

Abstract

Although women's rights advocates came to human rights demanding accountability for all human rights, this demand has been stymied. Specific elements of violence against women (VAW) as a human rights issue, coupled with sexual harm's particular operation to make VAW visible, produced a paradox: the harms themselves are not yet effectively responded to, yet women's sexual vulnerability is now firmly on the global agenda. This piece explores the state-oriented focus of rights work on the suffering body, its reliance on criminal law, and its failure to develop a theory of economic justice. Health and human rights work must consider the complexities of portraying women as sexual agents, targets of abuse and citizens at the same time, if it seeks to fulfill its original promise.

Bien que les partisans des droits des femmes soient venus aux droits humains en exigeant une obligation de rendre compte pour tous les droits humains, cette demande n'a pas abouti. Des éléments particuliers de la violence à l'égard des femmes en tant que sujet des droits humains, combinés à la façon particulière dont les exactions sexuelles rendent la violence visible à l'égard des femmes, ont abouti à un paradoxe : il n'a pas été remédié effectivement aux torts par eux-mêmes, mais la vulnérabilité sexuelle des femmes figure maintenant fermement dans le programme d'action mondial. Cet article explore la priorité accordée par les États à la protection du corps contre la souffrance, son recours au droit pénal et l'absence de formulation d'une théorie de la justice économique. Les activistes défendant le droit à la santé et les droits humains doivent tenir compte des complexités des femmes productives dans leur rôle sexuel, comme objets d'abus et comme citoyennes, tout en s'efforçant de tenir leurs promesses initiales.

A pesar de que los partidarios de los derechos de la mujer se dirigieron a las instituciones de derechos humanos exigiendo el respeto de todos los derechos humanos, tal demanda ha sido frustrada. Elementos específicos de violencia contra la mujer (VCM) como tema de derechos humanos junto al papel particular del daño sexual en hacer visible la VCM, produjo la siguiente paradoja: aún no se responde efectivamente a los daños en sí, y, sin embargo, la vulnerabilidad sexual de la mujer se encuentra ahora bien establecida en la agenda política mundial. En este artículo, se estudia el enfoque sobre el estado del campo de los derechos humanos, y como con relación a la sexualidad el teoría ha centrado en el sufrimiento del cuerpo, y ha mostrado una dependencia en las leyes penales y una falta de desarrollar una teoría de justicia económica. El campo de salud y derechos humanos, para cumplir con su promesa original, debe considerar las complejidades de presentar a la mujer como agente sexual, blanco de abuso, y ciudadana—todo al mismo tiempo.

SEXUALITY, VIOLENCE AGAINST
WOMEN, AND HUMAN RIGHTS:
Women Make Demands
and Ladies Get Protection

Alice M. Miller

I begin this essay with a paradox: The variety of sexual harms experienced by women or men are nowhere understood, effectively prevented, or responded to; and yet, sexual threats to girls and women are in the headlines everywhere. Not only are they in the headlines, but increasingly they are framed as women's human rights issues. A moment that epitomizes this extraordinary combination of partially successful rights advocacy and its incongruous results can be seen in the speech of the President of the United States to the UN General Assembly in September 2003 in which he condemned the practice of "sexual slavery of girls and women" and called for action against this horror as an example of the kind of steps toward "moral clarity" required in the global "war against terror."¹

A critical success of women's human rights has been the increased global recognition of sexual harm as an element of

Alice M. Miller, JD, is Assistant Professor of Clinical Population and Family Health in the Heilbrunn Department of Population and Family Health at the Mailman School of Public Health, Columbia University. Please address correspondence to Alice M. Miller, Heilbrunn Department of Population and Family Health, Mailman School of Public Health, Columbia University, 60 Haven Avenue #B2, New York, New York 10032, USA or to am808@columbia.edu

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the harms done by violence. Indeed, preventing violence against women has been one of the founding themes of the health and human rights movement.² However, the extraordinary prominence of high-level calls for action to protect women from sexual harm signals interests other than women's rights at work. Analyzing this new attention and the particular ways in which it manifests itself is of critical importance, especially as new national laws and international treaties with transborder power over crime are being rapidly created in ostensible response to these concerns.³

Sexuality intersects with rights at places where the internal tensions of human rights—particularly whether to focus on protection or push for freedom (and the ways by which to do either)—are either unexplored or fiercely contested. While the protection/freedom quandary arises in other aspects of rights work, and has been specifically critiqued for its neo-colonial forms, it unfolds in particularly dangerous ways in regard to women and violence, and is even more volatile with regard to sex.⁴ Exploring the specific connections and interactions between protection, freedom, sexuality, and human rights can reveal how some restrictive and regressive responses to sexual harm—“protecting women, rather than protecting their rights,” as Sunila Abeysekera says—can be inadvertently produced.⁵ However well intentioned, a single-minded focus on sexual harm that avoids consideration of other issues and effects can inadvertently frustrate other goals in human rights, particularly those of building enabling conditions that expand women's and men's capacities.

This essay explores an aspect of the “protection of women” vs. “protection of women's rights” quandary by examining how very diverse women's rights advocates made the call to human rights and how violence against women (VAW) succeeded as the main motor that powered their success. Sexual violence was effective in this cause because it seemed to provide a means to make the gender-specific content of this violence visible to the key human rights bodies and actors. How did violence, and in particular sexual violence, take the lead among the many claims of women's rights? Until the late 1980s, it was exceedingly difficult to get the human rights world to pay attention either to

women as rights claimants or to sexual harm as a form of harm.⁶ However, once sex was accepted as an area of concern, a “hyper-attention” to sex perversely operated to exclude attention to other aspects of harm, as epitomized by President Bush’s move to use sexual harm to focus the world on “moral clarity”—not global labor equity, not participatory equality, and not life-saving health interventions and systems for women and men.

