



## **Society of Catholic Social Scientists**

**100 Franciscan Way, Steubenville, Ohio 43952 – (740) 284-5377**  
**[catholicsocialscientists@gmail.com](mailto:catholicsocialscientists@gmail.com)**

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Commission on Unalienable Rights  
United States Department of State  
2201 C Street NW  
Washington, D.C. 20250

Dear U.S. State Department Commission on Unalienable Human Rights:

We are very grateful for the *Report of the Commission on Unalienable Rights* (the Report) and for the opportunity to make comment. Our recommendations to the Commission are in bold type.

### *Introduction:*

The Society of Catholic Social Scientists (SCSS) is a scholarly, interdisciplinary organization dedicated to promoting and conducting rigorous social scientific research within the parameters of orthodox Catholic doctrine. The SCSS boldly challenges a secularized approach to the social sciences by combining objective scholarly analysis with fidelity to the Magisterium. Through a collegiality of Catholic scholars, professors, researchers, practitioners, and writers, the SCSS brings credible scholarship to political, social, and economic questions. SCSS members approach their work in both a scholarly and evangelical spirit. They are expected to observe the highest scholarly and professional requirements of their disciplines as they examine their data in light of Church teaching and the natural law. In this way, the Society seeks to obtain objective knowledge about the social order, provide solutions to vexing social problems, and further the cause of Christ.

The International Solidarity and Human Rights Institute (ISHRI) is committed to establishing solidarity among people worldwide by promoting authentic human rights based on natural law principles, as set forth in such documents as the *Declaration of Independence*, the *Universal Declaration of Human Rights*, and the *Charter of the Rights of the Family*. Its mission is informed and motivated by respect for the inherent dignity and equality of all human beings created in the image of God as understood by the teaching office of the Catholic Church.

The work of both organizations involves education and research, public interest litigation, mediation, and works of mercy so as to eliminate human rights violations. These organizations, acting alone or in conjunction with other like-minded institutions, inform the public, students, government officials, international organization delegates,

and financial, educational and cultural leaders and assists them to promote solidarity and human rights.

*Comment:*

Benjamin Franklin wondered whether the sun half visible on the horizon painted on the back of George Washington's chair at the United States Constitutional Convention in 1787 was a sun rising or a setting upon the young republic's experiment in self-government. As he stepped forward to sign the United States Constitution, he commented that it was indeed a rising sun. Just so, with the publication of the Report. Now people of good will have reason to believe that, though human rights have seemed obscured in fog and miasma, "a time of crisis for the human rights idea,"<sup>1</sup> unmoored and the ad hoc plaything of self-appointed experts, the sun has finally broken through and it is a rising sun. The Report casts a clear light on the contours of human rights and will serve as a beacon for those struggling to resist ideological colonization<sup>2</sup> by these same self-appointed experts.<sup>3</sup>

One contour in the field of human rights that your draft Report brings to light is that not all human rights mentioned American rights tradition and the Universal Declaration of Human Rights have the same source. Some are direct corollaries or conclusions of the moral axiom of inherent human dignity, such as the prohibition against doing gratuitous harm to innocent persons. These direct percepts of human dignity never change and may never be denied, many of which are recognized as *jus cogens* in international law.<sup>4</sup> Other human rights are specifications of those direct corollaries which give them life but upon which reasonable minds may differ, such as what kind of sanctions should be imposed upon a person guilty of committing murder or other kinds of harm to innocent persons. These specifications of the direct corollaries of human dignity may change over time, subject as they are to cultural variants and allow, as you note, a "legitimate pluralism, or a margin of appreciation."<sup>5</sup>

The Report also makes clear that although all authentic human rights are inherent, universal, and indivisible not all authentic human rights have the same end: some are ceilings which allow of exceptions, while others are floors which allow of no exceptions.<sup>6</sup> Some authentic human rights are universal but aspirational in the sense of

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<sup>1</sup> Commission on Unalienable Rights, Draft *Report of the Commission on Unalienable Rights* (July 16, 2020), p. 45.

<sup>2</sup> See Pope Francis' address in Manila warning of the ideological colonization of the family through the promotion of contraceptive practices and gender ideology, *National Catholic Reporter* (Jan. 16, 2015), <https://www.ncronline.org/news/vatican/francis-warns-against-ideological-colonization-family-reaffirms-contraception-ban> (last accessed 7/28/20); also see *Crux* (Jan. 8, 2018) when addressing diplomats accredited to the Holy See Pope Francis said, "Somewhat paradoxically, there is a risk that, in the very name of human rights, we will see the rise of modern forms of ideological colonization by the stronger and the wealthier, to the detriment of the poorer and the most vulnerable." <https://cruxnow.com/vatican/2018/01/pope-laments-arms-anti-immigrant-rhetoric-ideological-colonization/> (last accessed 7/28/20).

