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SLAVERY, MISOGYNY, and CHILD OPPRESSION: THE COMMON DENOMINATOR

by Michelle Etlin

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> If Abraham Lincoln had insisted that slaves had the right to administrative hearing before being whipped, if he had supported a new law that said a slave could apply for medical treatment if irreparable harm could be proven, if he had insisted that owners should not be allowed to rape their slaves, and that if a slave could prove she had been raped, she could change owners, would that change the fact that slavery was tolerated in this country, side-by-side with the Constitution and the Bill of Rights? I DON'T THINK SO! What if we had ameliorated the lot of the slaves so that everyone felt a little better about it? Would that have removed the blight of slavery from this land? Or would it have merely put a salve on the wounded conscience of the powerful who were willing to tolerate the abomination in the name of law? Just as it is true that slaves could not be free from abuse until they were free, because slavery is itself abuse, just so, children will not be free from sexual abuse until they are free — until they have their RIGHTS, including, but not limited to, the right not to be raped. The right NOT TO BE RAPED is simply a human right, part and parcel of the right to be human. While children do not have the right to be human, they do not yet enjoy the right not to be raped, and no procedural requirements we place on judges, no legislation providing for penalties to child rapists, no rhetoric, no protest, no study, no task force, will change that.
>
> Michelle Etlin, speech delivered on Mothers' Day 1993
> to the Mothers on the March, Washington, D.C.

WHAT IS IN THE BEST INTERESTS OF A CHILD? The absolute protection of that child's life interest, for every other interest throughout his life depends upon it.

WHAT IS THE LIFE INTEREST? It is a non-entity in American law. It is the interest a living child has in being able to develop and grow, and to live his life undiminished and without interference from any "competing" interests of adults around him, including those who control him by controlling his access to the resources he needs to grow.

WHO IS RESPONSIBLE TO PROTECT A CHILD'S LIFE INTEREST? At present, under our law, nobody is responsible to do so. In practice, a child's mother and others who support the mother in this activity.

WHAT IS THE GREATEST THREAT TO A CHILD'S LIFE INTEREST? In this culture, the greatest threat is the law, because it supports "competing" adult interests that can diminish it.

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The Myth of the "Battered Husband Syndrome"

by Jack Straton © 1995

The most recurrent backlash against women's safety is the myth that men are battered as often as women. Suzanne Steinmetz[1] created this myth with her 1977 study of 57 couples, in which four wives were seriously beaten *but no husbands were beaten.* By a convoluted thought process[2] she concluded that her finding of zero battered husbands implied that men just don't report abuse and therefore 250,000 American husbands[3] are battered each year by their wives,[4] a figure that exploded to 12 million in the subsequent media feeding frenzy.[5]

Men have never before been shy in making their needs known, so it is peculiar that in 17 years, this supposedly huge contingent of "battered men" has never revealed itself in the flesh. Could it be that it simply does not exist? Indeed, a careful analysis of domestic violence, using everything from common experience to medical studies to U.S. National Crime Survey data, shows that only three[6] to four[7] percent of interspousal violence involves attacks on men by their female partners.

In the myth's latest incarnation, Katherine Dunn (The New Republic, 8/1/94) is unable to counter these hard scientific data so she turns to disputed sociological studies by Murray Straus and Richard Gelles[8,9] for "proof" that violence rates are almost equal. She first implies that these studies are unassailable by calling the authors "two of the most respected researchers in the field of domestic violence." Then she cynically attempts to undercut Straus' critics by labeling them as "advocacy groups." In fact Straus' critics are unimpeachable scientists of both genders, such as Emerson and Russell Dobash[10,11] and Edward Gondolf,[12] who say his studies are *bad science,* with findings and conclusions that are contradictory, inconsistent, and unwarranted.[13,14,15]

There are three major flaws in Straus' work. The first is that he used a set of questions that cannot discriminate between intent and effect.[16] This so-called Conflict Tactics Scale (or CTS) equates a woman pushing a man in self-defense to a man pushing a woman down the stairs.[17] It labels a mother as violent if she defends her daughter from the father's sexual molestation. It combines categories such as "hitting" and "trying to hit" despite the important difference between them.[18]

Because it looks at only one year, this study equates a single slap by a woman to a man's 15 year history of domestic terrorism. Even Steinmetz herself says the CTS studies ignore the difference between a slap that stings and a punch that causes permanent injury.[19] Indeed, after analyzing the results of the U.S. National Crime Surveys, sociologist Martin Schwartz concluded that 92% of those seeking medical care from a private physician for injuries received in a spousal assault are women.[20] The NCS study

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The Promise: Life, Liberty and Property

The Constitution promises that we will not be deprived of life, liberty or property without due process of law. The Fourteenth Amendment adds that we may enjoy the equal protection of those laws, which have been applied by the state courts of the 50 states and the federal courts, which have district courts in all 50 states and 11 federal appeal circuits. During the last 200 years, the cases decided in all those courts have led to thousands of volumes of reported cases, which are collectively called "case law" and referred to by lawyers when they argue new cases based on precedent.

