

Totalitarian Democracy and the Future of the International Order

Robert J. Araujo S.J.
Loyola University Chicago

Follow this and additional works at: <http://ir.stthomas.edu/ustjlpp>



Part of the [International Law Commons](#)

Bluebook Citation

Robert J. Araujo, *Totalitarian Democracy and the Future of the International Order*, 9 U. St. Thomas J.L. & Pub. Pol'y 35 (2014).

This Article is brought to you for free and open access by UST Research Online and the University of St. Thomas Journal of Law and Public Policy. For more information, please contact Editor-in-Chief [Patrick O'Neill](#).

TOTALITARIAN DEMOCRACY AND THE FUTURE OF THE INTERNATIONAL ORDER

ROBERT J. ARAUJO, S.J.¹

JOHN COURTNEY MURRAY, S.J. UNIVERSITY PROFESSOR, EMERITUS
LOYOLA UNIVERSITY CHICAGO

I. INTRODUCTION

Sovereignty has been and remains a vital issue in the realm of the international order and the law of nations, as well as in national and domestic law. In the context of republican democracy such as exists in the United States, citizens often take pride in the recitation that sovereignty resides with them and is inextricably tied to democratic institutions and the preservation of the rights of persons. In the international sphere, as Michael Ignatieff notes, under the Charter of the United Nations and the Universal Declaration of Human Rights (hereinafter the “UDHR”), “state sovereignty remains the main pillar of the international system. It also remains the case that human rights are best protected not by international treaty but by the constitutions of democratic states.”² In essence, for Ignatieff, the universal, fundamental rights of the human person are best realized and protected by the sovereignty of the people. Sovereignty is typically understood as the ability of the state (be it national, regional, or local) to exercise its legal authority to govern particular matters by making, enforcing, and adjudicating laws that are designed to protect the interests of the society served by the state. Emphasis must be placed on the concept of legal authority because it is the agreed upon understanding of juridical principles which validate the exercise of authority by anyone or anything.

Yet, as already suggested, sovereignty also exists in the hands of a people who form a nation and exercise their self-determination. In the context of popular sovereignty, it is typically exercised in a form of democratic and representative government such as that of the United States. In recent times, popular sovereignty has been assumed to be a desirable

1. The author extends his gratitude to Professor Mark DeForrest for his insightful comments submitted to the author on an earlier draft of this article.

2. Michael Ignatieff, *Human Rights: The Midlife Crisis*, N.Y. REV. OF BOOKS, May, 1999, at 62.

form of governance which echoes Abraham Lincoln's exhortation of "government of the people, by the people, for the people."³ In discussing a nation "conceived in liberty" and dedicated to the proposition "that 'all men are created equal,'" Lincoln noted that this nation—"so conceived"—could endure a great internal conflict such as the Civil War, but the endurance of the nation would necessarily be the demanding work of the people in the exercise of their sovereignty. In making this assertion, he reminded his fellow countrymen of the "great task remaining before us," the task whose execution is vital to the survival of a nation that is premised on self-governance.

Self-governance, i.e., democracy, can be easily assumed to be the most desirable form of government. Nonetheless, it is only a means rather than an end, for the value of self-governance is dependent on the values it holds and promotes.⁴ Hence, authentic democracy and the proper exercise of self-determination, that is its essential complement, are the hard work of all its members, not just some.⁵ As will be seen in my subsequent critique of totalitarian democracy, democracy can be corrupted from within, and degenerate into a form of governance in which the regulation of its peoples is subject to the interests of the powerful and influential who are not restrained in imposing their self-referential will on the populace.⁶

While the first form of sovereignty mentioned focuses on the state and the second on the human person as citizen, an important and inextricable link exists between the two: it is the idea that the exercise of sovereignty inevitably involves both a clear concept of the law and the rule of law that address what the law is about and what it should do. One form of desirable authority takes place in the merger of state and human sovereignty. Although Pope John Paul II pointed out after the fall of Communism in 1990 that democracy is a desirable form of self-governance, it can nonetheless contradict its own principles and must then be viewed with suspicion.⁷ Thus, while democracy can be a laudable system of governance, John Paul contended that it must remain a means to a proper end and never

3. Abraham Lincoln, *Gettysburg Address*, ABRAHAM LINCOLN ONLINE, available at <http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm> (offering the texts of the five known copies of the address).

4. JOHN PAUL II, *Evangelium Vitae* [ENCYCLICAL LETTER ON THE VALUE AND INVIOABILITY OF HUMAN LIFE], No. 70 (1995), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html [hereinafter *Evangelium Vitae*].

5. I have developed related points in more depth in two of my John Courtney Murray, S.J. annual lectures at Loyola University Chicago. The first is Robert John Araujo, S.J., *John Courtney Murray, S.J.: A Model of Engagement*, 43 LOY. U. CHI. L. J. i (2011); the second is, Robert John Araujo, S.J., *The Nature of the Law and the Role of Citizenship*, 45 LOY. U. CHI. L. J. 287 (2013).

6. *Evangelium Vitae*, supra note 3 at No. 70.

7. *Id.* at No. 20.

become an end unto itself; its value as a moral force is not automatic merely by claiming the name “democracy.”⁸

If democracy’s merit is indissolubly tied to the values it embraces, those values must remain in the best interest of the *res publica* and the common good.⁹ When this form of community self-governance contradicts essential normative values regarding the individual human person and all societies of human persons—including their dignity and right to life—it can evolve into a thinly disguised totalitarianism.¹⁰ Thus, it should now be evident that endorsement of democracy must be prudently made.

While any claim of sovereignty ought not insulate any state or group from their fundamental legal responsibilities established by the rule of law,¹¹ any independent state, especially those which claim to be democratic, requires a solid foundation of proper sovereignty in order to assert and exercise its rights and duties. How are these distinctions between desirable and improper exercises of sovereignty to be made? I suggest that the natural law, which is the foundation of international law, is the basis for distinguishing between appropriate and problematic sovereignty—whether the sovereignty under investigation be that of the state or of self-determination.

Hence, this investigation of what constitutes appropriate sovereignty in democratic societies begins by considering the topic of natural law and its bearing in domestic and international contexts. Second, this inquiry will consider the role of the natural law and why it is particularly relevant to international society in the age of international organization. Third, this examination will explain the concept of totalitarian democracy (a kind of wolf-in-sheep’s disguise) and why it constitutes a betrayal of good/desirable sovereignty, which is founded on the natural law. Lastly, this presentation will offer illustrations of desirable sovereignty and improper sovereignty in an institution that has been entrusted with safeguarding the international common good: the United Nations.

8. *Id.* at No. 70.

9. By the common good, I mean the good being the flourishing of each person in relation to the flourishing of all other persons in a realm of peace, harmony, and good will.

10. *Evangelium Vitae*, *supra* note 3 at No. 20. *See also*, JOHN PAUL II, *Centesimus Annus*[ENCYCLICAL LETTER ADDRESSED BY THE SUPREME PONTIFF JOHN PAUL II TO HIS VENERABLE BROTHERS IN THE EPISCOPATE, THE PRIESTS AND DEACONS, FAMILIES OF MEN AND WOMEN RELIGIOUS, ALL THE CHRISTIAN FAITHFUL AND TO ALL MEN AND WOMEN OF GOOD WILL ON THE HUNDRETH ANNIVERSARY OF RERUM NOVARUM], No. 46 (1991), *available at* http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html, “[a]s history demonstrates, a democracy without values easily turns into open or thinly disguised totalitarianism.”

11. *See, e.g.*, Louis Henkin, *That “S” Word: Sovereignty and Globalization, and Human Rights*, *Et Cetera*, 68 *FORDHAM L. REV.* 1 (1999).

II. THE NATURAL LAW AND SOVEREIGNTY IN BOTH DOMESTIC AND INTERNATIONAL SOCIETIES

The theme of the natural law has intersected the law and the law's application for centuries in diverse legal cultures from early to present times. It is traceable back to the ancient western civilizations and runs through the thinking of Plato, Aristotle, the Stoics, and Cicero; as well as Christian thinkers, such as Augustine of Hippo and Thomas Aquinas.¹² In Renaissance times, one must not forget that natural law was the foundation of the works of Francis de Vitoria and Francis Suárez who provided the foundation of modern public international law developed by Hugo Grotius.¹³ In the American context, the natural law intersects the mind and writings of Thomas Jefferson—who drafted the Declaration of Independence—and the Founding Fathers, who wrote the Constitution of the United States. In more recent times, the natural law has been aptly described by Father John Courtney Murray, S.J. as a synthesis of objective intellect of the human person comprehending intelligible reality.¹⁴ I shall refer to this explanation of the natural law throughout this essay.

It is evident that the natural law is an important element in both international and domestic law, and it provides an answer to the question: why do we have law? My simple answer to this question follows: the law exists to safeguard societies and their peoples by protecting them and their liberty—a liberty which must be and remain ordered. Law encourages flourishing while at the same time discouraging the appetites of subjective minds. Law directs and guides persons and their societies in the direction of the common good, as I have previously defined this concept. The common good, moreover, maintains the essential ingredient of justice, which is a right relationship, among all peoples so that each person receives his or her due—a due which takes stock of everyone's due if the common good is to be authentic. The law that aids the achievement and preservation of the common good is not idealistic; rather, it is simultaneously aspirational and practical by necessity because it is again a means rather than an end. The end is the common good.

In its western and international appropriations, the natural law presents

12. For a helpful introduction to the natural law, *see*, HEINRICH ROMMEN, *THE NATURAL LAW: A STUDY IN LEGAL AND SOCIAL HISTORY AND PHILOSOPHY* (1998) *available at* <http://oll.libertyfund.org/titles/rommen-the-natural-law-a-study-in-legal-and-social-history-and-philosophy>.

13. *See*, 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 LAWS OF NATIONS* (1934), AND JAMES BROWN SCOTT, *THE SPANISH ORIGIN OF INTERNATIONAL LAW* (1934).

