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Susan Dewey

Tonia St. Germain

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## **Between Global Fears and Local Bodies: Toward a Transnational Feminist Analysis of Conflict-Related Sexual Violence**

By Susan Dewey<sup>1</sup> and Tonia St. Germain<sup>2</sup>

### **Abstract**

Sexual and gender-based violence (SGBV) knows no borders. The twentieth and twenty-first centuries have witnessed historically unprecedented levels of violence against non-combatants as well as a concomitant rise in international and local efforts to assist survivors of conflict-related sexual violence. Yet the diversity of cultural contexts in which SGBV occurs challenges us to ask a timely question: what might a transnational feminist analysis of conflict-related sexual violence look like? This is particularly salient because feminist scholar-activists increasingly help shape policy designed to both address sexual violence as a weapon or by-product of war and services to assist its survivors. This article addresses the rise of global and local initiatives and institutions that rely upon the relatively recent emergence of concretized “best practices” recommended as global solutions to what are inevitably local problems. This article demonstrates how such global solutions are recommended for what are inevitably local problems and exemplifies how best practices are couched in human rights discourses that are presumed universally relevant despite their almost exclusive origination and dissemination by individuals in a privileged position vis-à-vis the intended beneficiaries of such discourse’s practice. After analyzing the ethical concerns raised by this reality, this article proposes using non-hegemonic feminist models to develop new strategies for respecting both cultural diversity and the humanitarian responsibility to protect individuals from conflict-related sexual violence.

*Keywords:* International law, rape, sexual violence

### **Introduction**

Conflict-related sexual violence permeates human cultural consciousness even in the earliest accounts of war: in the *Odyssey*, the kidnap of Helen proves a pivotal moment in the sacking of Troy, while the Hindu epic *Ramayana* revolves around the rescue of the goddess Sita from behind enemy lines by her husband. The implication of rape serves as a powerful subtext in both tales, and is featured in myriad variations throughout the world. Yet despite this centrality of women and sexual violence in war narratives both ancient and contemporary, it is only relatively recently that states have begun to regard conflict-related sexual violence as an offense against individual women rather than the family honor of her male relatives.

This article addresses the rise of initiatives and institutions reliant upon the relatively recent emergence of concretized “best practices” recommended as global solutions to what are inevitably local problems. These are often couched in human rights discourses that draw considerable power from their presumed universal relevance despite

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<sup>1</sup> Affiliation: Assistant Professor, Gender & Women’s Studies, University of Wyoming. Email: sdewey3@uwyo.edu

<sup>2</sup> Affiliation: Adjunct Associate Professor, Gender & Women’s Studies, University of Wyoming Email: tstgerma@eou.edu

the near-exclusive origination in and dissemination by organizations staffed by those who are relatively privileged vis-à-vis the intended beneficiaries of such discourse's practice. Part I raises ethical concerns about this practice, then proposes the implementation of non-hegemonic feminist models to develop new strategies for respecting both cultural diversity and the humanitarian responsibility to protect individuals from SGBV. Feminist scholarship, jurisprudence, and activism made significant contributions to the shape of international criminal practice in this area during the 1990s special courts and criminal tribunals, particularly in Rwanda and the former Yugoslavia, and the particularities of the definitions of justice employed dramatically impact international legal discourse and practice today. Yet feminist scholars continue to debate the nature of the North American and Western European rape law reform movement's influence of on the Rome Statute (UN General Assembly, 1998), the authorizing law used to prosecute SGBV-related crimes at the International Criminal Court (ICC). Part I explores the process by which solutions developed by the rape law reform movement spread through statutory law and case law to emerge as global solutions to conflict-related SGBV in myriad cultural contexts.

Part II analyses the contributions and constraints posed by the "end the impunity model" which emerged as the prevailing approach to justice for conflict-related SGBV survivors, and describes its dissemination through the various post-conflict international courts. Subsequent analysis critiques the limitations of using such a universal model in local conflicts, and Part III explores the theoretical utility of decentering hegemonic feminism in responses to conflict-related SGBV.

## **Part I: International Humanitarian Law (IHL) and Conflict-Related Sexual Violence**

### **IHL: A Brief History**

While the War Crimes Commission of 1919 marked the first efforts to systematically document violence against non-combatants, the sheer scale of destruction wrought by WWII that was truly instrumental in the development of IHL and the international organizations charged with developing it. IHL is the body of law that seeks to limit the effects of armed conflict by protecting non-combatants and restricts the means and methods of warfare. IHL is distinct from human rights law, which applies principally in peacetime to protect individuals from government persecution, while humanitarian law governs relations between states in time of war and protects individuals from enemy powers (Meron, 2008). Violations of human rights law result principally in state responsibility, while violations of humanitarian law can result in state responsibility, armed reprisals, and individual criminal liability for the perpetrator at the International Criminal Court (ICC).

The IHL has roots in the work of the Nuremberg War Crimes Tribunal and the Tokyo Tribunal, which obliquely addressed conflict-related SGBV in charging Japanese troops with the the mass rape of Chinese women at Nanking (Yoshida, 2009) and sexual slavery in the form of "comfort women" (Soh, 2009). The Nuremberg War Crimes Tribunal did not prosecute for rape although testimony about sexual violence was presented (Askin, 1997, p.31). These paved the way for the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former

Yugoslavia (ICTY), the latter of which was the first to successfully prosecute rape as a war crime.

