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NATURAL LAW AND THE RIGHTS OF THE FAMILY

Robert John Araujo, S.J.¹

INTRODUCTION

This paper will examine, in the context of fundamental and universal human rights, the nature and rights of the family in the twenty-first century and beyond. In doing so, I must take stock of the modern history of the human rights of the family. By considering the basic norms of generally accepted and essential human rights regimes, especially those from the Universal Declaration of Human Rights (UDHR)² and corresponding provisions from the International Covenant on Civil and Political Rights (ICCPR)³ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR),⁴ this paper will investigate the claim that the family, the basic unit of society, consists of the marriage of one man and one woman for whom the proper vocation is, through commitment and love, to have and raise children and form a family. The parents are the first and primary educators of the succeeding generation. The paper will demonstrate that this claim represents the authentic understanding of what constitutes a family and family life. Moreover, this position is supported by a natural law understanding that adopts principles of right reason founded on objectivity rather than subjectivity. It is my plan to demonstrate that the international texts which have emerged from the functions of the United Nations rely on the vital element of the natural law called right reason—the very reason that has led men and women over the centuries and across the planet to acknowledge self-evident truths about the human person and human nature.

To illustrate further this last claim, the author will rely on the 1983 Charter of the Rights of the Family (CRF) promulgated by the Holy See on October 22 of that year. Reliance on this insightful text will demonstrate that the claims of this paper reflect the natural-law principle that although

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² Adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), *available at* <http://www.un.org/en/documents/udhr/index.shtml>

³ 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, *available at* <http://www1.umn.edu/humanrts/instatee/b3ccpr.htm>

⁴ 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, *available at* <http://www.un-documents.net/icescr.htm>

human rights are typically considered individual in their nature, they possess an inextricable social dimension “which finds an innate and vital expression in the family.”⁵ It is with and through this common social dimension that persons are capable of recognizing and acknowledging fundamental, universal truths about the world and the human person.

An essential point that must be made here is this: the shared principles of the UDHR, the ICCPR, the ICESCR, and the CRF may, at first, appear to be coincidence. After all, there was great diversity of backgrounds of those who came together to draft these documents. But is it simply coincidence that explains the common themes and the mutual provisions that I shall subsequently identify and comment on in this brief paper? It is my position that the shared principles are not coincidental; rather, they are common and mutual because, regardless of the differences of authorship and the diversity of the authors’ backgrounds, these individuals understood the role of the natural law and its reasoning process; their understanding enabled them to agree on fundamental principles, and so to transcend parochial interests.⁶

While recognizing that certain other notions about the nature of the family have surfaced in recent years (particularly within the context of advocacy for same-sex marriage and the relationships developed by these associations), this paper will demonstrate that these other notions about the nature of the family are inconsistent with the concept of the family as understood by international juridical principles and the natural law. Viewed from these perspectives, it is submitted that marriage under the law of nations can only be based on the complementary union of one man and one woman that is freely contracted and publicly expressed, which has the potential for transmitting human life and is the subject of authentic human rights norms. This point needs elaboration in the exploration of certain first principles that

⁵ Charter of the Rights of the Family, Preamble, Paragraph A, *available at* http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html

⁶ In 1947, the philosopher Jacques Maritain participated in a symposium of experts from diverse countries and backgrounds to assist the committee drafting the UDHR. The views submitted were published in a volume entitled *HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS* (1949). In his introduction, Maritain stated that “where human rights were being discussed, someone expressed astonishment that certain champions of violently opposed ideologies had agreed on a list of those rights. ‘Yes,’ they said, ‘we agree about the rights *but on the condition that no one asks us why.*’” *Id.*, at 9 (italics in the original). I suggest that notwithstanding their diversity of political and other opinions, these experts could agree on the rights identified by the UDHR because they were, at least for a time, free of the constraints that can be imposed by cultures and politics and could therefore formulate opinions based on objective reason that transcends these constraints.

undergird the international texts, the CRF, and the natural law. To assist the reader in identifying these principles, I have prepared an appendix to this paper which lists the principles and where they appear in the UDHR, the ICCPR, the ICESCR, and the CRF.

Here is the road map that will be followed in the elaboration of these points: Part I will address first principles about the family contained in the natural law and the Charter of the Rights of the Family; Part II will consider the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights; Part III will explore the role of the natural law in these international texts insofar as they pertain to the family; Part IV will provide a more detailed exploration of the Charter of the Rights of the Family; and Part V will offer a conclusion.

I. FIRST PRINCIPLES

The family is a subject of investigation that has been the focus of much attention throughout human history, but in the context of modern developments in human rights it has been rightly praised as the fundamental unit of society. Why? First, the family, as constituted and founded by a husband and wife and their children, has been around since the beginning of recorded human history. But this recognition has not arrested present-day attacks or hostility or suggestions that alternatives to this understanding of the fundamental unit of society now exist. In order to understand as best we can why the family deserves the utmost protection of the larger society, it is vital to comprehend what constitutes the family as this larger society's fundamental unit—in short, what is its authentic essence. Various other groups may be called “family,” but as will be demonstrated, they do not meet the constitutive norms. The fundamental reason for this is that, without the union of a man and a woman and the procreation that results, the future of the human race would stand in jeopardy of extinction—hence, this basic cell of society is vital to human flourishing in individual and social contexts.

First and foremost, the family is based on marriage, that intimate union of life in complementarity between one man and one woman, and this union is constituted in the freely contracted and publicly expressed indissoluble bond of matrimony that is open to the transmission of human life.⁷ Marriage is the natural institution to which the mission of transmitting new human life and the primary education of the children who are the issue of this transmission

⁷ CRF, Preamble, Paragraph B.

are entrusted, notwithstanding the capacity of present-day medical science to produce artificially new human life through various methods of artificial reproduction. As a consequence, the family, as a natural society, exists prior to the state or any other community,⁸ and it possesses inherent rights which are inalienable owing to its foundational nature.

The family is more than a mere juridical, social, and economic unit. It is a community based on love and solidarity, which is uniquely suited to teach and transmit cultural, ethical, social, spiritual, and religious values essential to the development and well-being of its own members and of the larger society beyond it. When the family prospers, so does the society surrounding and beyond it. When it does not, society becomes all the poorer. The family is also the place where human history is first recorded and transmitted to different generations, for it is the place where different generations come together and help one another grow in human wisdom—a wisdom of the past that strengthens in the present and that grows in the future. It is the milieu in which its members harmonize the rights of individuals with the demands and obligations of social life. The family is linked to the larger society by vital and organic bonds—one of the most fundamental being the complementary function that constitutes the simultaneous defense and advancement of the good of every person and of humanity as a whole.

