

The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics

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Through traveling to other people’s “worlds” we discover that there are “worlds” in which those who are the victims of arrogant perception are really subjects, lively beings, constructors of vision even though in the mainstream construction they are animated only by the arrogant perceiver and are pliable, foldable, file-awayable, classifiable.

—Maria Lugones¹

If I can’t dance, I don’t want to be part of your revolution!
—attributed to Emma Goldman

In the much publicized visit of Bill Clinton to South Asia in March 2000, the then U.S. president stated he “could have danced all night” with the rural women he met in the western Indian state of Rajasthan. He was surprised at the knowledge the women had of their rights, and, I suspect, also at their ability to dance. His surprise in turn surprised me, until I reflected upon the images of the “Third World” subject—in particular, the female subject—that dominate news items in the Western Hemisphere and the

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1. Maria Lugones, *Playfulness, World-Travelling, and Loving Perceptivity*, in *MAKING FACE, MAKING SOUL/HACIENDO CARAS: CREATIVE AND CRITICAL PERSPECTIVES BY WOMEN OF COLOR* 390, 402 (Gloria Anzaldúa ed., 1990).

developed world. Indeed, that look of starvation, helplessness, and victimization is remarkably familiar to our imaginations, irrespective of the reality.

The victim subject is a transnational phenomenon. It occurs, at least within legal discourse, in both the "West" and the Third World. However, the Third World victim subject has come to represent the more victimized subject; that is, the real or authentic victim subject. Feminist politics in the international human rights arena, as well as in parts of the Third World, have promoted this image of the authentic victim subject while advocating for women's human rights.

In this Article, I examine how the international women's rights movement has reinforced the image of the woman as a victim subject, primarily through its focus on violence against women (VAW). I use the example of India to examine how this subject has been replicated in the post-colonial context, and the more general implications this kind of move has on women's rights. My main argument is that the focus on the victim subject in the VAW campaign reinforces gender and cultural essentialism in the international women's human rights arena. It also buttresses claims of some "feminist" positions in India that do not produce an emancipatory politics for women. This focus fails to take advantage of the liberating potential of important feminist insights. These insights have challenged the public/private distinction along which human rights has operated, and traditional understandings of power as emanating exclusively from a sovereign state.

In the first Part of this Article, I examine how the victim subject has become the dominant focus of the international women's human rights movement. I examine this move specifically within the context of VAW campaigns and then look at the broader implications it has for women's rights. I argue that the victim subject has reinforced gender essentialism and cultural essentialism. These have been further displaced onto a Third World and "First World" divide. I discuss how this displacement resurrects the "native subject" and justifies imperialist interventions. In the second Part of the Article, I show how the victim subject has been central to feminist legal politics in India and how this focus, in turn, is a symptom of post-coloniality. The victim subject has invited a protectionist response from the state. The focus on the victim subject at a time when the Hindu Right dominates electoral politics in India has reinforced this protectionist response.² In the final Part of this Article, I argue in favor of transcending the

2. The Hindu Right is a religious right-wing and nationalist party that has become increasingly influential in contemporary politics in India. It consists of the Bharatiya Janata Party (BJP), the political wing of the Hindu Right; the Rashtriya Swayamsevak Sangh (RSS), which is the main ideological component of the party; and the Vishwa Hindu Parishad (VHP), which promotes the religious ideology of the party. For more on the rise to power of the Hindu Right, see generally BIPAN CHANDRA, *COMMUNALISM IN MODERN INDIA* (1984); BENEDICT ANDERSON, *IMAGINED COMMUNITIES* (1983); GYANENDRA PANDEY, *THE CONSTRUCTION OF COMMUNALISM IN COLONIAL NORTH INDIA* (1990); K. JAYAPRASAD, *RSS AND HINDU NATIONALISM* (1991).

victim subject and disrupting the cultural and gender essentialism that have come to characterize feminist legal politics. I then discuss the political and emancipatory value of focusing on the peripheral subject and identifying her locations of resistance when addressing women's human rights. Finally, I discuss the importance of engaging with non-state actors and with new sites of power in order to address a broader array of rights and a broader range of arenas that implicate women's human rights.

I. THE HEGEMONIC VICTIM SUBJECT

The 1993 Vienna World Conference on Human Rights marked the culmination of a long struggle to secure international recognition of women's rights as human rights. It was a turning point for both the international women's rights movement and the human rights movement. The final document that emerged from Vienna acknowledged that, partly as a result of the artificial line drawn between the public and private sphere, certain gender-specific issues had been left out of the human rights arena.³ Governments around the world acknowledged that women, too, were entitled to enjoy fundamental rights. These included full and equal participation in political, civil, economic, social, and cultural life at the national, regional, and international level.⁴ In addition, the document brought about a significant change in human rights law: the recognition of women's human rights in the private sphere. A broad spectrum of harms occurring in the sphere of the family were rendered open to human rights scrutiny.⁵ The

3. See generally Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991). See also Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973 (1991); Karen Engle, *After the Collapse of the Public/Private Distinction: Strategizing Women's Rights in RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW* (Dorinda Dallmeyer ed., 1993); Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS. J. 87 (1993). For an analysis of how the public/private distinction continues to inform international law and its exclusionary impact on women, see Dianne Otto, *Challenging the "New World Order": International Law, Global Democracy and the Possibilities for Women*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 371 (1993).

4. *Vienna Declaration and Programme of Action, United Nations World Conference on Human Rights*, U.N. GAOR, at 25, U.N. Doc. A/CONF/157/23 (1993). Part I, Article 18 of the declaration provides that:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Id. Part II, Article 39 urges states to withdraw reservations to the Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13. *U.N. World Conference on Human Rights*, *supra* at 37.

5. *U.N. World Conference on Human Rights*, *supra* note 4, at 37. Part II, Article 38 of the Vienna Declaration provides:

the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the

document challenged the public/private distinction along which human rights had traditionally operated and increased awareness of the fact that power operates in multiple arenas.

The women's rights movement at the international and regional level, as well as official recognition of women's rights, appear to have focused primarily on the issue of violence against women and their victimization in this context. Immediately after the Vienna conference, the U.N. General Assembly passed a Declaration on Violence Against Women.⁶ The declaration stated that it would strengthen and complement the process of effective implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It recognized 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." It reiterated the consensus reached at Vienna: that violence against women covers "gender-based violence . . . whether occurring in public or in private life."⁷

In 1994, Dr. Radhika Coomaraswamy was appointed as the U.N. Special Rapporteur on Violence Against Women.⁸ Since then, she has submitted a series of annual reports to the U.N. General Assembly addressing the issue of violence against women.⁹ Even Recommendation 19 of the CEDAW, which deals with violence against women and is not binding, has achieved greater visibility after the Human Rights World Conference.¹⁰

rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.

Id. See also Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486 (1990). The demand to include violence against women as a human rights issue was reiterated at the Women's Conference in Beijing in 1995.

6. The Declaration also set the basis for the appointment of a U.N. Special Rapporteur on Violence Against Women to cover aspects of violence against women, including its causes and consequences. *Declaration on the Elimination of Violence against Women*, G.A. Res. 104, U.N. GAOR, 48th Sess., 85th plen. mtg., Supp. No. 49, at 217-19, U.N. Doc. A/48/49 (1993).

7. *Id.* at 217. Under Article 2, violence against women includes violence in the family, marital rape, female genital mutilation, and other "traditional" practices that are harmful to women. It also covers similar violence in the community, including harassment at work and violence perpetrated or condoned by the state, wherever it occurs.

8. The United Nations Economic and Social Council endorsed the resolution of the U.N. Commission on Human Rights to appoint a special rapporteur on violence against women, its cause and consequences, for a three-year term. U.N. ESCOR, 42d plen. mtg., U.N. Doc. E/DEC/1994/254 (1994).

9. The reports include the *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. ESCOR Hum. Rts. Comm., 53d Sess., Provisional Agenda Item 9(a), E/CN.4/1997/47 (1997) (concerning violence in the community); *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. ESCOR Hum. Rts. Comm., 54th Sess., Provisional Agenda Item 9(a), E/CN.4/1998/54 (1998) (concerning violence against women as perpetrated and/or condoned by the state); *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. ESCOR Human Rights Commission, 55th Sess., Provisional Agenda Item 12(a), E/CN.4/1999/68/Add.3 (1999) (concerning violence against women in the family); *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. ESCOR Hum. Rts. Comm., 56th Sess., Provisional Agenda Item 12(a), E/CN.4/2000/68 (2000) (concerning trafficking in women, women's migration, and violence against women).

10. U.N. General Recommendation No. 19, Violence Against Women, U.N. CEDAW Comm., 11th

The focus on violence against women has had some extremely important and beneficial consequences for women. The women's human rights movement drew attention to the lack of domestic governmental response to women's demands for more effective rape laws, laws against child sexual abuse, and domestic violence laws. The VAW campaign has been overwhelmingly successful in translating very specific violations experienced by individual women into a more general human rights discourse.¹¹

VAW discourse has succeeded partly because of its appeal to the victim subject. In the context of law and human rights, it is invariably the abject victim subject who seeks rights, primarily because she is the one who has had the worst happen to her. The victim subject has allowed women to speak out about abuses that have remained hidden or invisible in human rights discourse. Moreover, the Vienna World Conference and subsequent women's conferences have enabled women to speak out to the international community. A powerful form of this presentation has been through personal testimonials in public tribunals, as at Vienna, or through international video links.¹² These accounts are usually very graphic and horrifying, and are told through the location of the victim subject.¹³

The victim subject also provides a shared location from which women from different cultural and social contexts can speak. It provides women with a subject that repudiates the atomized, decontextualized, and ahistorical subject of liberal rights discourse, while at the same time furnishing a unitary subject that enables women to continue to make claims based on a commonality of experience. Any further fragmentation of the subject raises fears that the absence of a common subject will leave feminists divided and women even more disempowered. The idea of multiple or fractured subjectivities threatens to deprive women of a foundation from which to make claims for rights and for broader global recognition.¹⁴ If women's experi-

Sess., U.N. Doc. A/47/38 (1992) provides that discrimination against women includes gender-based violence; that is, violence directed against a woman because she is a woman, or violence that affects women disproportionately. It further states that gender-based violence is a form of discrimination that inhibits a woman's ability to enjoy rights and freedoms on an equal basis.

11. The campaign on reproductive rights has also acquired a certain degree of visibility. However, it has not translated into effective policies or actions by state parties. See *U.N. Report of the International Conference on Population and Development*, U.N. GAOR, 49th Sess., U.N. Doc. A/CONF/171/13 (1994). Furthermore, the failure of the governments participating in this meeting to incorporate sexual rights into their programme, leaves women's roles as mothers and procreators undisturbed. Their identities as sexual beings entitled to sexual rights, rather than exclusively as victims of sexual wrongs, remains unaddressed. See Sarah Y. Lai & Regan E. Ralph, *Female Sexual Autonomy and Human Rights*, 8 HARV. HUM. RTS. J. 201 (1995).

12. See, e.g., U.N. Global Videoconference, *A World Free of Violence Against Women*, (Mar. 8, 1999), at <http://webevents.broadcast.com/unifem/women/> (last visited Sept. 28, 2001); Center for Women's Global Leadership, *16 Days of Activism Against Violence Against Women*, at <http://www.cwgl.rutgers.edu/16days00/16daysindex.htm> (last visited Sept. 28, 2001); *Vienna Declaration and Programme of Action*, *supra* note 4.

13. Martha Minow argues that "victim talk" has an appeal at the level of popular discourse that must not be underestimated. See Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411 (1993).

14. See Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Schol-*

ences are represented as fragmented, they may lose power and undermine certain "truth claims" about women's lives.

However, an exclusive reliance on the victim subject to make claims for rights and for women's empowerment has some serious limitations. The articulation of the victim subject is based on gender essentialism; that is, overgeneralized claims about women.¹⁵ As Chandra Mohanty points out, essentialism assumes that "women have a coherent group identity within different cultures . . . prior to their entry into social relations."¹⁶ Such generalizations are hegemonic in that they represent the problems of privileged women, who are often (though not exclusively) white, Western, middle-class, heterosexual women.¹⁷ These generalizations efface the problems, perspectives, and political concerns of women marginalized because of their class, race, religion, ethnicity, and/or sexual orientation. The victim subject ultimately relies on a universal subject: a subject that resembles the uncomplicated subject of liberal discourse. It is a subject that cannot accommodate a multi-layered experience.

The second problem with a focus on violence against women is that it is a position based on cultural essentialism. Women in the Third World are portrayed as victims of their culture, which reinforces stereotyped and racist representations of that culture and privileges the culture of the West. In the end, the focus on the victim subject reinforces the depiction of women in the Third World as perpetually marginalized and underprivileged, and has serious implications for the strategies subsequently adopted to remedy the harms that women experience. It encourages some feminists in the international arena to propose strategies which are reminiscent of imperial interventions in the lives of the native subject and which represent the "Eastern" woman as a victim of a "backward" and "uncivilized" culture.

