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UNESCO’S PROGRAM FOR SEXUALITY EDUCATION IN LIGHT OF A PROPER UNDERSTANDING OF INTERNATIONAL HUMAN RIGHTS

John D. Shea and Majel E. Braden†

INTRODUCTION

Over the past few years, several international organizations have advocated a need for sexuality education.1 From June to December 2009, the United Nations Educational, Scientific, and Cultural Organization [hereinafter UNESCO] published International Technical Guidance on Sexuality Education: An Evidence Informed Approach for Schools, Teachers, and Health Educators, and

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International Guidelines on Sexuality Education: an evidence informed approach to effective sex, relationships, and HIV/STI education (collectively, the Guidelines), outlining the implementation for sexuality education programs for primary and secondary schools. UNESCO published these massive documents with the goal of equipping children and young people with the “knowledge, skills and values to make responsible choices about their sexual and social relationships in a world affected by HIV and AIDS.” Unfortunately, this noble goal is quickly abandoned in favor of advocating an approach that is “rights-based, culturally sensitive, respectful of sexual and gender diversity...” and encourages teachers and governments to act in the place of the child’s parents in educating children on sexuality. The purpose of this paper is to provide a critical analysis of UNESCO’s two sexuality education guidelines in light of a proper understanding of the rights of parents, family, and children in binding international law, and to demonstrate that UNESCO’s approach is more focused on sexualizing children through social policy, rather than on health.

Part One provides a brief history of UNESCO’s two guidelines on sexuality education. Part Two discusses the philosophy of UNESCO’s approach to the topic of sexuality and its appropriateness in education as presented in its two sexuality education guidelines. Part Three summarizes UNESCO’s sexuality education documents and compares how slight differences in the documents demonstrate an intent to expose young people to overtly sexual information. Part Four outlines several additional issues in international law and their relation to the sexualization of children. This analysis gives greater insight into the Guidelines, and reveals that UNESCO’s objective is indoctrination and desensitization of children by overwhelming them with sexual-based information, rather than the promotion of better sexual health.

3. INTERNATIONAL GUIDELINES, supra note 2, at 3.
4. Id. at 3, 4.
I. HISTORY OF UNESCO’S TWO SEXUALITY EDUCATION GUIDELINES

As previously mentioned, UNESCO has published two documents that provide an overview on sexuality education. The first of these two documents, INTERNATIONAL GUIDELINES ON SEXUALITY EDUCATION [hereinafter International Guidelines], was published in June 2009. UNESCO states that the purpose of publishing this document was to help reduce the risk of young adults contracting HIV/AIDS and to prevent coercive and abusive sexual activity. The International Guidelines were intended to target education and health ministers in order to globally implement sexuality education programs. Further, UNESCO argues that sexuality education is “an essential part of a comprehensive response to HIV and AIDS at the national level.”

The second document, INTERNATIONAL TECHNICAL GUIDANCE ON SEXUALITY EDUCATION [hereinafter Technical Guidelines], was published several months later in December 2009. UNESCO states that the Technical Guidelines are aimed at “education and health sector decision-makers and professionals.” The Technical Guidelines received more support than the International Guidelines, as the Technical Guidelines were developed not only by UNESCO, but with contributions from UNAIDS (The Joint United Nations Programme on HIV/AIDS), UNFPA (United Nations Population Fund), WHO (World Health Organization), and UNICEF (United Nations Children’s Fund). In this document, UNESCO also describes effective sexuality education as “a vital part of HIV prevention.” During a web conference in April 2010 that discussed the Technical Guidelines, UNESCO presented the rationale for these guidelines as reducing “the risk of acquiring HIV infection and...
passing it along to others” by means of changing young people’s behavior through sexuality education.14

UNESCO can claim to speak as an authority on education because they are considered “the UN specialized agency for education.”15 Acting as a specialized agency for education, UNESCO “undertakes its work in a broader effort . . . to move towards universal access to comprehensive HIV prevention programs, treatment, care and support . . . [particularly through] Education Sector reform.”16 One of the purposes education can serve is to “create the understanding and tolerance that contribute to reduced stigma and discrimination against vulnerable and marginalized communities and people living with HIV.”17 UNESCO states that to achieve the best effect on preventing the spread of HIV and AIDS, “holistic approaches” are necessary.18 Within the motive to prevent the spread of HIV and AIDS, UNESCO is more explicit that its educational programs must promote “respect for sexual diversity and non-discriminatory attitudes and behaviors against same-sex attracted individuals, individuals of different sexual orientation and transgendered individuals.”19 Rather than categorizing sexuality education as objective, UNESCO uses the term “non-judgmental” in describing its efforts to prevent HIV and AIDS via education.20

II. UNESCO’S PHILOSOPHY OF SEXUALITY AND EDUCATION

UNESCO is an international organization founded under the authority of the United Nations shortly after World War II.21 Specifically, UNESCO is a specialized agency under the Economic

16. Id. at 4.
17. Id. at 5.
18. Id. at 11.
19. Id. at 19.
20. See id. at 21.
and Social Council of the United Nations. The purpose of UNESCO is to “contribute to peace and security by promoting collaboration among the nations through education, science and culture.” UNESCO’s use of education as a means to peace must be provided in the context of “unrestricted pursuit of objective truth.” In 1948, “UNESCO proclaimed by a special resolution the importance of this Declaration [Universal Declaration of Human Rights] for all activities of the Organization and undertook to make it know[n] as widely as possible.” Under the Universal Declaration of Human Rights [hereinafter UDHR], all human beings are born “free and equal in dignity and rights.” The UDHR states all humans are born with equal dignity and they are “endowed with reason and conscious and should act towards one another in a spirit of brotherhood.” The foundations of this inherent dignity of the human person and his inalienable rights as a part of the human family are “freedom, justice, and peace in the world.”


24. Id.


27. Id. at art. 2.

28. Id. at pmbl.
between a man and a woman, which forms the “natural and fundamental group unit of society and is entitled to protection by society and the State.” These are the principles of the human person outlined in the UDHR, adopted by UNESCO in its work. Unfortunately, UNESCO’s two documents on sexuality education programs do not appear to adopt these fundamental understandings of human sexuality.

A. Sexuality in UNESCO’s Technical Guidelines

According to UNESCO’s Technical Guidance, sexuality is part of the physical, psychological, emotional, social, and cultural development of a person. Sexuality is intrinsically linked to one’s identity and sexual identity unfolds in the social, economic, and cultural context. Human sexuality is referred to as “being sexual,” that is participation in sexual behaviors that are “an important part of many people’s lives [because] it can be a source of pleasure and comfort and a way of expressing affection and love or starting a family.”

As a result of some sexual behavior, people are exposed to certain negative health consequences, particularly HIV/AIDS. In order to prevent the spread of negative health consequences, people must acquire a better understanding of gender and sexuality. Young people suffer at high rates from sexual diseases and unsafe abortions. In order to protect young people from these negative

29. Id. at art. 16(1).
30. Id. at art. 16(3).
32. TECHNICAL GUIDELINES, supra note 2, at 5.
33. Id.
34. Id.
35. Id.
36. Id.
37. Id. at 6 (referencing INTERNATIONAL PLANNED PARENTHOOD FED’N, FRAMEWORK FOR COMPREHENSIVE SEXUALITY EDUCATION, 5 (May 2006), available at www.ippf.org/NR/rdonlyres/CE7711F7-C0F0/0/Sexuality.pdf (last visited Nov. 25, 2010) (citing that every year 111 million cases of curable sexually transmitted infections occur in young people age 10 to 24).
38. Id. (referencing World Health Organization, Unsafe Abortion: Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2003 (5th. ed. 2007), available at http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241596121/en/index.html. (last visited Nov. 25, 2010) (citing that the majority of young girls aged 15 to 19 years old in developing countries have unsafe abortions)).
health consequences associated with sexual behavior, they are provided age-appropriate sexuality education in the supportive infrastructures of schools. Schools are appropriate settings for sexuality education because parents are often “reluctant to engage in discussion of sexual matters with children because of their cultural norms, their own ignorance, or discomfort.” Parallel programs address parental concerns by providing updates on the materials of sexuality education to parents. Because sexuality is an inherent part of a person’s identity, health, and well being, sexuality education is vital for fighting the health risks and social stigma associated with unintended pregnancies, HIV/AIDS, sexually transmitted infections, and discrimination based on sexual orientation. In order to provide young people with a comprehensive sexuality education program, there are seven key concepts of human sexuality that are addressed: relationships, values about sexuality, sexuality and culture, society, and human rights, human development, sexual behavior, and sexual health. As will be demonstrated infra, UNESCO’s approach to sexuality education contradicts the binding requirements of international law.

B. Sexuality in UNESCO’s International Guidelines

According to UNESCO’s International Guidelines, human sexuality is “a process that comprises physical, psychological, emotional, social and cultural dimensions.” Furthermore, human sexuality is “inextricably linked to the development of one’s gender identity . . . by the transmission of cultural values from one generation to the next that forms a critical part of socialization [including] values related to gender and sexuality.” Similar to UNESCO’s Technical Guidelines, the International Guidelines also state “being sexual is an important part of many people’s lives.” Human sexuality is seen as “a source of pleasure and comfort and a way of expressing affection

39. INTERNATIONAL GUIDELINES, supra note 2, at Vol. 1, pg. 6.
40. Id. at 5.
41. Id. at 12.
42. Id. at 7.
43. Id. at 6.
44. INTERNATIONAL GUIDELINES, supra note 2, at Vol. 1, 5.
45. Id.
46. Id. at 6.
and love.”

Human sexuality is equated to the act of intercourse; therefore, UNESCO justifies the importance of comprehensive sexuality education because it “prioritizes the acquisition and reinforcement of values such as reciprocity, equality, and respect that are prerequisites for healthier and safer sexual and social relationships.”

Comprehensive sexuality education purports to create healthier and safer relationships by informing young people (ages 5 through 18) about sexually transmitted infections, namely, HIV/AIDS.

The International Guidelines claim that since some sexual behaviors result in unfavorable outcomes, such as HIV infections and unplanned pregnancies, young people must be educated about sexuality. The best place for discussion about sexuality is in schools because “parents are often reluctant to engage in discussion of sexual matters with children because of cultural norms, their own ignorance, or discomfort.” On the contrary, teachers are better suited to discuss the various aspects of human sexuality with children because “they are the most skilled and trusted source of information.” Likewise, schools are the most favorable setting for sexuality education because “they have the potential to promote communication about important issues between young people, trusted adults, and the broader community.”

Human sexuality is taught in light of several topics under the International Guidelines including relationships, values, attitudes, skills, culture, society, law, human development, sexual behavior and sexual and reproductive health. These are the same topics included in UNESCO’s Technical Guidelines on sexuality education. Having seen an overview of UNESCO’s approach to human sexuality, the next section provides the history of UNESCO’s two documents that integrate human sexuality with comprehensive sexuality education programs.

III. COMPARISON OF UNESCO’S TWO SEXUALITY EDUCATION

47. Id.
48. Id.
49. See id. at 6.
50. See id. at 5-7.
51. Id. at 5.
52. Id. at 7.
53. Id.
54. See id. at 28.
55. Technical Guidelines, supra note 2, at Vol. 1, pg. 6
GUIDELINES

According to UNESCO’s Guidelines, sexuality is part of the physical, psychological, emotional, social, and cultural development of the human person and unfolds in the social, economic and cultural context. UNESCO views human sexuality as participation in sexual behaviors as a source of pleasure, comfort, expressing affection, or starting a family. Some sexual behaviors lead to negative health consequences that affect young people at higher rates, like sexually transmitted infections and unsafe abortions. UNESCO justifies that the Guidelines on sexuality education are necessary to protect young people from these negative health consequences. Schools are appropriate settings for sexuality education because parents are often “reluctant to engage in discussion of sexual matters with children because of their cultural norms, their own ignorance, or discomfort.”

Both UNESCO Guidelines address seven key concepts of comprehensive sexuality education: relationships, values about sexuality, sexuality and culture, society and human rights, human development, sexual behavior, and sexual health. The seven key


57. TECHNICAL GUIDELINES, supra note 2, at Vol. 1, pg. 5.

58. Id.; see also INTERNATIONAL GUIDELINES, supra note 2, at 6.

59. INTERNATIONAL GUIDELINES, supra note 2, at 6; see also TECHNICAL GUIDELINES, supra note 2, at Vol. 1, pg. 6 (referencing INTERNATIONAL PLANNED PARENTHOOD FED’N, FRAMEWORK FOR COMPREHENSIVE SEXUALITY EDUCATION, 5 (May 2006), available at http://ippt.org/NR/rdonlyres/CE7711E7-C0F0-4AF3-A2D5-1E1876C24928/0/ComprehensiveSexEducation.pdf (last visited Nov. 25, 2010) (citing statistics showing that every year 111 million cases of curable sexually transmitted infections occur in young people)).


61. TECHNICAL GUIDELINES, supra note 2, at Vol. 1, pg. 6; INTERNATIONAL GUIDELINES, supra note 2, at 6.

62. TECHNICAL GUIDELINES at 5; see also INTERNATIONAL GUIDELINES, supra note 2, at 5-7 (discussing the importance of implementation in schools).

63. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 6; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 28.
concepts of sexuality education are further divided into four age-appropriate categories: the first category is children aged five to eight years old; the second category is children aged nine to twelve years old; the third category is children aged twelve to fifteen years old; the fourth category is children aged fifteen to eighteen years old.64

A. Relationships

The Guidelines discuss that there are several types of families, which includes “non-traditional families,” a term for which no definition is provided.65 Furthermore, the two documents define love generally as an expression of affection between people in relationships.66 The first age category is taught that different types of families (e.g. single parent, nuclear and non-traditional) and different types of friends (e.g. boyfriend, girlfriend, or friend) involve different expressions of love that must be tolerated.67 The second age category learns that gender equality is a vital part of making relationships of all kinds healthier.68 The third age category is instructed that as they mature, close relationships and friendships sometimes become sexual, but successful marriages must be based on love, tolerance, and respect.69 The fourth age category learns that abusive relationships are harmful and that marriage is a long-term commitment that may encounter many difficulties impacting a person’s decision to have children.70

Essentially, both the Technical Guidelines and the International Guidelines provide the same general information concerning relationships. Although the concepts of family, friendship and love seem unbiased, there are subtle differences that attempt to expose by integration certain behaviors like homosexuality and abortion. For example, the Technical Guidelines state that families may undergo crisis when a young family member becomes pregnant or discloses their sexual orientation.71 Whereas, the International Guidelines are

64. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 4; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 26.
65. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 8-11; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 30-33.
66. Id.
67. Id.
68. Id.
69. Id.
70. Id.
71. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 8.
more specific by stating that families may undergo stress and crisis when a young family member has an abortion or comes out as being gay. Likewise, the Technical Guidelines use the term “non-traditional families” while the International Guidelines use the term “same sex couple parents.” While the Technical Guidelines generalize that stigma and discrimination on the grounds of differences between people is a violation of human rights, the International Guidelines clarify that such discrimination is intended to encompass homophobia and transphobia. A final and subtle familiarization of abortion is achieved by both Guidelines integrating the notion that “[e]very person has the right to decide whether to become a parent...” This statement implies that parenthood is a choice reduced to a right and as such, abortion must then attach as a protection of this alleged right to choose parenthood.

B. Values on Sexuality

The second topic addresses the values and norms that society and culture attach to human sexuality. The UNESCO documents stress the importance of sexual values without ever providing any clear guidance as to what proper sexual values are; however, the context of this section of the Technical and International Guidelines outlines sexual values as a subjective compilation of social, familial, religious and cultural norms about human sexuality. Children in the first age category learn that values, influenced by family and peers, will guide decisions on relationships, including the value of protecting one’s privacy and bodily integrity. In the second age category, children are taught the influence of social norms on sexual behavior. Children in the third age category learn tolerance for different values and beliefs about sexual behavior and that abortion is an accessible

72. INTERNATIONAL GUIDELINES, supra note 2, Part II, pg. 30.
73. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 8; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 30.
74. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 10; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 32.
75. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 11; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 33 [emphasis added].
76. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pgs. 12-16; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 34-38.
77. Id.
78. Id.
part of sexual and reproductive health. Children in the fourth age category discuss their differing values with their parents and are taught to resist negative attitudes about sexual behavior.

Both the Technical and International Guidelines teach that the concepts of sexuality are derived from the views of family and peers, and influenced by social norms; there is no meaningful discussion of any objective moral standards on acceptable sexual behavior. UNESCO adheres to a more subjective interpretation of sexual values, claiming that such values evolve from changing social norms. As portrayed in the two documents, family, peers and social norms are subjective sources of values because they depend on personal or collective acceptance rather than any sort of underlying truth.

There are differences between the documents, particularly in the International Guidelines, that offer an endorsement of abortion, contraception, and LGBT (Lesbian, Gay, Bisexual and Transgender) lifestyles. For example, the Technical Guidelines teach, “[p]eople can resist negative peer influence in their sexual decision-making” and the International Guidelines teach young people to “stick to one’s own decisions about sexual activity.” These general statements may not seem negative on their face; however, they direct decisions about sexual activity and sexual decision to children as young as nine years old. In the Technical Guidelines, pregnancy is only displayed negatively as “unintended” and grouped with other unintended consequences like STIs (sexually transmitted infections) and HIV. The International Guidelines do not mention pregnancy as a consequence of sexual activity, but focus on teaching children to defend their rights to make their own decisions. Further, children as

79. Id.
80. Id.
81. It is important to remember that sexuality is defined in both documents as “diverse sexual expression and orientation.” See TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 17; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 39.
82. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pgs. 12-16; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 34-38.
83. Id.
84. Id.
85. Id.
86. See TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 13; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 35.
88. See INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 36.
young as twelve are taught to use communication skills “to practice safe and consensual sex.”

Another clarification is provided in the International Guidelines that children as young as twelve must be told there are places where they can receive support for sexual and reproductive health, including contraception and abortion, and help against homophobia. The Technical Guidelines do not discuss homophobia in its help and support section under sexual values.

C. Sexuality in Culture, Society and Human Rights

UNESCO infers that gender identity and sexual orientation are fluid because they change as social norms change. UNESCO erroneously states that international agreements determine sexual and reproductive health rights to include access to abortion, ignoring the fact that such agreements are only binding on party signatories, not as a matter of law generally.

89. INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 37.
90. Id.
91. See TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 16.
92. See id. at 17-20; see also INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 39-42.
In the first age group, children are taught that families, friends, schools, the media and society as a whole are the sources to learn about sex and gender.\textsuperscript{94} When they reach the second age group, children are taught that cultural and social norms related to gender and sexuality change over time.\textsuperscript{95} The third age group is taught that cultural factors determine what is appropriate sexual behavior and international agreements\textsuperscript{96} provide guidance on sexual and reproductive health.\textsuperscript{97} In the fourth age group, children learn to accept differing sexual orientations and gender identity.\textsuperscript{98}

As previously mentioned, there are differences between the Technical Guidelines and the International Guidelines that expose UNESCO’s push for acceptance of homosexuality and promiscuity. For example, the Technical Guidelines state, “respect for human rights requires us to consider others’ opinions on sexuality,” while the International Guidelines clarifies that others’ opinions on sexuality means, “diverse sexual expression and orientation.”\textsuperscript{99} Similarly, the International Guidelines discusses the topic of gender inequality in each age group, while the Technical Guidelines clarifies that gender inequality “promotes equal decision making about sexual behavior and family planning.”\textsuperscript{100} Moreover, the International Guidelines instructs children as young as five about “body rights” and the
difference between consensual and forced sexual activity, while encouraging fifteen year olds to promote the right to and access to safe abortion.\textsuperscript{101} Further, the Technical Guidelines teaches children as young as five that “inappropriate touching, unwanted and forced sex are forms of sexual abuse.”\textsuperscript{102}

D. \textit{Sexuality and Human Development}

UNESCO’s guidance on human development is focused on sexual development and is applied to primary and secondary schools,\textsuperscript{103} without assessment of appropriateness for the individual child. The first age group learns that men and women have different bodies that develop over time during puberty and they must respect the privacy and integrity of their body and the bodies of others.\textsuperscript{104} The second age group is taught about sexual and reproductive anatomy, wet dreams, menstruation and that abstinence and contraception will prevent unwanted pregnancy.\textsuperscript{105} The third age group reviews the development of a fetus during pregnancy and that the size and shape of the penis, breast, or the vulva do not affect a person’s ability to be a good sexual partner.\textsuperscript{106} The fourth age group is taught that mutual consent is key for sexual activity to commence with a sexual partner.\textsuperscript{107}

UNESCO teaches children to protect the integrity of their bodies,\textsuperscript{108} however UNESCO’s notion of bodily integrity is based purely on a concern for privacy and consent.\textsuperscript{109} The Technical Guidelines introduces the concept of puberty to children as young as five years of age and instructs children as young as nine on sexual and reproductive anatomy, including erections and ejaculation.\textsuperscript{110} The International Guidelines is more explicit in stating, “[g]irls and boys have private body parts that can feel pleasurable when touched

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\bibitem{101} \textit{INTERNATIONAL GUIDELINES}, \textit{supra} note 2, at Part II, pg. 42.
\bibitem{102} \textit{TECHNICAL GUIDELINES}, \textit{supra} note 2, at Vol. 2, pg. 20.
\bibitem{103} \textit{INTERNATIONAL GUIDELINES}, \textit{supra} note 2, at 2-3; \textit{INTERNATIONAL GUIDELINES}, \textit{supra} note 2, at 2-3.
\bibitem{104} \textit{TECHNICAL GUIDELINES}, \textit{supra} note 2, at Vol. 2, pgs. 21-25; \textit{INTERNATIONAL GUIDELINES}, \textit{supra} note 2, at Part II, pgs. 43-47.
\bibitem{105} \textit{Id.}
\bibitem{106} \textit{Id.}
\bibitem{107} \textit{Id.}
\bibitem{108} \textit{Id.}
\bibitem{109} \textit{Id.}
\bibitem{110} \textit{INTERNATIONAL GUIDELINES}, \textit{supra} note 2, at Part II, at 43-45.
\end{thebibliography}
by oneself.”\textsuperscript{111} Further, both Guidelines present pregnancy in the same undesirable category as HIV and STIs. The Technical Guidelines instructs that the “correct and consistent use of condoms and contraception can prevent pregnancy, HIV and other STIs,”\textsuperscript{112} while the International Guidelines instructs that the “prevention [of pregnancy and sexually transmitted infections] needs to be considered before the act of intercourse.”\textsuperscript{113} Likewise, both Guidelines instruct children as young as five that they have the “right to decide who can touch their body, where, and in what way.”\textsuperscript{114} A curious topic discussed in the International Guidelines is “the risk associated with transactional and transgenerational sexual encounters,”\textsuperscript{115} whereas the Technical Guidelines does not mention these topics.

E. Sexual Behavior

As could be readily predicted from the “anything goes” attitude of the curriculum on sexual values, UNESCO’s instruction on sexual behavior is similarly lax and relativistic. The youngest age group learns that it is natural to explore private areas of the body.\textsuperscript{116} The second age group is taught that there is a wide range of ways in which couples can demonstrate love, care and feelings of sexual attraction.\textsuperscript{117} The third age group is instructed that everyone needs to be tolerant and respectful of different expressions of sexuality and abstinence is the best way to prevent pregnancy and unintended consequences of sexual behavior.\textsuperscript{118} The fourth age group learns that both sex partners are responsible for preventing unintended consequences like pregnancy, HIV, or other sexual infections.\textsuperscript{119}

\textsuperscript{111} INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 43.
\textsuperscript{112} TECHNICAL GUIDELINES, supra note 2, at 22.
\textsuperscript{113} INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 44.
\textsuperscript{114} TECHNICAL GUIDELINES, supra note 2, at 25; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 47.
\textsuperscript{115} INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 47.
\textsuperscript{117} TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 27; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 49.
\textsuperscript{118} See TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pgs. 26, 28; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pgs. 48, 50
\textsuperscript{119} See TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 28, INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 50.
According to UNESCO, the appropriate context for sexual behavior is when both sex partners have emotional and physical maturity according to (undefined) social norms. Masturbation is acceptable at any age as long as it is done in private. The only reference UNESCO makes to pregnancy is unwanted pregnancy—pregnancy is mentioned alongside HIV/AIDS and sexual infections as an example of the negative consequences of sexual behavior. UNESCO aims to prevent these negative consequences of sexual behavior (namely, unintended pregnancy, HIV and sexually transmitted infections) through contraception, abortion and the occasional mention of abstinence. In this section on sexual behavior, the International Guidelines teaches that both men and women can partake in sexual pleasure with a partner of the same or opposite sex. The Technical Guidelines is more general about homosexual behavior by pushing respect and tolerance for the different ways sexuality is expressed. Overall, the International Guidelines contains more explicit information about sexual behavior than generalized concepts of sexual behavior in the Technical Guidelines.

F. Sexuality and Health

UNESCO’s concept of sexual health is focused just as much on the prevention of pregnancy, as if it was a disease, as it is with prevention of transmission of actual infections. UNESCO begins its concept of sexuality and health by informing children as young as age five that all children should be wanted and if unwanted pregnancy occurs, abortion is an available remedy. Further, both Guidelines instruct that family planning should occur when sex partners mutually decide that it is appropriate to start a family. The second age category

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120. TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pgs. 26-28; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pgs. 48-50.
121. INTERNATIONAL GUIDELINES, supra note 2, at Part II, pgs. 48.
122. Id. at 50; see also TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 28.
124. See INTERNATIONAL GUIDELINES, supra note 2, at Part II, pg. 50.
126. See TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 29; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pgs. 51-52.
127. See TECHNICAL GUIDELINES, supra note 2, at Vol. 2, pg. 30; INTERNATIONAL GUIDELINES, supra note 2, at Part II, pgs. 51-52.
learns that abstinence is the best method of contraception and preventing negative health consequences like sexual infections. The third age category is taught that abstinence is the most effective way to prevent pregnancy and HIV, but sexuality education programs will help people living with HIV to practice safer sex, without explaining how. The fourth age category learns to practice safe sex by correct use of contraceptives and family planning, which are undefined throughout both Guidelines.

Although both Guidelines generally present the same information regarding sexual health as preventing pregnancy and sexually transmitted infections, there are still slight differences between the two Guidelines on the appropriateness of the information. For example, the International Guidelines discusses specific types of contraception, but caveats that “natural contraceptive [not defined in the document] methods are only safe for adults” and that “children should not have penetrative sexual intercourse.” Similarly, the Technical Guidelines portrays access to contraception as a rights issue because “no sexually active young person should be refused access to contraceptives or condoms on the basis of their marital status, their sex, or their gender [not defined in the document].” Surprisingly, as UNESCO justified the existence of these two sexuality education guidelines for the prevention of HIV/AIDS, the ways of reducing the risk of acquiring HIV/AIDS are generalized in the Technical Guidelines as prevention before exposure to the virus (i.e. contraception) or after exposure to the virus (i.e. Post-Exposure Prophylaxis). The International Guidelines simply teaches “risk reduction for STIs and HIV.” The Technical Guidelines discusses that disclosure of a person’s HIV status to their sexual partners should be voluntary and the International Guidelines asserts that people living with HIV have a right to express sexual love.

134. International Guidelines, supra note 2, at Part II, pg. 53.
would seem contrary to preventing the spread of HIV/AIDS by encouraging people to continue sexual activity, but these two UNESCO documents encourage such behavior as long as the partners correctly use contraception.

IV. UNESCO’S SEXUALITY EDUCATION IN LIGHT OF INTERNATIONAL LAW

UNESCO’s approach to sexuality education is largely at odds with the foundational documents of international human rights law. The Guidelines ignore the rights of parents, misinterpret the roles of children and their families and sexualize children by exposing them to detailed information regarding human sexuality.

A. The Rights of Parents and Families

UNESCO’s Guidelines completely ignore the rights and responsibilities of parents in determining the content and method of their children’s education. Parents are given lip service in a few lines, which paints them as fearful and incompetent to teach their children. For example, parents are not substantially mentioned in the Guidelines at all until the eleventh page, in a section dedicated entirely to addressing parents’ “strong fears and concerns (sometimes misplaced) about the effects of sexuality education,” putting their “fears to rest” by encouraging them to communicate “more openly and honestly” with their children, and essentially getting them out of the way by placating or threatening.137 This implication that parents are not relevant except as potential obstacles becomes clear when parents are not even included in the long, exhaustive list of “stakeholders” in sexuality education, but only in “parent-teacher associations.”138

137. UNESCO cautions, “[m]any parents may have strong views and concerns (sometimes misplaced) about the effects of sexuality education. The cooperation and support of parents should be sought from the outset and regularly reinforced... Parental concerns can be addressed through the provision of parallel programmes that orient them to the content of their children’s learning and that equip them with skills to communicate more openly and honestly about sexuality with their children, putting their fears to rest... If parents themselves are anxious about the appropriateness of curriculum content or unwilling to engage in what their children learn through sexuality education programmes, the chances of personal growth for children and young people are likely to be limited.” Id. at 11.

138. Id. at 9.
The dismissive treatment of the rights of parents begins to make sense when the content of the course is revealed. In a complete contradiction of the Convention on the Rights of the Child specific command that “the education of the child shall be directed to . . . [t]he development of respect for the child’s parents,” the family is treated as an obstacle for sexuality education as much as an asset to it. From the age of five, children are taught that “many different kinds of families exist . . . [including] same-sex couple parents, etc.,” and that “[g]ender inequality is often reflected in the roles and responsibilities of family members.” Children are taught that “[v]alues are strong beliefs held by individuals, families, and communities about important issues,” but such values are given no authority beyond the statement that they are “strong beliefs.” Five year olds are likewise taught about “the right to self-determination,” which is not defined.

According to UNESCO, parents have no individual rights to determine what their children learn about sexuality and how they learn it. This flies in the face of the “prior right” of parents to decide the education of their children, as established in the UDHR. The family is given no chance to exercise its responsibility for education of children under the International Covenant on Civil and Political Rights or the Convention on the Rights of the Child. The “liberty of parents . . . to ensure the religious and moral education of their children” is completely ignored. Even teachers, who are encouraged to replace the parents as the sexuality educators of children, are forced out of the sexuality education arena if they refuse to accept UNESCO’s sexuality norms. Sexuality education, according to UNESCO, is “a matter of institutional policy rather than the personal choice of an individual teacher,” and sexuality education

140. INTERNATIONAL GUIDELINES, supra note 2, at 30.
141. Id.
142. Id. at 34.
143. Id. at 35.
144. See UDHR, supra note 26, at art. 26(3).
145. CRC, supra note 139, at art. 18(1); UDHR, supra note 26, at art. 10(1).
policies must be given the force of law. The family, the child’s parents, are ignored at best and rejected at worst.

B. Sexualization and “Gender” in UNESCO’s Guidelines

UNESCO’s Guidelines reveal themselves to be much more aligned with the postmodern “fluid” theory of gender than the one defined in the Rome Statute. UNESCO enlists children in efforts to advocate for “gender equality,” and instructs them that they must accept diverse “gender identities,” without ever defining either term. What UNESCO means by these terms is unclear, perhaps deliberately, but it is certainly not the legally binding definition of “gender” under the Rome Statute.

The term “gender” appears on 40 of the 123 pages of the Technical Guidelines, but nowhere is the term actually defined. Despite this, both Guidelines instruct teachers that one of their very first actions in the program is to “define gender” to their students at the age of five. A few of the first topics discussed in the program include gender bias, gender roles, gender inequality and “[e]xamples of gender stereotypes,” terms which are likewise undefined. Further confusing the meaning of “gender,” UNESCO references terms like “sexual orientation” and “gender identity,” but also makes references to “men and women,” never bothering to clarify why it is using certain terms in certain contexts.

However, UNESCO infers that “gender identity” cannot be the same thing as “gender” under the Rome Statute. Rather, gender identity and sexual orientation are fluid because they change as social norms change, and are “widely understood to be influenced by many

147. “The sensitive and sometimes controversial nature of sexuality education makes it important that supportive policies are in place, demonstrating that the delivery and curricula of sexuality are a matter of institutional policy rather than the personal choice of an individual teacher. Such policies are usually developed primarily by the national ministries of education or health, but in some settings they need to be reinforced or sanctioned at the state or local level.” TECHNICAL GUIDELINES, supra note 2, at 11.

148. UN General Assembly, Rome Statute of the International Criminal Court, G.A. A/CONF. 183/9, at art. 7(3) (July 1, 2002) [hereinafter Rome Statute].

149. See id.

150. The term “gender” appears in the introduction to the Technical Guidelines on pages 2, 5, 9-12, 20, 21, 25, 31-33, 41, 47, 49, and 52, in section 1 of the Technical Guidelines on pages 2, 5, 7-9, 11, 12, 14-21, 24, 25, 29, 30, 32, 35, and 39-41. On none of these page is the term defined.

151. TECHNICAL GUIDELINES, supra note 2, at 19.

152. Id. at 41.

153. Id. at 12-25.
factors.” Additionally, children are taught that “[g]ender inequality influences sexual behavior and may increase the risk of sexual coercion, abuse and violence,” but are never taught what “gender inequality” actually is. Children are taught to accept differing sexual orientations and “gender identities.” According to UNESCO, “people do not choose their sexual orientation or gender identity.” Finally, UNESCO stresses that “[e]veryone has a responsibility to advocate for gender equality,” and directs teachers to instruct children in advocacy for this still-undefined value. What, then, does UNESCO mean by, “gender,” “gender equality,” and “gender identity?” UNESCO does not say, but it is clear from its use of the terms as fluid and socially influenced that UNESCO cannot mean “the two sexes, male and female, within the context of society.”

UNESCO ignores the legally binding definition of “gender” and instead stresses the importance and acceptance of “gender equality,” “gender identity,” and “sexual orientation,” without ever defining these terms. This dismissive treatment of binding international law indicates strongly that the underlying focus of the sexuality education program is more on teaching policy than promoting health. As will be demonstrated infra, UNESCO’s program in fact has much more to do with imparting liberal sexual mores and policies than it does with reducing STI and HIV transmission rates and teenage pregnancy.

V. UNESCO’S PRIORITIZATION OF POLICY OVER HEALTH

From the earliest ages, the primary focus of UNESCO’s sexuality education program seems to be more on social policy than on reproductive health. This initial impression is reinforced by an in-depth look at the stark contrast between the stated educational and health purposes of the program, the actual focus of the material and the studies UNESCO relies upon to determine the success or failure of sexuality education programs. A closer examination reveals that UNESCO’s sexuality education program is not actually intended to

154. Id. at 17-20; Id. at 19.
155. Id.
156. Id.
157. Id. at 48.
158. Id. at 20.
159. Rome Statute, supra note 148 at art. 7(3).
160. See infra § 0.
promote sexual health. Rather, it is a vehicle with which UNESCO can spread its social and moral values to young minds —values that will be compulsorily taught with the force of law.

A. UNESCO’s Guidelines Admit Failure to Meet Its Own Stated Goals

The United Nations Sexuality Education Program states that the program’s purpose is to promote better sexual health and to combat HIV/AIDS.161 But does the UNESCO program achieve its stated goals of increasing sexually responsible behavior and reducing HIV infection rates? In fact, it does not. The Guidelines present a series of studies on sexuality education programs around the world, more than half of which were in the United States.162 According to UNESCO, “[a]ll of the programs were designed to reduce unintended pregnancy or STIs, including HIV, they were not intended to address the varied needs of young people or their right to information about many topics.”163 And yet, UNESCO concedes on the very next page that none of the studies it presents in fact measured any impact on either STI or pregnancy rates!164

The only metrics that the studies cited by the Guidelines measured were initiation of sex, frequency of sex, number of sexual partners, use of condoms, use of contraception and sexual risk-taking (sex without condoms).165 These categories, the ones which UNESCO thought more important than the Guidelines’ stated purpose of reducing unintended pregnancy and STI/HIV infections, line up neatly with the contraception and abortion-heavy content of the Guidelines’ curriculum. However, the majority of the studies cited in the Guidelines showed that the sexuality education programs had “no significant impact” even in these narrow categories (between 66% and 44%, depending on the category).166 In other words, not only does UNESCO’s sexuality education program not even begin to achieve its stated purpose (combating unintended pregnancy, HIV/AIDS and other STIs), it does not even achieve its clandestine purpose of promoting contraception particularly well.

161. TECHNICAL GUIDELINES, supra note 2, at 3.
162. Id. at 12.
163. Id.
164. Id. at 13.
165. Id. at 12.
166. Id.
Perhaps the most striking example of a failed UNESCO-model sexuality education program, however, is the Mema Kwa Vijana Programme in Tanzania. This study actually showed substantial increases in condom use, and is highlighted by UNESCO in the Guidelines as “a particularly strong and interesting study,” which included youth-friendly reproductive health services, community-based condom promotion and distribution by and for peers, and a community sensitization effort to create a supportive environment for the interventions. Despite all this, the program “did not have any impact on HIV, other STI or pregnancy rates.” UNESCO admits that “even a well-designed program . . . still may not have a significant impact on pregnancy, STI, or HIV rates.” By its own admission, UNESCO’s approach to sexuality education does not provide a consistent, reliable, or effective method of reducing the frequency of HIV, STIs, and unintended pregnancy. The International Guidelines fails to accomplish its alleged educational goal.

B. The International Lobby For Child Sexuality and Explicit Sexual Education

To understand the true intent of UNESCO’s program, some context is required. One must look to the push for sexuality education among organizations and lobbyists surrounding the United Nations to truly understand the resulting actions of United Nations Agencies. Many international advocacy groups and interest groups have been strongly working toward entrenching a different anthropology in the United Nations policy, one at odds with the traditional “dignity of the human person” approach of the International Bill of Human Rights. There is a growing push for children’s “right” to be sexually active and for government-enforced “sexuality” education, which is often extremely graphic. Some states have been answering this invitation to enforce sexuality education on children by law. In Germany, parents have been jailed

167. Id. at 14.
168. Id. at 16.
169. Id.
170. For the sake of this paper, a “child” is defined under the same definition as used in the Convention on the Rights of the Child. “[A] child means every human being below the age of eighteen years.” CRC, supra note 139, at art. 1.
multiple times for attempting to opt-out of mandatory explicit sexuality education programs on behalf of their children.  

Leading the charge in this effort is the Center for Reproductive Rights (hereinafter CRR), which instructs states (without citing any authority) that “international human rights standards require that governments guarantee the rights of adolescents to health, life, education and non-discrimination by providing them comprehensive sexuality education in primary and secondary schools.” This “right” of children to sexuality education is established, according to the CRR, by multiple international human rights treaties. The CRR cites to a number of treaties for this proposition, none of which contain any language concerning sexuality education whatsoever. Rather, the CRR cites to the “periodic observations and recommendations” of treaty-monitoring committees to support its argument, and incorrectly instructs state parties to the treaties through which “treaty-monitoring body statements serve as legal authorities that interpret the meaning of the treaty obligations of states parties.” The CRR’s assertion of an international right to sexuality education is premised solely upon this grossly false statement about the basics of international law.

The CRR reveals its agenda when it criticizes Croatia for its sexuality education program. Without even mentioning whether Croatia’s approach led to health benefits for children, the CRR singles out Croatia’s sexuality education program for criticism of all the countries in the world. Croatia’s education program contained


173. Id. at 1, n. 7.

174. This assertion by CRR that the statements of treaty-monitoring bodies are legal authorities is completely false and in contradiction with basic principles of international law, and in fact contradicts their characterization of these statements as “observations and recommendations” earlier on the same page. Even the most powerful of the treaty-monitoring bodies, the Human Rights Committee, is not empowered to make decisions that are binding on states. See, e.g., ANTHONY AUST, HANDBOOK OF INTERNATIONAL LAW 71 (Cambridge University Press 2010); Id. at 1, 2.
“discriminatory statements with regard to sexual orientation,” stigmatized homosexuals and was not mandatory throughout the entire period of schooling (parents could opt-out on behalf of their children). Croatia failed to satisfy the CRR with its sexual education program, not because of any articulable educational defect, but because it did not portray homosexuality in a positive light.

The CRR is not alone in its push for mandatory, internationally enforced, explicit, pro-homosexual sexuality education. The National Education Association (hereinafter NEA), the largest union of teachers in the United States, has campaigned at the United Nation’s Commission on the Status of Women in favor of “inclusive” sexuality education based on liberal heterosexual and homosexual expression. Similarly, the Yogyakarta Principles call on states, once again without citing any source of law, to “ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds.”

The intense push for state-enforced, LGBT (Lesbian, Gay, Bisexual, and Transgender)-friendly sexuality education ties into a similar lobbying effort on behalf of the “rights” of children to be sexually active. Leading the charge for children’s sexual “rights” is the International Planned Parenthood Federation (hereinafter IPPF).


176. YOGYAKARTA PRINCIPLES, supra note Error! Bookmark not defined., at 21, 22.

In the booklet “Healthy, Happy, and Hot,” the IPPF tells young people, particularly those infected with HIV, that they have a “right to sexual pleasure,” that there is “no right or wrong way to have sex,” and that they should “[j]ust have fun, explore and be yourself!” The IPPF encourages youth to engage in masturbation, oral and anal sex, and advises the use of “emergency [potentially abortifacient] contraception.” Abortion is advertised as a way out of a “stressful” situation that can “strain [your] relationship.”

The IPPF emphasizes young people’s right to be sexually active so strongly, they even believe that states have no right to require HIV-infected youths to disclose their infection to potential sex partners before intercourse. This prioritization of children’s “right” to be sexually active, even over the lives of unsuspecting potential AIDS victims, is an astoundingly irresponsible position in a world where HIV poses a major risk to the health of many young people.

The ardent efforts of non-governmental organizations like the IPPF to promote reckless child sexual activity are destructive, but far more are efforts by states themselves. The United Kingdom’s National Health Service in 2009 circulated a pamphlet to schoolchildren informing them that they have a “right” to an enjoyable sex life, and recommending that they engage in sexual activity twice a week, or even daily. The United Kingdom has also

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178. *Id.* at 7. According to IPPF, “[s]ex can feel great and can be really fun! Many people think sex is just about vaginal or anal intercourse... But, there are lots of different ways to have sex and lots of different types of sex. Sex can include kissing, touching, licking, tickling, sucking, and cuddling. Some people like to have aggressive sex, while others like to have soft and slow sex with their partners. There is no right or wrong way to have sex. Just have fun, explore and be yourself!”

179. *Id.* at 8, 14.

180. “Women may have an unplanned pregnancy, even if they and their partner(s) use contraceptives, and may wish to terminate their pregnancy by having a safe abortion. Unplanned pregnancies can be stressful for both partners and can strain the relationship, whether you decide to continue or terminate the pregnancy. Make sure you get support from a registered family planning clinic so that you can access supportive counseling, a safe abortion procedure and follow-up services.” *Id.* at 14.

181. “Some countries have laws that say people living with HIV must tell their sexual partner(s) about their status before having sex, even if they use condoms or only engage in sexual activity with a low risk of giving HIV to someone else. These laws violate the rights of people living with HIV by forcing them to disclose or face the possibility of criminal charges.” *Id.* at 6.

182. The NHS pamphlet proudly rhymes that “an orgasm a day keeps the doctor away”, and states that “Health promotion experts advocate five portions of fruit and veg a day and 30 minutes’ physical activity three times a week. What about sex or masturbation twice a week?” Jack Grimston, *Pupils told: Sex every day keeps the GP away*, THE TIMES (London), July 12, 2009, at 1, available at http://www.timesonline.co.uk/tol/news/uk/education/article6689953.ece.
instituted sexuality education programs encouraging children less than sixteen years of age to experiment with oral sex. The German government went even further, promoting incestuous pedophilia as a form of healthy sexual education, and publishing children’s songs (aimed at children aged four years) encouraging masturbation. According to the German Federal Health Education Center, “[f]athers do not devote enough attention to the clitoris and vagina of their [one to three year old] daughters. Their caresses too seldom pertain to these regions; while this is the only way the girls can develop a sense of pride in their sex . . . The child touches all parts of their father’s body, sometimes arousing him. The father should do the same.”

C. UNESCO’s Agenda behind Sexuality Education

These efforts by modern non-governmental organizations and governments to encourage sexual activity by children, none disclosure of exposure to HIV to partners, and even pedophilia and incest, are shocking. UNESCO’s sexuality education program is much less repugnant, but strongly enforces policy and social doctrine that is far from the mainstream. As demonstrated supra, UNESCO’s sexuality policies fail, by their own admission, to reduce HIV and STI rates. An examination of some of the content matter of the program has revealed that UNESCO spends a substantial amount of time advocating for liberal sexual mores, homosexuality, same-sex marriage, contraception and abortion instead.

Five year olds are introduced to masturbation, told that their private parts “can feel pleasurable when touched by oneself,” that “it is natural to explore and touch parts of one’s own body” and that

185. Westen, supra note 182.
186. See supra Part 0.
187. See supra Part 0.
188. Id. at 43.
“[m]asturbation is not harmful, but should be done in private.”189 Nine year olds are taught about “stigma, discrimination, homophobia, transphobia, and abuse of power,”190 “use of assisted fertility technologies and surrogate parenting,”191 “specific means of preventing unintended pregnancy” and the use of condoms.192 Twelve-year old children are taught about “[l]inks between gender role stereotypes and relationship abuse and violence,”193 about “[g]ender stereotyping in pornography.”194 These preadolescents are also taught “[r]espect for the different sexual orientations and gender identity,” and taught that “[p]eople do not choose their sexual orientation or gender identity.”195 They are instructed that, “regardless of their marital status, sexually active young people have the right to access contraceptives and condoms,” and are instructed to identify local sources of contraceptives.196 They are taught that “contraceptives and condoms give people the opportunity to enjoy their sexuality without unintended consequences,” that “there are many ways to give and receive sexual pleasure without penetration” and that “both men and women can give and receive sexual pleasure with a partner of the same or opposite sex.”197 By the age of fifteen, UNESCO’s focus is unequivocally on policy, not health. At this stage, the teens are taught “respect for the diversity of views and beliefs about sexuality,” but are also taught that “[r]igid gender roles can reinforce behavior that increases the risk of sexual coercion, abuse, and violence.”198 The course culminates with training on “[s]exual and reproductive rights as articulated in international instruments.”199

Especially revealing is UNESCO’s treatment of abortion as a part of children’s sexuality education. However, at the age of nine, children are introduced to abortion, told that it is safe, are taught about its legal status locally and globally and are told that it is an option available to pregnant teenagers.200 At twelve, these pre-teen

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189. Id. at 48.
190. Id. at 32.
191. Id. at 33.
192. Id. at 44.
193. Id. at 31.
194. Id. at 40.
195. Id. at 48.
196. Id. at 52.
197. Id. at 50.
198. Id. at 39, 41.
199. Id. at 39.
200. Id. at 51.
children are introduced to “places where people can access . . . abortion [where legal]” and to the health risks of “safe and legal abortion” and “illegal and unsafe” abortion, at the same time as they are introduced to the challenges of teenage parenting. By the time these children reach the age of fifteen, UNESCO teaches them “advocacy to promote the right to and access to safe abortion.” UNESCO is not merely content to teach children about abortion, it openly seeks to recruit and train them to become advocates for abortion in their communities.

UNESCO presents itself as an organization attempting to equip children with the “knowledge, skills and values to make responsible choices about their sexual and social relationships in a world affected by HIV and AIDS.” However, their “rights-based, culturally sensitive, respectful of sexual and gender diversity . . .” approach reveals itself to be policy-focused, parent-excluding and by its own admission, ineffective. This leads to one inescapable conclusion: for UNESCO, sexuality education is not about health; it is about “rights.”

VI. CONCLUSION

As an observer of the Holy See recently stressed to the United Nations, “education must be firmly rooted in a profound respect for human dignity and with full respect for religious and cultural values. If this is absent, then education is no longer a means of authentic enlightenment but becomes a tool of control by those who administer it.” A close examination of UNESCO’s Guidelines reveals that they are more indoctrination than education. International law contains a dignity-focused anthropology enshrined in its most fundamental binding human rights treaties. This anthropology is ignored or flatly contradicted in UNESCO’s sexuality education program, particularly with regard to a proper respect for parents and family and a proper understanding of sex and gender. UNESCO’s program fails, by its own admission, to fulfill its stated goals, and the Guidelines are overwhelmingly focused on advocacy for homosexuality, abortion.

201.  Id. at 33, 38, 44.
202.  Id. at 42.
203.  Id., at 3.
204.  Id. at 3, 4.
and liberal sexual mores. These facts leave only one reasonable conclusion: UNESCO’s primary objective is not to teach healthy reproduction. Rather, UNESCO seeks to educate children to accept the social and sexual mores of United Nations Agencies and their allied non-government organizations, regardless of the wishes of the state, society, or even the children’s parents.
GLOBAL SEX DEVIANCE ADVOCACY: THE TROJAN HORSE TO DESTROY THE FAMILY AND CIVIL SOCIETY

A REPORT ON UNESCO AND INTERNATIONAL PLANNED PARENTHOOD FEDERATION

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INTRODUCTION

Global child advocates and law enforcement officers agree that civil societies face a frightening trend, i.e., that the international sex industry is expanding its reach far beyond child pornography and sex trafficking. This paper examines two of the major contributors to this pitiless sexual commodification of children; media sexploitation and classroom sexual indoctrination of the world’s children. This study analyzes two of the largest global anti-family sexual re-education umbrella groups — The United Nations Education, Scientific, and Cultural Organization [hereinafter UNESCO] and the International Planned Parenthood Federation, [hereinafter IPPF] a non-governmental organization (NGO) affiliated with Planned Parenthood Federation of America [hereinafter PPFA]. This paper examines how and why their policies undermine laws and traditions
that actually protect children’s psychological, physical and social well-being.

The activities, advocacy, and policies of both UNESCO and IPPF can be said to advance a worldview best described as anti-family ‘sexual anarchy,’ wholly antithetical to their claims that they are attempting to advance child health and welfare. Statistical and linguistic analyses demonstrate shocking but irrefutable findings: UNESCO’s and IPPF’s activities and policies encourage youthful rejection of religion and family while advocating child sexual activity and sexual pleasure as a priority over HIV/AIDS contagion, and expansion of the global sex-industrial complex.

Researchers conducted a content analysis on sex education guidelines and policies promoted by UNESCO and IPPF. The results are framed in context with UNESCO’s origins and definitions of youth and contrasted with related statistics, activities, and laws of the United States. The results tell a startling tale. If the UNESCO and IPPF programs were operated under United States law and public scrutiny rather than the twilight labyrinth that is the United Nations, they would create public outrage and an immediate call for criminal investigations.

Part I of this paper will discuss how sex education imprints on a child’s brain, and on sex education as a larger phenomenon. Part II will look at significance of using certain vocabulary, while avoiding others. Part III will look at the significance of Alfred Kinsey in the development of sexology and his harmful influence on current sexuality education. Part IV will deal with the child’s right to protection, in light of Kinsey’s contribution to sexual education. This paper will conclude that the sex guidelines by UNESCO and IPPF do not protect children, but are instead harmful to children by encouraging their sexualization and desensitizing society from the terrors of pedophilia.

I. SCHOOL SEX EDUCATION: IMPRINTING YOUNG BRAINS

Common sense, historical and statistical data establish that juvenile sexual conduct is toxic to children, youth, and civil society.\(^1\) Neuroscience increasingly confirms what parents and religion have taught for centuries – that for a myriad of cellular, spiritual, and

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emotive reasons, sexual images and words are intrinsically intimate, private and volatile. Any ideas that facilitate youthful sexual conduct inevitably increase youthful sexual conduct, which is universally understood to be disruptive of child development and civil society. In other words, research supports what logic, intuition and religious study has demonstrated for years, i.e., early sex education increases early sexual activity.

Advances in the brain sciences have established that school sex education does not only inform, but also imprints young immature brains with sexual ideations at an age when children are largely incapable of cognitive, mature analysis. Sam Wang, Stanford University neuroscientist, explains:

Now . . . we can chart the workings of the brain and the rest of the nervous system in remarkable detail to explain how neurons, synapses, neurotransmitters, and other biological processes produce all the experiences of everyday life. . . [f]rom . . . infancy to the act of learning a skill, falling in love, getting a joke, revising an opinion, or even forgetting a name . . . .

As it turns out, although we perceive that we have free will and can resist undesired messages, in fact, the brain often determines our course of action without cognitively processing arguments and discussions. Neural processes are strengthened, like a muscle, by training and education. These processes establish what people remember, believe, and even cognitively, emotionally, and spiritually act on. Consequently, exposure to early, frequent and explicit sex education will trigger emotionally driven sexual beliefs, drives and, inevitably, conduct.

A well-recognized example of this phenomenon of learning and cognition is the ability of young children to master a foreign language compared to adults. The specialized functions of specific brain regions, such as those that control language, are not fixed at birth but shaped by experience and learning, so young developing brains can more readily process and master the information associated with

learning a language.⁵ Research increasingly confirms the incredible neural flexibility of the developing brain.⁶ For example, if input from the eyes is rerouted to the auditory area of the brain, that area may substitute the capacity to process visual information in place of auditory information. In other words, environmental input may actually override the primary function and strength of specific areas of the brain.⁷

The settled science released by the American Science of Addiction Medicine finds that sexual and gambling behaviors can be associated with the “pathological pursuit of rewards.”⁸ These data illustrate why early exposure to sexuality can have long-lasting and dysfunctional consequences.⁹ The U.S. Centers for Disease Control and Prevention (CDC) admits that “[a]bstinence from vaginal, anal, and oral intercourse is the only 100% effective way to prevent HIV, other Sexually Transmitted Diseases (STDs), and pregnancy.” This shows the wisdom in not introducing, and certainly not recommending, those activities to impressionable, still-developing young brains.¹⁰ Nevertheless, global institutional sex education organizations such as UNESCO and IPPF promote both deviant and normal forms of sex as education and as an essential, basic course of cognitive study like math, science, or English for children in kindergarten through 12th grade.¹¹ The consequences of this “early and often” exposure to early and deviant sexuality as normal, is reflected in the following statistics: 13% of teens claim to have had vaginal sex by age 15, while sexual activity is increasingly common by the late teen years. By their 19th birthday, seven in 10 teens of both sexes reportedly have had intercourse.¹²

Unfortunately, the poor methodology common to

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⁶ Id.
⁷ Id.
⁹ Id.
sexuality studies render most data suspect, while they commonly aggregate oral, anal, autoerotic and normal coitus into one sexual activity category while ignoring the increasing view of oral sodomy as a prophylactic alternative to intercourse.\textsuperscript{13} Additionally, the use of contraceptives during first premarital sex has been increasing, rising from 56% among women whose first premarital sex occurred before 1985, to 76% among those who first had sex in 2000–2004, to 84% among those whose first sex occurred in 2005–2008.\textsuperscript{14}

![Table 1](https://www.example.com/table1.png)

**TABLE 1**\textsuperscript{15}

Sexologists tout such data as progress.\textsuperscript{16} Regardless of the trend, sexologists spin the data to support their agenda. If more teens have sex or abortions, sexologists claim the statistics show a greater need for sex education. If fewer teens have sex or abortions, sexologists claim the statistics show sex education is working and needs to


\textsuperscript{14} Guttmacher Institute, Facts on American Teens’ Sexual and Reproductive Health, supra note 12.


\textsuperscript{16} See Heather D. Boonstra, Advancing Sexual Education in Developing Countries: Evidence and Implications, 14 GUTTMACHERPOL’Y REV. 17, 17 (2011).
increase. Such predetermined conclusions reflect a political agenda which claims that: 1) children and adolescents engage in sex from childhood on, regardless of parents’ wishes or faith tradition, and 2) children are sexual, have sexual rights, and should be instructed in how to engage in “safer sex.”

This is reflected internationally. On December 31, 2011, the UK press reported (Table 1, see above) key international teen abortion data and concluded that the increasing abortion rate and risky sexual activity by teens demonstrated a need for more sex education. The journalist did wonder, after decades of comprehensive sex education, why British teens still had high rates of STDs and abortions. The report noted the low rates in Catholic Poland, a country still tough on abortion, and even mused, “Greece, which has similar laws to Britain...has the lowest rate. Perhaps in fiercely patriarchal Greece, teenage pregnancy still carries a stigma which no longer seems to apply here?”

Such common sense press observations are rare. In reality, high abortion and STD rates reflect the consequences of sexology training based upon the premise that children naturally engage in sexual activity. Hence should be taught about sex at early ages and encouraged to engage in “outercourse,” (petting to orgasm without penetration) or coitus with condoms. In such training, sex educators and policy makers ignore and deride all sexual morality teachings that restrain unmarried sex, especially those based on religion, as atavistic in light of modern sexuality. This training ignores human history as well as myriad studies finding that religious involvement helps teens delay sexual activity, have fewer sexual partners in adolescence, and establish stronger marriages. It is also

18. See generally Boonstra, supra note 16.
deleterious to developing brains, as children are educated, indeed programmed, with permission-giving sex education and advocacy.\textsuperscript{23}

A major problem with challenging school sex education is the fact that it is sold as sexual safety and protection. However, such training is rarely limited to instruction about STDs, pregnancy or contraception. Accordingly, AVERT’s (a IPPF/UNESCO kindred group) definition of sex education attests:

Sex education, which is sometimes called sexuality education or sex and relationships education, is the process of acquiring information and forming attitudes and beliefs about sex, sexual identity, relationships and intimacy. Sex education is also about developing young people’s skills so that they make informed choices about their behavior, and feel confident and competent about acting on these choices. It is widely accepted that young people have a right to sex education. This is because it is a means by which they are helped to protect themselves against abuse, exploitation, unintended pregnancies, sexually transmitted diseases and HIV and AIDS. It is also argued that providing sex education helps to meet young people’s rights to information about matters that affect them, their

\textsuperscript{23.} See, e.g., Whitehead, supra note 22 (detailing how sex education encourages young children to engage in sexual activity).
right to have their needs met and to help them enjoy their sexuality and the relationships that they form.\textsuperscript{24}

School sex education and the marketing of deviance as sexual freedom has become so ubiquitous that there no longer is such a thing as a comparative control group upon which to base studies of the effects of schoolroom sex education.\textsuperscript{25}

A. School Sex Education as Part of a Larger Phenomenon

The consequences of early formation of attitudes and beliefs about sexuality espoused in sex education curriculum reach far beyond the classroom. Indeed, the early imprinting of early and deviant sexuality onto children’s brains is merely a symptom of a global pandemic of militant sexual politics that has ruined millions of lives and led to millions of unnecessary deaths. One example was the 1972 publication of Professors Nena and George O’Neill’s \textit{Open Marriage}, in which they asserted that “sophisticated” adultery could be harmless, hot, happy and healthy.\textsuperscript{26} \textit{Open Marriage}, which sold 1.5 million copies, immediately launched “swinging” and “wife-swapping” among significant numbers of susceptible American couples:

[After] reading the Kinsey reports (on \textit{Sexual Behavior in the Human Male} in 1948 and \textit{Sexual Behavior in the Human Female} in 1953) [we believed] everybody else was apparently already doing it. What really went on in the sexual life of America had at last been made public through rigorous scientific research. Inhibitions began to look plain silly.\textsuperscript{27}

Only five years later, following the flood of devastating, agonizing divorces that directly resulted from her adultery advocacy, Nena O’Neill recanted. It was unfortunately too little, too late.\textsuperscript{28} Notably, as stated above, the source for the O’Neills’ adultery advocacy, and indeed for much of the militant sexual politics upon which the sex


\textsuperscript{25} See id.; Whitehead, supra note 22 (describing the ubiquity of “comprehensive” sex education).

\textsuperscript{26} \textsc{Nena O'Neill} & \textsc{George O'Neill}, \textit{Open Marriage} 28 (1972).

\textsuperscript{27} \textsc{Judith A. Reisman}, \textit{Sexual Sabotage} 97 (2010).

\textsuperscript{28} \textsc{Nena and George O'Neill}, \textit{Shifting Gears} 19 (1975).
industrial complex has been built, are Alfred Kinsey’s books, *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953) which ushered in *sexual liberation* and the *sexual revolution*.29

One of the early consequences of the *revolution* was the flood of sexually transmitted diseases, finally leading to AIDS, which in the United States in the early 1980s was still known as GRID (Gay Related Immune Deficiency), the “gay plague,” or “gay cancer” (Karposi’s Sarcoma).30 GRID (AIDS) was so confined to male homosexual sodomy that originally it was strictly a homosexual disease.31 One common theory was that the disease was caused by the constant assault on the immune system by anal-related sodomy, widespread gay sexual promiscuity, and intravenous drug use.32 Epicenters of the epidemic in the United States were homosexual bathhouses in New York and San Francisco. On March 11, 1985, the Center for Disease Control [hereinafter CDC] reported 3,088 cases in New York, and 1,030 cases in San Francisco, both hard hit by the epidemic.33 Bathhouses were not merely sodomy marketplaces, but also symbols of the unbridled sexual liberation ushered in by Kinseyan mythology. GRID raised questions that threatened the very survival of what has been called *homosexist identity*.34 The stigma of the sexual epidemic jeopardized the legal and social acceptance that homosexist activists had made in the previous decade.35

At the time, some gay activists fought to save their colleagues’ lives by closing down the male brothel-bathhouses.36 Unfortunately, militant political factions like the Gay Liberation Front, while ignoring the deaths and epidemic disease, demanded continued sexual anarchy without stigma. The priority was protecting

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29. Id.
homosexuality as an acceptable, normal and safe way of life.\textsuperscript{37} Since gay politics won, more than a half-million lives have been lost to AIDS in the United States alone.\textsuperscript{38} Advocates offer no apology for the fatal results of sexual liberation politics. In fact, quite the opposite is true. Today, sexual politics and the business of merchandizing sexual gratification are global phenomena.\textsuperscript{39} Activists, politicians, bureaucrats, profiteers, cultural revolutionaries and politically correct media now target the world’s children as pawns in the advancement of their pansexual ideology.\textsuperscript{40}

Such dangerous ideologically driven, unproven theories are reflected in a myriad of official documents including the 2009 \textit{UNESCO International Guidelines on Sexuality Education} \cite{41} [hereinafter \textit{The Guidelines}].\textsuperscript{41} The Guidelines demonstrate the role of global sexual anarchists in governments and the sex industry whose zealotry has contributed to pandemic child STDs, including fatal diseases like AIDS, while placing the world’s youth on the auction block for sex trafficking and other forms of sexploitation.

Upon examination, a sexual anarchist worldview, promoted by global private and public organizations, is increasingly reflected in \textit{sexual rights} policies that permeate sex education.\textsuperscript{42} Running counter to all science, religion, tradition, and reason, children are re-defined as sexual creatures that need sex and should have \textit{the right} to sexual relationships starting at birth.\textsuperscript{43}

The idea of harm resulting from child prostitution and child-adult sex was for years dismissed in law journal articles and by sex advocates as a quaint idea to be relegated to the trash bin of unenlightened times.\textsuperscript{44} By default, this has supported the

\begin{thebibliography}{99}
\bibitem{39} Judith A. Reisman, \textit{Sexual Sabotage}, supra note 27 at 301-311.
\bibitem{43} Judith A. Reisman, \textit{et al., Kinsey, Sex And Fraud: The Indoctrination of a People}, supra note 31 at 82.
\end{thebibliography}
preposterous (but unspoken) corollary: that adults not only have the right to have sex with children but they are actually fulfilling the child’s need for love.45 Studies in the United States show that “among teen girls, the younger the woman at first intercourse, the more likely it was that her partner was considerably older.”46 The criminal abuse of such contacts was trivialized for decades, largely until the recent child sex trafficking and pornography pandemic.

II. MINING LANGUAGE TO EXPOSE THE EMBEDDED MESSAGE

Public policy language commonly reflects the authors’ worldview and agenda. Just as Judeo-Christian writings reflect their authors’ worldview, UNESCO language and resources reflect their authors’ antithetical worldview. The data find that the Guidelines advises youth to engage in sex despite parental objections while refusing to provide words of advice and resources for protection from or prosecution of their sexual offenders.47 In essence, the Guidelines protocols still presume a reality in which child sex victims or sexual predators are only antiquated notions held by the uninformed.

The authors of Analyzing Media Messages: Using Quantitative Content Analysis in Research, write, “content analysis is a research method that uses a set of procedures to make valid inferences from text.”48 Klaus Krippendorff said it is “a research technique for making replicative and valid inferences from data to their context.”49 Ole Holsti adds it is “any technique for making inferences by objectively and systematically identifying specified characteristics of messages.”50 Language analysis can uncover the hidden agenda of a text by the number of times certain words are used and others silenced. The US

45. JUDITH A. REISMAN, SEXUAL SABOTAGE, supra note 27, at 267.
47. See supra note 40.
49. KLAUS Krippendorf, CONTENT ANALYSIS: AN INTRODUCTION TO ITS METHODOLOGY (1980) at 21.
Supreme Court increasingly relies on dictionary usage in textualist analysis that seeks to find a sort of ‘objectified’ intent. With this in mind, Table 2 (below) reports the words and ideas the Guidelines made visible and also the words and ideas they made invisible. AIDS, HIV, HIV/AIDS and STDs appear 773 times; “sexual rights” appears 135 times (i.e.: your rights to be sexual even though you have a fatal, communicable STD); “sex/sexuality” appear 491 times (i.e.: enjoy it, do it) and “condoms,” 27 times (i.e., use condoms if you so wish).

**TABLE 2**

In its more than 55 pages, the Guidelines censor all words cautioning constraint, morality or family tradition. The Guidelines authors censored words and concepts likely associated with the criminal, harmful transmission of STDs, such as; homicide, pedophile, pederast, police, arrest, felony, crime, criminal, normal, immoral, husband, wife, father, mother, or daughter. The authors also

52. The Guidelines, supra note 41, at 301-311.
53. Id. (Information derived from author’s standard word search of the the Guidelines which resulted in these calculations).
54. Id. (information derived from author’s standard word search of the Guidelines which revealed that these terms were not present).
provided on page 17 the single mention of “anal sodomy,” “injecting drug use,” unsafe sexual activity in the context of “sex work” [sic] and “unprotected” (mainly anal) sexual intercourse between men.\textsuperscript{55} No sex acts are said to be “dangerous,” and none are cautioned as possibly “fatal.”\textsuperscript{56}

The Guidelines contain no directions or instructions, no words, no advice, no warnings for children about predators, victims, prosecution, or their rights to protection from sexual exploitation.\textsuperscript{57} In this way, UNESCO ignores almost universal data finding child sex trafficking and child prostitution (what UNESCO calls “sex work”), globally rampant. Indeed, the words “prostitution,” “prostituted” or “prostitute,” “traffic,” and “sex trafficking,” are wholly purged from the Guidelines.\textsuperscript{58}

Over 84 percent of the world population identifies itself as religious, with 33 percent specifically identifying as Christian.\textsuperscript{59} However, the words pray/prayer, God, forgiveness, Jesus, or Christ never appear in the allegedly accurate UNESCO Guidelines.\textsuperscript{60} Since these sexually constraining faith tenets are known to directly apply to 33 to 84 percent of the population, it seems that the only way that these terms could be missing from the Guidelines is because they were intentionally omitted.\textsuperscript{61}

\begin{itemize}
\item \textsuperscript{55} Id. (information derived from author’s standard word search of the Guidelines).
\item \textsuperscript{56} See id.
\item \textsuperscript{57} Id. (information derived from author’s standard word search of the Guidelines which revealed that these terms were not present).
\item \textsuperscript{58} See id.
\item \textsuperscript{59} Major Religions of the World Ranked by Number of Adherents, ADHERENTS.COM, http://www.adherents.com/Religions_By_Adherents.html.
\item \textsuperscript{60} The Guidelines, supra note 41 (information derived from author’s standard word search of the Guidelines which revealed that these terms were not present).
\item \textsuperscript{61} See id. (Regarding percentage of the population that adheres to religious beliefs) [Note; the remainder of the sentence is the author’s observation/opinion].
\end{itemize}
A. Analyzing UNESCO and International Planned Parenthood Federation’s “Healthy, Happy, and Hot”\(^\text{62}\) Finds Both Enable Acceptance and the Spread of AIDS.

The bathhouse controversy of the eighties that contributed to hundreds of thousands of AIDS-related deaths of boys and men and indirectly then of girls and women, discussed above, is just one example of the deadly results of pansexual politics.

On December 9, 2010 Terrence McKeegan and Tyler Ament reported on a new UN and IPPF campaign, “to eliminate disclosure laws which require HIV-positive individuals to inform their sex partners of their potentially deadly infection.”\(^\text{63}\) The campaign led by IPPF and UNAIDS, an umbrella group of UN agencies, like the Guidelines, dismisses the manslaughter, or what could arguably be viewed as murder, of children and adults who are the “victims of a willful refusal to disclose HIV status.” As part of a larger IPPF campaign, “Criminalize Hate Not HIV” was launched at the International AIDS Conference in Vienna.\(^\text{64}\)

Furthering the idea that AIDS carriers should not be obliged to disclose their disease to anyone, even sexual partners, IPPF distributed their HAPPY, HEALTHY, AND HOT brochure at a UN event sponsored by the Girl Scouts.\(^\text{65}\) The most troubling aspect of HAPPY, HEALTHY, AND HOT is its marketing multiple sex partners diseased with AIDS as “hot” sex, as advice for positive sexual experiences. The brochure states that “some countries have laws that violate the right of young people living with HIV to decide whether to disclose. . . . These laws violate the rights of people living with HIV by forcing them to disclose or face the possibility of criminal charges.”\(^\text{66}\) The statement, sexual rights are “necessary for the development and well-


\(^{66}\) HAPPY, HEALTHY, AND HOT, supra note 62, at 6.
being of all people and the societies in which they live,” reflects an underlying premise that ‘life is not worth living absent constant sex with others.”

Criminal law defines manslaughter as death resulting from criminal negligence or reckless disregard for human life. How else would a reasonable person classify knowingly exposing someone to a fatal disease, while deliberately hiding ones infectious state, to attain what HAPPY, HEALTHY, AND HOT mislabels sexual “pleasure?”

The IPPF makes the oxymoronic squabble that criminalizing willful transmission of HIV hinders prevention by stigmatizing HIV-positive individuals. Yet, the undeniable consequence of HIV advocacy is the increase of naive adults and child HIV carriers, and resulting deaths. HAPPY, HEALTHY, AND HOT opens with the following statement of “YOUR RIGHTS:”

Young people living with HIV may feel that sex is just not an option, but don’t worry . . . Things get easier (and sex can get even better) as you become more comfortable with your status. This guide . . . explores how your human rights and sexual well-being are related and suggests strategies to help you make decisions about dating, relationships, sex and parenthood. It explores the rights of young people living with HIV to:

- express and enjoy their sexuality (page 3)
- decide if, when, and how to disclose their HIV status (page 5)
- experience sexual pleasure (page 7)
- take care of their sexual health (page 9)
- practice safer sex (page 11)
- choose if, when, how many, and with whom to have children (page 13)

67. See id. at 2.
Healthy, Happy, and Hot offers what IPPF calls a training guide for safer sex for young people (which can be read as children) infected by an AIDS carrier. First, IPPF instructs child and adult readers, “[S]ome people have sex when they have been drinking alcohol or using drugs.” After making this statement, the trainers feloniously reassure the disease carriers, “This is your choice.”

IPPF then says, “bring condoms and lube” or keep them close to use “in the heat of the moment.” The authors even euphemistically note that whatever partner of whatever age, it is hoped he, she, or they freely consent to sex while both are coherent and conscious. The undeniable, predictable consequence of such IPPF advocacy is increased HIV infections and the deaths of unsuspecting child and adult victims from AIDS.

B. “Sodomy,” “Love,” All Words Related to Abuse or Prosecution are Absent in the IPPF “Healthy, Happy, and Hot” Sexuality Training “Guide.”

Next, a content analysis of the visible and invisible words in HAPPY, HEALTHY, AND HOT reveals the author’s true moral worldview. The HAPPY, HEALTHY, AND HOT authors write that “aggressive sex” is fine. Holding themselves out as experts, they state that “being in a relationship with someone who has HIV is just as fulfilling and satisfying as with anyone else.” This is wholly unscientific speculation, with no factual or scientific basis. Moreover, it implies to children and adults that all pleasurable sexual arousal outweighs any consideration of contracting and transmitting an incurable and often fatal disease.

Furthermore, if IPPF cared about scientific accuracy and the health and welfare of children, HAPPY, HEALTHY, AND HOT would advise readers how to report sexual assault as crimes. As the data provided

69. HAPPY, HEALTHY, AND HOT, supra note 62, at 1.
70. Id. at 11.
71. Id.
72. Id.
73. Id.
74. See id. at 7.
75. Id. at 4.
in Table 3 (see next page) by the US Department of Justice study, *Sexual Assault of Young Children as Reported to Law Enforcement* reveals:

Females were the large majority of victims in incidents of sexual assault with an object (87%) and forcible fondling (82%). In contrast, the majority of victims of forcible sodomy (54%) were males . . . .

For victims under age 12, the male proportions were even greater: sexual assault with an object (19%), forcible fondling (26%), and forcible sodomy (64%) . . . . Based on the NIBRS data, the year in a male’s life when he is most likely to be the victim of a sexual assault is age 4.  

![64% of Boys Who Are Forced Sodomy Victims Are Boys Under 12 Years Old](chart)

**TABLE 3**

IPPF claims that secretly infecting people with AIDS and other STDs is legal and moral. Obviously then, words censuring rape, assault, pornography, or other sexual crimes do not appear in these

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78. See generally HAPPY, HEALTHY, AND HOT, supra note 62, at 3, 11 (informing readers that disclosure of their condition is up to them and encouraging them to explore their sexuality).
guides. IPPF’s foremost fervor is to see AIDS carriers who hide their disease allowed to have sex with children and adults. IPPF says that “some countries have laws that say people living with HIV must tell their sexual partner(s) about their status before having sex . . . These laws violate the rights of people living with HIV by forcing them to disclose or face the possibility of criminal charges.”

IPPF fears criminal charges, but for whom? Who do they seek to protect? Children are by far the majority of victims both in forced sodomy and sexual abuse (see Table 4). If the authors of HAPPY, HEALTHY, AND HOT were scientifically honest and accurate they would include explicit words to warn readers of the possible infectious consequences of both forms of sodomy and directions on how to prosecute offenders. Instead, IPPF, in what can only be conscious and cruel decisions, excised from HAPPY, HEALTHY, AND HOT all words that would protect children. Meanwhile, the predictable victims of these machinations become revenue streams for IPPF’s lucrative contraception and abortion services.

The HAPPY, HEALTHY, AND HOT content analysis revealed zero references to: sodomized, sodomize, sodomy, rape, raped, pornography, porn, explicit, incest, death, dying, jealousy, suicide, prostitute, abuse, traffic, trafficking, or prostitution. Also, there were no references to words which tell victims about protection or seeking redress for injuries, e.g., offender, predator, victim, prosecution, police, report, jail, arrest, crime, court, molestation, violence, forced, force, tricked, violated. The word aggressive appeared once, but only as a legitimate form of sex.

79. Author’s content analysis of HAPPY, HEALTHY, AND HOT, The publication revealed that these terms were not used nor were there any references to prohibitions against them.
80. HAPPY, HEALTHY, AND HOT, supra note 62, at 6.
81. Id. at 6.
82. BUREAU OF JUSTICE STATISTICS, supra note, 77.
83. Author’s content analysis of the publication revealed that the terms listed below, which would evoke protection of children were not found in the document.
84. See HAPPY, HEALTHY, AND HOT, supra note 62, at 7.
Thus, youth who are sodomized and raped, and who will die of early sexual abuse are told essentially to accept their brutalization as happy, healthy, and hot.

