



HARVARD Kennedy School
JOHN F. KENNEDY SCHOOL OF GOVERNMENT

WOMEN'S POLICY

JOURNAL OF HARVARD

VOLUME 8, 2010–2011

INSIDE

RESEARCH IN WOMEN AND POLICY

Pursuit for Justice Continues

The Unexpected Effects of a

Welfare Program in Argentina

Engaging Religion to Promote Female
Empowerment and Health

COMMENTARY

Beyond the 2011 General Election
in Nigeria

SPECIAL FEATURE: FEMINISM, WOMEN, AND HUMAN SECURITY

The Paradox of Double Effect:

How Feminism Can Save the
Immunity Principle

An Interview with Laura Sjoberg
and Jessica Peet

The Failure of Policies Supporting
Gender Mainstreaming in
Post-Conflict Peacebuilding



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We are currently accepting submissions for our Spring 2012 volume.

We seek papers that explore the impact of public policies on women around the world and provide new insight into issues affecting diverse groups of women. We also welcome articles and commentaries that offer a gendered or woman's perspective on pressing political, social, and economic policy issues or that investigate the role of women in the policy-making sphere.

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- A cover letter should include the author's name, address, e-mail address, daytime phone number, and a brief biography.
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CONTENTS

1 **Editor's Remarks**

RESEARCH IN WOMEN AND POLICY

3 **In the Matter of Human Trafficking in Ohio: The Pursuit for Justice Continues**

Tasha Perdue, Celia Williamson, Maggie Billings, Jessica Schart, and Ruth Boston-Gromer

13 **Empowering Poor Women: The Unexpected Effects of a Welfare Program in Argentina**

Mariela Szwarcberg

23 **Engaging Religion to Promote Female Empowerment and Health: Case Studies in Hinduism and Islam**

Dhrubajyoti Bhattacharya

COMMENTARY

45 **Women, Politics, and the Law: Beyond the 2011 General Election in Nigeria**

Joy Ngozi Ezeilo

SPECIAL FEATURE: FEMINISM, WOMEN, AND HUMAN SECURITY

53 **The Paradox of Double Effect: How Feminism Can Save the Immunity Principle**

Laura Sjoberg

71 **Securing Women: Peace, War, and Human Trafficking: An Interview with Laura Sjoberg and Jessica Peet**

Interviewed by Zan Larsen

77 **Commentary: The Failure of Policies Supporting Gender Mainstreaming in Post-Conflict Peacebuilding**

Onyido Onyinyechukwu

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EDITOR'S REMARKS

The 2011 edition of the *Women's Policy Journal of Harvard* presents a collection of pieces that both press against the boundaries of traditional policy debates and re-imagine the public policy sphere to encompass women's contributions alongside feminist lenses and gender critiques. Spanning women's roles in politics to religion and gender in policy, the pieces in this edition raise the profile of women and gender issues in diverse policy areas while engaging questions of serious political and policy significance.

Our research articles span contexts as different as Ohio, Argentina, and South Asia, but ultimately coalesce in their concerns for women's health, welfare, and security. "In the Matter of Human Trafficking in Ohio: The Pursuit of Justice Continues" discusses persistent gaps in the coverage of hard-won anti-trafficking legislation that should be rectified through a renewed focus on youth, while Mariela Szwarcberg explores the unexpected positive externalities for women of the Plan Vida social policy. Dhrubajyoti Bhattacharya reflects on the power of cultural narratives within religion for securing empowerment and positive health outcomes for women in India and Pakistan. These research pieces are followed by a poignant commentary by Joy Ngozi Ezeilo, a professor of law at the University of Nigeria and the United Nations Special Rapporteur on Trafficking in Persons, who draws our attention to the intersection of political and legal frameworks impacting women's access to institutional politics and leadership, particularly within the Nigerian context.

Finally, our Special Feature—"Feminism, Women, and Human Security"—spans theoretical ruminations, humanizing anecdotes, and impactful commentary to encapsulate the broad and interdisciplinary sphere of work encompassed by women's human security concerns. The feature opens with Laura Sjoberg's reexamination of the immunity principle of just war theory in support of an alternative feminist ethic, and is followed by an interview with Laura Sjoberg and Jessica Peet of the University of Florida, who expand upon the practical and policy implications of "mainstreaming" gender into discussions of war and conflict. Onyido Onyinyechukwu closes out the feature examining the failure of gender mainstreaming from conflict through post-conflict.

These works embody the goals and aspirations of the *Women's Policy Journal of Harvard* to make critical, thoughtful, and creative interventions into the discourses of politics and policy that highlight the intersection of gender with all policy areas. This edition would not have been possible without the

hard work of our wonderful student staff, and without the kind support of several donors including: the Kennedy School Student Government, Malcom Wiener Center for Social Policy, the Women and Public Policy Program, the Mossavar-Rahmani Center for Business and Government, the Center for Public Leadership, and our individual donors Brigitte Bouchat and Julie Stitzel. Thank you for your kind support of women and gender issues in public policy, and we hope you are inspired by the insights of our 2011 edition.

Sincerely,
Sarah B. Bouchat
Editor-in-Chief, *Women's Policy Journal of Harvard*

In the Matter of Human Trafficking in Ohio: The Pursuit for Justice Continues

by Tasha Perdue, Celia Williamson, Maggie Billings, Jessica Schart, and Ruth Boston-Gromer

Tasha Perdue graduated with an M.S.W. from the University of Michigan. She is currently a research associate at the University of Toledo focusing on the issue of human trafficking. She is a member of the Lucas County Human Trafficking Coalition and the Ohio Trafficking in Persons State Study Commission serving on the Research and Analysis Subcommittee.

Celia Williamson is a professor in the Department of Social Work at the University of Toledo, chair of the Lucas County Human Trafficking Coalition, and a member of the Trafficking in Persons State Study Commission. She has written several scholarly articles on the subject of prostitution and human trafficking and has engaged in research on the topic funded by the U.S. Department of Justice and National Institutes of Health.

Maggie Billings is a researcher of human trafficking at the University of Toledo. She is also a member of the Lucas County Human Trafficking Coalition and serves on several subcommittees. She has been working to curb the demand for prostitution with both the Ohio Trafficking in Persons State Study Commission and locally as co-implementer of the first diversion program in Lucas County for males who solicit prostitutes—a

program she now leads. Additionally, she is a member of the National Research Consortium on Commercial Sexual Exploitation and a board member for Second Chance.

Jessica Schart is a current master's of social work student at the University of Toledo. In 2009, she graduated from Northern Arizona University with a B.A. in international affairs and a B.S. in economics. Schart became interested in the field of sex trafficking while studying abroad in Southeast Asia. Her other interests include working with people who have experienced trauma. She is currently working with Celia Williamson on a grant to further the understanding of domestic sex trafficking and ways to reduce the issue.

Ruth Boston-Gromer is a student at Spring Arbor University pursuing her B.S. as a family life educator. As part of her independent study program, she is currently an intern at the University of Toledo. The internship is focused on the issue of human trafficking. She is under the mentorship of Celia Williamson.

ABSTRACT:

Ohio was one of the last states in the United States to pass human trafficking legislation. Several groups consistently opposed a stand-alone human trafficking law as they believed victims were adequately protected by existing Ohio legislation. This article examines the journey for Ohio to pass its human trafficking legislation in 2010. The article discusses the need for additional protections for youth and the need to provide services to all minors rather than criminalizing them. In addition, the authors, although encouraged by the passing of the 2010 legislation, recognize the need for Ohio to provide more government protections for youth including Safe Harbor legislation.

FACTS OF THE CASE

Human trafficking is an increasing global and national concern. It is the second-largest criminal industry with more than 12.3 million victims involved worldwide (International Labour Office 2005). Current estimates suggest that a minimum of 50 percent and upward of 80 percent of human trafficking victims worldwide are women (U.S. Department of State 2005; U.S. Department of State 2010). Seventy percent of female victims are trafficked into the sex trade, while 30 percent are trafficked for purposes of labor (Polaris Project 2009). While the number of adult female trafficking victims in the United States is still largely unknown, the National Center for Missing & Exploited Children estimates that 100,000 U.S. youth are victims of sex trafficking and are sold each year throughout the United States (Williamson et al. 2010, 21). The U.S. Department of Justice confirms that youth are the largest known population of trafficking victims in the United States (U.S. Department of State 2010, 342).

In 2000, the U.S. government passed the Trafficking Victims Protection Act (TVPA) with revisions in 2005 and 2008. This law identifies human trafficking as a crime and created provisions that offer protection for those victimized through force, fraud, or coercion and involved in labor and/or sex trafficking. The U.S. government began a campaign that identified human trafficking as a form of “modern day slavery” and called on both governmental and nongovernmental organizations to help “rescue and restore” victims (U.S. Department of Health and Human Services n.d.).

In addition, under this federal law anyone under the age of eighteen that is involved in prostitution (without proving force,

fraud, or coercion) is a victim of child sex trafficking. Further, “sex trafficking” includes the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. This can be and has been interpreted to mean “customers” who often provide transportation, engage in the provision of, and obtain a person for commercial sex. Precedent has been set for such a conviction. In 2009 four men apprehended during Operation Guardian Angel in Kansas were the first customers indicted under the federal TVPA. The four “Johns” were charged with the attempted commercial sex trafficking of children when they were caught attempting to purchase sex from a minor during an undercover sting (U.S. Department of Justice 2009).

Despite a growing understanding of trafficking throughout the United States, the state of Ohio has been hesitant to recognize this type of victimization and to create legislation to combat it. Five separate bills centering on human trafficking were introduced and defeated during General Assembly sessions within the last two years (Sikora et al. 2010). Despite the resistance to human trafficking legislation in Ohio, advocates remained dedicated to the issue. Their intense efforts paid off in 2010 as the Ohio legislature passed Senate Bill 235, making human trafficking a felony offense. Although this legislation is a step in the right direction, Ohio needs to remain steadfast and consider additional progressive legislation to protect youth.

EVIDENCE

Since 1998, published research articles have surfaced by scholars about prostitution and sex trafficking in Ohio (Fedina et al. 2008; Williamson 2008; Williamson

and Baker 2009; Williamson and Cluse-Tolar 2008; Williamson and Prior 2009). Toledo, Ohio, was identified as having had a trafficker or victim in every national trafficking sting since the passage of the Trafficking Victims Protection Act of 2000 (Williamson et al. 2010, 26). Toledo was one of only seventeen cities in 2006 to earn its own FBI Innocence Lost Task Force to combat child sex trafficking in the city. In 2008, an hour-long national ABC Primetime special, focused on sex trafficking in Toledo, highlighted the intimate and traumatic experiences of two underaged girls forced into the sex trade.

Jeremy Wilson and Eric Dalton (2007), in a project funded by the RAND Corporation in 2007, engaged in a comprehensive case study and identified both labor and sex trafficking cases in the Ohio cities of Columbus and Toledo. An in-depth report on Cincinnati's problem surfaced in 2009 describing the existence of human trafficking in the city and its inability to effectively respond (National Underground Railroad Freedom Center 2009). In 2010, the Victim Services and Safe Locations Sub-Committee of the Trafficking in Persons State Study Commission for Ohio conducted a statewide survey and reported that 55 percent of health care, social service, and law enforcement agencies were aware of trafficking but that 52 percent lacked the knowledge or tools to act (Hannan et al. 2010).

Further evidence of human trafficking can be found in various newspaper articles throughout the state. At least twenty-five documented cases of labor or sex trafficking have been reported in the eight major newspapers in Ohio since 2005 (Williamson et al. 2010). In these reports, domestic minor victims range in

age from twelve to seventeen. It is reported that victims are beaten, threatened with weapons, raped, and forced to provide massage services and pose for nude photography.

In response to the growing concern of trafficking in Ohio, in 2009 State Senator Teresa Fedor advocated for Ohio House Bill 280 to create a "specification" in the law. This specification was not a stand-alone offense and required two felony offenses related to the same plan in order to tack human trafficking onto the offense. The specification offenses that qualified included compelling prostitution, abduction, kidnapping, and illegal use of a minor in nudity-oriented material or performance, and at least one offense had to be committed in Ohio (Ohio Revised Code 2929.01). This specification was ineffective and never used following its implementation in April 2009 (Ohio Attorney General's Office 2010). Although this specification was not adequate, this was a victory as Ohio was able to overcome the opposition from the Ohio Prosecuting Attorneys Association and other legislative groups that voiced concerns that human trafficking legislation would overlap with other criminal codes (Toledo Blade 2010). This small success set the stage for stronger legislation to be introduced.

As part of House Bill 280, Senator Fedor and House Representative Kathleen Chandler also encouraged the Ohio attorney general to convene the previously mentioned Trafficking in Persons State Study Commission to bring together researchers, practitioners, law enforcement, and advocates from around the state. The formation of the Ohio Trafficking in Persons State Study Commission in July 2009 was a catalyst for both Senator Fedor and

Representative Chandler to obtain more support from members of the General Assembly. Significant forward movement came as each committee of the commission delivered its reports.

Senator Fedor introduced Ohio Senate Bill 235 in 2010 after the Research and Analysis Sub-Committee of the Study Commission released a report on the prevalence of human trafficking in Ohio. The report estimated that 6,316 individuals are at risk for trafficking, and of those, 1,861 are actually trafficked in a year (Williamson et al. 2010). Of those at risk for being trafficked, 1,078 are estimated to be domestic minors with a disproportionate number of these victims identified as female, persons of color, and/or sexual minorities (Williamson et al. 2010). Thus far, Ohio is the only state in the nation to provide estimates on the number of victims recruited from or living in the state.

On the heels of this report came the Legal and Legislative Committee's strong suggestion of a stand-alone felony for human trafficking. With support from the study findings, Fedor was able to secure cosponsor support from a Republican male and easily obtained backing for S.B. 235 from twenty-five of her peers. Representative Chandler also introduced Ohio House Bill 493, which, in addition to making human trafficking a stand-alone offense, would provide for training and education of law enforcement officers, require data collection, mandate the display of the human trafficking hotline, and provide other protections to victims.

Despite the mileage gained from the reports, many Ohio legislators argued against the need for a stand-alone felony in Ohio. In August 2010, the Polaris

Project, a national antihuman trafficking organization in Washington, DC, cited Ohio for its weak response to human trafficking. It listed Ohio as one of the "Dirty Dozen"—those states with the worst human trafficking legislation (Polaris Project 2010a). Even this was not enough to prompt Ohio legislators to take immediate action. As the end of 2010 approached, its advocates feared that S.B. 235 would die in the lame-duck session of the State Congress (Johnson 2010). Advocates increased efforts, and after many amendments, the bill passed unanimously and was signed by then Governor Ted Strickland on December 23, 2010.

Even though the signing of the legislation was a victory for anti-trafficking efforts, there is more work to be done. In a press release, the Polaris Project cited some concerns about amendments added to the legislation (Polaris Project 2010b). Under the legislation, customers who knowingly purchase sex from trafficking victims cannot be prosecuted for trafficking without more evidence, and prosecutors will be unable to stack multiple charges against a defendant if the charges involve the same conduct and same victim (Polaris Project 2010b). According to the Polaris Project this does not fall in line with the federal Trafficking Victims Protection Act, and the legislation is not on an equal level with the human trafficking laws of forty-four other states (Polaris Project 2010b).

Prior to this legislation, the juvenile justice system was the primary institution in Ohio that intervened in issues of child sex trafficking. Seen as "juvenile prostitutes," and despite the federal Trafficking Victims Protection Act, victims were incarcerated in juvenile detention facilities. Many incarcerated and traf-

ficked youth in Ohio are not charged with prostitution or soliciting. Rather, they are determined to be runaways, in violation of their curfew, or loitering. One who is not in control of his or her body or who lacks freedom of movement cannot possibly be responsible for determining when they will return home or when they will go in off the street after curfew. With the new legislation, it remains to be seen if victimized youth will continue to be incarcerated under related delinquencies or status offenses.

This is common practice in the United States. The Trafficking in Persons Report, released by the U.S. Department of State in 2010, discusses the current weaknesses in the overall approach in the United States regarding youth victims. The report refers to the re-victimization of youth, citing the tendency to handle commercial sexual exploitation of youth as a juvenile justice issue instead of a child abuse issue requiring the intervention of child protective services (U.S. Department of State 2010).

According to a study by the University of Toledo, 77 percent of trafficking youth who do not receive intervention will go on to participate in adult prostitution (Ventura et al. 2007). A congressional report in 2005 revealed that 70 percent of incarcerated women were first arrested for engaging in commercial sexual activity, and one out of every three female inmates is in prison because of a prostitution charge (U.S. Congress 2005). In Ohio, during fiscal year 2010, the average cost to house an adult prisoner was \$69.50 per day and \$25,368 for a year (Ohio Legislative Service Commission 2010a, 74). Costs for youth are even greater with the average cost for the Department of Youth Services to care for a juvenile offender in fiscal year 2009

being \$300 per day (Ohio Legislative Service Commission 2010b, 76).

Adult men purchasing sex from youth on the other hand have limited consequences from their decision to purchase sex. According to Shared Hope International et al. (2006), 34 percent of arrests related to the sale of sex in 2002 were of male customers and an overwhelming 66 percent were of women and children. Steven D. Levitt and Sudhir Alladi Venkatesh (2007) determined that there was ten times the opportunity for male customers to be arrested for every one female involved. In a very practical sense, customers are always involved in breaking the law, so the mistake of arresting a victim is removed when the demand side of prostitution is targeted over the supply side. At a ratio of ten to one, law enforcement has many more opportunities to target the larger group of lawbreakers. Similar to the words of Rachel Lloyd, founder of the Girls Educational & Mentoring Services program for trafficked youth in New York, if a thirty-year-old sells a fourteen-year-old to a forty-five-year-old male, the fourteen-year-old will be the point of enforcement and will bear the burden for the criminal act.

LEGISLATIVE CONCERNS

Youths constitute the largest-known number of trafficking victims in the United States (U.S. Department of State 2010, 342). In an attempt for the federal government to further clarify its position on domestic minor sex trafficking, in 2010 the U.S. Congress proposed H.R. 5575 in regards to domestic minor victims of sex trafficking. A portion of the bill reads:

(12) Minor sex trafficking victims are under the age of 18. Because minors do

not have the capacity to consent to their own commercial sexual exploitation, minor sex trafficking victims should not be charged as criminal defendants. Instead, minor victims of sex trafficking should have access to treatment and services to help them recover from their sexual exploitation, and should also be provided access to appropriate compensation for harm they have suffered.

(13) Several States have passed or are considering legislation that establishes a presumption that a minor charged with a prostitution offense is a severely trafficked person and should instead be cared for through the child protection system. Some such legislation also provides support and services to minor sex trafficking victims who are under the age of 18 years old. These services include safe houses, crisis intervention programs, community-based programs, and law-enforcement training to help officers identify minor sex trafficking victims.

Based on recommendations and legislative attempts, the federal government appears to recognize the inherent victimization that occurs when an adult male purchases sex from a minor. However, while a few other states such as New York and California have passed Safe Harbor laws that provide for the safety of these victimized youth without incarcerating them, Ohio remains hesitant to qualify all youth as victims (Polaris Project 2008). Of special concern is how legislators view minor victims of trafficking. According to the Legal and Legislative Sub-committee's report to the Ohio attorney general, there was a suggestion to allow minors charged with prostitution to avoid prosecution by amending certain statutes in the Ohio Revised Code (Sikora

et al. 2010). Several subcommittee members voiced concern that this suggestion may prevent sixteen- and seventeen-year-old minors who are not trafficking victims from prosecution in juvenile court (Sikora et al. 2010). Essentially this stance would force sixteen- to seventeen-year-old minors to prove their victimization.

Concerns over youth willingly selling themselves seemingly hinges on the statutory rape law in Ohio (2907.04) that suggests that sexual assault occurs when a person engages in sexual activity with a minor who is between the ages of thirteen and sixteen (Ohio Revised Code 2907.04). Youth over the age of sixteen may consent to sexual activity with persons over the age of eighteen. However, consent is defined as "to be in agreement" to engage in particular activities. Youth aged sixteen and seventeen involved in prostitution may comply with the demands of adults, as youth under age eighteen cannot consent and be criminally charged with their own abuse. Consent and compliance are two different terms with different meanings. Compliance is the willingness to yield to the will of others. As victims of abuse, compliance occurs when conditions are such that persons (defined as victims of child abuse for doing so), offer their body commercially in hopes of meeting some financial or emotional need. Children cannot consent, and therefore bear responsibility for their abuse, so the actions of the adult allow or encourage this behavior. Therefore, while the adult is engaged in criminal behavior, abused and exploited youth are in need of care, preferably through child protective services. It is troubling that the adults in charge with creating laws to protect the vulnerable fail to see the difference.

