RIGHTS, DUTIES AND THE PROBLEM OF HUMILITY

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Abstract:
Tema humilitas dalam etika politik terbilang baru. Sejak Machiavelli tak pernah kerendahan hati menjadi suatu elaborasi filsafat etika politik. Sebab karakter kerinduan opini penguasa atau yang bertanggung jawab atas tata hidup bersama selalu dalam bingkai jalan pikiran kesuksesan. Setiap kegagalan adalah kenaifan. Pengakuan atas kegagalan harus dijalankan dengan suatu strategi yang tidak boleh memalukan. Artikel ini menganalisis tema-tema yang sangat penting dalam lapangan filsafat etika politik: hak, kewajiban, dan kerendahan hati. Pembahasannya merujuk kepada kontribusi filosofis dan *social teaching of the Church*, buah refleksi Romo Ernest Fortin (seorang assumpsionist) yang mengajar filsafat dan teologi selama kurang lebih empat puluhan tahun di *Assumption College* dan *Theological Department dari Boston College*, USA. Artikel ini sedianya dimaksudkan untuk buku *Gladly to Learn and Gladly to Teach: Essays on Religion and Political Philosophy in Honor of Ernest Fortin, A.A.*, edited by Michael P. Foley and Douglas Kries, Lexington Books, 2002. Penerbit memberikan ijin resmi untuk dipublikasikan di *Studia* ini. Problem humilitas dalam etika politik sangat krusial. Jika problem humilitas dipandang sepele, aktivitas politik akan mudah terjerat pada pengedepanan *self-interest* penguasa dan pembelakangan kepentingan umum warga.

Keywords: Rights, duties, humiliy, human nature, Ernest Fortin

It was in Rome, about eight years ago, that I first heard Ernest Fortin's name used as an adjective. In a discussion without reference to him up to that point, I obliquely suggested that there *might* be a difference between "natural law" and "human rights." Whereupon my interlocutor said, "I don't know. This is beginning to sound very Fortinesque." Though said in good humor and without rancor, it was intended as a criticism. Such critics deny Fortin's claim that:

> The passage from natural law to natural rights and later (once "nature" had fallen into disrepute) to "human" rights represents a major shift, indeed, *the* paradigm shift in our understanding of justice and moral phenomena generally.[1]

1. Ernest L. Fortin, "Human Rights and the Common Good," in Human Rights, Virtue, and the Common Good: Untimely Meditations on Religion and Politics, vol.III of Ernest L. Fortin: Collected Essays, ed. Brian Benestad (Lanham: Rowman and Littlefield, 1996), p. 20.

Of course it is widely denied that such a paradigm shift has occurred. For many today, human rights are so self–evidently true and indispensable to all moral discourse, that to question them seems counterintuitive. As it becomes increasingly difficult even to conceive of a moral discussion not presented in terms of rights, it is presumed that all previous moral thinkers must have been thinking of rights regardless of what they actually said. Emblematic of this trend is a recent *Human Rights Reader* offering selections from "The Bible to the Present." In the editor's view even the decalogue is "implicitly" making rights claims despite the fact that it is cast in the language of duties.[2] By contrast, Ernest Fortin says that "natural rights are totally foreign to the literature of the premodern period," and thus one looks in vain for any mention of rights in the Bible.[3] If Fortin is correct, and a major paradigm shift has occurred, then the differences between the two views on either side of the shift cannot be understood if one assumes that rights language is merely the modern idiom of an earlier discussion about duties and natural law.

Though I am convinced that many of Fortin's critics have either misunderstood or misinterpreted his views on human rights and the common good, I offer here neither a summary nor a defense of his position. Rather, I offer some reasons why appeals to human rights are attractive and why critiques such as Fortin's are received with skepticism. I then discuss the relation between duties, humility, and gratitude. I do not claim to resolve any of the underlying issues, but it is hoped that the questions raised will encourage some to read Ernest Fortin's work for the first time and encourage others to reread his work more unarmed than in the past.

1. Rights

A hallmark of modern political theory and discourse is its ubiquitous appeal to natural or human rights. To take only three prominent examples, the foundational documents of the American and French revolutions, and of the United Nations, all appeal to natural or human rights. The United States Declaration of Independence (1776) claims that "all men are endowed by their creator with certain unalienable rights." The French Declaration of the Rights of Man and the Citizen (1789), influ-

2. Micheline R. Ishay, ed., The Human Rights Reader: Major Political Essays, Speeches, and Documents from the Bible to the Present, (New York: Routledge, 1997). In an introduction (p. xv) Ishay writes: "The Bible contains a variety of injunctions (formulated in terms of duties) which correspond to secular conceptions of rights for others. For example, 'thou shalt not kill' implicitly refers to the right to secure one's life, just as 'thou shalt not steal' implies a right to property." With this approach one could claim that almost any moral statement in the history of humanity was "implicitly" a rights claim.

3. Fortin, "Sacred and Inviolable: Rerum Novarum and Natural Rights," in Human Rights, Virtue, and the Common Good: Untimely Meditations on Religion and Politics, vol. III of Ernest L. Fortin: Collected Essays, p. 202. This essay is Fortin's most comprehensive treatment of the difference between natural law and human rights.

enced by the American Declaration, appeals to "the natural, unalienable, and sacred rights of man." In the wake of World War II the United Nations, explicitly intending to codify the lessons of the Nuremberg and Tokyo war crimes tribunals, approved a Universal Declaration of Human Rights (1948) that appealed to "the equal and inalienable rights of all members of the human family." Only when such rights were universally recognized, it was argued, could we prevent a repetition of the genocide that had resulted from their denial. The suave power of such rights claims is derived in part from the assertion that the mere fact that one is a human being is sufficient to warrant recognition as a bearer of rights. Because such rights are conditioned on nothing other than membership in the human species, they have been called "human" rights; because the species is prior to and transcends particular circumstances, they have been called "universal." Thus the logic of a universal declaration is that such rights are not modified in light of particular circumstances; rather the particular circumstances must be modified to respect the universal rights in question. Furthermore, by recognizing such rights the sovereign governments represented in the United Nations were simultaneously recognizing the existence of a unique kind of claim that relativized or limited their own claims of sovereignty. The recognition of such rights and the hope of their eventual codification in positive law were seen by many at the time as the promising culmination of a process begun two centuries before. Since the founding of the United Nations, the term "human rights" has gradually replaced the earlier "natural rights," though most consider this change more terminological and rhetorical than theoretical.[4] Although there are important differences between natural rights and human rights, they are not crucial to the argument advanced here.

