

‘NO GOVERNANCE WITHOUT GOVERNMENT’: REFLECTIONS ON THE IMPORTANCE OF ACCOUNTABILITY AND CHECKS-AND-BALANCES

Comment on Professor Rocco Buttiglione’s Paper

■ JANNE HAALAND MATLARY

The famous Boston tea party – the real one – was occasioned by the unjust taxation of the American colonies by their British rulers. Not only was the tax unduly heavy, therefore unjust, but it was unjust in a more important sense, as it came without representation. There was no social contract behind it whereby citizens allowed their representatives to levy such a tax on them. “*No taxation without representation*” sums up the essence of democratic government: those who govern always do so on behalf of the citizens who in turn mandate them. The social contract stipulates that if rulers go beyond their mandate, they can be recalled, for they are accountable. Whatever they do, they can do only as long as they stay within their mandates. Voters will hold them accountable and reject them at will in the next election. Among all the norms of democracy, *accountability and the concomitant recall in elections is the most important*. Where there is no accountability, there is always corruption in one form or the other: “Power corrupts, and absolute power corrupts absolutely”, in the famous words of Lord Acton.

But political government is not total or absolute. *The second most important norm is that of checks-and-balances, of separation of powers, of rule of law*. The separation of powers and rule of law are prior historically to general suffrage – the latter only became reality around 1890s for men (in most European states) and for women much later, around 1920 onwards. Social contract theory was much earlier, and the ideas of political theorists like Rousseau, Montesquieu, etc. predated accountability. The idea of checks-and-balances is that power should not be allowed to concentrate in the political realm, that there be checks on governments through the law and courts, and that political power is regulated by a constitution, and in our days, by human rights. The realm of the political is naturally delimited, and is kept in check as such by non-political institutions. The ancient Greeks defined what was political and what was not, and these distinctions have been preserved and developed in natural law thinking.

When we embark on the discussion of governance beyond the state level, of ‘emerging forms of governance’, we should keep the vital importance of accountability and checks-and-balances in mind.

Regimes rather than Governance

Governance is not at all a precise term. It comes from the Greek word for ‘steering’, and this has a clear meaning in German and Norwegian, to steer a ship is to have control of it, to command it. ‘Politisk styring’ makes good sense, ‘political steering’, and this avoids the stem ‘govern’ in the term, which as we point out below, has connotations of democracy. If we could use ‘steering’ instead of ‘governance’ in English we would have had a more precise term that simply says that someone makes decisions about something. But instead we are bound to use the normative term ‘governance’ which in the UN setting is prefixed by ‘good’, so that we speak about ‘good governance’ (but never about ‘bad governance’). ‘Good governance’ at the UN is a substitute for democracy, which is controversial in non-democracies and therefore objected to, but ‘good governance’ is vague enough to avoid objections.

The term ‘govern’ is a positive term, unlike ‘rule’ because it implies democracy in some form. A *government* is implied to be democratic somehow, whereas a regime is usually something negative – despite the fact that *regimen* only means a set of rules. Governance ‘borrows’ democratic connotations from the word government, but has none of these itself, as I shall show below.

In political science we use the term loosely, denoting a *set of rules and actors governing an issue area* in international affairs, such as the ‘governance of the international economy’, but we prefer the term *regime* in the scholarly literature because it is precise. It is defined as the principles, rules, procedures and standards in a given issue area, something which is possible to define and study empirically. The international regime in the issue area of nuclear arms would e.g. consist of the relevant treaties, the IAEA as the treaty body and inspection organisation, the states that are in the NPT treaty and if possible, the states that have such weapons that are not. In addition, NATO has a nuclear policy. In attempting to make decisions on nuclear disarmament or on Iran, North Korea, all the rules and the actors mentioned would be part of the process. Thus, it makes empirical sense to look at issue-specific regimes in world politics and to determine the rules, actors, conflicts, and possibilities. Often also non-state actors like NGOs, guerrilla groups, corporations, etc. are actors in a regime and have to be included. My point is that most issue areas of world politics are ‘covered’ by legal rules and norms, by political rules and norms, are ‘inhabited’ by so-called ‘interested states’ and have some kind of international organisation (IO) in charge of enforce-

ment of rules (seldom), maintaining and reporting on implementation (often), and the states that are concerned and interested, as well as the non-state actors, can easily be identified. In political science there is an enormous literature on both the theory of regimes and on empirical regimes. Which ones function? Why? How can regimes function better?

