

Why Catholic Universities Should Engage International Law

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Abstract

This article argues that Catholic universities should vigorously engage international law for at least three reasons. First, international law is an indispensable dialogue partner for Catholic Social Teaching (CST). Since CST belongs in Catholic higher education, so too does international law. Second, in numerous ways and on a global scale, international law raises the very questions of unity and diversity (disciplinary, perspectival, religious, and cultural) that Catholic universities, as *universities*, can and must address. Third, given its secular character, international law challenges Catholic universities, as *Catholic*, to engage, without sacrifice of faith-informed intellectual commitments, what Charles Taylor calls “a secular age.”

There are many compelling reasons why Catholic universities¹ should emphasize Catholic Social Teaching (CST)² and the critical issues with which it deals. I will not make that case here. Rather, I wish to advance a correlative educational principle and goal, namely, that Catholic universities should commit themselves to an increasingly vigorous engagement of international law. It is fitting that Catholic universities emphasize international law for at least three reasons, each of which provides a major section heading for the pages below.

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¹ Here “universities” is meant to include colleges (in the American sense) as well. This matches the inclusive way in which *Ex corde Ecclesiae* uses the term.

² This term is to be construed in the widest sense to include “Catholic social thought” and “social Catholicism.” CST thus comprises not only modern Catholic Social Teaching but also the range of thought and movements related to that teaching. For a discussion of this more inclusive view, see Marvin L. Krier Mitch, *Catholic Social Teaching and Movements* (Mystic, CT: Twenty-Third Publications, 1998); and several essays in Kenneth R. Himes, ed. *Modern Catholic Social Teaching: Commentaries and Interpretations* (Washington, DC: Georgetown University Press, 2005), and J.S. Boswell et al. eds., *Catholic Social Thought: Twilight or Renaissance?* (Leuven: Leuven University Press, 2000).

First, international law is an apt and critical dialogue partner for CST, especially today. International law deals in concrete ways (treaties, established custom, accepted or contested principles, court decisions, international organizations and NGOs) with an astonishing array of issues ranging from the ordering of the oceans and outer space, laws against torture and child labor, and critical questions of war and peace. Engaging international law helps to test and refine CST's principles and their applications at the global level. Charges that CST is "unrealistic" or irrelevant—charges that international lawyers also face³—may be better met in this process. The emphasis of this article is on engaging international law on Catholic campuses rather than on trying to convince international lawyers to take CST more seriously. However, by being held up to the mirror of CST, international law also stands to gain.

Second, international law and higher education are similar in that both must address vexing questions of unity and diversity between and among disciplines, perspectives, cultures, and religions. Questions regarding "the one and the many" go to the heart of the university. International law, for its part, is an ancient and ongoing exercise in negotiating differences. Catholic universities, as *universities*, will advance their efforts to engage differences by engaging international law.⁴

Third, to the degree that Catholic universities effectively engage international law, they will be addressing, in an intellectual and practical

³ International lawyers are themselves long accustomed to answering critics who doubt the relevance of their efforts in a world of crassly self-interested states and power geo-politics. See Louis Henkin, *How Nations Behave: Law and Foreign Policy*, 2d ed., (New York: Columbia University Press, 1979); John E. Freund, "International Law—Neither Orphan Nor Harlot, Neither Jailer Nor Never-Never Land," in Charlotte Ku and Paul F. Diehl, eds., *International Law: Classic and Contemporary Readings* (Boulder, CO: Lynne Rienner Publishers, Inc. 1998), 25-51; and Harold Hongju Koh, "Why Do Nations Obey International Law?" *Yale Law Journal* 106/8 (1997): 2599-2659.

⁴ This engagement may occur both in Catholic law schools (where such exist) and elsewhere in the university. This includes undergraduate education where, to meet the global demands of the twenty-first century, interdisciplinary and integrative learning is increasingly stressed. See, for example, *College Learning for the New Global Century*, Report from the National Leadership Council for Liberal Education and America's Promise, (Washington, D.C.: American Association of Colleges and Universities, 2007), available at http://www.aacu.org/advocacy/leap/documents/GlobalCentury_final.pdf.

arena, the challenges of “a secular age.”⁵ The secular character of international law is unmistakable and long-standing. With its religious grounding, Catholic higher education may respond in at least two ways. On the one hand, recognizing the proper autonomy of international law (a point affirmed in general terms at the Second Vatican Council⁶), scholars and others will respect and attend to international law’s own dynamics and inner workings. On the other hand, Catholic universities (especially as *Catholic*) may encounter in international law intimations of transcendence that might otherwise be obscured by an avowed secularism. By engaging international law, Catholic universities may test and advance their faith-informed intellectual commitments and character on a global scale.

The Context for this Proposal

I propose that Catholic higher education take international law seriously, especially where and when it does not already do so. Given both the complexities of international law and the variety of Catholic colleges and universities, descriptions and prescriptions relevant to that proposal will be limited at best. But a few words about the educational dimensions of international law, and the past and present state of international law in Catholic higher education may help clarify and situate the proposal.

International Law’s Educational Thrust

Manfred Lachs, a prominent jurist and former World Court judge, has discussed the profound importance of “the teacher in international law.”⁷ Many of these teachers are well-known, at least to international lawyers, and have produced “classics” that have shaped international law’s long development.⁸ Many have also labored in universities. Indeed, one prominent jurist identified the University of Salamanca as the

⁵ The Catholic philosopher Charles Taylor has discussed this topic at great length in *A Secular Age* (Cambridge, MA: The Belknap Press of Harvard University Press, 2007). Cf. Mark Lilla’s helpful but less satisfactory *The Stillborn God: Religion, Politics, and the Modern West* (New York: Alfred A. Knopf, 2007).

⁶ Pope Paul VI, *Gaudium et Spes: Pastoral Constitution on the Church in the Modern World* (Vatican City, Typis Polyglottis Vaticanis, 1965), 36.

