Seeking a Standard: Reconciling Child Abuse and Condoned Child Rearing Practices Among Different Cultures

Michael Futterman

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COMMENT

SEEKING A STANDARD: RECONCILING CHILD ABUSE AND CONDONED CHILD REARING PRACTICES AMONG DIFFERENT CULTURES

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"Of all nature's gifts to the human race, what is sweeter to a man than his children?"

Marcus Tullius Cicero¹

"Gripping my arm, Mother held it in the orange blue flame. My skin seemed to explode from the heat. I could smell the scorched hairs from my burnt arm . . . . Mother then ordered me to climb up onto the stove and lie on the flames so she could watch me burn. I refused, crying and pleading. I felt so scared I stomped in protest. But Mother continued to force me on top of the stove. I watched the flames, praying the gas might run out . . . . To keep mother off balance, I began to ask whining questions. This infuriated her even more, and Mother began to rain blows around my head and chest. The more Mother slugged me . . . ."

David Pelzer—Kindergarten²

² DAVID PELZER, A CHILD CALLED "IT": ONE CHILD'S COURAGE TO SURVIVE 41-42 (1995).
I. Introduction

Incidents of child abuse occurring in the world today have reached an outstanding level.\(^3\) Despite the substantial amount of funds governments are allocating to education and prevention programs, this epidemic is worsening.\(^4\) Whether in China, Australia, the United States, or Latin America, the multitude of child abuse cases is staggering.\(^5\) One of the major controversies surrounding this public health epidemic is the lack of legislation against child abuse in certain countries and the permissibility of some practices due to religious and cultural differences. Some countries permit female genital mutilation as a form of religious practice,\(^6\) others permit coining\(^7\) and foot binding,\(^8\) while others


6. Casandra Terhune, *Cultural and Religious Defenses to Child Abuse and Neglect*, 14 J. AM. ACAD. MATRIM. LAW. 152, 153 (1997). "Female genital mutilation has been described as a brutal, disabling ritual tied to culture and tradition that serves as a psychological chastity belt." It often results in death from intense pain, excessive loss of blood, or infection. If a young girl is lucky to survive such a ghastly procedure she is likely to encounter many problems in the future including infertility, hemorrhaging, nerve damage, dermoid cysts, or chronic urinary tract infections. *Id.* The United States has deemed this practice a criminal act prohibited by law. See § 645 Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA). In countries such as Nigeria, however, 60 to 90% of the female population is subjected to it. Nwaokolo v. I.N.S., 314 F.3d 305 (7th Cir. 2002).

7. "Coining is often used by Cambodian refugees to relieve pain and to eliminate illness. The affected part of the body is covered with ointment and the skin is rubbed with a coin, leaving behind welts. This use of cupping is thought to release the bad wind, the source of the illness, from the body, thereby relieving the symptoms." Some professionals, including the author of this work, feel that western health care providers have mistaken coining as a sign of abuse. Sana Loue, *Alien Eligibility for Health Care Services, IMMIGR. LAW & HEALTH*, October 2002 at §15.2; But see ROBERT D. GOLDSTEIN, *CHILD ABUSE AND NEGLECT: CASE BOOK AND MATERIALS* 82 (1999) (child protection services advising immigrants to abandon the practice of coining).

8. JOHN BRIERE, ET AL., *THE APSAC HANDBOOK ON CHILD MALTREATMENT* 410 (1996). Foot binding is the former Chinese practice of "crippling a girl's feet through bending and breaking at a young age in order to prevent proper growth." Erika Sussman, *Contending with Culture: An Analysis of the Female Genital Mutilation Act of 1996, 31 CORNELL INT'L L.J.* 193, 213 (1998). It is intended to "ensure virginity and faithfulness on the part of women" and it is "equated with status and marriage prospects for women and sexual pleasure for men." FAN HONG, *FOOT BINDING*
seeking a standard
deem striking a young child with a wooden spoon as tolerable. These child-rearing practices are perfectly acceptable in many cultures, yet they are different from those practiced in the United States.

The problem is confounded when immigrants arrive in the United States with different religious and cultural beliefs. Often they find themselves in dependency court on child abuse and neglect charges while they adamantly claim their innocence. The key is to differentiate between what is an acceptable child rearing practice and what is not, to determine if cultural differences should be a factor in the process, and to formulate an analytical tool to answer these questions.

This comment will focus on the cultural differences found amongst Latino cultures concerning child-rearing practices and their effects when they are carried out in the United States. Part I will discuss the basic cultural dilemma that the United States is currently facing and the quandary that confounds the world when dealing with a definition of child abuse. Part II will examine Mexico and its culture in relation to children. It will discuss the various child abuse laws that exist in the country, focusing on a specific Mexican State and its lax child abuse regulations. Part II will also discuss the many differences that exist in the parenting styles of Mexicans and Mexican-Americans compared to those of other nationalities. Part III will provide a general analysis of parenting styles, regulations, and cultural differences in other parts of Latin America. Part IV will propose a legal standard to determine which practices should be condoned and which ones should not be permitted, and will apply the suggested analysis to a number of examples. This comment concludes that cultural differences should not be a factor in child abuse analysis. The goal should be a simple legal standard and it should be applied to all cases regardless of the circumstances. Is physical and/or emo-

Feminism and Freedom: The Liberation of Women's Bodies in Modern China 45-46 (1997).
10. See, e.g., A.C. v. Department of Children and Families, 798 So. 2d 32, 33 (Fla. 4th DCA 2001) (Haitian mother claiming that disciplining her twelve year old daughter by holding her hand over a hot stove burner, causing second degree burns, was permitted in her country and thus should be acceptable in the United States).
11. This Comment tends to summarily integrate both the criminal and civil aspects of child abuse into one analysis. It should be noted, however, that there does exist a different set of standards and punishments depending on which court someone is involved with. See generally Goldstein, supra note 7.
tional harm done to the child? If the answer is yes, the practice should be prohibited; if the answer is no, then the practice should be condoned.