International 'governance' is not democratic

If we adopted the label 'regime' instead of 'governance', we would avoid confusing it with government and democracy.

Many naturally may think that international affairs, when regulated by common principles and norms, are also democratically governed. This is however not the case. All international decision-making must achieve its democratic legitimacy at home, in the nation state. There are no supra-national bodies that are democratic.

One may perhaps object that there is at least the European Parliament (EP) and that many IOs (international organisations) have parliamentary assemblies. The EP is directly elected, but on a vague mandate, without any recall mechanism and without accountability. Only about 45% of European voters elect the MPs, they do not represent national parties or parliaments, they have little or no contact with their constituency in their home country, and they are supposed to represent general European interests and ideologies. They are thus mainly cut off from the everyday lives of those who elected them, and since the EP after the Lisbon treaty wields co-decision power for all directives, determines the budget of the EU, and confirms the Commission, one may argue that this body is a major *democratic problem* because it is so powerful while enjoying 'impunity' in terms of accountability. Unlike the parliamentary assemblies of e.g. NATO, the Nordic Council, the OSCE, etc. which have no decision-making power and which draw their members from elected national parliaments, the EP has as much power as the Council of Ministers, intergovernmental and directly accountable to national parliaments, without being responsible to anyone but itself.

As we gather, the words 'parliament' and 'governance' may mean rather undemocratic things when examined more closely.

Turning to other IOs, they are mostly intergovernmental, meaning that a member state sends its ministers to make decision on behalf of governments that are democratically accountable, at least nominally (in the ca. 120 states of the world's 193 that are democracies today). The UNSC (Security Council) is a special case of supra-national competence to decide on the use of force in all cases but self-defence on behalf of all UN member states (although there is no obligation to contribute military force to missions).

All members of the UN are *politically bound* to accept the decisions by the UNSC, which has privileges of the veto and eternal membership for five states only (the P5 – Russia, China, the US, France, and Britain), while the rest of the world's states compete for biannual non-permanent seats on a regional rotation basis. The UNSC is therefore not at all democratic, neither in composition nor decision-making power.

This is also the case with the IMF, where the US has more power than others, but as a general rule, IOs have a 'one state, one vote' structure, although it is of course clear that some are more important members than others. In the EU's Council of Ministers, the voting power is distributed according to population size and a big power-medium power-small power rule, but the vote is never used in that organisation. One negotiates until a decision emerges.

The point of the above is simple: *to underline that international governance has little or nothing to do with democratic norms.* Democratic legitimacy must be ensured at the national level, and democratic theory has always insisted that 'small is beautiful': democracy works best where voters know their politicians and where there is a sense of community. The nation state seems to be the upper limit of democracy for these simple and important reasons. Local democracy works best of all because of the immediate contact between citizens and the inability for politicians to 'hide' behind distance and cumbersome institutions. The impossibility of direct democracy is known – Switzerland being the exception – but there is always concern about representation, whether representative government really can work. The farther away, the more slack is possible.

Further, international governance is thought to be democratic to the extent that NGOs are let into the decision-making processes. The truth, however, may be that this diminishes the democratic accountability that exists in these decisions – accountability obtained at national level, before a minister with his mandate leaves the airport at home to go to an international meeting. NGOs represent only their members and their single-issue interest. They are in no way enhancing democracy, but are logically on the same level as other non-state actors, like corporations or guerrilla movements. Their cause is usually much worthier, but there is no check-and-balance on the power they wield.

The dilemma posited by globalisation

Today globalisation seems to shrink the planet, but note that this is true for communication, internet, and the economy. It is not true for law and politics, which remain firmly national, despite the many international legal

regimes and the many IOs. Law and politics are two sides of the same activity, politicians make laws and the system of checks-and-balances at national level ensures that courts do not overstep their competence and that politicians do not overstep theirs. *At the international level, there is no system of checks-and-balances*, and this makes supra-national courts as well as supra-national IOs a democratic problem.