C. “CHILDREN,” “YOUTH,” “YOUNGSTERS” REPLACED WITH “YOUNG PERSON/PEOPLE”

Just as pro-abortionists manipulate language to dehumanize the pre-born and camouflage the fact that abortion is the killing of human life, HAPPY, HEALTHY, AND HOT manipulates language to disguise the fact that it is targeting children and youth with its message of consequence-free sexual liberation. HAPPY, HEALTHY, AND HOT contains no words which refer to normative human relations i.e., faith and family-centered words such as honor, fidelity, morals, moral, values, value, beloved, adored, fiancé, normal, love, commitment, God, faith, husband, wife, teenager, abstinence, abstain, boyfriend, girlfriend, lover, student, blessed, faith, faithful, chastity, virginity or purity.  

85. BUREAU OF JUSTICE STATISTICS, supra note 77.
86. See HAPPY, HEALTHY, AND HOT, supra note 62, at 1-16.
The emotive words *child* or *youngster* have been excised and replaced with 23 citations to “young persons/people.” *Pleasure/pleasurable* was used 16 times and alongside *mouth, anal/anus/rectum*, 10 times. *HIV* appears 112 times, *sex/sexuality* appears 71 times, *sexual partner, appears 30, partners, (plural)* is used 18 times, *rights/right, is used 20 times, STD/STDs and condoms* appear 19 times, *vaginal/vagina* appear 8 times, *genitals* are used 4 times, *responsibility* is used 4 (as in you have *no* responsibility, no fault), *drugs* is used 3 times, (as in some folks are injecting drugs), *penis* and *oral* appear 2 times (oral or anal sex), *marriage* appears 2 times (as in fear of disclosing AIDS), *fun* is used 2 times, *reproduction, baby* and *birth* each appear 1 time (as in passing on AIDS).

![Language Analysis of IPPF's "Happy, Healthy, and Hot"

TABLE 5

This campaign to legitimize all forms of painful, dangerous, disease-producing sexual acts, including sodomy by those knowingly transmitting deadly sexually transmitted diseases like AIDS, is a

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87. See id. (information derived from a standard word search of HAPPY, HEALTHY, AND HOT)
dominant theme in both the IPPF document and the UNESCO International Guidelines on Sexuality Education, aimed at children, apparently even in primary grades.

III. ENTER ALFRED KINSEY, THE ROCKEFELLER FOUNDATION’S SELECTED HUMAN SEXUALITY CHANGE AGENT

In 1948, barely three years after WWII, while war-weary and traumatized soldiers everywhere struggled to recover from the global bloodbath, sado-masochistic zoologist and Indiana University professor Alfred Kinsey, financed by the Rockefeller dynasty and marketed by the international press, launched the “sexual revolution.” Kinsey libeled his countrymen and women as liars—claiming their religious hypocrisy covered up their innate sexual promiscuity.88

By 1955, Kinsey’s sexual ideology, based on wildly fraudulent sociosexual “data,” was dexterously gutting traditional United States’ Judeo-Christian sex laws. It did this through the American Law Institute’s “Model Penal Code” [hereinafter ALI-MPC], adopted all or in part by every state in the nation.89 In 1958, seeing the legal and liberal educational future unfold, Christian author, C. S. Lewis warned, “[i]f education is beaten by training, civilization dies,” adding that this is highly likely to happen.90 Three decades later, in 1989, the prestigious National Research Council divided sex science “somewhat crudely into the pre-Kinsey and post-Kinsey eras.”91 In 2000, The New York Times Book Review thanked Indiana University for producing “The Man Whose Studies Started the Sex Revolution.”92

Further, the liberal website Salon wrote:

Kinsey’s effect on society was profound and enduring. It did not rise and fall with his bestseller status . . . [becoming] the manifestoes of sexual revolution and the counterculture . . . The history of sex in America falls into two large, unequal, yet clearly defined periods.

88. JUDITH A. REISEMAN, SEXUAL SABOTAGE, supra note 27, at ch. 1.
89. The American Law Institute, Model Penal Code, Tentative Draft No. 4, “207.1” Sex Offenses, April 25, 1955, 206–207.
The first era belonged to the Puritans, the Victorians . . . . This epoch of libidinal prohibition lasted until Jan. 4, 1948. The following day, Professor Alfred C. Kinsey of Indiana published “Sexual Behavior in the Human Male.” Whereupon, as the expression has it, the earth moved.  

Indeed, the earth moved and shifted. In 2004, Fox Searchlight released a feature film starring the heroic actor Liam Neeson as Dr. Kinsey, effectively sanctifying the insect specialist as the most important sociosexual change agent in history.  

Kinsey, whose research has never been duplicated nor corroborated, claimed that children are sexual from birth and most men are erstwhile bi/homosexual. Kinsey’s fraudulent study is the foundation of the UNESCO and IPPF aggressive pedophile-leaning rights agenda.  

A. Kinsey’s sexual revolution was sexual anarchy

Briefly, Kinsey’s 1948 Male earth-shaking volume, followed in 1953 by his “K Bomb,” Sexual Behavior in the Human Female, was the first such science to claim children could be sexually autonomous. Claiming to have interviewed 18,000 to 21,000 Americans, 87% during WWII, Kinsey and his hand-picked team of handsome, young, healthy, draft-dodging male lovers created data claiming that the greatest generation of Americans were sexual and “moral hypocrites.” According to Kinsey, a closet bi/homosexual, pornography and masturbation addict, claimed that while posing as a puritanical Judeo-Christian culture, the members of the Greatest Generation were really sexually licentious wantons.  

94 A change agent is a person or idea that has considerable influence over the culture. See JUDITH A. REISMAN, SEXUAL SABOTAGE, supra note 27 at 20 (listing of some of the change agents associated with the sexual revolution).  
95 Id. at 20, 229.  
97 ALFRED C. KINSEY, ET AL., SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953).  
98 JUDITH A. REISMAN, SEXUAL SABOTAGE, supra note 27 at 16-20; see also JUDITH A. REISMAN, KINSEY: CRIMES & CONSEQUENCES, supra note 44, at ch. 2.  
The UN’s claims of “fluid genders” comes directly from Kinsey’s world famous and disproven allegation in his infamous “Kinsey Scale” (see Table 6 above) that humans are largely bisexual, with 10% to 37% of males being at least “sometimes” homosexual.

Sufficient numbers of the Baby Boomer generation were trained using such terms to spawn modern sex education and the homosexual, pedophile, abortion, pornography and feminist advocacy movements. Penalties for sex crimes in American law were eliminated or drastically weakened as Kinsey’s fraudulent data shaped the ALI-MPC of 1955. This in turn were used to sabotage

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100. Kinsey’s Heterosexual-Homosexual Rating Scale, The Kinsey Institute, http://www.kinseyinstitute.org/research/ak-hhscale.html (“The Heterosexual-Homosexual Rating Scale, sometimes referred to as the ‘Kinsey Scale,’ was developed by Alfred Kinsey and his colleagues Wardell Pomeroy and Clyde Martin in 1948, in order to account for research findings that showed people did not fit into neat and exclusive heterosexual or homosexual categories.”) (last visited Mar. 28, 2012).
102. Kinsey’s Heterosexual-Homosexual Rating Scale, supra note 100.
103. Id.
104. Id.
105. JUDITH A. REISMAN, SEXUAL SABOTAGE, supra note 27, at 302-326.
American sexual mores and to make mainstream what was previously considered rare; rape, child sex abuse, incest, and wholly new and barbaric forms of sex crimes.

B. Kinsey’s Claims of Children’s Orgasmic Capacity is the Root of UNESCO/IPPF Sex Guidelines

With support from the Rockefeller Foundation and Indiana University, Kinsey said that he proved adultery, masturbation, abortion, and adult sex with children were common and not only harmless but actually helpful to children. In November 2010, Accuracy in Academia’s legal spokesman reported:

![Table 34. Examples of multiple orgasm in pre-adolescent males](image)

<table>
<thead>
<tr>
<th>AGE</th>
<th>NO. OF ORGASMS</th>
<th>TIME INVOLVED</th>
<th>AGE</th>
<th>NO. OF ORGASMS</th>
<th>TIME INVOLVED</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 mo.</td>
<td>3</td>
<td>?</td>
<td>11 yr.</td>
<td>11</td>
<td>1 hr.</td>
</tr>
<tr>
<td>11 mo.</td>
<td>10</td>
<td>1 hr.</td>
<td>19</td>
<td>1 hr.</td>
<td></td>
</tr>
<tr>
<td>11 mo.</td>
<td>14</td>
<td>38 min.</td>
<td>7</td>
<td>3 hr.</td>
<td></td>
</tr>
<tr>
<td>2 yr.</td>
<td>7</td>
<td>9 min.</td>
<td>3</td>
<td>3 min.</td>
<td></td>
</tr>
<tr>
<td>2 yr.</td>
<td>11</td>
<td>65 min.</td>
<td>9</td>
<td>2 hr.</td>
<td></td>
</tr>
<tr>
<td>4 yr.</td>
<td>4</td>
<td>2 min.</td>
<td>12</td>
<td>2 hr.</td>
<td></td>
</tr>
<tr>
<td>4 yr.</td>
<td>6</td>
<td>2 min.</td>
<td>13</td>
<td>1 hr.</td>
<td></td>
</tr>
<tr>
<td>4 yr.</td>
<td>17</td>
<td>10 hr.</td>
<td>15</td>
<td>8 hr.</td>
<td></td>
</tr>
<tr>
<td>4 yr.</td>
<td>26</td>
<td>24 hr.</td>
<td>13</td>
<td>8 hr.</td>
<td></td>
</tr>
<tr>
<td>7 yr.</td>
<td>7</td>
<td>3 hr.</td>
<td>13</td>
<td>8 hr.</td>
<td></td>
</tr>
<tr>
<td>8 yr.</td>
<td>7</td>
<td>2 hr.</td>
<td>13</td>
<td>8 hr.</td>
<td></td>
</tr>
<tr>
<td>9 yr.</td>
<td>7</td>
<td>68 min.</td>
<td>11</td>
<td>2 hr.</td>
<td></td>
</tr>
<tr>
<td>10 yr.</td>
<td>9</td>
<td>52 min.</td>
<td>26</td>
<td>24 hr.</td>
<td></td>
</tr>
<tr>
<td>10 yr.</td>
<td>14</td>
<td>24 hr.</td>
<td>11</td>
<td>4 hr.</td>
<td></td>
</tr>
</tbody>
</table>

Table 34. Examples of multiple orgasm in pre-adolescent males

Some instances of higher frequencies.

TABLE 7

[The] aggressive sex education . . . guidelines which the United Nations is concocting [are] inspired by Alfred Kinsey.... Once highly respected. . .UNESCO now works in partnership with the Sexuality

106. JUDITH A. REISMAN, KINSEY: CRIMES & CONSEQUENCES, supra note 44, at 147.
107. Table 34 from ALFRED C. KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN MALE (1948) at 180; discussed in JUDITH A. REISMAN, SEXUAL SABOTAGE, supra note 27 at 29.
ALFRED C. KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN MALE, supra note 107 at 180.
Information and Education Council of the US (SIECUS), an educational arm of the controversial Kinsey Institute. Last September, a torrent of criticism greeted new UNESCO guidelines on sexuality education for promoting legal abortion and masturbation for children as young as five. The UN’s connection to the work of controversial sex researcher Kinsey is fairly explicit. “UNESCO acknowledges a former director of SIECUS is one of the principle authors of its sexuality guidelines.”

The Guidelines train pedagogues that “there are no ‘rights or wrongs’” for sexual conduct. SIECUS, whose staff helped author the Guidelines have claimed that newborns are capable of “genital pleasure,” and can engage in “sex play” by age 3. In his Table 34 (see TABLE 7 above), Kinsey claims to have recorded orgasms of infants as young as five months, and a four year old with 26 “orgasms” in 24 hours, a round the clock experiment. One journalist reports:

These comments are all drawn from the now discredited work of Alfred Kinsey, which is carried on by SIECUS. Recent disclosures from children who were raped during Kinsey’s so-called “research” experiments have several lawmakers already considering a new round of investigations into the Institute for possible complicity with pedophiles who “worked” with Kinsey during his tenure at the University. The Kinsey Institute created SIECUS in 1964 as its


111. ALFRED C. KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN MALE, _supra_ note 107 at 180.
educational arm. The first director of SIECUS was Dr. Mary Calderone, the former medical director of Planned Parenthood.112

Kinsey taught sexologists and the world that child sex abuse and rape are victimless crimes. He alleged he surveyed 4,441 women and reported that not one was damaged by rape; while child incest victims actually solicited and enjoyed their abuse.113 Since Kinsey created the fanciful field of sex science out of whole cloth, he was and remains the gold standard, the father of the bogus human sexuality field and all of its offshoots.114 Multinational establishment sex degrees and research are all mere footnotes to Kinsey’s psychopathological pedophile/pederast canon.115

VI. CHILD’S RIGHT TO PROTECTION? OF, OR FROM, WHAT?

The child sex-education Guidelines parrot the Kinsey party line, “[i]t is never too early to start talking to children about sexual matters...”116 Exactly what does that mean? Accuracy in Media reports, for example, that “UNESCO removed some of the most explicit language in the revised guidelines, but retained an appendix with ‘guiding principles’ that includes a Kinsey-inspired sex education curriculum for children from birth to age five,” McKeegan notes. “This curriculum instructs parents to provide anatomically correct dolls for young children to play with, inform them of diverse sexual relationships, and to be supportive of masturbation.”117

Language asserting children’s rights to sexual independence permits UN agents to claim that children should be sexually free. It is both revealing and outrageous that the child rights language, mirrors

113. JUDITH A. REISMAN, KINSEY: CRIMES & CONSEQUENCES, supra note 44, at 158-162.
116. Kline, supra note 82.
language used by child molesters, *i.e.*, child victims *consent* to their own sexual violations—including being used in prostitution and pornography.\(^\text{118}\) The 2009 *Guidelines* as well as the United Nations Convention on the Rights of the Child [hereinafter *CRC*], have potentially anti-family and pedophile-protecting language all over them.\(^\text{119}\) As some child protection specialists have observed, the following Articles of the CRC leave children “free” to be unprotected and profitably violated by international pedophiles and sex traffickers. This reflects the victory of a small communist structure over that of Judeo-Christian based electoral republics.

Euphemistic language appears to offer worthwhile and credible protections. However, as outlined previously, UNESCO/IPPF’s euphemistic definitions of health and *sexual rights* include the right to infect adults and children with a deadly sexually transmitted disease, without disclosure or penalty, for the sake of one’s own sexual excitement.\(^\text{120}\) In context with euphemistically cloaked sexuality advocacy language in other UN documents, these Articles in the UN Convention are ominous for the youngest citizens. A few examples include:

**Article 1**: *The Convention defines a ‘child’ as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger . . .*

Sixteen is the age of consent in most countries, with some setting the age of consent at 13.\(^\text{122}\) Under a euphemistic interpretation of Article 1 of the convention, millions of children as young as 13, will be classified as adults and trafficked for sexual use. Since prostitution is largely legal worldwide,\(^\text{123}\) Article 1 also legitimizes the marketing of


\(^{121}\) *CRC*, *supra* note 119, art. 1.


prostitution and pornography of children as young and sometimes younger than 13. In addition, the Guidelines lump children as young as age 10 into a single 10-24 year age bracket identified as “youth” with sexual rights. Adults will arguably have rights to have sex with these “young persons.”

Article 17: (Access to information; mass media): Children have the right to get information that is important to their health and well-being. . .

The Convention has defined “children” as those below the age of consent, perhaps as young as 13. But, who is defining their “health and well-being?” Kinseyan sex educators have long used pornographic “children’s books” and videos as sex education materials, often masked as “AIDS prevention,” or “safe sex instruction.” Behind the mask, the books and videos promote sexual rights for children that supersede parental rights. Based on a UNESCO/IPPF “sex is health” paradigm, marketing of all forms of pornography to, by, and of children is normalized and legalized via these carefully crafted words.

Article 15: [All children have access to] freedom of association and to freedom of peaceful assembly. 2. No restrictions may be placed on the exercise of these rights [if they are legal in that society].

This Article potentially criminalizes parental efforts to protect their children from sexual abuse as children are seen as expressing their alleged sexual rights. Thus, if prostitution is legal in a country, and if the age of consent is 13 or younger, then parental rights are largely eliminated and subordinate to that of bureaucrats and politicians who will permit children to be exposed to sexually explicit materials and vulnerable to being sexually violated by pedophiles and sex traffickers who woo and win the child’s trust. The United States

124. CRC, supra note 119, art. 17.
127. CRC, supra note 119, art. 15.
is witnessing a similar phenomenon as federal courts have stripped parents of any right to receive information about, object to or opt out of explicit, pornographic “sex education” or intrusive sexual questionnaires disguised as informational surveys.\textsuperscript{128} In \textit{Brown v. Hot, Sexy and Safer Productions}, the First Circuit dismissed a parents’ and students’ constitutional challenge to students’ compelled attendance at sexually explicit AIDS awareness assembly.\textsuperscript{129} The 90-minute assembly consisted of:

sexually explicit monologues and . . . sexually suggestive skits with several minors chosen from the audience. Specifically, the complaint alleges that Landolphi: 1) told the students that they were going to have a “group sexual experience, with audience participation”; 2) used profane, lewd, and lascivious language to describe body parts and excretory functions; 3) advocated and approved oral sex, masturbation, homosexual sexual activity, and condom use during promiscuous premarital sex; 4) simulated masturbation; 5) characterized the loose pants worn by one minor as “erection wear”; 6) referred to being in “deep sh—” after anal sex; 7) had a male minor lick an oversized condom with her, after which she had a female minor pull it over the male minor’s entire head and blow it up; 8) encouraged a male minor to display his “orgasm face” with her for the camera; 9) informed a male minor that he was not having enough orgasms; 10) closely inspected a minor and told him he had a “nice butt”; and 11) made eighteen references to orgasms, six references to male genitals, and eight references to female genitals.\textsuperscript{130}

Attendance at the assembly was mandatory for high school students. Parents were not given advance notice of the content of the program or an opportunity to excuse their children from attendance at the assembly.\textsuperscript{131} The First Circuit rejected the plaintiffs’ claims that the compelled attendance constituted “conscience shocking” behavior, admitting only that compelling minors to view the program without parental notification or approval might have shown some “callousness” toward the sensibilities of the minors.\textsuperscript{132}

\textsuperscript{128} See, e.g., \textit{Brown v. Hot Sexy and Safer Productions, Inc.}, 68 F.3d 525 (1st Cir. 1995); \textit{Fields v. Palmdale School Dist.}, 447 F.3d 1187 (9th Cir. 2006) (per curiam).

\textsuperscript{129} \textit{Brown, supra} note 128 at 529.

\textsuperscript{130} \textit{Id.}

\textsuperscript{131} \textit{Id.} at 530.

\textsuperscript{132} \textit{Id.} at 532.
The Ninth Circuit went even farther in stripping parents of any right to prevent their children from being exposed to inappropriate materials.\textsuperscript{133} The court held, “the right of the parents ‘to control the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs’—the right to privacy here asserted—does not entitle them to prohibit public schools from providing students with information that the schools deem to be educationally appropriate.”\textsuperscript{134} Parents “do not have a fundamental [due process] right generally to direct how a public school teaches their child.”\textsuperscript{135} Notably, the court softened language that appeared in an earlier panel decision, where the court said: “Thus, the right of the parents ‘to control the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs’ is not protected by the constitutional right to privacy, at least not as that purported right is understood by the parents in this case.”\textsuperscript{136}

While parents might not have a right to privacy according to U.S. courts, children do have rights to privacy according to the CRC’s Article 16. Under Article 16, children have a right to be free from “arbitrary or unlawful interference with his or her privacy...honour and reputation.”\textsuperscript{137} As if the other Articles were not enough to create new rights in support of those who would molest children, this Article provides further protection for those who would exploit children.\textsuperscript{138} Parents who dare to try to protect their children from sexual predators could face sanctions, even criminal prosecution, for violating their children’s “rights.” Again, bear in mind that the UNESCO sex education guidelines deliberately censor morality, parents, tradition, and faith from the discussion of “rights.”\textsuperscript{139}

Under Article 24, “health care” family planning education and services have to “abolish traditional practices prejudicial to the health of children.”\textsuperscript{140} Article 24 removes any doubt about the pedophile-enabling worldview inherent in the previous Articles. Here,
UNESCO and IPPF redefine “health care” to include “family planning” and exclude “traditional practices,” i.e., regulations and procedures that protect children, that UNESCO and IPPF assert are “prejudicial to the health of children.” UNESCO’s canon removes sexual boundaries, rules, and other protections for children, leaving them vulnerable to adult exploitation.

**CONCLUSION**

A systemic study of UNESCO and IPPF semantics finds pedophile protective language, ideas and desires as the UNESCO and IPPF standard for sexual *rights*, sex education, and sexuality in general. Those who want to protect and advocate for the world’s children must recognize that a UN agency uses pedophile-supportive language to advance a pan-sexual worldview that enables injurious, even fatal, actions that endanger millions of innocent children. This worldview is designed to invalidate the God-given rights of parents to protect their children from sexual and psychosexual battery, including fatal sexual disease. This pedophile child sex abuse advocacy comes in quietly within a Trojan horse called children’s *rights* and sex education, under the auspices of UNESCO and IPPF.

It is difficult for average citizens to believe that UNESCO and IPPF would lobby for the sexual right to transmit deadly sexual diseases to unsuspecting children and adults. It is also difficult to comprehend that respected governments would circumvent the will, faith, and traditions of their citizens in order to promote a Kinseyan/pedophile sexuality as a tool for a communist/fascist new world order. Nevertheless, that is precisely what has happened. Secularist politics ride to success over free nations on the backs of sexual profiteers and elitist revolutionaries. The United Nations has been their playground and laboratory for decades, with IPPF serving as “a global service provider and a leading advocate of sexual and reproductive health and rights for all.”

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141. See, e.g., HAPPY, HEALTHY, AND HOT, supra note 62, at 8 (Alluding to “the need to change social norms and harmful practices that are not in line with human rights and increase vulnerability and risk, especially for girls and young women”) (emphasis added); see also, HAPPY, HEALTHY, AND HOT, supra note 62, at 17 (“IPPF works towards a world where women, men and young people everywhere have control over their own bodies, and therefore their destinies…. A world where gender or sexuality are no longer a source of inequality or stigma. We will not retreat from doing everything we can to safeguard these important choices and rights for current and future generations.”) (emphasis added).

142. HAPPY, HEALTHY, AND HOT, supra note 62, at 17.
Lobbying for and training children to engage in sexual behaviors provides IPPF with a never-ending revenue flow as millions of sexualized child victims are driven into IPPF clinics for their core services: abortions, yielding the “harvesting” of pre-born baby parts, contraception, and ever increasing varieties of vaccines and pharmaceuticals to “prevent,” test and treat new childhood STDs. In any other, non-sexual endeavor, responsible governments and private citizens would recognize the political war being waged against free democracies, and would repudiate the blatant and vile greed and sexual politics that repeatedly costs the lives of millions of innocent victims.

An ongoing attack on puberty, the normal hormonal basis for sexual awakening, underpins Kinsey's original pedophile serving child sex frauds that drove the 1955 gutting of USA's Judeo-Christian sex laws. These Kinsey frauds, the foundation of IPPF as well as the UNESCO Guidelines and all of institutional sexology, have spawned the current Sex Industrial Complex, a merger of Big Pharmacology, Big Sexology, Big Pornography, and Mainstream Media.

Kinsey's child “orgasm” claims, based on his team's violent child libido experiments on infants as young as 2 and 5 months of age, spawned the western free sex culture with its fallout in pandemic impotence, pornography addiction, myriad new forms of brutal sex crimes, AIDS and other STDs. This same junk science facilitates the highly profitable child sex traffic fueled by global pornography addiction and the billions made by the sex industry’s Big Pharma partner. This same partner provides endless new drugs to facilitate abortion, repair STDs, temporarily repair impotence, and mask the depressions and other mental and physical disorders born of sexually related trauma.

Indeed, the consequences of Kinsey's “sexual anarchy” and UNESCO/IPPF’s Kinsey-inspired worldview reach into the farthest corners of the globe. In fall 2007, the Kinsey Institute produced the first Chinese language translation of Kinsey’s work, a biography entitled *Kinsey, The Man Who Changed The World*, written by Kinsey Institute employee Liana Zhou and her husband Wen

144. See ALFRED C. KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, supra note 107 at 180; see also JUDITH A. REISMAN, *KINSEY: CRIMES & CONSEQUENCES*, supra note 44, at 139-43 (discussing the methods of data collection on boys age five months to fifteen years).
Reportedly, 500,000 known copies (and perhaps many hundreds of thousands of pirated copies) were distributed in China in

This mirrors the UNESCO/IPPF incursion into sex education, in which people who do not have the historical and educational perspective to perceive and process the nature of the information are inundated with pseudo-scientific theories without the context to fully analyze the data. Lacking the Judeo-Christian foundations present in the United States, the Chinese people would not have a basis from which to compare the information being presented, just as American schoolchildren would not yet have sufficient knowledge of the Judeo-Christian worldview to properly process and analyze the data. As a result, the audiences are trained, or educated in a sexually anarchist worldview with all of its injurious, even deadly, consequences.

It is certainly time to demand criminal investigations of any private or governmental agency that has colluded with private business to promote the very exploitation and potentially life-threatening environment and behavior that has deliberately risked, even taken, children’s lives, the lives such agencies are sworn to protect. Unfortunately, both IPPF and UNESCO operate in the twilight labyrinth of the United Nations where politicians and bureaucrats, like openly homosexual Congressman Barney Frank, may intimidate the poorest of the poor governments. These governments often must decide between sacrificing their culture or their children to garner funding for supposed national healthcare from the growing Sex-Industrial Complex symptomatic of UNESCO and IPPF.

146. Email from Chinese researcher to Dr. Judith Reisman, January 2, 2012, 12:22 AM, EST on file with author.
INTRODUCTION

On its website and in its publicity, B4U-Act defines itself as a non-profit organization based in Maryland. The organization purports to educate mental health professionals and society about pedophilia and to suggest therapeutic support to other “self-identified . . . adults and adolescents” who desire sex with children. B4U-Act claims its mission is to merely eliminate the “stigma” against pedophilia by removing what they call the “tremendous barriers to communication” among pedophiles, mental health professionals, and the public. To facilitate these ends, they hold workshops and other gatherings to allegedly promote “dialog.” The purpose of this paper is to give an overview and analysis of B4U-Act’s most recent gathering, a symposium entitled: “Pedophilia, Minor-Attracted Persons and the DSM.” The authors will argue that B4U-Act, while purporting to
assist pedophiles and the trauma they face from societal stigma, in fact, works to incrementally legitimize what they refer to as “minor attraction” and the inherently abusive sexual acts implied by this term. To attain this normalization and legalization of adult sexual abuse of children, B4U-Act now advocates for linguistic and semantic changes defining pedophilia to correspond with changes in the Diagnostic and Statistical Manual (DSM) of the American Psychiatric Association (APA). This paper will be divided into three parts. Part I will discuss the nature, mission, and membership of the B4U-Act organization. Part II will give an overview of the DSM, its significance for mental health professionals, and their diagnosis of the mental disorder of pedophilia. Part III will consider the organization and contributions at the B4U-Act symposium, held in August 2011 in Baltimore, and its implications for the drafting of the fifth version of the DSM.

I. THE NATURE AND MISSION OF B4U-ACT

B4U-Act was founded in 2003. Michael Melsheimer, who served a three-year prison sentence in New Jersey for sexually assaulting a teen-age boy, co-founded B4U-Act with Chairman Russell A. Dick. Russell A. Dick is a licensed social worker with thirty-eight years of experience working with “people who are attracted to minors.” Richard Kramer, the Director of Operations, established the Male Homosexual Attraction to Minors Information Center (MHAMIC). MHAMIC promotes the theory that “boys are not always severely harmed by sexual activity with adults.” Howard Kline, the Science
Director, claims B4U-Act’s efforts “can help them [pedophiles], because we are the people they are writing about.”  

The name “B4U-Act” is purported to encourage the public, especially mental health practitioners and “minor attracted persons” to “know the facts and consider the consequences . . . before you act.” Its stated mission has a dual focus: outreach and education. It seeks to (1) “publicly promote services and resources for self-identified individuals who are sexually attracted to children and desire such assistance,” (2) “develop a pool of providers in Maryland who agree to serve these individuals and abide by B4U-ACT’s Principles and Perspectives of Practice,” (3) “educate mental health providers regarding the approaches helpful for such individuals,” and (4) “educate the citizens of Maryland regarding issues faced by these individuals.”

B4U-Act has held various workshops toward these ends, including one workshop devoted to the topic of de-stigmatizing language regarding pedophiles and pedophilia entitled, “How Do We Talk About It? Developing a Language for Discussing Attraction to Minors.” At that workshop it proposed that “Minor Attracted Persons accept themselves, reclaim words, and become involved in changing the discourse” in a way that does not “pathologize the attraction to minors.”

Other groups view the work of B4U-Act as a major catalyst in the Boylove activist movement. Specifically, the Boylove Internet Forum BOYCHAT, where recent posts focused on such themes as the sexual attractiveness of little league baseball players and “How Not to Out

16. Id. (emphasis added)
17. BOYCHAT, http://www.boychat.org, (BoyChat explains on the website that “BoyChat boylove message board is a boylover bulletin board bbs for boy lovers who need a boy love forum for chat and discussion.”) (last visited Feb. 27, 2012).
18. See e.g., Wizard, PA Pitcher, BOYCHAT (Aug. 19, 2011 8:22 PM), http://82.94.204.206/messages/1265687.htm, see also punkschool, Re: PA Pitcher, BOYCHAT
Yourself,” 19 compares the efforts of B4U-Act with that of gay activists. 20 Some posted that as the psychopathic connotation of homosexuality was first eroded, and then completely taken from the DSM—with the idea being to seek “political leverage” and a “tipping point”—B4U-Act is now acting analogously regarding pedophilia. 21


20. See Timothy J. Daily, Harming the Little Ones: The Effects of Pedophilia, HIDDEN MYSTERIES: THE HEALTH ARCHIVE, http://www.hiddenmysteries.org/health/effects/pedophilia.html (Conservative analyst Timothy Dailey also notes the presence of this type of calculated strategy as well in the pedophile activism at large, patterning itself on and drawing leverage from homosexual activism. “Emboldened by the APA’s acceptance of homosexuality as a valid lifestyle, advocates of adult-child sex are making cautious forays into the scholarly literature. Once again, this move is shrewdly calculated, with the expectation that society in general will follow the lead of the ‘high priests’ of the scientific community.”) (last visited Feb. 29, 2012).


I consider the task that B4U-Act is attempting to achieve is similar to what was done by gay activists with the APA in an earlier decade. They found via their activism that many clinicians did not actually agree with the policy being adopted by the APA. While a large portion of those asked in clinical practice if homosexuality was pathological had stated yes, this view shifted almost overnight. Why did that change happen? Because the clinical experience included real people whose narratives, when inserted in the public mind, questioned the central ideas of seeing gay men as pathologically flawed. A second factor was the increased influence of a gay group of psychiatrists inside the APA who gained political leverage [sic] and was able to shift the debate. B4U-Act is using a similar interpretation of our current situation. Clinitions [sic] are actually struggling to know what to do with clients who present as child lovers. The therapies that are used don’t work and the clinitions [sic] know this to be true. B4U-Act is looking for a ‘tipping point’ to emerge for the management of those labeled ‘the sex offender’. The kind of ideological closure assumed by some who post here is not actually held strongly by everyone inside the medical profession. In reality what is at stake is a questioning of a dominant discourse. It can be argued it will fall over as the effectiveness of that ideology is shown to be faulty. We are in this period right now. What B4U-Act is doing is allowing the flawed character to be more visible. If people push for a simple binary situation (them against us), as I have seen argued here, change is less likely. The posts I read here are arguing for an unduly
Another post observed that the removal of pedophilia from the DSM “is a priority” for B4U-Act and that they are now “asking for the small step of ‘better representation’ in the DSM.”22 The same post concludes that any pedophile “who works for B4U-Act will tell you that they’d prefer to not have it listed in the DSM at all,” but as they have “barely gotten a reaction just requesting for ‘better representation’” they are proceeding incrementally.23 In sum, observers, who view B4U-Act in a favorable light, encourage supporters to “read between the lines.”24

The name, B4U-Act, is brilliantly constructed to confuse and mislead the public. Who should think before you act? Should child molesters and pedophiles think before they act? Should judges, juries, and the public think before we act, so as to not convict pedophiles for their child sex crimes? Who is a minor attracted person? Is this a minor who is attracted to an adult, or is it some person attracted to a child? The B4U-Act website uses euphemisms such as “gay” for homosexual, and “sex toys” for sex implements.25 This sexual language is crafted to dissemble, to confuse, to win empathy, and to incrementally work away at what is left of traditional sexual values, morals, and laws.

II. THE DSM AND B4U-ACT’S INTEREST THEREIN

The tipping point lies in gaining a foothold on the upcoming revision of the DSM manual. The majority of B4U-Act’s current work
is directed toward this end. The “News” portion of their website shows eight of the fourteen activities headlined therein directly pertain to DSM related advocacy.\textsuperscript{26}

The DSM is the standard classification of mental disorders used by mental health professionals in the United States, providing a common language for clinical communication.\textsuperscript{27} Thus, by clearly defining the criteria for what is determined to be a mental disorder, the DSM is seen as crafting an accurate and consistent diagnosis.\textsuperscript{28} It is intended to apply in a wide array of contexts, to be used by clinicians and researchers of different disciplines, as credible in courts of law, as well as to serve the collection and communication of accurate public health statistics.\textsuperscript{29}

By way of historical background, the initial stimulus for developing the DSM was the need to collect statistical information.\textsuperscript{30} Following World War II and the development of a much broader nomenclature by the U.S. Army, the APA published the first edition of the DSM (DSM-I) in 1952, which contained essentially a glossary of descriptions of diagnostic categories of mental malaise.\textsuperscript{31}

\begin{itemize}
\item \textsuperscript{29} Diagnostic and Statistical Manual, supra note 28.
\item \textsuperscript{30} Pre-World War II, AMERICAN PSYCHIATRIC ASSOCIATION, http://www.psych.org/ MainMenu/Research/DSMIV/History_1/PreWorkWarII.aspx (last visited Mar. 05, 2012).
\item \textsuperscript{31} Post-World War II, AMERICAN PSYCHIATRIC ASSOCIATION, http://www.psych.org/ MainMenu/Research/DSMIV/History_1/PostWarClassifications.aspx (last visited Mar. 05, 2012).
\end{itemize}
The mental disorder of pedophilia in the DSM-I was listed as a “sexual deviation.”  The DSM-II, published in 1968, maintained this classification. Then in 1980, the DSM-III introduced explicit diagnostic criteria and in this way adopted a more descriptive approach. Pedophilia was listed under the Psychosexual disorders as a “Paraphilia,” the new euphemism given to “sexual deviations” therein. “Paraphilia,” from para, signifying “other” or “outside of”

32. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (1st ed. 1952) [Hereinafter DSM I]

33. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 5, at 301-304 (2nd ed. 1968) [Hereinafter DSM II]


35. A paraphilia is another term created to neutralize one whose arousal and gratification depend on fantasizing about and engaging in sexual behavior that is abnormal. A paraphilia can revolve around a particular object (children, animals, underwear) or around a particular act (inflicting pain, exposing oneself). Allegedly a paraphilia is specific and unchanging. It is distinguished by a preoccupation with the object or behavior to the point of being dependent on that object or behavior for sexual gratification. Paraphilias include sexual behaviors that society may view as criminal, distasteful, unusual or abnormal. This is the current canon within the psychology profession. Paraphilias, PSYCHOLOGY TODAY, http://www.psychologytoday.com/conditions/paraphilias (last visited Mar. 05, 2012).

36. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3rd ed. 1980) [Hereinafter DSM III].

302.20 Pedophilia. The essential feature is the act or fantasy of engaging in sexual activity with prepubertal children as a repeatedly preferred or exclusive method of achieving sexual excitement. The difference in age between the adult with this disorder and the prepubertal child is arbitrarily set at ten years or more. For late
and _philia_, as “loving,” is a more companionable, less pejorative term than “sexual deviation” as it shifts the sense of the meaning and usage toward a more neutral sense of unusual—implying a possible innocuous sexual preference difference.\(^{38}\) In 1987\(^{39}\) the DSM III-R

adolescents with the disorder, no precise age difference is specified; and clinical judgment must be used, the sexual maturity of the child as well as the age difference being taken into account. Adults with the disorder are oriented toward children of the other sex twice as often as toward children of the same sex. The sexual behavior of these two groups is different. Heterosexually oriented males tend to prefer eight-to-ten year-old girls, the desired sexual activity usually being limited to looking or touching. Most incidents are initiated by adults who are in the intimate interpersonal environment of the child. Homosexually oriented males tend to prefer slightly older children. The percentage of couples in this group who know each other only casually is higher than in the heterosexually oriented group. Individuals with undifferentiated sexual object preference tend to prefer younger children than either of the other two groups. Most individuals oriented homosexually have not been married, whereas most individuals oriented heterosexually either have been or are married. _Age at onset_. The disorder may begin at any time in adulthood; most frequently it begins in middle age. _Course_. The course is unknown, although homosexually oriented Pedophilia tends to be chronic. The severity of the condition often fluctuates with psychosocial stress. The recidivism rate for homosexually oriented Pedophilia is second only to that for Exhibitionism, and ranges from 13% to 28% of those apprehended, roughly twice that of heterosexually oriented Pedophilia. _Differential diagnosis_. Isolated sexual acts with children do not warrant the diagnosis of Pedophilia. Such acts may be precipitated by marital discord, recent loss, or intense loneliness. In such instances the desire for sex with a child may be understood as a substitute for a preferred but unavailable adult. In Mental Retardation, Organic Personality Syndrome, Alcohol Intoxication, or Schizophrenia there may be a decrease in impulse control, particularly in the elderly, that in rare instances leads to isolated sexual acts with children. However, sexual activity with children is generally not the consistently preferred method for achieving sexual excitement. In Exhibitionism exposure may be to a child, but the act is not a prelude to further sexual activity with the child. Sexual Sadism may, in extremely rare instances, be associated with Pedophilia, in which case both diagnoses are warranted. _Diagnostic criteria for Pedophilia_. A. The act or fantasy of engaging in sexual activity with prepubertal children is a repeatedly preferred or exclusive method of achieving sexual excitement, B. If the individual is an adult, the prepubertal children are at least ten years younger than the individual. If the individual is a late adolescent, no precise age difference is required, and clinical judgment must take into account the age difference as well as the sexual maturity of the child.

37. Reisman notes here that “paraphilia” is a term meant to sound different so as to confuse and deflect from ordinary discourse. It is a deliberately misleading term that is more positive than “sexual deviation” in that it implies pedophilia is merely another erotic choice rather than a disordered, abnormal and often criminal perversion.


added a subjective qualification similar to that which appeared in the evolving scientific perception of homosexuality: the individual must be “markedly distressed” by his own pedophilic activity to be considered needful of therapy.  

With the 1994 publication of the DSM-IV, the description and diagnostic criteria of pedophilia were changed such that a child

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41. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed. 1994) [Hereinafter DSM IV].

302.2 Pedophilia. The paraphilic focus of Pedophilia involves sexual activity with a prepubescent child (generally age 13 years or younger). The individual with Pedophilia must be age 16 years or older and at least 5 years older than the child. For individuals in late adolescence with Pedophilia, no precise age difference is specified, and clinical judgment must be used; both the sexual maturity of the child and the age difference must be taken into account. Individuals with Pedophilia generally report an attraction to children of a particular age range. Some individuals prefer males, others females, and some are aroused by both males and females. Those attracted to females usually prefer 8 to 10 year-olds, whereas those attracted to males usually prefer slightly older children. Pedophilia involving female victims is reported more often than Pedophilia involving male victims. Some individuals with Pedophilia are sexually attracted only to children (Exclusive Type), whereas others are sometimes attracted to adults (Nonexclusive Type). Individuals with Pedophilia who act on their urges with children may limit their activity to undressing the child and looking, exposing themselves, masturbating in the presence of the child, or gentle touching and fondling of the child. Others, however, perform fellatio or cunnilingus on the child or penetrate the child’s vagina, mouth, or anus with their fingers, foreign objects, or penis and use varying degrees of force to do so. These activities are commonly explained with excuses or rationalizations that they have “educational value” for the child, that the child derives “sexual pleasure” from them, or that the child was “sexually provocative”—themes that are also common in pedophilic pornography. Individuals may limit their activities to their own children, stepchildren, or relatives or may victimize children outside their families. Some individuals with Pedophilia threaten the child to prevent disclosure. Others, particularly those who frequently victimize children, develop complicated techniques for obtaining access to children,
molester was “considered to have a psychiatric disorder only if his actions caused clinically significant distress or impairment in social, occupational or other important areas of functioning.” Thus, the APA’s classifications of sexual deviancy were gradually shifted from an objective description of aberrant behavior toward the subjective thoughts and perceptions of the individual. Therefore, according to the DSM-IV, if a person feels no desire to change, there is no need to change. For example, a man who molests children without remorse and significant impairment in his social and work relationships, according to the DSM-IV, could possibly be diagnosed as normal—a psychologically normal type of pedophile.

which may include winning the trust of a child’s mother, marrying a woman with an attractive child, trading children with other individuals with Pedophilia, or, in rare instances, taking in foster children from nonindustrialized countries or abducting children from strangers. Except in cases in which the disorder is associated with Sexual Sadism, the person may be attentive to the child’s needs in order to gain the child’s affection, interest, and loyalty and to prevent the child from reporting the sexual activity. The disorder usually begins in adolescence, although some individuals with Pedophilia report that they did not become aroused by children until middle age. The frequency of pedophilic behavior often fluctuates with psychosocial stress. The course is usually chronic, especially in those attracted to males. The recidivism rate for individuals with Pedophilia involving a preference for males is roughly twice that for those who prefer females.

Diagnostic criteria for 302.2 Pedophilia. (A) Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger), (B) The fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning, (C) The person is at least age 16 years and at least 5 years older than the child or children in Criterion A. Note: Do not include an individual in late adolescence involved in an ongoing sexual relationship with a 12- or 13-year-old. Specify if: Sexually Attracted to Males, Sexually Attracted to Females, Sexually Attracted to Both Specify if: Limited to Incest Specify type: Exclusive Type (attracted only to children) Nonexclusive Type.

42. *Id.*


In 1998, an APA journal published an article\textsuperscript{46} downplaying the harm of adult sexual abuse of children.\textsuperscript{47} It stated that childhood sexual abuse is on average only slightly associated with psychological harm and that the harm may not be due to the sexual experience, but instead to the negative family factors in a child’s background.\textsuperscript{48} It claimed that if the sexual contact is “not coerced,” especially when it is experienced by a boy and “is allegedly remembered positively,” it may not be harmful at all.\textsuperscript{50} It further proposed that psychologists stop using judgmental terms like “child abuse,” “molestation,” and

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{46}] See B. Rind, P. Tromovitch, & R. Bauserman, \textit{A Meta-analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples} (American Psychological Association 1998) 124 Psychological Bulletin, 1, 22-53. Dailey’s comments on the article are illustrative:
\begin{quote}
A significant initial salvo for the acceptance of pedophilia in academia was the publication of what would become a highly controversial study on child sexual abuse in the prestigious journal Psychological Bulletin. Authored by Bruce Rind, Philip Tromovitch, and Robert Bauserman, the study — “A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples” — asserted that the widely held belief that sex between adults and children always causes harm to children “is of questionable scientific validity.” While the authors contend that “the vast majority of both men and women reported no negative effects from their CSA [child sexual abuse] experiences,” they nonetheless allow that some experiences result in negative consequences for the victim. And to what are these negative effects attributed? To none other than family environment factors such as “traditionalism” that prevent the child’s parents from lending support to the child engaged in pedophilic activity. According to the Rind study, the child sexual abuse itself was “relatively unimportant compared with family environment” in causing negative effects. The clear implication is that children would suffer few if any negative effects from pedophilia if only society were more accepting of such behavior. Adult-child sex, conclude the authors, should not be indiscriminately termed child sexual abuse. “One possible approach,” they suggest, “is to focus on the young person’s perception of his or her willingness to participate and his or her reactions to the experience. A willing encounter with positive reactions would be labeled simply adult-child sex, a value-neutral term.” The Rind study was roundly condemned by many and eventually criticized by the American Psychological Association, publisher of Psychological Bulletin. Paul Fink, M.D., former president of the American Psychiatric Association, pointed out that most of the studies discussed by the authors had never undergone rigorous peer review, and that the results were largely based on one study conducted over 40 years ago.
\end{quote}
\item[\textsuperscript{48}] Id.
\item[\textsuperscript{49}] Id. (“Non-coerced” sex in this context is a misnomer because there is always an element of coercion—involving a misuse of adult authority, and a misuse of the child’s need for affection. If a researcher sees no harm, “it may be because he is using the wrong glasses...not because there is nothing to see.”).
\item[\textsuperscript{50}] Id.
\end{itemize}
\end{footnotesize}
“victims,” using instead ostensibly neutral, value-free terms like “adult-child sex.” Similarly, it says discussions should not debate the “severity of the abuse,” but instead refer to “the level of sexual intimacy.” The authors thus opined that behaviour, which psychotherapists commonly term “abuse,” may only constitute a violation of social norms. The APA report authors proposed an understanding of pedophilia as “abuse” only if the child feels bad about the relationship. Predictably, much acute criticism followed. In response, the APA did change the definition of pedophilia in a text revision of the 2000 manual, the DSM-IV-TR, the most current version to date. It holds that acting upon one’s pedophilic urges is sufficient for a diagnosis of disorder.

The publication of the fifth edition of the DSM is scheduled for May 2013. The proposed deviance changes are once again controversial. The proposal would expand the definition of the disorder to include hebephilia, thus producing a confusing hybrid

51. Id. (emphasis added)
52. Id.
53. Id.

The U.S. House of Representatives voted overwhelmingly yesterday to condemn research that concluded that the long-term effects of child sexual abuse are not as serious as many believe and that scientists should classify sexual encounters between adults and children differently, depending on the age and ‘willingness’ of the child. The congressional resolution, which passed by a vote of 355 to 0 (with 13 voting ‘present’), ‘condemns and denounces’ all suggestions that sexual relationships between children and adults are less harmful than believed or might be positive for some children. It “vigorously opposes any public-policy or legislative attempts to normalize adult-child sex or to lower the age of consent.”

56. Nicolosi, supra note 44.
59. This is an attraction to children who are going through puberty. It should be noted that hebephilia does not appear in the same manner as pedophilia in the DSM-IV-TR. According to the American Psychiatric Association a hebophile normally receives a diagnosis in the DSM-IV-
category, pedohebephilia, consisting of the pedophilic type, the hebephilic type, and the pedohebephilic type (attracted to both).

Strictly speaking, before a diagnosis of “pedohebephilia” can be made, two children younger than eleven must be victimized or three children between the ages of eleven and fourteen. Thus, there is the possibility of a child molester abusing one child exclusively and not falling under the ‘evolving’ APA diagnosis. The use of child pornography must go on for at least six months before it is considered a psychosexual problem.

The above duplicitous definitions open the DSM decision makers to charges of reflecting the interests of pedophiles over that of children. The claim that either psychiatry or its DSM, with its fluctuating definitions of mental health, is scientific is a contested claim indeed. Nonetheless, the public, media, courts, lawyers, and legislators commonly cite and regard the DSM as a tool for scholarly agreement. In my view, this entire procedure is inexcusable, unconscionable, and a farce. Especially examining the disingenuous definition of pedophilia, the APA and the DSM have no credibility as either scientific or as objective sources of psychological knowledge. As I have meticulously documented in my past three books on Alfred C. Kinsey, the acknowledged father of the sexology field, they have hidden crimes against children and society throughout their tenure. Both groups have played the politically correct game for decades and will continue to do so. They count on the sexual anarchy of society to fill their coffers and to award them with wholly undeserved esteem.

Both the APA and its DSM should be disbanded. The APA leadership should do the right thing and present society with a confession of liability and call for a return to the common law and Judeo Christian foundational principles as models for psychological and psychosexual health and well being.
Pedohebephilia is a cynically concocted, confusing, semantic euphemism for adults who lust after immature youths and children. Under no circumstances should children be separated from other immature youths for legitimate lust nor does it require a six month period to create a deviance or to define a deviant. Lusting after a non-adult is deviant. The DSM incrementally has been moving toward legalizing and legitimizing lust for children with its time boundary for pedophilia. As scrupulously documented in my research, a pedophilic sensibility has been in place at the highest levels of the psychiatric establishment for several decades.

III. THE SYMPOSIUM

On August 17, 2011, thirty-eight participants gathered in Baltimore, Maryland to attend the symposium, which in the words of B4U-Act was to “facilitate the exchange of ideas among researchers, scholars, mental health practitioners, and minor attracted persons who have an interest in critical issues surrounding the entry for pedophilia in the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association.” Predictably, the symposium began with a clarification of the language. Russell A. Dick, co-founder of B4U-Act, gave the opening remarks. He argued that “inaccurate preconceptions” had been associated with certain terms or labels, so the new term “minor attracted person/people” would be used as a part of B4U-Act’s ongoing effort to promote its dialogue. The individual speakers then fleshed out their philosophical and scientific framework to sustain this new language.

A. Dr. Fred Berlin, “Understanding Pedophilia and Other Paraphilias from a Psychiatric Perspective”

The keynote speaker Dr. Fred Berlin, in his presentation entitled “Understanding Pedophilia and Other Paraphilias from a Psychiatric Perspective”

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68. Dr. Fred Berlin, M.D., Ph.D., serves as Associate Professor of Psychiatry and Behavioral Sciences, Johns Hopkins University School of Medicine, Baltimore, MD, available at http://www.hopkinsmedicine.org/psychiatry/expert_team/faculty/B/Berlin.html.
Perspective,” provided a conceptual overview of pedophilia from his psychiatric viewpoint.\(^69\) He argued for acceptance of the person who has committed pedophile acts while disagreeing with “adult-minor” sexual activity.\(^70\) Although, sounding thoughtful, it does not comport with his earlier actions. Dr. Berlin\(^71\) refused to comply with a state

69. Dr. Berlin appeared on FoxNews “The O’Reilly Factor,” August 22, 2006 and was asked his view regarding pedophilia:

O’Reilly: …Joining us now from Baltimore, Dr. Fred Berlin, founder of the Sexual Disorders Clinic at Johns Hopkins University. All right. We have this debate about people that do things that are not in the mainstream. Do you believe pedophilia is inherent, you’re born with it? Berlin: Let me define it first. Pedophilia is a condition in which a person’s sexual condition is directed either in whole or in part towards young children. So that’s what we’re talking about. And just as not all drunk drivers are alcoholics, not everyone who abuses a child has pedophilia. Now in terms of the cause of pedophilia, it’s a good question, but like asking what is the cause of heterosexuality or what’s the cause of homosexuality — what we know is those things are not determined by a voluntary choice. As a little boy I didn’t sit down and say to myself, “Do you want to grow up to be attracted to women, men, boys, or girls?” I discovered that I am attracted to women. And similarly, the man that is attracted sexually to children discovers that he is afflicted with aberration of sexual makeup. He isn’t that way because he was a bad little child who decided to grow up to be different.


71. See Roamajous, Dr. Berlin’s speech, BOYCHAT http://www.boychat.org/messages/1265916.htm. Further regarding Dr. Berlin, from the Internet Chat Forum BoyChat, the following conversation offers a perspective on Dr. Berlin’s presence and positions on the issue of pedophilia. Entitled “Dr. Berlin’s Speech”, the post reads:

Thanks I read it. I was a little disappointed at the following statement: Keynote speaker Dr. Fred Berlin (of Johns Hopkins University) provided a conceptual overview of pedophilia from a psychiatric viewpoint, and argued in favor of acceptance of and compassion for people who are attracted to minors, while at the same time rejecting adult-minor sexual activity. Why would he add that statement at the end? It kind of defeats the purpose of the whole symposium if he is getting out of his way to point that out. And he is the keynote speaker. That doesn’t sound very supportive.

The post in response, entitled “He has to”, reads as follows:

Otherwise he would be perceived by his COLLEAGUES of being in favor of adult child sexual activity and there goes his career, credibility, and any ability to HELP US in any way. There isn’t just stigma against those attracted to children but also against those who are perceived to support adult child sex. It is a sad state of affairs but it is true. Why don’t people get that? This is why MAPs are our own worst enemies. We bash our own supporters! It takes a lot just to get him to show up and agree with the fact that we ought to be treated humanely and on par with other people. That in itself is controversial and puts him in the firing line of some of his colleagues. Demanding
law requiring him to report patients he believed were engaged in child sexual abuse.\textsuperscript{72} Also, pedophiles themselves agreed that Dr. Berlin should not favor adult child sexual activity in order to help further their cause.\textsuperscript{73}

Dr. Berlin began with positive comments about the deceased co-founder of B4U-Act, Michael Melsheimer. Melsheimer, a convicted pedophile, was a former patient of Dr. Berlin, \textsuperscript{74} who described Melsheimer as a “courageous, decent and honest”\textsuperscript{75} person, who “felt very badly about the stigma that was tied to labels such as pedophilia;”\textsuperscript{76} he wanted people with these attractions to “feel good about themselves, particularly if they were being responsible in how they were dealing with them [these attractions].”\textsuperscript{77}

Dr. Berlin then moved to one of his key points: people can behave in similar ways for a variety of reasons.\textsuperscript{78} One must first discern whether a person has a psychiatric condition. If the answer to this question is affirmative, the next query is whether the person, in question, has a different sexual makeup.\textsuperscript{79} Dr. Berlin criticized theories claiming that pedophilic behavior stems from issues of power and control or that it is performed by men who lack social skills.\textsuperscript{80} He opined that such theories do not explain the pedophile’s physiological sexual response and attributed attraction to prepubescent children. Dr. Berlin argued that someone could be a pedophile, and it may be

\begin{itemize}
\item that he then support legalizing sex between adults and children is just plain greedy.
\item You want too much out of this man. b4uact would lose all ability to influence anything if its goal was legalizing adult/child sex.
\end{itemize}

(last visited Feb. 29, 2012) see also, Cabinet Maker, He has to!, BOYCHAT http://www.boychat.org/ messages/1266031.htm (last visited Feb. 29, 2012).

75. Strickland Conference Notes, supra note 68, at 4-5.
76. Id. at 5.
77. Id.
78. Id.
79. Id.
80. Id. at 6.
difficult for them, because of those attractions to be in control of themselves, but this does not mean, he asserted, that such persons are “pathologically flawed, generally anti-social, or morally corrupt.”

Dr. Berlin’s next key point concerned the etiology or causes of pedophilia. He did not believe the cause of pedophilia was due to prior sexual abuse, parental neglect, or some sort of biological abnormality, although he conceded that such factors could predispose a person to pedophilia. In his view, it was perfectly fine, and by implication normal, for people to “experience attractions to young people.” The DSM-IV was wrong in confusing qualitative differentials with intensity differences. In other words, people differ in regard to behaviors they find erotically arousing, the kinds of partners found to be sexually attractive, the intensity of the sexual desire, and attitudes about their own sexual desires.

B. Dr. Reisman on Dr. Berlin’s Presentation

Dr. Berlin, as a pedophile apologist, was a consultant to the United States Catholic Bishops on how to deal with pedophilia until at least 1985. Dr. Berlin and his John Hopkins University mentor,
Dr. John Money, were the two foxes in the chicken coop, advising Catholic Bishops on how to protect their chickens from pedophile inflicted disease and even death. In a documented *Journal of Paedophilia* interview, Dr. Money called for an end to the age of consent, saying this is where we have to begin—to legalize sex with children of any age.\(^8\) Dr. Berlin’s claims that his methods cured or were successful in “managing” pedophiles were never established as true. Moreover, his pedophile “therapy” at Johns Hopkins was being conducted while his unincarcerated “patients” were raping children, crimes of which Dr. Berlin was aware and which he deliberately allowed to continue. Dr. Berlin protected the predators in his care while ignoring their acknowledged ongoing child victims.

On August 25, 2011, I discussed Dr. Berlin’s pedophile advocacy on FoxNews, “Controversy Over Push to Redefine Pedophilia.” I provided the broadcast with press stories from *The Baltimore Sun*, showing that in 1990 and 1992 Dr. Berlin refused to comply with the state law requiring him to report patients he believed were engaged in child sexual abuse. Instead, Dr. Berlin advised convicted predators to hire a lawyer who would refer them to him, in order to give Dr. Berlin and the abusers “attorney-client privilege.” The Maryland Attorney General deemed it illegal to give abusers the “attorney-client privilege”. These documents are in the Reisman Archive, Liberty University School of Law, and available upon request.\(^9\) I further reiterated Dr. Berlin’s promotion of pedophilia at the “Minor Attracted Person Conference,” on Canada’s *Sun News Network*.\(^9\)

Dr. Berlin’s presentation contributed sanction to this pedophile organization and its sexual dogma. All B4UAct conference attendees can receive six units of continuing education credits in social work and in psychology, courtesy of the Maryland Board of Social Work Examiners. A twelve-member board of professional social workers thus agreed to credential each B4UAct pedophile gathering as having authentic academic value. There is unacceptable misrepresentation reporting sex offenders to the civil authorities, although all major psychiatric and mental health organizations and professional associations have strongly supported mandatory reporting for decades.


\(^{9}\) Coverage On The Pedophile Lobby, YOUTUBE, http://www.youtube.com/watch?v=RkQ7SciK6rY.
inherent in such credentialing as it eventually legitimizes the child sex abuse canon. Official recognition carries with it the notion that attendees are sexuality experts—giving such special interest representatives undeserved authority as neutral, warranted, trustworthy educators in our institutions of higher learning, in our courts and in the court of public opinion.91

C. Dr. John Sadler, “Decriminalizing Mental Disorder Concepts—Pedophilia as an Example”

Dr. John Sadler was the next presenter.92 His presentation was entitled, “Decriminalizing Mental Disorder Concepts—Pedophilia as an Example.” He argued, “diagnostic criteria for mental disorders should not be based on concepts of vice since such concepts are subject to shifting social attitudes and doing so diverts mental-health professionals from their role as healers.”93 His stated thesis was that “we should not be defining mental illness in terms of wrongful thought or content.”94

Dr. Sadler’s general approach to research in psychiatry was presented as philosophical.95 He emphasized the conceptual rather than the scientific issues in the DSM-IV.96 Dr. Sadler made the distinction between the notion of “word” (name or sign given to a concept) and the idea of “concept” (idea given in thought).97 He said that “one of the important ways philosophy distinguishes between word and concept is that one concept can have two different words for it, and different concepts can have the same word used for them.”98

Dr. Sadler defined values as ideas or dispositions that are action guiding and susceptible to praise or blame, being either good or bad.

91. See the discussion of this event in Judith Reisman, “HAZMATS, Coming Attractions: Is Pedophilia the Next Sexual Perversion to Become Normalized?”, Winter 2011, SALVO 40-41.

92. Dr. John Sadler, M.D., serves as Professor of Medical Ethics and Psychiatry, UT Southwestern Medical Center, Dallas, TX, available at http://www.utsouthwestern.edu/fts/search.html?type=list&filter=name&letter=S.


94. Strickland Conference Notes, supra note 68, at 11.

95. Id. at 9.

96. Id.

97. Id.

98. Id.
but never neutral.\textsuperscript{99} He made the distinction between moral values (associated with rightful or wrongful thought and conduct—good, bad, evil, virtuous, etc.) and non-moral values (all the other kinds of philosophical values—aesthetic, practical, epistemic).\textsuperscript{100} Values are “culture bound, or as some people like to say socially constructed.”\textsuperscript{101}

They differ over periods in the sense that some things that are disapproved of in one historical era can be approved of in another historical era, thus there is nothing absolutely firm about them.\textsuperscript{102}

\textsuperscript{99.} Id.
\textsuperscript{100.} Id.
\textsuperscript{101.} Dr. Benjamin Kaufman, Clinical Professor of Psychiatry at The University of California School of Medicine, is critical of social construction theories such as used by Sadler here:

While social constructionists claim to be battling oppression and to have science on their side, once in control of a professional organization or committee, they have used their power to oppress those who disagree with them and have discarded any pretense to scientific objectivity. In the hands of social constructionists, professional organizations, their committees and publications, become vehicles for forwarding political objectives by influencing courts, legislatures, and public opinion. The public is led to believe that a scientific debate has taken place and that conclusions have been reached, when in fact nothing of the sort has transpired. What has occurred is the triumph of circular reasoning: statements decided on by political negotiation are used by activists as though these statements represent scientific fact.

\textsuperscript{102.} Strickland Conference Notes, \textit{supra} note 68, at 9-10. However basing an argument against vice laden diagnostic categories upon a notion of vice that is inherently relativistic presents problems, as Reisman later notes, particularly in regard to subject matter so sensitive as pedophilia and protection of children. If what is inherently “wrongful” in thought and act change throughout time, it is thus negotiable in a sense and child abuse along with many other evils can be legitimized. Pope Benedict XVI’s comments on the issue of relativism are enlightening. In understanding relativism as letting oneself be “tossed here and there, carried about by every wind of doctrine” he states this allows a “dictatorship of relativism that does not recognize anything as definitive and whose ultimate goal consists solely of one’s own ego and desires”. In this way “in essential things we no longer have a common view” as “each one can and should decide as he can” and thus “we lose the ethical foundations of our common life.” Dr. Sadler’s philosophical underpinnings are at best suspect in this regard and paint a picture not entirely accurate. Societies perception of right and wrong may change, some values may seem to endure longer than others, but historical experience demands recognition of the truth that there are values that not only endure, but endure because they are rooted in the very dignity and nature of the human person and thus are unchanging and objective. Thus inherently disordered acts can never become ordered nor child sexual abuse inherently changed into normative or ordered behaviour.


Some values tend to be more prevalent historically, such as murder and theft being wrong and love being good.\textsuperscript{103}

Considering vice, Dr. Sadler argued that “it is one word with many different concepts associated with it.”\textsuperscript{104} Vice is wrongful (morally) criminal thought or conduct, and thus something that is vice laden requires wrongful criminal content in its meaning.\textsuperscript{105} This content does not have to be permanently wrongful, as cultural notions of wrongfulness change, and therefore it is only “logically wrongful.”\textsuperscript{106} Some DSM diagnostic criteria are vice laden and therefore, are, in his view, undesirable moral evaluations.\textsuperscript{107}

Dr. Sadler argued against vice laden criteria and concepts in medicine and psychiatry.\textsuperscript{108} Since the Enlightenment, Anglo-American law has recognized a distinction between wrongful acts and wrongful thoughts, with wrongful thoughts not subject to arrest or punishment.\textsuperscript{109} Yet “large portions of the Anglo-American culture recognize wrongful thoughts as morally wrong or sinful.”\textsuperscript{110} Vice laden diagnostic criteria bring in “this cultural baggage of wrongfulness.”\textsuperscript{111} Many Americans consider fantasies of adult child sexual content as morally wrong. “Even the cognitive criteria for pedophilic or pedohebiphilic disorders constitute wrongfulness, and pedophilia is still vice laden.”\textsuperscript{112}

There are four problems with having vice laden concepts in the DSM according to Dr. Sadler.\textsuperscript{113} First, in medicine, typical diseases and injuries are non-moral and thus, vice laden categories are confined to mental disorders and not medical disorders or injuries, with mental illness subject to shifting socio-moral attitudes.\textsuperscript{114} Second, vice laden diagnosis transform mental health clinicians into regulators of moral deviance, more akin to police than moral healers.\textsuperscript{115} Third, vice laden diagnosis undermine psychiatry’s claims

\textsuperscript{103.} Strickland Conference Notes, supra note 68, at 10.
\textsuperscript{104.} Id.
\textsuperscript{105.} Id.
\textsuperscript{106.} Id.
\textsuperscript{107.} Id.
\textsuperscript{108.} Id.
\textsuperscript{109.} Id.
\textsuperscript{110.} Id.
\textsuperscript{111.} Id.
\textsuperscript{112.} Id.
\textsuperscript{113.} Id. at 11.
\textsuperscript{114.} Id.
\textsuperscript{115.} Id.
that mental illness is just like physical illness.\textsuperscript{116} Fourth, vice laden diagnosis perpetuate stigma for all mental illnesses and also introduce confusion into mental health and justice systems.\textsuperscript{117}

As a solution, Dr. Sadler proposed that scientists look for underlying dysfunctions or abnormalities that are not moral judgments.\textsuperscript{118} He argued that there are two options to deal with the issue of pedophilia diagnostic criteria.\textsuperscript{119} The first is that the concept of pedophilia or pedohebophilia could be rehabilitated scientifically by looking for non-moral validators of the conditions that make the evaluation of the condition non-moral: what is it about individuals with pedophilia that make them ill rather than involved in wrongful thought or conduct?\textsuperscript{120} Regarding this first option, he noted that it is entirely possible that there is nothing else there. The condition of intense recurrent fantasies is left and there are no other symptoms associated with it.\textsuperscript{121} The second option is that there are no non-moral problems associated with the condition and therefore removal of pedophilia as a diagnostic category should be considered.\textsuperscript{122}

D. Dr. Reisman on Dr. Sadler’s Presentation

I view Dr. Sadler’s diatribes as confused, disoriented, and disingenuous. His view that “vice” is subjective has no basis in fact or science. Vice is easily identified by its concrete results such as sexually transmitted diseases, mental despair, depression, suicidal ideation, as well as sexual criminal activity, from sexual harassment to sexual seduction and even rape and sexualized murder of vulnerable populations. These vulnerable populations often include underaged, undeveloped, distressed and often-neglected children. Whether “diagnostic criteria for mental disorders” shifts with the moral degradation of a society does not alter the scientifically valid concepts of “vice” and “sin” as undermining the health and welfare of children and societies. As to diverting “mental-health professionals from their role as healers,” their “healing” is subject to shifting politically correct theories du jour—with pedophile power

\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id. at 12.
\textsuperscript{119} Id. at 11.
\textsuperscript{120} Id.
\textsuperscript{121} Id. at 11.
\textsuperscript{122} Id. at 11-12.
increasingly apparent in the academic, “mental health” and “healing” community.

E. Dr. Nancy Nyquist Potter, “Is Anybody Out There?”: Testimony of Minor-Attracted Persons and Hearing Versus Listening to Their Voices

The next presenter was Dr. Nancy Potter. She “analyzed the concept of ‘uptake’—that is, what she called genuine listening—and argued that by giving uptake to minor-attracted people, those revising the DSM would strengthen DSM-V and contribute to more ethical treatment, but that minor-attracted people must exhibit accuracy and sincerity in their testimony.” Her presentation on virtue was a counterpart to Dr. Sadler’s presentation on vice.

She explained that there is a widespread view that self-reporting is particularly unreliable in pedophilia. Sex offenders are not rewarded for truth telling regarding pedophilic impulses. Her presentation was “undergirded by the idea that virtues are tied to scientific knowledge (epistemic—knowledge as constructed in a particular time period as used in the DSM).” The DSM relies on

123. Dr. Nancy Potter, Ph.D., serves as Professor of Philosophy, University of Louisville, Louisville, KY and also as President of the Association for the Advancement of Philosophy and Psychiatry available at http://louisville.edu/faculty/nlpott01/bio.html.


125. It is interesting to view Potter’s presentation through the lens of a classical understanding of virtue:

According to its etymology the word virtue (Latin virtus) signifies manliness or courage. “Appelata est enim a viro virtus: vii autem propriam maxime est fortitude” (‘The term virtue is from the word that signifies man; a man’s chief quality is fortitude’; Cicero, ‘Tuscul.’, I, xi, 18). Taken in its widest sense virtue means the excellence of perfection of a thing, just as vice, its contrary, denotes a defect or absence of perfection due to a thing. In its strictest meaning, however, as used by moral philosophers and theologians, it signifies a habit superadded to a faculty of the soul, disposing it to elicit with readiness acts conformable to our rational nature.


127. Id.

128. Id.

129. Id. Potter’s analysis here illustrates a level of superficiality that was apparent in the thought presented in the conference as a whole. Virtues are more profoundly tied to the inherent nature and dignity of the human person. In this sense St. Augustine states, “Virtue is a good
evidence, so it is crucial to determine what counts as appropriate evidence.\textsuperscript{130}

One kind of evidence about pedophilia comes from the testimony of pedophiles.\textsuperscript{131} She argued that it is bad science to not listen to this testimony and that the DSM-V classification will be scientifically inadequate if the practice of neglecting the voices of pedophiles continues.\textsuperscript{132}

Dr. Potter argued that “scientific legitimacy relies on a philosophical model of knowledge that is rooted in an outdated positivism.”\textsuperscript{133} “[W]hat counts as knowledge in mainstream epistemology, rules out the kind of knowing that comes from interpersonal and intersubjective encounters.”\textsuperscript{134} “[P]sychiatry uses an epistemological model that entails that knowledge of other persons, including the matrix of desiring, acting, willing, doesn’t count as genuine knowledge because it cannot be evaluated with traditional methods.”\textsuperscript{135} A model of bad science is: “this matrix of abstract concepts as it plays itself out in the norms of eroticism, sexuality, and identity is essential to genuinely understand persons attracted to habit consonant with our nature.” Hervada speaks well to the consequences of adapting a superficial notion of virtue:

Lo que llamamos ley natural no es una doctrina, sino un hecho de experiencia...Esta ley es natural, porque no procede de factores culturales, sino de la estructura psicológico-moral del ser humano. Es una operación natural de nuestra inteligencia. La experiencia personal de cada uno muestra que así es; de lo contrario, si no fuese una operación natural, si no hubiese naturalmente en nuestra razón esta estructura mental que lleva a esos juicios deonticos, no existiría la dislocaión entre lo que comprendemos que debe hacerse y no queremos hacer, o que debe evitarse y queremos hacer, porque la razón se limitaría a enunciar lo único que captaría, que sería la preferencia de nuestra voluntad. ¿Cómo iba producir la razón el juicio <<debe hacerse a>>, que no es lo que prefiere la voluntad del sujeto, si no existiese ninguna exigencia objetiva? Tal juicio no existiría, y en caso de existir, sería una enfermedad mental. El hombre normal sería amoral y se limitaría a juicios <<técnicos>> de conveniencia, interés y utilidad.


\textsuperscript{130} Id. at 14.

\textsuperscript{131} Id.

\textsuperscript{132} Id.

\textsuperscript{133} Id.

\textsuperscript{134} Id.

\textsuperscript{135} Id. at 14.
minors.” Knowledge in this respect from pedophiles can “illuminate and perhaps challenge what counts as normative desire, and challenge what the warrant is for designating certain desires as normal or natural.”

Dr. Potter suggested turning to the “communicative dynamic” as a solution to these problems. The most immediate and basic point of “telling” is to convey knowledge which places a responsibility on the listener to treat the speaker as a potential knower contributing to a body of knowledge. The idea of “uptake” occurs “when the second party listens to my speech act, reorientates herself to me, and the relation between us comes off with an appropriate response.” “It is important for clinicians to understand the concept of uptake because reliance upon conventions of one’s own culture, place, and time may skew a listener’s ability to give uptake to the communicator.” She argued that as our listening can be unjust and epistemically wrongheaded, the communicative struggle is bound up with being an ethical clinician and thus giving uptake is a virtue.

She argued that there is a “deficiency of giving ‘uptake’ to minor attracted persons.” “[L]isteners must develop what is called ‘critical consciousness,’ what she defined as ‘a critical stance toward our own ideas, values, practices and institutions . . . .’” The idea is that

136. Id. at 15.
137. Id. This type of analysis is precisely what John Paul II warned against in *Fides et RATIO.*

It should never be forgotten that the neglect of being inevitably leads to losing touch with objective truth and therefore with the very ground of human dignity…Once the truth is denied to human beings, it is pure illusion to try to set them free. Truth and freedom either go together hand in hand or together they perish in misery.


138. Strickland Conference Notes, supra note 68, at 15.
139. Id.
140. Id.
141. Id.
142. Id.
143. Id.
144. Id., see also John J. Coughlin, *Law and Theology: Reflections on What It Means to Be Human From a Franciscan Perspective,* 74 St. John’s L. Rev. 609, 614-615 (2000) (Coughlin’s analysis is illustrative here:)

[T]here is [something] apparent . . . a consciousness of the incomparable newness of the present situation, of a change in the world and mankind that cannot be measured by the usual norms of historical change as they have always existed but rather signifies an epochal transformation for which there is no adequate comparison. This
culturally inflected perspectives, including ideas about morality, sexual desire, and about willing and acting affect understanding and “the first step to change our faulty thinking is to subject it to disciplined analysis.”

Dr. Potter argued that pedophiles “should be listened to and not just heard.”

F. Dr. Reisman on Dr. Potter’s Presentation

Dr. Potter’s “uptake” obsession and her “deficiency of giving ‘uptake’” to what she gratuitously calls “minor attracted persons” is just another example of rationalization of dysfunction, disordered, and criminally vicious behavior by pedophiles. We need not focus on “uptake,” but we should, of course, focus on the commonality of early sexual abuse and seduction of children who will then, themselves, too often spend a lifetime justifying their adult lust for children, commonly a lust grounded in a similar age of their own early abuse. There was little or no attention to such an abusive etymology at this conference by any of the speakers, or by Dr. Potter’s uptake fixation. Dr. Potter’s excuse making is visible in her pseudo intellectual comment that a “matrix of abstract concepts as it plays itself out in the norms of eroticism, sexuality, and identity is essential to genuinely understand persons attracted to minors.”

No, we need to tell the truth about early sexual abuse of children as quite commonly precipitating pedophilia and all other forms of “vice” and “sin” and subsequent sexual disorder, crime, and unhealthy conduct.

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146. Id.
147. Id. at 15.
G. Lisa J. Cohen, “Identifying the Psychobiological Correlates of Pedophilic Desire and Behavior: How Can We Generalize Our Knowledge Beyond Forensic Samples?”

Dr. Lisa Cohen148 presented data on the psychological correlates of pedophilia based on forensic samples, and argued that use of non-forensic samples would help researchers separate factors related to feelings of attraction from those related to behavior, and support the development of improved diagnostic systems.149 She argued that there is “tremendous variability” in pedophiles and “comprehensive research is necessary to understand the range of psychological traits associated with pedophilic desire.”150 She explained that “pedophilia as a diagnosis is one of the only psychiatric diagnosis which is defined by the desire to perform acts which are illegal and that are deemed destructive to children,” with “both sexual desire and actual behavior characterizing pedophilia.”151 Her “point being that the desire and the actual behavior do not always co-occur.”152 “Pedophilia research is in pretty bad shape,” as there has been forensic research, but not a lot of clinical research.153 “[T]hus there is little known about the development and underlying mechanisms of pedophilia.”154 Inherent problems in pedophilia research include the legal risks of self-disclosure due to the current

148. Dr. Lisa J. Cohen, Ph.D., serves as Director of Research for Psychology and Psychiatry, Professor of Clinical Psychiatry and Professor of Psychiatry and Behavioral Sciences at Beth Israel Medical Center, Albert Einstein College of Medicine, New York, NY, available at http://www.einstein.yu.edu/home/faculty/profile.asp?id=7430.
150. Strickland Conference Notes, supra note 68, at 20, see also Benjamin Kaufman, Why Narth? The American Psychiatric Association’s Destructive and Blind Pursuit of Political Correctness, 14 REGENT U. L. REV. 423, 426 (2002). Researcher’s should keep in mind the following admonition from Kaufman:

The more passionately researchers believe in their theories, the more carefully they must design the studies they undertake to prove them. Researchers should minimize personal bias, avoid prejudging the evidence, present findings clearly and honestly, never conceal data that conflicts with their hypotheses, and draw conclusions based on the facts before them. However, when research is viewed primarily as ammunition in a political battle, objective validity ceases to be a concern.

