

Words that sound alike but have different meanings:
Christian "Natural Rights" and Kantian inspired "Human Rights"

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Robert Kraynak's Christian Faith and Modern Democracy imprecisely diagnoses a problem in modern rights doctrines. Kraynak conflates the modern notion of autonomous rights with natural rights as traditionally understood in Christian thought. It is still possible to defend the Christian-Aristotelian version of rights rather than let autonomy-based rights lead even Christians to licentiousness or despotism.

I

Kraynak's book reminded me of encountering Leo Strauss' *Natural Right and History* 40 years ago. Strauss makes sense of the history of political philosophy, culminating in its demise in the thought of Heidegger and what, after Strauss' death, would be called "post-modernism." He helped me understand why the natural law tradition in which I had been educated has so little currency outside of faith-protected intellectual enclaves. It is because modern rationalism, developing from its Machiavellian, Cartesian and Hobbesian seeds, issues in a 20th century conviction that how we should live together is nothing but a construction of human will rather than an apprehending by reason. Similarly, Kraynak makes sense of how Kantian philosophy transformed Christian political thought since World War II. Both books give "big picture" accounts of how ideas change and the differences the changes make in our understanding of decisive political and religious matters. Kraynak's historically informed book focuses on the last half of the 20th century. His perspective is, at once, that of a theologically informed believer and a scholar of the history of political philosophy.

Kraynak is struck by the "historical anomaly"¹ that "at the beginning of the third millennium nearly all Christians believe that the form of government most compatible with their ethical and spiritual teachings is liberal democracy" (Kraynak, 148). Indeed, "modern theologians" teach that Christianity "*necessarily* entails one specific form of government,

namely...liberal democracy founded on human rights" (Kraynak, 5 emphasis added). In contrast, "many great theologians of the past understood it [Christianity] to be compatible with kingship, hierarchy or authoritarian institutions (Kraynak, xiii). Furthermore, "the Christian tradition has been rather illiberal and undemocratic for much of its history"(Kraynak, 3). He contrasts this modern situation with the Augustinian tradition which denies that Christianity entails any particular political order and whose political teaching is prudential and concerned with limiting government in order to protect the right to teach and exercise faith.

He finds the core of this revolution in "a heightened sensitivity to the demands of human dignity in the modern age" (Kraynak, 5); in major 20th century Catholic thinkers; the Vatican Council's "Declaration on Religious Freedom" (*Dignitatis Humanae*); "The Constitution of the Church in the Modern World" (*Gaudium et Spes*) and the *Catechism of the Catholic Church* regarding the "rights that flow from his dignity as a creature" (Kraynak, 157).

II

Kraynak's most theoretically far reaching and politically consequential argument is his critique of rights language. He argues persuasively that, especially since World War II, "The [Catholic] church has chosen to speak the language of Kantian Christianity about the human person rather than in the language of Augustinian or Thomistic Christianity about the inherently limited ends of the temporal realm." "[T]he language of Kantian Christianity" but not of pre-Kantian Christian thought, speaks unconditionally of "the rights and dignity of the human person" (Kraynak, 222).

Kraynak grants that, in the short run, this "rights and dignity" language serves the good end of aiming to decentralize and limit the scope of state power and that it has "a certain rhetorical advantage in a world that knows and respects only modern categories of thought." But he thinks it would be better for Christians at least to say "that the two Cities defines the principle and ends of social institutions and that the human person is derived from it," i.e. from "the true hierarchy of ends." Otherwise the danger is that "rights and dignity" will be understood "in

contemporary secular terms and will [among other things] weaken subsidiarity by increasing demands to expand the centralized bureaucratic state" (Kraynak, 222-23).

While Kant sometimes speaks an older liberal and even Christian language of rights "by nature," he also speaks of "the right of humanity in our own person."² This right is "freedom (independence from constraint of another's will) insofar as it is compatible with the freedom of everyone else" and what flows from that. By stressing "humanity" rather than either "natural" or "inalienable rights," Kant decisively modifies the older language of rights in a way that harms Christian faith. "[H]uman rights are not only powerful weapons against tyranny; they also carry skeptical and subversive assumptions that undermine all authority...the skeptical baggage of rights is so intimately tied to conceptions of autonomous freedom that it is nearly impossible to stop *human rights* from subverting all authority and social cohesion...[even] the very idea of an objective Good, undermining belief not only in God, virtue and the common good but also in the doctrine of rights themselves" (Kraynak, 169 emphasis added). This self-destructiveness is at least one important reason why "Christian faith is weakened from within by embracing democratic human rights as an inference from the [Kantian] dignity of the person" (Kraynak, 168).

