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Women, Health and Human Rights

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WOMEN, HEALTH AND HUMAN RIGHTS*

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Because health practices are often rooted in cultural practices and religious beliefs, as well as social customs and mores, viewing health issues in the human rights context raises many complex and sometimes quite delicate issues. Female genital mutilation (FGM) or female genital surgery,[1] as it is also called, dramatically highlights a number of these complex issues including: perspective, culture, creation, acceptance and imposition of values. Perhaps to put it most succinctly, the tension between notions of cultural relativism versus universality of human rights. These issues are being hotly debated around the world by human rights activists and scholars, both in the context of the practice of FGM as well as more generally.[2]

Professor Vanessa Merton thus leaves off at an interesting point by bringing the issues of FGM into this discussion of health as a human rights issue for women. Because of the inva-

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[1] Even the question of what to call the practice is itself an issue of some debate and discussion. *See, e.g.*, Isabelle R. Gunning, *Arrogant Perception, World-Traveling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1991). A discussion of that debate is beyond the scope of this paper. For purposes of simplicity and clarity, I will refer to the practice as female genital mutilation or FGM.

[2] *See* Berta Esperanze Hernandez-Truyol, *Women's Rights as Human Rights-Rules, Realities and the Role of Culture: A Formula for Reform*, 21 BROOK. J. INT'L L. 605, 650-67 (1996) (discussing the importance of recognizing both cultural relativism and universalism in fashioning human rights norms and succinctly citing and critiquing some of the prominent positions in the current debate on the subject). *See also* Sharon K. Hom, *Commentary: Repositioning Human Rights Discourse on 'Asian' Perspectives*, 3 BUFF. J. INT'L L. 251 (1997) (addressing the challenge that the tasks entailed in "humanizing" human rights "need to conceptualized beyond a polar divided world of, for example, North and South," and conceptualizing the complexities of repositioning human rights in such a way as to be broadly acceptable, culturally respectful and individually meaningful, with a gendered perspective, through an examination of human rights discourse and practice in and about Asia generally, and China in particular).

sive nature of this procedure and its well-documented affects on both mental and physical health, as well as the still prevailing attitudes in the West about the regions of the world where FGM is most widely practices, largely parts of Africa, I view the issue of FGM as both too easy and too hard, and so am not going to respond immediately to many of the points that Professor Vanessa Merton has raised.[3] I do agree that the issue is important and very much worth looking at, especially in the context of women's health, and I will return to the subject by way of briefly addressing some of the concerns that are raised by FGM. I begin with an introduction to the way in which health has been conceptualized in international documents, and how that conceptualization fits into the evolving human rights framework, and position that background in the context of the particular health concerns of women.

The earliest delineation of health as a human right in the modern era is contained in the constitution of the World Health Organization (WHO). In that document, WHO defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmities."[4] This definition, dating back to 1946, and promulgated by the international body charged with setting policy and monitoring health concerns worldwide, WHO, reveals that health has long been viewed broadly as an issue that encompasses a totality of factors and conditions in life. It further demonstrates a concern with protecting health as an affirmative state of being, rather than simply as an absence of a negative condition of illness or infirmity.

The Universal Declaration of Human Rights is the foundational document for the present-day conceptualization and articulation of human rights. It states in Article 25 that everyone has "the right to the standard of living adequate for the health and well-being of himself and his family including food, cloth-

[3] *See* NEW YORK TIMES May 13, 1997 for an interesting and shocking account of the practice of genital surgery performed on infants and young girls in the United States by U.S. Doctors at the behest of U.S. parents.

[4] Constitution of the World Health Organization, July 22, 1946 (entered into force Apr. 7, 1948) BASIC DOCUMENTS (Geneva: World Health Organization, 39th ed. 1993).

ing, housing and medical care."[5] Although the drafters use of the terminology *him and his family* (giving them the benefit of the doubt), I think we may safely assume that this language was intended to mean *all* people and not just male people.[6] Article 5 reiterates the view that health is linked to overall well-being and is concerned not merely with the absence of disease, but with the presence of a number of positive factors in the conditions of one's life.