II. Changing Culture and the Problematic Definition of Abuse

The United States is a vast melting pot, where the ethnic and racial makeup of the population is constantly being altered. In the past ten years, thousands of immigrants from Africa, Europe, Mexico, and Central and South America have come to the U.S. seeking refuge and the opportunity of living better and more successful lives. Each one of these groups carries a cache of cultural beliefs, standards, and attitudes that are passed from one generation to the next. They bring diverse views on work, on food, and most importantly, on raising children and parenting styles. What happens when these child-rearing practices are disharmonious with the dominant culture? Should the United States be unvarying and proscribe any custom or ritual different from its own, or should it condone certain acts common to other cultures?

For instance, the Western practices of permitting a child to sleep alone in a separate room or ignoring infants while they “cry themselves out” are seen as unacceptable by many non-western cultures. In other countries, however, harsh physical discipline such as locking children in huts for several days without food, smearing excrement on their faces in public, or forcing them to take extremely hot baths, considered child abuse in the U.S., is common practice. As Steven Weller, J.D., Ph.D., and his co-authors claim:

[O]ne of the great challenges for the courts in the 21st century will be to deal fairly and effectively with litigants from different cultures. When it comes to making decisions about the fate of individuals, [the] justice system ... [has] to assure that the courts

13. Id. Between 1991 and 2000, millions immigrated to the United States including: 2.2 million people from Mexico, 180,000 from Haiti, 381,000 from Africa, and 539,000 from South America. Id.
14. BRIERE, supra note 8, at 409. “Culture is dynamic and changing, not static; it changes as the condition of the people change and their interaction with the larger society changes.” Id.
16. Id. at 65.
do not discriminate against individuals because of their race, ethnicity or cultural background.  

The question remains, how far should a dominant culture go in accepting another culture’s practice? Many feel that cultural values and religious factors should be taken into consideration to determine whether a specific act constitutes child abuse. This viewpoint is based on the beliefs that “principles of organized justice mandate recognition of the cultural defense . . . accuracy of cases would be improved; and public policy in a culturally diverse society dictates that defendants should be able to assert a cultural defense.” On the other hand, some feel that a parent should be precluded from using religious or cultural ideology as justification for the maltreatment of a child. Advocates of this theory feel “cultural defenses may promote stereotypes;” and that, “immigrant women and children’s rights are undermined by the defense.” They also believe that “it would be impossible to draft legislation that defines when, where, and how the defense can be used; and lastly that the defense would cause a balkanization of the criminal justice system.”

At the core of these issues is the lack of a universal definition of child abuse. A standard is required that can be used across


19. Clark, supra note 15, at 65. (“For the most part courts have been unsympathetic to a caregiver’s defense to child maltreatment based on his claim of religious, ethnic, cultural, or call difference.”).


21. Id. at 1708.
22. Id.
23. Id.

24. Clark, supra note 15, at xi. The United Nations Convention on the Rights of the Child is the “first binding treaty to endorse children’s rights as separate from both adults and the family.” Article 19 grants a child’s right to protection from abuse, but it does not formulate a definition. “Given the difficulty in identifying an internationally acceptable definition of child abuse which is flexible enough to apply to a variety of situations across numerous cultural contexts, it is not surprising that the Convention lacks a precise definition.” Paula C. Littlewood, Domestic Child Abuse Under the U.N. Convention on the Rights of the Child: Implications for Rights in Four Asian Countries, 6 Pac. Rim L. & Pol’y J. 411, 418-19 (1997). The World Health Organization has defined child abuse as “all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health,
cultures, one that is useful, acceptable, and clear; one that gives practitioners the tools to opine whether or not a practice should be permitted. This, however, due to the different characterizations that cultures give to child abuse, is an extremely daunting task. In the United States alone, there are at least fifty-one different statutory definitions; one for the federal government and a distinct one for each state, the District of Columbia, and U.S. territories. For example, in Florida, child abuse is defined as: “any willful or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.” In other states the definition ranges from very broad and inclusive to very specific. This results in varying statistics

survival, development or dignity in the context of a relationship of responsibility, trust or power.” See the International Child Abuse Network link for “Defining Child Maltreatment,” available at www.yesican.org (last visited Apr. 6, 2003).

25. CLARK, supra note 15, at xiii.

26. Id.

27. The Child Abuse and Prevention Act (CAPTA), 42 U.S.C.S. § 5101(g) et. seq. (2002), establishes a minimum definition of child abuse and neglect, provides federal funding to states, provides grants to public agencies and non-profit organizations, and establishes the Office on Child Abuse and Neglect. Nicholson v. Williams, 203 F.Supp. 2d 153, 165 (E.D. N.Y. 2002). The definition, amended in 1996, states: “the term 'child abuse and neglect' means, at a minimum, any recent act or failure on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm . . .” 42 U.S.C.S. §5101, §110. Many states had difficulty complying with CAPTA’s requirements, as minimum as they were, because it would entail substantial legislative and administrative upgrading. Thus, the National Center on Child Abuse and Neglect developed the Model Child Protection Act to “help states enact programs that would conform to the requirements for funding eligibility under CAPTA.” This Act has been adopted by many, but not all, of the states. Kate Hollenbeck, Between a Rock and a Hard Place: Child Abuse Registries at the Intersection of Child Protection, Due Process, and Equal Protection, 11 Tex. J. Women & L. 1, 9-10 (2001).


29. FLA. STAT. ch. 39.01 (2002).

30. N. Dickson Reppucci & Carrie S. Fried, Child Abuse and the Law, 69 UMKC L. Rev. 107, 109 (2000). California Penal code § 11165.6, a relatively precise definition, states: “Child abuse or neglect includes physical injury inflicted by other than accidental means upon a child by another person, sexual abuse, neglect, willful cruelty or unjustifiable punishment, unlawful corporal punishment or injury.” Arizona Revised Statute Annotated states: “Abuse means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and which is caused by the acts or omission of an individual having care, custody and control of a child. Abuse shall include: infliction or allowing sexual abuse; sexual conduct with a minor; sexual assault; molestation of a child; commercial sexual exploitation of a
concerning child abuse cases due to the fact that "states with broader definitions and fewer exceptions give more discretion to child protective service workers and other reporters."\textsuperscript{31} In 1997, a study determined that the number of reported child abuse cases in the United States ranged from 8.43 to 78.05 of every 1000 children, depending on which state was analyzed.\textsuperscript{32}

