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Knowing the Universal Declaration of Human Rights

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PROPTER HONORIS RESPECTUM

KNOWING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS†

*Mary Ann Glendon**

Interviewer: *Finally, Mrs. Roosevelt, is there any way that students can help to make the Declaration of Human Rights a living document?*

Roosevelt: *Well, I really think the area in which students should function is first of all they should know the Declaration which we agreed that we would strive to implement in our own country.*¹

The United Nation's Universal Declaration of Human Rights of 1948 is the single most important reference point for cross-cultural discussion of human freedom and dignity in the world today. As described in a leading text, "It is the parent document, the initial burst of enthusiasm and idealism, terser, more general and grander than the treaties, in some sense the constitution of the entire movement—the single most invoked human rights instrument."² As it reaches its fiftieth anniversary, the Declaration is already showing signs of having achieved the status of holy writ within the human rights movement. Public figures nod briefly in its direction when the occasion arises. Cults have formed around selected provisions. It is widely admired, but little read. The Declaration as a whole is scarcely known.

The loss of, or, more precisely, the failure to acquire a sense of the Declaration as an integral body of principles has facilitated a host of opportunistic interpretations and uses. The prevailing approach to the rights contained in its thirty articles is a pick-and-choose cafeteria-style. The sections devoted to traditional political and civil liberties

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* The Learned Hand Professor of Law, Harvard University.

1 HOWARD LANGER, *HUMAN RIGHTS: A DOCUMENTARY ON THE UNITED NATIONS DECLARATION OF HUMAN RIGHTS FEATURING AN INTERVIEW WITH MRS. ELEANOR ROOSEVELT* (Folkways Records 1958).

2 HENRY STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 120 (1996).

are frequently, but unevenly, invoked.³ The provisions on social and economic justice are commonly ignored, even by major human rights organizations.⁴ The family protection principles have come under direct assault.⁵ Though virtually all U.N. members are committed in principle to the proposition that the Declaration's rights are universal,⁶ some international actors openly maintain that all rights are relative,⁷ others assert the priority of economic interests over human rights,⁸ and still others charge that universality is a cover for Western imperialism.⁹ The efforts of special interest groups to impose their agendas in the form of rights lend credibility to fears of cultural imperialism.¹⁰

In its fiftieth year, the universal rights project can evoke, even in the minds of its friends, disquieting thoughts of another ambitious human undertaking: the ill-fated tower built by the men of the Valley of Shinar who wanted their very own staircase to heaven.¹¹ Were philosophical rights skeptics, such as Michel Villey and Alasdair MacIntyre, right, after all, that something is intrinsically wrong with the universal rights idea? Villey, noting the tensions among several basic rights (e.g. liberty and equality), argued that the whole idea is hopelessly incoherent: "Each of the so-called human rights is the

3 Aryeh Neier observes that "the main impact [of human rights] today comes in curbing abuses by governments that lack geopolitical or economic significance. When human rights abuses occur in countries of first-rank importance, governments and intergovernmental bodies that could have influence pay lip service—at best to the problem." Aryeh Neier, *The New Double Standard*, FOREIGN POL'Y, Winter 1996-97, at 91.

4 See STEINER & ALSTON, *supra* note 2, at 269; Lynn Freedman, *Reflections on Emerging Frameworks of Health and Human Rights*, 1 HEALTH AND HUM. RTS. 314, 329 (1994).

5 See Mary Ann Glendon, *What Happened at Beijing*, FIRST THINGS, Jan. 1996, at 30, 32.

6 The Vienna Declaration adopted in 1993 at the Second World Conference on Human Rights provides in section 1(5) that "[a]ll human rights are universal, indivisible, and interdependent and interrelated."

7 For example, China's Premier Wei Jiang told President Clinton that "concepts on democracy, on human rights, and on freedoms are relative." John F. Harris, *U.S.-China Summit on a Tightrope*, INT'L HERALD TRIB., Oct. 31, 1997, at 1.

8 See Seth Mydans, *Do Rights Come First? Asia and Europe Clash*, N.Y. TIMES, Mar. 1, 1996, at A8; Steven Myers, *Business Interests Overshadow Human Rights, Survey Results*, N.Y. TIMES, Dec. 5, 1996, at A8.

9 See SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE MAKING OF WORLD ORDER* 38, 195 (1996).

10 For a developing world perspective, see Amartya Sen, *Population: Delusion and Reality*, N.Y. REV. OF BOOKS, Sept. 22, 1994, at 62.

11 *Genesis* 11:1-9.

negation of other rights.”¹² MacIntyre warned that to combine fragments of different conceptual schemes, resting upon incommensurable moral premises, is a recipe for mischief.¹³ Belief in human rights, he scoffed, “is one with belief in witches and unicorns.”¹⁴ Garden variety cynics regard the 1948 Declaration as just a hodge-podge of ideas that emerged from deals cut after World War II, with no more coherence than a typical federal statute.

With all the turmoil that surrounds the human rights enterprise, it is natural to wonder whether the design of the Declaration was faulty and the aims of its framers unrealistic. My own current research on the origins of the Declaration, however, has led me to increased admiration for the project of 1948, and for the men and women who dedicated themselves to it. I am struck by the prescience with which the framers anticipated the problems that might arise, and impressed by the safeguards they devised to help minimize future difficulties. I am moved by the vision of the men and women who, after two world wars which gave them every reason to despair about the human condition, did what they could to help make the world a better and safer place. This essay aims to pay tribute to that version by taking seriously Mrs. Roosevelt’s admonition to “know” the Declaration.

I. WHAT THE PHILOSOPHERS KNEW

The problem of universality loomed large from the moment the idea of an “international bill of rights” was conceived in the aftermath of World War II. Was it really possible for the fledgling United Nations to produce a document acceptable to delegates from fifty-eight countries containing four-fifths of the world’s population (twenty-one from the Americas, sixteen from Europe, fourteen from Asia, four from Africa, and three from Oceania)? Six member nations were within the emerging socialist bloc; in eleven, Islamic culture was strong; four countries had a large Buddhist population; and thirty-seven were more or less marked by Judeo-Christian traditions and enlightenment thought. It was by no means certain that a universal declaration of rights was feasible.

In 1946, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) appointed a committee composed of many of the leading thinkers of the day to search for areas of potential agreement among different cultural and philosophical traditions. This blue-ribbon “Committee on the Theoretical Bases of Human

12 MICHEL VILLEY, *LE DROIT ET LES DROITS DE L’HOMME* 12–13 (1983).

13 See ALASDAIR MACINTYRE, *AFTER VIRTUE* 1–21 (1981).

14 *Id.* at 67.

