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WHAT IS TO BE DONE?

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We live at a moment of change, enormous change in human life. We tend to imagine it is material change, electronic and technical. We have almost forgotten the great social changes of the modern era: democracy, universal suffrage, representative government, and individual rights. But the last one hundred fifty years has seen a far greater transformation of human relationships. Indeed, we live in the last days of patriarchy.

Since patriarchy is the oldest and most universal form of human organization in the historical period, the most pervasive and entire, the fact that it is changing is of enormous importance. It has not existed forever, of course, but it is all we know and our most fundamental social scheme. It is behind, beneath, and below every other form of human organization—whether it is the rule of kings or presidents, laws or religions, families or tribes or nations. Patriarchy is so indigenous and basic it has existed without question or recognition for millennia. Patriarchy is the rule of male over female in all departments of human life. It is based on custom, belief, law, and ultimately on force.

Human social life everywhere is based on this model, whether it be the state or the family. It plays out in every thing we do and manifests itself even in our sense of psychology and personality. We ascribe aggression to men, and weakness and passivity to women. Certain activities are therefore appropriate to males and other activities to females—because they “are born that way,” born into one group or the other, because God or nature wished it so, or because it is inherent in human biology and destiny. The two groups are not as much complimentary as they are incongruent—the male to rule, the female to be ruled and to serve.

We align our apprehension of the supernatural this way and religion under patriarchy is, of course, patriarchal. So is our law, our notions of learning and wisdom, our social and economic hierarchies, our systems of defense, war and weaponry—even our notions of right

* I am grateful to Professor Anita Bernstein for her comments on earlier drafts of this Essay.
and wrong and what is beautiful, aesthetic, or appropriate.

Under patriarchy, the human race is divided into two castes, and personal identity is determined by birth and sex group. Conformity is carefully cultivated through socialization and nonconformity is punished. Masculinity and femininity is who we are or should be. Make a gesture associated with the other sex and you will be marginalized and stereotyped. In addition to the male/female categories, the compulsive system of heterosexuality is enforced—born into one identity, you do not switch or cross over, swap clothes, or transgress. Punishments here are terrible and have succeeded in producing obedience throughout history. Imagine challenging them.

Yet the whole structure is under challenge. For 150 years in our country, patriarchy has been under organized political challenge since the first convention for women's rights in Seneca Falls, New York in 1848.1 At this convention, a group of women—and some men too—gathered to ratify a “Declaration of Sentiments”2—a quaint Victorian term that almost disguises the radical nature of their claim. More specifically, these individuals demanded that the United States Declaration of Independence be applied to women, contending that Declaration of Independence had not been written with women or blacks in mind. Appropriately the women who called the convention were abolitionists and the strongest voice speaking for their wildest and most radical claim—that women be admitted to the suffrage as full citizens and permitted to vote—was that of the great black orator Frederick Douglass.3

The implementation of this document has been the work of 150 years of hard and uphill work, but it has been heard around the world. The outcomes have been real: threshold citizenship,4 the right to own property5 (previously husbands owned their wives' property and even their wages), the right to witness,6 make contracts,7 and the right to act as jurors. The work also led to claims for equal education, entrance to certain professions, and equal wages. These claims are still not entirely achieved.

4. See Eisenberg & Ruthsdotter, supra note 1.
What the women of Seneca Falls were doing was applying the American model of rights to the case of women. They were pioneers in doing so, and the New World American context was peculiarly appropriate for making these claims. Soon, these same claims were made abroad in country after country, and fostered the first great wave of feminist reform—the first undermining of historical patriarchy.

The second wave of American feminism surfaced in the 1970s, historically speaking only a moment ago. We are so much in the very midst of this change that it confuses us. The second wave of American feminism has hardly achieved its goals—it has not yet been rewarded with a piece of definitive legislature like the suffrage amendment. The Equal Rights Amendment (the “ERA”) was nearly passed but then shamefully defeated: as the religious right woke up to the dangers it posed to the patriarchy so dear and essential to them, they rose up and killed it.