This article explores the various streams within both human rights doctrine and practice and traditional women’s human rights that combined to produce a hyper-visibility of sexual harm without producing an equal attention to remedies and enabling conditions. This analysis intersects with the history of mainstream human rights’ failure to take on economic and social rights until recently. This story, therefore, also intersects with the history of health and human rights, as well as with an older, troubled history of sexuality and health. Fundamentally, this is a dangerous excavation project, digging at the foundations of the rights claims around sexual harm at a stage when these claims are barely incorporated in the formal human rights system and are facing serious counter-challenges. The balance is a delicate one: We must defend against attacks on sexual rights and sexual health, even as we simultaneously critically examine the role that protection from sexual harm has played in the recognition of women’s human rights. This balance, while delicate, is key. The recognition that sexual harm has begun to operate in isolation from other injustices as the worst abuse that can happen to a woman should alert us to the uncomfortable similarities, and differences, between this position and a position we fight against—that the most important thing to know about a woman is her chastity.

A personal disclosure: I write from the position of an activist who played a role, alongside many extraordinary people globally, in pushing mainstream human rights organizations to accept VAW and women’s sexual harm as key human rights issues. Therefore, I am both complicit with and proud of the story I am telling. This article explores the dynamics of an on-going story about which I claim no objectivity. At the same time, if we take seriously the imperative to evaluate our work against the broader goals of human

rights, it would seem that, more than 10 years into human rights policy and campaigning against violence against women, we should be at a place where reflective evaluation can play a helpful role in determining our next steps.

Women's Human Rights and the Trajectory of Violence Against Women As a Human Rights Issue in the UN System

A number of different worlds in the UN and in the mainstream human rights movement had to be transformed to make women's rights "human rights": the under-funded and undervalued (and structurally separate) world of women's rights/women's status and economic rights had to be integrated and elevated; the mainstream world of human rights had to be convinced to take on gender analysis and apply it to state accountability; and the separate world of humanitarian law had to be brought closer to human rights.⁷ And, fundamentally, health and human rights as a practice had to be developed and accepted. This section is a selective history and analysis of some of the interests and accidents underlying these events.

A Reflection on the Short Version of the Success of Women's Human Rights at the UN

Women's rights advocates had struggled with a basic question for years: How could women's issues, including but not limited to violence, be made a priority on the international agenda? The solution finally came with the exploding power of human rights in the 1990s, a force that women's rights proponents sought to harness. As Arianne Brunet said at the Vienna World Conference on Human Rights in 1993, "Women's human rights provided for the 'mainstreaming of feminism.'"⁸

The UN had failed to effectively promote women's rights, even though non-discrimination on the basis of sex was built into the UN Charter at its creation.⁹ At the 1985 World Conference on Women in Nairobi, violence against women did emerge as a major issue *for women*, but even so it suffered marginalization as a "women's issue" in the

gender-blind world of the UN's human rights work.¹⁰ The late 1980s saw the concurrent evolution of a health and human rights discourse, which, when joined to women's human rights in general and VAW in particular, strengthened the call for governments to take VAW seriously. Health responses became key services that had to be provided as elements of a rights-based remedy to VAW.

Also in the 1990s, global attention to the role of rape in notorious armed conflicts (other armed conflicts at the same time were ignored), first in the former Yugoslavia and later Rwanda, amplified women's claims at the 1993 World Conference on Human Rights in Vienna and then again at the 1995 Fourth World Conference on Women in Beijing, leading to legal, structural, and political victories in international venues.¹¹ Human rights approaches compelled the international humanitarian law system to re-characterize rape as a form of violence (instead of a crime against community or honor) in armed conflict. Many new mechanisms and norms came into being in response to these campaigns, including: the incorporation of gender crimes in the statutes/practice of the ad hoc War Crimes Tribunals, the creation of a UN Special Rapporteur on Violence against Women, a UN Declaration on the Elimination of Violence against Women, and the integration of gender into the definition of crimes and expertise of the judges for the International Criminal Court (ICC).¹²

By recounting this short history as a "triumph narrative," I do not mean to diminish its importance; but I do mean to make explicit that it needs more examination to expose the many other forces and interests (national, North/South, mainstream non-governmental organization (NGO)) at work in this history and to explain both what the triumph contained *and* what it left out. Violence worked in progressive and regressive ways simultaneously. As Charlotte Bunch has asserted, VAW as a claim to rights worked because it embodied a horror that could not be ignored; and it also worked, as Ratna Kapur notes, because stories of the victim subject could enter the mainstream of representation and reaffirm the image of women (especially Southern women) as without power and in need of protection.^{13,14}

Did sexual harm gain prominence also because it epitomized what made gender violence visibly *gendered*?¹⁵ Was it because the public-policy world had discovered (in the emergence of health and human rights responses to HIV/AIDS) that we could talk about sex—and in turn about sexual violence—as a matter of life and death? Was it because “sexual” had become a site of knowledge about an individual’s selfhood and personhood, an aspect that needed protection and promotion?¹⁶ Can it be that the focus on sexual harm sprang from and re-affirmed both progressive and regressive ideas about women and sexuality, and that some part of the engagement with human rights amplified the regressive aspects?

Exploring Women’s Human Rights in the UN Context: The Doctrines of Equality, Development, and State-Actor Focused Violence

One way to complicate this story of VAW propelling women’s human rights forward is to re-examine the state of women’s rights in the late 1980s.¹⁷ At that time, equality and non-discrimination, while repeatedly stated as core principles in rights work, could have, but never, materialized as an entry point for women’s human rights within the mainstream human rights system. This failure of equality to function as a lever for women’s rights is deeply ironic, as substantive equality (as opposed to the narrower formal equality) was already embodied in a women-specific treaty, as well as in one addressing race discrimination.¹⁸ The call to substantive equality has, however, re-emerged as a core claim for rethinking rights as vehicles for real social transformation in mainstream rights work. This re-emergence is ironic because it was available 25 years ago, but neglected by both the UN and mainstream human rights groups.

