

HOW TO THINK THEOLOGICALLY ABOUT RIGHTS

STANLEY HAUERWAS

Gilbert T. Rowe Professor Emeritus of Divinity and Law, Duke University

A version of this article was originally published as the chapter “How to Think Theologically about Rights,” in Stanley Hauerwas, The Work of Theology (Grand Rapids, MI: Wm. B. Eerdmans, 2015), 191–207. The chapter is reprinted here by permission of the publisher (all rights reserved) and the author, with minor changes to accommodate the JLR’s style, and with the author’s expanded conclusion.

ABSTRACT

In this essay I offer a nuanced account of my critique of “rights” language. I argue that my primary concern is not to discount the usefulness of rights language in contemporary expressions of legal and moral duties. Rather my concern is with the overreliance on rights language such that it guards a society from acknowledging prior claims to a common good. Rights language has become too powerful when appeals to rights threatens to replace first-order moral descriptions in a manner that makes us less able to make the moral discriminations that we depend upon to be morally wise. Finally, I turn to Simone Weil and Rowan Williams, who both turn to the body to suggest a more constructive way for thinking about rights as attending to the body, which forces us to attend to contingency. Human contingency can help us resist abstractions that fail to properly account for and address bodily needs.

KEYWORDS: Christianity, rights, duty, morals

WHAT IS RIGHT ABOUT RIGHTS

I am usually identified with those who have reservations about the language of rights. That I am so identified is not without reason, but allow me to begin by saying that in no way do I want to discount how the appeal to rights has been a means to protect those who have no protection in the world in which we find ourselves. For many, claims to “rights” express the hope that something like a human community exists, making possible declarations that all people deserve to have their dignity recognized. From a theological perspective, rights so understood can be regarded as an expression of the Christian eschatological hope that all people are to be ultimately united in common worship of God.

It is hard to understand how anyone, at least anyone who cares about human suffering, could possibly be against the use of “rights” language. Yet even this very positive account of rights as an expression of human dignity is not free of controversy.¹ For example, David Gushee suggests in his

1 Steven Pinker has called into question the appeal to dignity itself in his article, “The Stupidity of Dignity,” *The New Republic*, May 28, 2008, www.newrepublic.com/article/the-stupidity-dignity. For a well-argued defense of the appeal to dignity see Gilbert Meilaender, *Neither Beast nor God: The Dignity of the Human Person* (New York: New Atlantis Books, 2009). I am indebted to Brian Volck and Joel Shuman for reminding me of the controversy Pinker’s article occasioned. I have benefited from their yet unpublished paper, “Dignity and the Body: Reclaiming What Autonomy Ignores.”

book *The Sacredness of Human Life: Why an Ancient Biblical Vision Is Key to the World's Future* that human dignity functions simultaneously to ground the concepts of human rights as well as the content of specific rights.² John Milbank, however, has challenged the yoking of human dignity to human rights. Milbank acknowledges that one can understand how in the face of totalitarian suppression of human freedom and the brutal treatment of certain classes of human beings, human dignity and human rights were thought to be mutually implicated when in fact they represent two fundamentally opposed traditions of political and ethical thought. Human rights are correlative of the liberal political tradition embodied in the American Constitution, whereas human dignity derives largely from the Catholic tradition.³

Though I am sympathetic with Milbank's genealogy, I should like to think his account of the origins of rights language means that all appeals to rights do not carry the implications he finds so deleterious. I will have more to say about the questions of origins further on, but my primary purpose in this essay is to provide a more modest defense of right-making claims that can sustain the moral commitments associated with the acknowledgment of our mutual humanity. As a way to begin that effort, however, I need to revisit what I have said about rights in the past.

In her book *The Ethics of Human Rights: Contested Doctrinal and Moral Issues*, Esther Reed calls attention to my early reservations about appeals to human rights to sustain moral judgments and arguments. She provides an extensive quote from my essay titled "Rights, Duties, and Experimentation on Children." This was an essay originally written for a government committee charged with the duty to investigate the moral constraints on experimentation on children. That essay was later published in my book *Suffering Presence: Theological Reflections on Medicine, the Mentally Handicapped, and the Church*. I call attention to the essay's origin because, as I observe in the essay, given the charge before the committee, the language of "rights" would prove particularly attractive for those trying to develop general policies on matters such as experimentation on children. It turned out I was right that the committee would find it impossible to avoid using the language of rights to explain the moral possibility that children could be used as experimental subjects.

