

# Michigan Journal of International Law

---

Volume 13 | Issue 1

---

1991

## Nurturin Rights: An Essay on Women, Peace, and International Human Rights

Barbara Stark  
*University of Tennessee*

Follow this and additional works at: <https://repository.law.umich.edu/mjil>



Part of the [Civil Rights and Discrimination Commons](#), [Human Rights Law Commons](#), [International Law Commons](#), and the [Law and Gender Commons](#)

---

### Recommended Citation

Barbara Stark, *Nurturin Rights: An Essay on Women, Peace, and International Human Rights*, 13 MICH. J. INT'L L. 144 (1991).

Available at: <https://repository.law.umich.edu/mjil/vol13/iss1/5>

This Essay is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mLaw.repository@umich.edu](mailto:mLaw.repository@umich.edu).

## ESSAY

# NURTURING RIGHTS: AN ESSAY ON WOMEN, PEACE, AND INTERNATIONAL HUMAN RIGHTS

by Barbara Stark\*

In 1970, we<sup>1</sup> held a strike to close my high school until two demands were met. First, we wanted the war in Vietnam to end. Second, we wanted girls to be allowed to wear jeans to school. Sensibly conceding our principal's limitations, we compromised on the first demand and conducted a "teach-in" on the war instead. The school administration quickly caved in on the second demand, requiring only that the jeans be "clean and decent."

For many years afterwards, I mocked our adolescent naiveté, the hopelessness and impossibility of our first demand and the triviality of our second, our linkage of the sublime and the ridiculous. But we wore jeans from then on, and the war indeed ended. Now, twenty years later, I am convinced that the connection between peace and women's right to participate in public life with the same freedom as men (and the demand to wear jeans was nothing less) is not only defensible but inevitable, necessary, and profound. This essay will explore the relationship between what many view as the two most urgent issues of our time.

## NURTURING RIGHTS

Using the analytic framework developed in connection with international human rights law, I will argue that elevating women's universal concerns<sup>2</sup> to the status of internationally recognized rights would both encourage women's participation in public life and promote

---

\* Associate Professor, University of Tennessee. Cornell University, B.A.; New York University, J.D.; Columbia University, LL.M. I am grateful to Fran Ansley, Christine Chinkin, Glenn Reynolds and Nadine Taub for their criticism, suggestions, and encouragement and to Linda Johnson for her patience and skill in typing the manuscript.

1. As Martha Minow has noted, "A difficulty here, as always, is who is 'we'." Martha Minow, *The Supreme Court 1986 Term — Foreword: Justice Engendered*, 101 HARV. L. REV. 10, 15 (1987); see also Judith Resnick, *Complex Feminist Conversations*, 1989 U. CHI. LEGAL F. 1, 7. In this essay, "we" or "our" refers to all of us, men as well as women.

2. This is not as grandiose as it sounds. See *infra* text accompanying notes 8-11.

peace.<sup>3</sup> "Nurturing rights" refers both to certain kinds of rights and to the process by which rights in general may be cultivated. Its dual meanings reflect the dual objectives of this essay: first, to define and describe nurturing rights and second, to urge their cultivation as a means of promoting peace.

The kind of rights I refer to as "nurturing rights" are the rights of every living human being to be nurtured — to be cared for, housed, fed, clothed, healed, and if not loved, at least confident that her survival is an important priority for her society. These are hardly radical rights. Rather, they are restatements of well-established rights set forth in the International Covenant on Economic, Social and Cultural Rights (the Economic Covenant).<sup>4</sup> Article 11.1 provides in pertinent part: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." Under article 12.1, the States Parties recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The Economic Covenant has been ratified by more than ninety nations, including almost all of the western industrialized States, with the notable exception of the United States.<sup>5</sup>

These "rights" are familiar to those who have never heard of the Economic Covenant or even international law. We recognize them as inverted descriptions of women's work, what women throughout the

---

3. This would not be the only consequence of such recognition, but this essay will focus narrowly on the link between nurturing rights and peace. For present purposes, "peace" may be understood as it is used in the *Declaration on the Right of Peoples to Peace*, G.A. Res. 39/11, U.N. GAOR, 39th Sess., Supp. No. 51, at 22, U.N. Doc. A/39/51 (1985), which provides in pertinent part that the right to peace "demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the [U.N.] Charter." Article I of the Charter provides that the purposes of the United Nations include:

(1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; (2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

U.N. CHARTER, Art. 1(1)-1(2).

4. International Convention on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 (entered into force Jan. 3, 1976) [hereinafter *Economic Covenant*].

5. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, REPORT ON THE FOURTH SESSION, 1990, U.N. Doc. E/1990/23, E/C.12/1990/3 at 79-84 [hereinafter *FOURTH SESSION REPORT*].

world actually *do*. While academics and politicians argue about the content of these rights, characterize them as aspirational,<sup>6</sup> discuss the cost and other difficulties of implementing them, or disparage them as “distractions,”<sup>7</sup> women continue to nurture, care for, house, feed, clothe, heal, and, if not love, at least assure their families,<sup>8</sup> patients, students, and charges that it matters not only that they survive, but thrive.<sup>9</sup> This is so widely acknowledged, so generally taken for granted, that footnotes are hardly necessary to demonstrate that women throughout the world continue to do most of the “nurturing” — including cooking, shopping, cleaning, and, of course, childcare — even when they spend as many hours as men working outside the home,<sup>10</sup> in the industrialized north as well as the developing south, regardless of race, class, or age.<sup>11</sup> Innumerable commentators have

6. PAULA DOBRIANSKY, U.S. HUMAN RIGHTS POLICY: AN OVERVIEW 2-3 (U.S. Dept. of St., Current Pol’y No. 1091, 1988), *quoted in* FRANK C. NEWMAN & DAVID S. WEISSBRODT, INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS 385 (1990); THE INTERNATIONAL BILL OF RIGHTS 98-99 (Louis Henkin ed., 1981); OSCAR SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 346 (1985). *Cf.* Ruth Colker, *Feminism, Sexuality, and Self: A Preliminary Inquiry into the Politics of Authenticity*, 68 B.U. L. REV. 217, 217 n.1 (1988) (arguing that feminism “needs to speak aspirationally”).

7. According to Maurice Cranston, for example, “circulation of [such] a confused notion of human rights hinders the effective protection of what are correctly seen as human rights.” MAURICE CRANSTON, WHAT ARE HUMAN RIGHTS? 65 (1973). As Professor Louis Henkin points out, such fears are not entirely without basis: “Many states have asserted the priority of long-term economic and social development (even as against present economic-social rights), and the need to sacrifice or defer civil and political rights.” LOUIS HENKIN, THE AGE OF RIGHTS 33 (1990).

