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CATHARINE A. MacKINNON

**are women human?**

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and other international dialogues

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## Crimes of War, Crimes of Peace

Where, after all, do universal human rights begin? In small places, close to home.

—Eleanor Roosevelt

### I

Behind all law is someone's story—someone whose blood, if you look closely, leaks through the lines. It is not only in the common law that the life of the law is experience.<sup>1</sup> The loftiest legal abstractions, however strenuously empty of social specificity on the surface, are born of social life: amid the intercourse of particular groups, in the presumptive ease of the deciding classes, through the trauma of specific atrocities, at the expense of the silent and excluded, as a victory (usually compromised, sometimes pyrrhic) for the powerless. Principle begins in reality. Law does not grow by syllogistic compulsion; it is pushed by the social logic of domination and challenge to domination, forged in the interaction of change and resistance to change. Text does not beget text; life does. The question—a question of politics and history and therefore law—is whose experience.

Human rights principles are not based on the experience of women. It is not that women's human rights have not been violated. When women are violated like men who but for sex are like them—when women's arms and legs bleed when severed, when women are shot in pits and gassed in vans, when women's bodies are salted away at the bottom of abandoned

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mines or dropped from planes into the ocean, when women's skulls are sent from Auschwitz to Strasbourg for experiments—this is not recorded as the history of human rights atrocities to women. They are Argentinian or Honduran or Jewish. When things happen to women that also happen to men, like being beaten and disappeared and tortured to death, the fact that they happened to women is not noted in the record books of human suffering. When no war has been declared and still women are beaten by men with whom they are close, when wives disappear from supermarket parking lots, when prostitutes float up in rivers or turn up under piles of rags in abandoned buildings, these atrocities go unmarked entirely in the record of human suffering because the victims are women and it smells of sex. What happens to women is either too particular to be universal or too universal to be particular, meaning either too human to be female or too female to be human.

Women are violated in many ways that men are not, or rarely are; many of these violations are sexual and reproductive.<sup>2</sup> Ranging from objectification to killing,<sup>3</sup> from dehumanization and defilement to mutilation and torture to sexual murder, this abuse occurs in forms and settings and legal postures that overlap every recognized human rights convention but is addressed, effectively and as such, by none. What most often happens to women escapes the human rights net. Something—jurisdictional, evidentiary, substantive, customary, or habitual—is always wrong with it. Abuses of women as women rarely seem to fit what these laws and their enforcing bodies have in mind; the more abuses there are, the more they do not fit. Whether in war or in what is called peacetime, at home or abroad, in private or in public, by our side or the other side, man's inhumanity to woman is ignored.

Women's absence shapes human rights in substance and in form, effectively defining what a human and a right are. What does it mean to recognize a principle called human rights that does not really apply to the systemic and systematic violations of the dignity and integrity and security and life of over half the human race? It means that what violates the dignity of others is dignity for them; what violates the integrity of others is integrity for them; what violates the security of others is as much security as they are going to get. Even death to a full human being is less serious for them. Half of humanity is effectively defined as nonhuman, subhuman, properly rightsless creatures, beings whose reality of violation, to the extent it is somehow female, floats beneath international legal space.

For a compressed illustration of some current realities that are at once a hair's breadth and a gendered light-year away from the atrocities that

ground human rights principles and fill the factual reports of Amnesty International,<sup>4</sup> consider this communication from a researcher of Bosnian and Croatian descent gathering information in Croatia and Bosnia-Herzegovina:

Serbian forces have exterminated over 200,000 Croatians and Muslims thus far in an operation they've coined "ethnic cleansing." In this genocide, in Bosnia-Herzegovina alone over 30,000 Muslim and Croatian girls and women are pregnant from mass rape. Of the 100 Serbian-run concentration camps, about 20 are solely rape/death camps for Muslim and Croatian women and children. . . . [There are] news reports and pictures here of Serbian tanks plastered with pornography—[and reports that those who] catch the eye of the men looking at the pornography are killed. . . . Some massacres in villages as well as rapes and/or executions in camps are being videotaped as they're happening. One Croatian woman described being tortured by electroshocks and gang-raped in a camp by Serbian men dressed in Croatian uniforms who filmed the rapes and forced her to "confess" on film that Croatians raped her. In the streets of Zagreb, UN troops often ask local women how much they cost. . . . There are reports of refugee women being forced to sexually service them to receive aid. . . . Tomorrow I talk to two survivors of mass rape, thirty men per day for over three months. . . . The UN passed a resolution to collect evidence, a first step for a war crimes trial, but it is said there is no precedent for trying sexual atrocities.<sup>5</sup>

Human rights were born in a cauldron, but it was not this one. Rape, forced motherhood, prostitution, pornography, and sexual murder, on the basis of sex and ethnicity together, have not been the horrors that so "outraged the conscience"<sup>6</sup> of the relevant legal world as to imprint themselves on the international legal order.

Formally illegal or not, as policy or merely as what is systematically done, practices of sexual and reproductive abuse occur not only in wartime but also on a daily basis in one form or another in every country in the world. Under domestic and international law, whether or not prohibited on their face, these practices are widely permitted as the liberties of their perpetrators, understood as excesses of passion or spoils of victory, legally rationalized or officially winked at or formally condoned.<sup>7</sup> Even where international instruments could be interpreted to prohibit such practices, it is telling that their cultural supports are more likely to provide the basis for exempting states from their reach than the foundation for a claim of sex discrimination.<sup>8</sup>

The war against Croatia and Bosnia-Herzegovina<sup>3</sup> exemplifies how existing approaches to human rights can work to cover up and confuse who is doing what to whom and effectively condone atrocities. All state parties are covered by the relevant international human rights guarantees, laws of war, and customary international law.<sup>9</sup> But nothing has yet been invoked to stop the abuses described in the communication or to hold the perpetrators accountable.<sup>10</sup> What is the problem? The fact of Serbian aggression is beyond question, just as the fact of male aggression against women is beyond question, here and everywhere. "Ethnic cleansing" is a Serbian policy of extermination of non-Serbs with the goal of "all Serbs in one nation," a "Greater Serbia" encompassing what was called Yugoslavia.<sup>11</sup> "Ethnic cleansing" is a euphemism for genocide. Yet this genocidal war of aggression has repeatedly been construed as bilateral, a civil war or an ethnic conflict, to the accompaniment of much international wonderment that people cannot get along and pious clucking at the behavior of "all sides"<sup>12</sup> in a manner reminiscent of blaming women for getting themselves raped by men they know. To call this a civil war is like calling the Holocaust a civil war between German Aryans and German Jews.

One result of this equalization of aggressor with aggressed-against is that these rapes are not grasped either as an instrumentality of genocide or as a practice of misogyny, far less as both at once, continuous at once with this ethnic war of aggression and the gendered war of aggression of everyday life. This war is to everyday rape what the Holocaust was to everyday anti-Semitism. Muslim and Croatian women and girls are raped, then murdered, by Serbian military men, regulars and irregulars, in their homes, in rape/death camps, on hillsides, everywhere. Their corpses are raped as well.<sup>13</sup> When this is noticed, it is either as genocide or as rape, or as femicide but not genocide, but not as rape as a form of genocide directed specifically at women. If it is seen either as part of a campaign of Serbs against non-Serbs or as an onslaught by combatants against civilians, it is not seen as an attack by men against women. Or, in the feminist whitewash, it becomes just another instance of aggression by all men against all women all the time, rather than what it is, which is rape by certain men against certain women. The point seems to be to obscure, by any means available, exactly who is doing what to whom and why.<sup>14</sup>

When the women survive, the rapes tend to be regarded as an inevitability of armed conflict, part of the war of all against all, or as a continuation of the hostilities of civil life, of all men against all women. Rape does occur in war among and between all sides; rape is a daily act by men against women and is always an act of domination by men over women.

But the fact that these rapes are part of an ethnic war of extermination being misrepresented as a civil war among equal aggressors<sup>15</sup> means that Muslim and Croatian women are facing twice as many rapists with twice as many excuses, two layers of men on top of them rather than one, and two layers of impunity serving to justify the rapes: just war and just life.

