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UNIVERSAL HUMAN RIGHTS, THE UNITED NATIONS, AND THE *TELOS* OF HUMAN DIGNITY

William Joseph Wagner[†]

The United Nations *Universal Declaration of Human Rights* of 1948,¹ along with the United Nations covenants on economic, social and cultural rights, and civil and political rights of 1966,² are instances of the age-old aspiration to harness power to advance genuine human fulfillment under a rule of reason. All were adopted based on the premise that the world will be united. The United Nations adoption reflects the belief that this manifest destiny of the human race should proceed, if possible, on the plane of universal respect for human dignity, rather than by force. This choice of options was the lesson of the conflagration of World War II.³

The device of promulgating universal rights guarantees represents an alternative to an older approach that sought to bring about legal observance of general norms of reasonableness governing conduct, that were formulated in terms of moral duty and grounded in fidelity

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1. *Universal Declaration of Human Rights*, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948), *reprinted in* UNITED NATIONS CENTRE FOR HUMAN RIGHTS, HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS (Vol. I, Part 1) 1 (1994) [hereinafter COMPILATION]. The preamble to the *Declaration* declares that it is adopted as a "common standard of achievement for all peoples and all nations." *Id.* at 2. The *Declaration* was adopted with unanimous approval by the United Nations General Assembly on December 10, 1948 (with abstentions by the Soviet Union, South Africa, Saudi Arabia and five other nations). Avery Dulles, *Human Rights: Papal Teaching and the United Nations*, AMERICA, Dec. 5, 1998, at 14, 14.

2. *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., 1496th mtg., Annex, U.N. Doc. A/6316 (1966), *reprinted in* COMPILATION, *supra* note 1, at 8; *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., 1496th mtg., Annex, U.N. Doc. A/6316 (1966), *reprinted in* COMPILATION, *supra* note 1, at 20.

3. Mary Ann Glendon notes, "The horrors of two world wars" led some to believe "that some principles of human decency are so basic that every nation and culture could accept them as a common yardstick." Mary Ann Glendon, *John P. Humphrey and the Drafting of the Universal Declaration of Human Rights*, 2 J. HIST. INT'L L. 250, 250 (2000).

to traditions of right behavior.⁴ The Catholic Church long was a stalwart proponent of the older approach and spent considerable energy in a rearguard defense against early incursions of the newer model throughout much of the nineteenth century.⁵ But following World War II, the Church clearly and unambiguously converted to the newer rights approach.⁶ In *Pacem in Terris*, John XXIII described the United Nations *Universal Declaration of Human Rights* as an "act of the highest importance."⁷ In *Redemptor Hominis*, John Paul II

4. David Hollenbach describes the transition which Pope John XXIII makes in *Pacem in Terris* from the older to the newer approach by its

careful discussion of the correspondence between rights and duties. To the moral claims which arise from human dignity there correspond duties and responsibilities of society. To every human right there corresponds the duty that this right be respected by the subject of the right himself or herself, by other individual persons and by society.

....

... The rights it affirms have been assembled from those mentioned and defended in the previous documents of the tradition.

DAVID HOLLENBACH, S.J., CLAIMS IN CONFLICT: RETRIEVING AND RENEWING THE CATHOLIC HUMAN RIGHTS TRADITION 65-66 (1979). Hollenbach observes that by its shift in emphasis and direction, the encyclical is able significantly to enlarge "the domain of rights" and "includes both those rights stressed by the liberal democratic tradition and those emphasized by socialists." *Id.* at 66. John Finnis analyzes the shift from the older to the newer approach by tracing the changing meaning of *jus* or "right" within the theories of western political writers. JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS 205-10 (1980).

5. "If one moves back 100 years before *Pacem in Terris* in the history of papal teaching on society, one comes to the *Syllabus of Errors* of Pius IX (1864). . . . Pius IX was struggling to preserve a privileged or even a monopoly position for the Catholic religion. . . . Catholicism's institutional sympathies during most of the nineteenth century were with conservatism that had its roots in the *ancien regime*." John Langan, *Human Rights in Roman Catholicism*, in HUMAN RIGHTS IN RELIGIOUS TRADITIONS 25, 31-32 (Arlene Swidler ed., 1982).

6. "The Roman Catholic Church has stepped boldly in the aftermath of the Second Vatican Council (1962-1965) to develop a refined human rights theology and advocacy." John Witte, Jr., *Law, Religion and Human Rights*, 28 COLUM. HUM. RTS. L. REV. 1, 15 (1996). Mary Ann Glendon recounts that the Catholic theologian Jacques Maritain was one of a group of philosophers asked by UNESCO to examine the question as a step in drafting the *Declaration* and she states that significant portions of the *Declaration* are traceable to the social encyclicals of the Catholic Church. Mary Ann Glendon, *The Sources of 'Rights Talk': Some Are Catholic*, COMMONWEAL, Oct. 12, 2001, at 11, 11. And apparently even the Catholic Bishops of the United States had an influence in the drafting process: "A committee of the National Catholic Welfare Conference—the forerunner of the National Conference of Catholic Bishops—issued a statement on human rights in 1947. . . . [A] copy of that statement reached Eleanor Roosevelt, and . . . many passages in the 1948 U.N. declaration [drafted by the U.N. committee Roosevelt headed] are strikingly similar to the U.S. bishops' document, suggesting probable influence." John L. Allen, Jr., *Church's Human Rights Record a Mixed Bag*, NAT'L CATH. REP., Dec. 11, 1998, at 13, 13.

7. Pope John XXIII, *Pacem in Terris* [Encyclical Letter on Establishing Universal Peace in Truth, Justice, Charity and Liberty] ¶ 143 (St. Paul ed. 1963) [hereinafter *Pacem in Terris*]. David

called it a cause of "joy of all people of good will," and, in *Sollicitudo Rei Socialis*, he acknowledged that a growing consciousness of human dignity was attributable to it.⁸ In his October 5, 1995 address to the United Nations, John Paul II evaluated the United Nations *Declaration* as a "basic inspiration and cornerstone" of human conscience.⁹

Even today, not all adherents of religion agree with the Catholic Church on the wisdom of adopting the rights model. Polarization in global politics indicates, for example, that some adherents of Islam do not.¹⁰ Experience under the *Declaration*, to this point, is mixed, even from the perspective of Catholicism. If the goal of the Catholic endorsement of human rights is the vindication of the *telos* of human dignity, as it is conceived within the Catholic tradition, the verdict is not in.¹¹ The United Nations rights framework is not a foolproof guarantee of authentic human fulfillment, as the Christian tradition envisions it. In fact, events have established that the framework can

Hollenbach correctly identifies *Pacem in Terris* as "the most powerful and thorough statement of the Roman Catholic understanding of human rights in modern times." HOLLENBACH, *supra* note 4, at 41.

8. Pope John Paul II, *Redemptor Hominis* [Encyclical Letter on the Redeemer of Man] ¶ 17 (St. Paul ed. 1979); Pope John Paul II, *Sollicitudo Rei Socialis* [Encyclical Letter on Social Concern] ¶ 26 (St. Paul ed. 1987) [hereinafter *Sollicitudo Rei Socialis*].

9. Pope John Paul II, *Address to the 34th General Assembly of the United Nations in New York* (Oct. 2, 1979), in 24 THE POPE SPEAKS 297, 300 (1979). Regarding the Vatican international human rights policy, see EDWARD J. GRATSCH, THE HOLY SEE AND THE UNITED NATIONS 1945-1995 (1997).

10. In his "Declaration of War Against the Americans Occupying the Land of the Two Holy Places," of August 1996, Osama bin Laden, for example, inveighs against Western aggression "under the cover of the iniquitous United Nations" with its "false claims and propaganda about 'human rights.'" LAWRENCE DAVIDSON, ISLAMIC FUNDAMENTALISM: AN INTRODUCTION 177 (2003).

11. Mary Ann Glendon writes of the United Nations Fourth World Conference on Women that took place in Beijing in 1994, "The significance of Beijing for human rights is mainly in the nature of a warning." Mary Ann Glendon, *What Happened at Beijing*, FIRST THINGS, Jan. 1996, at 30, 35. She notes, for example, that "[a]s the fiftieth anniversary of the UN's 1948 Universal Declaration of Human Rights approaches, the Beijing conference appears to have been a testing ground for . . . the universal language of human rights by an impoverished dialect that has already made great inroads on political discourse in the United States." *Id.* Doubts exist in some quarters, more specifically, in the capacity of the United Nations to administer human rights oversight in keeping with the original spirit of the *Declaration*. "If a person would visit from the moon and would look at these bloody violators of human rights, countries like Sudan, which excels in slaveholding in the 21st century, sitting in judgment of political democracies like the state of Israel, the absurdity of the U.N. Human Rights Commission becomes clear to everybody." *Has the U.N. Commission on Human Rights Lost Its Course?: A Review of Its Mission, Operations, and Structure: Hearing Before the House Subcomm. on Int'l Operations and Human Rights*, 107th Cong. 7 (2001) (quoting Tom Lantos, Member, House Comm. on Int'l Relations).

actually come to interfere with societal adherence to the requisites of such fulfillment.¹² The Catholic option to support the international human rights framework of the United Nations as a means of advancing a sustainable global vision of human dignity must be viewed, in a certain sense, as an experiment.