The welfare of society is directly related to the welfare of the family. Consequently, the state and international organizations have a duty to protect the family through political, economic, social, and juridical measures, which aim at consolidating the unity and stability of the family so that it can exercise its specific functions. The stability of the family contributes to the stability of the supporting society and its culture. Unfortunately, throughout human history, the rights, the fundamental needs, and the well-being and values of the family have often been ignored and, on occasion, sacrificed—as they were in the Germany of National Socialism. The family has even been undermined by laws, institutions, and socio-economic programs not only in totalitarian states of the past but in modern democracies of the present. By way of example, many families today have been forced to live in poverty, which prevents them from carrying out their role with dignity for both the family and its members. Moreover, efforts of states and international organizations to intrude into family issues and relations, including the intimate decisions of family members with one another, have not disappeared. With these general points in mind, some particular details can be stated to elaborate the foregoing.

⁸ CRF, Preamble, Paragraph D.

Those couples who wish to marry and establish a family have the right to expect from society the moral, educational, social, and economic conditions that will enable them to exercise their right to marry with maturity and responsibility.⁹ The institutional value of marriage should be upheld by the public authorities; the situation of non-married couples (be they heterosexual or homosexual) must not be placed on the same level as marriage duly contracted. The husband and wife, in their natural complementarity, enjoy the same dignity and equal fundamental rights regarding the marriage.¹⁰

The spouses have the inalienable right to found a family and to decide on the spacing of births and the number of children to be born, taking into full consideration their duties towards themselves, their children already born, the family, and society, in a just hierarchy of values and in accordance with the objective moral order which excludes recourse to artificial contraception, sterilization, and abortion.¹¹ The activities of any public authority or private organization that attempt in any way to limit the freedom of couples in deciding about their children constitute a grave offense against human dignity and justice.¹²

New human life, a product of marriage, must be respected and protected absolutely from the moment of conception.¹³ Children, both before and after birth, have the right to special protection and assistance, as do their mothers during pregnancy and for a reasonable period of time after childbirth.¹⁴ Orphans or children who are deprived of the assistance of their parents or guardians must receive particular protection on the part of society. The state, with regard to foster care or adoption, must provide legislation that assists suitable families to welcome into their homes children who are in need of permanent or temporary care.¹⁵ Following these principles, it would be logical to argue that preference should be given in adoption and foster care situations in which children will be placed with a family headed by a mother and father who are married to one another.

Because they have conferred life on their children, parents have the original, primary, and inalienable right to educate them; hence, they must be acknowledged as the first and foremost educators of their children. Parents have the right to educate their children in conformity with their moral and

⁹ CRF, Article 1(b).

¹⁰ CRF, Article 2(c).

¹¹ CRF, Article 3.

¹² CRF, Article 3(a).

¹³ CRF, Article 4.

¹⁴ CRF, Article 4(d).

¹⁵ CRF, Article 4(f).

religious convictions, taking into account the cultural traditions of the family that favor the good and the dignity of the child. They should also receive from society the necessary aid and assistance to perform their educational role properly.

To examine the position supported by these principles, let us turn to the international juridical norms addressing marriage and the family and test these principles for their consistency and compatibility with international norms. We will discover that the first principles just presented are reflected in the modern day consensus of the international community and the order vital to its sustenance.

II. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND RELATED TEXTS

As mentioned in the introduction, it would be specious to address the nature, meaning, and constitution of a family within the context of international society without reference to the Universal Declaration of Human Rights (UDHR). Hence, this part of the investigation will consider the relevant provisions of the UDHR, the ICCPR, and the ICESCR. Before beginning an analytic overview of its provisions relevant to the issues addressed in this paper, several fundamental points must be kept in mind about the UDHR dealing with the family, its nature, and its function in society. The first is that this “bill of rights” was a vigorous response to the abuses perpetrated by National Socialism in Germany prior to and during the Second World War. Some of the abuses existed in National Socialism’s totalitarian and positivist attempts to transform radically the institutions of marriage and the family so as to make them into instruments of the state rather than respecting them as ends in themselves. The UDHR reflects a major effort in modern times to counter dictatorial and totalitarian trends—be they of the past, the present, or the future—with the recognition of inalienable and non-negotiable rights that belong to the human person and are not functions or creations of the state or some other political organ.

The essence of these rights emerges from the fact that, contrary to some flawed views such as those of National Socialism and also of political movements of the present day, these rights are not created by the state but exist because of the universal nature and essence of each and every member of the human family. As the Preamble to the UDHR asserts, the rights addressed derive from the acknowledgment of “the inherent dignity and of the equal and inalienable rights of all members of the human family.” The source of these rights is not the state or some political party or international

organization; rather, the foundation is found in the nature and essence of the human person and the natural dignity of the person. As Jacques Maritain once said prior to the conclusion of the Second World War about the dignity of the human person, “there are things which are owed to man because of the very fact that he is man.”¹⁶

Prior to launching into consideration of the relevant provisions of the UDHR, the ICCPR, and the ICESCR, a brief study of the origins and underlying intention of the drafters of the UDHR is in order. In 1999, Professor Johannes Morsink provided a great service to the international community through his investigation of the *travaux préparatoires* (working papers) of the UDHR, which explore the genesis and underlying intentions and objectives of the UDHR’s substance. The UDHR contains three explicit references to the family other than the Preamble’s reference to the “human family.” I share Professor Morsink’s assessment that the drafters of the UDHR were very keen “on protecting this particular community”—i.e., the family.¹⁷

Of special interest to this paper are the provisions of Article 16.¹⁸ The first element of the UDHR meriting attention is Article 16(1), which states that, “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. They are entitled to equal rights as to marriage, during marriage and at its dissolution.” The juxtaposition of the words “men” and “women” has crucial significance regarding the composition of the family that is addressed by the UDHR. Rather than choosing other formulations such as “everyone,” which appears throughout the UDHR,¹⁹ the drafters specifically chose the formulation “men

¹⁶ JACQUES MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* 65 (1943).

¹⁷ JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT* 252 (1999) (hereafter MORSINK).