Furthermore, many countries have varying definitions and regulations concerning child abuse. Some have formulated a very expansive definition, and others have no definition at all, giving sole discretion to the prosecutor.\textsuperscript{33} In Hong Kong, for example, statutes on child abuse "are quite explicit in their condemnation of any maltreatment, and stiff penalties await those who transgress legal norms."\textsuperscript{34} However, in China, "statutes and policies concerning child abuse are set forth in a very generalized fashion with relatively little substance."\textsuperscript{35} A lack of an adequate definition in most countries is due to a number of factors including varying

\textsuperscript{31} Repucci & Fried, \textit{supra} note 30, at 109.
\textsuperscript{32} \textit{Id.} at 108. The relatively minimal number of cases in certain states can also be attributed to judges and child workers with too much discretion, "who may make decisions based on their own child-rearing strategies and impose their personal views on unwilling parents." \textit{Id.} at 109.
\textsuperscript{33} \textit{See generally} Littlewood, \textit{supra} note 24, at 411.
\textsuperscript{34} \textit{Id.} at 422. In Singapore, the laws regarding child abuse are explicit and penalties are stringent. Guidelines for the removal of a child are outlined in the statutes, and the government is very active in educating the public about child abuse. \textit{Id.} at 433-34. Great Britain too has one of the most specific and guiding definitions. It is separated into four major categories: child neglect, child physical injury, child sexual abuse and child emotional abuse. Paola Di Blasio & Elena Camisasca, \textit{Child Abuse: Analysis of a Global Problem,} 7 IPA JOURNAL (INCH) 3 (1996), available at http://www.ipa-france.net/pubs/inches/inch7_3/dib.htm (last visited Apr. 6, 2003). The European Union is now attempting to construct a standardized definition amongst all its member countries. "It is recognized that local authority bases will not currently demonstrate the incidence or prevalence of child abuse since they work with very different definitions, and may contain both alleged and confirmed cases. However, they will become increasingly useful once definitions are standardized and they are recording only confirmed cases." Opinion of the Committee of the Regions on Local and Regional Cooperation to Protect Children and Young People From Abuse and Neglect in the European Union OJ 2000 C57/46.
\textsuperscript{35} Littlewood, \textit{supra} note 24, at 428. Indonesia has a similar policy regarding child abuse which consists of vague statutes and a lack of guidelines as to implementation. The three major laws concerning child abuse protect children from
political, cultural, economic and social aspects. In addition, many nations are reluctant to acknowledge child abuse as a problem due to the extent and method of reporting, and the broad differences in culturally accepted practices.

A universal definition and a test to ascertain instances of child abuse is the key to prevention; one that will encompass differences in culture and religion, and one, most importantly, that will protect children. It should “1) distinguish child abuse clearly from other social, economic, and health problems of international concern; and 2) it should be sufficiently flexible to apply to a range of situations in a variety of social and cultural contexts.”

A universal definition must be sensitive to all cultural differences, but it must not be too narrowly construed so as to condone harmful practices. One possibility that has generated a lot of support is as follows: “Child abuse is the portion of harm to children that results from human action that is proscribed, proximate, and preventable.

At present, however, “owing to the cross-cultural variability in child rearing beliefs and behavior . . . a universal definition for optimal child care and child abuse has still not been attained despite an increasing awareness of the problem as well as continued growth in the international literature on child maltreatment.” Practitioners, researchers, and lawmakers are

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36. Id. at 418.
37. Id.
39. Id.
40. CLARK, supra note 15, at 66.
41. Id. This formulation has some advantages according to David Finkelhor and Jill Korbin including a focus on human behavior, eliminating accidental harm, taking cultural norms into account, limiting the definition to only those acts that directly cause injury, and considering abusive only those acts that could have been prevented. Id.
42. Littlewood, supra note 24, at 417; see generally Taylor, supra note 24, at 333 (quoting Michael Freeman as saying: “Arguments surrounding definitions of child abuse reflect ideological differences and prove intractable . . . . [Too] much depends on who is doing the defining and for what purpose.”).
experiencing a prodigious amount of difficulty in determining a
definition that "draws distinctions between acceptable traditional
child rearing practices and inappropriate child maltreatment."\(^{43}\)
This debate centers around two areas of disagreement: one,
whether to use broad or narrow definitions, and two, whether the
definition should focus on the parents' behavior or on the actual
harm suffered by the child.\(^{44}\) Those favoring a broad definition
believe that child protection services will be able to identify abuse
at its earliest stages and will be better at identification, interven-
tion, and prevention.\(^{45}\) Advocates of a narrow definition cite the
following reasons as their basis: recognition of diversity in lifesty-
les, inadequate knowledge of non-traditional child-rearing prac-
tices, and the fact that premature intervention may actually harm
the child.\(^{46}\) Another factor, possibly the most important, that
inhibits the resolution of this debate, is that a definition of child
abuse determines the point at "which the state may intervene in
the traditional zone of family privacy, investigate and monitor its
internal workings, and mandate certain conduct for the future."\(^{47}\)
Until this debate is settled and a universal standard is formulated
and recognized by all countries, the problem of abuse and neglect
will continue to destroy the lives of many children.

III. MEXICO

A. Child Abuse and its Legal Considerations

Mexico, home to 95 million citizens and a major migrating
populace to the United States, is currently one of the few industri-
alized countries whose laws are lacking the effectiveness needed
to protect children.\(^{48}\) In 1917, with little knowledge of child abuse,
the Constitution of the Mexican United States was drafted with
an article regarding the protection of children: "It is the duty of
parents to preserve the right of minors to satisfy their needs of
physical and mental health."\(^{49}\) Forty-eight years later, in 1965,
child abuse became a social issue when the first known case was
reported,\(^{50}\) and in 1977 the federal government created the Family

\(^{43}\) Schwartz-Kenney, supra note 4, at xvi.
\(^{44}\) Taylor, supra note 17, at 334.
\(^{45}\) Id. at 335.
\(^{46}\) Id. at 336.
\(^{47}\) Id. at 342.
\(^{48}\) Schwartz-Kenney, supra note 4, at 155.
\(^{50}\) Schwartz-Kenney, supra note 4, at 149. Child abuse actually became a
national concern in 1968, three years after the first reported case, when Usbaldo
Integral Development (DIF), in order to protect abused children.\(^{51}\)

