Concluding Remarks: Making Women Visible: Setting an Agenda for the Twenty-First Century

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MAKING WOMEN VISIBLE: SETTING AN AGENDA FOR THE TWENTY-FIRST CENTURY
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INTRODUCTION

The Women's Rights as International Human Rights Symposium (Symposium), sponsored by the International Women's Human Rights Project of the Center for Law and Public Policy at St. John's University, focused on the roles played by rules of law and by the conflation of economic, social, political, religious, cultural, and historic forces in the marginalization of women in the public and private sectors in both the international and domestic systems. The traditional exclusion of women from the articulation, development, implementation, and enforcement of rights has rendered gender issues invisible and thereby shielded gender-based abuses from much needed scrutiny. The flawed public/private dichotomy, for example, has delayed the recognition of domestic violence as a violation of both domestic and international rights, such as the universal international right to security of the person. Additionally, the application of the public/private distinction in domestic, regional, and international law has ghettoized women's interests and has helped to

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maintain the unequal status of women.

The Symposium, recognizing the second-class status of women in international societies and the dangers of the marginalization that results from this treatment, sought to reassess the international human rights construct to ensure inclusion of women's rights as human rights. These reconceptualized norms must be applied to issues pertaining to individuals, such as sexual harassment, reproductive freedom, and gender-based violence, and to issues facing local and national governments and intergovernmental organizations including economic policies and structural adjustment programs. Forward-looking strategies must be devised to facilitate and safeguard women's enjoyment of the full range of so-called "generational human rights" — first, civil and political; second, economic, social, and cultural; and third, solidarity.\(^2\) The eradication of the false public/private dichotomy and the encouragement and incorporation of women's voices and concerns into the rights discourse is essential to effect this reformulation of human rights. Scholars and activists in various fields must work together, utilizing an interdisciplinary approach to the rights construct, to implement existing rights in a fashion that protects women. Simultaneously, these individuals must innovatively develop, expand, and transform the content and meaning of these rights to reflect women's realities and perspectives.\(^3\)

A feminist methodology is necessary and appropriate because gender concerns simply represent a microcosm of the myriad problems facing the international community. Gender is a particularly well-suited focus precisely because it encompasses many vital issues such as race, ethnicity, culture, language, religion, national and social origin, class, and sexuality. A new analytical construct taking a multidimensional perspective is necessary.\(^4\) The current construct, that has been used to define rights and

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\(^2\) See Susana Fried, Panel Session on Economic and Social Rights, held at the 1994 Women's Global Leadership Institute, Center for Women's Global Leadership (June 1994) (arguing that hierarchy implied by notion of "generations" of rights obstruct recognition of indivisibility and intersectionality of human rights in general, and women's rights in particular).

\(^3\) See Berta E. Hernandez-Truyol, *Final Report and Recommendations*, 44 AM. U. L. REV. 4 (1995) [hereinafter *Final Report*]. The author proposes a multidimensional approach to evaluate claims, rather than the prevalent, traditional single-issue approaches. Additionally, she notes that in the international arena, the increasing activism of nongovernmental organizations (NGOs) has secured greater participation by women in the rights discourse. As a result, recent international documents such as the Vienna Declaration and Programme of Action reflect more adequately women's concerns and their perspectives.

\(^4\) Id.; see also Berta E. Hernandez-Truyol, *Raising Women's Voices/Making Women Visible: Rules, Realities and the Role of Culture*, [hereinafter *Role of Culture*] (forthcoming 1995) (manuscript on file with author). The author proposes a multidimensional perspective which focuses on
prohibitions with a single-issue focus, is ill-equipped as an analytical tool to evaluate women's issues.\(^5\) The multidimensional perspective requires a culturally sensitive analysis that incorporates the voices of different cultures to ensure that the new international human rights construct is indeed equitable in both principle and application.

Although these concerns are not new, only recently have women gained access to domestic and international arenas. As a result, gender dimensions of human rights norms are being examined and a feminist critique of international law is emerging.\(^6\) It is disturbing, however, that despite this recent trend, there are some who have already begun to dispute the need for any focus on international women's human rights.\(^7\) Critics suggest that the emergence of and discourse about international "women's human rights" is inappropriate because international human rights norms include women as human beings, and, thus, the proper emphasis is on all people, not just women.

This analysis is defective for various reasons,\(^8\) especially as it would be inconceivable to challenge a violation of racial, religious, cultural, or indigenous peoples' rights on the grounds that they too are simply people. Further, these criticisms are problematic when considering both the historic invisibility of women in the rights discourse and the present global status and condition of women as second-class citizens. The reality of women's condition worldwide is such that the United Nations (certainly no bastion of gender equality) classifies women as the largest excluded group in the world.\(^9\) Unfortunately, this sad truth is borne out regardless of which

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\(^6\) See, e.g., Hilary Charlesworth et al., Feminist Approaches to International Law, 85 AM. J. INT'L L. 613 (1991) (providing feminist critique of international human rights and reaffirming need to reassess and reconstruct traditional paradigm to reflect women's realities).


\(^8\) See infra notes 21-34 and accompanying text (detailing how international law documents address sex and then either expressly exclude or routinely ignore women); see also Hilary Charlesworth, Feminist Critiques of International Law and their Critics, Address at AALS 1994 Annual Meeting, International Law Section (rebutting Teson, supra note 7) (speech on file with the author).