Liberty and Property Interests

In 200 years, the courts of this country have developed a very rich case law about the rights based on "life, liberty and property" and the due process clause. Reading those cases shows that there is something that is not actual tangible property, but which gives rise to constitutional rights as if it were; that something has been defined as a "property interest." Thus, in order to deprive a person of property without due process, one need not actually take his house away and throw him in the street. One can place an unlawful lien on his house, or prevent him from establishing his own household in his house, or one could make a law (shades of Hundred Years of Solitude) decreeing that he must paint his house blue. A person also has a property interest in his employment, so if he is fired for an improper reason, his property interest is at stake. Examples abound in employment discrimination, real estate, copyright and trademark, patent, and unfair competition law, as well as in federal civil rights cases. Our law has consistently forbidden, and provided redress for, the denial of persons' property interests without due process.[1]

There is also something that is not actual tangible liberty, but which gives rise to the interest a person has in her own liberty. One need not slap handcuffs on a person and lead her to jail in order to infringe upon her liberty — one can deprive her of her "liberty interest" by many less intrusive but still damaging actions. For instance, one can prevent her from quitting her job when she feels unfairly treated by her employer; one can prevent her from moving into a neighborhood simply because others already living there want to practice discrimination against persons of her race or national origin; one can deny her the right to sit in a vacant seat in the front of a bus; one can deny her the right to vote; one can punish her for practicing her religion.

Property and liberty interest suits are common, expected, and validated by our law and our lawyers. Hairs are split so finely that tenths of pennies are examined in public utility rate cases. Liberty interest litigations have, in the same time period but especially in the last century, proliferated to such an extent that the federal judiciary has already heard cases dealing with the liberty to wear non-regulation hats in the military or unusual hairstyles in public schools, the freedom of expression to pass intestinal wind in grocery stores, and the ownership of the phrases, "I love you, you love me, we're a happy family."

While one's interest in property and liberty is the source of countless cases before countless tribunals, the only way a person can be deprived of the third great (really the FIRST GREAT) gift protected by the Constitution is if he is killed outright. Thus, the promise that we will not be deprived of life without due process leads only to litigation over wrongful death (in which a dead person's family members or corporate dependents may sue for deprivations resulting to them from the loss of life visited upon the person legally called "their decedent") or death sentence cases in which appeals are filed by public interest attorneys. Even in these cases, not a single attorney in two hundred years has sought to define a person's "life interest" in his own life and in access to those necessities that sustain life.[2] As a result, there is, to date, in American law, no admission or understanding of the fact that a person has a right to his interest in the development of his own life free from negative influences that tend to deny him the ability to benefit from it HIMSELF. This, more than anything else, explains the reason that the develop-

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ment of American law has been able to ignore and deny — wholesale — the rights of children, and to camouflage and deny the rights of women, African Americans, and other hated, powerless classes. The common denominator of slavery, misogyny, and child oppression is denial of the life interest, in the law (the mirror of our culture) and, of course, in real life.

Liberty and Property Themselves

To understand the operation of and relationships among property, liberty and life interests, it is useful to understand what these things mean and what they mean to us. It may seem that this would be unnecessary, but we are conditioned by our culture to such an extent that we do not always understand the principles by which we live unless they are set out in relief. Property is a concept that people think they understand naturally, but it is only by force of habit that they believe so. Property consists of things that surround us, including the earth itself and the rivers and trees, over which we exercise a form of control, at least to the extent that we can prevent others from having free access, or any access, to them. Property is our extension, our piece of something not-ourselves, that attaches to us or pertains to us. The more we project ourselves outward with the hope of control over resources, the more we concern ourselves with property. As such, it is a peculiarly patriarchal (that is, non-maternal) concern. The law deals mainly with property in the civil realm. This is the area where the most money is made by attorneys and their adjunct economic brethren.

