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The European Union and Violence Against Women: Fundamental Rights and Con Games

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The European Union and Violence Against Women: Fundamental Rights and Con Games

Abstract

Deciphering the European Union's (EU) commitment to countering violence against women is challenging. To date, much of its response has been rhetorical. This article opens with a brief consideration of the EU's first few initiatives to counter violence against women before turning to the polity's enthusiastic endorsement of the Council of Europe's 2011 Istanbul Convention, which defines such violence as a human rights violation. Not least, it offers a critical analysis of the EU's Fundamental Rights Agency's 2014 survey on violence against women, the world's largest international survey of its kind. That inquiry involved 42,000 in-person interviews with a representative sample of approximately 1,500 women (aged 18-74) across all of the EU's then 28 Member States. After examining the Agency's survey and its subsequent report in the context of those efforts that preceded it, the article suggests the EU's rhetoric and related programs for women may conceal the more controversial manifestations of the violence directed at them. For example, the Agency's survey excluded female genital mutilation from the rubric of violence against women. One finds a similar reluctance on the part of the Agency and other institutional actors across the EU to address the eroticized commodification of violence in prostitution and pornography that pervade the polity's common market. Despite the EU's occasional pronouncements to the contrary, it appears violence against women is a human rights violation that the polity deliberately circumscribes and perfunctorily condemns.

Keywords

European Union, violence against women, fundamental rights, male violence against women, Council of Europe, female genital mutilation, FGM, prostitution, pornography, human rights, women

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This article began as a Sears Lecture on Human Rights in the European Union at Purdue University. I am especially grateful to my colleague S. Laurel Weldon for having organized that event and for her considerable research on violence against women within a global context. I am also fortunate for the support I have received from Kalamazoo College and my colleagues and students within the Political Science Department. Not least, my gratitude extends to the anonymous reviewers for their helpful comments and to Susan Weinger and Barry Shanley for reading and commenting on this work with such care. Dignity thanks the following reviewer for her comments on this article: Jalna Hanmer, professor of women's studies (emerita), and a founding member of the Feminist Archive North, UK.

THE EUROPEAN UNION AND VIOLENCE AGAINST WOMEN: FUNDAMENTAL RIGHTS AND CON GAMES

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ABSTRACT

Deciphering the European Union's (EU) commitment to countering violence against women is challenging. To date, much of its response has been rhetorical. This article opens with a brief consideration of the EU's first few initiatives to counter violence against women before turning to the polity's enthusiastic endorsement of the Council of Europe's 2011 Istanbul Convention, which defines such violence as a human rights violation. Not least, it offers a critical analysis of the EU's Fundamental Rights Agency's 2014 survey on violence against women, the world's largest international survey of its kind. That inquiry involved 42,000 in-person interviews with a representative sample of approximately 1,500 women (aged 18-74) across all of the EU's then 28 Member States. After examining the Agency's survey and its subsequent report in the context of those efforts that preceded it, the article suggests the EU's rhetoric and related programs for women may conceal the more controversial manifestations of the violence directed at them. For example, the Agency's survey excluded female genital mutilation from the rubric of violence against women. One finds a similar reluctance on the part of the Agency and other institutional actors across the EU to address the eroticized commodification of violence in prostitution and pornography that pervade the polity's common market. Despite the EU's occasional pronouncements to the contrary, it appears violence against women is a human rights violation that the polity deliberately circumscribes and perfunctorily condemns.

KEYWORDS

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IN 2014, THE EUROPEAN UNION'S (EU) FUNDAMENTAL RIGHTS AGENCY (FRA) issued a report that recognized violence against women as "an extensive human rights abuse that the EU cannot afford to overlook" (European Union Agency for Fundamental Rights, 2015, p. 3); it was a marked departure from the EU's past. Decades prior, there was no EU agency dedicated to human rights, and the EU's executive body (the Commission) claimed its market-oriented mandate inhibited its legal reach to address the problem of male violence (A. Gradin, personal communication, July 19, 1999). The EU (formerly called the European Community) was, after all, founded as a common market. Its six original Member States established a single economic region to move their capital, goods, services, and persons freely within it. Initially preoccupied with promoting affluence, human rights concerns were largely symbolic and left to the Member States and other European-wide actors like the Council of Europe (COE), Europe's oldest pan-European institution devoted to the promotion of parliamentary democracy and human rights.