Rights" was chaired by Cambridge historian E.H. Carr. University of Chicago philosopher Richard McKeon was the Rapporteur, and Jacques Maritain was one of the most active members. They began by sending an elaborate questionnaire to statesmen and scholars in every part of the world.¹⁵ Replies were received reflecting on human rights from Chinese, Islamic, Hindu, and customary law perspectives, as well as from the United States, Europe, and the countries of the socialist bloc. The respondents included such notables as Mahatma Gandhi, Benedetto Croce, Pierre Teilhard de Chardin, and Aldous Huxley. To the Committee's surprise, the lists of basic rights and values they received from their far-flung sources were essentially similar.¹⁶ McKeon's final report recorded their conclusion that it was indeed possible to achieve agreement across cultures concerning certain rights that "may be viewed as implicit in man's nature as an individual and as a member of society."¹⁷

The Committee members well understood how thin that sort of agreement was. Maritain liked to tell the story of how a visitor to one meeting had expressed astonishment that champions of violently opposed ideologies had agreed on a list of fundamental rights. The man was told, "Yes, we agree about the rights but on condition no one asks us why."¹⁸ Maritain and his colleagues did not regard this lack of consensus on foundations as fatal. The fact that an agreement could be achieved across cultures on several practical concepts was "enough," Maritain wrote, "to enable a great task to be undertaken."¹⁹ Such an agreement, McKeon stressed, would at least provide a "framework within which divergent philosophical, religious, and even economic, social and political theories might be entertained and developed."²⁰

More serious than divergence on the "why" of each right, the philosophers realized, would be the problems of arriving at a common understanding of what the principles meant, of reconciling tensions among the various rights, of integrating new rights, and of incorporating new applications. In that connection, Maritain observed that the document should ideally "cover the scale of values, the key in which,

15 The Committee's report, the questionnaire, and several of the responses are collected with an introduction by Jacques Maritain in *HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS* (UNESCO ed., 1949).

16 Jacques Maritain, *Introduction*, in *HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS* 10 (UNESCO ed., 1949).

17 Richard McKeon, *The Philosophic Bases and Material Circumstances of the Rights of Man*, in *HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS*, *supra* note 16, at 45.

18 Maritain, *supra* note 16, at 9.

19 *Id.* at 10.

20 McKeon, *supra* note 17, at 35.

in their practical exercise in social life, the acknowledged rights of man must be harmonized.”²¹ Everything depends, he continued, on “the ultimate value whereon those rights depend and in terms of which they are integrated by mutual limitations.”²²

McKeon foresaw another problem. Different understandings of the meanings of rights usually reflect divergent concepts of man and of society, which in turn cause the persons who hold those understandings to have different views of reality. Thus, he predicted that “difficulties will be discovered in the suspicions, suggested by these differences, concerning the tangential uses that might be made of a declaration of human rights for the purpose of advancing special interests.”²³ That is a philosopher’s way of saying, “Watch out, this whole enterprise could be hijacked.”

II. WHAT THE FRAMERS DID

While the UNESCO Committee was winding up its investigation of the theoretical bases for human rights, the U.N. Commission on Human Rights, headed by Eleanor Roosevelt, was preparing to draft an international bill or declaration. The task that faced the Commission was daunting. Proposals, models, and ideas had poured in from all over the world.²⁴ How could they ever be analyzed, evaluated, and integrated into a document that the then fifty-eight member nations of the U.N. would find acceptable?

The Commission was set up with eighteen members, with five seats allocated to the representatives of the “great powers”—China, France, the Soviet Union, the United Kingdom, and the United States. The remaining thirteen seats were assigned on a rotating basis to different countries, so that, according to Roosevelt, “there should be due regard to distribution throughout the world, so that . . . there would be no part of the world whose interests would not be considered.”²⁵ The group’s very size and scope, however, could easily have led to

21 Maritain, *supra* note 16, at 15–16.

22 *Id.*

23 McKeon, *supra* note 17, at 35.

24 Among the most important preparatory materials were an analysis of all existing treatments of human rights at the national level and the draft proposal that became the 1948 Pan-American Declaration of Human Rights and Duties (the so-called Bogota Declaration) sponsored by the regional organization that later became the Organization of American States. The analytical survey was prepared by a Canadian, John P. Humphrey, the permanent head of the Division of Human Rights in the U.N. Secretariat. Cassin acknowledged a debt to Humphrey’s “excellent work” in RENÉ CASSIN, *LA PENSÉE ET L’ACTION* 108 (1972).

25 ELEANOR ROOSEVELT, *THE AUTOBIOGRAPHY OF ELEANOR ROOSEVELT* 315 (1961).

grave difficulties. The framers might well have ended up like the architects in Pieter Brueghel the Elder's rendition of the Tower of Babel, poring despondently over their plans in the shadow of a crazy pile constructed by a consortium, each of whose members had a somewhat different conception of what the whole should look like.

The work in fact got off to a rocky start when the leadership of the Commission (Mrs. Roosevelt, President; China's Peng-Chun Chang, Vice-President; and Lebanon's Charles Malik, Rapporteur) appointed itself as the drafting subcommittee. After several delegates protested that the group was insufficiently representative, the membership was expanded to eight by adding the delegates from Australia, Chile, England, France, and the Soviet Union.²⁶ Happily for the Universal Declaration, this potentially unwieldy assemblage appointed a four-person "working" group. That smaller group, composed of the American, English, French, and Lebanese members, in turn chose to put a single author in charge of the actual drafting process.

The lot fell to one of the most distinguished jurists of the twentieth century. René Cassin had been General Charles de Gaulle's principal legal adviser during World War II, and was entrusted by de Gaulle at war's end with the formidable task of rehabilitating the compromised French administrative system.²⁷ So far as the Declaration was concerned, it was fortuitous that Cassin was a pioneer of the study of comparative law.²⁸ He was also experienced in the art of legislative drafting, having drawn up the instruments constituting the government of the Free French during the war.²⁹

26 See PHILIPPE DE LA CHAPELLE, *LA DECLARATION UNIVERSELLE DES DROITS DE L'HOMME ET LE CATHOLICISME* 34 (1967).

27 The principal biographies are MARC AGI, *RENÉ CASSIN: FANTASSIN DES DROITS DE L'HOMME* (1979); and GERARD ISRAEL, *RENÉ CASSIN* (1990). Among the many key positions held by Cassin after the war were the presidency of the Conseil d'Etat, the presidency of the Ecole Nationale d'Administration, the presidency of the European Court of Human Rights at Strasbourg, and membership on the French Constitutional Council.

28 In his memoirs, Cassin observed: "The study of comparative law is always useful. But when one seeks . . . as in the 1948 Declaration of Human Rights to identify a certain number of common principles concerning the fundamental rights of every human being, comparative law becomes a necessity." CASSIN, *supra* note 24, at 224.