In this short essay, I seek to provide a description of the way the rights framework, by its nature, functions to unify global practice around normative ideals. I then outline obstacles, both theoretical and practical, to the effective functioning of this framework and the advancement of its purpose. Next, I lay out and critique the means that the Church, in its official teaching, proposes for overcoming these obstacles. I conclude by sketching briefly what I understand to be a more adequate program for addressing the impediments that exist to the realization of the aspiration of universal respect for human dignity that underlies the Catholic endorsement of the United Nations *Universal Declaration*. The outline I offer speaks directly to the longer-term ongoing implementation of international human rights guarantees and indirectly to the Church's choice of its mode of advocating human rights in the global arena.

I. CHARACTER OF THE RIGHTS MANIFESTOS AS A DEVICE FOR UNIFYING THE PRACTICE OF STATES

A proclamation of human rights guarantees, such as the *Universal Declaration*, relies upon abstract norms, set forth without reference to longer history, culture, or local tradition and without reference to any stipulated ontological or metaphysical ground.¹³ Such a proclamation

12. As Avery Dulles, S.J. observes,

Positivism is widespread in contemporary ethical thinking. Values are commonly treated as expressions of merely personal preferences. Individuals and nations might be induced to enter into agreements that would be indefinitely open to revision. The proposed International Criminal Court might coerce nations to accept specious rights contrary to the natural law. Present controversies about the right to contraception, gay rights, the right to choose an abortion and the right to die illustrate the problem.. By a final absurdity, immorality itself would be elevated into a right.

Dulles, *supra* note 1, at 18.

13. Instead, in the *Declaration's* preamble, the drafters cite "disregard and contempt for human rights" as the cause of "barbarous acts which have outraged the conscience of mankind," referring to the excesses of World War II. And, they assert that such rights have now been proclaimed, and that a "common understanding" of them is necessary. They assert faith in human dignity and equality, to social progress, and the importance of "the rule of law" and of "friendly relations between nations" as reasons for promulgating the *Declaration*. They do not

assumes that the modes of respect it requires can be assigned, moreover, as due a person or a configuration of persons, without a more comprehensive description of concrete circumstances.¹⁴ Likewise, the proclamation presupposes that the assignment of the right has meaning without provision for a judicial office to adjudicate its violation or a specific mechanism of law for enforcing, in any case, any remedies that any judge might order in response to that violation.¹⁵

The validation of a declaration of rights depends on the unique moral appeal of the historical moment in which it emerges or of some immediate consensus underlying its adoption, if not on outright self-evidence. Such a declaration assumes a universal normative authority as the measure of the rightness of state practice, regardless of particular circumstances. As such, it relativizes the normative meaning of the dynamic forces of history, culture, and local tradition, so that this meaning is at most pre-moral in character.¹⁶ Its atemporal

directly stipulate the way in which rights have an ontological or metaphysical ground. COMPILATION, *supra* note 1, at 1.

14. "For human rights laws are inherently abstract ideals—universal statements of the good life and the good society. They depend upon the visions of human communities and institutions to give them content and coherence, to provide 'the scale of values governing the[ir] exercise and concrete manifestation.'" Witte, *supra* note 6, at 2 (quoting Jacques Maritain, *Introduction to UNESCO, HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS 15-16* (1949)).

15. Cf. HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY 15-16* (1980) ("A proclamation of a right is not the fulfillment of a right A proclamation may or may not be an initial step toward the fulfillment of the rights listed. . . . [A] right has not been fulfilled until arrangements are in fact in place for people to enjoy whatever it is to which they have the right."). On the United Nations mechanism for responding to reports of human rights violations and the role of the United Nations Commission on Human Rights, see Mel James, *The Country Mechanisms of the United Nations Commission on Human Rights*, in *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: FIFTY YEARS AND BEYOND 75-84* (Yael Danieli et al. eds., 1999). David Hollenbach, however, argues that the nonjusticiable nature of the rights declared by the United Nations does not, as Maurice Cranston alleges, push them "out of the clear realm of the morally compelling into the twilight world of utopian aspiration." HOLLENBACH, *supra* note 4, at 32 (citing MAURICE CRANSTON, *WHAT ARE HUMAN RIGHTS?* 68 (1973)). Hollenbach observes, "Liberal democratic thought, with its fundamental principle of the rule of law, has naturally focused on those human rights which can be directly translated into legislation and constitutional principles," but that the substantive rights important to socialism and Catholicism, by contrast, may call for alternate modes of implementation, such that "any adequate theory and program of human rights must recognize that different rights require different means of implementation." *Id.* at 33.

16. It is possible to pursue values

in two ways: the values or goods involved in a human act would be, from one viewpoint, *of the moral order* (in relation to properly moral values, such as love of God and neighbor, justice, etc.) and, from another viewpoint, *of the pre-moral order*,

and extrinsic benchmarks of due legal order invite an attitude of constant vigilance against the potential of the dynamic and particular elements in a legal culture to devolve into unwarranted force and domination. They give the disempowered a mandate to challenge all particular arrangements within a given constitutional order, by appearing to confer extra-legal standing on the many to object to the legal status quo.¹⁷ The principal realm in which this "standing" can be exercised, given its extra-legal character, is political. The abstract importance the rights manifesto gives the individual tends to reinforce the value of individualism and the centrality of the market.¹⁸

which some term non-moral, physical or ontic (in relation to the advantages and disadvantages accruing . . .).

Pope John Paul II, *Veritatis Splendor* [Encyclical Letter Regarding Certain Fundamental Questions of the Church's Moral Teaching] ¶ 75 (St. Paul ed. 1993).

17. "Ronald Dworkin has captured the tone of the rights vocabulary by calling rights 'political trumps held by individuals.'" HOLLENBACH, *supra* note 4, at 7 (quoting RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* xi (1977)). Thomas Buergenthal explains,

By universalizing and legitimating mankind's yearning for human rights and human dignity, the Universal Declaration has also shaped the manner in which people around the world personalize their right to have rights. Never before have so many people in so many countries believed that they have human rights and that it is the purpose and duty of government to respect and protect these rights. This is not to suggest that at other times in history human beings did not wish to be treated with dignity or to have their rights respected. Of course they did. What has changed though is that in the past the vast majority of humankind accepted its suffering as preordained or unavoidable; today more and more people believe that those who cause their suffering are acting illegally.

Thomas Buergenthal, *Centerpiece of the Human Rights Revolution*, in *REFLECTIONS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A FIFTIETH ANNIVERSARY ANTHOLOGY* 91, 93 (Barend Van Der Heijden & Bahia Tahzib-Lie eds., 1998).

18. The economic implications of the rights manifesto is variously evaluated.

Starting from the Marxist assumption that civil and political rights are "formal" bourgeois freedoms that serve only the interests of the capitalists, the conspiracy theory holds that human rights serve the same purpose in the international arena. It sees them as instruments of domination because they are indissolubly tied to the right to property, and because in the field of international economic relations, the human rights movement fosters free and unrestricted trade which seriously hurts the economies of Third World nations.

Fernando R. Tesón, *International Human Rights and Cultural Relativism*, 25 VA. J. INT'L L. 869 (1985), *reprinted* in *THE PHILOSOPHY OF HUMAN RIGHTS* 379, 390-91 (Patrick Hayden ed., 2001) (footnote omitted).

In other words, if by "capitalism" is meant what the West at its best means by capitalism—a tripartite system in which democratic politics and a vibrant moral culture discipline and temper the free market—then that is the system the pope urges

The declarative-rights approach serves the many as a grammar of dissent, providing language that enables those who use it to exert pressure on lawmakers to reallocate power. The pre-modern Thomas Aquinas, by contrast, saw no recourse for the disaffected except prayer, and he considered tyrants as a scourge permitted by God for the purification of all.¹⁹

While the rights manifesto offers a certain template of a human rights ideal, that template is of inherently limited value, since, by its nature, it lacks reliable cues regarding the fit of its requirements with a society's historical and cultural traditions.²⁰ Its guarantees are not confined by the specificity that is the earmark both of legislative or constitutional drafting or the concreteness that is that of justiciability and, on the latter count, they generally are not a basis for claims for individual relief. They have the character of preemptive objection to institutional arrangements and societal relationships that do not reflect their priorities. Their application tends to dissolve inherited organic forms of social organization, and to promote reliance on present-tense formulation of prospective visions of the social good.

The challenge of the rights-based approach, and of the modernism associated with it, is to facilitate its own characteristically politicized environment for coordinating common societal action without, incidentally, eroding the possibility of continuing adherence to the very rights concepts upon which it relies.²¹ The great social-contract

the new democracies and the Third World to adopt, because that is the system most likely to sustain a human freedom that is truly liberating.

George Weigel, *The Virtues of Freedom: Centesimus Annus* (1991), in *BUILDING THE FREE SOCIETY: DEMOCRACY, CAPITALISM AND CATHOLIC SOCIAL TEACHING* 207, 217 (George Weigel & Robert Royal eds., 1993).

