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The Protean Vocabulary of Human Rights

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The language in which we express human rights does matter. The words are not merely empty signifiers but have referents, and the way that we speak about human rights says something about the human being whose rights we claim, about the community in which he or she is situated, and the responsibilities of justice that the rest of us share toward that person.

With that broad “cultural” premise in mind, I was particularly struck recently by a television advertisement seen in the United States, offered by a cellular telephone company seeking to market its data plans to young people. The ad features a man, apparently in his early 20s, speaking against a background of photos and videos, and he says this:

“The miraculous is everywhere. In our homes, our minds, we can share every second in data dressed as pixels. A billion roaming photojournalists uploading the human experience, and it is spectacular. So why would you cap that? My iPhone 5 can see every point of view, every panorama, the entire gallery of humanity. I need to upload all of that. I need – no, I have the right to be unlimited.”

I need – no, I have the right to be unlimited!

Now, I would not want to make too much of this – it is after all only one television advertisement – but neither is it insignificant. On the one hand, it appeals to its target audience by playing upon the insatiability of human desire, affirming that every limitless desire for self-affirmation is, by right, entitled to satisfaction. And at the same time, as the answer to that unlimited human desire it offers . . . a *data plan*! This is the answer that young people are seeking to that infinite desire and that structural longing of the human heart: an iPhone with an unlimited data plan. It is, really, a brilliant strategy. It simultaneously captures one of the core characteristics of human dignity – our endless thirst for something more; the infinite horizon of our yearning – and then also reduces its satisfaction to something so small and paltry as to make the human person nothing more than a consumer, a plaything of powers interested in nothing more than instrumentalizing human desire for their own profit.

This is the danger of human rights today: the expansion of the language of rights to encompass every desire, coupled with the extreme reduction of what it means to satisfy our human needs, ultimately serves the instrumentalities of power.

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To see more clearly that this dynamic is not merely limited to a single clever television advertisement, I would like to look more broadly at the vocabulary of human rights in political life generally.

Human rights, like all principles of law, are always embedded in a political context and a political culture. Our understandings of what human rights are find expression in political life, and the uses of the language of human rights in our politics in turn help to constitute our understandings of what is due to people in justice. This has always been true, from the first assertions of the idea of human rights by the Spanish neoscholastic philosophers and theologians in Salamanca in the 16th century, seeking to respond to what they perceived to be the tremendous injustices of the conquest of the indigenous peoples of the new world.² And it was no less true in 1948 when the Universal Declaration of Human Rights was drafted and adopted. The extraordinary human achievement of the Universal Declaration was that a very disparate group of men and women, with profoundly differing philosophical and cultural perspectives, were able to agree on a common vocabulary for speaking about some of the most basic requirements of human dignity, justice, and the common good.³ The Universal Declaration was a political document, not a legal one; it sought to generate a common political commitment to certain basic principles, which it was hoped would eventually become crystallized into law and realized in practice.

The drafters of the Universal Declaration knew that the success of their effort would require developing a “common understanding” over time of the meaning of the document – as the Preamble states explicitly.⁴ And, indeed, the development of the vocabulary of human rights in political life profoundly influenced the use and effect of the Universal Declaration over the next decades. For example, the consistent assertion, in the context of international politics and diplomacy, of human rights as principles of general concern to the international community gradually eroded the prior notions of “sovereignty” and “domestic jurisdiction”, to the point that no state today can reasonably say that questions of basic human rights are solely its internal concern.⁵ Similarly, the way that the language of human rights was very quickly swept up into the polarization of the cold war after 1948 – with the global superpowers each using one part of the canon of human rights as a political tool against the other – had lasting effects on the development of human rights instruments and ideas for decades, contributing to the artificial separation of civil and political rights from economic, social, and cultural rights.⁶ Still later, the ever-shifting development of a vocabulary of human rights in key political movements contributed to everything from the so-called “third wave” of democratization around the

² Paolo CAROZZA, “From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights”, *Human Rights Quarterly* 25 (2003): 291.

