INTERNATIONAL LAW, SOCIAL CHANGE AND THE FAMILY

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INTRODUCTION

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

I.   INTERNATIONAL LAW AND NATIONAL POLICY

In the last decade, the United Nations System has assumed a major new role: that of world policymaker. Recent conferences, including the Special Session on Children, the Second World Assembly on Ageing, and the upcoming World Summit on Sustainable Development, are

influential norm-setting events.[1] Moreover, the declarations flowing from these meetings are

playing a growing role in shaping and solidifying the content of enforceable international law.

UN conference declarations now influence not only international – but national – policy. In

addition, widely adopted Conventions – perhaps most notably the Convention on the Rights of

the Child (or "CRC") – are making rapid inroads into areas of family law that were once the sole

concern of nation states.

   An extended analysis of the process of international lawmaking is beyond the scope of

this paper[2]. What is important to understand, for purposes of my present remarks, is that

international law matters a great deal. It matters because modern international law now deals –

not only with the obligations of states – but with the rights of individuals, including children.[3]

   Treaty law – beginning with the Treaty of Westphalia – began as the primary fount of

international law. The importance of treaties in establishing international law (and, increasingly,

domestic obligations) continues unabated. Customary international law, however, is beginning

to play an increasingly important role in shaping the rights of citizens throughout the world. It

once required centuries to create international customary law, because that law was developed

through the uniform, consistent practice of nation states over time.[4] More recently, however,

some legal scholars have begun to argue that international customary law may be developed (at

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[1]Nafis Sadik, *Reflections on the International Conference on Population and Development and the Efficacy of UN Conferences*, 6 COLO. J. INT'L ENVTL. L. & POL'Y 249, 252-53 (1995) ("More than any previous events of their kind, these conferences have fostered the mobilization and participation of civil society and the private sector in the affairs of the international community. . . . This process has nurtured the growth of democracy at the national level and democratized processes at the international level, increasing their transparency and accountability").

[2] For an extensive discussion of the growth and impact of international law and its influence on domestic policy, *see* ESTER RASBAND & RICHARD WILKINS, A SACRED DUTY, 111 (Bookcraft 1999).

[3]*See, e.g.,* Convention on the Rights of the Child; Rome Statute of the International Criminal Court at art. 25 ("The Court shall have jurisdiction over natural persons pursuant to this Statute," and such persons "shall be individually responsible and liable for punishment in accordance with this Statute").

[4]Richard B. Bilder, *An Overview of International Human Rights Law*, *in* GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, 10 (Hurst Hannum, ed. 1992, 2nd ed.). (Customary

least in significant part) by the mere repetition of agreed language at UN conferences. As a

leading international scholar has asserted, negotiated language "repeated by and acquiesced in by

sufficient numbers with sufficient frequency, eventually attain[s] the status of law."[5] Some

scholars have even argued that the negotiation of international conference agreements, such as

the World Summit on Sustainable Development, to be finalized next month in Johannesburg,

may create (in some instances) *instant* customary international law.[6] This argument, at present, is

controversial. But, whether or not the doctrine is sound, academic discussion of instant

customary law demonstrates, at a minimum, that international law can be dramatically influenced

by purportedly non-binding instruments – and without the passage of much time.

This is a momentous, and troubling, new development. Customary law is binding upon

states, often whether or not they agree with a particular customary norm.[7] As a result, even

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international law is defined as a consistent practice in which states engage out of a sense of legal
obligation.).

[5]Higgins, *The Role of Resolutions of International Organizations in the Process of Creating
Norms in the International System*, *quoted in* Frederic L. Kirgis, Jr., INTERNATIONAL ORGANIZATIONS IN
THEIR LEGAL SETTING, 341 (Second Ed. 1993).

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

[7]*See* THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW 99
(1989) ("Given the rapid continued development of international human rights, the list [of customary
international law norms] as now constituted is essentially open-ended. . . . Many other rights will be
added in the course of time."); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED
STATES, § 702 cmt. a (1987) (noting that its "list [of customary international law norms] is not necessarily
complete, and is not closed: human rights not listed in this section may have achieved the status of
customary law, and some rights might achieve that status in the future"); Richard B. Lillich, *The Growing
Importance of Customary International Human Rights Law*, 25 GA. J. INT'L & COMP. L. 1, at 7 n.43
(1995/96) (reporting that in a 1996 speech, Professor Louis Henkin, Chief Report of *Restatement (Third),*
indicated that "if he were drafting Section 702 today he would include as customary international law
rights the right to property and freedom from gender discrimination, plus the right to personal autonomy

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technically non-binding UN Conference Declarations – such as the recent document "A World

Fit for Children" – can *become* binding if the language in those documents is repeated at future

conferences, thereby crystallizing emerging rules of international law.[8]

Accordingly, individuals and groups interested in understanding the meaning of

"marriage" and "family" within domestic legal systems must pay increasing attention, not only to

national laws, but to international treaties, conference declarations and the on-going review and

implementation of those treaties and conference declarations.

II.   INTERNATIONAL LAW AND THE NATURAL FAMILY

Until relatively recently, the concepts of "marriage," "family" and even "children's

rights" were not commonly linked with the notion of "international law." Family and marital law

presented issues so closely tied to unique cultural and religious norms that the international

community did not undertake any real efforts to regulate marriage and family issues on an

international scale.[9] Nevertheless, the Universal Declaration of Human Rights[10] – as well as

other UN founding treaties – announce (or at least recognize) the importance and centrality of

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and the right to live in a democratic society"); Beth Stephens, *Litigating Customary International Human Rights Norms*, 25 GA. J. INT'L & COMP. L. 191, 198-99 (1995/96) (describing customary international law as a "developing concept" and predicting as likely developments "environmental protections and the right to political access (i.e., to vote) and other attributes of democracy"). Commentators have argued, for example, that customary international law includes, or will soon include, rights such as freedom of thought, free choice of employment, the right to primary education, the right to form and join trade unions, and rights relating to sexual orientation. *See* Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815 (1997).

[8]Jiri Toman, "Quasi-Legal Standards and Guidelines for Protecting Human Rights," in *Guide to International Human Rights Practice* 192 (Hurst Hannum, ed. 1992, 2nd ed.).

[9]In fact, the U.N. Charter states, "Nothing contained [herein] shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present charter . . ." U.N. CHARTER art. 2, para. 7.

[10]UNIVERSAL DECLARATION OF HUMAN RIGHTS art. 16:
(1)   Men and women of full age, without any limitation due to race, nationality or religion, have
                the right to marry and to found a family. They are entitled to equal rights as to
                marriage, during marriage and at its dissolution.
(2)   Marriage shall be entered into only with the free and full consent of the intending spouses.