<sup>3</sup> "[T]hese [international human rights ] institutions are rife with serious flaws: they are frequently subject to interest-group capture; they are not broadly representative of the societies that are putatively governed by the norms they apply; and they lack democratic legitimacy inasmuch as they vest enormous discretion in the professional elites who staff their permanent bureaucracies." *Ibid.*, p. 48.

<sup>4</sup> *Ibid.*, pp. 37-38. Also see, p. 56: "Some international norms, like the prohibition on genocide, are so universal that they are recognized as norms of *jus cogens* – that is, principles of international law that no state can legitimately set aside."

<sup>5</sup> *Ibid.*, p. 56.

<sup>6</sup> "[I]t needs to be appreciated that the UDHR presents and promotes the two groups of rights [political and civil verses economic and social] in different ways. A crucial difference is that [UDHR] Article 22, which introduces the entire section on economic and social rights, provides that they are dependent on the 'organization and resources of each State,' while the UDHR imposes no such limitation on the civil and political rights that it outlines...More generally, the differing linguistic construction of UDHR articles suggests that some civil and political rights are not subject to

always before us as a goal that allows degrees of compliance, such as a right to decent work. Other authentic human rights are universal and prescriptive injunctions and do not permit degrees of compliance, such as prohibitions against trafficking and slavery. It is obvious, as your Report makes clear, that a nation may choose to prioritize the allocation of its limited resources to those authentic universal human rights that are direct conclusions of human dignity and prescriptive, rather than those that are culturally sensitive determinations of those conclusions and/or aspirational.<sup>7</sup>

Your Report also illuminates rougher terrain besetting the human rights project by suggesting that some “new” human rights may be inconsistent with the direct corollaries of human dignity as these were expressed in the *Declaration of Independence*, *United States Constitution* and *Bill of Rights* and the *Universal Declaration of Human Rights* (UDHR) understood, as they should be, in accord with the plain meaning of the words and intent of those who drafted and ratified them. Although the Report makes reference to the controversies surrounding abortion, euthanasia, and same-sex marriage<sup>8</sup> it does not identify them as being inconsistent with the core concepts of human dignity and unalienable rights. Instead the Report provides a criterion by which those who shape public policy can judge for themselves whether a new right is an organic outgrowth of the core values of the American rights tradition and international rights principles or part of the proliferation of ad hoc, ersatz rights – tares, if you will, wrongly sown in the wheat field of universal human rights.<sup>9</sup>

We concur with the Report’s assessment that the core concept of human dignity can no longer serve as the sole foundation of universal human rights as it did in 1948 for those who drafted and ratified the UDHR. Today many interpret the anthropological foundations underlying the concept of human dignity from a stilted or grotesque reading of Immanuel Kant.<sup>10</sup> They contrast autonomy (obligations one chooses free from internal emotional desires or external coercion) and heteronomy (obligations imposed upon an individual by internal emotional desires or external coercion) and posit that only the former manifest human dignity and may serve as the foundation of human rights.

It would seem that those who champion sexual and reproductive rights and sexual orientation and gender identity rest their case on this grotesque reading of Kant’s philosophy of the human person. For them, since nothing so sums up and constitutes a person as an act of sexual expression, they wrongly believe that a woman is inauthentic (behaving heteronomously) if any external or internal constraint impedes her free will to choose any and all forms of sexual activity or gender identity. For these libertarian ideologues unfettered autonomy is the bases of human dignity, plain and simple.

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limitation, especially those negative rights that require the State to refrain from directly violating them: for example, ‘no one’ shall be subjected to slavery, torture, or arbitrary arrest. But none of the economic and social rights – which usually imply affirmative State measures rather than government restraint from action – employ this formulation.” Ibid., pp. 34-35.

<sup>7</sup> “International law accepts that some human rights are absolute or nearly so, admitting of few or no exceptions, even in times of national emergency, while others are subject to many reasonable limitations or are contingent on available resources and on regulatory arrangements.” Ibid., p. 37.

<sup>8</sup> Ibid., pp. 7, 24.

