THE IDEA OF VIOLENCE AGAINST WOMEN: LESSONS FROM *UNITED STATES V. JESSICA LENAHAN*, THE FEDERAL CIVIL RIGHTS REMEDY, AND THE NEW YORK STATE ANTI-TRAFFICKING CAMPAIGN

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ABSTRACT

Violence against women is both a fact of life for women throughout the world and an idea growing out of the international human rights movement. As an idea, violence against women brings together various kinds of gender violence, names them, and characterizes them not as isolated incidents perpetrated by misguided individuals but as parts of culturally-created systems of gender inequality. Armed with an understanding of the idea of gender violence and the insights into its character and dynamics, activists are free to use this idea as a weapon. This paper will discuss three examples of efforts to use the idea of violence against women and its corollaries to change the lives of women and girls who live within its shadow: a case brought in the Inter-American Human Rights Commission on behalf of a United States victim of domestic violence, federal violence against women legislation, and New York State's anti-human trafficking campaign. Each represents a different kind of action, and each met with a different kind of success. In the end, the problem of violence against women demands that we call on all of these approaches—and many more—if we are to make headway against this ancient, global blight.

I. INTRODUCTION: THE FACT AND THE IDEA OF VIOLENCE AGAINST WOMEN 594
II. THE CONTOURS OF THE IDEA OF VIOLENCE AGAINST WOMEN 599
A. Sources of the Idea of Violence against Women 599
B. The Meaning of the Idea of Violence against Women 600
1. The Broad Definition of Violence against Women 600
2. The Legal Framework of Violence against Women: Discrimination 602
3. Common Dynamics of Violence against Women: Victim-Blaming 603

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4. The Context of Violence against Women: Gender Inequality 605
5. The Value of the Idea of Violence against Women 606
III. ADVANCING THE IDEA OF VIOLENCE AGAINST WOMEN THROUGH INTERNATIONAL HUMAN RIGHTS LAW: THE CASE OF JESSICA LENAHAN 606
A. Jessica Lenahan's Case 607
B. The Practical Value of the Case 610
IV. THE IDEA OF VIOLENCE AGAINST WOMEN AT THE FEDERAL LEVEL: THE VIOLENCE AGAINST WOMEN ACT AND THE CIVIL RIGHTS REMEDY 612
A. Enacting the Violence against Women Act 613
B. Provisions of the Violence against Women Act 617
C. The Fate of the Civil Rights Remedy 618
D. VAWA and the Idea of Violence against Women Post-*Morrison* 622
V. THE IDEA OF VIOLENCE AGAINST WOMEN ON A LOCAL LEVEL: NEW YORK'S ANTI-TRAFFICKING LAWS 624
A. New York Laws on Violence against Women: Anti-Human Trafficking Legislation 624
B. Making the Case that Sex Trafficking is Violence against Women ... 625
C. Turning Around Victim-Blaming: Survivors' Stories 628
VI. CONCLUSION 633

I.
INTRODUCTION: THE FACT AND THE IDEA OF VIOLENCE AGAINST WOMEN

Violence against women is an ugly fact of daily life in every country in the world.[1] In the United States alone, over 25,000 women are seriously injured by their intimate partners each year,[2] and over 1,200 are murdered.[3] Close to

1. *See, e.g.*, Special Rapporteur on Violence Against Women, its Causes and Consequences, Statement by Ms. Rashida Manjoo, 65th Session of the General Assembly, Third Committee, Item 28, at 7 (Oct. 11, 2010), http://www.un.org/womenwatch/daw/documents/ga65/vaw.pdf ("Despite the global focus on violence against women, the reality on the ground shows that . . . violence against women . . . remain[s] endemic around the world, cutting across national boundaries, race, class and religion, violating the human rights and dignity of women . . . ."); U.N. WOMEN, *Progress of the World's Women: In Pursuit of Justice*, 2011–2012, 32–37 (2011), http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf.

2. SHANNAN CATALANO, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE IN THE UNITED STATES (2007) (averaging data from 2001–2005), http://bjs.ojp.usdoj.gov/content/pub/pdf/ipvus.pdf.

3. *Id.* Based on averaged data from 2001–2005, more than half a million women are victims of intimate partner violence; half of them are injured. More than 12,000 women are raped or sexually assaulted by intimate partners without any additional injuries. *Id.* In North America 40–60% of women who are murdered are killed by intimate partners. Jacquelyn C. Campbell, *Health Consequences of Intimate Partner Violence*, 359 LANCET 1331, 1331 (2002). *See also* Senator Joseph R. Biden, Jr., *The Civil Rights Remedy of the Violence Against Women Act: A Defense*, 37

200,000 women are raped or sexually assaulted.[4] Sex trafficking takes a terrible toll on millions of girls and women in the United States and abroad.[5] Sexual harassment and sexual assault plague a vast range of professions, including the U.S. military,[6] the ranks of firefighters,[7] the Peace Corps,[8] and the academic world of physical scientists.[9] College students are sexually assaulted, threatened with sexual violence, and stalked in large numbers.[10] Both female genital

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HARV. J. ON LEGIS. 1, 2–3 (2000) ("An estimated four million American women are battered each year by their husbands or partners.").

4. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 227669, CRIMINAL VICTIMIZATION IN THE UNTIED STATES, 2008: STATISTICAL TABLES tbl.27 (2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/cvus08.pdf. Recent criticism of the FBI's data gathering's reliance on a narrow definition of rape suggests that the numbers compiled by the Department of Justice underestimate reported cases of rape. Erica Goode, *Rape Definition Too Narrow in Federal Statistics, Critics Say*, N.Y. TIMES, Sept. 29, 2011, at A14.

5. One estimate puts the number of women and girls who are trafficked across international borders each year at between 700,000 and 2,000,000; this number excludes all domestic trafficking victims and all victims that have been trafficked in past years and remain within a destination country. Charlotte Watts & Cathy Zimmerman, *Violence Against Women: Global Scope and Magnitude*, 359 LANCET 1232, 1235 (2002). For other estimates, see U.S. DEP'T OF STATE, 2011 TRAFFICKING IN PERSONS REPORT 372–73 (2011), *available at* http://www.state.gov/j/tip/rls/tiprpt/2011 (providing statistics of prosecutions for human trafficking); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 44 n.40, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008) (by Manfred Nowak).

6. Dana Michael Hollywood, *Creating a True Army of One: Four Proposals to Combat Sexual Harassment in Today's Army*, 30 HARV. J.L. & GENDER 151, 152 (2007); Lieutenant Keith B. Lofland, *The Neglected Debate over Sexual Assault Policy in the Department of Defense*, 55 NAVAL L. REV. 311, 314 (2008); Megan N. Schmid, *Combating a Different Enemy: Proposals to Change the Culture of Sexual Assault in the Military*, 55 VILL. L. REV. 475, 479–85 (2010); Editorial, *Sexual Violence and the Military*, N.Y. TIMES, Mar. 9, 2012, at A30. *See also* Complaint at 3, Klay v. Panetta, No. 1:12-cv-00350-ABJ (D.D.C. Mar. 6, 2012).

7. DENISE M. HULETT, MARC BENDICK, JR., SHELIA Y. THOMAS & FRANCINE MOCCIO, A NATIONAL REPORT CARD ON WOMEN IN FIREFIGHTING 3, 8–9 (2008), *available at* http://www.i-women.org/images/pdf-files/35827WSP.pdf.

8. Sheryl Gay Stolberg, *Ex-Peace Corps Volunteers Speak out on Rape*, N.Y. TIMES, May 11, 2011, at A16. In 2011, President Barack Obama signed into law amendments to the Peace Corps Act designed to protect Peace Corps volunteers who are victims of sexual assault. *See* Kate Puzey Peace Corps Volunteer Protection Act of 2011, Pub. L. No. 112-57, 125 Stat. 736; Lisa Rein, *New Measure Protects Peace Corps Workers*, WASH. POST, Nov. 22, 2011, at B4.

9. Ellen Sekreta, *Sexual Harassment, Misconduct, and the Atmosphere of the Laboratory: The Legal and Professional Challenges Faced by Women Physical Science Researchers at Educational Institutions*, 13 DUKE J. GENDER L. & POL'Y 115, 128–32 (2006).

10. *See, e.g.*, BONNIE S. FISHER, FRANCIS T. CULLEN & MICHAEL G. TURNER, NAT'L INST. OF JUSTICE & BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN 10–11, 15–16, 23, 27–28 (2000), *available at* https://www.ncjrs.gov/pdffiles1/nij/182369.pdf. *See also* Nancy Chi Cantalupo, *Burying Our Heads in the Sand: Lack of Knowledge, Knowledge Avoidance, and the Persistent Problem of Campus Peer Sexual Violence*, 43 LOY. U. CHI. L.J. 205, 210 (2011) ("Comprehensive studies on campus-based, peer sexual violence that have been completed over the last several decades have consistently found that 20–25% of college women are victims of attempted or completed nonconsensual sex during their time in college.").

mutilation[11] and "honor" killings have migrated from other parts of the globe to the United States.[12] In New York State, violence against women is part of the fabric of the lives of women, as it was twenty-five years ago when the New York State Task Force on Women in the Courts reported that "[v]iolence against women is a problem of dramatic proportions."[13]

But violence against women is more than individual incidents visited on women. It is an idea that aggregates various wrongs, names them, and characterizes them as more then isolated incidents. As an idea, it has the potential for use as a tool for changing the fact of violence that pervades the lives of women.

As a start, the idea of violence against women gives each category of gender violence and each act of violence greater significance. Wife-battering and marital rape are no longer simply what happens to women unlucky enough to marry the wrong guy. The murder in a distant land of a daughter for the offense of flirting is not just an archaic and unfortunate tribal custom. The seduction of a young girl by a pimp who turns her out into prostitution is not merely the perpetuation of the world's oldest profession. Seen through the lens of violence against women, these acts are part of wider patterns of global violence.

Understanding violence against women as a single phenomenon with many faces also makes visible the connections among and between different forms of violence. Legal systems, for example, label many kinds of violence against women private matters unworthy of public notice. This traditional distinction between public and private wrongs masks violence within families from outside scrutiny, protects perpetrators of brutal acts from sanctions, and denies victims access to legal remedies.[14] Victim-blaming, like the private/public distinction, cuts across various instances of violence against women and marginalizes acts of violence. By confusing cause and effect and creating a miasma of guilt and shame, victim-blaming blunts efforts to understand violence. In practical terms, it infects the responses of the public, prosecutors, judges, juries, news media, and victims themselves.[15]

The concept of violence against women also has political uses. Armed with a robust idea of violence against women, activists can avoid having to fight bush

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11. *Female Genital Mutilation in the U.S. Fact Sheet*, EQUALITY NOW, http://equalitynow.org/node/866 (last visited July 28, 2012). *See also* Nadia Sussman, *After School in Brooklyn, West African Girls Share Memories of a Painful Ritual*, N.Y. TIMES, Apr. 26, 2011, at A22 (discussing young immigrants in the United States who had undergone female genital cutting before arriving).

12. *See, e.g.*, Shira T. Shapiro, *She Can Do No Wrong: Recent Failures in America's Immigration Courts to Provide Women Asylum from "Honor Crimes" Abroad*, 18 AM. U. J. GENDER SOC. POL'Y & L. 293 (2010); Nadya Labi, *An American Honor Killing: One Victim's Story*, TIME (Feb. 25, 2011), http://www.time.com/time/nation/article/0,8599,2055445,00.html.

13. *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L.J. 11, 27 (1986).

14. *See infra* notes 39–44 and accompanying text.

15. *See infra* notes 49–64 and accompanying text.

skirmishes against a host of different kinds of violence viewed as unrelated. Instead, they can wage campaigns against gender violence *per se* and win victories that apply to multiple forms of violence at once. For example, feminists successfully fought to place violence against women on the international human rights agenda and to have violence against women declared a human rights violation.[16] As a result, efforts to combat domestic violence, sexual assault, and sex trafficking all benefit from the embrace of institutions protecting human rights and the dignity afforded to human rights concerns. Activists also convinced the treaty body responsible for monitoring the Convention Against Torture to bring violence against women within its ambit on the terms developed within the feminist movement.[17] As a result, the Convention Against Torture now covers not only rape in war and violence by state actors against women in custody, but also ordinary domestic violence and rape when the state does nothing to prevent it, punish perpetrators, or protect and compensate victims.[18]

Analyzing the patterns and meanings of violence against women, activists have created a powerful critique of the causes and effects of gender violence that suggests the kind of activism necessary for wide-spread, lasting change.[19] Human rights documents explaining, condemning, and reporting on gender violence describe violence against women as more than bad acts by bad people but as part of systems of gender inequality found the world over. Violence against women, according to this critique, can only exist in a world in which women are denied power and subjugated to male authority but also violence against women operates as an effective means of maintaining the very power imbalance that makes violence against women possible.[20] The implications of this critique are clear: any effective campaign against violence against women must take aim at global gender inequality.

While the idea of violence against women may be an elegant, intellectually satisfying construct, it accomplishes nothing if it lives principally in the pages of human rights documents and academic journals. Activists must find ways to use it to change laws, practices, and the long-held societal attitudes that support gender violence. This article examines some efforts to use the idea of violence against women as a political and legal tool.

Part I sets the stage by exploring in some detail the content of the idea of violence against women in international human rights documents, in which the

16. *See infra* notes 26–34 and accompanying text.

17. *See* Rhonda Copelon, *Gender Violence as Torture: The Contribution of CAT General Comment No. 2*, 11 N.Y. CITY L. REV. 229, 230–43 (2008) (discussing the history of the process of incorporating violence against women, particularly domestic violence, into the Torture Convention).

18. U.N. Comm. Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: General Comment No. 2, Implementation of Article 2 by States Parties, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008).

19. *See infra* notes 65–70 and accompanying text.

20. *See, e.g.*, U.N. WOMEN, *supra* note 1, at 32.

fullest and most complete understandings are found.

Part II looks at the case of *United States v. Jessica Lenahan (Gonzales)*[21] before the Inter-American Commission on Human Rights. Jessica Lenahan was a victim of domestic violence with a court-issued order of protection against her estranged husband when local police refused to answer her repeated pleas for help. The tragic result was the death of Lenahan's daughters, as well as her husband. Unable to secure remedies in United States courts, Jessica Lenahan turned to the international human rights structure. Her case illustrates some of the possibilities and the practical limits of using international human rights institutions to combat violence against women.

Part III turns from the international arena to the national stage to examine the Civil Rights Remedy of the federal Violence Against Women Act.[22] Passage of this legislation marked the height of concern within the federal government for violence against women. However, the Supreme Court's decision striking down the Civil Rights Remedy[23] checked efforts both to shift power to victims of gender violence and to advance development of the idea of violence against women. The history of the Civil Rights Act demonstrates deep and continuing opposition to full gender equality within the United States.

Part IV explores a very different kind of legislative history, this time at the state level. It discusses the New York State campaign against sex trafficking, one particular form of violence against women. The advocates who spearheaded the campaign had extensive experience combating other forms of violence against women, particularly domestic violence and sexual assault, and they were steeped in the ideas about violence against women found in the human rights movement. However, their most effective weapon was not rhetoric about violence against women *per se*. Rather, it was their tactic of upending the victim-blaming that pervades responses to violence against women. By helping the public and policy-makers to see victims of trafficking as victims, not criminals, bad girls, or fallen women, they created sympathy that made change possible. Pioneering legislation and compassionate court decisions are some of the fruits of this campaign.