8. In addition to women’s acknowledged roles in housekeeping and childcare, there is considerable support for the proposition that wives take care of husbands. Married men are healthier and live longer than single men, for example, the opposite being true for women. BARBARA EHRENREICH, THE HEARTS OF MEN 10 (1983) (citing JESSIE BERNARD, THE FUTURE OF MARRIAGE 18 (1972)); *see also* Anna Quindlen, *Bears with Furniture*, N.Y. TIMES, Oct. 18, 1990, at A25 (citing study by researchers at University of California at San Francisco which found that men between the age of 45 and 64 who live alone or with a person other than a wife are twice as likely to die within 10 years as men in the same age group who live with their wives).

9. For a description of women’s nurturing activities, and their costs and consequences, see Nadine Taub, *From Parental Leaves to Nurturing Leaves*, 13 N.Y.U. REV. L. & SOC. CHANGE 381 (1984-85); *see also* INTRAHOUSEHOLD RESOURCE ALLOCATION: ISSUES AND METHODS FOR DEVELOPMENT POLICY AND PLANNING (B.L. Rodgers & N.P. Schlossman eds., 1983); MARILYN WARING, IF WOMEN COUNTED: A NEW FEMINIST ECONOMICS (1989); Genevieve Vaughan, *The Gift Economy*, MS. MAGAZINE, May/June 1991, at 84.

10. CYNTHIA MURRAY TAEUBER & VICTOR M. VALDISERA, WOMEN IN THE AMERICAN ECONOMY 7 (U.S. Bureau of the Census, Current Population Reports: Special Studies, Series P-23, No. 146, 1986) (“Most working women meet the usual demands of housework and family care in addition to their work in the labor force.”). Labor force participation of mothers of young children is especially dramatic. *Id.* at 8. Sixty-two percent of all mothers of school age children in the United States were in the labor force in 1980, for example. *American Women: Three Decades of Change: Hearing Before the Joint Economic Comm. of the United States Congress*, 98th Cong., 1st Sess. 2 (1983). By 1986, most U.S. mothers (72%) who worked were employed full-time. SENATE FINANCE COMM., 100TH CONG., 1ST SESS., DATA RELATED TO WELFARE PROGRAMS FOR FAMILIES WITH CHILDREN 159 (Comm. Print 1987).

11. ARLIE HOCHSCHILD & ANNE MACHUNG, THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME (1989) (arguing that women suffer the consequences of a

observed this division of labor and suggested almost as many ways to rectify the obvious imbalance, from wages for housework to programs for convincing Third World men that gathering fuel, fetching water, and growing vegetables for home consumption are not exclusively women's work.<sup>12</sup>

This essay approaches the issue from a theoretical perspective. Assuming the correspondence between rights and duties described by Wesley Newcomb Hohfeld,<sup>13</sup> I argue that nurturing rights, those indeterminate aspirations set out in the Economic Covenant, may best be understood as the rights corresponding to the actual obligations and duties assumed by, and imposed on, women all over the world. I am not suggesting complete congruence, a perfect fit. Women obviously do not — and could not — assume sole responsibility for meeting the requirements of the above-cited Economic Covenant provisions. Their ability to provide food, clothing, and housing for their families is subject to market conditions, and often to State regulation and cultural proscriptions beyond their control or influence. Nor does all of the work done by women for their families necessarily promote the objectives of the Economic Covenant. Nevertheless, the overlap seems substantial enough to justify the preliminary inquiry set out here. Moreover, as Joseph William Singer has noted: "Hohfeld demonstrated that any supposed connection between liberties and duties did not result from logical necessity. 'Whether there should be such con-

---

"stalled revolution" that propelled women into the marketplace but failed to inspire men to assume commensurate responsibilities in the home); ANN OAKLEY, *WOMAN'S WORK: THE HOUSEWIFE PAST AND PRESENT* 7 (1974) (comparison of data on housework hours, showing a decline to 67 hours per week in urban France in 1958 from 82 hours per week in 1948); LOUISE A. TILLY & JOAN W. SCOTT, *WOMEN, WORK, AND FAMILY* 221 (1987) (describing "double burden of working wives" in France); Ruth S. Cowan, *A Case Study of Technological and Social Change: The Washing Machine and the Working Wife*, in *CLIO'S CONSCIOUSNESS RAISED* 245 (1974); Alison Leigh Cowan, *Women's Gains on the Job: Not Without a Heavy Toll*, N.Y. TIMES, Aug. 21, 1989, at A1; Gene Koretz, *Economic Trends*, BUS. WK., Dec. 24, 1990, at 14 (citing economist June O'Neill's work on "the sudden marked narrowing of the wage gap between women and men." O'Neill predicts that "future progress will depend less on eliminating discrimination than on reducing persistent gender differences in the priorities placed on work and family responsibilities.")

12. See, e.g., Jane Perlez, *Uganda's Women: Children, Drudgery, and Pain*, N.Y. TIMES, Feb. 24, 1991, at 10.

13. Wesley N. Hohfeld, *Fundamental Legal Conceptions as Applied to Judicial Reasoning*, 26 YALE L.J. 710 (1917). While I rely on Hohfeld's general analytic framework of jural opposites and correlatives, its rigorous application in this context is beyond the scope of this essay. Nurturing rights may be defended as true "rights," even though, depending on the circumstances, their exercise may well fit more snugly in another of Hohfeld's categories. A *privilege* to fish in state waters may be all a person needs to feed herself and her family, for example, but if the fish all get eaten, she may still assert her underlying *right* to food under the Economic Covenant. For creative and intellectually challenging readings of Hohfeld, see J.M. Balkin, *The Hohfeldian Approach to Law and Semiotics*, 44 U. MIAMI L. REV. 1119 (1990); Joseph William Singer, *The Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld*, 1982 WIS. L. REV. 975 (1982).

comitant rights (or claims) is ultimately a question of justice and policy.'"<sup>14</sup> Although the argument is rooted in abstraction, my purpose is its subversion.<sup>15</sup> I argue for the recognition of nurturing rights<sup>16</sup> — and of women's role in securing them — on the most concrete, practical, personal level.<sup>17</sup>

### PROMOTING PEACE

Linking women's work to the nurturing rights set forth in the Economic Covenant would promote peace in three major ways. First, it would revitalize economic rights, affirming their connection with the real, mundane concerns which have always been the essence of these rights.<sup>18</sup> As Professor Oscar Schachter recently noted, we are increasingly aware that "economic and social deficiencies . . . contribute to internal tensions and to interstate conflict."<sup>19</sup> Second, it would facilitate a shift in domestic allocation of resources, if not quite turning

---

14. Singer, *supra* note 13, at 1053 (quoting Hohfeld) (citation omitted).

15. See Frances Olsen, *Feminist Theory in Grand Style*, 89 COLUM. L. REV. 1147, 1170 (1989) (reviewing CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* (1987)) (grand theory criticized for "suppress[ing] the complexity and ambiguities of life in order to fit lived experience into these tidy categories.").

