3. Freedom, women’s rights and the rise of the sexual security regime

I knew what I wanted to run to. But it didn’t exist, so I didn’t leave.
—Chimamanda Ngozi Adichie, *Half of a Yellow Sun*

At the end of December 2015, hundreds of women were sexually molested during New Year’s Eve celebrations near the main cathedral and central train station in Cologne. Headline news around the world suggested that men of Middle Eastern or North African appearance had carried out most of the assaults. At the time, Europe was engulfed in a highly fraught debate on the refugee crisis, in relation to which the allegations concerning the Cologne attacks proved a turning point. Specifically, the attacks seriously challenged German chancellor Angela Merkel’s open-door policy, which was labelled ‘irrational’ and ‘dangerous’. Under the policy, more than one million refugees fleeing from conflict zones, mainly Syria and Iraq, had been permitted to enter the country. While only 3 of the 58 men ultimately charged were actually refugees, the racial origins of the perpetrators, who were mostly non-white, non-German citizens, led to immediate conflation with Islam and generated hysterical xenophobic phrases such as ‘Islamic Rape of Europe’ and ‘Europe’s Muslim Rape Epidemic’, or the term ‘Rape refugee’. The response of *Charlie Hebdo* – the French satirical magazine that emerged as a global icon of free expression following the lethal terrorist attacks on Paris in January 2015 – was to run the famous image of the Syrian refugee toddler who drowned along with his mother and brother while crossing the Mediterranean, his body later washing up on a Turkish beach. The *Hebdo* cartoon was captioned: ‘What would little Aylan Kurdi have grown up to be? Ass-groper in Germany.’

Given that sexual violence against women rarely triggers this level of alarm – or even interest – in Europe, including in Germany, the question that arises is whether the nationality and religion of the attackers, rather than the criminal treatment of women, was more at issue. For example, the ‘rape refugee’ slogan brandished by supporters of Pegida, an extreme right-wing German political party, at a rally after the assaults seems to confirm that the victims had become mere background features in the
heated discussions and muscular assertions of nationalism surrounding the refugee debate. The dominant narrative, supported partly by the media, took the form of an iteration that sexual violence is a crime usually committed by ‘Others’ – ‘non-white’, ‘non-European’, ‘Muslim’ men, originating from elsewhere. This familiar orientalist discourse, which underpinned the colonial rhetoric, is coupled in the contemporary period with an Islamophobia that is rife in Europe, has flourished ever since 9/11 and has been strengthened by subsequent terror attacks in major Western European cities. Denial and disavowal of the ‘Other’ are exposed as being integral to human rights in the post-9/11, postcolonial era. The failure to acknowledge that violence against Western women is not perpetuated solely by ‘Others’, or that Western liberal democratic states are themselves thoroughly implicated in having triggered the current mass migrations into Europe, is an instance of how the solutions to the problem – in this case, combating the perceived threat through bigotry, xenophobia and carcerality – can miss the point altogether and, in the process, do further harm. In the subsequent reforms enacted by the German national parliament, MPs backed stricter rape laws that included making the victim’s lack of consent central to the definition of the crime.6 At the same time, law reform has enabled the prosecution of entire groups for a sex crime, regardless of whether any individual in the group is involved in the crime. Under the new law, it is a crime just to be present in a group that carries out a sexual assault. The relevant provision is specifically intended to address the events that occurred in Cologne, and places a powerful tool in the hands of authorities by making it easier for them to deport migrants who commit sexual offences.7

In a contrasting case, thousands of Indian citizens of all ages and backgrounds marched in protest against the brutal gang rape and murder of 23-year-old medical student Jyoti Singh Pandey and the vicious assault of her male companion, which occurred in a moving bus on the Delhi streets during the night of 16 December 2012.8 The sadistic attack triggered national and international outrage, with protestors demanding an end to the culture of pervasive sexism and violence against women. While at one level the protests were similar to those responding to the Cologne attacks, in which outrage was directed against migrants, they were also distinct from them in a number of respects. They signalled both deep anger and exhaustion with a profoundly misogynistic culture that enables women to be ogled, groped, molested, stalked, threatened, bullied and harassed while traversing public space, using public transport, or otherwise spending time outside the home pursuing everyday activities. Thus, the protests represented a defiant demand for the recognition of women’s rights not only concerning public safety, but also in relation to...
bodily integrity and sexual autonomy. They also vociferously confronted the entrenched understanding of women’s rights as located exclusively within a familial framework and upon an outdated notion of ‘Indian womanhood’ – a cultural archetype and historical assumption that all Indian women should unswervingly align with the classical image of the female as perennially self-sacrificing, obedient, malleable, dutiful, honourable, heterosexual, marriage-oriented and, most importantly, chaste.10 The protests provided a thorough challenge to and repudiation of calcified conventional understandings of ‘Indian womanhood’ and its accompanying stereotyped assumptions about female and male, femininity and masculinity. Holding aloft placards that declared ‘I am not just your mother, daughter, sister or wife. I am a citizen. I demand equal rights’, some demonstrators overtly distanced themselves from customary perceptions of what it means to be subject to the ‘Indian cultural values’ that have shackled women’s freedom.

At the same time, the protests also represented a sharp shift in the direction of a neoliberal political rationality that is increasingly characterizing and shaping the terms of gender within India, as well as within the global context and the international legal arena. Jyoti Pandey’s parents, who came from a lower income bracket, sold their land to support her desire to become an educated professional; she, in turn, had intended to support the education of her younger siblings once she began earning enough. The image of an aspiring Indian woman creating a valid, hard-earned place for herself within a sexist national order – which is now also linked to a global economic order – marked a significant moment in the inscription of a new generation within the neoliberal schema of gender, and the foregrounding of the femme economicus. Pandey was perceived as embodying the aspirations of millions of such women.11

The government responded to the protests by enacting a series of reforms focused exclusively on the criminal law. These included provision for the death penalty where rape resulted in the death or maiming of the victim, the strengthening of law enforcement machinery and increased surveillance on public transport.12 However, the government refused recommendations to remove the marital rape exemption from the criminal law and to do away with colonial and Victorian provisions concerning the outraging of a woman’s modesty and chastity, which reflected a dominant nationalist view that equated Indian women’s virtue with the ‘honour’ of the nation itself.13 The new legal edifice focused primarily on security. It left gender dualisms intact – that is, the fixed categorization of what constitutes a ‘man’ and what constitutes a ‘woman’ – and it reinforced intractable gender stereotypes, where women...
are seen as passive and vulnerable, as victims and as subservient repositories of ‘Indian culture’, whereas men dominate as either patriarchs, perpetrators, protectors or custodians. A spate of measures targeting women’s mobility and freedom were also promoted at local and state levels, and included allegations that women were ‘inviting’ rape by ‘flaunting’ their sexuality through personal practices such as wearing Western clothing and adopting Western patterns of sociality.14

The gruesome Delhi attack also became the subject of a documentary entitled *India’s Daughters* (2015), which was made by a little-known UK-based filmmaker called Leslie Udwin.15 The film includes lengthy interviews with one of the convicted rapists/killers, who justifies the fatal violence of his group on the basis of the woman’s dress and behaviour and the fact she was out late at night with a man – which, for the rapists, was apparently sufficient proof of her promiscuity and immorality. Igniting furious controversy, the filmmaker’s ‘whiteness’ and gender were noted in conjunction with strong criticism that the film ‘denigrated’ Indian men and concerns that it would simply reinforce stereotypes of them as ‘barbaric’ and ‘misogynists’.16 In this sense, the film was seen as an affront to the Indian nation, laden with ‘patriarchal undertones’ and essentially depicting India as a ‘place of ignorance and brutality toward women’.17 The film was ultimately banned, partly for the reason that it posed a law and order problem. Somewhat problematically, the ban was supported by at least one segment of the Indian feminist movement, which objected to the ‘white woman’s saviour complex’ and the civilizing mission purportedly embodied by the film.