Finally, the victim subject and the focus on violence invite remedies and responses from states that have little to do with promoting women's rights. Thus, a related concern is that the victim subject position has invited protectionist, and even conservative, responses from states. The construction of women exclusively through the lens of violence has triggered a spate of domestic and international reforms focused on the criminal law, which are used to justify state restrictions on women's rights—for the protection of women. The anti-trafficking campaign, with its focus on violence and victimization, is but one example. The government of Nepal restricts women under thirty from traveling outside of the country without the permission of a husband

arship, 42 FLA. L. REV. 25, 34–43 (1990). See generally Seyla Benhabib, *On Contemporary Feminist Theory*, 36 DISSENT 366 (1989); WENDY BROWN, *STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY* 77 (1995).

15. See, e.g., Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Marlee Kline, *Race, Racism, and Feminist Legal Theory*, 12 HARV. WOMEN'S L.J. 115 (1989).

16. Chandra Talpade Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* 51, 70 (Chandra Talpade Mohanty et al. eds., 1991).

17. *Id.*

or male guardian as part of an anti-trafficking initiative.¹⁸ Early feminist interventions struggled to move away from such protectionist responses through anti-discrimination discourse. However, the VAW campaigns, which are contingent on the victim subject, have taken feminists back into a protectionist and conservative discourse. Furthermore, these interventions reinforce women's victim status. The exclusive focus on finding resolutions through appeals to the state fails to consider the relevance to the women's rights agenda of new players in the public sphere who are de-centering the power of sovereign states.

A. Gender Essentialism

Gender essentialism refers to the fixing of certain attributes to women. These attributes may be natural, biological, or psychological, or may refer to activities and procedures that are not necessarily dictated by biology. These essential attributes are considered to be shared by all women and hence also universal. "Essentialism thus refers to the existence of fixed characteristics, given attributes, and ahistorical functions that limit the possibilities of change and thus social reorganization."¹⁹ The limits of gender essentialism are not new to feminist legal thinking, and in recent years there has been considerable critique of the hegemonic generalizations about women that result from this essentialism.²⁰ Such claims represent primarily the problems

18. See JYOTI SANGHERA & RATNA KAPUR, REPORT ON TRAFFICKING IN NEPAL: POLICY ANALYSIS—AN ASSESSMENT OF LAWS AND POLICIES FOR THE PREVENTION CONTROL OF TRAFFICKING IN NEPAL 24 (2001) (on file with author). Similar initiatives have been recently taken by the Philippines against companies in the United Arab Emirates. See also the Revised Draft Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially in Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A.Res. 55/25, U.N. GAOR, Annex II, Supp. No. 49, at 60, U.N. Doc. A/45/49 (2001); the South Asian Association for Regional Co-operation draft, Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, SAARC/CPCIT/WD/1/REV.3/98; and the U.S. Victims of Trafficking and Violence Protection Act, 22 U.S.C. §§ 7101–7110 (2001). In all of these texts, the consent of the woman is deemed irrelevant. At the same time, there is no commitment made to provide any services or to protect the rights of the victim, as States are reluctant to provide support for non-nationals. In some countries, such as Spain, the limited rights afforded to "trafficked persons" have been withdrawn. In addition, anti-trafficking measures have continuously conflated women's movement or migration with trafficking, where even women moving (legally or illegally) to seek higher-wage work are suspected of being trafficked. See *id.* at § 102(b)(4).

19. Elizabeth Grosz, *Sexual Difference and the Problem of Essentialism*, in *THE ESSENTIAL DIFFERENCE* 82, 84 (Naomi Schor & Elizabeth Weed, eds., 1994). See also Ratna Kapur, *Post-colonial Erotic Disruptions: Legal Narratives of Culture, Sex, and Nation in India*, 10 *COLUM. J. GENDER & L.* 333 (2001).

20. See DIANA FUSS, *ESSENTIALLY SPEAKING: FEMINISM, NATURE, & DIFFERENCE* xi (1989) (explaining essentialism as "a belief in the real, true essence of things, the invariable and fixed properties which define the 'whatness' of a given entity"); ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988); Gayatri Chakravorty Spivak with Ellen Rooney, *In a Word: Interview*, in *THE ESSENTIAL DIFFERENCE*, *supra* note 19, at 151. (Gayatri Spivak's work has addressed some of the problems of essentialism in the work of the subaltern historians, who are attempting to recuperate the voice of the marginalized subject. She has argued that the "subaltern cannot speak."). See also Gayatri Spivak, *Can the Subaltern Speak?*, in *MARXISM AND THE INTERPRETATION OF CULTURE* 296 (Cary Nelson & Lawrence Grossberg eds., 1988). Spivak argues that subaltern historians are erecting a native subject with an authentic voice, and challenges the essentialism that inheres in such a position. Yet the erasure of the native becomes a point of critique of Spivak's work. For a critique of her

of privileged women and result in the production of theoretical agendas and perspectives that efface the problems of more marginalized women. In the United States, gender essentialism has been challenged by Black, Latina/o, and lesbian feminists as being exclusive and failing to recognize that women experience various forms of oppression simultaneously.²¹ Black, Latina, Asian American, and Native American women experience the complex intersection of sexism and racism. Their experiences of gender oppression cannot be extricated from their experiences of racial oppression because they occur simultaneously. They come to the law not just as women, but as Black women, and/or Latina women, and/or Muslim women, negotiating with the dominant and stable discourses on race, ethnicity, culture, sexuality, and/or family.²²

For those who do not experience such intersecting oppressions, the focus on gender remains less complicated. As Marlee Kline explains, the focus on gender as the primary variable of oppression conceals the way in which privilege may be operating simultaneously. Kline says that white women "are able to ignore the experience of our race because it does not in any way correlate with an experience of oppression and contradiction."²³

Kline provides an insightful critique of Catherine MacKinnon's dominance feminism agenda, which has focused on sexuality as the central source of women's oppression.²⁴ Although there has been a substantive critique of

position, see Benita Parry, *Problems in "Current Theories of Colonial Discourse,"* 9 OXFORD LITERARY REV. 27 (1987).

21. See Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989-1990); Harris, *supra* note 15; Kline, *supra* note 15; Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, U. CHI. LEGAL F. 139 (1989). See also BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTRE* (1984); PATRICIA COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (1991); HOME GIRLS: A BLACK FEMINIST ANTHOLOGY (Barbara Smith ed., 1983); Elizabeth M. Iglesias & Francisco Valdes, *Religion, Gender, Sexuality, Race, and Class in Coalitional Theory: A Critical and Self-Critical Analysis of Later Social Justice Agendas*, 19 CHICAGO LATINO L. REV. 503 (1998); GLORIA ANZALDUA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987).

22. See JUDITH BUTLER, *BODIES THAT MATTER* (1993); *Id.* at 223-42 (Butler focuses on sexuality). As Marlee Kline has pointed out, the family is a site of contradictory experiences for Black women. Although white and Black women may experience the family as at times a space of violence, it can also serve as an important resistive space for Black women.

[F]or women of color, the family often functions as a source of support for its members against the immediate harassment of racism and provides a site of cultural and political resistance to white supremacy. [Many white middle class feminists fail] to account for the contradictory experiences of the family by women of color and thus . . . concentrate only on gender oppression.

Kline, *supra* note 15, at 122-23. Some scholars argue that the family also served as a site of resistance to colonial rule. See Partha Chatterjee, *The Nationalist Resolution of the Women's Question*, in RECASTING WOMEN: ESSAYS IN COLONIAL HISTORY 233 (Kum Kum Sangari & Sudesh Vaid eds., 1989); Tānika Sarkar, *Colonial Lawmaking and Lives/Deaths of India Women: Different Readings of Law and Community*, in FEMINIST TERRAINS IN LEGAL DOMAINS: INTERDISCIPLINARY ESSAYS ON WOMAN AND LAW 210 (Ratna Kapur ed., 1996).

23. Kline, *supra* note 15, at 123.

24. MacKinnon argues that women identify themselves, through a process of gender socialization, as sexual beings who exist for men. Men and women are divided into gender categories through the social requirement of heterosexuality, through which male sexual dominance and female sexual submission are institutionalized. Dominance feminism thus asserts that sexuality is the lynchpin of gender inequality. See

MacKinnon in her own domestic arena, she has succeeded in bringing her analysis into the international arena, largely unmodified.²⁵ While she acknowledges the multiplicity of women's experience, she has remained reluctant to interrogate the extent to which this multiplicity displaces gender as the central category of analysis. She focuses on that which is shared amongst women rather than on their differences.²⁶ Focusing on the commonality of women's experiences places the analysis on a slippery slope where it can slide into the essentialist and prioritizing category of gender; it can blunt rather than sharpen our analysis of oppression. As MacKinnon states, "what [women] have in common is not that our conditions have particularity in ways that matter. But we are all measured by a male standard for women, a standard that is not ours."²⁷ In her analysis, sexuality and sexual relations remain central to women's oppression.²⁸ The fact that women do not come from a shared social position (and hence may not prioritize issues of sexuality or sexual violence) is not addressed in MacKinnon's work.

Consistent with her theory that sexual exploitation is the basis of women's oppression, MacKinnon focuses on the issues of rape, abortion, and pornography as constituting the primary human rights violations against women.²⁹ She argues that, as sexual exploitation and sexual violence are experiences that women share in common, these commonalities are more important than their differences. In her view, all women experience oppression at the hands of patriarchal power, and she argues that power is invariably male.³⁰ In law, it is expressed through "male laws" and "male" systems of justice.³¹ She does not consider the way in which legal systems have been shaped by social, economic, or historical forces, such as colonialism, enslavement of non-white populations (including both men and women), or the role of the Christian

CATHERINE A. MACKINNON, *FEMINISM UNMODIFIED* (1987).

25. *See id.* *See also* CAROL SMART, *FEMINISM AND THE POWER OF LAW* 66 (1989).

26. *See, e.g.,* Catharine MacKinnon, *Rape, Genocide, and Women's Human Rights*, in *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA* (Alexandra Stiglmeier ed., 1993); Catharine MacKinnon, *Crimes of War, Crimes of Peace*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES* 83 (Stephen Shute & Susan Hurley eds., 1993) (arguing that sexual violence is a weapon of war, especially in the context of the Bosnian conflict); Catharine MacKinnon, *Turning Rape into Pornography: Postmodern Genocide*, MS, July/Aug., 1993, at 24; Catharine MacKinnon, *On Torture: A Feminist Perspective on Human Rights*, in *HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY: A GLOBAL CHALLENGE* 21 (Kathleen Mahoney & Paul Mahoney eds., 1992). In 1996, MacKinnon was also the lead counsel in a case filed under the 1993 Alien Tort Claims Act and Torture Victim Protection Act, in which individuals and women's groups of Bosnian Muslim and Croat survivors of Serbian sexual atrocities sought international justice for genocide. *Doe v. Karadzic*, 866 F. Supp. 734 (S.D.N.Y. 1994), *rev'd*, *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995).

27. CATHERINE MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 76 (1987).

28. "If sexuality is central to women's definition and forced sex is central to sexuality, rape is indigeneous, not exceptional, to women's social condition." CATHERINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 172 (1989).

29. *Id.* at chs. 9–11.

30. *Id.* at 157–70.

31. The early origins of this theory are found in Catharine MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *SIGNS* 515 (1982); Catharine MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *SIGNS* 635 (1983).

Church. Her central concern is women as objectified victims of this male process: law, which is produced by men, objectifies women. Class, cultural, religious, and racial differences between women are all collapsed under the category of gender through women's common experience of sexual violence and objectification by men.

Despite the appeal of such grand metanarratives, gender essentialism produces a theory that effaces the differences between women.³² The exclusive focus on violence against women does not reveal the complexity of women's lives but only the different ways in which they may experience violence. Thus, culture is invoked primarily to explain the different ways in which women experience violence—in the process often reinforcing essentialist understandings of culture and representing particular cultures as brutal and barbaric.

The lack of complexity has become particularly evident in the international women's human rights arena. The feminist legal agenda, despite its international complexion, has not sufficiently taken on board the critiques of gender essentialism in formulating the women's human rights project. The VAW campaign has not translated into a complex understanding of the ways in which women's lives and experiences are mediated by race, religion, class, and gender.

This response has not been a liberating one. The tension between accounting for women's multiple experiences of race, gender, culture, and class on the one hand, and violence against women as a universal phenomenon on the other, is resolved through the victim subject. Difference is acknowledged through the different experiences of violence that the victim is exposed to in diverse economic, social, and cultural settings. While VAW operates as something of an equalizer, it also sets up a subject who is thoroughly disempowered and helpless. This subject, in turn, becomes the universal subject of human rights discourse for women. VAW either erases diversity or constructs diversities as aggravating experiences of oppression; whereas, in reality, the aspects of a woman's life which differ from the essentialized concept may serve to alleviate oppression. As Tracy Higgins says, "In short, when feminists aspire to account for women's oppression through claims of cross-cultural commonality, they construct the feminist subject through exclusions, narrowing her down to her essence."³³

32. Catharine MacKinnon is one of several scholars who resort to metanarratives in dealing with women's rights issues. Others include Katherine Mahoney, Andrea Dworkin, and Kathleen Barry, whose work on sexuality, pornography, and prostitution, respectively, have broad appeal in the women's human rights arena—though there is also considerable resistance to the universalizing approach of their work and the appeal to the victim subject. Wendy Brown argues, in the context of MacKinnon's work, that part of the appeal of the metanarrative lies in the ability to tell a grand story in modernist terms that counters dominant narratives and creates the possibility of some common basis from which to speak about women's rights. See BROWN, *supra* note 14, at 41–43.