Prior victimization needs to be considered when addressing youth involved in prostitution. Victims may be involved in court proceedings when they are sixteen or seventeen but may have been recruited anywhere from ages eleven to fourteen, as this is the average age range for recruitment into the sex industry (Shared Hope International et al. 2006). Recent cases reinforce this. For example, the 2010 Northwest Ohio Innocence Lost Task Force sting rescued a twelve year old and a fourteen year old from an undisclosed location in the Toledo area (U.S. Department of Justice 2010). A ten-year-old child from Toledo being groomed for sex trafficking was also discovered in November 2009 (Romaker 2009). Previous years of trauma must be considered when determining the appropriate legal approach for trafficked youth, whether they are fourteen or seventeen. Trafficking victims face a range of mental health, physical health, and social issues including depression, post-traumatic stress disorder, sexually transmitted diseases, pregnancy, and more (Williamson and Folaron 2001). Most of those involved in selling sex come from vulnerable populations, the large majority being poor, females of color, and sexual minorities.

CONCLUSION: ELEMENTS OF INJUSTICE REMAIN

Although comprehensive legislation remains a barrier for trafficking victims, Ohio is neglecting to address the issue on many different levels ranging from prevention and education to intervention. Services for victims of trafficking are sorely lacking in Ohio. The Victim Services and Safe Locations Subcommittee of the Trafficking in Persons Study Commission reports that there are only twelve agencies providing services to

victims of human trafficking and only five providing specific antihuman trafficking services (Hannan et al. 2010). Considering the scope of the problem for Ohio, and the number of at-risk youth, the number of agencies that provide services for victims should be increased.

Education for youth could prevent these children from being trafficked, and the most efficient way to complete this education would be through the school system. Unfortunately, school systems remain hesitant to bring this topic into classrooms. With H.B. 19, Ohio mandated schools in March 2010 to educate students on dating violence. With the passage of this legislation, all schools must incorporate information on intimate partner violence for youth and will need to treat this form of violence the same as other forms of violence such as bullying on school property. A similar mandate should be incorporated for sex trafficking education because youth are the most vulnerable for recruitment into this trade.

Runaway youth face the greatest risk of being trafficked into the sex trade. Ohio does not have enough interventions for runaway youth to prevent these children from being trafficked. In addition, local police departments lack resources to devote to a high risk victims unit (HRVU) for youth. With adequate resources in these areas, runaway indicators for trafficking could then be properly addressed. However, as it stands, runaways are not a priority for the police departments who, in these cases, engage in passive enforcement by questioning suspicious youth should they happen upon them. Social service providers who focus on outreach may look for youth but do not often leave the confines of their own community. Most trafficked youth

(85 percent in Ohio) who are mistaken for runaways are taken to another city and often across state lines to be sold (Williamson et al. 2010). As of the end of 2010, there is no way of tracking or finding youth who have been taken out of their cities of origin. The National Center for Missing & Exploited Children is not contacted regarding the some 15,000 youth in Ohio who run away from home, are thrown away, or are given away each year. Thus far on the organization's Web site, there are forty-one Ohio youths listed (National Center for Missing & Exploited Children 2010). When or if youth are located, they are treated as delinquent rather than at risk (Williamson et al. 2010). At the beginning of 2011, federal legislation (H.R. 5575) was pending for improved reporting of missing or abducted youth to the National Crime Information Center to better identify these children as at risk for victimization. Ohio should consider increasing protections for these youth and develop better communication regarding runaway and missing youth across local, state, and federal systems.

Finally, Ohio should adopt a Safe Harbor law to extend protections to juvenile victims. According to the Polaris Project, these laws assist in moving youth from the juvenile justice system while providing them with specialized services (Polaris Project 2008). Previous discussions indicate that Ohio legislators are reluctant to decriminalize juvenile commercial sexual activity. Diversion programs where youth are moved from delinquency proceedings to child protection could be a way to protect youth and would not involve the decriminalization feared by legislators (Polaris Project 2008). In addition, when formulating the program the Polaris Project recommends three

considerations, including the need to place victims of trafficking in specialized treatment separate from non-trafficked youth, the consideration of using survivors or those familiar with the trauma specific to trafficking, and the need for appropriate protocols to place youth in the safe locations without interrogations from untrained professionals (Polaris Project 2008).

Progress is slowly occurring in Ohio, but there is much work to do in order to protect youth. We are encouraged by the new human trafficking legislation. In addition, we are optimistic that Ohio will continue to improve the response to trafficking victims. Safe Harbor laws need to be implemented to provide services to juvenile victims rather than criminalizing them. Legislators should view customers in a serious light as traffickers because without demand there will be no supply. The actions of the customers permit the exploitation and abuse to continue. Finally, Ohio law should fall as close in line to the federal Trafficking Victims Protection Act as possible. Although we have won an important battle against trafficking in Ohio due to the initial passage of S.B. 235, the pursuit for justice continues.

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Empowering Poor Women: The Unexpected Effects of a Welfare Program in Argentina

by Mariela Szwarcberg

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ABSTRACT:

This article presents an analysis of a poverty alleviation program implemented in Argentina called *Plan Vida*. Created and launched by the incumbent party, the program ultimately failed to deliver the desired electoral results and has only achieved a moderate improvement in public health indicators. However, the plan has enhanced the ability of

participants to negotiate their role and status within their communities. By using a comprehensive approach to evaluate the effects of this program, several indirect benefits to women and society are shown. Overall, this article illustrates the importance of using a comprehensive approach to evaluate the effects of social policy.

TEXT:

Created with the dual purpose of boosting the Argentinean incumbent Peronist party's vote share in upcoming elections and lowering malnutrition and infant mortality indicators, *Plan Vida*, a welfare program targeted to infants and pregnant and nursing mothers, failed in delivering the expected votes and has only achieved a moderate effect on public health indicators. Yet the program has succeeded in empowering millions of women who have been involved in delivering and receiving daily food as part of the program. Even as these women continue to carry out the household tasks that constitute the core of their lives, such as raising children, cleaning houses, and cooking, their testimonies highlight how much their lives have changed since they were enrolled in the program.

Plan Vida was created in 1994 and initially implemented in the province of Buenos Aires. Over time, the plan's coverage was extended to several other provinces. While at present the program does still exist in several provinces, it does so under different names with substantive modifications in implementation and significantly reduced coverage.

The plan's creator and director was the wife of the governor of the province of Buenos Aires, Hilda "Chiche" Duhalde, part of the Peronist party. When she decided to run for national deputy in 1997, she gave Plan Vida an extraordinary

amount of national visibility. The 1997 races, including that of Chiche Duhalde, tested the incumbent Peronist party's power. As the largest electoral district and a stronghold of the Peronist party, the province of Buenos Aires therefore became a battleground for elections held that year. The combination of poverty and voter concentration in Greater Buenos Aires made winning this district key to guarantee an electoral victory. The concentration and visibility of the female *manzanas* involved in the Plan Vida program in Greater Buenos Aires inevitably put these women at the center of the political campaign.

There were daily discussions in newspapers, on the radio, on television, in coffee shops, and in political associations about the electoral effect Duhalde's "army of *manzanas*" would have.¹ At the time of the election there were 27,355 women distributing Plan Vida's goods to 838,615 beneficiaries in 1,704 neighborhoods in Greater Buenos Aires, according to figures reported in *La Nación* in November 1997. Public opinion associated Plan Vida with traditional forms of "political clientelism," where the votes of the poor are bought with minor consumption goods, in this case with food. Candidates were not absent to these discussions and voiced their opinions about the *manzanas* during and even after the political campaign. Running in opposition to the incumbent wife of the governor was Graciela Fernández Meijide, a charismatic politician with almost no political experience but with a personal history of struggle as a mother of a disappeared son. Fernández Meijide was quick to realize that she did not have to oppose *manzanas*; quite the contrary, she had to win their support. Thus, while she publicly denounced the "potential for clientelism"

of the program, she promised to support it. While campaigning she asked voters "to take with one hand [the goods they received from the program] and vote with the other." Chiche Duhalde insisted in the "apolitical character" of the program: "The *manzanas* are not involved in politics," and "I am not seeking to buy votes by using a program that delivers daily goods to pregnant women and children."

The combination of voters who saw the election as an opportunity to voice their discontent with the current administration (retrospective voting) and those who supported the best candidate (prospective voting) explains the Peronist party's electoral defeat in its stronghold that year. More surprisingly was the Peronist party's inability to win the support of poor voters that constituted its historical constituency.

In evaluating Plan Vida based on its efficacy in delivering the dual goals of expected votes for the incumbent party and a decrease in infant mortality indicators, policy makers, journalists, and academics have failed to observe and appreciate the profound impact the plan has had on the women involved in it. In this article I show how Plan Vida has enhanced women's capacity to negotiate their role and status within the household and expanded the range of potential choices available to them within their communities.²

By focusing on the unexpected effects of this welfare program in Argentina, this study makes two contributions. First, it highlights the importance of evaluating welfare programs in a comprehensive manner that enables policy makers to detect these significant changes. In this regard, the article shows that policy

makers need to go beyond simple quantitative metrics to fully comprehend the implications of policy. Second, the study challenges the conventional scholarly assumption that welfare programs targeted to women necessarily reinforce existing power inequalities by reproducing traditional gender roles.

In paying close attention to the life stories of the women involved in the program, I show how in addition to strengthening their role as mothers of the poor, Plan Vida has enabled these women to think critically about familial relationships, womanhood, and the problems of their community. Furthermore, I demonstrate how the changes they have experienced since being involved in the program have led many of these women to challenge existing arrangements in their domestic partnerships and to demand local services for their communities. Overall, the results presented here suggest that the emergence of new services in communities targeted by social programs can be an indicator of empowerment.

BACKGROUND AND METHODS

The aim of Plan Vida is to target infants and pregnant and nursing mothers by providing them with milk and cereal daily, eggs weekly, and sugar monthly. Plan Vida's beneficiaries receive the goods from the hands of *manzaneras*, female activists who distribute food among the beneficiaries on their blocks daily. In exchange for participating in the program, *manzaneras* obtain the same benefits as those enrolled in the program whether or not they are pregnant, nursing, or have infants.

I use ethnographic data that I collected in a representative working-class neighborhood in the province of Buenos Aires, Sargento Barrufaldi, to demonstrate how

the institutions and services we observed in that community were the direct outcome of women's involvement in the Plan Vida program. Most residents of Sargento Barrufaldi live in precarious and overcrowded homes that do not have indoor plumbing. They lack employment and health insurance, and their children suffer from malnutrition and treatable diseases. The extent of the effects unemployment have had on the community is devastating. Among the 5,000 people that live in Sargento Barrufaldi, 70 percent are children and teenagers, and 8.4 percent are senior citizens. According to SIEMPRO, women have on average five children, more than half of the population has not finished high school, and a significant number of household heads, particularly women, have not finished primary school. Based on these indicators, municipal authorities chose individual residents of Sargento Barrufaldi to receive the goods of Plan Vida. It should be noted that considering the situation for most residents in Sargento Barrufaldi, among the families of most beneficiaries, Plan Vida not only contributes to feeding children but also to feeding entire families.

The ethnographic data includes a field diary, direct observations, and participation in delivering goods for the program during four months of fieldwork in 2000, transcripts of recorded in-depth interviews with *manzaneras* and beneficiaries that lasted on average three hours each, and archival research in municipal, provincial, and national newspapers.³ I conducted follow-up fieldwork in 2002 and 2005 to trace changes in the community. By combining data gathered from forty life stories, participant observations of the distribution of the welfare program, and interactions among women

who deliver and receive the program's goods, I show how women's involvement in the program has made them question how they understand and interpret their own history and encouraged them to organize collectively to improve the living conditions in their community.

I measure women's empowerment by studying the observable effects of Plan Vida in the Sargento Barrufaldi community. In Sargento Barrufaldi, Plan Vida stimulated the manzanas and the beneficiaries to organize themselves and to successfully demand both the implementation of a program that enables adults to finish school and the construction of a health center (*salita*) in the community. Both projects responded to the shared needs of the manzanas and the beneficiaries and are the product of their collective organization in petitioning local authorities.

This study builds on a tradition of oral history and interpretation to study poor women's empowerment. As in the seminal historical works of the life of Rigoberta Menchú (Burgos-Debray 1984) and Doña María (James 2000), I used the transcripts of the life stories of manzanas as texts subject to interpretation. I draw on the narratives of manzanas, beneficiaries, and residents of Sargento Barrufaldi to build an argument about the unexpected effects Plan Vida has had for the individuals involved in the plan in particular and for the community in general.

PLAN VIDA'S UNEXPECTED EFFECTS: EMPOWERING POOR WOMEN

"Becoming a manzana was to begin a new life," Dora told me while sharing a mate on her patio. I spoke with her on one of my trips to the community. When I asked her why a new life, she explained to me that her personal and social world

became bigger after joining the plan. Before the program, Dora's world was her home and family; she had little contact with anyone else in the *villa*. Her family lived in another province, and her husband left early in the morning to come home late at night *molido* (burned out) after working in construction for ten hours and commuting another two. In describing the changes she experienced since becoming a manzana, Dora compared her life before the program as living inside a prison cell. Plan Vida enabled her to get in touch with people and attend workshops where she got motivated to finish the studies she quit when she got pregnant. Other manzanas also constantly mentioned the prospect of getting out and knowing other people as virtues of the program. As one manzana, Miriam, said:

Look, I love it because I get to talk to people. Before, in the morning I got up, cleaned the house, and sat down to have mate. Now, while I have my mate I talk to them [beneficiaries who come to pick up food at her house]; they tell me about themselves. You know, it's a nice job.

The sheer fact that many women are seen to value the possibility that the program has given them simply to talk with their neighbors illustrates the isolation of women living in overcrowded urban areas. Even though they live next to one another, the everyday chores of cleaning, cooking, buying groceries, and raising children take over, leaving little time to talk and get to know one another. In this context, Plan Vida has connected women, and it is in those interactions that manzanas and beneficiaries have become aware of inherited models of family and womanhood.

The process through which manzanas ended up questioning their existing situation, and specifically their husbands' machismo, began through the realization of how much they shared with others. To think critically about their reality and circumstances, women needed to question the world of their mothers and grandmothers, which was all they knew, expected, and even looked for. It was at the workshops run as part of Plan Vida where women in the community began to develop these thoughts that ultimately empowered them to pursue and even achieve individual goals.

Manzanas were asked to participate in weekly workshops to discuss and share their experiences in implementing the program. While the goal of these workshops was to monitor and advise manzanas on such things as how to proceed when beneficiaries did not show up to pick up the goods or when they sent their children, the workshops became a space where women discussed problems that far exceeded the purpose of Plan Vida. As the plan's coordinator of Sargento Barrufaldi told me: "They began talking about their husbands, about their role as mothers, and the problems in their community."

It was during Plan Vida's meetings that women of Sargento Barrufaldi built their demands to have a program for adults to finish school and to have a health center in their community. The majority of manzanas, as well as most beneficiaries, had to quit school to begin working or to take care of their siblings and/or as a result of young pregnancies. Women who had not finished primary or high school felt shame and were frustrated as a result of not being able to help in their children's education and in contributing to household income. As Rosa, a mother of five, told me, "I always felt bad because I

couldn't help my own children to do their homework." Others were disappointed by not being able to find employment due to their lack of formal education.

The idea of implementing a program for adults to finish school began during one of the weekly meetings when a group of manzanas asked the program coordinator whether there was a possibility that she could give them classes to finish school. In response, the coordinator proposed that the women organize and pressure the local government to provide them with an official program with qualified teachers. Manzanas asked for the help of well-known female activists in Sargento Barrufaldi. Collaboration among manzanas, community organizers, and party activists was possible because manzanas did not challenge existing local leaders; on the contrary, they sought their advice and help. In addition, local leaders and politicians began using manzanas' networks of beneficiaries to transmit information about events and activities that were going to take place in the community.

After more than a year of showing up at least three times a week at councilors' and executive officials' offices, the manzanas managed to get the municipality to send them accredited teachers who would help them to finish school. Following this successful experience, manzanas began demanding that a health center be established in their community and convinced the municipality to give them construction materials to build the center free of charge. The manzanas' husbands and neighbors volunteered in the construction of the center, and once it was finished, the municipality provided some basic equipment, one nurse who is at the center daily, and a doctor who works at the center three times a week.

Women involved in Plan Vida also experienced significant changes in their personal lives, as Magdalena's story illustrates. As a mother of seven young children, Magdalena's everyday chores took most of her day and most of her energy. "By the end of the day, I was so exhausted, I only wanted to go to bed," she said. Magdalena's isolation was considerable given that she did not have either family or friends in Sargento Barrufaldi. She said:

Because I never have money I don't buy magazines, newspapers. It was like living inside a prison cell, always at home with the children. It was like all I cared about was my home, stuck in here, but it was also because my husband was so . . . how can I put this? I can't put it into words . . . as not to get in trouble with him. My life has changed a lot since I started with the program. That's when I started going to these meetings that they had.

Magdalena's capacity "to deal with her husband without getting into trouble" was an uncalculated achievement of Plan Vida's workshops. After becoming a manzanera, Magdalena began questioning her husband's idea that she could not finish her studies. Magdalena's husband always told her that she would never be able to either find a job or finish school, a stigma that she carried on silently. By the time I left Sargento Barrufaldi, Magdalena had reached an agreement with her husband for her to be able to finish school. Magdalena never expected her husband to help her in cooking, cleaning, and raising the children; those were still her duties as a mother and a wife. Nevertheless, she thought she had won "a big battle" by being given the opportunity to finish school.

Further research is needed to study if and how a welfare program can affect the individual lives of those who live in communities targeted with these instruments of public policy. While the empowerment of a group of residents can have a direct effect on the lives of those who do not belong to the program by the provision of social services, there seems to be no change in the everyday lives of those who are left behind.

I met Jacinta when she was waiting to pick up four out of her seven children after school. She was neither a beneficiary nor a manzanera but knew the Plan Vida well and considered it helpful for the community. "I wish there was something like that when I had my children," she told me with a hint of nostalgia. Since she was not included in the plan, Jacinta did not attend the weekly meetings and workshops, and although she had visited the health center, she was not enrolled in the school program. She said her life, therefore, had not experienced any significant change since the implementation of Plan Vida. Jacinta's world was still the same as her grandmother's, mother's, and daughter's: "For me, the world is my home, my husband, and my children."

In contrasting Jacinta's testimony with that of the manzaneras and their beneficiaries, we observe the limits of women's empowerment in Sargento Barrufaldi. Still, I believe that Jacinta will recognize that to have a health center is better than not to have one. The difference between women who have been involved in Plan Vida and those who have not not also enables me to challenge existing assumptions about the use of traditional gender roles to reproduce and sustain women's oppression.

Feminist scholars constantly point out how programs like Plan Vida contribute to the reinforcement of the role of women as mothers who take care of the poor. In Argentina, this relationship became both explicit and significant in the figure of Eva Perón. In a chapter dedicated to “Doña María’s story for gender,” historian Daniel James argues that since its origins between 1945 and 1955 Peronism “both mobilized and legitimized women as actors within a newly enlarged public sphere. . . . Women’s political activity was taken to derive from their unique virtues as mothers, wives, and guardians of the hearth. They were intrinsically unselfish, capable of self-sacrifice and communal in nature, not the greedy individualists symbolized by men in politics” (2000, 220). Building on this tradition, as soon as Chiche Duhalde created and implemented Plan Vida in the province of Buenos Aires, political analysts, scholars, and journalists began to compare her to Evita.

In demonstrating the success of Plan Vida in empowering women as mothers, my work contributes to a body of literature that focuses on how women use traditional gender roles to challenge authoritarian and repressive regimes and fight for recognition (Jelin 1985; Jelin 1987; Jaquette 1989; Escobar and Alvarez 1992; Feijoó 1989). While exploiting women’s roles as mothers to make them work daily with almost no compensation, Plan Vida nevertheless has provided *manzanas* and beneficiaries with the opportunity to think critically about their individual and collective lives. As a result of this recognition, more than sixty women in the community have finished school and even more have received health care.

IMPLICATIONS FOR POLICY AND PROGRAMS

Manzanas’ empowerment, manifested through their increasing demands, became threatening to public officials in Sargento Barrufaldi. Whereas local officials dealt daily with demands from community organizers and brokers, they always asked for and in most cases obtained something in exchange. With the manzanas, the quid pro quo logic did not work, and the 1997 Peronist electoral defeats provided municipal politicians with an excuse to remove the scheduled local meetings of manzanas included in the program that had contributed to empowering women.

Plan Vida continues to deliver goods, but the weekly meetings and workshops that contributed so much to manzanas’ empowerment have been reduced to monthly meetings at the city hall. Moreover, changes to the format and location of the workshops have led to a significant drop in attendance. While in the beginning manzanas made the effort to find someone to take care of their children and spent their own money for transportation to attend the meetings, the mass character of the workshops in place now has made the meetings almost useless, and many women have stopped attending.

Ana, a manzana of Sargento Barrufaldi who at first attended the new larger meetings, told me, “We couldn’t talk among ourselves, learn what was going on, even listen to the speakers, as they didn’t have a microphone, and we were more than a hundred in a conference room.” Accordingly, Ana and many others have stopped attending. Local politicians accomplished their goal of ending the empowerment of poor women; however, they could not take back either the

experience many of these women have gained or the changes they have undergone as a result of being involved in the plan.