\(^9\) See United Nations Human Development Program, Human Development Report (1993) [hereinafter 1993 UNHDR]. The Report labeled women as a “non-participating majority” because despite the fact that women constitute a majority of the world’s population, they “receive only
statistics are considered: employment, economics, personal autonomy, education, political participation, health, or violence.10

Currently, in Bosnia and Haiti, women are pillaged and raped as instruments or prizes of war.11 This reflects the fact that women are a long way from achieving universal respect, let alone security of the person or personal integrity. This is not just a woman's reality in times of war, rather it is a woman's reality in everyday life. Women are routinely subjects of torture, starvation, terrorism, violence, humiliation, mutilation, rape, health risks, economic duress, and sexual exploitation simply because of their gender. Sadly, culture is sometimes used either to shield these realities from scrutiny or to justify or explain these violations.12 Thus, practices such as genital mutilation, child marriages, female infanticide, bride-burning, foot-binding, slavery, face-hiding, and forced multiple child bearing occur every day. Cultures continue to ignore or deny occurrences of domestic violence and rape by spouses and boyfriends. Many of these oppressive acts, tolerated because they are “merely” based on sex, would be deemed outrageous if they were instead predicated upon race or any other protected classification.13

While in the United States we prefer to scrutinize abuses perpetrated in other countries, conditions that women suffer because of their sex are

a small share of developmental opportunities.” Id. at 25; see also Nina Crimm, Opening Remarks—Women's Rights as International Human Rights, 69 ST. JOHN’S L. REV. 1, 3-4 (1995) (citing Report and discussing specific examples worldwide); Berta E. Hernandez-Truyol, Out in Left Field—Cuba’s Post-Cold War Strike Out, 18 FORDHAM INT’L L. J. 15, 30 (1994) [hereinafter Out in Left Field] (outlining similar results in Cuba).

10 See Out in Left Field, supra note 9, at 30 (noting that women receive “a small share of developmental opportunities . . . often excluded from the education or from the better jobs, from political systems or from adequate health care”) (citing United Nations Human Development Program, Human Development Report 174, at 25 (1994)).

11 See Letter from International Women’s Human Rights Law Clinic at City University of New York School of Law to the Secretary-General of the Organization of American States, The Member States, and the General Assembly 1 [hereinafter IWHRLC] (on file with author). “On March 23, the UN/OAS Observer Mission reported . . . that 12 women and girls had been raped in Port-au-Prince and concluded that it appeared that rape was being used as an instrument of terror against the female population of Haiti who were suspected or designated as opponents of the illegal regime.” Id. IWHRLC demanded effective investigation, publicization and prosecution of crimes. Id.; see also Knopf, supra note 1 (citing Donna E. Arzt, Genocidal Rape in Bosnia-Herzegovina and Croatia and The Role of International Law (Apr. 1993) (unpublished manuscript on file with author).

12 See Role of Culture, supra note 4 (arguing that notion of cultural relativism can operate as smoke screen to prevent dealing with and recognizing historic oppression of women and their subordination to prevailing normative culture).

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present here as well. One example is the feminization of poverty—a global reality that cannot be ignored. In addition, persistent discriminatory employment practices, inequitable social-structural relationships, and gender-based violence—some of the many factors which interact to perpetuate gender subordination and disparity—are a daily fact of life. The United States must acknowledge and redress the widespread gender, racial, ethnic, cultural, and sexual orientation inequities in the domestic context to preserve our credibility in the international human rights arena.

In the international context, however, the United States Department of State (again, like the United Nations, no bastion of gender equality) explicitly has acknowledged “the problem of rampant discrimination against women,” and has reported on the acute and real suffering inflicted upon women simply because of their sex. Further, the State Department concedes that violations of women’s human rights include not only physical abuse, but also extend to the systematic denial and discriminatory restrictions of such fundamental freedoms as voting, marriage, travel, testifying in court, inheriting and owning property, and obtaining custody

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14 See MARY BECKER ET AL., FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 511 n.3 (1994). A census report comparing the incidence of poverty across gender and racial lines, indicated that “only 4% of elderly white married women are poor, whereas 24% of elderly white women living alone are poor. Of African American women, 22% of older married women are poor, whereas 60% of older Black women living alone are poor.” Id. Exploring the socioeconomic basis for this discrepancy, the authors noted that women are typically paid less for their services and are less likely to remain in the labor market where pension benefits are often tied to lifetime earnings. Id. Moreover, the gender inequity evident in poverty rates provides [T]he strongest evidence that safety nets protect men better than women (and children). In the United States, “two out of three adults in poverty are women; three-quarters of the nation’s poor are women and children; 50% of female-headed households—and 75% of homes headed by black women—live below the poverty line; three-quarters of the elderly poor are women.”


16 Physical abuse is the most obvious example [of the problem of rampant discrimination against women]. In many African countries, the practice of female genital mutilation continued. In Pakistan, many women in police custody are subjected to sexual or physical violence. On several continents, women and girls are sold into prostitution. In many Gulf countries, domestic servants from Southeast Asia are forced to work excessively long hours and are sometimes physically and sexually abused. In Bangladesh and India, dowry deaths continue. Marital rape in many countries is not recognized as a crime, and women raped or beaten at home often have no recourse. That female life is not valued as much as male life is apparent in countries such as China where it is reported that more female fetuses than male are aborted.

Id.
of children. The practice of limiting access to education, employment, health care, and nutrition is especially shocking in this day and age, as we approach the twenty-first century. The problems of disenfranchisement and invisibility are compounded because these limitations maintain the status quo of subordination and ensure that women will remain ill-equipped to vindicate, let alone assert, their rights. Therefore, sexual inequality is a global reality. Unfortunately, almost all structural, political, social, cultural, and religious systems evidence some form of gender discrimination or subjugation. Hardly any exceptions to this norm exist, thereby giving female subordination and marginalization an appearance of inevitability.

Remarkably, critics of the feminist methodology insist that a focus on women’s human rights is misplaced because international, regional, and domestic instruments mandate gender equality. The critics support their position by noting that many domestic instruments, as well as international documents such as the United Nations Charter, the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Convention on Economic, Social,
and Cultural Rights, all expressly include sex as a protected category.

This position is flawed because many instruments that include sex as a protected classification in general provisions regularly exclude sex as a protected category in specific rights provisions. The above listed documents, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the African Charter on Human Rights and People's Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, and the Convention on the Elimination of all Forms of Discrimination against Women all have general provisions proscribing sex discrimination.

