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WOMEN’S RIGHTS
EVALUATING THE APPLICATION OF GENDER-SPECIFIC RIGHTS

Leah Schmidt

This essay examines the reasons why women’s rights are not being fully realized internationally within the context of structural issues within the international community. These structural issues include the marginalization of women’s rights within intergovernmental bodies, discrepancies in international and national law, and a lack of female participation in the conventions tasked with creating and interpreting human rights proclamations.

Women’s rights differ from the general body of human rights, which most people are familiar with. Women’s rights specifically provide protection from abuses that are more likely to occur against women. These rights provide basic protection from actions that transcend race, ethnicity and language, such as discrimination based on sex, or abuse based on a perception that women are inferior to men and hence not entitled to the same rights and privileges. Recently, women’s rights have begun to obtain greater international prominence.

Although concern for the protection and development of human rights has been on the international agenda since the Universal Declaration of Human Rights in 1948, women’s rights did not achieve global prominence until 1979 when the first Women’s Convention took place. Despite this recognition, gains in women’s rights have not been realized at the same rate as other categories of group right.

This essay will argue that women’s rights are not being fully achieved due to structural issues within the international community. These structural issues include the marginalization of women’s rights within intergovernmental bodies, discrepancies in international and national law, and a lack of female participation in the conventions tasked with creating and interpreting the proclamations of human rights. The essay will define what is meant by the term “women’s rights” and will identify and analyse the women’s rights issues within international human rights bodies. Furthermore, this essay will present a discussion on how international and domestic law
hurt the practical application of women's rights. In addition, a discussion on how the lack of female participation in the creation of human rights doctrines has contributed to the failure of practical applications for women's rights will be provided. Finally, this essay will use a case study based on marital rape in the United States to demonstrate a common violation of women rights and the lack of protection for women within the international community.

The lack of sensitivity towards women’s rights is illustrated by the manner in which the United Nations proclamations regarding human rights have been applied. The United Nations defines human rights, as “natural-born rights for every human-being universally.” The main goal of the Universal Declaration of Human Rights is to provide a common standard of achievement for all persons. The declaration states within the preamble that human rights “seek to affirm the dignity and worth of the human person including men and women.” However, throughout the declaration the use of the terms “man”, “brotherhood” and “his family” demonstrate the lack of gender sensitivity in its creation. Male centric terminology within the covenant neglects female representation within the declaration. Without gender-neutral language, a male perspective of rights dominates the covenant and undermines the concerns that are specific to women. Although the Universal Declaration of Human Rights states that women are included in the category of a human person, human rights laws have lacked in the ability and commitment to protect gender-specific rights. The failure of intergovernmental bodies and

international law to protect and uphold human rights for women prompted the creation of
gender-specific rights, in order to protect those neglected by mainstream human rights bodies.⁵
Consequently, women created multiple doctrines and covenants that deal specifically with their
rights.

Although there are numerous gender-specific rights, this essay will deal predominately
with gender-based violence. Gender-based violence, as defined by the Committee to Eliminate
Discrimination Against Women (CEDAW), is “violence directed against a woman because she is
a woman or which affects women disproportionately.”⁶ Gender-based violence can occur in both
public and private life and is a distinct violation of human rights specifically against women.⁷
The United Nations explains that violence directed at women is a violation of the most basic
human rights whether it was violated in the privacy of a woman’s home or within public life.⁸ By
explicitly identifying domestic abuse as a violation of human rights, the assumption that
violations only take place in public life is discarded.⁹ Although the recognition is significant, it
is ultimately symbolic, since many governments still possess legislation restricting government
interference within a citizen’s private life. The remainder of this essay will identify specific
issues within the international human rights structure that prevents the practical adoption of
proclamations against gender-based violence within human rights declarations.

