WHAT WE CAN LEARN ABOUT HUMAN DIGNITY FROM INTERNATIONAL LAW

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International law was once assumed to regulate the rights and duties of states in their mutual interactions. As such, it might seem far removed from philosophic reflection on human dignity. In the contemporary world, however, "human dignity" has been proclaimed a central concern of international law. The Preamble to the United Nations Charter proclaims "faith in fundamental human rights, in the dignity and worth of the human person." The first sentence in the Universal Declaration of Human Rights appeals to "the inherent dignity and . . . the equal and inalienable rights of all members of the human family."[1] Article I of the Universal Declaration affirms that "[a]ll human beings are born free and equal in dignity and rights."[2]

Advocates for the "international human rights movement" often claim that it is grounded in a body of thought that found earlier expression in the framing of the American Constitution.[3] International human rights proclamations are, in this view, simply the contemporary culmination of America's own founding vision.

This claim is, at best, highly distorted. The American Founders, while acknowledging "the law of nations" in the Constitution's grant of congressional power "to define and punish . . . offenses against" it,[4] did not indicate that international law could directly secure "human dignity." One reason, surely, is that they understood international law to have a much more confined role than that which is now implied by the Universal Declaration of Human Rights. Perhaps a more important reason is that the Founders also had a rather different notion of human dignity.

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1. Universal Declaration of Human Rights pmbl., para. 1, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

2. *Id.* art. I.

3. *See, e.g.*, LOUIS HENKIN ET AL., HUMAN RIGHTS 16-36 (1999) (arguing that "The Human Rights Idea" is exemplified by extracts from the American Declaration of Independence and the works of John Locke, William Blackstone, Thomas Paine, and other writers who influenced the thinking of the American Founders).

4. U.S. CONST. art. I., § 8, cl. 10.

In what follows, I want to explore what international law teaches us about human dignity. I will argue that contemporary ideas about the role of international law are grounded on a very misplaced notion of what human dignity is. The classical scheme of international law, as it was known to the American Founders, did not aim at promoting human dignity. The Founders embraced this more limited conception of international law because they understood that human dignity was not something that could be assured by government, let alone by international understandings.

I. DIGNITY IS NOT EQUALITY

To start with, we might notice that the U.N. texts associated "dignity" with equality. This is curious, since "dignity" normally implies a point of distinction: what is dignified is in some way distinguished from the ordinary—or at least from the undignified. When the American Founders talk about "dignity," it is most commonly in relation to the dignity of office, which involves a claim to special respect.

The Founders did speak about equality, but they did so in reference to "rights."[5] The most famous claim about equality in the American founding is the assertion in the Declaration of Independence that "all men are created equal . . . endowed by their Creator with certain unalienable Rights . . . ." The U.N. texts also speak about equal rights, but their drafters evidently supposed that something would be added to claims about rights by linking them to claims about "dignity." On the other hand, the U.N. texts suppress the appeal to divine authority in the American Declaration.[6] Perhaps this omission in the U.N. texts reveals something about the inner logic of internationally approved notions of "human dignity."

It is true that some religious thinkers, in recent times, have embraced the phrase "human dignity." There is dispute, however, about whether this usage comes out of actual religious traditions or is simply a borrowing from secular philosophy.[7] Certainly, the claim

5. For example, the parallelism of the phrasing ". . . that all men are crated equal, that they are endowed by their Creator with certain unalienable Rights" links "created" with "Creator" and "equal" with "rights," suggesting that the Creator's method of creating men equal is to give them equal rights.

6. *See* Universal Declaration of Human Rights, *supra* note 1, at pmbl., para. 1 (substituting passive voice where the Declaration of Independence refers to a creator); *see also* U.N. CHARTER pmbl. ("faith in equal rights of men and women"); *id.* art I, § 2 ("principle of equal rights").

7. One of the earliest versions of the doctrine, expressed in religious terms, appears in

about human dignity, as it appears in U.N. documents, does not seem to rest on a religious foundation.

The most famous and influential secular characterization of "human dignity" was offered by the Prussian philosopher Immanuel Kant.[8] Kant certainly linked "human dignity" with equality. He grounded the claim of human dignity in human free will, in the capacity for moral choice. According to Kant this capacity is the same, in principle, in the most degraded and the most exalted of human beings. Kant made the claim to "autonomy" a central aspect of human dignity—the notion that each person makes his own moral law for his own life. One version of Kant's "categorical imperative" for moral action is that one must act in accord with a law one could conceive as a universal obligation, or, in other words, on the principles that each of us could and would endorse as a legislator for mankind.[9]

As a moral philosophy, Kant's formulations may have no necessary connection with a political program. Kant's own political prescription, set out in very sketchy form, holds that a just government must respect the rights of individuals, though it emphasizes a rather formalistic version of the rule of law more than any particular rights claims and more than any element of democratic accountability or constitutional checks. It may be contrary to Kant's own intentions to extrapolate from Kantian moral philosophy to any

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the work of the neo-Thomist scholar, Jacques Maritain, who tried to reconcile earlier Church doctrine with liberal rights doctrine:

> A person possesses absolute dignity because he is in direct relationship with the absolute, in which alone he can find his complete fulfillment . . . . [T]he entire order of things . . . draws our life towards this Absolute. . . . [T]his description does not belong exclusively to Christian philosophy although Christian philosophy carries it to a higher point of accomplishment.

JACQUES MARITAIN, THE RIGHTS OF MAN AND NATURAL LAW 4-5 (Doris C. Anson trans., Charles Scirbner's Sons 1973) (1943). *See generally* ROBERT KRAYNAK, CHRISTIAN FAITH AND MODERN DEMOCRACY 148-54 (2001) (including skeptical discussion of this interpretation of Christian doctrine, emphasizing the Kantian derivation of modern Church teachings about "dignity").

8. *See generally* IMMANUEL KANT, GROUNDING FOR THE METAPHYSICS OF MORALS 30, 44 (James W. Ellington trans., 2d ed. Hackett Publishing 1983) (1785).

9. *Id.*

> Hence there is only one categorical imperative and it is this: Act only according to that maxim whereby you can at the same time will that it should become a universal
> law. . . . Our own will, insofar as it were to act only under the condition of its being able to legislate universal law by means of its own maxims—this will, ideally possible for us, is the proper object of respect. And the dignity of humanity consists just in its capacity to legislate universal law . . . .

