

## INTRODUCTION TO SYMPOSIUM ON THE INTERNATIONAL LEGAL OBLIGATION TO CRIMINALIZE MARITAL RAPE

Catherine Powell\* and Carlos M. Vázquez†

AJIL Unbound is pleased to publish a symposium on the obligation of states under international law to criminalize marital rape. The lead essay by Melanie Randall and Vasanthi Venkatesh, *Criminalizing Sexual Violence against Women in Intimate Relationships: State Obligations Under Human Rights Law*, argues that international law requires the criminalization of sexual violence against women within marriage (and other intimate relationships), and that such criminalization should constitute a central element of the human rights agenda for achieving gender equality. The authors contend that the failure to criminalize sexual violence perpetrated by a husband or other intimate partner violates the rights to liberty, autonomy, self-determination, and bodily security and “creates a class of women with lesser legal rights.”<sup>1</sup> According to the authors, international human rights law imposes a due diligence obligation to punish acts of violence against women even when perpetrated by private persons.

This initial round of responses includes contributions by Professor Robin West of Georgetown Law and Professor Julie Goldscheid of CUNY Law School. West views the essay as “a breakthrough in our understanding of human rights, rape, and the institution of marriage, and the intersection of the three,”<sup>2</sup> but flags questions that the authors leave unanswered. West maintains that the causal connection between marital rape and women’s subordination merits closer examination. Because criminalization carries costs—for example, in government spending and in lives damaged by virtue of incarceration—West questions the centrality placed by the authors on criminalization as a means of addressing women’s subordination. Another question West raises is definitional. The authors argue that rape should be defined as nonconsensual sex (rather than as forced or violent sex) and that the “consent” required should be “affirmative consent” (rather than implied or implicit or passive consent). But West argues that societal pressures—such as the threat of violence, stigma, the withdrawal of economic support, and the gender inequality in marriage and in communities that condone marital rape—would render *any* act of consent—whether affirmative or implied—meaningless. Thus, West contends that rape should be defined as “coerced sex” rather than nonconsensual sex.

Goldscheid also expresses concern that Randall and Venkatesh’s primary focus on criminalization as the core response to marital rape is unnecessarily limited.<sup>3</sup> While recognizing that criminalization is a fundamental part

\* Associate Professor, Fordham University School of Law.

† Professor of Law, Georgetown University Law Center.

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<sup>1</sup> Melanie Randall and Vasanthi Venkatesh, *Criminalizing Sexual Violence against Women in Intimate Relationships: State Obligations Under Human Rights Law*, 109 AJIL UNBOUND 189, 190 (2015).

<sup>2</sup> Robin West, *Marital Rape, Consent, and Human Rights: Comment on “Criminalizing Sexual Violence against Women in Intimate Relationships”*, 109 AJIL UNBOUND 197, 197 (2015).

<sup>3</sup> Julie Goldscheid, *Considering the Role of the State: Comment on “Criminalizing Sexual Violence against Women in Intimate Relationships”*, 109 AJIL UNBOUND 202 (2015).

of states' obligations under international human rights law, Goldscheid notes that the authors' focus on criminal justice responses is oversimplified and shortchanges other types of interventions. Goldscheid urges a more comprehensive approach with a wider reach to address the cultural and social barriers that allow marital rape to continue with impunity.

A second round of responses will be published later this month.