The responses to the Delhi rape, much like those to the Cologne assaults, demonstrate how gender can be taken up by discourses that have little to do with women’s rights – in this instance, sexual violence. Instead, gender was incorporated into three parallel modalities: first, a security discourse combined with neoliberal rationalities; second, a nationalist narrative that valorizes tradition and is opposed to external intervention; and third, the configurations of what is perceived as a new kind of gender imperialism.

The compelling question that arises from these two sets of narratives is: how did these appalling episodes of sexual violence come to be articulated within the discourses of security and sexual surveillance, nationalism and cultural identity, and also displaced onto a First/Third World, ‘us and them’ divide? More specifically, it compels us to ask why and how decades of women’s human rights advocacy has produced outcomes moving in the direction of unfreedom rather than freedom?
This chapter discusses how the stability of gender concepts and gender categories – prioritized as integral to gender rights advocacy in international human rights law (IHRL) – are maintained partly through appeals to the state for redress, and partly through an overwhelming focus on violence against women (VAW) and the criminal justice framework. I use the term ‘gender’ interchangeably with ‘woman’/‘women’ largely to reflect the practice in IHRL, where ‘gender’ has been used as a synonym. Women’s rights advocacy is directed at the state to demand redress and protection, primarily in the form of carceral measures, which in turn translates into a general tightening of the sexual security regime in accordance with national and cultural imperatives. This carceral vision is also embedded within a neoliberal paradigm that views VAW as an obstruction to women’s participation in the market, with the market epitomizing the desired coalescence of subjectivity, choice and economic agency – crucial variables in the calculus of liberal freedom.

In this deeper reading of rights, attention should be drawn to the historical co-optation of gender to serve the political ends of imperialism and colonialism, through the discursive construction of the powerless and victimized Third World woman. This history in part explains the dominance of the script of violence in women’s rights advocacy within the realm of international human rights. The foregrounding of this violence helps make the case for categorizing women as victims who are unfree and require saving and empowerment. This focus reproduces the first two avatars of the subject that figure in the scholarship on liberalism and human rights discussed in Chapter 1 – that is, the abject powerless subject and the powerful subject. It is my contention that women’s human rights advocacy on sexual violence has partly contributed to a reaffirmation of the dualistic and heteronormative categories of gender and sexuality, and has also strengthened the policing of these categories, which have been displaced onto a First/Third World divide. The reproduction and preservation of these categories within the liberal fishbowl becomes a justification for the establishment of security regimes and militaristic interventions which have increasingly come to frame women’s human rights, and where apparent freedom from the threat of hostile, unintelligible, irrational ‘Others’ – the third avatar of the subject – is, in fact, achieved through the imposition of modalities of unfreedom.

The sexual and cultural dichotomies permeating the narratives of nation states deeply inform and influence the vocabulary of gender rights advocacy. I illustrate this argument by tracing the work that gender does in international human rights advocacy, specifically in the areas of sexuality rights and anti-trafficking, as well as gender, peace and security.
The analysis explains the outcomes of the Cologne and Delhi violence, clarifying how such interventions are moving inexorably in the direction of less socio-sexual freedom for women, increased regulation of gender and more vigilant surveillance of women’s sexual conduct, as well as of the presence of the undisciplined ‘Other’.

UNPACKING GENDER, SEX AND SEXUALITY IN HUMAN RIGHTS ADVOCACY

Since the 1990s, the scholarship on gender in international law has been prolific.20 While prior to the 1990s feminists prioritized the goal of gender equality and directed their efforts towards greater inclusion of women in all domains, in the early 1990s their primary focus shifted to addressing VAW. The same period also witnessed the emergence of more critical and postcolonial feminist legal voices. These critical positions have drawn attention to the structural biases in international law (IL) more generally, noting how women’s inequality has been positioned as either being outside the remit of IL or included on terms that reproduce both gender and cultural stereotypes, as well as the limited emancipatory effects of IHRL for women more specifically.21 The critical, feminist and activist objective, then, was to advocate for an overall restructuring of IL parameters to further accommodate women’s rights, rather than to struggle for greater inclusion within the skewed existing arrangements, and to shape interventions that could resist collusion with abusive power structures while supporting the development of new understandings of state responsibility.22 However, it was no easy task to challenge the foundations of IL and its modes of operation, and such efforts continue to meet considerable resistance.23 As Buss and Manji have argued, ‘international lawyers may not change what they do or how they do it, but they now seem willing to tolerate feminists at their side as they do it’.24

Feminist legal scholarship has unpacked the normative/naturalized assumptions on which the categories of gender, sex and sexuality are based. These include interrogation of the following: gender dualism and the idea that there are only two biologically distinct genders – male and female; gender hierarchy, and the assumption that women are naturally weak and vulnerable, and entirely dependent on – and the property of – men who are cast as their protectors, breadwinners and saviours; sex as a natural, physiological and stable category; and sexuality as essentialized and presumptively based on reproductive heterosexuality. The scholarship has specifically struggled to dislodge these categories from the vicelike grip of the ‘real’, ‘authentic’ or ‘natural’ – conceptualizations that have
reproduced gender stereotypes and invited protectionist responses which continue to treat women as vulnerable, weak, victimized and incapable.

Significant inroads have been made in articulating gender as a social construction and in exposing the gendered nature of law – in terms of procedure, substance and its differential impact on women. This understanding has enabled feminists to challenge a broad range of issues including discrimination and violence in the home, sexual violence and harassment, and inequality and sex discrimination in the workplace. However, there remains a constant risk of interventions falling into and reproducing the biological traps that cause gender to become fixed and frozen. And in the international legal arena, where the term ‘gender’ has been increasingly deployed within human rights advocacy and by UN institutions, the normative inscriptions of the category of gender remain largely unchallenged.

Similarly, there have been persistent feminist challenges to understandings of sex and sexuality as natural and physiological. The dominant narrative of gender in IL more generally, and in IHRL more specifically, is based on the reiterated idea that biological sex is a stable, anatomical, natural category, and that gender is a social construction which can be altered and manipulated. The theoretical sex/gender binary has reinforced the conventional understanding of sex/sexuality as a purely biological category, and thus of selfhood as inextricably bound up with personal physiology. It has further privileged a specific form of sexuality – that is, reproductive heterosexuality – as superior, ‘natural’, and desirable, relegating all deviations from this norm to an inferior and/or ‘unnatural’, ‘abnormal’ status.

Challenges to the idea of sex and sexuality as natural, physiological categories initially emerged in the writings of radical/dominance/power feminists, such as Catharine MacKinnon. Her central argument is that the differences between men and women are instituted by an exercise of power through which sexuality is entirely defined and dominated by men, and where women are subordinated, oppressed and disadvantaged through male dominance. Gender is thus a product of the way in which sexuality is constructed as a form of power, quite specifically through the patriarchal oppression of women and their sexuality. This argument contends not only that the very culture and substance of law is gendered, but also that notions of neutrality and objectivity are, in fact, based on male experiences and a male point of view. From this perspective, sex – that is, the body – is treated as the primary site for female subordination and viewed as an ever available, easily accessible terrain for all modes of ideological, social and cultural inscription. This position has had an overwhelming influence on women’s rights advocacy strategies, which
have been directed almost exclusively at combating sexual violence, including rape, pornography, sexual harassment and prostitution.

