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Tamara Rice Lave
University of Miami School of Law, tlave@law.miami.edu

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Thinking Critically About How to Address Violence Against Women

TAMARA RICE LAVE*

Every day across the Americas, men, women, and children are forced to work in degrading circumstances due to structural poverty and inequality. They do not earn a living wage, and they are denied the opportunity to thrive to their fullest potential. They are often the victims of violence, sometimes perpetrated, often tolerated, by agents of the state. Life for these individuals is too often “poor, nasty, brutish, and short.”¹

Women and girls are often subjected to the worst abuses.² Across the developing world, they work more and are paid less.³ They receive inferior health care,⁴ less education,⁵ and they are more likely to be the victims of sexual violence.⁶ Women of color, women with disabilities, migrants, and gay, bisexual, lesbian and transgendered people often suf-

* Associate Professor, University of Miami School of Law; PhD Jurisprudence and Social Policy, University of California, Berkeley; J.D. Stanford Law School; B.A. Haverford College. I am indebted to Carrie Bettinger-López, Gwendolyn Leachman, and my dad for their insightful comments and criticisms. I'd also like to thank the editors at the *University of Miami Law Review* for their patience and hard work.

1. THOMAS HOBBS, *THE LEVIATHAN* 65 (Ernest Rhys ed., 2d ed. 1924).

2. UNICEF, *THE STATE OF THE WORLD'S CHILDREN 2007: WOMEN AND CHILDREN* (2006), available at <http://www.unicef.org/sowc07/docs/sowc07.pdf>.

3. UNICEF, *supra* note 2.

4. A 2003 World Bank report of gender inequality worldwide found that maternal mortality rates have remained unchanged over the past two decades despite the fact that many other health indicators in developing countries have improved during this same period. It also found that worldwide, women are more likely to be infected with AIDS and HIV, and in many Caribbean countries, women comprise the majority of new cases. Finally, it found that poor women are often more vulnerable to diseases like tuberculosis and malaria because they are given lower priority for medical treatment due to their low status. See *THE WORLD BANK GENDER AND DEV. GRP., GENDER EQUALITY & THE MILLENNIUM DEVELOPMENT GOALS* (2003), available at [http://site/resources.worldbank.org/INTGENDER/Publications/20169280/gendermdg.pdf](http://site.resources.worldbank.org/INTGENDER/Publications/20169280/gendermdg.pdf).

5. UNICEF, *supra* note 2.

6. For a discussion of differential sexual violence in the United States, see BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *BULLETIN: NATIONAL CRIME VICTIMIZATION SURVEY: CRIMINAL VICTIMIZATION, 2007* (Dec. 2008), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cv07.pdf>. For a discussion of Canada, see STATISTICS CANADA, *MEASURING VIOLENCE AGAINST WOMEN: STATISTICAL TRENDS 2006* (2006), available at <http://www.statcan.gc.ca/pub/85-570-x/85-570-x2006001-eng.pdf>. For a discussion of differential sexual violence during armed conflict, see *Sexual Violence and Armed Conflict: United Nations Response, WOMEN2000* (UN/Women's Rights Unit), Apr. 1998, available at <http://www.un.org/womenwatch/daw/public/cover.pdf>. See also U.N. Secretary-General, *In-Depth Study on All Forms of Violence Against Women*, U.N. Doc. A/61/122/Add.1 (July 6, 2006), available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS%20A61122Add1.pdf>.

fer the most. Victims of double and even triple discrimination,⁷ they incur different and even more severe forms of abuse.⁸

The purpose of this essay is not to solve these problems. That is a job for the women who experience and resist subordination in their daily lives and their advocates. Instead, this essay has a more modest goal—to urge advocates to think critically about the task ahead and what limits, if any, should be placed on potential solutions. I will be focusing my comments on violence against women, especially sexual violence, because I believe that sex offender policy in the United States provides a fruitful opportunity for thinking critically about potential ways of addressing the epidemic of violence against women worldwide. I hope that my experience working with women who are typically labeled victims (as a law student advocating for battered women in East Palo Alto, California and Washington, D.C.) and men who are generally labeled perpetrators (as a deputy public defender in San Diego, California) will provide a valuable perspective.