Liberty is a concept about which philosophers and even poets have written for ages, and by force of habit we now believe that we know inherently what liberty is. First of all, it is the ability to be where we are and to go where we will — except onto others' property. It is also the right to limit others' access to US, to our persons, so it represents something one step closer to our dwelling-within-ourselves than did property, which only limited others' access to our peripheries. The right to one's bodily integrity is said to be a liberty interest. But the right to custody of one's child is also a liberty interest. If a child says that her bodily integrity has been invaded by a parent, there are two competing liberty interests facing off against each other. In the present system, the parent has a better chance of defending his liberty interest than does his child.

One of the most important liberties has always been the right to govern or to participate in government — in other words, the right to determine the competing liberties and liberty interests of ourselves and others. Children are not represented in our government. Instead, the state has declared itself "in parens patriae" — in the place of the parent — with respect to children, and there are state employees in every state who are considered to represent the children's interests in that state. In no state, however, are these employees required to take the children's own positions or preferences into account in determining their "best interests." The law deals with liberty mainly in the criminal realm and in civil rights litigation in the federal courts — except with respect to children, where it is handled in the juvenile, family, or matrimonial courts.

Neither liberty nor property says anything about our ability or entitlement to access other people. We can access their property if we can establish a sort of commerce with them that represents a reciprocal trade of property for property or liberty for property. We can also trade liberty for liberty with others in such arrangements as marriages, and the gigantic and incoherent interstate network of family courts regulates these trades in a distinctly arbitrary and capricious way, while their more valid brothers, the civil courts, regulate property-for-property and property-for-liberty trades instead. Meanwhile, the criminal courts regulate the extent to which one person may access the property or limit the liberty of another, by punitively removing the liberty of individuals charged with or convicted of violating the laws protecting others' liberty and/or property. Therefore, all these courts operate in an adversary system while measuring the competing liberty and property interest claims of the parties before them.

While this massive system deals with brushfires in people's individual lives by applying an ever-growing body of law, case by case, within a fiercely adversarial context with deference to property first, liberty second, and not at all to life and that which supports life, we are encouraged to think of this as a system that can, if operated properly and skillfully and if developed to its ultimate destiny, produce JUS-

TICE. The fact that a certain essential ingredient is missing has been overlooked as thinkers, players and hapless victims analyze various pieces of a puzzle that can never hang together for failure to FIT. This, in my opinion, is why this culture, based as it is upon the reinterpretation of our daily lives within a "legal" context, has failed to thrive, especially intellectually. This is why slavery was able to coexist for two hundred years with a law that provided for freedom and independence; for the last century of its existence, slavery was even able to coexist with the Constitution itself, and for most of that time, was also able to coexist with the Bill of Rights! We can no longer think straight because we are living within this magnificent sleight of hand, and we cannot find the missing link because we are concerning ourselves more and more with tangles that form among the other links — the property and liberty links — in our hopelessly broken chain.

The Missing Ingredient: The Life Interest

The Bill of Rights, clearly enunciating the right to one's life, liberty and property unless removed by "due process of law," preceded the 13th Amendment abolishing slavery. Yet slavery thrived and there was a "law of slavery" in the states that practiced it. This was possible because slavery — which would have been illegal by definition — was simply allowed to remain undefined. Slavery was not really an institution. There was really no such thing as slavery, as a phenomenon. Slavery is a word that was used to legitimize **a series of crimes that were committed against persons whom the law refused to protect from those crimes**. The word slavery and the "law of slavery" were giant sociolinguistic and psychosemantic excuses for a massive criminal conspiracy. Each and every act of "slavery" was really a criminal act already illegal under the laws not only of the United States but even of the states in which they "legally" took place: acts of murder, mayhem, rape, aggravated assault and battery, kidnap, theft, conversion, terroristic threatening, illegal restraint, etc. The failure of the judiciary to recognize these acts as crimes, and the failure of the executive branch to enforce the punishments for these crimes, was a significant operating part of that conspiracy. Thus, the first Ten Amendments to the Constitution were in place while the law allowed the wholesale violation of all their provisions against persons called slaves in those states that chose to call a class of persons slaves. The reason this was possible was that the judiciary refused to apply the Constitution to those persons, using "lack of standing" as the excuse. Justice Taney of the United States Supreme Court actually wrote, in the forever shameful Dred Scott decision, that there were no rights for which a person of color was entitled to sue in his own behalf. The owner of a slave could sue for his slave's wrongful death at the hand of a person who was not his owner — to recover the value of his — the owner's — loss of the slave as property. The owner had a liberty interest in doing with his slaves as he chose. He had a property interest in his slave's health and usefulness.