In 1982, the DIF was reorganized and its objectives restated, making its mission to "a) assess the social situation of the family and its environment, b) promote healthy growth of children, and c) take immediate action to detect and prevent all cases of child abuse."\(^{52}\) This modification of child abuse law was a mediocre start, but there still existed a plethora of inadequate regulation surrounding this epidemic.\(^{53}\)

After a number of disagreements and faltering drafts and amendments, the legislature enacted the latest articles to the Mexican Civil Code concerning parenting.\(^{54}\) Article 423 provides: "...persons having parental authority over children or having children of their own are authorized to discipline them, and are required to conduct themselves in a manner so as to provide a proper example to the minors, in order to implement the requirements of Article 422."\(^{55}\) Article 444, much like the law of the United States,\(^{56}\) declares that parents may have their parental rights terminated if they abuse their children\(^{57}\) and Article 180 gives a judge the power to remove a child from the home and send

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51. Schwartz-Kenney, supra note 4, at 150. Currently the First Lady of Mexico, Martha Sahagun de Fox is the president of the DIF. Before President Vincente Fox appointed his wife to this position, the governors' wives of each state were the state presidents of the organization. Only time will tell whether this change is good for the children in the thirty-one individual states. DIF and the Adoption Process, available at www.uark.edu/depts/lastinfo/jsr200l (last visited Jan. 8, 2003).

52. Schwartz-Kenney, supra note 4, at 152.

53. Id.

54. Id.

55. COD. CIV. D.F. art. 423 (Mex. 1928).

56. FLA. STAT. ch. 39.811(b)(2) (2002), states "If the child is in the custody of the department and the court finds that the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall, by order, place the child in the custody of the department for the purpose of adoption."

57. COD. CIV. D.F. art 444 (Mex. 1928): Parental authority is lost: 1) If the one who exercises it is expressly condemned to lose such right; or is found guilty twice or more of the commission of a serious crime; 2) In the cases of divorce, as provided by Article 283; 3) If as a result of depraved habits, ill treatment or abandonment of their obligations, the parents fail to provide for the health, security or well being of the child, even if these acts do not constitute a crime; and 4) If the father or mother
him or her to a public institution or a foster home.\textsuperscript{58}

Despite these improvements in the law, Mexico is still haunted by several diverse problems concerning the inadequacies of its effort to combat child abuse. First of all, it is lacking what many other countries are devoid of: a clear and concise definition.\textsuperscript{59} The current definition states that abuse occurs when "a child suffers occasional or habitual physical or emotional violence or both, by omission or action, but always intentionally, non-accidentally, by parents, guardians or other responsible persons."\textsuperscript{60} This definition gives little guidance to judges, lawyers, social workers, and others as to when an infraction of the child abuse guidelines has occurred.\textsuperscript{61} Secondly, it is "necessary that new reforms be made to the Civil and Criminal Laws in order to typify and sanction more severely the abusers of the young."\textsuperscript{62} Mexican legislation can no longer afford to be merciful on those guilty of child abuse if its eventual goal is prevention and deterrence.\textsuperscript{63} A further problem exists due to the lack of statistics and research in relation to the prevalence of child abuse, its causes, or its effects.\textsuperscript{64} Without this pertinent information, it is very onerous to formulate effective legislation.\textsuperscript{65} A national organization is needed where all of the applicable information can be compiled, analyzed, and applied to a prevention and treatment agenda.\textsuperscript{66} Lastly, at the educational level, child abuse appears to be a low priority.\textsuperscript{67} There are no required classes on child abuse or family violence at any of the universities, and books concerning the subject are exiguous.\textsuperscript{68} The few journals that do cover the issue are not maintained and are poorly circulated.\textsuperscript{69}

\begin{itemize}
  \item [58.] \textit{Cod. Civ. D.F.} art. 180 (Mex. 1928).
  \item [59.] \textit{Schwartz-Kenney}, supra note 4, at 153.
  \item [60.] \textit{Id.} at 150.
  \item [61.] \textit{Id.} at 153.
  \item [62.] \textit{Id.}
  \item [63.] \textit{Id.}
  \item [64.] \textit{Id.} at 154.
  \item [65.] \textit{Id.}
  \item [66.] \textit{Id.} at 155.
  \item [67.] \textit{Id.} at 154.
  \item [68.] \textit{Id.} at 151.
  \item [69.] \textit{Id.} at 155. Even so, the country as a whole is improving. There are now a number of television shows that seek to educate children about abuse, and the media is beginning to promote public awareness regarding the protection of children. There is also promising, yet speculative improvement at the academic level: the University of Montemorales, Estrada has conducted research concerning child abuse, and a very
At the heart of Mexico's problem is the lack of consistency between the federal government and the states. In order for a system to be effective, all states must have a similar definition based on a federal standard, they must institute mandatory child abuse reporting, and they should have "formal and informal mechanisms to help abused children." In Mexico, however, each state has its own policies and laws concerning child abuse. Some states have very stringent laws where a minor infraction can be considered child abuse, whereas others consider only severe injury to be an encroachment of the guidelines. In Mexico D.F. for instance, child abuse is defined as "any harm caused intentionally to the child." Other states, however, relying upon the fact that physical punishment is culturally accepted as an appropriate disciplinary method, tend to have much more lenient regulations, as discussed below. This results in many states condoning and sometimes even encouraging physical punishment by parents or guardians through legislation.

The laws and regulations regarding child abuse in the Northwestern State of Sonora, Mexico, are prime examples of a system that does little to safeguard children. Article 590 of the Sonora Civil Code provides that parents or guardians have the "faculty of correcting children, and that if it is needed, legal authority will assist the parent by providing admonitions and correctives to children in order to render sufficient support to parental authority." Despite the Mexican Civil Code and the Constitution, parents in the State of Sonora are permitted, pursuant to Articles 590 and 248, to exact injury on their children for corrective purposes, as long as the healing process does not extend beyond fifteen days.

limited number of universities are including family violence amongst their educational topics. Id.

70. Id. Mexico is divided into thirty-one states and a federal district. Each state has its own constitution, and is divided into three branches; legislative, executive, and judicial. Further information on the division of the Mexican government is available at www.loc.gov/dcgi-bin (last visited Jan. 8, 2002).

