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DOMESTIC AND SEXUAL VIOLENCE AS SEX DISCRIMINATION: COMPARING AMERICAN AND INTERNATIONAL APPROACHES

Julie Goldscheid*

INTRODUCTION

Feminist theory’s insights into the ways in which domestic and sexual violence reflects and perpetuates sex-based inequality have been critical in advancing reform efforts both domestically and internationally. In the United States, feminist advocacy linking violence against women to women’s historic sex-based subordination has significantly transformed law reform, public education, and social services. International efforts have also produced substantial changes, supported by frameworks that explicitly recognize violence against women as a problem of sex discrimination. Yet the nature and role of sex-equality-based arguments figure differently in both systems.

In this essay, part of a symposium on “The Global Impact of Feminist Legal Theory,” I explore the comparative roles that sex-equality-based arguments have played in law reform, addressing violence committed primarily by men against women.¹ I start from two observations about domestic and sexual violence law reform in the United States. First, the reforms that have taken place over the last few decades can be grouped into four categories: elimination of formal inequality;

* Associate Professor, CUNY School of Law. Thanks to Penny Andrews, Ruthann Robson, Rebecca Bratspies, and participants in the CUNY Law School Junior Faculty Workshop for their comments on an earlier draft of this paper, and to Shira Galinsky, Jackie DeVore, and Elizabeth Bruisie for assistance with the underlying research.

¹ I use the term “domestic and sexual violence” rather than the more commonly used term “violence against women,” since the latter term facially excludes intimate-partner violence committed in same-sex relationships and implies that men are not victims of domestic and sexual offenses. I do not use the phraseology “gender-based violence” in this article because the phrase is both underinclusive and overinclusive, and thus is most useful rhetorically rather than descriptively. See infra notes 76, 81 and accompanying text.
enhancement of criminal penalties; expansion of social services; and amendments to civil provisions to make the law more responsive to victims' needs. If generalizations can be made, compared to thirty years ago, on a day-to-day basis victims of domestic and sexual violence now likely stand a greater chance of meeting improved responses from the criminal justice system. They may well have increased access to social and support services. Nevertheless, many areas for improvement undoubtedly remain.

Second, notwithstanding the critical advances in all four of these areas, and despite the fact that many of these reforms were grounded in arguments exposing domestic and sexual violence as a manifestation of historic sex-based discrimination against women, the landscape of legal remedies and social services available to victims, with few exceptions, lacks an express acknowledgement of domestic and sexual violence as a problem of sex discrimination. Services and advocacy programs for domestic violence victims typically cast the problem as "family violence." The civil rights remedy of the 1994 Violence Against Women Act (VAWA), a legal innovation explicitly framing domestic and sexual violence as sex discrimination, was ruled unconstitutional by the United States Supreme Court.2 Discrimination often surfaces in public debate in the form of arguments that services and policies devised to assist victims discriminate against men, rather than in arguments that domestic and sexual violence, and the associated system responses, discriminate against women.3 Nevertheless, the daily experience of domestic and sexual violence survivors reflects the ongoing legacy of sex discrimination, both in the persistent gender-based differences in who generally commits and is harmed by the abuse, and in the responses victims encounter from legal, criminal justice, and social services systems.4

International human rights law contrasts with that of the United States in that it explicitly defines violence against women as a problem of equality. Legal instruments, including the

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3. See infra notes 87-88 and accompanying text.

4. See infra notes 41, 52, 79, and accompanying text.
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), frame violence against women as a human rights violation and define "gender-based violence" as a form of sex discrimination. This essay investigates what impact, if any, the express link between violence against women and sex discrimination has had on reform. It tackles this project by analyzing the steps countries have reported taking in order to comply with international human rights laws' express anti-discrimination mandates, primarily through analyzing the reports of the Special Rapporteur on Violence Against Women. Although this approach is far from comprehensive, given the sheer quantity of states that could be surveyed to address the question, the magnitude of potential responses within each state, and the inherent limitations of the reporting process, I offer this analysis as a starting point.

Part I provides background for the comparison by briefly reviewing the role sex discrimination arguments have played in the United States' domestic and sexual violence reform efforts over the last several decades. Part II contrasts those legal frameworks with international human rights instruments, under which domestic and sexual violence is explicitly defined as a form of sex discrimination. Part III draws from the comparison several observations that could reinvigorate reforms in the United States and guide international initiatives. This review of the role equality-based arguments have played in contrasting political and legal contexts highlights both the power that the rhetoric of equality, or its alternative, discrimination, holds as an advocacy tool, and the challenge of eliminating discrimination beyond striking formal inequalities. Significantly, despite the different formal structure of domestic and international initiatives, both systems have adopted largely similar reforms. The extent of overlap suggests that an express gendered framework may not make a significant difference in the type of reforms enacted. Nevertheless, the United States' experience offers a cautionary tale. Absent an express focus on the impact of sex equality and other socio-political factors, reform efforts

5. See infra Part III.
6. The Special Rapporteur is charged, in part, with receiving information on violence against women and its causes and consequences, and recommending measures to eliminate it. See infra notes 121-22 and accompanying text.
and public discourse can lose sight of the importance of addressing prevention and initiatives that target root causes. International human rights frameworks' structural incorporation of a mandate to address the root causes of domestic and sexual violence holds the potential to ensure that this important focus is not lost, and that states address prevention and eradication as well as services and criminal justice responses.

I. DOMESTIC AND SEXUAL VIOLENCE AS SEX DISCRIMINATION IN THE UNITED STATES

A. Historical Perspectives and Legal Frameworks

Arguments exposing domestic and sexual violence as a form of sex discrimination lie at the heart of the wave of domestic and sexual violence reform that began in the late 1960s. Although activists identifying themselves as feminist long had been working to stop domestic and sexual violence, the advocacy efforts that began in the 1960s, in tandem with the rebirth of feminism, marked a new generation of change. The rape crisis and anti-domestic violence movements that emerged at that time brought attention to the prevalence and harm of violence committed primarily by men against women. These movements framed the problem in explicitly political and social terms and defined the violence as a manifestation of historic sex discrimination.


Advocacy focusing on sex discrimination helped shift public understanding away from previous paradigms that had privatized and pathologized battered women’s experiences and blamed the women for their abuse.\(^9\)

For example, activists in the 1970s identified and challenged the prevalent ideology that “mild” chastisement was necessary to “keep a woman in line” and that “women like men who dominate.”\(^{11}\) They charged that battery and rape exemplified abuse of male power over women,\(^{12}\) and that the sexual socialization of men predisposes them to commit rape.\(^{13}\) They criticized the cultural norms that cast wives as the sexual property of their husbands and that treated women’s accounts of rape as inherently suspect.\(^{14}\) They advocated for the end of policies reflecting these biases, such as police officers’ refusal to intervene in domestic violence cases because they were “private”

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9. For comprehensive descriptions of the development of the anti-domestic violence movements, see, for example, SCHECHTER, supra note 7; SCHNEIDER, supra note 7, at 13-23; DOMESTIC TYRANNY, supra note 8, at 183; Siegel, supra note 8, at 2118-73. For a history of the rape crisis movement and the evolving understanding of rape as male domination over women, see, for example, SUSAN BROWN MILLER, AGAINST OUR WILL (1975); SCHECHTER, supra note 7, at 32-34; SUSAN ESTRICH, REAL RAPE: HOW THE SYSTEM VICTIMIZES WOMEN WHO SAY NO (1987); STEPHEN J. SCHULHOFER, UNWANTED SEX: THE CULTURE OF INTIMIDATION AND THE FAILURE OF LAW 7-46 (1998); Vivian Berger, Man’s Trial, Women’s Tribulation: Rape Cases in the Courtroom, 77 COLUM. L. REV. 1 (1977); Susan Estrich, Rape, 95 YALE L.J. 1087 (1986); MacKinnon, supra note 7; see also ANGELA DAVIS, WOMEN, RACE AND CLASS 7 (1981).

10. See, e.g., SCHNEIDER, supra note 7, at 22-23; Elizabeth M. Schneider, The Violence of Privacy, in THE PUBLIC NATURE OF PRIVATE VIOLENCE 36 (Martha A Fineman & Roxanne Mykitiuk eds., 1994); SCHECHTER, supra note 7, at 54; NATALIE J. SOKOLOFF & IDA DUPONT, DOMESTIC VIOLENCE AT THE MARGINS: READING ON RACE, CLASS, GENDER AND CULTURE 139 (2005); Sally F. Goldfaib, Violence Against Women and the Persistence of Privacy, 61 OHIO L.J. 1, 18-35 (2000).

11. SCHECHTER, supra note 7, at 58.

12. Id. at 219-24 (detailing ways in which male battering thwarted women’s efforts to assert their independence); DIANA RUSSELL, THE POLITICS OF RAPE: THE VICTIM’S PERSPECTIVE 265 (1984).

13. RUSSELL, supra note 12, at 263.

14. See, e.g., DIANA RUSSELL, RAPE IN MARRIAGE 3, 355-57 (1982); ESTRICH, supra note 9, at 28. Few quotations capture this view better than the oft-quoted statement that rape is a charge “easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent.” 1 MATTHEW HALE, HISTORY OF THE PLEAS OF THE CROWN 635 (1736).
rather than criminal matters. They challenged public officials' revictimization of victims through treatment that reflected indifference and disdain.

Nevertheless, the connection between sex discrimination and domestic and sexual violence is not easily, nor precisely, described. Definitional formulations of domestic and sexual violence as "gender violence" presumably equate these crimes with gender discrimination. Although this may be true in a global sense, gender alone may not be a salient factor in each act of domestic or sexual violence. It may be more accurate to say the problem of domestic and sexual violence is rooted in and reflects the legacy of sex discrimination and accompanying attitudes sanctioning male violence towards women. Viewed in this light, the term focuses on social or external, rather than personal or internal, factors. As a term describing the social construction of domestic and sexual violence, "gender violence" is underinclusive because individual acts may be informed by other socio-political factors as well as gender. Since at least the early 1980s, advocates and scholars urged recognition of the complex interaction of race, national origin, economics, and other social factors that define the context in which male violence against women occurs. That debate, and the


16. SCHECHTER, supra note 7, at 54, 58 (recounting discriminatory and disrespectful attitudes towards battered women, such as that they must "enjoy the violence" because they return to the batterer).

accompanying critique that mainstream discourse on domestic and sexual violence ignores social factors other than sex or gender, continues today. On the other hand, as a causal factor, a "gender" lens is overinclusive to the extent that some acts of domestic and sexual violence may be driven more by psychological factors than by social or political causes. On balance, gender should be recognized as one of a variety of socio-political factors that play a role in the perpetration of the violence, and shape the response of victims and the civil, criminal justice, and social service systems. We should neither lose the link with historic sex-based discrimination, nor should we overstate the connection.