⁵ Arvonne S. Fraser, “Becoming Human: The Origins and Development of Women’s Human
Rights,” in Women, Gender, and Human Rights: A Global Perspective, ed. Marjorie Agosin
(New Jersey: Rutgers University Press, 2001), 58.
⁶ Tomasevski, Women and Human Rights, 91.
⁷ Sally Engle Merry, “Women, Violence, and the Human Rights System,” in Women, Gender,
and Human Rights: A Global Perspective, ed. Marjorie Agosin (New Jersey: Rutgers University
⁸ “Women and Violence,” United Nations Department of Public Information, February 1996,
⁹ Temma Kaplan, “Women’s Rights as Human Rights: Women as Agents of Social Change,” in
Women, Gender, and Human Rights: A Global Perspective, ed. Marjorie Agosin (New Jersey:
A lack of interest among the international community about the systemic nature of subordination of women has allowed international organizations to pay little attention to women's specific human rights needs.\(^\text{10}\) Many international bodies argued that women's rights were confined to a special interest group and therefore not a concern to the general body of human rights. Unfortunately, this belief relegated women's rights to a secondary status from the beginning, which created an uphill battle for the application of women’s rights.\(^\text{11}\) Operationally, mainstream human rights organizations have failed to integrate women's rights into their agenda.\(^\text{12}\) Instead, gender-specific rights commissions are placed under the supervision of parent bodies, where red tape fails to establish procedures that deal specifically with women's rights violations.\(^\text{13}\) Furthermore, the greater concerns of the parent body overshadow women's rights agendas.\(^\text{14}\) The multiple schemas of the parent bodies fail to coordinate the different demands of each commission within the organization. The lack of a specific focal point for women's rights has prevented the bodies from effectively implementing gender-specific rights.\(^\text{15}\) For example, the parent body that CEDAW operates under is known as the Economic, Social and Cultural Rights Commission (ECOSOC). ECOSOC has only allowed CEDAW to meet for two weeks

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\(^{13}\) Ibíd., 43.


annually to discuss the agenda and implementation methods of the commission. Clearly, the allotted time is insufficient to draft and implement delegations for women's rights. By dealing with women's rights issues in this manner, they continue to be marginalized. Therefore, the practical realization of women's rights is inhibited and women's rights continue to be subordinate to mainstream human rights objectives.

In addition to the above operational issues within intergovernmental bodies, international law has posed serious difficulties in the pursuit of women's rights. The issues of legal jurisdiction within the public and private spheres, as well as an emphasis on negative rights, have prevented international law mechanisms from robustly implementing women's rights. International law is set up to protect an individual’s human rights; however, the law tends to interpret this in terms of protecting a citizen from their government. International human rights law specifically tends only to deal with issues that pertain to rights violations within the “public sphere.” The public sphere can be understood as the area of life where a citizen is in contact with his or her government and where citizens can gather and discuss the community as a whole. Human rights violations that can occur within the public sphere are usually connected with more mainstream human rights violations, such as extra-juridical executions or torture by a public official. While these human rights violations are important, the focus on abuse within the public sphere inadvertently neglects the mistreatments that occur in the private sphere, which can be

16 Ibid.
18 Ibid.
understood as the dealings within families and private businesses. Unfortunately, for women, the majority of their human rights violations occur in the private sphere.

The failure of international law to provide greater protection against the violations that occur in the privacy of a woman's home has allowed gender-specific rights to continue to be violated and seen as a domestic issue and not one of international importance. The United Nations Declaration to Eliminate Violence Against Women implies that the violations that occur in the private sphere toward women constitute a category of harm that has been viewed as less serious than the human rights violations that occur in the public sphere. Furthermore, in the International Covenant on Civil and Political Rights, article nine states that liberty and security is meant only in the context of action on behalf of the state. Consequently, this leaves all threats to security within the private sphere out of the view and reach of international law and leaves violations largely ignored.

In this regard, several doctrines have identified torture as a serious human rights violation. However, international law defines torture as an action taken place in the public sphere whereby a public official, as a means to gain information, inflicts pain on an individual. Unfortunately, this definition does not identify that torture can occur in the private sphere as well. Many women, within the privacy of their homes, are subject to torture from the physical abuse inflicted by their husbands. The Oxford Dictionary definition of torture clearly states that torture is any action wherein serious pain is inflicted on someone as a means of getting

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19 Charlesworth, “What are ‘Women’s International Human Rights?’” 68.
21 Charlesworth, “What are ‘Women’s International Human Rights?’” 73.
something from that person.\textsuperscript{23} Many partners use marital rape, which is an act that inflicts serious emotional and physical pain, as a means of achieving sexual satisfaction. Unfortunately, international law and until recently most domestic laws did not recognize this action as torture, thus allowing women to continue to be subject to abuse within the private sphere.