71. SCHWARTZ-KENNEY, supra note 4, at 155.


73. Id. at 205.

74. Id. at 206.

75. Id.

76. Id. Apparently these laws are very common in other states in the United Mexican States as well. Id.

77. Id. at 208 (citing C.C. SONORA art. 590 (1994)).

78. Id. (citing C.P. SONORA art. 248). Article 248 states that any parent or
Additionally, there is no intelligible definition of child abuse, and the penalties, in the rare instance when a case makes it to trial, are exceedingly inconsequential.\footnote{Id. at 206.} For instance, Article 86 of Law 74 states that violators of the child abuse laws will receive a fine of anywhere from $13.50 to $450, or they may lose their rights to their children.\footnote{Id. at 209 (citing Law 74 art. 86, Consejo Tutelar Para Menores (Hermosillo, Mex. 1994)). In addition, there is no requirement under Mexican Law to report incidences of child abuse. \textit{Id.} at 210. Most people will only notify the police in cases of severe abuse and injury. How is reporting supposed to be pervasive when there is no clear and concise definition as to what child abuse is? Even in countries where there is mandatory reporting the situation is no better. In the United States, where there is mandatory reporting by law, social services, schools, etc. reported only 28\% of recognized cases in 1986. \textit{Id.} at 211. In a different study, 24\% of psychologists claimed they often did not report suspected cases of child sexual abuse. \textit{Id.} In Australia, where law mandates child abuse reporting, many professionals and practitioners did not report suspected abuse cases. \textit{Id.}}

Judges also play a role in the tolerance given to persons guilty of child abuse.\footnote{Id. at 213.} Many of the judges hearing these cases adhere to, and strongly believe in, the way of doing things in Mexico: the belief that physical punishment is a necessary disciplinary measure to raise obedient children.\footnote{Id.}

The laws dealing with child abuse in Mexico and its thirty-one states are inconsistent and in a constant state of flux. Many of the states lack the fundamental regulations necessary to protect children, and many parents assume that the harsh physical parenting style in which they were raised is permissible for their own offspring. When these same people immigrate to the United States, they bring this belief with them and cultural problems commence.

\section*{B. Culture}

1. Parenting Style

In Mexico, ahead of financial success, academic achievements, and athletic prowess, family is the most important social institu-
tion. "Parentela members, compadres, cuates, and friends expect from one another various degrees of loyalty, material and spiritual assistance, emotional support, physical protection, and even flexibility in the enforcement of laws, norms, and regulations." Tradition and morals are paramount, and the most important of these is respect and discipline for parents and elders. To gain this respect, physical punishment and harsh discipline are common; both of which are viewed as necessary methods to produce obedient children.

This tendency to employ physical punishment, which frequently leads to violent physical abuse, is also found in Mexican parents raising their children in the United States, and to a lesser extent, in Mexican parents born in the United States. In one study, researchers Martha Frias-Armenta and Laura Ann McCloskey determined that amongst Mexican mothers, harsh parenting practices are ubiquitous due to cultural values and beliefs. These beliefs embrace the "positive effects of punishing children and the use of punitive strategies as corrective or disciplinary practices." It was likewise determined that parenting style was more influenced by cultural disposition than any other

85. Id. Compadres means godparents.
86. Id. Cuates means very close buddies.
87. Mexico: Interpersonal Relations, supra note 84.
88. Frias-Armenta, supra note 83, at 131.
89. Id. Despite the use of the authoritarian style, it must be noted that Mexican families promote many positive values including love, kindness, loyalty, and others. Id.
90. Id.
91. Id. at 142. It must be noted that this study was done in only one state in Mexico, and the results should not be generalized to the rest of the country without further study and analysis. Id.
92. Id. at 133. The sample for this study included 105 mothers of different socioeconomic statuses. Each mother was given a questionnaire regarding demographic information, child abuse episodes, history of abuse, inter-marital violence, and parent's use of alcohol and drugs. The mothers were interviewed at their homes by one of four Mexican clinical psychologists; the information was compiled and analyzed. Id.
93. Id. at 138. "It is an open empirical question, but possible that, in Mexico, culture influences parenting more, than in, for instance, the United States, because of broader social control and informal monitoring within local communities, and stronger ties to traditional values." Id. at 139.
characteristic. Alternatively, various studies have found differing parenting styles not quite as harsh as the one mentioned above. Studies have determined Mexican parenting styles to range from “permissive to rigid and from authoritarian to affectionate and nurturing.” Inconsistencies in these studies have been attributed to the insufficiency of dependent measures, differing ancestries, degree of acculturation, and the ranges of socioeconomic status. One study completed by Pedro Solis-Camara and Robert A. Fox determined that there were no significant differences between Mexican and U.S. mothers in parenting practices with their young children.

2. Folk Healing and Instances of Child Abuse

Folk healing is an ideal paradigm of a cultural practice that encompasses the differing parenting styles amongst Mexican parents and thus causes a number of legal and sociological dilemmas in the United States. Also known as curanderismo, folk healing is the practice of treating medical problems with a combination of psychosocial interventions, mild herbs, and religion. It has three central aspects: “1) The role of the social network, particularly kin, in diagnosing and treating illness; 2) The relationship between religion and illness, which includes the use of religious

94. Id. at 143.
96. Id.
97. Id.
98. Id. at 594. The study was conducted on sixty-nine Latino mothers from Mexico and sixty-nine Anglo mothers from the United States with at least one child between the ages of one and five years. All the mothers completed a demographic form and the Parent Behavior Checklist which is a 100-item rating scale, measuring the parenting of young children. It contains three subscales which measure parents' developmental expectations, responses to children's problem behaviors, and specific parent behaviors that promote a child's psychological growth. This study was completed on extremely young children as opposed to the one mentioned in detail above, which was conducted on mothers of older, adolescent children. Id.
99. Jaime Krajewski, Folk-Healing Among Mexican American Families as a Consideration in the Delivery of Child Health Care Services, 70 Child Welfare 1 (Mar/Apr. 1991). In a 1980 study of Mexican-Americans, it was determined that between 20% and 30% of the sample did not believe in folk illnesses or folk healing. In addition, these practices have begun to subside and are now considered “traditional” by many Mexican-Americans. Id.
100. Id. at 2. Folk-healing originated in the “humoral medicine of Western Europe, in which a state of health requires a balance between the various bodily humors and between heat and cold.” Id.
ritual in many healing processes; and 3) The remarkable consistency of beliefs amongst Hispanic communities about symptoms, etiology, and regimens in healing."¹⁰¹ A large percentage of both Mexicans and Mexican-Americans believe that folk healing is the most suitable practice to utilize when dealing with the health of children.¹⁰²