I define "slavery" as the conversion of one person's (the slave's) life interest into the property interest of another person (the owner).

From 1864 forward, it was illegal under federal law throughout all the states and territories of the United States for one person to purchase, acquire or own another adult male, or to hold or force him into involuntary servitude. But slavery did not stop on the day of emancipation and it has not yet stopped. Even with respect to the African American people, whom the Emancipation Proclamation was designed to liberate, *de facto* slavery has not yet been eradicated. Progress has, of course, been made thanks to a massive outpouring of energy and legal firepower, in a huge credible movement toward civil rights. But the landmarks were placed in this movement by property interest and liberty interest cases brought under the Civil Rights Act which was itself based on the 14th Amendment, which was passed in order to force recalcitrant slave states to implement the Congressional intent after emancipation. (The Commonwealth of Virginia, for example, kept its miscegenation laws on the books until 1968, more than a Century after emancipation, when the U.S. Supreme Court struck them down as unconstitutional in Brown v. Virginia, because that state had sentenced an inter-racial couple to six months' imprisonment or required them to move out of the state.)

Furthermore, the essential element of slavery—that is, conversion

of one person's life interest to the property and/or liberty interests of another person—continues in full vigor protected by the law in every state of the Union. Our judiciary still refuses to recognize as crimes certain criminal acts committed in agreed-upon patterns against certain classes of persons, and even dares to deny those persons redress under the Civil Rights Act by saying that their plight must be addressed **ONLY BY THE COURTS OF THE STATES** — the very culprits that the Civil Rights Act aimed at, the very courts that ruled that Rosa Parks had to sit in back of the bus. This continuing conduct allows states to deny certain classes of persons their constitutional rights, and even to deny them access to the federal judiciary for relief.

Who are these persons whose life interests are routinely converted and ignored, and who are denied access to court and standing to sue on their own behalf? Children. With respect to children, massive criminal conspiracies legally coexist with the laws they violate, and the combined efforts of the legislatures, courts and executive agencies prevent access to justice for these victims. Now, of course, we have graduated to a different kind of rationale — converting the life interests of children into the liberty interests (more respectable than property interests) of parents (more respectable than owners).[3] Now, when the life interest of the victim-child is ignored, and the adult's liberty interest prevails, we do not say that it is done because the child is "inferior" or "subhuman." The rhetoric of Dred Scott is abhorrent to us. We are civilized. We say that all this is being done in the "best interests" of the child. But there is often no difference in the actual practice of guardianship and that of slavery. Most parents care about their children and don't want to hurt them, but they can hurt them if they choose. Most slave owners had vested interests in keeping their slaves healthy and productive, but that would not prevent mistreatment if they chose that course of conduct. A father can rape his child, today, as easily as an owner could rape his slave in 1863. In fact, the Appellate Division of the Supreme Court of New York observed in a child sexual abuse case in 1993, In re Jamie T.T., that the accused molester (a step-father) could actually have prosecuted his victim for running away from him. Not only could this child not sue for her own right not to be raped by her parental guardian, she could not escape without the law hunting her down and punishing her for trying. And for Jamie T.T., unlike the slaves, there was no **NORTH** where she would be safe.

Definition: Life Interest

A person's "life interest" is her interest in the natural development and continuation of her life, from the point of birth forward, including but not limited to her interest in being provided with all those elements essential to the natural development and continuation of her life, so that, within 18 years, she can become fully functional in accessing her liberty and property interests along with all other citizens. Physical, sexual and emotional abuse deprive a person of her "life interest" and therefore she has an inalienable right to be free from **RISK OF ABUSE**, a self-executing right to be granted upon demand. A person's "life interest" is entitled to more weight than any liberty or property interest of her or of any other person. A person's "life interest" entitles her to the performance of positive obligations by others (during her first 18 years) so that she has help accessing those resources that support life. But should those persons who have special relationships with her not function properly in providing her with those resources, she is entitled to the provision of those resources from the state itself. Since the special relationships between the child and her family or guardians are not the source of her entitlement to those resources that support her life interest, she is legally the sole decision-maker on the issue of whether or not any other person, with or without such a special relationship to her, has access — or continued access — to her, **because she doesn't "need" them to survive or to develop her own life interest**. She can execute her entitlements and get the help she needs from persons who are her parents or guardians, or from others who are willing to provide for her, or, in the absence of such others, from the state.