Id.

particular political agenda.[10] But it is surely more than coincidence that Kant also advanced a plan for securing perpetual peace through a federation or league of states.[11] Kant is often considered to be a chief source of philosophic inspiration for twentieth century efforts in international organization—where talk of "human dignity" now plays such a prominent role.[12] In trying to grasp what is new and strange in contemporary international appeals to "human dignity," then, it may be appropriate to start by noticing what was already very odd—or at least, compared with American views, very different—in Kant's formulations.

At first glance, the Kantian formula seems quite sentimental: I can be a legislator for mankind, you can be a legislator for mankind; any one of us is up to the task. Evidently, the job requires no particular study, no particular experience, no particular character. Each of us has the same inherent dignity, whether we are learned or ignorant, seasoned or green, serious or silly. We are all equal in our capacity to legislate. On second thought, this does not seem so much sentimental as megalomaniacal: if each of us should regard himself as a legislator for mankind, then we must think it is, one some level, quite reasonable for a mere human being to legislate for all humanity. What unites these seemingly opposite perspectives is the common premise that laying down law is easy, because it is merely a matter of will (even if, as Kants insists, it requires good will or good intentions). This seems to exalt mere intention in a way that is quite beyond ordinary political thinking.

The Declaration of Independence seems to start with the opposite view: "When in the Course of human events, it becomes *necessary* . . . ." Quite apart from their own intentions, human beings are subject to necessities—in this case, the necessity of "one people" to insist on its "separation" from another with which it had previously been "connected." A "necessity" does not become less necessary to recognize and grapple with merely because one fails to notice it. How we cope with "necessity" does not simply turn on our intentions but also on our capacities, including, perhaps, our capacity to exercise imagination, foresight, and judgment.[13]

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10. In fact, *Human Rights* includes a selection from Kant's moral doctrine as illustrative of the "Western Individual Rights Tradition." *See* HENKIN ET AL., *supra* note 3, at 37-40.

11. *See generally* IMMANUEL KANT, PERPETUAL PEACE (Lewis White Beck ed., Liberal Arts Press 1957) (1795).

12. *See, e.g.*, MICHAEL DOYLE, WAYS OF WAR AND PEACE 251-300 (1997).

13. Hence, while the Declaration begins with an appeals to what is "necessary," it ends with a "pledge" by the individual signers of ther "Lives, . . . Fortunes . . . and . . . Sacred

Perhaps this passage in the Declaration alludes to moral as well as physical or political necessities. At any rate, the Declaration does not attribute the largest necessities to human intention. When the Declaration speaks about universal, seemingly moral, standards, it appeals to "the Laws of Nature and of Nature's God," to the rights "endowed by their Creator," and to the vindicating judgments of "the Supreme Judge of the world." The implicit assumption behind such appeals is that no mere human being could be trusted to legislate for the whole world.

Of course, that thought did not originate with the American Founders. Indeed, it may be traced back to biblical times. "What is man, that thou are mindful of him?"[14] The Bible seems more devoted to preaching humility than extolling human dignity. When it speaks about dignity—or what the King James version renders as "dignity"—it refers to rank, to distinctions among men.[15] And the Bible is far from disparaging or ignoring all such distinctions.

A respect for human limitations is one important link between the Bible and the Declaration of Independence. It may be that the difficulty of eliminating every form of inequality among human beings is itself a human limitation. The sense in which each human soul matters equally to God might be beyond human capacity to emulate. At any rate, when the Founders talk about equality, they talk about "rights." Whatever connection there might be between equality of rights and a biblical teaching about human souls, the term "rights" is not, itself, something one finds in the Bible.

The first writer to offer any clear account of rights in the modern sense, rights from the standpoint of the claimant ("my right" as opposed to "what is right"), was the Dutch jurist Hugo Grotius.[16] A right gives its owner a claim to insist on his due as a matter of law.

Honor," appealing to others to respect the seriousness of the signers. This latter appeal would be quite superfluous if the initial assertions regarding what is "necessary" could be adequately evaluated on their own merits by every reader. The Declaration seems to take for granted that not everyone is equally well situated to judge necessities, even when "facts" are "submitted" to prove them. There remains the need to trust the "sacred honor" of those who assert such necessities (or determine how to present the relevant "facts") for others.

14. *Psalms* 8:4 (King James).

15. For example, the patriarch Jacob blesses his first-born: "Reuben, thou *art* . . . the beginning of my strength, the excellency of dignity, and the excellency of power." *Genesis* 49:3 (King James). Elsewhere, the King of Persia asks, "What honour and dignity hath been done to Mordecai for this?" *Esther* 6:3 (King James). Two different Hebrew words are here translated as "dignity," but both words convey the sense of elevation or distinctive honor.

16. *See* KNUD KAAKONSSEN, *Hugo Grotius and the History of Political Thought*, 13 POL. THEORY 239, 240 (1985).

Grotius emphasized that law must be distinguished from wider ethical notions about honor or moral desert.[17] Rights talk began with a leveling of moral distinctions.

And this was, as it happens, in the context of a treatise on international law. Indeed, *De Jure Bellum ac Pacis* (*The Law of War and Peace*) has been seen as the first modern treatise on international law. That is, in fact, how the American Founder saw it.[18] The primal right in this treatise is the right to demand redress—if necessary, by war.[19]

In the Grotian account, not everyone has equal rights. Some people may be justly reduced to slavery and have no rights at all. A sovereign ruler may sharply limit the rights of his own people and they may have no legal recourse against such abuse.[20] The right to demand redress by war is a right that is, in general, reserved for sovereign rulers. But for a sovereign, at least, there is a natural right, according to Grotius, to wage war to protect his rights.[21] If this does not encompass everything we might associate with "dignity," it is at least a basis for demanding respect.

By the time of the American Founding, international law was understood to provide a derivative protection for the rights of foreign nationals traveling in other countries. According to Blackstone's *Commentaries*, perhaps the most important legal reference work for the American Founders, "offenses against the law of nations" include injury to the ambassador of a foreign state and any injury to a foreign national traveling under a "safe conduct" or "passport."[22] One might think of this as a claim about rights, but it was a limited claim. As a matter of international law, a foreigner could claim a degree of

17. ". . . [L]aw properly defined . . . [in] its essence lies in leaving to another that which belongs to him, or in fulfilling our obligations to him." Hugo Grotius, *Prolegomena* to HUGO GROTIUS, DE JURE BELLI AC PACIS LIBRI TRES 13 (Francis Kelsey trans., William S. Hein & Co. 1995) (1625). "[A] right becomes a moral quality of a person, making it possible to have or to do something lawfully" which is "a legal right properly or strictly so called." *Id.* at 35.