Regardless of the term used, both human and natural rights are understood by their defenders as absolute, inalienable, ultimate, and universal claims. When understood as natural rights, they are seen as pre–political and grounded by an appeal to a state of nature; when understood as human rights, they are seen as trans–political and grounded by an appeal to human dignity. When political liberalism was still a new and dangerous theory, natural rights were defended as conclusions *to* which one argued. Today, for better or worse, we are all to some extent political liberals, even the most conservative among us. As a result human rights now tend to be posited as self–evident first principles *from* which one argues. In both cases, however, rights are considered as fundamental and duties as derivative.[5] It was the latter

4. John Finnis holds this position. Fortin and others see an important theoretical shift when "rights" (plural) replaces "natural law" or "natural right" (singular). It is interesting to note that of these three foundational documents, only the most recent, the UN Declaration of Human Rights, explicitly invokes equality and makes no justificatory reference to nature. As close as the Universal Declaration of Human Rights comes to appealing to nature is in Article 16, sec. 3: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." As for justifying an appeal to rights, the Declaration repeats in its preamble the claim from the UN Charter (1945), that "faith in fundamental human rights" is being reaffirmed.

5. See Leo Strauss, "Progress or Return? The Contemporary Crisis in Western Civilization," in An Introduction to Political Philosophy: Ten Essay by Leo Strauss, ed. Hilail Gildin (Detroit: Wayne State University Press, 1989), pp. 270–71.

form of the rights doctrine, a development of post–Kantian political liberalism, that was finally accepted by the Catholic Church, though not without some important qualifications.[6]

Perhaps nothing better represents the coming of age of natural or human rights theories than their qualified incorporation into modern Catholic social teaching.[7] No less an authority than the German Jesuit Oswald von Nell–Breuning argued that human rights claims were fundamentally the same as natural law claims.[8] This represents a remarkable change. The Catholic Church had long been virtually the only institutional defender of natural law or natural right in the modern world.[9] After Vatican Council II, both the appeal to natural law and the neo–scholasticism that had justified such an appeal disappeared almost overnight.[10] The sheer speed of the change demands an explanation of some kind, though I will not attempt it here.

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6. Modern Catholic moral and social teaching emphasizes the correlative, reciprocal nature of rights and duties, and as a foundation appeals to the "dignity of man" based on his having been "created in the image and likeness of God." This appeal is especially prominent in the Vatican Council II document Guadium et Spes. "Created in the image and likeness of God" is indeed a strong basis for recognizing human dignity, though it is a theological premise not available to natural reason. On the theoretical level, this is perhaps the most significant difference in how Catholicism and political liberalism differ in their use of rights discourse. For a further discussion see Fortin, "Human Rights and the Common Good," in Human Rights, Virtue, and the Common Good: Untimely Meditations on Religion and Politics, vol. III of Ernest L. Fortin: Collected Essays, ed. Brian Benestad (Lanham: Rowman and Littlefield, 1996), pp. 223–29.

7. See Fortin, "The New Rights Theory and Natural Law," Review of Politics 44 (1982), pp. 590–612; "Augustine, Thomas Aquinas, and the Problem of Natural Law," Mediaevalia 4 (1978): pp. 179–208; "The Trouble with Catholic Social Thought," pp. 303–13; "Sacred and Inviolable: Rerum Novarum and Natural Rights,"pp. 191–222; "From Rerum Novarum to Centesimus Annus: Continuity or Discontinuity?", pp. 223–29, in Human Rights, Virtue, and The Common Good: Untimely Meditations on Religion and Politics, vol. III of Collected Essays, ed. Brian Benestad.

8. Oswald von Nell–Breuning, "Katholische Soziallehre," in Staatslexikon, 7th ed.,(Görres–Gesellschaft. Freiburg: Herder, 1985–89), speaks of Catholic Church's tendency, in using the natural law approach, to remain stuck in abstractions or to attempt to deduce more from abstract norms than one can, and notes: "Seit Pp. Johannes XXIII. und dem II. Vatikanischen Konzil ist man sehr bemüht, diese Fehler zu vermeiden, gibt darum soziologischen Ausfuhrungen mehr Raum und Gewicht und beruft sich nur selten ausdrücklich auf das Naturrecht, um so häufiger allerdings auf die Menschenrechte. Im Grunde genommen ist die Argumentation aber nach wie vor die gleiche, weil man anders als 'aus der Sache heraus' gar nicht sachlich argumentieren kann. Was anderes sind denn die neuesten, so viel berufenen Menschenrechte als reinste, ursprünglichstes Naturrecht?" (In the last sentence, my emphasis.) The Austrian social philosopher Johannes Messner and Jacques Maritain were of the same opinion concerning natural law and human rights. It would be hard to overestimate Maritain's influence in promoting this view, especially among Catholics. See his The Rights of Man and Natural Law (London: Geoffrey Bles, 1944, 1958).

9. Though "natural law" was term long preferred by Catholic thinkers, there is a tradition that can speak of "natural law," "natural justice," and "natural right" (singular) that depends upon a teleological view of nature. "Natural rights" (plural), on the other hand, from at least Hobbes on, appeals to a state of nature. Catholic thinking, and official teaching, has not always been as clear on this distinction as one might have hoped. See Fortin's work on Rerum Novarum, Centesiumus Annus, natural rights, natural law, and human rights and the common good in vol. III of Ernest L. Fortin: Collected Essays, and the works previously cited.

10. The turn against natural law has for many moral theologians a specific date: 1968 and the publication of the papal encyclical Humanae Vitae. The American Roman Catholic theologian, Richard McCormick, is said to have had a "pre–" and "post–Humanae Vitae" development in his thought. See Bernard Hoose, Proportionalism: The American Debate and its European Roots (Washington, D.C.: Georgetown University Press, 1987), p. 37,

The majority view today would concede that there is something distinctly modern about rights claims, whether qualified as "natural" or "human," though they would argue that the roots of such rights doctrines are to be found in pre–modern thought. Leo Strauss, Ernest Fortin, Pierre Manent, Philippe Bénéton, and Alisdair MacIntyre, in claiming that the modern doctrine of rights was a radical break with pre–modern thought, represent a distinguished and growing minority.[11] Nonetheless, there is a certain plausibility to the majority view. Both traditional natural law and modern natural rights doctrine are presented as a standard by which positive law can be judged. Thus either theory affords some refuge to the king's subjects or the republic's citizens when faced with tyranny. Despite this similarity there are substantial differences. Classical natural law or natural right understood nature teleologically and saw man as political by nature; modern natural rights theory understands nature non–teleologically and sees man as political by convention. For the ancients, nature was understood as the end of a process of fulfillment, consummation, or perfection. The modern view, when it refers to nature at all, posits a state of nature as a minimal origin.[12] These are significant differences, part of the paradigm shift to which Fortin has directed our attention.

