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# The Principles of the Proclamation

## Ten Years of Hope

*Richard G. Wilkins*

On September 23, 1995, while presiding at the first general Relief Society meeting held since he was sustained as prophet, seer, revelator, and President of The Church of Jesus Christ of Latter-day Saints, President Gordon B. Hinckley read “The Family: A Proclamation to the World.” The Proclamation was prefaced by these remarks:

With so much of sophistry that is passed off as truth, with so much of deception concerning standards and values, with so much of allure-ment and enticement to take on the slow stain of the world, we have felt to warn and forewarn. In furtherance of this, we of the First Presidency and the Council of the Twelve Apostles now issue a proclamation to the Church and to the world as a declaration and reaffirmation of standards, doctrines, and practices relative to the family which the prophets, seers, and revelators of this Church have repeatedly stated throughout its history.<sup>1</sup>

President Hinckley thereafter read nine paragraphs that summarize the Church’s “standards, doctrines, and practices relative to the family.”<sup>2</sup>

The Proclamation reaffirmed long-standing values regarding marriage, the roles of husbands and wives, and the duties and obligations of family members. However, the Proclamation is not a static, regressive document. As its plain terms emphasize, there is a pressing need for husbands and wives to protect, promote, and improve the lives of family members—particularly those of women and children. The Proclamation unequivocally affirms that there *are* social norms, traditions, and beliefs associated with family life that require modification, alteration, and correction. These include practices and traditions that condone (or worse, promote) spousal

## Richard G. Wilkins

As I wrote about the international struggle to defend the family according to principles found in the “The Family: A Proclamation to the World,” I was reminded of a story told by my great uncle Joseph Gundersen. His father, my great-grandfather Thomas Gundersen, was a blacksmith. He made useful things out of iron: nails, hinges, wheel rims, and horseshoes—the simple things that made ordinary life pleasant and possible. He taught my uncle Joe, who he called “Dodi Boy,” how to be a blacksmith. It wasn’t easy.



Uncle Joe didn’t like the heat, and he was afraid of the fire. He had to stand by a hot oven, take the iron out of the fire and place it on the anvil. As he would strike the iron with a heavy hammer, sparks would fly and burn his face and arms. The smoke would sting his eyes, and the heat would cover him in drenching sweat. When he would shrink from these difficulties, Great-grandpa would shout, “Stand up to the fire, Dodi Boy! Stand up to the fire!”

Uncle Joe learned to stand up to the fire. When he did, when the sparks didn’t frighten him, and the sweat was a sign of accomplishment, not oppression, he made useful things out of iron; the simple things that made ordinary life pleasant and possible.

We have been given a charge to stand up to a fire now burning (virtually out of control) throughout the world. This fire is being used to forge norms and laws that can undermine the meaning, value, and importance of the family and family life. We may not like the heat emanating from this fire. We may be afraid of the sparks—and wisely so. Prudence may caution us to avoid the sweat, heartache, and pain that will surely flow from any approach to this particular furnace. Nevertheless, standing up to this fire is our charge, as surely as crossing the plains was the charge given to an earlier generation.

If we learn to stand up to this fire, and to do so with patience, humility, love, and forgiveness (for our allies and opponents alike), with the generous assistance of our Father in Heaven, given by and through our obedience to His Son, Jesus Christ, we can forge results stronger than iron: generations of mothers and fathers, sons and daughters, grandparents and grandchildren, who will reap the blessings of the simple things of life—marriage, motherhood, fatherhood, childhood, and faith—the simple things that make ordinary life pleasant and possible.

No task in this increasingly complex world is more important.

and child abuse, a disregard of basic family responsibilities (including the provision of emotional or economic support), a denial of basic human respect, and the failure of husbands and wives to assist one another as equal partners. The Proclamation emphasizes the selfless love, compassion, and mutual respect that should permeate family life.<sup>3</sup>

Nevertheless, some of the basic principles reaffirmed by the Proclamation are the subject of criticism crafted to restructure the relationships that have defined the family for thousands of years.<sup>4</sup> For at least three decades prior to 1995, academicians, political action groups, sociologists, lawyers, law professors, litigants, and judges have labored to deconstruct—and then redefine—such fundamental notions as marriage, gender, parenthood, childbearing, and the sanctity of human life. Sophistry, as President Hinckley explained in September 1995, was often accepted as truth.<sup>5</sup>

At the time the Proclamation was first read, growing numbers of academicians no longer believed that marriage was a union between “a man and a woman” that encouraged the equal partnership of men and women while protecting a child’s entitlement “to be reared by a father and a mother.”<sup>6</sup> Rather, marriage was a utilitarian concept that should be reconstructed to satisfy the longings of autonomous individuals, who were entitled to define their intimate relationships without the fetters of established sexual and social norms, including those related to human reproduction.<sup>7</sup> Gender, in turn, was not an “essential characteristic of individual . . . identity and purpose.”<sup>8</sup> Rather, “gender was a social construct” that was “mutable,” “changeable,” and not “essential” to an individual’s identity.<sup>9</sup> “Fatherhood,” when and if acknowledged, was all too often described in classrooms as a relic of patriarchal oppression,<sup>10</sup> while international human rights organizations criticized “motherhood” as a “harmful traditional stereotype.”<sup>11</sup> Any reference to the bearing of children to “multiply, and replenish the earth” (Gen. 1:28) prompted the same international human rights bodies to expound upon the dangers of religious faith.<sup>12</sup> Similar skepticism<sup>13</sup> became a common response to scholars (and others) who worked to develop sound legal and sociological evidence supporting such concepts as the “sanctity of life” and the “divinely appointed” means “by which mortal life is created.”<sup>14</sup>

This skepticism regarding the traditional family, along with other ideas (such as “autonomy rights” for children<sup>15</sup>) was gaining unprecedented aca-

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*“Fatherhood” was described as a relic of patriarchal oppression, and “Motherhood” was deemed a harmful stereotype.*

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demic and political popularity when the Proclamation's call to fortify positive family relationships was issued—so much so that, while I was profoundly grateful that the First Presidency and the Quorum of the Twelve had carefully and compassionately called for improving and strengthening the family unit, I frankly wondered whether the plain language of the principles set out in the Proclamation could possibly be heard—let alone understood—by a generation already so besmirched by “the slow stain of the world.”<sup>16</sup>

President Hinckley was less skeptical about strengthening the family unit. At the end of his address, he said:

May the Lord bless you, my beloved sisters. You are the guardians of the hearth. You are the bearers of the children. You are they who nurture them and establish within them the habits of their lives. No other work reaches so close to divinity as does the nurturing of the sons and daughters of God. May you be strengthened for the challenges of the day. May you be endowed with wisdom beyond your own in dealing with the problems you constantly face. May your prayers and your pleadings be answered with blessings upon your heads and upon the heads of your loved ones. We leave with you our love and our blessing, that your lives may be filled with peace and gladness. It can be so.<sup>17</sup>

Ten years later, some of the principles set out by the First Presidency and Quorum of the Twelve in the Proclamation have been embraced in surprising ways—and not just by members of The Church of Jesus Christ of Latter-day Saints. On December 6, 2004, during the concluding special session of the United Nations General Assembly celebrating the tenth anniversary of the 1994 International Year of the Family, a formal resolution was adopted which noted the outcomes of the Doha International Conference for the Family.<sup>18</sup> One of these outcomes was the Doha Declaration (see appendix), an international legal document—first discussed at meetings sponsored by Brigham Young University—that reaffirms long-ignored international norms related to the family and recognizes the centrality of many principles stated in the Proclamation. Should the international community once again turn its attention to strengthening the family, as called for in the Doha Declaration, “peace and gladness”<sup>19</sup> may yet increase for families around the world.

This article describes how I discovered the need for legal and other academic arguments to support the principles set out in the Proclamation and details the increasingly important connection between international law and family policy. International law now governs a wide range of topics, including many aspects of family life. But, despite the challenges to the family posed by a few modern international legal norms, there is reason

for hope. As evidenced by the Doha Declaration, academicians, citizens, and government leaders around the world understand the lasting value of many of the concepts explained by President Hinckley to the Relief Society in September 1995. There is much yet to be done; the global debate regarding the family continues.

### **“Habitat II” and the Formation of the World Family Policy Center**

In June 1996, about nine months after the Proclamation was issued, contrary to personal plans and what seemed to be simple common sense, I attended my first UN negotiation, the Second United Nations Conference on Human Settlements (or “Habitat II”) in Istanbul, Turkey. I had been urged to attend by several scholars from Catholic universities I had met over the years, as well as members of various nongovernmental organizations. I did *not* want to go. I was not an expert in international law and I honestly did not believe my participation could make any difference. Furthermore, I was having too much fun to run off to Istanbul: I was playing Tevye (complete with a full beard) opposite my wife, Melany, who was playing Golde, in *Fiddler on the Roof* at the Hale Center Theater in Orem, Utah. I like teaching law. I enjoy legal scholarship. But I *love* acting with my family. Going to Istanbul was not high on my “to do” list.