Like all rapes, these rapes are particular as well as generic, and the particularity matters. This is ethnic rape as an official policy of war:<sup>16</sup> not only a policy of the pleasure of male power unleashed; not only a policy to defile, torture, humiliate, degrade, and demoralize the other side; not only a policy of men posturing to gain advantage and ground over other men. It is rape under orders: not out of control, under control. It is rape unto death, rape as massacre, rape to kill or make the victims wish they were dead. It is rape as an instrument of forced exile, to make you leave your home and never come back. It is rape to be seen and heard by others, rape as spectacle. It is rape to shatter a people, to drive a wedge through a particular community. It is the rape of misogyny liberated by xenophobia and unleashed by official command.<sup>17</sup> It is rape as genocide.

It is rape made sexy for the perpetrators by the defenselessness and youth of many of the victims and the rapists' absolute power to select victims at will. It is rape made more arousing by the ethnic hostility against a designated enemy—"For Serbia"—and made to seem right by lies about the behavior of that enemy. It is rape made exciting by knowing that there are no limits on what can be done, that the women can be raped to death. Most of all, it is rape made sexually irresistible by the fact that the women are about to be sacrificed, by the ultimate power of reducing a person to a corpse, by the powerlessness of the women and children in the face of their imminent murder at the hands of their rapist. It is murder as the ultimate sexual act. Do not say it is not sex for the men. When the men are told to take the women away and not bring them back, they rape them, then kill them, then sometimes rape them again, cut off their breasts, and rip out their wombs.<sup>18</sup> One woman was allowed to live so long as she kept her Serbian captor hard all night orally, night after night after night.<sup>19</sup>

This is rape as torture and rape as extermination. Some women who are not killed speak of wanting to take their own lives. It is at once mass rape and serial rape indistinguishable from prostitution. It is concentration camp as brothel: women impounded to be passed around by men among men.<sup>20</sup> It is also rape as a policy of ethnic uniformity and ethnic conquest, annexation and expansion, acquisition by one nation of others, colonization of women's bodies as colonization of the culture they symbolize and embody as well as of the territory they occupy. It is rape because a Serb wants

your apartment. It is rape for reproduction as ethnic liquidation: Croatian and Muslim women are raped to help make a Serbian state by making Serbian babies.<sup>21</sup>

This is ethnic rape. If this were racial rape, it would be pure pollution, the children regarded as dirty and contaminated: their mothers' babies, as in the American South under slavery, Black babies. Because it is ethnic rape, the children are regarded as clean and purified: their fathers' babies, Serbian babies, as clean as anyone with a woman's blood in them and on them can be. The idea seems to be to create a fifth column within Croatian and Muslim society, children (all sons?) who will rise up and join their fathers. Much Serbian ideology and practice takes a page from the Nazi book. Combining with it the archaic view that the sperm carries all the genetic material, the Serbs have achieved the ultimate racialization of culture, the (one hopes) final conclusion of Nazism: now culture is genetic.<sup>22</sup>

The spectacle of the UN troops violating the population they are supposed to protect adds a touch of the perverse. My correspondent observes that "there are . . . reports of UN troops participating in raping Muslim and Croatian women from the Serb rape/death camps. Their presence has apparently increased trafficking in women and girls through the opening of brothels, brothel-massage parlors, peep-shows, and the local production of pornographic films."<sup>23</sup> A former United Nations Protection Force (UNPROFOR) commander reportedly accepted offers from Serbian commanders to bring him Muslim girls from the camps for orgies.<sup>24</sup> This paradigmatic instance of the male bond across official lines pointedly poses, in the gender context, Juvenal's question of who shall guard the guardians—especially when the guardians are already there to guard the other guardians. The Nazis took pictures, but in its sophisticated employment of media technology, in the openness of its use of pornography, in its conscious making of pornography of its atrocities, this is perhaps the first truly modern war.<sup>25</sup>

Where do international human rights law and humanitarian law stand on this? In real terms, the rules that govern the law's treatment of women elsewhere pertain here as well: A human is not one who is sexually and reproductively violated. One is not human "down there." Nor is a human right something a man in society or in a state of nature takes away from you and others like you. In fact, there are no others like you, because "a man" defines what "an individual" means, and human rights are mostly "individual" rights. Men have their human rights violated; rather, when someone's human rights are recognized as violated, he is probably a man.

Men are permitted to be individuals so can be violated as individuals. If you are hurt as a member of a group, the odds that the group will be recognized as violated, considered human, are improved if it includes men. Under guarantees of international human rights, as well as in everyday life, a woman is "not yet a name for a way of being human."<sup>26</sup>

A right, as this legal definition is lived in reality, becomes something no woman, as a member of the group women, has to lose. A right is also something only an entity with the power of a nation can violate; it is a duty of government not to interfere with civil and political liberties as they socially exist. The role of international law has been largely, in Isaiah Berlin's sense,<sup>27</sup> negative. It could be so much more, but it tends to foster human rights less through mandating governmental intervention than through enforcing governmental abstinence. In other words, if your human rights are going to be violated, pray it is by someone who looks like a government, and that he already acted, and acted wrong.

In Europe, some basis exists for interpreting international law to require that governments act in situations like these; the affirmative state is more congenial to the European legal tradition in any case.<sup>28</sup> Sometimes international human rights law is stretched to countenance action against private violations, but this is pursued selectively. Honduras was held responsible for murders by private death squads that both acted as if they were official and were officially permitted to operate.<sup>29</sup> "Mainstream human rights groups have taken on the phenomenon of 'disappearances' in Argentina, murder of indigenous rubber tappers in Brazil, and racially-motivated hate crimes—all abuses perpetrated by private individuals," notes Lori Heise, "but when it comes to the beating and murder of millions of women each year, their hands are tied."<sup>30</sup>

The violations of the human rights of men better fit the paradigm of human rights violations because that paradigm has been based on the experiences of men. Male reality has become human rights principle, or at least the principle governing human rights practice. Men have and take liberties as a function of their social power as men. Men have often needed state force to get away with subjecting other men; slavery and segregation in the United States and Hitler's persecutions were explicitly legalized. So the model of human rights violation is based on state action. The result is when men use their liberties socially to deprive women of theirs, it does not look like a human rights violation. When men are deprived of theirs by governments, it does.

In the case of women, because male dominance is built into the social

structure, social force is often enough to deprive them of human rights on a mass scale. Even so, states do collaborate elaborately, not just by abdicating social life but by intervening legally to entitle men to much of the power they socially exercise, legitimating what men can get away with in fact. But even recognizing this fairly active state involvement, most women are not directly raped, forcibly impregnated, and trafficked by state policy, at least not most of the time. Although the state in some way stands behind most of what men do to women, men typically have enough power to control and violate women without the state's explicitly intervening to allow it. As a result, women are not seen as subjected by the state as such, so their condition is regarded as prelegal, social and hence natural, and so largely outside international human rights accountability.

Now consider that most human rights instruments empower states to act against states, rather than individuals or groups to act on their own behalf. Given that only state violations of human rights are recognized, this is very odd. States are the only ones recognized as violating human rights, yet states are also the only ones empowered to redress them. It is not only the fox guarding the henhouse, it is the guardians guarding the guardians. Not only are men's so-called private acts against women left out; power to act against public acts is left exclusively in the hands of those who commit those acts. No state effectively guarantees women's human rights within its borders. No state has an incentive to break ranks by setting a human rights standard for women's status and treatment that no state yet meets. Internationally, men's states protect each other the way men protect each other from accountability for violations of women within states. At least this is one explanation for the failure of international human rights law effectively to empower individuals or groups of women to enforce their own human rights against individuals and states alike.<sup>31</sup> Which state is in a position to challenge another state on women's human rights? Which state ever will?

Wartime is exceptional in that atrocities by soldiers against civilians are always essentially state acts. But men do in war what they do in peace. When it comes to women, at least to civilian casualties, the complacency that surrounds peacetime extends to war, however the laws read. And the more a conflict can be framed as *within* a state, as a civil war, as social, as domestic, the less human rights are recognized as being violated.<sup>32</sup> In other words, the closer a fight comes to home, the more "feminized" the victims become no matter their gender, and the less likely international human rights will be found to be violated, no matter what was done.

