

# RELIGIOUS LIBERTY AND HUMAN DIGNITY: A TALE OF TWO DECLARATIONS

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“We agree on these rights,” Jacques Maritain once stated, “*provid[ed] we are not asked why.*”<sup>1</sup> He was referring to his work on the 1946 UNESCO Committee on the Theoretical Bases of Human Rights, but he might just as well have been referring to the American intellectual community today: We all agree that there is such a thing as human dignity (who would oppose it?), just so long as we do not have to say why. The “why” of human rights, however, is vitally important. For example, if human rights are widely said to follow from human dignity, then the contours of those rights must depend on the contours of that dignity. Change the basis or the scope of human dignity and the rights, so to speak, go all wrong. This article compares two human rights declarations, one that was unable to state an explicit basis for either rights or dignity, the United Nations’ Universal Declaration of Human Rights (“Universal Declaration”),<sup>2</sup> and one that was prepared to argue for both, Vatican II’s Declaration on Religious Freedom.<sup>3</sup>

## I. UNIVERSAL DECLARATION

In 1946, leading thinkers from around the world gathered under the auspices of the United Nations to determine whether a consensus on human rights could be achieved. They reached a limited one,<sup>4</sup> agreeing that such rights existed but not on how, in theory, to ground them.<sup>5</sup> As a result, when the Universal Declaration of Human Rights

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1. JACQUES MARITAIN, *MAN AND THE STATE* 77 (4th ed. 1956).

2. Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc. A/810, at 71 (1948).

3. VATICAN COUNCIL (2D: 1962-1965), *Declaration on Religious Freedom*, reprinted in *THE SIXTEEN DOCUMENTS OF VATICAN II* 481 (Marianne Lorraine Trouvé ed., N.C.W.C. trans., Pauline Books & Media 1999) (1965).

4. The preamble consistently explicates the cooperation between Member Nations required to define the idea of human rights. See Universal Declaration of Human Rights, *supra* note 2, at 72 (“The General Assembly [p]roclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations.”).

5. See *id.*; see also Mary Ann Glendon, *Reflections on the UDHR*, 82 *FIRST THINGS* 23

was promulgated two years later, its Preamble reflected this inability to achieve a consensus, by declaring that a “common understanding of these rights and freedoms, is of the greatest importance for the full realization of [the] pledge”<sup>6</sup> to respect human rights, then failing to explicitly define this “common understanding.”<sup>7</sup>

Despite the inability of the Committee to establish a basis for human rights, the rise of totalitarianism made the United Nations’ human rights project something of an emergency. After totalitarianism, it became necessary to defend, not merely *some* rights, *some* truths, or *some* moral principles, but the very existence of human rights, of truth, and of morality. Maritain and other thinkers knew it was critical to insist, at the moment of the founding of the United Nations, that there are rights—whatever their source—that must be recognized and respected in order to formulate “common principles of action.”<sup>8</sup>

The drafters of the Universal Declaration were thus less concerned with attempting to create a theory underlying human rights than they were with the urgent task of agreeing together to protect those rights in practice,<sup>9</sup> leaving for another day a task they still thought vital, that of forging “a common understanding of these rights.”<sup>10</sup>

While the Universal Declaration does not lay out a systematic grounding for human rights, it does hint at one. The Preamble implies that the fundamental error behind totalitarianism lies not in political theory, but rather in the human person. Because of a “disregard and contempt for human rights” at the heart of those “barbarous acts

(1998) (“Different understandings of the meanings of rights usually reflect divergent concepts of man and of society, which in turn cause those who hold those understandings to have different views of reality.”).

6. Universal Declaration of Human Rights, *supra* note 2, at 72.

7. *See id.* at 71-72; *see also* Glendon, *supra* note 5, at 24.

The [drafter of the Declaration] tried to satisfy the Soviets by making clear that the new rights, like the old, are importantly related to human dignity. It met the English concerns by establishing that the new rights were different in kind, if not in importance, from traditional political and civil liberties. They are dependent on ‘the organization and resources’ of each state . . . in a way that, say, the right to be free of torture is not.

*Id.*

8. MARITAIN, *supra* note 1, at 78-79.

9. *See id.*; *see also* Universal Declaration of Human Rights, *supra* note 2, at 71.

[D]isregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

*Id.*

10. Universal Declaration of Human Rights, *supra* note 2, at 72.

which have outraged the conscience of mankind,” it was necessary to recognize “the inherent dignity and . . . the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world.”<sup>11</sup> This notion grounds the basis for justice in the idea of rights, which is somehow connected with “the inherent dignity” of the person. Consequently, it is not the nature of the state we are considering, but the nature of the human person.