29 See ISRAEL, *supra* note 27, at 181. Cassin later recalled his uneasiness when he found, at the first meeting of the Commission, that many of the eighteen delegates had no legal training whatsoever. Cassin, *supra* note 24, at 105. For a discussion of the continental advantage in legislative drafting, see Mary Ann Glendon, *Comment, in* ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* 95, 95-114 (1997).

Cassin's background in a civil law system where drafting skills are highly prized facilitated a response to Maritain's call for a document with a hermeneutical "key." The Preamble and the Proclamation, as well as Articles 1 and 2 of the thirty-article Declaration, belong to what in continental legal terminology is called the "general part." These sections set forth premises, purposes, and principles that guide the interpretation of the specifically enumerated rights in Articles 3 to 27. The Declaration's last three articles, again, contain interpretive guides, contextualizing rights in relation to limits, duties, and the social and political order in which they are to be realized.

When the Declaration emerged from the drafting committee, it was recognizably "civilian" in form and style. Since the civil law tradition then, as now, was the most widely distributed legal tradition in the world,³⁰ that meant the draft had a familial resemblance, not only to rights declarations in continental European constitutions, but to the constitutions and charters that had appeared or were soon to appear in many Latin American, African, and Asian countries.

The draft was submitted to all U.N. member governments for comments and to the full Human Rights Commission for debate. In the process, it went through several revisions. There was no nation, according to Cassin, that did not "usefully contribute to the improvement of the draft through suggestions or criticisms."³¹ The fact that representatives from many countries had contributed to its content, plus the broad process of consultation that preceded and accompanied the drafting stage, helped to ease the way for its ultimate adoption by the General Assembly.

Behind the scenes work by Roosevelt must have contributed toward that end as well. Early on, she initiated informal meetings among women delegates and found the custom so fruitful that she broadened it. She began getting together with U.N. representatives of different nationalities on a semi-social basis. Malik and Chang, the most scholarly members of her Commission, got to know each other better while bantering about Thomism and Confucianism over tea in Roosevelt's apartment.³² "I discovered," she wrote in her autobiography, "that in such informal sessions we sometimes made more progress in reaching an understanding on some question before the United Nations than we had been able to achieve in the formal work

30 See MARY ANN GLENDON ET AL., *COMPARATIVE LEGAL TRADITIONS* 58-62 (2d ed. 1994).

31 CASSIN, *supra* note 24, at 112-13.

32 See ROOSEVELT, *supra* note 25, at 317.

of our committees."³³ One group, however, remained resolutely aloof from her efforts. "[I]t was difficult to know any Russian well and I suppose the Kremlin planned it that way. It was really impossible to have a private and frank talk with Russian officials."³⁴

At the next stage, in July 1948, Cassin and Roosevelt were heartened when the Economic and Social Commission (chaired by Malik) unanimously approved the "final" draft submitted to it by the Human Rights Commission.³⁵ That removed the last hurdle before submission to the General Assembly. But when the General Assembly began its deliberations on the Declaration in September 1948, the international scene was extremely tense. Relations were worsening between the Soviet Union and the West. The Berlin blockade was a powder keg waiting for a match. Conflict had broken out in Greece and Korea. Small nations were becoming resentful of the influence of the great powers and suspicious of their motives. Cynicism and power politics had taken their toll on the mood of hopefulness in which the human rights project had been launched. A decade later, Roosevelt told an interviewer, "We thought we were presenting such a good draft that there would be very little discussion. We found we were mistaken. In the big committee they argued every word And so we had some terrible times in Paris."³⁶

It took the talents of another extraordinary individual to shepherd the Declaration through the process of deliberation and revision that led up to final adoption in December 1948. That man was Malik, a personable Lebanese philosophy professor whose diplomatic skills were as finely honed as Cassin's legal talents.³⁷ Malik was a familiar figure on the little gray TV screens of the 1950s. Well-respected among delegates from many different parts of the world, he was frequently elected to leadership positions in the U.N., including mem-

33 ROOSEVELT, *supra* note 25, at 305.

34 *Id.* at 311.

35 See CASSIN, *supra* note 24, at 112; see also ROOSEVELT, *supra* note 25, at 320.

36 LANGER, *supra* note 1.

37 For biographical information, see *Charles Habib Malik*, in CURRENT BIOGRAPHY 410 (Anna Rothe ed., 1948). Though a prominent figure on the international scene throughout the 1950s, Malik always described himself as primarily a philosopher and theologian. He earned his Ph.D. at Harvard University, and taught at Harvard, Beirut University, and Catholic University. Jude P. Dougherty, *Charles Habib Malik*, in YEARBOOK-1989 237 (American Philosophical Society ed., 1990). A Greek Orthodox Christian, Malik frequently defended Arab and Palestinian views in the U.N. in the early 1950s, but later found himself at odds with Arab leaders on various issues. The 1987 Reuter obituary cryptically reports, "None of Lebanon's Moslem or pro-Syrian politicians or militia leaders mourned Malik's death." *Lebanon's Christians Mourn Veteran Diplomat Charles Malik*, REUTER LIBR. REP., Dec. 29, 1987.

bership on the Security Council and the Presidency of the General Assembly.³⁸ During the period leading up to the adoption of the Declaration, he wore many hats, serving as the Human Rights Commission's Rapporteur, an active member of the four-person working group on the draft, and President of the Economic and Social Council to which the Commission reported. When the draft Declaration was ready to be taken to the General Assembly, it was the ubiquitous Malik who chaired the three-person group that steered it through more than eighty stormy meetings in Paris in the fall of 1948.

Malik's fluency in many languages, including Arabic, French, German, and English, enabled him to move easily between East and West, and between large and small nations. He made the most of the fact that the document reflected input from diverse sources, and he took pains to point each country to the places in the Declaration where it could either find its own contributions, or the influence of the culture to which it belonged.³⁹ At many stages, he was aided by Mrs. Roosevelt, who was a shaper as well as a wielder of the influence of the United States.⁴⁰

The Soviet Union, represented by the intelligent and voluble Professor A.P. Pavlov, made repeated efforts to stall and drag out the process. "[Pavlov] was an orator of great power," Roosevelt recalled, "his words rolled out of his black beard like a river, and stopping him was difficult."⁴¹ With each delay, the prospects for success grew dimmer, to the point where Cassin began to fear that all his work might go for naught.⁴² But Malik was up to the challenge. Durward Sandifer, Roosevelt's State Department adviser, described Malik as "the only person I ever knew who succeeded in holding a stopwatch to Pavlov."⁴³

Malik directed his arguments to the public and posterity as well as to his fellow delegates. Unlike previous rights declarations which had sprung from particular cultures, he said, the Universal Declaration was "a composite synthesis of all these outlooks and movements and of

38 See Former Lebanese Foreign Minister Malik Dies, REUTER LIB. REP., Dec. 29, 1987.

39 See Charles Malik, *The Challenge of Human Rights*, in BEHIND THE HEADLINES, Dec. 1949, at 2.

40 For an account of Roosevelt's subtle but influential role, see JOSEPH P. LASH, ELEANOR: THE YEARS ALONE 56-81 (W.W. Norton & Co. 1972). Cassin remembered her as "a political woman who was sensitive to opinion, and who showed remarkable skill in dealing with Indian and Lebanese philosophers, American statesmen and diplomats, as well as delegates from old Europe and the Eastern world." CASSIN, *supra* note 24, at 82.