151. Strickland Conference Notes, supra note 68, at 18.
152. Id.
153. Id.
154. Id.
illegality of pedophilia. This “leads to biases in research as the research contains more data on those already in the criminal justice system and individuals already in the criminal justice system may be quite different from those who are not in it.”

She argued that comprehensive and representative research is critical. Dr. Cohen gave an example of the “extreme range” of the present state of research. She referenced a “completely anonymous” email with ‘no identifying data’ that she received from a person claiming to be a pedophile and member of B4U-Act. This person, who claimed he had never acted on his attractions, was contrasted with an HIV positive and substance abusing convicted felon who sexually abused his daughter.

Regarding the DSM, she noted that the DSM-IV-TR has a diagnosis for pedophilia (excluding hebophilia) while the proposed revision of the DSM-V has the diagnosis for pedohebophilia. She observed that in the differing versions there was no distinction made between desire and behavior. She then proposed that the subgrouping of “true” (persistent, not dependent on context) versus “opportunistic” pedophilia (situational) be added to the DSM, as this assists in the distinction of desire versus behavior.

Dr. Cohen then discussed her own research and the “findings supported increased prevalence of CSA (Childhood Sexual Abuse) along with elevated propensity towards cognitive distortions and psychopathy in individuals with pedophilia vs. healthy controls.”

155. Id.
156. Id.
157. Id. (That Psychology needs better and more comprehensive research to understand pedophilic desire is an incomplete assessment.) see also Linda Ames Nicolosi, Should These Conditions Be Normalized, NARTH (Joseph Nicolosi of the National Association for Research and Therapy of Homosexuality (NARTH) comments in this regard that what is needed above all is not more research but a more accurate worldview, so as to agree on those things that genuinely enhance human dignity. Nicolosi argues that “it’s a measure of how low the psychiatric establishment has sunk, that it would even debate the idea that pedophilia, transvestism, and sado-masochism could ever be expressions of true human flourishing”. Thus Dr. Cohen’s call for more research should go hand in hand with the authentic exploration of what a true and genuine human anthropology should look like.) available at http://www.narth.com/docs/symposium.html (last visited Feb. 29, 2012).
158. Strickland Conference Notes, supra note 68, at 19.
159. Id.
160. Id.
161. Id.
In her reviewed literature there is “robust support” for the abused abuser theory (the notion that history of sexual abuse may predispose toward pedophilic tendencies).\textsuperscript{163} Childhood sexual abuse is a risk factor for many psychiatric problems and though a non-specific risk factor for most, it is a specific risk factor for developing pedophilic tendencies in adulthood.\textsuperscript{164} A tremendous amount of rationalization, minimalization, and normalization of pedophilic behavior is present.\textsuperscript{165}

During a brief question and answer period that followed her presentation, one conference participant inquired as to the role adult or child pornography plays in pedophilic behavior.\textsuperscript{166} She responded that though she did not know of research off hand, she has been told by clinicians that with the increase of internet pornography there has been an increase in pedophilic behavior, that “there has been an increase in people acting on the urges that would not have acted before.”\textsuperscript{167} Another participant in disputing Dr. Cohen’s response, linking increased pedophilic behavior to viewing child pornography, stated “[i]t’s like blaming adultery on facebook.”\textsuperscript{168} Indeed the response was enlightening to all who were present.

H. Dr. Reisman on Dr. Cohen’s Presentation

Everyone present should be fully aware of early sexual abuse, and now exposure to adult and juvenile pornography, as precipitating pedophilic lusts. It is settled science, except among those fighting to maintain sexual access to children by adults who have never reconciled their lusts as precipitated by their own abuse. The idea that “pedophilia research is in pretty bad shape” is simply not true. It is historically and cross culturally validated by hard data as well as consistently validated by evidentiary reports by victims in recovery, as well as by criminals arrested for crimes against children, and statistics compiled by judicial agents of governments. Dr. Cohen’s statement “there is little known about the development and underlying mechanisms of pedophilia” reveals either blatant ignorance or special interests that are masked as “objective” analysis.

\textsuperscript{163} Strickland Conference Notes, supra note 68, at 19-20.
\textsuperscript{164} \textit{Id.}
\textsuperscript{165} \textit{Id.} at 20.
\textsuperscript{166} \textit{Id.} n.110.
\textsuperscript{167} \textit{Id.}
\textsuperscript{168} \textit{Id.}
I. Dr. Renee Sorrentino, "The Forensic Implications of the DSM-V’s Pedohebephilia"

Dr. Renee Sorrentino presented on “The Forensic Implications of the DSM-V’s Pedohebephilia.”\textsuperscript{169} She “discussed legal, ethical, and medical consequences of the proposed DSM-V entry for pedohebephilia.”\textsuperscript{170} She argued that there would be negative consequences if the present proposal is included.

She stated that forensic psychiatry is involved in the area of sexual disorders because of two trends.\textsuperscript{171} The first trend is that of the legal civil commitments of sexually dangerous persons/sexually violent predators.\textsuperscript{172} The second trend relates to federal and state enforcement regarding child pornography, the idea that targeting individuals who view such pornography will go on to commit hands on offenses against children, and the psychiatrists’ role in evaluation in these cases.\textsuperscript{173}

She discussed two landmark legal cases.\textsuperscript{174} The first case is \textit{Kansas v. Hendricks},\textsuperscript{175} which was the first United States Supreme Court case identifying the concept that an individual could be civilly committed

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\item[\textsuperscript{169}] Dr. Renee Sorrentino M.D. serves as Clinical Instructor in Psychiatry at Harvard Medical School, Cambridge, MA and as the Medical Director, Institute for Sexual Wellness, Quincy, MA available at http://www.instituteforsexualwellness.org/about/. (last visited April 4, 2012).
\item[\textsuperscript{171}] Strickland Conference Notes, supra note 68, at 21.
\item[\textsuperscript{172}] Id. at 21.
\item[\textsuperscript{173}] Id. at 21-22.
\item[\textsuperscript{174}] Id. at 22.
\item[\textsuperscript{175}] A salient issue in the case is the status of pedophilia as a mental abnormality, thus highlighting the strategic importance of the DSM. After incarceration for a long history of child sexual molestation, the State of Kansas sought the commitment of Leroy Hendricks under its Sexually Violent Predator Act which provided for the commitment of persons likely to engage in predatory acts of sexual violence brought on by mental abnormality or personality disorders. Hendricks testified that he still suffered from pedophilia and is likely to molest children again and thus became a candidate for civil commitment under the Act. On appeal from a court ordered commitment, the Kansas Supreme Court invalidated the Act as unconstitutional in not satisfying substantive due process requirements. Ultimately the United States Supreme Court reversed the judgment of the Supreme Court of Kansas. The court held that the Act satisfied due process requirements as it required a finding of dangerousness either to one’s self or to others as a prerequisite to involuntary confinement. Further commitment proceedings were initiated only when a person had been convicted of or charged with a sexually violent offense and suffered from a mental abnormality or personality disorder that made the person likely to engage in the predatory acts of sexual violence. See Kansas v. Hendricks, 521 U.S. 346 (U.S. 1997).}
\end{enumerate}
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if deemed a sexually dangerous person. The second, *Kansas v. Crane* which held that an individual must have a mental abnormality and difficulty controlling sexual urges (not necessarily irresistible) in these situations of civil commitment.

Regarding the DSM-V, the pedohebophillia criteria of “repeated use of, and greater arousal from, pornography depicting prepubescent or pubescent children than from pornography depicting physically mature persons, for a period of six months or longer” is an example of the DSM defining mental illness in terms of criminal behavior. There is no terminology for pedohebephilia or hebephilia in the DSM-IV-TR and thus falls under the “not otherwise specified” category of paraphillic disorder in the DSM-IV-TR. She encouraged consideration of the consequences of inclusion of pedohebephilia terminology in the DSM-V with regard to both civil and criminal areas, treatments, and civil commitments. Dr. Sorrentino argued, inclusion will likely lead to increased civil commitments.

She presented legal cases having to do with the diagnosis of hebephilia and the “not otherwise specified” category of the DSM-
IV. The case of *US v. Carta* discussed whether hebephilia qualified as a mental disorder qualifying a person to be considered as a Sexually Dangerous Person. She spoke of *US v. Shields* and *US v. Abregana* and noted two relevant legal arguments: first, that there is not enough data to establish hebephilia as a major mental disorder and second, that using the “not otherwise specified” DSM-IV-TR category does not satisfy a level of admissibility acceptable to courts. The case of *State v. Lamure* was important regarding third party testimony and *State v. Jeffrey Dahmer* was the first time

183. Id.

184. A case highlighting many important issues in the DSM revision, particularly the role of the DSM and hebephilia therein. In *Carta*, the United States sought to civilly commit Todd Carta as a sexually dangerous person under the Adam Walsh Child Protection and Safety Act of 2006. The United States District Court for the District of Massachusetts has most recently found on July 7, 2011 that the government has established by clear and convincing evidence that Carta is a sexually dangerous person, after he was previously found not to be a sexually dangerous person due to testimony from a government expert regarding the Hebephilia diagnosis among other things. *United States v. Carta*, No.07-102064, 2011 U.S. Dist. LEXIS 73007 at 1-7 (D. Mass. July 7, 2011).


186. Jeffrey Shields was convicted in 2002 by a federal court for possession of child pornography. In 2006, a day before his scheduled release from custody, the Bureau of Prisons filed a petition in the District Court for the District of Massachusetts to have Shields civilly committed as a “sexually dangerous person.” After a bench trial with an advisory jury, during which the court heard evidence of Shields’s history of child molestation as well as opinions from several clinical psychologists on the risk that Shields would commit future offenses, the court ordered him committed. On appeal, the judgment was affirmed. *United States v. Shields*, No. 07-12064, 2011 U.S. App. LEXIS 16540, 1-2 (1st Cir. Mass. Aug. 11, 2011).

187. The Court found here after considering all of the testimony and evidence, including the expert reports and their conflicting diagnosis and prognosis that it was not adequately proven that Abregana would have serious difficulty in refraining from committing acts of child molestation. Regarding Abregana’s history of continuous illegal conduct this conclusion raises many questions. See *United States v. Abregana*, 574 F. Supp. 2d 1145, 1147-1150 (D. Haw. 2008).

188. Strickland Conference Notes, supra note 68, at 24-25.

189. Lamure appealed his conviction of five counts of criminal sexual contact of a minor, two counts of criminal sexual penetration, and one count of extortion, all involving one adolescent victim. The trial court allowed testimony from defendant’s son that defendant also had coerced sexual contact with him. Lamure admitted having a sexual relationship with an adolescent male victim but claimed that the relationship was consensual. The court on appeal found that testimony from Lamure’s son about multiple unwanted sexual contacts between Lamure and the son was relevant to whether the relationship between Lamure and the victim was coerced or consensual as they related to motive and intent. The court affirmed Lamure’s convictions for criminal sexual contact of a minor, criminal sexual penetration, and extortion. *State v. Lamure*, 115 N.M. 61 (N.M. Ct. App. 1992).

paraphilias were suggested as being mental disorders that rose to the level of interfering with volitional capacity, thus implicating the defense of not guilty by reason of insanity.\textsuperscript{191} She argued that if pedohebephilia is included in the DSM-V, hebephilia will most likely be used for civil commitment for Sexually Dangerous Persons (meaning that in order for the individual to be released they must be treated and it must be shown that they are no longer dangerous).\textsuperscript{192} She indicated this could take away from other potentially more dangerous disorders.\textsuperscript{193}

J. Dr. Reisman on Dr. Sorrentino’s Presentation

It should be noted that Jeffrey Dahmer, the homosexual mass murderer of boys and men, was defended by the B4UAct keynote, Dr. Fred Berlin. Dr. Berlin’s claim that Dahmer was afflicted by a lack of volitional capacity was rejected by the jury.\textsuperscript{194}

Regarding Dr. Sorrentino, any lessening of laws and public policies toward those who seek sex with children, or tweens, or teens, or toddlers or infants or youth, or adolescents or anyone else who is a non-adult, is harmful to all children since the law in these United States still views adult sex with anyone under age eighteen as child sexual abuse. Current data identifying the rational brain as underdeveloped until age twenty one to twenty five more fully justifies strong public and legal censure and punishment as completely appropriate and necessary. Moreover, there is simply no

\textsuperscript{191} Strickland Conference Notes, \textit{supra} note 68, at 25.
\textsuperscript{192} \textit{Id}.
\textsuperscript{193} \textit{Id}.
\textsuperscript{194} “DEFENSE WITNESSES Dr. Fred Berlin - Director of the Sexual Disorders Clinic at John Hopkins University; Maudsley Hospital in London; DSM-III-R subcommittee for the definition of sexual disorders Dr. Berlin testified that Jeff Dahmer was unable to conform his conduct at the time that he committed the crimes because he was suffering from Paraphilia, or more specifically, Necrophilia, a mental disease. He described Dahmer’s affliction as being a ‘cancer of the mind’, The prosecution impaired Berlin’s integrity by confirming a total of fifteen minutes on his “family history” as well as “Half an hour” on his personal history, etc. See, http://www.criminalprofiling.com/Psychiatric-Testimony-of-Jeffrey-Dahmer_s115.html, \textit{last visited April 8, 2012}. \hfill 297
justification for any media materials to be permissible that sexually exploit the sexual arousal states, the erotic reward circuitry of the viewers. We are well behind the learning curve now for public exposure as causal in mirroring and mimicking the erotic scenes and language ignorantly and irresponsibly mass distributed to clearly vulnerable populations. The “individuals who view” any and all pornography are prone at some time to committing “hands on offenses against children” or others and that such offenders may even include “the psychiatrists” who are evaluating these cases, is an increasingly troubling fallout of widespread pornographic access. Certainly the influence of world renowned Johns Hopkins professor, Dr. John Money, identified above as calling, in Paidika, The Journal of Paedophilia for an end to any age of consent laws, stands as a beacon to alert the observant, regarding the vulnerability of even well respected mental health authorities.

K. Andrew Hinderliter, “Can the Medicalization of Sexual Deviance ever be Therapeutic?”

Andrew Hinderliter presented next upon, “Can the Medicalization of Sexual Deviance ever be Therapeutic?” He “argued that the medicalization of social deviance blurs the boundary between the helping professions and the criminal justice system, creating the potential for psychiatry to become a means of controlling undesirables, rather than an agent of healing.” He called for the abandonment of the pedophilia diagnosis all together.

His paper made two assumptions: important quality mental health care should be available for “minor attracted persons” and the primary aim of mental health professionals should be the well-being of patients/clients because a therapist is not a probation officer.

197. Strickland Conference Notes, supra note 68, at 27 (The claim that the primary aim of mental health professionals should be the well being of patients/clients is not realistic. Of course the well being of patients is of great importance. However, as there is no known cure for pedophilia and management of sexually abusive behavior is a lifelong task, this necessitates particular caution. Thus Ellen Mugmon, as member of the Maryland State Council on Child Abuse and Neglect, stated that prominent among abuse guidelines and practice standards in place is the admonition that “community safety takes precedence over other considerations.”.)
Medicalization of sexual deviance can never be therapeutic due to “civil commitment issues” as “being honest about their [“minor attracted persons”] attractions can cause someone to be locked up for the rest of their life.”

Andrew Hinderliter argued for the abandonment of the pedophilia diagnosis. He argued that “the state of research regarding pedophiles as unrepresentative of pedophiles as a whole and considered the recruitment of individuals for research in the current circumstances as difficult.” Andrew Hinderliter argued that pressure against depathologization of pedophilia comes from people who consider minor attracted persons as “collateral damage.”

L. Dr. Reisman on Andrew Hinderliter’s Presentation

We will need much less mental health therapy if we cut back to the pre-1950 forms of mass media—when society had significantly less sex crimes in general and absolutely less sexual abuse of children. Pre-1948 when seduction was still a crime in most states and a felony in California, we had minimal need for therapy for pedophiles. There were fewer child sex crimes as well as fewer associated sexually transmitted diseases, single mothers, abortions, and other such problems. My books on Alfred Kinsey document the history of these crimes over time and of the role of psychology and “human sexuality” in bringing about the sexual anarchy that now dominates the social work profession as well as all mental health professions. So long as we continue in denial, to train “mental health” professionals...
with bogus and even criminally harmful data, we will continue to suffer the national consequences in the criminal justice system, psychiatry, and from all other “healing” professions.

M. Jacob Breslow, Sexual Alignment: Critiquing Sexual Orientation, The Pedophile, and the DSM V”

Jacob Breslow next presented on “Sexual Alignment: Critiquing Sexual Orientation, The Pedophile, and the DSM V.” He “challenged assumptions about minors and sexuality which currently underlie policymaking and the DSM.” He advocated for a “rethinking” of children as sexual partners.

Jacob Breslow felt “required to begin with a heuristic,” which allowed him to “enter into the Diagnostic and Statistical Manual through a path that while engaging with the text sort of refuses to maintain its premise.” Jacob Breslow then felt “the need to circumvent the framework of the DSM because” he is “deeply concerned” with “how the entire conversation on pedohebophilia has been constructed so far.” He argued “the way we come to understand pedohebophilia is one example, perhaps a hyperbolic or hypervisible example, by which we must rethink sexual as well as interpersonal becoming.”

He discussed the heuristic of shoes so as to “think differently about our shoes.” He “wanted to work through the phenomenological questions” and explained “phenomenology asks of us to take our objects that we see as familiar and approach them as if they were unfamiliar.” This “may mean attending to our objects


204. See Strickland Conference Notes, supra note 68, at 29.

205. Id. at 30.

206. Id.

207. Id.

208. Id.

209. Id. A more authentic phenomenological approach is that offered by John Paul II. His phenomenological personalism is based on the idea that human beings determine themselves through self possession and governance. This self-determination presupposes experiences and feelings in the human psyche, but these feelings, including and especially those of sexuality, must be integrated into acts of self-determination for an authentically human experience. A key
physically and spatially.” He analogized asking a shoe if it wants to be worn to asking a child if he or she wants to have sex, stating that the manner in which it is asked “must not require an answer, or again at least not one which is conventionally intelligible or audible.”

Jacob Breslow argued that just as the desire to and act of reaching sexual climax upon a shoe required a rethinking of the shoe and how it comes into being, so does the desire to and the act of reaching sexual climax upon or with a child require a rethinking of both the child and of the person for whom the child is a sexual fantasy or partner.

He argued “we must ask ourselves as producers of this knowledge on pedohebephilia and this diagnosis to come out of...
the familiar spaces of our consciousness and be critically challenged.” He clarified “what this conference has generally been trying to get us to do, is to see that these things are not black and white but various moments of grey, various shades.”

N. Dr. Reisman on Jacob Breslow’s Presentation

Jacob Breslow’s bogus, arrogant and pathetic “heuristic” simply identified the poor man as yet another victim of Alfred Kinsey’s sexual anarchy, who instead of trying to help others recover from this nonheuristic reality, real crime, real harm, real desecration—seeks instead to recruit more victims! At some point society will have to understand that we have taken a very wrong path, we have been conned, lied to, and violated by those who have sought to perpetrate their own despair unto the generations. This is not a “heuristic” observation but a very real one, reflected in abortions, rapes, sexual diseases, divorces, murders, and broken and suffering people. It was not broken and we should not have tried to fix it.

O. Dr. Richard Kramer, “The DSM and Stigma”

The final presentation of the day was by Dr. Richard Kramer. He was the only speaker officially representing the views of B4U-Act at the symposium. He “analyzed sources of stigma in the DSM, presented survey data regarding minor attracted persons’ feelings of stigma, and provided recommendations for revising the DSM to reduce stigma.” He argued for a radical change in the

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213. Id.
214. Id.
216. The news release concerning the August 17th symposium on the B4U-ACT website states: “Richard Kramer (the only speaker representing B4U-ACT), analyzed sources of stigma in the DSM, presented survey data regarding MAPs’ feelings of stigma, and provided recommendations for revising the DSM to reduce stigma.” See B4U-Act Holds Scientific Symposium on Pedophilia and the DSM (Aug. 17, 2011), online at http://b4uact.org/news/20110817.htm. Various references made to this during the symposium as well.
conception of pedophiles, though he conceded that research data used in his presentation may not have been sound.\footnote{218}

He argued stigmatization of minor attracted persons in the DSM prevents people from getting help when they need it and inhibits people from living fulfilling lives.\footnote{219} He stated that the DSM is important as it is the only place in the mental health literature where pedophiles are recognized, with the definition of pedophilia being in the DSM.\footnote{220}

Considering research on pedophiles, he looks for two qualities: that non-forensic populations are being studied and that “there are not necessarily the preconceptions that forensic literature seems to have.”\footnote{221} He argued there may be many similarities between the attraction to minors and the attraction to adults in terms of non-sexual feelings that go along with them, feelings of emotional attraction, feelings of being in love, and feelings of caring, just like a person who is attracted to adults cares about the adult they are in love with.\footnote{222} He further argued “some of the qualities that Minor Attracted People find attractive in adolescents or children are often similar to the qualities that adults find, that people who are attracted to adults find attractive in other adults.”\footnote{223}

\footnote{218. Strickland Conference Notes, \textit{supra} note 68, at 36 (He conceded regarding his research data that “it’s the best that you could do, is to do an online anonymous survey and you trust that people are being honest, and there is probably going to be a few dishonest answers.”).}

Thankfully, groups are taking steps to monitor “science” such as this. As Benjamin Kaufman recalls:

NARTH has taken an active role in exposing the studies and articles it views as dangerous or deficient. A 1998 letter co-authored by NARTH board member A. Dean Byrd criticizes the APA for publishing an article by Rind, Tromovitch, and Bauserman entitled “A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples” in its \textit{Psychological Bulletin} on the grounds that the article distorts the literature on sexual child abuse and is a veiled attempt to decriminalize pedophilia. The issue was brought to the attention of radio talk-show host Dr. Laura Schlessinger. It was further revealed that Bauserman had written articles for \textit{Paidika}, \textit{The Journal of Pedophilia} and had defended unethical research on boys who were being sexually abused, something the APA should have been aware of before publication.


\footnote{219. Strickland Conference Notes, \textit{supra} note 68, at 34.}
\footnote{220. \textit{Id.}}
\footnote{221. \textit{Id.}}
\footnote{222. \textit{Id.} at 35.}
\footnote{223. \textit{Id.} The statement was:}
He presented research from an online survey conducted by B4U-Act last spring having almost two hundred respondents. Some respondents had considered suicide in their lives, difficulty in speaking of the issue, and frustration with the present state of mental health services available. He essentially portrayed pedophiles as victims.

Dr. Kramer argued that “the DSM gives the impression that all or most pedophiles engage in sexual acts with children and that violence or aggression is heightened among people who are attracted to minors.” The DSM has the implicit assumption that the motives of pedophiles are always malicious “rather than the possibility that the non forensic research has shown that they may actually care about children in the same way that people attracted to adults care about the adult they are attracted to.” He argued that the overall impression the DSM gives is that pedophiles are defined as criminals and that the message given is that the mental health system is adversarial rather than supportive. He then presented an online survey by B4U-Act, which, concluded that a vast majority of pedophiles felt that the DSM had inaccurate information, did not encourage focus on their psychological well being, contributed to adversarial relationships with the therapist, and encouraged unethical treatment, and the writers did not want to understand them.

He argued for the consideration of “the biggest issues that are looming on the horizon for ‘Minor Attracted People’ right now,

There very well may be sizable numbers maybe even a majority of Minor Attracted People who refrain from sexual interaction with children and secondly that there is, there maybe [sic] a lot of similarities between the attraction to minors and the attraction to adults in terms of non sexual feelings that go along with them, feelings of emotional attraction, feelings of being in love, feelings of caring, just like a person who is attracted to adults cares about the adult they are in love with. Some of the qualities that Minor Attracted People find attractive in adolescents or children are often similar to the qualities that adults find, that people who are attracted to adults find attractive in other adults. Even some of the psychological functioning seems to be not that different according to the findings of this non forensic research, except possibly some differences that were affected by society’s reactions to the Minor Attracted Person.

225. Strickland Conference Notes, supra note 68, at 35.
226. Id.
227. Id.
228. Id.
229. Id. at 35 – 36.
stigma and the problems they face in life, again, living their lives with strong desires, falling in love, emotional attractions, sexual attraction that they cannot act on. “230 He argued this involves “a radical change in the conception of the ‘Minor Attracted Person.’”231

P. Dr. Reisman on Dr. Kramer’s Presentation

Dr. Kramer, while not referring to sex with children (as another speaker did) as no different than expressing his orgasmic lust on a shoe, continued the effort to normalize child rape as just another sexual variety, or as Dr. Berlin advocated, a “sexual orientation.” The genuflecting of modern societies to “sexual orientations” of various kinds, numbers, colors, and tones, is unique for our time. We seem to discover a new “natural” sexual orientation each year. Bestiality232 is one that is quickly coming down the pike and soon should be required in our sex education of primary schools along with homosexuality, bisexuality, pederasty,233 transvestism, transgenderism, questioningism, etc., or the ism of the day. Dr. Kramer thinks that pedophiles and pederasts and others who like to sexually assault children are just like adults who, perhaps also like to assault adults. That is, he says “some of the qualities” pedophiles prefer in children are like what “adults find attractive in other adults.” Since all sex with children is by its nature, violent and exploitive, it is true that too many adults are similarly violent and exploit other adults. As above, we do not seek to encourage such violence to adults and certainly not to children, hence the need to return to the moral foundations of our nation, those that we lived by and reared our children by pre-Alfred Kinsey, pre-World War II.F234

230. Id. at 36.
231. Id.
234. The homosexual lobby is global. Since there are no public “heterosexual” child sex advocacy groups the push to legalize adult sex abuse has been driven by organized homosexuality. Recently a Brazilian federal appeals court ruled that a pedophile who raped
If we had rejected Kinsey’s fraudulent data claiming a “10%” homosexual population created by Kinsey, a bi/homosexual pedophile advocate and sadomasochistic psychopath, retained these moral foundations after 1950, Dr. Kramer might himself have been spared.

Q. Question and Answer Period

The final part of the conference was a period in which the presenters took questions and subsequent discussion ensued. One question concerned the extent a “sex panic” is going on with respect to pedophiles and how much the DSM-V is a reflection of this. Several people thought that there is a “sex panic” occurring, with many participants expressing negative reactions. Another inquiry regarded a consensus of an appropriate age of sexual consent for children amongst the speakers. The response was dodged and the next question was immediately taken. The “stranger danger” mentality was discussed noting that abuse takes place in family circles also, and that “it feeds the sense of panic to have the sex offender registry.”

Another question regarded therapeutic treatment in an outpatient setting from a non-adversarial viewpoint. This young, female participant stated, “I am pretty progressive in my thinking,” inquired into manners of treatment “without repression” and went on to inquire about the idea of “doing some sort of age play with other adults or adults that look young or what have you.” The participant said, “I am just not into repression as an answer,” and went on to state, “I could just name twenty girls off the top of my head that are of age and have very prepubescent looking bodies.”

three twelve-year-old girls was innocent because, “the victims were far from innocent,” having been prostituted sometime prior. This Brazilian ruling is in concert with federal legislation what would lower their age of consent “from 14 to 12 years of age.” LifeSiteNews.com., April 2, 2012, http://www.lifesitenews.com/news/brazilian-court-acquits-child-molester-says-victims-were-far-from-being-inn, (Last visited April 5, 2012.)

235. See Dr. Judith Reisman’s three books on Alfred Kinsey described at drjudithreisman.com.

236. Strickland Conference Notes, supra note 68, at 37.

237. Id.

238. Id.

239. Id.

240. Id. at 38.

241. Id.
Another question inquired as to the effects of these issues in the international context.\textsuperscript{242} Responses indicated an international discontentment with the “Anglo-American standard being imposed on them,” that “the Anglo-American Standard is new from a western society for thousands of years perspective – the age of consent either didn’t exist or if it existed as a legal concept it only applied to women.”\textsuperscript{243} The participant who previously inquired as to a group consensus regarding an age of consent again posed the same question in this context of direct discussion on the issue, this time receiving the avoidance response that “it’s not relevant,” with discussion immediately resuming upon the exact issue of consent for an extended period.\textsuperscript{244} Questions and answers then continued until the end of the conference regarding various topics such as insurance coverage during treatment for pedophiles.\textsuperscript{245}

IV. CONCLUDING THOUGHTS

A group composed of pedophiles advocating for acceptance of their desires in the DSM has organized an annual gathering of others sympathetic to their special interests to advocate for their canon on pedophilia, pedophiles, in the DSM. An introductory speaker announced the desire to remove any negative terms addressing adult sexual lust for children in the DSM language. The speakers then argued for their philosophical and scientific framework to support their desires. A keynote speaker, who was on record as refusing to comply with a state law requiring him to report patients he believed were engaged in child sexual abuse, gave his psychiatric approach to the issue. A second speaker, claimed there is nothing permanent about moral values. A third speaker challenged what counts as normative desire. A fourth speaker argued that research and knowledge regarding pedophiles is in a bad state. A fifth speaker warned of negative consequences if the current DSM definitions continue. A sixth speaker argued to abandon any pedophilia

\textsuperscript{242} Id. Of note here is that “the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) has been translated into 22 languages.”\textit{DSM In Other Languages}, AMERICAN PSYCHIATRIC ASSOCIATION, http://www.psych.org/MainMenu/Research/DSMIV/DSMIVTR/DSMinOtherLanguages.aspx (last visited Mar. 14, 2012).

\textsuperscript{243} Strickland Conference Notes, supra note 68, at 38.

\textsuperscript{244} Id.

\textsuperscript{245} Id.
diagnosis as aberrant. A seventh speaker, argued that objecting to sexual climax on or with a child requires a “rethinking,” and that like sex with a shoe, children need not give consent to sex. An eighth speaker, who considers a myth that boys are always severely harmed by sexual activity with adults, argued for a radical change in the conception of pedophiles. Finally, during a short question and answer period, one participant’s question on the age of consent received group consensus that the issue was “irrelevant.”

As Phillip K. Dick notes and appropriates to B4U-Act’s efforts toward linguistic acceptance of pedophilia, “the basic tool for the manipulation of reality is the manipulation of words,” thus “if you can control the meaning of words, you can control the people who must use the words.” Clearly, B4U-Act desires to see its normative language in the DSM.

However, language does not exist in a vacuum and the symposium illustrates this. Words denote beliefs and actions that reach far beyond the confines of their presence on the page or in speech, particularly in the internationally influential environment of the DSM. A change in words results in a change in beliefs, realities, and in the way these beliefs and realities interplay as has been seen in the historical evolution of the pedophilia diagnosis itself.

As Brian Bix states, “Language is the medium through which law acts” and “the nature of the medium necessarily has a persuasive effect on


\[247. \textit{In Deus Caritas Est} Pope Benedict illustrates an analytical linguistic approach that offers assistance in situations of semantic entanglement. In examining his analysis of the word “love,” we can extrapolate a 3 step program of critique. Benedict first recognizes that there is a linguistic problem due to misuse. He states concerning love that it “has become one of the most frequently used and misused of words, a word to which we attach quite different meanings” and as such he “cannot simply prescind from the meaning of the word in the different cultures and in present-day usage.” Secondly he notes the vast semantic ranges of the word in question and thus asks if all these forms of usage are basically one so that in its many and varied manifestations there is ultimately a single reality or whether the same word is used to designate totally different realities. Thirdly he considers whether the different, or even opposed, meanings of the word “love” point to some profound underlying unity, or whether on the contrary they must remain unconnected, one alongside the other. He concludes his analysis by reasoning that “fundamentally, ‘love’ is a single reality, but with different dimensions; at different times, one or other dimension may emerge more clearly.” See Pope Benedict XVI, \textit{Deus Caritas Est}, \textit{(December 25, 2005)} para. 2, \textit{available at} \texttt{http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est_en.html} \textit{(last visited Feb. 24, 2012).}\]
what purposes can be achieved through the law and how well those purposes can be forwarded.”

The word “psychology” can be substituted for the word “law” and this comes to the heart of the point here.

So what is really at stake is the onset of a new philosophical and anthropological framework, where the desire for sexual relations with children—which is an inherently narcissistic and abusive act—is acceptable and not looked upon with “stigma.” Based upon the contents of the symposium, it seems that B4U-Act, in previously establishing new linguistic usage, is now moving on to the more ambitious task of filling in the semantic voids behind these new words with a functional framework of “scientific research” and new “values” in the hope that this framework once solidified can support the weight of its enterprise. The words of Pope Benedict XVI are prophetic in this regard:

“[P]aedophilia was theorized as something fully in conformity with man and even with children. This, however, was part of a fundamental perversion of the concept of ethos. It was maintained . . . that there is no such thing as evil in itself or good in itself. There is only a “better than” and a “worse than.” Nothing is good or bad in itself. Everything depends on the circumstances and on the end in view. Anything can be good or also bad, depending upon purposes and circumstances. Morality is replaced by a calculus of consequences, and in the process it ceases to exist. The effects of such theories are evident today.”

With the acceptance of this moral revisionist language, and most importantly the supporting framework which this new language serves to blur and disguise, a societal acquiescence of child abuse is not far off. When pedophile advocates can equate the same


250. Judith Smith of Concerned Women for America, makes the following observation:

“Calling illegal, coercive and abusive sex with children “minor attraction” and “male intergenerational intimacy” shows the dishonesty involved with shifting our culture into what Dr. Reisman calls “sexual anarchy.” Yet we discovered recently that the Department of Health and Human Services, headed by former Governor Kathleen Sebelius put out on its website in the “Questions and Answers about Sex” that children and infants are “sexual beings,” calling purported sexual exploration as healthy and normal even in infancy. Obviously, they have been influenced by another Kinsey associate, Dr. Mary Calderone, a SIECUS (Sex Information and
causality of Facebook to adultery as child abuse to child pornography, a gross dehumanization has occurred—of both the child and the adult. When pedophile advocates equate asking shoes for permission to be worn to asking children permission for sex, a gross dehumanization has again occurred—of both the child and the adult. When a man can claim in the name of science that it is a myth that boys are severely harmed by sexual acts with adults, indeed a gross dehumanization has occurred—of both the child and the adult. Again words do not exist in a vacuum—the philosophical and anthropological meanings underlying them are pervasive such that even words and concepts seemingly far from more expansive terms can have new subtleties and nuances associated with them. Time proven truths can be swept away in an absurd current of radicalism that leaves video recorded child abuse analogized to a social media network, a piece of cloth or leather to a living and breathing human child, harm as an invention solely of statistical or scientific manipulation, and the question of consent to ones abuse or use as “irrelevant.”

“Given such a grave situation we need now more than ever to have the courage to look the truth in the eye and to call things by their proper names, without yielding to convenient compromises or to the temptation of self-deception.” The desire for or act of adult sex with children is distorted, wrong, and can never be called otherwise. Children deserve more than what rhetorical usage of “facebook,” “shoes” and “myth” offer—they merit the utmost protection of science and society at large due to the child’s own vulnerability and inviolable dignity.

Most importantly pedophiles deserve more than


252. The Pope recalled that society has an obligation to defend the basic goods and rights of the powerless. This moral principle “is not something alien to America, but rather speaks to the very origins of this nation!” The Pontiff’s challenge raises questions about the proper development of rights language in constitutional law. Rights language has tended to focus on individuals and their subjective preferences. The dominance of individual autonomy suggests a separation of law from the value afforded by the objective moral order. Additionally, rights language has tended to
the absurd affirmation of their condition. Surely then those responsible for the DSM should be wary of B4U-Act, indeed before they act and push its agenda onto society, and before the already damaged credibility of the APA and the DSM crosses a point of no return.

reflect a negative concept of freedom, which in itself is insufficient to inform the human being and society about the good. Unless the negative notion of freedom is balanced with a positive account, it is difficult to establish the correct proportions between subjective desires and the common good. These tendencies in the development of rights language could obscure the metaphysical worth of each human being, which is measured by the degree of protection afforded to the powerless.


253. The Harvard Mental Health letter, “Pessimism About Pedophilia” includes the following statements:

Several reports have concluded that most people with pedophilic tendencies eventually act on their sexual urges in some way. Typically this involves exposing themselves to children, watching naked children, masturbating in front of children, or touching children’s genitals. Oral, anal, or vaginal penetration is less common. Fears about predatory behavior are valid. Most pedophiles who act on their impulses do so by manipulating children and gradually desensitizing them to inappropriate behavior. Then they escalate it. Pedophiles are able to do this because in most cases they already know the children or have access to them. In about 60% to 70% of child sexual abuse cases involving pedophiles, the perpetrator is a relative, neighbor, family friend, teacher, coach, clergyman, or someone else in regular contact with the child. Strangers are less likely to sexually abuse children — although they are more likely to commit violent assaults when they do…When confronted about sexual abuse, convicted pedophiles often rationalize their actions, such as insisting that a victimized child acted seductively or enjoyed the encounter. These rationalizations may reflect an inability to empathize with the child, which could be part of a co-occurring antisocial or narcissistic personality disorder. Some researchers fear that the growth of Internet communities for people with pedophilic tendencies may encourage users to act on their sexual urges and share information about how to elude detection.

“WHAT YOU DO UNTO THESE LITTLE ONES . . .”
PEDOPHILIA ACTIVISTS, LINGUISTIC MANIPULATION, AND ATTEMPTS TO SANITIZE PEDOPHILIA

*Geoffrey Strickland*

“The basic tool for the manipulation of reality is the manipulation of words. If you can control the meaning of words, you can control the people who must use the words.”

Phillip K. Dick

INTRODUCTION

The explosion of technological progress in our modern society has given power never before seen to those skilled in linguistic use and manipulation. Among many examples in our modern culture, the global attempt to legitimize pedophilia through linguistic distortion is particularly hard to grasp. This paper will examine linguistic uses

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One fact that emerges from a study of the history of rhetoric is that there is usually a resurgence of rhetoric during periods of social and political upheaval. Whenever the old order is passing away and the new order is marching - or stumbling - in, a loud, clear call goes up for the services of the person skilled in the use of spoken or written words. One needs only to hearken back to such historical events as the Renaissance in Italy, the Reformation in England, and the Revolution in America to find evidence of this desperate reliance, in times of change or crisis, on the talents of these skilled in the persuasive arts.

such as “adult/child sex” and “man/boy love” employed by pro-pedophilia activists and will argue that greater integrity of language is required in order to demythologize the values truly present. With our Lord’s words from the Gospel of Matthew as a backdrop, we will offer some foundational principles of analysis, then examine the contexts, strategies, and actors involved in the linguistic problem, offer a brief analysis of the issues, and finally close with some concluding remarks.

For example, many use the term ‘pro-choice’ to obscure the reality that abortion kills an innocent human life. The real question is not whether people can choose their own actions, since all people have free will, but rather whether the choices are morally evil or not… When discussing abortion today, and some other hot-button topics as well, perhaps we should begin by declaring, ‘Thou shalt not twist language.

4. See Brian Bix, Language, Law, and Legal Determinacy 1 (1993) (“Language is the medium through which law acts. The nature of the medium necessarily has a persuasive effect on what purposes can be achieved through the law and how well those purposes can be forwarded.”).


Let your “Yes” mean “Yes,” and your “No” mean “No.” Anything more is from the evil one. …At that time the disciples approached Jesus and said, “Who is the greatest in the kingdom of heaven?” He called a child over, placed it in their midst, and said, “Amen, I say to you, unless you turn and become like children, you will not enter the kingdom of heaven. Whoever humbles himself like this child is the greatest in the kingdom of heaven. And whoever receives one child such as this in my name receives me. Whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone hung around his neck and to be drowned in the depths of the sea. Woe to the world because of things that cause sin! Such things must come, but woe to the one through whom they come! If your hand or foot causes you to sin, cut it off and throw it away. It is better for you to enter into life maimed or crippled than with two hands or two feet to be thrown into eternal fire. And if your eye causes you to sin, tear it out and throw it away. It is better for you to enter into life with one eye than with two eyes to be thrown into fiery Gehenna. See that you do not despise one of these little ones, for I say to you that their angels in heaven always look upon the face of my heavenly Father.

…Jesus said, “Let the children come to me, and do not prevent them; for the kingdom of heaven belongs to such as these.”
I. FOUNDATIONAL PRINCIPLES

A. The Dignity of the Human Person Created in the Image and Likeness of God

In the Trinitarian mystery, Christ is the Eternal Word of the Father, spoken by the Father from all eternity.\(^6\) Christ, in the very revelation of the mystery of the Father and of His love, makes man fully manifest to himself and brings to light his exalted vocation.\(^7\) It is in Christ, the image of the invisible God, that man has been created in the image and likeness of the Creator.\(^8\) Thus created in the image of the Eternal and Perfect Revelation of the Father, man is called to this same integrity of communication.

The divine image is present in every man.\(^9\) It shines forth in the communion of persons, in the likeness of the unity of the divine persons among themselves.\(^10\) Endowed with a spiritual and immortal soul, the human person is the only creature on earth that God has willed for its own sake.\(^11\) From his conception, he is destined for eternal beatitude.\(^12\) The human person participates in the light and power of the divine Spirit.\(^13\) By reason, he is capable of understanding the order of things established by the Creator.\(^14\) By free will, he is capable of directing himself toward his true good. He finds his perfection in seeking and loving what is true and good.\(^15\) By virtue of his soul and his spiritual powers of intellect and will, man is endowed with freedom, an outstanding manifestation of the divine image.\(^16\)

The revelation in Christ of the mystery of God as Trinitarian love is at the same time the revelation of the vocation of the human person to love.\(^17\) This revelation sheds light on every aspect of the personal

\(^6\) See John 1 (Revised Standard, Catholic Edition).
\(^8\) Id.
\(^9\) Id. at 1702.
\(^10\) Id.
\(^11\) Id. at 1703
\(^12\) Id.
\(^13\) Id at 1704.
\(^14\) Id.
\(^15\) Id.
\(^16\) Id. at 1705
dignity and freedom of men and women, and on the depths of their social nature.\textsuperscript{18} Being a person “in the image and likeness of God” involves existing in a relationship, in relation to the other “I” because God himself, one and triune, is the communion of the Father, of the Son and of the Holy Spirit.\textsuperscript{19}

In the communion of love that is God, and in which the Three Divine Persons mutually love one another and are the One God, the human person is called to discover the origin and goal of his existence and of history.\textsuperscript{20} The Council Fathers, in the Pastoral Constitution \textit{Gaudium et Spes}, teach that “the Lord Jesus Christ, when praying to the Father ‘that they may all be one . . . as we are one’” (\textit{Jn} 17:21-22), has opened up new horizons closed to human reason by implying that there is a certain parallel between the union existing among the divine Persons and the union of the children of God in truth and love.\textsuperscript{21} It follows, then, that if man is the only creature on earth that God has willed for its own sake, man can fully discover his true self only in a sincere giving of himself.\textsuperscript{22}

The relationship between God and man is reflected in the relational and social dimension of human nature.\textsuperscript{23} Man, in fact, is not a solitary being, but a social being, and unless he relates himself to others he can neither live nor develop his potential.\textsuperscript{24} This relation is achieved principally through communication of which language is the means. Thus as such, language must reflect the integrity of the transparent and all loving relation that God calls humanity to as mirrored within Himself. However this authentic communion is only possible in the truth, as union without truth is impossible.

\begin{thebibliography}{100}
18. \textit{Id}.
19. \textit{Id}.
20. \textit{Id}.
21. \textit{Id}.
22. \textit{Id}.
23. \textit{Id} at 110.
24. \textit{Id}.
\end{thebibliography}
B. The Primary Elements of Human Anthropology: Truth and Freedom

This is because the truth is by its very nature ordered toward union, as it is in its essence a union. As truth is the harmony of intellect and reality, persons can only achieve real communion through communal participation in intellectual union with reality. John Paul II distills this anthropology and provides a foundation from which to build upon.

The process of integrating love relies on the primary elements of the human spirit – freedom and truth. . .Freedom and truth, truth and freedom determine the spiritual imprint which marks the various manifestations of human life and human activity. They penetrate the remotest recesses of human action and experience.

As truth and freedom are those values, which most deeply affect humanity at both the individual and group levels, these seem appropriate to call the basis of rational linguistic use.

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Any understanding of truth is essentially grounded in the acknowledgement of “being”. By the term “being” here, what is referred to is existence (that something is) and essence (what something is), considered in things that actually exist or in existence as such in itself. “Being” is the foundation of all reality. It is the first and fundamental principle of all things. Aquinas speaks of truth in relation to “being” in the 3 ways. He first defines truth “according to that which precedes truth and is the basis of truth...that which is.” Here the foundational element of “being” in the true is shown, as well as that in fact “being” is the cause of the true. The importance of this causal aspect is seen in the second and primary definition of truth given by St. Thomas in which he writes that truth is “the conformity of thing and intellect” and similarly in the affirmation of that “to be which is, and that not to be which is not.” This correct affirmation by the intellect thus produces the effect of knowledge, which is the third aspect of St. Thomas’ definition. He speaks of this aspect in the words of Hilary that the “true is that which manifests and proclaims existence” and St. Augustine that “truth is that by which that which is, is shown.” The perfection of truth is the union of the human intellect with God, which occurs in its completeness in the beatific vision. This constitutes the very meaning of life itself.

1. Language as Interpersonal Identification

In the short but potent essay *Abuse of Language-Abuse of Power*, Joseph Pieper gives a functional outline of a philosophy of language based upon this anthropology. Pieper argues that human words and language accomplish a two-fold purpose: We speak to identify something for someone. For Pieper these two aspects are interrelated, as the purpose of language is to capture and communicate reality. We understand reality as the metaphysical existential value of what is as delineated from what is not. We understand communicate as the transmission of the object of a reality from one subject to another. We understand capture as the act of the correct apprehension of the reality to be communicated. The essence of his position can be seen in the following summation:

The natural habitat of truth is found in interpersonal communication. Truth lives in dialogue, in discussion, in conversation - resides, therefore, in language, in the word. Consequently, the well-ordered human existence, including especially its social dimension, is essentially based on the well-ordered language employed. A language is well ordered when its words express reality with as little distortion and as little omission as possible.

Pieper cites two forms of linguistic corruption. On the one hand there is the corruption of the relationship of the word to reality. On the other hand there is the corruption of the communication. Regarding this linguistic corruption Pieper is particularly sensitive to the opportunity for political manipulation. However Pieper is quick to acknowledge that this same dynamic can take place in the socio-

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28. Id.
29. Id. at 36.
30. Id.
31. Id.
32. Id.
33. Pieper, supra note 27, at 30

Public discourse the moment it becomes basically neutralized with regard to a strict standard of truth, stands by its nature ready to serve as an instrument in the hands of any ruler to pursue all kinds of power schemes. Public discourse itself, separated from the standard of truth, creates on its part, the more it prevails, an atmosphere of epidemic proneness and vulnerability to the reign of the tyrant.
political context, which can be equally as destructive but yet more
difficult to detect.\textsuperscript{34}

2. \textit{The Timely Importance of Linguistic Integrity in Identification}

In \textit{Evangelium Vitae}, John Paul the Great is clear regarding the
call for our times, particularly in reference to the battle to instill a
linguistic integrity regarding Pedophilia.\textsuperscript{35} In an often-quoted excerpt
he explains that:

We need now more than ever to have the courage to look the truth in
the eye and to call things by their proper name, without yielding to
convenient compromises or to the temptation of self-deception.
Especially in the case of abortion there is a widespread use of
ambiguous terminology, such as “interruption of pregnancy”, which
tends to hide abortion’s true nature and to attenuate its seriousness
in public opinion. Perhaps this linguistic phenomenon is itself a
symptom of an uneasiness of conscience. But no word has the
power to change the reality of things: procured abortion is the
deliberate and direct killing, by whatever means it is carried out, of a

\textsuperscript{34} \textit{Id.} at 32

...all this is not outside our own experience. Yet propaganda in this sense by no
means flows only from the official power structure of a dictatorship. It can be found
wherever a powerful organization, an ideological clique, a special interest or a
pressure group uses the word as their weapon...The common element in all of this is
the degeneration of language into an instrument of rape. It does contain violence
albeit in latent form...This lesson in a nutshell says: the abuse of political power is
fundamentally connected with the sophistic abuse of the word, indeed, finds in it the
fertile soil in which to hide and grow and get ready, so much so that the latent
potential of the totalitarian poison can be ascertained, as it were, by observing the
symptom of the public abuse of language...The degradation, too, of man through
man, alarmingly evident in the acts of physical violence committed by all tyrannies
(concentration camps, torture) has its beginning, certainly much less alarmingly, at
that almost imperceptible moment when the word loses its dignity. The dignity of the
word, to be sure, consists in this: through the word is accomplished what no other
means can accomplish, namely, communication based on reality. Once again it
becomes evident that both areas, as has to be expected, are connected: the
relationship based on mere power, and thus the most miserable decay of human
interaction, stands in direct proportion to the most devastating breakdown in
orientation toward reality.

\textsuperscript{35} Pope John Paul II, \textit{Evangelium Vitae} [Encyclical Letter on the Value and Inviolability of
human being in the initial phase of his or her existence, extending from conception to birth.  

This problem is accentuated by the grave situations that pedophilia issues are rooted in, concerning fundamental questions of existence, essence, and reality. However the corruption that Pieper spoke of can most clearly be seen in these areas, which heightens the necessity of linguistic integrity. These fundamental questions of existence and meaning, sensitive as they are to linguistic manipulation and imposition, lend themselves to an encounter with something greater than themselves. For proof of this, one does not need to look further than the unequaled fervor used to fight for differing responses to these questions.

3. Language in Search for Realities Surpassing Itself

In Fides et Ratio John Paul II characterizes the human person as "one who seeks truth" but notes that "the search for truth, of course, is not always so transparent" as "the natural limitation of reason and the inconstancy of the heart often obscure and distort a person's search." However he makes the most important observation that "the unity of truth is a fundamental premise of human reasoning, as

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36. Id. ¶ 58. [emphasis added]
37. Id. ¶ 60. For example John Paul states:

Some people try to justify abortion by claiming that the result of conception, at least up to a certain number of days, cannot yet be considered a personal human life. But in fact,

from the time that the ovum is fertilized, a life is begun which is neither that of the father nor the mother; it is rather the life of a new human being with his own growth. It would never be made human if it were not human already. This has always been clear, and ... modern genetic science offers clear confirmation. It has demonstrated that from the first instant there is established the program of what this living being will be: a person, this individual person with his characteristic aspects already well determined. Right from fertilization the adventure of a human life begins, and each of its capacities requires time-a rather lengthy time-to find its place and to be in a position to act.

Even if the presence of a spiritual soul cannot be ascertained by empirical data, the results themselves of scientific research on the human embryo provide "a valuable indication for discerning by the use of reason a personal presence at the moment of the first appearance of a human life: how could a human individual not be a human person?

the principle of non-contradiction makes clear.”39 He goes on to poignantly state that:

Human language may be conditioned by history and constricted in other ways, but the human being can still express truths which surpass the phenomenon of language. Truth can never be confined to time and culture; in history it is known, but it also reaches beyond history.40

Thus we see that language in a sense is always reaching beyond itself toward that which it is orientated.41 This orientation is toward none other than that of “being/reality” itself.

4. The Orientation of Language Toward Being/Reality

Pope Benedict XVI discusses this orientation in his address at Regensburg.42 In this masterful invitation to dialogue we see the argument that true philosophical, theological, or political inquiry must be rooted in the search for being/reality. In other words,

39. Id. at 34.
40. Id. at 34.
41. Id. at 25, 27.

All human beings desire to know, and truth is the proper object of this desire. Everyday life shows how concerned each of us is to discover for ourselves, beyond mere opinions, how things really are. Within visible creation, man is the only creature who not only is capable of knowing but who knows that he knows, and is therefore interested in the real truth of what he perceives. People cannot be genuinely indifferent to the question of whether what they know is true or not. If they discover that it is false, they reject it; but if they can establish its truth, they feel themselves rewarded. It is this that Saint Augustine teaches when he writes: “I have met many who wanted to deceive, but none who wanted to be deceived”… No one can avoid this questioning, neither the philosopher nor the ordinary person. The answer we give will determine whether or not we think it possible to attain universal and absolute truth; and this is a decisive moment of the search. Every truth—if it really is truth—presents itself as universal, even if it is not the whole truth. If something is true, then it must be true for all people and at all times. Beyond this universality, however, people seek an absolute which might give to all their searching a meaning and an answer—something ultimate, which might serve as the ground of all things. In other words, they seek a final explanation, a supreme value, which refers to nothing beyond itself and which puts an end to all questioning.

inquiry must be focused upon finding out what is as differentiated from what is not. This must be accomplished through the free investigation of reality through open dialogue and questioning. In the closing paragraphs of this address Benedict draws upon Socratic philosophy:

Here I am reminded of something Socrates said to Phaedo. In their earlier conversations, many false philosophical opinions had been raised, and so Socrates says: “It would be easily understandable if someone became so annoyed at all these false notions that for the rest of his life he despised and mocked all talk about being - but in this way he would be deprived of the truth of existence and would suffer a great loss.”

We see here Benedict’s stress on the importance of seeking reality as it is as the basis of inquiry that is interested in the authentic search for truth. This is in fact, the only way to liberate the “liberty” of inquiry and expression.

5. **Linguistic Creative “Freedom” only Free in Truth**

From *Veritatis Splendor* we can begin to explore what authentic freedom entails and specifically how linguistic usage must be tempered by a proper understanding of freedom, which is based upon the truth. John Paul notes that “reason and experience not only confirm the weakness of human freedom; they also confirm its tragic aspects” and thus consequently “freedom itself needs to be set free.” John Paul goes on to say the following:

As is immediately evident, the crisis of truth is not unconnected with this development. Once the idea of a universal truth about the good,

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44. *Id.*
45. *Fides et Ratio,* supra note 38, at 90 (John Paul II also stresses this point in *Fides et Ratio*).

It should never be forgotten that the neglect of being inevitably leads to losing touch with objective truth and therefore with the very ground of human dignity... Once the truth is denied to human beings, it is pure illusion to try to set them free. Truth and freedom either go together hand in hand or together they perish in misery.

47. *Id.* ¶ 86.
knowable by human reason, is lost, inevitably the notion of conscience also changes. Conscience is no longer considered in its primordial reality as an act of a person’s intelligence, the function of which is to apply the universal knowledge of the good in a specific situation and thus to express a judgment about the right conduct to be chosen here and now. Instead, there is a tendency to grant to the individual conscience the prerogative of independently determining the criteria of good and evil and then acting accordingly. Such an outlook is quite congenial to an individualist ethic, wherein each individual is faced with his own truth, different from the truth of others. Taken to its extreme consequences, this individualism leads to a denial of the very idea of human nature.

Either way a freedom of any sort, but particularly a linguistic freedom, divorced from the proper reality underneath makes interpersonal relations at any level difficult and certainly not free. Thus John Paul says that “freedom then is rooted in the truth about man, and it is ultimately directed towards communion.” This understanding of freedom is important, as language is a fluid concept, allowing for varieties and fluctuations of usage.

6. The Linguistic Techniques of Tying and Ambiguation

This variety of usage is due in part to the multiple meanings and significances possible in differing situations. Lawrence Lessig highlights the fact that words not only have dictionary meanings but also, of equal or greater importance, social meanings as well. The importance of understanding this cannot be understated. According
to Lessig, for a word or action to convey a social meaning, it must do so without appearing contingent or contested; it must do so in a way that feels natural. It must function with a sort of “social magic.”

There are two techniques for changing social meaning which rely directly upon the semiotic content of the meaning to be changed. Both use the reality of social meaning to attempt to change a

people who sell out their moral convictions in exchange for personal gain “whores”? More important, prostitution implies a willing exchange. Ultimately, the term “child prostitution” implies that little children are “seductive,” that they “volunteer” to have sex with adults in exchange for cash (which, of course, the children never see). The difference between calling Destiny a “child prostitute” and a “prostituted child” is not purely semantic . . . How have such grotesque distortions taken control of our language? To answer that question, we must first ask another: Who profits? Who benefits from pervasive cultural language that trivializes violence against children? Pedophiles are very familiar with the power of language. They would have us believe that child pornography is a free-speech issue. They know that if they succeed in placing “child prostitution” anywhere on the continuum of voluntary sexual activity, they will have established a beachhead from which to launch future assaults. We must understand that such language is no accident—it is the deliberate product of cultural lobbyists. There is a carefully orchestrated campaign to warp public perception, a perception that affects everything from newspaper coverage to legislation and even jury verdicts. If they can get us to accept that children consent to sex for money, it will be easier to sell the idea that they can consent to sex for “love.” But an adult male who sexually abuses little boys is no more “homosexual” than one who victimizes little girls is “heterosexual.” They are both predatory pedophiles. There is no such thing as a child prostitute; there are only prostituted children. When we use terms such as “lose’s one’s virginity” in referring to adult sex acts with children instead of calling it “rape,” or when we say that teachers “have affairs” with their pupils instead of saying that the teachers sexually exploit them, the only beneficiaries are the predators who target children. This is not about political correctness. It is about telling the truth. In any culture, language is the undercurrent that drives the river of public perception. That undercurrent has been polluted for too long. If we really want to protect our children, it’s time to watch our language . . . When it comes to child abuse, the language we use can distort the reality of the crime and create a roadblock to justice. The next time you hear a news report, keep in mind what the following terms actually mean … and the consequences of the conduct described.

52. See Lessig, supra note 50, at 958-959 Lessig elaborates,

As a first cut, we can describe context as the collection of understandings or expectations shared by some group at a particular time and place. But to function in the sense that I mean here, these understandings or expectations must be shared in a particular way. They must be taken for granted by those within the group at issue, or put another way, they must be relatively uncontested in that context. It is not enough that individuals understand that a particular idea along with a given action may yield a given meaning. For it to function as a “social meaning,” the individuals in this context must also accept it.

53. Id. at 959.

54. Id. at 1009.
particular social meaning, one by focusing and clarifying and the other by blurring a particular social meaning at issue. The first and most obvious example is the technique of tying. In these cases, the architect of social meaning attempts to transform the social meaning of one act by tying it to, or associating it with, another social meaning that conforms to the meaning that the architect wishes the managed act to possess. The tied text thereby gains some of the associated meaning of the tied-to text. The technique is extremely common. This notion of tying is illustrated by attempts to tie pedophilia to "liberty" and "human rights," particularly with recently recognized so-called homosexual "rights" movements.

A second technique is that of ambiguation. While the focus in law is often to clarify, this technique functions not by clarifying, but instead by blurring. With this technique, the architect tries to give the particular thing or act a second meaning in addition to the accepted meaning which functions to undermine the negative effects of the first. In this sense, while tying is about establishing that X is like Y, ambiguation is about establishing that X is like Y or Z. It simply adds a link without denying an existing link, and thereby blurs just what it is that X is - thereby making ambiguous the real

55. "Id.
56. "Id.
57. "Id.
58. "Id.
59. "Id.
60. "Id. at 1010.
61. "Id.
62. "Id.
63. "Id. at 1010-11, For example,
reason that the same actors were doing the particular act. By ambiguating the meaning of the action, one undermines any stigma attached to the action, making it easier for the action to be taken. This notion of ambiguating is exemplified by using terms like “inter-generational love” and “man/boy relations” to describe pedophilia.

7. The Integrity of Language Required: Let Your Yes Be Yes and Your No Be No

The clarity and integrity of language required is illustrated by our Lord’s words from the Gospel of Matthew. His counsel to “let your yes be yes and your no be no,” provide the basis of all linguistic analysis. Their simplicity should not be equated with lack of profundity. One could explain this scripture by offering that one must say what one means, and mean what one says. In other words, one should not attempt to misrepresent, distort, or proffer half-truths in place of the fullness of the reality that words and phrases hold. We could translate this as transparency - of meaning, of usage, and of form; all of which contribute to the integrated linguistic function that the dignity of the human being requires. No human person deserves to be lied to or manipulated by empty words and phrases. Vague and foggy language often provides a ripe opportunity for manipulation in the power struggle of political expediency versus morality.

II. The Problem of the Changing Linguistic Appearance of Pedophilia

A. Medical Context

Pedophilia has traditionally been understood as distorted sexual attraction toward children. Recent changes in the American
Psychological Association’s (APA) own diagnostic and statistical manual of mental disorders (DSM) have reopened the discussion of the psychological dimension of pedophilia. In the previous edition of the DSM-III (1980), the APA contended that merely acting upon one’s urges toward children was considered sufficient to generate a diagnosis of pedophilia. However in the updated DSM-IV (1994), the APA changed its criteria so that a person who molested children was considered to have a psychiatric disorder only if his actions “caused clinically significant distress or impairment in social, occupational or other important areas of functioning.” In other words, a man who molested children without remorse, and without experiencing significant impairment in his social and work relationships, could be diagnosed by a clinician as a “psychologically normal” type of pedophile. Challenged to defend the change, the

O termo pedofilia tem origem grega e possui como tradução o amor/amizade pelas crianças. Pedófilo, frisam alguns especialistas, é aquele indivíduo que possui atração sexual primária ou exclusiva por crianças, mesmo sem nenhum contato sexual efetivo. Acrescentam que nem todos aqueles que praticam o abuso sexual de crianças é pedófilo, pois podem ter sido impulsionados por outras variáveis que não a predileção sexual por infantes. A pedofilia é atualmente considerada pela psiquiatria uma parafilia, espécie de desvio sexual. Os ativistas pró-pedofilia pregam o livre amor (entendendo-se consequentemente sexo) entre os indivíduos, independentemente da idade dos amantes. Repudiam, enfaticamente, o ato sexual violento, considerando-se defensores somente do sexo com crianças quando as mesmas expressam consentimento e vontade nessa direção.

69. Id.
70. Id.
71. Id.

Timothy Dailey, senior analyst for cultural studies with the Family Research Council, chronicled the APA’s treatment of pedophilia in the DSM and compares it to the APA evolution of homosexuality. In DSM revisions, Dailey explained that APA “adds a subjective qualification similar to that which appeared with regard to homosexuality: The individual must be “markedly distressed” by his own pedophilic activity to be considered needful of therapy,” Dailey wrote, adding that in the latest revision, pedophilia “is to be considered a paraphilia when the behavior causes ‘clinically significant distress or impairment in social, occupational or other important areas of functioning.’” Mary Eberstadt, research fellow at the Hoover Institute, told CNSNews.com: “The evidence is plain: there is indeed an ongoing attempt from
APA stated categorically that it had, in fact, no intention of normalizing pedophilia. Soon afterward, a journal of the APA published the infamous Rind, et al. article - a study which downplayed the effects of, in particular, “man-boy” sex. Rind supported his argument with the finding that quite a few of the boys remembered their childhood sexual experiences positively.

Following the publication of the Rind study, the APA faced an embarrassing wave of criticism. The APA apologized for the study and issued a new and quite surprising official statement: no matter what the research showed about the psychological effects of pedophile relationships - pedophilia remained, in its opinion, “morally” wrong. The APA must have been aware of the implications of its own pronouncement that pedophilia was immoral, because the March 2002 issue of the American Psychologist carried an official article stating that the association had learned something from within the psychiatric and psychological communities to de-stigmatize pedophilia by de-classifying it as a paraphilia in the first place.”

73. Nicolosi, supra note 68.
75. Nicolosi, supra note 68.
76. Id.
77. Id.
78. Id. Nicolosi adds this commentary:

Morally wrong? This was an odd statement indeed from a scientific organization. What, then, was the APA’s moral position on, say...adultery or abortion? What about the morality of sexually open relationships? Would APA follow up with an official position on, say, the morality of polygamy? The very fact that APA admitted to holding a moral viewpoint on a psychological issue ought to have opened up a broad new challenge to psychology’s authority and its presumptions as our culture’s arbiter of practically every social and moral issue now under debate. Indeed, the time was then ripe for layman to issue a fruitful challenge to the entire concept of psychological health--its inherent limitations, its value-laden nature, and its meaninglessness without dependence on an underlying social-moral philosophy. Most of all, the discussion could have addressed psychology’s inability to scientifically answer the essential, basic questions upon which any meaningful psychology must be based...foundational questions such as, “What is good?” And, “What is the meaning and purpose of sexuality?” Or, “How does one define ‘self-actualization’?” “What exactly is our distinctively human nature? How does our nature require that we live?” In an age when even our culture’s moral leaders feel obligated to look to science to defend their positions, such a discussion could clarify to the public what psychologists already know but tend to be loathe to publicly admit—that science alone has a limited capacity to either define or resolve our social-moral problems.

79. Id.
the Rind fiasco.\textsuperscript{80} Two of those lessons learned were that the APA must build bridges to conservative groups, and secondly that in the future, psychology must be prepared to defend its validity as a branch of science.\textsuperscript{81} Subsequently the APA quietly instituted a change regarding the definition of pedophilia in the Text Revision of the DSM-IV in the year 2000. It returned to its previous standard holding merely acting upon one’s pedophilic urges sufficient for a diagnosis of disorder.\textsuperscript{82}

B. The Legal Context

Pedophilia and other forms of sexual abuse of children are typically prosecuted under state law.\textsuperscript{83} An example is Florida Statute Chapter 800.04 on Lewd or Lascivious Conduct. This section of the Florida Statutes covers practically every lewd act performed on a child less than 16 years of age.\textsuperscript{84} Consent is not a defense to the offense, so if an individual has consensual sexual intercourse with a person less than 16 years of age, this statute is used instead of the sexual battery statute.\textsuperscript{85}

However, when a child is sexually abused on federal lands, such as military bases or Indian lands, the offense can also be prosecuted under federal law.\textsuperscript{86} For example, it is a federal crime for a person to

\textsuperscript{80} Id.

\textsuperscript{81} Id.

\textsuperscript{82} Id. (NARTH Scientific Advisory Board member Russell Hilliard, along with psychiatrist Robert Spitzer, published a letter in the \textit{American Journal of Psychiatry} which points out that in contrast to the DSM’s statement that “no substantive changes” had been made in the latest DSM-IV Text Revision, “in fact, DSM-IV-TR has made a substantive change” in its criteria for pedophilia. “Would it not have been better,” Hilliard and Spitzer note about the APA’s obvious silence, “for the DSM-IV-TR editors to have acknowledged that there were a few substantive changes in the criteria, and that for the Paraphilias they were correcting a mistake made in DSM-IV?”).


\textsuperscript{85} Id.

\textsuperscript{86} \textit{Child Sexual Abuse}, \textsc{United States Department of Justice}, http://www.justice.gov/criminal/ceos/subjectareas/childsexualabuse.html (last visited Apr. 02, 2012);
engage in a sexual act with a minor child within specified federal territories.\textsuperscript{87} Moreover, federal law assigns harsher penalties for those convicted of engaging in a sexual act with young children or if the offender uses force or threats, inflicts serious bodily injury or death, or kidnapping is involved.\textsuperscript{88}

People who traffic or lure children to participate in sexual activity may also be prosecuted under federal law.\textsuperscript{89} Federal law makes it a crime for any person to knowingly transport a child or adult in interstate or foreign commerce intending that the person become a prostitute or take part in any sexual activity constituting a criminal offense.\textsuperscript{90} This includes importing an alien (person who is not a United States citizen or resident) for such purposes.\textsuperscript{91} It is also a federal crime to attempt to take part in this type of activity.\textsuperscript{92} Traveling between states or abroad for the purpose of engaging in any sexual act with a child can be prosecuted under the authority of federal law, as can engaging in a sexual act with a child while abroad, regardless of whether that was the purpose of the trial.\textsuperscript{93} For example, it is a federal crime for an adult United States citizen to travel abroad to a foreign county to engage in sexual activity with a citizen of that


\textsuperscript{87} Id.; 18 U.S.C. § 2243 (2006).

\textsuperscript{88} 18 U.S.C. § 2241(2006); \textit{Citizen’s Guide on Child Sexual Abuse, supra note 86}.


\textsuperscript{90} 18 U.S.C. §§ 1591, 2421-2423; \textit{Citizen’s Guide on Extraterritorial Sexual Exploitation of Children, supra note 89; Citizen’s Guide on the Prostitution of Children, supra note 89; Prostitution of Children, supra note 89.}

\textsuperscript{91} 18 U.S.C. §§ 1591(a), 2421-2422, 2423(a); \textit{Citizen’s Guide on the Prostitution of Children, supra note 89; Prostitution of Children, supra note 89.}

\textsuperscript{92} 18 U.S.C. §§ 1591(a), 2421-2422, 2423(e); \textit{Citizen’s Guide on the Prostitution of Children, supra note 89.}

\textsuperscript{93} 18 U.S.C. § 2423(b) - (c); \textit{Citizen’s Guide on Extraterritorial Sexual Exploitation of Children, supra note 89; Extraterritorial Exploitation of Children, supra note 89.}
foreign country under the age of 18. It is even a crime to attempt to engage in this type of activity.

Luring any individual, including a child, by knowingly persuading, inducing, enticing or coercing them to travel in interstate or foreign commerce to engage in prostitution or sexual activity that constitutes a criminal offense violates federal law. An example of luring would occur if an adult found a child in a chat room and used email correspondence with the child to persuade the child meet him with the intent that the child engage in sexual activity. Use of United States mails to lure any individual to engage in prostitution or criminal sexual activity also constitutes a federal offense. In addition, it is a federal crime for any person to use the mail or any facility or means of interstate or foreign commerce to knowingly transmit the name, address, telephone number, social security number, or email address of a child under the age of 16 with the intent to lure the child to take part in prostitution or other criminal sexual activity.

Though Federal statutory language seems firmly opposed to pedophilic manipulation, the United States Supreme Court may have opened the door to legalizing pedophilia in *Lawrence v. Texas*. This decision pertained to private homosexual behavior, and not directly to pedophilic behavior as such, however activist groups wish to tie these “rights” to the growing movement to de-stigmatize pedophilia.

Responding to a reported weapons disturbance in a private residence, Houston police entered John Lawrence’s apartment and saw him and another adult man, Tyron Garner, engaging in a private, consensual sexual act. Lawrence and Garner were arrested and convicted of deviate sexual intercourse in violation of a Texas statute forbidding two persons of the same sex to engage in certain intimate

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94. Id.
95. 18 U.S.C. § 2423(e).
96. 18 U.S.C. § 2422; Citizen’s Guide on the Prostitution of Children, supra note 89; Prostitution of Children, supra note 89.
98. Id.
101. See Steve Brown, supra note 72.
102. Lawrence, 539 U.S. at 562-563.
sexual conduct. In affirming, the State Court of Appeals held that the statute was not unconstitutional under the Due Process Clause of the Fourteenth Amendment, with Bowers v. Hardwick, 478 U.S. 186 (1986), controlling. The questions before the Supreme Court were as follows: Do the criminal convictions of John Lawrence and Tyron Garner under the Texas "Homosexual Conduct" law, which criminalizes sexual intimacy by same-sex couples, but not identical behavior by different-sex couples, violate the Fourteenth Amendment guarantee of equal protection of laws? Do their criminal convictions for adult consensual sexual intimacy in the home violate their vital interests in liberty and privacy protected by the Due Process Clause of the Fourteenth Amendment? Should Bowers v. Hardwick, 478 U.S. 186 (1986), be overruled?

In a 6-3 opinion delivered by Justice Anthony M. Kennedy, the Court held that the Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violates the Due Process Clause. After explaining what it deemed the doubtful and overstated premises of Bowers, the Court reasoned that the case turned on whether Lawrence and Garner were free as adults to engage in the private conduct in the exercise of their liberty under the Due Process Clause. The language here is particularly important. "Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government," wrote Justice Kennedy. The Texas statute "furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual," continued Justice Kennedy. Accordingly, the Court overruled Bowers.

Jan LaRue, Chief Counsel for Concerned Women for America (CWA), a Washington D.C. based women's public policy group, stated that "the likes of the North American Man/Boy Love Association and other pedophiles will certainly use [Lawrence v.

103. Id. at 563.
104. Id. at 563; see also Bowers v. Hardwick, 478 U.S. 186 (1986).
105. Lawrence, 539 U.S. at 564.
106. Id. at 564.
107. Id. at 564.
108. Id. at 558.
109. Id. at 558-559.
110. Id. at 592.
111. Id. at 594.
112. Id. at 560.
Texas] to seek legitimization for their behavior.” Pedophiles may co-opt language used in the Lawrence decision regarding homosexuals; that laws against their behavior are a discriminatory attempt to harm them as a persecuted minority.

The Catholic Family Association of America (CFAA) pointed to a potential pedophilia advocate sitting on the Court itself. CFAA president Timothy Chichester stated, “given that homosexual advocates are in a ‘full court press’ to lower the age of consent as low as it can go, and pro-pedophile sitting Supreme Court Justice Ruth Bader Ginsburg ‘s documented advocacy of lowering the age of consent to 12 years old, parents should be horrified that there are so few politicians. . .actually defending the family.” Chichester referred to the fact that Ginsburg authored a paper entitled “Sex Bias in the U.S. Code, which was prepared for the U.S. Commission on Civil Rights in April 1977.” The pertinent paragraph, speaking to revision in rape laws, reads as follows:

113. Steve Brown, supra note 72.
114. Id.
115. Id.
116. Id.

Ruth Bader Ginsburg, prior to being on the Supreme Court, wrote a 230-page report entitled Sex Bias in the U.S. Code: A Report of the U.S. Commission on Civil Rights, on the societal impact the ERA would have. Ginsburg states that, “Equal rights and responsibilities for men and women implies that women must be subject to draft registration if men are. Congressional debate on the Equal Rights Amendment points clearly to an understanding of this effect on the Amendment.” She goes on to state that not only should women be included in the draft, they must also serve in combat units: “Implementation of the equal rights principle requires a unitary system...that cannot be founded on a combat exclusion for women.” Not only will the military be made gender neutral under the ERA; prisons would be desegregated: “If the grand design of such institutions is to prepare inmates for return to the community...then perpetuation of single-sex institutions should be rejected.” College students involved in the Greek system at their schools will be affected by this amendment. Sororities and fraternities will be integrated, according to Justice Ginsburg: “Replace college fraternity and sorority chapters with 'social societies.'” This applies to all organizations separated on the basis of sex including the Boy Scouts, Girl Scouts, 4-H Boys and Girls Clubs and all single-sex schools and college activities and sports. Not only does the ERA impose unreasonable demands upon the government; it strips women of laws that protect them. Under the ERA, “Current provisions dealing with statutory rape, rape, and prostitution are discriminatory on their face.” Statutory rape should not be an offense at all because a girl as young as 12 years old should have the right to have sex with whomever she pleases. She also believes that legalized
Eliminate the phrase “carnal knowledge of any female, not his wife, who has not attained the age of 16 years” and substitute a federal, sex-neutral definition of the offense. “... A person is guilty of an offense if he engages in a sexual act with another person... [and] the other person is, in fact, less than 12 years old.”\textsuperscript{118}

The presence of the Obama Administration is not helping the stability of an already unstable legal environment on the issue.\textsuperscript{119} Deputy Attorney General David Ogden is a prime example. Ogden fought to remove porn filters from the Internet in public libraries.\textsuperscript{120} He argued that the law requiring producers of sexually explicit material to keep records about the identity and ages of their performers was unconstitutional.\textsuperscript{121} He submitted a Supreme Court brief on behalf of the ACLU arguing that a man had been improperly convicted under the federal child pornography statute because the man’s videotapes, “Little Girl Bottoms (Underside)” and “Little Blondes,” which the U.S. Court of Appeals for the Third Circuit had found “clearly were designed to pander to pedophiles,” aren’t really pornography under the Constitution.\textsuperscript{122} Then-President Bill Clinton disagreed with Ogden, as did the U.S. Senate, 100-0.\textsuperscript{123}

prostitution could result from the amendment: “Prostitution, as a consensual act between adults, is arguably within the zone of privacy protected by recent constitutional decisions.” This is an amendment that is allegedly designed to bring equality to women. The result is precisely the opposite: It removes laws that protect a woman’s right not to be raped and reduces women to objects that can be sold legally through prostitution.