The Preamble repeats this point, observing that in the United Nations Charter the member states “reaffirmed their faith in fundamental human rights, [and] in the dignity and worth of the human person,”<sup>12</sup> intertwining again the ideas of human rights and human dignity.

This connection between rights and dignity is no coincidence. As Professor Mary Ann Glendon observes, Maritain himself had insisted that if the future Declaration “were not to be a mere hodgepodge of ideas, it would need a tuning fork or ‘key’ according to which the rights could be harmonized. Everything depends, [Maritain] said, on ‘the ultimate value whereon those rights depend and in terms of which they are integrated by mutual limitations.’”<sup>13</sup> In other words, if the Declaration could not appeal to an ultimate *source* of rights, it could, at least, appeal to an “ultimate value” that would make the document internally coherent. Professor Glendon has no trouble identifying that ultimate value, stating that “the ‘key’ in which the various rights were to be ‘harmonized,’ the Universal Declaration belongs to a family of postwar rights instruments that accord their highest priority to human dignity.”<sup>14</sup>

Therefore, human dignity is the “ultimate value” that gives coherence to human rights. But if rights somehow depend on dignity, where does dignity come from?

Once again, the Declaration does not specifically identify the roots of human dignity. Article I states that “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”<sup>15</sup> The juxtaposition of freedom, dignity and, rights in the first sentence and reason and conscience in the second implies that

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11. *Id.* at 71.

12. *Id.* at 72.

13. Glendon, *supra* note 5, at 23.

14. *Id.* at 24.

15. Universal Declaration of Human Rights, *supra* note 2, at 72.

human rights somehow follow from human dignity and human dignity follows from human rationality and conscience. Something about human intellect and conscience creates a duty to treat people in a certain way: in a spirit of brotherhood.

This is not just a throwaway line. It is because the drafters of the Universal Declaration believe that humans are naturally rational beings with consciences that they believe disputes may be settled peacefully. According to this logic, human beings give reasons for their actions, confessing to themselves and to one another that their actions are not random. Rather, their actions are based on premises that can be examined and judged by some standards outside of their own preferences. The Universal Declaration says humans possess a conscience that identifies these standards, meaning humans are capable of making moral distinctions, and are under some sort of normative obligation to seek out truth and make choices in accordance with it. The realities of intellect and conscience are what allow one person or society to bring normative obligations to the attention of any other person or society.

It is possible to aspire to resolving disputes through the use of persuasion rather than force only insofar as each individual's reason and conscience correspond to a single reality that all human beings share in common. This is why the Universal Declaration coherently claims in Article 28 that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."<sup>16</sup> Without a common rationality and conscience to which all men and women may appeal—that is, a rationality and a conscience, grounded in common human reality itself, that transcend cultural boundaries—such a goal would not only be difficult to realize on a practical level, but, on a conceptual level, simply absurd.

The Declaration, positing the universality of intellect and conscience, envisions a world in which it is possible to call others to account for their behavior and to have a basis for human interactions outside the metric of brute force and power politics.

That seems to be the logic, as far as it goes. All this talk of dignity and conscience, however, hints of greater discoveries to be had. Can the dignity-conscience logic lead toward a theory of rights? There is reason for optimism. Almost twenty years after the United Nations' Universal Declaration, another declaration on human rights appeared.

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16. *Id.* at 76.

In 1965, the Second Vatican Council issued *Dignitatis Humanae*, its Declaration on Religious Freedom,<sup>17</sup> which made a similar but much more explicit argument about the relationship between human rights, human dignity, and human conscience.

## II. DIGNITATIS HUMANAЕ

Vatican II's Declaration is a fitting counterpoint to the United Nations' Declaration because *Dignitatis Humanae* is not a purely religious document. Rather, the Council's argument for religious liberty as a fundamental human right proceeds along two tracks, one theological and one anthropological, a deliberate action that allowed the document to serve both as a source of doctrine for Catholics and, importantly, as a basis for dialogue with the world.<sup>18</sup> The resulting argument started from an understanding of human rights based in human dignity—and of human dignity based in the quintessentially human thirst for transcendence, which was a more explicit version of the personalist argument implied in the Universal Declaration.

The central inspiration behind *Dignitatis Humanae* is a point of view generally known as “personalism.” Personalism is not so much a theory or a science of the person as it is an ethical stance, an attitude of living that treats oneself and others as subjects of rights. It is an attitude that sees *persons* as free individuals who are ordered toward participation with one another through the actions that they perform.<sup>19</sup> These actions affect those around us, and they also affect ourselves—when we act well, we become better *as persons*, and, when we act badly, we become worse, also *as persons*.