POSTSTRUCTURAL, QUEER AND POSTCOLONIAL CRITIQUES

Poststructural, queer and postcolonial feminist critiques have further troubled the categories of gender, sex and sexuality, as well as the continued prevalence of gender dualism and the idea of sexuality as the central site of women's oppression. A significant early critique initiated more than two decades ago by poststructuralist feminist scholar Judith Butler interrogated the overly deterministic position of radical/dominance/power feminists, which conflated sexuality and gender, and limited the possibility of theorizing sexuality outside of gender difference. Butler's work theorizes sex not as the natural manifestation of the body's innate physiological drives, but as a discursive and cultural production made existent in and through the modality of gender. Butler casts the givens of gender into a new mould: as performance, or a set of conditioned re-enactments that simultaneously involves a constant re-experiencing of meanings socially attached to it. Gender is thus a scripted construct: a seemingly predictable yet equivocal apparatus through which sex is produced and rendered as fixed and incontrovertible — that is, as 'pre-discursive' and 'natural'/*normal*. Drawing upon Foucault's notions of disciplinary and regulatory power, Butler argues that sex operates as a norm whose regulatory power 'produces the bodies it governs'. Through a 'stylized repetition of acts' that congeal over time, gender is an effect of discourse and performance. And this performance has normative effects through repetition, reiteration and exclusion. This argument rejects the distinction between sex as natural and sexuality/gender as socially constructed, but rather views sex as a product of the discourses of gender and sexuality and, in this sense, as denoting the impossibility of exercising agency outside of these sets of discursive practices.

Relating this argument to the specific context of law, Margaret Davies argues that neither sex nor gender are natural. Rather than referring to the idea of law as gendered, she refers to law as sexing and heterosexing its subjects, thus exposing its heteronormative moorings and marking a move away from the sex/gender distinction, the naturalness and immutability of which are disavowed. These positions resonate with Foucault's critique of the understanding of political power primarily in terms of sovereignty exercised by the various components of a nation state. As
discussed in Chapter 2, Foucault argues that this account of the functioning of power disguises the minute and intimate ways in which it is deployed – the capillary operations that infiltrate the personal, and influence the constitution of the subject.\textsuperscript{36} Subsequent developments in queer theory have built on Butler’s analysis and have sought to more comprehensively challenge concepts of gender, sex and sexuality, with a view to creating space for more polymorphous and pluralistic genders, sexes and sexualities.\textsuperscript{37} They have argued that these concepts are fractured and contingent, and have sought to fully disengage sex/gender from its biological moorings. Efforts to envisage the sex/gender binary as a fully social category, and to dislodge the naturalized and universalized hegemonies in which this binary has been – and continues to be – embedded, seek to push back against protectionist representations and responses that are built on gender, sexual and cultural stereotypes.\textsuperscript{38} The re-conceptualizing and reimagining of the entire category of sex/gender as fluid and fluctuating rather than based on an asymmetrical gender dualism remains crucial to confronting the tenacious grip of biological determinism as an explanation for women’s subordination (and male dominance), as well as countering the constant re-emergence of protectionist and paternalistic responses to women and developing understandings of how gender, sex and sexuality operate as technologies of power.

Postcolonial feminist critiques have similarly outlined not only how male and female bodies have been overwhelmingly understood within the human rights discourse as naturally different, but also how they have been consistently displaced onto a First/Third World divide. Colonial understandings of the gendered ‘Other’ are constructed by equating tradition and antiquity with primitiveness and libidinal aggression – a perspective central to the colonizers’ moral judgements about the native subject and his treatment of women. This equation served to reinforce civilizational differences and to inscribe the cultural superiority of the West, both of which remain highly potent ideas in the postcolonial era. Non-European societies were, and continue to be, treated as objects of knowledge to be reconstituted through various techniques, including law, and made comprehensible to the West. This knowledge was informed by liberal definitions of colonial masculinity, femininity, heteronormativity, culture and historical difference, in addition to liberal postulations of what and who constitutes the universal subject.\textsuperscript{39} These arguments were deployed to facilitate the continuation of colonial rule through gender, as well as to manage and regulate the native population. Civilizational maturity or achievement became a prerequisite to legal entitlements and other state-bestowed benefits.\textsuperscript{40}
Liberal imperialism mobilized the mission of empire as a disciplining and civilizing tool through which gender, sexuality and culture were sutured together as key sites for structuring the contest between the colonial power and the native subject. As observed elsewhere in this book, colonial attempts to outlaw harmful cultural practices – characterized by Spivak as white men ‘saving brown women from brown men’ – were as much about establishing the civilizational and cultural supremacy of the West as they were a justification for denying self-rule to the backward and/or barbaric native subject. Postcolonial feminism emerged from the politics of the colonial encounter and its aftermath – namely, the global wave of decolonization that followed the Second World War. This position addresses the manner in which liberation is advanced through the discourse of liberal democracy, and plays out specifically within the context of women’s human rights and a global feminism informed centrally by the “moral superiority” of American geopolitical discourse. This process ‘construct[s] “American” feminists as saviors and rescuers of “oppressed women” elsewhere within a “global” economy run by a few powerful states’. It is an approach that reinstates liberal selfhood at the cost of obscuring heterogeneity and structural inequality, and which retains human rights as a virtuous technology of rescue and emancipation.

These critiques expose and illustrate the governance work being conducted by gender, historically, since the period of the colonial encounter – where economic global expansionism was not only coupled with a civilizing mission, but also a rescue mission. In contemporary women’s rights advocacy, interventions regarding gender also involve an intervention on existing racial, religious and sexual norms and prevailing civilizational discourses. Interrogating the idea of pre-existing subjectivities awaiting emancipation and affirmation through the liberal paradigm of gender and sexuality rights exposes how rights discourses are implicated in the construction and inscription of these very identities, and highlights the cultural and civilizational hierarchy that continues to inform contemporary women’s rights advocacy – which thus materializes as a governance project.

Although contemporary poststructural, queer and postcolonial scholarship has problematized the categories of gender, sex and sexuality, women’s human rights advocacy continues to operate primarily along the fraught sex/gender binary, with an apparent acceptance of traditional gender dualisms. Re-imagination of gender, sex and sexuality entirely outside of biological and naturalized embeddedness has found little traction in the international legal arena. Biological explanations persist, which not only restore gender dualisms and reinforce gender stereotypes,
but also ensure that several closeted forms of sexuality and categories of people who do not adhere to or fall into the rigidly defined categories of gender, sex and sexuality are excluded from protection. Similarly, the unmasking of colonial strategies, which have been integral to the structural formations of gender vis-à-vis reformist interventions on behalf of ‘native’ women, has not shaken the commitment of human rights to the sex/gender binary and its accompanying racial and civilizational underpinnings. There remains considerable resistance to the ambivalences produced by these critiques in respect of those for whom the sex/gender binary (as well as racial and civilizational hierarchy) is axiomatic.

Women’s human rights advocacy has embraced gender, sex and sexuality in ways that have not been unequivocally emancipating or liberating for women. A protectionist approach towards women – coupled with biological determinism and dualistic understandings of gender – has retained its tenacious grip on this advocacy. While this development is evident in the context of several issues pertaining to women’s rights, including gender equality and the gendered ‘Other’, which I examine in Chapter 4, the focus of my discussion in the remainder of this chapter is the campaigns pursued by women’s human rights advocates, which target VAW.

GOVERNANCE FEMINISM, SECURITY DISCOURSE AND CAMPAIGNS TARGETING VIOLENCE AGAINST WOMEN

In the international human rights arena, freedom in contemporary gender advocacy has been largely framed within the logic of campaigns confronting VAW. The turning point came at the 1993 Vienna World Conference on Human Rights, when the human rights community recognized that violence against women in the home or private sphere should be subject to human rights scrutiny. Accordingly, the Vienna Declaration stressed the significance of eliminating VAW, including ‘all forms of sexual harassment, exploitation and trafficking in women’. and recognized that ‘[v]iolations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law’. While the 1994 Cairo Conference on Population and Development, the 1995 Beijing World Conference for Women and the adoption of the 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women have been important milestones for women’s human
rights, the proliferation of resolutions and declarations addressing sexual violence against women has received the most attention.