I. THE PHILOSOPHICAL UNDERPINNINGS FOR ADDRESSING VIOLENCE AGAINST WOMEN

In 2006, the Secretary General of the United Nations wrote that “[s]tates have an obligation to protect women from violence, to hold perpetrators accountable and to provide justice and remedies to victims.”⁹ But the question is *why*. What is the underlying rationale for this claim? Do women have the *right* to be free from violence, or does it make sense from a cost/benefit perspective? This is an important question to answer because it has implications for what kinds of solutions are permissible for combatting violence against women.

It seems abundantly clear that the United Nations and organizations like it are making a rights-based argument. As an example, I turn to the Center for Reproductive Rights and VIVO POSITIVO (a Chilean-based HIV/AIDS service organization). In 2009, they filed a complaint against Chile before the Inter-American Commission on Human Rights on behalf of F.S., a woman who alleged that she had been forcibly sterilized

7. Kimberlé Crenshaw defines double discrimination as “the combined effects of practices which discriminate on the basis of race, and on the basis of sex.” Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 149–50 (1989). She also refers to the “multi-dimensionality of Black women’s experiences” as “intersectionality.” *Id.*

8. U.N. Secretary-General, *supra* note 6, at 46–47.

9. *Id.* at 9.

at a state hospital because she had HIV.¹⁰ The complaint claimed that the Chilean government had violated F.S.'s right to be free from discrimination, to decide the number and spacing of her children, to be free from violence, and to have access to justice.¹¹ Even though F.S. had HIV, she was *still* entitled to the rights of every other person.

This is essentially a Kantian argument, and it says that rights exist regardless of one's status.¹² Because human beings are rational and autonomous (capable of self-legislating), they have a "dignity, . . . an unconditional, incomparable worth."¹³ As such, they must be treated as "an end" and never "merely as a means."¹⁴ This argument is radically different than a traditional utilitarian argument,¹⁵ which says that the best way to maximize overall happiness is by ensuring that women have reproductive freedom. Under a rights rationale, the state may not sterilize women as part of some social policy *even if* it calculates that the benefits outweigh the costs. Instead, women must be allowed to make their own decisions about how they want to live their lives and what they want to do with their bodies. To deny them this right is to treat them like objects instead of with the respect that they deserve.

By invoking these concepts, the Center for Reproductive Rights and VIVO POSITIVO grounded their claim in something absolute. Rights are inalienable, and they belong to all human beings equally. As such, they provide an important challenge to the laws and customs of a particular country, which are tied to a certain time and place.¹⁶ Rights

10. *Chile: Forcibly Sterilized Woman Files International Case*, HUFFINGTON POST (Apr. 11, 2011), http://www.huffingtonpost.com/2009/02/03/chile-forcibly-sterilized_n_163565.html.

11. *Id.*

12. Although the liberal rights paradigm is hegemonic in U.S. and international law, many activists on the ground are critical of it. "Indigenous and feminist movements . . . assert that by assuming that all individuals are universally alike in their need for the protections delineated in human rights documents, the liberal mode of human rights elides significant differences among women and other social groups." Patricia Richards, *The Politics of Gender, Human Rights, and Being Indigenous in Chile*, 19 GENDER AND SOCIETY 199, 203 (2005). Activists may resist this liberal paradigm through alternative "collective rights" claims, which "diagnose a social movement's problem as a collective wrong, rather than an individual wrong" and "propose status-conscious legal protections as a proper solution to persistent discrimination." Gwendolyn Leachman, *A Social Constructionist Approach to Legal Framing: Imagining New Legal Possibilities "in the Shadow of Social Institutions"*, 54 STUDIES IN LAW, POLITICS AND SOCIETY (forthcoming 2011).

13. IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS 4:436 (Mary Gregor ed., trans., Cambridge Univ. Press 1997).

14. *Id.* at 4:429.

