



Inalienable Rights and the Traditions of Constitutionalism

Conference at University of Notre Dame explores the nature of human rights and their future in an uncertain world

“Grounding analysis of human rights in fundamental principles, not policy preferences”

SOUTH BEND, Indiana: From November 14 – 16, 2021, the Kellogg Institute for International Studies at the University of Notre Dame convened thirty international scholars to explore and extend the work of the Commission on Unalienable Rights (COUR) — an independent and nonpartisan body convened from 2019 through 2020 and composed of academics, philosophers, and religious scholars. Its charge was to provide the U.S. State Department with advice on human rights grounded in the nation’s founding principles and the principles of the 1948 Universal Declaration of Human Rights.

Keynote speakers included Dr. Mary Ann Glendon of Harvard Law School, who chaired the Commission on Unalienable Rights; Dr. Joseph Weiler, NYU Law Professor and Co-director of the Jean Monnet Center for International and Regional Economic Law & Justice; Dr. Robert P. George, Professor of Jurisprudence and Director of the James Madison Program in American Ideals and Institutions at Princeton University; Dr. Meir Y. Soloveichik, Rabbi of Shearith Israel, America's first Jewish Congregation, founded in Manhattan in 1654; and Dr. Peter Berkowitz of Hoover Institution, Stanford University, who served as Director of the State Department’s Policy Planning Staff, executive secretary of the department's Commission on Unalienable Rights, and senior adviser to the Secretary of State.

In his welcoming remarks, Dr. Paolo Carozza — COUR Commissioner, Director of the Kellogg Institute for International Studies, and Principal Investigator of the Notre Dame Constitutionalism and Rule of Law Lab (CAROLL) — said:

To be able to focus our first [CAROLL] conference on the work of the Commission on Unalienable Rights is in some senses extremely apt... The charge that was given to the group was simply to help reflect on the basic principles that ought to guide U.S. foreign policy and human rights, with an emphasis on the principles, not on the specific policy decisions to be made....

The Commission finished its work in the summer of 2020.... [But] it was most evident right from the start that many of the initial responses really were flowing through highly polemical filters.... To give you a few examples: it was said that the Commission in its final report was somehow hostile to the human rights of women or to the human rights of LGBTQI persons. But in fact, the report says nothing at all about the latter and uses the former as one of the most central examples of its narrative of the development of rights in the constitutional tradition of the United States.... [we] received a great deal of fusillades from both the left and the right for entirely different reasons and [this] perhaps most clearly exemplifies what Walter Russell Mead memorably said about the report but many others overlooked: he described it as being “radically moderate”....

The report tries to articulate and to propose a much more complex and nuanced view of the proper relationship between pluralism, constitutional traditions and universality in realizing the ideal of human rights. The interdependence of these areas and the need for democracy in order to mediate them.... Is it really the case that this pluralism of traditions among the human family is an obstacle that needs to be overcome in the effort to recognize and realize human rights? Or can we see that pluralism and universality in fact go hand-in-hand, and have a symbiotic relationship to one another? This raises questions centrally of constitutional pluralism, of natural law, of human dignity, all themes that we will be exploring over the next few days.

I and many others have been struck by the reception, as I said earlier, of the report in some other parts of the world. One of the most notable was the very warm, and enthusiastic and intelligent engagement of the report by interlocutors among the Muslim community in Indonesia. And that fact was so striking that we have decided to build in to this conversation a particular focus on the relationship of the plurality of constitutional traditions, including the traditions of Islamic constitutionalism and inalienable rights and to use that as an entry point into broader discussions about a variety of thick religious, constitutional, ethical traditions around the world and how they might relate to the universal project of human rights....

We hope that the conference as a whole does not prove in any way to be an end point or an instrument of closure for these discussions but rather an opportunity for opening things up even further, for reflecting together in the long run on how to reinvigorate the commitment to inalienable human rights as the locus of a deeper and more universal cross-civilizational consensus and action, especially recognizing the new and monumental threats to human dignity, liberty and democracy in today's world.