16. Such "recognition" could be achieved in several ways, like any other binding interpretation of an international treaty provision. Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 19 (formulation of reservations) and art. 31 (interpretation of treaties), 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980). An "interpretive statement" or an "understanding" could be attached to a state's ratification, for example. See, e.g., *Belilos Case*, 132 Eur. Ct. H.R. (ser. A) at 21-24 (1988); D.W. Bowett, *Reservations to Non-Restricted Multilateral Treaties*, 48 BRIT. Y.B. INT'L L. 67 (1976-77). Alternatively, a domestic court could adopt the analysis of rights discussed here in the context of treaty-based litigation.

17. This may be seen as part of a larger project described by Charlotte Bunch: "The specific experiences of women must be added to traditional approaches to human rights in order to make women more visible and to transform the concept and practice of human rights in our culture so that it takes better account of women's lives." Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486, 487 (1990); see also Riane Eisler, *Human Rights: Toward an Integrated Theory for Action*, 9 HUM. RTS. Q. 287 (1987). For a thoughtful discussion of the need for "women to work together in concrete ways as we struggle to clarify our views," see Nadine Taub, *Thoughts on Living and Moving with the Recurring Divide*, 24 GA. L. REV. 965, 969 (1990).

18. The drafters of the Economic Covenant maintained that the political and civil rights set forth in the International Covenant on Civil and Political Rights could not be effectively exercised unless the basic needs of survival were met. This is not to suggest that the rights set out in the Economic Covenant must be addressed first. The interdependence of the two covenants, and the fallacy of asserting the primacy of either, is by now well-established. Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365, 385 n.89 (1990); see G.A. Res. 44/130, U.N. Doc. A/Res/44/130 (1989) (Resolution on the Indivisibility and Interdependence of Economic, Social, Cultural, Civil and Political Rights, accepted Dec. 15, 1989). As Henkin points out in *The Age of Rights*, development cannot be an excuse for derogating from fundamental civil and political rights; rather, such values must be integrated into any valid development program. HENKIN, *supra* note 7, at 192.

19. Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 AM. J. INT'L L. 452, 473 (1991).

swords into plowshares, at least making the conversion economically feasible. Third, recognition of nurturing rights would support a fundamental normative shift toward values more conducive to peace.

### *Revitalizing Economic Rights*

Hungry, bitter, and desperate people are more ready to go to war than those whose basic needs are satisfied.<sup>20</sup> Their governments, moreover, may well be tempted to use war to distract a rebellious populace from domestic hardship.<sup>21</sup> The Economic Covenant was drafted to address such hardship. Recognizing the relationship between the cited provisions of the Economic Covenant and the work actually done by women would invigorate the affirmative economic rights set out in the Economic Covenant by bringing them back down to earth.<sup>22</sup>

The Economic Covenant was drafted to express the dissatisfaction of Third World States with what was viewed as the limitations of the traditional liberal notion of rights set forth in the International Convention on Civil and Political Rights.<sup>23</sup> It reflects the actual material concerns of its drafters.<sup>24</sup> What is the *substance* of a right to an "adequate standard of living"? The drafters deliberately couched this pro-

20. This is a fundamental premise of the "basic needs" approach to development. Its advocates emphasize social goals, quality of life, and equitable distribution. See Franklin D. Roosevelt, State of the Union Address, Jan. 11, 1944, *quoted in* NEWMAN & WEISSBRODT, *supra* note 6, at 362 ("People who are hungry and out of a job are the stuff of which dictatorships are made"); see generally JAGDISH N. BHAGWATI, *WEALTH AND POVERTY* (Essays in Development Economics Vol. 1, Gene Grossman ed., 1985); GERALD M. MEIER, *LEADING ISSUES IN ECONOMIC DEVELOPMENT* (4th ed. 1984); *THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT* (Charles K. Wilber ed., 3d ed. 1984).

21. While few would put the Bush administration in this category, many observed that the Gulf War diverted public attention from domestic problems even if that was not its objective. See, e.g., Anna Quindlen, *The Domestic Front*, N.Y. TIMES, Jan. 31, 1991, at A23.

22. Rights, like Antaeus, gain strength every time they hit the ground. In the Greek myth, Hercules was required to subdue Antaeus, a giant and a son of Earth. Every time Hercules threw him to the ground, Antaeus sprang up with renewed energy. Hercules finally won by holding his opponent above his head. THOMAS BULFINCH, *BULFINCH'S MYTHOLOGY* 153 (1968). It has been suggested that projects on a scale that precludes actual participation by the group whom they are intended to benefit should probably be scuttled. James C.N. Paul, *International Development Agencies, Human Rights and Humane Development Projects*, 17 DENV. J. INT'L L. & POL'Y 67 (1988); see also BETSY HARTMANN, *REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL AND REPRODUCTIVE CHOICE* 10-11 (1987) (describing often tragic consequences of policies adopted without adequate consideration of local conditions, such as Third World infant deaths caused by abandoning breast feeding in favor of formula diluted with polluted local water).

23. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force Mar. 23, 1976).

24. See U.N. GAOR 3d Comm., 6th Sess., 358th-72d, 411th-17th mtgs., at 67-150, 399-499, U.N. Docs. A/C.3/SR. 358-72, 411-17 (1951-52). The decisions resulting from these debates are contained in the *Report of the Third Committee*, U.N. GAOR, 6th Sess., Annexes, Agenda Item 29, at 37, U.N. Doc. A/2112 (1952), *discussed in* David M. Trubeck, *Economic, Social and Cultural Rights in the Third World*, in *HUMAN RIGHTS IN INTERNATIONAL LAW* 205, 211 n.17 (Theodor Meron ed., 1984).

vision to permit the flexible interpretations required by diverse cultures.<sup>25</sup> Actual implementation, however, requires more focus.<sup>26</sup> How much and what kind of food, shelter, or clothing is "adequate"? How does this vary as a function of local conditions? What is most workable? The practical answers to these questions are critical.<sup>27</sup>

Who is better qualified to provide them than the women who actually confront these problems every day?<sup>28</sup> Women's expertise could be tapped on several levels. The most productive practices of individual homemakers, such as a plan for water-conserving vegetable gardens, could be documented and publicized. Support could be provided for women to organize and coordinate group activities, from childcare to craft cooperatives. Women could serve as consultants or administrators at regional, national, and international levels.<sup>29</sup> The point, however, is not to speculate about what women *could* do, but to focus State attention on — and provide State support for — what women *already* do to implement economic and social rights. We should make the most of the knowledge of women who are already creatively struggling to provide their families with basic necessities. Their efforts should be recognized and supported by States.<sup>30</sup>

---

25. FOURTH SESSION REPORT, *supra* note 5, at 65. These are always concerns when "universal" documents are drafted.

26. It may be especially difficult to develop such a focus where there is no pre-existing welfare state jurisprudence to guide decisionmakers, nor any tradition of the state as provider. As Professor Alston has pointed out, norm clarification remains a central dilemma here since the content of the Economic Covenant "was not based upon any significant bodies of domestic jurisprudence as was the case with civil and political rights." Philip Alston, *Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 332, 351 (1987).