\textsuperscript{118} \textit{Id}. at 102.  

The list of far-left extremists poised to take over the Justice Department goes on: Dawn Johnsen, nominated to serve as head of the Office of Legal Counsel, worked at NARAL and the ACLU. She opposes even modest regulation of abortion, such as partial-birth abortion bans and parental notification for teenagers. She’s argued that restrictions on abortion violate the Thirteenth Amendment, which banned slavery, because “forced pregnancy requires a woman to provide continuous physical service to the fetus in order to further the state’s asserted interest.” Thomas Perrelli, nominated to be Assistant Attorney General, worked with the Florida ACLU to cut off basic food and water to Terri Schiavo, causing her to die, and later expressed disdain for the American people making laws through elected representatives that undo the work of legal extremists and activist courts.

\textsuperscript{120} \textit{Id}.
\textsuperscript{121} \textit{Id}.
\textsuperscript{122} \textit{Id}.
\textsuperscript{123} \textit{Id}.
C. The Academic Context

“A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples,” was a study published in the July 1998 *Psychological Bulletin* of the American Psychological Association. It contended that:

[N]egative effects (of child sexual abuse) were neither pervasive nor typically intense, and that men reacted much less negatively than women. It further stipulated that children’s feelings about sexual encounters with adults should be taken into effect and that “a willing encounter with positive reactions would be labeled simply adult-child sex.”

In 1999, after being rejected by several publishing houses, the University of Minnesota Press published *Harmful to Minors* by

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125 Id.

Concerned Women For America offers this summary of Levine’s book:

In Chapter 1, Levine is worried that kids don’t have enough access to pornography. In Chapter 2, she ridicules the idea that ‘so-called pedophiles’ are “a major peril to ... children.” In Chapter 3, she ridicules the possibility that inappropriate sexual behavior by children might be a symptom of sexual abuse. In Chapter 4, Levine suggests that parents are overreacting if they call the police when their 13-year-old daughter runs away with a mentally unstable 21-year-old man she met on the Internet. After warning in Chapter 5 about the evil right-wing plot to teach kids that “virgin” isn’t a dirty word, Levine argues in Chapter 6 that underage girls ought to be able to get an abortion without their parents' knowledge or consent. In Chapter 7, Levine worries that — despite the best efforts of the puritan anti-sex Nazis — kids might be having sex, but they aren’t enjoying it enough. In Chapters 8, 9, 10 and 11, Levine tells America how to fix all this so kids can have more sex and enjoy it better. This is a radical book from start to finish, and Levine knows it. But she tries to hide this with ambiguity, switching back and forth on age-related terms when she talks about kids and sex. First it’s “teens,” then it’s “children,” then it’s “adolescents,” then it’s “youth.” For instance, she writes, “Criminal law ... is not the proper place to adjudicate family conflicts over youngsters’ sexuality?” Are these “youngsters” 12 or 16? Reporters have let Levine get away with saying she’s written a mainstream book about “teens.” OK, a 13-year-old and a 19-year-old are both “teens,” but one is a seventh-grader and the other is a college sophomore. And a 12-year-old is not a “teen” but Levine endorses “reasonable legislation” that would make it legal for any adult to have sex with a 12-year-old. So long as it’s “consensual,” and doesn’t involve “exploitation.”
journalist Judith Levine, including a foreword by former Surgeon General Joycelyn Elders, who was asked to resign by President Bill Clinton after she endorsed making masturbation part of the public school curriculum.127 In the book, Levine contends that pedophiles are “myths” and faults the government for making pedophilia illegal.128 “Pedophiles are not generally violent, if there is such thing as pedophiles at all,” Levin wrote.129 “More important,” she stated, “sexual contact with a child does not a pedophile make.”130 Many have pointed out that Levine’s assertions in the book rest solely on pro-pedophilia sources such as the NAMBLA Bulletin.131 However the effects are certainly reverberating through all levels of the academic community. High Schools132 and even primary schools are

127 Brown, supra note 101.
128 Id.
129 Id.
130 Id.
131 Id.
132 Judith A. Reisman, Crafting Bi/Homosexual Youth 14 Regent U. L. Rev. 283, 326-327 (2002) (Sexual recruiting is becoming more common in schools. Some examples follow. New York City Schools: In 1991, the AIDS Program Services, New York City Department of Health published and distributed “A Teenager’s Bill Of Rights” to New York schoolchildren. The pamphlet, endorsed by a series of credible organizations, tells the readers, “I have the right to decide whether to have sex and who to have it with,” without reference to parents, age of consent, or statutory rape. The following tender, romantic directions grace an illustration of “How to use a condom.” Children should use condoms in “vaginal sex (penis into a woman’s vagina), oral sex (penis into the mouth) and anal sex (penis into the butt). Use a dental dam ... or plastic food wrap for oral sex... Hold it over her vagina to keep from getting her fluids in your mouth.” Minnesota Schools: The Minnesota Department of Education uses its booklet “Alone No More: Developing a School Support System for Gay, Lesbian and Bisexual Youth.” Denying the well-known sexual trauma inherent in the initiation of lonely and isolated children into early sex, and the predictable pattern of sexual disease and even death from homosexual conduct, the twin myths of condom safety and “informed consent” have become the sex educator’s fetish. School personnel are warned that they must adhere to the new sexuality dogma or be labeled homophobes, subject to serious disciplinary action. Massachusetts Schools: In Massachusetts, Department of Education employees are reported as “describing the pleasures of homosexual sex to a group of high school students at a state-sponsored workshop. Homosexual lecturers described the fun of “fisting,” (insertion of ones fist-even an arm-into, another’s rectum) in libidinous, pornographic detail. [Organized by] The Commission for Gay and Lesbian Youth, made up of homosexual activists from across the state, since 1992 the Commission has used the safe schools mantra and state money to persuade over 180 schools in Massachusetts to accept the [Gay-Straight Alliance (GSA)] clubs and their activities. Parents and others who offer any criticism of the programs are regularly accused of homophobia and endangering students’ safety. The information above became public only because a concerned parent took a hidden tape recorder into one of the meetings. After the parent circulated copies of the tape, homosexual organizations’ only response was to threaten to sue the parent for making the
not safe.\footnote{133} It should be noted that Levine’s work earned a book prize from the Los Angeles Times.\footnote{134}

D. \textit{General Strategies Used}

Sociologist and Professor Mary de Young,\footnote{135} has studied the phenomena of pedophilia activism and has shone light on many methods used to further their cause.\footnote{136} Among several strategies she

presentation public. Apparently they saw nothing wrong with teaching high school children how to do “fisting,” while dismissing its psychopathology and ridiculing its obvious physical harms.)  

\footnote{133} See Michele Maskaly, \textit{School Clams Up on ‘Gay’ Pledge Cards Given to Kindergartners}, Fox News (Nov. 1, 2008), http://www.foxnews.com/story/0,2933,445865,00.html.  

A California school system refused to say what action, if any, it will take after it received complaints about a kindergarten teacher who encouraged her students to sign ‘pledge cards’ in support of gays. During a celebration of National Ally Week, Tara Miller, a teacher at the Faith Ringgold School of Arts and Science in Hayward, Calif., passed out cards produced by the Gay, Lesbian and Straight Education Network to her class of kindergartners. The cards asked signers to be “an ally” and to pledge to “not use anti-LGBT (lesbian, gay, bisexual and transgender) language or slurs; intervene, when I feel I can, in situations where others are using anti-LGBT language or harassing other students and actively support safer schools efforts.” The school has acknowledged that the exercise was not appropriate for kindergartners. …The district employs a “Professional Learning Specialist: Equity,” who is in charge of gathering material and helping teachers decide what should be taught on the subject matter. …[P]arents at the Faith Ringgold School weren’t notified of what was going to take place in the classroom.  


\footnote{135} See generally Mary de Young, Grand Valley State Univ., http://www.gvsu.edu/soc-dept/mary-deyoung-54.htm (last visited April 1, 2012) (short biography of Professor Mary de Young on Grand Valley State University’s website).  

\footnote{136} Reisman, \textit{supra} note 132, at 317-18. While many suggest that these distorted sexual orientations are innate, the tactics of gay activists themselves do not seem to presuppose this assumption. Reisman argues: 

The following strategies for crafting “gay” children suggest homosexuality requires vigilant and organized wooing that rivals the recruitment techniques of the United States Marine Corps. Children, (labeled “initiates” as in prostitution or religion) are weaned from their “old fashioned” parents, “first into a self-affirming semisecrect group, then by collective socialization into a ‘gay’ cultural system,” a form of religio-sexuality cult. San Francisco State University Sexuality Professor and homosexual advocate Gilbert Herdt spells this out in his anthology Gay Culture in America. Hundreds of homosexual activists who “range in age from twenty-three to the late forties,” “aid” child initiates. Homosexual advocate Frederick Lynch describes the function of advisors in the suburban context.
noted the following regarding language. One strategy is using value-neutral terminology. This is akin to Lessig’s idea of

[W]hat has not been brought out fully in some other coming out studies is the role of guide, teacher, or “helping hand” in either the signification state, the coming-out-stage, or both .... [T]he often benign and helpful role that older, more experienced homosexual men play with regard to younger [males].

An example is “an ad by the Mulinomab County Children & Youth Commission offering ‘rewarding opportunities’ to those seeking to aid ‘sexual minority youth,’ etc., with the Commission (like many homosexual ‘youth’ groups) offering scholarships to those children who will attend their events. In their New York University Press classic, Lavender Culture, editors Jay and Young present Gerald Hannon address ‘Gay Youth and the Question of Consent.’ This prestigious homosexual political manifesto candidly describes the organized homosexual campaign to recruit children.

‘I believe ... we have to behave in a certain way vis-à-vis young people. I believe that means we have to proselytize .... The answer is to proselytize. Aggressively so.”

137 Mary de Young, The World According to NAMBLA: Accounting for Deviance, 16 J. SOC. & SOC. WELFARE 1, 111–26 (1989) (Other strategies are the denial of injury, condemnation of the condemners, appeal to higher loyalties/principles, and the denial of the victim).

138 See Revisiting the Double Language, BELIEVE THE CHILDREN (Dec. 3, 2008), http://believethechildren.blogspot.com/2008/12/revisiting-double-language.html. (For a different example of the same problem from a formerly abused child turned therapist which highlights the fact that although language can change the impact of the underlying realities does not:

The more I learn from survivors and new answers from my own past, the more insidious the abuse. Children are provided with benign terms that are used to describe sexual or other abuse activities. A child has no language for such acts and so uses what the abusers call it. Recently it became known that “having a date” or “going on a date” has a terrifying meaning for Tyler. He’s only about 9 now but heard the term and expressed great fear of “going on a date.” It connected to harm by his good parents as stated by the abusers. He has been safe from them for about two years but still deals with many triggers and fear of being taken by the abusers. A few weeks ago I learned the term “washing hair” was terrifying to one of my littles. It was an awful meaning. That’s been processed. But if someone witnessed and then reported to a safe adult, “Joe washed Jimmy’s hair,” no one would hear abuse. Another innocent word had been connected for me to abuse. “Exercise” was sex...sexual abuse. I have always had an aversion to exercise. That finally was processed when the meaning came out yesterday. Instead of trying to convince myself that “exercise” was a safe word, I created my own term since “exercise” still caused a visceral reaction in me. My new term is healing energy work. I can do healing energy work. So how do we fight this? A child tries to tell and no one hears. An adult hearing a child tell something that seems innocent needs to notice behavior and emotions of the child reporting. Is the child frightened by telling you? If so, it should be reported. Let the child trained interviewers find out what the phrase means. At least it might help get more children out of dangerous situations. I can imagine when I had language and may have tried to tell my mother, “Daddy made me exercise when you went shopping.” Her response would likely have been, “Exercise is good for you.” All these terms the perps use are so calculated to prevent the world from ever knowing. We need to start listening very differently.
ambiguation. Pedophile advocates proffer that one should replace “dull and reductionistic” terms like “pedophilia” and “abuse” when discussing sex between “a person who has not achieved adulthood and one who has”.\textsuperscript{139} Moreover, words like “child” or “childhood”, which have connotations of psychologically developmental, should be “resisted at all costs”.\textsuperscript{140} To this end, another recurring theme among those seeking to gain social acceptance for pedophilia is the need to restrict the usage of the term “child sexual abuse”. Pedophile activists recommend a child’s “willing encounter with positive reactions” be called “adult-child sex” instead of “abuse.”\textsuperscript{141} Also noteworthy here are the attempts to divorce pedophilia from mental illness. Activists refer positively to academics who argue that pedophilia should be removed from the Diagnostic and Statistical Manual of Mental Disorders (DSM), as per the arguments stated above.\textsuperscript{142}

Reconceptualization of children as willing sexual participants along with the decriminalization of consensual sexual relations is another key change sought by pedophile advocates.\textsuperscript{143} This type of argument is akin to Lessig’s notion of tying, as it attempts to attach itself to other forms of sexual “liberation” that the 20\textsuperscript{th} century society recognized. For example, Tom O’Carroll claims:

\begin{quote}
[w]hat there most definitely needs to be [in determining consent] is the child’s willingness to take part in the activity in question; whatever social or legal rules are operated, they must not be such as to allow unwilling children to be subjected to sexual acts. But there is no need whatever for a child to know “the consequences” of engaging in harmless sex play, simply because it is exactly that: harmless.\textsuperscript{144}
\end{quote}

Many other pedophile activists argue that children are actually able to knowingly consent to sex.\textsuperscript{145}

\textsuperscript{139}De Young, supra note 137, at 116.
\textsuperscript{140}See generally id. at 111-126.
\textsuperscript{141}See id. at 116.
\textsuperscript{142}See generally id. at 120-21.
\textsuperscript{143}Id. at 122.
\textsuperscript{145}See De Young, supra note 137, at 122-24.
E. The Activist Groups Behind the Promotion of These Linguistic Distortions

Unfortunately there are a variety of globally dispersed groups who are advocating\(^{146}\) for these linguistic changes. There are also

\[^{146}\] Reisman, supra note 134, at 322-24 (Why such aggressive techniques? Consider this argument from Reisman:

After the advent of the AIDS epidemic, academic homosexual leaders worried that boys were avoiding gay men. Homosexual leaders determined they must access schools, scouts, and other child institutions in order to “institutionalize ‘socialization’ techniques” to bring homosexuality to mainstream youth in the mid-1980s and reverse a growing youthful resistance to homosexuality. School newspaper ads seeking ‘gay’ youths and proclaiming a battle against gay suicide and associated “hate” crimes began to appear regularly. Herdt explained why homosexual recruitment efforts increased. “We had not foreseen that ... gay youth would also have to contend with the new horrors of AIDS [and that] ... teenage gays and lesbians would shun older gays as role models or even as friends ....” To meet this challenge, Herdt said, “[O]nly now has gay culture begun to institutionalize ‘socialization’ techniques for the transmission of its cultural knowledge to a younger generation ...” as “local ‘gay’ movements provide their own infrastructural support for the coming out process in teens.” Homophile medical anthropologist Douglas Feldman claimed, “these kids are our (the gay community’s) future and we must invest in them.” Yet, Feldman admits that gay and lesbian organizations discourage having ‘gay’ boys tested for HIV. Why? Feldman’s reply is disturbing. “Teenagers tend to be very susceptible to sexually transmissible diseases [that testing might expose],” observed Feldman. In any event, Feldman observes, these boys “have about a one in four chance of developing AIDS in approximately five years.” So how does the gay community counteract the unforeseen boyish fear of homosexual sex and an early, painful and lonely death? Methods of socialization into “gay cultural values” were subsequently developed and implemented. The victim-minority propaganda techniques which Marshall and Kirk diagramed in *After The Ball* were largely followed to facilitate sexual access to all American schoolchildren. “How To Stop Child Abuse,” is one of a series of full-page, fear-based advertisements designed by Kirk and Madsen to sell the idea of “bi/homosexual youth” to middle-America. Propagandizing as science the false Kinsey data that “one in every ten kids” is gay, the ad poses a forlorn, average young boy of about thirteen years of age. Implicit in the ad language is the threat to parents and boys—this could be you. The ad says the boy felt “different” when growing up and realized he was gay. Then he was abused (thrown out of his home) by his parents and brutally rejected by his friends. Because most children feel “different,” telling children this could mean they are “gay” exploits the viewer’s fear even as it encourages homosexual experimentation and recruitment. Kirk and Madsen provide an eight point “Strategic Evaluation” form to evaluate an ad’s success in vilifying the “straight” world as scoundrels and smearing “parents [and] his folks,” who are not gays, as child abusers. This advertisement rates a “Bull’s-eye,” say Kirk and Madsen, for implicit in the ad “How To Stop Child Abuse” is the boy’s possible suicide because of “his folks” intolerance of yet another “gay teen.” Following is the Kirk and Madsen analysis of the ad: STRATEGY: Jamming/Conversion/Desensitization. Build straight sympathy and protectiveness toward gays by portraying them as innocent victims of circumstance and bigotry.
several web groups. These organizations serve as platforms from which pro-pedophile activists disseminate their materials seeking to establish these linguistic manipulations. Below are a few of the more prominent examples.

NAMBLA, the North American Man/Boy Love Association, is based in New York, NY, USA and San Francisco, CA, USA. As the name of the organization suggests, the group advocates for man/boy relations and vehemently defends the legalization of sexual relations between men and boys based on the argument that minors

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148 Verhoeven, supra note 67.
149 Melzer v. Board of Education of City School Dist. of City of New York, 336 F.3d 185, 190 (2nd Cir. 2003). The court speaks of NAMBLA’s Bulletin:

The NAMBLA Bulletin is published ten times a year and features articles on topics of interest to members. The Bulletin is the self-described voice of NAMBLA. It is distributed by direct mail and sold to the public at select magazine and bookstores. Articles appearing in the Bulletin offer insight into the organization’s beliefs and purpose, as well as the extent of Melzer’s involvement. Issues of the Bulletin where Melzer is listed on the masthead as editor included articles like “Staying Safe and Happy as a Man/Boy Lover,” which appeared in October 1993. The article proffered advice developed by NAMBLA activists on how to deal with police, how to store contraband erotica to escape discovery, and how to keep the specifics of a relationship with an underage boy secret from authorities. That advice included: never answer police questions, avoid keeping photos of underage boys where police may find them, never discuss the specifics of an illegal relationship with therapists or social workers, and secure legal representation before you need it. Another article appearing in the January-February 1993 Bulletin gave advice on how to identify susceptible children and lure them into sexual acts. Melzer stated later that although he did not agree with the article, he did not believe most people would take the advice. A published letter to the editors of the Bulletin, entitled “Good Touches” appeared in the December 1992 issue. The letter graphically instructed readers on ways to touch specific body parts. In his capacity as editor, Melzer sanctioned such pieces in the “Letters” section of the Bulletin because he thought they had value.
have the right to freely explore sexuality.\textsuperscript{150} The group has an infamous legal history in the United States.\textsuperscript{151}

Holland has prominent groups as well. MARTIJN\textsuperscript{152} began in Holland in 1982 and battles for legal recognition and social acceptance of sexual relations between adults and children.\textsuperscript{153} It fights against what it calls “terror and discrimination”.\textsuperscript{154} It publishes the “OK” magazine, maintains an active website, and works socially and politically to advance its views.\textsuperscript{155} JON\textsuperscript{156} began in 1979, and this Dutch group provides “support” for persons who are attracted to children.\textsuperscript{157} They operate a multi-lingual web site that offers an environment for internet communication as well as other “assistance.”\textsuperscript{158}

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On the first evening of the conference, Agent Hamer met the defendant, David Mayer. During their casual conversation, Mayer said that he had been to Thailand several times and spoke about traveling to have sex with boys. Agent Hamer suggested that they form a travel group. Mayer responded with frustration that NAMBLA kept up pretenses of trying to change society when in fact its members only wanted to travel to meet boys...Later, the agent and the defendant corresponded, along with several other NAMBLA members, about traveling to Mexico to a hotel that could provide young boys for American tourists. Agent Hamer sent a link to a fake travel agency web site that had been constructed by the FBI prior to the 2004 conference, though Agent Hamer never mentioned it to anyone at the conference. Mayer made a reservation for the trip through the FBI’s fake travel agency. Mayer and his co-defendants were promised “special friends” and asked about their “age preference.” They sent either checks or credit card authorization to the FBI, which then bought the tickets and arranged the flights to San Diego. On February 11, 2005, Mayer flew with his two co-defendants to San Diego, where they were arrested; and Harper v. Wallington, 877 F.2d 728 (9th Cir. 1989) (the Court of Appeals there upheld a ban on mail from the North American Man/Boy Love Association (NAMBLA). The defendants demonstrate that the NAMBLA material threatened prison security because it could lead to violence against its readers and that “inmates who are identified as or suspected of being pedophiles or homosexuals are a favorite target for violence since many incarcerated felons were sexually abused as children.”
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\textsuperscript{150} Verhoeven, supra note 67.
\textsuperscript{151} For examples, United States v. Mayer, 503 F.3d 740 (9th Cir. 2007) (an FBI agent infiltrated NAMBLA posing as member, arranged trip to Mexico where he discovered the true intent of NAMBLA as stated by an inside member,

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\textsuperscript{153} Verhoeven, supra note 67.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} See JON, http://home.uni-one.nl/plein/jon/ (last visited ).
\textsuperscript{157} Verhoeven, supra note 67.
\textsuperscript{158} Id.
Three of the more prominent websites are the following. GLGARDEN is an activist site acting as a forum to share experiences with adults and children, battle for full democratic rights for those with “different” sexual attractions. Free Spirits is a site that supports a sexual union of men and boys as a valid sexual orientation with a developed network of chatting and other communicative organization. Christian Boy Love Forum is a forum that attempts to give support to Christian pedophiles. Its stance and linguistic use regarding the issue is hauntingly vague.

IV. ANALYSIS

Again, in order to talk about language we must remember that it is essentially the working communication of persons both at the individual and communal levels. Thus John Paul II’s words provide a foundation from which to build upon.

The process of integrating love relies on the primary elements of the human spirit – freedom and truth. Freedom and truth, truth and freedom determine the spiritual imprint, which marks the various manifestations of human life and human activity. They penetrate the remotest recesses of human action and experience.

As truth and freedom are those values, which most deeply affect humanity at both the individual and group levels, these seem appropriate to call the basis of rational linguistic use. Drawing from Pieper and understanding language as the interpersonal communication of reality, the integrity of language in the Medical, Legal, and Academic settings regarding pedophilia takes on an extremely relevant importance. The level of precision used deserves to be scrutinized and examined meticulously, and points of contradiction or linguistic corruption by the numerous pro pedophile groups merit unapologetic illumination. Though some would argue that language can be utilized in a “free” and somewhat unclear

160 Verhoeven, supra note 67.
162 Verhoeven, supra note 67.
163 Id.
164 See id.
165 WOJTLA, supra note 26, at 118-119.
manner through techniques such as tying and ambiguation, John Paul II would counsel that language is free only for the truth which is proper to its nature. Benedict XVI illumines this goal of language for us as the expression and transmission of being/reality of the dignity of the human persons involved. John Paul II reminds us that there is no greater time than the present to advocate for linguistic integrity as the truth is being replaced with manifold lies; buried underneath the linguistic clutter and instability such as that which the malleable APA definitions illustrate. It is hoped that true to John Paul II’s words that the realities that do in fact surpass language, those which language seek to identify, shall indeed be made clear through the increased scrutiny that is now called for in language in this most sensitive of settings. This is all in the hope that language use will achieve the integrity and transparency of which the Eternal Word is the model.

Regarding language and linguistic usage in the Pedophilic context, the principle of linguistic transparency urges us not to abuse the linguistic freedom that the fast evolving era of globalization offers us. Though perhaps language can be knowingly or unknowingly divorced from the realities normally understood to be represented therein by linguistic evolution or by those skilled in rhetorical arts, this can never be done through misrepresentation or half-truths. This type of usage is possible in politics which often recognizes a linguistic freedom to stretch and manipulate words. But a “freedom” to divorce usage from the underlying reality is not a freedom at all. It only results in a manipulation by the speaker to the listener, resulting in an imposition of the speaker’s self created “reality” upon the listener which effectively leaves the listener in the most un-free position to accept the speaker’s new creation of “reality” or to deal with the consequences of this. Simply one must call for what it is; it is lying and it is a selfish manipulative distortion.

166 Veritatis Splendor, supra note 38, ¶ 88, 99 (John Paul goes on to say:

The attempt to set freedom in opposition to truth, and indeed to separate them radically, is the consequence, manifestation, and consummation of another more serious and destructive dichotomy, that which separates faith from morality…Totalitarianism arises out of a denial of truth in the objective sense. If there is no transcendent truth, in obedience to which man achieves his full identity, then there is no sure principle for guaranteeing just relations between people. Their self-interest as a class, group or nation would inevitably set them in opposition to one another. If one does not acknowledge transcendent truth, then the force of power takes over, and each person tends to make full use of the means at his disposal in order to impose his own interests or his own opinion, with no regard for the rights of others…. Thus, the root of modern totalitarianism is to be found in the denial of the
The implications of continued manipulation of language are obvious. As language is corrupted, the habits of the political culture turn into a corrosive element that erodes the very foundation upon which politics, media, and communication must be built: the truth. Simply put, the truth here is that pedophilia should never be legitimized under any circumstance or rationalization. Children are not capable of sexual interaction despite what any activist minority tries to advocate. If pedophile activists were truly interested in the well being of those that they profess to “love” then this would be clear to them. Though these attempts are difficult to grasp as their efforts at rationalization are so far from any semblance of reality and common sense, as Orwell writes we should be left not in a state of despair but of hope:

Now, it is clear that the decline of a language must ultimately have political and economic causes: it is not due simply to the bad influence of this or that individual writer. But an effect can become a cause, reinforcing the original cause and producing the same effect in an intensified form, and so on indefinitely. A man may take to drink because he feels himself to be a failure, and then fail all the more completely because he drinks. It is rather the same thing that is happening to the English language. It becomes ugly and inaccurate because our thoughts are foolish, but the slovenliness of our language makes it easier for us to have foolish thoughts. The point is that the process is reversible. Modern English, especially written English, is full of bad habits which spread by imitation and which can be avoided if one is willing to take the necessary trouble. If one gets rid of these habits one can think more clearly, and to think clearly is a necessary first step toward political regeneration. . .

By taking the first steps toward identifying the problem of linguistic manipulation and distortion, it is hoped that the initial movement toward thinking more clearly has already begun. This clear thinking leads to a more coherent vision of a just society which does not allow for the establishment of social rights to affirm moral
transcendent dignity of the human person who, as the visible image of the invisible God, is therefore by his very nature the subject of rights which no one may violate — no individual, group, class, nation or State.

disorders. The Social Doctrine of the Catholic Church articulates such an integrated vision.\(^{168}\)

A just society can become a reality only when it is based on the respect of the transcendent dignity of the human person. The person represents the ultimate end of society, by which it is ordered to the person. “Hence, the social order and its development must invariably work to the benefit of the human person, since the order of things is to be subordinate to the order of persons, and not the other way around.” Respect for human dignity can in no way be separated from obedience to this principle. It is necessary to “consider every neighbor without exception as another self, taking into account first of all his life and the means necessary for living it with dignity.” Every political, economic, social, scientific and cultural program must be inspired by the awareness of the primacy of each human being over society.\(^{169}\)

In no case, therefore, “is the human person to be manipulated for ends that are foreign to his own development, which can find complete fulfillment only in God and His plan of salvation: in fact, man in his interiority transcends the universe and is the only creature willed by God for itself.”\(^{170}\) The person cannot be a means for carrying out economic, social or political projects imposed by some authority, even in the name of an alleged progress of the civil community as a whole or of other persons, either in the present or the future.\(^{171}\) Authentic social changes are:

- effective and lasting only to the extent that they are based on resolute changes in personal conduct. An authentic moralization of social life will never be possible unless it starts with people and has people as its point of reference: indeed, “living a moral life bears witness to the dignity of the person.” It is obviously the task of people to develop those moral attitudes that are fundamental for any society that truly wishes to be human (justice, honesty, truthfulness, etc.), and which in no way can simply be expected of others or

\(^{169}\) Id.
\(^{170}\) Id. at 133.
\(^{171}\) Id.
delegated to institutions. It is the task of everyone, and in a special way of those who hold various forms of political, judicial or professional responsibility with regard to others, to be the watchful conscience of society and the first to bear witness to civil social conditions that are worthy of human beings.172

V. CONCLUSION

To summarize then, we can say the following. Efforts of linguistic manipulations in the promotion of Pedophilia are a major problem for society to deal with. Activists within the medical, legal, and academic communities are attempting to distort and misuse language toward the end of blurring society’s perception of their agenda. There are many geographically diverse groups behind this activism using techniques such as tying and ambiguation. Our Lord gives us the model of transparency and integrity in language, as one must say what one means and use language with integrity. Only this usage corresponds to the dignity of the human person created in the image and likeness of God, which is the basis for a just society. John Paul II gives us a metaphysical foundation from which to understand language as interpersonal communication. Pieper teaches us that language is interpersonal identification and John Paul II speaks to us of the timely importance of linguistic integrity in identification. John Paul II further adds that language is in search for realities surpassing itself. Benedict XVI then directs us that the expression of reality is the authentic purpose of language, which highlights John Paul’s principle that linguistic freedom is only free in the truth. In sum, we can say that all these principles are manifest in the Eternal Word Himself, spoken by the Father from all Eternity in one transparent utterance of pure Being and Love that eclipses all the ages.

As a final note we can reflect on these words of our Lord: “What you do unto these little ones you do unto me.”173 Thus, for those of us who profess to follow Him, He leaves us with this chilling reminder,

[t]hen they will answer and say, ‘Lord, when did we see you hungry or thirsty or a stranger or naked or ill or in prison, and not minister

172 Id. at 134.
173 Matthew, supra note 5, at 25:40.
to your needs?’ He will answer them, ‘Amen, I say to you, what you did not do for one of these least ones, you did not do for me...  

Let us not carry the guilt of inaction toward these most heinous efforts as we journey to meet Him. We can begin by using terminology and connotations proper to the disturbed nature of these acts and not allow others to attempt to “sanitize” pedophilia through linguistic manipulation and corruption.175

174 *Id.* at 44:45.
AN EVALUATION OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION’S TASK FORCE REPORT ON THE SEXUALIZATION OF GIRLS

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INTRODUCTION

The purpose of this paper is to evaluate the American Psychological Association’s (APA) Task Force Report on the Sexualization of Girls (Report). The Report has four parts: evidence of the sexualization of girls; consequences of the sexualization of girls; positive alternatives; and recommendations. The Task Force on the Sexualization of Girls (TSG) presents ample evidence of the problems and consequences, as well as some positive alternatives and helpful recommendations. This paper will argue that the recommendations presented will not achieve the goal of protecting girls because the TSG fails to identify the underlying causes and implicitly accepts unsubstantiated ideologically based assumptions.

Part I will explore the causes. Part II deals with the factors the TSG does not take into consideration when presenting its recommendations and historical responses to the problem. Part III will analyze the ideological influences on the TSG, namely the Sexual Revolution and Radical Feminism. Part IV will deal with the fundamental question that the TSG avoids, namely: Should adolescent


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girls engage in sexual activity or do the risks outweigh the benefits? The authors of the TSG Report appear to believe that they can preserve the sexual freedom of girls, while avoiding the negative effects of sexualization. There is no evidence that this is possible and, indeed, the Report itself presents substantial evidence of the failure of such a plan.

I. EVIDENCE OF THE SEXUALIZATION OF GIRLS

In response to what has been identified by journalists, child advocacy organizations, parents, and psychologists as an increasingly serious problem, the APA formed the TSG:

The Task Force will examine and summarize the best psychological theory, research, and clinical experience addressing the sexualization of girls via media and other cultural messages, including the prevalence of these messages and their impact on girls.  

The Report of the TSG presents a comprehensive summary of reasons for legitimate concern. According to the TSG, “Virtually every media form studied provides ample evidence of the sexualization of women, including television, music videos, music lyrics, movies, magazines, sports media, video games, the internet and advertising.” Women are more likely to be dressed in sexy clothing. In addition “a narrow (and unrealistic) standard of beauty is heavily emphasized.” According to the TSG Report, sexualization occurs when:

...a person’s value comes only from his or her sexual appeal or behavior; the exclusion of other characteristics; a person is held to a standard that equates physical attractiveness (narrowly defined) with being sexy; a person is sexually objectified—that is made into a thing for others’ sexual use rather than seen as a person with the

3. Id. at 2.
capacity for independent action and decision making; and/or sexuality is inappropriately imposed upon a person.\textsuperscript{4}

The media is undeniably promoting the sexualization of girls and adult women by this definition. Direct cause and effect relationships in areas such as media influence are difficult to prove absolutely. There is certainly reason to consider the real possibility that constant media images of sexualized girls and women effect the way a woman thinks about her own body.\textsuperscript{5}

It appears probable that viewing oneself as a sexual object or being treated as a sexual object has, as the TSG Report asserts, “negative effects in a variety of domains, including cognitive functioning, physical and mental health, sexuality, attitudes and beliefs.”\textsuperscript{6} According to the TSG Report, “Research links sexualization with three of the most common mental health problems of girls and women: eating disorders, low self-esteem and depression or depressed moods.”\textsuperscript{7}

The evidence presented by the TSG is compelling. The question not addressed is: Why should young women, who by all measures have better educational and vocational opportunities than women of any other generation in history, be suffering from serious mental health problems? The TSG is not the first to draw attention to this problem. Mary Pipher, author of Reviving Ophelia, after seeing teenage girls in her private practice, who suffered from depression, eating disorders, and low self-esteem, concluded that, “Girls are coming of age in a very poisonous, girl-hurting culture.”\textsuperscript{8} She blamed the images girls see in the media, and particularly in advertisements, for setting a standard the normal girl cannot attain. She argues that girls have “been taught that what’s valuable to them is their sexuality.”\textsuperscript{9} While Pipher sees ‘lookism,’ sexism, and patriarchal society as at the root of the problem, the majority of adolescent girls with serious problems whose histories she presents have engaged in sexual activity. The

\textsuperscript{4} Id. at 1.
\textsuperscript{5} See id. at 2-3.
\textsuperscript{6} Id. at 2.
\textsuperscript{7} Id. at 3.
\textsuperscript{9} MARY PIPHER, REVIVING OPHelia: saVing the SELVES OF ADOLESCENT GIRLS 8 (Ballantine Books 1995).
possibility that the conflict with parents, depression, drugs, eating disorders, self-mutilation, and suicide attempts which brought these girls to counseling may be related to or at least exacerbated by their sexual involvement is not explored, even though Pipher admits:

My own belief is that junior-high girls are not ready for sexual experiences... By high school, some girls may be mature enough to be sexually active, but my experience is that the more mature and healthy girls avoid sex. Because of my work, I see the unhappiness of early sexual intimacy – the sadness and anger at rejection, the pain over bad reputations, the pregnancies, the health problems and the cynicism of girls who have had every conceivable sexual experience except a good one. I’m prepared to acknowledge exceptions, but most early sexual activity in our culture tends to be harmful for girls.10

On the other hand, Pipher sees adolescence for girls is a time for “coming to terms with their own sexuality, defining a sexual self, making sexual choices, and learning to enjoy sex.”11 Pipher does not’ explore this inconsistency.

In contrast to the young women who came to her for counseling, Pipher also interviewed several girls who appeared to be successfully surviving adolescence. She talked to Christy whom she met volunteering at a homeless shelter. Christy wanted to date, but not have sex.12 She interviewed Leah, the daughter of a Vietnamese single mother, who said “I would never have sex until I was married. That would bring great shame on my family.”13 Pipher was surprised that Lori, who believes sex comes with marriage, was “so well rounded and mentally healthy that I pondered how to explain it.”14 Pipher was conflicted about Jody, who came from a very traditional family and who said, “I want to follow God’s plan for me... I want to marry and have a close family like mine.”15 Pipher writes:

I struggled with the questions this interview raised for me. Why would a girl raised in such an authoritarian, even sexist, family be so well liked, outgoing and self-confident? Why did she have less anger

10. Id. at 208.
11. Id. at 205.
12. Id. at 204.
13. Id. at 88.
14. Id. at 51.
15. Id. at 91.
Maria and Evonne, two minority girls Pipher interviewed, were not sexually active. Pipher noted that, “It’s interesting, given how mature they were compared to their peers, that they didn’t feel ready for sex.”

It appears that Pipher sees the dangers of sexualization, but is unable in spite of the evidence before her to acknowledge that abstaining from sexual intimacy protects girls from the toxic culture. One can argue that the TSG Report suffers from the same failure to acknowledge the negative effects of sexual activity on girls.

II. TSG RECOMMENDATIONS VERSUS TRADITIONAL APPROACHES

The TSG Report has identified serious problems for girls, and made a number of recommendations among them:

- Increased access for girls to athletic and other extracurricular programs that make them feel powerful.
- The development and presentation of comprehensive sexuality education programs which deal with this issue.
- Positive messages for girls from organized religious and other ethical instruction
- Alternative media to counteract the sexualized image in major media.
- Forums, research, and feminist activism to create awareness.

Granted that a problem of sexualization of girls exists, are the remedies suggested by the TSG Report the correct ones? Or has bias caused the authors to ignore other factors, in which case the suggested remedies will at best only deal with symptoms and at worst exacerbate the problem? The Report does not address why contemporary culture tolerates the sexualization of girls, why this has increased, and why media is so deeply involved. Unless the causes of the problem are correctly diagnosed, the solutions proposed may be less than effective.

16. Id. at 92.
17. Id. at 281.
Several of the suggestions have merit. Awareness of the problem is important. Feminist groups should be concerned about the sexualization of girls. Religious teachings and a strong faith do act as a protection; however, traditional religious beliefs come into direct conflict with the messages promoted in comprehensive sexuality education courses and by feminist groups.

There are several factors, which the TSG Report fails to take into consideration and these include:

A. Sex Differences

There is a simple rule that should be applied to any effort at social change, “Accept the things you cannot change, change the things that can be changed, and have the wisdom to know the difference.”18 If society is going to successfully address the problem of the sexualization of girls, the part played by biology and human nature—in particular universal male and female desires, attractions, and responses should be taken into consideration. For example:

1) Men are sexually attracted to women, in particular to younger women and to women they perceive as beautiful.19 They want to engage in sexual activity with them and will try to obtain that objective by various means including seduction and lies. While male sexual desire can be repressed and/or channeled,20 there is no evidence that it can be eliminated. However, the male ideal of beauty is different for different cultures and at different times in history, therefore while men will always prefer women they perceive as beautiful, the standard of beauty can change.21

2) Women want to be loved by a man, to form a permanent relationship, and to have children.22 Women are susceptible to seduction. They can be talked into engaging in sexual intimacy by promises of love and commitment. Young girls are particularly susceptible. The desire to be loved will lead them to attempt to attract the attention of males. Since men

18. This is a truncated form of the Serenity Prayer attributed to Reinhold Neibuhr.
19. STEVEN RHoads, TAKING SEX DIFFERENCE SERIOUSLY, 54-59 (Encounter Books 2004) [hereinafter Rhoads].
20. E.g., TSG, supra note 1, at 34.
22. Rhoads, supra note 19, at 190-191.
favor certain body types and physical characteristics, girls will seek to achieve an attractive appearance to make themselves more appealing.\textsuperscript{23}

Any program aimed at reducing the negative effects of the sexualization of girls should take into account these fundamental differences. Unfortunately, the APA and numerous other professional associations have adopted an ideological agenda, generally known as political correctness, which—among other things—denies that there are natural human instincts and rejects the claim that men and women are naturally different.\textsuperscript{24} Some contemporary views forward the belief that all observable differences between men and women are socially constructed, imposed by an oppressive society, and not manifestations of any underlying human instincts or hormonal reactions, and therefore, it is not considered politically correct to take traditionally recognized sex differences into account when developing social policy.\textsuperscript{25} Men and women are told that their feelings and reactions are the product of social conditioning and can and should be changed.

The solutions suggested in the TSG Report are based on several dubious assumptions. For example, if girls feel powerful,\textsuperscript{26} they will no longer want to be attractive to males and if the media no longer shows pictures of sexually attractive women,\textsuperscript{27} men will no longer seek to have sexual relations with women they view as sexually attractive.\textsuperscript{28} Such hidden assumptions are not supported by experience or evidence.

The belief that there are no natural differences between men and women is so engrained in academia, that when the president of Harvard suggested that there might possibly be some natural differences between men and women, those in academia were furious. No apology was sufficient and as a result he is no longer the president of Harvard.\textsuperscript{29}

\begin{thebibliography}{99}
\bibitem{23} Rhoads, \textit{supra} note 19, at 86.
\bibitem{24} Rhoads, \textit{supra} note 19, at 58.
\bibitem{26} TSG, EX, \textit{supra} note 2, at 6.
\bibitem{27} \textit{E.g.}, TSG, EX, \textit{supra} note 2, at 5-7.
\bibitem{28} \textit{Id.}
\end{thebibliography}
Instead of trying to change what cannot be changed, it might be more profitable to look at the things that can be changed. An article by Bonafini and Pozzeilli entitled “Body Weight and beauty: The changing face of the ideal female body weight,” points out that:

...there have been dramatic changes in what is considered a beautiful body. The ideal of female beauty has shifted from a symbol of fertility to one of mathematically calculated proportions. It has taken the form of an image responding to men’s sexual desires. Nowadays there seems to be a tendency toward the destruction of the feminine, as androgynous fashion and appearance dominate our culture.  

This change in fashion in the twentieth century occurred as the result of several factors: photography, film, and television accentuate body fat, make women look heavier than they are, and favor the thin. Professional models that are tall and thin can display a wider variety of garments than those who are pleasantly plump. Gay male designers have an inordinate influence in international high fashion and may unconsciously favor androgyny and women with boyish figures, as well as fashion that borders on the obscene. In the eighteenth and nineteenth centuries women achieved a thin waist by wearing corsets—which were uncomfortable and unhealthy. A woman’s thighs and hips were concealed. In the first half of the twentieth centuries, corsets were replaced with flexible girdles and then in the 1960’s artificial restrictions were done away with entirely; at the same time more of a woman’s body was exposed. Given the emphasis on thin and athletic women, a woman who wished to be attractive had no option, but to reduce her weight.

It is not just the images of sexy women that are a problem. In a majority of television and movie comedies and dramas produced today, if an unmarried man and woman kiss, in the next frame they are falling into bed. However, it is interesting to note that dramas where sexual promiscuity are not part of the plot are popular—such

30. Bonafini, supra note 21, at 62.
31. Personal observation of ballerinas who although they weighed less than 110 lbs were told they had to lose 10 lbs. to appear their original weight on television.
as the dramatizations of Jane Austin novels, Harry Potter films, and Lord of the Rings.\textsuperscript{34}

An emphasis on more modest clothing and pressure on the fashion industry to use models with various body shapes could certainly take the pressure off women to conform to unrealistic body image goals, but this is only a symptom of the real problem. No matter how women dress, men will lust after them and women will want to be loved.

Throughout history, various societies have sought to control male lust and channel it in ways that protected women and girls.\textsuperscript{35} Such social policies reflected a general recognition that sexual activity outside marriage has negative consequences for society in general and women in particular:

1) Sexual intercourse leads to pregnancy. Pregnancy outside marriage presents a serious challenge to society, whose goal is to provide a stable environment for each baby—namely a father and mother who are committed to each other by marriage and therefore to the child. In the past the conception of a child outside marriage was often followed by a forced marriage. Unwed motherhood was considered a scandal and abortion was illegal and dangerous.\textsuperscript{36}

2) Sexual intercourse outside marriage spreads sexually transmitted diseases, some of which cause infertility and some of which, while treatable, cause continuing health problem.\textsuperscript{37}

3) Sexual intimacy causes the release of oxytocin in the woman, which causes her to bond to her partner and increases trust.\textsuperscript{38} The woman may not be able to control her emotional response


\textsuperscript{37} See generally Sexually Transmitted Diseases, Centers for Disease Control and Prevention (CDC) (last updated Feb. 16, 2012), http://www.cdc.gov/STD/.

\textsuperscript{38} Miriam Grossman, Unprotected: A Campus Psychiatrist Reveals How Political Correctness in Her Profession Endangers Every Student 7 (Sentinel 2006); See Michael Kosfeld, Oxytocin Increases Trusts in Humans, 435(2) Nature 673, 673 (June 2005).
to a man she has been intimate with and may trust a man who
is not committed to her. The breakup of the relationship
leaves the woman feeling betrayed and depressed and lowers
her self-esteem. 39

4) Women want to be loved, married, and have children. If
women refuse to grant sexual favors before marriage, men,
desiring to win the favor of a particular woman, are more
likely to propose marriage and accept the responsibility for the
woman and the children born of their union.

5) Because women become pregnant, nurse babies, and are more
likely to be responsible for the primary care for children, they
are less available to engage in certain forms of economic
activities and they and their children have to rely on the
husband/father for support.

6) The family consisting of the father, mother, and their children
is the fundamental unit of society and societies have therefore
encouraged, supported, and privileged family foundation. 40

Throughout history, various societies have recognized the
negative consequences of sexual activity outside marriage and have,
therefore, discouraged it. Reading through the nineteenth century
novels of authors like Austen, Trollope, and Dickens, one can see the
emphasis placed on a woman’s chastity, the methods used to protect
unmarried women and the tragedy predicted for those girls who fell
from virtue:

1) The activities of girls and unmarried women were restricted.
When in public, they were accompanied by family members or
chaperons. The whole family, particularly the girls’ father and
brothers, was concerned about the preservation of the virtue
of young women.

2) Women married young, often to men selected or at least
approved by their parents. Although young women wanted
to marry for love, economic consideration and social class
played an important part in the choice of mate.

3) Girls’ education was thereby restricted and, if they were
educated, it was in all-female institutions.

39. Id.
40. The Universal Declaration of Human Rights recognizes this reality: “The family is the
natural and fundamental group unit of society and is entitled to protection by society and the
and childhood are entitled to special care and assistance.” Id. at art. 25 (pt. 2).
4) Because of limitation on education, early marriage, and negative attitudes to women’s abilities, women’s participation in the economic and political life of their communities was circumscribed.

5) Society recognized the effect of overtly sexual clothing on males; therefore girls’ clothing was carefully chosen to avoid immodesty.

6) Girls were educated in religious and cultural values of chastity and modesty. They were taught that sexual relations were for marriage and sexual intimacy outside marriage was wrong.

7) Girls and women who were sexually active outside marriage brought shame on their families and were shunned by other women.41

In the second half of nineteenth century women rightly rebelled against restrictions on their education and on their right to participate in the political and economic life of their communities.42 They objected to stereotypes that portrayed them as lacking intelligence and skills.43 Women wanted to marry for love, rather than economic consideration, which were often primary in their parents’ minds. In the twentieth century women won acceptance as full and equal citizens, but something happened which the nineteenth century foremothers of women’s liberation had feared. Freed from restrictions, thrust into the male world without protection, women became vulnerable to the lust of men. Women were supposed to protect themselves by carefully monitoring their behavior. They did for a time have the support of society, which imposed various rules of behavior and provided safe environments. For example, young women attending co-ed colleges up until the 1960’s were housed in sex segregated dormitories and males were not allowed above stairs or in the rooms of female students. Curfews were enforced.44

In the 1960’s all this changed. Any residual protection of young women was swept away by two interconnected social movements: the Sexual Revolution and Radical Feminism.45

44. Personal observation based on personal experiences of the authors.
45. Radical feminism applies Marxist class struggle theory to the relationship between men and women, classifying men as the oppressor class, women as the oppressed class, proposing a
III. IDEOLOGICAL INFLUENCES IMPLICIT IN THE TSG

Pronouncements from the APA need to be carefully scrutinized for evidence of ideological bias, since the organization has come under the influence of special interest groups, which have imposed an ideology of political correctness upon it. In the book Destructive Trends in Mental Health: The Well-Intentioned Path to Harm, Rogers Wright, founding president of the Council for the advancement of Psychological Professions and Sciences, and Nicholas Cummins, past president of the APA, collected essays by various professionals documenting how the APA is failing in its professed mission. In the preface they write: “...psychology and mental health have veered away from scientific integrity and open inquiry, as well as from compassionate practice in which the welfare of the patient is paramount...Psychology, psychiatry, and social work have been captured by an ultraliberal agenda.”46 According to Richard Redding, “Psychology’s manifestly liberal stance undermines its credibility. Scientific findings are rendered suspect.”47 The authors of Destructive Trends argue that the APA is not a neutral professional organization seeking to provide the public with the fruits of objective scientific study, but an organization it has repeatedly taken sides in contentious public controversies, offering opinions which are outside its area of expertise, and not supported by well-designed, reliable research. Two ideological influences can be identified: the sexual revolution and radical feminism.

A. The Sexual Revolution

A movement promoting absolute freedom from all social restrictions on sexuality had been lurking beneath the surface for decades, but the invention of the birth control pill provided an opportunity for a full-scale revolt against traditional morality and common sense restrictions on sexuality. It became socially acceptable to promote absolute sexual liberation. According to anthropologist

sex-class revolution that will overthrow the patriarchal system, and promoting abortion on demand and lesbianism as means to achieve their objectives. See Shulamith Firestone, The Dialectic of Sex (Farrar, Straus, Giroux 1970); Dale O’Leary, The Gender Agenda: Redefining Equality (Vital Issues Press 1997).

46. Rogers Wright & Nicholas Cummins, Destructive Trends in Mental Health: The Well-Intentioned Path to Harm xiii (Routledge 2005).

47. Id. at 10.
Edward Green, “The sexual liberation paradigm holds a core belief that nothing should interfere with sexual freedom. . .”48 Furthermore, “The sexual liberation paradigm grew out of the sexual revolution of the 1960s and 1970s, in which gay activists, feminists, and others sought equal rights and recognition (legal and societal) and rejected ‘heteronormative’ traditional sexual morality.”49 Likewise,

The advent of the availability of effective contraception and treatment for sexually transmitted infections removed much of the risk of pregnancy and disease from sexual intercourse. Casual sex came to be regarded as safe, liberating, fun, freely available and something that members of modern consumer cultures felt much freer to consume.50

The sexual liberation movement led to the development of intense narcissistic personality conflicts in adults and in youth, including the belief that no one was harmed by using another person solely as a sexual object for one’s own pleasure.51

The proponents of sexual liberation convinced many that with the invention of a pill to prevent pregnancy and improved treatment of STDs, women were now as free to engage in sexual activity as men had always been. All restrictions, all social condemnation, all protections of women’s chastity were tossed aside as irrational restrictions. Those who objected were told that they had Puritan or Victorian hang-ups.52 Pornography, which had been hidden away, was brought out and became big business. Abortion, which had previously been available though illegal, was legalized first by New York State, and then in 1973, nationally, by the Supreme Court.53 The Sexual Revolution was accepted by the media as a fait accompli and its promoters reveled in their new freedom.54

49. Id. at 39.
50. Id. at 29.
51. See Fred Hutchison, Narcissism and the culture war, Renew America (Feb. 8, 2004), http://www.renewamerica.com/columns/hutchison/040208.
53. For the national legalization of abortion, see Roe v. Wade, 410 U.S. 113 (1973).
However, contraception while universally available was not always universally used, and unplanned pregnancies increased. Not all the pregnant unmarried women opted for abortion, creating an underclass of single mothers, often with offspring by several fathers. It turned out that the medical profession had been overly optimistic about its ability to treat STDs. In addition to the classic STDs, — syphilis and gonorrhea,— new diseases became epidemic: Chlamydia—which could render a woman sterile; herpes—which could be controlled, but those infected remained vulnerable to reoccurrence and could continue to infect others; human papilloma virus—which has been linked to cancer; and AIDS—which was initially almost always fatal, and now is a chronic and debilitating disease.55

The Sexual Revolutionaries, unable to ignore the carnage their revolution had caused, did not retreat, instead they insisted that they and only they were capable of dealing with the problem. The liberal advocates demanded and received permission to institute comprehensive sexuality education courses K through 12.56 They claimed that the objective of these courses was to prevent pregnancy and disease. And in the 1980s at the height of the AIDS epidemic with thousands dying, parents and school boards were concerned enough to give these sexual ‘experts’ free rein. What many did not understand was that the goal of the sexual revolutionary ‘experts’ was not to teach the students how to eliminate the risks involved with sexual relations outside marriage by abstaining from such activity (just as one eliminates the negative effects of smoking, by not smoking), but to teach the students how to reduce their risk through the use of condoms, contraception, and when that failed abortion (the equivalent of offering filter tip cigarettes). The primary concern of these experts was the preservation of their sexual revolution.57

Students were taught that they were sexual beings from birth. This claim was based on the writings of Alfred Kinsey, who relied on the


experiments of a notorious pedophile for his theory.58 This claim purposefully confused the healthy recognition that one is male or female, with participation in activities designed to sexually arouse. Students (in some cases as early as kindergarten) were encouraged to engage in masturbation and various sexual behaviors when they felt they were ready.59 What boy in lust does not think he is ready? What girl in love is not sure she can handle the consequences? Emotionally vulnerable teenagers were told that all they had to do was use the proper forms of protection. As the failure of comprehensive sexuality education in high school became evident, the experts insisted that the programs needed to start earlier—in junior high, then elementary school, then kindergarten. Parents were assured that comprehensive sexuality education would solve all the problems. In a very real sense, the schools hired the arsonists to put out the fire and the consequences were predictable. The problems increased. Rather than being the solution to the sexualization of girls, comprehensive sexuality education may well be a contributory factor.60

Wendy Shalit, in her book, Return to Modesty: Discovering the Lost Virtue, recounts her experience with sex education in the 4th grade. One day her math class was interrupted by a visit of a cheery woman with a Question Box. She said that she would open the box and read a question. The first question was “What is 69?” The boys giggled, but the woman insisted that there was nothing to giggle about. This was a class about Human Growth and Development and no question was off limits. Wendy raised her hand and asked to go to the bathroom. That evening Wendy told her mother about the class and after some negotiation with school authorities, it was agreed that Wendy would go to the library during the sex education class. Although she did not attend the sessions, she could not help but notice the effect the lessons had on the students who did attend. The boys used the information they had gained to harass the girls, asking

them if they masturbated and why they weren’t developing. Mary Pipher confirms Wendy’s observation:

While junior-high boys have always teased girls about sex, the level of teasing is different. Girls are taunted about everything from oral sex to pubic hair, from periods to the imagined appearance of their genitals. The harassment that girls experience in the 1990’s is much different in both quality and intensity. The remarks are more graphic and mean-spirited.

The authors of the TSG Report recognize the problem of the sexual harassment of girls, including pre-teens, “Even 10 to 12-year-olds, most of whom had not yet completed the fifth grade, reported significant and frequent experiences of sexual harassment in school.”

While the TSG Report decries sexuality “which is inappropriately imposed upon a person,” Shalit reported on how under the influences of the comprehensive sexuality education programs school girls felt that they either had to engage in sexual activity in order to be regarded as ‘normal’ or (as she did) pretend to have participated in such behavior.

B. Radical Feminism

Throughout the first half of the twentieth century, women had been making gradual progress in education and in acceptance into the workplace. There were those, however, who felt that the choice of some women to accept traditional roles, to marry and have children severely limited women’s progress. These Radical Feminists—Simone de Beavoir, Betty Friedan, Gloria Steinem, Germaine Greer, Shilamith Firestone, Mary Daly—wanted to free women from all restrictions, not only those imposed by cultural stereotypes, but those considered by most to be biological.

61. Id. at 17.
62. PIPHER, supra note 9, at 69.
63. TSG, supra note 1, at 17.
64. TSG EX, supra note 2, at 1.
Radical Feminists of the 1960s differed sharply from their nineteenth century foremothers. While the nineteenth century women had understood and celebrated the differences between men and women. The Radical Feminists denied them, insisting that the obvious differences were not natural, but oppressive patriarchal cultural constructions which could and should be eliminated so that men and women would participate in every activity of society in statistically equal numbers. In particular, they promoted absolute sexual liberation. If there were no differences between men and women, then there was no reason why women should not engage in sexual activity outside marriage. Old fears of pregnancy and disease were no longer a concern; women should be as sexually unrestricted as men. Women might be the only ones to get pregnant, but that didn’t mean that women should take care of babies. Either the task should be shared equally by men and women, or children should be placed into state funded daycare facilities.\footnote{Dale O’Leary, The Gender Agenda: Redefining Equality 135-44 (1997).}

The Radical Feminists adopted social construction theory and decried “essentialism” and “[s]ocial construction theory challenges the notion that biology determines sexual identity and behavior and criticizes the cultural influence model for being essentialist and holding that certain phenomena such as sex roles are natural and inevitable.”\footnote{Green & Ruark, supra note 48, at 25.}

Radical Feminists insisted that men and women were equally interested in sexual activity and there was no reason for women to protect their virtue or virginity. Women could enjoy sexual liaisons with a number of different men, in the same way that men enjoy sexual encounters without commitment or love. This of course fell into line with the ideology of the Sexual Revolution, which was sweeping the country.

Manners, such as men opening the door for a woman, standing when she enters the room, or helping her with her coat were decried as sexist and men who observed these conventions were castigated as patriarchal oppressors. The men quickly learned that they no longer had to respect women as the weaker sex. They absorbed the message that women were just like men and wanted what men wanted—which included unlimited sexual access. Men who wanted a first date to end in a sexual encounter assumed that their date also did. When refused, the males resorted to emotional and in some cases physical pressure to achieve their end. ‘No,’ no longer meant no and date rape.
became a real problem. Women were seen by men—girls by boys—as available for sexual relations. All that was needed was the right line. The Sexual Revolution and its comprehensive sexuality education programs turned girls into sexual objects and males into narcissistic users. Feminism took away all their defenses.

The effects have been widespread. Elementary school boys pressured girls into performing oral sex, on occasion in the back of classrooms. Boys no longer feel obliged to go through the motions of dating and instead offered to be “friends with benefits.” Dr. Miriam Grossman reports in her book Unprotected how she counseled a young college woman who was depressed and confused about her “friends with benefits” arrangement. The young man with whom she was involved did not want to go to the movies or engage in other dating behavior because that would mean they were in a “relationship.” She was depressed and felt that he was getting the “benefits” and she was not getting anything. What is interesting is that having been exposed to the current attitudes about sexuality as promoted at her university, this young woman felt that there was something wrong with her for feeling used.

Dr. Grossman was outraged that while the health services at her university warned young women about the dangers of smoking and poor diet, they failed to even mention the physical and psychological risks associated with sexual activity as experienced on campus. Young women were depressed because relationships had broken up, traumatized after contracting an STD, and suffered posttraumatic stress after abortion. Not only was there no campus outreach to these women, they were made to feel that their reactions were illegitimate. Academia required absolute adherence to the belief that there were no differences between men and women. Women who expected commitment were categorized as clingy. Those broken hearted after a breakup were told to get over it. Abortion was promoted as a minor


69. GROSSMAN, supra note 38, at 32.
procedure that empowered women. While students were warned about the long term effects of diet and smoking, these young women were not warned that they were risking their fertility by engaging in sex with multiple partners and putting off having children until their thirties.

Radical Feminists, with their disdain for motherhood, failed to mention to the young women who embraced their cause that there might be a price for sexual freedom. A woman, who believes that she can finish her education, establish her career, and wait for the perfect man, may discover that she has waited too long. The window of opportunity for pregnancy is open only for a certain period of time. Silent sexually transmitted diseases can cause infertility. Even with all the modern reproductive technologies now available, very few women are able to have their first child after thirty-five.

Anne Taylor Fleming had been totally committed to the feminist ideology. In her thirties however, her “protracted and adamant and yes revolutionary journey away from maternity” came to an end. She wanted a baby, and was faced with “the revenge of the womb.” In vain she endured years of expensive and debilitating procedures in hopes of becoming pregnant.

Sylvia Anne Hewlett has dedicated herself to promoting women’s advancement in the workplace. In her study of high achieving women, she discovered that, among high earning career women ages forty to fifty-five, thirty three percent are childless and not by choice. They wanted children, but waited too long. Her book Baby Hunger is a warning to young women that if they want to have a baby, they should not wait too long.

It is interesting to note that some of the most influential feminists later retreated from the anti-family, marriage, and motherhood stance that dominated the movement in the 1960s and 1970s. Early feminist icon Betty Friedan, in her book The Second Stage recognized that motherhood is important to women:

73. Anne Taylor Fleming, Motherhood Deferred: A Woman’s Journey 186 (Fawcett Columbine 1995).
74. Hewlett, supra note 71, at 51.
...many feminists knew all along that the extremist rhetoric of sexual politics defied and denied the profound, complex human reality of the sexual social psychological, economic, yes biological relationship between women and man. It denied the reality of women’s own sexuality, her childbearing, her roots and life connection in the family.\textsuperscript{75}

Germaine Greer, who championed promiscuity, came to realize that motherhood can be a meaningful choice. In her book \textit{Sex and Destiny}, she wrote:

Because motherhood is virtually meaningless in our society is no ground for supposing that the fact that women are still defined by their mothering function in other societies is simple an index of their oppression. We have to at least consider the possibility that a successful matriarch might well pity Western feminists for having been duped into futile competition with men in exchange for the companionship and love of children and other women.\textsuperscript{76}

It is interesting to note that that while Radical Feminists promote absolute sexual freedom and expect men to be responsible for their behavior, they do not expect the same kind of responsibility from women. Women may dress in ways clearly calculated to incite male desire, and then be held innocent when the desire they have enflamed is openly expressed. The TSG Report reflects this double standard, “It is important to underscore that girls do not “cause” harassment or abusive behavior by wearing sexy clothes; no matter what girls wear, they have the right to be free of sexual harassment, and boys and men can and should control their behavior.”\textsuperscript{77}

\textbf{IV. THE FUNDAMENTAL QUESTION}

\textbf{A. Sexual Involvement}

Before the sexualization of girls can be addressed, there is a more fundamental question that needs to be answered: Should unmarried women of any age engage in sexual activity? Are the risks for women

\textsuperscript{75} BETTY FRIEDAN, \textit{THE SECOND STAGE WITH A NEW INTRODUCTION} 39 (Harvard U. Press 1982).

\textsuperscript{76} GERMAINE GREER, \textit{SEX AND DESTINY: THE POLITICS OF HUMAN FERTILITY} 29 (Harper Row 1984).

\textsuperscript{77} TSG, supra note 1, at 34.
simply far greater than the benefits? For generations, most cultures believed that they were. However, the authors of this report, although they never say so explicitly, appear to believe that the goal is for women to have the option of engaging in sexual relations regardless of their marital state, so long as they don’t feel sexualized. For example they write, “. . .[T]een girls are encouraged to look sexy, yet they know little about what it means to be sexual, to have sexual desires, and to make rational and responsible decisions about pleasure and risk within intimate relationships that acknowledge their own desires.”

Even in a non-sexualized culture teen girls are not mature enough to make a rational and responsible decision to take the risks, both physical and psychological involved in an intimate relationship. Rather than recognize this problem, the TSG Report argues that the improper sexualization they decry differs from healthy sexuality, “Self-motivated sexual exploration on the other hand, is not sexualization, by our definition, nor is age-appropriate exposure to information about sexuality.” According to the TSG, “Healthy sexuality is an important component of both physical and mental health, fosters intimacy, bonding, and shared pleasure, and involves mutual respect between consenting partners.” The authors of the TSG Report appear to assume that it is possible to preserve the sexual freedom of men and women, including girls, while avoiding the negative effects of sexualization. They do not present evidence that this is possible. They put their faith in “comprehensive sexuality education and other sexuality education programs” and believe without evidence that these will solve the problem. According to the TSG Report, comprehensive sexuality education includes:

"... the presentation of accurate, evidence-based information about reproduction and contraception, the importance of delaying intercourse initiation for young people, and the building of communication skills. Most relevant to combating sexualization, many also address media, peer, and cultural influences on sexual behaviors and decisions and promote a notion of sexual...

78. TSG, supra note 1, at 3.
79. TSG EX, supra note 2, at 1.
80. TSG, supra note 1, at 2.
responsibility that includes respect for oneself and an emphasis on consensual, nonexploitative sexual activity.\(^{81}\)

The key word is “comprehensive”—this translates to programs which stress contraception, abortion, condom usage with every act, the gay, lesbian, bisexual, transgendered and questioning (or Queer) agenda (GLBTQ), masturbation and the promotion of sexual pleasure for minors, and as an afterthought, abstinence. These are “how-to” have “safe-sex” courses.\(^{82}\) No one should be surprised if students put what they learn into practice. However, while they absorb the “how to have sex” part, the “safe” part has proven illusive. If an adolescent girl engages in sexual activity, she opens herself to being used for sexual pleasure in a temporary relationship and as a result, she will feel used as a sexual object. The writers of the TSG admit that if girls are rewarded for allowing themselves to be seen as sexual objects, they will self sexualize.

Self-sexualization—Girls may treat and experience themselves as sexual objects. If girls learn that sexualized behavior and appearance are approved of and rewarded by society and by the people (e.g., peers) whose opinions matter most to them, they are likely to internalize these standards, thus engaging in self-sexualization.\(^{83}\)

Surely girls will self-sexualize if they allow themselves to be used as sexual objects. Comprehensive sexuality education courses are supposed to promote sexual health. According to the TSG, “diminished sexual health” can be “measured by decreased condom use and diminished sexual assertiveness.”\(^{84}\) If sexual assertiveness means teaching a young woman how to tell a young man that she intends to wait till marriage that would be a worthy goal. But if, as the quote suggests, “sexual assertiveness” means insisting that her partner wear a condom, then it will be very difficult to achieve real sexual health, given that condoms provides little or no protection against several STDs and are one of the least effective barriers to

\(^{81}\) Id. at 37 (emphasis added).

\(^{82}\) NATIONAL GUIDELINES TASK FORCE, Guidelines for Comprehensive Sexuality Education: Kindergarten through 12th Grade, SIECUS (2004), http://www2.gsu.edu/~wwwche/Sex%20ed%20class/guidelines.pdf.

\(^{83}\) TSG, supra note 1, at 3.

\(^{84}\) Id. at 26 (quoting E. Impett, D. Schooler, & D. Tolman To be seen and not heard: Femininity ideology and adolescent girls’ sexual health, 35 Archives of Sexual Behavior, no. 2 129-142(2006)).
pregnancy. Such assertiveness is hardly a prescription for physical or psychological health. As one young woman traumatized by the end of an affair explained to Dr. Grossman,

When it ended, it hurt so much... I think about him all the time, and I haven’t been going to one of my classes, because he’ll be there, and I can’t handle seeing him. I was so unprepared for this... why do they tell you how to protect your body – from herpes and pregnancy – but don’t tell you what it does to your heart.85

The TSG Report’s advocacy for “comprehensive sexuality education” reveals their unstated agenda. According to Clover Simon, vice president for Planned Parenthood of the Greater Northwest, an advocate for comprehensive sexuality education, “The whole point of people having good accurate information that is age appropriate for wherever they’re at, is so that they can enjoy sex and avoid the negative consequences of sex.”86

However, Ms. Simon admits that “Birth control does fail for many, many people because people aren’t perfect and we don’t take it perfectly. And so people experience failures.”87 Of course as an employee of the largest provider of abortion services, Ms. Simon may not see such failures as a catastrophe, but there is substantial evidence that the women and men who experience these ‘failures’ carry the scars for decades.

Study after study demonstrates that adolescent girls who are sexually active are at risk. A study of the relationship between depression suicide attempts and sexual activity among girls 14 to 17 found that 25.4% of those who were sexually active felt depressed “a lot of the time” or “most of the times” versus 7.7% of those who were not sexually active. Among the sexually active, 14% attempted suicide versus 5.1% of the not sexually active.88 A new survey of African American youth has found that almost half report...
considerable pressure to have sex. A study of sexual satisfaction among late adolescent girls, referenced in the TSG found that 28% of women “perceived their first sexual experience to be physically satisfying” and less than 28% perceived their first sexual experience to be psychological satisfying,” which means a substantial percentage found the experience unsatisfying. In another study of 13,791 youths engaging in sexual behaviors places adolescents, especially girls, at risk for future depression. The research demonstrated that 44% of girls with multiple sexual partners experienced depression as opposed to 4% of girls who were virgins experienced depression.

The APA has a professional responsibility to provide informed consent to youth about the psychological dangers inherent in the sexual behaviors it is advocating for adolescent females. TSG demonstrates the failure on the part of APA to provide informed consent. The APA appears to be denying the research that demonstrates the trauma to adolescent females in particular from being used as sexual object.

Those who oppose ‘comprehensive sexuality education’ believe that for girls the risk of sexually transmitted diseases and unmarried pregnancy so outweigh the benefits of teenage pleasure seeking that abstinence until marriage is the only thing that should be promoted. If girls are taught that they have a ‘right’ to sexual pleasure, girls will be motivated to seek male attention and the only way to get male attention is to conform to the male image of a pretty or sexy girl. If she wants to win male attention, she will feel compelled to sexualize herself. The TSG Report admits concern about self-sexualization. If the goal of comprehensive sexuality education is to encourage young unmarried women to engage in sexual activity, then sexual objectification is inevitable, men will continue to view women as objects to be used for their sexual pleasure and women will try to make themselves attractive to men by starving themselves and dressing provocatively.


B. Adult Intervention

The solutions suggested in the TSG do not address the causes of problem and therefore have little chance of reducing the sexualization of girls. The authors make the following suggestions for real change. Real change could occur if adults—parents, teachers, and community leaders—decided to accept their responsibility to protect girls. Real change could occur if adults—parents, teachers, and community leaders, including clergy—decided to accept their responsibility to educate girls about romantic love, true loving friendship and sexuality and, thereby, protect girls from the sexual utilitarian and contraceptive mentality so prevalent in the culture.\footnote{93. Pope John Paul II (Karol Wojtyla), Love and Responsibility 260-261 (Farrar, Straus, Giroux 1981).}

The writings of Blessed John Paul II are of great assistance in this formation process. He wrote, “Every educational program, whether Christian or secular, must emphasize that true love is chaste love, and that chastity provides us with a founded hope for overcoming the forces threatening the institution of marriage and the family and at the same time for freeing humanity from devastation wrought by scourges such as HIV/AIDS and promiscuity; that is, using people as sexual objects.” 2004. Parents, teachers and clergy need to teach that freedom without responsibility is the opposite of love, as is using another person as a sexual object.

Also, parents need to say no to comprehensive sexuality education. If they cannot have it banned in their children’s schools, they need to insist that their children be excused from the sex education classes. Fears that their child will be subjected to teasing are unjustified. The promise by sex educators that the classes will also include lessons on abstinence is not sufficient, since the goals of the two approaches are diametrically opposed. Parents should not support the idea that to have sex or not to have sex is the child’s option and here are the pros’ and con’s. They should send a clear and univocal message, “Wait until you are married.”

While abstinence education is certainly preferable to comprehensive sexuality education, it has a serious flaw. It puts the entire burden on the girl. She is thrust out into a world of young men who are sexually aroused and given 50 ways to just say ‘No.’ This is not enough, society can’t tell girls to “Just say no.” when adults who should be their protectors can’t just say no.
There needs to be serious consideration of a return to some of the old rules, to the time when parents and those in charge of women’s education had no trouble saying ‘No.’ Parents and particularly fathers must just say no to un-chaperoned dating. Young men can come to the house only when the family is home. Adults must say no to co-ed dorms and provide privacy for women. No more men in women’s dorms, period. Living at home, particularly during the first two years of college should be considered. Parents of girls in junior high need to ban together to encourage single sex activities, single sex schools, and discourage dating. Parents need to monitor their daughter’s clothing choices. School uniforms can be a useful means of eliminating immodest clothing. Fathers should take an active part in modesty education, explaining delicately the effect of certain kinds of clothing on young men. Girls need to be taught how to keep the focus on their faces.

Fathers are essential to young women’s self esteem. Self-esteem comes not from media images, but from having a father who takes an active interest in her welfare and who protects her from men who would use her sexually or treat her as a sexual object. Above all a father must never treat his own daughter as a sexual object.

Bullying prevention should switch its focus from promoting the GLBTQ agenda, to severely punishing the sexual harassment of girls at every level of education. One way to achieve this is to segregate anti-bullying programs and encourage girls to band together to protect one another. Programs could focus on training girls with leadership qualities to protect the weak and report boys who sexually harass vulnerable girls. Sexual harassment via the internet and “sexting” should be prohibited.

The failure of adults to recognize the risks involved in sexual relations outside marriage and protect young women from seduction is at the heart of the problem. In addition to curfews, chaperons, and strict rules, girls need to receive one unequivocal message: For a woman, sex before marriage is the path to disease, pregnancy, infertility, and a broken heart. Parents need to teach their daughters that just as they must plan for their education and possible career,
they must also plan for marriage and children and not do anything that will jeopardize these goals.

C. A Philosophy of Responsibility

Blessed John Paul II in his 1960 book Love and Responsibility, presents a comprehensive response to the problem of the sexualization of girls. He explains why sexual relations outside marriage—no matter how much emotion is involved—never can achieve the kind of love that a woman desires. Women in non-marital relationships feel used, because they are being used and can be discarded if they no longer provide the pleasure desired by their partner. According to John Paul II, “True love is a love in which sexual values are subordinate to the value of the person.”96 Girls need to be taught that just as it is wrong for boys to use girls as objects, it is wrong for a girl to allow herself to be used. According to John Paul II “The person cannot (must not) voluntarily descend to the position of an object of use for another person or persons.”97 Girls have a right to be loved, for themselves not treated as objects either by the culture or by sexual partners seeking transitory pleasure, “Man’s capacity for love depends on his willingness consciously to seek a good together with others, and to subordinate himself to that good for the sake of others, or to others for the sake of that good.”98 Only in marriage can there be a true unity of the two, in which neither is using the other, but each is making a complete gift of self.