<sup>9</sup> See Matthew 13:24-30: Tares look like wheat but are destructive weeds sown in the field of wheat by an enemy of the landowner. In the end the tares must be identified, separated from the wheat, and eliminated.

<sup>10</sup> Luigi Caranti, “Kant’s Theory of Human Rights,” *Estudos Kantianos* 2, no. 02 (2014), “Kant-OnLine,” posted June 17, 2014, footnote 10. “[W]e must avoid attributing to Kant, as it has been done so often, the grotesque view that only moral agency is free [done free of internal desire and external coercion] and non-moral agency [that done under the compulsion of desire or threat of external force] is not accountable precisely because it is not free. Needless to say, sometimes Kant lends himself to such an interpretation when, for example, he claims: “what else, then, can freedom of the will be but autonomy, i.e., the property that the will has of being a law to itself...” (last accessed July 29, 2020).

However, their flawed anthropology and hedonist ethical creed is far removed from that of the Founding Fathers of the American Republic and the overwhelming majority of those who contributed to the drafting of the UDHR. In 1948 Mahatma Gandhi was asked to comment on the foundations of human rights and he replied:

I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus, the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.

Yours sincerely,  
M.K. Gandhi<sup>11</sup>

For Mahatma Gandhi the way to tell the tares from the wheat in the field of human rights is whether an alleged human right corresponds to a personal duty towards others to be first performed. Applying this criteria, we find that a mother first has a personal duty to her child, both before and after birth and, so, can assert a right to flourish her life only if it does not jeopardize the life of her child. Likewise, a person first has a duty to his God, his family, his country to stay the course of his natural life, a gift he did not bestow on himself, and not quit his station willfully as John Locke wrote regarding suicide:

But though this be a state of liberty, yet it is not a state of licence: though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure...Every one, as he is bound to preserve himself, and not to quit his station wilfully...<sup>12</sup>

The worldview of the drafters of the *Declaration of Independence*, the *United States Constitution* and its *Bill of Rights* as well as those who contributed to the drafting of the UDHR upheld the notion that authentic human rights must be correlated to duties first performed. The notions of sexual and reproductive rights and sexual orientation and gender identity ideology, that view personal duties as heteronomous liabilities, present an antithesis to the worldview and anthropology of the founders of the American rights tradition as well as many of those who contributed to drafting the UDHR.

Your Report rightly points out that, although there was no consensus on the ultimate foundations of the list of human rights in the UDHR, all agreed that human rights are “inherent” in human nature. The Report then links the notion of inherent rights in the UDHR to the concept of unalienable rights in the American rights tradition and that it is the first order of government to promote and defend these inherent and unalienable rights.

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<sup>11</sup> Mahatma K. Gandhi, “Letter to Dr. Julian S. Huxley, Director-General,” as cited in UNESCO, “United Nations Educational, Scientific and Cultural Organization, Human Rights: Comments and Interpretations, a symposium edited by UNESCO, with an Introduction by Jacques Maritain” (July 25, 1948), 3, <https://unesdoc.unesco.org/ark:/48223/pf0000155042> (last accessed December 1, 2019).

<sup>12</sup> John Locke, *Second Treatise of Government*, section 6, The Project Gutenberg EBook of *Second Treatise of Government* by John Locke, last updated April 1, 2012, <https://english.hku.hk/staff/kjohnson/PDF/LockeJohnSECONDTREATISE1690.pdf> (last accessed 7/29/20).

For the Founders of the American republic, the self-evident unalienable rights of life, liberty and the pursuit of happiness are grounded in a “transcendent foundation” of human rights inherent in human nature.<sup>13</sup>

**We suggest that, in addition to the five criteria you have put forth in the Report in order to identify “whether a new claim of human right warrants support in U.S. foreign policy,”<sup>14</sup> you add another: that all authentic and truly universal human rights must correspond to a personal duty to be first performed towards another. Truly universal human rights, then, guarantee that no one may rightfully interfere with one’s freedom to perform their inherent and primary obligations towards others.<sup>15</sup>**

