

## Rights Rhetoric, the Family, and Social Change

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### Introduction

The last half of the past century has manufactured more social change than perhaps any other period in world history. Modifications of social machinery are swiftly affecting all aspects of life, particularly the natural family: motherhood, fatherhood, and childhood. While there are many causes for the breathtaking speed of these modern developments, I would like to focus on one particular engine for social revolution: the unprecedented, rapid development of international law. Conferences sponsored by the UN system are promulgating norms that dramatically alter the natural family. Whether much of this social experimentation is sound, however, is questionable. Solid empirical evidence supports the conclusion that the long-established and natural institutions of marriage, family, motherhood, fatherhood, and childhood are essential to the social health of men, women, and particularly children. Moreover, social science evidence demonstrates that, as societies around the world depart from these natural norms, the family—and our children—are becoming increasingly fragile. Furthermore, and quite unfortunately, some well intentioned international tinkering actually may be hastening the world's growing social fragility.

### International Law and National Policy

In the last decade, the United Nations System has assumed a major new role: that of world policymaker. Recent conferences, including the Special Session on Children, the Second World Assembly on Aging, and the upcoming World Summit on Sustainable Development, are influential, norm-setting events.<sup>1</sup> Moreover, the declarations flowing from these meetings are playing a growing role in shaping and solidifying the content of enforceable international law. UN conference declarations now establish not only international, but also national, policy.

This is not the time or place for a tedious legal lecture on the various methods by which the United Nations is achieving growing dominance in the creation of international and national law. What is important to understand, for purposes of my present remarks, is that international law matters a great deal. It matters because modern international law now deals not only with the obligations of states, but with the rights of individuals, including children.<sup>2</sup>

Customary international law, moreover, is beginning to play an increasingly important role in shaping the rights of citizens throughout the world. It once required centuries to create international customary law, because that law was

developed through the uniform and consistent practice of nation states over time.<sup>3</sup> More recently, however, some legal scholars have begun to argue that international customary law may be developed, at least in significant part, by the mere repetition of legal language at UN conferences. As a leading international scholar has asserted, negotiated language "repeated by and acquiesced in by sufficient numbers with sufficient frequency, eventually attain[s] the status of law."<sup>4</sup> Some scholars have even argued that the negotiation of international conference agreements, such as the World Summit on Sustainable Development, to be finalized next month in Johannesburg, may in some instances create instant customary international law.<sup>5</sup> This argument, at present, is controversial. But, whether or not the doctrine is sound, academic discussion of instant customary law demonstrates at a minimum that international law can be dramatically influenced by purportedly nonbinding instruments, and without the passage of much time.

This is a momentous and troubling new development. Customary law is binding upon states, often whether or not they agree with a particular customary norm.<sup>6</sup> As a result, even technically nonbinding UN Conference Declarations, such as the recent document "A World Fit for Children," can become binding if the language in those documents is repeated at future conferences, thereby crystallizing emerging rules of international law.<sup>7</sup>

Accordingly, individuals and groups interested in protecting (among other things) the rights and prerogatives of the family—including the innocence of childhood—must pay increasing attention, not only to treaties, but to international conference declarations and the ongoing review and implementation of those conference declarations.

### International Law and the Natural Family

Until relatively recently, the concepts of "marriage," "family" and even "children's rights" were not commonly linked with the notion of "international law." Family and marital law presented issues so closely tied to unique cultural and religious norms that the international community did not undertake any real efforts to regulate marriage and family issues on an international scale. Nevertheless, the Universal Declaration of Human Rights,<sup>8</sup> as well as numerous other UN treaties, announce (or at least recognize) the importance and centrality of marriage and family to human civilization.<sup>9</sup> Moreover, human rights issues have become an increasingly important topic of discussion at international conferences.

Perhaps because of the confluence of these two factors—that is, the existence of “family” and “marriage” language in international agreements and the growing importance of human rights rhetoric—marital and family structures have recently become the centerpiece of discussions at international conferences.<sup>10</sup>

As a result of this discourse, there has been a curious new development. In order to improve the social and political standing of women—goals that, in themselves, are quite laudable—international law has become unusually hostile to long-standing notions of marriage, the natural family, and the rearing of children. As a consequence, marriage, motherhood, fatherhood, and childhood often have been presented as cultural and economic “problems” that demand immediate “solutions.”

The “solutions” have tended to focus on two initiatives. First, and perhaps most prominently, there has been a major effort to liberate women from the burdens of childbearing by demanding international access to abortion. The second major drive has involved deconstruction of the natural family. This deconstruction proceeds in four steps: i) assertions that religious faith is irrelevant or dangerous, ii) attacks on parental authority, iii) claims that there is nothing unique about the union between a man and a woman, and finally, iv) the submission that children should be granted broad autonomy rights. These “solutions”—to the extent they are eventually accorded the deference due customary international law—could radically restructure domestic law around the world. I will briefly discuss a few examples from each area of concern.