33. Tracy E. Higgins, *Anti-Essentialism, Relativism, and Human Rights*, 19 HARV. WOMEN'S L.J. 89, 102 (1996).

Gender essentialism may be used with strategic purpose, but the way in which it is being deployed in the international women's human rights arena has had a reactionary effect.³⁴ By not remaining sufficiently attentive to cultural and historical specificities, gender essentialism constructed through a VAW discourse has prompted state actors, non-state actors, and donors to embrace universalizing strategies in responding to human rights violations against women. It has further obscured differences between women located in very different power relationships. Religion, for example, is of acute significance in many parts of the post-colonial and Third World, especially for women located within minority communities.³⁵ In post-colonial India, for example, the relationship between gender and religion remains very complex due to the increasing legitimacy of the Hindu Right and their political agenda emphasizing the assimilation of religious minorities. Muslim women are caught in the tension between their demands for gender equality within their religious community and their dependence upon and support for the community as a site of cultural and political resistance to Hindu majoritarianism.³⁶

Unfortunately, the VAW agenda has taken up issues of culture and religion in ways that have not only reinforced gender essentialism but have also essentialized certain features of culture and reinforced racial and cultural stereotypes.

B. Cultural Essentialism

One response to the critique of gender essentialism's failure to pay sufficient attention to Third World women and to the diversity of women's lives has been reiteration of the need to take account of national and cultural differences among women. Culture and cultural diversity have entered into the women's human rights discourse primarily through VAW campaigns. However, in an effort to avoid the critique of exclusivity and gender essen-

34. Essentialism continues to be relevant at a strategic level. The danger lies in the way essentialism is deployed in dominant discourses. As Annie Bunting states, "essentialism from a dominant position can perpetuate oppression while, as a means of challenging dominant ideologies, it can be necessary and persuasive." Annie Bunting, *Theorizing Women's Cultural Diversity in Feminist International Human Rights Strategies*, in *FEMINIST THEORY AND LEGAL STRATEGY* 6, 12 (Anne Bottomley & Joanne Conaghan eds., 1993).

35. It is also of significance in different Western countries, though its presence remains unaddressed. Religion and culture are frequently cast in the non-Western world as fundamentalist, present, and pervasive. However, the religious right in Western and non-Western democracies has successfully deployed liberal rights discourse (especially the right to equality) to capture the public imagination. See Ratna Kapur, *Joseph C. Hostetler-Baker & Hostetler Lecture: The Fundamentalist Face of Secularism and Its Impact on Women's Rights in India*, 47 *CLEV. ST. L. REV.* 323 (1999).

36. Brenda Cossman & Ratna Kapur, *Secularism's Last Sigh?: The Hindu Right, the Courts, and India's Struggle for Democracy*, 38 *HARV. INT'L L.J.* 113 (1997); BRENDA COSSMAN & RATNA KAPUR, *SECULARISM'S LAST SIGH? HINDUTVA AND THE (MIS)RULE OF LAW* (1999); Ratna Kapur, *Secularism: A Comparative Perspective*, in *COMPARATIVE CONSTITUTIONAL LAW* (Mark Tushnet & Vicki Jackson eds., forthcoming 2002); Ratna Kapur, *The Two Faces of Secularism and Women's Rights in India*, in *RELIGIOUS FUNDAMENTALISMS AND THE HUMAN RIGHTS OF WOMEN* 143 (Courtney W. Howland ed., 1999).

tialism, the move to address violence across difference has sometimes resulted in the reification of culture.

In this Section, I discuss the ways in which cultural essentialism is reproduced through the VAW agenda. I examine how the issue of culture is often displaced onto a First World and Third World divide with the result that colonial assumptions about cultural differences between the West and "the Rest," and the women who inhabit these spaces, are replicated. Some cultural practices have come to occupy our imaginations in ways that are totalizing of a culture and its treatment of women, and are nearly always overly simplistic or a misrepresentation of the practice. For example, the veil is assumed to be an oppressive and subordinating practice that typifies Islam and its degrading treatment of women.³⁷ Female circumcision has been represented as a brutal procedure that is practiced by *all* Africans and receives cultural sanction—a representation that reinforces the inferiority of the African people.³⁸ In the context of post-colonial India, a common image that resides in popular imagination or perceptions about India is the image of the female body in flames.³⁹ Women are burned to death, and this act apparently has some kind of cultural sanction.

37. The veil may not be a modern practice, yet the multiple meanings of the veil, through different cultural and historical contexts, get subsumed in rhetoric that focuses almost exclusively on veiling as an oppressive and subordinating practice. It is read in a uniform, linear manner as an oppressive practice because it erases women's physical and sexual identity and is symbolic of the subjugation of women in Islam. Yet, there is no universal opinion as to its function amongst those who wear the veil. For some, it does represent honor, and an effective mechanism to avoid tempting men. More significantly, the veil has also been a very empowering symbol for Muslim women in some countries. In Iran, it was the sign of rebellion and rejection of the Shah and of Western imperialism. Amongst immigrant communities in the West, it is the symbol of exclusive cultural space and a rejection of assimilation. In other contexts, the veil is considered a private space: one in which no one can intrude. The veil also disrupts the public space, where women are often marginalized. The sheer symbolism of the veil brings the woman very visibly into the public sphere—she simply cannot walk by unnoticed. Fatima Merinissi's story, "The Harem Goes to the Movies," depicts the multiple uses of the veil: as an act of resistance in a public space (the cinema hall), as a cover that carries authority, and also as a barrier against sexual harassment in the cinema. FATIMA MERINISSI, DREAMS OF TRESPASS: TALES OF A HAREM GIRLHOOD 112–22 (1994). However, in the assumptions about the veil that inform refugee cases and opinions outside of Islamic contexts, the multiple readings and functions of the veil are erased, and only one stands out: the veil as a tool of oppression and barbarism against women.

38. For an insightful critique of these assumptions, see Isabelle R. Gunning, *Arrogant Perception, World-Traveling, and Multi-Cultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1992). See generally Nancy Kim, *Toward A Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism*, 25 COLUM. HUM. RTS. L. REV. 49 (1993).

39. Early feminist writings had a considerable influence on the development of this perception. Such writings continue to inform contemporary feminist politics, especially the women's human rights movement. See, e.g., MARY DALY, GYN/ECOLOGY: THE METAETHICS OF RADICAL FEMINISM 113–33 (1978). See also ELISABETH BUMILLER, MAY YOU BE THE MOTHER OF A HUNDRED SONS: A JOURNEY AMONG THE WOMEN OF INDIA 44–74 (1990), which became a bestseller in the United States and has also been included in college curriculums. For a critique of the these two works, see AUDRE LOURDE, *An Open Letter to Mary Daly*, in SISTER OUTSIDER: ESSAYS AND SPEECHES BY AUDRE LOURDE, 66–71 (1984), and UMA NARAYAN, DISLOCATING CULTURES: IDENTITIES, TRADITIONS, AND THIRD WORLD FEMINISM 82, 105–07 (1997).

C. "Death by Culture"⁴⁰

The invocation of culture as a way in which to explain the different forms and shapes that violence against women takes has resulted in a reification of culture, especially the culture of people in the post-colonial or Third World. In this Section, I discuss, by way of example, how dowry murders have been used in the international VAW campaign as an example of the cultural forms that violence against women in India/South Asia assumes. I chose the issue of dowry murder primarily because of the vast amount of research that has been conducted and the innumerable international conferences that have been held on this issue. These conferences and research efforts continue to describe dowry murder as an ancient Hindu practice and fail to reflect how this "practice" is a thoroughly modern and contemporary phenomenon. The VAW discourse bears some responsibility for setting up dowry as a tradition that has been in existence since time immemorial and for reinforcing inaccurate and often racist cultural stereotypes.

Dowry murders in India frequently have been explained through appeal to broad assumptions about women and fire and the assertion that the burning of women is sanctioned by some kind of Indian cultural or religious tradition.⁴¹ The act is cast as a cultural practice, and, in turn, represents the entire culture as barbaric and uncivilized in its treatment of women. Yet, as Uma Narayan explains, dowry murders are thoroughly modern in their origin.⁴² Dowry itself is a traditional practice in *some* Indian communities. It has been characterized at times as a gift, at times as compensation (to the groom's family for taking on the responsibility of providing for a wife), and at times as pre-mortem inheritance, reflecting a daughter's rights to a share in the family property.⁴³ However, these explanations do not account for the expectations that the groom's family has for some share in the dowry. Narayan explains that this part of the phenomenon is connected to the setting up of a market economy in India since the 1970s and the growth of a consumer-oriented culture. In some communities, this phenomenon has produced a practice known as dowry bargaining, where the groom's family has come to expect certain consumer items at the time of (and, indeed, for many years after) his marriage.⁴⁴ This expectation is compounded by demands on families to provide large dowries for their own daughters. If a woman and her parents

40. I borrow this term from Uma Narayan, who uses it in her discussion of how dowry murders are cast in First World scholarship as an age-old Indian/Hindu cultural practice and contrasts it with research on domestic violence murders in the United States, which are not similarly cast as practices of "American culture" through references to Christianity. She argues that the "death by culture" arguments used to explain the phenomenon of dowry-murders are neither accurate nor helpful because they offer very little understanding about the nature and causes of such practices. See NARAYAN, *supra* note 39, at 82.

41. See, e.g., BUMILLER, *supra* note 39, at 44-45.

42. NARAYAN, *supra* note 39, at 85.

43. *Id.* at 109.

44. *Id.* at 111.

are unable to meet these demands, which can at times take the form of threats, intimidation, and even violence, then the woman is deemed expendable. As Narayan points out, there is a failure to understand that dowry violence is a part of domestic violence and that dowry murders are the most extreme form of violence that a situation of domestic violence can take in India (where the method of killing more often than not is by fire).⁴⁵ As Narayan has indicated, the cultural explanations offered both by Western and Indian scholars are of little value. She states:

I can therefore only note with irritation the tendency of many discussions of dowry-murders, both by Westerners and Indians, to be sprinkled with such "religio-cultural explanations" *even when they go on to also provide the sorts of social and economic explanations* I have sketched. There seems to be a fairly widespread tendency in discussions of "Third-World issues" to engage in what I increasingly think of as a "schizophrenic analysis," where religious and mythological "explanations" must be woven in willy-nilly, even if they do no real "explanatory work."⁴⁶ (emphasis in original)

The gratuitous connection between culture and violence is almost invariably brought up in relation to the Third World. In particular, culture is frequently invoked to explain the kind of violence experienced by women in the Third World, though it is not invoked in a similar way when discussing violence against women in various Western contexts.

This perception has been continuously reinforced and reiterated by the women's human rights movement, specifically in the context of VAW campaigns. Charlotte Bunch, a co-organizer of the 1993 Vienna tribunal on violence against women, has stated:

In India, more than 5,000 women are killed each year because their in-laws consider their dowries inadequate. A tiny percentage of the murderers are brought to justice . . . Traditions also feed the practice of "dowry death," in which a woman is killed because she is unable to meet her in-laws' demands for dowry. In

45. There is also an extraordinary lack of common sense displayed by some writers who attempt to understand violence against women through a cultural spectrum. For example, there is, in the literature, an intriguing connection made between violence and Hindu women's relationship to fire. Narayan clarifies that fire has the forensic advantage of simply getting rid of any evidence in a society where guns are not as easily available as in the United States. According to this mode of murder some kind of spiritual significance misses the most simple, practical explanations that are available. Narayan discusses the conflation between *sita*, *sati*, and dowry, and how this misrepresentation of "Hindu Culture" has created an exotic representation. *Id.* at 102.

46. *Id.* at 111. For evidence of the tendency of even Indian writers to understand issues such as dowry murders by reference to religion and tradition, see, for example, KALI'S YUG: EMPOWERMENT, LAW AND DOWRY DEATHS (Rani Jethmalani ed., 1995); Partha Banerjee, *Extreme Cruelty: Bride Burning and Dowry Deaths in India*, 1 INJUSTICE STUD. (1997), at <http://wolf.its.ilstu.edu/injustice/banerjeedoc.htm> (last visited Nov. 7, 2001).

India, over a *dozen women* a day die as a result of such disputes, mostly in kitchen fires designed to look like accidents. (emphasis added)⁴⁷

Such statements add nothing useful to the understanding of domestic violence or female fatalities in India, and they perpetuate inaccurate understandings of culture, dowry, and dowry murders.⁴⁸ They further skew

47. Charlotte Bunch, *The Intolerable Status Quo: Violence Against Women and Girls*, THE PROGRESS OF NATIONS, 1997, at 41, 43; also available at <http://www.unicef.org/pon97> (last visited Nov. 23, 2001). It is beyond the scope of this Article to provide a comprehensive understanding of the problem of dowry. The simple point I wish to make is that dowry has existed in some Indian (as well as in some non-Indian) communities and is not a helpful lens through which to understand domestic violence and domestic violence fatalities in India. Such a lens obscures more than it reveals, and reinforces discriminatory and racist representations of culture, especially in the global arena. Dowry murders are a new phenomenon and cannot be explained as an outcome of religious belief or practices. Accounts, other than those readily available, and unexamined assumptions about culture both need to be explored to provide more adequate accounts about the cause of dowry murders and the reasons they have emerged as a relatively recent phenomenon in Indian society.