15. By traditional utilitarianism, I am referring to the philosophy of Jeremy Bentham. See JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 1-9 (Neil H. Alford et al. eds., 1986). This theory has also been called act-utilitarianism or the principle that "the rightness or wrongness of an action is to be judged by the consequences, good or bad, of the action itself." J.J.C. SMART & BERNARD WILLIAMS, UTILITARIANISM: FOR AND AGAINST 9 (1973).

16. Scholars who study transnational social movements make a similar point. They argue that

give us a toehold into criticizing unjust practices. They give us a response to the refrain, "I was just following the law." They allow us to say, "That may be the law, but it is still wrong."

II. LIMITS ON REFORM

These first principles do not just provide a foundation for reform;¹⁷ they also provide limits on what reforms are acceptable. From Alaska to Argentina, men, women, and children are being sexually assaulted and raped.¹⁸ These crimes happen at home and in the workplace, and they are perpetrated by strangers, and even more often, by friends and intimates.¹⁹ The question is what should be done.

Data gathered from police stations across the United States tell us that males between the ages of seventeen and twenty-one are most likely to be arrested for forcible rape.²⁰ Although many would call it draconian, one option for addressing violence against women would be to lock up all males between these ages. Such preventive detention would remove males from the streets when they are at greatest risk for hurting others and then release them when they no longer pose as great a danger. Even if males received excellent education and job training while locked away, first principles tell us that such a program would still be unacceptable. As human beings, these males have certain rights including the right to freedom and self-determination. Denying them these rights, even in the name of protecting others, is impermissible.

Such a plan may seem far-fetched, but variations of it currently exist in the United States. Twenty states and the federal government have passed sexually violent predator (SVP) legislation, which allows

human rights claims are an important forum for challenging particular laws/customs, and their effectiveness derives in part from the normative pressure they put on the state. See Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891 (2008); Elizabeth Heger Boyle & Minzee Kim, *International Human Rights Law, Global Economic Reforms, and Child Survival and Development Rights Outcomes*, 43 LAW & SOC'Y REV. 455 (2009); Kathryn Sikkink and Carrie Booth Walling, *The Impact of Human Rights Trials in Latin America*, 44 J. PEACE RES. 427 (2007).

17. For a critical look at the role of rights in reform, see SALLY ENGLE MERRY, *COLONIZING HAWAII: THE CULTURAL POWER OF LAW* (1999).

18. For a multi-country study of violence against women, see WORLD HEALTH ORG., WHO MULTI-COUNTRY STUDY ON WOMEN'S HEALTH AND DOMESTIC VIOLENCE AGAINST WOMEN vii (2005), available at http://www.who.int/gender/violence/who_multicountry_study/en/. For a discussion of violence against women in the United States, see BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY* (1995), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/FEMVIED.PDF>.

19. For a recent study showing that both male and female victims of rape and sexual assault in the United States were more likely to know their attacker, see BUREAU OF JUSTICE STATISTICS, *supra* note 6, at 6.

20. *Crime in the United States, 2009*, FEDERAL BUREAU OF INVESTIGATION, <http://www2.fbi.gov/ucr/cius2009/index.html> (last visited Apr. 5, 2011).

the state to lock up individuals *after* they have completed their prison sentence on the grounds that they are mentally ill and dangerous.²¹ Although this legislation is popular, it suffers from some serious problems. First, contrary to public opinion, most sex offenders do not re-offend.²² Complicating matters further, the instruments that are used to predict who will re-offend make a lot of mistakes.²³ That means that people who would not re-offend if released into the community are being locked away forever.²⁴

Although such mistakes are unfortunate, they might seem excusable in light of the fact that these individuals are in a hospital receiving treatment. After all, the Supreme Court has held that they aren't being punished; they're actually being helped.²⁵ The primacy of rights reminds us, however, that we should not be misled by the apparent benevolence of certain institutions. Locking someone up forever for treatment is still locking someone up forever. It is still a loss of liberty and a degradation of humanity. That doesn't mean that lifetime commitment is never acceptable, but it does mean that we should not fool ourselves into thinking it is innocuous or even appropriate, in the majority of circumstances, from a human rights perspective.²⁶

Some may believe that these men do not deserve to have rights. After all, most of them committed a serious crime, which is what got them into trouble in the first place.²⁷ If human rights really are universal,²⁸ however, then they *must* belong to everyone—even sex offenders. Otherwise, when advocates want to use them as the basis for arguing

21. See Tamara Rice Lave, *Controlling Sexually Violent Predators: Continued Incarceration at What Cost?*, 14 *NEW CRIM. L. REV.* 213 (2011).