I start with the unyielding attempt to force all nations to provide access to abortion on demand. A clear example of this international initiative comes from the Committee charged with interpreting the Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW. The CEDAW Committee routinely criticizes governments for limiting abortion—even though abortion is nowhere mentioned as a right in the convention itself.<sup>11</sup> The committee also labels motherhood as a mere “stereotype” that holds women back.<sup>12</sup> When countries have attempted to follow the admonition in the Universal Declaration of Human Rights that motherhood (and the correlative right of childbearing) deserve special protection and care, the CEDAW Committee has complained that these efforts are “paternalistic,” or, even worse, that encouraging motherhood discourages women from seeking greater fulfillment in paid work.<sup>13</sup> For example, the committee admonished Armenia to “use the education system and electronic media to combat the traditional stereotype of women ‘in the noble role of mother.’”<sup>14</sup>

Once beyond abortion, modern social theorists and their supportive NGOs turn their attentions to the deconstruction of—or, more simply, redefinition of—the natural family. This

deconstruction of the natural family commences (as noted above) with attacks upon faith and religion. The CEDAW Committee, again, is a good example of the approach of some within the modern international community. The committee frequently takes aim at religion and culture, expressing the view that “cultural and religious values cannot be allowed to undermine the universality of women’s rights.”<sup>15</sup> The committee, in fact, was so bold as to pronounce that “[i]n all countries, [one of] the most significant factors inhibiting women’s ability to participate in public life have been the cultural framework of values and religious beliefs.”<sup>16</sup> The committee concluded that “[t]rue gender equality [does] not allow for varying interpretations of obligations under international legal norms depending on internal religious rules, traditions and customs.”<sup>17</sup> The committee, in fact, has gone so far as to instruct Muslim nations that they must read the Holy Qur’an in ways that will better comply with modern social trends.<sup>18</sup>

The attack on the natural family is also furthered by an often obstinate refusal to recognize that the family and parents play a vital role in child-rearing and culture-building. Even though study after study shows that the weakening of parents’ supervisory roles, even more surely than poverty, leads to serious dysfunctions such as crime, the UN’s Committee on the Rights of the Child interprets the Convention on the Rights of the Child in ways that intrude on and weaken the parent-child relationship. The committee views the child as a miniature adult, with rights to privacy, freedom of expression, and freedom to decide what he or she will learn, even against parents’ wishes.<sup>19</sup>

The attack on the natural family that is the most difficult to address (primarily because any reasoned discourse is almost immediately dismissed as “phobic” or “insensitive”) is the modern assertion that there is nothing unique about the relationship between a man and a woman; instead, that there are “various forms of the family.” On one level such language is absolutely correct. The family has always included single-parent households, households involving stepchildren, and those embracing aunts, uncles, grandparents, and other inter-generational relationships. But the modern assertion is much more expansive: it is nothing less than the claim that the very concept of “family” has nothing to do with childbearing or procreation. So understood, any two men or any two women—or any group at all—can claim equal status as a “family.” Such a claim can succeed, however, only if the international community is willing to completely separate society’s vital interest in reproduction—that is, in the bearing and rearing of children<sup>20</sup>—from the concept of family. This severance of reproduction from the concept of family is fraught with profound difficulties.

The severance of family life from reproduction has significant legal, sociological, moral, and philosophical consequences

that have been discussed by, among others, Professors Robert George and Gerard Bradley,<sup>21</sup> and Hadley Arkes.<sup>22</sup> According to these scholars, heterosexual relationships (and, in particular, marital relationships) differ significantly from other possible sexual acts. Sexual relations between a man and a woman bound in marriage are described as “an intrinsic (or . . . ‘basic’) human good.”<sup>23</sup> This is due, in large part, to the fact that a natural marital relationship has the biological potential for reproduction. Indeed, stripped of this reproductive potential, sexual relationships become nothing more than mutually agreeable physical sensations.

One need not dispute that mutually agreeable physical sensations can have emotional, mental, and physical overtones. Such stimulation may be the result of, or perhaps result in, intense attachments to a sexual partner. One need not deny—nor do I deny—that homosexual couples often have relationships founded on affection and devotion for each other. I am not, in short, “homophobic” as some would claim. Nevertheless, absent any relation to procreation, the sexual act is reduced to a purely sensory experience (whether the sensation is physical, mental, or emotional).<sup>24</sup>

At this point, some might argue that if the natural family exists to further society’s procreative imperative, why should infertile heterosexual unions fit within the definition of family? The argument, however, is wide of the mark. The natural family, unlike any other sexual relationship, furthers society’s profound interest in the only sexual relationship that has the biological potential for reproduction: union between a man and a woman.