Thus, in the very origins of present day understanding, health is portrayed as a protected human rights interest that all people have, and must be viewed in the context of people's daily lives and living conditions. Equally important is the position taken in these documents, that health includes not only access to medical care, but also encompasses an individual's sense of overall well being, socially, mentally and physically. These two documents convey that the articulation of health as a protected human right springs from the very foundation of modern day human rights formulation, and thus is not a new concept at all. Health as a human right is not an additional right that people are trying to include with other rights. It is, rather, an independent, free-standing right that is intertwined with other rights; one that should be recognized and treated on equal footing with other human rights.[7] When health is viewed in that broad context, it becomes clear that there cannot be any meaningful protection of health as well being, without protection of other basic human rights. Moreover, these two documents are not alone in framing health in its broader context and asserting health as a protected human rights doctrine.

Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Conven-

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[5] *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948). The only precursor to this document in terms of modern day origins of human rights protection is the Charter of the United Nations, June 6, 1945 (entered into force Oct. 24, 1945).

[6] While this may not be a safe assumption in strict terms of semantics, it is clear that in terms of actual application and meaning of the concepts behind the words, women have been traditionally excluded from human rights protection. *See infra* notes and accompanying text.

[7] *See infra* note 26 and accompanying text for a brief discussion of the "hierarchy" of human rights.

tion)[8] dictates that State parties "*shall* take all the appropriate measures to eliminate the discrimination against women in the field of health care, to ensure on the basis of equality access to health services."[9] This language specifically deems unequal access to health care as a discrimination that must be addressed and eliminated in order for signatories to the Women's Convention to be in compliance with their obligations under the Convention. Thus, the Women's Convention does not create a new right, but, rather, frames health as an issue of equality for women relative to the health care and medical treatment received by men. The Women's Convention adds the dimension that discrimination in the entire realm of health care must be free of discriminatory practices, so that women receive equal access. The language of the Women's Convention frames the issue in such a way that non-discrimination is articulated as encompassing not only equality in the provision of health care services, but, also, equality in training, opportunity and delivery of health services. Both aspects are portrayed as essential to ensuring equality and non-discrimination.

In 1993, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), issued a Recommendation[10] that principally recognizes gender-based violence as a form of discrimination that was intended to be encompassed by the Women's Convention. Specifically, the Recommendation states that any gender-based violation, which impairs the enjoyment by women of their human rights or fundamental freedoms, is a form of discrimination.[11] These human rights and

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[8] Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A 34746 (1976). The United States has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women and, although many states have done so, in many cases it has been with reservations. *See* R.J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, VA. J. INT'L L. 645 (1990), for a discussion of the meaning of ratification of this Convention with reservations.

[9] Convention on the Elimination of All Forms of Discrimination Against Woman, *supra* note 8.

[10] General Recommendation 19 of the Committee on Elimination of Discrimination Against Women [hereinafter Recommendation] adopted at its eleventh session in February 1992, in Compilation of general comments and general recommendations adopted by human rights treaty bodies, U.N. Doc. HRI/GEN/1/Rev. 1 of 29 July 1994, 84-90.

[11] Recommendation, *supra* note 10.

fundamental freedoms, as articulated in the Recommendation, include the "right to the highest standard attainable of physical and mental health."[12] This provision of the Recommendation reinforces that same pivotal understanding that the right to health must be situated in the human rights context, and must be viewed broadly and holistically.

The International Covenant of Economic, Social and Cultural Rights (ICESCR), contains a provision that, once again, uses the language of the "right to enjoyment of the highest attainable standard of physical and mental health."[13] This provision defines the parameters of health as a protectable human right. This Covenant, addressing as it does a broad range of human rights concerns, places health firmly in the human rights framework and treats it as holistic and integrated into the larger context of overall well being.

