

Women's Rights in the Universal Declaration

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I. INTRODUCTION

The Charter of the United Nations forbids discrimination on the basis of "race, sex, language or religion."¹ Some of the delegations involved in drafting the 1948 Universal Declaration of Human Rights felt that this short list of four nondiscrimination items was enough and should be repeated in the Declaration. Others wanted to be more exhaustive. The matter was referred to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. This commission recommended that the article in the Declaration state that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, sex, language, religion, political or other opinion, property status, or national or social origin."² Everything after "religion" was added to the Charter list. A few objections were raised, but nothing was deleted from the list. Instead, the two items of "color" and "birth" were added to the Sub-Commission's recommendation.³

Article 2 of the Declaration is thus an expansion of the Charter's mandate that the new world organization promote human rights for all without discrimination. This theme of nondiscrimination runs through all the deliberations about the Declaration, and whatever disagreements there were about the various items on the list were minor. There was complete agreement that the article on nondiscrimination was a keystone of the Declaration and a gateway to its universality. If we take away someone's race, sex, and opinions on various subjects, all information about his or her background,

1. U.N. Charter art. 1, para. 3.

2. U.N. Doc. E/CN.4/SR.52 at 4.

3. See U.N. Doc. E/CN.4/SR.35; E/CN.4/SR.52; 3 (1) U.N. GAOR C.3 (84th–180th mtg.) at 140, U.N. Doc A/C.3/SR.84–180 (1948).

about birth and present economic status, what we have left is just a human being, one without frills. And the Declaration says that the human rights it proclaims belong to these kinds of stripped-down people, that is, to everyone, without exception. As Mr. Heywood, the Australian representative, said, "logically, discrimination was prohibited by the use in each article of the phrase 'every person' or 'everyone.'" ⁴ That is why the prohibition against discrimination is not repeated—as it well might have been—with each article, but is stated at the beginning and made applicable to "all the rights and freedoms set forth in this Declaration."

Given this opening prohibition against discrimination, there is, strictly speaking, no need for repetition. But that does not mean that the temptation was not there, especially in the case of sex-based discrimination. Nor does it mean that the final product—a litany of the words "everyone" and "no one"—was arrived at without struggle. For there was a struggle, especially in the case of women's rights.

II. THE WOMEN'S LOBBY

In the second paragraph of the Charter, the peoples of the United Nations say that they are determined to "reaffirm their faith in fundamental human rights, in the dignity and worth of the human person [and in] the equal rights of men and women. . . ." And when the Charter talks about the organs that are to implement the goals of the organization, it expressly states that "[t]he United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."⁵ In the Charter, discrimination on the basis of sex is singled out from among the list of items and specifically prohibited. This is why Denmark had no trouble having a resolution passed in the First General Assembly of 1946, asking member states to adopt measures necessary to fulfill the purposes and aims of the Charter by granting women the same political rights as men.⁶

It is also why the Economic and Social Council appointed a Sub-Commission on the Status of Women to "submit proposals, recommendations and reports to the Commission on Human Rights."⁷ This subservience did not last very long. Mr. Humphrey, who was the first director of the UN Secretariat's Division of Human Rights, records in his memoirs that "at the second session of the Economic and Social Council (ECOSOC), its chairman, Mrs. Bodil Begtrup of Denmark, said women did not want to be dependent 'on the pace of another commission.'" Her wish was granted, says Hum-

4. U.N. Doc. E/CN.4/AC.1/BR.24 at 4.

5. U.N. Charter art. 7, para 2.

6. See U.N. Doc. E/615 at 5.

7. U.N. Doc. E/38/Rev.1/App.1 at 14.

phrey, when ECOSOC made Mrs. Begtrup's Commission report directly to it and no longer by way of the Human Rights Commission.⁸

When the Commission on Human Rights came to discuss its tasks, Mrs. Roosevelt, the chairperson, immediately pointed out that "there might be some duplication" between the Commission's mandated interest in the "status of women" and the newly created, independent commission by that name. She pointed out that the Commission, if it so chose, could have its terms of reference changed.⁹ Mr. Tepliakov, the delegate from the Soviet Union, said that "when it came to a discussion on the International Bill of Rights, the commission was entitled to deal with all questions within the field of human rights," and he opposed striking out the words "status of women" from the scope of the Commission's interest.¹⁰ He was supported in this by Mr. Romulo, the Philippine delegate, and by Mrs. Metha, the delegate from India.

The Commission on Human Rights, with Eleanor Roosevelt as chair, did not actively seek to stay in touch with the Commission on the Status of Women, chaired by Mrs. Begtrup, and the two commissions threatened to drift apart. As a result, ECOSOC passed a special resolution,¹¹ after prodding from Mrs. Begtrup's Commission,¹² which asked the Human Rights Commission "to invite the officers of the Commission on the Status of Women to be present and participate without voting . . . when the rights of women were being considered."¹³

It seems that the absence of sexism in the Universal Declaration is primarily due to the aggressive lobbying of Mrs. Begtrup and the steady pressure of the Soviet delegation. Of Mrs. Begtrup's commission, Mr. Humphrey reports:

[M]ore perhaps than any other United Nations body the delegates to the Commission on the Status of Women were personally committed to its objectives

8. J. Humphrey, *The Memoirs of John P. Humphrey, The First Director of the United Nations Division of Human Rights*, 5 Hum. Rts. Q. 392 (1983). This is an excerpt. The complete version can be found in J. Humphrey, *Human Rights & The United Nations: A Great Adventure* (1984). Mr. Humphrey notes that many members of the Human Rights Commission resented the fact that "the section on the Status of Women was part of the Division of Human Rights with a man as its director, and I was sometimes made to feel that my presence was not welcome. . . . Although a few of the delegates . . . made a special effort to be friendly, [Mr. Humphrey] found the chairman somewhat formidable and unbending." *Id.* at 406. This stubbornness on the part of Mrs. Begtrup shows clearly in the lobbying efforts of her Commission. It is my suspicion that Mrs. Begtrup and Mrs. Roosevelt were not well-disposed toward each other, which made Mrs. Roosevelt denser than she otherwise might have been on the issue of women's rights and the language needed to reflect them.

9. U.N. Doc. E/CN.4/SR.1 at 6.

10. *Id.*

11. U.N. Doc. E/437/Res.46/f.

12. U.N. Doc. E/281/Rev.1 at 8.

13. U.N. Doc. E/CN.4/SR.23 at 8.

. . . [and] acted as a kind of lobby for the women of the world. . . . There was no more independent body in the UN. Many governments had appointed . . . as their representatives women who were militants in their own countries.¹⁴

Mr. Humphrey also notes that "the Soviet Union was proud of its record in the matter of the equality of men and women and . . . often attacked the Western countries for their 'backwardness.'" ¹⁵ An example of this can be found in the comments by Mr. Pavlov to the Third Committee. He observed that although the equality of men and women was stated in the British and US constitutions, "it had in reality not been applied. Thus of the 640 members of the British Parliament only 24 were women, and only 9 women were members of the United States Congress. The Supreme Council of the USSR included 277 women, a much higher proportion than that found in any other parliament in the world."¹⁶

Presently, the fourth recital of the Declaration's preamble repeats the "equal rights of men and women" phrase from the UN Charter. In the same passage, the Charter also speaks of fundamental human rights and of the dignity and worth of the human person. Initially, the equality between the sexes was not mentioned in the Declaration's reproduction of this Charter passage. Mrs. Bernardino, the delegate from the Dominican Republic, proposed that equality be made explicit because, she said, her delegation "was aware that in certain countries the term 'everyone' did not necessarily mean every individual, regardless of sex. Certain countries did in fact recognize certain rights for 'everyone,' but experience had shown that women did not enjoy them, as, for instance, voting rights."¹⁷ She was supported by Mrs. Menon, the delegate from India, who called attention to the fact that "the fourth recital [of the Declaration] which reproduced the language of the preamble to the Charter did not reproduce the phrase 'the equal rights of men and women' contained in that passage of the Charter."¹⁸ Such an omission, she added, would seem deliberate and hence invite sex-based discrimination. The addition was approved with a vote of thirty-two to two, with three abstentions. The United States and China voted against.¹⁹

At one point, Mrs. Begtrup made the suggestion that a phrase or note stating that "when a word indicating the masculine sex is used in the following Bill of Rights, the provision is to be considered as applying without discrimination to women should be added to the Preamble."²⁰ Her point

14. J. Humphrey, *supra* note 8, at 405.

15. *Id.*

16. 3 (1) U.N. GAOR C.3 (84th-180th mtg.) at 132, U.N. Doc. A/C.3/SR.84-180 (1948).