Though the modern approach as embodied in political liberalism is now taken for granted (it is the regnant tradition), there is also a growing sense that all is not well within the house of political liberalism. There is talk of a crisis of liberalism, and one hears ever more misgivings about the radical individualism that seems inherent to liberal democracy. As the number of rights claims explodes, basic communities—in particular religious and familial—are disintegrating. It seems that there is no claim, no matter how extravagant, that cannot be advanced as a rights claim of some kind. The very ubiquity of rights claims becomes an inflation that exacts a price in the perceived dignity of any individual claim. If "ultimate" claims are advanced daily, they eventually become so ordinary they are no longer taken seriously. The various communitarian, civil society, and virtue ethics approaches are in agreement that rights claims must be limited in some way if a communal life based on a shared common good is to be

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citing W.B. Smith, "The Revision of Moral Theology in Richard A. McCormick," Homiletic and Pastoral Review 91 (1081): p. 9. The encyclical remains official Roman Catholic teaching. For a defense, see Dietrich von Hildebrand, The Encyclical Humanae Vitae, A Sign of Contradiction: An Essay on Birth Control and Catholic Conscience, trans. Damian Fedoryka and John Crosby (Chicago: Franciscan Herald Press, 1969); Germain Grisez, Contraception and Natural Law (Milwaukee: Bruce Publishing Co., 1964); Janet Smith, Humanae Vitae: A Generation Later (Washington, DC: Catholic University Press of America, 1991); Germain Grisez, Joseph Boyle, John Finnis, and William May, "'Every Marital Act Ought to be Open to New Life': Toward a New Understanding," Thomist 52 (1988), pp. 365–426; and Kevin L. Flannery, "Philosophical Arguments Against and For 'Humanae Vitae,'" Anthropotes 2 (December, 1994), pp. 189–204.

11. There are important differences among these thinkers. Alasdair MacIntyre, in After Virtue, 2nd ed. (Notre Dame: University of Notre Dame Press, 1984) claims that natural or human rights, like utility, are "fictions." (p. 38) Since they cannot be rationally defended, they are simply asserted. Belief in rights "is one with belief in witches and unicorns." (p. 69) See the extended discussion at pp. 62–78.

12. On the classical view, consider Aristotle's Politics, Bk I, 2: "[T]he 'nature' of things consists in their end or consummation; for what each thing is when its growth is completed we call the nature of that thing." Aristotle, The Politics, trans. Ernest Barker, revised with an Introduction and notes by R. F. Stalley (New York: Oxford University Press, 1995), p. 10. Paradigmatic for the modern view, is chap. XIII of Hobbes's Leviathan.

possible.[13] But on what countervailing authority does one limit a right whose own moral authority derives from its claim to be inalienable, universal, and absolute? If a human right is the ultimate moral counter, and if it is advanced in the name of the humanity of the one making the claim, how can conflicting rights claims be resolved without appearing to deny or limit the humanity of one party to the dispute? There is no shortage of suggestions as to where we should turn for help: empathy, sympathy, solidarity, duties to others, virtue, gender equity, trans–generational justice, and enlightened self–interest, to name just a few. Particularly favored among those doing "Christian ethics" is the attempt to pair off every rights claim with a corresponding duty. Nonetheless, the situation does seem at an impasse, there is no agreed upon way of resolving conflicting rights claims, and the moral discussion is no less interminable than when Alasdair MacIntyre wrote *After Virtue* in 1981. It is here that the work of Leo Strauss, and its development by Ernest Fortin and others, offers us some help. There are times when a dead end suggests not more of the same, but a new beginning. Strauss single–handedly rehabilitated ancient political philosophy. Thanks to Strauss and Fortin a pervasive modern prejudice is at least being challenged, if not overcome. It is becoming ever more widely recognized that the ancient philosophers need to be studied not only to learn *about* them, but more importantly because we can learn *from* them. And since the ancients did not take rights as their starting point when discussing moral and political matters, we stand to learn from them if we begin by *not* assuming that their views were a mere prolepsis to the modern rights doctrine.

2. Duties

A good place to enter the discussion is the difference between the modern doctrine of rights and the ancient view of duties. We owe to Fortin one of the most succinct formulations of this difference:

> What once presented itself as first and foremost a doctrine of duties and hence of virtue or dedication to the common good of one's society now takes its bearings, not from what human beings owe their fellow human beings, but from what they can claim for themselves.[14]

13. See Amitai Etzioni, The Spirit of Community: Rights, Responsibilities, and the Communitarian Agenda (New York: Crown, 1993); Etzioni, ed., New Communitarian Thinking: Persons, Virtues, Institutions, and Communities (Charlottesville and London: University Press of Virginia, 1995); Etzioni, ed., The Essential Communitarian Reader (Lanham: Rowman and Littlefield, 1998); Charles Taylor, "Cross–Purposes: The Liberal–Communitarian Debate," in Liberalism and Moral Life, ed. Nancy Rosenblum (Cambridge: Harvard University Press, 1989), pp.159–82; Roger Crisp and Michael Slote, eds., Virtue Ethics (Oxford: Oxford University Press, 1997); Daniel Statman, ed., Virtue Ethics (Washington, D.C.: Georgetown University Press, 1997); David Rasmussen, ed., Universalism vs. Communitarianism.(Cambridge: MIT Press, 1990); Jean L. Cohen and Andrew Arato, Civil Society and Political Theory (Cambridge: MIT Press, 1992); and Adam B. Seligman, The Idea of Civil Society (New York: Free Press, 1992).

