

**SYMPOSIUM: RETHINKING RIGHTS: HISTORICAL, POLITICAL, AND  
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THE RIGHTS OF MONADS OR OF INTRINSICALLY SOCIAL BEINGS?  
SOCIAL ONTOLOGY AND RIGHTS TALK**

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## **Text**

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### Introduction

A theory of rights, it is now generally acknowledged, presupposes a social ontology. It presupposes, this is to say, a theory of the nature of human social life encompassing an account of both the relationship of the individual to society, and the character and proper role of the whole array of the various groups and institutions which collectively constitute "society" (including the state). This article contends that the problematic features of contemporary American rights discourse are a function, at least in part, of the ontology of social life implicit in this discourse, and that Catholic social life offers us an alternative model of social thought that lays the groundwork for a new and better way of thinking about rights.

The argument is divided into three parts. The first will briefly examine the nature and roots of the flawed vision of social life that informs what Mary Ann Glendon terms contemporary America's "rights dialect." <sup>1</sup> The second will provide an overview of the alternative ontology of social life that emerges in Catholic social thought, an ontology that brings into sharp focus the social dimension of human existence. The third part will seek to show how these different ontologies point to very different understandings of the nature and scope of rights, and to argue that Catholic social thought points us toward a way of thinking about rights that is more consistent with the demands both of our nature as social beings and **[\*234]** of the principle of limited government and the type of rights doctrines that dominate contemporary America's civil conversation.

Social Ontology, Contemporary Rights Talk, and Enlightenment Liberalism

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<sup>1</sup> Mary Ann Glendon, Rights Talk: The Impoverishment of Political Discourse 14 (1991).

Over the past half-century, as Glendon has so ably shown, our public life has come to be dominated by a new and highly problematic type of rights discourse. <sup>2</sup> Strident and hyper-individualistic, this new brand of rights talk has proven itself incapable of effectively specifying the content of the commonweal or of limiting the scope of government; it has prevented us from articulating a wide array of important human and social goods which are essential to any adequate account of social and political life; it has infused both our culture and legal order with a corrosive individualism subversive of the framework of social institutions on which human flourishing, self-government, and ordered liberty depend; and this new rights discourse has fostered a continuing expansion in the scope of government.

Implicit in this new variety of rights talk is an anthropology which views human beings as unencumbered selves - as, in Sandel's words, "free and independent selves" who are "unbound by moral ties antecedent to choice." <sup>3</sup> Implicit in it is also a particular ontology of social life, the hallmarks of which are essentially twofold. The first consists in a particular map of social life. Contemporary rights discourse sees social life through the prism of what Glendon has aptly termed the "individual-state-market grid." <sup>4</sup> It sees social life, in other words, through a lens that allows it to discern only three realities: the individual (understood as an unencumbered self), the state (understood as the guardian of rights - above all, the right of each individual to self-definition and self-determination - and creator of a framework of order within which each individual is afforded the maximum possible freedom to pursue his or her self-chosen goals [\*235] consistent with the exercise of that same freedom by others), and the market (understood as a realm of autonomous individual activity in accordance with a utilitarian calculus of self-interest and thus as the institutional embodiment of the sovereignty of the individual). In this vision, all human groups must be conceptualized through the prism of market models as, according to Carl Schneider's terms, "collections of individuals united temporarily for their mutual convenience and armed with rights against each other." <sup>5</sup>

This map of social life is, of course, simply untenable. It ignores the whole realm of what James W. Skillen calls "nongovernmental, nonmarket relationships and institutions." <sup>6</sup> It ignores, in other words, what Jean Bethke Elshtain terms "nonutilitarian" forms of community <sup>7</sup> and what Glendon terms "communities of memory and mutual aid" - groups like "families, neighborhoods, workplace associations, and religious and other communities of obligation" - that collectively constitute "civil society." <sup>8</sup> These groups are organized and operate according to a very different logic than that which informs the world of the market: possessing a highly personal character, they are united by ties that are solidaristic rather than instrumental and contractual.

This truncated map of society, in turn, is rooted in a particular understanding of the nature of human social relations; Charles Taylor has dubbed the term "atomism" to describe this type of understanding. <sup>9</sup> Here we arrive at the second hallmark of this social ontology. By atomism, Taylor means a conception of social life that involves "a purely instrumental view of society," a view that insists that society is "in some sense constituted by individuals for the

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<sup>2</sup> See generally *id.* For other helpful discussions of this phenomenon, see William A. Donohue, *The New Freedom: Individualism and Collectivism in the Social Lives of Americans* (1990); Richard E. Morgan, *Disabling America: The "Rights Industry" in Our Time* (1984).

<sup>3</sup> Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* 12 (1996) [hereinafter Sandel, *Democracy's Discontent*]. For a more developed treatment of this anthropology, see Michael J. Sandel, *Liberalism and the Limits of Justice* (2d ed. 1998) [hereinafter Sandel, *Liberalism*].

<sup>4</sup> Glendon, *supra* note 1, at 143.

<sup>5</sup> Carl E. Schneider, *Moral Discourse and the Transformation of American Family Law*, [83 Mich. L. Rev. 1803, 1859 \(1985\)](#).

<sup>6</sup> James W. Skillen, *Recharging the American Experiment: Principled Pluralism for Genuine Civic Community* 70 (1994).

<sup>7</sup> Jean Bethke Elshtain, *A Pope for All Seasons? The Many-Sidedness of John Paul II*, in *Ecumenical Ventures in Ethics* 14, 26 (Reinhard Hutter & Theodor Dieter eds., 1998).

<sup>8</sup> Glendon, *supra* note 1, at 119-20.

<sup>9</sup> 2 Charles Taylor, *Philosophy and the Human Sciences* 187 (1985).

fulfillment of [certain] ends which [are] primarily individual." <sup>10</sup> Implicit in atomism is a rejection of "the view that man is a social animal" in favor of an affirmation of "the self-sufficiency of man alone or, if you prefer, of the individual." <sup>11</sup> Atomism thus involves the denial of what Sandel describes as a "strong, constitutive" **[\*236]** conception of community <sup>12</sup> in which society is understood as "an ingredient or constituent" of the identity of individuals <sup>13</sup> rather than "a possible aim of antecedently individuated selves." <sup>14</sup>

Here again, this vision of social life is simply untenable. As Glendon points out, it ignores the fact that men and women are not simply "monads" but exist "as essentially social beings." <sup>15</sup> Furthermore, it ignores the fact that "people do not 'enter' society; they are constituted in part by society and in turn constitute it." <sup>16</sup> It also ignores the ways in which human beings, as Alasdair MacIntyre has recently and so forcefully reminded us, are dependent creatures, naturally situated within a complex matrix of relationships of care-giving and dependency, <sup>17</sup> and it ignores what Jacques Maritain has aptly described as "the radical generosity" - the natural orientation to self-giving and communion - "inscribed within the very being of the person." <sup>18</sup>

