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SEX, CULTURE, AND RIGHTS: A RE/CONCEPTUALIZATION OF VIOLENCE FOR THE TWENTY-FIRST CENTURY

*Berta Esperanza Hernández-Truyol**

I. INTRODUCTION

The central theme of this Article, "Sex, Culture, and Rights: A Re/conceptualization of Violence,"¹ is that a re/vision of acts that constitute violence against women is necessary for gender equality—both domestically and internationally—to become a reality. This reconceptualization must address not only the normative concept of violence, i.e., the use of physical force, but it must also transform and reposition the idea of violence within a broader framework that includes, considers and aims to eradicate (1) psychological, social and political subordination of women; (2) male dominant (and female subservient) cultural and traditional practices; as well as (3) economic marginalization and subjugation of women.

First, in looking at sex (meaning both sex and gender)² and

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Many thanks to Albany Law School Dean Tom Sponsler for hosting this great symposium and to Beth Ann Isenberg and Peter Halewood (to whom I could not "just say no") for organizing the event and to the Albany Law students who worked indefatigably to see that this magnificent program became a reality. Special thanks to Beth for her work and assistance throughout the live symposium to publication process.

It is indeed a special pleasure and honor, as an Albany Law alumna, to have been invited to participate in this groundbreaking Symposium on Conceptualizing Violence: Present and Future Developments in International Law (hereinafter Symposium). It is a unique and gratifying experience to return to my *alma mater*, a place where I obtained a magnificent education, confronted so many intellectual challenges, and received tremendous support, to share with the Albany Law community thinking that was initially inspired by the knowledge imparted within these walls by terrific and caring faculty. Therefore, I dedicate this Article to the Albany Law community, with a special note of thanks to my former professors who were so kind as to attend my presentation: Professors Katherine Katz and Frank Anderson.

¹ This Article is adapted from the talk, of the same title, delivered at the *Albany Law Review* Symposium.

² See CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 263 n.5 (1987). MacKinnon explains that sex is viewed as the biological aspect of being female,

culture, this Article will expose the status of women in the international human rights construct.³ This analysis will reveal that women world-wide are still far from enjoying of equality in any sphere, and in any state within the international community.

It is important to emphasize that the new model's redefinition of violence against women that this Article proposes is more comprehensive, expansive and extensive than the everyday variety of "A hit B"—be it with sex, a fist, a bat or a gun; be it at war, at home, at work or in the streets. To be sure, the discussion will include this "common understanding"⁴ of violence. However, this Article also challenges the global community to develop a conceptualization of violence with, and from, a gender-sensitive perspective,⁵ with a view to eradicating practices harmful to women,

while gender is the social aspect. She rejects both the distinction and the use of the terms interchangeably, "[s]ince . . . the importance of biology to the condition of women is the social meaning attributed to it, biology is its social meaning for purposes of analyzing the inequality of the sexes, a political condition." *Id.*

³ For an extensive treatment of women's human rights and the role of culture see generally Berta Esperanza Hernández-Truyol, *Women's Rights as Human Rights—Rules, Realities and the Role of Culture: A Formula for Reform*, 21 BROOK. J. INT'L L. 605 (1996), and Arati Rao, *The Politics of Gender and Culture in International Human Rights Discourse*, in WOMEN'S RIGHTS HUMAN RIGHTS 167 (Julie Peters & Andrea Wolper eds., 1995).

⁴ I borrow this phrase from language used in early race cases to show that, as with the "common understanding" of what determined one's race, what is defined as violence against women has been limited by pre-conceptions, based on master narratives, generally from a male perspective, regarding what qualifies as violence—a notion that often was limited to the public sphere. See, e.g., Rhonda Copelon, *Intimate Terror: Understanding Domestic Violence as Torture*, in HUMAN RIGHTS OF WOMEN 116 (Rebecca J. Cook ed., 1994). *Morrison v. California* provided a thorough description of the "common understanding" concept in the construction of race.

"White persons" . . . are members of the Caucasian race, as Caucasian is defined in the *understanding of the mass of men*. The term excludes . . . American Indians Nor is the range of exclusion limited to persons of the *full blood*. . . . [M]en are not white if the strain of colored blood in them is a half or a quarter, or, not improbably, even less, the governing test always being that of *common understanding*.

Morrison v. California, 291 U.S. 82, 85-86 (1934) (emphasis added) (citations omitted).

⁵ For a discussion positing that the international structure was not created or developed in a manner that had women's issues, problems and concerns in mind, see generally Berta Esperanza Hernández-Truyol, *Human Rights Through A Gendered Lens: Emergence, Evolution, Revolution* (manuscript on file with the *Albany Law Review*), in WOMEN'S INTERNATIONAL HUMAN RIGHTS: A REFERENCE GUIDE (Kelly Askin & Doreen Koenig eds., forthcoming 1997) [hereinafter *Gendered Lens*]; see also Hernández-Truyol, *supra* note 3, at 606 n.2, 608-09 nn.4-6, 641-45 nn.145-57 and accompanying text (discussing exclusion and marginalization of women in the international, regional and domestic spheres). Sonia Picado Soleta similarly noted that

[t]he blight of many women's lives exposes the shortcomings that have beset international law, both in its origins and in its more modern developments. Classical international law, like the law of nature and nations, paid no attention to women as such; both nature and

particularly with the aspirational goal of attaining real, rather than virtual or theoretical, equality for women. Such an expanded vision must condemn truly abusive, although not directly physically intrusive, conduct that has shattering effects on all women's lives by perpetuating their subordinated status and entrenching their second-class existence. The Article's proposed model presents a re/constructed notion of violence, that not only facilitates discourse on violence itself, but also engenders an environment that will enable the eradication of violence and the promotion of women's self-determination, empowerment and equality.

II. WOMEN'S INEQUALITY: SEX, CULTURE AND RIGHTS

In its 1995 *Human Development Report*, the United Nations plainly stated that "[i]n no society today do women enjoy the same opportunities as men."⁶ Similarly, the U.S. Department of State, in its 1995 annual report on human rights practice, left no doubt that as the global community approaches the turn of the century, the condition and status of women world-wide is one of social, political, educational, legal and economic inequality.

Women in many countries are subjected to discriminatory restrictions on their fundamental freedoms regarding voting, marriage, travel, property ownership, inheritance practices, custody of children, citizenship and court testimony. Women also face discrimination in access to education, employment, health care, financial services including credit, and even food and water. Other long-standing violations of women's human rights include torture, systematic rape, domestic violence,

nations have been understood through the characteristics of men and through the motivations and strategies of men who led the affairs of nations.

Sonia Picado Sotela, *Foreword* to HUMAN RIGHTS OF WOMEN, *supra* note 4, at ix; see also Rebecca J. Cook, *Women's International Human Rights Law: The Way Forward*, in HUMAN RIGHTS OF WOMEN, *supra* note 4, at 3.

International human rights and the legal instruments that protect them were developed primarily by men in a male-oriented world. They have not been interpreted in a gender-sensitive way that is responsive to women's experiences of injustice. Critical recharacterization of international human rights is needed in order that women's distinctive human rights will not be marginal, and implementation of such rights becomes part of the central agenda of human rights work.

Id. at 10.

⁶ UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1995, at 29 (1995) [hereinafter UNHDR 1995]. The report notes "a widespread pattern of inequality between women and men . . . in their access to education, health and nutrition, and even more in their participation in the economic and political spheres." *Id.*

sexual abuse, harassment, exploitation and trafficking, and female infanticide.⁷

Although the early human rights documents promised women a standard of non-discrimination on the basis of sex,⁸ that pledge, as the *1995 Country Reports* and the U.N.'s *Human Development Report* indicates, is still, today, not a reality.⁹

It is significant in an analysis of the real presence of women's voices, issues and concerns in the global community to note that women, because of their sex, were excluded from participation in the creation or early development of international law and its international human rights law component.¹⁰ Women's historical and

⁷ U.S. DEPT OF STATE, 104TH CONG., 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1995 at xvi-xvii (Joint Comm. Print 1996) [hereinafter 1995 COUNTRY REPORTS].

⁸ See, e.g., U.N. CHARTER preamble ("reaffirm[ing] . . . the equal rights of men and women"); *id.* at art. 1(3) ("The purpose[] of the United Nations [is] . . . [t]o achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to . . . sex . . ."); Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., art. 2, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration] ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as . . . sex . . ."); International Covenant on Civil and Political Rights, Dec. 19, 1966, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, art. 2(1), U.N. Doc. A/6316 (1967), 999 U.N.T.S. 171, 173 (adopted by the United States June 8, 1992) [hereinafter ICCPR] ("Each State Party . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as . . . sex . . ."); *id.* at art. 26 ("[T]he law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . sex . . ."); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, G.A. Res. 2200, 21st Sess., Supp. No. 16, art. 2(2), U.N. Doc. A/6316 (1967), 993 U.N.T.S. 3, 5 (entered into force Jan. 3, 1976) [hereinafter Economic Covenant] ("State[] Parties to the present Covenant undertake to guarantee that the rights enunciated . . . will be exercised without discrimination of any kind as to . . . sex . . ."); *id.* at art. 3 (articulating the obligation of "State Parties . . . to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the . . . Covenant"); *id.* at art. 7 (guaranteeing women "conditions of work not inferior to those enjoyed by men, with equal pay for equal work").