The ECHR in Strasbourg is currently much debated because it seems to rule in strangely political ways, employing the so-called 'dynamic' method which is nothing but the adaptation to political trends, and one rightly asks whether this is not really a political activity? If so, decisions should not be made by judges, but by national parliaments. The so-called Lautsi case (crucifixes in Italian schools) was reversed after much political protest and the 'national margin of appreciation' allowed for, something which is another way of leaving controversial issues to politicians. Norwegians, who very dutifully implement every ECHR ruling in national law, are starting to ask why one should be bound by its rulings because the latter seem to be very close to politics in many instances.

My point is simple: democracy is not intended to result from international governance because this is rather impossible. Even Europe is too large with its 500 million people, and what works in the EU is not regulation, but de-regulation. Attempts at integration towards a political and monetary union have been uneven, as there is no common language, culture, or community across nation states that makes for one polity. The monetary union is a fact, but is in deep trouble, partly because there is no common political entity that guarantees it – a backer of last resort, so to speak. And when bailouts are necessary, national citizens in one state are bound to *help each other under their own social contract*, but not all others. The drama of Germans bailing out Greeks is evident in both German and Greek politics.

After WWII there were very few IOs and little international law in the form of conventions. Now we have more than 250 IOs and a plethora of international legal regimes. The world is 'carpeted' with international regimes, there are rules to be followed in every issue area. These take the form of soft law, i.e. political norms, and hard law, i.e. law proper. A few of these regimes have enforcement mechanisms and there are a few international courts (The ICC, the *ad hoc* tribunals for Cambodia, Rwanda, FRY), the ECJ, the ECHR, the Court of Justice). Europe with the EU has supra-national governance in its own court, the ECJ, in all internal market cases, and the members of the Council of Europe in the ECHR. Europe is the most integrated of all regions because of its common borders (Schengen treaty), common asylum policy (Dublin treaty), and common arrest warrant,

in addition to common market, common currency, common diplomatic rights, common identity card, etc.

Other regions are marked by inter-statal fear and suspicion, rivalry and even armed conflict. These include the Caucasus, the Middle East, the Maghreb, sub-Saharan Africa to some extent, and Asia. Relations are typified by a lack of trust, by enmity. It is no surprise that international regimes have little impact in these regions.

International governance is nominally important in the whole world today, but the impact of it varies a lot. *We should therefore not assume that there is any common development.* Western states largely follow international rules and law, many other states only pay lip service to them or interpret them at will.

In sum, international governance varies from issue area to issue area and its impact varies from region to region, country to country. Democratic legitimacy must be ensured at national level. The problem today, however, is that the national level – where democracy exists if at all – is unable to make efficient decisions about most issues, including the economy.

Globalisation means that *power to govern escapes the national level* and efficient solutions to problems must be had at the international level.

Exkurs Europa: When the state cannot govern effectively even there

“Ein Unglück kommt selten allein”: This is clearly true for Europe. The euro crisis has revealed corrupt elites, privileges, and dysfunctional state bureaucracies. The economic crisis has led to a political crisis which may lead to social upheaval. When the EU tried to confiscate Cypriots’ savings through a ‘tax’ on their accounts, the battle cry was naturally “no taxation without representation!”

The crisis in Europe illustrates my point about the absolute need for accountability in any type of governance. Corruption is a grave problem in Eastern and Southern Europe (Balkans), where the financial crisis has revealed political systems with major structural flaws like cultures of bribery, patronage, network corruption: in short, the opposite of Weberian meritocracy. Family connections give jobs, elites reproduce themselves through privileges, there is little or no class mobility through the education system, etc. Greece’s Byzantine system of kickbacks where one can pay one’s way to attractive jobs or give them to friends, is but one example, the common evasion of taxes is another. Elites are insulated from the economic crisis, put their money abroad and do not pay taxes, and the common man is left with the crisis and the bill for it. In France there is currently a crisis of elites and their leading position after the budget minister not only had secret accounts in Switzerland but also lied about them, in Spain the political elites are sus-

pected of bribes from big industry, in Italy jobs are only possible through personal networks and tax evasion is common.