Why do human persons have duties to be first performed that constitutes them, then, as rights bearers, as Gandhi suggests? The answer lies in the fact that we are not autonomous isolated beings but relational persons who can only know ourselves and flourish in interpersonal relations. We have a primal duty, therefore, to be open to others, that is, to give ourselves and receive other persons including our Creator in whose image and likeness we are made. Pope John Paul II cast light on a third way to chart the terrain of human dignity between autonomy and heteronomy, that of a genuine moral autonomy or “participated theonomy.”<sup>16</sup> The transcendent dimension found in human nature is an image of God that contains an imprint of God’s eternal law. Therefore, when one submits to the demands of the eternal law known in one’s well-formed conscience one is not acting out of constraint to an external or internal alien pressure that inhibits one’s free will. Rather, one acts in conformity with one’s truest self. In fact, the libertarian notion of absolute autonomy turns out to be a disguised form of heteronomy:

Autonomy, or obedience to myself in alienation from God, is still slavery because it is disguised heteronomy. For since I am made in God’s image, if I am alienated from Him, then I am also alienated from myself. Obedience to my alienated self is but obedience to yet another alien ‘other.’ The only true freedom is ‘participated theonomy,’ joyful participation in the law of God in whose image I am made. Only in this way can I be fully what I am; and so only in this way can I be fully and truly free.<sup>17</sup>

The Report critiques several new challenges to the human rights project.<sup>18</sup> We would like to emphasize and comment on one in particular, namely, “new technologies” and “biotechnology (including manipulation of the human genome).”<sup>19</sup> Recently Associate Justice Clarence Thomas highlighted his grave concerns regarding the eugenic manipulation of society through birth control and abortion. What he wrote in his

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<sup>13</sup> See the Report, p. 10: “The Declaration ascribes transcendent foundations to unalienable rights, appealing to both philosophy and faith, reason and revelation.

<sup>14</sup> See the Report, pp. 39-40: An authentic/universal human right flowing from the core concept of human dignity must 1) comply with the plain meaning of the texts and their original intent, 2) be congruent with long-standing traditions of the American people, 3) be based in international hard (treaty) law, 4) be supported by clear multinational cultural consensus and 5) not contradict or unravel existing human rights.

<sup>15</sup> See Pope John Paul II, *Veritatis Splendor* #51: “A person’s primary obligations towards others, including God, include preserving one’s life (and those of innocent third parties), being fruitful and multiplying responsibly (in natural marriage inherently open to procreation), living in solidarity with others, cultivating the riches of the material world, seeking truth, and cultivating beauty.”

<sup>16</sup> Pope John Paul II, *Veritatis Splendor* (Vatican: 1993), #40.

<sup>17</sup> J. Budziszewski, “Underground Thomist,” February 22, 2016, <https://www.undergroundthomist.org/theonomy> (last accessed December 2, 2019).

<sup>18</sup> The seven new challenges to human rights identified in the Report are the decline of human rights culture, the failings of International organizations, the autocratic challenge, new technologies, migration of peoples, global health and pandemics and the rise of human rights violations by non-states organization.

<sup>19</sup> The Report, p. 52.

concurring opinion in *Kristine Box, Commissioner, Indiana Department of Health, et al. v. Planned Parenthood of Indiana and Kentucky, et al.*, a case that dealt with sex selective and disability abortions bans, applies all the more to the genetic manipulation of human beings: “Although [Margaret] Sanger was undoubtedly correct in recognizing a moral difference between birth control and abortion, the eugenic arguments that she made in support of birth control apply with even greater force to abortion. Others were well aware that abortion could be used as a ‘metho[d] of eugenics,’ [internal citation omitted] and they were enthusiastic about the possibility. Indeed, some eugenicists believed that abortion should be legal for the very *purpose* of promoting eugenics.”<sup>20</sup> **In light of the ever growing technological prowess of genetic manipulation to literally alter the face of humanity, more could and should be said in the Report about the advent of a new eugenics legitimized by an anthropology that exults unbounded autonomy while denying unalienable rights to the detriment of the most vulnerable human beings.**

*Conclusion:*

At the heart of the human rights crisis lies a chasm that was too far to cross in 1948. Jacques Maritain, who contributed significantly to the drafting of the UDHR, when asked about the list of human rights in the UDHR replied: “Yes, we agree about the rights, but on condition no one asks us why. That why is where the argument begins.”<sup>21</sup> But at least in 1948 there was consensus on the list of rights, today there is not. One thing, however, has remained a constant from 1948 to the present – a clear philosophical divide at the core of the chasm that Maritain addressed:

From the point of view of philosophic doctrine, it may be said, without oversimplification, that, as regards the question of Human Rights, men are today divided – as the readers of this collection will easily perceive – into two antagonistic groups: those who to a greater and lesser extent explicitly accept, and those who to a greater or lesser extent explicitly reject ‘Natural Law’ as the basis of those rights.<sup>22</sup>