In an effort to summarize my reservations about rights, Reed provides this selective quote:

An appeal to rights cannot provide the kind of basic moral presuppositions needed for the social and political life of a good society. When rights are assumed to be basic there seems to be no way to avoid an arbitrariness in the list of alleged rights and/or how conflicts of rights can be adjudicated When rights are taken to be the fundamental moral reality we are encouraged to take an ultimately degrading perspective on society. No real society can exist when its citizens' only way of relating is in terms of noninterference. The language of "rights," especially as it is displayed by liberal political theory, encourages us to live as if we had no common interests or beliefs.⁴

Reed's summary quotation does not quite do justice to my worries about appeals to rights developed all too briefly in my testimony before the investigating committee. In particular I did not

2 David Gushee, *The Sacredness of Human Life: Why an Ancient Biblical Vision Is Key to the World's Future* (Grand Rapids: Wm. B. Eerdmans, 2013), 19–20.

3 John Milbank, "Dignity Rather than Right" (working paper, Centre of Law and Philosophy, University of Nottingham, 2013), <http://theologyphilosophycentre.co.uk/online-papers/>.

4 Esther Reed, *The Ethics of Human Rights: Contested Doctrinal and Moral Issues* (Waco, TX: Baylor University Press, 2007), 29, quoting Hauerwas, *Suffering Presence: Theological Reflections on Medicine, the Mentally Handicapped, and the Church* (Notre Dame, IN: University of Notre Dame Press, 1986), 130.

abjure all appeals to rights for moral argument, but argued that if rights were to be intelligible “they must be correlative to specific contexts and institutions we believe serve a common good. If families, for example, have rights they do so because such rights are the means to protect the goods we believe constitutive of the family.”⁵ I suggested that rights language is peculiarly relevant for adjudicating relations between strangers, but just to the extent rights serve that function the language of rights is inappropriate for determining the relationship between parents and their children. I also raised the problem of whether children possess the moral and psychological characteristics that allegedly right-bearing creatures must have to claim the rights due them.

I call attention to Reed’s identification of me as a critic of rights language because I assume that many regard me as a representative of those most modern of atheists, namely, those who do not believe in rights. I take it to be a mark of our times that a theologian may have worries about whether God exists, but we cannot call into question the status of rights. For as Reed suggests, the language of rights came into its own after World War II in response to the absence of any unifying political ideologies or religious belief systems necessary to bind the majority of individuals together. Rights are, therefore, as I suggested above, regarded as a source of ethical and political value that was and is capable of binding people together without violence. The language of rights became and remains the language of the high humanism many think necessary to sustain moral peace in a fragmented world.⁶ To be a critic of rights, therefore, is close to putting oneself on the side of terrorism.

In fact Reed calls attention to the 1987 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment as a crucial example of the importance of the development of rights language. If we did not have the language of rights we might, it seems, lack the necessary moral presuppositions for the condemnation of torture. She notes that governmental and nongovernmental agencies make frequent appeals to this Convention in support of political prisoners and their families around the globe. Accordingly rights as ideals and principles form a basis for liberal democracies that have assumed a value and authority without precedent in the history of the world.⁷ It is hard to imagine why anyone, particularly someone like me who is committed to non-violence, would have any hesitations concerning appeals to rights.

Yet I do have reservations, which interestingly enough involve how one thinks about torture. I will develop my worries below, but I can put the matter succinctly: if you need a theory of rights to know what torture is, or if you think you need rights to ground your judgment that torture is morally wrong, then something has clearly gone wrong with your moral sensibilities. What follows is my attempt to defend that remark, but before doing so I at least need to make clear that I have not called into question all appeals to rights. In fact, in my Oxford Amnesty International Lecture in 2008 I acknowledged that I have no difficulty with “rights” claims that express social and legal

5 Hauerwas, *Suffering Presence*, 130. Of course one of the crucial questions is whether a family can have rights. I have always thought John Rawls’s understanding of the family has not received the attention it deserves because Rawls with his usual clarity and honesty saw quite clearly that the family “may be a barrier to equal chances between individuals” in a well-ordered society shaped by the two principles of justice. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 301. That such is the case does not mean that right-making claims are antithetical to a commitment to the family, but neither can it be denied that there may be a tension between claims to have rights and how the moral status of the family is understood.