But while he is particularly concerned about such Kantian inspired rights, his argument conflates rights as such with the specifically Kantian version so as to cast doubt on *all* ideas of "rights." This conflation is first evident in the books' Index. Under "natural rights" it says "see human rights" and the latter entry says "human (natural) rights." But his argument confirms the Indexes' conflation. At first, only Kantian rights "carry skeptical and subversive assumption about all authority" but the next sentence elides that into "rights" simply. "Rights challenge and subvert all authority...." "[T]he skeptical baggage of rights" suggests that *all* rights teachings are premised on skepticism. Hence, he doubts that any rights teaching can be prevented "from undermining legitimate authority as well as tyranny" (Kraynak, 169).

This conflation imprecisely diagnoses the problem he has identified. A more precise diagnosis is that "human rights" and "democratic human rights" connected to Kantian "dignity"

are the problem. Kant's idea that human dignity is grounded in our individual autonomy implies that freedom and rights are "unconditional." *That* is the problem, not *rights* as such.

Not *all* ideas of rights need be unconditional. For example, Kant's rights doctrine concludes that "the one and only legitimate constitution is a pure republic—meaning a representative democracy that protects human rights in the name of the people" (Kraynak, 152). But Hobbes, the founder of the modern natural rights teaching, says monarchy is superior but countenances both aristocracy and democracy.³ And Locke, who moved natural rights in a more egalitarian and republican direction, acknowledges the equal legitimacy of "democracy," "oligarchy" and "monarchy", of different kinds of monarchy (hereditary or elective), and even such "compound and mixed forms of government as they [the people] think good."⁴ Clearly, early liberalism's variety of legitimate regimes is less doctrinaire,⁵ that is more prudential, than Kant's (following Rousseau's) teaching that only democracy is legitimate.

Kraynak is correct that this early liberal natural rights teaching is already skeptical about Providence, arguably subversive of authority, and even posits an individualism that leans in the direction of autonomy (Kraynak, 32-33). But it does not yet issue in Kant's political doctrinairism. It is therefore more moderate, and less dangerous, than Kant. Hence, one prudential option for contemporary Christians is to defend the older liberalism, rather than abandon rights as such. And while Kraynak does not explicitly recommend such abandonment, his relentless attack on *all* ideas of rights apparently points in that direction.

III

Another prudential option Christians might utilize, which should not suffer from Kantian doctrinairism, is the pre-Hobbesian Christian understanding of natural rights. While Kraynak is correct that "...the Church...has come to accept some of the political ideas...such as God-given natural rights...", his own text gives grounds to doubt that these were "*initially* proposed by rational religion [of the Enlightenment]" (Kraynak, 133 emphasis added). How can that be when Kraynak acknowledges the pre-Enlightenment teaching of Suarez (1548-1617) that individuals

have natural rights "embedded in the social nature of man" and which is consistent with "the primacy of the common good" (Kraynak, 122-23)? Moreover, Vitoria (1483-1546) and Las Casas (1474-1566) taught that all men, most particularly the American Indians, have a natural right to "dominion" (roughly "property"), to self-defense, and to liberty from being ruled by others without their consent. Hence, "the colonial conquest of Indians was judged to be unjust" (Kraynak, 136). Still, Kraynak asserts that Vitoria and Las Casas did not "quite" develop claims of "natural or human rights." Apparently he thinks this because he [Vitoria following Suarez] "still follows the traditional idea that a right is a grant from the common good rather than a claim derived from the primacy of the individual will" (Kraynak, 137-38).

This last point might shed light on Kraynak's seemingly factual error that "God-given natural rights" *initially* arose as part of the rational religion of the Enlightenment, rather than in this 16th-17th century school of Christian-Aristoteleans at Salamanca.⁶ For them "natural rights" belong to individuals who are by nature part of civil society. In contrast, early modern "natural rights" belong to individuals who are not by nature part of society, who by nature live in a non-social "state of nature." This is conceptualized variously as a "war of all against all" (Hobbes) and a condition of innocence, moderate desires, solitariness and peace (Rousseau). Kant's individual "autonomy"⁷ derives from Rousseau.