Both the ICESCR and the Women's Convention are treaties that have been signed and ratified by many countries, although the United States, much to its discredit, has ratified neither. Be that as it may, these treaties are legally binding on all State parties that have ratified them. The treaties make it clear that the signatories have assumed the obligation to safeguard, as an important human right, women's health in its broad social context, as well as the health of men and children.[14] The Universal Declaration of Human Rights, on the other hand, though not a treaty, is widely viewed to have the force of law behind it, pursuant to customary international law.[15]

In addition, there are a number of other documents without the legally binding force of a treaty or customary law, which address very particular issues relating to women's health; including, but not limited to, the issue of FGM, issues in the context of women, health and human rights, such as rape, family planning and birth control. Here, I give one recent example. Paragraph 89 of the Beijing Declaration and Platform for Ac-

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[12] *Id.*

[13] G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at 49, U.N. Doc. A/6316 (1966)(entered into force Jan. 3, 1976).

[14] *But see supra* note 8 regarding the many reservations made by ratifying countries to the Women's Convention.

[15] *See generally* Louis V. Sohn & Thomas Buergenthal, INT'L PROTECTION OF HUM. RTS. 518, 519-22 (1973).

tion[16] brings together many different strands in defining and examining health as a human rights issue for women. Paragraph 89 states that "[w]omen have the right to the enjoyment of the highest attainable standard of physical and mental health,"[17] using the same language that has been use repeatedly since 1946. Enjoyment of this right is deemed to be "vital to their life and well-being and their ability to participate in all areas of public and private life."[18] Paragraph 89 goes on to state that "health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[19] This language brings us back to the definition of health contained in the WHO constitution and brings us back to the notion that health is multi-faceted and inter-connected with other human rights. This view is articulated expansively and unequivocally in the following sentence: "[w]omen's health involves their emotional, social and physical well-being, and is determined by the social, political and economic context of their lives as well as by biology."[20]

Paragraph 89 places the issue of health in the social and political context, asserting that health does not exist independent of other factors in women's daily lives.[21] Paragraph 89 goes on to state that "the major barrier for women's achievement of the highest attainable standards of health is inequality, both between men and women and among other women."[22] This language is an acknowledgment of the fact that there are not only gender-based discrepancies in the application of the right to health, but also economic or class-based, culture-based, reli-

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[16] Beijing Declaration and Platform for Action, U.N. Doc. A/CONF.177-20 (1995)(draft Platform); DPI/1766/Wom (1996) (final). This document came out of the Fourth World Conference on Women in Beijing, China in 1995. Section C of the Beijing Platform is entitled "Women and Health" and encompasses some 23 fairly lengthy paragraphs, all dedicated to issues of women and health. *Id.* at ¶¶89-111. These concerns are articulated as rights throughout the section, including the assertion that "the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment." *Id.* at ¶92.

[17] *Id.* at ¶89.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Beijing Declaration and Platform for Action, U.N. Doc. A/CONF.177-20 (1995)(draft Platform); DPI/1766/Wom (1996) (final).

[22] *Id.* at ¶89.

gion-based or other bases for discrepancy or disparity that bring about unequal treatment of women's health needs.

In raising these discrepancies as a barrier to full health and well being, the Beijing Platform[23] recognizes that health is not a single-issue right, but is integral to fully protecting human rights across the board. In order to achieve the "highest attainable standard of health," all forms of discrepancy and unequal treatment must be overcome and all basic rights and freedoms must be protected. The Beijing Platform[24] asserts, as do many of the earlier renditions of the right to health, that health is a part of collective human rights, integrally related and each must be fully protected of they are to have individual meaning.

