

World Modernization, Family, and the Universal Declaration of Human Rights

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It is now clear that modernization and economic development come with great costs to our families. The spread of technical rationality in the form of globalization, the digital age, economic efficiency, and artificial reproductive technology can inject a variety of separations into the family. These include the separations of work and family, sex and marriage, reproduction and marriage, and reproduction and parenting. The cultural individualism of Western societies aggravates these separations. Although modernization and economic development offer much to overcome poverty and increase health, such gains can be lost if they come at the price of increased divorce, nonmarriage, and their negative consequences for children, women, and even men.

Some people believe that the human rights tradition is also a part of modernization and is therefore a threat to families. I believe that when this tradition is rightly conceived, it protects the right of children to their families and therefore is a defense against the possible, but not inevitable, negative consequences of modernization.

So I ask, what was the meaning of the family in the most basic document of the human rights tradition – the Universal Declaration of Human Rights? And how can this view of the family help guide the modernization and development process?

Historians tell us that an air of practicality dominated the Commission on Human Rights that wrote the Universal Declaration.¹ With the endorsement of Eleanor Roosevelt, the Commission's first chair, attempts to ground the basic concepts of the Universal Declaration with reference to God or the idea of nature were either rejected or significantly qualified.

The Lebanese philosopher and statesman Charles Malik resisted these expedencies. He proposed inserting the sentences, "The family deriving from marriage is the natural and fundamental group unit of society. It is endowed by the Creator with inalienable rights antecedent to all positive law and as such shall be protected by the State and Society."² Malik believed that the words "natural" and "endowed by the Creator" assured that the marriage-based family would be seen as endowed by its own "inalienable rights" and not viewed as a human invention subject to the caprice of either the state or current public opinion.³

Malik was not successful in getting this entire statement into the Universal Declaration. However, Article 16 did retain part of his formulation when it declared that, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State (Article 16, 3)."⁴ This is less than Malik wanted, but more than first meets the eye.

The connection between marriage and family was deleted, principally out of the mistaken fear that it would stigmatize children born out of wedlock.⁵ But the words "natural," "fundamental," and "group unit" were retained and are not meaningless. Furthermore, they point to some model of natural law. For Malik, it was the role of society and the state to protect the family, but he also argued that neither society nor the state created the family or endowed it with its basic rights. Family rights are independent of these social entities and, at best, society and

state recognize and give public visibility to preexisting natural rights resident in the very nature of the family.

New Models of Natural Law

It is widely acknowledged that Malik tried to ground the Universal Declaration in some kind of natural law theory. Although he was not completely successful, he did not entirely fail. Appeals to nature may have a more important role in grounding its ideas about marriage and family than the Commission believed. I will argue that a flexible natural law theory is in fact implied by the Universal Declaration, even as it stands. I also believe that such a flexible theory can be found in a variety of older philosophical and religious systems and is also consistent with much of modern knowledge.

Central to this flexible natural law theory is the importance of kin attachments and kin altruism to the strength of families. Kin altruism refers to the attachments and investments that biologically related family members have to each other by virtue of their shared biological inheritance. Rightly understood, however, kin altruism is a finite, in contrast to an ultimate, good. By this distinction, I am suggesting that kin altruism is not the measure of all goods for families but rather a highly central good to be enhanced by law, culture, and religion, and to be balanced with other goods.

Religious systems may carry and, indeed, strengthen the value of kin altruism as does Judaism, Islam, Confucianism, Hinduism, and Buddhism, even more tenaciously than did early Christianity. In recently editing a book called *Sex, Marriage, and Family in World Religions* (2006), I learned how the value of kin altruism was particularly strong in Confucianism, Hinduism, and Buddhism. It not only functioned between family members in this life but extended beyond the grave in a cosmic cycle of intergenerational reciprocity and care between the living and the dead.⁶

But the importance of kin altruism for human life also can be discerned by natural observation and rational analysis. It is a value that philosophy, law and religion have frequently cooperated with one another to articulate, defend, and implement. The Universal Declaration of Human Rights reflects this grand tradition, and its contributions to culture, law and public policy would be even stronger were the importance of kin altruism to family stability made clearer on its pages.

It is a matter of cultural variability as to whether families are patriarchal or egalitarian; extended, joint, or nuclear; polygamous or monogamous; multigenerational households or two-generation parent-child systems. But within all this pluralism of family forms, there has been in the past a persistent core value that is widely cherished around the world. This is the principle that the individuals who procreate an infant also should be, as nearly as possible, the ones responsible for its maintenance, care, and socialization. This value was based on the widely held assumption that the people who conceive a child, when they recognize their relation to it, will on average be the most invested in its nurture and well-being.

The centrality of kin relatedness to the investment in and care for children was elaborated in Aristotle's Nichomachian Ethics and Politics. It is assumed in the folk psychology of early Christianity. It was systematically brought into Christian theology in the thought of the great medieval Roman Catholic theologian Thomas Aquinas. It is assumed as part of the political theory of the Reformers of the Protestant Reformation - Luther and Calvin. It influences the Roman Catholic social teachings of the late 19th and early 20th century, especially the encyclicals

of Pope Leo XIII and Pius XI. And it is from this source that Malik appropriated the ideas of kin altruism and the natural family for the Universal Declaration, but now presented by him as philosophical concepts.