22. A 2003 Department of Justice study found that just 5.3% of sex offenders were rearrested for a new sex crime within three years of release. PATRICK A. LANGAN ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994*, NCJ 198281 (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rsorp94.pdf>. Other studies have made similar findings. See Lisa L. Sample & Timothy M. Bray, *Are Sex Offenders Different? An Examination of Rearrest Patterns*, 17 *CRIM. JUST. POL'Y REV.* 83 (2006); R. Karl Hanson & Monique T. Bussiere, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 *J. OF CONSULTING & CRIM. PSYCHOL.* 348, 350 (1998).

23. Lave, *supra* note 21, at 236–51.

24. *Id.*

25. *Kansas v. Hendricks*, 521 U.S. 346, 361–65 (1997).

26. See *Universal Declaration of Human Rights*, UNITED NATIONS, <http://www.un.org/en/documents/udhr/index.shtml> (last visited Apr. 26, 2011); see also *International Covenant on Civil and Political Rights*, Mar. 23, 1976, 999 U.N.T.S. 171, available at <http://www2.ohchr.org/english/law/ccpr.htm>.

27. Not all states require that the person have been convicted of a sexually violent offense. See Lave, *supra* note 21, at 225–29. Nor do all states even require that a person have been convicted of a sex crime at all. See Tamara Rice Lave, *Throwing Away the Key: Should States Follow U.S. v. Comstock by Expanding Sexually Violent Predator Commitments?*, 14 *U. PA. J. CONST. LAW* (forthcoming 2011–12).

28. For a critical discussion of the liberal concept of rights, see *supra* note 12.

that a practice like forcible sterilization is wrong, the state can just respond by saying that these particular women don't deserve rights because they are poor, illiterate, unhealthy, etc. It is the *universality* of rights that gives them their authority. Without it, rights become as contingent as the practices they are being used to criticize.

III. RIGHTS ARE NOT A ZERO-SUM GAME

Some social movement groups have advocated that the movement prioritize issues that exclude members of the community they purport to represent. This decision may be made due to an ethos of practical politics—a belief that change should be incremental because demanding “too much” will undermine the group’s effectiveness by making their goals appear too radical.²⁹ Other times, social movement groups may not even recognize the legitimate claims of those demanding to be heard. For instance, the Student Nonviolent Coordinating Movement (“SNCC”) was committed to racial equality, but failed to practice gender equality. In 1964 a group of women joined together to write a paper about their experiences entitled, “Women in the Movement,” which they submitted anonymously at a SNCC meeting in Waveland, Mississippi.³⁰ It declared, in part:

The average white person finds it difficult to understand why the Negro resents being called “boy,” or being thought of as “musical” and “athletic,” because the average white person doesn’t realize that *he assumes he is superior*. And naturally he doesn’t understand the

29. For an interesting discussion of the reason transgendered people were excluded from the Employment Non Discrimination Act (ENDA), see Libby Adler, *The Gay Agenda*, 16 MICH. J. GENDER & L. 147, 191 (2009).

In another example, pro-gay lobbyists have been urging Congress for years to pass the Employment Non-Discrimination Act (ENDA). ENDA would provide anti-discrimination coverage in the employment context much like Title VII does for other groups. Early versions of the bill protected against discrimination on the basis of sexual orientation, but did not address gender identity. As the voices of trans people became louder and trans activists logged in some significant victories at every (local, state, and federal) level (despite some defeats under Title VII), there were calls to add anti-discrimination coverage based on gender identity to the bill. In October, 2007, Representative Barney Frank (D-MA) issued a missive, urging that after years of fighting for the passage of ENDA he thought he could get the votes in the House *if* gender identity coverage were excluded from the bill. He must have been stunned by the resistance he encountered. Over three hundred GLBT organizations came together to form an ad hoc coalition called ‘UnitedENDA’ to push for the more inclusive version. Members’ in-boxes swelled with emails from the United ENDA organizations urging constituents to contact members of Congress and insist that transgender people not be left out.