19. See THOMAS AQUINAS, *On Princely Government: To the King of Cyprus*, in *AQUINAS: SELECTED POLITICAL WRITINGS* 3, 33, 35 (A. P. d'Entrèves ed., J. G. Dawson trans., 1959) ("Finally, when there is no hope of human aid against tyranny, recourse must be made to God the King of all, and the helper of all who call upon Him in the time of tribulation. . . . But for men to merit such benefit of God they must abstain from sinning, because it is as a punishment for sin that, by divine permission, the impious are allowed to rule . . .").

20. Cf. HOLLENBACH, *supra* note 4, at 7 ("[T]he language of human rights. . . is crisp, blunt, almost curt. Human beings have rights. These rights are to be respected. . . . The clarity of the rights vocabulary is far from being matched by our understanding of what human rights are, how they are interrelated, how they are limited by each other, and whether they can ever be subordinated to other social values.").

21. Some view this challenge with complacency. For instance, Richard Rorty says,

. . . I shall be defending the claim that nothing relevant to moral choice separates human beings from animals except historically contingent facts of the world, cultural facts.

thinkers relied heavily on the distinction between form and substance to strike something like the required balance, with rights being largely formal guarantees of individual freedom.²² Such thinkers did not presume to think that the individualized political environment they sought to advance was compatible with any extensive scheme of substantive rights. The United Nations framework goes beyond these precursors in stipulating a comprehensive vision of substantive fulfillment as the subject of rights.²³ The Catholic endorsement of the United Nations framework becomes more readily understandable when one observes that it contains substantive as well as formal guarantees, in a manner resonant with received Catholic ideas of the

....

... Cultural relativism is associated with irrationalism because it denies the existence of morally relevant transcultural facts. . . . Philosophers like myself, who think of rationality as simply the attempt at such coherence, agree . . . that foundationalist projects are outmoded. We see our task as a matter of making our own culture—the human rights culture—more self-conscious and more powerful, rather than of demonstrating its superiority to other cultures by an appeal to something transcultural.

Richard Rorty, *Human Rights, Rationality, and Sentimentality*, ON HUMAN RIGHTS: OXFORD AMNESTY LECTURES 1993 (Steven Shute & Susan Hurley eds., 1993), reprinted in THE PHILOSOPHY OF HUMAN RIGHTS, *supra* note 18, at 241, 245-46. Others do not, including Mary Ann Glendon who comments: "Rights talk in its current form has been the thin end of a wedge that is turning American political discourse into a parody of itself and challenging the very notion that politics can be conducted through reasoned discussion and compromise." MARY ANN GLENDON, RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE 171 (1991).

22. Isaiah Berlin describes the contractarian concept of freedom as the negative ideal of liberty. He notes:

Kant came nearest to asserting the "negative ideal" of liberty when (in one of his political treatises) he declared,

The greatest problem of the human race, to the solution of which it is compelled by nature, is the establishment of a civil society universally administering right according to law. It is only in a society which possesses the greatest liberty . . . in order that it may co-exist with the liberty of others—that the highest purpose of nature, which is the development of all her capacities, can be attained in the case of mankind.

ISAIAH BERLIN, *Two Concepts of Liberty*, in LIBERTY 199 n.1 (Henry Hardy ed., 2002) (quoting *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht* (1784), 8 CRITIQUE OF PRACTICAL REASON: KANT'S GESAMMELTE SCHRIFTEN 22 (Berlin, 1900-)). An avowed modern liberal, Isaiah disagrees with Kant's assumption that freedom can be premised on a commonly intelligible concept of rational self-fulfillment. *Id.* at 49, 194-95.

23. See *International Covenant on Economic, Social and Cultural Rights*, *supra* note 2, at 8-19.

common good, albeit without overt reference to traditional Catholic attention to ontology, metaphysics, and tradition.²⁴

II. THEORETICAL OBSTACLES TO THE EFFECTIVE FUNCTIONING OF A DECLARATIVE HUMAN RIGHTS FRAMEWORK

The regime of rights under the United Nations *Universal Declaration* relies on a kind of moral positivism. Its guarantees serve as a check on the terms of national legal systems after the manner of moral norms acknowledged as binding by the judge or social critic, but, at the same time, they appear to be posited as if virtually a form of higher law. The effectiveness of the rights depends on a kind of fiction that they possess self-evident truth and are of self-executing force. Pope John Paul II perpetuates this fiction in asserting that these formal concepts "are inscribed in the very nature of reality."²⁵ In fact, a constructive exercise is required to translate the guarantees of the *Declaration* into an epistemologically credible set of moral propositions. Such a constructive account must demonstrate how the content of the *Declaration* and related documents can be considered to express the genuine demands of the good and the right and how, more specifically, the *Declaration's* demands are to be realized in concrete circumstances.

In the classic view of Aristotle, the political order acquires its meaning by participation in intrinsic ends. It aims at the good.²⁶ Correspondingly, law secures society's compliance with standards of conduct that advance the good.²⁷ What one is due under the law, i.e.

24. "[T]he rights tradition into which the church has tapped is the biblically informed, continental, dignitarian tradition which she herself had already done so much to shape. 'The Catholic doctrine of human rights,' Avery Dulles points out, 'is not based on Lockean empiricism or individualism. It has a more ancient and distinguished pedigree.'" Glendon, *supra* note 6, at 13.

25. "In expounding the philosophical foundation of human rights John Paul II insists that they . . . are inscribed in the very nature of reality." Dulles, *supra* note 1, at 15.

26. Aristotle writes,

Every state is a community of some kind, and every community is established with a view to some good; for everyone always acts in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good.

ARISTOTLE, *POLITICS*, Book I, ch. 1, *reprinted in* 2 *THE COMPLETE WORKS OF ARISTOTLE* 1994 (Jonathan Barnes ed., Benjamin Jowett trans., 1984).

27. "In all sciences and arts the end is a good, and the greatest good and in the highest degree a good in the most authoritative of all—this is the political science of which the good is

one's "right," follows indirectly from the community's commitment to some demonstrable conception of authentic human fulfillment. Aristotle held that the priority of claims under rule of the state could be ranked only "if we take into account a good life."²⁸ In this view, the notion of a list of rights apart from a philosophically sound account of what is genuinely worth attaining is absurd.²⁹ Likewise, the idea that one could give priority to the wishes or needs of discrete actors or relationships within society as "rights," apart from a comprehensive account of the good of the complete community would be untenable.³⁰

The more fully one can transcend a positivistic interpretation of a rights declaration by constructing a philosophical justification for considering it, in effect, a shorthand articulation of the requirements of a full theory of the good like Aristotle's, the greater its value for coordinating stable and lasting solutions to societal conflicts. Certainly, the Catholic tradition has long assumed that such a philosophical justification is possible.³¹ In its endorsements of the

justice, in other words, the common interest. . . . Hence it is evident that in seeking for justice men seek for the mean, for the law is the mean." *Id.* Book III, ch. 12, at 2035; Book III, ch. 16, at 2043.

28. *Id.* Book III, ch. 13.

29. *See id.*

30. "The state, as I was saying, is a plurality which should be united and made into a community by education . . ." *Id.* Book II, ch. 5, at 2005.

31. John A. Coleman, S.J. describes this desideratum as a need to "generate . . . a theory of basic rights." John A. Coleman, S.J., *Catholic Human Rights Theory: Four Challenges to an Intellectual Tradition*, 2 J.L. & RELIGION 355 (1984). David Hollenbach says, "Philosophers and political theorists have a major contribution to make to the development of this more integral and coherent approach." HOLLENBACH, *supra* note 4, at 34. He asserts that there are three questions which an adequate human rights theory must address: "What is the foundation of human rights? What is the relation between different human rights? What is the relation between human rights and the institutions of social, political and economic life?" *Id.* at 33. Hollenbach observes that the Church's role is unique in pursuing human rights advocacy from a perspective that itself requires theoretical grounding, that it is "among . . . nongovernmental organizations . . . notable for the degree to which it has developed an approach to human rights which is both activist and theoretically rigorist." *Id.* at 34. Charles Taylor holds that, philosophically speaking, some such justification is necessary for rights concepts to have currency. He states,

To be accepted in any given society, these would in each case have to repose on some widely acknowledged philosophical justification; and to be enforced in fact, they would have to find expression in legal mechanisms. One way of putting our central question might be this: what variations can we imagine in philosophical justifications or in legal forms that would still be compatible with a meaningful universal consensus on what really matters to us, the enforceable norms?

post-World War II rights framework, the Church has, however, evaded saying what that justification is, often treating rights language as essentially self-evident.³² Meanwhile, rival viewpoints promote alternate interpretations of the United Nations documents whose utilitarian and individualistic tenets contradict the Church's implicit position.³³

In the view of classical political philosophy, the rights framework of the United Nations *Declaration* will, nonetheless, remain of no more than imperfect value, even when supported by an adequate constructive effort linking it to a sufficient theory of the good. From an Aristotelian perspective, the concept of rights remains inherently dubious because it fosters a kind of cosmopolitanism. The touchstone of the rights-bearing individual relativizes the authority of all cultural institutions. The rights framework implicitly accords centrality to the market, as the forum within which rights-bearing individuals undertake exchanges according to individualized preferences. Thus, from the viewpoint of Aristotle, rights have a doubly questionable character. In contrast to a rights-theorist such as John Locke, Aristotle considered the opportunity for abstract profit represented by buying and selling to represent a decadent falling away from intrinsic meaning.³⁴ Aristotle, no less than the Catholic Aquinas after him, was wary of the intrinsic tendency of cosmopolitanism to break the link between the *polis* and the appeal of universal values.³⁵ Thus, even as

Charles Taylor, *A World Consensus on Human Rights?*, DISSENT, Summer 1996, at 15, *reprinted in THE PHILOSOPHY OF HUMAN RIGHTS*, *supra* note 18, at 409, 415.