⁷ Manfred Lachs, *The Teacher in International Law: Teaching and Teachings* (Boston: Kluwer Boston, 1982).

⁸ See the 40-volume series, “Classics in International Law,” published by the Carnegie Endowment for International Peace.

birthplace of modern international law (see below). With an eye to continuing this grand tradition, international lawyers have more recently shown concern about the state of international law taught not only in law schools,⁹ but also, for instance, in political science departments.¹⁰

It is crucial to note that international legal education occurs beyond the university as well. For instance, the mission of the American Society of International Law (ASIL), with more than 4,000 global members, is, in part, to “foster the study of international law.” It seeks to advance “international law scholarship and education for international law professionals as well as for broader policy-making audiences and the public.”¹¹ Informal training in international law also occurs through participation in international organizations and the ever-growing number of Non-Governmental Organizations (NGOs).

This “extracurricular” education in international law is part of the context for this proposal even though I cannot attend to it sufficiently in this article. It parallels the way in which CST is engaged and advanced not just in universities, but also in relief organizations, labor unions, peace movements, and elsewhere.¹² The Catholic university may be the place where the Church does its thinking, but such thinking occurs not only there. CST in Catholic universities can and must be partnered with the teaching and learning that takes place beyond its walls.¹³

This observation provides a transition to the second aspect of the proposal’s context, the history and status quo of international law in Catholic universities. Facts prove possibilities. For example, John Brown Scott is remembered for, among other things, helping to found the ASIL, with its strong educational mission; editing the Carnegie

⁹ Carl M. Franklin, “The Teaching of International Law in American Law Schools,” *American Journal of International Law (ASIL)*, 46/1 (January 1952): 140-143; and John King Gamble, Jr. and Natalie S. Shields, “International Legal Scholarship: A Perspective on Teaching and Publishing,” *Journal of Legal Education* 39/1 (March 1989): 39-46.

¹⁰ American Society of International Law, *A Survey of the Teaching of International Law in Political Science Departments*, Conducted under the joint auspices of the ASIL and the American Political Science Association (Washington, DC: American Society of Washington, 1963).

¹¹ See <http://www.asil.org/mission.cfm>. Among its 20 interest groups, the Teaching International Law group currently ranks sixth, with 435 members.

¹² See Mitch, *Catholic Social Teaching and Movements*.

¹³ This includes such educational opportunities as service or experiential learning, study abroad, and peace and justice immersion trips. On the importance of moving “from contemplation to action” in international law, see Antonio Cassese, *The Human Dimension of International Law: Selected Papers* (Oxford: Oxford University Press, 2008), lxxv-lxxviii.

“Classics of International Law” series; and, although a Protestant, arguing for the “Catholic” origins and conception of international law.¹⁴ Scott studied at Georgetown University, where he worked closely with the Rev. Edmund Walsh, S.J., the founder in 1919 of Georgetown’s School of Foreign Service. If, historically, international law has been prominent in Catholic higher education and linked to activity beyond the university, then such linkages are indeed possible today and in the future.

This convergence of international law, the Catholic tradition, and the Catholic university at Georgetown nearly a century ago, continues today, perhaps most visibly in university-sponsored institutes and centers.¹⁵ In mission statements and program descriptions of these educational ventures, one may discern (1) roots in the Catholic social tradition, (2) an emphasis on interdisciplinary approaches, and (3) an appreciation for religious meaning and value. The discussion that follows champions engagement of international law already occurring in Catholic higher education. Such affirmations are important. But the discussion also speaks to educational lacunae and suggests redirections in curricula, research, and pedagogy. In the absence of a thorough quantitative and qualitative assessment of the state of international law studies in Catholic higher education (faculty expertise, curricula, programs, syllabi, etc.) it is difficult to say precisely what these might be. Since an adequate study goes beyond the scope of this article and the author’s competence, it is left to the reader, with knowledge of particular institutions, to consider, first, the reasons why serious engagement of international law befits Catholic higher education, and then the possible need for change.

International Law and Catholic Social Teaching

The first reason why Catholic higher education should take international law seriously begins with its close relation to CST, especially in its global applications.

¹⁴ James Brown Scott, *The Catholic Conception of International Law: Francisco de Vitoria, Founder of the Modern Law of Nations; Francisco Suárez, Founder of the Modern Philosophy of Law in General and in Particular of the Law of Nations* (Washington, DC: Georgetown University Press, 1934). Cf. John Eppstein, *The Catholic Tradition of the Law of Nations*, Published for the Carnegie Endowment for International Peace by the Catholic Association for International Peace (Washington, DC: Burns Oates and Washbourne, Ltd., 1934).

¹⁵ Examples include Notre Dame’s Kroc Institute for International Peace Studies and its Center for Human and Civil Rights; DePaul University Law School’s Center for International Human Rights Law; Boston College’s Center for Human Rights and International Justice; and Seattle University Law School’s Center for Global Justice.

Common Origins

We begin with a question of origins. Just as *Ex corde Ecclesiae* emphasizes that the Catholic university was “born from the heart of the Church,”¹⁶ so also one might argue that international law emerged largely, if not exclusively, from the Christian past. As noted above, John Brown Scott located those origins primarily in the Salamanca schools of theology and philosophy. Such claims may of course be contested,¹⁷ but disagreements further the proposal. They render international law suitable and significant academic fare in history departments, among political philosophers, and in law schools of Catholic universities.

Overlapping Issues

Whatever the truth regarding origins, there is considerable overlap in the substantive issue areas dealt with by international law and CST. These include: human rights; economic relations; migration of peoples and the plight of refugees; property disputes, often on a grander scale (such as the moon or the oceans); environment, ecology, and global climate change; the welfare of children; torture; genocide; conflict resolution; and laws of armed conflict or humanitarian law. International lawyers and those immersed in CST take a keen interest in such matters. These common interests form a second link between CST and international law for courses and curricula.

