

Convention on the Rights of the Family

Commentary

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On April 7, 2011, the Council of Europe's Committee of Ministers adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence, commonly known as the Istanbul Convention. It entered into force on August 1, 2014. The laudable goal of the Convention is to reduce and eliminate violence against women who are often in positions of vulnerability. The Convention seeks to engage the State Parties in policies that include prevention, protection, and prosecution. Most particularly, the Convention seeks to uproot traditional social structures of the family and relationships between men and women on the presumption that differing social roles, hierarchical relationships, and institutional arrangements such as the family are a cause and a perpetuation of a culture that victimizes women. It is profoundly disconcerting that the ideological presuppositions that lay behind the Convention may undo the most effective mechanisms of preventing violence against woman, and may, in fact, result in more harm than good.

The fundamental ideological position that not only underlays the Convention, but is textually integrated into the Convention, is the presumption that differentiation of sexes and roles leads to hierarchical domination and violence. The cure proposed by the Convention, therefore, for preventing violence is not to change the behavior of those, primarily men, who commit acts of violence against women, but to engage in an entire social re-engineering of gender relations, including marriage, from which it is supposed that violence proceeds.

Thus, the Convention's preamble declares that "the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women", and that "violence against women is a manifestation of historically unequal power relations between women and men". It states that "the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".

Article 6 of the Convention implements the ideology by committing the States Parties to "undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women". Although Article 4 declares that implementation of the Convention shall be accomplished with discrimination against a wide list of types of persons and orientations, discrimination *is* permitted (presumably against men) in effectuating by "special measures" to protect women against "gender-based violence". But, as we have seen, in the Convention, all sorts of social mechanisms are blamed for the causing gender violence, and thus, the Convention does not regard disrupting social conventions that may disadvantage men (not to speak of children) as "discrimination".

There is no doubt that most of the acts of violence against women that are forbidden by the Convention need to be comprehensively addressed and eliminated. These include forced marriages (Art. 32), stalking (Art. 34), sexual violence, including rape (Art. 36), forced marriage (Art. 37), female genital mutilation (Art. 38), and "honour" crimes (Art. 42).

Also prohibited are forced abortions and forced sterilizations (Art. 39), but the key word in that prohibition is “forced.” The ideology behind the Convention makes it evident that, but for the opposition of some States and some significant groups within the European Union, “forced” childbirth (by means of prohibition some or all abortions) would also be seen as an act of violence against women.

The ideology is not working. Recent statistics show that there has not been a diminution of violence against women, despite all the social engineering that has taken place. Moreover, the vast amount of domestic violence occurs between unmarried partners. By undermining stable marriage and making relationships individualistic and episodic increases the likelihood of domestic violence by a very large factor. Not only do impermanent relationships abet violence perpetrated by males (the Convention explicitly blames male domination for the cause of violence), it also does not lower violence even initiated by women. Statistics reveal that, over 70% of violent domestic episodes are initiated by women. However, one must not ignore the fact that male initiated violence—because of physiological differences—is far more damaging both physically and psychologically.

Further, the attempt to end differentiation between of the sexes—and to end the differentiation as to who can appropriately contract marriage—breaks down standards of relationships and expected behaviors. This can only be made worse by many in society attempting to eradicate the notion of biologically based gender altogether.

Nor should we ignore the culture of violence that is engendered by abortion. If the least of humans may be violently done away with, then the moral legitimacy of violence becomes dyed into the fabric of all kinds of human relationships.

What would happen if, instead of the Istanbul Convention’s misplaced ideological premises, a convention were formed that offered the best hope for doing away with the very kinds of degradations against women that the Istanbul Convention aspires to eliminate?

We know from undeniable social facts that strong families are the best environment in which women can live safely, thrive, and, with their husbands, raise children who understand how to respect others and how to handle interpersonal difficulties. What, then, if a convention could be based on marriage founded on the complementarity of the sexes, on an institution where children are protected, and not discarded, and where mutually supporting relationships are structured to last?