Dr. Mary Ann Glendon — Learned Hand Professor of Law at Harvard Law School (Emerita) — delivered the final keynote address of the conference on November 16th. During her long and distinguished career, Dr. Glendon led the Vatican delegation to the 1995 Beijing Conference on Women; served on the President's Council on Bioethics and as U.S. Ambassador to the Holy See; and in 2013 was appointed, by Pope Francis, as a member of the Pontifical Commission of Inquiry for the Institute for the Works of Religion, which is also known as the Vatican Bank. Dr. Glendon's book, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, conveys the drama that led to the creation of the UDHR and analyzes its ongoing significance in the modern world.

During her address, Professor Glendon noted that “the most consequential of the responses [to the COUR Report], in my view, came from the world's largest independent Muslim organization, called Nahdlatul Ulama. It is a 90-million-member organization which is distinguished by, among other things, its commitment to freedom of religion; its commitment to religious pluralism; and its condemnation of the use of religion as a pretext for violence. It is based in Indonesia and is a group that deserves to be much better known in the West.”

Professor Glendon also remarked on “the interest from another, very large international group, the world's largest association of political parties, Centrist Democrat International, which is a union of parties from some 73 countries mostly based in Europe and Latin America.... [T]his great union of political parties adopted a formal resolution in which, I am going to quote their language, approving the report and mentioning in particular its quote ‘re-affirmation of the spirit and substance of fundamental human rights.’

“Now, you might be wondering, what was it about the report that attracted that interest and that degree of approval? I didn’t see any universal or unreserved acceptance in the State Department. You might be wondering what it was about the report that attracted their interest and the answer seems to be, from what I can tell, the report’s exploration of a couple of questions that are salient in projects that Nahdlatul Ulama is working on and that Centrist Democrat International is working on, and they refer to their project as ‘shared civilizational values.’ So, the two questions that seem to be very important in that enterprise are two big questions that were of concern to the framers of the Universal Declaration and others after WWII who were wondering ‘can there be such a thing as universal human rights given the great variety of civilizations, philosophies, cultures?’”

The General Secretary of Nahdlatul Ulama, KH. Yahya Cholil Staquf — who hosted U.S. Secretary of State Michael Pompeo and Professor Glendon in Jakarta in October of 2020, following publication of the COUR Report — was invited to address the conference at Notre Dame, but was unable to attend due to pressing responsibilities in Indonesia. Speaking in Mr. Staquf’s place, Dr. Timothy Samuel Shah, Director of Strategic Initiatives of the Center for Shared Civilizational Values, delivered an address titled “Human Dignity and Inalienable Rights Across Cultural and Religious Traditions,” an edited version of which may be read below.

Human Dignity and Inalienable Rights Across Cultural and Religious Traditions

Remarks by [Dr. Timothy S. Shah](#)

To set the scene for my brief remarks, I’d like us to travel back to the mid-to-late 1940s. In retrospect we take for granted a narrative that makes the promulgation of the Universal Declaration of Human Rights in 1948 inevitable – as something the great powers of America and Britain and France were determined to produce. Mary Ann Glendon’s *A World Made New* suggests otherwise. It was not the great powers, but small powers that were pushing hardest for a declaration of rights, and it was often great powers — and one has to say great white powers — who did not like the idea of being pushed around by small brown and black peoples.

This dynamic is nicely captured in an exchange between two diplomats in 1948. And it’s especially apt since we heard so much about the Bible yesterday, in Rabbi [Soloveichik’s] beautiful remarks.

The Filipino intellectual and journalist, Carlos Romulo, became one of the postwar period’s most strenuous advocates for human rights, freedom, and decolonization. The Philippines made him one of its representatives to the UN, and in 1948 in Paris, at the third UN General Assembly, he strongly disagreed with a proposal made by the Soviet delegation headed by Andrei Vishinsky, who then shot back, to Romulo: "You are just a little man from a little country." In return, Romulo replied, "It is the duty of the little Davids of this world to fling the pebbles of truth in the eyes of the blustering Goliaths and force them to behave!" Which had the effect of forcing at least one Goliath to behave. Vishinsky did not know how to reply, and quickly sat down.