⁹ See 1995 COUNTRY REPORTS, *supra* note 7, at xvi-xvii (outlining the continued discrimination that women face throughout the world); Hernández-Truyol, *supra* note 3, at 607 (quoting the UNHCR 1995, which states: "In no society today do women enjoy the same opportunities as men.").

¹⁰ Women were excluded from representative positions both in the sphere of the particular States and in the international legal institutions—not only the United Nations System but also intergovernmental organizations and, until relatively recently, even non-governmental organizations . . . inevitably result[ing] in the real invisibility of women, and of the issues and concerns central and pivotal to women and their personhood, independence, and development as human beings, in the articulation of the substantive provisions and proclamations of human rights law.
Gendered Lens, *supra* note 5 (manuscript at 1-2).

systematic exclusion from the international legal processes in which human rights were articulated, developed, implemented and enforced, resulted in the invisibility of gender issues and shielded gender-based abuses from public condemnation.

Conventional wisdom places the watershed, transforming and defining event in modern human rights law at the world community's reaction to the tragedy of the Holocaust. For women, however, the real international human (women's) rights movement was not sparked until 1979, with the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention or Convention)¹¹ by the United Nations General Assembly (U.N.G.A. or General Assembly). This Convention reconceptualized international human rights discourse by placing women at center stage. It incorporated issues of concern to women not only with respect to so-called "first generation" civil and political rights,¹² but also to so-called "second generation" social, economic and cultural rights,¹³ as well as "third generation" collective rights.¹⁴ The Women's Convention addressed matters such as sexual harassment, gender-based violence, reproductive freedom and denial of basic rights. The Convention also recognized that women globally were being denied basic rights such as the rights to education, to vote, to own property, to travel and to give *their* children *their* name and nationality. Actions of states, governments and intergovernmental organizations, such as economic policies and structural adjustment programs, also were recognized as issues

¹¹ G.A. Res. 180, U.N. GAOR, 34th Sess., U.N. Doc. A/RES/34/180 (1980), *reprinted in* 19 I.L.M. 33 (1980) [hereinafter Women's Convention or Convention].

¹² See *Gendered Lens*, *supra* note 5 (manuscript at 40-41); Hernández-Truyol, *supra* note 3, at 622-29 & nn.53-86 (providing a detailed description of first generation rights). The first generation civil and political rights were conceived as "negative rights," meaning freedom from government interference, including "freedom of opinion, conscience, and religion, . . . the press, . . . assembly, . . . movement, freedom from arbitrary detention or arrest, . . . interference in correspondence . . . [and] property . . ." Stephen P. Marks, *Emerging Human Rights: A New Generation for the 1980s?*, 33 RUTGERS L. REV. 435, 438 (1981).

¹³ See *Gendered Lens*, *supra* note 5 (manuscript at 41-44). The second generation social, economic and cultural rights are positive rights requiring State action, such as the right to an adequate standard of living with adequate food and nutrition, clothing, housing and health. See generally Asbjørn Eide & Allan Rosas, *Economic, Social and Cultural Rights: A Universal Challenge*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS 15 (Asbjørn Eide et al. eds., 1995).

¹⁴ See *Gendered Lens*, *supra* note 5 (manuscript at 45). Third generation rights include the right to environment, development, peace, as well as rights to common heritage, communication and humanitarian assistance. See *id.*; see also Marks, *supra* note 12, at 442-51 (detailing these rights).

central to the marginalization and subordination of women worldwide. The Women's Convention articulated the goal of establishing equality for all women in all aspects of public and private life, including health, education, family, work and political participation. It created obligations on states to end public and private practices that deny women their full panoply of rights simply because of their sex.¹⁵

Although the Women's Convention created the documentary blueprint for women's equality and empowerment, regrettably, its goals have not been realized in any aspect of women's lives. A major problem lies not with the Convention's own terms, but with the treaty-making process that allows states to opt out of certain obligations.¹⁶ Significantly, such opting out is permitted only when the reservation is compatible with the "object and purpose" of the Convention, a limitation that may provide a lifeline to an otherwise tortured equality document. It seems, at best, confused and, at worst, disingenuous to argue that if the object and purpose of a treaty is sex equality, a reservation that perpetuates sex-based subordination is compatible with a treaty's object and purpose. Nonetheless, the Women's Convention is one of the most broadly reserved treaties on record,¹⁷ and some of the reservations effect violence against women.

Indeed, reservations taken to the Women's Convention are vivid examples of how legislating "equality" fails to eradicate the systemic inequality that plagues women in all aspects of their lives. Many nations made reservations to the Women's Convention for various reasons. For example, the reservations range from Belgium's, Luxembourg's and Spain's reservation to reflect the exclusively male heritage in exercise of royal power; to Germany's, New Zealand's and Thailand's exclusion of women from employment in the armed forces or access to combat duties; to Malta's and the United Kingdom's

¹⁵ See Women's Convention, *supra* note 11, at arts. 7 (elimination of discrimination against women in political and public life), 10 (education), 11 (employment), 13 (equality for women in economic and social life including the right to family benefits), 14(2)(b) (right of women to have access to adequate health facilities), 15 (right of women to conclude contracts and administer property), 16 (equal rights of women to marriage and family relations, including choice of name, choice of spouse, management of property and parental rights).

¹⁶ See Vienna Convention on the Law of Treaties, May 23, 1969, art. 2(1)(d), U.N. Doc. A/CONF.39/27, 1155 U.N.T.S. 331, 333 (entered into force Jan. 27, 1980) ("Reservation" means a unilateral statement, however phrased . . . whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.").

¹⁷ See Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L L. 643, 644 (1990).

restriction of employment of women in night-work or at jobs deemed hazardous to their health. Moreover, numerous countries reserved, wishing to maintain restrictions on equality with respect to marriage, family, citizenship and legal personalty of women. Finally, many Islamic countries reserved, insisting that equality be subordinate to the teachings of indisputably gender-subordinating religious law.¹⁸

In light of the inefficacy of the formal processes to effect real change in women's lives, it was no accident that women's voices were *not* heard in the world sphere within the formal system that excluded them, even as that system created documents to protect and empower them. Women first gained recognition through their own activism and initiatives, such as participation in grass-roots organizing by individuals and nongovernmental organizations (NGOs). This informal, parallel track facilitated and enhanced women's voices and global visibility as well as their access to each other's work, thus developing a formidable and impressive network of data, information, resources and support.¹⁹ This informal system also initiated the reconstitution of the rights construct to meet women's needs, effect our self-determination and ensure participation in the global sphere at the local, state-wide and international levels. Women's participation and successes, exhibited best by the results at the international conferences at Rio,²⁰ Vienna,²¹ Cairo,²²

¹⁸ See RICHARD B. LILICH, INTERNATIONAL HUMAN RIGHTS INSTRUMENTS 220.13 to 220.38 (2d ed. 1990) (listing the reservations to the Convention by nation). Islam is not the only religion with teachings that differentiate and exclude on the basis of sex. For example, Roman Catholicism excludes women from the priesthood and Jewish Orthodoxy separates the sexes in worship. The intersection of religion with secular rights, however, presents a problem which is most acute in the cases of religious states. To be sure, freedom of religion itself is a protected human right. See, e.g., Economic Covenant, *supra* note 8, at art. 2; ICCPR, *supra* note 8, at arts. 2 (non-discrimination), 18 (freedom of thought, conscience and religion), 26 (equal protection); Universal Declaration, *supra* note 8, at arts. 2 (equal protection), 18 (freedom of thought, conscience and religion).

¹⁹ See Hernández-Truyol, *supra* note 3, at 671-72 (highlighting the effectiveness of NGOs in furthering women's rights).

²⁰ See United Nations Conference on Environment and Development: Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/5/Rev 1 (1992), *reprinted in* 31 I.L.M. 874, 878 (1992).

²¹ See United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/24 (1993), *reprinted in* 32 I.L.M. 1661 (1993) [hereinafter Vienna Declaration].

²² Report of the International Conference on Population and Development, Int'l Conf. on Population and Dev., U.N. Doc. A/CONF.171/13 (1994) [hereinafter Cairo Conference].

