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WHAT HAS FEMINISM GOT TO DO WITH CHILDREN'S RIGHTS?

A CASE STUDY OF A BAN ON CORPORAL PUNISHMENT

Benjamin Shmueli[*]

[*]Benjamin (Binyamin) Shmueli, Ph.D. 2005, L.L.M. 1999, L.L.B. 1998, Bar Ilan University; Visiting Assistant Professor, Duke University School of Law, 2006-2007, 2007-2008; Assistant Professor and Director of the Center for the Rights of the Child and the Family, Sha'arei Mishpat Law College; Adjunct Professor at the Law Faculties in Tel Aviv University and Bar-Ilan University, Israel.

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ABSTRACT

Has feminism breached new boundaries and entered the arena of children's rights? Are feminist theories prepared to act for the benefit of other weak sectors of the population, including weak family members, by rectifying social wrongs that are not directed at women? This study examines the degree of influence exerted by feminist groups to promote children's rights.

This paper examines corporal punishment of children as a case study for this question. It asks whether limitations on this aspect of parent-child relations, which is performed mostly by women in holding important positions in the society, is a reflection of feminist influence. This paper also addresses whether efforts to restrict corporal punishment reflect not only feminist influence, but also humanism more generally, as an ethic of care, either in combination with feminists, or to the exclusion of feminists.

A glance at the general character of the individuals and organizations who contributed to imposing the ban on the use of corporal punishment of children and students in Israel indicates that this group primarily consists of women, whether they be judges, members of parliament, Ministry of Justice workers, members of children's rights organizations or members of academe. Yet, at no stage during the process of reform leading to the ban was it ever mentioned that feminist theories inspired the movement, either directly or indirectly. This article examines the identities of those who carried out the process of reform, as well as the nature of the process itself, in an attempt to determine whether the process of change is actually the result of feminist influence, since not all movements undertaken almost entirely by women must necessarily be defined as feminist.

The purpose of this examination is not only to identify the processes underlying the movement to ban corporal punishment, but also to open a window on two broader issues. The first issue is the potential influence of feminist theories on the development of children's rights. This issue is examined by questioning whether it is possible to compare male-female relations and the feminist effort to eliminate the artificial status and power gap between men and women, and parent-child relations, where the gap between parents and children is perhaps more natural and ensues from the dependence of children on their parents and the parents' duty to educate their children. The second issue examines whether feminist theories are interested in advancing the rights of weak or

ideas. Special thanks to my dedicated research assistants Hadas Aharoni, Penelope Donkar, Yoni Polack, and Moriah Ben Moshe. Naturally, the article represents my own views only.

disadvantaged sectors of the population other than women or whether they are interested in confining their struggle solely to male-female relations, even if the nature of the feminist struggle is theoretically compatible with the struggles of other groups. This may explain the relative lack of feminist writings that focus on children's rights.

The conclusions drawn from these issues allow us to hone our understanding of the scope and application of feminist theories. This paper might also expand the influence of feminist thinkers. By examining whether feminist activists were involved in children's rights could spur researchers who define themselves as feminists to write about, and impact, the field of children's rights. This paper also asks whether this influence will have a beneficial effect on children's rights or whether it will interfere with attempts to promote those rights because of the antagonism which some decision-makers feel towards feminists.

I. INTRODUCTION

Has feminism breached new boundaries and entered the arena of children's rights?

Supreme Court (retired) Justice Dalia Dorner; Supreme Court Justice (now President) Dorit Beinish; District Court Judge (now Supreme Court Justice) Ayala Prokazia; District Court Judge (now Deputy President) Saviona Rotlevy; Knesset (Israel's parliament) member (MK) Anat Maor; MK Yael Dayan; MK Naomi Blumenthal; Attorney Judith Karp, Deputy Attorney General; Dr. Hanita Zimrin, Chairman of Israel Association for Child Protection; Dr. Shulamit Almog; and Attorney (now Dr.) Tamar Morag.

What do the members of this distinguished group have in common?

True, all are Israeli women, and they hold important positions. But all also contributed, some directly and decisively and some more indirectly, to the determination that the use of corporal punishment as a means of education is no longer legitimate,[1] to the imposition of a prohibition on the corporal punishment of Israeli children in both the home and at school,[2] and to the attempt to instill the newly adopted norms in the public mind.[3]

In this article I seek to examine the degree of influence feminists, particularly of the radical school of thought,[4] exert upon the promotion of children's rights by examining the corporal punishment of children in Israel—which has recently been widely considered and is of great interest throughout Israel—in terms of far more than its merely legal aspects. By looking at the activities of the women mentioned above, I will examine whether open or hidden feminist influence was exerted in the process of enacting a criminal prohibition of corporal punishment of children and students. This penal ban on corporal punishment was established by an Israeli Supreme Court ruling and reinforced by the abrogation by the legislature of a civil defense previously accorded to parents and teachers in tort actions.[5] For this purpose I shall analyze not only the *identity* of the instigators of the process, (*i.e.*, those who established milestones in the process of change in their own fields), but also the *nature* of their activities. In doing so, I will attempt to answer the question of whether there is evidence of feminist influence, while bearing in mind that not every measure undertaken almost entirely by women is necessarily feminist in nature.[6]

I conclude the predominantly feminine identity of the primary contributors to the movement to ban corporal punishment may point to some feminist influence, although it seems that this influence is not sufficient to justify this kind of conclusion. In other words, it is possible that feminists exerted at least a certain

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1. *See infra* Part III.D.

2. *See infra* Part III.D.

3. *See infra* Part III.D.

4. The radical school of thought will be discussed throughout this chapter. Unless otherwise noted, references to "feminism" should be read to mean "feminism, particularly of the radical school of thought." I will also refer to other schools of thought, including *liberal feminism* and *cultural feminism. Liberal feminism* focuses on inequality of women in the family and the market. According to liberal feminism, there are no real differences between the sexes. Women must be perceived as achievement and career oriented creatures, not merely as passive individuals who are only interested in living a stable life by the side of a successful husband. Even if the woman has emotional intelligence which is different from that of the man, this must not cause her to be accorded a lower social status. *Cultural feminism* points to the uniqueness of women and hopes to improve the value of feminine qualities that have been undervalued for so long. According to this school of thought, there are inherent differences between sexes and that these differences are biologically and not socially created. Furthermore, the unique characteristics of women are fundamentally better than those of men. *See, e.g.*, JUDITH LORBER, *The Variety of Feminisms and their Contribution to Gender Equality*, *in* GENDER INEQUALITY: FEMINIST THEORIES AND POLITICS 8 (Judith Lorber ed., 2nd ed. 2001) (analyzing the distinction between these three main schools of thought).

5. *See infra* Parts III.D.1- 2.

6. *See infra* Parts II, IV.A.

degree of indirect influence on the process to ban corporal punishment because the process was carried out primarily by women, and the nature of the social change correlates to feminist theories. I conclude that this correlation is correct, although no expressly feminist argument was raised during the process of banning corporal punishment. This correlation is particularly strong where the focus can be put on children's rights without damaging women's rights through the process of the social change.

However, the purpose of the examination is not only to determine whether there was feminist influence related to the ban on corporal punishment of children and students, but to open a window on to two broader issues. The first issue examines the potential for future feminist influences on the development of children's rights generally, by considering whether *it is possible* to compare male-female relations and the feminist effort to eliminate the artificial gap between men and women, and parent-child relations, where the gap between parents and children is perhaps more natural and ensues from children's natural dependence on their parents and the parents' duty to educate. Traditionally, feminists address the rights of women and not the rights of children. Conceivably, if feminists can be shown to have embraced children's rights in this or other contexts, this could represent a feminist breakthrough into new fields of interest. *Prima facie*, a possible breakthrough should not be dismissed if the influence exerted on children's issues is compatible with feminist influence in relation to women's rights. The fact that children's rights only achieved international recognition in the last quarter of the 20th century,[7] whereas feminist theories have been around for more than a hundred years might explain the new breakthrough.[8]

The second issue examines whether feminist theories are even *interested* in advancing the rights of other weak, oppressed or disadvantaged sectors of the population, in order to help remedy social wrongs; or whether feminist theories are interested in confining their efforts solely to male-female relations. If the latter is true, this might explain the relative lack of feminist writings that focus on children's rights, even though the feminist struggle is, by its nature, compatible with the struggles of these other groups. This examination will allow us to hone our understanding of the degree of application and the reach of feminist theories.

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7. One of the peaks in the development of children's rights is the U.N. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (Nov. 20, 1989) [hereinafter Convention on the Child]. For an analysis of developments in children's rights, *see* MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS (2005); Martha Minow, *What Ever Happened to Children's Rights?*, 80 MINN. L. REV. 267 (1995) [hereinafter Minow, *Children's Rights*]. *See also* LEON SHASKOLSKY SHELEFF, GENERATIONS APART: ADULT HOSTILITY TO YOUTH 4 (1981) (focusing on interfamilial conflicts, including child abuse, from the 1970's on).

8. *See* LORBER, *supra* note 4; Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1511-12 (1983) [hereinafter Olsen, *Market*]; Frances Olsen, *Children's Rights: Some Feminist Approaches to the United Nations Convention on the Rights of the Child*, 6 INT'L J.L. & FAM. 192, 192 (1992) [hereinafter Olsen, *Convention*] (examining the different streams of feminism, both old and new).

First, I will present the relevant feminist theories and address their applicability to other oppressed groups in the population and in the family. Next, I will show that women indeed stood behind the major part of the revolution concerning corporal punishment of children in Israel through a variety of channels: in court rulings;[9] by means of legislative and parliamentary activity;[10] through the activities of the Ministry of Justice;[11] through the activities of children's rights organizations[12] and through academic, scholarly and professional writings.[13] Finally, I will try to cast doubt on, and even refute some, of the presumptions that lead to the conclusion that we are dealing with the clear influence of feminist theories. We will be left with the understanding that, while it is indeed difficult to ignore the possibility of feminist influence on the subject at hand, it is also difficult to ignore evidence that is inconsistent with this conclusion. Thus, I will conclude that there was, at most, a minimal degree of feminist influence on this process, even though one might have anticipated a stronger and more express influence in light of the similar objectives of protection of women and protection of children in society and within the family coupled with the fact that women played a large role in achieving the ban on corporal punishment.

This paper will analyze issues concerning parent-child relations in the feminist prism, because these are nearly unplowed fields from the point of view of the potential influence of one field – women's rights – on another – children's rights. The examination will not only focus on the question of whether it is possible to identify feminist influences in the context of the ban on corporal punishment of children, but will also raise the issue of whether the potential feminist influence considered in this article could spur researchers who define themselves as feminists to write about and effect change in the field of children's rights generally. Finally, I will consider whether this possible feminist influence will have a beneficial effect on children's rights or, on the contrary, interfere in the development of these rights because of the antagonism towards feminism which some decision-makers (e.g. judges, members of parliament who vote on children's rights legislation, and other policy-makers) might feel.[14]

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9. *See infra* Part III.D.1.

10. *See infra* Part III.D.2.

11. *See infra* Part III.D.3.

12. *See infra* Part III.D.4.

13. *See infra* Part III.D.5.

14. I should point out that for the purpose of this article, the character of the family—whether the parents are married or unmarried and whether the parents are biological, adoptive, or foster—is irrelevant. The analysis is from the point of view of the responsible adult with the authority over a child. I make this point because some streams of feminism object to the institution of marriage as such, and children are part of this classic institution. For example, some feminists discuss the very act of bringing children into the world as an event which conflicts with the personal development of a woman's career. For discussion on this, see, for example, the writings of the well-known French feminist scholar, Simone de Beauvoir. In English, see FEMINIST INTERPRETATIONS OF SIMONE DE BEAUVOIR (Margaret A.

II. FEMINISM, THE FAMILY, AND CHILDREN'S RIGHTS

A. Feminism and the Family

Feminism attempts to, among other things, identify centers of power within society, the community, and the family, and destroy the traditional control wielded by those who hold power where exertion of control might create inequality and cause harm to the weak.[15] True, feminist approaches focus primarily on the disparity between men and women in various contexts (e.g. society, community, market and family).[16] However, this approach may also be relevant to other types of relationships that are characterized as having one strong party and a weak and oppressed party. If applied to these relationships, feminist theories would stand for remedying social wrongs in general.

Accordingly, it is conceivable that feminist theories might play a role within the context of parent-child relations where the disparity between weak and strong is permanent. Applying these theories to the parent-child relationship would limit the power of the parent and weaken his/her source of strength. In doing so, the theory that the law must intervene on behalf of individual rights as opposed to the collective (here, the family) is relevant. If there are weak and strong members of a family, the rights of the strong must be limited, and greater substance must be added to the rights of the weak in accordance with principles of justice, equality, and dignity.

Like other types of feminism, radical feminism champions ensuring that women have rights equal to those of men in order to enable all members of society to achieve autonomy, freedom, and equal rights.[17] In contrast to liberal feminism, where the primary focus is granting rights to women in order to realize their right to equality (a desire which is also relevant to other sectors of society), radical feminism emphasizes the disparity between men and women and the impact this has on the status of women in society.[18] Radical feminists seem to aspire to equality which is construed as severing the phenomenon of weak members of society and the family being subordinated to stronger groups, while emphasizing that institutional non-intervention leads to the perpetuation of power disparities. The radical feminist stream's perception of equality aspires to destroy gender-based and artificial hierarchies, and nonexistent, natural, social gender differences. Under this approach, a situation in which one group in society is

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Simons ed., 1995). This article will accept the family and children, and consequently, the type of family involved is not important for the purposes of this article.

15. *See generally* Olsen, *Convention*, *supra* note 8, at 193-95 (describing the different streams of feminism).

16. *See generally* Olsen, *Market*, *supra* note 8.

17. *Id.*

18. Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: Towards Feminist Jurisprudence*, 8 SIGNS 635, 642-43 (1983) [hereinafter MacKinnon, *Feminist Jurisprudence*]. *See also* CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987); CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989); Owen M. Fiss, *What Is Feminism?*, 26 ARIZ. ST. L.J. 413 (1994).

subordinate to another merits social and legal condemnation, both because the subordination creates an obstacle to the self-fulfilment of the individual in the subordinate group and because it undermines the basic concept of the community. Catharine MacKinnon, Frances Olsen and Owen Fiss developed, in principle, this approach in their writing.[19]

A possible feminist theory could be based on the concept that the state, in general, and the government, in particular, is traditionally run by men and, therefore, neither the state nor the government can be regarded as useful tools in the struggle for change. Other possible feminist theories (some of which are presented below) argue that even though the state is the actual cause of disparities, it can still play an integral role in preventing the perpetuation of traditional centers of power in society and the family, particularly because the state itself shaped the institution of and delineated the structure of the family. The state must be objective and exercise its power in as positive a manner as possible in order to prevent the perpetuation of those centers of power. These theories present a certain paradox: they condemn the activities of the state and accuse it of having become an agent that perpetuates suppression and twists social processes, while simultaneously seeking the state's support in effectuating social change. In practice, feminists accept the state as a potential partner in the struggle for equality.[20] However, in my opinion, feminists, particularly radical feminists, are not eager to harness the legislature and the courts, which are part of the establishment, to carry out changes and revolutions, although they will work through the state if doing so will advance their goals. Similarly, post-modern feminists (sometimes called the "third age" of feminism) oppose the notion that it is possible to correct disparities through legal processes and, as a result, call for social revolution.[21]

Thus, according to radical feminists, the "name of the game" is state intervention in the family. However, one must be precise: not only do radical feminists view non-intervention as reprehensible on the grounds that it perpetuates disparities, but radical feminists also perceive existing legal intervention as inadequate and as reflective of social inequality because it is predominantly masculine, even if the legal actors are convinced that they are

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19. *See* Fiss, *supra* note 18; MacKinnon, *Feminist Jurisprudence*, *supra* note 18; Olsen, *Market*, *supra* note 8. For evidence that MacKinnon is a radical feminist, see Lisa R. Pruitt, *A Survey of Feminist Jurisprudence*, 16 U. ARK. LITTLE ROCK L.J. 183, 197-98 (1994). Although Olsen tends to support critical legal studies, see Katharine Bartlett, *Cracking Foundations as Feminist Method*, 8 AM. U. J. GENDER SOC. POL'Y & L. 31, 50 (2000) [hereinafter Bartlett, *Cracking Foundations*] for evidence that Olsen is sympathetic to radical feminism as well a defense of MacKinnon's radical ideas. While Olsen is a radical feminist, in my opinion, Fiss is more of a humanist or a liberal feminist.

20. Fiss, *supra* note 18, at 422-23; MacKinnon, *Feminist Jurisprudence*, *supra* note 18; Olsen, *Convention*, *supra* note 8, at 192.

21. Catharine A. MacKinnon, *Points Against Postmodernism*, 75 CHI.-KENT L. REV. 687 (2000) [hereinafter MacKinnon, *Points Against Postmodernism*]; Olsen, *Convention*, *supra* note 8, at 214-17.

intervening in a neutral and unbiased manner.[22] According to radical feminists, the state cannot permit itself to be neutral because neutrality means the perpetuation of power and disparities because existing legal view points are from the male perspective, which regards the family as a private issue. This perspective effectively preserves the male grip on an excessive source of power (*i.e*. coercive power according to traditional social relationships) and prevents women and children from using the state and its authorities to improve their living conditions.[23] In other words, according to this argument, non-intervention and legal neutrality are also a form of intervention, because in extreme cases the laws in existence permit coercion and harm caused by one family member to another, and non-intervention has the effect of preserving the existing application of these unequal laws.

The various streams of feminism, if one may generalize on this point, therefore, reject the theory of the "private family," which certainly has many variations, but underlying which is the notion that the family must be left to govern itself, which it typically does in conformity with traditional stereotyped divisions of authority.[24]

Accordingly, feminists do not accept the following general approaches to the family: (a) the family is traditionally regarded as an altruistic and generous place, compared to the competitive, egoistic, wicked and valueless market. Accordingly, it is precisely in the age of the welfare state in which the market is no longer free that the family must preserve its privacy – which is a fundamentally successful model – without state intervention;[25] (b) the family is sufficiently independent as a unit to preserve its privacy. It can act separately from the state because the important values in the family are cooperation and sacrifice, not individualistic values. Among the pillars upholding the family are the obedience of children to parents and parents' sacrifices of their own personal good and convenience for the sake of their children;[26] (c) attempting to achieve equality among family members through intervention in the family unit undermines liberalism and the traditional structure of the family, as well as the

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22. Fiss, *supra* note 18, at 15-16; MacKinnon, *Feminist Jurisprudence*, *supra* note 18, at 644; Olsen, *Convention*, *supra* note 8, at 192. For a criticism directed against this aspect of the radical approach that addresses lack of legal objectivity, see Olsen, *Convention*, *supra* note 8, at 216. For a criticism of the patriarchal perspective of courts and their treatment of children and the benefit of the child in adoption disputes, see Meghan S. Skelton, *Providing Justice for Children in Disputed Adoptions: A Feminist Perspective*, 1 WM. & MARY J. WOMEN & L. 217, 217-18 (1994).

23. Olsen, *Market*, *supra* note 8, at 1504. For an argument that the family unit is a symbol of male superiority, see Hilary Lim & Jeremy Roche, *Feminism and Children's Rights*, *in* FEMINIST PERSPECTIVES ON CHILD LAW 227, 229 (Jo Bridgeman & Daniel Monk eds., 2000).