If it thus appears that the EU has come far in acknowledging the economic effects and pervasiveness of violence against women as a human rights problem it earlier endeavored to avoid, consider this: the FRA's otherwise 2014 ground-breaking survey of 42,000 women from across the 28 Member States entirely sidestepped both female genital mutilation (FGM) and the sexualized commodification of women and girls. The omission may seem curious considering the Agency recognized the growing interest in these matters from the Member States and, in 2009, the European Parliament (EP) called for a union-wide ban of FGM (*Resolution of 24 March 2009 on combating female genital mutilation in the EU, OJ C 117 E, 6.5.2010, 2009*). Moreover, the EP had long denounced prostitution and pornography as crucial obstacles to sexual equality (European Parliament, 1986). Yet despite its status as the only directly elected international assembly in the world, the EP was without power to endorse its positions. Not a typical legislative body; the EP did not make laws. Members of the European Parliament (MEPs) instead influenced budgetary decisions and elaborated on policy directions through amendments and vetoes on select bills. EU legislation was the province of the European Commission and the European Council (formerly the Council of Ministers). The current requirement that EU legislation requires Parliamentary approval did not come into force until 2009. Before then, the Commission negotiated legislation and countless policies with the appropriate ministers from the Member States in private meetings under the auspices of a democratic "Europe." Only after the mounting social costs of economic integration underscored the EU's "democratic deficit" did the EU become a more transparent and seemingly more human rights-oriented polity.

While the FRA's recent evasions appear to contradict the earlier positions taken by the significantly less powerful EP, the Agency's approach is in keeping with the EU's relatively more commanding institutions, like the Commission, Council and the European Court of Justice (ECJ), the final arbiter of EU law. This article explores this history in brief before turning to the 2014 report and more recent developments, like the often enthusiastically embraced the 2011 Istanbul Convention against violence against women and domestic violence. Taken together, an analysis of this EU history, Agency report, and Convention suggests the EU is far from clearly acknowledging, much less effectively countering, sexualized manifestations of male violence against women and girls.

Formulation of European Union Principles

In 1979, the ECJ held that although individual Member States could, in principle, object to pornography on "moral grounds," the Treaty's promise of "free trade" trumped prohibitions on "indecent" or "obscene" material in the absence of consistent policies (*Regina v. Maurice Donald Henn & John Frederick Ernest Darby, 1979*). Hence, the two men (Henn and Darby) convicted by the United Kingdom for importing Danish pornography through the Netherlands successfully appealed the UK's ruling. They convinced the European Court that pornography is a legitimate commodity in the open market.

Three years later, the ECJ similarly ruled that in the absence of "genuine or effective measures intended to combat" local prostitution, there should be no barriers for other EU nationals to engage in such "personal conduct" (*Adoui & Cornuaille v Belgian State, 1982*). Here the Court admonished the Belgian government for its refusal to tender residence permits to two French women because they had a history of prostitution when, in fact, Belgium had no laws against it. The Court reasoned that in the absence of "genuine or effective measures intended to combat such conduct" for local

nationals, other EU nationals have a right to reside in Belgium and carry out the same behaviors as their hosts. While the ECJ's implicit objection to double standards (i.e., one for local EU nationals and another for others) is welcome, the Court's analysis is wanting. First, the ECJ suggests poorly implemented measures be abandoned rather than improved, a potentially devastating approach in countering violence against women because laws protecting women often go unenforced. Second, the Court's characterization of prostitution as "personal conduct" further perpetuates the myth that prostitution is merely a private choice, a position later contradicted by the Parliament's subsequent resolution (in 1986) that prostitution is a social problem.

By contrast to the European Court of Justice, the European Parliament persisted in its position that prostitution is a manifestation of violence against women and, in 1989, Members of the European Parliament (MEPs) adopted another non-binding resolution specifically focused on the Exploitation of Prostitution and the Traffic in Human Beings (*Resolution on the Exploitation of Prostitution and the Traffic in Human Beings OJ C 120/352*, 1989). While recent studies suggest that such resolutions and other "soft laws" seldom offer a direct basis for concrete measures against male violence (McQuigg, 2018; United Nations, 2014, p. Para. 68), others emphasize their potential for changing social norms (Terpan, 2015, p. 68).