Copenhagen²³ and Beijing,²⁴ brought women into the discourse and transmogrified and validated the role of NGOs in the international community.²⁵

While activism has sparked changes and effected some laudable results, women are still far from enjoying equality,²⁶ and continued, rampant gendered violence is the basic culprit.²⁷ Although the violence is not exclusively of the "A hit B" nature, as the State Department's 1994 Report on human rights plainly notes, the "problem of [physical] violence against women" is of "particular

²³ Report of the World Summit for Social Development, U.N. Doc. A/CONF.166/9 (1995) [hereinafter Social Summit].

²⁴ Beijing Declaration and Platform for Action, United Nations Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995) [hereinafter Beijing Declaration].

²⁵ See Elisabeth Friedman, *Women's Human Rights: The Emergence of a Movement*, in WOMEN'S RIGHTS, HUMAN RIGHTS, *supra* note 3, at 18, 30 ("[T]he most organized and vocal of the NGO participants [at the Vienna Conference were] women [promoting] . . . their issues at the NGO Forum and the official meeting."); Mona Zulficar, *From Human Rights to Program Reality: Vienna, Cairo, and Beijing in Perspective*, 44 AM. U. L. REV. 1017, 1019 (1995) (stating that the Vienna Conference "provided women's groups and nongovernmental organizations . . . with an excellent platform for advocating the integration of women's rights as human rights into the Vienna Declaration and Programme of Action").

²⁶ See 1995 COUNTRY REPORTS, *supra* note 7, at xvi-xvii; see generally HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1997 [hereinafter HRW 1997 REPORT].

²⁷ See Joan Fitzpatrick, *The Use of International Human Rights Norms to Combat Violence Against Women*, in HUMAN RIGHTS OF WOMEN, *supra* note 4, at 532, 533 (cataloguing seven types of violence against women: "(1) domestic violence . . . and rape; (2) genital mutilation . . . ; (3) gender-based violence by police and security forces . . . ; (4) gender-based violence against women during armed conflict; (5) gender-based violence against women refugees and asylum-seekers; (6) violence associated with prostitution and pornography; [and] (7) violence in the workplace, including sexual harassment[,] and noting that these "implicate a surprisingly diverse array of international law sources and international institutions"). Significantly, all these forms of violence have an economic dimension. Some categories implicate economics directly, such as violence in the workplace, prostitution, pornography and mutilation, and some do so indirectly, such as domestic violence based in a desire to control and subordinate women. Charlotte Bunch, a recognized leader in the international women's human rights movement, has commented on the menace of physical violence and observed its nexus to economic well-being:

The importance of control over women can be seen in the intensity of resistance to laws and social changes that put control of women's bodies in women's hands: reproductive rights; freedom of sexuality, whether heterosexual or lesbian; laws that criminalize rape in marriage; and so on. Abusing women physically maintains this territorial domination and is sometimes accompanied by other forms of human rights abuse such as slavery (forced prostitution), sexual terrorism (rape), or imprisonment (confinement to the home). Charlotte Bunch, *Transforming Human Rights from a Feminist Perspective*, in WOMEN'S RIGHTS, HUMAN RIGHTS, *supra* note 3, at 11, 15; see also *id.* at 16 ("Women face terrorism in the form of sexual assault on the streets and in jobs where sexual harassment is a condition for receiving a paycheck.").

concern.”²⁸ Such concern, coupled with the reality of the pervasive nature of gender-based violence against women around the world, prompted the international community to take formal action.

In early 1994, the U.N. Human Rights Commission established a Special Rapporteur on Violence Against Women to examine its causes and consequences. The 1994 Human Rights Reports document that physical abuse of women, including torture, systematic rape, female genital mutilation, domestic violence, sexual abuse, harassment, exploitation and trafficking of women, and female feticide continued throughout the world.²⁹

When evaluating the status of women, it is significant to note states’ complicity in, and responsibility for, the denial of women’s rights.³⁰ Often institutionalized state systems and laws create or facilitate the systematic oppression that continues to marginalize, disempower and subordinate women.³¹ Even civil and political rights which are considered sacrosanct, certainly in most of the western world and sometimes through colonial influence in the rest of the world, are far from being uniformly enjoyed by women.³²

²⁸ U.S. DEPT OF STATE, 104TH CONG., 1ST SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1994 at xix (Joint Comm. Print 1995) [hereinafter 1994 COUNTRY REPORTS].

²⁹ *Id.* These reports also note, as do the 1995 reports, that women are denied civil, political and legal rights as well as suffer from discrimination in myriad spheres including many fundamental freedoms and access to education, work and health care. *See generally id.*; 1995 COUNTRY REPORTS, *supra* note 7.

³⁰ *See* HRW 1997 REPORT, *supra* note 26, at 338-53 (outlining the human rights records of numerous nations and international bodies).

³¹ *See, e.g., supra* notes 17-18 and accompanying text (noting states’ reservations to the Women’s Convention); HRW 1997 REPORT, *supra* note 26, at 338 (reporting that in Egypt, a woman who marries a non-Egyptian cannot pass Egyptian nationality to her children, but that no such restriction exists if an Egyptian man marries a non-Egyptian); 1995 COUNTRY REPORTS, *supra* note 7, at 132 (“[In Kenya] a woman is legally required to receive consent from her husband or father before obtaining a passport.”).

³² In Egypt, women suffer second-class citizenship, imperilment of their bodily integrity because of the State’s dismissal of domestic violence claims, and the persistence of female genital mutilation (FGM) despite the State’s condemnation of the practice. *See* HRW 1997 REPORT, *supra* note 26, at 338-39. The Mexican government has failed to protect women’s rights to privacy and family, as pregnancy testing and questioning about sexual and/or contraceptive practices is common. *See id.* at 340-41. There is no right to equality in Morocco, where the Moudawana requires that a woman obey her husband and submit to his authority, and custom condones the husband’s use of force in dealing with her refusal to submit. *See id.* at 341-42. In Russia women’s bodily integrity is not respected as sexual violence is not taken seriously. Equal opportunity does not exist as recent law increases professions from which women are excluded and employers are not prohibited from discriminating against women on the basis of sex. *See id.* at 342-43. Issues of equality arise in Rwanda where, under customary law, women cannot inherit property unless they are specifically designated as beneficiaries. *See id.* at 343-44. In the U.S., women’s bodily integrity is compromised by virtue of sexual

There are many places in the world (more than many of us can imagine) where women still cannot vote for the governments that oppress them.³³ This exclusion from participation in government is a rank form of violence that strips women of their political voice and denies them their world vision. The denial of the right to vote, combined with exclusion from the right to hold high-levels of public office,³⁴ has resulted in a dearth of women in representative positions at the international, national and intranational organizational levels.³⁵ This invisibility, by virtue of lack of representation is a further act of violence against women because it renders them not only voiceless but simply invisible in the realm of the rights-defining, membership-constituting world.

Women's absence from public office is not only an example of the indivisibility and interdependence of rights, but it also shows that if one cannot vote one cannot elect representatives to support and promote one's interests. If women cannot be elected to political office, they are not only foreclosed from voicing their political perspectives, but they also are denied access to the economic benefits

misconduct of male corrections officers. *See id.* at 344-45.

³³ *See, e.g.*, 1995 COUNTRY REPORTS, *supra* note 7, at 194 (noting that in Niger, men vote their wives' proxy ballots); U.S. DEPT OF STATE, 103D CONG., 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1993, at 1231 (Joint Comm. Print 1994) ("In Kuwait . . . Women are denied the right to vote"); *id.* at xvi (noting that women throughout the world are denied the right to vote).

³⁴ *See* 1995 COUNTRY REPORTS, *supra* note 7, at 222 (noting low representation of women in political office due to "de facto impediments"); *id.* at 153 ("[In Madagascar t]here are no legal restrictions against women participating in politics, but in practice men dominate the political process."); *id.* at 1284 ("[In Yemen, a]lthough women may vote and hold office, these rights are limited by cultural and religious customs."); UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT, at 156-57 (1996) [hereinafter UNHDR 1996] (providing statistics exhibiting the global lack of participation of women in the economic and political arenas).

³⁵ In March 1991, women headed their country's government in 4 of the 159 member states of the United Nations. In mid-1989, at cabinet level only 3.5% of the ministries in 155 countries were held by women, and 99 nations had no women ministers. States are slow to make women permanent representatives to the United Nations: in March 1990, 4 out of 149 were women.

Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 622 n.56 (1991) (citations omitted).

Further, there has only been one woman at the bench at the International Court of Justice, and "no woman has ever been a member of the International Law Commission." Additionally, "[i]n 1991 . . . there were 2 women (out of 18) on the Economic, Social and Cultural Rights Committee, 1 (out of 18) on the Committee on the Elimination of Racial Discrimination, 2 (out of 18) on the Human Rights Committee, and 2 (out of 10) on the Committee against Torture."