A review of the reforms that have evolved over the last quarter-century reveals that, notwithstanding the central role arguments about sex equality played in discourse surrounding the problem in the 1960s and 1970s, implementation of the resulting reforms, and current mainstream discussion of


19. For example, Michael Johnson has identified four patterns of partner violence: common couple violence; intimate terrorism; violent resistance; and mutual violent control. Michael P. Johnson & Kathleen J. Ferraro, Research on Domestic Violence in the 1990s: Making Distinctions, 62 J. MARRIAGE & FAM. 948 (2000). Under this framework, common couple violence arises in the context of a specific argument that leads one or both partners to lash out at the other and may be driven more by factors of personality than sex discrimination. Intimate terrorism is characterized by one partner's efforts to exert control over the other. This type of violence tends to escalate over time, is less likely to be mutual, and is more likely to involve serious injury. Violent resistance refers to violence committed in self defense. Mutual violent control involves rare situations in which both husband and wife are controlling and violent. Id. at 949-50.

20. See, e.g., Jana L. Jasinski, Theoretical Explanations for Violence Against Women, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 5, 15-17 (Claire M. Renzetti et al. eds., 2001) (reviewing the universe of explanatory theories relating to domestic violence, including multidimensional theories that include both social factors and individual characteristics, and concluding that the more integrated and encompassing the theoretical model, the more valid it will be).
domestic and sexual violence, generally lack any reference to the ongoing role of sex discrimination. As described in more detail below, although reforms may have removed barriers to civil and criminal justice and have improved social services systems, in practice, many if not most of these reforms target neither sex discrimination nor other socio-political factors.\textsuperscript{21} Beginning in the early years of the movement, debates over approaches to reform were animated by the tension between those emphasizing the social context in which domestic and sexual violence occurs and those supporting a more traditional social services response.\textsuperscript{22} On one level, it is unremarkable that many reforms would not directly target sex discrimination. It should come as no surprise that a wide range of changes would be needed to reform a system that evolved in a legal culture which reflected and perpetuated discriminatory norms and stereotypes. What is notable is the dearth of any formal incorporation of the connection between domestic and sexual violence and sex discrimination under United States law and policy. Given this increasingly neutralized approach, however, it is no coincidence that public debate has become increasingly devoid of discussion of the social context, and that prevention initiatives that address root causes are more the exception than the rule.

\textbf{B. Cataloging Reforms}

The anti-rape and domestic violence movements in the

\textsuperscript{21} For a summary of resulting reforms, see infra Part I.B. For a discussion of the "neutralization" of public discourse concerning domestic and sexual violence, see infra Part I.C. This paper's discussion of these trends focuses on mainstream services and dialogues. This contrasts with grassroots initiatives that consistently have incorporated analyses of social context in which domestic and sexual violence occur and the impact of that context on victims, into services, and advocacy. See infra notes 59, 77, 81, 163, 168.

\textsuperscript{22} See, e.g., SCHECHTER, supra note 7, at 2, 50-51, 241-55. Schechter quoted one socialist feminist social worker's capsulization of the dilemma: "Are we a service for women or a movement to end violence? ... Do battered women exist because of inadequate service delivery systems or because of women's oppression." \textit{Id.} at 51 (quoting anonymous personal communication). Schechter's argument that the movement needs a "dual focus" on both services and politics continues to resonate more than twenty years later. \textit{Id.} at 107-09, 111-12, 241-55. For other accounts of this tension, see also, for example, SCHNEIDER, supra note 7, at 23; Elizabeth M. Schneider, \textit{The Dialectic of Rights and Politics: Perspectives from the Women's Movement}, 61 N.Y.U. L. REV. 589 (1986).
United States have helped foster substantial change in the way the problem is viewed and in the legal and social services responses victims receive. The advances can be grouped into four categories: eliminating formal inequalities, enhancing criminal and criminal justice-related penalties, expanding social services, and enhancing civil law responses. The following brief review of each category of reform shows that notwithstanding the substantial rhetorical role arguments about sex equality played in prompting reform, sex discrimination plays a notably limited formal role in the changes that have transpired.

1. Eliminating Formal Inequalities

The most obvious legacy of historic sex discrimination as it relates to domestic and sexual violence lies in formal inequalities such as those that prohibited victims of domestic and sexual violence from obtaining redress through the civil and criminal justice systems. Advocates accordingly sought to eliminate spousal immunities that exempted husbands from criminal laws proscribing rape and inter-spousal immunities precluding civil

23. See, e.g., SCHNEIDER, supra note 7, at 27 (noting that domestic violence now is "widely recognized" as a social problem); Richie, supra note 18, at 51 (recognizing law reforms to protect battered women and sexual assault survivors, advancement of social services, as well as academic and public policy initiatives including academic journals, national conferences, and federal programmatic and funding initiatives).

24. Although there undoubtedly are other ways to categorize the reforms, at least one other commentator has grouped reforms in a similar way. See, e.g., Jane C. Murphy, Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Reform, 21 HOFSTRA L. REV. 1243, 1263 (1993) (categorizing reforms that have resulted from feminist advocacy to address domestic violence as creating new criminal sanctions; encouraging enforcement of existing criminal sanctions and expanding civil remedies, including the civil protection order).

25. Rather than provide a comprehensive review of reforms enacted to address domestic and sexual violence, this essay will briefly catalogue the most prominent for the purpose of tracing the role sex-equality-based theory and arguments have played.

26. For a discussion of law reform to eliminate marital rape exemptions, see, for example, ESTRICH, REAL RAPE, supra note 9, at 57-58, 72-79; RUSSELL, supra note 14, at 18; SCHECHTER, supra note 7, at 216-18; SCHULHOFER, supra note 9, at 30; Jill E. Hasday, Contest and Consent: A Legal History of Marital Rape, 88 CALIF. L. REV. 1373, 1377, 1482-98 (2000); Victoria Nourse, Symposium on Unfinished Feminist Business: The "Normal" Successes and Failures of Feminism and the Criminal Law, 75 CHI.-KENT L. REV. 951, 962 (2000); Robin West, Equality Theory, Marital Rape, and the Promise of the
recovery between spouses. 27 Although these efforts have been widely heralded as a success, and many of the most stark immunities have been eliminated, 28 formal inequalities remain. For example, a majority of states retain some form of criminal immunity or reduced penalties for sexual assault within marriage. 29 Civil immunities still persist in insurance exclusions, preventing insurance coverage, for example, if a battered woman sued her husband for injuries resulting from his abuse. 30

Despite the seemingly obvious connection between these immunities and historic sex-based discrimination, 31 most reforms have not formally been grounded in sex-discrimination theories. Since most marital rape exemptions are drafted in gender-neutral terms precluding suits between “spouses,” when


27. Like the marital rape immunities, these tort immunities also were based on the outdated doctrine of coverture and the related doctrine of marital unity, which deemed husband and wife to be one person and therefore unable to sue one another. See, e.g., Clare Dalton, Domestic Violence, Domestic Torts and Divorce: Constraints and Possibilities, 31 NEW ENG. L. REV. 319, 326-27 (1997); Jennifer Wriggens, Interspousal Tort Immunity and Insurance “Family Member Exclusions”: Shared Assumptions, Relational and Liberal Feminist Challenges, 17 WIS. WOMEN’S L.J. 251, 252-53 (2002); Siegel, supra note 8, at 2162-66; Carl Tobias, Interspousal Tort Immunity in America, 23 GA. L. REV. 359, 361-65 (1989). More recently, the immunities were also justified by fears that husbands and wives would collude and file false insurance claims and obtain undeserved benefits for alleged negligently inflicted harms. See Wriggens, 17 WIS. WOMEN’S L.J. at 252-53; Tobias, 23 GA. L. REV. at 449-56.

28. Virtually every state has revisited its marital rape laws over the last quarter century, and many have modified those laws to eliminate absolute immunity from prosecution. Nourse, supra note 26, at 961-69; Hasday, supra note 26, at 1385, 1380; Anderson, supra note 26, at 1468-72.

29. See, e.g., Hasday, supra note 26, at 1375 (detailing statutes that, for example, criminalize only a narrower range of offenses if committed within marriage, or subject marital rapes to less serious sanctions, or create special procedural hurdles for marital rape prosecutions); Anderson, supra note 26, at 1470-72, 1485-96 (detailing immunities that remain inscribed in criminal laws); Nourse, supra note 26, at 962-68 (describing ways that marital rape immunities remain difficult to eliminate from criminal statutory schemes).


31. See, e.g., West, supra note 26, at 64-65 (tracing marital rape immunity’s roots in coverture). As Matthew Hale summarized the doctrine, a married woman was presumed to consent to all marital sex, and therefore, could not be raped. Id. (citing 1 MATTHEW HALE, THE HISTORY OF THE PLEAS OF THE CROWN 628-29 (1778)).
challenged, the exemptions generally have been subject to rational basis rather than any heightened standard of review. Although a small number of state courts have found exemptions unconstitutional under rational basis analysis, marital rape exemptions often have been upheld under this less exacting standard. Thus, the reasoning of cases such as People v. Liberta, which struck down New York’s marital rape exemption based on an analysis that the exemption was irrational because it was rooted in “archaic notions” about consent and property rights between husbands and wives that “no longer have any validity,” have not been widely accepted and have not eliminated the full range of marital immunities that still exist today.

The legacy of sex discrimination also is manifest in sex-based classifications in criminal laws proscribing rape. Over the last twenty-five years, virtually all states that had such classifications have replaced gender-specific with gender-neutral formulations. In large part, these changes acknowledge that men as well as women are vulnerable to rape. Although most feminists support those reforms as advancing formal equality and broadening the universe of cases subject to prosecution, some have questioned whether this shift away from a gendered

32. As Robin West has persuasively argued, United States’ current conceptions of formal equality create barriers to successful challenges to these immunities. West, supra note 26, at 50, 63-71.