Social research has shown that the intact family is the best protection against a whole range of social pathologies, including violence, crime, drugs, poverty and ignorance. No other social institution functions as effectively as does the family. No other living arrangement of human persons, however denominated, can produce the fully matured individual as does the family centered around a man and woman in mutual commitment. In the family, the man’s “strength” is socialized to be protective of others, something that is more likely to be absent in non-marital living arrangements.

But the fact that as a social institution, the family is ideal, does not mean that family life is idyllic. We know that family life is difficult. But in its difficulty is its glory. The daily life of the family has strains, conflicts, and pressures. And every day, the family resolves those strains, conflicts, and pressures. The family is the most important conflict resolution mechanism in all of society. As a phenomenological matter, the daily life of the family consists in the resolution of conflict. Within the well-functioning family, the child learns the rules of justice, the nature of authority, trust and reliance; he learns the techniques of negotiation, the constraints on sexuality, the adjustment of desires, the making of choices within

scarcity, the meaning of sacrifice, and the healing that comes from forgiveness. From these accomplishments come the joys of family life.

The child who grows out of a well-functioning family to be a man or woman can be part of a society wherein conflicts must be resolved every day. Such a man or woman now understands what it is to work for and to co-operate for the common good. The health of all civic organizations—business, labor, education, fraternal organizations, churches, political entities—all derive from the school that is the family.

We see in Western Europe and the United States today that where family life weakens, civic organizations lose their membership and their effectiveness as regulators of civil society. We see also that where family life is weak, then societal conflict grows and the role of the state to maintain order becomes greater. As individuals lose their skills for co-operation and mutual forbearance for the common good, the state necessarily becomes more intrusive. That is why strong families promote liberty.

There are many in the United States that look upon the breakdown of the family as a positive good, because, they say, it frees the woman from constraints of marriage. Their formula, however, has been a disaster for women and children. When the male is marginalized in society, the woman is not freed, but left alone and abandoned. Those who seek a society free of the family will find a society that is disordered and without liberty. A people cannot truly enjoy self-government unless the people are themselves self-governed. It is the family that teaches that lesson. The family is not only the domestic church. It is society's school.

That is why a proposed Convention on the Rights of the Family is a needed antipode to the Istanbul Convention. The objective of forging a society where women are safe, where their individual contributions are celebrated, and where they can find dignity, is shared by all civilized persons. But to do so, we must start from the correct premises, from social realities that are rooted in nature, and have been shown to have, over time, moved society, men and women, in the right direction.

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Professor Forte was the inaugural holder of the Charles R. Emrick, Jr.- Calfee Halter & Griswold Endowed Chair at Cleveland-Marshall College of Law, Cleveland State University.

During the Reagan administration, Professor Forte served as chief counsel to the United States delegation to the United Nations and alternate delegate to the Security Council. He has authored a number of briefs before the United States Supreme Court, and has frequently testified before the United States Congress and consulted with the Department of State on human rights and international affairs issues. His advice was specifically sought on the approval of the Genocide Convention, on world-wide religious persecution, and Islamic extremism. He has appeared and spoken frequently on radio and television, both nationally and internationally. In 2002, the Department of State sponsored a speaking tour for Professor Forte in Amman, Jordan, and he was also a featured speaker to the Meeting of Peoples in Rimini, Italy, a meeting which gathers over

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Professor Forte was a Bradley Scholar at the Heritage Foundation, and Visiting Scholar at the Liberty Fund. He has been President of the Ohio Association of Scholars, was on the Board of Directors of the Philadelphia Society, and is also adjunct Scholar at the Ashbrook Institute. He has been appointed to the Ohio State Advisory Committee to the U.S. Commission on Civil Rights. He has also been also a Civil War re-enactor and a Merit Badge Counselor for the Boy Scouts.

He writes and speaks nationally on topics such as constitutional law, religious liberty, Islamic law, the rights of families, and international affairs. He served as book review editor for the American Journal of Jurisprudence and has edited a volume entitled, *Natural Law and Contemporary Public Policy*, published by Georgetown University Press. His book, *Islamic Law Studies: Classical and Contemporary Applications*, has been published by Austin & Winfield. He is Senior Editor of *The Heritage Guide to the Constitution* (2006, 2014), published by Regnery & Co, a clause by clause analysis of the Constitution of the United States.

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