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Sex and the Problem of Human Rights

—◆—
STEPHEN BASKERVILLE

Liberty, when men act in bodies, is power.

—Edmund Burke, *Reflections on the Revolution in France*

Something disturbing is taking place in the politics of human rights. At one time, human rights were seen as a matter of putting international pressure on authoritarian regimes to stop repressing their people. With little discussion or scrutiny, however, the term *human rights* has evolved into something much more expansive. It is little exaggeration to say that it has become a free-for-all, a grab bag into which one can toss almost any political agenda, however distantly connected to the term's original understanding. In the name of human rights, we now undertake campaigns to legislate contentious social policies and claim the authority to instruct other countries on their welfare programs and spending priorities. Recent innovations allow the criminalization of not only government officials but also private citizens for "human rights" violations. The term *human rights* is astoundingly used even to rationalize suspension of due-process protections and incarcerations without trial. We now presume to supervise how private individuals conduct their personal lives in the privacy of their own homes and prosecute them as human rights violators if we disapprove. Some campaigns conducted in the name of human rights now have aims precisely opposite to what most people understand by the term, to the point where "human rights are [increasingly] threatened in the name of human rights" ("On Human Rights" 1998).

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Although these trends may be seen on several fronts, the cutting edge—perhaps the sharpest fault line in human rights politics today—involves provisions related to the family, gender, and sexuality.

The innovative nature of human rights politics is not wholly new. The modern human rights agenda began in the aftermath of the Holocaust with the Universal Declaration of Human Rights in 1948. Although that nonbinding document—followed by more binding treaties—incorporated standard protections from traditional Western bills of rights, it also included more controversial provisions traditionally considered matters of social policy (Art. 22–27).

“First-generation” rights were basic safeguards protected in the International Covenant on Civil and Political Rights (ICCPR; United Nations [UN] General Assembly 1966a): freedom of speech and expression, religion, association, and assembly; procedural protections; due process of law; and equality before the law. Thus limited, human rights simply universalized the freedoms traditionally enjoyed in much of the Western world.

To these traditional rights, the International Covenant on Economic, Social, and Cultural Rights (ICESCR; UN General Assembly 1966b) added “second-generation” rights in more contentious areas, such as rights to “social security,” employment, certain levels of pay and a certain “standard of living,” food, clothing, housing, medical care, education, leisure, and “social services”: provisions that did not limit government action but required it, measures someone must pay for.

Second-generation rights have provoked sharp criticism. Some see them as cheapening more basic and more urgent demands. “It weakens the public concern for basic, first-generation human rights,” writes one critic, “for suddenly it sounds like there is a moral equivalency between a government not providing very high unemployment benefits and a government selling people . . . into slavery. . . . It . . . has cheapened the entire discussion of human rights.” Because second-generation rights involve financial costs that are beyond some nations’ means, their inclusion in the category of “human rights” “makes all human rights sound like distant, vague political goals to be pursued at some later date in human history, not as demands of justice that can and should be met *today*” (Johnson 2008, 80–82, emphasis in original).

More serious, however, is the charge that the expansive definition of human rights itself threatens freedom, a view similar to Frederic Bastiat’s argument about the different principles of the French Revolution: “M. de Lamartine wrote me one day: ‘Your doctrine is only the half of my program; you have stopped at liberty; I go on to fraternity.’ I answered him: ‘The second half of your program will destroy the first half.’ And, in fact, it is quite impossible for me to separate the word ‘fraternity’ from the word ‘voluntary.’ It is quite impossible for me to conceive of fraternity as *legally* enforced, without liberty being *legally* destroyed, and justice being *legally* trampled underfoot” ([1848] 1995).

The two categories of rights assume roles for the state that are diametrically opposite. “Earlier lists of political rights were mainly concerned with governments doing things they should not, rather than failing to do things they should,” writes James Nickel (2007, 12). One momentous implication has been greatly underappreciated: whereas the original meaning of human rights uniformly *diminished* government power, the newer norms *expand* it.

That controlling government repression was the original thrust of human rights campaigns—the assumption on which the public was brought on board the human rights agenda and that continues to justify intervention for most people—is clear from the literature even today. “When *governments* do cruel and unjust things to their citizens we are likely to describe those actions as violations of human rights,” Nickel begins his authoritative recent book *Making Sense of Human Rights*, writing of “enforcing international norms that will prevent *governments* from doing horrible things to their people.” Likewise, he states: “Governments are their primary addressees” (2007, 1, 7, emphasis added). One authority, citing human rights activists, concludes (at least theoretically) that “[h]uman rights law is not interested in torture if it is practised by a drug-dealer to extort money from his clients, but only if it is practised by an officer of a state” (Laughland 2008, 14). Continuing constitutional bills of rights that date back at least to Magna Carta and that have commanded almost universal respect for many centuries, human rights law derives its moral authority from our consensus against government repression.

All this has changed dramatically, however, with virtually no public discussion. Today, almost anyone can find himself designated a human rights abuser. Several trends have contributed to this development. In a number of prominent instances—indeed, going back to the Holocaust itself—human rights were incontestably violated by low-level officials, though in most instances those civil servants and soldiers were not prosecuted.

In recent years, people who were not government officials at all committed atrocities: Bosnia and Rwanda are the most prominent examples. Indeed, the fact that entire populations have been implicated in hideous atrocities has spawned a new field of inquiry known as “transitional justice,” in which special tribunals are created to deal with the actions of those beyond the reach of national judiciaries and with cases in which quasi-religious and quasi-therapeutic languages (using terms such as *healing* and *atonement*) are invoked to bridge the gap between those who can be brought to justice and the mass of the population whose numbers are too great but whose culpability is too conspicuous to sweep under the carpet.

Equally important, however, this shift has been driven by a view of human rights that makes it the property not of the universality of humanity (as the term itself suggests), but of specific groups seeking “power.” As one advocate writes approvingly, “Today, recourse to human rights discourse in order to make claims on behalf of individual people or specific social groups is so widespread in international politics that it might be described as ‘hegemonic.’” Not the substance of specifically defined

rights, but a nebulous “human rights discourse” is seen as little more than a “useful political tool,” less to protect individuals from repression than to advance political agendas (for example, against “multinational corporations”) (Steans 2010, 76). In this view, human rights is not “universal” and equally applicable to all. Instead, it is a means or “instrument” to other, more political ends that benefit particular interests competing for “power” with others. “International human rights law is a peaceful but powerful instrument of change,” writes Geraldine Van Bueren. “Human rights is about peacefully redistributing unequal power. The essence of economic and social . . . rights is that they involve redistribution, a task with which, despite the vision of human rights, most constitutional courts and regional and international tribunals are distinctively uncomfortable” (1999, 680). In this view, human rights is not a continuation of constitutionalism, limiting government power and its abuse. Instead, it is what Van Bueren calls an “ideology,” rationalizing and conferring *increased* government power for some to use against others.

Nowhere is this view more advanced than where human rights is invoked to support innovations in social policy, specifically in regard to the family, gender relations, and sexuality. This area of human rights politics is by far the most militant and ideologically charged: “The incorporation of women’s rights issues into human rights practice is a revolutionary and evolutionary process” (Thomas and Beasley 1993, 62). Feminists acknowledge and even celebrate the “revolutionary” thrust of their agenda and how thoroughly they have altered the very meaning of the term *human rights*, often against the wishes of those who intended to stop repression: “During the past twenty years, the campaigns and interventions of feminist movements all over the world have forced the human rights movement to undergo a radical change by redefining the concept of ‘human rights.’ Although committed to the notion of ‘universal human rights,’ feminist activists and scholars have nevertheless argued that human rights are not static and fixed but are determined by historical moments and struggles . . . in the process, expanding the meaning of ‘rights’ to incorporate their own hopes and needs” (Bahar 1996, 105).

This account openly acknowledges that feminists have politicized human rights and appropriated it to advance the political “struggle” of a sectional interest. “Women’s groups . . . are increasingly utilising the language of rights in gender struggles,” one feminist scholar acknowledges (Steans 2010, 75).¹ Here again, human rights changes from a universal code of specific rights to be protected equally for all and becomes a “language” or “discourse,” a rhetorical “tool” to be invoked when convenient to advance what is in reality the pursuit of self-interested “power” by “specific social groups”: “The language of human rights and human rights convention provide a useful tool for activists seeking to ‘empower’ women” (Steans 2010, 75, 85). Rather than fixed principles, the influential Charlotte Bunch argues,

1. “The principle of struggle,” according to Polish dissident Tadeusz Mazowiecki, “sooner or later leads to elimination of one’s opponent” (Mazowiecki 1996, 229).