Thus, there are severe problems in Europe with states where elites protect their privileges and bar the young from getting jobs, and the dysfunction of such states makes it almost impossible to foster economic growth through innovation and investment. FDI (Foreign Direct Investment) seeks transparency, rule of law and well-functioning states. The lack of meritocracy, transparency, and accountability in poorly functioning states is a vicious circle. Education is the prime cause of social mobility, but in these states the young today find that meritocracy is not real and that they are kept out of the labour market. The lack of real equality in many liberal democracies has been accentuated by the crisis in Europe. There is an inter-generational injustice – the young are not able to find work (up to 60% unemployment in Spain among the young) and the 'sclerotic' public sector protects those on the inside. There is also inequality between sexes in the sense that women dare not have children for fear of losing their jobs, and the culture of tax evasion in many countries precludes the existence of a functioning welfare state. The result is that the young generation lives off parents and even grandparents, and cannot start a family or get a place of their own. This is nothing less than massive social injustice, a far reality from the old compromise between market and welfare states.

Further, this leads us to ask whether the current type of capitalism is just and sustainable as a system. Capital owners/employers are vastly privileged in terms of bargaining power when they can move their means of production – capital – anywhere in seconds, creating a 'race to the bottom' whereby workers are left to compete for jobs in a global labour market where outsourcing to China and India means that wages are lowered as a consequence.

Let me illustrate this by one example: in Norway there is a major political debate about Ryanair which flies from a base in the country. Two female employees – one Italian, one Polish – were sacked overnight over trifles. Unlike most others, they sued the company and claimed that it broke Norwegian labour law. Ryanair replied that it follows Irish law, and is allowed to refuse payment to sick employees, can sack on the spot, has no duty to allow trade union membership, and lets them pay only 6% tax, which in turn makes it possible for the company to have low fares. The Norwegian Ministry of Finance states that Ryanair is to follow Norwegian law, both tax and labour law since it operates out of Oslo. The company says the opposite.

This case is interesting because it illustrates how *globalisation favours capital owners over workers and also how the nation state is unable to govern the economy*. The talk is now about 'regime-shopping' by capital owners, who look for the most

favourable regime for their interests. Undoubtedly globalisation implies that the old system of tripartism – state, unions, and employers that negotiate – is gone, and with it, the power of workers to negotiate. Labour power is still there in the public sector paid for by the state, but in all competitive areas the forces of globalisation make themselves felt. In aviation this is very clear now – crews can be imported in their entirety from low-cost states – as in shipping and good production. But also in services outsourcing is growing, and in Europe itself workers from low-cost states are driving wages down. While globalisation may help developing countries in terms of jobs, workers in developed countries lose their bargaining power vis-à-vis employers. This has grave implications for what we term ‘the just wage’ and conditions for workers.

The current problems of *just and effective government* therefore concern very basic principles: the economy, like everything else in a state, is ultimately subject to politics. The Greek word for economy means household, i.e. something belonging in the private sphere. The neo-liberal model has brought many benefits, but the fact that employers can ‘shop’ from state to state means that their power is vastly increased over both governments and workers. The social and economic rights that are also basic human rights cannot easily be safeguarded by states anymore.

The example above also illustrates the *uneven character of globalisation*. Jurisdictions remain national apart from certain types of law, like human rights, war crimes, etc. There is however no international law pertaining to labour rights, ILO is a weak body, and while the ECJ has ruled in this field for many years, but the EU has no real competence in social policy. Hence, we have the typical problem of national politics and national jurisdiction. In each case of conflict some court has to finally decide which country’s jurisdiction is valid for that case, and businesses that dislike one country’s legislation can move to the next.

During the post-war period – *les trentes glorieuses* – there was a trade-off between the gradual opening of the common market in Europe and the welfare state. Governments had power in economic matters. The neo-liberal model on a global scale is very different. States that are rich, like the Nordic ones, are able to ensure social and political rights still. But very many European states are unable to attract capital, also because they are dysfunctional as democracies and as bureaucracies.