14. Fortin, "The Trouble with Catholic Social Thought," in Human Rights, Virtue, and the Common Good:

Fortin is at one with the conclusions drawn by Leo Strauss, especially in *Natural Right and History* and "Three Waves of Modernity."[15] Though both Strauss and Fortin have made what strikes many as an unassailable case for the modern provenance of rights claims, their position is not widely accepted. One reason it has not gained acceptance is that in the formulation just cited, Fortin implies that there an inherent egoistic element to rights claims. Such a view would tend to be rejected today by many who are convinced that they are most altruistic precisely when advancing a rights claim, especially when the claim is advanced on someone else's behalf: *that* woman's right to choose, *that* unborn child's right to life, the rights of *those* animals or trees. It can be granted that the autonomous moral subject does not accept any obligations of which it is not the source ("it" is increasingly appropriate for this concept of the "self"), yet neither does it make any rights claims for itself it is not willing to grant to others. Thus the universality of the claim would seem to save it from selfish egoism. In its strongest, noblest form, as I legislate for myself I also legislate for humanity. Thus shared egoism, if regulated intelligently, will unintentionally produce a minimal common good: What the invisible hand does for the market, enlightened self–interest will do for the common good.

There are many aspects of this argument that Christians have no trouble accepting. Due to the fact of pluralism, one could argue, something like a Rawlsian approach to the common good is necessary, even though my own, private motivation as a Christian will be based not on self–interest but on a recognition, usually via empathy, of the dignity of my neighbor. Even if one were to put aside the question of whether any Rawlsian approach is compatible with Christian anthropology, there are other questions. How is it that apparently self–evident, absolute, rights claims contradict each other and seem to claim diametrically opposed basic goods? As MacIntrye has pointed out, the result is a moral "discussion" that is interminable, not in that sense that opposing rights claims *de facto* go on and on; rather, in principle they are incapable of being resolved, for the arguments, though logical, are based on opposing incommensurable premises. As a result, protest, indignation, and mock rationality are the key features of clashing rights claims.[16]

One can acknowledge the benefits of living within a liberal democracy with its attendant regime of rights, and still wonder if the advantages have not come at a price. Eventually the underlying question of what we are "by nature," as Hobbes and Rousseau saw more clearly than did their successors, must be faced. Do we want to

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Untimely Meditations on Religion and Politics (Lanham, MD: Rowman and Littlefield, 1996), p. 304.

15. Strauss, Natural Right and History (Chicago: University of Chicago Press, 1950), "Three Waves of Modernity," in Introduction to Political Philosophy: Ten Essays, ed. Hilail Gildin (Detroit: Wayne State University, 1989).

16. See MacIntyre, After Virtue, pp. 6–35, 70–72. Since at least 1987 Americans have witnessed an interminable "discussion" between the "right to choose" vs. the "right to life" whenever a nomination for the United States Supreme Court is sent to the Senate. There is never really any discussion or agreement. The issue is "resolved" by the strength of the majority.

be comfortable consumers, customers, and clients, or dignified human beings?[17] Will a lowest–common–denominator pluralism at the service of the new architectonic science, economics, give us a life for which we would be willing to risk our own lives to ensure its survival for those who come after us? During the Gulf War there was a newspaper picture of a college student holding a sign in protest of American involvement which read: "Nothing is worth dying for." One had the impression at the time that the response was one of uneasy shock: uneasiness that the claim might be true, shock that anyone would say it so boldly. Have we found what is most worth living for if we can no longer name anything for which we would be willing to give our lives? In other words, does modern, liberal, democratic man look "up" to anything? Is he capable of seeing himself in relation to anything higher than himself? What evokes his awe and humbles him?

3. The Problem of Humility

Leo Strauss points out that societies identify themselves not merely by what insures their survival, but by what evokes their admiration. Strauss writes:

> Ordinarily a political man must at least pretend to "look up" to something to which at least the preponderant part of his society looks up. That to which at least everyone who counts politically is supposed to look up, that which is politically the highest, gives a society its character; it constitutes and justifies the regime of the society in question. The "highest" is that through which a society is "a whole," a distinct whole with a character of its own, just as for common sense "the world" is a whole by being overarched by heaven of which one cannot be aware except by "looking up."[18]

Among the ancients "looking up" also involved "looking back." Strauss says that "the whole moral development of mankind" finds its roots in "a primeval equation of the good with the ancestral."[19] According to the Greek myth, *Mnemosyne*, memory, is the mother of the muses and therefore the mother of wisdom as well. "In other words," says Strauss, "primarily the good, the true, however you might call it,

17. Hobbes thought that lowering the goal of human life was a gain; Rousseau was convinced that much had been lost. In his First Discourse Rousseau criticizes the "Civilized peoples" of his time as "happy slaves" of "urbane morals,"and notes that "The ancient political Thinkers spoke of morals and of virtue; ours speak only of commerce and of money." See Jean–Jacques Rousseau, The Fist and Second Discourses, Together with the Replies to Critics and Essay on the Origin of Languages, Victor Gourevitch, ed. and trans. (New York: Harper and Row, 1986), pp. 5, 16. Rousseau would not be surprised to hear that in the United States one increasingly hears government agencies and civil servants refer to those they serve, not as fellow citizens, but as "our clients."

18. Strauss, "An Epilogue," in H. Gildin, An Introduction to Political Philosophy: Ten Essays by Leo Strauss, p. 241–42.

19. Strauss, "Progress or Return?" in Gildin, p. 291.

can be known only as the old because prior to the emergence of wisdom memory occupied the place of wisdom."[20] Strauss argues that the roots of both faith and philosophy find a common origin in this look both "back" in time and "up" in dignity.[21] Although the philosopher considers the whole in a way that transcends the particular claims of the city, the love of truth demands that he look up to those superior to him in virtue. Aristotle's treatment of friendship in the *Nicomachean Ethics* remains unintelligible if this is not the case. One must have had the experience of friends superior to oneself before one can appreciate questions about what makes friendship possible. If I look up to no one, then I will fail to recognize the presence of a superior teacher, one who can point me in a direction that may lead out of the cave. Until I can identify someone superior to myself, I remain unteachable. Such insight will always require an act of memory.