³ For a history of the composition of the Universal Declaration see generally Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, (New York: Random House, 2002).

⁴ “Preamble”, in *The Universal Declaration of Human Rights*, United Nations, accessed June 9 2013, <http://www.un.org/en/documents/udhr/>.

⁵ See David P. FORSYTHE, *Human Rights in International Relations*, (Cambridge: Cambridge University Press, 2012): 25-26.

⁶ For a description of the use of the Declaration in political rhetoric during the Cold War see Mary Ann GLENDON, “The Deep Freeze” in *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, (New York: Random House, 2002): 193-220. For a short history of the artificial separation of rights see “Key concepts on ESCRs - Are economic, social and cultural rights fundamentally different from civil and political rights?”, United Nations Human Rights, Office of the High Commission for Human Rights, accessed June 9 2013, <http://www.ohchr.org/EN/Issues/ESCR/Pages/AreESCRfundamentallydifferentfromcivilandpoliticalrights.aspx>.



world in the 1980s and 1990s to the increased recognition and inclusion of disabled persons in our polities.⁷

These examples already show us that although we must expect that to some significant degree the language of human rights will change and develop with the evolution of political life, that dynamic is not, by itself, necessarily good or bad. We can welcome the development of the language of human rights insofar as it conditions the excesses of absolute sovereignty or fosters democratic forms of governance, just as we lament the artificial cleavage of human rights into distinct categories for ideological purposes. The point is that the changing language of human rights must be judged by whether in fact it concretely serves the good of human persons and communities, or instead does them harm. Politics can contribute either to the construction of a more authentic and more widely shared understanding of human rights, or to a corruption and instrumentalization of its ideals.

In light of that background, I would like now to identify and discuss briefly several trends in the political evolution of human rights language that raise difficult questions about whether they are in fact in the service of human goods or ultimately opposed to them.

Note first, however, that I am not talking merely about the uses and abuses of the language of human rights for other political ends. Given the realities of human rights and power, that will always be a danger in the human rights enterprise to be aware of and to guard against. For instance, we have seen in recent years the persistent use of human rights principles to provide rhetorical support for war. Afghanistan is the most egregious example, where a drumbeat of the Taliban's horrible violations of the rights of women have accompanied American soldiers throughout the conflict, and are still employed today to justify the ongoing presence of foreign powers.⁸ Libya, Mali, and now Syria provide further exhibits. Or, we sometimes see states engaging in naval actions to intercept and turn back or detain irregular migrants before they reach the shore of the destination country, and cover such enforcement with a cloak of human rights-protecting rhetoric.⁹

These cases are troubling indeed, because they make human rights an instrument of other and less humanitarian political ends, but they don't exactly come within the scope of what I am interested in identifying here. Arguably, they use the words of human rights to support ends unrelated or even contrary to the ideals of peace and justice that inspired the Universal Declaration. But the effectiveness of their legitimization depends on an implicit claim that the vocabulary of human rights that is used in fact corresponds to what we all already have agreed upon.

⁷ See Paolo CAROZZA and Daniel PHILPOTT, "The Catholic Church, Human Rights and Democracy: Convergence and Conflict With the Modern State", *Logos: A Journal of Catholic Thought and Culture* 15 (2012): 18-19, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1394355. See also *Convention on the Rights of Persons with Disabilities*, United Nations, available at <http://www.un.org/disabilities/convention/conventionfull.shtml>.

⁸ See Shadi MOKHTARI, "The New Politics of Human Rights in the Middle East", *Foreign Policy Magazine*, October 30, 2012, accessed June 7 2013, http://mideast.foreignpolicy.com/posts/2012/10/30/the_new_politics_of_human_rights_in_the_middle_east?wp_login_redirect=0. Let me say very clearly that I do not in any way deny that human rights, including in particular the human rights of women, were and are being egregiously violated here. I am merely putting into question whether these ought to justify the massive human and financial cost of war, and whether war can ever be an appropriate means for addressing human rights concerns.