The crisis of the state and of the EU in Europe today is a problem unto itself, but if we consider that European states are the most advanced as well as the most integrated in terms of international governance, we must pause to ask: what about the rest of the world? If the ‘showcase’ is in trouble, how do the rest fare?

Western states are the main ones to promote social justice and human rights, rule of law and accountability. These states are now weaker.

The West and the Rest: An End to Multilateralism?

In *The Future of Power* (2011), Joseph Nye argues that “today, power in the world is distributed in a complex three-dimensional chess-game. On the top chessboard, military power is largely unipolar and the US is likely to remain supreme for some time. But on the middle chessboard, economic power has been multi-polar for more than a decade, with the US, Europe, Japan, and China as the major players” (my emphasis, p. XV).

In international affairs, much change occurs on the Nike shoes campaign slogan “Just do it”. If states start to use military power in support of their interests, the UN Pact’s norms may change quickly again, back towards the logic of *Realpolitik*. One example of such use of force was the Russian strategic attack on Georgia in 2008. Russian forces stayed in the country for several weeks to underline that they could and would do this, in contravention of the UN Pact, and the real reason for this move was to prevent NATO from granting membership action status to Georgia.

In a multipolar state system we will see regional hegemony, and China and Russia are in the process of establishing themselves as such. The *instability* of such a system is marked by the power struggle of emerging powers, and the *economic interdependence between them – say the US and China – may lead to more instability, not less*. In a relationship of interdependence; even interlock, the most dependent party will suffer. When there is power asymmetry, there is power of one over the other, and also the possibility of acquiescence. We see this in US-China relations where the US is careful in its human rights criticism, as is the EU.

There is clear evidence that the UNSC is not working well at present because Russia and China do not wish to allow for humanitarian criticism, no less intervention, with regard to Syria. All resolutions on this civil war have been blocked. At the UN’s Human Rights Council Islamic members like Iran and communist states like Cuba re-interpret human rights, and China clamps down on all criticism of its human rights record while expanding its economic grip on Africa. We are living in a world where new great powers play leading roles and they follow the logic of *Realpolitik* rather than multilateralism. In April 2013 the BRIC states met in Cape Town and discussed making new IOs for international governance. Thus, in a radical manner we are in the midst of a revolution in international affairs in the sense that the post-WWII organisations (Bretton Woods, UN system, etc.) may become increasingly irrelevant to international governance and even-

tually marginalised. We should remember that it is the power of the West – in particular, that of the US – that has underwritten this multilateral system. When power shifts to other states, there are direct consequences for the UN and the other WWII institutions.

In Europe, densely populated by IOs, the EU is in crisis and the ECHR is increasingly contested. This scrutiny, as has been argued above, is democratically sound and legitimate. But what is at stake in the international system as such is the very acceptance of multilateralism as a mode of governance. That is something very different. The UN pact and its peremptory status has been accepted by almost all states, and the UNSC has been better than the alternative, which is great power rivalry and use of force at the discretion of these states. The process of multilateralism is one whereby great powers have to legitimate and argue for their interests in an open world forum, often over prolonged periods, and the UN as such is very important and unique because it is the only arena where all world leaders meet once a year and can conduct their secret bilaterals, which are of immense importance. Thus, the slow and transparent process of multilateralism is far preferable to secret diplomacy by great powers as in times of old. The world is a very dangerous place, especially in a multipolar mode as today, and for this reason the arena that the UN provides is critically important. The UN pact strikes the necessary and very promising balance between sovereignty and human rights, and must be preserved as authoritative to the extent possible, as the only anchor in the unruly sea.

In conclusion, I would argue that accountability and checks-and-balances remain the vital democratic criteria and that these can only be instituted and safeguarded at the national level and below. Most importantly, they cannot be obtained at the international level however much one talks about ‘good governance’. We should therefore be clear that international ‘steering’ is what takes place at that level, actors meet in IOs and follow many of the rules in international law and even soft law norms, but they are essentially state actors that negotiate from the mandate they have received at home, where such mandates can be presumed to be accountable in democratic terms, at least in democracies.