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marriage and family to human civilization.[11] Moreover, human rights issues have become an increasingly important topic of discussion at international conferences. Perhaps because of the confluence of these two factors (that is, the existence of "family" and "marriage" language in international agreements and the growing importance of human rights rhetoric), marital and family structures have recently become the centerpiece of discussions at international conferences.[12]

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

The "solutions" have tended to focus on two initiatives. First, and perhaps most prominently, there has been a major effort to devalue motherhood and childbearing. The second major drive has involved deconstruction of the natural family. This deconstruction proceeds in four steps: (i) assertions that religious faith is irrelevant or dangerous, (ii) attacks on parental authority, (iii) claims that there is nothing unique about the union between a man and a woman and, finally, (iv) the submission that children should be granted broad autonomy rights. These "solutions" – to the extent they are eventually determined to be binding as treaty or customary

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(3)   The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

[11]*See, e.g.,* INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS art. 10-1 (the family is entitled to "the widest possible protection and assistance"); INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS art. 23-2 ("The right of men and women of marriageable age to marry and to found a family shall be recognized").

[12]*See, e.g.,* Richard G. Wilkins, *Bias, Error and Duplicity: Domestic Law and United Nations Conference Agreements*, THE WORLD & I, 287-305 (December 1996) (reprinted in 34 AUSTRALIA AND

international law – could radically restructure domestic law around the world.   I will briefly

discuss a few examples from each area of concern.

I start with the unyielding attempt to redefine the status of motherhood and childbearing.

This effort begins with claims for abortion on demand and concludes with disparagement of

maternity. A clear example of this international initiative comes from the Committee charged

with implementing the Convention on the Elimination of All Forms of Discrimination Against

Women, or "CEDAW." The CEDAW Committee routinely criticizes governments for limiting

abortion[13] – even though abortion is nowhere mentioned as a right in the Convention itself.[14] The

Committee, as part of this effort, also labels motherhood as a mere "stereotype" that holds

women back.[15] When countries have attempted to follow the admonition in the Universal

Declaration of Human Rights that motherhood (and the correlative right of childbearing) deserve

special protection and care (Universal Declaration of Human Rights art. 25(2)), the CEDAW

Committee has complained that these efforts are "paternalistic," or – even worse – that

encouraging motherhood discourages women from seeking (ostensibly more valuable) paid

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WORLD AFFAIRS 23 (Spring 1997); 35 AUSTRALIA AND WORLD AFFAIRS 38 (Summer 1998)) (noting the
importance abortion and family structure arguments played in the negotiation of the Habitat Agenda).

[13]For instance, in Mexico, where abortion is forbidden, the CEDAW Committee encouraged the
local and district governments to "review their legislation so that, where necessary, women are granted
access to rapid and easy abortion." U.N. Doc. A/53/38/Rev.1, Part One, para. 426 (Mexico).

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

[15]Indeed, one of the most common "stereotypes" routinely targeted for eradication by the
CEDAW Committee is "motherhood." The Committee recently chastised both Georgia and Belarus for
overemphasizing women's role as mothers and has specifically criticized Belarus for reinstituting a
national Mothers' Day. U.N. Docs. A/54/38/Rev. 1, Part Two, para. 99 (Georgia); A/55/38 Part One,
paras. 359 and 361 (Belarus).

work. In recent reports, the Committee has gone so far as to tell Western European countries like Germany, Spain, and Luxembourg – countries with below replacement birth rates and imploding populations – that their governments must do more to get women into the full-time work force and to "eradicate stereotypical attitudes."[16] And what are such "attitudes"? The Committee asserts that countries must "use the education system and electronic media to combat the traditional stereotype of women 'in the noble role of mother.'"[17] Childbearing and rearing, in short, are viewed as somehow "ignoble" and are discouraged despite the demographic realities facing nations and/or regions.

Once past this anti-natalist philosophy, modern social theorists and their supportive non-governmental organizations turn their attentions to the deconstruction of the natural family. This deconstruction commences (as noted above) with attacks upon faith and religion. The CEDAW Committee, again, is a good example of the approach of some within the modern international community. The Committee frequently takes aim at religion and culture, expressing the view that "cultural and religious values cannot be allowed to undermine the universality of women's rights."[18] The Committee, in fact, boldly pronounced that "[i]n all countries, [one of] the most significant factors inhibiting women's ability to participate in public life have been the cultural framework of values and religious beliefs."[19] The Committee concluded that "[t]rue gender equality [does] not allow for varying interpretations of obligations under international legal norms depending on internal religious rules, traditions and customs."[20] The Committee, in fact,

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[16] U.N. Docs. A/55/38 Part One, paras. 311-12 (Germany); A/54/38/Rev.1, Part Two, para. 259 (Spain); A/52/38/Rev.1, Part Two, paras. 215-17 (Luxembourg).

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

[18] U.N. Doc. A/53/38 (Part 1) para. 282.

[19] U.N. Doc. A/52/38/Rev.1 at para. 10.

[20] Report of the Committee on the Elimination of All Forms of Discrimination Against Women, art 16, para. 135, U.N. Doc. A/49/38 (1994).

has gone so far as to instruct Muslim nations that they must re-read the Holy Qur'an in ways that will better comply with modern social trends.[21] Broader condemnations of the value of religion and religious life within various cultures and the family can hardly be imagined.

After demeaning the important role of faith and religion, the international redefinition of the family continues with an obstinate refusal to recognize that parents play a vital role in child-rearing and cultural building.[22] Even though study after study shows that the weakening of parents' supervisory roles – even more surely than poverty – leads to serious dysfunctions such as crime, UN bodies often interpret international norms in ways that intrude on and weaken the parent-child relationship.[23] The Committee on the Rights of the Child, for example, views the

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[21] The CEDAW Committee instructed Libya to alter its reading of the Qur'an with the following language:

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

U.N. Doc. A/49/38 paras. 130, 132.

[22]The following objection to a U.N. Declaration by the Vatican illustrates this point. The Vatican:

> repeatedly sought to introduce the concept of parent's rights, duties and responsibilities to provide appropriate direction and guidance to their youth, in a manner consistent with their evolving capacities, a right enshrined in the most significant international documents of this century. . . . Despite our best joint efforts . . . [the declaration] continues to fail to take into account the vital role which parents must play. . . . [T]here is no language currently in the draft Lisbon Declaration as regards marriage and the creation of the family.

Nunciatura Apostolica Portugal, press release, Lisbon (Aug. 12, 1998).

[23]The recommendations contained in the "Report of the Youth Forum ICPD +5" illustrate this point. The Report's first recommendation for action calls for "instruction" before "the end of primary school" on "sexual and reproductive health and rights." Under the heading of "Sexual & Reproductive Health, Human Rights," the Report states that:

> Comprehensive sexual education in schools should be mandatory at all levels. This should cover sexual pleasure, confidence and freedom of sexual expression and orientation.

Report of the Youth Forum ICPD +5, The Hague, Netherlands 7 (Feb. 1999).

"Mandatory" sexual education in such matters as "sexual pleasure" and homosexuality (encompassed by required training in "freedom of sexual expression and orientation") runs counter to

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child as a miniature adult, with rights to privacy, freedom of expression, and freedom to decide what he or she will learn, even against parents' wishes.[24] Thus, according to some of the more extreme advocates in the international community, the child must be freed from parental supervision so that the child can be the master of its own upbringing. I will discuss the consequences of this development shortly.