“human rights are dynamic and flexible, providing a useful language in which to frame issues and a powerful political tool to advance feminist objectives” because they lend “gravitas” to that political agenda (qtd. in Steans 2010, 78). This refrain is repeated almost verbatim in literally dozens of articles that saturate the self-referential world of feminist scholarship: “Human rights discourse is a powerful tool for affecting political processes at the national and international level,” writes Donna Sullivan. “Gender-specific abuses have yet to be fully integrated into that discourse” (1995, 126).

This reframing of human rights is a huge shift. Moral capital built up by decades of dangerous work against repression, torture, mass killings, and other atrocities by regimes of left and right is available to be appropriated to justify a grab for political power by an ideological interest. Feminists even boast that they are doing more than redefining human rights:

Feminist human rights activists are . . . doing more than merely expanding the notion of human rights. They are questioning the political and social foundations on which the notion of “rights” rests; they are undermining the distinction between public and private and challenging the social contract which is the basis of such distinctions. . . . To incorporate the demands . . . of this movement, therefore, involves more than merely focusing on women’s human rights; it demands a reconsideration of the definition of “human rights,” of social contract theory, of theories of the family, and of the relationship between the state and the gendered citizen. (Bahar 1996, 107)

The feminist redefinition of human rights directly inverts traditional understanding of the term and in doing so undermines the foundations and principles that have protected traditional rights for centuries. Far from protecting the private individual from state intrusion, the feminist understanding of human rights creates a highly invasive ethic resting on a fundamental denial of any distinction between public and private or of a private sphere of life beyond the reach of state power. The main targets are family and personal privacy.

Human Rights and Private Life

The earliest modern human rights documents treated private life and the family explicitly as realms to be protected. The Universal Declaration of Human Rights states, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (UN General Assembly 1948, Art. 16.3), and it makes other provisions for the protection of family privacy and marriage. It also declares that “[p]arents have a prior right to choose the kind of education that shall be given to their children” (Art. 26.3).

Though not legally binding, the declaration is backed by the ICESCR, which states even more strongly: “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children” (UN General Assembly 1966b, Art. 10.1). It also assumes marriage as the basis of the family and provides for the rights of parents: “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions” (Art. 13.3). The ICCPR protects the family (UN General Assembly 1966a, Art. 23) and parental rights (Art. 18.4) in language largely identical to the other measures.

Some provisions of these earlier treaties did signal problems. Although they recognized marriage as the basis of family life, they also set it up for failure by providing for the rights of spouses at its “dissolution” (Cere 2008–2009)—rights that incidentally have not been remotely enforced in any country, given the tremendous disadvantage to spouses who do not initiate divorce, fathers in particular (Baskerville 2007).

Yet two subsequent treaties go much further in undermining family integrity and private life generally. The ostensibly “universal” protections for the family are largely negated by subsequent conventions singling out specific groups—here women and children—as alleged victim groups. Both treaties have been the work of a small number of ideologues, and it is apparent that many governments have signed them with little real commitment to enforcing their provisions, many of which seem to be largely ignored. Yet their implications are far reaching. They have the effect of undercutting virtually every traditional authority, from the family and parents to the national sovereignty of signatory states.

Like the early treaties but more controversially, the newer treaties establish monitoring committees that evaluate compliance by signatory governments. Though in theory purely advisory, these committees issue reports on countries’ behavior and instructions that the countries must follow to bring themselves into compliance. The committees, composed of “experts” in “women’s” issues, also issue opinions or “general comments” about the meaning of the treaties that often end up expanding the treaties’ reach.

Women as Victims: CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW; UN General Assembly 1979) has transformed the treaty-making process into a vehicle for social engineering. Drafted in the 1970s at the height of the sexual

revolution, CEDAW requires countries to codify feminist ideology as an official doctrine—a practice forbidden by the constitutions of most democracies, which recognize that beliefs cannot be given official status if freedom of expression is to be preserved. Under CEDAW, signatories must not only “take all appropriate measures to eliminate discrimination against women” but also eradicate “any stereotyped concept of the roles of men and women at all levels and in all forms” (Art. 10c). This goal of eliminating “concepts” is taken very literally; not even personal beliefs are exempt from official oversight. “It contains language calling for the most intrusive government imaginable—government which intrudes into the most private and sacred areas” (Balmforth 1999). One passage requires signatory governments to engineer changes not only in societal practices, but also in people’s thoughts: “States Parties shall take all appropriate measures . . . [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (Art. 5a).

The CEDAW monitoring committee insists that governments not simply eliminate discrimination but propagate feminist ideology among their populations. “States should introduce education and public information programmes to help eliminate prejudices that hinder women’s equality” and “public information and education programmes to change attitudes concerning the roles and status of men and women” (UN Division for the Advancement of Women [UNDAW] 1992). The CEDAW committee has repeatedly expressed its view that governments have a duty to indoctrinate their populations in approved ideology and to suppress unorthodox heresies. Toward Indonesia, the committee expressed “great concern about existing social, religious, and cultural norms that recognize men as the head of the family and breadwinner and confine women to the roles of mother and wife” and demanded to know “what steps the Government is proposing to take to modify such attitudes” (Committee on the Elimination of Discrimination Against Women 1998, para. 289).

CEDAW also takes an expansive approach to “discrimination,” insisting that even “private” persons are punishable for how they “discriminate” in their personal associations. “Under CEDAW, even private behavior—such as how couples divide household and child-care chores—is subject to government oversight and modification,” observes Christina Hoff Sommers (2010a, 5). “The UN monitoring committee routinely censures countries such as Denmark, Norway, and Iceland for failing to prevent women from taking primary care of children, a practice it deems ‘discriminatory’” (Hoff Sommers 2010b). Thus, not simply governments, but private individuals can be designated as human rights violators simply because of how they divide the household labor or otherwise conduct their private lives and personal relationships. “Discrimination under the Convention is not restricted to action by or on behalf of Governments,” the committee points out. Article 2(e) requires

governments “to eliminate discrimination against women by any person” as well as by organizations. Article 2(f) requires governments forcibly “to abolish existing . . . customs and practices which constitute discrimination against women.” The committee concludes: “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights” (UNDAW 1992).

CEDAW also regulates the content of education, including “family education” or what parents teach their own children in their own homes. “CEDAW prohibits making distinctions between the roles of mother and father, and teaching a traditional understanding of the family,” observes one scholar. “Children are to be taught that they can get along just as well with two mothers or two fathers, and any attempt to show otherwise could be considered discrimination against women” (Estrada 2009).

Having rendered such questions into matters of “human rights” and “discrimination,” CEDAW officials may then issue decrees to prevent the discrimination, without having to consider whether the dictates are feasible, what costs they entail, who must pay them, and even that they might be mutually inconsistent. Thus, the CEDAW committee requires that governments simultaneously legalize prostitution and prosecute men for engaging in it. The committee urges Mexico to legalize prostitution and “strongly recommends that new legislation . . . should punish pimps and procurers.” As one team of scholars observes, “Legalizing the activity . . . contradicts the reasonably clear language of the CEDAW treaty itself, which says, ‘States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.’ In the CEDAW committee, it seems that enabling prostitution is a form of suppressing it!” (Fagan, Saunders, and Fragoso 2009, 23; see also Committee on the Elimination of Discrimination Against Women 1998, para. 414).

The CEDAW committee does not have to deal with the costs entailed by all of this enforcement, and so it may issue requirements for which others must pay. CEDAW officials insist that citizens of signatory states must fund “necessary supporting social services,” including “the establishment and development of a network of child-care facilities” (Art. 11[2][e]). In fact, the CEDAW committee seems particularly concerned to engineer the collectivization of childrearing. As Hoff Sommers notes, “Throughout the treaty, the drafters show a determination to eradicate gender stereotypes, especially those that associate women with caregiving and motherhood” (2010, 13). Governments accordingly must supervise household practices to “ensure that family education includes a proper understanding of maternity as a social function” (Art. 5[b]). According to Patrick Fagan, William Saunders, and Michael Fragoso, the CEDAW committee admonishes New Zealand that “[t]he Committee is concerned that the rates of participation [in daycare] for mothers of young children and single mothers remain below the average for States members of the Organization for Economic Cooperation and Development.” Careerism seems to be the primary criterion directing the

family-policy decrees of the CEDAW committee, which scolds Slovakia because the “decrease in pre-school childcare is particularly detrimental to women’s equal opportunity in the employment market since, owing to lack of childcare, they have to interrupt their employment career.” Slovenia must create “more formal and institutionalized childcare establishments for children under three years of age as well as for those from three to six.” Having as many children as possible in institutional care is apparently a virtue for its own sake: “The committee expressed disdain that only 30% of the children under age three were placed in formal day care, while the rest were cared for by family members and other private individuals.” Collectivized childrearing seems to be the committee’s foremost panacea to combat gender inequality. In Germany, the committee was “concerned that measures aimed at the reconciliation of family and work *entrench stereotypical expectations* for women and men. In that regard the Committee is concerned with the unmet need for kindergarten places for the 0–3 age group” (qtd. in 2009, 11–12, emphasis added).