This broad contextual approach leads to a recognition that other vital rights are imbedded in protecting and advancing well-being as an integral part of the right to health, such as: the right to adequate shelter, food and clothing; the right to earn a livelihood; the right to an education; the right to adequate family planning information and birth control; the right to determine whether, when and whom to marry. These are all examples of rights that are related to commonly held notions of what constitutes a sense of overall vitality and well being. All of these issues have been discussed in various human rights documents,[25] although not all are considered to have the same degree of binding legal force. Yet, all have been raised as issues of human rights concern and have further been identified as issues of particular concern to women.

One of the two highly relevant issues raised by insisting that a panoply of basis human rights must be protected in order for the right to health to be meaningfully protected, is the view that there is a hierarchy of rights that are protected or protectable under traditional human rights law.[26] This view is

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[23] *See Id.*

[24] *See Id.*

[25] *See generally, e.g.*, the International Covenant on Social, Economic and Cultural Rights; the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna, June 14-23, 1993, U.N. Doc. A/CONF.157/23, July 12, 1993.

[26] For a discussion of the hierarchy of human rights, *see, e.g.*, Theodore Meron, *On a Hierarchy of International Human Rights*, 80 AM. J. INT'L L. 1 (1986). *See also* Shelly Wright, *Economic Rights and Social Justice: A Feminist Analysis of Some International Human Rights Conventions*, AUSTL. Y.B. INT'L L. 241 (1993).

couched as a qualitative distinction between what are termed the "first generation" human rights and "second generation" human rights. "First generation" human rights are limited to civil and political rights; for example, the right to be free from torture and the right to be free from arbitrary detention. Human rights violations are typically perpetrated by the State against individuals. These rights are considered to have the greatest level of protection.

Gaining in acceptance as being equally valuable are the so-called "second generation" human rights. These include social, economic and cultural rights, such as the right to economic security, the right to education and the right to health care. Though human rights, they are still considered secondary in order of their importance for protection by and against the State.[27] This means that any right not considered a "first generation," civil or political right, is not given the same value by the international community, and as such, violations of "lesser" valued human rights, second generation, are more tolerated. Obligations to protect them are deemed to be progressive actions that must be taken over time, thus, making them ephemeral and more difficult to measure compliance. Enforcement of their violation is generally not pursued aggressively and is often left unaddressed by the international community. For women, the problem of a hierarchy of human rights is compounded by an historical disregard for women as important subjects of human rights protection.

It does not require more than a cursory examination of modern human rights doctrine to reveal that there has, unquestionably, been a male standard in defining what is to be considered normal acceptable practice and what deviates from that norm.[28] One of the obvious ways this bias is apparent in through the language used. Since the early origins and

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[27] There is also a "third generation" of human rights which is now being raised and discussed in international human rights fora. These are collective rights, principally related to rights of indigenous people attaining autonomy and self-governance. *See supra* note 26. An in-depth discussion of third generation human rights is beyond the scope of this essay.

[28] Much has been written on this point in recent years. For one of the pivotal early writings articulating views that have since been greatly expanded upon, *see* Hilary Charlesworth, Christine Chinkin, Shelly Wright, *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991).

throughout much of human rights history, male-centric language, using "man" and "he" as the subject of most of the protections, has been used uniformly until very recently.[29] Although some may take the position that this is purely semantical and in no way reflects deprivation of substantive rights of women, in reality, the language is reflective of the greater underlying problem of women's lives and experiences historically being invisible in the human rights arena. As invisible non-subjects, the human rights violations faced by women were seldom addressed, and only when they happened to coincide with the rights of "men." One way to highlight the problem of the masculinity of human rights norms is through examining what is known as the public/private distinction, and the way in which the view of that dichotomy has only recently begun to change in international human rights law.[30]

With the beginning of the 1990's, and especially with the 1993 World Conference on Human Rights, in Vienna, the emphasis on women's human rights first entered the public arena in a significant way.[31] Prior to that time, there was a very clear split between rights that were considered protectable because they occurred in the public sphere, and those that occurred in the private realm, which were considered of lesser importance and required little or not protection. At the end of the 1980's and into the early 1990's, many voices pushed for wide-scale recognition that the kinds of human rights abuses that women