17. *Id.* at 771.

18. *Id.* at 764.

19. *Id.* at 788.

20. U.N. Doc E/CN.4/AC.2/SR.2 at 2-3.

was not voted upon, nor discussed. This left her Commission no choice but to seek to protect the status of women in the Declaration step by step, or article by article.

III. ARTICLE 1: NOT "ALL MEN"

Many people, even nonresidents of the United States, know by heart the line from the US Declaration of Independence which claims it to be a self-evident truth that "all men are created equal." Referring to that Enlightenment way of thinking, Mrs. Begtrup, in a General Assembly discussion on the scope of the word "everyone," recalled "that the Declaration of the Rights of Man and of Citizen . . . which had so solemnly laid down the fundamental freedoms, made no mention of the rights of women and did not even imply them. The world had evolved since then. . . ." ²¹ Indeed, the repetition of "everyone" and "no one" in virtually every article of the Declaration gives the reader a clear, nonsexist message.

Still, some critics think that the document is tainted by sexism. Adamantia Polis has argued that the Declaration is informed by "the notion of man as an autonomous, rational, calculating being, . . . a notion of man but not of woman and not even of all men but only of some." ²² And Robert Nelson has spoken of the "quasi-religious belief for promoting what the United Nations—in pre-feminist years—styled a 'spirit of brotherhood' among all human beings." ²³ He refers here to Article 1 and would have had a much stronger case if the earlier versions of the article had survived, for all of them started out with the phrase "all men." ²⁴

From the start, various delegates expressed dissatisfaction with the phrase "all men." In the first session of the drafting committee, Mr. Koretsky, the delegate from the Soviet Union, argued against using exclusive language. He objected to the understanding of some members that all persons were included in this phrase, for "this implied an historical reflection on the mastery of men over women," and he hoped the phrase could "be modified in some way to make it clear that all human beings were included." ²⁵ Mr. Harry, the Australian delegate, "[thought] the problem insoluble" and pointed out that "in the Charter itself reference was made to 'mankind' and

21. See 3(1) U.N. GAOR (136th–187th plen. mtg.) at 892, U.N. Doc. A/3/SR 136–187 (1948).

22. *Toward A Human Rights Framework* 7 (P. Schwab & A. Pollis eds. 1982).

23. Nelson, *Human Rights in Creation and Redemption: A Protestant View*, in *Human Rights in Religious Traditions* 10 (A. Swidler ed. 1982).

24. See the reports of the First Session of the Drafting Committee, U.N. Doc. E/CN.4/21/Annex F at 4; of the Second Session of the Commission, U.N. Doc. E/CN.4/95/Annex A/ at 73 and of the Second Session of the Drafting Committee, U.N. Doc. E/CN.4/95/Annex A at 5. This means the change did not occur till the Third Session of the Commission.

25. U.N. Doc. E/CN.4/AC.1/SR.13 at 6.

not to 'mankind and womankind.'"²⁶ This prompted Mrs. Roosevelt to add that "it had become customary to say 'mankind' and mean both men and women without differentiation."²⁷

The disagreement was carried over into the second session of the Commission. There too, attempts to change the text failed. In a meeting of the Working Group, which had been set up by the second session of the Commission, Mrs. Begtrup sought to have the term "human beings" substituted for the term "men." Mrs. Roosevelt told her that that was not advisable due to a question of translation concerning the French text.²⁸ After that failure, Mrs. Metha, the delegate from India, raised the issue in the regular session of the Commission, saying that "she did not like the wording 'all men' or 'should act . . . like brothers.'" Such phrases, she said "might be interpreted to exclude women, and were out of date."²⁹ Mrs. Roosevelt again made the point that "the word 'men' used in this sense was generally accepted to include all human beings."³⁰

After the phrase "all men" was adopted with a vote of twelve to zero, with five abstentions, Lord Dukeston, the British representative, suggested that the Declaration contain a note stating that in the document the word "men" referred to "all human beings."³¹ Mrs. Metha, the Indian delegate, did not object to this suggestion but still preferred to see the language changed to "human beings" or "persons," since "Article 1 was the only place in the Declaration where the expression 'men' appeared."³² The British representative's suggestion about a note was adopted by twelve votes to one, with three abstentions. In its comment on Article 1, the Dutch government took exception to that note, thinking it "superfluous to state explicitly that the word 'men' implies both men and women."³³ Nothing was changed until the third session of the Commission.

By this time the Commission had received a draft of Article 1 from the Commission on the Status of Women. The proposal for the rewording of Article 1 came in a letter from the Secretary-General. The Secretary had received the proposal from ECOSOC, sent originally by the Commission on the Status of Women, and forwarded it to the Commission on Human Rights.³⁴ This roundabout route underscores the intensity of the women's lobby, for the Secretary almost never served as a conduit between the ECOSOC and the Commission on Human Rights. Given the failures so far to have the

26. *Id.*

27. *Id.* at 7.

28. U.N. Doc., *supra* note 21, at 4.

29. U.N. Doc. E/CN.4/SR.34 at 4.

30. *Id.*

31. *Id.* at 5.

32. *Id.*

33. U.N. Doc. E/CN.4/85 at 14.

34. See U.N. Doc. E/CN.4/81.

language of the crucial first article changed, the extra women's effort is understandable, and it did pay off. The Commission on the Status of Women proposed that "all people" be substituted for "all men" and that the phrases "in the spirit of brotherhood" for "like brothers" be similarly changed. Mrs. Ledon, the vice chairman of the Commission, said that while "her Commission understood that the term 'all men' had a general sense, there was a certain ambiguity in it and it would be better to use the more precise term, which moreover figured in the Charter."³⁵ Other suggestions before the Commission were a joint British and Indian proposal to use the phrase "all people, men and women," and a French proposal that started the article with the phrase "all members of the human family."³⁶ Mr. Pavlov, the Soviet representative, pointed out that the phrase "all people, men and women" would be difficult to translate into Russian "as in that language women were automatically included in the notion of 'people.'"³⁷

The same redundancy affects the British-Indian text, which the United States supported because it expressed "the principle of equality for men and women" and showed the conviction that "discrimination against women had no place in the laws of any state."³⁸ Mr. Lebeau, the Belgian delegate, pointed to the absurdity of "*tous les hommes, hommes et femmes*" and proposed the compromise phrase of "all human beings."³⁹ Mr. Metha wanted to hear what the Commission on the Status of Women thought was the best text. Mrs. Ledon responded that the terminology suggested by Mr. Lebeau best suited her Commission.⁴⁰ But when the vote came, the British-Indian phrase "all people, men and women," as well as the phrase "in the spirit of brotherhood" were adopted.⁴¹ On behalf of her Commission, Mrs. Ledon thanked "the Commission [on Human Rights] for the amendment it had adopted to Article 1, which although slightly different from the one proposed by the Commission on the Status of Women was in conformity with its wishes."⁴²

At this point we are faced with a puzzle about the transmission of the text from the third session to the Third Committee. As just shown, the Commission on Human Rights, in its third session, had approved the British-Indian phrase "all people, men and women." Yet, the Secretariat's draft of the report for that third session begins Article 1 with the phrase "all human beings."⁴³ This draft was approved for transmission to the ECOSOC without

35. U.N. Doc. E/CN.4/SR.50 at 9.

36. *Id.* at 9–10; U.N. Doc. E/CN.4/82/Add.8 at 2.

37. U.N. Doc. E/CN.4/SR.50 at 13.

38. *Id.* at 9.

39. *Id.* at 10–11.

40. *Id.* at 11.

41. *Id.*

42. *Id.* at 15.