At the time of that exchange, less than two thousand miles away from Romulo’s Philippines, other Davids were firing not only metaphorical “pebbles of truth” but live ammunition to win their freedom from other Goliaths.

Indonesia declared independence from Dutch colonial rule in the summer of 1945 — three-and-a-half years before the promulgation of the Universal Declaration of Human Rights in December 1948, and long before anyone could have had any confidence that human rights would constitute a significant feature of the post-World War II international order. Indonesian political and religious leaders from highly diverse backgrounds produced a draft constitution that insisted in its preamble that independence from colonial rule is the “inalienable right” of all nations. The 1945 Constitution went on to declare that Indonesia’s independent government would acknowledge and respect certain “inalienable rights” on the part of individual citizens as well, including a right to freedom of conscience and religion.

In what seems a clear echo of the first paragraph of the American Declaration of Independence — which refers to the right of all peoples, by virtue of the Laws of Nature and Nature’s God, to assume a separate and equal station among the peoples of the earth — the 1945 Indonesian Constitution begins:

Whereas independence is the inalienable right of all nations, therefore, all colonialism must be abolished in this world as it is not in conformity with humanity and justice;

And the moment of rejoicing has arrived in the struggle of the Indonesian independence movement to guide the people safely and well to the gate of the independence of the state of Indonesia which shall be independent, united, sovereign, just and prosperous;

By the grace of God Almighty and motivated by the noble desire to live a free national life, the people of Indonesia hereby declare their independence.

This seemingly sudden flowering of a distinctive rights tradition in the world’s largest Muslim-majority nation was, in fact, long in the making, with roots in a centuries-old Javanese tradition of respect for freedom of conscience, a tradition of religious freedom that was formalized some two hundred years before the 1786 Virginia Statute for Religious Freedom.

Moreover, this distinctive rights tradition — which one might term a communitarian-spiritual rights tradition, as it lays stress on communal harmony and combines elements of Islam and Indonesia’s pre-Islamic Indian cultural and spiritual heritage — remains to this day a vital and central element in Indonesia’s official, constitutionally mandated philosophy of “*Pancasila*” (“Five Pillars”). It does more than animate the country’s constitutional law, however. It is a robust and living element in Indonesia’s religious and political culture, and, as such, is one factor that explains how and why Indonesia stands out as arguably the most successful and enduring Muslim-majority democracy in the world.

One mark of the fact that Indonesia has not only talked the talk but walked the walk in terms of respecting the inalienable rights of its citizens is that it is the only Muslim-majority country in the world whose Christian population has not plummeted in the last 75 to 100 years, but actually increased – and indeed dramatically. The proportion of Indonesia’s population that is Christian has risen from 3% in 1945 to over 10% today. Indonesia is far from perfect when it comes to human rights and religious freedom. But if religious minorities are the canary in the coal mine, and a reliable indicator of the country’s overall ecology of freedom, then Indonesia’s canaries are doing remarkably well.

Indeed, just a short time ago, Indonesia reaffirmed its [commitment](#) to the unalienable right to religious freedom of all of its citizens, including vulnerable minorities. Earlier this year,

Indonesia's Minister of Religious Affairs warmly conveyed a New Year's greeting to Indonesia's miniscule Baha'i community. When this video greeting triggered harsh criticism by Islamists, the Ministry of Religious Affairs responded by affirming that every Indonesian citizen — "including Baha'is, Sikhs, Taoists and Jews" — has a constitutional right to religious freedom, and to practice the teachings of his or her faith.