14. JOHN COURTNEY MURRAY, S.J., *WE HOLD THESE TRUTHS: CATHOLIC REFLECTION ON THE AMERICAN PROPOSITION* 109 (1986).

several fundamental questions. The first is: what is the human person, or as those of past times would ask, *quid est homo*—what is man, what is the human person? A second quickly follows: is there a universal essence and nature to this person? At this stage, a third question inevitably surfaces: what is the purpose of the human person? The natural law acknowledges that these fundamental questions are interrelated—one cannot be responsibly addressed without considering the others.

Pope Benedict XVI (2005-2013) assists us in addressing these three issues when he said in 2008: I repeat the necessity and the urgency, in today's context, to create in culture and in civil and political society the indispensable conditions of the natural moral law. Also thanks to the study that you have undertaken on this fundamental argument, it becomes clear that the natural law constitutes the true guarantee offered to each one to live in freedom and in the respect for his dignity as a person, and to feel protected from any ideological manipulation and from all abuse perpetrated based on the law of the strongest. We all know well that in a world formed by the natural sciences the metaphysical concept of the natural law is almost absent, incomprehensible. Moreover considering its fundamental importance for our societies, for human life, it is necessary that there be a new response and that in the context of our thought this concept is made comprehensible: being itself bears in itself a moral message and an indication for the paths of law.¹⁵

This statement raises the relevance of considering objective moral values that have a universal bearing on uniting humanity and procuring peace, happiness, and right relationships in the world for all its human inhabitants. These values frequently find their way into jurisprudential discussions of the civil law—both international and domestic. In a particular context, the natural law has made considerable contributions to developments in the law of authentic human rights—rights which are non-derogable and belong to every human being. This point posits the objective notion that, in spite of differences among the members of the human family, there is a universal essence and nature of the person that guides him or her to fundamental truths applicable to all humans and the societies in which they exist. Recognizing this point is critical to the law and the rights and duties, which the law imposes. It is these truths, which Jefferson asserted

15. Pope Benedict XVI, His Holiness, Address to Participants at the Plenary Session of the International Theological Commission, (Dec. 5, 2008) *available at* http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/december/documents/hf_ben-xvi_spe_20081205_tologica_en.html

are self-evident, that are the basis of laws that are founded on the natural law.

The notion of self-evident truths is fundamental to the longstanding teaching about the essential value of the common good that inextricably unites the interest of each person and all members of the human family and issues dealing with the natural rights of each person. In this context, it is crucial that the laws made to address these values are premised on the objective intellect comprehending intelligible reality for the advancement of the common good as I have defined it. This law-making process is a search for, and an implementation of, a common or universal ethical language that concerns the development and enforcement of equitable and rational norms reflecting reality that apply to those who are subject to the ensuing positive law. Moreover, this law making process has traditionally been the foundation of human rights law in the international sphere.

A major reason for the justification of this foundation of human rights law is that this foundation is premised on a universal ethics that underlies a fair and just legal system. These ethics are based on the application of the right reason of the natural law—the essential objective intellect comprehending intelligible reality—which provides an indispensable counterpoint to the tendency in the world to manifest or interpret the rights claimed by the aggressively autonomous and isolated individual who is often separated from the concerns of the society in which he or she lives. A compelling force for this person is subjectivity rather than objectivity. The jurisprudential foundation of the principles made and followed by this autonomous individual is represented in the Supreme Court of the United States decision in *Planned Parenthood v. Casey*.¹⁶

Casey was a legal controversy concerning access to abortion and the Commonwealth of Pennsylvania's legal efforts to narrow and regulate the killing of unborn children permitted by the Supreme Court's 1973 decision of *Roe v. Wade*.¹⁷ In *Casey*, the Court fashioned an interesting but disproportionate definition of liberty. In time, the Court's definition of liberty was used to rationalize the decision of *Lawrence v. Texas*¹⁸ decriminalizing same-sex sodomy, renovating the meaning of marriage,¹⁹ and, again most recently, to redefine principles related to the meaning of

16. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

17. *Roe v. Wade*, 410 U.S. 113 (1973).

18. *Lawrence v. Texas*, 539 U.S. 558 (2003) (relying on *Casey* to declare unconstitutional laws criminalizing consensual adult sodomy).

19. *Goodridge v. Department of Health*, 440 Mass 309 (2003) (relying on *Casey* and *Lawrence* to legitimize same-sex marriage through a redefinition of marriage); *United States v. Windsor*, 133 S. Ct. 2675 (2013) (redefining marital relations by incorporating the interests of same-sex couples).

marriage in *United States v. Windsor*.²⁰

The *Casey* plurality defined liberty in this fashion: “At the heart of liberty is the right to define one’s *own* concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”²¹ Is this a sound foundation for liberty, or is it a recipe for unmitigated individualism that is detached from the notion of the common good? The suggestion made here is that it is not a wise principle for the development of any law whose duty is to promote and protect the common good. This is a moral obligation, i.e., to do right and to avoid wrong.²²

In reality, *Casey* offered a permissive license as a substitute for legitimate and ordered liberty. As this essay has stressed the role of the natural law—objective intelligence comprehending intelligible reality, the *Casey* definition of freedom is at odds with this important foundation of the law that is, again, a moral obligation. The human mind has the capacity to understand the many environments in which the human person and human societies exist; moreover, this capacity leads to the making of norms that are sound and just for the individual and the communities to flourish. But the recipe for liberty concocted by *Casey* substitutes the isolated individual’s idiosyncratic preference for all this. Moreover, the *Casey* definition is a stark counterpoint to the need for individual persons and their communities to understand the world and the universe in which the human person lives and the incontrovertible nature of the person and what is essential to his or her being. Careful studies, including the scientific, tell us about the universe and existence and the role of the human person in all this, yet *Casey* says just the opposite: it is the individual and no one or nothing else which determines these matters which can and must be corroborated by the objective intelligence of the human person rather than his subjective caprice. While the *Casey* definition of freedom superficially enhances the rights of the individual, it, in fact, jeopardizes them.

First of all, in the name of “human rights,” the person and societies who follow the course of *Casey*’s disordered liberty become detached from the ethical, moral, and rational foundations essential to understanding the

20. *Windsor*, 133 S.Ct. 2675 (2013).

21. 505 U.S. at 851. (Italics added)

22. In *Casey*, the plurality gratuitously suggested that, “Our obligation is to define the liberty of all, not to mandate our own moral code.” 505 U.S. at 850. In fact, the plurality did mandate its own moral code by first of all providing a foundation to undermine existing moral codes dealing with the right of human beings to live. Second, the plurality’s rewrite of a moral code was used later to justify the outcome of *Lawrence v. Texas*, which in turn was used to justify the conclusion of *Windsor v. United States*. Third, with the redefinition of liberty, the plurality furnished the means for the will of individuals to trump long-standing moral codes that advanced the common good.

human person, who the person is in relation to others, and what are the essential objectives of all, not just some of them. Hence, the autonomous and isolated rights bearer is separated from other members of the same society and consequently from the essential ingredient for good law and the common good. The natural law process leads to the making of law that places everyone in right relationship with everyone else, thereby establishing the just society. An essential criterion for determining what is just—what is due each person (the *suum cuique*)—cannot be determined without ascertaining what is due to all persons who are engaged in the life of the same society. The *Casey* understanding of liberty stands in conflict with this essential principle regarding justice. In short, the legal system that is founded on the autonomous individual relies on a strongly positivist or utilitarian legal system that has little or no regard for the common good. The interests of each person cannot be fully and correctly understood until his or her interests are related to those of all others. *Casey* militates against this.

It is thought by some in the world of the early twenty-first century that the claim that there is a universal ethic founded on the natural moral law and objective truth is outdated. What is preferred in many quarters, including the academic and liberal political circles, is a claim for pluralism, diversity, and tolerance. Of course, there is great diversity within the world and human preferences for one thing versus another. However, there is a kind of relativism that becomes the erroneous justification for the contemporary call for pluralism, diversity, and tolerance that are, in fact, a danger to authentic human values including the legitimate claims for authentic self-determination. This relativism is a thinly disguised form of legal positivism that relies on declaring what is just or what constitutes justice by the subjective standards of those to whom the law-making and law-interpreting processes are entrusted.²³ This is the fruit of *Casey*.

Unfortunately, under the influence of *Casey*, the allocation of important authority delegating the administration of law is misplaced by the faulty assumptions of the political and intellectual elite, who rely on *Casey*'s understanding of freedom. Yet, it is considered that these members of the elite are best suited to ascertain what is most desirable for a pluralistic, diverse, and tolerant society. The alternative to this predicament that can be corrected by objectively reasoned human initiative is the mechanism of the natural law. This process is within the competence of virtually any virtuous person and relies on the law "written on their hearts"²⁴ that is accessible by the exercise of right reason—the objective intellect comprehending intelligible reality. It is the virtuous person who realizes that he or she is not

23. *Evangelium Vitae*, Nos. 20, 96 (1995).

24. *Romans 2:15*(Revised Standard Version—Second Catholic Edition).

alone but lives in relationship with all others in spite of *Casey's* unfortunate but influential dictum. From the earliest moments of their reasoning, children begin to cultivate the virtues (courage, prudence, justice, temperance, wisdom) that are essential to the task of the natural law. It is the human instinct founded on these virtues that enables even the youngest to distinguish between right and wrong. In turn, this learning process concerning virtues cultivates the crucial sense of what is the good and what is not—not just for the self but also for the other with whom one is in relation. This reasoning process, that must be cultivated and exercised by the process of education, constitutes the nucleus of the natural law. It is the basis upon which each person, by the light of reason, can identify and employ the fundamental guidelines for choosing the moral action that conforms with the nature, essence, and end of the human person, which is the common good.

The normative development of each member of society, which relies on the virtues, provides the basis for cultivating the norms of society that become the precepts, the commandments, and the rules by which rights, responsibilities, and remedies are understood and practiced in the attending legal system. This method is the antidote to the strong force of political elites who claim to act in the names of pluralism, diversity, and tolerance that are founded on *Casey*. These fundamental precepts founded on the virtues are durable because they are objective and universal. The virtuous person, in the exercise of right reason, will come to recognize that these precepts are vital to the formulation of the moral, juridical, and political determinations that regulate the life of each person and every society. In turn, the norms—the positive laws—that emerge provide the soundest basis for ensuring the dignity—the non-derogable worth—of the human person in the face of ideologies that may initially seem attractive to some, but are the symptoms of legal systems that harm the nobility of every person and frustrate the natural desire for human flourishing that is possessed by each person and for the sustenance of the common good.

