Entitlements are in fact political and economic realities that most often were proposed and enacted with the best of intentions. As their purposes worked themselves out, however, it became clear that they had the effect of transferring much wealth and independence of the citizen over to the state. Theoretically, the state assumed the responsibility not only of well-being but of defining well-being. The Generous State treated its citizens and especially those who directly worked for it exceed-

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31. See JAMES V. SCHALL, *RELIGION, WEALTH, AND POVERTY* (1990).

32. See EDMUND BURKE, *REFLECTIONS ON THE REVOLUTION IN FRANCE* (J.G.A. Pocock ed., Hackett Publishing Company 1987).

ingly well. Somehow, it also corrupted the whole social order because it did not attend to the productive or innovative side of human reality and the vast reaches of intelligence and organization that were located there. This is why the remarks from John XXIII cited at the beginning of these reflections remain so pertinent. The secret sources of grace and human energy need to be allowed to work, need to be fostered through the principle of leaving things at the lowest level as possible, through not wanting the state to provide for all ills and the righting of all wrongs.

The state as the primary substitute for divine providence and bounty is a dangerous entity precisely because it has lost contact with the true destiny and nature of man as he exists in this world. We have, so to speak, been blessed with an "entitlement" that always limits the state and elevates us to a higher level than the state can provide for us. When this higher level is restricted, unrecognized, not allowed to grow, the state will see human life as a failure on its own terms. It will come to see its own task as that of replacing those energies and forces that are no longer encouraged or allowed to exist in human society.

The generous state easily becomes the all-caring and all-powerful state, seeing itself as acting in the highest and most noble motives. Entitlements that reduce us to wards or subjects of state largess as the proper and only ambiance for our actions and security are not neutral either in theory or in practice. Reflections on entitlements, like all questions of politics and economics, can and should bring us to confront the conditions and nature of the highest things. When we do not have these latter considerations in proper order, we will in all likelihood end up corrupting even those institutions, such as entitlements, that we proposed and put into effect with the most noble of intentions.