43. U.N. Doc. E/CN.4/148/Add.1 at 2.

anyone pointing out the discrepancy between what the Commission had decided and this report.⁴⁴

As a result of this error all subsequent drafts of the Declaration contain the compromise phrase "all human beings," first suggested by Mr. Lebeau, the Belgian delegate. In neither the Third Committee debates nor in the one in the General Assembly was the issue of the opening wording of Article 1 ever raised again. Both bodies approved the present phrase, which, though not explicit about the equality of men and women, is nevertheless free of all sexist implications.

IV. ARTICLES 16 AND 25: THE FAMILY AND CHILDREN

The article on marriage started as part of an article on equality before the law. The article as later stated contained three ideas: the equality of men and women, the protection of the family, and the protection of motherhood and childhood.⁴⁵ Put this way, the redundancy is immediately apparent; if the sexes are given equal rights even in marriage, as they are in Article 16, and if motherhood and children are protected, as they are in Article 25, why then does the Declaration have a separate statement just on the family? Since families are made up of men, women, and children, all of whose rights are separately protected in the Declaration, it would seem that no extra statement just about the family is needed. Yet the third paragraph of Article 16 asserts that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

This statement grew out of an earlier, simpler version adopted by the Working Group of the second session. Combining a Byelorussian and a French text, the Philippine delegate, Mr. Romulo, proposed adding a paragraph to the article on marriage stating that "[m]arriage and the family shall be protected by the State and society." The Working Group accepted this proposal by three votes to one, with two abstentions.⁴⁶ But when this group reported to the second session, Mr. Malik, the Lebanese delegate, proposed this substitute: "The family deriving from marriage is the natural and fundamental group unit of society. It is endowed by the Creator with inalienable rights antecedent to all positive law and as such shall be protected by the State and society."⁴⁷

Mr. Malik maintained that "society was not composed of individuals, but of groups, of which the family was the first and most important unit," the one in which human rights were first nurtured. He was not going to

44. U.N. Doc. E/CN.4/SR.81 at 26–29.

45. See U.N. Doc. E/CN.4/AC.2/SR.6.

46. *Id.* at 7.

47. U.N. Doc. E/CN.4/SR.37 at 11.

insist on the word "Creator" but liked it because he "believed that the family did not create itself" and had as such been "endowed with inalienable rights, rights which had not been conferred upon it by the caprice of man. . . ."48 It is remarkable how Mr. Malik, one of the most aggressive defenders of individual rights throughout the entire deliberations, here transferred the language of inalienability from the individual to the family, thus possibly—but not necessarily—trapping children and mothers in that unit.

Mr. Bogomolov, the Soviet representative, immediately took exception to Mr. Malik's definition of the family.

He pointed out that varied forms of marriage and family life existed in the world, each form corresponding to the special economic conditions of the people concerned. Different religions had different ideas regarding the position of women in the family; some religions allowed polygamous families and some did not accord an equal status to men and women. He also reminded the delegates that many people did not believe in God, and that the Declaration was meant for mankind as a whole, whether believers or unbelievers.⁴⁹

No discussion took place, though it should be noted that the reference to polygamy went against an earlier recommendation made by the Commission on the Status of Women. In its first report, the Commission had urged the Commission on Human Rights to abolish polygamy.⁵⁰

Neither Mr. Malik nor Mr. Bogomolov contemplated the idea that gays and lesbians have the right to establish a family. Both of them were thinking in exclusively heterosexual terms. Even so, their different views had far-reaching consequences for the equality of men and women as well as for the secular or sacred character of the family.

A compromise was struck. The first sentence about the natural and fundamental character of the family as a group unit was accepted by nine votes to five, with four abstentions. The second sentence, with the reference to the Creator and the family's inalienable rights, was rejected by nine votes to six, with three abstentions. From an anthropological perspective, the compromise was not a bad one. In his essay on the family, Claude Levi-Strauss argues that the family, understood as mother, father, and children, is the fundamental—though not necessarily the natural—group unit of society.⁵¹

But even the first sentence was soon afterwards rejected in the second session of the drafting committee. The drafters went back to the simpler call that "marriage and the family shall be protected by the State and society."⁵²

48. *Id.* at 11, 12.

49. *Id.* at 12.

50. U.N. Doc. E/615 at 12.

51. C. Levi-Strauss, *Family in Transition* 55, 61, 65 (1971).

52. U.N. Doc. E/CN.4/AC.1/SR.38 at 15.

One reason for the reversal might be the fact that Mr. Malik reintroduced his second sentence with the reference to the "Creator" or its substitute "Nature," stressing the "fundamental and inalienable importance of the family."⁵³ Mr. Bogomolov said he was in agreement on the need to have the family protected, but he still "felt that it was unnecessary to bring any philosophical theories into the Declaration." Mr. Malik's second sentence was once more turned down six votes to one, with one abstention.⁵⁴

That still left the original first sentence about the family as the fundamental group unit of society to be decided upon. Mr. Malik's appeal to the fact that the same idea about the family could be found in the Bogota Declaration, which had been adopted by no fewer than twenty-one states at the Ninth International Conference of American States one month earlier, did not help.⁵⁵ The vote was a very close one and had to be taken twice. The sentence failed by four votes to three, with one abstention, leaving only the call for the protection of marriage and the family by the state and society.⁵⁶

In the third session of the Commission, the delegates returned to the earlier compromise and once more accepted the first sentence. Mr. Malik again pleaded for the retention of the words "the natural and fundamental group unit of society" which he said were the most essential part of the amendment he had reintroduced.⁵⁷ He had reason for optimism, because the French, Belgian, and US delegations all had made proposals that contained these words.⁵⁸

Opposed to the first Lebanese amendment stood a very short joint British-Indian text; it stated that men and women were "entitled to equal rights as to marriage" and left everything else out.⁵⁹ It did not call for special protection of the family or of motherhood and children. Given the two extremes of a mere call for protection on the one hand, and the two-sentence original, Lebanese version on the other hand, the old middle of just accepting the first sentence about the family as the natural and fundamental unit found favor once again.

At one point, Mr. Fontaine, the delegate from Uruguay, suggested that the word "natural" be deleted, "since the essential point was to state that the family was the fundamental group unit of society and that it was the cell around which the State was formed; the way in which the family was constituted was of secondary importance."⁶⁰ This proposal was not adopted,

53. *Id.* at 8.

54. *Id.* at 10.

55. *Id.* That document states that "[e]very person has the rights to establish a family, the basic element of society, and to receive protection therefor." See U.N. Doc. E/CN.4/122 at 3.

56. *Id.* at 11.

57. U.N. Doc. E/CN.4/105.

58. U.N. Doc. E/CN.4/SR.58 at 9 (US proposal); U.N. Doc. E/CN.4/82/Add.8 at 4, U.N. Doc. E/CN.4/SR.58 at 14 (French proposal); U.N. Doc. E/CN.4/103 (Belgian proposal).

59. U.N. Doc. E/CN.4/99 at 4.

60. U.N. Doc. E/CN.4/SR.58 at 13.

but if it had been, it would have left the Declaration less open to the charge that it is insensitive to rights of gays and lesbians, for the word "natural" was probably interpreted by most, if not all delegates, as a reference to the heterosexual character of marriage and the family.

The Uruguay proposal would have protected the right of nonheterosexuals to found families and still would have done justice to the anthropological data which tell us that over the long term, the monogamous, heterosexual marriage is the best device for a society's continued existence.⁶¹ The fact that Mr. Malik, who had appealed to the Bogota Declaration—which did not use the word "natural" in its article on the family—added the word, suggests that he was indeed thinking of a natural law approach to human rights. His use of the phrase "antecedent to all positive law" in the earliest formulation of the amendment leads to the same conclusion. The majority of delegates supported this view, for the word survived in the third session⁶² and was never again seriously questioned.⁶³ It is my view that the Commission should either have deleted the paragraph on the family—since the rights of the individual members are covered already—or dealt with the issue under the heading of social security, as indeed it proceeded to do in addition.