Moreover, Christian-Aristotelian rights were inferences from the duties of natural law "as means toward realizing an objective hierarchy of ends." The duties were primary and foundational to the rights. However, Kraynak says, such rights "are not 'rights' properly speaking but only conditional goods subservient to higher goods." In particular, they provide "no justification for claiming that individuals have a natural right to pursue happiness as they see fit" (Kraynak, 170). In contrast, modern natural rights make rights primary (as deriving from strong natural desires which one cannot rationally be expected to deny) and the foundation for greatly attenuated natural law duties. "Rights properly speaking" derive only from the primacy of individual will. That is from Hobbes and everything descended from Hobbes, including Locke and Kant. They belong to liberal modernity ("the rational religion of the Enlightenment").

Hence, Kraynak asserts, Christian-Aristotelian natural rights are not "rights' properly speaking."

Here the earlier inexactness has important consequences. These pre-modern Christian Aristotelians speak of "natural rights" and "inalienable rights"⁸ and Hobbes and Locke still use this language although moving considerably in the direction of the primacy of individual will. It is only "human rights," an offshoot of Kantian "dignity", which is fully vulnerable to Kraynak's objection. But if Kraynak is right that "rights properly speaking" exist only within liberal modernity, that modernity has no place for a Christian understanding of rights unless it is a Christianity that has gone over to Enlightenment liberalism.

The alternative for traditional Christians would be to counter liberal rights with the older Christian natural rights. Kraynak understands this to be Maritain's project in distinguishing "personalist" from "bourgeois" democracy and continued in Robert George's "perfectionist liberalism" (Kraynak, 171). But he thinks this project gives insufficient weight to "the self-love that is part of our fallen nature." Once grant "rights to personal satisfaction and to personal identity" and these rights "take over" and "swallow up the higher ends and subvert higher authorities including the churches and theologians who defend them." The "mistake lies in vastly underestimating the subversive power of rights" (Kraynak, 171-72).

This powerful argument describes much that we see around us in late political modernity. Heideggerian nihilism, softened and liberalized by Dewey, etc., and the consequent invention of "civil liberties" by the 1940's Supreme Court, intensified an individualism unmoderated either by natural law or by the right of legislatures to limit individual choices as required by the common good. Gradually, even legislatures seem more interested in liberating individuals from, instead of reinforcing, previous duties. And students come to my classes little conscious of their duties but quite aware they have rights.

So there is much to be said for Kraynak's view that our fallen nature needs restraining as much as licensing. But there is also much to be said for Christians not cutting themselves off from modern public culture and for attempting to moderate that culture's worst tendencies by teaching virtue in a language it can understand.

Kraynak thinks this has vanishingly little hope of practical success. And he may be correct, at least for the reasonably foreseeable future. The recovery and teaching of the older Christian natural rights tradition may not save either democracy or Christianity from being subverted by extreme notions of rights. But, since we cannot know the future, is it not our duty to keep alive, as best we can, the truth as it has been given to us? And to hope that, at some time, in ways unforeseeable by us, it might become effective?

Such hope has precedents. After the Founding, the natural rights teaching of the *Declaration of Independence* took a back seat to compromises that permitted slavery to expand, until Lincoln memorably re-energized its anti-slavery animus at Gettysburg.⁹ And although Las Casas failed to save the Indians from the Conquistadores' depredations, his intellectual efforts generated an example of the articulate rational grounds upon which later generations of Christians might defend those who do not share our skin color, language or faith, but who nevertheless deserve what belongs to them by nature.¹⁰

Under present conditions, it is understandable to despair of where "rights" seem to be taking us. But it is still possible to defend the Christian-Aristotelian version rather than let autonomy based rights lead even Christians to licentiousness or despotism. "The founding documents of the United States assert "certain 'self-evident' truths about the human person." These are "opportunities in the pursuit of happiness and in service to the common good;" a "freedom designed to enable people to fulfill their duties and responsibilities toward the family;" and a "respect and support for the natural groupings through which people exist, develop, and seek the higher purposes of life in concert with others."¹¹ Rights can exist for the sake of man's moral duties as a member of society and not only as claims to autonomy.