While violence, but not non-discrimination, eventually succeeded as the lead issue for women’s human rights, in the late 1980s its presence on the UN agenda was scattered. It was not a sole priority on the women’s agenda, nor had advocates developed a clear or coherent analysis for how it was a human rights problem. At best, VAW was spoken of in the human rights world as an issue of domestic criminal law, not subject to international review and hence not a “human

rights" concern (it is not even contained in the text of Convention for the Elimination of All forms of Discrimination Against Women). The only two places VAW (or sexual harm) appeared in the international system at that time were in humanitarian law and in the UN's anti-trafficking convention.¹⁹ The 1949 Anti-Trafficking Convention rhetorically condemned "prostitution [as] incompatible with the dignity and worth of the human person," but it did not address any aspect of violence in the trafficking process or the human rights of the trafficked person. The Geneva Conventions of the same year saw women as entitled to special protection as mothers, or entitled to protection from "attacks on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."²⁰

The interlinked moves to make "women's rights human rights" connected to the scattered attention to VAW in the UN, but it succeeded primarily by following the form of the mainstream human rights paradigm of the time: a focus on the body suffering from acts committed by the state. This result was not inevitable, particularly considering the two diverse paths by which VAW had begun to evolve in the UN: it was addressed either as a problem for development or as an issue of discriminatory denial of protection against crime.²¹ However, national-level domestic violence activism, increasingly strong among many women's groups in the North and South in the 1980s, was beginning to look to the UN for support.²² In trying to take on the power of rights, national groups struggled with questions about how to engage with the state's responsibility to take steps to protect women from assault (regardless of the perpetrator and place) and how to ensure that remedies and redress for violence met the harm (including through the provision of appropriate health services). These kinds of claims can be seen as attempts to "human rights-ify" violence against women.

The Seventh UN Congress on the Prevention of Crime and Treatment of Offenders made an important link between VAW and international human rights law when it said that domestic violence and rape "jeopardize[d] the personal and social development of women and are against the interests of society."²³ However, another move was neces-

sary before VAW could become a human rights issue: making the state accountable for acts by non-state actors. The doctrine of state obligation (and the reviewing standard of due diligence) that emerged in both the 1992 CEDAW General Recommendation 19 on Violence against Women and the 1994 UN Declaration on VAW relied on a notion of state responsibility to protect and fulfill human rights and built the case that a state could be accountable for abuses by non-state actors (like husbands).²⁴ Here, an emerging doctrine in mainstream human rights work (on state accountability) was simultaneously strengthened in its codification and also gendered in the work of making violence against women a human rights claim. Thus, the political willingness to build a new doctrine in human rights was already present, but the claim of VAW added an engine to this doctrine even as women's rights was challenging rights frameworks to respond.

Violence Against Women: The Political and Campaigning Motor for Attaching Human Rights to Women

The 1993 World Conference on Human Rights was a political watershed in this process of transformation and the moment when VAW took the lead in bringing attention to the human rights of women.²⁵ The Conference took place at a time of great global shifts, many occasioned by the end of the Cold War. It was a moment when new alliances between and among nations—and with NGOs—were forged on key issues such as the indivisibility of economic, social and cultural rights with civil and political rights, indigenous peoples rights, children's rights, and so on. This period was also one of great flux: economic and social rights advanced in tandem with and often connected to gender and sexuality-related claiming (especially in health). For example, advances in health and human rights claims were made visible at the United Nations International Conference on Population and Development (ICPD) around sexual and reproductive health at the same time that lesbian and gay activists were pushing sexual rights as the subject of human rights.²⁶ Women's rights claiming in the time leading up to the 1993 World Conference on Human Rights was a *campaign on* human rights at a time of many other challenges

to traditional rights work, including challenges around the dominance of Northern-based groups and the priority accorded to civil and political rights. In this campaign, women's rights advocacy took the shortest route to success when it picked violence as a lead issue, as it connected to the dominant practice of rights work (responding to attacks on the body) even while it sought to transform and broaden this agenda. The tension of trying to succeed in the charged political world of World Conferences only adds to the contradictions women's rights advocacy faced in trying to simultaneously transform mainstream rights actors and be accepted by them.

In order to make sexual harm a rights issue, advocates came to the UN and to mainstream human rights and health policy organizations to force them to take positions, set legal standards, and change policy. To build a political force that could not be resisted, advocates had to emphasize and make visible what was different about the experiences of women; they had to make these experiences too horrendous to ignore. Women from diverse settings told stories of horrific abuse and thereby brought attention to a previously naturalized harm reframed as a global (hence universal) rights problem. The campaigning took a classic feminist tool—ending silence—and coupled it with another classic feminist tool—intimate story telling by individual women. By these means, activists overturned myths: rape doesn't happen in marriage, rape always "happens" in war.

Activities in this project numbered in the hundreds (if not more). The "Women's Rights are Human Rights Tribunal," hosted by the Center for Women's Global Leadership in Vienna during the 1993 World Conference on Human Rights, is a paradigmatic example of these strategies.²⁷ Viewing the video of this Tribunal today, it is extraordinary how many women came together to make this event. All the more striking is how focused the video is, without explicit acknowledgment, on sexual violence: of the 15 or so testimonies shown, at least 10 deal with sexual assault in detention, incest, rape in marriage, trafficking for forced prostitution, or rape in armed conflict. Bringing stories together from all over the world, advocates put VAW, and in particular sexual violence, on the map as a global human rights problem.²⁸

Although international humanitarian law (IHL) is a separate branch of law from human rights, it has been the target of women's human rights advocacy within political venues such as the World Conferences. In turn, VAW, especially the evolution of the treatment of rape in armed conflict, has been one of the key bridges in bringing human rights, IHL and international criminal law more closely together.²⁹ This centering of humanitarian law (which had the virtue of at least explicitly containing reference to sexual assault, although mischaracterizing it as a crime of honor) placed sexual harm again at the core of the women's human rights debates. In campaigns to include sexual assault as an element of genocide and of crimes against humanity in the new Tribunals and then the ICC, advocates thereby reaffirmed sexual harm as central to the abuse of power in wartime and often as what distinguished women's experiences from that of men.