The third session made one change in the Lebanese first sentence. The phrase "deriving from marriage" after the word "family" was deleted.⁶⁴ Mr. Loufti, the delegate from Egypt, was the first to propose that this be done.⁶⁵ He was supported in this by Mr. Larrain, his colleague from Chile. Mr. Malik demurred, but the language was adopted by ten votes to one, with four abstentions.⁶⁶ The reason for the deletion of the phrase "deriving from mar-

61. This is how I interpret Levi-Strauss' conclusion that

"[s]ociety belongs to the realm of culture, while the family is the emanation, on the social level, of those natural requirements without which there could be no society and indeed no mankind. . . . Man can only overcome nature by complying with its laws. . . . The greatest amount of compliance with the natural laws is likely to be found at both extremes of the cultural scale: among the simpler peoples as well as among the more highly civilized. . . . Indeed the first ones are not in a position to afford paying the price of too great a departure, while the second have already suffered from enough mistakes to understand that compliance is the best policy. This explains why, as we have already noticed, the small, relatively stable, monogamic restricted family seems to be given greater recognition both among the more primitive peoples and in modern societies than in what may be called (for the sake of argument) the intermediate levels.

C. Levi-Strauss, *supra* note 51, at 70, 71.

62. By a vote of eight to one, with six abstentions. U.N. Doc. E/CN.4/SR.62 at 11.

63. Incidentally, in all the commotion the phrase "by society and the State" which had been a more or less permanent part of the protection clause was dropped in the third session and resurrected in the third committee as part of a Soviet amendment. U.N. Doc. E/800 at 33, item 12.

64. I do not think Levi-Strauss, to once more invoke his authority, would have thought this deletion a good idea, for in his essay he moves from a discussion of the family to one about marriage, which he sees as society's expression of control over the process of the formation of families necessary for its survival. He would, no doubt, have been sympathetic to the reasons for the deletion. See *generally*, C. Strauss, *supra* note 51, at 61, 68.

65. U.N. Doc. E/CN.4/SR.58 at 12.

66. U.N. Doc. E/CN.4/SR.62 at 10.

riage" was a concern for illegitimate children and their right to protection. This deletion and the earlier retention of the word "natural" fit together. Marriage and its ceremonies make up a social control mechanism and as such are not derived from nature in any direct way. Assuming that the Declaration was to contain a statement on the importance of the family, it would probably have been better to claim "that the family, derived from marriage, is the fundamental group unit of society and is entitled to protection by society and the state." This would have put the whole matter on a social plain, where it probably belongs.

In spite of what I have called the redundancy of the Malik first sentence, a case can be made for a statement about the family, but only, I think, in connection with the rights of children. And in that case we need to remember that not all children are so lucky as to be born into or raised by nurturing families. This is why the second paragraph of Article 25 protects children regardless of the circumstances of their birth. The statement about the family in Article 16 could be a way to the entrapment of children in that unit, bereft of their human or natural rights. But that is not what it is. The Declaration does recognize and protect children as individuals outside the confines of parental authority.

Some of the constitutions available to the Commission were quite explicit about the needs of pregnant women and children. The French constitution called for special protection to be given to "the child, to the mother and to all the aged workers."⁶⁷ Article 157 of the Brazilian constitution asserted the right "of an expectant mother, to rest before and after childbirth, with no prejudice to her job or wage."⁶⁸ Similar provisions could be found in the Nicaraguan and Panamanian constitutions.⁶⁹ Various nongovernmental organizations submitted their own drafts of a declaration to the Commission. The draft of the American Federation of Labor sought a guarantee against "the employment of child labor."⁷⁰

There was, therefore, ample precedent for a paragraph demanding the protection of motherhood and childhood, especially in the context of an article on the rights to social security, which is where the second session placed it.⁷¹ At the time of the discussions in the Third Committee, the version that was slated for adoption read that "mother and child have the right to special care and assistance." Several countries made amendments, some of which were very explicit about the equal rights of illegitimate children. The Yugoslavian delegation wanted the Declaration to assert that "illegitimate

67. U.N. Doc. E/CN.4/AC.1/3/Add.1 at 343.

68. *Id.* at 341.

69. *Id.* at 345, 346.

70. U.N. Doc. E/CN.4/W8 at 20.

71. Then it read: "Motherhood shall be granted special care and assistance. Children are similarly entitled to special care and assistance." U.N. Doc. E/600 at 17 (art. 26, para. 2).

children are equal to legitimate children and have the same right to social protection."⁷² The proposal that led to our present text came from the Norwegian delegation. It read: "[c]hildren born out of wedlock are equal in rights to children born in marriage and shall enjoy the same social protection."⁷³ Mr. Habib, the Indian delegate, welcomed the Norwegian amendment "in the firm conviction that the sins of the parents should not be visited upon the children."⁷⁴

At about the time the Commission asserted the equal rights of legitimate and illegitimate children, its members had their awareness of children's rights raised by Mr. Rajchman, the chairman of the United Nations International Children's Emergency Fund (UNICEF). Speaking twelve days before the Declaration was adopted, he reported to the Commission that "[d]uring the twelve preceding months, the UNICEF had rendered assistance to twelve war devastated European countries with a total population of 191 million, of whom 64,600,000 were children under eighteen years of age and 4,800,000 were pregnant or nursing women."⁷⁵ He went on to say that only 6 percent of those eligible for aid had received it and that the "infant mortality rate had [consequently] reached an abnormally high level in those countries."⁷⁶

Also at this time, the Commission received a progress report on the activities of the United Nations Appeal for Children (UNAC), a campaign conducted by the office of the Secretary-General. The campaign was hugely successful. By 15 November, more than thirty million dollars had been collected.⁷⁷ It is clear that the Commission did not want to tie the rights of children to any kind of definition of the family, in which they might be trapped. The language of Article 25 will not allow this.

V. ARTICLE 16: MARRIAGE AND DIVORCE

Eli Zaretsky tells us that Fourier's interest in individual rights, including those of women, was so pure or strict that he criticized the French revolution for not abolishing the family.⁷⁸ It is a radical notion, that, from the perspective of individual rights, warrants discussion. Zaretsky tells the story of women's entrapment in the family unit. Historically, men have had a far easier time asserting their own individuality and their rights apart from the family. Any

72. U.N. Doc. Annexes A/C.3/233 at 38.

73. U.N. Doc. Annexes A/C.3/344 at 82.

74. 3(1) U.N. GAOR C.3 (84th–180th mtg.) at 578, U.N. Doc. A/C.3/SR.84–180 (1948).

75. *Id.* at 796.

76. *Id.*

77. U.N. Doc. Annexes A/C.3/387 at 107.

78. E. Zaretsky, *Capitalism, The Family, and Personal Life* 67 (1986).

statement, therefore, about the family can—but, of course, need not—be a coverup for the oppression of women. We have seen that the Universal Declaration does contain a strong statement about the family, and we should ask whether that signals the entrapment of women in that social unit. If women are to have rights as individuals, they must not only have them as homemakers and mothers; they must not be merged without remainder into this familial background.

This concern is underscored by both Article 23 and Article 25, which speak of a person's work and standard of living as adequate for "himself and his family." This suggests that there is one family wage and that it is earned by the man. It hints at a division of labor between the sexes which contemporary feminists rightly reject. Historically, the language of "a family wage" is very much part of a sexist way of thinking. Says Zaretsky, "[b]y the end of the nineteenth century, the politics of socialists, feminists, and trade unionists had converged on the same demand for a 'living' or 'family' wage for the working class family, i.e., a single male wage large enough to support a family."⁷⁹ In addition to the valid point about social security made by this demand, it also implies by the use of the word "his" that a woman's natural place is in the home and not in the world of production.

The women's lobby never sought to have the word "his" in these two articles changed to some more neutral, nonsexist terminology, one just as suited to expressing the social security point. This should come as no surprise. The earliest Humphrey draft, which was gleaned from the constitutions of the member states, stated, "Everyone has the right to such public help as may be necessary to make it possible for him to support his family."⁸⁰ The constitution of Iceland, for instance, stated that "[a]nyone who is unable to support himself or his family . . . is entitled to receive" public funds.⁸¹ The International Federation of Christian Trade Unions submitted a draft that spoke of a person's right to work under conditions "[such] that his labor enables him to support himself and his family."⁸² And in one of his early drafts Professor Cassin wrote that human labor "shall give a decent standard of living to the worker and his family."⁸³ Articles 23 and 25 reflect this language and the women's lobby let it stand.