¹⁸ Article 16 states: “(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. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

¹⁹ For example, Article 2, “Everyone is entitled to all the rights and freedoms set forth in this Declaration”; Article 3, “Everyone has the right to life, liberty, and security of person”; Article 6, “Everyone has the right to recognition everywhere as a person before the law”; Article 8, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted”; Article 10, “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal”; Article 11(1), “Everyone charged with a penal offense has the right to be presumed innocent until proved guilty”; furthermore, Articles 12, 13, 14, 15, 17, 18,

and women.” After all, it is a man and a woman who become one flesh and through their biological and marital unions expand the family by begetting children. Article 16(3) addresses the issue of the family as introduced in Article 16(1) and states that it “is the natural and fundamental group unit of society and is entitled to protection by society and the State.”²⁰ While this may appear logically obvious to some, it is important to take stock of the fact that this natural and fundamental group preceded the existence of the state by centuries if not millennia. The family also precedes other societies. It is, in human history, the proto-society.

Although Article 16 on its face does not explicitly state that it is the union of a man and a woman that forms the marriage and founds a family, this is implicit in the language, structure, and logic of the UDHR. Article 16 was drafted long before homosexual unions or heterosexual partnerships were proposed as marriage substitutes or alternatives and before these subsequent groupings were discussed in the context of human rights law. Consequently, there could only be one way of founding a family given the language and underlying intention of Article 16, and that is through the union of a man and a woman who come together in marriage. Marriage may be considered many things, but for purposes of international law it is the complement of the personal and social/state purposes that I have previously identified. The desire or attraction of two persons of the same sex (regardless of whether either or both are “transgendered”) cannot fulfill the personal and social/state goals of marriage that have been previously identified and discussed.²¹

Article 23.2 of the ICCPR reiterates these points, stating, “The right of men and women of marriageable age to marry and to found a family shall be

19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 all contain at least one reference to “everyone” enjoying the right or rights specified.

²⁰ Professor Mary Ann Glendon has stated that, “Article 16 ... is a blend of old and new ideas with varying genealogies. It went far beyond most national legislation of the day with its affirmation of the principle of equal rights between the spouses both during marriage and at its dissolution. The idea that the family ‘is entitled to protection by society and the state,’ on the other hand, was familiar in many countries as legislative policy, had already appeared in several constitutions, and would shortly appear in many others.” MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 182 (2001) (hereafter GLENDON.).

²¹ Morsink notes that there was a Uruguayan proposal that would have protected the right to found a family “on the part of those whose sexual inclination is not heterosexual”; this was not incorporated, and, as Morsink notes, even if it had been, no injustice would have been done “to the anthropological data which tells us that over the long haul the monogamous, heterosexual marriage is the best device for a society’s continued existence.” MORSINK, *supra*, note 17, at 256.

recognized.” The first subparagraph of this same article restates the protection to be accorded the family by stating, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Article 10.1 of the ICESCR parallels these same points in somewhat different language by stating in pertinent part, “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society. ... Marriage must be entered into with the free consent of the intending spouses.”

Within the UDHR, the Article 23.3 and 25 references to “the family” focus concern on the economic welfare and protection not only of individuals but also the families of which they are constitutive members. As Morsink points out, the economic protection of the family addressed in Article 23 was eventually largely supported, even though it was opposed by the United States during the negotiations.²²

Advocates of same-sex marriages may suggest that the construction of these normative and juridical provisions as I have presented them might, under contemporary thinking, be unlawful on two grounds. The first would be on the grounds of discrimination; the second would be based on their failure to provide or promote equal protection or other equality claims under the UDHR. But not all discrimination in the context of marriage is unlawful. In the present age, we often hear claims made about “inclusiveness” and “human rights” that are deemed essential by some advocates to make each person “equal” with all others notwithstanding the diversity that differentiates them, often in some significant ways.²³ This is patent in many arguments advanced in favor of same-sex marriage. The justifications offered contravene the facts surrounding human nature and the objective reasoning that enables us to understand the similarities and differences that exist among people.

Here we need to take stock of some fundamental questions regarding equality claims. Are we equal in possessing the talents and skills that enable us to pursue the many activities found within human existence? Can the lover of music assert that he or she is the equal of Wolfgang Amadeus Mozart when it comes to composing music, knowing their mutual love of music? In truth, some of us may have to expend a great effort to attain what it might take another person little if any exertion, and if this be the case, can it be said that we are equal in all respects? The answer is or should be manifest regarding any claim made about equality and the disagreement regarding the claim that may ensue: the meaning of equality is restrained by certain limits

²² *Id.* at 184–85.

²³ See, e.g., EVA BREMS, *HUMAN RIGHTS: UNIVERSALITY AND DIVERSITY* (2001); MICHAEL J. PERRY, *THE IDEA OF HUMAN RIGHTS: FOUR INQUIRIES* (1998).

that can be rationally and factually understood. The quest for marriage equality for same-sex couples is unsustainable because it removes from consideration two foundational pillars essential to equality: the first concerns the importance of objective facts, and the second raises the vital role of right reason and logic in assessing the extent of similarities and distinctions found among people.²⁴ When reason and fact are pushed aside, the law becomes a tool of pure positivism that grants a license to make “equal” what reason and reality demonstrate and conclude is not.²⁵ Knowing that I am entering a topic that bears great sensitivity among many people, I want to express clearly that it is not my intention to insult, demean, or marginalize anyone and the dignity that inheres to everyone.²⁶ To disagree with someone with different views on any subject is not to insult, to demean, or to marginalize those with whom one disagrees. The nature of disagreement is, rather, to enter a debate with reasoned analysis and objective commentary supported by factual analyses.

Thus, my objective is to demonstrate that the consideration of claims of equality in the context of marriage requires a clear analysis of the nature of marriage. Declaring something to be equal with another thing does not make it so. By way of example of this point, let us consider the following

²⁴ Professor Robert George gives focus to the equality claim and the biological issues when he states, “If, in other words, the marital acts of spouses consummate and actualize marriage as a one-flesh communion and serve thereby as the biological matrix of the relationship of marriage at all its levels, the embodiment in law and policy of an understanding of marriage at all its levels, then the embodiment in law and policy of an understanding of marriage as inherently heterosexual denies no one fundamental aspects of equality.” Robert P. George, “Neutrality, Equality, and ‘Same-Sex Marriage,’” in *MARRIAGE AND SAME-SEX UNIONS: A DEBATE* 129, edited by Lynn D. Wardle, Mark Strasser, William C. Duncan, & David Orgon Coolidge (2001).