48. The VAW campaigns are not the only international arenas in which the influential but inaccurate understandings of dowry murder are reinforced. There have been at least four Harvard University-sponsored conferences on bride burning and dowry deaths in India: First International Conference on Dowry and Bride-burning in India, Harvard University, Sept. 30–Oct. 2, 1995, at <http://www.asiatica.org/publications/ejvs/events.html> (last visited Sept. 28, 2001); Second International Conference on Dowry and Bride-burning in India, Harvard University, Nov. 1996; Third International Conference on Dowry and Bride Burning, London University, Nov. 1997; Fourth International Conference on Dowry and Bride-burning in India, Harvard University, Dec. 5, 1998. A similar international conference was to be held in New Delhi in January 2001. Fifth International Conference on Dowry, Bride-burning, and Son-preference in India, New Delhi, Jan. 27–30, 2001, at <http://www.asiatica.org/dowryconf.php3>. The narrative about dowry murder at these conferences typically runs as follows:

The problem of bride-burning stems from the ancient custom of giving a dowry. In India, the dowry is given to the groom's family to ensure the bride gets a good husband. The amount given as a dowry has increased over the centuries, . . . to the point where today the bride's family often goes into debt, sometimes for generations, in order to put together the dowry In some cases, the bride can become something of a hostage as the groom's family demands more and more, sometimes exceeding the original agreed upon dowry. If more money isn't forthcoming, the bride can suffer an "accident" in the kitchen, where kerosene used for cooking can be spilled on her and lit.

Alvin Powell, *Conference on Bride-Burning in India to Be Held at Harvard*, HARV. U. GAZETTE, Dec. 3 1998, available at <http://www.news.harvard.edu/gazette/1998/12.03/bride/html> (last visited Sept. 28, 2001).

Himendra Thakur provides another example of the rhetoric that is typically used in these conferences. Thakur, who runs the Salem, Massachusetts-based International Society Against Dowry and Bride-Burning in India, began his presentation at one conference with the following narrative:

Imagine a young Indian woman who just got married with all pomp and splendor in a grand event celebrated over several days by friends and family. Fresh flowers. Fine food. Fun. Frolic. Festivities. A beautiful bride with a full life in front of her—a life filled with a rich mix of many joys, some setbacks and a few delightful children. Now imagine somebody pouring kerosene over her. Kerosene makes her feel cold as it draws out the heat from her body. And then they set her on fire. Now imagine these murderous blazes flaring up 25,000 times a year . . . yes, that is your India Today.

Himendra Thakur, *The Chill of Kerosene*, presented at the Fourth International Conference on Dowry, Harvard University, (Dec. 5, 1998) (on file with author).

The author proceeds to provide a cultural account of the emergence of dowry, tracing its history without providing any sources and making the common mistake of collapsing the practice of dowry with sati. See also NARAYAN, *supra* note 39, at 41, for a critique on how *sati* has also been cast as an ancient cultural practice, embedded in the notion of a good Indian wife. For an excellent historically grounded explana-

our understandings of the causes of domestic violence fatalities in India.⁴⁹

Dowry murders continue to receive attention from researchers because of their connection with the “Other” and their misplaced cultural association with fire, which exoticizes the practice. This understanding translates into the broader public space in ways that are almost Kafkaesque. Recently, the *New York Times* ran a feature titled “Kerosene Weapon of Choice for Attacks on Wives in India.”⁵⁰ The article provides an account of “bride burning” that conflates culture and domestic violence as an unquestioned fact. Dugger states:

Typically, these women and thousands like them have been depicted as victims of disputes over the ancient social custom of dowry and as symbols of the otherness of India, a place where lovely young brides are doused with kerosene and set ablaze for failing to satisfy the demands of their husbands’ families for gold, cars and consumer goods that come as part of the marriage arrangement.⁵¹

The exotic move⁵² serves to exonerate the researcher from any responsibility to investigate the issue at a deeper level by inquiring whether there are more complex stories to tell about dowry and about domestic violence

tion and understanding of sati, see Sudesh Vaid & Kum Kum Sangari, *Institutions, Beliefs, Ideologies: Widow Immolation in Contemporary Rajasthan*, ECON. & POL. WKLY, Apr. 27, 1991, at WS-2; RAJESWARI SUNDER RAJAN, *The Subject of Sati: Pain and Death in the Contemporary Discourse on Sati*, in REAL AND IMAGINED WOMEN: GENDER, CULTURE, AND POSTCOLONIALISM (1993).

49. For example, Himendra Thakur’s article reproduces the data of the Indian National Crimes Bureau on the annual number of dowry-murders as well as the geographical distribution of such murders. Thakur, *supra* note 48. However, the bureau has no similar statistics available on the general prevalence of domestic violence, the number of women injured from such incidents, or the number of domestic violence fatalities that result from non-dowry related reasons. See Achala S. Dagn et al., *An Investigation of Hospital Casualty Records*, Mumbai, presented at the International Conference on Preventing Violence, Caring For Survivors: Role of Health Profession and Services in Violence, S.N.D.T. Women’s University, Churchgate, India, Nov. 28–30, 1998, at <http://www.hsph.harvard.edu/grhfi/SAsia/suchana/0929/rh370.html>. The authors reveal that of the cases they studied, most of the women who were victims of domestic violence were kicked, beaten, punched, bitten, choked, or strangled. Only four percent had been deliberately burned. These statistics suggest that a large percentage of women are beaten or abused for failing to adequately perform domestic tasks such as cleaning or cooking.

50. Celia W. Dugger, *Kerosene Weapon of Choice for Attacks on Wives in India*, N.Y. TIMES, Dec. 26, 2000 (on file with author). The article refers to studies conducted by the International Center for Research on Women in 1999 and 2000, which point to the fact that there has been an overemphasis on dowry as a cause of abuse, and that such emphasis has distorted understandings of the problem of domestic violence. However, the author does not use this information to dispel the myths and assumptions that surround the issue of dowry and culture in India. She simply proceeds to provide more details about kerosene deaths and the importance of dowry in a marriage arrangement in India. She does this by focusing on the account of her main protagonist, Geetha, in her feature who lies ravaged from burns she had received from a kerosene attack by her husband and mother-in-law.

51. *Id.*

52. This term refers to an orientalist gesture that treats the Other as an intriguing and exotic fantasy.

generally that elaborate on the material, social, and institutional explanations for dowry.

Cultural explanations ultimately neither challenge nor arrest the problem of dowry murders. They also deflect attention from the broader and more prevalent crime of domestic violence and the many other reasons why women are beaten, abused, or killed in family violence situations.⁵³ In fact, such explanations reproduce the native subject of colonial discourse, leaving in place the distorted image of the Indian woman in flames and of the practice as something that is both exotic and barbaric.⁵⁴

It is necessary to explode the mystery often set up by cultural arguments that obscures the real issues concerning women's human rights. There is a need for economic, social, and institutional analysis in order to make certain kinds of politics and strategies feasible in various national settings.⁵⁵ Researchers, scholars, and women's rights activists must take responsibility for understanding and informing themselves about the complexity of debates that surround issues of women's rights in the postcolonial world. They must put to rest the search for the native subject and the essential cultural explanations that are used to exoticize the Other. A deeper and more rigorous kind of contextual analysis is essential to protect against simple, unreflective, and naive strategies that invariably harm more than help those who are victims of rights violations.

D. *The Imperialist Move and Reproducing "the Native"*

The VAW agenda is contingent on the victim subject. It is a subject that provides the common foundation on which to build a shared movement and vision. But it is also a subject that is ahistorical, invoked by scholars and activists alike to analyze issues concerning women from the lens of a universal, unemancipated subject. It has invited, at times, imperialist responses

53. See, e.g., Dagn et al., *supra* note 49. Human rights and women's rights groups in India are currently lobbying for the enactment of a Domestic Violence Law. See Naunidhi Kaur, *Rights-India: Domestic Violence Needs Public Attention*, INDIAN PRESS SERVICE, Nov. 4, 1998 (on file with author); T. K. Rajalakshmi, *Resistance to a Bill: A Draft Bill Attempting to Broaden the Definition of Domestic Violence Faces Resistance from Certain Sections of the Criminal Justice System*, FRONTLINE, Nov. 10, 2000, 94-95 (on file with author); Susan Mathai, *Changing Attitudes in India*, COMMON CONCERN, Mar. 1998, at http://www.worldwica.org/common_concern/mar1998/chg_india.html (last visited Sept. 28, 2001).

54. See U.N. Global Videoconference, *A World Free of Violence Against Women*, *supra* note 12. One of the speakers, Alpna Chandola, was described as a "survivor of dowry violence." However, her testimony reveals that she was also a survivor of domestic violence, beaten and abused from the first day of her marriage. Focusing on the dowry demand deflected attention from other reasons for the violence that she experienced. Describing Chandola's experience of violence through the lens of dowry closed off a more complex socio-economic analysis of her experience and reinforced cultural stereotypes about how women in India experience domestic violence.

55. The role of international institutions and neo-liberal projects in new, transitional, and Third World democracies remain unaddressed in an analysis based on cultural explanations. For an analysis of the implications of global economic integration and its implications for women's rights, especially in the context of transition democracies, see Kerry Rittich, *Transformed Pursuits: The Quest for Equality in Globalized Markets*, 13 HARV. HUM. RTS. J. 231 (2000).

towards women in the developing world, by accentuating the difference between First World and Third World women. In this Section, I examine how victimization rhetoric has reinforced an imperialist response towards women in the developing world whereby the Third World subject is represented as the real, or most authentic, victim subject.⁵⁶

The move to integrate cultural diversity into a gender analysis was intended to counter the gender essentialism that has characterized the women's human rights campaign. However, this move has been approached through the spectrum of violence, which has reinforced cultural essentialism and the construction of the Other as backward and uncivilized. The result is that international feminist legal politics has reinforced the representation of the Third World woman as thoroughly disempowered, brutalized, and victimized: a representation that is far from liberating for women. Moreover, in some respects, it recreates the imperialist move that views the native subject as different and civilizationally backward.

The image that is produced is that of a truncated Third World woman who is sexually constrained, tradition-bound, incarcerated in the home, illiterate, and poor. It is an image that is strikingly reminiscent of the colonial construction of the Eastern woman.⁵⁷ Current scholarship on trafficking and prostitution that takes place in the post-colonial and Third World evokes such imagery. Kathleen Barry's work on trafficking, which has been extremely influential in this debate, recreates this colonial imagery.⁵⁸ Barry

56. There are a large number of "cultural" practices that have been held out as practices of violence and oppression against women—the veil, female sexual surgeries, and more recently, honor killings. Several scholars have complicated our understandings of these "cultural" practices. See Lama Abu-Odeh, *Comparatively Speaking: The "Honor" of the "East" and the "Passion" of the "West,"* 1997 UTAH L. REV. 287; Gunning, *supra* note 37; Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1 (1995); Hope Lewis & Isabelle R. Gunning, *Cleaning Our Own House: "Exotic" and Familiar Human Rights Violations*, 4 BUFF. HUM. RTS. L. REV. 123 (1998); OLAYINKA KOSO-THOMAS, *THE CIRCUMCISION OF WOMEN: A STRATEGY FOR ERADICATION* (1997). Honor killings have become the latest item on the women's human rights agenda. There is a considerable amount of donor funding being made available on this issue, which is being represented as a "cultural artifact" of different societies and misrepresented in ways that are similar to dowry murders. Although it is beyond the scope of this Article to address this issue in detail, it is an area that deserves to be scrutinized, not exclusively from the perspective of cultural practices that discriminate against women, but also by considering how this issue has become such a popular item on feminist air waves and conferences, in the same way that female sexual surgeries/genital mutilations were a few years ago. I emphasize that my critique does not endorse these practices nor deny that they take place. My argument is that to cast them as "cultural" fails to provide us with the insights and information required in order to formulate effective human rights strategies. Cultural explanations, without more, are deemed sufficient even though they add little to our understanding of what is going on and why. For an excellent discussion of how culture has been invoked to explain certain forms of male violence against women in immigrant communities and to perpetuate assumptions about what constitutes cultural practices within these communities, see Leti Volpp, *Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573 (1996). See also Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defenses,"* 17 HARV. WOMEN'S L.J. 57, 91–93 (1994).

57. See generally Lata Mani, *Multiple Mediations: Feminist Scholarship in the Age of Multinational Reception*, 35 FEMINIST REV. 24 (1990); WESTERN WOMEN AND IMPERIALISM: COMPLICITY AND RESISTANCE (Nupur Chaudhuri & Margaret Strobel eds., 1992).

58. See, e.g., KATHLEEN BARRY, *FEMALE SEXUAL SLAVERY* (1979). Barry is a co-founder of the Coali-

argues that prostitution is violence against women and that it reduces all women to sex. She argues that prostitution is per se a violation of women's human rights. Any woman who migrates for prostitution or to work in the sex trade is also a victim of human rights violations.