The step in the deconstruction of the natural family that is the most difficult to address (primarily because any reasoned discourse is almost immediately dismissed as "phobic" or "insensitive") is the modern assertion that there is nothing unique about the relationship between a man and a woman;[25] instead, there are "various forms of the family." Paragraph 31 of the Habitat Agenda, for example, proclaims that "[i]n different cultural, political and social systems, various forms of the family exist." On one level such language is absolutely correct. The family has always included single-parent households, households involving stepchildren, and those embracing aunts, uncles, grandparents and other inter-generational relationships. But the modern assertion is more expansive: it is nothing less than the claim that the very concepts of "family" and "marriage" have *nothing to do* with childbearing or procreation. So understood, any group can claim marital status.

The fourth approach often used to deconstruct the natural family has been adverted to above: that is, to separate the child from the family by "reinventing" the child as an "autonomous rights bearer" free (to one degree or another) from parental control, guidance and support. One of the principal tools used to achieve this result is the Convention on the Rights of the Child or

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values of Islam and Christianity – which stress the importance of sexual chastity and forbid homosexual relationships. Qur'an 26:160-73; 1 Corinthians 6:9. Such "education," furthermore, can be expected to undermine not only the moral authority of established religion, but the primary rights of parents who (confronted by "mandatory" sexual training) will face considerable restraints in passing on their own moral codes to their children.

[24]U.N. Docs. CRC/C/15 Adds. 34, 36, 40, 43, 46, 55, 61, 67, 68, 74, 76.

[25]For example, the CEDAW Committee criticized Kyrgyzstan for classifying lesbianism as a criminal offence. U.N. Doc. A/54/38/Rev.1 Part One, paras. 127-28 (Kyrgyzstan).

"CRC." The CRC, cited as the centerpiece for the "rights-based approach" at the recent Special Session on Children, represents an international attempt to ensure children's well being. This is a laudable goal and one that is repeated in the preamble to the Convention. The preamble emphasizes children's rights to "special care," "assistance," "protection," "safeguards," and "consideration." However, after reciting the vital special care, assistance and protection that children must be accorded, the Convention veers off in a questionable direction by granting – not protective rights for children – but autonomy rights that may actually harm rather than strengthen children.

III.   A CRITIQUE OF INTERNATIONAL LAW AND THE
        NATURAL FAMILY

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

A careful review of available social scientific evidence suggests that the world community should be exceptionally cautious in adopting and implementing the norms discussed above. There are legitimate grounds to question whether continued discouragement of childbearing, disparagement of religion, intrusion upon parental authority, re-definition of the traditional concept of marriage, and emphasis upon the autonomous child are in the best interests of either women, men, children or the international community. Indeed, evidence suggests that further reinforcement of these policy initiatives many undermine social well being, particularly for children. Instead of continuing on its present course, the international community should

seriously consider re-emphasizing the importance of childbearing, religion, parental authority, natural marriage and protection – not emancipation – of our children.

A. The Need for a Positive Emphasis upon Childbearing, Motherhood and Fatherhood

As noted above, the first step in the modern, international "solution" for the perceived problems inherent in family life has been to discourage childbearing and demean the role of parenthood – particularly the role of mother. In light of demographic realities and current social science findings, neither of these approaches appears sound at the dawn of the new millennium.

First, contrary to widespread discussion of the so-called "population explosion," the world community *needs* children – and needs them badly. Fertility rates in the entire developed world are now well below replacement levels.[26] As Dr. Nicholas Eberstadt of Harvard University

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[26]According to Dr. Nicholas Eberstadt:

> In all, 79 countries and territories, with 44 percent of the world's population, fit the below-replacement category. And the countries themselves are strikingly diverse in geography, culture and level of economic development.

Virtually every advanced industrial democracy is on the list. In fact, 27 of the Organization for Economic Cooperation and Development's 29 members have total fertility rates of less than 2.1 —- more or less the level required for long-term population replacement. The two exceptions, by the way, are Mexico and Turkey, countries at the low end of the OECD as measured by income and education. Within the regular OECD grouping, the highest total fertility rates are the United States (2.07) and Iceland (2.04)--levels just shy of replacement. At the other end, Germany and Spain's current TFRs are just over 1.2 -- and Italy's is even lower.

Most OECD members are in Western Europe, which had a collective TFR of 1.4 in 1998. But overall fertility levels appear to be even lower in Eastern Europe--by Census Bureau reckoning, about 1.3. Bulgaria, in fact, has the lowest fertility level ever witnessed in modern nation not at war, with women averaging only 1.14 births in a lifetime. Were that pattern maintained indefinitely, each new generation would be half the size of the one before. In all of Europe, only remote Albania and the tiny outposts of Gibraltar and the Faeroe Islands are thought to be above-replacement enclaves--and in those cases, only barely so.

Within the former USSR, fertility has fallen far below replacement since the collapse of the Soviet empire. While fertility rates in the six former Islamic Soviet republics all appear to be above the net replacement level (from Kazakhstan's projected TFR of 2.1 to Tajikistan's 3.5), the other nine states are far below replacement. In the Russian Federation, by far the most populous of the former Soviet republics, fertility is a shade over 1.3. In the next largest, Ukraine, the TFR is just over 1.3--as it is in Belarus and in the three Baltic states. With a projected TFR of 1.88, Moldova would rank as distinctly the most fertile European enclave within the former USSR today.

has noted, "the trend [in population growth] appears to have reached a monumental turning point. For as the 21st century commences, the tempo of population growth is unmistakably in decline."[27] And, if current declines in fertility rates in the developing world continue, the entire world will soon be below replacement level fertility.[28] Indeed, the dramatic declines in population that the world will face in the next 50 to 60 years were last seen during such dark periods of history as the Black Plague.[29]

According to Dr. Eberstadt, the much-touted "population explosion" of the past century "was entirely the result of health improvements and the expansion of life expectancy. Between 1900 and 2000, life expectancy at birth at least doubled from something like 30 years to 63

Nicholas Eberstadt, *World Population in the 21st Century: Last One Out Turn Off the Lights? at* http://www.worldcongress.org/gen99_speakers/gen99_eberstadt.htm ¶ 18-21 (Nov. 1999) (paper presented at the World Congress of Families II, Geneva, Switzerland) (last visited Aug. 2002).

[27]*Id.* ¶ 4.

[28]While noting that demographic predictions are always "a matter of educated guesswork," Dr. Eberstadt concludes it is quite likely that even the undeveloped world will face dramatic population decline within the next 50 years. *Id.* ¶ 44. As he states:

> We now know . . . that fertility decline can kick in swiftly in low-income settings. . . .   [T]here are now examples of countries in which fertility levels have declined by 1.5 births per woman per decade for a full quarter of a century. In sub-Saharan Africa total fertility has been falling by 20 percent per decade, while in Latin America and the Middle East the pace is around 30 percent per decade. The comparable figure for East Asia is nearly 40 percent, thus far sustained for two and a half decades.

