

Women's Human Rights: What are they and what do they mean?

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Excellencies, Ladies and Gentlemen,

Thank you for this invitation to speak at this important conference on women and human rights at the Angelicum. St. Thomas has had a decisive influence on my intellectual development and the Dominicans played the key role in my own conversion to Catholicism, notably fr. Albert Raulin, o.p., who was the editor of the French translation of the *Summa*, but who spent his whole adult life in the Dominican house in Oslo, arriving there in 1946.

In this intervention I want to focus on what human rights for women actually are, according to the UNHR, and what they mean according to the interpretation we arrive at when we look at all the rights as a whole. This principle of interpretation was underlined as the only correct one by those that drafted it, notably the French jurist Renee Cassin (Glendon, 2002). But the idea that there is an underlying anthropology or view of the human person that tells us how to interpret these human rights is greatly at odds with contemporary political reality in the West, and this results in a politisation of human rights, as if they can be changed by political will. They can not, and this is the main point of my analysis. **They are inborn, pre-political and apolitical, not given by politicians, not to be taken away or changed by politicians:**

Human rights were codified as a response to the political and legal relativism of Hitler's Germany and World War II; which put in a nutshell the relativist problem of obeying orders from the legal ruler of the realm – in this case Hitler – when these orders were contrary to morality. The Nuremberg trials laid down that it is wrong to obey such orders; that there is in fact a 'higher law' – a natural law if you will – that not only forbids compliance, but which also makes it a crime to follow such orders. In the wake of this revolutionary conclusion in international affairs – it was the first time in history where a court had adjudicated in such a way - there was a growing movement to specify what this 'natural law' for the human being entailed. This resulted in the Universal

Declaration of Human Rights only three years later, a supra-national set of inherent and inalienable rights for every human being. It is very clear that the statement of human rights was to be a 'common standard for all mankind', as states in the preamble, and not something that could be changed at will by political actors. Yet this is exactly what happens in Western politics today:

In her analysis Rights Talk from 1991, Harvard law professor Mary Ann Glendon writes that "discourse about rights has become the principal language that we use in public settings to discuss weighty questions of right and wrong, but time and again it proves inadequate, or leads to a standoff of one right against another. The problem is not, however, as some contend, with the very notion of rights, or with our strong rights tradition. It is with a new version of rights discourse that has achieved dominance over the last thirty years" (Glendon, 1991:x). This new rights discourse is characterized, says Glendon, by the proclamation of ever new rights that are the properties of '**the lone-rights bearer**' as she aptly calls him, **one who has no duties and who pursues his own interests in the form of 'new rights:** "As various new rights are proclaimed and proposed, the catalog of individual liberties expands without much consideration of the ends to which they are oriented, their relationship to one another, to corresponding responsibilities, or to the general welfare" (Ibid. XI).

The rights defined in the declaration are parts of a whole, making up a fullness of rights which reflect a very specific anthropology. The rights are clear and concise, and the underlying anthropology is equally clear. The intention of the authors of the declaration was to put into a solemn document the insight about human dignity that could be gleaned from an honest examination, through reason and experience, of what the human being is. Therefore they wrote explicitly that 'these rights are inviolable and *inherent*'. The declaration is a natural law document which was put into paragraphs by representatives from all the world, from all regions and religions. Human rights are *pre-political* in the sense that they are not given or granted by any politicians to their citizens, but are 'discovered' through human reasoning as being constitutive of the human being itself. They are also therefore *apolitical* because they are not political constructs, but anthropological – consequences of our human nature. As one of the key drafters of the declaration, Charles Malik, said; "When we disagree about what human rights mean, we disagree about what human nature is" (Glendon, 2001:39). The very concept of human rights is therefore only meaningful if we agree that there is one **common human nature** which can be known through the use of reason.

This last statement is however at great odds with contemporary mentality, which is relativist and subjectivist, scorning the idea that human nature as such exists and even more so that it can be known through reason. But if this is denied, and we regard human rights as something that mere political processes

can change, **how can we uphold human rights as a standard for others, if not for ourselves?**

Let us now take a look at the rights in the declaration that concern women:

In art 1, we learn that “All 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.