6 Reed, *The Ethics of Human Rights*, 23.

7 *Ibid.*, 22.

duties.⁸ Indeed I assume the law is rightly regarded as the source and proper context for claims of rights because the law expresses well-established social and political expectations.⁹

While I find very interesting the current debates about how the history of rights is best understood, my worry about rights language is not whether that language began in the Enlightenment or in earlier canon law, but rather what that language is now doing.¹⁰ In that respect I do have a number of worries about appeals to rights that I will try to make explicit. These worries may be due to what I can only regard as the overuse of appeals to rights that may be due to liberal political and social habits, but that is not my primary worry. Rather my primary concern is that rights language has become too powerful. By that I mean that appeals to rights threaten to replace first-order moral descriptions in a manner that makes us less able to make the moral discriminations that we depend upon to be morally wise.

I cannot hope to give an adequate philosophical or theological justification concerning my worries about rights language, but I at least need to try to provide an account of what I take to be my primary concerns. Yet I feel the need to begin by naming the difficulties I see with claims about rights in general. By doing so I hope to show—or at least suggest—how my worries about rights are interrelated. So what follows is a broadside critique of what I can only regard as the overdependence on rights language in our culture. Once that task is completed I hope to defend how right-making claims can and should be used by attending to the work of Simone Weil and Rowan Williams.

WHAT IS WRONG ABOUT RIGHTS

I can illustrate what I mean when suggesting that rights language has become too powerful by calling attention to a remark of someone whom I believe was in the Department of Justice during the civil rights campaign in Mississippi. Several civil rights workers had been killed. The spokesman for the Department of Justice was appropriately outraged. But in order to express his outrage he resorted to the moral vocabulary in which I assume he most felt at home. He said that those who had been killed had had their rights violated. When rights become a more basic moral description than murder, you have an indication that your language has gone on a holiday.

8 This lecture, which was titled “Pentecost: Learning the Languages of Peace,” can be found in my book, *War and the American Difference: Theological Reflections on Violence and National Identity* (Grand Rapids, MI: Baker Books, 2011), 117–34. The observation about rights is on page 122. I am, of course, aware that Nicholas Wolterstorff has argued that rights cannot be grounded in duties. I will not, however, address his argument directly because I am not sure why rights need a “grounding” in the first place. It is not clear to me also if what I mean by a duty is what Wolterstorff means by obligation. See Wolterstorff, *Justice: Rights and Wrongs* (Princeton, NJ: Princeton University Press, 2008), 264–84.

9 I must acknowledge, however, that given Wolterstorff’s distinction between right-order accounts of rights and inherent rights I remain firmly in the former category. To explore that distinction as well as to defend a right-order position would make it impossible for me to ever get around to my worries about rights. See Wolterstorff, *Justice: Rights and Wrongs*, 21–43. For an extremely informative, at least informative for me, account of my interactions with the law see John Inazu, special editor, “Theological Argument in Law: Engaging with Stanley Hauerwas,” *Law and Contemporary Problems* 75, no. 4 (2012). I am indebted to the authors of the essays that make up this issue, and, in particular, I owe John Inazu much for planning the conference in which the papers were delivered. All the essays are interesting, but I think many would find the essays by Inazu and Stephen Carter relevant to the central issues at the heart of *The Work of Theology*. I responded to the essays in *Law and Contemporary Problems* in an essay titled “Hauerwas on ‘Hauerwas and the Law’: Trying to Have Something to Say,” 233–51.

10 For a good overview of these debates see David Gushee, *The Sacredness of Human Life*, 214–59. John Milbank provides a spirited response to Wolterstorff’s genealogy of rights in his “Against Human Rights: Liberty in the Western Tradition,” *Oxford Journal of Law and Religion* 1, no. 1 (2012): 203–34.

Of course one cannot help but have some sympathy for the Department of Justice representative. He was using the most powerful language he knew to indicate what a horrible moral crime had been committed. Yet the very appeal to the violation of rights as the fundamental moral description may indicate a profound worry about such a morality. For if confidence in the language of rights is lost it is not clear what the alternative to nihilism would be.

I worry, therefore, that for no doubt many reasons some are trying to make the language of rights do more work than it can do. Not very long ago one of the fundamental issues that characterized that strange activity called meta-ethics was whether “right” or “good” was the primary ethical notion on which all other ethical judgments were to be justified. That fruitless debate was, of course, an attempt to choose between Mill and Kant on strictly logical grounds. The challenge to that way of understanding ethics was represented by philosophers such as Bernard Williams, Iris Murdoch, Philippa Foot, Alasdair MacIntyre, and Raimond Gaita, who directed attention to words such as “kindness,” “honesty,” “gentleness” as descriptions at least as—if not more—important than “big words” such as “right” and “good.” I am trying to make a similar point about rights.