CEDAW officials insist that religious freedom and democratic rights must be curtailed when voters in democracies disagree with their agenda. The committee expresses open hostility to the free exercise of religion, reporting that “in all countries, the most significant factors inhibiting women’s ability to participate in public life have been the cultural framework of values and religious beliefs” (UNDAW 1992). According to the committee, “[T]rue gender equality [does] not allow for varying interpretations of obligations under international legal norms depending on internal religious rules, traditions and customs” (Committee on the Elimination of Discrimination Against Women 1994, 39). If a nation’s religious rules, traditions, and customs conflict with the CEDAW committee’s view of women’s rights, that nation must find new religious rules, traditions, and customs.

The fact that Ireland’s Catholic voters have voted down several referenda to legalize abortion apparently necessitates restrictions on how the Irish may vote. “The influence of the Church is strongly felt not only in attitudes and stereotypes, but also in official State policy. In particular, women’s right to health, including reproductive health, is compromised by this influence.” Because Norway’s protection for religious minorities leaves them free to disagree with feminist doctrine in “family and personal affairs,” Norway should restrict religious freedom: “The Committee is especially concerned with provisions in the Norwegian legislation to exempt certain religious communities from compliance with the equal rights law. Since women often face greater discrimination in family and personal affairs in certain communities and in religion, they asked the Government to amend the Norwegian Equal Status Act to eliminate exceptions based on religion” (qtd. in Fagan, Saunders, and Fragoso 2009, 24–25).

Likewise in Indonesia: “Cultural and religious values cannot be allowed to undermine the universality of women’s rights,” meaning legalized abortion.

Religious freedom in fact seems to be the source of most trouble: “In all countries the most significant factors inhibiting women’s ability to participate in public life have been the cultural framework of values and religious beliefs” (qtd. in Fagan, Saunders, and Fragoso 2009, 24–25).

CEDAW officials acknowledge that they are doing more than enforcing existing rights; they are creating new ones that are directly contrary to most societies’ existing values. The UN’s special rapporteur on violence against women acknowledges that “[t]he most controversial [area] is the issue of sexual rights”:

The right to self-determination [of nations] is pitted against the CEDAW articles that oblige the state to correct any inconsistency between international human rights laws and the religious and customary laws operating within its territory. . . . While international human rights law moves forward to meet the demands of the international women’s movement, the reality in many societies is that women’s rights are under challenge from alternative cultural expressions. . . . The movement is not only generating new interpretations of existing human rights doctrine . . . but it is also generating new rights. The most controversial is the issue of sexual rights. . . . One can only hope that the common values of human dignity and freedom will triumph over parochial forces attempting to confine women to the home. (Coomaraswamy 1997)

As a practical matter, some question what this treaty can accomplish when most signatories seem to ignore it. “Signatories like Saudi Arabia, Burma, Yemen, and North Korea have done almost nothing to reform their laws, policies, and traditional practices—even when admonished by the UN’s CEDAW Compliance Committee,” Hoff Sommers points out (2010, 4).

Complete gender equality as feminists conceive it is, after all, virtually impossible to achieve because women make choices that differ from men’s, especially once children appear. It is not clear that any country can ever comply with CEDAW’s provisions that require the elimination of “all forms” of gender stereotypes, short of the most intrusive regulations of the intimate details of citizens’ private lives and thoughts—a path CEDAW operatives seem willing to take. “If, for example, more women than men routinely take care of children, the CEDAW committee recommends ways to turn things around, usually with government-imposed quotas and ‘awareness raising’ campaigns,” notes Hoff Sommers (2010, 15). The committee recently advised Spain to organize a national “awareness raising campaign against gender roles in the family.” Finland was urged “to promote equal sharing of domestic and family tasks between women and men.” Slovakia was instructed to “fully sensitize men to their equal participation in family tasks and responsibilities.” Liechtenstein was questioned about a “Father’s Day project” and reminded to “dismantle gender stereotypes” (Hoff Sommers 2010, 16–17).

Children as Victims: Convention on the Rights of the Child

Where CEDAW assumes that men are oppressors of women, the UN's Convention on the Rights of the Child (CRC; UN General Assembly 1989) depicts parents as oppressors of children. Its political implications are even more far reaching.

The UN and other international bodies have long expressed concern about children's suffering. Yet, by their own admission, decades of action seem to have made very little difference:

In spite of the comprehensive framework of instruments, standards, and commitments on the rights of the child and of first progress in achieving the agreed objectives, the daily reality for millions of children worldwide is still in sharp contrast to these commitments and objectives: Children still face major threats to survival, lack opportunities for quality education, proper health and social care; they are victims of worst forms of child labour, sexual exploitation and abuse, diseases, armed conflict, various forms of violence; they are forced into early marriages and have to endure harmful traditional practices. Children belonging to vulnerable groups or children in particularly difficult situations face particular risks and are exposed to discrimination, marginalization, and exclusion. Girl children face specific risks and need particular attention. (*European Union Guidelines* n.d., 3)

Yet it is not clear how a treaty can possibly protect children from this hodge-podge of disparate and ill-defined horrors. Most of these problems and grievances proceed largely from poverty and instability that are chronic in much of the world. Children suffer them in common with the rest of the population, including their parents. Most are not crimes in any enforceable sense of that word, and to use them to rationalize separating children from everyone else, driving a wedge between them and their own parents and criminalizing the parents, is the worst kind of cynical posturing and simply constitutes another form of exploitation that is in many ways much crueler than what the children must already endure. These problems certainly cannot be solved by confiscating children from their parents and criminalizing parents in industrialized democracies. Yet that is precisely the sleight of hand involved in the CRC.

The CRC goes further than CEDAW to infringe not only national sovereignty, but also the authority of elected representatives at the national, state, and local levels; it weakens state governments vis-à-vis federal governments; it bypasses constitutional provisions and protections for citizens' freedom; and it drastically diminishes parents' authority. The CRC undermines every authority below the level of the UN: parents and the family, local and state governments, and national or federal governments, each of whose authority is transferred to the next level up and ultimately to the UN.

One sympathetic writer comments, “[T]he CRC provides an ideology for state intervention” into not only social and economic policy but even the most intimate corners of private life (Van Bueren 1999, 692). Like CEDAW, only more so, the CRC is not a limitation on government power, but precisely the opposite: a justification for expanding it.

Because of the CRC, areas of jurisdiction now constitutionally forbidden to national or federal governments would become subjects of mandated government intervention. In countries such as the United States, where (in theory) states rather than the federal government still make family law, the CRC transfers from states to the central government an array of powers, including such vast areas of policymaking as education and health care. Moreover, national and federal governments in turn themselves become the marionettes of the UN and its monitoring committee. The entire federalist principle—the original justification for the U.S. Constitution and government—would become largely irrelevant.

The United States is the only country that has not ratified the CRC. Its ratification would have huge implications in both the United States itself and beyond it, not simply because of its size and influence, but also because of its unique method of implementing treaties.

When the U.S. Constitution was drafted, treaties still served their traditional role as agreements between sovereign states concerning external relations. Because earlier conceptions limited treaties to clear matters of foreign policy, the American Founders allowed treaties to be concluded by the president and Senate alone, without the participation of the more democratic House of Representatives, whose involvement was considered less appropriate to the conduct of diplomacy. As treaties come to resemble legislation covering individuals, the Constitution’s treaty-making provision becomes a loophole, allowing vocal groups to legislate domestic policy by using the treaty provision, thus bypassing the people’s elected representatives in the House.

The effect in the United States is also likely to be much more far reaching than elsewhere. In other countries, treaty enforcement is a political matter to be carried out as part of a country’s foreign policy, but treaties are unenforceable by domestic courts, which generally do not involve themselves in foreign affairs. In the United States alone, a treaty becomes by constitutional stipulation the “supreme law of the land,” equal to the Constitution itself. This provision requires domestic courts to enforce its provisions automatically, without recourse to international tribunals (Farris 2005).

Although the treaty-monitoring committee’s role is in theory only “advisory,” its interpretation of compliance would be authoritative in the case of the United States, effectively binding on U.S. courts, government agencies, and parents. Not only American family policy but the relations among family members in the privacy of their own homes throughout the United States would be dictated by a small UN committee made up of feminists.