The natural law subsists within the tenets of the world religions as well as the non-religious principles that also produced the enduring democracies found across the globe. This is because the natural law finds a common denominator in those societies where the dignity of every person and the attainment of the common good are inextricably related. Of course, many within society—including many responsible for the administration of diverse legal systems—have been and remain skeptical about the claims of a universal and objective natural law. To those critical of the natural law's claims, the following points will assist in better comprehending the natural law and why it is not only desirable but essential to any society that claims to be just.

The first point is this: it is not mere coincidence that there are parallels

between the claims of the natural law and the first principles of a well-ordered and free society that have been recognized and adopted by most civilizations for thousands of years. For example, principles dealing with homicide, perjury, theft, and greed are found within the ancient Abrahamic religions and the legal systems of secular cultures. The link between and among these diverse legal systems that acknowledge the crucial role of these same normative principles is the exercise of right reason—objective intelligence comprehending intelligible reality and not the *Casey* recipe for determining meaning. In essence, this exercise of right reason, that is objective, relies on the thinking of virtuous people who understand and seek the norms that are, in fact, part of the same moral patrimony which exists amongst the peoples of the world and across time.

It is not simple coincidence that leads the thoughtful and virtuous person to conclude that it is natural to human existence and flourishing to rely on a universal ethic which has been expressed throughout human history by the natural law process. Characteristic of this ethic is the reality of and reliance on the universal and objective moral order that eschews the relativism and subjectivity for which *Casey* argues. This universal ethic, moreover, understands that the natural law not only avoids the conformism often associated with the positivistic and totalitarian attitudes of legal systems that have existed throughout human history, but also reinforces authentic personal freedom by defending those marginalized and oppressed by those institutions forgetful of the common good.

A second point follows pertaining to the perception arrived at by many about common moral values held in diverse societies and cultures. A quick illustration is that it is wrong to take the life of another person without an urgent justification, namely, the final step for self-defense. This element of the natural moral law considers how the human person can identify fundamental principles of moral experience and formulate or discover the precepts of the natural law that have universal appeal and can inspire the moral life of any person. In spite of these common moral values, it is evident that assaults on the dignity of the human person persist into the contemporary age as they have across the centuries. In this context, recognition between the constant and necessary interplay between rights and responsibilities is essential to the advancement of the universal moral values underpinning the common good. Objective intelligence comprehending intelligible reality displays the truth of this position. This additional concern, regarding the inextricable relationship between rights or claims and responsibilities, is an innate component of the natural law. The recognition of the fundamental principle of seeking that which is good and avoiding that which is evil—drawing on the first principle of the law as

argued by Aquinas²⁵—is at the core of the common moral values that are established on the complementarities of rights and responsibilities. Inherent in any endeavor dealing with Aquinas' first principle is the formation of the moral person, which prepares the way for identification of moral norms that relate each person to others, rather than separating them as the *Casey* dictum insists.

The third point addresses the foundations of the natural law and provides the transition from common experience to normative concept in which the philosophical, metaphysical, and religious foundations of the natural law can be identified as moral norms take shape. It is through this transition that the moral subject is led to the judgments of conscience where the moral requirements that surface and present themselves in the concrete situations can and must be acknowledged—certainly by the virtuous person who acknowledges that he or she is in relationship with others rather than isolated from them as *Casey* suggests. This process leads the human subject from one's isolated self to the objective standards that are universal to the natural law. Here the virtuous person encounters the truth of authentic freedom, i.e., freedom *for* rather than freedom *from* the truth—the objective truth that is so essential to the natural law and the universal ethics critical to all individuals and the common good.

The fourth point deals with the natural law and the society of persons—the family, the city, the nation, and the international order. The link between the natural law and the various societies of human existence provides insight into the regulatory function of the natural law in public and political life common to all people and their societies ranging from the familial to the global. It is here where the person in the public square—be it the family or international society—must take stock of the human (the positive) law produced by the society in which this person and the other members of the same society subsist together. Here is where the universal and objective natural law and the natural right of each person engage one another. This engagement necessitates recognition that the person is—that all persons are—at the center of the political and social order. Why?

The answer to this provocative issue rests on the objective fact that each person is an end and not a means to an end. At the same time this response emerges, it must be acknowledged that the person is a social being by nature and essence; therefore, in order for each person to flourish, there must be a social network established with others and regulated by the civil law and guided by the natural law. Hence, the natural law is the normative background in which the political order is called to move so that society may correctly fulfill its own mission of serving the person, who is prior to society, but who is also an element of society. In this fashion, the four

25. THOMAS AQUINAS, *SUMMA THEOLOGIAE, Part I of the Second Part*, q. 94, a. 2.

pillars of social life long associated with the Catholic intellectual tradition of the natural law in modern times—freedom, truth, justice, and love—are satisfied for one and for all.²⁶

These four values correspond to the requirements of an ethical order conforming to the natural law and the right to which each human subject is entitled in his or her societies. The repeated reference to the natural law in the life of the “earthly city” impels ongoing reliance on reason that avoids a political order which threatens with the arbitrariness of self-centered interests, of organized untruth, or of the manipulation of human thought—elements of totalitarian societies. In essence, the natural law contains the idea that the law of the political state must necessarily be established on the principle of subsidiarity that respects persons and intermediate bodies and regulates their interactions. This principle is alien and unwanted by totalitarian structures.

An underlying precept of the natural law recognizes that the human family should pursue the common enterprise of identifying and living by common norms that promote justice and peace vital to the world and its peoples—evidence of this may be found in the Charter of the United Nations.²⁷ In this regard, the natural law demonstrates that it is the foundation for the universal ethics that can best promote the common human nature shared by one and all. The certitude of this claim is that the natural law is “inscribed” on the hearts of everyone because this normative deposit is accessible through the reason that is a part of virtually every person. Another major illustration of this point was the agreement of the UN drafting committee, which produced the UDHR, which will be discussed in more detail later.

The natural law is not itself a list of definitive and immutable precepts, but it is the motivation held in common which enables people everywhere to search for the objective foundation that is at the underpinning of a universal ethics and traditionally served the world and all her people well. With this general background in mind, it will now be useful to consider the role of the natural law in international society in the present age of international organization.

III. THE NATURAL LAW IN INTERNATIONAL SOCIETY IN THE AGE OF INTERNATIONAL ORGANIZATION

International society is a place well-suited to carry on an examination

26. Pope John XXIII, *Pacem In Terris* [ENCYCLICAL LETTER OF JOHN XXIII ON ESTABLISHING UNIVERSAL PEACE IN TRUTH, JUSTICE, CHARITY, AND LIBERTY], No. 35 (1963), available at http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html.

27. U.N. Charter art. 1.

and discussion about the natural law This point is evidenced by the work of the committee of philosophers chaired by Jacques Maritain, which assisted the committee that drafted the UDHR.²⁸ Because of their subscription to and adoption of objective intelligence comprehending intelligible reality, people of the Christian faith, other faiths, and no faith under Maritain's tutelage found principles that would enhance the understanding of human rights and just norms that promote peace and harmony amongst all societies and their members.

In the present age of the second decade of the twenty-first century, virtually all sovereign states are members of the United Nations which was founded in 1945 "to maintain peace and international security" in the world through "conformity with the principles of justice and international law."²⁹ In 1985, in an address delivered before the International Court of Justice at The Hague, Saint Pope John Paul II spoke in favor of these and related tenets by asserting that:

Developing international law and extending and strengthening international organizations are vitally important tasks for humanity today. But what is absolutely essential in all of this is the pursuit of the common good on the basis of justice, according to the norms of a true world legal system. Without an understanding of the source of law, the reasons for law and the object of law, a proper legal system cannot exist. Without an understanding of the criteria for the peaceful settlement of conflicts such solutions do not come into

28. See, Jaques Maritain, *Human Rights: Comments and Interpretations, Introduction*, (UNESCO ed. 1948), available at <http://unesdoc.unesco.org/images/0015/001550/155042eb.pdf>. Maritain noted in the introduction to the Comments and Interpretations that at a UNESCO meeting someone had expressed astonishment that "certain champions of violently opposed ideologies" were able to agree on a fundamental list of universal human rights. Maritain notes that "yes," they agreed about the rights "but on the condition that no one asks us why." *Id.* at I. However, Maritain had his own answer to this question: "the goal of UNESCO is a practical goal, agreement between minds can be reached spontaneously, not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man and of knowledge, but upon the affirmation of a single body of beliefs for guidance in action." *Id.* at II. It is Maritain's explanation of "common practical ideas" that holds the key. As he said, "when we are concerned with a basic *practical ideology* and basic principles of *action* implicitly recognized today, in a live, even if not formulated state, by the consciousness of free peoples, we find that they constitute *grosso modo* a sort of common denominator, a sort of unwritten common law, at the point where in practice the most widely separated theoretical ideologies and mental traditions converge." *Id.* He went on by saying, "To understand this, it is only necessary to make the appropriate distinction between the rational justifications involved in the spiritual dynamism of a philosophic doctrine or religious faith, and the practical conclusions which, although justified in different ways by different persons, are principles of action with a common ground of similarity for everyone. I am quite certain that my way of justifying belief in the rights of man and the ideal of liberty, equality and fraternity is the only way with a firm foundation in truth." *Id.* From this, it would appear that Maritain bases his answer to the question "why" with a universal application of the objective intellect comprehending intelligible reality.

