

# Response: The Irony of It All

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In this response, I will bring to light a fascinating, and in some ways hopeful, irony embedded in the preceding essays on human rights, when they are taken together. Unfortunately, I will have to forego saying anything about the many other interesting and important points raised—for example, Michael Zuckert’s observations concerning the origins of our egalitarian concept of dignity.

In his very helpful and informative essay, “The Clash of Universalisms: Religious and Secular in Human Rights,” Abdulaziz Sachedina describes and comments on Muslim criticisms of the Universal Declaration of Human Rights. Muslim critics of the Declaration see it as an expression of Western secularism, the tell-tale sign for them being the fact that the Declaration offers no religious support for the recognition of human rights. This silence is seen by the Muslim critics as reflecting the strategy the West adopted for coping with religious pluralism upon the fragmentation of Christianity, namely, to secularize public life by privatizing religion and keeping it out of the public sphere. Muslim critics point to the fact that no Muslims who were capable of articulating a comprehensive Muslim defense of human rights were included in the discussions that led to the writing of the document. And they see their interpretation of the Declaration as an expression of Western secularism as confirmed by those vocal defenders of human rights in the West who argue that religion must be kept out of discussions about human rights.

It should be added that the interpretation of the Declaration as an expression of Western secularism is by no means peculiar to Muslim critics of the Declaration. The same interpretation is common in the West. The dominant story told in the West about the emergence of the idea of human rights is that it is a child of the secular Enlightenment.

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With all this in mind, it is easy to see why pressure by the West on the Muslim world to accept the Declaration would be seen by many Muslims as anti-religious, ethnocentric, and hegemonic. Sachedina argues that traditional Islam will accept human rights only if it becomes convinced that Islam offers a religious foundation for human rights. Thus when secularists such as Michael Ignatieff express their opposition to all attempts to provide a religious basis for human rights, insisting that we should content ourselves with a purely pragmatic defense, they impede rather than advance the cause of human rights in the Muslim world.

Though Sachedina presents this analysis and critique as typical of Muslim critics of the Declaration, my impression is that, up to this point, he by and large agrees with the critics. Where he parts ways is in his conviction that human rights are fundamental, and in his conviction that Islam has the resources for constructing a religious foundation for human rights. He suggests that in the past Islam has already done some of this. His plea to the secularists of the West is thus that if they are truly serious about human rights, they will cease attempting to impose their secular perspective on Islam and will instead welcome a genuine dialogue concerning foundations, a dialogue in which religious traditions are allowed to speak in their own voices. Sachedina anticipates that, from such a dialogue, a considerable overlapping consensus on human rights will emerge. Such a consensus cannot emerge if the anti-religious secularists of the West continue their opposition to the articulation of a religious basis for human rights.

Though I very much agree with Sachedina that if the cause for human rights is tied up with the secularism of the West, it will go nowhere in other parts of the world, my own response to the Muslim critique is somewhat different from his. First, we now know that the story that says the idea of human rights was born of the secular Enlightenment, and carries the DNA of individualism in its bones and blood, is demonstrably false. The medieval historian Brian Tierney, in his book *The Idea of Natural Rights*, has shown beyond the shadow of a doubt that the twelfth-century canon lawyers had formed and were already employing the idea.<sup>1</sup> In the West, the idea of natural human rights emerged from the womb of Christendom, not from the (supposedly secular) Enlightenment. We will have to leave it to scholars of Islam, such as Sachedina, to tell us whether the idea was also formed and employed by medieval Islamic lawyers and theorists.

Second, I think the Muslim critics are mistaken in their analysis of the role of religion in liberal democracy—though there are plenty of people in the West who offer the same analysis. The founding idea behind liberal democracy, certainly in its American version, was not that religion must be kept out of public life and that anti-religious secularism should take its place as the orienting ideology for our life together. The idea was rather that the state is not to inhibit citizens from practicing their various religions and is not

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<sup>1</sup> See Brian Tierney, *The Idea of Natural Rights* (Grand Rapids: Eerdmans, 2001).

to establish any religion (or anti-religious movement). A great deal of religion in public life is compatible with these restrictions. If it is true that anti-religious secularism shapes public life in the West—my own view is that this is too crude an analysis—it is not because of the structure of a liberal democratic polity. Life in the West has been shaped for more than a millennium by the vague principle that “spiritual” matters are to be distinguished from “temporal” matters, with the authority of the church being confined to the former and the authority of the state to the latter. Apparently a somewhat similar distinction between spiritual matters and temporal matters has been operative in parts of Islam for some centuries.