The roots of this ontology are found in a particular intellectual tradition that has come to provide what Roberto Mangabeira Unger terms the "deep structure" within which both our academic theorizing and civil conversation operate. <sup>19</sup> The tradition in question is Enlightenment liberalism. For its "true nature" to be understood, as Unger has demonstrated, "liberalism must be seen all of a piece, not just as a set of doctrines about the disposition of power and wealth [in society]," <sup>20</sup> but as a "metaphysical system." <sup>21</sup> Although their implications were only worked out slowly over the course of several centuries, the rationalism and nominalism that lie at liberalism's metaphysical core profoundly shaped the evolution of its political theory. <sup>22</sup>

**[\*237]** What is important for our purposes here is that, as Francis Canavan points out, its metaphysical commitments make it "hard" for liberalism "to entertain the notion of relations as natural." <sup>23</sup> The result is a wholly voluntaristic conception of social relations. The individual, in this view, "is an atom, motivated by self-interest" <sup>24</sup> rather than an essentially "social being from whose nature flow relations to his family, neighbors, fellow workers, the community, and the political order." <sup>25</sup> Far from being understood as rooted in our dynamic orientation toward perfection, the fulfillment of our human nature, social relations are instead seen as the "essentially contractual" <sup>26</sup>

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<sup>10</sup> Id.

<sup>11</sup> Id. at 189.

<sup>12</sup> Sandel, *Liberalism*, supra note 3, at 152.

<sup>13</sup> Id. at 64.

<sup>14</sup> Id.

<sup>15</sup> Glendon, supra note 1, at 74.

<sup>16</sup> Id.

<sup>17</sup> Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (1999).

<sup>18</sup> Jacques Maritain, *The Rights of Man and Natural Law* 5 (Doris C. Anson trans., 1943).

<sup>19</sup> Roberto Mangabeira Unger, *Knowledge and Politics* 8 (1984).

<sup>20</sup> Id. at 6.

<sup>21</sup> Id. at 11.

<sup>22</sup> On this point, see id.; Francis Canavan, *The Pluralist Game: Pluralism, Liberalism, and the Moral Conscience* 115-23 (1995); Thomas A. Spragens, Jr., *The Irony of Liberal Reason* (1981).

<sup>23</sup> Canavan, supra note 22, at 121.

<sup>24</sup> Id.

<sup>25</sup> Id. at 131.

products of self-interest, the subjective preferences of naturally autonomous individuals. Social relations are thus something "external, accidental, and adventitious, not consequences" of the very structure of human nature.<sup>27</sup> We thus arrive at the intellectual universe of atomism and the individual-state-market grid.<sup>28</sup>

This vision of social life, in turn, lays the groundwork for a distinctive type of rights talk. Insisting that, as Canavan noted, the individual be viewed as "an atom ... to whom violence is done if he is subjected to a relationship ... he has not chosen"<sup>29</sup> (or to which, it might be added, he no longer consents), and insisting that individual freedom takes precedence "over any other human or social good that conflicts with it,"<sup>30</sup> liberal rights doctrines center on what Gerard V. Bradley terms the "Megaright" of individual autonomy, the right of the individual to self-definition and self-determination, to choose his or her own values, goals, and lifestyles.<sup>31</sup> "At the heart of liberty," as Justices O'Connor, Souter, and Kennedy affirmed in their opinion in *Planned Parenthood v. Casey*,<sup>32</sup> "is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery [**\*238**] of human life."<sup>33</sup> The right of individuals to act on their subjective preferences - so long as they are compatible with the equal right of other individuals to do the same - "trumps" the claims of such social goods as the commonweal, public morality, and communal solidarity so long as they are compatible with the equal right of others to do the same. Existing to protect this right in all its manifold forms, government, in David A. J. Richards's formulation, is limited to the pursuit of "general goods" that "all persons could reasonably accept as all-purpose conditions of pursuing their aims, whatever they are."<sup>34</sup>

#### Human Social Life: The Catholic Vision

Today, our need for a richer, more complex model of social life is widely recognized.<sup>35</sup> Nevertheless, we have experienced great difficulty in articulating the "thicker" model of social life we so badly need. Although a number of factors undoubtedly contribute to this state of affairs, part of the problem consists in the tendency of "thick" social ontologies to absorb the social into politics and the individual into "society." It is against this backdrop, I would suggest, that the possible contribution of Catholic social thought can be seen. Catholic social thought begins with a moral and metaphysical realism that is set in the framework of the Christian idea of a universe created and redeemed by a loving Triune God. Man, as the Second Vatican Council affirms, is subject to "a law which he does not impose upon himself, but which holds him to obedience,"<sup>36</sup> a law that, in Pope John Paul II's words, is

<sup>26</sup> *Id.* at 121.

<sup>27</sup> *Id.*

<sup>28</sup> See Glendon, *supra* note 1, at 143.

<sup>29</sup> Canavan, *supra* note 22, at 121.

<sup>30</sup> *Id.* at 76.

<sup>31</sup> Gerard V. Bradley, *Shall We Ratify the New Constitution? The Judicial Manifesto in Casey and Lee*, in *Benchmarks: Great Constitutional Controversies in the Supreme Court* 117, 121 (Terry Eastland ed., 1995).

<sup>32</sup> [505 U.S. 833 \(1992\)](#).

<sup>33</sup> [Id. at 851](#).

<sup>34</sup> David A. J. Richards, *Toleration and the Constitution* 245, 259 (1986).

<sup>35</sup> The literature on the inadequacies of our current understanding of community is vast. Perhaps the classic critique of modern thinking on the subject of community is Robert Nisbet, *The Quest for Community: A Study in the Ethics of Order and Freedom* (ICS Press 1990) (1953) [hereinafter Nisbet, *The Quest for Community*]. For a more detailed outline of the alternative vision of community that Nisbet seeks, see Robert Nisbet, *Twilight of Authority* 213-29 (Liberty Fund 2000) (1975) [hereinafter Nisbet, *Twilight of Authority*]. More recently, the proponents of the intellectual movement known as communitarianism have sought to articulate an alternative to the highly individualistic model of social life that dominates our contemporary civil conversation. Influential communitarian works include Robert N. Bellah et al., *The Good Society* (1991); Robert N. Bellah et al., *Habits of the Heart: Individualism and Commitment in American Life* (1985); Sandel, *Democracy's Discontent*, *supra* note 3; Sandel, *Liberalism*, *supra* note 3; Alan Wolfe, *Whose Keeper? Social Science and Moral Obligation* (1989).

"inscribed" in our humanity, in the very **[\*239]** "teleological characteristic" of human nature itself. <sup>37</sup> There thus exists an order of human and social ends that binds us prior to, and independently of, our consent to pursue them.