Procreation within the natural family unit requires a coupling between the two sexes. Sexual relations between a man and a woman, therefore, even if infertile, fundamentally differ from homosexual couplings. Homosexual couplings do not have the biological potential for reproduction: children are possible only by means of legal intervention (*e.g.*, adoption) or medical technology (*e.g.*, artificial insemination). Accordingly, and by their very nature, sexual relationships between a man and a woman—even if infertile—differ in kind from couplings between individuals of the same sex: heterosexual couplings in general have the biological potential for reproduction; homosexual couplings always do not. This potential procreative power is the basis for society’s compelling interest in preferring potentially procreative relationships over relationships founded primarily upon mutually agreeable physical (or emotional) sensation.<sup>25</sup>

The institution of the natural family, therefore, furthers not mere sensory experience, but society’s “very . . . survival.”<sup>26</sup> Moreover, the law has never been ignorant of the vital distinction between sexual practices and procreation. And international law, for its part, must take cognizance of this biologically obvious distinction. International decision making, because it purports to affect the lives of all people, must

be grounded in both principle and reason. When it comes to a worldwide definition of the family, the undeniable and well grounded principle that has guided mankind for generations is straightforward: there is a fundamental difference between procreative sexuality and nonprocreative sexuality.

Reproduction is the only human act for which the two genders undisputably require the other. A woman can do everything in her life without a man, except reproduce. Vice versa for a man. Thus, the sexuality that unites a man and a woman is unique in kind. This uniqueness, in fact, is the very basis of the religious, historical, and metaphysical notion that “marriage” indeed joins two flesh in one.<sup>27</sup>

Furthermore, should international law abandon the principle that reproductive sex has a unique role, we will be left with no basis upon which to draw principled distinctions between sexual relations that are harmful to individuals and/or society and relations that are beneficial. In fact, the same arguments that would seemingly require international protection for same-sex marriage would also require international protection for any consensual sexual practice. After all, once the principled line of procreation is abandoned, we are left with nothing more than sex as a purely sensory experience. The purely sensory experience cherished by any given sexual partnership will be no more or less precious than the purely sensory experience valued by another sexual partnership, no matter how socially repugnant. Should the international community depart from the established definition of the natural family, there will be little, if any, principled ground upon which to deny familial status to any and all consensual sexual groupings—even those involving sexual intimacy with children.<sup>28</sup>

The fourth approach often used to undermine the vital role of the natural family is to separate the child from the family by “reinventing” the child as an “autonomous rights bearer” free (to one degree or another) from parental control, guidance, and support. One of the principal tools used to achieve this result is the Convention on the Rights of the Child, or CRC. The CRC, cited as the centerpiece for the “rights-based approach” at the Special Session on Children, represents an international attempt to ensure children’s well-being. This is a laudable goal, and one that is repeated in the preamble to the convention. The preamble emphasizes children’s rights to “special care,” “assistance,” “protection,” “safeguards,” and “consideration.” However, after reciting the vital special care, assistance, and protection that children must be accorded, the convention veers off in a questionable direction by granting, not *protective* rights for children, but autonomy rights that may actually harm rather than strengthen children.

Prior to the adoption of the Convention on the Rights of the Child, no legal system in the world granted autonomy rights to children. The convention, however, does just that.

The convention, beyond question, is well intentioned. But, its sweeping and unprecedented creation of autonomy rights for children may, in the long run, threaten children's well being. As Peter Neubauer has stated, "Children who are pushed into adult experience[s] do not become precociously mature. On the contrary, they cling to childhood longer, perhaps all their lives."<sup>29</sup>

Two of the most potentially harmful autonomy provisions contained in the convention are the right to privacy and the right to free speech and association. CRC Article 16 states, "[N]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence." Given the growing complexity of privacy laws, this sweeping grant could cause problems for parents and schools who wish to control children's access to, among other things, pornography on the Internet. By preventing "unlawful interference" with a child's "privacy," CRC Article 16 could place even the basic ability to discipline and monitor children—activities necessary for effective parenting—into serious doubt.

An even greater risk is that the CRC's language might be construed to support sexual freedom for children. Some supporters believe that CRC Article 16 grants the same right to "protections for procreation and abortion decision-making" as those that are afforded to adults.<sup>30</sup> Hence, there will continue to be a heated debate at UN Conferences about granting sexual autonomy and abortion rights to children, a position that oddly enough is supported by the same individuals that one might expect to decry the sexual abuse of children.<sup>31</sup> Such heated ideological battles, however, should not lose sight of the reality that most child development experts have long believed that "adolescent sexual activity is . . . unhealthy for children—emotionally, psychologically, spiritually, and physically."<sup>32</sup>

Article 13 of the CRC also grants children the right to "receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."<sup>33</sup> The language of this article does little to recognize the dangers of obscenity and child pornography. Far too many supposed experts in today's world are likely to believe that pornography, and even unrestrained sexuality, are good for children.<sup>34</sup> Given the broadly worded language of CRC article 13, the ability of parents and other caregivers to restrain children's access to potentially harmful sexual practices and harmful pornographic materials is in doubt.