Quality, Quantity, Source

A child's life interest is at its maximum measurable level when she is newborn, because at that moment, she cannot perform any independent functions to access the elements she needs for the natural development and continuation of her

life, other than sending signals (predominantly in the form of cries) to others that she is experiencing some deprivation in the provision of those elements. She is entitled to food, shelter, warmth, hygienic attention, medical attention, physical and physiological contact that comforts and calms, communication from others that encourages intellectual and emotional growth, consistent and responsive care, and protection from all negative influences, such as cold, harmful physical contacts, exposure to disease agents, sexual or other abuse, neglect or exploitation. Her 100 percent life interest at birth entitles her to the performance of **POSITIVE OBLIGATIONS** by others, and gives her needs absolute predominance over theirs. The quantity of resources that must be delivered to satisfy the infant's life interest is undetermined, and can be determined ONLY BY THAT INFANT. The baby cries when it is uncomfortable. Nobody but that baby can tell if the baby is comfortable, except by listening and heeding.

The source of these entitlements for an infant can, and usually will, be a voluntary source: the mother, one hopes, with the willing support of the father and other voluntary providers. But the state is always and must always be the back-up source for each and every need a child expresses as an element of her life interest. Ideally, any assistance the state must provide should be mediated through the mother, so that the mother can provide for her infant with access to the state's full support in so doing. In my opinion, there is no better, indeed no other, excuse for the governing of one person by another. If the infant just born cannot access the benefits of such government, there are no such benefits worth working for, voting for, or certainly, fighting for.

Why is a child's life interest 100 percent at birth?[4] Let us examine the interplay among rights and interests under our constitutional scheme. Let us take as an example a woman who gives birth to a baby in a nice house in Arizona. The temperature there is over 80 degrees and there are no dangerous persons or animals around. She doesn't abuse the baby. She doesn't decrease the baby's property interests (he has none) or liberty interests (he can go anywhere he wants). She merely exercises her own liberty interest—which she has an absolute right to do—by taking a trip abroad starting eight hours after giving birth. She had a perfect right to a vacation; giving birth is not easy and she needed a break. That baby, however, will probably die within 48 hours although nothing has been done to him that is recognizable as a crime if committed against an adult. But crimes have been committed against that infant.[5] Those crimes are presently described under our law as "child neglect" or "denial of critical care," and as such, they are dependent upon the theory of "special relationships." That is, the mother is the only one guilty of those crimes because she was the only one with a special relationship to that child, the only one who owed him the care that was critical, or who owed him affirmative obligations she neglected. But "special relationships" are double-edged swords, because they are not based on the baby's life interest but upon the adult's **LIBERTY INTEREST IN THE BABY**. In other words, we can hold the mother responsible for the baby's care because, and only because, she has a right to control that baby and treat it as she sees fit—within some very wide discretionary parameters. Her liberty interest in the baby allows the society to require her, as a reciprocal matter, to feed, clothe and immunize that baby. But it doesn't require her to do much more. And in return, she gets the right to "discipline" the baby and to bring it up in a way that satisfies her, and her liberty interests, and she may even use the baby for the enhancement of her property interests.

This is where it goes wrong. Since the mother's obligations are based upon her entitlements, not on the baby's life interests, when the baby needs protection from HER, he cannot rely upon his own life interest to access that protection. **He must prove that her mistreatment of him has exceeded her interest in him!** Whereas, in our misogynist culture, it is often possible for a child to get away from, or be taken away from, his mother, by the state, it is almost impossible for him to get away from a father, because the father's liberty interest in the child is paramount, and the father is considered the true authority in every family. The worst-case scenario is, of course, a child whose mother is trying to protect his life interest from invasion by the legal father, such as in a custody or sexual abuse case where the mother is the psychological parent facing divorce or the protective parent in a child abuse proceeding. In such cases, the child's life interest is not fac-

tored in (since he has none, under our historical common law); the mother's liberty interest is negligible because she is considered a bad woman (who has not pleased her husband) or a vindictive bitch (who has accused her husband of incest). Meanwhile, the father's rights of access to the child and vindication from the mother — even of the right to punish the mother for her ungrateful, anti-spousal behavior — rise victorious nearly every time. The cases that have been reported in this newsletter as the horror stories from the world of custody and sexual abuse litigation have all been decided under these principles. If the reader will remember the Mary H. story, the father's liberty interest in custody of HIS baby was upheld even after he was convicted of molesting her older sister, and while he was still serving his sentence for that crime!

Which brings me to a question that any reader of a newsletter must ask after so much verbiage: even supposing that denial of the life interest is the common denominator among slavery, misogyny and child oppression, what does that have to do with custody or child sexual abuse?