The inclusion of women as a class in general non-discrimination provisions of international and regional human rights documents, however, does not adequately protect against the marginalization of women based on sex. This is because these very same instruments also exclude women from

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25 See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ESC] (entered into force on Jan. 3, 1976). Article 2 guarantees "that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Id. at 5 (emphasis added).

26 The European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter European Convention], amended by Protocols No. 3, 5 & 8 (entered into force on Sept. 21, 1990, Dec. 20, 1971, and Jan. 1, 1990, respectively). Article 14 provides “[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Id. at 232 (emphasis added).

27 See American Convention on Human Rights, Nov. 22, 1969, 9 I.L.M. 673 [hereinafter American Convention] (entered into force July 18, 1978). Similarly, Article 1 outlines State obligations to respect and protect rights and freedoms "without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.” Id. at 675 (quoting art. 1) (emphasis added).

28 The African Charter on Human Rights and People's Rights, June 27, 1981, 21 I.L.M. 58 (1982) [hereinafter Banjul Charter] (entered into force on Oct. 21, 1986). Article 2 guarantees rights and freedoms “without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.” Id. at 60 (emphasis added).


protection on the basis of sex in some of their substantive provisions.\footnote{31} These exclusions alone should convince the critics that there is a need for a feminist analysis of law. The Racial Discrimination Convention provides an egregious example. When purportedly citing to the Universal Declaration, it actually removed the Universal Declaration's explicit reference to sex-based protection.\footnote{32} Similarly, the International Covenant on Civil and Political Rights (ICCPR)\footnote{33} demonstrates the falsity of suggesting women receive full protection of their rights. Notwithstanding the articulation of specific protection for gender in certain articles, Article 20, for example, provides that “[a]ny advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.”\footnote{34} The mention of sex is strikingly absent. Does this mean that advocacy of gender-based hatred constituting incitement to discrimination, hostility, or violence is permissible? The canons of construction and interpretation at common law,\footnote{35} and those dictated by the Vienna Convention on the Law of Treaties,\footnote{36} would seem to compel this conclusion.

The omission conveys the subtextual message that hatred, discrimination, hostility, or violence is accepted when it is sex-based, and prohibited when it is the more egregious national, racial, or religious-based. It is easy

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\footnote{31} See infra note 32.

\footnote{32} See Racial Discrimination Convention, supra note 29. The Preamble of the Racial Discrimination Convention refers to the nondiscrimination clause of the Universal Declaration, yet only specifically notes race, colour, and national origin as protected classifications. \textit{Id.} at 212, 214. For further examples of the exclusion of sex as a protected category in substantive provisions, see ESOC, supra note 25 (articulating universal right to education to promote full development of human personality and sense of dignity and to strengthen respective human rights and fundamental freedoms). Article 13, however, excludes sex, providing education “shall enable all persons to participate in a free society, promote understanding, tolerance and friendship among all nations, racial, ethnic, or religious groups, and further the activities of the United Nations for the maintenance of peace.” \textit{Id.} at 8 (emphasis added); see also American Convention, supra note 27 (designating incitement of hatred based on race, color, religion, language, or national origin as offense); Banjul Charter, supra note 28 (articulating freedom of movement and prohibiting “the mass expulsion of non-nationals . . . . which is aimed at national, racial, ethnic, or religious groups”). Both the American Convention and the Banjul Charter do not specify sex as a protected class.

\footnote{33} See ICCPR, supra note 24. This is the only international human rights convention ratified by the United States to date.

\footnote{34} \textit{Id.} at 178.

\footnote{35} See, e.g., \textbf{E. ALLAN FARNSWORTH, CONTRACTS 496 (Little Brown \\& Co. 1982)} (“\textit{I}n contract interpretation there exists the assumption that parties who list specific items, without any more general or inclusive terms, \textit{intend to exclude unlisted terms . . . . } \textit{I}d. (emphasis added). From that basic assumption comes the maxim expressio unius est exclusivo alterius (the expression of one thing is the exclusion of another). \textit{Id.}.

to draw the dangerous conclusion that sex-based hatred is fine. This is a powerful and chilling message, which, when coupled with some of the previously noted cultural pretexts for oppression, is frightening in light of the realities regarding violence against women.\textsuperscript{37}

Indisputably, a wide gap exists between laws that purport to legislate equality based on sex and the reality of women’s lives. The existence of these norms, however, fabricate a myth of equality providing ammunition to the critics of feminist perspectives and maintaining women’s status quo. The very documents that supposedly protect women’s rights are themselves part of the conspiracy to silence women and render them invisible.\textsuperscript{38} Thus, regardless of the gender equity/equality rhetoric of the myriad instruments, careful scrutiny of their provisions clearly indicates that sex, meaning female, remains a leading indicator of inequality.

Consequently, it is imperative to raise women’s voices and make women visible worldwide. The invisibility of women rulemakers sets the stage for the problems that inevitably follow. Women can begin to counteract the effects of the previously imposed silence and ensure that the formal rules constructed adequately address women’s problems, issues, and concerns by assuming a more active role in both the international and domestic spheres.\textsuperscript{39} Women can both improve the rules that govern international human rights and secure their enforcement by analyzing and reforming the scope and nature of international women’s human rights.

I. PRESENTATIONS: THE BREADTH OF WOMEN’S INVISIBILITY, SILENCE AND SUBORDINATION

The Symposium panelists analyzed the extent to which women historically have been marginalized and silenced. They discussed the breadth of skills that women must develop and the mechanisms that women should use to shape and define women’s international human rights.

\textsuperscript{37} See supra notes 12-21 and accompanying text; see also BEVERLY BALOS & MARY L. FELLOWS, LAW AND VIOLENCE AGAINST WOMEN: CASES AND MATERIALS ON SYSTEMS OF OPPRESSION (Carolina Academic Press 1994).