²⁵ Heinrich Rommen noted that “Positivism has only one criterion for law: the will of the sovereign formulated in accordance with the legislative process prescribed by the constitution.” HEINRICH A. ROMMEN, *THE NATURAL LAW—A STUDY IN LEGAL AND SOCIAL HISTORY AND PHILOSOPHY* 122 (Thomas P. Hanley, trans., 1998) (hereafter ROMMEN).

²⁶ See, e.g., Charles E. Mauney, Jr., *Landmark Decision or Limited Precedent: Does Lawrence v. Texas Require Recognition of a Fundamental Right to Same-Sex Marriage?*, 35 CUMB. L. REV. 147, 157 (2005), wherein the author states, “Although the Massachusetts high court based its decision solely on the Massachusetts state constitution, the *Goodridge* decision cited *Lawrence* in its opening paragraphs. Specifically, the court cited *Lawrence* as ‘reaffirm(ing) that the Constitution prohibits a State from wielding its formidable power to regulate conduct in a manner that demeans basic human dignity, even though that statutory discrimination may enjoy broad public support.’ Thus, the court discounted any notion of popular support for laws restricting marriage to opposite-sex couples.”

hypothetical: let us assume that two islands which have not yet been inhabited by humans are to be colonized: on Island Alpha, heterosexual couples only are assigned; on Island Beta, only homosexuals. In one hundred years, will both islands be populated? I suggest that Island Alpha will be; but Island Beta will not. Why? The basic answer is to be found in the biological complementarity of the heterosexual couple necessary for procreation that is absent in same-sex couple.

Discrimination may be legally justified on the basis of degree of relation, age considerations, and concerns about public and private health. Such discrimination does not violate equal protection under international law. By way of illustrating this last point, Article 4.2 of the ICCPR does not permit derogation of certain rights in times of public emergency involving: the right to life (Article 6); the right to be free from torture or cruel, inhuman, or degrading treatment or punishment (Article 7); the right not to be enslaved or subjected to certain kinds of servitude (Article 8.1 and 8.2); freedom from imprisonment for debt (Article 11); freedom from prosecution under *ex post facto* laws (Article 15); the right to be recognized as a person before the law (Article 16); and, the right to freedom of thought, conscience, and religion (Article 18).²⁷ However, it would appear permissible that other rights may be derogated under such circumstances as identified in Article 4.1. Consequently, with such a hierarchy of rights in the context of those which may be derogated and those which may not would support the conclusion that there exists a lawful inequality amongst them.

It may be argued that refusal to recognize same-sex marriage constitutes discrimination on the basis of “other status” as mentioned in Article 2.1 and Article 26 of the ICCPR and Article 2 of the UDHR. First, the phrase “other status” applies to individuals, not to associations or groups of persons—such as same-sex couples. While states may not discriminate against an individual solely on the basis that he or she is homosexual, there is no prohibition against the state’s forbidding or regulating conduct or actions that emerge from this status. Therefore, the state may regulate homosexual conduct by prohibiting same-sex marriages.

These prohibitions must be interpreted as precluding only inappropriate or irrational distinctions. They cannot reasonably be read as prohibiting states from making any distinctions at all. If they were, states could not incarcerate

²⁷ Since religion fits into the category of rights that may not be derogated, it could be logically argued that forcing a religious community to accept same-sex marriages against its beliefs would constitute a violation of international human rights law; i.e., imposition of same-sex marriages on religious communities would be a violation of the non-derogation clause of Article 4.2 (Article 18—religion).

people for committing crimes or require licenses to drive cars, be electricians, perform brain surgery, or practice law. Distinctions and permissible discrimination are a part of life and many are lawful when the distinction or discrimination is based on objective reason and fact.

This problematic phrase “other status” must be properly construed under accepted rubrics of legal construction or interpretation. One rubric that would provide immense assistance is the canon of construction, *ejusdem generis*. The essence of this canon is that when a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed. The example used in Black’s Law Dictionary (1999) to illustrate this canon is the phrase “horses, cattle, sheep, pigs, goats, or any other barnyard animal.” The general language, “or any other barnyard animal,” despite its seeming breadth, would probably be held to include only four-legged, hooved mammals (and thus would exclude chickens, geese, and ducks). This prudent rubric for legal interpretation would provide for restrictive rather than expansive definition of “other status.” Otherwise “other status” would include anything, including the worst anti-social behavior that would be criminal in any recognized legal system, municipal or international. For the phrase “or other status” to make sense, it must be read coherently with all the provisions, as well as their underlying intent and purposes.

Let us now turn to an examination of the natural law and the insights it provides regarding the nature and meaning of the family.

III. THE ROLE OF THE NATURAL LAW IN THE INTERNATIONAL TEXTS

How could diverse people agree on the fundamental principles about the family that are endorsed in the texts that I have discussed? The answer to this and related questions resides in the natural law. But what is the natural law? As Heinrich Rommen noted in his legendary work on the natural law, “the doctrine of the natural law is as old as philosophy.”²⁸ It is not a substantive body of law that is tied to a particular legal culture or nation such as the human law known as positive law (i.e., posited by the lawmaker). The natural law, as a method of reasoning that relies on objective rather than subjective investigation, can and often does inform the positive law by reflecting some basic and universal truth about the human person, human nature, and the

²⁸ ROMMEN, *supra*, note 25, at 3.

societies in which the human person lives.²⁹ It is an exercise of the intellect that leads or guides the will. Rommen captured the essence of natural law when he said that it “[i]s the consequence of the doctrines of the priority of the intellect over the will (law is reason) in both God and man, of the knowability of the essences of things and their essential order, their metaphysical being, and the ordered hierarchy of values. Positivism, on the other hand, is the consequence of the doctrine of the primacy of the will with respect to the intellect in both theology and human psychology.”³⁰

Article 16 of the UDHR, as previously noted, acknowledges the rights of men and women to marry freely and found a family, which is the natural and fundamental unit of society. Why? The answer is again found in the objective reasoning that courses through the methodology of the natural law: the family is established on the principle of a marriage, which is the intimate union of two lives—the complementary union of a man and a woman. René Holaind, in his 1899 lectures on natural law and legal practice delivered at the Georgetown University Law School said about marriage and its definition: “Marriage is the union of one man and of one woman in a community of life, hallowed by conjugal love, formed by the united consent of both parties to last until death part them, ordained by nature for the continuance and increase of the human race and the complement of both sexes.”³¹ This is an insightful observation made almost a half century before the promulgation of the UDHR. It is reflected in human biology: the physical structures of men and women are not identical but different and yet harmonizing; this harmonized difference is the basis for the transmission of life.