According to Dorchen Leidholdt, then Director of the Coalition against Trafficking in Women (CATW), the 1989 resolution was pathbreaking in its recognition that "the practice of prostitution involves the violation of certain fundamental human rights and freedoms, especially the rights to privacy, liberty and the integrity of the human person" (Leidholdt, 1996, p. 91). Furthermore, the resolution urged the European Community to forge a *common* policy among the Member States to combat prostitution *and* eliminate the traffic in persons.

In 1996, the Commission funded the STOP program to counter "the transport of women from third countries [i.e., non Member States] into the European Union (including *perhaps* subsequent movements between Member States) for the purpose of sexual exploitation" (Commission of the European Communities, 1996b, p. 4 author's emphasis). The program's most dedicated proponent, EU Commissioner Anita Gradin, explained her ambition was "to avoid a debate on prostitution as such, and concentrate on what measures could be taken hindering the slave trade" (Raymond, 2013, p. 100). Hence, she established a firm wedge between prostitution and trafficking, helping to sustain and even legitimize the former through rhetorical condemnations of the later. Four years later, the Commission reaffirmed its opposition to sex trafficking by emphasizing that the EU's own Charter of Fundamental Rights prohibits it (in Article 5). Nonetheless, several Member States have refused to ratify (much less implement) this and other international conventions against trafficking, sexual exploitation and male violence. Indeed, when the European Union signed the Istanbul Convention alongside the Council of Europe with the stated objective of ending violence against women and domestic violence, ratification stalled in several EU countries. Although unanimity is required in matters of security, defense and citizenship, Member States occasionally "opt-out" of participation in particular policies through negotiations. Such was also the case with the euro, the European Union's common currency. Despite the continued funding extended to STOP and myriad calls from within the EP for stronger measures, the ECJ's precedent bolstered the position of these more recalcitrant states. Indeed, by 2001, in a nod to state sovereignty and the protection of the common market (including its sex industries), the ECJ further recognized prostitution as work (*Aldona Malgorzata Jany & Others v Staatssecretaris van Justitie*, 2001). Its

position was explicit: as long as prostitution poses no “genuine threat to the public order” (paragraph 57), it can be regarded as a paid service (Case C-268/99 [2001] ECR 8615, 50).

A decade after the Court embraced prostitution, the EP passed additional resolutions, including one that recognized FGM within the scope of violence against women (*Resolution of 24 March 2009 on combating female genital mutilation in the EU, OJ C 117 E, 6.5.2010*, 2009). The EP then called on Member States to investigate and quantify the number of women who had undergone and/or were at risk for having the procedure. Not least, MEPs requested the FRA to take a “leading role in combating FGM” through “research and/or awareness-raising actions” (European Parliament 2009a, Para. 17). In 2012, the Parliament reiterated its call for action and repeated World Health Organization (WHO) estimates that at least 500,000 women and girls within the European Union had already been subject to such abuse and warned that many more were at risk, particularly third country nationals and refugees (*Resolution of 14 June 2012 on ending female genital mutilation OJ C 332 E, 15.11.2013*, 2012, p. 87).

Yet, in keeping with their earlier recalcitrance, several Member States proved so resistant to providing relief, the Parliament soon after recognized that “FGM tourism” had emerged and it attributed the problem to the legal disparities between the Member States. As was the case with prostitution and trafficking, the EU’s rhetorical condemnations of FGM appear to have had a limited impact on women’s lives throughout the Member States.

Rather than explore the pervasiveness of genital mutilation, pornography, prostitution and whether existing efforts to prevent these abuses are effective, the 2014 report insists that both trafficking and genital mutilation only “affect certain groups within the female population and therefore are hard to capture through a general population survey” (European Union Agency for Fundamental Rights, 2015, p. 10). In a special issue of *The Journal for Interpersonal Violence* dedicated to the report, Joanna Goodey, a head researcher for the FRA, offers a glowing review of her Agency’s 2014 report. Thus, she similarly reasons that because “the survey was based on a random sample of women in the general population, it was not in a position to capture these “rarer” incidents of violence that specific groups in the population are prone to (such as FGM)” (Goodey, 2017, p. 1771). Yet whether FGM is truly rare is something we cannot now know because the FRA excluded questions pertaining to it in its survey.