Likewise, Catholic social thought affirms the naturalness of political life and a thick conception of the common good. Political authority is natural, it insists, because, without it, the "men, families and ... various groups which make up the civil community ... cannot achieve a truly human life." <sup>38</sup> It is natural, in other words, because it is necessary for the "realization of the common good," which the Church defines as "the sum of those conditions of the social life whereby men, families and associations more adequately and readily may attain their own perfection." <sup>39</sup> Consisting as it does, as Maritain points out, in nothing less than the "communion" by its members in "the good human life," this good has both "material" and "moral" dimensions. <sup>40</sup>

Finally, and most importantly for our purposes here, Catholicism affirms a deeply social vision of the person. "This social life is not something added on to man," as the Council affirms, because "by his innermost nature man is a social being," a being who "by its very nature stands completely in need of social life." <sup>41</sup> In this view, as Elshain observes, "human beings [are] creatures essentially, not contingently, related to others." <sup>42</sup> Inasmuch as man can only be himself in and through community, as Johannes Messner notes, it follows that "by nature man is as much a social being as he is an individual being." <sup>43</sup> In part, the human person's nature as a social being is rooted in his or her lack of self-sufficiency as an individual. Most fundamentally, however, it is rooted in what Pope John Paul II terms "the capacity and responsibility" for "love and communion" **[\*240]** inscribed in the very nature of the person. <sup>44</sup> Inasmuch as we are created in the image of a Triune God, love constitutes "the fundamental and innate vocation of every human being." <sup>45</sup> Indeed, man "cannot fully find himself except through a sincere gift of himself." <sup>46</sup>

#### Normative Pluralism

If the Catholic vision of social life is thick, it is also pluralistic and personalistic. To begin with the former, Catholic social thought embraces what is sometimes called institutional or normative pluralism, insisting, as John Paul II writes, that "the social nature of man is not completely fulfilled in the State, but is realized in various intermediary groups, beginning with the family and including economic, social, political and cultural groups." <sup>47</sup> As Heinrich Rommen explains, the social nature of the human person gives rise to a "plurality of social forms and of cooperative spheres that ... serve independent particular ends in the order of the common good." <sup>48</sup> These institutions and

<sup>36</sup> Second Vatican Council, *Gaudium et Spes* [Pastoral Constitution on the Church in the Modern World] P 16 (1965), reprinted in *The Sixteen Documents of Vatican II* 513, 527 (Nat'l Catholic Welfare Conference trans., St. Paul ed. 1967) [hereinafter *Gaudium et Spes*].

<sup>37</sup> Pope John Paul II, Address to the Roman Rota on the Natural Dimension of Matrimony (Feb. 1, 2001), in 46 *The Pope Speaks* 4, 225-26 (2001) (considering this inscribed law in relation to marriage).

<sup>38</sup> *Gaudium et Spes*, supra note 36, P 74.

<sup>39</sup> *Id.*

<sup>40</sup> Maritain, supra note 18, at 41, 43 (emphasis removed).

<sup>41</sup> *Gaudium et Spes*, supra note 36, PP 12, 25.

<sup>42</sup> Jean Bethke Elshain, *Catholic Social Thought, the City, and Liberal America*, reprinted in *Catholicism, Liberalism, and Communitarianism* 97, 104 (Kenneth L. Grasso et al. eds., 1995).

<sup>43</sup> Johannes Messner, *Social Ethics: Natural Law in the Western World* 96 (J. J. Doherty trans., rev. ed. 1965).

<sup>44</sup> Pope John Paul II, *Familiaris Consortio* [Apostolic Exhortation on the Role of the Christian Family in the Modern World] P 11 (St. Paul ed. 1981).

<sup>45</sup> *Id.*

<sup>46</sup> *Gaudium et Spes*, supra note 36, P 24.

<sup>47</sup> Pope John Paul II, *Centesimus Annus* [Encyclical Letter on the Hundredth Anniversary of *Rerum Novarum*] P 13 (St. Paul ed. 1991) [hereinafter *Centesimus Annus*].

groups are neither creations of the state nor the purely conventional products of contractual agreements among individuals, but "stem from human nature itself."<sup>49</sup> According to Rommen's description, they are "original entities and original social organizations" in their own right, and not merely administrative units created by the state and exercising functions delegated to them by it.<sup>50</sup>

"With regard to their specific ends," Rommen argues, these social institutions "are irreplaceable, however changeable and adaptable" their specific "forms" may be in "different stages of historical development and national culture."<sup>51</sup> They are irreplaceable, to begin with, because each discharges a distinctive function that is essential to human flourishing, essential to equipping individuals to realize their humanity. Likewise, they are irreplaceable by virtue of their status as **[\*241]** the principal sites, as it were, wherein human beings fulfill their vocations as persons for love and communion.

Insofar as the social ties in which our nature finds expression include relations of both an instrumental and solidaristic character, this pluralist understanding of the structure of social life takes us decisively beyond the horizon of the individual-state-market grid. Indeed, it highlights what this grid obscures: the existence of a complex matrix of institutions that differ dramatically in their organizing principles from either the state or the market. Without these institutions, as John Paul II argues, society would become "an anonymous and impersonal mass" because the individual, by being treated "only as a producer and consumer of goods, or as an object of state administration," would be "suffocated between two poles represented by the State and the marketplace."<sup>52</sup> If, from the Catholic perspective, the state and the network of social relations constitutive of the marketplace play indispensable roles in the overall scheme of social life, these nonstate, nonmarket groups and institutions constitute, as it were, the center of social gravity.

Thus, for Catholic social thought, Messner observes that "society is a unity composed of smaller communities with relative independence or autonomy, and that these all have their own social ends, their own common good, and hence their own functions."<sup>53</sup> This vision of society as a *communitatis communitatum*, in turn, has profound implications. It means that, as Jonathan Chaplin notes, "the common good" of society "is necessarily pluralistic in character" and that it necessarily "includes the particular goods" of the whole range of institutions issuing from the social nature of the human person.<sup>54</sup> Only if those communities are able to be themselves, only if they can effectively pursue their particular ends and their distinctive common goods, can human beings "enjoy the possibility of achieving their own perfection in a certain fulness of measure and also with some relative ease."<sup>55</sup>

It means that, although a natural institution, the state is neither the only nor necessarily the most important institution in which the **[\*242]** social nature of the human person finds expression.<sup>56</sup> The state, therefore, must share the stage of social life with the whole range of social institutions and communities that issue from human nature. In Rommen's formulation, precisely because these other social institutions "have their intrinsic values and

<sup>48</sup> Heinrich A. Rommen, *The State in Catholic Thought: A Treatise in Political Philosophy* 143 (1945).

<sup>49</sup> *Centesimus Annus*, supra note 47, P 13.

<sup>50</sup> Rommen, supra note 48, at 256.

<sup>51</sup> *Id.* at 144.

<sup>52</sup> *Centesimus Annus*, supra note 47, P 49.

<sup>53</sup> Messner, supra note 43, at 148.