Heuristic Principles and Themes

A third connection emerges when one asks how the principles or themes of CST might be present in—or absent from—international law. These include human dignity, the social nature of the human person, the common good, solidarity, the preferential option for the poor, and subsidiarity.¹⁸ It is not difficult to show how each of these might be applied to international law. But, one must recognize the unfinished, dynamic, and

¹⁶ Pope John Paul II, *Ex corde Ecclesiae: On Catholic Universities* (Vatican City: Typis Polyglottis Vaticanis, 1990), ¶ 1.

¹⁷ For a sharp rejection of Scott's thesis, see Arthur Nussbaum, *A Concise History of International Law* (New York: Macmillan, 1954), 296-306.

¹⁸ There are several, often overlapping, lists of CST principles. The one I draw upon here is found in John A. Coleman, “Making the Connections: Globalization and Catholic Social Thought,” in *Globalization and Catholic Social Thought*, ed. John A. Coleman and William F. Ryan (Maryknoll, NY: Orbis, 2005), 16-17.

often dialectical character of the relationship. The principles are generally regarded as developing rather than static, as heuristic rather than conceptually settled in every respect. As Pope John Paul II put it, CST is a matter of both “continuity and renewal.”¹⁹ A sharpened awareness of the heuristic character of principles, and of CST in general, is a key aspect of the connection between CST and international law.²⁰

Take, for instance, the notion of the *common good*. A focus on the common good can guide descriptive and normative thinking about an increasingly interdependent world.²¹ Indeed, the international character of the common good informs conciliar and later papal documents.²² The common good (which has more than one meaning within official Catholic documents)²³ may be better understood, as complex and concrete issues of globalization are confronted,²⁴ in part through the workings of international law. For instance, what does “common good” mean when the global commons (the oceans, the ozone shield) are increasingly threatened, when global communication is fraught with possibilities and perils, and when large corporations have a global reach?²⁵ These are multifaceted and often controversial questions for international law, as debates over ocean management, especially of the deep seabed,²⁶ and environmental treaties such as the Kyoto Protocol, will attest.

The principle of *human dignity* provides the implicit if not explicit lynchpin of the body of the international human rights law that has burgeoned over the past sixty years. This emergence is due in part to

¹⁹ Pope John Paul II, *Sollicitudo rei socialis: On Social Concern*, ¶ 3, http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis_en.html.

²⁰ On the developing character of CST, see, e.g., Staf Hellemans, “Is There a Future for Catholic Social Teaching After the Waning of Ultramontane Mass Catholicism?” in Boswell, et al., eds., *Catholic Social Thought*, 13-32.

²¹ This point was well understood by Jacques Maritain, who attacked bloated claims regarding national sovereignty that would place individual states above international law. See Jacques Maritain, *Man and the State* (Chicago: The University of Chicago Press, 1951), esp. chapters 2 and 7.

²² David Hollenbach, “Common Good,” in *The New Dictionary of Catholic Social Thought*, ed. Judith Dwyer (Collegeville, MN: The Liturgical Press, 1994), 192-97.

²³ *Ibid.*

²⁴ Lisa Sowle Cahill, “Globalization and the Common Good,” in Coleman and Ryan, eds., *Globalization and Catholic Social Thought*.

²⁵ For one attempt to address this issue from the point of view of CST, see John Coleman, “Global Governance, the State, and Multinational Corporations,” in *ibid.*, 239-248.

²⁶ See William P. George, “Envisioning Global Community: The Theological Character of the Common Heritage Concept in the Law of the Sea” (dissertation, University of Chicago, 1990).

international law's implicit mooring in Judaism and Christianity and the biblical emphasis on human beings as created in the image of God. But when proponents of the Catholic tradition enter into dialogue with those of international law about human rights, they are doing something new.

For one thing, Catholicism's historical contributions to human rights doctrine notwithstanding,²⁷ the Catholic hierarchy has not always been enthusiastic about certain views of "rights." Worries that an emphasis on "subjective" rights might degenerate into individualism and subjectivism, or a concern that rights might overshadow duties have, at times, tempered Catholic affirmation of the human rights tradition. However, this caution has diminished and the language of human rights is now woven into the fabric of still-developing Catholic social thought.²⁸ A strong emphasis in CST on human rights is "new," just as it is relatively new in international law.

But an emphasis on human dignity may be new to CST in another respect. By engaging international law, the Catholic affirmation of human dignity might expand as women,²⁹ children,³⁰ future generations,³¹ and humankind³² become the real or possible bearers of rights. The Catholic tradition is aware of these "new" rights bearers. A basis for the rights of (or at least concern for) future generations may be found in

²⁷ Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150-1625*, Emory University Studies in Law and Religion (Atlanta: Scholars Press, 1997).

²⁸ See David Hollenbach, *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition* (New York: Paulist Press, 1979). A clear Catholic affirmation of human rights is John XXIII's 1963 encyclical *Pacem in terris*, http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html.

²⁹ *Convention on the Elimination of All Forms of Discrimination against Women*, adopted by the U.N. General Assembly 18 December 1979 (resolution 34/180).

³⁰ *Convention on the Rights of the Child*, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990. This is the most widely accepted human rights convention, with the United States the only major nation not a party to it.

³¹ References to future generations may be found in international environmental law and in the first line of the U.N. Charter. More generally, see Emmanuel Agius et al., eds., *Future Generations and International Law* (London: Earthscan Publications Ltd., 1998).

³² The presence, in the 1982 Convention on the Law of the Sea and elsewhere, of the "common heritage of mankind" as a legal principle presses the question of whether the whole human race is to be considered a "subject" of international law and in that sense a bearer of "rights."

the writings of Aquinas,³³ and there are clear references to posterity in recent CST.³⁴ But the Church's social tradition will inevitably be stretched by international law and *vice versa*, and this dialogue³⁵ belongs in a Catholic university.