When I returned to Sargento Barrufaldi in 2005, the community's local associations, the school, health center, and civic associations, were thriving. Plan Vida still has more than one million beneficiaries and employs 37,900 women (Ilari 2005). Since 2002, Plan Vida has been complemented with the *Plan Jefes y Jefas*, a program that subsidizes unemployed heads of households.⁴ Nevertheless, after the country's economic meltdown in 2001 that led more than half of the population into poverty,⁵ a new problem has emerged in Sargento Barrufaldi, as in most poor communities of Greater Buenos Aires: the paco.

A highly addictive form of cocaine of very low quality that sells for cheap on the street corners of Greater Buenos Aires, paco is killing poor Argentine youth who engage in criminal activity to sustain their vice. The local and international media began paying close attention to this phenomenon mostly after several mothers began pressuring the government to do something to stop the sale of this drug (Taylor 2008). In Sargento Barrufaldi, many mothers who joined the organization of "Mothers Against Paco" were former manzanas. Empowering women to organize and better their lives through political activism, as Plan Vida has done, could have unexpected positive consequences for campaigns such as the fight against paco and is clearly a valuable aspect of social policy.

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ENDNOTES

¹ “Duhalde’s Army of Manzaneras” was the title of a widely circulated article printed in *Clarín* in October 1997.

² In “Conflicts over Credit: Re-Evaluating the Empowerment Potential of Loans to Women in Rural Bangladesh,” feminist economist Naila Kabeer (2001) understands empowerment as the expansion of choices available for women.

³ For general information at the national level and in the province of Buenos Aires, I consulted *Clarín*, *La Nación*, and *Página/12* newspapers. For provincial information in Córdoba, I reviewed *La Voz del Interior* and *La Mañana de Córdoba*. For municipal information of San Miguel, José C. Paz, and Malvinas Argentina, I read *La Hoja*, *La Nueva Provincia* for Bahía Blanca, and *El Puntal* for Río Cuarto.

⁴ Plan Jefes y Jefas was launched when the country’s population living below the poverty line went from 38 percent to 57 percent in less than one year. The program distributes 150 pesos (\$50) to families with children (younger than eighteen years old) where the head of the household is unemployed.

⁵ According to the Argentine National Institute of Statistics and Censuses (INDEC), poverty among residents of Greater Buenos Aires reached 61 percent in 2003.

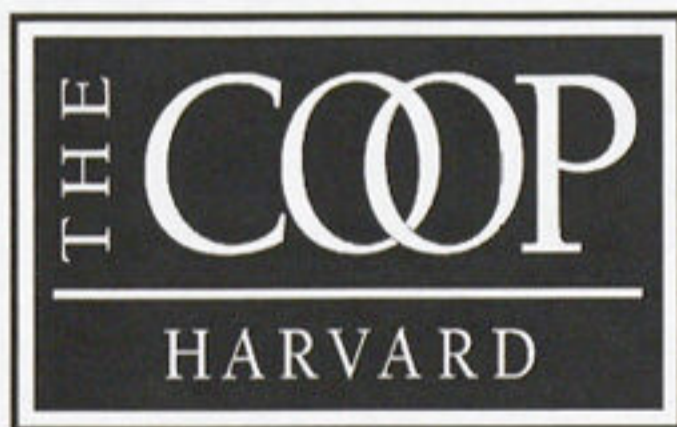
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Engaging Religion to Promote Female Empowerment and Health:

Case Studies in Hinduism and Islam by Dhrubajyoti Bhattacharya

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ABSTRACT:

In South Asia, numerous health-related issues, such as unsafe abortions, sex-selective abortions, lack of access to contraceptives, and domestic violence, continue unabated. Rather than recycle decades-old arguments citing “human rights” violations, this article examines motifs of autonomy, equality, and empowerment within the Indian and Pakistani cultures, focusing on Hinduism and Islam, respectively, to promote female empowerment. In doing so, the article highlights opportunities for cultural engagement—rather than examples of

legal derogation—to support communities in a diaspora where the separation of church and state is hardly rigid and socioreligious dialogue can be utilized to enhance gender parity.

TEXT:

In South Asia, unsafe abortions, sex-selective abortions, lack of access to contraceptives, and domestic violence are among the myriad health-related issues that continue unabated. According to the World Health Organization (WHO), an unsafe abortion is the “terminati[on] of an unintended pregnancy by persons lacking the necessary skills or in an environment lacking the minimal medical standards, or both” (World Health Organization 2007). Limited access to safe abortions is associated with a high maternal mortality rate. In India, the problem is complicated by an elevated preference for male children that has resulted in laws precluding sex-selective abortion. While access to safe abortions and regulation of sex-selective abortions may appear as distinct issues, they revolve around fleeting expressions of female autonomy. To date, however, no study has adequately explored the cultural (and specifically, religious) determinants to promote female empowerment.

In this article, which focuses on India and Pakistan, I argue that legal recourse for alleged violations of women’s rights at the national or international level is futile because India’s and Pakistan’s reservations to the international, United Nations–adopted Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) further an unconstitutional agenda in violation of the inherent dignity and liberty of their female constituency. Undefined traditional values have resulted in a hodgepodge of

unconstitutional laws, unpersuasive judicial decisions, and a subtle infusion of unsettled religious doctrine whose combined effect has suppressed any notion of female integrity. Rather than recycle decades-old arguments citing “human rights” violations, however, I take a different approach that examines motifs of autonomy, equality, and empowerment within the Indian and Pakistani cultures, focusing on Hinduism and Islam, respectively. There has been ample scholarship that focuses on cultural practices and beliefs that belie legal standards of equality among the sexes. Here, I highlight opportunities for cultural engagement—rather than examples of legal derogation—to support communities in a diaspora where the separation of church and state is hardly rigid and socioreligious dialogue can be utilized to enhance gender parity.

In this article, I begin by discussing trends in global and national rates of unsafe abortions and attendant health consequences. I review the prevalence and severity of unsafe abortions and the sociocultural issues pertinent to India and Pakistan. In doing so, I identify key barriers to access and the forces that influence a woman’s capacity for decision making. Next, I focus on international and national legal instruments and derogation from essential human rights obligations on the part of India and Pakistan. I specifically review international conventions and whether national instruments seek to promote or stymie women’s ability to control matters affecting their sexual and reproductive health. Here, I reiterate why the plethora of national and international legal safeguards have proved themselves largely ineffective in securing women’s health. I then contextualize the discussion with

respect to the predominant religions of India and Pakistan to identify a unified principle of female empowerment. Moral edicts were often passed along through stories and rituals rather than a strict codification of rights and responsibilities. Select examples from traditional tales of Hinduism and Islam suggest that women are not a vulnerable class in need of protection. On the contrary, elements of equality, nondiscrimination, and autonomy ring true throughout these stories and portray a cultural milieu that is ripe for female empowerment. I continue by proffering recommendations for policy practitioners eager to institute ethical, legal, and structural reform to promulgate a unified principle of female empowerment. Finally, I conclude by summarizing the argument and reiterating key measures to effectuate change to secure the health of Indian and Pakistani women, which may serve as a template to promote female empowerment worldwide.

TRENDS IN UNSAFE ABORTIONS AND FEMALE DECISION-MAKING CAPACITY

The alarming trends worldwide of unsafe abortions and their attendant health consequences demand immediate attention. The impact on individual states, however, varies. Against a backdrop of global trends, a brief exploration of the public health burden and impact on Indian and Pakistani women is vital to illustrate the diminished capacity of female decision making in matters related to reproductive health.

Public Health Burden and Impact on Women in India

Every year, 19-20 million abortions are conducted worldwide by individuals lacking the necessary skills and/or in unhygienic medical environments

(Grimes 2006). Some estimates suggest that up to 11 percent of these types of abortions occur in India (Jain et al. 2004). The burden and impact of unsafe abortion on women in India exceeds that of global trends. One study conducted in a tertiary care hospital in India used data over a fifteen-year period and found that 60 percent of cases used primitive methods of pregnancy termination, and all women invariably suffered complications, one-quarter of whom died (Jain et al. 2004). Contextualizing the data with respect to socioeconomic impediments further illustrates the complexity of the overall problem by revealing gender inequities that may compromise female decision making and access to medical care.

In rural Indian communities, a woman's interaction with the health care system is directly influenced by her husband. One study found that 67 percent of adult women and 81 percent of younger women required their husband's permission to visit a health center (Ganatra and Hirve 2002). The same study reported that 88.8 percent of adult Indian women (i.e., over twenty years of age) and 75.8 percent of women under twenty were the primary decision makers in choosing whether to have an abortion (Ganatra and Hirve 2002).

Husbands were the primary decision makers in aborting the fetus in 8.9 percent of cases involving adult female spouses and in 10.7 percent of cases with adolescent spouses (Ganatra and Hirve 2002). The husband's mother (wife's mother-in-law) made the decision in 3.4 percent of cases involving adolescent females, and in 4.5 percent of cases, the adolescent girl wanted to continue the pregnancy but yielded to family pressure. In contrast, of adult women, only 0.2

percent reported a mother-in-law as a decision maker in choosing to abort and just 1.5 percent succumbed to family pressure despite wanting to continue the pregnancy. Only 74 percent of adolescents discussed matters of contraception with their husbands, compared to 85 percent of adult females. This figure is particularly disturbing where studies indicate that 48.3 percent of married Indian women (aged fifteen to forty-nine) use no contraception (Bankole 1998). While the accuracy of these statistics may vary across female populations throughout India, the data is consistent with perceptions of male control over female sexuality. The male authority to engage in sexual intercourse and refuse to use contraceptives effectively curtails (if not severs) any notion of female autonomy.

Public Health Burden and Impact on Women in Pakistan

Data on abortion statistics in Pakistan is scarce. Official government data is simply unavailable, and most studies include significant caveats (National Institute of Population Studies 2001). The issues, in large part, stem from inadequate surveillance and reporting. Since abortion in Pakistan can only be legally conducted to save a woman's life, most women may be reluctant to respond directly to surveys inquiring about abortion-related decisions. Even so, a number of studies proffer ample evidence indicating that unsafe abortions are taking a significant toll on Pakistani women.

A regional study of thirteen developing countries found that up to 7 per 1,000 (or 197,000) Pakistani women were treated in hospitals annually for complications from unsafe abortions (Singh 2006). This figure places Pakistan in the middle spectrum of states with rates ranging from 3 per 1,000

to 15 per 1,000 across the developing countries included in this study. Still, the numbers are grossly misleading. First, the number is “likely substantially underestimated since data from most private sector facilities were not available” (Singh 2006). Additionally, abortions are generally illegal in Pakistan unless performed to save a woman’s life. Considering that 890,000 induced abortions occur annually in Pakistan, the vast majority are likely unsafe (Sathar et al. 2007).

Moreover, one study reported up to 68.5 percent of induced abortions in Pakistan resulting in complications, particularly heavy vaginal bleeding and fever (Saleem and Fikree 2001).

Pakistani women cite a number of economic and social forces that influence their ability to seek an abortion. Among these factors are the cost of affording another child, the husband’s role as a decision maker, and attitudes toward contraception. At least 55 percent of women having an induced abortion had reached their desired number of children, and 54 percent could not afford another child (Population Council 2004). Other factors (without statistical reports) include spacing of children and, in a small number of cases, being unmarried at the time of conception. Husbands exert significant influence in deciding whether to seek an abortion and on the use of contraceptives. While some women acknowledged that pressure by the husband or another family member (e.g., mother-in-law) prevented them from seeking an abortion, there was no data on this trend. Among women who sought an abortion, only 30 percent did so entirely of their own volition with no involvement of their husbands. When husbands were involved (70 percent), the final decision was usually a joint decision by the couple

(66 percent) as opposed to a unilateral decision by the husband (4 percent). It is difficult, however, to distinguish between joint and unilateral decisions by husbands where they exert significant control over their partner’s sexuality.

Husbands also play a significant role in deciding whether to use contraceptives. While 78 percent of women had used a modern contraceptive method, the husband participated in the decision 90 percent of the time. Even so, the predominant issue was not whether to use contraception (in many cases favored by the husband), but when to use it because of differences of opinion as to when the woman should become pregnant and how many children she should bear (Population Council 2004). This observation is supported by studies where grand multigravida (i.e., at least five or more complete or incomplete pregnancies experienced by a female) in Pakistan was a “strong predictor of induced abortion suggesting that pregnancies were terminated for the purpose of birth spacing or limiting family size” (Saleem and Fikree 2005). In response, the Population Council recommended engaging men more directly to reduce unwanted pregnancies. It is questionable, however, how effective this approach would be against a backdrop of female disempowerment.

When Pakistani women “perceive that their husbands want large families, and indeed the men . . . express the view that it is their wives’ responsibility to continue bearing children,” decisions affecting women’s sexual and reproductive health are invariably a function of their husband’s choice (i.e., desire for sexual fulfillment and/or procreation) (Population Council 2004).

LEGAL INSTRUMENTS AND DEROGATION FROM HUMAN RIGHTS OBLIGATIONS

In general, women are not getting unsafe abortions despite or purely because of existing laws. A purely legalistic analysis is flawed in that it overlooks the role of men as decision makers in matters affecting their partner's sexual and reproductive health; additionally, the law is overwhelmingly indifferent to constrictions on female autonomy. In fact, upon closer examination, such restrictions are reinforced by unconstitutional laws, irrational judicial decisions, and adherence to the notion that upholding female integrity necessarily entails a curtailment—if not an absence—of female autonomy.

Declarations and Reservations to CEDAW

India ratified and Pakistan acceded to the Convention on the Elimination of All Forms of Discrimination against Women in 1993 and 1996, respectively. CEDAW was adopted by the United Nations in 1979 and, as of March 2011, has been ratified by 185 countries. CEDAW is the most comprehensive international agreement on the basic human rights of women, recognizing freedom in all spheres of public and private life including employment, health care, family life, and civic participation. An essential tenet of CEDAW is eliminating discrimination against women among government officials and other members of civil society. This position was reiterated at the United Nation's General Assembly during the five- and ten-year reviews of the International Conference on Population Development (United Nations Population Fund 1999). In both reviews, key actions were specified, including the involvement of religious leaders to "actively promote

gender equality" (United Nations Population Fund 2005). Although CEDAW was intended to "incorporate the principle of equality of men and women in their legal system," a set of declarations and reservations by India and Pakistan effectively defeat its ultimate object and purpose.

India's declarations are essentially reservations to the overriding principle of equality between men and women. Its first declaration states, in relevant part:

With regard to articles 5(a) and 16(1) of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent. (Government of India 1993)

This declaration is an express derogation of state party obligations that consequently marginalizes women and officially condones "community" norms that ensure replication of these norms. From India's Initial Report on CEDAW, it appears that the term "community" is used to broadly refer to any minority population with particular beliefs and practices (Government of India 1999). Whereas § 5(a) of CEDAW mandates steps to eliminate discrimination arising from notions of a superior sex or stereotypical gender roles, the Indian government clearly states that such steps are not a state-sponsored obligation absent an initiative on the part of the discriminating community. To enforce such a mandate would constitute "interference" in the community's "personal affairs." This reading is consistent with its

application to other provisions within the treaty, such as § 16(1), which concerns marital relations between spouses and particularly equality in the determination of family spacing. Such an idea is inconsistent with Indian precedent that if a woman attempts to assert exclusive control over her body (see India's Supreme Court decision discussed in the next section), she may be civilly liable.

Apparently, the government has deferred to community norms both at the expense of subjecting females to discrimination and condoning community practices affording the same. Since express discrimination defeats the purpose of CEDAW, allowing communities to engage in such practices is an affront to the express purpose of the treaty that leans on "culture" as an amorphous concept to sustain sex-based discrimination. This mischaracterization of Indian "culture" will be challenged later in this article.

Pakistan's declaration is a single statement that, on its face, appears harmless. It states, in relevant part, "The accession by [the] Government of the Islamic Republic of Pakistan to the [said convention] is subjection to the provisions of the Constitution of the Islamic Republic of Pakistan ('Pakistani Constitution')" (Islamic Republic of Pakistan 1948). Nonetheless, the qualification is telling. The Pakistani Constitution provides that "all citizens are equal before law and are entitled to equal protection of law" (Islamic Republic of Pakistan 1948). Still, the Pakistani Constitution expressly reinforces sex differences that, under CEDAW, may rise to levels of potential discrimination. Women are constitutionally a class of persons (1) that is to be protected and (2) has traditional roles as wives and mothers. The equal protection clause does not "prevent the State from

making any special provision for the protection of women" (Islamic Republic of Pakistan 1948). This exception is repeated in the subsequent clause requiring nondiscrimination in respect to accessing public places, whereby "nothing . . . shall prevent the State from making any special provision for women."

Social justice is an inherent prerogative of the Pakistani Constitution but with important qualifications. The state is obligated to "make provisions . . . ensuring that . . . women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment" (Islamic Republic of Pakistan 1948). Women are expected to work in a capacity for which they are "suited"—cognizant of their role as mothers so they may receive "maternity benefits." These provisions of the Pakistan Constitution reinforce the notion of women as a vulnerable class in need of protection and of their traditional roles as wives and mothers.

Furthermore, such roles exist within the express domain of male-dominated societal relations. The Pakistan Constitution recognizes the "dignity of man and . . . privacy of home" and considers it an "inviolable" sphere of personal conduct. Given the difficulty for women in their traditional roles to secure their sexual and reproductive health, the Pakistan Constitution essentially fails to live up to its promise of equal protection by marginalizing women and protects nothing more than cultural norms couched in the "privacy" of the home.

Indian Unconstitutional Agenda Furthered by Conflicting Laws and Rulings

While the Constitution of India (Republic of India 1948) recognizes equal protection of its citizens irrespective of sex, federal laws and judicial rulings attach male participation—and consent—in the exercise of female autonomy in matters affecting a woman's sexual or reproductive health. Against this backdrop, the rampant discrimination against women is an affront to notions of equal protection and equality.

Indian Medical Termination of Pregnancy Act and its Failure to Secure Female Reproductive RThe Indian Medical Termination of Pregnancy Act (MTPA) of 1971 (amended 2001) allows a health care provider to conduct an abortion to save the life of the mother, to prevent grave injury to the mother's physical or mental health (includes rape), or to prevent the birth of a child with mental or physical abnormalities. The MTPA is unsuccessful in securing female rights because it: (1) discriminates against women under the age of eighteen; (2) accords no active role on state governments in regulating abortions; and (3) requires reporting of nonconfidential personal information. Pursuant to § 3(4) of the MTPA, a woman who is under eighteen years of age must obtain written consent by her guardian, who is often, in practice, her husband. In August 2010, for example, the Delhi high court proclaimed that a "husband who is a minor can be the guardian of his minor wife" (Daily News & Analysis 2010). The majority of marriages involving women under eighteen are in rural communities where girls are particularly susceptible to further domestic exploitation. For example, one study revealed that nonconsensual sex,

sexual violence, and a woman's inability to refuse her husband's sexual demands "appeared to underlie the need for abortion in both younger and older women" (Ravindran and Balasubramanian 2004). This only compounds the difficulty in securing a safe abortion and heightens the chances (and attendant risks) of resorting to an unsafe procedure.

Due to lack of regulation, the concomitant costs of private providers are quite high and beyond the reach of many women. The constituent state governments are not leading providers of abortions (Duggal 2004). While abortion services are readily available, they are not easily affordable. The lack of state regulation has resulted in private providers charging upward of 2000 Indian Rupees (approximately US \$44), which in some areas may be more than an average worker's monthly salary. Furthermore, a government study revealed that only 28 percent of rural hospitals are equipped with health personnel certified to do abortions. Absent government regulation, unsafe abortions will continue to flourish in an environment of commercial exploitation. The regulatory framework, moreover, is hardly protective of a woman's best interests. The MTPA regulations require mandatory reporting of an abortion without the consent of the woman, including disclosure of personal information, such as her name, address, and reason for termination. A separate, anonymous form is submitted that indicates the religion of persons who underwent an abortion (although reference to any surname will likely suffice to determine religious affiliation). It is unclear why such information is even assessed. Nonetheless, the mandatory disclosure of personal information

without a woman's consent is an affront to her bodily and mental integrity.

INDIAN JUDICIAL DECISION RESTRICTING ACCESS TO ABORTION

On March 26, 2007, the Supreme Court of India issued a judgment severely curtailing a woman's right to abortion. In the case of *Samar Ghosh v. Jaya Ghosh*, the respondent husband brought suit to terminate the marriage based on cruelty stemming from numerous incidents and patterns of behavior. Included among the alleged acts of cruelty was the appellant's refusal to have any children with the respondent. The appellant had a child from a previous marriage and made it clear that she wanted no further children. The court ultimately held for the respondent and determined that the appellant's behavior had amounted to cruelty to warrant a divorce.

While the court's rationale for reinstating the divorce may have been reasonable, its subsequent decree on spousal consent for seeking an abortion and liability for refusal to have children were inappropriate and unconstitutional. First and foremost, neither issue before the court involved a woman's right relating to matters affecting her sexual or reproductive health. Regardless, the court decided that: "if the wife undergoes a . . . abortion without medical reason without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty."