Nevertheless, soon after *Fiddler* opened, I kept waking up in the middle of the night, fretting about Istanbul. Finally, about two weeks before the conference, Melany told me that I should apply for an expedited passport and try to register as a nongovernmental delegate. As a result, I left Utah before the closing night of *Fiddler*—without shaving my “Tevye” beard—carrying a passport photo that did not comply with BYU’s dress and grooming standards. Melany, shortly before I left, slipped a copy of the Proclamation into my suitcase with a simple explanation: “You may find it helpful,” she said.



Courtesy Richard G. Wilkins

A passport photo taken while Richard G. Wilkins was playing Tevye in *Fiddler on the Roof*. Wilkins soon after left for Istanbul and attended his first UN negotiation.

My experience in Istanbul in June 1996 was extraordinary.<sup>20</sup> I was one of ten people selected from among twenty-five thousand nongovernmental delegates to address the plenary session of the conference. I discussed “International Law and the Family.” With words and concepts taken from the copy of the Proclamation that Melany put in my suitcase, I urged international

lawmakers to remember the importance of marriage, motherhood, fatherhood, childbearing, family, and faith.

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*However diverse our doctrinal beliefs, most of the world’s great faiths share common understandings of marriage and family.*

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The reaction to these short remarks was completely unexpected. Within thirty-six hours an international coalition had formed around concepts I had taken

from the principles of the Proclamation. The conference concluded by acknowledging many of these principles and affirming that “the family is the basic unit of society and as such should be strengthened.”<sup>21</sup>

I returned to Utah convinced that BYU had a unique role to play in taking the Proclamation to the world, although I was not precisely sure how that role should be played out. Nevertheless, a few months later, with the support of the dean of the J. Reuben Clark Law School and the director of student programs at the David M. Kennedy Center for International Studies, a fledgling new center called NGO Family Voice (the initials “NGO” standing for “nongovernmental organization”) began limited operations.<sup>22</sup> About eighteen months later, the name was changed to the World Family Policy Center. Since late 1996, the World Family Policy Center has worked to continue delivering the message conveyed in Istanbul.

Beginning in late 1996 and early 1997, I attended additional academic conferences and negotiations<sup>23</sup> that reaffirmed a powerful insight first gained in Istanbul: however diverse our doctrinal beliefs, most of the world’s great faiths share common understandings related to marriage and the centrality and importance of stable and healthy family life. Furthermore, despite proposals that continue to be made at international negotiations to redefine marriage and family life, more and more scholars in the late 1990s were finding that the long-established and well-understood institutions of marriage, motherhood, fatherhood, and stable family life were essential to individual (and social) welfare.<sup>24</sup>

By 1998, the Center had hired a legally trained executive director and an administrative director (and thereafter added additional talented employees and volunteers).<sup>25</sup> With this additional help, the World Family

Policy Center was able to convene its first World Family Policy Forum in early 1999, inviting scholars, diplomats, and religious leaders from around the world to Provo to hear and discuss research supporting marriage, parenthood, the value of stable family life, and the need to reconsider international family policy. From this gathering in 1999, an unusual international coalition of scholars, world leaders, and religious communities began to form around concepts and ideas contained not only in the principles of the Proclamation, but in Article 16(3) of the Universal Declaration of Human Rights, which states that the “family is the natural and fundamental group unit of society.”<sup>26</sup> This coalition emerged none too soon. As the new millennium dawned, it was becoming increasingly clear that international law could exert a powerful force on national laws relating to home and family life.

### **The Growing Influence of International Law**

Lawmakers in America (as in countries around the world) now face what for some is an unexpected reality: international social norms—not merely national laws—influence the ultimate legality of their official actions. A complete analysis of how international law shapes the contours of domestic policies (including the meaning of the United States Constitution) would require a fairly hefty treatise.<sup>27</sup> For present purposes, three developments demonstrate the growing prominence of international law.

First, international treaties now deal not only with the obligations of nations but also with the rights of individuals. Second, in addition to treaties, the UN system is generating a vast body of pliable norms, called “soft law,” that are quickly ripening into “hard law.”<sup>28</sup> Third, a growing number of national actors (including judges in the United States) are increasingly willing to consider (and sometimes enforce) international norms in ways that would have been hard to anticipate twenty years ago.

Treaty law, beginning with the 1648 Treaty of Westphalia, began as the primary fount of international law.<sup>29</sup> For centuries, treaties have dealt primarily with issues of war, peace, boundary disputes, navigation, and commerce; questions that were fundamental to the relationship of one nation with another.<sup>30</sup> Indeed, the phrase “international law” reflected this reality: international law governed conduct between, or “inter,” nations.<sup>31</sup> The importance of treaties in establishing the form and content of international law continues unabated.

However, modern treaties do more than settle wars, boundary questions, and resource disputes. They now govern such important issues as

gender equality,<sup>32</sup> children's rights,<sup>33</sup> and racial discrimination.<sup>34</sup> Until quite recently, these issues were the sole concern and prerogative of national governments.

In addition to promoting a burgeoning number of international treaties and conventions, the modern UN system formulates soft law norms at an ever increasing rate. Hundreds of UN negotiations each year examine questions related to virtually every conceivable social issue.<sup>35</sup> As a result of these negotiations—the most prominent of which are the periodic five- and ten-year reviews of major UN conferences on the environment, population, women's rights, and human settlements<sup>36</sup>—various reports, platforms, agendas, and declarations are issued, updated, and expanded. Not long ago, these soft law documents were considered little more than helpful (or, perhaps even irrelevant) “suggestions.”<sup>37</sup> Now they are more than mere words.

In the new millennium, soft law norms generated at UN meetings can rather rapidly attain a status approximating hard law. As a result of constant negotiation, reexamination, and reformulation, various actors in the international legal system—including national governments, nongovernmental organizations, and legal scholars—develop expectations that these norms will be respected.<sup>38</sup> If expectations related to enforcement are low, a norm is considered soft. But expectations grow and norms harden. Eventually, what began as soft law transmutes into hard law. This occurs if and when soft law norms come to be seen as evidence of customary international law.<sup>39</sup>

It once required centuries to form hard, or customary, international law because such law was developed through the uniform, consistent practice of nations over time.<sup>40</sup> More recently, and largely because of the exploding number of international meetings, some legal scholars argue that binding international norms develop (at least in significant part) through the mere repetition of agreed language at UN conferences. As a leading international scholar has asserted, negotiated language “repeated by and acquiesced in by sufficient numbers with sufficient frequency, eventually attain[s] the status of law.”<sup>41</sup>

The third factor driving the expansion of international law is the willingness of an increasing number of national actors to consult, consider, and sometimes enforce soft international laws. For several decades, various influential nongovernmental organizations argued that international norms should influence, if not govern, domestic legal policies.<sup>42</sup> Scholars made similar arguments,<sup>43</sup> as did litigants.<sup>44</sup> These submissions, once considered controversial,<sup>45</sup> are now bearing fruit in surprising ways—including at the United States Supreme Court.

Until recently, it was rather unlikely that any state or federal court would enforce the terms of a treaty that had not been ratified by the United States Senate. This is no longer true. On March 1, 2005, in *Roper v. Simmons*, Justice Kennedy cited the UN Convention on the Rights of the Child—a treaty *never* ratified by the Senate—to support the conclusion of five justices that the execution of minors is unconstitutional.<sup>46</sup>

As a personal matter, I oppose the execution of minors. As a constitutional scholar, however, I would have been hard pressed (prior to *Roper*) to assert that the execution of minors was unconstitutional.<sup>47</sup> Whatever the ultimate wisdom of executing minors, as of March 2005, there was no clear consensus that such punishment violated constitutional values that were deeply held and widely shared by the American people: indeed, at the time *Roper* was decided, slightly more than half of the states that permitted capital punishment included minors within its reach.<sup>48</sup> The Supreme Court's decision, therefore, that there was a "constitutional consensus" invalidating the juvenile death penalty was unusual. The Supreme Court's citation of an unratified, non-binding treaty to support this conclusion was astonishing. *Roper* demonstrates beyond doubt that the meaning of the United States Constitution can be altered by international norms that have been *rejected* by political processes at the state level (the majority of death penalty states applied it to minors) and at the federal level (the U.S. Senate had not ratified the international treaty the Supreme Court cited to prohibit the execution of minors).

Soft international law has also been found determinative in redefining the meaning of the Fourteenth Amendment. In *Lawrence v. Texas*,<sup>49</sup> a majority of the Supreme Court reversed its determination—announced sixteen years earlier—that the United States Constitution did not afford special protection for consensual acts of homosexual sodomy.<sup>50</sup> The *Lawrence* Court could not convincingly argue that either the words of the Constitution or the history and traditions of the American people had changed dramatically in those sixteen years. Accordingly, the justices simply announced that sixteen years ago the Court got it wrong.<sup>51</sup> As evidence that the current majority now "had it right," the Justices cited decisions from international tribunals and a brief filed by the former UN High Commissioner of Human Rights.<sup>52</sup> Prior to their citation by the nation's highest court, these materials would have been considered by most scholars as among the softest of all possible soft law relevant to the meaning of the due process clause in the Fourteenth Amendment. Not any longer. Soft international law now has significant constitutional clout.