24. Olsen, *Convention*, *supra* note 8, at 209. Cultural feminists might not support this argument. This stream is discussed below.

25. Olsen, *Market*, *supra* note 8, at 1504-05, 1521.

26. *Id.*

various social functions of its members.[27] All of these ideas are completely rejected by Olsen and other feminists.

In practice, feminists argue that "the private is the public," and even what occurs within the family is of interest to the public and must be made the subject of change.[28] Indeed, the objective of feminists is to erase the structural disparities within the traditional family unit, and to neutralize those aspects which are incompatible with the feminist agenda (thus, for example, they do not necessarily call for the abolition of parental sacrifice). It seems that even non-intervention in the name of liberalism is perceived by feminists as the state's refusal to protect a member in the family unit from destructive acts by other members. Thus, feminists reject arguments that a family must be accorded privacy and be freed from state intervention for the benefit of both the family and society. Instead, feminists argue that this non-intervention necessarily contradicts equality.[29] Indeed, feminists are not persuaded by the theory that the process of ensuring equality and the advancement of individuals by way of intervening in the family unit damages the traditional structure of the family and the various social functions of its members. According to this theory, equality does not mean freedom and liberalism; as leaving the family arena without legal intervention does not mean equality, but rather continuation of the existing traditional structure of repression and control.[30]

The aspiration to true equality within the family unit is related to individualism. However, the ideal of family equality does not create the type of individualism that is related to the liberalism that exists in the free market, where "every person acts as he sees fit." Rather, this is a type of individualism that utilizes the law to destroy the hierarchical structure of traditional roles within the family unit and makes the family more democratic and, therefore, more equal.[31] According to this feminist theory, legal intervention is only welcome if it is intended to equate the status of the weak with that of the strong, in so far as possible, and thereby prevent the strong from achieving power and other advantages over the weaker groups.

Thus, non-intervention in relationships within the family unit creates a barrier between the private sphere, which most would agree includes the family and parent-child relations, and the public sphere (particularly in the context of the non-penetration of criminal law into the family sphere) preserves the relative social power and control of the strong.[32] If modern law intervenes in

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27. *Id.*

28. *See* Michael Freeman, *Feminism and Child Law*, *in* FEMINIST PERSPECTIVES ON CHILD LAW 19, 20 (Jo Bridgeman & Daniel Monk, eds., 2000), [hereinafter Freeman, *Feminism*]; Lim & Roche, *supra* note 23; Olsen, *Convention*, *supra* note 8, at 194-95, 208.

29. Olsen, *Market*, *supra* note 8, at 1504-07; see MacKinnon, *Feminist Jurisprudence*, *supra* note 18.

30. *See, e.g.,* MacKinnon, *Feminist Jurisprudence*, *supra* note 18, at 656; Olsen, *Market*, *supra* note 8, at 1509-12.

31. Olsen, *Market*, *supra* note 8, at 1527-28.

32. Freeman, *Feminism*, *supra* note 28, at 20, and the references cited thereon. At the same time, the state decides what is included within the private sphere. *See* Deborah Rhode,

individuals' private relations in any capacity, there is no reason for it not doing so when those same individuals are organized within a family. Perhaps an even better reason for intervening exists, in light of the barrier that sometimes exists between the family and society and the terrible actions which sometimes take place behind that barrier. This approach would require perceiving the family as a collection of individuals. In this context, the family's "privacy" does not mean the creation of a separate and distinct private sphere in which inequality is perpetuated, but rather, in the language of MacKinnon, treatment of each individual in the family as "an inviolable personality," meaning a person who possesses independence, autonomy and control of the intimacy of his/her identity.[33]

Dana Pogach summarizes her feminist critique regarding the need for legal intervention to prohibit corporal punishment of children and argues that the penetration of the family unit and changes in the way society perceives family members may lead to a revolution in basic concepts, similar to the revolution which took place in the status and condition of women.[34] Pogach expressly states the possibility of applying lessons learned in the context of couples to the parent child relationship because of the similarities between the two relationships. Parent-child relationships also involve a relationship of weak versus strong, maybe even more so than relationships between men and women. In addition, feminists address the allocation of power within both society and the family from a perspective that is not necessarily gender-based.[35]

The fact of a multicultural society spanning several generations ascribing to different viewpoints can also theoretically harness feminism to protect the rights of the child in such areas as corporal punishment and maybe domestic violence in general. Legal intervention that prohibits corporal punishment may be a manifestation of the desire to accord equal treatment for all members of society, irrespective of their status, and to not engage in inconsistent or preferential enforcement of existing laws.[36] The premise in this instance is that the law is the central device able to fuse diverse members of society within the proverbial

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Feminist Critical Theories, 42 STAN. L. REV. 617 (1990). For possible ramifications of this argument, particularly in relation to women, see the comments of Dana Pogach in Dana Pogach and Lior Barshak, *Between Private and Public: Criminal Law and the Family, Following* Cr. A. 4596/98 Anon. v. State of Israel, 20 LEGAL STUDIES, 7, 14-15 (2003) (Isr.). These comments are apparently also applicable to liberal feminism, which, in terms of chronology, was the first feminist school of thought. As previously discussed, equality is the primary concern for this school of thought. *See supra* note 4. One may assume that this type of equality is also required, and perhaps first and foremost required, in the family framework.

33. MacKinnon, *Feminist Jurisprudence*, *supra* note 18, at 656-57.

34. Pogach, *supra* note 32, at 26.

35. CAROL SMART, WOMEN, CRIME AND CRIMINOLOGY: A FEMINIST CRITIQUE 89 (1976).

36. Another reaction to this problem could be to allow parents to follow their own cultural norms where the law does not conform with these strict standards. However, I focus only on the consequence of asserting uniform standards for all sectors since this suggestion might be compatible with feminist theories.

melting pot, while filtering out and uprooting harmful norms that are based on outdated beliefs and opinions, and replacing them with more accepted norms. Even if the mode of education that the parents recognize and acknowledges (in accordance with their religious, ethnic and racial affiliation or in accordance with tenets and beliefs passed down from generation to generation in their family to which they adhere) is different from the mode of education endorsed by that society, the law, as the representative of society, cannot permit itself to become flexible and compromise. Rather, it must condemn these modes of education. In doing so, the law sends a message that society will not accept this behavior because the acts are intolerable according to general societal standards. At the root of this legal approach is the concept that the law must aspire to an ideal and not reflect the existing circumstances.[37] The law must spur social improvement rather than adapt to current conditions. The law thus sets the boundaries of acceptable behavior rather than merely reflecting social norms. In this way, the law will promote principles of distributive justice which embrace principles of equality and fairness and provide rights to children in a non-patronizing fashion in so far as possible.

Michael Freeman (who has written voluminously about children's rights) proposes the adoption of Dworkin's general thesis and acknowledgment of the rights of children from a legal point of view, by recognizing their dignity, even if the utilitarian approach would indicate that the providing rights to children will not be of maximum benefit to society.[38] Recognition of rights is necessarily a function of the law, as any other device will fail because it lacks the same degree of influence. Autonomy in the management of the family unit may lead to the exploitation of the weak by the strong, particularly where the weak party is not aware that he has been harmed because the weak party views the harm as natural in light of the values and way of life instilled in him as part of his education. This is not a declaration of war against minorities, because the entire public must understand that relativism without boundaries is inconceivable, and one of the clear boundaries which the law must consider in relation to minorities in society is the implementation of human rights and children's rights. This legal function is perhaps principally applicable when the child is *not* a partner to the parent's views, for example, when the cultural identity is different, and it is the function of the law to "rescue" the child from the unacceptable acts in which the parents engage.

Accordingly, one may assume that for all these reasons, feminists will also engage in legal intervention in the family, for example, by way of prohibition of corporal punishment, particularly in a multicultural society, where the child can be

37. Jeremy Bentham of the 18th and 19th centuries and John Stuart Mill of the next generation advocated the utilitarian approach. *See, e.g.,* JEREMY BENTHAM, INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (Oxford 1789).

38. Michael D.A. Freeman, *Taking Children's Rights More Seriously*, 6 INT'L. J.L. & FAM. 52 (1992) (based on RONALD M. DWORKIN, TAKING RIGHTS SERIOUSLY (1977)).

in greater need of legal protection, because there s/he is not only in conflict with the parent but also with the more traditional views of their sector or community.[39]

B. Feminism and the Rights of the Child Within the Family

Notwithstanding the aforesaid, there is a broad consensus that the vast majority of feminists have not focused on parent-child relations or children's rights, or even the rights of girls.[40] Indeed, several feminist theorists argue that women and children possess a shared fate and are in "the same boat," as they are both exposed to the same repressive, humiliating, and contemptuous behavior.[41] They believe that women, as the chief caretakers of children, are themselves influenced for better or worse according to the condition of their children.[42] This means that the condition of the children affects the status of women, too. Yet relatively few feminist writings promote (some of them only impliedly) children's rights, and little has been written on the connection between feminism and children's rights.

In some cases, the feminist authors analogize the condition or status of women in families to that of children in families. Thus, for example, Carol Gilligan states that the family is the most dangerous place for both woman and children.[43] Gilligan also states that, in certain cases, the woman is completely dependent on the man (for example, economically); this dependence is

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39. See Edo Landau, *Feminism and Multiculturalism*, *in* MULTICULTURALISM IN THE ISRAELI PRISM 93, 93-100 (Ohad Nahtomi ed., 2003) for different approaches regarding the relationship between multiculturalism and feminism.

40. *See* Kirsten M. Backstrom, *The International Human Rights of the Child: Do They Protect the Female Child?*, 30 GEO. WASH. J. INT'L L. & ECON. 541, 541 (1996); Amy Small Bilyeu, *Trokosi – The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights*, 9 IND. INT'L & COMP. L. REV. 457, 462 (1999); Lim & Roche, *supra* note 23, at 227, 229; Sherrie L. Russell-Brown, *Bridging the "Divide" Between Feminism and Child Protection Using the Discourse of International Human Rights*, 13 S. CAL. REV. L. & WOMEN'S STUD. 163, 163 (2003); Barrie Thorne, *Re-Visioning Women and Social Change: Where are the Children?*, 1 GENDER & SOC'Y 85, 99 (1987).

41. SHULAMITH FIRESTONE, THE DIALECTIC OF SEX (1970); Freeman, *Feminism*, *supra* note 28, at 42; Lim & Roche, *supra* note 23, at 229-30; Olsen, *Convention*, *supra* note 8, at 192; Thorne, *supra* note 40, at 86; Jonathan Todres, *Women's Rights and Children's Rights: A Partnership with Benefits for Both*, 10 CARDOZO WOMEN'S L.J. 603, 603 (2004); Joan Williams, *Toward a Reconstructive Feminism: Reconstructing the Relationship of Market Work and Family Work*, 19 N. ILL. U. L. REV. 89 (1998); Lenore J. Weitzman, *Women and Children Last: The Social and Economic Consequences of Divorce Law Reforms*, *in* FEMINISM, CHILDREN, AND THE NEW FAMILIES 212 (Sanford M. Dornbusch & Myra H. Strober eds., 1988). There are those who argue that this shared fate applies primarily to women and female children. *See* Backstrom, *supra* note 40, at 582.

42. Cynthia Price Cohen, *The United Nations Convention on the Rights of the Child: A Feminist Landmark*, 3 WM. & MARY J. WOMEN & L. 29, 70-71 (1997); Olsen, *Convention*, *supra* note 8*;* Todres, *supra* note 41, at 611-16; Williams, *supra* note 41.

43. Zvi Trigger, *To Dare To Look at the God of Love: Conversation with Carol Gilligan*, *in* TRIALS OF LOVE 557, 564 (Orna Ben Naftali and Hannah Naveh eds., 2005) (Isr.) [hereinafter Gilligan, *God of Love*]. Gilligan's approach ("ethic of care") is unique, and is identified with cultural feminism, which will be discussed below.

somewhat similar to the child-parent relationship, where the inequality is extreme because children are completely dependent on their parents for their survival.[44] Gilligan also compares the relationships based on the frequent identification with the aggressor on the part of the victim, women with their husband and children with their parents, a process which is termed "confusion of power" in psychology.[45] However, these examples are specific comparisons, rather than an alliance of feminists with children's rights more generally.

At the same time, a few authors, whose writings appear to be feminist support child-parent issues and related matters, should be mentioned.

First, I shall consider feminist writings concerning children's rights within the context of human rights in international law: the UN Convention on the Rights of the Child (CRC).[46] Feminist writings—albeit certainly less than one might have hoped for—exist in support of the CRC. These writings reveal a range of views regarding the rights of the child, particularly those of girls, set out in the CRC. These writings analyze the Convention from a number of angles. Some of the authors accept the CRC enthusiastically as a feminist document for all purposes; others criticize it harshly; and yet others choose a middle path.

Frances Olsen, one of the most prominent feminist scholars, examines the CRC critically from the perspective of a few streams in feminism, and reviews the advantages and disadvantages of the CRC according to each approach.[47] The "half empty cup" view of Olsen and other authors emphasizes the CRC articles that seem, according to at least some streams of feminism, to restrict women. In this view, the CRC relates to children generally, and therefore is more relevant to the male child (perhaps even only to the white male child), maybe to the exclusion of the female child. This view, therefore, emphasizes provisions that are lacking in the CRC, such as the marriage of young girls.[48] The more positive view taken by Olsen and others sees the CRC as an impressive, important and incisive document that progresses towards a more complete and feminist perception of rights in general and struggles against the private/public dichotomy.[49] Ultimately, Olsen—and many other writers on this issue—sees the

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44. *Id.* at 566.

45. *Id.*

46. Convention on the Child, *supra* note 7.

47. Olsen, *Convention*, *supra* note 8.

48. *See* Alison Dundes Renteln, *Who's Afraid of the CRC: Objections to the Convention on the Rights of the Child*, 3 ILSA J. INT'L & COMP. L. 629, 638 (1997).

49. Backstrom, *supra* note 40; Price Cohen, *supra* note 42. Price Cohen and Backstrom regard the CRC as promoting the rights of young girls in an exceptional manner. *Id.* Todres emphasizes the mutual benefit gained by joining children's rights and women's rights, and the advantage of human rights generally. Todres, *supra* note 41. He argues that while these two groups have different needs, the mutual benefit is great if the two systems combine. *Id.* Accordingly, Todres calls for cooperation between different populations that were marginalized in the past, among which are not only women and children, but also refugees and ethnic minorities. *Id. See also* Lim & Roche, *supra* note 23, at 229; Williams, *supra* note 41, at 139 (calling for the creation of coalitions between different groups for the enhancement of human rights). Williams proposes a new model of feminism which does not harm children by

CRC as a positive device for promoting the rights and status of children, although it might not address some important issues.[50]

A number of articles even compared the status of women (girls) following the adoption of the CRC with the status of women prior to its adoption, when the principal document opposing discrimination against women was another international convention dealing with the prevention of discrimination against women.[51] These comparisons led some feminists to display great enthusiasm for the promotion of the rights of girls in the CRC.[52] They saw this as an important feminist milestone primarily because young girls are particularly exposed to breaches of human rights, being vulnerable both as women and as children.[53]

Conversely, other feminists severely criticized the CRC for promoting the rights of girls and even perceived it as a threat to the autonomy of the adult woman.[54] Some of the criticism stemmed from opinion that the CRC ought to

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distancing mothers to devote their time to self-development. *Id.* This proposed feminism is pro-family and is based on the premise that children need their parents at home, and that the two parents will integrate their obligations to the family with their obligations to the labor market. *Id.* In her opinion, a change must be made whereby women stay at home more in order to nurture their children, while men work many hours outside the home (as the efforts to equate the work of women to that of men have not succeeded, and have not really led to equality). *Id.* The present situation also gives men an economic advantage in the event of divorce. *Id.* For a discussion of the social premise that a day care center is not as beneficial for the child as a mother at home, thereby creating a dilemma for women, see Karen Skold, *The Interests of Feminists and Children in Child Care*, *in* FEMINISM, CHILDREN, AND THE NEW FAMILIES 113 (Sanford M. Dornbusch & Myra H. Strober eds., 1988). *See also* Linda A. Malone, *Protecting the Least Respected: The Girl Child and the Gender Bias of the Vienna Convention's Adoption and Reservation Regime*, 3 WM. & MARY J. WOMEN & L. 1, 4 (1997).

50. Olsen, *Convention*, *supra* note 8, at 217.

51. International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. (Dec. 21, 1965) (entered into force Jan. 4, 1969) [hereinafter Women's Convention].

52. *See* Backstrom, *supra* note 40 (emphasizing that the integration between the conventions protects children much more than any single document by itself, and it is important to encourage integration with other mechanisms of human rights); Price Cohen, *supra* note 42 (arguing that the Women's Convention does not sufficiently meet all the needs of girls, and because of this the Convention on the Child gains greater importance); *id.* (emphasizing that the Convention declares the existence of equal rights for boys and girls and will be implemented throughout the world); Todres, *supra* note 41 (showing how women's rights can benefit children, particularly girls). *See also* Malone, *supra* note 49; Russell-Brown, *supra* note 40.

53. *See* Todres, *supra* note 41, at 605-07 (describing this situation as a "dual challenge," but also recognizing that young girls can enjoy the rights granted both to women and to children). *Cf.* Backstrom, *supra* note 40, at 541-42 (stating that the abuse of children is still a global problem - particularly affecting female children. She refers to female excision, bride burning, female infanticide, sex slavery and tourism, and servile marriage, as good examples rhat affect the female child because she is female and a child - both positions of vulnerability in many societies).

54. See authorities cited by Price Cohen, *supra* note 42, at 72 (noting that women's organizations expressed criticism against the Convention for failing to distinguish between

be seen first and foremost as protection for the rights of young girls and focus should not be placed on the relations between women and children.[55] Under this view, by promoting the rights of young girls, the CRC would also promote the rights of women, in what is in essence a symbiotic relationship.[56] These writings focused on the rights of girls and not of children in general, with the assumption that if a girl insists on her rights during her childhood, she can do so even more forcefully as a woman.[57] Even though this may be regarded as an egocentric thesis that, at best, ignores the rights of the male child, or even attacks the drafters of the CRC for preferring the male child,[58] it does represent a development of the rights of some children, *i.e.*, the young girls. This, of course, is also valuable because at this junction, the concept of the rights of women and the rights of children unite, or at least are supposed to unite.

Some feminists state that it is easy for feminism to concentrate on international documents, where the focus is on non-discrimination against girls, but that the true test of whether feminism is concerned with children's rights must be found in other matters.[59] I will now turn to some of these other matters.

First, I will examine the writings on the sexual abuse of children, mostly by radical feminism scholars. These authors look at the fundamental oppression of women by men through domestic violence, affecting both wives (or female partners) and girls. Certainly, here it is easier to identify feminist writings than in the context of children's issues. However, these writings—for example, Carol-Ann Hooper's review of feminism in the 19th and 20th centuries regarding the sexual abuse of children—generally concentrate on the following:

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mothers and fathers, using general language of "parents" or "custodians," and discriminating against mothers in some of its provisions). *See id.* at 70.

55. *Id.* at 71. Price Cohen also criticizes Olsen on this point.

56. *Id.*; Todres, *supra* note 42, at 612-16.