Abortion and reproductive rights were won in the courts, but these rights are lost or nearly lost every day as the religious right hacks away at the idea of women controlling their own bodies and fertility. First, the right to abortion from Medicaid and the poor was removed. Then, gradually, abortion itself turned into a dirty word by the “right to life movement,” which ironically not only supports the death penalty but also consists of individuals who assassinate medical doctors performing abortions and terrorize the public by bombing clinics. For some, the right to life becomes the right to kill. Why, you wonder, do pious aims end in such lawlessness? Because patriarchy is based and rooted in the control of women and their sexuality.

Patriarchy could not come into being until the discovery of paternity. Maternity is a certain affair: the child emerges between the woman’s legs, you can see it, and you know who is its mother. Paternity is a far cloudier matter. To link sexual intercourse with pregnancy, especially in a sexually free society, is hardly something one would easily surmise; it took millennia of human existence to make this connection. Early human life was based on gathering

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8. See Roe v. Wade, 410 U.S. 113, 153 (1973) (“This right of privacy... is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”); Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (finding that the right of privacy included the decision whether to bear or beget a child).

rather than hunting or farming. But with the discovery of paternity patriarchy was made possible—and with it, the fact of property in persons, in children and in women. Recall the population explosion of the early cities with their slaves and castes, of divine pharonic rulers and a priestly class: more property in persons.

Now women could be sequestered and paternity made almost certain. Children bred as workers, slaves bred as chattel. The whole sorry mess of human exploitation depended upon what is actually a scientific discovery. That precedent continues. In our time, new scientific discoveries—cloning, in vitro fertilization, and genetic research—are bringing about a new biologic explosion capable of new forms of exploitation such as surrogate motherhood by the poor for the rich, and the elimination of the female fetus through amniocentesis—discoveries which may change life once again, depending on how they are used and by whom.

But patriarchal sentiment is sure of one thing—women must be controlled. Their sexuality must always be legally circumscribed, punished with poverty and illegitimacy and never permitted to be free or by their own choice. For women's sexuality to be without male control or terrible consequence is anathema. Patriarchy essentially hates and fears sexuality. In women, patriarchy sees sexuality as evil and sin. In men, sexuality is sometimes freedom, sometimes just dangerous, but in women it must be a dire consequence, a vulnerability, shameful and debilitating.

A great deal of the impetus of the second wave of American feminism has been toward sexual freedom and sexual expression for women, and also toward the liberation of sexual orientations other than compulsive heterosexuality. Here, the new women's movement is aligned with gay liberation. As lesbians are women too, the second wave has battled for them and challenged the heterosexual norm and the very notions of masculinity and femininity. Women have children on their own now: lesbians have children. You can see how this wreaks havoc with patriarchal control, and how the very struggle takes place over the female body. The second wave has also highlighted the role of domestic violence and rape—what you might call "informal" patriarchal practices, officially disapproved of but culturally encouraged as a kind of vigilante intimidation of the entire female population. Fear of rape helps in sequestration and prevents women from being free, or even visible, in public or at night. Within the family, domestic terrorization, secret and embarrassing, keeps individual women in line and assures male control in the home. Both
women and children are threatened in a general way by this widespread violence because so many are suborned and imprisoned in what is supposedly "private" rather than public existence within the family and the privileged space of domestic life.

Under patriarchy women did not, and still do not, have much in the way of a public or larger social existence. Political theorists from Plato to Habermas do not see women as having public existence, still less public office. Throughout patriarchal history women have not been citizens in the way that men have been who enjoy both the public and private sphere. Confined to the home and child care, women are controlled by the *pater familias*, as the heads of household are controlled by the state.

This confinement is particularly advantageous for authoritarian patriarchal regimes—the Axis powers in World War II for example, or present-day dictators who manipulate Islam for similar purposes. A tight ship—a rigid hierarchy—is extremely easy to control and direct towards government's own economic or martial purposes. Of course, patriarchy is essentially and historically war-like, socially hierarchical and economically exploitative. We see it today in the neo-Darwinian survival of the fittest in global marketeering and the exploitation of foreign—usually female—labor. Just as university students of an earlier generation opposed apartheid by causing universities to divest themselves of all investments in South Africa—a worldwide pressure that brought down the regime and freed the country—students more recently have contemplated the Nike shoe and what its makers are paid. United States capital dominates the world in harsher and harsher terms. The richest seek the poorest to hire for the lowest wage, to entrap their resources and despoil their environment, whether the Amazon forest or Nigerian oil.