32. Mary Ann Glendon believes the shift away from natural law theory "was also part of the church's shift from nature to history, as well as her increasing openness to learning from other traditions." Glendon, *supra* note 6, at 12. David Hollenbach thinks, "Though major advances have been made at the U.N. the synthesis remains more of a political compromise than a genuine theoretical breakthrough. It is therefore an unstable synthesis." HOLLENBACH, *supra* note 4, at 33.

33. According to Mary Ann Glendon, their "features include: rights envisioned without corresponding individual or social responsibilities; one's favorite rights touted as absolute with others ignored; the rights-bearer imagined as radically autonomous and self-sufficient; and the willy-nilly proliferation of new rights." Glendon, *supra* note 11, at 35.

34. Catholic social thought gives this economic implication of rights thinking a nuanced endorsement. George Weigel states that Catholic social teaching endorses "a tripartite system in which democratic politics and a vibrant moral culture discipline and temper the free market . . . is the system the pope urges the new democracies and the Third World to adopt." Weigel, *supra* note 18, at 217.

35. ARISTOTLE, *supra* note 26, Book I, ch. 9, at 1995 ("For natural riches and the natural art of wealth-getting are a different thing; in their true form they are part of the management of a household; whereas retail trade is the art of producing wealth, not in every way, but by exchange. And it is thought to be concerned with coin; for coin is the unit of exchange and the

the Catholic Church champions rights talk as a legitimate way of promoting universal participation in what the Church holds to be authentic human fulfillment, one observes empirically that the ideology of rights serves to break up traditional cultures and to extend the scope of Western-style economic markets.³⁶

As well as a concept of the good, a sustainable philosophical foundation for the rights manifesto would encompass an explanation of the relationship of rights to "what is right," i.e. a theory of justice. In the moral philosophy of Thomas Aquinas, traditionally endorsed by Catholicism,³⁷ "rights," in fact, are no more than a description of what justice requires in a given circumstance:

[T]he right in a work of justice, besides its relation to the agent, is set up by its relation to others. . . . [A] man's work is said to be just when it is related to some other by way of some kind of equality, for instance the payment of the wage due for a service rendered. And so a thing is said to be just, as having the rectitude of justice, when it is the term of an act of justice, without taking into account the way in which it is done by the agent: whereas in the other virtues nothing is declared to be right unless it is done in a certain way by the agent. For this reason justice has its own special proper object over and

limit of it. And there is no bound to the riches which spring from this art of wealth-getting. As in the art of medicine there is no limit to the pursuit of health, and as in the other arts there is no limit to the pursuit of their several ends, for they aim at accomplishing their ends to the uttermost (but of the means there is a limit, for the end is always the limit), so, too, in this art of wealth-getting there is no limit of the end, which is riches of the spurious kind, and the acquisition of wealth.").

36. John Langan inadvertently touches upon a significant cause of the Church's abandonment of a more precise philosophical account of its rights position. "The decisive removal of equivocation on the issue of religious freedom by Vatican II was a major, though belated, accomplishment which both preserved the credibility of the Catholic Church's teaching on human rights and opened the way to fuller and richer relationships with other religious traditions." Langan, *supra* note 5, at 34. But, as Langan also notes concerning the Church's change in position on religious freedom, "Few major accomplishments, however, are without problematic consequences." *Id.*

37. Pope Leo XIII specifically endorsed the philosophy of St. Thomas Aquinas as the perennial philosophy of the Catholic Church:

Let carefully selected teachers endeavor to implant the doctrine of Thomas Aquinas in the minds of the students, and set forth clearly his solidity and excellence over others. Let the academies already founded or to be founded by you illustrate and defend this doctrine, and use it for the refutation of prevailing errors.

Pope Leo XIII, *Aeterni Patris* [*Encyclical Letter on the Restoration of Christian Philosophy*] [¶ 31] 21 (St. Paul ed. 1990). But apart from the neo-scholastic revival engendered by that Pope, the reasoning of St. Thomas Aquinas dominates the Catholic moral tradition.

above the other virtues, and this object is called the just, which is the same as *right*. Hence it is evident that right is the object of justice.³⁸

While Aquinas leaves room for customary formulations of the "right" in situations that recur, according to the converging pattern of the *ius gentium* (law of nations), these formulations derive their authority from universal acceptance among ongoing communities of social practice.³⁹ In each case, the common norm calls for a righting of relations between or among persons, all pertinent circumstances having first been taken into account. By contrast to rights, as they are generally understood today, Aquinas's conception of "what is right" is neither a pure abstraction nor even an abstract prerogative or attribute of an identifiable individual or discrete group.⁴⁰

John Finnis argues persuasively that, if used in a disciplined way, rights talk can legitimately be employed to express the fullness of the demands of justice. Rights may be asserted, no less than claims in justice, with rationally defensible content.⁴¹ Yet, the format of the

38. THOMAS AQUINAS, *SUMMA THEOLOGICA*, Part II-II, Question 57, Article 1 (Fathers of the English Dominican Province trans., Christian Classics 1981) (1911).

39. Aquinas writes,

On the other hand to consider a thing by comparing it with what results from it, is proper to reason, wherefore this same is natural to man in respect of natural reason which dictates it. Hence the jurist Gaius says: *whatever natural reason decrees among all men, is observed by all equally, and is called the right of nations*.

Id. Part II-II, Question 57, Article 3 (citation omitted).

40. *Id.* Part II-II, Question 57, Article 1 ("[T]here pre-exists in the mind an expression of the particular just work which the reason determines, and which is a kind of rule of prudence . . . called a *law*, which . . . is not the same as right, but an expression of right."); see also *id.* Part I-II, Question 95, Article 2 ("[T]he first rule of reason is the law of nature. . . . Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. . . . But it must be noted that something may be derived from the natural law in two ways: first, as a conclusion from premises, secondly, by way of determination of certain generalities. The first way is like to that by which, in sciences, demonstrated conclusions are drawn from the principles: while the second mode is likened to that whereby, in the arts, general forms are particularized as to details: thus the craftsman needs to determine the general form of a house to some particular shape. . . . Accordingly both modes of derivation are found in the human law. But those things which are derived in the first way, are contained in human law not as emanating therefrom exclusively, but have some force from the natural law also. But those things which are derived in the second way, have no other force than that of human law.").

41. As Finnis explains,

The modern language of rights provides, as I said, a supple and potentially precise instrument for sorting out and expressing the demands of justice. . . . Let me conclude this review of the shift of meaning in the term "right" [away from meaning "duty"] and its linguistic predecessors by repeating that there is no cause to take sides as

rights manifesto does not lend itself to Finnis's disciplined interpretation. Questions of justice concern actions that are either past or, if hypothetical, sufficiently concrete and immediate as to count as if actual.⁴² Declarative rights have a different temporal reference. They function as a call to create future possibilities of participation in the good through reform. As such, declarative rights can never have precisely the same determinate content as have claims in justice—specifically, they can never give rise to fully justiciable claims. They tend by their nature to blur the boundary between politics and law and, within law, between the judicial and legislative functions. Since a declaration of rights serves to mobilize political objection to uses of power, one is never able wholly to distinguish it from a statement of interests. Thus, the Pope warns against the standing danger of the United Nations *Declaration* "decisively subjugated by what is wrongly called political interest."⁴³

The task of turning a declaration of rights to the critique of particular social institutions raises a distinctive set of problems regarding the meaning to be accorded established societal practices. Thinkers such as Burke in England, von Savigny in Germany, and, more recently, Alexander Bickel in the United States develop grounds for considering these problems to be a basis for objecting to abstract concepts such as rights. These theorists emphasize the perils of cutting a society's institutions to the cloth of purely abstract ideals. Aquinas restricts his cross-cultural generalizations about norms to those he can validate by convergent praxis. These thinkers assert that one can legitimately critique institutions only as an exercise in political prudence grounded in cumulative experience.

In *Reflections on the Revolution in France*, Edmund Burke rejects the overturning of the old order in favor of such new abstract imperatives as the *Declaration of the Rights of Man*, observing,

between the older and the newer usages, as ways of expressing the implications of justice in a given context.

FINNIS, *supra* note 4, at 210. Thus, "duty" does not necessarily have a logical priority to "right" but, instead may have "a more strategic explanatory role than the concept of rights." *Id.* at 210. For Finnis, the meaning of rights, no less than that of claims in justice, are specified in relation to a concept of the common good. *Id.* at 210-18.

42. Finnis provides a frame of analysis for specifying the meaning of asserted rights "in three-term right-duty relationships." *Id.* at 225.