As Professor Bruce Hafen has cogently noted, until the CRC, legal systems in the world limited "children's autonomy in the short run in order to maximize their development of actual autonomy in the long run."<sup>35</sup> This approach, he notes, "encourages development of the personal competence needed to produce an ongoing democratic society

comprised of persons capable of autonomous and responsible action."<sup>36</sup> But, to "short-circuit this process by legally granting—rather than actually teaching—autonomous capacity to children ignores the realities of education and child development to the point of abandoning children to a mere illusion of real autonomy."<sup>37</sup>

### **The Importance of the Natural Family to Human Rights and Social Ecology**

The discussion to this point should make two points clear: 1) the international legal system is gaining considerable clout in establishing norms that, by various means, including the development of customary law, may one day become enforceable international law; and 2) some of these new norms are being used to destroy innocent life and deconstruct the family. These two points, in turn, raise questions regarding the effect these newly articulated norms might have on global society.

A careful review of available social scientific evidence suggests that the world community should be exceptionally cautious in adopting and implementing the norms discussed above. Policy proposals that denigrate the importance of motherhood and childbearing, that undermine the natural family, and that erode the long-established rule that children need protection, not autonomy rights, have an incremental but inevitable effect: they tend to undermine social well being, particularly for children.

The disintegration of the family unit is having a profoundly negative impact on children. Social science data demonstrates two nearly incontestable conclusions: 1) stable, natural marital structures provide profound benefits for men, women, and children; and 2) the breakdown of stable, natural marital structures impose significant social costs upon individuals, children, and society at large. These realities suggest that if we truly want a stable social ecology, the world community should strengthen the historic role of the natural family in nurturing, strengthening, and educating their children.

#### *The Benefits of the Natural Family for Children*

Marriage, as it has been conceived of and practiced for centuries, has marked benefits for marital partners and their offspring.<sup>38</sup>

Married people are generally healthier; they live longer, earn more, have better mental health and better sex lives, and are happier than their unmarried counterparts. Furthermore, married individuals have lower rates of suicide, fatal accidents, acute and chronic illnesses, alcoholism, and depression than other people.<sup>39</sup>

These benefits flow not just to the adult partners of a stable marriage. A growing body of research shows that natural, heterosexual marriage has significant benefits for children.

According to one scholar, the natural family is "by far the most emotionally stable and economically secure arrange-

ment for child rearing."<sup>40</sup> Recent research, moreover, indicates that, for children, nothing compares to a solid, stable marriage between their biological parents.<sup>41</sup>

**Natural marriage supports children's education.** Studies consistently show that children in an intact natural family are significantly less likely to drop out of high school than children in a one parent family.<sup>42</sup>

**Natural marriage minimizes the likelihood of poverty.** Studies also show that children raised outside marriage are more likely to be raised in poor economic conditions.<sup>43</sup>

**Natural marriage aids in crime prevention.** Recent studies emphasize the critical role dual-parenting plays if children are to become law-abiding citizens. As one researcher noted, "the single most important factor in determining if a male will end up incarcerated later in life is . . . whether or not he has a father in the home."<sup>44</sup> The mother-child relationship is equally important. "As mothers spend less time with infants and toddlers . . . the boys' developing brains, and thus their behavioral systems, are affected."<sup>45</sup> Children without this crucial early bonding are "more likely to start out on a path of later narcissism and out-of-control behavior as [they] compensate for [the] early deprivation."<sup>46</sup>

**Natural marriage supports healthy socialization.** The natural family also appears to be an unequaled institution for fostering healthy socialization. Young women from single-parent households are more likely to give birth out of wedlock, and young adults are more likely to be out of both school and the labor force.<sup>47</sup>

In sum, if we want a stable social ecology, society has a compelling interest in promoting and preferring the stable natural family in order to protect future generations. Any breakdown in the importance placed upon the family impairs the social welfare of future generations.<sup>48</sup>

#### *The Costs for Children of Destabilizing The Natural Family*

There are growing signs of distress in society, including poverty. There is "[m]uch . . . debate about the growing gap between rich and poor. . . . Analysis of social science literature demonstrates that the root cause of poverty and income disparity is linked undeniably to the presence or absence of marriage. A broken family earns less and experiences lower levels of educational achievement. Worse, it passes the prospect of meager incomes and family instability on to [its] children, making the effects intergenerational."<sup>49</sup>

As demonstrated above, "[r]esearch has documented that natural family structures benefit nearly every aspect of children's well being. This includes greater educational opportunities, better emotional and physical health, less substance abuse, and lower incidences of early sexual activity for girls, and less delinquency for boys."<sup>50</sup> In the United States, 50 percent of children who live with a single mother live in poverty; by contrast, only 10 percent of children residing in two-parent homes live below the poverty level.<sup>51</sup>

But more than education, emotional health and poverty is at stake. The very safety and lives of women and children depend upon marital stability. A groundbreaking survey of scientific literature performed by Dr. David Popenoe and Dr. Barbara Dafoe Whitehead found that cohabiting, unmarried women "are more likely than married women to suffer physical and sexual abuse."<sup>52</sup> The consequences of cohabitation are even more serious for children. Doctors Popenoe and Whitehead conclude:

The most unsafe of all family environments for children is that in which the mother is living with someone other than the child's biological father. This is the environment for the majority of children in cohabiting couple households.<sup>53</sup>

In short, stable marital unions promote the health, safety, and social progress of women, men, and children. Unstable marital relations promote poverty, crime, abuse, and social disintegration. These realities, moreover, are particularly acute for women and children. While the assault on the natural family in large part has been championed by organizations who purportedly seek the betterment of women and children, their efforts (as shown above) have not always actually improved the lives of women and children. Modern activists would do well to heed the fact that "the family as an institution exists to give legal protection to the mother-child unit and to ensure that adequate economic resources are passed from the parents to allow the children to grow up to be viable adults."<sup>54</sup>

#### **Conclusion**

What is the import of my fairly wide-ranging remarks? I will offer a word of caution and make a plea for help. First, a word of caution. While working to improve social mobility and cultural progress, particularly for children, the international community would do well to avoid the social costs now flowing from the modern marital and sexual revolution. As Professor Maria Sophia Aguirre has noted, "The disruption of the family has had serious and high social welfare costs."<sup>55</sup>

Second, I plead for your help. The threats facing men, women, children and the family do not face one faith, country, or culture alone. All religious faiths, all cultures, and all countries must stand together to combat the erosion of morality and the family. All nations must take their role in crafting international conference agreements very seriously. All too often, nations sign UN agreements only to "appease popular or 'politically correct' sentiment."<sup>56</sup> Such an approach to the negotiation and finalization of international declarations is unwise.

Virtually every UN conference addresses contentious provisions regarding the role of the natural family, childhood autonomy, and children's sexual rights. As these provisions are negotiated, the words that are used and the norms that

are created may become legally binding in the very near future. Each internationally negotiated document builds upon language used and objectives sought in preceding conferences and as a result forms an important link in a chain that inevitably encircles the international community.<sup>57</sup>

The nations of the world must carefully consider the natural family and children's rights language they incorporate into an international declaration. Language may be merely a recommendation today, but that same language may be binding tomorrow. The world community, in negotiating documents that affect the world's social ecology, must be certain that the phrases it uses, the rules it creates, and the lessons that it teaches uplift rather than degrade the world's most important resource: our children.

### Notes

1. Sadik, Nafis. *Reflections on the International Conference on Population and Development and the Efficacy of UN Conferences*, 6 *Colo. Journal of International Law and Policy* 249, 1995, pp. 252–53 (“More than any previous events of their kind, these conferences have fostered the mobilization and participation of civil society and the private sector in the affairs of the international community. . . . The process has nurtured the growth of democracy at the national level and democratized processes at the international level increasing their transparency and accountability.”)

2. See, e.g., Rome Statute of the International Criminal Court at Article 25 (“The Court shall have jurisdiction over natural persons pursuant to this Statute,” and such persons “shall be individually responsible and liable for punishment in accordance with this Statute.”)

3. Bilder, Richard B. “An Overview of International Human Rights Law,” in *Guide to International Human Rights Practice*, 10, note 6 (Hurst Hannum, ed. 1992, 2nd ed.) (“Customary international law is defined as a consistent practice in which states engage out of a sense of legal obligation.”)

4. Higgins. “The Role of Resolutions of International Organizations in the Process of Creating Norms in the International System,” quoted in Frederic L. Kirgis, Jr., *International Organizations in Their Legal Setting* (Second Ed. 1993), p. 341.

5. Conference documents are viewed as significant international instruments because they are the result of consensus, following much debate and deliberation. Hurst Hannum, “Human Rights,” in 1 *United Nations Legal Order* 319, note 15, & 336, note 77 (Oscar Schachter and Christopher C. Joyner, eds. 1995); see also James C.N. Paul, “The United Nations and the Creation of an International Law of Development,” 36 *Harvard International Law Journal*, 1995, pp. 307, 315 (“Because world conferences provide potential opportunities for global popular participation, expert consultations, and, sometimes, vigorous debate, they can in theory, become unique vehicles to elaborate norms (cast in the form of legal instruments) governing development.”) As such, conference declarations are imbued with a strong expectation that members of the international community will abide by them. As this expectation is justified by state practice, including activities within the UN organization, the principles of the document may by custom become binding upon a state.