Anti Sex-Trafficking Interventions

As discussed earlier, states have responded to the recognition of sexual violence in IHRL largely through an overall strengthening of the law and order agenda and a tighter focus on criminal justice provisions. A carceral vision has been acutely evident in the area of anti-trafficking interventions, where intensification of border controls, raid-and-rescue operations by law enforcement and a zero-tolerance campaign aimed at targeting individuals engaged in sex trafficking are among the dominant responses by the state. In the context of anti-trafficking interventions undertaken in the 1990s and the first decade of the twenty-first century, gender continues to be primarily aligned with victimization, vulnerability and sexual oppression. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (UN Trafficking Protocol) illustrates how the discourse of IHRL is complicit in the constitution of the trafficked subject, as well as how freedom visualized by activists in relation to the trafficked subject is aligned with a criminal justice and law and order agenda. The Protocol was specifically attached to the UN Convention on Transnational Organized Crime, which falls under the remit of the UN Office on Drugs and Crime (UNODC). The definition of trafficking under the Protocol is arguably intended to cover a broad range of activities, including forced labour and services. While the definition is gender neutral and extends beyond the specific issue of prostitution, the document retains a core focus on prostitution and violence against women in the broader public arena, where freedom is largely seen as an outcome of law enforcement, enhanced border security, prosecution and the criminal justice system – processes inscribed as the primary methods by which to protect the human rights of persons who are trafficked.

Consistent with such anti-trafficking campaigns, which have become central to women’s rights advocacy, a number of states have been moving towards what is described as the ‘Nordic model’, which criminalizes the clients of sex workers and various other aspects of the sex industry. It is well known that, in this model, the sex worker is recognized only as a victim to be rescued. Critiques of this position highlight the ‘victimization and rescue’ mentality that informs anti-trafficking campaigns, which frequently focus on representing Third World women or women from the Global South exclusively as victims sold into the sex industry.
Thus, a carceral and criminal justice framework becomes central to addressing the problem of trafficking.

Several larger projects are served by the focus on anti-trafficking in relation to prostitution, which specifically targets sex workers and migrants. This approach has been supported and promoted, in part, by a specific strand of feminism that classifies and targets all sex work, voluntary and involuntary, as a form of violence against women perpetrated through the conduit of trafficking. For some women’s rights advocates, freedom lies in dismantling the very structure of the sex industry and in erasing the sex worker as a legible or eligible category of person in law, or making the sex worker only eligible in the identity of a victim. This paradigm encourages criminal law to sweep up any remnants of the industry, the dismantling of which serves to reinforce both governing norms and the moral crusade against sex work. These interventions have become a magnet for other actors and stakeholders who view all voluntary and coerced sex work/workers as ‘sinful’ – a position that dovetails specifically with the moral topographies of well-funded evangelical Christian ‘humanitarian’ organizations and individuals involved in projects to rehabilitate victims trafficked for this purpose.54

The entrenchment of anti-trafficking interventions in the criminal law can be traced through earlier international legal instruments that focused on transnational trafficking and, quite specifically, on criminalizing the trafficking of women and young girls for the purposes of prostitution.55 While the turn to criminal law to redress human rights violations has been more evident in other areas of law since the early 1990s, in the specific area of trafficking, criminal prosecution and punishment have been central features for the past century.57 These interventions claim to emancipate women through the elimination of trafficking, but have instead further entrenched the control and regulation of women’s cross-border movements, while also establishing a precedent for characterizing female transnational migration as invariably forced and for the purpose of prostitution and/or sexual slavery. In the contemporary context, an important feature of anti-trafficking interventions is how feminists and conservatives alike share the state’s construction of gender and its focus on a carceral vision that seeks to penalize men who behave badly. These seemingly politically opposed groups have a common commitment to supporting interventions that, in actuality, target, police and criminalize economically and racially marginalized populations, through an emphasis on tough border controls and the use of threats to withdraw donor funding and non-humanitarian aid in order to coerce countries into actively curtailing prostitution.

*The rise of the sexual security regime*
In some jurisdictions, the definition of ‘trafficking’ and the scope of related interventions has extended beyond sex trafficking to include a broader array of activities – such as forced labour – which do not necessarily involve any migratory movement, and which are then classified as various forms of exploitation under the generic term ‘slavery’.\textsuperscript{58} This expansion has emphasized, and been facilitated by, prosecution-oriented strategies that have focused on the accountability of individual perpetrators. These measures affect a wide range of people and provide the state with enormous power over them, as well as over their movement across borders – control, in this sense, being a central plank in liberal governance and its embrace of a security agenda. The overall trajectory is one that privileges a criminal law approach with accountability sought through prosecution – an approach that works via the reductive traditional dialectic of victim protection and offender incarceration, and which does not move in the direction of freedom. Traffickers are not the root problem – they are responding to demand from desperate people and ‘helping’ them, while also charging exorbitant prices and using unsafe means of transport. In the clamour to demonize traffickers, advocacy loses sight of how their prosecution is used to obscure the larger picture and to justify a host of other agendas, including carceral responses in relation to sex work and cross-border migrations. The imposition of discourses and technologies of control, such as the state security apparatus, which seem so removed from women’s human rights has produced fierce rejoinders as to whether these carceral initiatives have contributed anything at all towards women’s freedom, or even marginally eased the suffering of trafficked persons.\textsuperscript{59}

Anti-trafficking interventions are also part of a larger move by states to address VAW as part of the ‘second-generation’ reforms that have shifted the focus from macroeconomic and financial considerations to those seeking to address the broader structural dimensions of development, including gender.\textsuperscript{60} VAW is understood as being a barrier to women’s participation in the market, including as a cheap exploitable labour resource. A specific set of prescriptions designed to promote women’s participation in the market thus accompany this ‘modern-day slavery’ abolitionist project.\textsuperscript{51} These strategies visualize women specifically as human capital whose potential is being impeded by gender-based violence; as a demographic, they are viewed as a significant repository and resource that needs to be unleashed as well as exploited. Importantly, this reflection upon the structural dimensions of development has not invited analysis of the reasons for cross-border migrations. The complex issue of safe migration remains at the periphery of analysis, where trafficking and migration are treated as separate spheres – despite their overlap in
practice – and consciously dissociated for address under separate juridical regimes. Nor have responses to the movement of women inquired into the possibility of developing local, regional and international mechanisms to address labour migration, migrant rights and ethical work practices, so that people would not be compelled to migrate for livelihood purposes. This argument is not to suggest that drawing attention to migrant rights would bring freedom; however, it would draw attention to the larger global issue of neoliberal markets, which are often sequestered from human rights scrutiny, even though these processes remain in plain sight.

The central strategy of using criminal law is embedded in the neoliberal agenda, where state intervention is limited to the penal sphere to ensure security in the interests of market stability and efficiency. These interventions divert attention from the deeper truth underlying the political accommodation of voluntary and/or involuntary migration – particularly the national and international need for a large, stable, malleable labour force, which includes the terrain of sexual labour. Therefore, these measures are ultimately less about women and more about means to other ends. Opposition to sex trafficking is thus presented as a modernizing, sanitizing project. Solutions to the problem of violence against women are articulated in terms of the restoration of the heterosexual familial order, law making and physical control, and individual perpetrator accountability – all viewed as means for creating a stable economic environment that enables women’s freedom to participate in the market.

At one level, women rescued from sex trafficking are reintegrated into their original familial spaces, or incarcerated for their own protection. At another, the solutions are imagined in corporate and consumer terms – in other words, an economic logic becomes a significant motive for securing sexual freedom, alleviating sexual trauma, resettling uprooted lives and bringing about gender justice. Under this logic, rescued women are encouraged to set up small-scale business enterprises to manufacture goods that are advertised as having been produced by ‘traffick[ed] victims’. The increasing obsession with national security, law and order modalities, surveillance and border policing serves not only as a deterrent to traffickers and a form of protection for the trafficked victim, but also to protect advocacy-linked special interests in the context of globalization and free-market ideology.