57. Price Cohen, *supra* note 42, at 42 (contrasting girls' limited access to education because of their intensive household duties, among other factors, with the fact that girls are seen as a burden on the family, leading to early marriage and often pregnancy during youth). According to Price Cohen, the Convention on the Child must be perceived as the "first floor" of the building, before the Women's Convention. *See id.* at 73-74, 76; Todres, *supra* note 41, at 612-16. At the same time, it should be noted that Price Cohen (and others) caution against perceiving girls as "pre-women," as there is a danger that young girls will not be regarded as possessing their own rights. Price Cohen, *supra* note 42, at 77-78. For the perception of children generally as "pre-adults" and for the extreme view which asserts that the child is not yet a person but a "pre-person," in the sense of "not yet being," see EUGEEN VERHELLEN, CONVENTION ON THE RIGHTS OF THE CHILD: BACKGROUND, MOTIVATION, STRATEGIES, MAIN THEMES 14 (1994); Melinda Jones & Lee Ann Basser Marks, *The Dynamic Developmental Model of the Rights of the Child: A Feminist Approach to Rights and Sterilisation*, 2 INT'L J. CHILD. RTS. 265, 265-66 (1994); Thorne, *supra* note 40, at 93.

58. See Price Cohen, *supra* note 42, at 41-43, for a comparison of the rights of girls with those of boys and reference to the fact that boys are almost always preferred over girls (for example, in relation to issues such as breast feeding, quality of food, health services, education, performing some of the household tasks and in some countries also leaving to work as servants).

59. Lim & Roche, *supra* note 23, at 230.

the woman and mother and the sexual abuse she suffered in her childhood;[60] the sense of loss, confusion, and change of world view that the mother experiences who discovers that her child suffered abuse at the hands of her spouse;[61] the manner in which the woman and mother handles the sexual abuse of children by a man-husband-father;[62] and the criticism of the accusations made against mothers who allegedly are to blame of sexual abuse of children, even when the abuser is the father. This final criticism is based on the theory of "the dysfunctional family" and the perception that the two parents are a single entity.[63]

In relation to sexual abuse of children, which is arguably the most severe example of harm to children, feminists may have felt obligated to become involved. Feminists have placed this matter on the public agenda in different historical periods, arguing that existing laws were patriarchal and inadequate in terms of providing protection to women or young girls against male violence.[64] One possible reason for this could be that girls might be subjected to sexual abuse more than boys.

Likewise, Sheila Jeffreys' review of feminism and sexuality from 1880 to 1930 is based on this perspective, and takes it one step further.[65] Her review primarily addresses the sexual abuse of young girls and feminists' efforts to put women officials in key positions to help exploited girls (such as women judges, women jurors, policewomen and women doctors) as well as to push forward legislation against incest within the legal system.[66] She asserts that initially the legal system was biased in favor of men and showed them great leniency, and often even regarded girls who had been sexually abused as having been guilty of tempting her male abuser.[67] Here, too, Jeffreys admits that feminists' rage against sexual abuse of young girls ensued from their general desire to protect

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60. Carol-Ann Hooper, *Child Sexual Abuse and the Regulation of Women: Variations on a Theme, in* REGULATING WOMANHOOD: HISTORICAL ESSAYS ON MARRIAGE, MOTHERHOOD AND SEXUALITY 53 (Carol Smart ed., 1992).

61. *Id.*

62. *Id.* at 70.

63. *Id.* at 68, 72.

64. *Id.* at 53, 57-58, 66-67 (exemplifying cooperation between women's organizations and children's organizations). *See also* Caia Johnson, *Traumatic Amnesia in the New Millennium: A New Approach to Exhumed Memories of Childhood Sexual Abuse*, 21 HAMLINE J. PUB. L. & POL'Y 387, 400 (2000); Jodi Leibowitz, *Criminal Statutes of Limitations: An Obstacle to the Prosecution and Punishment of Child Sexual Abuse*, 25 CARDOZO L. REV. 907, 907-08 (2003); Lonnie Brian Richardson, *Missing Pieces of Memory: A Rejection of "Type" Classifications and a Demand for a More Subjective Approach Regarding Adult Survivors of Childhood Sexual Abuse*, 11 ST. THOMAS L. REV. 515, 516 (1999); Thorne, *supra* note 40, at 90.

65. Sheila Jeffreys, The Spinster and Her Enemies, Feminism and Sexuality 1880-1930, 54-84 (1987).

66. *Id.*

67. *See id.* at 59.

women and girls from coercive abuse by older men in general and within the family framework in particular.[68]

Hooper focuses on the woman/mother's confrontation with male violence, not on the exploited child or even the relationship between the two,[69] while Jeffreys focuses on both the woman/mother's and girl's confrontation with male violence.[70] However, in both cases the attack by the man is at the center of the analysis, sometimes to a greater degree than the victim of the abuse. Thus, for example, Hooper says that the phenomenon of sexual abuse of children represents informal societal control of women by men. Women are victims as young girls, as partners of abusive men, and as mothers, when they are the primary providers of protection for children against sexual abuse – an abuse that restricts their autonomy and control over their lives.[71] All this is in the context of the male tendency to sexually abuse children (and in particular young girls, according to this argument) and display irresponsibility and indifference towards them generally.[72] Thus, it is possible to explain feminist intervention (by way of writing) in this area on the basis that sexual abuse is characteristic of men and not of women. Thus, in contrast, for example, to corporal punishment, it is easier to cast the problem as a generally male one, and it is easier for feminists to use the child as a tool to advance the overall struggle against male-patriarchal control.[73] In contrast to other forms of abuse, boys also suffer, and women also are the perpetrators.

Kirsten Backstrom analyzes a number of scenarios, among them domestic violence, which indicate that girls are the thread connecting children and women.[74] While she does not specifically mention corporal punishment, only violence generally, she draws a link between violence experienced by girls and violence sometimes experienced by the same girls when they reach adulthood, where the most classic form of domestic violence is wife-beating by husbands. According to Backstrom, boys also experience domestic violence, but less frequently and to less injurious effect.[75] Thus, here too, the governing stereotype is that of a man physically abusing a girl or woman.

Some feminists explain that once feminists have decided to deal with the rights of children, they will prefer to deal with severe situations such as sexual abuse, circumcision of girls, child labor, forced marriage and the like, and not

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68. *Id.* at 54, 67.

69. Hooper, *supra* note 60.

70. JEFFREYS, *supra* note 65.

71. Hooper, *supra* note 60, at 53.

72. *Id.* at 56; Freeman, *Feminism*, *supra* note 28, at 42.

73. It is possible to identify the initial feminist writings addressing sexual abuse from the angle of the rights of girls versus the rights of women, without expressly lashing out against male dominance. However, these are only the initial writings, and the perspective here is also primarily feminist and not from the perspective of the child. *See* Russell-Brown, *supra* note 40, at 165.

74. Backstrom, *supra* note 40, at 547. Backstrom's writing seems to be a radical or a mixed approach.

75. *Id.*

matters such as corporal punishment.[76] One may assume that, in this context, it is not coincidental that the principal victims of the abusive conduct are girls. Some of these feminists explain that corporal punishment is permitted in most countries around the world and, for some reason, feminism blindly accepts this practice. Even though in most countries physical *abuse* is prohibited, feminists have difficulty drawing the line between the two forms of conduct.[77] Consequently, some scholars critique those feminist writings which have not sought to define abusive behavior to include corporal punishment as conduct that should be prohibited.[78]

As with Frances Olsen, most feminist critiques that call for intervention in the family traditionally focus on criminal law (as noted, mainly in relation to abuse or neglect). But they do not ignore the debate surrounding the attitude of society and the law towards contractual relations between couples,[79] or towards a tort claim filed by one member of the family unit against another and the possible familial immunity of the defendant for such a claim. Indeed, Olsen treats this through a discussion of the civil family law, in terms of judicial policy, specifically, whether to recognize a child's tort claim against a parent.[80] In her opinion, society currently expects the courts to confirm the traditional social functions of parents as imposers of discipline, and if the courts were to enable a child to sue his/her parents in a tort action for having sent him to his room as punishment *(e.g.,* for the tort of false imprisonment), most members of the public would regard this as an extreme interference on the part of the state in family life.[81] On the other hand, if a third party sent the child to his/her room, the act would be regarded as a prohibited deprivation of the child's freedom and no immunity would attach to the act.[82] Olsen notes that, on occasion, failure to apply laws to the family sphere causes a type of internal contradiction and disharmony, whereby, on one hand, the state does not recognize tort claims within the family and in effect establishes immunity against such claims, and on the other hand enforces the criminal law against third parties, on occasion, for the very same acts, as shown by the example above.[83]

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76. Lim & Roche, *supra* note 23, at 230 n.18.

77. Freeman, *Feminism*, *supra* note 28, at 21.

78. *Id.* at 44 (asserting that feminists in England should have followed the Swedish in this regard by influencing decision-makers to prohibit corporal punishment, and that they should have given meaning to the rights of the child).

79. Olsen, *Market*, *supra* note 8, at 1521-24.

80. *Id.* at 1505-06.

81. *Id.*

82. *Id.* For a discussion of parent-child immunity, see DAN B. DOBBS & PAUL T. HAYDEN, TORTS AND COMPENSATION 441-46 (5th ed. 2005); RICHARD A. EPSTEIN, TORTS 615-17 (1999); FRANK J. VANDALL ET AL., TORTS: CASES AND PROBLEMS 668-88 (2d ed. 2003); Sandra L. Haley, Comment, *The Parental Tort Immunity Doctrine: Is It A Defensible Defense?*, 30 U. RICH. L. REV. 575 (1996).

83. Olsen, *Market*, *supra* note 8, at 1524.

The example provided by Olsen may also apply, of course, to the issue of corporal punishment, as when one person hits another, even if the blow is light, the act is deemed to be a criminal offense and the tort of battery.

Other prominent feminist scholars have focused on general definitions and structure of the family, and some focus specifically on custody issues, including visitation rights and other specific disputes. Even though these issues involve children's rights, the main emphasis is put on gender and on the rights of the wife and the mother versus the rights of the husband, partner and father, excluding any real emphasis on the rights of the girl.

Katherine Bartlett deals with issues like custody disputes and visitation of grandparents from a feminist perspective. One of her articles explores the issue of feminism in family law in the context of divorce, reproduction and domestic violence.[84] Given that the aims of feminism are to remedy unjust inequalities, Bartlett shows how feminists have attempted to deal with a "legal regime that has permitted, even reinforced, the subordination of some family members to others."[85] In this sense, Bartlett's analysis of feminist intervention in family law inequalities could be applied to parent-children relations, and to the children as subordinates of their parents. Bartlett also looks at the role feminists have played in legal reform efforts to prevent domestic abuse. She shows how women's rights movements have included children's rights by protecting children from domestic violence.[86] These reforms include taking domestic violence into account when making decisions about custody and visitation rights in divorce cases.[87] However, it seems that, although she addresses the best interest of the child, Bartlett's writing focuses on the dispute between the rights of adults. In the context of visitation rights for grandparents, she writes: "Children do not, and should not, bear the responsibility about how they should be raised. This is up to parents…and neither the state nor the children themselves."[88]Although, Bartlett discusses the rights of the child, she does so from a family-based approach which is actually a paternalistic-women-adult perspective. She focuses on the husband-wife relationship rather than the parent-state or parent-child relationship.[89]

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84. Katherine T. Bartlett, *Feminism and Family Law*, 33 FAM. L.Q. 475 (1999). One may identify Bartlett's feminist writing as liberal or a somewhat mixed approach. *See, e.g.,* Collette Matzzie, *Substantive Equality and Antidiscrimination: Accommodating Pregnancy Under the Americans with Disabilities Act*, 82 GEO. L.J. 193, 194 (1993).

85. *Id.* at 475.

86. *Id.* at 497.

87. *Id.*

88. Katherine T. Bartlett, *Grandparent Visitation: Best Interests Test is Not in Child's Best Interests*, 102 W. VA. L. REV. 724, 726 (2000) (endorsing *Troxel v. Granville*, a decision that allows parents to limit grandparent visitation).

89. *See, e.g.,* Katherine T. Bartlett, *Child Custody in the 21st Century: How the American Law Institute Proposes to Achieve Predictability and Still Protect the Individual Child's Best Interests*, 35 WILLAMETTE L. REV. 467 (1999) (discussing the American Law Institute's approach to custody); Katherine T. Bartlett, *Re-Expressing Parenthood*, 98 YALE L.J. 293, 295 (1988) (arguing to re-evaluate how the court approaches custody disputes, from a system of "parental possessiveness" to one of rights and responsibilities in

Carol Smart also addresses custody disputes as a central issue in the power struggle between parents and the role of these disputes in establishing the woman's power as a mother.[90]

Catharine MacKinnon also deals with a wide range of issues related to the power struggle between men and women, and in doing so addresses sex and physical violence towards children in general and girls in particular. [91]

Martha Fineman follows a similar path. Indeed, Fineman addresses children's rights within the larger picture of family autonomy.[92] She argues that a more effective way to promote family privacy rather than relying on a separate private sphere of family autonomy would be to evenly distribute the burdens of "inevitable dependency" between the family and the market.[93] Fineman points to the existing problems created by existing ideas of family privacy to illustrate why changes to the concept of family privacy are necessary. She looks both at a feminist critique of domestic abuse and also at the problems created by the practice of treating children as property of their parents. Although she advocates turning the family into a functionally equitable institution, she does make a distinction between feminist and children's rights, noting "it is more appropriate to view the parent-child relationship, not as one of equality, as with sexual affiliates, but as one of responsibility."[94] Despite this distinction, when discussing the necessary changes to family privacy to create a more equitable and functional family form, Fineman does choose to integrate women's rights and children's rights in a singular argument for the reform of the family.

However, in addressing issues specific to children, Fineman restricts her analysis of the inequality between the sexes in the family and in the public sphere to the point of view of wives and mothers. For example, when she deals with the issue of visitation rights for abusive spouses she focuses not on the children's rights, but on the fact that visitation can place the woman at a higher risk from the abusive ex-spouse.[95] As a feminist, Fineman argues against the judicial tendency to place much of the burden in legal proceedings on the abused spouse. Her consideration of children's rights in this model is solely in

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differentiating between parental roles); Katherine T. Bartlett and Carol B. Stack, *Joint Custody, Feminism and the Dependency Dilemma*, 2 BERKELEY WOMEN'S L.J. 9 (1986).

90. *See* Carol Smart, *Power and the Politics of Child Custody*, *in* CHILD CUSTODY AND THE POLITICS OF GENDER 1 (Carol Smart & Selma Sevenhuijsen eds., 1989) [hereinafter Smart, *Power*]. Smart can be defined as a radical feminist. *See*, *e.g.* Kathleen Mahoney, *Theoretical Perspectives on Women's Human Rights and Strategies for Their Implementation*, 21 BROOK. J. INT'L L. 799, 818 n.93 (1996).

91. *See* MacKinnon, *Points Against Postmodernism*, *supra* note 21.

92. Martha Albertson Fineman, *What Place for Family Privacy?*, 67 GEO. WASH. L. REV. 1207 (1999) [hereinafter Fineman, *Privacy*]. It seems that Fineman is a liberal feminist. *See* Bartlett, *Cracking Foundations*, *supra* note 19, at 43-44.

93. Fineman, *Privacy*, *supra* note 92, at 1209.

94. *Id.* at 1222.

95. Martha Albertson Fineman, *Domestic Violence, Custody, and Visitation*, 36 FAM. L.Q. 211, 213 (2002).

relation to women's rights. She is more concerned about women's and mother's rights in these custody disputes than the actual best interest of the children. In another article, Fineman discusses the issue of children's rights within society.[96] She further explores how to affect gender neutrality in custody decisions, but focuses on how to keep gender equality and feminist ideals while still coming to a fair decision.[97]

Susan Moller Okin looks at the balance of rights within the spousal relationship, especially in her book, *Justice, Gender, and the Family*.[98] In looking at family roles and responsibilities, Okin tries to break down the family structure along gender lines.

The writings of Barbara Woodhouse and Martha Minow differ from those mentioned above since they focus on children's rights and their best interests from a feminist perspective.

Barbara Woodhouse is a great advocate of a child-centered approach to family law and other juvenile law issues, and some of her theories can be likened to feminism (probably the liberal school of thought), as she attempts to change the constitutional[99] and legal status of children, primarily in custody[100]

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96. Martha Albertson Fineman, *Fatherhood, Feminism and Family Law*, 32 MCGEORGE L. REV. 1031 (2001) [hereinafter Fineman, *Fatherhood*].

97. *Id.* In this article, Fineman explores the impact of liberal feminism on family law and the effect of strictly applied equality on unequal roles in the family, specifically mothers typically having more responsibility for children than fathers. She explains that the liberal feminist movements in family law have actually further disadvantaged women by strictly enforcing gender neutral decision making where motherhood should sometimes be considered separately. Fineman credits this disadvantageous equality in family law to the fact that feminists are often loath to accept special treatment for motherhood because of "their overarching commitment to equality for women" and that "[f]or these feminists, it is imperative that the law reflect society's *aspirations* for equality rather than remedy hardships caused by existing (gendered) allocations of household labor." *Id.* at 1034-35 (emphasis in the original). Her focus is here, as previously mentioned, not on the best interests of the child.

98. SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY (1989). Okin is considered a radical feminist who criticizes the multiculturalism approach. *See* Pruitt, *supra* note 19, at 189.

99. Barbara Bennett Woodhouse, *The Constitutionalization of Children's Rights: Incorporating Emerging Human Rights into Constitutional Doctrine*, 2 U. PA. J. CONST. L. 1 (1999) (using the South African constitution as a case study to endow children with rights). Because granting parents and family a high degree of autonomy from state intrusion is problematic, Woodhouse claims that there may be better, newer models of family privacy that can both protect children's rights and provide a certain degree of family autonomy. Barbara Bennett Woodhouse, *The Dark Side of Family Privacy*, 67 GEO. WASH. L. REV. 1247, 1249-51 (1999). Woodhouse is hesitant to view the family as an entity, but instead views members of a family as individuals. *Id.* at 1251. She argues for replacing the privacy model with a human dignity model. *Id.* at 1261. Though not all constitutions explicitly provide a right to human dignity, she compares this approach to the United States' right to privacy is implicit within the penumbras of other rights. *Id.* This approach is related to her case study of South Africa, exemplifying the fact that many newer constitutions do include a right to dignity (including South Africa's constitution). *Id.*

100. Barbara Bennett Woodhouse, *Child Custody in the Age of Children's Rights: The Search for a Just and Workable Standard*, 33 FAM. L.Q. 815, 817 (1999) (stating that

and visitation rights disputes,[101] to reflect basic rights that she feels should be granted to children. Her perspective on the issue of children's rights is that of a "generist perspective," which is fundamentally different than the feminist perspective that focuses on equality between men and women. Instead, a generalist perspective aims to establish parents as "trustees" of children as opposed to "owners."[102] Under this approach, the best way to address family disputes in a legal sense and still honor children's rights would be to respect children's need for identity and continuity. The law should give children ownership of their fate to a certain capacity instead of treating them as property. This approach is particularly relevant in determining a non-traditional family structure, as children should have the right to determine whether or not to associate with non-traditional caretakers, such as grandparents and ex-step-parents.