The most significant recent development toward addressing conflict-related sexual violence occurred in 1998, when 111 states became party to the Rome Statute that created the ICC, which commenced operation in 2002. Under Article 8, the Rome Statute allows the ICC to prosecute rape and sexual violence committed by combatants in the context of armed conflict as a war crime and allows the prosecution of widespread systematic sexual violence directed against any civilian population as crimes against humanity, and in some cases genocide under articles 6 and 7 (UN General Assembly, 1998). The statute gives the ICC jurisdiction over genocide, crimes against humanity and war crimes. The Rome Statute recognizes rape, sexual slavery, trafficking, enforced prostitution, forced pregnancy, enforced sterilization and any other form of SGBV violence of comparable gravity as crimes against humanity. The statute provides that these and any other form of sexual violence constituting a grave breach or serious violation of common Article 3 of the Geneva Conventions and can be prosecuted as war crimes if they occur during either international or internal armed conflict.

### **Definitions and Feminist Debates**

Definitions are integral to legal process. The ICC Elements of Crimes (ICC, 2011) defines rape and other forms of sexual violence by focusing on the coercive acts of the perpetrator, including threats and psychological oppression, rather than on physical force alone. The ICC's definition of rape is gender-neutral and refers generally to the invasion of the victim's body, rather than just the forced vaginal penetration with a penis (Amnesty International, 2010). However, in the world of international policy and aid, definitions can change according to the politics of the organizations, and understandings of SGBV differ by country, community and cultural context. The lack of a clear and commonly accepted language inhibits development of effective reporting systems and/or databases, and thus restrains prevention, monitoring, and victim advocacy efforts (Baker, 2007). Under the law every defendant must be informed clearly and with specificity of the crimes he or she is alleged to have committed, and thus the evolution of the legal definitions pertaining to war rape were key to the development of the Rome Statute and continue to impact the ICC's effectiveness in prosecuting conflict-related SGBV. Feminist scholarship and activism have been instrumental in constructing contemporary perceptions of conflict-related SGBV.

Feminist scholarship on the experiences of women both during and after conflict clearly reveals a number of key patterns at work despite the diverse cultural and geographical contexts in which conflict-related SGBV takes place. These include a dramatic rise in the number of female soldiers (Enloe, 2010; McKay, 2004), increased attention paid to the ways in which conflict is explicitly gendered (Enloe, 2000; Giles & Hyndman, 2004; Goldstein, 2003; Moser & Clark, 2001; Turshen & Twagiramaya, 1998), and efforts to incorporate women into the postconflict peace-building process (Meintjes, Turshen & Pillay, 2002; Cockburn, 2007; Mazurana, Raven-Roberts & Parpart, 2005). Yet the relatively recent emergence of concretized best practices, defined as a method or technique shown to demonstrate superior results, with respect to conflict-related SGBV remains relatively unexplored. Such best practices, despite their good intentions, recommend global solutions for what are inevitably local problems and are

frequently couched in human rights discourses presumed universally relevant yet are almost exclusively originated and disseminated by individuals in a privileged position vis-à-vis the intended beneficiaries of such discourse's practice. For instance, UN Women catalogued a wide variety of peacekeeping practices with respect to conflict-related SBGV, including firewood patrols, market escorts, night patrols and early-warning systems (UNIFEM/UN Women et al., 2010). While these attempts are noble, such broad overviews obscure the local realities of girls' and women's experiences in conflict zones by proposing universal solutions that ignore the particularities of culture and place.

Such attempts have considerable precedent in the United States, where feminist legal scholarship has begun to challenge this pro-prosecution approach arguing that these reforms have not been successful in the U.S. (Bumiller, 2008; Gruber, 2009). Nonetheless, this prosecution-oriented approach remains popular among the populace, prosecutors, and jurists involved with the ICTR, the ICTY, and the ICC, many of whom received their appointments due to their involvement with the legal rape reform movement and who secured this approach in the case law, procedural law, and the administrative court procedures surrounding victim/witnesses of wartime sexual violence (Halley, 2008). The purported benefits of criminalization are even more destructive in the international criminal prosecution arena when cultural beliefs about gender, sexuality, and violence are as varied as the countries where conflicts originate and where SGBV is not interpersonal but systemic and widespread among the civilian population.

Exporting flawed solutions from the North American criminal justice system raises serious ethical and human rights concerns regarding conflict-related SGBV, a great deal of which takes place in communities outside the North American ideological purview. Feminist scholars have documented how such macro-discourses are increasingly used by populations outside these geographical regions in ways that illuminate gendered points of tension in local communities (Charlesworth, 1994; Cook, 1994). Sally Engle Merry (2006) argues that despite the best efforts of the UN and advances in human rights law, violence against women across the globe is still perpetuated in the gap between legal principle and local practices.