Id. (emphasis added).

30. *Student Nonviolent Coordinating Committee Position Paper: Women in the Movement, THE SIXTIES PROJECT*, http://www2.iath.virginia.edu/sixties/HTML_docs/Resources/Primary/Manifestos/SNCC_women.html (last visited Apr. 26, 2011).

problem of paternalism. So too the average SNCC worker finds it difficult to discuss the woman problem because of the assumptions of male superiority. Assumptions of male superiority are as widespread and deep rooted and every much as crippling to the woman as the assumptions of white supremacy are to the Negro. Consider why it is in SNCC that women who are competent, qualified, and experienced, are automatically assigned to the “female” kinds of jobs such as typing, desk work, telephone work, filing, library work, cooking, and the assistant kind of administrative work but rarely the “executive” kind.³¹

Thus these women were trying to show that although male SNCC members were sensitive to racial stereotypes, they were at the same time oblivious to the fact that they were perpetrating gender stereotypes and hierarchy.

Ironically, the feminist movement has also been criticized for putting forth goals of social change that have been oriented towards the leaders and that ignored the experiences of other women in the movement. Historically, the feminist movement has been dominated by white middle and upper class women who face a different type of discrimination than that confronted by lesbians, women of color, and women with disabilities. As a result, it is difficult for them to see the relevance of race, sexual orientation, ethnicity, and/or disability.³² For instance, Kimberlé Crenshaw discusses how antiracist and feminist politics marginalize the issue of sexual violence against women of color. She

31. *Id.*

32. See Crenshaw, *supra* note 7; Rosemarie Garland-Thomson, *Integrating Disability, Transforming Feminist Theory*, 14 *FEMINIST FORMATIONS* 1–32 (2002); see also Urvashi Vaid, Remarks at the 2010 Kessler Lecture—Center for Lesbian and Gay Studies—CUNY Graduate Center: What Can Brown Do For You: Race, Sexuality and the Future of LGBT Politics (Nov. 24, 2010), available at <http://urvashivaid.net/wp/?p=709>.

The key structural reason why neither branch of the LGBT movements has operationalized its stated intersectional politics, is quite simple: the default definition for what “Gay” means has been set by, and remains dominated by, the ideas and experiences of those in our communities who are white and this really has not changed in more than fifty years. Issues, identities, problems that are not “purely” gay—read as affecting white gay men and women—are always defined as not the concern of “our” LGBT movement—they are dismissed as “non-gay” issues, as divisive, as the issues that some ‘other movement’ is more suited to champion. We have our hands full we are told. We need to single-mindedly focus on one thing. This is an argument that many LGBT liberationists and gay-equality focused activists have made to each other and bought wholesale for decade—without malice, without prejudice—just because there has been an unquestioned assumption that this narrow focus works, that we are getting results because we are making a “gay rights” argument, that this is smart and successful political strategy.

Id. PAUL FRYMER, *BLACK AND BLUE: AFRICAN AMERICANS, THE LABOR MOVEMENT, AND THE DECLINE OF THE DEMOCRATIC PARTY* (2008) (discussing how the labor movement left behind civil rights).

writes, “[w]hen Black women were raped by white males, they were being raped not as women generally, but as Black women specifically: Their femaleness made them sexually vulnerable to racist domination, while their Blackness effectively denied them any protection.”³³

Thus, advocates should be open to the viewpoints and experiences of those around them. They should also be careful of how the rhetoric they use—and more importantly, the issues they prioritize—can exclude other people. Victims’ campaigns in the United States often focus on the innocent child.³⁴ Words like “innocent” may seem innocuous, but they implicitly differentiate women who are deserving of our sympathy from those who are not. Yet there is no need to see rights as a zero-sum game. Women in prison deserve protection from sexual and physical violence as much as girls who attend church and are on the honor roll.³⁵

IV. INEFFECTIVENESS

Assuming that all women have similar experiences can lead to well-intentioned but ineffective solutions. Research shows that poor women are disproportionately represented among battered women, both in terms of number and severity of abuse.³⁶ Yet one of the most common methods for protecting victims of domestic violence, court-issued restraining orders, is woefully inadequate for these women.³⁷ Low-income women often don’t have sufficient income or resources to leave; they may be too dependent on their batterers for food and shelter.