Forget theory. It is a fact that fertility levels have fallen by three-fifths in just twenty-five years in one Arab country (Tunisia) where upwards of half of all women of childbearing ages have had no formal schooling, and by 45 percent in a sub-Saharan country (Kenya) with a dismal incidence of poverty. For whatever reasons, the constraints against fertility decline appear to be receding remarkably in our own time—and may possibly continue to recede in the coming century.

Id. ¶ 47-48.

[29]As Dr. Eberstadt has noted:

> The population has fallen before—in the 14th century, for example. Those earlier reductions, however, were the consequence of catastrophes: bubonic plague decimated societies across Asia, Europe and North Africa between 1333 and 1355. The 21st century population implosion, by contrast, would take place under conditions of steadily improving life expectancy and living standards.

Id. ¶ 14.

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years."[30] By contrast, the current rapid decline in populations within both the developed and the

developing world is the result of "sustained and progressive reductions in family size due to

deliberate birth control."[31] Continuation of current population policies will have dramatic – and

potentially dangerous – consequences for global society.

> According to Dr. Eberstadt:
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> If the pace of global fertility decline continues for another generation--and the world consequently heads toward negative population growth--the population issues of the future won't resemble those of the recent past. In a world of long life expectancies, small families and negative population growth, the Malthusian specter will cease to be relevant to public policy. . . .
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> [In addition,] rapid global aging [will] have a number of ineluctable implications. For one thing, it [will] increase the salience of addressing the health care and income security needs of the elderly. In Western countries, current public programs for these purposes are coming under increasing demographic pressure, and require far-reaching overhauls to maintain financial soundness. In low-income countries, where coverage by public pension and health systems is limited, the issue of how to take care of the elderly could be all the more pressing.
>
> Rapid global aging [also raises] the question of how to educate and train the work force of the future. It is not difficult to imagine circumstances in which a majority of a country's workers were over the age of 50. . . .
>
> Finally, prolonged sub-replacement fertility in a world of long life expectancy would presage a radical change in family structure . . . . For the first time in the human experience, there could be societies in which the only biological relatives for many people would be their ancestors. With sufficiently low fertility for just two generations, people with blood siblings and cousins would become the exception. Exactly how a society would operate under such conditions – how, for example, children would be socialized -- is difficult to imagine.[32]

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[30]*Id.* ¶ 7.

[31]*Id.* ¶ 8. Dr. Eberstadt notes that:

In historic terms, this trend is a very new phenomenon: it apparently had not occurred in any human society until about two centuries ago. France, where the trend began by the early 19th century, was the first country to experience the sustained decline. Since that beginning, the decline has spread steadily if unevenly across the planet, embracing an ever rising fraction of the global population and depressing voluntary childbearing in the affected societies to successive record lows.

Id. ¶ 9.

[32]*Id.* ¶ 56-59.

The continued emphasis on population control within the international community, therefore, appears misguided. It is time to turn our attention from continued attention on abortion and the burdens of childbearing to the social need for responsible reproduction. As Ben J. Wattenberg noted on the March 4, 2002 editorial page of the Wall Street Journal, the "birth dearth" and "subsequent depopulation" should now "share the billing [with population control] and soon move center stage."

Regaining and maintaining a healthy population trend, however, will require refashioning some of the rhetoric used within the international community. Motherhood, for one, should no longer be considered an unhealthy "stereotype." While the notable advances made for women in economic, cultural, social and political spheres should be applauded and continued, the world community should not continue to make such successes contingent upon diminishing the status of motherhood. For that matter, the importance of fatherhood should be increasingly stressed.

Recent studies emphasize the critical role dual-parenting plays if children are to become law abiding, well-socialized citizens. As one researcher noted, "the single most important factor in determining if a male will end up incarcerated later in life is . . . whether or not he has a father in the home."[33] The mother-child relationship is equally important. "As mothers spend less time with infants and toddlers . . . the boys' developing brains, and thus their behavioral systems, are affected."[34] Children without this crucial early bonding are "more likely to start out on a path of later narcissism and out-of-control behavior as [they] compensate[] for [the] early deprivation."[35]

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[33]*See* MICHAEL GURIAN, THE GOOD SON: SHAPING THE MORAL DEVELOPMENT OF OUR BOYS AND YOUNG MEN 182 (1999) (referring to research studies conducted by the University of Pennsylvania and Princeton University).

[34]*See id*. at 42-43.

[35]*See id.* at 43. Gurian notes that today there is a cultural strain on the early bond between both mothers and fathers. "Most boys lose their mothers not because of death but because the importance of the mother-son bond has been gradually diminishing in our culture, and thus in the home. Pressures on contemporary mothers are such that mothers can't mother their sons as they wish and need to. Similar pressures have for years frayed the father-son bond. . . ." *Id*. at 42. Gurian also notes that "[t]he reason the question of working mothers and child care is so developmentally crucial now is that mother-child

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Thus, the natural family – where children enjoy the protection and support of both a

father and a mother – is "by far the most emotionally stable and economically secure

arrangement for child rearing."[36] Furthermore, recent research indicates that – for children –

nothing compares to a solid, stable marriage between their biological parents.[37] It is well past

time for the international community – and particularly the U.N. Conference System – to

recognize these important realities.[38]

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attachment itself has changed a great deal by force of culture. Our economic system forces many mothers
to work far away from their babies, and the 'aunties' – the child-care workers provided by our culture –
are generally so slightly paid that they don't stay around long enough to form bonds. This situation is
potentially dangerous to the developing child." *Id*. at 74.

[36]*See* Brigitte Berger, *The Social Roots of Prosperity and Liberty*, 35 SOCIETY 44 (1998).

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

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

Marsha Garrison, *Law Making for Baby Making: an Interpretive Approach to the Determination of Legal
Parentage*, 113 HARV. L. REV. 835, 839-40 (2000). Garrison also notes that

> [d]uring a 12-month period in 1986-87, there were approximately 4,000 requests from single
> women for artificial insemination. [citation omitted]. While there are no current national data on
> the proportion of [artificial insemination] users who are single women, anecdotal evidence
> suggests that the phenomenon is increasing in frequency. For example, the director of one
> California sperm bank has estimated that 40% of its [artificial insemination] recipients are single
> lesbian women. [citations omitted]. Births to unmarried mothers have also risen dramatically in
> recent years. In 1970, 10.7% of U.S. births were to unmarried women; by 1995, 32.2% were.
> [citations omitted]."

Id. at 839, n.9.