A carceral vision remains embedded in a neo-colonial as well as neoliberal paradigm. The analysis does not suggest that the antidote rests in simply shifting to a focus on rights that promote mobility, freedom of movement, and equality – which already exist in international and domestic laws. Such rights do not in and of themselves either disrupt the
normative assumptions about female autonomy and agency, or unmask the broader agendas that are being advanced through anti-trafficking interventions. This does, however, partly illustrate how an entire regulatory regime of anti-trafficking interventions — that focus on clandestine profiteering networks of handlers, traffickers and smugglers — can be established without tackling the root causes behind exploitation of and violence against women, which include the failure to formulate effective migration strategies as well as to challenge conservative sexual morality. Such a focus removes or hides the responsibility of the state, the market and neoliberal ideology, as well as of sex work abolitionists, in the production of these clandestine networks. The interventions depend upon a law and order, criminal justice approach; on the objectification of women, viewed simultaneously as victims and as sinful contaminants; and on appeals to states for redress — all of which contribute to a legal edifice that may appear to support women’s freedom, but which, in fact, could be bypassing the core problem altogether.

This misperception does not bring the trafficked woman any closer to her goal of freedom. She remains immobilized within the state-cum-advocacy panoptic: one that constructs her almost exclusively as a victim, controls her sexual autonomy and facilitates a host of exploitative agendas that have little to do with her freedom. Moreover, the focus on criminal law has not in the least discouraged irregular movement; on the contrary, it has strengthened the operations of an illegal, transnational, transcultural migrant mobility circuit, which continues to facilitate the movement of people determined and desperate to move, and pushes them into situations of increasing vulnerability, exploitation and abuse. The central point here is that a human rights regime which protects the normative arrangements of gender and sexuality by disentitling the sex worker and the migrant — thus reinscribing their precarity — does so in the first instance by rendering their very livelihood as per se constituting violence against women, and in the latter instance by projecting and stigmatizing them as a threat to the social cohesion, security and law and order of the receiving state. This disentitlement thus sustains the dominant exclusionary rationales of the liberal paradigm, as well as the normative prescriptions that constitute ‘fishbowl’ freedom.

**Gender, Peace and Security**

Similarly, the continued focus on sexual violence — from a perspective based on fixed and static representations of gender — continues to inform women’s human rights advocacy in relation to gender, peace and security. Dualistic understandings of gender have informed the United Nations
Security Council Resolutions 1325 (‘Resolution 1325’) and 1820 (‘Resolution 1820’) on women, peace and security. The three principal features of Resolution 1325 call for greater participation of women in conflict prevention, resolution and peace processes; for renewed attention to and focus on women as victims of violence, particularly sexual violence in the context of armed conflict; and for ‘gender mainstreaming’ in all activities of the UN and member states pertaining to their conflict-related operations. Resolution 1820 focuses on the issue of violence against women, particularly on sexual violence against women in the context of armed conflict, and enumerates the responsibilities and commitments of the UN, parties to a conflict and member states. Resolution 1325 has been lauded as a landmark political moment. Not only have the resolutions offered a route for gender advocacy to be both heard and addressed, but they have also served to shore up the Security Council’s credentials on gender.

Embedded in Resolution 1325, its accompanying resolutions and the scaffolding of UN documents and mechanisms that enable them is the notion that women are inherently peace loving, speak ‘in a different voice’ – a gentler, more modulated tone – than men and are innately more committed to the pursuit of peace and conflict resolution. These conventional and culturally sanctioned assumptions are strewn across the field of IL more generally, and the women’s human rights industry more specifically. Women are not only portrayed as more peaceful than men, but are also – in the statements surrounding these resolutions – described as being ‘better equipped than men to prevent or resolve [conflict]’, and as having for generations played a crucial role in preserving social order when communities have collapsed.

In the process, women’s human rights are increasingly absorbed into the hegemonic discourse of security, militarism and war that often has little to do with the realization of freedom. The securitization of gender continues to be grafted onto existing power structures and inscribed into a gender binary, where gender is equated with women, and women remain essentially differentiated from men. The persistent representation of women as victims in need of protection and men as either perpetrators or rescuers/custodians continues within the gender, peace and security initiatives. In the process, the military and security apparatus within which this issue is addressed increasingly becomes the overarching paradigm for taking up women’s rights. Freedom comes to be articulated within an earlier discourse of protectionism in relation to gender and, within this rhetoric, women remain objects needing protection. Quite specifically, an earlier version of American feminism based on an ‘ethic of care’ has been retrieved, and is now centrally deployed to characterize
women’s moral perspectives and to frame the discourse of gender in women’s rights advocacy.78

The paradoxical incorporation of women’s capacity and role as empathetic peace makers into the coercion and militarism of security discourse has at one level enhanced the value attached to women’s human rights within the larger UN discourse, especially as the move has the backing of the Security Council and its most powerful members.79 At the same time, the resolution reproduces responses to women’s human rights. The work that gender does in the context of peace and security provides a clearer understanding of how gender, as a category/sphere for intervention, serves to enhance security as well as to provide a justification for militarism and war, since women are presented as in need of rescue and protection. For example, the military invasion of Afghanistan in 2003 was glazed with a call, supported by feminists among others, to rescue the ‘Other’ woman from the barbaric ‘Other’ man (an issue further explored in Chapter 4). The rhetoric used to legitimize the call for militarism presents women as being genetically conditioned to be peaceful, inclined to promote peace and in need of protection from violent, culturally regressive ‘Other’ male predators. A broader and newer definition of security emerges in the context of the Security Council resolutions, extending beyond existent frameworks, and frenetically concerned with individual and group security. This definition continues to encase women within a static relationship of protector/protected, masculine/feminine, male/female, under an umbrella binary of (liberal) ‘us’ and (illiberal) ‘them’, which obscures the actual insecurities and vulnerabilities of women and others in conflict and post-conflict societies.

Moreover, the political and radical claims of women directly involved in conflict on equal terms with men – as, for example, armed combatants, members of rebel militia cadres or guerrilla groups – remain unacknowledged, unaddressed or dismissed in the very terms of peace promotion. There is no questioning or challenging of the very basis on which peace, security or the category of ‘woman’ is understood.80 Examples of those with such agency include the female guerrilla fighters in the People’s Liberation Army who actively participated in the civil conflict in Nepal from 1996 to 2006; or female Tamil Tiger soldiers in Sri Lanka’s civil war; or those in the active battle zones of the ‘war against terror’, such as the Kurdish women who, in 2015, formally joined the Peshmerga as frontline soldiers to fight the Islamic State (IS); or the Yazidi women who, in 2015, audaciously refuted obscurity, domesticity and traumatic displacement to organize themselves into all-female squads, wearing battle fatigues and training to defend their communities from the rav-}

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erting bloodlust of IS jihad.
More significantly, in the aftermath of war, peace itself comes to be structured alongside a wholesale restoration of normative gender and familial arrangements. In this scheme, women participants in conflict are ‘rehabilitated’ through training in domestic skills and reintegration into the normative structures of gender and family, whereas fighters – assumed in most instances to be men – are rewarded with positions of authority in new governing structures, including the military, police and security apparatus. Local security and society is reordered in the image of liberal governance. The newly restored peace becomes an enabling condition for a reinstatement of the normative orders of gender based on privileged hegemonic masculinities; for the re-subordination of gender, equated entirely with women, through a protectionist lens; and for the restored state and gender apparatus to welcome, and embrace, liberal market forces. And the unprecedented expansion of the Security Council’s power in this arrangement is further enhanced and strengthened in the name of gender, peace and security, in which women have a prescribed role. The justification for this framing is reminiscent of the logic of ‘Empire lite’, a new colonialism that celebrates global hegemony in the form of free markets, human rights and democracy – the principal architecture of ‘fishbowl’ freedom. It is a humanitarian vision of empire, where rule of law rationales become part of a technocratic enterprise that incorporates gender/gender activism and women’s rights in thorough accordance with the diktat of neoliberal govern mentality.