Because of the foregoing factors—the expanding reach of international treaties, the explosive growth of international soft law norms, and the

willingness of judges to enforce international pronouncements without prior state or federal approval—individuals and groups interested in

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*Gender equality does not require that a woman's value be measured solely in economic terms.*

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understanding and protecting the meaning of “marriage” and “family” must pay attention not only to national laws, but also to international treaties, UN conference declarations, and the opinions of jurists from legal systems all over the world. Developing nations must

give particular care to international legal rules: if the content of the United States Constitution can be changed by international norms that have been rejected by state governments and the United States Congress, the impact of these rules on less-developed nations could be profound indeed.

### **International Law and the Family**

International law is not only increasingly important, it now plays an unprecedented role in shaping national laws related to the family. UN negotiations during the past fifteen years have consistently evaluated, reevaluated and (sometimes) significantly redefined basic definitions related to marriage, gender, fatherhood, motherhood, childbearing, and childhood.<sup>53</sup>

Equality for women, protection of children, and elimination of unjust discrimination are vitally important and laudable goals. But gender equality does not require that a woman's value be measured solely in economic terms,<sup>54</sup> the protection of children is not necessarily furthered by granting them the same legal rights as adults,<sup>55</sup> and the elimination of unjust discrimination does not mandate social acceptance of all forms of consensual sexual practice.<sup>56</sup> American society has furthered the rights of women, children, and minorities without embracing these sorts of extreme measures.

How did family law become the subject of such unrelenting international lawmaking efforts? I believe it occurred (at least in large measure) because efforts to fundamentally alter long-standing family structures encountered substantial opposition in national political forums. The refusal of American society to adopt extreme proposals may have prompted the dramatic growth of international norms that embody such measures. Disappointed by efforts to alter domestic legal rules, many scholars and social activists concluded that international law could be harnessed to achieve results that had eluded their nationally based efforts. They had good reason, furthermore, to support this strategy. Controversial proposals are

more likely to succeed in international fora rather than in national fora because of a little-understood but long-established reality: professors and universities (particularly law professors and law schools) play an exceptionally prominent role in the creation of international law. If sufficient numbers of “international experts” support a proposal, even one that has been repeatedly rejected at national levels, the proposal has a surprisingly good chance of acceptance within an international arena somewhere. Furthermore, lawyers and law professors not only have significant influence in the creation of international law, they also tend to be somewhat “out in front” of current social views related to the family, children, and human sexuality.<sup>57</sup>

There are three major sources of international law: (1) norms established by the common practice of states, (2) norms set out in treaties and international agreements, and (3) norms derived “from general principles common to the major legal systems of the world.”<sup>58</sup> Academic opinion is exceptionally influential in the last two categories. Modern-day academicians regularly plan strategies for, participate in, and influence the outcome of global negotiations<sup>59</sup> leading to treaties and international agreements. In addition, “the teachings of the most highly qualified [scholars] of the various nations” establish (in significant measure) the general principles of law that form the third source of international law.<sup>60</sup>

Accordingly, faculties of law schools and universities around the world hold a privileged status in the formation and adoption of international norms: that of quasi-lawmakers. The scholars and academicians who operate women’s, children’s, and gender rights centers at universities and law schools around the world have taken advantage of this status to engage in organized and effective efforts to redefine such vital concepts as equality, children’s rights, and marriage.<sup>61</sup>

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*Sociological evidence shows that each deviation from lifelong marriage between a man and a woman increases the likelihood of negative outcomes.*

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To the extent that extreme concepts of gender equality, children’s rights, and the meaning of marriage are widely adopted, there is good reason to believe that human suffering around the world will increase. Whether the measure used is physical and mental health, educational achievement, economic success, alcoholism, substance abuse, or average life expectancy, substantial sociological data suggest that stable, natural marital unions promote the health, safety, and social progress of women, men, and children.<sup>62</sup> Furthermore, there is no reliable evidence that

alternative family forms reliably produce the same benefits—either for individuals or society as a whole.<sup>63</sup> On the contrary, the available sociological evidence (considered as a whole) demonstrates that each deviation in family structure away from lifelong marriage between a man and a woman increases the likelihood of a broad array of negative outcomes for men, women and—in particular—children.<sup>64</sup>

Not every family (especially through the generations) will be fortunate enough to be founded upon stable, natural marital unions, and in some circumstances, such as marriages involving serious forms of abuse, marital dissolution may be wise. But, despite deviations and human failures, the model itself (as shown by the course of history and mountains of current research) is the surest recipe for personal and social progress. Moreover, the negative consequences of departing from the model are particularly acute for women and children.

Accordingly, to decrease human suffering, particularly for women and children, we must halt further redefinition and revision of norms related to marriage and family life.

### **The Doha Conference and Hope for the Future**

The family has been subjected to redefinition in significant part because academicians and advocates of that approach have been vigorously engaged in the international lawmaking process. This ongoing process can be slowed, and perhaps reversed, by similar action on the part of those who believe in—and understand—the meaning of Article 16(3) of the Universal Declaration of Human Rights. The Doha International Conference for the Family is an example of how such efforts can succeed.

Through the efforts made at various international conferences, the World Family Policy Center has established close relationships with many national delegations. At important negotiations, including the 1998 negotiation of the Rome Statute for the Creation of an International Criminal Court, the Center's academic and legal expertise has played a significant role in preventing further erosion of values stated in the Proclamation.<sup>65</sup> In early 2003, the Center was approached by the ambassador of the State of Qatar, His Excellency Nassir Al-Nasser, regarding the possibility of convening a major family conference during the United Nation's celebration of the tenth anniversary of the First International Year of the Family, to be held during 2004. Ambassador Al-Nasser visited the campus of Brigham Young University, held discussions with various university officials, and met with the First Presidency of The Church of Jesus Christ of Latter-day Saints in Salt Lake City. The ambassador expressed his interest

in sponsoring a major event during 2004 because, during that important commemorative year, Qatar would be chair of the “Group of 77,” the largest single bloc of nations within the United Nations.<sup>66</sup>

Following the visit of the ambassador, Her Highness Sheikha Moza bint Nasser Al-Missned, Consort of His Highness the Emir of Qatar and President of the Supreme Council for Family Affairs in the State of Qatar, invited H. Reese Hansen, Dean of the Law School, and me to visit Doha, Qatar, in May 2003 to discuss the matter. During that meeting, Her Highness expressed her desire to hold a significant international event that would reaffirm the importance of long-established family values shared by Islamic and Christian principles, while still supporting sound social progress and development, and justice for women. She expressed her confidence and desire to work with Brigham Young University and the World Family Policy Center in achieving these goals.

Following these meetings, planning for the Doha International Conference for the Family began in earnest. The World Family Policy Center, working with a distinguished group of partners from around the world,<sup>67</sup> served as the chair of a coordinating committee that assisted the State of Qatar in organizing and convening this conference. The World Family Policy Forum in July 2003 focused upon the preparations for and possible outcomes of the 2004 celebration of the tenth anniversary of the International Year of the Family. Possible language for an important declaration regarding the family was discussed at the forum.<sup>68</sup> In December 2003, the UN General Assembly adopted a resolution welcoming the Doha International Conference for the Family as a major event of the 2004 celebration.<sup>69</sup>

The conference was formally organized under the patronage of Her Highness Sheikha Moza. A worldwide call for papers was issued in early 2004. Thereafter, the conference consisted of a year-long series of academic and intergovernmental meetings in major capitals around the world. Conferences organized and assisted by the World Family Policy Center, together with its nongovernmental and governmental partners, were held in Geneva, Switzerland; Stockholm, Sweden; and Kuala Lumpur, Malaysia. The Center also assisted with events in Mexico City, Mexico; Cotonou, Benin; Baku, Azerbaijan; and Riga, Latvia. Declarations, papers, essays, personal statements, findings, and proposals for action that were developed at these events were collected by the Center, and two significant reports were prepared.

The first report, entitled “The World Unites to Protect the Family,” details the results of over two hundred community meetings in thirty-four nations.<sup>70</sup> The second report, entitled “The Family in the Third

Millennium,” provides an initial look at the more than 2,500 pages of global scholarship and academic findings developed during the preparatory proceedings. Final publication of “The Family in the Third Millennium” is now pending; a major international press has expressed interest in publishing the collected scholarship and distributing it worldwide.

The Doha Conference culminated in an intergovernmental meeting in Doha, Qatar, on November 29–30, 2004. At that meeting, governmental representatives negotiated and adopted the Doha Declaration, which reaffirms long-standing legal norms related to family life. On December 6, 2004, the UN General Assembly adopted a consensus resolution, supported by the 149 nations who cosponsored the resolution, formally noting the Declaration.<sup>71</sup> As a result, the Doha Declaration takes its place in the growing canon of declarations, platforms, and agendas from which international legal norms are derived by political leaders, judges, and lawyers.

The language of the Doha Declaration was drawn from established (but long-ignored) principles of international law. Astonishingly, however, the Declaration reaffirms many of the principles related to family life stated in the Proclamation. Among other things, the Declaration recommends the world to

- strengthen “the family’s supporting, educating and nurturing roles”
- recognize the “inherent dignity of the human person”
- note that, “the child, by reason of his physical and mental immaturity, needs special safeguards and care before as well as after birth”
- acknowledge that “motherhood and childhood are entitled to special care and assistance”
- provide that, within marriage, “husband and wife should be equal partners”
- recognize “that the family has the primary responsibility for the nurturing and protection of children from infancy to adolescence”
- acknowledge that “the full and harmonious development” of children is best achieved when they “grow up in a family environment, in an atmosphere of happiness, love and understanding.”