Recognition and enabling legislation in service of the life interest of children is the only possible way to inject some measure of humanity into the legal system that governs our attempts to protect children from abuse, to protect the rights of mothers to provide for their children in ways that support the children's ability to grow and thrive, and to protect ourselves from the effects of the growing chasm between law and justice.

Why is the Life Interest the Only Solution? Why Won't Simple Fairness Work?

After 3,000 years of misogyny and child oppression in the world and 400 years of slavery, misogyny, child oppression and legalized patriarchal abuse in our own country, there are enough flaws in the systems we have established to ensure that any attempts to make them operate differently will be, at best, frustrating partial failures. Fairness as a concept is supposedly an organic part of democracy, which we supposedly have achieved. But it has given rise to an elaborate rhetoric more useful to abusers than victims. Now we hear that it is not fair to accuse men of being child-molesters simply on the word of children. And it is not fair to blame abusers when whole families are dysfunctional. And it is not fair to disrupt relationships between parents and children just because of abuse.

Being fair to mothers won't provide magic solutions either. All attempts to support mothers' rights to protect their children have failed miserably, and even if mothers had more rights, and if courts were not biased against them, that would not guarantee children's rights or provide protection against mothers who are themselves abusers. Although I am an advocate for mothers and a proponent of true maternal thinking as a political theoretical framework, I must admit that my attempts to support them when they try to protect their children fail most of the time, with terrible negative collateral effects upon their children. We are wasting our time and energy if we continue, as we have been, to try to support protective mothers who are genuinely trying to protect their endangered children **whose own rights and interests are not even part of the equation**. I believe our society is so violently anti-mother that our efforts will always fail miserably. If, however, a child were to have rights that could be enforced **by a mother, or against a mother**, he would have something negotiable, something viable, something that might work.

As it is now, the battle over mothers' versus fathers' rights to children is so skewed, so fundamentally flawed, and so deeply entrenched in our habits of patriarchy, supremacy and misogyny, that it cannot lead to either justice or peace. This is not about mothers' rights or fathers' rights, except incidentally. So long as we believe that legislating and adjudicating the competing liberty and property interests of men and women will lead us to justice, we will continue to travel painfully down the same path we have been traveling down for over 200 years of law, lawyers and litigation, analysis, analysts and writers, scandals, exposes, horror stories and day-time TV talk shows, all the while coming no closer to real understanding or improvement.

Can an Idea Save a Life?

The short answer is Yes, I hope so. Only one concept can possibly provide the framework for work that might salvage the remnant of our people. Look at this people: who are we? Forty Million of us have been sexually savaged as children.

Most of us are unable to think or act independently as adults all of the time. An unacceptable proportion of us are homeless, hopeless, or even incarcerated. Does an 18-year-old suddenly shed all her life interest and stand ready and able to take her place in a working society? She does not. As an adult, she should have the absolute right to health care as and when she needs it. We don't even have a system that can deliver that simple human basic need. Our adults — including those adults who are our legislators and our government — are handicapped by the fact that their own life interests were frequently denied.

What we need is recognition, definition, and enabling legislation in service of the life interest. This will invigorate and enhance the efficiency and viability of our people. For example, we will never be able to stop child molesters from molesting children. We will never be able to punish or even treat them into harmlessness. All we can do is to inform children about the facts and then legally empower them, and allow them to remove themselves from accessibility to molesters and abusers. Just as we once faced the idea that a woman should be able to leave her husband without proving that he "deserved it" to other men who might just as easily deserve like treatment, we must now face the idea that children must be able to leave their parents — even their sacred fathers — for their own reasons, good or bad, without "justification" that takes any rights into account except their own right to protect their life interest. Cries always arise at this point, from parents who say their children might leave them without good cause.[6] That objection, however, recognizes the liberty interests of parents. As life is more sacred than liberty or property, the life interest — the one component missing from American jurisprudence since its inception — is more sacred than anything else expressible or judiciable. A child's life interest should always supersede ALL OTHER INTERESTS.

As a Practical Matter, What Will Express the Life Interest?

I have written up a model for federal legislation that is called the Child At Risk Classification Office (CARCO) bill. As a first piece of legislation addressing the needs of children from the point of view of provision of their life interest, it is designed to address the worst-case bases for this need: protection of the child at risk of incest. CARCO legislation would remove incest from the arena of the courts altogether, remove all criminal penalties for incest, and admit that parents are allowed to molest their children and often do so. It would, on the other hand, educate children about their absolute right to avoid incest by avoiding any parent or guardian who wishes to molest or continue to molest them. It would simply give every child the right to avoid contact with any adult, even a parent, based on the child's expression of fear of abuse, all from the child's sole point of view. In other words, it would admit what is really going on, educate children about it in age-appropriate fashion, and give them a chance to avoid it.