This ruling expanded the express provisions of the MTPA, which marginalizes girls under eighteen, by requiring these young girls to obtain guardian consent (as mentioned earlier) as well as by further requiring spousal consent for any woman, regardless of her age. The court reiterated the inseparable ties of a husband and wife

by noting that for either to exercise a "unilateral decision . . . not to have a child . . . may amount to cruelty." By implication, a woman could not unilaterally decide to have a child; however, this perception would presumably contravene the court's central presumption that it is a woman's duty to bear children pursuant to her role as a wife and a man's right to expect as much. This rationale effectively delegates a woman's fundamental right to decisions affecting her sexual and reproductive health to her husband and society's expectation of her role as a woman, that is, as a wife and mother.

Pervasive Problems Amidst an Incoherent Legal Framework in Pakistan

In Pakistan, abortion is a criminal offense that may lead to imprisonment. According to the Pakistan Penal Code, two exceptions apply: if a health care provider deems it necessary to save the life of the woman or if the procedure is required as a matter of "necessary treatment." A pressing challenge in Pakistan is reconciling the criminalization of abortion with efforts to prevent further marginalization of women and health care providers that provide related health care services. Moreover, implementing key measures to promote gender equality is problematic against an ideological backdrop that specifies a particular role for women in society. The criminalization of abortion coupled with the often unfavorable attitudes of health care providers toward the practice act as a deterrent to women in procuring safe abortions.

The decision to terminate a pregnancy without subjecting oneself to criminal prosecution ultimately rests with the health care provider. Generally, health

care providers have an unfavorable attitude toward abortion and do not support its practice. A study that attempted to gauge provider attitudes found that 67.3 percent had an unfavorable opinion of abortion, only 25 percent favored it, and 81 percent of those who wanted to change the law wanted it to be stricter, that is, they wanted the law to further restrict access to abortions (Rehan 2003). Surprisingly, only 19.1 percent of providers wanted to change the abortion law to make it less restrictive.

Consequently, existent laws, societal forces, and the health care system afford little solace to the severe burden that women must endure.

RECONCILING HUMAN RIGHTS, RELIGION, AND SOCIAL JUSTICE

The above sections of this article illustrate the complexity of alleviating the public health burden and the impact of unsafe abortions against a backdrop of international and national laws. While practitioners and scholars have written extensively on the health and political determinants, they are often reluctant (if not ill equipped) to address the underlying issue of female empowerment within the cultural fabric of India and Pakistan. Simply put, any meaningful discussion of female autonomy must be addressed and analyzed within the context of culture, which is heavily influenced by religion. India is home to a plurality of religious traditions dating back more than 5,000 years, and Pakistan is an Islamic state. It is naïve to ignore this social context or limit engagement to the “ills” of such traditions.

To be sure, the inadequacy of legal imperatives has not been lost on keen observers. W.R. Rogers argues that in India, decisions to carry a child to term or

seek sex determination are “intentionally and consistently administered by a patriarchal society,” effectively denying any sexual agency so that a woman “has little choice but to avoid [the decisions]” (Rogers 2007). Julie Zilberberg noted that excessive restrictions or enforcement might turn harmful practices underground (2007). As such, she argued that female empowerment and elevation of women were vital, alongside bans or other regulatory safeguards, to promote wider social change.

The human rights movement has been noble but arguably disoriented in its efforts to effectively engage the South Asian diaspora in addressing these cultural determinants. In 2005, the United Nations Population Fund called on advocates to implement programs with “full respect for the various religious and ethical values and cultural backgrounds of people and in conformity with universally recognized international human rights” (United Nations Population Fund 2005). It also called for raising awareness and enhancing communication with religious and community leaders and “taking into account local, cultural, traditional, and religious beliefs.” If a prevailing worldview does not recognize a particular motif (e.g., equality), why should everyone accord “full respect” thereto? A disagreement is a testament to an ideological difference that must be made transparent—not shoved under a rug of tolerance that brings attention to some issues, but not others. In effect, this quasi-sensitive pretense of respect is a disingenuous, hypocritical, and ineffective means to ameliorate existent harms to women worldwide.

Historically, scholars have focused exclusively on fundamentalist attitudes and oppressive practices that blatantly

discriminate against women. I categorically applaud and support these efforts. I differ, however, insofar as I embrace the possibility and potentiality of identifying those motifs within the culture that may counter these fundamentalist notions. While casting the negative influence of religion on curbing women's rights is well-documented, I proffer an alternative approach. I suggest that recognizing the harmony among religious principles with key tenets of women's rights (e.g., equality, nondiscrimination, autonomy) refutes a rigid characterization of women as a vulnerable class in need of protection. By engaging communities in the context of familiar territory (but concededly unfamiliar motifs), repressive social policies, practices, and beliefs can be challenged and effectively dismissed as quasi-cultural attempts to engage in harmful acts and violations of individual rights.

A pressing challenge is articulating the balance of rights and responsibilities of stakeholders while reconciling the varied languages of religion, law, and the social sciences. This is problematic since perspectives that cannot recognize some modicum of common ground are invariably bound for disagreement. It is therefore essential to establish a framework that can identify those commonalities. Renowned philosopher Martha Nussbaum articulated a list of "central human functional capabilities" that we can utilize to illustrate why the Hindu and Islamic tales I present next in this article are more useful in securing women's empowerment than are mere legal instruments. Specifically, these capabilities include (Nussbaum 1999):

- Life
- Bodily health
- Bodily integrity

- Senses, imagination, and thought
- Emotions,
- Practical reason
- Affiliation
- Other species
- Play
- Control over one's environment

As indicated in Table 1, these capabilities are consistent with many themes in CEDAW.

The question, then, is whether religion can be engaged to illustrate some, if not all, of these particular functional capabilities. I believe so, as I argue emphatically below. Owing to their length and the scope of this article, I've selected one tale from Hinduism and three tales from Islam that illustrate many (if not all) of Nussbaum's human functional capabilities. These observations are a testament to notions of equality, nondiscrimination, and autonomy. For the sake of brevity, the tales have been condensed to their essential facts and appear in sidebars. In the ensuing discussion in the article, more details of the stories are included where appropriate

These tales provide a sample from the corpus of literature within the Hindu and Islamic traditions. Their capacity to inform, and arguably promote, female empowerment can be summarized in the identification of salient features that are consonant with specific rights and capabilities. These trends are summarized in Table 2.

The Common Law of the Sanatana Dharma and Female Empowerment

Hindu law is not codified in a single text. Its traditions, while at times relegated to written form, have been passed orally for more than 5,000 years in the form of

Table 1 — The Intersection of Human Rights and Functional Capabilities

Central Functional Capability*	Life	Bodily Health	Bodily Integrity	Senses, Imagination, Thought	Emotions	Practical Reason	Affiliation	Other species	Play	Respect for environment	Totals
Corresponding CEDAW Provision											
Definition of discrimination	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	—	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	8
Adopt policies for equality	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	—	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	8
Guarantee basic rights	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	—		<input checked="" type="checkbox"/>	6
Modify sociocultural acts	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	—	<input checked="" type="checkbox"/>		7
Acquire, change nationality							<input checked="" type="checkbox"/>	—			1
Educational opportunities				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		—			2
Employment opportunities							<input checked="" type="checkbox"/>	—			1
Access to health care	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					—			3
Legal rights (e.g., property)							<input checked="" type="checkbox"/>	—		<input checked="" type="checkbox"/>	2
Marriage, family planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	—			4
Totals	6	6	6	5	1	3	8	n/a	3	4	

* Martha Nussbaum (1999)

Table 2 — How Religious Tales Fulfill Human Functional Capabilities

Central Functional Capability*	Life	Bodily Health	Bodily Integrity	Senses, Imagination, Thought	Emotions	Practical Reason	Affiliation	Other species	Play	Respect for environment	Totals
Tale											
Savitri	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑	10
Aishah, Mortality of Man	☑	☑	☑	☑	☑	☑	☑	☑	—	—	8
Aishah, Affair of Slander	☑	☑	☑	☑	☑	☑	☑	—	—	—	7
Aishah, Verse of Choice	☑	☑	☑	☑	☑	☑	☑	—	—	—	7
Totals	4	4	4	4	4	4	4	2	1	1	

* Martha Nussbaum (1999)

scriptures and stories. Whereas the scriptures consist mostly of hymns, philosophical discourses, and other abstract allusions, the tradition comes alive in the personification of characters and deities in the epic poetry, particularly Ramayana and Mahabharata. The Ramayana and Mahabharata are the foundation for understanding the laws and principles that govern a Hindu's own life (*svadharma*) and those that govern the entire society (*sanatanadharma*). The Mahabharata speaks of its own authority in Hindu thought, claiming that any person who "knows the four Vedas with their branches and Upanisads, but does not know this epic, has no learning at all" (van Buitenen 1981). The oral tradition was later accompanied by a literary tradition manifest in the Puranas, a compilation of eighteen treatises (and eighteen further sub-treatises) consisting of stories that include the characters, tales, and even novel circumstances based on the epic poems.

The tale of Savitri is recounted in Vyasa's epic poem, the Mahabharata, and takes place here on Earth in the outskirts of the kingdom of Madras (see Sidebar 1, "The Tale of Savitri in the Mahabharata"). While the names of Sita and Draupadi are popular characters invoked in studies on Hindu women, the role of Savitri has been by and large overlooked. This is unfortunate owing to the immense potential that her tale brings to effectuate female functional capabilities and human rights. A striking observation is that each of these elements is present in the story. Consider the following observations related to Nussbaum's human functional capabilities.

CAPABILITY OF LIFE

Nussbaum describes this capability as being able to live to the end of a human life of normal length, not dying prematurely or before one's life is so reduced as to not be worth living. To this I would add female valuation and an explicit rebuke of sex selection and sex-selective abortions. Son preference has become a scourge of Indian (and particularly Hindu) culture, prompting a public denunciation in 2008 by Prime Minister Manmohan Singh (Gentleman 2008). The tale of Savitri begins with society's preference for males over females, epitomized in King Asvapati's desire to have a son, pursuant to the counsel of society's learned men and in accordance with *para dharma*, or "highest dharma." The term *dharma* is a catchall for law, righteousness, and virtue. Unlike the overly rigid and narrow conception of law in modern society, *dharma* refuses to be devoid of a moral attribute, though the potential conflict of an individual sense of *dharma* (*svadharma*) and a universal and generally applicable sense of *dharma* (*sanatanadharma*) is recognized. In fact, this is a central theme of the tale. Here, the conflict concerns the issue of son preference. Notably, the king was not advised to have a son. The council had advised him that *samt nam* was in accordance with the highest *dharma*. In Sanskrit, *samt nam* means "offspring" or "progeny," not "son." Thus, the king had not chosen in accordance with the *sanatanadharma* but out of his own personal preference. The granting of a daughter in response to his request is a clear rebuke of his misperception. While Savitri herself wishes to have sons later in the tale, she does not conflate her personal wants with the common morality. Female valuation is an explicit theme throughout the tale.

CAPABILITY OF BODILY HEALTH

Being able to have good health, including reproductive health, is indicated by Savitri's upbringing up to the point where the people, upon seeing her, remark, "We have received a goddess" (Ganguli 1896). There is perhaps no better characterization of adequate nourishment and shelter than a presentation that commands divine comparisons.

CAPABILITY OF BODILY INTEGRITY

The freedom to move freely and have opportunities for sexual satisfaction and for choice in matters of reproduction are neatly packaged in a series of events. Savitri is given absolute freedom to choose a husband according to her own wishes. She thereupon roams throughout all the kingdoms in search of a suitable partner. Savitri chose Satyavan and, upon becoming his wife, attended to him by "indications of her love in private," the nature of which should not be lost on readers as an indiscriminate allusion to conjugal affairs.

CAPABILITY OF SENSES, IMAGINATION, AND THOUGHT

This capability concerns the ability to imagine, think, and reason in a human way that is informed and cultivated by education. For Savitri, this capability is illustrated in a series of acts that encompass her: (1) choosing a husband of her own accord; (2) undergoing severe physical penance; (3) confronting Death; and (4) receiving the unique praise by the seers upon completing her trials. Her choice of Satyavan is not haphazard. As her father advised, she was to find a partner that had virtues that were comparable to her own. It is upon finding Satyavan "fit to be my husband" that Savitri chooses him (Ganguli 1896). Her subsequent undertaking of penance is

equally profound. Society cannot see the rationale in this—personified in the blind king who only sees her as a “daughter” and nothing more. Despite her newly acquired strength (as a result of her penance), her own husband observes that she looks “gaunt from your fast and vow,” although she affirms that she is not weak (van Buitenen 1981). Her capability to express her beliefs, though questioned and even mocked, does not preclude her from fulfilling her vow. Consequently, she is able to confront Death and withstand his attempts to dissuade her. She ignores Death’s reference to her being a “devoted wife” and having fulfilled a predefined societal role, thereby “acquitted of all debts to [her] husband” (van Buitenen 1981). She chooses of her own volition to bear children and also how many she will have. In doing so, she conquers Death and restores her husband’s life and her father’s eyesight—that is, she restores balance to a society by asserting her strength and independence to exercise her autonomy unfettered. She is not praised by the seers as a “wife” or a “daughter” but as a “good woman” and “noble lady,” thereby “rescu[ing]” a society that has gone astray (van Buitenen 1981). Savitri was not merely capable but exemplary in her exercise of senses, imagination, and thought.

CAPABILITY OF EMOTIONS

The first instance of Savitri’s capability of emotions is found when she falls in love with Satyavan and chooses him “in my heart.” Second, she later refuses to choose another husband upon hearing of his impending doom. As a seer observed, the “heart of . . . Savitri wavereth not!” (Ganguli 1896). Third, she engages in “honeyed speech” with her husband, along with “indications of her love in private” (Ganguli 1896). Fourth, her

emotions are seen in the “sorrow” she feels as the day of Satyavan’s death nears, and finally, they are seen in her refusal to let Death carry her husband away. Recalling that her “debts” to her husband were paid, Savitri’s longing stems from her intimate relationship, founded not on duties and debts but on love and friendship. She also cites this emotional bond as a basis for social discourse when, in her opening verse to Death, she calls on him as a friend to engage her in dialogue.

CAPABILITY OF PRACTICAL REASON

Being able to exercise free will and engage in critical reflection is a central theme of the tale. From the outset of her dialogue with Death, Savitri is praised for speaking words “with fine reason” (van Buitenen 1981). Her authority does not stem from citing scriptures or personal figures; she speaks with conviction based on reason that yields universal human truths. Though society has declared four stages of human life (e.g., study, domestication, retirement, renunciation), adhering to true dharma, according to Savitri, consists of “true knowledge,” which in turn stems from people who have brought “their souls under control” (van Buitenen 1981). Using reason to articulate the good is thereby “the foremost of all things,” and speech is its vehicle. At the outset of each subsequent exchange, Death begins by remarking how he is “pleased with the words that you speak.” Moreover, reasoning is not merely a reflection on the past, but an opportunity to create and develop new ideas. As Death observes, Savitri’s reasoning “add[s] to the wisdom of sages” (van Buitenen 1981).

CAPABILITY OF AFFILIATION

Being able to live for and in affiliation with others, and also retaining self-respect and non-humiliation, should coexist without qualification. This is a central theme within the tale. On the one hand, Savitri pleases her in-laws by “her virtues and services” and looks after and cares for each of them (i.e., her father-in-law, mother-in-law, and husband). Her virtues are not lost on any of them, including Satyavan, who rejoiced upon acquiring a wife “endowed with all virtues” (van Buitenen 1981). Yet her father-in-law’s initial reluctance to approve of her undertaking a vow and Satyavan’s comments on her appearance thereafter are important. Her father-in-law opined that such hardships were not suitable for the “daughter of a king” (Ganguli 1896). Satyavan also observed that she appeared “gaunt” after completing her fast (van Buitenen 1981). Though their remarks were not intentionally berating, they reflect (as today) a society that is hesitant to recognize a woman’s potential to achieve and succeed in whatever endeavor she so chooses to embark on. By asserting her own capabilities, she conquers Death and notably restores her husband’s life and her father’s eyesight.

CAPABILITY OF [BEING SENSITIVE TO] OTHER SPECIES

Being able to live with concern for and in relation to animals, plants, and the world of nature is explicitly declared by Savitri during her exchange with Death. She declares that “the eternal duty of the good towards all creatures is never to injure them in thought, word, and deed, but to bear them love and give them their due” (Ganguli 1896). Recalling that Savitri and Satyavan live in a forest, the sincerity of

her remarks in relation to her daily interactions is unquestionable.

CAPABILITY OF PLAY

Being able to laugh, play, and enjoy recreational activities is indicated in a childhood reference to the upbringing of Satyavan. As a child, he took great delight in horses, used to make horses out of clay, and even drew pictures of them. But this allusion to his past is not merely reminiscent of childhood dalliances. The reference also hints at what distinguishes Satyavan from other men and is vital to recognizing why Savitri describes him as “fit to be my husband.” Within his character is an innocence, which is at once present and absent in his being endowed with wisdom, juxtaposed with his unawareness of his impending death. Satyavan never exploits the environment, but leans on it through his asceticism. His childlike (as opposed to childish) demeanor enables him to not only win Savitri’s love but also prepares her subsequent encounter with Death, who explains how Satyavan’s virtues required Death (rather than his emissaries) to take his soul in person.

CAPABILITY OF RESPECT FOR ENVIRONMENT

This capability entails being able to engage in political and material choices that govern one’s life vis-à-vis freedom of speech and expression and to avail oneself of the opportunities to work, hold property, and engage in meaningful relationships with others. Since the political landscape in ancient India was intertwined with a worldview of cosmic proportions, the allusions to controlling decisions affecting one’s personal life and relationships with others will suffice. The entire tale of Savitri is a constant assessment and reassessment of human

proclivities. From the outset, speech is the manner in which sound determinations can be made. It is through speech that King Asvapati recognizes his own merits in fulfilling his penance and thinks himself entitled to a son. And though the goddess told that king that, “I knew before this [request] this intention of yours,” she did not suppress his freedom to express his wants (van Buitenen 1981). With freedom of speech comes the freedom to err.

The Principle of Awliya and the Exercise of Female Autonomy

Shari’a is the common term used to denote Islamic law and stems from the Quran, Hadith, Ijma, Qiyas, and Ijtihad (Ali 2000). The Quran is Islam’s equivalent of a religious constitution, the word of God revealed through the angel Gabriel to the Prophet Mohammed (hereafter “Mohammed”), comprising 6,666 verses, of which scholars estimate 500 retain a legal element and 80 deal specifically with issues relating to women’s human rights. While Islamic law affords some structural semblance to modern legal jurisprudence, its dissimilarities are profound. Unlike a state constitution, the Quran cannot be amended. As the word of an infallible deity, complete and perfect, it is considered flawless and immutable. Still, where it is silent or provides little express guidance on a particular issue, other sources of Islamic law may be instructive. Nonetheless, a law that expressly rejects a Quranic mandate cannot be reconciled by resorting to traditional statutory interpretation (e.g., relying upon the plain meaning of the text).

While scholars continue to debate specific Quranic verses that seemingly grant women more or less autonomy than

others, the concept of “wali” in verse 9:71 captures the spirit of female empowerment as portrayed in the Ahadith, a secondary source of Islamic law. In 9:71, “the believers, men and women, are awliya, one of the other” (Ali 2000). The term “awliya” is the plural form of “wali,” which in Arabic means “friend, charge, guide, and protector.” This term does not suggest subservience, but collaboration in a spirit of friendship whereby men and women engage in different roles, at different times, to help, guide, and protect one another.

As a secondary source of Islamic law, the Ahadith (collected sayings of Mohammed) contains numerous stories that illustrate the principle of wali as a cornerstone of female empowerment. Unlike the previous Hindu tale, these accounts should not be read as distinct stories but as parts of a single story that captures the wali between Mohammed and his wife Aishah bint Abi Bakr. Consistent with our prior discussion, these accounts depict: (1) the self-destructive nature of male abuse; (2) the necessity to exercise autonomy based upon principles of freedom; and (3) a woman’s strength in enduring, withstanding, and overcoming threats to her inherent dignity. In the interest of space, the human functional capabilities as pertains to each story are summarized in Table 2.

The stories are drawn from their retellings in the work of Elizabeth Warnock Fernea and Basima Qattan Bezirgan (1977) and recounted below. (Owing to their brevity, they are summarized in the main body of the text with additional details given in sidebars where necessary.)

Aishah bint Abi Bakr and the Mortality of Man

The tale begins with Mohammed as the leader, in charge, directing his wife Aishah in her post to keep an eye on a prisoner (see Sidebar 2, “The Mortality of Man”). In response to an innocent mistake, Mohammed succumbs to his anger and betrays their relationship of wali to assume a superior role. In doing so, he attempts to exert his power by “cursing” Aishah and exclaims that her hand be severed. Aishah’s reluctance to react only evokes a sense of guilt as Mohammed concedes his mortality, for “[he is] only human,” and “get[s] angry like any other human.” As a result, he pleads with Allah to “atone” for not only his outburst toward Aishah, but for anyone he may have cursed. Mohammed recognizes the self-destructive nature of his behavior and its capacity to disrupt wali between him and his wife, along with awliya within the greater society. Aishah’s ability to endure his anger and withstand any inclination to react (as he did), inevitably causes Mohammed to make amends, securing their wali and her dignity.