\textsuperscript{38} See supra notes 32-37 and accompanying text (describing exclusion of women from provisions in instruments and contending that discrepancy between rules and reality reveals inclination, if not intent, to exclude women from certain protections given on other grounds). This in effect renders women invisible in the human rights world and, therefore makes the female sex worth less. Id.

\textsuperscript{39} See The Honorable Carmen Ciparick Beauchamp, Keynote Address at the St. John’s University School of Law Women’s Rights as International Human Rights Symposium (Apr. 22, 1994) [hereinafter Ciparick] (transcript on file with author). New York Court of Appeals Judge Carmen Ciparick Beauchamp offered similar advice and urged participation in government and political procedures to effect the elimination of sexism, racism, violence and poverty.
Despite the panelists' diverse disciplines, a powerful, uniform theme was the recognition that women must network and unite to create a new reality reflecting their experiences and perspectives. Whether we utilize an economic, anthropological, social, cultural, literary, or political framework to analyze and critique the rights construct, we must advocate an inclusive, culturally sensitive approach to facilitate immediate and sustainable reform in both international and domestic situations.

Professor Gwendolyn Mikell urged such a perspective in *African Structural Adjustment: Women and Legal Changes*.' Professor Mikell highlighted the interplay between cultural notions of inferiority and social-structural relationships that predictably have denied women equal participation in the articulation, development, implementation, and enforcement of rights. The resulting gender inequities are unfortunately compounded by the process of structural adjustment and women's limited access to judicial fora to vindicate their paper rights. Professor Mikell anthropologically analyzed the process by tracing the cultural, social, economic, and legal impediments that have frustrated goals of equality and have led to the increasing feminization of poverty.41

Women's agendas are not reflected in the social-structural relationships that affect them because women are frequently excluded from participation in the communal and political processes that define cultural norms. The traditional concepts of marital obligations and land ownership in matrilineal societies, for example, emphasize the distinct rights of extended families rather than the rights of the conjugal unit. Typically, property and other resources are divided in a linear fashion which devalues and ignores women's economic contributions to the family. The disparate adverse impact of the structural adjustment process, whereby women must overcome the massive male migration to urban areas, divorce and abandonment, lack of child support, rising unemployment, and drastic reductions in social services further compounds women's economic marginalization. Women who previously owned properties are unable to secure the necessary capital for support and development because their holdings now are deemed too small or their access to capital too uncertain.

Governments have imposed western-influenced economic models and social policies to secure economic access for women and promote real and

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41 *Id.* The author notes that the combination of economic crises and the implementation of structural adjustment, increasing male migration, steadily climbing divorce rates, abandonment of wives and children, and dramatically reduced maternity services at increased prices are placing women in an even more precarious situation. *Id.* at 10-11.
sustainable social progress. The corresponding procedural and individual-oriented rules of behavior are frequently foreign to the local social and cultural norms and realities of women. In Ghana, for example, recent marital and land reforms designed to foster gender equity and facilitate women's economic independence by ensuring access to family resources and granting spouses an intestate share of property, directly conflict with the traditional system of matrilineal ownership. Consequently, both the validity and utility of attempted reforms remain uncertain or simply fail. Similarly, family legislation requiring maintenance and child support ignore both the flexibility of men's work situations, and the perception that children belong to (and thus are the responsibility of) the wife's lineage. In fact, these reforms may result in further victimization of women rather than any promotion of women's progress, because they may deter from marriage men who seek to avoid subsequent legal responsibility.

Despite these social and cultural limitations, some women do seek to exercise or enforce newly established rights. Not surprisingly, these attempts are often frustrated because, notwithstanding legal entitlements, strong traditional norms mandating lineage property encourage families to contest women's claims. Current legislation is ill-equipped to handle these disputes. Vigorous and protracted challenges thwart women's ownership of property and result in discouraging women from enforcing their rights for fear of reprisals or social harm in other arenas of life. Predictably, gender disparity remains inherent in the same system that purports to strengthen women's rights on paper but fails adequately to provide a forum to enforce them. Constant vigilance is necessary to counteract and eliminate these severe and persistent limitations to women's economic access and status. Governments must acknowledge women's contributions to the economy and be held accountable for the consequences of inhospitable social and economic policies. To this end, women must voice their concerns and work together to ensure that both economic and social rights are integrated into international human rights. As illustrated above,

\[\text{[\text{\textsuperscript{42}}} \text{ Mikell, supra note 13, at 18. In the context of intestate succession laws, for example, effective transmission of property to women is rare because "[w]omen . . . are reluctant to file for letters of administration . . . anticipating the negative reaction from family and community members among whom they must live even after a court case." Id. Moreover, should a woman choose to exercise this right, challenges made by matrilineal relatives often delay the distribution of the property. Id.}\]  

\[\text{[\text{\textsuperscript{43}}} \text{ Id. at 15 (detailing contradiction in legally empowering women without actually increasing their access to resources with which they can determine their economic fate and actively participate in economic development).}\]  

\[\text{[\text{\textsuperscript{44}}} \text{ Id. at 21.}\]
a culturally sensitive approach to such integration is necessary to challenge and transform the underlying assumptions of such policies.

Dra. Alina Camacho-Gingerich's presentation, *In Search of the Feminine Voice in Latin American Literature*, echoed the urgent need for women's voices to be raised and heard. Her paper addressed women's historic invisibility and highlighted how women used such disability to further their creative potential. Although women traditionally have been silenced and ignored, and their literary contributions have been dismissed, devalued and discouraged, women have manipulated this silence into both a creative tool and a weapon to craft their own realities reflecting their concerns and issues. In so doing, women have maintained their dignity, achieved control over their own destiny, and succeeded in reinventing themselves.

Not surprisingly, women devised characters and identities that served to redefine gender roles and simultaneously reject and transcend traditional patriarchal stereotypes and images. Women created a literary universe that accurately reflected their views of the world, themselves, and others. Women authors constructed these characters not only to document the consequences of oppression and highlight the absence of such figures in history and fiction, but also to offer new alternatives for women. These strong female characters reflect women's many qualities, ranging from imagination, creativity, eccentricity, rebelliousness, sensibility, and dependability—each unlimited by gender stereotypes. By providing such images of authenticity for women, women authors ensured that women would "cease to be the traditional pretext of masculine discourse and become instead the text itself."