29. U.N. Charter art. 1.

being.³⁰

The sentiments of John Paul II have been reiterated by his predecessors and successors. For example, the words of Saint John XXIII, who was a seasoned Vatican diplomat, are pertinent to this discussion about the natural law in the international sphere. In considering the overarching theme of “peace on earth,” Pope John XXIII spoke of the eternal correlation of rights and duties in civil society. As he noted:

in human society one man’s natural right gives rise to a corresponding duty in other men; the duty, that is, of recognizing and respecting that right. Every basic human right draws its authoritative force from the natural law, which confers it and attaches to it its respective duty. Hence, 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.³¹

The intricate and vital balance of rights and duties may be for some an elusive goal, but it need not be. After all, the human person has been gifted with an intelligence that is objective; moreover, this intelligence is capable of enabling everyone the capacity to comprehend the intelligible reality of the world. When legal principles are established, they should then reflect this objective intelligence comprehending intelligible reality. These norms are more apt to ensure the common good by safeguarding the necessary balance between rights and duties. It is the synthesis of objective intelligence and comprehension of intelligible reality that enabled the founding of the United Nations. The maintenance of this synthesis, however, through the recognition of its necessity and nurturing, is critical to the success of not only this major international organization, but also the democratic institutions of the world that purportedly recognize and promote the objectives that are similar to those identified in the UN Charter.

When the recognition and promotion of the principal objectives of institutions like the UN falter, there is the possibility that democratic institutions, which are essential to its existence and proper functioning, are undergoing a transformation into something that is antithetical to their *raison d’être*. This is why John Paul II asserted that when democracies lose the values essential to them, they could mutate into thinly disguised

30. Pope John Paul II, *Address of John Paul II to the International Court of Justice during the Meeting at the Peace Palace*, N. 7. (1985), available at http://www.vatican.va/holy_father/john_paul_ii/speeches/1985/may/documents/hf_jp-ii_spe_19850513_corte-internazionale_en.html .

31. Pope John XXIII, *Pacem in Terris*, *supra* at 30 (1963).

totalitarianism.³² Here, there is a need to consider more closely what John Paul II said and to reflect upon whether societies with improper values threaten important institutions such as the United Nations. To answer this question, we must study some essential history of the evolution of the idea of totalitarian democracy.

In the early 1950s, Professor Jacob Talmon (1916-1980) began a multiple volume study of what he called totalitarian democracies. He began his investigation by considering the French Revolution, and he concluded his investigation by considering an extreme form of totalitarian democracy, Soviet Communism. The central thesis of his work is that there is a type of political philosophy that commences with a form of governance that is superficially democratic, but whose objective is “the pursuit and attainment of an absolute collective purpose” that comes about by coercive means.³³ Some may think that with the fall of the twentieth century totalitarian states and with the appearance of democratic movements in the People’s Republic of China, the totalitarian corruption of democracy is a thing of the past. I suggest, however, that at the national and international levels, totalitarian democracy is still alive and operative in the world today. My rationale for making this claim follows.

As one considers the neuralgic issues of the day, such as the claim of abortion as a human right and the increasingly successful campaigns for redefining marriage and the family, one can observe the implementation of the new totalitarianism that relies on “liberalism” and democratic ideals (e.g., making claims based on rights, equality, and dignity), but nonetheless has transformed democracy into an all-or-nothing form of totalitarianism. In a very short period beginning in the latter part of the twentieth century, universal notions of important political and natural rights claims have become something else, transformed by the popular enthusiasm that is essential to totalitarian democracy.³⁴ A primary illustration of this transformation is the definition of liberty formulated in the *Planned Parenthood v. Casey* case previously discussed.³⁵ While insisting that the Court’s “obligation is to define the liberty of all, [and] not to mandate our own moral code,”³⁶ the plurality of the Court reimaged not only the legal understanding of liberty, but also reinvented how lawmaking is pursued by courts of law.

As we shall see, this expansive definition is not without considerable problems; one of the most significant being the head-on collision of diametrically opposed views about the meaning of existence, the universe,

32. See John Paul II *supra* note 9, and related text.

33. JACOB L. TALMON, *THE RISE OF TOTALITARIAN DEMOCRACY* 2 (1952).

34. See generally *Id.* at 6.

35. *Casey*, 505 U.S. at 846 – 47.

36. *Id.* at 850.

and the mystery of human life.³⁷ These problems become all the more patent as one considers the thesis that law is a tool of society to achieve and preserve the common good—the simultaneous good of each person and all persons. In the context of this and other problems, the *Casey* reformulation of liberty was not only a revolutionary move, it was—perhaps unplanned—also an exercise in democratic totalitarianism. It was a totalitarian move in that this judicial opinion’s presumed logic and legal rationale do not reflect an exercise in objective intelligence comprehending intelligible reality. Rather, this dictum was an exercise in pure, subjective will—an attempt to rationalize rather than justify a political objective of removing a key moral issue that properly belongs in the debate of the public square that safeguards the common good.

These problems associated with totalitarian democracy that emerge from the *Casey* definition of liberty do not stop with that opinion, as noted by the previous mention of the *Lawrence*, *Goodrich*, and *Windsor* cases. The restructuring of democratic ideals into totalitarian principles has been manifested elsewhere. Most of the problematic changes to domestic and international law’s understanding of previously well understood and generally accepted legal concepts have occurred in piecemeal fashion, including the meanings of the right to life, marriage, and human rights. This listing is not exhaustive but only illustrative. The transformation of the meaning of fundamental legal concepts dealing with the right to life, marriage, and human rights in general often begins by the interpretative process in which a word or phrase is given a twist here and there with little noticeable impact at first. With the passage of time, however, what was seen as a “democratic” expansion of “rights” becomes an unreasonable interpretation, which nonetheless takes hold and transforms the meaning of traditional terms such as “right to life,” “marriage,” and “family.” The distorted process repeats itself, and transforms the whole meaning of life, marriage, and the family within a decade or so.

There is even more at stake. The robust debate and reasoned discourse of democracy, essential to authentic progressive development of the law that serves the common good, is put aside. What should be robust and reasoned discourse is banned, for there is no room for argument under a new legal regime that is, in actuality, a totalitarian democracy. The social

37. Interestingly, in his 1952 essay “The Church and Totalitarian Democracy,” Fr. John Courtney Murray, S.J. had this relevant remark: “This philosophy [akin to that of the totalitarian democracy and found in *Casey*] asserts the absolute autonomy of the individual human reason. Each man is a law unto himself . . . Thus the freedom with which reason endows him knows no limits. Everything is in principle permissible, a matter of individual choice. . . . There is no objective order of obligations imposed on man; there is no one and nothing to create such an order. Man is bound to obey only himself.” Fr. John Courtney Murray, S.J., *The Church and Totalitarian Democracy*, 13 THEOLOGICAL STUDIES 525, 553 (Dec. 1952), available at <http://d1ckv7js84buaj.cloudfront.net/13/13.4/13.4.2.pdf>.

engineers of progress, as viewed from the perspective of totalitarian democracy, labor to redefine everything to their liking. Moreover, to say that the law means something else other than what the social engineers demand, would not only be incredulous, but most likely criminal as well.³⁸ One illustration of this is the enactment of hate-speech legislation, which has had a chilling effect on legitimate debate about important but sensitive topics. This is the tactic of the modern day totalitarian: begin slowly, but conclude with something that is irrefutable because opposition to it is against the law. Ironically, as was done by a number of totalitarian dictators in history, what cannot be taken by force is taken over by using an existing legal system and distorting it. Once the corruption is settled into the fabric of the law, there is no place to hide since the law no longer means what it is supposed to mean.

This international transformation is one important reason to understand the jurisprudential foundation of the law, and why the natural law is essential to the human, positive law—both domestic and international—and its objectives that serve society by promoting, advancing, and protecting the common good. These jurisprudential underpinnings founded on the natural law are particularly important to the law that is designed to safeguard the rights and responsibilities of everyone.

While the notion of human rights began with some of the work of Francis de Vitoria in the sixteenth century,³⁹ the legal concept began to solidify after the Second World War with the promulgation of the UDHR and its associated human rights instruments. However, there is a drift in the present age in which the authentic meaning of human rights is being obscured by the failure to understand not only their foundation in jurisprudence, but also the appropriate nature of legal reasoning that undergirds the proper claims and duties of the human person. These failures are largely the fruit of totalitarian democracy at work today.

Through recognition and publication of what they really are, the noble ideals of authentic and fundamental human rights—such as those rights and responsibilities dealing with marriage and the family—can reinstate the truth about the nature of the human person. In order to proceed with demonstrating this objective, I will first elaborate on what totalitarian

38. As Talmon argues, “The point of reference of modern Messianism [totalitarian democracy] . . . is man’s reason and will, and its aim happiness on earth, achieved by social transformation. The point of reference is temporal, but the claims are absolute . . . [S]ecular Messianism . . . has developed a fanatical resolve to make its doctrine rule absolutely and everywhere.” See TALMON, *supra* n32, at 10.

39. See Robert John Araujo, S.J., Our Debt to de Vitoria: A Catholic Foundation of Human Rights, 10 AVE MARIA L. REV. 313 (2012); Robert John Araujo, S.J., The Catholic Neo-Scholastic Contribution to Human Rights: The Natural Law Foundation, 1 AVE MARIA L. REV. 159 (2003); see also Scott, *supra* note 13.

democracy is, and how it is harmfully transforming fundamental norms of civil society. Second, I will provide an objective account of those elements of the UDHR, and its companion juridical instruments (primarily the International Covenant on Civil and Political Rights [hereinafter the ICCPR]) that deal with marriage and the family, which are of critical importance to civil society. It should then appear that the natural law reasoning, which is vital to the defense of the rights identified in the UDHR and its companion instruments, is missing from the totalitarian democrat's approach.