<sup>54</sup> Jonathan Chaplin, *Subsidiarity as a Political Norm*, in *Political Theory and Christian Vision* 81, 88 (Jonathan Chaplin & Paul Marshall eds., 1994).

<sup>55</sup> Second Vatican Council, *Dignitatis Humanae* [Declaration on Religious Freedom] P 6 (1965), reprinted in *The Sixteen Documents of Vatican II* 395, 402 (Nat'l Catholic Welfare Conference trans., St. Paul ed. 1967) [hereinafter *Dignitatis Humanae*].

<sup>56</sup> Indeed, Catholic social thought, as Messner writes, affirms "the primacy of the family among all other social units, including the state." Messner, supra note 43, at 401.

their objective ends," precisely because they make indispensable contributions to human flourishing, the state does not make them "superfluous." <sup>57</sup> It thus may neither "abolish" them nor "take over" their functions and purposes. <sup>58</sup>

It means that the basic question of political theory cannot be reduced to the proper relationship between the sovereign state and the sovereign individual. It also means that the state's role in the overall economy of social life is a limited one. The state is limited by the fact that only certain limited aspects of the common good have been entrusted to its care. The remainder have been entrusted to the care of other institutions and communities, institutions and communities that are "original entities and original social organizations" in their own right rather than mere creatures of the state existing at its pleasure and exercising functions delegated to them by it. The state is thus restricted by the finite character of its functions relative to the overall economy of human social life and by the responsibilities, the distinctive functions, of the other institutions with which it shares the stage of social life. Society, as Canavan remarks, "is organized as the state, but only for certain purposes and for the performance of certain functions relative to those purposes." <sup>59</sup>

### Personalism

Catholicism's ontology of social life combines this commitment to institutional pluralism with a personalist vision of society. Man, it affirms, is a person, a being "endowed with reason and free will and therefore privileged to bear personal responsibility." <sup>60</sup> The person, in turn, as Thomas Aquinas writes, signifies "what is most perfect in all [\*243] [of] nature." <sup>61</sup> Thus, by virtue of our personhood, human beings possess an "exalted dignity." <sup>62</sup> Implicit in our personhood, moreover, is a task and grave responsibility. As a person, each human being has what Pope Pius XII described as "the entirely personal duty to preserve and order to perfection his material and spiritual life." <sup>63</sup>

Catholicism's vision of our nature and dignity as persons has profound implications for its understanding of social life and its proper ordering. We can do no more here than mention a few of these implications. To begin with, from our nature as persons it follows that social activity has a subsidiary character. As Jean-Yves Calvez and Jacques Perrin point out, however, this does not mean that social life is something "secondary or accidental" to man, but rather that society exists "to provide help to the person." <sup>64</sup> Precisely because man is a person, as Messner observes, his "self-realization" is "not something given" him "from without" but implies "personal responsibility" and involves "the exercise of his freedom." <sup>65</sup> Accordingly, "any social grouping, including the state, therefore, can assume merely an ancillary role." <sup>66</sup> It is thus no accident that, as we have seen, Catholic social thought identifies the common good of society as conditions in which individuals, families and other intermediary groups "enjoy the possibility of achieving their own perfection in a certain fulness of measure and also with some relative ease." <sup>67</sup>

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<sup>57</sup> Rommen, *supra* note 48, at 301.

<sup>58</sup> *Id.*

<sup>59</sup> Francis Canavan, S.J., *Religious Freedom: John Courtney Murray and Vatican II*, in *John Courtney Murray and the American Civil Conversation* 167, 168 (Robert P. Hunt & Kenneth L. Grasso eds., 1992).

<sup>60</sup> *Dignitatis Humanae*, *supra* note 55, P 2.

<sup>61</sup> Thomas Aquinas, *Summa Theologica*, Part I, Question 29, Article 3 (Fathers of the English Dominican Province trans., Christian Classics 1981) (1911).

<sup>62</sup> *Gaudium et Spes*, *supra* note 36, P 26.

<sup>63</sup> 1 Pope Pius XII, *The Anniversary of Rerum Novarum*, in *The Major Addresses of Pope Pius XII* 26, 31 (Vincent A. Yzermans ed., 1961).

<sup>64</sup> Jean-Yves Calvez, S.J. & Jacques Perrin, S.J., *The Church and Social Justice: The Social Teaching of the Popes from Leo XIII to Pius XII (1878-1958)* 122 (J. R. Kirwan trans., 1961).

<sup>65</sup> Messner, *supra* note 43, at 631.

<sup>66</sup> *Id.*

<sup>67</sup> *Dignitatis Humanae*, *supra* note 55, P 6 (emphasis added).

Likewise, inasmuch as the dignity of the human person, in the words of Pope John XXIII, "requires that every man enjoy the right to act freely and responsibly," it also follows that freedom is elevated to the status of a foundational principle in the ordering of social and political life. <sup>68</sup> "The freedom of man," in the formulation of the **[\*244]** Second Vatican Council, must "be respected as far as possible and is not to be curtailed except when and insofar as necessary." <sup>69</sup>

At the same time, this affirmation of the dignity of persons combines with Catholicism's commitment to normative pluralism to ground the affirmation of the existence of an order of human rights that must be respected by the state and whose protection and promotion are an essential element of the common good. <sup>70</sup> "Universal, absolute and unchangeable," in the words of Pope John XXIII, these rights flow from our very "nature [as] rational beings," from the demands of human dignity and the responsibilities inherent in this dignity. <sup>71</sup>

Thus, as John Courtney Murray writes, man's nature and dignity as a person confer upon "him certain immunities and ... endow[] him with certain empowerments. He may make certain demands upon society and the state which require action in their support, and he may also utter certain prohibitions in the face of society and [the] state." <sup>72</sup> On the one hand, the rights of the person include access to the various material and cultural resources "necessary for leading a life [that is] truly human." <sup>73</sup> On the other hand, insofar as the quest for truth and goodness must proceed in a manner in keeping with our dignity as persons that requires us to "act according to a knowing and free choice ... [and] not under blind internal impulse nor by mere external pressure," <sup>74</sup> this dignity demands an inviolable sphere of personal freedom within which individuals can confront the responsibilities inherent in their personhood in a manner in keeping with their nature as persons.

From the fact that the institutions and groups of civil society are communities of persons, it follows that they too are the subjects of rights. The source of these rights is found in the participation of these groups in the subjectivity of the persons who compose them. The example of the family illustrates the essential principles involved. "Just as the person is a subject," John Paul II affirms, "so too is the **[\*245]** family, since it is made up of persons, who, joined together by a profound bond of communion, form a single communal subject." <sup>75</sup> As such, the family possesses both responsibilities, rooted in the ends it exists to serve, and a very real dignity. From these responsibilities and this dignity flow certain proper and specific rights that transcend the rights of the individuals who compose it. <sup>76</sup> Precisely because "the family is much more than the sum of its individual members," it follows that "the rights of the family are not simply the sum total of the rights of" its individual members. <sup>77</sup> Like the rights of individuals, furthermore, the rights of the family encompass both the right of access to the economic and cultural resources required to discharge its mission and the right to a large measure of autonomy and self governance, establishing it "in a certain sense [as a] 'sovereign' society." <sup>78</sup>

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<sup>68</sup> Pope John XXIII, *Pacem in Terris* [Encyclical Letter on Establishing Universal Peace in Truth, Justice, Charity and Liberty] P 34 (St. Paul ed., 1963) [hereinafter *Pacem in Terris*].