The portrayal of women largely as idealistic non-aggressors is an example of how gender is inscribed within the international legal regime in a way that reflexively reinforces the standard framework of gender advocacy, without any real scrutiny or critical reworking of the standard model of ‘woman’. Nor do these interventions play any role in problematizing the way gender is deployed as a category that remains contingent on the traditional male/female binary, fixed and intact, a construction that enables or enhances the securitization of women’s human rights. The foregrounding of the vulnerable subject is, in this instance, taken up within the discourse of security, where gender is framed within the terms of a biologically determined perspective assumed to be common to all women, rather than utilized as an analytical category for interrogating the a priori, stereotypical assumptions of the international legal regime. At the same time, the homogenizing vision of ‘liberal peace’, which remains the end goal of these interventions, does not accommodate any assertions of autonomy that disrupt the conventional gender order, even when evidence of such disruption is regularly produced in the theatre of war itself. As discussed, this vision takes no account of the agency of militarized women – female combatants, guerrilla fighters or suicide
bombers – who fail or refuse to comply with the gender order of their own traditions and seek alternative expressions of identity and selfhood, but who are generally regarded as anomalous to this essentialist discourse.

The discussions on sex trafficking and on peace and security – both longstanding central concerns for the state and civil society in women’s human rights within the wider ambit of IHRL – exemplify the particular ways in which gender, sex and sexuality have manifested in international and human rights circuits. The Security Council resolutions, like the anti-trafficking interventions, are a manifestation of what Janet Halley describes as governance feminism; they illustrate how the ‘international legal order is increasingly receiving feminists into its power elites and that feminist law reform is emerging there as a formidable new source of legal ideas’. Governance feminism maintains the idea that gender operates along the binary of man/woman, male/female, masculine/feminine; that it is committed to a theory of subordination, where woman/female/feminine are subordinated to men/male/masculine; and also that feminists carry a brief for women, femininity, the female/feminine gender. In this description, then, the gender category ‘woman’ remains distinct, stable and closed. Within this arrangement, women’s human rights manifest as a form of governance feminism, especially when the discourse coincides with the linked parameters of the neoliberal market, securitization and imperialistic ambition.

Governance feminism finds literal manifestation in the international legal regime, where gender is regulated, disciplined and managed in ways that do not necessarily emancipate women. While ‘doing gender’ enhances the ‘progressive’ credentials of states and non-state actors, the work that gender does and that is being done through gender tells a somewhat different story. As discussed, gender is addressed primarily through carceral measures and the criminal law, which offer and validate ‘fishbowl’ freedom – finite, conditional, preferential, duplicitous and, in essence, illusory. The strong focus on sexual violence and victimization has invited the state’s selective engagement with feminist ideas and the pursuit of a carceral vision and, in the process, deflected attention from the broader structural, political and economic arrangements that produce violence. At the same time, the state’s appropriation of gender advocacy to strengthen the security apparatus clearly serves the state’s priorities, which are directed towards establishing social and political stability – partly to ensure that the market performs efficiently and optimally. In the guise of protecting women and protecting the right to free choice, state and market forces collude to ensure the political and economic regulation of the citizen-subject. The emergent narrative is a description of how the
deployment of stable, solidified understandings of gender serves other larger projects of empire, neoliberalism and the free market.

**RESISTANCE OR COMPLIANCE? THE POLITICAL LOCUS OF ‘VIOLENCE AGAINST WOMEN’ CAMPAIGNS IN INTERNATIONAL HUMAN RIGHTS LAW**

I return to the discussion regarding the Cologne attacks and the Delhi rape which introduced this chapter so as to reiterate that the procession of state and non-state responses to these events was deeply influenced by the global response to VAW in IHRL. The translation of rights into a security discourse informed the interventions by various state and non-state actors in the ‘Delhi rape’ case, and, with the sometimes violent barring of refugee entry by border guards, acted as part of the highly racialized and paranoid response to the Cologne assaults. The broader structural causes that serve as a trigger for VAW either remain un-addressed through these paternalistic and culturally claustrophobic interventions or are addressed in purely economic terms, where the remedies are seen to lie in market access and participation – a logic that further entrenches and exacerbates the conditions of social inequality, marginality and disempowerment.

The exponential increase in security, sexual surveillance and law and order has augmented the muscular power of the state to regulate and discipline the sexual behaviour of its citizens in the direction of fewer rights, more surveillance and less freedom. The state uses crisis, such as the Cologne and Delhi rape protests, to extend the tentacles of criminal law into women’s personal lives and intensify its powers of regulation and surveillance; moreover, it does so by building upon the existing legal edifice, without any scrutiny or deconstruction of the normative assumptions about gender, women’s vulnerability and the lack of autonomy embedded in the discriminatory sexist substrate of women’s bodies as repositories of ‘national honour’ and integrity. Nor does it challenge the hubris underlying the assumption of superior civilizational values. It simultaneously uses these events to construct the ‘Other’ – whether refugee or Muslim, for example – as a threat to the liberal paradigm, and to develop interventions for expelling, incarcerating or severely restricting the unprecedented, unforeseen surge of the unruly, irrational, illegible ‘Other’ into the safe, sanctioned, sanitized, serene fishbowl of European space.
It is increasingly apparent that the state is utilizing carcerality as a central feature of neoliberal governance, to manage the civic insecurities, disruptions, equivocations and contradictions being produced in these neoliberal times. In the process, the language of rights is used to justify state or state-supported interventions that remain focused on security, imprisonment and identifying and executing ‘solutions’ to social ‘problems’ through criminal law. The burden of responsibility for the overall welfare of vulnerable citizen-subjects is shifted away from the state, which is complicit in producing the existing environment of insecurity and predation, and which absolves itself by providing and operating technologies of increased control over citizens’ lives. Doubling back on itself like a Möbius strip, this approach does little to curtail the enactment of prevalent sexist norms and, in part, explains why so little has changed with regard to the lack of public safety for women in ‘developed’ Germany or ‘underdeveloped’ India, despite several decades of women’s human rights advocacy.

It is also a fact that the security apparatus, which was strengthened by both the Cologne and the Delhi assaults, is partly propelled by market demands for an economic environment of continual stability and efficiency, and hence the need for greater policing. This apparatus becomes the means for suppressing counter-opinion, choking dissent and directly and indirectly reinforcing the rightist panopticon.86 Such interventions serve to reinforce existent political, social and economic hegemonies, rather than to empower disenfranchised communities who are using the rights discourse to demand recognition, action and inclusion.

It must be remembered that while security, sexual surveillance, law and order and the rhetoric of rights are perceived as the primary tools to fight sexual inequality and sexual violence, this amalgam of enforcement mechanisms and activist interventions is a core feature of neoliberal governance more generally rather than a specific feature of German or Indian society, or a necessary means for responding to the criminal abrogation of purportedly superior civilizational or cultural values. The deliberate and prominent use of the security discourse deflects attention away from the dysfunctional social and economic structures that pervade many aspects of daily existence. Little attention is paid to concretely addressing the stark material deprivation that is the perennial substrate of so many women’s daily lives and is opportunistically used to perpetrate violence against them. Nor does a security discourse interrogate the grossly and unapologetically sexist educational and social conditioning that nurtures specific archetypes and valorizes certain images of desirable/undesirable, ‘good’/‘bad’ women.
Moreover, the trend in security discourse is to target men belonging to already marginalized communities – whether religious and racial minorities, migrants, those of lower caste or ‘the poor’ in broad terms – and displace responsibility for sexual violence onto them. These men are systematically represented and stigmatized as sociopathic deviants whose ‘naturally’ ignorant, misogynist, predatory treatment of women may be partly attributed to their religious, class or caste affiliations, illiteracy or poverty. The surveillance and incarceration of profiled offenders is lauded as the most effective means for having apparently ensured greater security and autonomy for women. However, state, non-state and social actors all collude to validate the sexist hegemonies, hierarchies and rhetoric that perpetuate socio-economic inequality and injustice via increasingly refined security discourses and instruments.