18. As James Madison put it, Grotius "is not unjustly considered . . . the father of the modern code of nations." James Madison, Examnination of the British Doctrine, a Neutral Trade Not Open in Time of Peace, *in* 2 LETTERS AND OTHER WRITINGS OF JAMES MADISON, 1794-1815, at 230, 234 (Philip R. Fendall ed., 1865).

19. See GROTIUS, *supra* note 17, at 170-71.

20. *Id.* at 103-13.

21. *See id.* at 100-01; *id.* at 164.

22. 4 WILLIAM BLACKSTONE, COMMENTARIES *68. Blackstone explains that the need to punish such "offences" with a "becoming severity" arises from the hope that, in this way, "the peace of the world may be maintained," since by failing to punish, "the sovereign then avows himself an accomplice or abettor of his subject's crime and draws upon his community the calamities of foreign war." *Id.*

protection from a host state even where a citizen of that state might not. The foreigner had to be treated with respect because his home state might retaliate if he were treated abusively.

Well into the twentieth century, international law made claims on behalf of foreign travelers or foreign investors without making any comparable claims for citizens dealing with their own governments. The foreigner's claim might be backed by his home state's demand that its citizen be treated with respect by another state. There was no international authority that could claim to enforce the rights of citizens in disputes with their own governments.

In the most effective international institutions, the pattern remains to this day. Under the North American Free Trade Agreement, a foreign investor can demand international arbitration to resolve claims regarding expropriation of his property in, for example, Mexico.[23] This recourse is not available, however, to a Mexican citizen in a dispute with the Mexican government. A Canadian or U.S. national invoking this right has, in the background, the power of his own government to retaliate against Mexico for abusive treatment. As far as NAFTA is concerned, however, no outside power stands in the background when a Mexican national enters a dispute with his own government.

The World Trade Organization makes the power claim even more explicit: Only a state may initiate a complaint against another state for violation of trading rules. A citizen who feels that his trading rights have been infringed must first enlist a state to champion his claims. He must induce his government to take up the challenge before the offending state has any obligation to pay attention. States have the exclusive right to initiate complaints because states retain the ultimate sanction of imposing retaliatory tariffs on the offending state.[24] It follows that not all trading rights are equal, let alone equally effective. Citizens of non-WTO member states have no rights under the system. Even those businessmen who are nationals of WTO member states have no direct rights against their own governments. These businessmen may not even have effective claims against a foreign government, which, for whatever reason, their own government does

23. The relevant provision on protection for foreign investors can be found in article 1110, which deals directly with "expropriation" or any "measure tantamount to nationalization or expropriation of such investment." North American Free Trade Agreement, Dec. 8, 1992, art. 1110, Can-U.S.-Mex., 32 I.L.M. 296, 605 (1993).

24. Agreement on Dispute Settlement Understanding, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex. 2, art. 3, 32 I.L.M. 1125 (1994), *available at* http://www.wto.org/English/docs_e/legal_e/28-dsu_e.htm.

not wish to challenge.

Of course, the notion that respect depends on the capacity to retaliate is not unique to international law. We can still see traces of this outlook in the ordinary courtesies of domestic life. To indicate respect to an individual man, we call him "sir." This term was originally reserved for men of aristocratic rank. Other European languages preserve the same aristocratic usage—a "herr," a "señor," a "signor," or a "sieur" (addressed as "monsieur") was originally a person of feudal rank. In fact, such titles were called "dignities" because they distinguished the holders from mere "commoners." And the underlying distinction, originally, was that the feudal lord or knight was authorized and trained to carry arms. He had the capacity to retaliate, so one had to speak to him respectfully and deferentially; one had to respect his "dignity." The usage remains in the military, where officers are addressed as "sir," while enlisted men are not. Showing "disrespect" to an officer remains a distinct and very serious offense, for which military commanders may retaliate with severe penalties.[25]

In the American South, where dueling and points of honor lasted much longer than in other regions, respectful forms of address have remained in more general use among civilians. But it was common, even into the 1960s, for whites in the South to address any black man as "boy" or "uncle," terms implying that the addressee was so dependent or familiar that he could not be any sort of threat. To address a man in this way—especially a stranger—was a pointed reminder of his impotence. It implied that the addressee could not retaliate for lack of respect. Adopting such a familiar tone with adult men was a means of diminishing their status, depriving them of dignity.

The idea that everyone should be addressed with a respectful tone might seem to be a generalization from the traditional practice toward men of rank. But, perhaps, the idea of retaliation still remains somewhere in the background. Sovereigns must respect each other's rights in order to avoid war or to limit the severity of war. Thomas Hobbes, perhaps the first great theorist to emphasize the equal rights of all men by nature, grounded this right in the ability of each to retaliate: "the weakest has strength enough to kill the strongest, either

25. The Uniform Code of Military Justice authorizes a punishment "as a court-martial may direct" for "any person" in the military who "behaves with disrespect toward his superior commissioned officer." 10 U.S.C. § 889 (2000). One who "offers any violence against him" may, "in time of war," be punished "by death." 10 U.S.C. § 890 (2000).

by secret machination, or by confederacy with others, that are in the same danger with himself."[26] But in the Hobbesian account, this situation is so inherently frightful, with everyone exercising the capacity to attack everyone else, that we must take refuge under an absolute sovereign, no longer bound to respect anyone's rights.[27]

John Locke's *Treatise of Government* seems more serious about assuring that individuals retain their rights.[28] But even in Locke's account, individuals in the state of nature depend on enforcing their rights by their own force. To those who doubt that individuals ever lived in such a dissociated state, Locke answers that "all princes and rulers of independent governments all through the world are in a state of nature" relative to each other.[29] The rights of individuals are conceived by analogy with the rights of sovereigns, so force, again, seems to be the key reliance. In dealing with the claims of "any man of the society" against "other states or persons out of its community . . . an injury done to a member of their body engages the whole in the reparation of it."[30] Within "civil society" there can be "an established, settled, known law, received and allowed by common consent to be the standard of right and wrong" and "a known and indifferent judge, with authority to determine all differences according to the established law"—and a "power to back and support the sentence when right, and to give it due execution."[31]

No doubt the establishment of civil authority allows us to be more "civil" toward each other, or at least less armed and wary. But the ultimate recourse remains force; that is, revolution. Victims of tyranny have "a right to defend themselves and to recover by force what by unlawful force is taken from them."[32] Perhaps this is another reason to maintain civil ties: it is "impossible for one or a few oppressed men to disturb the government where the body of the people do not think themselves concerned in it."[33] Rights still seem to depend on force in the background—that of the government or that of

26. THOMAS HOBBES, LEVIATHAN 87 (Richard Tuck ed., Cambridge University Press 1996) (1651).

27. *See id.* at 117-21.