Not unrelated to the overdetermination of rights language in our current moral vocabulary is my worry that once the language of inalienable rights is introduced there is no way to control their multiplication. Once rights are divorced from the practices that they depend upon for their intelligibility, they multiply faster than rabbits. I may well think I have a right to my body, but it is not clear how that claim can be commensurate with a people who think suicide is wrong. If I have a right to my body does that mean, as some seem to think, that I have a right to die?

Not only does the unlimited scope of rights language seem uncontrollable once the cat of inalienable rights is let out of the bag, but there is also no way it seems to adjudicate mutually exclusive right claims. The assumption that I have a right to my body is not very different from someone who thinks they have an unlimited right to their money. The moral life conceived primarily in terms of rights turns out to produce people who end up shouting at one another by claiming that their rights have been violated.

John Milbank observes, for example, if rights for women only mean that women are to receive their respective shares of *ius* in relation to men and children then the notion of women’s right as self-possession can rebound to further oppression of women. For example, if only women have “rights” over the fetus, Milbank suggests, then “men as men will naturally exercise their implied equivalent rights to have nothing to do with childbearing or the nurture of children.”¹¹

My other concern about “rights” language is the moral psychology that is often presupposed by those who use that language. It was not by accident that I raised this issue when testifying before a committee charged with assessing the legitimacy of experimentation on children. In *A Theory of Justice* John Rawls had admirably acknowledged that, at least in relation to animals, his account of justice did not require that those lacking a capacity for a sense of justice were owed strict justice.¹² Rawls is clearly making a point about his understanding of justice, but many draw a similar conclusion about the capacity that must be present in order to claim rights.

Questions concerning the moral psychology that is necessary to claim rights are particularly important for how one thinks about the morality of abortion. If the “fetus” lacks the characteristics necessary to be a “person” and is, therefore, not capable of being a rights-bearer, does that mean that abortion does not need to be justified? Or even more radical, if the fetus lacks the capacity to

¹¹ Milbank, “Against Human Rights,” 29.

¹² Rawls, *A Theory of Justice*, 512.

claim rights, do we need the language of abortion at all? “Termination of pregnancy” is a description that seems perfectly adequate if the fetus has no rights. Of course “termination of pregnancy” suggests that this is purely a “medical procedure” that raises no moral questions.

Finally I worry that the language of rights has not been thought through theologically. In particular it is not clear what the implication of the language of rights has for our relationship to God. Rights seem to suggest we may well have a standing over against God that betrays what it may mean to be a creature. Such a stance may not be without theological justification, but it surely demands more reflection than it has been given. It is to Nicholas Wolterstorff’s great credit that he has addressed this issue straight on by arguing that the *imago Dei* entails the claim that because we are loved by God we have a bestowed worth that grounds our claim to have rights, even if we seem to lack the capacity for such a claim.¹³ Wolterstorff may well be right that no purely secular account of rights is possible, but I find his correlative claim, namely, that God has rights, to be an odd claim.¹⁴

Such is my bill of particulars against the language of rights. I need to emphasize again that I am not calling into question all appeals to rights. There is no question that claims about human rights have served to challenge forms of human oppression. David Gushee is surely right to suggest that Christians should celebrate recent advances in international human rights law in which the “smallest” individual has been given protection from the “greatest” ruler.¹⁵ Yet even that achievement is not without problems because it is not clear that a claim to have a right makes sense without a mechanism that can enforce that claim.

SIMONE WEIL ON RIGHTS

I described the above as a broadside attack on rights. In order to defend that broadside I want to call attention to Simone Weil’s account of rights. In particular I want to direct attention to a set of her remarks about rights in her remarkable essay “Human Personality.” This essay, like all her work, was published after her death in 1950, but it seems to have been written in 1943. It now appears in her *Selected Essays: 1934–1943*.¹⁶ She begins the essay by observing that something is amiss with the vocabulary of personalism just to the extent that what is sacred in each of us is not our personhood, but that we are who we are and not someone else.¹⁷ What makes us and others sacred is not our human personalities, but everything about us, the whole of us, our arms, our thoughts, our eyes.

This understanding of the sacred character of our lives is the background that makes intelligible Weil’s remarks about rights that I think are particularly important. She says:

If you say to someone who has ears to hear: “What you are doing to me is not just,” you may touch and awaken at its source the spirit of attention and love. But it is not the same with words like “I have the right . . .” or ‘you have no right to . . .’ They invoke a latent war and awaken the spirit of contention. To place the notion of rights at the centre of social conflicts is to inhibit any possible impulse of charity of both sides.