The Declaration (set out in full in the appendix) reaffirms that “the family is the natural and fundamental group unit of society” and calls upon all nations to take effective action to provide the family with “the widest possible protection and assistance.”

These are widely shared and fundamental values—values that, for too long, have not been given their deserved attention and respect. Their reaffirmation in 2004 by the UN General Assembly is significant. Legal scholars have called the Doha Declaration “nothing short of miraculous,

one of the best things to come from the UN since the 1948 Universal Declaration of Human Rights.”<sup>72</sup> The Declaration gives reason to hope that the world can turn its attention from deconstructing the family to strengthening the family. Perhaps most importantly, the negotiation and adoption of the Doha Declaration has demonstrated that men and women, fathers and mothers, from all cultures and from all political and religious backgrounds *can* come together to preserve society’s most fundamental unit.

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*With emotion, the ambassador asked me a question that changed my life: “Where have you been?”*

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At the concluding session of the Doha International Conference in 2004, Her Highness Sheika Moza announced that she would establish the Doha International Institute for Family Studies and Development in Doha, Qatar. In late September 2005, legal documents establishing the institute as an academic center, situated within the City of Learning in Doha, were finalized by Her Highness and the Qatar Foundation.<sup>73</sup> The Doha Institute will research, examine, and proffer policy proposals to implement the norms set out in the Doha Declaration. There is a great amount of work yet to do, but on the tenth anniversary of the issuance of “The Family: A Proclamation to the World,” there is clear hope that members of The Church of Jesus Christ of Latter-day Saints can link arms with cultures around the world to strengthen the family.

### **Stand Up to the Fire**

An international reaffirmation of many of the principles stated in “The Family: A Proclamation to the World” grew, in significant measure, from a simple question I was asked in Istanbul. After delivering my plenary session remarks in 1996, I was approached by an ambassador from a Middle Eastern country. The ambassador noted that he had attended scores of international conferences. At those conferences, numerous scholars from around the world had urged significant (in his words, “radical”) changes to national and international laws related to the family. But, he said, he had never heard *any* academician support protecting and strengthening the natural family. Then, with some emotion, he asked me a question that changed my life: “Where have you been?”

On the tenth anniversary of the Proclamation, this question should be considered by every member of The Church of Jesus Christ of Latter-day Saints, and particularly by academicians, scholars, and researchers. In 1995, the Proclamation was issued to warn and forewarn the Church and

the world of a pressing need to return to the “standards, doctrines, and practices relative to the family which the prophets, seers, and revelators

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*When defending the family, we must be prepared for the sparks that will surely fly.*

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of this church have repeatedly stated throughout its history.”<sup>74</sup> In 2005, Latter-day Saints everywhere should assess whether they have heeded the call to “promote those measures designed to maintain and strengthen the family as the fundamental unit of society.”<sup>75</sup>

The Proclamation ends with a warning and a call for action. The warning is disquieting. Failure to reverse current trends “will bring upon individuals, communities, and nations the calamities foretold by ancient and modern prophets.”<sup>76</sup> But a way out is marked as well: citizens and government leaders are called upon to take action “to strengthen the family as the fundamental unit of society.”<sup>77</sup>

Nearly ten years after the Proclamation was first read to members of the Relief Society from the pulpit of the Salt Lake Tabernacle, it has been framed, hung on the wall, even memorized. These laudable actions, however, are not enough. Despite the constant request of President Hinckley to stand for something, many members of the Church are fearful to stand up for marriage, life, and the family. A decade after the Proclamation was first issued, we must overcome our fear.

The defense of the family must be grounded in reason. We must use carefully chosen words and act pursuant to well-thought-out plans motivated by love and compassion. We must not be angry, dogmatic, or insensitive to the deeply felt concerns of those with opposing views. Without compromising principle, we should seek common ground. As President Hinckley has counseled, we must avoid contention and dispute whenever possible.

But, however reasoned, careful, compassionate, planned, and moderate our efforts, we must be prepared for the sparks that will surely fly. We must never create needless controversy for ourselves, our families, our nation, or the Church. But we must also not retreat from the defense of truth. Let us not withdraw, but stand up to the fire of our times.

## Appendix: The Doha Declaration

### Introduction

Representatives of Governments and members of civil society met in Doha, Qatar, on 29 and 30 November 2004, for the Doha International Conference for the Family, in commemoration of the tenth anniversary of the International Year of the Family.

The Conference was convened under the patronage of Her Highness Sheikha Moza bint Nasser Al-Missned, Consort of His Highness the Emir of Qatar and President of the Supreme Council for Family Affairs, State of Qatar.

The preparatory proceedings of the Doha Conference for the Family gathered the views of government officials, academicians, faith-based groups, non-governmental organizations and members of civil society.

The Conference recalls regional meetings held in Cotonou, Benin; Mexico City, Mexico; Stockholm, Sweden; Geneva, Switzerland; Kuala Lumpur, Malaysia and other venues; and notes the proposals and views expressed during the Conference by all participants.

### Preamble

Reaffirming that the family is the natural and fundamental group unit of society, as declared in article 16 (3) of the Universal Declaration of Human Rights;

Noting that 2004 marks the tenth anniversary of the United Nations 1994 International Year of the Family and that the Doha International Conference for the Family was welcomed by the United Nations General Assembly in its resolution 58/15 of 3 December 2003;

Acknowledging that the objectives of the tenth anniversary of the International Year of the Family include efforts to (a) strengthen the capacity of national institutions to formulate, implement and monitor policies in respect of families; (b) stimulate efforts to respond to problems affecting, and affected by, the situation of families; (c) undertake analytical reviews at all levels and assessments of the situation and needs of families; (d) strengthen the effectiveness of efforts at all levels to execute specific programmes concerning families; and (e) improve collaboration among national and international non-governmental organizations in support of families;

Taking into consideration the academic, scientific and social findings collected for the Doha International Conference, which collectively

demonstrate that the family is not only the fundamental group unit of society, but is also the fundamental agent for sustainable social, economic and cultural development;

Recognizing the need to address the challenges facing the family in the context of globalization;

Realizing that strengthening the family presents a unique opportunity to address societal problems in a holistic manner;

Reiterating that strong, stable families contribute to the maintenance of a culture of peace and promote dialogue among civilizations and diverse ethnic groups;

Welcoming the announcement by Her Highness Sheikha Moza bint Nasser Al-Missned, Consort of His Highness the Emir of Qatar and President of the Supreme Council for Family Affairs, State of Qatar, about the creation of an international Institute for Study of the Family.

*In this regard, we reaffirm international commitments to the family and call upon all Governments, international organizations and members of civil society at all levels to take action to protect the family.*

### **Reaffirmation of commitments to the family**

We reaffirm international commitments to strengthen the family, in particular:

1. We commit ourselves to recognizing and strengthening the family's supporting, educating and nurturing roles, with full respect for the world's diverse cultural, religious, ethical and social values;

2. We recognize the inherent dignity of the human person and note that the child, by reason of his physical and mental immaturity, needs special safeguards and care before as well as after birth. Motherhood and childhood are entitled to special care and assistance. Everyone has the right to life, liberty and security of person;

3. We reaffirm that the family is the natural and fundamental group unit of society and is entitled to the widest possible protection and assistance by society and the State;

4. We emphasize that marriage shall be entered into only with the free and full consent of the intending spouses and that the right of men and women of marriageable age to marry and to found a family shall be recognized and that husband and wife should be equal partners;

5. We further emphasize that the family has the primary responsibility for the nurturing and protection of children from infancy to adolescence. For the full and harmonious development of their personality,

children should grow up in a family environment, in an atmosphere of happiness, love and understanding. All institutions of society should respect and support the efforts of parents to nurture and care for children in a family environment. Parents have a prior right to choose the kind of education that shall be given to their children and the liberty to ensure the religious and moral education of their children in conformity with their own convictions.

### **Call for action**

Taking into account the above commitments, we call upon all Governments, international organizations and members of civil society at all levels to:

### **Cultural, religious and social values**

1. Develop programmes to stimulate and encourage dialogue among countries, religions, cultures and civilizations on questions related to family life, including measures to preserve and defend the institution of marriage;
2. Reaffirm the importance of faith and religious and ethical beliefs in maintaining family stability and social progress;
3. Evaluate and reassess the extent to which international law and policies conform to the principles and provisions related to the family contained in the Universal Declaration of Human Rights and other international commitments;

### **Human dignity**

4. Reaffirm commitments to provide a quality education for all, including equal access to educational opportunities;
5. Evaluate and reassess government policies to ensure that the inherent dignity of human beings is recognized and protected throughout all stages of life;

### **Family**

6. Develop indicators to evaluate the impact of all programmes on family stability;
7. Strengthen policies and programmes that will enable families to break the cycle of poverty;
8. Evaluate and reassess government population policies, particularly in countries with below replacement birth rates;

9. Encourage and support the family to provide care for older persons and persons with disabilities;
10. Support the family in addressing the scourge of HIV/AIDS and other pandemics, including malaria and tuberculosis;
11. Take effective measures to support the family in times of peace and war;

### **Marriage**

12. Uphold, preserve and defend the institution of marriage;
13. Take effective measures to strengthen the stability of marriage by, among other things, encouraging the full and equal partnership of husband and wife within a committed and enduring marital relationship;
14. Establish effective policies and practices to condemn and remedy abusive relationships within marriage and the family, including the establishment of public agencies to assist men, women, children and families in crisis;

### **Parents and children**

15. Strengthen efforts to promote equal political, economic, social and educational opportunities for women and evaluate and assess economic, social and other policies to support mothers and fathers in performing their essential roles;
16. Strengthen the functioning of the family by involving mothers and fathers in the education of their children;
17. Reaffirm that parents have a prior right to choose the kind of education that shall be given to their children;
18. Reaffirm and respect the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

We request the host country of the Conference, the State of Qatar, to inform the United Nations General Assembly of the proceedings of the Conference, including the Doha Declaration, in particular during the celebration of the tenth anniversary of the International Year of the Family to be held on 6 December 2004.