43. Pope John Paul II, *supra* note 9, at 301.

The science of government being therefore so practical in itself and intended for such practical purposes—a matter which requires experience, and even more experience than any person can gain in his whole life, however sagacious and observing he may be—it is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purposes of society, or on building it up again without having models and patterns of approved utility before his eyes.⁴⁴

He emphasizes that the present generation lacks adequate scope of perspective to comprehend either the full import of the experience of the past, or of future consequences to justify global changes to received institutions, by appeal to purely abstract norms. Burke proposes a mode of respect for human dignity that is a sharp contrast to the abstract rights of the revolutionaries in France. He suggests that lawmakers and judges must cherish an “idea of inheritance” according to which the “advantages” of due civil order “are . . . locked fast” in the concrete practices helping to constitute “the great mysterious incorporation of the human race” . . . “as in a sort of family settlement, grasped as in a kind of mortmain forever.”⁴⁵ He allows for change, to advance “original justice,”⁴⁶ but only where such change can be “carefully formed upon analogical precedent, authority, and example.”⁴⁷

Friedrich Carl von Savigny, the founder of the historical school of jurisprudence,⁴⁸ joins Burke in repudiating the abstract codification

44. EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE 69-70 (Thomas H. D. Mahoney ed., Bobbs-Merrill 1955) (1790).

45. *Id.* at 38.

46. *Id.* at 109.

47. *Id.* at 36. Burke asserts that “the science of jurisprudence, the pride of the human intellect, which with its defects, redundancies, and errors” studies “the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns.” *Id.* at 108. The *Casey* plurality discussed how *stare decisis* provides a reason why change in American abortion policy is not reversible after twenty years of planning private economic lives:

The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives. . . . [W]hile the effect of reliance on *Roe* cannot be exactly measured, neither can the certain cost of overruling *Roe* for people who have ordered their thinking and living around that case be dismissed.

Planned Parenthood v. Casey, 505 U.S. 833, 856 (1992).

48. “The starting point of the historical school is, of course, Savigny’s small but celebrated pamphlet ‘Ueber den Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft’. It was published in October, 1814, and directed against Thibaut, the head of the so-called philosophical

associated with the French Revolution. The focus of his opposition is the subsequent Napoleonic law reform. He concludes his *Of the Vocation of Our Age for Legislation and Jurisprudence* by stating,

In the opinions we form of our present condition, also, we coincide, [with those who favor French abstract codification], for we both regard it as defective. *They*, however, see the cause of the evil in the sources of law, and believe that they could remedy it by a code—I, on the other hand, find it in ourselves, and believe, for this very reason, that we are not qualified to frame a code.⁴⁹

Von Savigny doubts the capacity of individual human reason reliably to formulate abstract norms, in isolation from the historically demonstrated good of a concrete community. In this view, the neutrality of purely abstract norms is only apparent. Inherent bias enters with the hidden interests of the party who formulates them or applies them in concrete circumstances. The jurist is, for this reason, not qualified to articulate and apply abstract norms, but only to study and clarify the proper application of the best received legal forms, as these are transmitted within a living legal culture. Norms, adequate to advance the good of a particular culture, take shape according to the distinctive orientation of the culture, through generations of common practice. In Germany, von Savigny saw this organic unfolding in the traditional influence of Roman law.⁵⁰ No less than Burke's, von Savigny's reasoning suggests that skepticism is appropriate regarding the wisdom of endorsing an abstract rights manifesto, such as the United Nations *Universal Declaration of*

school." Hermann Kantorowicz, *Savigny and the Historical School of Law*, 53 LAW Q. REV. 326, 332 (1937) (footnote omitted).

49. FRIEDRICH CHARLES VON SAVIGNY, *OF THE VOCATION OF OUR AGE FOR LEGISLATION AND JURISPRUDENCE* 182-83 (Abraham Hayward trans., 1975) (1831).

50. Kantorowicz, *supra* note 48, at 332-33 ("Like language, manners, and constitution, law has no separate existence, but is a simple function or facet of the whole life of the nation. In early times the common conviction of the people is the origin of the law. But with the development of civilization the making of law, like every other activity, becomes a distinct function, and is now exercised by the legal profession. In every higher civilization the jurists, therefore, represent the people in the creation of the law. Thus, law is always organically connected with the development of social life. It arises from silent, anonymous forces, which are not directed by arbitrary and conscious intention, but operate in the way of customary law. . . . The real remedy for the deficiencies of German law was to apply strictly historical methods, and thus to purify the original Roman law from its defilement through modern ignorance and indifference. History alone, Savigny declared, is the road to the understanding of our own conditions.").

Human Rights, as the legitimate basis of constitutional reform within a particular nation.

In *The Morality of Consent*, Alexander M. Bickel takes up, in a more contemporary setting, the themes of Burke and von Savigny. Bickel concurs with the pre-modern Aristotle and Aquinas, in asserting that "[i]n order to survive, be coherent and stable, and answer to men's wants, a civil society ha[s] to rest on a foundation of moral values."⁵¹ However, he agrees with von Savigny and Burke, that this foundation may not be imposed by "theoretical definition."⁵² He holds that is to be discovered "in balances between differences of good, in compromises sometimes between good and evil, and sometimes between evil and evil."⁵³ Bickel quotes Burke, with approval, to the effect that "Political reason is a computing principle: adding, subtracting, multiplying, and dividing, morally and not metaphysically, or mathematically, true moral denominations."⁵⁴ He, therefore, concludes that "[t]he rights of man, this is to say, have no independent, theoretical existence. They do not preexist and condition civil society. They are in their totality the right to decent, wise, just, responsive, stable government in the circumstances of a given time and place."⁵⁵

Bickel identifies his position and, implicitly, those of von Savigny and Burke, as representative of the whig or conservative, as opposed to liberal political tradition.⁵⁶ This tradition is skeptical that abstract norms, such as those in a rights manifesto, can offer a reliable basis for the reform of societal institutions. Such skepticism need not go so far as to necessitate the rejection of a document like the *Universal Declaration of Human Rights*, but it does ensure that such a document can serve as no more than a loose aspirational ideal, understood as requiring the mediation by political prudence, to find its concrete organic meaning within the inherited legal and moral terms of the culture, and, depending as well on inherited institutional channels of decision, for its application. There can be no doubt that Bickel would be skeptical regarding Catholic social teaching's wholesale enthusiasm for the United Nations human rights regime,

51. ALEXANDER M. BICKEL, *THE MORALITY OF CONSENT* 23 (1975).

52. *Id.*

53. *Id.* (quoting Edmund Burke).

54. *Id.* at 23-24 (quoting Edmund Burke).

55. *Id.* at 20.

56. *See id.* at 12.

conceived as a concrete step towards the world-wide unification of law.

Equally disinclined to consider abstract rights concepts adequate, a variation on the conservatism of Bickel, Burke, and von Savigny can be seen in the quasi-millenarian or utopian views of liberation theology. Liberation theologians, and those who think like them, merely insist that content can be given rights not by reference to the past, but only in reliance on a concretely envisioned future that finds its orientation in an *omega* point. In commenting on the Jose Miguez Bonino's *Doing Theology in a Revolutionary Situation*, James W. Skillen and Rockne M. McCarthy note that "liberation theology is not so much anti-historical as it is futuristic. . . . Miguez Bonino and other liberation theologians take history as seriously as did Burke Yet they view history more in the light of its future positive goal and destiny than in the light of its past traditions."⁵⁷

III. PRACTICAL OBSTACLES TO THE EFFECTIVE FUNCTIONING OF A DECLARATIVE HUMAN RIGHTS REGIME

In addition to the difficulties caused by the gaps in a viable theory of human rights, obstacles of a practical kind may arise to the reliable interpretation of a declarative human rights framework. These practical challenges underscore the need for a more adequate theoretical foundation for declarative rights. They may arise within the dynamic of the functioning human rights regime. Instances of such internal challenges include the commandeering of the rights frameworks by the impulses of individualism, utilitarian social engineering, interest politics, and cultural chauvinism. They may also arise through stresses external to the framework, which interfere with its reception. Examples include the disaffection and anxiety of rootless cosmopolitanism; the diversion of the human religious and moral instincts by fundamentalism; and traditional cultures' retreat from globalization into various forms of parochialism.

A. *Subversion from Within*

The Catholic Church endorses the international human rights framework, because doing so promises to contribute to an integral

57. José Miguez Bonino, *Doing Theology in a Revolutionary Situation*, reprinted in *POLITICAL ORDER AND THE PLURAL STRUCTURE OF SOCIETY* 115, 115-16 (James W. Skillen & Rockne M. McCarthy eds., 1991).

realization by the human community of its objective fulfillment. But John A. Coleman, S.J., has identified the practical danger that the rights framework will be read to favor liberal individualism, with the consequence that it is no longer suited to advance Christian notions of fulfillment.⁵⁸ An inherent ambiguity in the formal and positive character of a rights declaration means that theoretical interpretations other than the Church's will receive play within society. No amount of theoretical foundation for the Church's interpretation of rights will have an effect if popular sentiment accords them a different meaning. If, differently than the Church, the general community interprets the grammar of rights as one of radical individualism, the Church must be aware that such grammar will not, in fact, serve to coordinate societal conduct in a manner that fosters the goal of human dignity that the Church cherishes.⁵⁹

58. Coleman states that "a theoretical foundation of rights which appeals too simply to the dignity of the human person . . . could legitimate a liberal political philosophy, at odds with the Catholic social theory. Such a theoretical basis might promote individualism and undermine social solidarity." Coleman, *supra* note 31, at 353 (quoting Gregory Baum, *The Catholic Foundation of Human Rights*, in 18 THE ECUMENIST 8 (1979)). Coleman further quotes Baum approvingly:

[O]n the contrary, . . . the theoretical basis for civil liberties and all human rights is the common good of society, i.e. the values, institutions, laws and structures that mediate relations between persons and groups in accordance with their dignity. . . . [R]ights . . . are not granted simply because the subjective demands of persons must not be violated.