This coup is facilitated by invoking the questionable concept of “customary international law” to incorporate treaty provisions into domestic legal decisions *even if the United States has not ratified the treaty*. In *Lawrence v. Texas* (539 U.S. 558 [2003]), the Supreme Court invoked international law when it struck down a Texas sodomy law, and the Court has twice cited the CRC itself in deciding cases: once involving the death penalty (*Roper v. Simmons* [543 U.S. 551 (2005)]) and later in a case involving life sentence without parole (*Graham v. Florida*, Docket Number 08-7412 [2010]). Lower federal courts have applied nonratified treaties as binding on the United States.

Thus, an *unratified* treaty can be declared the “supreme law of the land”—equal to the Constitution itself—through nothing more than the opinions of a legal elite with a vested interest in expanding its own power.

This use of “customary international law” renders law nebulous to the point of nihilism. It pertained originally to a very limited number of uncontroversial practices. Because there was no sovereign authority such as a legislature from which to derive international law, jurists aimed to codify existing “customary” (meaning “universal”) practice. This application pertained to such undisputed matters as diplomatic safe passage and piracy. “In order for customary law to emerge three things must be present,” Austin Ruse points out:

First, there must be uniform universal state practice. This means that all countries must practice this. Second, this practice must have gone on for a long time. It cannot happen over night or even over a few decades. Third, the states must practice it based on their understanding that they have a legal obligation to do so. This is a very high bar and explains why there are so few items considered as customary international law.

Customary international law cannot be established from non-binding documents and neither can it be established in only 15 years. It takes decades and even centuries. (2010)

Yet in recent years radicals in sex and gender issues have tried to accelerate the process of having their own highly innovative opinions ratified as “customary” law even though these opinions have provoked sharp disagreement and promote behaviors not practiced for any length of time. “Proponents of abortion make the case that if the phrase ‘reproductive health’ is repeated enough times in non-binding UN documents then a customary international law has been achieved” (Ruse 2010).

This tactic turns the law into a grab bag for whatever ideological fashion jurists wish to institutionalize: no legislature need enact it; no citizens need approve it; no public need agree to it; no election need ratify it; no mechanisms must exist to repeal it; no one can be held responsible for it. No vote is ever held, and no precise wording is ever codified. Nothing more than the momentary opinions of an elite judicial clique is necessary to declare as instant “custom” whatever fancy may take hold of those

elites; without their even having to state precisely what it is, it immediately becomes “law” throughout the world, even if the vast majority of mankind has never heard of it, has not approved it, or adamantly opposes it.

The essence of the CRC is its attack on parenthood. This convention permits and even requires governments to override every decision made by every parent if a government social worker disagrees with the parent’s decision. Children can seek government review of every homework assignment or restriction with which they disagree. Areas of jurisdiction now constitutionally forbidden to the federal government (or any government) would become subjects of mandated federal intervention. The CRC’s centralizing and authoritarian power is succinctly conveyed in the observation that if it is ratified, “[s]panking could be a federal crime” (Farris 2008, 5).²

A key concept in the CRC gives governments the power to determine the “best interest of the child,” every child. This provision sounds unexceptionable. However, as Americans, Britons, and others have already discovered in domestic family law, the “best-interest” standard is highly destructive of parental and family rights. It allows government officials to decide the “best interest” of other people’s children, usurping that prerogative from parents who have committed no legal offense. In effect, it transfers control of children from their parents to state officials, even to the point of banishing parents who have done nothing legally wrong from their own children (Baskerville 2007, chap. 1).

Legal authority over children has long been recognized to reside with parents until they somehow forfeit it. “For centuries it has been a canon of law that parents speak for their minor children,” observed U.S. Supreme Court justice Potter Stewart. “So deeply embedded in our traditions is this principle of the law the Constitution itself may compel a state to respect it.” (qtd. in Baskerville 2007, 78). Parents, not governments, decide the best interest of their own children; otherwise, they are not parents. Courts have long recognized “that natural bonds of affection lead parents to act in the best interests of their children” (qtd. in Baskerville 2007, 78).

Unbeknownst to most parents, this principle has already been all but abolished by recent innovations in American, British, and other domestic law, and the CRC is certainly not the only threat to it. Contrary to these seemingly unequivocal precedents, it is now the norm in American family law to assume precisely the opposite: that “the child’s best interest is perceived as being independent of the parents,” as one practitioner writes, “and a court review is held to be necessary to protect the child’s interests” (Williams 1994, 2).

The CRC would put added international pressure on this principle. As Professor Van Bueren forthrightly concedes, “Best interest provides decision and policy makers with the authority to substitute their own decisions for either the child’s or the parents’, providing it is based on considerations of the best interests of the child.

2. The CRC committee has called for states to criminalize spanking. See Fagan, Saunders, and Fragoso 2009, 15–16.

Thus, *the [CRC] challenges the concept that family life is always in the best interests of children and that parents are always capable of deciding what is best for children*" (1998, 46, emphasis added). But it does not challenge the substitute presumption that government intervention in family life is always in the best interests of children and that government officials are always capable of deciding what is best for other people's children. Children are presumed not to need their parents or families, and government officials owe parents no explanation for taking away their children other than that the officials know best.

Most cases eroding parental rights are divorce cases, where the "best-interest" principle was developed. Noting that the best-interest "standard also applies in divorce cases on the presumption that the family unit has been broken," Michael Farris observes, "If this treaty [the CRC] becomes binding, all parents would have the same legal status as abusive parents, because the government would have the right to override every parental decision if it deemed the parent's choice contrary to the child's best interest" (2006; see also Baskerville 2007, chap. 1). This is precisely the status divorced parents now have, abusive or not and whether they contributed or agreed to the divorce or not.

A connected provision demands the "child's right of participation" in all matters that affect him or her. Article 12 stipulates that signatory governments "shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child" (UN General Assembly 1989). But what child is not "capable of forming his or her own views"? And against whom must national governments "assure" this right for children to express their views about, say, homework or chores or bedtime? This provision in reality institutionalizes children's "right" to disobey and rebel against their parents and puts the state on the side of the child, with the backing of international law. "The Children's Convention potentially protects the rights of the child who philosophically disagrees with the parents' educational goals," writes Van Bueren (1995, 745). What makes the disagreement "philosophical"? What is the difference between this type of disagreement and a child who (philosophically) simply does not wish to do his homework?

A striking irony of the CRC is the claimed protection of children's "privacy." Article 16 provides that "[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence" and that "the child has the right to the protection of the law against such interference or attacks." But, again, the question is, Protection from whom other than his or her parents? Authorizing state officials to protect this "privacy" is in itself authorization to violate the family's privacy. This implication illustrates how the concept of privacy—though valid (and undervalued by many family advocates)—is meaningless outside the context of the family.

All of these provisions might sound innocuous and even praiseworthy to protect adults against government repression. When applied to children, however, they have the effect of abolishing parents and all authority between children and the

state. This implication starkly illustrates how the family is essential to freedom and how the state, when it claims to protect “rights,” “freedom,” and “privacy” without the mediating authority of the family, may be the fox that promises to protect the henhouse.

These provisions allow government officials to pose as the mouthpieces and defenders of other people’s children—children they do not know and do not love. Yet these officials’ altruism is assumed without question, whereas parents are vilified as selfishly promoting their own interests, which are cast as contrary to those of their own children. The mentality expressed here, according to one scholar, is that “[t]he interests of the child should be at the center of any decision-making. If the child is capable of articulating a perspective, the child should have client-directed counsel to get that voice before the court and the court should seriously consider it. Even if the child is unable to articulate a view, the child’s attorney can offer a child-focused assessment of the child’s needs. Because the child’s best interests may be different than one or both of the parent’s interests, the child should have a voice.” What is described as the child’s “voice” comes out of the mouth of a lawyer or some other government official. Parents are left with no greater authority over their own children than that of another “voice” that officials may heed or ignore as they please: “Giving the child a voice, however, does not necessarily ‘conflict.’ Listening to the child does not mean not listening to the parents or others involved in the dispute. The key is to add the child’s voice to the voice of others being presented” (Elrod 2007, 869, 882–83).

Indeed, it is difficult to see how the CRC has any other purpose than to neuter and eliminate parents and thus effectively abolish the family. “No criticism was leveled against either Ireland or the UK for failing to consider the child’s viewpoint in those cases where the parents left the child in the sex education classes,” writes Farris. “Nor was there any criticism for failure to consider the child’s views in the decision to enroll the child in the government schools.” Farris concludes that “[t]he child’s wishes seem to get special attention only when the parents want something different from the wishes of the government” (2008).