[38]Change within the U.N. System may be difficult to achieve. At a recent session of the
Commission for Social Development, Mr. Pino Arlacchi, Executive Director of the United Nations Office
for Drug Control and Crime Prevention, concluded in his report to the Commission that "a stable,
supportive family life provides a vital shield to drug abuse, particularly among minors." Nevertheless,
even though Mr. Arlacchi also testified that peer pressure was one of the greatest causes of drug abuse
among teenagers, the "Agreed Conclusions" drafted by the Commission for Social Development merely
stated that "youth groups can also be engaged as active agents in the field of prevention of drug abuse."
CSW, Agreed Conclusions for Agenda Item 3(a)(iii) para. 3 (1998). Thus, rather than assisting parents in
alleviating drug use, the method actually advocated by the UN's Executive Director of the Office for

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B. The Need for a Return of Religion and Faith

The world community needs to do more than recognize that children are our greatest natural resource. International fora also need – now more than ever – to pay close attention to the structure within which most children are raised: the family. The legal and social science literature of the recent past has done much to deconstruct the family. It is time to reverse that trend and do a little construction work to preserve the family. Any such construction work, moreover, will have to recognize the centrality and importance of religion in building stable marriages and families.

I do not question there are certain practices – sometimes inaccurately justified under the rubric of religion -- that demand condemnation. To the extent that such abhorrent practices as honor killings, female genital mutilation or wife burning are purportedly required by religion, religious thought and practice must be reformed. But the modern condemnation of religion by some within the international community has gone too far. To use a well-worn English adage, in order to eliminate a few particularly egregious human rights abuses perpetrated in the name of religion, many in the international community have "thrown the baby out with the bath water." Rather than being harmful, the great bulk of religious thought and practice reinforces familial stability and well-being.

Social science literature now demonstrates that, at least in Western societies, the family unit is rapidly disintegrating.[39] This disintegration of the family unit is having a profoundly

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Drug Control, the Commission on Social Development mobilized "peer groups" – the very forces that the Executive Director feared when it came to increased drug abuse.

[39]*See, e.g.*, David Popenoe, *Family Caps*, 33 SOCIETY 25, (1996):

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

negative impact on children. Social science data also demonstrate two nearly incontestable conclusions: (1) stable, natural marital structures provide profound benefits for men, women and children;[40] and (2) the breakdown of stable, natural marital structures impose significant social costs upon individuals, children and society at large.[41] As one scholar noted, "[a]lthough of late we can witness a public rediscovery of the salutary role of the nuclear family of father, mother, and their children living together and caring for their individual and collective progress, policy elites appear neither to have fully understood that public life lies at the mercy of private life, nor do they seem to have apprehended the degree to which the [traditional] virtues and [traditional] ethos continue to be indispensable for the maintenance of both the market economy and civil society."[42]

One of the traditional virtues that has supported the nuclear family of father, mother and children is religious belief and practice. Parents and children in intact families are much more likely to worship than are members of divorced families or step families.[43] In fact, religion and religious practice appear to play an essential role in maintaining marital and family stability. Research has demonstrated that religious devotion within the family context has a host of positive impacts. These beneficial consequences include improvements in health, education, income, virginity, marital stability, the reduction of crime and addictions, and increased mental

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36 percent. It is very much in the public interest for the government to prevent such family disintegration–to promote marriage and the two-parent family and to try to limit single-parent families and out of wedlock births.

[40]*See, e.g.,* STEVEN L. NOCK, MARRIAGE IN MEN'S LIVES 11 (1998); Linda J. Waite, *Does Marriage Matter?*, 32 DEMOGRAPHY 483, 494 (1995).

[41]Dr. Maria Sophia Aguirre, *Family, Economics, and the Information Society: How are They Affecting Each Other? at* http://www.worldcongress.org/gen99_speakers/gen99_aguirere.htm (Nov. 1999) (paper presented at the World Congress of Families II, Geneva, Switzerland) (last visited Aug. 1, 2002).

[42]Brigitte Berger, *The Social Roots of Prosperity and Liberty*, 35 SOCIETY 44 (1998).

[43]Scott M. Myers, *An Interactive Model of Religiosity Inheritance: The Importance of Family Context*, 61 AMERICAN SOCIOLOGICAL REVIEW, 858-866 (1996).

health and general happiness – to mention but a few.[44] Thus, rather than being condemned for

preventing social progress for women and men,[45] the great bulk of religion and religious

practices should be encouraged for the familial – and social – stability they engender.

C. The Need for Parental Authority

There is also a need within the international community to rediscover the virtues of

parental authority. Marriage, as it has been conceived and practiced for centuries, has marked

benefits for marital partners and their offspring.[46] Indeed, a growing body of research shows that

natural, heterosexual marriage has significant benefits for adults[47] and children. For example,

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[44]Patrick F. Fagan, *Why Religion Matters: The Impact of Religious Practice on Social Stability*, The Heritage Foundation, BACKGROUNDER, No. 1064, Jan. 25, 1996, *available at* http://www.heritage.org/library/categories/family/bg1064.html (last visited Aug., 2002).

[45]*See supra*, notes 18-21.

[46]*See* STEVEN L. NOCK, MARRIAGE IN MEN'S LIVES 11 (1998). "Married people are generally healthier; they live longer, earn more, have better mental health and better sex lives, and are happier than their unmarried counterparts. Furthermore, married individuals have lower rates of suicide, fatal accidents, acute and chronic illnesses, alcoholism, and depression than other people." *Id.* at 3.

[47]Marriage is the ultimate social bond that can be formed between a man and woman because

> [b]y their marriages, husbands and wives accept an obligation to be faithful, to give and receive help in times of sickness, and to endure hardships. Not everyone will be able to remain true to such vows. However, it is more difficult for a married than for an unmarried person to break such promises *because* they are part of our laws, religions, and definitions of morality. Others have taken identical vows throughout history. Collectively, society enforces these ideals both formally and informally. Nothing can be said about any other type of intimate relationship between two adults.

Id. at 4.

It should come as little surprise, then, that this ancient social union has particular (and unique) social value. This unique social value, moreover, does not flow from some natural selection process in which healthy, strong, bright, and charismatic people are the most likely to marry and, therefore, the most likely to benefit from the union. "Married people do not simply *appear* to be better off than unmarried people; rather, marriage changes people in ways that *produce* such benefits." *See id*. at 3 (emphasis in original) (citing R.H. Coombs, *Marital Status and Personal Well-Being: A Literature Review*, 40 FAMILY RELATIONS 97-102 (1991)); *see also* Walter R. Gove et al., *The Effect of Marriage on the Well-Being of Adults*, 11 JOURNAL OF FAMILY ISSUES 4, 25 (1990) ("[T]he evidence suggests that [the link between individual benefits and marriage] is not primarily due to particularly competent and healthy persons being more likely to marry and stay married but instead is primarily due to the effect of the marital relationship on individuals").