They are granted, rather, because they are the necessary condition for a public good which serves as a matrix for human survival, action, and flourishing.

Id. at 355 (quoting Baum, *supra*, at 10). James W. Skillen and Rockne M. McCarthy observe that this individualist interpretation deserves to be discredited:

The Enlightenment myth of the progress of freedom, according to Nisbet, holds that as individuals become liberated from the past constraints of aristocratic and ecclesiastical bondage, they will become ever more independent, happy, and self-determining. This faith leads its adherents to reject much of what is good about traditional associations and community life. A chief consequence is that these supposedly liberated individuals fall prey to bureaucratic and even totalitarian states which make them less free in many cases than their ancestors had been.

James W. Skillen & Rockne M. McCarthy, *Introduction* to POLITICAL ORDER AND THE PLURAL STRUCTURE OF SOCIETY, *supra* note 57, at 1, 6.

59. Mary Ann Glendon writes,

For the new rhetoric of rights is less about human dignity and freedom than about insistent, unending desires. Its legitimation of individual and group egoism is in flat opposition to the great purposes set forth in the Preamble to the Constitution: "to form a more perfect Union, establish Justice, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

When diverse philosophies valuing relational measures of fulfillment compete to dictate the societal interpretation of rights, moreover, a philosophy other than the variants of the Aristotelian/Thomist philosophy traditionally associated with the Church may prevail. One thinks specifically of philosophies of social engineering. What the right requires in concrete circumstances readily becomes whatever a utilitarian calculus demands. Such philosophies are chameleon-like in their ability to adopt without change the external coloration of the language of rights while altering their actual content. Arguably, the meaning of the Fourteenth Amendment to the United States Constitution has evolved away from older relational conceptions to advance more utilitarian objectives. The United States Supreme Court now advances abortion as an individual right, but its decisions appear driven by essentially utilitarian regard for integrating women as participants into the economic life of the nation on an equal footing with men, without requiring a distribution of the costs of their child-bearing to the wider community.⁶⁰ The Catholic belief that the framework of human rights will necessarily function to advance the Christian vision of integral human fulfillment is, therefore, not, without more, justified.

The formal quality of rights talk, with its operative value for challenging the allocation of power, introduces some distortions into the quest for a theoretically coherent concept of rights. These distortions arise from the impact of the politics of interest which creeps into the application of the rights framework in the international arena. Some trade-offs are theoretically justified. The quest for consensus among people holding diverse views is an appropriate expression of the value of human solidarity. But, pure interest politics also makes use of the rights framework.⁶¹ The Church, no less than the Bush Administration, is vulnerable to being caught up in such maneuvers. The Church, too, can be found either advancing a human-rights critique of a regime, or remaining silent, according to its perceived balance of interests.⁶² For example,

GLENDON, *supra* note 21, at 171-72.

60. See *Planned Parenthood v. Casey*, 505 U.S. 833, 856 (1992).

61. David Hollenbach distinguishes among considerations of theoretically based trade-offs, consensus-building based on solidarity, and the politics of interest. See HOLLENBACH, *supra* note 4, at 141-209.

62. "Neither governments nor international agencies . . . are especially effective advocates of human rights. Either their own self-interest, or pressing diplomatic reasons, severely limits governmental moral leverage on human rights questions." Coleman, *supra* note 31, at 344.

observers cite Apostolic Nuncio Pio Laghi's games of tennis with the generals of the Pinochet regime.⁶³ The danger exists of rights talk acting as a cover for corruption among those who have or want power, whether in the Church or the political regime. Moreover, the mere perception that this exists undermines the value of the declarative rights framework for mediating genuine political discourse.

A final obstacle to of the human rights framework actually serving its intended *telos* arises through the phenomenon of cultural imperialism.⁶⁴ A dominant culture employs rights concepts selectively, to undermine the stability of local cultural order for the sake of its hegemony. Some in Islam see a current example in the Bush Administration's greater demand for human-rights change in Afghanistan, Iraq, and Iran than in Saudi Arabia.⁶⁵ The use of the rights concept may be consciously or unconsciously adopted by the aggressor for the sake of symbolizing cultural dominance. The use of Christianity to pacify indigenous Americans in the late nineteenth and early twentieth centuries provides a certain parallel.⁶⁶ Whatever

63. Pio Laghi played tennis with a high ranking Pinochet officer, Admiral Emilio Eduardo Massera, "almost every day" while Pinochet was in power. John L. Allen Jr., *These Paths Lead to Rome*, NAT'L CATH. REP., June 2, 2000, at 13.

64. The charge can be brought by those objecting, in general, to the subordination of regional cultures: "[P]roponents of the conspiracy theory charge that human rights advocacy amounts to *moral imperialism*. In short, 'the effect, if not the design, of such an exclusive political preoccupation [is] to leave the door open to the most ruthless and predatory economic forces in international society.'" Tesón, *supra* note 18, at 391 (footnote omitted) (emphasis added). The charge can also be brought by the Church objecting to the attack by individualism on communitarian morals: "[I]n June [of 1994], 114 of the world's 139 cardinals . . . backed John Cardinal O'Connor of New York in a demand that the Cairo conference should not produce '*cultural imperialism*' by which 'abortion on demand, sexual promiscuity and distorted notions of the family are proclaimed as human rights.'" Alan Cowell, *Vatican Attacks Population Stand Supported by U.S.*, N.Y. TIMES, Aug. 9, 1994, at A1 (emphasis added).

65. Cf. JULIE A. MERTUS, BAIT AND SWITCH: HUMAN RIGHTS AND U.S. FOREIGN POLICY 2-3 (2004) ("[T]hat the United States has a distinctive rights culture and often uses distinctive legal terminology is not troubling. Indeed, the distinctiveness of the United States may benefit human rights claimants. However, the use of a double standard may be devastating both for U.S. human rights foreign policy and for the future of human rights.") (footnote omitted).

66. See GEORGE E. TINKER, MISSIONARY CONQUEST: THE GOSPEL AND NATIVE AMERICAN CULTURAL GENOCIDE 6 (1993) ("The 'Civilization' Act passed by the U.S. Congress in 1819 was clearly an attempt to co-opt the churches and their missionaries to serve the government's political ends with respect to Indian peoples. And the missionaries were only too glad to be co-opted for the sake of federal land grants and funding for mission schools. The so-called Grant Peace Policy of the 1870s delegated to the denominations the responsibility for filling the positions of Indian agent, parceling out particular nations or reservations to various denominations. The missionaries of all the churches came to Indian nations with the firm support of the political authorities.") (footnotes omitted).

morally legitimate interpretations exist for the ideology that the dominant culture officially advances, a dynamic of cultural chauvinism can cripple the capacity of the local culture authentically to assimilate a new idea, either because of passivity or resentment.

All of the practical challenges mentioned here were apparently in the ascendant at the United Nations 1994 Conference on Population and Development in Cairo and its Fourth World Conference on Women held in 1995 in Beijing. Conference participants do not appear to have contested the stated terms of the United Nations manifesto of human rights on its face. But, under the surface of agreement on formal language, interest politics raged, radical individualism was advanced, utilitarian social engineering agendas moved forward, and cultural chauvinism appeared to flex its muscle.⁶⁷ The Church, for its part, wasted no time seeking consensus in theory, but acted to form alliances with fundamentalist Islamists for the sake of securing what it considered the interests of authentic moral practice.⁶⁸

B. *Subversion from Without*

Factors of an external kind may also interfere with the effectiveness of the human rights framework. Cultural instability arising with globalization may join with the apparently superficial cultural cosmopolitanism of human rights formulations to create profound anxiety or insecurity.⁶⁹ Such insecurity may lead groups to opt for the sense of security offered by power-based regimes. In the more distant past, one observes the Napoleonic era following the French Revolutionary period, and that of Hitler following the Weimar

67. See Glendon, *supra* note 11, at 30-36.

68. "At the Cairo Conference, . . . the Vatican and allies such as . . . Saudi Arabia, Lebanon, and Sudan, were able to effectively force 'the lowest common denominator on these issues, in the face of the fact that well over 170 delegations might have agreed with more progressive recommendations.'" Rishona Fleishman, Comment, *The Battle Against Reproductive Rights: The Impact of the Catholic Church on Abortion Law in Both International and Domestic Arenas*, 14 EMORY INT'L L. REV. 277, 284-85 (2000) (footnotes omitted). "In Beijing, . . . [j]ust as in Cairo, the Vatican found itself allied with conservative Muslim countries on various issues. . . . During both conferences there seemed to be more similarities between the delegates from fundamentalist Islamic nations and the Holy See than delegates from other sovereigns." *Id.* at 287-88 (footnotes omitted).

69. "We may note . . . that an ethnic group can be culture—rather than interest—based and yet be reactive. For a social categorisation [sic] that fails to acknowledge cultural distinctiveness may itself trigger group identification that focuses on precisely this distinctiveness." PAUL GILBERT, PEOPLES, CULTURES AND NATIONS IN POLITICAL PHILOSOPHY 29 (2000).