A great deal of Woodhouse's literature examines the role of children's rights within the structure of the family.[103] Under Woodhouse's child-centered analysis, while children are not equally autonomous as their parents, they do have the right to be treated as people, rather than as their parents' property. Looking at parents as stewards, rather than owners of the child, Woodhouse emphasizes that this perspective requires a genuine love of children, a love that

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"children's position as the booty in gender wars even today shapes the development of children's law"). Woodhouse argues that the best way to decide custody cases in the era of children's rights is by using the best interest standard. *Id.* at 815. While this standard requires the court to do more fact finding than is necessary when a simple presumption rules the custody dispute, occasionally, as in the cultural feminist movement, the court and laws must shoulder this burden in order to best accommodate children's rights. *Id.* at 831. Woodhouse points out that custody decisions refer to children's interests rather than children's rights, partly because the judiciary does not view children as autonomous individuals with rights. Barbara Bennett Woodhouse, *Talking about Children's Rights in Judicial Custody and Visitation Decision-Making*, 36 FAM. L.Q. 105, 110 (2002). Much as feminists did in the feminist era, she also argues that on the issue of custody, "a child should be viewed as 'a unique person and not as a fungible object.'" *Id.* at 117. A significant connection to feminist theories is Woodhouse's explicit argument that a "protection principle" exists in our judiciary and that children, the weak party, have a right to be protected from the parents, the powerful party, though this principle is juxtaposed against the right to have semi-autonomous familial relationships. *Id.* at 120.

101. Barbara Bennett Woodhouse & Sacha Coupet, Troxel v. Granville*: Implications for at Risk Children and the Amicus Curiae Role of University-Based Interdisciplinary Centers for Children*, 32 RUTGERS L.J. 857 (2000) (commenting, as does Bartlett, on *Troxel v. Granville* and the risk to children's rights created by the decision to allow parents to limit grandparent visitation). They note that the Court did not consider children's rights in determining this case, which focused on the lack of grandparent's right, and argue that the Court should have considered children's rights. *Id.* at 868-69, 871.

102. Barbara Bennett Woodhouse, *"Out of Children's Needs, Children's Rights:" The Child's Voice in Defining the Family*, 8 BYU J. PUB. L. 321 (1993).

103. Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 CARDOZO L. REV. 1747 (1993) [hereinafter Woodhouse, *Hatching the Egg*]; Barbara Bennett Woodhouse, *From Property to Personhood: A Child-Centered Perspective on Parents' Rights*, 5 GEO. J. ON FIGHTING POVERTY 313 (1998).

is missing from many families today.[104] This love is necessary because a generist perspective is not meant to give children full autonomy, but instead endow parents, judges, and legislators with the ability to make the best decisions on behalf of the child.[105] Furthermore, children's needs could serve as a justification to overcome adult power. In particular, children's needs should be the primary consideration in many family law issues, particularly custody.[106] Additionally, it is the duty of the law to encourage and foster parental selflessness to benefit children.[107] Woodhouse later notes that to create this generist perspective child-centered legal system, we must listen to the voices of children,[108] support caregivers in attempting to remodel the structure of families, and also "must be committed to challenging and combating, rather than replicating, the effects of sexism, racism, and poverty on children and their families."[109]

Woodhouse also examines the consequences of children's rights and increased individualism on the structure and breakdown of the family unit.[110] In fact, she claims, the main catalyst for change within the family and family law has been an increasing respect for children's rights and dignity.[111] This concern has also impacted the distribution of child care, and correlates with the women's rights movements. Woodhouse states "such support is a recognition that if children are to receive adequate care and nurture in a changing society, we must all share in the work of child-rearing that is now disproportionately shouldered by women."[112]

Unlike Woodhouse, Martha Minow criticizes the existing discourse of rights, but sees the development of the rights of the child, and their connection to the relationship between the child and the state and their parents, as something that could lead to an improvement of the discourse on rights in general.[113] One desirable consequence from the promotion of the rights and autonomy of the child is the eradication of the misconception that granting rights to children may actually harm them because they need authority (that sets boundaries) and not

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104. Woodhouse, *Hatching the Egg, supra* note 103, at 1755.

105. *Id.*

106. *Id.* at 1815.

107. *Id.* at 1865.

108. Barbara Bennett Woodhouse, *Defending Childhood: Developing a Child-Centered Law and Policy Agenda*, 14 U. FLA. J.L. & PUB. POL'Y at vii (2002) [hereinafter Woodhouse, *Defending Childhood*]. *See also* Barbara Bennett Woodhouse, *Enhancing Children's Participation in Policy Formation*, 45 ARIZ. L. REV. 751 (2003).

109. Woodhouse, *Defending Childhood*, *supra* note 108, at xii.

110. Barbara Bennett Woodhouse, *Children's Rights: The Destruction and Promise of Family*, 1993 BYU L. REV. 497 (1993).

111. *Id.*

112. *Id.* at 512.

113. Martha Minow, *Rights for the Next Generation: A Feminist Approach to Children's Rights*, 9 HARV. WOMEN'S L. REV. 1 (1986) [hereinafter Minow, *Rights for Next Generation*]. Minow's feminist approach can be identified as somewhat mixed, with a tendency towards a relational (a new cultural) feminist approach. *See* Pruitt, *supra* note 19, at 195.

rights. This idea is based on the fear that children's rights may constrict the freedom and authority of the parents.[114] Thus, Minow's article joins other works which do not deal with the rights of the child as such, but see them as another link in the chain of rights generally, and as promoting the rights of women in particular (including those of girls).[115] Yet, she nonetheless advanced the cause of children's rights. Minow also states that children's rights "owe" more than a little to efforts that have been made in order to promote women's rights, as women's struggle for rights had political reforms benefited children. For example, children are no longer regarded as chattel but as autonomous individuals.[116] Thus, her statements indicate that children's rights were indirectly influenced or are a by-product of women's rights.[117]

Minow further claims that children's advocates need to push for children's rights without the influence from an adult agenda.[118] Minow takes a cultural approach to advocating for children's rights. By suggesting that children are in fact very different and unique from their parents and that these differences need to be examined and acknowledged, her approach is somewhat similar to the cultural feminist approach.[119] In one of her articles, she compares the emerging study of the subjugation of children to the study of the subjugation of women throughout the women's movement, exemplified by the introduction of women's studies in the university setting.[120] However, Minow makes a point to

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114. Minow, *Rights for Next Generation, supra* note 113, at 1.

115. *See* Olsen, *Convention*, *supra* note 8. Olsen presents some of these other works presented in this chapter, along with her own writings.

116. This is a main idea of her article. Fineman, *Privacy*, *supra* note 92.

117. *Cf.* Leibowitz, *supra* note 65, at 908. It seems that Williams' proposal for a new model of feminism is designed, first and foremost, to improve the situation of women, and the benefit to children is, in effect, a by-product, even though it is presented as a principal outcome. Williams, *supra* note 41. For past activities of women's organizations to safeguard children against neglect and exploitation in situations where the discourse was not yet one of children's rights but rather the need to save the children, see Lim & Roche, *supra* note 23, at 233.

118. Martha Minow, *Children's Rights: Where We've Been, and Where We're Going*, 68 TEMP. L. REV. 1573 (1995) [hereinafter Minow, *Where We've Been*]; Minow, *Children's Rights*, *supra* note 7.

119. *See* Minow, *Rights for Next Generation*, *supra* note 113. In this article, Minow applies a feminist approach to promoting children's rights. She notes the methods and themes of the feminist movement, including "appreciation of relationships, a commitment to a vision of the self forged in connection with—not just through separation from—others, and a preference for glimpses of complexity, contextual detail, and continuing conversation." *Id.* at 15. She notes, however, that while the children's rights movement can be informed by the women's rights movements, a simplistic view of rights and equality is not useful in the children's rights movement. Because children are constantly developing in cognition and maturity, they may be able to carry the responsibility associated with rights at varying ages depending on the right in question. Minow concludes by advocating for public discourse about the rights of children in order to understand the joint dependency of children and parents. *Id.* at 24. This is clearly a perspective similar to cultural feminism, noting the uniqueness of a child's situation, while still attempting to use the particularities of children as a means of making them different, but just as worthy of rights, as parents.

120. Martha Minow, *Children's Studies: A Proposal*, 57 OHIO ST. L.J. 511 (1996). In this article, Minow advocates establishing programs to study the experiences of children in

distinguish her opinions about the children's and the women's rights movements as the power differential in parent-child relationship is not the same as in a male-female relationship.

Finally, jurist and sociologist Leon Sheleff—whose unique approach at first seems both provocative and extreme—argues that there is a natural antipathy between generations and genders.[121] His approach is particularly relevant in the context of parents' violence against their children. Sheleff's perspective is interdisciplinary and takes into account views from the following fields: sociology, psychology, anthropology, philosophy, education, law, as well as feminism or maybe humanism in relation to the generational conflict. Sheleff focuses on the hostility occasionally felt by adults and parents towards the group whose welfare and care is in their hands, namely, infants, children and youths.[122] In other words, he believes that a comparison should be drawn between the hostility inherent in relations between parents and children and the similar hostility existing between the sexes. According to Sheleff, mutual hostility exists in both sets of relationships, but there is no equality, because of the hostility felt by the strong towards the weak. For example, "[a]dults certainly have both the opportunity and the physical power to express their hostility."[123] In his opinion, because relations between the sexes influence relations between generations and the converse, particularly when the relations are within the same family, to lessen the hostility in one circle it is necessary to lessen the hostility in the other circle, too.[124] It is worthwhile to develop this point briefly.

According to Sheleff, the disparity in a conflict between parents and children ensues, in part, from the fact that the parents as adults are dominant over their children, and they have the opportunity and physical capacity to express their hostility against their children.[125]

Sheleff asserts that the family tensions that lead to hostility can also originate from the provocative conduct of children and youths and even violence perpetrated by children against their parents. He argues that this hostility can even cause a child to kill their parent, in accordance with the well-known Oedipus complex[126] and common Freudian theories, which see the

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universities. Much as the way that women's studies and African-American studies programs were established via interdisciplinary collaborations, child studies should pull across disciplines looking at the psychological, economic, and other impacts of society on children's experiences and rights. The implications of this are that the full comprehension of children, as a disadvantaged group, can be understood if better studied, much as women's rights have been advanced through university focus on women's studies.

121. SHELEFF, *supra* note 7, at 5.

122. *Id.* at 3. This is the basic assumption of Sheleff's book.

123. *Id.* at 9.

124. *Id.* at 325-26.

125. *Id.* at 9.

126. Gilligan is of the opinion that positioning the Oedipus complex at the heart of developmental psychology, in effect, favors male dominance, and only eradication of this theory will enable true equality between men and women. She suggests adherence to another myth, which tells a tale of love which is actually possible and not tragic. *See* Gilligan, *God of Love*, *supra* note 43, at 559.

intergenerational conflict from only one direction – "the evil intentions of the young."[127] However, in his opinion, the intergenerational problems are two-directional and is reflected in violence committed by parents against their children, where the force exercised by the parent is actually identified as weakness and is motivated and ensues from that hostility.[128] According to Sheleff, as every adult was once a child, the adult is convinced that s/he understands the feelings and needs of the children; however, this is not always the case.[129] In his view, tension and hostility based on the age gap, may be no less severe than that which develops from other sector-related differences (such as those connected to religion, race or social status). This is especially true where the two hostile parties share the same surroundings, like when they are under the same roof.[130] Indeed, according to Sheleff, the hostility is mutual;

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127. SHELEFF, *supra* note 7, at 6. Sheleff further develops this idea at 15-176.

128. *Id.* at 9, 249.

129. *Id.* at 7. Linked to this, Sheleff contends it is problematic that sociological research often focuses on the adult (including the parent) and not on the child. *Id.* at 7-8. This issue must be considered from all directions and inter-generational hostility too must be examined from each side, as explained by Becker: *"A few sociologists may be sufficiently biased in favor of youth to grant credibility to their account of how the adult world treats them. But why do we not accuse other sociologists who study youth of being biased in favor of adults? Most research on youth, after all, is clearly designed to find out why youth are so troublesome for adults, rather than asking the equally interesting sociological question: 'Why do adults make so much trouble for youth?'"* Howard S. Becker, Whose Side Are We On? (August 1966), *in* SOC. PROBS., Winter 1967, at 242. Sheleff absorbs the criticism, "raises the gauntlet," and presents his thesis in a way which, according to him, is not completely objective, through the eyes of the children. SHELEFF, *supra* note 7, at 11. Thus, Sheleff completes what is missing in the "equation:":the part played by parental hostility towards children, without refuting or diminishing the importance of the opposite part: the hostility of the children towards the adults, which is very profound and ensues from their aspirations, hopes and desire to obtain their equal share of freedom, power and resources. As noted, Sheleff elaborates on the "Oedipus complex" from Greek mythology, of which Zigmund Freud spoke, and which it is claimed began with the hostility shown by Oedipus' father towards him. *Id.* at 18. Sheleff gives this structure—the interpretation and ramifications of which are the subject of scholarly dispute—a unique interpretation in relation to parent-child relations in the modern world. *Id.* at 19. Indeed, the Oedipus complex only concerns an analysis of the reasons and causes of youth violence towards adults (murder, in the Oedipus case) and not the converse. *Id.* at 6. For various Freudian theories which offer different explanations for the origin of children's hostility, and which actually perceive the relations between a child and his father as the key to understanding the inter-generational conflict in accordance with the Oedipus complex, see *id.* at 329-30. Still, Sheleff links this, in the appropriate circumstances, to the explanation for tensions within the family generally, including violence and hostility shown by adults towards children. *Id.* at 8-9. Sheleff presents, in effect, a critique on models of Freudian thinking within the field known as 'sociology of knowledge' by means of a discussion of the converse case to that of Oedipus, namely, the case where the father kills the son, taken from Persian mythology, through which Sheleff explains that the inter-generational problems are indeed two-directional. *Id.* at 10, 33-37.

130. SHELEFF, *supra* note 7, at 322. Sheleff does not ignore the positive sides of the generational gap, which are expressed, for example, by disclosures of happiness and pleasure in his own relationships with the members of other generations in his family. *Id.* at 322-23. However, the inter-generational conflict which creates the hostility of the adults ensues

however, in an unequal relationship such as the family unit, the hand of the strong will overcome that of the weak and the asymmetry will become obvious. The parent's hostility towards the child will supersede and dominate the relationship.[131]

Sheleff's theory regarding mutual hostility between parents and children—which elucidates the problematic aspects and complexity of their relationship—may be somewhat extreme and incapable of truly explaining every interaction between a parent and child which involves an element of punishment that is ultimately carried out for the education of the child in order to draw boundaries for him/her for their future benefit. However, it is not possible to ignore the core of Sheleff's approach which may be true in many cases, particularly if one accepts the argument that corporal punishment is not really carried out for the benefit of the child but in order to allow the parent to let off steam and release his/her anger on the child, thereby expressing the hostility of the dominant party – the parent.

Sheleff does more than merely raise this issue as a problem. He also proposes possible solutions, one of which is relevant to our inquiry[132] Sheleff draws a parallel between parent-child relations and another type of relationship.[133] In his opinion, to change parent-child relations depends, in part, on changing male-female relations, in particular the relationship between husband and wife.[134] These relationships are similar in that it is customary to classify one party as weak and the other as strong. This is true both within the family context and outside it.[135] In other words, relations between the sexes influence intergenerational relations and vice versa. In effect, there is a triangular relationship: father-husband, mother-wife, and son-daughter. It should be emphasized that the two-directional influence is not unique to a particular society; it can take place within a specific family, in which the mother is also the wife, the father is also the husband and the children are also brothers, and a change in one relationship may influences other relationships.[136] Solving the tension and hostility between sexes in the family (mainly resolving tension regarding the tension between motherhood and fatherhood and child

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primarily from society's demands on them. Among the causes of hostility are: self-sacrifice for children; fear of failure to fulfil their functions as parents; internal conflicts; fatigue and the feeling that abilities cannot meet the test of time; feelings of guilt and even of failure; feelings of despair; a sense of rejection by the children or even envy of them and failures of communication with them. *Id.* at 323-24. In my opinion, Sheleff focuses—in the same way as those sociologists whose errors are criticized by Becker—on the parent, no less than on the child, and perhaps even more.

131. *Id.* at 9.

132. *Id.* at 323-24. In short, Sheleff attaches supreme importance to the solution of the intergenerational gap through direct confrontation of problems, both those connected to the child and to the parent. He suggests trying to minimize existing tensions by fresh thinking which, at a minimum, focuses on the natural hostility existing between the parties in a family.

133. *Id.* at 322, 325.

134. *Id.* at 326-27.

135. *Id.* at 327.

136. *Id.*

rearing regarding greater involvement of fathers) may minimize the tension and hostility between parents and children.[137] First, however, according to Sheleff, we must be aware of this mutual hostility between adults and children and understand its roots.[138] This approach certainly seems consistent with feminist theories. Sheleff is not alone in this view: there were other feminists, particularly women, who articulate similar theories.[139]

C. Conclusion: Feminism Does Not Always Rush to Focus on Children's Rights

It is true that all of the works presented above have implications for children's lives in regards to custody, visitation and other parental disputes. Indeed, these scholars express their discomfort from the static role of the state in a situation in which both women and children are still routinely dominated by men. However, children's rights, and even girl's rights, are not the center of their analysis, with the exception of Woodhouse, Minow and Sheleff, and to a limited extent, a few of the others. Instead, feminists focus on women's rights as wives and mothers against patriarchal rule. In other words, while these scholars discussed the rights of the child, they did so from the strong point of view of the child as a major focus of the dispute between parents or spouses and as a means to enhance women (mothers' and wives') rights. Thus, it may be said that feminists do not rush to focus on children's rights within the family, even though here too there is a weak group confronting a strong one within the family. This does not eliminate the possibility of feminist influence on parent-child relations, but it does cause us to use extra care when considering feminist arguments in the context of child-parent relations.[140]

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137. *Id.* at 327-29.

138. *Id.* at 332.

139. For feminist theories which link these relationships, see JESSIE BERNARD, THE FUTURE OF MARRIAGE 67-81 (1973); DOROTHY DINNERSTEIN, THE MERMAID AND THE MINOTAUR: SEXUAL ARRANGEMENTS AND HUMAN MALAISE (1976); and ELLEN KEY, THE CENTURY OF THE CHILD (1909). *See also* Sorence Boocock, *The Social Context of Childhood*, 119 PROC. AM. PHIL. SOC'Y 419, 423 (1975) (suggesting that inter-gender relations are actually more dependent on intergenerational relations). *See* SHELEFF, *supra* note 7, at 328-29 (referring to IAN SUTTIE, THE ORIGINS OF LOVE AND HATE (1935) (presenting male frustrations, such as inability to give birth, as causes for hostility in the relations between husband and wife and stating that their solution may also be beneficial to the child during the course of his development, and thereby also have an influence on the relations between parent and child)).