27. See *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. E/CN.4/1987/17, Annex, reprinted in 9 HUM. RTS. Q. 122 (1987).

28. See *supra* notes 8-11 and accompanying text; see also WOMEN AS SINGLE PARENTS: CONFRONTING INSTITUTIONAL BARRIERS IN THE COURTS, THE WORKPLACE, AND THE HOUSING MARKET 3 (Elizabeth Mulroy ed., 1988).

29. Cf. Alston, *supra* note 18, at 379 ("The starting point for a program to implement economic and social rights is to ascertain, as precisely as possible, the nature of the existing situation with respect to each right, so as to identify more clearly the problems that need to be addressed and provide a basis for principled policymaking").

30. Many women, especially in the Third World, are effectively precluded from owning or controlling their own property. Recognition of nurturing rights could require the *direct* provision of state support to such women. While this is certainly problematic, it illustrates the potential impact of the proposal sketched here.

A major problem is whether support for nurturers simply traps them in that role. The pronatalist supplements given to French mothers have been criticized for this reason, for example. DOROTHY M. STETSON, WOMEN'S RIGHTS IN FRANCE 94-97 (Contributions in Women's Studies No. 74, 1987). The risks, while always substantial, can be lessened by simultaneously providing inducements for men to nurture and ensuring that women have other options. See *infra* notes 48-50, 62-68, and accompanying text.



*Swords Into Plowshares*

The recognition of nurturing rights as rights under the Economic Covenant would not only support but mandate a shift in the allocation of resources by States Parties.<sup>31</sup> It would focus State attention on women's work, which would be taken into account in the States' self-monitoring reports.<sup>32</sup> This would increase the visibility of women's work, making it something to be reckoned with as a fact of public, political life.

The importance of ascribing value to the work done by women has been recognized in a variety of contexts.<sup>33</sup> Divorce and personal injury lawyers, for example, have sought to maximize benefits for the individual women they represented.<sup>34</sup> Some women's rights activists have argued that women as a group can never attain parity unless they are recognized — and paid — as workers.<sup>35</sup> Advocates for the poor

31. See Alston, *supra* note 18, at 377-80.

32. Economic Covenant, *supra* note 4, art. 16. States Parties to the Economic Covenant already include benefits to women and families under article 10 in their reports. See, e.g., COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, REPORT ON THE SECOND SESSION, U.N. Doc. E/1988/14, E/C.12/1988/4, Supp. No. 4, at 26 (1988) [hereinafter SECOND SESSION REPORT] (referring to high Swedish outlays in social and health sectors). Similarly, activities of "private" citizens providing for their own needs are routinely taken into account. See, e.g., *id.* at 17 (noting construction of residences by private citizens in Mongolia), and *id.* at 21 (noting visits by priests to the sick in Romania). State support of such private efforts is also regularly taken into account. What is *not* reported, because it is so universally taken for granted that it is invisible, is the "value added" by women to support received pursuant to article 10.

33. There have been countless efforts to develop a method to calculate the market value of housework. In LISA PEATTIE & MARTIN REIN, WOMEN'S CLAIMS: A STUDY IN POLITICAL ECONOMY 38 (1983), for example, the authors suggest three approaches, all based on 1976 British Bureau of Economic Analysis statistics. First, they provide two methods of calculating market cost, which they estimate either at a national replacement cost of \$566 billion to hire individuals to do general housework, or a national service cost of \$789 billion to hire market specialists, such as launderers or caterers. A second method is a replacement cost which would be 33% of the GNP, while the service cost would amount to 46% of the GNP. The third method is the lost opportunity cost; that is, what could have been earned by the houseworker had she been working for pay. This is calculated as \$1037 billion gross compensation, \$887 billion net compensation, and net return, after working costs are deducted, \$777 billion. Gross lost opportunity value would be 61% of the GNP, net compensation would be 52%, and net return 46%. It is an open question whether the value of homemaker services can be adequately expressed in monetary terms. There are several reasons for this, including the tendency of household work to expand to fill all available time. For the Marxist definition of domestic labor, see A DICTIONARY OF MARXIST THOUGHT 135-37 (Tom Nottomore ed., 1983).

34. There is little consistency and less predictability in their methods, however. See Carl E. Schneider, *The Next Step: Definition, Generalization and Theory in American Family Law*, 18 U. MICH. J.L. REF. 1039 (1985). More importantly, these methods are only applied if there is a divorce or an accident, and for the most part represent a very fact-specific determination.

35. The wages-for-housework movement attempted to make women's work visible by linking it to the national economy, by putting a dollar value on it. But who was supposed to pay? It would hardly be fair to have husbands pay, since the gap between the wages of a doctor's wife and those of a factory worker's wife would bear no relation to the respective work of each woman. See Silvia Federici, *Wages Against Housework*, in THE POLITICS OF HOUSEWORK 253 (Ellen Malos ed., 1980); Joan Landes, *Wages For Housework — Political and Theoretical Considerations*, in *id.* at 262. For some thoughtful suggestions see Annamay T. Sheppard, *Paying for*

have sought recognition for women's work as a way of securing benefits for the economically disadvantaged, a larger group that includes but is not limited to women.<sup>36</sup> They are, in a sense, calculating the hardest case, reflecting the exceptional problems faced by poor women in taking care of their families. While we all rely on female nurturing, the poor only survive through the terrible resourcefulness of women.<sup>37</sup> Yet the pittance provided by a welfare system that fails to recognize nurturing rights, and women's work in satisfying them, ironically contributes to the devaluation of that work by equating it with a bare subsistence allowance.<sup>38</sup>

Linking women's work to already-recognized international human rights enables us to conceptualize it in a universal context. By shifting our perspective, and looking at women's work as a corollary to the rights set out in the Economic Covenant, we avoid valuation problems.<sup>39</sup> By acknowledging nurturing rights as authentic rights, we simply make their implementation a matter of the highest priority — as it always has been for women. Under the terms of the Economic Covenant, the issue is not one of computation but rather what steps must be taken to "achiev[e] progressively the full realization [of these rights]."<sup>40</sup> Under the Economic Covenant, the value of the work would be established not by calculating what other women would be paid to do it (a devalued currency at best), but by addressing nurturing rights *before* considering national interests that did not rise to the level of rights.

Assuming U.S. ratification of the Economic Covenant,<sup>41</sup> for example, the recognition of nurturing rights could be the lever for a pre-

---

*Women's Work: The Unfinished Business of the Family Law Revolution*, in GENDER BIAS AND FAMILY LAW: COMPARATIVE PERSPECTIVES (B. Stark ed., forthcoming 1991).