## II

The received concepts at work here have a complex history, mostly a western one, which can be read and compressed as follows. The contractualist liberals, building on Greek and Roman antecedents, opposed medieval status notions that assigned human value within a rigid hierarchy based on birth. Seeking to secure human freedom against state tyranny, they posited the radical notion that each person, *qua* human, had, meaning had by nature, irrevocable and equal entitlements to life, liberty, security, dignity, property, and so on. Through the American and French revolutions, this idea of inalienable human worth called individual rights was entrenched, checking organized power in the form of government. Subsequently, some transnational agreements further elevated and enshrined the same recognitions as binding among state parties.

Then the Third Reich utterly violated all such rights—*inter alia* by manipulating the pre-1945 system that left minority protection exclusively to states<sup>33</sup>—isolating and liquidating those it saw as inferior or polluting or oppositional. In particular, the official attempted extermination of the Jews as a people galvanized the notion of supranational guarantees of human rights with a survival urgency. This organized genocide by government policy indelibly marked and fundamentally shaped the content, priorities, sensitivities, and deep structure of the received law of human rights in our time. In a reading of this reality, more than any other, contemporary human rights finds its principled ground.

Largely beneath notice in this tradition has been the status of women as such, socially subordinated to men and excluded or ignored, marginalized or subjected by state policy. Women's enforced inequality has been a reality on which all these systems are materially predicated so seamlessly it has been invisible. Women were not citizens in Greek democracy; they were wives, slaves, prostitutes.<sup>34</sup> In this setting, Aristotle formulated his equality principle as treating likes alike and unlikes unalike—a concept fundamentally unquestioned since, including in the international human rights context. In this approach, it does not matter whether one was hurt or helped, permitted to dominate or kept subordinated; all that matters is that empirical condition, no matter how created, fits normative treatment.<sup>35</sup> That women were apparently so different to Aristotle as not to be treated unequally under his principle when excluded from citizenship has not been considered a drawback or an indication that something is amiss.

Building on this tradition, the original liberals formulated their social compacts in and for societies in which women could not even vote. With

the exception of John Stuart Mill,<sup>36</sup> they did not see a problem in this, projecting their purportedly universal notions of what have come to be called human rights in ways that did not explicitly include women and effectively kept most women from access to them. Humans own property; women mostly cannot; more often they are property. Humans are equal because they can kill; women are socialized not to kill and are punished, not glorified, when they do. Humans consent to a regime or leave it; women have no voice to dissent, no place to go, and no means of leaving.<sup>37</sup> At the same time, guarantees women specifically need because of sex inequality in society, in order to live to a standard defined as human—like freedom from being bought and sold as sexual chattel, autonomous economic means, reproductive control, personal security from intimate invasion, a credible voice in public life, a nonderivative place in the world—were not considered at all.

What women need for equality was not only not guaranteed; much of women's inequality was guaranteed in the form of men's individual civil liberties.<sup>38</sup> In these theories, abuses of women were tacitly if not explicitly condoned as individual rights. What were called individual rights have become, in life, rights of men as a group over women individually and as a class. Women's rape becomes men's liberty, gang-rape their fraternity, prostitution their property, forced pregnancy their family and their privacy, pornography their speech. Put another way, whatever their rebellions accomplished for human freedom, and it was substantial, the American Revolution did not free the slaves, and the French Revolution did free the Marquis de Sade—facts connected by legitimating a traffic in human beings and the sexual abuse of women for economic gain. This is what the received concept of equality meant and largely still means.

Because women are a group whose claim to human status is tenuous and denied, the attempt to apply human rights law to women as such makes two more general problems worse. Human rights have no ground and no teeth. As to teeth, human rights are enforced internationally primarily between states, states that agree to them. Many, such as the United States, do not agree to many of them. Enforcement is mainly through reporting, meaning moral force, meaning effective nonenforcement. Signatory countries are even permitted formal excuse from compliance, a practice disproportionately used to evade sex equality provisions.<sup>39</sup> The covenants against trafficking women, for example, are many and venerable,<sup>40</sup> yet the traffic continues unabated, untouched, flourishing. Thailand even traffics in women by policy.<sup>41</sup> China may officially force abortions and sterilizations,<sup>42</sup> yet nothing is done. Enforcement of human rights against

states' lack of action and against private parties may be possible in principle but is virtually absent in practice. For women, international human rights present the biggest gap between principle and practice in the known legal world.

Many existing international instruments guarantee sex equality.<sup>43</sup> Yet so little of women's experience of violation of human rights has been brought under them that it becomes necessary to inquire into the foundations of human rights to explain why. The primary foundation of human rights has been natural law, a secular religion that moves only those who believe in it. Its content tends to redescribe the social status quo and attribute it to nature. (Emphatic use of the existential verb to affirm loudly and often that women "are" human beings carries only the clout of its speaker's decibel level.) Positive law helps little more, since women have had little voice in its formulation in most places. Morality, an alternative ground, can be moving, but does not mean anyone has to do anything, as illustrated by the use of the phrase "moral victory" to refer to an actual defeat. All these grounds come down to social power in the end. If you have it, you can meet the tests for "human"; but power is exactly what women are socially denied, which is why their human rights can be violated and why they need them recognized.

At its philosophical foundations, the natural law tradition on which human rights remain primarily based has never been clear on whether women are men's natural equals. Rather, to oversimplify a complicated debate, it has been relatively clear that they are not and has provided no method for resolving different conclusions, each equally firmly said to be predicated on the law of nature. Nor has it reconciled its observation that sex is a natural difference with its view that equality is predicated on natural identity. To those who ground human rights in the opportunity to live out one's life project rationally,<sup>44</sup> it should be pointed out that, socially speaking, women as women have not been permitted a life project<sup>45</sup> and are widely considered as not possessed of rationality, or of what passes for reason among men. Others ground human rights in basic personal liberty<sup>46</sup> or in fundamental human dignity,<sup>47</sup> the problem being that you already have to have them to have a human right violated when you are denied them. So, it's back to nature.

Mortimer Adler exemplifies rather than exposes this circularity when he says, "If there are no natural rights, there are no human rights; if there are no human rights, there cannot be any crimes against humanity."<sup>48</sup> Women's problem has been that society and law do not agree that nature made them human, so nothing that is done to them is a crime against humanity, so to

speak, because they have none. If society gives you no rights, such that a state need never deny them to keep you from having them, it may do you a little good to have them formally guaranteed in international law. Free of this essentialist circularity, the task is to ground a claim to crimes against humanity clear of natural rights, which are not recognized to exist in nature unless they are recognized to exist in society. In other words, all discourse about nature is a social discourse.

Horror at the Holocaust grounds modern morality. No one knows what is good, but nearly everyone knows that the Holocaust was evil. We may not know what human is, but the Holocaust was inhuman. Jewish women were distinctively abused in ways that connect to anti-Semitic misogyny to this day and startlingly resemble the tortures of Croatian and Muslim women by Serbs. The horrific tortures and extermination of millions of Jews of both sexes because they were Jews has overshadowed everything then and since.

Considered in terms of equality theory, the Third Reich can be seen to follow an unbroken line from Aristotle through American segregation of treating “likes alike and unlikes unalike”—Jews having been rendered “unlike” Aryans.<sup>49</sup> Yet human rights law still uses the same equality concept, without reassessment. The dominant lesson that seems to have been learned instead was that Jews could be and were annihilated because they were “different,” not that something is wrong with an equality standard that permits extermination for “differences.” The Jews failed the equality test—not the equality test failed the Jews. Not that a better equality theory would have stopped Hitler. But what is one to make of an equality principle apparently logically consistent with, and undisturbed by, genocide? If equality’s abstractions are receptive to Nazi substance, are they perhaps a flawed vehicle for social justice? The fact that international law pervasively guarantees sex equality, yet there is no sex equality, while mass rape and forced childbearing go on both in peacetime and in war, including in genocidal war, suddenly begins to make sense.

### III

[T]he refusal to demand . . . one absolute standard of human dignity is the greatest triumph of antifeminism over the will to liberation. . . . A universal standard of human dignity is the only principle that completely repudiates sex-class exploitation and also propels all of us into a future where the fundamental political question is the quality of life for all human beings.