Hernández-Truyol, *supra* note 3, at 630 n.97 (citations omitted). *See also* UNHDR 1995, *supra* note 6, at 42 (noting the world-wide dearth of women political leaders).

of those jobs. Women's absence from public office not only denies women their civil and political rights, but it also excludes women from full enjoyment of social, economic and cultural rights.³⁶ Similar to women's exclusion from public office, women are under-represented at high level jobs in the private sector, further denying women equal access to economic resources.³⁷

To be sure, the United Nations has recognized that women suffer economic duress in everyday life. This duress is evident, for example, because "[w]omen receive a disproportionately small share of credit,"³⁸ and because women's work remains "unrecognized and undervalued."³⁹ In addition to being foreclosed from jobs in the public and private sectors, women suffer direct economic oppression by virtue of systems that prohibit them from inheriting and owning property,⁴⁰ that routinely deny them access to education,⁴¹ including the limitation as to the education they can receive and the careers they can pursue,⁴² as well as by their direct exclusion from

³⁶ Liberal feminists say the relationship of the state to the individual must be the same for both women and men and that the root of female subordination is in customary and legal constraints that block women's entrance into and/or success in the public world. To be equal, women must have more choices.

Kathleen Mahoney, *Theoretical Perspectives on Women's Human Rights and Strategies for Their Implementation*, 21 BROOK. J. INT'L L. 799, 802 (1996) (citation omitted).

³⁷ See Barbara Jordan, *International Women's Year: The Challenge We Face*, 5 TEX. J. WOMEN'S L. 235, 237 (1996) (pointing out that women in the private sector do the same work as men, but earn less).

³⁸ UNHDR 1995, *supra* note 6, at 4.

³⁹ *Id.* at 87 ("Much of women's work remains unrecognized and undervalued. . . . in economic terms."); see also Hernández-Truyol, *supra* note 3, at 613 & n.19 (discussing the relatively low economic attainment of women).

⁴⁰ For example, under Islamic inheritance laws in Kuwait, a Muslim woman may receive only half of what male heirs receive, and under some customary laws in Africa, a woman has no rights to exercise ownership over communal or clan property. In many countries, the husband has exclusive control over marital property. See 1995 COUNTRY REPORTS, *supra* note 7, at 15, 76, 122; see also Gwendolyn Mikell, *African Structural Adjustment: Women and Legal Challenges*, 69 ST. JOHN'S L. REV. 7, 17 (1995). In addition, "[m]arried women are under the permanent guardianship of their husbands and have no right to manage property in Botswana, Chile, Lesotho, Namibia and Swaziland." UNHDR 1995, *supra* note 6, at 43.

⁴¹ See UNHDR 1995, *supra* note 6, at 34 (noting that two-thirds of the world's illiterate people are female); 1995 COUNTRY REPORTS, *supra* note 7, at 1293 (citing Afghanistan as an example of where women's educational opportunities are restricted).

⁴² [W]omen have been excluded from 79 out of 157 courses of studies in the university: 55 courses out of 84 in technology and mathematics, 7 out of 40 in natural sciences, and 17 out of the remaining 33. . . . Women have been banned from all four fields of agriculture. In faculties of letters and humanities, only 10 of 35 courses are available to women, and women are not allowed to study archaeology, the restoration of historic monuments, handicrafts, graphics, visual communications, or cinematography. They are banned from the central Art Institute. In industrial design, there is the maximum quota

the economic realm by prohibiting them from certain jobs or professions.⁴³ For example, since the Islamic revolution in Iran, women have been excluded from courses of studies ranging from technology and math, to agriculture, archeology, cinematography and art. In most fields, women are denied scholarships and are not allowed to leave Iran for post-graduate studies.⁴⁴ Afghanistan provides prime examples of the subjugation of women. Afghani women are subject to stoning, forced covering of their bodies and exile from their professions and jobs.⁴⁵ These events were brought into our own homes, in living color, by Diane Sawyer on Barbara Walter's 20/20 program⁴⁶ and Christiane Amanpour on 60 Minutes.⁴⁷ Their reports (and their own dress on their shows) vividly depicted what it is like for women to live in that country under the Taliban regime. Thus governments, by imposing official subordination in the name of religious law, are denying women civil, political, social, economic and cultural rights. Such religious law excludes women from certain professions, such as the judiciary, simply because of their sex.⁴⁸ These religious norms also limit a Muslim woman's inheritance to half of what a male heir would receive.⁴⁹ Governments have forced women into facelessness, public silence and joblessness, and thus into economic subordination and second-class citizenship. Of course, where women are removed from the work force, there remains a void. Children in orphanages are being left without care-takers, and the ill in hospitals are being denied medical services.⁵⁰

of 20 percent women.

Akram Mirhosseini, *After the Revolution: Violations of Women's Human Rights in Iran*, in WOMEN'S RIGHTS, HUMAN RIGHTS, *supra* note 3, at 72, 74.

⁴³ See 1995 COUNTRY REPORTS, *supra* note 7, at 1293 (noting the ban of the employment of women in Afghanistan); HRW 1997 REPORT, *supra* note 26, at 343 (citing the new labor legislation in Russia, effective July 1, 1996, which "increased the number of occupations forbidden to women").

⁴⁴ See Mirhosseini, *supra* note 42, at 74.

⁴⁵ See 1995 COUNTRY REPORTS, *supra* note 7, at 1293 (noting that the Taliban, the religious group in power, increasingly has restricted the activity and rights of women, such as by the forced wearing of head-to-toe garments and the banning of employment and schooling).

⁴⁶ 20/20 (ABC television broadcast, Nov. 1, 1996).

⁴⁷ 60 Minutes (CBS television broadcast, Nov. 3, 1996).

⁴⁸ See Sarah A. Ramage, *Resisting the West: The Clinton Administration's Promotion of Abortion at the 1994 Cairo Conference and the Strength of the Islamic Response*, 27 CAL. W. INT'L L.J. 1, 36 (1996) (noting that in some Muslim countries, women can perform work that is proper under the Koran such as working with small children).

⁴⁹ See Hernández-Truyol, *supra* note 3, at 640 n.141.

⁵⁰ See, e.g., 1995 COUNTRY REPORTS, *supra* note 7, at 1292-93 (discussing the effects of changes in Afghanistan created by the Taliban regime).

Other examples of economic violence against women abound. In some countries women need their husband's permission before they can pursue remunerated employment.⁵¹ Not surprisingly, women worldwide, even when they are allowed to work at all, earn less than men, even in the same occupations.⁵² Worldwide, "women's labor," as traditionally defined, is underpaid and undervalued.⁵³ Worldwide, women who work outside the home still carry the burden of working inside the home, and only receive recognized economic compensation from one of their jobs.⁵⁴

Significantly, just as the above discussion has shown the interconnectedness of civil and political rights with social and economic rights, the discussion that follows will illustrate the nexus between culture and persistent violence against women. Oftentimes this discussion takes place in the context of the debate as to whether international human rights are universal or culturally relative. Although an in-depth treatment of the theories of universality and relativism is well beyond the purview of this Article,⁵⁵ a brief description of the terms is appropriate. Relativists believe that one society or group cannot condemn or pass judgment on traditions and practices of other societies or groups because outsiders' critique of insider's conduct is simply invalid. Relativists maintain that there is no appropriate basis upon which outsiders may evaluate insiders' conduct.⁵⁶ Some cultural relativists would have the human rights structure itself be limited, rather than enriched by culture.⁵⁷

⁵¹ See UNHCR 1995, *supra* note 6, at 43 (citing Bolivia, Guatemala and Syria as examples).

⁵² See *id.* at 36-37; UNHCR 1996, *supra* note 34, at 138-39 (showing that globally, the earned income of females is consistently lower than that of males).

⁵³ See UNHCR 1995, *supra* note 6, at 6; JEANNE VICKERS, *WOMEN AND THE WORLD ECONOMIC CRISIS* 23-24 (1991) (noting that globally, women are far more likely to be employed in low wage, low skill and low prestige jobs).

⁵⁴ As Professor Rebecca J. Cook has observed, "[w]omen suffer additional discrimination, however, because roles identified with female gender are not valued in social and economic terms. Those who perform domestic and child care work in their own homes are frequently regarded as 'unemployed' and ineligible for non-monetary benefits related to paid employment" REBECCA J. COOK, *WOMEN'S HEALTH AND HUMAN RIGHTS* 6 (1994).

⁵⁵ See Douglas Lee Donoho, *Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards*, 27 STAN. J. INT'L L. 345 (1991) (discussing generally the theories of relativism and universality); Hernández-Truyol, *supra* note 3, at 657-60 (discussing the differences between relativism and universality).

⁵⁶ See generally ALISON DUNDE RENTELN, *INTERNATIONAL HUMAN RIGHTS: UNIVERSALISM VERSUS RELATIVISM* 61-87 (1990) (describing the evolution of the theory of relativism).

⁵⁷ See *id.* at 82-87. But see Abdullahi Ahmed An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights*, in *HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES* 20, 24-25 (Abdullahi Ahmed An-Na'im ed., 1992) ("Cultural relativism has been charged with neutralizing moral judgment and thereby impairing action against injustice. . . .