Given these worries about the entrapment of women in the family unit, let us take a second look at the article on marriage, especially its first paragraph, in which divorce is openly mentioned. It is my contention that the discussion of this issue shows that the delegates in 1948 were aware of

79. *Id.* at 48.

80. U.N. Doc. E/CN.4/AC.1/11 at 45.

81. U.N. Doc. E/CN.4/AC.1/3/Add.1 at 344.

82. U.N. Doc. E/CN.4/45 at 3.

83. U.N. Doc. E/CN.4/AC.1/W.2/Rev.1 art 37.

the entrapment problem and resisted it, thus liberating women far beyond what most constitutions at that time allowed.

At the start, Article 6, about equality before the law, and Article 16, about marriage and the family, were combined. For example, one of the early Cassin drafts read: "Everyone has the right to a legal personality. Everyone has the right to contract marriage in accordance with the laws of the state."⁸⁴ Concerning equality before the law, the Soviet delegation twice raised the issue of discrimination against women. In the second session of the drafting committee, Mr. Pavlov wanted to know what this article meant in light of the fact that "in the State of Georgia of the United States, a married woman had no legal existence apart from her husband's." Mrs. Roosevelt answered that in her country the phrase "fundamental civil rights"—which at that time was used in discussing the article—"varied from State to State."⁸⁵

In the third session of the Commission, there even was an attempt to drop this article entirely. The British, Indian, and US delegations felt that the general article on nondiscrimination was sufficient and that there was thus no need to enter into the murky waters of what it means to be a "person before the law." Mr. Pavlov joined his French colleague in wanting to retain the idea of a "juridical personality":

He also pointed out that apart from attempts against whole groups, such as those against the Jews in Germany [mentioned by the French delegate], account must be taken of the fact that some civil legislation still contained restrictive provisions regarding juridical personality of individuals. Thus, in certain cases, a wife had no juridical personality independent from that of her husband. It was the Commission's duty to combat all discrimination, including discrimination based on sex, which was still prevalent in several countries, and he did not see why [the Commission] should reject an article that could not fail to be of value from that point of view.⁸⁶

The article was retained by twelve votes, with four abstentions.⁸⁷

In the meantime, the drafting committee had referred the questions about marriage and the family to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, and its members had felt that any suggestions from the Commission on the Status of Women should be routed through that Sub-Commission.⁸⁸ As a result the Sub-Commission sought to consult with the Commission on Women. All of this delay surprised Mrs. Begtrup "in view of the conclusions recorded in the last report of the Commission on the Status of Women."⁸⁹

84. U.N. Doc. E/CN.4/AC.1/W.2/Rev.2 art. 15.

85. U.N. Doc. E/CN.4/AC.1/SR.37 at 7, 8.

86. U.N. Doc. E/CN.4/SR.58 at 4.

87. *Id.* at 8.

88. U.N. Doc. E/CN.4/AC.1/SR.13 at 16.

89. U.N. Doc. E/CN.4/AC.2/SR.5 at 8.

That report had been submitted almost a year earlier. It had, she said, advocated full equality of civil rights "irrespective of marriage, race, language, or religion."⁹⁰ That report also said that civil marriage should involve freedom of choice, the dignity of the wife, monogamy, the equal right to the dissolution of marriage, the equal right to guardianship, the right to keep one's nationality, the right to make contracts, and the right to own property.⁹¹ And it went on to make some progressive social recommendations such as leave with pay for pregnant women and equal access to an education for women.⁹² By way of justification for these recommendations, the Commission had referred to the UN Charter, where "the equal rights of men and women" are expressly stated as one of the goals of the United Nations. In light of all this, Mrs. Begtrup could not see why the Commission on Human Rights had backed away from tackling the article on women and the family. Perhaps the delegates sensed the upcoming fight about divorce, for on that issue they were deeply divided.

In the Working Group of session two, the Byelorussian delegation proposed the idea that "marriage and the family shall be protected by the state and regulated by law on the basis of equal rights for men and women."⁹³ No mention of divorce was made. Mrs. Roosevelt, on behalf of the US delegation, proposed that "women and men shall have the same freedom to marry and to choice of marriage partner, and the same access to remedies for breach of marriage."⁹⁴ Ironically, this is the first mention of the possibility of divorce by a delegation which later was to back away from inclusion of the idea. Ms. de Romer, who represented the International Union of Catholic Women Leagues, preferred "a text affirming equality as regards marriage without specifying whether it was a case of contracting marriage or dissolving it."⁹⁵ She was immediately and "warmly supported" by Mr. Vanistendael, the representative of the International Federation of Christian Trade Unions.⁹⁶

At this point in the deliberations neither Mrs. Uralova, the Rapporteur of the Commission on the Status of Women, nor Mr. Bogomolov, the Soviet representative, brought up the matter of divorce. The latter felt that "the question of marriage should be examined from the angle of the protection which the State must give the home, and the main emphasis should be placed on the protection of children."⁹⁷ Mr. Adamo, the Panamanian representative, said that his delegation could not accept most proposals, since "some States were bound by laws based on Concordats with the church

90. *Id.*

91. U.N. Doc. E/281/Rev.1 at 12.

92. *Id.*

93. U.N. Doc. E/CN.4/AC.2/SR.6 at 2.

94. *Id.*

95. *Id.* at 3.

96. *Id.*

97. *Id.* at 4.

and had, in respect of religious marriage and of divorce, obligations which would not permit them to accept the proposed texts."⁹⁸ The only proposal he could have been reacting against was the US proposal, which spoke of the breach of marriage. The Working Group voted to adopt the reading "that men and women shall have the same freedom to contract marriage in accordance with the law."⁹⁹ The question of divorce had been sidestepped.

At the time of the second session of the Commission, in December 1947, no version of the article on marriage had yet been received from the Commission on the Status of Women. This Commission met in January 1948 and proposed the following article: "Men and women shall have equal rights to contract or dissolve marriage in accordance with law."¹⁰⁰ After this, the question of divorce could not be avoided any longer. Still, in a drafting committee meeting, Mrs. Roosevelt, acting for the United States, proposed a more benign version: "Men and women shall have the same rights to contract marriage in accordance with law," which dropped the reference to the possible dissolution of marriage.¹⁰¹

Mr. Vanistendael, the representative of the International Federation of Christian Trade Unions, had a clear preference. "He drew the Committee's attention to the controversy which the text proposed by the Commission on the Status of Women might raise. The dissolution of marriage was unacceptable to millions of Christians and the text proposed was in contradiction to that belief."¹⁰² He therefore wanted the equal rights of men and women affirmed without explicit mention of the matter of divorce. This idea carried the vote. The text of the Commission on Women was voted down and the US amendment adopted as reading, "Men and women shall have equal rights as to marriage in accordance with law."¹⁰³

At the beginning of the third session of the Commission, Mrs. Ledon, the vice chairman of the Commission on the Status of Women, came back to this defeat and sought to explain her Commission's position. It was not that the Commission demanded that divorce be made legal—though it could easily have argued that on the basis of the separation of church and state—but that it "had been obliged to take account not only of the views of groups that did not recognize divorce, but also of the existing situation in countries where, divorce being legally recognized, the relevant legislation usually

98. *Id.* at 5.

99. With votes of four to zero, with two abstentions and of three to one, with two abstentions. The British delegation succeeded in having added the comment that "married persons should have the right to reside together in any country from which they could not lawfully be expelled." *Id.* at 6, 7.

100. U.N. Doc. E/615 at 12.

101. U.N. Doc. E/CN.4/AC.1/SR.38 at 12.

102. *Id.* at 13.