IV. TOTALITARIAN DEMOCRACY AND THE PROBLEMS IT GENERATES TO THE VITAL ROLE OF THE NATURAL LAW

As mentioned earlier, in the early 1950s, Talmon began a study of what he would eventually identify as totalitarian democracy. This is essentially the corruption of democratic institutions based on a fallacious assumption that there is a sole and exclusive truth in political systems.⁴⁰ What I term a "corruption," Talmon calls "political Messianism," which relies upon a kind of paradoxical freedom—i.e., a freedom defined by a segment of society that self-promotes the ideals identified and pursued by its political elite.⁴¹

In the past, totalitarian democracy pursued ideals reinventing economic and social life (e.g., the French Revolution's idea of liberty, equality, and fraternity leading to the Reign of Terror; Soviet Communism's assertion of freedom from economic oppression of the capitalist class) or transforming the social strata of European culture (e.g., National Socialism's contention of freedom from the conspiracy of Jewry). Today, the targets of contemporary totalitarian democracy are different, but the methods used to assert and promote the goals of the elite remain similar. Regardless of the period or the geographic region in which it exists, totalitarian democracy is a political system of absolute, or near-absolute, power that presents a monistic view of the world and the human person. The political elite and the will not the objective intellect, form this monistic view, which is engrained in the elite's principles and campaigns to implement them into an unsuspecting society and its legal regimes. The society, nurtured by the political elite, is a subset of the state that falls within the control of the political elite. Typically, the elite often targets traditional religious beliefs as a suspect in the society that it attempts to overwhelm and replaces it with a new creed that is statist. Totalitarian democrats do not favorably view traditional influences, such as private associations and religious communities,.

Regarding religion, Talmon observed that totalitarian democracy

40. TALMON, *supra* note 32, at 1.

41. *Id.* at 2.

negates and replaces the relevance and positive roles of religion in society with a “secular, social morality” that is defined by the State and the political elite whose presence is often synonymous with the State.⁴² In addition, the underpinnings of totalitarian democracy are founded not on objective reason that has long been fostered by the natural law thesis, but on a “doctrinaire spirit” that has a superficial appeal, which makes the members of the polity enthusiastic about the objectives of the totalitarian democrat.⁴³ It is this kind of totalitarian doctrine, today characterized by the clarion of “being on the right side of history,”⁴⁴ that supplants the spirited discussion and debate of the citizenry that is essential to authentic democracy and self-determination, which must include the voice of religious communities.

Totalitarian democracy is allied with an uncompromising legal positivism that has been a fundamental characteristic of the totalitarian regimes of the twentieth century, where the powerful rather than objective reason determines what the law is and the legal regime should be. As theory and praxis, totalitarian positivism makes, interprets, and enforces law that is based solely on whatever pleases those who control the state and its juridical machinery.⁴⁵ Eventually, totalitarian democracy mutates into “an exclusive doctrine represented by a vanguard of the self-enlightened elite, who justify themselves in the use of coercion against those who refused to

42. *Id.* at 3.

43. *Id.* at 6.

44. This remark is attributable to then Secretary of State Hillary Rodham Clinton in her address before the United Nations, Geneva, Switzerland on December 6, 2011, in commemoration of International Human Rights Day. In discussing LGBT issues as “human rights issues,” Mrs. Clinton concluded her address with these words: “There is a phrase that people in the United States invoke when urging others to support human rights: ‘Be on the right side of history.’ The story of the United States is the story of a nation that has repeatedly grappled with intolerance and inequality. We fought a brutal civil war over slavery. People from coast to coast joined in campaigns to recognize the rights of women, indigenous peoples, racial minorities, children, people with disabilities, immigrants, workers, and on and on. And the march toward equality and justice has continued. Those who advocate for expanding the circle of human rights were and are on the right side of history, and history honors them. Those who tried to constrict human rights were wrong, and history reflects that as well. I know that the thoughts I’ve shared today involve questions on which opinions are still evolving. As it has happened so many times before, opinion will converge once again with the truth, the immutable truth, that all persons are created free and equal in dignity and rights. We are called once more to make real the words of the Universal Declaration. Let us answer that call. Let us be on the right side of history, for our people, our nations, and future generations, whose lives will be shaped by the work we do today. I come before you with great hope and confidence that no matter how long the road ahead, we will travel it successfully together.” Hilary Rodham Clinton, Secretary of State, Remarks at Palais des Nations (Dec. 6, 2011) (transcript available at <http://www.state.gov/secretary/20092013clinton/rm/2011/12/178368.htm>). Her address is seasoned not by objective intellect, but by subjectively founded political will, as is partially demonstrated by her tying LGBT issues with matters involving racial equality. The two are very distinct as objective reasoning demonstrates.

45. TALMON, *supra* note 32, at 8.

be free⁴⁶ in the sense that totalitarian democracy defines freedom.

Talmon was not alone in advancing a critique of democracies that transform into totalitarianism. Christopher Dawson (1889-1970), another historian, who was the first holder of the Chauncy Stillman Chair at Harvard (1958-1962), also studied dictatorships and totalitarian systems. He did so by way of investigating the role of Christianity in public life and culture, particularly in the twentieth century when Fascism, National Socialism, and Soviet Communism reigned. Dawson had a keen eye and an equally perceptive mind, and these helpful analytical tools enabled him to conclude that western democracies and other allied institutions were not immune from the fanatical control by despotic regimes, which are the driving force of totalitarianism. As he said in his 1960 book *The Historic Reality of Christian Culture*:

The totalitarian state—and perhaps the modern state in general—is not satisfied with passive obedience; it demands full co-operation from the cradle to the grave. Consequently the challenge of secularism must be met on the cultural level, if it is to be met at all; and if Christians cannot assert their right to exist in the sphere of higher education [and I, Araujo, extend the remark to the sphere of the public square], they will eventually be pushed not only out of modern culture but out of physical existence. That is already the issue in Communist countries, and it will also become the issue in England and America if we do not use our opportunities while we still have them. We are still living internally on the capital of the past and externally on the existence of a vague atmosphere of religious tolerance which has already lost its justification in contemporary secular ideology. It is a precarious situation which cannot be expected to endure indefinitely. . .⁴⁷

In the present age, Talmon and Dawson are prophets who provide a critical explanation about the dramatic change of direction taking place in some aspects of contemporary western democracy. Their insights may disturb some people—even people from a western democracy such as the United States who think they represent good will in the context of progress. But disruption for the sake of change is not the prophet's function; rather, it is the prophet's duty to disturb, not because the prophetic voice is unkind or evil or mischievous, but because it comes to alert his audience to an impending calamity and to warn that there may still be time to find a remedy

46. *Id.* at 5.

47. CHRISTOPHER DAWSON, *THE HISTORIC REALITY OF CHRISTIAN CULTURE: A WAY TO THE RENEWAL OF HUMAN LIFE* 97 (W. H. Auden et al. eds. 1960).

for the imminent misfortune.

In the case of the corruption by totalitarian democracy of good government, which includes the role of international organizations such as the United Nations, the calamity is the transformation of democratic institutions into an absolutism that defies objective reason in order to satisfy the appetite of the political, social, cultural, and economic elite who control society by misusing the name of democracy. The absence of objective reason and the wrench of a strong will founded on an exaggerated and insistent subjectivity that is destined to apply to everyone are the energy which propels the machinery of totalitarian democracy.

Talmon decisively noted that it is an atypical understanding of freedom that is at the root of the mutation of democracy that becomes totalitarian democracy.⁴⁸ While traditional notions of political freedom consider that liberty is the absence of coercion, totalitarian democrats consider liberty as “the pursuit and attainment of an absolute collective purpose.”⁴⁹ As the objective intellect will recognize, this is not authentic freedom but license. In addition, totalitarian democracy relies on the appearance of “rights” and wants to appear that it befriends and protects them. Ultimately, however, it is the political elite, who control the totalitarian democracy, that decide what they are and by whom they are to be exercised, for their goal is “a homogeneous society.”⁵⁰ Calls for diversity and pluralism—which sound very democratic and appealing—are part of the disguise used to usher in a regime that often defies objective reason and substitutes for it a pure exercise of the will that is detached from the guidance of objective intelligence. How else can undemocratic ideals be presented as egalitarian?

In its contemporary form, totalitarian democracy relies on communication of the notions that initially generate a “popular enthusiasm” about the need for change or diversification in the institutions of society.⁵¹ In the estimation of this author, the promotion of this popular enthusiasm for the will of the elite relies on the clarions of liberty, equality, and being on the “right side of history.” In the words of Talmon, “[t]he point of reference is temporal, but the claims are absolute.”⁵² While the origin of the exaggerated freedom that is vital to the emergence of totalitarian democracy is not isolated to a particular country, its crux is well-captured by the plurality decision of *Planned Parenthood v. Casey* which I have previously discussed.⁵³

At this stage, let us turn to a consideration of how the practice of

48. TALMON, *supra* note 32, at 2.

49. *Id.*

50. *Id.* at 4.

51. *Id.* at 6.

52. *Id.* at 10.

53. *See Casey*, 505 U.S. 833.

authentic democratic ideals consistent with natural law reasoning can be contrasted with the political will of the elite that is essential to totalitarian democracy.⁵⁴

V. DEMOCRACY IN ACTION: GOOD SOVEREIGNTY AND CORRUPTED SOVEREIGNTY

While the *Casey* definition of liberty may appeal to advocates who claim to champion robust freedom, this dangerous explanation of freedom has corrupted an important social and legal concept which is overwhelming the discourse about human rights today by forcing the idea of human rights into a political and social environment regulated by a self-deputized elite. It is their corruption of freedom, which has become a major implement of totalitarian democracy that imposes and maintains the doctrinaire spirit, that insists on the absolute claims of the political elite and whose will-based reigns on sovereignty exclude objective reasoning that comprehends intelligible reality.