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children living with their biological parents have significant advantages in education,[48] suffer less from poverty,[49] commit fewer crimes,[50] and are better adjusted socially than children living in single-parent homes or step-parent homes.[51]

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[48]Studies consistently show that children in an intact natural family are significantly less likely to drop out of high school than children in a one parent family. *See* Linda J. Waite, *Does Marriage Matter?*, 32 DEMOGRAPHY 483, 494 (1995). In some studies, the likelihood of dropping out more than doubles for children in single-parent households. *See id.* at 494. Importantly, Waite notes that the statistics regarding the likelihood of dropping out of school for children of single-parent households, "take into account differences in a number of characteristics that affect educational attainment," thus accentuating the accuracy of the statistics' indications. Children of non-traditional families are also more likely to have lower grades and other measures of academic achievement. *See* Paul R. Amato, *Children of Divorce in the 1990s: An update of the Amato and Keith (1991) Meta-Analysis* 15 JOURNAL OF FAMILY PSYCHOLOGY, 355-370 (2001); *See also* William H. Jeynes, *The Effects of Several of the Most Common Family Structures on the Academic Achievement of Eighth Graders*, 30 MARRIAGE AND FAMILY REVIEW 73-97 (2001). Finally, children of divorced parents are more likely to have lower occupational status and earnings and have increased rates of unemployment. *See generally* Catherine E. Ross & John Mirowsky, *Parental Divorce, Life-Course Disruption, and Adult Depression*, 61 JOURNAL OF MARRIAGE AND THE FAMILY (1999).

[49]Studies show that children raised outside marriage are more likely to be raised in poor economic conditions. *See* Waite, note 48 above, at 494. Even after controlling for race and family backgrounds, children raised outside of marriage suffer not only from economic deprivations, but also from a lack of parental attention and from high rates of residential relocation, all of which can work to disadvantage the child's development. *See* Pamela J. Smock, et al., *The Effect of Marriage and Divorce on Women's Economic Well-Being,* 64 AMERICAN SOCIOLOGICAL REVIEW, 794-812 (1999); *See also* Teresa A. Mauldin, *Women Men and the Economic Consequences of Divorce: Evidence from Canadian Longitudinal Data*, 30 CANADIAN REVIEW OF SOCIOLOGY AND ANTHROPOLOGY, 205 (1990)(finding that the presence of two parents potentially means more parental supervision and more parental time helping with homework).

[50]*See supra* notes 33-35. Adolescents with married parents are least likely to use marijuana, cocaine, or smoke cigarettes. Patrick Fagan et al., THE POSITIVE EFFECTS OF MARRIAGE: A BOOK OF CHARTS, at 35-36, 38 (The Heritage Foundation, 2002). Children with non-traditional family structures are twice as likely to use marijuana or cocaine and are 30 percent more likely to have experimented with cigarettes than children with two biological parents. *Id*.

[51]"[C]hildren of divorce do not accept monitoring or supervision from live-in parents nearly as much as they do from married parents." Sanford M. Dornbusch et al., *Single Parenthood*, 33 SOCIETY 30 (1996). Young women from single-parent households are more likely to give birth out of wedlock, and young adults are more likely both to be out of school and the labor force. *See* WAITE *supra*, note 47 above, at 494. Furthermore, "children who spend part of their childhood in a single-parent family . . . report significantly lower-quality relationships with their parents as adults and have less frequent contact with them." *Id*. at 495 (citing D.N. Lye, et al., *Childhood Living Arrangements and Adult Children's Relations with Their Parents*, 32 DEMOGRAPHY, 261-80 (1995)). Children of fragmented or divorced families are also more likely to commit suicide and have higher risks of obtaining mental illnesses. *See* William J. Doherty et al., *Why Marriage Matters: Twenty One Conclusions from the Social Sciences*, 14-15 (Center for the American Experiment Coalition for Marriage, Family and Couples Education Institute for American Values 2002)(stating that high rates of family fragmentation are associated with an increased risk of suicide among both adults and adolescents. In the last half-century, suicide rates among teens and young adults have tripled. The single "most explanatory variable," according to one new study,

These benefits do not flow from the beneficent impact of some governmental action or bureaucracy. Research demonstrates that these benefits flow from well-functioning, two-parent households. Therefore, except in those cases where it can be shown that parents are incapable or incompetent to perform their important roles as protectors and mentors of their children, they should have full authority to make the decisions which most affect the daily lives of their children. While I have no doubt that many international proposals that interfere with (or even eliminate) parental authority are well-intentioned, I am similarly convinced that no local, national or international agency can make decisions for children that are superior to those made by a reasonably well functioning two-parent family. However well-intentioned, no international law – including the Convention on the Rights of the Child – should be construed so as to deprive parents of the authority to determine, on their own, what is in the best interests of their progeny.

D. The Importance of the Traditional Conception of Marriage

As noted earlier, the current international debate over marriage and family that is most difficult to address is the claim that there is nothing unique about heterosexual, marital unions. Any two consenting individuals, the argument goes, should be able to lay claim to the status of "marriage." Such a claim can succeed, however, only if the international community is willing to completely separate society's vital interest in reproduction – that is, in the bearing and rearing of children[52] – from the concept of family and marriage. This severance of reproduction from what the Universal Declaration of Human Rights calls the "natural and fundamental group unit of society"[53] is fraught with profound difficulties.

(David M. Cutler et al., *Explaining the Rise in Youth Suicide*, Working Paper, 7713 (Cambridge, MA: National Bureau of Economic Research)) (2000), "is the increased share of youths living in homes with a divorced parent." The effect, note the researchers, "is large" explaining as much as two thirds of the increase in youth suicides" over time.

[52]Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

[53]UNIVERSAL DECLARATION OF HUMAN RIGHTS art. 16(3).

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Separating the concepts of marriage and family from reproduction has significant legal, sociological, moral and philosophical consequences that have been discussed by, among others, Professors Robert George and Gerard Bradley,[54] and Hadley Arkes.[55] According to these scholars, heterosexual relationships (and, in particular, marital relationships) differ significantly from other possible sexual acts. Sexual relations between a man and a woman bound in marriage are "an intrinsic (or . . . 'basic') human good."[56] This is due, in large part, to the fact that the natural family furthers society's profound interest in the only sexual relationship that has the biological *potential* for reproduction: union between a man and a woman. This potential procreative power is the basis for society's compelling interest in preferring heterosexual relationships over other possible sexual unions.

The long-understood institution of marriage and the family, therefore, furthers society's "very . . . survival."[57] The law, moreover, has never been ignorant of the vital distinction between sexual practices, proclivities and procreation. And international law, for its part, *must* take cognizance of the biologically obvious distinction between heterosexual unions and other possible sexual acts. International decision making, because it affects the lives of all people, must be grounded in both principle and reason. When it comes to a world-wide definition of the family and marriage, the undeniable and well-grounded principle that has guided mankind for generations is straightforward: there is a fundamental difference between potentially procreative sexuality and non-procreative sexuality. Thus, while Paragraph 31 of the Habitat Agenda

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[54]Robert P. George & Gerard P. Bradley, *Marriage and the Liberal Imagination*, 84 GEO. L. J. 301 (1995).

[55]Hadley Arkes, *Questions of Principle, Not Predictions: A Reply to Macedo*, 84 GEO. L.J. 321 (1995).

[56]GEORGE & BRADLEY, *supra* note 55, at 301-02.