⁹ See Maurizio ALBAHARI, "Death and the Moral State: Making Borders and Sovereignty at the Southern Edges of Europe" (Working Paper #136, The Center for Comparative Immigration Studies, University of California at San Diego, December 2, 2005): 16-17.



There are other cases, however, where the language of human rights shifts in political usage, where it begins to take on new meanings, where the concepts and human realities to which they refer has been transformed. Those are the examples that more aptly illustrate the question raised here at this event. And to get at that a little more deeply, I will cite three prominent words in the lexicon of the Universal Declaration of Human Rights.

The first word represents perhaps the most profound example of this phenomenon of shifting meanings because it trades on the one single concept that is explicitly at the core of the entire contemporary human rights enterprise: *dignity*. From 1948 to the present, almost every single human rights instrument ever adopted, starting with the Universal Declaration itself, has referred to the inherent dignity of the human person as the foundation for all the human rights that we recognize and protect.

Now, to some extent we must acknowledge that reference is a little bit deceptive. As is well known from the fine histories that have been written of the Universal Declaration, human dignity was included in that document in part because the drafters *could not* agree on the foundations of human rights. As Jacques Maritain liked to put it, when asked how he – a Catholic philosopher of natural law – could agree on a declaration of rights with other delegates who had radically different philosophical commitments, “Yes, we agree on the rights, so long as no one asks why. It is with the ‘why’ that all the disagreements begin.”¹⁰ So, human dignity represented the minimal agreement on foundational principles among otherwise diverging and even incompatible theories. And so it is not surprising that over the ensuing decades, up to the present, we should continue to find that the meaning and content of the principle of human dignity is itself subject to a variety of understandings that are not always in perfect harmony with one another.

But still, there was at least implicitly a core, shared understanding of human dignity in the vocabulary of human rights.¹¹ First, at a minimum, it referred to the irreducible value of the human being, of every human being by virtue of being a member of the human race and nothing more. And it was deemed and declared to be an inherent quality of every human being, preceding any action or grant or recognition by any act of the State or any other power. Second, human dignity is clearly understood in the Universal Declaration as the basis for all of the rights, in an integrated way – political and economic, individual and communal, from life and physical integrity to freedom of religion to health and labor. In other words, the dignity of the human person is respected and guaranteed in the totality of the rights recognized – “interdependent” and “indivisible” are the words that later emerged to describe this truth within the narrative of human rights. This in turn means that human dignity is not reducible merely to one aspect of the human personality or another. Dignity includes the personal integrity of the human being but is not limited only to the immunity from torture or cruel, inhuman and degrading treatment; it implies the fundamental equality of all persons but is not limited to norms of non-discrimination; it includes our belonging to constitutive communities and relationships, but is not limited to the communal and relational dimensions of personhood; and (most relevantly, as we will see) it includes

¹⁰ Jacques MARITAIN, Introduction to *Human Rights Comments and Interpretations, symposium*, edited by UNESCO (London: Wingate, 1949), 9.

¹¹ For an extended discussion of this core, shared understanding see Paolo G. CAROZZA, “Human Rights, Human Dignity, and Human Experience”, in *Understanding Human Dignity*, ed. Christopher MCCRUDDEN (Oxford: Oxford Univ. Press, Forthcoming): 620 and 625.



recognition of the value of each person's freedom and agency but cannot be reduced merely to individual autonomy.

Unfortunately, in the political vocabulary of human rights today, even that minimal core agreement on the meaning of human dignity is rapidly disappearing and becoming fragmented into complete incoherence. Dignity is invoked in the politics of human rights for the most disparate and contradictory ideas, so much so that it can be said to have been essentially evacuated of its meaning. Deconstructed into its different parts, human dignity gets used in human rights discourse to justify every new right, even ones that go against the very core meaning that I described above.¹²