Another important principle relevant to the composition and nature of the family is the realization—and recognition—of the fact that the family rather than the state is the fundamental unit of society. It is the first place where human beings come together in society; it is the first place where human beings are subject to juridical, social, and economic life; it is the first place where the newly born are introduced to values and norms regarding the interaction between one person and another. It is also the primary institution where persons of different generations come together throughout their lives in solidarity with one another—the young providing certain things from their energy and zeal to their elders; the elders providing other things from the

²⁹ Readers interested in my understanding of the natural law may wish to look at my essay, R. J. Araujo, *International Law Clients: The Wisdom of Natural Law*, 28 *FORD. URB. L. J.* 1751 (2000–2001).

³⁰ ROMMEN, *supra*, note 25, at 36.

³¹ RENÉ I. HOLAIND, S.J., *NATURAL LAW AND LEGAL PRACTICE: LECTURES DELIVERED AT THE LAW SCHOOL OF GEORGETOWN UNIVERSITY* 184 (1899).

wisdom of experience to the young. Common sense and right reason demonstrate this to be so as one considers the reality of this human experience and the relationship from which it comes. These relationships are intensified by the organic bonds that emerge from the growth of a family unit—either genetically or through adoption.

The right reason of the natural law, moreover, justifies the state or the civil authorities to provide special protections to the family via political, economic, social, and juridical modalities. These modalities not only benefit the family, they benefit the society at large by enabling the basic cell of civilization to ensure that each family's members are also productive citizens who are not only served by society but, in turn, serve society. The well-cared-for family necessarily underpins a well-cared-for society. As Gratian, the famous medieval canonist, noted about the natural law: it "is common to all nations because it exists everywhere through natural instinct, not because of any enactment."³² In his subsequent commentary, this distinguished jurist, who made major contributions to the evolution of legal thought and reasoning, indicated that the natural quality of law arises from "an instinct of nature proceeding from reason."³³ The role of reason—right reason—continues to be a major factor in the natural law and the theories that follow and promote it. Reason and cognitive function have exercised crucial functions in the development of the law. In this context we should recall the point made by Aquinas that the law can be understood as "an ordinance of reason for the common good, made by him who has care of the community."³⁴

Here I should like to reconsider the elements of the UDHR that address the family and explicate them in the context of natural law reasoning. Section 16(1) of the UDHR asserts that regardless of their gender persons of "full age" (implying the age of reason) without regard to race,³⁵ nationality, or

³² GRATIAN, *THE TREATISE ON THE LAWS (DECRETUM DD. 1–20)* (Augustine Thompson, O.P., trans.) WITH ORDINARY GLOSS 1140 (James Gordley, trans.), Distinction 1, C.7, § 2 (1993).

³³ *Id.*, at C.7, § 2.

³⁴ 1–2 THOMAS AQUINAS, *SUMMA THEOLOGICA* q. 90, a. 4 (vol. 1, p. 995, of the Fathers of the English Dominican Province trans., Benziger Brothers, 1947).

³⁵ Compare *Loving v. Virginia*, 388 U.S. 1 (1967). This decision does not have the application to same-sex relationships that advocates for same-sex unions wish it to have. The issue in *Loving* was the constitutionality of a Virginia statute prohibiting interracial marriage. The fulcrum issue was race rather than the complementarity of the sexes. Race is a matter of special vigilance in due process and equal protection adjudication, but is not relevant to same-sex marriage cases. Sex between a man of one race and a woman of another race is not analogous to the sexual liaison between two men or between two women. The color of skin does not affect the complementarity of the male-female

religion, have the right to marry and establish a family. A similar principle might propose that each also has a right to remain single. Both of these principles, one clearly expressed in the UDHR and the other implied, indicate that everyone has the capacity to marry or not; if they do so, they have the further right without consideration of racial, religious, or national considerations to establish a family—their family which is the fruit of the caring relationship of the man and woman who enter the state and relationship of marriage. The civil law should not, therefore, intrude on these decisions; moreover, any legal restrictions on this natural right must be objectively based and further the interest of the husband and wife and their posterity; i.e., the children who will emerge from their union. An objectively based impediment would be that the couple is not closely related by blood; e.g., siblings or close cousins. While these two persons may have a sincere love and devotion to one another, objective considerations regarding the impact on the genetic contribution to their children must be taken into account. However, a restriction based on the fact that the would-be husband and wife are from different racial or ethnic backgrounds, such as those found in the Nuremberg Laws of National Socialist Germany, would not be an objectively determined impediment and would not defy but be consistent with the application of right reason.

Following the line of right reason, it is clear that any interference or impediment that unjustly impedes or discriminates against the prudently formed free consent of the intending husband and wife would be impermissible. While some cultures in the world, even in the twenty-first century, may impose restrictions on each member of the couple choosing his own wife or her own husband, these and similar obstacles cannot be justified by the application of right reason. Legal rules that ignore the natural complementarity that exists between the biological natures of a man and a woman are similarly suspect; however, those which respect this natural complementarity are supported by objective reason and, rather than unjustly disrupting personal choice, do much to further the legitimate social interests in marriage. They reflect the understanding that the basic unit of society begins with two people but also includes their posterity: their progeny must also be taken into account.

Here another matter regarding the integrity of the basic unit of society comes to the surface. May the civil law (or the rules of international organizations) properly restrict the actions of a husband and wife in

relationship, nor does it implicate the ability to reproduce. The sexual pairing of a man and a woman can produce a new generation; the pairing of two males or two females cannot do so.

regulating the spacing of births and the number of children that the couple have? The answer to this question is no: such matters are exclusively within the dominion of the husband and wife. Moreover, any influence by these external parties that promotes or mandates abortion, artificial contraception, or sterilization deeply offends the dignity of the parents and most assuredly the integrity of their future children. Any efforts to influence families directly, through the promise of monetary or other physical assistance, or indirectly, through the regulation of government grants, which may be veils for the promotion of abortion, artificial contraception, or sterilization, are impermissible because they defy the integrity of the husband and wife.