## **Part II: The “End the Impunity” Model of Justice- Troubling Questions**

Two universal liberal concepts shared and promoted by some feminist rape law reformers govern the area of legal advocacy for survivors of conflict-related SGBV: (1) the rule of law, in which governmental decisions are made by applying known legal principles (Black's, 1979, UN ROL n.d.), and (2) ending impunity, defined as holding perpetrators accountable through criminal, civil, administrative or disciplinary proceedings (UN Principles, 2005). In terms of the development of statutory law, such as the Rome Statute, these concepts figure so powerfully that they create a hegemonic response to justice for war rape survivors. This hegemonic responses holds that prosecution of the perpetrator is the sole means by which survivors can seek justice, ideally through following the best practices advocated by legal organizations, such as the ICC and other special courts and tribunals.

International criminal lawyers involved in prosecuting wartime rape have very powerful perceptions of the boundaries of the law and how to use them to achieve a conviction. Carla Del Ponti, lead prosecutor for the ICTR and ICTY during the cases that

paved the way to the Rome Statute, tellingly noted that “victims feel we are picking and choosing perpetrators” because prosecutors’ duty toward judicial economy (measures taken to avoid unnecessary effort or expense on the part of the court or the court system) require them to do so. From this perspective, the role of the victim-witness is as a tool, a means to an end. That is not to say that the victim/witnesses cannot share a similar criminalization approach, but more often than not, they must be groomed to take the stand and give testimony in cases that have been specifically selected for their ability to produce a conviction. The prosecutor has jurisdiction over the crime and must often violate the boundaries, invade the borders, and disregard the agency of the victim-witness to achieve what the North American and Western European legal systems regard as “justice.” Clearly this is even more intensified in international criminal law practice, which operates as the enforcement arm of the legal system. Justice at the ICC is based on a hegemonic view of individual “justice” that leaves no room for community-based conceptions of justice.

Feminist scholarship has a long history, beginning with Susan Brownmiller (1975/1993), of acknowledging how the criminal justice system can conduct a “second rape” of the victim-witness, resulting in significant re-traumatization. In fact, much of the past and current reforms emanating from the feminist violence prevention movement have resulted from a desire to make a criminal prosecution less onerous for the victim. To date, 32 U.S. states have amended their constitutions to include rights of crime victims (National Center for Victims of Crime, 2010), which are culturally meaningful in terms of reframing attitudes and beliefs about sexual violence, but have not yielded an increase in the number of rape reports and convictions. Rape has the lowest arrest rate (25%) of any crime in the US, where police scandals of thousands of untested DNA evidence in rape kits in urban areas nationwide have challenged the reliability of the conviction rate analysis for the FBI (Keteyian, 2009). Similarly, in the United Kingdom, between 75 and 95 percent of rapes are never reported to the police (HMIC & HMCPSP, 2007) After 40 years of North American and Western European rape law reform, it appears that the end impunity approach has been less than efficacious.

This gives rise to some troubling questions. How have legal reforms that emerged from the prosecution of one man and one woman in North America or Western Europe translated to the prosecution of mass systemic rape elsewhere in the world? Are other approaches to justice presented as alternatives or is ending impunity the “one right way”? How are the needs of the survivors incorporated into the concepts of justice? Who benefits from the end the impunity approach most? Here Rwanda provides a particular significant case in point: between 1990 and 1994 it is estimated that between 250,000 and 500,000 women were raped (SURF, 2010). Rwanda is an example of a situation where there are as many perpetrators as victims and the criminal system cannot hope to provide “individual” justice to each survivor. The ICTR issued 21 sentences (18 convictions and 3 acquittals), the vast majority of which had no rape convictions; in fact, there were double the number of acquittals for rape, and the Prosecutor’s Office did not bring rape charges in 70% of cases (Nowrojee 2005).

The first time in history rape was explicitly recognized as an instrument of genocide and a crime against humanity was during the ICTR Akayesu (1998) trial, when the sole female judge at the ICTR at that time, Judge Navanethem Pillay, questioned the witnesses about rape and invited the prosecution to consider amending the indictment to

include charges for the rape crimes (Askin, 2004). Ironically, the issues presented before Pillay in 1998 were equally unresolved in the ICC trial of Thomas Lubanga, who was not charged with any form of SGBV despite his militia's responsibility for widespread rape and the sexual enslavement of girl soldiers (Simons, 2012). The exclusion of sexual violence in arrests, indictments and convictions were the very things that those involved in the creation of the Rome Statute sought to remedy through the promotion of the end impunity approach to war rape. Clearly, legal advances such as the Rome Statute constitute an enormous advance in IHL and much appreciation needs to be paid to these path-breaking legal scholars, practitioners, and activists for their work and accomplishments. Yet, any approach has benefits and limitations that must be explored in terms of their substantive results, as analyzed above, and through the flow of resources to victims, witnesses, and survivors of conflict-related sexual violence, as discussed below.

### **Following the Money: Resource Allocation**

The ICC's governing Rome Statute mandates aid and protection to survivors of conflict-related SGBV involved in a case selected by prosecutors, which leaves many out. The reparations aspect of this solution is further narrowed by the requirement that a conviction must ensue. The Rome Statute also mandates funding for organizations that aid in-country survivors, but these monies are dependent on availability and the politics of the ICC budgeting and administration process. Thus, help for victims under the legal model is highly selective and the international criminal prosecution industry is the big financial winner.