The entire system attempts to harness and exploit the rebelliousness of children and adolescents and to focus it on their parents. “Normally, when children rebel against their parents, society frowns,” one team of scholars observes. “Yet the UN is attempting to put in place, in policy and law, structures that foster this type of rebellion.” They give this example: “The UN committee report to Belize recommends that the government set up legal mechanisms to help children challenge their parents, including making an ‘independent child-friendly mechanism’ accessible to children ‘to deal with complaints of violations of their rights and to provide remedies for such violations.’ In other words, the CRC committee is suggesting that the state create some entity *to supervise parents*, a structure that enables children in Belize to challenge their mother and father’s parenting in court” (Fagan, Saunders, and Fragoso 2009, 13, emphasis in original).

The CRC also allows UN and government officials to demand expenditures on certain policies and effectively to control budgets. One UN report cites Moldova (the poorest country in Europe) for “inadequate financial support out of the state budget”: “The Committee strongly recommends that the State party . . . further increase budget allocations for the implementation of the rights recognized in the Convention” (UN Committee on the Rights of the Child 2009, 3–4). Under the guise of human rights, the UN is not stopping any repression, but trying to control a sovereign nation’s spending decisions. The committee has also criticized Austria, Australia, Denmark, the United Kingdom, and other countries for not spending enough on certain items the committee prefers. According to the CRC committee’s existing interpretation, it is illegal for a nation to spend more on national defense than on children’s welfare (Farris 2008). In the United States, the federal government would be empowered to regulate education, health care, family life, or any other area the UN deems appropriate.

Like any socialistic machinery, this apparatus is also a means of making patronage payoffs to favored clients, in this case groups that are professionally involved in child welfare. The UN demands that Moldovan taxpayers fund pressure groups (euphemistically termed “civil society”) and “recommends that the State party continue to provide financial and material support to NGOs [nongovernmental organizations] working for the protection and promotion of children’s rights” (UN Committee on the Rights of the Child 2009, 4–5). Despite the ostensibly altruistic pretext of protecting children’s welfare (which puts one in mind of the self-serving Communist-era axiom “Nothing’s too good for the workers”), UN officials are simply looting Moldova and funneling its impoverished citizens’ tax revenues to their cronies, who become extensions of the government. This arrangement creates what some call “GONGOs,” the oxymoronic “*government-organized* nongovernmental organizations.” “At what point does government funding of NGOs make them no longer NGOs?” asks ParentalRights, an organization that opposes the CRC. “If Moldova were to accede to the UN’s wishes and fund these non-government organizations, just how ‘non-government’ could they hope to remain?” (ParentalRights n.d.).

The CRC is truly breathtaking in its attempt to usurp and centralize power. It effectively surrenders the authority of parents, of democratically elected governments at all levels, and of the national constitutions of the people of all the nations on earth—all to an unelected UN committee of eighteen feminists. As such, it places the beginning of world government in a political version of the one hand that may be the most powerful in the world: “the hand that rocks the cradle.”

Law Enforcement as a Human Right

Carrying forward the logic of CEDAW and the CRC is the most striking threat to human rights in the name of human rights: the effort to transform criminal law enforcement into a matter of “human rights”—for the protection not of the accused,

but of the accuser. By this argument, alleged criminals are human rights violators; they are put in the same category as tyrants and dictators—in other words, accusations are politicized, bypassing due-process protections, and making the accused guilty virtually by accusation.

Here, too, the cutting edge is found in matters of sexuality and the family. The most innovative development in human rights law is the campaign to classify “domestic violence” as a human rights violation. “Until recently, it has been difficult to conceive of domestic violence as a human rights issue under international law,” feminist scholars acknowledge (Thomas and Beasley 1993, 37). There are logical reasons why it should be difficult to so conceive it. “Human rights” is presumed to be about *government* repression, not about ordinary crime. Even on its face, domestic violence has no connection with human rights. No one suggests that theft and arson, when not perpetrated by government agents, are “human rights violations.” They are crimes for which the criminal justice system either provides or does not. If it does not, the system is dysfunctional, but this dysfunction has nothing to do with human rights. “In traditional human rights practice states are held accountable only for what they do directly or through an agent, rendering acts of purely private individuals—such as domestic violence crimes—outside the scope of state responsibility,” feminists acknowledge (41). “Systematic nonenforcement of laws against armed robbery by private actors alone is not a human rights problem; it merely indicates a serious common crime problem” (42). To maintain otherwise is to absorb all criminal law enforcement into “human rights.” “States cannot be held directly accountable for violent acts of all private individuals because all violent crime would then constitute a human rights abuse for which states could be held directly accountable under international law” (43). The other implication, not mentioned by the feminists, is that accused individuals themselves, not merely the states in which they live, would be directly subject to international law.

Yet that course is precisely the one that these feminist scholars and others propose to follow: replace apolitical criminal law and its due-process protections for the rights of defendants with the politicized prosecutions that characterize human rights campaigns against tyrants and dictators. The result is predictable, if ironic: the concept of “human rights” is turned into a prescription for mob justice against not public political figures, but private individuals who have been convicted of no crime and who have no public platform from which to defend themselves. “More recently, however, the concept of state responsibility has expanded to include not only actions directly committed by states, but also states’ systematic failure to prosecute acts [allegedly] committed either by low-level or para-state agents or by private actors,” we are told. “In these situations, although the state does not actually commit the [alleged] primary abuse, its failure to prosecute the [alleged] abuse amounts to complicity in it” (Thomas and Beasley 1993, 41).

What justifies this innovation? Again, the alleged oppression of women, though with little definition of what precisely this means or evidence that it has even occurred.

“Modern studies suggest . . . that far from being a place of safety, the family can be [a] ‘cradle of violence’ and that much of this violence is directed at the female members of the family” (Thomas and Beasley 1993, 43–44, quoting Connors 1989).³ No evidence is presented for these vague assertions of unspecified “violence”; one group of scholars is quoting another scholar who is quoting “studies,” of which only one, by the United Nations, is cited. The quoted UN work likewise offers no specifics or evidence, but only additional vague generalizations: “Women . . . have been revealed as seriously deprived of basic human rights. Not only are women denied equality with the balance of the world’s population, men, but also they are often denied liberty and dignity, and in many situations suffer direct violations of their physical and mental autonomy” (Connors 1989, 3). What precisely constitutes “violations of their physical and mental autonomy” is not explained, but unspecified (and untried) persons apparently are guilty of these violations and must be punished.

The feminists in fact acknowledge that they have no evidence for their assertions about violent families. “Although anecdotal evidence of an overwhelming incidence of domestic violence exists, hard facts or large scale surveys of specific aspects of spousal murder, battery, or rape have often been hard to obtain, or altogether unavailable,” two of them admit. “National homicide data by gender has not been collected, and statistics regarding battery and rape, where available, are usually compiled by hand and rarely in a systematic way” (Thomas and Beasley 1993, 57). In other words, there is no evidence whatever that “domestic violence” is a problem apart from other crime.

In fact, it is well established that an intact family is the safest environment for women and that most violence occurs after the dissolution of families (Baskerville 2007, chap. 4). Far from having any evidence for the “cradle of violence” thesis, the feminists are ignoring clear data that demonstrate precisely the opposite.

Yet even if pertinent evidence can be provided, it is still not clear how statistical evidence of a crime problem justifies reclassifying it as an international human rights violation. Domestic violence is a human rights matter apparently because it involves “discrimination.” The peculiarity of describing an alleged violent crime as “discrimination” (it is perhaps worth asking how many victims of mugging or armed robbery would see themselves foremost as objects of “discrimination”) is said to be justified by “the widespread failure by states to prosecute such violence and to fulfill their international obligations to guarantee women equal protection of the law” (Thomas and Beasley 1993, 48). Yet even granting this logic, no evidence is presented for this alleged failure because, as scholars again acknowledge, none exists: “Although information about government response to this problem is still minimal, the research suggests that investigation, prosecution, and sentencing of domestic violence crimes occurs with much less frequency than other, similar

3. Catherine Moore (2003, 95) quotes the same passage also without offering any specific evidence, as do other feminist scholars.

crimes” (Thomas and Beasley 1993, 46). But, once again, no such “research” is presented.

In fact, these assertions are not only unsupported, but the precise opposite of the truth, as reputable scholars have already established. Even if we accept the “discrimination” logic, it is undercut by one simple but incontrovertible fact on which the feminists are silent: no evidence exists that “domestic violence” is perpetrated primarily against women. On the contrary, it is well established by studies over decades (including many by feminist scholars) that men are victims of domestic violence at roughly the same rates as women (Fiebert 2010). This finding alone suggests serious problems with defining violence against women as “discrimination,” which is the sole justification for not leaving it to ordinary criminal law.