The moves to bring VAW into human rights also intersected with the moves at domestic and international levels to get the public health and medical establishment to take VAW, including sexual violence, seriously as a health issue.³⁰ The groundbreaking early reports from The World Health Organization (WHO) on violence against women contributed enormously to getting the issue on the policy agenda of national governments, even if in some instances it was a rhetorical maneuver. A key component of this strategy included emphasizing the health consequences of VAW and demanding that services be both a right and an element of compensation.

Collectively, these strategies for women's rights claims were met with a mixture of resistance, recognition, and acceptance. This reception was shaped in large part by the state of the dominant human rights doctrine and practice at this time, the subject to which this article now turns.

A “Doctrine and Practice” Analysis of the Encounter Between Human Rights and Sexuality

Two key elements of human rights—doctrine and practice—have a dynamic inter-relationship that is highly sensitive to historical political context. Understanding this rela-

tionship can help explain why elements of rights doctrine (like obligations around the right to health or the frame of substantive equality noted above) were available but unused in practice by differently situated NGOs. As many commentators of Northern-based, traditional human rights advocacy have charged—sometimes as ideological condemnation, sometimes as explanation—rights is a chameleon-like practice, despite its rhetoric of political purity.³¹ That is, rights practices have changed and will continue to change over time, adjusting to political context, dominance of players, and need. In regard to work on human rights and sexuality, it is clear that doctrinal change (such as the redefinition of torture to include rape) and the content of state accountability to address private actor violence are both deeply connected to methodological and practical changes in human rights. The sections that follow explore aspects of rights work that had particular resonance with the narrow frame of sexual harm, a frame that tends to reduce women to suffering bodies in need of protection by the law and the state, rather than as bodies and minds in need not only of protection, but participation and equality.

The Fault Lines in the Politics of the Body Versus the Politics of Social Justice

Torture As a Paradigm for Rights Abuse and the Links-Between the Suffering Body and the Sexual Body

Through NGOs such as Amnesty International, which had become synonymous with rights work, torture functioned as the most recognized form of human rights violation.³² Thus, rights practice focused on harm to an individual's body. This dominant practice reinforced a lack of attention to the conceptual frameworks necessary to address systems beyond the criminal/military judicial systems (needed for protection against arbitrary detention, torture, etc.). Attention to other systems would have had to include national and transnational systems by which economic rights are realized, racism as a whole is addressed, and sexual and other forms of health are ensured.³³

Yet the work to end individual human suffering does not automatically move toward transformative social justice work: it can *but it does not necessarily* lead to changing

the relations of powers in the society. The style of 1980s rights reporting—its individual story/case focus, with limited and consciously styled “non-political” (i.e., neither for nor against specific forms of government) claims—meant that the over-riding spectacle was deliberately inflicted pain to an individual, a spectacle obliterating any analysis of the politics that led to it.³⁴

Nascent health-and-rights responses in the 1980s emerged as calls to involve health professionals in preventing and responding to torture. This work was a key aspect of the Amnesty International outreach to health professionals in its campaigns in the 1980s, responding to reports of medical participation in torture in South Africa, Chile, and Uruguay, as well as to an emerging understanding of the role of both mental and physical treatment as an element of redress for torture victims. Various centers for the treatment of torture victims were created and linked to rights campaigns.³⁵ Yet, while medicalized responses to torture are necessary, over-reliance on them can inadvertently elevate the politics of the body above the politics of broader justice claims. As Arthur and Joan Kleinman comment, through new health-based diagnoses of Post-Traumatic Stress Disorder, the torture victim moves from political activist to patient with a medical syndrome.³⁶

Evolutions by Analogy: Rape As Torture; Rape Survivors As Citizens?

In considering how differently gendered, raced, and sexed bodies have been able to make abuse visible and build or retain a public profile as citizens, it is important to note the extent to which services for victims of sexual violence become exclusive remedies for damage to a subordinated female subject. While clearly health, including mental health, services are an essential part of any rights claim, the services should be not only remedial but transformative. This transformation means, for instance, that fundamental changes are incorporated into the structures of the state (increasing its responsibility for health services) and that the view of a survivor as a “rape victim in need of services” is repositioned to that of a citizen able to participate in creating the policies affecting her life.

Historically, the compelling (and sympathetic) image of “rape victim” as an innocent female in need of solace for her destroyed innocence/chastity operates against this latter transformation. Traditional health-based approaches to sexuality—especially female sexuality—have colluded with this paradigm, treating the female body as vessel, and not actor. For example, many commentators have examined and criticized the extent to which medicine and public health have focused on the embodied aspects of sexuality (sexual health as absence of disease).³⁷ Others have noted the troubling technologies of macro- and micro-control, such as those of population control, which link the body of the woman with nation and race.³⁸ In general, the history of health’s engagement with sexuality has practically and discursively reinscribed sexuality within reproduction and assigned it to powerless and untrustworthy women’s bodies; it also pathologized sexually active non-reproductive bodies.³⁹ These models have at best left undisturbed (at worst, reinforced) dominant structures of gendered and raced power for differently situated women and men.⁴⁰ Even as the new reproductive health rights paradigm has been welcomed, commentators have noted that some of its manifestations—especially in formal UN documents—often ignore the broader economic and structural shifts required to make these rights a reality for women globally.⁴¹

Making Women’s Bodies Visible While Holding Onto Their Minds: Sexual-Harm Campaigns Engage Human Rights

The campaigns around sexual harm placed the tensions within rights—highlighting bodies, pathology, and suffering on the one hand versus identifying conditions for participation, agency, and collectivities on the other—in sharp relief. Feminists stressed making the invisible visible and de-naturalizing the harm to women. To do this, they stressed the horror of brutal rapes, a maneuver that forced human rights organizations to develop ways to respond to these stories as rights violations, often through the frame of torture in armed conflict.