36. Nationally as well as globally, women are disproportionately poor. See RUTH L. SIVARD, WOMEN . . . A WORLD SURVEY 16-17 (1985); TAEUBER & VALDISERA, *supra* note 10, at 36-39; WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 95-96 (1987); Fran P. Hosken, *Toward a Definition of Women's Human Rights*, 3 HUM. RTS. Q. 1 (Spring 1981); Laura Reanda, *Human and Women's Rights: The United Nations Approach*, 3 HUM. RTS. Q. 11, 15 (Spring 1981); Barbara Stark, Book Review, 12 WOMEN'S RTS. L. REP. 51, 55-56 (1990) (reviewing MALVINA HALBERSTAM & ELIZABETH F. DEFEIS, WOMEN'S LEGAL RIGHTS: INTERNATIONAL COVENANTS: AN ALTERNATIVE TO ERA (1987)).

37. See Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFFALO L. REV. 1 (1990).

38. I am referring to the U.S. welfare system. Those of some other nations are more generous. Alston, *supra* note 18, at 376 n.49.

39. Valuation issues may well arise later, in considering the cost-effectiveness of various proposals for implementing the Economic Covenant. But valuation would no longer be the threshold question to establish the worth of women's work.

40. Economic Covenant, *supra* note 4, art. 2(7); see generally Philip Alston and Gerard Quinn, *The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 156 (1987).

41. This concededly requires some strenuous imagining. Alston, *supra* note 18; see generally

emptive shift in national priorities. As Dwight D. Eisenhower observed in 1953: "Every gun that is made, every warship launched, every rocket fired, signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and not clothed."<sup>42</sup> The devotion of vast resources to defense projects continues to drastically diminish our ability to provide housing, food, clothing, and health care for our people.<sup>43</sup> Elevation of these concerns to the level of "rights" assured under the Economic Covenant would at the very least raise questions about the continuing wisdom of existing allocations.<sup>44</sup>

### *A Normative Shift — Toward Nurturing States*

The reallocation of resources described above would contribute to, as well as reflect, a normative shift. Recognition of nurturing rights would change our shared values in other, more subtle, ways as well. It would require us not only to support women's work, but to rethink it. It would challenge the already dubious constructs of "public" and "private" spheres<sup>45</sup> and, by facilitating the transformation of "women's" work into *human* work, promote values consistent with peace. These values are certainly subject to debate.<sup>46</sup> For present purposes, I suggest the following as a kind of lowest common denominator: our own strength, abilities, success, and even security — as individuals and as a people — would be measured less in terms of our

---

*The United States Constitution and the Adoption of International Human Rights Instruments: Freeing the Political Logjam*, 20 GA. J. INT'L & COMP. L. 253 (1990).

42. Dwight D. Eisenhower, Address "The Chance for Peace" Delivered Before the American Society of Newspaper Editors, PUB. PAPERS 179, 182 (1953).

43. Jimmy Carter, *The Greatest Human Rights Crime: War*, 13 HAMLINE L. REV. 469 (1990). As Kate Millett, Robin Morgan, Gloria Steinem, and Ti-Grace Atkinson succinctly noted when the Gulf War began: "For 20 years we have said war is a feminist issue; it still is. Our priorities remain at home: poverty, racism, AIDS, the dangers to our economy and ecology." Kate Millett et al., *A Feminist Issue Still*, N.Y. TIMES, Jan. 20, 1991, § 4, at 18.

44. Suzanne Gordon, *A National Care Agenda*, THE ATLANTIC, Jan. 1991, at 64; Virginia Held, *Birth and Death*, 99 ETHICS 362, 388 (1989); see generally DOROTHY DINNERSTEIN, *THE MERMAID AND THE MINOTAUR: SEXUAL ARRANGEMENTS AND HUMAN MALAISE* (1976).

45. As Virginia Held has noted, "a long line of thinkers [including Aristotle, Kant, Hegel, Lévi-Strauss, Arendt] have associated the 'public' sphere with the distinctively human, the 'private' with the natural . . . the family as focused on particularistic and hence inferior concerns, often in conflict with the superior and more universal concerns of the 'public' sphere." Held, *supra* note 43, at 377. For anyone wishing to read it again, the classic formulation of separate sphere ideology in U.S. jurisprudence appears in Justice Bradley's infamous concurrence in *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 139-42 (1872) (Bradley, J., concurring).

46. Some of the most searching treatments may be found in HANNAH ARENDT, *THE HUMAN CONDITION* (1958); NICCOLO MACHIAVELLI, *THE DISCOURSES* (Max Lerner ed., 1950); PLATO, *THE REPUBLIC OF PLATO* (Allan Bloom trans., 1968). For consideration of the debate itself as gendered discourse, see JEAN B. ELSHTAIN, *WOMEN AND WAR* (1987); DAVID D. GILMORE, *MANHOOD IN THE MAKING: CULTURAL CONCEPTS OF MASCULINITY* (1990).

capacity to defeat an enemy and more in terms of our skill in taking care of ourselves.

Women are good at nurturing and they have internalized nurturing values. This is better attributed to environment than to biology;<sup>47</sup> nurturing has traditionally been women's work, their occupation.<sup>48</sup> If nurturing work is reconceptualized so that it constitutes part of the State's legal obligation to its people, the work will be distributed differently. Shifting responsibility to the State would have at least two consequences. First, it would increase the status and worth of the work.<sup>49</sup> Second, more men would become involved in it — in part, of course, because of its increased status and worth, but also because it is men who govern and manage the State.

At the same time recognition of nurturing rights would shift male attention to concerns traditionally associated with the private sphere, it would encourage female activity in the public sphere. Women's expertise would be invaluable in implementing nurturing rights. Women would also have more time and energy to participate in public life, since they would be relieved of at least some of the burden of nurturing.

This is a variation of a theme — the influx of women and "feminine" values into the public sphere — that resonates throughout feminist literature and movements. Women's movements have historically been expected to "inject social concerns" into the political agenda.<sup>50</sup> Sarah Ruddick and others have suggested that women's experience and perspective are vital to peace. Ruddick argues, for example, that taking care of small children develops capacities for creative, nonviolent conflict resolution desperately needed in world leaders, and sorely lacking in most males.<sup>51</sup>

---

47. R.W. Connell has observed that although it became clear in the 19th century that sexual and gender arrangements were not biologically determined, sociopolitical forces precluded a critical sociology. R.W. CONNELL, *GENDER AND POWER* (1987). Such a sociology is now widely recognized. See, e.g., RUTH BLEIER, *SCIENCE AND GENDER* 80-109 (1984) ("As many others have said . . . the range of variation is far greater among males or among females than between the two sexes," *id.* at 109 (emphasis in original)); NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* 12-30 (1978); Laura Shapiro, *Guns and Dolls: Nature or Nurture*, *NEWSWEEK*, May 28, 1990, at 56. *But cf.* NEL NODDINGS, *CARING: A FEMININE APPROACH TO ETHICS & MORAL EDUCATION* 128 (1984) (suggesting a biological and material basis for mothering). See generally the sources cited in Wendy W. Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 7 *WOMEN'S RTS. L. REP.* 175, 185 n.58 (1982).