Universalists, on the other hand, believe that all persons are entitled to the same inalienable, fundamental human rights.⁵⁸ They would have one be blind to culture, contrary to express provisions in international human rights documents themselves.⁵⁹

Indeed, international human rights theory supports the concept of universality of rights.⁶⁰ My position insists on the protection of culture as an independently protected right, this Article advocates a cultural pluralist perspective within human rights discourse. This pluralist perspective rejects the use of culture as a pretext to subordinate or marginalize women, or relegate women to second-class citizenship.⁶¹ Ethnocentric, culturally biased notions of right and wrong, however, must be rejected.

Significantly, international human rights instruments support this view of the role of culture in the international sphere. For example, while human rights documents consistently address culture as a basis upon which protections must be afforded,⁶² not one cites to culture as a basis upon which protections may be abridged. To the contrary, many documents support the idea that some aspects of culture, particularly those distinctions that are justified solely by status (such as sex), must cede to universal human rights. For example, the African Charter on the Rights and Welfare of the

In my view, the merits of a reasonable degree of cultural relativism are obvious, especially when compared to claims of universalism that are in fact based on the claimant's rigid and exclusive ethnocentricity." (citation omitted)).

⁵⁸ See MYRES S. MCDUGAL ET AL., *HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY* at xvii (1980) ("The conception of human rights which we recommend . . . can be made to transcend all differences in the subjectivities and practices of peoples, not merely across nation-state lines, but as between the different cultures of the larger community.").

⁵⁹ See, e.g., Economic Covenant, *supra* note 8, at art. 1(1) ("All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their . . . cultural development."); Universal Declaration, *supra* note 8, at art. 22 ("Everyone . . . is entitled to realization . . . of . . . cultural rights indispensable for his dignity and the free development of his personality."); ICCPR, *supra* note 8, at art. 27 (recognizing that minority populations within a state have a right "to enjoy their own culture").

⁶⁰ See U.N. CHARTER art. 55(c) (espousing, as the fundamental purpose of the Charter, "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion"); Universal Declaration, *supra* note 8, at preamble (recognizing the "equal and inalienable rights of all members of the human family"); Economic Covenant, *supra* note 8, at preamble ("[Human] rights derive from the inherent dignity of the human person . . .").

⁶¹ See Hernández-Truyol, *supra* note 3, at 660-77 (rejecting universality versus relativity dichotomy and proposing a paradigm that respects culture but rejects its use as a pretext for sex-based discrimination, violence or subjugation).

⁶² See *supra* note 59 and accompanying text (citing international instruments that protect culture).

African Child⁶³ expressly balances rights and culture and requires members of the Organization of African Unity to “abolish customs and practices harmful to the welfare, normal growth and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the child and (b) *those customs and practices discriminatory to the child on the grounds of sex or other status*.”⁶⁴ The Convention on the Rights of the Child⁶⁵ requires state parties to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”⁶⁶ Similarly, the Women’s Convention squarely confronts the possibility of misuse of culture as a pretext to discriminate. In this regard, the Convention mandates state parties “[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, *customs and practices* which constitute discrimination against women.”⁶⁷ Further, the Women’s Convention requires that

state parties take all appropriate measures . . . [t]o modify the *social and cultural patterns of conduct* of men and women, with a view to achieving the elimination of prejudices *and customary and all other practices* which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁶⁸

Support for the notion of human rights as universal also is plain in recent conference documents including those from Rio, Vienna, Cairo, Copenhagen, Beijing and Istanbul. For example, the consensus document emerging from the International Conference on Population and Development in Cairo expressly states that “[t]he human rights of women and the girl-child are an inalienable, integral and indivisible part of *universal* human rights.”⁶⁹ The Social Summit document from Copenhagen expressly recognizes the nexus between violence and culture. It requires the elimination of all forms of exploitation, abuse, harassment and violence against women, by urging state parties to pay “[s]pecial attention . . . to

⁶³ Charter on the Rights of the Welfare of the African Child, July 11, 1990, art. 21, OAU Doc. CAB/LEG/24.9/49.

⁶⁴ *Id.* at art. 21 (emphasis added).

⁶⁵ G.A. Res. 44/25, U.N. GAOR, 44th Sess., U.N. Doc. A/RES/44/25 (1989).

⁶⁶ *Id.* at art. 24(3).

⁶⁷ Women’s Convention, *supra* note 11, at art. 2(f) (emphasis added).

⁶⁸ *Id.* at art. 5(a) (emphasis added).

⁶⁹ Cairo Conference, *supra* note 22, at ch. 2, princ. 4 (emphasis added).

violence resulting from harmful traditional or customary practices.”⁷⁰ Moreover, the Beijing Declaration recognizes that inequalities between men and women affect the well-being of all people⁷¹ and that women’s plight is “exacerbated” by their increasing poverty.⁷² The world community committed itself to “[e]nsure the full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms.”⁷³ Further, the global community made the commitment of taking “effective action against violations of [such] rights and freedoms.”⁷⁴ The Beijing Declaration expressly recognized the impact of culture on women’s rights when it committed the global community to “[i]ntensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, *culture*, religion, or disability, or because they are indigenous people.”⁷⁵ The Beijing Programme of Action recognizes the demoralizing, paralyzing and dehumanizing effects of these barriers on women of poverty,⁷⁶ of the feminization of poverty,⁷⁷ of unemployment⁷⁸ and of garden-variety “A hit B” violence against women.⁷⁹ The platform also recognizes that women are “key contributors to the economy” and urges the recognition of women’s role in the economic realm both through their remunerated and unremunerated employment, the community, as well as the workplace.⁸⁰ The Beijing document even recognizes the deleterious effect of customary attitudes that interfere with girls’ access to education.⁸¹

Notwithstanding these provisions regarding the use of culture as a basis upon which to abridge women’s rights, culture and tradition frequently are presented as pretextual obligations for practices that are harmful to women. Such practices include “genital mutilation,

⁷⁰ Social Summit, *supra* note 23, at Part II, ch. IV, ¶ 79(b) (emphasis added).

⁷¹ See Beijing Declaration, *supra* note 24, at Annex I, ¶ 5.

⁷² See *id.* ¶ 6.

⁷³ *Id.* ¶ 9.

⁷⁴ *Id.* ¶ 23.

⁷⁵ *Id.* ¶ 32 (emphasis added).

⁷⁶ See *id.* at Annex II, ¶¶ 47-68.

⁷⁷ See *id.*

⁷⁸ See *id.* ¶¶ 150-80.

⁷⁹ See *id.* ¶¶ 112-30.

⁸⁰ See *id.* ¶ 21.

⁸¹ See *id.* ¶ 71.

female infanticide, bride-burning, foot binding, slavery, face-hiding, wife-beating, honor-killing, forced pregnancy, forced abortion" and body trafficking to name a few.⁸² Despite the evolution of women's "paper rights," the universal fact remains that women are routinely subject to torture, starvation, terrorism, humiliation, mutilation, rape, health risks, economic duress and sexual exploitation simply because of their sex.⁸³ This oppression persists in the world even though documents mandate the equality of women and protect their rights. Such rights include the right to: bodily integrity, food, peace, equality, privacy, education, religion, travel, family life, choice regarding the number of children, information, life, liberty, security and integrity of the person, freedom from torture, freedom from slavery, equal political participation, free assembly and association, work, enjoyment of the benefits of scientific progress, development, environment, democracy, self-determination and solidarity, to name some of the rights pertinent to the protection of women's international status and condition as human beings who deserve freedom from violence.⁸⁴

For example, customary laws in Africa deny women the right to exercise ownership over communal or clan property.⁸⁵ In many countries, husbands still have exclusive control over marital property. For example, in Botswana, Chile, Lesotho, Namibia and Swaziland, married women are under the guardianship of their husbands and have no right to manage their own property.⁸⁶ Thus, culture, tradition and religion often are invoked as justifications for denying women the right to be free from violence. Sometimes this denial is reflected in the suppression of civil and political rights, such as the choice of a marriage partner and the freedom from torture. Other times it affects women's economic and social rights, such as the right to own property and work in the profession of their choice.⁸⁷ Similarly, women in South Asia frequently find themself-

⁸² Hernández-Truyol, *supra* note 3, at 635-36 (citations omitted).

⁸³ See *id.* at 634-37 & nn.107-26.

⁸⁴ *Id.* at 624-29 (citations omitted).

⁸⁵ See Florence Butegwa, *Using the African Charter on Human and Peoples' Rights to Secure Women's Access to Land in Africa*, in HUMAN RIGHTS OF WOMEN, *supra* note 4, at 495, 500.

⁸⁶ See UNHCR 1995, *supra* note 6, at 43.