The distance that must be traveled to see a male torture victim as a reconstituted citizen/subjective holder of rights is shorter than the distance that must be traveled to see a

raped woman as a citizen/rights holder. By speaking of distance, I am trying to capture the barriers placed (sometimes in law) by social stereotypes around gender, sexuality, age, race or ethnicity, for example. For men, the distance is shortest if the torture victim represents an already recognizable, respectable male citizen; i.e., he is of the right race, sexuality, and social status (not a convicted felon, a Roma youth, or a gay male prostitute). But for persons gendered as female, notions of citizenship are attenuated by cultural/political norms around female sexuality to begin with. As Gayle Rubin notes, the disproportionate explanatory power that sex often has operates with particular power around women: sexual harm is total harm, and many women's not-yet-complete claim on citizenship (already weakened through the operation of racism, neo-colonialism, or her own nation's lessened sovereignty) is easily severed.⁴² Thus, for many women, especially of the Third World, the distance between "sex slave" and citizen is remarkably long.

Reviewing 10 years of reporting on sexual harm by mainstream human rights groups, the difficulty of bringing attention to interrelated rights (health-oriented protections, enabling conditions for labor, political equality for women, and so on) while telling stories of sexual harm is painfully clear, as is the danger of reinforcing internal and external stereotypes around the ways "chastity defines the woman."⁴³ More recent efforts within mainstream NGOs show efforts to contextualize rape as part of political struggles while highlighting the connections between gender subordination (in the law and in economic life) and political violence. A laudable effort is clearly being made in instances like these—such as, for instance, in highlighting inheritance and land-reform laws in Rwanda—to move beyond the view of sexual violence as a "thing" that happens to all women, to contextualize its causes and consequences, and to put remedies back into general social reform.⁴⁴

Unfortunately, this approach, while increasingly followed in the practice of human rights groups, is not often apparent in the popular discourse on sexualized crimes. The more simplified version of "sexual slavery" told in early Women's Rights/Human Rights Watch (HRW) reports on trafficking in

Asia have garnered and retained more public attention than the far more nuanced 2000 HRW report addressing labor rights, racism, violence, and immigration law in the “traffic” of Thai women to Japan. The simpler story’s traction is evident in the U.S. Congressional findings on which the U.S. Trafficking Victim Protection Act is based.⁴⁵ A careful study of the impacts of formal human rights reporting on popular press and policy reform remains to be done. Even a cursory glance, however, demonstrates that advocates and activists would do well to note that Congressional and Parliamentary bodies worldwide reduce nuanced and contextualized sexual harm reporting to simplified discussion of “sex slaves.” It is, thus, an absolute necessity to think carefully about the placement and shape of such stories, sifting through them and timing them in such a way as to avoid perpetual retelling of the story of the sexually abused victim who needs only rescue rather than a demanding woman who needs rights and social justice as a citizen.

The Accountability of the State: Criminal Prosecution or Social Welfare—or Both?

Women’s human rights entered rights at a time when the full potential of the rights framework (to guarantee both the core claim and the conditions needed to enjoy the right) had not yet been realized by dominant rights practice: the story of its engagement with rights is thus a dual one of transformation as well as containment.

Missing in Rights Work: A Theory of Exploitation

In the 1980s, the gap between the politics of the body and the politics of social justice operated to narrow VAW (including sexual harm), positioning it as an isolated harm to be addressed for all women (thus reinforcing human rights’ tendency toward gender essentialism) regardless of their other experiences in their domestic and laboring lives.⁴⁶ In responding to this gap, rights work still needs to develop a theory of economic power and *exploitation*, particularly to develop useful responses to the impacts of the globalization of markets and the transnational movement of workers.

The language of exploitation as currently codified in rights standards has led to a discourse where sexual

exploitation is the only form of exploitation generating actual policy responses. The current global attention to “trafficking” reinvigorates a term that has multiple meanings, but which seems unable to escape its association with prostitution and is now trumpeted as the dominant women’s human rights concern. This attention brings with it a focus on crime control methods and rescue, to the detriment of the promotion of the full range of rights needed by trafficked persons, and is indicative of this lack of broader analysis. Clearly there are a number of harms in trafficking, a term defined in the recent UN Protocol as:

(a) . . . recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, fraud, or deception, or the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

(b) Exploitation shall mean at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴⁷

Unfortunately, even this minimal attempt to give content to exploitation is troubled, as Ann Jordan notes in her Annotations to the Protocol: “Sexual exploitation has no definition under international law, and was explicitly left undefined, in part because the negotiating states could not agree (including not agreeing that prostitution was by definition exploitative).”⁴⁸ Notably, the Protocol creates international law in the context of crime control—not human rights or labor protections—so it is not particularly surprising that it goes no further in exploring economic exploitation other than stating its forms. In the Protocol definition, however, prostitution occupies an asymmetrical place in the list, as it names a specific content of the forced activity (as opposed to the rest of the list, which identifies *forms* of compulsion or *structures* of exacting labor; i.e., forced labor, servitude, or slavery).⁴⁹ Thus, in the context of a transnational anti-*crime* convention, two themes emerge: the site of sexual exchange

as a priority for state intervention and a criminal response as the main response to exploitation.

If we look to other treaties for help in responding to exploitation, particularly human rights treaties, we find that language around labor rights addresses non-discrimination (in wages and conditions of access to and advancement in work), workplace safety (conditions of work), and the question of “fair remuneration.”⁵⁰ These concepts, especially the concern for remuneration, approach questions of exploitation, but they address the issue implicitly within nations, not across borders: How do we understand the search for fair remuneration across borders and regions? The Convention on the Rights of the Child uses the language of exploitation in three places: as a form of abuse (“from abuse, neglect, maltreatment or exploitation, including sexual exploitation”), in speaking about economic exploitation in the context of work likely to be hazardous for health or morals, and in requiring states to protect children from sexual abuse and exploitation.⁵¹ The Convention for the Elimination of all Forms of Discrimination Against Women considers exploitation only within the Article 6 obligation of states to take steps to end the “trafficking of women and the exploitation of the prostitution of others.”⁵² Much more work must be done to understand the global aspects of economic exploitation and its link to coercive sex, as well as the connections between women and men seeking livelihoods in collapsing formal economies. Attention to trafficking, however, seems to stand in for these concerns, while not fully addressing them.