Thus, **women and men are equal.**

In art 3, we learn that “Everyone has the right to life, liberty and security of person.”. The right to live is thus the most basic human right, without which one cannot enjoy any other rights. **This art. has implications for abortion, euthanasia, capital punishment and war.**

In art 16, marriage and family is defined:

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Women and men are equal also if they divorce (the reason why Saudi-Arabia abstained when the declaration was adopted), they have the right to marry when they reach legal age, and they have a right to found a family. i.e. to have children. To get or procure children is not a human right, but to try to have children when one marries clearly is. The family is in this paragraph based on marriage. It is also declared to be the fundamental basis of society as such. The heterosexual character of marriage is implicit in this paragraph because it links marriage and family foundation, as because it emphasizes that women have equal rights to marriage dissolution with men, something quite radical at the time.

In art 25 we find **special protection of mother and child:**

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

In sum, women and men enjoy all the political, social, economic, and civil rights that we associate with democracy and rule of law. Women as mothers are to be given special protection by the state.

But while **'the right to life'** is the first and primary human right according to the Universal Declaration; most European states have had abortion on the law books for many decades. While the right to marry is defined as a right for **'every man and woman'** in the same declaration, same-sex 'marriage' is increasingly introduced in European states. While **children have a right to know and be raised by their biological parents or in a similar situation** according to the *Convention on the Rights of the Child* (1989), this seems to be ignored when children are 'produced' from anonymous donors. While the family is firmly defined as the **'fundamental group unit'** of society in the declaration, it is redefined by many nation states and often the state does not have policies that support the family. While the right to **special societal protection for mother and child** is defined in the declaration, motherhood is often regarded as a drawback for women in the European labour market, and mothers are discriminated against. While the family has a right to a sustainable income: just wage, in the declaration, labour rights are more and more neglected in European states and individual taxation makes a mockery of the 'family income' concept.

As stated, there is a curious situation; a *paradox*, in the many discrepancies between the human rights professed, especially abroad, and the political reality at home.

Right to Life

Abortion came to the fore in the public debate in Western democracies some 30 years ago. Everyone knew that abortions had always been performed, in secrecy in the private sphere. Now women demanded that the state should perform them. Their argument was pragmatic: abortions will happen, they should be made 'safe'. Abortion was politicized, ie. placed in the public-political sphere, by feminist interest groups.

In the case of the abortion debate, the fierce struggle which continues and which will continue is about the terms of the debate: if the question is "under which conditions can human life be taken?" one has to consider the constitutional norms of right to life and the international instruments of human rights that state this as the highest norm. If the debate is cast in pragmatic terms, e.g. as a women's issue, this is not necessary. *The abortion issue*

was decided when the terms of the debate were decided. But abortion represents a water-shed in Western politics precisely because it exhibits a total cleavage in views on what is legitimate democratic politics and procedure.

The same political process can be seen in the debate over *euthanasia*, which is now becoming politically prominent in Scandinavia, Australia, the US, and gradually in other Western states. The duc Henri de Luxembourg refused to sign the euthanasia law last week. Such laws have been passed in Switzerland and Holland. The terms of the debate are being set in a very important process right now. For instance, one sees reports in the press on the increasing number of people that favour euthanasia, doctors who find it good for the patient, euthanasia as the right to choose, it is a new human right, etc. There is in other words a process going on that seeks to *pragmatise* the issue so that it can easily be decided over by majority procedure, and a concomitant process driven by interest groups that argues that abortion and euthanasia are new *human rights*.

But the 'rights' language is justified by pragmatic reasoning: because women have abortions, they are a right; and because many people accept euthanasia, it is a right. In this debate there is no discussion of which topics should belong in the private sphere - the strategy is to lift them into the public sphere. There is no hierarchy of principles for determining what is a common, and thus political problem; and what is not. We are faced with a completely confused debate, driven by interest groups.

The 'rights' language used to make these policies more acceptable destroys the notion of fundamental constitutional rights by denying that there can be a hierarchy of rights and even that there are fundamental contradictions between rights, such as the right to life and the right to abortion.

In questions of the taking of human life, as in abortion and euthanasia, one does not ask the logical ethical question of «when is the taking of human life justified?» Here the state has no normative stand even if its constitution explicitly states that a right to life exists. In these cases one avoids the normative discussion altogether and opts for a combination of pragmatism ('there is a need for abortion, abortions happen all the time') and selective 'rights' language (since abortions are favoured by a majority, a 'right' to abortion exists). The fallacy of inferring the existence of a right from empirical data is obvious, but hardly seen as such.