Third, in their criticism of the Universal Declaration of Human Rights as foundationless, Muslim critics are mistaken. This Declaration, along with the other UN declarations on human rights, is not a foundationless affirmation of human rights; the declarations do not, for example, base human rights on the pragmatic consideration that the practice of according certain rights to all human beings yields desirable social consequences. The declarations are all dignity-based documents; the dignity of each and every human being is cited as the foundation of human rights. It is true that no reason is given, in turn, for the claim that each and every human being has dignity. But given their silence on that point, the declarations are open to any line of thought, religious or non-religious, that yields the conclusion that human beings have dignity. They are open to Muslim, Jewish, Buddhist, Christian, and Kantian arguments for human dignity.

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Thus, rather than seeing the declarations as offering a foundationless affirmation of human rights, we should see them in the opposite way: they cite human dignity as the foundation of human rights. And their affirmation of human dignity, in turn, is completely open to religious defenses of human dignity, including, then, Muslim defenses. They are not open to a purely pragmatic, anti-foundationalist defense such as Ignatieff offers. Ignatieff does not believe that human rights are founded in human dignity. He does not agree with the declarations on that point, or, to put it from the other side, the declarations exclude his position.

Jeffrie Murphy and Avishai Margalit both concede, in their essays, that it is possible to give a religious defense of human dignity; if it is the Abrahamic religions that are giving the defense, the claim will be that each and every human being has dignity because he or she was made in the image of God and is the object of God’s love. Margalit observes, about this defense, that it is by no means evident what the image of God might be. I think he is right; the idea has to be developed, not just mentioned. And in developing the idea, it will turn out that many of the traditional ways of thinking about the *imago dei* do not yield the conclusion that each and every human being has rights-grounding dignity. Margalit further suggests that close scrutiny of the Abrahamic

defense of human dignity reveals that what it claims, strictly speaking, is that God has dignity; the defense tacitly assumes that “there is nothing great about human beings.” Though Margalit’s claim here is true of many, perhaps most, Abrahamic defenses of human dignity, I myself think that the Abrahamic defense can be developed in such a way that it does not fall prey to this objection.<sup>2</sup>

Be that as it may, however, both Murphy and Margalit allow that a religious defense of human dignity along Abrahamic lines is possible. Murphy observes that “skeptical doubts can be raised against the belief in God,” but that, of course, does not gainsay the claim that the premises offered do yield the conclusion.

So what, then, is the status of non-religious defenses? (I will refrain from calling them “secular,” since, in this context, “secular” is too easily understood as meaning “anti-religious.”) The great majority of non-religious defenses of human dignity are *capacity* defenses; they point to some capacity possessed by human beings as that which imparts to human beings the relevant dignity. Kant thought the dignity-conferring capacity was the capacity for moral action, or perhaps the more elementary capacity for rational action—it is not entirely clear which of these he preferred. In his essay, Zuckert points out that John Locke thought the dignity-conferring capacity was the capacity for forming abstract and general ideas.

All capacity approaches suffer from similar difficulties, difficulties that are, to my mind, insuperable. The most decisive seems to me one that both Murphy and Margalit note: no matter what capacity one singles out as the dignity-conferring capacity, there will be human beings who do not possess that capacity—human beings suffering from dementia, human beings severely impaired mentally from childbirth, and so forth. Such human beings are not capable, for example, of forming abstract and general ideas.<sup>3</sup> Zuckert takes note of Locke’s very helpful distinction between persons and human beings. The capacities approach can at best offer an account of the dignity of human persons; it cannot offer an account of the dignity of those human beings who are not capable of functioning as persons.<sup>4</sup>

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<sup>2</sup> In my forthcoming book, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008), I develop a version of the Abrahamic defense that, I think, does not fall prey to this objection.