Work against trafficking has fluctuated over the past 20 years between a labor/slavery model (as evidenced in its frequent appearance on the agenda of the Working Group on Contemporary Forms of Slavery of the UN-Sub-Commission) and a VAW paradigm.⁵³ Today the VAW model dominates and, interestingly, includes the language of sexual exploitation at the same time. This is most evident in regards to the use of the term *rape*, which, despite the complexity of the issue in relation to trafficking, predominates as *the* description of the violation, with an added harm included—“rape for profit.”⁵⁴ While rape *is* often an accurate description of one of the

crimes that occurs in trafficking, it does not capture the variety of experiences many women describe when they talk about being unpaid or placed in health-threatening situations by the conditions of their sex work.⁵⁵ Instead, the model of rape invokes, primarily, a criminal justice response, one that is now usually coupled with border control.⁵⁶ This trafficking-equals-rape paradigm serves primarily a crime control approach (one among many possible governmental interests in stopping trafficking) rather than ensuring safe migration or just economic conditions in home or destination countries, and places sexual harm as a justification for restraining women's movement.⁵⁷

Indeed, health interventions may actually be stymied by anti-trafficking interventions that are framed solely as "rape as prostitution" approaches.⁵⁸ As one U.K. advocate noted, mental health services are provided as part of a process of "deportation with a smile."⁵⁹ If trafficking is cast solely as "movement for rape-for-profit" and not as an exploitative process that feeds off of women and men's interests in livelihoods, then it is difficult (and often impossible) for anti-trafficking initiatives for women to include services that would allow them to make decisions to improve their conditions of work. Health providers, rather than expanding the ability of trafficked persons to control their lives, become complicit in the apparatus of control.⁶⁰ Moreover, too many social service programs in the context of anti-trafficking offer STD and HIV/AIDS services that are based exclusively on the model of rape care, when in fact the women affected may want a wide range of care, including dental care, housing assistance, and psychological counseling.⁶¹

Thus, attention to trafficking as primarily a crime of male desire and forced sex operates to shut down careful work about the actual objective and subjective interests of the trafficked people and the sectors in which they are exploited, and blocks interventions into the new realities of urban and rural poverty and irregular labor sectors where most people are searching for their livelihoods and are trafficked. In the popular discourse, then, the harms of trafficking become entirely sexual, sometimes racialized but almost always in a way that reinforces gender stereotypes and protects against reflection of Northern economic accountabilities.

Prosecution for Sexual Harm: Scrutinizing the Criminal Law in Light of Its Regulatory Histories

The absence of rights-based theories and practices addressing the role of the state in protecting against economic harm and in promoting distributive justice reinforces mainstream human rights' reliance on the criminal prosecutorial aspect of state power. This is particularly troubling with regard to the focus within women's rights on sexual harm. On the one hand, appropriate use of the criminal powers of the state is an aspect of equality for women: the under-responsiveness of criminal justice systems to VAW generally and to sexual violence in particular is a key element of gendered inequality globally.⁶² On the other hand, advocates know the international and state structures of criminal justice are untrustworthy, as demonstrated by the continuing stratification of prosecutions by class and race, in regard to both victim and perpetrator.⁶³ This troubled history of criminal law is a good reason to scrutinize the actual operation of the criminal law (as opposed to rhetorical claims about its role) very carefully.

The specific role of criminal law regarding sexuality in general—that is, the history of sex law—reveals another troubling silence in the engagement of rights work with sexuality.⁶⁴ The justification for the state's power to criminally regulate even consensual sex is under-explored.⁶⁵ Although sexual rights claims globally are driving a more self-conscious conversation about the state's justifications for regulating sex (consent, morality, and reproduction, to name just a few), this discussion needs to be coupled with the calls for using state power to punish real or putative sexual harm.

For example, the thorny question of sexual rights within marriage needs serious, contextualized examination. What, in addition to the action of prosecution for marital rape, are appropriate interventions? With its focus on harmful intent and individual perpetrators, criminal law is too blunt an instrument to address the many power differentials and goals of sexual exchange within marriage.⁶⁶ Indeed, the Holy See and others that oppose sexual rights recognize that, in light of gender equality, a struggle for the redefinition of marriage *itself* is embedded in the debates over marital rape/criminal law interventions.

By naming prostitution as the most egregious site of sexualized gender harm and calling on the criminal law to respond, women's groups also have a history of externalizing their discontents with marriage at the domestic level.⁶⁷ In the 1980s, labor and marriage roles began to change for women and men, a result of both the struggles for women's rights and the impacts of globalization.⁶⁸ By the early 1990s, however, prostitution became seen more through the global frame of trafficking. Local women's groups gained international credibility through advocacy on trafficking as a human rights issue.⁶⁹ This is not to say trafficking does not occur, or that horrific abuses do not occur, but rather to highlight the way that speaking of "sex"—and about women as uniquely harmed by sex—allowed an initially uphill struggle of local women's groups to snowball into a primary concern of the U.S. government and the Christian Right internationally.⁷⁰

The Operation of Respectability in Human Rights Work

There is an obvious fault line looming in rights advocacy: When human rights claims are picked up by powerful players, they are often drained of their transformative content and used solely for the benefits they bring to these players. Understanding how advocates gained credibility and put "sexuality on the agenda" means looking at how the international community has come to talk about sexuality in public space as a human rights issue. Applying the notion of sexual hierarchies (as first introduced by Gayle Rubin 20 years ago) to human rights advocacy reveals the operations of power and judgment that operate below the surface of women's human rights advocacy around sexual harm.⁷¹ Sexual hierarchies are systems of legitimacy both tacit (shaming) and explicit (legal) that arise in various contexts (country, culture, whatever the unit of imagination) and that prioritize certain forms of reproductive, marital, and heterosexual activity above other sexual behaviors and identities, eventually forcing these marginalized behaviors outside the pale of rights claiming. Lines are not permanently fixed—previously discredited behaviors can move up in the hierarchy—but some kind of line drawing (against chaos and danger) persists.⁷² Facing local and international attacks, in the struggle to gain credibility for women's human rights

groups, many of us struggled to assert respectability at the price of other less respectable women. In doing so, we inadvertently used human rights terms to help reinforce (and not reconsider) the hierarchies.