For example, the ICC continues to show overall budget growth; €102,630,000 in 2009, and €112,181,630 in 2012 (Women's Initiatives for Gender Justice, 2011), while the budget of the Trust Fund for Victims' budget was only €3,131,218 in 2009 and the total amount of funds available in in 2011 was €300,000 less than in 2010. The Trust Fund was established to support programs aimed at addressing the harms suffered by victims under the jurisdiction of the ICC. Funds are supposed to help victims with physical and psychological rehabilitation and material assistance (UN General Assembly 1998). In 2011 the Trust Fund reported total funds obligated for grants in the Democratic Republic of Congo (DRC) and northern Uganda since 2007/2008 amounted to €5,344,545, with €600,000 been allocated to activities in the Central African Republic (CAR), and reserves to supplement orders for reparations from the Court amounting to €1,000,000 (ICC, 2009). To put these numbers in perspective, Dr. Denis Mukwege, director and founder of Panzi General Referral Hospital in Bukavu, South Kivu province in the DRC, who won the United Nations Prize in the Field of Human Rights for 2008, reports that, "the number of women who have been raped since the beginning of the conflict is far higher than the U.N. estimates of 200,000-300,000...the real figure is more like half a million" (Manalsuren, 2009). Using these numbers approximately 5% of the overall ICC budget has gone to directly service survivors of conflict-related SGBV rape.

Examining the flow of resources indicates that end impunity battle cry of the ICC has resulted in a criminal justice industry that appears to serve the ICC's definition of justice quite well in the sense that the vast majority of funds go directly to the ICC rather than to survivors of conflict-related SGBV. The imbalance of financial resources between the interests of prosecution and survivor reparation exemplified in ICC funding allocations could be attributed to the gender inequality in privileging of individualistic

definitions of justice and gender inequality within the structures that enforce them. What this justice might look like to survivors of conflict-related SGBV remains to be seen. It may safely be assumed that many of the cross-cultural meanings of “justice” differ considerably from the witness participation, protection, and reparation approach of the ICC. On the other hand because particular concepts may be absent or defined differently in local settings does not immediately invalidate them, however the current IHL and the impunity model leaves little room for alternative approaches that are inclusive of the survivors perspectives of justice.

### **Part III: Alternative Approaches**

Women of color in the United States (Smith, 2005; Koyama, 2002) and Australia (Atkinson, 2002) have challenged the efficacy of state supported services for survivors of SGBV due to their exclusionary nature and bias toward white women. This critique also applies to the way feminist legal scholars impacted the development of ICTR and ICTY case law, the Rome Statue, and the ICC. The international criminalization approach of the ICC and other international tribunals exports many of the same problems critiqued in scholarship by feminists of color living and working in zones of privilege dislocated from areas in which conflict-related SGBV occurs.

Transnational feminist theorists similarly articulate critiques of the ways in which white feminists can potentially reinscribe neocolonial imperatives of political domination, economic exploitation, and cultural erasure in their accounts of SGBV; what Spivak (1994) articulated as “white men saving brown women from brown men”. Mohanty, for instance, argues that the assumption of homogeneity among women “seems predicated on the erasure of the history and effects of contemporary imperialism” (2003, pp. 110-111). These key concepts are directly applicable to rethinking understandings of justice for survivors of conflict-related sexual violence. Scholarship by women of color that describes the experiences of women living in racially segregated and systematically marginalized communities rather disturbingly mirrors patterns emergent amongst women facing conflict-related SGBV. For instance, Native American scholar and activist Andrea Smith (2006) documents patterns of control and surveillance, policing, homogenization of diverse cultural practices, and double marginalization of those who do not neatly fit victim models defined by the dominant society.

Smith’s observations closely resemble those of conflict-related SGBV survivors, whose needs are excluded from the discourse as attention is focused on neocolonial and neoliberal understandings of justice, victimhood, and survivors’ needs. This dependency on a notion of culture and gender as static concepts assumes that anything but the Western approach to SGBV justice and survivor services is a sign of underdevelopment and thus rationalized as easily ignored (Singleton, 2012). While recent UN conventions, such as the Rights of Indigenous Peoples, are much more rigorous and complex in their approach to culture, Charlesworth (2005) argues that the powerful tools that international humanitarian law offers for gender equality have actually been used to halt or retard advancement for women.

Polman (2010) reminds us that humanitarian crises, such as conflict-related SGBV, are always symptomatic of political circumstances and there is no apolitical way of responding to them. Indigenous and other women of color in the West call for an antiviolence movement that includes the history of women of color and requires a radical



rethinking of the legal models currently promoted by international bodies as “best practices.” We argue that the experiences of women in communities of color, which have survived genocide, systematic sexual violence, and the imposition of the rule of law can be most useful in the struggle to provide justice for conflict-related SGBV survivors. The question arises as to how the professional and academic elite from the international legal and aid community can place the voices and experiences of these survivors, activists, and scholars at the center. In other words, is it possible to envision a context where the systems of justice surrounding conflict-related SGBV could become accountable to the less powerful?

We acknowledge that the North American and Western European movements to prevent violence against women have made a tremendous impact on providing legal recourse where little previously existed and delivering much-needed services to survivors. In addition, international criminal law and rape as war crime prosecutions enacted through the ICTR, ICTY, and ICC serve as a powerful consciousness raising movement, in tandem with other international feminist campaigns, such that today journalists cover SGBV as a matter of course. Yet, the numbers of women (and girls) who are victimized through SGBV during conflict (and peace) continues to increase as does the brutality of these crimes and this requires that the international feminist movement to end violence against women to re-examine its philosophies, policies, and practices so it can better achieve its goals. In this vein, we have identified five specific challenges that feminist jurisprudence, public policy and service providers might want to explore.