33. See, e.g., Hasday, supra note 26, at 1486-90, 1501-02 nn.470-71 (citing cases). States that have upheld the laws have relied on justifications that they were rationally related to interests such as the maintenance of family and marital relationships. See, e.g., id. at 1486-90, 1501 n.465; West, supra note 26, at 64; Nourse, supra note 26, at 962-66, 961 n.44 (citing cases).


35. Id. at 573-74.

36. See, e.g., RUSSELL, RAPE IN MARRIAGE, supra note 14, at 18; ESTRICH, REAL RAPE, supra note 9, at 81-82; Hasday, supra note 26, at 1500 n.465; Patricia Novotny, Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?, 1 SEATTLE J. SOC. JUST. 743, 744 n.12 (2003); David P. Bryden, Redefining Rape, 3 BUFF. CRIM. L. REV. 317, 321 (2000); Deborah W. Denno, Sexuality, Rape and Mental Retardation, 1997 U. ILL. L. REV. 341 n.152 (citing statutes).

approach fuels a misperception that gender bias is no longer a factor in sexual assault.38 The limits of this formal equality approach will not surprise those who have criticized the United States’ neutral approach to constitutional equality,39 or those who engage with the challenges of rooting out discrimination once formal equality is achieved.40

2. Enhancing Criminal Justice Responses

Much law reform in the area of domestic and sexual violence has focused on changing and enhancing the criminal law. To a great extent, these reforms have responded to feminist critiques that the criminal justice system diserved victims of domestic and sexual violence, by revictimizing them rather than facilitating their participation.41 The most common reforms of laws regulating sexual assault include redefining the single crime of rape with a series of graded offenses that more accurately describe the range of crimes the term rape encompasses; eliminating requirements that the victim physically resist her attacker or that her testimony be corroborated; and placing restrictions on the introduction of evidence of the victim’s prior sexual conduct.42 Domestic violence-related reforms include the creation of specific domestic violence offenses,43 including federal crimes for domestic violence that involves interstate activity,44 recognition of self-defense arguments for battered

38. Novotny, supra note 36, at 750.
40. For other approaches that attempt to eradicate discrimination that reaches beyond the elimination of formal inequalities, see, for example, IAN AYRES, PERVERSIVE PREJUDICE?: NON-TRADITIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION (2001); MICHAEL K. BROWN ET. AL., WHITETWASHING RACE (2003); Susan Sturm, Second Generation Employment Discrimination: A Structural Approach, 101 COLUM. L. REV. 458 (2001).
42. See, e.g., ESTRICH, REAL RAPE, supra note 9, at 81-91; RUSSELL, supra note 14, at 18; SCHULHOFER, supra note 9, at 43-46, 69-98; Spohn, supra note 37, at 122; Bryden, supra note 36, at 321.
women who kill or otherwise use violence against their perpetrators; and the authorization of expert testimony to explain women's responses to violence. More controversial innovations include mandatory arrest and no-drop prosecution policies designed to reduce police discretion and enhance police responsiveness. Notwithstanding these important reforms, many advocates and scholars have criticized the movement's overemphasis on criminal justice responses. More recent reform initiatives incorporate social service, public education, and research agendas along with criminal justice-based


45. For a description of the evolution of these arguments, see, for example, SCHNEIDER, supra note 7, at 112-47; Victoria Nourse, Passion's Progress: Modern Law Reform and the Provocation Defense, 106 YALE L.J. 1331 (1997).


47. These reforms, which require police and prosecutor action in domestic violence cases, have produced a wealth of literature examining the empirical as well as theoretical issues associated with mandating police intervention regardless of the victim's stated wishes. For discussions of these debates, see, for example, Coker, supra note 41, at 805-06; Emily J. Sack, Battered Women and the State: The Struggle for the Future of Domestic Violence Policy, 2004 WIS. L. REV. 1657, 1672-722; Cheryl Hanna, No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions, 109 HARV. L. REV. 1849 (1996); Deborah Epstein, Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System, 11 YALE J.L. & FEMINISM 3, 17-21 (1999).

48. See, e.g., Coker, supra note 41, at 821-33 (analyzing dangers of increasing state intervention in battered women's lives); SCHNEIDER, supra note 7, at 181-88 (analyzing complexities of engagement with the state through criminal law interventions such as mandatory arrest); Crenshaw, supra note 17, at 1257; Incite! Critical Resistance Statement, in SOKOLOFF, supra note 18, at 107-8 (stating that law enforcement approaches to violence against women have not worked as an overall strategy for ending the violence); Richie, supra note 18, at 50, 54 (arguing for a reassessment of reliance on law enforcement as the principal strategy to address violence against women); Martha McMahon & Ellen Pence, Making Social Change: Reflections on Individual and Institutional Advocacy with Women Arrested for Domestic Violence, 9 VIOLENCE AGAINST WOMEN 47, 54, 58 (2003) [hereinafter Making Social Change] (noting activists' redirection from demanding equality toward reforming criminal justice systems and arguing that increased funding for criminal justice programs weakened anti-domestic violence movement's connections to political roots).
proposals.49

Even though many reforms evolved in response to critiques that the criminal justice system failed to address (predominantly female) victims' concerns and charges that the system instead exacerbated their injury through discriminatory treatment, few criminal justice-related reforms address the impact of sex discrimination directly. For example, substantial funding has been allocated to improving law enforcement's response through programs such as federal grants authorized under VAWA.50 These programs include initiatives to improve prosecution strategies and victim services.51 The programs are intended to improve law enforcement's responses to victims and are critically important. However, they do not address the underlying problems of sex bias that still plague law enforcement responses.52

49. For example, proposals for the reauthorization of the Violence Against Women Act (VAWA) included provisions that would improve law enforcement responses, as well as enhance social services such as counseling, shelter, and health care responses. See, e.g., Violence Against Women Reauthorization Act of 2005, H.R. 2876 (introduced June 14, 2005); Violence Against Women Reauthorization Act of 2005, S. 1197 (introduced June 8, 2005).


51. See, e.g., 42 U.S.C. § 3796gg-hh (authorizing grants to states for prosecution strategies to combat violence, crimes against women, and to develop and strengthen victim services in those cases).

52. The federal programs authorized under VAWA fund training for law enforcement officers, judges, court personnel, and prosecutors to more effectively identify and respond to violent crimes against women and to develop policies and procedures to more effectively prevent, identify, and respond to the crimes. 42 U.S.C. § 3796gg(b)(1)–(3). Not surprisingly, the grant programs do not require that programs address underlying social causes such as persistent sex-based stereotypes. For resources on judicial education programs and the task forces that address gender bias in the courts, see generally National Judicial Education Program, available at http://www.legalm omentum.org/njep/index.shtml (last visited Apr. 9, 2006); see also Lynn Hecht Schafran & Norma J. Wikler, Gender Fairness in the Courts: Action in the New Millennium (2001), http://womenlaw.stanford.edu/genderfairness-strategiesproj ect.pdf.
3. Expanding Social Services

A third category in which feminist advocacy has produced substantial reforms is in the growth of social and support services for victims. The range of services available to victims has expanded dramatically. Every state has a domestic violence and sexual assault coalition;53 shelters in every state provide both emergency and transitional housing to domestic violence victims;54 hospitals have teams of nurses who are specially trained to work with victims of sexual assault;55 and community-based programs employ staff counselors who provide services to victims of domestic and sexual violence.56 Many shelters and service programs now receive federal funding, which expanded significantly as a result of VAWA and its 2000 reauthorization.57


54. Susan Schechter traces the evolution of the shelter movement in her pathbreaking text, WOMEN AND MALE VIOLENCE. See SCHECHTER, supra note 7, at 53-68.


The expansion of services is undoubtedly a positive development, although services still fall far short of victims’ needs. However, as the availability of social services expands, concerns re-emerge that battered women’s programs will reflect a traditional service orientation without acknowledging the social factors that underlie the problem. Social service programs may provide mental health-based programs that frame the problem through an individual and psychological, rather than a political or social, lens. Victims may learn about safety planning and how to negotiate the criminal justice system and community resources, but may not be afforded the opportunity to examine the social context in which the violence occurs. To the extent that addressing the problem as one rooted in sex-based stereotypes and other socio-political factors can support prevention efforts that target root causes, approaches that adopt a purely service-based approach have a far more limited impact.


58. See supra note 22 and accompanying text; see infra notes 48, 59, 77, 78 and accompanying text.

59. See, e.g., Mimi Kim, The Community Engagement Continuum: Outreach, Mobilization, Organizing and Accountability to Address Violence Against Women in Asian and Pacific Islander Communities 8 (Mar. 2005) (criticizing social service orientation of current anti-violence movement for insufficient attention to long-range solutions); McMahon & Pence, supra note 48, at 58 (recounting battered women’s services’ shift from political to institutional approaches).

60. For example, one study of social service responses to domestic violence victims listed the following potential interventions: referral to social and legal services; safety assessments; discussions of available social services; protective orders; legal rights; providing information about the court process; alternative shelter; inquiring about the need for medical attention; providing crisis counseling; developing safety planning; providing concrete resources such as bus tickets or food vouchers. Erin Lane et al., The Second Responders Program: A Coordinated Police and Social Service Response to Domestic Violence, NCJ 199717, at 205 (2004), http://www.ncjrs.org/pdffiles1/nij/199701.pdf. Programs that place the violence in the social, political, and ethnic context in which it occurs are far less common. See, e.g., Rhea V. Almeida & Judith Lockard, The Cultural Context Model: A New Paradigm for Accountability, Empowerment, and the Development of Critical Consciousness against Domestic Violence, in DOMESTIC VIOLENCE AT THE MARGINS, supra note 18, at 301-20.

61. Undoubtedly, research exploring the relationship between the orientation offered by service providers and victim behavior and perspective would help further illuminate this argument.
4. Civil Justice Responses

Law reform also has been instrumental in amending civil law provisions to better respond to domestic and sexual violence victims’ needs. Civil protection orders can direct the abuser to refrain from abusive behavior and can include other provisions such as directives about custody and support. Amendments to family law codes direct judges to address issues such as custody, child support, and separation and divorce, when domestic violence is an issue. Immigration laws have been amended to allow battered immigrant women to apply for permanent residency status and to suspend deportation proceedings without having to rely on an abusive partner.