Talking About Sexual Violence As Respectable Women: Credibility Through Respectability

Work against sexual violence in women's human rights advocacy has had some success, even if only partial. At the same time, a focus on harm makes the discussion of sexuality safe—which is to say, respectable. Some forms of anti-sexual violence advocacy dovetail with the interests of states and thereby gain “respectability” as an element of “credibility” to participate in making policy with a state.

George Mosse's work on respectability (a status gained through a discourse of sexual moderation) highlights the role it can play in reinforcing the discourses of nationalism and racial superiority, even as it incorporates new groups in a broader political project. In challenging policy on equality or sexual health, women's groups, already excluded from public debate, are often attacked as “disreputable.”⁷³ The International Gay and Lesbian Human Rights Commission and the Center for Women's Global Leadership documented the multiplicity of ways that sexual slurs are deployed to silence women's groups: Often individuals in the group are attacked as lesbians or prostitutes—publicly sexed as deviant and non-respectable—regardless of the nature of their rights advocacy.⁷⁴

All human rights groups strive toward credibility because it is a crucial aspect of their influence on public policy. Credibility in human rights work is thought to be built on notions of valid documentation, an unbiased application of accepted norms to facts, and publicly accountable campaigning.⁷⁵ International NGOs regularly state that they are without political positions: objective, neutral, and impartial. Regardless of the validity of this claim, women's rights groups who often operate primarily in regional or local networks are also rendered by definition “partial” because of their focus on gender.⁷⁶

Thus, women, already “sexed” speakers in local and international contexts and not quite fully public citizens,

often have to strive doubly hard for their credibility as activists in human rights. At the same time, they are caught in a paradox: The stories of sexual harm (non-economic, criminal-justice focused, and individually embodied suffering) are powerful, and yet sex as a chosen activity to be protected (for lesbians, for unmarried heterosexual women) is not a fit topic for public debate. Focusing on the harm in sex rather than what good sex might be puts the speaker beyond self-interest and salaciousness, especially if her focus is on a powerless victim, someone who cannot conceivably be held responsible for initiating sexual activity. The tendency to prefer innocent (young) victims for advocacy intrudes here, as does the need to provide evidence of "worthiness" when calling on the criminal/prosecutorial aspect of state action. Thus women are "duped" into prostitution and must gain no benefits in the process to make the harm visible: an exploited sex worker is a much less sympathetic victim than a raped innocent girl.

Making sexual harm a health issue is another move toward respectability and credibility. By making talk about sexuality functional, i.e., related to disease and to survival rather than prurient and personal, health as a discourse plays a key role in achieving respectability. At the same time, a health response can replace the voice for girls and women with the voice of medical experts in public debates on sexuality—thus signaling a moment lost for women's sexual citizenship.⁷⁷

While this inquiry into women's NGOs and speech on sexual harm is tentative, it nevertheless suggests that the success in getting rape on the international agenda as a human rights issue has affected the whole of human rights work for women. Working against rape gave us credibility and respectability, and it introduced us into the powerful world of human rights as promoted through criminal law. These are real advances, the importance of which I do not intend to impugn. At the same time, working for sexual diversity is less well understood, does not involve an area where traditional human rights yet has a theory and a practice, and challenges our own credibility. Similarly, work against economic exploitation and social marginalization is

not only undeveloped as a rights frame, but, most importantly, it also implicates global market operations in ways deeply threatening to the empowered policy-makers (North and South).

Conclusion

The trajectory of this article ends at a critical question: How do we ensure that our interventions focused on stopping harm against women do not unknowingly reinscribe and reinforce the idea that the most important thing about a woman is her sexual integrity (formerly understood as her “chastity”)? This article has considered some of the many forces that shape both the success of advocacy strategies on sexual violence against women as the pre-eminent claim in women’s human rights work and its seeds for danger. In the historical context, women’s rights claiming had multiple strands (development, equality, health) in the UN system, and the move to mainstream women’s rights as human rights occurred at a time of great flux for human rights as a whole.

VAW as a theme connected with the fewest theoretical and political obstacles to human rights, and sexual harm seemed to be a claim that had particular resonance. The particular “twigs on the forest floor” that could be more easily assembled into a successful nest of an international human rights claim included the focus on the body as the site of harm (and the belief that sex resides in the body) and a focus on the state as both a limited guarantor against harm and an active prosecutor of harm. These issues arose in both peacetime and wartime work against torture, yet they had slightly different trajectories in human rights and humanitarian law and practice. Coupled with this was the lack of a widespread acceptance of the doctrine of state accountability for economic justice and a concomitant failure of rights practitioners to develop either a theory of the state as a “good” state or to explore questions of economic exploitation. Thus, the complex matrix of coercion, agency, and survival was simplified or ignored, and sexual exploitation was forced to bear all the weight of harm. Health responses to sexual harm tended to echo this focus on the body and also

tended to dis-empower “treated” persons, moving them from citizen to patient. All of these tendencies within rights mapped over (indeed, in their genesis were integrally related to) various gendered and raced assumptions about who can be a citizen in the first place—all of which make it more difficult for the women portrayed as victims of sexual harm to emerge as full citizens in their varied cultural and country contexts.

The reality that sexuality is still explosive, still not valid as a topic of study globally, and still not fully incorporated into human rights efforts also affects this work. The search for credibility for women’s human rights tended therefore to emphasize social respectability, such that women’s groups, trying valiantly to raise attention to real abuses and denials of women’s sexual rights, predominately focused on condemning sexual harm rather than demanding sexual agency.

This latter problem is in part a danger inherent in public campaigning and its need for successful representational strategies. We succeed most quickly in bringing an issue to general public attention if it connects to existing beliefs—including gender, racial and cultural stereotypes—and does not challenge them. However, in the long run, if we do not challenge dominant structures of power, we have not done our work. It was sexual harm (harm to a woman’s sexuality in particular, as this article has not addressed harm to men) that made gendered harm visible; and yet, paradoxically, this radical idea can also reinforce deeply conservative beliefs about women and sexuality.