But here we are in the belly of the beast, the heart of the empire. Anyone can see the effects on feminism: we have had decades of essentially Republican rule, a profit driven culture, and a powerful religious right that has come within an inch of a coup d'état and imposed moralizing hypocrisy upon the nation through an uncontrollable prosecutor and endless investigations into private life. These zealots did not succeed, but they have come a long way and pulled the country with them toward the right and authoritarian controls. Authoritarianism is all around us. Our television programs revolve around cops as heroes. Imagine, free people entertaining themselves this way.

Without an external enemy, the government has made an enemy
of its own citizens in the war on drugs—largely a war on the poor and on blacks for what may be seen as merely economic crimes. The other victim is our civil liberties—unreasonable search and seizure and losing the Fourth Amendment to name a few. American citizens, increasingly policed and imprisoned are hardened to executions by the state. We have more people in prison than South Africa or the Soviet Gulag.\textsuperscript{10} Prison is a business now, where investors can play on the market in prison building and beyond: private prisons and the prison industry. It is slave labor when we talk of Chinese prison labor. What a deal: the taxpayer feeds and shelters your work force for you and you don’t even have to pay minimum wage; no wonder it’s a hot item on the rocket market.

I recite all this quick history to make a simple point: even though things used to be worse, this is not a good moment for American feminism. Like most progressive forces, we are stalemated, on the defensive, trying desperately to hold on to the gains we have made and unable to go forward. Which is why I want to praise international feminism. There, real progress is being made. That is where the action is, in this great world of social change. There we see a different frame of reference: the idea that women’s rights are human rights.

To begin with, the founding document of the United Nations (the “U.N.”)—the engine behind international feminism—is the U.N. Declaration of Universal Human Rights.\textsuperscript{11} Its focus is on “the dignity and worth of the human person and in the equal rights of men and women.”\textsuperscript{12} Eleanor Roosevelt’s gift to the world, it is now fifty years old—so much younger than the U.S. Constitution or the Declaration of Independence, documents on which U.S. feminism has depended for its philosophy. Unlike the U.S. documents, it recognizes that humans have economic rights: to food, health and shelter, the right to work, and to a living wage.\textsuperscript{13} These are not rights Americans have ever recognized but they make a very big difference.

The other big factor in U.N. thinking is the indivisibility and universal character of human rights. In the founding American government, women and people of color were simply not human


\textsuperscript{12} See id.

being; they were consequently not and could never be citizens. Americans have enlarged that view but not modified it. The U.S. Constitution has not rewritten its preamble that all men are created equal: it means men, white men; and the text has not been corrected.

The United Nations has become the locus of international feminism as feminists from every country began to network through the U.N.'s Decade of the Woman and the four great worldwide U.N. Conferences on Women. Begun innocuously enough with the official representatives being Mrs. So-and-so, the wife of the vice president, etc., these conferences have been attended by many tens of thousands of grassroots feminists and non-governmental organizations. Get that many women together and something will happen. These conferences have been held at Teheran, then Mexico City, then Copenhagen, then Nairobi, and then Beijing.

At the 1993 Vienna convention, the rights of women were fully accepted as human rights. Therefore, the oppression of women is a human rights crime. After Vienna, the routine facts of patriarchal life worldwide—that women are unwanted births, that girl children are fed less and often sold into sexual traffic, that women are beaten in private life in the home (generally regarded as no business of government, or simply individual foible, or cultural or religiously condoned practices or customs), that they inherit less or not at all, that they can be contracted into marriage without their consent, forced to bear unwanted children and worked hard and paid nothing or a pittance—all came to be seen as "crimes against women" as a class, not merely meaningless offences against disorganized individuals who have no hope of redress.