—Andrea Dworkin, *Right-Wing Women* (1983)

One approach to this problem might be to interpret existing international sex equality guarantees as grounded in the global women’s movement against sex inequality, including sexual and reproductive abuses, and apply the resulting concepts in peace and in war. A right to equality, both as a right in itself and as a basis for equal access to other rights, would ground its definition of inequality, and by implication its concept of the human, in the universal—meaning worldwide and everywhere spontaneously indigenous—movement for women’s rights.

The reality recognized by this movement is generating new principles: new in content, form, reach, operation, and relation to social life. In law, the principles of this movement are best approximated in North American equality law, pioneered by the Black civil rights movement in the United States in the 1960s and 1970s and the women’s movement in Canada in the 1980s and 1990s. These equality rights are implemented by individuals and groups against other individuals and groups as well as by and against governments. They allow governments to proceed but do not limit to governments the ability to act against discrimination. They allow complaints for indirect and systemic inequality. To be fully realized, they call for relief against state inaction as well as action. Such devices add enforcement potential rather than let states off the hook.

In the received international human rights tradition, by contrast, equality has been more abstract than concrete, more transcendent than secular, more descended from natural law than admittedly socially based. The Universal Declaration of Human Rights grants equality “without distinction of any kind,”<sup>50</sup> as if distinction were the problem and lack of distinction the solution. The Convention on the Elimination of All Forms of Discrimination Against Women defines discrimination against women in largely gender-neutral and referential terms, guaranteeing enjoyment of all other rights “on a basis of equality of men and women.”<sup>51</sup> This has mostly been interpreted nonsubstantively, has not allowed claims by individuals or groups, claims against government inaction, or claims against private parties. The committee that oversees it is coming to recognize, however, that violence against women is a form of sex discrimination and seeks to make states responsible for “private acts” if they fail to prevent, investigate, or punish discriminatory acts of violence.<sup>52</sup> But reporting is its primary tool for effectuation.<sup>53</sup>

As a basis for an expanded equality principle, women’s resistance to sex inequality is ubiquitous and everywhere concrete and socially specific. It is not based on being the same as men but on resistance to violation and abuse and second-class citizenship because one is a woman. It starts close to home. African women oppose genital mutilation. Philippine, Thai, Jap-

anese, and Swedish women organize against the sex trade. Women in Papua New Guinea and the United States and workers at the United Nations resist sexual harassment. Brazilian and Italian women protest domestic battery and "honor" as a male excuse for killing them. Indian women protest dowry and suttee as a male excuse for killing them. American women protest domestic battery and romantic love as a male excuse for killing them. Canadian women protest the use of feminism as a male excuse for killing them. Women everywhere rise up against rape, even in cultures where women have recently been regarded as chattel. Women in Forced motherhood is opposed from Ireland to Germany to Bangladesh. Female infanticide and objectifying advertising are legislated against in India. Everywhere women seek access to literacy, which they have often been denied as women, and to survival based on the work they do, as well as to access to doing all kinds of work.<sup>54</sup>

One feature of this movement is its combination of socially specific comparison—men are not treated this way—with its refusal to be limited to imitating or emulating men. Women's diversity is extraordinary, yet everywhere, with social particularity, below some man. This produces an appreciation for the fact that difference by itself is certainly not the excuse for second-class citizenship it has become, but that imposed inferiority is everything. The movement criticizes socially organized power itself, as well as its excesses.

This movement has produced a rich concept of equality not as sameness but as lack of hierarchy. Its everywhere relative universality, its refusal to settle for anything less than a single standard of human dignity and entitlement, and its demand for elevation in that standard have left Aristotle in the dust. The scope and depth of this uprising for social equality offers a neglected ground for sex equality as a human right. The movement provides a principled basis in social reality for women's human rights, for a positive equality. Its principles include: If you do not do it to each other, you cannot do it to us, and ending the subordination of women because they are women.

"Civil rights" have been considered a subprovince of human rights, typically distinguished from political, social, economic, and cultural rights, as well as rights of personhood. A more embracing sense of equality is developing and being applied in North America, originating in the civil rights struggle of Blacks for social equality through legal equality in the United States and extending to its current pinnacle formulation in the Supreme Court of Canada's equality jurisprudence originating in the women's move-

ment. This equality is not confined to equal access to other rights, as it is in international human rights law<sup>55</sup> and most domestic equality law, but is a principle in its own right. This equality looks to social context, broadly and in each particular, to eliminate imposed stratification. It envisions an active role for equality law in implementing the necessary changes.

In Canada, the approach takes the form of requiring that laws "promote equality." This "entails the promotion of a society" of equal dignity and respect. In the words of the Supreme Court of Canada, "[I]t has a large remedial component."<sup>56</sup> It recognizes that social inequality exists and must be changed, rather than assuming a neutral and equal social world and avoiding legal differentiation to preserve it. Its approach is based on noticing the reality of inequality in order to end it, rather than on enforcing a colorblindness and gender neutrality, which have often meant a blindness to the unequal realities of color and gender. This mandate is interpreted with particular sensitivity to, and priority upon, eliminating the inequality of groups that have traditionally been socially disadvantaged.

This equality looks to "civil society" on the level of ordinary transactions and interactions: buying and selling, work and education and accommodations, home and the street, communications and insurance, as well as voting, elections, and juries. It encompasses prohibition of racially segregated toilets and teaching racial hatred, sexual coercion by doctors, and denial of pregnancy benefits. It is rooted in everyday life, looking beyond the legal formalism of formal equality to social consequences. It understands that although inequality hurts individuals, it hurts them as members of social groups. It addresses the most systemic inequalities as well as ones that happen only to a few individuals. It practices a social, contextual, relational, antihierarchical equality jurisprudence.

As currently defined, international human rights are so abstract that people who concretely believe polar opposites can agree on them on principle and give them equally to no one. Both a Stalin and a Solzhenitsyn embrace them. That neither would likely favor civil rights as described here suggests the tension between such "civil rights" and "human rights" as currently conceived, in particular between abstract "human rights" equality and substantive "civil rights" equality. Civil rights begin at home or close to it; human rights seem to improve the further one gets from home. By a preference for direct civil remedies in the hands of the unequal, civil rights distribute power from government to people as they redistribute power among people. Human rights tend to see the state as the enemy of equality; civil rights see it as their potential promoter. Human rights locate equality in eliminating irrational differentiation; civil rights see equality as

much in affirmative claims of cultural particularity, in ending oppression whether based on real differences or not, and in altering the mainstream to accommodate an uncompromised diversity.

The current political force of the mainstream human rights view takes its deep text, on my analysis, from a reading of the Nazi experience: Survival lies in blending in, in being indistinguishable from one's surroundings, in nondifferentiation. Cast in equality terms, instead of criticizing the view that killed you for being different, you fight for the right to be recognized as the same and to become the same because it will keep you alive. So many Polish Jews died, it is said, because they only spoke Yiddish. They could not "pass" as not Jews. Aryan-appearing German Jews were more likely to survive. It should follow that assimilation—sameness—guarantees an equal right to live, not to be exterminated because of who you are. This is nonarbitrary recognition for meeting the dominant standard, integration over self-determination. Do not think about whether integration is ultimately possible; do not think about those who will never be permitted to meet the standards; do not challenge the standards themselves.

An analogy could be drawn to the psychology of battered women, which is also a dimension of femininity more generally. The only reality is the power of the abuser; keeping your head low keeps you alive. This, too, acquiesces in the dominant standard and concedes the permanent powerlessness of an underclass. The shame of being who you are—as if that is validly and forever the real reason for your subordination—leads to always wanting and trying to become who you are not, which women know is a living lie until they become it. This is the victim-side adaptation to the perpetrator-defined reality. It converges with the final solution to the inequality problem: annihilation.

This is the equality of Aristotle, of the Enlightenment, of the Nazis, of the mainstream U.S. equality jurisprudence today, and of international human rights law. It seems rather late in the pursuit of equality to seek fair conditions of extermination on the basis of speaking Polish or looking German. It is like a battered woman's seeking not to be beaten by serving dinner on time and providing regular sex. Such equality does nothing about the annihilation machine itself, so long as it sorts likes from unlikes accurately. It may mean survival for some under unequal conditions, but do not call it equality. Such equality means conceding the standards under which one is measured, monitoring only their recognition without irrational distinction. One can understand trying to construct an equality principle to ensure survival under conditions of genocide; yet this is very close to

conceding genocidal conditions in the construction of the equality principle, with the result that, so far as the equality principle is concerned, we will never live under any but genocidal conditions.