But problem-solving, to be effective, must today take place at the international level in most issue areas. This is accentuated by globalisation, which deprives the national level of power to govern the economy in particular, but also a number of other issue areas. The movement towards a multipolar state system greatly impinges on the abilities of IOs to be arenas for problem-solving and we are in danger of an ever weakening of the processes of multilateral decision-making, which, while cumbersome, are at least rather

peaceful and bring all relevant actors together. The whole multilateral order created by the West after WWII is now in danger of being marginalised in importance.

Can Catholic Social Teaching (CST) provide directions?

If the main problem today is that the state can no longer solve problems alone – be they related to jobs, economy, labour rights, but also to the environment, security, etc. – but that the state is the only polity that can meaningfully be democratic, what is the solution to this dilemma? The more democratic a system of government is, the less efficient its output in terms of efficient decisions?

How can international governance also be accountable and transparent, therefore legitimate? At the outset I argued strongly for the state level in terms of democracy that the state is the upper limit of democracy. I also argued that accountability and checks-and-balances must be ensured in a real democracy. There is no substitute for these two essential norms of good governance. I also noted that IOs are typically wholly undemocratic according to these norms and that nothing else is really possible.

Let us now consider CST as laid out in PT: when *Pacem in terris* (PT) was published in 1963, the international situation was very grave: the Cuban missile crisis was just over, bringing the world to the brink of nuclear war, the Cold War was at its height, and nuclear weapons seemed to make war between states an Armageddon. On the less dramatic level, but no less important, the state system was profoundly changed by the emergence of many new states in the wake of de-colonization. Furthermore, although human rights (HR) were in place legally in the world – the two major conventions of 1966 having been ratified by most states – HR did not really mean much in international affairs yet. It was only in the 1990s that we saw the political importance of HR in day-to-day international affairs. On the economic side, there was steady progress in terms of economic growth in the West at this time – the French called the period between 1950 and 1980 *les trentes glorieuses* with economic growth each year and a political ‘truce’ between the market mechanism and the welfare state in Europe. In other parts of the world, particularly in Africa, there was however poverty, so the North-South gap was clearly evident in the world. Development aid was therefore becoming national policy in most Western states at this time.

Peace, the theme of PT, is defined as ‘right order’. It has several layers in the text: order in the universe, order in man because of his *imago Dei*, order among individuals, order in the political community (the state) and among states, and finally, order between individuals, states, and supranational gov-

erning bodies – enlarging order to the entire world community. The relationship between citizens and the state is defined as one based on *subsidiarity* and *solidarity*. Both concepts are essential to understanding right order, and human rights – the novelty in the encyclical – are based on natural law.

The emphasis on order may seem conservative, and at time it certainly did to some. The embrace of human rights in the encyclical could likewise be seen as progressive. Yet such categorization is superficial, for the Church's social teaching does not fit into ideological schemes. The characteristic of true peace is a question of true order, of man being at peace with God, and therefore with himself. Likewise, human rights are not positive rights only, but natural rights derived from natural law. Only laws that are based on truth can be just, and unjust laws are not laws. The "order that should prevail among men" is therefore premised on the recognition of one fundamental principle:

... each individual man is truly a person. His is a nature endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence of his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable (9).

The concept of rights is derived from man's nature which is rational and moral. This is the classic teaching on natural law, applied to the modern concept of human rights. The rights, and importantly, the *duties* that are part and parcel of the former, are a consequence of the person's nature – as said, a rational nature, including moral ability. Man can reason about ethics when his conscience is rightly ordered. Thus, we see that the concept of order is a necessary precondition for the concept of human rights. Rights here are not man-made, but natural, and the natural is God-made.

The Pope goes on to present the various human rights: the first right is the right to live, to bodily integrity, and then the *key social and economic rights are mentioned*: food, shelter, clothing, and the 'necessary social services', health services, etc. (11). In (12) are mentioned the rights to freedom of speech, respect for one's good name, cultural and political rights, and in (14) religious freedom receives special mention. The family as the "primary cell of society" is elaborated on in (16). Section (18–22) is devoted to economic rights, which include the right to work, where women are especially mentioned, the just wage for a worker is discussed, and the right to private ownership is qualified by its "social obligation". In the section on political rights the quest for the *summum bonum* is underlined, and the reciprocity between rights and duties is stressed: "*... to claim one's rights and ignore one's duties, or only half fulfill them, is like building a house with one hand and tearing it down with the other*" (30). The duty to strive for the common good of any society is thus firmly underlined.