As for the assertion that domestic violence is punished “with much less frequency” than other crimes, it, too, is the diametrical opposite of the truth. Even in domestic law, domestic violence is indeed adjudicated very differently from standard criminal assault: it employs much more draconian methods, as scholars have also begun to document. “Relaxed rules of evidence and the lower burden of proof” (“preponderance of the evidence” rather than the normal criminal standard of “beyond a reasonable doubt”) enable courts to convict and punish defendants against whom no evidence exists (Verkaik 2001). David Heleniak, calling domestic violence law “a due process fiasco” (2005, 1042), has identified numerous violations of standard due-process protections in state statutes. With domestic violence cases, there is no necessary presumption of innocence, hearsay evidence is admissible, and defendants have no right to confront their accusers (see also Young 2005). Domestic violence cases seldom involve a trial and almost never a jury, and no defendant is ever acquitted. One study found that everyone arrested for domestic violence is punished (Gover, MacDonald, and Alpert 2003, table 11). In Great Britain, Canada, and the United States, special “domestic violence courts” have been created for the express purpose of expediting predetermined convictions and meting out more punishments (Baskerville 2007, chap. 4). Many jurisdictions, such as Warren County, Pennsylvania, use preprinted confessions, which defendants must sign on pain of incarceration, stating, “I have physically and emotionally battered my partner.” The accused must then describe the violence, even if he insists he committed none. “I am responsible for the violence I used,” the documents state. “My behavior was not provoked.”

It is fairly clear that the entire category of “domestic violence” is artificially created specifically to circumvent the due-process protections of criminal law. Advocates’ words (including their consistent omission of the word *alleged* in leveling criminal accusations) reveal a presumption of guilt and a zeal to punish. Innovative gender crimes such as domestic violence exist precisely to punish those who cannot be convicted with evidence. Once this fact is understood, it becomes easy to see how readily it lends itself to being further expounded into a “human rights” issue: human rights accusations likewise are nebulously defined and loosely adjudicated, require a

low burden of proof, are highly politicized, and are weighted toward conviction and punishment.

But the most astounding claim regarding domestic “violence” is that its central feature—and what finally distinguishes it from standard violent assault—is that it is not in most cases *violent*. The recent ruling by Britain’s Supreme Court that “criticizing” and “denying money” constitute domestic violence merely ratifies longstanding official practice (“Shout at Your Spouse” 2011). “Domestic violence is not restricted to physical violence,” according to the Home Office, which governs law enforcement; “it may include psychological, emotional, sexual, and economic abuse” (Tacket 2004, 1). The U.S. Department of Justice likewise includes “undermining an individual’s sense of self-worth and/or self-esteem” as domestic violence. “Domestic violence can be physical, sexual, emotional, economic, or psychological actions . . . that influence another person,” proclaims the department. Among the crimes included in its definition of “violence” are “constant criticism, diminishing one’s abilities, [and] name-calling” (U.S. Department of Justice n.d.). In short, domestic violence can be virtually anything. Under feminist pressure, law enforcement officials are redefining words into meaninglessness, which gives them the leeway to prosecute virtually anyone for anything they choose to construe as a crime.

This situation illuminates precisely why some law enforcement officials may in the past have been reluctant to prosecute some alleged incidents: because no violence was involved. After going through a litany of alleged horror stories from around the world in which police allegedly failed to prosecute domestic “violence” (all from an undocumented UN report), one feminist scholar reveals that police adhered to “a narrow definition of domestic violence as it refers only to physical violence and so therefore excludes sexual and psychological violence” (Moore 2003, 97.) In other words, police did not prosecute the “violence” because there was no violence.

This rather arresting feature of domestic violence campaigns, difficult for the uninitiated to comprehend, also accounts for the otherwise peculiar tendency in feminist scholarship to wax eloquent and at length about why violence is bad. “Violence is an egregious affront to the core and basic notions of civility and citizenship,” declares one scholar. “Violence assaults life, dignity, and personal integrity. It transgresses fundamental norms of peaceful coexistence” (Romany 1993, 87). Such grand pronouncements that no one denies—no one, that is, who envisions true violence—are only necessary to stop the mouths of those who, once they discover what is actually meant by the “violence” being discussed, might be tempted to conclude that it is not really very serious after all.

As may be apparent, if anyone has been the victim of gender “discrimination” and the unequal protection of the laws concerning domestic violence, it is accused men. Indeed, the virtual persecution of men under domestic violence hysteria fits standard descriptions of human rights abuses as practiced by some of the most repressive modern regimes: patently fabricated accusations (Kiernan 1988; Epstein

1993; Kasper 2005; Dutton and Corvo 2006), loose rules of adjudication, suspension of due-process protections, incarcerations without trial, and special politicized courts that never acquit. Yet “human rights” groups not only are silent about this situation but also endorse and applaud it.

In other areas of human rights law, attention is focused on protecting the accused, especially when the accusations are questionable. Yet here “human rights” advocates become the accusers and urge more punishment, to the point of suspending due-process safeguards. Armed with ill-defined, open-ended, domestic violence accusations, human rights groups advocate more arrests and more punishments in the name of human rights, regardless of whether any evidence indicates that the accused are guilty. We even learn that domestic violence constitutes “private torture” (Meyersfeld 2003, 373) and that “Amnesty International considers domestic violence a form of torture,”⁴ statements that demonstrate an Orwellian willingness to redefine words and that cheapen campaigns against real torture.

That the definition of human rights is politicizing law enforcement is evident from the way the campaign involves more than simply prosecuting criminals; it also involves changing political opinions. “Domestic violence is not random—*i.e.*, it is directed at women because they are women and is committed to impede women from exercising their rights,” we are told. “As such, it is an essential factor in maintaining women’s subordinate status.” Feminists deride “the false conclusion that all they [governments] need to do to eliminate domestic violence is prosecute [alleged?] aggressors equally with other violent criminals”—in other words, to observe the equal protection of the laws. Instead, governments must supplement the punishments by instructing their populations in the correct opinions. The “international community” needs the authority to “direct a state to adopt a particular social program to change discriminatory attitudes.” Law enforcement thus becomes inseparable from political ideology, which must be disseminated among (and financed by) the population as a matter of “human rights.” “As the concept of state responsibility in international law evolves further, human rights organizations may more easily hold governments accountable for failing actively to counter the social, economic, and attitudinal biases which underpin and perpetuate domestic violence” (Thomas and Beasley 1993, 58–60). People must be made to see the problem as proceeding from their own ideologically incorrect opinions or what one scholar calls “insidious forms of thought” that must be rooted out by the state machinery because they “constitute the basis of all discriminatory practices and violence against women.” Government mandated reeducation “to modify existing ideological, social, and cultural constructs that perpetuate the idea, in any way, that women are inferior to men” will be required. “Such educational programmes are imperative if one is

4. This line was apparently removed from the Amnesty International Web site following the publication of Baskerville 2010, but it is still quoted on feminist Web sites: see, for example, <http://evilslutopia.com/2008/10/domestic-violence-awareness-month-2008.html> and <http://momma-momo.livejournal.com/> (accessed January 28, 2010).

attempting to change people's attitudes toward religious and customary practices" (Moore 2003, 106–10).

Here we arrive at the ideology's logical Stalinist conclusions. Women apparently are now oppressed not by gender discrimination, but by precisely what feminists themselves have been clamoring for with equal stridency: gender *neutrality*. Both sexes are equal, but one is now more equal than the other:

Treating domestic violence as merely an issue of equal protection, and by inference therefore, setting up the treatment of men as the standard by which we ought to measure the treatment of women in our societies, may in fact disserve women and mask the ways in which domestic violence is not just another common crime. The norm of gender neutrality itself, embodied in the human rights treaties and international customary law, may unintentionally reinforce gender bias in the law's application and obscure the fact that human rights laws ought to deal directly with gender-specific abuse, and not just gender-specific failures to provide equal protection. The gender-neutral norm may appear to require only identical treatment of men and women, when in fact, equal treatment in many cases is not adequate. (Thomas and Beasley 1993, 61)

Gender neutrality is gender bias. Nonviolence is violence. Due process of law violates human rights. Words can be redefined to mean whatever a political agenda demands that they mean.