How equality is defined in the North American movements, by contrast, is self-respecting but not isolationist, self-determinant but not segregationist, uncompromised but not absolutist, solid at the core but forgiving at the edges. Its equality is not absolute but relative to the best society has to offer, insisting on an expanded role for the subordinated in redefining standards from the point of view of those living under them. Such a theory may appear to lack principled definition, grounded as it is in response to an unprincipled social world. But its relativism gives it substance that defines rather than undermines its principle. Perhaps if white men had been lynched, as Black men were in the American South, substantive relative rights would be more of a problem; the fact is, they were not. Given that no society systematically traffics men as men for sex, rapes men at will and with impunity, forces men to reproduce, batters men in homes, sometimes to death, on an everyday basis, pays men as a group less than women, or presents male sexuality in demeaned ways for entertainment and profit on a large scale, the comparative dimension to the standard has a lot to offer. It also helps avoid imposing foreign cultural standards in diverse social settings, since women are not seeking equality with foreign women but with men of their own cultural groups.

In legal practice in Canada, this approach has proven capable of addressing a substantial number of realities of sex inequality that have eluded prior attempts. A woman has been permitted to sue her city police force for failure to warn of a serial rapist.<sup>57</sup> Sexual harassment<sup>58</sup> and pregnancy discrimination<sup>59</sup> have been recognized as human rights violations. Under the tutelage if not the direct control of this approach, common law remedies for sexual abuse have recognized inequalities of power,<sup>60</sup> and statutes of limitations for incest have been revised based on the experience of victims.<sup>61</sup> Criminal laws against wife-battering have been interpreted to recognize the woman's reality,<sup>62</sup> and publication of the names of sexual assault victims has been prohibited.<sup>63</sup> After the Court's refusal to recognize women's equality rights to keep their sexual histories out of rape trials,<sup>64</sup> a whole new rape law was introduced.<sup>65</sup> Significant decisions have also been made in light of this approach in the area of reproductive rights, preventing men from gaining a veto over women's abortions<sup>66</sup> and recognizing women's rights in and over their fetuses.<sup>67</sup> Perhaps most tellingly, when the rights to freedom of expression of anti-Semites and pornographers were balanced against the equality rights of their targeted victims, equality

won.<sup>68</sup> In Canada, some of the reality of inequality is becoming the basis for the legal equality principle.

#### IV

Against this backdrop, what will become of the Muslim and Croatian women violated by the Serbs? The basis in a women's movement for a meaningful equality exists, but interpreting what law? Since November 1991, feminists in Zagreb in particular have been working with refugee survivors of the sexual atrocities of genocide through war. Their accountability to the victims has been continuous and absolute; their documentation and relief effort, committed and accurate.<sup>69</sup> If jurisdiction can be secured, and it should be able to be, laws do exist to cover many of the atrocities.<sup>70</sup> Rape, enforced prostitution, and indecent assault are already recognized as war crimes.<sup>71</sup> There is even precedent for trying them.<sup>72</sup> After World War II, Japanese generals were tried for sexual atrocities committed under their command: rape, imprisonment of girls in hotels and subjecting them to repeated rape, mass rape, cutting off breasts, killing women civilians and raping their corpses.<sup>73</sup> Other than the breeding aspect, this has happened in wars before, right down to tortures of fingers and feet.

There are many more examples in which nothing was done, as analyzed by Joan Fitzpatrick, "the mass rapes of women during the war for independence in Bangladesh, the systematic rape of women suspected of complicity in the insurgency in Kashmir, and the belated but growing scandal concerning the 'comfort women' who were abducted and forced into prostitution by the Japanese army during the Second World War."<sup>74</sup> Evidence on rape was presented by the French and Soviet prosecutors at Nuremberg.<sup>75</sup> Sexual forms of torture were documented,<sup>76</sup> but sexual assault was not charged in the indictments. One can only speculate that it was not seen to be within the tribunal's emphasis "not on individual barbarities and perversions" but only on the Nazi "Common Plan."<sup>77</sup> Rape has so often been treated as extracurricular, as just something men do, as a product rather than a policy of war.

Proceeding through war crimes tribunals on behalf of Muslim and Croatian women would create accountability, but it would not redistribute power to women in situations other than war. On the civil side of human rights, these atrocities violate every sex equality guarantee in international law, properly interpreted, and they do not fail to do so because this is wartime. Surely these are crimes against humanity, a "consistent pattern of mass violation of human rights."<sup>78</sup> Perhaps this would be a good occa-

sion to use equality guarantees to address violence against women; there is no state-action problem. Such an approach could establish precedents for use by women in peacetime as well.

As a practical matter, it helps that these incidents happened in a war. Men know men hurt men in war, so maybe there is an analogy? It does not help for recognizing them now, or for creating a precedent that could affect nonwar interpretations, that similar acts are common everywhere in peacetime and are widely understood as sex. Yugoslavia's pornography market was "the freest in the world"<sup>79</sup> before this male population was officially mobilized to commit the atrocities they had already been sexually conditioned to enjoy. It does help that men did these acts in declared military groups, instead of one on one everywhere at once and all the time, or in small packs, murdering, raping, pimping, and breeding but not recognized as an army of occupation. Will there be command responsibility for these rapes? Will women have to identify each individual man, often numbering in the hundreds, who raped them? In legal terms, it does not help that no state raped these women and got them pregnant; it does help that a state's men did.<sup>80</sup>

Will these atrocities be seen as human rights abuses? If the Muslims were Jews, would the world be allowing this to happen? Must a group first survive genocide for it to be recognized next time? Will principle see reality? Will it connect with similar acts in everyday life? The murders maybe; the rapes possibly, and if so, probably because they are ethnic, hurting a group that includes men; the pregnancies, less likely (and what to do with the children?); the prostitution, for all the twenty-two treaties against it, little chance; the pornography never, meaning if ever, probably not soon.

Or will this situation and these women, here and now, be the time and place in which the word "woman," like the word "Jew," will finally come to stand, among its meanings, for a reality of abuse that cannot be forgotten, a triumph of survival against all that wanted you dead, a principle of what cannot be done to a human being? Will women, at last, get amnesty?

## Turning Rape into Pornography

### Postmodern Genocide

"Everything was dark, but the bed on which they were raping was lit up, like when they interrogate you and point the light only on you. Only that bed was lit up with a spotlight. . . . I had a feeling that they were sometimes recording or filming." In what is called peacetime, pornography is made from rape in film studios, on sets, in private bedrooms, in basements, in alleys, in prison cells, and in brothels. It should be no surprise to find it being made in a "rape theater" in a Serbian-run concentration camp for Muslims and Croatians in Bosnia-Herzegovina—as reported above by one survivor, a twenty-eight-year-old Croatian and Muslim woman. Still, it comes as a shock, a clarifying jolt. When Linda "Lovelace" reported her coercion into the pornographic film *Deep Throat*,<sup>1</sup> Gloria Steinem reworded the essence of the disbelief and blame Linda encountered as amounting to asking her, "What in your background led you to a concentration camp?"<sup>2</sup> If this was ever only an analogy, it isn't anymore.

Exploding the strategy pioneered a year earlier on Croatia, Serbian military forces in Bosnia-Herzegovina have been, as the world now knows, carrying out a campaign called "ethnic cleansing." This is a euphemism for genocide. It means removal or liquidation of all non-Serbs from the territory that was called Yugoslavia. This campaign of expansion through ethnic extermination has included rape, forcible impregnation, torture, and murder of Muslim and Croatian women, "for Serbia." A Bosnian Muslim soldier—call him "Haris" to protect his identity—who spied on Serbian

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forces described what he saw them do, from Vaganac in Serbian-occupied Croatia to Grabež in Serbian-occupied Bosnia: "Everything that's Muslim or Croatian, they slaughter, kill, set on fire. Nothing's supposed to remain alive, not even a chicken, cat, or bird, if they know it's Muslim or Croatian. . . . One said, 'There's a dog; it's Muslim, kill it.'" The raped women, the filmed women, the pregnant women, and probably the murdered women as well as the men suffer not only from these atrocities but also from knowing that they are intended to be the last of their people there.