By contrast, one could extend the metaphor by saying that modern man, in the name of a dignity based on autonomy, seeks to liberate himself as much from the memory of the past as from the necessity of nature. Modern man looks forward without looking over his shoulder. He is more concerned with horizontal questions concerning "horizon" than with "looking up." Yet even if one accepts Hobbes's claim that there is no *finis ultimus* or *summum bonum*, this does not mean that modern man stands in awe of nothing. The source and object of his awe is himself. Consider Rousseau's question: "What is so ridiculous about believing that everything is made for me, if I am the only one who is able to relate everything to himself?"[22] Though Rousseau acknowledges that he is not the author of his own existence, this is nonetheless a far cry from Psalm 8: "What is man that you should care for him . . . you have made him little less than a God." If Rousseau were writing a gloss on Psalm 8 we would expect something like, "What a great piece of work am I." The ancient injunctions against *hubris*, the command to "know thyself" as well as the Biblical demands that one "fear the Lord," have an aspect of humility in common.[23]

All this having been granted, one cannot simply suggest that modern man, whether as a citizen in a liberal democracy or as a moral subject, merely "humble

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20. Strauss, "Progress or Return?" in Gildin, p. 294.

21. Strauss, "Progress or Return?" in Gildin, passim. Of course Strauss was also convinced that there is a "radical opposition between Bible and philosophy," and that "as long as there will be a Western civilization there will be theologians who will suspect the philosophers and philosophers who will be annoyed or feel annoyed by the theologians." Gildin, p. 295.

22. J. Rousseau, Emile, IV, trans. Allan Bloom (New York: Basic Books, 1979), p. 277. The speaker is the Savoyard Vicar.

23. Strauss claims that this common "humility" which begins in a comprehensive obedience to law, leads to radically different conclusions for the man of faith and for the philosopher. He also notes that "Biblical humility excludes magnanimity in the Greek sense."See "Progress or Return?", p. 277. Aristotle's megalopsychos as the polar opposite of Christian humility is the guiding insight of A. MacIntyre's, Dependent Rational Animals: Why Human Beings Need the Virtues (London: Duckworth, 1999). Nonetheless, Thomas Aquinas thought magnanimity and humility were complimentary virtues helping us avoid immoderation and despair. See Summa Theologiae , II–II, 161, 1. (Hereafter, S.T.) The man of faith is not the only one who bows. The philosopher ultimately bows before the truth. Teresa of Avila's statement that "humility is truth," is not unknown to the philosopher.

himself" by "looking up." How do we verify our progress in humility? How do we know when we have been sufficiently humble, and can we take any pride in the accomplishment? Furthermore, what about the loss of equality, autonomy, and liberty that might result by from placing ourselves "below" others? This might be suitable advice for private religious life, but does it really have any relevance for ethical and political life? I will concede most of these objections, but nonetheless argue that there is a way open toward resolving some of the questions surrounding the relation between rights and duties. It is less a matter of choosing between them or of pairing them off, than of finding some common, fundamental element prior to both rights and duties. If such a moment can be found which is empirically verifiable in one's own experience, and which is also the condition of possibility of moral action, then we will also have found a rational basis—Luc Ferry's concerns notwithstanding—for making metaphysical and ontological claims about human nature.[24] Indeed, we cannot avoid making such claims. No doubt other approaches could be taken, but one possible answer to the problem of humility is to be found in an analysis of the experience of gratitude.

4. The Analogy of Gratitude

One of the earliest expressions we learn within the family is "thank you," and through the example of parents and siblings we also learn that when it is a true statement, it is an expression of gratitude. This is not a definition. Gratitude is so fundamental that it escapes definition. Like such basic terms as "space," "time," "straight," and "friendship," it would have to be presupposed in any attempt to define it. We could, however, call it "a moral *a priori*" recoverable through reflexive thought. Thus we could say that gratitude is what is expressed when "thank you" is a true statement.

Gratitude, like the "thank you" that expresses it, is analogous. The same expression, "thank you," is used in situations that are both similar and different. "Thank you" can be mere formal etiquette, insincere and manipulative, or the expression of the highest form of religious devotion. In each case, a distinction can be made between benefit, beneficiary, and benefactor. Even the insincere or manipulative expression of gratitude follows this pattern.

Though we may express gratitude with degrees of sincerity and intensity that vary with our mood, circumstances, and acquired virtue, it is hard to imagine forms of familial, political, ethical, and religious life where no one said "thank you" and

24. On Ferry, see his 3 volume work on political philosophy, vol. I, Rights—The New Quarrel between the Ancients and the Moderns (Chicago: University of Chicago Press, 1990), vol. II, The System of Philosophies of History (Chicago: 1992), vol. III, From the Rights of Man to the Republican Idea (Chicago: 1992), trans. Franklin Philip.

sometimes meant it. Even the insincere thanks, like lying, would cease to be effective if it became the norm. "Thank you" is one of the earliest additions to a child's vocabulary, and as we become old, infirm, and once again ever more dependent upon others, it may be one of the last phrases we utter. If gratitude and its expression—birthdays, anniversaries, gift–giving, politeness, saying "thanks," praying—so pervades our lives from beginning to end, it is surprising that it has received so little attention from psychologists, philosophers, and theologians. When we do find such a discussion, there are significant differences between the ancients and the moderns.

The context for the ancient discussion of gratitude is justice and friendship; for the moderns, autonomy, affectivity, self–esteem, authenticity, respect, rights, and duties. For the ancients, justice and friendship are preeminently political terms, and thus a discussion of gratitude is at least implicitly a political discussion as well. By contrast, the terms associated with the modern discussion represent less a context than a list of concerns, primarily individual in nature.

One of the problems with almost all recent accounts of "gratitude," is that they, like Kant, see it primarily as a problem of justifying the "debt" or "obligation" of gratitude.[25] Modern accounts of gratitude show:

1) a tendency to see gratitude primarily as an affective state with limited cognitive content;
2) an emphasis on duty, which in turn raises the questions of how one can be obligated to have a particular affective state;
3) a lack of clarity about the intentionality of gratitude; and
4) a concern about limiting gratitude so as to avoid its "pathological" or misplaced forms.

Much of the confusion here results from a modern inability to conceive of gratitude as something more than an affective state. Once gratitude is understood as a virtue a number of these difficulties are resolved. However, I will return to this issue later.

For Kant there is also a problem in that gratitude threatens the autonomy necessary to democratic equality. For Kant, one has a duty *not* to accept favors which would bring with them a debt of gratitude.