48. Ann F. Ginger, *All Filled with Women and Men*, 2 *PEACE REV.* 35 (1990).

49. See generally Taub, *supra* note 9.

50. See generally *THE WOMEN'S MOVEMENTS IN THE U.S. AND WESTERN EUROPE* 80 (Mary F. Katzenstein & Carol M. Mueller eds., 1987).

51. SARA RUDDICK, *MATERNAL THINKING* (1989); see also Anna Quindlen, *In The Shadow of War*, *N.Y. TIMES*, Jan. 13, 1991, § 4, at 19 ("To the extent that we still think of men as

The "personal is political," feminists have insisted.<sup>52</sup> Women have already made hitherto "private" concerns matters of urgent public debate, demanding State<sup>53</sup> attention and resources. They have shown us that women's own "personal" needs — to be assured that their children are being well cared for when they are at work; to know that if they have to take care of sick relatives they will not lose their jobs<sup>54</sup> — raise fundamentally political questions and require political action.<sup>55</sup> The deployment of women to the Gulf brought the point home dramatically. Nurturing work was briefly seen as an urgent national issue.<sup>56</sup> As women assumed traditional male roles in the military, and their husbands took on more responsibility for home and family, the notion of nurturing work as gendered began to seem increasingly arbitrary.<sup>57</sup>

---

resolving differences through force and women through talk, there is a feminization of national feeling"). As of December, 1990, Louis Harris was able to report that "for the first time women alone have turned American public opinion about a war. They have swayed the polls against . . . using military force in the Gulf." Louis Harris, *The Gender Gulf*, N.Y. TIMES, Dec. 7, 1990, at A35.

52. Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990). Anna Quindlen applied the maxim to the Gulf War in a series of columns in the N.Y. Times. See, e.g., Anna Quindlen, *Personally*, N.Y. TIMES, Jan. 17, 1991, at A23.

53. A distinction must be made between *public sphere* activity, which could include activities of private charitable organizations, and *State* activity, by which I mean affirmative acts undertaken by the government because it is under a legal obligation to do so. The U.S. idea of a "safety net," if not examined too closely for holes, reflects the notion that if private resources fail, the government will at least assure the needy of subsistence. "State activity" should not be confused with East European bureaucracy. The models here are the Western social democracies such as France, the Netherlands, Germany and Sweden. I refer to a "State" rather than a "social" obligation partly to sharpen the parallels to the Economic Covenant (which obligates "States Parties"), and partly to resist digression. (Would a "social obligation" simply shift the duties to private women's charitable organizations?)

54. Taub, *supra* note 9.

55. The examples given unquestionably fall within the ambit of nurturing rights. Examples of politicization of the "personal" that would *not* be considered nurturing rights for present purposes include women's needs to feel safe as they travel, to win approval from men, and to acknowledge and explore their own sexuality. See, e.g., JOHN BERGER, *WAYS OF SEEING* (1973); JANET KAUFMAN, *PLACES IN THE WORLD A WOMAN COULD WALK* (1987); Colker, *supra* note 6, at 222; Andre Lorde, *Uses of the Erotic: The Erotic as Power*, in SISTER OUTSIDER 53 (1984); Olsen, *supra* note 15, at 1155; Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 SIGNS: J. WOMEN, CULTURE & SOC'Y 631 (1980), reprinted in THE SIGNS READER: WOMEN, GENDER & SCHOLARSHIP 139 (Elizabeth Abel & Emily K. Abel eds., 1983); Mariette Besanger West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81 (1987). For perceptive discussions of the role of consciousness-raising in this process, see Bartlett, *supra* note 52; Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589 (1986).

56. Jane Gross, *Needs of Family and Country Clash in Persian Gulf Mission*, N.Y. TIMES, Dec. 9, 1990, at 1. Many argued that nurturing work was as important as defense work. *Id.*

57. One of the most moving articles about the human cost of deploying mothers was written by Sally Quinn, who recounted her nervous collapse and hospitalization as a child when her beloved father was sent to Korea. Sally Quinn, *Mothers at War: What Are We Doing to Our Kids?*, WASH. POST, Feb. 10, 1990, at C1.

For the most part, however, male involvement in the private realm remains problematic.<sup>58</sup> Men slowly and grudgingly accept increased responsibility in the home, in curious contrast to women's enthusiastic rush into the marketplace.<sup>59</sup> There are, of course, few economic incentives for nurturing and little, albeit increasing, support from the culture for male nurturers. The problem, as Nancy Chodorow and others have noted, is more complicated: "[A]n open web of social, psychological, and cultural relations, dynamics, practices, identities, beliefs, in which I would privilege neither society, psyche, nor culture, comes to constitute gender as a social, cultural and psychological phenomenon."<sup>60</sup>

For reasons I have explained elsewhere,<sup>61</sup> it is clear to me that changes in black letter law, much less the kind of conceptual shift urged here, cannot by themselves transform our notions of gendered "private" and "public" spheres. But where there is already momentum, even incremental changes or adjustments may have significant impact.<sup>62</sup> The commingling of public and private spheres, and the blurring of boundaries between them, are processes already well underway in several Western nations.<sup>63</sup> The inconsistencies of the pub-

---

58. Even if we assume that nurturing is learned behavior and that remedial training could be provided for those with inadequate skills, this remains a complex, but not necessarily intractable dilemma. See, e.g., Meta Schrenk, *Grade-School Babying*, N.Y. TIMES, Apr. 8, 1990, § 4A, at 19; Susan N. Wilson, *Family Life Education: Needed Now More than Ever*, N.Y. TIMES, July 1, 1990, § 12 (N.J. Weekly), at 20 (21 states have compulsory family life and sex education programs, focusing on interpersonal relationships, human growth development, sexuality, responsible personal behavior, and building strong families). Cf. Ann Shalleck, *Women and the Law Project Meeting, Jan. 1991*, in AALS-WLE NEWSLETTER, Mar. 1991, at 3 (noting Nancy Polikoff's recommendation that courses in "remedial life experience" be prerequisites to doctrinal courses). See generally LYNNE SEGAL, SLOW MOTION: CHANGING MASCULINITIES, CHANGING MEN (1990) (arguing that psycho-feminist theories explaining male resistance to change are insufficient without an analysis of class).

Even when men are willing to nurture, there may be difficulties. Because of the prevalence of child abuse, for example, men who try to take care of children are more likely to be met with mistrust than support. Jon Nordheimer, *Caring for Children, Men Find New Assumptions and Rules*, N.Y. TIMES, Aug. 5, 1990, at A1.

59. The resultant void in the private sphere may be another reason to recognize nurturing rights, separate and distinct from recognition as a means of promoting peace. But see discussion *supra* note 3.