Moreover, international law tends to place emphasis on “first generation rights.” These civil and political rights protect an individual’s negative liberties from the encroachment of the state.\textsuperscript{24} Negative rights are simply the lack of action on the part of the state, the actions which it must refrain from committing. For example, the freedom of speech is a negative liberty because governments protect it by not preventing individuals from speaking their minds. First generation rights are directed toward actions that occur within the public sphere mainly between men and their government. International law primarily focuses on first generation rights, which ultimately undermines the violations that are quite persistent in the private sphere. Therefore, international law only mediates between governments and citizens; ignoring, conflicts between individuals. This emphasis on first generation rights and actions occurring within the public sphere, therefore, is exclusive and neglects the grave violations occurring elsewhere within a nation.

The tendency of international law to protect first generation rights relegates all other rights to that of secondary status, and ultimately these rights are neglected by the influence of international laws.\textsuperscript{25} Although first generation rights can affect women, the majority of female rights violations occur outside of the public sphere.\textsuperscript{26} Consequently, the main rights violations that occur against women tend to be against rights, which are classified under the social and

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\textsuperscript{24} Charlesworth, “Human Rights as Men’s Rights,” 106.
\textsuperscript{25} Ibid.
\textsuperscript{26} Ibid.
\end{flushleft}
economic category of rights. These liberties are ultimately a second-generation right, and hence, relegated to the back burner of international rights proclamations and laws.

Furthermore, the responsibility that international law places on state governments to punish any crimes inflicted against women has also contributed to the practical failure of advancing women's rights. The last article of the Declaration to Eliminate Violence Against Women calls upon state governments to uphold and punish those who violate women's rights. Given that it is a virtual certainty that individual state governments will enact legislation to alter international declarations, it is next to impossible to enact globally a minimum level of rights legislation to address women's rights. The lack of international responsibility to prevent violence against women ultimately leads to the failure of domestic governments to protect the rights of women. Consequently, individual states realize that they are effectively outside the jurisdiction of international law and are ultimately not bound to any international proclamations.

The lack of state responsibility to advance women’s rights arises when governments claim that they need to protect the privacy of family life within private spheres which are distinct from other realms which fall under the control and supervision of the state. When governments stay out of the business that occurs in the private sphere, women's rights are jeopardized because the majority of women's rights violations occur in the privacy of their own home. Gender-specific rights are suppressed because international law dictates it does not have jurisdiction within the private sphere and state governments claim that they have no business in the private lives of their citizens. Therefore, the inability of both domestic and international legislation to

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28 Ibid.
deal specifically with violations of women's rights within the private sphere prevents women's rights from being realized.

In addition, national governments have argued that women's rights and issues do not pertain to threats to peace. Governments have used this argument to justify why national foreign policy does not concern itself with women's rights. States argue that national violations of women's rights are of domestic concern and do not pertain to the agendas of commerce between nations. However, many states forget that women's rights are no different from basic human rights. The pursuit of women's rights seeks nothing more than recognition of women’s “natural-born rights” and “[seeks] to affirm the dignity and worth of the human person including men and women.” Hence, women’s rights do not constitute a special interest category, and thus, deserve the same attention as violations between a government and its citizens. Unfortunately, governments do not acknowledge the impact foreign policy can have on women’s rights. Often, foreign policy agreements are made in the interests of the state and take little consideration into what the effects of an agreement may have on a certain group of peoples. Since women are frequently marginalized in national governments general concerns, states foreign policy would neglect to consider the impact that an agreement may have on the rights of women. For example, when a nation’s foreign policy dictates to go to war, women of the nation where the war is occurring often become victims of abuse and rape and are used as a technique to win the war through rape genocides. However, in the interests of maintaining the rules of sovereignty, women’s rights suffer through the relegation to the domestic realm of national law.

33 “Universal Declaration of Human Rights,” 5.
Moreover, the lack of women participating in the creation and interpretation of human rights declarations has contributed to the failure to put women's rights on the same level of importance as more male-dominated and male-oriented rights. Non-governmental organizations and the United Nations are dominated by men, which results in a predominantly male perspective on what is important in the realm of human rights. \(^{34}\) While the amount of women within intergovernmental organizations is relatively high, the lack of female representation within positions of power has prevented women’s goals from being recognized. Women account for approximately 40% of the United Nations secretariat; however, the amount of women holding managerial positions is within the single digits. \(^{35}\) Only one woman has ever sat as a judge in the International Court of Justice. \(^{36}\) Other than the Women's Convention, which created the Declaration to Eliminate Violence Against Women, women only represent three percent of the individuals who have created all other United Nations doctrines. \(^{37}\) Moreover, prior to 1995, no woman had ever served in the International Law Commission. However, since 2007 two women have been elected to work within the commission. \(^{38}\) Even within states, women are severely under-represented in national governments. Globally, women account for less than ten percent of those within parliamentary systems. \(^{39}\) While within Canada the amount of women


\(^{36}\) Ibid.