This genocidal war has repeatedly been mischaracterized as a "civil war," aggressor equated with victim, "all sides" blandly blamed for their "hatred." Yet Serbian aggression against non-Serbs is as incontestable and overwhelmingly one-sided as male aggression against women in everyday life. Wars always produce atrocities, especially against women civilians. But there is no Muslim or Croatian *policy* of territorial expansion, of exterminating Serbs, of raping Serbian women. This is not a reciprocal genocide. The reluctance to say who is doing what to whom is reminiscent of the mentality that blames women for getting ourselves raped by men we know and then chides us for having a bad attitude toward them. Asja Armanda, of the Kreta Feminist Group in Zagreb, theorizes that the closer to home atrocities come, the more they are domesticated, made into love gone wrong. The more "feminized" the victims thus become, the more hesitant other men are to intervene in a family quarrel, and the more human rights can be violated and atrocities condoned.

The rapes in the Serbian war of aggression against Bosnia-Herzegovina and Croatia are to everyday rape what the Holocaust was to everyday anti-Semitism: both like it and not like it at all, both continuous with it and a whole new departure, a unique atrocity yet also a pinnacle moment in something that goes on all the time. As it does in this war, ethnic rape happens every day. As it is in this war, prostitution is forced on women every day: what is a brothel but a captive setting for organized serial rape? Forced pregnancy is familiar too, beginning in rape and proceeding through the denial of abortions; this occurred during slavery and still happens to women who cannot afford abortions—who in the United States are disproportionately African American or Latina. Also familiar is the use of media technology, including pornography, to make hatred sexy. Women are abused by men in these ways every day in every country in the world. Sex has also been used before to create, mobilize, and manipulate ethnic hatred, from the world of the Third Reich to the world of *Penthouse*. Yet the world has never seen sex used this consciously, this cynically, this elaborately, this openly, this systematically, with this degree of technolog-

ical and psychological sophistication, as a means of destroying a whole people.

With this war, pornography emerges as a tool of genocide. Natalie Nenadic, an American of Croatian and Bosnian heritage, writes from Zagreb that she learned from Muslim sources that "some massacres in villages as well as rapes and/or executions in camps are being videotaped as they're happening." One woman who survived the Bučje rape/death camp in Serbian-occupied Croatia reports the making of pornography of her rapes this way: "In front of the camera, one beats you and the other—excuse me—fucks you, he puts his truncheon in you, and he films all that. . . . We even had to sing Serbian songs . . . in front of the camera." Account after account documents that Serbian forces film as they rape. As they do it, they watch, laugh, encourage each other, and spew ethnic curses and epithets. "*Ustaša* whore" is particularly commonplace. "*Ustaša*" is a derogatory political term that refers to the fascist regime in Croatia (then including Bosnia-Herzegovina) that collaborated with Hitler. Serbian soldiers use it for Muslim and Croatian women—most of whom were not even born until after World War II.

In a military trial in Sarajevo in March 1993, Borislav Herak, a Serbian soldier, testified that the rapes he committed had been ordered for "Serbian morale."<sup>3</sup> As an instrument for their morale building, the Croatian-Muslim survivor quoted earlier—one of whose twin sons was decapitated in her arms—reports that as they raped her, Serbian soldiers "were telling them 'Croatia needs to be crushed again. *Balijas* need to be crushed completely. You are half this and half that. You need to be crushed to the end. Because you're Croatian, you should be raped by five different men—and because you're a *Bula*, you should be raped by five more.'" *Balija* and *Bula* are derogatory terms for Muslims. Xenophobia and misogyny merge here; ethnic hatred is sexualized; bigotry becomes orgasm. Whatever this rape does for the rapist, the pornography of the rape mass-produces. The materials become a potent advertisement for a war, a perfect motivator for torturers, who then do what they are ordered to do and enjoy it. Yes, it improves their morale.

Some of the rapes that are made into pornography are clearly intended for mass consumption as war propaganda. One elderly Croatian woman who was filmed being raped was also tortured by electric shocks and gang-raped in the Bučje concentration camp by Serbian men dressed in generic camouflage uniforms. She was forced to "confess" on film that Croatians raped her. This disinformation—switching the ethnic labels—is especially easy where there are no racial markers for ethnic distinctions. It is a standard

Serbian technique. Another such incident of switched victims and murderers was dismissed as "a shameless lie" by relief officials, according to a UN spokesperson in Sarajevo.<sup>4</sup> One woman captured by the Serbs described how she was forced to participate in such lies by reading a scripted false "confession" about her activities as a "terrorist" for a TV Novi Sad camera. She knew that the fabrication aired because she was recognized by a Serbian guard who said that he had seen her on Belgrade TV.

Serbian propaganda moves cultural markers with postmodern alacrity, making ethnicity unreal and all too real at the same time. Signs and symbols, words, images, and identities are manipulated to mean anything and its opposite—all in the service of genocide, a single reality that means only one thing. When human beings are "represented" out of existence, playing reality as a game emerges as a strategy of fascism.

Actual rapes of Muslim and Croatian women by Serbian soldiers, filmed as they happen, have been shown on the evening news in Banja Luka, a Serb-occupied city in western Bosnia-Herzegovina. The women were presented as Serbian, and as being raped by Muslim or Croatian men. In September 1992, one woman around age fifty, entirely naked with visible bruises, was shown being raped on television. A Serbian cross hung around her neck; the rapist—using a term for Serbian fascist collaborator that has become a badge of pride among Serb forces—cursed her *chetnik* mother; someone was yelling "harder." The verbal abuse was dubbed—and unmistakably Serbian in intonation and word usage. The man's face was not visible, but the woman's was. In another televised rape a few days later, a woman near age thirty-five, with short dark hair, was shown on the ground; her hands were spread and tied to a tree, her legs were tied to her hands. Many men watched her raped in person; thousands more watched her raped on television. This time, in an apparent technical lapse, about four or five seconds of the actual sound track was aired: "Do you want sex, *Ustaša*? Do you like a Serbian stud horse?" Earlier in the war, according to Asja Armanda of the Kreta Feminist Group, a news report showed Serbian tanks rolling in to "cleanse" a village. The tanks were plastered with pornography.

How does genocide become so explicitly sexually obsessed? How do real rapes become ordinary on the evening news?

Pornography saturated Yugoslavia before the war. Its market, according to Yugoslav critic Bogdan Tirkanić, was "the freest in the world."<sup>5</sup> A major news magazine, *Start*, with a *Newsweek*-like format and the politics of the *Nation*, had *Playboy*-type covers and a centerfold section showing naked women in postures of sexual display and access. Select women who were

privileged under the Communist regime, and who presented themselves as speaking for women, regularly published there and even occasionally served as editors. (The presentation of pornography as a model of feminism repelled many women from feminism.) When pornography is this normal, a whole population of men is primed to dehumanize women and to enjoy inflicting assault sexually. The *New York Times* reported that "piles of pornographic magazines" were found in the bedroom of Borislav Herak, the captured Serbian soldier who calmly admitted to scores of rapes and murders.<sup>6</sup> At his war crimes trial in Sarajevo, when asked where he learned to kill, he described being trained by killing pigs.<sup>7</sup> No one asked him where he learned to rape, although he testified that his first rape in this war was his first sexual experience. Pornography is the perfect preparation—motivator and instruction manual in one—for the sexual atrocities ordered in this genocide.

Pornography, known to dehumanize women for its consumers, pervades some rape/death camps, according to survivors. In one military prison, the pornography was customized to suit the guards' sexual tastes, in echoes and parallels to the acts they performed. One woman in her mid-thirties, a mother of two, recalls how some men drew little penises next to women in the pornography with whom they wanted to have sex, and wrote their names on the penises. Next to the men in the materials, some wrote "I have a longer one than you" and signed their names. One Serbian guard "draws a picture of his own dick and an arrow showing where he'd go with it." In other words, these men do to women in the materials what they do to women in the camp: ". . . the women were cut out, but the man remains whole." And speaking of personalized weaponry, survivors in the Bosnia-Herzegovina Refugee Women's Group, Žene BiH, in exile in Zagreb, report finding the name of Jovan Tintor, a *chetnik* commander, inscribed on the remains of projectiles that were aimed at, and hit, a Sarajevo maternity ward.