Another category of civil law reform imposes civil liability for domestic or sexual violence either under tort or anti-discrimination laws. Although sexual harassment law is not

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commonly thought of as an anti-violence initiative, it has been a source of recovery for victims of sexual assault at work since courts began to recognize sexual harassment as a form of sex discrimination.65 Courts also have recognized that victims of domestic violence may suffer sex discrimination at work, for example, if they are penalized when the perpetrator is not, or if they are subject to adverse job actions on account of the abuse.66

Perhaps the most visible legal initiative that framed domestic and sexual violence as a form of sex discrimination was the civil rights remedy enacted as part of VAWA.67 That law, which was struck down by the United States Supreme Court as an invalid exercise of Congress' powers under both the Commerce Clause and Section 5 of the Fourteenth Amendment,68 situated gender-based violence alongside other civil rights violations and authorized a private right of action by a victim against a perpetrator in federal court.69 Notwithstanding the invalidation of the federal law, eleven states and the District of Columbia maintain statutes that authorize civil recovery for crimes such as domestic or sexual violence as a civil rights violation.70 These civil rights approaches have been heralded as holding the potential both to transform public understanding of domestic and sexual violence from a private to a public problem, and to afford victims a source of compensation for the resulting injuries.71 Nevertheless, as I have discussed

65. Notably, the first United States Supreme Court case to address sexual harassment was based on allegations of sexual assault at work. See Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986). For a fuller discussion of cases redressing sexual assault and domestic violence under anti-discrimination laws, see The Civil Rights Remedy, supra note 7, at 172-73.

66. Id.


71. For commentary on the civil rights remedy and the impact of the Morrison decision, see, for example, Catherine A. MacKinnon, Disputing Male Sovereignty, 114 HARV. L. REV. 135 (2000); Sally F. Goldfarb, Use and Abuse of
elsewhere, the laws that remain on the books are not widely publicized and remain underutilized.\textsuperscript{72}

\textbf{C. The Neutralized Conversation}

Debate about social factors, including the legacy of sex-based stereotypes and discrimination, occupied the center stage of public discourse about domestic and sexual violence that sparked the generation of reform in the 1960s and 1970s.\textsuperscript{73} Discussion of those social forces now take the back seat in what is nevertheless a far more public discussion of the issues. Current initiatives to end domestic and sexual violence find support in mainstream organizations including national alliances of corporations. However, these often lack any reference to social context or root causes.\textsuperscript{74}

As activists warned,\textsuperscript{75} the expansion of government funding has resulted in public dialogue that more often discusses the issue as "family" or "intimate partner" violence rather than as a problem rooted in sex-based stereotypes. The increased public discussion of domestic and sexual violence undoubtedly is a positive development, as is the recognition that violence occurs in same-sex as well as heterosexual relationships and that both men and women can batter and can be battered.\textsuperscript{76} But with the

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\item \textsuperscript{72} \textit{The Civil Rights Remedy,} \textit{supra} note 7, at 167-71.
\item \textsuperscript{73} \textit{SCHICHTER, supra} note 7, at 46.
\item \textsuperscript{74} See, e.g., Corporate Alliance to End Partner Violence, \textit{available at} http://www.caepv.org (last visited Jan. 4, 2006) (describing national nonprofit organization comprised of corporations addressing the impact of domestic violence on the workplace).
\item \textsuperscript{75} \textit{See generally, supra} note 58.
\item \textsuperscript{76} Nevertheless, studies consistently conclude that men are overwhelmingly the perpetrators, and women the victims, of intimate partner violence. \textit{See, e.g., CALLIE MARIE RENNISON, U.S. DEPT OF JUSTICE, INTIMATE PARTNER VIOLENCE,} NCJ 197838 (2002) at 1, \textit{available at} http://www.ojp.gov/bj
\end{flushitemize}
issue's mainstreaming has come a depoliticization of the accompanying debate. 77 Without a focus on social context, services and advocacy become increasingly distanced from the experiences of women who are battered and abused, and policy solutions may be geared more toward supporting a growing bureaucracy of social service and criminal justice programs than on working to eliminate the problem at its core. 78

Statistical data and anecdotal accounts indicate that sex continues to play a role in the perpetration of domestic and sexual violence. 79 Race, national origin, and economic status are

s/pub/pdf/ipv.pdf (reporting, inter alia, that violence by an intimate partner accounted for 20 percent of all non-fatal violent crime experienced by women in 2001, and three percent of the non-fatal violent crime experienced by men that same year).

77. See, e.g., McMahon & Pence, supra note 48, at 54 (describing the depoliticization of the domestic violence movement). In contrast to the neutralization of mainstream discourse, grassroots and community initiatives incorporate race, class, ethnicity, and sexual orientation as well as gender into their service and advocacy work with clients. See, e.g., Kim, supra note 59, at 8-9 (describing emerging community based programs that incorporate community organizing strategies); Janet Carter & Jill Davies, Domestic Violence and Poverty: Organizing an Advocacy Voice, 7 NFG REPORTS (Fall 2000), available at http://www.nfg.org/reports/73domestic.htm (describing the "Building Comprehensive Solutions to Domestic Violence Project," which incorporates community organizing and social services to address overlapping issues of domestic violence and poverty); CONNECT, Safe Families, Peaceful Communities, http://www.connectnyc.org/index.html (last visited Jan. 4, 2006) (organizing and service program dedicated to preventing and eliminating family and gender violence); Voice of Women Organizing Project, Survivors of Domestic Violence Organizing for Change, http://www.vowbwc.org (last visited Jan. 4, 2006) (organizing and advocacy project driven by battered women's experiences and priorities).

78. See, e.g., Ellen Pence, Advocacy on Behalf of Battered Women, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 329, 330, 340-43 (Claire M. Renzetti et al. eds., 2001) (describing depoliticization of services); Rebecca Campbell & Patricia Y. Martin, Services for Sexual Assault Survivors, The Role of Rape Crisis Centers, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 227, 230 (recounting studies documenting rape crisis programs' "deradical[ization]"); National Coalition Against Domestic Violence, Battered and Formerly Battered Women's Statement (July 14, 2004), http://www.ncadv.org/resources/BatteredandFormerlyBatteredWomensStatement_151.html (criticizing domestic violence service providers' use of "clinical language" and "mental health/social work models" and advocating that primary focus should be promoting social change).

79. Statistics consistently confirm that violence in intimate relationships is committed overwhelmingly by men against women. See Rennison, supra note 76. Anecdotal evidence confirms that abusive conduct often reflects traditional sex-based stereotypes. See, e.g., Julie Goldscheid & Risa E. Kaufman, Seeking
also determinative in victims' experience of violence and ability to access services.\textsuperscript{80} If legal, policy, and social service interventions are to make strides toward prevention and eradication of domestic and sexual violence, they must address root causes in addition to offering services to victims. Although policy initiatives may more easily garner mainstream support through descriptions that are not explicitly political, they may skew public discourse and fail to advance the ultimate goal of prevention if they avoid the underlying social causes.

The mainstreaming of domestic and sexual violence and the neutralization of the manner in which it is discussed can be observed in several ways. For example, government publications often address the prevalence and scope of the problem, and list the sex-based differentials in the respective identities of victims and perpetrators (with women overwhelmingly represented in the category of "victims"), but the descriptions make little or no reference to the socio-political context in which the violence occurs.\textsuperscript{81} The websites of state domestic and sexual violence


\textsuperscript{80} See, e.g., supra notes 9-10, 17-18 and accompanying text.

coalitions also illustrate the shift away from a social frame. Some states explicitly discuss the problem in terms of the role that sex stereotypes and social forces play. However, other states discuss the problem in behavior- and gender-neutral terms, and do not mention the connection between domestic and sexual violence and sex discrimination. Counseling programs may address victims' needs in a variety of critical ways, but may do so by focusing on individuals' psychological reactions to the exclusion of the cultural and systemic bases of abuse. As a


84. See supra note 78 and accompanying text.
result, victims may not place their experience in a broader social context. The ensuing public discussion will be more likely to focus on services rather than on how to move beyond victim services to prevention and violence reduction.

Some batterers' intervention programs (BIPs) are an exception to this neutralized approach. Although BIPs vary in the approaches they use, some employ an explicitly "feminist" curriculum.\(^{85}\) Perhaps not surprisingly, these programs have been subject to criticism and derision by commentators who see the focus on historic sex-based stereotypes and recognition that women are the predominant victims as unfair to men.\(^{86}\)

In contrast to the minimal attention given to sex discrimination by those who see themselves as representing the majority of victims of domestic and sexual violence, fathers' rights groups who complain that current services ignore their concerns explicitly argue that they are the victims of discrimination based on sex.\(^{87}\) They have brought lawsuits challenging domestic violence shelter services and laws authorizing funding for "battered women" as unconstitutional because they allegedly discriminate against men on the basis of

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87. For a fuller discussion of fathers' rights' groups claims as they relate to domestic violence law reform and advocacy, see, for example, Sack, supra note 15, at 1697-703, 1709-10.
sex. Although those challenges thus far have been unsuccessful, the willingness to use sex discrimination rhetoric in the service of arguments that domestic violence services discriminate against men stand in stark contrast to the otherwise neutralized dialogue on behalf of the vast majority of victims of abuse.

II. INTERNATIONAL HUMAN RIGHTS, DOMESTIC AND SEXUAL VIOLENCE, AND SEX DISCRIMINATION

A. Framing the Problem as Sex Discrimination

International human rights law has been heralded as the new center of groundbreaking work to address domestic and sexual violence as a problem of discrimination. This view, at least in part, reflects the impact of international human rights instruments that name violence against women as a human rights concern. For example, the International Covenant on Civil and

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89. See, e.g., SCHNEIDER, supra note 7, at 28.