41 ROOSEVELT, *supra* note 25, at 320.

42 See AGI, *supra* note 27, at 231.

43 LASH, *supra* note 40, at 78.

much Oriental and Latin American wisdom. Such a synthesis has never occurred before in history."⁴⁴ The Latin American countries had brought to the process the ideas and experience gained in preparing the 1948 Pan-American Declaration on the Rights and Duties of Man; India had played a key role in advancing the non-discrimination principle, especially with respect to women; the United Kingdom and the United States had shared the wisdom acquired in their long experience with traditional political and civil liberties; the Soviet Union had championed the cause of improving the living conditions of the broad mass of people; the importance of including duties had been emphasized by participants from China, Latin America, the Soviet Union, and France; many smaller countries contributed to the articles on freedom of religion and the rights of the family; the social, economic, and cultural rights had numerous fathers and mothers.⁴⁵

The debates wore on for two months, often lasting late into the night.⁴⁶ Finally, on December 10, 1948, in spite of the deteriorating international situation, the Declaration was approved without a single dissenting vote. Malik and Roosevelt received a standing ovation.⁴⁷ Clouds loomed on the horizon, however. Eight countries, including the entire socialist bloc, abstained: Byelorussia, Czechoslovakia, Poland, Saudi Arabia, South Africa, the Soviet Union, Ukraine, and Yugoslavia.⁴⁸

Today, when one reads what Cassin, Malik, Maritain, McKeon, Roosevelt, and their colleagues said and wrote many years ago, it is striking that they foresaw nearly every problem their enterprise would encounter—its buffeting from power politics, its dependence on common understandings that would prove elusive, its embodiment of ideas of freedom and solidarity that would be difficult to harmonize, and its vulnerability to politicization and misunderstanding. It is of interest, therefore, to see how they attempted to protect it against the most egregious forms of manipulation.

III. KNOWING THE DECLARATION⁴⁹

The Universal Declaration, with its thirty short articles, seems at first glance to invite comparison with older rights documents such as

44 Malik, *supra* note 39, at 1; see also CASSIN, *supra* note 24, at 233.

45 See Malik, *supra* note 39, at 1-3.

46 See ROOSEVELT, *supra* note 25, at 320.

47 See Charles Habib Malik, *supra* note 37, at 412.

48 See Charles Malik, *Human Rights in the United Nations*, U.N. BULL., Sept. 1952, at 1.

49 For the reader's convenience, the Universal Declaration appears as an Appendix *infra* at 1177.

the Magna Carta, the French Declaration of the Rights of Man and the Citizen, and the first ten amendments to the U.S. Constitution. In recent years, American influence upon the international human rights movement has become so pervasive that the Declaration is now widely read as Americans read the Bill of Rights: as a string of essentially separate guarantees. As we shall see, however, that approach is inappropriate for an organic document like the Declaration.⁵⁰ The Declaration is not a list or a "bill," but a set of principles that are related to one another and to certain over-arching ideas. It possesses an integrity which has considerable strength when the document is read as it was meant to be read, namely as a whole.

Cassin often compared the Declaration to the portico of a temple.⁵¹ (He had no illusions that the document could be anything more than an entryway to a future where human rights would be respected.) He saw the Preamble, with its eight "whereas" clauses, as the courtyard steps moving by degrees from the recognition of human dignity to the unity of the human family to the aspiration for peace on earth. The general principles of dignity, liberty, equality, and fraternity, proclaimed in Articles 1 and 2, are the portico's foundation blocks. The facade consists of four equal columns crowned by a pediment. The four pillars are: the personal liberties (Articles 3 through 11); the rights of the individual in relation to others and to various groups (Articles 12 through 17); the spiritual, public, and political liberties (Articles 18 through 21); and the economic, social, and cultural rights (Articles 22 through 27). The pediment is composed of the three concluding articles, 28 through 30, which establish a range of connections between the the individual and society.

Let us stroll through the portico, noting the relations among its parts, and some of the more interesting architectural details.

The Preamble begins by asserting the dependence of freedom, justice, and peace upon the universal recognition of human dignity and rights. It announces the principal innovation of the Declaration: that human rights are *universal*, belonging to "all members of the human family." In other words, it repudiates the long-standing view that the relation between a sovereign state and its own citizens is that nation's own business.

The Preamble then evokes the circumstances that give rise to the need for universal standards: "[D]isregard and contempt for human

50 For a convincing argument that the clause-by-clause approach is also inappropriate for the Bill of Rights, see Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131 (1991).

51 See AGI, *supra* note 27, at 317.

rights have resulted in barbarous acts which have outraged the conscience of mankind." It goes on to speak of hopes for a better world where human beings may enjoy what most U.S. readers of the day would have recognized as Franklin Roosevelt's four freedoms: "freedom of speech and belief and freedom from fear and want."⁵² It points toward a future when rights will be "protected by the rule of law" and by "the development of friendly relations among nations."

The Preamble then anchors the Declaration firmly in the U.N. Charter:

Whereas the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom

By expressly including women, by alluding to freedom from want, and by evoking the U.N. Charter's commitment to better standards of life, the Preamble signals from the outset that this document is not just a "universalization" of the traditional eighteenth century "rights of man," but part of a new "moment" in the history of human rights. In this respect, the Universal Declaration belongs to the family of post-World War II rights instruments that attempted to graft social justice onto the trunk of the tree of liberty. Most of these instruments also bear traces of roots in a past before the first rights moment. In the Declaration, for example, human dignity is said to be "inherent"; dignity and rights are "recognized," not conferred; human beings are said to be "born" free and equal, and "endowed" with reason and conscience; the family is "natural" as well as fundamental. Hence MacIntyre's warning about incommensurable moral premises. The framers hoped, however, that the graft, the tree, and the roots would nourish one another.