When pornography is this common and this accepted, the lines dividing it from news, entertainment, and the rest of life are so blurred that women may know no word for it. The woman who survived the Serbian military prison described a thick sex book that made the rounds. It showed, she said, "men with animals and women with animals, how you get AIDS." The book was "so read that it was completely falling apart." Another woman spoke of seeing "those magazines with the nude women, the sex." The women in the military prison grasped for words to describe them: "either they remain standing and are nude or . . . you have a woman lying on a woman or a woman lying on a man, all those poses that are done. I

don't know what those magazines are called." Asked what was on the walls of the room where the guards slept—pictures of political leaders perhaps?—another woman answered, "I can't say I saw Milošević or Tito. These pictures were mainly naked women . . . those usual pictures from *Start* and those things. Male things."

The conditions in the camps throughout the occupied areas of Croatia and Bosnia-Herzegovina are subhuman. Some peacetime brothels have become wartime rape/death camps—a kind of surreal camouflage through blatancy. Some are outdoor pens ringed with barbed wire. Some are animal stalls. Some were arenas, factories, schools. Women are typically allotted one thin slice of bread a day. Humanity is jammed into closet-size concrete cells, begging even for boards to sleep on, waiting for the few to be selected out for systematic torture, to be taken to the rooms with the beds with the bloody sheets. "When night came," as one survivor put it, "death in life came." Those who are allowed to live often must sexually service their captors. One woman was forced to keep her Serbian captor's penis hard in her mouth from midnight to 5:00 A.M. for fourteen nights in a Serb-run concentration camp in Vojvodina. "My job was to please him, to excite him that whole time, so that he would be able to ejaculate. . . . Sometimes I began to suffocate, and when [he] began to spurt out on the cement, he would beat me up. I had to remain kneeling."

Often the atrocities are arranged to be watched by other soldiers. In televised rapes, the viewer can see other boots, standing around, walking around. The Croatian-Muslim woman quoted earlier says of her experience: "These soldiers would invite their friends to come watch the rapes. That was like in the movie theater. All sit around while others do their job. . . . Sometimes those who were watching put out cigarette butts on the bodies of the women being raped." The Serbian soldier Borislav Herak described how other soldiers watched him rape one young girl after another—all of whose names he remembered.<sup>8</sup> This is live pornography.

We will never know what happened to most of the women who were killed—until we uncover the mass graves or the pornography. A gang-rape observed by Haris, the Bosnian soldier, gives a rare glimpse into the sexual spectacles staged for private viewing, proceeding on orders from a superior at Ličko Petrovo Selo, a village in Serbian-occupied Croatia: The woman was tied to four stakes in the ground, "in a lying position but suspended." While they were raping her, the soldiers said "that Yugoslavia is theirs . . . that they fought for it in World War II, partisans for Yugoslavia. That they gave everything for Yugoslavia." The national politics are fused with sex. Haris reports that the men laugh and chide each other for "not sat-

isfying her," for not being able to "force a smile out of her," because she is not showing "signs of love." They beat her and ask if it is good for her. The superior who is ordering them says, "She has to know that we are *chetniks*. She has to know this is our land. She has to know that we're commanding, that this is our Greater Serbia, that it'll be this for everyone who doesn't listen." Does it ever occur to them that the woman is a human being? "I don't know if they ever even think this is *person*," Haris says.

Is there a relationship between the pornography consumed, the sexualization of the environment of torture and predation, and the sexual acts that are performed? This is not an academic question.

One woman reported that she saw done to a woman in a pornography magazine what was also done to her. Describing materials in the camps, she says, "Those pictures with those things you hit them with . . . like you have a chain like this, and like this they hang you to a bed. He hangs her from the ceiling." Without missing a beat, she moves from describing the materials to describing what was done to her: "I know there was some kind of wooden board on the side, a woman tied to it by chains, she had a mask over her eyes and he was hitting her with some kind of thick whip-crop. I mean that whip-crop reminded me of the Begejci concentration camp, because there in Begejci, they had a thick whip, a crop made like that one—from leather—and they beat the captives in that way. I mean, I was whipped like that once in Begejci with that whip-crop, so I know that it hurts."

Many tortures in the camps are organized as sexual spectacles, ritualized acts of sadism in which inflicting extreme pain and death are sexual acts, performed and watched for sexual enjoyment. Haris, hiding in a tree, observed a small concentration camp in Serbian-occupied Croatia in April 1992. It was wholly outdoors, with "hungry, tortured people, beaten, bloody." He watched a man and a woman—who appeared to be seven or eight months pregnant—being taken to a clearing in the woods. The woman was tied vertically to a cross, legs pressed together and arms extended. They ripped her pregnant belly open with a knife. "It was alive . . . it moved." The woman took about fifteen minutes to die. The man, apparently her husband and father of the baby, was bound to a nearby tree and forced to watch. The attackers attempted to force him to eat the baby's arm. Then "they hacked him up, cut the flesh on him so that he would bleed to death." While they were doing this, "they were laughing. . . . 'We're going to slaughter all of you. This is our Serbia.'" Haris is certain it was filmed.

Change the politics or religion, and victims of ritual torture in this

country report the same staged sexual atrocities ending in sacrifice. Some say these "snuff" scenes, too, are videotaped.

The Nazis were precocious with the media technology of their time. They used it to create images of events that never took place. They also took pictures of some of their horrific medical experiments and executions. They imprisoned women in brothels, forced women in camps to run naked before cameras, and paraded naked women for pictures just before their executions. They published sexually explicit anti-Semitic hate propaganda.<sup>9</sup> Since then, visual technology that uses human beings as live targets has become cheap, mobile, and available. Nearly half a century of deployment of pornography worldwide has escalated its explicitness, intrusiveness, and violence. With this in hand, the Serbs make the Nazis' efforts look comparatively primitive.

Rape was not charged in the post-World War II indictments of the Nazis at Nuremberg, although sexual forms of torture, including rape, were documented at the trials. Perhaps this omission was a casualty of the tribunal's emphasis "not on individual barbarities and perversions" but on the Nazi "Common Plan." Rape in war has so often been treated as extracurricular, as just something men do, as a product rather than a policy of war. Yet the propagandist Julius Streicher—editor of the anti-Semitic newspaper *Der Stürmer*, which contained pornographic anti-Semitic hate propaganda—was indicted for "crimes against humanity" for incitement to hatred of the Jews.<sup>10</sup> Streicher, described by prosecution documents at the Nuremberg trials as a brutal sadist who carried a leather whip attached to his wrist, was found guilty and condemned to death by hanging.<sup>11</sup> In the war crimes trials for the genocidal war against Bosnia-Herzegovina and Croatia, will those who incited to genocide through rape, sexual torture, and murder—the Serbian pornographers as well as high policymakers and the underlings—get what they deserve?<sup>12</sup>

Women hesitate to report that pornography is made of their rapes even more than they hesitate to report the rapes themselves. Disbelief from outside combines with humiliation, shame, and a sense of powerlessness inside. It is unbearable to know that even after you are dead—maybe soon, on tape—thousands will see you this way. The depth of despair at stopping the rape becomes an infinity of hopelessness at stopping the pornography of it.

Even though women in rape/death camps know that the same things are being done to other women, and sometimes are even forced to watch them, still the sense of isolation is total. Always they fear reprisals, especially for speaking out against the pornography, even when they are what

is called free—meaning they and their families are not literal captives of armed men.

What do we owe them, women for whom “you were lucky if they only raped you”? What will make it possible for them to speak of what was done to them? As one survivor put it, “I have no use for telling you the rest. I have no security. I have nothing.” When the films of her rape are sold as pornography—emblem of democracy and liberation in post-Communist Eastern Europe and increasingly protected as speech worldwide—she will have even less than that.