⁸⁷ See Sara Hossain, *Equality in the Home: Women's Rights and Personal Laws in South Asia*, in HUMAN RIGHTS OF WOMEN, *supra* note 4, at 465, 473 (discussing how personal laws "perpetuate women's subordination within the family and . . . contribute to the causes of continuing violence against women").

ves relegated to second-class status because of customary and personal laws.⁸⁸

It is important to recognize that social, political, economic and physical violence takes place not only somewhere across some vast ocean; nor does it occur only in the "South," the "East" or "Third World States." Such violence exists in our own backyard. Representative Schroeder introduced a bill to outlaw female genital mutilation (FGM) *in this country* because it is an act of torture, an affront to physical integrity, a violation of equality (all universally protected first generation rights), and it is happening here.⁸⁹ Recent immigration⁹⁰ and welfare⁹¹ laws, in effect, serve as economic assaults on poor people, citizens and non-citizens alike, and on immigrants, documented and undocumented alike.⁹² Economic violence in the United States is a reality, with women still over-represented among the poor,⁹³ under-represented in government⁹⁴

⁸⁸ See *id.* at 473; Kirti Singh, *Obstacles to Women's Rights in India*, in HUMAN RIGHTS OF WOMEN, *supra* note 4, at 375, 379 (discussing the anti-women characteristics of Indian personal law).

⁸⁹ Recent news stories emphasize not only the brutal nature of the ritual, its permanent harms and dangers, but also the vehemence with which the practice is defended. See, e.g., Howard W. French, *The Ritual: Disfiguring, Hurtful, Wildly Festive*, N.Y. TIMES, Jan. 31, 1997, at A4 (noting that for many women in Sierra Leone, the practice is a question of culture and that women, including girls who recently had their genitals cut, defended the practice and wanted it to continue, while others campaign strenuously against the practice); Howard W. French, *Africa's Culture War: Old Customs, New Values*, N.Y. TIMES, Feb. 2, 1997, § 4, at 1 (noting that the West's attempts to put an end to the practice has been unsuccessful, and that the practice of FGM is being defended as part of the African culture). With the outlawing of the practice in the U.S., families who have immigrated to the U.S., but want their daughters to undergo the procedure, simply say that they will return to their countries of origin to have the cutting performed. See *In re Kasinga*, Int. Dec. 3278 (BIA 1996) (June 13, 1996) (granting asylum to a woman who feared subjection to cutting if she returned home); Editorial, *The Right Call in a Deportation Case*, CHI. TRIB., Apr. 4, 1994, at 14 (reporting the grant of asylum of two girls, who are U.S. citizens, to a foreign mother, who is the custodial parent, because of the fear that if she took her daughters to their country of origin, they would be subjected to FGM). For a discussion on the relationship of the practice of FGM to equality and to economics, see Fitzpatrick, *supra* note 27, at 540-43.

⁹⁰ See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (to be codified in scattered titles and sections of U.S.C.).

⁹¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (to be codified in scattered sections of 8 U.S.C. and 42 U.S.C.).

⁹² See Swati Agrawal, *Trusts Betrayed: The Absent Federal Partner in Immigration Policy*, 33 SAN DIEGO L. REV. 755, 758 (stating that both acts will discontinue benefits to legal immigrants); Richard J. Pierce, Jr., *The Due Process Counterrevolution of the 1990s?*, 96 COLUM. L. REV. 1973, 1990-92 (1996) (discussing ways in which states will be encouraged to discontinue welfare benefits under the Personal Responsibility and Work Act).

⁹³ See MARY BECKER ET AL., FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 511 n.3 (1994) (showing women's disparately high presence among the poor); UNHCR 1995, *supra* note 6, at 4 (noting that women represent seventy percent of persons in poverty).

and underpaid across the line, for performing the same jobs as men.⁹⁵ To be sure, the stereotype of mother belonging at home, taking care of children, and not working (for pay, that is) is pervasive.⁹⁶

Latinas in this country are the poorest of any group in all of the United States of America.⁹⁷ Their condition illustrates the reality of women's economic nightmare within our borders. Additionally, Latinas are the least educated and the least represented in any body politic, ranging from the bedroom to the boardroom, to government, to the law school, on both sides of the podium.⁹⁸ Latinas as a group are so marginalized and invisible, that statistics are rarely available to allow commentators to bring them to visibility.⁹⁹ Latinas often

⁹⁴ See Fernando R. Tesón, *Feminism and International Law: A Reply*, 33 VA. J. INT'L L. 647, 650 (1993) (discussing the argument that women are underrepresented in government); UNHDR 1996, *supra* note 34, at 141-43 (listing the percentage of women in each nation's professional and political work force).

⁹⁵ See UNHDR 1995, *supra* note 6, at 35-36 (analyzing and listing data exhibiting that women's pay is lower than men's).

⁹⁶ See VICKERS, *supra* note 53, at 15 (noting that globally, women work in the home and are generally uncompensated for their household work).

⁹⁷ See SONIA PÉREZ, NATIONAL COUNCIL OF LA RAZA, *UNTAPPED POTENTIAL: A LOOK AT HISPANIC WOMEN IN THE U.S.* 31 (1996) ("In 1993 [Latinas'] median income (\$8100) was 72% of White women's median income (\$11,266) and 85% of Black women's income (\$9508)."). In 1986, Latinas were the poorest ethnic group, with the lowest socio-economic indicators in the U.S. See generally *Symposium on the Feminization of Poverty: The Hispanic Perspective*, Co-Sponsored by The New York State Division for Women and The National Conference of Puerto Rican Women, Inc. (June 1986) (symposium materials on file with the *Albany Law Review*).

⁹⁸ There are 43 Latinas in full-time, non-clinical, tenure-track positions in law schools in U.S. (Survey of Latinas/os in legal education) (on file with author). See generally Berta Esperanza Hernández-Truyol, *Las Olvidadas I - Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 J. GENDER, RACE & JUSTICE (forthcoming 1997) (manuscript on file with the *Albany Law Review*) [hereinafter *Las Olvidadas I*] (discussing Latinas in law school and the legal profession, as well as their economic and educational opportunities outside of law).

⁹⁹ See, e.g., GLORIA BONILLA-SANTIAGO, *BREAKING GROUND AND BARRIERS: HISPANIC WOMEN DEVELOPING EFFECTIVE LEADERSHIP* 2 (1992) (noting the lack research on Latinas); THE COALITION FOR WOMEN PRISONERS, *THE CORRECTIONAL ASSOCIATION OF NEW YORK'S WOMEN IN PRISON PROJECT, PROPOSALS FOR REFORM IN NEW YORK STATE* 15 (1996) ("Data regarding women in prison is seriously lacking."); MULTICULTURAL WOMEN ATTORNEYS NETWORK, ABA COMMISSION ON WOMEN IN THE PROFESSION & COMMISSION ON OPPORTUNITIES FOR MINORITIES IN THE PROFESSION, *THE BURDENS OF BOTH, THE PRIVILEGES OF NEITHER* 6 (1994) ("[T]he Network found that precious little data and information exist that reveal any detail about women lawyers of color."); PÉREZ, *supra* note 97, at 2, 5, 13, 23 (noting lack of data and need for research on Latinas); Jenny Rivera, *The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, 4 J. L. & POL'Y 463, 505 (1996) (noting lack of information on the experiences of women of color with mandatory arrest policies); Sara Torres, *A Comparative Analysis of Wife Abuse Among Anglo-American and Mexican-American Battered Women: Attitudes, Nature and Severity, Frequency and Response to the Abuse* 1 (1986) (unpublished Ph.D. dissertation, University of Texas, Austin) (on file

fall into the category of either "Hispanic" or "minority women." Thus statistics from these categories do not, and cannot, truly represent Latinas. Significantly, much of the economic violence that is perpetrated on, and experienced by, Latinas as a group is a result of, and is perpetuated by, gendered cultural norms.¹⁰⁰ Latinas are acculturated to be secondary, subordinate, beings.¹⁰¹ The family always comes first—be it their parents and siblings, or their husbands and children.¹⁰² Latinas are indoctrinated with the myth of *marianismo*, a construct in which the Virgin Mary is the aspirational model. This model demands that a Latina must be *la buena mujer* ("the good woman"), and requires of women self-sacrifice, self-effacement and self-subordination.¹⁰³ The notion of *familismo* (family comes first) also keeps Latinas, right here within our own *fronteras* (borders), hiding behind the proverbial privacy closet door of family. *Familismo* results in the expectation of Latinas to take the blows from husbands and fathers alike, and never to complain. Majority culture and Latina culture alike, as well as the church expect Latinas to be holy, self-effacing and to protect the family.¹⁰⁴ Of course, many who are undocumented immigrants will not report the violence against them, because they fear deportation for themselves or their families.¹⁰⁵ As a result, they learn to suffer indignities and tolerate physical, sexual and economic violence at the hands of their husbands and underground employers.¹⁰⁶ Latinas

with the *Albany Law Review*) ("Hispanics constitute one of the ethnic groups in which there is a dearth of studies in wife abuse.").

