

Human Rights and the Family

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As we spent Tuesday at the airport greeting you, I was struck at the delight I felt in welcoming you to Utah and to our university. We are honored that so many of you were willing to travel great distances, sometimes at great personal hardship, to meet with us. We understand, and are touched, that many of you sacrificed by leaving your homes during Ramadan to be here with us. It was a pleasure to greet friends we have made at the United Nations, and to meet those of you whom we hope will become new friends as we work together in this important effort.

I have watched several of you work at the UN, and have admired your skill. At the last session of the Commission on Social Development, I watched Faith Innerarity, a member of the Bureau of the Commission, chair meetings. She handled her duties with tact and good humor, using her uncommon intelligence to inject common sense into the proceedings. This was no easy task, because it has been my impression, after observing UN meetings for a year or so, that common sense is often controversial.

At the last negotiating session of the Optional Protocol to CEDAW, only a handful of delegates seemed to fully appreciate the potential of the draft document to intrude into areas of domestic governance and precious national sovereignty. Among those who understood was a colleague of our distinguished participants from the People's Republic of China. The Chinese delegate was a young woman who looked fragile but had a mind like a steel trap. She had an encyclopedic memory and could recite precedents at length. Though she took strong positions in defense of her nation's interests, her manner was so disarming that even when she opposed Western positions, the Western delegates, especially the men, would sit there wearing silly grins. It was extremely amusing to watch.

It was also at the Optional Protocol meetings that I first met Amany Fahmy, from Egypt. I noticed immediately that Amany's training in law made her an especially effective advocate. She understood every aspect of the problems with the document, and she wasn't afraid to defend her country's interest and her culture. She—and the few others who would not simply accede to the wishes of the women's caucus—were subjected to intense pressure and attempts at intimidation, but they withstood.

I have watched Mr. Munawar Bhatti, from Pakistan, at the Commission on the Status of Women and other meetings. He is tireless. I have seen him remain smooth, clam, and resolute through marathon negotiating sessions. He sees quickly through the nonsense and the rhetoric and gets

directly to the heart of the matter. He is a committed defender of the family and of the values that have protected and strengthened the family in cultures around the world.

Those of us from NGO Family Voice have watched many times as delegates from G77 nations stood up in support of what is right, sometimes in the face of condescension and even ridicule from Western delegates. You have our admiration and gratitude, because it is you, not the West, that is a light to the world on these issues. It is you who are holding the line for the family. We salute you.

It is also wonderful to welcome our friends and NGO colleagues. Juliette Sayegh, with her education and many years of experience with the UN system, is helping us learn the ropes. Her assistance has been invaluable. Austin Ruse, Peter Smith, our friends from the VPM, each moved by their own faith and commitment, are dedicated to the pro-family cause. We are happy to host their first visit to Utah.

As this conference has unfolded, we have appreciated the many fine comments from our new friends. You are helping us to understand the problems facing families in other parts of the world. Though there are diverse issues, there is a deep common commitment, springing from our common humanity and our shared understanding that humanity depends on the family. By your participation here, you are helping us develop and refine our efforts on behalf of the family. We hope this conference will be just the beginning of a long, fruitful dialogue.

We have had presentations from distinguished scholars who have devoted their careers to the family and to the moral and ethical values that support it. I am so grateful to have been present to hear them. Though many of us are motivated to defend the family by our religious faith, research and logic are also on our side. The arguments simply need to be heard.

My own background is as a practitioner of law. My firm specializes in civil rights litigation, and I litigated against some of the same lawyers who are now at the UN promoting agendas which undermine the traditional family. I have seen their tricks. Some of the same language and tactics I have observed firsthand in lawsuits here in the United States are showing up in documents I have reviewed at the UN.

On Wednesday, two of our distinguished presenters told you about methods successfully used by some activists in the United States to force their views and norms on an unwilling majority. Those of us in the majority in the United States were unwary. We thought twenty or thirty years ago that our society could never be altered as it has been. I want to briefly dis-

cuss this phenomenon again, not to belabor the point, but because the same methods are now being used at the UN, and, as they say, forewarned is forearmed.