### **Different Voices, Altered Approaches, and Anticipated Solutions**

First, international criminal justice via the ICC alone cannot deter offenders, protect survivors, or end impunity. Second, criminalization has resulted in untrained law enforcement, whether in the form of UN Peacekeepers or local/state police, contributing to survivor pain through bad procedures and actual commission of SGBV against women and girls. Third, criminalization often excludes victims marginalized in their own communities, including women with disabilities, sex workers, and undocumented women. Fourth, funding is channeled into policing, prosecution, and prisons and away from the needs of the survivors and their families, placing further constraints on their already limited abilities to access medical and psychological care, education, housing, and jobs. Finally, reliance upon international criminalization and humanitarian aid has resulted in an isolating, apolitical professionalization that alienates survivors leaving them disempowered, silenced, and distanced from social justice groups working on similar issues.

These five items all share the neoliberal philosophy (Harvey, 2007) of reliance on the individual and shifts focus away from developing ways communities can collectively respond to SGBV. In doing so, these principles reject one of the basic philosophies of feminist jurisprudence, which is to develop law and policy that does not isolate individual acts of violence from the larger context in which they occur. Feminist legal analysis needs to take the lead in developing new strategies to address the multiple ways in which communities experience and respond to conflict-related SGBV.

## **Intersectional Responses to Conflict-Related Sexual Violence**

African-American feminist scholars (Crenshaw, 1991; Hill Collins, 2000) provided feminism with the intersectional approach to race and gender, and Smith (2006) took that discourse one step further by describing how the politics of intersectionality could fundamentally shift how SGBV is analyzed. She describes SGBV as “not simply a tool of patriarchy but also a tool of colonialism and racism” that are used to victimize entire ethnic communities. She further describes how many in the Native American community argue that sexual violence is “traditional” (p. 13) and how this is a state of false consciousness created by internalized racism and sexism. Smith explains that gender violence certainly occurred prior to colonization but historical records show that it was a rarity as well as a severely punished. The question that arises here then is, can international feminist jurisprudence and policy find ways to help SGBV survivors reach into the pre-colonial past to reclaim and histories and traditions that celebrate women’s participation in the political and social norms that prevented and punished SGBV before colonization, war, and conflict? Like the indigenous peoples of North America, many ethnic groups in Africa for example, enjoyed a pre-colonial culture where women could serve as spiritual and political, leaders and many societies were matrilineal (Gunn Allen, 1986).

Can what Native American scholar and activist Paula Gunn Allen (1986) argued about colonizers needing to teach Native American people about gendered hierarchy and the role of physical/sexual abuse of women in maintaining it may be extrapolated to Sub-Saharan Africa? As part of her argument to de-center hegemonic feminism and the systematic denial of the history of SGBV against indigenous women and other women of color, Smith outlines the various forms of systematic sexually violent atrocities committed against Native American and African-American slave women by various state actors and military that match the brutality of the kinds Mukengere and Nangini (2009) make about rape with extreme violence in South Kivu, DRC.

Would it be possible to develop women-identified, community-based responses to conflict-related SGBV that do not wholly rely on the international or state criminal justice systems? Could transformative practices emerging from communities of color in North America and Western Europe be documented and disseminated to promote a collective response to SGBV that occurs in conflict and post conflict zones? How would the international movement to end violence against women be transformed if all feminists demonstrated by action and deed their respect for the leadership (and survivorship) of women of color? These are the questions we pose that might shape a new discourse around what a transnational feminist approach to justice for wartime SGBV might look like.

## **Creating New Best Practices and Models**

Our approach is molded on the theories and experiences of Native American women and communities as they have documented their work to develop systems of justice that do not divert accountability away from community and towards the prison industrial complex (Davis, 1998). However, Nielson & Silverman (1996) note that the reification of tradition has not been advantageous for native women who survive SGBV, and that survivors may be reluctant to pursue alternatives to criminalization/incarceration for SGBV because: (1) survivors are often pressured to “forgive and forget” in traditional

mediation programs; (2) some traditional alternatives focus more on maintaining community than on providing justice and safety for women; (3) offenses against children are more successful than those against adult women because communities are less likely to blame the child victim for the sexual assault; (4) traditional approaches to justice are more effective in rural isolated areas as the perpetrator is less likely to simply move away; (5) community members see SGBV as less of a crime when an adult women is the victim and will not support holding the perpetrator accountable; (6) elders admit that their own understandings of traditional punishments have been tainted by their own colonization process; (7) because SGBV is not considered a pre-colonial native “tradition” the colonial ways are better punishment. While these problems are responding to individual not systemic SGBV as found in conflict zones, they mimic many of the criticisms leveled against African communities that value traditional communal modes of justice for adjudicating SGBV.