Similar observations might be made about the unfinished character of other CST principles invoked on Catholic campuses. Principles affirmed by CST can or already do inform international law, while the concrete challenges of the international sphere may develop and refine the principles themselves³⁶ to translate ideals into law.

Foundations and Frameworks

Serious discussion based on CST and international law principles will include questions at the level of foundations and frameworks. For example, natural law was the bedrock of international law until it gave way to positivism in the nineteenth century. But it is still relevant to international law³⁷ and can be a vital point of conversation between international lawyers and those who take their bearings from CST. Natural law has been consistently present in CST, especially in CST's major documents. But there are at least four areas where its significance

³³ William P. George, "Regarding Future Neighbours: Thomas Aquinas and Concern for Posterity," *The Heythrop Journal* 33/3 (July 1992): 283-306.

³⁴ For a discussion of some of these references, especially those found in the writings of Pope John Paul II, see Emmanuel Agius, "The Earth Belongs to All Generations," in Emmanuel Agius and Lionel Chircop, *Caring for Future Generations: Jewish, Christian, and Islamic Perspectives* (Westport, CT: Praeger, 1998), 103-122.

³⁵ For instance, those who applaud international law's concern for future generations may be challenged to take more seriously long-standing Catholic teaching on protection of the unborn, lest international law engage in a sort of moral and legal leapfrog by assigning rights to generations still in the future even as legal protection for prenatal life is downplayed or denied. The 1989 Convention on the Rights of the Child includes in the Prologue—but *only* there—this highly contested line: "Bearing in mind that, as indicated in the [1959] Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, *needs special safeguards and care, including appropriate legal protection, before as well as after birth*,'" (emphasis added).

³⁶ One thinks, for instance, of relating CST's sometimes controversial "preferential option for the poor" to the hotly contested concern for "less developed nations" in the 1982 Convention on the Law of the Sea and the earlier call to develop a New International Economic Order (NIEO). The principle of "subsidiarity" also provides an important and complex intersection between CST and international law.

³⁷ Stephen Hall, "The Persistent Spectre: Natural Law, International Order, and the Limits of Legal Positivism." *European Journal of International Law* 12 (2001): 269-307.

is yet to be determined: (1) the individual and society (especially in the face of Western individualism); (2) religion and public life in a pluralistic society; (3) nature (including human nature) and history; and (4) ethics and science.³⁸

There are challenges indeed. But these same—or at least parallel—challenges are apparent in international law.³⁹ It would benefit theologians, philosophers, and others interested in natural law to engage scholars and practitioners of international law in dialogue. They would learn, if they do not already know, that the task of retrieving viable approaches to natural law is not theirs alone. The dialogue may provide all participants with new insights into natural law.

Theological disciplines, sources, and perspectives deserve special regard when considering frameworks and foundations in Catholic higher education. The Catholic tradition values both faith and reason. It rests on the Catholic belief, especially strong in Thomism, that grace heals and builds on, rather than destroys, natural human capacities. This estimation of human nature includes the capacity to order relations through international law. In addition, the Catholic tradition recognizes sin, and thus the limits of law's effectiveness.

This is an especially crucial point when it comes to international law. An emphasis on sin anticipates international law's critics who dwell on its inadequacies. Eschatological, Christological, soteriological, and other doctrinal underpinnings of CST⁴⁰ might also respond to the sometimes theologically-oriented concerns of international lawyers

³⁸ Stephen J. Pope, "Natural Law in Catholic Social Teachings," in Kenneth R. Himes, ed., *Modern Catholic Social Teaching* (Washington, DC: Georgetown University Press, 2004), 63-66.

³⁹ The question of the degree to which an *individual* person qualifies as a "subject" of international law has long been pressed by international lawyers, and if one considers the relationship of the "individual" sovereign state to the "society" of states and other actors—that is, the "international community"—then, of course, one is grappling with international law at its most fundamental and problematic level. The rightful place of *religious discourse in international law* has been questioned at least since Grotius and, as discussed below (Part III), this issue continues to draw attention. The question of the relationship between *nature and history* is central in the ever-broadening area of environmental law (Is global warming a "natural occurrence," "human-induced," or some combination thereof?). It is also apparent when biotechnology potentially crosses borders, which also brings into relief the problematic relationship between *science and ethics*.

⁴⁰ On the "theological methodology" of CST, see Charles E. Curran, *Catholic Social Teaching 1891-Present: A Historical and Ethical Analysis* (Washington, DC: Georgetown University Press, 2002).

themselves.⁴¹ One of the world's leading international lawyers, a self-described secularist, finds in his practice of international law a confrontation with the problem of evil.⁴² An International Court of Justice (ICJ) judge is able to write not only scholarly legal treatises but also a book on the Lord's Prayer.⁴³ Such possible linkages exceed the scope of this article. The theological impulses, convictions, and sources of Catholic higher education can shed light upon the issues of international law. Catholic theologies and theologians are likely to be enriched as well in the process.