Barry locates trafficking of women in pre-industrial and feudal societies, where women are excluded from the public sphere, and contrasts them with post-industrial, developed societies, where women have been economically independent and prostitution is normalized.⁵⁹ The consequence of this kind of argument is that women in the Third World and non-Western world are represented as ignorant, illiterate, tradition-bound, domesticated, and victimized. As Kamla Kempadoo states, Barry's representation of the Third World woman leaves her not yet a "whole or developed" person; instead, she resembles a minor needing guidance, assistance, and help.⁶⁰ In striking contrast to this emaciated image stands the image of the emancipated Western woman; she has "control over her income, her body and her sexuality."⁶¹ The analysis is structured along the contours of colonial thought: the assumption being that women in the Third World are infantile, civilizationally backward, and incapable of self-determination or autonomy.⁶² Infantilizing women in the Third World reproduces the colonialist rationale for intervening in the lives of the native subject (to save those incapable of self-

tion Against the Trafficking of Women (CATW), which exerts considerable influence on the strategies against trafficking being developed at the international level. Her work, and that of CATW, have been subjected, however, to a considerable amount of critique for their colonialist representation of women in the developing world and the imperialist character of the interventions they recommend (particularly rescue and rehabilitation). See Kamala Kempadoo, *Introduction: Globalizing Sex Workers' Rights*, in *GLOBAL SEX WORKERS' RIGHTS*, 1, 11–12 (Kamala Kempadoo & Jo Doezema eds., 1998); Kamala Kempadoo, *Women of Color and the Global Sex Trade: Transnational Feminist Perspectives*, 1 *MERIDIANS: FEMINISM, RACE, TRANSNATIONALISM* 28 (2001); Prabha Kotiswaran, *Preparing for Civil Disobedience: Indian Sex Workers and the Law*, 21 *B.C. THIRD WORLD L.J.* 161, 188 (2001); Ratna Kapur, *Post-Colonial Excursions of Desire*, 78 *DENV. U. L. REV.* (forthcoming 2001). See generally *WESTERN WOMEN AND IMPERIALISM*, *supra* note 57.

59. BARRY, *supra* note 58.

60. *Id.* at 11.

61. *Id.*

62. Similar assumptions justified incursions into the lives of the native and the colony. Empire would assist in the development of the civilization until it reached a point at which it was capable of self-determination. See UDAY SINGH MEHTA, *LIBERALISM AND EMPIRE: A STUDY OF NINETEENTH-CENTURY BRITISH LIBERAL THOUGHT* (1999). Mehta examines the relationship between eighteenth- and nineteenth-century liberal theory and liberal practice, and how this theory was used to justify colonialism—what he calls the "inclusionary pretensions of liberal theory and the exclusionary effects of liberal practices." *Id.* at 46. He discusses the work of nineteenth-century British liberal thinkers, including J.S. Mill and James Mill, who argued that political institutions such as representative democracy depended on a society having a certain state of development or maturation. The mechanism of empire operating through colonialism was one way in which to rectify the deficiencies of the past—what has frequently been described as the civilizing mission of empire—in societies that have been stunted by history. Civilizational achievement was a necessary pre-condition for realizing progress, and the stage of civilization was the marker for determining if progressive possibilities would be within the reach of a community at any given point of time. "The empire . . . is an engine that tows societies stalled in their past into contemporary time and history." *Id.* at 82.

determination) in order to justify the rescue operations advocated by Barry and others.

The strategy espoused by Barry has invited legal interventions on issues of trafficking in the international arena that reinforce the victim status of women.⁶³ These proposals fail to draw a distinction between consent and lack of consent when it comes to trafficking.⁶⁴ This approach has implications for all women, whether they are forcefully trafficked or migrate voluntarily (even if primarily for economic need), and has specific implications for women in the Third World.⁶⁵ While women are increasingly encouraged to avail themselves of opportunities outside the confining domestic familial arrangement, these new approaches send a strong message. Women who move are invariably regarded as "victims" of trafficking, conflating migration (legal or illegal) with trafficking, lending to the notion that the solution lay, in part, in directing governments to draft legislation to keep their people at home.⁶⁶

As demonstrated in the context of anti-trafficking, these representations invite state responses, primarily in the area of criminal law, that perpetuate gender and cultural stereotypes. Moreover, foregrounding the state neither addresses nor accounts for the myriad actors that have entered the international arena and become contenders in the play for power, or the impact

63. See Kapur, *supra* note 19.

64. See *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49 (2000), which contains strong law enforcement provisions and the first-ever international definition of "trafficking in persons." Note especially Article 3, which deals with the issue of consent in relation to trafficking: "(b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used." The Protocol does not require governments to provide any services to trafficked persons. This serious gap in the Protocol is partly due to government reluctance to make any commitment to provide services and protections to undocumented migrants, even if they are victims of horrific crime. Governments were aided in their efforts to avoid discussion of the need for mandatory protections by a drawn-out debate over the definition of trafficking by countries such as the Philippines, Belgium, the Vatican, and several feminist NGOs. These groups insisted that the trafficking definition include all sex work, whether voluntary or forced, despite the fact that such a definition would break consensus. The definition fails to distinguish between trafficking and smuggling, which means that victims of trafficking can be treated in the same manner as they treat undocumented migrants: they may be detained, punished, and deported. Moreover, protection and assistance are provided primarily to advance prosecution rather than as part of a state's obligation. Numerous governments expressed the view that trafficked persons are valuable as witnesses, and therefore deserving of protections during trials, but that they should be deported immediately after the trial.

65. See *Recommendation of Comm. of Ministers*, Eur. Consult. Ass., 710th Meeting, Doc. No. R (2000) 11 (urging action by member states against trafficking in human beings for the purpose of sexual exploitation). The issue is linked to organized crime, an understanding that encourages a punitive approach to human trafficking for sexual exploitation. The emphasis is on the purpose of the movement, rather than on the violence experienced by women in the course of being transported, migrating, or moving. For an excellent analysis of some of the international legal instruments dealing with trafficking, see Jamie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65 (1998).

66. See, e.g., 22 U.S.C. §§ 7101–7110, *supra* note 18 (noting especially § 7106 and § 7107).

their activities have had on women's lives.⁶⁷ Globalization is challenging the traditional structures of sovereignty and of state power as it simultaneously alters domestic and familial arrangements. What are the implications of these shifting alignments on women's rights? On the rights of Third World women? On feminist legal politics? These questions cannot be adequately addressed within the exclusive matrix of a state/VAW/victim-centered analysis.

II. THE AUTHENTIC VICTIM SUBJECT AND POST-COLONIAL FEMINIST CONSTRUCTIONS

In this Part, I discuss how imperialist responses and victimized representations of women in the Third World have been aided by certain aspects of the politics of post-colonial feminism. I discuss specifically the example of India, where feminism has set itself up as anti-Western in order to meet the charge of anti-nationalism. This authenticity move, which is a symptom of postcoloniality, has been played out partly through the victim subject. Ironically, this move feeds into the representation of Third World women and the victim subject that dominates feminist legal politics in the international arena.

The prerequisite of authenticity has been integral to the way in which feminism has operated during the modern period in India. This feature is partly the result of the fact that women's issues were integral to the nationalist struggle. In late nineteenth-century India, women did not play an obvious role in the independence struggle or resistance to colonial rule, but they were the sites of contestations between political nationalists, social reformers, and the colonial power.⁶⁸ Law was one site at which the meaning and place of certain cultural practices performed by or pertaining to women in the Hindu tradition were fought out.⁶⁹ The British colonial power used the position of women to legitimize colonial rule by pointing to extreme cultural practices as evidence of the "barbarity" of Indian society and of its resulting need for colonial intervention. Social reformers sought legal changes by the colonial administration to improve the status of Indian women: in particular, to eliminate social practices such as *sati*, the prohibi-

67. See Symposium, *Feminism and Globalization: The Impact of the Global Economy on Women and Feminist Theory*, 4 IND. J. GLOBAL LEGAL STUD. 1-144 (1996); Saskia Sassen, *Toward a Feminist Analysis of the Global Economy*, 4 IND. J. GLOBAL LEGAL STUD. 7 (1996); Lucie E. White, *Feminist Microcentering: Validating the Rights of Women in the New Global Order?*, 50 ME. L. REV. 327 (1998); Karen Knopp, *Borders of the Imagination: The State in Feminist International Law*, PROC. OF THE 88TH ANN. MEETING OF THE AM. SOC. OF INT'L L. 14 (John Hargrove & Susan Bassuener eds., 1994).

68. For a historical "revision" of Indian feminism and its relationship with law, see RATNA KAPUR & BRENDA COSSMAN, *SUBVERSIVE SITES: FEMINIST ENGAGEMENTS WITH LAW IN INDIA* 45-73 (1996).

69. See Partha Chatterjee, *The Nationalist Resolution of the Women's Question*, in *RECASTING WOMEN: ESSAYS IN COLONIAL HISTORY* 233 (Kumkum Sangari & Sudesh Vaid eds., 3d ed. 1997); Sarkar, *supra* note 22, at 210-42; Lata Mani, *CONTENTIOUS TRADITIONS: THE DEBATE ON SATI IN COLONIAL INDIA* 1 (1998).

tion on widow remarriage, and child marriages.⁷⁰ Their interventions were by no means progressive—that is, they were not based on an assumption that women ought to be equal to men. The interventions were protectionist, and promoted the image of the ideal Hindu woman as the ideal wife and mother.⁷¹ The political nationalists opposed these moves by social reformers. They challenged the authority of the law, regarding it as a colonial tool that should not be used to intervene in the domestic sphere. This place was projected as the pure space of “Indian culture,” and had to be protected from colonial intervention. They were not only challenging the legitimacy of engaging with the colonial state through law reform but were also challenging the colonial power’s authority to define Hindu culture and tradition.⁷²

In the early part of the twentieth century, women began to participate in the struggle for independence. The turn of the century also witnessed the “resurgence of Hinduism” and marked a “clear ideological shift” from the social reform debates of the nineteenth century. The Western and “alien” ideas of the social reformers actually came into disrepute as the political nationalists sought to resurrect the ideals of the Hindu past. Indian womanhood gradually became the embodiment of nationalism as the nation came to be constructed as a divine mother and as mother India and women became “the mothers of the realm.”⁷³

A. Nationalism and Feminism in the Post-Colonial Moment

In the post-colonial moment, both nationalism and feminism took on a different meaning. Nationalism was a crucial mobilizing discourse at the time of Independence and had a liberatory and emancipatory potential in so far as it was directed against colonial rule. In post-colonial India, however, the state has retained its anti-imperialist stance, but this has not necessarily operated in a liberating fashion. The nation-state has come into existence, but today nationalism is playing a conservative rather than a progressive role. The negative dimensions of nationalism are baring themselves. The exclusive focus of Indian nationalism a half century ago was the British colonial power. The sub-continent was otherwise characterized by a vast amount of difference and diversity. Today, these differences are asserting themselves in the forms of separatist movements, regional movements, and other cleavages along the lines of gender, caste, and religion. It is becoming increasingly difficult for a nationalist ideology to keep all of these fragments together.

Nationalism, as an aspirational ideal, is supposed to speak for a majority of Indians. Yet differences that were unarticulated at the time the nation was

70. See Sarkar *supra* note 22, at 210–42.

71. See Meera Kosambi, *Women, Emancipation, and Equality: Pandita Ramabai's Contribution to Women*, *ECON. & POL. WKLY.*, Oct. 29, 1988, at WS-38.

72. See KAPUR & COSSMAN, *SUBVERSIVE SITES*, *supra* note 68, at 50.

73. See MAITYREE CHAUDHURI, *INDIAN WOMEN'S MOVEMENT: REFORM AND REVIVAL 75* (1993).

struggling to be free of colonial rule are manifesting themselves in the contemporary moment. The major struggle is in the sphere of religion. It is not possible to speak about nationalism today without speaking about religious identity and religious community.⁷⁴ Hindu nationalism is emerging as the new nationalism of the Indian state, and the most vociferous exponent of this new nationalism is the Hindu Right. The Hindu Right is establishing itself through the discourse of secularism and equality, as well as through nuclear tests and agni missile launches, with the goal of establishing a Hindu state in India.⁷⁵ Their strategy involves emphasis on religion as the real basis of national identity. Religion is being deployed as the overarching category to create one people and one nation, and to create a common enemy: the Muslim. The new Hindu nationalism is not concerned with the rights of women. Its agenda for women fits into its overall ideology of creating a Hindu *raj* (Hindu rule).

The emergence of the Hindu Right provides the backdrop for the contemporary women's movement in India. The contemporary movement has shifted its focus from women as mothers of the nation to women's individual rights. It has once again sought a redefinition of tradition and gender, this time by revealing and challenging the violence and oppression that women experience. These efforts, like those of the social reformers of the nineteenth century, have met with considerable resistance from powerful discourses.⁷⁶ The primacy of women's roles as wives and mothers is strongly asserted, and any challenge to these traditional roles within the family are met with cries of "religion in danger" and of "the family under attack."⁷⁷

Feminism in India continues to have a tenuous relationship with nationalism and has been cast as Western and imperialist at several historical moments.⁷⁸ Indeed, feminism has been charged with being a product of "decadent Western capitalism; [and] that it is based on a foreign culture of no relevance to women in the 'third world.'"⁷⁹ For this reason, feminists have had to project themselves as nationalist and anti-Western. They have adamantly denied allegations of being Western, and sought to establish a distinctively Indian feminism: the "authentic Indian feminist subject." This distinct subject has been constructed on essentialist notions of the West and

74. I do not want to suggest here that Hindu nationalism emerged in the contemporary moment. It was the outcome of the very nationalism that gave birth to the Indian State. I am grateful to Jyotsna Uppal for elucidating this idea in conversation at the International Law Workshop, Columbia University Law School, Apr. 10, 2001.