A just society must be based on true order, i.e. the natural order in men, not only on truth, but also on justice, charity, and freedom. “*There is nothing human about a society that is welded together by force*” (34). Thus, stability in a dictatorship can never qualify as peace, nor can stability in a world made up of states that do not respect human freedom and human rights. We immediately see the relevance of these conditions for present-day international politics.

Justice requires the fulfillment of both rights and duties, and since men are rational (ethically able) and social, they should work to help each other. There is a *rational solidarity in the human heart if one’s conscience is rightly ordered*, and this element of justice goes beyond giving each man his due – as spelt out in the human rights and duties above – it is completed in charity, the love of the other which is the Christian virtue *par excellence*.

This is a tall order indeed:

Human society demands that men be guided by justice, respect the rights of others and do their duty. It demands, too, that they be animated by such love as will make them feel the needs of others as their own, and induce them to share their goods with others ... we must think of human society as being primarily a spiritual reality ... (35, 36, my emphasis).

The Pope notes that there is progress at the time of his writing in three areas: the status of the worker, the status of women, and de-colonization, making for independence for former colonies in the state system (40-44).

Relations between States

In section III the international state system is the topic. There is no dispensation from the moral order that should govern men, politicians have no other morality than private persons – whatever Machiavelli may have thought about this. *The relationship between states must be governed by justice* (91-93) *which means that it is one of human rights and duties*. This statement may seem obvious to some today, but it is far from obvious in the anarchic¹ system of mutually independent states where the domestic form of government has traditionally been protected by Westphalian sovereignty. Inside the state, the ruler could act as he pleased.

When conflicts of interests occur, they should be settled by peaceful means, not by armed force. Furthermore, an “active solidarity” among states should be obtained (98) and the arms race must be halted (109), likewise, peace is

¹ *An-archos* is the Greek term for the lack of a governing system, there is no authority above states.

not to be had through the “terror balance” because “people are in the grip of constant fear” (111). Even if no one would start a nuclear war, it could come about by “chance of unforeseen circumstances” (*ibid*). The Pope calls for disarmament and the banning of nuclear weapons. While the fear of nuclear arms has been small for the last 30 years – after 1990 traditional defence questions about state-to-state wars seemed superseded – we are at the time of writing worrying about the irrational behaviour of the North Korean regime which uses brinkmanship to a degree not seen since the Cuban missile crisis. Both accident and irrationality may result in the use of nuclear weapons in the world today, as at the time of the writing of PT.

The other key issue addressed in this section is development and North-South issues – the need of rich states to assist in the development of poorer ones without dominating them. This issue has continued to be pertinent, even if Africa today has a 5% growth rate. The economic problems and youth unemployment in Europe are new problems that are very grave also.

In sum, we can derive two conditions for government proper:

1. States must be based on human rights, democracy, and the rule of law in order to be just, therefore these principles must be obtained in their inter-relations as well.
2. States must respect both subsidiarity and solidarity as ordering principles within themselves and between states and international bodies. There is a call for a “world authority” in the encyclical, but this is not a world government.

Anno 2003 and 2013

What were the “signs of the times” after 40 years? In the message for the world peace day in 2003 Pope John Paul II analyses the current state of affairs with regard to the conditions in PT. He notes progress in the observance of human rights, “a new awareness of human dignity and inalienable human rights” (4), also taking into account the fall of communism and the Wall (to which he himself contributed so much): “– significant progress has been made over the past forty years ... the fact that states all over the world feel obliged to honour the idea of human rights show how powerful are the tools of moral conviction ...”(6).

In addition, there must be more work done to alleviate the gap between rich and poor, and in general, to implement human rights. In terms of war, much more must be done to enhance peaceful settlements of disputes.

In sum, *the early years of the second millennium were quite positive in terms of both the spread of democracy and human rights and the decline of war.* Defence budgets were cut by about 30% in Europe, and internal armed conflicts –

'small wars' – seemed to be the only security worry. Neither WMDs² nor state-to-state wars were prevalent, and human rights played a role in international politics like no time before. It was, in the words of Francis Fukuyama, "the end of history".