The illustrations of the deconstruction of dignity are numerous, but in the interests of time I will cite only one prominent example. The political efforts in many constitutional and international contexts aimed at legalizing physician-assisted suicide and more active forms of euthanasia has taken the word "dignity" as its rallying cry – as in, "death with dignity." It would take much more time than we have available to give a complete analysis of the problem, but even a few observations are sufficient to see how the invocation of "dignity" here has completely altered the meaning of the term. First, it implies that a person who is suffering is no longer possessed of inherent human dignity. Dignity has become something that is achieved through an act of will rather than something inherent in the person that is inviolable and must be respected. Second, dignity here takes one isolated aspect of the human person's good – the ability to choose and to exercise some control over one's own conditions of life – and exalts it to an extreme at the expense of every other aspect, denying the comprehensiveness of dignity. And third, most importantly of all it is in fact contrary to the best available evidence we have of what actually serves the good of the persons involved. Research shows that most patients suffering from terminal illnesses who desire suicide do so only because they either mistakenly believe that their pain cannot be relieved, or because they are suffering from treatable forms of clinical depression.¹³ With adequate palliative and psychiatric care, they in fact desire to continue to live.¹⁴ In sum, "dignity" is thus distorted to a meaning not only different from the original foundation of rights, but contrary to it and contrary to our best understandings of human well-being.

The second word whose meaning has not only shifted but been vacated in the politics of human rights is "family." The Universal Declaration among other human rights instruments refers to the family as "the natural and fundamental group unit of society" and thus affirms that "it is entitled to protection by society and the state." That is, the family precedes the State as a social reality and thus is not defined by the State and its law. Now, we all know that in recent decades, in many parts of the world the meaning of the family has been profoundly contested and subject to dramatic changes. That is a reality we can't ignore. But then what does that entail for the protection "by society and the States" of this "natural and fundamental group unit of society."

¹² For a description of different ideological uses of dignity see Id: 623.

¹³ For studies linking pain, requests for physician assisted suicide, as well as the desire for suicide itself, see Kathleen M. FOLEY, "The relationship of pain and symptom management to patient requests for physician-assisted suicide", *Journal of Pain and Symptom Management* 6 (1991): 289-297. For the physician's perspective on the need for palliative care instead of assisted suicide see Kathleen M. FOLEY and Herbert HENDIN, *The Case against assisted suicide: for the right to end of life care*, (Baltimore: Johns Hopkins University Press, 2002): 227.

¹⁴ See Richard M. DOERFLINGER and Carlos F. GOMEZ, "Killing The Pain Not The Patient: Palliative Care Vs Assisted Suicide", accessed June 8 2013, <http://www.usccb.org/issues-and-action/human-life-and-dignity/assisted-suicide/killing-the-pain.cfm>.



Again, let me offer just one example of how the shifting political meanings of the word undermine the good of the persons that human rights are intended to protect. In 2010 I had the opportunity to participate as a delegate in the United Nations World Youth Conference in Mexico. Charged with comprehensively examining the needs of young people – ages 10-24 – everywhere in the world, the conference produced a final declaration listing 61 priorities for action to promote the well-being of youth in a wide array of different sectors, from poverty and education to health and culture.¹⁵ Nowhere in any of the 61 action priorities is the family mentioned. The “natural and fundamental group unit of society” is, judging from that document, irrelevant to the needs and priorities of youth. I personally asked the head of the drafting group to insert a recognition of the indispensable role of the family – citing empirical evidence that the long-term physical health, psychological and emotional development, and education of children is highly correlated with their insertion and growth in a stable family life. I noted, too, that child and youth poverty and violence and exploitation are strongly linked to the absence of families within which they can be nurtured and protected. I was told in response that because the meaning of the word “family” was now deeply contested, we could not accept among the 61 priorities any that referred to the Universal Declaration’s requirement that the family receive the protection of society and the state. In other words, the changing political meaning of the term led to a rejection of something that no one disputed to be a critical part of the needs of young people everywhere in the world.