Aishah bint Abi Bakr and the Affair of the Slander

The “affair of the slander” was a significant crisis in Aishah’s life, but she remained adamant in securing her innocence (see Sidebar 3, “The Affair of the Slander”). Here, the self-destructive nature of male abuse is portrayed in accusations of Aishah’s infidelity, encompassing the entire society, particularly among Mohammed’s comrades who attempt to dismiss Aishah. Reflecting on this predicament, Aishah speaks directly to society’s indifference to the truth, explaining how she was in a no-win situation of speaking the truth (whereby nobody would believe her) or proclaim-

ing her guilt (a lie that would be received as a confession). She cites her own endurance—fitting patience—to withstand society’s attempt to trespass on her dignity. Afterward, she holds Mohammed accountable for betraying their wali, recalling his disbelief. Still, it is Aishah’s strength and endurance that alone secures her dignity.

Aishah bint Abi Bakr and the Verse of the Choice

The famous account of the Verse of the Choice (“Choice”) alludes to Mohammed’s proposal to Aishah that, “If you desire the life of the world and its embellishments, then come and I will compensate you and release you honorably, but if you desire Allah and his Prophet and the life of the hereafter, then Allah will prepare for the chaste among you a great reward.” Aishah replied, “I want Allah and His messenger and the hereafter. I don’t need to consult my parents.” Mohammed laughed upon hearing her reply.

The Choice succeeded a period when Mohammed was thought to have considered divorcing all his wives. He had “retired to be alone, to contemplate and meditate.” It is unclear whether he found his worldly life a distraction or what may have propelled such thoughts. Regardless, as reflected in the Choice, he deferred to each wife the decision to stay with him—as opposed to the suspicion that he would outright reject them. Aishah, as his favorite wife, asserted her autonomy in choosing him and also negated any notion that her parents had any say in the matter. The choice reflects a departure from earlier efforts to exert control by instead engaging in an honest dialogue that solidified the friendship and trust of

their relationship. In 632 A.D., Mohammed died in Aishah's arms.

RECOMMENDATIONS FOR ETHICAL, LEGAL, AND STRUCTURAL REFORM

The present analysis illustrates that the cultural bases for female empowerment are fertile ground to respect, promote, and secure the sexual and reproductive health of South Asian women. Upon consideration, the following recommendations are proffered:

- Amend declarations to CEDAW to align policies with its object and purpose. Condoning community beliefs and practices that infringe upon women's exercise of reproductive rights furthers discriminatory practices, thereby defeating CEDAW's underlying object and purpose. State and local laws become toothless if they do not stem from policies that denounce gender inequality and empower women to actively participate in matters affecting their sexual and reproductive health. Religious or cultural norms cannot deny any woman her fundamental right to assert control over her body. Nor can the law remain silent and allow such practices to remain unfettered. It is irrelevant if exercising her right is consistent with religious or cultural perspectives. Women must be the ultimate decision makers in matters affecting their sexual and reproductive health.
- Institute state regulation of abortions to reduce social and economic impediments to access and post-complication treatment. Abortion laws in India and Pakistan do not adequately address the prevalent social hardships imposed on Indian and Pakistani women. Power differentials between husbands and wives may stymie women's access to services and the flow of information to secure their health. For

example, while contraceptives may be readily available, access to and use thereof is often a function of the willingness on the part of a woman's husband. Laws should be implemented that recognize women's autonomy as paramount, encourage women to seek out information on matters affecting their health and sexuality, and foster their collective health and well-being.

- Engage community religious leaders to promote education that respects, promotes, and fulfills a women's autonomy and right to self-determination. While the International Conference on Population Development's five- and ten-year reviews encouraged the participation of religious leaders to implement key actions, the guidelines remained silent on precisely how to do so. Identification of religious principles that value women's autonomy and right to self-determination creates a bridge to engage communities in meaningful dialogue. Religious leaders may act as educators to demonstrate the consistency of government policies with underlying religious tenets. While religious leaders may not have a legal obligation to the government or society at large, they occupy a unique position in promoting communal solidarity and enunciating the roles and responsibilities of their constituency.

CONCLUSION

In this brief sketch, we find a fascination with the human quest for meaning that transcends traditional dichotomies of East and West, of man and woman, of moral and legal imperatives. The tales of Savitri and Aishah offer an opportunity to utilize religious traditions to engage communities to deliberate on contemporary issues of sex, gender, and equality. The stories also rebuke an outright rejection of religious texts as a medium

for engaging communities, especially within cultures where patriarchal worldviews remain the norm. On the contrary, these tales illustrate a seemingly perpetual struggle that was no less real a few thousand years ago than it is today. Aligning efforts in public health, law, and religion is a challenge that should be embraced to encourage female autonomy in matters affecting sexual and reproductive health. If Socrates is the father of the humanities, Savitri is surely its mother. While no less a renowned scholar as Dr. Leon Kass would describe Socrates and Plato among the “world’s first and greatest humanists,” I find the absence of any mention of their female, non-Western counterparts quite tragic.

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Sidebar 1: The Tale of Savitri in the Mahabharata

King Asvapati longed for a son and offered prayers for eighteen years to propitiate the goddess Savitri; at the end of the eighteenth year, the goddess appeared and asked King Asvapati what he wanted. The king asked for a son, since he was “told by [society’s learned men] that having many sons” is “the highest Law.” To this, the goddess smiled and told him he would beget a daughter and that he was not to reply. The king happily agreed and named his daughter after the goddess, Savitri. When Savitri grew up, she was exceedingly beautiful, intelligent, and independent. Her splendor was as such that no prince dared approach her to ask for her hand in marriage. Eventually, the king asked her to choose a husband “for yourself with virtues that match yours.” Savitri then came upon a young hermit named Satyavan. A chance appearance of a wise seer, however, informed her that Fate had declared that Satyavan would die within one year from that day. Regardless, Savitri, having chosen him, discarded her royal attire and joined him along with his parents; Satyavan’s father was Dyumatsena, a blind king who was exiled from his kingdom and lived with his wife and son in the surrounding forest. On the days leading up to Satyavan’s “day of death,” Savitri undertook penance for three days, restricting her diet, and standing day and night in prayer. The blind king told her that the vow “was too severe [for a] daughter of a king” and “exceedingly difficult.” Nonetheless, she continued. At the break of dawn, Satyavan grabbed his axe to chop wood, and Savitri expressed her desire to accompany him. At first, he refused, commenting that she looked “gaunt” and that the “path [was] difficult.” Savitri replied, “I am not weak” and joined him. Deep in the forest,

Satyavan began chopping wood and soon broke into a sweat, exclaiming, "I don't have the strength to stand." He then fell into her arms and died. A moment later, Death arrived. After praising Savitri for being "a devoted wife" and "now acquitted of all debts to your husband," Death encouraged her to return home. Savitri refused and began walking with Death deeper into the forest. After walking seven steps, Death asked her why she was following him. Savitri replied, "It is masters of their souls who practice the Law in the woods, and austerities; and knowing the Law they promulgate it—hence the strict say the Law comes first. By the Law of the one as approved by the strict we all proceed on the course he has set. I don't want a second, I don't want a third—hence the strict say the Law comes first." Pleased with her reply, Death granted her a boon (except not Satyavan's life). She requested that her blind father-in-law be restored of his eyesight. An exchange continued as Savitri refused to let Death walk off with Satyavan's soul. Her answers were rewarded with additional boons (with which she restored her father-in-law's reign over his kingdom) until Death granted her one final wish. Savitri requested that she be a mother. Death agreed and subsequently restored Satyavan's soul. As Savitri raced back to Satyavan's corpse, he awoke to find her waiting for him. As they returned to the forest, many seers gathered and proclaimed "The king of men's dynasty was mired

In a pool of darkness, beset by evils.

And you, good woman, blessed by the Law,

You, noble lady, have rescued it!"

(Cites are drawn from the translation of the primary text by J.A.B. van Buitenen [1981]).

Sidebar 2: The Mortality of Man

Aishah bint Abi Bakr ("Aishah") was considered Mohammed's favorite wife. On one particular occasion, Aishah was in charge of overseeing a prisoner who escaped while she was attending to some other affairs. Mohammed then came, and Aishah recalls the dialogue that ensued:

"I [Aishah] said, 'I was preoccupied with the women, and he escaped.' 'What is the matter with you?' exclaimed Mohammed. 'May Allah cut off your hand!' Then he went out and gave orders that the prisoner should be sought after and returned. After the prisoner was brought back, Mohammed came in and found me examining my hands. He said, 'What is the matter with you? Have you gone mad?' I said, 'You cursed me, so I am examining my hands, wondering which one of them will be cut off.' Then he praised and extolled Allah and raised his hands high, saying, 'O Allah, I am only human. I get angry like any other human. Let me atone for any believer I may have cursed'" (Fernea and Bezirgan 1977).

Sidebar 3: The Affair of the Slander

During an expedition, Aishah was once accidentally left behind when she left the camp to perform her ablutions. In the meantime, a young man on a camel came along and offered to take her to Medina. She accepted, and he took her back to her convoy. The incident, however, raised rumors and gossip of her alleged relations with the young man. Some of Mohammed's close allies urged him to scorn her, while others tried to convince him otherwise. Mohammed eventually confronted her and said, "Aishah, if you have been tempted to evil or done wrong, repent; for Allah accepts repentance from his servants." Aishah, however, stood her ground. She recalled:

"If I said that I had done nothing and Allah knows that I would be telling the truth, you would not believe me for you already think me guilty. If I said I were guilty and Allah knows I am not, you would say I had confessed. Thus, all I can do is cite Joseph's father: 'My course must be fitting patience, and Allah's help is to be sought for the problem you describe.'"

Mohammed then had a revelation revealing Aishah's innocence and urged her to rejoice. When her parents insisted that she return to Mohammed, Aishah replied, "I shall neither go to him nor praise him nor you who believed what you heard about me and did not deny it. I shall praise Allah who revealed my innocence" (Fernea and Bezirgan 1977).

Women, Politics, and the Law: Beyond the 2011 General Election in Nigeria

by Joy Ngozi Ezeilo

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Political arrangement in Nigeria has significantly excluded female legitimacy. From the 1979¹ election to today we have seen only a marginal increase in the number of female representatives in elected and appointed positions. The increasing abandonment rate of political projects of women aspirants and the high, outright-failure rate of political campaign projects by women are now a recurrent feature of politics in Nigeria. In the same vein, we are aware of the fact that women are disadvantaged in terms of knowledge, skills, and control of physical resources,

which invariably influence political arrangements and polity. In other words, those who aspire to power must have access to, control of, and a share of the necessary knowledge, skills, and physical resources to guarantee their inclusion in leadership positions. This state of affairs has prompted concerned persons/actors to conclude that “where the power is, women are not.”

There have been persistent calls in Nigeria for affirmative action to remedy the gender gaps in politics especially in the aftermath of the 1995 Beijing World Conference on Women, which popularized the recommendation of at least 30 percent representation of women in power and decision making. The 2007 National Gender Policy (NGP) in Nigeria further raised the gender stakes by providing for 35 percent affirmative action. Previously, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the United Nations General Assembly in 1979, had called for affirmative action in all spheres of life and in favor of women. This was reechoed by the 2000 Millennium Development Goals (MDGs) and the 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, which Nigeria ratified on December 16, 2004, and which also set the agenda of increasing the proportion of seats women occupy in parliament. Despite these legislative advancements, women globally and in Nigeria are far from attaining gender equity or parity in governance.

The challenge therefore remains in Nigeria. The challenge is not just due to the absence of a normative framework for the inclusion of women in power-sharing arrangements; in fact it is more because

of a lack of political will and institutional mechanisms to operationalize and mainstream gender. Such measures would have been necessary to realize the already recognized percentage reserved for the representation of women not just in the NGP but also in the manifestos and constitutions of some political parties.

Focusing on Nigeria, this article analyzes female candidates' performances in elections, opportunities to increase women's participation in Nigerian politics, threats that undermine those opportunities, and other roadblocks to power.

WOMEN IN POLITICS: THE GLOBAL CONTEXT AND NORMATIVE FRAMEWORK

There have been a number of international commitments to eliminate discrimination against women in the political arena. First, Articles 7 and 8 of the CEDAW enjoin state parties to take all appropriate action to eliminate discrimination against women in the political and public life of their country. Additionally, the 1948 Universal Declaration of Human Rights (UDHR), the 1995 Beijing Declaration and Platform for Action, and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa reinforce these rights. Moreover, Goal 3 of the MDGs seeks to "promote gender equality and empower women." One of the indicators for measuring the achievement of that goal is the proportion of seats held by women in national parliament and the extent that gender is mainstreamed in governance. Since Nigeria is a state party to both CEDAW (which the Nigerian government ratified on June 13, 1985, and for which it has been relatively regular in its report to the CEDAW Committee) and

the Protocol to the African Charter on the Rights of Women (which Nigeria ratified on December 16, 2004), this requires the government through executive, legislative and judicial action to be accountable and to ensure gender equality. In fact, the government must take positive measures including affirmative action to redress systemic discrimination that impedes women's active participation in power and decision-making processes.

WOMEN'S POLITICAL PARTICIPATION IN NIGERIA: PERSPECTIVE FROM PAST ELECTIONS

In the first tenure of former Nigerian President Olusegun Obasanjo's administration (1999-2003), women held less than 5 percent of elected positions at national and state levels. Only 2.8 percent of Senate members and 3.3 percent of federal House of Representatives members were women. In the states there was no female governor and only one female deputy governor. This pattern of marginalization could be seen across the board for elective positions including state houses of assembly.

The primary party nomination stage of the 2003 elections looked promising for female candidates. By the end of party primaries in 2003, two women had won their party's presidential candidate nominations and two had won their party's vice presidential candidate nominations with others winning gubernatorial tickets and deputy governorship candidacies. Women fared particularly well in the less established parties where many women won nominations for a range of positions.

At the conclusion of the 2003 general elections, despite women's strong showing in the party primaries, there was only a marginal improvement from 1999 in the

number of women actually elected. An increase could be found in the House of Representatives, where the number of women increased from twelve to twenty-one. This was still only 5.83 percent of the total number of representatives. There was also an increase in female deputy governors whose number grew from one to three. In the arena of federal-level appointments women also fared more equitably in 2003, taking on a number of key ministries and roles as special advisers.

The 2007 elections saw a marginal but critical increase in the number of women occupying elective positions. The Senate moved from three elected female senators in 2003 to nine in 2007, a 200 percent increase. Unfortunately, the same is not true of the House of Representatives where there was less than a 50 percent increase in female representation from twenty-one female representatives in 2003 to twenty-seven in 2007. Moreover, there was slight improvement in the Houses of Assembly of States of the Federation from thirty-eight female members in 2003 to fifty-four in 2007. Prior to the 2007 general elections, there were 1,200 female aspirants for 1,532 offices, with 660 winning their primaries and 93 elected overall.

In the party primaries there were stories of women who won their party primaries against men but whose names were supplanted with the names of men. In some instances, these women were blackmailed and intimidated into stepping down for men. The reasons given for such brazen injustice include that women are political liabilities, have no financial muscle to run elections, or lack the sophistication of thuggery and election-rigging skills. The challenge, therefore, for those interested in gender equality and women empowerment is

how to ensure more substantive gains in the elections that lie ahead in Nigeria.

WOMEN'S PROSPECTS IN FUTURE ELECTIONS

Having done the above analysis of previous elections, the vital question becomes how women will fair in future elections. Women's performance in upcoming general elections will depend on a number of variables, some of which are challenges facing the polity in organizing a credible election. This is not just a question for women but one with which the Nigerian Independent National Electoral Commission (INEC), political parties, and other stakeholders are all grappling. However, for women, this question has assumed a larger-than-life image given their continuing marginalization in power structures and power-sharing mechanisms.

In November 2010 and again in January 2011, INEC Chairman Professor Attahiru Jega assured Nigerians that despite the fact that the nationwide voter's registration exercise had been shifted to January 2011, the general election would still take place in April 2011, leaving women in Nigeria and other stakeholders little time to prepare for, participate in, and engage in the political system. Similar to previous elections, female mobilization for political participation and enhanced representation started late; this usual ad hoc approach is disempowering and results in unfinished business and unfulfilled aspirations in women's quest for power.

In assessing women's prospects for future elections and beyond it is pertinent to perform a quick reality check and consider the opportunities and threats to enhancing women's representation in power.

OPPORTUNITIES

As this article is set to go to press before the April 2011 elections are held in Nigeria, here we discuss some of the expectations in terms of women. Limited but crucial opportunities exist for women to leverage in the 2011 general election. Amongst them are the promise of a credible election championed by Nigerian President Goodluck Jonathan and current INEC leadership, both of whom have provided some indication of a gender-friendly government. Importantly, the global political climate favors increased representation of women in elective and appointive positions as well as the conduct of free and fair election. This global climate is helping in no small measure to mount pressure on Nigeria to conduct a credible election, which ties closely to popular participation in the electioneering process and inclusion of all genders.

Currently, there is no legal impediment for women to enter and participate in politics or enjoy full enfranchisement. In fact, section 77 (2) of the constitution of the Federal Republic of Nigeria confers upon all citizens equal rights to belong to political parties, to be entitled to be registered, to vote and be voted for during elections, and to form or belong to any political party. Also, section 40 guarantees the right to freedom of association whilst section 42 inter alia prohibits discrimination on grounds of sex.

The National Gender Policy of 2007 is geared toward achieving a just society devoid of discrimination and harnessing the full potential of all social groups regardless of sex or circumstance. The objectives of the policy are to establish the framework for gender responsiveness in all public and private spheres and strengthen capacities of all stakeholders to

deliver their mandate. Specifically the policy target is to adopt special measures, quotas, and mechanisms for achieving a minimum critical threshold of women in political offices, party organs, and public life. The 2015 target is 35 percent female political representation at all levels in both elective and appointive posts.

Some have argued that a quota system is undemocratic. Proponents of this point of view regard a quota system as tokenism that does not deal with the underlying causes of discrimination. Moreover, they argue that guaranteeing 30 percent of places or more to women would diminish the democratic credibility of elections. However, quota strategies have worked successfully in countries such as South Africa, Rwanda, Uganda, India, Bangladesh, Eritrea, and even to a limited extent in Ghana. In Argentina, the electoral law stipulates a compulsory 30 percent quota representation for women for elective positions. These nations have achieved a significant level of equal representation through the establishment of a quota system.

Despite a stated desire to include more women in the political arena, Nigeria is reluctant to use structural devices like quotas and proportional representation to accelerate inclusion.

THREATS

Varying forms of threats militate against women's political participation, including political godfatherism; hijacking of political party structure (garrison politics); mercantile politics where only the wealthy succeed; political gangsterism, aka do or die politics; thuggery, kidnapping, and general insecurity in the polity; political parties' biases against female candidates; "indigeneship" contestations²; zoning and power-sharing formula³;

gender-based political violence against women; cultural and religious fundamentalism; family and societal biases against female politicians; and use of pejorative name-calling for female politicians and unleashed propaganda against their persons. Other factors include women's apathy, complacency, absence at points of decisions making, cheer ladies syndrome (in which women praise female singers/clappers who have effectively clapped themselves out of power⁴), willingness to accept tokenism and poor self-perception, and consistent inability to network and use the numerical strength of the female electorate to their advantage. Finally, Nigerian political parties and their modus operandi constitute a major threat to women's participation, yet ironically women can only succeed through this mechanism since there is no room yet for independent candidature.

The Nigerian political parties have failed to play the pivotal role expected of them in facilitating the political advancement of women. How do we hold political parties accountable to their female members?

A cursory examination of political parties' manifestos and constitutions in Nigeria shows glaringly the lack of political will to change the status quo and ensure a better gender balance of power in the political system (Ezeilo 2007, 16). It is common knowledge that the only position given to women in the political parties' executive (meaning leadership, the party leaders who drive the political parties, according to their constitutions) is the so-called "woman/women leader"⁵ position, which smacks of tokenism and shows a reticence in promoting women to key party positions. Since female political wings have been banned it appears that female politicians have no other space for

democratic engagement than through an individual office of the "woman leader."

Nigeria's political parties have not demonstrated any serious inclination to implement mechanisms for equal gender representation within the party structure. The experiences of women in elections in Nigeria, especially in the 2007 general elections, indicate that Nigerian political parties do not empower and support female aspirants. Yet the political party is a most central and important arena for political participation; if women are excluded in the power structure of the party and affirmative actions are not pursued by parties beyond articulating them in their manifestos and constitutions, then there is a problem for women.