<sup>69</sup> *Dignitatis Humanae*, supra note 55, P 7 (emphasis added).

<sup>70</sup> In the words of John Paul II, "The common good that ... the state serves is brought to full realization only when all the citizens are sure of their rights." Pope John Paul II, *Redemptor Hominis* [Encyclical Letter on the Redeemer of Man] P 17 (St. Paul ed., 1979).

<sup>71</sup> *Pacem in Terris*, supra note 68, PP 35, 38.

<sup>72</sup> John Courtney Murray, S.J., *We Hold These Truths: Catholic Reflections on the American Proposition* 81-82 (1960).

<sup>73</sup> *Gaudium et Spes*, supra note 36, P 26.

<sup>74</sup> *Id.* P 17.

<sup>75</sup> Pope John Paul II, *Letter to Families from Pope John Paul II* P 15 (St. Paul ed., 1994).

<sup>76</sup> See *id.* P 17.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* (emphasis removed).



Although "the family is more a subject than any other social institution," societies "possess a proper subjectivity to the extent that they receive it from persons and their families" who compose them.<sup>79</sup> Thus, as Messner notes, the rights of communities are rights in themselves, just as individual rights are, and not only an appendix to the latter and include the right of these communities to exist and perform the responsibilities proper to them.<sup>80</sup> Inasmuch as human nature gives rise to a plurality of communities, each with its own distinct ends, functions and common good, there exists "a plurality of categories of equally original rights, none of which can be simply derived from another."<sup>81</sup>

### The Subsidiary State

What emerges here is a distinctive vision of the state and its role in the overall economy of social life. The state exists neither to supplant the array of institutions and groups in which the social nature of the human person finds expression, nor to absorb their functions, nor to micromanage their affairs. Any attempt by the state to do so would be an affront to the dignity of the human person and [\*246] would constitute an over-expansion of the state's rightful jurisdiction. The state, moreover, does not unilaterally create the "sum total" of all those conditions necessary to human flourishing - i.e. the common good. Rather, it collaborates in the creation of these conditions with the full range of institutions that issue from the social nature of the human person. As Maritain observes, although the "common good ... is its final end," the state's "immediate end" is that particular segment of this good that Maritain designates "the public order and welfare."<sup>82</sup>

What does the public order and welfare consist of? It consists of the creation of what Rommen terms "an order of tranquillity, justice, and peace" that will enable the full range of institutions in which our nature as social beings finds expression to freely and effectively pursue their own particular ends.<sup>83</sup> As Chaplin notes, the state establishes such an order primarily through the promulgation of a framework of public law "recognizing and protecting the various rights and duties pertaining to each [institution or group] and, in the interests of the common good, by adjudicating between them when conflicts of rights or duties arise."<sup>84</sup> It is the responsibility of the state, in short, to coordinate social activity so as to enable these groups to be themselves and thereby to make their essential contributions to human flourishing.<sup>85</sup> With regard to the groups and institutions of civil society, as Franz H. Mueller observes, "the functions of the state are essentially subsidiary."<sup>86</sup>

What this means, to begin with, is that the state must acknowledge the right of these institutions to exist and to discharge their distinctive functions, as well as their right, as communities of persons, to a large measure of autonomy and self-governance. The state, furthermore, must take account of these groups and seek to facilitate their activities. Among other things, this means that it must provide them with a secure foundation in its public law and recognize them as the subjects of social rights and obligations. It also means that the state must recognize and respect the natural structure - in [\*247] John Paul II's phraseology, "the proper identity"<sup>87</sup> - of each of these

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<sup>79</sup> Id. P 15.

<sup>80</sup> Messner, supra note 43, at 193-94.

<sup>81</sup> Id. at 193 (emphasis removed).

<sup>82</sup> Jacques Maritain, *Man and the State* 14 (Catholic Univ. of Am. Press 1998) (1951).

<sup>83</sup> Rommen, supra note 48, at 270.

<sup>84</sup> Chaplin, supra note 54, at 95.

<sup>85</sup> Messner, in fact, goes so far as to argue, "To make it possible for the families which form the political community to fulfill their natural functions is the predominant task of the state." Messner, supra note 43, at 401 (emphasis added).

<sup>86</sup> Franz H. Mueller, *The Church and the Social Question* 81 (1984).

<sup>87</sup> Pope John Paul II, *Sollicitudo Rei Socialis* [Encyclical Letter on Social Concern] P 33 (St. Paul ed. 1987).

institutions and communities. It is thus the nature of these institutions, as Rommen observes, "that control the legal forms, not vice versa."<sup>88</sup>

Likewise, the state must not only put into place the infrastructure necessary for social unity and the proper functioning of nonstate institutions (e.g., roads, a common currency, a legal system), but it must also seek to create conditions in which all of these groups have ready access to the material and cultural resources they need to prosper. It thus must seek to safeguard the social ecology upon which each depends to assure that none, in Rommen's phraseology, is allowed to prevail "hypertrophically over the others"; rather it must seek to enable them to collaborate together as "balanced parts of a well-organized order in unity" so as to secure conditions in which each can make its proper contribution to human flourishing.<sup>89</sup> If what may be called the subsidiary state would have a bias toward freedom and initiative in the economic order, for example, it would not simply allow these institutions to fend for themselves in the face of market forces but would intervene in the impersonal workings of the market to see to it that the institutions of civil society have the resources they need to flourish and to protect the social ecology on which they depend.<sup>90</sup>

### Rights, Civil Society and the State: Two Visions

What is important for our purposes here is the way in which these two different models of social life point us toward two very different approaches to the whole subject of rights. By conceptualizing social relations as essentially external, conventional, instrumental and voluntary rather than as products of our nature as social beings, liberal rights doctrines take their bearings from a vision of human beings as contingently, rather than as essentially, social beings and as essentially autonomous individuals.

**[\*248]** From the individual so conceived, liberal rights theorists proceed to deduce or derive a whole order of rights. Thus, as Alexander M. Bickel points out, for liberal rights doctrines, these rights "have a clearly defined, independent existence predating society."<sup>91</sup> Only after these rights have been specified is the individual then inserted into society. These rights are thus "lexically prior" to the social life that must operate "within limits they set."<sup>92</sup> To these rights, in other words, society and its institutions "must bend."<sup>93</sup> Just as social relations and the goods they instantiate do not enter into the very constitution of human nature, so these relations and goods do not enter into the very constitution of rights, but remain external to them. Social life comes ontologically after rights as something rights-bearing individuals (individuals motivated by self-interest) voluntarily choose to establish, and it possesses an instrumental and contractual character. It leaves the nature of these rights essentially untouched.