¹⁰⁰ See *Las Olvidadas I*, *supra* note 98 (manuscript at 41-50) (discussing internal barriers of culture and gender).

¹⁰¹ See *id.*; BONILLA-SANTIAGO, *supra* note 99, at 11 (explaining that traditionally the ideal Latina is expected to be "sentimental, gentle, impulsive, docile, submissive, dependent, and timid"); ROSA MARIA GIL & CARMEN INOA VAZQUEZ, *THE MARIA PARADOX* 7 (1996) (describing the concept of *marianismo*, which encompasses the above traits).

¹⁰² See *Las Olvidadas I*, *supra* note 98 (manuscript at 41-42); BONILLA-SANTIAGO, *supra* note 99, at 11; PIERETTE HONDAGNEU-SOTELO, *GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION* 9 (1994).

¹⁰³ See GIL & VAZQUEZ, *supra* note 101, at 7 (describing the socialized expectations placed on Latinas); see also *Las Olvidadas I*, *supra* note 98 (manuscript at 42) (same).

¹⁰⁴ See *Las Olvidadas I*, *supra* note 98 (manuscript at 41-45); Latinas and Domestic Violence, Panel Presentation, Under Represented Women and the Law, sponsored by *Berkeley Women's Law Journal*, at 6-7 (Nov. 5-6, 1994) [hereinafter *Berkeley*] (materials on file with author).

¹⁰⁵ See *Berkeley*, *supra* note 104, at 6-7; Edward Gondolf et al., *Racial Differences among Shelter Residents: A Comparison of Anglo, Black, and Hispanic Battered*, 3 J. FAM. VIOLENCE 39, 48 (1988); *Las Olvidadas I*, *supra* note 98 (manuscript at 24).

¹⁰⁶ See CHRIS HOGELAND & KAREN ROSEN, *DREAMS LOST, DREAMS FOUND: UNDOCUMENTED WOMEN IN THE LAND OF OPPORTUNITY* 12 (1991) (describing the plight of a Guatemalan

endure such violence in their own homes, as well as in the homes of those for whom they work as nannies, housekeepers and maids, because they are afraid that if they complain about or reject the sexual harassment, the underpayments, the humiliation, the rapes and the insults that they suffer, they will be deported.¹⁰⁷

Consider the complex, paradoxical messages given daily to all women in poverty. Society expects women to stay home and care for children, family and spouses, but the very same society demonizes them for the very same conduct if they happen to be in poverty and accept financial assistance from the state. The same conduct of stay-at-home care-taker goes from glorified to condemned and demonized depending on who is signing the paycheck, all the time for doing their jobs as mothers. This, too, is every day economic violence.

III. RECONCEPTUALIZING VIOLENCE

After traveling through such a depressing, albeit common, path of persistent violence against women, it should be evident that the international community must re/vision "violence" so that it offers women greater protection in the Twenty-first century. Recognizing the close nexus between economic dependence and marginalization to physical victimization, this Article proposes that the conceptualization of violence be developed, expanded and transformed to embrace the indivisibility of human rights and interdependence of rights construct.¹⁰⁸ Such a re/conceptualization must embrace all three "generations" of rights: (1) civil and political rights (first generation);¹⁰⁹ (2) social, cultural and economic rights (second generation);¹¹⁰ and (3) solidarity rights (third generation).¹¹¹

immigrant); *Las Olvidadas I*, *supra* note 98 (manuscript at 24).

¹⁰⁷ See HOGELAND & ROSEN, *supra* note 106, at 10 (describing the fears of women immigrants in their search for, and effort to keep, jobs); *Las Olvidadas I*, *supra* note 98 (manuscript at 23-25).

¹⁰⁸ See *generally Gendered Lens*, *supra* note 5. These rights are classified in separate generations to denote the order in time in which they grew to prominence. Despite these classifications United Nations documents emphasize the indivisibility and interdependence of all categories of human rights. See G.A. Res. 421 (V), U.N. GAOR, 5th Sess. (1950) (calling on the U.N. Commission on Human Rights to adopt a single convention on human rights); Vienna Declaration, *supra* note 21, ¶ I(5) ("All human rights are universal, indivisible and interdependent and interrelated.").

¹⁰⁹ See *supra* note 12 and accompanying text (discussing the "spark" of the women's rights movement in the international arena).

¹¹⁰ See *supra* note 13 and accompanying text (referring to these rights as "positive" rights).

¹¹¹ See *supra* note 14 and accompanying text (dealing with the specific rights of a healthy and peaceful environment).

As a prologue to re/constituting and re/conceptualizing violence, one useful blueprint/model to make the transition from the "A hit B" or "A shot B" to the less physically forceful but equally damaging forms of violence is the evolution (revolution) that transmogrified domestic violence, an act that can result in the deprivation of rights belonging to any or all of the rights generations, from a private act to a public act.¹¹² In the past (and in some cultures in the present), it was believed that what happens between or among family members is a "private" matter. If a spouse hit his or her spouse or child, it was not a crime, but rather, business as usual within the family structure. Not too long ago, it was acceptable for a husband to keep his wife in line by using force. Courts even permitted a husband to beat his wife with a stick so long as it was no bigger than his thumb, the so-called "rule of thumb."¹¹³ It was believed that wives, like children, needed to be disciplined, controlled and supervised not only physically, but also economically. Women were not even allowed to deal in their own property.¹¹⁴ Municipal systems of law would not get into the business of forbidding violence in the home so as not to intrude in this private sphere of life. As a result, it was considered to be well outside the realm of the international legal system to reach such private individual conduct. In fact, until recently, states alone were subjects of international law; individuals were simply objects, and not subjects, of international law.¹¹⁵

The role of the individual within the context of international law changed with the development of international human rights law, a

¹¹² See generally Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in HUMAN RIGHTS OF WOMEN, *supra* note 4, at 85; see also Hernández-Truyol, *supra* note 3, at 608-09 (noting that domestic violence is no longer considered solely a private act).

¹¹³ See Torres, *supra* note 99 (manuscript at 16).

¹¹⁴ See *id.* (noting that these restrictions were explained as being for the wife's benefit). In the United States, women's rights as property owners began to change in the mid-nineteenth century.

Beginning with Mississippi in 1839, all common law property states had, by the end of the nineteenth century, enacted Married Women's Property Acts. These statutes removed the disabilities of coverture and gave a married woman, like a single woman, control over all her property. Such property was her separate property, immune from her husband's debts. The wife also gained control of all her earnings outside the home.

The Married Women's Property Acts, prompted by a desire to protect a wife's property from her husband's creditors, as well as to give her legal autonomy, did not give the wife full equality.

JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 368 (3d ed. 1993).

¹¹⁵ See *Gendered Lens*, *supra* note 5 (manuscript at 19-20).

discipline that, as we know it, emerged as an answer and in reaction to the repulsive, violent acts of the Holocaust.¹¹⁶ Similarly, our municipal systems of law and our international human rights system of law have reacted to the horrors of domestic violence and other types of family abuse.¹¹⁷ Local legal systems dragged the dirty linen of domestic violence from the private closet into the public forum by passing laws rendering such acts criminal, meaning offenses against the very public state.¹¹⁸ A similar movement recently occurred in the international sphere.

To be sure, these changes are very recent. In 1985, at the World Conference of Women, held in Nairobi, women from around the world united for the first time to condemn domestic violence.¹¹⁹ The Conference recognized the heinous nature of domestic violence and re/defined it as a public act of violence against women. This strategy resulted in unprecedented successes during the World Conference of Human Rights in Vienna in 1993.¹²⁰ Noting that the quintessential disempowerment of women is based on the public/private dichotomy, women in Vienna, from all parts of the world spoke in a unified voice in their strategic approach to the Conference: to make violence against women a focal point of the demands for inclusion of women in the Vienna agenda—a human rights agenda that, at the outset, did not include women.¹²¹ Fortunately, the strategy was successful. Success was achieved, however, because, unfortunately, violence against women is so prevalent that it was a common concern for all women, from every place and status in the world.

¹¹⁶ See *id.* (manuscript at 22).

¹¹⁷ See *id.* (manuscript at 20-38); see also *Declaration on the Elimination of Violence Against Women*, G.A. Res. 48/104, U.N. GAOR, 48th Sess., art. 2, U.N. Doc. A/RES/48/104 (1994), reprinted in 33 I.L.M. 1049 (1994) (providing a broad definition of violence including physical, sexual and psychological violence and recognition of economic component, e.g., dowry-related violence).

¹¹⁸ See generally BEVERLY BALOS & MARY LOUISE FELLOWS, *LAW AND VIOLENCE AGAINST WOMEN: CASES AND MATERIALS ON SYSTEMS OF OPPRESSION* (1994) (tracing the evolution of domestic violence laws); see also Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV., 267, 298-302 (1985) (encouraging the involvement of the legal system to combat domestic violence).