Here is the essence of the problem with the *Casey* definition in the

54. There are recent illustrations of how totalitarian democrats force their will upon others without recourse by using the lens of objective intelligence to comprehend intelligible reality. They may argue that their course is intelligent, but it is not the intelligence of the natural law, rather it is the intelligence of tyranny, a tyranny which understands how to use human ingenuity to achieve its will. One illustration is the action of totalitarian democrats to pressure Mr. Brendan Eich, the new CEO of Mozilla Corporation. See Alistair Barr, *Mozilla CEO Brendan Eich Steps Down*, WALL ST. J., April 3, 2014, <http://online.wsj.com/news/articles/SB10001424052702303532704579479741125367618>. I question one speaker's claim about diversity. Diversity is exemplified by the right of people to contribute to, whether for or against, campaigns concerning Proposition 8 or any other matter before the *res publica*. If diversity is, in fact, to be authentically welcome at Mozilla, would not the company be precisely the institution in which different views on major political issues be embraced? In an exchange between Mr. Ryan Anderson of the Heritage Foundation (who favors defining marriage as union of one man and one woman) and Mr. Josh Barro of The New York Times (who supports same-sex marriage), Mr. Barro argued that "some people are deserving of incivility." As is cited elsewhere in this essay, I support Fr. John Courtney's position, that "[c]ivility dies with the death of dialogue." See *infra* note 70. If true dialogue and debate are no longer welcome in democracy, then the democracy, along with the civility essential to its functioning, will die too. In the context of the abortion debate (if abortion and its desirability can still be debated), one need consider the January 2014 remarks of New York Governor Andrew Cuomo who discussed the enemies of New York. "Who are they? Are they these extreme conservatives who are right-to-life, pro-assault-weapon, anti-gay? Is that who they are? Because if that's who they are and they're the extreme conservatives, they have no place in the state of New York, because that's not who New Yorkers are." See Heather Long, *Conservatives aren't welcome in New York, according to Governor Cuomo*, THE GUARDIAN, Jan. 24, 2014, <http://www.theguardian.com/commentisfree/2014/jan/24/governor-cuomo-conservatives-not-welcome-new-york>. See also Adam J. MacLeod, *Gordon College and Pluralism in Higher Education*, THE WITHERSPOON INSTITUTE, July 30, 2014, <http://www.thepublicdiscourse.com/2014/07/13600/> for a discussion of totalitarian democrats pressuring religiously affiliated schools to abandon their commitment to following Christ. These examples are illustrative of the power of political will divorced from objective intelligence, debate, and civility, all of which are essential to authentic democracy and self-determination.

venue under discussion: when two individuals are determined to follow the *Casey* understanding of liberty, there is no safety mechanism to avert the inevitable head-on collision when their respective views of freedom are diametrically opposed. Objective reason counsels against this understanding of freedom, but reason is not sufficiently relevant to totalitarian democrats, who proclaim rights that are founded on satisfying extremes of subjectivity. Rather, it is the will of the political elite and the attainment of their objectives that transforms an entire culture so that its members are instructed to adhere to the elite's view and no other.

In the context of abortion, a person may be "free" to privately believe that this procedure is the murder of a defenseless child, but this person must publicly adhere to the claim that abortion is an essential, fundamental and, therefore, non-negotiable "human right." In the context of marriage, a person may privately believe that marriage is between one man and one woman, but this person must publicly accept and embrace the claim that same-sex couples are denied the fundamental rights of liberty and equality if they cannot marry the person they love.

There are a number of important problems that emerge from the ongoing materialization of totalitarian democracy that threaten the vitality of the kind of positive law that is faithful to its jurisprudential base in the natural law. My claim here applies to both domestic and international laws and the juridical machinery that undergirds both kinds of legal systems. Allow me to extend this thought into two principal claims of the law that are under dramatic redefinition. These claims are: there is a non-derogable right to life; and there is a non-derogable right to marry. The first claim involves the subject of abortion.

Many contemporary national legal systems refrain from calling abortion a right. In the context of international law, there is no convention or treaty which asserts that it is a human right. Moreover, the American Convention on Human Rights (The Pact of San Jose, Costa Rica, 1969) states that the right to life begins, in general, "from the moment of conception."⁵⁵ Nevertheless, the totalitarian democrats of the present age have a plan to include abortion as a defensible, important "human right" by consistently urging the use of the term "reproductive health" in their discourse and insist on its inclusion in documents discussing human rights. One illustration of this is the U.N. Human Rights Committee, which is charged with the oversight of the International Covenant on Civil and Political Rights, and whose 2005 opinion in *KL v. Peru*⁵⁶ contends that the inability to obtain an

55. Organization of American States, American Convention on Human Rights, art. 4.1, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf.

56. *KL v. Peru*, United Nations Human Rights Comm., U.N. Doc. C. (Oct. 24, 2005).

abortion is a violation of human rights, including a denial of the mother's right to life.⁵⁷

Another topic relevant to the rise of totalitarian democracy deals with the protection against discrimination based on sex. Like many domestic legal systems, international law protects everyone against discrimination based on various human traits including sex. Of course, a sound understanding of what constitutes unlawful sexual discrimination is critical to understanding what is and what is not prohibited by the law. The concept of discrimination is found in the history of most societies. Within the last four or five decades, the subject of discrimination has taken on an increasingly important role in the juridical structures of national and international society. In spite of some considerable disagreement about what constitutes discrimination and what does not, there is a general understanding that categorizing people on hierarchical scales, without further consideration of the objectivity and merits of the categories, robs them of their innate dignity and is therefore discriminatory.

With the exercise of the objective human intellect comprehending intelligible reality, most people should likely agree that meritless classifications of human beings are antithetical to the nature of the human person because they defy general human nature as comprehended by objective human reason (after all, the human person is an intelligent creature). This same objective intellect, however, recognizes and acknowledges that substantive distinctions among people due to their essence and nature in fact exist. For example, some people excel in sports, while others do not. Some surpass others in music. Still others outclass their contemporaries in a wide variety of human endeavors such as poetry, art, prose, engineering, scientific prowess, physical stamina, etc.

This is why the natural law approach to the ideas of equality and unjust discrimination are important and relevant to the political, social, and cultural climate of the present age where strenuous objections are often made regarding *any* distinction between and among people. In short, any submission of difference is regarded by powerful political forces of totalitarian democracy across the globe today, not only with suspicion, but often with condemnation. The fundamental argument made in support of the justification for this suspicion or condemnation is the misconception of the real meaning of equality. Today, accurate understandings of discrimination and equality are frequently misunderstood and, therefore, the concept of discrimination is misapplied. In this context, the relevance of the natural law becomes all the more important to an authentic comprehension of the meaning of equality and of discrimination that is unjust. In spite of the soundness of natural law reasoning, there is pressure applied by the

57. *Id.* at 6.

powerful political forces associated with totalitarian democracy, which are vigorously dispensing the misconceptions of equality and discrimination in order to solidify their control of societies and their laws. These misconceptions are generally based on a derivative of the *Casey* understanding of liberty.

This disordered perception of liberty is used by totalitarian democrats to redefine the term “sex” by emphasizing expressions such as “sexual orientation” and “gender identity.” By arguing that these later terms are synonymous with the word “sex” and covered by the UDHR etc., totalitarian democrats have a profound effect on the evolving meaning of the institutions of marriage and the family. The totalitarian democratic outlook regarding these topics emerges in the controversial description of “gender identity” reflected in the 2007 Yogyakarta Principles, which defines this concept as:

each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.⁵⁸

The reader should recognize that the Yogyakarta understanding relies on *Casey*’s highly subjective definition of liberty. Hence, the Yogyakarta definition means that even though a person is, in reality, a man (is male), gender identity is subjectively determined and means that a person is not a man until he so decides that he is male. What makes him one or the other gender/sex is not the intelligible reality of his physical nature that can be scientifically corroborated, but his purely subjective decision to be what he wants to be in spite of the physical, biological evidence to the contrary. It could be asked then that if the person were to think that he or she were something else, the *Casey* rationale would enforce this highly subjective conclusion as well.

This process is empowerment of the “liberated” human person and is a cherished tool of the contemporary totalitarian democrat as evidenced by the Yogyakarta Principles. It is justified by the fact that totalitarian democracy’s understanding of the human person necessitates reliance on a subjective anthropology that is reinforced by the goals of the political elite. The totalitarian democrat’s views of what constitutes the human person and the person’s rights are founded on flawed perceptions about the nature of the human person that fail to rely on objective reason comprehending the

58. Sonia Onufer Correá & Vitit Muntarbhorn, *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, p. 8, (Aug. 2010), available at http://www.yogyakartaprinciples.org/principles_en.pdf.

objective and intelligible reality of the subject.⁵⁹ Ultimately, what this flawed approach to human nature promotes is not the nobility and dignity of the human person and the authentic human rights that contribute to the common good, but a vulgar caricature of the noble creation of God.

Paradoxically, the totalitarian democrat does not consider or accommodate for the rights of those persons who legitimately express objective and reasonable concerns about the claims based on sexual orientation or gender identity and abortion rights. What is happening in the present age is that anyone who disagrees with these problematic developments is labeled in an undesirable form (e.g., as a bigot or a backward thinker) and whose reasoned concerns about the unwarranted and unjustified claims of the totalitarian democrat must be excluded from the *res publica*. While the wisdom of natural law insists upon objective reason about the nature of the human person that relates to contemporary issues dealing with sexual orientation, marriage, etc., the totalitarian democrat does not seek engagement with or use of objective intelligence comprehending intelligible reality. Rather, this person seeks the exclusion of the natural law process from the public square and substitutes it with a distorted sense of human existence.

As we have seen in the United States and elsewhere in recent times, same-sex marriage advocates have expressed surprise that their efforts and victories have opened the door to further redefinition of marriage and what constitutes a family. The redefinition of marriage will permit just about any combination of persons and, perhaps in due course, other entities to be deemed marriages and families demanding protection of the state and its laws.⁶⁰ Is this mock surprise or is it naiveté? Perhaps this is too candid an assessment, but it is an appraisal that is fair and objective and demonstrates matters that are of major concern for persons of good will. Now I must turn to the principles which are of vital concern to people of good will.

As I have suggested, the authentic meaning of the UDHR and its related juridical instruments offer a very different approach to the meaning of marriage and the family than those understandings proffered by totalitarian democrats due to grave misconceptions of the nature of the human person and the essence of human sexuality. The respected international texts that

59. See generally ROBERT R. REILLY, MAKING GAY OKAY: HOW RATIONALIZING HOMOSEXUAL BEHAVIOR IS CHANGING EVERYTHING (2014). In short, his treatment demonstrates the soundness of the objective intellect comprehending intelligible reality.