In refusing to include specific questions on seemingly more controversial manifestations of male violence (such as FGM, pornography, and prostitution), FRA researchers obscured the extent, character and consequences of both the sex industry (which is recognizably pervasive) and genital mutilation (which we are told is uncommon). Additionally, in selecting to ignore sex trafficking and FGM because such abuse only “affects certain groups,” the Agency could also overlook the EP’s earlier requests for action and abandon the universal ambitions of human rights the EU claims to embrace. After all, what seemingly happens only to some groups of women can affect us all.

The Con Game: Concealing Controversial Violence Against Women

Deciphering “violence against women” and thus the betrayal of “human rights” within the EU’s transnational polity is a lot like watching a shell game. Like a glimpsed ball rapidly rotated beneath three cups, violence against women is that swiftly moving object. Its composition and location seemed obvious until one realizes (if ever one does) that the others with whom one has been watching it move – those experts who

seemingly have been paying as much (if not more) attention – may be the skills whose job it has been to distract us from finding it.

Focusing on the FRA's 2014 report and the larger political context within which it was written, disseminated and received, allows one to expose the few grand gestures beneath which the EU may conceal the more controversial realities of violence against women and human rights. This cover-up requires that we understand that the most important element to any sleight of hand is misdirection. Misdirection involves diverting the public's attention away from that which one wishes to conceal. The intent behind magic and political subterfuge may differ, but the guiding principle is the same. Grandiose, well-timed narratives and movements (against violence against women and in support of human rights) conceal smaller covert ones (e.g., the commodification of women's bodies as "sex work").

Formulating the Narrative of European Human Rights for Women

Consider the timing of the Commission's first initiatives to counter sex trafficking in 1996. It was especially keen to take action that year, following a political scandal involving sexual abuse, trafficking and the serial murder of young women and girls throughout Belgium that agitated a horrified public. The man who eventually confessed to these crimes (Marc Dutroux) was joined by another (Michel Nihoul), a well-known executive who admitted to having organized sex "parties" for businessmen, police officers, judges, politicians, and other prominent European officials – including a former European Commissioner (Elman, 2007, p. 97).

Extending funding to combat sex trafficking likely appealed to the Commission's desire to simultaneously augment its tarnished legitimacy and distance itself from any appearance of impropriety within the EU's capital shortly after the public became aware of the above-noted scandal.

Deciphering women's "human rights" within the EU requires that we reveal a key deception surrounding them – namely that the polity has long been (and continues to remain) active in the fight for human rights. This perception was more recently perpetuated by the Nobel Prize Committee in 2012 when it awarded the Community its peace prize for six decades of "human rights" oriented efforts. That few acknowledged the Community had little interest in and no substantive authority to address human rights because Europe's unification was foremost (and has largely remained) an economically inspired plan might stem from a strategic desire to will the EU to act against the very human rights violations it has been reluctant to address. However, the claim that the EU labored for decades on behalf of human rights grants the polity a legitimacy it has not yet earned. Thus, the Nobel narrative becomes what the poet Wallace Stevens called a "supreme fiction" (Stevens, 1951, p. 6), a fictive knowingly believed despite the actual absence of a human rights platform in the polity's founding treaties.

Even when the EU proclaimed its first Charter of Fundamental Rights in 2000, it was not until 2009 that it gained legal force (through the Lisbon Treaty). Two years prior, in 2007, the Commission established the FRA, which essentially rebranded the Agency's predecessor—the European Union Monitoring Centre. The 1996 memorandum that established that initial Centre explained, "The point is not to take specific measures to combat racism and xenophobia." Instead, the Centre was to provide "the Community and the Member States ... with objective, reliable, and comparative data ... on racism, xenophobia, and antisemitism in order to help ...when ... [the Community and Member States] take efforts against these matters" (Commission of the European Communities, 1996a, p. 3). Thus, the Centre never intruded in the controversies and

internal affairs of Member States. Moreover, whatever appearances to the contrary, the Centre and its successor Agency – the FRA -- has stayed true to the memo's original mission.

The Shell Game: Rebranding and Redefining

What then changed for women's human rights? In rebranding the Centre the FRA, the Commission expanded its original responsibilities from racism, xenophobia, and antisemitism to all of the Charter's "thematic areas" (which, with 54 chapters, includes children's rights, Roma integration, data privacy, asylum rights and much more). This expansion alarmed some constituencies, especially organizations against racism and antisemitism. Concerned that in the absence of any demonstrated success for its original three areas, EU critics suggested it was unwise to expand the bureaucracy's remit (Elman, 2014). Indeed, the Charter extended no new powers to the Union to mitigate human rights violations. As John Peterson remarked, "The EU consistently fails to meet expectations while never ceasing to develop new and bolder ambitions" (Peterson, 2008, 202). While his insight stems from his expertise on EU foreign policy matters, his characterization is no less relevant for those considering its policies pertaining to human rights in general and efforts to stem violence against women, in particular.