A 37-year-old woman complained that when she was young the pressure to have sex led to an affair, which in turn led to “the loss of innocence, the desire to feel clean and whole.”99 She now believes, “A healthier society would protect women from premarital sexual experience.”100

While young people may complain about restrictions, Wendy Shalit believes that many young women would welcome adult concern, she writes:

We have so few rules these days, and even when we do, no one seems to enforce them. Why is no one enforcing our rules? Don’t

96. POPE JOHN PAUL II, supra note 92, at 183.
97. Id. at 182.
98. Id. at 29.
99. SHALIT, supra note 59, at 209.
100. Id.
they care about us? . . . Today adults err on the side of not intervening at all, . . . I often find myself lecturing adults about why they should be lecturing me, which is a strange position to be in. I’m always pining for someone to young-lady me. As in, young lady what are you doing? Where are you going? But no one ever young-lady’s me, so I have to young lady myself. 101

So long as schools present adolescent girls with ‘choices,’ when the evidence is overwhelming that the only safe choice is “No,” the problem presented by the TSG will continue. So long as boys are exposed to explicit, how-to, comprehensive sexuality education courses, boys will see girls as sexual objects and girls will either accept their status as sexual objects or be forced to continually defend themselves in an increasingly hostile environment. It is time for adults to lovingly, but firmly, just say “No.”

CONCLUSION

The APA’s Task Force Report on the Sexualization of Girls presents compelling evidence of the sexualization of girls in our culture and of the negative consequences of such sexualization. While some of the positive alternatives and recommendations, offered are helpful, because they do not address the causes of the problem, even if they were implemented there is no evidence presented that they would reverse this trend. Because the TSG fails to identify the underlying causes and implicitly accepts unsubstantiated ideologically based assumptions, the recommendations presented will not achieve the goal of protecting girls. Also, the APA does not cite the literature that demonstrates the psychological harm to adolescent females from irresponsible sexual behavior. The APA is thereby negligent in its responsibility to provide informed consent about recommended behaviors for girls.

The fundamental question the TSG avoids is: Should adolescent girls engage in sexual activity or do the risks outweigh the benefits? The authors of the TSG Report appear to believe that they can preserve the sexual freedom of girls, while avoiding the negative effects of sexualization. If adolescent girls are encouraged by comprehensive sexuality education and other cultural messages to believe that if they feel mature enough they can decide to engage in sexual relations, they will underestimate the risks and overestimate

101. Id. at 195-196.
the positive benefits. When sexual activity is an option, young men will push young women to surrender to their lust and the inevitable result will be that—regardless of media images—they will view girls as available for sexual use. Girls will be sexualized.

Rejection of the ideologies of the sexual revolution and radical feminism and adoption of a strategy that stresses education in true love, modesty, chastity, and adult supervision has the potential to protect girls from the current harmful culture.
THE MASS IMPLEMENTATION OF INTERNATIONAL SEX EDUCATION GUIDELINES AND THE LEGAL AND MORAL RAMIFICATIONS AS PRESENTED BY THE ROMAN CATHOLIC CHURCH

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INTRODUCTION

The Roman Catholic Church, through its many teachings, boldly stands in opposition to the U.N.’s proposed regulations and ideologies ensuring the individual person is protected and cultivated into a mature and modest sexual human being. The world we exist in today is full of information about sexuality, health and lifestyle choices not available to previous generations. As we have progressed technologically and have begun to further understand the many contours of human sexuality, our culture and government have forced further regulation and imposed duties on educators that had been previously under the control of parents and religious communities. The true question that is asked of the legal community is whether the regulations imposed upon educators actually have improved the sexual health of humans in these regulated jurisdictions. This further regulation has pushed the family to accept the educational material required by regulators, like the U.N. and foreign governments, even if the required material is against the better judgment of families and religious organizations.

The goals of sex education in many jurisdictions are drastically different compared to those of the Church. The Church has been an advocate of sex education from the home and religious community to ensure that children gather knowledge about sexuality as they mature as an individual. The Church teaches that parents should play a significant role in determining when they feel it is appropriate to

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introduce a new topic on sexuality to the child. These discussions between parents and children are most effective when accompanied with programming and informational gatherings in the community. The Church purports that education should be conducted with appropriate materials and with modesty and friendship as dominating forces in the curriculum.

I. THE PURPORTED RIGHTS

It is important to define sex education and illustrate the current trend towards establishing sex education as a fundamental right given to all human beings. This fundamental right further requires a right to freedom of information, allowing individuals to have free flowing access to important information pertaining to their sexuality. Additionally, the establishment of a right to equal treatment of the numerous acknowledged genders of the U.N. is promoted to ensure that gender stereotypes are not communicated to children. These specific goals of sex education are discussed through enumerated international documents giving specific guidelines for educators, governments, and other individuals directly influencing the sexual well-being of the next generation. The newly established fundamental rights, in many circumstances, push liberal and progressive knowledge about individual genital stimulation as the sole focus on sexual relations and not the dignity of the human person or procreation.

A. Sex Education, Defined

Sex education is a lifelong process of acquiring information and forming attitudes, beliefs and values about identity, relationships, and intimacy. Sex education addresses the biological, socio-cultural, psychological and spiritual dimensions of sexuality topics in sex education including sexual development, reproductive health, interpersonal relationships, affection, intimacy, body image, and gender roles.\(^1\) It is further defined as an age-appropriate, culturally relevant approach to educating individuals about sexual behaviors and relationships by offering accurate, realistic and non-judgmental

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information specific to the individual. This education provides individuals with specific opportunities to investigate and develop their own values and attitudes. This process will allow them to create and progress in their individual decision-making, communication and risk reduction skills about many aspects of their own sexuality. There are varying programs available surrounding sex education and they differ depending on the specific curriculum offered. “Abstinence-Only Education” teaches abstinence as the sole option of sexual interaction for teenagers. It typically censors information concerning contraception for the prevention of sexually transmitted infections and unintended pregnancy. Programs funded under the 1996 Welfare Reform Act must censor information about contraception and condoms for the prevention of sexually transmitted infections and unplanned pregnancy. Comprehensive Sex Education teaches similar matters as the “Abstinence-Only Education,” but also educates individuals about the use of condoms and contraception. It also teaches interpersonal and communication skills and helps young people explore their own values, goals, and options.

Valerie Huber, executive director of the National Abstinence Education Association, stated in accordance with a new study that this “study adds to 22 other peer-reviewed studies showing Sexual Risk Avoidance (SRA) education has a positive impact on student sexual behavior. This rigorous research design adds an important exclamation point to the efficacy of abstinence-centered education.” Additionally, researchers stated that the current U.S. administration, under President Barack Obama, refused to release a report that exemplified the fact that abstinence education positively influences young individuals. In 2009, the Administration for Children and Families (ACF), an agency of the U.S., funded a study of more than 1,000 youth between the ages of 12-18. Recently released, the report

3. Id. at 12.
4. Id. at 32.
6. Id.
7. Id.
9. Id.
found that “parental and peer attitudes do more to shape teens’ views of sex and abstinence than adolescent exposure to sex and abstinence topics in a class or program.”

Their anti-abstinence position is just as political, if not more so, than the pro-abstinence position of conservatives. The liberals often claim it is conservatives who are anti-science, but when the research and the science goes against their ideological position, they are very eager to suppress the findings. Anyone who opposes SRA abstinence-centered education must be honest in their antagonism. They can no longer say that the approach “doesn’t work,” but must admit that their opposition is simply an ideological distaste for programs that encourage teens to wait for sex.

B. Sex Education as a Fundamental Right

The rights to health and freedom of information, “carr[y] the most direct impact and provide the greatest degree of protection for minors’ rights to seek comprehensive sex education.” A society must acknowledge other rights such as the right to education and information in order for a right to health to be recognized. The Center for Reproductive Rights has explained that, “all adolescents need accurate and adequate information about sexual and reproductive health . . . without easy access to accurate information, adolescents are at risk of being misinformed about sexual and reproductive matters, which may lead them to make decisions which could have negative impacts on their lives.”

Prominent organizations in the international community contend that the right to health has many applications in the context of sex education. If an individual is unable to seek comprehensive, accurate information about sex and sexuality, their ability to exercise a right to health is considerably undermined. International law
recognizes a right to health, which includes a right to acquire health-related information. Some of the most notable and recent treaties include the Convention on the Rights of Children, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Committee on the Elimination of Discrimination Against Women (CEDAW). Each of these international treaties provides strong affirmative protections for the right to health. International organizations have recognized that there is a right to acquire information about health and have consistently expressed the specific need for comprehensive and medically accurate sex education in promoting the right to health.\textsuperscript{16} The majority of Western countries, including the U.S., have played important and demonstrative roles in the international conferences, which specifically address the right to health. In the 1995 World Conference on Women in Beijing\textsuperscript{17}, the main committee on world health stressed the importance of comprehensive sex education as a fundamental part of women’s right to health.\textsuperscript{18} The main committee instructed governments to “ensure [that] education and dissemination of information to girls, especially adolescent girls, regarding the physiology of reproduction, reproductive and sexual health, responsible family planning practice, family life, sexually transmitted infections, Human Immunodeficiency Virus (HIV) infection and aids prevention.”\textsuperscript{19} At the September 1994 International Conference on Population and Development in Cairo (ICPD), women’s movements pushed for the recognition of women’s health, education and rights as prerequisites for effective policies in population and development.\textsuperscript{20}

Advocates of minor’s access to sex education are found in many of the prevailing international governing bodies such as the U.N. and

\textsuperscript{18} Id. at 206(i).  
\textsuperscript{19} Id. at 281(e).  
\textsuperscript{20} “The U.N. Third World Conference on Women in Nairobi represented the culmination of ten years of work on gender empowerment. Attended by approximately 1,400 official delegates from 157 countries and 15,000 NGO representatives, the conference aimed to evaluate the progress made during UN Decade for Women and devise a new course of action for the advancement of women,” 1985 World Conference on Women, Nairobi, Kenya (July 1985), available at http://www.5wwc.org/conference_background/1985_WCW.html.
They purport the concept of a right to health that is provided by and mandated broadly by governments. Advocates believe that a citizen possesses a right to health thereby requiring governments to ensure minor’s access to all options available for their own reproductive health. This ideal is contrary to the current federal sex education policy of the U.S. and the Church, in which abstinence only programs are provided funding. Section 510 (b), Title V of Social Security Act currently defines the specific programs, all abstinence related, that the federal government will provide funding to if requested. Despite these federal efforts, sex education policy is, on the whole, decentralized. States have multiple policies governing sex education, which leads to a complex system. Many states that require sex education be taught in the classroom, but they differ greatly in terms of what curriculum they desire to be administered to the students. Meanwhile, a state that has no specific policy on sex education may still recommend that educators take a particular course of action or even specify that a school district opting to offer sex education adhere to a particular curriculum. Furthermore, within an individual state, there may be differing policies governing mandates for education.

International advocates further promote the concern that a broad interpretation of the right to health, when joined with the ideas presented at the Convention on the Rights of Children, emphasizes the preparation of children to live in a “free society.” This brings to the forefront many of the liberty interests recognized under developed nations. They further argue that the right to sex education mandates governments to prepare children for all activities protected in free society.

23. Id. at 2013.
24. Section 510 (b), Title V of Social Security Act.
26. Id. at 3.
27. Id.
C. The Right to Freedom of Information

The information available to minors is at the center of the argument concerning the right to information on sex education. There are several international treaties, which provide for the “freedom to seek, receive and impart information and ideas of all kinds.” At the International Conference on Population and Development in 1994, the Cairo Programme of Action recognized that access to information for minors would help them make well-informed decisions regarding their personal sexual health. The conference concluded that:

The response of societies to the reproductive health needs of adolescents should be based on information that helps them attain a level of maturity required to make responsible decisions. In

30. See generally, U.N. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 1946, the UN General Assembly adopted Resolution 59(I), stating, Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the U.N. is consecrated. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, elaborated on this in his 1995 Report to the UN Commission on Human Rights, stating: Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked. The UN Special Rapporteur on Freedom of Opinion and Expression has been rather more progressive in his approach. In successive recent annual reports to the UN Commission on Human Rights, the Special Rapporteur has stated clearly that the right to access information held by public authorities is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), as the following excerpt from his latest report, in 1999, illustrates: [T]he Special Rapporteur expresses again his view, and emphasizes, that everyone has the right to seek, receive and impart information and that this imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems - including film, microfiche, electronic capacities, video and photographs - subject only to such restrictions as referred to in article 19, paragraph 3, of the International Covenant on Civil and Political Rights. These views have been welcomed by the UN Commission on Human Rights, composed of 53 member States of the U.N. Within the Commonwealth, there have also been moves recognizing the importance of freedom of information. The Commonwealth Secretariat, with the assistance of Article 19, organized an Expert Group Meeting in March 1999 to discuss the importance of freedom of information legislation. The Group adopted a Final Document setting out a number of principles governing freedom of information of which the first is as follows: Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.
particular, information and services should be made available to adolescents to help them understand their sexuality and protect them from unwanted pregnancies, sexually transmitted infections and subsequent risk of infertility.\(^{31}\)

**D. The Right to Equal Treatment**

International human rights initiatives under the U.N. directly prohibit educational material which promotes gender stereotypes.\(^{32}\) The International Covenant on Civil and Political Rights (ICCPR) expressly protects against sex discrimination stating that, “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”\(^{33}\) Abstinence-only programs have been presented with great criticism in the world of academia and international regulation. One critic of sex education presented the idea that, “abstinence-only programs not only present archaic images of women and girls, and they also reinforce troubling myths and stereotypes about the differences between men and women.”\(^{34}\)

**E. Specific Goals of Sex Education Programs**

Many goals apply to sexually active youth while others apply to those not currently sexually active. A common goal across many programs includes reducing the number of sexual encounters, including postponing the age of a minor’s first sexual contact, promoting abstinence, decreasing the number of sexual partners, and increasing the use of contraception.\(^{35}\) With regard to contraception, the use of condoms by sexually active youth is encouraged to prevent pregnancy, HIV/AIDS and other sexually transmitted infections.\(^{36}\) There is also a desire to reduce the rates of marriages due to pregnancy and reducing the rate of unwelcome pregnancies and consequential abortions.\(^{37}\) There is a broad range of

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32. Id. at 4.19.
34. LEAH J. TULIN, supra note 22, at 2005.
36. Id. at 2, 5.
37. Id. at 1, 2, 9.
educational procedures available for sex education programs, which include peer education, mass media, social marketing, youth friendly services, and policy dialogue and advocacy. 38

The World Bank has set forth the key elements of successful sex education programs. Pursuant to the World Bank's view, the majority of successful school based programs were under the mandates and regulations of the supreme governing body of that nation. 39 The Joint U.N. Programme on HIV/AIDS (UNAIDS) commissioners acknowledge that a successful program recognizes the child as a committed student who already knows, feels, and understands some of the many healthy habits that can be attributed to a strong development and HIV/AIDS prevention. 40 The healthy development of an individual encounters many risks throughout adolescence. 41 The inclusion of knowledge and certain attitudes and skills needed for prevention are imperative elements of successful programs as well as the understanding of the impact relationships have on behavioral change in youth and young adults. 42 It is understood that the positive reinforcement of social values and the portrayal of human sexuality as a healthy and normal part of life that is not derogatory against any specific gender, race, ethnicity, or sexual orientation has proven effective in the past. 43 The World Bank suggests that a program that focuses on the analysis of the students learning and a broad evaluation is important to ensure that each pupil is assessing the material in a manner favorable to the governing body's liberal opinions. 44 Furthermore, instructors and teachers require continual support in order to provide good instruction coupled with multiple participatory learning activities and strategies. 45 The World Bank concludes that a good program should include the greater community to provide the youth with unilateral support and for a specific sequence and progression to ensure the continuity of specific messages. 46

38. JAMES E. ROSEN, Sexuality Education in Schools: The International Experience and Implications for Nigeria, Policy Working Paper Series No. 12, 2-3 (June 2004).
39. WORLD BANK, supra note 35, at 380.
40. Id. at 381.
41. Id. at 379.
42. Id. at 288.
43. Id. at 190.
44. Id. at 313.
45. Id. at 314.
II. CHARACTERISTICS OF SEX EDUCATION PROGRAMS ACROSS THE WORLD

In this section, the common characteristics found in programs across the world are discussed including the international treaties, regulations and conferences, which offer insight into the differing status of these programs. Furthermore, the sex education trends experienced across regions will be distinguished with the goals of international regulatory bodies, such as the U.N.

A. Treaties, Regulations and Conferences

1. International Conference on Population and Development

The 1994 International Conference on Population and Development introduced reproductive health and other new phrases to the debate. However, due to the non-binding nature of the report, these words should not be used in international policymaking. These words do not retain definition in any international regulations or governing bodies due to the lack of consensus by the international community. Nonetheless, due to their extensive use in the remainder of the document, they will be defined according to their current use in these prevailing international papers. Reproductive health is mentioned extensively and the conference defined it as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the

World Bank, Key Elements: We provide low-interest loans, interest-free credits, and grants to developing countries. These support a wide array of investments in such areas as education, health, public administration, infrastructure, financial and private sector development, agriculture, and environmental and natural resource management. Some of our projects are co financed with governments, other multilateral institutions, commercial banks, export credit agencies, and private sector investors. We also provide or facilitate financing through trust fund partnerships with bilateral and multilateral donors. Many partners have asked the Bank to help manage initiatives that address needs across a wide range of sectors and developing regions. We offer support to developing countries through policy advice, research and analysis, and technical assistance. Our analytical work often underpins World Bank financing and helps inform developing countries’ own investments. In addition, we support capacity development in the countries we serve. We also sponsor, host, or participate in many conferences and forums on issues of development, often in collaboration with partners.

reproductive system and to its functions and processes.”48 This definition implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide it, when and how often to do so.49 This further implies the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of contraception of their choice, as well as other methods of their choice for regulation of fertility, which are not against the law.50 Additionally, the right of access to appropriate healthcare services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.51 The term reproductive healthcare is “the constellation of methods, techniques and services that contribute to reproductive health and well-being through preventing and solving reproductive health problems.”52 This includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely the counseling and care related to reproduction.53 These rights rest on the recognition of the basic right of all couples and individuals to freely decide the number, spacing and timing of children.54 It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.55 Finally, a reproductive duty has been defined, as “in the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community.”56 The conference stated that abortion was not a means of family planning by concluding that, “governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning, and in all cases provide for the humane treatment and counseling of women who have had recourse to abortion.”57

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48. Id. at 7.2.
49. Id.
50. Id.
51. Id.
52. Id.
53. Id.
54. Id.
55. Id.
56. Id.
57. Id. at 7.24.
B. Trends Observed by Region and by Country

The diversity and depth of legislation is substantial across the world. According to the U.N. Population Fund in Latin America and the Caribbean, only three countries have a high level of specialized legislation on the education of children in schools about their sexual health. The report indicated that a majority of countries, in eleven cases, have an intermediate level; whereas the remaining twelve countries have either a low level of stipulations in their legislation or they have no applicable legislation. Latin America and the Caribbean offer evidence that the existence of legislation does not correlate to educational programs actually having been implemented and carrying out the legislative intent. The majority of these countries have designated professionals in the fields of pedagogy, psychology and medicine to be responsible for the development of specific curricula. Those responsible for the implementation of policies for comprehensive sex education are typically teachers and educators. The health and sex education of the youth, which has a varying definition across the world, is a topic that is taught across many subject areas in school, which allows for a broad exposure of the issue. Across a majority of these countries the Ministry of Education and Health is involved to ensure continuity and ensure that mandates are followed properly.

In Europe, education on sexual health is compulsory in nineteen countries and remains voluntary in six. These programs begin between the ages of five years of age and fourteen years of age depending on the specific jurisdiction. Whether the Ministry of Education is responsible for the design and implementation of specific public policies on sex education, in their respective countries, varies by region. In countries with a broader concept of sex education, many government agencies are involved in the process.

59. Id. at 485.
60. Id. at 487.
61. Id.
62. Id. at 490.
63. Id. at 492.
65. Id.
66. Id.
cases the teachers are the sole individuals responsible for the policy implementation. It was documented by the Special Rapporteur of the U.N. that in Europe, the quality of the education varies little from country to country but more so within a single country. Due to this difference, it is crucial that the Ministries of Education and Health play a vital role in ensuring the universal application of these policies in their specific country.

Sex education in a majority of European states spans several subject areas in the classroom. Portugal teaches sex education within the courses of biology, geography, philosophy, and religion. In other countries it is taught in civil classes, which take a broader approach to these issues of sexuality. In Belgium the moral and ethical aspects of sexuality are drawn into the discussion. Often countries will deal with sex education from a biological point of view and focus on the aspects that emphasize the importance of health education but often neglect relational and affective issues, undermining a comprehensive approach.

A study by the International Congress on AIDS in Asia and the Pacific (ICAAP) on the sex education policies in East Asia found that most countries’ sex education policies had been in effect since the early 1990’s. Papua New Guinea, Mongolia, the Philippines and Thailand were found to have the most extensive and widely implemented programs in the East Asia region. Since 2009, the implementation of these programs and policies has expanded widely with the push of the U.N. and other non-governmental organizations. However, this part of the world still does not provide comprehensive sex education by U.N. standards. A majority of the countries report HIV education policies but relatively few adopted a comprehensive approach, which according to the U.N. requires the implementation of their liberalized and progressive approach to human rights, values, life skills, and community participation.

67. Id.
68. Id. at 45.
69. Id. at 46.
70. Id.
71. Id.
72. Id.
74. Id.
The ICAAP report also reported that there were no strategic connections between the various community sectors such as health and education. The policies implemented were not designed with the intent of impacting several sectors of a community. In East Asia, the implementation and impact of sex education policies is typically less significant to that of Western cultures. In these countries the topic is mostly covered in science courses such as biology or health. In the Asia-Pacific region, sex education is included in the secondary level of education in all countries and six countries include it within the primary level of education. Of the countries studied, thirteen implemented the programs without any training programs for the teachers or instructors. Some of these countries ignore the intrusive nature of the U.N., and sex education is simply limited to its biological or moral aspects. The U.N. suggests that education should encompass all aspects of an individual’s life, pushing their agenda on those who may not require such rigorous, crude and sometimes relentless sexualized education.

Cambodia has a legal framework, which continues to establish legal ideas and has stimulated significant progress in the creation of a comprehensive sex education program, according to guidelines set forth by the U.N. According to the study, the country has made the discussion of gender mainstream and has pushed for the expansion of the definition from what has traditionally remained male and female. The U.N. has tried to change the traditional meaning of gender since the advent of the sexual revolution in the U.S. and Western Europe.

76. Id. at 49.

A concern is raised in several SRAs about the lack of comprehensive information on HIV and SRH (India, Indonesia and Nepal). It seems likely that information about high-risk behaviours, such as sex work or males who have sex with males (MSMs) are not included in most school curricula. Some national HIV strategies refer to basic (limited in scope and probably mainly biological) information about HIV and AIDS rather than emphasising more comprehensive social information. Gender issues, including stereotyping, harmful masculinities and gender-based violence, may be underestimated or totally missing. More research is needed to investigate how comprehensive curricula are in their integration of sexuality issues as well as how faithfully a curriculum is delivered in the classroom.

77. Id. at 19.
In Thailand, sex education has been included in the curriculum of school systems since 1978 and has even accommodated the Muslim faith by the recent creation of a manual. Vietnam has expressed a continued commitment to sex education since 2000. Their system of education has provided great strides in the prevention of HIV and improved reproductive health. Both HIV prevention and reproductive health are included in the compulsory curriculum for children age 10-12 and is taught as an extracurricular subject for those aged six to nine.

The African continent has a very different educational system compared to many other regions previously discussed. Countries in Africa typically do not provide planned sexual curriculum. Generally African families are uncomfortable talking about sexuality with their children and therefore refrain from doing so altogether. Nonetheless, many children receive information informally through friends and through HIV prevention programs provided by non-governmental organizations. According to a study by UNESCO, in 2004, nineteen of twenty African countries with the highest prevalence of HIV had programs designed to eliminate this trend. Implementation of these programs, however, has been slow and many were not integrated into the curriculum due to a lack of organization. A study completed by the Guttmacher Institute, a non-profit organization promoting reproductive rights including, but not limited to, abortion, found that half of 15 to 19 year olds in Burkina Faso, Ghana, Malawi, and Uganda have received some form

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80. _Id._ at 54.
81. _Id._ at 54.
of sex education in their education. This statistic is suspect because in Burkina Faso, more than half of fifteen to nineteen year olds have never attended school.\(^{85}\)

The U.N. Special Rapporteur highlights the experience of Denmark where teacher training in sex education is carried out in conjunction with the Danish Family Planning Association.\(^{86}\) The U.N. is supportive of this system primarily because of its collaborative nature and imposition of U.N. supported ideologies. Accordingly, the U.N. views this to be a good example of how to promote sex education and provide the necessary elements to the whole population.\(^{87}\)

1. **Analysis by Perspective: The U.N. Special Rapporteur**

The U.N. Special Rapporteur considers that sex education is a right in itself, another human right, and should be clearly linked with other rights.\(^{88}\) Those with disabilities have been included in these suggested international guidelines due to the prejudices, coupled with many laws and practices, which limit the legal capacity and ability for persons with disabilities to act on their right to informed consent.\(^{89}\) The report discusses individuals with disabilities, and establishes that those with disabilities are wrongfully determined to not have sexual desire or a desire to be in longstanding relationships.\(^{90}\) The U.N. argues that these individuals are being denied their “right to pleasure and happiness.”\(^{91}\) The U.N. has stated that sex education must be free of prejudices and stereotypes, which lead to the justification of discrimination against a particular group. The Special Rapporteur includes the idea of a gender perspective, which they suggest will allow people to think critically about the world around them.\(^{92}\)

The report admits that the curriculum has a central role in perpetuating the knowledge sharing among children about the

\(^{85}\) Middlecom, *supra* note 82, at 8.


\(^{87}\) Id.

\(^{88}\) Id. at 61.

\(^{89}\) Id. at 62.

\(^{90}\) Id.

\(^{91}\) Id.

\(^{92}\) Id. at 67.
inequities associated with patriarchal models. These models, according to the U.N. report, drastically reduce a children’s potential for full development. This organization holds the belief that sex education should encourage a rethinking of the stereotypical roles assigned to men and women so that real equality can be achieved.

The U.N. report emphasizes the importance of a comprehensive approach to sex education, rather than a limited scope based on abstinence. The U.N. report states that there are certain types of programs, which are limited in effectiveness because of the narrow scope of abstinence. Programs that focus exclusively on abstinence as the sole option are said to raise various problematic questions because students are denied the right to accurate information that allows them to make informed decisions. It is argued that the U.N. is looking to further propagate the liberal ideologies put forth by Western cultures. The report argues that abstinence-only programs are present to marginalize many young people who are already having sexual relationships and do not foster informed and responsible decision-making. According to the U.N., this type of program normalizes, stereotypes and promotes images that are disciplinary because they are based on “heteronormativity.” Thus, the argument stands that by denying the existence of the lesbian, gay, transsexual, transgender and bisexual population, these individuals expose these groups to risky and discriminatory practices.

2. The Role of Families and the Community

This Special Rapporteur specifically stated that the community is important in the formation of people’s identities. However, the report pointed to the State and its unavoidable obligation to guarantee education that is free from prejudices and stereotypes. School, as a forum of socialization, opens up access to different perspectives.
Together countries and families have complementary roles that are not mutually exclusive with regard to sex education. The report acknowledges that fathers and mothers are free to choose the nature and manner of education that their sons and daughters will be exposed to but state that this authority may never run counter to the rights of the children and adolescents. Thereby, that statement removes the parents from controlling the education of their children, a contradictory statement in the report. The central focus is on the best interests of the child.  

The report argued that the U.N. is concerned about the individual community’s cultural and religious values. The report stated that the comprehensive sex education presupposes a value-based perspective even though it may include different moral considerations from a pluralistic point of view. The comprehensive approach will promote the integration of individuals into a more democratic and unrestricted society. It is a challenge, according to this report, for the educational system and communities to work together without the imposition of personal moral values on the general public. They contend that this imposition will compromise the individual’s freedom to choose a particular lifestyle. The Special Rapporteur has studied cases in which approved scientific sex education was never implemented because of ecclesiastical influence. Ecclesiastical Influence is a source of concern for liberal ideologies whose values are losing the battle for cultural dominance against commonsense traditional values.

3. Other Conclusions and Recommendations

The report includes conclusions and recommendations to the international community. Recommendations include:

International human rights standards clearly establish the human right to comprehensive sex education, which is indivisible from the right to education and is key to the effective enjoyment of the right to

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100. Ecclesiastic/Ecclesiastical: “Pertaining to or of the Church. Hence ecclesiastical government is Church government; an ecclesiastical province is a grouping of Church jurisdictions or dioceses; an ecclesiastic is a Church official.” Dictionary of Catholic Terms, http://www.thesacredheart.com/dictionary.htm (last visited Dec. 19, 2011).
102. Id.
life, health, information, and nondiscrimination, among others.\textsuperscript{103} Furthermore, sex education should be associated with the prevention of sexually transmitted infections and unwanted pregnancy; while this is necessary, it cannot provide a basis for state policies, which must consider sex education as a right in and of itself.\textsuperscript{104}

Another recommendation is the elimination of legislative and constitutional limitations, which in their assumption will be a barrier to an individual’s full enjoyment of the right to comprehensive sex education.\textsuperscript{105} The U.N. promotes strong legislation that guarantees the right to education without discrimination against individuals in society who decide against traditional relationships and lifestyle choices.\textsuperscript{106}

The report encourages the design and implementation of comprehensive and sustainable public policies aimed specifically at this effective communication of this material to individuals.\textsuperscript{107} The report suggests that the policies should focus on rights, gender and respect for diversity, while providing for coordination among agencies.\textsuperscript{108} These programs should ensure the inclusion of comprehensive sex education from primary school onwards, taking into account the age of first intercourse and other variables based on the age of students and the capacities associated with their levels of emotional and cognitive development.\textsuperscript{109} The U.N. states that when establishing a sex education curriculum countries and organizations should provide for the inclusion and expansion of a holistic perspective that does not focus exclusively on biology. These programs should include the gender dimension, human rights, new patterns of male behavior, diversity and disability.\textsuperscript{110} The report argues that it is important to provide high-quality, specialized teacher training in an institutional environment that supports teachers and increases their confidence through a curriculum framework of medium and long-term projects.

\textsuperscript{103} Id. at 75.
\textsuperscript{104} Id. at 81.
\textsuperscript{105} Id at 87(a).
\textsuperscript{106} Id at 87(a).
\textsuperscript{107} Id at 87(b).
\textsuperscript{108} Id at 87(b).
\textsuperscript{109} Id at 87(c).
\textsuperscript{110} Id at 87(d).
The report cites to the importance of including families and communities as strategic allies in curriculum design and implementation. Their incorporation must be grounded in pluralism\(^{111}\) and compliance with the obligation to provide comprehensive education, which includes scientific information based on evidence and human rights standards.\(^{112}\) These liberalized ideologies are promoted to ensure that this extremist agenda is propagated to the masses through state and country run programs whose citizens may lack the requisite knowledge to discern from sex education and the biased political view of an international agency.

These recommendations suggested by this Special Rapporteur suggest a liberal and far spanning reach of this progressive curriculum in every region of the world. The suggested guidelines and teaching methods are in direct contradiction to that of the largest Christian institution on earth, the Roman Catholic Church.

III. ROMAN CATHOLIC SOCIAL TEACHING IN ACCORDANCE WITH THE TEACHING OF ABSTINENCE

A. Significance in Sexuality

The Church has in recent decades\(^{113}\) further established their presence in the debate on human sexuality. In this section, a

\(^{111}\) Pluralism is based on dialogue. The language of pluralism is that of dialogue and encounter, give and take, criticism and self-criticism. Dialogue means both speaking and listening, and that process reveals both common understandings and real differences. Dialogue does not mean everyone at the ”table” will agree with one another. Pluralism involves the commitment to being at the table -- with one’s commitments.

\(^{112}\) U.N., G.A., supra note 64, at 87(h).

\(^{113}\) POPE PIUS XI, The Education of the Redeemed Man, (Dec. 1921). Pope Pius XI stated that “no approbation whatever can be given” to group sex education, and that precautions must be taken to see that young people avoid all occasions of sin; POPE PIUS XII, Allocation to Professors of the Discalced Carmelitesin, (Sept. 23, 1951). Pope Pius XII insisted that only parents should give sex education, and on April 13, 1953, he reaffirmed the decree of 1931. POPE PIUS XII, Sacra Virginitas, (Mar. 1954). Pope Pius XII condemned those who teach about sex, and further proclaimed in an address to families that urged them to fight those forcing the education of the youth on these matters. He initiated the dicourse about how parents can protect children who are exposed to the evils of sex education, he stated, “seriously resolve both to correct them and to do what they can to provide every help for the youth entrusted to their care.” “Pope Paul VI, in an address on September 13, 1972, classed sex education along with
discussion of the Church’s continued efforts to emphasize the significance of human sexuality. The Christian concepts of human sexuality will be further illuminated by the nature, purpose, and means of sex education. Along with many sects in the Christian faith, the function of the family and its supreme importance in the education of our youth about human sexuality will be discussed in light of Catholic social teaching. Furthermore, the clash between civil society, sex education guidelines, and the Church will be clarified with the role of the school system as the main focus. The appropriate teaching materials for children educated about human sexuality are vital to a successful non-harming experience. These teaching materials should include modesty and friendship, which are at the center of Church debate. The Church’s teaching on human sexuality has spanned many centuries and has been well-established throughout the years.

The Church has had a different position on the education of adolescents and adults on sexuality. It applies a standardized set of principles, which give parents, families, and spiritual communities the exclusive role in developing an individual’s feelings and prospective on sexuality. The Church is aware of cultural and social differences existing in different countries and teaches local pastors to adapt to the specific communities that they serve.”

Sexuality is a fundamental component of personality and is an important part of “feeling and expressing human love.” It is from sex that the human person receives the characteristics, which on the biological, psychological and spiritual levels, make that person a man or a woman.

In many societies difficulties abound when the urgency of the sex education problem is not recognized, or where it is thought that it can resolve itself without a specific curriculum. The Vatican Council II illustrated in the “Declaration on Christian Education” the proper perspective in which sex education must be set. It affirms the right of
young people to receive an education adequate to their personal requirements. As individuals advance in years they should be provided with positive and prudent sex education to ensure a specific maturity is found in discussions surrounding sex.

The cooperation of various parents, teachers, and pastors is necessary for the successful education of children. Education must occur first within the family in a gradual manner and always considering the total formation of the person physically, spiritually, and psychologically. In today’s society individuals are immersed in a culture which reduces human sexuality to something solely physical and selfish. Parents must ensure that the education they provide is “truly and fully personal,” sexuality is an enrichment of the whole person including ones body, emotions and soul.

Sex education is a basic right, therefore it is the duty of parents to control the information their children view and be attentive to their surroundings. Education and encouragement to live a chaste life is a virtuous quality, allows an individual to develop a maturity that makes him or her capable of respecting and nurturing a healthy value to their body. A close link is found between the sexual dimension of the person and their ethical values. The purpose of educating children is to aid them in understanding and acknowledging moral norms as the necessary and highly-valuable guarantee for responsible personal growth in human sexuality. The Catholic Church is opposed to highly-regulated and secular education systems because they ignore moral principles, which are key to an individual’s growth into a mature Christian.

B. Catholic Concepts of Sexuality

Christian education promotes the realization of man and woman through the development of all their being and spirits. Christian education is rooted in faith, which “throws a new light on all things and makes known the full ideal which God has set for man.” In

118. Id.
119. Id.
120. POPE PAUL VI, Gaudium et spes, (Dec. 7, 1965), at 52.
121. Id.
123. Id.
124. Id.
125. POPE PAUL VI, supra note 11.
recent times, men and women have tended to reduce sexuality to a genital experience alone, which leads to the devaluing of sex and a feeling of defilement. The guidelines presented by the Church intend to oppose such devaluation because sex is something that is natural and beneficial for humankind.\textsuperscript{126}

C. Nature, Purpose and Means of Sex Education

Effective sex education recognizes the totality of the person and insists on the integration of the biological, psycho-affective, social and spiritual elements.\textsuperscript{127} In order to achieve to maturation in ones sexuality, self-control is necessary, which presupposes virtues such as modesty, temperance, respect for self and for others.\textsuperscript{128} When educating the next generation on sex education, it is of the utmost importance that the knowledge we impart to them includes new notions, but that it is assimilated into the corresponding values of the traditional society.\textsuperscript{129} It is important that they grasp and understand the personal responsibilities that are associated with the entry into adulthood.\textsuperscript{130} Educators must stimulate children to a critical reflection on received impressions, and, while they propose values, they must give testimony of an authentic spiritual life, both personal and communal.\textsuperscript{131} As directed in the Sacred Congregation for Catholic Education:

Educators will have to bear in mind the fundamental stages of an individual’s maturation. Educators will have to bear in mind the fundamental stages of such evolution: the primitive instinct, which in the beginning is manifested in a rudimentary state, meets in its turn the ambivalence of good and evil. Then with the help of education, the feelings are stabilized and at the same time augment the sense of responsibility. Gradually selfishness is eliminated, a certain asceticism is established, others are accepted and loved for themselves, the elements of sexuality are integrated: genitality, eroticism, love and charity. Also if the result is not always fully

\textsuperscript{126} CARDINAL WILLIAM WAKEFIELD BAUM (Prefect), \textit{supra} note 113, at 28.
\textsuperscript{127} \textit{Id.}
\textsuperscript{128} \textit{Id.}
\textsuperscript{129} \textit{Id. at 89.}
\textsuperscript{130} \textit{Id. at 37.}
\textsuperscript{131} \textit{Id. at 39.}
attained, they are more numerous than may be thought who come near the goal to which they aspire.132

D. The Function of the Family

According to the Church, education is recognized as a duty of the family, which “is the school of the richest humanity.”133 It has been long recognized that the family environment is the best to accomplish the obligation of securing a gradual education in one’s sexual life. A family has been best suited, and continues to be, for rational decision making on the introduction and education of our youth. The introduction of these topics can be traumatic for young children and must be handled in a delicate manner to ensure that the integration of this information is effective and non-harming.134 In a family, the affection and reciprocal trust are necessary for the harmonious and balanced development of the child right from birth.135 The effective and natural bonds, which unite parents to children, place parents in the right place to recognize a peaceful balance in the education of a child’s sexuality. These bonds allow them to establish a relationship of trust and a dialogue with their children in an appropriate manner for their age and maturity.136 In regard to the “more intimate aspects, whether biological or affective, an individual education should be bestowed, preferably within the sphere of the family.”137

A continued relationship between parents and educators, based on openness and collaboration, will positively influence the maturation of young people. The full realization of conjugal life and the sanctity and stability of the family depend on the formation of conscience and values assimilated during one’s childhood. Moral values seen in the family are transmitted to children more easily.138 Among these values is the respect for life in the womb and in general, that of every age and condition. The young must be helped to understand, appreciate and respect these fundamental values of existence.139

132. Id. at 42.
133. POPE PAUL VI, supra note 119, at 22.
134. CARDINAL WILLIAM WAKEFIELD BAUM (Prefect), supra note 113, at 48.
135. Id. at 49.
136. Id.
137. Id. at 58.
138. POPE JOHN PAUL II, supra note 121, at 37.
139. Id. at 52.
The spiritual community also has a mission entrusted in them to ensure that the sex education of children is complete and done in a proper manner. A family that interacts within the faith community because it can adequately prepare a child for the active assimilation of the Christian ethic into their own lives. The difficulties, which sex education often encounters within the family, require a major commitment on the part of the Christian community including priests, Christian schools and other Christian community organizations.140

Catechesis141 is another important layer to the education of children about sexual health. Therefore, in order to lead the children to maturity of faith, it must illustrate the positive values of sexuality. If parents do not feel comfortable or able to perform this sacred duty, they may have recourse to others who enjoy their confidence. A wise initiative, prudent and adapted to age and environment can avoid trauma to children and render them easier the solution to today’s varying sex education problems.142

E. Civil Society and Sex Education

It is the task of our current society to be watchful of the physical and moral environment found in schools to ensure a safe environment for students to grow and learn. Civil society should respond to the positive requests of parents, not the reverse, which is common today. The Church believes that it is the task of the State to safeguard its citizens against injustices and moral disorders, such as the abuse of minors and every form of sexual violence, degrading dress, permissiveness, and pornography.143 His Holiness, Pope John Paul II, indicated that the situation in which children find themselves today, confronted by the instruments of social communication, is “fascinating and devoid of defense before the world and adults, children are naturally ready to accept whatever is offered to them, whether good or bad...they are attracted by the ‘small screen,’ they

140. Id. at 53-55.
141. Catechesis: Is an elementary form of religious instruction, typically oral, and traditionally under the guidance of a parent, pastor or priest, religious teacher, or other individuals in church roles (including a deacon, religious monk or nun) who poses set questions and prompts students (or disciples) New World Encyclopedia, www.newworldencyclopedia.org/entry/Catechism (last visited April 4, 2012).
142. CARDINAL WILLIAM WAKEFIELD BAUM (Prefect), supra note 113, at 59.
143. Id. at 64.
follow each gesture which is portrayed and they perceive, before and better than every other person, the emotions and feelings which result.”

It is urgent that those who are at the receiving end of the media, especially the young, learn moderation and discipline in their use of them. They should aim to understand fully what they see, hear and read. They should discuss them with their teachers and with experts in such matters and should learn to reach correct judgments.

In this particular area, deference is given to the rights of the child, Pope John Paul II stated that education, “stimulates the consciences of all responsible Christians, especially parents and operators of instruments of social communication, so that they do not hide behind the pretext of neutrality and respect for the spontaneous development of the child, since in reality this a behavior of preoccupying indifference.”

It is argued that the duties that are incumbent on civil authority require there to be regulation on the instruments of social community to protect public morality, in particular the youth of the world, especially with regard to magazines, films, radio and television programs.

F. The School and its Task with Regard to Sex Education

The primary duty of parents is to educate their offspring regarding the importance of human sexuality. The role of the education system is to complement the work of the parents by furnishing a safe environment where children can be motivated and guided by good example. Effective sex education cannot be easily

144. JOHN PAUL II, Message for the XIII World Communications Day (May 23, 1979) at 930.
145. POPE PAUL VI, Decree on the Media of Social Communications Inter Mirifica (Dec. 4, 1963), at 10; MARTIN J. O’CONNOR, Communio et Professio, (1971) at 68.
146. JOHN PAUL II, supra note 142, at 930-933.
147. POPE PAUL VI, supra note 143, at 12.
148. POPE JOHN PAUL II, supra note 121, at 32. There is no mention of education in the U.S. Federal Constitution, see CATO INSTITUTE, Cato Handbook for Congress, Department of Education, http://www.cato.org/pubs/handbook/hb105-11.html. “The Founders feared the concentration of power. They believed that the best way to protect individual freedom and civil society was to limit and divide power. Thus it was much better to have decisions made independently by 13–or 50–states, each able to innovate and to observe and copy successful innovations in other states, than to have one decision made for the entire country. As the country gets bigger and more complex, and especially as government amasses more power, the advantages of decentralization and divided power become even greater.” The Department of Education of the U.S. has codified regulations pursuant to Title 34, Code of Federal Regulations
reduced to teaching material, or to theoretical knowledge alone. Sex education has a specific objective; the effective maturation of the pupil, of self-control, and of correct behavior in social relationships.\textsuperscript{149}

Education systems can contribute to this objective in various ways. All courses can offer an opportunity to coordinate themes and their relation to sexuality. The teacher should always educate in a positive manner and with great delicacy, concretely evaluating the opportunity and the methods. Individual sex education retains prior value and cannot be entrusted indiscriminately to just any member of the school community.\textsuperscript{150} This education requires a teacher of outstanding sensitivity in initiating the child and adolescent in the problems of love and life without disturbing their psychological development.\textsuperscript{151}

Oftentimes particular events in the life of the school require timely intervention. In such cases, school authorities should contact parents to agree on an appropriate solution. School authorities and professionals who enjoy the trust of parents can be invited to hold private conversations with pupils to help them to develop their maturity and aid in balancing in their social relationships.\textsuperscript{152} Such interventions in personal guidance belong in particular to the more difficult cases, when the enormity of the situation creates the need for

\footnotesize{(CFR), Parts 74-86 and 97-99. Thus giving the U.S. federal government further control over the education of its nations students.}\textsuperscript{149} \textit{Id.} \textsuperscript{150} \textit{Id. at 40.} \textsuperscript{151} \textit{Id. at 71.} \textsuperscript{152} It is important to acknowledge the Church’s recent \textsc{Pope Benedict XVI, To The Catholic’s of Ireland} (March 19, 2010) at 7.

You betrayed the trust that was placed in you by innocent young people and their parents, and you must answer for it before Almighty God and before properly constituted tribunals. You have forfeited the esteem of the people of Ireland and brought shame and dishonour upon your confreres. Those of you who are priests violated the sanctity of the sacrament of Holy Orders in which Christ makes himself present in us and in our actions. Together with the immense harm done to victims, great damage has been done to the Church and to the public perception of the priesthood and religious life. I urge you to examine your conscience, take responsibility for the sins you have committed, and humbly express your sorrow. Sincere repentance opens the door to God’s forgiveness and the grace of true amendment. By offering prayers and penances for those you have wronged, you should seek to atone personally for your actions. Christ’s redeeming sacrifice has the power to forgive even the gravest of sins, and to bring forth good from even the most terrible evil. At the same time, God’s justice summons us to give an account of our actions and to conceal nothing. Openly acknowledge your guilt, submit yourselves to the demands of justice, but do not despair of God’s mercy.
a specialist in the matter.\textsuperscript{153} “The formation and development of a harmonious personality require a peaceful atmosphere, fruitful understanding, reciprocal trust and collaboration between persons in charge. It is obtained with mutual respect for the specific competence of the various members of the educational staff, their responsibilities and the choice of the differentiated means at their disposal.”\textsuperscript{154}

G. *Appropriate Teaching Materials*

In order to offer effective sex education, appropriate teaching materials are necessary. The explanation of such materials requires the contribution of specialists in moral and pastoral theology, catechists, educationists and catholic psychologists. Particular attention should be paid to the materials to be distributed to pupils. Some materials on sexuality can be harmful to children due to their graphic nature. These materials are more harmful when they present sexual realities, for which the pupil is not prepared, in a crude manner thereby creating traumatic impressions or raising unhealthy curiosity.\textsuperscript{155} Youth groups and peers offer a different type of education. These go side-by-side with the action of the family and school and frequently have greater influence in the formation of the person. They intensely influence the life of the adolescent and young adult. The human sciences hold that “groups” are a positive condition for formation, because the maturation of the personality is not possible without efficacious personal relationships.\textsuperscript{156}

H. *Educating about Modesty and Friendship*

Modesty defends the dignity of man, woman and authentic love.\textsuperscript{157} It allows certain attitudes to restrain behavior, which

\begin{itemize}
  \item[a.] \textsuperscript{153} *Id.* at 73-74.
  \item[b.] \textsuperscript{154} *Id.* at 75.
  \item[c.] \textsuperscript{155} *Id.* at 76.
  \item[d.] \textsuperscript{156} *Id.* at 77.
  \item[e.] \textsuperscript{157} *Catechism of the Catholic Church*, 2521:

  Purity requires modesty, an integral part of temperance. Modesty protects the intimate center of the person. It means refusing to unveil what should remain hidden. It is ordered to chastity to whose sensitivity it bears witness. It guides how one looks at others and behaves toward them in conformity with the dignity of persons and their solidarity.

  *Catechism of the Catholic Church*, 2523:
maintains the dignity of the person. It is a necessary virtue and effective means of controlling one’s instincts while incorporating human sexuality into the person. “Modesty has great pedagogic weight and should be taught to our children.”\textsuperscript{158} Children and young people will thus learn to respect the body itself as a gift from God, member of Christ and temple of the Holy Spirit. They will learn to resist the evil that they encounter and to have a vision and clear imagination to seek to express a truly human love with all its spiritual components when they meet people in friendship.\textsuperscript{159}

Friendship is the height of effective maturation because it “allows and fosters true communion by its reciprocal generosity and its stability.”\textsuperscript{160} The bonds of friendship contribute both to understanding and to reciprocal respect when they are maintained within the limits of normal expression. If, however, they become or tend to become manifestations of a genital character, they lose the authentic meaning of mature friendship. The prejudice from this genital distraction harms relationships, those involved and the future prospects with regard to an eventual marriage. These situations also render the individuals concerned less attentive to a possible call to the consecrated life.\textsuperscript{161}

From these reflections one can conclude that in the actual socio-cultural situation there is urgent need to further positive and gradual affective-sex educations to children, adolescents and young adults.\textsuperscript{162} Silence is not a valid norm of conduct in this matter considering the “hidden persuaders” in today’s society. The influence of these persuaders today is undeniable and it is up to parents to be alert not only to repair the harm caused by inappropriate and injurious interventions but also above all to opportunely inform their own children.\textsuperscript{163} The defense of the fundamental rights of the child for the complete development of the personality conforms to the dignity of

There is a modesty of the feelings as well as of the body. It protests, for example, against the voyeuristic explorations of the human body in certain advertisements, or against the solicitations of certain media that go too far in the exhibition of intimate things. Modesty inspires a way of life which makes it possible to resist the allures of fashion and the pressures of prevailing ideologies.

\textsuperscript{158} Id. at 90.
\textsuperscript{159} Id.
\textsuperscript{160} Id. at 77.
\textsuperscript{161} Id. at 93.
\textsuperscript{162} Id. at 94.
\textsuperscript{163} Id. at 106.
the children of God, and belongs in the first place to parents.\textsuperscript{164} Personal maturation requires continuity in the educative process, protected by love and trust, proper to the family environment. In accomplishing this mission, the Church has the duty and the right to take care of the moral education of the baptized. The contribution of the school in all education, and particularly in these matters which are so delicate, must be carried out in agreement with the family.

In order for information and sex education to be effective it must be carried out with prudence and with adequate expression.\textsuperscript{165} The outcome of this education will depend largely on the human and Christian vision in which the educator presents the values of life and love. The Christian educator, whether father or mother, teacher, priest or whoever bears responsibility in this regard, can be tempted, today above all, to demand from others this task which requires such delicacy. Nonetheless, each aspect of sex education is inspired by faith and draws indispensable strength from it and from grace. The Letter of St. Paul to the Galatians puts self-control and temperance at the forefront of the discussion.\textsuperscript{166} “It is God who bestows light; it is God who grants sufficient strength.”\textsuperscript{167}

\textbf{CONCLUSION}

There is a great divide between secular and religious societies as the U.N. and other governing bodies further impart their liberal and progressive ideologies on foreign nations. The Church, through its many teachings, boldly stands in opposition to the U.N.’s proposed regulations and ideologies, ensuring the individual person is protected and cultivated into a mature and modest sexual being. The Church has great strength in their teachings on sex education and emphasizes the importance of developing an individual’s feelings and perspectives on human sexuality. The sex education provided through, and regulated by, governmental and international organizations offer programs in direct contradiction to the teachings of the Catholic Church. The U.N. has worked to further substantiate their position by defining sex education, freedom of information, and equal treatment as fundamental rights of all human beings, of course

\textsuperscript{164} \textit{Id.} at 106.
\textsuperscript{165} \textit{Id.} at 109.
\textsuperscript{166} \textit{Id.} at 110.
\textsuperscript{167} \textit{Galatians} 5:22-24.
excluding the unborn. These specific rights substantiate the U.N.’s agenda to reach their specific goals on sex education; to purport their crude interpretation of human sexuality without regard for natural and purposeful sexual relations between a husband and wife. In recent decades many conferences have discussed sex education and with each passing year the agenda of liberal Western cultures force their opinions and ideas of human sexuality through their funding mandates and program specifications. Throughout the world, each region has specific trends, which tend to exemplify the spread of these liberal and progressive ideas and their detrimental impact on society and the dignity of the human person.

The Church has been of great influence on the dispute over sex education and continues to be the beacon of hope in the protection of children and their rights as individuals. Pope John Paul II emphasized in many of his personal writings the significance of sexuality and the many Catholic concepts that further establish the importance of one’s sexual maturation. The nature, purpose and means of sex education are not only imperative to the successful development of the individual but also to the formation of future relationships and to the health and viability of a society.

It is necessary that we take a bold stand in today’s society, a bold stand with the Church to defend the young individuals who are subjected to the suggested defiling methods and procedures of the U.N. along with other international governing bodies. The change of perceptions on sex education is an ever-important topic that needs to be dealt with immediately and without negotiation. With every passing year, our next generation continues to suffer from the harmful implications of U.N. regulated sex education.
TRAFFICKING: WHEN AWARENESS IS NOT ENOUGH

Asthा Adhikary†

INTRODUCTION

Stealing is a bad thing, and is something that we are all made aware of as children. What if someone is stealing food out of hunger? Does it solve the issue of hunger by making someone aware that stealing is bad? No. Awareness also does not solve the problem of trafficking because it does not solve the core issues behind trafficking: the lack of enforcement of laws, poverty, illiteracy, unemployment, and gender discrimination. This paper will show that by enforcing the laws currently in place, with combined efforts of the Nepalese government and the international community, the Nepal will be further along in combating trafficking. This includes the enforcement of border control between India and Nepal. The lack of border patrol enforcement has resulted in the increase of trafficking between the two countries. Most importantly this paper will show that in order to combat trafficking, the core issues mentioned above need to be resolved. In addition, this paper will show that by helping girls and women become financially stable and able to receive an education, their chances of falling victim to trafficking by the lure of financial gain and a better life will decrease.

The paper will focus on three main areas. The first section will give an overview of the history of trafficking in Nepal, the international and domestic laws against trafficking and the Catholic

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Church’s view on trafficking. The second section will discuss the various reasons for why trafficking of girls and women occur. The discussion is based on the Trafficking In Person (Especially On Women and Children) In Nepal 2008-2009, National Report by the Office of the Special Rapporteur on Trafficking in Women and Children (OSRT), the National Human Rights Commission (NHRC), and the Report on Trafficking by Terre des Homes, an international organization that advocates for children’s rights. The second section will focus on women and families choosing trafficking for their children as a way to provide financial stability for the family. The desire to become independent from one’s community and family is also a reason why some women may choose to go with the trafficker. Lastly, the paper will talk about the efforts currently in place to prevent trafficking and the solutions such as: giving women sufficient funds to start their own businesses or assisting them in furthering their education, and tighter border control efforts between India and Nepal.

I. THE HISTORY OF TRAFFICKING IN NEPAL

Nepal is a country rich in history and culture. Present day Nepal was created in the second half of the eighteen century. The history of sex slavery (including trafficking) in Nepal dates back to the Rana regime, which began in 1846 A.D. and lasted for a 104 years. During the Rana rule, the Ranas had an unlimited number of wives and concubines. Many times if the Ranas saw a beautiful girl on the street, they forced the girl to serve them in their palaces.

When the Rana dynasty fell in the 1950s, many of the Ranas escaped to India taking their concubines with them. When the Ranas were no longer able to afford their lavish lifestyles in India, they forced their women to sell themselves outside of their own homes.

3. Nepal Monitor, supra note 2; Terre des homes, supra note 2.
4. Nepal Monitor, supra note 2; Terre des homes, supra note 2.
5. Nepal Monitor, supra note 2; Terre des homes, supra note 2.
(sex for money). Some started to run brothels and to recruit women from their villages in Nepal. This was the start of trafficking of girls and women from Nepal to India. Cultural systems in some communities also helped create the environment for sex slavery to flourish. These communities made “sexual subservience” a way of life. Even today young girls from these communities are forced to serve other groups.

After the fall of the monarchy in 2008, Nepal held an election to create the Constituent Assembly (CA). The primary purpose of the CA is to draft a new constitution for Nepal; furthermore it serves as a parliament. The interim constitution was adopted in 2007 and articulated full commitment to democratic ideals and norms, including fundamental human rights. Seven years earlier the government had created the National Human Rights Commission (NHRC), a government appointed commission with a mandate to investigate human rights violations. However, the government continues to delay the implementation of the commission’s recommendations. Despite some improvements, human trafficking in women remains a serious problem. The United States Department’s 2008 Trafficking in Persons Report indicated that 5,000 to 7,000 girls have been trafficked from rural parts of the country to Kathmandu. The large numbers are indicative of the seriousness of the issue of trafficking in Nepal.

6. Nepal Monitor, supra note 2; Terre des homes, supra note 2.
7. Nepal Monitor, supra note 2; Terre des homes, supra note 2.
8. Nepal Monitor, supra note 2; Terre des homes, supra note 2.
9. Nepal Monitor, supra note 2; Terre des homes, supra note 2.
10. Nepal Monitor, supra note 2; Terre des homes, supra note 2.
11. Nepal Monitor, supra note 2; Terre des homes, supra note 2.
13. Id.
14. Id.
16. Id.
17. Id.
A. What is Trafficking?

1. International Law

The United Nations has defined trafficking as:

the recruitment, transportation, purchase, sale, transfer, harboring or receipt of persons by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of placing or holding such person, whether for pay or not, in forced labor or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described. 19

According to the United Nations’ Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, in order to prevent, suppress, and punish trafficking in persons, countries have to create and implement criminal offences for trafficking. 20 Furthermore, Article 9 of the Protocol calls for State parties to create social and economic initiatives to stop and fight trafficking. 21

Trafficking for sexual exploitation remains the number one purpose for trafficking. 22 Trafficking is generally categorized into two models: hard trafficking and soft trafficking. 23 In hard trafficking, trafficking occurs because of force, blackmail, deception, and kidnapping. 24 In soft trafficking, girls in particular are seen as a commodity that can be purchased and sold. 25 The latter form of trafficking appears to take place in some instance with the approval


20. Preamble, at 3.

21. Id. at 5-6.


23. Terre des homes, supra note 2, at 12.

24. Id.

25. Id.
or participation of parents from rural villages. In both models, women have almost no power over the choices made for them.

2. Nepalese Domestic Laws

The Nepalese government is striving to make progress in the prosecution of trafficking. The 2007 Interim Constitution of Nepal states that “no one shall be trafficked.” Human trafficking has been criminalized several times in Nepal. Most recently in 2007, the 1986 Human Trafficking Act was replaced by the Human Trafficking and Transportation (Control) Act 2007 (HTT ACT). The HTT ACT defines the meaning of human trafficking and criminalizes the act. According to the HTT ACT, the “sale or purchase of persons, enforced prostitution, and participating in prostitution both for internal and cross-border trafficking” are all trafficking offenses. Regulation was enacted in 2008 to expedite execution of the law against these offenses. The HTT ACT includes measures to award the informants and trafficked person who report trafficking offenses as a way to strengthen the investigation and prosecution of trafficking. Penalties are proportional and more severe, and judicial discretion is limited during sentencing. The purpose of the HTT ACT is to protect the rights of the victims and provide them assistance by establishing measures such as privacy and security rights, allowing property of offenders to be seized and sold with the money going to the victims, and bringing criminal charges against anyone committing such an offense against a Nepali citizen.

26. Id.
27. Id.
28. Interim Constitution, para. 28. “Rights against exploitation. (3) No one shall be trafficked in nor shall one be held in slavery or in servitude.”
31. HTT ACT, at 1.
32. Id. at 2.
34. Id. at 9.
36. Id. at 91; see also HTT ACT, at 1.
Nepal has also adopted several international laws against trafficking. Nepal joined the United Nations in 1955.\(^{37}\) As of April 2009 Nepal’s government has ratified nineteen Human Rights treaties and covenants, four of which are international humanitarian laws.\(^{38}\) Nepal is also a party to three anti-trafficking conventions: the 1926 Slavery Convention, the 1956 Supplementary Convention on the Abolition of Slavery, and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others.\(^{39}\) The Nepalese government ratified the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child Optional Protocols in 2002.\(^{40}\) That same year, the government signed but has not ratified the U.N. Convention against Transnational Organized Crime.\(^{41}\) Despite being a party to all of these Conventions, Nepal has yet to become a party to the 2000 U.N. TIP Protocol.\(^{42}\) Nepal is a dualistic system with regard to international law.\(^{43}\) The “ratification of, accession to, acceptance of or approval of treaties or agreements” is accomplished “by a two-thirds majority of the total number of members of the Legislature-Parliament present in the House.”\(^{44}\) Unless such a procedure has occurred, no treaty or agreement is binding against the Government of Nepal or the State of Nepal.\(^{45}\) Moreover, Nepal is also a party to the South Asian Association for Regional Cooperation’s (SAARC) Trafficking Convention.\(^{46}\) The Nepalese government has complied with the general principles set forth in the SAARC Convention, especially by recognizing trafficking as a serious crime and making legal and policy commitments to suppress it.\(^{47}\) Furthermore, the government has complied with the SAARC Convention by adopting

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37. U.S. Department of State Diplomacy in Action, Background Note: Nepal.
39. Id.
40. Id.
41. Id.
43. Interim Constitution, at 83.
44. Id. at 83-84.
45. Interim Constitution, at 84.
47. Id.
the National Place of Action against trafficking and sexual exploitation; making the Ministry of Women, Children and Social Welfare a focal Ministry for the creation, implementation and monitoring of anti-trafficking programs. Nonetheless, Nepal lacks in the progress of creating and/or implementing agreements to combat trafficking with other member states. This is a problem because the HTT ACT does not plainly state that trafficking and transportation are extraditable offences. Furthermore, the 1953 India-Nepal Extradition Treaty states that extradition is allowed in relations to seventeen offenses, however, human trafficking or transportation are not included on the list.

B. The Catholic Church’s View on Trafficking

In a letter to Archbishop Jean-Louis Tauran, Secretary for Relations with States, Pope John Paul II wrote that human trafficking is an outrageous offense against human dignity and a grave violation of fundamental human rights. The Second Vatican Council pointed to the selling of women and children, as ‘infamies’ which ‘poison human society debase their perpetrators’ and constitute ‘a supreme dishonour to the Creator’ (Gaudium et Specs, 27). According to the Church, selling women and children is an offense to fundamental values, which are shared by all cultures and people. Archbishop Agostino Marchetto, Secretary of the Dicastery, emphasized the necessity for the universal Church to get involved in recognizing victims and helping them return to their “human dignity.”

II. WHY TRAFFICKING IN GIRLS AND WOMEN OCCUR

The reasons trafficking occur has changed little since the Rana regime. The National Reports on the Trafficking in Persons have been published since 2005. The 2008-2009 Report (Report) is a

48. Id. at 91.
49. Id. at 7.
50. Id. at 92.
51. Id.
53. Id.
54. Id.
55. Id.
continuation of the earlier reports and it traces the evolution of trafficking.\textsuperscript{57} During the Rana Regime, from 1846 to 1950, girls and women were trafficked internally for servitude, slavery, and exploitation.\textsuperscript{58} Trafficking for sex work cross-border started with India during the Post Rana period and Panchayat Regime from 1950 to 1990. It continues today extending to the Middle East, South East Asia, and other developed countries.\textsuperscript{59} During the armed conflict between the Maoists rebel and the Nepalese government from 1996 to 2006, many girls and women were forced to leave their villages in search of security and livelihood. As they left, females became increasingly exposed to trafficking because they lacked necessary skills, education and resources.\textsuperscript{60} The danger of trafficking continues in the post-conflict state.\textsuperscript{61} It is estimated that from 2008 to 2009, 3,500 girls and women were intercepted from different border points and rescued from India and Gulf countries.\textsuperscript{62} Due to the lack of accurate statistics, it is difficult to analyze the exact magnitude of harm that trafficking has caused.\textsuperscript{63}

The data that does exist shows that progress is occurring. Furthermore, the average number of trafficking cases registered with the Nepalese police between 2004 and 2009 was 109.\textsuperscript{64} This is a low number of cases, illustrated by the fact that 421 out of the 463 trafficking survivors interviewed in 2008 did not file a complaint against their traffickers. This occurred because they lacked knowledge about filing complaints, feared social stigma, were threatened by traffickers not to file a complaint, feared family hatred, or because they lack proof.\textsuperscript{65} The average number of trafficking cases registered in the courts of Nepal during this five year period was 410.\textsuperscript{66} Despite the low number of complaints, there has been a twenty-nine percent increase in the number of trafficking related cases registered in the courts from 2003 to 2004 and 2007 to 2008.\textsuperscript{67}

\textsuperscript{57} Id. at 17
\textsuperscript{58} Id. at 18, Box 2.1 (Changing dynamics of trafficking in Nepal).
\textsuperscript{59} Id.
\textsuperscript{60} Id.
\textsuperscript{61} National Report on Trafficking, at 18.
\textsuperscript{62} Id.
\textsuperscript{63} Id. at 21.
\textsuperscript{64} Id. at 20.
\textsuperscript{65} Id. at 22.
\textsuperscript{66} Id.
\textsuperscript{67} Id. at 23.
The root causes of trafficking in many regions are poverty, illiteracy, unemployment, and gender discrimination. Other causes may include, “poor governance, lack of rule of law, political conflict and war, violence, and social and cultural structures (power, hierarchy and social order).” Furthermore, in their assessment report (Child Trafficking in Nepal) Terre des Homes states that migration is also a root cause of trafficking. This report stated that trafficking is often a “direct result” of migration. As young girls and women travel to other regions looking for better employment prospects, their chances of being trafficked increase. Furthermore, many times they migrate with little or no information about what they are going to be doing. Border villages are one of the most lucrative and profitable places for trafficking.

Gender discrimination begins at home in Nepal. The ill-treatment of girls and women starts at an early age. Culturally women are treated as second class citizens and inferior to their husbands, fathers and sons. Girls are constrained to the family environment and generally do not leave their villages. Educating and investing in a girl’s future are extremely limited. Female literacy rate is quite low in Nepal. For women who have limited rights and freedom and few employment opportunities, the offer of economic independence by traffickers may be seen as the only opportunity to improve their situations. The Terre des Homes report states that there is a close correlation between the emotional situation of village girls and mobility. Some girls interviewed in the report stated that “at times we feel so depressed, that we think if someone comes and persuades us to go to the city with them, we will willingly go along with them.” The desperate feeling of helplessness leads these girls right into the traffickers’ hands.

69. World Bank, at 11.
70. Terre des homes, at 7.
71. Id.
72. Id.
73. Id. at 8.
74. Id. at 7.
75. Terre des homes, at 8.
76. Id.
77. Id.
78. Id. at 9.
79. Id.
80. Terre de Homes, supra note 77.
Research shows that about forty percent of the victims were either orphans, or forced into the sex trade by stepparents. In such circumstances, the lack of self-worth, trust, or belief in a better personal future away from their current living conditions make these women particularly susceptible to trafficking. Additionally, economic deprivation such as “denial of right to property or opportunity of earning or destruction of property owned by women” are other reasons women gravitate towards the sex trade industry. Inequality in treatment is yet another reason women turn towards the industry. For example, women receive less health care than men, have a more excessive workload, and they are restricted in having social relations, getting an education and starting their own businesses. Poverty and the desire to earn money may be the reasons commercial sex workers turn to this profession; however, the root cause of girls and women turning towards this industry may be the way they are raised.

A. Who are the Traffickers?

Traffickers have a variety of faces. Aside from professional agents and local recruiters, family members (uncles, cousins, stepfathers) also act as trafficking agents. Most female traffickers are former prostitutes who return to the villages during the peak trafficking months of June and late August, and partake in local festivals to recruit girls for trafficking. It is easier for the traffickers to get the girls to come with them during this time because it precedes the harvest, when poverty is felt most deeply. These recruiters are told that the only way they can secure their release is by providing a substitute. Other times trafficking happens through deceptions: young men enter villages, claim they are from Kathmandu and offer

81. Id.
82. Id.
83. Id.
84. Id.
85. Id.
87. Id.
88. Id.
89. Id.
90. Rape For Profit, supra note 86.
marriage and modern comforts to young girls; older men offer the girls jobs in the city; a distant relative or friend pretends to arrange a marriage, then kidnaps the girl, and sends her to India, or someone promises the opportunity for an education.

III. SOLUTIONS

A. Education

Currently, education about trafficking and awareness programs are the main methods in place to address the issue of trafficking in Nepal. The Asia Foundation and Horizons Research Summary states the findings of prevention activities currently in place:

<table>
<thead>
<tr>
<th>Prevention Activities</th>
<th>Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awareness raising, advice giving, and social mobilization (rallies, IEC materials, peer education, organization of women’s groups, etc.)</td>
<td>Few interventions provide relevant, realistic messages about trafficking; information and support systems for safe migration also lacking.</td>
</tr>
<tr>
<td>Improvement of livelihood opportunities (income generation, vocational training, micro-credit)</td>
<td>Most programs offer training only in traditional, low-income skills, such as sewing; the aim is primarily to keep girls from leaving the village.</td>
</tr>
<tr>
<td>Interception of suspected trafficking victims (community surveillance and border-based rescue)</td>
<td>The accuracy of the methods used to identify trafficked persons as opposed to legitimate migrants/travelers is unclear and needs evaluation.</td>
</tr>
</tbody>
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91. Id.
92. Id.
93. Id.
94. Id.
96. Id.
These prevention activities are a start. The aforementioned findings show that these activities alone will not solve the issue of trafficking. Relevant and realistic messages about trafficking are vital in showing the dangers of trafficking. In the United States 2011 Report on Trafficking in Persons, the U.S. government made the following recommendations:

increase law enforcement efforts against all types of trafficking, including labor trafficking, and against government officials who are found to be complicit in trafficking, while respecting the rights of victims and defendants; institute a formal procedure to identify victims of trafficking and refer them to protection services; ensure that sex trafficking victims are not punished for involvement in prostitution; improve protection services available for victims of all forms of trafficking; promote legal awareness programs to potential trafficking victims and government officials; work with Indian officials to establish a procedure to repatriate Nepali victims of trafficking in India; and provide disaggregated data under the Human Trafficking and Transportation Control Act.  

These recommendations are mainly geared toward stabilizing the situation after trafficking has occurred. Abusive home life and poverty are two major causes of trafficking that need to be addressed before resolving post trafficking issues. In order to help these girls and women escape their abusive homes, it is necessary to help them become financially stable. The Nepali government created the National Plan of Action against Trafficking in Children and Women for Sexual and Labor Exploitation which identified several action areas to address; one of which is the income and employment generation area. In these particular areas, ministry groups and departments have created programs for income and employment generation.

The Nepali government has also implemented programs such as the Poverty Alleviation Program and Women Empowerment Program to decrease poverty and increase the income of poor and

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98. Id.
100. Interview with Mr. Niranjan Thapa, Former Home Minister (Oct. 2011).
102. Id.
disadvantaged groups in the country. However, many of these programs do not sufficiently provide coverage for the most vulnerable groups such as the Dalit, dissertated women, abandoned women, single women, and the very poor. Many of the programs focus on awareness campaigns and not enough on income generating and employment programs.

The National Human Rights Commission and the Office of the Special Rapporteur provides guidance on trafficking to Ministries, Constitution Assembly Members, and human rights defenders. These groups work as decision-makers, implementers and activists for combating trafficking through the lenses of policy and legal response. These key members made commitments to fight trafficking using various methods. Mr. Bhim Bahadur Rawal, Honorable Minister of Home Affairs, expressed that it is important to enforce the laws that have been created in order to combat trafficking in persons. He further stated that teamwork between the government and local community organizations is also vital. More importantly Mr. Rawal emphasized that “awareness and development of sense of accountability among the populace can contribute to reducing the malaise of trafficking in human beings.”

Arzu Rana Deuba, Honorable Member of the Constitutional Assembly, also emphasized awareness campaigns and the need to work together with countries that are trafficking hubs. Mr. Mohamad Atab Aalam, Honorable Minister of Labor and Transport Management, acknowledged that poverty, illiteracy, and unemployment in villages are some of the root causes of trafficking. He suggested creating programs that targeted specific groups such as women and children, enable the community members to fight against

103. Id.
104. Id. at 101.
105. Id. at 101.
108. Id. at 109.
109. Id.
110. Id.
111. Id. at 113.
112. Id. at 110.
trafficking in their villages and develop coordination mechanisms among the government and NGOs and civil society.\textsuperscript{113}

Sapana Pradhan-Malla, Honorable Member of Constitutional Assembly, stated that the root cause of trafficking must be fought first.\textsuperscript{114} She also stated that enactment of law is not enough unless law is disseminated.\textsuperscript{115} Ms. Pradhan-Malla emphasized that support systems need to be created along with counseling, legal aid, shelter for victims, justice, and \textit{more importantly economic programs}.\textsuperscript{116} Mr. Sushil Pykuryal, Human Rights Defender and Ex-Commissioner, NHRC, stated that in his opinion trafficking is a regional problem that cannot be combated without a united front.\textsuperscript{117} Mandira Sharma, Humans Rights Defender of the Advocacy Forum, stated that creating laws are not enough when the laws are not sufficiently enforced.\textsuperscript{118} He also stated that the education policies of the government need an overhaul to promote not only receiving primary education, but higher-level education as well.\textsuperscript{119} Overall, these commitments show that these key activists know that the root causes of trafficking have to do with the “rigid patriarchal system” making women second class citizens in families and society.\textsuperscript{120}

Some of the commitments focus on awareness as a way of battling trafficking, while others state that the government and NGOs have to work together.\textsuperscript{121} The National Report on Trafficking 2008-2009 identified the following “key words” that emerged from the commitments on combining efforts:

- Need coordination between Ministries and Departments
- Ensure budget and resources allocated
- For prevention Ministry of WoCSW, NWC, NGOs play proactive role
- For protection, the Ministry of Home, Police Department, Attorney General Office and the Judiciary play an important role

\textsuperscript{113} Id.

\textsuperscript{114} Id. at 113.

\textsuperscript{115} Id. at 114.

\textsuperscript{116} Id. (Emphasis added).

\textsuperscript{117} Id. at 117.

\textsuperscript{118} Id.

\textsuperscript{119} Id. at 118.

\textsuperscript{120} Id. at 121.