While Dra. Camacho-Gingerich's presentation concentrated specifical-

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46 *Id.* at 28 (noting literature "was not considered a proper activity for women"). When women sought to explore their literary talents, they were classified as "the other," and thus, subject to different literary criteria and regularly excluded from Latin American literary anthologies. *Id.*

47 Camacho-Gingerich, *supra* note 45, at 33 & n.18 (discussing myriad uses of silence by women). Silence is a powerful mechanism, used to escape the constraints of the traditional patriarchal gendered images and to achieve self-definition. Silence is also a potent weapon, used both to punish male abusers and to create a separate reality where women can imagine and become, achieving dignity and autonomy. *Id.* Finally, silence is a creative device used to incorporate women's experiences and perspectives into local, regional or international history and traditions. *Id.*

48 *Id.*

49 Camacho-Gingerich, *supra* note 45, at 32.
ly on women's literary contributions, it metaphorically imports the need to reaffirm the value of integrating women's perspectives and experiences worldwide on all subjects ranging from literature to violence, from first generation rights (civil and political), to second (social and economic), to third generation rights (solidarity). Similarly, Hiroko Hayashi's presentation, Japan: Sexual Harassment in the Workplace and Equal Employment Legislation, underscored this need by addressing the impact of employment on women in Japan. Professor Hayashi detailed the discriminatory Japanese labor system that has prevented women from attaining real access to economic opportunities in the private sector. Interestingly, Japanese employers have responded to governmental attempts to promote equal employment opportunities by introducing an inequitable two-track system. The tracks differed significantly in wages, promotional opportunities, and fringe benefits under this system. Not surprisingly, women are overwhelmingly placed in the "general track" as opposed to the more lucrative, male-dominated "management track." This discriminatory system, however, has survived scrutiny because the distinction was deemed to be based on sex-neutral criteria such as acceptance of long working hours and transfers. This rationale is flawed because these factors ignore the reality of socially imposed gender roles which create extra burdens for women. Japan has negated the promise of employment reforms by sanctioning this discriminatory two-tiered

50 See Rhonda Copelon, Integrating the Three Generations in an Indivisible Framework for the Protection of Reproductive and Sexual Health as Human Rights (unpublished speech on file with the author). Professor Copelon, of the City University of New York School of Law, indicates that third generation solidarity rights include: the right to equitable and sustainable development, respect for self-determination, and the protection of the environment, security, and peace. Id.


52 Id. at 38-40. The two principal Japanese labor laws on employment discrimination in the private sector are the 1947 Labor Standards Law (LSL) and the 1985 Equal Employment Opportunity Law (EEOL).

The EEOL was enacted in connection with Japan's ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women (CEDAW).

53 Id. at 41.

54 Hayashi, supra note 51, at 41. The placement in each track clearly evinces a discriminatory pattern. 96.2% of women are placed in the "general track," whereas 99% of men, and only 3.7% of women are placed in the "management track." Id.

55 Id. at 42-43 (discussing complaints filed against Sumitomo Life Insurance Company after its implementation of two-track system).
Ironically, the judiciary underscored the formal system’s inability to cope with women’s issues when it rejected sex discrimination charges by married women because there were no men in the general track with whom they could be compared.57

The Japanese response to discrimination has also proven insufficient in the area of sexual harassment. Indeed, the official reliance on the innocuous and vague term “communication gap” instead of the explicit term “sexual harassment” highlights the inadequacies of sexual harassment protections and employment legislation.58 Moreover, sexual harassment in Japan appears to fall into the public/private dichotomy trap and, therefore, is viewed as a personal matter outside the scope of review altogether or subject to a lesser degree of scrutiny. Management will acknowledge the existence of sexual harassment but narrowly define the activity to include only environmental harassment or coercive bargaining for benefits.59 The Ministry of Labor’s routine rejections of mediation applications and the lengthy delays before reaching final dispositions unfortunately deter these limited attempts to provide legal remedies and define employer liability to enforce economic legislation which could guarantee equal opportunity for women.60

Professor Hayashi, therefore, demonstrated that in Japan, as in the international system, paper rights do not translate to equality in real life despite explicit paper guarantees to the contrary. As a result, women in Japan are not considered equal in employment concerns and certainly fail to garner real protections. The Japanese judiciary, for example, recently recognized a woman’s claim of discrimination based on a hostile work environment, rather than explicitly acknowledging, expanding, or articulating remedies for sexual harassment.61 The court’s failure to explore the definition of sexual harassment and its relationship to employment discrimination fosters women’s vulnerability to other forms of harassment and remains a useful tool for men to circumvent competition

56 Hayashi, supra note 51, at 40-41. The Ministry of Labor determined that this system did not violate the EEOL because the standard of qualification was not based on sex. Id. at 41. Moreover, the Ministry has routinely rejected mediation applications since the promulgation of the EEOL. Id. at 43-44.
57 Id. at 42-43.
58 Id. at 52. There is no Japanese law explicitly forbidding sexual harassment. Id. at 46. Thus, there is no legal definition of sexual harassment.
59 Id. The author describes the two types of sexual harassment recognized in Japan. Claims must address either a hostile working environment, or “quid pro quo” harassment. Id. at 57.
60 Hayashi, supra note 51, at 44.
61 Id. at 47 n.58.
from women and to frustrate gender parity.\textsuperscript{62}