28. *See generally* JOHN LOCKE, *Second Treatise*, in TWO TREATISES OF GOVERNMENT (Peter Laslett ed., Cambridge Univ. Press 1988) (1690).

29. *Id.* at 110.

30. *Id.* at 168 (discussing the powers wielded by the "federative power," which "therefore contains the power of war and peace").

31. *Id.* at 159.

32. *Id.* at 196.

33. *Id.*

an organized people.

The Declaration of Independence makes the same point. All men are "endowed by their Creator with certain unalienable Rights," but to "to secure these rights, Governments are instituted among Men." Rights are not secure without an organized force to protect them. It might be that everyone's rights will be more secure when everyone's rights are protected. At the least, this might seem to reduce the risk of violent rebellion from those without rights.

One might describe all this as an equal claim to respect. At a minimum, it is a claim to respect for rights. But is it really a claim to dignity? Is it not rather degrading to reduce dignity to the capacity to retaliate? Even if we avert our gaze from the issue of force in the background, the security of rights still seems, on this view, to depend on belonging to a particular political community. In this way, Locke's account, which in many ways is summarized in the American Declaration of Independence, offers a kind of mirror image of the classical view in international law. In international law, an individual has rights if he belongs to a home state that can protect him against foreign states. In Locke's view, an individual has reliable rights if he belongs to a community which can protect him against an abusive state. Does that confer "dignity?" Perhaps we should take the thought more seriously.

II. THE DIGNITY OF BELONGING

Jonathan Sacks, the chief rabbi of the United Kingdom, recently published a book on "the dignity of difference."[34] He calls attention to the fact that, according to the Book of *Genesis*, mankind was divided into different nations by the direct intervention of God.[35] The confusion of tongues at the Tower of Babel seems to have been punishment for the overreaching ambition of those who sought to build a tower "whose top *may reach* unto heaven."[36] But perhaps it was also an expression of divine mercy to prevent man from destroying humanity by ever again attempting such an overreaching project.

We might note that God, in His omnipotence, could have divided the Tower builders in such a way that every individual was relegated to his own private language, leaving each with entirely idiosyncratic

34. JONATHAN SACKS, THE DIGNITY OF DIFFERENCE (2002).
35. *Id.* at 51-52.
36. *Genesis* 11:4 (King James).

terms for right and wrong. God might thus have established true autonomy for each individual human being. Instead, the Bible implies that God, in His mercy, let some men understand each other, so there arose many distinct nations rather than an utter jumble of individuals.

Rabbi Sacks focuses on the difference among differing religions and cultures, insisting that the oneness of God does not necessarily imply that there is only one humanly appropriate path to God. He appeals for respect toward the differing religious traditions or faiths to which, over many centuries, different communities have been devoted. Most of us sense that there is, after all, some dignity in adhering to ancient faiths. It is hard to make the same claim for idiosyncratic beliefs or practices. Adherence to a long-established tradition seems to confer a certain distinction of the adherent—or, as one might say, lend a special dignity to his belief.

Locke's *Treatise of Government* takes notice of the Babel story, but concedes that it explains only how mankind came to speak separate languages and not how any particular government came to exercise governing authority.[37] Government, Locke insists, derives its power from the consent of the governed. How does that bring us back to any claim about dignity? Here again, international law may have something to teach us. Vattel's *Droit des Gens*, first published in the mid-eighteenth century, was the principal authority on international law at the time of the American founding and was certainly much respected by the American Founders.[38] Vattel largely follows the political doctrine of Locke, depicting each sovereign state as in a state of nature with all other sovereign states. Accordingly, each sovereign state has a claim to perfect equality with others: "A dwarf is as much of a man as a giant is; a small Republic is no less a sovereign State than the most powerful Kingdom." [39] It is probably the doctrine of Vattel that is summarized in the opening sentence of the American Declaration of Independence: "the Law of Nature and Nature's God entitle . . . [every independent people] to assume among the powers of the earth, [a] separate and equal station."

Nonetheless, Vattel's treatise devotes an entire separate chapter to

37. *See* JOHN LOCKE, *First Treatise*, *in* TWO TREATISES OF GOVERNMENT, *supra* note 28, ch. 11, paras. 145-47.

38. ARTHUR NUSSBAUM, CONCISE HISTORY OF THE LAW OF NATIONS 161-62 (1954).

39. EMERICH DE VATTEL, THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW bk. 1, § 18, at 7 (James Brown Scott ed., Charles Fenwick trans., Carnegie Inst. of Wash. 1916) (1758).

the question of "dignity" among nations. [40] On his own premises, Vattel finds it hard to account for the honors and dignities attaching to sovereign princes. "The honor due to a Nation belongs fundamentally to the body of the people; and it is shown to the sovereign merely as the representative of the Nation." [41] Vattel thus acknowledges that "titles and honors decide nothing; they are but empty names and idle ceremonies when they are not appropriate."[42]

Still, Vattel acknowledges that titles may have "influence upon men's minds."[43] The titles and ceremonies attaching to the rulers of more powerful states may thus have some reasonable basis, since "a large and powerful State has a much more important position in the universal society [of states] than a small State."[44] The government of a larger state has larger responsibilities and its decisions matter more to the peace of other nations. So it makes sense for rulers of larger states to assume grander titles. This sort of "dignity" may be respected by other states. Even rulers of smaller states may insist on titles that acknowledge their authority, however, since the pettiest prince still "unites in his person the attributes which belong to the nation. No individual, however free and independent, can stand in comparison with a sovereign . . . ."[45] Vattel draws this conclusion: "Nations and sovereigns have, therefore, both the obligation and the right to uphold their dignity and to cause it to be respected, as a thing of importance to their peace and their security."[46]