Republic. At present, commentators note, with concern, signs of an apparent incipient parallel in countries like Russia, which may be experiencing a freeze after an initial period of greater openness following the fall of the Soviet Empire.⁷⁰ One may recognize aspects of this same pattern in the widespread suspicion that exists towards the policies of the United Nations in the western United States, in an extreme form, within the militia movement.⁷¹

70. Darrin M. McMahon explains the reaction to the Enlightenment impulse of the French Revolution as follows:

By attacking hierarchy and touting equality, the declaration dangerously subverted the natural order of France. It severed essential ties that bound men and women together, removed necessary social restraints, and turned subjects toward the whims and passions of individual desire—all in the name of a groundless set of abstract principles.

DARRIN M. MCMAHON, *ENEMIES OF THE ENLIGHTENMENT* 70 (2001). "With such an enemy, there could be no compromise. . . . To read the Revolution as the realization for *philosophie* was to oppose it." *Id.* at 73. Detlev Peukert describes,

Nowhere else in Europe had both traditional values and new political and social reforming ideas been so called into question as they had been in post-war Germany; and nowhere else had public life become so politicized and polarized. The one phenomenon reduced the chances of an accommodation between liberals and conservatives and threatened the very survival of the fundamental compromises of 1918. The other deprived the old élites of the mass support they needed in their search for a return to authoritarianism, while at the same time ruling out the possibility of any authoritarian solution that did not rest on such support. Finding themselves in an impasse of their own making, the old élites plumped for an alliance with Hitler.

DETLEV J. K. PEUKERT, *THE WEIMAR REPUBLIC: THE CRISIS OF CLASSICAL MODERNITY* 266-67 (Richard Deveson trans., 1992). In the contemporary instance of Russia, Richard Pipes, in a parallel vein, notes,

When the Soviet Union dissolved in 1991, expectations were high that Russia, rid of communism, would take a firm pro-Western course: democratizing its political system, granting its citizens unassailable civil rights, and rejoining the international community. Such were the promises made by President Boris Yeltsin when he took charge. But after more than a decade, these expectations have not been realized. Since ex-KGB colonel Vladimir Putin took over as president in 2000, Russia's democratic institutions have been muzzled, its civil rights restricted, and its cooperation with the international community far from assured.

Richard Pipes, *Flight from Freedom: What Russians Think and Want*, 3 FOREIGN AFF., May-June 2004, at 9, 9 (2004).

71. As one of the three unifying themes of the Contemporary American militia movement, D. J. Mulloy cites "a fear that the United States itself is under threat from an international conspiracy attempting to institute a 'New World Order' or 'one world government' on the country under the auspices of the United Nations." D. J. MULLOY, *AMERICAN EXTREMISM: HISTORY, POLITICS AND THE MILITIA MOVEMENT* 1 (2004).

The Catholic Church has a religious motivation for supporting the declarative human-rights framework, but the at times rationalistic appearance of that framework, together with its tendency to relativize concrete traditions of belief, may lead other religions to withhold their support from it, or even to assume the overtly antagonistic counterpoint of religious fundamentalism.⁷² Thus, the mode of discourse offered under the United Nations human rights framework may actually be another factor alongside the economic and cultural policies of so-called first world countries helping to explain the resurgence of religious fundamentalism in some parts of the world.

IV. THE RESPONSE OF THE SOCIAL TEACHING OF THE CATHOLIC CHURCH TO INTERNAL AND EXTERNAL OBSTACLES TO THE EFFECTIVENESS OF THE INTERNATIONAL HUMAN RIGHTS REGIME

In addition to endorsing the declarative rights framework of the United Nations, and offering an exposition of its content, Catholic social teaching offers at least some warrants for accepting it, and some suggestions for making it more effective. But, how successful is Catholic social teaching in addressing the lacunae noted above in the theoretical foundations of the rights regime as sketched above? When one searches the documents of Catholic social teaching for an answer, one discovers little of substance, in fact, beyond the Church's magisterial authority as a basis for assenting to the United Nations declarative framework. While Catholic documents promulgated since World War II include some of the terminology of natural law, as in *Pacem in Terris*,⁷³ that philosophical support generally falls away in more recent documents.⁷⁴ The one exception to this paucity of

72. "Still, in many countries, Islamist movements have attacked those seeking change as Western stooges and enemies of Islam, and they have seized on resistance to women's rights as an issue in their power struggle with moderate Muslim rulers." Susan Sachs, *Force of Islam: A Woman's Place*, N.Y. TIMES, Dec. 17, 2001, at B1, 2001 WLNR 3400421.

73. David Hollenbach observes that "*Pacem in Terris* develops . . . [its] themes by a careful discussion of the correspondence between rights and duties." HOLLENBACH, *supra* note 4, at 65. He states that "[i]ts approach provides theological justification for appeals to reason and natural law as the bases of a theory of human rights." *Id.* at 109.

74. Hollenbach sees that the approach in *Pacem in Terris* gives way to the "other pole, represented by *Gaudium et Spes*, plac[ing] greater emphasis on the contribution which Christian faith can make to the theory of rights in a pluralistic world." *Id.* Hollenbach's inquiry into "A Christian Theory of Rights" essentially uncovers reliance on the concept of *imago Dei*, and the theological rather than philosophical nature of the Church's position. *Id.* at 108-09. Although Hollenbach gives a clear and concise overview of rights-related themes in ecclesial documents through the end of the term of Pope Paul VI, he would seem to contradict himself in

philosophical development is the documents' reliance on the language of Christian personalism.⁷⁵ The concept of personalism contributes something to the philosophical depth of contemporary human rights discourse, but Church documents espouse the philosophy cursorily, without supplying arguments in its support, or explaining why personalism is preferable to other philosophical options.

The outstanding contribution of contemporary Catholic teaching to the discourse of human rights remains theological rather than philosophical. Throughout their pages, these Catholic documents emphasize the hierarchical and integral character of the human goods that rights guarantees protect.⁷⁶ They are decisive in identifying the human person's status, *imago Dei* as the ground of all human rights and God, as representing the human person's *summum bonum*, within the pattern of goods which respect for rights fosters.⁷⁷ In addition to endorsing human rights, as a political matter, the Church

terming the content of the Catholic documents "theoretical" while citing a "theoretical vacuum" and a continuing unmet need for the creation of theory. *Id.* at 33. Hollenbach is correct when he implies that the content of these documents is "doctrinal" not theoretical.

75. *Laborem Exercens* provides an example of the personalism of Catholic social teaching, stating: "The Church's teaching has always expressed the strong and deep conviction that man's work concerns not only the economy but also, and especially, personal values." Pope John Paul II, *Laborem Exercens* [*Encyclical Letter on Human Work*] ¶ 15 (St. Paul ed. 1981).

76. *Pacem in Terris* states,

Now an order of this kind, whose principles are universal, absolute and unchangeable, has its ultimate source in the one true God, Who is personal and transcends human nature. Inasmuch as God is the first Truth and the highest Good, He alone is that deepest source from which human society can draw its vitality, if that society is to be well ordered, beneficial, and in keeping with human dignity.

Pacem in Terris, *supra* note 7, ¶ 38 (footnote omitted).

77. Pope John Paul II writes,

If there is no transcendent truth, in obedience to which man achieves his full identity, then there is no sure principle for guaranteeing just relations between people. . . . Thus, the root of modern totalitarianism is to be found in the denial of the transcendent dignity of the human person who, as the visible image of the invisible God, is therefore by his very nature the subject of rights which no one may violate.

Pope John Paul II, *Centesimus Annus* [*Encyclical Letter on the Hundredth Anniversary of Rerum Novarum*] ¶ 44 (St. Paul ed. 1991). A major point of similarity among Protestant and Catholic theorists is that "most participants in the ecumenical consensus appeal to the *imago Dei* in support of their human rights concern and root particular human rights in a concept of human dignity or worth." Joseph L. Allen, *Catholic and Protestant Theories of Human Rights*, 14 RELIGIOUS STUD. REV. 347, 352 (1988). John Langan says that this emphasis in the Catholic documents "creates new possibilities for dialogue with other religious traditions, especially Protestantism." Langan, *supra* note 5, at 36.

offers its own religious worship and practice to validate the rights framework. By presenting declarative human rights as grounded in reason and addressed to all people of good will, the Church may, at times, distract attention from the constant basis of its position on rights, which is actually theological. The Church can also divert attention from this theological grounding when it—however legitimately—chooses to emphasize the role of pragmatic consensus in reaching cross-cultural understanding and agreement on the meaning of rights.

V. A PROPOSED PROGRAM FOR ENSURING THAT THE HUMAN RIGHTS FRAMEWORK OF THE UNITED NATIONS ADVANCES THE
TELOS OF HUMAN DIGNITY

The brief review here of the challenges that exist to realizing a *telos* of human dignity through the declarative human rights framework of the United Nations suggests a program of response. This program would apply to the interpretation and application of human rights in the realm of law and politics, but also to the Catholic Church's formulation of its own options as an international human rights advocate.