Political Rights, to which the United States is a party, has been interpreted to incorporate protections against domestic and sexual violence as part of its assurance of equality between men and women. 91 Regional treaties also recognize states' obligations to prevent and address domestic and sexual violence as part of their obligation to ensure sex equality and human rights for all. 92

CEDAW most specifically addresses problems of sex equality and offers the most comprehensive discussion of domestic and sexual violence as a problem of discrimination. 93 CEDAW defines discrimination in terms of distinctions having the "purpose or effect" of impairing the equality of men and women in the exercise of human rights and fundamental


91. See International Covenant on Civil and Political Rights, Entry Into Force (Mar. 23, 1976). The Human Rights Committee, which monitors implementation of the ICCPR, has recognized the importance of eliminating domestic and sexual violence in a range of contexts. See Hum. Rts. Comm., General Comment No. 28: Art. 3 ("The equality of rights between men and women) ¶¶ 8 (protection from gender-based violence during armed conflict), 11 (laws prohibiting domestic violence, including rape and female genital mutilation), 12 (prohibitions against trafficking), 14 (laws or practices condoning confinement of women), 16 (restriction of women's movement), 24 (supporting marriage as a free choice by, inter alia, proscribing attitudes that marginalize women victims of rape), 31 ("honor crimes" violate Convention) (68th Sess. 2000).


freedoms in the political, economic, social, cultural, civil, or any other field.\textsuperscript{94} It called for a Committee on the Elimination of Discrimination Against Women, which is charged with "considering the progress made in the implementation of the Convention."\textsuperscript{95} Under CEDAW’s reporting requirements, signator states must submit regular reports detailing that country’s efforts to give effect to CEDAW’s provisions.\textsuperscript{96}

Although the text of CEDAW itself does not explicitly discuss domestic and sexual violence,\textsuperscript{97} General Recommendation No. 19, adopted in 1992, focuses on violence against women.\textsuperscript{98} It defines "gender-based violence"\textsuperscript{99} as "a form of discrimination."\textsuperscript{100} It explains that discrimination includes violence "directed against a woman because she is a woman or that affects women disproportionately.”\textsuperscript{101} The

\begin{itemize}
  \item \textsuperscript{94} CEDAW, \textit{supra} note 93, art. 1.
  \item \textsuperscript{95} Id. art. 17.
  \item \textsuperscript{96} Id. art. 18. States must submit reports within one year after the treaty enters into force and every four years thereafter, or as often as the Committee requests. \textit{Id.} art. 17.
  \item \textsuperscript{97} However, CEDAW does require states to take measures to "suppress" trafficking in women and exploitation of prostitution. CEDAW, \textit{supra} note 93, art. 6.
  \item \textsuperscript{98} CEDAW authorized the Committee to make suggestions and general recommendations based on the reports states submit detailing their efforts to comply with the Convention. \textit{Id.} art. 21, \textit{supra} note 1. The Committee accordingly has issued a series of General Recommendations, including Recommendation No. 19, On Violence Against Women. \textit{Gen. Rec. No. 19 (11th Sess., 1992), available at} \url{http://www.un.org/womenwatch/daw/cedaw/recommendations/reco mm.htm#top}. This recommendation followed an earlier recommendation, promulgated in 1989, that States should include in their reports information on violence and on measures introduced to deal with it. \textit{Id.} \textsuperscript{96} 2. In reviewing the reports that were subsequently submitted, the Committee determined that the reports did not uniformly or adequately address the connection between discrimination against women, gender-based violence, and violations of human right and fundamental freedoms. \textit{Id.} \textsuperscript{96} 4. Accordingly, the Committee promulgated General Recommendation No. 19, which contained both general comments on the connection between gender-based violence and discrimination against women, and a series of twenty-three specific recommendations about steps states should take to comply with the Convention’s anti-discrimination mandate. See \textit{id.} \textsuperscript{96} 6-23, 24.
  \item \textsuperscript{99} For discussion of the implications of using the term "gender-based violence" as opposed to "violence against women,” domestic and sexual violence, or other formulations of the problem, see \textit{supra} note 1.
  \item \textsuperscript{100} \textit{Gen. Rec. No. 19, supra note 1, 6, 7.}
  \item \textsuperscript{101} \textit{Id.} \textsuperscript{96} 6. By including violence committed disproportionately against women, the Recommendation avoids the need to address the difficult question

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Recommendation details a number of rights and freedoms that gender-based violence may impair or nullify, and makes clear that CEDAW applies to violence perpetrated by both public and private parties.\textsuperscript{102}

General Recommendation No. 19 complements those articles in CEDAW that do not specifically address domestic and sexual violence by explaining the connection.\textsuperscript{103} Several of these explanations emphasize the link between violence and discrimination. For example, comments to the article addressing traditional social and cultural customs and practices explain that cultural practices such as family violence, forced marriage, and female circumcision serve to keep women in subordinate roles and contribute to low levels of political participation as well as low levels of education, skills, and work opportunities.\textsuperscript{104} The comments also explain that poverty and unemployment increase the opportunities for trafficking and other forms of sexual exploitation, and are "incompatible" with respect for women's equal rights and dignity.\textsuperscript{105} Another comment explicitly frames domestic violence as being "perpetuated by traditional attitudes."\textsuperscript{106} The comment elaborates how the lack of economic independence forces women to stay in violent relationships and that men's "abrogation of family responsibilities" can be a form of violence and coercion.\textsuperscript{107}

General Recommendation No. 19 then enumerates 23 steps states should take to eliminate violence against women as part of

\begin{itemize}
  \item[102.] Gen. Rec. No. 19, ¶¶ 7-9. The General Recommendation makes clear states' responsibility for private acts when they fail to act with due diligence to prevent violations or to investigate and punish act of violence. \textit{Id.} ¶ 9.
  \item[103.] \textit{Id.} ¶¶ 10-23. For example, the Recommendation details that traditional attitudes may perpetuate practices involving violence or coercion, such as family violence, forced marriage, dowry deaths, acid attacks, and female circumcision. \textit{Id.} ¶ 11. It also makes explicit the connection between discrimination in employment and gender-specific violence such as sexual harassment. \textit{Id.} ¶¶ 17, 18.
  \item[104.] \textit{Id.} ¶ 11.
  \item[105.] \textit{Id.} ¶ 14, 15.
  \item[106.] \textit{Id.} ¶ 23.
  \item[107.] \textit{Id.}
\end{itemize}
their efforts to eliminate discrimination against women.\textsuperscript{108} The Recommendation starts by making explicit the importance of adequate legal protections, appropriate support services, and gender-sensitive training of judicial and law enforcement officers and other public officials.\textsuperscript{109} It goes beyond expanded criminalization and social services and includes recommendations that would advance the instrument’s transformative aspirations. Among other recommendations, it identifies the need for compilation of statistics and research; for ensuring media respect for women; for overcoming traditional attitudes, customs, and practices that perpetuate violence against women; for complaint procedures and remedies; and for compensation.\textsuperscript{110}

Although many of the recommendations are similar to the types of reforms enacted in the United States, they are presented within an express and formal framework mandating the elimination of discrimination against women. Although United States law variously proscribes sex discrimination and proscribes violence, no formal directives prohibit domestic and sexual violence as a form of sex discrimination. By contrast, CEDAW’s analogous prohibitions are subsumed under its stated goal of eliminating discrimination against women. General Recommendation No. 19’s explicit connection between what the recommendation terms “gender-based violence” and discrimination against women places anti-violence initiatives under an anti-discrimination directive.\textsuperscript{111}

Specific recommendations would have states address the link between violence and discrimination directly. For example, in encouraging the compilation of statistics and research, the recommendations make clear that those initiatives should address the “causes and effects” of violence, as well as its prevalence and the effectiveness of responsive measures.\textsuperscript{112} The recommendations include education and public information programs as preventive measures, but suggest that such programs “help eliminate prejudices that hinder women’s

\textsuperscript{108} Id. \$ 24(a) – (v).
\textsuperscript{109} Id. \$ 24(b).
\textsuperscript{110} Id. \$ \$ 24(c), (d), (e), (i).
\textsuperscript{111} See, e.g., id. \$\$ 6, 7.
\textsuperscript{112} Id. \$ 24(c).
equality," and "change attitudes concerning the roles and status of men and women," rather than simply urging education about the prevalence and nature of the problem.\textsuperscript{114}

The Declaration on the Elimination of Violence Against Women (Declaration), adopted by the United Nations General Assembly in 1993, also places efforts to eliminate violence against women in the context of eliminating discrimination against women.\textsuperscript{115} The Declaration states that violence against women is an "obstacle to the achievement of equality," that it "constitutes a violation of the rights and fundamental freedoms of women," and it recognizes states' "long-standing failure" to address the problem.\textsuperscript{116} The Declaration explicitly links violence and equality in one of several introductory paragraphs that framed its directive:

\begin{quote}
Recognizing that violence 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 the 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 with men...\textsuperscript{117}
\end{quote}

The Declaration's recommendations echo those of CEDAW's General Recommendation No. 19 in urging initiatives that address the gender inequality that perpetuates domestic and sexual violence. For example, the Declaration urges comprehensive, preventive approaches that protect women against violence and ensure that women are not re-victimized because of "laws insensitive to gender considerations, enforcement practices, or other interventions."\textsuperscript{118} It also encourages training for law enforcement and other public officials responsible for preventing, investigating, and punishing violence against women, "to sensitize them to the needs of

\begin{itemize}
\item \textsuperscript{113} Id. ¶ 24(f).
\item \textsuperscript{114} Id. ¶ 24(t)(ii).
\item \textsuperscript{115} Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104 (Dec. 20, 1993) [hereinafter Declaration].
\item \textsuperscript{116} Id.
\item \textsuperscript{117} Id.
\item \textsuperscript{118} Declaration, supra note 115, art. 4(f).
\end{itemize}
women.”

Another recommendation explicitly addresses the connection by encouraging “all appropriate measures... to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices, and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.”

B. International Reforms

As someone who has worked extensively on issues of sex equality and domestic and sexual violence in the United States, but was not experienced in international initiatives, I sought to understand whether the formal equation of domestic and sexual violence as sex discrimination made a difference in the resulting reforms. To begin to answer that question, I analyzed the reports of the Special Rapporteur on Violence Against Women, who is charged with receiving information on violence against women and its causes and consequences, and recommending measures to eliminate it. Accordingly, her reports compile and review the information states submit to comply with CEDAW’s reporting requirements.

119. *Id.* art. 4(i). Although the Declaration does not explicate what it means by this language, presumably it may refer to the issues and concerns of victims of crimes such as domestic violence and sexual assault, which predominantly harm women.