Somewhat similar reasoning appears in *The Federalist*. "Dignity" is a term that recurs at regular intervals, though it is hardly a central theme. The word "dignity" appear seventeen times in *The Federalist Papers*, while "nation" appears nearly 100 times, "people" over five hundred time and "government" over 800 times.[47] Every reference to "dignity" in *The Federalist* refers to the dignity of an office or officer or to the dignity of the government or the nation. And the point is always that proper constitutional arrangements must be made to assure the "dignity" of the office, the government, and the nation as a whole. Dignity is not "inherent" as *The Federalist* sees it but

40. *See id.* bk II, ch. 3, §§ 35-38, at 126-129.
41. *Id.* § 38, at 126.
42. *Id.* § 41, at 127.
43. *Id.*
44. *Id.* § 37, at 126.
45. *Id.* § 35, at 126.
46. *Id.*
47. THE FEDERALIST CONCORDANCE 141, 223, 340, 393 (Thomas S. Engeman et al. eds., Univ. of Chicago Press 1988) (1980).

something that must be earned and defended. Dignity is a point of distinction, and distinctions are not "inherent" in the sense that they can be guaranteed in advance. The natural thing, after all, is equality.

Dignity, in this moral sense, is not the same as a right but almost the opposite: something that must be striven for, not simply endowed by the Creator. Dignity seems to be a human accomplishment—if only because it depends, in some way, on acknowledgement from other humans. But *The Federalist* is very clear that the "dignity" of human authorities is necessary to the security of rights for ordinary human beings.[48] If we cannot respect the dignity of a government that secures our rights, we will not have secure rights. And that is because securing rights, after all, is not such an easy thing. *The Federalist* goes on for hundreds of pages explaining why a governmental scheme constructed in a particular way will be most likely to secure our rights.

Securing rights appears partly to be a matter of mobilizing force, as in claiming shipping rights on the high seas: "The rights of neutrality will only be respected when they are defended by an adequate power. A nation, despicable by its weakness, forfeits even the privilege of being a neutral."[49] But more is required than mere force to escape the ranks of the "despicable." *The Federalist* also emphasizes respect for the authority of office:

> An individual who is observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once by all prudent people as a speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him, but all will decline to connect their fortunes with his; and not a few will seize the opportunity of making their fortunes out of his. One nation is to another what one individual is to another . . . . Every nation consequently, whose affairs betray a want of wisdom and stability, may calculate on every loss which can be sustained from the more systematic policy of its wiser neighbors. But the best instruction on this subject is unhappily conveyed to America by the example of her own situation. She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is prey to every nation which has an interest in speculating

48. *Cf.* THE FEDERALIST NO. 6, at 27 (Alexander Hamilton) (Clinton Rossiter ed., 1999) ("Let the point of extreme depression to which our natural dignity and credit have sunk, let the inconveniences felt everywhere from a lax and ill administration of government, let the revolt of a part of the state of North Carolina, and the late menacing disturbances in Massachusetts, declare—!").

49. THE FEDERALIST NO. 11, at 55 (James Madison) (Clinton Rossiter ed., 1999).

> on her fluctuating councils and embarrassed affairs.[50]

Part of the reason for this sad condition was that state legislatures did not make "the dignity and respectability" of the Confederation "the objects of their affections and consultations."[51] By constituting adequate national institutions to deal with outside powers, the Constitution would give some office-holders a stake in preserving America's reputation: "Those who represent the dignity of their country in the eyes of other nations, will be particularly sensible to every prospect of public danger or of a dishonorable stagnation in public affairs."[52] In the end, however, the issue is not simply how foreign nations view the United States but how its own citizens see it:

> [T]he most deplorable effect of all is that diminution of attachment and reverence which steals in the hearts of the people, toward a political system which betrays so many marks of infirmity and disappoints so many of [the people's] flattering hopes. No government any more than an individual will long be respected without being truly respectable, nor be truly respectable without possessing a certain portion of order and stability.[53]

So it is necessary to have a single chief executive, because establishing a multiple executive in which each is "clothed with equal dignity and authority" leads to "animosity" among them and a breakdown of stable policy.[54] It is necessary to have a judicial office with life tenure so that the judiciary does not fall "into hands less able and less well qualified to conduct it with utility and dignity."[55]

In the last analysis, however, the dignity of federal offices and institutions reflects on the dignity of the citizenry who support it. *The Federalist* asserts this doctrine in its very first paper: It is in the "interest" of Americans to adopt the new Constitution because "this is the safest course for your liberty, your dignity and your happiness."[56]

This dignity is a collaborative attribute, not unrelated to the dignity of individuals. It follows, in a way, from the argument of the Declaration of Independence. In the Declaration's account, governments derive "their just powers from the consent of the governed." Even "just powers," however, are still powers.

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50. THE FEDERALIST NO. 62, at 348-49 (James Madison) (Clinton Rossiter ed., 1999).
51. THE FEDERALIST NO. 46, at 264 (James Madison) (Clinton Rossiter ed., 1999).
52. THE FEDERALIST NO. 58, at 327 (James Madison) (Clinton Rossiter ed., 1999).
53. THE FEDERALIST NO. 62, *supra* note 52, at 264.
54. THE FEDERALIST NO. 70, at 394 (Alexander Hamilton) (Clinton Rossiter ed., 1999).
55. THE FEDERALIST NO. 78, at 439-40 (Alexander Hamilton) (Clinton Rossiter ed., 1999).
56. THE FEDERALIST NO. 1, at 4 (Alexander Hamilton) (Clinton Rossiter ed., 1999).

Government is still about control. Consent is not the same as direction: One can consent to be led by someone more capable or more reliable than oneself, and people often do. Moreover, "the consent of the governed" does not mean the particular approval of each individual citizen, but some process by which the community as a whole expresses "consent," even if some disagree. Consent is not quite the same as free choice: we can "consent" to what we feel obligated to do, even if that particular action is not our own immediate impulse or initial preference.[57]

The Declaration insists that, when government becomes abusive, it is not only the right but the duty of the people to seek to change the government. One person cannot change a government. The claims of "prudence" are so powerful as to "dictate" against acting on impulse or acting for "transient causes." The duty of the people to protect their rights thus seems to be bound up with a duty to act in reasonable concert with others. To embrace humanity as a whole may not be feasible and is not, in any case, necessary. What is "necessary" is to take part in a community large enough to have some capacity to act against abusive government. Rights, after all, are connected with a degree of civic duty. Even if rights are, in some way, inherent, we can only make them secure by living up to this civic duty.

