

HEINONLINE

Citation: 13 S. Cal. Rev. L. & Women's Stud. 163 2003-2004

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Fri May 24 05:25:53 2013

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=1088-3525](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=1088-3525)

BRIDGING THE “DIVIDE” BETWEEN FEMINISM AND CHILD PROTECTION USING THE DISCOURSE OF INTERNATIONAL HUMAN RIGHTS*

SHERRIE L. RUSSELL-BROWN**

In the spring of 2000, at a United Nations women's human rights conference, several female participants wore large pink buttons, written on which was the word "mother" in the middle of a circle with a slash through it. The buttons were worn in reaction to an issue that had arisen regarding the Holy See's representative to the conference. However, seeing the buttons was unsettling. It seemed to me to go too far to suggest that to be pro-women's human rights meant that one had to be anti-mother. That same spring, when I mentioned my interest in gender and children's issues in a meeting with a human rights organization, it was explained to me that the articulation of women's and children's human rights should remain separate: For too long, women have been defined by their reproduction and child rearing. I understood the explanation and the need for separate consideration of women's and children's human rights. But I did not understand why I could not be concerned with *both* the human rights of women *and* the human rights of children. Why was it "either/or" as opposed to "both/and?"

* © 2003 Sherrie L. Russell-Brown.

** Assistant Professor of Law and an Associate Director of the Center on Children and the Law, University of Florida, Fredric G. Levin College of Law; B.A. (Government), 1989, Pomona College; J.D., 1992, Columbia University School of Law; LL.M. (International Law, International Human Rights Law), 1999, Columbia University School of Law. I would like to thank Professors Gaylin Soponis and Barbara Woodhouse for their comments.

At the time of these two events, I was a recent graduate of Columbia Law School with a Masters of Law in Human Rights. I did not remember my coursework treating women's and children's human rights as mutually exclusive, distinct and unrelated topics. I was taken aback by the suggestion that they should be so treated and struggled to understand it.

Then, two years later, I was to participate in (and presented a version of this essay to) a workshop entitled, "Feminism & Child Protection: Tension & Possibilities." I was again faced with an issue that had never been resolved to my satisfaction and remained troubling: the divide between women's and children's rights. It was still difficult for me to visualize the "divide."

I thought that perhaps race could be contributing to the perception that there is a divide and that African-American women might have another perspective on the issue. In July 2001, I submitted to the Committee on the Elimination of Racial Discrimination (CERD), in Geneva, Switzerland, a "shadow report" on the reproductive rights of women of color in the United States.¹ Issues of the denial and obstruction of African-American women's right to reproduce have always been, and remain, extremely important to me. Before entering academia in 2001, I worked for the Center for Reproductive Law & Policy (now the Center for Reproductive Rights) in the hope that I could influence the mainstream reproductive rights regime to include in its dialogue the perspective and concerns of women of color, which perspective and concerns are not always in line with those of the majority. It is in that context that I heard the workshop's topic and found it difficult to isolate the rights of children from the rights of women. There are those that are all too willing to separate African-American women from their children.

My difficulty visualizing the divide may be the result of my position as an African-American woman and may also be a result of my academic background and research interests, i.e. human rights. Generally, my interest is in the intersectionality of race and gender in the human rights context. Specifically, I have an interest in issues related to health and human rights, humanitarian law, international criminal law, and labor law and human rights. In these areas, the rights and concerns of women and children are at times inextricably linked because the rights of both are destroyed by the same evil. Two examples are the AIDS pandemic in sub-Saharan Africa and sexual violence in armed conflict.

1. *Women of Color and Reproductive Freedom*, 2001: A Shadow Report, available at <http://lic.law.ufl.edu/~russellb/>.

As a result of the prevalent myth that having sex with a virgin can cure HIV, men in South Africa infected with the virus target “girl children, infants, and babies” for rape.² Adult women are similarly targeted, but they are also exposed to HIV as a result of inequities in their relationships with their male partners and their inability to protect themselves by demanding and ensuring that their partners use condoms.³

Concerns of women and girls are also co-extensive in the area of sexual violence in armed conflict. During the 1994 Rwandan genocide, Rwandan girls and women were subjected to brutal forms of sexual violence.⁴ Rape was widespread.⁵ Some observers believe that almost every woman and adolescent girl who survived the genocide was raped (and, of course, we can never know how many of those who did not survive were subjected to rape before their deaths).⁶ The women and girls who were raped ranged in age from two to fifty years old.⁷ Surely the impact of the sexual violence was as profound on girls as it was on adult women.