Some Illustrative Cases

Engagement of international law will sharpen, extend, and add further texture to the teaching, learning, and research that occurs in Catholic universities, especially when CST is accessed. A few examples demonstrate this point. First, while nuclear warfare may not attract the attention it did at the height of the Cold War, it remains a profoundly critical issue. Undergraduates in a political science or ethics class might be asked to read what popes and bishops, international lawyers and courts have had to say on this matter. More specifically, they might be asked to consider: Why, in the 1980s, did the U.S. Catholic Bishops condemn the use of nuclear arms but, following recent papal teaching, stop short of condemning U.S. deterrence policy?⁴⁴ And on the side of international law, why could the ICJ, roughly a decade later, not bring itself to outlaw not only the threat, but even the use of nuclear arms?⁴⁵ In what ways are these two cases similar or different? Is there simply a gap between "legality" and "morality?" Or are other factors at work as well? How might the authors of *The Challenge of Peace* regard this ICJ advisory opinion, and why? How might the thinking behind the ICJ's decision shed critical light on the bishops' perspectives and policy prescriptions? Juxtaposing these two approaches to nuclear peril may elucidate to students the similar if not identical dilemmas and challenges

⁴¹ One example is found in "The Trinity and Human Rights," chapter 3 in Michael J. Himes and Kenneth R. Himes, O.F.M., *Fullness of Faith: The Public Significance of Theology* (Mahwah, NJ: Paulist Press, 1993).

⁴² Cassese, *The Human Dimension of International Law*, lxviii-lxx.

⁴³ C.G. Weeramantry, *The Lord's Prayer: A Bridge to a Better World* (Ligouri, MO: Ligouri/Triumph, 1998).

⁴⁴ United States Conference of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response* (Washington, DC: USCCB, 1983), pars. 172-199.

⁴⁵ Legality of the Threat or Use of Nuclear Weapons, International Court of Justice Advisory Opinion, I.C.J. 226, reprinted at 35 I.L.M. 809 (1996).

faced by bishops and judges, by theologians and lawyers, and by teachers and students themselves.

Second, the issue of torture cuts across many academic disciplines—ethics, psychology, theology,⁴⁶ film and television, and, of course, law.⁴⁷ Discussing torture from the perspective of CST and Catholic moral theology will lead to the discussion of attacks on “human dignity” and “intrinsically evil acts.”⁴⁸ Whatever might be the starting point for the discussion, sooner or later attention will turn to the Geneva Conventions, especially when the focus is on recent U.S. policy and practice. But references to these conventions cannot be taken seriously unless conventions, along with other aspects of international law, really matter. Those Catholic universities who consider torture a critical issue need not be experts in international law; but if their concern about torture and similar issues is sincere, they must appreciate the importance of international law and seek to consider it as fully as they can.

A third example involves rapidly developing biomedical technologies.⁴⁹ Cloning, gene therapy, embryonic stem-cell research, and related issues should be critically considered in Catholic universities in multiple settings. To appreciate more fully the global reach of such issues, educators would do well to explore a recent case in international law: the 2005 United Nations General Assembly declaration on human cloning and the failed attempt to negotiate a treaty on this issue.⁵⁰ Engagement of international law in this instance would reveal that the challenges enunciated by Stephen Pope with regard to CST’s reliance on natural law thinking emerge in negotiations of this kind.

Other examples may be drawn from currently offered courses or programs at various institutions. I find an example from some forty years ago to be particularly instructive. In the 1970s, Villanova University

⁴⁶ William T. Cavanaugh, *Torture and Eucharist* (Blackwell Publishing, 1998).

⁴⁷ See Sanford Levinson, ed., *Torture: A Collection* (New York: Oxford University Press, 2004). Most of the contributors are lawyers or legal scholars.

⁴⁸ The question of “intrinsically evil acts” has been a topic of considerable discussion in recent Catholic moral theology. Here, I simply suggest that international law provides an additional venue for that discussion.

⁴⁹ For a recent Vatican statement on these issues, see Congregation for the Doctrine of the Faith, “Instruction *Dignitatis personae* on Certain Biological Questions,” September 8, 2002. http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html.

⁵⁰ The Holy See was a significant participant in these negotiations. See Mahnoush H. Arsanjani, “Negotiating the UN Declaration on Human Cloning,” *American Journal of International Law* 100/1 (January 2006): 164-179.

was deeply involved in early negotiations on the Law of the Sea through its World Order Research Institute under the leadership of John Logue. This is precisely the sort of interaction with international law I commend. But Logue drew criticism for his “‘grandiose, idealistic ideas’ that were ‘politically not possible to sell.’”⁵¹ Whether the criticism is fair or not, it draws attention to a key point about being concerned with international law. International law is not only law. It is also politics with all that this implies, positively and negatively. If politics is the law of the possible, then those in Catholic higher education who turn to international law are implicitly facing the difficult question of how a faith- and reason-informed vision might be realized.

International Law and the Catholic *University*: The Challenge of Unity and Diversity

A second reason why Catholic universities should explore international law is that it represents a challenge that goes to the heart of higher education. The problem of “the one and the many” is at least as old as Greek philosophy, and it plays out in several ways in the university today. Let me mention three: (1) the unity and diversity between and among academic disciplines; (2) differing perspectives or horizons, even within particular disciplines; and (3) cultural diversity in the university and on a shared planet. I will comment briefly on each and seek to show how concern with international law aids Catholic universities in their mission to negotiate differences of various kinds.

Unity and Diversity of Disciplines

On university campuses, the question of the relationship among the disciplines (including schools as well as academic and “professional” programs and subjects) is ongoing. Special concerns about the overspecialization or fragmentation of higher education have been expressed for some time.⁵² Interdisciplinary and integrative approaches

⁵¹ Tommy Koh, diplomat from Singapore, quoted in Ralph B. Levering and Miriam L. Levering, *Citizen Action for Global Change: The Neptune Group and Law of the Sea*, Syracuse Studies on Peace and Conflict Resolution (Syracuse University Press, 1999): 33.

⁵² Suggestions that “university” should give way to “multiversity” as the appropriate term for institutions of higher learning reach back to the 1950s. See Dwight H. Day, Jr. “The Origin of Multiversity,” *American Speech*, Vol. 48, No. 3/4 (Autumn-Winter, 1973): 299-300. See also Clark Kerr’s seminal *The Uses of the University*, 5th ed. (Cambridge, MA: Harvard University, 2001).

to learning are accepted as proper aims of higher education, even when rhetoric outstrips understanding of how demanding interdisciplinary learning can be. Catholic universities join other institutions in housing numerous “studies” programs (women and gender studies, African and African-American studies, Latin American studies, religious studies, and, of course, Catholic studies) that assume interdisciplinary commitments. If universities are living up to their calling, disciplinary aspects of the larger question of the “one and the many” are bound to remain.