Yet perhaps most extreme are the feminist demands that the state subject all family and private life to its control in the name of human rights. "The binary concept of the public opposing the private, in law and society, negatively impacts women's enjoyment of fundamental human rights with specific reference to the harm incurred in cases of domestic violence" (Moore 2003, 93). In the inbred world of feminist scholarship, this claim, too, is repeated again and again like an incantation because feminist scholars not only refuse to recognize any distinction between public and private but argue vehemently against it. "Violence in the family can ultimately be traced back to . . . assumptions regarding gender roles and hierarchies within the family. As a result, the liberal distinction between private/family and public/state falls" (Bahar 1996, 106).

Punishing actual crime of course does not necessitate controlling the private lives of innocent citizens. Acts of true physical violence perpetrated in the home or anywhere else can be punished criminally without violating the realm of personal and family privacy, let alone denying that any such realm exists. Feminists acknowledge that "[s]ince domestic violence in essence perpetrates harm on others, such action should not legitimately be protected by the private element" (Moore 2003, 104). In other words, punishing true crime does not require abolishing private life. Yet they propose to abolish it anyway. Indeed, if feminist literature on human rights, if not

feminist literature in general, has one central theme, it is that no private sphere of life is legitimate if it “is not regulated by the state.” “This lack of regulation of the private sphere manifests itself in an absence . . . of laws that specifically condemn domestic violence” (which includes “psychological” violence) (Moore 2003, 93, 95), even though there is no absence of standard laws against violent assault. Because the claimed “violence” is not violent, this project has nothing to do with protecting anyone from physical harm. It is a part of a purely political program to use knowingly false criminal accusations to eradicate the family and to acquire government power over the most private corners of citizens’ lives. “Void of such regulation the private sphere . . . facilitates and encourages the continuance of female suppression to male dominance in the most basic unit of society, the family” (Moore 2003, 121). In respectable academic journals, scholars are repeating formulaically and fearlessly without expectation of rebuttal that the state should not recognize or respect privacy or private life: “There is a critical need to place gender-based violence within the context of women’s structural inequality as a means of breaking down the distinction between public and private life that operates to exclude gender-based violence from the human rights agenda. An analysis of women’s structural inequality should be substituted for the current “mainstream” preoccupation with the public/private distinction” (Sullivan 1995, 133).

In short, domestic violence law has been formulated not to punish existing crime (which it does not punish), but to subject private life to criminal punishment. “In this regime,” writes Jeannie Suk, “the home is a space in which criminal law deliberately and coercively *reorders* and *controls* private rights and relationships . . . not as an incident of prosecution, but as its goal.” Though ostensibly criminalizing violence (which is already criminal), domestic violence law results “not only in the criminalization of violence proper, but also in the criminalization of . . . an alleged abuser’s presence in the home.” Indeed, it amounts to the “criminal prohibition of intimate relationships in the home.” Spouses and sexual partners cannot live their private lives “without risking arrest and punishment” (2006, 7–9).

Thus, a roundabout political logic almost rationalizes the classification of domestic violence as a human rights issue, because, appearances and trappings to the contrary, human rights are never a judicial matter, but always a political one. Like the (alleged?) dictator, the (alleged?) domestic abuser is not a common criminal; he is a patriarchal tyrant whose guilt has little to do with any acts he is claimed to have committed. Rather, he inhabits a patriarchal order in which incorrect opinions oppress women in some general, ill-defined sense, and it is from this condition that his guilt derives. Evidence is irrelevant because he is guilty by virtue of his position and the opinions of his society, not by virtue of his deeds. One scholar forthrightly acknowledges that domestic violence is a purely political category created by her fellow feminists: “The clear distinction between the type of harm under examination and the many other types of violence within any society is the mooring of ‘domestic violence’ in its historical roots of gender subordination and feminist activism.”

All males are part of this pattern, but they are prosecuted criminally only when a woman armed with feminist ideology brings a complaint: “A binding characteristic of communities throughout the world, almost without exception,” writes this scholar (again without evidence), “is the battering of women by men” (Meyersfeld 2003, 379, 371).

With the creation of the International Criminal Court (ICC), ostensibly to prosecute the most egregiously repressive dictators who are supposedly not subject to the criminal jurisdiction of their own countries, there can be little doubt that men accused of “domestic violence” will eventually be brought before this tribunal court. The Rome Statute creating the ICC is littered with coded references making it clear that in cases “where the [alleged?] crime involves sexual or gender violence or violence against children” (UN General Assembly 1998, Art. 68[1]), the court is expected to ensure that men are found guilty.

Article 36(8)(b) of the statute provides for hiring “judges with legal expertise on specific issues, including, but not limited to, violence against women or children,” and the prosecutor likewise must “appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children” (Article 42[9]). In both provisions, no other specific issues are singled out for mention. The prosecutor must also “ensure the effective investigation and prosecution of crime” by respecting the “interests and personal circumstances of [alleged?] victims and witnesses,” including their “gender,” and “take into account the nature of the [alleged?] crime, in particular where it [allegedly?] involves sexual violence, gender violence, or violence against children.” The ICC may hold trials in secret only “in the case of a[n] [alleged?] victim of sexual violence or a child who is a victim or a witness.” In deciding whether to hold secret trials, the Court must regard “particularly the views of the [alleged?] victim or witness,” but not those of the accused (Article 54[1][b]). The definition of “sexual crime” is likewise fluid. “Hurting someone’s feelings could even be a war crime,” observes Dore Gold (2005, 187), who notes that the statute criminalizes “humiliating and degrading treatment” (Article 8[2][b][xxi]).

“Today’s human rights activists . . . are inspired by a punishment ethic,” observes John Laughland (2008, 257). Protecting the human rights of those accused of human rights violations is something for which activists have shown little concern. They seem far readier to join their Jacobin forebears in erecting an assortment of grand conventions, committees, and “special” tribunals whose mandate seems to be to punish anyone brought before them. Like the fanatical Antoine de St. Just, who justified the Reign of Terror with the cry, “No freedom for the enemies of freedom!” modern human rights zealots are demanding, “No human rights for the violators of human rights!”

And this movement is now more widespread than the pursuit to prosecute the occasional dictator. As Laughland shows, the questionable justice we mete out, with almost universal approval, against those we deem tyrants can be morally exhilarating

and intoxicating, as power always is. It is another matter when it is brought home, and we find ourselves in the docket.

“The protection, and first of all the recognition, of equal human rights” in their origins, writes philosopher Pierre Manent, “was strongly tied to the construction of the sovereign state” (2007, 16). If we allow “human rights” to become a grab for power to the point of undermining those very institutions we have cultivated over centuries to exercise and protect our rights, then we simply install a new tyranny.

References

- Bahar, Saba. 1996. Human Rights Are Women’s Rights: Amnesty International and the Family. *Hypatia* 11, no. 1 (Winter): 105–34.
- Balmforth, Kathryn. 1999. Hijacking Human Rights. Speech delivered at the World Congress of Families, November 14–17. Available at: http://www.worldcongress.org/wcf2_spkrs/wcf2_balmforth.htm.
- Baskerville, Stephen. 2007. *Taken into Custody: The War Against Fathers, Marriage, and the Family*. Nashville: Cumberland House.
- . 2010. Human Rights or Wrongs? *LewRockwell.com*, July 26. Available at: <http://www.lewrockwell.com/baskerville/baskerville13.1.html>.
- Bastiat, Frederic. [1848] 1995. The Law. In *Selected Essays in Political Economy*, translated by Seymour Cain. Irvington-on-Hudson, N.Y.: Foundation for Economic Education. Available at: http://www.econlib.org/library/Bastiat/basEss2.html#anchor_n34.
- Cere, Daniel. 2008–2009. Human Rights and the Family. *Academic Questions* 22, no. 1 (Winter): 63–78.
- Committee on the Elimination of Discrimination Against Women. 1994. *Report of the Committee on the Elimination of Discrimination Against Women*. 13th sess. (A/49/38). New York: UN Women.
- . 1998. *Report of the Committee on the Elimination of Discrimination Against Women*. 18th and 19th sess. Supplement no. 38 (A/53/38/Rev.1). New York: UN Women. Available at: http://www2.ohchr.org/english/bodies/cedaw/docs/CroatiaCO18th_en.pdf.
- Connors, Jane Francis. 1989. *Violence Against Women in the Family*. New York: United Nations.
- Coomaraswamy, Radhika. 1997. Reinventing International Law: Women’s Rights as Human Rights in the International Community. Speech given at Harvard Law School, Cambridge, Mass. Available at: <http://library.law.columbia.edu/urlmirror/11/ReinventingInternationalLaw.htm>.
- Dutton, Donald, and Kenneth Corvo. 2006. Transforming a Flawed Policy: A Call to Revive Psychology and Science in Domestic Violence Research and Practice. *Aggression and Violent Behavior* 11, no. 5: 457–483.
- Elrod, Linda. 2007. Client-Directed Lawyers for Children: It Is the “Right” Thing to Do. *Pace Law Review* 27, no. 4 (Summer): 869–920. Available at: <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1143&context=plr>.