In the run-in to the 2007 party primaries, Women Aid Collective (WACOL) conducted focus group discussions with female politicians and aspirants from the South-East and South-South geopolitical zones. Its findings reinforce what a lot of political observers and analysts have argued: formal institutions are generally male-dominated and intrinsically male-biased. Right from the beginning of party politics in Nigeria, the emergent local political parties have always been an entirely male affair with women as spectators (Women Aid Collective 2009). This ugly disenfranchising situation has largely continued to the present day.

Starting with their manifestos, these parties display a blatant disregard for female participation and representation in the political process. They are also very gender-insensitive. Reading through the constitutions and manifestos of about fifty-one political parties, one cannot but conclude that Nigerian political parties are grossly gender-insensitive. Right from the use of language, one will at once

notice the gender bias. For example, the use of “he” instead of “he or she” is a language of gender bias. Some of the manifestos only have cosmetic plans for development for women. Reading through the welter of manifestos, one is left with the impression that Nigerian political parties do not understand what is meant by gender balance nor are they willing to protect or promote it to stimulate greater women participation in the political process.

Today there are only a few women in the national executives of all the political parties. Apart from the almighty position of “woman leader,” other women who hold any position in the national executives of the parties hold such posts as director of welfare, social organizer, or ex-officio members. These positions are in truth politically redundant portfolios or at best seasonally functional offices. One cannot point to any position held by a woman in the party executive of Nigeria’s fifty burgeoning political parties.

The waiver of nomination fees has been hailed by many as good for women to be able to actualize their political ambition. I see this as a double-edged sword, however, that contributes to the political marginalization of women in that it helps to perpetuate the notion that women are merely beneficiaries and at worst parasites on political parties and incapable of the meaningful financial contribution necessary for party politics to thrive. I think women need to debunk this and encourage the removal of this waiver. As a matter of fact, nomination fees should go into political budget calculations for anyone seeking an elective office. Women should not be afraid to demand forthwith the waiver’s removal and in its place advocate for internal party democracy

and gender mainstreaming that binds political parties to field a desired percentage of women for both elective and appointive positions.

Of course, unequal access to campaign financing and other political resources has been implicated in the high failure rate of the campaign projects of contemporary female political aspirants. Instead of the waiver of nomination fees, serious consideration should be given to setting up funds for assisting female political aspirants.

ACTION TOWARD ENHANCING WOMEN’S POLITICAL PARTICIPATION

First and foremost I encourage Nigerian women to harness the existing opportunities discussed above, beware of the aforementioned threats, and work in concert to overcome these roadblocks to power. It is pertinent to observe that there is no legal enablement to promote or enhance women’s participation in politics beyond a policy framework as contained in the National Gender Policy. Therefore, those interested in promoting women’s participation must first work to ensure that affirmative action is entrenched by law. Today, the National Parliament in Rwanda has fifty-fifty representation with the scale tilting more in favor of women.⁶ As of 2006, South Africa’s National Assembly, which ranked thirteenth out of 183 countries in a 2005 study by the Inter-Parliamentary Union, has had 129 women in its 400-member Parliament (Open Society Foundation for South Africa 2006, 48-50). A cursory examination of other parts of Africa shows that Nigeria is indeed a laggard in terms of political development of its womenfolk. If other countries such as Eritrea, Uganda, and South Africa have a gender-responsive constitution, so can Nigeria (Citizens’

Forum for Constitutional Reform 2004, 102-107). The changing nature of politics and the new context in the globalized world require Nigeria to engender its political agenda and deconstruct the deeply rooted patriarchal norms and patterns of social behavior that marginalize women in power and decision-making positions.

Consequently, I recommend the following as the way forward in engendering the political arena and advancing women's participation in governance:

- The indigeneship policy and practice that hampers women's electoral and political appointment bids in Nigeria should be abolished. A "woman should have a choice in residency/state of domicile for the purposes of elections rather than having to battle with the indigeneship issue" (Citizens' Forum for Constitutional Reform 2004, 38).
- Voter registration exercises, grassroots mobilization, and civic/political education must be pursued with greater intensity to ensure full participation of women.
- Political parties should be vigorously engaged to rearticulate female concerns and promote gender-equality principles in their manifestos and constitutions through concrete actions.
- Women who want to run and win elections must understand and follow through the electioneering stages and the process of seeking an elective position (Women Aid Collective 2006). I believe that the 5Cs toward increasing women's participation are: consciousness raising, capacity building, campaign/electioneering assistance, communication, and coalition for change.
- Women's groups and female politicians and candidates should work to ensure that incidents in which women were actively discriminated against in the 2007 elections do not repeat themselves.
- The federal character principle enshrined in section 14 (3) of the 1999 constitution intended for power sharing and resource balance in Nigeria along ethnic lines should be amended to include gender as one of the indices for redressing imbalance in the polity. The weakness of the federal character principle is that it only recognizes sectional interests in terms of ethnicity; there is no recognition of the disparities of gender. Thus, it only succeeds in marginalizing women further because, within the current framework constructed around ethnicity, a female candidate would have to emerge from her ethnic group.
- Mechanisms must be put in place and rigorously monitored for realization of the 35 percent affirmative action. Gender-focused organizations must work with stakeholders to map out modalities for effective engagement of women in democratic governance.
- Increasing women's representation should be tied to credible election, which is why I advocate that women form strategic alliances with youths and others who have been marginalized in the scheme of politics as well as sympathetic men and political organizations.
- Finally, I make a bold statement and submit that although the forecast is not very bright for a significant increase in women's representation and the realization of 35 percent affirmative action, the opportunities are there nevertheless to be tapped for at least a 100-to-200 percent increase in the current status of elected females in Nigeria. I am looking already beyond 2011 to 2015, which I think will be the dawn for women in politics. Of course, that does not in any way suggest

that we should wait and watch, because for that to be, all those interested in women's participation must not rest on their laurels from now onward. A proper legal framework whether by legislation or subsequent amendment of the constitution is indeed required for women to get to where they want and deserve to be in both elective and appointive position.

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ENDNOTES

¹ In Nigeria, the Second Republic started with the elections of 1979 and was terminated in December 1983 when the military struck again under Generals Muhammadu Buhari and Tunde Idiagbon.

² "Indigeneship," derived from the word indigene, is used often to exclude people from political office. In Nigeria, if you run in a locality where you do not have traditional roots, you may not be able to contest and win an election. This is a particular hardship on women because if a woman marries a man outside of her state of origin, it is difficult for

the woman to run because she is not seen as an indigene. If she goes back to her state of origin, it is difficult to run or win an election because she has been married off, which puts her in a position of not only having been away from her state of origin but also being subject to deep-seated cultural attitudes that once a woman is married, she should follow the husband and take his domicile, no longer being able to benefit from her father's home or her birthplace.

³ Nigeria is unconstitutionally divided into six geopolitical zones (North Central, North East, North West, South East, South-South, and South West), which are used for the purposes of power allocation—who gets what especially at the federal level in both elective and appointive positions. Major political parties zone offices such as presidency of the country, parliament, and party leadership according to geopolitical zones, and this contributes in further marginalizing women in power as they are usually not considered for these major offices shared on the basis of zoning. Nowadays, the zoning phenomenon has permeated all of the contested positions not just at the federal but also at state and local government levels. Consequently, politicians would often decide on whether to run for an election based on the zoning formula.

⁴ Women are often used by political parties in campaigns as singers, clappers (cheer ladies), and dancers—in short, for entertainment and food sharing. In effect, as they perform that role they have failed to see how they have become instrumental to their relegation at the party level.

⁵ The nomenclature varies according to political parties and their manifestos.

⁶ This was made possible through constitutional reform entrenched in the Constitution of Rwanda that recognized affirmative action to enhance women's political participation. Today, this African country ranks amongst the world's best examples of a gendered parliament alongside some Nordic countries of Europe.

The Paradox of Double Effect: How Feminism Can Save the Immunity Principle

by Laura Sjoberg

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ABSTRACT:

This article argues that the idea of civilian immunity in war, particularly as it relies on just war theorizing's principle of double effect, is ineffective and gender-biased and that the two are intrinsically interlinked. It begins by introducing some traditional interpretations of the non-combatant immunity principle and discusses the principle's failures, both in practice and in its theoretical construction. The article presents evidence that the principle of double effect is internally

contradictory and that this contradiction contributes to the impossibility of enforcing the immunity principle as frequently formulated. The article then introduces a principle that could arguably solve the contradictions within the immunity principle specifically and just war theories more generally: empathetic war fighting. Empathetic war fighting, derived from feminist just war theorizing, focuses on responsibility and people's security, particularly at the margins of global politics. The article concludes by discussing the possibilities for a new immunity principle based on empathetic war fighting.

TEXT:

In 2002, when now retired U.S. General Tommy Franks said of the first Gulf War in Iraq "we don't do body counts" a number of activists expressed shock and horror at what appeared to be callousness about the civilian impacts of military conflict, particularly when those civilians are viewed as foreigners or even potential enemies. There is substantial evidence to support the argument that, despite the increasing technological capabilities to provide militaries with precise—or even smart—weapons, civilian casualties have been on the rise in recent conflicts both in absolute terms and relative to military deaths (Ford 2003). Many policy makers, activists, and academics have expressed concern about this trend and have been interested in why and how war continues to impact the world's most vulnerable populations.

The just war tradition, which is a tradition of political thought on the ethics of war, offers the noncombatant immunity principle to deal with the ethical treatment of civilians in war. This principle instructs that belligerent militaries are not

to target civilians and that they are to attempt to minimize accidental civilian casualties. If in theory the noncombatant immunity principle is meant to protect civilians from the horrors of war, in practice it falls short of that goal. A number of just war theorists observe that, while protecting innocent civilians in a time of war is a nice idea, it is either outdated or fundamentally impracticable (Greenwood 1993). The immunity principle is often ignored or directly violated in war (Bruderlein 2001), and the principle of double effect, designed to deal with the immunity principle's moral complications, often falls short as well. A critical look at the immunity principle shows that it is in need of radical reformulation if it is to serve as an effective ethical guideline for war-fighting decisions. I propose to turn the immunity principle on its head, focusing not on innocence but on responsibility; not on civilian death but on civilians' security.

I begin by introducing some traditional interpretations of the noncombatant immunity principle. I discuss the failure of the immunity principle to protect civilians from the effects of twenty-first century warfare. I then introduce the argument that the increasing technological sophistication of the weapons of war could save the immunity principle but show that the promise of technology is a false one. I criticize the conceptual foundations of the immunity principle. I also discuss the paradox of the principle of double effect and the doubt that it casts on the viability of just war theorizing more generally. I then introduce a principle that I argue can solve the contradictions within the immunity principle specifically and just war theories more generally: empathetic war fighting. Empathetic war fighting, derived from

feminist just war theorizing, focuses on responsibility and people's security, particularly at the margins of global politics. I conclude by discussing the possibilities for a new immunity principle based on empathetic war fighting.

MEANINGS OF NONCOMBATANT AND IMMUNITY

The noncombatant immunity principle makes distinctions between those who ought to be held culpable for the wrongdoing of the enemy and those who should be understood as innocent. Militaries are ethically and legally expected to respect the immunity of those who are innocent and direct their violence toward those who are guilty or culpable. This limit on militaries' violence has two expected impacts: containing suffering and improving the likelihood that states at war are able to reconcile at the end of the conflict and find a lasting peace (Caverzasio 2001). Though most articulations of the noncombatant immunity principle distinguish between innocence and guilt, theorists have different ideas of what qualifies as innocence and what protection it merits the innocent.

Put another way, in order to know who to protect and who is a legitimate target, the noncombatant immunity principle needs to be able to distinguish between the innocent and the guilty. Making this distinction, and particularly identifying innocence, is controversial within the just war literature (Mavrodes 1975, 121). Several models are proposed in the literature. One model is based on potential: the harmless are innocent and the dangerous are guilty (Teichman 1986, 66). Another is based on behavior: guilt is determined by acting guilty and innocence established by resistance (Hartigan 1982). In this act-based model, "acting

guilty” has various interpretations, from narrow ones that limit it to making combat to broad ones that count voting for the actively guilty party (Hartigan 1982). A third model is based on participation: all who take part in the hostilities are combatants, whether they are fry cooks, fighter pilots, or workers in war-supporting industries (Kalshoven 1973, 35). A number of theorists criticize this model, however, arguing that people who work in “war-supporting” industries could just be working for a living without support or regard for the use of the product they make (Kalshoven 1973, 38-39). This model, then, risks holding a person who did not affirmatively consent to a war responsible for the actions of people who decided for him or her.

Famed just war theorist Michael Walzer characterizes consent as a key factor in deciding whether someone is innocent or guilty—noncombatant or combatant. He contends that “war is hell whenever men are forced to fight, whenever the limit of consent is breached” (Walzer 1977, 28). Particularly, Walzer is interested in the situations in which someone ends up looking like a combatant (e.g., in a uniform, with a weapon, on a battlefield) unwillingly, by coercion or by force. Walzer argues that a non-consenting “combatant” has a similar moral status to that of a civilian or innocent (Walzer 1977, 147). Walzer’s account of guilt, therefore, is similar to those utilized in many criminal proceedings, where guilt requires not only objective danger or injury but also guilty mind. Applied to just war theorizing, such an idea suggests that many, if not most, people who fight in wars are technically innocent, not guilty, because they hold the belief that they are doing right, not wrong. At the very least, identifying guilty people would

be impossible in Walzer’s conception unless the individuals’ consent to fighting in the war was clear. These many interpretations of where to draw the line between innocence and guilt for the purposes of identifying combatants and noncombatants make identifying a class of persons that the noncombatant immunity principle would consider “immune” from war difficult.

Even if there were some clear way to identify a class of persons that merits “immunity,” however, just war theorists have had trouble agreeing on what it would mean to be “immune” from a war or conflict. Walzer defines immunity in terms of positive rights, arguing that “noncombatants . . . are men and women with rights and . . . they [noncombatants] cannot be used for some military purpose, even if it is a legitimate purpose” (Walzer 1977, 137). In other words, having “immunity” is being entitled to having one’s rights not used for military means. Others see immunity as a negative right, where civilians should not be impacted by war when it can be helped. Still others see immunity as a question of degree, recognizing that wars will always impact civilians but do not always risk civilians’ lives. For example, to George Mavrodes, immunity means that civilian deaths can never morally be an intended consequence of a military action (1975, 119).

INEFFECTIVE IMMUNITIES

As the opening of this article indicates, the immunity principle receives substantial attention in debate about war tactics and decisions but is often either ignored or directly violated in wars (Downes 2008). There is also evidence that war is becoming more, not less, dangerous to civilians. Given the noncombatant

immunity principle's stated goal of not only protecting civilians but also making them immune, the contradiction between the idea that civilians are "immune" and the actual impacts of war on them is substantial. As Richard Hartigan once noted, "it is obvious that if the practice does not coincide with the theory, something is wrong: either the commitment to norms is not real or is not possible" (1982, 7).

While the ineffectiveness of protecting civilians in times of war may be a problem of growing magnitude, it is not a new problem. Civilians have never been absolutely safe from wars. Instead, historically, "some civilian casualties have always been tolerated as a consequence of military action" (Gardam 1993a, 398). Many scholars have recognized that states, convinced of the justice or urgency of their cause, often ignore just war's *in bello*, or war-fighting, rules and norms. Particularly, the idea that some civilian deaths are "militarily necessary" has become commonly accepted in contemporary military circles, where, "often, 'military necessity' means that an otherwise-applicable rule can be discarded because it would be disadvantageous to the goal of winning the war" (Yoder 1996, 27). Alex Downes (2008) has linked belligerent attacks on civilians to desperation to win the war quickly.

States fighting wars also disregard the noncombatant immunity principle in response to their opponents' real or perceived attacks on civilians. Debates about violations of noncombatant immunity often boil down to "he said, he said" sorts of debates about who attacked whose civilians first; civilians on both sides of the conflict are the losers of those debates. Frequently, a war-fighting state makes reference to its opponent's

behavior in justifying its own violations of the noncombatant immunity principle. While "belligerents have a self-interest in observing international conventions governing war conduct . . . their failure to do so would invite enemy retaliation in kind," meaning that one party's breaking the perceived rules can become a slippery slope (Regan 1996, 99).

All of these problems with the breakdown of commitments to the immunity principle assume that belligerents are actually committed to protecting civilians. While a number of political actors at least claim to hold a norm respecting the protection of civilians, an increasing number of war-fighting parties attack civilians directly in diverse contexts, locations, and conflicts. Many—though not all—acts of terrorism, for example, are aimed at persons that just war theorists would consider noncombatants (Sjoberg 2009), and genocidal campaigns often have either the explicit purpose or clear mission of destroying the civilians among competitor or enemy populations (Power 2002).

Above and beyond these concerns, many scholars wonder if states and other belligerents could follow the immunity principle in practice even if they were committed to it in theory. For example, Judith Gardam expressed concern for the meaning of giving civilians immunity from a total war, which, by definition, includes societies as wholes rather than just militaries on battlefields (1993a). Would such a total war be *prima facie* unethical, or would the problem be reduced to finding ways to distinguish between civilian and military targets with a broader definition of "military" than in traditional, battlefield-centered wars (O'Brien 1969)? Some theorists have also expressed a concern that the only effective

mechanisms for discrimination—uniforms and battlefields—have become outdated in the practice of fighting wars (Wells 1969, 827). There are those who believe precision technology is the answer to effective civilian immunity, but others are skeptical about the practical possibilities of using technology to isolate civilians.

When thinking about the practicability of the immunity principle, just war theorists have focused on particular ways of fighting wars and their inherent challenges to protecting civilians. For example, the use of airplanes to fight wars drastically reduces military casualties but introduces unique difficulties in discriminating among ground targets. Jon Gorry has called air war “technologically advanced hostage-holding,” where the captor shoots some of the hostages (2000, 182). Likewise, many strategists contend that knowing who is a combatant and who is not becomes impossible in guerilla wars, let alone with enough notice to engage in normal practices of self-defense (Vaux 1992, 137). Michael Walzer has pointed out the complications inherent in asking soldiers to risk their lives to identify civilians in wars where fighters are visually indistinguishable from civilians at a safe distance (1977). Similarly, the type of warfare that James Turner Johnson calls “ideological warfare,” where blind devotion to the cause for which a belligerent is fighting often results in blind violence toward opponents (1999), concerns just war theorists in their conception of an immunity principle. These considerations often add up to a noncombatant immunity principle that, while claiming general applicability and availability to all, provides much less practical protection.

TECHNOLOGY AND THE IMMUNITY PRINCIPLE

The idea is not that the noncombatant immunity principle is not still (at least discursively) salient in the practice of making and fighting wars. As mentioned at the beginning of this article, technological advances that improve the availability and effectiveness of precision weapons mean that militaries interested in discriminating have tools at their disposal. Many of the most productive of these advances have been in the areas of precision targeting, smart weaponry, and unmanned surveillance. Johnson has argued that now “wars can be waged while avoiding means and methods that are grossly and disproportionately destructive” (1984, 19).

While Johnson’s contention may hold true in theory, in practice, technological developments have not fully redeemed the civilian immunity principle, if they can even be said to have redeemed it at all. The first level of problems includes fairly banal ones, but they still have an impact on the effectiveness of protecting civilians. These preliminary concerns include imperfect precision (the weapons may miss); uncalculated impacts (“side effects” and second-order impacts); and human-related flaws (such as immoral targeting). Those thinking about the ethics of war have particular concern for the “side effects” argument because some precision targeting choices have longer-term effects not immediately obvious as civilian damage. For example, a “smart” bomb that blows up a power plant while minimizing or eliminating civilian casualties in the explosion still causes long-term, potentially fatal, impacts on those who depend on that power source for survival, for power to their homes, for power to their schools, for power to their

hospitals, and for power to their workplaces. Some theorists express concern that precision-targeting infrastructure has the potential to cause greater harm to civilian populations in the long term than indiscriminate bombing in the short term. Specifically, Richard Regan notes that, in an era of precision targeting, targeting civilian infrastructure has gained acceptance, which destroys social welfare (1996, 90). Targeting civilian infrastructure, therefore, is a more subtle, harder-to-see form of violating the noncombatant immunity principle that has become more commonplace.

Robert Tucker echoed these concerns when he called precision weapons “double-edged swords,” since their very existence provides an illusion of discrimination when in practice their discriminatory capacity is often either not utilized or ineffective (1985, 470). This concern foreshadows the second level of problems with precision weapons: the chance that they might inadvertently increase states’ comfort making wars. Particularly, Kenneth Vaux worries that the technology of precision warfare unintentionally makes the world a more dangerous place for civilians, since “the cleanliness of surgical attack has proved more like [messy] obstetrical care,” yet the discourse of cleanliness appears to remain an open-and-shut answer to immunity in war (1992, 28).