Coming to the present, we start by noting that the optimistic 'status report' of 2003 may no longer be so positive. In 2013 we are in the midst of a *change away from multilateralism and the prevalence of the West in underwriting this system* and in promoting human rights and democracy in the world.

Concretely, the Pope speaks about the need for a world authority and mentions the UN. Specifically, he points to the importance of the Universal Declaration of Human Rights (UNHR) of 1948, "an act of the highest importance performed by the United Nations Organisation was the Universal Declaration of Human Rights (143) ... the documents represents an important step on the path towards the politico-juridical organization of all the peoples of the world (144)". He goes on to underline the natural human rights of every person and hopes that the UN will safeguard human rights.

Clearly, the 'trinity' of politics is democracy, rule of law and human rights, where the latter is the substance and basis. Multiparty democracy and rule of law follow directly from human rights, from the fundamental civil and political rights. There is thus a clear distinction between states founded on force, as the Pope puts it, and those founded on this 'trinity'. In sum, *liberal democracy, when truly respecting human rights, is the only legitimate form of government*. A dictatorship or totalitarian government can per definition not respect human rights.

Surely these principles and values are to be striven for and not expected to be fulfilled completely in any state, presupposing ideal citizens in terms of virtue. The ideal of the *summum bonum* is clear and persistent, it has a long history in Western political thought through the Greeks, Romans, and in particular, Christianity.

The number of *nominal* democracies in the world has never been larger than today, but there are few that are truly based on rule of law, separation of powers, and human rights. Europe, the US, Australia, are examples of states where there is a stable liberal democracy. This, however, does not mean

² Weapons of Mass Destruction – nuclear, chemical, and biological weapons – these are all prohibited by international treaties, with the exception of the P5 states of the UNSC which are allowed to have their nuclear arms provided they work towards disarmament (NPT treaty). All testing of nuclear arms is prohibited (North-Korea tested a weapon on 12 Feb 2013).

that such states are without problems in terms of what PT calls for as true government: *the politicisation of human rights* takes place in these states, meaning that the family, right to life and also other rights are not given the natural law interpretation that was intended by PT and which is the teaching of the Church. France recently legalized same-sex marriage, as in several other states. Euthanasia and abortion are legal in several states. So-called “value questions” are extremely controversial in Western liberal democracy. Surrogacy and all forms of artificial procreation are facts of technology and make political inroads at present. Thus, natural law seems a very remote reality in the old continent where this philosophical position was developed and where the Catholic Church is really the only actor that promotes it.

Yet in terms of rule of law, separation of powers and other basic human rights these states fare better than the rest of the globe. There is no doubt that the promotion of liberal democracy is the best way not only to peace, but to just states. But today precisely these states – the Western ones – are weakening in terms of international power and influence. The world’s economic power is already multipolar, and political power depends not only on persuasion, but also on coercion. Western states are no longer in a good position to promote their type of liberal democracy throughout the world. Yet there is no other alternative than to go on with the promotion of democracy and human rights. Economic and military power is not the only type of power.

The power of ideas, the attraction of ‘moral power’, exists. The idea of justice does not disappear even in highly unjust states. The role that Catholic social teaching can play on the world scene is great and wholly unique. There is at present an urgent need for this voice that can speak about social justice and natural human rights to all men of ‘good will’. The key concepts of political analysis are *subsidiarity* and *solidarity*: For instance, a system of governance cannot be supra-national, as a ‘world government’ could never be accountable. As I have argued above, democratic accountability is now more important than ever and the only logical way to proceed is through the type of federalism that is based on subsidiarity – that tasks are to be solved at the level where they naturally belong, or at the ‘lowest’ level possible. The application of the principle of subsidiarity is to be discussed in later sessions at this conference: suffice it to say that it is in urgent need of substantial application both in the EU and at the UN and other IOs. Further, solidarity means that the various human rights that are discussed at length in PT must balance each other – having only civil rights will not do if the right to work is an illusion, as is the case for many young people in Europe today.