Problems arise, however, when these beliefs and practices are brought to a dominant culture that does not acknowledge them, such as the United States. For example, in one incident, an American social worker recommended the removal of a boy when his mother refused medical treatment and instead suspended a pair of sharp scissors above his bed.¹⁰³ The mother explained that she had already attempted several home remedies to eliminate her child's fever, but "evil spirits had... taken possession of her child and the usual remedies no longer helped. The only thing left to do was to prevent new spirits from entering the child's body."¹⁰⁴ The mother felt that the scissors would "immediately cut any spirit... [attempting] to enter the child's body"; since an evil spirit could attach to any person who entered the room, a physician would not

¹⁰¹ Id.
¹⁰² Id.
¹⁰³ Id. at 1. Refusal of medical treatment is a commonly litigated issue in the United States due to the prominence of cultural and religious beliefs of groups such as Jehovah’s Witnesses and Christian Scientists. Courts have consistently held the state may intervene to “insure that a child is given medical treatment necessary for the protection of its life or limb... where the custodian of the child has unreasonably refused to allow such treatment, and that the exercise of the state’s power to protect the lives and health of its children over the objections of their custodians is not violative of the constitutional right to freedom of religion where such objections are based on religious grounds.” Jay M. Zitter, Power of Court or Other Public Agency to Order Medical Treatment Over Parental Religious Objections for Child Whose Life is Not Immediately Endangered, 21 A.L.R. 5th 248, 257(1994); see also In re Jensen, 633 P.2d 1302 (1981) (holding a trial court correctly placed a child in custody of children's services for treatment of hydrocephalus, and directed that the division provide medical care, including a surgical operation if necessary, despite objections by the parents on the ground that their religious beliefs included a principle that members of the church might not accept medical treatment or professional health care); but see Newmark v. Williams/DCPS, 588 A.2d 1108 (Del. 1991) (holding a court could not order a three-year-old child suffering from cancer to undergo treatment over his parent's religious convictions despite the fact that, without treatment, the child would die in six to eight months); People in Interest of E., 614 P.2d 873 (Colo. 2000) (holding a court could not order that a child suffering from epilepsy should be given medical treatment over the religious objections of the child's parents, where the illness would probably not turn life threatening). See also Peter Margulies, Children, Parents and Asylum, 15 GEO. IMMIGR. L.J. 289, 294 (2001) (recommending turning to family law guidance in situations of refusal of medical treatment).

¹⁰⁴ Krajewski, supra note 99 at 1.
be permitted to do so.105

This example of folk healing is innocuous; yet, other practices can be potentially deleterious and considered child abuse in certain cultures. A number of Mexicans believe children’s health problems are caused by a magical power called “evil eye,” which occurs when “someone with strong vision admires someone else’s child without actually touching them.”106 This results in fever, severe headaches, restlessness, excessive crying, and aches and pains.107 To heal these illnesses the person who looked at the child must touch him or her; if unavailable, the child is taken to a folk healer, a raw egg is rubbed over the child’s body, the egg is broken and then examined.108

What if chili or chicken soup is given to a child who is experiencing pneumonia or a cold?109 What if lard is placed on a severe burn?110 In the United States neither of these examples are considered child abuse. However, two other examples of folk healing might initiate different responses: the remedies for two emotional-based illnesses, real del susto and espanto.111 Both are caused as the result of a traumatic experience or fright due to supernatural causes, and symptoms include weakness, hallucinations, anorexia, insomnia and other painful sensations.112 To treat such an illness, Mexicans instruct a child to lie down on the floor as they proceed to sweep his or her body with branches, herbs, and prayers, to “coax... the lost spirit to reenter the victim’s body.”113

The examples mentioned above pose an obscure situation for a judge, an attorney, or a social worker: are they instances of child abuse or should they be an accepted cultural practice? One health problem that is of a major concern to child welfare workers is moladera caida, in which fallen fontanel is the major symptom.114 Fallen fontanel, caused by removing a nipple too roughly from a baby’s mouth or by bouncing a baby too hard, can result in fever, diarrhea, excessive crying, sunken eyes, failure to suckle, and

105. Id. Consequently, the child was not removed from the home because the social worker was able to persuade the mother to change the location of the scissors so the doctor could enter the room and the child would still be protected. Id. at 2.
106. Id. at 3.
107. Id.
108. Id.
109. Id.
110. Id.
111. Id.
112. Id.
113. Id.
114. Id. at 4.
vomiting. Many believers of folk-healing, in order to treat this dreadful condition, feel that the following treatments are successful: 1) inserting a finger in the child's mouth and pushing up on the palate; 2) holding the child upside down over a pan of water; or 3) applying a poultice to the depressed area of the head. These treatments are extremely dangerous and potentially fatal if a physician is not consulted. Situations such as this, where a baby is clearly put in more danger by folk healing, are some of the various instances that demonstrate the legal predicament that emerges when presented to social workers, lawmakers, and physicians in the United States.

There are still other examples, not explicitly considered folk healing, which pose a cultural conundrum for courts in the United States. In In re Stephanie M. v. Norma, a one-year-old Mexican child was brought to the emergency room after she had stopped breathing. The young child was diagnosed with battered child syndrome; she had three bone fractures, and had recently been suffocated. When her parents were questioned as to the condition of their child they "denied any abuse and explained that Stephanie had suffered an accident . . . her arm was broken and that they sought treatment from a masseuse, according to purported Mexican custom." At a detention hearing, the court found a prima facie showing that the child had been abused pursuant to state law, and it ignored the defense of Mexican custom.