140. It should also be noted that radical and other feminist streams, which have been discussed here, do not protest against the institution of family but seek to change the disparities that often exist within the family unit, as in society. In contrast, other streams in feminism, especially the postmodernist stream, are even more extreme. The authors cited in this footnote indeed belong, each in her own way, to the postmodern feminist school of thought, writing under the strong influence of French post-modern thinkers. Monique Wittig is, in effect, one of the leaders of lesbian feminism and, accordingly, objects to the 'straight' structures of traditional family units. Monique Wittig, *One is not Born a Woman*, FEMINIST ISSUES, Winter 1981, at 47. Judith Butler is another of these authors and was influenced more than a little by Wittig. *See generally* JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY (1990) and JUDITH BUTLER, BODIES THAT MATTER: ON THE

III. A DESCRIPTION OF DEVELOPMENTS IN ISRAELI LAW REGARDING CORPORAL PUNISHMENT OF CHILDREN

A. General Overview

I shall now turn from the general to the specific and attempt to examine the argument that feminist theories may be compatible, even if only to a limited extent, to parent-child relations. This examination will be done through a discussion of an issue connected to these relations in areas of law (criminal and civil) and society: the attitude of law to mild corporal punishment used for the education of children and students. As noted, corporal punishment was recently prohibited in Israel in what was a graduated, if swift, process that prohibited a norm that had prevailed for nearly five decades.[141] This process reveals clear, if not always express, signs of feminist influence on two levels: in relation to the identity of the contributors to the revolution and in relation to the substance of the theories underlying the revolution, which are theoretically compatible with feminist approaches.

B. What is Corporal Punishment of Children?

Corporal punishment has been defined in a variety of contexts. Sociologist Murray Straus defines the term "corporal punishment" as "[t]he use of physical force with the intention of causing a child to experience pain, but not injury, for the purpose of correction or control of the child's behavior."[142] In his definition, Straus distinguishes between light and moderate corporal punishment—which is designed to make the child feel pain in order to correct him and control his behavior—and injury caused to the child by use of this measure. It seems that according to Straus, causing injury to the child does not fall within the scope of "corporal punishment" but within the definition of "violence." The American Academy of Pediatrics defines corporal punishment as "[t]he application of some

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DISCURSIVE LIMITS OF "SEX" (1993). Butler was also influenced to a certain extent by Luce Irigray. For her approach, which may be termed "substantive feminism," see, for example, LUCE IRIGARAY, SPECULUM OF THE OTHER WOMAN (Gillian C. Gill trans., Cornell University Press 1985); LUCE IRIGARAY, THIS SEX WHICH IS NOT ONE (Catherine Porter & Carolyn Burke trans., Cornell University Press 1985). While these authors do not seek to uproot differences between men and women, they deny the naturalness of family relations and, it may be assumed, will consequently also deny the naturalness generally attributed to parent-child relations and the parent's duty to educate the child, albeit it is also possible to assert the converse – that the denial applies to the naturalness of heterosexual relations but not necessarily to the very existence of an inter-generational gap. In any event, if these authors argue against the naturalness of the authority inherent in parent-child relations, and even against pregnancy and having children, it appears that *most* feminist approaches have not followed this path.

141. *See infra* Part III.C.

142. MURRAY A. STRAUS WITH DENISE A. DONNELLY, BEATING THE DEVIL OUT OF THEM: CORPORAL PUNISHMENT IN AMERICAN FAMILIES 4 (1994).

form of physical pain in response to undesirable behavior."[143] Experts in behavioral sciences have defined the term in the following way: "the administration of one or two mild to moderate 'smacks' with an open hand, on the buttocks or extremities which does not cause physical harm."[144]

Essentially corporal punishment is the hitting of children by a parent or teacher in order to educate, generally through a light slap, smack, blow, pat or swat on their buttocks or hand because they have strayed or misbehaved or failed to obey instructions, and refused to accept authority. Proponents of corporal punishment argue that corporal punishment is a deterrent—used to train children not to repeat undesirable acts in order to shape their character, nurture worthy traits, teach them, and guide their future life on the proper path, at least until they can "stand on their own two feet" as independent persons and are able to make decisions properly. Indeed, the traditional premise is that it is only permissible to apply moderate, reasonable and infrequent corporal punishment, if at all, when it is important to do so, as an occasionally essential measure, to draw clear behavioral boundaries for children in order to raise them, strengthen them and guide their proper and safe course in the future.[145]

Nonetheless, whether to use corporal punishment to educate children is a difficult question subject to dispute among jurists, psychologists, sociologists, educators, and, indeed, and the general public.[146] Modern opponents of corporal punishment assert that its use should be prohibited because of the physical and emotional damage it causes and its inefficiency as a deterrent. Furthermore, if the conduct amounts to a criminal offense or the tort of battery, the parent should not be granted immunity.[147] Proponents of corporal punishment argue that, if the corporal punishment is used moderately and with common sense, it is not harmful and may even be useful in drawing boundaries for the child.[148]

C. Description of the Process in Israel – From Qualified Permission to a Ban on Corporal Punishment

About sixteen countries around the world, the majority in Europe, have legally prohibited the use of corporal punishment to educate children. Some of them have done it in penal law (Cyprus and Israel), and some granted the

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143. American Academy of Pediatrics, Committee on Psychosocial Aspects of Child and Family Health, *Guidance for Effective Discipline*, 101 PEDIATRICS 723, 725 (1998).

144. Canadian Found. for Children, Youth & the Law v. Attorney Gen. in Right of Canada, [2002] D.L.R. 632, 636.

145. *See, e.g.,* Diana Baumrind, Robert E. Larzelere & Philip A. Cowan, *Ordinary Physical Punishment: Is It Harmful? Comment on Gershoff (2002)*, 128 PSYCHOL. BULL. 580 (2002).

146. *See, e.g.,* Elizabeth Thompson Gershoff, *Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review*, 128 PSYCHOL. BULL. 539 (2002).

147. *Id.*

148. Baumrind et al., *supra* note 145; Robert E. Larzelere, *Presentation: A Review of the Outcomes of Parental Use of Nonabusive or Customary Physical Punishment*, 98 PEDIATRICS 824, 824-27 (1996).

children a civil law; some of them have done it in legislation, and one (Israel) in Court ruling.[149] Israeli law, which is relatively young, went through a big and accelerated process of change regarding this issue. The 1990's saw great developments in Israeli and international legislation and case-law relating to human rights in general and children's rights in particular,[150] and these developments had ramifications for the issue of corporal punishment.

In the year 2000, the Supreme Court of Israel (the judgments of which create binding precedents) clearly curtailed the rights and powers of a parent, in favor of the rights of a child, when it almost completely prohibited the use of corporal punishment against children, and thereby joined a number of other countries which had taken some form of similar action.[151] First, the court prohibited corporal punishment in the education system,[152] and, finally, the prohibition was expanded within the family unit.[153] This ruling changed the legal status quo, which had prevailed for almost fifty year, with the *Rassi* ruling that was delivered by the Supreme Court of Israel in the early 1950's.[154]

The *Rassi* ruling permitted the use of corporal punishment both within the family unit and within the educational system, subject to qualifications of moderation and reasonableness. This ruling relied on English law, and the existence of a *lacuna*,[155] and was based on agency relations between the parent and teacher (as *in loco parentis*) regarding the education of the child.[156] The *Rassi*

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149. For a summary, see SUSAN H. BITENSKY, CORPORAL PUNISHMENT OF CHILDREN : A HUMAN RIGHTS VIOLATION 153-246 (2006); Benjamin Shmueli, *Who's Afraid of Banning Corporal Punishment? A Comparative View on Current and Desirable Models*, 26 PENN. STATE INT'L L. REV. 57 (2007).

150. The Israel legislature enacted a few statutes regulating child abuse and neglect, including adopting mandatory reporting, and ratified the UN Convention on the Rights of the Child during the 1980's and 1990's. *See* Tamar Ezer, *Children's Rights in Israel: An End to Corporal Punishment*, 5 OR. REV. INT'L L. 139, 150-52 (2003).

151. Corporal punishment was prohibited in Scandinavian countries (Sweden, Norway, Denmark, Finland) and in Germany, Austria, Bulgaria, Iceland and Latvia, through civil laws that grant children the right to not be subjected to physical punishment or any other humiliating treatment. Criminal legislation prohibiting this type of conduct was enacted in Cyprus, as well as by the Supreme Court of Italy (though the decision is not binding). In the United States moderate and reasonable corporal punishment is permitted; in about half of the states, a ban on corporal punishment only exists within the education system. In other countries, such as England and South Africa, emphasis has been placed on corporal punishment only within the education system. *See* BITENSKY, *supra* note 149, at 153-334.

152. *See infra* Part III.D.

153. *Id.*

154. CrimA 7/53 Rassi v. Attorney General of Israel [1953] IsrSC 7 790, *available at* http://elyon1.court.gov.il/files_eng/53/070/000/z01/53000070.z01.htm.

155. Until 1980, Israeli law, applying Clause 46 of the Order in Council, provided for reference to English law in the case of a *lacuna* in the domestic law. English law applied in Palestine during the period of the Mandate, which preceded the establishment of the State of Israel. Since 1980, in case of a lacuna, courts should refer to a statute that cancelled section 46 and instead refers to the heritage of Israel. *See* the Foundations of Law Act, 1980, S.H. 163.

156. *See* CrimA 7/53 Rassi v. Attorney General of Israel [1953] IsrSC 7 790, *available at* http://elyon1.court.gov.il/files_eng/53/070/000/z01/53000070.z01.htm.

ruling was the guiding and binding principle for dozens of years in the criminal sphere, and it joined a similar civil provision that created a defense against the tort of battery for parents and teachers who used moderate and reasonable force to educate the child.[157]

In the early 1990's Judge Amnon Strasnov of the District Court of Tel Aviv sustained the guiding principle laid down in *Rassi* and acquitted a father who had slapped his child, holding that reasonable and moderate corporal punishment was permitted.[158]

However, a few years later a different guideline was used in the rulings of the District Court, led by Tel Aviv District Court Judge Saviona Rotlevy, who regarded the *Rassi* principle as outdated and no longer capable of being implemented in terms of its underlying rationale.[159]

The judgment in the *Sdeh-Or case*, delivered by Justice Dalia Dorner (in a panel) of the Supreme Court in July 1988, prohibited every type of corporal punishment administered by educators at any level.[160] Justice Dorner convicted a kindergarten teacher who had hit students of battery and child abuse and held that corporal punishment was completely prohibited within the educational system.[161] Justice Dorner, with whose judgment Justice Izhak Englard and Justice Theodor Or concurred, overturned the decision of the District Court which had acquitted the kindergarten teacher.[162] She held that the *Rassi* ruling was not compatible with contemporary norms, and the use of force by educators in the present day, even for purposes of education, was entirely prohibited, particularly when applied to young children.[163] Justice Dorner stated that the use of force was incompatible with the goals of education.[164] Corporal punishment reflected a flawed world view which endangered children and which might undermine the fundamental principles of society – human dignity and physical integrity.[165] The *Sdeh Or* ruling, in effect, rescinded the *Rassi* ruling as it applied to the educational system.[166]

This judgment laid the groundwork for imposing a similar prohibition within the family. In January 2000, Justice Dorit Beinish (in a panel) of the Supreme Court delivered a judgment in the *Anon* case, holding that corporal

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157. Civil Wrongs Ordinance (New Version), 5732-1972, § 24(7), 2 LSI 12 (1972) (Isr.).

158. CrimC (TA) 570/91 Israel v. Asulin [1992] IsrDC 5752(1) 431.

159. CrimC (TA) 511/95 Israel v. Anon [1997] IsrDC 97(3) 1898; CrimC (TA) 64/96 Israel v. Anon [1983] IsrDC 97(3) 1983.

160. CrimA 5224/97 Israel v. Sdeh Or [1998] IsrSC 53(3) 374. The judgment relies on norms of human dignity, particularly following the adoption of Basic Law: Human Dignity and Liberty, 1992, S.H. 150, and Convention on the Child, *supra* note 7, which Israel ratified in 1991.

161. CrimA 5224/97 Israel v. Sdeh Or IsrSC 53(3) 374.

162. CrimC (Hi) 117/95 Israel v. Sdeh Or, [1997] IsrDC 97(3).

163. CrimA 5224/97 Israel v. Sdeh Or IsrSC 53(3) 374, §§ 7-9.

164. *Id.* at § 8.

165. *Id.* at § 9.

166. *Id.* at §§ 7-9.

punishment administered by parents was a completely improper form of education and a remnant of a totally outdated social-educational concept.[167] Justice Beinish held that the principles laid down in the *Sdeh Or* case regarding educators also applied to parents, notwithstanding the difference between the two roles.[168] According to Justice Beinish, corporal punishment of children as a method of education was completely improper as it was a remnant of an antiquated social-educational outlook that was proscribed in contemporary times.[169] At the end of the judgment, Justice Beinish qualified this sweeping ruling by holding that the currently recognized qualifications to criminal liability – including the defense of *de minimis* and the state attorney's discretion to refrain from prosecution – adequately reflected the appropriate distinction between parents' use of force for educational purposes, which was improper and forbidden, and "*the reasonable use of force which is intended to prevent harm to the child or to others, or to allow minor physical contact, even if it is forceful, with the child's body to maintain order.*"[170] The *Rassi* ruling was, therefore, also overturned in relation to the family.[171]

This was not the end of the revolution. About six months after the decision in the *Anon case*, and it may be assumed with reference thereto, the Knesset (Israel's parliament) in a bill tabled by MK Anat Maor, repealed section 24(7) of the Civil Wrongs Ordinance, the civil defense against the tort of battery available to a parent or teacher who struck a child moderately and reasonably

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167. CrimA 4596/98 Anon v. Israel [2000] IsrSC 54(1) 145. This judgment was given on appeal. CrimC (TA) 511/95 Israel v. Anon [1997] IsrDC 97(3) 1898. For critiques of the judgment, see AMNON STRASNOV, CHILDREN AND YOUTHS IN THE PRISM OF THE LAW, 271-9 (2000) (Isr.); Evelyn Gordon, *Judges Without Borders*, AZURE 10, 65 (2001) (Isr.); Rhona Schuz, *Child Protection in the Israeli Supreme Court: Tortious Parenting, Physical Punishment and Criminal Child Abuse, in* THE INTERNATIONAL SURVEY OF FAMILY LAW 2001 EDITION 165 (Andrew Bainham ed., 2001) (Isr.); Leslie Sebba, *He who 'Spares the Rod' Under the Orders of the Supreme Court: Queries Following the Legal Revolution,* TRENDS IN CRIMINOLOGY: THEORY, POLICY AND IMPLEMENTATION 425 (Meir Hovav et al. eds., 2003) (Isr.); Binyamin Shmueli, *Corporal Punishment of Children by their Parents According to Jewish Law: Traditional Approaches and Modern Streams* 10 PELILIM 365-446 (2002) (Isr.), to be published in English in another version: Benjamin (Binyamin) Shmueli, *Corporal Punishment of Children in Jewish Law: Traditional Approaches Meet Modern Trends – A Comparative Study*, 18 JEWISH LAW ANNUAL, forthcoming.

168. CrimA Anon v. Israel [2000] IsrSC 54(1) 145 §§ 25-26.

169. *Id.* at § 29.

170. *Id.*

171. President Aharon Barak concurred. Justice Izhak Englard did not refer to the issue of corporal punishment at all, but only addressed whether or not it was right to convict the mother of assault, battery, or abuse. However, Judge Englard was a member of the panel in the *Sdeh Or case* and agreed with the judgment of Justice Dorner. He also held in an *obiter dictum*, in a judgment delivered a few months after the judgment in the *Sdeh Or case* and prior to the judgment in the *Anon case*, that no importance should be attached to the question of whether the child was struck in order to satisfy the emotional needs of the striking parent or for educational purposes, because both options involved prohibited acts. CA 1674/99 Levy v. Israel [1999], ¶ 4 (unpublished decision printed in the unofficial reporter, Takdin Elion 99(1) 64).

for the purpose of educating him.[172] Towards the end of 2000, the Knesset passed the Student's Rights Law,[173] which includes a provision granting the student the right not to be administered punishment in a physical or humiliating fashion.

D. Identity of Those who Contributed to the Process of Banning Corporal Punishment

This revolution was carried out mostly by women.[174] This phenomenon is apparent in court rulings, legislation, scholarly literature, the activities of the Ministry of Justice, in membership of the UN Committee on the Rights of the Child, membership of the Committee to Secure the Rights of the Child in Israeli Legislation, and in the activities of children's rights organizations.[175]

1. Court Rulings

The beginning of this change may be seen in what I shall term the "*Rotlevy approach,"* the unequivocal approach taken by Judge Saviona Rotlevy of the District Court of Tel Aviv, in a number of judgments given in the 1990's that strongly condemned any form of corporal punishment, including mild chastisement.[176] Judge Rotlevy strongly supported the repeal of Section 24(7) of the Civil Wrongs Ordinance[177] and also advocated eradicating corporal punishment as a means of education in terms of tort liability.[178] She noted that following the enactment of Basic Law: Human Dignity and Liberty in Israel in 1992 and the adoption of the UN Convention on the Rights of the Child a short time earlier, "such a shameful statutory provision [had to] be eradicated from the statute books."[179]

The "*Rotlevy approach*" contrasts to the "*Strasnov approach*" led by Judge Amnon Strasnov[180] following the *Rassi* case,[181] which permitted corporal punishment so long as it met conditions of reasonableness and moderation.

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172. Civil Wrongs Ordinance (New Version), 5732-1972, § 24(7), 2 LSI 12 (1972) (Isr.) (repealed by 2000, S.H. 1742).

173. Student's Rights Law, 2000, S.H. 1761.

174. *See* Sebba, *supra* note 167, at 446-47. However, I will argue that the trend is more widespread than Sebba indicates.

175. Men also participated, albeit in relatively small numbers, in this process, though their contribution was of less significance than the contribution of the women. There were also a few women who opposed the process in retrospect. Examples for this phenomenon will appear below.

176. CrimC (TA) 511/95 Israel v. Anon [1997] IsrDC 97(3) 1898; CrimC (TA) 64/96 Israel v. Anon [1997] IsrDC 97(3) 1983.

177. By virtue of the Basic Law and the Sdeh Or ruling. Basic Law: Human Dignity and Liberty, 1992, S.H. 150; CrimA 5224/97 Israel v. Sdeh Or IsrSC 53(3) 374.

178. CrimC (TA) 511/95 Israel v. Anon [1997] IsrDC 97(3) 1898; CrimC (TA) 64/96Israel v. Anon [1997] IsrDC 97(3) 1983.

179. CrimC (TA) 22/98 Israel v. Anon [1998] § 7.13 (unpubslihed decision).

180. CrimC (TA) 570/91 Israel v. Asulin [1992] IsrDC 5752(1) 431.

181. CrimA 7/53 Rassi v. Attorney General of Israel [1953] IsrSC 7 790.

Some of the judges of the lower courts agreed with the "*Strasnov approach*" and some with the "*Rotlevy approach.*"[182]

In the middle of 1998, Judge Dalia Dorner, head of a panel of the Supreme Court that heard the *Sdeh Or case*,[183] held that any use of force by educators was entirely prohibited. Justice Dorit Beinish, who delivered the judgment (in a panel) in the *Anon* case[184] also imposed a prohibition on corporal punishment within the family unit and completed the revolution in court rulings in the beginning of 2000.

Thus, the major milestones in case law were shaped by three women judges—Saviona Rotlevy, Dalia Dorner and Dorit Beinish.