A case in point is the model in the Rwandan *gacaca* courts established to provide restorative justice to victims of the genocide. *Gacaca*, derived from the Kinyarwanda word for the lawn upon which community members arbitrated disputes, this system places a strong emphasis on plea bargaining, community service and, above all, holding perpetrators accountable rather than offering mass amnesty (Meyerstein, 2007). The *gacaca* model demonstrates how “international law can ‘look to the bottom’” for solutions (Rajagopal, 2003) but the Native American experience shows that reification of the traditional is no solution when the crimes involve SGBV. However, it does point to how human rights advocacy conducted through extensive engagement with local stakeholders is an approach that should be central not marginalized, because it is prepared to appreciate these distinctions and engage local populations on their own terms. (Meyerstein, 2007). What is clear is that taking a binary approach alone is not leading to solutions that help survivors specifically or the community as a whole, irrespective of whether that approach involves criminalization or the community.

Developing a model that both accepts and resists the dominant international legalist model and does so from a standpoint respectful of culture, rather than sovereignty alone, might be worthy of more exploration. A form of justice that is attentive to the needs of postcolonial society in the developing world and in its emphasis on communal development and reconstruction driven by local, informal processes could address concerns about how the social and economic well-being of the polity takes precedence over the narrow focus on individual civil and political rights, as the liberal legalists and human rights activists tend to do, despite the impracticality of such interventions in post-conflict situations (Meyerstein, 2007).

Smith (2006) states the problem clearly: Thus our challenge is, how do we develop community- based models of accountability in which the community will actually hold perpetrators of SGBV accountable?” Centering responses to conflict related SGBV on indigenous feminism, as opposed to white or colonial women, will aid in the understanding of what justice means to individual stakeholders engaged in efforts to redress or prevent sexual violence in conflict and post-conflict zones. This re-centering demands that law and policy makers, as well as service providers, “address the interpersonal, state and structural violence simultaneously” (p. 160). This form of analysis suggests new directions that acknowledge that neither Western criminalization that seeks to “end impunity,” nor traditional restorative justice that reifies “tradition,” nor

“professionalized” services to survivors that are apolitical, offer panaceas for justice. Our own attempt to de-center has developed in to an approach that we propose below as a starting point for continuing this discourse.

### **Conclusion: The Lived Experience Model as a Feminist Strategy for Responding to Conflict-Related Sexual Violence**

This model uses a matrix perspective to analyze the roles and perspectives of stakeholders whilst demonstrating the complexity of disjunctures between international and local responses to the issue. Employing a unique intersectional methodology that focuses upon equal consideration of all perspectives (including those of perpetrators), the lived experience model documents the invisibility and restricted agency otherwise obscured in much of the discourse on conflict-related sexual violence. While the global human rights system is now deeply transnational taking place in global settings and with representatives from nations and NGOs from around the world, gender violence is still very local. Merry (2006) explains, “because gender violence is deeply embedded in systems of kinship, religion, warfare, and nationalism, its prevention requires major social change in communities, families, and nations” (p.2). Models that can appreciate this tension between the global and local have been developed.

Our model goes a step further, in its advocacy of employing a multi-method approach including participant observation, interviews, legal narrative, and policy analysis that incorporates all stakeholders on equal terms. The “lived experience” model allows applied anthropologists and feminist legal scholars to offer solutions to pressing social crises such as conflict-related sexual violence by ascertaining how stakeholders come to inhabit the particular line of reasoning that frames their thinking. Simply put, this model recommends asking a series of key questions regarding each stakeholder’s perspective: [1] how does this particular stakeholder stand to benefit or suffer from the current state of policy or law? [2] which structural forces help to construct the position the stakeholder has taken on the issue? [3] how might the stakeholder be encouraged to critically reexamine his or her position vis-à-vis others in order to facilitate future cooperation on more equitable grounds? The inquiry seeks to expose the deficits of international criminal prosecution or affirmations of human rights without addressing women’s social, political, and economic exclusion. The answers that emerge using such a model allow us to arrive at possibilities for constructing more effective assistance measures, particularly through a broader understanding of how bureaucracy and institutions function to disempower individuals in different ways (Herzfeld, 1993; Wedel, 1998).

Feminist scholarship can be of great use in the formulations of solutions to the problem of how conflict-related sexual violence could be best addressed. Stakeholders inhabit perspectives and are accordingly constrained by their professional roles. Institutional memory can be lengthy, and often functions as simmering arena of resentment, particularly in countries or regions where donor funding is limited yet necessary to the operation of social service provision in the absence of strong state support. These patterns can be seen in legal practice, particularly international criminal prosecution as the law itself is reified and mystified in a way unlike other professions except for perhaps medicine/science. The lived experience model can help to determine not only what these roles are, but how they sometimes function in opposition to one

another to produce counterproductive results. This is one of the greatest strengths of the “lived experience” model, which can provide concrete examples of how individuals believe the system is failing them. This model can also reveal how service provision workers rationalize the means by which their organizational protocols are failing the system.

Clearly, there is room for improvement in integrating feminist perspectives and practices into international responses to conflict-related SGBV, and as feminists there is room to de-center our approaches away from white middle class women and towards indigenous and other women of color. Or as Bumiller (2006) puts it, “human rights strategies should seek to empower women thorough forms of political action that support survivors’ individual sovereignty, rather than reliance on state powers of surveillance and punishment” (p. 135). Feminist scholarship is in a place to move the international human rights policy and international criminal law in a new direction both methodologically and substantively. Acknowledging the limitations of state power and criminalization is a first step towards tailoring human rights standards to the particulars of each individual country, ethnic group, or regional situation.