They are also present in international law. While some wish international law could be cordoned off as a separate “discipline,” with its own highly specialized terms (often in Latin), this is no longer possible, even if desirable. International law is so far reaching that it “is not a ‘course’; it is a curriculum,”⁵³ in danger, like the university, of fragmenting into numerous specialties. International law can no longer be isolated from other disciplines found in universities. Manfred Lachs remarked some twenty-five years ago, that “international law has entered fields of a scientific and theological character, and it cannot be made, interpreted or applied without taking into account almost all the sciences; from physics, chemistry and biology to spheres concerning communications and transport. While all of them need law’s guiding hand, they may play an important part in inspiring and assisting the law-making process.”⁵⁴

Dialogue between the disciplines is crucial, if sometimes difficult. For example, there are now signs of rapprochement between international law and international relations theory, two formerly estranged realms of study.⁵⁵ In the case of the convention on cloning cited above, the life sciences’ entrance into the debate was anything but smooth.⁵⁶ Scientific input is crucial to international protection of air and water, and meteorology joins other sciences in advancing legal approaches to global climate change. International law must attend to science, and scientists in universities and elsewhere who hope to shape policy on the

⁵³ Lori Fisler Damrosch et al, eds., *International Law: Casebook and Materials*, 4th ed., American Casebook Series (St. Paul, MN: West Publishing Co., 2001), xx.

⁵⁴ Manfred Lachs, “The Grotian Heritage, the International Community and Changing Dimensions of International Law,” in *International Law and the Grotian Heritage: A Commemorative Colloquium*, ed. T.M.C. Asser Instituut (The Hague: T.M.C. Asser Instituut, 1985), 204-5.

⁵⁵ Anne-Marie Slaughter, et al, “International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship,” *AJIL* 92/3 (July 1998): 367-397.

⁵⁶ Arsanjani, “Negotiating the UN Declaration on Human Cloning”: 171-172.

global stage must learn to share that stage with players reading from the developing script of international law.

Other disciplines are (or may be) integral to international law. If international law is “the gentle civilizer of nations,”⁵⁷ it surely deserves a place in courses in “Western Civilization” or world history. While philosophy may no longer occupy international lawyers as it once did, “big” questions continue to emerge, to be taken up by those who are Kantians, Hegelians, and others.⁵⁸ The international sphere should be included in courses in the philosophy of law on college campuses. Political scientists also need to attend to international law, and not just in courses under that name. Staple offerings in constitutional law cannot ignore international law that increasingly impinges on domestic law in various ways.

Given international law’s inevitable secular nature, discussed below, the study of religion and theology in relation to international law is a distinct case. But it may be noted here that international lawyers, and certainly international relations specialists,⁵⁹ have not been oblivious to religion. This trend is likely to continue, for religious influences across the globe are not about to vanish as many once assumed.

Diversity of Perspectives and Methods

Apart from disciplinary differences, there are various perspectives, methods, and schools of thought vying for acceptance or ascendancy both in international law and in the university, even *within* particular disciplines. Sometimes these differences are complementary and mutually enriching; they may also be radically at odds with no middle ground.⁶⁰ In the case of international law there is the deep fissure between positivists and natural law proponents, and on either side of this divide there are further divisions. Nearly a decade ago the *American Journal of International Law* sponsored a symposium on

⁵⁷ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (New York: Cambridge University Press, 2001).

⁵⁸ See, for example, philosophically-informed works of the British international legal scholar, Philip Allott.

⁵⁹ See Jonathan Fox and Shmuel Sandler, *Bringing Religion into International Relations* (New York: Palgrave Macmillan, 2004); and Jeffrey Haynes, *An Introduction to International Relations and Religion* (New York: Pearson Education Limited, 2007).

⁶⁰ For a discussion of these differences, see Cynthia S.W. Crysdale, “Horizons that Differ: Men, Women, and the Flight from Understanding,” *Cross Currents* 44/3 (Fall 1994): 345-361.

methods in international law.⁶¹ The prospectus for readers of the various contributions distinguished between and among positivism, New Haven School (policy-oriented jurisprudence), international legal process, critical legal studies, feminist jurisprudence, and law and economics. The authors of the list acknowledge its limits, and one prominent writer declined to submit a contribution but wrote a lengthy letter explaining why his work does not fit the description of method laid out by the organizers.⁶²

The situation is no easier today,⁶³ and is not likely to become simpler in the future. There is no possibility of sorting out, much less resolving, these differences in this article. The diversity one finds in international law resonates with that found in universities and affirms the appropriateness of treating international law as a university-wide subject of inquiry.

Cultural Diversity

Issues of *cultural* diversity are woven into the discussion of diversity above. It is worth making the distinction since “multiculturalism” (or “cultural diversity”) has been stock in trade in both universities and international law, and it seems fitting to bring the two together under this heading. Given the keen interest in cultural diversity on college campuses, it is perplexing when international law is de-emphasized or ignored. International law is one of the world’s oldest and most widespread experiments in multiculturalism. One might think of *jus gentium* as a means of finding commonality amidst diversity among various peoples of the Roman Empire, and Vitoria’s *De Indis* an attempt to argue that diverse peoples share a common humanity. Given international law’s Eurocentric roots, it is understandable if international law does not come to mind when cultural diversity is the topic. But there have been signs of change for some time. The anthropologist Adda Bozeman asked nearly forty years ago about “the future of law in a multicultural world”⁶⁴

⁶¹ Symposium on Method in International Law, ed. Steven R. Ratner and Anne-Marie Slaughter, *AJIL* 93/2 (April 1999): 291-423.