60. NANCY J. CHODOROW, *FEMINISM AND PSYCHOANALYTIC THEORY* 5 (1989).

61. Barbara Stark, *Divorce Law, Feminism and Psychoanalysis: In Dreams Begin Responsibilities*, 38 UCLA L. REV. 1483 (1991).

62. Duncan Kennedy has compared the chaotic dynamics of changing neighborhoods to avalanches, where relatively minor action at the beginning of the process (an injunction to keep an apartment from being condemned), like a boulder rolling from the top of the mountain, may have enormous consequences. Duncan Kennedy, *The Role of Law in Housing Markets*, Remarks at Rutgers Law School, Newark, N.J. (April 20, 1990).

63. This is demonstrated by the scope of, as well as national resources devoted to, social welfare programs, men's growing, albeit still limited, assumption of nurturing responsibilities, and women's unprecedented workforce participation. See JESSICA BENJAMIN, *THE BONDS OF LOVE: PSYCHOANALYSIS, FEMINISM, AND THE PROBLEMS OF DOMINATION* 75 (1988) (noting

lic/private distinction have been exposed,<sup>64</sup> and its defense seems increasingly pedantic, if not suspect.<sup>65</sup> Indeed, arguments for its continued viability may simply be another way of saying, "Let the women keep taking care of such things."<sup>66</sup>

Even where separate-spheres ideology is accepted, the recognition of nurturing rights would still be an important element in a long-term, cumulative process. As Professor Louis Henkin has pointed out, the power of an idea should not be underestimated in the context of human rights.<sup>67</sup> There are few ideas more compelling than peace. By providing men with increased opportunities and incentives to become involved in nurturing, and women with more chances to make nurturing values part of public discourse, the recognition of nurturing rights could make the idea of peace less of an abstraction, and more of an experiential reality, for us all.<sup>68</sup>

#### CONCLUSION: WOMEN IN JEANS AND PEACE

The discussion above applies to recognition of nurturing rights on the domestic level: that is, recognition by individual nations. The emergence and recognition of nurturing rights has similar potential for promoting peace on the international level. The change in priorities would not be as conspicuous since the international community as such hardly devotes a comparable proportion of its wealth to military forces.<sup>69</sup> The greatest potential impact would not be in international

---

that paternal participation in childrearing is increasing, at least in middle class Western families); discussion, *supra* note 39; discussion, *infra* note 77.

64. See, e.g., Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983); Frances E. Olsen, *The Myth of State Intervention in the Family*, 18 U. MICH. J.L. REF. 835 (1985).

65. Mary F. Katzenstein, *Comparing the Feminist Movements of the United States and Western Europe: An Overview*, in THE WOMEN'S MOVEMENTS OF THE UNITED STATES AND WESTERN EUROPE, *supra* note 50, at 5, 17 n.6 (placing "public" and "private" in quotations, "because they are, and should be, distinctions under challenge").

66. The link between the public/private dichotomy and the sexual division of labor has long been recognized. See generally CLAUDE LÉVI-STRAUSS, *THE ELEMENTARY STRUCTURE OF KINSHIP* (1969); TILLY & SCOTT, *supra* note 11, at 53 (historically, the survival of the family in France "depended on the work of both partners. The household division of labor reflected the social definition of difference between husband and wife: tasks performed were complementary. . . . The family economy reproduced itself as the basic economic unit of production").

67. HENKIN, *supra* note 7, at 3. ("[T]he idea of human rights implies entitlement in a moral order under a moral law, to be translated into and confirmed as legal entitlement in the legal order of a political society").

68. As the Quakers say, "There is no way to peace. Peace is the way." Quoted in ERNEST VAN DER HAAG & JOHN P. CONRAD, *THE U.N.: IN OR OUT?* 292 (1987). I am indebted to Dan Ricketts, one of my international human rights students, for this quote.

69. Indeed, it has been suggested that additional expenditures for peacekeeping are necessary. Louis Sohn, *Peace After the War: Who Should Be in Charge?*, Statement at the Conference on the U.N. and the International Use of Force in the Post-Cold War Period 5-6 (Univ. of

priorities, but in the structure of international institutions. I am not suggesting that the recognition of nurturing rights urged here would constitute such a restructuring. It would, however, serve as a paradigm for using existing rights frameworks to promulgate nurturing values. It would also further norms which would encourage such use.

Recognition of nurturing rights would remind us of their urgency, even — or especially — during war. When the war in the Gulf began, many international lawyers were appalled by the rapidity with which troops were deployed.<sup>70</sup> It was generally agreed, however, that the attack on Baghdad was entirely legal as a matter of international law.<sup>71</sup> The Security Council had functioned as it was supposed to for the first time.<sup>72</sup> Did the U.N. Charter scheme encourage use of force? It could be argued that the institutional framework itself was neutral, that Saddam Hussein, George Bush, a sluggish Congress, or a distracted Soviet Union were responsible for the war. Whatever the spark, the structures established by the Charter permitted it to ignite and the conflagration to spread.

A student of the Charter had no business being surprised. The Charter was drafted at the end of World War II and reflects the major preoccupations of its drafters in 1945. It represents an unequivocal denunciation of the atrocities of World War II, a resounding “Never again!” Never again would the world powers tolerate such a war or such violations of human rights. It was a *crie de coeur* linking human rights to peace and security. If Hitler were reincarnated (and that is how many saw Hussein), the Charter would enable the rest of the world to subdue him quickly and effectively.

This is not to say that the use of force is unambiguous under the Charter. Professor Henkin argues that there may be no transboundary use of force except in the case of self-defense against armed attack.<sup>73</sup> Professor Schachter has explained that the use of force

---

Georgia, Mar. 1, 1991); Mary Ellen O'Connell, *Enforcing the Prohibition on the Use of Force: The U.N.'s Response to Iraq's Invasion of Kuwait*, 15 S. ILL. U. L.J. 453, 482 (1991).

70. For an original analysis of the possibility of using the rule of law as an alternative to force, see David D. Caron, *Iraq and the Force of Law: Why Give a Shield of Immunity?*, 85 AM. J. INT'L L. 89 (1991); see generally BOB WOODWARD, *THE COMMANDERS* (1991) (described by the N.Y. Times as an “authoritative account drawn heavily from senior military sources,” suggesting that the President was determined to go to war from the beginning, against the advice of the military; *Lunging for War?*, N.Y. TIMES, May 5, 1991, at E16).

71. Theodor Meron, *Agora: The Gulf Crisis in International and Foreign Relations Law*, 85 AM. J. INT'L L. 63 (1991).

72. Korea is usually considered an exceptional case. For a concise summary, see DAVID J. SCHEFFER, *THE UNITED NATIONS IN THE GULF CRISIS AND OPTIONS FOR U.S. POLICY* 8 (UNA-USA Occasional Papers, revised edition no. 1, Feb. 1991).