The categories of gender, sex and sexuality are also being managed and controlled by an aggressive neoliberal political rationality that is not confined to economic transactions, but extends and disseminates market values to all institutions and social actions.87 It is an implementation strategy in which market demands for efficiency and stability are partly pursued in and through legal discourse – the latter being consciously applied as a normalizing mechanism through which citizens are rendered recognizable or non-recognizable, enfranchised or disenfranchised, variously able or less able or unable to function as economic units. As discussed in Chapter 2, differential participation in the voracious neoliberal market becomes the primary index for calibrating human worth and value, and for the bestowing of entitlements. Legal discourse, which includes the narrative of human rights, is utilized to discipline and regulate all spheres of life, including the economic life of both the powerful and the powerless. At the same time, the move towards a society of control reinforces itself through carceral means to suppress those unruly, undesirable, illegal subjects who can, sometimes – even through mere visibility – threaten the prosperity, stability and viability of the neoliberal enterprise.

One significant outcome of the way in which the market is harnessing gender to advance the neoliberal economic project, together with the framing of gender issues within a carceral vision, is that traditional gender categories continue to be reproduced as normalized, naturalized and stable. This process remains problematic, as ‘gender’ remains a noun – a static object of focus – rather than a performance that is normatively reproduced and reinforced. The swathe of diverse practices that constitute gender are contracted into and elided with the existing narrow understanding of ‘woman’ as a fixed biological category within an axiomatic sex/gender binary, as discussed earlier in this chapter. Such essentialism
also operates on the formulaic assumption that the woman is always inherently vulnerable, a victim in need of rescue and protection from predatory men. This distorted logic is primarily offered as a solution within the context of sexual violence, soliciting and implementing interventions that conform to the normative gender script. Such approaches are not useful in procuring freedom for women in general, or even specific justice for the criminally violated, such as the ‘Delhi rape victim’, the victims of the Cologne sexual assaults or anyone else subject to gender inequality. Replicating these normative arrangements inevitably produces ahistorical, decontextualized and universalist accounts of gender. Moreover, such reiteration effectively forecloses any possibility of change in the existing patriarchal gender and sexual arrangements.

‘TAKING A BREAK’ FROM (ANGLO-AMERICAN) FEMINISM?

Women’s groups and human rights groups have not adequately confronted the fact that advocacy, like other modalities, is being embedded in international and national legal orders, which are heavily consolidated by a top-down understanding of sovereign power. The interventions have proved restrictive and have not provided positive benefits for women; nor have they addressed the dispersed and disguised forms of power that have an impact on, or constitute, the reification of the term ‘gender’. Halley argues that a specific thread of feminism is being co-opted within the larger agenda of IL, and is exercising considerable power in international institutions.88

In the specific context of IHRL, feminist activists have been forced to dilute their demands and homogenize their ideological differences in order to secure visibility, consensus and a strong critical voice in the international legal arena, where policy makers and strategists turn to feminists for ‘expertise’ on gender advocacy issues – thus feminism becomes a technocratic enterprise. It is no longer a means of interrogating and challenging current practices and structures – including the neoliberal political rationality that serves to perpetuate gender inequality, or indeed the very categories of ‘man’, ‘woman’, ‘male’, ‘female’, ‘masculinity’, ‘femininity’ – but rather has become a means of facilitating and legitimizing the (neo)liberal project of IHRL in the guise of addressing women’s concerns. For this reason, feminism is trapped in its own recursive rhetoric and has become its own obstacle – which, as Halley proposes, may be overcome by ‘taking a break’ from feminism to
review the role of feminism in mechanisms directed towards securing women’s human rights.\(^89\)

The call to ‘take a break’ is tempting in light of the perception that feminism appears to have become an obstacle in the pursuit of what are deemed as emancipatory projects. Yet several scholars have expressed concern over the implications of Halley’s call to step back from the current model of gender justice and emancipation, and regarding her overestimation of feminist power within the international legal arena. Otto argues that despite substantial victories at the UN, the feminist project is losing ground.\(^90\) She views the institutional reception of feminist ideas as part of the management of feminist ideas, which serves to divest them of their emancipatory content. She therefore prefers to represent the results of such management as ‘co-option’ rather than ‘governance feminism’, the latter of which implies that the result is desired by feminists.\(^91\) Charlesworth further argues that governance feminism may be overstating the case, as feminist critiques of IL in the academy have been largely regarded as a frill, with such efforts remaining in a ‘scholarly ghetto’.\(^92\) At the institutional level, feminists have been engaged with normative projects largely to secure women’s equality based on gender mainstreaming, but their gains have been partial and not without costs. Charlesworth argues in favour of a more sustained critical engagement, and reasserts her earlier call to pursue feminist messages through feminist methods, such as searching for the silences on gender in the international legal arena as well as highlighting how this arena excludes women’s lived experiences.\(^93\)

Other scholars object to the demoralizing and demobilizing impact of the formal call to ‘take a break’ from feminism, since this clearly risks ceding the hard-won terrain of gender justice to regressive forces, as well as producing other costs that are incurred not by those who make this call but those on behalf of whom the call is made. By rejecting the call, these scholars are not endorsing a narrow vision of gender, but are arguing in favour of paying more attention to the reconstructive potential of IL and human rights, which rests somewhere between resistance and compliance.\(^94\) The debate illustrates how feminists are confronted with a dilemma posed by the possibilities of resistance and compliance, whereby they recognize that human rights excludes or marginalizes women from the human rights boardroom even as entry is sought in the hope that the project still has some potential for promoting women’s rights. And, indeed, admission seems contingent on feminists speaking only with the master’s voice and undertaking action only with the master’s tools.
Scepticism about the potential clarities that might manifest through literalizing Halley’s call to ‘take a break’ from feminism is important and useful, insofar as Halley’s position emerges largely from an American Left tradition, and targets the American feminist Catharine MacKinnon’s work as exemplifying the partiality and imperfections of feminism in law. Halley’s narrative of feminism erases the specific cultural formations and colonial histories that constitute the ground upon which rights are deployed and through which rights must be procured. Instead, it valorizes the emergence of a hegemonic contemporary global (read American) feminism that, in the international legal arena, has consolidated around the issue of violence against women and the victimized, specifically ‘Third World’, woman’s body. Since Halley’s call is based largely on Anglo-American debates and context, it may be more appropriate to provincialize her call – namely, to treat it as a call to take a break from Anglo-American feminism.

The proliferation and reinforcement of American feminism is integral to the hegemonic imaging of ‘the West’, particularly the United States, as the ideal site of freedom, including women’s freedom, where personal rights are a political reality; this position is systematically exported to ‘the Rest’ through the mechanism of IHRL. Contemporary feminism is actively complicit in the global embedding of the American imperium. In this analysis, the goal of freedom remains one of incorporating the ‘Other’ woman into a dominant model that is largely driven by Western feminists, and especially American feminists. The call to ‘take a break’ from the old certainties of feminism is helpful if read as a break from Anglo-American feminism and the colonial, racial and civilizational certainties that have and continue to shape this project. This shift should not invariably move back in the direction of human rights as holding out the possibility of freedom for women. My argument is that such a break can take us in another direction – it can help create space for feminism that emerges from elsewhere in the world and is influenced by the diverse and complex genealogies that have emanated from a colonial past. These other modalities of feminism do not assume to speak for all women, do not carry a brief only for women and do not view Anglo-American feminism as the solution to developing world gender injustices but, in fact, experience it as part of the problem. Postcolonial feminism is an example of how gender can be productively theorized along the intersections of gender, race, caste, ethnicity and religion. This discursive operation challenges the First/Third World divide that privileges feminist thinking from ‘the West’, and along which feminist advocacy, including that by and about ‘the Rest’, previously habitually aligned itself. At the same time, the call for such a break from Anglo-American feminism can
create space for alternative understandings of gender as well as freedom, as delineated in the remainder of this book, that are not confined within the generic liberal fishbowl and its accompanying hegemonies.