The remaining panelists detailed the impact of the widespread experiences of gender abuse and violence, further underscoring the invisibility and inequality of women. By critically examining the existing structures and bases of restrictive social norms, the panelists reinforced the need for women to unite to attain gender equity. Rhonda Copelon, for example, discussed the campaign of violence and abuse against women generally, and in the context of war.\textsuperscript{63} In \textit{Women and War Crimes}, Professor Copelon illustrated how rape and assault against women are consistently used as tools of terror to silence and dehumanize women.\textsuperscript{64} Battered women worldwide suffer repeated trauma, both in war and in peace-time, while being denied a civil rights cause of action for such abuse.\textsuperscript{65} Additionally, most traditional human rights scholars remain reluctant to equate this pervasive "privately" inflicted violence with torture, or even to include it as a human rights abuse.\textsuperscript{66}

War-time gender abuses, in the international arena, are dismissed as an inevitable, albeit prohibited, by-product of war.\textsuperscript{67} Although nations acknowledge rape as a crime, recognition and punishment are rare because it is difficult for countries to demand compliance or impose sanctions when their forces similarly disregard proscriptions.\textsuperscript{68} Nations, therefore, frequently perceive wartime sexual violence as isolated or random incidents rather than conceding the unequivocal pattern of abuse.

In recent history, these systematic abuses against women were deemed private—\textit{i.e.}, domestic—issues, and, therefore, they were beyond the reach of public scrutiny or protection. Through global mobilization around gender violence and international human rights, women advocates initiated the slow and painful processes of (1) reformulating the rights construct to incorporate rape as a form of torture and a threat to security and overall health; (2) eliminating the false public/private dichotomy to ensure scrutiny and protections; and (3) reviewing, improving, and creating effective implementation and enforcement mechanisms.\textsuperscript{69} The United Nations

\textsuperscript{62} See generally id. at 62.


\textsuperscript{64} Id. Ms. Copelon discussed the Haitian and Bosnian tragedies and their impact on women and girls in each respective country. Initially, instances of rape and assault remained invisible and unreported because of the military involvement. Media attention and U.N. recognition, however, has uncovered the existence of such systematic abuses against women.

\textsuperscript{65} Id.

\textsuperscript{66} Id. at 67-68.

\textsuperscript{67} Id. at 64.

\textsuperscript{68} Copelon, supra note 63, at 64-65.

\textsuperscript{69} Id.
Conference on Human Rights in Vienna exemplified this breakthrough by shifting the international human rights discourse to issues women face daily, thus enabling women to have a significant voice in both the identification and condemnation of the abuses to which they are subjected. Rape and assault, once viewed as merely incidental to war, are now recognized as gender persecution because they constitute an attack on sexuality and gender identity.\(^7\)

Troubling issues remain, however, regarding the type of charges violence against women in times of war will entail. If rapes and assaults are defined as crimes against humanity rather than as war crimes, these crimes against women will not be subject to universal jurisdiction.\(^7\) Moreover, if prosecuted by the International War Crimes Tribunal, rapes and assaults against women will be subject to lesser sanctions than other war crimes deemed to be more grave.\(^7\) Such results would simply support the untenable, biased, and dehumanizing belief that war on women’s bodies is a lesser evil than other war-time abuses.

Another difficulty arises when the gender component is excised from rape in the rights discourse. By ignoring the intersectionality of race, ethnicity, culture, and gender and thereby categorizing rape as either genocidal or gendered, unacceptable distinctions result.\(^7\) Sex (meaning female) is rendered invisible again, indicating that gender is not an appropriate basis for a crime against humanity, nor is it deserving of heightened scrutiny or sanctions.

Activists and academics must work to render women’s experiences and perspectives central to the rights discourse. Only this perspective will ensure the creation of effective remedies for gender-based violence to redress injustices and eliminate the pervasive inequality and subordination of women in society. By coalescing economic, political, cultural, and social rights in the international arena, the global women’s movement can promote women’s rights as basic human rights.

Gloria Valencia-Weber and Christine Zuni, in their presentation entitled *Domestic Violence and Protection of Indigenous Women in the United States*, discussed gender-based violence in the U.S. American Indian population both within and outside the tribal system and, particularly, the

\(^7\) Id. at 64 & n.14.

\(^7\) Id. at 66-67.

\(^7\) Id. at 66 n.22.

\(^7\) Copelon, supra note 63, at 66-67.
violence experienced by Indian women. First, they detailed the unique status of American Indians as an ethnic minority and political sovereign. Although there exists vast diversity among the many Indian tribes, this group as a whole exists within a unique cultural relational framework that guides the exercise of power and protects the well-being of Indian women within their communities. The two panelists focused on the prevalence of domestic violence and reviewed the tribal legislative codes, judicial interpretation of tribal codes and common law, and tribal intervention programs, to show their singular role in protecting women.

The presenters also analyzed the status and rights of indigenous women in relation to their tribal communities, examining tribal sovereignty in the context of international law. Traditionally, the tribal community-centered perspective has guided the recognition and protection of rights. In contrast, the North- and West-based development of human rights has embraced individual rights. These different approaches may result in some tension between tribal dynamics and those international documents recognizing and protecting women's rights. Nonetheless, the speakers urged that the tribal culturally-based models “provide encouraging models for protecting women inseparable from their distinct tribal sovereignty.”

In the context of domestic violence, therefore, tribes often take an expansive view of the protected class of individuals and relationships such as the extended family and tribal community. This focus recognizes the harm not only to the individual woman, but includes the community and the tribe as well. Additionally, these efforts provide real gender protection by incorporating the inherent tribal authority, culture-specific values, and the possible application of international human rights instru-