75. See KAPUR & COSSMAN, *SECULARISM'S LAST SIGH?*, *supra* note 36.

76. KAPUR & COSSMAN, *SUBVERSIVE SITES*, *supra* note 68, at 71.

77. At the same time, feminists have had to contend with the fact that the Hindu Right has been appropriating its issues and strategies. See *id.* at 247-73.

78. Leela Gandhi analyzes the uneasy relationship between feminism, nationalism and imperialism. See LEELA GANDHI, *POSTCOLONIAL THEORY* 81-101 (1998). See also R. Radhakrishnan, *Nationalism, Gender, and the Narrative of Identity*, in *NATIONALISMS AND SEXUALITIES* (Andrew Parker et al. eds., 1992).

79. KUMARI JAYAWARDENA, *FEMINISM AND NATIONALISM IN THE THIRD WORLD* 2 (1986).

Western feminism.⁸⁰ The search for the authentic subject has been a cornerstone of feminist politics' search for legitimacy in the contemporary Indian context.

The unreflective embrace of nationalism by at least some significant sections of the feminist movement has led to troubling and contradictory results. On several issues that have been characterized as women's rights issues, Indian feminists have sought to distinguish their position from Western feminism: not only in the hope of being heard, but also because of a genuine belief that these issues are different. Two recent examples where this position has been very starkly presented are beauty contests⁸¹ and sex work.

In November 1996, when the Miss World beauty contest was held, many women's groups opposed the holding of the pageant on the grounds that it degraded and commodified women and was vulgar. Some of them countered the pageant space by proposing to hold a "Ms. Dowry Victim" pageant that would represent the true plight of Indian women in the country. According to one pamphlet, circulated by a large number of women's groups in Delhi that opposed the staging of the pageant, "Beauty contests foster a false notion of 'free choice' which obscures the reality of violence against women."⁸² The Indian woman as victim came to be equated with the nationalist project—the idea that women in India were different from Western women. The "real Miss India" was represented as someone who was very different from a beauty queen. "Every four minutes a crime is committed against women in India. Every 47 minutes a woman is raped. Every 44 minutes a woman is abducted. Every 17 minutes women are killed for dowry."⁸³ In contrast to the agency implicitly ascribed to the Western woman, the Indian woman was represented as a suffering subject, impoverished and violated. The vic-

80. See GANDHI, *supra* note 78, at 96–97.

81. Beauty pageants and fashion shows have emerged as zones of cultural contests over the past few years. As far back as April 1998, BJP-supported student groups took control of the University of Lucknow to declare a blanket ban on fashion shows and beauty pageants on campus. The government also banned the screening of the Miss Universe beauty pageant, at a time when Sushma Swaraj, the "moral police woman" of the BJP, was the Information and Broadcasting Minister. It was contended that such contests were not in keeping with the profile of India's national image. See Rashmi Saksena, K. Sunil Thomas & Maria Abraham, *THE WEEK*, May 17, 1998, available at <http://www.the-week.com/98May17/cover.htm> (last visited Jan. 15, 2001) (on file with author). Sushma Swaraj is back again as the Information and Broadcasting Minister, and has deputed the "Central Monitoring Cell" to watch fashion television and find out if it violates Indian culture and ethos. The cell was established in the 1930s to review the propaganda that could be beamed from Pakistan into India. See Anuradha Raman, *Sushma's Men Are Watching a Lot of F-TV*, *INDIAN EXPRESS*, Jan. 14, 2001, at 1 (on file with author). Ironically, Indian women have won several international beauty pageants over the course of the past six years: Susmita Sen, Miss Universe 1994; Aishwarya Rai, Miss World, 1994; Diana Hayden, Miss World 1997; Yukta Mookhey, Miss World 1999; Lara Dutta, Miss Universe, 2000; Miss Priyanka Chopra, Miss World, 2000; Diya Mirza, Miss Asia-Pacific 2000; and Aditi Gomitkar, Mrs. World, 2000. For more details on beauty pageants and Indian women, see *Femina Miss India*, at <http://www.feminamissindia.com/flashback4.html> (last visited Jan. 15, 2001).

82. See Ratna Kapur & Shohini Ghosh, *Beauty Queens: What a Drag?*, *FORUM NEWS* (Asia Pac. R. on Women, L., & Dev., Kuala Lumpur), Dec. 1996, at 11, 12 (on file with author).

83. *Id.*

tim image was the message conveyed to women in India, as well as to international audiences, in order to secure legitimacy for Indian feminists.

These groups came to share an uncomfortable platform with the Hindu Nationalist parties who opposed the pageant on the grounds that it was against Indian cultural values (especially the swimsuit competition). The Nationalists regarded the swimsuit competition as extremely offensive as it revealed women's bodies in a fashion that was alien to "our culture." Similarly, in denouncing the Ms. World beauty pageant, the chairperson of the National Commission of Women invoked Indian cultural values. The Commission also focused cultural indignation on the swimsuit competition. This part of the pageant was ultimately flown out of India, and held in Mauritius (where ostensibly it was not against Mauritian cultural values). The most extreme form of protest came from women members of the Hindu Nationalist party who threatened to crash the pageant and immolate themselves should the pageant be held.⁸⁴

Sex work has been another area in which Indian feminists have tried to distinguish themselves from Western feminism. The arguments of some feminist groups have assumed that "prostitution" in the North or West is an occupational choice (emphasizing thereby the agency of Western women, albeit in a disapproving, not supportive manner), but that, in India, women enter the trade as a consequence of poverty.⁸⁵ Recently, some groups called for a ban of an "International Sex Workers Carnival" held in Calcutta to celebrate the lives and struggles of sex workers and to demand that their basic human rights to mobility, family, and work be respected. Opponents of the fair argued that sex work in South Asia was a form of exploitation and largely a condition of poverty, and that those who were participating in the

84. From 1996 to 2000, Indian women were crowned beauty queens of the Miss World Pageant, Miss Universe Pageant, and Miss Asia-Pacific Pageant. The response from some feminists has been to deride these victories as further examples of the commodification of women and of the impact of Westernization and globalization. These statements converge with the actions of Rajnath Singh, the BJP Chief Minister of Uttar Pradesh (a northern state), who has banned the holding of beauty pageants and fashion shows in his state, condemning them as a form of Western imperialism that is eroding Indian cultural values and degrading Indian womanhood. His reasoning is that beauty contests are part of a "larger game plan to build a massive cosmetics market in India." He further states, "Beauty contests are nothing more than exhibition of the female body and this is extremely unfortunate. Real beauty lies in one's intellect. I believe that beauty is god's gift and there is no need to put it up for public display." Sharad Pradhan, *Beauty pageants trying to promote cosmetics market: Rajnath*, at <http://news.indianinfo.com/2000/12/15/15beauty.html> (Dec. 15, 2000). The ban was insituted shortly after Priyanka Chopra won the title of Miss World 2000.

85. Jean D'Cunha states that prostitution "cannot be considered [as a choice] in the socio-cultural milieu of Asia where it is at best a "survival strategy" for the large majority of women. Choice can exist only when a certain amount of freedom or option is available in decision-making. This conspicuously is absent in most cases at least in India where either physical force or socio-economic coercion lead women to a life in prostitution." Revised Draft Bills with Explanatory Notes on *The Internal Traffic (Prevention) Act, 1956*, prepared by Dr. N. R. Madhava Menon, National Law School of India University in association with Students, Faculty, and Task Force Experts from Calcutta, Lucknow, Bangalore, Bombay and Madras, December 1993, sponsored by the Department of Women and Child Development, Government of India, New Delhi, at 2.

fair were simply promoting sex tourism.⁸⁶ This position has been supported by a large number of women's groups in India and South Asia. Donna Fernandes argues that in the West, the individual constructs social relations, the market determines morality, and functions such as care of the elderly are institutionalized. In Asia, despite liberalization and the establishment of a consumer society, the community is the main reference point. "Hence . . . Western women may opt for prostitution as an occupational choice On the other hand, most Asian women are compelled into prostitution by poverty and deception (in the form of marriage or promises of finding her employment)."⁸⁷

These critiques are located on an East/West binary. First, they assume that although choice is possible in the West, economic oppression in Asia is so all-encompassing that the very possibility of choice or agency is negated. Second, the critiques are also based on certain cultural assumptions. The culture of Asia is said to be more communitarian; as opposed to the culture of the West, which is more individualistic. Asian women are set up in opposition to Western women: the Asian woman is cast as chaste and vulnerable to exploitation, in contrast to the promiscuous Western woman who is ruled by the (im)morality of the market. The discourse of feminists in this instance is embedded in the idea of an authentic Indian subject and the construction of the woman in prostitution as a victim of the (Western) market.

The victim status conferred on women by some post-colonial feminist positions becomes almost indistinguishable from the discourse on the purity of the nation and the preservation of Indian womanhood that characterized the nationalist discourse in the late nineteenth and early twentieth centuries.⁸⁸ It is a status that invites the state to resort to the criminal law to address women's issues and, more significantly, coincides with the agenda of the Hindu Right, whose position on women's rights is very different.⁸⁹

Quite significantly, the current BJP-led government in India has declared the year 2001 to be the "Year of Women Empowerment."⁹⁰ They propose to reform a number of laws in order to promote women's empowerment. However, a close analysis of this policy reveals that most of the proposed law reforms concern the criminal law. These include strengthening the punishment for giving dowry; the prevention of sati, trafficking in women, prostitution, and obscenity; and the introduction of a law on domestic violence.⁹¹ Even the proposed sexual harassment law is to be brought within the

86. See *Stall Move to Legalize Prostitution, Say NGOs*, HINDUSTAN TIMES, Mar. 2, 2001, at 4 (on file with author). See also Kritivas Mukherjee, *Unique Sex Worker Fair Rekindles Legitimization Debate*, ASIAN AGE, Mar. 5, 2001, at 1 (on file with author).

87. Kotiswaran, *supra* note 58, at 188–89.

88. See CHAUDHURI, *supra* note 73.

89. See KAPUR & COSSMAN, *SUBVERSIVE SITES*, *supra* note 68, at 265–73.

90. *Id.*

91. See *2001 Will Be Year of Women's Power*, INDIAN EXPRESS, Jan. 3, 2001, at 2 (on file with author).

framework of the criminal law.⁹² Although many of these proposals touch on issues that are of concern to women, there are no corresponding proposals to promote women's civil rights, mobility, freedom, bodily integrity, or substantive equality. While there are some tentative proposals to reform some of the laws of religious minority communities that discriminate against women, these strategies are not designed to foreground women's rights and interests. Rather, they reinforce the law-and-order agenda of the Hindu Right, their paternalistic approach to women's issues, and their communalizing agenda.⁹³

B. *The Treachery of "Authenticity"*

By entering onto the terrain of authenticity, feminists have headed down a treacherous path. Feminists' adoption of this anti-Western rhetoric, although often a dictate of political realities, is not necessarily progressive.

Moreover, the idea of an "authentic victim subject" in India operates along two assumptions: that Indian women are a monolithic victim group who are all similarly oppressed, and that there is an essentialized Indian culture and Indian woman. The result is that Indian feminism has essentialized the very category of gender that it has, along with others, critiqued Western/First World/white feminists for producing. Their position has resulted in the exclusion of other subjugated identities. Some Indian feminists have also essentialized culture by setting up "Western culture" against "non-Western culture."⁹⁴ The essentializing of discourses that have presented such difficulties for the women's movement during the colonial period has produced contradictory results for feminists in post-colonial India. The fact that feminists have come to inhabit a highly contradictory space is not in and of itself problematic, since many spaces feminism inhabits are contradictory. The problem arises when that space is inhabited unreflectively.

The failure to reflect on the contradictory nature of nationalism has led to a host of problems. First, the denial of agency, as illustrated by the responses to the beauty pageant and to the issue of sex work, has been articulated by feminists in and through the discourses of nationalism and authenticity. A consequence of such arguments is the construction of a pure place of authenticity. This is remarkably similar to the strategies of the religious right, whose vision for women is rather different. The contemporary discourse of the Hindu Right around women's rights is based on the idea of "modern but not western."⁹⁵ This idea relies heavily on the language of tradition: of returning women to their rightful place of honor and respect that they enjoyed

92. *Id.*

93. For more on how the Hindu Right's approach to women's rights promotes these two agendas through law, see KAPUR & COSSMAN, *SUBVERSIVE SITES*, *supra* note 68, at 247–73.