33. Crenshaw, *supra* note 7, at 158–59.

34. Megan’s Law, Three Strikes and You’re Out, Jessica’s Law, and Chelsea’s Law, to name a few.

35. In 2010, Women’s Link Worldwide and the Foundation for the Defense and Restitution of Human Rights (“FUNDERES”) filed a complaint before the Inter-American Commission on Human Rights against Bolivia because it did not protect the rights of a victim and her family in accordance with the international human rights documents to which Bolivia is a signatory. Although the victim in this case was a ten-year-old schoolgirl, Women’s Link Worldwide and FUNDERES did refer to her as “innocent.” See Press Release, Women’s Link Worldwide and FUNDERES, International Complaint Filed Before the Inter-American Commission on Human Rights (May 27, 2010), available at http://www.womenslinkworldwide.org/pdf_press/press_release_20100527_en.pdf. This is to be commended since they were not relying on passion or prejudice, but were implicitly saying that all girls and women, and not just the “innocent,” have the right to be free from violence. *Id.*

36. Claudia L. Moreno, Nabila El-Bassel, Louisa Gilbert & Takeshi Wada, *Correlates of Poverty and Partner Abuse Among Women on Methadone*, 8 VIOLENCE AGAINST WOMEN 455 (2002).

37. TK Logan, Lisa Shannon, Robert Walker & Teri Marie Faragher, *Protective Orders: Questions and Conundrums*, 7 TRAUMA, VIOLENCE & ABUSE 175, 185–86 (2006) (citations omitted).

V. UNINTENDED CONSEQUENCES

Even the most carefully considered solutions are likely to lead to unintended consequences, and so anti-violence activists should be aware of this when their cause is being co-opted by politicians or interest groups like prison guard unions. Part of the reason why this happens is that legal categories are often interpreted more broadly than some might have expected. California's Three Strikes and You're Out legislation provides such an example.

California's Three Strikes law dramatically increased the punishment for repeat serious or violent offenders. When it was first proposed to the California State Legislature, it failed to get out of committee.³⁸ Proponents then turned to the California initiative process. Even with the support of the National Rifle Association and the prison guard union, however, proponents were having a difficult time gathering enough signatures to get Three Strikes on the ballot. All that changed when Richard Allen Davis kidnapped twelve-year-old Polly Klaas from her bedroom window and then raped and murdered her.³⁹ Californians were outraged that a repeat violent offender like Davis could have ever been released from prison. To prevent such a horrifying crime from happening again, they voted overwhelmingly for Three Strikes and You're Out.⁴⁰

Although the official ballot argument read, "Three strikes keeps career criminals who rape women, molest children and commit murder behind bars where they belong,"⁴¹ in reality, Three Strikes applies much more broadly. It classifies residential burglary as a strike, and it mandates a sentence of twenty-five years to life for any third felony, regardless of whether it is serious or violent.⁴² It also applies retroactively, which means that a person can be sentenced to life in prison for stealing a piece of pizza even if his qualifying priors happened over fifty years before. These provisions make California's habitual offender law harsher than any other in the country, and they have meant that people are serving life sentences for minor drug and theft offenses.⁴³

In addition, political pressure expands the application of laws

38. MIKE REYNOLDS, BILL JONES & DAN EVANS, *THREE STRIKES AND YOU'RE OUT!: A PROMISE TO KIMBER* 44 (1996).

39. FRANKLIN E. ZIMRING, GORDON HAWKINS & SAM KAMIN, *PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU'RE OUT IN CALIFORNIA* 5 (2001).