These rights doctrines are thus characterized by a commitment to what Taylor terms "the primacy of rights."<sup>94</sup> In this view, rights - in particular, the "freedom to choose one's own mode of life,"<sup>95</sup> - are ascribed to individuals "as binding unconditionally."<sup>96</sup> Our "obligation ... to belong to or sustain society, or a society of a certain type, or to obey authority or an authority of a certain type," in contrast, is "seen as derivative, as laid on us conditionally,

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<sup>88</sup> Rommen, *supra* note 48, at 143.

<sup>89</sup> *Id.* at 253.

<sup>90</sup> For a fuller account of this understanding of the state and its role in the overall economy of social life, see Kenneth L. Grasso, *The Subsidiary State: Society, the State and the Principle of Subsidiarity in Catholic Social Thought*, in *Christianity and Civil Society: Catholic and Neo-Calvinist Perspectives* (Jeanne Heffernan ed., forthcoming 2005).

<sup>91</sup> Alexander M. Bickel, *The Morality of Consent* 4 (1975).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Taylor, *supra* note 9, at 188.

<sup>95</sup> *Id.* at 196.

<sup>96</sup> *Id.* at 188.

through our consent, or through its being to our advantage." <sup>97</sup> Therefore, "the individual and his rights" take "priority ... over society." <sup>98</sup>

### Asocial Rights

Given this starting-point, it is no accident that one of the most striking features of the rights doctrines spawned by Enlightenment liberalism, one is tempted to say, is their hyperindividualistic, asocial - or even antisocial - character. The rights championed by liberalism, as Marx observed, are the rights of man "regarded as an **[\*249]** isolated monad." <sup>99</sup> "Founded ... upon the separation of man from man," they are ultimately the very "right of such separation." <sup>100</sup> As Elshtain points out, furthermore, inasmuch as it causes any constraint on individual choice to be perceived as suspect, the atomistic rights doctrines, spawned by liberalism, "blank[] out of existence" the "important and troubling questions that arise as one evaluates the writ over which individual right and social obligation, respectively, should run." <sup>101</sup> Their effect is thus to "give[] over everything, or nearly so, to the individualist pole in advance." <sup>102</sup>

The hyperindividualistic, asocial character of these doctrines manifests itself in many ways. It manifests itself in the denial that the institutions of civil society are subjects of rights that transcend the rights their members possess as individuals, and in the reduction of the rights of these communities to only an appendix to the rights of the individuals who compose them. <sup>103</sup> It also reveals itself in the reduction of the task of government to the protection of the rights of the individual (as liberalism understands these rights), and thus the denial to government of any responsibility for promoting the goods proper to nonutilitarian forms of social life or of recognizing and protecting the institutions of civil society and the social ecology on which they depend. Finally, it manifests itself in the insistence that the right of individuals to self-determination trumps not only the claims of social institutions to preserve their own integrity, but of all other human and social goods, save the right of other individuals to that same freedom.

Not surprisingly, given their hyperindividualistic character, liberal rights doctrines have a profoundly destructive impact on the groups and institutions of civil society. They erode these groups and institutions through both the ethos they embody - and implicitly inculcate - and the disintegrative effects of the legal order that they establish. To begin with, they preclude efforts to provide a secure foundation for these institutions in public law, to recognize their rights in this law, and to safeguard, through law and public policy, **[\*250]** the delicate social ecology on which their wellbeing depends. Indeed, they enshrine, in both culture and law, the liberal conception of the institutions of civil society as being nothing more than temporary aggregations of individuals united for reasons of mutual utility. Liberalism also draws from this understanding the normative conclusions about the proper ordering of these institutions. In the process, these doctrines supply individuals with rights that make it difficult for these institutions to sustain their distinctive identities and solidaristic character and for society to maintain the social environment on which their flourishing depends. The cumulative effect of all of this is to destabilize these institutions and to place them under relentless pressure - culturally and legally - to refashion themselves in accordance with liberalism's atomistic vision of social relations.

Against this backdrop, what is perhaps the central irony of liberal rights doctrines begins to emerge. If the idea of limited government long predates the modern world, the fact is that, since its inception in the seventeenth century, liberalism has been closely associated with the cause of constitutionalism. Indeed, it has provided what are beyond

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<sup>97</sup> Id.

<sup>98</sup> Id. at 187.

<sup>99</sup> Karl Marx, On the Jewish Question (1843), reprinted in *The Marx-Engels Reader* 24, 40 (Robert C. Tucker ed., 1972).

<sup>100</sup> Id.

<sup>101</sup> Jean Bethke Elshtain, *The Liberal Captivity of Feminism: A Critical Appraisal of (Some) Feminist Answers*, in *The Liberal Future in America: Essays in Renewal* 63, 67 (Philip Abbott & Michael B. Levy eds., 1985).

<sup>102</sup> Id.

<sup>103</sup> See Messner, *supra* note 43, at 193-94.

any question the modern era's most influential accounts of, and most influential justifications for, the institutions and practices of constitutional government. One of the distinctive features of liberalism's approach to constitutionalism has been its invocation of individual rights as the primary principle defining the limits of state power.

As Stanley Hauerwas points out, however, it has gradually become apparent that "there is a fundamental tension between our commitments to the rights of the individual, preservation of intermediate associations, and the ability to retain a limited state."<sup>104</sup> Liberal rights doctrines do more than undermine solidaristic institutions - they simultaneously threaten limited government. Indeed, the ascendancy of liberal rights doctrines must be numbered among the factors that have spurred the far-reaching expansion in the size and scope of government over the past several centuries. To begin with, as Alexis de Tocqueville foresaw, the inevitable result of the social and psychological vacuum created by the progressive disabling of the institutions of civil society will be a massive expansion in the size and scope of the state. In part, this expansion will be a function of the state's own self-aggrandizing tendencies. As [\*251] Tocqueville remarks, "it is in the nature of all governments to seek constantly to enlarge their sphere of action."<sup>105</sup>

In part, it will stem from the fact that, in an atomized society, the state is the only possible candidate to both fill the vacuum created by the erosion of civil society and respond to the social pathologies inevitably unleashed by this erosion. In an atomized society, as Tocqueville wrote, the "wants" and "desires" of individuals "naturally" come to center on "that imposing power which alone rises above the level of universal depression," namely, the state.<sup>106</sup> Thus, in reality, individualism and statism prove to be mutually reinforcing: the decline of other social institutions leads inexorably to a dramatic expansion in the size, scope and power of government. Indeed, as George Sabine points out, "The absolutely sovereign and omni-competent state is the logical correlate of a society which consists of atomic individuals."<sup>107</sup>

This vacuum, however, is not the only factor at work here. Liberal rights doctrines have a logic of their own, a logic that operates at cross purposes with the idea of limited government. On the one hand, there is the movement from what may be called "classical" or "libertarian" liberalism toward "egalitarian" or "reform" liberalism. When liberalism's embracement of the idea of social and economic rights (in the name of equalizing the opportunities of individuals to live the lifestyles of their choice) is combined with its single-minded focus on the market and state at the expense of other institutions, the result is a massive increase in the size and scope of government as the state is charged with providing an ever-expanding array of entitlements (e.g., welfare, health care).