The Preamble is followed by a Proclamation clause which announces the nature of the document.⁵³ The Declaration is to be "a common standard of achievement for all peoples and nations" toward which "every individual and every organ of society" should "strive"

52 Franklin Delano Roosevelt, State of the Union Message (Jan. 6, 1941), *in* 1940 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 663 (1941).

53 One of the first decisions made by the Commission on Human Rights was that the "international bill of rights" it had been asked to prepare should be in the form of a declaration rather than a legally binding treaty or covenant. The international human rights system that grew up subsequently includes many treaties and covenants, including the two 1966 covenants that were adopted to implement the Universal Declaration, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

(and by which the conduct of nations and peoples can be measured). The Proclamation implicitly acknowledges the hurdles ahead, stating that "a common understanding" of the Declaration's rights and freedoms "is of the greatest importance for the full realization of this pledge."

The Declaration proper then begins, not with a right, but in civil law fashion, with two introductory general articles. It was at Cassin's insistence that a declaration purporting to be universal should begin with a statement of what all human beings have in common.⁵⁴ Thus the first article reads: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." It speaks volumes about the spirit of Cassin, a World War I veteran of Jewish ancestry who had lost twenty-one relatives in concentration camps,⁵⁵ that he insisted on beginning the Declaration with an affirmation of faith in human conscience and rationality. In 1968, that largeness of spirit was recognized when he received the Nobel Peace Prize for his years of work on behalf of human rights.

Article 2's emphatic statement of the anti-discrimination principle underlines the principle of universality. "Everyone" in the Declaration means everyone—"without distinction of any kind."

The Declaration then turns, in Articles 3 to 11,⁵⁶ to familiar individual rights that had already received a significant degree of recognition, if not implementation, in various legal systems: rights to life, liberty, and personal security; bans on slavery and torture; rights to legal recognition, equality before the law, effective remedies for violation of fundamental rights, and freedom from arbitrary arrest and detention; and guarantees of fair criminal procedures, presumption of innocence, and the principle of non-retroactivity in criminal law.

In Cassin's view, the rights in this first group were mainly directed toward protecting individuals as such from aggression, while the rights in Articles 12 to 17 were more concerned with protecting people in their relations with others and within civil society.⁵⁷ His second column includes the right to be free of arbitrary interference with one's "privacy, family, home, or correspondence" and from arbitrary attacks upon one's "honor and reputation"; freedom of movement and the right of return; the right to political asylum; the right to a nationality;

54 See DE LA CHAPELLE, *supra* note 26, at 83.

55 See CASSIN, *supra* note 24, at 213.

56 Here, I follow Cassin's quadripartite division of the body of the Declaration, although it seems to me that other groupings are plausible as well.

57 See AGI, *supra* note 27, at 326.

provisions on marriage and the family; and the right to own property. This second group of rights is less precisely formulated than the first, leaving larger scope for variation in different social and political contexts.

Article 16, dealing with marriage and the family, is a blend of old and new ideas with varying genealogies. It went far beyond most national legislation of the day with its affirmation of the principle of equal rights between spouses. The idea that the family "is entitled to protection by society and the State," on the other hand, was familiar in many countries as legislative policy, had already appeared in several constitutions, and would shortly appear in many others.⁵⁸

Cassin's third pillar, Articles 18 through 21, covers freedoms of religion and belief in Article 18; opinion, expression, and communication in Article 19; assembly and association in Article 20; and the principle of participatory democratic government in Article 21. Article 18 is noteworthy for its fairly detailed specification of the content of religious freedom. The Human Rights Commission had been on the verge of going forward with a draft that spoke only of conscience and belief, but when Roosevelt interjected that a text protecting religious freedom ought to use the word "religion," that view carried the day.⁵⁹ In its final form, Article 18 not only protects religious freedom expressly, but acknowledges the right to manifest one's beliefs in public as well as in private, and "in community with others" (this latter point due to an amendment by Malik to Cassin's more individualistic rendering of the concept).⁶⁰

Apart from the aspiration to universality, the most innovative part of the Declaration was its fourth pillar, Articles 22 through 27, which elevates to fundamental right status several "new" economic, social, and cultural rights. As memories fade, it is sometimes assumed that this collection of rights was included mainly as a concession to the Soviets. The fact is, however, that support for these ideas was very broad-based.

The Declaration's social and economic rights provisions drew from a variety of sources. They contained more than an echo of FDR's proposed "second bill of rights,"⁶¹ a legacy which Mrs.

58 The Preamble to the 1946 French Constitution stated, "The nation ensures to the individual and the family the conditions necessary to their development," CONST. preamble. Germany's Basic Law of 1949 provided, "Marriage and family shall enjoy the special protection of the state," GRUNDGESETZ [Constitution] [GG] art. 6, ¶ 1.

59 See DE LA CHAPELLE, *supra* note 26, at 150.

60 See *id.* at 151.

61 Franklin Delano Roosevelt, State of the Union Message (Jan. 11, 1944), in 1944-45 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 32 (1950).

Roosevelt "through her very name," according to Malik, "imported into our council chambers."⁶² (Officials in the Truman State Department were initially "lukewarm" toward the idea of social and economic rights, but Mrs. Roosevelt eventually won their backing.)⁶³ This group of rights also bore a close resemblance to their counterparts in the Preamble of the 1946 French Constitution, the 1948 Bogota Declaration on the Rights and Duties of Man, as well as to the programs of socialist and many Christian political parties. Similar rights would soon appear in most postwar and post-colonial constitutions, sometimes framed as obligations of society and the state. At the international level, similar principles had been recognized by the International Labor Organization.⁶⁴

Much of what is contained in Articles 23 and 24 was already the common stuff of labor legislation in most liberal democracies (decent working conditions including paid vacations and limits on working hours; protection against unemployment; the right to form and join unions). Less widely recognized, however, were Article 23's "right to work" and its "right to equal pay for equal work" without discrimination; Article 25's elevation of social welfare principles into a universal right to a decent standard of living; and Article 26's right to education.

Agreement on the relation of the "new" rights to the "old" was much harder to achieve than agreement on their content.⁶⁵ According to Cassin, the sessions where the Commission wrestled with that problem were extremely difficult and emotionally charged.⁶⁶ England wanted the differences from traditional civil and political liberties to be sharply emphasized. It took the position that the social and economic rights should be handled in an entirely separate document.⁶⁷ The Soviet Union, for its part, opposed any measure which would appear to relegate social and economic rights to an inferior rank.⁶⁸ Madame Mehta, the Indian representative, pointed out that poorer nations could hope to move only gradually toward making such rights a reality.⁶⁹

62 Charles Habib Malik, *Introduction*, in O. FREDERICK NOLDE, *FREE AND EQUAL: HUMAN RIGHTS IN ECUMENICAL PERSPECTIVE* 7, 9 (1968).