⁶² Martti Koskenniemi, “Letter to the Editors of the Symposium,” *ibid.*, 351-360.

⁶³ One may add to the mix, for instance, gay/lesbian/bisexual/transsexual/transgendered critiques of and approaches to international law. Douglas Sanders, “Human Rights and Sexual Orientation in International Law,” *International Journal of Public Administration* 25/1 (February 2002): 13-44.

⁶⁴ Adda B. Bozeman, *The Future of Law in a Multicultural World* (Princeton, NJ: Princeton University Press, 1971).

and international lawyers have been asking about “the future of international law” in the challenging global milieu.⁶⁵

These are complex matters. International law, not unlike the academy, appears to be making the difficult shift from what Bernard Lonergan called a “classicist” view of culture (where a single culture was seen as normative) to a more historical and empirical view.⁶⁶ The “culture wars” in universities pitted new and diverse voices against the Western Canon; similarly, former colonies, now recognized states, might challenge the “classicist” assumptions behind listing, in 1948, “general principles of law recognized by *civilized* nations” (emphasis added) as a dependable norm for identifying the sources of international law.⁶⁷ By engaging international law, universities take up the challenge of respecting the cultural “many” without losing sight of the “one.” International law (and not only human rights law, where questions of cultural relativity are crucial), merits special attention in Catholic universities as *universities*.

International Law and the *Catholic* University: The Challenge of Secularism

A third reason why it is fitting for Catholic universities to emphasize international law has to do with the latter’s assumed secular nature. Can a university claim to be “catholic”—as in “universal”—and “Catholic”—as faithful to the Roman Catholic Church—if it does not, in the words of Thomas Aquinas, treat all facets of reality “under the aspect of God,”⁶⁸ or in the words of Ignatius of Loyola, somehow seek to “find God in all things,” including the workings of international law?

Cardinal Newman was presenting the question clearly—that is, not just with reference to “Catholic” universities but also to any university—when he laid out his “idea of a university.” He insisted that if theology were not included among its distinct though interrelated disciplines, then the resulting vacuum would be filled by some other discipline(s) reductively overstepping its (their) disciplinary bounds, and at the same

⁶⁵ See the various essays in *The Future of International Law in a Multicultural World (Workshop 1983), The Hague, 17-19 November*, ed., René-Jean Dupuy (Boston: Martinus Nijhoff, 1984).

⁶⁶ Bernard J.F. Lonergan, “Transition from a Classicist World-View to Historical-Mindedness,” in *A Second Collection*, ed. William J.F. Ryan, S.J. and Bernard J. Tyrrell, S.J. (Toronto: University of Toronto Press, 1996), 1-9.

⁶⁷ Statute of the International Court of Justice (1948), Art. 38. This is the commonly recognized authoritative listing of the “sources” of international law.

⁶⁸ *ST I Q. 7 Art. 1.*

time, shutting out the transcendent. “Universal knowledge” would be precluded, and the university would contradict its own identity and mission.⁶⁹ More recently, Bernard Lonergan, attuned to both the benefits and the challenges of modernity and postmodernity, with their secularizing tendencies, emphasized that the question of God is “the question that questions questioning itself,” including, I assume, the range of questions raised across the university.⁷⁰

Openings to Transcendence

The range of issues included under the heading “the university in a secular age,” cannot be taken up here. But stressing international law on Catholic campuses may be one way to pursue them. International law is generally regarded as secular in nature even to the point of bias against religion.⁷¹ Resistance to religion may be so ingrained that “theological” becomes a code word in international law for “narrow,” “unbending,” “sectarian,” or “dogmatic” in the worst sense. Still, today there may be openings to transcendence—“doors to the sacred,” in the words of one sacramental theologian⁷²—in international law. Engaging international law in Catholic universities can and should mean investigating and entering these doors.

What might these be? There is, to begin with, international law’s religious and theological past, which is still worth exploring, even if modern international law has renounced it. Scholars as diverse as John Milbank⁷³ and Carl Schmitt⁷⁴ have argued that political theology remains important since the intellectual benchmarks of the modern and postmodern world (and we may include here international law) are either theological but under a another guise, or have emerged in reaction to

⁶⁹ See John Henry Cardinal Newman, *The Idea of a University* (New York: Image Books, 1959), Discourses II-IV.

⁷⁰ Bernard J.F. Lonergan, *Method in Theology* (New York: Herder and Herder, 1972), 103.

⁷¹ For instance, international law textbooks repeatedly credit Grotius for having wrested international law from the vice grip of theology, even when the evidence indicates that Grotius intended to do nothing of the kind. See William P. George, “Grotius, Theology, and International Law: Overcoming Textbook Bias,” *Journal of Law and Religion* 14 (Winter 2001): 101-125.

⁷² Joseph Martos, *Doors to the Sacred: A Historical Introduction to Sacraments in the Catholic Church* (New York: Doubleday, 1981).

⁷³ John Milbank, *Theology and Social Theory: Beyond Secular Reason* (Cambridge, MA: Blackwell Publishers, 1991).

⁷⁴ Karl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Cambridge, MA: MIT Press, 1985).

theological frameworks and concepts which must be understood if new formulations are to be grasped.

A second opening is the interest of at least some international lawyers in religious and theological perspectives and practices.⁷⁵ This interest may have to do especially with the past influence of religion on international law. But not all influence is in the past. Religious beliefs and practices, often at a grassroots level, remain crucial for international law's growth and effectiveness.⁷⁶ As suggested above (in the section entitled *International Law and Catholic Social Teaching*), there is much overlap in the concerns of theologians and international lawyers writing about such current topics as "just war," torture, global warming,⁷⁷ and international economic justice.