Relying almost exclusively on this notion, it becomes impossible to keep one’s eye on the real problem. If someone tries to browbeat a farmer to sell his eggs at a moderate price, the farmer can say: “I have the right

13 Wolterstorff, *Justice: Rights and Wrongs*, 352–60.

14 *Ibid.*, 306.

15 Gushee, *The Sacredness of Human Life*, 376.

16 Simone Weil, *Selected Essays: 1934–1943*, trans. Richard Rees (London: Oxford University Press, 1962), 9–34.

17 *Ibid.*, 9.

to keep my eggs if I don't get a good enough price." But if a young girl is being forced into a brothel she will not talk about her rights. In such a situation the word would sound ludicrously inadequate. Thus it is that the social drama, which corresponds to the latter situation, is falsely assimilated, by the use of the word "rights," to the former one. Thanks to this word, what should have been a cry of protest from the depth of the heart has been turned into a shrill nagging of claims and counter-claims, which is both impure and unpractical.¹⁸

What I find particularly interesting about these remarks is Weil's examples. The farmer has every right not to sell his eggs. His claim to possess such a right depends on the thick network of relationships and habits that make him the farmer he is. He does not have to sell his eggs because his neighbors will understand why he refuses to sell at a reduced price. To claim his right not to sell is to locate the farmer in a network of relations and the narratives that give intelligibility to the farmer's practices. It is the very mediocrity, Weil's word, of the rights to which the farmer appeals that makes his declaration to have rights intelligible.

Yet the mediocre character of the appeal to rights by the farmer, according to Weil, is the reason that an appeal to rights by a young girl being forced into a brothel does not do justice to the seriousness of the wrong being done to her. It does not help, according to Weil, to try to raise the stakes by suggesting that her "personal rights" are being violated. Indeed to add the word "personal" to "rights" is only to make matters worse. It is not, Weil argues, her personality that is being violated but her very being.

Weil expands her remarks about the "personal" by suggesting that to add the language of "personal" to qualify rights only makes the cry of the oppressed even meaner than bargaining. It does so because it inflects the call of justice with the tone of envy. She observes that "to the dimmed understanding of our age" the claim that all should have an equal share of privilege does not seem odd. Yet the claim is both absurd and base, absurd because privilege is by definition a matter of inequality, and base because what is claimed to be worth having is not worth having. In fact, the kinds of people who formulate such claims are in a privileged position, which makes them presume they have a monopoly on the language of rights. They are the last people, therefore, who should say that privilege is unworthy to be desired.¹⁹

Weil is no defender of injustice. It is important to remember Weil's profound sympathy for those who work in factories. In fact she closely identified with those who worked at such tasks, even trying to join them in similar work. But she argued that to put in the mouth of the afflicted words she described as coming from the "vocabulary of middle values," words such as "democracy," "rights," and "personality," is to offer the afflicted that which can bring them no good and will inevitably do them much harm. It is the language of truth, beauty, justice, and compassion that they need—not the language of rights.²⁰

Weil's worry about the use of rights language by those she identifies as the "afflicted" is based on her judgment that the notion of rights is linked with notions of exchange and measured quantity. In short, the language of rights has a commercial ring that is evocative of law courts and arguments. Accordingly rights are colored with the tone of contention. Such a tone, however, if it is to be serious, must rely on force if a claim to rights is not to be laughed at. That rights depend on force is

18 Ibid., at 21. I am indebted to Rai Gaita for calling my attention to this passage in Weil.

19 Ibid., 22. If Weil seems to be operating in a Wittgensteinian key on these matters, that may well be the case, at least if Peter Winch is right. See his introduction to *Simone Weil, Lectures on Philosophy* (Cambridge: Cambridge University Press, 1978), 1–23. Winch makes some fascinating comparisons of Weil and Wittgenstein.