The conclusion to this article reviews the extent to which these disparate efforts succeeded in reaching, first, the people who hold the levers of power and, second, the women and girls whose lives are touched by gender violence. It also very briefly suggests another approach that looks beyond victims and damage already done to prevention.

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21. Lenahan (Gonzales) v. United States, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, OEA/Ser.L/V/II.142 (2011).

22. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902.

23. United States v. Morrison, 529 U.S. 598 (2000).

II.
THE CONTOURS OF THE IDEA OF VIOLENCE AGAINST WOMEN

A. Sources of the Idea of Violence against Women

International human rights and United Nations documents provide some of the most sophisticated explanations of the idea of violence against women. The defining documents are products of activism in the early 1990's.[24] Among the first were the 1992 General Recommendation of the treaty body responsible for monitoring and implementing the Convention on the Elimination of Discrimination Against Women (CEDAW), which recommended recognizing gender violence as a form of discrimination and thus illegal under existing human rights agreements,[25] and the 1993 Vienna Declaration and Programme of Action, classifying violence against women as a human rights abuse. The Declaration on the Elimination of Violence Against Women, adopted by the United Nations General Assembly in late 1993, was the next step forward and an important advance.[26] The Declaration defined violence against women broadly to include private, communal, and state-perpetrated violence,[27] and it outlined the obligations of States to act against both specific forms of violence and the systemic problem of violence against women.[28] Other United Nations documents have developed and affirmed the themes of these basic texts.[29]

The work of the United Nations' Special Rapporteur on Violence Against Women has added richness and depth to the understanding of violence against women. In 1994, the United Nations Commission on Human Rights created the position of the Special Rapporteur on Violence Against Women and assigned the Special Rapporteur responsibility for gathering information on violence against women, recommending ways of eliminating both violence and its root causes,

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24. For general descriptions of the effort to create a human rights foundation for understanding and addressing violence against women, see Special Rapporteur on Violence Against Women, its Causes and Consequences, *15 Years of the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences (1994–2009)—A Critical Review*, ¶¶ 1–2, 7–8, U.N. Doc. A/HRC/11/6/Add.5 (May 27, 2009) (by Yakin Ertürk) [hereinafter Special Rapporteur on Violence Against Women, its Causes and Consequences, *A Critical Review*]; Charlotte Bunch, *The Global Campaign for Women's Human Rights: Where Next After Vienna?*, 69 ST. JOHN'S L. REV. 171 (1995); Copelon, *supra* note 17, at 233–43; Alice Edwards, *Violence Against Women as Sex Discrimination: Judging the Jurisprudence of the United Nations Human Rights Treaty Bodies*, 18 TEX. J. WOMEN & L. 1, 3–4 (2008).

25. U.N. COMM. ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW), *CEDAW General Recommendation No. 19: Violence Against Women* (1992), http://www.unhcr.org/refworld/docid/453882a422.html.

26. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

27. *Id.* at 2.

28. *Id.* at 4.

29. *See, e.g.*, U.N. Secretary-General, *In-Depth Study on All Forms of Violence Against Women*, ¶ 32, U.N. Doc. A/61/122/Add.1 (July 6, 2006); U.N. WOMEN, *supra* note 1.

and integrating women's rights into human rights work.[30] Fulfilling this mission, the Special Rapporteur issues annual reports that provide information on her visits to specific countries and updates on her work.[31] Also, in 2006, the Special Rapporteur produced a comprehensive report reviewing the first fifteen years of work.[32]

These international human rights documents define violence against women as human rights violations, catalogue its different forms and manifestations, describe its dynamics, and explain the steps necessary to bring about its demise. Together they create a full and nuanced portrait of the meaning of violence against women.

B. The Meaning of the Idea of Violence against Women

The international human rights approach to violence against women is a powerful lens for viewing gender violence. As a starting premise, it regards violence against women as more than a series of wrongs committed against individuals and more than the sum of the different types of violence suffered by women. Instead, it views violence against women as a distinct entity, marked by dynamics that span the various criminal acts, cultural practices, and traditions commonly considered under the rubric of violence against women. With this foundational understanding, the international human rights movement sets forth a compelling series of ideas that follow from the initial recognition of violence against women as a unified phenomenon.

1. The Broad Definition of Violence against Women

The human rights idea of violence against women brings together a whole swath of brutal, destructive practices within a broad definition. The 1993 Declaration on the Elimination of Violence Against Women covers physical, sexual, and psychological violence.[33] The Declaration's list of forms of violence against women includes domestic violence, sexual abuse of girl children, sexual assault, rape, marital rape, dowry-related violence, female genital mutilation,

30. For a full description of the office of the Special Rapporteur on Violence Against Women, its Causes and Consequences, see Special Rapporteur on Violence Against Women, its Causes and Consequences, *A Critical Review*, *supra* note 24, ¶¶ 16–27. For a shorter description of the role and mission of the Special Rapporteur, see *Special Rapporteur on Violence Against Women, its Causes and Consequences*, OFF. HIGH COMMISSIONER FOR HUM. RTS., http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx (last visited July 28, 2012).

31. For a catalogue of annual reports of the Special Rapporteur on Violence Against Women, its Causes and Consequences, see *Annual Reports*, OFF. HIGH COMMISSIONER FOR HUM. RTS., http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx (last visited July 28, 2012).

32. Special Rapporteur on Violence Against Women, its Causes and Consequences, *A Critical Review*, *supra* note 24.

33. Declaration on the Elimination of Violence Against Women, *supra* note 26, at 1, 2(a)–(b).

sexual harassment in the workplace and in schools, trafficking, and forced prostitution.[34] A 2006 UN study on violence against women offers a broader and more refined list. It expands the catalogue of gender violence by adding female infanticide; child marriage; forced marriage by abduction and rape; "honor" killings; abuse of older or widowed women (who may be sexually assaulted, ostracized, or labeled witches); dating violence; violence against women in jails, prisons, police cells, and immigration detention centers; forced abortion, pregnancy, and sterilization; and the sexual violence experienced by women in armed conflicts.[35]

Crucial to the international definitions of violence against women is the inclusion of acts committed not only by States or visibly condoned by States, but also acts of individuals committed in the privacy of homes and within families. The Declaration on the Elimination of Violence Against Women's definition includes violence "occurring in public or in private life . . . [and] in the family."[36] Explicit references to privacy and family are necessary because legal systems commonly make distinctions between public and private or familial violence that leave violence against women free to flourish behind closed doors, fueled by State indifference or tacit support.[37] A prime example is intimate partner violence, one of the most pervasive of all kinds of violence against women, which has been excluded routinely from criminal law, either by statute or practice.[38] In the United States, legal authorities tacitly gave husbands permission to rape and assault their wives well into the twentieth century.[39] The

34. *Id.* at 2.

35. U.N. Secretary-General, *supra* note 29, ¶¶ 109–155.

36. Declaration on the Elimination of Violence Against Women, *supra* note 26, at 1–2.

37. *See, e.g.*, Special Rapporteur on Violence Against Women, its Causes and Consequences, *A Critical Review*, *supra* note 24, ¶¶ 30, 35 (references to breaking down the "private/public dichotomy"); U.N. Secretary-General, *supra* note 29, ¶ 95 ("Legal doctrines protecting the privacy of the home and family have been widely used to justify the failure of the State and society to intervene when violence is committed against women in the family and to take remedial action."). A Department of Justice Report noted the "traditional position, universal until this century, that what goes on within the home is exempt from public scrutiny of jurisdiction. If a husband beats his wife . . . that is a private matter." WILLIAM L. HART ET AL., U.S. DEP'T OF JUSTICE, FAMILY VIOLENCE: ATT'Y GEN.'S TASK FORCE FINAL REPORT 3 (1984), *available at* http://www.eric.ed.gov/ERICWebPortal/contentdelivery/servlet/ERICServlet?accno=ED251762. For further discussions of the private/public distinction, see Copelon, *supra* note 17, at 234, 237–39; Sheila Dauer, *Violence Against Women: An Obstacle to Equality*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS, 281, 285–86 (2006); Edwards, *supra* note 24, at 10–11; Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191, 196, 199 (2008); Victoria F. Nourse, *Where Violence, Relationship, and Equality Meet: The Violence Against Women Act's Civil Rights Remedy*, 15 WIS. WOMEN'S L.J. 257, 260–61 (2000); Donna E. Young, *"To the Stars Through Difficulties": The Legal Construction of Private Space and* The Wizard of Oz, 20 S. CAL. INTERDISC. L.J. 135, 142–43 (2010).

38. For information on the prevalence of domestic violence, see U.N. Secretary-General, *supra* note 29, ¶ 112; Watts & Zimmerman, *supra* note 5, at 1233.

39. For a history of the marital rape exemption, see generally Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 CALIF. L. REV. 1373 (2000). *See also* Michelle J.

fight to treat violent crimes perpetuated by husbands against wives as seriously as crimes committed by strangers is far from over.[40] Indeed, the doctrine of familial privacy still permeates the legal system in the United States to the particular detriment of wives who are victims of violence.[41]

2. The Legal Framework of Violence against Women: Discrimination

The human rights framework characterizes violence against women as sex discrimination.[42] Discrimination on the basis of sex is the thread that joins human rights imperatives with violence against women. No treaty provision explicitly forbids violence against women,[43] but the 1945 United Nations Charter and the 1948 Universal Declaration of Human Rights make equality

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Anderson, *Diminishing the Legal Impact of Negative Social Attitudes Toward Acquaintance Rape Victims*, 13 NEW CRIM. L. REV. 644, 662–63 (2010) [hereinafter Anderson, *Diminishing the Legal Impact of Negative Social Attitudes*]. For a history of the legal treatment of domestic violence in the United States, see Thomas L. Hafemeister, *If All You Have Is a Hammer: Society's Ineffective Response to Intimate Partner Violence*, 60 CATH. U. L. REV. 919, 926–28 (2011); Kohn, *supra* note 37, at 195–96; Emily J. Sack, *From the Right of Chastisement to the Criminalization of Domestic Violence: A Study in Resistance to Effective Policy Reform*, 32 T. JEFFERSON L. REV. 31, 34 (2009) [hereinafter Sack, *From the Right of Chastisement*]. For a case study of the failures of domestic violence law enforcement in the 1990's, see Emily J. Sack, *Is Domestic Violence a Crime?: Intimate Partner Rape as Allegory*, 24 ST. JOHN'S J. C.R. & ECON. DEV. 535, 540–42 (2010) [hereinafter Sack, *Is Domestic Violence a Crime?*]. For a history of a husband's right to chastise his wife in Anglo-American law and a discussion of the doctrine of familial privacy as justification for states' reluctance to protect women from violence within families, see Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2122–42, 2151–71 (1996).

40. *See, e.g.*, Anderson, *Diminishing the Legal Impact of Negative Social Attitudes*, *supra* note 39, at 663–64 (urging complete elimination of marital rape exemptions and inferences of ongoing consent in relationships); Ann Laquer Estin, *Golden Anniversary Reflections: Changes in Marriage After Fifty Years*, 42 FAM. L.Q. 333, 341 (2008) ("Although [reformed domestic violence and rape] laws have significantly improved women's physical security, state laws continue to treat rape within marriage as a less serious crime, based on a conception of marital privacy with strong echoes of the law of coverture."); Sack, *Is Domestic Violence a Crime?*, *supra* note 39, at 555–56 (listing some of the ways current statutes treat marital rape). For a catalogue of continuing disparities between the laws of marital rape and other rape laws, see Sack, *From the Right of Chastisement*, *supra* note 39, at 52–54.

41. *See, e.g.*, Siegel, *supra* note 39, at 2200–06 (arguing that judicial objections to the Civil Rights Remedy of the Violence Against Women Act, couched in terms of "federalizing" family law, can be traced to the "discourse of affective privacy"). Susan Estrich argues that law enforcement deference to "privacy" works to the detriment of all rape victims who have had any prior relation with the perpetrators. Susan Estrich, *Rape*, 95 YALE L.J. 1087, 1177 (1986) [hereinafter Estrich, *Rape*].

42. U.N. Secretary-General, *supra* note 29, ¶ 254 ("It is now well-established under international law that violence against women is a form of discrimination against women and a violation of human rights.").

43. *See* Edwards, supra note 24, at 3 ("[T]here is no single treaty provision explicitly prohibiting violence against women . . . ."). For a description of international instruments that support the prohibition of violence against women as a violation of human rights obligations and as a form of discrimination despite the lack of treaty provisions directly forbidding gender violence, see U.N. Secretary-General, *supra* note 29, ¶¶ 31-37.

between men and women a basic human right.[44] Since 1948, various treaties have incorporated guarantees of equality and proscriptions against sex discrimination, thus embedding these ideas deeply into international human rights law.[45]

3. Common Dynamics of Violence against Women: Victim-Blaming

Understanding the idea of violence against women as a single phenomenon that embraces various acts makes visible common characteristics and dynamics among different forms of gender violence. One prime example is victim-blaming, or, in its muted form, victim accountability.[46] Victim-blaming acts as a diversion, allowing perpetrators of violence and the violence itself, to escape scrutiny while victims are examined under microscopes.

"Honor" killing, one of the most notorious forms of violence against women, is a particularly brazen form of victim-blaming. Under the banner of "honor" killings, communities excuse the murders of girls and women for real or imagined acts of independence or for simply falling victim to happenstance. A woman or a girl may be killed by her father, brother, or uncle because she tried to choose her own husband, fell in love with a man outside her tribe, was caught with an unfamiliar telephone number on her cell phone, sought a divorce, had unsanctioned sex, or was raped.[47] In the minds of her family and her community, her actions were shameful, her death was the appropriate response, and her murderers deserve no punishment. Legal systems, through action or inaction, affirm these communal judgments.[48]

In the United States, legal responses to rape historically incorporated victim-

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44. U.N. Charter pmbl.; Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at pmbl., 2 (Dec. 10, 1948).

45. For a description of the equality and non-discrimination obligations in international instruments, see Edwards, *supra* note 24, at 18–24.

46. *See, e.g.*, Watts & Zimmerman, *supra* note 5, at 1233 ("[P]articular to most forms of violence against women is the way in which society attributes blame to female victims."). For descriptions of victim-blaming in congressional hearings on the federal Violence Against Women Act, see Nourse, *supra* note 38, at 265.

47. These examples of excuses for murders were cited in Robert Fisk, Op-Ed., *Invisible Massacre: The Crimewave that Shames the World*, INDEPENDENT (London), Sept. 7, 2010, at 28. For other descriptions of the kind of offenses that give rise to "honor" murders by family members in the West, see Ian Austen, *Afghan Family, Led by Father Who Called Girls a Disgrace, is Guilty of Murder*, N.Y. TIMES, Jan. 30, 2012, at A8 (daughters killed for dating and wearing immodest clothes); Labi, *supra* note 12 (daughter wore tight jeans and makeup, rejected an arranged marriage, and chose her own boyfriend).