The American Founders did not take for granted that everyone would feel this sense of duty or feel it in the requisite degree. For example, Alexander Hamilton warned his friend, the Marquis de Lafayette, against the dangers of revolution in France when that revolution was only a few months old. He worried that "the vehement character" of the French people would make them "more easy to bring on, than to keep within proper bounds," and he worried that the "reveries of your philosophic politicians" would exert "great influence" in ways not consistent "either with human nature or the composition of your Nation."[58]

In later years, despite French pleas for revolutionary solidarity, the United States firmly resisted entanglement with the adventures of the French Republic. In this, it followed the stricture of Vattel against interference in the internal affairs of other states.[59] The American

57. The Declaration does not refer to an individual citizen nor an individual event as the reason for rebelling against the King. Rather, the document places an extremely high bar on what may be termed a violation of the principle of consent of the governed, requiring a "long train of abuses and usurpations . . . to reduce them under absolute Despotism."

58. Letter from Alexander Hamilton to the Marquis de Lafayette (Oct. 6, 1789), *in* HAMILTON: WRITINGS 521 (Joanne B. Freeman, ed. 2001).

59. *See* WALTER MCDOUGALL, PROMISED LAND, CRUSADER STATE 28-32 (1997)

Declaration of Independence puts the point in unqualified terms in its opening sentence: the "Laws of Nature and of Nature's God entitle" every independent nation to "a separate and equal station" "among the powers of the earth." No state or collection of states can claim the divine omniscience required to lay down law on behalf of another people.

Classical doctrine in international law certainly acknowledged that states might be quite justified, given certain threats or injuries, in invading the territory of other states. But Vattel was quite wary of any suggestion that rights of oppressed people could justify war on their behalf by foreign governments.[60] The doctrine rested on the assumption that while states could not be blamed for asserting their own rights, they could not expect to be trusted—and would not likely be trusted—by other states when claiming to act for humanity at large. Humanitarian intervention continued to be viewed with much suspicion by commentators on international law through the end of the twentieth century.[61]

And, of course, such suspicions remain. Among other things, there is doubt that an intervening power, even with good intentions, will be able to organize a successor government that local people can accept. This was one argument advanced by opponents of a war to topple Saddam Hussein's brutal government in the year before the war was actual launched. Critics warned that while Saddam's government might be handily defeated by outside troops, the aftermath might see ongoing tribal and sectarian conflict that no outside army could easily contain. Critics also warned that other states, particularly Islamic states, might see the whole venture as American aggression against Islam and seek to retaliate in dangerous and unpredictable ways.

In the particular case of Iraq, no one could deny that the Anglo-American military venture in the spring of 2003 put an end to a monstrous regime. Saddam's government had butchered hundreds of thousands of its own citizens; mass graves were discovered, with

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(laying particular stress on the policy of avoiding entanglements in the internal affairs of other states).

60. *See* VATTEL, *supra* note 39, bk. II, ch. 4, § 55 at 131. "No foreign State may inquire into the manner in which a sovereign [prince] rules, nor set itself up as a judge of his conduct, nor force him to make any change in his administration. . . . [I]t is for the Nation [over which he rules] to take action." *Id.*

61. See Antonio Cassese, *Ex iniuria ius oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?*, 10 EUR. J. INT. L. 23, 25 (1999) (beginning with a demonstration that armed intervention for humanitarian ends was "contrary to curfrent international law" as of the time of the Kosovo intervention).

numbing regularity, by coalition forces in the months after their victory. Even so, prominent human rights groups criticized the war against Saddam as improper, arguing that it was not undertaken for the right reasons. The Anglo-American invasion may have destroyed a murderous oppression, but it had not been undertaken for this reason, Amnesty International complained.[62] Whatever the humanitarian gains, the war had not been undertaken for the intention of securing humanitarian aims—so it was not undertaken with good intentions.

From the notion that pure intentions are a necessary requisite to moral action, it is only a short step to the inference that good intentions are more important than actual consequences. One might conclude as much from Kant's strictures on morality. It might seem only a further step to the notion that good intentions alone can secure good consequences.

That seems, indeed, to have been the premise of international human rights law from the outset. It proclaimed its vision of universal human rights on the assumption that rights could be secured—universally—without force. Rights might also be secured, then, without civic engagement or political discipline. Appeals to the "dignity" of good intentions might be all that was needed. It was, in any case, all that the United Nations was prepared to supply.

III. THE INDIGNITY OF INTERNATIONAL HUMAN RIGHTS LAW

If one forgets the assertions in the Declaration of Independence that rights are "secured" by "government," many new vistas are open to view. In particular, it may then be plausible to think that rights can be secured by the United Nations. Even though the U.N. has no machinery of enforcement and has never been trusted to exercise real coercive powers, it can still be viewed as the fount of rights for each person in the world. Many advocates do seem to believe something of this sort. The Universal Declaration of Human Rights is now, many authorities assure us, "binding law."[63] It came to be "binding law"

62. Ben Russell, *Blair Comes Under Fire Over Graphic Dossier on Saddam's Brutality*, INDEP. (London), Dec. 3, 2002, at 1 (quoting Amnesty International's protest against "political opportunism" in highlighting Saddam's human rights record on the eve of the war and the similar complaint by Human Rights Watch about the lack of "previous actions by the [British] government to expose human rights violations").

63. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 701 (1987) (presenting a cautious version of the claim); MYERS MCDOUGALL ET AL., HUMAN RIGHTS AND WORLD PUBLIC ORDER 272-75 (1980) (including bibliographic review of articles from the preceding decade claiming General Assembly resolutions could be "instantaneous

because it was proclaimed by the General Assembly and then invoked, in bits and pieces, in later resolutions, decade after decade. In sum, it is "law" because the U.N. has said so.

But what is law? "If there be no penalty annexed to disobedience," *The Federalist* warns, "the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation."[64] But those who believe that the U.N. can make law in this way think it is enough to talk. Of course, this makes things easier: no need to think about all the complications of how and when and where to enforce the law or about the most reasonable way to organize the machinery of government, a topic that occupies so many papers in *The Federalist*. An actual government or legislature pauses before laying down standards that would be very costly or difficult to enforce. It might worry that in trying to enforce an overly ambitious standard, it would do more harm than good. In the U.N. view, this deliberation is not necessary. Rights have only to be proclaimed.