Now, with the burgeoning rhetoric on human rights and the stated ambition to protect women from the daily violence waged against them, male violence has reemerged as a significant human rights concern that the EU has had to address (European Union Agency for Fundamental Rights, 2015, p. 3). Thus, the FRA was tasked to provide comprehensive, comparable data about it, in the event that the Member States or EU institutions should wish to move against it. For EU women, whose history with fundamental rights have long been tenuous, disputed or denied, imagining rights as objects to be engaged instead of protected can be a challenge.

The 2014 Fundamental Agency Rights Agency Report

The Agency's 2014 report on male violence against women is the world's largest international study of its kind: based on 42,000 interviews with a representative sample of approximately 1,500 women in each Member State aged 18 to 74. The interviews were conducted face-to-face by women interviewers in the homes of women respondents throughout the EU.

The report offers an ominous glimpse into several of the very real conditions women face. For instance, one in three (33%) respondents experienced physical and/or sexual violence since the age of 15, over 20% of the respondents experienced abuse from a current or former partner, and over half of *all* the women have been sexually harassed and avoid certain situations or places on occasion for fear of being physically or sexually assaulted (European Union Agency for Fundamental Rights, 2015, p. 167). In addition to cataloging these conditions and fears, the survey exposed the limited confidence that most women respondents had in any authority to counter the violence against them (European Union Agency for Fundamental Rights, 2015, p. 68).

And, although the Agency's researchers referred to the lackluster definitions of violence against women developed by other transnational actors like the United Nations (UN) and the Council of Europe (COE), they circumvented an explicit definition in their own interviews to "avoid restricting women's understanding to a fixed definition" and instead fixed on "specific acts or situations involving different forms of

violence” (European Union Agency for Fundamental Rights, 2015, p. 10). Interviewers specifically asked respondents if they had been punched, stabbed, strangled, or kicked. They also inquired whether the women received “sexually explicit e-mails or text messages” or were “forced to watch pornographic material” (European Union Agency for Fundamental Rights, 2015, p. 108).

The single survey question concerning “pornographic material” (as opposed to “sexually explicit” texts and messages—a distinction with little difference) revealed what may be one of the report’s most intriguing yet under-appreciated findings. Researchers found, “In all EU Member States (except Luxembourg), young women aged between 18 and 29 represent the group most vulnerable to all ... forms of sexual harassment,” with one notable exception. “The exception is the behavior ‘forced to watch pornographic material,’ which was most frequently experienced by women aged between 40 and 49 (at 30%) and for those aged between 30 and 39 (27%)” (European Union Agency for Fundamental Rights, 2015, p. 108). For younger women between the ages of 18-29, just 13% said they were forced to watch pornography (European Union Agency for Fundamental Rights, 2015, p. 108). That finding might suggest pornography’s ubiquitous presence in an internet age within which young women cannot recall a (feminist) movement against it and are instead expected to watch and even like pornography.

Interestingly, the report’s researchers offered no comment, much less explaining what appears to be the single exception to younger women, otherwise registering as the most vulnerable to the abuses recognized by the FRA. Yet, far from anomalous, the report steered clear from the eroticized commodification of male violence, a tactic most explicitly evidenced when analysts endeavored to establish a distinction between “sexually explicit” materials connected to sexual harassment and abuse and “pornography.” Even the EP, which had previously rebuffed this position (e.g., in its 1986 resolution), seems more amenable to this politics.

When, in 2018, the EP submitted a resolution to prevent bullying and sexual harassment throughout public life (i.e., at work and in politics) (*Measures to prevent and combat mobbing and sexual harassment at the workplace, in public spaces, and in political life in the EU P8_TA(2018)0331*, 2018), it recognized that “sexist hate speech” serves as a “root cause” for a great deal of the violence and discrimination meted out against women (*Measures to prevent and combat mobbing and sexual harassment at the workplace, in public spaces, and in political life in the EU P8_TA(2018)0331*, 2018, p. Para. M). However, “hate speech” was sufficiently vague so as not to directly implicate pornography’s central role in violence and discrimination against women.