48. For a description of the meaning of honor killings within the societies that practice them, see KWAME ANTHONY APPIAH, THE HONOR CODE: HOW MORAL REVOLUTIONS HAPPEN 139–60 (2010); Lama Abu Odeh, *Honor Killings and the Construction of Gender in Arab Societies*, 58 AM. J. COMP. L. 911, 911–32 (2010); John Alan Cohan, *Honor Killings and the Cultural Defense*, 40 CAL. W. INT'L L.J. 177, 181–202 (2010). For a discussion of control of women's sexuality and the concept of honor specifically within the context of violence against women, see Special Rapporteur on Violence Against Women, its Causes and Consequences, *A Critical Review*, *supra* note 24, ¶¶ 95–99.

blaming,[49] and still do today.[50] Judges and jurors, like the general public, often subscribe to victim-blaming rape myths.[51] "Contributory behavior" of the victim may be no more than hitchhiking, dating, or talking with men at social gatherings.[52] Confronted with a rape victim, both men and women[53] tend to ask what the victim was wearing, where she was walking, and what she was drinking.[54] Rape victims are routinely accused of "asking for it"[55] or blamed for "letting it happen."[56]

Federal case law on sexual harassment has adopted some of the worst features of rape jurisprudence and its characteristic victim-blaming.[57] Sexual harassment victims making claims of sex discrimination under Title VII of the Civil Rights Act of 1964 must show that the harassment was unwelcome, forcing

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49. The common law requirements of chastity, resistance, and immediate outcry allowed, and still allow, victim-blaming to play a major role in rape adjudications. For a description of the common law of rape, see Anderson, *Diminishing the Legal Impact of Negative Social Attitudes*, *supra* note 39, at 647–62. For descriptions of "contributory behavior" in rape cases, see Michelle J. Anderson, *Time to Reform Rape Shield Laws: Kobe Bryant Case Highlights Holes in the Armor*, 19 CRIM. JUST. 14, 14–15 (2004); Estrich, *Rape*, *supra* note 41, at 1173–74, 1177–78.

50. *See* Michelle J. Anderson, *Women Do Not Report the Violence They Suffer: Violence Against Women and the State Action Doctrine*, 46 VILL. L. REV. 907, 927 (2001) [hereinafter Anderson, *Women Do Not Report the Violence They Suffer*] ("Most of [the] biased requirements in rape law . . . have been modified or abolished in the law. It may be easy, therefore to dismiss them as historical wrongs. Such a dismissal would be unwise. Today, the biased traditional requirements are operational in law through more informal channels."); Thomas A. Mitchell, *We're Only Fooling Ourselves: A Critical Analysis of the Biases Inherent in the Legal System's Treatment of Rape Victims*, 18 BUFF. J. GENDER, L. & SOC. POL'Y 73, 77 (2010) ("[R]ape cases still [tend] to center around the woman's 'character' for chastity—her past sexual conduct and/or . . . whether she 'invited' intercourse.").

51. Francis X. Shen, *How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform*, 22 COLUM. J. GENDER & L. 1, 24–27 (2011). Studies showing that even nurses and mental health professionals tend to blame victims demonstrate the wide reach of rape myths. *Id.* at 27.

52. Estrich, *Rape*, *supra* note 41, at 1173.

53. *See* Shen, *supra* note 51, at 62–64.

54. For a description of victim-blaming rape myths, see Estrich, *Rape*, *supra* note 41, at 1174, 1177–78; Shen, *supra* note 51, at 14–22; Sumathi Reddy, *In the Boroughs: A Thin Line on Skirts*, WALL ST. J., Sept. 30, 2011, at A18 (reporting that in response to a series of sexual attacks, the New York Police Department warned women against wearing skirts or shorts). Activists have taken the fight against victim-blaming to the streets through Denim Days (protesting the dismissal of an Italian rape case because, in the words of the judge, "the victim wore very, very tight jeans"). *See Sexual Violence Prevention and Education Campaign: History*, DENIM DAY IN L.A. & USA, http://denimdayusa.org/about/history (last visited July 28, 2012). Slutwalks, in response to a Toronto police officer who told law students that "women should avoid dressing like sluts in order not to be victimized," are another form of contemporary protest. *See* Ed Pilkington, *Policeman's Loose Talk About Wearing Provocative Clothes Sets SlutWalking Movement on Angry Road*, GUARDIAN (London), May 7, 2011, at 29; Katha Pollitt, *Talk the Talk, Walk the SlutWalk*, NATION, July 18/25, 2011, at 9; June Q. Wu, *Steps Toward Fighting a Culture of Blame*, WASH. POST, Aug. 14, 2011, at C4.

55. Watts & Zimmerman, *supra* note 5, at 1233; Anderson, *Diminishing the Legal Impact of Negative Social Attitudes*, *supra* note 39, at 658.

56. Shen, *supra* note 51, at 15–16.

57. *See, e.g.*, Susan Estrich, *Sex at Work*, 43 STAN. L. REV. 813, 815–16, 827–34 (1991) [hereinafter Estrich, *Sex at Work*].

plaintiffs to prove lack of consent.[58] Like rape victims, plaintiffs find their behavior at the center of the litigation, and their words or manner of dress that potential harassers might deem "provocative" are considered legally relevant.[59] Victims of domestic violence experience victim-blaming from their abusers, who excuse their violence as understandable responses to victims who do not have dinner ready, went out with friends too often, or belittle them.[60] As one commentator concluded, "[t]he litany is familiar: rape victims ask for it, battery victims provoke it, sexual harassment victims manipulatively sleep their way to the top."[61]

4. The Context of Violence against Women: Gender Inequality

All of these forms of violence, according to the international human rights analysis, share the underlying theme of gender inequality. Gender inequality makes violence against women possible but the violence also serves as a powerful means of maintaining the very inequality that allows the violence to exist. International bodies have articulated eloquently the connections between violence and gender inequality. The Declaration on the Elimination of Violence Against Women states that "[v]iolence against women is a manifestation of historically unequal power relations between men and women—which have led to domination over and discrimination against women by men and to prevention of the full advancement of women"—and that "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men."[62] In a more recent formulation of this idea, a UN report on the Progress of Women said that "[v]iolence against women and girls is both an extreme manifestation of gender inequality and a deadly tool used to maintain women's subordinate status."[63] The UN's 2006 study expanded on this theme. It situated the cause of violence against women in the historical, social,

58. For the Supreme Court's formulation of the "unwelcomeness" requirement, see *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 68–69 (1986).

59. For an extended discussion of onerous burdens on plaintiffs that judges have written into sexual harassment law, see Estrich, *Sex at Work*, *supra* note 57, at 815–16, 827–34. *See generally* Lauren M. Hilsheimer, *But She Spoke in an Un-ladylike Fashion!: Parsing Through the Standards of Evidentiary Admissibility in Civil Lawsuits After the 1994 Amendments to the Rape Shield Law*, 70 OHIO ST. L.J. 661 (2009); Grace S. Ho, *Not Quite Rights: How the Unwelcomeness Element in Sexual Harassment Law Undermines Title VII's Transformative Potential*, 20 YALE J.L. & FEMINISM 131 (2008).

60. Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 MICH. J. GENDER & L. 65, 71 (1993); Watts & Zimmerman, *supra* note 5, at 1233. For a recent and particularly egregious example of victim-blaming, see the press coverage of the gruesome murders of a woman and her two children by the woman's estranged husband. *See, e.g.*, Larry Celona, *Pals: Verbal Abuse Led to Family Slaughter: Beaten Daddy Finally Snapped*, N.Y. POST (Oct. 20, 2011), http://www.nypost.com/p/news/local/beaten_daddy_finally_snapped_P4Y5SsvRP4sK7eT8FeuGON.

61. Baldwin, *supra* note 60, at 71.

62. Declaration on the Elimination of Violence Against Women, *supra* note 26, at pmbl.

63. U.N. WOMEN, *supra* note 1, at 32.

and cultural norms of patriarchal institutions and pointed to the impunity that often greets acts of violence as a reason that gender violence is such a successful mechanism for controlling women.[64] The Special Rapporteur on Violence Against Women has bluntly characterized violence against women as "a systematically used tool of patriarchal control"[65] and "a logical outcome of the unequal social, cultural and economic structures, rather than . . . a social aberration or a 'law-and-order' problem."[66]

This critique of violence against women as both a result and a cause of gender inequality, repeated and refined, is one of the most important contributions of the human rights analysis. It has great power to illuminate the dynamics of violence and the particular prevalence of violence in places where women exercise the fewest rights and where men have the most traditional ideas of women's roles. It also brings into focus the dimensions of the challenges faced by those seeking to eliminate gender violence. If violence against women is embedded in gender inequality, then change hinges on altering the very status of women, or, in short, making revolutions.[67]

5. The Value of the Idea of Violence against Women

The idea of violence against women is an elegant construct. Through its lens we understand better the forms of gender violence that shadow the lives of women and girls across the globe. However, activists who fought for the inclusion of violence against women in the human rights agenda defined success as something more than persuading international governmental entities to call violence against women a human rights violation. Ultimately, the measure of success of the idea of violence against women is its power to change laws and policies that, in turn, change lives by freeing women and girls from violence and the threat of violence.

III.
ADVANCING THE IDEA OF VIOLENCE AGAINST WOMEN THROUGH INTERNATIONAL HUMAN RIGHTS LAW: THE CASE OF JESSICA LENAHAN

The experience of Jessica Lenahan, a victim of domestic violence from Colorado, before the Inter-American Commission on Human Rights[68] was an interesting test of the power of the idea of violence against women. Jessica

64. U.N. Secretary-General, *supra* note 29, ¶¶ 69–77.

65. U.N. Special Rapporteur on Violence Against Women, its Causes and Consequences, *A Critical Review, supra* note 24, ¶ 91.

66. *Id.* at ¶ 88.

67. *See, e.g.*, U.N. Secretary-General, *supra* note 29, ¶ 101 ("States must take up the challenge of transforming the social and cultural norms regulating the relations of power between men and women and other linked systems of subordination.").

68. Lenahan (Gonzales) v. United States, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, OEA/Ser.L/V/II.142 (2011).

Lenahan's lawyers brought her case to the Inter-American Commission after United States authorities, from the local police to the Supreme Court, failed to provide her with either protection or justice. The Inter-American Commission is a friendly forum for a party making arguments grounded in the international idea of violence against women, and the Commission strongly backed Jessica Lenahan's claim. The benefits of bringing her case to an international human rights tribunal, however, are not as clear cut as the favorable ruling. Although the international human rights movement has developed a sophisticated understanding of violence against women, the human rights legal structure has no real enforcement mechanisms. Ultimately the international system lacks the power to translate its findings into on-the-ground change. Instead, its influence derives principally from its moral authority.

A. Jessica Lenahan's Case

In the words of Justice Antonin Scalia, writing for the majority of the Supreme Court that ruled against Jessica Lenahan's claims, the facts of her case are "horrible."[69] Jessica Lenahan, then Jessica Gonzales, had obtained an order of protection for herself and her three daughters against her husband, whose erratic, threatening, and violent behavior had alarmed her.[70] Jessica Lenahan's husband had abused her physically and sexually; he had stalked her, burglarized her house, and vandalized her property; he had threatened to kidnap the children and threatened to kill himself in their presence.[71] A few weeks after a court had issued a permanent order of protection, Jessica Lenahan's husband kidnapped her three daughters as they were playing in the yard in front of their house.[72] Over the course of the next seven hours, Jessica Lenahan made a series of urgent calls to the police department of Castle Rock, Colorado, where she lived.[73] The police visited her house in response to the first call, were shown the order of protection, and, despite Jessica Lenahan's pleas, told her that they could do nothing.[74] The police responses to Jessica Lenahan's other calls throughout the night were equally unhelpful and unsympathetic.[75] Sometime after 3:00 AM, Jessica Lenahan's husband drove to the police station in his pickup truck and opened fire with a gun he had bought that evening.[76] The police returned fire, and, when the gun battle was over, Jessica Lenahan's husband was dead.[77] So

69. Town of Castle Rock v. Gonzales, 545 U.S. 748, 751 (2005).

70. For a description of the facts of the *Lenahan* case, see *Town of Castle Rock*, 545 U.S. at 751–54; *Lenahan*, Report No. 80/11, ¶¶ 18–29; Caroline Bettinger-López, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 COLUM. HUM. RTS. L. REV. 19, 40–42 (2008).

71. For a fuller description of the events, see *Lenahan*, Report No. 80/11, ¶¶ 71–81.

72. Town of Castle Rock, 545 U.S at 753.

73. *Id.* at 753–54.

74. *Id.* at 753.

75. *Id.*

76. *Id.* at 754.

77. *Id.*

were her three daughters, whose bodies were found in the cab of the truck.[78] Whether the children were killed by their father or by police bullets remains an open question.[79]

Ms. Lenahan sued in federal court asserting two related claims. First, she argued that the Castle Rock Police Department had acted recklessly, with gross negligence, or with deliberate indifference to her civil rights. Second, she claimed that the police department had "an official policy or custom of failing to respond properly to complaints of restraining order violations."[80] The Court of Appeals, sitting *en banc*, found that Jessica Lenahan had a due process claim,[81] but the Supreme Court disagreed.

The Supreme Court reversed the Court of Appeals, rejected Lenahan's attempts to compel the Castle Rock Police Department to reform, and left Lenahan without a remedy.[82] The Court also laid waste to state efforts to change police departments' systematic failures to enforce orders of protection or protect abused women.[83] Colorado, like many other states, had enacted a mandatory arrest statute for the explicit purpose of changing police behavior.[84] The Supreme Court, however, wrote the obligatory language out of the statute. Justice Antonin Scalia said flatly, "[w]e do not believe that these provisions of

78. *Id.*

79. While the Supreme Court decision stated that the children were murdered by their father, Town of Castle Rock, 545 U.S. at 754, the Inter-American Commission found that "the circumstances of the shooting leave doubt as to the conclusion that Simon Gonzales's bullets were the ones that killed his daughters." *Lenahan*, Report No. 80/11, ¶ 187.

80. Town of Castle Rock, 545 U.S. at 754.

81. *Id.* at 754–55.

82. For a scathing critique of the reasoning of Justice Scalia's majority opinion, see generally Roger Pilon, Town of Castle Rock v. Gonzales: *Executive Indifference, Judicial Complicity*, 2004/2005 CATO SUP. CT. REV. 101 (2005).

83. *See, e.g.*, G. Kristian Miccio, *The Death of the Fourteenth Amendment: Castle Rock and Its Progeny*, 17 WM. & MARY J. WOMEN & L. 277, 285 (2011) ("For all practical purposes, mandatory arrest has been rendered impotent and all avenues of Fourteenth Amendment due process redress have been foreclosed to battered women and their children. . . . Indeed, what we have is the illusion of protection, which is worse than no protection at all."); Max D. Siegel, *Surviving* Castle Rock*: The Human Rights of Domestic Violence*, 18 CARDOZO J.L. & GENDER 727, 737 (2012) (*Castle Rock* "compromised the safety of survivors in the thirty-two jurisdictions that had mandatory arrest provisions for violations of restraining orders. . . . By declining to recognize mandatory arrest provisions, the Court simultaneously ignored and voided the accountability that sparked the early movement to improve American response to domestic violence, recalling a recent time in the country's history when men could violate and beat their wives without legal consequence.").