THE PARADOX OF THE PRINCIPLE OF DOUBLE EFFECT

Just war theorists and practitioners realize that war will hurt civilians despite the noncombatant immunity principle. In fact, the just war tradition considers the situations in which civilian deaths may be acceptable or at least unavoidable. *Jus in bello* (just war fighting) theories agree

that warring parties cannot attack civilians but disagree on the moral consequences of accidental or inadvertent harm to civilian lives and/or property. Just war theories have dealt with inadvertent or “collateral” harm to civilians using the principle of double effect, which “holds that even foreseen bad consequences are acceptable so long as they are unintended” (Smith 2002, 360; Johnson 1984, 32). The moral requirements of double effect center around the belligerent’s primary intent. A targeting decision is said to have a “double effect” if hitting that target has both a military (and therefore morally defensible) end and a morally questionable (usually civilian) side effect. The principle of double effect justifies targeting if and only if the focus of intent is the morally acceptable target. As J.E. Hare and Carey B. Joynt explain:

The principle of double effect sets to separate the intended effect of an action from the anticipated effect that may result as consequences of that action. Hence, unintended side effects are permissible even if they are foreseen, as long as the intention is good in itself and the permitted evils are not disproportionate to the intended benefits. (Hare and Joynt 1982, 6)

A war fighter seeking to be just under the principle of double effect, then, would aim at and intend to kill those identified as combatants (Wells 1969, 826). Still, as previously discussed, “the killing of non-combatants incidental to the prosecution of a necessary military operation in a justified war may also be morally acceptable” (Phillips 1985, 30). The principle of double effect tries to deal with these complexities.

One of the key moral components of the double effect principle that enables it to maintain its claim to discriminate between civilians and combatants while allowing for some civilian casualties is the requirement that the “evil” effects of a targeting decision cannot be intended even as a means to a morally good end (Regan 1996, 96). Put simply, belligerents cannot do something evil to get something good. Robert Phillips provides the idea of drilling teeth as an example of this distinction. He explains that drilling teeth for medical reasons is painful, but the pain is a collateral effect (Phillips 1985, 45). The point of drilling teeth, medically speaking, is not to cause pain, but rather to restore dental health. The pain, therefore, is not a means to the end of restoring dental health, it is purely incidental to the action required to restore that health. Therefore, drilling teeth for medical reasons passes the double effect test. On the other hand, drilling teeth as torture for the purpose of extracting information fails the double effect test (Phillips 1985, 45) because, in that case, the pain is a means to an end. Even if it were a means to a morally defensible end, drilling teeth as torture constitutes doing evil to get something good, which the principle of double effect forbids.

Still, many just war theorists have doubts about whether the principle of double effect is limiting or permissive. Some scholars express concern that, using the principle of double effect, any *in bello* choice could be justified, depending on how the choice happens to be described (Quinn 1989, 339; Predelli 2004, 19). In this situation, the moral worth of a targeting decision is reduced to semantics, leading some just war theorists to argue that the principle of double effect permits

too much. In response to these critics, Walzer formulated a stricter interpretation of the principle of double effect, which requires that the following conditions be met (1977, 153-155):

1. The act is good in itself or at least indifferent, which means, for our purposes, that it is a legitimate act of war.
2. The direct effect is morally acceptable—the destruction of military supplies, for example, or the killing of enemy soldiers.
3. The intention of the actor is good, that is, he aims narrowly at the acceptable effects, the evil effect is not one of his ends, nor is it a means to his ends, and, aware of the evil involved, he seeks to minimize it, accepting costs to himself.
4. The good effect is sufficiently good to compensate for allowing the evil effects.

The third of these four points demonstrates a shift from previous theorizing as it requires the belligerent making the targeting decision with a double effect to actively minimize the civilian damage and/or other negative effects of the strategic decision.

While Walzer’s articulation of the principle of double effect is more limiting, some concerns remain. Particularly, measuring how much a belligerent tried to minimize civilian casualties and determining how much effort is enough present challenges. Also, many military leaders are unwilling to sacrifice their soldiers to reduce the cost to the enemy’s civilians, which Walzer’s formulation would demand in some (if not many) situations. Walzer’s approach has also been criticized for leaving open the number of times a belligerent can perform actions with double effects so long as the belligerent does so by the rules laid out in the principle. Iterated double

effect actions could substantially impact civilian populations in the aggregate in ways that would not be obvious in each individual calculation. Walzer acknowledges these points of contention but believes that any problem with the implementation of the principle of double effect has practical rather than fundamental significance since the principle draws a bright line between permissible and impermissible behaviors. In spite of these counterarguments, whether these concerns regarding the impacts of iterated actions and practical effects fundamentally weaken Walzer's formulation remains debatable.

John Howard Yoder highlights further fundamental concerns with the double effect principle. Yoder sees the double effect as a dangerous precedent because the logic can defend just war theories just as it can defend breaking the rules of just war (1996). Judging a decision to go to war using the logic of the double effect principle, therefore, suggests a possible contradiction. Even more critically, the principle of double effect may negate the possibility of a just war. While fighting a war with a morally acceptable intent by Walzer's standards—where the good outweighs the evil—remains possible, it is the idea in the principle of double effect that evil cannot serve as a means to good that gives pause. As I have argued elsewhere, applying this criterion to the whole war would mean that “the evil (war) cannot be used as a means to the good (the just cause)” (Sjoberg 2006a, 92). This internal contradiction weakens not only the noncombatant immunity principle but also the moral foundations of just war theorizing.

IS JUST WAR A PARADOX?

This paradoxical foundation of just war on the permissive principle of double effect calls into question the credibility of the just war tradition more generally. If “evil” (war) cannot serve as a means to good, then war cannot be used to increase the justice of the international political environment. If war cannot be used for good, then just war is an inherently contradictory concept. This chain of reasoning, however, is unnecessary; the idea of justice in war is not flawed, but rather the flaw is in the construction of an immunity principle on the basis of double effect.

Most people who think about ethics in warfare would agree that there are alternatives in global politics that are less morally acceptable than fighting a just war. For example, the Holocaust was less morally acceptable than fighting a just war to end it. In this example, evil is relative, not absolute. Certainly, war is evil, but a just war against the Holocaust is not as evil as the Holocaust itself. A lesser evil can therefore be used to defeat a greater evil.

The double effect principle fails to recognize that we live in a world where we more often must choose between relative evils than between absolute good and evil. The double effect principle further fails to realize that, often, lesser evils remain the only means of combating evil at all.

Just war, then, is not a paradox; the reality of global politics dictates that evil must serve as a means to prevent greater evil or produce good. So long as the evil does not overshadow the good, most human moral schemas permit the use of that evil even as a means to good ends. While just war theory recognizes this fact, the double effect principle does not.

Acknowledging the use of evil as a (sometimes) necessary means to achieving some desirable moral end does not mean surrendering all control of the means of warfare, however. Rather, recognizing this reality requires that *in bello* principles not be based on an internally contradictory logic. Instead of a more permissive immunity principle, therefore, I seek to formulate an immunity principle with more solid moral foundations that translate into more certain enforceability. In the following sections, I review some of the fundamental problems with the immunity principle and propose a new schema for the moral consideration of *in bello* targeting based in feminist theorizing, which I argue corrects both the morally contradictory and practically counterproductive results of the current immunity principle.

ADDRESSING PROBLEMS WITH THE IMMUNITY PRINCIPLE

The previous sections indicated several problems and shortcomings with the current formulation of the immunity principle that my work will address. First, the current immunity principle incorporates an inaccurate combatant/civilian dichotomy. As I mentioned above, multiple different interpretations exist concerning who counts as a civilian and who counts as a combatant. This diversity of interpretations ultimately relates to the fact that the term “combatant” distinguishes negatively; it refers to people who are not (or do not look like) soldiers rather than being a term with clear meaning and characteristics. As a result, the civilian/combatant dichotomy lacks representativeness and rejects complexity, contingency, interdependence, and political choice as criteria determining whom to hold liable for the war or the political reason for fighting. This unre-

presentativeness means that the noncombatant immunity principle often does not accomplish its most fundamental task of distinguishing between the innocent and the guilty for targeting purposes. As a result, noncombatants often suffer during wars, and “the principle of double effect allows for the (near-complete) side-stepping of the promise of limited damage to those not culpable for the war” (Sjoberg 2006a, 100).

If the combatant/civilian dichotomy in the noncombatant immunity principle requires reformulation, so does the use of the concept of “immunity,” which serves as the second major concern to address. As previously mentioned, understanding what it would mean to be “immune” from a war presents difficulties, particularly in total war. The word “immunity” in the noncombatant immunity principle, however, is in some sense even more fundamentally problematic because no just war theorizing actually guarantees civilians will be immune from, or not impacted by, the fighting of wars. Instead, the double effect principle usually reigns, and civilian “collateral damage” is limited but tolerated. Infrastructural damage, economic destruction, and destruction of trade routes for essential supplies can be perpetrated while still touting the principle of noncombatant immunity because these activities do not directly target (or directly kill) civilians. Still, these attacks do substantial damage to peoples’ lives and thus merit being weighed in calculations of the justice or injustice of a target since the extensive humanitarian impacts of most wars mean that being immune is impossible.

The third problem that needs to be addressed regarding the immunity principle is its relationship with gender subordination (Sjoberg 2008). The

immunity principle produces and reflects a particular account of men's and women's roles in war that subordinates both in different ways on the basis of gender. The role women play in just war stories about immunity is that of the "beautiful soul," who is the reason men fight wars while being personally both innocent of the specific war and withdrawn from war generally by virtue of being peaceful, defenseless, and apolitical (Elshtain 1987; Elshtain 1991; Sjoberg 2006b). Beautiful souls, in war stories, need to be protected by heroic men, even when it is heroic men's actions that are endangering them (Elshtain 1991). Women's innocence, therefore, is at once the reason to fight the war and the war's first casualty. The dichotomy of "innocent/guilty" echoes many other gendered dichotomies in global politics; terming civilian protection as "immunity" abstracts gendered violence. These critiques demonstrate that the problem is not the implementation of the immunity principle but its very foundational structure. In the next section, I explain what gender has to do with the immunity principle.

WHAT'S GENDER GOT TO DO WITH IT?

Yoder argues that we could identify just war theory by what it is not: macho or male-validating, because just war is about morals, not male heroism (1996).

Feminists have argued, however, that gender has everything to do with our interpretations and perceptions of the immunity principle (Sjoberg 2006b). The immunity principle is not merely ineffective; its ineffectiveness is skewed by gender (Cuomo 1996, 38). Because just war theorists have rarely addressed the relationships between war and sex equality norms in states and societies, they often neglect to classify the sex-spe-

cific impacts of war (e.g., rape) in their moral schema. The immunity principle often does not even imagine immunity from strain on family dynamics, women's loss of economic opportunities outside of the home, increases in domestic violence frequently associated with wars, or other potential long-term health and safety effects of war on women's lives.

While many just war theorists see war as having a defined starting point and a defined ending point, many women's experiences of war start before the first shot is fired and do not end until long after the "peace" has been made, if at all. As a result, the immunity principle cannot account for many issues related to everyday life. For example, it:

... has no means to account for the suffering of a family that ate contaminated food during a food shortage in a war, went to a hospital lacking electricity and doctors, and had chronic stomach problems for the next twenty years ... will not count a woman whose malnourishment in a time of conflict deprived her breast-milk of nourishment to feed her child, leaving the child chronically developmentally disabled. ... has no way to analyze the impact of a war on a man who took the train to a job forty miles from home until the war destroyed the train. (Sjoberg 2006a, 52)

Importantly, these examples present the case that the noncombatant immunity principle is isolated from many of the impacts that war and conflict have on everyday life, particularly at the margins of warring states. These impacts are often gender-differentiated, and the just war tradition often neglects the impacts of wars on women. While some scholars would separate the noncombatant

immunity principle's more general failures from its gender bias, I have argued that the gendering of the immunity principle is intrinsically tied to its conceptual and practical problems (Sjoberg 2006a).

This is where feminists' insights are crucial. In the simplest framing, feminist scholarship looks for the effects of certain political situations on women. As Betty Reardon explains, "feminism is the belief that women are of equal social and human value with men, and that the differences between men and women, whether biologically based or culturally derived, do not and should not constitute grounds for discrimination against women" (1996, 20). In this conception, feminism is a political theory and a political movement interested in ending the subordination of women to men in the theory and practice of local and global, social and political life (Ruddick 1995, 234; Chodorow 1995). As feminists look for the effects of war on women, they find that women and others at the political margins are disproportionately affected by the horrors of war.

When feminists find women at the margins of war, they observe structural violence impacting women's abilities to provide their families with shelter, nutrition, health care, and stability. It is not only women, however, who suffer at the hands of the structural violence of war; rather, the entire society is affected by the war fighting. Feminists, then, are able to observe that weapons and military strength impact security just as power outages, structural violence, food shortages, militarism, and human rights violations do (Steans 1998). As such, people are more secure when they are not subjected to unemployment, dangerous working conditions, debt, poverty, or

family violence (Tickner 2001). Feminists see that women can be insecure even when states are secure, and they broaden their understanding of security accordingly. Feminist security is seen through the eyes of people whose lives are affected by insecurity, theorized at the individual level, and linked to emancipation for the marginalized (Tickner 2001). While theorists from a number of different perspectives share broad interpretations of security, feminist perspectives produce unique insights starting from women's lives to understand that violence toward civilians occurs in a number of actions that the noncombatant immunity principle does not consider. Gendered lenses, then, see war differently than many of the traditional inspirations for just war theories.

"Lenses serve as filters; choosing, sorting, and ordering what a person sees and understands" (Peterson and Runyan 1998, 1). Just war theorists use a variety of different lenses, including Catholicism, various Protestant doctrines, other non-Western religions, ancient philosophy, different political affiliations, or more than one of those lenses at once (Yoder 1996). This diversity of lenses, however, can cloud just war's moral coherence and practical effectiveness. I argue that a feminist frame for evaluating the immunity principle provides new insight into protecting real people from real wars. A feminist frame for the immunity principle would prioritize people's security, women's needs, and individual suffering. A feminist reformulation of the ethics of targeting—which I formulate as empathetic war fighting—goes a long way toward fixing the conceptual and practical problems of the immunity principle outlined above.

EMPATHETIC WAR FIGHTING: A NEW IMMUNITY PRINCIPLE?

The feminist moral concerns highlighting gender subordination and political marginality as outlined above suggest directions for a new foundation or “motivating morality” to address questions of immunity and war (Sjoberg 2006a). This motivating morality centers around a reformulated understanding of security, or a security ethic, focusing on the security of individuals and communities.

While most security ethics employed in international politics are conflictual in nature, concentrating on relative gains and state security, feminists have criticized conflict-based politics, arguing that constant political competition causes substantial harm at the margins of social and political life. Therefore, a feminist security ethic moves away from centering political behavior on conflict and competition.

To achieve this shift in focus, I have previously presented empathetic cooperation as an alternative security ethic that emphasizes feminist considerations (Sjoberg 2006a). In this context, empathy encompasses hearing others’ stories, entering into the spirit of something and appreciating it fully, and being transformed by that appreciation of others’ experiences (Sylvester 1994, 96; Bystydzienski 1992). Empathy is neither about duplicating others’ experiences or feeling sorry for the bad things others have gone through. Instead, empathy involves emotionally identifying with others’ pain. Feminism as a political movement embodies this empathy in practice. While gender subordination is globally prevalent, it manifests in many different ways. When women come together to form feminist movements,

each woman does not experience the subordination others have endured, but instead hears of it, talks about it, and identifies with the experience. Women in the feminist movement, then, can find common ground to understand gender subordination individually and collectively.

In these terms, solidarity is an important part of a project of empathetic cooperation, where empathy inspires supportive interaction in an interdependent world (Ruddick 1995, 239; Sylvester 2002; Arendt 1970). Christine Sylvester explains:

To be empathetically cooperative is to become relationally rather than reactively autonomous with those we have defined as unmistakably other, with those who are not inside “our” community, our value system. . . . One does not take up permanent domicile in the other when one has empathy; one does not universalize her experience as something “I” can know absolutely, thus cannibalizing her. Rather, one appreciates the similarities that are echoes of one’s independent experience. . . . Empathy enables respectful negotiations with contentious others because we can recognize involuntary similarities across difference as well as differences that mark independent identity. There is no arrogance of uniqueness. Precious little committed defensiveness. (Sylvester 2002, 119-120)

Crucial to these ideas are feminists’ understandings of human connectedness, which come from observations of the relationally autonomous, connected, and interdependent ways that women often navigate the world. Particularly, feminists have recognized that collective action,

communication, and cooperation are ways to exercise power even at the margins of global politics (Allen 1998).

Empathetic cooperation could be the missing link to connect the immunity principle and the everyday experiences of real people in war and conflict. While the immunity principle often talks about states, weapons, and strategies in a depersonalized way, feminists prioritize including how people are affected by war individually and collectively in the moral calculus justifying war generally and particular strategic choices specifically. Feminist writer Robin Schott once characterized the immunity principle as gendered both in its content and in its logic, arguing that its construction means that “concerns and feelings that express emotional awareness of human reality behind the sanitized abstractions of death and destruction become marked as feminine, and thus are difficult both to speak and hear” (1996, 24).

In other words, the emotional (Sjoberg 2006a) and sensory (Sylvester 2010) experiences of war are omitted from how the noncombatant immunity principle is traditionally constructed and from the protections and immunities it purports to guarantee. Feminist work has drawn attention to human suffering as a result of war, the physical and emotional dimensions of that suffering, and the fact that it is real people who feel the pain calculated in war rooms and debated in policy circles.

An empathetic approach to the ethics of war moves away from the combativeness of many foundational moralities in just war theory and focuses on persons’ intersubjective links. As a motivating morality for a feminist reformulation of the ethics of targeting, empathetic

cooperation provides a focus on real people’s physical and social/emotional lives. Empathetic war fighting, then, as a feminist reformulation of the noncombatant immunity principle, might propose that in the conduct of war, belligerents must attempt to understand the composition and political commitments of the people in the opposing society. They must evaluate these commitments with an eye toward an empathetic understanding of opposing positions. Given such an understanding, choice of targets should rely on a responsibility-for approach (Sjoberg 2006a, 102).

Empathetic war fighting thus employs a “responsibility-for” approach to help determine appropriate targeting strategies (Steans 1998). The responsibility-for approach asks who will be affected, and how, by any war-making or war-fighting decision. Such an articulation of the noncombatant immunity principle would assign belligerents culpability not only for intent but also for reasonably foreseeable results of their war-fighting tactics. In other words, “the immunity principle asks who the party intends to shoot at; empathetic war-fighting asks who the party might hit” (Sjoberg 2006a, 103). While this distinction might not sound particularly important, it might make the difference between the immunity principle as a permissive force or a restrictive force in war-fighting. The principle of double effect does not disapprove of war-fighting tactics known to or predicted to affect civilians, so long as the civilians are not the intended target and the “good” effects outweigh the “bad” effects. The responsibility-for principle is inspired by care for people, and people die when civilians are hit in war—regardless of intent.

This approach deconstructs the artificial barrier between intent and foreseeable consequences that the principle of double effect installs in noncombatant immunity theory and practice. In this reformulation, if a targeting decision led a belligerent to win a particular spoil of war but also cut off the water supply to a civilian village in the process, both effects (rather than just the military one) would need to be considered primary, and the belligerent would be expected to accept moral accountability for both of the impacts of its target choice.

This empathetic approach would also have implications for the moral treatment of mistakes and misses in targeting. It is true now, has always been true, and will always be true that belligerents will, sometimes, miss their targets when they try to execute military strategies. This is not a case of immoral targeting but mistake—where the belligerent meant to hit a legitimate target and failed by technical glitch, missed calculation, or human error. When belligerents fail to hit their targets, there is often civilian “collateral” damage. Still, some collateral damage is unavoidable, and the noncombatant immunity principle is about limiting, rather than eliminating, civilian deaths.

But people still die when warriors miss their targets, even when they do not mean to miss. A feminist ethic of targeting acknowledges that mistakes are not targeting per se, but that they also cannot be left out of the ethical calculus. These mistakes are a part of war and should be weighed in the moral balancing about the pros and cons not only of particular strategic or tactical choices, but also of making wars initially. Policy makers should use the knowledge that “innocent” people will die in wars to consider the

overall moral and practical advantages and disadvantages of going to war in the first place.

In this way, empathetic war fighting reverses the logic of noncombatant immunity. The noncombatant immunity principle suggests that, when possible, a war should be fought against the people responsible for the war-fighting party’s grievance, or an idea known as just cause. Empathetic war fighting argues that a party needs to have grievance against all those who the war will affect in order to choose to fight a war. In this logic, ethical war fighting is not about trying to miss innocent people, but rather about considering potential distinctions between who a war is against and who will feel the impacts of the war most dramatically. Civilians’ lives, however they are defined, should enter the calculus not only regarding how to fight a war, but also in if it is appropriate to go to war. To meet the criteria of empathetic war fighting, belligerents must have a just cause against those whose security is impacted by the fighting of the war. Culpability for targeting mistakes, then, is a part of choosing to go to war. The effects that the principle of double effect sees as second-order (civilian, unintended consequences) would be the key ethical considerations of *in bello* targeting choices, with special attention to those generally marginalized in military discussions specifically and global politics generally. Instead of strategic competition inspiring belligerents to get ever closer to making unethical choices about targets, human empathy should inspire belligerents to avoid risking unnecessary civilian casualties.