*Dignitatis Humanae* summarizes its argument as follows:

It is in accordance with their dignity as persons—that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility—that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these

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17. VATICAN COUNCIL (2D: 1962-1965), *supra* note 3, at 481.

18. Douglas G. Bushman, *Introduction* to VATICAN COUNCIL (2D: 1962-1965), *supra* note 3, at 483-85.

19. See Karol Wojtyła, *Personalizm tomistyczny*, 13 ZNAK 664 (1961), translated in Karol Wojtyła, *Thomistic Personalism*, in PERSON AND COMMUNITY: SELECTED ESSAYS 165 (Andrew N. Woznicki ed., Theresa Sandok trans., Peter Lang 1993) (“Personalism is not primarily a theory of the person or a theoretical science of the person. Its meaning is largely practical and ethical: it is concerned with the person as a subject and an object of activity, as a subject of rights, etc.”).

obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom. Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it, and the exercise of this right is not to be impeded, provided that just public order be observed.<sup>20</sup>

This idea goes further than the United Nations' argument that reason and conscience provide the possibility of appealing to some common set of rights. It is an argument that reason and conscience actually demonstrate the basis for such rights.

Human dignity is said to follow from "reason and free will and therefore . . . personal responsibility."<sup>21</sup> That is, people have dignity because they are responsible for the choices they freely and knowingly make. This sense of responsibility is a universal experience, rooted in our very existence, that raises in us a series of questions, such as: Why am I here? What is the meaning of my life? And, most importantly, how do I daily choose how to act, what to value, what to avoid, who or what to love, in light of those prior questions? Our existence is thus a *project* to be fulfilled. We experience not only a freedom to mold our own lives, but also an obligation to mold our lives well as a condition for our own fulfillment. We realize that our choice of the goods we seek, and of the context within which we choose to seek them, commits us radically as persons. By freely seeking what is good (or evil) we become good (or evil) as persons.

This experience is inescapable. We can try to eschew reason and try to act randomly, but that results in being judged insane. Our capacity to reflect on our freedom and the necessity of choice forces us to face our responsibility, forcing us to face our deep need for knowledge about how to decide. We are confronted with a multiplicity of things that we *can* seek and actions we might take. While we all share certain basic needs and desires, there is virtually no limit to the ways in which these can be gratified or fulfilled, which poses even more questions: How do we order our individual desires, much less the multiplicity of human desires that coalesce and clash whenever human beings live together? How do we decide what to do,

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20. VATICAN COUNCIL (2D: 1962-1965), *supra* note 3, at 493.

21. *Id.*

in the polling booth, or even just after rolling out of bed each morning? Because we humans are born with the necessity of choosing, we are also born with anxiety about choosing well, or to put it another way, with an innate thirst for discovering the truth about the good.

Furthermore, when we reflect on it, we consider the search for truth an adventure, not a chore. Truth is more than just information about other good things—it is a good thing itself. Mark Twain once defined a classic as “something that everybody wants to have read and nobody wants to read.”<sup>22</sup> Truth is not like that for us. We do not just want to have learned it so we can get on with life. We enjoy discovering it. It is something that tastes good all by itself. Vatican II can say that we are “impelled by nature . . . to seek the truth;”<sup>23</sup> it is itself a good thing that we naturally desire.

The Vatican Declaration adds that humans are “also bound by a moral obligation” to seek the truth.<sup>24</sup> And not only to seek it, but also to “adhere to the truth, once it is known,” indeed “to order their whole lives in accord with the demands of truth.”<sup>25</sup> Where do those requirements come from? The Vatican Declaration “professes its belief that it is upon the human conscience that these obligations fall and exert their binding force.”<sup>26</sup> The document repeats the point later, stating that every person “has the duty . . . to seek the truth in matters religious.”<sup>27</sup> The person “perceives and acknowledges” that duty “through the mediation of conscience.”<sup>28</sup>

Conscience, in short, demands that our minds and hearts attend to their built-in hunger for the true and the good. It prods them along in their search for it—and then insists they embrace what they believe they have found. Conscience, of course, is neither omniscient nor infallible. Regardless, it must be obeyed if we are to keep our integrity. After all, conscience takes the truth, as we understand it, and applies it to concrete circumstances to judge what is good. To refuse to follow its judgment (even when it turns out to have been mistaken) is to consciously reject what we believe to be true and turn

22. Mark Twain, *The Disappearance of Literature*, Speech Before the Nineteenth Century Club (Nov. 20, 1900) (quoting his friend, Professor Caleb Winchester), in SAMUEL L. CLEMENS, *MARK TWAIN SPEAKING* 358, 359 (Paul Fatout ed., 1976).