Critical engagement with human rights must continue for the purpose of calibrating the work that is being done by gender in human rights advocacy, and tracking how this may have little to do with advancing women’s rights and freedom and more with legitimating discriminatory governance – whether through the modality of a civilizing mission or colonial knowledge project, as in the past, or in service of neoliberal economic forces or right-wing political agendas from the contemporary moment. It is only through persistent, if not necessarily optimistic, engagement with the current discourses and instruments of gender advocacy that we might come to see what is continuously and constantly revealed, and what is just as continuously and constantly concealed, in the name of women’s empowerment and freedom.

NOTES


8. Jyoti Singh Pandey and her male friend were returning home at night after watching a film at a well-known multiplex cinema in New Delhi. They waited at a bus stop on a main road for one of the city’s unreliable and erratic public buses, and even tried to hail a three-wheeler auto-rickshaw, but to no avail. Eventually, a private bus with tinted windows slowed, and a youth posing as a conductor invited them aboard. Along with the driver, the bus held four other men pretending to be passengers. As the bus pulled away, a sadistic nightmare unfolded on the streets of the nation’s capital. Two hours later the couple, stripped naked and bleeding, were dumped on a road near the glistening new international airport. The young woman had been brutally gang raped and had suffered traumatic
injuries as the result of penetration with an iron rod. She subsequently died of these injuries in hospital. Her friend had been gruesomely beaten by the rapists, but survived and later testified in court. The six assailants – all young, one a minor, and all from socio-economically deprived backgrounds – were swiftly arrested and jailed by the city police. One of the accused died while in prison, prior to sentencing. Four of the other accused were convicted and sentenced to death in 2013. In May 2017, the death sentences were affirmed by the Indian Supreme Court. The sixth accused was a minor at the time of the assault. He was convicted and sentenced to three years at a remand home for juveniles, in line with the legal provisions governing juveniles. He was released in December 2015 upon completion of his sentence.


12. The definition of rape under the existing law was expanded to include acts that were not confined to vaginal penetration by the penis against a woman’s will: Criminal Law (Amendment) Act, 2013 (India), s. 9, amending the Indian Penal Code, 1860 (IPC), ss. 375, 376, 376A, 376B, 376C, 376 D. The addition of the death penalty clause seems somewhat superfluous given that rape resulting in death is tantamount to murder, which is already a capital offence under sections 302 and 303 of the IPC.

13. The government largely ignored the findings of a committee constituted shortly after the Delhi rape, which recommended repeal of the marital rape exception in the IPC, and also sought to address gender outside the constraints of familiality through rights to bodily integrity and sexual autonomy: see J.S. Verma, Leila Seth, and Gopal Subramanium, Report of the Committee on Amendments to Criminal Law (New Delhi: Centre for Social Research, 2013).


15. India’s Daughters, film, dir. Leslee Udwin (United Kingdom: Berta Film, 2015).


20. The most important early work was Hilary Charlesworth, Christine Chinkin and Shelley Wright, Feminist Approaches to International Law’, The American Journal of International Law 85, no. 4 (1991): 613–45. This was followed by a rapid proliferation of scholarship on feminism and international law. For an excellent compilation of these seminal works see Otto, ed., Gender Issues and Human Rights: When Discourses Keep Meeting’, in International Law: Modern Feminist Approaches, eds. Doris Buss and Ambreena Manji (Oxford: Hart, 2005), pp. 47–66. See
generally Geeta Chowdhry and Sheila Nair, eds., *Power, Postcolonialism and International Relations: Reading Race, Gender, and Class* (New York: Routledge, 2002).


However, resistance to a more fluid and interpretative understanding of gender in human rights has remained intractable, as reflected by the term’s invariable bracketing in significant UN documents. See, for example, the extremely ambiguous definition of the term in the statement from the President of the Fourth World Conference on Women, which reflected the tension between feminists and conservatives: United Nations, *Report of the Fourth World Conference on Women* (Beijing, 4–15 September 1995), UN Doc. A/CONF.177/20/Rev.1, 27 October 1995, Annex IV (‘Statement by the President of the Conference on the Commonly Understood Meaning of the Term “Gender”’).


33. Ibid., p. 189.


Books, 2007), pp. 91–116, arguing that Empire and the anti-colonial nation were both profoundly heteronormative projects.


43. Grewal, Transnational America, p. 152.

44. Otto, ‘Towards Rethinking Sex/Gender Dualism’, 204; Cynthia Rothschild, Written Out: How Sexuality is Used to Attack Women’s Organizing, eds Scott Long and Susana T. Fried (New York: International Gay and Lesbian Human Rights Commission; Center for Women’s Global Leadership, 2005). Also see Puu, Terrorist Assemblages, pp. 79–113, on how queer interventions have also produced their own set of cultural and racial exclusions.


47. Ibid., II, para. 38.

48. Ibid.


53. Several countries and influential international women’s rights groups have endorsed the Swedish or Nordic model, which views the sex trade as incompatible with gender equality. In 2014, the Council of Europe adopted a resolution endorsing the Nordic or Swedish model, thus signalling member countries to do the same: Council of Europe, Trafficking and Modern Slavery in Europe, Resolution 1983, 8 April 2014, para. 12.1.1.

Gender, alterity and human rights


The rise of the sexual security regime


63. On ‘looking at the world without actually seeing it’, see Marks, Four Human Rights Myths, pp. 13–14, 16–17.


66. GAATW, Collateral Damage.


69. UNSC, Resolution 1325; UNSC, Resolution 1820.

70. The resolution ‘[e]ncourages the Secretary-General to … increase … the participation of women at decision-making levels in conflict resolution and peace processes’: UNSC, Resolution 1325, para. 2.

71. Ibid., para. 10.

72. Ibid., preamble; para. 17.


including women. She bases this argument on the finding that Resolution 1325 does not make any attempt to address the structural causes of women’s equality. In this way, ‘[d]e-linking gender mainstreaming from the goal of gender equality is a very effective way to remove any feminist political content’: Otto, ‘The Exile of Inclusion’, 21. See also Maria Jansson and Maud Eduards, ‘The Politics of Gender in the UN Security Council Resolutions on Women, Peace and Security’, *International Feminist Journal of Politics* 18, no. 4 (2016): 590–604.


77. UN Secretary-General, ‘Secretary-General Calls for Council Action to Ensure Women are Involved in Peace and Security Decisions’, Press release SG/SM/7598, 24 October 2000.


79. See, for example, Natalie Florea Hudson, *Gender, Human Security and the United Nations: Security Language as a Political Framework for Women* (Hoboken, NJ: Taylor and Francis, 2009). Hudson, who quotes from an interview with a UN official, describes how it is essential to move human rights concerns on to the discursive terrain of security in order to get traction on such issues from politicians.


81. See, for example, UN Secretary-General, ‘Calls for Council Action’; Jamie J. Hagen, ‘Queering Women, Peace and Security’, *International Affairs* 92, no. 2 (2016): 313–32.


88. Halley, ‘Rape at Rome’.

89. Halley, *Split Decisions*.


91. Ibid., p. 13.