A feminist ethic of war fighting moves away from abstracting human suffering in war, therefore, and toward assigning culpability for all of the effects of war

fighting—immediate or long-term, traditionally considered or invisible. Empathetic war fighting pays attention to the impacts of war decision making on real people's lives. An empathetic ethic makes a special effort to take note of those impacts of war least likely to be recognized in traditional just war evaluations. These impacts include the health effects on the state's poorest citizens, effects on family structure, problems with literacy, reactive gender conservatism, and the like. Empathetic war fighting abandons gender essentialism but pays attention to the real gendered impacts of war fighting. It also does not perpetuate the illusion that people formally uninvolved in a conflict could hope to escape the effects of the war. As such, "empathetic war-fighting is a more realistic, more responsible, and less gendered way to answer just war questions about the morality of targeting" (Sjoberg 2006a, 104).

EMPATHETIC WAR FIGHTING AND PEOPLE'S SECURITY

Current formulations of the immunity principle provide civilians' lives inadequate protection from the harmful effects of war, both in the case of the immediate harm of collateral damage and in the inevitable long-term suffering from infrastructural damage. War threatens people's immediate security. Should civilians survive the war, they often are greeted with long-term threats to their health, economic well-being, education, environment, and stability. Feminist interest in political marginality sheds light on these threats to people's security.

People's security is a priority for a feminist reformulation of an immunity principle that has proven woefully inadequate to deal with the damages that

structural and physical violence inflict on social and political life in war-torn areas. Empathetic cooperation offers a new standard, based on care and human security, that may offer societies involved in war true protection by turning the immunity principle on its head. Empathetic war fighting, instead of minimizing civilian damage in each targeting decision, considers the civilian damage that will be incurred in the question of whether to pursue a war. Empathetic war fighting focuses not on who is innocent, but on the question of whether the people who will be affected by the physical and structural violence of war are those who the war is against.

Empathetic war fighting could revitalize *jus in bello* as an ethical instruction for decisions about going to and fighting in war. While empathetic war fighting cannot save the tens of thousands of civilians who have already died, despite their "immunity" from twenty-first century wars, it can provide a new way of looking at and thinking about war-making and targeting decisions that focuses on the security and welfare of individual lives. A focus on people's security will strengthen the efficacy of just war, increase its relevance to modern warfare, and decrease its insidious abstraction and gender bias.

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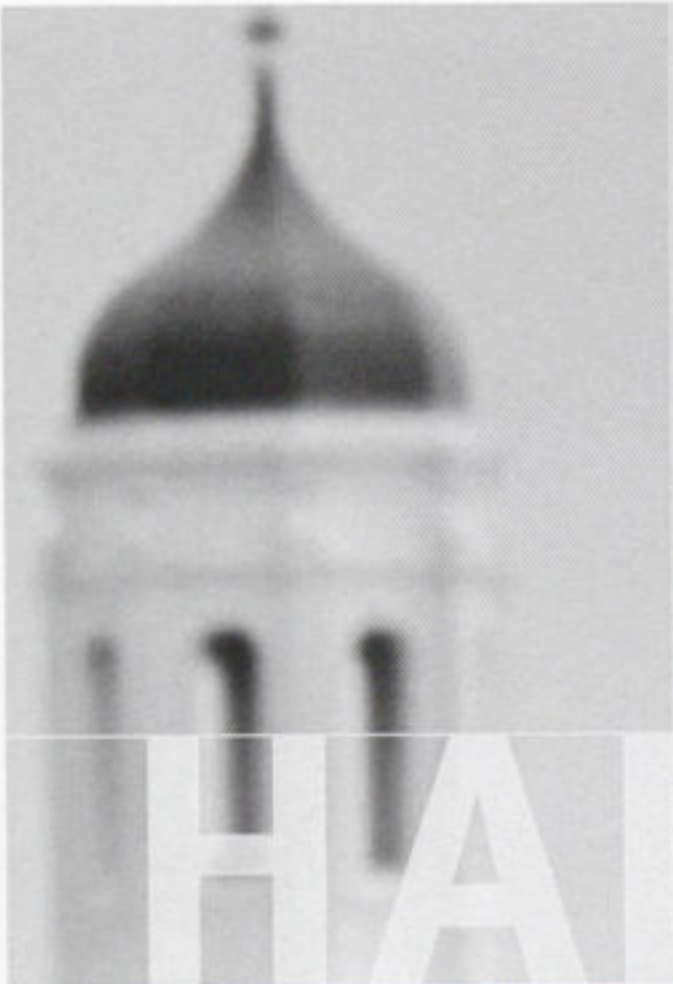
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Securing Women: Peace, War, and Human Trafficking: An Interview with Laura Sjoberg and Jessica Peet

Interviewed by Zan Larsen

Laura Sjoberg is Assistant Professor of Political Science at the University of Florida, and Jessica Peet is a Ph.D. candidate in political science at the University of Florida.

Zan Larsen, a 2012 Master in Public Policy candidate at the John F. Kennedy School of Government at Harvard University, interviewed Laura Sjoberg and Jessica Peet via an online phone call on January 10, 2011.

WPJ

Can you give an overview of your research, particularly the piece Laura has written for this volume of the *Women's Policy Journal*?

PEET

This particular piece engages the civilian victimization debate. There have been several theories put forth as to why civilian victimization happens, and all of those disregard gender or don't take gender into account. So, we engaged the debate arguing that you can't understand civilian victimization without understanding the gendered justificatory logics of war—basically that ideas of masculinity and femininity and performing masculinity are what legitimate war. We argue that when belligerents or when states

are victimizing civilians they are actually aiming at women or at the feminine—that which is to be protected and therefore that which is to be fought for. We use a combination of statistical and case study analysis to support our argument.

WPJ

How did you pick the conflicts to use in your study, and are these representative of conflicts in general?

PEET

First, we wanted to have a variety, so we didn't want to focus on one region, on one specific type of conflict, on one specific country. We wanted to create a variety to see where this theory would apply and where it wouldn't. As to the second question, we do feel that actually the cases that we have chosen are an accurate representation. Part of this project involves statistical modeling, and our theories hold true across all the different types of conflict in the data set that we use that was actually collected by somebody else. So, even not using our particular variables, these theories and models still held true.

SJOBERG

The database that we used contains some 300 cases and is the one usually used in analysis of civilian victimization, and what we did was code additional variables that are about gender to see how they hold and add intrastate war cases. It was important to expand our study to include intrastate wars, because most literature only focuses on interstate wars. We wanted to make it very clear that the same logic plays in both types of war.

WPJ

Could you further clarify on the extra variables you coded for gender?

SJOBERG

The first variable is the level of sexual violence in wars; so our argument is that wars with intentional civilian victimization will have higher levels of sexual violence because intentional civilian victimization is targeted at women, and that holds to be highly significant. In fact, it is one of the largest explanatory variables of different and varying civilian victimization. The second variable was a little bit more complicated . . . the variable is the gender ratio of civilian deaths, but it turns out that no one really keeps record of civilian deaths during war, much less do they disaggregate by gender. We ended up finding gender disaggregated population data and took the second derivative (the change in the change) of the gender ratios of those populations. So what we got is what we think is a pretty good estimate of the relationship between male civilian and female civilian deaths in these wars. It turns out that female deaths are significantly higher in wars with intentional civilian victimization than without.

WPJ

What opinion do you have of the direction policy is taking on gender and conflict both in the United States and internationally? It seems to have become a major focus of many international organizations, specifically with the United Nations signaling the importance of this issue with the passage of UN Security Council Resolutions 1325 and 1820. Do you think progress is being

made and what else would you like to see happen?

SJOBERG

Gender and security is a very odd thing because it is, at least in theory, a priority for most security organizations. In the UN, NATO, EU, ASEAN [Association of Southeast Asian Nations], etc., there are gender mainstreaming resolutions; that is radically different than it was fifteen years ago. Those gender mainstreaming resolutions at least, in theory, again, aren't just "add the women"; they actually talk about thinking about gender and policy. That said, sometimes, it goes terribly badly. There continues to be an assumption that women have different needs than men and that women have women's traditional needs and therefore a woman with an automatic weapon definitely wants to get back in the kitchen, which turns out not to be true with most women with automatic weapons. So, in some sense, a lot of gender mainstreaming programs, in practice, maintain fairly stereotypical notions of gender. I think that is obvious in 1325; it says "because women are good at peace and security you need to include women in peace." Which is a somewhat instrumentalist understanding and it's also ignoring the fact that women aren't particularly better at peace and security. Certainly feminine values are better at peace and security than masculine values but those just don't match up one-to-one on women.

PEET

I would agree. I think it says something that it's being discussed; this is good, it's creating a dialogue on it, but does that really mean progress?

SJOBERG

To what extent do formal equality rules hide informal inequalities?

WPJ

Margot Wallstrom, the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, has said on multiple occasions that ending sexual violence is not a women's issue, it is a peace and security issue. How would you interpret this idea?

PEET

To say this is not a women's issue, it's a peace and security issue creates a dichotomy. It is setting up peace and security versus women's issues. When you think about how gender really constitutes international politics in the international system, if peace and security isn't a gender issue, what is it? And if gender isn't a peace and security issue, what is it? And I think as long as these dichotomies remain, we're not really going to be able to address either of them as completely or as well as they should be.

WPJ

What do you think should be the U.S. foreign policy in regard to including gender as a consideration?

SJOBERG

You have to choose your own ending to form the debate. The thing is that U.S. foreign policy would have to be redesigned from the ground up. So, I think in some sense, for what purpose you are thinking about it matters for what you'd do. So, to me it's a little bit easier to say "what would a feminist perspective on Iran/U.S. relations in 2011 be?" I don't think that's by any stretch of the imagination an easy question or one to which there is a single answer, but I do think

that it makes it a little more manageable. An important other part of the answer is what would feminists not do with U.S. foreign policy. I think former President George W. Bush justified the war in Afghanistan and Iraq with women's rights. That's bad feminist policy. . . . That's bad for women, and it's bad for diplomacy. In some sense, part of it is what would you do to change the instrumental uses of feminism that actually hurt both people and feminism?

WPJ

What, if any, role do you see for women in sustainable development as a means to reduce risk of future conflict?

PEET

I think you cannot leave women out of any development effort at all, they constitute a little more than half the world's population; to leave them out is to guarantee failure. If women aren't involved, there are large factors being overlooked, social relations, contacts, the environment, etc., that would be ignored.

SJOBERG

A good way to look at it might be about gendered experiences, of globalization, and of tourism, of migration, etc. In some sense, those gendered experiences make you positioned differently in the world on the basis of your perceived gender/perceived sex, whatever. Those different positions give you different knowledge about how stuff works, different understandings of the problems, and one of the things that [philosopher of feminist and postcolonial theory, author, and professor] Sandra Harding's work really emphasizes and that I really like is that it doesn't take just one of those knowledges to fix the problem—it takes all of them. You need more than just my objectivity as

whatever position in the world I am, you need a dialogue between what everyone experiences in a particular phenomenon and then you need to know those things to even understand what problem there is to fix, much less how to fix it. In some sense, I think that a great majority of gendered experiences are generally left out of policy making. I think what would be best for sustainable development practices is to take into account more than one, two, or five gendered experiences of poverty and globalization.

WPJ

To see some of these changes, do you think it is necessary to have more female elected officials?

PEET

I always think it's good if we can get more female elected officials, if there is wider representation of women, of females. Will that automatically translate into better gender policies on security? That I have my doubts about. Even when women are elected into office, it is often not because of their feminine traits, it's because of their masculine traits. They are assertive, they are leaders—not saying that you cannot be a leader and assertive and not be gender sensitive; I think that's very possible. I just think that the culture that's created around these institutions lessens that.

SJOBERG

The question of what happens when women get in office is an interesting one, cause right now women are 19 percent of the world's parliamentarians, and most (countries) actually fall right around that norm. So, most of those women legislators, empirical test-wise, aren't particularly better at gender issues than male legislators. In fact, most of them are a

little bit worse, statistically speaking. That's because they think you need to be more of a man, display more masculinity, to get elected as a woman. I think it's important to vote for and support women. I think it's important to be gender sensitive. Those two goals are certainly related, although I don't think they are as related as we might hope they are.

WPJ

Jessica, apart from your research with Laura, you also research human trafficking. Could you talk about how you feel the two topics are related?

PEET

First, going back to what was discussed earlier, when we think of security, it's from a state security perspective; this is often true of how we talk about human trafficking. Whereas when we look at it from a gender perspective, [we ask] how is the individual impacted, [such as] whether [it's] from a trafficking experience or a conflict experience. Also, another way is that both demonstrate that gender constitutes these things, conflict is constituted through these gender tropes, just like trafficking itself is constituted through gender; the very category of trafficking victim is often gendered as feminine. Even as the U.S. State Department estimates that 80 percent of victims are female, there are still men, and these tend to fall away; even when they are recognized they are often feminized. I think especially in policy and the media how trafficking victims or conflict victims are portrayed often takes away their agency.

WPJ

What, in your opinion, drives strong policy accompanied by effective enforcement on gender-related issues such as trafficking?

PEET

What I think is that one of the things that often policy tends to be based on is narratives, on these few stories that are told about trafficking, for example.

One story [might be] that there was a kidnapped woman, smuggled against her will across a border; she is now enslaved in a house being forced to service men and has no freedom—and that's what a trafficking victim is. So, then, when you have police come into a house and maybe this woman wasn't kidnapped, maybe she willingly crossed the border; she migrated searching for work and happened to find herself in a situation where her passport was taken away and then she was forced to work without being paid. Because that story doesn't fit the policy model it's not always prosecuted as a trafficking case. I think strong policy needs to take in the lived experiences of all individuals who go through these experiences.

When you have the gap between policy and implementation it's often because of one dominant narrative and also just a lack of education on the part of legal enforcement.

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The Failure of Policies Supporting Gender Mainstreaming in Post-Conflict Peacebuilding

by Onyido Onyinyechukwu

Onyido Onyinyechukwu is an Assistant Lecturer/Research Fellow with the Centre for Ethnic and Conflict Studies at the University of Port Harcourt and a Ph.D. candidate in peace and conflict studies at the University of Ibadan researching coping mechanisms of women in post-conflict societies in Africa.

WOMEN AND ARMED CONFLICT

Armed conflicts affect women and men differently. The needs and experiences of women are distinct from those of men in pre-conflict, conflict, and post-conflict settings, and these distinctions produce differing gender roles (Sorensen 1998; Naraghi-Anderlini 2001). Women are particularly affected because of their social status. Rape and sexual abuse are increasingly becoming tools of war, especially given the central role that women play in cultural and family structures (Byrne 1996). This gender-related violence is in itself both complex and diverse, mirroring social and cultural gender constructions, with consequences on family structure and economic survival (Moser and Clark 2001).

Although men are the primary perpetrators of violence toward women and children, it is important to note that they too are subject to victimization and violence including sexual violence. Further, there is no doubt that armed conflict directly kills, injures, and harms more men than women since combatants are predominantly male and men are an obvious threat. The increasing number of household-headed women in conflict zones illustrates men's specific vulnerability (EL Jack 2002). In such situations, women often come to assume the responsibilities of family welfare and security, thus taking on traditionally male roles (Meintjes et al. 2001). For example, in Somalia, nomadic women took on the responsibilities of traveling to markets, selling livestock and milk, and purchasing consumer goods (United Nations Economic Commission for Africa 1998). A similar gender role shift was also witnessed in the United States during the Second World War.

Unfortunately these advances in gender roles for women are temporary and short-lived; they are rarely accompanied by cultural change. Once the war is over, the status quo returns. As Donna Pankhurst (2000) notes, "the challenge to gender relations often becomes too great for patriarchal societies to maintain in times of peace, and women find their historical contribution marginalized in both official and popular accounts of war, and their freedoms in peacetime restricted or removed."

PATRIARCHY, GENDER MAINSTREAMING, AND POST-CONFLICT PEACEBUILDING

Many communities in Africa are patriarchal in nature. As such, culture and tradition in most parts of Africa tend to discriminate against women. Traditional state structures did not undergo radical changes even after independence. In such societies, there is manifest male dominance to the disadvantage of women, who for instance are subject to the expropriation of their right to land. This cycle drives many women into poverty, since women in rural Africa depend on farming for a living. Women, particularly in rural Africa, continue to be plagued by entrenched cultural norms (reinforced even after conflicts) that constrain their effective and unique contribution to the peacebuilding process.

There have been many calls to include women in the sphere of peace and security. One such call is for “gender mainstreaming in post-conflict peacebuilding,” defined by the Economic and Social Council (ECOSOC) of the United Nations as “a strategy for making women’s . . . concerns and experiences an integral dimension of policies and programmes in all . . . spheres. . . . The ultimate goal is to achieve gender equality” (United Nations 1997).

Gender mainstreaming involves ensuring that gender perspectives and gender equality are central to all government activities, from policies to advocacy to implementation. Gender mainstreaming means being deliberate in giving visibility and support to women’s contributions and addressing the differential impacts of strategies and programs.

Johanna Schalkwyk et al. (1996) argue that gender mainstreaming should

recognize the need not just to “add in” gender but to challenge the status quo. Gender mainstreaming must be more than merely an inclusive process; its true goal must be the *transformation* of unequal social and institutional structures into just and equal ones (International Labour Organization 2000).

Post-conflict peacebuilding is the effort to strengthen the prospects for internal and sustainable peace and prevent the recurrence and continuation of armed conflicts through a wide range of political, development, humanitarian, and human rights mechanisms. Its ultimate aim is to lay the basis for sustainable peace in a war-torn society. Reforming failed or failing state structures is a crucial element of such efforts. Structures not only refer to the system of access and distribution of resources, but also to situations and relationships of which gender relations is a part.

Unfortunately, according to the 2004 report of the United Nations Commission on the Status of Women (CSW), the number of women participating in peacebuilding remains “very small or they are conspicuously absent” (United Nations Economic and Social Council 2004).

WHY POLICIES FAIL

International humanitarian and human rights laws provide both the rationale and the international standards for incorporating gender perspectives in peacebuilding. The call for the inclusion of women in post-conflict peacebuilding has been a global consensus since the 1995 Beijing Declaration of the Fourth World Conference on Women declared that “equal access and full participation of women in power structures and their full involvement in all efforts for the preven-

tion and resolution of conflicts are essential for the maintenance and promotion of peace and security” (United Nations 1995).

This call was formalized in the United Nations Security Council Resolution 1325 on women, peace, and security, adopted in 2000, which advocates for the inclusion of women and gender issues in the structures of peacebuilding in post-conflict regions (UNIFEM 2004). The outstanding feature of Resolution 1325 is its ability to politically involve and integrate women’s contributions in numerous peace and security processes, in particular constitutional and institutional reforms. Introduced in 2003, the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa specifically states that African women must participate in all aspects of planning, formulation, and implementation of post-conflict reconstruction and rehabilitation (African Commission on Human and Peoples’ Rights 2003).

Unfortunately, in the sixteen years since the Beijing Declaration its recommendations have not translated beyond the adopting of a formal gender mainstreaming policy. The legal instruments are in place, but the implementation mechanisms still need to be developed. The range of cultural, historical, and patriarchal causes of the exclusion of women is not addressed by existing instruments. Current approaches in international development focus on women as a unit but ignore the crucial cultural relationships that exist between men and women. In African societies, this lack of understanding of these barriers constrains the effective participation of women in formal processes. The United Nations Security Council finally recognized these cultural impediments in 2009 in

Resolution 1889, adopted October 5, 2009, which asserts a deep concern with “the persistent obstacles to women’s full involvement in . . . post-conflict public life as a result of . . . cultural discrimination” (United Nations Security Council 2009).

THE WAY FORWARD

There is a strong recognition by peace practitioners that gender should be mainstreamed in post-conflict peacebuilding, but what all have failed to recognize is that most African women are constrained by the continued existence of laws and practices that discriminate against them, despite equality provisions in most domestic constitutions. The patriarchal structure of most societies and cultures is a serious impediment to gender mainstreaming in peacebuilding policy at the grassroots level. “While UN Resolution 1325 has strengthened African women’s claim to a seat at the peace table, it has not removed the political, cultural and economic obstacles to their full participation as peacemakers or citizens” (Fleishman 2003).

The success of peace processes will be influenced by the extent to which such structures of marginalization are dismantled. To do so, peacebuilders will have to:

- Examine gender relations and roles in pre-conflict African societies, since gender relations/roles in pre-conflict situations often set the stage for women and men’s options in the post-conflict stage.
- Examine the gender dimensions of conflicts in Africa since conflict is a gendered activity and women and men experience armed conflict differently.
- Critically investigate the structures of marginalization in African societies, using the identified patriarchal structures as a baseline.

• Ascertain the level of women (and men's) involvement in the peacebuilding process in Africa since in the past women and men have been involved in building peace informally in post-conflict societies. It is important to ascertain to what level women are involved and in what specific activities.

Making such efforts will represent concerted steps toward improving the level and quality of the involvement of women in peacebuilding operations as well as the level and quality of these operations' ultimate success.

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