*To see the official UN document visit [www.un.org/ga/59/documenta-tion/list5.html](http://www.un.org/ga/59/documenta-tion/list5.html) and click on "A/59/592"*

Richard G. Wilkins (wilkinsr@lawgate.byu.edu) will begin a two-year professional development leave from Brigham Young University in January 2006 to serve as the initial Managing Director of the Doha International Institute for Family Studies and Development in Doha, Qatar. He has served as the Managing Director of the World Family Policy Center, BYU, since 1996. He is Professor of Law at the J. Reuben Clark Law School at BYU, where he has written extensively on constitutional law, international law, family policy, federal jurisdiction and legal advocacy. He is a former Assistant to the Solicitor General, United States Department of Justice.

1. Gordon B. Hinckley, "Stand Strong against the Wives of the World," *Ensign* 25 (November 1995): 100; Gordon B. Hinckley, *Discourses of President Gordon B. Hinckley, Volume 1: 1995-1999* (Salt Lake City: Deseret Book, 2005), 32.

2. Hinckley, "Stand Strong against the Wives of the World," 100; Hinckley, *Discourses of President Hinckley*, 32-34.

3. "The Family: A Proclamation to the World," *Ensign* 25 (November 1995): 102.

4. John Gee, "The Family in the Third (and Second) Millennium . . . BC: Where We've Been" (paper presented July 11, 2005, at the World Family Policy Forum, Brigham Young University, publication in proceedings of the World Family Policy Forum, forthcoming) analyzes marriage, divorce, and family laws as reflected in the earliest historical records of Egypt and Mesopotamia, concluding that the "family as we know it historically, and not as some people have recently tried to redefine it, goes back at least as far as we have human records," the family has been "based on monogamous marriage between a man and a woman," and the "state had an interest in regulating sexual conduct from the beginning."

5. Hinckley, "Stand Strong against the Wives of the World," 100; Hinckley, *Discourses of President Hinckley*, 32.

6. "The Family: A Proclamation to the World," 102. See Richard G. Wilkins, "Reply to 'Discrimination against Gays Is Sex Discrimination'" and "The Constitutionality of Legal Preferences for Heterosexual Marriage," in *Marriage and Same-Sex Unions: A Debate*, eds. Lynn D. Wardle, Mark Strasser, William C. Duncan, and David Orgon Coolidge (Westport, Conn.: Praeger Publishers, 2003), 221-40. See also Gee, "Family in the Third (and Second) Millennium."

7. See for example *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003), on disassociating marriage from norms related to sexual complementarity, fatherhood, motherhood, human reproduction, or social expectations that conflict with an individual's conception of "the meaning of life." See also Andrew Koppelman, "Discrimination against Gays Is Sex Discrimination," in *Marriage and Same-Sex Unions*, 209-20.

8. "The Family: A Proclamation to the World," 102.

9. See Mary K. Klages, "Queer Theory," materials prepared for students enrolled in Professor Klages's English 2012 Course, "Modern Critical Thought," at the University of Colorado at Boulder. See <http://www.colorado.edu/English/ENGL2012Klages/queertheory.html> (last visited September 8, 2005). According to Professor Klages:

Feminist theory thus argued that gender was a social construct, something designed and implemented and perpetuated by social organizations and structures, rather than something merely "true,"

something innate to the ways bodies worked on a biological level. In so doing, feminist theory made two very important contributions. The first is that feminist theory separated the social from the biological, insisting that we see a difference between what is the product of human ideas, hence something mutable and changeable, and what is the product of biology, hence something (relatively) stable and unchangeable. The second contribution is related to the first: by separating the social and the biological, the constructed and the innate, feminist theory insisted that gender was not something “essential” to an individual’s identity.

10. See for example Zillah Eisenstein, *The Radical Future of Liberal Feminism* (Boston: Northeastern University Press, 1981), 14–15:

Patriarchy as a political structure seeks to control and subjugate women so that their possibilities for making choices about their sexuality, child-rearing, mothering, loving, and laboring are curtailed. Patriarchy, as a system of oppression, recognizes the potential power of women and the actual power of men. Its purpose is to destroy woman’s consciousness about her potential power, which derives from the necessity of society to reproduce itself. By trying to affect woman’s consciousness and her life options, patriarchy protects the appropriation of women’s sexuality, their reproductive capacities, and their labor by individual men and society as a whole.

Ithaca College’s web site describes Professor Eisenstein as “a professor of politics at Ithaca College and activist, educator, and researcher.” <http://www.ithaca.edu/intercom/article.php/20050202095102964> (last visited on September 8, 2005).

11. Report of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), General Assembly Official Records A/55/38 pars. 311–314 (Germany) and pars. 403–404 (Luxembourg); A/54/38/Rev.1 pars. 259–262 (Spain), contains statements from CEDAW, advising countries to make all “necessary” efforts to eradicate the “harmful stereotype” of motherhood and ensure full employment of all women.

12. Report of CEDAW, General Assembly Official Records A/54/38/Rev.1 par. 180. CEDAW condemned Ireland for tolerating religious opposition to women’s right to “reproductive health.” The Committee has instructed at least one Islamic country to review its interpretation of the Koran. According to the Committee, “true gender equality [does] not allow for varying interpretations of obligations under international legal norms depending on internal religious rules, traditions and customs.” A/49/38 pars. 130 and 135. The report of the CEDAW Committee asserts that religious norms disadvantage women “in all countries” in A/52/38/Rev.1, par. 10. CEDAW criticizes Norway and Hong Kong for granting religiously based exemptions from discrimination laws that—without religious exemptions—would alter basic religious doctrines justified by reference to the Bible and other religious texts in A/54/38/Rev. 1 par. 314 (China/Hong Kong); A/50/38, par. 460 (Norway).

13. The Convention on the Elimination of All Forms of Discrimination against Women condemns “any distinction . . . on the basis of sex.” G.A. res. 34/180, art. 1. This provision (according to many scholars) demands official recognition of

abortion; otherwise women (who *may* become pregnant) are burdened by a “distinction” not applicable to men (who *cannot* become pregnant). One author in particular captured the argument with remarkable clarity: “Just as no man will ever become pregnant, no man will ever need an abortion, hence be in a position to be denied one by law. On this level, only women can be disadvantaged, for a reason specific to sex, through state-mandated restrictions on abortion.” Catherine A. MacKinnon, “Reflections on Sex Equality under the Law,” *Yale Law Journal* 100 (1991): 1281, 1320 (footnotes omitted).

See also Erin Daly, “Reconsidering Abortion Law: Liberty, Equality, and the New Rhetoric of *Planned Parenthood v. Casey*,” *American University Law Review* 45 (1995): 77, discussing the court’s recognition of the unequal burdens of procreation on men and women; Dawn Johnsen and Marcy J. Wilder, “Webster and Women’s Equality,” *American Journal of Law and Medicine* 15 (1989): 178, arguing for the equality of women by securing the decision in *Roe v. Wade*, using similar language to CEDAW; Christina L. Misner, “What If Mary Sue Wanted an Abortion Instead? The Effect of *Davis v. Davis* on Abortion Rights,” *American University Journal of Gender, Social Policy and the Law* 3 (1995): 296, which states that “equal protection is triggered in the abortion context in that laws regulating abortion treat women differently than men”; Alec Walen, “Consensual Sex without Assuming the Risk of Carrying an Unwanted Fetus: Another Foundation for the Right to an Abortion,” *Brooklyn Law Review* 63 (1997): 1128, discusses the inequality between males and females associated in consensual sex without assuming the burden of a fetus; and Eileen L. McDonagh, “My Body, My Consent: Securing the Constitutional Right to Abortion Funding,” *Albany Law Review* 62 (1999): 1057, seeking to classify equal protection argument in the context of the harm created by the fetus and “consent-to-pregnancy.”

14. “The Family: A Proclamation to the World,” 102.

15. See Bruce C. Hafen and Jonathan O. Hafen, “Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child,” *Harvard International Law Journal* 37 (Spring 1996): 449, 450.

16. Hinckley, “Stand Strong against the Wiles of the World,” 100; Hinckley, *Discourses of President Hinckley*, 32.

17. Hinckley, “Stand Strong against the Wiles of the World,” 101; Hinckley, *Discourses of President Hinckley*, 34.

18. United Nations General Assembly A/RES/59/111 (December 6, 2004), noting outcomes of the Doha International Conference for the Family; United Nations General Assembly A/59/592 (December 3, 2004).