84. Town of Castle Rock, 545 U.S. at 759–60. For a more extended discussion of the legislative history of the statute, see *Gonzales v. City of Castle Rock*, 366 F.3d 1093, 1107–08 (10th Cir. 2004) ("The Colorado legislature clearly wanted to alter the fact that the police were not enforcing domestic abuse restraining orders."), *rev'd sub nom.* Town of Castle Rock v. Gonzales, 545 U.S. 748 (2005); David Hirschel, *Domestic Violence Cases: What Research Shows About Arrest and Dual Arrest Rates*, NAT'L INST. JUST. (July 25, 2008), http://www.nij.gov/publications/dv-dual-arrest-222679/dv-dual-arrest.pdf (table listing states with mandatory arrest laws).

Colorado law truly made enforcement of restraining orders *mandatory*."[85] Instead of giving credence to the concerns of the Colorado legislature that had passed the statute, the Court granted leave to police to use their traditional excuse, police discretion, to ignore violations of orders of protection.[86] Nothing in the Court's decision acknowledged the pervasive problem of domestic violence in the United States or the need for legislation, such as Colorado's mandatory arrest law, to reverse the long history of police malfeasance.

The Inter-American Commission's response to the case was radically different. The Commission found that Jessica Lenahan and her daughters had been denied appropriate protection from her abusive husband.[87] Unlike the Supreme Court, the Commission placed the case in context. The Commission described the problem of domestic violence in the United States generally and in Colorado in particular.[88] It mapped the connections between domestic violence, violence against women, and the anti-discrimination principles of human rights obligations.[89] It also described in detail States' obligations to use due diligence to prevent, investigate, sanction, and remedy private as well as State acts of violence against women, to address the underlying discrimination that makes violence against women possible, and to provide effective judicial remedies.[90]

The Commission concluded that the United States had failed to meet its obligations to Jessica Lenahan and her daughters in multiple ways. It found that the governmental authorities had never offered "a coordinated and effective response to protect Jessica,"[91] and condemned "State inaction towards cases of violence against women [that] fosters an environment of impunity and promotes the repetition of violence."[92] To remedy these failures, the Commission recommended that the United States (1) make "serious, impartial and exhaustive"[93] investigations into the deaths of the three young girls and the multiple law enforcement failures vis-à-vis Jessica Lenahan's order of protection; (2) apportion blame and hold officials accountable; and (3) make reparations to Jessica Lenahan—in short, provide the relief that had been requested in the federal case.[94] But, going further, the Commission called for federal and state action on a broad scale to write new laws, train law

85. Town of Castle Rock, 545 U.S. at 760. As one commentator said, Justice Scalia writing for the majority, "told us that 'shall' meant 'maybe or maybe not,' dismissing out of hand the legislative history of thirty-two states and the plain statutory meaning of the word." Miccio, *supra* note 83, at 293.

86. Town of Castle Rock, 545 U.S. at 760–61.

87. Lenahan (Gonzales) v. United States, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, OEA/Ser.L/V/II.142 ¶ 177 (2011).

88. *Id.* ¶¶ 92–100.

89. *Id.* ¶¶ 102–125.

90. *Id.* ¶¶ 126–127.

91. *Id.* ¶ 170.

92. *Id.* ¶ 168.

93. *Id.* ¶ 201.

94. *Id.*

enforcement, design models for police departments, and address basic root causes by adopting public policies aimed at the discriminatory practices that hinder women and children from finding protection from domestic violence.[95]

B. The Practical Value of the Case

Strong as the Commission's support of Jessica Lenahan's claims was, the Commission had no power to enforce its decision or make changes that would help Jessica Lenahan or, more generally, domestic violence victims in the United States. As the United States noted in a submission to the Commission, the Commission is not "a formal judicial body."[96] Its powers are diffuse; it has no enforcement mechanism; and it issues recommendations, not orders.[97] After the Commission makes a report, it can bring a case to the Inter-American Court on Human Rights only if a State has submitted to the Court's jurisdiction through ratifying appropriate treaty instruments,[98] which the United States has refused to do. The United States has failed to ratify many human rights treaties, including the American Declaration of Human Rights, which is the authority under which the Commission acted,[99] and the convention and protocol that make the Inter-American Court of Human Rights rulings binding.[100] Nor has the United States ratified the Convention to Eliminate Discrimination Against Women (CEDAW), a cornerstone of the human rights structure that defines violence against women as a violation of basic human rights.[101]

The Commission argued that it had authority to consider the case by virtue of the United States' membership in the Organization of American States (OAS), whether or not it had signed the American Declaration on Human Rights.[102] Yet the Commission's reliance for jurisdiction on an "international consensus," rather than specific treaty provisions, betrayed the weakness of its arguments. Whatever the strength of the Inter-American Commission's assertions about its

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95. *Id.*

96. *Id.* ¶ 50 (citing Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, Lenahan (Gonzales) v. United States, Case 12.626, Inter-Am. Comm'n H.R. (Oct. 17, 2008)).

97. *See* Bettinger-López, *supra* note 70, at 29–34 (describing the policies and procedures of the Inter-American Commission on Human Rights). For another explanation of the functions of the Inter-American Commission on Human Rights, see HUMAN RIGHTS CLINIC, UNIV. OF TEX. SCH. OF LAW, MAXIMIZING JUSTICE, MINIMIZING DELAY: STREAMLINING PROCEDURES OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 17–21 (2011), http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf.

98. *See* Bettinger-López, *supra* note 70, at 33.

99. *See id.* at 30.

100. *See id.* at 33.

101. *See* Ratification, Accession, and Succession Status of the Convention on the Elimination of All Forms of Discrimination Against Women, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last updated Nov. 24, 2012) (documenting that the United States is one of a handful of countries, including Somalia and Iran, that have not ratified CEDAW).

102. *Lenahan*, Report No. 80/11, ¶¶ 115–116.

jurisdiction, it has only the power that States give it, and the United States has given it none.

Nonetheless, bringing Jessica Lenahan's case to the Inter-American Commission contributed to the process of building a solid edifice of human rights laws on which the idea of violence against women in many ways depends.[103] National courts, even occasionally within the United States, cite to international law, and lawyers draw on arguments from the body of human rights law.[104] Also, reports upholding claims such as those of Jessica Lenahan carry moral weight and influence public opinion, which in turn can create pressure for change. By bringing critical facts to the attention of wider audiences, they help build coalitions and provide ammunition for persuading policy makers to take action.[105]

Human rights cases serve individual participants as well. Bringing the case to the Inter-American Commission and appearing in person before the Commission made a difference to Jessica Lenahan.[106] For the first time, she had a chance to present her story to a tribunal that was willing to consider the substance of her case.[107] Expressing her gratification for the Commission's report, she said, "I have waited 12 years for justice knowing in my heart that police inaction led to the tragic and untimely deaths of my three young daughters . . . . Today's decision tells the world that the government violated my human rights by failing to protect me and my children from domestic violence."[108] Litigating the case not only vindicated Jessica Lenahan, but turned her into a powerful human rights advocate,[109] a clear win for the campaign

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103. For international human rights cases upholding claims on behalf of victims of violence against women, see, e.g., *Gonzalez v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009) (murders in Ciudad Juárez); *Opuz v. Turkey*, App. No. 33401/02 (Eur. Ct. H.R. June 9, 2009) (domestic violence), http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92945; *Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L./V/II.111, doc. 20 rev. (2000) (domestic violence).

104. *See, e.g.*, Graham v. Florida, 130 S. Ct. 2011, 2033–34 (2010) (citing the United Nations Convention on the Rights of the Child in support of its decision even though the Convention has been, in the words of the Court, "ratified by every nation except the United States and Somalia"). *See generally* THE OPPORTUNITY AGENDA, LEGAL AND POLICY ANALYSIS: HUMAN RIGHTS IN STATE COURTS 2011 (2011), http://opportunityagenda.org/files/field_file/2011.08.25%20Human%20Rights%20in%20State%20Courts%202011%20FINAL.pdf (analyzing the use of international law in state courts).

105. Jessica Lenahan's lawyer argues eloquently for these kinds of benefits. *See* Bettinger-López, *supra* note 70, at 58–66.

106. *See id.* at 56–58.

107. *See id.* at 56.

108. Press Release, Am. Civil Liberties Union, Int'l Comm'n Finds U.S. Denied Justice to Domestic Violence Survivor (Aug. 17, 2011), http://www.aclu.org/womens-rights/international-commission-finds-united-states-denied-justice-domestic-violence-survivor.

109. *See* Bettinger-López, *supra* note 70, at 57–58 (describing how Jessica Lenahan regularly speaks at conferences about the need to protect the rights of battered women, noting that she feels the issue is larger than her individual case).

against gender violence.

Jessica Lenahan's case illustrates both the weaknesses and the strengths of using the international human rights system. Human rights law is still inchoate. Unlike national courts, human rights tribunals have no police to enforce orders, and countries can ignore recommendations and rulings with impunity, as the United States has. The benefits of bringing cases to human rights tribunals are remote and abstract compared to the benefits of changing national laws or winning cases in United States courts. For now, turning to bodies such as the Inter-American Commission on Human Rights requires faith in a future when human rights law can produce immediate and tangible changes in the conditions of lives and a commitment to building that future.

IV.
THE IDEA OF VIOLENCE AGAINST WOMEN AT THE FEDERAL LEVEL: THE VIOLENCE AGAINST WOMEN ACT AND THE CIVIL RIGHTS REMEDY

The history of the passage of the 1994 Violence Against Women Act (VAWA)[110] and litigation under VAWA's Civil Rights Remedy is the story of the rise and fall of the idea of violence against women in United States federal law. Part of the same era of activism that placed violence against women securely within the human rights agenda, VAWA drew on many of the ideas stirring the international movement. The campaign for VAWA, however, took place not at international human rights conventions, but in the halls of Congress and in federal courtrooms, where advocates made their case using studies, numbers, and, above all, the vivid, moving words and voices of victims.[111] Advocates demonstrated convincingly that the problem of gender violence in the United States was broad and deep. They documented the damage violence against women caused and the failures of government on multiple levels.[112] At the same time, advocates developed themes familiar from international human rights work, such as the duty of the State to find ways to reach not only public, but private violence and the importance of understanding violence against women as sex discrimination.[113] By confronting decision makers with evidence that was both objective and personal, advocates won converts, votes, and legal cases.

Despite their success with Congress and much of the federal judiciary,

110. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902.

111. *See generally* Biden, *supra* note 3; Christy Gleason, *Presence, Perspectives and Power: Gender and the Rationale Differences in the Debate over the Violence Against Women Act*, 23 WOMEN'S RTS. L. REP. 1 (2001) (chronicling the history of VAWA); Sally Goldfarb, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications & Litigation Strategy*, 4 J.L. & POL'Y 391 (1996) [hereinafter Goldfarb, *The Civil Rights Remedy of the Violence Against Women Act*] (portraying the success of VAWA as a grassroots effort); Nourse, *supra* note 37 (describing the legislative history of VAWA).

112. *See infra* notes 117–23 and accompanying text.

113. *See infra* notes 124–35 and accompanying text.

activists lost the chance for fundamental change when the Supreme Court struck down VAWA's Civil Rights Remedy.[114] They lost because a majority of the Supreme Court refused either to understand or accept the idea of violence against women.

A. Enacting the Violence against Women Act

The Violence Against Women Act was the product of four intensive years of advocacy. During the lengthy series of Congressional hearings leading to its passage, over one hundred witnesses testified at nine hearings, and Congress issued eight separate reports on violence against women.[115] Congress gathered evidence from law professors, social scientists, prosecutors, judges, physicians, private business representatives, and survivors of domestic violence and rape.[116] Women's voices were heard, and heard clearly, telling stories of their victimization, first at the hands of violent men and, then, at the hands of law enforcement and the justice system.[117] As one commentator recounted, members of Congress heard "stories of women living in constant fear brought on by threats or prior abusive situations, or the basic fear that stems from knowing that every six minutes another woman is raped."[118]

The first order of business for proponents of VAWA was establishing the dimensions of the problem. VAWA hearings focused principally on only two of the many forms of violence against women, domestic violence and sexual assault,[119] but evidence from the hearings left no doubt about the scope and seriousness of the problem.[120] In the words of Justice David Souter, the

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114. United States v. Morrison, 529 U.S. 598 (2000).

115. For a full list of hearings and reports, see Biden, *supra* note 3, at 2 nn.6–7. For an account of VAWA's journey through Congress, see Gleason, *supra* note 111, at 5–8. For information specifically on the Civil Rights Remedy, see *Morrison*, 529 U.S. 598, 629–31 nn.3–8 (2000) (Souter, J., dissenting); Nourse, *supra* note 37, at 263–64.

116. *See* Nourse, *supra* note 37, at 265–67.

117. *See id.* at 265.

118. Gleason, *supra* note 111, at 12.

119. Absent from consideration were forms of violence squarely within the international Declaration on Violence Against Women, such as sexual harassment in the workplace and trafficking for commercial sexual exploitation. At the time of the hearings, sexual harassment was outlawed, at least in theory, by Title VII of the Civil Rights Act of 1964. *See generally* Estrich, *Sex at Work*, *supra* note 57 (analyzing problems with federal sexual harassment law contemporaneous with congressional consideration of VAWA). Trafficking was the subject of federal legislation passed in 2000 as the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1466, which was reauthorized under the titles of Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-93, 117 Stat. 2875, and William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044.

120. *See* Biden, *supra* note 3, at 2 (noting that "[d]uring its four-year inquiry, Congress generated a massive record, including testimony from law enforcement officials, judges, social scientists, professors, physicians, and victims. . . . that violence against women is a national problem of the highest order—a problem that Congress found seriously impeded women from participating fully in the commercial life of the nation and one that state legal systems had proven unable and unwilling to remedy"); Goldfarb, *The Civil Rights Remedy of the Violence Against*

legislative hearings produced, a "mountain of data."[121] Legislators heard at length about the prevalence of violent crimes against women,[122] including the sobering fact that violence is the leading cause of injury to women ages 15-44,[123] and the huge costs of violence, amounting to billions of dollars each year.[124] According to then-Senator Joseph Biden, the bill's chief sponsor, legislative hearings established that violence against women was a "national problem of the highest order."[125]

VAWA's Congressional hearings had a purpose besides convincing legislators that violence against women was a serious enough problem to require federal action. The hearings also made the case for VAWA's constitutionality. Proponents of the legislation anticipated challenges to its most ambitious provision, the Civil Rights Remedy, which created a right of action against private and public actors for violent crimes motivated by gender.[126] To counter possible attacks, the bill's advocates built a case for the authority of the law under both the Commerce Clause and the Fourteenth Amendment. The subtext of this phase of the hearings was the symbiotic relationship between gender inequality and violence against women. Proponents of the legislation presented testimony illustrating ways that gendered violence directed at women in the United States is a means of assuring that women remain second-class citizens but also that sex discrimination pervades the responses of governmental authorities within the United States to violence against women.

To establish that the Commerce Clause authorized VAWA, proponents created a record of the effects of gender violence both on individual women's economic status and, in aggregate, on the commerce of the country. Congressional leaders heard about the ways violence and the fear of violence created economic disadvantages for women, and helped maintain them in conditions of gender inequality. They heard that women's opportunities in the market place were limited by fears of rape[127] and that women turned down jobs that required out-of-town travel or night work out of concern for their physical safety.[128] Documented too, were the ways that victims of domestic violence often find their ability to participate in the job market compromised by abusers

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Women Act, *supra* note 111, at 392–93 (describing the testimony of women before Congress on the scope of the problem).