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[29] *See generally*, Universal Declaration of Human Rights, International Convention on Civil & Political Rights; *cf.* Convention on the Elimination of All Forms of Discrimination Against Women. Much has been written in the past decade on redefining human rights to include a broader spectrum of protected individuals including: women in general, women of color and women from diverse backgrounds and geographic regions, as well as include a more expansive awareness of issues of class, race, ethnicity, abilities, and other non-exclusively privileged male notions of whom it is who is "deserving" of international protection against human rights violations. *See e.g., supra* note 2.,

[30] *See e.g.*, Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS J. 87 (1993).

[31] For an overview of events leading up to and including the Vienna Human Rights Convention and a critical discussion of the approach taken in defining and setting goals and priorities for women and human rights at that convention, *see* Julie Mertus and Pamela Goldberg, *A Perspective on Women and International Human Rights After the Vienna Declaration: The Inside/Outside Construct*, 26 N.Y.U. J. INT'L L. & POL. 201 (1994).

were most likely to be exposed to were those that would not be considered a violation of a "civil or political" human right, such as torture by the state or arbitrary detention. Rather, the kinds of human rights violations women were most likely to suffer were those that occur in the so-called private sphere, violations that were committed not by the State, but by a spouse or parent, a village elder or doctor.

This takes us back to Professor Merton's example. FGM is an example of conduct that is not perpetrated by the State, but, rather, is performed by a member of the community, or sometimes a member of the family. As such, FGM has long been considered something beyond the scope of international human rights protection. Being viewed as a "private matter" between individuals in society or within the family, it was held at arm's length and not addressed by human rights bodies. As one example of the potentially devastating consequences of the public/private split, FGM has, been, for most of its history, viewed as beyond the reach or concern of international human rights law. The recognition that actions that are not taken by the State, or may not even condoned by the State, might nonetheless be viewed as human rights violations is slowly taking hold. Thus, this recognition is opening the door to greater protection for women against the kinds of abuses they are most likely to face.

Rape in war is now considered a human rights violation. Domestic violence is viewed by many as a violation of human rights. Forcible compliance with severely restrictive practices is seen as potentially rising to the level of discrimination and violation of human rights. Other activities perpetrated against the individual, not by the State, but by another individual or group, where the state either condones or ignores the practice, are beginning to be viewed as potential human rights violations. Still, the inroads cannot be overestimated and much remains to be done to ensue the protection of the full array of human rights for women.

Where does this leave us on the subject of women's health as a human rights issue? Much has been written in the last few years on the importance of putting women's health in the human rights context.[32] Health, as a human right, in general,

[32] *See generally* 1 HEALTH AND HUMAN RIGHTS, *Special Focus: Women's Health and Human Rights* 4 (1995); Sofia Gruskin and David Studdert, *A Selected Bibli-*

is also being addressed.[33] Yet, health falls into the category of social, cultural and economic rights, leaving it vulnerable to being accorded lesser status in the human rights "hierarchy."[34] When the lesser status is combined with the difficulties in obtaining protection of human rights concerns of women, it can be seen that the effort to accord this full protection will be long-term and arduous.

In thinking about approaches to the issues touched on above, and those discussed by Professor Merton, many important questions are raised. The first concern is perspective. Perspective is the key, and human rights theorists, strategists and activists must grapple with it because perspective tells the largest part of the story.[35] For example, some issues, such as the right to preventative medical care through the use of vaccinations, seem readily acceptable as not being an intrusion, as an exchange for a fairly widely accepted benefit. Yet, among some cultures or societies, injection by a needle would be viewed as a terrible invasion, perhaps even life-threatening in itself.

However, in the scheme of things, there are many more controversial issues related to health, particularly women's health, that pose fundamental questions concerning perspective, stand-point and positionality. Issues such as family planning, access to birth control, abortion, FGM, rape and its consequences, are addressed in many of the documents mentioned above, including the Women's Convention[36] and the Beijing Document.[37] These issues all raise questions about how women's health is viewed and fundamental questions about who decides and how women's health decisions are made.