60. Kent Greenfield, an advocate for same-sex marriage, anticipates in his online July 15, 2013, short essay that other lobbies, e.g., polygamists, would use the arguments proffered by same-sex marriage proponents. As Greenfield concedes, “[o]pponents of same-sex marriage have long argued that allowing such unions will lead to marriages among more than two people and between adults who are related. They’re right.” Kent Greenfield, *The Slippery Slope to Polygamy and Incest*, THE AMERICAN PROSPECT, intro. (July 15, 2013), <http://prospect.org/article/slippery-slope-polygamy-and-incest>.

address issues of universal concern to the human person and the common good do specify understandings of marriage and the family that conflict with those proposed and insisted by totalitarian democracy, notwithstanding its efforts to corrupt the meaning of these important primers of international law and principles. Let me begin with the subject of marriage. The UDHR and ICCPR treat the subject in a similar fashion, but totalitarian democrats have a very different take on the institution of marriage.⁶¹ For example, consider the following:

UDHR	ICCPR	Totalitarian Democrat
<p>Article 16: 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. . .</p>	<p>Article 23.2: The right of men and women of marriageable age to marry and to found a family shall be recognized.</p>	<p>Principle 3: . . . Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity.</p>

The texts of the UDHR and ICCPR reflect the work of diverse people using objective intelligence to comprehend the intelligible reality of human nature in order to define the meaning of marriage. The totalitarian democratic text, however, is quite different in attitude and approach as it is the product of subjectivity, which becomes more evident as definitions of family are examined. Here is what these three texts further assert about the institution and meaning of the family (notice the strong connection between marriage and family in the UDHR and ICCPR)

61. *See generally* Corr ea & Muntarhorn, *supra* note 57.

<p>UDHR</p> <p>Article 16: 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family³. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.⁶²</p>	<p>ICCPR</p> <p>Article 23: 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.⁶³</p>	<p>Yogyakarta Principles</p> <p>Principle 24: Everyone has the right to found a family regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members. States shall: Ensure that laws and policies recognize the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members⁶⁴</p>
---	--	---

The strong parallel between the UDHR and ICCPR is apparent; however, a dramatic contrast appears in the Yogyakarta Principles' explanation of the family as it relies on the highly subjective explanations of sexual orientation/gender identity. This difference is largely reflected by the utilization of natural law thinking that was evident in the 1940's and the 1950s when the UDHR and ICCPR were respectively drafted. By 2007, the

62. Universal Decl. of Human Rights, G.A. Res. 217A, at 74, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

63. Int'l Convention on Civil and Political Rights, art. 23, Dec. 19, 1966, S. Treaty Doc. No. 95-2, 999 U.N.T.S. 171.

64. YOGYAKARTA PRINCIPLES, *supra* note 57, at 27-28.

exaggerated subjectivity of *Casey* had a strong influence on composing the Yogyakarta Principles. Perhaps realizing the existence of a divergence between the UDHR and ICCPR, on the one hand, and the Yogyakarta Principles, on the other, the Yogyakarta drafters saw a need to rely on a phrase that appears in the UN-originated document which states: “Everyone is entitled to all the rights and freedoms set forth in [the UDHR], without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or *other status*.”⁶⁵ The totalitarian democrats give an expansive interpretation to the phrase “or other status.” A sensible interpretation of this expression that appears in the UN documents cannot be stretched as far as totalitarian democrats would like it to extend as I shall explain.

Totalitarian democrats interpret the phrase “or other status” which appears in the UN texts independently of the categories that proceed it, and thereby widens the interpretative horizon impermissibly. If this were a permissible manner of interpreting the term “or other status,” this important phrase repeated in several important human rights texts could mean virtually anything that the interpreter wants, *e.g.*, “or other status” including those persons who are convinced that they are Napoleon Bonaparte or have discovered the cure for cancer. If this or similar things were to happen, the objective meaning of the non-discrimination language of the UDHR and ICCPR would be eviscerated.

The proper way of interpreting “or other status” is by employing the respected canon of construction *ejusdem generis*. This canon holds, the concluding phrase at the end of the series (in this case “other status”) seems so extensive and broadly comprehensive that it can mean almost anything, *it must be limited by the categories which precede the broad or general term or phrase which appears at the end of the series*.⁶⁶ Otherwise, the preceding categories become meaningless through highly subjective interpretation as displayed by Lewis Carroll’s Humpty Dumpty who argued, “‘When *I* use a word,’ Humpty Dumpty said, in rather a scornful tone, ‘it means just what *I* choose it to mean—neither more nor less.’”⁶⁷ This is also the interpretative approach of totalitarian democracy.

Today, totalitarian democrats typically do not concede anything very easily—even when objective reason and comprehension of intelligible reality confound their positions and the justifications used to vindicate their

65. Universal Decl. of Human Rights, *supra* note 61. The ICCPR largely captures the concept of “or other status” in Articles 2 and 26. *See also* Int’l Covenant on Civil and Political Rights, *supra* note 62, at 173, 179.

66. BLACK’S LAW DICTIONARY 631 (10th ed. 2014).

67. *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 173 n.18 (1978) (quoting LEWIS CARROLL, *Through the Looking Glass*, in THE COMPLETE WORKS OF LEWIS CARROLL 196 (1939)).

positions. The objective reason and verifiable proof of which I speak, and advance as my counterpoint argument to the position of the totalitarian democrats, entails the scientific explanation of the biological and genetic distinction between male and female. The distinction is not only the traditional understanding of sexual identity but the only rationally objective explanation. The epistemological and ontological facts of the human person are connected.

Nonetheless, totalitarian democrats are prone to rely on the term “sex” and argue that this crucial word must include the concept of “sexual orientation” and the highly subjective concept of “gender identity,” notwithstanding what the objective, biological evidence accurately asserts about sexual distinction amongst people. The inherent problem with the totalitarian democrat’s approach is that it takes the term “sex”, which has a clear and universal understanding of meaning, either male or female, and supplies a highly subjective concept as presented by the Yogyakarta Principles idea of “gender identity.”

The Yogyakarta Principles themselves rely on the phrase “or other status” in several places to make the case that “or other status” includes the sexual orientation and gender identity position.⁶⁸ But the phrase “or other status” has and must continue to have limits to its meaning as formulated by the understandable distinctions of race, color, language, religion, political or other opinions, national and social origin, property, and birth in accordance with the *ejusdem generis* principle. Otherwise, a person could claim a violation of his or her “human rights” based on “or other status” because the person is, for example, discriminated against for being a serial criminal—serial criminality being a category of “or other status.”

Returning to the parallels between the UDHR and ICCPR, one finds the natural law’s objective intelligence comprehending intelligible reality at work. The fact that there are parallels between the UDHR and ICCPR

68.

The Yogyakarta Principles’ Preamble states:

Recalling that all human beings are born free and equal in dignity and rights, and that everyone is entitled to the enjoyment of human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status[.]

YOGYAKARTA PRINCIPLES, *supra* note 57, at 8 (emphasis added).

The introduction to these principles also state that:

[H]uman rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by experiences of other forms of violence, hatred, discrimination and exclusion, such as those based on race, age, religion, disability, or economic, social or other status.

Id. at 6 (emphasis added).

regarding the meaning of marriage and the family is not a coincidence. This correlation is due to the fact that the authentic, progressive development of public international law (the law of nations) has relied on the foundation of natural law reasoning. This leads to the formation of norms and juridical principles that are the product of human intelligence objectively comprehending the intelligible reality of the world and the universe. For international law to be an effective instrument of a just and lasting peace, a source of equitable security, and a tool of ordered liberty of persons, nations, and states, it must be based on objective reason. It must also be based on the truth of comprehensive factual disclosure so that its principles can be understood and accepted by diverse cultures and traditions that proliferate across the globe. This is the basis on which the peoples of the world, who come from diverse cultures, can freely and sensibly agree on the first principles upon which sound international law is based—at least up to the present moment.⁶⁹ It is also the means by which the common good can and must be maintained.

Further analysis and consideration of the strong and obvious parallels between the UDHR and ICCPR's understandings of marriage and family demonstrate the following points that are essential to any discussion and debate on human rights:

1. The juxtaposition of the words “men” and “women” in the UN-generated texts dealing with human rights is no coincidence. It takes a man and a woman, through the complementarity of the sexes (male and female) and through the transmission of genetic donation of each (by sperm and ovum), to generate a new and distinct human life. It is by reason of this complementary union why the family is deemed the fundamental unit of society. Any other grouping of persons is not the same kind of society as is the family founded by the marriage of a man and woman who pass off their respective genetic composition to the children who are the fruit of this union and who are the next generation of this family. Advocates for same-sex marriage maintain the same-sex union is the equal of the opposite-sex union when in fact it, is qualitatively different. It does not possess the sexual complementarity (a term frequently disparaged by totalitarian democrats) that is essential to marriage and is the necessary prerequisite for a family. In spite of the love and dedication in the same-sex union, it is a

69. I have a reason for adding the qualifier “up to the present moment.” Totalitarian democrats have found the international forums, such as the UN and international conferences, a profitable venue for pursuing their agendas. The author, who has served as a delegate of the Holy See to many UN-sponsored events since early 1997, has witnessed the efforts of totalitarian democrats to transform the understanding of sexual identity and difference other than the biological/genetic distinction of male and female so that the combination of the word “sex” and the phrase “or other status” can include whatever understandings that are proffered by highly subjective perspectives which defy logic, objective reason, and fact.

sterile relationship lacking the complementarity essential to the foundation of the basic unit of society.

2. It is the complementary union of male and female that is essential to found a family, which is the next generation of humans who will continue the complementary process of man and woman commencing yet another generation of human life. In spite of the subjectivist totalitarian democrat's claim that a same-sex union is the same or equal to that of the male and female, it is not. The same-sex union is *not* complementary notwithstanding the claims of totalitarian democrats;⁷⁰ moreover, without artificial means requiring other human and laboratory interventions, no future generation can be established. Therefore, no new family can be founded unless by adoption, but such a unit of persons would not be that which is established by the complementarity of the two sexes.