121. United States v. Morrison, 529 U.S. 598, 629 (2000) (Souter, J., dissenting).

122. *Id.* at 631–32 (citing the extensive congressional reports on violence against women and its toll on society).

123. Biden, *supra* note 3, at 2.

124. *Id.* at 4 (citing a study that suggests that violence against women costs the country at least $3 billion a year); Morrison, 529 U.S. at 632 (Souter, J., dissenting) (stating that estimated costs were between three and ten billion dollars a year).

125. Biden, *supra* note 3, at 2.

126. 42 U.S.C. § 13981(d)(1) (2006).

127. *See* Biden, *supra* note 3, at 21–22 (explaining that fear of violence affects jobs for women).

128. *Id.* at 20–23.

who sabotage their efforts to work.[129] Evidence was presented about how women's educational experiences, which determine much of their value in the workplace, were shaped by the prevalence of sexual assault and the fear of sexual assault on university and college campuses.[130] Testimony also covered the consequences of victimization on women's economic status. Legislators were told that half of rape victims lost their jobs in the aftermath of an assault,[131] and that domestic violence victims regularly found themselves homeless or dependent on government benefits.[132] Summarizing the evidence presented to Congress, Senator Joseph Biden said that gender violence "inflicts on women severe and dislocating 'economic injury' because of the loss of opportunity for women to engage fully in activities that are the lifeblood of our national economy."[133]

The legislative history created in support of Fourteenth Amendment authority for VAWA's Civil Rights Remedy focused on sex discrimination in statute books, police departments, and courts. Proponents of VAWA documented the bias in the laws themselves, which in some states still gave women little protection against marital rape and allowed inter-spousal immunity to defeat claims for redress.[134] Far more pervasive and pernicious, however, was bias in the application of laws.[135] Evidence was amassed to show that in each facet of the legal system and at each phase of legal proceedings, the crimes of sexual assault and intimate partner violence against women were taken less seriously, pursued less vigorously, and punished less severely.[136] Women's claims were trivialized, women's credibility was questioned, and victims were

129. *See* Julie Goldscheid, United States v. Morrison *and the Civil Rights Remedy of the Violence Against Women Act: A Civil Rights Law Struck Down in the Name of Federalism*, 86 CORNELL L. REV. 109, 116–17 (2000) (listing ways in which women might be victimized at work).

130. Biden, *supra* note 3, at 4 (noting violence affects places where women "study"). *See also* United States v. Morrison, 529 U.S. 598, 633 (2000) (Souter, J., dissenting) (citing a report indicating that 125,000 college women can expect to be raped each year); Sally F. Goldfarb, *"No Civilized System of Justice": The Fate of the Violence Against Women Act*, 102 W. VA. L. REV. 499, 502 (2000) [hereinafter Goldfarb, *"No Civilized System of Justice"*] (discussing violence against women perpetrated by male college athletes and universities' tolerance of it).

131. Biden, *supra* note 3, at 21.

132. *Id.* at 4; Goldscheid, *supra* note 129, at 117 (noting that "gender-motivated violence can force victims into poverty, forcing them to seek support from government benefits and social services"). *See generally* Sally F. Goldfarb, *Applying the Discrimination Model to Violence Against Women: Some Reflections on Theory and Practice*, 11 AM. U. J. GENDER SOC. POL'Y & L. 251, 256–57 (2003) [hereinafter Goldfarb, *Applying the Discrimination Model to Violence Against Women*] (suggesting a link between gender-motivated violence and women's "disproportionate rates of poverty and homelessness").

133. Biden, *supra* note 3, at 13.

134. *Id.* at 32; Goldfarb, *"No Civilized System of Justice," supra* note 130, at 507; Goldscheid, *supra* note 129, at 118 (describing disparities in state remedies for spousal violence against women).

135. Biden, *supra* note 3, at 32. *See* Morrison, 529 U.S. at 633–34 (Souter, J., dissenting); Goldscheid, *supra* note 129, at 118–19; Nourse, *supra* note 37, at 259–60, 265–67.

136. Biden, *supra* note 3, at 4–5, 28, 33–36.

blamed for their own plight.[137] In the end, Congress concluded that "[f]rom the initial report to the police though prosecution, trial and sentencing, crimes against women are often treated differently and less seriously than other crimes."[138]

Legislators built a persuasive case for the passage of VAWA, but their success was also the product of a particularly fortunate moment in history that created a broad, although not unanimous, consensus. Channeled into the movement to pass the legislation was anger triggered by two high-publicity events: the treatment of Anita Hill at the confirmation hearings of now Supreme Court Justice Clarence Thomas and the murder of Nicole Simpson after years of abuse by her husband, football star O.J. Simpson.[139] Also, voters had just elected the largest cohort of women ever to serve in the U. S. Congress.[140] While the chief Congressional sponsor of VAWA was then-Senator Joseph Biden, a Democrat from Delaware, the process of holding hearings and listening to women made a genuine convert of Senator Orrin Hatch, a Republican from Utah.[141] In the end, 67 senators and 225 representatives cosponsored the bill.[142] State governments overwhelmingly supported the legislation, and 41 attorneys general urged Congress to pass VAWA.[143]

The only dissent of any significance came from portions of the judiciary. Both the federal Judicial Conference of the United States and the State Conference of Chief Justices lobbied against VAWA.[144] In spite of statutory language excluding family law from the VAWA's jurisdiction,[145] opposition centered on fears that the Civil Rights Remedy would allow unwarranted federal interference with states' regulation of family law.[146] Chief Justice Rehnquist himself actively opposed the Civil Rights Remedy on the grounds that it would

137. *Id.* at 33–36; Goldfarb, *"No Civilized System of Justice," supra* note 130, at 507.

138. Biden, *supra* note 3, at 36 (internal citations omitted).

139. Gleason, *supra* note 111, at 3–5; Nourse, *supra* note 37, at 257–58.

140. Gleason, *supra* note 111, at 4. ("[T]he 103rd Congress included seven female Senators (nearly twice the number as in the 102nd Congress and more than three times the number present in the 101st Congress) and forty-seven Congresswomen (the first time the number of Congresswomen jumped more than ten in any given election).").

141. Biden, *supra* note 3, at 26; Gleason, *supra* note 111, at 3–5, 7.

142. Goldfarb, *The Civil Rights Remedy of the Violence Against Women Act, supra* note 111, at 396.

143. United States v. Morrison, 529 U.S. 598, 653–54 (2000) (Souter, J., dissenting); Goldscheid, *supra* note 129, at 119–20 (The forty-one attorneys generals were from thirty-eight states, the District of Columbia, and two U.S. territories.).

144. Goldfarb, *"No Civilized System of Justice," supra* note 130, at 510–12; Nourse, *supra* note 37, at 272.

145. Section (4) of the provision states that that the Civil Rights Remedy shall not be construed to confer "jurisdiction over any State law claim seeking the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree." 42 U.S.C. § 13981(e)(4).

146. *See* Goldfarb, *"No Civilized System of Justice," supra* note 130, at 511–12; Siegel, *supra* note 39, at 2197–99.

burden federal courts and flood them with a "whole host of domestic-relations disputes."[147] In the end, the opinion of Chief Judge Rehnquist would trump the judgments of a bipartisan Congress, but, in 1994, what has been characterized as "an historic stand and hopeful step toward free and safe lives for women as equal citizens"[148] became law.

B. Provisions of the Violence against Women Act

The Violence Against Women Act attacked gender violence on a number of fronts.[149] It created two new crimes: a felony for interstate domestic violence[150] and a felony for interstate violation of orders of protection.[151] For battered immigrants dependent on abusive husbands for immigration status, it created new paths to permanent legal residency and citizenship.[152] The law also funded a long list of projects designed to change the inaction, indifference, or hostility that surrounded enforcement of existing state laws protecting women. It authorized money to train police and prosecutors, reach underserved populations, fight stalking, provide shelter and civil legal assistance to victims, establish a national domestic violence hotline, study parental kidnapping laws, and develop a research agenda through the National Institute of Justice.[153]

All of these provisions were important, maybe even game-changing, but the Civil Rights Remedy[154] was VAWA's most radical provision, and the statute's best chance of altering fundamental ideas about equality, violence, power, and women. The Civil Rights Remedy created a cause of action for anyone injured by "a crime of violence motivated by gender" for compensatory and punitive damages and for injunctive and declaratory relief."[155] It opened federal courthouse doors to women who had made futile attempts to find protection, vindication, or compensation from state law enforcement. Previously, women who had turned to the justice system for help had found police who refused to make arrests; prosecutors who declined to take cases; court systems too burdened to enforce laws; judges who questioned women's credibility or instinctively sympathized with batterers and rapists; juries mired in stereotypes and reluctant to convict on the basis of a woman's word; and penal codes that

147. Nourse, *supra* note 37, at 272.

148. Catharine A. MacKinnon, *Disputing Male Sovereignty: On* United States v. Morrison, 114 HARV. L. REV. 135, 138 (2000) [hereinafter MacKinnon, *Disputing Male Sovereignty*].

149. *See* Goldfarb, *"No Civilized System of Justice," supra* note 130, at 504–08 (subtitle by subtitle analysis of VAWA).

150. 18 U.S.C. § 2261 (2006).

151. 18 U.S.C. § 2262 (2006).

152. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902.

153. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, COMPARISON OF VAWA 1994, VAWA 2000 AND VAWA 2005 REAUTHORIZATION BILL (2006), http://www.ncadv.org/files/VAWA_94_00_05.pdf.

154. 42 U.S.C. § 13981(a) (2006).

155. 42 U.S.C. § 13981(c) (2006).

simply lacked effective provisions for holding perpetrators of violence accountable. Breaking down the rigid private/public distinction that had kept women without legal remedies, the new law took what happened in a kitchen, a bedroom, a dark alley, or a college frat house into the public sphere. It labeled the gender violence that happened to women discrimination, a violation of civil rights, and, as one commentator said, "a deprivation of women's fundamental right to equality."[156] The Civil Rights Remedy placed the power to seek justice for these human rights deprivations directly in the hands of women, allowing them to seek redress without waiting for the very state players who had consistently failed them to take action. It was a tremendous, albeit short-lived, victory.

C. The Fate of the Civil Rights Remedy

Organized opposition, fully anticipated by proponents of the law, vigorously fought actions brought under VAWA's Civil Rights Remedy.[157] Nonetheless, for six years the overwhelming majority of courts that heard VAWA cases found the Civil Rights Remedy constitutional.[158] Proponents' education of state officials on violence against women, begun with the Congressional hearings, continued as judges heard arguments and testimony from litigants and reviewed Congressional findings as they considered the law's constitutionality.[159] Most judges had little difficulty finding that the violence in question in particular cases had been caused by gender or motivated by gender animus.[160] Court decisions

156. Goldfarb, *Applying the Discrimination Model to Violence Against Women*, *supra* note 132, at 252.

157. Gleason, *supra* note 111, at 6.

158. *See, e.g.*, Jugmohan v. Zola, No. 98 Civ. 1509(DAB), 2000 WL 222186, at *3–4 (S.D.N.Y. Feb. 25, 2000) (canvassing cases finding in favor of and against the constitutionality of the Civil Rights Remedy shortly before the Supreme Court decided *United States v. Morrison*); Culberson v. Doan, 65 F. Supp. 2d 701, 710 (S.D. Ohio 1999).

159. For cases reviewing congressional findings, see, e.g., *Culberson*, 65 F. Supp. 2d at 709–12; *Doe v. Mercer*, 37 F. Supp. 2d 64, 67 (D. Mass. 1999); *Ericson v. Syracuse University*, 45 F. Supp. 2d 344, 345–47 (S.D.N.Y. 1999); *Anisimov v. Lake*, 982 F. Supp. 531, 537–38 (N.D. Ill. 1997); *Seaton v. Seaton*, 971 F. Supp. 1188, 1192–93 (E.D. Tenn. 1997); *Doe v. Hartz*, 970 F. Supp. 1375, 1421–22 (N.D. Iowa 1997); *Doe v. Doe*, 929 F. Supp. 608, 611–12 (D. Conn. 1996).

160. Culberson, 65 F. Supp. 2d at 706 (attempted assault accompanied by a threat to victim if she had contact with other men sufficient to establish gender animus for murder); Liu v. Striuli, 36 F. Supp. 2d 452, 475 (D.R.I. 1999) ("The pattern of physical and emotional abuse . . . alleged by [the victim], including the rapes, along with the lack of any other apparent motive, is sufficient to warrant the conclusion that [the] conduct was gender-motivated."); Ziegler v. Ziegler, 28 F. Supp. 2d 601, 607 (E.D. Wash. 1998) (stating that it is sufficient to show an inference of gender-motivated violence where "[a]t least one incident of rape . . . [g]ender specific epithets . . . [a]cts that perpetuated stereotype[s] of submissive role . . . [s]evere and excessive attacks . . . especially during [victim's] pregnancy . . . [and] violence [that] was often without provocation and specifically at times when the Plaintiff asserted her independence"); Crisonino v. N.Y. City Hous. Auth., 985 F. Supp. 385, 391 (S.D.N.Y. 1997) (calling plaintiff a "dumb bitch" and shoving her to the ground are sufficient to show acts were committed because of the plaintiff's gender and motivated by gender animus); *Anisimov*, 982 F. Supp. at 541 ("inappropriate sexual advances toward [victim] including fondling her, attempting to remove her clothing, grabbing her breasts,

showed nuanced understanding of sexual violence, and judges came close to finding that sexual assault was *per se* motivated by gender animus.[161] In 2000, however, the Supreme Court put a halt to the development of these promising judicial insights.[162]

The case that found its way to the Supreme Court began in 1994 when Christy Brzonkala, a freshman at Virginia Tech, was raped by two members of the varsity football team in her first month of school.[163] The attack took place within thirty minutes of meeting her assailants and involved three separate sexual assaults.[164] Depressed and suicidal, Brzonkala took a leave of absence.[165] When she returned to school, she filed a complaint with Virginia Tech. During the hearing held to consider her charges, Antonio Morrison, one of her attackers, admitted to having sex with Christy Brzonkala after she had twice told him "no."[166] Virginia Tech found that Morrison, but not the other assailant (who, unlike Morrison, had not confessed), had sexually assaulted Brzonkala and suspended Morrison for two semesters.[167] Morrison then threatened to sue Virginia Tech for failing to provide him due process, and Virginia Tech decided it had bungled its handling of the complaint.[168] Following a second hearing, conducted under circumstances that gave Morrison practical and procedural advantages denied Brzonkala, the University found Morrison guilty of "using abusive language," and imposed the same suspension it had after the first hearing.[169] However, when Morrison appealed, the University provost decided the suspension was excessive, and Morrison was allowed to return to the University on a full athletic scholarship.[170] The school never told Christy Brzonkala the result of the appeal; instead she learned of the decision from an article in the *Washington Post*.[171] Fearing for her personal safety and believing

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assaulting and attempting to rape her, and ultimately luring her to a deserted office site and raping her" are sufficient to demonstrate gender animus for rape); *Hartz*, 970 F. Supp. at 1408–09 ("Allegations of unwanted or unwelcome sexual advances . . . are sufficient to meet the requirement to allege that the defendant 'targeted [the victim] on the basis of his or her gender' and 'had a specific intent or purpose, based on the victim's gender, to injure the victim.'").