103. *Id.* The rejection was with three votes to zero, with two abstentions; the adoption with five to one, with one abstention.

placed women at a disadvantage."¹⁰⁴ She was supported in this stance by Mr. Stepanenko, the Byelorussian representative, who also felt that women should be guaranteed "the same rights as men not only to contract but also to dissolve the marriage ties."¹⁰⁵ The Soviet delegation also made the dissolution point explicit in its proposal.¹⁰⁶

Again, the representatives of various Christian groups spoke up against any explicit mention of divorce. Mr. Vanistendael said that "[i]f the Declaration proclaimed the right to dissolve marriage, it would be unacceptable to hundreds of millions of Christians in countries that were Members of the United Nations."¹⁰⁷ Mrs. Schaeffer, who represented the International Union of Catholic Women's Leagues, "pointed out that her organization comprised 36 million women divided among 120 associations in 60 countries," all of whose consciences would be offended by the "principle of the dissolution of marriage."¹⁰⁸

Given these divergent opinions, it is understandable that some delegations were drawn toward the simple, not very controversial phrasing of the British-Indian text, stating that "men and women are entitled to equal rights as to marriage."¹⁰⁹ This phrase "as to marriage" became the end of the first sentence of the article and was as such passed on to the Third Committee.¹¹⁰ At this point Mr. Pavlov, the Soviet delegate, pointed out that the Commission had inadvertently left out the idea of the need for the "full consent of both parties,"—which had long been a point of consensus among the delegates—as well the idea of the dissolution of marriage, which "was intended to protect the woman from the loss of property which she frequently incurred as a result of divorce."¹¹¹ Both points were voted upon. He was upheld on the consent question, but turned down on the divorce issue.¹¹²

When Article 16 arrived at the Third Committee, it had the following three paragraphs: (1) men and women of full age have the right to marry and to found a family and are entitled to equal rights as to marriage; (2) marriage shall be entered into only with the full consent of both intending spouses; and (3) the family is the natural and fundamental group unit of society and is entitled to protection. The difference between this text and the final one we have lies in the addition of the phrases "without any limitation due to race, nationality or religion" and "during marriage and at its dissolution," both to paragraph one. In the second paragraph, the consent

104. U.N. Doc. E/CN.4/SR.58 at 10.

105. *Id.* at 12.

106. *Id.* at 10.

107. *Id.* at 16.

108. *Id.* at 17.

109. U.N. Doc. E/CN.4/99 at 4.

110. U.N. Doc. E/CN.4/SR.62 at 10.

111. *Id.* at 11.

112. *Id.* at 12.

was not only made full, but also free, while in the third paragraph, to the idea of protection was added that it be done "by society and the state." Most of these changes did not require extensive discussion.

The word "free" was added upon the recommendation of the Lebanese delegation.¹¹³ The nondiscrimination clause, asserting the right to marry "without any discrimination due to race, nationality or religion," received some opposition, because several delegations felt it was not necessary to repeat the prohibition of Article 2. The insertion was proposed by the Mexican delegation. Mr. Campos Ortiz said his delegation realized this prohibition against discrimination repeated what Article 2 had already said. Nevertheless, he felt that important things needed to be repeated as often as necessary and such repetition would strengthen the Declaration "immeasurable in the eyes of the common man."¹¹⁴ Mrs. Kalinowsky, the Polish delegate, supported the Mexican amendment because the war, she said, had shown the equality of the sexes.¹¹⁵ It passed with a vote of twenty-two to fifteen, with six abstentions and is the only place in the Declaration where some of the nondiscrimination items in the prohibition of Article 2 are repeated.¹¹⁶

This fact itself testifies to the strength of the women's lobby and the desire of the delegates to adhere to the Charter's promise of equal rights for men and women. The phrase that calls for the family's protection "by society and the State" was proposed by the Soviet Union and passed with a comfortable two to one margin.¹¹⁷ Again, this is the only place in the Declaration where the power of the state is invoked as a protective device and as such it underscores the high regard all delegates had for the family.

The addition of the nondiscrimination clause may seem innocent enough, since it simply repeated some of the items of Article 2. The prohibition of discrimination on the basis of religion was, however, a great stumbling block to delegates from largely Muslim countries. For in Muslim law, Muslims are forbidden to marry someone of another faith. This conflict was so severe that it caused Saudi Arabia to abstain in the final vote on the Declaration, one of only eight countries to do so. Mr. Baroody, the Saudi delegate to the Third Committee,

emphasized the fact that apparently the authors of the draft declaration had for the most part taken into consideration only the standards recognized by western civilization and had ignored more ancient civilizations which were past the experimental stage, and the institutions of which, for example marriage, had proved their wisdom through centuries.¹¹⁸

113. The vote was thirty-six to zero, with five abstentions. 3(1) U.N. GAOR C.3 (84th-180th mtg.) at 376, U.N. Doc. A/C.3/SR.84-180 (1948).

114. *Id.* at 364.

115. *Id.* at 371.

116. *Id.* at 375.

117. *Id.* at 377.

118. *Id.* at 370.

Mr. Cassin, the French delegate, commented on this abstention in the General Assembly. He pointed out that the wording of Article 16 had not prevented other Muslim countries such as Syria, Iran, Turkey, and Pakistan from voting for the Declaration.¹¹⁹ Mrs. Ikramullah, the delegate from Pakistan, had said that “her delegation fully supported the adoption of the declaration because it believed in the dignity and worth of man [and because] it was imperative that the peoples of the world should recognize the existence of a code of civilized behavior which would apply not only in international relations, but also in domestic affairs.”¹²⁰

I have shown above that any mention of even the possibility of divorce had been consistently rejected by the Commission itself. The Third Committee was a much bigger body, comprising representatives of all the member states. The closeness of the vote in that larger forum—it passed on a count of seventeen to sixteen, with nine abstentions¹²¹—reveals the intensity of the debate. Those who were against the amendment generally argued that the Commission’s phrase “equal rights as to marriage” said everything that needed to be said, without offending anyone. “Mrs. Roosevelt . . . replying to the question asked by the representative of Denmark [Mrs. Begtrup], pointed out that the Commission on Human Rights had interpreted the term marriage in its widest sense. Article [16], in its original draft, dealt with all stages of marriage, from the contract to the divorce.”¹²² She was backed on this by Mr. Cassin, the French delegate, who argued that “countries which had divorce laws could not after all impose the use of the word ‘divorce’ in the declaration when certain national constitutions did not admit it.”¹²³ By itself, this argument does not carry much weight, since the very project of the Declaration was to bring errant constitutions in line with the moral principles enunciated therein. In 1948, many constitutions did not yet provide for equal suffrage, but, as we shall see below, the Declaration calls for just that.

Both the Dutch and the Lebanese representatives made an interesting point against the Soviet position. They argued that the phrase “both during marriage and when divorced” suggested to the common man—and to anyone else as well—that the United Nations “approved of divorce on the same footing as marriage.”¹²⁴ Mr. Azkoul, the Lebanese delegate, elaborated on this point with the observation that “marriage was an institution, whereas divorce was merely an exceptional and regrettable aspect of that institution.”¹²⁵ The question is one about the extent to which the Declaration seeks

119. See 3(1) U.N. GAOR (136th–187th plen. mtg.) at 933, U.N. Doc. A/3/SR.136–187 (1948).

120. 3(1) U.N. GAOR C.3 (84th–180th mtg.) at 37, U.N. Doc. A/C.3/SR.84–180 (1948).

121. *Id.* at 376.

122. *Id.* at 373.

123. *Id.* at 374.

124. *Id.* at 368 (Mr. Beaufort, the Dutch delegate).

125. *Id.* at 372.

to enunciate moral principles regardless of imperfect national realities and of when it should bow to those realities. Implicit in the Dutch and Lebanese position is the idea that marriage is more permanent than not, divorce being the exception to the rule.