6. See Meron, Theodor. *Human Rights and Humanitarian Norms as Customary Law* 99, 1989 (“Given the rapid continued development of international human rights, the list [of customary international law norms] as now constituted is essentially open-ended. . . . Many other rights will be added in the course of time.”); *Restatement (Third) of the Foreign Relations Law of the United States*, pt. I, note 6, 702 cmt. a (noting that its “list [of customary international law norms] is not necessarily complete, and is not closed: human rights not listed in this section may have achieved the status of customary law, and some rights might achieve that status in the future”); Richard B. Lili-

lich, “The Growing Importance of Customary International Human Rights Law,” 25 *Georgia Journal of International and Comparative Law*, 1995/96, p. 57, at 7 n. 43 (reporting that in a speech in 1996, Restatement (Third) Chief Reporter Louis Henkin indicated that “if he were drafting Section 702 today he would include as customary international law rights the right to property and freedom from gender discrimination, plus the right to personal autonomy and the right to live in a democratic society”); Beth Stephens, “Litigating Customary International Human Rights Norms,” 25 *Georgia Journal of International and Comparative Law*, 1995/96, pp. 191, 198–99 (describing customary international law as a “developing concept” and predicting as likely developments “environmental protections and the right to political access—i.e., to vote—and other attributes of democracy”). Commentators have argued, for example, that customary international law includes, or will soon include, rights such as freedom of thought, free choice of employment, the right to primary education, the right to form and join trade unions, and rights relating to sexual orientation. See Curtis A. Bradley & Jack L. Goldsmith, “Customary International Law as Federal Common Law: A Critique of the Modern Position,” 110 *Harvard Law Review*, 1997, pp. 815, 816.

7. Toman, Jiri. “Quasi-Legal Standards and Guidelines for Protecting Human Rights,” in *Guide to International Human Rights Practice* 192, Hurst Hannum, ed. 1992, 2nd ed..

8. Universal Declaration of Human Rights, Article 16-3 (“The family is the natural and fundamental unit of society.”)

9. See, e.g., International Covenant on Economic, Social and Cultural Rights, Article 10-1 (the family is entitled to “the widest possible protection and assistance”); International Covenant on Civil and Political Rights, Article 23-2 (“The right of men and women of marriageable age to marry and to found a family shall be recognized.”)

10. See, e.g., Richard G. Wilkins, “Bias, Error and Duplicity: Domestic Law and United Nations Conference Agreements,” *The World & I*, December 1996, pp. 287–305 (reprinted in 34 *Australia and World Affairs* 23 (Spring 1997); 35 *Australia and World Affairs* 38 (Summer 1998)) (noting the importance abortion and family structure arguments played in the negotiation of the Habitat Agenda).

11. For example, the committee now regards abortion and lesbianism as “rights,” even though such “rights” were clearly rejected by the General Assembly at Cairo and Beijing in 1994 and 1995, respectively. See, e.g., A/52/38/Rev.1, Part Two, para. 210; A/54/38/Rev.1, Part Two, para. 139; A/54/38/Rev.1, Part Two, paras. 228–29 (abortion); A/54/38/Rev.1 Part One, paras. 127–28 (lesbianism). The Committee has also recently begun treating voluntary prostitution as a “right” under CEDAW. See A/54/38/Rev.1, Part One, paras. 288–89 (China), and paras. 197–98 (Greece). This practice of inventing new “rights” raises serious questions about the Committee’s good faith in interpreting CEDAW and about the legitimacy of a committee of “experts” imposing these new rights on sovereign governments, when the “experts” know that these governments would never have agreed to a document expressly containing them.

12. One “stereotype” routinely targeted for eradication by the CEDAW Committee is “motherhood.” The committee recently chastised both Georgia and Belarus for overemphasizing women’s role as mothers and has specifically criticized Belarus for reinstating a national Mothers’ Day. A/54/38/Rev. 1, Part Two, para. 99 (Georgia); A/55/38 Part One, paras. 359 and 361 (Belarus).

13. In recent reports, the committee has told Western European countries like Germany, Spain, and Luxembourg—countries with below replacement birth rates and imploding populations—that their governments must do more to get women into the full-time work force and to “eradicate stereotypical attitudes.” A/55/38 Part One, paras. 311–12 (Germany); A/54/38/Rev.1, Part Two, para. 259 (Spain); A/52/38/Rev.1, Part Two, paras. 215–17 (Luxembourg).

14. Report of the 17th Sess. of the Committee on the Elimination of All Forms of Discrimination against Women, Article 7 para. 65, U.N. Doc. A/52/38/Rev.1, 1997.

15. A/53/38 (Part 1) para. 282.

16. A/52/38/Rev.1 at para. 10.

17. Report of the Committee on the Elimination of All Forms of Discrimination Against Women, Article 16 para. 135, U.N. Doc. A/49/38, 1994.

18. The CEDAW Committee instructed Libya to alter its reading of the Qu'ran with the following language:

. . . Members felt that the interpretation of the Koran had to be reviewed in the light of the provisions of the Convention and in the light of the current social environment. . . . [E]fforts should be made to proceed to an interpretation of the shariah that was permissible and did not block the advancement of women. The Government was urged to take a leading role in its interpretation of the Shariah as a model for other Islamic countries.