161. Anisimov, 982 F. Supp. at 541 (stating the cases where rape is not motivated by gender "would appear to this Court to be few and far between"); Hartz, 970 F. Supp. at 1408–09 (explaining unwanted sexual advances are enough to demonstrate gender animus).

162. United States v. Morrison, 529 U.S. 598 (2000).

163. The fullest judicial description of the brutal attack on Christy Brzonkala and its aftermath appears in the dissent to the Fourth Circuit Court of Appeals' en banc decision finding the Civil Rights Remedy unconstitutional. Brzonkala v. Va. Polytechnic Inst. & State Univ. (*Brzonkala III*), 169 F.3d 820, 906–08 (4th Cir. 1999) (Motz, J., dissenting), *aff'd sub nom.* United States v. Morrison, 529 U.S. 598 (2000).

164. *Id.* at 906.

165. *Id.* at 906–07.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.* at 907–08.

170. *Id.* at 908.

171. *Id.*

the University had repudiated her claim, she withdrew from school.[172] A few months later, she filed a complaint in Federal Court claiming a right to damages under the Civil Rights Remedy of VAWA.[173]

The District Court that heard the motion to dismiss Christy Brzonkala's complaint found that the complaint alleged facts sufficient to show that the rapes at the core of her case were motivated by gender.[174] However, the Court concluded that "Congress's reliance on the Commerce Clause and the Fourteenth Amendment to support its authority to enact VAWA is misplaced,"[175] and dismissed the case. The Court of Appeals initially reversed the lower court and upheld the constitutionality of VAWA's Civil Rights Remedy, [176] but the bench was split. After an *en banc* hearing, the full Court of Appeals affirmed the District Court, both its finding that Christy Brzonkala was a victim of a crime motivated by gender and its conclusion that the Civil Rights Remedy did not pass constitutional muster.[177] At the time of the *en banc* decision, Christy Brzonkala's case was the only one in which judges had ruled that the Civil Rights Remedy was unconstitutional.[178] The Supreme Court granted certiorari and ended further Civil Rights Remedy litigation by ruling that Congress had no authority to enact VAWA's Civil Rights Remedy under either the Commerce Clause or the Fourteenth Amendment.[179]

Justice Rehnquist's majority suggests little interest in the problems that had compelled Congress to act. The decision superficially reviewed Congressional findings about the effects of gendered violence on women's economic power, but, unlike Justice Souter's dissent that discussed the findings at length,[180] the majority explored the content of those findings only to the extent necessary to summarily dismiss them.[181] Without acknowledging the gravity of the problem of violence against women, the decision expounded on the allocation of power

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172. *Id.*

173. Brzonkala v. Va. Polytechnic Inst. & State Univ. (*Brzonkala I*), 935 F. Supp. 779, 781–82 (W.D. Va. 1996), *rev'd*, 132 F.3d 949, 974 (4th Cir. 1997), *vacated en banc*, 169 F.3d 820 (4th Cir. 1999), *aff'd sub nom.* United States v. Morrison, 529 U.S. 598 (2000).

174. *Id.* at 784–85.

175. *Id.* at 801.

176. Brzonkala v. Va. Polytechnic Inst. & State Univ. (*Brzonkala II*), 132 F.3d 949 (4th Cir. 1997), *vacated en banc,* 169 F. 3d 820 (4th Cir. 1999), *aff'd sub nom.* United States v. Morrison, 529 U.S. 598 (2000).

177. *Brzonkala III*, 169 F. 3d 820, 829–30, 889 (4th Cir. 1999) (en banc).

178. Between the time the Court of Appeals decided *Brzonkala v. Virginia Polytechnic & State University*, 169 F.3d 820 (4th Cir. 1999) (en banc), in March, 1999, and certiorari was granted in September, another district court in *Bergeron v. Bergeron*, 48 F. Supp. 2d 628 (M.D. La. 1999), found the Civil Rights Remedy unconstitutional.

179. For detailed critiques of *United States v. Morrison*, see generally Anderson, *Women Do Not Report the Violence They Suffer*, *supra* note 55; Goldfarb, *"No Civilized System of Justice," supra* note 130; Goldscheid, *supra* note 129; MacKinnon, *Disputing Male Sovereignty*, *supra* note 148.

180. United States v. Morrison, 529 U.S. 598, 633–34 (2000) (Souter, J., dissenting).

181. *See id.* at 614–15 (majority opinion).

between Congress and the federal courts,[182] the states and the federal government,[183] and state actors and private individuals.[184] As a result, the opinion reads as if an attempt to help victims of run-of-the-mill crimes had been caught in the cross hairs of an intra-government squabble about the limits of Congressional power to write and enforce laws.

Within the subtext of the opinion, however, lies a systematic refutation of the existence and validity of the idea of violence against women. Instead of viewing gender violence as a distinct and significant phenomenon—a species of hate crimes—the Court repeatedly characterized the acts of violence covered by the Civil Rights Remedy as no different from other violent felonies.[185] The Court also downplayed the extent of gender violence. Despite the massive evidence to the contrary in VAWA's legislative history, the Court refuted the Congressional finding that violence against women was a problem of national dimensions, quixotically insisting that "Congress' findings indicate that the problem of discrimination against the victims of gender-motivated crimes does not exist in all States, or even in most States."[186]

The Court rejected as well the idea, central to human rights law on gender violence, that violence against women is a form of discrimination for which nations bear responsibility. The Court acknowledged Congressional findings on discrimination within states' justice systems,[187] but denied that Congress had authority to provide individuals effective remedies. Relying on the doctrine of congruence and proportionality, the Court rejected the argument that the Fourteenth Amendment's Section 5 gave Congress authority to enact the Civil Rights Remedy.[188] The harmful discrimination practiced by states, the Court said, was too distant from the injury and remedy.[189] With an outward show of sympathy, the Court concluded its decision by stating that "[i]f the allegations here [made by the petitioner] are true, no civilized system of justice could fail to provide her a remedy" and telling Brzonkala she had simply come to the wrong venue and should look to the Commonwealth of Virginia for a remedy. Yet the Court had just struck down the statute enacted precisely because states, like

182. *Id.* at 606–07, 614, 616.

183. *Id.* at 609–10, 615.

184. *Id.* at 620–22.

185. *See id.* at 615 ("[I]f Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence."); *id.* at 617 (characterizing the activity the Civil Rights Remedy regulated as simply "noneconomic, violent conduct"); *id.* at 618 (quoting an 1821 case which said that "[C]ongress cannot punish felonies generally"). The statute, in fact, set violence against women apart from other crimes by carefully crafted language limiting crimes to which the Civil Rights Remedy applied to those "committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender." 42 U.S.C. § 13981(d)(1) (2006).

186. Morrison, 529 U.S. at 626.

187. *Id.* at 619–20.

188. *Id.* at 619, 625–26.

189. *Id.*

Virginia, had systematically failed to provide redress to victims of gender violence.[190]

The Court also gave new life to the distinction between private and public spheres that human rights critiques credit with masking and perpetuating violence against women. Carved out from federal jurisdiction and reserved for the states, the Court claimed, was the regulation of family law.[191] The case before the Court, of course, had nothing to do with regulating families; the petitioner was raped by strangers, not family members, while she was living at college, not at home. Drafters of the Civil Rights Remedy, anticipating this argument, had explicitly exempted divorce and child custody from federal jurisdiction.[192] Nor, as Justice Breyer pointed out in his dissent, does Congress actually refrain from regulating families when it feels so moved.[193] For the Court, creating a category of regulation called family law that is outside federal jurisdiction (and therefore outside its concern), served the same purpose as doctrines relegating certain activities to private space outside the realm of public concern.[194] The effect of both is the same: victims of gender violence are left without remedies.

*D. VAWA and the Idea of Violence against Women Post-*Morrison

Although the Civil Rights Remedy of VAWA was struck down, the rest of the statute remains in force and, indeed, has been expanded through reauthorizations in 2000 and 2005.[195] Provisions protecting battered immigrant

190. *See, e.g.*, Goldfarb, *"No Civilized System of Justice," supra* note 130, at 526–27 (noting that a primary reason for enacting the Civil Rights Remedy was congressional recognition that "state laws and the mechanisms for enforcing them were pervaded by gender bias" and calling the *Morrison* Court's relegation of Brzonkala's claims to the very state that had provided her with no recourse a "cruel contradiction").

191. *Id.* at 615–16.

192. The Civil Rights Remedy exempted regulation of "any State law claim seeking the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree." Violence Against Women Act of 1994, Pub. L. No. 103-322, § 40302(e)(4), 108 Stat. 1902, 1942. Opposition from organizations of judges to the Civil Rights Remedy centered on the fear that it would somehow allow unwarranted federal interference with states' regulation of family law. *See* Goldfarb, *"No Civilized System of Justice," supra* note 130, at 511–12; Siegel, *supra* note 39, at 2197–99.

193. *See* Morrison, 529 U.S. at 659 (Breyer, J., dissenting). Justice Breyer mentions the Child Support Recovery Act of 1992, 18 U.S.C. § 228 (2006), in discussing the breadth of Congress' Commerce Clause authority. *Id.* The Defense of Marriage Act, 1 U.S.C. § 7 (2006), is a more recent example.

194. For commentaries on the theory that the *Morrison* Court's reliance on the idea that family law is special and inappropriate for federal regulation, and on the idea that the Court's separation of family law from other kinds of law is akin to the traditional private/public distinction, see generally Anderson, *Women Do Not Report the Violence They Suffer*, *supra* note 50; Goldfarb, *"No Civilized System of Justice," supra* note 130; Siegel, *supra* note 39.

195. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960; Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1491. *See also* GARRINE P. LANEY, CONG. RESEARCH SERV., RL 30871, VIOLENCE AGAINST WOMEN ACT: HISTORY AND FEDERAL FUNDING (2010). VAWA is up for reauthorization in 2012.

women have been strengthened and broadened to reach victims of other violent crimes, including trafficking.[196] The Office for Violence Against Women was made permanent in 2002 and currently pursues an ambitious agenda.[197] Congress has continued to fund projects, and by 2011 over four billion dollars had been awarded in grants to combat intimate partner abuse, sexual assault and rape, dating violence, and stalking.[198] Valuable data has, and continues to be, collected.[199]

Yet *Morrison* remains a painful loss. Besides its potential for righting individual wrongs and helping make women whole, the Civil Rights Remedy embodied important ideas about violence, women, discrimination, and gender inequality. The decision in *Morrison* was a devastating rejection of those ideas. Advocates achieved major victories in the process of lobbying for the Civil Rights Remedy. They educated policymakers, and they won important battles in both Congress and the federal courts. Ultimately, however, they lost the chance to continue the dialogue within the all-important federal policy sphere, and that loss reverberates still.

In 2011, the UN's Special Rapporteur on Violence Against Women undertook a mission to the United States, similar to its missions to other countries, and wrote a postscript for the *Morrison* Court's nullification of the Civil Rights Remedy. The Special Rapporteur noted VAWA's provisions that created new crimes, helped immigrant women, and funded a number of worthwhile programs.[200] However, the Special Rapporteur concluded that while "VAWA's intentions are laudable, there is little in terms of actual Federal

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See S. 1925, 112th Cong. (2011); H.R. 4970, 112th Cong. (2012). For an optimistic assessment of VAWA post-*Morrison*, see Rahim Kanani, *DOJ Director on Violence Against Women in the United States*, FORBES (Mar. 8, 2012), http://www.forbes.com/sites/rahimkanani/2012/03/08/doj-director-on-violence-against-women-in-the-united-states.

196. Laura Carothers Graham, *Relief for Battered Immigrants Under the Violence Against Women Act*, 10 DEL. L. REV. 263, 267–69 (2008).

197. *See generally* OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, FY 2012 PERFORMANCE BUDGET (2011), *available at* http://www.justice.gov/jmd/2012justification/pdf/fy12-ovw-justification.pdf.

198. *See generally* OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, 2010 BIENNIAL REPORT TO CONGRESS ON THE EFFECTIVENESS OF GRANT PROGRAMS UNDER THE VIOLENCE AGAINST WOMEN ACT (2010) (information on the kinds of projects funded under VAWA), *available at* www.ovw.usdoj.gov/docs/2010-biennial-report-to-congress.pdf. *See also About the Office on Violence Against Women*, OFFICE ON VIOLENCE AGAINST WOMEN, http://www.ovw.usdoj.gov/docs/about-ovw-factsheet.pdf (last updated April 2012) (Four billion dollars awarded in VAWA grants and cooperative agreements through 2011).

199. *See, e.g.*, *FY 2011 Budget Request at a Glance*, OFFICE ON VIOLENCE AGAINST WOMEN, http://www.justice.gov/jmd/2011summary/pdf/fy11-ovw-bud-summary.pdf (last visited July 28, 2012) (requesting funding for projects on child custody, economic problems related to domestic violence, and violence against Indian women). Indeed, VAWA-funded research was used in amicus briefs defending VAWA's Civil Rights Remedy. *See* Goldfarb, *"No Civilized System of Justice," supra* note 130, at 541–42.

200. Special Rapporteur on Violence Against Women, its Causes and Consequences, *Mission to the United States of America*, ¶¶ 67–68, U.N. Doc. A/HRC/17/26/Add.5 (June 6, 2011) (by Rashida Manjoo).

substantive protection or prevention for domestic violence."[201] In the end, citing *Morrison*, the Special Rapporteur said, "even where local and state police are grossly negligent in their duties to protect women's right to physical security, and even where they fail to respond to an urgent call, there is no federal level constitutional or statutory remedy."[202]

V.
THE IDEA OF VIOLENCE AGAINST WOMEN ON A LOCAL LEVEL: NEW YORK'S ANTI-TRAFFICKING LAWS

A. New York Laws on Violence against Women: Anti-Human Trafficking Legislation

New York State has never directly addressed ideas about the interrelationship of violence against women, sex discrimination, and gender inequality. It has no Violence Against Women Act, and state attention has never fixed on gender violence *per se*. Instead, in the past decades, New York has enacted various laws in response to changing societal ideas that reflect growing national and international understanding about violence. The long list of laws protecting against domestic violence is among New York's legislative achievements in the campaign against gender violence.[203] Legislation making sexual assault a family offense, for example, moved the discussion about violence and women forward by recognizing links between two kinds of violence, rape and domestic violence, previously seen as separate issues.[204] Other recent legislation outlawed discrimination against domestic violence victims in employment[205] and unemployment insurance.[206] By linking domestic violence and employment, the legislature implicitly acknowledged the economic inequality that allows domestic violence to exist and the vulnerability of victims who are tied by financial dependency to their abusers.

But also a coalition of New York's anti-trafficking activists has initiated a major assault on another form of violence against women, sex trafficking.[207]

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201. *Id.* ¶ 69.

202. *Id.* ¶ 71.