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75 Id. at pt. III.
76 Id. at pt. I.
77 Id. at pt. II.
78 Id. at 135.
79 Some tribes broadly define protected classes to include women “directly affected by domestic abuse, . . . [current] or former member[s] of the abuser’s household, or immediate residence area; [current or former people] involved in an intimate relationship with the abuser; any person who interacts with the abuser in an employment . . . setting; any offspring of the abuser; any relative or clan member . . . ; any elderly person or any vulnerable person, including the emotionally and physically disabled and impaired.” Valencia-Weber & Zuni, supra note 74, at 99-100.
80 Id. at 134. Additionally, the tribes provide protection for a broader range of abuses. These include: assault, violation of orders of protection, threats with dangerous weapons, battery, threatening, coercion, confinement, damage to property, emotional abuse, harassment, sexual abuse and other conduct that constitutes an offense or tort under tribal law. Id. at 110-12.
In her Keynote Address, the Honorable Carmen Beauchamp Ciparick also looked at ethnic women's struggles within U.S. society by discussing implications of cultural and social gender roles on Puerto Rican women. Judge Ciparick, specifically, addressed the adverse economic, social, political, and educational effects of invisibility and silence of Latinas. She also described the traditional subservient role of Puerto Rican women and detailed how Latinas worked within the confines of a rigid patriarchal society that granted women few opportunities for growth or development. Latinas sought economic independence and gender equality after many years as wives, mothers, and caretakers within the household, or working in the “pink ghetto.” No longer willing to compromise their identities, beliefs, and perspectives, Latinas rejected the traditional subordination that both limited their participation in decision-making processes and totally excluded their voices in other arenas (political, social, economic, etc.).

Latinas began to take advantage of new educational opportunities to achieve literacy and develop their skills. Puerto Rican women capitalized on their experiences by seeking employment and expression in nontraditional fields. Upon migration to the U.S. mainland, Puerto Rican women often became the breadwinners and providers because they possessed skills that were more readily adaptable to this new environment. As a result, Latinas escaped their former invisibility and added their voices and accomplishments to the fabric of Puerto Rican experience. This empowerment was a significant step towards gender equality. Yet gender discrimination and violence, racial prejudice, and poverty—underscoring the multidimensionality of gender issues—still present severe obstacles for Latinas attempting to achieve their full potential. Judge Ciparick urged Latinas and women worldwide to commit themselves to eradicating such remaining barriers by networking and participating in the political process.

Each speaker, from disciplines as varied as anthropology and literature, emphasized women's global invisibility in every aspect of their lives. These scholars evaluated and analyzed the systemic causes of this invisibility and the deleterious impact of women's marginalization. After

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81 Id. at 132-34 (exploring interaction of these issues and possible conflicts between emerging international rights and traditional tribal culture and customs).
82 Ciparick, supra note 39.
83 Id. at 72. Women became nurses and teachers, and expressed their patriotism, experiences and feelings as musicians, poets, dramatists, and revolutionaries. Id.
84 Id. at 76.
the academic presentations, a prominent group of activists further addressed these issues. Each proposed strategies for change and warned of the pitfalls of existing culturally-based biases and unaccommodating economic policies.

II. ROUNDTABLE DISCUSSION: RAISING WOMEN’S VOICES AND CREATING FORWARD-LOOKING STRATEGIES

Scholars and activists in various local, regional, national, and international organizations, at this roundtable discussion unanimously agreed on the need to end women’s historic invisibility and silence. The roundtable panelists capitalized on their distinct experiences and utilized an interdisciplinary approach to discuss the myriad issues and concerns that women must address in the international human rights arena. Significantly, they urged that women must strengthen networking attempts and demand a voice in establishing, expanding, and interpreting rights, yet remain sensitive to the different cultural contexts in which these rights exist. The panelists agreed that it is imperative to develop a multidimensional perspective because women are not a homogenous group. The feminist critique of international human rights must reflect women’s varied backgrounds to incorporate social, economic, cultural, and anthropological differences and analytical strategies.

Professor Charlotte Bunch, advocating an integrated approach to rights, explored *The Global Campaign for Women’s Human Rights: Where Next After Vienna*? Professor Bunch described the collective action of women worldwide that successfully made international gender-specific violations of women’s human rights visible. Women ensured that their rights were integrated into the international human rights discourse, thereby requiring an analysis of each provision’s impact on women, by organizing from the grass-roots upwards, and uniting globally, starting in Rio and culminating in Vienna. This solidarity also ensured that the Vienna Conference’s Declarations and Programme of Action contained woman-identified, gender-sensitive policy. Despite this remarkable achievement, however, Professor Bunch cautioned that the Vienna Declaration’s separate section on women evinces the difficulty in, and resistance to, integrating women’s rights in the international human rights construct and may manifest a disturbing willingness to ghettoize women’s concerns.8

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66 Id. at 171-72.
Thus, after Vienna, it is important to insist that gender issues not be treated as separate and distinct from other issues. Rather, gender issues must be developed as central to, and intertwined with, the entire international human rights agenda. Women must re-examine women’s human rights traditional definition, categorization, and dismissal. Professor Bunch maintained, therefore, that the elimination of the artificial public/private dichotomy is important to render every country responsible and accountable for allegedly private acts against women. Refugee conditions, for example, are not universal and the dramatically different nature of abuses refugee women endure because of their sex may be ignored unless a women’s perspective is incorporated. Significantly, a multidimensional feminist perspective is imperative because of women’s racial, ethnic, religious, sexual and cultural diversity. Professor Bunch noted that thorough documentation of all abuses is essential to cement such connections and expand the traditionally limited scope of human rights concepts.

The second facet of this reformulation requires the acknowledgement that, in addition to contemplating human rights within the international arena, scholars and activists must examine U.S. participation in abuses perpetrated both within and without U.S. borders. Hopefully, this will provide a basis for a true international solidarity movement and will facilitate the development, implementation, and enforcement of international women’s human rights.

