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CATHOLIC CONTRIBUTIONS TO AND
CRITIQUES OF HUMAN RIGHTS WITHIN
THE UNITED NATIONS

Robert John Araujo, S.J.[†]

The Charter of the United Nations boldly asserts that “the Peoples of the United Nations . . . reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women and of nations large and small.”¹ These noble aspirations, which are further defined in the substantive articles of the Charter, are reiterated in the teachings of the Catholic Church. A brief excursion through the documents of the Church—from papal encyclicals and other documents, e.g., the Catechism, to the Compendium of the Social Teachings, to works of early Catholic authors such as Francis de Vitoria—illustrates that the Church recognizes and endorses the fundamental rights of the human person and has held and expressed this position for a long time. If that were all that need be stated, I could sit down, now. But I cannot for another question follows: how do the Church and the UN understand what is constitutive of human rights today in the present age that encompasses the work of the UN and the Church? Here, we see that there exists a growing divide between what is at the core of human rights claims and therefore, what human rights and their protection mean.

There is profound divergence between these two institutions on definitions of terms essential to authentic, fundamental human rights. This deviation concerning meaning is not a matter of reasonable and acceptable argument about degree; rather, it is a substantive disagreement on the essence of authentic human rights. The disagreement is not with the UN and its Charter *per se*, but it is with

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¹ U.N. Charter at pmb1.

those who often control the direction in which the work of the institution goes, a direction that increasingly has become an exercise of totalitarian democracy and pure positivism.

To assist you in understanding this assertion, I will first offer the explanation of totalitarian democracy and how it has affected many understandings of human rights particularly within the United Nations Organization and also within the democracies of North America and Western Europe. Second, I shall explain the Catholic take on human rights and why it is often involved in a robust disagreement with those delegations who pave the path to totalitarian democracy and positivism. In the second component, I shall also offer some thoughts of how the emergence of totalitarian democracy can be met and countered by those of us in the Church who are concerned about the legitimate rights of the human person, human dignity, and the future of the legal understanding of these important matters as they intersect the common good, which is a fundamental precept of the Church's teachings.

I. TOTALITARIAN DEMOCRACY AND POSITIVISM—THE TRANSFORMATION OF HUMAN RIGHTS

In the early 1950s, the modern historian, Jacob Talmon (1916–1980), began a study of what he identified as totalitarian democracy: the corruption of democratic institutions based on the fallacious assumption that there is a sole and exclusive truth in political systems.² 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 is a self-promoted elite.³ Totalitarian democracy is a political system of absolute power which presents and then demands a monistic view of the world. For the totalitarian democrat, all societies are a subset of the state with the latter in absolute control.

Talmon remarks that the role of religion in the public exercise of totalitarian democracy is negated and replaced by the “secular, social morality” defined by the State.⁴ This kind of morality is a “doctrinaire

² JACOB TALMON, *THE RISE OF TOTALITARIAN DEMOCRACY* 1(1952).

³ *Id.* at 2.

⁴ TALMON, *supra* note 2, at 3.

spirit” rather than spirited discussion and debate amongst the members of society that is characteristic of totalitarian democracy.⁵ This spirit necessarily relies on an uncompromising positivism that makes, interprets, and enforces law. Open and fair debate and discussion about important issues are eliminated in this society because contrary views, no matter how reasonable and relevant (and true), are considered enemies of the state and society in that they pose challenges to the values espoused by the state and its influential, controlling elite. Eventually, totalitarian democracy mutates into “an exclusive doctrine represented by a vanguard of the enlightened, who justify themselves in the use of coercion against those who refused to be free” in the sense that totalitarian democracy defines freedom.⁶ While Talmon’s multi-volume study necessitates further investigation, let me conclude with one other thought of his here: he contends that totalitarian parties of the “Left have invariably tended to degenerate into soulless power machines, whose lip service to the original tenets is mere hypocrisy.”⁷