Although the UDHR, and ICCPR, and the ICESCR acknowledge that the family is the natural and fundamental unit of society,³⁶ none of these texts explains what a family is. The lack of a precise juridical definition does not mean that these texts do not provide insight into what constitutes the family. If one goes back to the drafting of the UDHR, it becomes apparent that one of the principal drafters, Charles Malik, a Lebanese Christian, argued that the family derives from marriage.³⁷ Some of his understanding survives in Article 16 of the UDHR, as the article also talks about men and women of full age having the right to marry without limitation on various grounds such as religion and race, and to found “a family.” Interestingly, Soviet participants in the drafting of this article raised the point that various forms of marriage and family life existed in different parts of the world, so the Soviets initially raised some objection to the Malik formulation. A further interesting point about the drafting of the UDHR was that the United Kingdom and the United States did not think that Article 16 was essential because its substantive content; i.e., the right of association, was covered elsewhere. But Malik continued to argue that marriage and family are crucial and deserved specific mention because they form the “cradle of all human rights and liberties.”³⁸ Ultimately, when other language receiving criticism was modified or removed, the essential views of Malik regarding the family prevailed.³⁹

With the completion of the ICCPR and ICESCR in 1966, issues surrounding the family escaped treatment by the UN in its debates, for a while, particularly those in the General Assembly (GA). However, with the passage of two decades, some concerns about the family and its nature and essence began to re-emerge. Since there had already been celebrations and

³⁶ The CRF (Preamble D) also states that the family is the fundamental unit of society in that it is prior to the state or any other community.

³⁷ GLENDON, *supra*, note 20, at 93.

³⁸ MORSINK, *supra*, note 17, at 255.

³⁹ *Id.*, at 256.

observances promoting groups such as women, children, and the disabled, a consensus began to emerge that the family needed similar recognition in a United Nations commemoration. In 1987, the GA adopted its first resolution regarding preparation for the International Year of the Family, noting that the family is to be accorded the “widest possible protection and assistance” and that it has an important role as an agent of positive change in society.⁴⁰ The 1987 and 1988 resolutions pertaining to the family bore the title of “Need to enhance international co-operation in the field of the protection of and assistance for the family.” Further resolutions in 1989 and 1990 were entitled “International Year of the Family.”⁴¹ In 1995, the GA adopted a resolution on the “Follow-up to the IYF.”⁴² While the term *family* was never defined in any of these resolutions, the GA in its 1995 resolution noted for the first time, echoing the old Soviet position during the drafting of the UDHR, that “in different cultural, political and social systems various forms of the family exist.”⁴³ A similar formulation about “various forms of the family” was repeated in 2000 and 2003 resolutions that provided the follow-up to the IYF celebration of 1994.⁴⁴

The justification offered by proponents of this problematic formulation is that in most countries, there is either cultural or legal recognition of the family that goes beyond the nuclear family of two parents and their children. While this may be an accurate observation in that most cultures have single-parent families, and families where either older siblings, grandparents or other relatives have become the parent figures owing to the death, desertion, or other absence of the natural (i.e., biological) parents, this formulation could also apply to relationships that consist of a man and a woman who are not married but have children or two persons of the same sex who are partnered in a “domestic relation” or otherwise “married” in accordance with the domestic law.

Though the UN has never formulated an official definition of *family*, it has permitted and perhaps even encouraged the meaning of family to depart

⁴⁰ A/RES/42/134, December 7, 1987.

⁴¹ A/RES/44/82, December 15, 1989; A/RES/45/133, December 14, 1990.

⁴² A/RES/50/142, December 21, 1995.

⁴³ A/RES/50/142, December 21, 1995, preamble ¶ 3.

⁴⁴ A series of reports by the UN Secretary General on families and related matters mentions “various forms of the family” (beginning in 1993). A series of Occasional Papers issued by the IYF Secretariat beginning in 1992 reflects the transformation of what is understood to constitute a “family.” Although the papers note that the views contained therein do not necessarily represent official UN positions, they nonetheless were authored by persons selected by UN officials, and the papers were published by the IYF Secretariat and the UN.

substantially from the understanding given to it by Charles Malik and like-minded drafters responsible for the UDHR formulation. My investigation of recent UN activity reveals that, since the late 1980s, the understanding of what is a “family” within UN circles has been formed by (1) a general cultural drift fueled by a largely positivist view of the legal understanding of “family” and “marriage,” or (2) by the exaggerated rights-based view of advocates who promote the cause of isolated, self-reliant, and autonomous individual at the expense of the community and the common good.

Neither can the role of advocates for evolving political and social views and new lifestyles be underestimated. So-called “human rights” advocacy groups have initiated legal challenges to prohibitions against same-sex marriages in a variety of western countries; e.g., Denmark, Belgium, the Netherlands, Canada, and a few states within the United States. Once legal recognition of these “families” occurs, the next step is for these advocates to promote their domestic victories internationally by using the argument that “general principles of law recognized by civilized nations” are a source of international law under Article 38 of the ICJ statute.⁴⁵ Thus, if the law of several civilized states legally recognizes these relationships as marriages and families, then other states may be inclined or even pressured to accept this view as well. Other organizations pursue the same tactic when it comes to the relationship between children and their parents. These advocates argue that the raising of children cannot be seen merely as a private matter notwithstanding the provisions of the UDHR, the ICCPR, and the ICESCR. Thus, the state or other entities such as “child advocacy” NGOs, e.g., the International Planned Parenthood Federation, must have a role in the upbringing of children.

One conspicuous result of such advocacy is the deleterious effect it has on the traditional notion of the family. It must be recalled here that the legal distancing of children from parental supervision was precisely the tactic used by the Third Reich to dramatically alter the family and disrupt the basic cell of society. This historical occurrence during the era of National Socialism supplied the basis for Article 26.3 of the UDHR, giving parents the prior right to choose the kind of education that would be given to their children. But this important historical fact seems to have been forgotten when the “best interests of the child” (a theme often heard in UN debates today) must be determined by someone other than the parents; e.g., jurists, legislators, NGOs, and “experts.”

⁴⁵ Statute of the International Court of Justice, Article 38.

The diminished role of the status of formalized marriage between one man and one woman and the growth of cohabitation without legal recognition have also had a great impact on what constitutes a family over the past two or three decades. The much more recent development involving the legal recognition of same-sex relationships as state recognized unions or marriages has eroded the once widely if not universally held position of Charles Malik even more.