> If I accept favors, I contract debts which I can never repay, for I can never get on equal terms with him who has conferred the favors upon me; he has stolen a march upon me, and if I do him a favor I am only returning a *quid pro quo*; I shall always owe him a debt of gratitude, and who will accept such a debt? For

25. Indicative of modern accounts of gratitude are Fred Berger, "Gratitude." Ethics 85 (July 1975): 298–309, and Claudia Card, "Gratitude and Obligation." American Philosophical Quarterly 25 (April 1988): 115–27. Berger's account exemplifies most of the shortcomings of the inability to see gratitude as a genuine virtue. Card's essay is one of the most insightful philosophical treatments I have been able to find.

> to be indebted is to be subject to an unending constraint. I must forever be courteous and flattering towards my benefactor, and if I fail to do so he will very soon make me conscious of my failure; I may even be forced to using subterfuge so as to avoid meeting him. But he who pays promptly for everything is under no constraint; he is free to act as he please; none will hinder him.[26]

This is not as far–fetched as it might sound. Have we not met people who seem at all costs to avoid saying "thank you"? Some almost choke on it. What about our own reluctance to accept compliments?

Kant speaks of "the duty of not needing and asking for others' beneficence, since this puts one under obligation to them, but rather preferring to bear the hardships of life oneself than to burden others with them and so incur indebtedness (obligation)."[27] Thus friendship consists in knowing that when you are in need you know you could call on your friend, but you never will. The best friendship is the one that is least beneficial.[28]

The difference can be seen in the contrast between the ancient view of *pietas* and its complete absence in moderns such as Kant. Whereas the ancients could not imagine a community in which *pietas* was not a factor, the moderns cannot imagine individual freedom and autonomy in a community burdened by obligations of gratitude. Modern analyses of gratitude share this Kantian difficulty, for they all tend to ask how we can be obligated in gratitude, and then go on to the difficulty of how the "emotion" of gratitude can be made obligatory. This misses the nature of gratitude as a virtue. One who has the habit of being grateful "spontaneously" makes a judgment about "benefit," "beneficiary," and "benefactor" so quickly that it seems not to take place. It has become second nature.

Let us consider a special case. What about when the "benefit" is our own existence? It is a problem which virtually all modern treatments ignore. The good of our own existence receives little attention, for the concern with autonomy induces a form of amnesia about origins. For the ancients, in contrast, gratitude is fundamentally concerned with memory and recollection.

There is a modern tendency to assume that gratitude, like justice, has an opposing vice that, linguistically, is the negation of the virtue in question. However,

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26. Kant, Lectures on Ethics, tr. by Louis Infield, Foreword by Lewis White Beck (Indianapolis: Hacket, 1963), pp. 118–19. Hobbes in some ways anticipates this. See Leviathan, Part I, chap. xi, in the Edwin Curley edition (Indianapolis: Hackett, 1994), p. 59.

27. Kant, "Doctrine of Virtue," in Metaphysics of Morals, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), § 36, p. 252.

28. Although Aristotle, in his discussion of friendship in the Ethics, Bk IX, 11, says that "manly natures take scrupulous care not to let their friends share their pain ... [for] he cannot bear the pain which <sympathy for him> gives his friends," this is still a far cry from Kant's position. Aristotle also says that the best friends are the most useful and necessary, just as the friendship of virtue includes all the benefits of the friendships based on utility and pleasure. Aristotle, Ethics trans. with an Introduction by Martin Ostwald (Englewood Cliffs, NJ: The Library of Liberal Arts, Prentice Hall, 1962), p. 270.

the contrary vice of gratitude is not so much ingratitude as it is forgetfulness. Aquinas treats gratitude as a virtue, along with religion, piety, and observance.[29] This treatment grows out of a consideration of justice, and is made necessary by the fact that the good received surpasses any relation of equality. That is, what we have received from God, parents, and country is, and will always remain, in excess of what we can return. For Aquinas, gratitude is primarily a process of remembering. Ingratitude, then, is a forgetfulness, a taking for granted. Can we be morally blamed for this? Yes, according to Seneca:

> The man is ungrateful who denies that he has received a benefit, which he has in fact received; he is ungrateful who pretends he has not received one; he, too, is ungrateful who fails to return one; but the most ungrateful of all is the man who has forgotten a benefit . . . . [for] there is no possibility of a man's ever becoming grateful, if he has lost all memory of a benefit.[30]

Too much attention to future projects impedes gratitude. As Seneca says, "How can a man who is wholly absorbed in the present and the future, who skips over all his past life, ever be grateful for benefits? It is memory that makes him grateful; the more time one gives to hope, the less one has for memory."[31] The debt Aquinas refers to is something quite different from the modern concept of duty. Aquinas's debt is based primarily on what we have received, and the basis of all that we have received is God. Ingratitude, in turn, is forgetfulness regarding a favor or benefit.

Why such perduring debts are not onerous, as compared with Kant, is shown by Aquinas's response to the question of whether our return in gratitude should exceed the favor received. It would seem that it should not, for then the debt of gratitude would continue to increase in an infinite regress. Aquinas answers that since the debt of gratitude is based on love, "it is not unreasonable that gratitude should have no limit."[32] Gratitude refers not so much to debts to be "paid off," as to perduring relations which constitute us. To forget or deny such relations is to forget or deny who we are. Such relations are not merely legal, moral, or psychological, but ontological.[33] What is most fundamentally ontological, my own existence, is most apt to be overlooked because "I" have never been without it.

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29. S.T., II–II, 58, 80, 101, 102, 106.
30. De Beneficiis, III, 1, trans. John W. Basore, Loeb Classical Library (Cambridge: Harvard University Press, 1935), pp. 128–9. My linking Seneca's and Aquinas's thought is hardly arbitrary. In S.T., II–II, 106, Aquinas cites Seneca some 15 times.
31. De Ben. III, 3, p. 133.
32. S.T., II–II, 106, 6, ad 2.
33. For a further development of what I can only suggest here, see the superb treatment by W. Norris Clarke, "To Be Is To Be Substance–In–Relation," Metaphysics as Foundation: Essays in Honor of Ivor Leclerc, eds. P. Bogaard and G. Treash (Albany: SUNY Press, 1993), pp. 164–81, and Person and Being, The Aquinas Lecture, 1993 (Milwaukee: Marquette University Press, 1993). Both works have important implications for natural theology.