Using the concept of kin altruism and the natural family in human rights documents, international law, and public policy requires a flexible understanding of natural law. The world of nature is full of proximate causes and conflicting tendencies, an insight that Charles Malik held as well.⁷ But when the conflicting tendencies of human sexuality are guided by culture, law, and religion to consider the needs of children, then the natural inclinations toward kin altruism should and can have a commanding role in ordering our unstable natural urges. Such a view is consistent with the images of natural law now developing in the thought of contemporary philosophers and theologians such as Mary Midgley,⁸ Jean Porter,⁹ Stephen Pope,¹⁰ Larry Arnhart,¹¹ and Lisa Cahill.¹² If we are to make use of Malik and the Commission when they referred to the family as “the natural and fundamental group unit of society,” we must have something like this more flexible understanding of natural law in mind.

Philosophical and Legal Reflections

The power and function of kin altruism has been clarified by recent advances in the academic discipline of evolutionary psychology. From ants, to mammals, to those unique mammals and primates called humans, contemporary evolutionists have discovered the proclivity of biological parents to invest, favor, and even in some instances sacrifice themselves for their biological offspring.¹³ Modern genetics helps us explain this process more concretely. Because of the long period of dependency of the human infant and child, the natural tendency of kin altruism needs the reinforcement of culture and the legal institution of marriage.

The Universal Declaration of Human Rights gave considerable weight to this insight, but not by being prejudicial to single-parent families and other possible family patterns that the accidents of life create. Mothers and their infants – which Aristotle, Aquinas, and evolutionary psychology all hold to be the primordial family – rightly receive special protections in the Declaration (Article 25, 2) but without sacrificing the centrality of the trilogy of what the Abrahamic religions called the one-flesh union of mother, father, and child.

The idea of the family as the fundamental group unit of society is a concept that was repeated time and again in most of the great human rights documents since the Universal Declaration. It is repeated in an altered version even in the controversial United Nations Convention on the Rights of the Child.¹⁴ One of the most interesting and hopeful recent legal statements is the Parliamentary Report on the Family and the Rights of Children presented by the Information Mission to the French National Assembly.¹⁵ This report presents a perspective on the new French bioethics. It concentrates on the rights of the child to be born in a society that protects its chance of being raised by the people who conceived it. The report resists a large number of trends in international family law, including making cohabiting couples and other non-traditional families equivalent with married couples before the law. It rejects legal support for the use of assisted reproductive technology for other than medical reasons and for single individuals. It is not clear if the Mission’s proposals will become law and how they would be adjusted to other negative directions of recent French family law, for instance its *pact civile de solidarite*, a system of registration for various forms of cohabiting persons. But its recommendations do suggest that law has a role in resisting the family disruptions of

modernization and economic development. The new French proposals are continuing directions first set forth in the Universal Declaration of Human Rights.

But law cannot stop family decline by itself. It must be part of a larger *work of culture* where law joins with religion, the human sciences, the market, public policy, and the arts to once again honor the natural family and equip persons to have the skills, commitment, supports, and rewards necessary to form and maintain it.

¹ Mary Ann Glendon, *A World Made New* (New York: Random House, 2001), pp. 77, 134.

² Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia, PA: University of Pennsylvania Press, 1999), p. 254.

³ *Ibid.*, p. 255.

⁴ “Universal Declaration of Human Rights,” in Glendon, *A World Made New*, p. 312.

⁵ Morsink, *The Universal Declaration of Human Rights*, p. 256.

⁶ Don Browning, *Sex, Marriage, and Family in the World Religions* (New York: Columbia University Press, 2006).

⁷ Charles Malik, “The Metaphysics of Freedom,” *Freedom and Man*, ed. by John Courtney Murray, S.J. (New York: P.J. Kennedy & Sons, 1965), pp. 184-185. Malik’s form of natural law could find a place for “proximate causes,” although he warned against a preoccupation with them at the expense of contextualizing them within the context of ultimate ends. He writes that “at its best throughout the ages the West was faithful to both realms” (p. 184).

⁸ Mary Midgley, *Beast and Man* (Ithaca, NY: Cornell University Press, 1978).

⁹ Jean Porter, *Natural and Divine Law* (Ottawa, Ontario: Saint Paul University Press, 1999).

¹⁰ Stephen Pope, *The Evolution of Altruism and the Ordering of Love* (Washington, D.C.: Georgetown University Press, 1994).

¹¹ Larry Arnhart, *Darwinian Natural Right* (Albany, NY: State University of New York, 1998).

¹² Lisa Sowle Cahill, *Sex, Gender and Christian Ethics* (New York: Cambridge University Press, 1996).

¹³ For the basic study that literally founded the fields of sociobiology and the later evolutionary psychology, see W.D. Hamilton, “The Genetical Evolution of Social Behavior, II,” *Journal of Theoretical Biology* 7 (1974), pp. 17-52. For a study that brings these theories into the sociology of family, see Pierre van den Berghe, *Human Family* (New York: Elsevier, 1979). For authoritative studies from within the field of evolutionary psychology, see Martin Daly and Margo Wilson, *Sex, Evolution, and Behavior* (Belmont, Calif.: Wadsworth Publishing Co, 1983), and Donald Symons, *The Evolution of Human Sexuality* (Oxford: Oxford University Press, 1979).

¹⁴ U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹⁵ Parliamentary Report on the Family and the Rights of Children, http://www.assemblee-nationale.fr/12/dossiers/mission_famille_enfants.asp.