Two passages from different issues of the UN Occasional Papers prepared by the UN Secretariat and its Programme on the Family appear to capture this erosion very well.⁴⁶ The 1992 paper entitled “Family: Forms and Functions” concludes by stating:

Families come in many shapes and varieties, and there is change over the life cycle of individual families. A family-friendly society is one that recognizes the diversity of family forms and respects the unique conditions, benefits and disadvantages each experiences in the execution of its functions. The relationship between form and function is as elusive in families as it is in art and deserves the attention of policy makers and legislators everywhere.⁴⁷

The second passage is from another 1992 paper entitled “Family Matters,” which concludes by stating:

IYF is not a house that is already built, in which people can look for the room that suits them: it is a process of construction, requiring the energy, input and commitment of those who will live in it. This distinction is basic to an understanding of IYF, and to the vision of 1994. The opportunity and challenge beckon, the door is open and the time is ripe.⁴⁸

It might be said of art that it is bad, distasteful, chaotic, and self-centered, and that it does not merit the attention of anyone, particularly not policymakers and legislators. And of the process commented upon in “Family Matters,” might it not be observed to be not one of construction but deconstruction? Neither the art nor the process is conducive to a well-ordered society based on transcendent and objective moral norms that take account of authentic human nature and that have provided the sound basis for international law for centuries.

⁴⁶ See <http://secint50.un.org/esa/socdev/family/family-occapers.html>

⁴⁷ Occasional Papers, 2/1992, “Family: Forms and Functions.”

⁴⁸ Occasional Papers, 1/1991, “Family Matters.”

IV. THE CHARTER ON THE RIGHTS OF THE FAMILY

The final segment of this paper relies on the contributions to world society found in the 1983 Charter on the Rights of the Family (CRF) promulgated by the Pontifical Council on the Family. While some may argue that this text is relevant only to the Catholic and Christian world, I argue that its application is broader, and indeed universal, given the common bases it shares with the international texts that I have briefly treated above and the universal appeal to the natural law on which the Charter is based. Moreover, it is clear that even on cursory examination, the parallels between the CRF and the international texts previously identified and discussed are evident and are based on the right reason of the natural law. In particular, the following parallels should be noted. (As noted, an appendix showing the major parallels is attached to this paper.)

As is the case with the UDHR and the ICCPR, the CRF acknowledges in several sections the reality that men and women of full age, and without limitation owing to race, nationality or religion, have the right to marry and establish a family. Article 1(a) of the CRF states that “Every man and every woman, having reached marriageable age and having the necessary capacity, has the right to marry and establish a family without any discrimination whatsoever; legal restrictions to the exercise of this right, whether they be of a permanent or temporary nature, can be introduced only when they are required by grave and objective demands of the institution of marriage itself and its social and public significance; they must respect in all cases the dignity and the fundamental rights of the person.” In addition, the preamble to Article 3 specifies that “The spouses have the inalienable right to found a family and to decide on the spacing of births and the number of children to be born, taking into full consideration their duties towards themselves, their children already born, the family and society, in a just hierarchy of values and in accordance with the objective moral order which excludes recourse to contraception, sterilization and abortion.”

Furthermore, like the UDHR, the ICCPR, and the ICESCR, the CRF provides that marriage can only be entered with consent. Article 2 states, “Marriage cannot be contracted except by free and full consent duly expressed by the spouses.”

One of the most important principles shared by all four texts concerns the fact that the family—as established by parents who have children that become the posterity of the human race—is the natural and fundamental group unit of society and is entitled to the protection of the state. Without this recognition and protection, the future of the human race can be easily compromised,

perhaps even forfeited. Thus, Principle D of the Preamble to the CRF asserts that “the family, a natural society, exists prior to the State or any other community, and possesses inherent rights which are inalienable.” Moreover, Principle I of the Preamble states that “society, and in a particular manner the State and International Organizations, must protect the family through measures of a political, economic, social and juridical character, which aim at consolidating the unity and stability of the family so that it can exercise its specific function.”

Perhaps because of the influence of natural law reasoning on some of the principal drafters of the UDHR, both the UDHR and the CRF express the principle that anyone who works has the right to just and favorable remuneration, not only for one’s self but also for one’s family. With recognition of these points, individual and family life will enjoy an existence that is worthy of human dignity—an important principle shared in the Preamble of the UDHR and the social teachings of the Catholic Church.⁴⁹ The CRF expresses these principles in Article 10(a), stating that “[r]emuneration for work must be sufficient for establishing and maintaining a family with dignity, either through a suitable salary, called a ‘family wage,’ or through other social measures such as family allowances or the remuneration of the work in the home of one of the parents; it should be such that mothers will not be obliged to work outside the home to the detriment of family life and especially of the education of the children.” Special emphasis is placed on the notion of a “family wage”—one that is geared to ensuring the survival and flourishing of the family, the basic unit of society.

By way of complement to these points, the UDHR, the ICESCR, and the CRF contend that everyone has the right to a standard of living adequate for the health and well-being of one’s self and the family. As Article 9(a) of the CRF states, “Families have the right to economic conditions which assure them a standard of living appropriate to their dignity and full development. They should not be impeded from acquiring and maintaining private

⁴⁹ For example, in his encyclical letter *Laborem Exercens* of September 14, 1981(N. 19), Pope John Paul II stated: “Just remuneration for the work of an adult who is responsible for a family means remuneration which will suffice for establishing and properly maintaining a family and for providing security for its future. Such remuneration can be given either through what is called a *family wage*—that is, a single salary given to the head of the family for his work, sufficient for the needs of the family without the other spouse having to take up gainful employment outside the home—or through *other social measures* such as family allowances or grants to mothers devoting themselves exclusively to their families. These grants should correspond to the actual needs, that is, to the number of dependents for as long as they are not in a position to assume proper responsibility for their own lives.” (Italics in the original.)

possessions which would favor stable family life; the laws concerning inheritance or transmission of property must respect the needs and rights of family members.”

The drafters of the UDHR were aware of how one totalitarian state, National Socialist Germany, attempted to override the interests and rights of parents in educating their children. As the National Socialists realized, if the state could control the content and the method of education, the future of Germany, and perhaps the world, would be more in accord with their political plans. However, the UDHR drafters acknowledged that parents have a prior right to choose the kind of education that shall be given to their children. Paralleling this provision is Article 18(4) of the ICCPR, which provides the juridical liberty of parents to ensure the religious and moral education of their children in conformity with the convictions of the parents. In a similar vein, the ICESCR has dual provisions along these lines—Articles 10(1) and 13(3). The first provides that the family is responsible for the care and education of dependent children. The second provides that parents have the liberty to choose schools other than those established by the state to ensure the religious and moral education of their children in conformity with their own convictions.