94. Uma Narayan, *Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism*, 13 *HYPATIA* 86 (1998).

95. KAPUR & COSSMAN, *SUBVERSIVE SITES*, *supra* note 68, at 265–73.

as wives and mothers in some long-lost ancient Hindu past. As Lata Mani's work demonstrates, their discourse of tradition is a selective and thoroughly modern reinterpretation of the past.⁹⁶

The legitimization of the Indian feminist position has also demanded a repudiation of the West (in particular the Western feminist), the polarization of Western versus Indian feminism, and the search for the authentic subject. This is troubling because it falls all too easily within the more traditional relationship between women and nationalism and is not clearly distinguishable from the contemporary discourse of the Hindu Right on women's rights.⁹⁷

The construction of the authentic victim subject position, constantly in opposition to imperialism or the West, seems to be critical to the legitimacy of Indian feminism. As illustrated by the beauty pageant and sex work examples, the subject is distinguished from the West and the Western feminist subject through her position of victimization. The closer the association between the Indian feminist and this victim subject (who is projected as the "real" Indian woman, or the authentic subject), the greater the legitimacy for feminists and feminism to operate in India. Yet, this subject has not produced a liberatory politics for women. Indeed, its existence has reinforced both a protectionist position of the state towards women and the women's rights agenda of the Hindu Right. The denunciation of beauty queens or sex workers does not create a space for a more complex politics. It simply eliminates such experiences and prioritizes the victim as the true symbol of Indian feminism and Indian womanhood. In negating women's agency, the complex negotiations and the multiple subjectivities of women are also eradicated. How can we articulate a space for women's multiple subjectivities? What is to be done with Malleswari, who won the bronze medal (the only medal for India) at the Sydney Olympics in 2000 in women's weightlifting?⁹⁸ Or with Lara Datta, who won the Miss Universe pageant in 2000, and has no reluctance to speak explicitly about sex, safe sexual practices, and the issue of AIDS?⁹⁹ Or the sex workers who state, "We want bread. We also want roses!"¹⁰⁰ Where do we locate these women in a politics that operates along the strict binaries of victim/agent, East/West, First World/Third World, or the West and the Rest?

I have discussed how the victim subject informs women's human rights discourse in the international context in ways that reinforce gender and cul-

96. Mani, *supra* note 57.

97. Let me emphasize here that although authenticity and victimization are closely related in the context of this Article, the two can and do exist independently as well.

98. *There's Our Bronze Girl in the Being . . .*, TIMES OF INDIA, Sept. 9, 2000, at 1. (on file with author); *She Lifts 240 Kg. and Hopes of a Billion*, INDIAN EXPRESS, Sept. 9, 2000, at 1 (on file with author). The event was the women's weight-lifting event in the sixty-nine kilogram category. See also JUDITH BUTLER, GENDER TROUBLE 12-13, 163-71 (1990).

99. FEMINA, November 1, 2000, at 30 (on file with author).

100. Slogan of the International Sex Workers Rights Poster produced for the International Sex Workers Carnival, Calcutta, Mar. 3-6, 2001.

tural essentialism. I have also examined some of the rather reactionary, and unanticipated, consequences of promoting the victim subject in the national context. Regardless of whether it is a product of the dominance feminism of the West or of the "authenticity" position of Indian feminism, this subject has become central to the women's human rights movement. The victim subject has become a de-contextualized, ahistorical subject, disguised superficially as the dowry victim, as the victim of honour killings, or as the victim of trafficking and prostitution. The subject is no longer distinctly Indian or European, let alone Eastern or Western. Oddly enough, this subject has created the basis for an alliance in the human rights arena between Western feminists and Indian feminists, amongst others, in their pursuit for the recognition of women's human rights.

In the context of India, I have argued that the very thing that represents the authentic subject for Indian women—the non-Western subject—bears an uncanny resemblance to the basis of the alliance between Indian women and Western women in the international arena. West and non-West, in effect, become one in the victim—discrete, and yet not. There is a convergence of Indian women's realities with some notion of global sisterhood, but this has not provided them with an effective or distinct voice in the area of women's human rights.

III. PERIPHERAL SUBJECTS, RESISTANCE, AND POWER ERUPTIONS

It is imperative to articulate a subject position in the domestic and international human rights arena that takes into account the subject's complex and contradictory locations in relation to different arenas of power. If a more progressive movement for women's rights is to develop within the arena of human rights, it is necessary to renegotiate and refashion new ways of legally and politically intervening and articulating women's concerns. This requires at least three major theoretical and practical shifts. First, it is important to recognize and center the peripheral subject and her multiple historically, culturally, and socially determined subjectivities instead of falling back on universalized assumptions about women's realities and their subject position. Feminist legal politics needs to foreground the peripheral subject if any significant normative shifts or disruptions are to be brought about. Second, in recognizing and working with the peripheral subject, there is a need to focus on moments of resistance to ensure against simply producing a narrative that describes the multiple ways in which even women on the periphery are subjugated. A final and related shift is to examine the implications of non-state actors emerging as significant contenders to state power.

I endorse the suggestion of other scholars to focus on a more complex notion of the multidimensional subject as an important way to shift attention from an exclusive focus on the victim subject. This focus will assist in disrupting the linear narrative produced by the VAW campaigns and will complicate the binary of the West and the Rest. At a practical level, this strategy

will complicate the narrative and guard against the cultural and gender essentialism that characterizes women's human rights campaigns and post-colonial feminist legal politics. For example, at the 1993 Vienna Tribunal on Violence Against Women, the personal testimonial of Perveen Martha, a woman from Pakistan, focused on the story of how she was set on fire when her husband doused her with kerosene in February 1984. The listener was left with the impression that the "burning of brides" is a feature of "Asian" culture. The framing of Perveen's life through the lens of violence and the mechanism of personal testimonial did not disrupt the gender and cultural assumptions present in the audience's imagination. What was marginalized in the telling of the story was the fact that Parveen was a *Christian* who had been married for several years and had several children who were no longer in her custody.¹⁰¹ Her husband had divorced her and she was struggling in court to secure maintenance and the custody of her children (whom she had not seen in five years). It is important to understand her multiple subject positions and location as a divorced Christian woman, at a time when the military dictatorship of General Zia-ul-Haq in Pakistan was clamping down on women's right generally.

The burning episode is only part of the story. Highlighting the burning incident reinforces her victim status and a cultural stereotype. It excludes significant portions of her story as well as the broad array of human rights that are implicated. The fact that her rights to custody and maintenance were restricted because of her religious identity as a Christian, and not simply because of her gender identity, prompts a deeper understanding and a more sharply tuned response to her situation and her struggle. Her location as a divorced, Christian woman in Muslim-dominated, non-democratic Pakistan, when strict laws against rape, adultery, and fornication were in fact enacted,¹⁰² is critical to understanding her story. These facts are also material to understanding the politics of her struggle in court and in the social context of her family and religious community, where she was both a marginalized and resistive subject and not exclusively a victim of violence.

However, the focus on multiple subjectivities is not in and of itself sufficient. It is also necessary to focus on the subject situated at the periph-

101. Even in the transcript of the testimony of Perveen Martha, her broader story as a divorced Christian woman and parent is not in the foreground. The script focuses on the burning incident that took place in February 1984, even though she had been subjected to physical abuse prior to this incident. Constructing the story around the incident of burning is an exotic move that plays into cultural essentialism and provides little insight into the reality of Perveen's life.

102. Until 1981, Pakistan had a very progressive law favoring women's rights. Entitled the Family Law Ordinance, it was enacted in 1961 and incorporated many of the recommendations of the Women's Rights Committee that was organized in 1953 and was one of the most liberal initiatives within Islamic law. As Nighat Kazmi, founding member of the Women's Action Forum in Lahore recently stated, "Only one or two countries have a better law than Pakistan as far as women's rights and Islam are concerned. The 1973 Constitution was also a liberal one for women. It said that until such time as women are equal the state will do everything to empower that process." Mohua Chatterjee, *Pakistan Women in Action*, TIMES OF INDIA, Jan. 15, 2001, at 10.

ery, as she has the power to bring about normative disruptions. For example, I have consciously foregrounded the sex worker in this Article. Her claims to rights as a parent, entertainer, worker, and sexual subject disrupt dominant sexual and familial norms. In post-colonial India, her repeated performances also challenge and alter dominant cultural norms. From her peripheral location, the sex worker brings about a normative challenge by negotiating her disclaimed or marginalized identity within more stable and dominant discourses—that is, the way in which the intersection of the dominant sexual, familial, and market ideologies structure her experience of the world.¹⁰³ By renegotiating and occupying dominant sexual, familial, and cultural norms, she brings out the ambivalence of these norms. She simultaneously creates the potential for a more inclusive politics, opening up a space for subjects who have remained unaddressed in the women's human rights politics as it has emerged, such as single parents, other sexual minorities, and religious and cultural minorities.

Perhaps even beauty queens might be centered in some of our analysis, at least in the post-colonial world.¹⁰⁴ They have provoked serious opposition from state actors, religious conservatives, and some feminists, and at the same time have opened up a space for "Others" to redefine, in the pageant space, understandings of beauty, culture, gender, and the sexed body.¹⁰⁵ As the example of the Miss World 1996 pageant illustrates, these subjects are implicated in human rights discourse because of the opposition—and indeed, the violations—they have encountered. The response of feminists and the religious right, who together threatened to disrupt the pageant and force the participants off of the pageant stage, created a law-and-order problem in the city as well as a harassment threat to the participants. In the course of

103. The theory of intersectionality was developed primarily by Black feminist thinkers who explored the ways in which categories of race and gender intersect and suggested that Black women's oppression was not simply racial oppression added to gender oppression. See Angela Harris, *supra* note 15; Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991). Post-colonial feminists have also examined the extent to which gender intersects with colonial understandings of the "native" subject. See Spivak, *Can the Subaltern Speak?*, in MARXISM AND THE INTERPRETATION OF CULTURE, *supra* note 20; Mani, *supra* note 57. For a more general discussion on the theory of multiple subjectivities, see John A. Powell, *The Multiple Self: Exploring Between and Beyond Modernity and Postmodernity*, 81 MINN. L. REV. 1481 (1997).

104. In 1996, for example, the Miss Malaysia beauty pageant was held in Kuala Lumpur. The police arrested the participants, the crowned queen, and the two runners-up as soon as the pageant ended. They were all Muslim women who were charged for violating the "decency" provisions in the legal code (which applied only to Muslim women). *Malaysian Beauty Queens Face Jail*, available at <http://www.bbc.co.uk/politics/97/news/08/0806/beauty.shtml> (last visited Nov. 25, 2001).

105. The disruption of the pageant space is not necessarily confined to the post-colonial world. See, e.g., discussion of PARIS IS BURNING *infra* note 112; BEAUTIFUL (Destination Films 2000) (challenging the rule that mothers cannot be beauty queens); MISS CONGENIALITY (Castle Rock Entertainment 2000) (the main protagonist, an undercover FBI agent, is sent to secure the pageant space from a terrorist threat, but proves incapable of conforming to the cast-iron gender mold and performance required by the pageant). These representations move beyond the Barbie doll images of the beauty queen and are equally challenging of cultural and gender essentialism.

the disruption of the cultural spaces inhabited by the beauty contestants, they were denied recognition of their rights.

Another example would be the migrant woman—the traveling subject, whose very movement across borders, whether legal or illegal, challenges normative arrangements of gender, sex, and culture. Through her cross-border transgressions, she brings to the fore women's ability to choose to move, and belies cultural assumptions that imagine women, particularly Third World women, as confined to the home, in an oppressive familial and cultural space. Through the course of travel and the obstacles she encounters as she crosses borders, she exposes the shape-shifting of culture and the anti-migrant impact of recent anti-trafficking legislation at the international, regional, and domestic levels. She is a market actor, a traveler, and a cultural importer, who brings an understanding about globalization to the metropolis "decades before the Californian suburbanite will ever get the point."¹⁰⁶

My second argument is that it is important to foreground the moments of resistance demonstrated by women in their different subject positions. One example would be a subject such as Malleswari, the female weightlifter. Centering this subject challenges both gender and cultural essentialism. Malleswari's location as a working-class, married woman; her body; and her commitment to weightlifting provide a serious challenge to the emaciated, linear image of the Third World woman that has colonized feminist imagination. In the case of the previous example of the sex worker in post-colonial India, projecting her exclusively in terms of her experience of victimization and violence ignores her struggle for, and claims to, rights in her multiple capacities.¹⁰⁷ Identifying these claims as moments of resistance validates the sex worker's agency without invalidating the harms to which she may have been subjected.¹⁰⁸ Through her claim for rights in these different guises, she challenges legal and non-legal responses from state and non-state actors that treat her exclusively as a victim in need of rescue and rehabilitation or as a criminal to be incarcerated. Such responses ignore the fact that she is a woman, a worker, and a parent with fewer legal rights than other women, workers, and parents. She is left without any tools with which to fight violence, exploitation, or discrimination.¹⁰⁹

106. AMITAVA KUMAR, *PASSPORT PHOTOS* xiv (2000).

107. See Ratna Kapur, *A Rally for Rights and Roses*, *THE HINDU*, May 13, 2001, at Magazine IV (describing the International Sex Workers Carnival held in Calcutta, India, which declared March 3 as International Sex Worker's Rights Day. The rights claimed by the sex workers included the right to work, the right to safe and non-discriminatory health care, the right to mobility within as well as across national borders, the right to keep children, and the demand for recognition of their families as legitimate and entitled to state benefits. See also *Sex Workers Demand Recognition*, Mar. 3, 2001, available at http://www.news.bbc.co.uk/hi/english/world/south_asia/newsaid_1200000/120044.stm (last visited Nov. 7, 2001)).

108. Emphasizing the specific location of the subject within her cultural and social context also avoids the traps of power-feminism, advocated by "Just Do It" feminists such as Camille Paglia, Katie Rophie, or Naomi Wolf. See LINDA WILLIAMS, *TWILIGHT ZONES* (1999).