63 See LASH, *supra* note 40, at 62.

64 See STEINER & ALSTON, *supra* note 2, at 257-58.

65 See CASSIN, *supra* note 24, at 110.

66 See *id.* at 110-11.

67 See *id.*

68 See *id.*

69 See ROOSEVELT, *supra* note 25, at 318.

Cassin finally resolved the impasse by drafting a "chapeau" or "umbrella" provision, Article 22, which serves as a mini-preamble to the provisions dealing with social, economic, and cultural rights. The chapeau tried to satisfy the socialist bloc by making clear that the new rights, like the old, are "indispensable" to human dignity.⁷⁰ It responded to the English and Indian concerns by recognizing that the new rights stood on a different footing from the old so far as implementation was concerned. Unlike traditional civil rights, which are protected mainly through access to courts, and political rights, which are secured mainly through constitutional frameworks, the economic and social rights require more official planning for their realization, and are more dependent on each country's economic situation. Accordingly, Article 22 specifies that the economic and social rights are to be realized "in accordance with the organisation and resources of each State." It was Mrs. Roosevelt who, in a particularly heated session, came up with the words just quoted that finally permitted agreement to be achieved.⁷¹

It is a credit to Cassin's skill that the "new" rights were not simply tacked onto, but integrated with, the more traditional rights that preceded them. Article 22 links the social, economic, and cultural rights to the protection of the individual in such a way that each group of rights sheds interpretive light on the other. The "new" rights are presented as rights of the individual, "indispensable for his dignity and the free development of his personality." The last sentence of Article 26 on parents' rights provides a bridge between the new right to education and the older family protection idea of Article 16. Similarly, Article 27, while recognizing a new "right to participate in the cultural life of the community," looks back to Article 17's property rights through its reference to protecting scientific inventions and literary and artistic creations.

The last three sections of the Declaration, in Cassin's view, constituted the pediment of the portico covering the entire Declaration and making essential links between the individual and society.⁷² Like the Preamble and Articles 1 and 2, these three sections bear importantly

70 Article 22: "Everyone, as a member of society, . . . is entitled to the realisation . . . in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality."

71 See CASSIN, *supra* note 24, at 111. According to one biographer, such inspired interventions by Roosevelt were frequently prefaced by remarks in which she conceded her interlocutor had a point, and with disclaimers such as "of course, I'm a woman and don't understand all these things." LASH, *supra* note 40, at 69.

72 See AGI, *supra* note 27, at 336.

on the meaning of the document as a whole. They address certain conditions that are prerequisite to the realization of the rights and freedoms enumerated in the Declaration. Once again, a general article serves as a kind of mini-preamble to illuminate what follows. Article 28, the invention of Charles Malik,⁷³ speaks of a right to a certain kind of order: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised."

Two necessary features of an order where rights can be realized are then spelled out, but quickly qualified, in Article 29: "Everyone has *duties* to the community" (but to a certain kind of community, where "the free and full development of his personality is possible"), and everyone's rights are subject to *limitations* (but only "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society"). A further limit on rights is the subject of Article 30: "Nothing in this Declaration may be interpreted as implying for any State, group, or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

When Cassin described these last three articles as linking the individual and society, he was referring to the way the Declaration handled a problem that had arisen in the drafting process. Where was primary responsibility for implementing human rights to lie? Even if an international enforcement machinery were to be created someday, that could not be the first line of defense. The Soviet representative had insisted that the sentence, "This shall be enforced by the state," be appended to many articles.⁷⁴ In the spring of 1948, upon re-reading the draft, the Commission members came to the conclusion that a misleading impression had been created. Cassin recalled:

It was apparent that its provisions repeatedly referred to the role of the State, as if that were the permanent and only agency for the protection and regulation of the rights of man. But man must be envisaged not only in his relations with the State, but with the social groups of all sorts to which he belongs: family, tribe, city, profession, confession, and more broadly the global human community. Amendments were needed in order to remove all ambiguity on this point.⁷⁵

73 See CASSIN, *supra* note 24, at 111.

74 See ROOSEVELT, *supra* note 25, at 317.

75 CASSIN, *supra* note 24, at 10; see also AGI, *supra* note 27, at 230.

In the view of Cassin and others, it had to be made clear that the responsibility for protecting human rights belonged not only to the nation states, but to persons and groups below and above the national level. The Declaration was thus ahead of its time in recognizing the importance for human freedom of a wide range of social groups, beginning with families, and extending through the institutions of civil society, nation states, and international organizations. The Proclamation clause calls not only "all peoples and all nations" but "every organ of society" to promote recognition and observance of human rights. In the main body of the Declaration, individuals are protected in their social as well as political settings. The rights to own property and to participate in important institutions of civil society—religious groups, labor organizations, and families—are guaranteed along with the right to take part in government. The family as such is a subject of human rights protection, to be provided, significantly, "by society" as well as the state (Article 16, ¶ 3). Article 28's right "to a social and international order in which the rights and freedoms" of the Declaration can be fully realized is the capstone of this group of provisions.

The Declaration as a whole leaves "no room for doubt," Cassin said in his Nobel speech, "concerning the essential question whether the nations have retained or lost their traditional exclusive jurisdiction over the treatment of their citizens. That national jurisdiction will always be at the base. It will remain primary. But it will no longer be exclusive."⁷⁶

The principal architects of the Declaration believed that the most effective defense of human rights would ultimately be "in the mind and the will of the people."⁷⁷ "In the eyes of the Declaration's authors," Cassin wrote, "respect for human rights depends first and foremost on the mentalities of individuals and social groups."⁷⁸ Roosevelt mused in a 1958 interview:

Where, after all, do human rights begin? In small places, close to home—so close and small that they cannot be seen on any maps of the world Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.⁷⁹

In sum, even a cursory reading of the Declaration in its entirety shows that it is no mere list of rights. In form, as distinct from con-

76 CASSIN, *supra* note 24, at 171.

77 NOLDE, *supra* note 62, at 70.

78 CASSIN, *supra* note 24, at 155.

79 LASH, *supra* note 40, at 81.

tent, the Declaration is recognizably a product of the drafting tradition that had been brought to its highest degree of refinement in the code-based continental European legal systems. The new rights instruments emerging from that tradition were patterned on the old codes in certain respects—their level of generality, the use of general clauses, the mutually conditioning relations among their parts, and the aspiration to be enduring. It follows that the Declaration is best understood through the methods of interpretation that are associated with that tradition.

The broad elements of those methods can be briefly summarized. The interpreter begins by reading the text as a whole, becoming aware of the interpretive guides that are embedded in it. Ordinarily, the text contains a few general principles that apply to the entire document, supplemented by special principles governing particular sections. Tension or conflict among principles and provisions is approached with a view toward respecting the priorities established in the text, and, if possible, optimizing the scope of each principle involved. Each interpretation should support the unity of the text.