The popes have emphasized that the United Nations *Universal Declaration of Human Rights* represents a unique turning point in the history of the supranational organization of human societies. Pope John XXIII, for instance, termed it "an important step on the path towards the juridical-political organization of all the peoples of the world."⁷⁸ Pope John Paul II called it a "milestone on the long and difficult path of the human race."⁷⁹ An elaboration of the further implications of this insight into the historic character of the *Universal Declaration* is decisive for articulating a program better to advance adequate interpretations of the declarative rights framework of the United Nations.

Unlike the *Declaration of the Rights of Man* of the French Revolution that worried Burke and von Savigny, the United Nations *Declaration* does not attempt to replace any intact, yet corrupt, historic tradition with a new order. Rather, in its distinctive historical moment, it seeks to be a substitute for the disorder of total war among nation-states, as experienced in the World Wars of the twentieth

78. *Pacem in Terris*, *supra* note 7, ¶ 144.

79. Pope John Paul II, *supra* note 9, at 300.

century. Thus, the rights framework offered by the United Nations can properly be understood as an initial matrix or latticework upon which a comprehensive world legal order can be expected eventually to grow into place. The priority the rights framework gives individual claims to relief from the oppressive use of power is, moreover, not arbitrary, but rather can be considered a proportionate response to the specific excesses of twentieth-century totalitarianism. The manifesto character of these rights can be understood as designed to elicit consensus in the midst of interest-politics, only as a short-term matter, with the longer-term aspiration being maturation of the "thin" declarative rights framework into a set of "thick," fully justiciable, norms within a juridico-political order in the strict sense. In time, a new order of established practice might come to embody the considered experience of the community that would satisfy the conservatism of a Burke. A history of past cases, successfully adjudicated, would allow concepts of right more adequately to be integrated into a settled praxis, sustained by, and sustaining, in turn, a comprehensive and balanced understanding of the meaning of justice in concrete circumstances.

The better defense of the United Nations human rights norms would, therefore, be to tie their concrete assertion, wherever possible, to concrete evidence of the evolving maturation of the world community to the point of readiness for genuine elements suggesting a juridico-political confederation of nations, along the lines described, in keeping with at least one theoretical schema, aspirationally by Immanuel Kant.⁸⁰ In particular, it would be advisable to tie them to the conditions of socio-economic interdependency which John Finnis identifies as the source of the incipient authority of a supranational legal order.⁸¹ International agreement on the inalienability of intrinsic and universal human values with corresponding restrictions on the scope of international markets can provide an offset to the

80. "The peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in *one* part of the world is felt *everywhere*." IMMANUEL KANT, *Perpetual Peace A Philosophical Sketch*, in *POLITICAL WRITINGS* 107-08 (Hans Reiss ed., H. B. Nisbet trans., 2nd ed. 1991).

81. "If it now appears that the good of individuals can only be fully secured and realized in the context of international community, we must conclude that the claim of the national state to be a complete community is unwarranted and the postulate of the national legal order, that it is supreme and comprehensive and an exclusive source of legal obligation, is increasingly what lawyers would call a 'legal fiction.'" FINNIS, *supra* note 4, at 150. Finnis finds therein consequences for the authority of legal systems and the content of obligations in justice. See *id.* at 156, 260.

cosmopolitan tendency of rights talk.⁸² The growth of international agreements to combat crime crossing national borders, such as human trafficking, serves to provide a relation between rights and general norms of justice.⁸³ Principles of federalism and subsidiarity can referee the respective balance of regional cultures entrusted with the legacy of history and international coordination aspiring to the fresh realization of ideals.⁸⁴ Even the latter coordination already has a

82. In each social teaching, the Catholic Church declares,

Government leaders, your task is to draw your communities into closer ties of solidarity with all men, and to convince them that they must accept the necessary taxes on their luxuries and their wasteful expenditures in order to promote the development of nations and the preservation of peace. Delegates to international organizations, it is largely your task to see to it that senseless arms races and dangerous power plays give way to mutual collaboration between nations, a collaboration that is friendly, peace-oriented, and divested of self-interest, a collaboration that contributes greatly to the common development of mankind and allows the individual to find fulfillment.

Pope Paul VI, *Populorum Progressio* [Encyclical Letter on the Development of Peoples] ¶ 84 (1967), reprinted in CLAUDIA CARLEN, I.H.M., THE PAPAL ENCYCLICALS 1958-1981, at 183, 198 (1981). The Catholic Church teaches further:

Development which is not only economic must be measured and oriented according to the reality and vocation of man seen in his totality, namely, according to his *interior dimension*. There is no doubt that he needs created goods and the products of industry, which is constantly being enriched by scientific and technological progress. . . . [But on] the basis of this teaching, development cannot consist only in the use, dominion over and *indiscriminate* possession of created things and the products of human industry, but rather in *subordinating* the possession, dominion and use to man's divine likeness and to his vocation to immortality.

Sollicitudo Rei Socialis, *supra* note 8, ¶ 29.

83. See, e.g., United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, opened for signature Nov. 15, 2000; Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. §§ 7101-7110 (2004).

84. On subsidiarity, *Pacem in Terris* states,

Moreover, just as it is necessary in each state that relations which the public authority has with its citizens, families and intermediate associations be controlled and regulated by the principle of subsidiarity, it is equally necessary that the relationships which exist between the world-wide public authority and the public authorities of individual nations be governed by the same principle. . . .

The world-wide public authority is not intended to limit the sphere of action of the public authority of the individual state, much less to take its place. On the contrary, its purpose is to create, on a world basis, an environment in which the public authorities of each state, its citizens and intermediate associations, can carry out their tasks, fulfill their duties and exercise their rights with greater security.

Pacem in Terris, *supra* note 7, ¶¶ 140-41 (footnote omitted).

history in international customary law offering material for rumination in the style of Burke, von Savigny, or Bickel, that might be retrieved and promulgated.⁸⁵

This program has implications for the Church of a less direct, but equally important, kind. The program I propose suggests that the Church would be advised to distinguish more clearly its unique ecclesial perspective from the concrete diplomatic role of Vatican City as a "state." If my view that the purely declarative phase of international human rights observance should be considered transitory is correct, the present interim should, nonetheless, be considered fraught with peril for the authentic orientation of the international community to the *telos* of human dignity. I have described here those dangers to the integrity of human rights, both from within and without, as a means of promoting the formation of a global legal order. During this transition, the Church is not likely to be found to have definitive philosophical answers to fill the gaps noted in rights discourse by reference to the philosophies of Aristotle or even Aquinas, let alone to possess the political prudence and reserve called for by von Savigny, Burke, or Bickel. The Church does, however, in distinctive measure, offer a credible, enduring witness to the theological belief in the dignity of the person in the *imago Dei* and to religious faith in humankind's *summum bonum*.⁸⁶ Let the Church

85. James Scott, for example, describes how international law arose out of the experience of the discovery of the New World. He calls attention to the Spanish school of international law founded in the sixteenth century by Francisco de Vitoria who was able to "analyse the conditions of his day, feeling the necessity for a community larger than Christendom, and foreseeing the international community of the future, even though its actual conditions must have been unknown to him—more unknown by far than they are to us" and to apply the concepts of "righteousness, justice, and the moral standard" in interpreting the meaning of international practice for the "vast majority," among nations, "the small powers." JAMES BROWN SCOTT, *Preface to THE SPANISH ORIGIN OF INTERNATIONAL LAW: FRANCISCO DE VITORIA AND HIS LAW OF NATIONS* 9a (1934).

86. This theological basis helps sustain an underlying attitude conducive to formality concepts:

I am convinced that the deepest roots of what we now call human rights lie somewhere beyond us, and above us; somewhere deeper than the world of human covenants—in a realm that I would, for simplicity's sake, describe as metaphysical. Although they may fail to realize this, human beings—the only creatures who are fully aware of their own being and of their mortality, and who perceive their surroundings as a world and have an inner relationship with that world—derive their dignity, as well as their responsibility, from the world as a whole: that is, from that in which they see the world's central theme, its backbone, its order, its direction, its essence, its soul—call it what you will. Christians put this quite simply: man is here in the image of God.

then proclaim the certainty it possesses on these points, while it awaits the clarification of open philosophical questions by others. It may not be realistic to think that Vatican diplomats can refrain from diplomacy on behalf of Vatican and Church interests, but it does seem fair to suggest that the Church would be best served by clearly and unambiguously subordinating its diplomacy to its proclamation, in and out of season, of the essential theological foundations of its commitment to human rights.⁸⁷ The Church's faith has unique value as a bridge between the present, with its abstract blueprint of the *Universal Declaration of Human Rights*, and a future in which those rights will have given rise to the concrete realization of a living world legal order.

Václav Havel, *A Spiritual Covenant for Mankind*, in REFLECTIONS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A FIFTIETH ANNIVERSARY ANTHOLOGY 147, 148 (1998).

87. Rather than disqualifying the Catholic voice on human rights, its simple theological root may enable it to collaborate on a more truly global level:

Religion is an ineradicable condition of human lives and communities. Religions invariably provide universal sources and 'scales of values' by which many persons and communities govern themselves. . . . Their faith and works must be adduced to give meaning and measure to the abstract claims of human rights norms, to give spirit and sanctity to the legal ideas and institutions of a human rights regime.

Witte, *supra* note 6, at 2-3.