[57]Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

recognizes that "various forms of the family exist," it also notes that marriage is an institution

between "husband and wife."

Reproduction is the only human act for which the two genders indisputably require the

other. A woman can do everything in her life without a man, except reproduce. Vice versa for a

man. Thus, the sexuality that unites a man and a woman is unique in kind. This uniqueness, in

fact, is the very basis of the legal, religious, historical and metaphysical notion that "marriage"

indeed joins two flesh in one.[58] As recognized by article 16 of the Universal Declaration of

Human Rights, marriage – defined as the voluntary union of a man and a woman – has been

linked to procreation and the rearing of children from the dawn of time.[59] The international

community will place the societal and cultural strength provided by "the natural and fundamental

group unit of society"[60] in peril if it abandons this reality.[61]

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[58]Robert P. George, *Public Reason and Political Conflict: Abortion and Homosexuality*, 106 Yale
L. J. 2475, 2497 (1997) ("Professor Bradley and I [Robert George] defend an alternative conception of
marriage – one which we believe to be reflected in traditional American and British marriage law,
especially in the law governing consummation of marriage. We argue that marriage is a one-flesh (i.e.,
bodily, as well as emotional, dispositional, and spiritual) union of a male and a female spouse
consummated and actualized by sexual acts that are reproductive in type. Such acts consummate and, we
maintain, actualize the intrinsic good of marriage whether or not reproduction is desired by the spouses in
any particular marital act, or is even possible for them in a particular act or at all.").

[59]. Universal Declarations of Human Rights art. 16:

> (1) Men and women of full age, without any limitation due to race, nationality or
> religion, have the right to marry and to found a family. They are entitled to equal rights
> as to marriage, during marriage and at its dissolution.

(2)   Marriage shall be entered into only with the free and full consent of the intending
spouses.

(3)   The family is the natural and fundamental group unit of society and is entitled to
protection by society and the State.

[60]*Id*. at art. 16(3).

[61] Before attempts are made to legitimize or sanction same-sex unions, careful attention
needs to be paid to the facts surrounding homosexual behavior and lifestyles. A significant body
of current research suggest that according homosexual unions the same status accorded
traditional marriage could be risky indeed. Homosexual behavior increases the likelihood of
psychiatric, mental, and emotional disorders. Sandforte et. al., *Same-sex Sexual Behavior and
Psychiatric Disorders Findings from the Netherlands Mental Health Survey and Incidence
Survey*, 58 ARCHIVES OF GENERAL PSYCHIATRY, 10, 85-91 (2001)(Youth are four times more
likely to suffer major depression, almost three times as likely to suffer generalized anxiety
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E. The Dangers of the Truly Autonomous Child

The final development in international law that I wish to discuss is the novel notion that

children within families are really just miniature adults, with full rights – subject to

governmental, not parental oversight – to privacy, association and speech. This notion, if taken

to its logical conclusion, goes a good deal toward abolishing, not only childhood itself, but the

very idea of parental rights.

Prior to the adoption of the Convention on the Rights of the Child, no legal system in the

world granted autonomy rights to children.[62] The Convention, however, does just that. The

Convention, beyond question, is well intentioned. But, its sweeping and unprecedented creation

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disorder, nearly four times as likely to experience conduct disorder, four times as likely to
commit suicide, five times as likely to have nicotine dependence, six times as likely to suffer
multiple disorders, and over six times as likely to have attempted suicide. Additionally, this
research originates in the Netherlands where homosexuality is much more mainstream and
accepted.). Beyond mere emotional and mental disorders, epidemiologists estimate that one out
of two men who have sex with men will eventually become HIV positive. Hessol et. al.,
Incidence and Prevalence of HIV Infection among Homosexual and Bisexual Men, 1978-1988 ,
National Library of Medicine AIDSLINE MED/00002789 (1989).   This result is sad, yet
predictable, given that a 1991 study of Gay Men in New York City revealed that the average
number of lifetime sexual partners was 308, while the mean number of partners stands at a
staggering 755. Meyer-Balburg et. al., *Sexual Risk Behavior, Sexual Functioning and HIV-
Disease Progression in Gay Men*, 28 JOURNAL OF SEX RESEARCH, 1, 3-27 (1991) (the "average"
figure differs from the "mean" as follows: the "average" takes the total number of men in the
study and "averages" the number of partners for *all* the men in the study; the "mean" figure
reveals the number of sexual partners of the gay man precisely "in the middle" of the study – that
is, the man who had the number of partners halfway between the lowest number of partners and
the highest number of partners). Finally, the most alarming and troubling aspect accompanying
the gay lifestyle is the prevalence of physical and emotional abuse. Susan C. Turnell, *A
Descriptive Analysis of Same-Sex relationship Violence for a Diverse Sample*, 13 JOURNAL OF
FAMILY VIOLENCE, 281 (2000) (finding that 44% of gay men report having experienced physical
violence in their relationships; 135 report sexual violence, and 83% report emotional abuse.
Among lesbians: 55% acknowledge having experienced physical violence, 14% report sexual
abuse and 84% report emotional abuse); *See also,* U.S. Department of Justice Study, CITIZEN
MAGAZINE , (January 2000) (reporting that the U.S. Justice Study found an epidemic of violence
between homosexuals: an annual average of 13,740 male victims of violence by homosexual
partners and 16,900 victims by lesbian partners. By contrast, the most recent numbers – 1999 --
for "hate crimes" based on sexual orientation totaled 1,558 victims).

[62]*See* Bruce C. Hafen & Jonathan O. Hafen, *Abandoning Children to Their Autonomy*, 37 HARV.
INT'L L.J. 449, 459 (1996) (quoting the drafters of the CRC as creating, for children, "the 'totally new
right' of individual personality" independent of parental control).

of autonomy rights for children may, in the long run, threaten children's well being. As Peter Neubauer has stated:

> Children who are pushed into adult experience[s] do not become precociously mature. On the contrary, they cling to childhood longer, perhaps all their lives.[63]

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

An even greater risk is that the CRC's language might be construed to support sexual freedom for children. Some supporters believe that CRC article 16 grants the same right to "protections for procreation and abortion decision-making" as those that are afforded to adults.[64] Hence, there will continue to be heated debates at UN Conferences about granting sexual autonomy and abortion rights to children, a position that (oddly enough) is supported by the same individuals that one might expect to decry the sexual abuse of children.[65] These ideological battles, however, should not lose sight of the reality that most child development experts have

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[63]Quoted in *Children Without Childhood*, by Marie Winn, 1981, ch. 13. Available at http://www.bartleby.com/66/87/41387.html (last visited Apr., 2002).

[64]Robert E. Shepherd, *Civil Rights of the Child*, CHILDREN'S RIGHTS IN AMERICA 143 (1990).