<sup>3</sup> Zuckert apparently does not see this as an objection to Locke’s version of the capacities approach. He does observe that Locke’s approach at best grounds negative rights—along, perhaps, with what Zuckert calls “proto-rights.”

<sup>4</sup> I discuss this point in detail in *Justice: Rights and Wrongs*. Alan Gewirth is well known for offering a defense of human rights that grounds human rights in capacities without appealing to the dignity that the possession of such capacities confers on those who possess them. I argue, in *Justice: Rights and Wrongs*, that Gewirth’s defense fares no better than do the other capacity approaches. The “victim defense” of human rights that Margalit articulates is neither a dignity defense nor a capacities defense. I very much share Margalit’s reasons for rejecting this defense. The other defense that he cites, the deification defense, is a capacities approach.

The irony I had in mind is now before us: Muslim critics attack the Universal Declaration of Human Rights as a manifestation of the hostility of Western secularism towards all foundations for human rights, in particular, religious foundations. The truth is that the Declaration is not a foundationless affirmation of human rights; it grounds human rights in human dignity. And whereas it is possible for the Abrahamic religions, at least, to offer in turn an argument for the claim that all human beings have dignity, it turns out that all secular attempts to support that claim have failed.

These are not only my own views on the matter; they are also apparently Murphy's and Margalit's views. And it is my impression that these views are becoming more and more widespread: whereas it is possible to articulate religious reasons for affirming human dignity, and thus for human rights, all non-religious attempts to do so have failed.

If this is correct, and if Sachedina is correct that the current rejection of the Declaration by Muslim critics is due more to historical contingencies than to anything intrinsic to Islam, then, over the long haul, it may well be that the future of human rights is more imperiled by the secularist rejection of religious foundations than it is by Islamic critiques of the Declaration. Sachedina's call for open conversations among different traditions about religious reasons for affirming human dignity and human rights, his hope that an overlapping consensus will emerge from such conversations, and his suggestion, in particular, that within Islam there are important resources for affirming human dignity and rights all become extremely important.

Of course, it might in principle be the case that even if it is impossible to articulate a dignity-based approach to human rights without appealing to religious reasons, there might be good secular reasons of a pragmatic, consequentialist sort for the rule-governed practice of according certain rights to each and every human being. A consequentialist approach is the one Ignatieff favors. The social benefit he cites is that such a practice will "help people to help themselves"; it will "protect their agency." And protecting human agency "necessarily requires us to protect all individuals' right to choose the life they see fit to lead."<sup>5</sup>

My response is three-fold. At best, Ignatieff's consequentialist account is a defense of negative human rights; it gives no support to the many positive human rights that the various rights declarations cite. Second, Ignatieff cites as his main objection to religious foundations for human rights that those foundations do not enjoy a consensus, and hence are controversial; surely the same is true for the social good that he sees as

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<sup>5</sup> Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001) 57. The word "right" in that last sentence is suspicious. On Ignatieff's account, all rights are socially conferred rights; there is no such thing as instituting practices and laws so as to protect rights. What he should have said is that protecting human agency requires conferring on everybody the right to choose the life they see fit to lead.

achieved by a human rights practice. Not everybody thinks that the sort of autonomy he favors is a good thing. And third, suppose that a person who is contemplating violating someone's rights weighs the goods that will be achieved by this violation and the evils that will ensue from endangering the human rights practice, and then concludes that, since he will commit his violation in secret, the practice will suffer no harm whatsoever, and proceeds to the violation. So far as I can see, this is eminently correct consequentialist thinking.