This moderate rights teaching, if I understand Kraynak correctly, was protected from corruption by our fallen nature's self-love because it was limited to the purposes of fostering personal virtue and the common good. There were never Christian natural rights against either of these. Nor did Christian-Aristotelian rights thinkers understand the common good as identical with what individuals choose by way of seeking "personal satisfaction" or "personal identity."

Christian-Aristotelian rights were always conditional and it is not clear why only unconditional rights should be said to be "'rights' properly speaking." So the problem is not rights as such, but those immoderate extensions, by Kant and others, of what rights are.

Accordingly, rather than cease using rights language, Christians can deny that the natural rights language of the *Declaration* is wholly modern. If it were, then to affirm the *Declaration* one must necessarily be a modern, a Hobbesian, a Lockean, and of a liberal religion which cares more about rights than about duties. To resist that, the philosopher Karol Wojtila points back to the thought of Suarez, Vitoria, Las Casas and Bellarmine. Similarly, American Catholics of the past, especially Orestes Brownson and Archbishop John Ireland, emphatically quoted Bellarmine and Suarez as evidence that Catholic (and not only Lockean) understanding is reflected in the *Declaration's* inalienable rights teaching.

Abandoning rights altogether means abandoning the *Declaration* and the political order founded on it. So what is at stake here for traditional, duty-oriented Christians in whether they have a place in modern democracy. Kraynak has written a powerful paragraph describing, at the level of specific public policies, what that means today. "While pretending to be neutral and open ended," liberalism "is dogmatic and hegemonic in its worldly ambitions" and "promotes its vision of the Good Life with all the weapons of cultural hegemony and state power" (Kraynak, 223-34). To abandon all ideas of rights would both weaken our defenses against that and also confirm the old idea that the principles of democracy are incompatible with Catholicism.

I hope the seriousness with which I have taken Kraynak's argument adequately expresses my gratitude for this serious book. It is plainly the fruit of sacrificial love for his religion, his country, and the search for truth.

Notes

1. Robert Kraynak, *Christian Faith and Modern Democracy* (Notre Dame, IN: University of Notre Dame Press, 2001), 3. Subsequent references to this work will be noted in the text with the following abbreviation: Kraynak.
2. Immanuel Kant, *The Science of Right* III, 22, 25, 28.
3. *Leviathan* Ch. 19, para. 1; Ch. 26, para. 4.
4. *Second Treatise of Civil Government*, Ch. X, Sec. 132, para. 1.
5. Doctrinaire" is the application of theoretical principles to practical situations without regard to circumstances. Here it is the view that there is only one legitimate practical application (democracy) of abstract principles (human rights). See the Oxford English Dictionary.
6. Robert Bellarmine (1542-1621) is also important in this tradition. Bellarmine and Suarez were held responsible by Filmer's *Patriarcha* (written before 1653, published 1680) for their "democratical" teaching of natural rights, government by consent of the governed, and right of revolution. Locke's *First Treatise* attacks Filmer and the *Second Treatise* famously propounds these ideas, or at least these words.
7. A term Kant coined. See J. B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1995).
8. See below and Arthur P. Monahan, *From Personal Duties towards Personal Rights: Late Medieval and Early Modern Political Thought, 1300-1600*. (Montreal: McGill-Queens University Press, 1994). Ch. Three. "Consent and Limit in Spanish neo-Scholasticism", 128-84.
9. See Harry V. Jaffa, *A New Birth of freedom: Abraham Lincoln and the coming of the Civil War* (Lanham, Md.: Rowman & Littlefield, 2000).
10. Bartolomé de Las Casas, *In Defense of the Indians: The Defense of the Most Reverend Lord, Don Fray Bartolomé de las Casas, of the Order of Preachers, late Bishop of Chiapa, Against the Persecutors and Slanderers of the Peoples of the New World Discovered Across the Seas*, trans. and ed. Stafford Poole (DeKalb : Northern Illinois University Press, 1992).

11. Pope John Paul II, December 19, 1997. Speech welcoming Lindy Boggs, new U.S. ambassador to the Holy See.