19. CRC/C/15 Add. 34, 36, 40, 43, 46, 55, 61, 67, 68, 74, 76. Such disregard of parents extends beyond the CRC. At a recent session of the Commission for Social Development, Mr. Pino Arlacchi, executive director of the United Nations Office for Drug Control and Crime Prevention, concluded in his report to the commission that "a stable, supportive family life provides a vital shield to drug abuse, particularly among minors." Nevertheless, even though Mr. Arlacchi also testified that peer pressure was one of the greatest causes of drug abuse among teenagers, the "Agreed Conclusions" drafted by the Commission for Social Development merely stated that "youth groups can also be engaged as active agents in the field of prevention of drug abuse." CSW, Agreed Conclusions for Agenda Item 3(a)(iii) para. 3, 1998. Thus, rather than assisting parents in alleviating drug use, the method actually advocated by the UN's Executive Director of the Office for Drug Control, the Commission on Social Development mobilized "peer groups"—the very forces that the executive director feared when it came to increased drug abuse.

20. *Skinner v. Oklahoma*, 316 U.S., 1942, pp. 535, 541.

21. George, Robert P. and Gerard P. Bradley. "Marriage and the Liberal Imagination," 84 *Georgia Law Journal*, 1995, pp. 301, 302.

22. Arkes, Hadley. "Questions of Principle, Not Predictions: A Reply to Macedo," 84 *Georgia Law Journal*, 1995, p. 321.

23. George and Bradley, *supra* note 21, pp. 301–02.

24. Professors George and Bradley argue that the notion of sex as [a] pure sensory experience comprises the important values of personal dignity and integrity:

[M]arriage provides a noninstrumental reason for spouses, whether or not they are capable of conceiving children in their acts of genital union, to perform [sexual] acts. In choosing to perform nonmarital orgasmic acts, including sodomitical acts—irrespective of whether the persons performing such acts are of the same or opposite sexes (and even if those persons are validly married to each other)—persons necessarily treat their bodies and those of their sexual partners (if any) as means or instruments in ways that damage their personal (and interpersonal) integrity; thus, regard for the basic human good of integrity provides a conclusive moral reason not to engage in sodomitical and other nonmarital sex acts.

*Ibid.* at 302.

25. While same-sex marriage is not sanctioned in the West, Professor Eskridge has argued that same-sex marriage has been recognized and accepted in other nonwestern cultures and countries. See William N. Eskridge Jr., "A History of Same Sex Marriage," 79 *Virginia Law Review*, 1993, pp. 1419, 1511. However, careful review of Eskridge's work reveals that other cultures have tolerated same-sex unions, but never sanctioned same-sex marriage. See Peter Lubin and Dwight Duncan, "Follow the Footnote or the Advocate as Historian of Same-Sex Marriage," 47 *Catholic University Law Review*, 1998, pp. 1271, 1325.

26. *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

27. George, Robert P. "Public Reason and Political Conflict: Abortion and Homosexuality," 106 *Yale Law Journal*, 1997, pp. 2475, 2497 ("Professor Bradley and I [Robert George] defend an alternative conception of marriage—one which we believe to be reflected in traditional American and British marriage law, especially in the

law governing consummation of marriage. We argue that marriage is a one-flesh (*i.e.*, bodily, as well as emotional, dispositional, and spiritual) union of a male and a female spouse consummated and actualized by sexual acts that are reproductive in type. Such acts consummate and, we maintain, actualize the intrinsic good of marriage whether or not reproduction is desired by the spouses in any particular marital act, or is even possible for them in a particular act or at all.").

28. Professors George and Bradley cogently ask how society can, in principle, reject the claim of the pederast once it accepts the marital claim of the homosexual couple. See George and Bradley, *supra* note 21, p. 311.

29. Quoted in *Children Without Childhood*, by Marie Winn, 1981, ch. 13. Available at <http://www.bartleby.com/66/87/41387.html> (last visited 25 April 2002).

30. Shepherd, Robert E. "Civil Rights of the Child," *Children's Rights in America*, 1990, p. 143.

31. See, *e.g.*, Professor Anne Hendershoot, "The Paradox of the Postmodern Pedophile," the *San Diego Union*, Union Tribune Publishing Company, 26 April 2002 (noting that the coming publication of *Harmful to Minors: The Perils of Protecting Children from Sex* by the University of Minnesota Press promises a "a radical, refreshing and long overdue reassessment of how we think and act about children's and teens' sexuality." In published interviews on the University of Minnesota's Web site, author Judith Levine decries the fact that there are people "pushing a conservative religious agenda that would deny minors access to sexual expression" and adds that "[w]e do have to protect children from real dangers. . . . But that doesn't mean protecting some fantasy of their sexual innocence.")

32. Redd, Henry J. *et al.*, "Contraception and Adolescents: A Discontent," 21 *Child and Family*, No. 2, 1990, pp. 105, 106.

33. Convention on the Rights of the Child, Article 13.

34. See *supra* Note 31.

35. Hafen, Bruce C. and Jonathan O. Hafen, "Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child," 37 *Harvard International Law Journal*, 1996, pp. 449, 491.