One should pause to note that this flowering of a distinctive "Indo-Islamic" rights tradition in the world's largest Muslim-majority nation in 1945 is a massively significant fact. It is at least consistent with the claim — if it does not strongly confirm — that the concept of inalienable human rights enjoys broad if not universal resonance and that, as the COUR Report suggests, a variety of quite different religious, cultural, and national traditions possess the resources for recognizing, articulating, and legally codifying claims of inalienable human rights. Despite criticism of the COUR Report that it promotes a parochial and narrow or Americanized conception of rights, those of us who have read the COUR Report will find passages such as the following (among many other that could be quoted):

This Report's survey of international human rights principles stemming from the Universal Declaration of Human Rights... reveals a tradition that was designed to affirm universal principles without relying upon any one particular national tradition. The list of principles in the UDHR was deliberately kept small and general so that those principles could be brought to life within many different cultures, traditions, and political systems.

Moreover, Indonesia's robust rights tradition goes some way towards complicating the views of certain influential critics of human rights and the post-war human rights project. For example, the existence of an independent and dynamic rights tradition in mid-twentieth century, pre-independence Indonesia sits rather awkwardly with the narrative put forward by Yale Law School's Samuel Moyn — namely, that the mid-twentieth century mobilization of "human rights" was a purely (or at least primarily) "Christian" project to defeat godless totalitarianism of the Right and the Left. Moyn's corollary conclusion is that the Christian origins of the 20th-century human rights project continue to taint that project, making it exclusivist, patriarchal, and Islamophobic.

Well, the fact that Indonesian Muslims successfully mobilized human rights and indeed "inalienable rights" to defeat Christian colonialists in the very years (the 1940s) that are the focus of Moyn's historical narrative suggests that the conceptual language of human rights was — and is — far more supple and universal than he suggests. Indeed, it highlights the plausibility of the suggestion that there is not one univocal human rights discourse ("Christian" or otherwise) but a multitude of diverse and distinctive "rights traditions." It was less the Goliaths, but the Davids of all kinds, who saw in the doctrine of inalienable human rights "pebbles of truth" that proved very effective indeed in compelling the Goliaths of the world to behave just a little bit better.

Now let's fast-forward from 1945 to 2020 — from Indonesia's declaration of independence to the 75th anniversary of that momentous event. Around the very time that Indonesia was celebrating the 75th anniversary of its independence, in August 2020, senior leaders of Nahdlatul Ulama carefully studied a document that had just been released in the United States, the Report of the Commission on Unalienable Rights. These NU leaders felt such a profound level of affinity with the report — particularly with its idea that there is a small core of fundamental rights that reflect our shared humanity, but that these core rights must be instantiated in different ways across the diverse cultures and religions of the world — that they

conveyed a formal letter to then Secretary of State Mike Pompeo. The letter expressed their appreciation. But it also contained an invitation: Please come to Indonesia, so that we can affirm, on a common platform, our commitment to the shared civilizational value of inalienable human rights.

I have some awareness of the details because, as it happens, I had been working closely with these senior NU leaders, including Yahya Staquf, since November 2019, and I offered to facilitate the delivery of their letter to Secretary Pompeo. And I did that through my former teacher and friend — and hapless reader of my juvenile interventions in political theory — Peter Berkowitz, who was of course then Director of Policy Planning.

As Peter recounted to us later, he delivered the message personally to Secretary Pompeo, and after about 3 seconds of deliberation the Secretary said something to the effect of (though Peter can correct me): “Let’s go to Indonesia!”

And go to Indonesia Secretary Pompeo did indeed. He went not by himself, but accompanied by Mary Ann Glendon, who was also personally invited by the senior leaders of Nahdlatul Ulama for a day of separate discussions about the shared commitment of America and Indonesia to unalienable human rights. Joining them was Cart Weiland, who was on the staff of the Commission.

Secretary Pompeo delivered a major speech in Jakarta, at an event hosted by Nahdlatul Ulama’s 5-million-member young adults movement, Gerakan Pemuda Ansor, and Bayt ar-Rahmah, which coordinates the global expansion of NU and Ansor activities.

Titled “Nurturing the Shared Civilizational Aspirations of *Islam Rahmatan li al-‘Alamin* (which means compassion or mercy for all creation), the Republic of Indonesia and the United States of America,” the event took place in the Indonesian capital, Jakarta, and was part of a two-day forum attended by top leaders of Nahdlatul Ulama, Ansor, the Government of Indonesia, the U.S. Department of State and all six of Indonesia’s major religions.