On the other hand, there is the inner dynamism of the liberal idea of freedom itself. Liberalism, as David Novak remarks, sees "individual autonomy as the primary good."<sup>108</sup> Indeed, it is a commitment to the maximization of individual autonomy that drives liberal rights doctrines. This commitment, in turn, demands the emancipation of individuals from any ties incompatible with the autonomy of the individual (as liberalism understands it), from any institution organized on principles incompatible with the individual's [\*252] right to self-definition and self-determination. In this view, the state is hardly the only threat to individual freedom. On the contrary, all strong, solidaristic institutions threaten it.

When it captures the state, therefore, the inner dynamism of liberalism's commitment to this sovereignty impels it to employ government to refashion other social institutions in accordance with its atomistic vision of social relations and in accordance with its commitment to the maximization of individual autonomy. Liberal rights doctrines thus usher in what Robert Nisbet terms "a revolutionary liaison" between the individual and the omniscient state.<sup>109</sup> The rights of the individual, this is to say, do not merely "limit" the liberal state - they simultaneously empower it.

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<sup>104</sup> Stanley Hauerwas, Symposium, 1 Center J. 42, 44 (1982).

<sup>105</sup> Alexis de Tocqueville, *Democracy in America* 294 n.1 (Alfred A. Knopf 1945) (1835).

<sup>106</sup> *Id.* at 294.

<sup>107</sup> Canavan, *supra* note 22, at 135 (quoting George Sabine, *History of Political Theory* (1961)).

<sup>108</sup> David Novak, *Covenantal Rights: A Study in Jewish Political Theory* 20 (2000).

Indeed, given their far-ranging character and the role occupied by the state in liberal theory, they effectively confer upon this state an essentially open-ended mandate to reorder all of social life in accordance with their demands and to liberate individuals from the tyranny of "society."

Its commitment to individual rights (as it conceives them), in short, trumps liberalism's commitment to limited government and underwrites a massive expansion in state power and a massive invasion of the institutions of civil society in the name of vindicating the rights of the individual. It is thus no accident that the ascendancy of liberalism has been accompanied by what Nisbet describes as "the conversion of once-traditional, once-autonomous, once-social relationships into those of the law and the courts" and the transformation of more and more social relations and institutions into "the handmaiden of legislature, law office, regulatory agency, and the courtroom."<sup>110</sup>

Now, it is certainly true that liberal rights doctrines have resulted in an expansion of the freedom of the individual (as liberalism understands this freedom). But it is also true that the ascendancy of these doctrines has been accompanied by a dramatic expansion in the power and scope of the state, a far-reaching reduction in the corporate freedom of groups, the growing homogenization of social life as all social institutions are gradually reconfigured in accordance with liberal principles, a far-reaching erosion of the institutions and groups [\*253] composing civil society, and the emergence of an increasingly atomistic social world. One cannot help but think here of the new type of despotism described so vividly by Tocqueville in the concluding chapters of *Democracy in America*.<sup>111</sup>

#### Rights and Social Goods

Although the idea of rights has figured prominently in Catholic thought since the time of *Rerum Novarum*, it would be an exaggeration to claim Catholic social thought contains a finished, comprehensive theory of rights.<sup>112</sup> Nevertheless, as even our cursory survey already suggests, a rights doctrine rooted in Catholic social thought would differ in important respects from those that emanate from the intellectual universe of Enlightenment liberalism. Perhaps the most obvious difference concerns the rights of corporate groups.

The differences between Catholicism and liberalism on this point becomes intelligible only in the light of a deeper difference - the disparate starting-points of each tradition's view of the whole subject of rights. Catholicism's understanding of rights begins not with the abstract, isolated individual, as Lisa Sowle Cahill observes, but from the idea of "a universal order inclusive of the human community within which the individual functions."<sup>113</sup> Rights, therefore, "are woven into a concept of community" and "exist within ... [a] social context."<sup>114</sup> They exist within the context of a wide array of social relations that are constitutive rather than external, artificial and contractual, relations that flow from the very nature of the human person.<sup>115</sup> For Catholic social thought, the individual, as a subject of rights, is not an asocial monad but a social being naturally situated within a complicated matrix of diverse social relations. In Murray's apt formulation, "it regards the community as 'given' equally with the person."<sup>116</sup> Thus,

<sup>109</sup> Nisbet, *The Quest for Community*, supra note 35, at 140 passim. The importance of this liaison to modern political thought and practice is one of the central themes of this classic study. For more on this liaison, see, for example, Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* (J. F. Huntington trans., Liberty Fund 1993) (1945).

<sup>110</sup> Nisbet, *Twilight of Authority*, supra note 35, at 219.

<sup>111</sup> Tocqueville, supra note 105, at 316-21.

<sup>112</sup> For a helpful compendium of recent statements by the Catholic Church on the subject of human rights, see Pontifical Council for Justice and Peace, *Human Rights in the Teaching of the Church: From John XXIII to John Paul II* (Giorgio Filibeck ed., 1994).

<sup>113</sup> Lisa Sowle Cahill, *Toward a Christian Theory of Human Rights*, 8 *J. Religious Ethics* 277, 285 (1980).

<sup>114</sup> *Id.* at 284.

<sup>115</sup> *Id.*

<sup>116</sup> Murray, supra note 72, at 327.

the juridical order must take into account the full range of institutions in which our nature, as social beings, finds **[\*254]** expression, the conditions of their flourishing, and the legitimate claims they make upon individuals and society as a whole.

The essential point is that, from the perspective of Catholic social thought, the structure of social relations that flows from human nature, and the goods that these relations instantiate, enter into the very constitution of the order of rights. These relations and goods, as Canavan writes, "are the foundation of both rights and obligations that are prior to and independent of consent."<sup>117</sup> Accordingly, they act to specify the nature and scope of both particular rights and the responsibilities that attach to them. The very relations and goods that ground rights, in other words, simultaneously define their natures and limits. The claims of "society" here are not something external, that limit and threaten rights from without, but are internal to the rights themselves, as it were, and order them from within.