115. Id.
116. Id.
117. Id.
119. Id.
120. Id. (emphasis added). See also Connie Schultz, It's Not the Way We Do Things: Vietnamese Father Convicted of Child Abuse, THE PLAIN DEALER, May 29, 1994, at 1B (speaking of a Vietnamese man who beat his daughter with an electrical cord, claiming he was brought up this way in Vietnam, and thus it should be acceptable in the United States. The court ignored the cultural defense and sentenced the man to two years probation and counseling); In re Tania S., 7 Cal.Rptr.2d 60 (Cal.App. 4th Dist. 1992) (denying the cultural defense, a jury recommended the execution of a Brazilian and Palestinian couple for the murder of their daughter even though the defense claimed the jury failed to acknowledge the Palestinian culture). But see Dumpson v. Daniel M, N.Y. LAW J., Oct. 16, 1974 at 17 (after a Nigerian father repeatedly struck his child during a meeting with the vice-principal, he claimed that in his homeland, "if a child misbehaves in school and causes shame to the family, the parent has a duty to punish immediately and in any manner he sees fit." The court considered the defendants' cultural defense stating, "in a society as culturally amorphous as our own, it is incumbent upon all members of society to be tolerant and understanding of customs that differ from their own.").
121. In re Stephanie M., 7 Cal. 4th at 296. See also The People v. Rosa Salinas, 131 Cal. App. 3d 925, 926 (1982) (convicting a Mexican woman of child abuse for
The previous examples of child abuse and of the differing parenting practices amongst Mexicans living both in Mexico and the United States are intended to promote contemplation of the following conundrum: Which cultural practices should be condoned as permissible child rearing techniques, and which should be considered child abuse?

IV. A General View of Culture and Parenting Practices Amongst Other Latino Groups

Child abuse is a relatively unexplored area of social science in many parts of Latin America. Research, journal articles, and statistics on the subject of child abuse are very uncommon, and any that do exist are often contradictory and inadequate. This is due to a number of reasons including failure to distinguish between culture and poverty, reporting biases, and ethnic lumping in which “researchers study Latinos from vastly different backgrounds and experiences as if they were a monolithic group.” Thus, the following discussion is a general one based on numerous articles, books, and accounts concerning Latin American countries. In no way does this discussion reflect the attitudes and values of many Latino communities and cultures. It should be noted that Latino families “do not approve or support child abuse . . . and, on the whole, Latino parents tend to exhibit both greater intimacy and more protective behaviors and strictness than [do] non-Hispanic whites.”

Analogous to Mexico, most other Latino cultures hold family relationships and the responsibility to care for all family members, especially children, as an integral aspect of their lives. Respect for elders and the overall behavior of each child are the most rudimentary elements of this value system. Consequently, Latino parents are more inclined to be strict, authoritarian, and place emphasis on dependency and family unity, as opposed to a repeatedly beating a three-year-old child with a belt. When asked why she had cut the young child's hair completely off prior to beating her, she claimed, “because it was falling out and this was a custom and home remedy in Mexico.”

123. Id.
124. Id. (emphasis added).
126. Aronson Fontes, supra note 122, at 34.
culture such as that in the United States which fosters independence. 127 Because these principles are so prominent, immigrants to the United States often find themselves in a difficult situation when they encounter opposition to their parenting practices. For example, because it is extremely important that children are well behaved in public, a Latino parent, unlike many non-Hispanics, will immediately scold a child in public for acting disobedient or disrespectful. 128 The immediacy of this reaction, when living in a culture such as the United States, places Latinos at a higher risk of being reported to authorities for child abuse even though none has occurred, simply because they have done something contrary to the dominant culture. 129

Many Latino communities also pride themselves on close adult supervision well into the later years of adolescence, a practice which could be seen as dysfunctional or intrusive to other cultures. 130 Latinos are more inclined to use physical punishment such as a tapaboca, a slap across the mouth when a child has used foul language, or a cocotazo, when a child is knuckled on the top of the head for saying something dim-witted. 131 Other practices include placing a child in a tub of cold bath water when he or she seems out of control, or making a child kneel on uncooked rice if he or she has been disrespectful. 132 In a study completed by Pablo G. Cardona, Bonnie Nicholson, and Robert Fox, it was determined that Hispanic mothers were more likely to use harsh discipline than Anglo-American mothers. 133 These practices present a convoluted dilemma when they are used in a different culture such as that of the United States.

There are certain child-rearing customs practiced by indigenous people in Latin America, especially in the areas surrounding the Amazon river that are unquestionably abusive by Western

127. Ferrari, supra note 125, at 794.
128. Aronson Fontes, supra note 122, at 34.
129. Id.
131. Aronson Fontes, supra note 122, at 34.
132. Id. at 35.
133. Pablo G. Cardona, et al., Parenting Among Hispanic and Anglo-American Mothers with Very Young Children, J. Soc. PSYCHOL., June 2000, at 357, 360. This study was conducted using thirty-eight Hispanic mothers and thirty-eight Anglo-American mothers of children ages three to five. Each participant completed a Parent Behavior Checklist, a questionnaire consisting of 100 questions regarding developmental expectations, discipline, and nurturing practices. Id.
standards. These include bathing infants in scalding water to drive out anger, scraping a child’s skin during puberty rites to promote stamina, and dipping a baby in a river to prevent it from crying. Other examples include giving hallucinogenic drugs to young children during religious ceremonies, spanking children with nettles, and leaving extremely young children unattended for hours at a time. In Ecuador, mothers believe that males must be breast-fed longer than females; and in Brazil, poor mothers sometimes give very inadequate care to infants who are sickly and thus “considered too risky for maternal investment.” These examples are intended to show the vast array of child rearing practices amongst the different cultures in the world, and are not representative of Latino people as a whole.

V. PROPOSING A STANDARD FOR CHILD ABUSE AND ANALYSIS OF CULTURAL DIFFERENCES IN CHILD REARING PRACTICES

Throughout the preceding pages there has been mention of many different, contrasting and unique parenting styles. From the very motherly, yet harsh and disciplinary style of the majority of Latino families, to the abusive and culturally unacceptable practices of certain indigenous tribes along the Amazon River, the differences in parenting practices around the world are astounding. These parenting practices pose a difficult quandary when they are practiced in a different culture and legal system such as that of the United States.

