

Alliance Defending Freedom, also known as Alliance Defense Fund, an ECOSOC-accredited non-governmental organization, makes this submission to the Office of the High Commissioner for Human Rights on best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity, in compliance with Human Rights Council resolution A/HRC/RES/21/3 of 9 October 2012:

1. As aptly noted by Professor Vladimir Kartashkin, Rapporteur of the drafting group of the Advisory Committee of the Human Rights Council, “the concept of ‘values’ has an especially positive connotation.” This is because values – i.e., objective, universal moral principles – undergird what can be identified as true human rights.

2. While it is true that not all that is traditional accords with human dignity, because certain immutable principles – the intrinsic dignity of the human person, for example – transcend time and place, the handing down of such principles in the form of “traditional values” is absolutely consistent with a proper understanding of human rights.

3. Indeed, rights that are truly fundamental are often undermined by those who embrace the label “progress” and treat “traditional values” with disdain. Though they adopt the rhetoric of “rights,” what they advocate is often the antithesis of rights properly understood.

4. One sees this, for example, when that most fundamental of rights, the right to life, without which no other rights can be enjoyed, is subverted by the assertion of “sexual and reproductive rights” deemed to include abortion, or by placing subsidiary rights such as autonomy or privacy above what by necessity is superior.

5. “Traditional values,” properly understood, are central to the modern human rights project, which begins with the Universal Declaration of Human Rights (UDHR) of 1948, though its antecedents date back to antiquity.

6. To understand why the project seemed so necessary at the time, one must recall what immediately preceded the memorializing of human rights in such a document: the horrors of World War II, in particular the Holocaust, and the Nuremburg trials, which sought to hold accountable those who had committed the worst of the atrocities.

7. There was, however, an obstacle which faced the prosecutors at Nuremburg, namely, that the acts committed by the Nazis against subject peoples were not considered crimes under the positive law of Germany. How then to convict, given the inviolable principle of “*nullum crimen sine lege, nulla poena sine lege*” (“no crime without the law, no penalty without the law”)?

8. The answer was because the perpetrators had violated a higher law, the “law above the law,” i.e., the natural law. Robert Jackson, the American prosecutor at Nuremburg, based his arguments on natural law principles he discerned in the common law. See Robert H. Jackson, *Nuremburg in Retrospect: Legal Answer to International Lawlessness*, 35 *Amer. B. Ass’n J.* 813 (1949).

9. Its roots, however, lie in antiquity with the Roman concept of *ius gentium*. Cicero identified this natural law with “Reason, right and natural, commanding people to fulfill their obligations and prohibiting and deterring them from doing wrong. Its validity is universal; it is immutable and eternal.”

10. This classical understanding was passed down through great Spanish late Scholastic thinkers such as Francisco Suarez, S.J., and Francisco de Vitoria, O.P., who were formative in the development of international human rights law as a distinct field; the latter had a statue dedicated to him in United Nations park in New York as “el fundador de derechos humanos” (“the founder of human rights”) in recognition of his contributions.

11. Rev. Martin Luther King, in his Letter from Birmingham Jail, likewise states that the justness or unjustness of the positive law must be measured by its conformity with the natural law.

12. The heirs of this tradition at the time of the formulation of the UDHR included Jacques Maritain and Charles Malik. To them, as to the prosecutors at Nuremberg, it would be impossible to speak of true rights without grounding them in that which is fixed and objective. As Malik put it:

At the base of every debate and every decision [concerning the UDHR]...is the question of the nature and origin of these rights. By what title does man possess them? Are they conferred upon him by the state, or by society, or by the United Nations? Or do they belong to his nature so that apart from them he simply ceases to be man?

Now if they simply originate in the state or society or in the United Nations, it is clear that what the state now grants, it might one day withdraw without thereby violating any higher law. But if these rights and freedoms belong to man as man, then the state or the United Nations, far from conferring them on him, must recognize and respect them, or else it would be violating the higher law of his being.

This is the question of whether the state is subject to higher law, the law of nature, or whether it is a sufficient law unto itself. If it is the latter, then nothing judges it: it is the judge of everything. But if there is something above it, which it can discover and to which it can conform, then any positive law that contradicts the transcendent norm is by nature null and void. *The Challenge of Human Rights: Charles Malik and the Universal Declaration 105* (Habib Malik, ed. 2000).

13. The passing down of such “traditional values” in the form of the natural law, then, down to such time as they were recognized in the UDHR as a safeguard and against the vagaries of a “law” synonymous with what is simply willed by the State, is something very positive indeed.

14. It is further important to note, that by its own terms the natural law cannot be bound to one culture at one particular place in time, but must be universally accessible, through the use of human reason, across the centuries. Thus, if its truth claims are to be deemed valid, one must find evidence of it in other traditions.

15. The drafters of the UDHR when they sought to fashion a declaration of human rights that was universal, confronted this issue, forming a committee under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO). The conclusion: "Where basic human values are concerned, cultural diversity has been exaggerated. The [UNESCO] group found, after consulting with Confucian, Hindu, Muslim and European thinkers, that a core of fundamental principles was shared in countries that had not yet adopted rights instruments and in cultures that had not yet embraced the language of rights." Cited in Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (2002).

16. Thus classical Confucianism, for example, contains the notion of the tao, akin to the natural law, against which the rightness of an act must be measured. It is a standard to which all are accountable, from the Emperor to the lowest commoner. A tremendous amount of common ground therefore existed between representatives of the Confucian tradition, such as China's P.C. Chang, and representatives of the Western natural law tradition, when they came together to draft the UDHR.

17. Such natural-law based universality can be seen in the emphasis the UDHR places on the family. As Jacques Maritain explained, "the family group is, under the natural law, anterior to civil society and to the State. It would thus be important in a Declaration of Rights to indicate precisely the rights and liberties deriving under this...and which human law does no more than acknowledge."

18. Thus the UDHR declares that "the family is the natural and fundamental group unit of society." UDHR art. 16(3). Marriage is based on the natural complementariness of the two sexes: "Men and women of full age...have the right to marry and found a family." UDHR art. 16(1). Parents therefore "have a prior right to choose the kind of education that shall be given to their children." UDHR art. 26(3). Being a prior right, it is prior to the State and grounded in nature, or in other words, a right which is inalienable and against which the state cannot intrude.

19. It is this notion, that there are rights which are not granted by the State but which are inalienable, grounded in nature, and that the State can only recognize which is so vitally important today. This fundamental truth has been forgotten by many, making this instant inquiry into the best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity so necessary and timely.