The last three or four decades have seen a noticeable decline in American morality and culture, and the resulting disintegration of many American families. Some of this decline has been driven by changes in the law, but many of these changes have *not* come about through the democratic process. Rather, these changes have been forced on the majority by committed activists who use the courts.

The individual rights contained in the American Constitution cannot be overridden by the popular will. The American Constitution was designed to make government responsive to the people and to keep government from intruding unnecessarily into the lives of the people. It was also designed, however, to make sure that the majority could never oppress the minority in certain critical areas, such as freedom of religion and freedom of speech. Thus, if a right is protected by the Constitution, then that right cannot be infringed, no matter what the majority thinks.

In the last half of this century, American courts began coming up with interpretations of the Constitution that its authors clearly never intended. For example, many American schools once opened their school day with a prayer, a reflection of the religious roots of this country. The Supreme Courts, a few decades ago, declared that the Constitution forbade such prayer, even though it had been accepted for 150 years.

Until 1972, most states in the United States would not allow abortion except in the hard cases, such as when the life of the mother was threatened, or in cases of rape. In 1972, even though the word "abortion" never appears in the Constitution, the Supreme Court suddenly "discovered" that the Constitution contains a right to abortion. The Supreme Court was divided on this decision, and this decision has divided American society ever since.

As Lynn Wardle and David Coolidge mentioned, homosexual rights activists are now going from state to state, bringing lawsuits, hoping to find a court that will declare that a state constitution or the federal Constitution contains a right to homosexual sodomy, and that homosexual partners should receive the same legal status as husband and wife. If they succeed, then this homosexual regime can be imposed, first on the citizens of that state and then on the rest of the country, against the clear wishes of the majority.

This same patten of "discovering" new rights in long-accepted human rights documents is now under way at the UN. At the same time, there is a concerted effort to diminish long-accepted, explicit rights, such as the right to free religious practice, the right to freedom of conscience, and—near and dear to my heart—the prior right of parents to direct the education and upbringing of their children.

Simultaneously, there is constant effort to enhance the power of the UN to coerce compliance with human rights

pronouncements. For example, unless it is substantially altered, the proposed Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW) will give unprecedented power to the CEDAW Committee to intrude into the domestic affairs of nations. As Professor Wilkins mentioned in his opening remarks, there was an attempt to insert language into the International Criminal Court statute which would have made criminals out of those who oppose these newly "discovered" rights.

In 1994, in *Toonen v. Tasmania* (see Appendix A) the Human Rights Committee declared that the right to privacy in the International Covenant on Civil and Political Rights embodies a right to homosexual sodomy, and that laws against such behavior therefore violate the ICCPR. Early this year, Mary Robinson, the High Commissioner on Human Rights, gave an address (Appendix B) in which she extolled the virtues of the Universal Declaration of Human Rights as a "living document," in which she had discovered, surprise of surprises, a right to protection based on sexual orientation. As recently as a few months ago, Elizabeth Evatt, a member of the Human Rights Committee, declared categorically that "intolerance of homosexuality was a clear case of discrimination and inequality. It fell clearly within the scope of human rights protection and there should be no debate or controversy" (Appendix C).

In 1996, the heads of the Human Rights Treaty Bodies held a roundtable at Glen Cove, New York. The report of the meeting has recently been published, and will, I'm told, be a centerpiece of the next Commission on the Status of Women. That document talks openly about reinterpretation of human rights documents, and suggests several options, including reinterpreting the "right to life" to include an unchallengeable right to abortion, which the women's caucus could never succeed in winning in an open and democratic process. The roundtable report also mentions, with approval, the determination that homosexual sodomy is a fundamental human right.

At the same time, this roundtable report explicitly takes aim at religion as an "obstacle" to the realization of these newly discovered rights. Thus we have the bizarre situation where freedom of religion—an express, long-accepted right which was adopted by consensus—is trumped by rights which are being read into documents by a powerful minority, and on which consensus could never be achieved.