203. For a description of the growth in domestic violence law in New York State, see generally Julie A. Domonkos, *The Evolution of the Justice System's Response to Domestic Violence in New York State*, *in* LAWYER'S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM 1–8 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 5th ed. 2006). For a compilation of laws touching on domestic violence enacted between 1995 and 2011, see *Legislative Summaries by Year*, N.Y. ST. OFF. PREVENTION DOMESTIC VIOLENCE (2010), http://www.opdv.ny.gov/law/summ_year/index.html (last visited Nov. 25, 2012).

204. Act of Sept. 16, 2009, ch. 476, § 3, 2009 N.Y. Sess. Laws 1223, 1225 (McKinney).

205. Act of July 7, 2009, ch. 80, 2009 N.Y. Sess. Laws 655 (McKinney).

206. Act of May 20, 2009, ch. 35, 2009 N.Y. Sess. Laws 110 (McKinney).

207. The author has been involved in New York's anti-human trafficking campaign over the past five years, and this section of this article is informed in part by her experiences as part of that movement.

Evidence of their success is a trio of pioneering laws that added much needed state presence to international and federal anti-trafficking efforts.[208] The first of these New York State laws is the Anti-Human Trafficking Act. Passed in 2007, it was one of the country's most comprehensive and toughest state anti-trafficking laws.[209] The law created the crime of sex trafficking, increased penalties for buyers of sex (but not for sellers, who are often trafficking victims), made provisions for services to help trafficking victims, and provided training for law enforcement officials.[210] However, the new law left gaps that exposed trafficking victims charged with prostitution to damage from arrests and convictions. Some of those gaps have been filled by two laws. One of them, the Safe Harbor Act, was enacted a year after the passage of New York's Anti-Human Trafficking Act. This legislation provided relief to trafficking victims by allowing Family Court judges to divert cases against young people arrested on prostitution charges from juvenile delinquency dockets and treat them more leniently as "Persons in Need of Supervision."[211] The Safe Harbor Act was the first state law in the country to protect young trafficking victims arrested for prostitution.[212] A few years later, in 2010, another bill was signed into law, amending New York's Criminal Procedure Law to provide a process for vacating convictions of trafficking victims arrested on prostitution charges.[213]

The New York advocates who brought anti-trafficking measures to lawmakers and campaigned for their passage drew on a deep understanding of the gendered violence inherent in trafficking, but they did not use the language of gender inequality or sex discrimination. Instead, they focused on conveying the simple but powerful message that the particular form of violence against women found in sex trafficking is deeply wrong and should be stopped.

B. Making the Case that Sex Trafficking is Violence against Women

The success of the anti-trafficking campaign depended on finding ways to make visible to the public and policymakers the particular brutality of trafficking. The idea that trafficking is violent may seem obvious. It is, of course, recognized as a form of violence against women in the human rights

208. For one explanation of the need for a state law, see N.Y. STATE INTERAGENCY TASK FORCE ON HUMAN TRAFFICKING, A REPORT BY THE INTERAGENCY TASK FORCE: IMPLEMENTATION OF THE 2007 LAW 5–6 (2008), *available at* http://criminaljustice.state.ny.us/pio/humantrafficking/human_trafficking_rpt_aug08.pdf.

209. *Id.* at 1, 5.

210. Act of June 6, 2007, ch. 74, 2007 N.Y. Sess. Laws 597 (McKinney). For a description of provisions of the law, see N.Y. STATE INTERAGENCY TASK FORCE ON HUMAN TRAFFICKING, *supra* note 208, at 7–15.

211. Act of Sept. 25, 2008, ch. 569, 2008 N.Y. Sess. Laws 2029 (McKinney).

212. Katherine Mullen & Rachael Lloyd, *The Passage of the Safe Harbor Act and the Voices of Sexually Exploited Youth*, *in* LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS 129 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 2011).

213. Act of Aug. 13, 2010, ch. 332, 2010 N.Y. Sess. Laws 1083 (McKinney).

framework.[214] The multiple forms of physical violence, perpetrated by both traffickers and by buyers of sexual services, and the effects of this violence have been well documented.[215] So has the rape that is endemic to, if not definitional of, sex trafficking and prostitution, which is the *sine qua non* for sex trafficking.[216] And, according to researchers, the psychic abuse in sex trafficking, brought about by conditions of captivity that are calculated to create dependency, compel compliance, and break victims, often rivals the physical abuse.[217]

Although the fact that sex trafficking and the institution of prostitution it

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214. The Declaration on the Elimination of Violence Against Women, as well as other international human rights documents, includes trafficking in women and girls and "forced" prostitution within the definition of violence against women. Declaration on the Elimination of Violence Against Women, *supra* note 26, at 2; U.N. Secretary-General, *supra* note 29, ¶¶ 135–138.

215. The health effects of trafficking according to one major study of trafficking victims "are startling in the breadth and depth of the harm . . . sustained." CATHY ZIMMERMAN, MAZEDA HOSSAIN, KATE YUN, BRENDA ROCHE, LINDA MORISON & CHARLOTTE WATTS, LONDON SCH. OF HYGIENE & TROPICAL MED., STOLEN SMILES: A SUMMARY REPORT ON THE PHYSICAL AND PSYCHOLOGICAL HEALTH CONSEQUENCES OF WOMEN AND ADOLESCENTS TRAFFICKED IN EUROPE 2 (2006) [hereinafter ZIMMERMAN, STOLEN SMILES]. *See also* Evelina Giobbe & Sue Gibel, *Essay: Impressions of a Public Policy Initiative*, 16 HAMLINE J. PUB. L. & POL'Y 1, 13–16 (1994); Jody Raphael & Deborah L. Shapiro, *Violence in Indoor and Outdoor Prostitution Venues*, 10 VIOLENCE AGAINST WOMEN 126, 132–38 (2004). *See generally* CATHY ZIMMERMAN, KATHERINE YUN, INNA SHVAB, CHARLOTTE WATTS, LUCA TRAPPOLIN, MARIANGELA TREPPETE, FRANCA BIMBI, BRAD ADAMS, SAE-TANG JIRAPORN, LEDIA BECI, MARCIA ALBRECHT, JULIE BINDEL & LINDA REGAN, LONDON SCH. OF HYGIENE & TROPICAL MED., THE HEALTH RISKS AND CONSEQUENCES OF TRAFFICKING IN WOMEN AND ADOLESCENTS: FINDINGS FROM A EUROPEAN STUDY (2003) [hereinafter ZIMMERMAN, THE HEALTH RISKS AND CONSEQUENCES OF TRAFFICKING IN WOMEN AND ADOLESCENTS].

216. *See, e.g.*, Elizabeth Hopper & José Hidalgo, *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 INTERCULTURAL HUM. RTS. L. REV. 185, 195–96 (2006) (explaining how rape is used as a psychological tool to break down victims' will to resist); Dorchen Leidholdt, *Prostitution: A Violation of Women's Human Rights*, 1 CARDOZO WOMEN'S L.J. 133, 138 (1993); ZIMMERMAN, STOLEN SMILES, *supra* note 215, at 12. For an example of how traffickers use rape, see *United States v. Martinez*, 621 F.3d 101, 103 (2d Cir. 2010). For an example of how victims experience prostitution as rape, see Taina Bien-Aimé & Leah Rutman, *International Law and Human Trafficking*, *in* LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS 63, 67 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 2011) (describing how one sex trafficking victim, who became an anti-trafficking advocate, characterized her experience in prostitution as "serial rape"); Amy Fine Collins, *Sex Trafficking of Americans: The Girls Next Door*, VANITY FAIR (May 24, 2011), http://www.vanityfair.com/politics/features/2011/05/sex-trafficking-201105 (quoting a trafficking victim from a major trafficking case that resulted in convictions in federal court, who said "[m]ost rape victims get it once—for us, it happens millions and millions of times").

217. *See* Hopper & Hidalgo, *supra* note 216, at 191–92 (trafficking victims live under conditions similar to what is experienced by hostages, prisoners of war, or concentration camp inmates); ZIMMERMAN, STOLEN SMILES, *supra* note 215, at 12 ("Women's psychological reactions were multiple and severe, and compare to, or exceed, symptoms experienced by torture victims."). A large proportion of women in prostitution suffer posttraumatic stress. Melissa Farley, Ann Cotton, Jacqueline Lynne, Sybille Zumbeck, Frida Spiwak, Maria E. Reyes, Dinorah Alvarez & Ufuk Sezgin, *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 J. TRAUMA PRAC. 33, 33–34 (2003).

serves are both violent[218] is obvious to people who know trafficking victims, victim-blaming masks the harm and overrides other responses to trafficking. In the abstract, trafficking victims are sympathetic, and trafficking, often called modern-day slavery, is a heinous crime. In recent years, celebrities have flocked to the anti-trafficking cause.[219] But once traffickers put a victim into prostitution—and the point of sex trafficking is to amass profits through prostitution—sympathy for victims evaporates. Our language has a host of words that express the contempt our culture ascribes to those victimized in prostitution: whore, ho, hussy, hooker, harlot, slut. Our statutes turn victims into criminals,[220] and deprive them of the protection of rape laws.[221] Girls arrested for prostitution may be subjected to delinquency proceedings that can result in a year's detention in a locked facility,[222] while the risk that the buyer, the raison d'etre for trafficking, will be arrested or convicted is extremely low.[223]

Adding to the difficulties of presenting trafficking victims sympathetically is the fact that trafficking victims who have been used in the commercial sex industry often do not look appealing. If they are still under the control of a trafficker or they have recently escaped, they may be physically sick, bruised, hobbled by traumatic head injuries, strung out on the drugs that are used to control them, fearful, depressed, or anxious.[224] Domestic trafficking victims,

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218. *See, e.g.*, Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, *Integration of the Human Rights of Women and a Gender Perspective: Summary*, ¶ 42, U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006) (by Sigma Huda) ("For the most part, prostitution as actually practiced in the world usually does satisfy the elements of trafficking.").

219. Demi Moore and Ashton Kutcher are among the celebrities to embrace the anti-trafficking movement. Tracy Clark-Flory, *The New Celebrity Cause: Sex Trafficking*, SALON (Apr. 11, 2011), http://www.salon.com/life/sexual_abuse/index.html?story=/mwt/feature/2011/04/11/child_slavery.

220. N.Y. PENAL LAW §§ 230.00, 240.37 (McKinney 2012).

221. *See, e.g.*, N.Y. CRIM. PROC. LAW § 60.42 (McKinney 2012) (taking away evidentiary protection for victims convicted of a prostitution offense in the last three years). *See generally* Karin S. Portlock, *Status on Trial: The Racial Ramifications of Admitting Prostitution Evidence Under State Rape Shield Legislation*, 107 COLUM. L. REV. 1404 (2007).

222. Mullen & Lloyd, *supra* note 212, at 129–30. For the story of Nicolette, the girl whose case inspired law reform efforts, see RACHEL LLOYD, GIRLS LIKE US: FIGHTING FOR A WORLD WHERE GIRLS ARE NOT FOR SALE 143–45 (2011). At the time of her arrest, Nicolette was a sex trafficking victim under federal law yet she served a year in an upstate facility for juvenile delinquents. *Id.* at 134–47. The john or customer involved in her case spent a couple of evenings attending a "john school." Mullen & Lloyd, *supra* note 212, at 129. Even with New York's Safe Harbor Act, girls may be treated as juvenile delinquents and placed in juvenile lock ups for extended periods of time. *Id.* at 139 (exceptions to the Safe Harbor Act protections).

223. *See* Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 300–01 (2011) [hereinafter MacKinnon, *Trafficking, Prostitution, and Inequality*].

224. For a description of the physical and mental health problems of women leaving trafficking, see ZIMMERMAN, STOLEN SMILES, *supra* note 215, 12–22. *See also* JODY RAPHAEL & JESSICA ASHLEY, ILL. CRIMINAL JUSTICE INFO. AUTH. & DEPAUL UNIV. COLL. OF LAW, DOMESTIC SEX TRAFFICKING OF CHICAGO WOMEN AND GIRLS 29-31 (violence to which pimps subject domestic trafficking victims) and 27, 32-35 (drugs used as coercion in trafficking) (2008),

often recruited at heart-breakingly young ages by men who purport to love them,[225] are among the least appealing. No matter how young they may be, they are still viewed as "bad girls," tough, rebellious, sullen, suspicious, and unreachable.[226]

C. Turning Around Victim-Blaming: Survivors' Stories

To succeed in building support for laws that would protect trafficking victims, advocates had to find ways to portray women and girls in prostitution who are sex trafficking victims as more than "fallen women," entitled, at most, to pity.[227] Advocates had to turn around the victim-blaming or, to use more academic language, shift the paradigm. This they did by presenting victims and their complex stories to the public. The use of stories has a long history in anti-trafficking campaigns. Government and international reports often rely on stories to create sympathetic portraits and to provide rich documentary evidence of both the paths into trafficking and the means used to hold victims captive.[228] The horrors of trafficking and the complexities of victims' lives, both before and during their ordeal, are too enormous and too important to be communicated effectively by numbers or generalized descriptions.

While asking victims to tell their stories is a common lobbying strategy—indeed proponents of the federal VAWA used it effectively—the challenge of

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available at http://www.law.depaul.edu/centers_institutes/family_law/pdf/sex_trafficking.pdf; JODY RAPHAEL & DEBORAH L. SHAPIRO, CTR. FOR IMPACT RESEARCH, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO 18–20 (violence in prostitution), 23–24 (substance abuse in prostitution) (2002), *available at* http://www.impactresearch.org/documents/sistersspeakout.pdf. Race and class also play a role in perceptions of appealing and unappealing victims. *See* LLOYD, *supra* note 222, at 139–44.

225. For a description of the research on the age of entry into prostitution, see MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 223, at 278 nn.21–22. For descriptions of the modus operandi of pimps praying on young girls, see Sewell Chan, *A Look at the Harrowing Lives of Child Prostitutes*, N.Y. TIMES CITY ROOM BLOG (July 3, 2008, 3:48 PM), http://cityroom.blogs.nytimes.com/2008/07/03/a-look-at-the-harrowing-lives-of-child-prostitutes; Jessica Lustig, *The 13-Year-Old Prostitute: Working Girl or Sex Slave?*, N.Y. MAG., Apr. 9, 2007, at 36; Ian Urbina, *For Runaways on the Street, Sex Buys Survival*, N.Y. TIMES, Oct. 27, 2009, at A1.

226. *See* LLOYD, *supra* note 222, at 131–32. Describing, a twelve-year-old arrested for prostitution, the New York Times said "[t]he lanky and sour Nicolette did not cut a terribly sympathetic figure to some in court," although a physical exam of her "turned up burns from hot iron and cigarettes as well as recently broken ribs." *Id.* at 142–43. *See also* Clyde Haberman, *Helping Girls as Victims, Not Culprits*, N.Y. TIMES, July 8, 2008, at B1 (quoting Rachel Lloyd, founder of GEMS, which works with domestic trafficking victims: "These are not kids with cancer—they're not the kids people feel the most empathy for"). For a description of the means used to control trafficking victims and a plea to look beyond "deserving" victims, see 2011 TRAFFICKING IN PERSONS REPORT, *supra* note 5, at 25.