As a family from Mexico or another part of Latin America arrives in the United States, there are a number of stressful situations that they immediately encounter and continue to experience throughout their lives. These include learning a new language; overcoming prejudice and discrimination; disruptions in family; puzzling interactions with new schools, churches, courts, and hospitals; and “coping with the aftereffects of trauma for refugees.” Should parents be forced to forget their values, their culture, and

134. CLARK, supra note 15, at 129.
135. Id.
136. Id. at 130.
137. Finkelhor, supra note 38, at 13.
138. Aronson Fontes, supra note 122, at 40. “Culture shock colors almost every aspect of daily life and may complicate obtaining an accurate assessment of parenting.” Id.
139. Id.
abide by the new and different culture they have just entered, or should they be allowed to act as they have for generations before?

Different parenting techniques and practices are at the crux of this dilemma. Often cultural practices “clash with the child-rearing norms of the dominant culture” and many Latinos are brought in contact with professionals and the child protection system. Many social workers report Latinos for child abuse, because they apply Anglo-American standards of good parenting instead of allowing for cultural differences. Consider the use of corporal punishment, a common practice amongst Latino parents, yet a trend that is no longer as popular in the United States. Should one incident of corporal punishment, such as a public spanking be considered child abuse? Should cultural and religious justifications be entertained when asking this question?

The solution to this worldwide quandary is simple: a universal test must be established, one that is clear and concise and will allow easy categorization as either child abuse or permitted parenting. The question to ask is straightforward: Is the practice detrimental to the physical and emotional health of a child, regardless of cultural acceptability? Whether it is accepted culturally or religiously should have no bearing on the tolerability of a parenting practice. The cultural aspect does not affect the result on a child, it does not ascertain whether something is harmful, and it should not be a factor. If it is harmful, physically or emotionally, to a child, the practice should automatically be forbidden. On the other hand, if the practice does not cause physical or emotional detriment to a child, it should be condoned. Despite the inflexibility of this standard, cultural differences should still be taken into account on an educational level. States should develop educational programs “to work with immigrant parents who may

140. Id. at 32.

141. Corporal punishment, according to sociologist Murray Strauss who has studied the subject extensively, is defined as “the 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.” David Orentlicher, Spanking and Other Corporal Punishment of Children by Parents: Overvaluing Pain, Undervaluing Children, 35 Hous. L. Rev. 147, 149 (1998). Michigan law defines corporal punishment as the “deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline.” MICH. COMP. LAWS ANN. §380.1312 (1997).

142. Aronson Fontes, supra note 122, at 32. Corporal punishment has a high, but decreasing rate of approval in the United States. Approval decreased from 94% in 1968 to 68% in 1994. Id.; see, e.g., Ingraham, et al. v. Wright, 430 U.S. 651 (1977) (upholding corporal punishment as a form of parental or school discipline).
be unaware that cultural practices acceptable in their homeland are not legal in the United States." 143 However, "when a clear conflict between cultural biases and human rights norms develops, cultural beliefs must yield." 144

Applying this test to indigenous practices, such as administering hallucinogens to children, and bathing infants in scalding water to drive out anger, poses a simple issue. Do the practices compromise the physical and emotional health of the child? Yes! These practices, regardless of their cultural acceptability, have no place in any society, whether committed along the Amazon River or in a community in the United States, and they should be prohibited.

When dealing with Mexican and other Latino parenting practices, the test formulated above becomes a bit more complicated, but should follow the same straightforward analysis: whether or not the practice is abuse depends on the physical and emotional detriment to the child. The first example mentioned above, concerning the mother who suspended a pair of scissors above her child's bed, is harmless. As long as professionals are allowed to appropriately care for the child, there is no physical or emotional detriment; thus, the cultural practice should be permitted. Notice that a cultural inquiry asking, for example, if it is accepted in a specific country or amongst certain people, is irrelevant. As mentioned above, it is a straightforward, single-pronged inquiry.

Nevertheless, certain other practices are not as innocuous; but they still are subjected to the same analysis. When a child is experiencing health problems such as fever, severe headaches, restlessness, and aches and pains, a physician is required. If a parent refuses a doctor because of his or her cultural beliefs, he or she is placing that child in danger and should be punished for it. This should unquestionably be considered child abuse, regardless of any cultural or religious justification. When a child experiences certain symptoms such as hallucinations, anorexia, insomnia, and other painful sensations as a result of real del susto and espanto, once again, a physician is required. A parent who refuses medical treatment and chooses to use folk healing instead, regardless of the culture, is subjecting the child to physical and emotional harm, and should be subject to the applicable penalties.

A major concern for social workers in the United States when

143. Goldstein, supra note 7, at 82.
144. Littlewood, supra note 24, at 448.
dealing with Mexican-Americans is fallen fontanel.\textsuperscript{145} As discussed above, a baby who experiences fever, diarrhea, and excessive crying, requires a doctor. With a condition such as this, there is no time to use such practices such as holding a baby upside down and dipping its head in water. The delay from such practices could cause severe physical and emotional damage to a baby. Lastly, in the example discussed in \textit{In re Stephanie}, a mother, purportedly acting according to Mexican custom, took her child to a masseuse for a broken arm.\textsuperscript{146} Like fallen fontanel, the broken arm situation, when put through the analysis suggested above, is child abuse; they both impose physical and emotional harm to the children involved.

Whether or not certain parenting practices should be condoned and what standard to use is a dilemma that professionals, courts and legislatures will continue to struggle with for years to come. It's as if the basic solution, or integral aspect of this quandary, is being ignored: the children. The analysis is simple: does this practice cause emotional and/or physical harm to the child involved? If the answer is yes, the practice should be condemned; if the answer is no, it should be condoned. Until the legislature of every country, the doctors, the social workers, and others realize that culture and religion have no place in this dilemma, the problem of child abuse will continue to affect the world for years to come. The only hope is that these factions will soon come together and realize that there is only one aspect to this problem, one solution, and one factor that should ever be spoken of: the health and safety of the children.

\textit{Michael Futterman*}

\textsuperscript{145} Krajewski, \textit{supra} note 99, at 4.
\textsuperscript{146} \textit{In re Stephanie M. v. Norma}, 7 Cal. 4th at 303.
* Juris Doctor candidate, May 2004, University of Miami School of Law. The author would like to thank Professor Bernie Perlmutter, University of Miami School of Law, for his wonderful assistance and suggestions.