19. “The Family: A Proclamation to the World,” 102.

20. These two weeks are documented in a book written with the help of a good friend, Ester Rasband: Ester Rasband and Richard Wilkins, *A Sacred Duty* (Salt Lake City: Bookcraft, 1999). See also [http://www.law2.byu.edu/Law\\_Society/publications/clark\\_memorandum.htm](http://www.law2.byu.edu/Law_Society/publications/clark_memorandum.htm) and select the Spring 1997 issue, pages 12–21.

21. Habitat Agenda, par. 31 [http://www.unhabitat.org/declarations/habitat\\_agenda.htm](http://www.unhabitat.org/declarations/habitat_agenda.htm) (last visited June 16, 2005).

22. Cory Leonard, Director of Student Programs at the David M. Kennedy Center, volunteered to assist me in those early months and years. For quite some

time, NGO Family Voice—and later the World Family Policy Center—consisted primarily of the voluntary efforts of Cory Leonard and me.

23. These included the first World Congress of Families, held in the Czech Republic in 1996, the follow-up review of the Habitat II Conference held in Nairobi, Kenya, in 1997, and the negotiation of the Rome Statute for the Creation of an International Criminal Court in Rome, Italy, in 1998.

24. See for example Brigitte Berger, “The Social Roots of Prosperity and Liberty,” *Society* (March/April 1998), at 51 (available on Westlaw at 1998 WL 11168752), which states, “Although of late we can witness a public rediscovery of the salutary role of the nuclear family of father, mother, and their children living together and caring for their individual and collective progress, policy elites appear neither to have fully understood that public life lies at the mercy of private life, nor do they seem to have apprehended the degree to which the [traditional] virtues and [traditional] ethos continue to be indispensable for the maintenance of both the market economy and civil society.”

25. Kathryn O. Balmforth, then a relatively recent graduate of the law school, was the first executive director of the World Family Policy Center. After several years of distinguished service, she returned to private law practice and Dr. A. Scott Loveless, who holds both PhD and JD degrees, took her place. Marya Reed—who joined the Center at about the same time as Kathryn—took on the role of administrative director, and has since earned a law degree from BYU. For a brief period the Center had a full-time attorney in New York, Renee Green. Emily Parks, who joined the Center’s staff as a student employee, now directs all secretarial and record-keeping tasks associated with the Center. The Center is administered by an interdisciplinary board drawn from faculties across the University, including Dr. David Dollahite from the School of Family Life, Dr. Shirley Cox from the School of Social Work, and—as from the beginning—Cory Leonard from the David M. Kennedy Center for International Studies. The Center’s team in 2005 is completed by a couple called as Church Service Missionaries, Elder Gary and Sister Joy Lundberg.

26. Universal Declaration of Human Rights, Article 16(3), available at <http://www.un.org/Overview/rights.htm>.

27. Chapters of such a book could profitably include an analysis of international law as it was understood at the time the U.S. Constitution was written, an analysis of the advantages and shortcomings of judicial review in the development of constitutional norms, a review of the various possible understandings of “international law” and how those understandings have changed during the Cold War and post-Cold War periods, a discussion of the means and processes by which actors in the UN system have gradually assumed policymaking authority, and a critique of the sociological and legal developments that have resulted in increasing international disdain for the sovereign authority historically exercised by independent nations.

An entire chapter (or even another book) could be devoted to tracing how early treaties establishing a European common market in the post-World War II era have resulted, step by step and treaty by treaty, in the founding of an integrated European megastate—the European Union. No single treaty produced the EU. Rather, the EU is the result of the inexorable “mission creep” of international treaties and agreements.

The Charter of Fundamental Rights of the European Union, approved by the Parliament, Council and Commission of the European Union in 2000, is merely one example of this process. See The Charter of Fundamental Rights of the European Union, [http://www.europarl.eu.int/charter/pdf/text\\_en.pdf](http://www.europarl.eu.int/charter/pdf/text_en.pdf). The Preamble to the Charter asserts that its norms are derived “from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.” As one commentator has aptly noted, “If [this] does not qualify as a common law of Europe, what then would?” Jan Wouters, “The EU Charter of Fundamental Rights: Some Reflections on Its External Dimension,” Institute for International Law, working paper no. 3, May 2001 at 3, available at <http://www.law.kuleuven.ac.be/iir/eng/wp/WP3e.pdf> (last visited September 15, 2005). Europe’s experience in the sixty years following World War II demonstrates that successive international agreements (like the documents cited in the Preamble of the EU Charter of Human Rights) produce increased supra-national integration of functions previously controlled by national governments (including the definition of human rights). The same international processes that produced the EU are now at work within the larger international community.

The 1948 Universal Declaration of Human Rights, for example, provided the foundation for the 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights—which expanded on the language of the Universal Declaration. Paul Szasz, “General Law-Making Processes,” in *United Nations Legal Order*, eds. Oscar Schachter and Christopher C. Joyner (Port Chester, N.Y.: Cambridge University Press, 1995), 47 n.18. These Covenants have been very influential. Other nonbinding international instruments, such as model codes and guidelines, also have been precursors to later international treaties and laws enacted by nations. As similar (and continually expanding) norm-setting processes continue, international inertia favoring some form of global federation may become inexorable. See for example Harold Hongju Koh, “Why Do Nations Obey International Law?” *Yale Law Journal* 106 (1997): 2599, 2646. But note the recent rejection of the proposed Constitution for the EU by France and the Netherlands because of concerns by voters in those nations regarding further concentration of power in a supra-national entity. See “French Say ‘No’ to EU Treaty,” May 30, 2005, <http://news.bbc.co.uk/2/hi/europe/4592243.stm> (last visited June 13, 2005); “Dutch Say ‘No’ to EU Constitution,” June 2, 2005, <http://news.bbc.co.uk/1/hi/world/europe/4601439.stm> (last visited June 13, 2005).

28. The definitions of “soft law” and “hard law” are almost self-evident: “soft law” consists of norms that “might be enforceable,” but then again perhaps not; “hard law” consists of norms that command a rather high level of compliance by national and international actors. See Jiri Toman, “Quasi-Legal Standards and Guidelines for Protecting Human Rights,” in *Guide to International Human Rights Practice*, ed. Hurst Hannum (Philadelphia: University of Pennsylvania Press, 1992), 192, which notes that “soft law” consists of norms not directly enforceable by formal or informal means.

While these definitions may be more or less straightforward, the processes that produce “soft” and “hard” international law are rather difficult to describe. As one scholar put it:

International law is manifested in a large variety of different types of instruments, such as treaties, non-binding agreements, and declarations and decisions of international organs. All of these have the characteristics of ‘black letter’ law in that the provisions can easily be read, although their binding force is widely differentiated and certainly cannot be defined by constructing hierarchies. There are also manifestations of the collective, coordinated or merely parallel will of states that can only be determined by studying their actions in the light of expressed or implied motives. Thus, in addition to the distinctions between black and increasingly light gray letter law, there is the distinction between binding or “hard” law and various “softer” forms. The international legislative or norm-making process is similarly structured, and also confusing in that there is no single legislature and no single source of administrative law. Instead, there are a multitude of norm-makers at every geographic “level” (i.e. global, regional, subregional, and so on), as well as inchoate processes that create and identify international customary and perhaps even general principles of law. Furthermore, the rather clear-cut relationship that exists at the domestic level between processes and products (e.g., a legislative body produces statutes) is by no means as simple internationally, where all sorts of processes can produce, as direct outputs or as indirect by-products, various types of hard and soft, and written and unwritten law.

Szasz, “General Law-Making Processes,” in *United Nations Legal Order*, 35–36.

29. Treaty of Westphalia, Oct. 24, 1648, Holy Roman Emperor–King of France, The Avalon Project at Yale Law School, available at <http://www.yale.edu/lawweb/avalon/westphal.htm>.

30. For a general overview of the development of international law through the nineteenth century, see Jeffrey L. Dunoff, Steven R. Ratner, and David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach* (New York: Aspen Law and Business, 2002), 4–9.

31. Henry Campbell Black and Bryan A. Garner, *Black’s Law Dictionary* (St. Paul, Minn.: West Group, 1999), 822. Wilhelm Grewe reminds his readers that Jeremy Bentham originally coined the phrase “international law.” C. G. Roelofsen, review of *The Epochs of International Law*, by Wilhelm G. Grewe, *American Journal of International Law* 98, no. 4 (2004): 867–68.

32. *Convention on the Elimination of All Forms of Discrimination against Women*, G.A. res. 34/180, at art. 11, clause 2, available at <http://www.ohchr.org/english/law/pdf/cedaw.pdf>. This mandates that states initiate a program for maternity leave with pay, or comparable benefits, so that women do not lose jobs, and give them special protections from harm when pregnant. Article 12 mandates that states provide access to family planning services (clause 1) and that states must provide free nutrition and appropriate services for pregnant women where necessary (clause 2).

33. *Convention on the Rights of the Child*, G.A. res. 44/25, U.N. GAOR, 44th sess., 61st plen. mtg., Annex, U.N. doc. A/RES/44/25. Article 6 specifically states that all children have the “inherent right to life” and that the state ensures the “survival and development of the child.” Article 7 mandates that the state register the child immediately after birth, and that the child shall be given the right to inherit, to acquire nationality, and to know and be cared for by its parents.