20 Weil, *Selected Essays*, 23–24.

but a reminder that rights are originally the creation of the Romans and, in particular, Roman property owners. It is important, moreover, to remember that the “property” the Roman owners owned was other human beings.²¹

Weil is not denying that rights have some moral standing. Rather her worry is that rights, which she identifies as being launched into the world in 1789, have proved unable to fulfill the role assigned to them. They have been unable to secure the sacredness of each human being, because the sacred can only be secured by the good. “This profound and childlike and unchanging expectation of good in the heart is not what is involved when we agitate for our rights.”²² There is, therefore, no guarantee for the protection of life against collectives unless the disposition of public life understands how life itself manifests a relation to the higher good.²³

What I find so compelling about Weil’s understanding of rights is her refusal to turn rights into abstractions. The language of rights has its place, but that place requires the display of thick human relationships. Weil begins her great book *The Need for Roots* by observing that “the notion of obligations comes before that of rights.”²⁴ Obligations come before rights because for a right to be effectual it cannot spring from the individual who possesses it. Rather the efficacy of a right depends on other people who consider themselves to be under certain obligations toward the one who claims the right. An obligation that goes unrecognized is still an obligation, but a right that is unrecognized by anyone is, Weil wryly observes, “not worth very much.”²⁵

Weil argues it is nonsense to say that we have rights and obligations as if those “possessions” have the same status. The relation between obligations and rights is that between object and subject, which means that a person considered in isolation only has duties, some of which will be duties to herself. A person left alone in the universe would have no rights, but she would still have obligations. She would have obligations because obligations, unlike rights, are independent of conditions in which they are expressed. By contrast, rights are always to be found related to certain conditions. That is what the revolutionaries of 1789 did not recognize, namely, they failed to see the contradiction entailed by their asserting their rights and yet at the same time wanting to postulate absolute principles. In effect they confused that which is eternal and unconditioned with that which is conditioned by facts.²⁶ From Weil’s perspective we have been paying the moral and political price for that confusion by trying to make rights do more than they are able to do.

For Weil, respect for another human being cannot be grounded in rights, but rather is a reflection of the obligations that make us human. The object of any obligation is the human being as such because the very reason such an obligation exists is because we are just that, namely, human beings. Such an obligation has no foundation, but is verified in the common consent found in our behavior toward one another. The recognition of such an obligation in particular cases can be expressed, to be sure, in a confused and imperfect way by what are called positive rights.²⁷ The recognition of such obligations, however, depends not on claims to possess rights but on the recognition of our common human needs.

The introduction of the language of “needs” makes clear that Weil and most defenders of rights in our time have radically different anthropologies. For Weil the “need for roots” is basic because

21 Ibid., 19–20.

22 Ibid., 10.

23 Ibid., 34.

24 Simone Weil, *The Need For Roots*, trans. Arthur Wills (New York: Harper and Row, 1952), 3.

25 Ibid.

26 Ibid., 4.

27 Ibid., 4–5.

as creatures destined for eternal life we will discover that destiny through needs as basic as order, liberty, obedience, responsibility, equality, hierarchism, honor, punishment, freedom of opinion, security, risk, private property, collective property, and truth. For Weil, the basic needs of our bodies create the condition that makes possible our being rooted in forms of life that makes respect for ourselves and the other.

From her perspective, therefore, the right to choose divorced from the rules that make life together possible can result in the loss of the enjoyment liberty should provide. That loss means people “must either seek refuge in irresponsibility, puerility, and indifference—a refuge where the most they can find is boredom—or feel themselves weighed down by responsibility at all times for fear of causing harm to others.”²⁸ As a consequence some may even, Weil suggests, conclude that liberty is not to be desired.

So concludes my account of Weil on rights. I have ended with her observation about the effect an overemphasis on the expression of rights as “freedom of choice” can have, because I fear she describes the lives of many in the world as we now find it. Of course one must be careful when making such claims. Whatever may be the pathologies that possess our lives it would surely be a mistake to attribute those pathologies exclusively to an overemphasis on rights. In fact, I suspect that for many the appeal to rights that has been at the heart of the call for the integration of African Americans into American life; the subsequent struggle of women to be recognized as full moral agents; and the gay and lesbian challenge to prejudices against them has provided for many a moral identity otherwise unavailable.

One cannot help but admire those who have migrated from one cause to another in the pursuit of securing the rights of those who have been unfairly treated—if not oppressed—in our society. They are people who have made the pursuit of rights a way of life. In a morally confused world, lives so constituted are very attractive. The problem, however, is that lives determined by the pursuit of rights require the constant pursuit of a cause. Such a pursuit may postpone the boredom Weil suggests can be the result of unlimited choice, but it is not clear that lives so conceived can have the staying power of a life well lived.

In that respect I find it quite interesting that some of the people I deeply admire, people like Jean Vanier, as far as I can determine, never use the language of rights. Vanier is committed to being with those who are said to be mentally disabled. You might think the language of rights would be the natural language he would use to defend and protect those with whom he lives. Yet he does not utilize that language. I suspect he does not use the language of rights because that language may prevent him from recognizing the full bodily reality of the human beings who share their lives with him.