CARCO legislation was designed, first and foremost, to deal with incest, since incest represents the most damaging and intervention-resistant form of child oppression in our culture, and my "triage" led me to deal with the worst cases first. The same office, enlarged but designed on the same model and operated on the same general principles, would ultimately administer all children's rights and provide children with representation and other services they need. It may be that an awareness of the life interest as it applies to children who are hideously abused will have to precede any more general awareness of it as an essential part of **NORMAL LIFE**.

At first, the CARCO office, set up in every school district, would educate children in age-appropriate fashion about incest, child sexual abuse, and child abuse in general. All adults would be mandated reporters to the CARCO office but contact with the CARCO office would be made possible and feasible for all children as well. Once a child approached or was introduced to the CARCO system, she would be offered interviews and risk assessments appropriate to the referral. In other words, if she had alleged abuse, she would be "read her rights" — including the absolute and immediate right NOT TO RETURN TO THE CONTROL OR CARE OF ANYONE SHE NAMED AS HER ABUSER [7] — and a risk assessment would be performed for and with her — after she was secured. If she disclosed abuse, regardless of whether a CARCO office worker "believed" it, she would be classified as a CHILD AT RISK. Once she was classified, she would be entitled to avoid contact with the

named abuser, regardless of the abuser's alleged rights, and she would be entitled to many other services, including therapy. No court proceedings could intervene or interrupt. She would be declassified when she and her CARCO liaison personnel decided that she was out of risk.

Naturally, when this system is modified and applied to children who are not at risk of abuse, it will be modified as a CHILD ENTITLEMENTS OFFICE. That is an even more utopian concept, of course, based on a concept of children as human beings who learn because they are curious and intelligent, who communicate with others because they have something to say and to learn, and who love others because they are active, interesting individuals and because they are loved. That's another newsletter.

Notes

[1] "He" and "she" will be used alternately throughout to indicate the person; we don't yet have a better, more convenient way to do it in our language while preserving the flow of speech.

[2] There is something called "life interest" which is a term of art in probate law. It refers to a person's property interest in the interest that accrues on money that passes through an estate, when the capital itself is not bequeathed to that person. In other words, a millionaire could leave his entire estate to his grandchild, but allow his daughter to use the interest on that money during her lifetime. Then the property would pass to the grandchild in spite of any will the daughter might later make to the contrary. Ironically, this came to play in a celebrated case in the 1800's. In his will, a slave-owner left a certain slave to his daughter for the benefit of his grandchild, but she could use the slave meanwhile. The daughter then felt that she could not legally decide to emancipate that slave (whose name was Dred Scott) because he didn't really belong to her — she only had a "life interest" in him. Dred Scott, meanwhile, offered this woman — his "owner" — money for his freedom, but he could not purchase it, because she felt she could not sell it. This twisted case clarified the principle that Dred Scott did not have a legal right to establish a property interest in his own liberty, because his "owner" had only a temporary property interest in him as property! What was missing, obviously, was the slave's life interest in his own life.

[3] Historically, men owned their wives and children as property until early in this century. In fact, the language of "liberty" interest in our children has only recently replaced frank laws about fathers' property interests in them.

[4] I am aware that some people would like to parlay the life interest of a child, 100 percent at birth, into an argument against abortion rights. "Isn't a foetus even more entitled to his life interest than a newborn?" My response to that is simple. Abortion is a solution to a problem that has been generated by two millennia of flat outright denial of the life interest to women and children. If a child's life interest were to be respected and legally supported, within a few generations there would be no need for women to seek that solution because there would not be the problems inherent in bearing children that have traditionally driven women to the clinics. If giving birth to children did not present almost automatic destruction to the life-style of many mothers, the need for abortion would be greatly decreased. But that is merely the political and moral argument. As far as a more sophisticated argument is concerned, granting life interest to embryos would necessitate state-provided and state-mandated health-care, welfare, and social services to every female of child-bearing years, continuously, except for those days during menarche when those females are provably non-pregnant. In addition, any women who tested pregnant would be entitled, on behalf of her foetus, to complete and luxurious maintenance at the cost of the state, to provide maximum "life interest" to the foetus. Even the anti-abortion contingent could not agree to this tax burden, although it might do a lot to civilize our nation.