34. International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

35. A search on the UN website <http://www.un.org/search/> reveals hundreds of meetings conducted by the various bodies of the UN System in 2004. For example, there were thirty-nine interagency meetings (<http://ceb.unsystem.org/calendar%20previous%20meetings.htm#January%202004>), seventy meetings by Human Rights committees (<http://www.ohchr.org/english/events/2004.htm>), and fifty-nine meetings by the Division of Public Administration and Development Management (<http://unpan1.un.org/intradoc/groups/public/documents/un/unpano11663.pdf>), just to name a few. These meetings dealt with such diverse topics as an inter-agency network on women and gender equality, migrant workers, communications, energy, and a meeting of experts on priorities in the Mediterranean Region.

36. See United Nations Conference on Environment and Development, Agenda 21, U.N. GAOR, U.N. docs. A/CONF.151/26, A/CONF/151/26, June 3–14, 1992, available at [http://www.sidsnet.org/docshare/other/Agenda21\\_UNCED.pdf](http://www.sidsnet.org/docshare/other/Agenda21_UNCED.pdf) (link from U.N. webpage <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21toc.htm>); International Conference on Population and Development Report of the ICPD, U.N. doc. A/CONF.171/13, Oct. 18, 1994, available at <http://www.un.org/popin/icpd/conference/offeng>; “Further actions and initiatives to implement the Beijing Declarations and Platform for Action” (BEIJING +5), U.N. GAOR, 23d spec. sess., U.N. doc. A/RES/S-23/3, 2000, agenda item 10, available at <http://www.un.org/womenwatch/daw/followup/ress233e.pdf>; Report of the United Nations Conference on Human Settlements (Habitat II), U.N. doc. A/CONF.165/14, 1996.

37. Just a decade ago, scholars suggested that the norms adopted at international negotiations might have little meaning because they are often adopted merely to reach “consensus” or to “appease popular or ‘politically correct’ sentiment.” Neil H. Afran, “International Human Rights Law in the Twenty First Century: Effective Municipal Implementation or Paen to Platitudes,” *Fordham International Law Journal* 18 (1995): 1756, 1758. Even the hard law language of treaties was often disregarded in the recent past. One writer noted that, in a conversation with a Latin American lawyer-diplomat over a decade ago, he was told that treaties signed by the lawyer’s country were negotiated by the Ministry of Foreign Affairs and, when approved, were locked in a cabinet and almost never seen again. John H. Jackson, “Status of Treaties in Domestic Legal Systems: A Policy Analysis,” *American Journal of International Law* 86 (1992): 310, 322 n. 70.

38. Harold Hongju Koh describes this process clearly:

The process usually occurs in four phases: interaction, interpretation, internalization and obedience. Normally one or more transnational

actors provokes an interaction, or series of interactions, with another in a law-declaring forum. This forces an interpretation or enunciation of the global norm applicable to the situation. By so doing, the moving party seeks not simply to coerce the other party, but to force the other party to internalize the new interpretation of the international norm into its normative system. The provoking actor's aim is to "bind" the other party to obey the new interpretation as part of its internal value set.

Harold Hongju Koh, "Why Do Nations Obey International Law?" *Yale Law Journal* 106 (1997): 2599, 2646; see also Harold Hongju Koh's address, the 1998 Frankel Lecture, "Bringing International Law Home," *Houston Law Review* 35 (1998): 623, which states that even resisting nations cannot insulate themselves from the influences of the transnational interactions on particular issues; Janet Koven Levit, "The Constitutionalization of Human Rights in Argentina: Problem or Promise?" *Columbia Journal of Transnational Law* 37 (1999): 281, 286–87; Joseph F. C. Dimento, "Process, Norms, Compliance and International Environmental Law," *Journal of Environmental Law and Litigation* 18 (2003): 251, which discusses how the international norm-setting process impacts national policies in various social and legal spheres.

39. International soft law norms are the product of significant international debate and deliberation. Hurst Hannam, "Human Rights," in *United Nations Legal Order*, 319, 336 n. 77; see also James C. N. Paul, "The United Nations and the Creation of an International Law of Development," *Harvard International Law Journal* 36 (1995): 307, 315, which states, "Because world conferences provide potential opportunities for global popular participation, expert consultations, and, sometimes, vigorous debate, they can in theory, become unique vehicles to elaborate norms (cast in the form of legal instruments) governing development." As such, conference declarations are imbued with a strong expectation that members of the international community will abide by them. As this expectation is justified by state practice, including activities within the UN organization, the principles of a UN document may—by custom—become binding upon a state. Hannam, "Human Rights," 336.

The ongoing international discussion and redeliberation of soft law norms may be expanding, rather rapidly, the official canon of binding customary law. See for example Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon, 1989), 99: "Given the rapid continued development of international human rights, the list [of customary international law norms] as now constituted is essentially open-ended. . . . Many other rights will be added in the course of time"; *Restatement of the Law, Third, The Foreign Relations Law of the United States* (St. Paul: American Law Institute Publishers, 1987), § 702 comment a, noting that its "list [of customary international law norms] is not necessarily complete, and is not closed: human rights not listed in this section may have achieved the status of customary law, and some rights might achieve that status in the future"; Richard B. Lillich, "The Growing Importance of Customary International Human Rights Law," *Georgia Journal of International and Comparative Law* 25 (1995/96): 7 n. 43, reporting that in a 1996 speech, Professor Louis Henkin, Chief Reporter of *Restatement (Third)*, indicated that "if he were drafting Section 702 today he would include as customary international law rights the right to property and freedom from gender discrimination, plus the right to

personal autonomy and the right to live in a democratic society”; Beth Stephens, “Litigating Customary International Human Rights Norms,” *Georgia Journal of International and Comparative Law* 25 (1995/96): 191, 198–99, describing customary international law as a “developing concept” and predicting as likely developments “environmental protections and the right to political access (i.e., to vote) and other attributes of democracy.” Commentators have argued, for example, that customary international law includes, or will soon include, rights such as freedom of thought, free choice of employment, the right to primary education, the right to form and join trade unions, and rights relating to sexual orientation. See Curtis A. Bradley and Jack L. Goldsmith, “Customary International Law as Federal Common Law: A Critique of the Modern Position,” *Harvard Law Review* 110 (1997): 815, 841, and n. 171.

40. Richard B. Bilder, “An Overview of International Human Rights Law,” in *Guide to International Human Rights Practice*, 10, stating that customary international law is defined as a consistent practice in which states engage out of a sense of legal obligation.

41. Higgins, “The Role of Resolutions of International Organizations in the Process of Creating Norms in the International System,” in *International Organizations in Their Legal Settings*, ed. Frederic L. Kirgis Jr., 2d ed. (St. Paul, Minn.: West, 1993), 341.

42. June Zeitlin, ed., *Beijing Betrayed* (New York: Women’s Environment and Development Organization, 2005), 7, available at [http://www.wedo.org/files/gmr\\_pdfs/gmr2005.pdf](http://www.wedo.org/files/gmr_pdfs/gmr2005.pdf), stating that these reports “show that women advocates everywhere have stepped up their activities since Beijing using the Platform for Action and other key global policy instruments to push governments into taking action.”

43. See Jiri Toman, “Quasi-Legal Standards and Guidelines for Protecting Human Rights,” in *Guide to International Human Rights Practice*, 192.

44. See *The Ctr. for Reprod. Law and Policy v. Bush*, no. 01-4986, 2001 U.S. Dist. WL 868007 (S.D.N.Y. July 31, 2001), which was dismissed for failure to show standing, *aff’d*, 304 F.3d 183 (2d Cir. 2002), rejecting the claims that U.S. policy restricting the funding of foreign abortions did not violate the Center’s First Amendment rights to speech and association, party lacked standing for Fourteenth Amendment claims, and that even though party had standing with equal protection theory, the policy did not violate equal protection rights.

45. See Marc-Olivier Herman, “Fighting Homelessness: Can International Human Rights Law Make a Difference?” *Georgetown Journal on Fighting Poverty* 2 (1994): 59, 71, and n. 157, discussing reluctance of U.S. courts to either invoke or rely upon international norms in deciding domestic disputes.

46. *Roper v. Simmons*, 125 S. Ct. 1183, 1198–1200 (2005).

47. In *Marbury v. Madison*, Chief Justice John Marshall declared that “a written constitution” was “the greatest improvement on political institutions” flowing from the American Revolution. *Marbury* 1 Cranch, 5 U.S. 137, 178 (1803). But despite Justice Marshall’s extensive reliance upon the concept of a “written Constitution,” the proper judicial technique for determining the meaning of the Founders’ words remains controversial. According to some, the judicial inquiry essentially involves “lay[ing] the article of the Constitution which is invoked beside the [government action] which is challenged . . . to decide whether the latter squares with the former.” *United States v. Butler*, 297 U.S. 1, 62 (1936). This

task, of course, is rarely as straightforward as the language of *Butler* suggests. Accordingly, constitutional interpretation has often led judges to look beyond plain constitutional text to the history and traditions of the American people. See, for example, *Palko v. Connecticut*, 302 U.S. 319, 325 (1937), holding that a provision of the Bill of Rights that embodies “a ‘principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental’” is applicable to state governments, notwithstanding express constitutional language limiting such a provision to actions of the federal government (quoting *Snyder v. Massachusetts*, 291 U.S. 97 [1934]). Whether the meaning of the Eighth Amendment is determined by reference to its words or the “traditions and conscience” of the American people, it is hardly clear that the execution of minors was unconstitutional prior to March 2005.