- Epstein, Elaine. 1993. Speaking the Unspeakable. *Massachusetts Bar Association Newsletter* 33, no. 7 (June–July): 1.
- Estrada, William. 2009. CEDAW and Homeschooling Families. July 16. Available at the Home School Legal Defense Association Web site: http://www.hslda.org/docs/nche/Issues/U/UN_CEDAW_7162009.asp.
- European Union Guidelines for the Promotion and Protection of the Rights of the Child*. n.d. Available at: <http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf>.
- Fagan, Patrick, William L. Saunders, and Michael A. Fragoso. 2009. *How UN Conventions on Women's and Children's Rights Undermine Family, Religion, and Sovereignty*. Washington, D.C.: Family Research Council.
- Farris, Michael. 2005. Judicial Tyranny Goes Global. *Home School Court Report* 21, no. 2 (March–April). Available at: http://www.parentalrights.org/index.asp?Type=B_BASIC&SEC=%7BFD002BD3-E4FC-4BE3-B30D-EFFE061FF34F%7D.
- . 2006. Parental Rights: Why Now Is the Time to Act. *Home School Court Report* 22, no. 2 (March–April). Available at: <http://www.hslda.org/courtreport/v22n2/V22N201.asp>.
- . 2008. Nannies in Blue Berets: A Legal Analysis. December 15. Available at: http://www.parentalrights.org/index.asp?Type=B_BASIC&SEC={B80868B0-58EC-4B84-8C7F-68B88C5B077B}&DE=#_ftnref51.
- Fiebert, Martin. 2010. References Examining Assaults by Women on Their Spouses or Male Partners: An Annotated Bibliography. *Sexuality and Culture* 14, no. 1: 49–91.
- Gold, Dore. 2005. *Tower of Babel: How the United Nations Has Fuelled Global Chaos*. New York: Three Rivers Press.
- Gover, Angela, John MacDonald, and Geoffrey Alpert. 2003. Combating Domestic Violence: Findings from an Evaluation of a Local Domestic Violence Court. *Criminology and Public Policy* 3, no. 1: 109–32.
- Heleniak, David. 2005. The New Star Chamber. *Rutgers Law Review* 57, no. 3 (Spring): 1009–42.
- Hoff Sommers, Christina. 2010a. *The UN Women's Treaty: The Case Against Ratification*. Washington, D.C.: American Enterprise Institute. Available at: <http://www.aei.org/docLib/20100323-CEDAW-Sommers.pdf>.
- . 2010b. The Case against the U.N. Women's Treaty. National Review Online, November 16. Available at: <http://www.nationalreview.com/corner/253400/case-against-un-womens-treaty-christina-hoff-sommers#>.
- Johnson, Thomas. 2008. *Human Rights: A Christian Primer*. Bonn: Verlag fuer Kultur und Wissenschaft.
- Kasper, Thomas. 2005. Obtaining and Defending Against an Order of Protection. *Illinois Bar Journal* 93, no. 6 (June). Available at: http://ancpr.com/obtaining_and_defending_against_.htm.
- Kiernan, Thomas. 1988. False Claims. *New Jersey Law Journal* 121 (April 21): 6.
- Laughland, John. 2008. *A History of Political Trials*. Oxford, U.K.: Peter Lang.
- Manent, Pierre. 2007. *Democracy Without Nations?* Wilmington, Del.: ISI.

- Mazowiecki, Tadeusz. 1996. A Solidarity Government Takes Power. In *From Stalinism to Pluralism: A Documentary History of Eastern Europe Since 1945*, edited by Gale Stokes, 229–31. Oxford: Oxford University Press.
- Meyersfeld, Bonita. 2003. Reconceptualizing Domestic Violence in International Law. *Albany Law Review* (Winter): 371–426.
- Moore, Catherine. 2003. Women and Domestic Violence: The Public/Private Dichotomy in International Law. *International Journal of Human Rights* 7, no. 4 (Winter 2003): 93–128.
- Nickel, James. 2007. *Making Sense of Human Rights*. Oxford, U.K.: Blackwell.
- On Human Rights: A Statement of the Ramsey Colloquium. 1998. *First Things* 82 (April): 18–22. Available at: <http://www.leaderu.com/ftissues/ft9804/articles/ramsey.html>.
- ParentalRights. n.d. Moldova: Poverty Demands Control? Available at: http://www.parentalrights.org/index.asp?Type=B_BASIC&SEC={11B6B020-AFAC-4C50-800D-B12C4D224D57}.
- Romany, Celina. 1993. Women as *Aliens*: A Feminist Critique of the Public/Private Distinction in International Human Rights Law. *Harvard Human Rights Journal* 6 (Spring): 87–127.
- Ruse, Austin. 2010. Rulers Without Borders. *Touchstone* 23, no. 1 (January–February). Available at: <http://www.touchstonemag.com/archives/article.php?id=23-01-045-c>.
- Shout at Your Spouse, Lose Your Home. 2011. *Daily Mail*, January 27.
- Steans, Jill. 2010. Body Politics: Human Rights in International Relations. In *Gender Matters in Global Politics*, edited by Laura Shepherd, 74–88. London: Routledge.
- Stokes, Gale. 1996. *From Stalinism to Pluralism: A Documentary History of Eastern Europe since 1945*. Oxford, U.K.: Oxford University Press.
- Suk, Jeannie. 2006. Criminal Law Comes Home. *Yale Law Review* 116, no. 2: 2–70.
- Sullivan, Donna. 1995. The Public/Private Distinction in International Human Rights Law. In *Women's Rights, Human Rights: International Feminist Perspectives*, edited by Julie Peters and Andrea Wolper, 126–34. London: Routledge, 1995.
- Tacket, Ann. 2004. *Tackling Domestic Violence: The Role of Health Professionals*. London: Home Office.
- Thomas, Dorothy, and Michele Beasley. 1993. Domestic Violence as a Human Rights Issue. *Human Rights Quarterly* 15, no. 1 (February): 36–62.
- United Nations (UN) Committee on the Rights of the Child. 2009. *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Republic of Moldova*. 50th sess. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-MDA-CO3.pdf>.
- United Nations (UN) Division for the Advancement of Women (UNDAW). 1992. *UN Division for the Advancement of Women, General Recommendations Made by the Committee on the Elimination of Discrimination Against Women*. No. 19, 11th sess. Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

- United Nations (UN) General Assembly. 1948. Universal Declaration of Human Rights. December 10. Available at <http://www.un.org/en/documents/udhr/>.
- . 1966a. International Covenant on Civil and Political Rights (ICCPR). Resolution 2200A (XXI), December 16. Available at: <http://www.hrweb.org/legal/cpr.html>.
- . 1966b. International Covenant on Economic, Social, and Cultural Rights (ICESCR). Resolution 2200 (XXI), December 16. Available at: <http://www.un-documents.net/icescr.htm>.
- . 1979. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). December 18. Available at <http://www2.ohchr.org/english/law/cedaw.htm>.
- . 1989. Convention on the Rights of the Child (CRC). Resolution 44/25, November 20. Available at: <http://www2.ohchr.org/english/law/crc.htm>.
- . 1998. Rome Statute of the International Criminal Court. UN Doc. A/CONF.183/9. Available at: <http://untreaty.un.org/cod/icc/statute/romefra.htm>.
- U.S. Department of Justice. n.d. Domestic Violence. Available at: <http://www.usdoj.gov/ovw/domviolence.htm>.
- Van Bueren, Geraldine. 1995. The International Protection of Family Members' Rights as the 21st Century Approaches. *Human Rights Quarterly* 17, no. 4 (November): 732–65.
- . 1998. *The International Law on the Rights of the Child*. London: Martinus Nijhoff.
- . 1999. Combating Child Poverty: Human Rights Approaches. *Human Rights Quarterly* 21, no. 3 (August): 680–706.
- Verkaik, Robert. 2001. Crackdown Unveiled on Domestic Violence. *The Independent*, November 19.
- Williams, Robert. 1994. An Overview of Child Support Guidelines in the United States. In *Child Support Guidelines: The Next Generation*, edited by Margaret Campbell Haynes, 1–17. Washington, D.C.: Office of Child Support Enforcement.
- Young, Cathy. 2005. *Domestic Violence: An In-Depth Analysis*. Washington, D.C.: Independent Women's Forum. Available at: http://www.iwf.org/pdf/young_domviol1.pdf.