36. *Ibid.*

37. *Ibid.*

38. See Steven L. Nock, *Marriage in Men's Lives* 11 (1998).

39. See *ibid.* at 3.

40. Berger, Brigitte. "The Social Roots of Prosperity and Liberty," 35 *Society*, 13 March 1998, p. 44 (available on Westlaw at 1998 WL 11168752) ("Although of late we can witness a public rediscovery of the salutary role of the nuclear family of father, mother, and their children living together and caring for their individual and collective progress, policy elites appear neither to have fully understood that public life lies at the mercy of private life, nor do they seem to have apprehended the degree to which the [traditional] virtues and [traditional] ethos continue to be indispensable for the maintenance of both the market economy and civil society.").

41. This research has many implications, particularly for those who are voluntarily choosing to ignore the patent benefits of marital parenting in the pursuit of individualistic lifestyles:

[W]hile only a couple of decades ago childbirth was sought almost exclusively by married couples in their prime childbearing years, many applicants for access to the new technologies are now single, and some are post-menopausal. Nor do these new applicants necessarily wish to establish traditional family forms. Some want their children to have only one legal parent; some want their children to have no father but two mothers; some want to establish "traditional" parental relationships by conceiving with sperm from a deceased partner.

Garrison, Marsha. "Law Making for Baby Making: an Interpretive Approach to the Determination of Legal Parentage," 113 *Harvard Law Review*, 2000, pp. 835, 839–40. Garrison also notes:

During a 12-month period in 1986–87, there were approximately

4,000 requests from single women for artificial insemination. [citation omitted]. While there are no current national data on the proportion of [artificial insemination] users who are single women, anecdotal evidence suggests that the phenomenon is increasing in frequency. For example, the director of one California sperm bank has estimated that 40% of its [artificial insemination] recipients are single lesbian women. [citations omitted]. Births to unmarried mothers have also risen dramatically in recent years. In 1970, 10.7% of U.S. births were to unmarried women; by 1995, 32.2% were. [citations omitted]

See *ibid.*, n.9.

42. See Waite, Linda J. "Does Marriage Matter?" 32 *Demography*, November 1995, pp. 483, 494.

43. See *ibid.* p. 494.

44. See Gurian, Michael. *The Good Son: Shaping the Moral Development of our Boys and Young Men*, 1999, p. 182 (referring to research studies conducted by the University of Pennsylvania and Princeton University).

45. See *ibid.* p. 42-43.

46. See *ibid.* p. 43. Gurian notes that today there is a cultural strain on the early bond between both mothers and fathers. "Most boys lose their mothers not because of death but because the importance of the mother-son bond has been gradually diminishing in our culture, and thus in the home. Pressures on contemporary mothers are such that mothers can't mother their sons as they wish and need to. Similar pressures have for years frayed the father-son bond. . . ." *Ibid.* p. 42. Gurian also notes that "[t]he reason the question of working mothers and child care is so developmentally crucial now is that mother-child attachment itself has changed a great deal by force of culture. Our economic system forces many mothers to work far away from their babies, and the 'aunties'—the child-care workers provided by our culture—are generally so slightly paid that they don't stay around long enough to form bonds. This situation is potentially dangerous to the developing child." *Ibid.* p. 74.

47. See *supra* note 42 p. 494.

48. See, e.g., Popenoe, David. "Family Caps," *Society* 25, 1 July 1996 (available on Westlaw at 1996 WL 9295227):

That substantial family disintegration has occurred in the United States in recent decades is now widely recognized. Here are some of the key statistics: From 1960 to 1990 the divorce rate in the United States doubled or tripled (depending upon how one calculates the rate); the percentage of families headed by a single parent tripled, growing from 9 percent to 27 percent; the percentage of out of wedlock births increased from 5 percent of all births to 30 percent; and the percentage of children living apart from their biological fathers more than doubled, growing from 17 percent to 36 percent. It is very much in the public interest for the government to prevent such family disintegration—to promote marriage and the two-parent family and to try to limit single-parent families and out of wedlock births.

49. Fagan, Patrick F. "How Broken Families Rob Children of Their Chances for Future Prosperity," *The Heritage Foundation Background*, No. 1283, 11 June 1999.

50. Hart, Craig H. *Combating the Myth that Parent's Don't Matter*, at 3 (address delivered at the World Congress of Families II, Geneva, Switzerland) (available online at <http://www.worldcongress.org>).

51. *Ibid.*

52. Popenoe, David and Barbara Dafoe Whitehead, *Should We Live Together? What Young Adults Need to Know about Cohabitation Before Marriage*, The National Marriage Project, Rutgers University, 1999, p. 7.

53. *Ibid.* p. 8.

54. Aguirre, Maria Sophia. *Family Economics and the Information Society: How are They Affecting Each Other?* paper presented at the World Congress of Families II, Geneva, Switzerland, p. 12 (available online at <http://www.worldcongress.org>).

55. *Ibid.* p. 23.

56. Afran, Neil H. "International Human Rights Law in the Twenty First Century: Effective Municipal Implementation or Paen to Platitudes," 18 *Fordham International Law Journal*, 1995, pp. 1756, 1758.

57. See Sadik, *supra* note 1 p. 252.