Analysis

Whether in myriad resolutions pertaining to or surveys on violence against women and girls, emphasizing opposition to “domestic violence” and “bullying” within the Member States as somehow separate from FGM, pornography, prostitution, and trafficking in women and girls *from outside* of the Community, the EU appeals to several competing constituencies simultaneously (Elman, 2007). First, EU policymakers often adopted anti-trafficking and FGM measures less to save and/or enhance the quality of women’s lives than to appeal to the anti-immigrant segments of the population. Nonetheless, for women’s groups that counter xenophobia and embrace the erroneous distinction between “free” and “forced prostitution, the EU provided a measure of relief for those (non-EU) women and girls deemed especially vulnerable.

This stance parallels the dominant human rights narrative, which suggests that the express commitment to human rights for European women and girls was somehow less necessary as if the possession of that “European” identity was a guarantee against abuse. This position also coincides with the UN’s 1993 adoption of a “forced” versus “free” prostitution distinction at its World Conference on Human Rights in Vienna, a position that contradicted earlier feminist condemnations of female sexual slavery that understood prostitution and trafficking as inextricable (Raymond, 2013, pp. 104–109). The UN position similarly presumes that women and girls within the EU’s presumably affluent communities have rights and privileges that make their being in prostitution and their watching pornography seem freely chosen while those (nationals) external to Europe’s common market lack these resources that render these and other behaviors a “choice.”

Most importantly, the “free” versus “forced” dichotomy protects a powerful constituency – the global sex industry and its countless (and often politically prominent) customers and their apologists. By limiting the numbers of those considered as victims, the EU’s discourse effectively shields both the market’s sex industry and its customers (including women) from accusations of coercion. Thus, the polity has helped legitimize the (EU’s) sex trade (i.e., “free prostitution”) as a voluntary, rational, economic choice – particularly for the often underprivileged and unemployed women in the (EU) market, an expanding segment in an age of austerity. The EJC affirmed this sexual neoliberalism when it codified prostitution as “sex work” in its rulings in 1982 (*Adoui and Cornuaille v Belgian State*, 1982 and 2001; *Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie*, 2001). The Commission’s STOP funding and its policies related to sex trafficking and violence (as if they are entirely separate) proved consistent with this approach (Elman, 2007).

The Triumph of the Sex Industry

The sex industry’s global triumph rests not only in its increasing profits but also in the growing perception that pornography and organized prostitution (if not trafficking) are “optional” activities separate and distinctive from “violence against women.” Once one understands that whether the violence it takes to prepare women and girls for prostitution and make pornography from them is shown depends on the consumer’s preference for it, one realizes male aggression against women is the rule rather than the exception. This point is substantiated through promotionals for prostitution and the titles readily available on any online pornography portal (e.g., *Border Bangers*, *Gangland Victims*, *Bitchcraft*, *Gag on my Cock*, etc.). That five men who dubbed themselves the “wolf pack” filmed their sexual assault of an 18-year-old with their phones during a bull-running festival in 2016 and were charged with “continuous sexual abuse” and acquitted for rape, which under Spanish law requires violence or intimidation (Minder, 2020), testifies to the success that pornographers (including these men) have had in concealing their violence by actually documenting it.

The (apparent) invisibility of this violence and the consent presumed from the women in it has been reinforced by efforts to address some (“domestic”) violence while trivializing and, at times, legitimizing others (i.e., pornography and prostitution). Unsurprisingly, the EU’s most consistent and unequivocal denunciations of male violence are reserved for those whose behaviors interfere with the labor market (e.g., harassers *at work*, batterers, and traffickers of *third country* nationals) and not those who might generate profits within it (like pimps and pornographers).

Thus, even the EU's seemingly most enlightened rhetoric proves wanting under scrutiny. For instance, the European Parliament's (2009) resolution on violence against women contained no mention of pornography. Still, it did once address prostitution, noting that its "tolerance ... in Europe leads to an increase in [sex] trafficking of women into Europe" (European Parliament, 2009). By focusing on prostitution merely as a contributing factor to the importation of others from *outside* of Europe for sexual exploitation (i.e., sex trafficking within the common market), the resolution chose to ignore another factor. By *not* countering the trafficking of EU nationals *within* the Member States, European citizens forced into prostitution and trafficked in their own countries as commodities are less protected than citizens of non-Member States. Notably, the Parliament's 2014 resolution on violence against women condemned only ... *child* pornography (European Parliament, 2014). Having more recently excluded adult pornography from its (1986) rubric of male violence, the EP concedes prostitution "may be viewed as a type of violence against women," but again by reference to trafficking (of non-EU citizens).