A third opening is the intimations of transcendence within the language of international law itself. One thinks of "covenant," with its biblical lineage, as an accepted term for "treaty." Or, consider the quasi-religious, almost apocalyptic appeal of Arvid Pardo's famous address in 1967 to the U.N. General Assembly that eventually bore fruit in the 1982 Convention on the Law of the Sea: "[T]he dark oceans," Pardo said, "were the womb of life":

from the protecting oceans, life emerged. We still bear in our bodies—in our blood, in the salty bitterness of our tears—the marks of this remote past. Retracing the earth, man is now returning to the ocean depths. His penetration of the deep could mark the beginning of the end of man, and indeed for life as we know it on this earth: it could also be a unique opportunity to lay solid foundations for a peaceful and increasingly prosperous future for all nations.⁷⁸

It may be suggested that the "common heritage of mankind," a key and hotly debated concept in the Law of the Sea, begs for religious foundations: If the global commons are humanity's "heritage," who exactly is the benefactor? Not simply past generations, for whence did they receive these goods? Not nature, certainly, for whence comes nature? Might the oceans and everything else be "given" by someone or something transcending all that we know or use?⁷⁹

⁷⁵ Janis and Evans, eds., *Religion and International Law*.

⁷⁶ James A.R. Nafziger, "The Functions of Religion in the International Legal System," *ibid.*, 155-176.

⁷⁷ The Catholic Theological Society of America has given three-year (2008-2010) recognition to an interest group on global warming, with a guaranteed place on the program of annual meetings during this period.

⁷⁸ *Official Record*, United Nations General Assembly, Twenty-second Session, First Committee, 1515th meeting, 1 November 1967.

⁷⁹ See George, "Envisioning Global Community."

Such questions, emerging from international law itself, are apt fare for Catholic universities, especially when considering the critical theological and philosophical aspects and dimensions of their educational mission. Catholic universities are in an ideal position to pursue such questions, to open the doors of the sacred found in international law. On Catholic campuses, religion and international law should not be strangers.

A New, Religiously-Diverse Context

Still, concern with international law in Catholic universities will mean more than returning to the theologically informed roots of international law in Christian Europe, as fruitful as that might be. The context of international law today is no longer Western—much less Medieval—Christianity, but rather a multicultural and multireligious world. As important, Catholic universities themselves must appropriate and advance the major shift toward ecumenical and interfaith dialogue that has emerged with Vatican II and with recent papacies.⁸⁰ This new openness to other traditions is not without its own tensions,⁸¹ and it has an unfinished quality. This renders it all the more apt for the work of Catholic higher education. Within these institutions, international law might provide a fitting point of engagement by multiple religious traditions. Ecumenical and interreligious dialogue can become a triologue; religious traditions in conversation with one another *and* with international law.

To urge that this kind of exchange occur in Catholic universities is not to say how it will or should occur. There are multiple examples in Catholic higher education of ecumenical and interreligious dialogue. But few take international law as the main point of intersection. Catholic higher education is not just institutionally diverse. Even apart from thoughts of international law, the nature and place of religious and theological discourse on these campuses, especially in the midst of diversity, is not always settled. Taking international law seriously and

⁸⁰ Of special importance are the conciliar documents on ecumenism and religious freedom. And here it should be emphasized that *Dignitatis humanae personae* (*On the Dignity of the Human Person*), especially, represented a genuine shift in Catholic teaching. See John T. Noonan, *A Church that Can and Cannot Change* (Notre Dame: University of Notre Dame Press, 2005), 154-58.

⁸¹ I have in mind negative reactions to the publication by the Congregation for the Doctrine of the Faith (headed by then Cardinal Joseph Ratzinger) of “*Dominus Iesus: On the Unicity and Salvific Universality of Jesus Christ and the Church*,” August 6, 2000, and the furor caused by Pope Benedict XVI’s remarks about Islam during his Sept. 2006 Regensburg University address.

adding it to the academic mix may resolve certain questions but it will also open others. In any event, if Catholic universities are able to engage international law without denying their religious and theological roots, this may indicate a willingness to engage our secular age.

Concluding Remarks

I have offered a three-fold argument affirming the engagement of international law in Catholic universities. I encouraged such interaction where it does not yet occur, and appealed for more vigorous engagement where it is already present. Perhaps more satisfactory arguments are available or lived out daily in classrooms and elsewhere on Catholic campuses, and in the educational outreach and partnerships of Catholic higher education. But it is also likely that they have not yet fully emerged. Catholic Social Teaching, when it is not “the Church’s best kept secret,” provides a profound resource for addressing the challenges of our age. But it is not sufficient. Or, more precisely, by its nature it urges engagement with many carriers of meaning and value. Surely international law is one of these, especially in a global age.⁸²

A prominent international lawyer has taken to heart the Roman maxim “*hominum causa omne jus constitutum est* (any rule of law is ultimately made on account of human beings).”⁸³ Is it possible in Catholic higher education to turn that maxim around? That is, if Catholic higher education revolves around a full and complete view of the human person, including a compelling theological view, should not one of its aims be finding and promoting the proper measure of law, including international law? To answer in the affirmative does not mean that everyone need be an international legal expert. Academic callings are diverse, as are courses and curricula. To insist that international law is important is not to say it is the only important thing. However, out of regard for its own mission and identity, Catholic higher education should take it seriously. It is a part of the Catholic past; it should be integral to its present and future as well. When Catholic universities proceed as they should, probing the myriad ways in which our world works or goes awry, questions of international law may emerge of their own accord. But those questions may also be posed more directly, with trust that those in Catholic higher education will respond in fitting ways.

⁸² *Globalization and Catholic Social Thought*, ed. Coleman and Ryan. On the side of international law, see David J. Bederman, *Globalization and International Law* (New York: Palgrave Macmillan, 2008).

⁸³ Cassese, lxx.