40. *Id.*

41. JOE DOMANICK, *CRUEL JUSTICE: THREE STRIKES AND THE POLITICS OF CRIME IN AMERICA'S GOLDEN STATE* (2004).

42. ZIMRING, *supra* note 39, at 5.

43. Emily Bazelon, *Arguing Three Strikes*, N.Y. TIMES MAG., May 21, 2010, <http://www.nytimes.com/2010/05/23/magazine/23strikes-t.html>. Of note is the fact that Polly Klaas's grandfather, Joe Klaas, has campaigned to reform Three Strikes legislation so that the second and third strike felonies be serious and/or violent. Bill Ainsworth, "3 Strikes" Campaign Splits Klaas

beyond what might make sense rationally. As mentioned above, the sexually violent predator laws allow people to be locked up indefinitely under the theory that they are mentally ill and dangerous. Yet there are people locked up under these laws who are in such poor health that they pose little danger. For instance, Leroy Hendricks, the person whose challenge to the Kansas SVP law made it all the way up to the United States Supreme Court, is confined to a wheelchair due to medical problems.⁴⁴ Despite the fact that Hendricks poses only the most negligible danger, he languishes in custody. Because of the public's fear of sex offenders, it is simply too politically costly to release him.

VI. OPPORTUNITY COSTS

In considering possible solutions, it is also important to pay attention to the associated costs. In a world of limited resources, funds spent in one arena are not available in another.

In 1994, seven-year-old Megan Kanka was raped and murdered by a sex offender who lived down the street from her. People were outraged that Megan's parents had not known their neighbor's criminal history and so had been unable to protect her. In response to community outrage, New Jersey passed Megan's Law, which requires sex offenders to register their addresses with local law enforcement within a certain period after release from custody. It also requires that the public be notified of an offender's presence in the neighborhood.⁴⁵ Currently, Megan's Laws exist in every state across the country.⁴⁶

In 2008, researchers from the New Jersey Department of Corrections and Rutgers University published a study on the effectiveness of Megan's Law.⁴⁷ They found that "[d]espite wide community support for these laws, there is little evidence to date, including this study, to support a claim that Megan's Law is effective in reducing either new first-time sex offenses or sexual re-offenses."⁴⁸ The authors noted that in 2007, it cost the state of New Jersey 3.9 million dollars to implement the law.⁴⁹ In light of the lack of effectiveness of the law, the researchers

Family, SAN DIEGO UNION TRIB., July 14, 2004, at A1. Polly's father, Marc, disagrees and has campaigned to keep Three Strikes unchanged. *Id.*

44. Monica Davey & Abby Goodnough, *Doubts Rise as States Hold Sex Offenders After Prison*, N.Y. TIMES, Mar. 4, 2007, at 11.

45. KRISTEN ZGOBA ET AL., N. J. DEP'T OF CORR., MEGAN'S LAW: ASSESSING THE PRACTICAL AND MONETARY EFFICACY 3-4 (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf>.

46. *Megan's Law by State/Victims' Rights by State*, KLAASKIDS FOUNDATION, <http://www.klaaskids.org/pg-legmeg.htm> (last visited Apr. 5, 2011).

47. ZGOBA ET AL., *supra* note 45.

48. *Id.* at 41.

49. *Id.* at 39.

questioned whether the cost was justified.⁵⁰

Directing money to Megan's Law means that resources are not available for other programs. Although Maureen Kanka dismissed the 3.9 million as "just pennies,"⁵¹ the state of New Jersey could certainly use the extra money. A recent article in the New York Times described the effect of Camden, New Jersey's recent decision to lay off 163 police officers due to a fourteen million dollar budget deficit.⁵² As a result of these lay-offs, officers are no longer available to respond to auto thefts or residential burglaries.⁵³ Although there have been fewer homicides as compared with the same period the year before the lay-offs took place, the number of assaults with a firearm have risen more than three-fold—from twenty-two to seventy-nine.⁵⁴ As Camden County Prosecutor Warren W. Faulk put it, "[w]e can't make a direct connection between the layoffs and that increase, but those assaults give you the impression they feel emboldened that there is not a police officer around the corner, or within earshot."