¹¹⁹ See *Nairobi Forward-Looking Strategies for the Advancement of Women*, United Nations Decade for Women: Equality, Development and Peace, in Nairobi, Kenya, July 15-26, 1985. U.N. Doc., A/Conf.116/28 (1985) (Conference materials on file with author).

¹²⁰ See *Gendered Lens*, *supra* note 5 (manuscript at 51); Julie Mertus & Pamela Goldberg, *A Perspective on Women and International Human Rights After the Vienna Declaration: The Inside/Outside Construct*, 26 N.Y.U. J. INT'L L. & POL. 201, 202 (1994) (noting that the Vienna Declaration "marks a milestone in the efforts to gain recognition of women's human rights").

¹²¹ See Mertus & Goldberg, *supra* note 120, at 204-07 (outlining the painstaking efforts of women's groups to be included on the Vienna agenda).

The conference document finally pierced the veil of the private closet in which women have suffered harms from time immemorial. That private realm—that venue into which the government ought not intrude—was revealed as the very area of women’s vulnerability. Thus, finally in Vienna in the international context, the privacy closet door was torn down, and

the legal concept of privacy [that] can and has shielded the place of battery, marital rape, and women’s exploited labor; [that] has preserved the central institutions whereby women are deprived of identity, autonomy, control and self-definition; and [that] has protected the primary activity through which male supremacy is expressed and enforced,¹²²

was finally dismantled as a matter of law, if not in the reality of women’s everyday lives.

The consensus document that emerged from the Vienna conference (the Vienna Declaration) for the first time recognized violations of human rights and incorporated the rights of women as “an inalienable, integral and indivisible part of universal human rights.”¹²³ The Declaration condemned “[g]ender-based violence and all forms of sexual harassment and exploitation”¹²⁴ and instructed the General Assembly to adopt a draft declaration on violence against women that urges states “to combat violence against women” according to UN mandates.¹²⁵ The Vienna Conference thus smashed, at the gender level, the barriers between state and individual responsibilities and rights.¹²⁶ Vienna crumbled the public/private barriers that had long caused the invisibility and untouchability of matters vital to women and their existence, subsistence and persistence.

After Vienna, the General Assembly approved a Declaration on the Elimination of Violence Against Women. By its terms, the Declaration confirms the shattering of the public/private dichotomy.

¹²² MACKINNON, *supra* note 2, at 101.

¹²³ Vienna Declaration, *supra* note 21, ¶ I(18).

¹²⁴ *Id.*

¹²⁵ *Id.* ¶ II(B)(38).

¹²⁶ See *Gendered Lens*, *supra* note 5 (manuscript at 50) (noting that a traditional time line identifies the late eighteenth century as the emergence, the nineteenth and early twentieth centuries as the evolution, and the events following the Second World War as the revolution of human rights). “From a woman’s perspective, however, the emergence, evolution and revolution of rights follows a dramatically different time continuum.” *Id.* (manuscript at 3). The 1979 adoption of the Women’s Convention marks the emergence, and the time between the adoption of the Women’s Convention and the present marks the evolution of human rights through a gendered lens. See *id.*

It condemns all violence against women and reiterates women's entitlement to equal enjoyment and protection of human rights and fundamental freedoms in political, economic, social, cultural, civil and other fields.¹²⁷ The Declaration provides a comprehensive definition of violence that includes both private and public acts:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.¹²⁸

The international community continued to dismantle the public/private dichotomy in Cairo during the International Conference on Population and Development. In Cairo, the discussion of population policies included reproductive technologies, processes, information and strategies to ensure not only maternal and infant health but women's overall well-being as well.¹²⁹ The Cairo Conference document expressly confirms that "[t]he human rights of women and the girl-child are an inalienable, integral and indivisible part of *universal* human rights."¹³⁰ The Cairo Declaration also recognized that this is central to the elimination of all forms of violence against women, to achieving gender equality and eradicating inequalities and subordination based simply on sex.¹³¹

Similarly, the document emerging from the Social Summit held in Copenhagen in 1995 requires the taking of "full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, in particular domestic violence and rape. *Special*

¹²⁷ See *Declaration on the Elimination of Violence Against Women*, *supra* note 117, at arts. 2-4.

¹²⁸ *Id.* at art. 2.

¹²⁹ See Berta Esperanza Hernández-Truyol, *Report of the Conference Rapporteur*, 44 AM. U. L. REV. 1389, 1390 (1995) (noting that "women's health rights were viewed as part of their over-all [sic] well-being").

¹³⁰ Cairo Conference, *supra* note 22, at ch. 2, princ. 4 (emphasis added).

¹³¹ See *id.* at ch. IV, ¶ 4.4.

attention should be given to violence resulting from harmful traditional or customary practices and all forms of extremism"¹³² Finally, the Fourth World Conference on Women, produced the Beijing Declaration and Programme of Action. These documents confirmed that the mandate of equality for women and the prohibitions of violence against women, are the global expectations of human rights norms.

These global developments provide the foundation for re/defining "violence against women." Indeed, the documents themselves have started the re/defining process by recognizing notions of violence beyond direct physical assaults. Moreover, these instruments are particularly valuable because they are *consensus documents*. They provide the foundation for rejecting cultural and religious pretexts for the subordination and subjugation of women. They condemn such pretexts as inappropriate bases to deny women the exercise of their civil and political rights, or their social, economic and cultural rights. Finally, because of the clear and distinct nexus between physical, social, educational and psychological abuse on the one hand, and economic deprivation on the other hand, it becomes not only logical, but necessary, to recognize that denial of economic rights is part of the panoply of events that effect harm on, and constitute violence against, women.

IV. CONCLUSION

The United Nations has recognized that women's unequal status transcends the social and family spheres. Women's global disadvantages and marginalization also result from lack of access to economic development opportunities¹³³ (in both the private and public sectors), denial of educational opportunities and restriction from social and political participation. Scrutiny of women's condition reveals that their less-than-full citizenship status¹³⁴ can be traced to both physical and economic violence. Such violence is often widely accepted, and even embraced, under the pretext of cultural normativity.¹³⁵ Consequently, before women can achieve social and

¹³² Social Summit, *supra* note 23, Part II, ch. IV, ¶ 79(b) (emphasis added).

¹³³ See UNHDR 1995, *supra* note 6, at 29.

¹³⁴ See *id.* at 99. ("The reality . . . is that women do not share equally with men in the opportunities, benefits and responsibilities of citizenship and development.").

¹³⁵ See Romany, *supra* note 112, at 100 ("A United Nations report on violence against women has clearly documented its global nature and, through the exploration of the intersection of its social, cultural, and economic components, the report indicts states for their complicity in

economic equality and engage in full political participation, societies world-wide must re/conceptualize the notion of violence. This reconceptualization must include all forms of injustice for women, including injustice beyond the "A hit B" or "A shot B" paradigm. It must include economic marginalization and acts of violence justified on the grounds of culture or traditional practices. Indeed, such a framework will facilitate and permit the recognition and understanding of the many intersections of the physical abuse and economic deprivation components in the construction of violence.

Thus, here are my suggestions. On any matter, always ask the woman question: can or does the policy/practice/standard effect, facilitate, promote or ignore violent consequences to women? This inquiry must recognize that such violent consequences can be direct or indirect, and physical *as well as* economic, emotional, psychological, social, educational or political. This analysis cannot be conducted solely by the proponents of the particular rule or practice. Rather, the analysis must be a broad-based, communications-based discursive model. Such a model requires women's comprehensive participation in the consideration of the consequences of the specific rules and practices. Indeed, in order to ensure that this model is truly inclusive, women must participate in the drafting process. In addition, in developing the paradigm, the inquirer must ask women if the proposal has an impact on their *real* lives. Indeed, women must participate in the process and the inquiring exercise as both inquirers and inquired. The only effective way to eradicate violence against women is to understand its overt and subtle forms by deconstructing its causes and manifestations so that violence can be detected at the outset. The only means to realize the mission of eradicating violence in the next century is with a discursive and inclusive model.

In looking at violence, we must expand our view from guns and fists to jobs and dignity. We must start from the bottom up rather than from the top down in defining violence. We need to ask those at the bottom of the economic ladder, the educational ladder, the health ladder and at the margins of the cultural borders—be those *fronteras* sex or sexuality, religion, ability or language—what *their* needs are and how such needs can best be met. We must ask those who are not represented in our representative bodies what their needs are in representation. We must give a voice and render visible

those who are underrepresented. We need to give the vote to those who have been denied access to the ballot box, and we must give dignity to the second sex—women of all races, colors, religions, sexualities, languages, national origins and classes. A re/constructed paradigm must ask the necessary questions to bring those at the margins to the center of human rights talk. All this can be achieved through a re/conceptualization of violence that truly recognizes the needs of women around the world.