Parental rights, like religious rights, are also being denigrated. The Universal Declaration of Human Rights give parents a "prior right" to direct the education of their children. The ICCPR and the International Covenant on Economic, Social and Cultural Rights also explicitly protect the right of parents to guide the moral and religious upbringing of their children. Yet in Portugal last summer, I attended a Youth Forum at which the organizers were promoting "reproductive health education and services" for "young people." The

term “young people” was defined to include children as young as ten. The organizers carefully manipulated the outcome of the Youth Forum and adamantly refused to acknowledge that these fundamental human rights—parental rights—even exist. We have seen similar phenomena at the Commission on the Status of Women, in discussions dealing with reproductive health of the “girl-child.”

These documents do not, of course, have the binding effect of treaties, which must be ratified by individual states. Nevertheless, we fear the slow creep of so-called “customary law,” by which, if language is repeated often enough in internationally negotiated documents, someone will claim that “customary law” has been created, and that nations are bound whether they have consented, or not.

I have asked Desmond Eppel and Jacob Allen, two very fine students, to review some of the reports of the Committee on the Rights of the Child and the CEDAW Committee and to extract some of the pronouncements of these committees which appear to us to have an antifamily effect (Appendices D and E). We think it will be useful to you to know exactly what you are dealing with when considering whether to cede any of your sovereign power to these committees. Though study after study shows across cultures that the weakening of the parents’ supervisory roles—even more surely than poverty—leads to serious dysfunction such as drug abuse and crime, Desmond and Jacob reported that, as time progresses, the Committee on the Rights of the Child appears to be more and more willing to interpret the Convention on the Rights of the Child in ways that intrude on the parent-right relationship.

The Committee seems to view 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 their parents. The Committee has labeled any form of corporal punishment, however slight, as a violation of the rights of the child (Appendix D, pp. 9–14). The Committee routinely admonishes states to establish mechanisms whereby children can lodge complaints, even against their parents. The Committee has condemned traditional attitudes concerning the role children play in the family (Appendix D, pp. 5, 7). The Committee has found the United Kingdom out of compliance with the Convention simply because that country has laws which permit parents—in the exercise of their fundamental right to guide the moral upbringing of their children—to decide whether their children shall be enrolled in public school sex education courses (Appendix D, p. 7).

The excerpts from the CEDAW Committee reports are more lengthy. You can peruse them. You will see that the Committee routinely criticizes governments for limiting abortion, even though abortion is nowhere mentioned as a right. The Committee labels motherhood as a mere “stereotype” that holds women back. When some countries have

attempted to follow the admonition in the Universal Declaration of Human Rights that motherhood deserves special protection and care, the CEDAW Committee has complained that those efforts are “paternalistic,” or that they enforce this awful “stereotype” of women as mothers, thus discouraging women from seeking greater fulfillment in paid work. For example, the Committee admonished Armenia, in a tone that can only be thought mocking, to “use the education system and electronic media to combat the traditional stereotype of women ‘in the noble role of mother’” (Appendix E, p. 18).

The Committee, however, wants to assure that lesbians can become mothers; it has taken the position that governments should assure that doctors do not discriminate against women seeking artificial insemination “on the basis of their marital status, sexual preference or lifestyle” (Appendix D, p. 6).

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” (Appendix E, p. 7–8), and stating that “[i]n 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.” (Appendix E 8) The Committee lectured the Libyan Arab Jamahiriya as follows:

[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. Reservations that were incompatible with the goals of the Convention were not acceptable.

The Committee then warned, ominously:

[I]mplementation of an anti-discrimination policy required that policies be coherent even though they touched upon religious and ideological issues. True gender equality did not allow for varying interpretations of obligations under international legal norms depending on internal religious rules, traditions and customs (Appendix E, p. 11).

In one amazing comment regarding the appropriate care of children, the CEDAW Committee bemoaned the fact that only 30 percent of the children in Slovenia under three years of age were in formal daycare, while the rest were cared for by family members and other private individuals. The Committee took the position that these tiny children were better off in day care than with their families, and urged the government to establish more formalized day care for children under three. (Appendix E, p. 23)

I spoke earlier about the goal of some activists to place the so-called “new rights” above long-accepted human rights. This is, in fact, happening in some places. We have included a comment (Appendix E, p. 7) which came not from the Com-

mittee, but from the French representative who was presenting her country's report. She proudly reported that people exercising their right to freedom of conscience and expression, without any violence, had been targeted by a new law which forbade even peaceful demonstrations against abortion, because such freedom of expression interfered with the right to abortion. The CEDAW Committee has also taken the position that the right to abortion trumps a doctor's right to freedom of conscience. The Committee has stated that when a hospital does not provide abortions because doctors refuse to perform them on grounds of conscience, the woman's rights have been violated.