Here we are at the very core of the problem of democracy and value relativism. The two cannot meaningfully co-exist: democracies where there is no set of fundamental norms underlying the political process become, sooner or later, tyrannies.

'Values' connote subjectivity: "I accept abortion, you do not" - our value preferences differ. "I accept euthanasia, you do not". Again, simply a matter of different preferences. "I accept genocide, you do not".

But do we agree with this statement? No - here the reaction will be one of universal condemnation of killing for ethnic reasons. This shows two things; one, in dealing with the question of taking human life, the public is inconsistent because the question is not posed as one of principle, i.e. of ethics, and two, there is still a sound reaction in most people about genocide. They will not hesitate to condemn it as evil - but if values are simply subjective preferences, they ought logically to say "I don't happen to like genocide, but if you do, you simply have other preferences than me".

There thus exists a remnant of the language of natural law in people. One reacts to dictatorships by calling them 'unjust', and thus retains some notion of justice. Justice was the basis for all legitimate government in the classical tradition, and justice requires principled reasoning. "When can human life justifiably be taken? " Traditionally the answer was 'in self-defence'. The lost discourse on ethics today points back to much richer European tradition of natural law, developed by Aristotle, rediscovered by St. Thomas and further developed by him and medieval Christian thinkers.

Family and Children

There are broadly two classes of arguments in the political debate about the **family**: those that rest on the presumption of *constructivism* – gender, not sex, is socially constructed, sex roles are thus constructed, and sex is constructed in terms of the feminine and the masculine and variations 'in between', more like a continuum than two categories. In turn this means that fatherhood and motherhood are socially constructed, and therefore the family can be freely defined and redefined. In fact, on this view it is pointless to seek a definition, as there is none to be found. What was the typical 'nuclear family' in some societies in some historical periods, changes. When the empirical manifestations of the family dissolve into many types of households, the definition of the family also changes. This argument is embedded in a view of society and politics that sees both as processes where there is no 'Fester Punkt' to be discovered.

The other point of view, the *natural law* argument, assumes the existence of a fixed human nature, consisting of two sexes, where the family is a natural and constant institution in human life – it makes sense to speak of something as *natural*. Motherhood and fatherhood are therefore constants, and the family cannot be redefined, but exists as a norm in all societies, albeit with many instances that differ from the norm, due to widowhood, single parents, etc. The *social* roles of the sexes are however malleable and thus, 'socially constructed'

to a great extent. Yet motherhood and fatherhood exist as ‘archetypes’ of human existence with much more than mere biological qualities.

Corresponding to these two views on the family’s constituent units, the parents, we find *two entirely different views on the rule of law (Rechststaat), the status of international human rights, and the limits of politics*. To the constructivist viewpoint corresponds the view that ‘all is politics’, as one critic put it to me: there are no limits to the political process in terms of human rights, and what we call human rights today, can be changed tomorrow, as we define new human rights. Likewise, if a majority today thinks that the traditional form of the family is obsolete, how can anyone stop it from redefining it when the ultimate political decision-making belongs on the national level, to the electorate in a given nation-state?

Similarly, to the view that there is a human nature that can be discovered and defined, corresponds a view of law that we usually call ‘natural law’: international human rights are apolitical and prepolitical, resting on the discovery of human nature and its dignity. If the family is protected and privileged by human rights, they are valid in all places at all times. Given the turn of international politics after Nurnberg, whose famous trials laid down the validity of natural law above all positive law, this is a very strong argument. But as we know, to paraphrase Tip O’Neill, ‘all politics is local’: who can sanction a national parliament who passes a law that contravenes international human rights? Furthermore, to this view belongs the assumption that the public and the private are definable, that politics is limited to the issues of the common weal. Re. the family, this means that its political relevance lies in its child rearing: it needs protection from political intrusion but also political protection.

When we look at human rights for women, we are thus faced with the question of how to interpret human rights, i.e. the question of what human rights in fact are:

Personalist philosophers like Jonas, Mounier, Ricoeur, and the late Pope John Paul II have emphasised that the experience of the other provides the basis for knowledge of human nature and ethics. Mounier himself states that the classical concept of person “is the best candidate to sustain legal, political, economic and social battles in defence of human rights” (Berti, op.cit., p. 10). The reason for this is entirely simple and logical: if equality is the central notion of law and politics, then this implies that there is something knowable about the human person that is the same everywhere and always. This is also the central point of my argument that human rights are a natural law concept –

they demand and presuppose one common human nature in terms of the same dignity and the same equality.