## Works Cited

- Amnesty International (2010). The International Criminal Court: Fact Sheet 7- Ensuring Justice for Women. Retrieved from:  
<http://www.amnesty.org/en/library/asset/IOR40/008/2000/en/1095575f-df60-11dd-aaaa-7d9091d4638f/ior400082000en.html>
- Askin, K. (2004) A decade of the development of gender crimes in International Courts and Tribunals: 1992 to 2003. *Human Rights Brief*, 11(3),16-27.
- Askin, K. (1997). *War crimes against women: Prosecution in international war crimes tribunals*. The Hague: Kluwer Law International.
- Atkinson, J. (2002). *Trauma trails recreating song lines: The transgenerational effects of trauma in indigenous Australia*. Spinifex Press: North Melbourne Australia.
- Baker, L. (2007). Gender-based violence case definitions: Towards clarity in incident classification. *International Research Committee*: circulated paper.
- Black's Law Dictionary, Fifth Edition. (1979). Eagan, MN: West Publishing Company.
- Brownmiller, S. (1975/1993). *Against our will: Men, women, and rape*. New York: Simon & Schuster/Fawcett Columbine)
- Bumiller, K. (2008). *In an abusive state: How neoliberalism appropriated feminist movement against sexual violence*. Durham, NC: Duke University Press.
- Charlesworth, H. (2005). Not waving but drowning: Gender mainstreaming and human rights in the United Nations. *Harvard Human Rights Journal* 18, 1-18.
- Charlesworth, H. (1994). What are “Women's International Human Rights”? In R.J. Cook (Ed.), *Human rights of women: National and international perspectives*. Philadelphia: University of Pennsylvania Press.

- Cockburn, C. (2007). *From where we stand: War, women's activism and feminist analysis*. London: Zed Books.
- Cook, R.J. (1994). Women's International Human Rights Law: The way forward. In R.J. Cook (Ed.) *Human rights of women: National and international perspectives* (pp. 3-36). Philadelphia: University of Pennsylvania Press.
- Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43(6), 1241-1299.
- Davis, A. (1998). Masked racism: Reflections on the prison-industrial complex. *Colorlines: News for Action*. Retrieved from: [http://colorlines.com/archives/1998/09/masked\\_racism\\_reflections\\_on\\_the\\_prison\\_industrial\\_complex.html](http://colorlines.com/archives/1998/09/masked_racism_reflections_on_the_prison_industrial_complex.html)
- Del Ponti, C. & Sudetic, C. (2009). *Madame Prosecutor: Confrontations with humanity's worst criminals and the culture of impunity*. New York: Other Press.
- Enloe, C. (2010). *Nimo's war, Emma's war: Making feminist sense of the Iraq war*. Berkeley, CA: University of California Press.
- Enloe, C. (2000). *Manuevers: The international politics of militarizing women's lives*. Berkeley, CA: University of California Press.
- Giles, W. & Hyndman, J. (2004). *Sites of violence: Gender and conflict zones*. Berkeley, CA: University of California Press
- Goldstein, J. (2003). *War and gender: How gender shapes the war system and vice versa*. Cambridge: Cambridge University Press
- Gunn Allen, P. (1986). *The sacred hoop*. Boston: Beacon Press.
- Halley, J. (2008). Rape at Rome: Feminist interventions in the criminalization of sex-related violence in positive international criminal law. *Michigan Journal of International Law*, 30, 1-25.
- Harvey, D. (2005). *A brief history of neoliberalism*. Oxford: Oxford University Press.
- Her Majesty's Inspectorate of the Constabulary (HMIC) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI). (2007). Without consent: A joint review of the investigation and prosecution of rape offences. Retrieved from [www.hmic.gov.uk](http://www.hmic.gov.uk).
- Herzfeld, M. (1993). *The social production of indifference: Exploring the symbolic roots of Western bureaucracy*. Chicago: University of Chicago Press.
- Hill Collins, P. (2000). *Black feminist thought: Knowledge, consciousness, and the politics of empowerment*. New York: Routledge.
- ICC/International Criminal Court. (2011). Elements of crimes. The Hague: The International Criminal Court. Retrieved from <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