227. On the subject of the stigma of prostitution, see LLOYD, *supra* note 222, at 209–15.

228. For example, the U.S. State Department's annual Trafficking in Persons Reports rely on stories to convey their message. *See* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORTS 2011, 2010, 2009, and 2008; United Nations Office on Drugs & Crime, Human Trafficking: An Overview (2008), http://www.ungift.org/docs/ungift/pdf/knowledge/ebook.pdf.

creating sympathy for trafficking victims is even greater than for other kinds of victims of gender violence. Often sex trafficking victims have been held captive for long periods by traffickers whose livelihoods depend on destroying their sense of self. In the eyes of the world, these women and girls have been turned into whores and criminals. Advocates working with victims had to help survivors tell, in public, compelling stories about events that they were likely to find extremely painful even to remember. Advocates also had to help victims find ways to stand up against the victim-blaming and deep prejudices to which women and girls in prostitution are subjected.

Kika Cerpa is one victim who surmounted these obstacles to play a major role in convincing New York legislators that passing an anti-trafficking statute was a moral necessity.[229] When advocates first met her, she was a client in a domestic violence law center trying to regain custody of her children from her abusive husband, who was a New York City Police Officer.[230] A Family Court judge had used her prostitution convictions as a reason to deny her custody, although her husband, in whose care the judge placed the children, had a history of patronizing brothels. In fact, he had met Kika in one.[231]

Kika Cerpa's journey to the brothel where she met her husband started in Venezuela, where she, like many trafficking victims, had been sexually abused as a child.[232] Daniel, a man she met in Venezuela who she believed to be her boyfriend, lured her to the United States[233] with promises of a job as a nanny. Once here, Kika found herself living with Daniel in a basement apartment with Sandra, Daniel's cousin.[234] Daniel and Sandra, in fact, were part of a well-established trafficking operation.[235] Together, preying on Kika's inexperience and vulnerability, Daniel and Sandra confiscated her passport and life savings of $2,000 and forced her into a brothel that Sandra managed.[236] The first night there Kika had sex with nineteen men.[237] She showered and then Daniel

229. For media mentioning Kika Cerpa, see Bob Herbert, *Hidden in Brothels, Slavery by Another Name*, N.Y. TIMES, June 1, 2006, at A25; Mary Stachyra & Rima Abdelkader, *She Survived the Horror: Ex-'Chica' Takes Aim at Trafficking*, N.Y. DAILY NEWS (Nov. 24, 2009), http://www.nydailynews.com/new-york/queens/survived-horror-ex-chica-takes-aim-trafficking-article-1.415251; *Activists Urge New York State to Pass Anti-Human Trafficking Law*, VOICE AMERICA (Nov. 1, 2009), http://www.voanews.com/english/news/a-13-2007-02-09-voa28.html; *Human Trafficking Victims Address UN Event as Ban Calls for Broad-Based Action*, U.N. NEWS SERVICE (Oct. 22, 2009), http://www.un.org/apps/news/story.asp?NewsID=32683&Cr=trafficking&Cr1.

230. Interview with Dorchen Leidholdt, Director, Center for Battered Women's Legal Services, Sanctuary for Families (Aug. 12, 2011).

231. *Id.*; Bien-Aimé & Rutman, *supra* note 216, at 66–67.

232. Bien-Aimé & Rutman, *supra* note 216, at 66–67; Herbert, *supra* note 229, at A25.

233. Bien-Aimé & Rutman, *supra* note 216, at 66–67; Herbert, *supra* note 229, at A25.

234. Bien-Aimé & Rutman, *supra* note 216, at 66–67; Herbert, *supra* note 229, at A25.

235. Bien-Aimé & Rutman, *supra* note 216, at 66–67; Herbert, *supra* note 229, at A25.

236. Bien-Aimé & Rutman, *supra* note 216, at 66–67; Herbert, *supra* note 229, at A25.

237. Herbert, *supra* note 229, at A25.

demanded his turn with her.[238] When she resisted, telling him she felt as if she were dead, he beat her.[239]

Kika Cerpa began to speak in public about her trafficking experiences with help from the attorney who had represented her in her custody case. By then, she was a working mother, scarred but free of trafficking and the abusive husband she had met while working in a brothel. During the campaign for the NYS Anti-Human Trafficking legislation, Kika spoke to journalists, appeared at news conferences, and went on lobbying trips to Albany.[240] When she addressed the New York State Assembly, she received a standing ovation.[241]

The driving force behind efforts to pass another piece of anti-trafficking legislation, the Safe Harbor Act, which provides some protection to juveniles arrested on prostitution charges, was a group of young victims of domestic trafficking. Rachel Lloyd, herself a survivor of commercial sexual exploitation, and girls from GEMS,[242] the extraordinary program Rachel Lloyd founded for victims of domestic trafficking, were among the bill's leading lobbyists. Rachel Lloyd had made a conscious decision to mold girls who came to GEMS for help into strong leaders.[243] As a result, the girls who traveled to Albany to lobby were a poised cadre, able to combat the prejudices of opponents of the measure, who were inclined to view sexually exploited youth as "teenage hookers" and "Lolitas."[244] Early in the advocacy for the Safe Harbor Act, GEMS girls had the opportunity to tell New York Assembly members and their staff about their difficult family histories, the abuse and torture inflicted by pimps, the arrests and incarcerations they endured, the indifference of authorities who were in a position to help children, and the stigma and scorn they encountered.[245] Their dramatic testimony won key allies.[246] Over the course of the next four years of the battle to pass legislation, different groups of girls from GEMS told their stories at legislative briefings, as part of roundtables, and to individual legislators.[247] In the process, they made major allies in the press,[248] and they moved their audiences to tears.[249] But it was not just the girls' stories that made the case for young victims of trafficking deserving better treatment. They

238. *Id.*

239. *Id.*

240. Interview with Dorchen Leidholdt, *supra* note 230.

241. *Id.*

242. "GEMS" stands for Girls Mentoring and Education Services. *See generally* Mullen & Lloyd, *supra* note 212, at 130–35.

243. LLOYD, *supra* note 222, at 244–53 (describing Lloyd's leadership in the GEMS trip to Albany).

244. Mullen & Lloyd, *supra* note 212, at 132.

245. *Id.* at 130–31.

246. *Id.* at 131.

247. *Id.* at 135; LLOYD, *supra* note 222, at 247–52.

248. Mullen & Lloyd, *supra* note 212, at 134.

249. *Id.* at 133; LLOYD, *supra* note 222, at 248.

themselves, a group of "smart, self-assured, confident, strong young women,"[250] defied stereotypes, overcame prejudices, and did much to shift paradigms.

The strategy of relying on the voices and presence of survivors led to the passage of not only the New York Anti-Human Trafficking Act and the Safe Harbor Act, but also legislation allowing judges to vacate convictions of trafficking victims charged with prostitution.[251] The legislation on vacatur was evidence of a dramatic shift in attitudes among the public and policymakers and the growing recognition of the relationship between trafficking and prostitution.

The first published decision under the law allowing trafficking victims to vacate convictions, *People v. G.M.*,[252] demonstrates the deep inroads that had been made in traditional ways of thinking about prostitution and sex trafficking. It also suggests the power of litigation as a forum for telling victims' stories and continuing to propagate ideas about the nature of violence against women. In *People v G.M.*, the victim asking to have her prostitution convictions vacated had spent years with an abusive husband. He had beaten her badly enough to leave her "scarred and disfigured,"[253] raped her while high on crack, threatened to kill her, confiscated her income, and forced her into prostitution.[254] The federal government had granted the victim, an immigrant from the Dominican Republic, a visa under provisions reserved for victims of trafficking.[255] However, her prostitution convictions had traveled with her, foiling job opportunities as they do for many trafficking victims.[256] The court's sympathetic description of the victim's history and its willingness to erase the prostitution convictions marked another high point in the ability of legal system to respond to the voices of trafficking victims.

Other judges who held hearings under the new law were also moved by the plight of sex trafficking victims. In one case, the victim had been lured into surrendering her immigration documents to traffickers and then blackmailed into prostitution.[257] Over a period of two and a half years, she was convicted of prostitution-related offenses eighty-six times.[258] Brushing aside the prosecutor's argument that the victim's story needed corroboration, the court found her eminently credible, noting that as a witness she had "admitted acts that caused her to cry."[259] In another case, a judge sympathetically recounted the history of a woman who had been trafficked by pimps since she had run away from home at

250. LLOYD, *supra* note 222, at 265.
251. N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney 2012).
252. People v. G.M., 922 N.Y.S.2d 761 (Crim. Ct. 2011).
253. *Id.* at 762.
254. *Id.* at 762–63.
255. *Id.* at 763.
256. *Id.*
257. People v. Gonzalez, 927 N.Y.S.2d 567 (Crim. Ct. 2011).
258. *Id.* at 568.
259. *Id.* at 569–70.

the age of 13.[260] The court referred to "the horror of [the victim's] sexual exploitation and physical abuse when she was a minor,"[261] and described the degradation and physical abuse the victim had suffered under her current trafficker.[262] Tacitly acknowledging the victim-blaming that characterizes prostitution and willing to use New York's new laws to reverse its damage, the court concluded that the "purposes of New York's law against sex trafficking are well served by relieving the defendant of the stigma and negative consequences of a criminal history."[263]

The campaign against trafficking in New York State continues. In 2012, anti-trafficking advocates proposed an omnibus bill. Its provisions would raise penalties for patronizing under-age victims to make them comparable to those for statutory rape and would establish sex trafficking as a defense to a prostitution charge.[264] The legislation also takes direct aim at victim-blaming by targeting the use of the term "prostitute." Provisions on prostitution are the only place in New York's statutes where an individual is identified by a crime.[265] The legislation proposes excising the term "prostitute" from New York's statutes.[266]

Using ideas borrowed from the broad idea of violence against women, New York's anti-trafficking campaign has succeeded in changing laws and deeply-held cultural understandings about one group of victims of gender violence. The message of New York's anti-trafficking laws and the recent court decisions, a message buried until recently under ancient layers of blame and contempt, is that trafficked women and girls in prostitution are victims of brutal, gender crimes, not perpetrators of minor vice. The campaign's successes both demonstrated the spread of ideas about violence against women and created the conditions for their further dissemination. For the victims who came forward to tell their stories, the process transformed them and made them into powerful agents of social change.

260. People v. Doe, 935 N.Y.S.2d 481, 482 (Sup. Ct. 2011).

261. *Id.* at 484.

262. *Id.* at 482–83.

263. *Id.* at 484.

264. Assemb. 9804, 2012 Leg., 235th Sess. (N.Y. 2012); S. 7212, 2012 Leg., 235th Sess. (N.Y. 2012).

265. *See A9804 Memo*, N.Y. ST. ASSEMBLY, http://assembly.state.ny.us/leg/?default_fld=&bn=A09804&term=2011&Memo=Y (last modified Apr. 19, 2012) ("The use of the term 'prostitute' is the only instance in the Penal Law where an individual is identified by the crime he or she allegedly commits . . . . For example, a criminal defendant is not referred to as a 'murderer,' 'robber,' or 'burglar.'").

266. Assemb. 9804, 2012 Leg., 235th Sess. (N.Y. 2012); S. 7212, 2012 Leg., 235th Sess. (N.Y. 2012).

VI.
CONCLUSION

Jessica Lenahan's case, the fight for the Violence Against Women Act and its Civil Rights Remedy, and New York's anti-trafficking campaign are all examples of the use of the idea of violence against women. They were battles fought on different terrain, using different tools, and calling on different implications of the broad idea of violence against women. Different, too, were their successes, measured both by the advances made in the spread of the idea of violence against women and the tangible changes felt in women's lives.

The gains from Jessica Lenahan's case are the most abstract and the most personal. Having lost in the United States courts, her lawyers turned to the international human rights system, operating at the highest levels of international government, where Lenahan won a favorable ruling. Her case, however, has had little or no direct effect on national or local laws or practices, since the United States, which argued the Commission had no jurisdiction over it, has ignored the Commission's recommendations. Nonetheless, the Commission's moral authority gives its report power to bring ideas to the world outside the narrow circle of human rights advocacy. The case also transformed Jessica Lenahan into an outspoken, eloquent advocate.

The battle to pass VAWA and preserve the Civil Rights Remedy was an ambitious attempt to legislate massive change. In spite of great and heartening initial successes, the effort, in the end, left behind limited gains. The arenas were Congress and the federal courts; the tools were quantities of evidence, in the form of studies, reports, and the voices of survivors of domestic and sexual violence. For most of a decade, from the time Congress began debating VAWA to the time the U.S. Supreme Court struck down the Civil Rights Remedy, the idea of violence against women advanced rapidly. Laws were changed, women found remedies in the federal courts, and ideas about women, power, and violence began to shift. The Supreme Court brought an abrupt halt to this promising process, and many gains have slipped away. Nonetheless, money continues to flow to significant projects that help victims and support law enforcement initiatives, and the Office of Violence Against Women continues to speak both on behalf of victims and about ideas of gender violence.

The New York State anti-trafficking campaign, while modest in some ways—it was confined to one state and one issue—has had considerable success in changing the ideas held by legislators, judges, and the public. The battle has been fought in Albany, in downstate courts, and in the media, with the collective voice of survivor-advocates wielded as the most effective weapon. A string of new laws has found its way into New York's statute books, and New York courts have reached for ways to use these laws to benefit victims. Ideas not only about trafficking, but also about its necessary corollary, prostitution, are in flux. The campaign has created a cadre of women and girls able to speak about the

violence in their lives and argue persuasively for the changes that are still necessary.

If a single lesson emerges from these disparate examples of the play between the idea of violence against women and legal strategies, it may be about the power of survivors. The connecting thread is the transformation of women from victims to storytellers to strong advocates. Through their presence, resilience, and courage these women demonstrated that what they suffered was wrong and deserves redress.

Yet the aims of these efforts were limited. Each was an attempt to change laws, policies, and practices within systems of justice and to make the lives of victims of gender violence better. Unquestionably, these are important, difficult undertakings. Yet, if violence against women is rooted in gender inequality, more is needed for lasting change than fixing justice systems and helping victims.

A school for girls in Nairobi's Kibera, one of Africa's worst slums, illustrates the possibilities of extrajudicial approaches. The school's inspirational founder Kennedy Odede, a native of Kibera, put his energy into educating girls in direct response to the gender violence in the world he knew.[267] He had seen his own mother beaten and a sister sexually assaulted, and he understood that poverty forces two-thirds of the girls of Kibera to trade sex for food.[268] The school project he founded, called Shining Hope for Communities, not only educates its students, but also raises the status of girls within its community.[269] If it succeeds, it will have played a part in stopping the spread of violence against women to another generation.

The human rights idea of violence against women, by situating gender violence in the broader problem of gender inequality, tells us that the task of eradicating violence against women is immense. It suggests that to make headway we will need to use every possible strategy and forum. We must find imaginative ways to reach lawmakers, judges, the public, and victims themselves; to look to prevention as well as remedies; and to create a multitude of legal and extralegal alternatives. Most importantly, perhaps, we must be both impatient enough to stir ourselves to passionate action and patient enough to persist in the face of setbacks and the certainty that the end we seek will not be accomplished in our lifetimes.

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267. Samuel Loewenberg, *Grassroots Project Shines Hope on Nairobi Slum Life,* 379 LANCET 108 (2012); Nicholas D. Kristof, Op-Ed., *Just Look at What You Did!*, N.Y. TIMES, Sept. 29, 2011, at A27.

268. Loewenberg, *supra* note 267, at 108.

269. *Id.*