3. Regarding equality claims, the term equality gets used frequently by the totalitarian democrat. At a superficial level, most people respond energetically and positively to claims based on the equality argument because, in fundamental ways, all people share an equality that is in their nature. This however, does not mean that there must be distinctions that justly and fairly demonstrate how and why people are *not* equal in all regards. For example, while many people enjoy music—be it Mozart or the Beatles—not all people are the equal of Mozart or the Beatles who also liked music. While many people love baseball, they are not the equal of Babe Ruth who also loved baseball. With regard to the distinction between the sexes, same-sex couples cannot be the equal of heterosexual couples in all regards, especially when it comes to the foundation of a family that is the fruit of the complementary sexual union.

By way of illustrating this last point, let us consider this hypothetical: the people of earth discover two distant planets that are capable of sustaining human existence. To planet A, opposite-sex couples are sent to colonize the planet; to planet B, same-sex couples are missioned to colonize that planet. Neither planet's colonists have the capability of using assisted reproductive technologies, so in that regard the two groups are equal. However, in a century's time, one must ask the inexorable question: will both planets still have human inhabitants? It is clear that planet A, which was colonized by the opposite-sex couples, will still have a human population; however, it is doubtful that planet B will still have any human inhabitants. So, eventually the equality claim relied upon by totalitarian

70. An important illustration of the redefinition of the term "complementarity" can be seen in two of the recently published volumes edited by Hinze, Hornbeck, and Norko. *See* 1 MORE THAN A MONOLOGUE: SEXUAL DIVERSITY AND THE CATHOLIC CHURCH: VOICES OF OUR TIME (Christine Firer Hinze & J. Patrick Hornbeck II eds., 2014); 2 MORE THAN A MONOLOGUE: SEXUAL DIVERSITY AND THE CATHOLIC CHURCH: INQUIRY, THOUGHT, AND EXPRESSION (J. Patrick Hornbeck II & Michael A. Norko eds., 2014).

democrats must fail.

4. Objective reason, also known as common sense, assists virtually anyone to conclude that there are substantive distinctions between the unions of one man and one woman and the confederacy of two persons of the same sex. In the first union, the complementary union of male and female, while offering pleasure, is open to the transmission of new human life. While the same-sex union may also offer pleasure, it is incapable of being open to the transmission of new human life.

5. There is growing evidence that totalitarian democrats have an inability or lack of desire to debate important issues, such as the meaning of marriage and family and the subsidiary issue that relates to both of these involving the nature, including sexual nature, of the human person. In her forward to the book *The Meaning of Marriage*, the late Jean Bethke Elshtain commented on the fact that “the topic has entered our public life at a time when the terms of our public discourse seem poorly equipped to engage in a serious and nuanced discussion concerning the nature and purpose of marriage in American (or any other) society.”⁷¹ Her fundamental point is that rights-talk, without a careful consideration of what rights are and are not, has “triumphed.”⁷² She concludes her remarks by recalling an incident where, at an academic function of accomplished and well-educated persons, one speaker expressed doubts about same-sex marriage, a topic which in his mind required debate. To the astonishment of some, the speaker “was booed by this respectable and mannered assembly. The hoots echoed across the audience.”⁷³ I had a similar experience at the UN when I was on assignment to the Permanent Observer of the Holy See during the first few years of the twenty-first century. The subject under debate was the issue of stereotyping or categorizing people. While there was merit in what some of the speakers were saying about certain problems associated with stereotyping people, it was clear that one important objective of this meeting was to conclude that *any* categorization of persons, even along sexual/genetic lines, was a problem necessitating condemnation. I suggested to the assembly that some categories are or may be essential because they reflect human nature; in this case, a woman is a mother, and a man is a father. At this point in my intervention, NGOs populating the spectators’ gallery began booing and causing uproar during the delivery of my intervention. Until I raised a point of order, the person chairing the meeting did nothing to call the house to order so that I could finish my intervention. I then realized that I was in the midst of totalitarian democrats.

71. JEAN BETHKE ELSHTAIN, *Forward to Witherspoon Inst.*, THE MEANING OF MARRIAGE: FAMILY, STATE, MARKET, & MORALS ix (Robert P. George & Jean Bethke Elshtain, eds., 2006).

72. *Id.* at x.

73. *Id.* at xviii.

These two illustrations, which have most likely been repeated elsewhere, reflect what Mary Ann Glendon has termed the absoluteness of rights rhetoric at the expense of responsibility.⁷⁴ While claiming to want dialogue and debate, totalitarian democrats want to engage in no such thing. Yet debate and disagreement are the substance of authentic democracy. There is no question that with different views, there will be conflict of opinion. It is this disagreement, however, that keeps citizens and office holders honest as long as the citizen and office holder constantly tests the ground upon which he or she stands. To do this, several ingredients are needed: virtue, good will, civility, wisdom, prudence, and seeking that which is good, the common good. Regarding civility and dialogue as John Courtney Murray noted some years earlier, “Civility dies with the death of dialogue.”⁷⁵ Moreover, disagreement is not synonymous with incivility. To the contrary, disagreement is founded on the ingredients I just mentioned, and such disagreement is a sign of respect to the other person with whom one disagrees. I wish, in my debate, to learn more about you and why you say the things that you do. To cut off debate, then, is the real sign of incivility, and totalitarian democrats tend to favor the suppressing of debate. Father Murray’s incisive remark has particular application when the methods of contemporary totalitarian democrats are under consideration. But all of my discussion so far raises one further issue that I need to discuss before closing.

Here I now suggest that this requisite assessment exists in the natural law contribution and the role in human rights discourse. There is a need to explain why the natural law must have a say as fundamental principles of international and domestic law dealing with authentic human rights are being transformed by totalitarian democracy. First of all, there is the need for the natural law perspective to engage people in good faith through reasoned and fair debate. Second, there is the further requisite to speak and teach the truth that is essential to the protection of the human person and the appurtenant common good regardless of the attacks against persons and positions that will occur. If this two-fold approach is not followed, there is the real and present danger that indisputable human rights will not be protected but eviscerated if totalitarian democracy prevails.

Saint John Paul II noted on more than one occasion that human dignity is due to everyone not because of considerations due to the person’s usefulness, intelligence, strength, beauty, or health but because of the fact that the person is a person—i.e., that the person is human and bears the

74. MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* 44–46 (1991)

75. JOHN COURTNEY MURRAY, S.J., *WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION* 14 (1960).

image of God.⁷⁶ John Paul was also a philosopher who used human reason critically and objectively, and his remarks about human dignity reflect those of another philosopher, Jacques Maritain, who chaired a group of philosophers and social scientists that advised the UDHR's drafting committee. Long before the earliest drafts of the UDHR were underway (1940s), Maritain said this about human dignity: "The expression [human dignity] means nothing if it does not signify that by virtue of the natural law, the human person has the right to be respected, is the subject of rights, possesses rights. There are things which are owed to man because of the very fact that he is man."⁷⁷

Knowing that artificial claims such as those based on the right to equality, are often used by totalitarian democrats to bolster their claims and causes, Maritain's words present an objective definition of "human equality" pure and simple. Maritain's point does not mean that each of us is entitled to what he or she wants (for that is not the *suum cuique tribuere*, to each his or her due⁷⁸), because that would be an exercise of subjectivity that emphasizes a desire controlled by an unregulated will detached from the operation of objective human intelligence. It does mean that we, each person in relation to all persons, are entitled to certain things based on our membership in the human family that are vital to the nature of the human person. The *suum cuique tribuere*⁷⁹, an ancient principle of justice, liberally seasons the elements of the UDHR and ICCPR that reflect more accurately universal claims about human dignity. It is a critical concept which is conspicuous by its absence in the thoughts of the totalitarian democrat insofar as his words and deeds reveal the content of his thinking.

VI. CONCLUSION

Authentic human rights are not a gift or a grant of the state or any other human institution. They are given to us by our Creator and reside in our complex, but comprehensible human nature, and their presence in the nature of the human person is self-evident. The foundation of authentic rights is based not on what the person wants but on what the person is. The reality of the self-evident truths about the rights of the human person is known by the exercise of objective intelligence comprehending intelligible reality. Indeed, the nature of the family and the institution of marriage are a

76. See, e.g., Pope John Paul II, *Evangelium Vitae*, *supra* note 3 at No. 99.. The Pope concluded his encyclical with this further thought: "There can be no true democracy without a recognition of every person's dignity and without respect to his or her rights." *Id.* at No. 101. Pope John Paul II, *Centesimus Annus*, *supra* note 9 No. 46., "As history demonstrates, a democracy without values easily turns into an open or thinly disguised totalitarianism."

77. JACQUES MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* 65 (1943)..

78. BLACK'S LAW DICTIONARY 1676 (10th ed. 2014).

79. *Id.*

part of the deposit of self-evident truths about the human person, which anyone can know, appreciate, and experience. The matter of self-evidence is in the exercise of natural law reasoning that has complemented the work of the progressive development of international law and the ordered liberty which it promotes. It is a momentous disappointment that this time-honored method of developing juridical, social, political, economic, and moral norms that promote the common good is evident in the campaign established and promoted by totalitarian democrats.

Nevertheless, it is up to people of good will not to be dissuaded from participating in and engaging all members of civil society who are participants in the international order to ensure that the self-evident truths at the core of human rights are not held hostage by totalitarian democracy. It is this necessary resolve which ensures that the noble ideas and ideals contained in the juridical instruments and declarations that identify and protect fundamental rights given by our universal Creator, are not forgotten. Since much is at stake in the present age about the nature and meaning of authentic human rights and the legal regimes that are entrusted to advance them, may I encourage that people of good will abide by an important passage of scripture that appears in both Testaments of the sacred scriptures quite frequently: Be not afraid!⁸⁰ Be not afraid of knowing and proclaiming the truths about the human person that are evident. Be not afraid of challenging the empty promises of totalitarian democracy that confound the self-evident truths surrounding the essence of the human person. If people of good will follow this course, the totalitarian democrats will not have an easy task before them. But if people of good will do nothing, the totalitarian democrats will have their objective in sight, and the inexorable product that will follow is disorder and then tyranny masquerading as freedom, democracy, and self-determination.

80. See, e.g., Joshua 1:9 in KING JAMES BIBLE 290 (Project Gutenberg, 2011).