120. *Id.* art. 4(j).


The Special Rapporteur's reports offer the most comprehensive collection of information on the steps states have taken to eliminate violence against women as part of their mandate to abolish sex discrimination. That being said, I preface my discussion of the reports with a number of caveats. First, the Special Rapporteur's reports by no means recount all steps countries have taken; in particular, the reports may omit substantial grassroots reforms that do not make their way into the official reports on which the Special Rapporteur's reports are based, and may not capture important details of initiatives that are included. Second, this review offers at best rough support for any conclusions about a causal connection between international law's sex discrimination framework and particular types of reforms. It is impossible to tell from the reports themselves whether CEDAW or any other of the international human rights documents were instrumental in effecting the reform, or whether they were inspired by other developments. Third, any comparison of reforms is limited by the reporting countries' radically divergent legal systems. Finally, it is difficult, if not impossible, to assess the extent to which any of the stated reforms have permeated the legal and social culture. As the first Special Rapporteur noted in her final report, the first decade of reporting, beginning in 1994, focused on standard-setting and awareness-raising, and the challenge for the next decade is effective implementation. She recognized that despite these


123. For other reports on the impact of CEDAW on international reforms, see, for example, UNIFEM, PATHWAY TO GENDER EQUALITY: CEDAW, BEIJING AND THE MDGs; INTERNATIONAL WOMEN'S RIGHTS PROJECT, THE FIRST CEDAW IMPACT STUDY, FINAL REPORT (2000); AMNESTY INT'L, MAKING RIGHTS A REALITY: THE DUTY OF STATES TO ADDRESS VIOLENCE AGAINST WOMEN (June 2004). This analysis of the impact of CEDAW may be affected by factors generally impacting countries' compliance with international human rights laws. For a general discussion of countries' compliance with international law, see Harold H. Koh, Why Do Nations Obey International Law?, 106 YALE L.J. 2599 (1997). For an empirical analysis of whether countries comply with international human rights laws, see Oona Hathaway, Do Human Rights Treaties Make A Difference?, 111 YALE L.J. 1935 (2002).

changes, little has changed in most women’s lives. Nevertheless, the trends reflected in this first accounting of reforms are a useful starting point for comparing the respective United States and international frameworks, given the similarities, and to a lesser extent the differences, in the legal and policy changes that have ensued.

With these caveats in mind, I focused on the final report of the first Special Rapporteur and its addendum, which collected international, regional, and national developments in the area of violence against women between 1994 and 2003. Most of the steps countries reported having taken can be cataloged into the same groups that characterize United States’ reforms: elimination of formal inequalities; increased criminal penalties; expanded social services; and modifications in civil law to respond to victims’ needs. The most substantial difference between the United States’ and international responses is in the extent to which the CEDAW reports incorporate public education and awareness campaigns, some of which address sex discrimination as a root cause of the violence. As I will describe below, the formal requirement that states address root causes rather than simply the consequences of violence holds the

E/CN.4/2003/75 (2003). Among other things, Coomaraswamy concluded that the first decade emphasized standard-setting and awareness-raising, and advised that the second decade focus on effective implementation and development of innovative strategies. Id. ¶¶ 71, 73-76, 78.

125. Id. ¶ 77.

potential to keep a spotlight on the role of sex discrimination and other social causes, and can advance initiatives that seek to eliminate, not merely address, the problem.

Of the approximately 185 states that submitted reports, the majority reported taking some steps to change the law to eliminate formal inequalities. This included eliminating or weakening laws that countenanced customary and traditional practices such as female genital mutilation, honor-killings, forced marriage, and exemptions for customary servitude and marital rape exemptions. Some countries reported amending family law codes to authorize more equal rights for women in the context of divorce, custody, and inheritance, including amendments that allow for property sharing by women. Many countries reported initiatives to ensure sex-based equality generally, whether through constitutional or statutory protections. A focus on formal equality of rights in this context is not surprising, particularly in countries in which traditional and customary practices facially disadvantage

127. Id. (reports of Burundi; Cote d'Ivoire; Djibouti; Eritrea; Gambia; Ghana; Kenya; Niger; Nigeria; Somalia; Togo; Egypt; Iraq; Jordan; Lebanon; Tunisia; Iran; Myanmar; Pakistan; Brazil; Belgium; Malta; Netherlands; Spain; Sweden).

128. Id. (reports of Zimbabwe (citing judicial decision rather than legislation); Nepal (same); Philippines (same); Sri Lanka; Antigua and Barbuda; United States; Belgium; Cyprus; Finland; Germany; Iceland; Ireland; Italy; Luxembourg; Malta; Netherlands; Sweden; Switzerland; Hungary; former Yugoslav Republic of Macedonia).

129. Id. (reports of Burkina Faso; Burundi; Central African Republic; Ethiopia; Malawi; Rwanda; South Africa; Zimbabwe; Egypt; Tunisia; Bhutan; Brunei Darussalam; Iran; Israel and occupied territories; Kyrgyzstan; Laos; Malaysia; Maldives; Mongolia; Nepal; Sri Lanka; Guatemala; Ireland; Turkey; United Kingdom).

130. Id. (reports of Burkina Faso; Burundi; Eritrea; Gabon; Guinea; Guinea-Bissau; Kenya; Madagascar; Malawi; Mauritius; Mozambique; Niger; Sao Tome and Principe; Sierra Leone; South Africa; Togo; Uganda; Zamb"a; Bahrain; Egypt; Iraq; Jordan; Kuwait; Libyan Arab Jamahiriya; Morocco; Syrian Arab Republic; United Arab Emirates; Australia; China; India; Israel and occupied territories; Japan; Kazakhstan; Laos; Mongolia; Nepal; Philippines; Korea; Sri Lanka; Thailand; Vietnam; Pacific Island States; Cuba; Cyprus; Liechtenstein; Switzerland; Belarus; Croatia; Czech Republic; Estonia; Georgia; Latvia; Lithuania; Republic of Moldova; Serbia and Montenegro; Slovenia; former Yugoslav Republic of Macedonia). Presumably, eliminating discrimination against women generally would also have the effect of reducing violence committed primarily by men against women. See, e.g., Country Report Addendum (report of Costa Rica (explicitly stating that presumption)).
women.

One of the most frequently reported reforms is the enhancement of criminal penalties. Many states reported revising their criminal codes and related provisions in ways that track the reforms enacted in the United States. These include broadening the definition of sexual abuse and domestic violence, increasing criminal penalties, authorizing protective orders and establishing penalties for their violation.

131. Not all countries reported trends in the direction of enhancing penalties. Poland, for example, reported lowering the penalty for rape and other sexual assault, and limiting, rather than expanding, the definition of rape. Id. (report of Poland).

132. Id. (reports of Cape Verde; Ghana; Kenya; Namibia; Seychelles; South Africa; Tanzania; Zimbabwe; Egypt; Kuwait; Australia; Bhutan; China; Indonesia; Israel and occupied territories; Malaysia; New Zealand; Philippines; Korea; Singapore; Sri Lanka; Turkmenistan; Antigua and Barbuda; Argentina; Bolivia; Brazil; Chile; Columbia; Costa Rica; Cuba; Dominica; Dominican Republic; Ecuador; El Salvador; Guyana; Mexico; Nicaragua; Panama; Saint Kitts and Nevis; Trinidad and Tobago; Canada; United States; Andorra; Belgium; Finland; France; Germany; Greece; Italy; Liechtenstein; Luxembourg; Malta; Norway; Portugal; Spain; Sweden; Azerbaijan; Belarus; Croatia; Georgia; Hungary; Latvia; Poland; Slovakia; Ukraine). Two states incorporated a sex discrimination analysis in their criminal law reform. Canada reported that its landmark case adopting a subjective test for determining whether a victim consented to sexual activity adopted an “equality” approach rather than a “historical” approach to consent. Country Report Addendum (report of Canada ¶ 1476). Under this approach, consent is judged by whether the woman said “yes,” rather than the historical approach through which a woman’s consent would be judged by her dress, her past sexual conduct, or her non-resistance. Id. Any standard that did not examine whether a woman affirmatively consented would breach her equality right. Id. South Africa prohibits “gender-based violence,” though its country report summary did not elaborate how the term has been interpreted. Country Report Addendum (report of South Africa ¶ 539).

133. Id. (reports of Botswana; Burkina Faso; Burundi; Uzbekistan; Cameroon; Cape Verde; Djibouti; Eritrea; Ethiopia; Ghana; Kenya; Mali; Mauritius; Namibia; Senegal; Sierra Leone; Tanzania; Zimbabwe; Jordan; Lebanon; Syrian Arab Republic; Tunisia; Australia; Bangladesh; Bhutan; Israel and occupied territories; Singapore; Sri Lanka; Turkmenistan; Cuba; Ecuador; El Salvador; Grenada; Honduras; Puerto Rico; Venezuela; Andorra; France; Liechtenstein; Netherlands; Norway; Portugal; Spain; Sweden; Azerbaijan; Belarus; Bulgaria; Georgia; Ukraine).