2. Legislation and Parliamentary Activities

Parliamentary activity seeking either to prohibit corporal punishment or repel legislative proposals protecting such methods of education is also clearly within the province of women (of various parties). This fact is of great importance, particularly in view of the scarcity of women officiating as Knesset members as compared to men.[185] A number of legislative proposals designed to permit moderate and reasonable corporal punishment, primarily through the defense of "justification" in the Penal Law, have been tabled in the Knesset over the years.[186] These proposals have been rejected time after time. One of the most passionate opponents to the defense of "justification" was MK Yael Dayan.[187] In June 2000, former MK Anat Maor submitted a bill to repeal Section 24(7) of the Civil Wrongs Ordinance, the civil defense against the tort

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182. In addition to Judge Rotlevy herself, her approach was supported by both female and male judges. Apart from Judge Strasnov himself, his approach was supported primarily by male judges but also by two female judges. Thus, for a period, albeit a short one, an interesting constitutional situation prevailed in which the law depended on the judge. Some asserted the existence of a binding ruling—even if an old one—handed down by the Supreme Court while others asserted that this ruling should be overturned and replaced by new principles. This demand was voiced notwithstanding the problematic aspect of a lower court seeking to overturn a decision of the Supreme Court, as the decision – even if antiquated – remains binding under Israeli law so long as it is not modified by a contrary judgment of the Supreme Court or by statute (Section 20 of Basic Law: the Judiciary).

183. CrimA 5224/97 Israel v. Sdeh Or [1998] IsrSC 53(3) 374.

184. CrimA 4596/98 Anon v. Israel [2000] IsrSC 54(1) 145.

185. Traditionally, one can find significantly fewer female MKs than male MKs. For example, in the 17th Knesset there are seventeen female MKs out of 120 total MKs. In the beginning of the 15th Knesset, where the great changes in corporal punishment took place, only thirteen women were MKs, and in the end of this Knesset, it rised to sixteen. *See* http://www.knesset.gov.il/mk/heb/mkindexbyknesset.asp?knesset=15 (last visited on October 25, 2007); http://www.knesset.gov.il/mk/heb/mkindexbyknesset.asp?knesset=17 (last visited on October 25, 2007).

186. *See, e.g.,* Penal Code Bill Proposal, (Amendment – Defense against criminal accountability for the use of moderate force on a minor for an educational purpose), 2000, HH, 1467 (proposed by MK Reuven Rivlin).

187. *See, e.g.*, MK Yael Dayan's remarks in 40 DK (1994) 9847-48 (regarding the proposal to include corporal punishment as a defense of "justification" in Amendment No. 39 of the Penal Law (General Part) in 1994).

of battery available to a parent or teacher who struck a child moderately and reasonably for the purpose of educating him.[188]

The significance of women acting through Parliament becomes clear when considering initiatives by women in the world more generally. A similar but different process took place in Sweden. Sweden was the first country in the world to prohibit corporal punishment within the family.[189] In 1979, the Swedish parliament amended an earlier law from 1949 on this subject, passing

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188. As noted, Section 24(7) of the Civil Wrongs Ordinance was repealed in 2000, S.H. 213. Civil Wrongs Ordinance (Repeal of Special Defenses for Battery of Minors) Amendment Bill (no. 10), 1999, HH 2832 (submitted by MK Anat Maor). I should also note the bill to prohibit corporal punishment in educational institutions submitted by MK Naomi Blumenthal in 1993 failed to pass the preliminary reading stage. Prohibition on Corporal Punishment in Institutions of Education Bill, 1993, HH, 1996. Some male MKs played a role in the process, too. MK Avraham Burg also tried to pass a similar bill in 1993. Prevention of Violence and Corporal Punishment in Educational Institutions Bill, 1993, HH 1156. In the year 2000, MK Silvan Shalom, with the aid of MK Zevulon Orlev, then Chairman of the Education Committee in the Knesset, passed the Student's Rights Law, which provides in Section 10 for the right of a student not to be subjected to corporal or humiliating punishment, in view of the incompatibility of such punishment with human dignity. Student's Rights Law, *supra* note 173. All the bills beginning in the early 1990's (including those submitted after the *Anon case*), which were intended to allow moderate and reasonable educational corporal punishment, were submitted by religious and non-religious male Knesset members. *See* Section 49(5) of Penal Law (Preliminary Part and General Part) Bill, 1992, HH, 2098 (submitted by the Ministry of Justice, headed by then Minister of Justice, Dan Meridor, with the aid of Professor Shneur Zalman Feler). This bill represented an effort to enact a defense of moderation or reasonableness within the framework of the justification defense. In consequence of the public outcry, the new Minister of Justice, David Libai, stated in the beginning of 1993 that the Ministry of Justice had decided to withdraw its approval for the enactment of the section. *See also* Education and Love of Children Bill, 2000, HH, 1345 (submitted by MK Rabbi Moshe Gafni in response to the judgment in the *Anon case*, which stated that a parent had the right to determine the method of education of his/her child, save for means of punishment which exceeded what was usual, customary or reasonable or which were applied without educational justification). Spares the Rod Hates his Son (Authorization of Educational Punishment) Bill, 2000, HH, 1468 (submitted by MK Rabbi Avraham Ravitz, also in response to the *Anon* case, and providing for a parent's duty to educate his/her child which, in special circumstances arising from this duty, included a light slap for the purpose of education, if the slap was reasonable and did not harm the child physically or mentally). Penal Law (Defense against Statutory Criminal Liability – Applying Moderate Force Against a Minor for an Educational Purpose – Amendment) Bill, 2000, HH, 1467 (tabled by MK Reuven Rivlin, which was also submitted following the *Anon* case and was withdrawn as a result of pressure exerted primarily by the National Council for the Child. This bill also sought to provide a defense against the criminality of hitting a child in order to educate him/her, if this was done with reasonable necessity and moderation in accordance). Male scholars agreed to moderate and reasonable corporal punishment both in the criminal legal literature and in the civil legal literature. *See* SHNEUR ZALMAN FELER, ELEMENTS OF PENAL LAW 488 (Part B, 1987) (Isr.). Professor Feler was the person behind the Penal Law Bill discussed above, which included the proposed defense to be applied through the defense of justification.

189. On the prohibition against corporal punishment in Sweden, see BITENSKY, *supra* note 149, at 154-60; Joan E. Durrant, *Evaluating the Success of Sweden's Corporal Punishment Ban,* 23 CHILD ABUSE AND NEGLECT 435 (1999); Joan Senzek Solheim, *A Cross-Cultural Examination of Use of Corporal Punishment on Children:* and *A Focus on Sweden and the United States*, 6 CHILD ABUSE AND NEGLECT, 147 (1982).

the amendment with an enormous majority of 259 to 6.[190] Adriana Houser of Colorado University explains that traditionally the government of Sweden has many women members and this helped in the enactment of the law, as children's rights are intertwined with women's rights in Sweden.[191]

3. Activities of the Ministry of Justice

The vigorous activities of Advocate Yehudith Karp, Deputy Attorney General, testifies to the influence she exerted on prohibiting corporal punishment and her efforts to resist statutory proposals to support positive authorization of such punishment as a means of education.[192]

The Minister of Justice made significant contributions to children's rights generally and corporal punishment in particular by creating a committee of public figures, headed by District Court Judge Saviona Rotlevy, and charging that committee with securing children's rights through legislation that complied with the UN Convention.[193] Most of the key positions in the committee were held by women.[194] Some of the sub-committees recommended the enactment of a criminal provision that would entrench a minor's right to protect his/her body by means of a criminal prohibition on the administration of corporal punishment or humiliating measures as a means of discipline, either by parents

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190. The current formulation, after a further amendment in 1983, is: "Children … are to be treated with respect to their person and individuality and may not be subjected to physical punishment or any other humiliating treatment" Föräldrabalk (Code Relating to Parents, Guardians, and Children) [FB] [New Parental and Guardianship Code] 6:1 (Swed.).

191. Adriana Houser, *Stopping Corporal Punishment of Children in order to Prevent Abuse, in* CHILDREN IN ISRAEL ON THE THRESHOLD OF THE NEW MILLENIUM 221(Asher Ben Aryeh & Yaffa Zionit eds., 1999).

192. Adv. Karp wrote on this issue. Judith Karp, *Corporal Punishment – Legal Aspect*, *in* EDUCATION ON VIOLENCE – EDUCATION TO VIOLENCE, CORPORAL PUNISHMENT AND STRIKING CHILDREN, COLLATION OF ARTICLES PUBLISHED BY THE NATIONAL COUNCIL FOR THE CHILD 4 (Miriam Gilat, ed., 1993). Adv. Karp was an active member of the UN Committee for the Rights of the Child, which deals with the implementation of the UN Convention on the Rights of the Child, which accorded an interpretation to convention articles whereby corporal punishment is prohibited. *See supra* note 7. Adv. Karp granted numerous interviews to media outlets on this issue, for the purpose of inculcating the new norms prohibiting corporal punishment. Adv. Karp was also a member of the Committee to Secure the Rights of the Child in Legislation.

193. *See* ROTLEVY COMMITTEE REPORT [hereinafter ROTLEVY COMMITTEE], *available at* http://www.justice.gov.il/MOJHeb/HavaadLeZhuyot/ (last visited on Dec. 31, 2006). The report was submitted (in two parts) to the Minister of Justice in 2003–2004.

194. The Deputy Chairman of the Committee and the Chairman of the Steering Committee were women (Adv., now Dr., Tamar Morag), formerly legal advisor to the National Council for the Child. The Committee investigator was a woman (Adv. Sharon Primor-Eldar). The Committee consisted of five sub-committees, each headed by a woman (one acted as the chairman of two sub-committees). One sub-committee was headed jointly by a man and a woman. Four female coordinators and only one male coordinator worked on the sub-committees. The gender of the members of the sub-committees was much more balanced than the heads of committees—about 46% of all its members were men. *See* http://www.justice.gov.il/MOJHeb/HavaadLeZhuyot/ (last visited Oct. 28, 2007) (Isr.).

or by the educational system rather than relying on case law.[195] In this way, the Committee interpreted the Convention in such a way as to place corporal punishment in the same class as other forms of exploitation, injury, abuse and neglect, on the premise that employing corporal punishment and any form of humiliating disciplinary measures is, first and foremost, a breach of the child's right to dignity.[196]

4. Activities of Children's Rights Organizations

Women also set the tone in the two main organizations concerned with the rights of the child in Israel: the National Council for the Child and the Israel Association for Child Protection (ELI). Both organizations acted vigorously to prohibit corporal punishment and ensure acceptance of the prohibition once adopted.[197]

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195. Report of the Sub-Committee on "The Minor in the Criminal Process," Article 9.7.3.4 "Means of discipline and Punishment in Hostels – Establishment of a Prohibition on Corporal and/or Humiliating Punishment," at 136-37 of the report, and Article 9.8.5.6 "Defense against Violence and Disciplinary Measures," at 152-53 of the report are both relevant to minors in hostels and institutions. Report of the Sub-Committee on "Education," Article 5.3, "Disciplinary Measures," at 99-104, 106, there the reference is both to parents and others responsible for the child as well as the educational system.

196. Report of the Sub-Committee on "Education," *id.* Article 5.3.1, at 99. It should be noted that the UN Committee for the Rights of the Child (that was appointed by virtue of Article 43 of the Convention), which deals with the implementation of the UN Convention on the Rights of the Child, indeed accorded an interpretation to convention articles whereby corporal punishment is prohibited. *See* CONVENTION ON THE CHILD, *supra* note 7. However, the UN Committee indeed gave some of the provisions of the Convention an interpretation to the effect that the Convention also prohibits the administration of light corporal punishment, both within the family and in other systems, but it referred to the Scandinavian model, which enacted a "prohibition" in civil law, whose aim was merely declarative. *See, e.g.*, Comm. On the Rights of the Child, 17th Sess., at 63, U.N. Doc. CRC/C/34, Annex IV (Nov. 8, 1994); RACHEL HODGKIN & PETER NEWELL, *IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD* 242-47 (United Nations Children's Fund 1998).

197. Traditionally, the Administrative Center for the Child and Law in the National Council for the Child, has been staffed by female attorneys, and they wrote a number of articles on this issue—most in publications of the Council itself (for example, Attorneys Tamar Peled-Amir and Tamar Morag who managed, each in her own time, the Administrative Center, both later held prominent posts in the Rotlevy Committee). These attorneys also carried out wide-spread publicity work on this issue, including appearing at conferences and attempting to influence decision-makers in relation to corporal punishment. *See, e.g.*, Tamar Morag, *Legal Aspects of the Rights of the Child,* 1 HED HA'HINUCH 13 (1992) (Isr.); Tamar Morag, *New Challenges in Defining Boundaries for Young Girls and Women in the Light of the International Convention on the Rights of the Child,* 44 SOCIAL SECURITY 116 (1995) (Isr.); Tamar Morag, *Rights of the Child and the Law,* RIGHTS OF THE CHILD IN ISRAEL: COLLECTION OF ARTICLES AND SOURCES 17 (Itzhak Kadman and Galia Ephrat eds., 1999); WITH CHILDREN – WITHOUT BLOWS, SAYING 'NO' TO CORPORAL PUNISHMENT (Tamar Peled-Amir and Itzhak Kadman eds., 2001); Letter from Adv. Tamar Morag to Tana Schpanitz, the Deputy Attorney General on Defense of Parents and Teachers in Torts, (March 5, 1997) (on file with the author). The letter sought to press the Ministry of Justice to repeal Section 24(7) of the Civil Wrongs Ordinance. The Council's attorneys participate on a permanent basis in the meetings of the Special Committee for the Advancement of the Status of the Child in the Knesset, a committee established at the urging of

5. Academic, Scholarly, and Professional Writings

Likewise, the authors in the academic,[198] explanatory,[199] and professional arenas,[200] who wrote about corporal punishment, were women.

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the Council. Previous legal advisors of the Council held various positions in the Rotlevy Committee, and it may be assumed that their positions in the Council played a significant part in their integration in the activities of the Committee (Adv. Limor Solomon, Adv. Tamar Morag, Adv. Tali Gal and Adv. Tamar Peled-Amir). Nonetheless, a male—Dr. Itzhak Kadman, Executive Director of the National Council for the Child and the motivating force behind its activities—played a critical role in promoting the prohibition on corporal punishment. He also published articles on the issue and was a member of the Rotlevy Committee. Dr. Hanita Zimrin heads the Israel Association for Child Protection (ELI), an organization which deals primarily with abuse and violence towards children, particularly in terms of treatment but also guidance, training and consultation. Dr. Hanita Zimrin has worked extensively in the area of the protection of children and is regarded as one of the leading figures in this area, particularly in connection with the phenomenon of beaten children. *See* HANITA ZIMRIN, BEATEN CHILDREN: A MULTIDIMENSIONAL PROBLEM (1985); HANITA ZIMRIN & OFRA AYALON, PAINFUL CHILDHOOD: A SECOND LOOK AT CHILD ABUSE (1990). She also wrote numerous articles and was a member of the editorial board of the journal of CHILD ABUSE & NEGLECT. The members of ELI mainly comprise of social workers, criminologists, special education teachers, and clinical psychologists; the vast majority are women (as of the beginning of 2005, eleven out of fifteen members of the Association (76%) were women. This fact cannot be disconnected from the fact that more than one-third of the members of the Association (six out of fifteen) are social workers, a profession which is generally identified with women; indeed, five out of the six association's social workers are women).

198. Following the enactment of Basic Law: Human Dignity and Liberty in Israel in 1992, Dr. Shulamit Almog (also a member of the Rotlevy Committee) explained that it was necessary to re-examine the general authorization given to parents to use force. SHULAMIT ALMOG, RIGHTS OF CHILDREN 61 (1997). Dr. Dana Pogach, another member of the Rotlevy Committee, wrote an article in support of the judgment in the *Anon* case, from a feminist perspective on parent-child relations in private law (albeit one which developed following and in consequence of the judgment and not prior to it). Pogach, *supra* note 32. Tamar Ezer also supported the judgment. Ezer, *supra* note 150. Nonetheless, there were a few male scholars who also wrote on this issue. Haim Cohen, who was a Supreme Court Justice, wrote an article in which he expressly called upon the legislature to reconsider the fundamental authorization to use corporal punishment. Haim Cohen, *The Values of a Jewish and Democratic State – Studies in Basic Law: Human Dignity and Liberty, in* HAPRAKLIT, JUBILEE BOOK 9, 30-31 (1994) (Isr.); Rabbi Itzhak Levy, *Striking Children (Response),* 17 TECHUMIN 157 (1996-97) (Isr.). Rabbi Levi, former Minister of Education and Chairman of the children's rights lobby in the Knesset, explained that in contemporary times, and in the eyes of Jewish law, parents and teachers should refrain from striking children as a mode of education. Adv. Aviad HaCohen, a lecturer (now Dr. and Dean of the Sha'arei Mishpat Law College) and member of the Rotlevy Committee, submitted a document to the committee on corporal punishment in Jewish Law and emphasized the stream of thought which does not support corporal punishment in Jewish law. Female journalist Evelyn Gordon published an article attacking the judgment in the *Anon case*. Gordon, *supra* note 167. However, a male scholar also wrote an article supporting the outcome of the judgment. Yechiel S. Kaplan, *The New Trend Affecting Corporal Punishment of Children for Educational Purposes,* 3 KIRYAT HAMISHPAT 447 (2003) (Isr.). Other male scholars followed a different path. Three scholars, Aharon Barak, Izhak Englard and Mishael Cheshin, who all eventually became justices of the Supreme Court of Israel (and two of them were even involved in the banning of corporal punishment about 20 years after), agreed that light and educational corporal punishment afforded a defense to a parent and teacher facing a civil action for battery, and even suggested extending this defense. AHARON BARAK, IZHAK

The conclusion of this chapter is clear: the main milestones of the process to prohibit corporal punishment, particularly the criminal prohibition of corporal punishment, can be attributed to women.

E. Are the Theories Underlying the Ban on Corporal Punishment Compatible with Feminist Theories?

Certainly none of the court judgments, academic articles, or other materials reviewed above, contain any express reference to any feminist theories.[201] Nonetheless, the impulse to regard corporal punishment as a form of conduct that is incompatible with such principles as equality, justice, the human dignity of the child, and the accompanying effort to remove some of the parents' powers and sources of strength is at least facially consistent with feminist theories, as analysed in the previous chapter, even if these theories were not mentioned explicitly during this process. In light of the principles described above, paternalistic ideas that corporal punishment is permissible, so long as it is administered moderately and reasonably (because ultimately it is for the benefit of the child), ought to be eradicated. In particular, the theory that children should not be considered the property of their parents justified the banning on corporal punishment.

Such reasoning may certainly be derived from feminist theories even if the connection is not made expressly. A revolution of opinion regarding corporal punishment occurred in which feminism played a significant part, at least indirectly.[202] It is possible that this revolution, like other movements related to parent-child relations, is one which can draw lessons from classic feminist theories. A woman always has the option to leave the family unit; married women may divorce and unmarried women can leave (albeit the complexity of potential social censure is heaped on a woman who leaves the home, even if she has been beaten in it). Yet, a child does not have this privilege, and s/he cannot divorce his/her parents.[203] Accordingly, it would seem that children suffering at the hands of their parents—including children suffering from mild corporal punishment—ought to be justify feminist intervention, at least so long as this

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ENGLARD & MISHAEL CHESHIN, TORT LAW – GENERAL LAW OF TORTS 423-24 (Gad Tedeski ed., 2nd ed. 1977) (Isr.). This chapter was written by Prof. Aharon Barak.