RIGHTS AS THE EXPRESSION OF OUR NEED FOR BODILY COMMUNICATION

I want to conclude by elaborating on this last remark about the importance of the body for disciplining the language of rights. I do so partly because I am aware that Simone Weil is regarded by many as a brilliant but eccentric thinker. Yet I think her emphasis on the bodily needs that ground our regard for one another is crucial if the language of rights is to be appropriately used for helping us better understand the moral character of our lives. I have, I should like to think, a weighty ally in support of that claim, namely, Rowan Williams, who has argued in a manner quite similar to Weil

²⁸ *Ibid.*, 13.

that because our bodies are not reducible to being an object among other objects, due regard for the body is foundational for our recognition of the rights of others.²⁹

Williams develops this understanding of rights in response to MacIntyre's claim in *After Virtue* that human rights, like unicorns, simply do not exist.³⁰ Williams thinks MacIntyre is surely right that the standoff between rights and utility in our culture has resulted in a managerial account of political life in which "experts" are now given authority in a manner that inhibits the arguments we need to have to discover the goods in common. But Williams does not think that means all rights-talk is to be left behind exactly because rights is now one of the resources we have for challenging the assumption that the modern state can do what it pleases.

In defense of rights language Williams calls attention to the uneasy relationship of Christians with slavery. Slavery was not condemned in scripture, and the early church obviously included in the ranks of the church slaveowners as well as slaves. But the relationship between the slaveowner and the slave, Williams observes, was complicated by baptism. Because of baptism Christians could not view their bodies or the bodies of their fellow Christians as "property." Indeed the body became the medium of the meaning. For what it means for us to have a soul is that the body is "the medium in which the conscious subject communicates, and there is no communication without it."³¹

Sounding very much like Simone Weil, Williams argues that the recognition of a body as a human body is fundamental for the recognition of another's rights. It is so because to recognize the body of another as a human body, a body that roots us in life, is to recognize the body as a vehicle of communication.³² Though he does not reference Herbert McCabe, Williams's focus on the significance of the body is quite similar to Herbert McCabe's stress on the significance of the body to make communication possible. For example, McCabe observes that "it is because I have this sort of body, a human body living with a human life, that my communication can be linguistic. The human body is a source of communication."³³

I call attention to the similarity between Williams and McCabe because both insist that the body is not an instrument of communication, but rather the human body is intrinsically communicative. Accordingly ethics is but the study of human behavior as communication. Williams argues that this understanding of the communication that the body makes possible has the advantage of not grounding rights in accounts of human dignity in which dignity is associated with having certain capacities. Such accounts, as I observed above, cannot but have the result of excluding some from being regarded as deserving recognition because they lack the appropriate characteristics.³⁴

That the body as a human body is a system of communication that is by no means rational or even verbal, Williams argues, is basic for why we should want to speak of rights at all. For constitutive of the routine act of communication is the doctrine of our shared obedience to Christ based in

29 Rowan Williams, *Faith in the Public Square* (London: Bloomsbury, 2012), 152.

30 For a declaration about the nonexistence of rights, see Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 2007), 69. MacIntyre argues that rights and utility, which are thought to be the moral alternatives to an ethic of the virtues, are fictions that hide from agents that we lack an account of the rationality of our morality.

31 Williams, *Faith in the Public Square*, 152. In "Against Human Rights" John Milbank criticizes Williams for grounding rights on the idea we are our speaking bodies because to do so reproduces the liberal subject that assumes we own our body rather than receive our bodies as gifts. I do not think Williams makes that mistake, for no other reason than I do not think Williams is trying to "ground" the doctrine of rights at all.

32 Williams, *Faith in the Public Square*, 152–53.

33 Herbert McCabe, *Law, Love, and Language* (London: Continuum, 2003), 90–91.

34 Williams, *Faith in the Public Square*, 153.

our bodily nature. That doctrine affirms that the body of every person is related to its maker and savior before it is related to any human system of power. Accordingly we have an identity that cannot be taken over by any other person's will. This holds true, moreover, of those who lack the means to communicate with their body.³⁵

Williams, therefore, maintains that if he is right about the communicative character of our embodiment then it is the inviolability of the body that is the basis for thinking about rights. Rights do not belong only to the person who has a rational capacity, but rather rights can be attributed to any organism that can be recognized as a human body. This view of the body, moreover, draws on the Christian presumption that as communicative being a bearer of a message cannot be silenced. The dignity accorded to others is not in recognition that they may be better than they seem, but rather is in recognition that what they have to say may be a gift of God.³⁶