\textsuperscript{121} See, National Report on Trafficking.
• Civil society work for rehabilitation and reintegration in society.\textsuperscript{122}

Still some see education as one of the main ways of combating trafficking.\textsuperscript{123} Girls and women need to be encouraged to seek a higher education.\textsuperscript{124} Which means it is up to the government to give girls and women an opportunity to receive such an education.\textsuperscript{125}

Other commitments focus on obtaining the justice victims deserve.\textsuperscript{126}

Padma Mathema, of the National HRC of Nepal, is responsible for monitoring, coordinating and building partnerships to counter human trafficking in Nepal. In a personal email she stated that bringing income to the families that are vulnerable to trafficking is a concern of the Nepalese government and NGOs.\textsuperscript{127} Both groups are implementing micro level income generating programs in the local villages; however, she states that these general programs are not targeting the vulnerable population.\textsuperscript{128} Additionally, Ms. Mathema affirms that there is foreign aid being given to programs in Nepal, however, she says that those programs are “happy with awareness raising for its comfortable implementation.”\textsuperscript{129} Ms. Mathema states, “I feel that the problem of combating trafficking is addressed in policy and acts but not in deed.”\textsuperscript{130} She goes on to say “targeted income based [programs] need[] to be launched in addition to awareness programme.”\textsuperscript{131} The issue is not the lack of funds but that the organizations have become complacent in structuring activities other than raising awareness.\textsuperscript{132}

Lack of awareness is not the problem in Nepal.\textsuperscript{133} There is a willingness among girls and women to listen to these traffickers who tell them that they will make a lot of money and become wealthy.\textsuperscript{134} Many of the girls and women are aware that they may become victims to trafficking, but nevertheless, they still move to the cities

\textsuperscript{122}. Id. at 123.
\textsuperscript{123}. See, National Report on Trafficking.
\textsuperscript{124}. Id. at 118.
\textsuperscript{125}. Id.
\textsuperscript{126}. Id. at 123.
\textsuperscript{127}. Interview with Padma Mathema, National HRC of Nepal (Oct. 2011).
\textsuperscript{128}. Id.
\textsuperscript{129}. Id.
\textsuperscript{130}. Interview with Padma Mathema, National HRC of Nepal (Oct. 2011).
\textsuperscript{131}. Id.
\textsuperscript{132}. Id.
\textsuperscript{133}. National Report on Trafficking; The Asian Foundation and Horizons
\textsuperscript{134}. National Report on Trafficking; The Asian Foundation and Horizons
and dream of becoming independent so that they no longer have to be in abusive homes. \textsuperscript{135}

B. \textit{Economic Stability}

In an interview with Niranjan Thapa, former Home Minister of Nepal, he spoke about distributing the funds for combating trafficking given by international organizations and other nations to women, so that they can start small businesses and have the ability to continue going to school. \textsuperscript{136} Mr. Thapa spoke about creating small businesses that these women could do from home, such as knitting clothes, raising cows and selling their milk, and growing vegetables to sell in the market. \textsuperscript{137} He says it is also necessary for us to pave the path for girls to continue their education and set goals toward going to college. \textsuperscript{138} Many times girls are taken out of school to help with farming and taking care of the house. \textsuperscript{139} The literacy rate for women in Nepal is forty-four half five percent. \textsuperscript{140} Mr. Thapa states that lack of funds is no longer an issue because of the vast amount of donations being received by Nepal through international organizations and other nations. \textsuperscript{141} The problem he says is how the funds are used once they are in the hands of the Nepalese organizations. \textsuperscript{142} Many of the funds are used towards awareness programs. \textsuperscript{143} Although in the beginning these programs were useful, now there needs to be more of an emphasis on helping these girls and women feel empowered and financially stable. \textsuperscript{144} If these small businesses were to succeed, women would become financially stable. The problem remains that in many instances these girls and women are not educated. \textsuperscript{145} Many do not have basic elementary education, which means that they are

\textsuperscript{135} Terre des homes, at 9.
\textsuperscript{136} Interview with Mr. Niranjan Thapa.
\textsuperscript{137} \textit{Id.}
\textsuperscript{138} \textit{Id.}
\textsuperscript{139} \textit{Id.}
\textsuperscript{141} \textit{Id.}
\textsuperscript{142} \textit{Id.}
\textsuperscript{143} \textit{Id.}
\textsuperscript{144} \textit{Id.}
\textsuperscript{145} \textit{Id.}
vulnerable to deceit and fraud when dealing with other businesses.\textsuperscript{146} Furthermore, limiting these girls and women to a cottage industry is showing these girls and women that their abilities are limited to creating their products at home.\textsuperscript{147} Funding a start-up business is a stepping stone but it should not be an end.\textsuperscript{148} The girls and women should be nurtured and guided to become acclimated with the modern world.\textsuperscript{149}

In an interview with Ms. Kriti Thapa, Legal and Policy Officer for The Asia Foundation-Nepal, she spoke of the solution being more legal oriented.\textsuperscript{150} The best solution she says is to first develop a mechanism to bring the human trafficking criminal to justice.\textsuperscript{151} Secondly, there are laws criminalizing human trafficking and transportation, but there needs to be an enforcement of these legal mechanisms.\textsuperscript{152} Lastly, combating initiatives should be done in coordination with the Government of Nepal, Civil Societies and NGOs.\textsuperscript{153} Schools from primary to higher level of education should focus on making girls aware of the effects of trafficking.\textsuperscript{154} Furthermore, amending the India-Nepal Extradition Treaty to criminalize trafficking would help in the extradition of traffickers from India to Nepal so that they can be prosecuted.\textsuperscript{155}

C. Border Policy Changes and Corruption Control

The solution to combating trafficking does not stop at education and economic stability. A major obstacle in the fight against trafficking is the open border policy between the two countries.\textsuperscript{156} A 1950 treaty between the two countries allows people to freely travel and trade across the borders.\textsuperscript{157} Nationals of the two countries are not

\textsuperscript{146} UNESCO, \textit{supra} note 140.
\textsuperscript{147} \textit{Id.}
\textsuperscript{148} \textit{Id.}
\textsuperscript{149} \textit{Id.}
\textsuperscript{150} Interview with Ms. Kriti Thapa, Legal and Policy Officer for The Asia Foundation of Nepal (Oct.2011).
\textsuperscript{151} \textit{Id.}
\textsuperscript{152} \textit{Id.}
\textsuperscript{153} \textit{Id.}
\textsuperscript{154} \textit{Id.}
\textsuperscript{155} Interview with Ms. Thapa
\textsuperscript{156} Rape For Profit, Trafficking of Nepali Girls and Women to India’s Brothels, HUMAN RIGHTS WATCH, vol.12, No. 5(A), June 1995, pg. 5.
\textsuperscript{157} \textit{Id.}
required to carry passports, visas, or residence permits while travelling between India and Nepal.\textsuperscript{158} It is estimated that nearly “12,000 girls are trafficked” from Nepal into India annually.\textsuperscript{159} This means close to “1,000 girls are taken across borders each month.”\textsuperscript{160} The Nepalese police state that close to “100,000” people per day pass through one particular border for “work, shopping and business.”\textsuperscript{161} Due to the large volume of traffic, it is quite difficult for the police to monitor illegal activities.\textsuperscript{162} Therefore, traffickers are available to travel easily across the border with their victims.\textsuperscript{163} It is left up to the border police to stop and question suspicious-looking travelers.\textsuperscript{164} However, many times police corruption on either side of the border defeats the attempt to catch traffickers.\textsuperscript{165} The governments of both countries should be thorough and neutral when investigating officials that may be involved in trafficking.\textsuperscript{166} A hotline where witnesses would feel safe to call and report charges of official involvement in trafficking should be established.\textsuperscript{167} Those officials that are involved in trafficking or are failing to enforce anti-trafficking laws should be prosecuted to the fullest extent of the law.\textsuperscript{168} Merely suspending, transferring, or ordering these officials to give public apologies is not sufficient.\textsuperscript{169}

Border monitoring stations is one way of addressing the border control problem.\textsuperscript{170} The focal point of the border station program is to monitor individuals who are seen making multiple trips across the India/Nepal border.\textsuperscript{171} Another component of the program is observing travelers and specifically looking for activity that may seem suspicious, and then interviewing those suspected to make sure a girl

\begin{itemize}
\item \textsuperscript{158} Id.
\item \textsuperscript{160} Id.
\item \textsuperscript{161} Rape For Profit, Trafficking of Nepali Girls and Women to India’s Brothels, at 5.
\item \textsuperscript{162} Id.
\item \textsuperscript{163} Id.
\item \textsuperscript{164} Id.
\item \textsuperscript{165} Id.
\item \textsuperscript{166} Rape for Profit, supra note 161, at 33.
\item \textsuperscript{167} Id.
\item \textsuperscript{168} Id.
\item \textsuperscript{169} Id.
\item \textsuperscript{170} FreeforLife, supra note 159.
\item \textsuperscript{171} Id.
\end{itemize}
is not in danger. Free for Life International and the Peace Rehabilitation Center (P.R.C.) expects to rescue at least two hundred girls at the border stations from being sold into brothels. The staffs at the border stations are expected to interview nearly two thousand individuals who cross the border each month. Out of these individuals five to ten percent will be trafficking victims. Border stations are effective because P.R.C. staffs have the expertise and ability to identify traffickers, keep them in custody, and arrest them while rescuing the girls that may be with them. The initial purpose of the open border policy between India and Nepal was to encourage travel and trade between the two countries. It is clear from the vast number of victims being trafficked that this policy needs to change. One way to better the open border policy is to use some of the funds the government of Nepal and NGOs receive towards establishing more border control stations.

Creating border control stations is the first part of solving this issue. Increasing manpower in these border stations is the second part. One way to increase the number of people working at the stations is to get the International Criminal Police Organization (INTERPOL) involved since Nepal is a member state. INTERPOL is an international police organization with 190 member countries with a mission to prevent and fight crime through international police cooperation. The organization works with police departments around the world to provide training, investigative support, and secure communication channels. The INTERPOL National Central Bureau (NCB) for Kathmandu works in conjunction with NGOs to combat trafficking. One of the services NCB-Kathmandu provides is “assisting with border security.” If NCB-Kathmandu joined

172. Id.
173. Id.
174. Id.
175. FreeforLife, supra note 159.
176. Id.
177. Id.
180. Id.
181. Id.
forces with the NGOs that are establishing border control stations, it would mean more security at the stations, as well as more enforcement power.

**CONCLUSION**

To summarize, the world’s spotlight is on Nepal because of its ever-increasing business of human trafficking. By creating national laws and being parties of international treaties, the government of Nepal has shown that it is committed to fighting and curbing trafficking. Awareness programs have educated the Nepalese about the dangers of trafficking. However, the strides made by awareness programs are diminished by the lack of enforcement of laws against trafficking. There is a need to show families that women are just as valuable as men. Furthermore, women should not be treated as second-class citizens. The outcome will be that girls and women would feel wanted, needed, and valuable, thereby making them less vulnerable to being trafficked. Giving these girls and women the opportunity to receive an education or start their own businesses would help them become independent and financially secure. Moreover, it is vital that traffickers are stopped at the border before they escape to other countries with these girls and women. If better border control enforcement between India and Nepal is established, the number of potential victims that are saved will rise. In conclusion, as Pope John Paul II stated, human trafficking is an outrageous offense against human dignity and a grave violation of fundamental human rights.
COMBATING IMPURITY IN HAITI: WHY THE ICC
SHOULD PROSECUTE SEXUAL ABUSE BY UN
PEACEKEEPERS

Renee A. Vezina†

INTRODUCTION

The sexual abuse of children in Haiti has been reported on by various international media outlets,¹ of particular note is the
systematic rape of young girls by Sri Lankan Peacekeepers² and the
abuse of a teenage boy by five peacekeepers from Uruguay.³ Despite
the efforts of the United Nations (hereinafter UN) to train
peacekeepers and implementing a ‘zero-tolerance’ for sexual violence
committed by peacekeepers⁴ they have not succeeded in preventing
these human rights violations.⁵ Furthermore, according to the Status-
of-Forces Agreements, States have the duty of prosecuting their
citizens for offenses committed while serving with the UN
peacekeeping missions;⁶ however, the accused offenders often go

† 2012 J.D. Candidate. Many thanks to Professor Rev. Joseph Isanga for his thoughts and guidance on the issues addressed in this note.
1. Alex Newman, UN Troops Accused of Sex Crimes Worldwide, THE NEW AMERICAN
(Sept. 08, 2011, 11:49 AM), http://www.thenewamerican.com/world-mainmenu-26/africa-
2. Neil MacFarquhar, Peacekeepers’ Sex Scandal Linger, On and Off Screen, NEW YORK
pagewanted=all.
3. Ansel Herz, et al., UN peacekeepers Accused of Sexually Assaulting Haitian Teen, ABC
NEWS (SEPT. 2, 2011), http://abcnews.go.com/Blotter/peacekeepers-accused-sexually-
assaulting-haitian-teen/story?id=14437122
4. See UN confirms sex charges against Sri Lankan troops in Haiti child abuse, TAMIL
[hereinafter UN confirms sex charges].
5. See IASC Task Force on Protection from Sexual Exploitation and Sexual Abuse in
2002)[hereinafter ISAC Task Force].
6. Agreement Between The United Nations and the Government of Haiti Concerning the
Status of the United Nations Operation in Haiti, July 9, 2004, at art. 51(b)[hereinafter
Agreement].
without punishment or diminished sentences and the penalties vary between the States. Child victims continue to endure the effects of the abuse and lack the closure of justice being served because their abusers are not held accountable for their depraved acts. Consequently, the international community and the United Nations must prove their commitment to protecting children through the establishment of a limited tribunal held by the International Criminal Court (hereinafter ICC). This paper argues that sexual abuse of children committed by UN peacekeepers in Haiti during the Stabilization of Mission to Haiti (hereinafter MINUSTAH) should be submitted to the ICC for prosecution because protecting children from sexual violence is not only a legal obligation but also a moral obligation that all members of the human race have.

Part I examines the origin and history of UN peacekeeping missions which have transcended from maintaining cease-fires to humanitarian efforts. Part I also looks at the history of the UN presence in Haiti, which is known as MINUSTAH. Part II studies the sexual violence committed against children by UN peacekeepers in Haiti, where there have been two widely reported incidents, one involving peacekeepers from Sri Lanka and the other with Uruguayan troops, and the UN response to the allegations. Part III then examines whether prosecution of these alleged child sex offenders by the ICC is possible in light of the Status of Forces agreement and makes a recommendation for a limited ICC tribunal. Part IV contends that prosecution of the alleged sexual offenders by the international community is both a moral and legal obligation, one that is advanced and encouraged by the Holy See. This paper also recommends, in light of legal duties and moral obligations, that those who allegedly sexually assault or rape children while performing peacekeeping missions should be submitted to the ICC for prosecution.

I. HISTORY OF UNITED NATIONS PEACEKEEPING MISSIONS AND MINUSTAH

In 1948, the United Nation’s Security Council (hereinafter Security Council) authorized the first peacekeeping mission in response to the beginning Cold War in order to maintain ceasefires, stabilizing ground situations, and provide crucial support for political efforts to
maintain peace. The UN peacekeeper forces are a part of the broader mission and activities of the UN: conflict prevention and mediation, peacemaking, peace enforcement, and peace building. It is recognized that UN peacekeeping forces are not provided per se in the UN Charter, but the UN is charged with the “primary responsibility for the maintenance of international peace and security.” To maintain international peace and security the Security Council and UN peacekeeping operations have had to adapt from traditional operations, which were essentially military in nature and focused on regional cease-fires and investigating complaints of violations, to internal conflicts and civil wars.

Peacekeeping within the past sixty years has become increasingly multi-dimensional, where peacekeepers not only provide security, stabilization, and peace consolidation; but may also assume legislative and administrative functions of the State. Today, UN peacekeeping forces do not only perform their traditional duties of implementing cease-fire or peace agreements, but are also used to “facilitate the political process, protect civilians, assist in disarmament, demobilization and reintegration of former combatants; support the organization of elections, protect and promote human rights and assist in restoring the rule of law.” The result of the broad multi-dimensional UN peacekeeping operations have required the Security Council to implement resolutions, coordinate with other international actors within and outside the UN, and create principles and guidelines. Human rights are at the core of UN peacekeeping

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10. U.N. Under-Secretary-General for Peacekeeping Operations, United Nations Peacekeeping Principles: Principles and Guidelines, at 47 (January 18, 2008), http://pbpu.unlb.org/pbps/Library/ Capstone_Doctrine_ENG.pdf [hereinafter Peacekeeping Principles] (the Security Council is authorized to establish a peacekeeping operation in Chapters VI, VII, and VII of the UN Charter, although most peacekeeping operations are established under the Security Council’s Chapter VII powers; but the Security Council does not need to invoke a specific Chapter upon passing a resolution authorizing the deployment of UN Peacekeeping troops).
12. Id. at 8-9, 22-23.
operations: “UN peacekeeping personnel— whether military, police, or civilian— should act in accordance with international human rights law False [p]eacekeeping personnel should strive to ensure that they do not become perpetrators of human rights abuses False [w]here they commit abuses, they should be held accountable.”\(^{15}\)

By the end of 2011, there were fifteen UN peacekeeping operations and an additional sixteen peacekeeping operations that were directed and supported by the Department of Peacekeeping Operations.\(^{16}\) These peacekeeping operations were deployed in four continents, with only one being in the Americas, the UN Peacekeeping Mission in Haiti.\(^{17}\) The UN has been involved with Haiti since 1990, when the UN Observer Group for The Verification of Elections, upon the request of the provisional Haitian government, oversaw the preparation and holding of elections.\(^{18}\) After conditions in Haiti worsened following a political coup in 1991, the UN attempted to establish an International Civilian Mission in Haiti along with Organization of American States,\(^{19}\) which was unsuccessful.\(^{20}\) The first deployment of a multinational force to Haiti to “facilitate the prompt return of the legitimate Haitian authorities, maintain a secure and stable environment in the country, and promote the rule of law” by the UN occurred in July 1994.\(^{21}\) Various UN peacekeeping missions followed from 1994 through 2000. After an armed conflict occurred in the city of Gonzales and other towns, the Security Council passed Resolution 1542 creating MINUSTAH on June 1, 2004 because the situation in Haiti was deemed to threaten international peace and security.\(^{22}\)

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17. Id.
20. MINUSTAH Background, supra note 18.
21. MINUSTAH Background, supra note 18.
22. Id (the previous UN missions to Haiti between 1994-2000 were: UNMIH, which assumed its functions in full in March 1995, the United Nations Support Mission in Haiti (UNSMIH), the United Nations Transition Mission in Haiti (UNTMH), and the United Nations Civilian Police Mission in Haiti (MIPONUH) despite the some successes of these mission there were many setbacks because of the political crisis and instability); see also Restoring a secure
Some of the stated purposes of MINUSTAH included:
1) Support of the Transitional Government in securing and stabilizing the nation;
2) Assistance in monitoring, restructuring and reforming the Haitian National Police;
3) Assistance with restoring and maintaining the rule of law, public safety and public order in Haiti;
4) Support of the constitutional and political processes;
5) Assistance in organizing, monitoring, and carrying out free and fair municipal, parliamentary and presidential elections; and
6) Support the Haitian Transitional government and other human rights groups and institutions in their efforts to promote and protect human rights.\textsuperscript{23}

The Security Council continuously reformed and adjusted the MINUSTAH mandate, to adapt to the changing circumstances and evolving requirements of Haiti’s political, social, economic, and security circumstances.\textsuperscript{24} On October 13, 2009, the Security Council extended MINUSTAH for another year to support the Haitian political process, to promote an all-inclusive political dialogue and national reconciliation, and to provide logistical and security assistance for the 2010 elections.\textsuperscript{25}

Shortly thereafter, on January 12, 2010 the devastating 7.0 magnitude earthquake in Haiti leveled Port-au-Prince and left more than 220,000 dead, including UN personnel, and 1.5 million people homeless. This national disaster also impeded nation-building efforts, led to a greater political uncertainty, and further demoralized the Haitian economy and infrastructure.\textsuperscript{26} The UN immediately launched emergency relief operations, with MINUSTAH acting as first responders, despite MINUSTAH’s own losses.\textsuperscript{27} Humanitarian efforts became a focus as a result of the earthquake, with “particular

\textsuperscript{23} MINUSTAH Background, supra note 18.
\textsuperscript{24} Id.
\textsuperscript{25} Id.
\textsuperscript{26} Id.
attention to the needs of the most vulnerable, including *children*, women, the elderly and persons with disabilities."\(^{28}\) The Security Council approved resolution 1927 of June 4, 2010, which authorized a temporary deployment of an additional 680 MINSUTAH troops to focus on building the Haitian National Police and recognized the need for MINSUTAH to "assist the Government of Haiti in providing adequate protection of the population."\(^{29}\)

Within months of the earthquake, there was a deadly cholera outbreak in Haiti, which resulted in 6,477 deaths and 457,000 people infected.\(^{30}\) News sources linked the cholera outbreak to UN peacekeepers, specifically peacekeepers from Nepal.\(^{31}\) Approximately a year after the cholera outbreak, in September 2011, a cell phone video depicting UN peacekeeper troops assaulting a Haitian teenage boy was released.\(^{32}\) Many Haitians called for the withdrawal of the peacekeeping troops; but Haitian president, Michel Martelly visited UN headquarters on September 23, 2011 requesting the UN to renew the MINUSTAH mandate and commitment to Haiti.\(^{33}\) After President Martelly’s appeal, the Security Council, on October 14, 2011, extended

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\(^{29}\) Id.


its mandate of MINUSTAH for another year; however the Security Council decided to reduce the number of troops to 2,500.  

MINUSTAH has been able to accomplish important goals, such as the peaceful transfer of power and improving the overall security situation.  However, the cholera outbreak and the sexual abuse scandals, especially those involving children, have weakened the overall success of MINUSTAH.  Although success of peacekeeping operations is never a guarantee, it is evident that success is largely based on the UN peacekeeping forces being legitimate and credible, especially in the "eyes of the local population." The sexual abuse and exploitation of children by UN peacekeeping personnel destroys the legitimacy and credibility of the UN’s operations. Furthermore, all forms of sex with children below the age of consent are illegal and the Convention on the Rights of a Child (hereinafter CRC) proclaims that any child under the age of eighteen is entitled to protection from sexual exploitation and abuse. Human rights violations by UN personnel destroys, damages, and undermines the UN’s image, mandates, and peacekeeping operations.  Former UN Secretary-General, Kofi Annan, expressed this sentiment, “sexual exploitation and abuse by humanitarian staff cannot be tolerated.  It violates everything the United Nations stands for.  Men, women, and children displaced by conflict or other disasters are among the most vulnerable people on earth. They look to the United Nations and its humanitarian partners for shelter and protection.” Consequently, the UN must take action against its personnel who violate its own

37. See Cassandra Clifford, UN peacekeepers and the Abuse of Children, FOREIGN POLICY ASSOCIATION (AUG. 1, 2007), http://foreignpolicyblogs.com/2007/08/01/un-peacekeepers-and-the-abuse-of-children (the UN must ensure that the peacekeepers in the blue berets are actually protecting the children).  
mandates, such as the prohibition of sexual violence, and international human rights and humanitarian law if MINUSTAH is to be remembered as a successful peacekeeping operation.

II. SEXUAL VIOLENCE OF CHILDREN IN HAITI AND PEACEKEEPER IMPUNITY

Global sexual violence against women has been documented and reported on extensively. However, sexual violence against children has not been as prevalent in the media and when it is mentioned usually it only mentions girls and alongside sexual violence against women. This paper is not attempting to downplay the atrocities of sexual violence against women, but rather highlight a group of individuals, that also suffer from sexual acts committed against them, the children. Children, boys and girls, are particularly vulnerable, and in need of greater protection from those that would physically, emotionally, and mentally harm them. The harms that result from sexual violence on children are everlasting and must be prevented, especially when the harms are committed by those individuals who were sent and employed to protect and defend them from such evil. Unfortunately, sexual abuses against women and children occur because the women and children often have to trade sex for food and other necessities.

40. “Nobody Remembers Us”: Failure to Protect Women’s and Girls’ Right to Health and Security in Post-Earthquake Haiti, HUMAN RIGHTS WATCH (2011) (the use of “women and girls” is prevalent throughout the document).

41. Csáky, supra note 38, at 18 (citing a Medcins Sans Frontieres facility statistics, “significant proportion of the victims of sexual violence were girls”); see also Treating sexual violence in Haiti: An interview with Olivia Gayraud, MSF Head of Mission in Port-au-Prince, MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BOARDERS (October 30, 2007), http://web1.doctorswithoutborders.org/news/article.cfm?id=2135.


A. Reports and Allegations of Sexual Abuse by Peacekeepers

The MINUSTAH peacekeeping mission in Haiti has had a series of reports and allegations of misconduct and abuse by peacekeepers. The most notable are the sexual abuse scandals in 2007 and 2011. Widespread accusations of peacekeepers having sex with minors led to the deportation of approximately 100 Sri Lanka peacekeeping troops from Haiti in 2007. Approximately three years later in September 2011, a cell phone video was released of an eighteen-year-old boy who was sexually assaulted by UN peacekeepers from Uruguay. The video provided evidence of the reports and accusations of the sexual abuse of children by UN peacekeepers to the international community. There have been reports of peacekeeping troops, sometimes called humanitarian men, who offer girls, between the ages of thirteen to fifteen years old, money, from $1.00-$3.00(US), if the girls will perform sexual acts.

Girls, between the ages of ten and fourteen years old have been subjected to the touching or fondling of their breasts by peacekeepers and the men exposing their penises. In 2007, a report of UN peacekeepers having sex with Haitian girls, as young as thirteen years old, for $1.00(US) and approximately 100 Sri Lankan soldiers were systematically raping women and girls was released.

45. See, e.g., CBS NEWS; BBC NEWS, supra note 32.
46. MacFarquhar, supra note 2.
47. Herz, supra note 3 (an individual who is eighteen-years old is in many countries, like the United States and Haiti, is no longer considered a “child” but rather an adult. However, the video does depict sexual violence against a teenager committed by UN peacekeeper troops from Uruguay and is illustrative of the difficulties facing prosecution of UN peacekeepers).
49. Newman, supra note 1; Csáky, supra note 38, at 15 (it is important to note that all forms of sex with children below the age of consent are illegal; the UNCRC proclaims that any child under the age of 18 is entitled to protection from sexual exploitation and abuse).
50. Csáky, supra note 38, at 5.
51. UN peacekeepers accused of sexual assault in Haiti, TAMIL GUARDIAN (SEPT. 09, 2011), http://tamilguardian.com/article.asp?articleid=3469; Carol J. Williams, U.N. confronts another sex scandal: In Haiti, more than 100 peacekeepers from Sri Lanka have been deported on
The 114 Sri Lankan peacekeeping troops who were repatriated in November 2007 were found to systematically rape and exploit girls almost every night and at almost every location where they were deployed.\textsuperscript{52} If the girls had not been raped, they had been sexually exploited, trading sexual acts for small amounts money, food, and mobile phones.\textsuperscript{53} Young girls are not the only victims of sexual assault. In September 2011, a one-minute cell-phone video depicted four men in the distinctive sky-blue berets laughing while they assaulted a young man, who was being held down on a mattress.\textsuperscript{54}

The four men were identified as Uruguayan peacekeepers and the boy in the video was identified as Johnny Jean, an eighteen year-old Haitian.\textsuperscript{55} However, the quality of the video is poor and the men speaking Spanish was gargled, which led one media outlet, CNN, to conclude that the video did not show a sex act.\textsuperscript{56}

There are difficulties in determining who sexually abuses the children. In countries like Haiti, there are many international humanitarian organizations, and some of the reports only indicate the perpetrator as a “man who works for an international organization.”\textsuperscript{57} This inability to identify UN peacekeepers from other “humanitarians” does not deprive the UN peacekeepers from their duty to protect these vulnerable children from sexual exploitation.\textsuperscript{58} UN reports have demonstrated that peacekeepers have a higher incident of allegations of sex with minors than other UN organizations.\textsuperscript{59} Despite the difficulties of reporting, the overarching
problem with reports and accusations of sexual abuse against children by peacekeepers is the failure to report the crime.

The reports of sexual abuse of children by peacekeepers can be difficult to obtain because of either fear of retaliation or not being allowed in the villages.\textsuperscript{60} Furthermore, the lack of faith in authorities, local police, and the court system prevents reporting of abuse.\textsuperscript{61} The failure to report often stems from the fact that the people who commit rape and acts of sexual violence against children are part of the same organization, “the same people,” to whom reports should be made.\textsuperscript{62} Another obstacle to the reporting of sexual abuse at the hands of peacekeepers is corruption between the organization and the local authorities or government, which results in a lack of accountability, impunity, and victims without any sense of justice.\textsuperscript{63} The underreporting of sexual abuse because of corruption, fear, or lack of trust is not constrained to Haiti, but has been cited in other peacekeeping missions, “many UN agencies False working here feel they cannot be touched by anyone.”\textsuperscript{64} As a result, the abuse continues and the UN has incomplete information, which could be vital to the training of peacekeepers regarding standard of conduct and the effectiveness of monitoring through the Office for Internal Oversight Services.

B. \textit{Response of the UN Towards Allegations}

The United Nations, in keeping with its ‘zero-tolerance’ policy regarding the sexual abuse by peacekeepers, has assisted Sri Lankan and Uruguay governments in legal proceedings against the

\textsuperscript{60} Csáky, \textit{supra} note 38, at 13 (young girl in Haiti stated that the abused child would not go to the organization out of fear of being “kicked out” of the village and a young boy in Haiti reported having a fear of being killed by the perpetrator.). See Clifford, \textit{supra} note 37 (“however one must note that children who have been repeatedly victimized, especially by figures of authority, often do not report their abuse, or abusers.”).

\textsuperscript{61} Csáky, \textit{supra} note 38, at 14 (young Haitian boy expressing that the police are afraid of the Peacekeepers and cannot “do” anything).

\textsuperscript{62} \textit{Id.} at 16 (young Haitian girl stating that the people raping us (sic) and the people in the office are the same people).

\textsuperscript{63} Csáky, \textit{supra} note 38, at 16. (aid worker in Haiti stating that whether the local authorities or government take action against a humanitarian or security organization depends on who the victim is, where the victim works and whether or not the government is receiving money).

\textsuperscript{64} \textit{Id.} (citing aid worker in Côte d’Ivoire).
The UN’s Office of Internal Oversight Services concluded in the matter of the Sri Lankan incident that the charges brought by the government should include rape, because the victims were under eighteen years old. After the release of the cell phone video to various media outlets the UN acknowledged the misconduct by the UN peacekeepers; but, stated that the “acts of few should not tarnish those who have served in Haiti with distinction.” Additionally, Elaine Nabaa, a spokesperson for MINUSTAH, publically stated that the UN has a ‘zero-tolerance’ policy regarding sexual abuse by its peacekeepers and “stressed that the UN does its utmost to prevent such abuses from occurring, including thorough training before troops are deployed to sensitise them to respect human rights and the customs, traditions and culture of the host country.” Additionally, the Commander of MINUSTAH, Major General Luiz Ramos wrote a letter to the Haitian people apologizing for “the unfortunate events caused by a small number of soldiers.” He echoed the sentiments expressed by Ms. Nabaa, and assured the people of Haiti that “[they] will continue to investigate allegations of misconduct False and that any wrongdoing [would] be punished.” As a result, the five peacekeepers that were identified in the cell-phone video were returned to Uruguay and to face prosecution by the Uruguayan government or military tribunal. The former Uruguayan


66. UN confirms sex charges, supra note 4 (both the ICC and the UN consider rape as a “war crime.” Although Haiti is not currently in conflict or in a state of war, the peacekeepers are military men and raped women of the country that they are occupying, thus the ICC could exercise jurisdiction over these atrocities. See, Rome Statute of the International Criminal Court, art.5(1)(c), 8(2)(b)(xxii), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute]).

67. Uruguay to probe, supra note 65.
68. Id.; Uruguayan peacekeepers, supra note 32.
70. Id.
peacekeepers were later released when authorities could not obtain the testimony of the victim; however, the associated press has talked to the young man via cell-phone, and he stated that no one had asked him to testify.\

Currently the charges against the five men are fraternizing with civilians inside a military base.\

The UN is unable to discipline the offending troops when peacekeepers are returned to their home countries for prosecution. The UN maintains that it would be “disappointed if only administrative and disciplinary actions” are taken against offending peacekeepers. Previous offenders have been ordered to pay financial support for any children fathered by the peacekeepers, and are banned from serving in other UN missions. In addition, once the UN peacekeepers are returned to their home country for misconduct, or sexually abusing children, they face dishonorable discharge and lose retirement benefits.

An order for financial support if a child results from the sexual abuse and dishonorable discharge from military service is not sufficient punishment for rape, or the solicitation of sex from children. The prosecution and punishment of those who commit an act of sexual violence varies between States. In Uruguay the age of consent is fifteen and if the victim is between the ages twelve and fifteen, there is a rebuttable presumption that violence was involved and the defendant must prove consent. However, consent is not a defense if

(Uruguayan judge, Washington Vigliola, investigated the charges and sentenced the five men to prison).


73. Id.

74. Sri Lanka ‘abused Haitians,’ BBC NEWS (Nov. 2, 2007), http://news.bbc.co.uk/2/hi/south_asia/7075866.stm (Sri Lankan army spokesperson, Brigadier H.A. Nihal Hapuarachchi has stated that the 114 Sri Lankan soldiers involved in the continuous rape and prostitution of Haitian girls were prosecuted and found guilty in Haiti’s sexual abuse case, but the Haitian Lawyers Leadership Network maintains that the perpetrators went free, unpunished); Chris Celius, Haiti-Rape Scandal: Peacekeepers Brought Revolting Sexual Abuse Culture, not Peace, FOREIGN POLICY ASS’N (SEPT. 13, 2011), http://foreignpolicyblogs.com/2011/09/13/haiti-rape-scandal-peacekeepers-brought-inherent-sexual-abuse-culture-not-peace/.

75. UN confirms sex charges, supra note 4.


77. Romo, supra note 56.

78. Código Penal [Cód. Pen.] [Criminal Code] Ley 17. 514, art. 272, 267 (Uru.).
the victim is under the age of twelve.\textsuperscript{79} Furthermore, the Uruguayan criminal code contains a charge for the corruption of minors if they are below the age of eighteen and are “manipulated” into having sexual relations.\textsuperscript{80} If an individual is under fifteen years old, only the parent(s) or guardian can bring a lawsuit, unless the individual is an orphan or the accusation is against the parent or guardian.\textsuperscript{81}

Under the Sri Lanka Penal Code, an individual who is guilty of soliciting a child, a person under the age of eighteen, for sexual abuse is subject to a fine, imprisonment up to ten years, or both.\textsuperscript{82} Furthermore, the age of consent in Sri Lanka is sixteen.\textsuperscript{83} Although Sri Lankan law provides for the general protection against violence, “no person shall be subject to harassment, or inhumane and cruel treatment or punishment,” rape is narrowly defined as sexual intercourse with a women in five specific scenarios, three of which are: (1) Sexual intercourse without consent; (2) Sexual intercourse even with consent where the woman is in lawful or unlawful detention or where consent is obtained through intimidation, threat, or force; and (3) Sexual intercourse with or without consent if the woman is under 16 years of age unless the woman is the accused man’s wife, she is over 12 years of age, and she is not judicially separated from the accused.\textsuperscript{84} However, the 1998 amendments to the Sri Lankan Penal Code have added the offense of statutory grave sexual abuse, which pertains to an act of sexual gratification that does not amount to rape when consent is not given or when the other person is under the age of sixteen.\textsuperscript{85} Pertaining to sentencing, the 1995 amendments of the Penal Code included minimal sentencing for rape and gross sexual abuse; however, a High Court found these minimum sentences to violate Sri Lanka’s constitution.\textsuperscript{86} According to a report

\textsuperscript{79} Id. art. 272(1).
\textsuperscript{80} Id. art. 274.
\textsuperscript{81} Id., at art. 274.
\textsuperscript{83} Penal Code, supra note 82, at art. 363(e) (as amended by Act No. 22 of 1995; the age of consent was raised from twelve in 1995 by this amendment).
\textsuperscript{84} Sri Lankan Constitution [Const.] Art. 11; Penal Code, supra note 82, at art. 363.
\textsuperscript{85} Penal Code, supra note 82, art. 365 (B)(1)(a)(aa).
\textsuperscript{86} Current Legal Framework: Rape and Sexual Assault in Sri Lanka, INT’L MODELS PROJECT ON WOMEN’S RIGHTS (AUG. 15, 2011), http://www.impowr.org/content/current-legal-framework-rape-and-sexual-assault-sri-lanka#_ftn19 [hereinafter Current Legal Framework] (citing High Court of the North Central Province, Case No.HC.333/04 Supreme Court (30/2008) (Sri Lanka) ruling that the mandatory sentence conflicts with arts. 4(c), 11, and 12 of the Constitution)).
by the United Nation’s Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the result of the High Court’s decision led to suspended or reduced sentences and increased impunity in cases of rape.\textsuperscript{87}

The Penal Codes of Uruguay and Sri Lanka demonstrate the inequities that result from member States prosecuting peacekeepers accused of committing acts of sexual violence; the results of prosecution of peacekeeper offenders vary, despite the equally damaging effects of their egregious acts, the committing of a war crime: rape and sexual violence against children.\textsuperscript{88}

III. PROSECUTION OF PEACEKEEPERS BY THE ICC VS. STATUS-OF-FORCES AGREEMENTS AND MEMORANDUM OF UNDERSTANDINGS

Most international law and international criminal tribunals that address sexual violence, such as rape, focus on acts occurring before or during conflict.\textsuperscript{89} Haiti is not engaged in a war or conflict; therefore, if the ICC were to exercise jurisdiction\textsuperscript{90} regarding the rape of Haitian children by UN peacekeepers, it would be a historic exercise of jurisdictional authority. The ICC’s decision to prosecute the alleged offenders for rape, especially the rape of children, would be a strong indicator that sexual violence directed towards children will not be tolerated by the international community and the alleged perpetrators will be held accountable.\textsuperscript{91} In the alternative, the

\textsuperscript{87} Current Legal Framework, supra note 86 (art. 364 specifies terms of imprisonment from seven to twenty years and an order of compensation); Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women, at THE WOMEN AND MEDIA COLLECTIVE, 41 (July 2010), available at http://www.womenandmedia.net/legal_statements/Sri_Lanka_NGO_Shadow_Report_to_CEDAW_July_2010.pdf.

\textsuperscript{88} UN confirms sex charges, supra note 4 (UN Office of Internal Oversight Services stating that acts of sexual abuse and exploitation of persons under eighteen years old is rape and a war crime).

\textsuperscript{89} Geneva Convention Relative to the Prosecution of Civil Persons in Times of War (Aug. 12, 1949) art. 27, 75 U.N.T.S 287-88, 6 U.S.T. 3516 (International Criminal Tribunal for Rwanda and International Criminal Tribunal for the former Yugoslavia are examples of the prosecution of sexual violent acts).

\textsuperscript{90} See discussion infra part III(C)(1) (in the alternative, ICC could be seized of the jurisdiction in this matter through a U.N. Security Council Resolution, Rome Statute, supra note 66, at art. 13(1)).

\textsuperscript{91} See e.g. Jan Rachel Reyes, Comment: Deliver Us from Our Protectors: Accountability for Violations Committed by Humanitarian Aid Staff Against Refugee Women and Children, 44 U.S.F. L. Rev. 211, 223 (2009) (proposing that separate tribunals should be created for enforcing international humanitarian law and passage of Resolution 1820 allows ICC to claim jurisdiction
perpetrators could be viewed as violating a recognized human right and basic principles of international law.

A. Sexual Violence of Children is a Violation of Human Rights

The Rome Statute contemplates human rights violations, or crimes against humanity, which includes “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.” 92 Though the Rome Statute was not entered into force until 2002, 93 prosecution of individuals at the international level on the crime of rape occurred as early as 1998 in the International Criminal Tribunal for Rwanda, when Jean Paul Akayesu 94 was convicted for crimes against humanity for his encouragement of the rape of Tutsi women. 95 The conviction, which was upheld by the Appeals Chamber, was historic because it was the first time in international legal history that a defendant was tried and convicted by an international tribunal for the crime of rape. It “paved the way for later prosecutions of sexual crimes by international tribunals.” 96

The principle of _jus cogens_ is prevalent in international law and must be abided by every State and actor in international law. 97 _Jus cogens_ has a moral undertone, with foundations in natural law. 98 Natural law is universal; 99 it applies to the entire human race, 100 and

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92. Rome Statute, _supra_ note 66, at art. 7(a)(g).
99. _Id._
“must be embraced as a premise for legally cognizable human rights.”101 Human rights, which “must be protected everywhere man goes,” and are “rooted in the conscious and reason of mankind though the ages” are also founded in natural law.102 Understanding that human rights are an international obligation with foundations in natural law and jus cogens provides for an erga omnes obligation by the States.103

Rape is a violation against human rights.104 International courts and tribunals have previously held that rape is both a preemiptory norm of international law, a jus cogens, and an erga omnes obligation.105 Since rape has been recognized by international courts and tribunals as an erga omnes obligation and a jus cogens norm, the lack of prosecution for these crimes is astounding considering if the agreements between the member States and the UN, or in the alternative, between the UN and Haiti, did not provide for the prosecution of these crimes, the treaties would be void.106 When States agree to supply troops and aid on the behalf of the UN, they agree to participate in accordance with prescribed international standards, which exist among all contracting treaties and the erga omnes obligation arises.107 Although the treaties provided for the prosecution of those who commit violations of domestic and international law,108 the unwillingness or lack of prosecution by the States, should also be considered as a violation of an erga omnes obligation and the ICC could seize prosecution.109 Rape, or sexual

104. See id. at 364.
108. Agreement, supra note 6 at art. 51(b).
109. Rome Statute, supra note 66, at art. 17 (ICC has jurisdiction when State is unwilling or unable to prosecute).
violence, is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, acts to traffic, or acts otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. When a child or minor is sexually abused or assaulted, it is definitional rape because children cannot legally consent to the sexual act. Sexual acts that do not involve force, or threat of force, or very young children are still punishable. The United States has criminalized sexual acts that are considered “less serious” than rape because “the perpetrator did not threaten the victim, and where the victim is between twelve and sixteen and the victim is at least four years younger than the accused.” Therefore, the sexual abuse of children, regardless of age, is a criminal act and a human rights violation.

The Universal Declaration of Human Rights (UNDHR) contains a proposition that “no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.” This should also extend to the sexual abuse of minors, or the solicitation of sexual acts by minors. Courts have defined degrading treatment as, “that which grossly humiliates a person before other or forces the person to act against his/her will or conscience, or incites fear, anguish, or inferiority;” as stated above, rape is a nonconsensual sexual act, and therefore clearly constitutes degrading treatment. Furthermore, soliciting children to perform sexual acts in exchange for money or necessities is not only degrading, but also has everlasting effects on the sexually exploited children. “These children are often unable to develop healthy affectionate relationships later in life, have sexual

111. Also known as statutory rape, defined by the US Dept. of Justice, when an individual has “consensual” sexual relations with an individual who is not old enough to legally consent, below the age of majority or the statutory age of consent. See Karyl Troup-Leasure and Howard N. Snyder, Statutory Rape Known to Law Enforcement, OFFICE OF JUSTICE PROGRAMS, U.S. DEPT. OF JUSTICE (AUG. 2005) pg.2, available at https://www.ncjrs.gov/pdffiles1/ojjdp/208803.pdf.
dysfunctions, and have a tendency to become sexual abusers as adults.”

Additionally, sexual violence against children is in contravention with UNICEF’s CRC, children are to be protected from “all forms of sexual exploitation and sexual abuse.” Thus, the UN peacekeepers are not only violating the protocols and policies of the UN missions, but also the United Nation’s own resolutions, the UNDR and the CRC. When UN peacekeeper troops engage in sexual acts with children it violates their respective State law, in addition to international law and principles. If the States are "unwilling" or "unable" to prosecute and/or investigate the atrocities committed by their military members, the international community must act if the UN and its peacekeeping missions are to retain legitimacy.

B. Agreements Between States and the UN

The goal of the UN is to maintain peace within the world and often requires the deployment of peacekeeping missions. In order to accomplish the goals of the UN, member States agree to supply peacekeeping missions with: “(1) military units/sub-units/elements (personnel and equipment organized and trained to fulfill a task or mission); (2) specialized personnel, both civilian and military, able to perform specific functions; (3) material and equipment; and (4) services.” The UN has proclaimed, “our military and police personnel are first and foremost members of their own national service and are then seconded to work with the UN.” This creates a discrepancy because the troops are originally under the directive of their State, but upon serving in a UN Peacekeeping operation, the troops must abide by certain international provisions, including respect for international humanitarian law, which forbids the rape of

119. See supra part II(B).
women and *children*, but are not subject to international law.\textsuperscript{123} Prior to member States offering their military troops in service to the UN, the State and the UN form of a Memorandum of Understanding (hereinafter MOD), which details resources provided, response times, and conditions of deployment.\textsuperscript{124}

In addition to the MODs, the UN also forms Status-of-Forces Agreements (hereinafter SOFA) with host States where UN military personnel, like UN peacekeeper troops, are to be deployed.\textsuperscript{125} Within the SOFA is a clause regarding the privileges and immunities of peacekeeping operations. The general rule is: "basic privileges and immunities of a [UN] peacekeeping operation False flow from the Convention of the Privileges and Immunities of the [UN]."\textsuperscript{126} The Convention of the Privileges and Immunities of the UN (hereinafter CPIUN) contains a clause that indicates immunities are not for the benefit of individuals themselves, but exist to "safeguard the independent exercise of their functions in connection with the [UN]."\textsuperscript{127} A Member has a duty to waive immunity of its representative where the "immunity would impede the course of justice, and it can be waived without prejudice."\textsuperscript{128} To date, a Member State has not exercised the waiver option, but since the immunities provisions are functional, applying to "words spoken and written and to False acts performed by them in their official capacity,"\textsuperscript{129} when a UN peacekeeper commits a crime, he is not acting within his official capacity and the issue of immunity would not be implicated.\textsuperscript{130}

As stated in Part I, MINUSTAH was established in 2004 by Security Resolution 1542.\textsuperscript{131} As part of the Resolution, the UN provided for the protection and promotion of human rights,

\begin{footnotes}
  \textsuperscript{123} Handbook, *supra* note 121 (emphasis added).
  \textsuperscript{124} *Id.*
  \textsuperscript{126} *Id.*
  \textsuperscript{128} *Id.*
  \textsuperscript{130} Szasz & Ingadottir, *supra* note 129, at 880.
  \textsuperscript{131} MINUSTAH Background, *supra* note 18.
\end{footnotes}
particularly women and children. The SOFA between Haiti and the UN provides that the CRC applies and that “MINUSTAH and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the . . . Agreement.” It is undeniable that rape and sexual assault of children is inconsistent with a peacekeeper’s duty to keep children safe.

The SOFA further provides that all members of MINUSTAH “shall be immune from legal process in respect of False all acts performed in their official capacity.” It is certain that UN peacekeepers who commit acts of sexual violence on children is not within the scope and duties of MINUSTAH, and thus not protected by the immunities clause. However, if military members of MINUSTAH, the Peacekeeper forces, commit a criminal act, the SOFA provides that offenders are subject to exclusive jurisdiction of their respective States. The treatment of rape, sexual assault and violence towards children in domestic penal codes are treated differently and justice becomes inequitable. The Haitian government granted broad immunity to MINUSTAH members for crimes committed in Haiti and provided in the SOFA that military members of MINUSTAH would be under the exclusive jurisdiction of their home country; thus the accused will be held accountable under the laws of their respective States and not international law.

Following the dismissal of charges against the Uruguayan troops and the sexual assault of three teenagers by Pakistani UN troops in January 2012, Senator Youri Latortue, one month later, requested that the Senate pass a resolution to lift the immunity of the MINUSTAH peacekeeping soldiers who sexually abuse children and teenagers in

132. Id. (emphasis added).
133. Agreement, supra note 6.
135. Agreement, supra note 6, at ¶ 50.
136. Szasz & Ingadottir, supra note 129, at 880.
137. Agreement, supra note 6, at art. 51(b).
138. See supra part II(B).
139. Compare Penal Code (Sri Lanka) supra notes 82-85, with Cód. Pen. (Uru.) supra notes 78-81.
Haiti. Senator Latortue believes that this resolution is needed because “the UN peacekeepers involved in twelve cases of sexual assault of children in Haiti have gone unpunished because of the immunity” and he also wishes to bring justice to the victims and their families. The Haitian government has requested to investigate human rights abuses by peacekeepers, such as the sexual assault and rape of children, under the “principles of equality before the law and the universal nature of human rights.” This request by the Haitian government and Senator Latortue demonstrates that the SOFA and the immunity provisions do not provide an adequate legal remedy or justice for the egregious crimes committed by the peacekeepers, because the accused are not prosecuted by their respective countries.

C. Justice for the Children

The SOFAs provide that if a UN peacekeeper commits a crime in the host country, the CPIUN applies and the offender is subject to the jurisdiction of their home country. However, if the crime violates international human rights and UN Conventions, such as the CRC and the UNDHR, it is arguable that the offender should be subject to the same tribunals and punishment as other violators of human rights, and thus subject to the jurisdiction of the International Criminal Court.

In past cases where UN peacekeepers have been accused of sexual violence, very few cases have been resolved and only two peacekeepers have been imprisoned. If the sexual violence against children is to be deterred and prevented, then the UN and the international community must show that such acts are not tolerated and ensure that justice prevails for the victim.


142. Id.

143. Haiti’s Renewal, supra note 140, at ¶¶ 7, 8.

144. See supra part II(B); Csáky, supra note 38.


146. See infra part III(C)(1).

147. Csáky, supra note 38, at 15 (out of 856 allegation of sexual abuse from 2004-2006, only 324 have been resolved, citing U.N. Secretary-General, supra note 53).
The UN has attempted to implement procedures and to ensure that proper measures are taken against child sex abusers, including developing investigative procedures and protocols. Alas, the Intern-Agency Standing Committee (IASC) has stated that “it has been impossible to determine if the incidence of sexual exploitation and abuse has increased or decreased” despite the efforts of the United Nations and other international Non-Governmental Organizations. The UN, in response to sexual exploitations by peacekeepers, passed Resolution 1325, which holds participating States responsible for failures in international human rights law. Importantly, Resolution 1325 calls for States to end impunity and prosecute those who are involved in crimes against humanity, such as sexual violence against children. Amnesty International has reported that Resolution 1325 has not been implemented effectively by member States.

In 2008, the UN renewed commitment to preventing sexual violence in conflict settings by passing Resolution 1820. The resolution implements a ‘zero-tolerance’ policy concerning sexual abuse in peacekeeping operations, calling for Member States to immediately comply with their obligations by prosecuting persons responsible for such acts, removing armed forces personnel, and holding commanders responsible. Most importantly, Resolution 1820 grants jurisdiction to the ICC by categorizing sexual violence as a war crime. However, unless jurisdiction is granted to the ICC the investigation and prosecution of sexual crimes committed by peacekeepers remain with the member States, which unfortunately leads to many peacekeepers being unpunished.

148. IASC Task Force, supra note 5.
149. Id.
151. Id.
155. Id.
156. Reyes, supra note 91, at 228.
1. Jurisdiction of The International Criminal Court

The International Criminal Court has jurisdiction to hear crimes that are “the most serious crimes of concern to the international community as a whole False with respect to crimes against humanity.” The rape of women has been determined to be a crime against humanity by the ICC, furthermore sexual violence has been qualified as a war crime. The UN has also stated that the rape of children is a war crime, and therefore is under the jurisdiction of the ICC. If it were found the national court could not or will not investigate or prosecute the accused offenders, the ICC would have jurisdiction to hear and adjudicate the case. The ICC can also exercise jurisdiction if a State Party refers the committed crimes to the Court. Additionally, the Security Council, acting under Chapter VII of the UN Charter, can refer a case to the Prosecutor. The Security Council can refer the crimes committed by peacekeepers to the Prosecutor because Haiti has not ratified the Rome Statute.

There are other possible procedural hurdles that may need to be met prior to the ICC obtaining jurisdiction to hear cases regarding the rape of children by peacekeepers in Haiti. For example, prior to the International Criminal Tribunal in the former Yugoslavia, the court first established jurisdiction over the participants of the Balkan conflict by determining that the offenses were committed during an armed conflict. The Prosecutor v. Tadic decision defined armed conflict as an occurrence “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups

158. See supra part III(A).
160. UN confirms sex charges, supra note 46.
162. Id. at arts. 13 & 14.
163. Id. at art. 13.
165. McHenry, supra 95, at 1286 (citing Kunarac, Judgment, No. IT-96-23, at § IV, para. 413).
within a state.”166 Under this requirement the ICC or an International Criminal Tribunal could not impose jurisdiction on crimes committed by UN peacekeepers, namely acts of sexual violence against Haitian children. In the alternative, jurisdiction exercised by either the ICC or an International Criminal Tribunal could be proper by a determination that there was attack directed against any civilian populations; proof of which would contain five elements:

1) There must be an attack.
2) The acts of the perpetrator must be part of the attack.
3) The attack must be “directed against any civilian population.”
4) The attack must be “widespread or systematic.”
5) The perpetrator must know of the wider context in which his acts occur and know that his acts are a part of the attack.167

In Haiti, the sexual violent acts committed by the UN peacekeepers towards children can easily be deemed an attack against the civilian population. Although the Rome Statute is primarily concerned with war crimes, the situation in Haiti would be considered as crimes against humanity, where conflict and war need not exist for the jurisdiction of the ICC.168 The UN peacekeepers are troops,169 the publicized acts of the troops from Sri Lanka demonstrate that the rape and sexual assault of Haitian children was a systematic attack upon the children, the UN peacekeeping troops involved were a part of the attack because (i) they either committed the sexual assault themselves, or assisted in the act;170 (ii) Haitian children are civilians;171 and (iii) the recording of the assault troops against the Haitian teen, demonstrates knowledge of the act being apart of the attack.172 Jurisdiction of the ICC under an armed attack against a

167. See McHenry, supra note 95, at 1287 (citing Kunara, Judgment, No. IT-96-23, § IV, para. 410).
169. E.g. Troop and police contributors, supra note 122 (“our military and police personnel”).
170. See supra part II(A).
171. E.g. Patterns in conflict: Civilians are now the target, UNICEF—INFORMATION: IMPACT OF ARMED CONFLICT ON CHILDREN, http://www.unicef.org/graca/patterns.htm (children are included in the discussion of civilian fatalities).
172. See supra part II (A) and (B).
civilian population can be exercised because the peacekeepers are armed in accordance with their duties as troops and police forces.\textsuperscript{173}

Whether or not the ICC can exercise jurisdiction over UN peacekeepers will also depend on the SOFA agreements and immunity provisions contained therein.\textsuperscript{174} However, the SOFA immunities provisions\textsuperscript{175} would not be applicable because sexual violent acts by UN peacekeepers are outside the scope of the immunity clause.\textsuperscript{176} Article 27 of the Rome Statute provides that official capacity will not bar jurisdiction of the ICC or exempt a person from criminal responsibility.\textsuperscript{177} However, if the Government of Haiti is successful in lifting the immunity clause of MINUSTAH’s SOFA, then the issue is moot.\textsuperscript{178}

It is recognized that international humanitarian law and international human rights law is applicable to individuals.\textsuperscript{179} The Rome Statute explicitly authorizes the ICC’s jurisdiction over individuals who commit crimes that are under the jurisdiction of the Court.\textsuperscript{180} The ICC is favorable because it would be a fair and impartial trial.\textsuperscript{181} Furthermore, the ICC’s ruling will be absolute and equitable.

States vary within their penal code and punishment,\textsuperscript{182} which creates inequitable results, for example if a peacekeeper rapes a child, how the peacekeeper will be punished will depend on what State he originates from.\textsuperscript{183} Therefore, a tribunal created by the ICC would ensure that those who sexually abuse children would be subject to the same consequences and penalties. There are barriers to an ICC trial, they can be costly and time consuming. In the alternative, a special tribunal of the ICC can accomplish the same goals of an ICC trial without the extensive cost and time. Tribunals have been created


\textsuperscript{174} See generally, Szasz & Ingadottir, supra note 129, at 872 (citing CPIUN, Sec. 22(b)).

\textsuperscript{175} See supra part II(B)(1).

\textsuperscript{176} Szasz & Ingadottir, supra note 129, at 880.

\textsuperscript{177} Rome Statute, supra note 66, at art. 27.

\textsuperscript{178} Jeanmich, supra note 141.

\textsuperscript{179} Reyes, supra note 91, at 222.

\textsuperscript{180} Rome Statute, supra note 66, at art. 25.

\textsuperscript{181} See generally id., at preamble and § 6.

\textsuperscript{182} See supra part II(B).

\textsuperscript{183} See supra part II(B) (part II examined the different penal codes between two States, Uruguay and Sri Lanka, and how the States defined rape and punishment for individuals who commit such crimes).
before, in the former Yugoslavia and Rwanda, which have both prosecuted individuals for crimes against humanity, including rape and sexual violence. Unlike the tribunals of Yugoslavia, a tribunal under the ICC would not be *ad hoc* or embedded with the UN Security Council. A tribunal in Haiti can be limited in time and scope, similar to former tribunals. Furthermore, since the ICC is a permanent court the residual issues that resulted from former tribunals or “selective justice” is irrelevant. The ICC has also explicitly codified sexual violent crimes that are comparable to grave crimes against humanity, including: rape, sexual slavery, and forced prostitution.

If an ICC tribunal were located in Haiti, it would ensure that victim testimony and evidence would not be tampered with. It would also decrease the costs of the tribunal because the ICC would not have to transport the victims and witnesses to several countries. By having the tribunal in Haiti, the victim will have the opportunity to be heard, which would satisfy the CRC’s mandate, that children should be provided the opportunity to be heard in any judicial proceeding that affects the child.

The recent events involving the peacekeepers from Uruguay has demonstrated the injustice that can result from having judicial proceedings against those who sexually assault children; because of the prosecutor’s inability to obtain victim testimony it resulted in the men being released from prison.

IV. THE HOLY SEE AND THE UN PROTECTING THE DIGNITY AND
RIGHTS OF THE CHILD\textsuperscript{190}

Children are a "precious treasure given to each generation as a challenge to its wisdom and humanity" and are persons and members of the human family and have an \textit{innate dignity} that must be recognized and respected.\textsuperscript{191} Protecting children from violence, including sexual violence, is one of the many challenges presented to the international community.\textsuperscript{192} The UNDHR recognizes "the value of the human person" and "the inherent dignity and equal and inalienable rights of all members of the human family."\textsuperscript{193} Thus, both the secular United Nations and the Holy See recognize that all members of the human race, including children, have an inherent dignity and value, which should be protected from the acts, sexual abuse, that violate their dignity.\textsuperscript{194}

In furtherance of the UNDHR, the UN implemented an internationally legally binding instrument to protect children’s rights, the CRC, which demonstrates an international effort to eliminate violence against children.\textsuperscript{195} The Holy See teaches that eliminating violence against children will help to eliminate violence in the world.\textsuperscript{196} Sexual violence against children, whether it is rape, abuse, exploitation, or harassment, is "a gross violation of children’s rights."\textsuperscript{197}

Although the Holy See had reservations to CRC, it is a signatory to the CRC because ultimately the Church determined that the CRC is "a proper and laudable instrument aimed at protecting the rights and

\begin{thebibliography}{99}
\bibitem{Pacem} \textit{Id.} (the \textit{Declaration of Human Rights} and the Holy See (\textit{Pacem in Terris}) both express the viewpoint that the dignity is not abstract but is present in every person/human being, including the "child.")
\bibitem{CRC} CRC, \textit{supra} note 118, at art. 19.
\bibitem{Tomasi2} Tomasi, \textit{supra} note 192.
\end{thebibliography}
interests of children."\textsuperscript{198} Enumerated within the articles of the CRC and the two optional protocols are the very basic and fundamental right that children have everywhere: protection from abuse and exploitation.\textsuperscript{199} Furthermore, the CRC was welcomed by the Holy See as recognizing the particular vulnerability of children, that a child has the same equality and dignity as an adult, and is entitled to fundamental rights.\textsuperscript{200} Importantly, the Holy See emphasized the CRC’s affirmation to a child’s “special safeguards and care, including appropriate legal protection.”\textsuperscript{201} Consequently, not only is the CRC a legal obligation imposed on its signatories to protect children from abuse, including sexual violence, but also a moral obligation.

When UN peacekeepers sexually abuse, assault, and exploit children where they have a duty protect, they are effectively violating international and moral obligations. Furthermore, when the peacekeepers who have abused children leave Haiti, the effects of their abuse will remain with the children and their families and communities.\textsuperscript{202} The UN and the international community have a moral and legal obligation to ensure the punishment, through an ICC limited tribunal, of those who commit sexual violence against children because, after all, “Respect for children is respect of humanity.”\textsuperscript{203}

\textbf{CONCLUSION AND RECOMMENDATIONS}

Children require special protection and respect.\textsuperscript{204} When children are sexually assaulted, raped, or are victims of other acts of sexual violence their basic human dignity is damaged. What adds insult to injury, is that these atrocities were performed by those whose duty and obligation was to protect these vulnerable children from such atrocities.\textsuperscript{205} The acts of the UN peacekeepers in Haiti have shocked

\textsuperscript{198} CRC, \textit{supra} note 118, at art. 11 (Holy See signed and ratified the convention on Apr. 20, 1990. The Holy See’s three reservations are: interpreting family planning as only morally acceptable methods of family planning; articles as safeguarding the rights of parents; and compatible with laws of Vatican City).

\textsuperscript{199} CRC, \textit{supra} note 118, at arts.19 & 34.

\textsuperscript{200} Tomasi, \textit{supra} note 192.

\textsuperscript{201} \textit{Id.} (emphasis added).

\textsuperscript{202} \textit{Child protection from violence, supra} note 197 (evidence shows that sexual abuse of children can have short- and long-term physical, psychological and social consequences).

\textsuperscript{203} Tomasi, \textit{supra} note 192.

\textsuperscript{204} \textit{See} Tomasi, \textit{supra} note 192 and CRC, \textit{supra} note 118, Preamble.

\textsuperscript{205} Peacekeeping Principles, \textit{supra} note 10.
the global conscious, and what is more horrific is that the accused offenders often go unpunished by their respective States.\textsuperscript{206} The UN has been given the responsibility to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person [including children].”\textsuperscript{207} Rape, or sexual violence against children, is a human rights violation,\textsuperscript{208} and the UN is charged in protecting and eliminating human rights violations and has an affirmative duty to protect from and prevent sexual violence by peacekeepers.\textsuperscript{209} The Security Council can, and should, refer peacekeepers to the ICC for prosecution for these crimes because they are crimes against humanity and the SOFAs and MODs are voidable upon a\textit{jus cogen} or\textit{erga omnes} obligation.\textsuperscript{210}

Consequently, if the international community and the UN are committed to establishing human rights worldwide, including the rights of the child, the peacekeepers accused for sexually assaulting or raping children in Haiti must be submitted to the ICC to be held criminally responsible for their acts. It is our moral duty to ensure that justice is served and that these children are protected from such evils.

\textsuperscript{206} See supra part II.
\textsuperscript{207} U.N. Charter Preamble.
\textsuperscript{208} Rome Statute, supra note 66, at art. 7(1)(g).
\textsuperscript{209} Peacekeeping Principles, supra note 10.
\textsuperscript{210} See supra part III.
INTRODUCTION

Associate Professor of Law Kevin Govern

The American philosopher George Santayana (1863–1952) cautioned in The Life of Reason, Volume I, that “[t]hose who cannot remember the past are condemned to repeat it.”1 Mindful of that admonitory aphorism, this Note from the rising scholar Katherine M. Ryan-McIlhon traces the evolution of anti-clerical Constitutional provisions in Mexico from 1857 to 1917. The Mexican experience of constitutional anti-clericalism is being relived to an uncannily similar extent some ninety-five years later, in Hungary, a land that is as linguistically, ethnically, and culturally as different as could be from Mexico, even as Mexico itself comes to revisit the ghosts of nearly a century ago in revising its own Constitution in 2012. Both nations share significant similarities and aspects of political and cultural exchange2 that make this comparative paradigm an especially apt one. Both similarly have endured foreign intervention and occupation,3 had monarchical, dictatorial, and other forms of nondemocratic rule,4


4. See HASLIP, supra note 2; see also Werner, Id.
yet during modern times both have had a strong Catholic Church and devout population coexisting alongside other minority faiths.\textsuperscript{5}

As Mrs. Ryan-McIlhon points out, President Álvaro Obregón of Mexico in the 1920s focused his political mandate on Mexican economic growth; Obregón justified enforcing the Constitution’s anticlerical articles because he believed that government should be the only institution to control the nation and it was his job to implement the Constitution.\textsuperscript{6} In amplification to what Mrs. Ryan-McIlhon noted about the ensuing revolution,\textsuperscript{7} I have written elsewhere about the self-imposed mandate of then-Mexican President Álvaro Obregón of Mexico.\textsuperscript{8} The resulting turmoil was the so-called Cristero War (or La Cristiada) of 1926 to 1929, an uprising and counterrevolution against the Mexican government. This conflict resulted in over 90,000 deaths and the first major emigration Mexicans to the U.S. in modern history, totaling as much as five percent or more of the Mexican population.\textsuperscript{9}

Similarly on January 18, 2012 Hungarian Prime Minister Viktor Orbán dramatically appeared before the European Parliament to defend his country’s new constitutional order.\textsuperscript{10} While there may well be many salutary, pro-life and/or pro-family effects stemming from newly enacted provisions,\textsuperscript{11} at least one group may have, in hindsight, prematurely lauded the new Hungarian Constitution, hailing it as “a national reshaping on traditional values.”\textsuperscript{12} At the time of this

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\textsuperscript{7} \textit{Id.} at 525.


\textsuperscript{11} \textit{See}, e.g., http://www.turtlebayandbeyond.org/2011/sovereignty/the-new-hungarian-constitution-a-national-reshaping-on-traditional-values/; \textit{see} Francis Phillips et. al., Hungary’s cheering pro-life constitution offers a shining example to a comfortable, selfish Britain, CatholicHerald.co.uk, June 9, 2011, \textit{available at} http://www.catholicherald.co.uk/commentandblogs/2011/06/09/hungary%E2%80%99s-cheering-pro-life-constitution-offers-a-shining-example-to-a-comfortable-selfish-britain/.

\textsuperscript{12} Grégor Puppinck, Ph.D, \textit{The new Hungarian Constitution: a national reshaping on traditional values}, Turtlebayandbeyond.org, May 20, 2011, \textit{available at}
writing, no modern-day, Cristiada-like, Hungarian Forradalom (revolution)\textsuperscript{13} involving violence has broken out, but constitutional challenges of serious political consequences have nonetheless ensued.\textsuperscript{14}

What are some bases for comparison and contrast between these two nations and constitutional systems? Unlike Mexico, Hungary has a tradition of relatively frequent constitutional change. After all, Hungary is a relatively young multi-party, parliamentary democracy that in the period of 1989 - 1990 had amended its Constitution nine times since the Act XXXI of 1989 which provided the constitutional framework for the peaceful change of the regime; now twenty years later it has essentially written yet another new Constitution.\textsuperscript{15}

History has proved, as Mrs. Ryan-McIlhon points out, that Mexico’s new Constitution did not preserve the rights of all; it imperiled the rights of citizens and non-citizens alike, especially with regard to religious freedoms. Will Hungary’s new Constitution similarly imperil the rights of citizens and non-citizens? Indeed, much concern has been raised within Hungary and abroad regarding over 300 religious groups and denominations losing “official recognition” in Hungary, while, by way of contrast, “approved” faiths include

\textsuperscript{13} Translations of “Revolution,” Translate.Definitions.net Website, last updated 2011, \textit{available at} \url{http://translate.definitions.net/revolution}. Note: This translation site uses the following definition with respect to the word in question: “(the act of making) a successful, violent attempt to change or remove a government \textit{etc the American Revolution}.” None of this is to be confused with the Hungarian Revolution of 1848, of 1919, or the Revolution or Uprising of 1956, all of which involved the use of force by and against established political authorities.


http://www.turtlebayandbeyond.org/ 2011/sovereignty/the-new-hungarian-constitutional-a-national-reshaping-on-traditional-values/. Author's Note: Puppinck, through a group known as Forum For Family, solicited foreign support of the new Hungarian constitutional provisions before that constitution was authoritatively translated, or widely published, read, or understood; in his Declaration of Support, Puppinck opined “We need VIPs to sign it first, like Parliamentarians, (ex) Member of Governments, Law Professors, eminent jurists, in addition to the [Non-Governmental Organizations]” and that “We need to get news articles about it.” See e-mail From: forumforfamily@googlegroups.com on behalf of Grégor PUPPINCK Sent: Sat 6/4/2011 10:01 a.m. To: forumforfamily@googlegroups.com Subject: [ForumForFamily] Declaration of Support to Hungary in regard to its constitutional process (on file with author).
traditional Catholic, Reformed, Lutheran and Orthodox congregations, as well as some Jewish groups. Among the religions purportedly denied Hungarian state approval are all versions of Islam, Buddhism, Hinduism, and Baha’i. Roman Catholic orders purportedly decertified include the Benedictines, Marists, Carmelites, and Opus Dei. Also included in the purported decertification are such Protestant denominations as Episcopalians, Jehovah’s Witnesses, Seventh Day Adventists, Mormons, Methodists, and all but one evangelical church. As for Judaism, only one each of the orthodox, conservative and liberal synagogues are recognized; all other Jewish congregations are purportedly not recognized. Faiths and sects otherwise excluded from recognition or approval will have the opportunity to apply for recognition in parliament if they have been operating for at least 20 years in Hungary. But what of those faiths and groups that, through emigration or evangelization or other forms of expansion, have a nascent presence in Hungary? Are they doomed to be excluded for two decades before being able to gain recognition?

Mrs. Ryan-McIlhon points out the resistance of common citizens and clergy to the then-new Mexican Constitution. As history has repeated itself in 2011 and 2012, thousands in Hungary have been marching in the streets and accusing the government of violating their rights, while “[w]estern allies, including the United States, are complaining about a constitution that critics say undercuts fundamental democratic principles.” In the words of Ian Kelly, the American Representative to the Organisation for Security and Cooperation in Europe (OSCE), these Hungarian Constitutional


18. Id.

19. Ryan-McIlhon, supra note 6, at 538.

changes “have effectively eroded the independence of key government institutions as well as important non-governmental elements of society and scaled back the checks and balances that are crucial to a democracy and the protection of civil liberties.” 21 Kelly added that the legislation had been “rushed” and “should have been the subject of a dialogue with civil society.” 22

Mrs. Ryan-McIlhon noted that various political groups joined Catholics hoping to overturn the new Mexican Constitution in 1920; 23 in 2012, the European Commission launched legal challenges against the Hungarian Constitution for having breached European Union (EU) treaties. 24 Unlike Mexico, which was independent at the time of its infamous constitutional amendments, and not a signatory to regional or international treaties on the preservation and advancement of human rights, Hungary exists as a sovereign nation nonetheless adhering to the subsidiarity principle to the EU (and held the presidency of that body when it made its newest constitution). 25 As such, Hungary ostensibly adheres to two major international conventions regarding human rights. The first is the European Convention on Human Rights, 26 under which Hungary and other signatories commit to the premise that “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.” In Article 9 section 2 of that Convention, the “[f]reedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.”

22. Id.
23. Ryan-McIlhon, supra note 6, at 539.
Similarly, Article 10 of the European Union Charter on Fundamental Rights preserves, promotes and protects freedom of thought, conscience, and religion, but makes no such provision for abrogating those freedoms under the "necessities of a democratic society." Since the time Mrs. Ryan-McIlhon’s wrote her note, dramatic constitutional changes have taken place in Mexico, because of (or in spite of) a recent Papal visit, and more is known about the Hungarian Constitution’s repercussions in the European and world political arena. In the wake of His Holiness Benedict XVI’s Spring 2012 visit to Mexico, that nation’s Senate approved a constitutional reform in April 2012 that “could pave the way for religious education in the country’s public schools,” and “ease restrictions that currently ban faith groups from owning media outlets, or participating in politics.” How much the Government of Mexico was influenced by this much-anticipated visit is speculation, but what is known that after stepping on Mexican soil, Benedict said nothing directly about the controversial constitutional reform, instead, saying that religious freedom was a “fundamental part” of a person’s dignity and integrity. That statement of natural law is consistent with what is currently present in Article 24 of Mexico’s Constitution that grants the right to pick and exercise the religion of their choice. Under the most recent changes, the Mexican Constitution will also grant people the right to “uphold their ethical convictions, freedom of conscience and religion,” and changes Article 40 so that it describes Mexico as a “secular nation respecting the separation of Church and State in Mexico.” By contrast to the pronounced secularism, supporters of the bill, led by the right-

28. Id., at Art. 10.
29. EUROPEAN CONVENTION, supra, note 26.
wing National Action Party (PAN), immediately began discussing further legislation that would be possible under the constitutional change, including religion taught in public schools and church ownership of mass media.\textsuperscript{34} While Mexico’s Senate approved constitutional reform by the barely requisite two-thirds majority necessary – a 72-35 vote – at least half of Mexico’s 31 state legislatures must still approve the changes to Articles 24 and 40 of the Mexican Constitution.\textsuperscript{35}

Has the Vatican fully considered the implications of the new Hungarian Constitution? We can only surmise its supportive stance, most notably, based upon an interview granted in January 2012 on Vatican Radio with the Auxiliary Bishop of the Archdiocese of Esztergom-Budapest, Monsignor János Székely:

Hungary’s new Constitution approved in 2011, which begins with the name of God in the introduction, states that human life must be defended starting from its conception, and declares that Hungary defends the institution of the family, which is an alliance of life between a man and a woman. The Constitution also states that the family is the foundation for the survival of the people, and that when setting taxes, the cost of raising children must be taken into consideration.\textsuperscript{36}

Readers may still wonder about the significance of religious disenfranchisement mentioned above, let alone negative reactions from other international bodies, namely from the secretary-general of the United Nations, the undersecretary of the German ministry of foreign affairs, or the European Parliament,\textsuperscript{37} just to name three notable critics.

Do the admirable ends of pro-life initiatives justify all means of implementing a constitution? Specifically, would those initiatives outweigh a lack of political transparency, so critical to advancing and maintaining rule of law? The political norm of transparency promises

\textsuperscript{34} Constitution Reform, supra note 30.
\textsuperscript{35} Id.
a solution to the problem of government secrecy. By providing legal certainty, transparency serves as an anchor for democracy. It lays open the values and goals to an accountability of actors as an essential element for (re)building confidence in a political system and its cornerstone documents. The Venice Commission, the constitutional law advisory body of the Council of Europe, has criticized the Hungarian Constitution for “a lack of transparency of the [drafting] process” and for how it limits the Constitutional Court’s rights to review legislation.

Please consider as you read Mrs. Ryan-McIlhon’s Note how similar current events are in Hungary to what occurred in Mexico in the past. Appreciate, too, how much leaders in Mexico in 2012 would be well-advised to consider what she says about the need to remediate constitutionally impaired religious liberties in 2012. Pope Benedict XVI deliberately went to the heart of La Cristiada on his Spring 2012 trip to Mexico, and to the last bastion of Marxism in Cuba to advance of freedom of religion, and renouncement of its restriction in Cuba. Challenging failed ideologies which “no longer corresponded to reality,” the Pope called for "new models" to be found, and made it clear that "the Church is always on the side of freedom of thought and of religion." With this brief exploration of past as prologue, we can better appreciate Mrs. Ryan-McIlhon’s splendid historical examination of law, politics, culture and religion regarding the anticlerical articles in the Federal Constitution of 1917 and its historical consequences in Mexico.


41. Id.
LOS ARTÍCULOS ANTICLERICALES EN LA CONSTITUCIÓN FEDERAL DE 1917 Y SUS CONSECUENCIAS HISTÓRICAS EN MÉXICO

Katherine Ryan-McIlhon†

I. Antecedentes de la Revolución de 1910

En México, la Constitución Federal de 1917 era un símbolo de una época nueva para los mexicanos en asunto políticos y religiosos. Después de siglos de luchas y descontento, los políticos habían creado una constitución robusta y a la misma vez, un castigo a la Iglesia Católica. El documento es interesante y merece atención porque refleja la historia de la relación entre el gobierno y la Iglesia durante cuatro siglos.

La Conquista fue el principio de la relación entre la Iglesia y el gobierno en México y es un fondo importante de la Constitución. Los Reyes Católicos, especialmente Fernando e Isabel, sentían que el Occidente era el lugar perfecto para evangelizar y enseñar la fe mientras obtenía tierra nueva en los siglos XV y XVI. En 1493, ellos recibieron permiso del Papa Alejandro VI en las Bulas Alejandrinas a evangelizar el Occidente (“Papa Alejandro”). La misión no era perfecta, sin embargo, porque muchos conquistadores pensaban que los indios eran menos avanzados que los europeos.