Article 5 of the CRF is a comprehensive set of principles treating these points found in the principles of the international texts and instruments. For example, the preamble to this article of the CRF states that because parents have conferred life on their children, they “have the original, primary and inalienable right to educate them; hence they must be acknowledged as the first and foremost educators of their children.” In addition, subsection (a) of this article provides that “[p]arents have the right to educate their children in conformity with their moral and religious convictions, taking into account the cultural traditions of the family which favor the good and the dignity of the child; they should also receive from society the necessary aid and assistance to perform their educational role properly.” Subsection (b) of Article 5 further asserts that “Parents have the right to freely choose schools or other means necessary to educate their children in keeping with their convictions. Public authorities must ensure that public subsidies are so allocated that parents are truly free to exercise this right without incurring unjust burdens. Parents should not have to sustain, directly or indirectly, extra charges which would deny or unjustly limit the exercise of this freedom.”

Article 5 of the CRF provides several important protective measures that insulate families from the improper control or exaggerated reach of the state. Subsection (c), for example, asserts that “[p]arents have the right to ensure that their children are not compelled to attend classes which are not in

agreement with their own moral and religious convictions. In particular, sex education is a basic right of the parents and must always be carried out under their close supervision, whether at home or in educational centers chosen and controlled by them.” By way of supplement and complement, subsection (d) provides that “[t]he rights of parents are violated when a compulsory system of education is imposed by the State from which all religious formation is excluded.” (National Socialism attempted to do this, as chronicled by Professor Nathaniel Micklem in his important study of National Socialism and the Church.)⁵⁰ However, the CRF does not propose an adversarial relationship between parents and the state. Article 5(e) states that “[t]he primary right of parents to educate their children must be upheld in all forms of collaboration between parents, teachers and school authorities, and particularly in forms of participation designed to give citizens a voice in the functioning of schools and in the formulation and implementation of educational policies.” Unlike the international instruments and texts, the CRF recognizes the influence of the surrounding culture, which can have a considerable influence on the moral development of the young. Thus subsection (f) of Article 5 states:

The family has the right to expect that the means of social communication will be positive instruments for the building up of society, and will reinforce the fundamental values of the family. At the same time the family has the right to be adequately protected, especially with regard to its youngest members, from the negative effects and misuse of the mass media.

V. CONCLUSION

This paper has provided a brief examination, in the context of fundamental and universal human rights, of the nature and rights of the family of the present day. By considering the basic norms of generally accepted and essential human rights regimes, especially those from the Universal Declaration of Human Rights (UDHR) and corresponding provisions from the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), this paper has investigated the claim that the family, the basic unit of society, consists of the marriage of one man and one woman for whom the proper vocation is, through commitment and love, to have and raise children and form a family. The paper has also demonstrated that this claim represents the

⁵⁰ NATHANIEL MICKLEM, NATIONAL SOCIALISM AND THE ROMAN CATHOLIC CHURCH 6, 75, 80, 87, 90, 100, 145–157, 182, 203, 213–217 (1939).

authentic understanding of what constitutes family and family life. My position is supported by a natural law understanding that adopts the principle of right reason, founded on objectivity rather than subjectivity. The international texts that have emerged from the functions of the United Nations rely on the vital element of the natural law called right reason.

An important illustration of the intentional application of the natural law is the 1983 Charter of the Rights of the Family (CRF) promulgated by the Holy See. Reliance on this insightful text demonstrates that the claims of this paper about the international texts reflect the right reason of the natural law that possess an inextricable social dimension “which finds an innate and vital expression in the family.”⁵¹ It is with and through this common social dimension that persons are capable of recognizing and acknowledging fundamental truths about the world and the human person.

While recognizing that certain other notions about the nature of the family have surfaced in recent years (particularly within the context of advocacy for same-sex marriage and the relationships developed by these associations), this paper has also demonstrated that these other notions about the nature of the family are inconsistent with the concept of the family as understood by international juridical principles and the natural law. Viewed from these perspectives, it is submitted that marriage under the law of nations can only be based on a complementary union of one man and one woman that is freely contracted and publicly expressed and that has the potential for transmitting human life and is the subject of authentic human rights norms.

I should like to conclude this brief essay with a thought of Heinrich Rommen’s:

When little or no respect any longer exists for any authority; when marriage generally ceases to be differentiated from concubinage and promiscuity; when the honor of one’s fellow citizen is no longer respected and oaths no longer have force, then the possibility of social living, of order in human affairs, vanishes together.⁵²

The natural law is one important and available response to these concerns identified by Rommen. It appears that the drafters of several vital international texts are in agreement.

⁵¹ CRF, Preamble, Paragraph A.

⁵² ROMMEN, *supra*, note 25, at 228.

APPENDIX

Shared Principles of the UDHR, the ICCPR, the ICESCR, and the CRF

	UDHR	ICCPR	ICESCR	CRF
Men and women of full age, w/o limitation due to race, nationality, or religion, have the right to found a family.	Article 16(1)	Article 23(2)		Article 1(a) Article 3
Marriage must be entered with free and full consent of the intending spouses.	Article 16(2)	Article 23(3)	Article 10(1)	Article 2
Family is the natural and fundamental group unit of society and is entitled to protection by the state.	Article 16(3)	Article 23(1)	Article 10(1)	Preamble D ("The family, a natural society, exists prior to the State or any other community, and possesses inherent rights which are inalienable.")
Everyone who works has the right to just and favorable remuneration ensuring self and family an existence worthy of human dignity.	Article 23(3)			Article 10 ("Remuneration for work must be sufficient for establishing and maintaining a family with dignity ...")
Everyone has the right to a standard of living adequate for the health and well-being of self and family.	Article 25(1)		Article 11(1)	Article 9(a)

<p>Parents have a prior right to choose the kind of education that shall be given to their children.</p>	<p>Article 26(3)</p>	<p>Article 18(4)</p> <p>(Liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.)</p>	<p>Article 10(1)</p> <p>(The family is responsible for the care and education of dependent children.)</p> <p>Article 13(3)</p> <p>(Parents have the liberty to choose for their children schools, other than those established by public authorities, that conform to minimum educational standards established by the state and to ensure the religious and moral education of their children in conformity with their own convictions.)</p>	<p>Article 5</p> <p>(A very comprehensive article dealing with education and the role and rights of parents.)</p>
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