Addressing NU spiritual leaders who established Bayt ar-Rahmah, Humanitarian Islam and the Movement for Shared Civilizational Values in order to restore universal love and compassion (*rahmah*) as the primary message of Islam, Secretary Pompeo said:

Your remarkable organizations, all of you sitting here today, have been powerful forces in the defense of unalienable rights. NU helped spur independence. You provided a voice and a conscience for the nation during more than three decades of authoritarian rule.

Your very own Gus Dur (Abdurrahman Wahid, 1940 – 2009) helped to lead Indonesia’s transition to democracy. His profoundly humane vision and teachings inspired the birth of the Humanitarian Islam movement. His legacy lives on today in the current generation of leaders who, in 2014, launched the *Islam Nusantara* campaign to repudiate ISIS’ hateful and violent brand of Islam. And it lives on in the Movement for Shared Civilizational Values as well.

In conclusion: however the COUR Report may or may not have been received in our polarized United States, it is not an overstatement to say that it helped to catalyze and strengthen a global movement — a Movement for Shared Civilizational Values. And it helped to inspire the creation just a few months ago of the Center for Shared Civilizational Values, in which I am

privileged to serve as Director of Strategic Initiatives. In a sense, the Movement and the Center seek to strengthen — and bring into a working alliance — the great and diverse rights traditions of the world, to “preserve and strengthen a rules-based international order founded upon universal ethics and humanitarian values.”

Critical to this alliance is not only the confluence of the American rights tradition and the Indonesian rights tradition that we saw in Jakarta last year. A third critical partner in this alliance is the world’s largest network of political parties, Centrist Democrat International (CDI), which was formerly known as Christian Democrat International. CDI is the heir to the great European and Latin American tradition of Christian Democracy as represented, for example, in the thought of Jacques Maritain. Astonishingly, and few people are aware of this fact: in November of 2018, CDI invited the Nahdlatul Ulama-based National Awakening Party, or PKB — Indonesia’s largest Islamic political party — to join this historically Christian political network.

In January of 2020, CDI held its Executive Committee meeting in Asia for the first time in 15 years, in the historic Indonesian city of Yogyakarta. The [three-day event](#), hosted by PKB, featured a conference attended by over 300 political and religious leaders, titled “The CDI Eurasia Forum.” It also led to the adoption of a [CDI resolution](#) which affirms “that Western humanism, Christian democracy and Humanitarian Islam are kindred traditions, with a shared interest in upholding a rules-based international order, rooted in universal ethics and values” and explicitly calls for “people of good will of every faith and nation, as well as political parties and governments worldwide” to join “[a 21st century alliance](#) to promote a rules-based international order founded upon universal ethics and humanitarian values.”

And just last week, in a strong demonstration of support for Indonesia’s Humanitarian Islam movement, the Honorable H. Muhaimin Iskandar, Chairman of PKB, was [appointed](#) CDI Vice President and joined CDI’s Executive Committee, the organization’s highest decision-making body. Here we see the joining together of a distinctively Indonesian rights tradition with what Mary Ann has called the distinctively “dignitarian” rights tradition that has been and remains foundational to Christian Democracy and Centrist Democrat International.

So not one, not two, but three rights traditions are working in growing coordination internationally. And we invite others to join us as well — including what I would call the “Ashokan” rights tradition of India, which traces its origins to the 3rd century BCE emperor of India, Ashoka. If we are to have any hope that the world will not always be one in which “the strong do what they will, and the weak suffer what they must,” as Thucydides hauntingly recounts in the Melian Dialogue, then Davids of all kinds must join together and gather pebbles of truth wherever we can find them, across the world’s rich traditions.

May our deliberations here, at the University of Our Lady [Notre Dame], inspire us to act with prudence, faith, hope and charity, so that these “pebbles of truth” may be transformed into the foundation stones of a truly just and harmonious world order that respects the equal rights and dignity of all human beings, regardless of power, race, religion, or nationality.

[Read the Report of the Commission on Unalienable Rights](#)