134. Id. (reports of Mauritius; Australia; Israel and occupied territories; Japan; Malaysia; New Zealand; Singapore; Argentina; El Salvador; Grenada; Saint Lucia; Saint Vincent and Grenadines; Trinidad and Tobago; United States; Austria; Finland; Iceland; Ireland; Italy; Netherlands; Sweden; Turkey; United Kingdom). For a brief description of protective orders, see supra note 62.
enacting rape shield laws,135 and criminalizing or prohibiting acts such as sexual harassment,136 female genital mutilation,137 stalking,138 and trafficking.139 Countries reported criminal justice-related reforms such as the creation of special courts and proceedings for sexual violence cases,140 implementation of policies to speed up domestic violence trials and make expert evidence easier to introduce,141 and no-drop and unconditional prosecution policies142 for domestic violence.143 Some countries reported approaches directed to assist victims, such as permitting exclusion of the perpetrator from the home or issuing other stay-away orders,144 and providing victims of sexual crimes with legal assistance.145 International law’s criminalization of rape as a war crime has brought attention to the problem, and some states

135. Id. (reports of Puerto Rico; United States; Ireland; United Kingdom).
136. Id. (reports of Botswana; Burkina Faso; Cote d’Ivoire; Mauritius; Senegal; Tanzania; Jordan; Syrian Arab Republic; Tunisia; Israel and occupied territories; Malaysia; Philippines; Sri Lanka; Antigua and Barbuda; Argentina; Belize; Costa Rica; Cuba; Dominican Republic; Ecuador; El Salvador; Guatemala; Mexico; Panama; Peru; Puerto Rico; Uruguay; Venezuela; United States; Belgium; France; Greece; Iceland; Ireland; Italy; Luxembourg; Netherlands; Norway; Portugal; Spain; Turkey; Croatia; Czech Republic).
137. Id. (reports of Ghana; Guinea; Kenya; Niger; Nigeria; Senegal; Somalia; South Africa; Togo; Tanzania; Egypt; Malaysia; New Zealand; Canada; United States; Belgium; Denmark; Finland; France; Norway; Sweden; United Kingdom).
138. Id. (reports of Japan; United States).
139. Id. (reports of Chad; Gambia; Guinea; Guinea-Bissau; Madagascar; Mali; Mauritius; Senegal; Seychelles; Tanzania; Zambia; Kuwait; Bangladesh; Brunei Darussalam; Cambodia; India; Israel and occupied territories; Kazakhstan; Philippines; Sri Lanka; Thailand; Cuba; United States; Austria; Belgium; Cyprus; Denmark; Germany; Greece; Luxembourg; Netherlands; Spain; Sweden; Switzerland; Albania; Belarus; Bosnia and Herzegovina; Czech Republic; Estonia; Lithuania; Poland; Republic of Moldova; Romania; Ukraine).
140. Id. (reports of Mauritius; South Africa; Bangladesh; Jordan; Australia; Bangladesh; Philippines).
141. Id. (reports of Kenya; Mauritius; South Africa; Singapore; Cyprus).
142. See supra note 47 (discussing no-drop and unconditional prosecution policies).
143. Country Report Addendum (reports of Pacific Island States; United States; Ireland; Norway; Portugal; Croatia; Lithuania).
144. Id. (reports of Argentina; Saint Lucia; Denmark; Germany; Ireland; Liechtenstein; Netherlands; Norway; Portugal; Sweden; Turkey).
145. Id. (reports of Cape Verde; Namibia; Egypt; Bangladesh; Laos; New Zealand; Costa Rica; Honduras; Denmark; Finland; Iceland; Ireland; Norway; Switzerland; Turkey; Russian Federation).
include compliance with international prosecutions in their reports.\textsuperscript{146}

In some cases, reforms are not easily subject to categorization. For example, family law reforms, enactment of sexual harassment laws, and authorization of protection orders as well as of inheritance and property rights for women, may cut across my artificial categories distinguishing “eliminating formal inequality” from “expanding criminal penalties” and “revising civil law provisions.” Tracking the United States’ traditional conceptions of civil justice’s goal of compensation, a number of countries reported authorizing compensation for the victim, although it is not clear whether the compensation is provided through government programs, as a legal remedy from the batterer, or on some other basis.\textsuperscript{147} No reports (other than that of the United States) list having enacted what are called “civil rights remedies” in the United States. One country reported having enacted a reform that parallels reforms emerging in the United States that recognize the economic impact of domestic and sexual violence, and prohibits employers from dismissing an employee during the first six months the victim is in a domestic violence shelter.\textsuperscript{148}

Most countries also reported taking some measures to improve social services for victims. These included support for crisis centers and counseling programs,\textsuperscript{149} domestic violence

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{146} \textit{Id.} (report of Croatia).
\item \textsuperscript{147} \textit{Id.} (reports of Algeria; Bhutan (part of criminal prosecution); Israel and occupied territories (welfare benefits for women in shelters); Pakistan (relief funds); Cyprus (fund for victims of violence); Germany (for victims of trafficking); Netherlands (battered women who leave partners become eligible for social benefits); Portugal (compensation for domestic violence victims and professional development programs to foster independence); Switzerland; Slovakia (under civil law)).
\item \textsuperscript{148} \textit{Id.} (report of Israel, ¶ 1019).
\item \textsuperscript{149} \textit{Id.} (reports of Burundi; Rwanda; South Africa; Algeria; Egypt; Morocco; Oman; Qatar; Syrian Arab Republic; Tunisia; Australia; Bangladesh; Brunei Darussalam; Cambodia; Indonesia; Israel and occupied territories; Japan; Malaysia; Myanmar; Pakistan; Philippines; Korea; Pacific Island States; Argentina; Brazil; Chile; Dominica; El Salvador; Grenada; Guyana; Haiti; Honduras; Puerto Rico; Saint Lucia; Trinidad and Tobago; Uruguay; Venezuela; Denmark; Finland; Germany; Greece; Iceland; Ireland; Luxembourg; Malta; Netherlands; Norway; Switzerland; Belarus; Czech Republic; Estonia; Lithuania; Romania; Russian Federation; Ukraine).
\end{enumerate}
\end{footnotesize}
shelters, provision of medical services, and hotlines. Others granted victims temporary residence status. Some reported specialized units in police departments to help victims. Other countries reported efforts to assist particular populations, such as victims of trafficking.

It is impossible to tell from the country reports themselves whether international laws’ framing of domestic and sexual violence as sex discrimination played a role in the development and implementation of these reforms. On their face, the majority of reforms appear similar to those that evolved in the United States without formal legal directives defining domestic and sexual violence as impermissible sex discrimination. This may well reflect the emerging international norms establishing best practices for multi-disciplinary approaches to the problem, rather than the result of a particular structural approach.

The primary difference between the United States’ reforms

150. Id. (reports of Cameroon; Malawi; Mauritius; Namibia; South Africa; Syrian Arab Republic; Tunisia; Brunei Darussalam; Cambodia; Malaysia; Myanmar; Philippines; Argentina; Bahamas; Costa Rica; Dominicana; Ecuador; Grenada; United States; Austria; Belgium; Cyprus; Finland; France; Germany; Iceland; Liechtenstein; Netherlands; Portugal; Turkey; Albania; Czech Republic; Estonia; Romania; Slovenia; Ukraine).

151. Id. (reports of Cameroon; Namibia; Rwanda; Egypt; Qatar; Bangladesh; Malaysia; Costa Rica; Grenada; Denmark; Switzerland; Russian Federation).

152. Id. (reports of Brunei Darussalam; Malaysia; Korea; Sri Lanka; Argentina; Bahamas; Brazil; Costa Rica; Dominicana; Trinidad and Tobago; Uruguay; France; Germany; Luxembourg; Portugal; Switzerland; Bosnia and Herzegovina; Czech Republic; Georgia; Lithuania; Slovakia).

153. Id. (reports of Cameroon; Canada; United States; Austria; Italy; Netherlands; Spain; Sweden; United Kingdom).

154. Id. (reports of Mauritius; Namibia; Sierra Leone, Brunei Darussalam, Timor-Leste; Sierra Leone; South Africa; Tunisia; Brunei Darussalam; Indonesia; Japan; Nepal; Singapore; Sri Lanka; Timor-Leste; Pacific Island States; Belize; Brazil; Chile; Dominican Republic; Nicaragua; Peru; Uruguay; Venezuela; United States; Belgium; Finland; Ireland; Malta; Netherlands; Portugal; Spain; United Kingdom; Poland; Serbia and Montenegro).

155. Id. (reports of Benin; Cote d’Ivoire; Equatorial Guinea; Gabon; Ghana; Guinea; Mali; Nigeria; Togo; Uganda; Kyrgyzstan; Laos; Nepal; Korea; Uzbekistan; Columbia; Canada; United States; Belgium; Finland; France; Germany; Greece; Italy; Netherlands; Portugal; Spain; Sweden; Switzerland; United Kingdom; Albania; Azerbaijan; Bosnia and Herzegovina; Bulgaria; Czech Republic; Hungary; Latvia; Lithuania; Republic of Moldova; Romania; Serbia and Montenegro; Slovakia; former Yugoslav Republic of Macedonia; Ukraine).
and those reported under international instruments lies in the positioning of public education campaigns. The single most commonly reported reform in this category is the appointment of a committee, commission, or ministry to address the problem.\(^\text{156}\) Nearly half of the reporting states list efforts to raise awareness about the problem, including general references to public education campaigns,\(^\text{157}\) sponsorship of conferences,\(^\text{158}\) training for public officials and professionals such as judges, law enforcement officials, teachers, and medical professionals,\(^\text{159}\) research programs,\(^\text{160}\) and creation of national plans.\(^\text{161}\)

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\(^{156}\) Id. (reports of Burkina Faso; Cameroon; Central African Republic; Chad; Congo; Cote d'Ivoire; Democratic Republic of Congo; Ethiopia; Gambia; Guinea; Kenya; Liberia; Malawi; Mali; Namibia; Niger; Nigeria; Sierra Leone; South Africa; Sudan; Togo; Tanzania; Zimbabwe; Bahrain; Egypt; Jordan; Morocco; Qatar; Tunisia; United Arab Emirates; Yemen; Afghanistan; Cambodia; India; Indonesia; Iran; Israel and occupied territories; Japan; Kazakhstan; Kyrgyzstan; Malaysia; Maldives; Myanmar; Nepal; New Zealand; Pakistan; Korea; Singapore; Sri Lanka; Tajikistan; Uzbekistan; Vietnam; Pacific Island States; Belize; Columbia; Cuba; Dominica; Mexico; Nicaragua; Paraguay; Peru; Venezuela; Canada; Cyprus; Greece; Iceland; Ireland; Sweden; Armenia; Azerbaijan; Croatia; Hungary; Romania; former Yugoslav Republic of Macedonia; Ukraine). The popularity of this response is not surprising, given the ease and meager resources required in order for it to be deemed accomplished.

\(^{157}\) Id. (reports of Angola, Cameroon; Chad; Democratic Republic of Congo; Eritrea; Ethiopia; Ghana; Guinea; Guinea-Bissau; Lesotho; Mali; Mauritania; Mozambique; Namibia; Senegal; Sierra Leone; Togo; Tanzania; Zambia; Egypt; Jordan; Oman; Tunisia; Yemen; Australia; Cambodia; China; Israel and occupied territories; Japan; Malaysia; Myanmar; New Zealand; Philippines; Pacific Island States; Bolivia; Brazil; Chile; Costa Rica; Dominica; Ecuador; Grenada; Haiti; Nicaragua; Saint Kitts and Nevis; Trinidad and Tobago; United States; Austria; Belgium; Denmark; Finland; France; Greece; Ireland; Italy; Liechtenstein; Luxembourg; Malta; Norway; Portugal; Spain; Sweden; United Kingdom; Belarus; Czech Republic; Poland; Ukraine).