199. The article written by Adv. Judith Karp on this matter was already mentioned. Karp, *supra* note 192. Other articles were written by the representatives of the National Council for Children's Rights. *See supra* note 129. Dr. Yitzhak Kadman also wrote several articles calling to ban corporal punishment. *See* Kadman, *supra* note 197.

200. The body of Israeli professional literature which dealt with general matters of violence and abuse was written primarily by women, including Ofra Ayalon and Dr. Hanita Zimrin. ZIMRIN & AYALON, *supra* note 197.

201. Pogach's arguments are perhaps an exception; however, as noted, her article was written following and as a consequence of the shift in the court rulings, not prior to the shift. Pogach, *supra* note 32.

202. *See* discussion *supra* Part III.D.

203. Dr. Gila Stuppler, On Love, Justice and Equality of Women Lecture, Feminism, Law and Social Change Conference at Tel Aviv University, (April 4 2005) (Isr.).

intervention does not conflict with feminist interests and does not dilute the emphasis on gender equality.

The revolution in Israel, from qualified permission to a nearly complete prohibition on corporal punishment in the criminal sphere and abrogation of defenses in the civil sphere, is expressed not only in the content of that revolution, which is consistent with feminist theories, but also in the identity of the persons carrying it out, most of whom were women.

IV. QUERIES – IS FEMINISM INTERESTED IN INFLUENCING CHILDREN'S RIGHTS?

In this chapter I will attempt to examine more generally whether feminist theories can be applied—with the necessary adjustments—to parent-child relations. In order to address this question, I shall attempt to refute the interim conclusion with which the previous chapter was ended, by raising a number of queries.

A. A Process Undertaken Primarily by Women Is Not Necessarily an Implementation of Feminist Theories

In the previous chapter, I argued that the movement to prohibit corporal punishment in Israel was advanced almost entirely by women in a variety of spheres, and a similar process occurred in Sweden.[204] However, this does not necessarily prove the influence of feminist theories, as not all the women are feminists and not all feminists are women (albeit most are). Men may also possess a feminist outlook, and women's activities need not necessarily be the product of feminist beliefs, even if the result hints at that correlation. This point requires further discussion, not only because some observers explicitly implied that the movement in Israel, and the role of women in that movement, was not a coincidence.[205] On the other hand, some argue that genuine male feminism cannot exist, or, at least, that such feminism is problematic, as male feminists themselves are part of the very problem that they profess to criticize, because they profit from being men, even if they present the situation as fundamentally bad and in need of change.[206]

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204. *See supra* notes 189-91 and accompanying text.

205. *See* Sebba, *supra* note 167, at 446-47.

206. David J. Kahane, *Male Feminism as Oxymoron, in* MEN DOING FEMINISM 213-36 (Tony Digby ed., 1998) and accompanying citations. Kahane argues that it is fundamentally possible to have a feminist man, but that in order to be 'feminist' it is necessary to 'live' the problem, the wrong and the inequality. Kahane expresses doubts concerning the ability of a man to be a feminist, as every average man who learns about feminism will tend to distort the facts and beautify the situation. However, he does not claim that a man who succeeds in creating a bridge between the feminist theories he supports and the reality of his private life as a man who believes that men are fundamentally the oppressors and women are the victims. In other words, feminism is not only an academic concept, but a practical philosophy which must be lived. For a man it is difficult, albeit not impossible, to see things as they really are from a feminist point of view, as he belongs to the governing group, and it may be assumed that he wishes to continue to be counted among the members of this group,

It is true that not all women are feminists and not all feminists are women. However, this argument does not necessarily compel the conclusion that feminist theories are not reflected here. Perhaps it is no accident that the movement to ban corporeal punishment is fundamentally consistent with the feminist discourse and women were involved in this movement in various contexts. This is true, even if we cannot prove that these women acted out of ideological feminist motives. It is difficult to find other issues where the primary actors are almost all women that are not connected with male–female relations.

In addition, even if one cannot present sufficient evidence to prove a direct feminist influence on this movement, there is at least an indirect feminist influence. According to Martha Minow, one cannot ignore the influence of the feminist lobby on placing women as judges, legislators, scholars and in other powerful positions in society, especially given the fact that this lobby presently has more power than children's rights organizations.[207]These women's positions constitute an indirect influence on the movement to ban corporal punishment in Israel and in establishing policies that could enhance children's rights and advance their vulnerable status as a weak and oppressed sector in both society and the family. One should consider the answer to the question "could it have happened without the feminist movement?" I think that the answer is: "probably not."

Furthermore, to determine the effect of women on this movement, we must examine feminist legal methods. Katherine Bartlett outlines legal methods employed by feminists, such as "asking the women question" and "feminist practical reasoning, expand[ing] traditional notions of legal relevance to make legal decision-making more sensitive to the features of a case not already reflected in legal doctrine."[208] These methods, though not directly correlated to methods in the children's rights movements, can be transferred by analogy to asking "the child's question" and using this perspective to add a broader perspective to guide judicial decisions and legislation.

Nevertheless, we should be cautious since it is not wise to ascribe every revolution or development of human rights to feminist influence. Not all developments in the rights of slaves, elderly, disabled or any other vulnerable and relatively powerless sub-populations could and should be explained as having a feminist influence. Human rights are a common denominator which is too wide-scaled. Nonetheless, even though one cannot necessarily reject an indirect feminist influence even in a process made primarily by men, it is more

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even if he understands the governed groups and is interested in helping them. He must live the experience; merely acquiring knowledge about it is inadequate. In every other case, a man (and that includes homosexuals, too) continues to live as controllers in the patriarchal society, and alongside other similarly situated men.

207. These organizations are usually less organized than feminist groups and have less power. Maybe this is the reason that the ban on corporal punishment in Israel was imposed through court rulings and not by legislation. Maybe the women judges felt they had to make the change, since the lobby for children did not succeed in advancing a bill.

208. Katherine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 836-37 (1990).

likely that there has been feminist influence where women played a dominant role. To put it differently, if we consider the fact of the similarity to feminist theories to the justification for banning corporal punishment, and maybe to other possible shifts in children's rights too, it seems that, at least in some cases, some feminist influence is present. This is true primarily in topics where the focus can be put on children's rights, where there is no risk of harming women's rights as a result of the change.

B. Is Feminism Truly Interested in Furthering Children's Rights?

Arguably, we should doubt the willingness of feminists to further the rights of the child and to bring social change and remedy social wrongs in intra-family relations, even if these are related to the underlying premise of feminism, which is to strengthen the status of the weak and the oppressed and eradicate centers of power in society and in the family.

There is a tendency to present feminism (and particularly contemporary feminist writings) as a concept that aims to bring about more justice and equality for *everyone*, and not limited to the status of women.[209] However, reality often flies in the face of theory, and many streams of feminist thought focus almost exclusively on the relationship between men and women. Some women's organizations have also withdrawn their attention at different times from efforts to further the rights of the child.[210] Arguably, this state of affairs is not accidental.[211] Feminists may consciously refuse to "digress" to other types of relationships, even if the theories underlying those are compatible with feminist ideals, for a number of possible reasons, most, if not all of which, are probably political and not substantive.

One such reason is a general feminist reluctance to tie women to children. Feminists argue for women's equal status and, in doing so, do not wish to equate women with those who, perhaps because of natural differences, possess a status that is not equal to that of an adult. In the past, this child-adult dualism was used to justify inequality in other relationships, such as woman-man.[212] The relationship between men and women were compared to that of a child and adult from the point of view of dependency, vulnerability and the need for protection.[213] One can say that today, although the reality has changed such that this comparison is no longer valid, feminists do not want to return to that equation which it worked so hard to discard.

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209. *See, e.g.*, Rosemarie Tong, *Is a Global Bioethics Possible As Well As Desirable? A Millennial Feminist Response, in* GLOBALIZING FEMINIST BIOETHICS: CROSSCULTURAL PERSPECTIVES 27-36 (Rosemarie Tong ed., 2001).

210. *See* Minow, *Where We've Been, supra* note 118, at 1581; Minow, *Children's Rights*, *supra* note 7, at 285-86.

211. The fact that children's rights are a relatively novel concept is not a real explanation for this. *See* Freeman, *Feminism*, *supra* note 28, at 20.

212. Thorne, *supra* note 40, at 96.

213. *Id.*

A second possible reason is the fear of diverting public attention from gender issues, because the principal goal of feminists is to further the status of women.[214] Feminists, in general, tend to be "egoistic" and self-centered, and do not have room to accommodate additional groups whose interests need to be promoted, even though from a conceptual point of view the interest of these groups are compatible with those of feminists. Indeed, this "egoistic" approach is a natural one; it seeks to wage a struggle and not to disperse it, in order to draw maximum public attention to the focal group. This is particularly relevant in light of the great advances in women's rights in the last decades, mostly as a result of the intensive activities of the feminist lobby. Aligning women's rights with children's rights might bring back sad memories from the past, when women were also considered to be the property of their husband.[215] Nevertheless, maybe there is room for feminism to intervene in particular children's issues, at least so long as the intervention is not contrary to feminist interests and will not totally dilute the focus on gender. Violence, including corporal punishment, may be a good example such an issue, if we assume that it is not contrary to women's rights, and if we understand that enhancing child's rights usually contributes to girls' rights and not exclusively the rights of boy's.[216]

Indeed, it is important to note that the advancement of children's rights will not necessarily harm women's rights. In my view, children's rights do not necessarily interfere with women's rights. On the contrary, feminists might even gain from this association. One such example can be drawn from our topic: sometimes men who beat their children also batter their wives and vice versa.[217] They will be violent towards any vulnerable human being in their vicinity, which is most often their family. Therefore, women and children both stand to gain from efforts to eliminate domestic violence.

Another example is currently theoretical, but still relevant to our inquiry. In many countries, including the United States, mandatory reporting rules exist for child abuse and neglect.[218] Different arguments can be raised in favor of expanding the duty to report violence directed at women. In this case, children's rights could be used to benefit women. Although it is easier to accept this kind of duty, which conflicts with liberty and constitutes a huge invasion into intra-family relations, as to children, eventually a similar duty could be enacted as to battered women. In fact, in Israel a bill trying to expand

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214. Hooper, *supra* note 60, at 62-63.

215. Lim & Roche, *supra* note 23, at 233.

216. It is true that in cases of sexual abuse, the attention of feminism can be easily analogized to children's rights since most of the victims are girls. But enhancing boys' rights, at the same time, in topics like corporal punishment, does not undermine girls' rights.

217. *See* Fineman, *Privacy*, *supra* note 92, at 221-22.

218. *See* Jessica Ann Toth Johns, *Mandated Voices for the Vulnerable: An Examination of the Constitutionality of Missouri's Mandatory Child Abuse Reporting Statute,* 72 UMKC L. REV. 1083 (2004); Victor I. Vieth, *Passover in Minnesota: Mandated Reporting and the Unequal Protection of Abused Children*, 24 WM. MITCHELL L. REV. 131 (1998).

mandatory reporting in this way was introduced.[219] Although it was not enacted eventually, this illustrates how this theoretical development could become a reality.

Another reason for feminist refusal to identify with other relationships is the fact that women blame children for their inferior status. Women are the primary caretakers of children, and this fact has caused them to fall into the oppressed state in which they now exist, as the more time they spend with children the less time they have to obtain an education, in contrast to women without children and to men. Accordingly, it is difficult for supporters of women to identify with children.[220]

Another possible reason is the difficulty of adults in general, not just feminists, to understand the rights of children other than through the prism of adult interests.[221] However, this is a reason which is not completely persuasive, because there are adult writers who deal with children's rights, and all children's rights organization are composed of adults.

Additional reasons for why feminists are not actively involved in securing children's rights include the following: marginalization of the primary feminist goals and a general lack of desire to enter such a "ghetto;" and the preference for examining the issues from a broader perspective of patriarchy, marriage and family.[222] Another reason is the claim that children's rights cause conflicts between children and adults.[223] Some feminists even assert that children's rights could lead to the patriarchal outcome of preservation of the *status quo* which impairs the rights and autonomy of women.[224] Some authors believe that children's and fetuses' rights occasionally harm women, for example, when women are regarded as "bad" by reason of their abuse of children,[225] when they are regarded as "bad" when they stand by while their spouse abuses the

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219. Draft bill amending the Prevention of Domestic Violence Act (no. 6), 1999, HH, 2830 (submitted by six female MK: Yael Dayan, Zehava Gal'on, Naomi Chazan, Sopha Landver, Anat Maor and Yehudith Na'ot).

220. *See* SAVITRI GOONESKERE, CHILDREN, LAW AND JUSTICE 27 (1998); Jo Bridgeman & Daniel Monk, *Introduction: Reflections On The Relationship Between Feminism And Child Law* in FEMINIST PERSPECTIVES ON CHILD LAW 1, 13 (Jo Bridgeman & Daniel Monk eds., 2000); Lim & Roche, *supra* note 23, at 230; Olsen, *Convention*, *supra* note 8, at 193 (pointing out that many women lose their freedom not when they get married, but when they give birth to a child); Price Cohen, *supra* note 42, at 71; Todres, *supra* note 41, at 615.

221. Thorne, *supra* note 40, at 86, 98, 104.

222. Freeman, *Feminism*, *supra* note 28, at 20 (raising these three reasons).

223. Martha Minow, *Interpreting Rights: An Essay for Robert Cover*, 96 YALE L.J. 1860, 1871-72 (1987) (raising this argument and then rejecting it).

224. Martha Albertson Fineman, *Intimacy Outside of the Natural Family: The Limits of Privacy*, 23 CONN. L. REV. 955, 964 (1991); Freeman, *Feminism*, *supra* note 28, at 20; Lim & Roche, *supra* note 23, at 227; Smart, *Power*, *supra* note 90, at 8-10 (regarding custody disputes). For the idea that women who have children become powerless and lack control, see Marie Ashe & Naomi R. Cahn, *Child Abuse: A Problem for Feminist Theory*, 2 TEX. J. WOMEN & L. 75, 84 (1993).

225. Jenny Rivera, *The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, 4 J.L. & POL'Y 463, 473-74 (1996).

children,[226] or by the prosecution of pregnant women who are drug addicts for potential harm to the fetus.[227] More moderate writing, although apparently stemming from the same source, argues that children's rights are synonymous with parental obligations, which, in effect, means more obligations on the shoulders of the mother in the current unequal social reality.[228]

These and other reasons have created a situation in which feminists often refrain from entering the arena of children's rights, in addition to a situation which sometime feminists are ambivalent towards human rights more generally.[229] Some argue that feminists not only refrain from allying with children, but even harm them, as feminist activism causes women to spend less time with their children and more time ensuring their own self-fulfillment.[230]

At the same time, feminists have also waded, in one way or another, into struggles linked to children's rights, if only in serious cases of physical or sexual abuse.[231] Writings do exist showing feminist endorsement of justice and equality in society as a whole.[232] One may conclude that feminists may be willing to promote children's rights in relation to more weighty issues but not to lesser matters, such as light corporal punishment (and even then the woman and mother will probably take center stage as opposed to the child, or, at minimum, the issue of male-female relationships will remain in play). This does not necessarily mean that feminists have no influence, even if only tacit influence, on "less weighty" issues such as corporal punishment. Yet it is difficult to find—not only in Israel—express influence exerted by feminism on the issue of corporal punishment.

Likewise, we have seen that feminist influences on children's rights may also be *indirect* in two aspects**.** First, one cannot ignore the role feminists played in putting women in positions as judges, legislators, scholars, and in other powerful positions in society. This increased the opportunity to benefit children's rights. Second, it is possible that feminists do not emphasize the development of children's rights, and even when they deal with matters that concern or impact children's rights, they do so exclusively to promote women's rights. For instance, feminists may impact children's rights in responding to the fate shared with children in the face of oppressive men (domestic violence would be a good example for this), and where children are the subject of

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226. Freeman, *Feminism*, *supra* note 28, at 42; Hooper, *supra* note 60, at 68, 71-72.

227. The argument here is that harm is being caused to women in general and black women in particular, in favor of the child or foetus. *See* Rivera, *supra* note 225, at 473-74; Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Rights of Privacy*, 104 HARV. L. REV. 1419, 1421, 1432-36 (1996).

228. Thorne, *supra* note 40, at 104.

229. Lim & Roche, *supra* note 23, at 227; Catharine A. MacKinnon, *Rape, Genocide, and Women's Human Rights*, 17 HARV. WOMEN'S L.J. 5 (1994); Olsen, *Convention*, *supra* note 8, at 192-93.

230. Williams, *supra* note 41, at 161.

231. *See supra* Part II.B.

232. *See supra* Part II.

dispute between mothers and fathers.[233] However, in almost every case feminists act while focusing – naturally – on the life of the woman, her status, empowering her, her relationship with men (during marriage, on separation from her husband and within the framework of the labor market), her relationship to her children, from pregnancy to raising children, or her relationships with the man and the child together (dilemmas relating to staying at home or sending the child to day care, custody disputes and the like).[234] But as feminists appeal against the dichotomy between the private and the public, and encourage a discourse of rights against patriarchal thinking,[235] they will always affect children, if only indirectly, and their impact will not be limited to women, whether they like it or not.

C. Great Care Should Be Taken in Applying Feminist Theories to Parent-Child Relations

Even if feminists are willing to foster the goals of weaker and oppressed family members, other than women themselves, we should take great care when applying feminist theories to these other relationships, particularly parent-child relationships. It is possible that feminists not only choose to refrain from participation in the movement to prohibit corporal punishment, but show indifference to it, or even express reservations about it. Why?

First, it seems that feminists are not always eager to harness the legislature and the courts, which are part of the establishment, in their reform efforts. This presents a problem because in order to impose a criminal prohibition on corporal punishment and repeal the civil defense, it is necessary to employ the establishment. However, as we have seen, feminists do not always reject this as a possibility.[236]

Second, one can certainly argue, in my opinion, that radical feminists aspire to detach the weaker groups in society and in the family from stronger groups, because those groups are an obstacle to the self-fulfilment of the individual and can even cause damage to basic tenets of the community. However, as mentioned above,[237] this stream of feminism explains that "equality" is an aspiration to destroy *gender* based hierarchies and not *existing natural* social differences in gender. Under this school of thought, the great disparity in power between a child and his/her parent is not a problem. This disparity is a natural social disparity based on society's perception of the different statuses of a child and parent respectively by virtue of the parent being an adult and more mature than the child. This is not an arbitrary gap created by men – or parents or adults

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233. This follows from matters reviewed in the first part of this article. For a general statement on this, see Bridgman & Monk, *supra* note 220, at 13.

234. *See supra* Part II.C.

235. MacKinnon, *Feminist Jurisprudence*, *supra* note 18, at 656.

236. *See supra* Part II.B.