The Western philosophical tradition has for many centuries upheld the classical notion of human nature as ‘rational and social’, but metaphysics was side-lined by first, British empiricism which equated the human and the natural sciences, and later by increasingly skeptical strands of thought. However, much of the problem with this evolution in the history of philosophy had to do with the immense progress in empirical and natural science and the deplorable lack of such in the human sciences. But it also has to do with the confusion between the two, premised on the paradigm that human science must imitate natural science in order to progress.

However, none of this has disproved Aristotle. The argument remains that the human being can reason about ethics as he or she can reason about facts. The Humean criticism misses the point when it faults Aristotle with confusing ‘fact and values’, for the classical concept postulates that the person is both ‘fact and value’ in its very essence – being rational means being ethical. This point is the most foreign of all to modern man, and the very unfortunate separation of the two that Hume made has henceforth obscured the possibility of natural law.

Let us now give natural law a chance, as it were. Could Aristotle be right?

In an interesting paper the Swedish MP Per Landgren records an imaginary incidence¹:

Two persons rescue people from a burning house. They are subsequently interviewed by the paper, and the journalist asks why they risked their own life to do this. One says that he did not think about that question at all; he simply acted. But the other says that he thought that he would become rich from getting a prize for valor, that he could get famous, etc. – The journalist is puzzled over this answer. Something seems very wrong, undignified, unnatural about it.

This example illustrates the argument that natural law makes: A *natural* reaction is to try to save life, even if one is afraid. An *unnatural* reaction is to do it to make money from it. One may even say that the latter reaction is evil, bad, wrong – thus, there is a *natural* ability in us to discern right from wrong.

Further, saving life – one’s own and that of others – seems to be a basic value, whereas the need to make money can be many things, and varies between being a vital and good thing when one must provide for one’s family, and being a bad

¹ Per Landgren, ”Naturretten – en mansklig etik”, Chapter 5, Det gemensamma basta – Om kristdemokratiens idegrund, Stockholm, 2002

thing when a life-rescuer saves life in order to make money, as in the example above. Thus, ethics makes sense only in a context of *telos*, as Aristotle argues.

Landgren makes the point that there are some basic values that are universally recognized as such: to live rather than to die, to be respected, to be healthy, to learn, to cherish truth rather than lies, etc. op.cit., p. 120). The opposite of these values are morbid and unnatural, most people would immediately agree. These basic values are called ‘intrinsic’, Grundwerte’, ‘Rechtsgüter’ (Ibid.).

The point about these values is that they are inborn, intrinsic, constitutive – they define what a human being is, just like Aristotle’s definition. This is so because we cannot derive them from any principles or logical arguments; they are simply what human beings, *grosso modo*, are like. True, there are mass murderers and masochists around, but we tend to describe them as aberrations, perversions, unnaturals. If we were true relativists, we would have to say that a mass murderer just has another subjective preference than ours.

Thus, when we read the Universal Declaration of Human Rights, we see that the rights therein are largely such **basic principles that are commonsensical to all reasonable persons**. Reasonable means, we recall, that one is upright and human; not corrupted and evil. And the author of this human nature, creator or not, does not have to be mentioned, but the rights form a whole that reflect a view of human nature that is knowable through common sense and reason. But if the concept of human nature is denied, there is no basis for these human rights – they become mere ideological and political devices. Human nature remains an axiom, as it was also to Aristotle, an essence and prime mover, as he would have called it.

But it remains fully possible to discern what human dignity and therefore human rights is about through the faculty of reason, deductive as well as inductive. The sharpness of the rational mind is a function of its ascetic and logical training, both in terms of consistent argument – ‘if all men are equal, one man cannot be discriminated’ – and ethics; “if stealing is wrong, I must refrain from it lest my ethical sense be dulled’. The problem, I think, lies not so much in lack of reason as in lack of virtue. It is rather easy to know what is right and wrong, but rather arduous and unpleasant to do what is right. As a Catholic dictum puts it, tongue-in-cheek: “A little virtue does not hurt you, but vice is nice”.

In conclusion, the relativist position is untenable and the rationalist position is possible. There is no need to discard Aristotle’s ontology, the classical notion of the person; and mere logic itself demands that the law be concerned with universals, not with subjective interests. But it remains a tall order indeed to restore rationality to Western politics.