Talmon was not alone in advancing this kind of thesis. Christopher Dawson (1889-1970), another historian and an Englishman, who was the first holder of the Chauncy Stillman Chair at Harvard (1958–1962), also studied dictatorships and totalitarian systems in addition to the role of Christianity in public life and culture. When it came to examining despotic systems, the objects of his investigation tended to be fascism, National Socialism, and Soviet Communism. However, Dawson also had a keen eye and an equally perceptive mind which enabled him to conclude that western democracies, including the United Kingdom and the United States, were not immune from the fanatical control by a despotic regime of Man and society which is 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

⁵ *Id.* at 4.

⁶ *Id.* at 5.

⁷ *Id.* at 7.

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 . . .⁸

The suggestion that Talmon and Dawson are prophets for the direction of the present age may disturb some people—even people who think they represent good will. But the prophet's role is to disturb not because he is unkind or evil or mischievous but because he comes to alert his audience to impending calamity. In the case of the corruption of good government, the calamity is the transformation of democracy into a despotism that defies objective reason in order to satisfy the appetite of the political, social, cultural, and economic elite who control the societies in which they live and operate. The absence of objective reason and the pull of a strong will founded on an exaggerated and aggressive subjectivity are the fuel which propels the machine of totalitarian democracy and its ally, legal positivism.

Talmon critically notes that it is an atypical understanding of freedom or liberty that is at the root of the mutation of democracy that becomes totalitarian democracy.⁹ Totalitarian democrats rely on the appearance of "rights" and want to seem that they befriend and protect them. But ultimately it is what the political elite who control the totalitarian democracy decides what "rights" are and by whom they are to be exercised in the fashion they prescribe. 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

⁸ CHRISTOPHER DAWSON, *THE HISTORIC REALITY OF CHRISTIAN CULTURE* (Elliot Books, 1960), reprinted in GERALD J. RUSSELO, *CHRISTIANITY AND EUROPEAN CULTURE* 81–82 (Catholic University of America Press, 1998).

⁹ See TALMUND, *supra* note 2.

by the plurality decision of *Planned Parenthood v. Casey*¹⁰ which the United States Supreme Court decided in 1992.

Casey was a legal controversy concerning abortion and the Commonwealth of Pennsylvania's legal efforts to narrow and regulate the killing of unborn children permitted by the Court's 1973 decision of *Roe v. Wade*. In *Casey*, the Court's definition of the core right of "liberty" was subsequently used to rationalize the decision of *Lawrence v. Texas*¹¹ decriminalizing same-sex sodomy and again most recently to redefine the import of marriage in *United States v. Windsor*.¹² 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 the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."¹³

While this definition may appeal to advocates of robust freedom, this expansive and dangerous definition of freedom has corrupted an important social and legal concept, and this distortion is overwhelming the discourse about human rights today. Here is the essence of the problem with the *Casey* definition: 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 the definition, but objective reason is not sufficiently relevant to those who proclaim rights that are founded on satisfying extreme subjectivity.

There are a number of important illustrations of this mutation of rights in the context of the United Nations. Over the years since the 1950s, the Holy See has been combatting efforts to introduce birth

¹⁰ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

¹¹ *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹² *United States v. Windsor*, 133 S. Ct. 2675 (2013).

¹³ *Casey*, 505 U.S. at 851.; *see also* Fr. John Courtney Murray, S.J., THE CHURCH AND TOTALITARIAN DEMOCRACY, 13 *Theological Studies*, 525–563 (1952) (where Fr. Murray 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.").

limitation by various means. More recently in the 1990s, the use of the term “reproductive health” has been a key measure to further this morally problematic enterprise which is disguised as a “human right.” At one time, this term had a very helpful meaning. In 1999 the UN Population Information Network put together a draft dictionary that was available online at the UN official website which explained the meaning of terms frequently employed in UN discussions and debates. In this draft dictionary, the term “reproductive health” was defined as: “The health of an individual from puberty through the adult life span.”¹⁴ This could have been a definition which many, including the Church, may have accepted in the UN discussions without further ado because it captures the essence of the nature of and truth about human reproductive health. But two things occurred.