The hallmarks of *both* of these situations is the suffering or harm inflicted on females of all ages because of their gender. There is a need for solidarity across the generations in righting the wrongs. With respect to issues of health, poverty, sexual violence, armed conflict, and economic subjugation, the dividing line between “woman” and “girl” is blurred. Females are persecuted *because* of gender, regardless of age, whether they are girls or women. More generally, what women share with children in communities around the world is powerlessness. Children may share women’s gender. Women share children’s powerlessness. They share the same destiny of suffering. And my fear is that creating, perpetuating, and acknowledging a divide between the rights of women and those of children may result in the unnecessary alienation of the two groups and the consequent dilution of the ability of either to effectively address the issues faced by both.

However, after hearing the panel discussions that preceded my presentation at the workshop, I understood better the framework of the

2. See Alexandra Arriaga, *HIV/AIDS and Violence Against Women*, 29-SUM Hum. Rts. 18, 19 (2002).

3. See *id.*

4. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE AND ITS AFTERMATH (September 1996), available at <http://www.hrw.org/reports/1996/Rwanda.htm>.

5. *Id.*

6. *Id.* at 29

7. *Id.*

debate and the tension that was driving the workshop. I understood that while, in theory, women's and children's *rights* are not necessarily antithetical, the *policies* that have been devised (allegedly to preserve and promote those rights) are at odds. For example, the policy of Social Services to remove a child from the home of the mother, rather than assist both mother and child through the creation of a better home environment, is certainly at odds with the rights of the mother. To simplify the issue greatly, the right of women to have and raise a child is in conflict with the way that the state operates in its protective role, and a critical issue is that the state might not be color-blind or race neutral. This is an especially important issue for African-American women because the state feels compelled to intervene in their lives as they are at times presumptively seen as "irresponsible."

With a better understanding of the question posed by the workshop, I thought about the role that a human rights discourse might play in addressing the "divide" or the debate, and I came up with preliminary questions: What are the alternatives when it comes to the expression of rights? Do we identify maternal or parental rights in negative terms, saying you can do anything *not* prohibited, or in positive terms, saying you can do only that which specifically *is* permitted? Does it matter? But whether parental rights are viewed in terms of "parents have rights to do anything not prohibited" or "parents have rights to do only that which is specifically permitted," children's rights are left undefined. Children remain on the margin. Children are in the default position. And this problem is exacerbated in the United States by the view of some parental rights advocates that parents have omnipotent "rights" over children. Under this view, rights of children may be not only marginalized, but rendered non-existent. This view also begs any question or issue with respect to parental responsibility.

Perhaps the key to the harmonization of children's and parent's rights is the *identification* and *enumeration* of children's rights, so that we can see where rights of parents and children intersect and are interdependent, and then and thereby develop policies that foster the rights of both. In the international human rights context, the Convention on the Rights of the Child (Children's Rights Convention)⁸ is an example of the harmonization of children's and parent's rights, and an analysis of the legal scheme

8. *Convention on the Rights of the Child*, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.

developed by the Children's Rights Convention might prove helpful to the debate.

The Convention enumerates the following rights for children:

- to life;
- to a name;
- to acquire a nationality;
- to know and be cared for by his or her parents;
- to preserve his or her identity;
- to maintain personal relations and direct contact with one or both parents if separated from them or if they reside in different states;
- to express views freely in all matters affecting them;
- to freedom of expression;
- to freedom of thought, conscience, religion, association, and peaceful assembly;
- to protection of the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and against unlawful attacks on his or her honor and reputation;
- to benefit from child-care services and facilities for which they are eligible and from social security, including social insurance;
- to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health;
- to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;
- to education;
- to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts; and
- to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.⁹

9. *Id.* at Articles 6-9, 12-16, 24, 26-28, and 31-32.

Acknowledging the interdependence of and the need for balance between rights of children and parental rights, Article 3(2) of the Convention provides that, in ensuring child protection, states parties shall take into account “the rights and duties of . . . parents.”¹⁰ Further, Article 5 of the Convention, which is devoted to parental rights, provides that states parties, “shall respect the responsibilities, rights and duties of parents . . . to provide . . . appropriate direction and guidance in the exercise by the *child of the rights recognized in the present Convention.*”¹¹ Finally, under Article 18 of the Children’s Rights Convention, “[p]arents . . . have the primary responsibility for the upbringing and development of the child” and, in order to support this responsibility, states parties are required to “render appropriate assistance to parents . . . in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.”¹²

In sum, the Children’s Rights Convention provides a good example of how a legal scheme, by specifically delineating the content of rights — here, children’s rights — and acknowledging the interdependence of and providing for a balance between rights, can respect the rights of children and parents. In the future, I hope to more fully explore how women’s and children’s human rights reinforce one another. Further, I would like to explore how the strand of feminism adopted, for example, African-American feminism, affects whether and how a “divide” between women’s and children’s rights is perceived. Perhaps the “divide” is an illusion, and the reality of human rights is one of intersectionality and interdependence.

10. *Id.* at Article 3(2).

11. *Id.* at Article 5.

12. *Id.* at Article 18(1) and (2).

NOTES