Despite decades of recycled resolutions and rhetoric against male violence, the FRA concedes, "there is no specific comprehensive legislation addressing violence against women at the EU level" (European Union Agency for Fundamental Rights, 2015, p. 11). Although one might wonder why not, the more fitting question might be, "why would there be?"

Following the Commission's repeal of proposed action for a targeted EU-wide strategy for criminal statistics that included violence against women in data collection in its mid-term 2010-2015 review of strategies for equality between women and men (European Union Agency for Fundamental Rights, 2015, p. 13), the FRA proposed that Member States adopt the (2011) Council of Europe's Istanbul Convention, which defines violence against women as a human rights violation.

With its notable omission of pornography and prostitution (read: the sex industry), the Convention offers a lengthy list of condemnatory practices, including an explicit reference to "forced abortions" and a corresponding (if not conspicuous) silence concerning forced pregnancy. Despite these shortcomings, most commentators (Goodey, 2017; e.g., Keygnaert & Guieu, 2015, p. 51) extend high praise to the Convention. More importantly, the FRA report regards it as "the most recent and most all-encompassing regional instrument to address violence against women" (European Union Agency for Fundamental Rights, 2015, p. 11), a point Goodey reiterates in her review of her Agency's report (Goodey, 2017).

Are we being played? The Agency that insists the EU is in league with women's interests and has done little to advance them proposes a Convention that, under the guise of protecting women from violence, condemns "forced" abortion while refusing to similarly denounce the denial of women's chosen access to it. We must not be so naïve as to trust the promotion of women's safety to the Council of Europe, a gatekeeper that has accrued legitimacy from the FRA's shortcomings and then squanders it by championing an end to "forced abortions" while failing to insist that women have a corresponding right to safe and legal ones. Not least, in keeping with the EU's more powerful institutions (e.g., the Commission and ECJ), the Convention entirely ignores the coercion that is central to the global sex industry. For all of the Agency's references to the Convention as comprehensive, repeating this claim will not make it so. If, as Wallace Stevens warned, "The imagination loses vitality as it ceases to adhere to what is real" (Stevens, 1951, p. 6), it is time to become imaginative. Achieving feminist ambitions requires a departure from EU rhetoric that conflicts with reality.

This article began with the assertion that substantive opposition to male violence necessitates that we reveal the deceptive gestures that inhibit that ability. After all, stemming the problem requires an imaginative capacity freed of rhetoric and rooted in reality. The EU's entrance into an explicit discussion of human rights in general and violence against women in particular is just decades old. Its efforts to address that violence have proven so elusive that its myriad expressions (e.g., FGM, prostitution, pornography, and trafficking within the EU) have been downplayed and sometimes denied.

Whether through the EU's circumscribed 2014 research on violence against women that excludes genital mutilation and distinguishes trafficking within the EU from other manifestations of male violence, vapid pronouncements from the Commission, European Parliament or the Court's precedent that prostitution is "sex work," violence against women is a swiftly moving object on the EU's "human rights" agenda.

Despite the clamorous condemnations to the contrary, the so-called comprehensive Istanbul Convention offers continuity. Like the initial efforts undertaken by the European Commission, it excludes the eroticized commodification of women's sexual abuse and use. Thus, violence against women is a human rights violation that the EU has occasionally addressed, rarely grasped, and often concealed by the bluster of seemingly sensitive but nonetheless contradictory rhetoric and insufficient conventions.