Accordingly, anything that appeals to persons of good will can be a right. At least this appears to have been the determining principle for the choice of rights declared "universal" in the Universal Declaration of Human Rights. There should be due process in all criminal trials.[65] There should be "higher education" that is "equally accessible to all on the basis of merit."[66] There should also be a "right to social security"[67] and a "right to . . . periodic holidays with pay."[68] And if such specifications leave out other claims that ought to be universal, many others may be inferred from the declared "right" or "everyone" to "a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services . . . ."[69]

It may look less like human government than divine providence: "Let there be rights," says the General Assembly, and somehow, miraculously, there are rights everywhere. Might such universal directives seem a bit beyond the powers of a mere diplomatic gathering? Might it remind us of the spirit of the Tower builders at Babel, rallying all humanity to reach into heaven? The rhetoric of the Universal Declaration betrays no such misgivings. The concluding

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customary law" or "quasi-legislation").

64. THE FEDERALIST NO. 15, at 78 (Alexander Hamilton) (Clinton Rossiter ed., 1999).

65. Universal Declaration of Human Rights, *supra* note 1, art. 11.

66. *Id.* art. 26.

67. *Id.* art. 22.

68. *Id.* art. 24.

69. *Id.* art. 25.

peroration of the Preamble, after summoning the irresistible claims of "inherent dignity" in "all members of the human family," "proclaims" that "every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights . . . and by progressive measures, national and international, to secure their universal and effective recognition and observance . . . ." These phrases echo a far older and more weighty admonition, which they were perhaps intended to supplement or replace: ". . . these words shall be upon thy heart; and thou shalt teach them diligently unto thy children and talk of them when thou sittest in thy house and when thou walkest by the way and when thou liest down and when thou risest up."[70]

There is the awkwardness, of course, that most of the actual precepts set down in the Universal Declaration must be implemented by governments and not merely observed by faithful individuals in their own lives. But they are "proclaimed" in the name of the General Assembly, which claims to speak for humanity. Is the moral authority of the General Assembly sufficient to ensure compliance from governments? The Bible tells us that in the beginning, when God had given only one law to our first parents, they promptly defied it. But that was long ago. The Universal Declaration confidently looks to the implementation of its directives by "progressive measures." These measures may be "national or international"—it hardly seems to matter. No provision for actual enforcement is included in the Declaration nor even mentioned as a prospect for future development.

If one has sufficient faith in this newest Law, one may presume that human rights have now come to be respected throughout the earth—by Sudan and Pakistan, by Cuba and China, by formerly tyrannical regimes around the world. One must suppose that these states have embraced human rights because they have all recently been elected to the U.N. Commission on Human Rights to monitor the human rights performance of others.[71]

Since enforcement is not needed to work these wonders, there is no real need for consent. It was easier to vote for the Universal Declaration when it was understood not to be binding. The American delegate to the U.N., for example, readily voted for the Declaration,

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70. *Dueteronomy* 6:6-7; *see also* MICHAEL IGNATIEF, HUMAN RIGHTS AS POLITICS AND IDOLATRY 53-100 (20001) (regarding the question of supercession).

71. Press Release, U.N. Econ. and Soc. Council, Economic and Social Council Elects Members of Human Rights Commission, Other Subsidiary Bodies (Apr.29, 2003), *at* http://www.un.org/News/Press/docs/2003/ecosoc6045.doc.htm.

even though the U.S. Senate would not ratify even a single human rights treaty for decades thereafter.

When the United States Senate did ratify the Covenant on Civil and Political Rights, it did so with reservations to ensure that the treaties would not conflict with constitutional obligations of the United States government or with the allocation of governing responsibilities set down in the U.S. Constitution.[72] The Human Rights Committee, charged with monitoring compliance with the Covenant, declared that some of these reservations were improper.[73] The Committee might plausibly have reasoned that if the U.S. ratifying instrument renounced some essential obligations to the treaty, the United States had not properly ratified at all and was not a genuine party to the Covenant. Instead, the Committee concluded that the ratification was binding and the accompanying reservations must simply be disregarded. The United States was then bound to standards from which the U.S. Senate had expressly withheld its consent. The U.N. Human Rights Committee had, in effect, consented for the United States Evidently, the Human Rights Committee was empowered to substitute its own views for the consent of the Senate because the Human Rights Committee spoke for the community of all states.[74]

If consent is not required, there is no barrier to proclaiming rights as universal—no barrier to legislating for humanity. It is not necessary to worry about how humanity should be organized to express its consent, to worry about what units of authority can commit what portions of the world's population. Humanity can speak through the organs of humanity. One of these organs has found, in the vague generalities of the Covenant on Civil and Political Rights, an implied right to engage in homosexual relations.[75] Many advocates insist there is also a right to abortion.[76] Perhaps these claims do not engage the enthusiasm of countries where many people adhere to a more traditional version of Christian teaching. Certainly, these claims do not find support in Muslim states. But feminist priorities command

72. *See* HENKIN ET AL., *supra* note 3, at 783-87.

73. *See id.* at 788-93.

74. *See id.* at 783-93.

75. Toonen v. Australia, Comm. No. 488/1992, U.N. GAOR Human Rights Comm'n, U.N. Doc. CCPR/C/50/D/488/1992 (1994), *in* HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 745-48 (2d ed. 2000).

76. Fr. Robert Araujo, *Sovereignty, Human Rights and Self-Determination: The Meaning of International Law*, 24 FORDHAM INT'L L.J. 1477, 1510-23 (2001) (protesting endorsements of "reproductive rights" as human rights claims, as urged by Western NGOs at the "Cairo +5" conference on "population and development").

the respect of those who dominate U.N. conferences. Most non-governmental advocacy groups seem to regard these claims as beyond question.

In the real world, many regimes have quite different priorities. With no real constraint on the prerogatives of human dignity, the most brutal regimes share spaces on the U.N. Human Rights Commission with bona fide constitutional democracies. And many of the later look to curry favor with the former, since they are now part of the same "community." So the Human Rights Commission carefully avoids criticizing the brutalities of the government of China. European states do not want to risk losing contracts with China, and China threatens to cancel contracts with any state that votes to inquire into Chinese human rights practices.[77]

On the other hand, the Commission has voted to endorse suicide bombing attacks against Israel, because the struggle for liberation must be pursued by all available means.[78] And European states are in favor of "liberation," which is, after all, part of "dignity." Somehow, endorsements of terrorism do not come directly from any European parliament, but the atmosphere of speaking for all of humanity is liberating to diplomats. The highest rhetoric is applied to the most brutal degradation. Measured by the ultimate standard—the standard of good intentions—no one should be dismayed. At least, no one should be surprised.