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ography of Women's Health and Human Rights, 1 HEALTH AND HUM. RTS. 447 (1995). *See also* Lynn P. Freedman, *Reflections on Emerging Frameworks of Health and Human Rights*, 1 HEALTH AND HUM. RTS. 314 (1995); *Conference on the International Protection of Reproductive Rights*, 44 AM. U. L. REV. 4 (1995).

[33] *See generally* HEALTH AND HUMAN RIGHTS, and international quarterly journal published by the Harvard School of Public Health and the Francois-Xavier Bagnoud Center for Health and Human Rights; first published in 1995.

[34] *See supra* text accompanying note 22.

[35] For an insightful exploration of perspective, perception and positionality in a cultural, social and legal context, see Melissa Harrison and Margaret E. Montoya, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. OF GENDER & L. 387 (1996). *See also supra* text accompanying notes 2, 21, 23 and 24.

[36] *See supra* text accompanying note 10.

[37] *See supra,* note 14.

There are no easy answers to questions of perspective. When we look at the geopolitical reality, it is inescapable that the States of the North/West have more power, influence and a greater means to impose the standards of what they deem appropriate human conduct on the rest of the world, by virtue of their wealth and might. That is one critique of the way human rights are structured by the mainstream international community, which has provoked on-going discussion and debate. The perspective debate is especially difficult to broach, because it challenges the position of the most powerful States in the international arena. It is made all the more complicated when dealing with health issues, because they involve crucial issues of access to resources and the provisions for potentially life-saving means and methodologies.

Another highly problematic area if enforcement. There is no international police force that is going to go into a country and force it to stop violating human rights, much less to require an affirmative provision of services, in the absence of some greater geopolitical concern behind it. An examination of recent history shows just how difficult it is, even when the situation is very dire, as it was in the former Yugoslavia or Somalia, to gain consensus in the United Nations (UN) to deploy peace-keeping forces. Not to mention that each member state of the UN has their own political constituency to also take into account.

When you begin to examine practices against women, such as the practice of FGM, even though there is strong language that deems it a human rights violation, there is not a country, nor a U.N. force, that is going to force a given country to prevent FGM from happening. When is issue is one that is far less aggressive than FGM, where it is far more pervasive, and controversial, such as birth control, there is even less chance of any action being taken to encourage or discourage such practices. What remains are things such as economic sanctions, from withholding or conditioning aid to multi-lateral embargoes. These kinds of economic measures are not taken lightly and are difficult to gain sufficient consensus for any international body or government to act upon.

More likely, the means of enforcement would have to rest on some kind of public censure, exposure or political pressures, both external and internal. This requires creating a climate

where the standards of what are acceptable practices are brought to a higher level; where expectations are increased, where adherence to fair and just policies are applauded and reinforced and where countries with more progressive views play a leadership role is establishing and maintaining those norms. Of course, this is not to say that this kind of effort can be authentically brought in by outsiders and imposed on other countries.[38] Rather, it must come from within a community, a country, a culture or society. As members of that particular community or society reach out, the greater international human rights communities have a vital role to play in helping advance those causes. This is also not to say that other communities should sit and wait for someone else to reach out to them. Particularly, here in the United States, we need to rethink what our role will be in enhancing and ensuring human rights throughout the world in the 21st century.

There is an undercurrent that says; human rights are what is happening over there, the things that go on in other countries of the world, where they allow these things to happen. Human rights discourse in this country takes a distancing stance, almost always referring to some other, faraway place. Yet the fact is that human rights violations are occurring in this country. As much we are reluctant to think about human rights violations in the local context, I want to urge you to think strongly about what this country is doing about human rights that exist and are required to be protected.