Addressing the difficulty in achieving these goals, Susan M. Davis, in WEDO and the Public Advocacy Agenda in Creating Sustainable Human Development, asserted that these obstacles arise naturally because of the nature and exercise of power within the traditional international structure. Indeed, the collective activism of international and non-governmental organizations often may be the only vehicle for reform. Local and regional networks are often inadequate to effect change in national and/or international policies that are inhospitable to women. Common advocacy through global networking can help redefine the traditional gender paradigm and, ultimately, create equitable, sustainable development. Specifically, the family unit, the market, and the global institutions that control both nation-states and the global economy must be subjected to a culturally sensitive gender analysis. This scrutiny will reveal that historic

87 Id. at 174. An interesting parallel is slavery, occurring in the private sector but sanctioned and perpetuated by state complicity. Only after state interference and state acknowledgment that slavery contravened human rights was it abolished.

analysis of factors, such as the family and the market, are not democratic and, in fact, work to marginalize and undervalue women’s work, women’s worth, and women’s political and economic contributions. Thus, women must organize and work together to develop and implement a rights framework that is sensitive to the myriad factors that affect women and cognizant of their worth.

Anika Rahman assessed two particular factors which substantially affect women: the right to health and the implementation of the right to reproductive health care. In her presentation, Toward Government Accountability for Women’s Reproductive Rights, Ms. Rahman noted that despite repeated inclusion in various regional and international documents, such rights are not uniformly protected. Thus, while in theory nations have a positive duty to provide health services, in reality the majority of governments limit the range of services they render in an attempt to promote population objectives. Such limitations contribute to women’s marginalization by endangering their lives.

Based on this narrow paradigm, women and the issues that affect them are not viewed holistically. Rather, population policies ignore the intersectionality of economic and developmental rights and their consequent impact on women’s health. Women must consider how fundamental human rights norms can be enforced and expanded to focus on and improve the quality of health care and counseling available to women, thus facilitating informed decision making. Standards for government accountability must be devised by examining socioeconomic indicators, such as maternal mortality and literacy rates, and demanding coherent policies designed to safeguard women’s well-being and respect for women’s human rights.

Dorothy Q. Thomas similarly endorsed the need for government accountability in Women’s Human Rights: From Visibility to Accountability. Ms. Thomas traced the emerging recognition in the United States of violations against women, noting the Congressional requirement that annual country assessments include documentation of these abuses. Additionally, the United States enthusiastically supported the creation of a new post—the Special Rapporteur on Violence Against Women—to monitor and report abuses against women and suggest recommendations for new ways to address women’s human rights.

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90 See id.
Despite this clear commitment to women's human rights, however, the rhetoric has yet to be translated into concrete, coherent action. The U.S. government, for example, has failed to raise issues or generate concern about the status of women in Russia, where notwithstanding the United States' grant of over $2.5 billion in financial assistance, that nation both engages in and tolerates widespread discrimination. In Turkey, forced virginity control examinations performed on women in custodial situations provide yet another illustration of this lack of accountability on the part of a foreign government. In contrast, the United States scrupulously documents violations by Thailand police and border guards in the trafficking of Burmese women for prostitution.

These examples clearly indicate that the United States is not consistently fulfilling its leadership role in exposing and condemning women's human rights violations that routinely occur around the world. This inaction is not surprising in light of the fact that the United States has failed to ratify major international human rights instruments. The United States cannot seriously expect to enforce human rights abroad when it refuses to acknowledge them within its own borders. In fact, as detailed earlier, violations of women's human rights persist within the United States. Public pressure is vital to demand U.S. accountability for both foreign policy determinations that affect women and domestic policy that serves to perpetuate gender inequities.

Beyond issues of government accountability and expansion of the content and meaning of rights, women must ensure that the application of rights is sensitive to religious, environmental, and cultural differences. In Women's Human Rights and Cultural Relativism, Dr. Nahid Toubia explored the question of the universality of human rights. Dr. Toubia cautioned that western activists must avoid imposing a western socio-economic model in the guise of universally applicable rights. To avoid charges of cultural imperialism, it is necessary for broad based participation among non-western states to reflect the various issues and concerns of their populations.

Dr. Toubia recognized that, despite these limitations, culture necessarily implicates issues of patriarchal control over women and their

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92 Id. at 220-21.
93 Id. at 222-23.
94 Id. at 221-22.
sexuality and reproductive role. The existing hierarchy of gender power may seek to use culture as a shield to disguise women's human rights abuses. The deleterious effects of these abuses are compounded when they are relegated to the so-called private sphere and thus shielded from public scrutiny. Thus, Dr. Toubia suggested the need to define the relationship between individual and community rights and craft a balanced response to rights that is sensitive to, but critical of, culture-specific practices.

In addition to notions of cultural relativism, any attempt to articulate and apply universal rights must be subject to economic analysis. Professor Mary L. Lyndon's speech entitled *Technology and the Law: Articulating a Women's Rights Perspective*, explored the way law shapes the development of scientific technology and knowledge about health and the environment, and how this dynamic shapes the re-evolution of technology. By analogizing the current rights discourse to the earlier Greek understanding of the world and the function of the public/private dichotomy, Professor Lyndon outlined the consequences of relying solely on market forces to regulate health and the environment: devaluation of women's contributions, externalization of environmental costs, and the marginalization of corresponding concerns such as property distribution and health. Noting the need to expose inconsistencies in the dominant free trade model, Professor Lyndon indicated that activists must reevaluate and propose their own cosmology to address the myriad issues previously dismissed by the dominant scheme. Professor Lyndon also suggested that economic analysis is a valuable tool for such reformulation because it encompasses diverse perspectives and strategies, and fosters participation from women traditionally confined by hierarchal concepts.

**CONCLUSION**

These illustrious panelists have paved a road for us, encouraging hard work and articulating possible solutions and strategies for establishing women's rights as human rights. As has been made amply clear, there is much work to be done before achieving the goal of raising women's voices and eliminating the traditional exclusion of women in both domestic and international, formal and informal, decision-making processes. The task often seems impossible and frustrating when women contemplate the current structural and policy limitations. The panelists exemplified the

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97 Id.
98 Id.
advantages of cooperation in the struggle to define and safeguard international women's human rights and also provided an excellent source of inspiration. With this common purpose and a collaborative effort, women can build alliances to extrapolate on their hard work and suggest concerted strategies to make continued progress. Hopefully, as we move towards the next century, human rights will truly be women's rights.