U.S. law, government, and social vision does not recognize crimes against women. Even the serial murders of prostitutes are just bad luck, or the act of an especially warped psyche. Women's rights

16. See id.
17. See id.
are not human rights in the United States; they are extras, concessions, the hobby of bourgeois and educated liberals who represent a blasphemous danger to religion and society. They are fought hard by the religious right who have mobilized especially to oppose them, beginning with the ERA and continuing with the prevention of affirmative action.

Consider the contrasting premises and promises of international feminism. Within international feminism, affirmative action is where you begin to get not only get equality of access but equality of outcome, that is an outcome where women really get into political office or a managerial position or have a say so in public policy. The great U.N. document on women—the Conventional Against Discrimination Against Women\(^2\) ("CEDAW"), still unratified by the United States\(^21\)—is set up with mechanisms for states to follow to bring about sexual equality. Nations have to do something to make it happen. Change their law, of course, especially family law where it discriminates, but also set up education and training to bring about sexual equality, change textbooks, make quotas for women candidates in elections. CEDAW challenges even civil life—culture and religion—where it impedes the equal opportunities of women.

Here, of course, international feminism takes on Islam and the Catholic Church, both of whom had a fit at the Cairo Conference on Population\(^22\) as it became clear that the social emancipation of women is essential to population control and that the sexual emancipation of women follows from fertility and reproductive rights. Before such ideas, patriarchy grows desperate, goes berserk. Rome and Islam even made common cause, but they were outvoted and the logic of woman's situation took over.

The Beijing conference in 1995\(^23\) made even greater demands on governments, no matter how patriarchal, to reform their laws and even spend money on opportunities for women in development and education. The most patriarchal states have chosen to avoid these responsibilities with the usual Christian or capitalist excuses. Many patriarchal states that have already signed CEDAW are trying to


\(^{23}\) See United Nations, Fourth World Conference, supra note 18.
wiggle out through Islamic exceptions to the rule that rights are indivisible and universal by claiming cultural and religious exception, or blaming their visceral opposition to women's rights on the West or imperialism or modernization or an attack upon their believed traditional culture, arguing through Biblical and Koranic verses to prove that women should be veiled or kept in male tutelage or tied to a man or a child and always kept poor and at home where females are divine and lovely and treasured and mystical if they behave themselves. In the United States, money and Republicans try to distance us from the United Nations.

Even in societies economically deprived and undeveloped, which would benefit so obviously by female participation, male government refuses to act in its people's interest. When Khomeini proclaimed the veil and in the same paragraph deprived women of effective citizenship, education and employment, he confirmed the support of half the population in one speech and annihilated the resistance of the other half. Dictators find an appeal to patriarchal sentiment convenient and logical—they are patriarchs remaining in patriarchal power by appealing to male supremacy.

But the principles of indivisibility and universality remain. This is the mechanism where patriarchy will finally be overturned everywhere and in every sphere of life. Universality takes women out of the ancient poverty and dependence of women in patriarchy, their isolation within the family and sacrifice to family duty through an ideal of equal employment and childcare and empowerment. All this in a time where the rich countries have decided to cut welfare and starve women and children in poverty, pay as little as possible for labor and export employment to the lowest bidder. There are enormous social and economic consequences here—a change in human organization so vast it is hard to imagine.

CEDAW is hardly even known here in the United States, for a reason. Americans might like it and go for it, and urge Congress to sign it and pay up. Why, by the way, does the U.S. not pay its U.N. dues? An easy question. The progressive program of the United Nations is anathema to the American right wing. Women's rights, children's rights, the convention against torture, the recognition of economic rights as human rights—this in the time of the worldwide exploitation of labor, resources and the environment?

Very dangerous ideas—and I recommend them to you. They have heart, humanity and justice; they are new, exciting and possible. They will be the downfall of patriarchy. And so I nominate the passage of CEDAW, the Convention For the Elimination of All Forms of Discrimination Against Women, as the greatest issue of unfinished feminist business before us.