Mrs. Begtrup saw the problem of equal footing that was raised and proposed the compromise phrase "equal matrimonial rights" for men and women. This excellent suggestion did not catch on and was rejected nineteen to seven, with thirteen abstentions,¹²⁶ but it does express the basic idea behind the Soviet amendment. Mr. Pavlov himself said that "the purpose of his amendment was not to encourage divorce, but to ensure the equality of husband and wife during marriage and in case of divorce. . . ." His delegation wanted to take "the human factor into account, for the refusal to grant a divorce in the case of a family crisis was tantamount to a flagrant denial of freedom."¹²⁷

The crucial qualification "in the case of" can also be found in the Polish position, as expounded by Mrs. Kalinowsky. She pointed out that her delegation was "opposed to easy divorce," but wanted to give "the man in the street . . . the assurance that equality would obtain in case of divorce. . . ."¹²⁸ Mrs. Bernardino, the delegate from the Dominican Republic, wanted:

the absolute equality between men and women as to marriage specifically expressed, for . . . there were countries which had not yet granted women absolute equality from the legal point of view. The ultimate goal of Article [16] should therefore be to influence governments to revise their legislation if necessary in order to abolish any disability affecting women in connection with marriage.¹²⁹

Mrs. Ikramullah, the Pakistani delegate, also supported the Soviet push toward equality between the sexes, partly "to ensure protection of women after divorce and the safeguarding of their property."¹³⁰

Given the reality of divorce, the Declaration asserts equal rights for men and women in that area, too. The drafters treated the question of divorce as one of nondiscrimination rather than as itself a basic and independent human right. It is true, of course, that much of the opposition to the explicit mention of divorce came from delegates from Christian countries and organizations. This opposition, which was based on certain religious convictions, did not prevent these countries in the end from voting for the Declaration. In that respect, these Christians were in the same position as some

126. *Id.* at 376.

127. *Id.* at 373.

128. *Id.* at 371.

129. *Id.* at 369.

130. *Id.* at 374. But she did want to point out that equal rights does not mean identical rights.

delegates from Muslim countries. Both groups objected on religious grounds to certain provisions of the marriage article. In the end, all of them—except Saudi Arabia—voted for the Declaration, in effect admitting that the question of human rights cannot be settled on religious grounds. The human rights enunciated in the Declaration are not linked to religion. The drafters did not think that in order to accept the existence of any one of the rights one had to be an adherent of a certain faith. In that context, the right to divorce, though derivative, is nevertheless fundamental, as is a prisoner's right to a fair hearing. No one has to contract marriage, but once there, certain rights become operative.

VI. ARTICLES 21 AND 23: SUFFRAGE AND PAY

In the article on marriage, the Commission had been willing to repeat some of the nondiscrimination items of Article 2, namely, race, nationality, and religion. Various delegations tried to get the same kind of repetition approved for the article on participation in government. This made good sense, for the Commission on the Status of Women, which "sought to raise the status of women, irrespective of their nationality, race, language or religion, to equality with men in all fields of human enterprise,"¹³¹ had decided that "democracy is now the only social order in which women can enjoy full rights as human beings."¹³² The Danish motion that passed the first General Assembly, urging member states to give women full political rights, is discussed above. Against this background, the article on participation in government is one of the most important ones. Again, the fight was taken up by the Commission on the Status of Women and the Soviet delegation.

In the Working Group of session two, Mrs. Begtrup pointed out "that in practice there were still in many countries qualifications of class, income and sex regulating suffrage. She would like to see the word 'equal' before the word 'election' " in any statement about the right to take part in elections.¹³³ Mrs. Eder, the representative of the International Council of Women "supported this view and emphasized equality of suffrage."¹³⁴ Miss Romer, who represented the International Union of Women's Catholic Organizations, "stressed the solidarity of women on the matter of equality of political rights and suggested that a comment should emphasize that the word 'everyone' in the article contained no discrimination against women."¹³⁵ To back up these suggestions, Mr. Stepanenko, the Byelorussian representative, pro-

131. U.N. Doc. E/281/Rev.1 at 12.

132. U.N. Doc. E/38/Rev.1 at 14.

133. U.N. Doc. E/CN.4/AC.2/SR.7 at 9.

134. *Id.*

135. *Id.* at 10.

posed that "[a]ll citizens of any State, regardless of race, sex, language, religion, fortune, education, national or social origin, have the right to elect and be elected in all the organs of their governments by universal, free and general elections." This sweeping proposal was rejected three to one, with two abstentions.¹³⁶ The group adopted instead the idea that "everyone, without discrimination, has a right to take an effective part in the government of his country."¹³⁷

Aside from the right to run for office and be elected, which its sponsor, Mr. Cassin, the French delegate, admitted was not really all that basic a right,¹³⁸ there are two main issues connected with participation in one's government. First, who should participate? This raises the question of universal suffrage and led the women's lobby to argue for a nondiscrimination prohibition. Second, how should such participation take place? This raises the matter of open and free elections. In the end, the question of equal suffrage rights for men and women was subsumed under the second issue, having to do with the nature of the elections.

In the second session of the drafting group, the chairman, Mrs. Roosevelt, proposed a United States text that deleted from the right of participation the phrase "without discrimination," on the grounds that it unnecessarily repeated the prohibition of Article 2.¹³⁹ The same deletion was also formally proposed by a British amendment.¹⁴⁰ The one extreme was to delete even this general prohibition against discrimination. The other extreme was an earlier Soviet proposal to add a long list of nondiscriminatory items such as "property, residence, social origin, religion, race or political beliefs,"¹⁴¹ all of which could not bar a person from participation.

Mr. Santa Cruz, the Chilean delegate, proposed a slightly different list: "everyone, without discrimination as to race, sex, language, creed or social class, possessing legal capacity . . ." has the right to participate in the government.¹⁴² Mr. Pavlov objected to the deletion of all mention of nondiscrimination as "it would allow the retention of dangerous discriminations"¹⁴³ which some governments still openly practiced. He was supported in this view by the French delegation. As a result, Mrs. Roosevelt and Mr. Wilson, "to facilitate the discussion," withdrew their amendments to delete all mention of nondiscrimination.¹⁴⁴ The drafting committee approved the Chilean nondiscrimination list, but rejected the Soviet proposal that the

136. *Id.* at 9, 10.

137. *Id.* at 11.

138. U.N. Doc. E/CN.4/SR.61 at 16.

139. U.N. Doc. E/CN.4/AC.1/SR.4 at 8.

140. *Id.* at 12.

141. *Id.* at 10.

142. *Id.* at 12.

143. *Id.* at 13.

144. *Id.* at 14.

elections mentioned in the article be mandated as “universal, equal, direct, periodic, free, fair, and by secret ballot.”¹⁴⁵ This was reversed in the third session of the Commission.

That session accepted a British-Indian text that deleted the Chilean nondiscrimination list, saying simply that “everyone has the right to take part in the government of his country directly or through his freely chosen representatives.”¹⁴⁶ Mrs. Ledon, the vice chairman of the Commission on the Status of Women, objected to this deletion of the enumeration “particularly discrimination of sex. It was unfortunately a fact that in many countries, women did not enjoy political rights; the right to vote, in particular, was often withheld on the pretext of political immaturity.” If this was not spelled out, she wanted a note added on how the commission interpreted the word “everyone” in this article. Mr. Wilson assured her that the term “embraced all persons, except children and the insane.”¹⁴⁷ The Soviet delegation supported the Commission on Women, but the simple British-Indian text passed eleven to four, with one abstention.¹⁴⁸ The election qualification was reintroduced when, in the Third Committee, a Chinese compromise text, roughly like the one we now have, was adopted.¹⁴⁹ This Chinese version had the qualification “equal” attached to elections, thus implying the acceptance of what Mr. Jimenez De Arechaga, the representative from Uruguay, called the “principle of the absolute equality of the political rights of men and women.”¹⁵⁰ This is yet another place where the Charter’s goal of political equality for women influenced, by way of the women’s lobby, the wording of the Declaration. This is so even though women are not mentioned explicitly.

The same thing is true of the repetition of the discrimination prohibition in the second paragraph of Article 23. It says that “[e]veryone, without any discrimination, has the right to equal pay for equal work.” The phrase “without any discrimination” is a compromise text that was accepted when discord arose in the women’s camp. The second session of the Commission had adopted the following language: “women shall work with the same advan-

145. *Id.*

146. U.N. Doc. E/CN.4/99 at 5.

147. U.N. Doc. E/CN.4/SR.61 at 16.

148. E/CN.4/SR.62 at 2. With respect to the nature of the election, Mr. Cassin at one point argued that the absence of secret balloting did not mean the procedure was not democratic “since in certain cantons of democratic Switzerland . . . elections were not held by secret ballot. . . .” 3(1) U.N. GAOR C.3 (84th–180th mtg.) at 450, U.N. Doc. A/C.3/SR.84–180 (1948). Mr. Demchenko, the Ukrainian delegate, was quick to counter “the French representative’s description of Switzerland as a model of a democratic state by pointing out that in Switzerland women did not enjoy the franchise.” *Id.* at 461.