109. A recent example of this resistance is the International Sex Workers Carnival, *supra* note 107. See also Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law and Desire*, 101 *COLUM. L. REV.* 181

Foregrounding the peripheral and resistive subject also scatters hegemonic understandings of culture and gender that are reproduced at the international and domestic levels. The reproductions are invariably essentialist and invite imperialist, conservative, or protective interventions.¹¹⁰ For example, in November 2000, eunuchs joined the regular models on the catwalk at a designer fashion show in Lucknow, a large metropolitan city in northern India.¹¹¹ One may well question how the participation of eunuchs in a fashion show reworks the normative framework of femininity. Yet, in participating in the fashion space as eunuchs, not as men or women, they denaturalize the normative framework of gender.¹¹² The eunuch also disrupts cultural norms that would not permit this subject any visibility. This performance is not transformative, but the placing of the eunuch on the catwalk represents an appropriation of a cultural space. Dominant meanings are challenged as she prowls along the line "between that hegemonic call to normalizing gender and its critical appropriation."¹¹³ At the international level, the visibility of this subject challenges cultural and gender stereotypes that have come to inform the politics of the women's human rights movement.

However, the claims made by the resistive subject may not necessarily be successful or even heard. In fact, the more marginalized and subversive her politics, the more reluctant the state will be to cede her any ground. In particular, it will be reluctant to grant her human rights.¹¹⁴ Her success or fail-

(2001). Franke discusses the broader need for feminist legal scholars to foreground women's agency and theorize the possibility of non-reproductive female sexual desire and pleasure. She argues in favor of moving away from theorizing sexuality as dependency and as danger. She argues in favor of an affirmative theory of sex and of the female body as a site of pleasure and erotic possibility.

110. At the domestic level, the resistive subject is able to make legal claims by taking advantage of the law's relative autonomy from other branches of the state. Law plays a formidable role in constituting and categorizing women's identities; at the same time, legal discourse can be used to challenge these very constructions. As Brenda Cossman and I have argued elsewhere, "As an official, though relatively autonomous discourse of the state, law plays a role in legitimating unequal power relations. At the same time, it is the relative autonomy of law from other branches of the state that creates the possibility of it operating to challenge these unequal power relations." KAPUR & COSSMAN, *SUBVERSIVE SITES*, *supra* note 68, at 41.

111. Tarannum Manjul, *Models Don't Find Eunuchs a Drag*, HINDUSTAN TIMES, Nov. 17, 2000, at 1 (on file with author).

112. A comparative example is in the opening sequences of the 1995 film on drag queens, *TO WONG FOO, THANKS FOR EVERYTHING, JULIE NEWMAR* (Amblin Entertainment 1995), where Patrick Swayze and Wesley Snipes prepare themselves to participate in the annual transgendered beauty pageant by applying make-up and dressing in flamboyant outfits. Their performance inscribes the pageant space with notions of beauty, gender, and sexuality that challenge the traditional pageant space. The performance is still limited, however, and does not necessarily lead to liberation from hegemonic constraints. See Judith Butler's discussion of the challenges posed by Venus Xtravaganza, who is represented in *PARIS IS BURNING* as a transgendered woman who has an added "desire to become a whole woman, to find a man and have a house in the suburbs with a washing machine." Butler, *supra* note 22, at 133. She does not appear to rework the heterosexual framework, indicating that the question of the denaturalization of gender and sexuality may not lead to a complete reworking of heteronormativity.

113. Butler, *supra* note 22, at 137.

114. Carol Smart has argued that the more conformist feminists are in their legal argument (by resorting to the language of individual rights, motherhood, or sexual morality), the more likely they are to

ure is contingent on the interplay of dominant familial, cultural, and sexual ideologies and the particular claims she puts forward. She may fail because of social, economic, or historical constraints and oppositions. Her claims will not redefine gender or even culture instantaneously. Feminist efforts to destabilize dominant meanings have encountered real oppositions firmly inscribed in dominant institutions and structures. Such oppositions cannot be countered through a single engagement. Feminists must be attentive to the ways in which these powerful and opposing discourses may be rooted in and shaped by dominant social and economic forces. Feminist engagements with law and human rights require a constant and careful consideration of the way in which feminist claims may be transformed through the powerful and complex interplay between dominant social relations and competing discourses. However, centering the peripheral and resistive subject is a disruptive move, destabilizing universalized and naturalized claims made about women, poor women, Third World women, or the culture from which these women emerge. The production and subjugation of identities are processes that go on simultaneously through legal engagement. The victim subject counters the atomized, ahistorical subject of liberal rights discourse, but it is not sufficiently disruptive of naturalized and universalized assumptions about gender and culture. The challenge is to disrupt and dispute the naturalness and originality of the victim subject. It is precisely at this point that we can contemplate the production of an inclusive politics.

Finally, feminists and human rights scholars must acknowledge and engage the new arenas of power that manifest themselves in today's globalized world. In this world, the actions of non-state actors have a significant impact on women's lives and women's rights.¹¹⁵ The women's human rights movement exposed the ways in which power impacts women's rights and women's lives at many different levels,¹¹⁶ but the focus on the victim subject and on violence has failed to develop this. By resorting to an exclusive focus on the victim subject and on women's experience of violence, feminists fell back onto an understanding of power (one that has also informed traditional human rights standards) as monolithic and emanating from a coherent sovereign.¹¹⁷ For example, addressing crimes against women without simulta-

succeed. Thus, she says, the strength of radical or cultural feminists is that they deploy commonsense notions, such as sexual and gender difference, in ways that seek to rearrange them rather than to challenge how we think about these categories. CAROL SMART, *LAW, CRIME, AND SEXUALITY: ESSAYS IN FEMINISM* 110 (1995).

115. See *supra* note 67. See also Charlesworth et al., *supra* note 3.

116. See, e.g., MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 135 (Robert Hurley trans., 1978). Drawing on Foucault's analysis of power, some feminists have emphasized that power is not a monolithic construction but is exercised within social relationships and through culture. A number of feminists have examined Foucault's work and the relevance of his analysis to feminist theory; in particular, the gendered aspects of regulation and the importance of understanding multiple sites of oppression. See, e.g., *FEMINISM AND FOUCAULT: REFLECTIONS ON RESISTANCE* (Irene Diamond & Lee Quinby eds., 1988); LOIS MCFARLANE, *FOUCAULT AND FEMINISM* (1992).

117. Although it is beyond the scope of this Article to do so, developing a comprehensive analysis that will investigate the implications of new international players is an important area of study. These

neously addressing their lack of civil and political rights assumes that the cause and the cure for violence lies with the state, specifically in the guise of the criminal law.¹¹⁸ By falling into the "sovereignty trap," feminists have failed to address the power eruptions that have occurred as a result of global integration and market activity.¹¹⁹

Power eruptions are taking place in a myriad of spaces: in the information technology revolution, in satellite broadcasting, and through the increasing interventions of non-governmental organizations, religious institutions, the World Trade Organization, and other trade and financial institutions.¹²⁰ The most obvious shifts in power from state to non-state actors have occurred in connection with market actors. The human rights movement is becoming acutely aware of the limitations of a human rights strategy that is tied to a state analysis, given the entry of supranational non-state actors into the market and the international arena.¹²¹ Economic globalization has emerged as a powerful force in structuring transnational systems of power as it simultaneously effects shifts in the locations and operations of power between genders, within families, in the workplace, and between the West and the Rest.¹²²

Although some scholars have addressed the issue of the radical disruption and re-distribution of power through unfettered global markets, the implications of these shifts for women's human rights and on women's lives still needs further elaboration.¹²³ These shifts will require greater attention to

non-state actors, such as financial institutions and non-profit organizations, have decentered the state as the crucial player in the international arena. See Rittich, *supra* note 55. In post-colonial India, despite the strong assertions of nationhood, financial institutions and other international funding organizations have been significant power contenders. The shift from a planned to a market economy has introduced new players into the development arena, who have a powerful influence on the shape and content of the state's economic policies.

118. *Supra* note 91.

119. See Kathleen B. Jones, *The Trouble with Authority*, 3 DIFFERENCES: A J. OF FEMINIST CULTURAL STUD. 105 (1991).

120. See Karen Knop, *ReStatements: Feminism and State Sovereignty in International Law*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 293 (1993). See also Saskia Sassen, *The State and Economic Globalization: Any Implications for International Law?*, 1 CHI. J. INT'L L. 109, 110 (2000) (focusing on the way in which the emergence of economic globalization has created a transnational system of power that challenges the traditional state and interstate system. One feature of this has been the relocation of certain functions of national governance to transnational private arenas, a process that is being accommodated by legislatures, courts, and executive agencies).

121. HUMAN RIGHTS WATCH WORLD REPORT (2000); L. Dubin, *The Direct Application of Human Rights Standards to, and by, Transnational Corporations*, 61 INT'L COMM. JURISTS, THE REV. 35 (1999). The presence of non-state actors in the international arena is not a new phenomenon. The trading companies of the eighteenth and nineteenth centuries were also global non-state actors and served as precursors to empire. Anthony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth Century International Law*, 40 HARV. INT'L L.J. 1 (1999). See also POLITICS AND TRADE IN THE INDIAN OCEAN WORLD (Mukherjee & Lakshmi Subraminaum eds., 1988); Om Prakash, *European Trade and South Asian Economies, in COMPANIES AND TRADE* (Leonard Blussé and Femme Gastra eds., 1981).

122. See Saskia Sassen, *The State and Economic Globalization: Any Implications for International Law?*, 1 CHI. J. INT'L L. 109 (2000).

123. Kerry Rittich, *Transformed Pursuits: The Quest for Equality in Globalized Markets*, 13 HARV. HUM. RTS. J. 231 (2000).

questions of location and, more specifically, to linking the complex subject positions discussed above to geopolitical and metaphorical locations.

CONCLUSION

The victim subject has highlighted that women suffer violence in the home and that such violence constitutes a human rights violation which is the responsibility of states to prevent or remedy. This is a very significant victory. Nonetheless, the creation and reinforcement of a victim subject has not empowered women. In fact, there are hidden traps which might result in a setback to the broader recognition of women's human rights. One example of this is the enthusiastic endorsement of the focus on VAW and the victim subject by governments in specific subject areas.¹²⁴

This Article reveals the down side of victim subject politics for women. The focus on the authentic subject as a victim in Indian feminist discourse has not produced a liberated subject, but rather one that is based on a questionable authenticity and set up in opposition to the Western subject. This subject risks denying women the agency that they in fact demonstrate throughout their lives, whether by leaving an abusive relationship, by soliciting for the purpose of prostitution, by participating in a beauty pageant, or by performing as a weightlifter.

In the international arena, the victim subject, in the context of the primary focus on violence against women, creates an exclusionary category built on racist perceptions and stereotypes of Third World women. This category is disempowering and does not translate into an emancipatory politics. It produces the fiction of a universal sisterhood, bonded in its experience of victimization and violence. There is no space in this construction for difference or for the articulation of a subject that is empowered. Indeed, the victim subject collapses easily into Victorian/colonial assumptions of women as weak, vulnerable, and helpless. It also feeds into conservative, right-wing agendas for women, which are protectionist rather than liberating.¹²⁵ Additionally, it encourages states to resort to the criminal law to address women's

124. A current example is the issue of trafficking and prostitution. There is a significant move at both the international and regional levels to recognize trafficking of women as a human rights violation. This move has provided a justification, however, for European countries to strengthen their immigration laws (which, of course, has implications beyond controlling the traffic in women), for the United Arab Emirates to restrict the travel of women below the age of forty, and for the South Asian Regional Co-operation (SAARC) to increase border controls as well as to intensify the surveillance of women's lives. *Supra* note 18. The pending SAARC draft on Trafficking in Women builds on the discourse of women as victims in need of rescue and rehabilitation, whose consent is completely irrelevant in regard to transport or migration. Even though it invokes CEDAW and the convention of Civil and Political Rights in its preamble, the document undermines women's rights to mobility, association, and expression. The Trafficking Victims Protection Act of 2000, *supra* note 66, passed by the United States Congress, as well as the move to address trafficking under the convention on Transnational Organized Crime, are also drafted along the same lines. *Supra* note 18.

125. See generally Didi Herman, *Globalism's "Siren Song": The United Nations and International Law in Christian Right Thought and Prophecy*, 49 SOC. REV. (2001); Doris Buss, *Robes, Relics, and Rights: The Vatican and the Beijing Conference on Women*, 7 SOC. AND LEGAL STUD. INT'L L.J. 339 (1998).

rights issues, an arena of law in which nation-states enjoy the powers of moral surveillance and regulation.

In challenging the universalizing and disempowering implications of foregrounding the victim subject in feminist legal politics, I do not seek to revert to the fragmenting politics of identity. Instead, I argue in favor of recognizing different subjectivities and peripheral subjects, primarily to counter the fictitious homogeneity and sisterhood created through the victim subject.¹²⁶

The challenge for feminists has been to think of ways in which to express their politics without subjugating other subjectivities through claims to the idea of a "true self" or a singular truth about all women. The re-envisioning of the subject of women's rights discourse leads to a reformulation of the notions of agency and choice. It is an agency that is neither situated exclusively in the individual nor denied because of some overarching oppression. It is situated in the structures of social relationships, the location of the subject, and the shape-shifting of culture. It is located in the recognition that the post-colonial subject can and does dance, across the shaky edifice of gender and culture, bringing to this project the possibility of imagining a more transformative and inclusive politics.

126. SMART, *supra* note 25, at 45.