73. Louis Henkin, *Use of Force: Law and U.S. Policy*, in *RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE* 37, 44-45 (1989).



under Article 2(4) must be "proportional."<sup>74</sup> The precise limits, if any, on the Security Council are unclear.<sup>75</sup> The scope of the debate among legal scholars reflects not only the lack of coherent consensus among the public at large but the fundamental fluidity of international law.

This indeterminacy begs for fresh perspectives. As Professor Sohn and others have pointed out, not since 1945 has the potential for constructive tinkering been so great.<sup>76</sup> Never have women been in a better position to participate in the tinkering process.<sup>77</sup> Since World War II, they have entered the paid work force as well as political life in unprecedented numbers.<sup>78</sup> They have challenged their subordinate status throughout the world, they have brought their concerns and perspectives to domestic as well as international fora, and they have

---

74. Oscar Schachter, *In Defense of International Rules on the Use of Force*, 53 U. CHI. L. REV. 113, 120 (1986). The "proportionality" of the Allied action has not been officially questioned by the United Nations, although estimates put Iraqi deaths at over 100,000 and allied fatalities at less than one percent of that amount. As Elizabeth Drew noted, the Bush Administration came under "substantial fire [domestically] for engaging in overkill." Elizabeth Drew, *Letter from Washington*, THE NEW YORKER, May 6, 1991, at 101.

75. There was no determination that economic sanctions were not working prior to the adoption of the resolution authorizing force in the Gulf War, for example, and no state has said that there should have been. Anthony D'Amato has argued that under the doctrine of humanitarian intervention, the limits on the legitimate use of force are even more liberal than those accepted in the Gulf War. Anthony D'Amato, Book Review, 85 AM. J. INT'L L. 201, 202 (1991) (reviewing LOUIS HENKIN ET AL., *RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE* (1989)); see also FERNANDO R. TESÓN, *HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY* (1988); Anthony D'Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 AM. J. INT'L L. 516 (1990).

76. Sohn, *supra* note 68. As Professor Schachter has observed, collective action during the Gulf War vindicated both international law and the principle of collective security; at the same time, the "massive devastation of civilian life during the war and the threat of renewed violence are troubling features." Schachter, *supra* note 19, at 452. The mixed success of the Charter scheme has inspired both a renewed commitment to the Charter and a determination to improve it.

77. See, e.g., U.N. CENTER FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS, *PARTICIPATION OF WOMEN IN DECISION-MAKING FOR PEACE: CASE-STUDY ON SWEDEN*, U.N. Doc. ST/CSDHA/8, U.N. Sales No. E.89.IV.7 (1989). This refers to modern history. Several scholars have described a matriarchal prehistory in which they suggest that women played major roles in political life. See, e.g., RIANE EISLER, *THE CHALICE AND THE BLADE* (1987). *But cf.* BONNIE S. ANDERSON & JUDITH P. ZINSSER, *A HISTORY OF THEIR OWN: WOMEN IN EUROPE 4* (1988) (concluding that "[r]ecent work in archaeology and anthropology leads away from universal explanations").

78. The increase in work force participation by women is part of a clear long-term economic trend. VICTOR R. FUCHS, *HOW WE LIVE* 127 (1983) (noting that, except for a temporary spurt during World War II, American women's labor force participation increased since 1890 at the rate of approximately three percentage points per decade until 1950; since then the rate has been nine percentage points per decade). *But see* Louis Uchitelle, *Women's Push Into Work Force Seems to Have Peaked, For Now*, N.Y. TIMES, Nov. 24, 1990, at A1 (citing weak economy and higher birth rate).

In France, women have comprised an increasing percentage of the labor force in recent years, climbing from 34.3% of the labor force in 1962 (compared to 33.8% in the U.S.) to 42.4% in 1984 (compared to 43.5% in the U.S.). STETSON, *supra* note 29, at 130. See generally *id.* at 129-

done so in droves.<sup>79</sup>

As Professor Carolyn Heilbrun has pointed out, throughout history there have been a few remarkable women like Joan of Arc and George Sands, who have adopted masculine dress in order to enjoy the freedom of movement (and the freedom from the threat of sexual assault or intimidation) which most men take for granted.<sup>80</sup> "Women wearing jeans" represent an important advance on Joan of Arc's armor or George Sands' pants in two distinct but related respects. Both were clear to us as high school women back in 1970. First, we were not isolated individuals. We were part of the *zeitgeist*, part of a change so comprehensive, so pervasive that we could not have identified its constituent parts had we tried.<sup>81</sup> Our sheer numbers made the second distinction possible: we were not adopting *masculine* dress. Rather, we were insisting that such attire was not masculine at all; it was androgynous.<sup>82</sup>

"Women wearing jeans" are not women "acting like men," but *women acting*, women insisting on their right to move in the world, to express themselves as freely and as effectively as men, and to make their values and priorities part of public discourse. If enough women "wear jeans," and if enough men have the sense to join them, nurturing rights will receive the status and resources they deserve. Recognition of nurturing rights would be a step toward a truly new world order — a world order more disposed to find security in peace, and to safeguard human rights by satisfying human needs.

---

59. The largest area of new jobs for French women has been in white-collar clerical jobs. TILLY & SCOTT, *supra* note 11, at 215.

In Japan, the number of women entering the work force reached a record high of 2.44 million last year. *The 'Mommy Track,' Japanese Style*, BUS. WK., Mar. 11, 1991, at 46.

Finally, and crucially, women are participating in combat. Their mobilization during the Gulf War brought nurturing issues to the front, literally as well as figuratively.

79. See NATALIE K. HEVENER, *INTERNATIONAL LAW AND THE STATUS OF WOMEN* (1982); see generally *ASSESSING THE STATUS OF WOMEN* (International Women's Rights Action Watch 1988). Indeed, it could be argued that women's participation in public life represents a sea change in international law on a par with the end of colonialism in the south, the rejection of communism in Eastern Europe, and the global scrutiny, thanks to telecommunications satellites, of at least some human rights violations. It is not an argument, however, that I can begin to do justice to in this footnote.

This is not to suggest that anything approaching parity between the sexes has been attained. See Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L L. 643 (1990).

80. CAROLYN G. HEILBRUN, *WRITING A WOMAN'S LIFE* 97, 111 (1988).

81. See generally *High School Women: Three Views*, in *SISTERHOOD IS POWERFUL* 362 (Robin Morgan ed., 1970).

82. See CAROLYN G. HEILBRUN, *TOWARD A RECOGNITION OF ANDROGYNY* (1973). Ruth Colker tells a story about gay and lesbian students in Cambridge half-humorously declaring a "Solidarity Day" during which people would express their support by wearing jeans. (The joke, of course, was that everyone was already wearing jeans.) Ruth Colker, *The Gay Family: Legal Strategies for the 1990s*, Remarks at the University of Tennessee School of Law (Apr. 3, 1991).