## Rape as Nationbuilding

The conflagration in Croatia and Bosnia-Herzegovina has been going on for more than three years. The bodies of the raped continue to pile up in public view. What is going on here? Arguably, we are witnessing a formative international as well as national governance process with profound implications.

The conflict in this region is a genocide euphemized as “ethnic cleansing.”<sup>1</sup> This campaign of extermination of non-Serbian peoples is being carried out by a phalanx of Serbian fascists in collaboration with the regime in Belgrade for political expansion and hegemony through ethnic uniformity, to achieve the “Greater Serbia” they have long planned. It is a genocide through war. It is not a war in the usual sense of armies fighting against other armies retreating and advancing over territories, or guerrilla bands from one side raiding troops and towns of another side. The sides are defined not by place or governmental allegiance or politics in the conventional sense, but by ethnicity. The objective, what is to be conquered and possessed and subdued and subjugated and ruled by force, is a land grab, but the targets are people. Ninety percent of the casualties are civilian.<sup>2</sup> This is a war against people.

In the standard lexicon of war, the closest term we have for this kind of war is “civil war.” In Croatia and Bosnia-Herzegovina, though, it is a misnomer if it means two sides fighting each other. Or it was until after some years of describing it that way—years of treating a war of aggression against people who have no armed forces and are forbidden to arm themselves, as if this were equal and reciprocal aggression, years in which the international community trivialized the attacks and distanced itself from them as if this were a domestic dispute, years of treating it the way most

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states treat rape in marriage—and in large part because it was treated that way, now the international community has its civil war, or elements of one within what remains international aggression.

In the genocide that is the engine of the onslaught, all non-Serbs go, dead or alive. To this end, systematic rape has been a prominent weapon, planned and ordered from the top as well as permitted on a wide scale. Muslim and Croat women and girls are raped, sometimes killed afterward, sometimes their corpses are sexually violated by Serbian military men, regulars and irregulars in various formations, and also by neighbors, on their doorsteps, on hillsides, in camps—camps that were factories, mines, sports arenas, restaurants, animal stalls. Sometimes men are raped as well on the basis of their ethnicity. Some of the rapes are filmed and photographed as pornography and propaganda. The women are raped to death or raped and made to live with having been raped. This is rape as forced exile: to make you leave your home and never go back. It is rape as spectacle: to be seen and heard and watched and told to others. It is rape as humiliation: for certain men to take pleasure from violating certain women, or certain men, or to take pleasure watching certain men be forced to violate certain women or girls. This rape is torture; it is sex and ethnic discrimination combined. It is rape as ethnic expansion through forced pregnancy and childbearing. It is rape to establish dominance, to shatter a community. It is rape to destroy a people: rape as genocide. It is rape as nationbuilding: to create a state.

What has the world's response been? To watch, let it go on. No doubt some people are horrified. But at the same time, these rapes seem to have fallen into some deep well of understanding and empathy, into the arms of de facto world condonation. Call it history, call it geopolitics or realpolitik, call it complacency, call it isolationism and lack of a national interest, call it fear—whatever it is, a lot of other men have a lot of respect for it and give it a lot of rope. Tolerance is what emerges from the foot-dragging reluctance, the excuses, the jockeying for position, the vacillations, the evasions, the denials, the cover-ups, the slippery-sloped sovereignty arguments, the doubletalk, the procedural morasses,<sup>3</sup> as thousands upon thousands of rapes sink beneath public view while being carried out in plain sight. If you read what the world's leaders do rather than listen to what comes out of their mouths, what you see is that many of the men who run this world recognize something, identify with something, in this conflict. It reminds them of something. The Serbs could win. This is how states are made.

The fact is, the more the Serbs rape and kill, the more respect they get,

the more dignity and seriousness the demands of these international war criminals are accorded, the closer they come to being able to get away with it all, and the clearer it becomes that this is one way communities are destroyed and states are created: by whom you can rape. The same acquiescence in this process underlies the much-heard palliative response these days beyond even the one that it is happening on all sides here.<sup>4</sup> It is: rape happens in all wars all the time. Relax. This is no different from usual, why get so exercised? Well, does one have to be surprised to be violated? Perhaps it is more unvarnished, undiluted, unashamed, undisguised, intentional, blatant this time. This time, women refuse to be silent about it. But suppose it is always there. They *always* do this? Getting away with *this* creates that legitimate monopoly on force of which nation-states are said to be made? This puts might makes right in a whole new light.

In this system, violating other men's women is planting a flag; it is a way some men say to other men, "What was yours is now mine." He who gets away with this, runs things. Doing this institutionalizes the rulership of some men over other men even as it establishes the rulership of all men over all women. You cannot govern the dead. Better that those you rule live in terror, knowing you have something over them, knowing what you can do to them at any time. This makes the power of government look like a form of the power of the rapist over the raped. Is this a dynamic in how states are run internally as well, in between their international conflicts? There, too, men define who they are in relation to other men and over all women by which women they can get away with violating. In this light, perhaps rape in peacetime, which no state does anything serious about, which is seen to violate human rights nowhere because humanity is not something women as such are thought to have, especially sexually—perhaps this is a way to keep state power at once out of the hands of women and over all women, as well as away from some men. Perhaps permitting rape of women by men, or all women by some men, is a device of internal order within states, of defining hierarchy of men over women and other men, just as it is between states.

In the male system, rape of women becomes an act by some men against other men. Women become a way men establish their power among one another. For raped women, it is always an act against women, often by certain men against certain women. In other words, it may be a sign and form of expression to men, a way men communicate with one another, but to women it is a real violation. As often happens when men plant flags, someone was already living there.

In the Bosnian situation, instead of being understood as male supremacy

or xenophobia, the culprit is often said to be nationalism. When men begin behaving to some other men and women the way they have been behaving to "their own" women all along, it is not called male dominance, it is called nationalism. Serbian fascists are called Serbian nationalists, as if their victims object to their having a nation, rather than to their having a genocide in order to have one. Every nation has its fascists; the question is, are they running your government? My clients are called nationalists for describing their rapists in the terms in which the rapists describe themselves: as Serbs. Women survivors of Serbian genocide are called nationalists, the same as their torturers and killers, for thinking they should not be tortured and killed because of their ethnicity. In this discussion, if you own yourself, claim yourself and identify with your own community, and publicly resent being raped because you are a member of it, you are called a nationalist. I have never heard Native Americans called nationalists for objecting to being subjected to genocide and for wanting their own nation back.

The charge of nationalism, like calling this a "civil war," is one more way to avoid calling it what it is: a genocide. The "civil war" cover-up is the latest symmetry trap, equalizing aggressor and aggressed-against—as if a will to exterminate is the same as a will to survive extermination, as if a fascist concept of nation is the same as a multiethnic one. It is as if those who are raped and killed because of the group to which they belong should find some higher, more enlightened, less particularized ground from which to object to their rape and murder. Objecting to it on the ground on which it is happening apparently is not good enough.

If the process we are witnessing is a part of a process through which nation-states have often been created, it also raises the question whether the international order has been built, and will continue to be built, on the same basis. No nation, not even any democracy, is accountable to women. Will international law be? Auschwitz raised the question whether poetry survived it.<sup>5</sup> Is there international law after Bosnia? Or will these rapes and the handling of those charged with them set off a new round of more of the same on the ground, at the negotiating table—where men make deals and there are no women—and in international tribunals? Will these violations of women only intensify as authoritarian regimes fall and democracy spreads, opening opportunities for yet more men to more freely violate women along lines formerly suppressed but always there? Will all these raped and tortured and murdered women become just another bargaining chip in building a state, sucked into men doing their business as usual, with even the international adjudication of the crimes against women becoming just another move in men's politics with one another?

A principled vision to animate a new international order could begin here: not only that rape would end, but that it stops working. That men stop using violation of women to get what they want from one another because it is no longer functional or effective. Because it gets contempt rather than respect. Because the world mobilizes to get in the way of it instead of standing around and watching it and rewarding it with territory and rule. Because those who do it are cast out of the human community instead of being treated like diplomats. Violation of women should violate the real rules, not just the rules on paper, rather than being a part of the unwritten rules, so that states are built on the backs of women on their backs no more.