This is not a symbolic exercise: there are real harms to be prevented and responded to here. Yet, human rights as both a practice and a doctrine is not free of the very same subordinating practices and ideologies that we campaign against. Our work is not disconnected from processes of power or subordinations on the basis of nation, gender, culture, race/ethnicity, sexuality, class. Indeed, our work may sometimes disturbingly operate through these very subordinations, not against them.⁷⁸ Fifteen years into the global women’s rights movement, we are at an explosive moment of global tension. Internationally, we have put rights into the geopolitics of debate without being able to shift the

rules of power, rules that privilege some nations as more sovereign than others. Within states, we are calling on state power to protect while still ambivalent about the state's motives, particularly its regulation of sexuality.⁷⁹

This article closes with no absolute answers for rights work. I do suggest, however, that as advocates we pause when we appear to be becoming “acceptable”—or “respectable”—in our work, even as we work carefully to be credible and relevant. The violence frameworks and equality frameworks must be brought together within the broader frame that sets up demands for conditions of exercising a right—whether a right to sexual expression between persons or political expression to the state. One framework used in isolation threatens to undo the key aspects of the other. Sexuality in rights work deserves respect but not respectability; human rights should demand both protection and freedom; and finally respect for each other as advocates demands that we reflect on our histories and constraints as we plan our work in the future.

Acknowledgments

I dedicate this essay to Joan Fitzpatrick, who died May 2003. Joan was not only one of the first scholar/activists within Amnesty International to take on the work of building a legal framework for VAW as a human rights issue, but she was also a colleague, mentor, and friend. Many thanks are due to Rana Barar and Ana Drobnik for their assistance. Particular thanks for key conversations are due to Carole Vance and Lee Waldorf, as well as to all the colleagues with whom I have had the honor of working on human rights.

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2. Fourth World Conference on Women, Beijing Declaration and Platform for Action A/CONF.177/20 September 15 1995, para 96. See also L.L. Heise, J. Pitanguy, and A. Germain, “Violence Against Women: The Hidden Health Burden,” *World Bank Discussion Paper 255* (Washington, DC: The World Bank, 1994).
3. The move to call for a response to sexual slavery is also very cynical, as no one can be “for” the enslavement of women, but through this claim, the U.S. disingenuously argues that its militarization of policing is

not just in the national interest, but also women's rights oriented. For the point that new national laws and international treaties with trans-border criminal powers are being rapidly created in (claimed) response to these concerns, see J. Sanghera and R. Kapur, "Report on Trafficking in Nepal: Policy Analysis—An Assessment of Laws and Policies for the Prevention and Control on Trafficking in Nepal" as cited in R. Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics," *Harvard Human Rights Journal* 15 (2003): pp. 1-37.

4. R. Kapur (see note 3). See also W. Brown, *States of Injury* (Princeton, NJ: Princeton University Press, 1995).

5. S. Abeyesekera used this phrase at the Institute for Rights Activism and Development (Bangalore: CREA/TARSHI, 2004).

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7. This essay focuses on the UN-oriented world of traditional rights claiming. This focus is not a neutral shortcut: decades of phenomenal grassroots, non-law-oriented, local, national, and international work of rights claiming—some specific to women, some to sex—are thereby cut out. Complicating our understanding of the "triumphant legal narrative" of women's human rights gains in the world of formal, UN focused human rights over the last decade, however, might also make space for these alternative histories and local initiatives to appear. For the point that the world of women rights/women's status and economic rights had to be integrated and elevated, see A. Byrnes, "The 'Other' Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women," *Yale Journal of International Law* 14/1 (1989).

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13. C. Bunch, "Women's Rights as Human Rights: Toward a Re-vision of Human Rights," *Human Rights Quarterly* 12 (1990): pp. 486-498.

14. R. Kapur (see note 3).

15. C. A. MacKinnon, "Crimes of War, Crimes of Peace" in S. Shute and S. Hurley (eds.) *On Human Rights: The Oxford Amnesty Lectures 1993* (Basic Books: New York, 1993), pp. 83-110.

16. M. Foucault, *The History of Sexuality Vol. 1* (New York: Pantheon Books, 1978).

17. R. Copelon, "Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law," *McGill Law Journal* 46 (2000). See also A. Fraser, (note 6).

18. CERD and CEDAW's test for equality was de facto and de jure: this means that the test for equality was not formal equality (gender neutrality and equality of opportunity), but the impact of the law's or policy's operation on the actual enjoyment of rights by people of different racial groups, or women and men, respectively.

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72. This is not to say that "anything goes" vis-à-vis sexuality, but that we must be very clear about the terms of line-drawing in rights terms. The

prevention of harm and the expansion of the powers of persons to make determinations about their lives would be good initial principles, but then we must still argue about the nature of "harm" and what the expansion of power looks like in radically differently-situated women.

73. G. Mosse, *Nationalism and Sexuality: Respectability and Abnormal Sexuality in Modern Europe* (New York: Howard Fertig, Inc., 1997).

74. C. Rothschild and S. Long, *Written Out: How Sexuality is Used to Attack Women's Organizing* (New York: International Gay and Lesbian Human Rights Commission and the Center for Women's Global Leadership, 2000).

75. *Women's Human Rights Step by Step: A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights* (New York: Women Law and Development International and Human Rights Watch, 1997).

76. M. Matua, (see note 31).

77. L. P. Freedman, (see note 38).

78. J. Doezsema, "Western Feminists' 'Wounded Attachment' to the Third World Prostitute," *Feminist Review* 67 (2001): pp. 16-38. See also W. Brown (see note 4) and R. Kapur (see note 3).

79. K. Bennoune, "'Sovereignty vs. Suffering?': Re-examining Sovereignty and Human Rights Through the Lens of Iraq," *European Journal of International Law* 13/1 (2002): pp. 243-262.