Por consecuencia, los conquistadores causaban una disputa en Castilla y Nueva España o México sobre la ética relacionada a la expansión castellana. Por ejemplo, cuando los españoles formaban un sistema de agricultura, los indios eran los encomendados y los españoles, los encomenderos. A veces, los encomendados fueron forzados a trabajar muchas horas y en condiciones malas. Cuando la Iglesia y los Reyes aprendieron sobre estos abusos, las órdenes y otros

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individuos luchaban contra el tratamiento injusto de las indígenas. Por ejemplo, Bartolomé de Las Casas era un fraile dominico que apoyaba a los indios, pero había excepciones como el teólogo, Juan Ginés de Sepúlveda, quien creía que algunas razas eran mejores líderes que otras. Aunque la mayoría de los eclesiásticos defendían a los indios, los mexicanos, especialmente los pobres y los mestizos, nunca olvidaban los hombres como Sepúlveda y la opresión. La evidencia está en la Constitución de 1917 en los artículos anticlericales.

La segunda época importante es el Imperio en Siglo XVI-XVIII. Durante estos siglos, la Corona de Castilla y la Iglesia trabajaban juntas para desarrollar México. Muchos misioneros viajaban a México para ayuda al pueblo en hospitales y escuelas mientras la Corona dedicaba la tierra a las órdenes y otras instituciones de la Iglesia. Un buen ejemplo es la Orden Hospitalaria de San Juan de Dios que creaban hospitales especialmente para los pobres con el apoyo de la Corona. La relación, sin duda, era muy íntima durante esta época. La Corona controlaba la política y los elementos legales mientras la Iglesia cuidaba del pueblo.

Durante la Ilustración y la Guerra de Independencia en España que antes el gobierno más controló la Iglesia. Se puede resumir las ideas para el gobierno en la Ilustración como “todo el pueblo sin el pueblo.” El gobierno creó los museos y las academias nacionales y promovió la industria. Durante el Siglo XVIII, la Iglesia y las órdenes religiosas que tenían mucha tierra y dinero continuaba a ayudar la gente.1 El principio del anticlericalismo empezó a extenderse durante la época. México era influido por la Revolución Francesa (1789-99). En muchos países en Europa, el pueblo se dividió entre los revolucionarios y los tradicionalistas mientras el conflicto transformaba, lentamente, por las ideas francesas. El Nuevo Régimen en España se enfocaba en unas cuantas de estas ideas como la secularización de la vida pública que naturalmente incluido una reducción del papel de la Iglesia, centralización del gobierno con más poder nacional, leyes basadas en el individuo en vez de la comunidad, y nuevas constituciones que regulaban y protegían la vida pública de la nación.

La transformación del Antiguo Régimen al Nuevo incluía cosas como ensayos constitucionales, transferencia de la propiedad, el

1. Alexandra Wilhelmsen, Civilización Hispánica, 288 (Manuscrito inédito, 2010).
capitalismo, y educación laica. Con todos de estos cambios, la clase modesta sufría porque muchos no tenían la capacidad a vivir en la situación nueva. Por ejemplo, los dueños nuevos de las tierras agrícolas subieron los arriendos y alquileres muchas veces. Los obreros y campesinos solamente empezaron a beneficiarse de este cambio político y económico en los principios años del siglo XX.

La propiedad de la Iglesia fue confiscada por los gobiernos y no hubo compensación. Como resultado, las ordenes y las parroquías no podían contribuir con sus orfanatos, asilos, hospitales y escuelas. Muchos monasterios y conventos fueron cerrados y los monjes y frailes fueron expulsados por el gobierno. Las órdenes masculinas fueron declaradas ilegales y sin propiedad, el gobierno esperaba que el clero tuviera menos poder. El gobierno desterró a la Compañía de Jesús. El gobierno quería una nación más secular que antes y las órdenes como la Compañía tenían mucha influencia. A la vez, la Guerra de Independencia entre España y Napoleón Bonaparte (1808-1814) dio a los mexicanos la oportunidad a obtener más autonomía. La Constitución de los Estados Unidos y la Constitución de Cádiz de España inspiraron a los mexicanos a formar un gobierno nuevo porque ambos se basaban en las ideas liberales que atraían a los mexicanos después de muchos años según la ley española (“Constitución de México”).

Los primeros líderes del Movimiento de Independencia eran dos sacerdotes diocesanos, los padres Miguel Hidalgo y José María Móreles. Ellos querían una reforma en la redistribución de la propiedad. En el Siglo XIX, después de la abdicación del Emperador de México, Agustín de Iturbide (1822-1823), el Imperio español se disolvió. El país finalmente era un estado independiente y rápidamente los mexicanos crearon una nueva constitución. La primera constitución, la Constitución de 1824 era federalista y abrió la puerta para los nuevos políticos (“Constitución de México”).

2. Id. at 320.
3. Id. at 321.
5. Wilhelmsen, supra note 1, at 322.
7. República de México, supra note 4.
Desafortunadamente, las ideas de estos políticos, como el liberalismo, causaban confusión para el gobierno, el pueblo, y la Iglesia en México. El liberalismo puede ser definido como un deseo de la secularización de la vida pública, el crecimiento del gobierno, constituciones extensas que regulan las vidas de ciudadanos, la reducción del poder de la Iglesia, división de las tierras comunales y énfasis legal en el individuo. El Presidente Valentín Gómez Farías (1833-1834) promulgó algunas leyes que incluían la secularización de las misiones y el cierre de la Universidad de México. Mientras el liberalismo crecía, el gobierno asumió más poder y había una necesidad para una constitución nueva.

La Constitución de 1857 fue promulgada por el Presidente Ignacio Comonfort (1855-1858).8 El liberalismo puede verse en la Constitución de 1857 en la expresión “los derechos del hombre son la base y el objeto de las instituciones sociales.”9 Con esta frase, el gobierno activamente empezó a asumir poder y tierra de la Iglesia. El Presidente Benito Juárez era el hombre que usaba la constitución nueva para promulgar leyes anticlericales. Juárez, durante la Constitución de 1857, promulgó las Leyes Reformas para tomar poder de la Iglesia. Los cambios causaron la Guerra de los Tres Años para defender la Iglesia. El gobierno quería ser el único poder y no deseaba que ninguna de otras instituciones como la Iglesia Católica, dificultaran su control. El mandato de Juárez es conocido como La Reforma. Las leyes importantes durante su presidencia fueron: Ley Juárez que suprimía los tribunales eclesiásticos y militares y la Ley Lerdo que confiscó las tierras de la Iglesia Católica, el establecimiento del matrimonio civil como el único reconocido por el gobierno y la secularización de los cementerios. Ley de días festivos, también, que limitaba el número de fiestas reconocidas por el gobierno y la secularización de hospitales y centros de beneficencia. Para continuar, la Ley de instrucción pública que organizaba las escuelas laicas. Después de todas leyes que regulaban la Iglesia, la única orden religiosa permitida era la de las Hijas de la Caridad porque ellas cuidaban de enfermos.

El conflicto entre la Iglesia y el gobierno realmente se intensificó durante el mandato de Sebastián Lerdo de Tejada (1872-1876). Era el

8. Wilhelmsen, supra note 1, at 323.
hermano del autor de la Ley Lerdo. Continuó la creencia en el liberalismo y proscribió ambos las órdenes religiosas de sacerdotes. Esto junto con las Leyes Reformas que expulsó de México a la última orden femenina, las Hijas de la Caridad, y atacó a los jesuitas, provocaron una rebelión conocido como Guerra de los Religionarios de 1873-1876. Sin embargo, la guerra políticamente tuvo un éxito mínimo. 10

Porfirio Díaz, un ex general y presidente de México en 1876 a 1910. El período en que gobernó es el “Porfiriato”. Durante su presidencia, permitió a la Iglesia funcionar, pero muy discretamente. Díaz se enfocaba en el desarrollo económico. Según la Doctora Alexandra Wilhelmsen, una profesora en la Universidad de Dallas, “para Porfirio Díaz, el bienestar social y la democracia verdadera serían resultados naturales del avance económico.” Él era presidente por treinta y cinco años y durante esta época, el capitalismo floreció sin la ayuda de la Iglesia. Desafortunadamente, este capitalismo ayudaba solamente a las clases altas y el resto de la población estaba más y más enojado con la economía. La reivindicación para reforma solamente creció.11

Claramente, la relación entre la Iglesia y el gobierno durante cuatro siglos era dinámica. La Iglesia rápidamente obtuvo poder en México y trabajaba con el gobierno en paz, pero por causa de los movimientos como el liberalismo en siglos posteriores, la Constitución de 1917 emergió y contenía los artículos anticlericales para obtener más poder de los siglos anteriores para el gobierno.

II. La Revolución de 1910

En reacción al gobierno de Porfirio Díaz, la Revolución de 1910 empezó porque mientras Díaz se enfocaba en el capitalismo, a muchos ciudadanos les parecía que el presidente les había abandonado.12 A finales de su presidencia hablía muchas publicaciones en contra de él. Por ejemplo, “El hijo del Ahuizote” por Juan Sarabia, “Excélsior” por Santiago de la Hoz y más importante “Regeneración” por Ricardo Flores Magón. Este periódico describe la vida descontenta de los ciudadanos de México durante la época y sugiere ideas para transformación política y social. Flores pintó la

10. Wilhelmsen, supra note 1, at 320-325.
11. Id. at 318-319.
vida de un peón como un “infierno dantesco.” “Regeneración” inspiró al Partido Liberal Mexicano con sus representaciones detalladas, también. El partido redactó el Manifiesto y Programa que demandaba la división de las grandes propiedades, la restitución de ejidos y la implementación según la ley de las relaciones entre el gobierno y la Iglesia.13

La guerra civil puede ser subdividida en tres etapas: la maderista, la constitucionalista y la lucha de las facciones. La primera fase “la maderista”, se refiere al gobierno de Francisco I. Madero (1911-1913). La Revolución comenzó durante las elecciones de 1910, cuando Madero estaba en contra de Díaz.14 El general ganó, pero Madero pensaba que Díaz había hecho fraude electoral. Rápidamente, Madero respondió con el Plan de San Luis Potosí el 5 de octubre 1910. Este plan empezó la Revolución con tres metas importantes: no reelección del presidente, Madero podría ser el presidente provisional y los ciudadanos necesitaban levantarse en armas contra Díaz.15 El plan fue ejecutado y lentamente, Madero y sus generales Pancho Villa y Pascual Orozco controlaron el país. En consecuencia en el 25 de mayo 1911, el Presidente Díaz dimitió su puesto y Madero ganó en las elecciones presidenciales. Su objetivo como el presidente era la aplicación estricta de la Constitución de 1857. Por esta razón, Madero trabajaba con la Comisión Agraria Ejecutiva para mejorar las condiciones del campo y las condiciones de la restricción de la tierra privada. Justo después en noviembre de 1911, el rebelde Emiliano Zapata formó el Plan de Ayala. Este documento se enfocaba en la restitución de ejidos para causar las personas a rebelarse. En el Plan, Zapata acusó Madero de abandonando las ideas revolucionarios especialmente en el campo. Su lema era “libertad, justicia, ley.”16 Cuatro meses después, en marzo de 1912, el General Orozco exigió que Madero dimitiera como presidente. Orozco quería más reformas laborales y división de tierra. Le inspiraba el Manifiesto del Partido Liberal Mexicano. Quería que la tierra se redistribuyera a los individuos.

En 1913, Félix Díaz, el sobrino de Porfirio, y el General Victoriano Huerta se asociaron a la rebelión contra Madero. Eventualmente,
después de mucha violencia, Huerta le reemplazó a Madero como el presidente. Tres días después, Madero fue a asesinado en los “Diez días trágicos.” Desafortunadamente, la paz no empezó con el nuevo presidente.17

En la etapa constitucionalista, las batallas para la reforma de la tierra continuaban el mismo año con las rebeliones de Pancho Villa y Venustiano Carranza. Carranza, un amigo de Madero y un enemigo de Huerta, puso en marcha el Plan de Guadalupe en 1913. Carranza quería restablecer el orden constitucional violado por Huerta. Específicamente, las reformas de tierra porque Huerta no trataba de poner en práctica las reglas contra la Iglesia.18 Una cita del Plan por Carranza describe un deseo de “repartir las tierras y las riquezas nacionales.”19

Villa y Álvaro Obregón, quien sería presidente después de la promulgación de la Constitución de 1917, luchaban contra de Huerta, también. Lentamente, los rebeldes controlaron las tres cuartas partes de México. En 1914, el Presidente de los Estados Unidos Woodrow Wilson (1913-1921) mandó soldados a Veracruz durante el caos. Allí, los soldados de los Estados Unidos construyeron escuelas e intentaron de regular el crimen. A los mexicanos no les gustaba la participación de los Estados Unidos y Huerta trató de unir el país en contra de los extranjeros. Como resultado, a pesar de la pérdida de control del país. Huerta dimitió con un testimonio que dijo que los Estados Unidos causara muchos problemas en México y el no podía controlar el gobierno por causa de esto.20

Sin presidente, los políticos y jefes organizaron la Convención de Aguascalientes. La Convención era para la elección de un presidente provisional. Carranza fue elegido Primer Jefe del Ejército Constitucionalista, Villa jefe de la División del Norte, y el General Eulalio Gutiérrez fue elegido presidente provisional.21

Este acuerdo no garantizó la paz porque los jefes empezaron a luchar entre sí para lograr más poder. Los enfrentamientos continuaron y 1915 es extraoficialmente conocido como la Guerra de generales. Eventualmente, Villa y Zapata controlaron la capital del país. El General Carranza y Obregón, rápidamente retomaron la
Ciudad de México y Gutiérrez se mudó al estado de Nuevo León. En abril de 1915, los EEUU reconoció a Carranza como el presidente de hecho. Villa y Zapata continuaron a luchar contra Carranza y Obregón y el caos afectaba a la economía.22

La lucha por el poder destruyó el país y el crimen y la pobreza aumentaron. Durante esta época, los sindicatos se rebelaron y causaron más caos con la clase laboral. La Casa del Obrero Mundial o COM y la Federación Regional de Labor fueron establecidas mientras muchos otros sindicatos se declararon en huelga en 1916. Carranza trató de parar muchas de estas huelgas. Ordenó que su ejército asesinara estas huelguistas.23

Sin duda, la primera parte de la Revolución afectó los políticos y la economía. Como resultado, inspiró un cambio en la Constitución de 1857. Carranza, después de pacificando el país hasta cierto punto, exigió una convención constitucional en 1916 que preparó la Constitución de 1917.24

III. El Congreso constituyente y la Constitución de 1917

Venustiano Carranza (1917-1920) fue reconocido oficialmente como el Presidente en 1915 por Woodrow Wilson, pero no aceptó el puesto porque quería ser el presidente por más de la mitad de un mandato. Como resultado, Carranza siguió como el Primer Jefe hasta 1917. Como Primer Jefe, Carranza quería reformar la Constitución de 1857, pero no quería transformar la Constitución. Solo le interesaban reformas pequeñas. Específicamente, la reelección de los presidentes porque Carranza quería evitar los mandatos largos como lo de Díaz.

Por consecuencia, el 19 de septiembre de 1916, Carranza decretó elecciones para el congreso constituyente. En octubre del mismo año, los representantes se encontraron en el estado de Querétaro después de las elecciones para corregir el borrador que Carranza había escrito. Los hombres que fueron elegidos, a pesar de los deseos y los esfuerzos de Carranza, eran muy radicales. La razón por esto es que los ciudadanos votaron para líderes locales. Muchos habían luchado en la guerra de generales y visto la destrucción de México. 25

22. Quirk, supra note 12, at 79.
24. Quirk, supra note 12, at 80.
25. Id. at 79-81.
Esto creó un gran desacuerdo en el Congreso y México empezó la tercera época de la Revolución, la lucha de facciones. Había dos grupos: los rojos y los blancos. Los rojos seguían a Carranza y votaban con papeletas rojas. Los hombres importantes en este grupo eran Luis Manuel Rojas, Manuel Aguirre Berlanga, José Natividad Macías, Alfonso Cravioto y Félix F. Palavicini. Los blancos, quienes votaban con papeletas blancas, querían más reformas sociales y económicas que los rojos. Algunos hombres en este grupo eran Francisco Javier Múgica, Cándido Aguilar y Salvador González Torres. Muchos blancos eran héroes locales y analfabetos. Como resultado, los rojos estaban más organizados pero había más blancos. Por eso, los rojos controlaban el Congreso en cuestiones técnicas. Luis Manuel Rojas fue elegido el Presidente del Congreso y los blancos Aguilar y González vicepresidentes.

En el Congreso, había algunas personas que tenían mucha influencia en la redacción de los Artículos de la Constitución. Francisco Javier Múgica era el hombre que probablemente dominaba el Congreso más que otros. Múgica era un general de brigada del estado de Michoacán. Era un hombre muy radical y su influencia contribuía a los artículos socialistas en la Constitución. Era famoso por su capacidad de unir hombres en sus discursos a pesar de su falta de experiencia en la política.

Para los rojos, José Natividad Macías, quien modificó el primer documento que Carranza redactó, tenía mucha influencia. Carranza había mandado a Macías a Los Estados Unidos para estudiar las instituciones democráticas, y como resultado, la propuesta de Macías contenía elementos de la Constitución de Los Estados Unidos. Por ejemplo, el concepto del liberalismo de los EEUU fue personificado en el primer artículo que dice, “en los Estados Unidos Mexicanos todo individuo gozará de las garantías que otorga esta Constitución, las cuales no podrán restringirse ni suspenderse, sino en los casos y con las condiciones que ella misma establece.”

En este artículo los ciudadanos mexicanos claramente fueron protegidos por el gobierno como el pueblo en Los Estados Unidos. Esta Constitución empieza con:

26. Silva, supra note 6, at 55.
27. Quirk, supra note 12, at 82.
28. El Rincón del Vago, supra note 4; República de México, supra note 4; Anexos pp. 34-50.
Nosotros, el Pueblo de los Estados Unidos, a fin de formar una Unión más perfecta, establecer Justicia, afirmar la tranquilidad interior, proveer la Defensa común, promover el bienestar general y asegurar para nosotros mismos y para nuestros descendientes los beneficios de la Libertad, estatuimos y sancionamos esta Constitución para los Estados Unidos de América.29

Las semejanzas son claras, pero había muchas diferencias importantes, también.

Aún así, el documento seguía las tradiciones de Juárez y Lerdo más que las de Los Estados Unidos porque Macías y Carranza querían más que la separación del Estado y la Iglesia. Buscaban más limitaciones a la Iglesia. Querían que el matrimonio fuera solo un contrato civil (la Ley Juárez promulgó esto pero ellos querían promulgar en la Constitución, también), y en su opinión, también, la Iglesia podría tener escuelas, pero solamente escuelas secundarias. Estas creencias reflejaban un deseo de seguir las tradiciones de Juárez con cambios mínimos.

Desafortunadamente, los radicales no aceptaron muchas de las enmiendas a la Constitución existente que Carranza y Macías deseaban. Aunque el Congreso aprobó los artículos que pertenecían a los derechos del pueblo en Artículos 1 y 2, Múgica y los radicales exigieron una revolución social especialmente en Artículos 3, 5, 24, 27, 123 y 130. A los radicales les parecía que Carranza desatendió los problemas sociales y agrícolas. A pesar de respeto para el Primer Jefe, los blancos formaron una comisión radical para corregir estos artículos.30 La Constitución de 1917 cambio de la Constitución de 1857 en dos formas que Carranza no pensaba—el Congreso añadió más aspectos sociales y anticlericales. El producto era difícil de lograr, sin embargo, porque las facciones debatían mucho y la discusión siempre incluía la Iglesia y el tema de limitación de su influencia.31

Por ejemplo, Múgica pensaba que Articulo 3 sobre las reformas educativas fuera completamente inadecuado. Por muchos años los niños habían recibido su educación en escuelas católicas y Múgica creía que la Iglesia restringía los derechos naturales de las personas y

30. Quirk, supra note 12, at 84-91.
31. Silva, supra note 6, at 85.
no les daba la capacidad de pensar libremente. Él odiaba al clero y dijo durante el Congreso:

[E]n la historia patria, estudiada imparcialmente, el clero aparece como el enemigo más cruel y tenaz de nuestras libertades; su doctrina ha sido y es: los intereses de la iglesia, antes que los intereses de la patria. Desarmado el clero a consecuencia de las Leyes de Reforma, tuvo oportunidad después, bajo la tolerancia de la dictadura, de emprender pacientemente una labor dirigida a restablecer su poderío por encima de la autoridad civil.32

Para Múgica, la doctrina de la Iglesia era abstracta y no era apropiada para los niños. En su opinión, la escuela católica debía ser prohibida. Macías y sus partidarios insistían, sin embargo, que los miembros del clero deberían tener el derecho de enseñar en escuelas secundarias. Ellos no creían que la Iglesia fuera mala. El problema continuaba en todo el Congreso constituyente porque los blancos ponían énfasis en las restricciones de la Iglesia porque ellos la consideraban anticuada y los rojos dudaban muchas propuestas demasiadas radicales.33

La versión final de la Constitución de 1917 tiene algunos principios nuevos como la división del gobierno, reformas agrícolas y artículos anticlericales. Los cambios finales importantes en el gobierno incluyen más poder al brazo ejecutivo y la centralización de la nación. Enmiendas sobre condiciones sociales eran la intervención en los desacuerdos entre obreros y patronos. Además, cambios en las reformas agrícolas eran que la propiedad privada puede ser usada por el gobierno cuando el bien común la necesite y el subsuelo de la tierra pertenece a la nación. Las enmiendas más drásticas eran los cambios en las relaciones entre la Iglesia y Estado. La Iglesia era la propiedad del Estado, la educación católica solamente podría ser permitida en las escuelas privadas secundarias y la Constitución confirmaba que los sacerdotes eran ciudadanos de segunda categoría que no podían votar o expresar sus creencias.34 Con estos cambios, la Constitución es una mezcla de artículos que representan tanto al

33. Quirk, supra note 12, at 84-91.
34. Wilhelmsen, supra note 1, at 356-357.
El liberalismo como al socialismo o los rojos y los blancos.35 Un aspecto importante es que el liberalismo es el énfasis en un estado secular y derechos iguales para todos. El socialismo es el énfasis en la economía y la propiedad pública y un ataque a la propiedad privada.

El Artículo 3 es la secularización de escuelas y probablemente el cambio más debatido. Este artículo refleja las creencias de Múgica y los radicales porque dice: “[L]a educación que imparte el Estado - Federación, Estados, Municipios -, tenderá a desarrollar armónicamente todas las facultades del ser humano y fomentará en él, a la vez el amor a la patria y la conciencia de la solidaridad internacional, en la independencia y en la justicia.” 36 La redacción específicamente pone énfasis en el estado. En la próxima parte, este artículo ataca y excluye a la Iglesia. Dice de la enseñanza pública: “... garantizada por el artículo 24 la libertad de creencias, el criterio que orientará a dicha educación se mantendrá por completo ajeno a cualquier doctrina religiosa y, basado en los resultado del progreso científico, luchará contra la ignorancia y sus efectos, las servidumbres, los fanatismos y los prejuicios.” 37 Claramente, este artículo es un ataque de la Iglesia. Se enfoca en la ciencia y el ser humano sin mencionar en Dios porque la religión era considerada una “ignorancia”. Como resultado, muchas escuelas católicas fueron destruidas por los blancos porque en los años siguientes, los presidentes cerrarían estas instituciones completamente.

El Artículo 5 usa las características del liberalismo para eliminar las órdenes completamente:

El Estado no puede permitir que se lleve a efecto ningún contrato, pacto o convenio que tenga por objeto el menoscabo, la pérdida o el irrevocable sacrificio de la libertad de la persona, ya sea por causa de trabajo, de educación o de voto religioso. La ley, en consecuencia, no permite el establecimiento de órdenes monásticas, cualquiera que sea la denominación u objeto con que pretendan erigirse.38

El punto de vista del Congreso constituyente era que las órdenes con sus reglas y estilo de vida estricto, causaba una pérdida de la

35. Silva, supra note 6, at 85.
36. El Rincón del Vago, supra note 4; República de México, supra note 4; Anexos pp. 34-50.
37. Id.
38. Id.
libertad del individuo. En esta manera, el móvil anticlerical del gobierno fue fundado.

El Artículo 24 estableció más restricciones para la misa y otras ceremonias religiosas. Con palabras muy claras dice:

Todo hombre es libre para profesar la creencia religiosa que más le agrade y para practicar las ceremonias, devociones o actos del culto respectivo, en los templos o en su domicilio particular, siempre que no constituyan un delito o falta penados por la ley. Todo acto religioso de culto público deberá celebrarse precisamente dentro de los templos, los cuales estarán siempre bajo la vigilancia de la autoridad.39

Las pautas para este artículo son vagas, y los jefes de estado usarían esta parte de la Constitución después de la promulgación a perseguir los devotos más de antes. Por ejemplo, muchas veces, los jefes ardieron las iglesias o difamaban los cementerios que tenían católicos (durante el mandato de Juárez, los cementerios católicos fueron secularizados).

El Artículo 27 es muy largo y contiene las reformas agrícolas y es considerado muy socialista como los blancos querían. La Iglesia creía que estas reformas eran inmorales porque en su opinión, era el robo.40 El principio del artículo describe el poder del gobierno y dice, “la propiedad de las tierras y aguas comprendidas dentro de los límites del territorio nacional corresponde originariamente a la Nación, la cual ha tenido y tiene el derecho de transmitir el dominio de ellas a los particulares constituyendo la propiedad privada.”41

El énfasis en la nación y la confiscación de tierra y redistribución manifiesta la teoría de socialismo porque no hay protección para la propiedad privada. Los elementos del socialismo continúan cuando el artículo dice:

[L]a Nación tendrá en todo tiempo el derecho de imponer a la propiedad privada las modalidades que dicte el interés público, así como el de regular, en beneficio social, el aprovechamiento de los elementos naturales susceptibles de apropiación, con objeto de hacer una distribución equitativa de la riqueza pública, cuidar de su conservación, lograr el

39. Id.
40. Quirk, supra note 12, at 93.
41. El Rincón del Vago, supra note 4; República de México, supra note 4; Anexos pp. 34-50.
desarrollo equilibrado del país y el mejoramiento de las condiciones de vida de la población rural y urbana.42

Este párrafo es interesante porque representa el socialismo de los blancos, pero también la influencia de Carranza. Los elementos socialistas incluyen frases como “el interés público”, “beneficio social” y “una distribución equitativa de la riqueza publica.” Todas estas frases siguen la creencia del socialismo en la igualdad de las clases y todo por la nación. Sin embargo, el liberalismo está aquí todavía en la frase “los elementos naturales” porque el liberalismo se enfoca en los derechos naturales de los seres humanos. Respecto a la Iglesia, el Artículo 27 da al gobierno el poder a confiscar su propiedad, incluyendo sus parroquias cuando sea para el “beneficio social” en la opinión del gobierno. Eventualmente, presidentes como Álvaro Obregón y Plutarco Elías Calles utilizarían este artículo para perjudicar a la Iglesia.

El Artículo 123 describe los derechos de los obreros en contra de sus patronos y dice “toda persona tiene derecho al trabajo digno y socialmente útil; al efecto, se promoverán la creación de empleos y la organización social para el trabajo, conforme a la ley.”43 El resto del artículo legaliza un salario mínimo, un número máximo de horas para un obrero, el derecho a formar sindicatos, un requisito de la edad mínima, igualdad entre los hombres y las mujeres y las buenas condiciones de trabajo.44 El interés en los derechos de los obreros era el motivo de muchas de las rebeliones en los años antes del Congreso constituyente. La Iglesia, sin embargo, no apoyaba la legislación que los presidentes fueron creando con la implementación de este artículo porque las leyes atacaban a los patronos. Sin embargo, los obreros católicos todavía estaban obligando a seguir.

El Artículo 130 ataca directamente a la Iglesia y es un producto muy agresivo de Múgica. Tiene muchas frases y partes importantes como “corresponde a los Poderes Federales ejercer en materia de culto religioso y disciplina externa la intervención que designen las leyes. Las demás autoridades obrarán como auxiliares de la Federación.”45 Aquí había más de una separación entre el Estado y la Iglesia. Aunque el Congreso no podía prohibir una religión, “los Poderes

42. Id.
43. Id.
44. Silva, supra note 6, at 15.
45. El Rincón del Vago, supra note 4; República de México, supra note 4; Anexos pp. 34-50.
Federales” podían entrometerse con la Iglesia Católica. Otra parte del Artículo 130 continúa así, “el matrimonio es un contrato civil. Este y los demás actos del estado civil de las personas son de la exclusiva competencia de los funcionarios y autoridades del orden civil, en los términos prevenidos por las leyes, y tendrán la fuerza y validez que las mismas les atribuya.”46 Antes de esta enmienda, la Iglesia controlaba ambos, los matrimonios y los documentos del matrimonio, porque muchos mexicanos eran católicos y para ellos el matrimonio era un sacramento.47 El Artículo 130 dice también que los ministros (el Artículo se refiere a los clérigos como “ministros”) necesitaba ser nacidos en México. Esa parte limitaba a los sacerdotes porque muchos eran misioneros europeos. La tercera parte del Artículo 130 dice:

[L]os ministros de los cultos nunca podrán en reunión pública o privada constituida en junta, ni en actos de culto o de propaganda religiosa, hacer crítica de las leyes fundamentales del país, de las autoridades en particular o en general del gobierno; no tendrán voto activo ni pasivo, ni derecho para asociarse con fines políticos.48

Las palabras son muy claras, los sacerdotes eran los ciudadanos sin derechos. El Artículo 130, también, permite al gobierno gravar las iglesias individuales y dice que los sacerdotes no pueden enseñar. Nadie podía donar a la Iglesia, tampoco. Las frases al final definen la propiedad de la Iglesia como “privada.” Específicamente, “los bienes muebles o inmuebles del clero o de asociaciones religiosas se regirán para su adquisición por particulares conforme al artículo 27 de esta Constitución.”49 En los años siguientes, este artículo en particular causaba muchos problemas para presidentes como Plutarco Calles y originaba la Cristiada.

IV. La legislación y la política anticlerical basada en la Constitución de 1917

Álvaro Obregón ganó la presidencia después de Carranza y en realidad era el primer presidente desde la promulgación de la nueva

46. Id.
47. Quirk, supra note 12, at 95.
48. El Rincón del Vago, supra note 4; República de México, supra note 4; Anexos pp. 34-50.
49. Id.
Constitución. Obregón, un hombre de Sonora que había ascendido desde una clase muy modesta, entro la política en 1910 con la meta de reforma después del Porfiriato. Rápidamente, se hizo famoso como un líder militar. Su carrera en el ejército duró hasta el mandato de Carrera cuando sirvió como el Secretario de Guerra. Dimitió en 1917 y regresó a Sonora. Un poco después, Obregón decidió presentarse a las elecciones a la presidencia. Cuando anunció su candidatura dijo: “Muchos de los hombres de más alto relieve dentro del orden militar y del orden civil han desvirtuado completamente las tendencias del movimiento revolucionario, dedicando todas sus actividades a improvisar fortunas, alquilando plumas que los absuelvan falsamente en nombre de la opinión pública ("Alvaro Obregon").” Se refería a Carranza. Obregón era un radical que apoyaba las transformaciones sociales y anticlericales de los blancos durante el Congreso constituyente. Obregón quería promulgar leyes para poner en práctica los artículos para reformas radicales en la Constitución porque Carranza no estaba decidido a promulgar leyes para hacer estas reformas. Eventualmente, Obregón y sus partidarios desterraron a Carranza seguía el Plan de Agua Prieta. Obregón era más popular que Carranza tenía el apoyo del ejército. Siguiendo a Obregón los soldados expulsaron a Carranza de la capital. Sin Carranza, Obregón fue elegido a la presidencia en 1920.

El mandato de este presidente se enfocaba en los artículos que pertenecía a la Constitución sobre la economía de México porque después de muchos años de revolución, la economía había deteriorado mucho. México estaba exhausto por diez años de luchar. Más de un millón de personas habían muerto. Por consiguiente, Obregón no estaba tan preocupado por las reformas anticlericales y los artículos de la Constitución, especialmente, a pesar de tener sus creencias anticlericales. Obregón se daba cuenta de que, por el momento, el gobierno tenía los medios económicos apoyar la educación de los niños completamente. Él dijo fue “en estos momentos, nada es más importante que la paz social y la estabilidad política” ("Alvaro Obregón"). Como resultado, se permitió

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51. Id.
53. Tuck, supra note 50.
54. Id.
funcionar las escuelas católicas mientras que el trataba de mejorar la economía. En todo caso, construyó centenares de escuelas para consolidar la enseñanza pública con la esperanza que eventualmente el gobierno podría cerrar todas las escuelas católicas. Obregón entonces decidió enfocarse en las reformas agrícolas anunciadas en el Artículo 27. Convenció al Congreso que implementar a este artículo y un poco después, empezó a confiscar grandes propiedades privadas y las dividió en los ejidos pequeños. Obregón, un realista, se daba cuenta que los pobres que recibieran la propiedad no podían cuidar de la tierra redistribuida porque no tenían el dinero para invertir en la tierra. Por consecuencia, los ejidos fueron nacionalizados. El sistema funcionaba así: el gobierno dividió la propiedad en ejidos más pequeños y eventualmente indemnizaba a los terratenientes. Esto era demasiado caro para el gobierno, a pesar de que los terratenientes nunca fueron indemnizados suficientemente. La Iglesia condenó estas reformas porque, a su entender, se trataba de robar y el robo es un pecado. El arzobispo Leopoldo Ruiz y Flores de Michoacán dijo que si alguien aceptaba la tierra dada a ellos por el gobierno, era obligado a indemnizar a los dueños.

Obregón también se enfocó en las reformas laborales. Apoyó y subvencionó las organizaciones obreras como la CROM o Confederación Regional Obrera Mexicana y la CGT o Confederación General de Trabajadores. Estos sindicatos crecieron rápidamente y como resultado, Obregón tenía éxito y ganaron apoyo de muchos obreros laborales.55

Fue, sin embargo, el sucesor de Obregón, el Presidente Plutarco Elías Calles (1924-1928) quien más abiertamente demostró su antipatía a la Iglesia e implementó cambios anticlericales. Calles nació el 25 de septiembre de 1877 en Guaymas, Sonora. En su educación primaria y secundaria, observó la mayor parte de los conflictos entre la Iglesia y el gobierno. Como resultado, decidió ser maestro y empezó a escribir artículos en contra de la educación católica durante esta época. En septiembre de 1911, durante la Revolución, recibió su comisión para el Ejército constitucionalista del General José María Maytorena para Agua Prieta, un pueblo cerca de Sonora. Su responsabilidad era mantener el orden. Por consiguiente, creó la Brigada Calles. En 1912, como capitán, luchó en la rebelión de Pascual Orozco en Nacozari, Sonora. Poco después, en 1913, estando bajo las órdenes de Álvaro Obregón, luchó contra Victoriano Huerta, cuando era un general leal.
a Díaz. Tuvo éxito, y en el 1915 Primer Jefe Venustiano Carranza lo nombró gobernador de Sonora.56

Durante su mandato de gobernación, Calles expulsó a todos los sacerdotes del estado de Sonora en marzo de 1916. Dos años después, promulgó una nueva constitución en 1919. Carranza fue ascendido a secretario nacional de Industria y Comercio. Poco después, Obregón inició su campaña para la presidencia, y juntos él y Calles, participaron en el debilitamiento del Presidente Carranza. Como resultado de esta alianza, cuando Obregón era el presidente, Calles fue nombrado el Secretario de Gobernación.57 Su ataque a la Iglesia continuó en este puesto nuevo y en 1923, cuando el Arzobispo de México José Mora y del Río quería dedicar una ceremonia a Cristo Rey, una fiesta nueva en la Iglesia, Calles la prohibió. Sin embargo, el nuncio, Monseñor Ernesto Filippi, continuó con la celebración y Calles ordenó el destierro del representante del Vaticano.58

El conflicto sobre Cristo Rey, animó a Calles a enfocarse más en la aplicación de los artículos anticlericales de la Constitución que habían sido ignorados. Estos artículos incluyeron 3, 5, 24, 27 y 130. La asamblea legislativa, sin embargo, no podía centrarse en estas propuestas porque estaba preocupada por las leyes de reelección en la nueva Constitución. Este problema demoraba el programa de Calles. Con prisas para lograr algo, el Congreso dio a Calles el poder a expedir decretos presidenciales.59

Rápidamente con su nuevo poder, Calles empezó la campaña en contra de la Iglesia. Primero, la mimó creando una infraestructura sólida en el sistema de educación pública. Calles declaró que los fines de una educación buena para los estudiantes “les abran nuevos horizontes de una vida mejor para la adquisición de la habilidades manuales y espirituales que se traduzcan en aumento de su capacidad económica.”60 Calles nombró a Moisés Sáenz como Ministro de Educación. Su objetivo era unir al pueblo mexicano a través de un sistema de educación nuevo que excluiera a la Iglesia Católica completamente. Según su deseo de mejorar escuelas, Calles y Sáenz, restablecieron ambos la escuela de Chapingo para agricultura y la de

57. Id.
58. Quirk, supra note 12, at 132-133.
59. Id. at 145-151.
Medicina Veterinaria y en total, abrieron más que cien escuelas primarias y secundarias en México.\textsuperscript{61}

Cuando el Arzobispo Mora y del Río protestó contra la política de Calles, el Presidente respondió: “quiero que entienda Ud., de una vez por todas, que la agitación que provocan no será capaz de variar el firme propósito del Gobierno federal . . . . No hay otro camino . . . que someterse a . . . la ley.” Poco después, en julio de 1926, Calles creó la Ley Calles bajo del Artículo 130 que derogaba los derechos de los sacerdotes como ciudadanos y opresaba sus actividades religiosas. El Presidente justificó la aplicación de los artículos anticlericales en la Constitución porque creía que el gobierno debería ser la única institución a controlar la nación y era su trabajo implementar la Constitución. Escribió en un artículo en el “Diario Oficial”:

El gobierno de México por ningún motivo faltará al cumplimiento de las leyes y esas presiones que están buscando en nada nos importan...estamos resueltos a mantener la dignidad nacional a costa de lo que venga...Qué menos puede exigir el representante legítimo del pueblo, como es el Gobierno, que saber quiénes están administrando sus bienes?...Irremisiblemente tendrán que sujetarse.\textsuperscript{62}

Él implacablemente promulgó leyes contra la Iglesia a pesar de las protestas de los católicos acérrimos. Por esta razón, la política de Calles causaba resistencia de la Iglesia y los ciudadanos de México.

V. La Cristiada

La lucha de la Iglesia con el gobierno naturalmente creció más después de poner en práctica la nueva Constitución. La violencia contra la Iglesia, que había empezado muchos años antes de la Constitución de 1917, continuaba incluyendo los incendios de Iglesias, robos y atropellos a sacerdotes y religiosas. Carranza no estaba solo en el ataque durante su mandato porque cuando los jefes militares quedaban como gobernadores de los Estados, promulgaban contra la Iglesia leyes tiránicas como que no hubiera Misa más que los domingos y con determinadas condiciones y que no se conservara el agua para los bautizos. Durante el mandato del Obregón, una bomba explotó cerca del altar mayor en la Basílica de la Virgen de

\textsuperscript{61} Id. at 30.

\textsuperscript{62} Id. at 67-75.
Guadalupe. La Iglesia creía que un miembro del gobierno de Obregón, Juan Esponda fue responsable. El comportamiento político, sin embargo, de ambos Carranza y Obregón era más pasivo y la Iglesia trataba de continuar funcionando, pero muchos mexicanos estaban enojados después de la bomba.

La resistencia al gobierno durante los primeros años (1913-1924), empezó con los jóvenes. En 1911, ellos fundaron la Liga de Estudiantes Católicos para reunir a alumnos de todo el país. Inmediatamente, después de su fundación, el grupo se involucró en la política. Un sacerdote asociado con la Liga, Padre Bernardo Bergoend, un jesuita de Francia, propuso que la Liga formara la Asociación Católica de la Juventud Mexicana o ACJM. Esta organización empezó campañas de propaganda en contra del gobierno. Por ejemplo, en 1915, el General Obregón encarcelo a muchos miembros del clero en la Ciudad de México, ACJM se rebeló con una manifestación y muchos de sus miembros de ACJM fueron encarcelados, también. La organización intentaba reunir pacificamente en apoyo para un presidente católico y cambios a la Constitución por manifestaciones en varias ciudades como Guadalajara y la Ciudad de Mexico. Las mujeres católicas formaron un grupo para abogar por la creación de escuelas católicas con peticiones al Congreso y muchos miembros de esta organización ayudaban ACJM donando fondos.

Un nuevo Arzobispo de Jalisco, Francisco Orozco y Jiménez y sus seguidores crearon la Unión Popular de Jalisco. Un líder principal en el grupo era Anacleto González Flores. Él era un abogado y apoyaba actividades pacíficas para el grupo como la publicación boletines y los discursos y las clases de catecismo en muchas partes del país. Durante la rebelión cristera desafortunadamente, González Flores sería asesinado.

Política, estos grupos católicos se unían con la esperanza que se revocara la Constitución nueva, sin embargo, durante las elecciones de 1920, Obregón derrotó al candidato católico sin ninguna

64. David C. Bailey, ¡Viva Cristo Rey! The Cristero Rebellion and the Church-state Conflict in Mexico, 28-36 (Austin: University of Texas, 1974).  
65. Wilhelmsen, supra note 1, at 359.  
66. Bailey, supra note 64, at 28-36.  
67. Wilhelmsen, supra note 1, at 359.
dificultad. Esta derrota electoral era porque muchas personas mexicanas no reaccionaron a la Constitución anticlerical, porque muchas personas en el campo no podrían ir a la misa porque no había una iglesia cerca de ellas. Como resultado, leyes como no misa en los domingos que los gobernadores habían promulgado no les importaban. Pero, cuando explotó la bomba en la Basílica de la Virgen, muchos mexicanos decidieron ayudar en la lucha porque el pueblo tenía un gran devoción a ella.

En 1925, cuando Calles anunció su intención de implementar los artículos anticlericales, muchos simpatizantes decidieron unirse en la Liga Nacional para la Defensa de la Libertad Religiosa. El líder de esta organización era Rene Capistran Garza. La Liga trató de influir al pueblo mexicano para hacer cambios con la política, pero tuvo poco éxito.

El presidente promulgó la Ley Calles en julio de 1926. Tres semanas después de que los obispos mexicanos, escribieron una Carta pastoral famosa. En este texto, manifiestan su decisión de oponerse a "ese Decreto y los Artículos antirreligiosos de la Constitución" para que fueran reformados. Añaden, "y no cejaremos hasta verlo conseguido." El presidente Calles respondió con "Nos hemos limitado a hacer cumplir las [leyes] que existen, una desde el tiempo de la Reforma, hace más de medio siglo, y otra desde 1917.... Naturalmente que mi Gobierno no piensa siquiera suavizar las reformas y adiciones al código penal." Poco después, Calles y su gobierno decidieron expulsar los obispos del país y en respuesta la jerarquía eclesiástica ordenar los sacerdotes a cerrar las iglesias.

Los campesinos piadosos reaccionaron por su cuenta. Calles les impulsó a actuar más con el asesinato del Padre Luis Batiz en Chalchihuites, Zacatecas, junto con tres líderes pacíficos de la Liga. Y en seguida en Jalisco, en Huequilla, donde el agosto el pueblo alzado daba el grito: ¡Viva Cristo Rey! Entre agosto y diciembre de 1926 en el país se produjeron 64 levantamientos armados. La mayoría de estos levantamientos ocurrieron en Jalisco, Guanajuato, Guerrero, Michoacán y Zacatecas. Estas rebeliones armadas fueron un intentó inútil de forzar el gobierno a cambiar su legislación anticlerical.

68. Bailey, supra note 64, at 37.
69. Quirk, supra note 12, at 3-4.
70. Wilhelmsen, supra note 1, at 359.
71. Iraburu, supra note 63.
72. Wilhelmsen, supra note 1, at 360.
En Jalisco, el Arzobispo Orozco y Jiménez apoyó a militantes de la resistencia armada. Cuando muchos obispos salieron del país porque Calles les expulsó, él apoyaba con valor a pesar de la ley. Con valor semejante, millas de hombres se convirtieron en guerrilleros de Cristo Rey y unidos en un ejército. Estos militantes eran conocidos como los “cristeros.”

Había dos generales importantes: Enrique Gorostieta y Jesús Degollado. El General Gorostieta organizó el ejército llamado la Guardia Nacional. En este ejército había 25,000 voluntarios y el General Degollado era el comandante militar del ejército en sus batallas en Michoacán y Jalisco. Había otros 25,000 cristeros que luchaban fuera de la Guardia Nacional. El General Degollado y su ejército de cristeros se apoyaban en la ayuda en la Brigada de Santa Juana de Arco. Esta era una organización de mujeres que ayudaban a los cristeros obteniendo suministros, especialmente las armas y municiones porque los cristeros no tenían armas adecuadas como el ejército federal. Ellas robaban en el ejército o compraban a otros, como los hacendados, armas y municiones. Los cristeros eran voluntarios con muy pocos conocimientos militares, la guerra nunca pasó de ser una guerra de guerrillas. Los cristeros luchaban bien en el campo, pero siempre fueron derrotados en los centros urbanos por el ejército federal que vigilaba las ciudades grandes. Había pocas batallas importantes, pero muchas escaramuzas y asesinatos (la mayoría del gobierno) en toda la rebelión.

En enero de 1927, la mayoría de los combates habían cesado. Los hombres que quedaban de las armas en la mano periódicamente atacaron a los soldados en grupos de 4 o 5. Para abril, el gobierno había abandonado un gran parte del campo, pero mantenido control de las ciudades.

En octubre del mismo año, el embajador de EEUU en México, Dwight Whitney Morrow, inició una serie de entrevistas con el Presidente Calles sobre la guerra y cuando Congreso nombró a Emilio Portes Gil el presidente provisional en septiembre de 1928, después del asesinato del presidente electo Obregón, Portes estaba más abierto a la Iglesia que Calles había sido. Portes permitía Morrow a restablecer su iniciativa de paz. Eventualmente, Morrow y varios eclesiásticos creó los Arreglos, un compromiso entre la Iglesia y el gobierno. Los cristeros, sin embargo, no eran incluidos en las discusiones. Aunque los artículos anticlericales de la Constitución no

73. Bailey, supra note 64, at 87-89.
74. Wilhelmsen, supra note 1, at 360.
eran eliminados, los obispos fueron invitados a regresar al país y la Misa podía reanudar. El Arzobispo de Morelia y Delegado, Leopoldo Ruiz escribió sobre los Arreglos:

[E]l Obispo Díaz y yo hemos tenido varias conferencias con el C. Presidente de la República. . . Me satisface manifestar que todas las conversaciones se han significado por un espíritu de mutua buena voluntad y respeto. Como consecuencia de dichas Declaraciones hechas por el C. Presidente, el clero mexicano reanudará los servicios religiosos de acuerdo con las leyes vigentes. Yo abrigo la esperanza de que la reanudación de los servicios religiosos [expresión protestante, propia de Morrow, su redactor] pueda conducir al Pueblo Mexicano, animado por un espíritu de buena voluntad, a cooperar en todos los esfuerzos morales que se hagan para beneficio de todos los de la tierra de nuestros mayores.

Los problemas con la Iglesia y el gobierno no fueron solucionados pero este acuerdo empezó una mejor relación entre el Estado y la Iglesia con los presidentes más recientes.

VI. Epílogo: beatificaciones y cambios en la Constitución

La fortaleza de los cristeros está representada en esta carta escrita en 1926 por Francisco Campos, un cristero de Santiago Bayacora, Durango, sobre sus compañeros durante el principio de los enfrentamientos:

[E]sos hombres no vieron que el gobierno tenía muchísimos soldados, muchísimo armamento, muchísimo dinero pa’hacerles la guerra; eso no vieron ellos, lo que vieron fue defender a su Dios, a su Religión, a su Madre que es la Santa Iglesia; eso es lo que vieron ellos. . . Los arroyos, las montañas, los montes, las colinas, son testigos de que aquellos hombres le hablaron a Dios Nuestro Señor con el Santo Nombre de VIVA CRISTO REY, VIVA LA SANTISIMA VIRGEN DE GUADALUPE, VIVA MÉXICO. Los mismos lugares son testigos de que aquellos hombres regaron el suelo con su sangre y, no contentos con eso, dieron sus mismas vidas por que Dios Nuestro Señor volviera otra vez. Y viendo Dios

75. Bailey, supra note 64, at 135-205.
76. Iraburu, supra note 63.
nuestro Señor que aquellos hombres de veras lo buscaban, se
dignó venir otra vez a sus templos, a sus altares, a los hogares
de los católicos, como lo estamos viendo ahorita, y encargó a
los jóvenes de ahora que si en lo futuro se llega a ofrecer otra
vez que no olviden el ejemplo que nos dejaron nuestros
antepasados.77

Trágicamente, había muchos mártires durante la Cristiada. El
jesuita Miguel Pro es probablemente el más famoso mártir porque su
asesinato fue filmado.78 Pro es solamente un ejemplo, sin embargo,
de la brutalidad de la guerra. La violencia incluido las mujeres y los
niños, también. Por ejemplo, los soldados cortaron las plantas de los
pies de José Sánchez del Río de Michoacán, un niño que tenía trece
años, quien luchaba como un cristero. Los soldados forzaron el chico
caminar al cementerio donde él fue apuñalado y pegado muchas
todas. Finalmente, se le mataron.79 Hubo centenares de asesinatos
como esto e en total durante la Cristiada, más de 100,000 personas
murieron.

Después de la concesión en los Arreglos, los sacerdotes volvieron
da sus parroquias. El problema, sin embargo, fue que los Arreglos no
habían incluido protección para los cristeros. Como resultado en los
años siguientes, unos 5,00080 antiguos oficiales cristeros fueron
asesinados por su actividad en la rebelión. Muchos años después,
desde 1992, el Vaticano finalmente había estado beatificando muchos
católicos activos como Pro, Sánchez y Anacleto González Flores.81 En
2000, la Papa Juan Pablo II, canonizó 25 mártires y en 2005, 13 más
fueron beatificados.82 La Cristiada afectaba la Iglesia de México en
una manera buena, también. En el siglo XX, la lucha en contra del
gobierno dio a los obispos y sacerdotes nueva energía vocaciones.83
Los católicos en todo el país fueron unidos y había una renovación en
su fe. En cierto sentido, la Constitución de 1917 causó un renacimiento
en la Iglesia de México.

77. Id.
78. Wilhelmsen, supra note 1, at 360-361.
79. Bailey, supra note 64, at 140.
80. Algunas fuentes dice que 1,500 murieron.
81. Wilhelmsen, supra note 1, at 360-361.
82. Servando Ortoll, 25 Martyrs Awaiting Canonization Were Not Cristeros, Says
Church, Guadalajara Reporter (Aug. 6, 1999), http://guadalajarareporter.com/features-
mainmenu-95/908-features/910-25-martyrs-awaiting-canonization-were-not-cristeros-says-
church.html.
83. Bailey, supra note 64, at 309-310.
Eventualmente, los presidentes introdujeron modificaciones en la Constitución. Este proceso desafortunadamente, tardó muchos años. La Iglesia nunca recuperó su poder, sin embargo, poco a poco cada presidente comenzó a ignorar los artículos anticlericales en la Constitución. Cuando Lázaro Cárdenas (1934-1940) fue elegido el presidente, los católicos podían adorar en sus iglesias con tranquilidad en muchas partes del país. El Presidente Manuel Ávila Camacho (1940-1946), un católico practicante, ayudó pacificar los problemas entre el gobierno y la Iglesia promulgando la revocación de las leyes anticlericales en todo el país. Finalmente, en 1993, el Presidente Carlos Salinas de Gortari (1988-1994) eliminó muchos aspectos de los artículos anticlericales de la Constitución de 1917. Con esta eliminación, el clero ahora puede votar y la Iglesia puede tener propiedad para sus iglesias.84

Anexos

Artículos anticlericales en la Constitución Federal de 1917

ARTICULO 3

84. Wilhelmsen, supra note 1, at 361.
La educación que imparte el Estado - Federación, Estados, Municipios, - tenderá a desarrollar armónicamente todas las facultades del ser humano y fomentará en él, a la vez el amor a la patria y la conciencia de la solidaridad internacional, en la independencia y en la justicia:

I. Garantizada por el artículo 24 la libertad de creencias, el criterio que orientará a dicha educación se mantendrá por completo ajeno a cualquier doctrina religiosa y, basado en los resultado del progreso científico, luchará contra la ignorancia y sus efectos, las servidumbres, los fanatismos y los prejuicios. Además:

a. Será democrática, considerando a la democracia no solamente como una estructura jurídica y un régimen político, sino como un sistema de vida fundado en el constante mejoramiento económico, social y cultural del pueblo;

b. Será nacional en cuanto -sin hostilidades ni exclusivismo- atenderá a la comprensión de nuestros problemas, al aprovechamiento de nuestros recursos, a la defensa de nuestra independencia política, al aseguramiento de nuestra independencia económica y a la continuidad y acrecentamiento de nuestra cultura; y

c. Contribuirá a la mejor convivencia humana, tanto por los elementos que aporte a fin de robustecer en el educando, junto con el aprecio para la dignidad de la persona y la integridad de la familia, la convicción del interés general de la sociedad, cuanto por el cuidado que ponga en sustentar los ideales de fraternidad e igualdad de los derechos de todos los hombres, evitando los privilegios de razas, sectas, de grupos, de sexos o de individuos;

II. Los particulares podrán impartir educación en todos sus tipos y grados. Pero por lo que concierne a la educación primaria, secundaria y normal y a la de cualquier tipo o grado, destinada a obreros y a campesinos deberán obtener previamente, en cada caso, la autorización expresa del poder público. Dicha autorización podrá ser negada o revocada, sin que contra tales resoluciones proceda juicio o recurso alguno;

III. Los planteles particulares dedicados a la educación en los tipos y grados que especifica la fracción anterior, deberán ajustarse, sin excepción, a lo dispuesto en los párrafos iniciales I y II del presente artículo y, además, deberán cumplir los planes y los programas oficiales;
IV. Las corporaciones religiosas, los ministros de los cultos, las sociedades por acciones que, exclusiva o predominantemente, realicen actividades educativas, y las asociaciones o sociedades ligadas con la propaganda de cualquier credo religioso, no interpondrán en forma alguna en planteles en que se imparta educación primaria, secundaria y normal, y la destinada a obreros o a campesinos;

V. El Estado podrá retirar, discrecionalmente, en cualquier tiempo, el reconocimiento de validez oficial a los estudios hechos en planteles particulares;

VI. La educación primaria será obligatoria;

VII. Toda la educación que el Estado imparta será gratuita; y

VIII. Las universidades y las demás instituciones de educación superior a las que la ley otorgue autonomía, tendrán la facultad y la responsabilidad de gobernarse a sí mismas; realizarán sus fines de educar, investigar y difundir la cultura de acuerdo con los principios de este artículo, respetando la libertad de cátedra e investigación y de libre examen y discusión de las ideas; determinarán sus planes y programas; fijarán los términos de ingreso, promoción y permanencia de su personal académico; y administrarán su patrimonio. Las relaciones laborales, tanto del personal académico como del administrativo, se normarán por el apartado A del artículo 123 de esta Constitución, en los términos y con las modalidades que establezca la Ley Federal del Trabajo conforme a las características propias de un trabajo especial, de manera que concuerde con la autonomía, la libertad de cátedra e investigación y los fines de las instituciones a que esta fracción se refiere;

IX. El Congreso de la Unión, con el fin de unificar y coordinar la educación en toda la República, expedirá las leyes necesarias, destinadas a distribuir la función social educativa entre la Federación, los Estados y los Municipios, a fijas las aportaciones económicas correspondientes a ese servicio público, y a señalar las sanciones aplicables a los funcionarios que no cumplan o no hagan cumplir las disposiciones relativas, lo mismo que a todos aquellos que las infrinjan.
ARTICULO 5

A ninguna persona podrá impedirse que se dedique a la profesión, industria, comercio o trabajo que le acomode, siendo lícitos. El ejercicio de esta libertad sólo podrá vedarse por determinación judicial, cuando se ataquen los derechos de tercero, o por resolución gubernativa, dictada en los términos que marque la ley, cuando se ofendan los derechos de la sociedad. Nadie puede ser privado del producto de su trabajo, sino por resolución judicial. La ley determinará en cada Estado, cuáles son las profesiones que necesitan título para su ejercicio, las condiciones que deban llenarse para obtenerlo y las autoridades que han de expedirlo. Nadie podrá ser obligado a prestar trabajos personales sin la justa retribución y sin su pleno consentimiento, salvo el trabajo impuesto como pena por la autoridad judicial, el cual se ajustará a lo dispuesto en las fracciones I y II del artículo 123. En cuanto a los servicios públicos, sólo podrán ser obligatorios, en los términos que establezcan las leyes respectivas, el de las armas y los jurados, así como el desempeño de los cargos concejales y los de elección popular, directa o indirecta. Las funciones electorales y censales tendrán carácter obligatorio y gratuito, pero serán retribuidas aquéllas que se realicen profesionalmente en los términos de esta Constitución y las leyes correspondientes. Los servicios profesionales de índole social serán obligatorios y retribuidos en los términos de la ley y con las excepciones que ésta señale. El Estado no puede permitir que se lleve a efecto ningún contrato, pacto o convenio que tenga por objeto el menoscabo, la pérdida o el irrevocable sacrificio de la libertad de la persona, ya sea por causa de trabajo, de educación o de voto religioso. La ley, en consecuencia, no permite el establecimiento de órdenes monásticas, cualquiera que sea la denominación u objeto con que pretendan erigirse. Tampoco puede admitirse convenio en que la persona pacte su proscripción o destierro, o en que renuncie temporal o permanentemente a ejercer determinada profesión, industria o comercio. El contrato de trabajo sólo obligará a prestar el servicio convenido por el tiempo que fije la ley, sin poder exceder de un año en perjuicio del trabajador, y no podrá extenderse, en ningún caso, a la renuncia, pérdida o menoscabo de cualquiera de los derechos políticos o civiles. La falta de cumplimiento de dicho contrato, por lo que respecta al trabajador, sólo obligará a éste a la correspondientes
responsabilidad civil, sin que en ningún caso pueda hacerse coacción sobre su persona.

ARTICULO 24

Todo hombre es libre para profesar la creencia religiosa que más le agrade y para practicar las ceremonias, devociones o actos del culto respectivo, en los templos o en su domicilio particular, siempre que no constituyan un delito o falta penado por la ley. Todo acto religioso de culto público deberá celebrarse precisamente dentro de los templos, los cuales estarán siempre bajo la vigilancia de la autoridad.

ARTICULO 27

La propiedad de las tierras y aguas comprendidas dentro de los límites del territorio nacional corresponde originariamente a la Nación, la cual ha tenido y tiene el derecho de transmitir el dominio de ellas a los particulares constituyendo la propiedad privada. Las expropiaciones sólo podrán hacerse por causa de utilidad pública y mediante indemnización. La Nación tendrá en todo tiempo el derecho de imponer a la propiedad privada las modalidades que dicte el interés público, así como el de regular, en beneficio social, el aprovechamiento de los elementos naturales susceptibles de apropiación, con objeto de hacer una distribución equitativa de la riqueza pública, cuidar de su conservación, lograr el desarrollo equilibrado del país y el de su conservación, lograr el desarrollo equilibrado del país y el mejoramiento de las condiciones de vida de la población rural y urbana. En consecuencia, se dictarán las medidas necesarias para ordenar los asentamientos humanos y establecer adecuadas previsiones, usos, reservas y destinos de tierras, aguas y bosques, a efecto de ejecutar obras públicas y de planear y regular la fundación, conservación, mejoramiento y crecimiento de los centros de población, para preservar y restaurar el equilibrio ecológico; para el fraccionamiento de los latifundios; para disponer en los términos de la ley reglamentaria, la organización y explotación colectiva de los ejidos y comunidades; para el desarrollo de la pequeña propiedad agrícola en explotación; para la creación de nuevos centros de población agrícola con tierras y aguas que les sean indispensables; para el fomento de la agricultura y para evitar la destrucción de los elementos naturales y los daños que la propiedad pueda sufrir en
perjuicio de la sociedad. Los núcleos de población que carezcan de tierras y aguas o no las tengan en cantidad suficiente para las necesidades de su población, tendrán derecho a que se les dote de ellas, tomándolas de las propiedades inmediatas, respetando siempre la pequeña propiedad agrícola en explotación. Corresponde a la Nación el dominio directo de todos los recursos naturales de la plataforma continental y los zócalos submarinos de las islas; de todos los minerales o sustancias que en vetas, mantos, masas o yacimientos constituyan depósitos cuya naturaleza sea distinta de los componentes de los terrenos, tales como los minerales de los que se extraigan metales y metaloides utilizados en la industria; los yacimientos de piedras preciosas, de sal de gema y las salinas formadas directamente por las aguas marinas; los productos derivados de la descomposición de las rocas, cuando su explotación necesite trabajos subterráneos; los yacimientos minerales u orgánicos de materias susceptibles de ser utilizadas como fertilizantes; los combustibles minerales sólidos; el petróleo y todos los carburantes de hidrógeno sólidos, líquidos o gaseosos, y el espacio situado sobre el territorio nacional, en la extensión y términos que fije el derecho internacional. Son propiedad de la Nación las aguas de los mares territoriales, en la extensión y términos que fije el derecho internacional; las aguas marinas interiores; la de las lagunas y esteros que se comuniquen permanente o intermitentemente con el mar; las de los lagos interiores de formación natural que estén ligados directamente a corrientes constantes; las de los ríos y sus afluentes directos o indirectos, desde el punto del cauce en que se inician las primeras aguas permanentes, intermitentes o torrenciales, hasta su desembocadura en el mar, lagos, lagunas o esteros de propiedad nacional; las de las corrientes constantes o intermitentes y sus afluentes directos o indirectos, cuando el cauce de aquéllas, en toda su extensión o en parte de ellas, sirva de límite al territorio nacional o a dos entidades federativas, cuando el cauce de aquéllas, en toda su extensión o en parte de ellas, sirva de límite al territorio nacional o a dos entidades federativas, o cuando pase de una entidad federativa a otra o cruce la línea divisoria de la República; las de los lagos, lagunas o esteros cuyos vasos, zonas o riberas, estén cruzados por líneas divisorias de dos o más entidades o entre la República y un país vecino, o cuando el límite de las riberas sirva de líndero entre dos entidades federativas o a la República con un país vecino; las de los manantiales que broten en las playas, zonas marítimas, cauces, vasos o ribera de los lagos, lagunas o esteros de propiedad nacional, y las que extraigan de las minas; y los cauces, lechos o ribera de los lagos y corrientes interiores en la extensión que fija la ley. Las aguas del
subsuelo pueden ser libremente alumbradas mediante obras artificiales y apropiarse por el dueño del terreno; pero, cuando lo exija el interés público o se afecten otros aprovechamientos, el Ejecutivo Federal podrá reglamentar su extracción y utilización y aún establecer zonas vedadas al igual que para las demás aguas de propiedad nacional. Cualesquiera otras aguas no incluidas en la enumeración anterior, se considerarán como parte integrante de la propiedad de los terrenos por los que corran o en los que se encuentren sus depósitos; pero si se localizaren en dos o más predios, el aprovechamiento de estas aguas se considerará de utilidad pública, y quedará sujeto a las disposiciones que dicten los Estados. En los casos a que se refieren los dos párrafos anteriores, el dominio de la Nación es inalienable e imprescriptible y la explotación, el uso o el aprovechamiento de los recursos de que se trata, por los particulares o por sociedades constituidas conforme a las leyes mexicanas, no podrá realizarse sino mediante concesiones, otorgadas por el Ejecutivo Federal, de acuerdo con las reglas y condiciones que establezcan las leyes. Las normas legales relativas a obras o trabajos de explotación de los minerales y substancias a que se refiere el párrafo cuarto, regularán la ejecución y comprobación de los que se efectúen o deban efectuarse a partir de su vigencia, independientemente de la fecha de otorgamiento de las concesiones, y su inobservancia dará lugar a la cancelación de éstas. El Gobierno Federal tiene la facultad de establecer reservas nacionales y suprimirlas. Las declaratorias correspondientes se harán por el Ejecutivo en los casos y condiciones que las leyes prevean. Tratándose del petróleo y de los carboños del hidrógeno sólidos, líquidos o gaseosos o de minerales radioactivos, no se otorgarán concesiones ni contratos, ni subsistirán los que en su caso se hayan otorgado y la Nación llevará a cabo la explotación de esos productos, en los términos que señale la ley reglamentaria respectiva. Corresponde exclusivamente a la Nación generar, conducir, transformar, distribuir y abastecer energía eléctrica que tenga por objeto la prestación de servicios público. En esta materia no se otorgarán concesiones a los particulares y la Nación aprovechará los bienes y recursos naturales que se requieran para dichos fines.

Corresponde también a la Nación el aprovechamiento de los combustibles nucleares para la generación de energía nuclear y la regulación de sus aplicaciones en otros propósitos. El uso de la energía nuclear sólo podrá tener fines pacíficos. La Nación ejerce en una zona económica exclusiva situada fuera del mar territorial y adyacente a éste, los derechos de soberanía y las jurisdicciones que
determinen las leyes del Congreso. La zona económica exclusiva se extenderá a doscientas millas náuticas, medidas a partir de la línea de base desde la cual se mide el mar territorial. En aquellos casos en que esa extensión produzca superposición con las zonas económicas exclusivas de otros Estados, la delimitación de las respectivas zonas se hará en la medida en que resulte necesario, mediante acuerdo con estos Estados. La capacidad para adquirir el dominio de las tierras y aguas de la Nación, se regirá por las siguientes prescripciones:

I. Sólo los mexicanos por nacimiento o por naturalización y las sociedades mexicanas tienen derecho para adquirir el dominio de las tierras, aguas y sus accesorios, o para obtener concesiones de explotación de minas o aguas. El Estado podrá conceder el mismo derecho a los extranjeros, siempre que convengan ante la Secretaría de Relaciones en considerarse como nacionales respecto de dichos bienes y en no invocar por lo mismo la protección de sus gobiernos por lo que se refiere a aquéllos; bajo la pena, en cuanto de faltar al convenio, de perder en beneficio de la Nación los bienes que hubieren adquirido en virtud del mismo. En una faja de cien Kilómetros a lo largo de las fronteras y de cincuenta en las playas, por ningún motivo podrán los extranjeros adquirir el dominio directo sobre las tierras y aguas. El Estado, de acuerdo con los intereses públicos internos y los principios de reciprocidad, podrá, a juicio de la Secretaría de Relaciones, conceder autorización a los Estados extranjeros para que adquieran, en el lugar permanente de la residencia de los Poderes Federales, la propiedad privada de bienes inmuebles necesarios para el servicio directo de sus embajadores o legaciones;

II. Las asociaciones religiosas denominadas iglesias, cualquiera que sea su credo, no podrán, en ningún caso, tener capacidad para adquirir, poseer o administrar bienes raíces, ni capitales impuestos sobre ellos; los que tuvieren actualmente, por sí o por interpósita persona, entrarán al dominio de la Nación, concediéndose acción popular para denunciar los bienes que se hallaren en tal caso. La prueba de presunciones será bastante para declarar fundada la denuncia. Los templos destinados al culto público son de la propiedad de la Nación, representada por el Gobierno Federal, quien determinará los que deben continuar destinados a su objeto. Los obispados, casas curales, seminarios, asilos o colegios de asociaciones religiosas, conventos, o cualquier otro edificio que hubiere sido construido o destinado a la administración, propaganda o enseñanza de un culto religioso, pasarán desde luego, de pleno derecho, al
dominio directo de la Nación, para destinarse exclusivamente a los servicios públicos de la Federación o de los Estados en sus respectivas jurisdicciones. Los templos que en lo sucesivo se erigieren para el culto público serán propiedad de la Nación;

III. Las instituciones de beneficencia, pública o privada, que tengan por objeto el auxilio de los necesitados, la investigación científica, la difusión de la enseñanza, la ayuda recíproca de los asociados o cualquier otro objeto lícito, no podrán adquirir más bienes raíces que los indispensables para su objeto, inmediata o directamente destinados a él, pero podrán adquirir, tener y administrar capitales impuestos sobre bienes raíces, siempre que los plazos de imposición no excedan de diez años. En ningún caso las instituciones de esta índole podrán estar bajo el patronato, dirección, administración, cargo o vigilancia de corporaciones o instituciones religiosas, ni de ministros de los cultos o de sus asimilados, aunque éstos o aquéllos no estuvieren en ejercicio;

IV. Las sociedades comerciales por acciones, no podrán adquirir, poseer o administrar fincas rústicas. Las sociedades de esta clase que se constituyeren para explotar cualquier industria fabril, minera, petrolera, o para algún otro fin que no sea agrícola, podrán adquirir, poseer o administrar terrenos únicamente en la extensión que sea estrictamente necesaria para los establecimientos o servicios de los objetos indicados, y que el Ejecutivo de la Unión, o de los Estados, fijarán en cada caso;

V. Los bancos debidamente autorizados, conforme a las leyes de instituciones de crédito, podrán tener capitales impuestos sobre propiedades urbanas y rústicas, de acuerdo con las prescripciones de dichas leyes, pero no podrán tener en propiedad o en administración más bienes raíces que los enteramente necesarios para su objeto directo;

VI. Fuera de las corporaciones a que se refieren las fracciones III, IV y V, así como de los núcleos de población que de hecho o por derecho guarden el estado comunal, o de los núcleos dotados, restituidos o constituidos en centro de población agrícola, ninguna otra corporación civil podrá tener en propiedad o administrar por sí bienes raíces o capitales impuestos sobre ellos, con la única excepción de los edificios destinados inmediata y directamente al objeto de la institución. Los Estados y el Distrito Federal, lo mismo que los
Municipios de todos la República, tendrán plena capacidad para adquirir y poseer todos los bienes raíces necesarios para los servicios públicos. Las leyes de la Federación y de los Estados en sus respectivas jurisdicciones, determinarán los casos en que sea de utilidad pública la ocupación de la propiedad privada, y de acuerdo con dichas leyes la autoridad administrativa hará la declaración correspondiente. El precio que se fijarán como indemnización a la cosa expropiada se basará en la cantidad que como valor fiscal de ella figure en las oficinas catastrales o recaudadoras, ya sea que este valor haya sido manifestado por el propietario o simplemente aceptado por él de un modo tácito por haber pagado sus contribuciones con esta base. El exceso de valor o el demérito que haya tenido la propiedad particular por las mejoras o deterioros ocurridos con posterioridad a la fecha de la asignación del valor fiscal, será lo único que deberá quedar sujeto a juicio pericial y a resolución judicial. Esto mismo se observará cuando se trate de objetos cuyo valor no esté fijado en las oficinas rentísticas. El ejercicio de las acciones que corresponden a la Nación, por virtud de las disposiciones del presente artículo, se hará efectivo por el procedimiento judicial; pero dentro de este procedimiento y por orden de los tribunales correspondientes, que se dictará en el plazo máximo de un mes, las autoridades administrativas procederán desde luego a la ocupación, administración, remate o venta de las tierras o aguas de que se trate y todas sus accesorias, sin que en ningún caso pueda revocarse lo hecho por las mismas autoridades antes de que se dicte sentencia ejecutoriada;

VII. Los núcleos de población, que de hecho o por derecho guarden el estado comunal, tendrán capacidad para disfrutar en común las tierras, bosques y aguas que les pertenezcan o que se les hayan restituido o restituyeren. Son de jurisdicción federal todas las cuestiones que, por límites de terrenos comunales, cualquiera que sea el origen de éstos, se hallen pendientes o se susciten entre dos o más núcleos de población. El Ejecutivo Federal se abocará al conocimiento de dichas cuestiones y propondrá a los interesados la resolución definitiva de las mismas. Si estuvieren conformes, la proposición del Ejecutivo tendrá fuerza de resolución definitiva y será irrevocable; en caso contrario, la parte o partes inconformes podrán reclamarla ante la Suprema Corte de Justicia de la Nación, sin perjuicio de la ejecución inmediata de la proposición presidencial.
La ley fijará el procedimiento breve conforme el cual deberán tramitarse las mencionadas controversias;

VIII. Se declaran nulas;
   a. Todas las enajenaciones de tierras, aguas y montes pertenecientes a los pueblos, rancherías, congregaciones o comunidades, hechas por los jefes políticos, gobernadores de los Estados, o cualquiera otra autoridad local, en contravención a lo dispuesto en la ley de 25 de junio de 1856 y demás leyes y disposiciones relativas;
   b. Todas las concesiones, composiciones o ventas de tierras, aguas y montes hechas por las Secretarías de Fomento, Hacienda o cualquiera otra autoridad federal, desde el día 1o. de diciembre de 1876 hasta la fecha, con las cuales se hayan invadido y ocupado ilegalmente los ejidos, terrenos de común repartimiento, o cualquiera otra clase pertenecientes a los pueblos, rancherías, congregaciones o comunidades y núcleos de población;
   c. Todas las diligencias de apeo o deslinde, transacciones, enajenaciones o remates practicados durante el período de tiempo a que se refiere la fracción anterior por compañías, jueces u otras autoridades de los Estados o de la Federación, con los cuales se hayan invadido u ocupado ilegalmente tierras, aguas y montes de los ejidos, terrenos de común repartimiento, o de cualquiera otra clase, pertenecientes a núcleos de población.

   Los repartimientos hechos con apego a la ley de 25 de junio de 1856 y poseídas, en nombre propio a título de dominio por más de diez años, cuando su superficie no exceda de cincuenta hectáreas;

IX. La división o reparto que se hubiere hecho con apariencia de legítima entre los vecinos de algún núcleo de población y en la que haya habido error o vicio, podrá ser nulificada cuando así lo soliciten las tres cuartas partes de los vecinos que estén en posesión de una cuarta parte de los terrenos materia de la división, o una cuarta parte de los mismos vecinos cuando estén en posesión de las tres cuartas partes de los terrenos;

X. Los núcleos de población que carezcan de ejidos o que no puedan lograr su restitución por falta de títulos, por imposibilidad de identificarlos, o porque legalmente hubieren sido enajenados, serán dotados con tierras y aguas suficientes para constituirlos, conforme a las necesidades de su población, sin que en ningún caso deje de concedérseles la extensión que necesiten, y al efecto se expropiará, por
cuenta del gobierno Federal, el terreno que baste a ese fin, tomándolo del que se encuentre inmediato a los pueblos interesados.