For a third and final example, I will be very summary. The word is “privacy.” The right to privacy is recognized in Article 12 of the Universal Declaration, which says, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...”¹⁶ Privacy, in that context, clearly refers to a sphere of intimate associations and relationships, like family and home and correspondence, over which the power of the State must be limited in order to preserve the basic requirements of justice and liberty and to limit the overbearing power of the modern State. It is striking that today, instead, “privacy” has become the principal basis for the assertion of a host of so-called “new rights” that not only do not limit the state but empower it, and not only do not preserve intimate relationships but turn them into vehicles for individual satisfaction. For example, privacy is the central basis today for assertions of the right to have a child by medically assisted techniques of procreation.¹⁷ There is much to be said about the difficulties and complexity of finding appropriate legislative regulations over such things as reproductive technologies; I don’t suggest otherwise. But the point here is to see how privacy has evolved from a sphere of non-interference in the intimacy of human relationships that are constitutive of the human personality, to the guarantee of state assistance in the realization of a prospective parent’s individual will and desire to produce offspring. It does not take into account what the good of the children produced by such means may be, or those human lives

¹⁵ Read the full 61 priorities at “Guanajuato Declaration”, World Youth Conference Mexico 2010, accessed June 8 2013, http://c-fam.org/docLib/20100908_declaracion_guanajuato_ing-1.pdf.

¹⁶ “Article 12” in *The Universal Declaration of Human Rights*, United Nations, accessed June 8 2013, <http://www.un.org/en/documents/udhr/index.shtml#a12>.

¹⁷ Gretel ARTAVIA MURILLO et al. v. Costa Rica, REPORT No. 85/10 (“In Vitro Fertilization”), CASE 12.361, (Inter-American Court of Human Rights, 2010), <http://www.cidh.oas.org/demandas/12.361Eng.pdf>. S.H. and Others v. Austria, Judgment 57813/00, Grand Chamber (European Court of Human Rights, 2011), [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107325#{"itemid":\["001-107325"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107325#{).



intentionally created and destroyed in the process, or the social implications of these methods – privacy validates my right to be free of all such responsibility.¹⁸

Even such a brief reference to the shifting meaning of privacy is useful because it helps point the way to a deep structural commonality among all three of the words I have cited. The “new” meanings of dignity, family, and privacy share a turn toward radical forms of individualism, and a rejection of the relational and communal dimensions of human flourishing. Dignity has become reduced to complete autonomy; family is merely the consequence of each individual’s choice to belong (or not) but has no larger social meaning or purpose; privacy is pure self-assertion. Similarly, they are all united by the validation of individual desire without accountability to any larger question of what men and women really need in order to live a full and flourishing human life, without any limit.

This is where we come full circle and see just how that cellular telephone advertisement with which I began reveals a deep cultural premise: “I need – no, I have the right to be unlimited.” The human person has become the consumer, driven by insatiable desire to convert every appetite into a right without boundaries and without responsibility.

I believe that we need to step back and collectively ask ourselves some hard questions. What kinds of people and what kinds of societies will these shifts in the vocabulary of human rights help to produce? Is it really the destiny of a global ethic of human rights, of that great expression of the human conscience that is the Universal Declaration of Human Rights, to be reduced to this? What do we truly hope for the generations who are to follow us?

We cannot begin to answer these questions, let alone recover the vocabulary of human rights, without referring anew to the priority of the human. What does it mean to be human, and what is it about our humanity that is universal?¹⁹ After all, when we speak of universal human rights, it is first the human that is universal, not the rights. There are no truly universal rights, no truly human rights, without humanity. Unless we recover that, then every important word associated with human rights will continue to be tossed and blown about by every passing wind of power and interest. Human rights will then be the instrument of political power rather than the limits that justice imposes on power to guide it toward the good.

¹⁸ Marta CARTABIA, “The Age of “New Rights””, (Working Paper No. 3/10, New York University’s Straus Institute for Advanced Study of Law and Justice, 2010): 28-34, available at <http://www.nyustraus.org/pubs/0910/docs/Cartabia.pdf>.

¹⁹ For an in depth analysis and answer to this question see Andrea SIMONCINI, Lorenza VIOLINI, Paolo CAROZZA, and Marta CARTABIA, *Elementary Experience and Law*, trans. Mariangela Sullivan (Milan: Fondazione per la Sussidiarietà, 2012): 3-4.