- ICC/International Criminal Court. (2009). Report of the Court on the activities and projects.  
Retrieved from <http://www.icc-cpi.int/Menus/ASP/Sessions/Documentation/8th+Session/>
- Kanyangara, P., Rime, B., Philippot, P. & Yzerbyt, V. (2007). Collective rituals, emotional climate and intergroup perception: Participation in “Gacaca” tribunals and assimilation of the Rwandan genocide. *Journal of Social Issues*, 63 (2), 387-403.
- Keteyian, A. (2009). Rape in America: Justice denied. *CBS News*. Retrieved from: [http://www.cbsnews.com/2100-500690\\_162-5590118.html](http://www.cbsnews.com/2100-500690_162-5590118.html)
- Koyama, E. (2006). Disloyal to feminism: Abuse of survivors in the domestic violence system. In *Color of violence: The Incite! Anthology* (pp. 208-222). Cambridge, MA: South End Press.
- Manalsuren, N. (2009). Congo-Kinshasha: How Many More Will Be Raped? *AllAfrica*. Retrieved from <http://allafrica.com/stories/200902130019.html>
- Mazurana, D., Raven-Roberts, A. & Parpart, J. (Eds.) (2005). *Gender, conflict and peacekeeping*. Lanham, MD: Rowman and Littlefield
- McKay, S. & Mazurana, D. (2004). *Where are the girls? Girls in fighting forces in Northern Uganda, Sierra Leone and Mozambique: Their lives during and after war*. Montreal: International Center for Human Rights and Democratic Development.
- Meintjes, S., Turshen, M. & Pillay, A. (2002). *The aftermath: Women and post-conflict transformation*. London: Zed Books.
- Meron, T. (2008). Human rights law marches into new territory. Marek Nowicki Memorial Lecture. Retrieved from [http://web.ceu.hu/legal/pdf%20documents/Nowicki/Meron\\_Enforcement%20of%20HRwarsawnowicki13nov08.pdf](http://web.ceu.hu/legal/pdf%20documents/Nowicki/Meron_Enforcement%20of%20HRwarsawnowicki13nov08.pdf)
- Merry, S. (2006). *Human rights and gender violence: Translating international law into local justice*. Chicago: University of Chicago Press.
- Meyerstein, A. (2007). Between law and culture: Rwanda’s *Gacaca* and postcoloniality. *Legality, Law & Social Inquiry*, 32 (2), 467-508.
- Mohanty, C. (2003). *Feminism without borders: Decolonizing theory, practicing solidarity*. Durham and London: Duke University Press.
- Moser, C. & Clark, F. (Eds.) (2001). *Victims, perpetrators or actors? Gender, armed conflict and political violence*. London: Zed Books.
- Mukengere, M. & Nangini, C. (2009). Rape with extreme violence: The new pathology in South Kivu, DRC. *Public Library of Science and Medicine*, 6(12), 1-5.
- National Center for Victims of Crime. (2010). Issues: Victims’ Bill of Rights. Retrieved from <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32697>

- Nielson, M. & Silverman, R. (1996). *Native Americans, crime, and justice*. Boulder: Westview Press.
- Nowrojee, B. (2005). "Your justice is too slow": Will the ICTR fail Rwanda's rape victims? United Nations Research Institute for Social Development (UNRISD). Occasional Paper 10. Geneva: UNRISD.
- Polman, L. (2010). *The crisis caravan: What is wrong with humanitarian aid*. London: Metropolitan Books.
- Rajagopal, B. (2003). *International law from below: Development, social movements and World resistance*. Cambridge: Cambridge University Press.
- Simons, M. (2012). International criminal court issues first sentence. *New York Times*. Retrieved from <http://www.nytimes.com/2012/07/11/world/europe/international-criminal-court-issues-first-sentence.html?emc=eta1>
- Singleton, J. (forthcoming 2012). The South African Sexual Offences Act and local meanings of coercion and consent in KwaZulu Natal. *African Studies Review*, forthcoming fall 2012.
- Smith, A. (2005). *Conquest: Sexual conquest and American Indian genocide*. Cambridge, MA: South End Press.
- Soh, S. (2009). *The comfort women: Sexual violence and postcolonial memory in Korea and Japan*. Chicago: University of Chicago Press.
- Spivak, G. (1998). Can the subaltern speak? In C. Nelson and L. Grossberg (Eds). *Marxism and the interpretation of culture* (pp. 271-316). Champaign-Urbana, IL: University of Illinois Press.
- SURF /Survivors Fund: Supporting Survivors of the Rwanda Genocide. (2010). Statistics of the Genocide. Retrieved from <http://www.survivors-fund.org.uk/resources/history/statistics.php>
- Turshen, M. & Twagiramaya, C. (1998). *What women do in wartime: Gender and conflict in Africa*. London: Zed Books
- UN/United Nations General Assembly (1998). *Rome Statute of the International Criminal Court (last amended January 2002)*, 17 July 1998, A/CONF.183/9. Retrieved from <http://www.unhcr.org/refworld/docid/3ae6b3a84.html>
- UN/United Nations Principles. (2005). The amended Set of Principles for the Protection and



Promotion of Human Rights Through Action to Combat Impunity, submitted to the

- United Nations Commission on Human Rights on 8 February 2005.
- UN ROL/United Nations Rule of Law (n.d.) What is the rule of law? Retrieved from [http://www.unrol.org/article.aspx?article\\_id=3](http://www.unrol.org/article.aspx?article_id=3)
- UNIFEM/UN Women, United Nations Department of Peacekeeping Operations, UN Action against Sexual Violence in Conflict. (2010). Addressing conflict-related sexual violence- An analytical inventory of peacekeeping practice. Retrieved from [http://www.unifem.org/materials/item\\_detail.php?ProductID=172](http://www.unifem.org/materials/item_detail.php?ProductID=172)
- Women's Initiatives for Gender Justice. (2011). Gender report card on the International Criminal Court. Women's Initiatives for Gender Justice: The Hague.
- Yoshida, T. (2009). *The making of "The Rape of Nanking": History and memory in Japan, China and the United States*. New York: Oxford University Press.