[65]*See, e.g.,* Professor Anne Hendershoot, *The paradox of the postmodern pedophile,* THE SAN DIEGO UNION, April 26, 2002, (Union Tribune Publishing Company) (noting that the coming publication of *Harmful to Minors: The Perils of Protecting Children from Sex* by the University of Minnesota Press promises a "a radical, refreshing and long overdue reassessment of how we think and act about children's and teens' sexuality." In published interviews on the University of Minnesota's Web site, author Judith Levine decries the fact that there are people "pushing a conservative religious agenda that would deny

long believed that "adolescent sexual activity is . . . unhealthy for children – emotionally, psychologically, spiritually, and physically."[66]

Article 13 of the CRC also grants children the right to "receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."[67] The language of this article does little to recognize the dangers of obscenity and child pornography. Far too many supposed experts in today's world believe that pornography – and even unrestrained sexuality – are good for children.[68] Given the broadly worded language of CRC article 13, the ability of parents and other care givers to restrain children's access to potentially harmful sexual practices and harmful pornographic materials is in doubt.

As Professor Bruce Hafen has cogently noted, until the CRC, legal systems in the world limited "children's autonomy in the short run in order to maximize their development of actual autonomy in the long run."[69] This approach, he notes, "encourages development of the personal competence needed to produce an ongoing democratic society comprised of persons capable of autonomous and responsible action."[70] But, to "short-circuit this process by legally granting – rather than actually teaching – autonomous capacity to children ignores the realities of education and child development to the point of abandoning children to a mere illusion of real autonomy."[71]

IV.   THE COSTS OF DESTABILIZING THE NATURAL FAMILY

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minors access to sexual expression" and adds that "[w]e do have to protect children from real dangers. . . . But that doesn't mean protecting some fantasy of their sexual innocence").

[66]Henry J. Redd et al., *Contraception and Adolescents: A dissent*, 21 CHILD & FAMILY 105, 106 (No. 2, 1990).

[67]CONVENTION ON THE RIGHTS OF THE CHILD art. 13(1).

[68]*See* HENDERSHOOT *supra* note 65.

[69]HAFEN ET. AL., *supra* note 62, at 491.

[70]*Id*.

The international community has paid close attention to the family during the past decade. As shown above, however, whether or not that close attention has been beneficial is questionable. Throughout the world there are growing signs of distress in society. There is

> [m]uch . . . debate about the growing gap between rich and poor. . . . Analysis of social science literature demonstrates that the root cause of poverty and income disparity is linked undeniably to the presence or absence of marriage. A broken family earns less and experiences lower levels of educational achievement. Worse, it passes the prospect of meager incomes and family instability on to their children, making the effects inter-generational.[72]

As demonstrated above, "[r]esearch has documented that natural family structures benefit nearly every aspect of children's well-being. This includes greater educational opportunities, better emotional and physical health, less substance abuse, and lower incidences of early sexual activity for girls, and less delinquency for boys."[73] In the United States, 50% of children who live with a single mother live in poverty; by contrast, only 10% of children residing in two-parent homes live below the poverty level.[74]

But more than education, emotional health and poverty is at stake. The very safety and lives of women and children depends upon marital stability. A groundbreaking survey of scientific literature performed by Dr. David Popenoe and Dr. Barbara Dafoe Whitehead found that cohabiting, unmarried women "are more likely than married women to suffer physical and

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[71]*Id.*

[72]Patrick F. Fagan, *How Broken Families Rob Children of Their Chances for Future Prosperity*, The Heritage Foundation, BACKGROUNDER, No. 1283, June 11, 1999, *available at* http://www.heritage.org/library/backgrounder/bg1283.html (last visited Aug. 2002).

[73]Craig H. Hart, Ph.D., *Combating the Myth that Parent's Don't Matter, at* http://www.worldcongress.org/gen99_speakers/gen99_hart.htm (Nov. 1999) (paper presented at the World Congress of Families II, Geneva, Switzerland) (last visited Aug., 2002).

[74]*Id.*

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sexual abuse."[75] The consequences of cohabitation are even more serious for children. Doctors

Popenoe and Whitehead conclude that:

> the most unsafe of all family environments for children is that in which the
> mother is living with someone other than the child's biological father. This is
> the environment for the majority of children in cohabiting couple
> households.[76]

In short, stable marital unions promote the health, safety and social progress of women,

men and children. Unstable marital relations promote poverty, crime, abuse and social

disintegration. These realities, moreover, are particularly acute for women and children. While

the redefinition of marriage and family – in large part – has been championed by organizations

that seek the betterment of women and children, their efforts (as shown above) have not always

actually improved the lives of women and children. Modern activists would do well to heed the

fact that "the family as an institution exists to give legal protection to the mother-child unit and

to ensure that adequate economic resources are passed from the parents to allow the children to

grow up to be viable adults."[77]

IV.   CONCLUSION

What is the import of my fairly wide ranging discussion? I will offer a word of caution

and make a plea for constructive change.

First, a word of caution. While working to improve social mobility and cultural progress,

particularly for women and children, the international community would do well to begin

minimizing the social costs now flowing from the modern marital and sexual revolution. As

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[75]DR. DAVID POPENOE AND DR. BARBARA DAFOE WHITEHEAD, SHOULD WE LIVE TOGETHER?
WHAT YOUNG ADULTS NEED TO KNOW ABOUT COHABITATION BEFORE MARRIAGE, at 7 (The National
Marriage Project, Rutgers University 1999).

[76]*Id*. at 8.

[77]AGUIRRE, *supra* note 41.

Professor Maria Sophia Aguirre has noted, "[t]he disruption of the family has had serious and high social welfare costs."[78]

Second, there is a profound need to strengthen the natural family. The deconstruction of the family has proceeded far enough. As stated earlier, it is now time for construction work. This construction project will require the efforts of all. Indeed, the threats facing men, women, children and the family do not face one country or culture alone. All cultures and all countries must stand together to combat the erosion of morality and the family. To do so, all nations must take their role in crafting international conference agreements very seriously. All too often, nations sign UN agreements only to "appease popular or 'politically correct' sentiment."[79] Such an approach to the negotiation and finalization of international declarations is unwise.

Virtually every UN conference addresses contentious provisions regarding the role of the natural family, childhood autonomy and children's sexual rights. As these provisions are negotiated, the words that are used – the norms that are created – may become legally binding in the very near future. Each internationally negotiated document builds upon language used and objectives sought in preceding conferences and – as a result – forms an important link in a chain that inevitably encircles the international community.[80]

The nations of the world must carefully consider the natural family and children's rights language they incorporate into international declarations. Language may be merely a recommendation today. But that same language may be binding tomorrow. The world community, in negotiating documents that affect the world's social ecology, must be certain that

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[78]*Id.*

[79]Neil H. Afran, *International Human Rights Law in the Twenty First Century: Effective Municipal Implementation or Paen to Platitudes*, 18 FORDHAM INT'L L.J. 1756, 1758 (1995).

[80]*See* SADIK, *supra* note 1, at 252.

the phrases it uses, the rules it creates, and the lessons that it teaches uplift rather than degrade

the world's most important resource: the world's families and their children.