The problem of limited resources exists across the country. According to a 2009 Human Rights Watch report, in Los Angeles alone, there are at least 12,669 untested sexual assault kits (known as rape kits).⁵⁵ In order to test these kits, Los Angeles would need to hire additional staff in their DNA laboratory at a cost of approximately 1.6 million dollars a year.⁵⁶ Although the Los Angeles Police Department has made some progress in reducing the number of unanalyzed kits, the California budget crisis has led to mandatory work furloughs that have slowed down these efforts.⁵⁷ As a result, rapists are able to continue walking the streets, and victims are left to feel that their rights don't matter.

VII. CONCLUSION

The problems that confront us are serious indeed. Preventing violence against women will be difficult, made even more so by social,

50. *Id.*

51. Susan K. Livio, *Maureen Kanka Defends Megan's Law Despite Report Saying It Fails to Deter Pedophiles*, NEW JERSEY REAL-TIME NEWS, Feb. 6, 2009, available at http://www.nj.com/news/index.ssf/2009/02/despite_new_report_on_megans_1.html.

52. Joseph Goldstein, *Police Force Nearly Halved, Camden Feels Impact*, N.Y. TIMES, Mar. 6, 2011, at A14, available at <http://www.nytimes.com/2011/03/07/nyregion/07camden.html>.

53. *Id.*

54. *Id.*

55. Sarah Tofte, *L.A.'s Untested Rape Kits Represent Lost Justice*, HUMAN RIGHTS WATCH, <http://www.hrw.org/en/news/2009/03/31/las-untested-rape-kits-represent-lost-justice> (last visited Apr. 6, 2011).

56. *Id.*

57. See Joel Rubin, *LAPD Cuts Backlog of Untested DNA Cases in Half*, L.A. TIMES (Oct. 5, 2009, 1:44 PM), <http://latimesblogs.latimes.com/lanow/2009/10/lapd-cuts-backlog-of-untested-dna-cases-in-half-.html>.

cultural, and economic forces that make it hard for women to escape to, and thrive in, a safer place.⁵⁸ Human rights law is a powerful tool for change, but accessing it is neither cheap nor easy.⁵⁹ On their own, an HIV positive woman in Chile and a pregnant woman incarcerated in the United States would have a difficult time accessing a system that requires legal and political skills.⁶⁰ Fortunately, as research and the work of the conference participants demonstrate, these limitations can be overcome through coalitions with NGOs and other elites.⁶¹

In addressing the global epidemic of violence against women, we must think about how to create accountability for perpetrators, protect victims, and at the same time, remain cognizant of the unintended consequences of the policies for which we advocate. Reflecting on the laws developed to punish and control sex offenders is particularly instructive. The American public is terrified of sex offenders, and politicians have responded by enacting legislation that dramatically reduces their rights and freedoms. This legislation has spread despite the fact that it is based on a fundamental misconception—that sex offenders are incapable of controlling themselves and so will continue to re-offend.

This essay has shown that sex offender policy is costly in the sense that it directs precious resources away from where they could be better used to combat violence against women. In addition, and perhaps more significantly, by denying rights to sex offenders, this policy threatens the rights of everyone. Once a society gets used to denigrating the rights of one group of unpopular people, it becomes easier to denigrate the rights of others.

If we want to protect *all* women from violence, then we need to take rights seriously. Otherwise we will end up with a hierarchical system of human rights—one that benefits the most privileged women while leaving intact the multiple, intersectional forms of discrimination that reinforce women's subordination. And, isn't that *exactly* what women and their advocates are trying to prevent?

58. UNICEF, *supra* note 2, at 38–41; U.N. Secretary-General, *supra* note 6.

59. Sally Engle Merry, Mihaela Serban Rosen, Peggy Levitt & Diana H. Yoon, *Law from Below: Women's Human Rights and Social Movements in New York City*, 44 *LAW & SOC'Y REV.* 101, 102 (2010).

60. *Id.*

61. *Id.*; see also Dana Sussman, *Bound by Injustice: Challenging the Use of Shackles on Incarcerated Pregnant Women*, 15 *CARDOZO J.L. & GENDER* 477 (2009).