Modern deontological ethics and liberal political theory prescind from what the ancient tradition considered fundamental and irreducible in the relation between children and their parents. The one benefit we receive from our parents, about which we were never consulted and without which no other benefits are possible, is life itself. The ancients recognized that due to the disparity between what we receive from our parents (existence) and what we can return, the relation could not be adequately analyzed in terms of justice. What was true of us in relation to our parents was also true in relation to our country. Since the equality necessary to even a proportionate consideration of justice did not obtain in either case, this relation was governed by the special virtue of *pietas*. Modern authors, on the other hand, rarely mention the gratuitous, utterly contingent nature of our existence. There is a tendency to take life, existence itself, the ultimate "condition of possibility," either for granted or to prescind from it in the search for universal *a priori* principles. The "autonomous self" seeks logical consistency in the present as it plans for the future, but has no memory, or at least a very short one. If the past is seen as a hindrance to autonomy, then cultivating a short memory has a liberating effect. Debts of gratitude that I cannot remember, no longer burden me with any obligation. But it is not only the past from which the modern moral subject is cut off.

The abstract nature of modern ethical theories accepts an anthropological split between the noumenal man and the phenomenal man that forces the moral subject to live in two worlds. Such two–world theories result in a gulf between the world of facts and values, is and ought, the kingdom of causes and the kingdom of ends. The result is something that can be conceived but not lived. It is a "self" without gender, citizenship, or memory. To borrow a phrase from John Rawls, we could say that this "self" must stand between two veils of ignorance: behind one, and in front of another which obscures the past. One way to address this split between the modern moral subject and his world is through what we could call a "transcendental pragmatic."[34] It is transcendental in the Kantian sense in that it regards "conditions of possibility." It is pragmatic insofar as the conditions, when fulfilled, involve not what can be thought, but what can be done. And that, in turn, implies the existence of a doer. I cannot say "yes" to my own existence before "I am." But others can: The condition of possibility of our own existence depends upon a community we have not chosen, which has nonetheless chosen us by saying "yes" to our existence.

34. So far as I am aware, Karl–Otto Apel, Diskurs und Verantwortung: Das Problem des Übergangs zur postkonventionellen Moral (Frankfurt: Suhrkamp, 1990) originated the term "transcendental pragmatic,"and I gratefully acknowledge the debt while also admitting I am using it in a different sense than did he. My use of the term owes much to conversations with Robert Spaemann.

5. Gratitude and Memory

Ontologically, the necessary condition for receiving a benefit is the existence of the beneficiary. But this condition does not obtain when the benefit is existence itself. I cannot receive anything before I am. In what sense, then, can I speak of my life as a gift for which I am grateful? Epistemologically, the consciousness and knowledge of our own beginnings is not direct, but mediated. As Robert Spaemann says, each of us has an origin in a "time beyond memory."[35] The origin of my own existence is beyond the power of my own memory to recall. And what is true of my memory in relation to my own origin is also true of my parents' memory in relation to their origin. But the same cannot be said of *their* memory of *my* origin. They can remember having said "yes" to my existence, and what they remember involves not only a present memory of their past action, but also a present memory of past remembering. In assuming the duties of parenthood parents cannot help but be reminded that "someone once did this for me." Thus they were beneficiaries long before they themselves could become benefactors. That they can assume duties at all is the result of having benefitted from someone else having once fulfilled duties toward them. No doubt this way of way of referring to duties may strike many as odd. The modern ear associates "duty" more with a limitation of liberty than with an expression of freedom. But a duty willingly assumed is not experienced as a limitation of the will. For those motivated by love and friendship—when you do what you ought to because you want to—the word "duty" comes into play only when it is ignored or neglected. Whether one prefers "duty" or "responsibility," a fundamental fact remains: recognizing a duty involves memory and gratitude in a way that claiming a right does not. At least this would seem to be the case when our ultimate condition of possibility—our own existence—is at stake. This way of understanding what is involved in saying "yes" to life is more amenable to those who do recognize a duty toward such life. There are others, however, who argue that in this area, as in many others, rights are more fundamental than duties.

One hears the claim that no one ought to be obligated to bring an unwanted child into the world. Why not? Because, we are told, "every child has a right to be wanted." This is a strange kind of claim. It cannot be consistently thought through, and anyone making it ought to at least be given pause by this fact: None of us knows whether our own existence could have survived such a test. None of us knows directly whether the news that we were, and if nurtured would continue to be, was received by our parents with joy, love, and benevolence, or by dread, fear, and anxiety. This our parents can remember, for our conception and everything that followed upon it did not occur in a time beyond their memory. What we know of our own beginnings is based on an inductive process resulting in mediated knowledge. Starting from what we can remember, we make reasonable inferences about what is

35. See Robert Spaemann, Glück und Wohlwollen: Versuch über Ethik, 2nd ed. (Stuttgart: Klett–Cotta, 1990), pp. 152–3.

beyond our memory. Beyond that, we are dependent upon what we are told by those who are responsible for making our remembering possible.[36] We can raise questions about our own origin only because, regardless of the circumstances under which we came to be, parents or their surrogates continued to support and nourish our existence. To speak of my life as a gift for which I am grateful is a metaphorical way of referring to the utterly contingent, gratuitous nature of my existence. I need not have been; there is nothing necessary about my existence. When what need not have been is recognized as a good, the natural, intentional response is gratitude. It could be objected that this metaphor—gratitude for my own existence—is nothing more than a metaphor, a conventional illusion, an unreflective way of speaking. This is not the case. A closer examination shows that gratitude does have an ontological basis.

The argument I have been trying to present is that political philosophy must address the conditions of its own existence. Agnes Heller's question, "good persons exist, how are they possible?"[37] can be restated in a form both more political and more personal: "What has made *me* and the community of which I am a member possible?" Such an orientation to the past need not be a denial of the necessary moral responsibility in the present, oriented toward the future. Parents do not raise their children merely by remembering what their own parents did. But neither do they raise them well in complete oblivion to how they themselves were raised. We all do take some implicit approach to our own personal, communal, and political past, and it affects us regardless of whether we are aware of it. Indeed, its effect is greater to the extent we remain unaware of it. We can no more avoid taking a stance toward the past than we can to the present or the future. Since the quality of our free choices in the present, oriented toward the future, will be affected by what we have not chosen, the best guarantee of true freedom is a discerning memory. Thus gratitude is the presence of true remembering, and this is no less true in political than in personal life. It is because memory functions individually and collectively, that repressed, distorted or false memories are just as harmful to the political community as to the individual.[38]

A question can now be posed about the relation between rights and duties. At some point in almost any political discussion, we can ask our interlocutor, "for what are you grateful?" The answer to this question will help discern whether our projects and proposals advanced in the name of freedom, justice, or equality are what they claim to be or are really covers for resentment, envy, or revenge. The healthiest integration of our past and the best guide for responsible decisions in the

36. If one adds natural faith to what has been said here, then we have the basic structure of much of Augustine's Confessions. The entire work is an act of discerning memory in the key of gratitude.