23. VATICAN COUNCIL (2D: 1962-1965), *supra* note 3, at 493.

24. *Id.*

25. *Id.*

26. *Id.* at 492.

27. *Id.* at 493.

28. *Id.*

our back on what we believe to be good, which violates our nature, if nothing else. Consequently, we sense that we have betrayed ourselves when we yield to coercion and act contrary to our consciences.

Human dignity, therefore, is a result of an intelligence and free will that, by their very nature, impose on us a duty, which conscience enforces, as well as a hunger, to seek the truth. From that conception of dignity the Vatican Council finds it a short step to human rights, declaring that people have “the duty, *and therefore the right*, to seek the truth.”<sup>29</sup> The Council elaborates:

In all his activity a man is bound to follow his conscience . . . . It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.<sup>30</sup>

While this particular argument focuses on the right to religious liberty, the dignity that it locates in human reason and freedom is broad enough to encompass the bases of the other, traditional human rights as well. A human person who is entitled to search freely for ultimate truth, and then to express publicly the results of that search, is surely entitled to freedom of speech, freedom from arbitrary arrest, from torture, etc. In short, intellect and conscience, which presumes free will, bestows dignity and gives rise to human rights.

Religious freedom, in this conception, is more than a social freedom or a matter of freedom of expression. It is the ultimate freedom, that of conscience and the freedom to seek and embrace the truth about the meaning and purpose of one’s life. In short, at the foundation of the personalist vision lies religious freedom, not as *a* right, but as the foundation of the existence of any human right. Freedom of religious expression is the catalyst in any society to the awareness of the dignity of the human person and the most fundamental precondition for any intelligible discussion about human rights.

That idea is not very different from the language of the United Nations’ Universal Declaration, which asserts that “human beings are born free and equal in dignity and rights. They are endowed with reason and conscience . . . .”<sup>31</sup> The Universal Declaration, recall, employs these concepts for a more limited purpose, using them to

29. *Id.* (emphasis added).

30. *Id.* at 493-94.

31. Universal Declaration of Human Rights, *supra* note 2, at 72.

argue for the possibility of a world-wide forum for enforcement of the rights it enumerates (but doesn't yet theoretically ground). Nevertheless, in looking for the elusive "common understanding" of those rights, this language, on which international consensus has already been achieved, serves well as the foundation of a more profound argument—a personalist reading of the document itself. This foundation would likely make the case for human rights much clearer, more persuasive, and immune to the usual culturally relativist objections, since the personalist case for human rights draws on some of the most deeply-felt and universal human experiences and desires. Following this personalist view, we could agree on the rights—and we could even agree why.

In order to treat people as ends rather than means, we have to first see this core of dignity created by our shared and equal thirst for meaning, which can only be fulfilled to the extent that the person is free of coercion. Even those among us who seem at first glance to reject the existence of such absolute values as "truth" and "goodness," perhaps on the grounds that they seem not to be meaningful or that they seem to serve no purpose, will, on closer examination, usually be found to embrace them at a more profound level. Ultimate meaning, after all, is another way of saying absolute truth, just as ultimate value or purpose is another way of saying absolute goodness, and no one really wants to live a life ultimately devoid of meaning or purpose.

Religious freedom is not merely one of many rights, but the prototypical human right. The Vatican document locates the foundation of *all* human rights (not just religious rights) in the dignity of the human person and in what might be called the religious impulse: the way in which each man or woman experiences *a universal thirst for meaning and purpose in life*.

This theory of religious freedom brings coherence to what that right looks like in practice. With reason and conscience, and thus dignity, as the foundation of our theory of human rights, it becomes clear that religious liberty is a core right, against which there are three great threats: state-imposed atheism, state-imposed religion, and state-imposed secularism. These phenomena are useful to study because each demonstrates the importance and precise contours of the particular facet of religious liberty that it offends.

In the case of state-imposed atheism, the religious impulse is targeted for repression because it is considered both a source of illusion and a threat to the hegemony of the state. In an atheistic regime, religion is condemned because it is thought to be false.

Perhaps more importantly, religious expression, especially in institutional form, is considered dangerous because it represents a source of authority that does not originate in, or otherwise depend upon, the state. The spiritual authority of religion, moreover, claims superiority to the temporal authority of the state.<sup>32</sup> Thus, religion offers a competing vantage point from which citizens may effectively critique and oppose government action.