The first is that the dictionary and this definition disappeared without comment. It was as if Winston Smith’s “memory holes” from Orwell’s novel *1984* consumed what was but no longer is. Whatever the Ministry of Truth wished to rewrite and revise was facilitated by the memory holes scattered throughout the Ministry—or, for that matter, the UN. Second, a new understanding of the frequently used term “reproductive health” emerged which opened up access to abortion and artificial contraception as exercises of “human rights.”

This reformulation continues and is often insisted upon by the employment of a very heavy hand. The evolving understanding of “reproductive health” was not consistent with the 1999 draft definition to which I have previously referred.¹⁵ Today the term has become code language for something that was not originally intended, i.e., abortion and aggressive “family planning” regimes. The disappearance of the noncontroversial and sensible definition seems to be the sort of work of the totalitarian mind: eliminate that which harms the cause of a dangerous form of positivism, which is the social engineering tool of a political elite.

Another illustration of how this sense of disordered liberty has infected the United Nations is the 2012 document of the United Nations Office of the High Commissioner, Human Rights entitled *Born Free and*

¹⁴ See generally UN Population Information Network, <http://www.un.org/popin/data.html>

¹⁵ See generally UN Population Information Network, *supra* note 14.

Equal: Sexual Orientation and Gender Identity in Human Rights Law.¹⁶ While this text asserts the protection of rights that belong to everyone, it makes a special case for the protection of sexual orientation and gender identity—categories which provide grievous problems for authentic human rights because they are exercises of totalitarian democracy and determined positivism. The UN documents and discussions rely on the polemic description of gender identity formulated in the highly controversial 2007 Yogyakarta Principles which subjectively 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.”¹⁷ This means that even though a person is, in reality, a man (is male) does not really mean that a person is a man until he so decides that he is male. Given the exaggerated logic of this way of thinking, the man may decide that he is really a female—or perhaps something else—who happens to have the body of a male but his gender is female or something else. What makes him one or the other is not the intelligible reality of his physical nature that can be scientifically corroborated but his decision to be what he wants to be in spite of the physical, biological evidence to the contrary. This is empowerment of the “liberated” human person at its “finest,” which really means at its worst.

This explanation of the meaning of “gender” which has been accepted by strong and influential sources within the United Nations system is the source of a grave problem that is established on a false anthropology. The problem’s essence is that the meanings of “human rights” and “human dignity” are coerced in the direction of an exaggerated liberty that is not ordered but disordered; consequently, the capacity to protect the nobility of the human person, human society, and

¹⁶ See generally Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law, Rep. of the U.N. Office of the High Comm’r for Human Rights, U.N. Doc. HR/Pub/12/06 (2012).

¹⁷ International Commission of Jurists (ICJ), Yogyakarta Principles-Principles on the application of international human rights law in relation to sexual orientation and gender identity, at 6, March 2007, available at <http://www.refworld.org/docid/48244e602.html> (last visited September 22, 2013).

the human family has been unduly compromised. What is promoted and protected is not the human person but a vulgar caricature of the noble creation of God.

Paradoxically, the Secretary General of the UN in his 2010 Human Rights Day speech expressed concern about discrimination that is based on sexual orientation and gender identity; thus, he was resolved to protect these faux "rights" because they, like any other right, cannot be compromised. He affirmed that "rights must carry the day."¹⁸ Without further discussion and distinction about the meaning and substance of rights, the Secretary General's assertion paves the way for future corruptions of human rights and their constitution. The formulation of liberty crafted in the smithy of the *Casey* plurality has wide-sweeping impact because it has given birth to these and other corruptions. Without being challenged, they will continue and proliferate, all to the detriment of authentic human rights and their necessary ally: objective reason.