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REFERENCES

- Adoui and Cornuaille v Belgian State (Cases 115 and 16/81) [1982], Retrieved from <https://op.europa.eu/s/oootm>
- Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie (Case C-268/99) [2001], Retrieved from <https://op.europa.eu/s/oootl>
- Commission of the European Communities. (1996a). Proposal for a Council Regulation (EC) establishing a European Monitoring Centre for Racism and Xenophobia, COM (96) 615, 27.11.96. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1599836487863&uri=CELEX:51996PC0615>
- Commission of the European Communities. (1996b). Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation (COM (96) 567 final, 20.11.96). Retrieved from https://eurlex.europa.eu/search.html?DTN=0567&DTA=1996&qid=1599836553253&DB_TYPE_OF_ACT=com&type=advanced&typeOfActStatus=COM&SUBDOM_INI T=PRE ACTS&DTS SUBDOM=PRE ACTS
- Elman, R. A. (2007). *Sexual equality in an integrated Europe: Virtual equality* (14790719). Palgrave Macmillan. https://doi.org/10.1057/9780230610071_5
- Elman, R. A. (2014). *The European Union, antisemitism, and the politics of denial* (014004787). University of Nebraska Press. <https://www.jstor.org/stable/j.ctt1d9nm4t>
- European Parliament. (1986). Resolution on Violence Against Women, OJ C 176, 14.7.86 (pp. 73–83). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1986:176:FULL&from=EN>
- European Parliament. (1989). Resolution on the Exploitation of Prostitution and the Traffic in Human Beings OJ C 120, 16.5.89 (pp. 352-355) Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1989:120:FULL&from=EN>
- European Parliament. (2009). Resolution of 24 March 2009 on combating female genital mutilation in the EU, OJ C 117 E, 6.5.2010, (pp. 52-59). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009IP0161&from=EN>
- European Parliament. (2009). Resolution of 26 November 2009 on the elimination of violence against women OJ C 285 E, 21.10.2010 (pp. 53-58). Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009IP0098\(01\)&rid=9](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009IP0098(01)&rid=9)
- European Parliament. (2012). Resolution of 14 June 2012 on ending female genital mutilation OJ C 332 E, 15.11.2013, (pp. 87-89). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2013:332E:FULL&from=EN>
- European Parliament. (2014). Resolution of 25 February 2014 with recommendations to the Commission on combating Violence Against Women (2013/2004(INL) OJ C 285, 29.8.2017, (pp. 2-10). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014IP0126&qid=1599839096871&from=EN>
- European Parliament. (2018). Measures to prevent and combat mobbing and sexual harassment at the workplace, in public spaces, and in political life in the EU P8_TA(2018)0331, OJ C 433, 23.12.2019, (pp. 31-41). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018IP0331&qid=1599839416398&from=EN>

- European Union Agency for Fundamental Rights. (2015). Violence against women: An EU-wide survey—Main results. Publications Office of the European Union. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf
- Goodey, J. J. (2017). Violence against women: Placing evidence from a European Union-wide survey in a policy context. *Journal of Interpersonal Violence*, 32(12), 1760–1791. <https://doi.org/10.1177/0886260517698949>
- Gradin, A. (1999, July 19). Private Phone Interview, Former European Commissioner [Interview to Author].
- Keygnaert, I., & Guieu, A. (2015). What the eye does not see: A critical interpretive synthesis of European Union policies addressing sexual violence in vulnerable migrants. *Reproductive Health Matters*, 23(46), 45–55. <https://doi.org/10.1016/j.rhm.2015.11.002>
- Leidholdt, D. (1996). Sexual trafficking of women in Europe. In R. A. Elman (Ed.), *Sexual Politics and the European Union: The New Feminist Challenge* (pp. 83–95). Berghahn Books.
- McQuigg, R. J. A. (2018). Is it time for a UN Treaty on violence against women. *International Journal of Human Rights*, 22(3), 305–324. <https://doi.org/10.1080/13642987.2017.1359552>
- Minder, R. (2020, February 6). US warns of assault threat in Spain. *New York Times*, A9.
- Raymond, J. G. (2013). *Not a choice, not a job: Exposing the myths about prostitution and the global sex trade*. Potomac Books. <https://doi.org/.2307/j.ctt1ddr7wg>
- Regina v Maurice Donald. Henn and John Frederick Ernest Darby (Case 34/79) [1979], Retrieved from <https://op.europa.eu/s/ootj>
- Stevens, W. (1951). *The necessary angel: Essays on reality and the imagination*. Random House.
- Terpan, F. (2015). Soft law in the European Union—The changing nature of EU law. *European Law Journal*, 21(1), 68–96. <https://doi.org/10.1111/eulj.12090>
- United Nations. (2014). Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences to the UN General Assembly, UN Doc. A/HRC/26/38, 28 May 2014. Retrieved from <http://undocs.org/en/A/HRC/26/38>