Though there is wide consensus in the civil law world on the elements of an approach to interpretation, that does not preclude lively controversy on specific applications.⁸⁰ And, in the case of human rights documents, laden with open-ended general clauses, there is plenty of room for debate as well as for reasoned elaboration of principle. Anticipating the incoherence critique mounted by Villey and others, McKeon tried to put the paradoxes of human rights in a positive light. “[They] are not ambiguities resulting from confusion or contradiction,” he argued, “they are productive ambiguities which embody the knowledge and experience men have acquired in the long history of rights, and which provide the beginning points for further advances.”⁸¹ The history of human rights is paradoxical because “it embodies concretely all the great antitheses and paralogisms explored by philosophers—the problems of the whole and the part, the universal and the particular, the internal and the external, the apparent and the real.”⁸²

Accepting McKeon’s characterization, what then is to prevent the interpretation of a document embodying those great tensions from degenerating into utter chaos? Maritain had stressed the need for

80 See Winfried Brugger, *Legal Interpretation, Schools of Jurisprudence, and Anthropology: Some Remarks from a German Point of View*, 42 AM. J. COMP. L. 395 (1994).

81 RICHARD MCKEON, *FREEDOM AND HISTORY* 56 (1968).

82 *Id.* at 49.

some "ultimate value whereon those rights depend and in terms of which they are integrated by mutual limitations."⁸³

But does the Declaration have such an ultimate value? An obvious candidate is human dignity. Dignity enjoys pride of place in the Declaration: it is affirmed ahead of rights at the very beginning of the Preamble; it is accorded priority again in Article 1; and it is woven into the text at three other key points, connecting the Declaration to the Charter in the fifth clause of the Preamble, introducing the social and economic rights in the "chapeau" (Article 22), and in Article 23's reference to "an existence worthy of human dignity."

The drafters fleshed out the dignity concept by connecting it to a fairly specific image of the human person. Human beings are said to be "endowed with reason and conscience," and they are expected to "act towards one another in a spirit of brotherhood." The Declaration's "everyone" is envisioned as an individual, uniquely valuable in himself. (There are three separate references to the "free development of his personality.") But "everyone" is also portrayed as situated in families, communities, workplaces, associations, societies, cultures, nations, and an emerging international order. In fact, Article 28 tells us that it is in community "alone" that the "free and full development of his personality is possible." Though its main body is devoted to basic freedoms, the Declaration begins and ends with exhortations to solidarity (Articles 1 and 29). Whatever else may be said of him or her, the Declaration's "everyone" is not a lone bearer of rights.

It is instructive to consider, in this connection, the approach that one of the world's most respected constitutional courts has taken to its own dignitarian rights document, approximately contemporaneous with the Universal Declaration. The German Basic Law of 1949, prepared under the watchful eyes of the Allied powers, begins by declaring in Article 1: "The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority." In one of its earliest—and most frequently cited—decisions, the German Constitutional Court drew from the Basic Law as a whole a picture of the human person that has informed many subsequent decisions: "The image of man in the Basic Law is not that of an isolated, sovereign individual. The Basic Law resolves the tension between individual and society by relating and binding the individual to society, but without detracting from the intrinsic value of the person."⁸⁴ As one commen-

83 Maritain, *supra* note 16, at 16.

84 The Investment Aid Case, 4 BVerfGE 7 (1954).

tator puts it, "this implies a departure from classical individualism, but at the same time rejects any form of collectivism."⁸⁵

Politically savvy, philosophically sophisticated creatures that they were, the Declaration's framers knew that the dignity principle possessed no special immunity to deconstruction, and that no document, however skillfully crafted, was proof against manipulation. Maritain said it best: whether the music played on the Declaration's thirty strings will be "in tune with, or harmful to, human dignity," will depend primarily on the extent to which a "culture of human dignity" develops.⁸⁶

IV. REMEMBERING THE DECLARATION

To the disappointment of the framers, the adoption of the Declaration was followed by nearly two decades during which the international human rights project stalled amidst Cold War politics.⁸⁷ By 1953, Cassin was complaining bitterly about what he considered to be the "scandalous politicization" of U.N. agencies, especially UNESCO.⁸⁸ In his 1968 Nobel acceptance speech, he deplored the delays which he said had been "very prejudicial" to the preparation of covenants to implement the Declaration, and he blamed the "desire of certain powers to delay even modest measures of implementation out of concern for their national sovereignty."⁸⁹

As the Cold War gradually thawed, human rights consciousness did indeed increase. But when the Declaration woke up, so to speak, it was like Rip Van Winkle, who emerged from his long slumber to find himself in a world where no one recognized him. The architects of the Declaration were mostly departed or inactive, and in their place was forming a human rights industry, much influenced by the ideas about rights, both good and bad, that were developed in the American judicial rights revolution.⁹⁰ The U.N. itself had grown in size and ambition; its specialized agencies, employing thousands of international civil servants, were surrounded by, and symbiotically intertwined with, various lobbying groups. The Declaration began to be

85 Kurt Sontheimer, *Principles of Human Dignity in the Federal Republic, in GERMANY AND ITS BASIC LAW: PAST, PRESENT AND FUTURE* 213, 215 (Paul Kirchof & Donald Kommers eds., 1993).

86 Maritain, *supra* note 16, at 16.

87 See CASSIN, *supra* note 24, at 226.

88 See ISRAEL, *supra* note 27, at 234.

89 CASSIN, *supra* note 24, at 170-71.

90 See generally MARY ANN GLENDON, *RIGHTS TALK* (1991) (especially Chapter 6); Anthony Lester, *The Overseas Trade in the American Bill of Rights*, 88 COLUM. L. REV. 537 (1988).

widely, almost universally, read in the way that Americans read the Bill of Rights, that is, as a string of essentially separate guarantees.

By isolating each part from its place in an overall design, that now-common misreading of the Declaration promotes misunderstanding and facilitates misuse. The popular cafeteria approach to the Declaration's rights inevitably means that the devices that were supposed to support the integrity of the document would be ignored. A major casualty has been the Declaration's insistence on the links between freedom and solidarity, just at a time when affluent nations seem increasingly to be washing their hands of poor countries and peoples. As for the aspiration to universality, with 185 flags now flying outside U.N. headquarters, it is natural to wonder whether the idea can withstand the stresses of mutual suspicion and heightened national and ethnic assertiveness.