37. Agnes Heller, General Ethics (Oxford: Blackwell, 1988), p. 7.

38. See Jane Kramer, The Politics of Memory: Looking for Germany in the New Germany (New York: Random House, 1996), and Catherine Merridale, Night of Stone: Death and Memory in Russia (London: Granta Books, 2000).

present with future consequences, will be a discerning, reflective integration of the past through gratitude. If I am unable to name anything for which I am grateful, what does that say about my own self–knowledge? Being grateful is not a way of avoiding responsibility. On the contrary, it is one of its most intense forms. The charge can be made, of course, that this emphasis on the past, on recollection and memory, is not worth the risk it poses for autonomy and human freedom. German philosophers such as Jürgen Habermas, unable to forget the disastrous twelve–year experiment of the "communitarianism" of their youth, are deeply suspicious about such appeals to community based on memory. They point out the lack of universality, as they see it, in any appeals that are particular, religious, and metaphysical. We live, they argue, in a post–metaphysical world. These are serious objections, and they deserve at least a preliminary response.

That gratitude can be used as a manipulative appeal to the past cannot be denied. Liberal democracy, despite its inherent individualism, is particularly attractive to Germans old enough to remember the Nazi phrase of their youth: *Du bist nichts. Dein Volk ist alles*. Unfortunately, this authoritarian and dictatorial appeal to community did not end after World War II for those living in the Democratic Republic of Germany (DDR). Any good German dictionary from this period shows a new vocabulary used only in the communist DDR. The communal took such precedence over the personal that a German theologian living in East Germany at the time reported that government censors never allowed him to use the word "person" in any of his writings. Given this background, who would not be suspicious of appeals to community? But the antidote for the abuse of memory is not amnesia. Dangerous memories are not rendered safe by being forgotten. It is precisely because memory concerns more than the past that it can become dangerous. It was pointed out earlier that gratitude refers not so much to "debts" to be paid off as to perduring relations which constitute us. To forget or deny such relations is to forget or deny who we are. Though I may remember the past, both the act of memory and the effect of remembering are perduring, *present* realities. Thus memory is constitutive of self–consciousness. Perhaps the new "false consciousness" of liberal democratic man is a truncated memory.

Turning from the political to the personal, and granting all the dangers of false memory, we must ask is we can afford to ignore something as central to human life as gratitude just because it can be abused. What is most important in life—love, friendship, family, citizenship, faith—is not only able to be abused, it is most apt to be so used. What we cannot live without will cause us the most harm when it is abused. True gratitude takes note not just of the good we have received, but of injustice as well. We not only do, we are done unto. The healthy, morally responsible integration of the past takes place through a dialectic of forgiveness and gratitude. Again, parenthood is the paradigmatic example. It is in raising their own children that parents see most clearly what they owe their parents in gratitude, and what they must forgive them. No one can do this for me. Others can remind me of what I ought not to forget, but no one else can do my remembering for me. In this case I alone am morally responsible. With gratitude, as with forgiveness and mercy, there are no surrogates.

The argument I have been suggesting all along is quite simple. A life in which someone never expressed gratitude would be less than human. Since we cannot remain human and avoid expressions of gratitude, what is at stake when we do so? We can identify *real* benefits which actually exist, *real* benefactors for whom we are truly grateful, and *real* differences in our lives due to having received such benefits. None of this can be recognized without acts of memory and gratitude, and it cannot be adequately discussed without making ontological claims of some kind. To address issues about the structure of gratitude and the role of memory does not immediately resolve the many questions that trouble contemporary political liberalism. But it does suggest that there are more concrete ways of conceiving and discussing moral and political life than those that yield the post–enlightenment abstract, autonomous subject of pure reason. One cannot be grateful "in general" or universally. I cannot say "thanks" without identifying concretely that for which (and to whom) I am grateful. Identifying the object and the reason for my gratitude requires a discerning act of memory. The example of gratitude for one's own existense was intended to show some of the limitations of an autonomy based on a lack of memory and understood exclusively in terms of rights. Recognizing the good of one's own bestowed but unsolicited existence involves a humility better expressed in the language of duties and gratitude than of rights. If this is true in the case of my own existence, perhaps it is true in other cases as well. In other words, maybe Ernest Fortin was on to something in directing our attention to "*the* paradigm shift in our understanding of justice and moral phenomena," the shift from duties to natural rights. He spent many years seeking to understand the causes and the consequences of that shift. Though not alone in addressing such questions, he was virtually alone in how he addressed them.

In a metaphorical expression in use since Tertullian and revived by Leo Strauss, the question of the relation between reason and reason has been referred to as the relation between Athens and Jerusalem. It is also raises questions about the only sciences that claim to deliver knowledge of the whole of human existence: theology and philosophy.

Most universities, in how they organize their faculties, seem dedicated to the proposition that in the tension between Athens and Jerusalem one stands at a fork in the road and must choose: the quest of reason, or the loving obedience of faith. Once you have chosen you will be assigned, as either a philosopher or a theologian, to your "field." And as a good farmer respectful of the property rights of others, you will never leave footprints in the furrows of someone else's field. Even when it is conceded that the tension between Athens and Jerusalem might be fruitful for a culture at large, it is often denied that such a tension may be fruitfully lived out in a single individual. But there are a few, very few, who do live out this tension. Ernest Fortin is an example of one of those with dual citizenship, a life of *fides quarens intellectum*. Such a life that is contemplative and theoretical will always be for many insufficiently pragmatic to be attractive. There was a public example of this recently in Boston.

A renowned philosopher, whose work Ernest Fortin greatly admires, had just finished delivering a well–received lecture. In response to a question he said,

"The modern state and the modern economy are like the weather. There is nothing you can do about them." Upon hearing of this later Fr. Fortin said, "It's not true that there's nothing you can do. You can try to understand."

To have found a colleague, teacher, and friend who believes this, has given some of us reasons not only for gratitude, but for hope.

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