Perhaps a bridge over the philosophical divide concerning natural law may find mooring on common ground if human rights discourse were transposed in a new grammar of ecology. Those who advocate for the, so called, “rights of nature” nonetheless correctly recognize *telos*, inherent purpose, in nature.<sup>23</sup> Therefore, they seek to enjoin human activity that violates the harmony, balance and rhythms found in the various ecosystems of the natural world.<sup>24</sup> It would be another sad irony<sup>25</sup> if the only

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<sup>20</sup> *Kristine Box, Commissioner, Indiana Department of Health, et al. v. Planned Parenthood of Indiana and Kentucky, et al.*, 587 U. S. \_\_\_\_\_, 19 (2019) (Thomas, J., concurring).

<sup>21</sup> Jacques Maritain, Introduction, “United Nations Educational, Scientific and Cultural Organization, Human Rights: Comments and Interpretations, a symposium edited by UNESCO, with an Introduction by Jacques Maritain,” (July 25, 1948), p. 3, <https://unesdoc.unesco.org/ark:/48223/pf0000155042> (last accessed December 1, 2019).

<sup>22</sup> *Ibid.*, p. 5.

<sup>23</sup> See Rom. 1:19-21.

<sup>24</sup> For example, see The Constitution of the Republic of Ecuador, Art. 71: “Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.”

<https://therightsofnature.org/wp-content/uploads/pdfs/Rights-for-Nature-Articles-in-Ecuadors-Constitution.pdf> , last accessed 7/30/20. Also see Bolivia’s Law of the Rights of Mother Earth, Chapter 1, Article 2, 1. Harmony: “Human activities, within the framework of plurality and diversity, should achieve a dynamic balance with the cycles and processes inherent in Mother Earth. <http://www.worldfuturefund.org/Projects/Indicators/motherearthbolivia.html> , last accessed 7/30/20. However, it is important to point out that Catholic social teaching recognizes only a one-way correspondence or analogy between human persons and the other creatures of the natural world, that is, they are like us, but we are not like them. If human rights discourse were to be transposed in the grammar of human ecology this crucial distinction would need to be emphasized. For instance, animal mating is like human procreation, but human procreation

creatures in the natural world without an inherent nature to be respected by human beings were human beings themselves. As Pope Francis points out – “man too has a nature that he must respect and that he cannot manipulate at will.”<sup>26</sup> There is a growing consensus among NGOs of Catholic inspiration that “[t]he grammar of integral human ecology reanimates the various rights, or vessels of dignified living, flowing into a human rights language offering a more stabilized vocabulary and coherent discourse.”<sup>27</sup>

Finally, the members of the Society of Catholic Social Scientists and International Solidarity and Human Rights Institute wish to thank the Commission for the progress it has made so far in the draft Report. The Report gives us hope that the sun is rising, not setting, on the human rights project. It provides a lens that will enable people of good will, not just in the United States but from around the world, to discern truly universal human rights from those that are ad hoc, to cultivate the former and root out the latter, separating the wheat from the tares.

Respectfully submitted,

Stephen M. Krason, J.D., Ph.D.,  
President of the Society of Catholic Social Scientists (SCSS)

D. Brian Scarnecchia, M.Div., J.D.,  
President of International Solidarity and Human Rights Institute (ISHRI)

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is not like animal mating, etc. Therefore we should accord no less respect for the natural flourishing of human beings than we do for fauna and flora, but we may not subject human beings to the principles of animal husbandry or eugenic manipulation given the difference in kind, not degree, of the inherent transcendent aspect of human nature, recognized in the American rights tradition and the UDHR, compared to the natures of the other creatures of the material world.

<sup>25</sup> “It would be a sad irony if the idea of human rights – which reflects the conviction that the positive laws of nations must be accountable to higher principles of justice – were reduced to whatever current treaties and institutions happen to say about it.” The Report, p. 41.

<sup>26</sup> Pope Francis, *Laudato Si'* (Vatican, 2015) #155, citing Pope Benedict XVI, “Address to the German Bundestag,” (Berlin, 22 September 2011).

<sup>27</sup> See *Catholic Inspired Organizations: Towards a More Inclusive Society*, edited by Geoffrey Strickland (Forum of Catholic Inspired NGOs, 2020), p. 19 [www.foruminternational.org](http://www.foruminternational.org) .