La superficie o unidad individual de dotación no deberá ser en lo sucesivo menor de diez hectáreas de terrenos de riego o humedad, o a falta de ellos, de sus equivalentes en otras clases de tierras, en los términos del párrafo tercero de la fracción XV de este artículo;

XI. Para los efectos de las disposiciones contenidas en este artículo, y de las leyes reglamentarias que se expidan, se crean:
   a. Una dependencia directa del Ejecutivo Federal encargada de la aplicación de las leyes agrarias y de su ejecución;
   b. Un cuerpo consultivo compuesto de cinco personas, que serán designadas por el Presidente de la República, y que tendrá las funciones que las leyes orgánicas reglamentarias le fijen;
   c. Una comisión mixta compuesta de representantes iguales de la Federación, de los gobiernos locales y de un representante de los campesinos, cuya designación se hará en los términos que prevenga la ley reglamentaria respectiva, que funcionará en cada Estado y en el Distrito Federal, con las atribuciones que las mismas leyes orgánicas y reglamentarias determinen;
   d. Comités particulares ejecutivos para cada uno de los núcleos de población que tramiten expedientes agrarios;
   e. Comisariados ejidales para cada uno de los núcleos de población que posean ejidos;

XII. Las solicitudes de restitución o dotación de tierras o aguas se presentarán en los Estados directamente ante los gobernadores. Los gobernadores turnarán las solicitudes a las comisiones mixtas, las que sustanciarán los expedientes en plazo perentorio y emitirán dictamen; los gobernadores de los Estados aprobarán o modificarán el dictamen de las comisiones mixtas y ordenarán que se dé posesión inmediata de las superficies que, en su concepto, procedan. Los expedientes pasarán entonces al Ejecutivo Federal para su resolución. Cuando los gobernadores o cumplan con lo ordenado en el párrafo anterior, dentro del plazo perentorio que fije la ley, se considerará desaprobado el dictamen de las comisiones mixtas y se turnará el expediente inmediatamente al Ejecutivo Federal. Inversamente, cuando las comisiones mixtas no formulen dictamen en plazo perentorio, los gobernadores tendrán facultad para conceder posesiones en la extensión que juzguen procedente;
XIII. La dependencia del Ejecutivo y el cuerpo consultivo agrario dictaminarán sobre la aprobación, rectificación o modificación de los dictámenes formulados por las comisiones mixtas, y con las modificaciones que hayan introducido los gobiernos locales, se informará al ciudadano Presidente de la República, para que éste dicte resolución como suprema autoridad agraria;

XIV. Los propietarios afectados con resoluciones dotatorias o restitutorias de ejidos o aguas que se hubiesen dictado en favor de los pueblos, o que en lo futuro se dictaren, no tendrán ningún derecho, ni recurso legal ordinario, ni podrán promover el juicio de amparo. Los afectados con dotación, tendrán solamente el derecho de acudir al Gobierno Federal para que les sea pagada la indemnización correspondiente. Este derecho deberán ejercitarlo los interesados dentro del plazo de un año, a contar desde la fecha en que se publique la resolución respectiva en el Diario Oficial de la Federación. Fenecido ese término, ninguna reclamación será admitida. Los dueños o poseedores de predios agrícolas o ganaderos, en explotación, a los que se haya expedido, o en lo futuro se expida, certificado de inafectabilidad, podrán promover el juicio de amparo contra la privación o afectación agraria ilegales de sus tierras o aguas;

XV. Las comisiones mixtas, los gobiernos locales y las demás autoridades encargadas de las tramitaciones agrarias, no podrán afectar, en ningún caso, la pequeña propiedad agrícola o ganadera en explotación e incurrirán en responsabilidad, por violaciones a la Constitución, en caso de conceder dotaciones que la afecten. Se considerará pequeña propiedad agrícola la que no exceda de cien hectáreas de riego o humedad de primera o sus equivalentes en otras clases de tierras en explotación. Para los efectos de la equivalencia se computará una hectárea de riego por dos de temporal, por cuatro de agostadero de buena calidad y por ocho de monte o de agostadero en terrenos áridos. Se considerará, asimismo, como pequeña propiedad, las superficies que no excedan de doscientas hectáreas en terrenos de temporal o de agostadero susceptibles de cultivo; de ciento cincuenta cuando las tierras se dediquen al cultivo del algodón, si reciben riego de avenida, fluvial o por bombeo; de trescientas, en explotación, cuando se destinen al cultivo de plátano, caña de azúcar, café, henequén, hule, cocotero, vid, olivo, quina, vainilla, cacao o árboles frutales. Se considerará pequeña propiedad ganadera la que no exceda de la superficie necesaria para mantener hasta quinientas
cabezas de ganado mayor o su equivalente en ganado menor, en los términos que fije la ley, de acuerdo con la capacidad forrajera de los terrenos.

Cuando, debido a obras de riego, drenaje o cualesquiera otras ejecutadas por los dueños o poseedores de una pequeña propiedad a la que se le haya expedido certificado de inafectabilidad, se mejore la calidad de sus tierras para la explotación agrícola o ganadera que se trate, tal propiedad no podrá ser objeto de afectaciones agrarias, aun cuando, en virtud de la mejoría obtenida, se rebasen los máximos señalados por esta fracción, siempre que se reúnan los requisitos que fije la ley;

XVI. Las tierras que deban ser objeto de adjudicación individual deberán fraccionarse precisamente en el momento de ejecutar las resoluciones presidenciales, conforme a las leyes reglamentarias;

XVII. El Congreso de la Unión y las legislaturas de los Estados, en sus respectivas jurisdicciones expedirán leyes para fijar la extensión máxima de la propiedad rural, y para llevar a cabo el fraccionamiento de los excedentes, de acuerdo con las siguientes bases:

a. En cada Estado y en el Distrito Federal se fijará la extensión máxima de tierra de que pueda ser dueño un solo individuo, o sociedad legalmente constituida;

b. El excedente de la extensión fijada deberá ser fraccionado por el propietario en el plazo que señalen las leyes locales, y las fracciones serán puestas a la venta en las condiciones que aprueben los gobiernos de acuerdo con las mismas leyes;

c. Si el propietario se opusiere al fraccionamiento se llevará éste a cabo por el gobierno local, mediante la expropiación;

d. El valor de las fracciones será pagado por anualidades que amorticen capital y réditos, a un tipo de interés que no exceda de tres por ciento anual;

e. Los propietarios estarán obligados a recibir los Bonos de la Deuda Agraria local para garantizar el pago de la propiedad expropiada. Con este objeto, el Congreso de la Unión expedirá una ley facultando a los Estados para crear su Deuda Agraria;

f. Ningún fraccionamiento podrá sancionarse sin que hayan quedado satisfechas las necesidades agrarias de los poblados inmediatos. Cuando existan proyectos de fraccionamiento por
ejecutar, los expedientes agrarios serán tramitados de oficio en plazo perentorio;

g. Las leyes locales organizarán el patrimonio de familia, determinando los bienes que deben constituirlo, sobre la base de que será inalienable y no estará sujeto a embargo, ni a gravamen ninguno; y

XVIII. Se declaran revisables todos los contratos y concesiones hechos por los gobiernos anteriores desde el año de 1876, que hayan traído por consecuencia el acaparamiento de tierras, aguas y riquezas naturales de la Nación por una sola persona o sociedad, y se faculta al Ejecutivo de la Unión para declararlos nulos cuando impliquen perjuicios graves para el interés público;

XIX. Con base en esta Constitución, el Estado dispondrá las medidas para la expedita y honesta impartición de la justicia agraria con objeto de garantizar la seguridad jurídica en la tenencia de la tierra ejidal, comunal y de la pequeña propiedad, y apoyará la asesoría legal de los campesinos;

XX. El Estado promoverá las condiciones para el desarrollo rural integral, con el propósito de generar empleo y garantizar a la población campesina el bienestar y su participación e incorporación en el desarrollo nacional, y fomentará la actividad agropecuaria y forestal para el óptimo uso de la tierra, con obras de infraestructura, insumos, créditos, servicios de capacitación y asistencia técnica. Asimismo expedirá la legislación reglamentaria para planear y organizar la producción agropecuaria, su industrialización y comercialización, considerándolas de interés público.

ARTICULO 123

Toda persona tiene derecho al trabajo digno y socialmente útil; al efecto, se promoverán la creación de empleos y la organización social para el trabajo, conforme a la ley.

El Congreso de la Unión, sin contravenir a las bases siguientes, deberá expedir leyes sobre el trabajo, las cuales regirán:
A. Entre los obreros, jornaleros, empleados, domésticos, artesanos, y de una manera general, todo contrato de trabajo:
   I. La duración de la jornada máxima será de ocho horas;

   II. La jornada máxima de trabajo nocturno será de siete horas. Quedan prohibidas: las labores insalubres o peligrosas, el trabajo nocturno industrial y todo otro trabajo después de las diez de la noche, de los menores de dieciséis años;

   III. Queda prohibida la utilización del trabajo de los menores de catorce años. Los mayores de esta edad y menores de dieciséis, tendrán como jornada máxima la de seis horas;

   IV. Por cada seis días de trabajo deberá disfrutar el operario de un día de descanso, cuando menos;

   V. Las mujeres durante el embarazo no realizarán trabajos que exijan un esfuerzo considerable y signifiquen un peligro para su salud en relación con la gestación; gozarán forzosamente de un descanso de seis semanas anteriores a la fecha fijada aproximadamente para el parto y seis semanas posteriores al mismo, debiendo percibir su salario íntegro y conservar su empleo y los derechos que hubieren adquirido por la relación de trabajo. En el período de lactancia, tendrán dos descansos extraordinarios por día, de media hora cada uno, para alimentar a sus hijos;

   VI. Los salarios mínimos que deberán disfrutar los trabajadores serán generales o profesionales. Los primeros regirán en las áreas geográficas que se determinen; los segundos se aplicarán en ramas determinadas de la actividad económica o en profesiones, oficios o trabajos especiales. Los salarios mínimos deberán ser suficientes para satisfacer las necesidades normales de un jefe de familia, en el orden material, social y cultural, y para proveer a la educación obligatoria de los hijos. Los salarios mínimos profesionales se fijarán considerando, además, las condiciones de las distintas actividades económicas.

   Los salarios mínimos se fijarán por una comisión nacional integrada por representantes de los trabajadores, de los patrones y del gobierno, la que podrá auxiliarse de las comisiones especiales de
carácter consultivo que considere indispensables para el mejor desempeño de sus funciones;

VII. Para trabajo igual debe corresponder salario igual, sin tener en cuenta sexo ni nacionalidad;

VIII. El salario mínimo quedará exceptuado de embargo, compensación o descuento;

IX. Los trabajadores tendrán derecho a una participación en las utilidades de las empresas, regulada de conformidad con las siguientes normas:
   a) Una comisión nacional, integrada con representantes de los trabajadores, de los patronos y del gobierno, fijará el porcentaje de utilidades que deba repetirse entre los trabajadores;
   b) La comisión nacional practicará las investigaciones y realizará los estudios necesarios y apropiados para conocer las condiciones generales de la economía nacional. Tomará asimismo en consideración la necesidad de fomentar el desarrollo industrial del país, el interés razonable que debe percibir el capital y la necesaria reinversión de capitales;
   c) La misma comisión podrá revisar el porcentaje fijado cuando existan nuevos estudios e investigaciones que lo justifiquen;
   d) La ley podrá exceptuar de la obligación de repartir utilidades a las empresas de nueva creación durante un número determinado y limitado de años, a los trabajos de exploración y a otras actividades cuando lo justifique su naturaleza y condiciones particulares;
   e) Para determinar el monto de las utilidades de cada empresa se tomará como base la renta gravable de conformidad con las disposiciones de la Ley del Impuesto sobre la Renta. Los trabajadores podrán formular ante la oficina correspondiente de la Secretaría de Hacienda y Crédito Público las objeciones que juzguen convenientes, ajustándose al procedimiento que determine la ley;
   f) El derecho de los trabajadores a participar en las utilidades no implica la facultad de intervenir en la dirección o administración de las empresas;

X. El salario deberá pagarse precisamente en moneda de curso legal, no siendo permitido hacerlo efectivo con mercancías, ni con vales, fichas o cualquier otro signo representativo con que se pretenda sustituir la moneda;
XI. Cuando por circunstancias extraordinarias, deban aumentarse las horas de jornada, se abonará como salario por el tiempo excedente un 100% más de los fijado para las horas normales. En ningún caso el trabajo extraordinario podrá exceder de tres horas diarias no de tres veces consecutivas. Los menores de dieciséis años no serán admitidos en esta clase de trabajos;

XII. Toda empresa agrícola, industrial, minera o de cualquier otra clase de trabajo, estará obligada, según lo determinen las leyes reglamentarias a proporcionar a los trabajadores habitaciones cómodas e higiénicas. Esta obligación se cumplirá mediante las aportaciones que las empresas hagan a un fondo nacional de la vivienda a fin de constituir depósitos en favor de sus trabajadores y establecer un sistema de financiamiento que permita otorgar a éstos crédito barato y suficiente para que adquieran en propiedad tales habitaciones. Se considera de utilidad social la expedición de una ley para la creación de un organismo integrado por representantes del Gobierno Federal, de los trabajadores y de los patrones, que administre los recursos del fondo nacional de la vivienda. Dicha ley regulará las formas y procedimientos conforme a los cuales los trabajadores podrán adquirir en propiedad las habitaciones antes mencionadas. Las negociaciones a que se refiere el párrafo primero de esta fracción, situadas fuera de las poblaciones, están obligadas a establecer escuelas, enfermerías y demás servicios necesarios a la comunidad. Además, en esos mismos centros de trabajo, cuando su población exceda de doscientos habitantes, deberá reservarse un espacio de terreno, que no será menor de cinco mil metros cuadrados, para el establecimiento de mercados públicos, instalación de edificios destinados a los servicios municipales y centros recreativos. Queda prohibido en todo centro de trabajo el establecimiento de expendios de bebidas embriagantes y de casas de juego de azar;

XIII. Las empresas, cualquiera que sea su actividad, estarán obligadas a proporcionar a sus trabajadores, capacitación o adiestramiento para el trabajo. La ley reglamentaria determinará los sistemas, métodos y procedimientos conforme a los cuales los patrones deberán cumplir con dicha obligación;

XIV. Los empresarios serán responsables de los accidentes del trabajo y de las enfermedades profesionales de los trabajadores,
sufridas con motivo o en ejercicio de la profesión o trabajo que ejecuten; por lo tanto, los patronos deberán pagar la indemnización correspondiente, según que haya traído como consecuencia la muerte o simplemente incapacidad temporal o permanente para trabajar, de acuerdo con lo que las leyes determinen. Esta responsabilidad subsistirá aun en el caso de que el patrono contrate el trabajo por un intermediario;

XV. El patrón estará obligado a observar, de acuerdo con la naturaleza de su negociación, los preceptos legales sobre higiene y seguridad en las instalaciones de su establecimiento, y a adoptar las medidas adecuadas para prevenir accidentes en el uso de las máquinas, instrumentos y materiales de trabajo, así como a organizar de tal manera éste, que resulte la mayor garantía para la salud y la vida de los trabajadores, y del producto de la concepción, cuando se trate de mujeres embarazadas. Las leyes contendrán, al efecto, las sanciones procedentes en cada caso;

XVI. Tanto los obreros como los empresarios tendrán derecho para coligarse en defensa de sus respectivos intereses, formando sindicatos, asociaciones profesionales, etcétera;

XVII. Las leyes reconocerán como un derecho de los obreros y de los patronos las huelgas y los paros;

XVIII. Las huelgas serán lícitas cuando tengan por objeto conseguir el equilibrio entre los diversos factores de la producción, armonizando los derechos del trabajo con los del capital. En los servicios públicos será obligatorio para los trabajadores dar aviso, con diez días de anticipación, a la Junta de Conciliación y Arbitraje de la fecha señalada para la suspensión del trabajo. Las huelgas serán consideradas como ilícitas únicamente cuando la mayoría de los huelguistas ejerriere actos violentos contra las personales o las propiedades o, en caso de guerra, cuando aquéllos pertenezcan a los establecimientos y servicios que dependen del gobierno;

XIX. Los paros serán lícitos únicamente cuando el exceso de producción haga necesario suspender el trabajo para mantener los precios en un límite costeable, previa aprobación de la Junta de Conciliación y Arbitraje;
XX. Las diferencias o los conflictos entre el capital y el trabajo se sujetarán a la decisión de una Junta de Conciliación y Arbitraje, formada por igual número de representantes de los obreros y de los patronos y uno del gobierno;

XXI. Si el patrono se negare a someter sus diferencias al arbitraje o a aceptar el laudo pronunciado por la Junta, se dará por terminado el contrato de trabajo y quedará obligado a indemnizar al obrero con el importe de tres meses de salario, además de la responsabilidad que le resulte del conflicto. Esta disposición no será aplicable en los casos de las acciones consignadas en la fracción siguiente. Si la negativa fuere de los trabajadores, se dará por terminado el contrato de trabajo;

XXII. El patrono que despida a un obrero sin causa justificada o por haber ingresado a una asociación o sindicato, o por haber tomado parte en una huelga lícita, estará obligado, a elección del trabajador, a cumplir el contrato o a indemnizarlo con el importe de tres meses de salario. La ley determinará los casos en que el patrono podrá ser eximido de la obligación de cumplir el contrato, mediante el pago de una indemnización. Igualmente tendrá la obligación de indemnizar al trabajador con el importe de tres meses de salario, cuando se retire del servicio por falta de probidad del patrono o por recibir de él malos tratamientos, ya sea en su persona o en la de su cónyuge, padres, hijos o hermanos. El patrono no podrá eximirse de esta responsabilidad, cuando los malos tratamientos provengan de dependientes o familiares que obren con el consentimiento o tolerancia de él;

XXIII. Los créditos en favor de los trabajadores por salario o sueldo devengados en el último años, y por indemnizaciones, tendrán preferencia sobre cualesquiera otros en los casos de concurso o de quiebra;

XXIV. De las deudas contraídas por los trabajadores a favor de sus patronos, de sus asociados, familiares o dependientes, sólo será responsable el mismo trabajador, y en ningún caso y por ningún motivo se podrá exigir a los miembros de su familia, ni serán exigibles dichas deudas por la cantidad excedente del sueldo del trabajador en un mes;

XXV. El servicio para la colocación de los trabajadores será gratuito para éstos, ya se efectúe por oficinas municipales, bolsas de
trabajo o por cualquiera otra institución oficial o particular. En la
prestación de este servicio se tomará en cuenta la demanda de trabajo
y, en igualdad de condiciones, tendrán prioridad quienes representen
la única fuente de ingresos en su familia;

XXVI. Todo contrato de trabajo celebrado entre un mexicano y un
empresario extranjero deberá ser legalizado por la autoridad
municipal competente y visado por el cónsul de la nación adonde el
trabajador tenga que ir, en el concepto de que, además de las
cláusulas ordinarias, se especificará claramente que los gastos de la
repatriación quedan a cargo del empresario contratante;

XXVII. Serán condiciones nulas y no obligarán a los contratantes,
aunque se expresen en el contrato:
   a) Las que estipulen una jornada inhumana, por lo
notoriamente excesiva, dada la índole del trabajo;
   b) Las que fijen un salario que no sea remunerador a juicio de
las Juntas de Conciliación y Arbitraje;
   c) Las que estipulen un plazo mayor de una semana para la
percepción del jornal;
   d) Las que señalen un lugar de recreo, fonda, café, taberna,
cantina o tienda para efectuar el pago del salario, cuando no se trate
de empleados en esos establecimientos;
   e) Las que entrañen obligación directa o indirecta de adquirir
los artículos de consumo en tiendas o lugares determinados;
   f) Las que permitan retener el salario en concepto de multa;
   g) Las que constituyan renuncia hecha por el obrero de las
indemnizaciones a que tenga derecho por accidente del trabajo y
enfermedades profesionales, perjuicios ocasionados por el
incumplimiento del contrato o por despedirle de la obra;
   h) Todas las demás estipulaciones que impliquen renuncia de
algún derecho consagrado a favor del obrero en las leyes de
protección y auxilio a los trabajadores;

XXVIII. Las leyes determinarán los bienes que constituyan el
patrimonio de la familia, bienes que serán inalienables, no podrán
sujetarse a gravámenes reales ni embargos y serán transmisibles a
título de herencia con simplificación de las formalidades de los juicios
sucesorios;
XXIX. Es de utilidad pública la Ley del Seguro Social, y ella comprende seguros de invalidez, de vejez, de vida, de cesación involuntaria del trabajo, de enfermedades y accidentes, de servicio de guardería y cualquier otro encaminado a la protección y bienestar de los trabajadores, campesinos, no asalariados y otros sectores sociales y sus familiares;

XXX. Asimismo, serán consideradas de utilidad social las sociedades cooperativas para la construcción de casas baratas y higiénicas, destinadas a ser adquiridas en propiedad por los trabajadores en plazos determinados; y

XXXI. La aplicación de las leyes del trabajo corresponde a las autoridades de los Estados, en sus respectivas jurisdicciones, pero es de la competencia exclusiva de las autoridades federales en los asuntos relativos a:

a) Ramas industriales y servicios:
   1. Textil;
   2. Eléctrica;
   3. Cinematográfica;
   4. Hulera;
   5. Azucarera;
   6. Minera
   7. Metalúrgica y siderúrgica, abarcando la explotación de los minerales, el beneficio y la fundición de los mismos, así como la obtención de hierro metálico y acero a todas sus formas y ligas y los productos laminados de los mismos;
   8. De hidrocarburos;
   9. Petroquímica;
   10. Cementera;
   11. Calera;
   12. Automotriz, incluyendo autopartes mecánicas o eléctricas;
   13. Química, incluyendo la química farmacéutica y medicamentos;
   14. De celulosa y papel;
   15. De aceites y grasas vegetales;
   16. Productora de alimentos, abarcando exclusivamente la fabricación de los que sean empacados, enlatados o envasados o que se destinen a ello;
   17. Elaboradora de bebidas que sean envasadas o enlatadas o que se destinen a ello;
18. Ferrocarrilera;
19. Madera básica, que comprende la producción de aserradero y la fabricación de triplay o aglutinados de madera;
20. Vidriera, exclusivamente por lo que toca a la fabricación de vidrio plano, liso o labrado, o de envases de vidrio;
21. Tabacalera, que comprende el beneficio o fabricación de productos de tabaco; y
22. Servicios de banca y crédito;

b) Empresas:
1. Aquéllas que sean administradas en forma directa o descentralizada por el Gobierno Federal;
2. Aquéllas que actúen en virtud de un contrato o concesión federal y las industrias que les sean conexas; y
3. Aquéllas que ejecuten trabajos en zonas federales o que se encuentren bajo jurisdicción federal, en las aguas territoriales o en las comprendidas en la zona económica exclusiva de la Nación. También será competencia exclusiva de las autoridades federales, la aplicación de las disposiciones de trabajo en los asuntos relativos a conflictos que afecten a dos o más entidades federativas, contratos colectivos que hayan sido declarados obligatorios en más de una entidad federativa; obligaciones patronales en materia educativa, en los términos de ley; y respecto a las obligaciones de los patrones en materia de capacitación y adiestramiento de sus trabajadores, así como de seguridad e higiene en los centros de trabajo, para lo cual, las autoridades federales contarán con el auxilio de las estatales, cuando se trate de ramas o actividades de jurisdicción local, en los términos de la ley reglamentaria correspondiente.

B. Entre los Poderes de la Unión, el Gobierno del Distrito Federal y sus trabajadores:

I. La jornada diaria máxima de trabajo diurna y nocturna será de ocho y siete horas, respectivamente. Las que excedan serán extraordinarias y se pagarán con un ciento por ciento más de la remuneración fijada para el servicio ordinarios. En ningún caso el trabajo extraordinario podrá exceder de tres horas diarias ni de tres veces consecutivas;

II. Por cada seis días de trabajo disfrutará el trabajador de un día de descanso, cuando menos, con goce de salario íntegro;
III. Los trabajadores gozarán de vacaciones, que nunca serán menores de veinte días al año;

IV. Los salarios serán fijados en los presupuesto respectivos, sin que su cuantía pueda ser disminuida durante la vigencia de éstos. En ningún caso los salarios podrán ser inferiores al mínimo para los trabajadores en general en el Distrito Federal y en las entidades de la República;

V. A trabajo igual corresponderá salario igual, sin tener en cuenta el sexo;

VI. Sólo podrán hacerse retenciones, descuentos, deducciones o embargos al salario, en los casos previstos en las leyes;

VII. La designación del personal se hará mediante sistemas que permitan apreciar los conocimientos y aptitudes de los aspirantes. El estado organizará escuelas de administración pública;

VIII. Los trabajadores gozarán de derechos de escalafón a fin de que los ascensos se otorguen en función de los conocimientos, aptitudes y antigüedad. En igualdad de condiciones, tendrá prioridad quien represente la única fuente de ingreso en su familia;

IX. Los trabajadores sólo podrán ser suspendidos o cesados por causa justificada, en los términos que fije la ley. En caso de separación injustificada tendrán derecho a optar por la reinstalación en su trabajo o por la indemnización correspondiente, previo el procedimiento legal. En los casos de supresión de plazas, los trabajadores afectados tendrán derecho a que se les otorgue otra equivalente a la suprimida o a la indemnización de ley;

X. Los trabajadores tendrán el derecho de asociarse para la defensa de sus intereses comunes. Podrán, asimismo, hacer uso del derecho de huelga, previo el cumplimiento de os requisitos que determine la ley, respecto de una o varias dependencias de los Poderes Públicos, cuando se violen de manera general y sistemática los derechos que este artículo les consagra;

XI. La seguridad social se organizará conforme a las siguientes bases mínimas:
a) Cubrirá los accidentes y enfermedades profesionales; las enfermedades no profesionales y maternidad; y la jubilación, la invalidez, vejez y muerte;

b) En caso de accidente o enfermedad, se conservará el derecho al trabajo por el tiempo que determine la ley;

c) Las mujeres durante el embarazo no realizarán trabajos que exijan un esfuerzo considerable y signifiquen un peligro para su salud en relación con la gestación; gozarán forzosamente de un mes de descanso antes de la fecha fijada aproximadamente para el parto y de otros dos después del mismo, debiendo percibir su salario íntegro y conservar su empleo y los derechos que hubieren adquirido por la relación de trabajo. En el período de lactancia tendrán dos descansos extraordinarios por días, de media hora cada uno, para alimentar a sus hijos. Además, disfrutarán de asistencia médica y obstétrica, de medicinas, de ayudas para la lactancia y del servicio de guarderías infantiles;

d) Los familiares de los trabajadores tendrán derecho a asistencia médica y medicinas, en los casos y en la proporción que determine la ley;

e) Se establecerán centros para vacaciones y para recuperación, así como tiendas económicas para beneficio de los trabajadores y sus familiares;

f) Se proporcionarán a los trabajadores habitaciones baratas, en arrendamiento o venta, conforme a los programas previamente aprobados. Además, el Estado mediante las aportaciones que haga, establecerá un fondo nacional de la vivienda a fin de constituir depósitos en favor de dichos trabajadores y establecer un sistema de financiamiento que permita otorgar a éstos crédito barato y suficiente para que adquieran en propiedad habitaciones cómodas e higiénicas, o bien para construirlas, repararlas, mejorarlas o pagar pasivos adquiridos por estos conceptos. Las aportaciones que se hagan a dicho fondo serán enteradas al organismo encargado de la seguridad social regulándose en su ley y en las que corresponda, la forma y el procedimiento conforme a los cuales se administrará el citado fondo y se otorgarán y adjudicarán los créditos respectivos;

XII. Los conflictos individuales, colectivos o intersindicales serán sometidos a un Tribunal Federal de Conciliación y Arbitraje, integrado según lo provenido en la ley reglamentaria. Los conflictos entre el Poder Judicial de la Federación y sus servidores, serán resueltos por el Pleno de la Suprema Corte de Justicia de la Nación;
XIII. Los militares, marinos y miembros de los cuerpos de seguridad pública, así como el personal del servicio exterior, se regirán por sus propias leyes. El Estado proporcionará a los miembros en el activo del Ejército, Fuerza Aérea y Armada, las prestaciones a que se refiere el inciso f) de la fracción XI de este apartado, en términos similares y a través del organismo encargado de la seguridad social de los componentes de dichas instituciones; y

XIII bis Las entidades de la administración pública federal que formen parte del sistema bancario mexicano regirán sus relaciones laborales con sus trabajadores por lo dispuesto en el presente apartado.

XIV. La ley determinará los cargos que serán considerados de confianza. Las personas que los desempeñen disfrutarán de las medidas de protección al salario y gozarán de los beneficios de la seguridad social.

ARTICULO 130

Corresponde a los Poderes Federales ejercer en materia de culto religioso y disciplina externa la intervención que designen las leyes. Las demás autoridades obrarán como auxiliares de la Federación. El Congreso no puede dictar leyes estableciendo o prohibiendo religión cualquiera.

El matrimonio es un contrato civil. Este y los demás actos del estado civil de las personas son de la exclusiva competencia de los funcionarios y autoridades del orden civil, en los términos prevenidos por las leyes, y tendrán la fuerza y validez que las mismas les atribuya. La simple promesa de decir verdad y de cumplir las obligaciones que se contraen, sujeta al que la hace, en caso de que faltare a ella, a las penas que con tal motivo establece la ley. La ley no reconoce personalidad alguna a las agrupaciones religiosas denominadas iglesias. Los ministros de los cultos serán considerados como personas que ejercen una profesión y estarán directamente sujetos a las leyes que sobre la materia se dicten. La legislatura de los Estados únicamente tendrán facultad de determinar, según las necesidades locales, el número máximo de ministros de los cultos. Para ejercer en los Estados Unidos Mexicanos el ministerios de cualquier culto se necesita ser mexicano por nacimiento. Los ministros
de los cultos nunca podrán en reunión pública o privada constituida en junta, ni en actos de culto o de propaganda religiosa, hacer crítica de las leyes fundamentales del país, de las autoridades en particular o en general del gobierno; no tendrán voto activo ni pasivo, ni derecho para asociarse con fines políticos.

Para dedicar al culto nuevos locales abiertos al público se necesita permiso de la Secretaría de Gobernación, oyendo previamente al gobierno del Estado. Debe haber en todo templo un encargado de él, responsable ante la autoridad del cumplimiento de las leyes sobre disciplina religiosa, en dicho templo y de los objetos pertenecientes al culto. El encargado de cada templo, en unión de diez vecinos más, avisará desde luego a la autoridad municipal quién es la persona que está a cargo del referido templo. Todo cambio se avisará por el ministro que cese, acompañado del entrante y diez vecinos más. La autoridad municipal, bajo pena de destitución y multa hasta de mil pesos por cada caso, cuidará del cumplimiento de esta disposición; bajo la misma pena llevará un libro de registro de los templos, y otro, de los encargados. De todo permiso para abrir al público un nuevo templo, o del relativo al cambio de un encargado, la autoridad municipal dará noticia a la Secretaría de Gobernación, por conducto del gobernador del Estado. En el interior de los templos podrán recaudarse donativos en objetos muebles.

Por ningún motivo se revalidará, otorgará dispensa o se determinará cualquier otro trámite que tenga por fin dar validez en los cursos oficiales a estudios hechos en los establecimientos destinados a la enseñanza profesional de los ministros de los cultos. La autoridad que infrinja esta disposición será penalmente responsable, y la dispensa o trámite referido será nulo y traerá consigo la nulidad del título profesional para cuya obtención haya sido parte la infracción de este precepto. Las publicaciones periódicas de carácter confesional, ya sean por su programa, por su título o simplemente por sus tendencias ordinarias, no podrán comentar asuntos políticos nacionales, ni informar sobre actos de las autoridades del país o de particulares, que se relacionen directamente con el funcionamiento de las instituciones públicas. Queda estrictamente prohibida la formación de toda clase de agrupaciones políticas cuyo título tenga alguna palabra o indicación cualquiera que la relacione con alguna confesión religiosa. No podrán celebrarse en los templos reuniones de carácter político. No podrá heredar por sí, ni por interpósita persona, ni recibir por ningún título, un ministro de cualquier culto, un inmueble ocupado por cualquiera asociación de
propaganda religiosa, o de fines religiosos, o de beneficencia. Los ministros de los cultos tienen incapacidad legal para ser herederos por testamento de los ministros del mismo culto o de un particular con quien no tenga parentesco dentro del cuarto grado. Los bienes muebles o inmuebles del clero o de asociaciones religiosas se regirán para su adquisición por particulares conforme al artículo 27 de esta Constitución. Los procesos por infracción a las anteriores bases nunca serán vistos en jurado.
THE ANTICLERICAL ARTICLES OF THE
FEDERAL CONSTITUTION OF 1917 AND THEIR
HISTORICAL CONSEQUENCES

Katherine Ryan-McIlhon†

I. BACKGROUND OF THE REVOLUTION OF 1910

In Mexico, the Federal Constitution of 1917 symbolized a new age for Mexicans in both political and religious matters. After four centuries of fighting and discontent, politicians had finally managed to create a lasting constitution, which while serving as a political triumph simultaneously delivered a strong blow to the Catholic Church. The document, although innovative for its time, strongly reflects the relationship of the Church and State of Mexico over its full history.

The Spanish Conquest in the 15th and 16th Centuries in Mexico was the beginning of the relationship between the Church and the government, and thus its implications would eventually become an important part of the Constitution of 1917. The Catholic Monarchs, Ferdinand and Isabella, used the New World as an opportunity to evangelize and teach the faith while reaping the economical benefits of new territory. In 1493, they received a blessing from Pope Alexander VI (1431-1503) to evangelize their new colonies (“Papa Alejandro”). Scandal quickly arose from this mission. Many of the Spanish conquistadors believed that the Native Americans were lesser human beings, and thus enslavement and abuse developed. Such issues were centered around the conquistador’s formation of a new agricultural system, with the natives being treated poorly as the workers, “encomendados,” while the Spanish were the

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“encomenderos.” Many times, the encomendados were treated much like slaves and forced to work long hours and in awful conditions.

Once rumors flooded back to Europe of such scandals, both Castille and New Spain debated about the ethical methods used to convert the natives. Many religious orders and individual scholars began to fight against such unjust treatment. For example, Bartolomé de Las Casas (1484-1566) was a Dominican monk that defended the rights of the natives. On the opposing end there were men like theologian, Juan Ginés de Sepúlveda (1489-1573), who believed that some races were truly better leaders than others, and thus this kind of treatment of the natives was justified. Although a majority of the ecclesiastical defended the Native Americans, many Mexicans, especially the poor and Mestizos, never forgot men like Sepúlveda and their oppression. This is evidenced in the Constitution of 1917 through its strong anticlerical sentiments.

The second important period of constitutional influence was the Spanish Empire in the 16th-18th centuries. During these years, the Crown and the Church worked together to develop Mexico. Generally speaking, the Crown controlled all legal elements while the Church cared for the daily needs of the people. Missionaries often traveled to Mexico to develop hospitals and schools. The government aided these projects by dedicating property to these religious orders and other Church institutions. A good example is the Order of the Hospital of St. John of God, which provided medical care for the poor with the support and funding of the Crown. The relationship, without a doubt, was very intimate during this period.

After such a cooperative period came the Enlightenment and the War of Independence in Spain. In these years, the government obtained much control over the Church. In retrospect it could be considered the beginning of the Constitution’s political foundation. The philosophy during the Enlightenment is best represented by the phrase “all the people without the people.” In other words, there was new importance placed on the individual members of society as the subject of man was now the focus of study. As a result, the government relied less on the Church and more on itself to improve the general welfare. It began to create museums and academies, and also to promote industry. By the 18th Century, the Church and the religious orders that owned a sizable amount of territory and had
obtained a large amount of funding still continued to help the people, but the roots of anti-clericalism began to develop.¹

Mexico was influenced by the French Revolution and other changes in Europe during this period. Its influence trickled outside France and many other European countries found themselves divided between revolutionaries and traditionalists. The New Regime in Spain focused on some of these French ideologies like the secularization of public life, centralization of the government, laws protecting the individual in place of the community, and new constitutions that regulated and protected the public entity of the nation.

The Spanish transformation of the Old Regime to the New Regime included constitutional essays, property transfers, and lay education. With Mexico still under Spanish influence, the same type of changes began to appear. With all of these changes, the middle classes suffered because many did not have the resources to flourish in the new circumstances thrust upon them by the government. For example, the new owners of agricultural land could not afford the raised rent and many people could not survive. It was not until the twentieth century that the working class and poor began to benefit from this political and economic change.²

In Mexico where the Church owned large amounts of property, secularization became a problem. Often, the property of the Church was confiscated by the government without compensation. This quickly crippled most orders and parishes from running their orphanages, asylums, hospitals, and schools. Many monasteries and convents were closed. To further weaken Catholic influence, most monks and brothers were expelled by the government, as many orders were declared illegal.³ At the same time, the War of Independence between Spain and Napoleon Bonaparte (1808-1814) gave the Mexicans the opportunity to obtain more autonomy. The Constitution of the United States of America and the Spanish Constitution of Cádiz was an inspiration to form a new government because both were based on liberal ideology, which attracted the people after many years under Spanish rule ("Constitución de

¹ Alexandra Wilhelmsen, *Civilización Hispánica*, 288+Manuscrito inédito, 2010).
² *Id.* at 320.
³ *Id.* at 321.
México’). Liberalism can be defined as a desire of secularization of the public life, the growth of government, extensive constitutions that regulate the life of citizens, reduction of power of the Church, division of communal property, and emphasis in the individual.

The first leaders of the independence movement were diocesan priests Fathers Miguel Hidalgo and Jose Maria Moreles. They desired a reform in the redistribution of property. In the 19th Century, after the abdication of the Emperor of Mexico, Agustín de Iturbide (1822-23), the last of the Spanish Empire dissolved. The country finally was an independent state and quickly the Mexicans created a new constitution. The first Constitution of significance was the Constitution of 1824 which was a federalist document and opened the door for a new realm of political debates (“Constitución de México”). Unfortunately, this ideology, like liberalism, caused confusion in the government, the people and the Church in Mexico. President Valentín Gómez Farías (1833-34) promulgated laws that included secularization of missions and the closing of the University of Mexico, a Catholic institution. With the desire for liberalism, the government assumed more power, and consequently, there was a necessity for a new constitution that legalized their new control.

The Constitution of 1857 was promulgated by President Ignacio Comonfort (1855-58). Its liberal roots can be seen in this constitution in the expression “the rights of man are the basis and the object of social institutions.” This line empowered, the government to legally assume power and territory from the Church as it was the government’s job to protect social institutions, many of which the Church was still struggling to run. The first president after the finalization of the new constitution, Benito Juárez (1857-1872), used

5. Wilhelmsen, supra note 1, at 322.
7. República de México, supra note 4.
8. Wilhelmsen, supra note 1, at 323.
this in order to promulgate the beginning of the anticlerical laws. He was, also, the first president of Native American descent from a small town in Oaxaca, and much of his presidency was inspired by his ancestors. As a result, Juárez fought for an independent Mexico safe from the grievances of the Spanish and the Church. His time in office is referred to by historians as the Reform. Some of the most substantial Reform laws were: the “Ley Juárez” that abolished ecclesiastic tribunals and military. The “Ley Lerdo” that confiscated property of the Catholic Church, the establishment of civil marriage as the only recognized kind by the government, and the secularization of cemeteries. To continue, the “Ley de días festivos” that limited the number of recognized religious celebrations by the government and the secularization of hospitals and health clinics. Next, the “Ley de instrucción pública” that organized public schools.

After all of these laws that regulated the Church, the only religious order permitted was the Sisters of Charity, which cared for the sick.

The conflict between the Church and the government really intensified during the presidency of Sebastián Lerdo de Tejada (1872-76). He was the brother of the author of the Ley Lerdo, and he assumed the presidency upon the death of Juárez. Lerdo continued the anticlerical assaults and prohibited any religious order of priests. This along with the Reform Laws expelled any remaining Jesuits. He provoked a rebellion known as the War of Religionists from 1873-1876. However, the war politically had minimal success or influence on the new governmental policies. Eventually, President Lerdo was overthrown by General Porfirio Díaz in the Plan of Tuxtepec (1876) in Oaxaca.

After the coup, Porfirio Díaz, the former general, assumed the presidency of Mexico from 1876-1910. The period in which he governed was called the “Porfiriato.” During his thirty-five year presidency, he permitted the Church to function discreetly. Capitalism flourished as Díaz focused economic development and social well-being. According to Dr. Alexandra Wilhelmsen, a professor at the University of Dallas, “Porfirio Díaz believed that social welfare and true democracy would be the natural results of economic progress.” He believed true democracy would naturally result in an improved economy. Unfortunately, he succeeded in only helping the upper class and the rest of the population became more

10. Wilhelmsen, supra note 1, at 320-325.
and more agitated with the state of the economy. By the end of his last term the demand for reform had only grown.\(^{11}\)

**II. THE REVOLUTION OF 1910**

The Revolution of 1910 began as a reaction to the government of Porfirio Díaz. While Díaz focused on developing capitalism, to many it appeared as though the President had abandoned them.\(^{12}\) By the end of his presidency, multiple publications had been written against him. For example, *El hijo del Ahuizote*, by Juan Sarabia, *Excélsior*, by Santiago de la Hoz and more importantly *Regeneración*, by Ricardo Flores Magón. This magazine described the troubled lives of the Mexican citizens during the Porfiriato and suggested ideas for political and social transformation. Flores painted the life of a laborer as "Dante’s inferno." *Regeneración* inspired the Mexican Liberal Party with their agenda, also. The party drew up the Manifesto and Program that demanded the division of large properties, the restitution of *ejidos*, and the implementation of the relationship between the government and the Church according to the law.\(^{13}\)

The Revolution of 1910 can be divided into three chapters: the Madero age, the Constitutional age, and the struggle between factions. The Madero age refers to the government of Francisco I. Madero (1911-1913). The Revolution began during the elections of 1910, when Madero challenged Díaz.\(^{14}\) Diaz won, but Madero accused the incumbent and his supporters of rigging the vote. Quickly, Madero drew up his new strategy to obtain power in the Plan of San Luis Potosí on October 5, 1910. In the plan he stated his desire to exile the incumbent President by way of the citizens taking up arms. He then would be elected as provisional president in the new elections.\(^{15}\) Madero and his generals Pancho Villa and Pascual Orozco, slowly gained control of the country by way of any means necessary. Consequently, on May 25, 1911, President Díaz, under great pressure relinquished his position and Madero successfully won

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11. Id. at 318-319.
14. Id. at 9.
the subsequent elections. His objective as president was the strict application of the Constitution of 1857. For this reason, Madero worked with the Executive Agricultural Commission in order to better the conditions of the countryside and further restrict private property. Soon after in November of 1911, the rebel Emiliano Zapata formed the Plan of Ayala. This political campaign focused on the restitution of ejidos by way of rebellion. Zapata accused Madero of abandoning the revolutionary principles especially in the countryside. His slogan was “Liberty, Justice, Law.”¹⁶ Four months after, in March of 1912, General Orozco demanded that Madero resign as President. Orozco wanted more labor reforms and division of land. He was inspired by the Manifesto of the Mexican Liberal Party, and consequently, wanted that the land be redistributed more equally between individuals.

In 1913, Félix Díaz, the nephew of Porfirio, and General Victoriano Huerta joined the rebellion against Madero. Finally, after much violence, Huerta usurped Madero as President. Three days after, Madero was assassinated in the “Tragic Ten Days.” Unfortunately, for Mexico, Huerta would also fail to bring peace.¹⁷

In the Constitutionalist period, the battles for land reform continued, this time against Huerta. Venustiano Carranza, a friend of Madero and an enemy of Huerta, put in motion the Plan of Guadalupe in 1913. Carranza wanted to reestablish the constitutional order violated by Huerta. Specifically, with regard to land reforms because he believed Huerta had not fought hard enough to enforce anticlerical laws.¹⁸ A quote from Carranza’s Plan describes a desire to “repartir las tierras y las riquezas nacionales” or “divide up land and national wealth.”¹⁹

General Álvaro Obregón, who would be president after the promulgation of the Constitution of 1917, fought, also against Huerta. Slowly, the rebels controlled three-fourths of Mexico. The country found itself in a state of chaos, and in 1914 the President of the United States, Woodrow Wilson (1913-1921), sent soldiers to Veracruz. There, the American soldiers constructed schools and attempted to regulate crime. The Mexicans disliked United States’ participation,
and Huerta tried in one last feeble attempt to unite the country against the foreigners. He failed dismally and was forced to step down as President.\textsuperscript{20}

Without a president, the politicians and \textit{jefes} organized the Convention of Aguascalientes. The purpose was to elect a provisional president and bring order to Mexico. Carranza was elected the Primer Jefe of the Constitutionalist Army, Villa the Jefe of the North Division, and General Eulalio Gutiérrez (1914-1915) was elected the provisional president.\textsuperscript{21}

This agreement did not guarantee peace, however, as the \textit{jefes} began to fight amongst themselves in order to obtain more power. Confrontations continued for a year and thus, 1915 is unofficially referred to as the “War of Generals.” Eventually, Villa and Zapata controlled the capital of the country. Generals Carranza and Obregón, quickly retook Mexico City and Gutiérrez moved to the state of Nuevo León. In April of 1915, the United States recognized Carranza as the \textit{de facto} president. Villa and Zapata continued fighting against Carranza and Obregón, however, and the chaos affected the economy with no end in sight.\textsuperscript{22}

The fight or power destroyed the country and crime and poverty grew. During this period, the unions rebelled and caused more chaos amongst the labor class. The Company of the World Worker or \textit{Casa del Obrero Mundial} (COM) and the Regional Federation of Labor were established while many other unions declared strikes in 1916. Carranza tried to stop many of these and ordered that his army assassinate any rebels.\textsuperscript{23}

Without a doubt, the first part of the Revolution affected not only politics, but also the economy. As a result, it inspired a change in the Constitution of 1857. Carranza, after pacifying the country to a certain point, demanded a constitutional convention in 1916 that prepared that which would be the Constitution of 1917.\textsuperscript{24}

\begin{itemize}
\item \textsuperscript{20} Quirk, \textit{supra} note 12, at 40-45.
\item \textsuperscript{21} Garfias, \textit{supra} note 15, at 144-145.
\item \textsuperscript{22} Quirk, \textit{supra} note 12, at 79.
\item \textsuperscript{23} Garfias, \textit{supra} note 15, at 176-182.
\item \textsuperscript{24} Quirk, \textit{supra} note 12, at 80.
\end{itemize}
Venustiano Carranza (1917-20) was officially recognized as President in 1915 by Woodrow Wilson. He, however, did not initially accept the position, as it would have inhibited him from being a full term president, and instead continued as the Primer Jefe until 1917. During these first two years, Carranza called for a reform of the current Constitution. Carranza hesitated at the idea of initiating radical social reform. He instead placed his emphasis specifically on the rules of reelection. Carranza wanted to eliminate the possibility for presidencies like that of Díaz, and used this to launch support for Constitutional reform.

On September 19, 1916, Carranza demanded new elections for a Constitutional Congress. In October of the same year, these representatives met in the state of Querétaro in order to amend the draft that Carranza had presented. The men that were elected, despite the desires and attempts of Carranza to form a moderate group, were very radical. The reason for this was that the voters chose local leaders. Many had seen the destruction of Mexico first-hand and felt very strongly about having a completely new government.25

This caused a great divide in Congress and with that, Mexico began the third phase of the Revolution, the struggle between factions.26 In the Convention, there were two groups: the “reds” and the “whites.” The reds followed the ideology of Carranza and voted with red ballots. The whites voted with white ballots, and were the radical faction, wanting extreme changes in social and economic reform. For the most part, the moderate faction consisted of educated politicians and businessmen. The radical faction mostly consisted of local military leaders and jefes who had received little schooling. As a result, the reds were more organized and controlled the Congress in technical issues, but overall the radicals had the majority. Red member, Luis Manuel Rojas was elected President of the Congress and radicals, Cándido Aguilar y Salvador González Torres, vice-presidents.

25. Id. at 79-81.
26. Silva, supra note 6, at 55.
Francisco Javier Múgica was the politician that probably dominated the Congress more than any other. He was a radical and his influence greatly contributed to the socialist articles in the Constitution. Múgica was a brigadier general from the state of Michoacán. He was famous for his ability to unite men through his speeches, despite his lack of political experience.27

For the reds, José Natividad Macías, who modified the first proposal of the Constitution that Carranza drafted, was extremely influential. Carranza had sent Macías to the United States to study at democratic institutions, and as a result, many of the proposal’s elements appear similar to aspects of the United States Constitution. For example, the concept of liberalism is personified in the first article of the draft that says, “every person in the United States of Mexico shall enjoy all guarantees granted by the Constitution; these shall neither be abridged nor suspended except in such cases and under such conditions as are herein provided.”28 This article gave the citizens clear and distinct protection by the government like the United States gives in its Constitution with the opening lines:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.29

Despite this distinct similarity along with some other minor ones, the document sways more toward the traditions of Juárez and Lerdo more than that of the United States. Macías and Carranza desired more than just a separation of Church and State, since they wanted the government to have the power to regulate religious institutions. They also wanted marriage to only be a civil commitment (the Ley Juárez promulgated this, but they wanted to make it permanent). Also, in Carranza’s draft, the Church would only be allowed to run schools at the secondary level.

27. Quirk, supra note 12, at 82.
28. El Rincón del Vago, supra note 4; República de México, supra note 4.
Unfortunately, the radicals did not accept many of the amendments that Carranza and Macias desired. Although Congress approved the articles that pertained to the rights of the people in Articles 1 and 2, Múgica and his supporters demanded a social revolution especially in Articles 3, 5, 24, 27, 123, and 130.30 Thus, the Constitution of 1917 changed the Constitution of 1857 in two ways that Carranza did not originally suspect—Congress drastically changed the social amendments and added more anticlerical aspects to the already existing articles.31

For example, Múgica thought that Article 3 about the educational reforms was completely inadequate. For many years children had received their education in Catholic schools and Múgica believed that the Church restricted the natural rights of the people and did not give them the ability to think freely. He said famously during one session of Congress:

En la historia patria, estudiada imparcialmente, el clero aparece como el enemigo más cruel y tenaz de nuestras libertades; su doctrina ha sido y es: los intereses de la iglesia, antes que los intereses de la patria. Desarmado el clero a consecuencia de las Leyes de Reforma, tuvo oportunidad después, bajo la tolerancia de la dictadura, de emprender pacientemente una labor dirigida a restablecer su poderío por encima de la autoridad civil (“In our country’s history, studied impartially, the clergy appears to be the most cruel and tenacious enemy of our liberties, their doctrine has been and is: the Church’s interests before the interests of the country”).32

For Múgica, Church doctrine was abstract and inappropriate for children. In his opinion, Catholic school should be completely prohibited. Macías and his supporters insisted, however, that the clergy could still have the right to teach in secondary schools. Similar problems involving the Church continued throughout the entire Constitutional Congress because the whites put emphasis on Church

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30. Quirk, supra note 12, at 84-91.
31. Silva, supra note 6, at 85.
restrictions, as they considered it outdated and the reds doubted many of the too radical proposals and the potential implications.\footnote{33}{Quirk, \textit{supra} note 12, at 84-91.}

The final major changes from 1857 to 1917 in the Constitution included more power to the executive branch producing a more centralized nation. The amendments involving social conditions now served as an intervention between workers and their employers with much greater attention to detail than before. Furthermore with regard to the agricultural reforms, private property could now legally be confiscated by the government when it would benefit the general welfare. Also, the subsoil of the land was nationalized. The amendments that were the most drastic were in the changes in the relationship between the Church and State. The Church was under the control of the State, Catholic education could only be permitted in private secondary schools, and the Constitution confirmed that priests were only second-class citizens, that could not legally vote or express their beliefs.\footnote{34}{\textit{Wilhelmsen}, \textit{supra} note 1, at 356-357.} With these changes, the Constitution became a mix of articles that represented both liberalism and socialism.\footnote{35}{Silva, \textit{supra} note 6, at 85} The liberal articles put emphasis in a secular state with equal rights for everyone. While the socialist sections put emphasis on the economy and public property by way of attacking private property.

Article 3 focused on the secularization of schools and was probably the most debated change during the entire Convention. This article reflects the beliefs of Múgica and the other radicals because it says: “The education imparted by the Federal State shall be designed to develop harmoniously all the faculties of the human being and shall foster in him at the same time a love of country and a consciousness of international solidarity, in independence and justice.”\footnote{36}{\textit{EL RINCON DEL VACO}, \textit{supra} note 4; \textit{REPÚBLICA DE MÉXICO}, \textit{supra} note 4.} The draft specifically put emphasis on fostering patriotism. In the following part, this article excludes the Church as it says of public education: “... guaranteed by Article 24, the standard which shall guide such education shall be maintained entirely apart from any religious doctrine and, based on the results of scientific progress, shall strive against ignorance and its effects, servitude, fanaticism, and prejudices.”\footnote{37}{\textit{Id}.} Clearly, this article is an attack on the Church and
a restriction of its right to teach. It focuses on the science and the human being without mentioning God. It reflects the radical’s belief that religion was the basis of the superstition and ignorance. As a result, many subsequent presidents would close Catholic-schooling institutions completely.

Article 5 eliminates religious orders leaving no gray areas or exceptions:

The State cannot permit the execution of any contract, covenant, or agreement having for its object the restriction, loss or irrevocable sacrifice of the liberty of man, whether for work, education, or religious vows. The law, therefore, does not permit the establishment of monastic orders, whatever be their denomination or purpose.\(^{38}\)

The point of view of Congress was that the orders with their rules and strict lifestyle caused the individual to lose their sense of liberty. In this way, the anticlerical goals of the politicians could be justified.

Article 24 established more restrictions for Mass and other religious ceremonies. With clarity it says:

Everyone is free to embrace the religion of his choice and to practice all ceremonies, devotions, or observances of his respective faith, either in places of public worship or at home, provided they do not constitute an offense punishable by law. Every religious act of public worship must be performed strictly inside places of public worship, which shall at all times be under governmental supervision.\(^{39}\)

The guidelines for this article are vague, and political leaders would eventually use this part of the Constitution after its promulgation to persecute the Church more than ever. For example, many times, small town governments burned the churches or defamed cemeteries that contained Catholics (during the mandate of Juárez, Catholic cemeteries were secularized).

Article 27 is extremely long and contains agricultural reforms. It is considered very socialistic. The bishops condemned these reforms because in their opinion, it was considered robbery.\(^{40}\) The beginning of the article describes the power of the government and says,

\(^{38}\) Id.  
\(^{39}\) Id.  
\(^{40}\) Quirk, supra note 12, at 93.
“[o]wnership of the lands and waters within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.”41 The emphasis on the nation and the confiscation of land and redistribution manifests the theory of socialism because there is no protection for private property. The elements of socialism continue when the article says:

The Nation shall at all times have the right to impose on private property such limitations as the public interest may demand, as well as the right to regulate the utilization of natural resources which are susceptible of appropriation, in order to conserve them and to ensure a more equitable distribution of public wealth.42

This paragraph is interesting because it represents not only the socialism of the radicals, but also the influence of Carranza. The socialist elements include phrases like “public interest,” “social benefit” and “equitable distribution of public wealth.” All these phrases are the socialist belief in equality of social classes. However, liberalism is present in the phrase “natural elements” because liberalism focuses on the natural rights of human beings. Regarding the Church, Article 27 gives the government the power to confiscate their property, including its parishes, which was for the “social benefit” in the government’s view. In the future, Presidents Alvaro Obregon and Plutarco Elias Calles would use this article to further attack the Church.

Article 123 describes the rights of workers against their employers and says “everyone who has the right to decent and socially useful purpose, will promote job creation and social organization for work, according to law.” 43 The rest of the article legalizes a minimum wage, a maximum number of hours for a worker, the right to form unions, a minimum age requirement, equality between men and women, and good working conditions.44 The interest in the rights of the workers was the subject of many of the rebellions in the years before the founding Constitutional Congress. The Church, however,

41. EL RINCÓN DEL VACO, supra note 4; REPÚBLICA DE MÉXICO, supra note 4.
42. Id.
43. Id.
44. Silva, supra note 6, at 15.
did not support legislation that presidents created with the implementation of this article because the laws attacked the rights of patrons.

Article 130 directly and aggressively assaults the Church. It has many important sections like “the federal powers shall exercise the supervision required by law in matters relating to religious worship and outward ecclesiastical forms.” Here the State is given power over the Church. Although Congress could not ban a religion, “the Federal Powers” could interfere with the Catholic Church. Another part of Article 130 continues, “[m]arriage is a civil contract. This and other acts of a civil nature concerning persons are within the exclusive competence of civil officials and authorities, in the manner prescribed by law, and shall have the force and validity defined by said law.”

Before this amendment, the Church controlled both marriages and marriage documents, because many Mexicans were Catholics and matrimony is a sacrament. Article 130 also says that the ministers (Article refers to the clergy as “ministers”) need to be born in Mexico. The third part of Article 130 says:

Ministers of denominations may never, in a public or private meeting constituting an assembly, or in acts of worship or religious propaganda, criticize the fundamental laws of the country or the authorities of the Government, specifically or generally. They shall not have an active or passive vote nor the right to form associations for religious purposes.

The words were very clear, to be a priest meant to give up your rights. Article 130, also allowed the government to tax individual churches, and said that priests could no longer teach. No one could donate to the church, either. The sentences at the end defined the property of the Church as “private” specifically, “the acquisition by private parties of personal or real property owned by the clergy or by religious organizations shall be governed by Article 27 of this Constitution.” In subsequent years, this particular article would

45. EL RINCÓN DEL VAGO, supra note 4; REPÚBLICA DE MÉXICO, supra note 4.
46. Id.
47. Quirk, supra note 12, at 95.
48. EL RINCÓN DEL VAGO, supra note 4; REPÚBLICA DE MÉXICO, supra note 4.
49. Id.
cause many problems especially with President Plutarco Calles and lead to the Cristero Rebellion.

IV. THE ANTICLERICAL LEGISLATION AND POLITICS UNDER THE CONSTITUTION OF 1917

Álvaro Obregón won the presidency after Carranza and was the first president under the enactment of the new Constitution. Obregon, from a modest family in Sonora, entered the world of politics in 1910 with the goal of reforming the government after the Porfiriato. He quickly became famous as a military leader. He was successful and eventually served as the Secretary of War. He resigned in 1917 and returned to Sonora.50 Not long after, Obregon decided to run for president as he was frustrated by the lack of radical reform. When he announced his candidacy said:

Muchos de los hombres de más alto relieve dentro del orden militar y del orden civil han desvirtuado completamente las tendencias del movimiento revolucionario, dedicando todas sus actividades a improvisar fortunas, alquilando plumas que los absuelvan falsamente en nombre de la opinión pública (Alvaro Obregón) (Many of the men of highest prominence within the military and civil order have completely distorted the tendencies of the revolutionary movement, devoting all their activities to improvising their fortunes, using their pens to falsely acquit in the name of public opinion.).51

This statement referred to Carranza. Obregon was a proponent of the radical social and anticlerical changes during the Constitutional Congress, and believed Carranza was not the power needed to enact these changes. Obregon and his supporters rose up against and exiled Carranza.52 It was not necessarily a difficult task as he was much more popular than Carranza and had the support of the army. Obregon was officially elected to the presidency in 1920.

51. Id.
During his time in office, Obregon first focused on the economic reforms in the Constitution because after many years of revolution, the economy was decimated. More than one million people had died (more than half from hunger and disease). Consequently, Obregon realized that the government did not possess the financial means to support the demand for large scale public education. He said “en estos momentos, nada es más importante que la paz social y la estabilidad política” (“at this moment, nothing is more important than social peace and political stability”). As a result, he allowed Catholic schools to operate. A few years into his term, however, he led in the establishment of hundreds of new schools in the hope that eventually the government would close all Catholic schools.

Obregon then decided to focus on the agricultural reforms laid out in Article 27. He persuaded Congress to implement this article, and a little later began confiscating large private estates and divided them into smaller ones. Obregon possibly from watching his predecessors fail realized that many who received the property could not care for the redistributed land because they did not have adequate income for land cultivation. As a result, these smaller estates were nationalized to aid in the care of these properties. The original intent was also to compensate the previous landowners; however, this was too expensive for the government. Most landowners were never compensated sufficiently. The Church condemned these reforms because, in its opinion, it was theft and therefore a sin. Archbishop Leopoldo Ruiz y Flores declared that anyone that received land was obliged as a Catholic to compensate the owners.

Obregon also focused on labor reforms. He supported and subsidized labor organizations such as CROM or Mexican Federation of Labor and the CGT or General Confederation of Workers. These unions grew rapidly, and as a result, Obregon won the support of many industrial workers.

It was, however, Obregon’s successor, President Plutarco Elias Calles (1924-1928) who openly showed his dislike for the Church by implementing many anticlerical changes. Calles was born on September 25, 1877 in Guaymas, Sonora. As a young man in school, he noticed the power struggle between the Church and government.

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53. Tuck, supra note 50.
54. Id.
55. Id.
He blamed the lack of advances in education on the clergy and their teaching methods. Becoming a teacher himself later, he began writing articles against Catholic education. After a career change in 1911, Calles received his commission to the Constitucionalist Army from General Maytorena in Agua Prieta, a town near Sonora. His responsibility was to maintain order. In 1912, as captain, he fought in Pascual Orozco’s rebellion in Nacozari, Sonora. Soon after, in 1913, while under the command of Alvaro Obregon, he fought against Huerta. Calles was successful in his campaigns, and in 1915 Primer Jefe Carranza appointed him the governor of Sonora.56

During this term of office, Calles expelled any remaining priests in the region. Two years after the new constitution was promulgated, Carranza promoted him to National Secretary of Industry and Trade. Soon after, when Obregón began his campaign for president, together he and Calles, began propaganda against President Carranza. As a result of this alliance, when Obregon was President, Calles was appointed Secretary of the Interior.57 His attack on the Church continued in this position, and in 1923, when the Archbishop of Mexico José Mora y del Rio wanted to dedicate a celebration to Christ the King, a new feast in the Church, Calles banned it. However, Monsignor Ernesto Filippi, continued with the Mass and Calles ordered his banishment.58

The dispute over Christ the King, which drew attention to the Church’s remaining defiance, Calles focused more on the application of the anticlerical articles in the Constitution, which had been ignored. These items included 3, 5, 24, 27 and 130.59

First, he began by creating a solid infrastructure in the public education system. Calles stated that the purpose of a good education for students “les abran nuevos horizontes de una vida mejor para la adquisición de la habilidades manuales y espirituales que se traduzcan en aumento de su capacidad económica” (“open new horizons for a better life for the acquisition of manual skills and spirituality that translate into an increased economic capacity”).60

57. Id.
58. Quirk, supra note 12, at 132-133.
59. Id. at 145-151.
Calles named Moises Saenz as his Minister of Education. His aim was to unite the people of Mexico through a new education system that excluded the Catholic Church completely. According to his desire to improve schools, Calles and Saenz, restored both the Chapingo School for Agriculture and the School of Veterinary Medicine. Also, in total, they opened over a hundred primary and secondary schools in Mexico.\textsuperscript{61}

When Archbishop Mora y del Rio protested against the policy of Calles, the President replied: "quiero que entienda Ud., de una vez por todas, que la agitación que provocan no será capaz de variar el firme propósito del Gobierno federal . . . No hay otro camino . . . que someterse a . . . la ley" ("I want you to understand, once and for all, that the unrest you caused will not be able to change the firm intention of the federal Government . . . There is no other way to submit to . . . the law"). Soon after, in July 1926, Calles created under new laws Article 130 that the priests’ rights as citizens and diminished their religious activities. The President justified the application of anticlerical articles of the Constitution because he believed that government should be the only institution to control the nation and it was his job to implement the Constitution. He wrote in an article in his "Diario Oficial":

El gobierno de México por ningún motivo faltará al cumplimiento de las leyes y esas presiones que están buscando en nada nos importan . . . estamos resueltos a mantener la dignidad nacional a costa de lo que venga . . . . Qué menos puede exigir el representante legítimo del pueblo, como es el Gobierno, que saber quiénes están administrando sus bienes . . . Irremisiblemente tendrán que sujetarse. (We are determined to maintain national dignity at whatever cost . . . . What less can one demand of the legitimate representative of the people, that is the Government, who is managing your assets.).\textsuperscript{62}

He relentlessly enacted laws against the Church despite the bitter protests of the Catholics. For this reason, the policy of Calles caused a resistance of the Church and citizens of Mexico.
V. THE CRISTERO REBELLION (1926-1929)

The struggle between the Church and the government grew naturally after implementing the new Constitution. Violence against the Church, which had begun many years before the Constitution of 1917, continued, including the burning of churches, theft and abuse of any remaining priests. Carranza was aided by both military leaders and politicians, as all of these men enacted tyrannical laws against the Church. Some of these included only allowing the Eucharist on Sundays and under certain conditions, and making any type of Holy water for baptisms illegal.

During Obregon’s term, a bomb exploded near the main altar in the Basilica of the Virgin of Guadalupe. The Church believed that a member of Obregon’s cabinet, Juan Esponda, was responsible. Politically, however, both Carranza and Obregon were more passive and the need for rebellion did not really catch fire until the bomb.63

Resistance against the government during the early years (1913-1924), began with the youth. In 1911, they founded the Catholic Students League to bring together young activists from around the country. Immediately after its founding, the group became involved in politics. A priest associated with the League, Father Bernardo Bergoend, a Jesuit of France, proposed that the League form the Catholic Association of Mexican Youth or ACJM.64 This organization began propaganda campaigns against the government.65 For example, in 1915, when General Obregon imprisoned many members of the clergy in Mexico City, ACJM rebelled with a demonstration and many of its members were arrested, too. The organization attempted to peacefully gather support for a Catholic president and changes to the Constitution by demonstrations in several cities of Guadalajara and Mexico City. Catholic women formed a group to advocate for the establishment of Catholic schools, too. They often sent requests to Congress and collected funding for ACJM.66

64. David C. Bailey, ¡Viva Cristo Rey! The Cristero Rebellion and the Church-state Conflict in Mexico, 28-36 (Austin: University of Texas, 1974).
65. Wilhelmsen, supra note 1, at 359.
66. Bailey, supra note 64, at 28-36.
The new Archbishop of Jalisco, Francisco Orozco y Jiménez and his followers founded the People’s Union of Jalisco. Anacleto Gonzalez Flores, a lawyer, led the group. He supported peaceful activities such as the publication of newsletters, speeches, and catechism classes in many parts of the country. Later during the Cristero Rebellion unfortunately, Gonzalez Flores was killed.67

Politically, these groups joined Catholics with the hope of overturning the new Constitution, however, during the 1920 elections, Obregón defeated the Catholic candidate without any difficulty.68 Many people did not react to the anticlerical articles because often in the countryside, Church attendance was not possible for those that could not afford to spend the day traveling for Mass. As a result, restrictions such as no daily Mass or no Eucharist did not raise any significant feelings.69 When the bomb exploded at the Basílica de la Virgen, many Mexicans decided to take up arms because the people had always had a great devotion to the Mother of God.

In 1925, when Calles announced his intention to implement the anticlerical articles, many opponents decided to join the National League for the Defense of Religious Liberty. The leader of this organization was Capistrán Rene Garza. The League tried to influence the Mexican people to make changes to policy without violence, but had little success.70

The President enacted the Ley Calles in July of 1926. Three weeks after, the Mexican bishops wrote a pastoral letter. In this paper, they expressed their resolve to oppose “this Decree and the anti-religious Articles of the Constitution” and demanded reform. They added, “we will not stop until we see this achieved.” President Calles responded with “Nos hemos limitado a hacer cumplir las [leyes] que existen, una desde el tiempo de la Reforma, hace más de medio siglo, y otra desde 1917 . . . . Naturalmente que mi Gobierno no piensa siquiera suavizar las reformas y adiciones al código penal” (“We were simply enforcing the [laws] which have existed, from the time of the Reformation, for more than half a century, and others from 1917 . . . Naturally, my Government does not intend to even bend the amendments and

67. Wilhelmsen, supra note 1, at 359.
68. Bailey, supra note 64, at 37.
69. Quirk, supra note 12, at 3-4.
70. Wilhelmsen, supra note 1, at 359.
additions to the criminal code)."  

Shortly after, Calles and his government decided to expel the country’s bishops, and in response, the Church ordered the priests to close their churches.

The peasants reacted eventually on their own. Calles spurred them into action with the murder of Father Luis Batiz, a member of the League, along with three others. In Jalisco, the people raised their voices against the government in August popularizing the cry “Viva Cristo Rey!” Between August and December of 1926 there were sixty-four armed uprisings. Most of these rebellions occurred in Jalisco, Guanajuato, Guerrero, Michoacan and Zacatecas. These demonstrations were a futile attempt to force the government to change its anticlerical legislation.

In Jalisco, Archbishop Orozco y Jimenez supported militant armed resistance after several failed attempts to get the governments attention. After the expulsion of the bishops, he stayed courageously despite the law. Thousands of men rose up in defense of Christ the King and united into an army. These militants were known as the “Cristeros.” There were two important generals: Jesus Degollado and Enrique Gorostieta. General Gorostieta was responsible for the structural organization of this army known as the National Guard. They had 25,000 volunteers and General Degollado was the military commander of the army in the battles in Michoacan and Jalisco. There were also another 25,000 Cristeros fighting individually outside the National Guard. General Degollado and his army of Cristeros were aided by the Brigade of St. Joan of Arc. This was an organization of women who helped the Cristeros obtain supplies. This included but was not limited to weapons and ammunition they did not have adequate weapons to fight the federal army. These women would steal from the army or buy from landowners supportive to the cause. Since the Cristeros were volunteers with little military expertise and inadequate supplies, the war never developed into more than gorilla warfare. Consequently, there were few major battles, but many skirmishes and assassinations (mostly by the government) throughout the rebellion. The Cristeros fought well

71. Iraburu, supra note 63.
72. Wilhelmsen, supra note 1, at 360.
73. Bailey, supra note 64, at 87-89.
74. Wilhelmsen, supra note 1, at 360.
in the rural areas, but they were always defeated in urban centers by the federal army guarding the big cities.

In January 1927, most of the fighting had ceased. The remaining resistance was mostly by groups of 4 or 5 men attacking passing troops. By April, the government had abandoned a large part of the countryside, but kept control of the cities.

In October of that year, U.S. ambassador for Mexico, Dwight Whitney Morrow, began a series of negotiations with President Calles about the war, but it did little to sway his anticlerical stance. After his presidency, when Congress appointed Emilio Portes Gil provisional president in September 1928 after the assassination of President-elect Obregón, Portes was more open to the Church than Calles had been. Portes allowed Morrow to renegotiate his peace initiative. Eventually, Morrow and several Church leaders created a treaty agreement. The Cristeros, however, were not included in the discussion. Although the anticlerical articles of the Constitution were not eliminated, the bishops were invited to return home and could resume the Eucharist celebration.75 The Archbishop of Morelia and Leopoldo Ruiz wrote about the treaty:

El Obispo Díaz y yo hemos tenido varias conferencias con el C. Presidente de la República. . . Me satisface manifestar que todas las conversaciones se han significado por un espíritu de mutua buena voluntad y respeto. Como consecuencia de dichas Declaraciones hechas por el C. Presidente, el clero mexicano reanudará los servicios religiosos de acuerdo con las leyes vigentes. Yo abrigo la esperanza de que la reanudación de los servicios religiosos [expresión protestante, propia de Morrow, su redactor] pueda conducir al Pueblo Mexicano, animado por un espíritu de buena voluntad, a cooperar en todos los esfuerzos morales que se hagan para beneficio de todos los de la tierra de nuestros mayores. (Bishop Díaz and I have had several conferences with the current President of the Republic . . . I am pleased to say that all of the conversations have been significant for a spirit of mutual goodwill and respect. As a result of the statements made by the current President, Mexican clergy will resume religious services in accordance with applicable laws. I am hopeful that the resumption of religious services [Protestant expression, characteristic of Morrow, the editor] may drive the Mexican people, animated by a spirit of good will to

75. Bailey, supra note 64, at 135-205.
cooperate in all efforts that are made in order to benefit all of the land of our ancestors).  

The problems with the Church and the government were not resolved but this agreement was the beginning of a more peaceful relationship between the Church and State.

VI. EPILOGUE: BEATIFICATIONS AND CHANGES TO THE CONSTITUTION

The strength of the Cristeros is portrayed in this letter written in 1926 by Francisco Campos, a Cristero from Bayacora Santiago, Durango, about the early fighting:

Esos hombres no vieron que el gobierno tenía muchísimos soldados, muchísimo armamento, muchísimo dinero pa’hacerles la guerra; eso no vieron ellos, lo que vieron fue defender a su Dios, a su Religión, a su Madre que es la Santa Iglesia; eso es lo que vieron ellos... Los arroyos, las montañas, los montes, las colinas, son testigos de que aquellos hombres le hablaron a Dios Nuestro Señor con el Santo Nombre de VIVA CRISTO REY, VIVA LA SANTISIMA VIRGEN DE GUADALUPE, VIVA MEXICO. Los mismos lugares son testigos de que aquellos hombres regaron el suelo con su sangre y, no contentos con eso, dieron sus mismas vidas por que Dios Nuestro Señor volviera otra vez. Y viendo Dios nuestro Señor que aquellos hombres de veras lo buscaban, se dignó venir otra vez a sus templos, a sus altares, a los hogares de los católicos, como lo estamos viendo ahorita, y encargó a los jóvenes de ahora que si en lo futuro se llega a ofrecer otra vez que no olviden el ejemplo que nos dejaron nuestros antepasados. (These men did not know that the government had many of soldiers, weapons, and money to fund the war; this was not their concern, what they saw was the need to defend God, their Religion, and their Mother who is the Holy Church; this is what they knew...The streams, mountains, forests, hills, were witnesses that these men spoke to God our Lord with the holy name of LONG LIVE CHRIST THE KING, LONG LIVE THE BLESSED VIRGIN OF GUADALUPE, LONG LIVE MEXICO. These places are also witnesses that the men watered the soil with their blood and, not

76. Iraburu, supra note 63.
content with that, gave their very lives for God our Lord to come again). 77

Tragically, there were many martyrs during the rebellion. The Jesuit, Miguel Pro, is probably most famous for his murder, which was filmed and viewed by the entire world. 78 The violence did not stop at men, however, women and children were often victims of the federal government, too. For example, the soldiers cut off the soles of the feet of Jose Sanchez del Rio from Michoacan, a child who was thirteen years old, who fought as a Cristero. The soldiers forced the boy to walk to the cemetery where he was stabbed and beaten repeatedly. After the slow torture, they killed him. 79 There were hundreds of murders like this and in total during the Cristero Rebellion, over 100,000 people died.

After the peace treaty, the priests returned to their parishes. The problem, however, was that the agreement did not include protection for Cristeros. As a result in the following years, some 5,000 80 former Cristeros were killed for their activity in the rebellion. Many years later, in 1992, the Vatican has beatified Catholics such as Pro, Sanchez and Anacleto Gonzalez Flores. 81 In 2000, Pope John Paul II canonized 25 martyrs and in 2005, 13 more were beatified. 82 The Cristero Rebellion affected the Church of Mexico in good ways as well. The battle with the government in the 20th Century gave both the bishops and priests new energy for their vocations. 83 All Catholics throughout the country for that matter were united and underwent a renewal of faith. Therefore, in a certain sense, the Constitution of 1917 led to a rebirth in the Church in Mexico.

The process of eliminating the anticlerical articles took many years. The Church never regained its former power, but gradually each consecutive president began to ignore the anticlerical Articles of

77. Id.
78. Wilhelmsen, supra note 1, at 360-361.
79. Bailey, supra note 64, at 140.
80. Algunas fuentes dice que 1,500 murieron.
81. Wilhelmsen, supra note 1, at 360-361.
83. Bailey, supra note 64, at 309-310.
the Constitution more and more. When Lazaro Cardenas (1934-1940) was elected President, Catholics could worship relatively freely in their churches in many parts of the country as long as it was kept silent. President Manuel Avila Camacho (1940-1946), a practicing Catholic, enacted the reversal of the anticlerical laws across the country. Finally, in 1993, President Carlos Salinas de Gortari (1988-1994) eliminated many sections of the anticlerical Articles of the Constitution. This gave the clergy the right to vote again and the Church the ability to purchase and own its own property.

84. Wilhelmsen, supra note 1, at 361.