Understanding the rights of the person as the rights of an essentially social being, as the rights of a being existing, not in isolation, but enmeshed in a complicated web of diverse social relations, Catholic social thought points us toward a type of "rights discourse" dramatically less individualistic and dramatically more complex than that which emerges under the auspices of liberalism. It is less individualistic because it understands human beings as intrinsically social creatures, because the subjects of rights include not just individuals but the groups and institutions in which our nature as social beings finds expression, and because the goods that these rights encompass are the diverse goods realized by these institutions individually and collectively. All of these goods bear on the juridical order; all of them enter into the determination of the nature and scope of rights, both individual and corporate. It is far more complex because it incorporates into its conception of the juridical order a host of actors and goods that liberal rights discourse, with its single-minded focus on the isolated, abstract individual and the good of choice, completely ignores.

Catholic social thought thus develops its theory of rights, in Paul Marshall's words, "alongside, in the context of, and often subject to, other political norms, rather than by transcending or ... 'trumping' such norms."<sup>118</sup> Indeed, Catholicism believes neither that all political issues can be adequately conceptualized as simple clashes-of-rights nor that all social and political goods can be adequately articulated in **[\*255]** the language of rights. Whereas liberalism tends to reduce the language of politics to the language of rights, in Catholic thought rights language is but one element in a richer, more subtle vocabulary that brings into play concepts such as the common good, solidarity, subsidiarity, the public order and welfare, social ecology, etc.

As this suggests, the differences between the two traditions is not limited to the question of the rights of corporate groups but extends to the nature, scope and rights of individuals as well. Indeed, by virtue of their different starting points, even when Catholicism and liberalism affirm the existence of the same rights, they understand these rights differently. While Catholic social thought emphatically affirms that individuals possess a series of rights that together afford them a broad sphere of freedom (e.g., freedom of religion, speech, etc.), this affirmation is not to be equated with the liberal claim that the individual's right to act on his or her preferences trumps all human and social goods, save the right of other individuals to that same autonomy. In the Catholic understanding, the freedom of the individual is circumscribed by the whole ensemble of social goods that collectively constitute the public order and welfare, including the social ecology required for human flourishing, the demands of public morality, and the claims of social groups to institutional autonomy and integrity. In the Catholic understanding, furthermore, these rights do not necessitate the privatization either of religion or, more generally, of substantive conceptions of the human good. On the contrary, they presuppose a particular understanding of this good.<sup>119</sup>

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<sup>117</sup> Canavan, *supra* note 22, at 131.

<sup>118</sup> Paul Marshall, *Two Types of Rights*, 25 *Can. J. Pol. Sci.* 661, 674 (1992).

<sup>119</sup> For a better understanding of the gulf separating the Catholic and liberal understandings of the institutions and practices constitutive of the free society, see Kenneth L. Grasso, *Man, Society, and the State: A Catholic Perspective*, in *Caesar's Coin Revisited: Christians and the Limits of Government* 79 (Michael Cromartie ed., 1996). On the specific question of the Catholic and the liberal understandings of religious freedom, see Robert P. Hunt, *Catholicism, Liberalism, and Religious Liberty*, in *A Moral Enterprise: Politics, Reason, and the Human Good* 143 (Kenneth L. Grasso & Robert P. Hunt eds., 2002).

Catholic social thought thus points us toward a more balanced form of rights discourse, a form of rights discourse that, as Elshtain observes, provides for the claims of "individuality ... together with the claims of social obligation."<sup>120</sup> In contrast to those spawned by liberalism, therefore, the rights doctrine toward which Catholic social thought points is not corrosive of solidaristic institutions; the rights it affirms do not undermine the ability of these institutions to maintain their distinctive characters, impinge upon their legitimate autonomy, [\*256] or subvert the social ecology which is a precondition of their flourishing. It does not require the reconstruction of all social institutions along atomist lines.

It also points toward an approach to the whole question of the limits of state power that avoids placing individual rights on a collision course with limited government. As we have seen, Catholicism's thinking on rights is embedded in a broader context that includes a pluralist conception of the proper organization of social life and a complex theory of the state. Precisely because society is not a collection of atomized individuals, but a *communitatis communitatum*, the state does not bear the primary responsibility for protecting and promoting all important social goods. Rather, government's mandate here is limited to the protection of the limited ensemble of goods constitutive of the public order and welfare. What this means is that the limits of state power are not merely a function of the rights of individual and corporate persons. They are also, in John Paul II's formulation, "inherent in the nature of the State," in the limited nature of "the tasks proper to the State" and in the overall economy of social life.<sup>121</sup>

The state's mission, therefore, does not extend to a responsibility for protecting and promoting the whole order of human rights; it possesses no open-ended mandate to vindicate the full range of rights proper to the human person. On the contrary, government's responsibilities vis-a-vis the order of human rights are limited because government's overall role in the economy of social life is a limited one; indeed, it shares the responsibility for protecting and promoting this order with a wide array of diverse groups and institutions. As John Paul II writes, for example, although the state plays an essential role in "overseeing and directing the exercise of human rights in the economic sector," it is to be noted that the "primary responsibility" for the protection and promotion of human rights in this area "belongs not to the State but to individuals and to the various groups and associations which make up society."<sup>122</sup>

If, in contrast to liberalism, Catholic social thought's commitment to limited government is not in tension with its commitment to [\*257] individual rights, this is not only because of its different understanding of the content of the order of rights but because of its less open-ended conception of the role of government. Government is limited not merely from "without" by rights, as it were, but from "within" by the limited character of the functions proper to it as a distinctive social institution. In a constitutional order inspired by Catholic social thought, government would be limited not merely by guarantees of individual rights but by provisions specifying the powers proper to the state.

## Conclusion

The ontology of social life that emerges in Catholic social thought lays the groundwork for a way of thinking and talking about rights that is decisively richer than the flawed and corrosive rights doctrines that dominate the contemporary scene. It offers us the possibility of a theory of rights that is not only fully consistent with the principle of limited government, but which reintegrates our thinking about rights with the demands of social life and with the demands of the full range of diverse institutions in which our nature as social beings finds expression.

Now, it is certainly true that in and of itself such a new way of thinking about rights will neither automatically solve the many problems that perplex us nor give us a detailed political program affording a quick and easy resolution of the policy debates that dominate our public life. What it does offer us is the possibility of a far wiser public argument

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<sup>120</sup> Elshtain, *supra* note 42, at 105 (emphasis removed).

<sup>121</sup> Centesimus Annus, *supra* note 47, PP 11, 48. Indeed, some of the rights affirmed by Catholic social thought are a function of the limited nature of government's jurisdiction. See John Courtney Murray, *Religious Liberty: Catholic Struggles with Pluralism* 229-44 (J. Leon Hooper, S.J. ed., 1993); Kenneth L. Grasso, John Courtney Murray, "the Juridical State," and the Catholic Theory of Religious Freedom, 33 *Pol. Sci. Reviewer* 1 (2004).

<sup>122</sup> Centesimus Annus, *supra* note 47, P 48.

than is possible in a civil conversation dominated by the type of rights discourse we see today. In the convoluted and imperfect world of politics, I would suggest, this is no small accomplishment.

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