I point all of this out in some detail because some very important negotiations will be undertaken in March on the Optional Protocol to CEDAW. CEDAW itself contains extremely intrusive provisions. It commits governments to intervene in virtually any setting, no matter how private or consensual, where, in the view of the CEDAW Committee, women are not considered equal. The CEDAW Convention, as interpreted by radical feminists, would require coercion within any familial or religious system which did not conform to the feminists' utopian vision.

Compounding this problem, the proposed Optional Protocol is unprecedented in its reach for power. The real question in negotiating the Optional Protocol is, "How much of your national sovereignty are you willing to turn over to the Western feminist lobby whose views dominate the proceedings?" I am in the midst of preparing a detailed memo, outlining what I see as the most overreaching aspects of the draft Optional Protocol. Today, I will touch upon five of what I believe are the worst problems with the draft Optional Protocol.

First, an attempt is being made to allow NGOs to bring complaints on behalf of "groups" of unidentified people. The lawyers who proposed this language undoubtedly wish to abuse the human rights complaint process as they currently abuse the so-called "class action" process in United States law. In this kind of action, the complaining organization makes broad allegations about terrible things that are happening to "many women." These allegations can neither be proven nor disproven, because you don't know who these women are. While bad things may happen to a few women, you have no idea whether it happens often enough to justify a change in the law. It is critical that only named individuals be permitted to bring complaints of violations of their own individual rights. This is required by most other protocols. Only in this way, can the facts alleged be verified. Under other human rights protocols, individuals can be helped by organizations in bringing their complaints, so a woman can clearly get assistance if she wants to complain. Thus, there is no justification for this "group" complaint, and it would only open the door for outside NGOs to bring complaints of vio-

lations, even if no woman in the country wished to bring a complaint herself.

Second, drafters of the Optional Protocol want to allow women to bring complaints if the country does not live up to its "obligations" under CEDAW. This would allow any woman, even if she was not necessarily adversely affected, to bring a complaint that the government was not living up to its "obligations" by, for example, failing to allocate its resources in a way that satisfied the CEDAW Committee. Other human rights protocols do not provide for such complaints. Individuals should be allowed to complain only of violation of rights that are expressly granted to them by CEDAW.

Third, the CEDAW Committee wants a right to conduct "inquiries" in a country, even if no complaint has been lodged. This "inquiry" procedure exists only in the Convention Against Torture, where the victims may be incarcerated and unable to complain. None of the other human rights protocols contain such a procedure, and it is unjustified in the context of CEDAW.

Fourth, the CEDAW Committee is seeking the right to request governments to maintain the status quo after a complaint is brought, but before a decision has been reached on the merits. This is analogous to the injunction process under United States law. Some feminist lawyers use this procedure domestically to stop duly passed laws from going into effect before a trial can even be held. This status quo provision is usually invoked under international human rights instruments only when someone is about to be executed. The relevant committee can ask the government to wait, so that the complaint won't be rendered moot by the complainant's death. Again, this provision is not necessary in the context of CEDAW.

Fifth, the draft protocol attempts to force nations to give up their sovereign right to make reservations.

I strongly urge you, in these negotiating sessions, to be very wary of these attempts to give unprecedented power to the CEDAW Committee. The UN Charter at Article 2, paragraph seven, states that it does not "authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any State." National sovereignty is important to women, as well as to men. The right to self-determination matters to women, as well as to men. The right to one's culture is an important to women as it is to men.

I acknowledge that, by virtue of having been born in this country, I have enjoyed freedoms and blessings that many women in other parts of the world do not. I am sure that I do not have a full appreciation for the hardships endured by women in other places, or even in this country, for that matter. But there is a saying in the American legal profession that "hard cases make bad law." By focusing only on the worst abuses and setting up an aggressive international mechanism to stamp them out, we risk creating a system under which important rights and freedoms are lost to all.