[5] Later on in life, certain obligations of the mother, such as protection from incest, will be harder to prove and much less likely to be considered criminal conduct, although possibly as harmful as neglect of the animal needs of a newborn.

[6] As a practical matter, this is not a plausible possibility. It represents, instead, a fear that our culture has fostered, and that abusers have used to terrorize people about the kind of a life we would lead if our children were treated as free, respectable persons instead of as chattel and slaves. Even a child who is disturbed enough to want to temporarily leave good parents will do much better within a system that assures him that his life interest can be provided — and will be provided — even if he does so. In other words, the threat of good parents losing their children forever is negligible, but even that circumstance is preferable to forced "special relationships" upon which a child must depend for life itself, even against his will. In fact, predatory pedophiles and other assorted child abusers prey upon those children who want to escape their homes, for whatever reason. In a situation where every child had a right to leave and still be provided with his needs in a decent and humane way, most predatory pedophiles and other business-like child exploiters would be disempowered.

[7] This right would NOT depend upon whether or not she had a parent who was willing to change his or her lifestyle to protect the child, or whether or not the named perpetrator was willing to admit the incident, or whether or not social workers agreed to support the child's outcry, or whether or not there was physical evidence of child sexual abuse. It would depend only and completely upon the right of the child to deny access to any other person that SHE decided should not have access to her.

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shows that one man is hospitalized for injuries received in a spousal assault for every 46 women hospitalized.[21]

Even if we ignore all of the previously mentioned flaws in Straus' CTS studies, they are bad science on a second set of grounds. Straus interviewed only one partner, but other studies[22,23] that independently interviewed both partners found that their accounts of the violence did not match. Also a study by Richard Gelles and John Harrop[24] using the CTS failed to find any difference in self-reporting of violence against children by step-parents versus birth-parents — in vivid contrast to the actual findings that a step-parent is up to 100 times more likely to assault a small child than is a birth parent.[25,26] Any research technique that contains a 10,000 percent systematic error is totally unreliable.

In fact a third independent case can be made against Straus' study. It excluded incidents of violence that occur after separation and divorce, yet these account for 75.9 percent of spouse-on-spouse assaults, with a male perpetrator 93.3 percent of the time, according to the U.S. Department of Justice.[27] The Straus study relied on self-reports of violence by one member of each household, yet men who batter typically under-report their violence by 50 percent.[28] Finally, the CTS does not include sexual assault as a category although more women are raped by their husbands than beaten only.[29] Adjusting Straus' own statistics to include this reality makes the ratio of male to female spousal violence more than 16 to one.

Police and court records persistently indicate that women are 90 to 95 percent of the victims of reported assaults.[30] Promoters of the idea that women are just as abusive as men suggest that these results may be biased because the victims were self-reporting. But Schwartz's analysis of the 1973-1982 U.S. National Crime Surveys shows that men who are assaulted by their spouses actually call the police more often than women who were assaulted by their spouses.[31]

In any case, criminal victimization surveys using random national samples are free of any reporting bias. They give similar results:

- The 1973-81 U.S. National Crime Survey, including over a million interviews, found that only 3 to 4 percent of marital assaults involved attacks on men by their female partners.[32,33]

- The 1981 and 1987 Canadian surveys[34,35] found that the number of assaults of males was too low to provide reliable estimates.

- The 1982 and 1984 British surveys found that women accounted for all of the victims of marital assaults.[36]

This is not to say that men are not harmed in our society, but most often men are harmed by other men. Eighty-seven percent of men murdered in the U.S. are killed by other men.[37] Those doing the killing in every major and minor war in this and previous centuries have mostly been men! Instead of attempting to undercut services for the enormous number of women who are terrorized by their mates, those who claim to care for men had better address our real enemies; ourselves.

Of course we must have compassion for those relative few men who are harmed by their wives and partners, but it makes logical sense to focus our attention and work on the vast problem of male violence (96 percent of domestic violence) and not get side-tracked by the relatively tiny (4 percent) problem of male victimization. The biggest concern, though, is not the wasted effort on a false issue, it is the fact that batterers, like O.J. Simpson, who think *they* are the abused spouses are very dangerous during separation and divorce. In one study of spousal homicide, over half of the male defendants were separated from their victims.[38] Arming these men with warped statistics to fuel their already warped world view is unethical, irresponsible, and quite simply lethal.

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4 *Time Magazine*, "The battered husbands," March 20, 1978, p. 69.

5 G. Storch, "Claim of 12 million battered husbands takes a beating," *Miami Herald*, August 7, 1978, p. 16.

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