48. *Roper v. Simmons*, 125 S. Ct. at 1206 (O’Connor, J., dissenting), stating that the evidence fails to show conclusively that a national consensus has emerged to condemn execution of minors; see also *Roper v. Simmons*, 125 S. Ct. at 1218 (Scalia, J., dissenting), noting that “18 States—or 47% of States that permit capital punishment” prohibit the execution of minors, but asserting that “words have no meaning if the views of less than 50% of death penalty States can constitute a national consensus.”

49. *Lawrence v. Texas*, 539 U.S. 558 (2003).

50. *Bowers v. Hardwick*, 478 U.S. 186 (1986).

51. *Lawrence v. Texas*, 539 U.S. at 567 (stating that the *Bowers* court “misapprehended the liberty claim presented to it” for not recognizing the privacy interests at stake); *Lawrence v. Texas*, at 568 (rejecting the claim of the *Bowers* court that homosexual sodomy had been regulated for a “very long time” *Bowers v. Hardwick* at 190).

52. *Lawrence v. Texas*, at 573, citing *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (1981); see also *Lawrence v. Texas*, at 576–77, citing brief of Mary Robinson, U.N. High Commissioner of Human Rights 1997–2002.

53. See authority detailing various efforts at international negotiations related to the above topics cited at notes 32–36, 38.

54. The committee overseeing international compliance with the *Convention on the Elimination of All Forms of Discrimination against Women* views full employment in paid work as a priority, and notes the importance of day-care for even the youngest children. See, for example, A/55/38, pars. 311–314 (Germany); A/54/38/Rev.1, pars. 259–262 (Spain); A/52/38/Rev.1, par. 104 (Slovenia).

55. Hafen and Hafen, “Abandoning Children to Their Autonomy,” 450.

56. In 1996, the UN High Commissioner for Human Rights issued “HIV/AIDS and Human Rights International Guidelines,” HR/PUB/98/1 (Geneva, Switzerland, September 23–25, 1996). At a 2001 special session of the UN General Assembly on HIV/AIDS in New York City, the UN High Commission for Human Rights urged the General Assembly to adopt a resolution making compliance with the guidelines mandatory. The proposal was ultimately rejected because, among other things, the guidelines called for (1) repeal of laws regulating homosexual sodomy (pars. 101–2), (2) legalization of same-sex marriage (par. 30-h), (3) graphic sexual training of children (pars. 95, 116), and (4) the creation of “penalties” for anyone who vilifies homosexual behavior (par. 30-h).

57. The history of the *Convention on the Rights of the Child* is an interesting example of this phenomenon. A well-respected analysis of the Convention notes:

Since American children's rights advocates took the lead in developing the *Convention on the Rights of the Child's* unique provisions for child autonomy, it is curious that the United States is not yet among the ratifying nations. The sluggishness of the United States might be explained by a traditional American reluctance to adopt international human rights treaties. . . . A more speculative possibility arises from the fact that the United States legal mainstream has never embraced the notion of legal autonomy for children. Some *Convention on the Rights of the Child* proponents have nonetheless incorrectly implied that their positions reflect the current state of United States law—which is unfortunate for those in the international community who have relied on their claims. This raises the question whether advocates of child autonomy who have been unsuccessful in United States legal circles have turned to the *Convention on the Rights of the Child* as a way of leveraging U.S. legislatures and courts toward what they can now present as an international, human rights–based vision of children's legal status. Hafen and Hafen, *Abandoning Children to Their Autonomy*, 449–50.

If this analysis is correct—as I believe it is—it demonstrates the unusual power of legal scholars within the international arena. The arguments made (as well as the positions held) by legal scholars are often rejected by American lawmakers. But once the law professors move into the international arena, their prestige and status can produce quite different results. Thereafter, the scholars need only wait for American courts to enforce the “international norms” that were initially rejected by American legislatures. See, for example, *Roper v. Simmons*, 125 S. Ct. 1183, 1198–1200 (2005), enforcing a provision of the Convention on the Rights of the Child despite the fact the treaty has not been ratified by the Senate.

58. Restatement of the Law, Third, The Foreign Relations Law of the United States, § 102(1)(c) (1987).

59. See for example Rutgers Center for Global Women's Leadership, “Beijing + 10 Review: A Feminist Strategy for 2004–05, A Working Paper for NGOS on How to Move Forward,” March 2004, available at <http://www.cwgl.rutgers.edu/globalcenter/policy/csw04/Biostrategy-CSWo4.pdf>. This monograph “emerged out of several activities held as part of a consultation process on the future of women's human rights sponsored by the Center for Women's Global Leadership in 2003” (page 1).

60. Statute of the International Court of Justice 59 Stat. 1055, T.S. No. 993, art. 38, available at <http://www.icj-cij.org/icjwww/basicdocuments/Basetext/istatute.htm>.

61. Reports issued by these academic institutions openly discuss plans to “re-politicize” international discussion of the family, often in the context of women's and children's rights, in order to promote such “sexual rights” as marriage alternatives and access to abortion. Rutgers Center for Global Women's Leadership, “Beijing + 10 Review: A Feminist Strategy for 2004–05, A Working Paper for NGOS on How to Move Forward,” pages 2, 3. NGO documents reporting on the discussions sponsored by Rutgers University, for example, reveal further details

of academic and non-governmental efforts to promote abortion rights during the Beijing + 10 process. One such document suggests “strategies” for this process, including “infiltration” of “conservative groups” and the distribution of materials “that support sexual and reproductive rights.” Alejandra Sardá, Report, “Global Reunion about Strategies for Beijing + 10,” New Jersey, December 5–8, 2004. The same document notes, “We will have Informative Sheets [to distribute at the Beijing review process], at least in English and in Spanish, about the most controversial topics: abortion, sexual orientation, maternal mortality, gender expression, sexuality of young women, sexual education.” See also <http://www.earthinstitute.columbia.edu>.

62. See Steven Nock, “The Positive Impact of Marriage on Society: The Case for Public Policy,” paper presented July 11, 2005, at the World Family Policy Forum, publication forthcoming; Craig H. Hart, “Do Parents Matter? Answers from Recent Studies in Various Cultures,” paper presented July 11, 2005, at the World Family Policy Forum, publication forthcoming.

63. See W. Bradford Wilcox, “The Complementarity of Motherhood and Fatherhood,” paper presented July 12, 2005, at the World Family Policy Forum, publication forthcoming; Camille Williams, “Theory, Tradition and Contemporary Marriage,” paper presented July 11, 2005, at the World Family Policy Forum, publication forthcoming.

64. See Center of the American Experiment; Coalition for Marriage, Family and Couples Education; and Institute for American Values, *Why Marriage Matters: Twenty-One Conclusions from the Social Sciences* (New York: Institute for American Values, 2002).

65. See Richard G. Wilkins and Jacob Reynolds, “International Law and Life,” publication forthcoming in *Ave Maria Law Review*, detailing the role of the World Family Policy Center during the negotiation of the Rome Statute for the Creation of an International Criminal Court in forestalling the creation of an international abortion right supported by legal scholars from law schools across the United States and Europe. See also reports of the efforts of the World Family Policy Center at the Rome ICC Conference, the International Conference on Ageing, and other events, on file with the World Family Policy Center.

66. See the official site of the “Group of 77,” describing its membership and functions, at <http://www.g77.org/main/main.htm> (last visited September 8, 2005).

67. These partners included CARE, London, England; The Family Research Council, Washington, D.C.; and the Catholic Family and Human Rights Foundation. Governmental partners included the Supreme Council for Family Affairs of the State of Qatar, the Malaysian Department of Population and Family Development, and distinguished Parliamentarians from throughout Scandinavia, the European Union, Africa, the Middle East, and Central and South America.

68. Language compiled by Susan Roylance and distributed at the 1999 Second World Congress of Families provided an early example of how long-standing international norms could be compiled into a document like the Doha Declaration.

69. UNGA A/RES/58/15 (December 15, 2003).

70. Copies of this report are available from the World Family Policy Center. This report was compiled by the Center’s service missionaries, Elder Gary Lundberg and Sister Joy Lundberg.

71. UNGA A/RES/59/111 (December 6, 2004).
72. Statement of Professor Richard Stith, Valparaiso University School of Law (June 6, 2005); see also Statement of Professor Bruce Logan, Maxim Institute, New Zealand (January 7, 2005), asserting that the Doha Declaration is “a major declaration on the family and marriage adopted by the UN; probably the most significant in two decades.” Letters on file with the author.
73. Mission Statement and Operational Objectives, Doha International Institute for Family Studies and Development, Revised by The Doha Planning Committee, September 27–28, 2005, Doha, Qatar.
74. Hinckley, “Stand Strong against the Wiles of the World,” 100; Hinckley, *Discourses of President Hinckley*, 32.
75. “The Family: A Proclamation to the World,” 102.
76. “The Family: A Proclamation to the World,” 102.
77. “The Family: A Proclamation to the World,” 102.