None of these problems have simple solutions. National interests and healthy economies *are* important, not only in themselves, but often for the sake of "better standards of living in larger freedom." The language of the Declaration *is* ambiguous. Principles such as freedom and solidarity *do* sit uneasily with one another. Meanwhile, in the years since 1948, "barbarous acts that outrage the conscience of mankind" have recurred with appalling regularity. Universal human rights remain an elusive dream.

At the present juncture, friends of human rights could do worse than to recall the framers' understandings of what a Declaration calling itself universal can and cannot accomplish. The men and women of 1948 were not naive about politics or human nature. To people who had lived through two world wars, it was evident that "even the noblest and most solemn declarations could not suffice to restore . . . faith in human rights."⁹¹ For the Soviets, that was the end of the matter. After the final vote in the U.N., Andrei Vishinsky contemptuously dismissed the Universal Declaration as just a "collection of pious phrases."⁹²

The Declaration's founding fathers and mothers had a vastly different, but no less realistic, outlook. For them, the elusiveness of the goal did not mean it was not worth pursuing with all one's might and main. While not exaggerating the importance of their work, neither did they underestimate the effects that might radiate from a common statement of principles. Malik predicted that the international human rights project would contribute to the formation of a "human

91 Maritain, *supra* note 16, at 16-17.

92 John Kenton, *Human Rights Declaration Adopted by U.N. Assembly*, N.Y. TIMES, Dec. 11, 1948, at A1.

rights conscience," and accurately foresaw that it would help to "focus the eyes of the world on the local scene." The Declaration itself is permeated with the realism as well as the hopes of the founders. It recognizes that full implementation requires a common understanding that is still far from being achieved; it recognizes that freedom depends on certain social, political, and economic conditions; it anticipates and attempts to forestall the most egregious forms of misinterpretation.

So far as the tension between universal rights and particular traditions is concerned, the Declaration's framework is capacious enough to encompass a degree of pluralism. Philosophers like McKeon and Maritain did not regard recognition of universal rights and respect for particular cultures as irreconcilable. After all, rights emerge from culture, cannot be sustained without cultural underpinnings, and, to be effective, must become part of each people's way of life.

The UNESCO committee theorists did not believe a declaration of universal principles could, or should, lead to completely uniform means of expressing and protecting basic rights. Why should there not be different cultural expressions of the universal human longing for freedom, and different ways of pondering the eternal tensions between freedom and order, the individual and the group? Ideally, each rights tradition would be enriched as it put the principles into practice, and the various experiences of the nations would in turn enrich the understanding of universal rights. With improved communication and with the accumulation of experiences of successful cross-cultural cooperation, they hoped, areas of common understanding would expand.⁹³ But there would always be, as Maritain put it, different kinds of music played on the same keyboard.⁹⁴

That equanimity concerning different visions of freedom proceeded, no doubt, from modesty concerning the state of human knowledge. "No declaration of human rights will ever be exhaustive or final," Maritain concluded after pondering the history of rights ideas.⁹⁵ The dynamic character of the relations among rights, the development of new rights, and new applications of old rights, McKeon added, would constantly "enrich their ambiguity."⁹⁶

One philosopher's fertile ambiguity, of course, is another's fatal flaw. As my own research has progressed, however, I have come to see

93 See McKeon, *supra* note 81, at 41.

94 See Maritain, *supra* note 16, at 16.

95 Jacques Maritain, *On the Philosophy of Human Rights*, in HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS, *supra* note 16, at 72, 74.

96 McKEON, *supra* note 81, at 46, 50.

the Declaration as, on the whole, remarkably well-designed. The flaws in the human rights enterprise are less in its documentary landmarks than in the human person—with all our potential for good and evil, reason and impulse, trust and betrayal, creativity and destruction, selfishness, and cooperation. All too familiar with the defects in human nature, the framers nevertheless staked their faith, in Article 1, on “reason and conscience.” But they were under no illusions about the precariousness of that wager.

The Declaration thus seems to me less like the Tower of Babel than like the sculpture by Arnaldo Pomodoro that dominates the plaza outside the U.N. building in New York. A gift from the government of Italy, this marvel consists of an enormous sphere of burnished bronze, perhaps suggesting a globe. The sphere is pleasing to behold, even though it startles with its imperfection. There are deep, jagged cracks in its golden-hued surface, cracks too large to ever be repaired. Perhaps it’s cracked because it’s flawed (like the broken world), one thinks. Or maybe (like an egg) it has to break in order for something else to emerge. Perhaps both. Sure enough, when one peers into the gashes on its surface, there is another beautiful golden sphere coming along inside. But that one is already cracked too!

I have no idea what Italy was trying to tell the United Nations! But whatever is going on inside these spheres, it doesn’t seem to be all chance and accident. There’s a tremendous sense of motion, of dynamism, of potency, of emergent probabilities.

Pomodoro’s emerging spheres poignantly evoke the great problem of all politics: to what extent can the probabilities be shifted by reflection and choice, as distinct from the will of the stronger and the blind forces of history and accident?⁹⁷ One does not have to be motivated by any love affair with the United Nations to appreciate the importance of a small core of principles to which people of vastly different backgrounds can appeal. To give up on the existence of such principles is to give up on the possibility of cross-cultural deliberation about the human future. It is to give up on the common humanity that makes it possible for people of different cultures to deliberate about how we are to order our lives together in an interdependent world. The framers of the Universal Declaration deserve better, as do the millions of women, men, and children who still lack the essentials for dignified living.

97 Cf. THE FEDERALIST NO. 1 (Alexander Hamilton).

APPENDIX:

UNIVERSAL DECLARATION OF HUMAN RIGHTS

PREAMBLE

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

WHEREAS it is essential to promote the development of friendly relations between nations.

WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

WHEREAS Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

*Now, Therefore,
The General Assembly
proclaims*

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective rec-

ognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

ARTICLE 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

ARTICLE 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

ARTICLE 3. Everyone has the right to life, liberty and security of person.

ARTICLE 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

ARTICLE 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 6. Every one has the right to recognition everywhere as a person before the law.

ARTICLE 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

ARTICLE 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

ARTICLE 9. No one shall be subjected to arbitrary arrest, detention or exile.

ARTICLE 10. Everyone is entitled to full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE 11. (1) Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. (2) No one shall be held guilty of any penal offense of any

act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

ARTICLE 12. No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.

ARTICLE 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

ARTICLE 15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

ARTICLE 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

ARTICLE 17. (1) Everyone has the right own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

ARTICLE 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

ARTICLE 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE 20. (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.

ARTICLE 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ARTICLE 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

ARTICLE 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for protection of his interests.

ARTICLE 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

ARTICLE 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

ARTICLE 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental states. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally assessable to all on the basis of merit. (2) Education

shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.

ARTICLE 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

ARTICLE 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

ARTICLE 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

ARTICLE 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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