What the Secretary General does not consider and the apocalypse which he does not address is the need to restrain the manufacture of more faux rights and prevent the havoc that will inescapably occur when these "rights" which are, in fact, licenses without sensible limitations, collide with *the rights that are protected* by human rights regimes and by the need to protect everyone one and the common good, which is indispensable to the human race. No consideration is afforded by the Secretary General to 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 and the rights of the scientific community to clone new human life which is destined for destruction at an early age. What is happening in the present age is that anyone who disagrees with these problematic developments is labeled a bigot or a back-ward thinker to whose reasoned concerns dictate not engagement but exclusion from the public square.

As we have seen in the United States within the past year of major developments of sexual orientation and gender identity "rights," same-sex marriage advocates have expressed surprise that their efforts and victories have opened the door to further redefinition of marriage

¹⁸ Human Rights Day 2010, Secretary General's Message (Dec. 10, 2010), <http://www.un.org/en/events/humanrightsday/2010/sg.shtml>

that will permit just about any combination of persons and, perhaps in due course, other entities to be deemed marriages demanding protection of the state and its laws.¹⁹ These domestic developments have a tremendous impact on international developments and the work of the UN.

Here I now suggest that there is an indispensable assessment of the Catholic Church's stance on and necessary role in human rights discourse. But first, there is a need to explain why the Church does two things regarding this difficult transformation of otherwise legitimate human rights: there is the need (1) to engage others in good faith through reasoned and fair debate; and, (2) to speak and teach the truth that is essential to the protection of the human person and the appurtenant common good.

II. THE CATHOLIC UNDERSTANDING OF AND CONTRIBUTION TO HUMAN RIGHTS

The critique offered by the Church in many UN and other similar debates today is not really of human rights; rather, the critique is of their flawed interpretation, an appraisal directed to those who insist that there can be different interpretations of fundamental rights as perceived through a highly subjective lens. To apprehend correctly this critique, it is crucial to understand the basis of the beliefs of the one offering the critique and the foundation in reason on which these views are presented. In addition, it is crucial to see that the Church does not give up easily on those who do not accept the rational premises of her teachings and the logical arguments used to justify them. The Church has had a very long history of over fifteen hundred years of engaging the temporal powers of the world so that the truth of God's peace, love, and care for each member of the human family may be recognized and achieved and the common good sustained. In one important way, this truth was tested early when at his trial before Pilate, our Lord Jesus Christ stated that he was the way, the truth, and the life; but, the skeptical

¹⁹ See generally Kent Greenfield, *The Slippery Slope to Polygamy and Incest*, THE AMERICAN PROSPECT (July 15, 2013), <http://prospect.org/article/slippery-slope-polygamy-and-incest>.

Pilate asked, "What is truth?"²⁰ The Church has answered Pilate's question and has been teaching the response ever since.

When addressing matters related to human rights discourse, the Church argues that the human person has a nature essential to properly understanding human rights—a universal nature that is founded on an objective understanding of this moral agent, the human person. This is the objective truth of what we are as intelligent creatures who are citizens of two realms—the earthly and the eternal—are capable of understanding. In this context of dual citizenship, the human person possesses a dignity that inheres in the fabric of humanity.²¹ Regarding man's nature: the human person is a beloved creature of God given reason and the intelligent ability to distinguish between right and wrong; good and evil; virtue and vice. The nature of the human person encompasses the destiny that embraces all people, which is union one day with the Creator of all. Regarding the dignity of the human person, the words of Jacques Maritain, as later used by Blessed John Paul II, define well this dignity: 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. The notion of right and the notion of moral obligation are correlative."²²

From the Catholic perspective, rights and dignity are only part of the central concern about human rights as Maritain points out. There is another vital component of human rights discourse in the Catholic intellectual tradition that needs to be considered as was just suggested: responsibility. In essence, the claims to and exercise of rights untethered from responsibility will inevitably lead to the result of the uninhibited license codified by *Casey*. The Church recognizes the critical nexus

²⁰ John 18:38 (Revised Standard Version).