149. *Id.* at 468, 472.

150. *Id.* at 465.

tages as men and receive equal pay for equal work."¹⁵¹ In the third session discord arose when Ms. Robb, the representative of the Liaison Committee of the International Women's Organizations, "speaking on behalf of 14 feminine organizations" asked that the paragraph be deleted. She thought that it could lead to misunderstanding and was an unnecessary limitation on the word "everyone" as used in the first paragraph of the article.¹⁵² But Mrs. Ledon, the representative of the Commission on the Status of Women, wanted to see the paragraph retained.

The issue was contentious, for the British and Indian delegations had submitted a joint text that omitted the equal pay for equal work paragraph.¹⁵³ And the brevity of that text was appealing to many delegates. Even Mrs. Mehta, the Indian representative and cosponsor of the deletion "did not think it necessary to use the words 'and women' since 'everyone' was all inclusive."¹⁵⁴ Mr. Lebeau, the Belgian delegate, preferred the British-Indian draft, because "the principle of equality between the sexes had been stated many times in the Declaration and therefore, it was unnecessary to mention it again."¹⁵⁵

In contrast, Mr. Pavlov, the Russian delegate, thought it crucial to keep the women's clause in, for "it could not be left to the discretion of the employer who was only too ready to hire cheap labor when he could. It was necessary therefore to guarantee the right explicitly."¹⁵⁶ A subcommittee was appointed, which proposed that "women shall work with the same advantages as men and receive equal pay for equal work."¹⁵⁷ Mrs. Mehta, who had been part of that group, said that only two members had wanted this provision and that she herself felt that to make "specific reference to women in the article would give rise to the impression that women did not have the same rights in other matters where they were not specifically mentioned."¹⁵⁸

Mr. Stepanenko, the Byelorussian representative, "expressed his astonishment that the representative of India, herself a woman, was opposed" to the paragraph. Mr. Stepanenko stressed the paramount importance of the provision, since women had suffered discrimination in wages perhaps more than in any other area. The Commission on the Status of Women had adopted

151. U.N. Doc. E/CN.4/SR.40 at 8. Several governments commented on this proposed draft. The Dutch did not want the paragraph to interfere with their system of family allowances, the South African government wanted to delete the whole idea, while the Australian government wanted the paragraph phrased in terms of women having "the right" to equal pay for equal work. U.N. Doc. E/CN.4/85 at 40.

152. U.N. Doc. E/CN.4/SR.64 at 5.

153. U.N. Doc. E/CN.4/99 at 6.

154. U.N. Doc. E/CN.4/SR.64 at 10.

155. *Id.* at 13.

156. U.N. Doc. E/CN.4/SR.66 at 15.

157. U.N. Doc. E/CN.4/114.

158. U.N. Doc. E/CN.4/SR.66 at 5.

a resolution asking that the Declaration contain a provision about equal pay for equal work. This had been included in the text of session two and in the one of the drafting committee and it was "not right to ask for its exclusion now."

At this point, Mr. Wilson, the British representative, "declared that, in spite of the arguments of the BSSR representative, he would be guided by the views of the two women members [Roosevelt and Mehta] of the Commission."¹⁵⁹ Following this,

[Mrs. Mehta] reiterated her conviction that any specific mention of women in the article would only weaken the position of women; there were many other fields in which there was discrimination against women, but nowhere else did the Declaration make specific mention of women, it being understood that "everyone" included women.¹⁶⁰

Mrs. Ledon, speaking for the Commission on the Status of Women, "which represented all the women of the world," urged that the paragraph be adopted. She "appealed to the sense of justice of the members on the Commission, urging them to support that paragraph in order to improve the position of women throughout the world."

Mr. Cassin, the French representative, said he did not worry about the overlap with Article 2, for he "considered it more important to defend women than to defend words."¹⁶¹ Mr. Pavlov, the Soviet representative, proposed to broaden and change the paragraph to read "everyone, regardless of race, nationality, or sex. . . ." That, he said, "would cover discrimination against women and also discrimination against coloured workers as compared to white, colonial workers as compared to those of metropolitan powers."¹⁶² This reference to the colonies did not sit well with the British representative who objected to such broadening of the discussion. The Commission adopted a Chilean proposal which read, "Everyone is entitled to receive equal pay for equal work," by a vote of ten to three, with four abstentions.¹⁶³ Any mention of discrimination was turned down, including a specific reference to women.

The issue was taken up again by the Soviet delegation in the Third Committee. Its amendment, "everyone, without distinction as to race, nationality, or sex has the right to equal pay for equal work" was adopted, but the whole text of the article—which included the other paragraphs as well—was rejected, leaving the matter unresolved.¹⁶⁴ As a way out of the impasse,

159. *Id.* at 6.

160. *Id.* at 7.

161. *Id.* at 7, 8.

162. *Id.* at 9.

163. *Id.* at 10.

164. U.N. Doc. Annexes A/C.3/363 at 93.

the US delegation proposed to replace the itemized Soviet list with the general phrase "without discrimination." Upon the suggestion of the Belgian delegation, the word "any" was added to that phrase, which brings us to the final text.¹⁶⁵ Again, the general phrase "without any discrimination" repeats the nondiscrimination prohibition of Article 2, but the impetus for its inclusion came from the women's lobby, suggesting that whatever else the article says, the Declaration must be interpreted as supporting a woman's right to equal pay for equal work.

VII. CONCLUSION

The Universal Declaration contains few references to women's rights. Borrowing a phrase from the Charter itself, the preamble reaffirms "the equal rights of men and women." Article 2 forbids discrimination based on sex, and as discussed above, the Universal Declaration also provides for equal marital rights and protection of motherhood. As far as explicit references go, this is not much, which is why it is crucial that we read "everyone" and "no one" literally. The drafters intended it that way.

The Declaration does have in it the sexist phrase "his family" and it does make a strong statement about the family in Article 16. Both of these could be signals that the document does not treat women as individuals, trapping them in the family and giving them rights only as housekeepers or mothers. I have argued that the document does not really do this. It does give women all the same rights as men in marital matters, voting booths, places of work, and all other areas of human endeavor. "Everyone" includes women every time it is used.

I did not make a comparative study of the cultural and legal status of women at the time the Declaration was being drafted. Still, I do think that this internal history of the drafting process and the struggles involved in reaching the final product, show that from the point of view of the rights of women the Declaration is a remarkably progressive document.

The credit for this goes to the effective women's lobby, made up of the representatives of the Commission on the Status of Women and the delegates from communist countries. I would single out Mrs. Bodil Begtrup, the Danish representative and the chair of the Commission, as the single most important individual in this respect. It comes as a surprise that Eleanor Roosevelt, who was chair of the Commission on Human Rights, was not more sympathetic to the goals of the women's lobby. At another time I shall defend her role as chair and show that her presence was crucial to the success of the project

165. *Id.* at 97.

as a whole. I am now simply saying that she had a blind spot here, as did many other, less powerful delegates.

This women's lobby was not only effective in the cases where women's rights are explicitly mentioned. It was their vigilance which repeatedly made the other delegates face up to an intended, literal reading of the words "everyone" and "no one." I have also shown that the issue of women's rights lies behind the retention of the article on being "a person before the law," behind the call for "equal suffrage," and for equal pay for equal work "without any discrimination."

The logic of the case demands that there be many places where the movement for women's rights and for human rights generally overlap and intersect. Fortunately, in the drafting of the Universal Declaration they did. This is one reason why the Declaration has such great moral authority today. Imagine the loss of status the document would have suffered had it started out saying—as the earlier drafts did—that all men are born free and equal. Instead it says that all human beings are so born.

The drafters wrote a declaration that is amazingly free of what we today would call sexist language. They intentionally chose words like "everyone" and "no one" and meant these to be taken literally. That is the reason why women's rights are not more often explicitly mentioned. Article 2, which forbids discrimination based on sex, does apply to "all the rights and freedoms set forth in this Declaration."