Williams argues, therefore, that the language of rights is not a language that lends itself to resolution in purely secular terms. For in secular terms the language of rights cannot help but become a supreme and noncontestable concept that overwhelms the concepts we need for communication. Appealing to Sabina Lovibond's use of Wittgensteinian-inspired arguments in her book *Realism and Imagination in Ethics*, Williams argues that there comes a point when argument comes to an end and we recognize that a level has been reached that is basic if we are to think at all. To speak of non-negotiable rights is the attempt to say that we have not chosen these commitments but rather they make our very ability to speak to one another possible.³⁷

Williams concludes that it is unlikely that the political and legal philosophy used to sustain the language of rights will converge with his theological framework for understanding rights. At the very least that means we should not presume that claims about inalienable rights have a firm foundation. As an alternative Williams suggests that the language of human rights should be regarded as an aspect of culture. Such a culture might be called the culture of dignity, indicating the outworking of a habit of accepting a wider acknowledgement of belonging.³⁸ For Williams the language of human rights becomes confused and possibly dangerous when it is divorced from the question of belonging and recognition. Those questions, moreover, cannot be explored in the abstract but must be explored in the concrete give-and-take between bodies rooted in particularistic histories and traditions.

FINAL CONFESSION OF A RIGHTS ATHEIST

I see no reasons, therefore, why Christians should refrain on a selective basis from using rights language as part of our moral toolkit. We do so, however, with modesty. For the appeal to rights depends on concrete practices that are more determinative than when right-making claims are used as ends in themselves. Rights, I think, are best understood as reminder claims to help us remember the thick moral relationships our bodies make possible and necessary.

I am, therefore, quite sympathetic with what John McGowan characterizes as a pragmatist account of rights in his book *Pragmatist Politics: Making the Case for Liberal Democracy*.³⁹

35 Ibid., 154.

36 Ibid., 156.

37 Ibid., 158.

38 Ibid., 165.

39 McGowan, *Pragmatist Politics: Making the Case for Liberal Democracy* (Minneapolis: University of Minnesota Press, 2012), 119–47.

According to McGowan, pragmatist rights pertain to our relationships with others and the ways the terms of those relationships are produced, made articulate, and enforced. He quotes Dewey, whose account of rights is, as one would expect it to be, against any need for a transcendental justification: “Right is only an abstract name for the multitude of concrete demands in action which others impress upon us, and of which we are obligated, if we would live, to take some account. Its authority is the exigency of their demands, the efficacy of their insistencies.”⁴⁰

Though he agrees with Dewey, McGowan worries that appeals to rights by conservatives as well as liberals too often result in a “rights inflation” that is used by conservatives to block social reforms or by liberals to increase the power of the state. Yet he thinks, “for better or worse,” we are stuck with the language of rights, which at best can indicate the permanent tension between claims of individuality and claims of the collective. What must be avoided, from McGowan’s perspective, is any attempt to provide epistemological foundational justifications of rights that avoids the political processes necessary to keeping rights in their place.⁴¹

McGowan suggests, therefore, that we best think of human rights in practice like a language. Rights emerge as a means of communication as we seek to coordinate action and establish relationships. That can be done, McGowan suggests, without having “something beneath it.” As a result, however, we should not expect rights to be the same in every society and politics. Rights necessarily reflect a people’s understanding of what constitutes a full and desirable human life. But because rights depend on historical processes that in different ways reflect what is thought to be a good life, they obviously differ from one time to the next as well as from place to place.⁴²

Like McGowan, I do not think, however, that the language of rights needs to be justified or grounded in some transcendental way. In particular I do not think they need to be justified theologically. If we do not need to justify or ground the use of a concept such as kindness for helping us name how Christians should live, why should it be assumed that an appeal to “rights” needs to be “grounded”? That would only be the case if rights are mistakenly assumed to be more basic than the kindness that should be constituent of the virtue of charity. The question is not: Can a Christian appeal to rights? Rather the question is whether our moral vocabulary is in good enough condition that such an appeal does not threaten to determine all we have to say. And that is all I have to say about rights.

40 Ibid., 120, quoting, John Dewey, *Human Nature and Conduct* (New York: The Modern Library, 1950), 326.

41 McGowan, *Pragmatist Politics*, 124–25.

42 Ibid., 127.