I also believe that, as people are exposed to new ideas, and as education improves in all parts of the world, there will be a natural evolution toward fairer systems where those are needed. Fairness is, after all, the ultimate goal. The life experiences of men and women are different, and if the human race is to continue, those experiences will continue to be different. What we really should be seeking, rather than absolute equality, is "equity." This is a familiar concept in the law which recognizes that things which are different can nevertheless be fair.

It wasn't that long ago that American law unfairly treated women as less than men. But we have evolved. And we did it without an international committee telling us what laws we should have, how we should interpret our scriptures, and what parts of our culture we must discard. Don't other nations deserve the same privilege to evolve toward these ideals in ways which are consistent with their own values and which don't cause severe dislocations in their cultures and families?

Moreover, the current feminist utopia does not sound all that utopian to many women, and it certainly overlooks the crucial needs of children. I realize that anecdotes don't prove anything, but I have, since taking this job, conducted my own informal survey of the young women with whom I come in contact, including single moms. In this country, of course, any woman has the right to choose to work. However, many work not to achieve self-actualization, but out of economic necessity. Most of the young working mothers I meet do not want to be liberated from their children; they want to be liberated from their jobs, so that they can be with their children during their brief, wonderful, growing up years. They want to be the ones to inculcate values in their children. They want to know that their little ones are looked after by someone who loves them.

Most of the single mothers I meet do not tell me they want more help from government. To a woman, they say they wish their children's fathers were as committed to the children as they are. They want a whole family.

If you'll forgive me for getting personal, I have looked at life from both sides. For the first twenty years of my marriage, my husband, who is kind and devoted, was the sole provider for me and my six children. I was able to be with those children to see all the adorable things they did: their first steps, their first words. I knew they were cared for by someone who loves them. I knew that they were learning my values, not someone else's. We had to be resourceful sometimes to make ends meet. But I got tremendous satisfaction from sewing and cooking, and doing creative things to enhance our lives that didn't cost a lot of money.

When my youngest child went to school, I entered law school. I have been unbelievably fortunate in my work since that time. Let's face it, most paid work is not as interesting as the work done by those of us in this room. Like many of you,

I have had wonderful opportunities for paid work that is intellectually stimulating and financially rewarding. I don't say this to boast in any way, but as a predicate for this: I'm convinced that most jobs don't get any better than the jobs I have fallen into. Yet, while I have more money to spend than I did when I stayed home full-time, I am cognizant every day that the most meaningful things I have done in my life are the things I have done with my family. Nothing I do as a lawyer will make me feel any more validated or worthwhile as a person than my relationship to my children and my soon-to-be seven grandchildren. My deepest joys and sorrows come from my work within my family. Nothing about paid work can touch me in that way. I know I'm not alone in feeling that way.

A world view which denies the simple and fundamental importance of family, motherhood and children, can't have all the answers for everyone. A world view which would force grotesque social experiments, undermining the values which have held families together for millennia, cannot be right for everyone. Proponents of this view—a small minority of the world's people—should not be permitted to capture and hold international human rights mechanisms. They should not be permitted to warp and distort fundamental human rights language into something strange and repugnant to most of the world's people.

The language of the "international Bill of Rights"—that is, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights—as that language was understood by the states who agreed upon it, gives a central place to family, home, and the prior right of parents to guide the education of their children. These human rights are fundamental. These must be constantly reaffirmed in international instruments and thereby preserved.

NOTES

The following documents are available in the office of the World Family Policy Center (formerly, NGO Family Voice):

Appendix A

International Convention on Civil and Political Rights; Human Rights Committee, 50th Session, 4 April 1994 Doc # CCPR/C/50/D/488/1992

Appendix B

Symposium on Human Rights in the Asia-Pacific Region. "The Universal Declaration of Human Rights: A living document," statement by Mrs. Mary Robinson, UN High Commissioner for Human Rights. United Nations University, Tokyo, 27 January 1998

Appendix C

"DPI/NGO Conference Examines Universality of Human Rights in Context of Diverse Cultures" UN Press Release, NGO/307/PI/1080. 14 September 1998