\(^{37}\) Ibid.

\(^{38}\) Ibid.

\(^{39}\) Ibid.
within parliament is slightly higher, sitting at around 22%, this number is still proportionally unacceptable.\textsuperscript{40}

Consequently, the long-term male dominated presence within government and international organizations has suppressed the voice, opinions, and concerns of women on both the international and national stage. Unfortunately, male perspectives about human rights become the norm and women's ideas become relegated to a limited category on the rights agenda. This small category becomes marginalized since the female perspective is not among the initiatives and goals of the mainstream agenda.\textsuperscript{41} Consequently, the lack of a significant female voice within governments and international organizations has prevented women's rights from being implemented because the authority to influence and address women’s rights is not lacking.

Finally, as discussed above, the issue of gender-based violence is a serious one, specifically, marital rape. The issue of marital rape within the United States will now be examined, a grave human rights violation that has gone relatively unnoticed and unprotected. Marital rape is the act of non-consensual sex wherein the perpetrator is the spouse.\textsuperscript{42} Amnesty International explains that torture for women can include sexual abuse, rape and/or forceful performance of sexual acts.\textsuperscript{43} Interestingly, all these acts have been proven to occur within the privacy of a marital relationship. The World Health Organization has identified wife battering,

which includes marital rape, as the number one cause of female injuries within the United States.\textsuperscript{44} Furthermore, another study shows that twenty-five percent of women who enter emergency rooms at hospitals in the United States are there due to domestic abuse.\textsuperscript{45} These statistics are shocking and extremely appalling coming from a country, which is supposed to be a fundamental advocator of human rights. Unfortunately, for wives, marital rape is not recognized to the same extent internationally as rapes that are committed during wars by militaries.

In addition, the fact that the United States is one of the nations which has not ratified the Declaration to Eliminate Violence Against Women demonstrates the country’s unwillingness to take the appropriate steps in order to protect women’s rights within the domestic sphere.\textsuperscript{46} Although the declaration has significant symbolic importance, unless states ratify the declaration, the covenant will be ineffective. In fact, the United States is the only Western democracy yet to ratify the treaty.\textsuperscript{47} Moreover, international law is unable to condemn the United States for women's rights violations since they have not ratified the declaration. In addition, international law does not consider domestic issues such as marital rape, within their jurisdiction. The lack of American governmental commitment to recognize the ills that occur in the private sphere and, furthermore, to protect the victims of such ills, has prevented even women within a Western democracy from enjoying the fundamental protection from violence. The case of the United States specifically demonstrates how international law and international organizations have relatively little impact on the realization and practical enjoyment of women's rights.

\textsuperscript{44} Dauer, “Indivisible or Invisible: Women's Human Rights in the Public and Private Sphere,” 76.
\textsuperscript{45} Tomasevski, \textit{Women and Human Rights}, 93.
\textsuperscript{46} Ibid., 116.
In conclusion, the achievement of women's rights has a relatively low success rate in the international arena. While there have been many symbolic declarations created on behalf of women rights, structural issues, both nationally and internationally, have prevented women's rights from being fully realized. Operational issues within intergovernmental bodies, such as the persistent view that women's rights are a secondary concern, place commissions that deal specifically with women's rights within parent bodies. Consequently, women's rights become marginalized within the parent body as these organizations tend to present agendas that incorporate all issues under the parent body’s mandate. Moreover, discrepancies within international law have also contributed to the failure to apply women's rights. Issues over jurisdiction in the public and private sphere, as well as the reluctance of individual states to protect second-generation rights, have added to the issue. Lastly, the issue of under representation of female voices within intergovernmental bodies, as well as national governments, has resulted in women's issues being undermined and further silenced. The combination of these structural issues has contributed to the failure to implement and protect women's rights, nationally and internationally. Women’s rights will not be realized until national and international agencies are committed to enforcing the words and ideas of gender specific declarations.
Bibliography