Human rights advocates now insist that international standards will finally be enforced in a serious way, because the world has established an International Criminal Court to prosecute the most egregious violations of rights. All states will now cooperate in handing over indicted abusers of rights—to a court with no police of its own and no means of making its own arrests. The court will decide whether governments have provided adequate justice in their own prosecutions or amnesties and supersede those judgments when necessary. It will judge whether field commanders have fought with the right amount of restraint or have perpetrated "damage to civilian objects" that is "excessive."[79] And no one will question the court's

77. STEINER & ALSTON, *supra* note 75, at 634-40 (describing the response of European states to United States proposals for criticizing China).

78. *See, e.g.*, Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, Human Rights Comm'n Res. 2002/8, U.N. ESCOR, U.N. Doc E/CN.4/Res/2002/8 (2002).

79. Statute of the International Criminal Court, July 17, 1998, art. 8, para. 2(b)(iv), *in* ARCHBOLD INTERNATIONAL CRIMINAL COURTS: PRACTICE, PROCEDURE & EVIDENCE 606 (2003).

authority because international bureaucrats will be trusted to make such determinations. If one has the faith, one may believe that future wars will be fought just as the International Criminal Court decides that they should be fought.

We might console ourselves that all of this presents, at least, an inspiring hope. Some may associate this hope with human dignity: released from political constraints, humanity may ultimately find its way to a universal law. But why not a universal tyranny? To imagine that universal law can reign supreme without universal force, one must suppose that human beings will turn out to be docile creatures—gentle sheep, just waiting for their shepherd. If only the right pied piper played the right tune in the right way, we could all learn to march in the same parade. According to the folk tale, the pied piper did charm the children of Hamlin into marching to his tune. But his original gift, we might recall, was to charm rats—creatures that can be made to run through mazes for no other end than the instruction of laboratory scientists. Is this really what we mean by human dignity?

IV. THE DIGNITY OF LIMITS

The dignity peculiar to human beings—what distinguishes them from other creatures—is a matter of some dispute. Perhaps it is mysterious, as all Creation is ultimately mysterious. The Bible tells us that human beings are lower than angels.[80] That is something we all have in common, though some people are more distant from angelic qualities than others.

In daily life, we recognize that outbursts of passion can be undignified. We admire someone who can retain his composure amidst terrible stress; someone who can, as we still say, "maintain his dignity." In this way of speaking we acknowledge that dignity has something to do with self-control, with rising above circumstances. Some people can "retain their dignity" even on the brink of execution, but this kind of unfailing self-control is exceptional. Many people "maintain their dignity" in public and then give way to sobbing or despair once removed from public view. In fact, the presence of others is often a constraint that helps people sustain a dignified demeanor they could not fully muster on their own.

In various ways, law and government can provide the same support. The more heroic among us might retain a dignified composure even when threatened by violence, but most of us are glad

80. *See Psalms* 8:5.

that police and courts are on hand to suppress such challenges to our sense of personal dignity. Fear has a way of making people "forget their dignity." So, too, most people forget their dignity when in the grip of a debasing addiction. Proper laws may sometimes save people from temptations that would threaten their self-control and thus their dignity as we commonly think of it.

Of course, governmental coercion can also be an engine of oppression and indignity. Apart from checks and balances in our constitutional system, we emphasize the need for government officials—especially those most responsible for applying coercion to individuals—to act with becoming restraint. Police are given badges and told not to "disgrace the badge," a directive that implies these marks of authority confer a kind of dignity that must be respected by the holder in order to be respected by others. Judges wear special robes and must be addressed in court as "your honor." Everyone knows that ceremonial trappings do not in themselves ensure perfect self-control. And we are not sure how much the private person must conform to the dignity associated with the public office. Partisans on both sides worried—though for different reasons—that revelations about President Bill Clinton's private conduct would "disgrace the office."

Classical international law exemplified this pattern on the largest scale, as the serious elements of international diplomacy still do. Ambassadors or ministers from even the smallest state may insist on being addressed as "your excellency." The annual economic output of a poor nation may be far below that of a major American corporation but an ambassador from that nation will still be accorded "dignities" at international gatherings which would not be accorded to the most successful U.S. corporate executive. Only states have seats in the United Nations and only states may be parties in suits before the International Court of Justice. There is a certain irreducible dignity to wielding political force. Governments that wield force without self-control, however, can be toppled without much regret by the international community. Even those who opposed intervention against Iraq did not mourn for Saddam Hussein when he was actually driven from power. But international law, or the part of it that governments still take most seriously, continues to protect the claims of sovereign states more so than those of private individuals. Rights, we still sense, even sovereign rights, are a precondition for dignity—though no guarantee of respect.

We do not hear about these sad extremities among angels, perhaps

they are always more aware of the "Supreme Judge of the world." As *The Federalist* remarks, "[i]f men were angels, no government would be necessary."[81] It "may be a reflection on human nature" that, as Publius says, in earthly affairs, "[a]mbition must be made to counteract ambition . . . ."[82] Reliable political arrangements are bound to display this pattern, for "what is government but the greatest of all reflections on human nature?"[83] The scheme of international law, as known to the American Founders, was a more general reflection on human nature.

It insisted on the rights of states, knowing well enough that many states would abuse their authority. It accorded a presumptive dignity to all states, as its leading expounders asserted the natural rights of all individuals—knowing, well enough, that not all individuals were equal in all things that might be politically or morally relevant. It gave more attention to rights than to dignity because it recognized that the world does not entirely agree on the elements of dignity. Perhaps it recognized that we do not have the higher dignity of angels, so we must grapple with human necessities.

But to recognize even this much is to recognize something about human circumstances—to recognize our place. There might be some dignity in that. Precisely that claim to dignity is lost by pretending that delegates from nations large and small, honorable and despicable, can make us all safe and free with magic incantations.

81. THE FEDERALIST NO. 51, at 290 (James Madison) (Clinton Rossiter ed., 1999).
82. *Id.*
83. *Id.*