237. *See supra* notes 18-20 and accompanying text.

generally – for their own benefit.[238] In other words, unlike disparities in power between men and women, only a parent has the duty to educate his/her child, and this duty necessarily entails power and authority for the purpose of exercising that duty, so arguably this gap is natural. Along these lines, natural dependence of the children on their parents is actually for their good, with parents raising children and keeping them safe. Today, it must be clear that the gap between men and women, for example, in connection with the assertion of authority and resulting subordination, and certainly in connection with violence, are artificial gaps that were created by the traditional power holders. Subordination in these relationships has no practical purpose, such as authority exercised to protect or educate. In other relationships, such as that arising between a policeman and civilian or an employer and employee, there is also subordination or authority; however, that subordination is appropriate in that context based on the individuals roles in society. Parent-child relations cannot be equal by their nature because of the functions that society assigns to parents and children in the family unit. Women are no longer perceived to be dependent like children.[239]

Consequently, if it is possible to apply conclusions drawn from feminist theories to the education of children, corporal punishment, and to parent-child relations in general, we must do so cautiously and in a less sweeping manner than with respect to the relationship between couples in a family or between men and women in general.

Nevertheless, some may argue that today the authority and power of the parent cannot authorize physically punishing a child. Under this argument, corporal punishment is not a legitimate expression of parental power, but rather is a lack of parental power and a loss of self-control, because a parent who uses corporal punishment to educate their child does so because they are incapable of doing so by other means. Possibly, the real test of whether parents have the authority over their children for educational purposes concerns other types of educational punishment: would the same prohibition have been applied to a mode of punishment that does not injure *the body* (but only harms or restricts the child's freedom or property), such as confinement in a room, "time out," grounding, confiscation of the child's equipment or withdrawal of pleasures, such as watching television or eating candies? The answer is unclear. As noted, the feminist intervention, which is arguably engaged in furthering the rights of children, may be limited to the more severe cases of physical abuse and sexual exploitation.[240] Perhaps it is not accidental that in less troublesome cases, such as light corporal punishment, feminists have traditionally not intervened, and

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238. At the same time, some will say that women's and men's differences (for example, in relation to childbirth), are also natural and no exception should be made in terms of children. The argument here asserts that these natural differences were translated into differences in power, and this also occurred in connection with parent-child relations: the natural differences may for example give rise to an attitude of worry and care, instead of differences in power.

239. Lim & Roche, *supra* note 23, at 232.

240. *See supra* Part II.B.

we should not anticipate feminists to intervene in relation to these other methods of education and punishment.

It is perhaps also possible to use feminist theories to demolish the "natural" basis of the traditional social status of parents and children and argue that this is also an artificial gap created by adults, the holders of wealth and decision-makers in society, and as such is similar to the gap which men created for themselves *vis-à-vis* women. This statement is valid, even if the validity is limited to the line between the imposition of authority and power that is for the benefit of children and parental activities that are not genuinely for their benefit and instead infringe on their rights and may cause them physical and mental damage.

Third, the real issue at stake is arguably not the equality between children and parents, but the correct *balance* between power and rights. Given that the gap in power between parents and children is not artificial but natural, the issue is not to make the relationship equal (as it is, or should be, between men and women) or to draw parallels between women and children against the patriarchy. Instead, the issue is to give the weak children more power than they have today, in order to protect them from damage to their body, dignity, and integrity. In other words, the goal is not to make the relationship equal, but to grant more basic human rights to the children. This is different from feminist goals. Perhaps this reflects the different status between women and children today, since women are not considered the property of their husbands and partners, and children, in a way, still are. The goals are similar in that they have a similar aspiration for a better future and attempt to minimize gaps in power. However, because as to children the gaps are natural, children's rights will never reach the same level that feminists aspire to reach with respect to women's rights.

Fourth, the new legal situation in Israel, which prohibits corporal punishment in its criminal aspect and even exposes parents and teachers to a tort claim for battery, arguably has more practical ramifications for women than for men. The impact may be greater for women because the division of functions in the house is not equal, as mothers spend more time at home with the children, than fathers. Likewise, there are more women who work as teachers than men, a career perceived to be unattractive and undesirable. Thus, the new legal situation may preserve the disparities and reinforce the low value that society attaches to helping others, including the treatment and teaching of children.[241] Indeed, surveys and data show that mothers hit their children more than fathers,[242] which

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241. Kahane, *supra* note 206. Kahane believes that the existing reality forces women to contend with different situations, such as raising children, which men can effectively evade by reason of their positions as decision-makers and the parties in control.

242. *See* Rivkah Freilich, *Mothers Hit More than Fathers,* Ma'ariv, May 2, 2000 (Isr.); Ziporah Roman, *It is actually women who abuse their children more¸* 2775 LA'ISHA [WOMAN] 84-88 (2000) (Isr.) (contrasting data which shows that fathers inflict more sexual abuse on their children.). According to data held by the Israeli National Council for the Child, as of the beginning of 2005, of all the injured children known to the Welfare Services 52% were injured by their mother and 48% were injured by their father. The data was presented during a conference on 15th Anniversary of the Mandated Reporting on Child Abuse and Neglect,

should not be surprising where women spend more time with their children. The new legal situation may also lead, inadvertently, to more severe punishments imposed on women who have injured their children, because as women they are expected to be more compassionate.[243] In addition, one might say that mothers (like fathers, in this point) should have the right to choose how to raise and educate their children, and intervening in this right harms the liberty of these mothers.

Thus, the prohibition may give rise to an ironic result where a movement arguably driven by feminists might ultimately harm women more than men and weaken the power of the mother and teacher in relation to the child and student. The mother and teacher spend the most time with the children and, therefore, they are more likely to be in a situation that leads to hostility. This reasoning seems infuriating, because the prohibition also applies equally to male parents and teachers. However, it is likely that feminists will not hasten to enter into a struggle where the result might harm the very group that feminists have sought to promote by removing them from inferior positions in society and in the family. In my opinion, it is ultimately difficult to argue that those who define themselves as feminists and hold key positions that may allow them to exert influence on the issue of corporal punishment would really choose to shut their eyes to the problem and not become involved in this matter because of an indirect and unfounded fear of harming mothers and female teachers. Moreover, there is no express feminist intervention *opposing* corporal punishment, it is difficult to find feminist writings that are interested in *allowing* corporal punishment of children by women (mothers or teachers) in the name of feminism.

However, this is not the only possible opinion. One can also argue the opposite, that banning corporal punishment will harm men more than women since men are stereotypically identified with the role of being educators and disciplinerers within the family even though they spend less time in the home. The ban would take out of their hands an important and common means of correction. Maybe this explains the lesser involvement of men in the movement to ban corporal punishment. It is convenient for men, as fathers, not to restrict the disciplinary means. However, the ban may actually contribute to greater equality between mothers and fathers, since it may reduce the phenomenon of mothers reacting to the child's bad behavior by saying something like: "you wait and see, when father comes home, you'll get yours," since when the father returns home, his belt returns with him. On the contrary, women could be interested in ending the practice of leaving disciplinary authority to men, which is often more harsh, by supporting the banning of corporal punishment.

Another point that has to be considered is the change in status of the child who becomes an adult and generally also a parent, compared to the lack of

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Sha'arei Mishpat Law College, Israel, (Jan. 4, 2005). However, this data is not confined to corporal punishment, but it also embraces violence in general, including severe violence and abuse, so that, in my opinion, it is not clear whether the data is also statistically valid in respect to light corporal punishment.

243. *See* discussion *infra* Part IV.D.

change in status of women compared to men. Every parent was once a child.[244] The wheel turns and the passing years change the power relations, the child is now a parent and has authority over her own children. In contrast, women's status remains static *vis-à-vis* men. This fundamental difference may reduce the applicability of feminism to the area of children's rights.[245]

The conclusion of this section is that we should be cautious in applying feminist theories to issues concerning children's rights, albeit the applicability is not impossible.

D. Does the Process Represent Feminist or Humanist Theories?

The question asked in the previous section may be taken a step further. Assuming the nature of the relationship between a child and parent is totally different from the relationship between a woman and a man, including within the family framework, it is more appropriate to look for influences from humanist rather than feminist theories. Are women just more humane towards the weak and vulnerable elements in every system? Does this make women more likely than men to work to remedy social wrongs? If they do, this would explain the predominant involvement of women in a movement that was not feminist in nature. In fact, a patriarchal society such as ours makes it more likely that women members of the parliament, women judges, and other women policy makers would regard themselves as having a central role to play in safeguarding individual rights in general, and the weak and oppressed in particular, not necessarily restricting their role to promoting women's rights.

As mentioned above, in other countries that have prohibited corporal punishment as a mode of education, the prohibition has not been extended to parental conduct.[246] This might support the conclusion that the movements in other countries were the result of humanist theories, too.[247]

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244. This sometimes leads to imitation of patterns of behavior of the grandparents in the previous generation, without any necessary connection to the conduct of the child – a type of inter-generational trap or inter-generational vicious circle. For this phenomenon in general and in relation to corporal punishment in particular, see the following: PHILIP GREVEN, SPARE THE CHILD: THE RELIGIOUS ROOTS OF PUNISHMENT AND THE PSYCHOLOGICAL IMPACT OF PHYSICAL ABUSE 193-98 (1990); Anthony M. Graziano, Jessica L. Hamblen & Wendy A. Plante, *Subabusive Violence in Child Rearing in Middle-Class American Families*, 98 PEDIATRICS 845-48 (1996); Judith G. McMullen, *Privacy, Family Autonomy, and the Maltreated Child,* 75 MARQ. L. REV. 569, 584-96 (1992); Benjamin Spock, *Is Punishment Necessary?* (reviewed by Robert Needlman), http://www.drspock.com/article/0,1510,3925+AgeY1_2+cbx_behavior,00.html (last visited on Dec. 31, 2006); Murray A. Straus, *Spanking and the Making of a Violent Society*, 98 PEDIATRICS 837-42 (1996);.

245. *Cf*. Thorne, *supra* note 40, at 102 (explaining that the fact that every adult was once a child might actually increase the understanding of adults, and among them feminists, for children's rights).

246. *See supra* notes 79-83 and accompanying text on Olsen's approach.

247. The use of force can create a red line which immediately invalidates any system of education which utilizes it; however, other children's rights that are breached for the purpose of education will be examined on their merits, will not be negated "automatically."

We must remember that humanism is not dependent on the sex of the judges or to feminist theories. Humanism is equally the province of men and is a question of world view and awareness of social wrongs, inequality and discrimination in general, and not only against a particular gender.[248] Thus, for example, in a line of judgments which were given both by male judges and by female judges in relation to various issues connected to the rights of children and conflicts within the family, the judges asserted that "the court is the father of minors."[249]

It would seem, therefore, that the arguments against corporal punishment as a means of education may be perceived as humanist and not necessarily feminist, or, alternatively, as both.

E. Does the Process Merely Reflect the Greater Compassion of Women, and Nothing More?

In addition to, and distinct from, the previous section, it is possible that almost the entire process of change was carried out by women, and women may be predominantly involved in other children's issues in the future too, because women, by their nature, are more compassionate and tend to worry about the weaker elements of society, such as the child. This view could stand on its own or as part of the "ethic of care," in the language coined by Carol Gilligan.[250] This is, in effect, a type of cultural feminism.[251] In Gilligan's opinion, men and women differ in how they display emotion; a phenomenon which is the outcome of culture.[252] Before Gilligan, others believed that this difference ensued from the fact that women have greater respect for justice and morality, whereas men have a more developed awareness of laws and rights.[253] Gilligan argues difference exists where men have an "ethic of justice" or "ethic of rights," in which the world is perceived as a system of individuals and laws

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These breaches will be recognized as legitimate if the harm they cause is trivial and they are performed in a measured and qualified manner. Society understands that a parent cannot and need not fulfill *all* the desires of the child and ignore his/her bad ways. On the contrary, the parent must set boundaries for the child and even use coercive measures. For this purpose, so goes the assumption, one must prefer deprivation of freedom to bodily harm, because bodily harm is traditionally perceived as more serious and injurious, and there intolerable. Modern humanist society is prepared to accept a form of punishment which denies the freedom of an offender and imprisons him, but it is not prepared to accept physical punishment (such as flogging) as was customary in ancient times and as is still accepted today in some societies.

248. Kahane, *supra* note 206, at 215 and note 19 and accompanying text (arguing this in relation to the male understanding of the source of the wrong against the women of the world).

249. *See, e.g.*, HCJ 243/88, 168/88, 170/88 Konselos v. Turjeman [1991] IsrSC 48(2) 626; CA 6106/92 Anon. v. Attorney Gen. [1994] IsrSC 48(4) 221.

250. CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982); Gilligan, *God of Love*, *supra* note 43, at 557-58.

251. *See* Olsen, *Convention*, *supra* note 8, at 204.

252. GILLIGAN, *supra* note 250.

253. On the perceptions before Gilligan's writing and after it, see Olsen, *Market*, *supra* note 8, at 1516-7; Olsen, *Convention*, *supra* note 8, at 202-3.

which link those individuals, while women have an "ethic of care" which emphasizes care for others, particularly in relationships, and derives obligations from them.[254] According to this explanation, it is not necessary to see the process as humanist, as humanism is not specific to women, while the "ethic of care" is unique to women.

Arguably, women are more compassionate, especially towards children, since they are more connected to them: they give birth and they are the main caretakers of children. Whilst other schools of thoughts of feminism would desire to avoid taking the "motherly role" in promoting the rights of children, it is possible that the ethic of care would embrace this thinking. Indeed, the ethic of care might explain that women, by their nature, feel more like mothers, and therefore when they are required to exert an influence and make decisions in relation to matters in which children are involved, they tend to regard themselves as mothers and show more compassion.[255]

VI. AFTERWORD

The movement to ban corporal punishment was primarily carried out by women, and its substance is meant to enhance the welfare of the children and to narrow the parental conduct that might harm children's rights. Is this process a reflection of feminism, humanism, ethic of care (as a type of cultural feminism), a combination of more than one, or maybe just a coincidence?

Superficially it seems clear that there is a feminist influence. Yet, a closer look makes this conclusion seem less certain. A number of queries have been raised in this paper. First, it was pointed out that a process conducted primarily by women is not necessarily evidence of the fact that feminist theories were behind it. The argument that it is about feminism since women are behind a process is somehow simplistic, as not all women are feminists and not all feminists are women. Second, a doubt was raised as to the willingness of feminists to further children's rights, as distinct from its theoretical ability to do so, although it was mentioned that feminists may exert an indirect influence on the family and child, whether or not they want to do so. I also warned that, for a number of reasons, great care must be taken when applying feminist theories to parent-child relations. The question of whether the process represents feminist theories, or perhaps also, or only, humanist theories or theories based on the women being more compassionate, named the "ethic of care."

However, if we combine the identity of the perpetrators to the fact that the content of the process reflects social changes that are compatible with feminist theories, even if there is no express referral to these theories, it seems that one could point to, at least, some kind of indirect feminist influence. In other words, the answer is somewhere in the middle, between the determination that the

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254. GILLIGAN, *supra* note 250.

255. Olsen believes that this examination of the ethic of care versus the ethic of rights is highly compatible with the discourse of children's rights versus the parent in general. *See* Olsen, *Convention*, *supra* note 8, at 203. *Cf.* Skelton, *supra* note 22, at 235-54.

movement was influenced by feminism doubting this conclusion by assuming that any connections are only coincidental. This could be a proper conclusion in particular as to the influence of radical feminist theories, which are interested in narrowing the gap which exists between strong and weak groups and negates the perpetuation of power built on the artificial disparities which the strong groups have created for themselves in order to remedy social wrongs and bring social changes. *Prima facie* there is nothing to stop these theories from acting the same way they do in male-female relations in relation to children's rights in their relations with their parents. In other words, maybe each one of these facts when examined separately does not suffice to point at feminist influence, but identifying both together in issues connected to parent-child relations, and maybe even in other strong-weak relations, might indeed reflect, at the very least, indirect radical feminist influence.

In my opinion this was the case in the movement to ban corporal punishment in Israel. The compatibility with feminist theories in this case exists both in relation to the substance of the process and in relation to the identity of those who carried it out, most of whom were women in various key positions.

A suitable and balanced conclusion can be reasoned from the examination of similar cases and processes. In those cases, one should examine whether the process could have happened without the feminist movement. It seems that in regard to corporal punishment in Israel, and to other processes that could be examined in the same way, it could not have happened without some kind of a feminist influence.

As noted, the primary objective in this article has been more than to merely examine whether the specific issue of corporal punishment of children in Israel has been influenced to any degree by feminist theories. Certainly, there is a benefit to be gained by simply analyzing the process and examining whether it indeed implements feminist theories *per se*. However, it is also important to examine the range of those theories and their influence beyond the specific issue at hand. The conclusions which I have reached may be relevant to a broader examination of the various influences on the development of the rights of the child and the student, and to honing our understanding of feminist theories and determining whether they are prepared to act for the benefit of other weak and oppressed groups in the population and in the family, or whether they confine their loyalty to women only. In my opinion, the discussion on the case study in this paper indeed could provide a foundation on which to consider further comparisons between feminism and children's rights issues.

However, one should be cautious in doing so. There are those who might believe that genuine feminism must refer to *all* existing social wrongs, including elderly, disabled, slaves etc., because a feminist is one who is sensitive to social wrongs in general and wants to enact social changes wherever it is necessary in her opinion. As noted, no unequivocal conclusion can be reached on this point. It is possible that feminism is "egoistical" and unwilling to divert its attention from the oppression of women except in very severe cases (such as sexual abuse of children, or more particularly young girls, such as circumcision of girls), if at all, and even then the women and the mothers take center stage and not the children, or, at the least, even then the

attention is not completely diverted from the struggle of the women. However, it is also possible that an artificial disparity exists in the relationships between men and women, whereas the gap between parents and children is perceived in essence as a natural gap which is not open to feminist intervention. On the other hand, this unploughed field of children's rights, *can* be (and perhaps *ought* to be) strongly influenced by the entry of researchers who define themselves as feminist – even if the natural differences between children and parents are dissimilar to those existing between men and women – *i.e*., feminists who are willing to roll up their sleeves and help the progress of other groups in society, who may well need their help. In my opinion, there is room for discussion on possible influences when it comes to parent-child relations.

A cautious comparison may be made. It might be that the field of children's rights is not about enhancing equality, like most feminist theories, since that natural gap between parents and children, which derives from the dependence and the duty to educate; rather, children's rights is about achieving more dignity, integrity, respect, and, more basic human rights for the child. It should be determined that compatibility here is less about how similar the two theories are, but more about how well they fit together to form something greater.

A possible influence, in future cases too, could prove significant in two directions. Feminist identification with the development of children's rights may help to promote those rights by providing them with a backing wind, children's rights having been left far behind in comparison with advances in the status of women. Dealing with violence in general and especially with domestic violence should be different in the feminist aspect, from dealing with custody, visitation rights and other intra-familial disputes. While in the latter one can understand the feminist's focus on mother's and wives' rights *vis-à-vis* the rights of the father and the husband, it is expected that in the former, feminism would try to focus on children's rights too, at least from the perspective of the girls' rights. That is true mainly if this influence would not harm women's rights and would not dilute the focus on gender. Feminism might even gain from this comparison to children's rights, although the main influence is *vice versa*.

However, I must emphasize that such identification might actually interfere with the implementation of the rights of children because of the antagonism felt by some decision-makers (for example, judges or members of parliament) towards feminism. These decision-makers may deem the development of the rights of children in a "pure" manner, without being pushed by feminism to be an "untainted" process and, therefore, also more worthy of their support.