Although this anthropology does not deny the religious nature of humanity, it errs in its evaluation by condemning rather than exalting that nature. On this view, the religious impulse certainly exists (or else there would be nothing systematically to repress), but that impulse *ought* to be repressed because it has no object in reality and precludes totalitarianism.

By contrast, where a state imposes one religion (or, less commonly, more than one), it affirms both the existence and value of the universal craving for God. Indeed, in a theocracy, satisfying that human need is deemed so urgent that the state will employ any means to that end. The stakes are so high—whether the fate of citizens' immortal souls, or the protection of society from corrosive forces—that the state considers itself justified in using force to exact religious observance.

But the conception of human nature implicit in this approach misunderstands the religious impulse. There is no exigency—spiritual, social, or otherwise—that warrants coercing religious belief or observance, by the sword or even by more subtle means. This is not because spiritual and social problems are unimportant, but because mandating religious adherence is not an effective remedy. In fact, enforced religion will only worsen those problems. Religion at gunpoint is merely the semblance of religion, not the real thing. Exacting such empty conformity neither vindicates our humanity nor promotes social harmony; even the overzealous state would be disappointed with this result. Indeed, theocracies *preclude* genuine adherence to whatever religion they enforce, because they squelch that freedom that is a necessary condition for authentic embrace of *any* religion. Religious coercion also commonly meets intense resistance, risking civil strife that would tatter the fabric of civil society. In short, if a government seeks to maximize the religious flourishing of its people, as well as the individual and collective goods attendant to that flourishing, mandatory observance will not

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32. MARITAIN, *supra* note 1, at 153.

achieve that result—freedom will.

But even where religious freedom is affirmed by the state, particularly in contemporary democracies, there remains the risk of state-imposed secularism. Although this is typically the result of well-intentioned but overzealous opposition to state-imposed religion, it is occasionally based on the same contempt for religion that animates state-imposed atheism. In either case, the nominal goal is government “neutrality” with respect to religion, but the effect is the banishment of religion from public life. The laudable institutional separation of church and state becomes the unworkable separation of anything religious from anything political. Thus, religious values must not inform any public moral debate, least of all any legislative action that might issue from such a debate. Though the state may not specifically target religion for suppression, the state remains free to act in callous disregard of it. Indeed, the “neutrality” of the state may be called into question if the state accommodates, or otherwise acts with sensitivity toward, religious expression.

Again, the problem with this approach is anthropological. “Neutrality” is understood to require the state to ignore the religious nature of humanity, to pretend it does not exist, rather than to acknowledge, accommodate, or promote it. But the human desire to seek the truth, and especially religious truth, cannot be overlooked, much less eliminated. Everyone is a religious thinker. Among a plethora of goods, every person must choose some ways of ordering them. Because we are human beings, not creatures of given instincts, to live we must act, and to act we must choose. By forcefully excluding certain criteria for ordering goods (personal, social and political) as religious and therefore to be quarantined, the state uses its power to segregate, discriminate and oppress those who find ultimate meaning in the service of God. Convictions derived from religious inquiry (including such inquiry that results in atheism, or humanism) unavoidably inform moral decision-making, which, in turn, unavoidably informs political decision-making. It is mere fiction that these intimately entwined aspects of human thought and social action can somehow be extricated from one another. Similarly, human beings will never cease to distinguish the sacred from the profane, and so will always require, to varying degrees, exceptions to ordinary rules of behavior for purposes of religious observance. In short, it is quite simply impossible to eliminate these hard-wired patterns of human being, whether for the sake of drawing a neat-and-tidy distinction between religion and politics, or for any other purpose. To

ignore them is to base society on a lie, and a deforming lie at that.

By treating religious contributions to public debate as out-of-bounds or merely tolerable, the state needlessly deprives itself (and, in turn, the people it exists to serve) of the rich moral and political resources that so many religious traditions hold in stewardship for the benefit of all. In the same way, by failing to affirm the singular importance of religious observance in the lives of its citizens, and by insisting instead on regulating extraordinary and mundane behavior on the same terms, the state harms those religious communities and institutions that serve as the seedbeds of virtue. Thus, democracies that embrace religious freedom can avoid lapsing into state-imposed secularism by acknowledging that the presence of religion in public life is not merely inevitable, but invaluable.

Truth is a good that is *worthy of being sought in itself*. Philosophers have long considered the contemplation of truth as the goal not only of our intellectual activity, but also of our practical way of life. Religious leaders of all persuasions have seen in this goal the greatest achievement and fulfillment of the human person. Our own experience also tells us that we are most fulfilled when we act according to the truth about ourselves and our surroundings. The attainment of truth thus becomes an imperative for our own development as persons.

Human existence is thus a *project* to be completed.