First, we can look at all the important human rights that the United States has yet to ratify.[39] More importantly, we can examine the practices and realities of human rights in this country. When we look at the recent welfare legislation,[40] the state of health care in this country,[41] and the recent anti-immi-

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[38] *See supra* text accompanying note 2. *See also* Isabelle R. Gunning, *Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*," 23 COLUM. HUM. RTS. L. REV. 189 (1991); *see supra* text accompanying note 23.

[39] *See supra* text accompanying notes 10 and 14.

[40] *See generally* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 119 Stat. 2105.

[41] *See generally* Symposium, *The National Agenda for Health Care Reform: What Does It Mean for Poor Americans*, 60 BROOK. L. REV. (Sp. 1996).

grant legislation,[42] we see that the United States is no picture of health. There are plenty of people who are suffering the same kinds of abuses and human rights violations, whether perpetrated or condoned by the U.S. government, that we see in poor and developing countries around the world.

As one of many examples of on-going deprivation of and failure to respect and protect human rights in this country, in south Texas there are people living in shacks without running water or access to medical services. Further, in New York City, the reality of homelessness and abject poverty confronts everyone on the street everyday. It is essential to examine and analyze human rights law, not only as it applies abroad, but in domestic context, and to find creative ways that we can analyze the problems and issues in the context of people's experiences in this country.

Lastly, we should create a climate where human rights are viewed broadly and contextually and where violations are not tolerated nor allowed to continue. This necessarily entails matters of compliance, enforcement and pressure. The law does not play an important role in this endeavor, and it is one that should not be underestimated. At the same time, there are other ways to address human rights violations. However, they are not as highly valued in this country because of a tendency to myopically stress the rule of law. No doubt there are many ways to participate in building this human rights approach, three of which, I believe, are most relevant.

First, scholarship plays a very significant role in moving the discourse forward in conceptualizing and expanding our understanding of human rights. I do not mean the esoteric, minutiae-focused writing that dissects one small piece of an arcane doctrine, but rather scholarship that is rooted in practical reality. This scholarship looks at real problems, analyzes what is available in the law, policies and in politics, and examines how can we begin to conceptualize the issues in a way to achieve greater protection of human rights.

Secondly, the critical and often ignored role of advocacy cannot be overstated. By advocacy, I mean talking clear, well-

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[42] *See generally* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 100 Stat. 3009 (September 30, 1996).

informed positions on important issues; framing them in a human rights context; bringing them forward and urging that they be adopted by people in power, such as government, business or the United Nations. Advocacy includes work done by lawyers, non-governmental organizations, individuals, grass roots, community-based organizations, as well as the government. Change occurs through strong and creative advocacy. The tremendous changes that have occurred since the early 1990's regarding women's human rights did not come about because the UN woke up one day and said, "oh, I think we should start looking at some of these issues." The UN came about on women's human rights issues because, women, as individuals, and through their organizations and governments, and with men, organized and lobbied, rallied and pushed for changes. Changes that were hard and long fought, yet slow to come. These changes have been occurring and, with pressure, will continue to take their course.

Third, brings us back to the law or legislation. By that I mean, the creation of, adherence to, and interpretation of domestic, regional and international legal documents. These interpretations of existing documents should be presented in the most life-affirming way. New documents should be fashioned to redress past wrongs and set new standards to ensure that human rights will be respected. The end goal should be to find creative ways to gain ratification and endorse human rights documents through implementation and compliance.

Much remains to be done in order to achieve full human rights protection for women's health concerns. Human rights will be fully protected only by creating the intellectual, scholarly foundation that will justify and support new laws and new interpretations of existing law. It is only by advocacy that we can ever get to the point where protection of these kinds of rights will be deemed enforceable and compliance will be viewed as an important and attainable goal. Finally, it is only by creating enough international pressure to raise the issues in the public arenas that we can begin to hope that someday human rights will be respected and enforced around the world. Human rights for women, human rights for all people, and rights that encompass freedom and dignity, including the human right to health and well being.