\(^{158}\) Id. (reports of Ghana; Malawi; Mozambique; Sudan; Swaziland; Zimbabwe; Bahrain; China; India; Mongolia; Timor-Leste; Denmark; France; Luxembourg).

\(^{159}\) Id. (reports of Botswana; Gambia; Ghana; Rwanda; Sierra Leone; South Africa; Qatar; Australia; Indonesia; Israel and occupied territories; Japan; Kazakhstan; Laos; Mongolia; Philippines; Korea; Singapore; Thailand; Pacific Island States; Argentina; Bahamas; Cuba; Guyana; Saint Kitts and Nevis; Suriname; Venezuela; United States; Austria; Belgium; Denmark; Germany; Ireland; Luxembourg; Netherlands; Norway; Portugal; Spain; Sweden; United Kingdom; Bosnia and Herzegovina; Croatia; Czech Republic; Estonia; Lithuania; Poland; Republic of Moldova; Serbia and Montenegro; Slovakia).

\(^{160}\) Id. (reports of Mauritius; South Africa; Jordan; Tunisia; Pacific Island States; Nicaragua; United States; Belgium; Denmark; Germany; Italy;
These reports of educational efforts may reflect CEDAW’s mandate to address the root causes of violence against women. Yet the extent to which these programs address root causes is unclear. For example, public education campaigns raising awareness of the nature and extent of the problem and listing available resources do not necessarily address sex discrimination or other social factors. On the other hand, some country reports reflect efforts to address underlying discriminatory attitudes. Several countries report framing their public education programs and national plans of action in terms of eradicating traditional gender roles. Although there is no guarantee that discussions of sex-role stereotyping in education and prevention efforts will successfully reduce the problem, those approaches provide a platform for discussion and experimentation that warrants further exploration.

III. COMPARISONS, RHETORIC, AND REFORM

This comparison makes clear that sex discrimination plays a

Switzerland; United Kingdom; Bulgaria; Romania).

161. Id. (reports of Botswana; Cameroon; Ethiopia; Ghana; Mali; Namibia; Sierra Leone; South Africa; Uganda; Algeria; Iraq; Oman; Syrian Arab Republic; Bangladesh; Cambodia; China; India; Japan; Mongolia; Myanmar; Nepal; Korea; Sri Lanka; Thailand; Pacific Island States; Columbia; Costa Rica; Ecuador; Mexico; Paraguay; Saint Kitts and Nevis; Saint Lucia; Canada; Germany; Iceland; Portugal; Spain; Armenia; Belarus; Bulgaria; Croatia; Estonia; Georgia; Slovakia; former Yugoslav Republic of Macedonia; Ukraine).

162. Id. (reports of Zambia (initiative to remove sex-based stereotyping in school textbooks; introduce gender training for curriculum development officers; encourage girls to enroll in technical courses); Bolivia (program to promote cultural change, defining violence against women and girls as a public health problem and establishing a program to eradicate all forms of violence and gender discrimination inside and outside schools); Costa Rica (program on violence-free schools focuses on promoting tolerance and respect); Finland (national project to strengthen attitudes condemning violence; making violence visible; and making public aware of its impact and developing programs to prevent violence against women); Ireland (social and personal education program for boys on post-primary schools with module on violence against women); Switzerland (government-supported public education campaign aimed at ending violence perpetrated by men against women)).

163. The CDC has recognized that the best way to prevent domestic and sexual violence is to begin teaching healthy attitudes and behaviors to young people. See, e.g., CDC Update, supra note 81, at 3. Accordingly, the CDC’s “social norms media campaign” aimed to prevent teen dating violence by correcting the perceptions of young people about the acceptability of physical or verbal abuse of their dating partners. Id.
very different structural role in international, as opposed to domestic, reform efforts to address domestic and sexual violence. International instruments place the elimination of domestic and sexual violence, which it terms "violence against women," or "gender-based violence," in the context of initiatives required to eliminate discrimination against women. By contrast, sex discrimination played a large rhetorical role in reform initiatives in the United States in the 1970s and 1980s, but now is virtually absent from any structural or legal mandate to redress the problem, and does not figure prominently in mainstream debate of the problem.

Nevertheless, both systems can point to a largely similar array of reforms that seek to eliminate formal inequalities, improve criminal justice responses, expand social services, and make civil law provisions more responsive to victims' needs. With the exception of efforts to eliminate formal inequalities, most of the reforms themselves do not explicitly address the discriminatory roots of domestic and sexual violence. This is not a criticism of the reforms. The range of reforms reflects the wide scope of responses that are needed to address the problem. The history of those reform efforts illustrates the power of sex discrimination as a rhetorical tool to advance those changes. International instruments' foregrounding of public education and their concern with root causes hold the greatest potential for realizing the instruments' transformative aspirations.

On the other hand, a "gender" frame may be too narrow. International human rights instruments' potential for reforms that addresses root causes of domestic and sexual violence may be complemented and enhanced by human rights instruments that direct states to eradicate other forms of discrimination

164. See supra notes 111, 115 and accompanying text.

165. Although CEDAW's lack of enforcement mechanisms necessarily limits its impact, some argue that "soft" laws such as CEDAW may be incorporated into international law, and even binding international law, through internalization of the norms the non-binding provisions reflect. See, e.g., C.M. Chinkin, The Challenge of Soft Law Development and Change in International Law, 38 INT'L COMP. L.Q. 850 (1989).

and promote social and economic equality. When considered in tandem with these other international instruments, the rhetorical connection with sex discrimination, but not other forms of discrimination or other social factors, may render the "gender" approach unduly limited.

By highlighting public education initiatives reported in the international context, I do not mean to minimize those that have been implemented in the United States. Domestic public education and awareness campaigns have been critical in bringing the problem of domestic and sexual violence to the public eye and in transforming attitudes towards victims. These programs increasingly are focused on prevention and elimination of the problem. Some domestic initiatives have used international human rights instruments as the basis for community organizing and public education campaigns. But

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168. For a sampling of prevention programs, see, for example, CDC Update, supra note 81; Family Violence Prevention Fund, There's No Excuse for Domestic Violence, available at http://endabuse.org/programs/display.php3?DocID=9903 (last visited Jan. 4, 2006) (stating that the social norms that allow domestic violence to exist must be changed in order to stop it); CONNECT, Safe Families, Peaceful Communities, available at http://www.connectnyc.org/en/about_us/mission.html (last visited Jan. 4, 2006) (community-based organization dedicated to preventing and eliminating family and gender violence through community prevention, early intervention services, and community empowerment that transform the attitudes, beliefs, and behaviors that perpetuate family and domestic violence).

unlike the international context, those programs generally are not grounded in any enforceable legal mandate.\textsuperscript{170}

International reporting of prevention and education initiatives is also limited in at least two respects. First, implementation of public education and prevention campaigns alone does not ensure that root causes, including sex discrimination, will be addressed. If programs are to advance the goal of eliminating the inequalities that allow violence against women to occur, they must go beyond recounting statistics about prevalence and descriptions of available services and address discriminatory attitudes and stereotypes. Second, CEDAW's potential to produce change has been called into question due to, among other things, its lack of enforcement mechanisms.\textsuperscript{171} Its recommendations, including General

\footnotesize{local CEDAW resolutions).


\textsuperscript{171} \textit{See, e.g.}, Rebecca L. Hillock, \textit{Establishing the Rights of Women Globally: Has the United Nations Convention on the Elimination of All Forms of Discrimination Against Women made a Difference?}, 12 TULSA J. COMP. & INT'L L. 481, 483 (2005) (arguing that CEDAW has not achieved its hoped-for impact due to the persistence of non-democratic forms of governments); Linda M. Keller, \textit{The Convention on the Elimination of Discrimination Against Women: Evolution and (Non) Implementation Worldwide}, 27 T. JEFFERSON L. REV. 35 (2004) (identifying limitations of CEDAW and optimal protocols); Sally E. Merry, \textit{Constructing a Global Law – Violence Against Women and the Human Rights System}, 28 LAW & SOC. INQUIRY 941, 942-43 (2003) (arguing that although CEDAW is a law without sanctions, it influences culture and social norms through the reporting process); Julie A. Minor, \textit{An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women}, 24 GA. J. INT’L & COMP. L. 137, 143-44 (1994) (arguing that CEDAW's vague policy on reservations, the limited authority it delegates to the Committee and pervasive cultural gender bias among its parties have impeded its effectiveness in producing change). On the other hand, it may be too soon to judge CEDAW's effectiveness, given its relatively recent enactment. For an ethnographic analysis of CEDAW's effectiveness, see, for example, Merry, \textit{supra} (recognizing CEDAW's role in shaping culture

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Recommendation No. 19, likely hold even less legal force than its substantive provisions. Nevertheless, CEDAW and related instruments can be useful advocacy tools whose promise has yet to be fully realized.

Domestic and sexual violence reform can be seen as serving two broad purposes: victim assistance and prevention. Many of the legal reforms and social service advances can be seen as serving the former. As challenging as improving services is, preventing and eliminating the problem is even more complex. Advocacy that addresses the root causes of domestic and sexual violence, including sex discrimination and other socio-political factors, holds potential to eradicate discriminatory beliefs and attitudes. The last several decades of reform in the United States illustrate that eliminating formal inequality is but one step in eradicating the underlying stereotypes and attitudes that create the conditions in which violence against women persists. If sex discrimination lies at the root of at least some, if not all, sexual and domestic violence committed disproportionately by men against women, an explicit focus on sex discrimination in policy debates and public dialog continues to be needed. This brief comparison suggests that absent express attention to the ongoing role of sex discrimination along with other socio-political factors, we risk eliminating formal equality and improving criminal justice responses and social services, but losing an opportunity to address the underlying problems that allow domestic and sexual violence to persist.

and attitudes about domestic and sexual violence).