...why *should I treat this human being as a human being?*

In closing, let me make a few observations about the moves that Margalit and Murphy make at this point in the argument. The conclusion to which Margalit finds himself led is that “the trait by virtue of which humans deserve moral respect is the trait of being human.” That conclusion makes it sound as if it is the property of being human that confers the relevant dignity on those who possess it. If that were what Margalit meant, we would want to know what it is about being human that confers that dignity, since to be human is, after all, a complex matter. And why doesn't being a chimpanzee confer just as much dignity on those beings that have that property? But that is quite clearly not what Margalit has in mind. He says this: “That all human beings deserve moral consideration is constitutive of what morality is. Morality, above all, provides an explication of what it is to treat humans as humans.”

Given that human rights are part of morality, I understand this to mean that to treat some being in accord with the standard schedule of so-called human rights just is (part of what it is) to treat that being as a human being, and that not to treat that being that way just is (part of what it is) not to treat that being as a human being. But, unless I am missing something here, that leaves open the question, *why* should I treat this human being *as a human being*? Why favor him with that mode of treatment? The answer may be forthcoming: because he is a human being. Well, yes. But consider an analogy. The thing I have in hand may be a work of art, but it does not follow that if I recognize that it is a work of art, I must, to be consistent, treat it as a work of art. It is open to me to think that, on this occasion, there are more important ways of treating it. Part of what goes into my decision to use it as a doorstep on this occasion, and not to treat it as a work of art, may be my view that it is an inferior work of art. I would never dream of using a Henry Moore sculpture as a doorstep.

Though Murphy has no defense to offer for human dignity, he nonetheless thinks it would be a serious mistake to discard the idea. Consider, he says, the horrible things that happened in the twentieth century when millions of people were treated as not having human dignity. To this he adds an interesting virtue argument. *Moral humility* is a virtue, and anyone who has that virtue will be very reluctant to conclude that some human being is mere scum, lacking the dignity that grounds human rights. In general, we do not know enough to make such judgments with any confidence, and we are not good enough to be entitled to make them.

Though it is not entirely clear to me, I suppose the point about not being good enough is that my judgment that the person over there is moral scum, and hence not worthy of being treated with respect, is a judgment that might apply to me also; though he may appear to be much worse than I am, deep down, my moral character may be as bad as his, possibly worse. The epistemological point is then related to this: we do not know enough to make reliable judgments about the inner moral character of a person, not even of ourselves.

Notice that Murphy assumes that human dignity is grounded in moral character. He says he does not know for sure whether every human being has a moral character that gives her dignity, but if she does have dignity, this is what gives it to her. This implies that if the moral character of some human being is completely corrupt, that human being has no rights. I presume it also implies that the better the moral character of a person, the better the treatment to which she has a right. But you and I are incapable of making any reliable judgments about moral character, so we should adopt the default procedure of regarding everybody as possessing the dignity of having a good moral character. Though the person before me gives the appearance of being moral scum, I should assume that she is in fact of good moral character and has the dignity that supervenes on that; I should treat her accordingly. If I fail to treat her as having that dignity, and she does in fact have it, I wrong her. And that I should not do. So I should play it safe.

Murphy's account of human dignity is interesting. Dignity is grounded not in capacities of some sort but in moral character, with character understood along the lines developed by Kant in *Religion within the Bounds of Reason*. His defense of the social practice of according rights to all human beings is likewise interesting. I had not previously thought of either this account of human dignity or this defense of according all human beings certain rights. So at present I confine myself to one comment: this account is, at best, an argument for acting on the assumption that those human beings who are persons have dignity and rights; the argument does not apply to those human beings who are not persons, since they have no moral character.

Let me return to the irony. It is ironic that Muslim critics should reject the human rights declarations for their supposed hostility to religious reasons for human rights since the declarations ground human rights in human dignity and only religious defenses for human dignity have proven successful. I think it is an intellectually fascinating irony. But I also think that, in important respects, it is a socially hopeful irony. For once it becomes clear to religious people, be they Muslim or other, that the UN declarations are not anti-religious, pragmatic, secular documents, but that they cite human dignity as the foundation of human rights and leave it open to religious traditions to offer their own defense of human dignity, then the possibility opens up of a genuine dialogue to which Islam would be welcomed as a full participant. It is the secular reading of the documents, the reading that holds that religious voice has no place in the conversation, that is untenable.