²¹ The Gelasian Thesis of two powers—the Church and the State—is denied by the totalitarian democracy. The monism of totalitarian democracy not only abandons but is intent on eradicating the role of the Church and other religious institutions. The new religion under the totalitarian democracy is the state itself and the autonomous individual to whom this state caters within limits. Since there is nothing beyond the isolated individual and autonomous person, there is no god other than the individual himself. This view of course is a narrow construction which constricts the nature of the human person in an exceedingly artificial manner.

²² JACQUES MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* 65 (Doris C. Anson trans., Charles Scribner's Sons, 1951).

between responsibility and rights, for without the former being the companion of the latter, bedlam is the inescapable result. Without the exercise of responsibility, each person becomes the judge of what is a right and how it is to be exercised. Responsibility reminds the rights-bearer that what he or she exercises must be properly claimed by everyone else if the right claimed is authentic. In essence, responsibility molds the right so that it enhances the dignity of the bearer and everyone else; it does not make the holder a caricature of the human person which some alleged rights inexorably do. [If you question what I am arguing here, I refer you to online photographic albums of images taken at the year's Pride Parades in various cities around the globe.]

Another important element of the Catholic understanding of human rights law—as is true for all legal systems and principles considered by the Catholic mind—is the natural law and its indispensable role in explaining and protecting authentic human rights. The Church's understanding of the natural law contends that human intelligence relies on objective reason to comprehend the intelligible reality of the world and human existence within it. This comprehension further enables the law maker to formulate norms that incorporate this comprehension. It is this natural law, and its derivative the natural moral law, which demonstrate that those who make claims that abortion, free sex, same-sex marriage, etc. are human rights are, in fact, wrong to advance and advocate for such things.

What is of further importance to the Church and her teachings about human rights is that objective reason must be the guide for charting the course for the proper direction which human rights advocacy must take. It is objective reason which illustrates that the *Casey* formulation of liberty and the rights claimed from it are unsustainable. In this regard, human intelligence taking objective stock of the intelligible reality of the human person is crucial to the task of formulating norms dealing with the rights and obligations of the human person and the freedoms the person claims. The UN Report to which I have referred fails to acknowledge any sympathy with objective reason and the intellect that is its companion. In essence, the Report removes the important modifier "ordered" out of the phrase "ordered liberty" which is important to the protection of fundamental rights. The result is that liberty becomes known by another name: chaos.

One more element of the Catholic approach to human rights discourse and debate must be considered. Stalin was correct when he questioned the Church's temporal authority and asked how many divisions does the pope have? However, Stalin's commentary on military capability assumed that there are only certain kinds of power in this world to which we need to pay attention. But Premier Stalin did not consider that there is an authority in reasoned argument that is unimpeachable in its logic and ability to convince. This is the kind of argument which the Church labors to present when she engages the temporal powers of the world in human rights and other socio-legal debates at the UN or other public forums. Keeping in mind what Shakespeare's Marcellus said in *Hamlet* about Denmark,²³ the Church nonetheless holds the view and presents the case that even that which is spoilt might still be saved—including those public institutions that seem to be on the path that will embrace totalitarian democracy and legal positivism. Her view is established on three principles— 1. the cultivation of the virtuous person and citizen who is schooled in the theological virtues of faith, hope, and charity and the cardinal virtues of justice, prudence, courage, and forbearance; 2. fidelity to the one who came to save us all and the confidence that God will help us in our exercise of faith; and, 3. generosity to never abandon that which may seem lost. After offering her critique, this is one particular, and I trust, true path on how the Church and her members contribute to the non-derogable rights of the human person.

The task is ours. Let us be steadfast to it and faithful to what God asks of us who follow His Son.

²³ "Something is rotten in the state of Denmark." *Hamlet*, I, IV, 90.